

Determination

NZME Limited and Fairfax New Zealand Limited [2017] NZCC 8

- The Commission:** Dr Mark Berry
Sue Begg
Elisabeth Welson
Graham Crombie
- Summary of application:** NZME Limited and Fairfax NZ Limited and its parent company, Fairfax Media Limited, seek approval to merge the New Zealand operations of NZME Limited and Fairfax NZ Limited.
- Determination:** The Commerce Commission is not satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market. The Commission is also not satisfied that the merger will result, or will be likely to result, in such a benefit to the public that it should be permitted. Therefore, the Commerce declines to grant authorisation for the merger pursuant to section 67(3)(c) of the Commerce Act 1986.
- Date of Determination:** 2 May 2017

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

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Glossary

Term	Description
App	A type of software that allows you to perform specific tasks. Applications for desktop or laptop computers are sometimes called desktop applications, while those for mobile devices are called mobile apps.
Banner or display advertising	Advertisements that are embedded into a webpage and which typically occupy the top and sides of the webpage, or within articles and pages.
Cpi or cpm	'Cost per impression' (cpi) or 'cost per thousand impressions' (cpm), which refers to the cost of advertising where advertisers pay each time an ad is displayed.
Datawall	A requirement to submit and register information to access news content, or news content above a specified amount.
Digital and online	These terms are used interchangeably to refer to any content (including news), advertisement, advertising inventory, or platform (ie, website or app) that relates to the internet.
Homepage takeovers	Advertisements displayed for a day on a publisher homepage. Often used for branding campaigns.
Mobile interstitials	Full-screen advertisements that appear before a webpage is first loaded on a mobile phone browser or application. These advertisements must be dismissed by the reader before the webpage or application can be used.
Native advertisements	Content that is created for the paid promotion of a brand but which does not have the usual format of an advertisement. These are sometimes referred to as advertorials.
NZME News Service	NZME's news sharing service with NZME's daily, Sunday and community newspapers and online websites and independent publishers.
News Works	The trading name of the New Zealand Press Association Limited's (NZPA) commercial entity. News Works advocates and promotes the brands of Newspaper Publishers' Association members (amongst other functions).

Term	Description
NPA	Newspaper Publishers' Association. The NPA's members are Fairfax, Allied Press, <i>The Gisborne Herald</i> , <i>Ashburton Guardian</i> , <i>The Greymouth Star</i> , <i>Westport News</i> , <i>The Whakatane Beacon</i> and <i>Wairoa Star</i> .
Paywall	A system that prevents internet users from accessing at least some of a website's content without payment.
Programmatic advertising	The use of software to purchase digital advertising, rather than buying ads from salespeople.
Reach	The total number of different people or households exposed, at least once, to a media platform during a given period.
Search advertising	A method of placing online advertisements on web pages that shows results from search engine queries.
Search engine	A software system that is designed to search for information on the internet.
Syndicated content	Content that is not self-generated by the publisher, user generated or generated by freelance writers, but is collected from a range of other news, information and entertainment organisations and is made available in the publisher's own print or online publication.

Executive Summary

- X1. On 27 May 2016 Fairfax and NZME (the Applicants) sought clearance or authorisation to merge their respective New Zealand operations. The merger would bring New Zealand's two largest newspaper networks and two largest online news sites under common ownership.
- X2. On 8 November 2016 the Commission issued a Draft Determination signalling our preliminary view that the proposed merger would be likely to substantially lessen competition in advertising and reader markets, and that the merger should not therefore be cleared. We also indicated that there was not likely to be sufficient benefit from the merger such that we should authorise the acquisition, taking into account the likely detriments to the public that we identified.
- X3. Following the release of the Draft Determination, we sought and considered the opinions of the Applicants, experts and the public, including at a public conference convened to hear submissions (6 and 7 December 2016). Following the Conference, further submissions and evidence were received and considered.
- X4. Having now completed our assessment of the evidence, our final views are in most respects unchanged from the Draft Determination. We are not satisfied that a substantial lessening of competition is unlikely, nor that there is likely to be such a benefit to the public that authorisation should be granted.
- X5. Our final decision is to decline clearance and authorisation.

Media market challenges

- X6. The Commission accepts that the Applicants each operate news media businesses in a challenging and rapidly changing commercial environment. Consumers are increasingly embracing the 'new media' methods of accessing news, whether by direct access to the Applicants' respective websites (nzherald.co.nz and stuff.co.nz) and mobile apps, or via social media channels such as Facebook.
- X7. NZME and Fairfax have both responded to these changes by adopting a 'digital first', multi-media strategy, where they publish all their news content online free to readers as it is produced. A selection of that content is then placed in daily print newspaper editions that consumers pay a monthly subscription or individual cover price to read.
- X8. News media markets are two-sided markets. Their commercial model depends broadly on attracting readers so as to sell advertising and also involves charging readers for some publications. The interdependence of these reader and advertiser markets is important. As readership diminishes, the business-case for advertisers weakens and advertisers may look elsewhere for marketing opportunities.
- X9. Advertising revenue is necessary for the production of news as content sales are not generally adequate to cover production costs. This poses a particular challenge online, where Facebook and Google account for the majority of digital advertising

revenue and news media providers struggle to generate substantial revenue directly from readers. The rise in news consumption through mobile devices, notably smart phones, has posed an additional challenge for news producers due to the decreased ability to generate advertising revenue through that channel compared with traditional print publications.

- X10. It is important to note that the changing commercial environment NZME and Fairfax face is not due to a reduced demand for their core product. New Zealanders are strong consumers of news. Usage data suggests that, on average each month, 2.4 million New Zealanders visit nzherald.co.nz and stuff.co.nz, spending over 5 million hours on these websites. In print, NZME and Fairfax have a combined daily newspaper circulation of over 370,000 – equivalent to nearly a quarter of all households.
- X11. However, the Applicants, like all news media, are in a transition phase. The growth in digital revenues is currently not replacing falling print revenues and they are seeking to transition to a more sustainable business model.
- X12. Discussion of these commercial environments and imperatives occupied a great deal of submission and evidence. Our decision reflects that we have focused on the choices that readers and advertisers have, and how their choices impact on the commercial prospects of the Applicants.
- X13. NZME and Fairfax submitted in their original application that without the merger they would continue to operate as separate entities in the short term. This would inevitably lead to the rationalisation or closure of some uneconomic print publications. By merging, they said they would be better able to continue to invest in journalism and content while adapting their business to the changing environment.
- X14. On 25 November 2016, following the Draft Determination and before the Conference, the Applicants presented the Commission with a significantly altered prediction as to the likely future for each of their businesses without the merger. The details of this submission are confidential, [redacted]. In this decision we reject that these are likely scenarios without the merger.
- X15. We accept that news media markets are not static and that therefore the status quo is an unlikely assumption for the future without the merger. In our view, both Applicants are likely to be increasingly focused on developing their online news businesses and their print products are likely to continue to diminish in number and comprehensiveness over time.
- X16. However, in such uncertain and rapidly changing markets, we are not satisfied that we should assume that [redacted]. [redacted]. In an article published on 23 March 2017 on the future of the news media industry NZME Managing Editor Shayne Currie said:

We are seeing growth in our print readership and you're seeing examples overseas where subscriptions are increasing in both print and digital because people are hankering for that quality content. If we can keep producing quality, relevant journalism, then I see our print products going well into the future.

- X17. The rate and rapidity of retrenchment of print change is uncertain, but we consider that each business will continue to offer some combination of online and print products over the five year assessment period for this authorisation.

Merger would remove closest competitor

- X18. In our Draft Determination we considered that the proposed merger would be likely to substantially lessen competition by increasing prices and/or decreasing quality for readers and/or advertisers in the following markets:

X18.1 premium digital advertising;

X18.2 the provision of online national news;

X18.3 Sunday newspapers; and

X18.4 community newspapers in:

X18.4.1 Whangarei;

X18.4.2 Hamilton;

X18.4.3 Rotorua;

X18.4.4 Taupo;

X18.4.5 Napier;

X18.4.6 Hastings;

X18.4.7 Stratford;

X18.4.8 Palmerston North;

X18.4.9 Horowhenua; and

X18.4.10 Kapiti.

- X19. Of those markets identified, our final views remain unchanged with the exception that the concerns we held about the premium digital advertising market have been resolved.

- X20. In assessing the effects of the merger on the above markets, we focused on the closeness of competition between NZME and Fairfax in both advertising and New Zealand news content production. We consider that competition would be removed in relevant markets where NZME and Fairfax currently compete for advertisers and

readers. Our view is that this would be likely to lead to price increases and/or reductions in quality.

- X21. In terms of advertising markets, the evidence we received indicates that advertisers currently negotiate between NZME and Fairfax in deciding which Sunday newspapers to advertise in. *The Herald on Sunday* and *Sunday Star-Times* are direct competitors in the North Island and both attract advertisers targeting a leisure and lifestyle focused audience. The closest print alternatives that may offer a similar audience are not as effective substitutes because they have different publication dates, format and frequency.
- X22. Similarly, we found that where NZME and Fairfax community newspapers overlap advertisers will negotiate between them to get the best price. We do not consider that services such as Facebook, flyers or radio are suitable alternatives for local advertisers. The evidence we received shows that NZME earns []. Removing this competition would likely lead to advertising price increases.
- X23. We also considered that there was a real chance that the merged entity would increase subscription and cover prices for Sunday newspapers and introduce a paywall for online news that would be more comprehensive and/or more highly priced than in a competitive market.
- X24. We further focused on the potential for the proposed merger to reduce the quality of news produced in online news and print markets. News quality incorporates factors such as the variety and volume of news covered, the choices about what content is produced and the breadth, accuracy and timeliness of coverage.
- X25. The Applicants submitted that quality would be enhanced under the merger by reducing duplication of editorial staff and allowing them to invest in better journalistic content, training and investigative resources. They also stated that the two-sided nature of the market meant that the merged entity would have no incentive to reduce the quality of the news content it produced as that would lead to reduced readership and a corresponding drop in advertising revenue. The Applicants suggested their internal code of ethics, editorial independence in newsrooms, and the Press Council would also provide safeguards to ensure quality was maintained.
- X26. However, we consider that competition between NZME and Fairfax leads them to produce higher quality content than would exist with the merger. Competition incentivises investment in editorial resources, motivates journalists and editors in their day-to-day work, and ensures diversity of editorial approaches. Competition also leads to greater investment and innovation in the way that content is presented to readers.
- X27. Fairfax and NZME compete to be the first to unearth and break news. When they have been beaten to a scoop each works quickly to catch up and look for new angles. Under the proposed merger this rivalry and the benefits it delivers is likely to be

removed. In our view this would negatively impact the quality of news and breadth of coverage produced.

- X28. We consider that the cost savings of the merger, including reductions in editorial and journalistic staffing, would likely have the effect of reducing the range, volume and variety of New Zealand news produced. There is also likely to be a greater concentration of editorial opinions as to what topics to cover and what angle or perspective to take.
- X29. We are not satisfied that the two-sided nature of the market nor existing internal safeguards would be sufficient to constrain the merged entity. We do not consider that TVNZ, MediaWorks, Radio New Zealand or any other news providers could expand their online offerings to the extent that they could provide sufficient competition to replace that lost by the merger. In our view, there is a real chance that the merged entity could undertake price increases or quality-reducing cost reductions without putting a significant amount of advertising revenue at risk.
- X30. We considered extensive submissions and evidence as to the competitive constraint presented by social media, blogs and other sources of information and access to news. We treat these as a constraint, but as a significantly lesser constraint than the merging parties are to each other. We remain of the view that social media platforms produce relatively little original New Zealand news content and do not represent a significant constraint on the Applicants' online news offering.
- X31. Overall, we consider the proposed merger would be likely to remove the closest competitor of each Applicant, and that this would be likely to lead to price increases or reductions in quality. We are therefore not satisfied that clearance should be given.

Benefits of the merger

- X32. Alternatively, the Applicants submitted that if the Commission declined clearance, then it should authorise the merger as it would result in significant public benefits to New Zealand.
- X33. In assessing the public benefit, we balance the negative effects of the proposed merger against any gain to the New Zealand public that would result from the merger. We are required to consider quantifiable and unquantifiable benefits and detriments, and to exercise our judgement as to whether we are satisfied on the evidence that a merger results in such a benefit to the public that it should be permitted.
- X34. We have assessed the benefits and detriments over a five year period. Even though we agree that print is retrenching, we consider that NZME and Fairfax will continue to operate their print and digital businesses over this period. However, given that the rate of print retrenchment is uncertain, we assessed two different scenarios in our authorisation assessment. Our approach is intended to take into account the benefits and detriments that are likely to occur as a result of the merger.

- X35. The Applicants satisfied us that the quantifiable net public benefit of the proposed merger would be potentially significant – we calculate this could also be anywhere between \$40 million to around \$200 million over five years. The benefits include savings related to corporate overhead costs, such as marketing, IT, premises and management costs and editorial and operational cost savings.
- X36. We considered unquantifiable benefits that could arise from the merger over five years if the merger prolonged the longevity of various print publications and the overall level of editorial resourcing. However, we note that the merged entity would face the same trend of declining print revenues as the Applicants, so a large proportion of this benefit may be relatively transitory.

Detriments of the merger – loss of plurality and quality

- X37. The fundamental detriment we described in the Draft Determination – and again here – concerns the likely loss of media plurality. Plurality ensures that there is a diversity of viewpoints available and consumed across and within media enterprises. Plurality helps safeguard against concentrating influence over public opinion and the political agenda. A loss of plurality cannot be quantified in a mathematical sense.
- X38. In response to our Draft Determination, the Applicants submitted that the Commission could not consider plurality as a detriment as the “relevant detriments are limited to the economic detriments from harm to the competitive process, in the markets in which any lessening of competition is likely.” They further submitted that Parliament expressly removed plurality as a relevant consideration when it repealed the Commerce Act 1975. Therefore, plurality was a policy goal outside the contemplation of the Act.
- X39. We address these submissions in greater detail in the legal framework section of this decision. However, we reject the notion that there is a category of negative consequences of a proposed merger that we are required to ignore. This approach could lead to a situation where we would be obliged to authorise a merger that in our assessment is not in the public interest. However the negative consequences are described (ie, as disbenefits or detriments), it is clear from previous legal cases and common sense that we can and should take all the consequences of the merger – positive and negative – into account.
- X40. Plurality considerations are particularly important in New Zealand given that current concentration levels of media ownership are already high by international standards. This merger would consolidate the two largest news media providers in New Zealand, in an already concentrated market.
- X41. The merged entity would have direct control of the largest network of journalists in the country, employing more editorial staff than the next three largest mainstream media organisations combined. Its news media business would include nearly 90% of the daily newspaper circulation in New Zealand and an overwhelming majority of traffic to online sources of New Zealand news. Including its radio network, the merged entity would have a monthly reach of 3.7 million New Zealanders.

- X42. In New Zealand there are no media ownership restrictions or other mandatory journalistic regulations that would be effective enough, in our view, to materially constrain the merged entity. Public news broadcasting in New Zealand is unlikely to make up for the loss of plurality from the merger.
- X43. We are satisfied that the merger would be likely to reduce ‘external plurality’ – plurality between organisations – through concentrating media ownership and influence to an unprecedented extent for a well-established modern liberal democracy of which we are aware.
- X44. NZME and Fairfax currently exert meaningful editorial influence over New Zealand’s news agenda. They compete to identify coverage-worthy news events, locate new sources of information, develop new angles on stories and create new methods of communicating with their readership. A reduction in the vigour of that competition – where two leading news firms become one – may result in editorial or ownership choices as to content, resourcing or coverage that result in important events not being covered, or covered less comprehensively than without the merger.
- X45. Given the importance of the news media to a well-functioning democratic society, we consider that any adverse effects from reduced plurality have the potential to be substantial. The large audience reach that the Applicants have would provide the merged entity with the scope to control a large share of the news consumed by a majority of New Zealanders. In our view, this level of influence over the news and political agenda by a single firm creates a real risk of harm to New Zealand’s democracy and to the New Zealand public, including both those who read the Applicants’ news content and those who do not.
- X46. The Applicants submitted that with the merger the likely ‘internal plurality’ – diversity of voices within a media company – would be sufficient to outweigh any likely reduction in external plurality. They noted that editorial independence and journalistic ethics provide protection against any reduction in the range of internal and external views they publish.
- X47. We accept that NZME and Fairfax currently provide a range of views across their online and print publications for at least some stories. However, we are not satisfied there is a real chance that internal plurality will be preserved or increased, particularly in the face of planned cost reductions. The extent of internal plurality is discretionary on the part of the media owner and we do not regard statements that internal plurality will be maintained as a sufficient safeguard on the future editorial decisions of the merged entity.
- X48. We also consider that the proposed merger would be likely to cause a loss of quality. This loss is also unquantifiable. However, the Commission considers that there would be a reduction in quality in reader markets due to a loss in competition. While we were conscious not to double count plurality and quality detriments in reaching our decision, our view is that quality detriments from the merger would be significant, in particular for consumers of online New Zealand news.

Balancing benefits and detriments

- X49. The Commission is not mathematically able to weigh a quantified net benefit against unquantified quality and plurality impacts. In our view, the case-law is clear that we must not prefer or favour the assessment of quantified effects over unquantified effects. The judgment that we must exercise is not so narrow as to exclude consideration of the likely effect on the New Zealand public of this level of reduction in media plurality.
- X50. As part of this balancing exercise, we considered what the benefits and detriments of the merger would be in the event that print retrenched even faster without the merger. However, even if this were to happen, we still consider that the loss of quality and plurality to New Zealanders would be significant. We consider that any further decline in print would also be matched by the increased importance of online news.
- X51. Therefore, we do not consider that the highest potential net quantified benefit of around \$200 million over five years, or any potential increased longevity of some print publications, would be sufficient such that in our overall assessment the New Zealand public would benefit from this merger. Whether or not some larger net benefit would cause us to reach a different conclusion is not a matter that we are required to decide, but in our assessment this conclusion was not finely balanced. We decline to grant authorisation.

Structure of this Determination

- X52. This report is divided into six sections:
- X52.1 Section 1 outlines the Commission's Determination and investigation;
 - X52.2 Section 2 outlines the key parties to this merger, the current state of the media industry, the Applicants' rationale for the merger, the legal framework for the Commission's assessment, the with and without the merger scenarios and the relevant markets;
 - X52.3 Section 3 defines the relevant markets on the advertising side, and considers whether the proposed merger would be likely to result in a substantial lessening of competition in those advertising markets;
 - X52.4 Section 4 defines the relevant markets on the reader side and considers whether the proposed merger would be likely to result in a substantial lessening of competition in those reader markets;
 - X52.5 Section 5 considers the potential vertical and competition effects arising out of the proposed merger; and
 - X52.6 Section 6 assesses and balances the benefits and detriments that are expected to result from the proposed merger.

Section 1: The Commission's Determination

The proposed merger

1. On 27 May 2016 the Commission registered an application from Wilson & Horton Limited (trading as NZME) and Fairfax New Zealand Limited (Fairfax) and their ultimate parent companies, APN News & Media Limited and Fairfax Media Limited (Fairfax Media), seeking approval to merge under section 67 of the Commerce Act 1986 (the Act) (the application). The Applicants seek clearance or, in the alternative, authorisation to merge the New Zealand operations of NZME and Fairfax.
2. On 24 June 2016 Wilson & Horton Limited changed its name to NZME Limited as a result of its de-merger from APN News & Media Limited. NZME listed on the NZX on 27 June 2016.
3. NZME and Fairfax seek approval from the Commission to merge their New Zealand operations.
 - 3.1 NZME proposes to acquire all of the shares in Fairfax.
 - 3.2 In exchange, NZME will pay NZ\$55 million in cash and issue shares equal to a 41% shareholding in NZME to Fairfax Corporation Pty Ltd (a wholly owned Australian subsidiary of Fairfax Media Limited).¹ Fairfax Corporation Pty Ltd will nominate two directors to the Board of NZME on completion of the merger.

Determination

4. On 8 November 2016 the Commission published a Draft Determination² outlining the Commission's preliminary view that it was not satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition. The Commission was also not satisfied that the proposed merger will result, or will be likely to result, in such a benefit to the public that it should be permitted.
5. After publishing its Draft Determination, the Commission then held a public Conference on 6 and 7 December 2016, received further submissions and evidence from the Applicants and interested parties, and tested its own preliminary thinking.
6. Having assessed all the evidence before it, the Commission considers that it is not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market. The Commission is also not satisfied that the proposed merger will result, or will be likely to result in such a benefit to the public that it should be permitted.

¹ Pre and post-completion adjustments could result in a greater or lower amount of cash or shares being paid to Fairfax. <https://www.nzx.com/companies/NZM/announcements/288557>

² <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/authorisations/merger-authorisation-register/detail/940>

7. Therefore, the Commission declines to give clearance or to grant authorisation for the merger under section 67(3)(c) of the Commerce Act 1986.

The Commission's investigation

8. In reaching this Determination, the Commission has obtained, tested and weighed information from a wide range of sources. The Commission has, amongst other actions:
- 8.1 reviewed the information and analysis in the application, including the economic reports submitted by the Applicants' economic experts NERA, the indicative synergies analysis provided by the Applicants' accounting experts PwC and the subsequent report submitted by the Applicants from Professor Randal C. Picker;
 - 8.2 posted a public version of the application on the Commission website;
 - 8.3 sought further information and clarification from NZME and Fairfax on a range of subjects;
 - 8.4 interviewed NZME, Fairfax and other interested parties;
 - 8.5 considered submissions and data from NZME and Fairfax, academics, journalists and other interested parties, including economic evidence from Covec on behalf of Television New Zealand (TVNZ);
 - 8.6 made relevant documents and information available to the Applicants, where necessary under expert and counsel only confidentiality undertakings;
 - 8.7 engaged BDO Wellington to assist in reviewing the Applicants' claimed benefits and reports from the Applicants' accounting experts PwC;
 - 8.8 engaged Dr David Levy³ at the Reuters Institute for the Study of Journalism at the University of Oxford and Mr Robin Foster⁴ of Communications Chambers to assist in advising on potential reductions in the quality of news content or in media plurality from the proposed merger;
 - 8.9 published a Draft Determination on 8 November 2016 outlining the Commission's preliminary view;
 - 8.10 sought and received submissions and cross-submissions on the Draft Determination, including further economic and expert reports submitted on behalf of the Applicants from NERA, PwC and Professor Picker;
 - 8.11 held a public conference on 6 and 7 December 2016; and

³ <http://reutersinstitute.politics.ox.ac.uk/people/dr-david-levy-director>

⁴ <http://www.commcham.com/our-members/>

- 8.12 sought, received and considered post-conference submissions on matters raised at the Conference, and met with and received new information from other interested parties and the Applicants, including further economic evidence and reports from NERA and PwC.

Section 2: Key parties and competition issues

The merging parties

NZME

9. NZME is a New Zealand media and entertainment business that offers radio broadcasting (Newstalk ZB, ZM, Radio Hauraki, etc), print publications (*The New Zealand Herald*, *Herald on Sunday*, *Weekend Herald*, etc), digital publications (such as www.nzherald.co.nz) and e-commerce services (such as www.grabone.co.nz).⁵ NZME also has an ownership interest in the:⁶

9.1 [];

9.2 The Beacon Printing & Publishing Company Ltd (21%); and

9.3 The Wairoa Star Ltd (40.41%).

10. A summary of NZME's publications and brands is outlined below.⁷

10.1 six daily papers in the North Island;

10.2 two paid weekly papers;

10.3 11 online versions of newspaper websites;

10.4 two life and style websites;

10.5 10 radio station websites;

10.6 16 other websites;⁸

10.7 six magazines;

10.8 nine radio stations;

10.9 23 community publications:

10.9.1 two in Northland;

10.9.2 two in Coromandel;

10.9.3 three in regional Waikato;

⁵ Application from NZME Limited and Fairfax New Zealand Limited, and their ultimate parent companies, APN News & Media Limited and Fairfax Media Limited seeking clearance or authorisation to merge their New Zealand operations (registered 27 May 2016) (Application) at [2.8].

⁶ Application at [2.9].

⁷ A full list can be found at Appendix One of the Application.

⁸ For example, WatchMe (www.watchme.co.nz) (NZME's Video On Demand platform) and GrabOne (www.grabone.co.nz).

- 10.9.4 six in Bay of Plenty/Rotorua;
- 10.9.5 one in Taranaki;
- 10.9.6 four in Hawke's Bay;
- 10.9.7 one in Manawatu;
- 10.9.8 one in Wanganui; and
- 10.9.9 three in Wellington.

Fairfax

- 11. Fairfax is the New Zealand subsidiary of Fairfax Media Limited, which is a media company operating in New Zealand and Australia.
- 12. In New Zealand Fairfax has a variety of print publications, websites, tablet and smartphone apps. Its mastheads include *The Dominion Post*, *The Press* and *The Sunday Star-Times*. Fairfax's primary online offering is stuff.co.nz.⁹
- 13. Amongst other companies, Fairfax also owns:¹⁰
 - 13.1 50% of Times Newspapers Limited; the publisher of the *Howick and Pakuranga Times* and *Botany and Ormiston Times*;
 - 13.2 70% of Neighbourly Limited (www.neighbourly.co.nz). Neighbourly is a private neighbourhood website that allows neighbours to talk and share online.
- 14. A summary of Fairfax's publications and brands is outlined below.¹¹
 - 14.1 nine daily papers – four in the North Island and five in the South Island;
 - 14.2 three paid weekly papers;
 - 14.3 seven websites;
 - 14.4 10 magazines;
 - 14.5 62 community publications:
 - 14.5.1 three in Northland;
 - 14.5.2 13 in Auckland (including Waiheke);
 - 14.5.3 nine in Waikato;

⁹ Application at [2.3]-[2.4].

¹⁰ Application at [2.5].

¹¹ A full list can be found at Appendix Two of the Application.

- 14.5.4 one in Rotorua;
- 14.5.5 two in Taranaki;
- 14.5.6 two in Hawke's Bay;
- 14.5.7 four in Manawatu;
- 14.5.8 seven in Wellington;
- 14.5.9 two in Nelson;
- 14.5.10 seven in Marlborough;
- 14.5.11 six in Canterbury;
- 14.5.12 three in Otago; and
- 14.5.13 three in Southland.

KPEX Limited (KPEX)

- 15. NZME and Fairfax are joint venture owners, alongside TVNZ and MediaWorks, in KPEX Limited.¹² KPEX operates as an ad exchange to sell remnant digital advertising inventory across qualifying publishers' online and mobile websites. Each of the joint venture parties holds a 25% share in KPEX.

Other industry participants

- 16. The Applicants list a number of parties which they regard as competitors in appendix eight of the application. The appendix lists weekly and regional print publications, magazines and online and digital publications. We set out a summary of some of the main competitors below.

Television New Zealand (TVNZ)

- 17. TVNZ is New Zealand's largest free-to-view video content provider. TVNZ is owned by the Crown but it is not a public broadcaster. TVNZ operates as a self-funded, commercial entity by virtue of the Television New Zealand Act 2003. Its predominant source of revenue is from advertising.¹³
- 18. TVNZ has two main broadcasting channels, TVNZ 1 and TVNZ 2, as well its Duke channel and its TVNZ OnDemand and 1 News Now online channels.¹⁴

MediaWorks Holdings Limited (MediaWorks)

- 19. MediaWorks TV, Radio and Digital (MediaWorks) is New Zealand's largest cross-platform media company.¹⁵

¹² Abbreviation of Kiwi Premium Advertising Exchange.

¹³ Submission from TVNZ to the Commerce Commission (14 September 2016) at [1.1].

¹⁴ Submission from TVNZ to the Commerce Commission (14 September 2016) at [1.1].

20. MediaWorks TV operates two free-to-air channels, ThreeNow and Edge TV and is a joint venture owner of free-to-air channel Bravo.
21. MediaWorks Radio operates nine commercial radio stations and its entertainment and news brands include Newshub, The Rock, More FM, The Edge, Mai FM, George FM and RadioLIVE.

Radio New Zealand (RNZ)

22. RNZ is a Crown entity established under the Radio New Zealand Act 1995. RNZ provides listeners with independent radio programmes in accordance with the RNZ Charter.
23. RNZ broadcasts over three nationwide networks: Radio New Zealand National, Radio New Zealand Concert and the AM network which relays Parliamentary proceedings.¹⁶

Allied Press Limited (Allied Press)

24. Allied Press is a privately-owned Dunedin-based media company. It has interests in daily and community newspapers, a regional television station, internet websites and commercial printing operations.¹⁷
25. Allied Press publishes *Otago Daily Times*. Allied Press also holds a majority interest in *Greymouth Evening Star* and has a range of community and farming newspapers in the South Island.¹⁸

Industry background

26. We set out below some of the key changes in technology and consumer demand that are taking place in print and online news markets.
27. This background provides the context for our subsequent assessment of the competitive effects and the benefits and detriments associated with the proposed merger.

Print is declining

28. The media industry has been subject to significant change over the last five years, due to changes in technology and consumer demand. Print revenue and readership has been in decline, as has advertising revenue. In its Global Entertainment and Media Outlook survey 2016-2020, PwC suggested that newspaper circulation is on track to fall by almost 50% in the decade to 2020.¹⁹

¹⁵ Submission from MediaWorks to the Commerce Commission (30 September 2016) at [1.2].

¹⁶ <http://www.radionz.co.nz/about>

¹⁷ Submission from Allied Press to the Commerce Commission (1 July 2016) at [3].

¹⁸ Ibid at [4]-[5].

¹⁹ PwC "Global Entertainment and Media Outlook 2016-2020".

29. The Applicants submitted that the initial disruption to newspaper publishers' revenue began a decade ago with the decline in classified revenue,²⁰ and has now spread to all aspects of print media revenue – both circulation/subscription revenue and display advertising revenue.²¹

The move to online consumption of news and information

30. Traditional media models in the form of print newspapers are facing increasing challenges from other modes of delivery. In contrast to the print media industry, digital media has been growing, with many consumers switching their news consumption from print to digital media, or supplementing their print news consumption with online news.
31. NZME experienced digital revenue growth of 24% in FY 2016²² and, similarly, Fairfax experienced 21% growth in digital revenues for the half year to December 2016.²³
32. The Applicants submitted that more New Zealand readers are choosing to read their news online on desktops, tablets and smartphones, and, in particular, via social media platforms.²⁴ Consequently, advertisers are also choosing different media platforms to target potential customers.
33. The online platforms through which readers can access content created (or syndicated) by the Applicants are:²⁵
- 33.1 their stuff.co.nz and nzherald.co.nz websites;
 - 33.2 social media platforms, eg, Facebook (including Instagram and Whatsapp), Twitter, YouTube;
 - 33.3 search engines, eg, Google and Yahoo; and
 - 33.4 apps on smartphones and tablets.
34. The Applicants submitted that the above global trends are leading to consolidation and rationalisation of publishing businesses²⁶ and that "... at some point in the future it is likely that some newspapers will no longer be printed every day and there may come a time where certain publications are only available online".²⁷

²⁰ Application at [6.5].

²¹ Application at [6.8]; NZME/Fairfax "Factual Submission on the Draft Determination" (25 November 2016) at [14], [52]-[53], [101]-[106]; Canadian Public Policy Forum, "The Shattered Mirror: News, Democracy and Trust in the Digital Age" (January 2017) – submitted by the Applicants on 27 February 2017.

²² See New Zealand Herald "NZME reports stable earnings, profit up slightly" (24 February 2017), at http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806656.

²³ See Fairfax Media "Fairfax Media Limited 2017 Half-year results announcement" (22 February 2017).

²⁴ Application at [6.8]; NZME/Fairfax "Factual Submission on the Draft Determination" (25 November 2016) at [11(e)], [66], [142], [147]-[165]; NZME/Fairfax letter to the Commission (27 February 2017) at [31].

²⁵ Application at [9.6]-[9.11].

²⁶ Application at [6.43].

²⁷ Application at [6.17].

Digital-first strategies

35. To cater to the change in reader demand, the Applicants have each reconfigured their businesses. The Applicants now produce content for their online channel first, a 'digital-first' strategy, with an increasing focus on video and audio in addition to written content.²⁸ This means that the Applicants prioritise the creation of digital editorial content instead of traditional daily newspaper formats. This content is then uploaded to the Applicants' respective websites and social media accounts continuously throughout the day. Select content is then converted to a print format for inclusion in the NZME and Fairfax print publications.²⁹

The Applicants' rationale for the proposed merger

36. The Applicants view the proposed merger as a response to this changing media landscape.³⁰ The Applicants pointed to declining print readership and revenue, as well as intensifying competition for online news (and information) with the growth of social media and New Zealand's high internet penetration.^{31 32}
37. Against this backdrop, the Applicants submitted that the proposed merger would allow them to continue to invest in journalism and content, but at the same time adapt their businesses to provide advertising customers with a "more targeted, lower cost, data rich, higher return on investment advertising offering".³³
38. In summary, the Applicants submitted in their Application that the Commission should clear the proposed merger because:³⁴
- 38.1 the merged entity would be able to provide advertisers with a better product at a competitive price point;
 - 38.2 there would be no material change to constraints on newspaper subscription prices as a result of the merger;
 - 38.3 the merger would improve the quality of news and information content produced; and
 - 38.4 the merger would create a strong print-invested entity.
39. In the alternative, the Applicants submitted that the Commission should authorise the merger. They submitted that the proposed merger would result in substantial public benefits to New Zealand, in the form of \$[] annual cost synergies as well as providing advertisers with an enhanced advertising alternative,

²⁸ Application at [6.46]; Commerce Commission Conference (6 December 2016) transcript at pages 16-18.

²⁹ Application at [9.3].

³⁰ Application at [1.2].

³¹ Application at [1.2].

³² The Applicants define news and information in their application to include local and regional news, life and style, sport, and entertainment content. The Commission's analysis refers to "news".

³³ Application at [1.6].

³⁴ Application [1.12].

an increase in journalistic quality, and enhanced content plurality.³⁵ The Applicants submitted that there would be limited detriments arising from the proposed merger.

40. The Commission tested these claimed benefits as part of its investigation. The Commission also considered likely detriments that could arise as the result of the proposed merger.

Legal framework

41. Any person who proposes to acquire assets of a business or shares and who considers that the acquisition may breach section 47 of the Act can make an application for clearance or authorisation under section 67 of the Act. As outlined above, NZME and Fairfax have sought clearance or, in the alternative, authorisation for their proposed merger. Section 67 provides (relevantly):

67 Commission may grant authorisations for business acquisitions

...

- (3) Within 60 working days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall
- (a) if it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or
 - (b) if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant an authorisation for the acquisition; or
 - (c) if it is not satisfied as to the matters referred to in paragraph (a) or paragraph (b), by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorisation for the acquisition.

42. The burden of proof lies with the Applicants to satisfy the Commission on the balance of probabilities that the merger is not likely to substantially lessen competition³⁶ or, if it is likely to do so, that the likely public benefit is such that the Commission should authorise it under section 67(3)(b) of the Act.
43. If the Commission is not satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, or the Commission is in doubt as to whether the acquisition will create a public benefit, it must decline an authorisation under section 67(3)(c).

³⁵ Application at [20.20].

³⁶ *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7].

44. The source of doubt is irrelevant. There is no significant difference between uncertainty associated with deficiencies in the evidence and uncertainty associated with the impracticality of predicting future events – in either case, the Commission must decline the application.³⁷
45. Section 67(3) of the Act requires the Commission to issue a decision within 60 working days after the date of registration of the notice, or such other longer period agreed to by the Commission and the Applicant. The Applicants agreed to an extension of time until 3 May 2017.
46. As outlined above, NZME and Fairfax sought clearance or, in the alternative, authorisation for their proposed merger. Therefore, the Act requires us to:
- 46.1 first, determine whether to clear the merger, ie, to decide whether we are satisfied that the merger will not be likely to substantially lessen competition in any market; and
- 46.2 second, if we do not grant clearance, determine whether to authorise the merger, ie, to decide whether we can be satisfied that the merger will be likely to result in such a benefit to the public that it should be permitted.³⁸

Analysing the competition effects of a merger

47. Our approach to analysing the competition effects of the proposed merger is based on the principles set out in our Mergers and Acquisitions Guidelines,³⁹ and is summarised below. We call this part of our analysis the competition analysis.
48. As required by the Act, we assess acquisitions using the substantial lessening of competition test.
49. 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).⁴⁰
50. We make a pragmatic and commercial assessment of what is likely to occur in the future with and without the merger, based on the information we obtain through our investigation. We take into account factors including market growth and technological changes.
51. A likely counterfactual is one that has a real chance of occurring. A ‘real chance’ is something more than a possibility, but it does not need to be more likely than not

³⁷ *Commerce Commission v Woolworths Ltd & Ors* (2008) 12 TCLR 194 (CA) at [93].

³⁸ *Godfrey Hirst NZ Ltd v Commerce Commission* (2011) 9 NZBLC 103,396 (HC) (*Godfrey Hirst 1*) at [49].

³⁹ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.

⁴⁰ *Woolworths* (CA) above n 37 at [63].

(have a greater than 50% chance of occurring).⁴¹ Because of this, there can be more than one likely counterfactual.

52. The present state of competition in a market (often referred to as the status quo) may not be the counterfactual that we use for our competition assessment. Where we regard it as likely that the future without the merger looks different from the status quo (because of technological developments or some other reason), we may identify a likely counterfactual that is different from the status quo.
53. A lessening of competition is generally the same as an increase in market power.⁴² Market power is the ability to raise price above the price that would exist in a competitive market, or to reduce non-price factors such as quality or service below competitive levels.

When a lessening of competition is substantial

54. 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.⁴³ Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.⁴⁴
55. 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 expert 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.
56. A lessening of competition does not need to be felt across an entire market. A lessening of competition that adversely affects a significant section of the market may be enough to amount to a substantial lessening of competition.⁴⁵ While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.⁴⁶

When a substantial lessening of competition is likely

57. 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

⁴¹ *Woolworths Ltd & Ors v Commerce Commission* (2008) 8 NZBLC 103,128 (HC) at [111].

⁴² The High Court in *Air New Zealand/Qantas Airways Limited v Commerce Commission (No 6)* (2004) 11 TCLR 347 (HC) (*Air NZ (No 6)*) at [42] said “A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, ie, dominance has been attained”.

⁴³ *Woolworths* (HC) above n 41 at [127].

⁴⁴ *Ibid* at [129].

⁴⁵ *Dandy Power Equipment Pty Ltd & Anor v Mercury Marine Pty Ltd* (1982) 64 FLR 238, 260; 44 ALR 173, 192; ATPR 40-315, 43,888

⁴⁶ *Woolworths* (HC) above n 41 at [131].

competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.

58. In *Commerce Commission v Woolworths*, the Court of Appeal found:⁴⁷

... [W]hat constitutes a substantial lessening of competition must in the end be a matter of judgment, although we accept, of course, that such a judgment must be informed by as much practical evidence as possible.

59. Not all evidence of past or present conduct or events provides a reliable predictor of future likely impact.⁴⁸ In addition, there may be insufficient evidence to justify a conclusion that there is no likelihood of a substantial lessening of competition in any particular case.⁴⁹ We will sometimes have before us conflicting evidence from different market participants and must determine what weight to give to the evidence of each party.⁵⁰

60. The Commission must make a reasonable enquiry into an application.⁵¹ However, as noted above the burden of proof ultimately lies with the Applicants to satisfy us on the balance of probabilities that the proposed merger is not likely to have the effect of substantially lessening competition.⁵²

61. Our assessment of the competition effects of the proposed merger is set out in sections 3, 4 and 5.

Assessing whether the merger will likely result in such a benefit to the public that it should be permitted

62. As described above, where the Commission declines to clear a merger, an applicant can ask the Commission to consider whether to grant an authorisation. The Act requires the Commission to authorise a merger where it is satisfied that the merger is likely to result in such a benefit to the public that it should be permitted.

63. In the competition assessment for a clearance application where multiple counterfactuals are likely, the Commission usually focuses only on the counterfactual that gives rise to the most competition concerns. In the authorisation context, in contrast, we must take into account all likely benefits and detriments in our balancing exercise.⁵³ In appropriate cases, it will also be necessary to weigh-up the relative likelihoods of the benefits and detriments.

⁴⁷ *Woolworths* (CA) above n 37 at [191].

⁴⁸ See, for example, the discussion of evidence in *Woolworths* (CA) above n 37 at [192].

⁴⁹ See, for example, *Woolworths* (CA) above n 37 at [197].

⁵⁰ *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) at [64].

⁵¹ *Woolworths* (CA) above n 37 at [101].

⁵² *Southern Cross* (CA) above n 36 at [7] and *Woolworths* (CA) above n 37 at [97].

⁵³ In order to assess the likely benefits and detriments, we agree with the Applicants' submission that simply looking at the "worst case" counterfactual would be insufficient if it excluded other scenarios that had a real chance of occurring and produced different benefits and detriments. See NZME/Fairfax "Response to Commerce Commission Counterfactual Letter" (22 March 2017). We note, however, the High Court's view in *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZHC 2287 at [64] that "[T]he

64. As set out in our Authorisation Guidelines, our usual approach is to balance the anti-competitive effects of the proposed merger against any gain to the public of New Zealand that would result from the proposed transaction.⁵⁴ The Guidelines provide (relevantly):

Relevant benefits and detriments

The definition of benefits and detriments

....

37. In our assessment we regard a public benefit as any gain to the public of New Zealand that would result from the proposed transaction regardless of the market in which that benefit occurs or whom in New Zealand it benefits. We take into account any costs incurred in achieving benefits.³⁰
38. In contrast, in assessing detriments we only consider anti-competitive detriments that arise in the market(s)³¹ where we find a lessening of competition (whether substantial or otherwise).³²
39. To illustrate the difference in our approach to benefits and detriments, if a transaction gives rise to a lessening of competition in market A and benefits in market A and market B, then:
- 39.1 the public benefit is counted across both markets A and B; and
- 39.2 only those detriments arising in market A are counted.

65. Footnote 32 further explains the usual approach to detriments and reads:⁵⁵

32. *Godfrey Hirst*, above n 11, at [72]. Observation by Wilson J in *New Zealand Bus Ltd v Commerce Commission* [2008] 3 NZLR 433 (CA) at [271]. In *Godfrey Hirst* while the court endorsed this settled approach, it observed that ‘disbenefits’ or negative benefits that arise outside the affected markets may be relevant to the public benefit test.

66. In assessing public benefit, the Act directs the Commission to have regard to efficiency considerations (section 3A) but, as noted by the Court of Appeal in *Godfrey Hirst 2*,⁵⁶ the requirement to consider efficiency does not displace other public benefit matters.
67. In terms of the positive consequences of the proposed merger, the Applicants claimed quantified benefits in the form of cost-savings. They also claimed unquantified benefits in terms of an enhanced advertising alternative for advertisers, increase in journalistic quality, and enhanced content plurality. The Applicants submitted that the merger synergies would also extend the life of less profitable

Commission is not required to chase down every conceivable possibility, irrespective of whether it has been considered by the applicant or identified by any other party”.

⁵⁴ Commerce Commission, *Authorisation Guidelines*, July 2013 at [37]-[39].

⁵⁵ *Authorisation Guidelines* above n 54 at [38].

⁵⁶ *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZCA 560 (CA) (*Godfrey Hirst 2*) at [18] and [31].

print products, enabling greater editorial resources to be sustained to the benefit of readers.

68. In this Determination, our assessment of these matters is set out in Section 7: Public Benefits and Detriments.
69. There are, however, two issues that the Applicants have raised that require specific consideration in relation to this application:
 - 69.1 the range of negative consequences to be included in our assessment; and
 - 69.2 the role of qualitative analysis.

Issue 1: Range of negative consequences

Context

70. The Act does not place any express constraints on the range of benefits or detriments that we should take into account (other than the requirement to have regard to efficiencies under section 3A). Rather, the statutory task is expressed in broad terms. The Commission must consider whether the transaction will likely result in “such a benefit to the public that it should be permitted” notwithstanding that we have found that it will or may lessen competition.
71. As set out in our Authorisation Guidelines, in assessing detriments we consider anti-competitive detriments that arise in the market(s) where we find a lessening of competition.⁵⁷
72. The detriments that arise from a lessening of competition typically include allocative efficiency detriments (welfare losses from increased prices/reduced quality), productive efficiency losses (higher costs over time), and dynamic efficiency losses (reduced incentive to innovate). In some circumstances, wealth transfers from New Zealanders to non-New Zealanders may also give rise to a detriment to New Zealand.⁵⁸
73. Reductions in the quality of New Zealand news content is an example of a potential source of detriment that would fall within the identified reader and advertising markets.
74. In a typical merger authorisation application we would weigh these “in market” anti-competitive effects of the proposed transaction against benefits to the public.
75. However, the proposed merger of NZME and Fairfax has the potential for negative consequences that may extend beyond the reader and advertising markets in which competition is affected.

⁵⁷ *Authorisation Guidelines*, above n 54 at [38].

⁵⁸ *Ibid* at [53]-[55]. The Commission’s approach was endorsed by the High Court in 2016 in *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZHC 2287 (HC) at [39].

76. In particular, a loss in plurality might impact on New Zealand society more generally. For example, submitters and expert media advisers identified media plurality as an important contributor to democracy and Government accountability, and as an issue of public importance irrespective of the type of media coverage (reporting or opinion).
77. A significant reduction in plurality would affect all New Zealanders, whether they directly consume news content or not.⁵⁹ A loss in plurality may therefore have effects that extend beyond the reader markets in which competition is affected. To the extent we consider plurality as a negative “out of market” consequence from the proposed merger, this gives rise to three questions:
- 77.1 Can negative ‘out of market’ consequences be considered in our analysis?
- 77.2 If so, should they appear together with the negative ‘in market’ consequences on the ‘detriments’ side of the ledger, or as ‘disbenefits’ (that is, ‘negative benefits’) associated with the merger which are offset against the claimed positive public benefits?
- 77.3 Can we assess the negative ‘in market’ and ‘out of market’ consequences of the proposed merger together?
78. We discuss each question in turn.

All negative consequences should be considered

79. The Applicants refer to our Authorisation Guidelines,⁶⁰ and say that any negative ‘out of market’ consequences have no place in our assessment of whether the proposed merger is likely to result in such a benefit to the public that it should be permitted. The Applicants submitted that any loss in plurality:
- 79.1 cannot be included as detriments since “[t]he relevant detriments are limited to the economic detriments from harm to the competitive process, in the markets in which any lessening of competition is likely.”⁶¹
- 79.2 cannot appear as a ‘negative’ entry in the benefits calculation because, although a “wide set of benefits” can be included and the “cost of those benefits is appropriately deducted”, a benefit “can only be a positive value on the benefits/detriments ledger”.⁶²
80. The effect of the Applicants’ approach is that there would be a category of negative consequences of a proposed merger that we are required to ignore. For example, if a

⁵⁹ As noted below, the evidence before us suggests that most adult New Zealanders consume news content.

⁶⁰ Fairfax/NZME legal submission in relation to Commerce Commission’s jurisdiction to consider plurality issues (25 November 2016) at [24]-[28].

⁶¹ Fairfax/NZME update on legal submission arising from Court of Appeal decision in *Godfrey Hirst* (23 December 2016) at [24(a)].

⁶² Fairfax/NZME legal submission in relation to Commerce Commission’s jurisdiction to consider plurality issues on jurisdiction (25 November 2016) at [45] and Fairfax/NZME update on legal submission arising from Court of Appeal decision in *Godfrey Hirst* (23 December 2016) at [11(d)].

merger was to have an adverse impact on the environment, employment, privacy interests, or other constituents of social welfare which fall outside of the market(s) in which competition has been lessened or else are not efficiency related, we would be required to ignore those factors in assessing whether there was such a public benefit that the transaction should be permitted.

81. The implication of the Applicants' approach is that we might have to authorise a merger that in our assessment was not in the public interest. That is, if we considered that there was a negative consequence that outweighed the positive aspects of a proposed merger, we might still have to authorise depending on where those negative impacts were felt.
82. It is difficult to discern a rationale for Parliament wanting the Commission to consider only some of the detriments to the public of a merger and to disregard others, and we would only adopt such an approach if compelled to do so by the statutory language, or judicial interpretation of the Act.
83. In our view, the language of the Act does not compel the interpretation that some negative consequences count for the purposes of the analysis and some do not. To the contrary, we consider that our statutory task is to determine whether the merger will be likely to result "in such a benefit to the public that it should be permitted" notwithstanding that the merger has the effect or likely effect of substantially lessening competition. Whether there is such a 'benefit to the public' cannot be considered divorced from outcomes that harm the public, whether or not they are economic or market-oriented in nature.
84. We also consider that a broad approach to benefits and detriments is consistent with judicial interpretation of the Act by the Courts that have specifically considered this issue.
85. The concept of a "benefit to the public" that might justify authorising an acquisition was discussed in the Australian decision of *QCMA*.⁶³ After observing that "we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit" and noting that this may include "anything of value to the community generally" or "any contribution to the aims pursued by the society",⁶⁴ the Trade Practices Tribunal went on to consider what was required by the balancing exercise:⁶⁵

This brings us to the balance that must be struck if the Tribunal is to find that "in all the circumstances" the substantial and not-otherwise-available benefit "justifies" the granting of the authorisation. We accept that the statute calls upon us to adopt a balancesheet

⁶³ *Re Queensland Co-operative Milling Association Ltd, Defiance Holdings Ltd (Proposed Mergers with Barnes Milling Ltd)* (1976) (QCMA) ATPR 40-012.

⁶⁴ *Ibid* at [17242].

⁶⁵ *Ibid* at [17243]. In *Victorian Newsagency* (1994) ATPR 41-357 at 42,683 the Tribunal elaborated on the approach to be taken to detriments as follows: "As with the assessment of benefit we give the characterization of the 'detriment to the public' a wide ambit, namely, any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency".

approach: we must balance the likely benefits and detriments flowing from the acquisition. We accept that the notion of detriment falling for consideration under “all the circumstances” is wider than the notion of anti-competitive effect. But at the same time, given the policy of the Act and the subject-matter under consideration, the most important of these potential detriments will normally be the anti-competitive effects.

86. The lay member in that case (Professor Maureen Brunt) subsequently described the background to the authorisation provision in the Australian legislation as follows.⁶⁶

In the early days, when restrictive practices were so pervasive in Australia, it was unclear to legislators how many of them might be "justifiable" ... or why. While it was thought that in the small developing Australian economy, there might well be efficiencies that were dependent upon scale or agreements, this was not the only consideration. It was thought to be unwise to be doctrinaire. At the same time, it was thought to be appropriate to give business firms the opportunity to demonstrate that their acquisitions, practices and agreements were in society's interest. And so the Commission and Tribunal were given a broad and open-ended criterion for authorisation. The statutory test was not couched in terms of efficiency, or consumer welfare, but "benefit to the public."

87. We observe that determining whether an acquisition was “in society’s interests” would seem to require taking an equally broad approach to both the positive and negative consequences of the proposed transaction.

88. The approach to be taken under our Act was considered in *Re Weddel Crown Corp Ltd* under the heading “Net benefit and detriment”.⁶⁷

It was put to the commission that the term "benefit to the public" means only the benefit arising from the agreement and not any corresponding detriment. This might mean, in the present case, that the fact that seasonal employment at the works was extended over a longer period was a benefit. On the other hand, the unions claimed that the loss of jobs means, overall, that there were detrimental effects upon employees from the closures. A similar problem arises when evaluating the effect of a lessening of competition - is only the lessening of competition caused by the agreement to be assessed, or are any pro-competitive effects of the agreement to be assessed also? In other words, in balancing "benefit" and "lessening of competition", is the commission concerned with a narrow construction of those words or is it concerned to balance "net" benefit and "net" competitive detriment? The commission appreciates that the words of the Act can be construed in either manner, but does not believe that the Legislature intended a narrow and hence unrealistic view of the Act - that would be tantamount to considering only half of the question. The commission has on many occasions been called upon to take a narrow view of the legislation but considers that it would be failing in its duty if it were not to take a fair, large, and liberal interpretation of the Act so as to best advance its objectives. There seems to be no reason why the long accepted and proper canon of construction applicable to this type of legislation should be changed in any way.

89. We note in particular the Commission’s concern in that case that if some of the positive or negative consequences were not included, then the Commission would be ‘considering only half of the question’.

⁶⁶ Brunt, Maureen “The Australian Antitrust Law after 20 Years — a Stocktake” *Review of Industrial Organization*, vol. 9, no. 5, 1994, pp. 483–526, at 506.

⁶⁷ *Re Weddel Crown Corp Ltd* (1987) 2 TCLR 215 at [26].

90. We then come to the High Court's decision in *AMPS-A*, which was heard by Justice Greig, Mr Shaw and Professor Brunt. Here the Court noted that:⁶⁸

Efficiency considerations, positive and negative, are relevant in the assessment of both benefit and detriment but clearly do not exhaust society's interest in the business conduct the subject of the Commerce Act.

...

Moreover, we would caution that the detriments attributable to the strengthening of dominance [or lessening of competition] are not the only detriments that could conceivably be relevant. The very concept of benefit to the public allows for some netting out, in an appropriate case, of any detriments to the public from the acquisition itself – albeit, again, it is a question what difference is made to the shape of the future with and without the acquisition.

91. In that decision, the Court expressly recognised that in assessing the benefit to the public from the proposed acquisition it may be appropriate to take into account “any detriments to the public from the acquisition itself”. The concept of offsetting such ‘disbenefits’ or ‘negative benefits’ against the positive public benefits of a merger was referred to by the High Court in *Godfrey Hirst 1*,⁶⁹ as referenced in Footnote 32 of our Authorisation Guidelines.
92. The Court of Appeal in *Godfrey Hirst 2*⁷⁰ also made observations relevant to this issue.
93. First, the Court endorsed the view that efficiency considerations do not exhaust society's interest in the business conduct the subject of the Commerce Act and said at [18] that “Efficiency gains can count toward public benefit when determining whether or not to authorise business acquisitions. But this does not displace ‘other public benefits’.”
94. Secondly, the Court went on to note, with reference to *QCMA*,⁷¹ that:

[22] The legislative history shows Parliament's intention to leave this category [of benefit to the public] open for the Commission's expert assessment: while the long-term benefit of consumers within New Zealand must be the primary consideration, the Commission must also have regard to any efficiencies likely to result. The Commission has long been guided by this broad conception of public benefits articulated in an early decision of the Australian Trade Practices Tribunal:

[We] would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the

⁶⁸ *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473 (HC) (*AMPS-A* (HC)) at 528. The decision was successfully appealed on other grounds in *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA).

⁶⁹ *Godfrey Hirst 1* above n 38 at [74].

⁷⁰ *Godfrey Hirst 2* above n 56 at [18].

⁷¹ *QCMA* above n 63.

context of trade practices legislation) the achievement of the economic goals of efficiency and progress. If this conception is adopted, it is clear that it could be possible to argue in some cases that a benefit to the members or employees of the corporation involved serve some acknowledged end of public policy even though no immediate or direct benefit to others was demonstrable.

95. And, thirdly, in terms of the relevance of both benefits and detriments to the public, the Court observed that (emphasis added):

[24] While the benefits are not confined to the particular market, the Commission and the courts must take account of the values or public interest at stake in that particular market when determining *benefits or detriments to the wider public*, especially when economic activity can have negative consequences for others and many social goods and services are now distributed through market mechanisms. But ordinary commercial markets are unlikely to warrant the Commission's assessment of non-economic factors when determining public benefits. In the present appeal we need not go beyond the Commission's economic focus to public benefits because the question of law relates solely to the inclusion (or exclusion) of efficiency gains flowing to foreign shareholders.

...

[31] ...In determining whether the subject conduct will meet that threshold, the Commission's inquiry was qualified by only one statutory requirement: it was to have regard to any efficiencies it considers will result or are likely to result from the acquisition, *as well as broader benefits and detriments* in the light of the overriding purpose to promote competition in markets for the long-term benefit of consumers in New Zealand.

96. The Commission's view is that we would not be giving effect to section 67 if we disregard a material source of negative consequences. Usually the approach set out in our Authorisation Guidelines will be sufficient to capture the dynamics involved in a proposed acquisition, but the plurality issue has caused us to carefully address where the relevant negative consequences should be included in our analysis.
97. We do not consider that our approach is precluded by our Authorisation Guidelines,⁷² but if there is an inconsistency then our Authorisation Guidelines cannot cause us to depart from the statutory test which requires us to determine in the round whether there is such a benefit to the public that the acquisition should be permitted.

⁷² As our *Authorisation Guidelines* above n 54 record at [6]-[7], the Guidelines are necessarily general and we must apply them flexibly according to the facts of each application. The Guidelines do not, and cannot, address every issue that might arise. The Guidelines state that they reflect the current state of the law, international best practice, and our own experience. Our approach will, therefore, continue to evolve in light of new developments. Our Authorisation Guidelines have not yet been revised to reflect the High Court and Court of Appeal decisions in *Godfrey Hirst 2*.

Negative 'out of market' consequences are netted off from the positive benefits

98. As foreshadowed above at paragraph 77.2, we consider there are two ways in which “out of market” plurality detriments can be accounted for in our assessment of whether there is such a benefit to the public that the merger should be permitted.
- 98.1 They could be accounted for as detriments caused by the lessening of competition in the relevant markets, even where they arise outside of these markets and/or extend beyond efficiency issues; or
- 98.2 They could be accounted for as ‘disbenefits’ or ‘negative benefits’ associated with the merger which are offset against the claimed positive public benefits.
99. We consider that either approach is open to us and that the choice is really one of convenience since both approaches will produce the same outcome as long as we include all benefits and detriments from the proposed merger in our overall analysis. In either case, however, we must also ensure that no double counting occurs.⁷³
100. The first approach would involve a broadening of the type of detriments that we ordinarily take into account as explained in our Authorisation Guidelines. That is, we would look at all detriments that are attributable to the lessening of competition in a causal sense, without qualifying this with a requirement that the detriments must be efficiency-related and can be those found only in the markets concerned. We consider that the loss of plurality discussed in this determination is attributable to the proposed merger in this sense.
101. The second approach appears to have been intended by the High Court in *AMPS-A*,⁷⁴ and is arguably more consistent with our past practice, and we adopt it here. That is, we will account for ‘out of market’ plurality detriments in our assessment of the benefits, although it is a negative consequence. In the words of *AMPS-A*,⁷⁵ we agree that “[t]he very concept of benefit to the public allows for some netting out, in an appropriate case, of any detriments to the public from the acquisition itself”.
102. On this approach, we first identify the detriments arising from the lessening of competition. We then ask whether there is nonetheless a sufficient benefit from the merger that we should authorise it. In working out whether the acquisition will likely result in such a benefit to the public, we will weigh up the positive and negative consequences of the proposed merger.
103. Where a merger has negative consequences that fall outside of the markets where the lessening of competition occurs, these are, in a broad sense, costs that society would incur to realise the benefits of the merger and so are analogous to the “realisation costs” that the Applicants agreed should be taken into account.

⁷³ *Godfrey Hirst 1* above n 38 at [75].

⁷⁴ *AMPS-A (HC)* above n 68 at 528.

⁷⁵ *Ibid.*

104. For example, in *Godfrey Hirst 1* the Commission treated redundancy costs as a one-off rationalisation cost (which was endorsed by the High Court) as they were a social cost to be deducted from the benefits arising from the acquisition.⁷⁶
105. Another example of the Commission and the Court approaching the public benefit test in this broader way is *Air NZ (No 6)*.⁷⁷ In that case, the High Court considered the Commission's assessment of increased tourism as part of the public benefit assessment even though there was no lessening of competition in relation to tourism. The tourism benefit arose from increased numbers of domestic tourists as a result of New Zealanders being deterred from travelling overseas by increased prices. While the Commission recognised that 'benefit', it netted off the tourism detriment from fewer inbound visitors. The actual benefit figure ranged from a negative (ie, a detriment or disbenefit) to a positive benefit. There was no suggestion that the negative figure of the detriment from reduced inbound tourists had to be ignored because it arose in a market that did not suffer any lessening of competition. The High Court did not disagree with the Commission's approach.
106. We also note that the essential issue in *Godfrey Hirst 2* was a detriment unrelated to efficiency: wealth transfers from New Zealanders to non-New Zealanders. Our Authorisation Guidelines categorise these as a potential public detriment.⁷⁸ In *Godfrey Hirst 2*, the Commission considered wealth transfers from wool growers to the overseas shareholders of the merged entity to be a public detriment, notwithstanding there was no lessening of competition in that market.⁷⁹
107. We consider that netting off public detriments from public benefits to determine the extent of any net public benefit from the proposed merger is consistent with that taken by the Australian Competition Tribunal to its merger authorisation regime under s 95AZH of the Competition and Consumer Act 2010. Section 95AZH(1) is substantially similar to s 67(1), in that the Tribunal may only grant authorisation where it is satisfied that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur.
108. As in New Zealand, the Tribunal reaches a view on the benefit to the public by balancing public benefits against public detriments. In *Application by Sea Swift Pty Limited* the Tribunal confirmed the approach that:⁸⁰

⁷⁶ Cavalier Wool Holdings Limited and New Zealand Wool Services International Limited (Commerce Commission Decision 725, 9 June 2011) at [423].

⁷⁷ *Air NZ (No 6)* above n 42 at [374]-[378].

⁷⁸ *Authorisation Guidelines* above n 54 at [54].

⁷⁹ See *Cavalier Wool Holdings Limited and New Zealand Wool Services International Limited* [2015] NZCC 31 at [589] – [612] and [625] – [626].

⁸⁰ *Application by Sea Swift Pty Limited* [2016] ACompT 9 at [43], citing *Medicines Australia Inc* [2007] ACompT 4 at [108] and [115]; *Re Australian Association of Pathology Practices Incorporated* (2004) 206 ALR 271; ATPR 41-985; [2004] ACompT 4 at [93]-[94]; and *Re VFF Chicken Meat Growers' Boycott Authorisation* (2006) ATPR 42-120; [2006] ACompT 2 at [66]-[67]. The Commission is aware of the Tribunal's recent discussions of the implications of the difference in wording between (the Australian equivalents of) section 61 and section 67, but this is not an issue which arises in this determination.

A public detriment includes the reduction of competition arising from an acquisition as well as other matters contrary to the goals pursued by society, including the goal of economic efficiency; public detriment may not be confined to competitive detriment

109. Taking the above matters into account, we consider that it is appropriate in this case to net off negative ‘out of market’ plurality consequences from the claimed positive public benefits and account for these “out of market” consequences as ‘disbenefits’ or ‘negative benefits’. However, as noted above, we see this as a matter of convenience since taking these consequences into account as a detriment would produce the same outcome.

The analysis of negative ‘in market’ and ‘out of market’ consequences

110. As noted earlier, a significant reduction in plurality would affect all New Zealanders, whether they consume news content or not.⁸¹ In this way it has both “in market” and “out of market” effects.
111. In relation to the question posed at paragraph 77.3 above, we consider that we could assess negative ‘in market’ detriments and ‘out of market’ ‘disbenefits’ or ‘negative benefits’ of the proposed merger either separately or together.
112. In this case, we have found it helpful to assess the negative plurality consequences of the proposed merger together as a single topic and account for any plurality losses as ‘disbenefits’ or ‘negative benefits’ rather than through separate analyses of “in market” and “out of market” consequences.
113. We consider that this is a legitimate approach, and avoids the risk highlighted by the High Court in *Godfrey Hirst 1* of double counting (in this case, any plurality losses).⁸² We have then evaluated this loss of plurality together with the other benefits and detriments (including quality) of the merger.

Response to the Applicants’ submissions on the range of negative consequences

114. In response to the Draft Determination, the Applicants submitted the following:
- 114.1 The purpose and scheme of the Act are limited to competition and efficiency issues, as is the Commission’s expertise. That implies that wider policy goals such as plurality are outside the contemplation of the Act.⁸³
- 114.2 Parliament expressly removed plurality as a relevant consideration when it repealed the Commerce Act 1975 in order to require the Commission to focus on economic outcomes rather than broader social policy goals, and that the Commission has previously acknowledged this.⁸⁴

⁸¹ As noted below, the evidence before us suggests that most adult New Zealanders consume news content.
⁸² *Godfrey Hirst 1* above n 38 at [75].

⁸³ Fairfax/NZME “Legal Submission in Relation to Commerce Commission’s Jurisdiction to Consider Plurality Issues” (25 November 2016) at [14]-[15].

⁸⁴ Fairfax/NZME “Legal Submission in Relation to Commerce Commission’s Jurisdiction to Consider Plurality Issues” (25 November 2016) at [29]-[30].

114.3 It is not the role of the Commission to take issue with the Government's approach to regulation of the media. Media plurality and independence are matters beyond the scope of the Act and the Commission's functions.⁸⁵

115. We address each of these submissions below.

Purpose and scheme of the Act

116. Section 3A of the Act is a mandatory consideration as it compels us to have regard to efficiencies. The Court of Appeal in *Godfrey Hirst 2* noted this when it referenced the High Court in *AMPS-A*.⁸⁶

[Section 3A] compels regard to any efficiencies that will likely result from the acquisition, but what weight will be given to them, either in relation to other potential elements of public benefit or in relation to public detriment, must be a matter of judgment in the particular case. We bear in mind that efficiency has three dimensions commonly referred to as allocative efficiency, production efficiency and dynamic efficiency. Efficiency considerations, positive and negative, are relevant in the assessment of both benefit and detriment but clearly do not exhaust society's interest in the business conduct the subject of the Commerce Act.

117. While competition and efficiency is a focus, it is clear from the language of the Act and the cases that they do not displace other public benefit factors or exhaust the relevance of the impact on society from the merger. In terms of expertise, we note that the Commission's statutory task is to assess "benefit to the public" and that this is a unitary process so that if loss of plurality is not considered by the Commission (or the Courts on appeal), then it will not be considered at all.

118. The Commission is conscious of the need to act cautiously in matters outside of its usual expertise when assessing benefits or detriments. In such cases the Commission will generally seek external expert advice and provide an opportunity for submission, including on that advice.⁸⁷ In this case it has sought outside expert opinions and submissions on media issues outside the Commission's usual expertise, including media plurality.⁸⁸

The 1986 Act did not put media plurality concerns outside the scope of consideration

119. The Applicants submitted that the 1986 Act removed well-being of the public as a factor, so the Commission should no longer turn down a media merger because of impacts on editorial independence. We consider that the Applicants' submissions do not accurately reflect the statutory history.

120. In our view, more accurately:

⁸⁵ Ibid at [47]-[49].

⁸⁶ *Godfrey Hirst 2* above n 56 at [19].

⁸⁷ For example, the Commission has in the past adopted that approach on issues of valuation and engineering. See *Cavalier Wool Holdings Limited and New Zealand Wool Services International Limited* [2015] NZCC 31.

⁸⁸ The Commission engaged Dr David Levy at the Reuters Institute for the Study of Journalism at the University of Oxford and Mr Robin Foster of Communications Chambers to assist in advising on potential reductions in the quality of news content or in media plurality from the proposed merger.

- 120.1 The 1975 Act provided for a one-step process where competition and a variety of other factors were taken into account. So, a merger could be turned down for editorial independence reasons even if there was no negative impact on competition.
- 120.2 The 1986 Act provides for a two-step process:
- 120.2.1 Stage one is a competition test. If there is no substantial lessening of competition, then there is no need to consider or comment on the public benefit test, as the Commission made clear in *News Limited and Independent Newspapers Limited*.⁸⁹
- 120.2.2 However, if there is a substantial lessening of competition, then the question is whether there is a public benefit at stage two. Given the broad language of “such benefit to the public”, we do not discern any intention to narrow the range of potentially relevant considerations at stage two of the analysis.⁹⁰
121. In the *News / Independent Newspapers* decision, the Commission noted that the new (1986) Act “revokes the power of the Commission or the Court to canvass the issues of independence of the press or editorial freedom as reasons for refusing consent to a merger or takeover proposal.”⁹¹ The Applicants relied on this statement as recognition by the Commission that media plurality concerns “are outside the scope of the Act”.⁹² However, the passage referred to was pointing out that under the 1986 Act the only grounds relevant to a clearance application were competition grounds.⁹³ Having decided to give clearance to the application, the Commission did not comment on the scope of the public benefit test in the 1986 Act.

Role of the Commission

122. The Commission is not, as suggested by the Applicant, attempting to fill any perceived regulatory gap and is not exercising a policy function. The Commission has simply assessed the benefits and detriments from the proposed merger, in the context of the existing media regulatory framework.

Issue 2: Role of qualitative analysis

123. We are required to have regard to all benefits and detriments – whether quantified or not – and assess whether we are satisfied, on the evidence before us, that the merger results in such a benefit to the public that an authorisation should be granted.
124. In making this assessment, we have regard to the quality of the evidence and make judgements as to the weight to be given to items of evidence.

⁸⁹ *News Limited and Independent Newspapers Limited* (Commerce Commission Decision 164, 9 May 1986).

⁹⁰ In our view the statutory history is to the contrary: see *Godfrey Hirst 2* above n 56 at [17] – [18].

⁹¹ *News/Independent Newspapers* above n 89 at [16].

⁹² Fairfax/NZME “Update on Legal Submission Arising from Court of Appeal Decision in *Godfrey Hirst*” (23 December 2016) at [24(b)].

⁹³ *News/Independent Newspapers* above n 89 at [3].

125. We must quantify benefits and detriments to the extent that it is practicable to do so,⁹⁴ but this does not mean that we must disregard or give less weight to benefits and detriments that cannot be quantified. Detriments and benefits that cannot be expressed in monetary terms still need to be brought into the balancing exercise.⁹⁵ The balancing exercise is not a purely arithmetical exercise.
126. The Commission directs itself – as it was put in *Ravensdown* – to the “task in hand”, and this task differs in each case depending on the markets and facts involved.⁹⁶
127. Where we cannot quantify a benefit or detriment, we must exercise a qualitative judgement as to the nature and significance of those unquantified benefits or detriments relative to the quantified benefits and detriments.⁹⁷ We note the comments of the Australian Competition Tribunal in *Re Qantas Airways Limited* on the limitations of quantification:⁹⁸

All other things being equal, detailed quantification is the best option. However, quantification at all costs is not required by the Act, and has never been sought by the Tribunal. There are diminishing returns to the quantification exercise. Benefits should be quantified only to the extent that the exercise enlightens the Tribunal more than the alternative of qualitative explanation. Where benefits cannot be quantified in monetary terms, they can still be claimed in qualitative terms. The authorisation test is, after all, a balancing exercise that requires judgment over a wide range of tangible and intangible factors. The final result will depend on the relative weight assigned to each of these factors.

Response to the Applicants’ submissions on the role of qualitative analysis

128. The Applicants criticised our approach in the Draft Determination and submitted that:
- 128.1 the Commission must undertake a rigorous and robust, data-focused analysis⁹⁹ and has a responsibility to attempt to quantify detriments as far as possible to avoid mere speculation or intuition;¹⁰⁰
- 128.2 subjective and unquantifiable factors (“eye of the beholder”) undermine certainty and would require clear statutory language as can be observed in overseas jurisdictions.¹⁰¹
- 128.3 to the extent plurality concerns are relevant, those concerns should be “...robustly tested against the facts, and if they cannot be properly

⁹⁴ *AMPS-A* (CA) above n 68 at 447 and *Air NZ No 6* above n 42 at [319]. *Ravensdown Corporation Ltd v Commerce Commission* High Court, Wellington AP 168-96, 16 December 1996.

⁹⁵ *Air NZ No 6* above n 42 at [415].

⁹⁶ *Ravensdown* above n 94 at 48.

⁹⁷ *Godfrey Hirst 1* above n 38 at [102].

⁹⁸ *Re Qantas Airways Limited* [2004] ACompT 9 at [208]-[209].

⁹⁹ Fairfax/NZME legal submission in relation to Commerce Commission’s jurisdiction to consider plurality issues (25 November 2016) at [59].

¹⁰⁰ *Ibid* at [22]-[23].

¹⁰¹ *Ibid* at [33]-[38], [57].

evidenced then they should be given little weight as unquantified subjective ‘detriments’ that will be outweighed by robust quantified benefits’;¹⁰²

- 128.4 the Commission has fallen into error by adopting the ‘stand back’ approach, applying a subjective value judgment addition to its analysis, as rejected by the Court in *Godfrey Hirst 1*;¹⁰³ and
- 128.5 the Commission has wrongly found that plurality trumps efficiency regardless of the size of operational benefits.¹⁰⁴
129. The role of qualitative analysis has been recently considered by the Court of Appeal in *Godfrey Hirst 2*.¹⁰⁵

[35] The Commission correctly referred to judicial guidance.⁴⁶ It highlighted in particular the view of Richardson J in *AMPS-A CA* that a regulatory body such as the Commission must “attempt so far as possible to quantify benefits and detriments [of the acquisition to the public] rather than rely on a purely intuitive judgment”. This guidance may imply a dichotomy between strict objectivity and undisciplined subjectivity. It must not be allowed, however, to obscure the Commission’s primary function of exercising a qualitative judgment in reaching its final determination. The Commission is a specialist body whose members are appointed for their particular expertise across a range of disciplines and who are expected to exercise their collective knowledge, skill and experience in making what is an essentially evaluative judgment on any application.

[36] Mr Dixon’s submissions assume that the mathematical quantification of efficiencies will determine the Commission’s assessment under s 67(3)(b). However, the statutory framework and legislative history shows that the Commission’s determination must have regard to efficiencies when weighed together with long-term benefits to consumers, the promotion of competition, and any economic and non-economic public benefits at stake in the relevant market. Where possible these elements should be quantified; but the Commission and the courts cannot be compelled to perform a quantitative analysis of qualitative variables. This Court’s observation in *New Zealand Bus Ltd v Commerce Commission* is apposite. When applying the prohibition under s 47(1) against business acquisitions that would have the effect of substantially lessening competition, the Court stated:

It is true that some data will be weighed or considered in deciding whether the law is violated and some will not. Yet all the suggestions about more systematic ways to inform that judgment are merely techniques, or hand tools. In short, this Court should not allow a kind of false scientism to overtake what is in the end a fundamental judgment which is required by the Act itself.

[37] Axiomatically, the Commission is better equipped than the courts to apply “more systematic ways” to inform its evaluative judgment. But the dangers of “false scientism” survive. The Commission cannot be expected to render all relevant

¹⁰² Fairfax/NZME “Response to Submissions on SoPI” (29 July 2016) at [6].

¹⁰³ Fairfax/NZME “Legal Submission in Relation to Commerce Commission’s Jurisdiction to Consider Plurality Issues” (25 November 2016) at [39]-[42] and [58].

¹⁰⁴ *Ibid* at [3] and [6].

¹⁰⁵ *Godfrey Hirst 2* above n 56 at [35]-[38].

factors in quantitative terms. Nor should its qualitative judgment be reserved as a mere backstop.⁵⁰ In this respect, we disagree with the framework outlined and applied in the High Court in Hirst’s 2011 appeal.⁵¹ We endorse the Court’s summary of the Commission’s “standard practice” relating to quantifiable factors:

[53] ... Consistent with economic theory, detriments (welfare losses) are quantified (as far as practicable) under three categories of efficiency losses: allocative, productive and dynamic. Efficiency benefits (welfare gains), recognised pursuant to s 3A, are also quantified. Other benefits claimed by a party seeking an authorisation are quantified if possible. The Commission then forms its view on the range, magnitude and likelihood of all the claimed benefits (those quantified and any that are not quantifiable).

[38] However, in the light of the statutory scheme, we are satisfied that a quantitative analysis of this nature cannot dominate the Commission’s approach. In cases where the Commission is able to undertake parallel assessments of a qualitative and quantitative nature, each must be informed by and ultimately integrated within the Commission’s determination by exercising its institutional expertise. Qualitative factors can be given independent and, where appropriate, decisive weight; it follows that non-quantifiable factors need not assume a merely supplementary function in a largely arithmetical exercise, as supposed in contemporary practice.⁵² Richardson J’s concern to avoid “[p]ure speculation ... and simple intuition” remains valid.⁵³ This appeal demonstrates, however, the dangers arising from a narrow focus on quantified efficiencies — it invites technical dissection of discrete components of determinations which are beyond reproach when viewed as a whole.

130. The Commission considers that its approach is consistent with that outlined by the Court of Appeal. In the Commission’s view:

- 130.1 In making what is an overall evaluative judgment as to whether the proposed merger should be authorised, we are conscious of the need to undertake both qualitative and quantitative assessments which are ultimately integrated into our final decision.
- 130.2 We cannot be compelled to perform a quantitative analysis of effects that cannot be quantified. As Justice Hammond noted in *NZ Bus*,¹⁰⁶ we should not allow a kind of ‘false scientism’ to overtake what is in the end an exercise of judgement.
- 130.3 The Commission cannot set aside benefits or detriments on the basis that they are “subjective and unquantifiable”. The High Court in *Air New Zealand (No 6)* made clear that it would be wrong to accord a benefit or detriment less weight because it has not or cannot be quantified.¹⁰⁷
- 130.4 Our qualitative judgement should not be reserved as a mere backstop where quantitative assessment has shortcomings or is finely balanced, and

¹⁰⁶ *New Zealand Bus Ltd v Commerce Commission* [2008] 3 NZLR 433 at [104].

¹⁰⁷ *Air NZ (No 6)* above n 42 at [415] – [416]. We note also that the Court indicated that in other cases there may be additional categories of unquantified benefits and detriments that were not before the Court.

quantification should not obscure our primary function of exercising a qualitative judgement.

- 130.5 We are not attempting to overlay a social policy judgement above the statutory criteria. Rather, we are directly considering, notwithstanding our finding that the merger is likely to substantially lessen competition, “is there a public benefit from this merger going ahead?”
131. With regard to the reference in the Draft Determination that the Commission has found that plurality outweighs efficiency irrespective of the size of operational benefits,¹⁰⁸ the reference to “irrespective” was in relation to the plausible range of efficiencies being put forward by the Applicants and was not an absolute proposition.¹⁰⁹
132. We understand our approach to be consistent with the position in Australia in relation to quantification issues.¹¹⁰ The Australian Competition and Consumer Commission (ACCC) and Australian Competition Tribunal recognise that in many cases it will not be possible to quantify benefits and detriments and a qualitative assessment is appropriate.

Conclusion on issues raised by the Applicants

133. We considered the Applicant’s submissions on the range of negative consequences that may be included in our assessment, and on the role of qualitative assessment in our analysis.
134. For the reasons outlined above, we conclude that:
- 134.1 we can consider all negative consequences arising from the proposed merger, in our consideration of whether the merger will result, or will be likely to result, in such a benefit to the public that it should be permitted;
- 134.2 irrespective of whether the plurality consequences of the proposed merger are ‘in market’ or ‘out of market’, we will consider any plurality losses as ‘disbenefits’ or ‘negative benefits’;
- 134.3 we are required to have regard to all benefits and detriments – whether quantified or not; and
- 134.4 where we cannot quantify a benefit or detriment, we must exercise a qualitative judgement as to the nature and significance of those unquantified benefits or detriments relative to the quantified benefits and detriments.

¹⁰⁸ Fairfax/NZME “Legal Submission in Relation to Commerce Commission’s Jurisdiction to Consider Plurality Issues” (25 November 2016) at [3] and [6].

¹⁰⁹ Commerce Commission Draft Determination (8 November 2016) at [1011] and [1017].

¹¹⁰ See Australian Competition and Consumer Commission Authorisation Guidelines (June 2013), *Qantas Airways Ltd* [2004] ACompT 9 at [208]–[209] and *Application of Authorisation of Acquisition of Macquarie Generation by AGL Energy Ltd* [2014] ACompT 1 at [172].

Counterfactual analysis

Framework for our competition assessment

135. As set out in the legal framework section, to determine whether a merger is likely to substantially lessen competition in a market we compare 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).¹¹¹
136. As noted by the High Court in *Woolworths*, the Commission is required to consider each of the without the merger scenarios that are real and substantial prospects. A relevant without the merger scenario involves more than a possibility but the effect does not need to be “more likely than not”.¹¹²
137. We do not choose a counterfactual that we consider has the greatest prospects of occurring, ie, is the ‘most likely’. Rather, as outlined in the legal framework section above, a likely counterfactual is something that has a real chance of occurring.¹¹³
138. Often the best guide of what would happen without the merger is what is currently happening (ie, the status quo). However, where a market is likely to undergo changes that will affect competition in the without the merger scenario, we take these changes into account.¹¹⁴
139. When determining the counterfactual, we first assess the possible scenarios that might arise without the merger and discard those that are unlikely. Each real and substantial prospect then becomes a counterfactual against which the factual is to be assessed.
140. When applying the counterfactual to the competition assessment (ie, the clearance test), for practical purposes, in a situation of multiple counterfactuals, the Commission typically conducts its competition assessment against the counterfactual that gives rise to the most competition concerns.¹¹⁵ We discuss our approach to the with and without scenarios in our benefits and detriments assessment separately below.
141. We usually assess competition effects over the short term (ie, two years). This is because if a lessening of competition occurs over this period, then we will typically regard it as being substantial. The relevant timeframe for assessment will, however, depend on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.¹¹⁶
142. We apply these principles below.

¹¹¹ *Woolworths* (CA) above n 37at [63].

¹¹² *Woolworths* (HC) above n 41 at [111].

¹¹³ *Ibid* at [111].

¹¹⁴ *Mergers and Acquisitions Guidelines* above n 39 at [2.36].

¹¹⁵ The Applicants agreed that this approach is correct. See Fairfax/NZME “Response to Commerce Commission Counterfactual Letter” (22 March 2017) at [2(a)(iii)] and [13].

¹¹⁶ *Woolworths* (HC) above n 41 at [131].

Industry pathway with or without the merger

- 143. As outlined above, print newspapers are facing increasing challenges from other news media platforms. In particular, print subscription and advertising revenues are in decline and the consumption of online news is growing. Many consumers are switching their news consumption from print to online, or supplementing their print news consumption with online news.
- 144. The Commission recognises that these changes in the media industry will continue to occur with or without the merger. Therefore, in determining the relevant factual and counterfactual, we have sought to isolate the differences with and without the merger with this transition in mind.

The Applicants’ proposed counterfactual following our Draft Determination

Introduction

- 145. The Applicants’ view of the without the merger scenario has evolved during the Commission’s consideration of their application. The Applicants initially presented their competition and net benefit analysis on the basis that, without the merger, in the short term, NZME and Fairfax would continue to operate as separate entities.¹¹⁷

“[]”.¹¹⁸

- 146. In support of this statement, the Applicants supplied internal documents which noted that

[]¹¹⁹
 []^{120 121}

- 147. In November 2016, in response to the Draft Determination, the Applicants provided further evidence from PwC indicating that:

147.1 []¹²²

¹¹⁷ Application at [13.1]. The Applicants did not provide a specific timeframe for the short term.

¹¹⁸ Application at [13.2].

¹¹⁹ NZME response to information request Annex 40 - NZME Strategy Day (22 March 2016).

¹²⁰ Fairfax response to information request Annex 48 - [].

¹²¹ NZME response to information request Annex 39 - FY15 Overview & FY16 Topline Budget – Pre reading pack 13 October 2015.

¹²² PwC “Fairfax Counterfactual Forecasts” (25 November 2016) at [14].

147.2 []¹²³

148. Post-conference, in December 2016, the Applicants submitted further evidence on the likely counterfactual.

148.1 For Fairfax, the likely counterfactual in the absence of the merger []¹²⁴

148.2 For NZME, the likely counterfactual in the absence of the merger []¹²⁵

149. In summary, the Applicants now consider that []¹²⁶ The Applicants submitted that the PwC reports indicated that there is a real chance that these []¹²⁷ However, the Applicants acknowledge that for the purposes of assessing whether a substantial lessening of competition would arise, “it is appropriate for the Commission to consider a ‘worst case, likely’ counterfactual”.¹²⁸

The Commission’s view

150. As outlined in the Draft Determination, the Commission accepts that the media industry has been, and continues to be, subject to significant change due to changes in technology and consumer preferences. We accept that the status quo would not prevail over the foreseeable future with further retrenchment of print likely occurring over the short term. However, it is difficult to predict precisely the level of rationalisation that would occur without the merger.

151. Nevertheless, even taking into account the dynamic nature of this market, the Commission is not satisfied that

¹²³ Ibid at [12].

¹²⁴ Applicants’ response to the Commerce Commission questions arising from the Conference, attached to an email from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (23 December 2016) at [68(a)].

¹²⁵ Ibid at [68(b)].

¹²⁶ Ibid at [74].

¹²⁷ Ibid at [70].

¹²⁸ Fairfax/NZME response to NZCC counterfactual letter 22 March 2017 at [2(a)(iii)] and [13].

[] in the next two years.

152. The Commission considers that it is likely that the Applicants would maintain their online news businesses and maximise the value of their profitable print publications for the next two years.
153. The Commission considers that this is the appropriate counterfactual for the purposes of undertaking our competition assessment. This is because it is the likely counterfactual that would give rise to the greatest competition concerns as it shows the effect of the loss of competition between NZME and Fairfax in the relevant markets.
154. The Commission focused its competition analysis on a two year period to consider whether any lessening of competition in these markets would be likely to be substantial. However, extending our assessment beyond two years would not change our analysis as we consider that [] in the online New Zealand news and relevant print markets over a longer period without the merger.¹²⁹
155. We explain below the reasons why we consider that it is likely that both NZME and Fairfax [] for the next two years. In the Benefits and Detriments section, we consider whether there is a real chance that [] over the next five years, such that this should be taken into account in assessing the likely benefits and detriments of the merger.

Applicants' current financial performance

156. The Commission considers that the Applicants' recent financial performance and the public statements made at the time of announcing these results suggests that it is likely that [].
- 156.1 On 24 February 2017, NZME reported a stable interim result which the Chief Executive Michael Boggs indicated was a "real positive for the company in what was a tough environment for the media".¹³⁰ Mr Boggs indicated that the continued focus on improving performance, investment in people and talent, and delivering on improvement initiatives, had enabled the company to out-perform the market in print and digital advertising revenue growth. Mr Boggs stated that NZME continues "to transform NZME to lift performance, grow audience and optimise our products."

¹²⁹ As noted below, we acknowledge that the community publications in [] areas may not be profitable after two years. We take this into account in our benefits and detriments analysis by allocating zero detriments to these newspapers after two years.

¹³⁰ See New Zealand Herald "NZME reports stable earnings, profit up slightly" (24 February 2017), at http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806656.

156.2 Although Fairfax’s results were not as positive as NZME’s, in releasing its interim results on 22 February 2017, Fairfax reported that “weakness in print advertising revenue was partially offset by strong digital growth of 21% and significant expansion in the contribution of Events.” Also, that “Cost management continued, with an 8% reduction in operating costs, notwithstanding a continued investment in digital and events.”¹³¹

157. The Commission also notes that the Applicants have [], as indicated above, the Applicants have made positive public statements about how they are continuing to transition their businesses in a dynamic market with a view to increasing revenues, reducing costs and investing in their businesses.

The Applicants would maintain profitable print publications

158. Based on the information provided by the Applicants, the Commission recognises that it is likely that the Applicants would further retrench their less profitable print publications or regions without the merger. Analysis provided by both Fairfax and NZME indicates that

[].¹³²

159. The Applicants have plans already in place to retrench some less profitable print publications or make changes in some regions. For example, Fairfax announced that the *Marlborough Express* will change from a regional daily to three days a week from May 2017.¹³³ Similarly, NZME is proposing to

[].¹³⁴

160. This reflects the approach that both businesses have taken to a gradual retrenchment of their print publications to date. Other examples include the sale of *The Wairarapa Times Age* and *The Whakatane News* by NZME. Another example is the reduction in the distribution areas of *The Dominion Post* and *The Waikato Times* by Fairfax.

161. However, we consider that both Applicants would retain profitable print publications and therefore their print businesses for the next two years. This is because the

¹³¹ See Fairfax Media “Fairfax Media Limited 2017 Half-year results announcement” (22 February 2017).

¹³² Fairfax analysis “Contribution by Product_Region FY16_Forecast FY17_22(2)” and NZME presentation “NZME print publications trends to 2020 for NZCC”.

¹³³ Plans to change the business model for the *Marlborough Times* [] – see Fairfax response to information request Annex 48 - []. More recently, Fairfax outlined its plans to change the *Marlborough Express* from a regional daily to a three-day publication <http://www.stuff.co.nz/business/90913306/fairfax-marlborough-express-paper-reduces-publication>.

¹³⁴

[]

Applicants' []
 (see Attachment A).¹³⁵ Further, both Fairfax and NZME
 [].¹³⁶

162. In an interview on the future of the news media industry, including newspapers, NZME managing editor Shayne Currie's view was consistent with print continuing in the future:¹³⁷

Across the ditch, Fairfax Media chief executive Greg Hywood has openly admitted that the daily print model will eventually give way to weekend-only as digital continues to grow.

Locally, Currie doesn't see this shift happening anytime soon and wouldn't be drawn into speculating when daily print titles might start closing down.

"I've never put an estimate on it and I've never agreed with the dates that various people have put on it," Currie says.

"We are seeing growth in our print readership and you're seeing examples overseas where subscriptions are increasing in both print and digital because people are hankering for that quality content. If we can keep producing quality, relevant journalism, then I see our print products going well into the future. Digital is absolutely vital, but we've never ever walked away from our newspapers. It's always been an integral part of our business".

163. Both Applicants also recently invested in maintaining their printing capacity based on a forecast that those investments would earn returns after [] years. On 20 December 2016 NZME approved an investment of \$[] in its [] print plant. This investment had an estimated payback period of [] years¹³⁸ and it was noted in NZME Board minutes that this [].¹³⁹ On 4 December 2013 Fairfax approved an investment of [] in [] with a payback period of [] years [], noting that the financial benefit showed a

¹³⁵ See for example "3236078 NERA Table Contribution by Product_Region FY16_ Forecast FY17_FY..." which indicated that
 []

¹³⁶ NZME Board Minutes 20 December 2016 at 3 noted that
 [] Fairfax budgets
 []

¹³⁷ See <http://stoppress.co.nz/news/shayne-currie-future-dailies-emergence-new-competitors-and-importance-local-alliances>

¹³⁸ Annex 130 - NZME Press Automation Upgrade NZME Print.

¹³⁹ NZME's Board Minutes 20 December 2016 at 3.

“[]¹⁴⁰

The Applicants would maintain their online news businesses

164. We consider that the Applicants are likely to maintain their online news businesses. This view is consistent with both Applicants’ internal strategies and forecasts:

164.1 Fairfax’s

[

]. In internal strategy

documents prepared in April 2016, Fairfax stated:

[

] ¹⁴¹

164.2 Fairfax also identified the opportunity to:

[

] ¹⁴²

164.3 NZME’s CEO Report to the Board in 2016 indicated that

[

] ¹⁴³

165. Further, despite PwC’s view that the Applicants’

[]¹⁴⁴ PwC

[]¹⁴⁵

This view is supported by the recent online revenue growth experienced by the Applicants¹⁴⁶ and the recent investments the Applicants made in this aspect of their

¹⁴⁰ []

¹⁴¹ Fairfax’s The new publishing model at 1.

¹⁴² Fairfax Media stated recently in announcing budget cuts that its focus is on digital media see https://www.theguardian.com/media/2017/apr/05/sydney-morning-herald-and-age-to-employ-fewer-journalists-and-narrow-coverage?CMP=Share_iOSApp_Other

¹⁴³ NZME December Board Meeting – CEO’s Report, at page 12.

¹⁴⁴ PwC “NZME Counterfactual Forecasts” at [16] and [18].

¹⁴⁵ PwC “Fairfax Counterfactual Forecasts” (25 November 2016) and PwC “NZME Counterfactual Forecasts” (25 November 2016).

¹⁴⁶ NZME has experienced digital revenue growth of 24% in the FY 2016. See *New Zealand Herald* “NZME reports stable earnings, profit up slightly” (24 February 2017) see http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806656. Similarly, Fairfax experienced a 21% growth in digital revenues from half year to December 2016. See Fairfax Media “Fairfax Media Limited 2017 Half-year results announcement” (22 February 2017).

business. For example, NZME's ARC content management system and [].

166. In reaching this view, the Commission acknowledges that the Applicants' local journalists, [], contribute to their online news sites. However, the Commission does not accept that retrenching print publications would necessarily result in a significant reduction in the audience of the Applicants' websites or the consumption of their news brands. Both Applicants could reduce the number of stories they produce yet still maintain a significant online news business.¹⁴⁷ This is because a number of stories will attract only a small proportion of online readers, and a reduction in such stories would reduce costs without significantly reducing audience.

Applicants are likely to consider []

167. We also do not consider that the analysis presented by PwC in November 2016 can be used to infer that

[].¹⁴⁸
Both PwC reports provided to the Commission in November 2016 outlined:

[]

[];¹⁴⁹

168. The Applicants have not provided any

[

] ¹⁵⁰

[].

¹⁴⁷ In response to a question of whether []. See Commerce Commission Conference (confidential session) NZME (7 December 2016) transcript at page 22; Fairfax "[]" (Annex 48) (April 2016) at page 10 – []. Fairfax Media recently stated when announcing its restructure that a New York Times report indicated that too many stories lacked significant impact and were read by relatively few people, "Our goal is to increase the proportion of stories that reach a larger readership".

https://www.theguardian.com/media/2017/apr/05/sydney-morning-herald-and-age-to-employ-fewer-journalists-and-narrow-coverage?CMP=Share_iOSApp_Other

¹⁴⁸ BDO Wellington "Counterfactual and Synergies Commentary Report" (19 April 2017) at 6.

¹⁴⁹ PwC "Fairfax Counterfactual Forecasts" (25 November 2016) at [14(b)]; PwC "NZME Counterfactual Forecasts" (25 November 2016) at [16(b)].

¹⁵⁰ See PwC "Fairfax counterfactual forecasts" (25 November 2016) and PwC "NZME counterfactual forecasts" (25 November 2016) at Appendix H of both reports, which

[].

169. Both Applicants have also made cost savings in the past. For example, Fairfax reported that costs were down 8% in 2016 in comparison to the previous year.¹⁵¹ Similarly, NZME reported that costs are down 9% compared to last year in recent reports submitted to its board.¹⁵²

170. We therefore consider that both NZME and Fairfax are likely to [] In PwC’s letter to Russell McVeagh of 23 April 2017, PwC noted that:

[]¹⁵³

[]¹⁵⁴

[]¹⁵⁵

[]

171. []¹⁵⁶
[]

172. []. For example, NZME sold *The Oamaru Mail* to Allied Press (which Allied Press has subsequently restructured into a weekly publication). Further, smaller independents have taken over regional mastheads when the major publications have exited, albeit in restructured forms (free communities). For example, NZME’s sale of *The Whakatane News* to Beacon Media in 2016.¹⁵⁷

173. []
158

¹⁵¹ Fairfax Media Limited “2016 Results Announcement” (10 August 2016).

¹⁵² NZME Board Paper – CFO Report, 10 December 2016 at [32] and [33].

¹⁵³ PwC letter to Russell McVeagh (23 April 2017) at [15].

¹⁵⁴ Ibid at [17].

¹⁵⁵ Ibid at Appendix B.

¹⁵⁶ [39]

¹⁵⁷ Submission from NZME/Fairfax on the Commerce Commission’s Draft Determination (25 November 2016) at [113(l)].

¹⁵⁸ []

]

174. [159
160]¹⁶¹

175. The Commission does not consider that the
[]

With the merger

176. As outlined above, NZME proposes to acquire the business and assets of Fairfax. The proposed merger would result in overlap between NZME and Fairfax:

176.1 in the provision of national online news and information services, through their respective websites, stuff.co.nz and nzherald.co.nz;

176.2 in Hawke’s Bay and Waikato for their respective daily newspapers:

176.3 Hawke’s Bay Today (NZME) and The Dominion Post (Fairfax) in the Hawke’s Bay region; and

176.4 The New Zealand Herald (NZME) and Waikato Times (Fairfax) in the Waikato region;

176.5 Sunday newspapers (paid weeklies) in the North Island; and

176.6 community newspapers in:

176.6.1 Whangarei;

176.6.2 Hamilton;

176.6.3 Rotorua;

¹⁵⁹ [

]

¹⁶⁰ [

¹⁶¹ [

]

]

- 176.6.4 Taupo;
- 176.6.5 Napier;
- 176.6.6 Hastings;
- 176.6.7 Stratford;
- 176.6.8 Palmerston North;
- 176.6.9 Horowhenua; and
- 176.6.10 Kapiti.

Applicants' view

177. In the application and as set out in our Draft Determination, the Applicants submitted that the merged entity would continue to develop and invest in new and innovative digital opportunities to maintain and grow its share of digital revenue, which is essential given that some newspapers will no longer be printed every day.¹⁶² The Applicants also submitted that rationalisation of their respective print assets would enable the entities to extend the lifespan of their respective print publications.¹⁶³
178. PwC's Factual Report in December 2016, provided on behalf of the Applicants, suggested that
[]¹⁶⁴
179. In March 2017 the Applicants provided further submissions on the synergies that would arise with the proposed merger. In particular, the Applicants provided a letter from PwC on 17 March 2017 stating:

[]¹⁶⁵
180. In particular, in relation to extending the economic lifetime of print, PwC's letter stated:

[]

¹⁶² Application at [1.10]. The Applicants did not say which publications they were referring to.

¹⁶³ NZME/Fairfax cross-submission on TVNZ's submission (14 September 2016) and submission from MediaWorks to the Commerce Commission (30 September 2016) dated (10 October 2016) at [54].

¹⁶⁴ PwC "Fairfax Forecast Factual" (22 December 2016) and PwC "NZME Forecast Factual" (22 December 2016).

¹⁶⁵ PwC "Impact of Synergies" (17 March 2017) at [4].

[

].

[

].

The Commission's view

181. The Commission's view is that the merged entity's approach to its print and digital publishing businesses is likely to be similar in the factual compared to the counterfactual in which NZME and Fairfax operate their businesses separately. That is, the cost and revenue drivers will be similar whether or not the merger occurs.
182. First, for the reasons outlined above, the Commission considers that the merged entity would continue to invest in its online news business.
183. Second, we are not satisfied that the proposed merger would result in the extension of the economic lifetime of their print publishing businesses and that of individual publications in the factual.¹⁶⁶ Given each Applicant's focus on cost cutting and profitability, the Commission considers that the merged entity would be likely to take the same approach to its print businesses as the Applicants are currently. Specifically, the merged entity would continue to maximise the value of its profitable print publications but would be incentivised to retrench or sell less profitable print publications that are making minimal contributions to earnings (see Attachment A). In other words, we consider that it is likely that the trajectory for print publishing would be similar in the factual and counterfactual.
184. We have reached this view because the Applicants have been seeking to establish a more sustainable business model focused on profitability and reduced costs.¹⁶⁷ We do not anticipate that this strategy would change with the merger.
185. The Applicants, supported by PwC, advised that they are [].¹⁶⁸ For example, NZME is investing in digital classifieds businesses (real estate and motor vehicles) and invested \$[] in 2016 in Ratebroker.co.nz, a digital platform which compares

¹⁶⁶ We take into account the cost savings that could be achieved by the merged entity in our benefits and detriments analysis.

¹⁶⁷ For example, a 2016 Fairfax Board paper noted that

[
[

].

].

¹⁶⁸ PwC "Impact of Synergies" (17 March 2017) at [11] to [17].

mortgage rates, life insurance premiums and real estate commission.¹⁶⁹ Fairfax established Neighbourly and Stuff Fibre.

186. In PwC's letter of 23 April 2017 to Russell McVeagh they indicated that:

[

].¹⁷⁰

187. Although we acknowledge the Applicants' submission that these other businesses leverage off their readership audiences, we do not consider that the Applicants would be likely to maintain less profitable print publications at the expense of investing in these new businesses. Nor do we expect that it is likely that they would want to cross-subsidise these print publications from other profitable business streams.¹⁷¹

188. We are also of the view that the Applicants' shareholders would consider taking the cost savings from the merger for dividends rather than support print publications which they suggest are not sustainable in the future. For example, in Australia Fairfax Media is potentially separating out its profitable Domain business so that shareholders can benefit from the value in that business, rather than using those profits to cross-subsidise its media business.¹⁷²

189. In reaching this view, we considered whether the factual should be what the Applicants described as a "unique opportunity for New Zealand to achieve a sustainable path forward for print/digital publishing".¹⁷³ For the reasons set out above, we do not consider that the proposed merger would improve the lifespan of less profitable print publications. We acknowledge, however, that in the factual the merged entity would continue its increased focus and investment in its online news business. We also take into account the likely benefits and detriments of the merger

¹⁶⁹ NZME 22 February 2017 Board Minutes indicated that
[] at 2; NZME December Board Meeting 20 December 2016 at 2 - 4.

¹⁷⁰ PwC letter to Russell McVeagh (23 April 2017) at [18].

¹⁷¹ A similar sentiment was expressed by Dr Gavin Ellis, who stated that "if a Marlborough Express or an Eketahuna echo is losing money, then the business decisions made in relation to that will be made irrespective of what's happening elsewhere". See Commerce Commission interview with Dr Gavin Ellis (21 December 2016) at 12. In its letter to Russell McVeagh on 23 April 2017, PwC also stated that
[

].

¹⁷² "Consideration of Domain Group Separation" see <http://www.fairfaxmedia.co.nz/pressroom/au---nz-press-room/au---nz-press-room/consideration-of-domain-group-separation>

¹⁷³ Fairfax/NZME "Response to Commerce Commission Counterfactual Letter" (22 March 2017) at 1.

if print retrenched even further in the next five years in our benefits and detriment analysis.

190. Therefore, we consider that in the factual and the counterfactual, the merged entity's and each Applicants' approach to their New Zealand publishing businesses would be similar. Even if the merged entity did not make the same choices concerning the retrenchment of particular print publications or regions, we consider that it is likely that in both with and without the merger the Applicants would maintain their online news businesses and continue to maximise the value of profitable print publications.

Approach to our competition analysis

191. As a result, the Commission conducted its competition analysis to determine whether the proposed merger would be likely to result in a substantial lessening of competition on the basis that both NZME and Fairfax, with and without the merger, would maintain their online news businesses and maximise the value of profitable print publications.
192. In taking this approach, we also considered that it is likely that the Applicants would remain in the particular print markets where they overlap (ie, Sunday newspapers, the Hawke's Bay and Waikato regions and community newspapers in 10 areas) for the next two years.¹⁷⁴
193. We also proceeded on the basis that, even with the retrenchment of some print publications, the Applicants would remain each other's closest competitors and would continue to have a strong advantage in terms of journalist numbers over other mainstream news competitors who are facing the same downward revenue pressures.¹⁷⁵ That is, we considered that the relative strength of all competitors would not change materially during the period of our assessment. Therefore, our competition analysis refers to the current state and consumption patterns of the Applicants and other industry participants.

Counterfactual in benefits and detriments analysis

194. We analyse the benefits and detriments that are likely to result from the merger to determine whether an acquisition results in such a benefit to the public that it should be authorised. In order to take into account the likely benefits and detriments that might arise from this merger we have modelled two scenarios: 'digital and print' and 'digital plus limited print'. We discuss the approach we took in detail in the Benefits and Detriments section below.

¹⁷⁴ However, we cannot exclude the real chance that at least one of the overlapping community newspapers in the [] areas would retrench within a two year period. Our range of efficiency losses for community newspaper advertising starts at zero for the purposes of our assessment of quantified detriments.

¹⁷⁵ In particular, the daily reach of linear TV and live radio has decreased by 12% over the past two years, with ownership of or access also decreasing in the same period. See Glasshouse Consulting "Where are the Audiences?" (commissioned by NZ on Air (2016)) at 27 and 64.

The relevant markets

How we define markets

195. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would 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.
196. We define markets in the way that best isolates the key competition issues that arise from a proposed acquisition.¹⁷⁶ In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market but which still impose some degree of competitive constraint on the merged entity.
197. The standard means to define the market is to use the “hypothetical monopolist test” (HMT).¹⁷⁷ The HMT asks whether a hypothetical sole supplier of a group of products could profitably raise prices by a small, yet significant, non-transitory (SSNIP) amount. If it could impose the SSNIP, the HMT is satisfied and a market is defined. If it could not, then the market is widened to include the next best substitute and the process repeated. The process continues until a group of products that satisfies the HMT is found.
198. Whether a SSNIP could be profitably imposed depends on the degree of demand and supply-side substitution that would occur. Demand-side substitution is where customers switch to other products outside the candidate market in response to a price increase. Supply-side substitution is where rival firms offering products outside the candidate market could easily, profitably and quickly switch their production processes to supply those products in the candidate market. What matters is whether demand and supply-side substitution together is sufficient to defeat the SSNIP.

Market definition in two-sided markets

199. Although the concept of the hypothetical monopolist test is typically relatively straightforward in ‘normal’ one-sided markets, two-sided markets typically require considering additional factors. Assessing the profitability of a price increase for a product provided on one side of a two-sided platform requires evaluating the impact that a change in consumption of that product may have on the revenue derived on the ‘other side’ of the platform.
200. In this case, the Applicants derive revenue by facilitating interactions between two distinct groups of customers: readers and advertisers. Revenue is derived by producing content that attracts readers’ attention, or ‘eyeballs’, and then selling these ‘eyeballs’ to advertisers. The platform on which the Applicants’ content is

¹⁷⁶ *Mergers and Acquisitions Guidelines*, above n 39 at [3.10] - [3.12].

¹⁷⁷ *Ibid* at [3.17] - [3.22].

distributed on (newspapers, websites, apps etc.) operates as the intermediary between readers and advertisers.

201. The assessment of the constraint imposed by the two-sided nature of these platforms is considered in the competition analysis section. It is our view that this is best achieved by first defining separate markets for readers and advertisers considering independently each side of those markets, and then assessing the degree of constraint provided on each of these markets by markets on the other side of these platforms.
202. To this extent, within each of the reader and advertising sides of the relevant two-sided markets, in our Draft Determination we defined a number of markets as set out in Table 1. With the exception of the market for premium digital advertising (discussed in the advertising market section), we remain of the view that is appropriate to define each of these markets separately.

Table 1: markets we defined in the Draft Determination

Relevant two-sided platform	Reader markets	Advertising markets
online	online New Zealand news	digital advertising premium digital advertising
Sunday newspapers	Sunday newspapers	Sunday newspaper advertising
community newspapers	community newspapers in 10 areas of overlap	community newspaper advertising in 10 areas of overlap

203. We have assessed each of the advertising markets in the Advertising section and each of the reader markets in the Reader Markets section.
204. The Applicants also provide other products and services, such as NZME's radio stations, Fairfax's Neighbourly website and magazines and event management services. These markets are not further considered further in this Determination given the limited overlap between NZME and Fairfax in these areas, except to the extent that radio and magazine publications could constrain the merged entity in the relevant markets or contribute to external plurality.

Section 3: Advertising markets

205. Post-merger, NZME and Fairfax would cease being independent competitors for the supply of advertising inventory, both digital and print. If the merging parties are close or each other's closest competitors in these markets, then the merger could provide the merged entity with increased market power.
206. Depending on the level of competitive constraint provided by other suppliers of advertising inventory, the merged entity could use any enhanced market power to raise the price of its advertising products.

The Commission's Draft Determination

207. In our Draft Determination,¹⁷⁸ we found that advertisers adjust their advertising spend from one media type to another in response to consumer engagement and the extent to which the platform is performing (for example, sales volumes or visits to the advertisers website).
208. We also considered that suppliers of advertising inventory on the same platform are likely to have a stronger constraining effect on each other than those on a different platform. That is, print publications that are similar in geographic and demographic appeal are more likely to be closer competitors than a non-print platform even if that platform has similar geographic and demographic appeal. Similarly, digital publications are likely to be a closer constraint on each other.
209. For the purposes of considering the proposed merger, in our Draft Determination we concluded that there are separate relevant markets for print advertising and digital advertising.¹⁷⁹ We also considered that within digital advertising, certain products, namely mobile interstitials, homepage takeovers, and native advertising, might constitute a separate 'premium digital' advertising market.
210. Within print advertising, the Commission concluded that there are separate markets for community newspaper advertising, Sunday newspaper advertising, and metropolitan daily newspaper advertising.

Further submissions and analysis

211. The Commission considered the further submissions made by the Applicants and other interested parties, and the views expressed during the Conference in respect of the advertising markets, and carried out further analysis on the extent to which different digital advertising products should be considered as part of the same product market.
212. The Commission remains of the view that it is appropriate to consider the competition impacts of the merger on individual platform markets because suppliers of advertising inventory on the same platform that have similar geographic and

¹⁷⁸ <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/authorisations/merger-authorisation-register/detail/940>

¹⁷⁹ And also relevant markets for advertising delivered by radio, television and outdoor.

demographic appeal are likely to be closer competitors than suppliers on a different platform.

213. However, the Commission has reassessed the view it expressed in the Draft Determination that there is a separate market for the supply of homepage takeovers, mobile interstitials and native advertising. The Commission is no longer approaching premium digital advertising as a separate market. This is also discussed further below.

Market definition in advertising markets

214. To determine whether a substantial lessening of competition would be likely to arise in advertising markets as a result of the proposed merger, as a first step the Commission assessed:
- 214.1 whether it should analyse different media as part of a wider advertising market; or
 - 214.2 whether there are separate relevant markets for different advertising formats, that is, different relevant markets for print advertising and digital advertising.

Previous Commission decisions – advertising markets

215. The Commission has previously considered advertising markets in a number of decisions.
216. In *Times Media*, in 2005 the Commission cleared Fairfax's acquisition of three overlapping community newspapers in the Rodney district. The Commission defined the relevant market to be print advertising services in the Rodney region.¹⁸⁰
217. In coming to this view, the Commission considered the extent to which other forms of print advertising, such as advertising flyers, were substitutable for advertising in community newspapers. The Commission was of the view that community newspapers and advertising flyers both had advantages and disadvantages for advertisers but that they were sufficiently close substitutes for enough advertisers to be considered part of the same market.
218. The Commission also assessed whether or not other forms of media (namely the internet, radio, TV and billboards) were viewed as substitutes to print advertising. The Commission found that the different forms of media were complements to print advertising (and each other) rather than substitutes.
219. In that decision, the Commission considered that radio advertising was not in the same product market as print advertising, as advertisers tended to use the two forms of media for different purposes. Radio was used to promote brand and simple

¹⁸⁰ Fairfax New Zealand Limited and Times Media Group Limited (Commerce Commission Decision 561, 14 October 2005).

messages and print was generally used to communicate details or display various prices of different stock.

220. For internet advertising, the Commission found that the internet was a constraint on classified advertising in newspapers, but that, at that time, it only affected display advertising in a minor way. The Commission concluded that it was appropriate to define print advertising and internet advertising as complements, rather than substitutes.
221. Similarly, in older decisions involving newspapers, the Commission defined a wide print advertising market. In *Power Plant Productions*,¹⁸¹ the Commission defined the advertising market as print media advertising in the Hawke's Bay region. In *Marlborough Express*,¹⁸² the Commission defined the market as the market for the provision of advertising services in the print medium in the Marlborough region.
222. More recently, the Commission has taken a different approach with respect to mergers involving print advertising. In *Bauer*,¹⁸³ rather than defining a specific market, the Commission considered the effect that the merger would have on the sale of magazine advertising to advertisers and focused on the constraint imposed by other magazines, newspaper-inserted magazines and the countervailing power of advertisers.

The Applicants' views

223. The Applicants submitted that current market dynamics support a broad view of the advertising market, namely a New Zealand market for the provision of print and online advertising services to advertisers. The Applicants suggested that this market is also likely to include other advertising sources, such as TV, radio and billboards.¹⁸⁴
224. The Applicants also submitted that in concluding that print and digital advertising constitute separate markets, the Commission's approach is inconsistent with the approach taken by the Australian Competition and Consumer Commission (ACCC) in its recent merger decisions on media markets.
225. The Applicants referred to the ACCC's recently completed review of the acquisition by Seven West Media Limited of the Sunday Time publication and website from News Limited in which the ACCC stated that advertisers are spending less on printed newspapers and finding "alternative ways of reaching target audiences, including via digital media".¹⁸⁵

¹⁸¹ Wilson and Horton Limited and Power Plant Productions Limited (Commerce Commission Decision 445, 7 December 2001).

¹⁸² Independent Newspapers Limited and The Marlborough Express Newspaper Company Limited (Commerce Commission Decision 329, 2 October 1998).

¹⁸³ Bauer Media Group (NZ) LP and APN Specialist Publications NZ Limited [2014] NZCC 1.

¹⁸⁴ Application at [14].

¹⁸⁵ Australian Competition and Consumer Commission mergers register "Seven West Media Limited – proposed acquisition of The Sunday Times publication and website from News Limited" (15 September 2016). See <http://registers.accc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751046>.

226. The Applicants considered that the ACCC's approach accurately captures the range of competitive advertising options available to print advertising customers.

Advertisers' views

227. Generally, the goal of advertising is to engage with consumers and persuade them to change or affirm their behaviour in some way. Different media platforms achieve this in different ways: by engaging with specific groups or segments of the population, by describing the price and attributes of a product or service, or by imparting a sense of trustworthiness in the product or service through the environment in which it is advertised.¹⁸⁶
228. The majority of the larger advertisers spoken to by the Commission split their advertising spend across a range of media, with most spending on a mix of digital, print, television and radio advertising. For each campaign, they consider which platforms best suit the message and the goal of the advertising campaign and seek bids or proposals from media firms that offer those platforms.¹⁸⁷
229. Normally, each of the media types is purchased separately and it is not uncommon for a campaign to have a number of different advertising vendors. Advertising vendors generally price their products on a 'cost-per-thousand' basis. This means the cost of having the advertisement viewed or seen by a thousand people.
230. Advertisers, particularly those that are sophisticated purchasers or that use an advertising agency, will monitor the performance of the advertising product and it is common for the type of media used in a campaign to change as the campaign progresses, in response to an individual media's performance or as part of the lifecycle of an advertising campaign.¹⁸⁸ Advertisers highlighted to the Commission that different media types have particular unique characteristics, appeal to different demographics, and have different price points.¹⁸⁹
231. For example, digital is seen by advertisers as providing a data-rich solution which means that it can be targeted to particular audience types. Print on the other hand is seen as a more authoritative environment that appeals to an older audience that may not be as receptive to digital advertising.
232. One large advertising agency considered that the key benefit of digital advertising is the ability to target specific customer types through the use of data and to track the performance of the campaign on a day-to-day basis.¹⁹⁰
233. Another advertising agency considered that mainstream media such as TV and print is more generic and broader than digital which provides a more versatile and

¹⁸⁶ Commerce Commission interviews with Draft FCB (27 June 2016) and Strategy Design and Advertising (14 July 2016).

¹⁸⁷ Commerce Commission interview with Starcom (28 June 2016).

¹⁸⁸ Commerce Commission interview with PHD (28 June 2016).

¹⁸⁹ See for example Commerce Commission interviews with Draft FCB (27 June 2016), Strategy Design and Advertising (14 July 2016) and [] (9 September 2016).

¹⁹⁰ Commerce Commission interview with PHD (28 June 2016).

dynamic solution to advertisers.¹⁹¹ They considered that the benefits of print advertising is that it provides a combination of permanence and size and allows the advertiser to talk about the product and the price.¹⁹²

234. [] stated that print advertising is more effective at targeting older customers.¹⁹³ [] stated that print advertising is viewed by consumers as a more trusted source of information and the message gains some legitimacy from being in a print environment. For this reason, [] uses print advertising if it needs to convey a compliance message (for example, informing customers of price increases or changes to terms of service).
235. This does not mean that if the price of advertising on one type of media platform increases or if it proves less effective, that they would not consider increasing spend on an alternative form of media. Rather it suggests that if one advertising supplier on a media type were to increase its prices, the first choice would be to find another advertising provider of the same media type.
236. In general, advertisers spoken to by the Commission have reduced their spend on newspaper advertising in recent years due to the perceived decline in newspaper readership and increased their spend on digital platforms.

The Commission's view

237. The Commission considered the extent to which substitution between different media types may differ depending on the scale of the advertiser, and the target demographic or audience that they are seeking to engage with.¹⁹⁴ For example, a large supermarket may view its advertising options as different to a local butcher shop.
238. Notwithstanding the conclusions reached in its previous decisions, the Commission examined the extent to which the various forms of advertising are seen as substitutes by advertisers to assess whether or not it is appropriate to view the different forms of advertising as being in separate product markets.
239. Advertisers appear to adjust their advertising spend from one platform to another in response to consumer engagement and the extent to which the platform is performing well, in terms of changing consumer behaviour through increased sales or customer interaction. This may indicate that advertisers view the different platforms as part of a wider advertising market.¹⁹⁵
240. However, advertisers' different methods of engaging with the consumer, advertisers' views of the relative strengths of the different platforms and the extent to which many different forms of advertising media are selected as part of a wider advertising

¹⁹¹ Commerce Commission interview with Draft FCB (27 June 2016).

¹⁹² Commerce Commission interview with Draft FCB (27 June 2016).

¹⁹³ Commerce Commission interview with [] (22 August 2016).

¹⁹⁴ *Brambles* above n 50 at [81].

¹⁹⁵ Commerce Commission interview with PHD (28 June 2016).

strategy, indicate that individual platforms are not substitutable and therefore constitute separate product markets.

241. We remain of the view that suppliers of advertising inventory on the same platform are likely to provide a stronger constraining effect on each other than those on a different platform.
242. Therefore, we also consider that due to the different characteristics of print and digital advertising, it is appropriate to consider them as forming separate advertising product markets.
243. Advertisers view the two media types as providing different solutions, attracting a different audience, and presenting a different type of message. For example, a retailer advertising the fact of a sale on radio or TV versus providing details of the products and the prices in the sale in a print advertisement.¹⁹⁶
244. This is consistent with the Commission's previous decisions where we viewed different forms of media as complements to print advertising rather than substitutes.
245. Consequently, for the purposes of considering the proposed merger, we have proceeded on the basis that there are separate relevant markets for print advertising and digital advertising.¹⁹⁷ For community newspaper advertising, we did not reach a conclusion on the precise scope of the product market. We consider that there are different customers who have different needs when it comes to community advertising.
246. We have also considered the extent to which within the broader print advertising there are separate relevant markets because of geographic or other considerations. These markets are discussed in more detail in the sections on print and community advertising below.

The ACCC's recent cases

247. In our Draft Determination, we considered that print and digital advertising should be considered as separate product markets, consistent with the feedback received from advertisers, and the different prices and characteristics of the two media.
248. The Applicants submitted that this approach was not consistent with recent ACCC decisions.
249. The Applicants referred to the ACCC's consideration of the "Western Australia Decision", the proposed acquisition of The Sunday Times and perthnow.com.au from News Corporation (News) by Seven West Media (SWM) and also the "Queensland Decision", the proposed acquisition by News Corporation of Australian Regional Media from APN News and Media.

¹⁹⁶ Commerce Commission interview with Harvey Norman (28 June 2016).

¹⁹⁷ And also relevant markets for advertising delivered by radio, television and outdoor.

250. The Western Australia Decision related to overlap between a Sunday newspaper and several week-day publications as well as a number of online news sites. The Queensland Decision involved a Brisbane metro title, some paid dailies and a number of community newspapers.
251. In the Western Australia decision, the Applicants said, the ACCC appeared to place greater reliance on the decreasing prevalence of print advertising, and the concomitant increase of digital advertising. However, we note that in that decision, the ACCC said that it:
- ... did not reach a concluded position on the delineation of the consumer-side market. In particular, the ACCC did not form a final view as to whether print newspapers and online news sites are in the same or separate product markets from a consumer perspective. Instead the ACCC focused on the degree of constraint the print newspapers and online sites provide on each other for different types of readers.¹⁹⁸
252. In respect of advertising, the ACCC considered that:
- While no single alternate form of advertising would replace the constraint that News currently imposes on SWM, the ACCC considered that the various advertising alternatives, including online, radio and TV, would collectively impose sufficient constraint on SWM post-acquisition.
253. Contrary to the Applicant's submission, we did have regard to the ACCC decisions in our assessment of the proposed acquisition. However, our evidence shows that New Zealand advertisers do not consider radio and television advertising to be as substitutable for print advertising as advertisers in Western Australia. In addition, where we see Fairfax and NZME as being the number one and two players providers of online news with number three a long way behind, the ACCC noted that there were at least two other parties with established online news sites (Fairfax and ABC) that would likely provide constraint on the merged entity's online news sites.
254. In respect of the Queensland Decision, the proposed merger related to the amalgamation of a metro, some paid dailies and a number of community newspapers. The ACCC did not conclude on market definition as it focused on the overlap in community newspapers.
255. The ACCC did not oppose the merger because as in the Western Australia Decision, Queensland advertisers consider there is substitutability with other forms of advertising such as radio and television and that they would act as a constraint post-merger. This is contrary to the responses of the majority of the 63 community newspaper advertisers that we interviewed who see radio (not television because it is too expensive for them) as a complement to community newspapers rather than a substitute.
256. In addition, the ACCC had evidence of real estate firms sponsoring entry into the community newspaper space whereas in New Zealand we have no such evidence.

¹⁹⁸ <http://registers.acc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751046>

Lastly, the ACCC noted that Fairfax has an online presence focused on the Brisbane region and was well placed to enter should the opportunity arise post-merger. We note that in New Zealand, we have found no such potential entrant.

257. In conducting our competition analysis, as explained below, we recognise that within the advertising industry there will be a range of different forms of advertising that will be substitutes for different advertisers at different times and, in considering whether competition will be lessened in the relevant markets, we will have regard to these constraints from outside the market.

Competition analysis – digital advertising

258. Digital or online advertising is a broad category that encompasses all advertising delivered over the Internet, via a consumer’s computer, mobile phone or tablet. The advertising can be audio, video, image or text-based.

Digital advertising – product market

259. In our Draft Determination, we considered that within the broader supply of digital advertising, there were separate markets for digital advertising (encompassing video, search, social media, display and programmatic advertising), and for premium digital advertising (encompassing homepage takeovers, mobile interstitials, and native advertising).

The Applicants’ views

260. In response to our Draft Determination, the Applicants submitted that there are not separate markets for digital and premium digital advertising, rather they each form part of a broader digital advertising market and that the evidence obtained by the Commission supports that view.¹⁹⁹
261. The Applicants submitted that for there to be a separate market for premium digital advertising, the Commission needs to show that there is a particular type of customer group that primarily purchases this type of advertising and that the merging parties would be able to price discriminate against these customers.²⁰⁰
262. Data provided to the Commission by the Applicants showed that while homepage takeovers, mobile interstitials and native advertising may be sold in different ways, once they are converted to a cost per thousand ‘CPM’ basis, there is no significant difference between the pricing of the home page takeovers and mobile interstitials, and other forms of digital advertising such as display.
263. With reference to native advertising, the Applicants further submitted that while they offer a creative service to advertising clients where the content of the advertising can be created by NZME or Fairfax, there is no impediment to advertisers bringing their own content to be featured as native advertising. The Applicants

¹⁹⁹ Fairfax/NZME “Response to Commerce Commission Counterfactual Letter” (22 March 2017) at [80].

²⁰⁰ Ibid at [81].

provided data that of the native advertising sold by Fairfax in 2016, over []% of it featured content created by the advertiser, not Fairfax.²⁰¹

264. Also, subsequent to the release of the Draft Determination, NZME informed the Commission that it will [] homepage takeovers on its soon to be redesigned nzherald.co.nz. NZME informed the Commission that demand for homepage takeovers has [] rapidly in recent times with sales of homepage takeovers [] over the past year.²⁰²
265. In making the decision []
[] to better meet demand, which NZME submitted is moving increasingly to mobile advertising.²⁰³

Advertisers' views

266. The Commission interviewed a number of interested parties, including the largest advertising agencies in New Zealand, and a cross-section of the Applicants' digital advertising customers.²⁰⁴
267. Most of NZME's and Fairfax's customers in the digital advertising market are large and sophisticated buyers that use rich data analytics to move advertising spend around in response to sales results, price, or other metrics such as social media views/sharing.
268. Industry participants explained that within the broader category of digital advertising there are a number of different types of advertising that provide different benefits to the advertiser. The key categories identified by advertising customers and providers of advertising inventory are search, social media, mobile, video, display, programmatic, mobile interstitial, homepage takeovers, and native advertising.²⁰⁵
269. Within the digital advertising market, there is a range of products that are purchased by advertisers for specific reasons and to achieve specific outcomes. For example, an advertiser may choose a social media campaign to engage with a younger audience, a homepage takeover to publicise a specific event, or programmatic advertising to maximise the number of eyeballs reached with the minimum amount of spend.
270. [] said that there are two major types of digital advertising. The first type includes advertising that is managed and purchased through its advertising agency. This type includes programmatic advertising, standard display advertising, social

²⁰¹ Fairfax Response to Commerce Commission requests for information 2 February 2017 (14 February 2017) at 16.

²⁰² NZME "Response to NZCC request for information" (26 January 2017) at [5.2].

²⁰³ NZME "Response to NZCC request for information" (26 January 2017) at 13.

²⁰⁴ Refer to Attachment B for a list of parties we spoke to during our investigation who advertise in community newspapers.

²⁰⁵ Commerce Commission interviews with FCB (27 June 2016), OMD (27 June 2016) and PHD (28 June 2016).

media and search. These advertising types tend to have a standard format, a standard measurement system and also a standard price.²⁰⁶

271. The second type involves a more in-depth relationship with the publisher and is built around specific campaigns or parts of the business. The types of products [] places in this category are native advertising and homepage takeovers.
272. The extent to which different media companies are active within these particular categories varies. For example, within the search category, the choice would typically be confined to Google, while in social media the choice would be between Facebook, Instagram and Twitter.²⁰⁷
273. Some advertisers consider these types of advertising valuable as they tie the scarcity value (as there is a limited number of these types of advertising available each day) with high reach and impact.²⁰⁸
274. Also, advertisers noted there is value in being able to utilise pre-booked advertising such as mobile interstitials to target key events such as movie releases and changes to interest rates, or to target specific shopping dates (as is used by []).

The Commission's view

275. We consider that within the broader category of digital advertising there are a range of different sub-categories that provide advertisers with different outcomes. However, contrary to our view in the Draft Determination, we no longer consider homepage takeovers, mobile interstitials and native advertising as forming a separate, 'premium digital' product market.
276. While some advertisers spoken to by the Commission²⁰⁹ expressed concern that the merged entity would be able to increase the price of these premium digital advertising products post-merger, we do not consider that they are sufficiently distinct from either a supply or demand perspective to be in separate markets.
277. One of the key differences we highlighted in our Draft Determination is that these types of advertising were sold in a different way to other forms of digital advertising (on a price per day basis rather than a CPM). We were of the preliminary view that the relative scarcity of these products, coupled in the case of native advertising with the unique journalistic abilities of the merging parties made it appropriate to consider them as being a separate market.
278. We also considered that certain types of digital advertising (such as homepage takeovers and mobile interstitials) could be distinguished from other forms of digital advertising in a number of ways. They have a high impact as they occupy a large amount of screen space and (in the case of mobile interstitials) must be closed by the user before the intended webpage can be viewed.

²⁰⁶ Commerce Commission interview with [] (5 September 2016).

²⁰⁷ Commerce Commission interview with Starcom (28 June 2016).

²⁰⁸ Commerce Commission interview with PHD (28 June 2016).

²⁰⁹ Commerce Commission interviews with [] (22 August 2016) and PHD (28 June 2016).

279. These types of digital advertising are also different in that they are limited in supply. For instance, for display, video, search and social media advertising, there is (theoretically) a limitless supply as a different advertising impression can be delivered each and every time a page is loaded.
280. By contrast, homepage takeovers and mobile interstitial advertisements are typically only available to one advertiser per day and they enable the guaranteed placement of the advertisement on that day. They are also typically sold on a per day basis (as opposed to other forms of digital advertising which is sold on a cost-per-thousand or cost per impression basis).
281. However, having reassessed our evidence, we accept that a key focus of all of the advertisers we spoke to is a need to ensure that, given the advertising platform of their choice, they are getting an appropriate return on their advertising investment. Advertisers typically measure on a cost per thousand basis as it enables different types of advertising to be compared in a meaningful way.²¹⁰ If homepage takeovers, mobile interstitials and native advertising were to have very different prices than other digital advertising on a cost per thousand basis, it might suggest that they would not be in the same market as other forms of digital advertising.
282. The pricing information provided to us by the Applicants indicated that when converted to a CPM basis, there is little material difference in the cost of homepage takeovers, mobile interstitials and native advertising when compared to other forms of digital advertising.²¹¹
283. Therefore, we consider there is no significant difference (on a CPM basis) between mobile interstitial advertising and other forms of digital advertising. The key difference between mobile interstitials and other forms of digital advertising is their scarcity, with a limited number of mobile interstitials available. Further, with the exception of [], no advertising customer expressed concern regarding the impact of the merger on mobile interstitials.
284. In relation to native advertising, the Applicants confirmed that there is no impediment to an advertiser bringing its own content to be used in a native advertisement. As a result, we are now of the view that the supply of native advertising is similar to the supply of display advertising, in that a client may bring an advertisement to the publisher and purchase space in which to display the advertisement. We have therefore considered native advertising as part of a broader digital advertising market.
285. We therefore consider that it is appropriate to consider the competition impacts of the proposed merger on the market for digital advertising, encompassing video, search, social media, display, programmatic, homepage takeovers, native advertising, and mobile interstitials.

²¹⁰ Commerce Commission interview with DraftFCB (27 June 2016).

²¹¹ Commerce Commission interview with Fairfax (12 September 2016) and email from Russell McVeagh to Commerce Commission (31 October 2016).

Digital advertising – geographic scope

286. Consistent with our Draft Determination, we consider that as both NZME’s nzherald.co.nz website and Fairfax’s stuff.co.nz website are available and published nationwide, it is appropriate to consider the competition impacts of the proposed merger on digital advertising customers at a national level. The Applicants did not disagree with the Commission on this point.

Competition analysis

287. We considered whether the proposed merger is likely to result in a substantial lessening of competition in the market for digital advertising.
288. NZME and Fairfax are each large suppliers of a wide range of digital advertising inventory. Post-merger, they would no longer be independent suppliers. If there is currently close competition between NZME and Fairfax for the supply of digital advertising, then the merged entity could have increased market power.
289. Depending on the level of constraint provided by other suppliers of digital advertising inventory, the merged entity could use any enhanced market power to increase the price of its digital advertising products, or to reduce the quality, range or service associated with its digital advertising products.
290. Price increases could be applied across all advertisers, or could potentially be targeted at those advertisers that have fewer attractive alternatives for digital advertising.
291. We have also considered how the proposed merger would impact on the KPEX programmatic exchange and whether, as a result of the merging parties obtaining a higher shareholding in KPEX, they would be able to operate the exchange to the detriment of the other owners (being TVNZ and MediaWorks).

Applicants’ views

292. The Applicants submitted that the merged entity would not be able to raise the prices of digital advertising above competitive levels in a converged New Zealand market. This is because of strong competition from, for example, Google and Facebook. The Applicants also submitted that New Zealand-focused advertising can be provided through a plethora of other advertising options, including print, online, TV, radio, cinema, and outdoor eg, billboards.²¹²
293. Specifically, in the digital advertising market, the Applicants submitted that the market for digital advertising is highly competitive, with the merged entity representing less than 15% of all sales of digital advertising inventory available to advertisers in New Zealand.²¹³

²¹² Application at [14.11] - [14.12].

²¹³ Application at [14.16].

*Others' views*The extent to which NZME and Fairfax compete

294. The views expressed by advertising agencies and customers about the extent to which the Applicants compete in the digital advertising market varied depending on advertisers' requirements. For example, if an advertiser is looking to run a social media campaign or simply optimise search results, NZME and Fairfax are not likely to be used or even approached because they are neither social media firms nor search engines. However, the merging parties are generally viewed as close competitors for the type of advertising and products that they offer.
295. When choosing whether or not to advertise on stuff.co.nz or nzherald.co.nz, OMD²¹⁴ indicated that it assesses how effective advertisements on these sites are in converting audience to sales and it moves spend from less well-performing sites to the others.²¹⁵
296. Starcom indicated that it does not pit NZME and Fairfax against each other regularly but when this does happen, it tends to occur in a particular ring-fenced area, such as rural-focused advertising. Starcom indicated that there would be an opportunity for the merged entity to increase the price of display advertising and, if that price rise was accompanied by an increase in the quality of the advertising product, then it would be welcome. However, Starcom advised us that in the event that the price rise was not accompanied by an increase in quality, it could use the size of its spend (around []) to explore other options.²¹⁶
297. FCB was of the opinion that each of the merging parties provides a valuable advertising environment because of the strength of their news products. This agency said this credibility can rub off on the advertiser which is not always the case with lesser known publishers.²¹⁷
298. [] also considered MediaWorks and TVNZ to be substitutes for display advertising and some video content but considered that NZME and Fairfax are the stronger parties in terms of news content.²¹⁸
299. [] said that the pricing of digital advertising can be mix of quality (in terms of effectiveness) but also security. Some premium digital products, such as homepage takeovers, are in high demand and need to be booked in advance to guarantee that they are available on the day(s) when [] wants them.
[] so as to coincide with advertising on other platforms.²¹⁹

²¹⁴ OMD New Zealand – advertising agency

²¹⁵ Commerce Commission interview with OMD (27 June 2016).

²¹⁶ Commerce Commission interview with Starcom (28 June 2016).

²¹⁷ Commerce Commission interview with FCB (27 June 2016).

²¹⁸ Commerce Commission interview with [] (31 August 2016).

²¹⁹ Commerce Commission interview with [] (26 August 2016).

300. There are occasions when [] views the advertising products supplied by the merging parties as a “must have”, because of the reach that NZME and Fairfax provide. Moreover, [] considered that the biggest differentiation between the merging parties and other suppliers of digital advertising is the type of content that they offer.
[]
-].
301. Some concerns were also expressed by advertisers about the merged entity’s desire to continue to innovate. [] expressed some concern over whether the merged entity would continue to innovate in the provision of digital advertising. [] noted that no one really knows what new innovations are coming and that there are potential new products or ways of thinking that might not happen with the merger.²²⁰
302. [], a real estate firm, considered that the competition between NZME and Fairfax has stimulated both parties to be innovative and invest in new methods of advertising. An example provided by [] is the real estate carousel on nzherald.co.nz which displays revolving display advertising of selected properties. [] stated that shortly after this was introduced on nzherald.co.nz, Fairfax followed suit with a similar product.²²¹

Competition from other advertising suppliers

303. The majority of advertising customers the Commission spoke to considered that competitors such as Facebook, Google, TVNZ and MediaWorks, would without the merger continue to provide sufficient constraint on the merged entity for the digital advertising products that they purchase.
304. Advertising agencies considered that with the merger, they would still have a number of compelling alternatives for digital advertising. While the merging parties are considered “tier 1” at a “homepage mass reach”, advertising agencies consider that TVNZ, MediaWorks and other New Zealand-based website providers are still effective.²²²
305. Some advertising agencies considered that while MediaWorks and TVNZ’s websites have considerably lower visitor numbers, there are customers for whom those providers are a better fit in terms of the environment they provide.²²³
306. Large advertising agencies did not consider that they would be vulnerable to price increases post-merger due to their size and ability to track and assess the performance of different publishers. If the price of advertising on stuff.co.nz or

²²⁰ Commerce Commission interview with [] (05 September 2016).

²²¹ Commerce Commission interview with [] (21 September 2016).

²²² Commerce Commission interview with Starcom (28 June 2016).

²²³ Commerce Commission interview with PHD (28 June 2016).

nzherald.co.nz were to increase post-merger, they would discuss what efficiencies the agency would gain as a result of the merger. If the price increase did not come with those efficiencies, they would look elsewhere (to Google, Facebook, MediaWorks and TVNZ).²²⁴

307. Advertising agencies considered²²⁵ that they will nearly always use Google as all clients require paid search advertising and, in some circumstances, Google will be the only digital product used. FCB considered that while there is a concern that prices could increase with the merger, the reality is that they (the merging parties and the advertising agencies) need each other and there are enough alternatives for FCB to find an audience if the merged entity were to push prices up.²²⁶
308. Some corporate advertisers spoken to by the Commission had a slightly different view on the extent to which other providers of digital advertising would act as a constraint on the merged entity. [] considered that in the digital area there are only a small number of key New Zealand sites, being stuff.co.nz, nzherald.co.nz, trademe.co.nz, metservice.co.nz, tvnz.co.nz, threenow.co.nz and seek.co.nz.²²⁷
309. Nevertheless, advertisers generally view Facebook and Google as playing a significant role in the supply of digital advertising as they are “huge” digital advertising platforms, with one large advertiser noting that in recent years it has been able to reach a number of people through Facebook, Google and TVNZ onDemand.²²⁸
310. Some advertisers noted that Google and Facebook have a different offering to the merging parties with Google dominant in search and able to be more direct in its tailored display options. Facebook was seen as offering a product that is tailored to a highly segmented audience with its advertising displayed in a very different social context.²²⁹
311. MediaWorks said that its *Newshub* brand and the ability to tie advertising to the full range of MediaWorks’ products []. For example, a home improvement show broadcast on ThreeNow could carry associated digital, radio and television advertising for a building supply merchant or appliance retailer.²³⁰
312. TVNZ considered that the key to advertising is the ability to combine audience reach with a rich data set.
[] to appeal to a large set of advertisers. TVNZ was concerned that with the merger, smaller

²²⁴ Commerce Commission interview with OMD (27 June 2016).

²²⁵ Commerce Commission interviews with OMD (27 June 2016), PHD (27 June 2016), Starcom (28 June 2016), FCB (27 June 2016).

²²⁶ Commerce Commission interview with FCB (27 June 2016).

²²⁷ Commerce Commission interview with [] (31 August 2016)

²²⁸ Commerce Commission interview with [] (26 August 2016).

²²⁹ Commerce Commission interviews with [] (5 September 2016), [] (22 August 2016).

²³⁰ Commerce Commission interview with MediaWorks (29 June 2016).

competitors would be disadvantaged as an advertiser could obtain this large reach from a single entity, [].²³¹

The Commission's view

313. The Commission considers that Fairfax and NZME are close competitors for the supply of the majority of the digital advertising products they sell.
314. Nevertheless, the main competitive constraints cited by the Applicants – Google and Facebook – offer significant reach and scale advantages, particularly when combined with the rich data sets they each possess regarding users and their interests, purchasing behaviour and networks.
315. Google, in particular, is able to leverage its Google AdWords and Ad Exchange services to be a significant competitor in the supply of a broad range of digital advertising services. Similarly, Facebook's social element and ability to offer targeted, context-rich advertising is reflected in its large (and growing) use by advertisers.
316. The downside of this aggregation for advertisers is that they have less control over the placement of their advertising. In general, the presence of content aggregators²³² means that advertisers cannot control what content their advert is placed next to, whereas placing an advert on stuff.co.nz or nzherald.co.nz means it will be placed on a news website and associated with these brands.
317. Overall, however, we consider that other existing providers of digital advertising provide a constraint on the merging parties. The majority of this constraint stems from large aggregators or intermediaries such as Google and Facebook but also (to a lesser extent) from other news and information providers such as TVNZ and MediaWorks. While these other providers have considerably fewer visitor numbers (and therefore reach) than the merging parties or the aggregators and intermediaries, they have a well-known and respected brand which is attractive to some advertisers.
318. This constraint is diminished when the advertiser is seeking to target its advertising within a news environment. To achieve comparable reach to the merging parties, an advertiser must combine purchases across a number of suppliers (such as TVNZ, MediaWorks and others) which adds cost and complexity for the purchaser. Nonetheless, the Commission considers that currently the market for digital advertising is competitive (and likely to remain so with the merger) with a number of alternative options for digital advertising.

²³¹ Commerce Commission interview with TVNZ (27 June 2016).

²³² A content aggregator compiles content from a variety of sources and presents that content to readers in the form of a selection of website links. An example of this is Google News.

KPEX

319. NZME and Fairfax are joint venture owners, with TVNZ and MediaWorks, in KPEX Limited.²³³ KPEX operates as an ad exchange to sell remnant digital advertising inventory across publishers' online and mobile websites. Each of the joint venture parties holds a 25% share in KPEX.
320. We considered the extent to which the proposed merger would result in the merging parties having a greater control over KPEX than TVNZ and MediaWorks, and whether this would enable them to operate the exchange in such a way as to disadvantage TVNZ and MediaWorks.
321. Currently, all four shareholders in KPEX have an equal shareholding with each of them providing representation on the KPEX board and contributing to the running of the company. The day-to-day operations of the company are carried out independently from the shareholders.
322. An initial concern was that through the merged entity acquiring a 50% shareholding in KPEX (as opposed to the equal 25% shareholdings of the four shareholders at present), it could be afforded a degree of influence that it could in some way favour the placement of its own advertising inventory over that of other KPEX shareholders.
323. However, KPEX relies on sophisticated algorithms to match advertising inventory with the needs of the advertiser and it does this without reference to an individual publisher's requirements. In addition,
[]].
[]].
324. To this extent, [] to prevent the merged entity from gaining a substantial degree of influence over KPEX.

Conclusion on digital advertising

325. For the reasons outlined above, the Commission is satisfied that the proposed merger between Fairfax and NZME will not have, or would not be likely to have, the effect of substantially lessening competition in the market for digital advertising in New Zealand.

Competition analysis – print advertising

326. Print advertising is a broad category which encompasses a number of different types of publications. Within print the merging parties produce a number of different publications, often with different geographical footprints, subscription pricing, and content focus. The key categories of these relevant to this merger are:

²³³ Abbreviated form of Kiwi Premium Advertising Exchange.

- 326.1 Sunday newspapers – weekly publications which are published on a Sunday and carry a subscription or cover price, encompassing the *Sunday Star-Times* and the *Sunday News* (Fairfax), and the *Herald on Sunday* (NZME);
- 326.2 metropolitan daily newspapers – daily newspapers published in the main metropolitan centres and regions and which carry a cover or subscription price, in particular, *The Dominion Post* and *Waikato Times* (Fairfax) (Waikato region) and *The New Zealand Herald* and the *Hawke’s Bay Today* (NZME) (Hawke’s Bay region), for both the weekday and Saturday editions; and
- 326.3 community newspapers – typically weekly, free publications which are distributed within relatively small geographical boundaries.

Market definition – print advertising

327. Advertisers spoken to by the Commission view Sunday newspapers, metropolitan dailies and community newspapers as delivering a different type of audience and advertising performance. For example, community newspapers are seen as providing low-cost (to both the advertiser and the reader), geographically-targeted advertising. Whereas a metropolitan daily, such as *The Dominion Post*, targets a more affluent audience that is spread across a wider region.²³⁴
328. The Commission considers that within the range of different print categories, certain types of publications (such as those that are distributed or sold in the same geographic area or which have a similar cover or subscription price) are likely to be viewed by advertising customers as closer substitutes than others.
329. This is because these publications generally attract a different audience, have different prices, and often target different geographical areas. In addition, a publication in any of these categories is likely to have as its closest rival a similar publication.
330. For the purposes of considering the competition effects of the proposed merger, we have proceeded on the basis that there are relevant markets for Sunday newspaper advertising, metropolitan daily newspaper advertising, and community newspaper advertising.
331. In reaching this view, we considered whether Saturday newspapers are in the same market for advertisers as Sunday newspapers. However, we have not defined the market on a ‘weekend’ newspaper basis because, as outlined below, feedback from both the Applicants and advertisers is that the Saturday and Sunday newspapers attract different types of advertisers. In any event, because the Applicants own all the metropolitan daily newspapers in the North Island, approaching the Sunday newspaper market in this way would not necessarily alter our competition analysis as the competitors in the market would still only be NZME and Fairfax.

²³⁴ Commerce Commission interview with Strategy Design and Advertising (2 September 2016).

332. We have also proceeded on the basis that within each of these relevant markets there are likely to be separate geographic markets defined by the distribution or circulation boundaries of the individual publications.
333. In carrying out our competition analysis, we recognise that different types of print advertising will be substitutes for different advertisers at different times. Also, depending on the advertiser and the goals of the advertising campaign, different print publications in different geographic areas will be substitutes. We have had regard to this when considering whether competition would be lessened in the relevant markets.

Geographic print markets

334. Within the three categories of print publications detailed above, the distribution of the individual newspapers will differ by the masthead's location. For example, *The Dominion Post* is published in Wellington, and is primarily distributed in the lower North Island, whereas *The New Zealand Herald* is published in Auckland and distributed mainly in the upper-North Island.
335. Similarly, a community newspaper is typically based around a defined town or region and is not available (at least in print form) outside of that region.
336. For Sunday papers, the *Herald on Sunday* mirrors *The New Zealand Herald* in that it is an Auckland-based newspaper with a predominantly upper-North Island distribution. By contrast, the *Sunday Star-Times* and the *Sunday News* are distributed throughout the country. Table 2 outlines the circulation of the different Sunday papers.

Table 2: Circulation and distribution of *Sunday Star-Times*, *Herald on Sunday* and *Sunday News* CY2015²³⁵

Newspaper	Circulation						Total ²³⁶
	Northern Region (copies per year)		Central Region (copies per year)		Southern Region (copies per year)		
<i>Herald on Sunday</i>	[]	[]%	[]	[]%	0	0%	[]
<i>Sunday Star-Times</i>	[]	[]%	[]	[]%	[]	[]%	[]
<i>Sunday News</i>	[]	[]%	[]	[]%	[]	[]%	[]
Total	[]	100%	[]	100%	[]	100%	[]

Source: NZME and Fairfax data

337. Table 2 shows that in the Southern region the *Herald on Sunday* is not present, with the *Sunday Star-Times* and the *Sunday News* being the only Sunday papers available. In the Northern region the *Herald on Sunday* has a much larger circulation with the balance shifting as you move down the North Island. This is consistent with the views of the Applicants and advertisers and indicates that the *Herald on Sunday* is the stronger paper in the Northern region.
338. The Commission considers that the relevant geographic scope within which to assess the impact of the acquisition on advertisers in Sunday newspapers is therefore in the North Island, as this is the area where the distribution of Fairfax's and NZME's Sunday newspapers overlap.

Competition analysis – Sunday newspapers

339. Post-merger, the merged entity would be the only provider of Sunday newspaper advertising in New Zealand. If Fairfax and NZME provide a competitive constraint on each other in the supply of advertising in Sunday newspapers, then the merger could provide the merged entity with enhanced market power.

Herald on Sunday – NZME

340. The *Herald on Sunday* is published once a week on a Sunday and has an average circulation of 89,000 per issue.²³⁷ It is a compact tabloid format newspaper and

²³⁵ The Northern Region is defined as being the area north of Taupo, the Central Region as the central/lower-North Island, and the Southern Region as the South Island.

²³⁶ This total excludes the *Herald on Sunday*, *Sunday Star-Times* and *Sunday News* amounts of [], recorded as 'other region'.

includes separate Living and Herald Homes lift-outs. Approximately []% of sales of the *Herald on Sunday* are in the Auckland and Northland regions.

341. In its advertiser overview, NZME describes the *Herald on Sunday* as:

...a provocative, compact newspaper that provides uncompromising, agenda-setting news. It has a strong reputation built up in just 10 years, and one we are committed to building on further still. It provides readers with an informative, entertaining, lively Sunday companion that enriches their lives, and in turn provides advertisers with a rich environment to deliver their message to a highly engaged audience.²³⁸

Sunday Star-Times – Fairfax

342. The *Sunday Star-Times* is also a weekly newspaper published on a Sunday that has an average weekly circulation of 88,000. Of this, approximately []% is circulated in the Northern region (as defined above). The *Sunday Star-Times* is a broadsheet format newspaper and includes separate Sunday, Business and Escape lift-outs.

343. The *Sunday Star-Times* has three separate print runs (in the Northern, Central and Southern Regions). The Commission notes that []).

344. Fairfax describes the *Sunday Star-Times* as:

The Sunday Star-Times connects with New Zealanders every Sunday, offering the opportunity to sit back and relax, catch up with the latest news, be inspired and switch off from the stressful week just gone.²³⁹

Sunday News – Fairfax

345. *Sunday News* is a compact format newspaper with a national weekly average Sunday circulation of approximately 23,000. Fairfax describes the *Sunday News* as:

Capturing a different audience to other Sunday papers, the *Sunday News* attracts a staunchly loyal, sports-loving audience. *Sunday News* features weekly columns, competitions, horoscopes and puzzles, and is topped off with the ultimate sports lift-out.²⁴⁰

Do the Fairfax Sunday newspapers currently provide a competitive constraint on the *Herald on Sunday* (and vice versa)?

346. To determine whether or not the proposed merger would provide the merged entity with increased market power in the market for print advertising in Sunday newspapers, we considered the extent to which the *Sunday Star-Times*, the *Sunday News* and the *Herald on Sunday* are currently providing a competitive constraint on each other.

²³⁷ Latest New Zealand Audit Bureau circulation figures from <http://newspaper.abc.org.nz/>.

²³⁸ <http://advertising.nzme.co.nz/media/361711/hosonepaper2016-2.pdf>

²³⁹ <http://advertise.fairfaxmedia.co.nz/s/Sunday-Star-Times-Product-Sheet-rlwg.pdf>

²⁴⁰ <http://advertise.fairfaxmedia.co.nz/sunday-news>

Applicants' views

347. The Applicants submitted that the primary competitive constraint on Sunday newspapers comes from other forms of advertising rather than rivalry between the individual Sunday newspapers. Further, the Applicants suggested that the ability for the merged entity to exert any market power would be limited by the intrinsic link between the advertising and reader sides of the market.²⁴¹
348. The Applicants also submitted that the *Herald on Sunday* and the *Sunday Star-Times* target different geographic regions and are therefore complementary choices²⁴² for advertisers rather than direct competitors. The *Herald on Sunday* has a strong upper-North Island focus with only []%²⁴³ of its sales being made outside of the Auckland and Northland regions. In contrast, only []%²⁴⁴ of sales of the *Sunday Star-Times* and the *Sunday News* are made in the Auckland and Northland regions.
349. The Applicants considered that as Fairfax charges South Island advertisers the same price for advertising in the *Sunday Star Times* as they charge North Island customers, it cannot be competition between NZME and Fairfax that constrains pricing. As Fairfax faces no competition for Sunday newspaper advertising in the South Island, the Applicants submitted that it must be constraint from other advertising options which is constraining the price of the *Sunday Star Times* in the South Island.

Advertising customers' views

350. In summary, these advertisers consider that Sunday newspapers are a key platform for delivering certain types of lifestyle-orientated advertising that is not easily replicated by other advertising platforms.
351. For example, [] considered that Sunday newspapers still have a strong readership and are a premium format that it is willing to pay for because of the impact that [] considers this advertising will have. [] does not advertise in the *Sunday News* as it does not consider that the content published in the *Sunday News* is right for [].²⁴⁵
352. Although [] indicated that the readership of the *Sunday Star-Times* and *Herald on Sunday* is different because of their different geographic footprints, it considered that there is a risk that prices may increase post-merger and that this would be a concern to []. In particular, it noted that it uses Sunday newspapers for specific campaigns or events where print is the key advertising medium that [] wants to use (such as its [] and other forms of print advertising are not substitutable for the impact of the Sunday newspapers.

²⁴¹ Application at [14.37].

²⁴² In response to the Draft Determination, the Applicants reiterated that the evidence from advertising customers demonstrated that most customers do not consider the *Sunday Star-Times* and *Herald on Sunday* to be substitutes, but rather they are complementary products. Fairfax/NZME "Factual Submission on the Draft Determination" (25 November 2016) at [297].

²⁴³ Application at [14.41(a)].

²⁴⁴ Ibid at [14.41(b)].

²⁴⁵ Commerce Commission interview with [] (26 August 2016).

353. [] stated that it has a choice between the *Sunday Star-Times* and the *Herald on Sunday* and that in all its negotiations for Sunday newspaper advertising it plays NZME and Fairfax off against each other in a bid to negotiate prices down.²⁴⁶
354. [] considered that the choice of which Sunday newspaper to advertise in depends on the audience it is looking to target. It considered that the *Sunday Star-Times* is more focused on the lower-North Island and the South Island, while the *Herald on Sunday* is focused on the upper-North Island.²⁴⁷
355. [] noted that across all of their negotiations between NZME and Fairfax where the merging parties offer comparable products, [] would “play NZME and Fairfax off against each other”.²⁴⁸
356. PHD said that the decision of which Sunday newspaper to advertise in depends on the media strategy for a particular client and that if the strategy is about reaching people in a print environment, then it would choose both papers. PHD considered that it could reach more Auckland readers if it used both the *Herald on Sunday* and the *Sunday Star-Times*.²⁴⁹
357. [] considered that where there is competition there will be competitive outcomes and that, with the merger, [] would expect the price of advertising in Sunday newspapers to increase.²⁵⁰

The Commission’s view

358. The majority of Sunday newspaper advertisers spoken to by the Commission considered that they have a choice between *the Sunday Star Times* and *the Herald on Sunday* for their Sunday newspaper advertising. The Commission considers the *Sunday News* provides some (albeit minor) constraint on the *Herald on Sunday*.
359. As discussed above, Fairfax markets *the Sunday News* as attracting a different audience to the other Sunday newspapers and [] noted that it considered that the content of the *Sunday News* to be unsuitable for its advertising.
360. The Commission considers that the proposed merger would remove each of the merging party’s closest Sunday newspaper advertising competitor in the North Island, being *the Herald on Sunday* (in the case of Fairfax), and *the Sunday Star Times* (in the case of NZME). The Commission also considers that the proposed merger would remove NZME’s next closest Sunday newspaper competitor (being *the Sunday News*).
361. While the *Herald on Sunday* is the larger of the Sunday papers in terms of North Island circulation, Table 1 shows that almost []% of the Sunday Newspapers sold in

²⁴⁶ Commerce Commission interview with [] (31 August 2016).

²⁴⁷ Commerce Commission interview with [] (05 September 2016).

²⁴⁸ Commerce Commission interview with [] (05 September 2016).

²⁴⁹ Commerce Commission interview with PHD (28 June 2016).

²⁵⁰ Commerce Commission interview with [] (23 September 2016).

the North Island are Fairfax newspapers with the *Sunday Star Times*, comprising []%.

362. Some advertisers spoken to by the Commission emphasised that they regularly play NZME and Fairfax off against each other to obtain the best price for Sunday newspaper advertising.
363. As noted above, the marketing material for *the Sunday Star Times* and *the Herald on Sunday* newspapers identifies a similar target demographic and a similar 'lifestyle' ethos. This suggests that Fairfax and NZME are seeking to attract the same advertisers and readers. Further, internal documents received from the Applicants indicated that they consider the newspapers compete closely.
364. [].²⁵¹ The same study showed that readers of Sunday newspapers [].
365. NZME's readership update for Q1-Q4 2015 [].²⁵²
366. We are of the view that Sunday newspaper advertising appeals to particular types of advertisers (eg, house, leisure). Advertisers have indicated that while there are digital alternatives, these alternatives are not as effective as they do not offer the laid-back and relaxed setting offered by the Sunday newspapers.
367. Internal Fairfax documents appeared to support this with [], under a heading: "Key reasons for satisfaction rating" quotes a study participant as stating:²⁵³
- []
368. [] told the Commission that one of the reasons that it does not advertise in the Sunday newspapers is that these newspapers offer a more lifestyle environment and lack the sense of urgency that [] is looking for.²⁵⁴ This view was supported by

²⁵¹ Fairfax Annex 28, Fairfax Media Brand Health. Newspaper Summary Report. Wave 3. *Sunday Star Times, Sunday News* contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (12 July 2016).

²⁵² NZME Annex 55, Readership Update; Q1-Q4 2015, contained in an letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (12 July 2016).

²⁵³ Fairfax Annex 28, Fairfax Media Brand Health. Newspaper Summary Report. Wave 3. *Sunday Star Times, Sunday News* contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (12 July 2016).

²⁵⁴ Commerce Commission interview with [] (19 September 2016).

[] and [] who both noted that Sunday newspaper advertising is too late in the shopping cycle to appeal as they would miss the opportunity to advertise to Saturday morning shoppers.²⁵⁵

369. We also considered whether other print competitors (such as Bauer through its *North and South*, *The Listener*, and *Metro* magazine products) would provide sufficient competitive constraint on the merged entity.
370. Bauer produces magazines that target a similar type of audience to the Sunday Newspapers and has a North Island focus. However, the Commission notes that of these magazines, only *The Listener* is published weekly, like the Applicants' Sunday newspapers.
371. Magazines also have different formats, sizes and submission deadlines that may make them less of a substitute to newspaper advertising. For example, a display advertisement in *The Sunday Star Times* must be booked by midday on the Monday prior to publication with submission of the final advertisement by the following Wednesday or Thursday.²⁵⁶ In contrast, an advertisement in *The Listener* which goes on sale, for example, on 27 March 2017 must be booked by 2 March with submission of the final advertisement by 10 March.²⁵⁷
372. We consider that while both online and other print alternatives (such as magazines) would continue to provide some constraint on Sunday newspaper advertising, we do not consider that this constraint would be sufficient to prevent the merged entity from increasing the price of Sunday newspaper advertising. This is particularly the case in a market where the merging parties are the only publishers of Sunday newspapers.

Constraint from potential entry

373. Through its investigation, the Commission has not identified any parties that we consider would be likely entrants into the Sunday newspaper market. Furthermore, even if such an entrant were to be identified, the Commission does not consider that entry would be likely due to the significant capital requirements of publishing a Sunday newspaper of any meaningful scale and the likelihood that such entry would be uneconomical in a commercial sense, given the declining rate of print advertising revenues.

Countervailing power of advertisers

374. We do not consider that Sunday newspaper advertisers would have sufficient countervailing power to substantially influence and constrain the pricing decisions of the merged entity. Advertisers in the Sunday newspapers value the ability to target a more leisurely, lifestyle focused audience. As discussed above the closest print

²⁵⁵ Commerce Commission interviews with [] (6 June 2016) and [] (13 September 2016).

²⁵⁶ Fairfax NZ – *Sundays Rate Card 2016.pdf*

²⁵⁷ <http://www.bauermedia.co.nz/advertising/rates-ad-specs>,

alternatives have different publication dates, formats and frequencies of publication and digital alternatives are not as effective.

Conclusion

375. Evidence provided by advertisers indicated that advertisers negotiate between NZME and Fairfax in deciding which Sunday newspaper to advertise in. We consider that this is because Sunday newspapers provide a different environment for advertisers looking to target a more leisurely, lifestyle focused audience. The closest print alternatives that may offer a similar audience (being magazines) have different publication dates, format and frequency.
376. The Commission is therefore not satisfied that the proposed merger will not result, or would not be likely to result in a substantial lessening of competition for the supply of print advertising in the market for Sunday newspaper advertising in New Zealand.
377. The Commission notes that a large number of Sunday newspaper advertising customers target audiences across both the North and South Islands. As a consequence, they have visibility over the prices that Fairfax charges nationally and can use the presence of NZME in the North Island as a bargaining chip with Fairfax.
378. The Commission considers that this indirect constraint, achieved through competition between the Fairfax and NZME Sunday papers in the North Island constrains the price of Sunday Star Times advertising in the South Island. With the merger, this North Island constraint is removed and the merging parties would be free to increase price across both islands.

Competition analysis – metropolitan daily newspapers in the Waikato and Hawke’s Bay regions

379. As outlined in the market definition section above, the majority of metropolitan daily newspapers in New Zealand have discrete areas of geographic distribution, usually based around major cities or regions (for example, *The New Zealand Herald* in Auckland, the *Otago Daily Times* in Otago, and the *Hawke’s Bay Today* in Hawke’s Bay).
380. As a consequence, the metropolitan dailies tend to have a more specific regional focus in terms of their content and are also attractive to advertisers who are looking to target readers in particular geographic areas.
381. For the majority of the metropolitan dailies produced by the merging parties, the distances between their base cities are such that there is no material overlap. However, for two regions (being Hawke’s Bay and Waikato) the distance to the nearest rival metropolitan daily is less. As a consequence, there is a greater degree of circulation overlap between the Fairfax and NZME papers.
382. In Waikato, Fairfax publishes *The Waikato Times*, a daily newspaper based in Hamilton. NZME’s closest major metropolitan daily is *The New Zealand Herald* which is based in Auckland. In Hawke’s Bay, NZME publishes the *Hawke’s Bay Today*.

Fairfax's closest major metropolitan daily is *The Dominion Post* which is based in Wellington.

383. Post-merger, *The New Zealand Herald*, *The Waikato Times*, *Hawke's Bay Today* and *The Dominion Post* would come under common ownership. The Commission has considered whether each of *The New Zealand Herald* and *The Dominion Post* currently act as a competitive constraint on *The Waikato Times* and the *Hawke's Bay Today*, respectively, such that the removal of that constraint would be likely to substantially lessen competition in the markets for print advertising in metropolitan daily newspapers in each of the Waikato and Hawke's Bay regions.

Competition between the Fairfax and NZME metropolitan daily newspapers in the Waikato and Hawke's Bay regions

384. To determine whether or not the proposed merger would have the effect of substantially lessening competition in the markets for print advertising in metropolitan daily newspapers in each of the Waikato and Hawke's Bay regions, we considered the extent to which *The Dominion Post* and *Hawke's Bay Today*, and *The New Zealand Herald* and *The Waikato Times*, are currently providing a competitive constraint on each other.

Advertisers' views

385. None of the advertising customers spoken to by the Commission expressed any concern regarding the proposed merger in relation to *The Waikato Times/The New Zealand Herald* or *The Dominion Post/Hawke's Bay Today* overlaps. These advertisers indicated that this was because purchasers of print advertising in metropolitan newspapers purchased advertising in the particular regions where readers live.

The Dominion Post and Hawke's Bay Today

386. In its advertising material, Fairfax described *The Dominion Post* as reaching Wellingtonians. In the same document, Fairfax presented a map of *The Dominion Post's* footprint which stretches from Wellington through to north of Taupo.²⁵⁸
387. NZME's marketing material for the *Hawke's Bay Today* stated that it is distributed to the Hawke's Bay area and surrounds and highlighted that the paper is "unashamedly local in its coverage".²⁵⁹ NZME informed the Commission that only around [] copies of the *Hawke's Bay Today* are available outside of the Hawke's Bay region, with none sold south of Dannevirke.
388. Data provided by the Applicants indicated that approximately []% of total sales of *The Dominion Post* were made in the Hawke's Bay region in 2015.²⁶⁰
389. Fairfax told the Commission that
[

²⁵⁸ <http://advertise.fairfaxmedia.co.nz/s/GO-Local-Wellington-media-kit.pdf>

²⁵⁹ <http://advertising.nzme.co.nz/media/361614/hbtodayonepager2016.pdf>

²⁶⁰ Fairfax data.

390. Fairfax also stated that it has [] for *The Dominion Post* outside of the Wellington region.²⁶²

The Commission's view

391. The Commission considers that while there is some overlap in the circulation of *The Dominion Post* in the Hawke's Bay region, neither *The Dominion Post* nor *Hawke's Bay Today* are likely to be viewed as close competitive constraints on each other for the supply of print advertising in the Hawke's Bay.
392. This is because a Hawke's Bay based advertiser would be unlikely to advertise in *The Dominion Post* as they would likely miss out on advertising their message to the majority of their Hawke's Bay customers. In addition, such an advertiser would be buying access to a large number of readers that are unlikely to make purchases in the Hawke's Bay area. As newspaper advertising is sold on a cost-per-thousand basis, such an advertiser would be wasting the majority of their money.
393. Similarly, a Wellington-based advertiser would be unlikely to choose the *Hawke's Bay Today* over *The Dominion Post* as no copies of the *Hawke's Bay Today* are available in the Wellington Region.

The New Zealand Herald and The Waikato Times

394. Similar to *The Dominion Post* and the *Hawke's Bay Today*, *The Waikato Times* and *The NZ Herald* are predominantly based around their home cities of Hamilton and Auckland, respectively. However, the distance between these two cities is closer (125km) and as such the two papers' distribution footprints are closer.
395. However, approximately []% of *The New Zealand Herald's* sales are in the Waikato region. This is less than *The Dominion Post* achieves in Hawke's Bay, despite the much greater distance between Wellington and Hawke's Bay (294km).
396. For the same reasons outlined above, we consider that *The Waikato Times* and *The New Zealand Herald* do not provide a strong competitive constraint on each other for the supply of print advertising.

Conclusion

397. The Commission is satisfied that while there is physical overlap between the distribution of *The New Zealand Herald* and *The Waikato Times* in the Waikato region and the distribution of *The Dominion Post* and the *Hawke's Bay Today* in the Hawke's Bay region, the proposed merger would not be likely to substantially lessen

²⁶¹ Fairfax "Response to Commerce Commission questions of 5 September 2016", attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

²⁶² Fairfax "Response to Commerce Commission questions of 5 September 2016", attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

competition in the market for print advertising in the Waikato and Hawke's Bay regions.

Community newspapers

398. The proposed merger would result in NZME acquiring Fairfax's network of community newspapers across New Zealand, including 10 that overlap with an NZME community newspaper in the North Island.
399. Generally, community newspapers are published for free on a weekly or bi-weekly (twice per week) basis and almost exclusively cover news that is local to the community that they service. Given that community newspapers are distributed for free, their only source of revenue is derived from advertising.²⁶³ Therefore, this section deals with the impact that the proposed merger would likely have on community newspaper advertising in these areas of overlap. The areas of overlap submitted by the Applicants are set out in Table 3.
400. We have assessed whether the aggregation of NZME's and Fairfax's community newspapers in these overlapping areas would enable the merged entity to unilaterally increase the price of community newspaper advertising in each area.
401. In assessing the magnitude of any potential increase in advertising prices, we have looked at the competitive alternatives available to community newspaper advertisers.

²⁶³ With one exception: NZME's *The Northland Age* which is a paid community newspaper.

Table 3: Areas of overlap

Area	NZME Community paper	Circulation ²⁶⁴	Frequency	Fairfax Community paper	Circulation	Frequency
Northland	<i>The Northland Age</i>	3,955	Bi-weekly	<i>Northern News</i>	14,702	Weekly
				<i>The Bay Chronicle</i>	12,719	Weekly
Whangarei	<i>Whangarei Report</i>	26,675	Weekly	<i>Whangarei Leader</i>	33,769	Weekly
Hamilton	<i>Hamilton News</i>	34,331	Weekly	<i>Hamilton Press</i>	62,490	Weekly
Rotorua	<i>Rotorua Weekender</i>	24,394	Weekly	<i>Rotorua Review</i>	23,221	Weekly
Taupo	<i>Taupo and Turangi Weekender</i>	16,801	Weekly	<i>Taupo Times</i>	27,386	Bi-weekly
Hauraki	<i>Coastal News</i>	8,357	Weekly	<i>Hauraki Herald</i>	31,790	Weekly
Napier	<i>Napier Courier</i>	24,913	Weekly	<i>Napier mail</i>	28,529	Weekly
Hastings	<i>Hastings Leader</i>	18,883	Weekly	<i>Hastings Mail</i>	25,812	Weekly
Rural Hawke's Bay	<i>CHB Mail</i>	6,702	Weekly	<i>HB Country Scene</i>	-	-
Stratford	<i>Stratford Press</i>	9,649	Weekly	<i>South Taranaki Star</i>	15,421	Weekly
Palmerston North	<i>Manawatu Guardian</i>	37,062	Weekly	<i>The Tribune</i>	37,001	Weekly
Horowhenua	<i>Horowhenua Chronicle</i>	15,745	Bi-weekly	<i>Horowhenua Mail</i>	14,987	Weekly
Kapiti	<i>Kapiti News</i>	25,348	Weekly	<i>Kapiti Observer</i>	28,904	Weekly

Source: Application at Appendix 15.

²⁶⁴ Latest New Zealand Audit Bureau circulation figures from <http://newspaper.abc.org.nz/>.

Market definition – community newspapers

402. As outlined above, the Commission has previously looked at mergers involving community newspaper advertising. In assessing the relevant product market, the Commission considered whether it was appropriate to adopt the approach to market definition taken in *Times Media*.²⁶⁵ However, based on the information gathered in this investigation, we have taken an approach similar to *Bauer*. Rather than defining specific markets, we have explored the extent to which the merger would affect the sale of advertising in community newspapers.
403. In this case, we consider that there is no bright line that separates products that are within a market from those that are outside the market. Community newspapers face differing levels of advertising constraints, including from other community newspapers, other forms of print advertising (including advertising flyers and metropolitan and regional newspapers) and from other media platforms such as radio and digital.
404. The competition analysis below does not rely on exact delineation of the relevant product market to identify the competitive constraints acting on the merged entity with respect to community newspaper advertising. It is, therefore, unnecessary for us to reach a conclusion on the precise product scope of the market, although we consider that within the broader supply of advertising in community newspapers, there are different customer types who have different needs and options when it comes to advertising.

Geographic areas of concern

405. Community newspapers are used by advertisers wanting to reach a local audience. Because of this, we consider that the proposed merger would only affect areas where NZME and Fairfax's community newspapers cover a similar area.
406. In most of the areas of overlap set out in Table 2, we consider that NZME and Fairfax's community newspapers are each other's closest competitors. In each of these areas, we consider that NZME and Fairfax's community newspapers provide a competitive constraint on each other and that constraint would be removed post-merger.
407. There are three areas that the Commission assessed and in which we are satisfied that the proposed merger is unlikely to result in a substantial lessening of competition.
- 407.1 In Northland we were advised by local advertisers that NZME's *Northland Age* covers a separate area to Fairfax's *Northern News* and *The Bay Chronicle*. These advertisers said that the *Northland Age* is focused on the Kaitaia area whereas the *Northern News* and *Bay Chronicle* are focused on the Kerikeri and Bay of Islands areas, respectively. In addition, the local advertisers also noted that the *Northland Age* attracts different readers to

²⁶⁵ Fairfax New Zealand Limited and Times Media Group Limited (Commerce Commission Decision 561, 14 October 2005).

the *Northern News* and *The Bay Chronicle* as it is a paid community newspaper.

- 407.2 In Hauraki, NZME's *Coastal News* almost exclusively services Whangamata, whereas the *Hauraki Herald* covers the wider Hauraki district. Most advertisers in the *Coastal News* are based in Whangamata and explained that they do not consider the *Hauraki Herald* to be an option for advertising as it would be a waste (as it covers a much larger area than Whangamata). Conversely, advertisers in the *Hauraki Herald* appear to be based in Thames and the wider Hauraki region and are unlikely to view the *Coastal News* as an alternative source of advertising.
- 407.3 The Applicants submitted that Fairfax's *HB Country Scene* and NZME's *CHB Mail* compete in rural Hawke's Bay.²⁶⁶ Based on the Commission's investigations, we have subsequently learned that the *HB Country Scene* ceased publication in 2013.²⁶⁷
408. In Taranaki, we consider that the proposed merger would only reduce the community newspaper advertising options in the Stratford area, rather than all of Taranaki. This is because NZME's *Stratford Press* only covers the Stratford area and, therefore, advertisers in other parts of Taranaki (for example, New Plymouth) are unlikely to view the *Stratford Press* as a close alternative.
409. Similarly, in Manawatu, we consider that it is unlikely that the proposed merger would have a substantial impact on advertisers in the Feilding area. While there is some overlap between NZME's *Manawatu Guardian* and Fairfax's *Feilding-Rangitikei Herald*, the advertisers that we spoke with did not view the two newspapers as close substitutes. Advertisers that want to target a Feilding-based audience use the *Feilding-Rangitikei Herald*, whereas advertisers that want to target Palmerston North will use either the *Manawatu Guardian* or *The Tribune*.
410. To this extent, when assessing the extent to which the proposed merger would affect the sale of advertising in community newspapers, we have focused on each of the following areas:
- 410.1 Whangarei;
- 410.2 Hamilton;
- 410.3 Rotorua;
- 410.4 Taupo;
- 410.5 Napier;
- 410.6 Hastings;

²⁶⁶ Application at 140.

²⁶⁷ Email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (20 October 2016).

- 410.7 Stratford;
- 410.8 Palmerston North;
- 410.9 Horowhenua; and
- 410.10 Kapiti.

Competition analysis

411. To determine whether the proposed merger would affect the price of community newspaper advertising in each of the areas of overlap, such that a substantial lessening of competition would be likely, we considered whether the merged entity would be sufficiently constrained by:
- 411.1 other community newspapers within each area; and/or
 - 411.2 other advertising options; and/or
 - 411.3 the countervailing power of community newspaper advertisers.
412. Where the Commission was not satisfied that the proposed merger would not be likely to substantially lessen competition in any of the areas of overlap, we then considered whether potential entry by a new community newspaper in any of these areas would act as a constraint on the merged entity.

Investigation approach

413. In conducting our competition analysis, the Commission spoke with a number of interested parties, including:
- 413.1 large national advertisers;
 - 413.2 advertising agencies; and
 - 413.3 local community newspaper advertisers.
414. Of these interested parties, we note that local advertisers are the biggest advertisers in community newspapers. For example, in 2015 only []% of the total advertising revenue that NZME generated from its community newspapers in the areas of overlap is derived from national display advertising. Most of the remaining revenue is generated from local advertisers: []% from local display advertising and []% from classified advertising.²⁶⁸
415. To obtain the views of local advertisers, the Commission spoke to approximately four to five local advertisers from NZME and Fairfax community newspapers across each of the areas of overlap as well as a number of advertisers from other areas. This

²⁶⁸ The remaining []% is from other forms of advertisements. NZME Annex 58 - Community Revenues (Excel), attached to an email from Russell McVeagh to the Commerce Commission (16 September 2016).

resulted in us speaking with 63 local community newspaper advertisers in total. Forty five of these are from the areas of overlap.

416. For most parts of our analysis, we considered that the characteristics of the areas of overlap were sufficiently similar to assess the views of the local advertisers collectively. For example, our analysis of the extent to which advertising flyers compete with community newspaper advertising.

Applicants' views

417. The Applicants submitted that the merged entity would continue to face competition from existing community newspapers in a number of the areas of overlap. These competitors are set out in Table 4.²⁶⁹

Table 4: Existing competitors listed by the Applicants²⁷⁰

Area	Competitor listed by Applicant	Circulation	Frequency
Whangarei	-	-	-
Hamilton	<i>Western Community News</i>	18,000	Twice per month
Rotorua	-	-	-
Taupo	-	-	-
Napier & Hastings	<i>Bay Buzz</i>	5,000	Every two months
Stratford	<i>Opunake and Coastal News</i>	8,800	Fortnightly
	<i>Taranaki Farming Lifestyles</i>	10,000	Monthly
	<i>Patea and Waverly Press</i>	2,700	Monthly
Palmerston North	<i>Manawatu Farming Lifestyles</i>	15,000	Monthly
Horowhenua	-	-	-
Kapiti	-	-	-

418. In addition to competition from other community newspapers, the Applicants submitted that in each area of overlap the merged entity would continue to face competition from a range of other advertising options, including digital advertising, TV, radio, and advertising flyers.²⁷¹
419. Further, the Applicants submitted that the merged entity would also be constrained by the countervailing power of advertisers. In making this submission, the Applicants referred to *Times Media*, where the Commission held:²⁷²

²⁶⁹ Application at 140-141 (Appendix 15).

²⁷⁰ This table only includes those publications that the Applicants have listed as existing competitors (for example, we have not included neighbouring publications listed by the Applicants).

²⁷¹ Application at 140 (Appendix 15).

²⁷² Application at 58.

The Commission considers that advertisers have a substantial degree of countervailing power. Advertisers are able to express this through a variety of ways, but underlying these different negotiation tactics is the knowledge that a community newspaper is dependent on advertisers for all its revenue.

Applicants' response to the Commission's Draft Determination

420. In response to the Commission's Draft Determination, the Applicants submitted that the Commission had not demonstrated that the merged entity would be "free from market pressures to pursue a unilateral and unconstrained price elevation strategy". The Applicants submitted that this is the test in accordance with *Brambles*²⁷³ that the Commission must apply in determining whether a substantial lessening of competition is likely.²⁷⁴
421. The Applicants asserted that the Commission had erred in its analysis of the views of local advertisers that we spoke to. The Applicants submitted that an analysis of the Commission's file notes of its interviews demonstrated that the majority of community advertisers would respond to a 5 – 10% price increase either by ceasing or reducing their expenditure on community newspaper advertising or switch to alternative forms of advertising.²⁷⁵
422. The Applicants further submitted that the price of community newspaper advertising had fallen across almost all areas of NZ and that there is no linkage between the rate of decline of those prices, and whether or not NZME and Fairfax directly compete with each other in a particular area.²⁷⁶
423. The Applicants considered that it is not competition between NZME and Fairfax's community newspapers that drives the price and quality of community newspaper advertising, rather the key constraint is the perception of value, in the context of what local advertising customers are willing and able to spend on community newspaper advertising.²⁷⁷
424. In support of this submission, the Applicants pointed to a number of local advertisers that the Commission interviewed who said that, if faced with a price increase, they would look to reduce the frequency and/or size of their advertising in community newspapers.²⁷⁸
425. In that regard, the Applicants submitted that alternative forms of advertising (particularly advertising flyers, radio and digital advertising) provide a constraint on print advertising in community newspapers. The Applicants also submitted that in its

²⁷³ *Brambles* above n 50 at [197].

²⁷⁴ NZME/Fairfax submission on the Commerce Commission's Draft Determination (25 November 2016) at [317].

²⁷⁵ Email from Russell McVeagh to the Commerce Commission (17 March 2017).

²⁷⁶ NZME/Fairfax submission on the Commerce Commission's Draft Determination (25 November 2016) at [314] to [320].

²⁷⁷ Applicants' response to the Commerce Commission questions arising from the Conference (23 December 2016) at [64].

²⁷⁸ Email from Russell McVeagh to the Commerce Commission (3 March 2017).

Draft Determination, the Commission had taken an approach that was inconsistent with a previous Commission decision.²⁷⁹

426. In particular, the Applicants submitted that the Commission erred in its Draft Determination in concluding that advertising flyers are not a close competitor to community newspapers. NZME submitted that a full page advertisement in a NZME community newspaper with a circulation of 30,000 costs approximately \$[] and may contain significant wasted audience as it cannot be targeted to the particular audience that the advertiser is aiming for.²⁸⁰
427. By contrast, the Applicants submitted that advertising flyers are able to be distributed in a much more targeted way and therefore lower quantities are needed. The Applicants submitted that to print and distribute its own flyers, an advertiser would incur a cost of around \$[] for 9,000 flyers. To have these flyers distributed for them to a defined group of streets would cost an advertiser around \$[].²⁸¹

Others' views

Views of advertising agencies

428. A number of the advertising agencies that we spoke with did not have a view as their clients rarely advertise in community newspapers.
429. Strategy Design & Advertising was one advertising agency that had clients that advertise in community newspapers.
[

] .²⁸²
430. Strategy Design & Advertising was of the view that
[
] .²⁸³ For these local advertisers, Strategy Design & Advertising considers community newspaper advertising is cheaper and/or requires less technical experience compared to other forms of advertising, such as radio, Facebook, or using advertising flyers.²⁸⁴
431. [] is a small advertising agency with some smaller clients that advertise in community newspapers. It was of the view that there are “not really any” alternatives that fill the ‘niche’ of community newspaper advertising. [] said that

²⁷⁹ NZME/Fairfax submission on the Commerce Commission’s Draft Determination (25 November 2016) at [319]-[320].

²⁸⁰ NZME and Fairfax response to Commerce Commission questions arising from the Conference on 6 and 7 December 2016 at [66].

²⁸¹ NZME and Fairfax response to Commerce Commission questions arising from the Conference on 6 and 7 December 2016 at [66].

²⁸² Commerce Commission interview with Strategy Design and Advertising (2 September 2016).

²⁸³ Commerce Commission interview with Strategy Design and Advertising (2 September 2016).

²⁸⁴ Commerce Commission interview with Strategy Design and Advertising (2 September 2016).

radio is completely different to community newspapers from an advertising perspective. In regards to Facebook, [] explained that significant time and costs are involved in making Facebook work, as an advertising medium, and that it is a social media platform, rather than a sales tool.²⁸⁵

National advertisers

432. The national advertisers that we spoke with rarely advertise in community newspapers. Instead, they often opt for advertising flyers which are a cost-effective option compared to community newspapers when printed and distributed on a large scale. Generally, the use of community newspaper advertising by national advertisers tends to be used to target a specific community or localised event.
433. PMP Limited, a large New Zealand-based printer and distributor of advertising flyers, confirmed that advertising flyers are cheaper than advertising in community newspapers for large scale advertisers. PMP Limited told the Commission that these national advertisers are printing up to a million advertising flyers at a time.²⁸⁶
434. Generally, national advertisers only use community newspapers on an ad hoc basis when they want to send a localised message to a specific local community. [] gave the example of using community newspaper advertising to promote the opening of a local store.²⁸⁷ [] did not consider radio to be an effective alternative to community newspapers, as it is not as targeted.²⁸⁸
435. We note that MediaWorks []. It considers that “the propositions offered by radio and print advertising are quite different”. However, it considered that in smaller markets where advertisers have fixed budgets, community newspapers are a competitor to radio advertising.²⁸⁹

Local advertisers

436. The 63 local advertisers that we spoke with are of the view that community newspapers are an effective way to advertise to people within their community. For many of these advertisers, their target audience is older and/or from a lower socio-economic group. The local advertisers explained that these audiences are more likely to read free community newspapers than paid newspapers and often do not use the internet.²⁹⁰
437. In response to a price increase of community newspaper advertising post-merger, none of the local advertisers said that they would switch to a competing

²⁸⁵ Commerce Commission interview with [] (1 September 2016).

²⁸⁶ Commerce Commission interview with PMP Limited (15 September 2016).

²⁸⁷ Commerce Commission interview with [] (9 September 2016).

²⁸⁸ Commerce Commission interviews with [] (9 September 2016) and [] (5 September 2016).

²⁸⁹ MediaWorks in response to Commerce Commission questions attached to an email from MediaWorks to the Commerce Commission (30 September 2016).

²⁹⁰ See for example Commerce Commission interview with [] (30 September 2016).

independent community newspaper. Rather, faced with an increase in the price of community newspaper advertising post-merger, the majority of local advertisers said that they would continue to advertise in the merged entity's community newspapers.²⁹¹

438. There was not a consensus among the advertisers spoken to by the Commission as to the extent of price increase needed before they would switch away from advertising in community newspapers. However, the majority of those spoken to said that they would continue to advertise in community newspapers at a price increase of at least 5-10%.²⁹²
439. A significant number of the local advertisers that we spoke with said that they either use or have used radio advertising. However, only one of these local advertisers said that it would switch to radio advertising in response to a price increase of community newspaper advertising.²⁹³
440. The advertisers that continue to use both radio and community newspaper advertising were of the view that radio and community newspaper advertising serve different purposes.²⁹⁴ Those advertisers that have stopped advertising on radio advertising were generally of the view that it was expensive and ineffective.²⁹⁵
441. While some local advertisers have a digital presence, such as advertising on their own website, Facebook, Google and/or Trade Me, only five of the local advertisers (the majority of which were car dealers) indicated that they would consider switching to digital advertising in the event of a price increase.²⁹⁶
442. Other car dealers had different views on the extent to which digital advertising is a close substitute to community newspaper advertising. These advertisers explained that advertising on Trade Me means that they have to compete with cars that are being sold throughout New Zealand and it is often difficult to have a point of difference. Whereas community newspaper advertising allows these car dealers to target potential purchasers within their own community.²⁹⁷
443. The local retail and service advertisers explained that while Facebook is useful for connecting with pre-existing customers that are internet users, it is not as effective for targeting new customers or for getting their name 'out there'. In addition, given that community newspaper audiences tend to be older, digital advertising was often not viewed as an effective way to reach these audiences.²⁹⁸

²⁹¹ See for example Commerce Commission interview with [] (20 September 2016).

²⁹² See for example, Commerce Commission interviews with [] (21 September 2016); [] (23 September 2016).

²⁹³ Commerce Commission interview with [] (26 September 2016).

²⁹⁴ See for example Commerce Commission interview with [] (26 September 2016).

²⁹⁵ See for example Commerce Commission Interview with [] (26 September 2016).

²⁹⁶ See for example Commerce Commission interview with [] (22 September 2016).

²⁹⁷ See for example Commerce Commission interview with [] (27 September 2016).

²⁹⁸ See for example Commerce Commission interview with [] (20 September 2016).

444. A number of advertisers spoken to by the Commission considered that when faced with a price increase of 5-10%, they would either look to reduce the volume of advertising that they purchased in community newspapers or consider other advertising options.²⁹⁹

Local advertisers' views of flyers

445. None of the 63 local advertisers we spoke with said they would switch to advertising flyers in response to a price increase of community newspapers.³⁰⁰ A number of local advertisers expressed the view that advertising flyers are an expensive option compared to community newspaper advertising. This view was supported by PMP Limited, which said that for local advertisers community newspapers are “quite a bit cheaper” than the cost of printing and distributing advertising flyers.^{301 302}
446. Consistent with the views of advertisers generally regarding the use of different advertising platforms, a number of the local advertisers noted that they use advertising flyers in addition to advertising in community newspapers. For example:
- 446.1 [], which operates a [], has recently begun advertising in both the Napier Mail and the Hastings Mail. It had traditionally used advertising flyers but switched to community newspapers because they were cheaper and provided a wider reach.³⁰³
- 446.2 [], a Rotorua based car dealer, occasionally uses flyers, but considers this to be “over and above” print advertising.³⁰⁴
- 446.3 In addition to print advertising, [] advertises online, on radio and via their own flyers.³⁰⁵
- 446.4 [] considered advertising flyers but decided against using them because of the cost and the time required to distribute them. [] indicated the price would have to increase by around 20% before it would switch from community newspapers to another advertising option.³⁰⁶
- 446.5 [] is based in Kaitaia and advertises in the Northland Age because it targets its local area. [] said that the Northern News covers the Kaitaia region. In addition to print advertising, [] advertises online, on the

²⁹⁹ See for example Commerce Commission interview with [] (26 September 2016).

³⁰⁰ We note that in Northland (not an area of overlap) one local advertiser viewed advertising flyers as a close substitute to community newspaper advertising.

³⁰¹ Commerce Commission interview with PMP Limited (15 September 2016).

³⁰² Simon Ellis (Managing Director of PMP Limited) is the President of the New Zealand Community Newspapers Association.

³⁰³ Commerce Commission interview with [] (23 September 2016).

³⁰⁴ Commerce Commission interview with [] (22 September 2016).

³⁰⁵ Commerce Commission interview with [] (21 September 2016).

³⁰⁶ Commerce Commission interview with [] (3 October 2016).

radio and through advertising flyers (it considered flyers to be as effective as the *Northland Age*).³⁰⁷

The Commission’s view

447. As outlined above, the Commission considers that some community advertising customers rely on community newspaper advertising more than others, specifically local advertisers. The Commission is of the view that community newspaper advertising is an effective way for local advertisers to reach local audiences. The Commission is not satisfied that local advertisers would be likely to have sufficient alternative advertising options to constrain the merged entity from increasing the price of advertising in community newspapers.

448. Our view is consistent with a Fairfax internal document which stated that community newspapers offer “[]”.³⁰⁸

449. Further, we are of the view that NZME and Fairfax’s community newspapers provide a pricing constraint on each other and that this constraint would be removed post-merger. We consider that this is consistent with NZME’s own internal document which stated:³⁰⁹

[]

450. Consistent with NZME’s internal document, we note that [] in the 10 areas of overlap,³¹⁰ compared with the areas where it does not appear to face competition from an existing community newspaper,^{311 312} as set out in Table 5.³¹³

³⁰⁷ Commerce Commission interview with [] (23 September 2016).

³⁰⁸ Fairfax presentation, Annex 26 - Communities Presentation. Trade Communications (November 2014), attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (4 July 2016).

³⁰⁹ NZME presentation, Annex 38 - NZME F16 Regional Strategy Summary (24 February 2016), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (19 August 2016).

³¹⁰ []

³¹¹ *Northland Age, Te Awamutu Courier, CHB Mail, Katikati Advertiser, Te Puke Times, Coastal News, Havelock North Village Press, Waihi Leader, Bush Telegraph.*

³¹² Above n 316.
[]

³¹³ The Commission has been unable to undertake a similar assessment in respect of Fairfax’s community newspapers because Fairfax was unable to provide the distribution costs for each of its community newspapers.

Table 5: NZME yearly gross profit margins by competition faced, 2013-2015

	10 Areas of overlap			Areas of no competition		
	2013	2014	2015	2013	2014	2015
Average circulation	23,005	23,599	24,216	8,249	8,566	8,697
Advertising revenue	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
Print costs	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
Distribution costs	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
Gross profit	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
Gross profit margin	[]%	[]%	[]%	[]%	[]%	[]%

Source: NZME Data

451. The Commission understands that the main variable cost of producing a community newspaper is the cost of print and distribution. Advertisers are prepared to pay more for advertising in community newspapers that are circulated to a larger number of people. As such, we would expect advertising revenues and print and distribution costs to be roughly proportionate to the circulation of a community newspaper and, therefore, expect similar gross profit margins across different areas.³¹⁴
452. The Commission notes that the characteristics of different markets could affect the profits earned by NZME. For example, a community newspaper that contains a higher proportion of real estate advertising (which is sold more cheaply than local display advertising) may have a lower profit margin compared with a community newspaper that only sells local display advertising. However, in this case, real estate advertising only makes up around []% of NZME's total revenue in the 10 areas of overlap, but []% in the areas of no competition.³¹⁵
453. Further, we are not aware of any reason why constraints from other forms of advertising (such as digital, radio or advertising flyers) would be significantly different between the 10 areas of overlap and the areas where NZME does not face competition.
454. To this extent, it is our view that the []

³¹⁴ []

³¹⁵ Annex 58 - Community Revenues (Excel), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (16 September 2016).

455. The High Court in *Woolworths v Commerce Commission* accepted the differences in margins or returns may be an indicator of differences in competition.³¹⁶ The Court noted, however, that margins and returns may be influenced by other factors such as taxation or depreciation rules. In this case the Applicants have not provided an alternative explanation for [] or suggested the Commission’s analysis is subject to factors similar to those that concerned the Court in *Woolworths*.
456. In response to our Draft Determination, NERA provided analysis that showed the percentage change in average annual advertising prices for a selection of NZME and Fairfax’s community newspapers.³¹⁷ This analysis shows that for these community newspapers there has been a range of average annual advertising price changes over the previous three years. A small number have increased in price, some have suffered large price decreases (ie, over 5%), and most have experienced relatively smaller price decreases (ie, less than 5%).
457. NERA’s analysis suggests that, for the selected community newspapers, there is no strong correlation between the level of competition faced by these newspapers and the price change they have experienced. The Applicants concluded from this analysis that “it is not competition between NZME’s and Fairfax’s respective community newspapers that is driving advertising competition; it is the constraint from the range [of] other advertising options, such as online, radio, flyers and the Internet.”³¹⁸
458. The Commission acknowledges that the price of community newspaper advertising has been falling for many community newspapers. This could be linked to changes in demand brought about by a change in preferences by a subset of advertisers towards other forms of advertising, including digital advertising.
459. However, we do not accept that this analysis proves that competition between NZME and Fairfax has no or little effect on the price of community newspaper advertising, such that a substantial lessening of competition from the merger is unlikely. Analysing price changes over the past three years does not take into account the actual price levels faced by community newspaper advertisers in the different areas. Consequently, it does not address whether a lack of competition between NZME and Fairfax has led to advertisers facing higher prices in areas of no overlap.
460. In contrast, [], which is consistent with a lack of competition driving higher prices. Furthermore, an NZME internal document states that “[

³¹⁶ *Woolworths* (HC) above n 41 at [143].

³¹⁷ NERA Fairfax/NZME: Review of the Draft Determination (25 November 2016).

³¹⁸ Fairfax & NZME Factual Submission on Draft Determination (25 November 2016).

]”.³¹⁹

The constraint provided by flyers

461. The Commission considers that for local advertisers, advertising flyers are significantly more expensive than community newspaper advertising. With community newspapers, advertisers are able to share the print and distribution costs with other advertisers. Advertising flyers, on the other hand, require a single advertiser to bear all of the print costs, and a significant proportion of the distribution costs. Advertisers (with the exception of large national advertisers) spoken to by the Commission do not consider that advertising flyers are a cost effective alternative to community newspapers. Rather, those local advertisers who did use advertising flyers did so as a complement to their community newspaper advertising, rather than as a substitute for it.
462. For example, to print and distribute a full page advertisement in a NZME community newspaper with a circulation of 30,000 costs approximately \$[].³²⁰ In order to reach a similar number of households through advertising flyers would cost around \$2,000.00 for the distribution alone, not including the cost of printing.³²¹
463. This view was shared by PMP Limited and is consistent with the fact that none of the local advertisers we spoke with said they would switch to advertising flyers in the likely event that the price of community newspaper advertising increased post-merger.³²²
464. The Commission accepts that advertising flyers are able to be more directly targeted towards a specific group of potential customers as they can be focused on particular geographic areas, such as a suburb or group of streets.
465. There is a point where an advertiser will have sufficient scale that advertising flyers become a cost-effective option compared to community newspaper advertising. This point likely lies somewhere between the scale of the national advertisers and the scale of local advertisers.
466. For national advertisers, advertising flyers are a cost-effective alternative to advertising in community newspapers. This is because of the large scale by which these advertisers print and distribute their flyers (up to one million at a time). The large national advertisers we spoke with already preferred to use advertising flyers and this is reflected in the small proportion of community newspaper advertising that is derived from national advertisers.

³¹⁹ NZME presentation, Annex 38 - NZME F16 Regional Strategy Summary (24 February 2016), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (19 August 2016).

³²⁰ NZME and Fairfax response to Commerce Commission questions arising from the Conference on 6 and 7 December 2016 at [66].

³²¹ Estimated cost of distributing 29, 943 flyers <http://quote.reachmedia.co.nz/#rounds> -

³²² Commerce Commission interview with PMP Limited (15 September 2016).

467. However, based on the views of local advertisers we spoke with, we do not consider that a sufficient number of community newspaper advertisers would have the requisite scale such that advertising flyers would become a cost-effective option and, therefore, would be likely to constrain the merged entity from increasing the price of community newspaper advertising.

Constraint provided by radio and digital advertising

468. Based on the views of the interested parties we spoke with, the Commission does not consider that, for local advertisers, radio and digital advertising alternatives would be likely to constrain the merged entity from increasing the price of community newspaper advertising in any of the areas of overlap.
469. This is consistent with the Commission's conclusions in *Times Media* in 2005 where the Commission found that overall, different types of advertising have different purposes and act as complements rather than substitutes.³²³
470. While a few of the 61 local advertisers that we interviewed consider radio and digital advertising to be a close alternative to community newspaper advertising, we consider that there is unlikely to be a sufficient number of these advertisers to effectively constrain the merged entity. This is consistent with the views of the majority of local advertisers we spoke with that would continue to advertise in community newspapers despite a 5-10% price increase.
471. In respect of radio advertising, we consider that our view is consistent with other community newspaper publishers that we spoke with. NorthSouth Multi Media was of the view that radio needs the "support" of print advertising for details.³²⁴ Likewise, Wellington Suburban Newspapers and River City Press did not consider radio advertising to be an advertising competitor to their respective community newspapers.^{325 326} We also consider that radio acts as a support medium to print advertising and is not capable of giving the same level of product and service description that print is. Radio is more suited to brand and event advertising.³²⁷
472. Also, as discussed above, we consider that many advertisers are targeting particular areas of the community such as older or lower socio-economic readers and community newspaper advertising is more effective in reaching this audience.
473. In respect of digital advertising, we consider that our view is consistent with NZME's own internal document which states that

³²³ Fairfax New Zealand Limited and Times Media Group Limited (Commerce Commission Decision 561, 14 October 2005).

³²⁴ Commerce Commission interview with NorthSouth Multi Media (13 October 2016).

³²⁵ Commerce Commission interviews with River City Press (16 September 2016) and Wellington Suburban Newspapers (28 September 2016).

³²⁶ Sun Media, took a different view, it said that it faces competition from radio and online advertising. That said, Sun Media also considered itself to be "a little bit different" to other community newspapers. In its view, because of its size *The Weekend Sun* attracts different advertisers to other community newspapers. Commerce Commission interview with Sun Media (16 September 2016).

³²⁷ Commerce Commission interview with [] (28 June 2016).

“[]”.³²⁸

474. While some local advertisers use Facebook for some of their advertising, they do not use it as a replacement for advertising in community newspapers, instead it was used as a complement to their existing advertising mix.³²⁹
475. If other forms of advertising were a competitive constraint on community newspaper advertising, we would expect to see these advertisers electing to switch more of their advertising to alternative platforms if faced with a price increase, rather than simply reducing the volume of community newspaper advertising that they purchase or continuing to advertise in community newspapers.

Constraint provided by existing community newspapers

476. In each of the areas of overlap, the Commission does not consider that the merged entity would face strong levels of competition from any existing independent community newspapers.
477. As set out in Table 6, we consider that the competing publications listed by the Applicants differ in circulation, geographic area, frequency and/or content from NZME and Fairfax’s community newspapers, such that they are unlikely to provide any significant constraint on the merged entity.
478. In addition, none of the local advertisers that we spoke with from the areas of overlap said that they would switch to advertising in an independent community newspaper post-merger.³³⁰

³²⁸ NZME presentation, Annex 38 - NZME F16 Regional Strategy Summary (24 February 2016), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (19 August 2016).

³²⁹ See for example Commerce Commission interview with [] (21 October 2016).

³³⁰ One advertiser said that it advertises in the *Opunake and Coastal News* when targeting audiences in the Opunake area; however, it did not consider it to be a substitute for advertising in Stratford.

Table 6: Existing competitors in each area of overlap

Area	Existing competitors	Commission's view on the constraint imposed by these competitors
Whangarei	-	There are no competing community newspapers in Whangarei.
Hamilton	<i>Western Community News</i>	<p>The Commission does not consider that <i>Western Community News</i> is a close competitor to the Hamilton Press and Hamilton News, for the following reasons:</p> <ul style="list-style-type: none"> • Between July 2015 and June 2016, the Western Community Centre earned \$16,860 from the <i>Western Community News</i>.³³¹ In contrast, in 2015, the <i>Hamilton News</i> and <i>Hamilton Press</i> earned around \$[]m³³² and \$[]m³³³ in advertising revenue, respectively. • <i>Western Community News</i> is focused on Hamilton West and, therefore, does not have the same coverage as NZME and Fairfax community newspapers. • It is a volunteer-run community newspaper with significantly less content than <i>Hamilton News</i> and <i>Hamilton Press</i>.
Rotorua	-	There are no competing community newspapers in Rotorua.
Taupo	-	There are no competing community newspapers in Taupo.
Napier	<i>Bay Buzz</i>	<p>The Commission does not consider that the <i>Bay Buzz</i> is a close competitor to the <i>Napier Courier</i> and <i>Napier Mail</i>, for the following reasons:</p> <ul style="list-style-type: none"> • The <i>Bay Buzz</i> has a significantly smaller circulation area (5,000) compared with the <i>Napier Courier</i> (24,913) and <i>Napier Mail</i> (28,529). An advertiser wanting broad reach in the Napier area would be unable to achieve this by advertising the <i>Bay Buzz</i>.

³³¹ Western Community Centre 2016 Annual Report, retrieved from here <http://www.westerncommunitycentre.org/annual-report-2016> on 4 November 2016.

³³² 3117377 Regionals L3Y P&Ls (confidential and subject to legal advice) – v1, attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (4 July 2016).

³³³ Annex 83 - Request28September_Communities, attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (6 October 2016).

Area	Existing competitors	Commission's view on the constraint imposed by these competitors
		<ul style="list-style-type: none"> • The <i>Bay Buzz</i> is distributed less frequently (every two months) compared with the <i>Napier Courier</i> (weekly) and <i>Napier Mail</i> (weekly). For community newspaper advertisers that want to advertise on a frequent basis, the <i>Bay Buzz</i> would not be a close alternative. • The <i>Bay Buzz</i> is a paid magazine compared with the <i>Napier Courier</i> and <i>Napier Mail</i> which are free community newspapers. Many advertisers use community newspapers to target certain demographics that are more inclined to read free publications; it would be more difficult to target these audiences by advertising in the <i>Bay Buzz</i>.
Hastings	<i>Bay Buzz</i>	The Commission does not consider that <i>Bay Buzz</i> is a close competitor to the <i>Hastings Leader</i> or <i>Hastings Mail</i> , for the same reasons as in Napier.
Stratford	<i>Opunake and Coastal News</i>	<p>The Commission does not consider that the <i>Opunake and Coastal News</i> is a close competitor to the <i>Stratford Press</i> and <i>South Taranaki Star</i> as it is not distributed in the Stratford area.³³⁴</p> <p>One advertiser said that it advertises in the <i>Opunake and Coastal News</i> when targeting audiences in the Opunake area; however, it did not consider it to be a substitute for advertising in Stratford.³³⁵</p>
	<i>Taranaki Farming Lifestyles</i>	<p>The Commission does not consider that the <i>Taranaki Farming Lifestyles</i> is a close competitor to the <i>Stratford Press</i> and <i>South Taranaki Star</i> for the following reasons:</p> <ul style="list-style-type: none"> • <i>Taranaki Farming Lifestyles</i> is only distributed to rural addresses and, therefore, is unlikely to be an effective option for advertisers wanting to target urban readers in Stratford. • <i>Taranaki Farming Lifestyles</i> covers farming news rather than Stratford-specific news and, therefore, is unlikely to be an effective option for advertisers wanting to advertise to the general Stratford population.

³³⁴ <http://www.opunakecoastalnews.co.nz/>

³³⁵ Commerce Commission interview with [] (15 September 2016).

Area	Existing competitors	Commission's view on the constraint imposed by these competitors
		<ul style="list-style-type: none"> • <i>Taranaki Farming Lifestyles</i> is distributed less frequently (monthly) compared with the <i>Stratford Press</i> (weekly) and <i>South Taranaki Star</i> (weekly). For community newspaper advertisers that want to advertise on a frequent basis, the <i>Taranaki Farming Lifestyles</i> would be unlikely to be a close alternative.
	<i>Patea and Waverly Press</i>	The Commission does not consider that the <i>Patea and Waverly Press</i> is a close competitor to the <i>Stratford Press</i> and <i>South Taranaki Star</i> as it is not distributed in the Stratford area.
Manawatu	<i>Manawatu Farming Lifestyles</i>	<ol style="list-style-type: none"> 1. The Commission does not consider that the <i>Manawatu Farming Lifestyles</i> is a close competitor to the <i>Stratford Press</i> and <i>South Taranaki Star</i> for the following reasons: 2. <i>Manawatu Farming Lifestyles</i> is only distributed to rural addresses and, therefore, is unlikely to be an effective option for advertisers wanting to target urban readers in Palmerston North. 3. <i>Manawatu Farming Lifestyles</i> covers farming news rather than Palmerston North-specific news and, therefore, is unlikely to be an effective option for advertisers wanting to advertise to the general Palmerston North population. 4. <i>Manawatu Farming Lifestyles</i> is distributed less frequently (monthly) compared with <i>The Tribune</i> (weekly) and <i>The Manawatu Guardian</i> (weekly). For community newspaper advertisers that want to advertise on a frequent basis, the <i>Manawatu Farming Lifestyles</i> would not be a close alternative.
Horowhenua	-	There are no competing community newspapers in Horowhenua.
Kapiti	-	There are no competing community newspapers in Kapiti.

Countervailing power of advertisers

479. This section assesses the extent to which the merged entity's ability to profitably increase prices would be constrained by the ability of advertisers to exert substantial influence on negotiations. This requires advertisers to have the ability to substantially influence the price the merged entity would charge.³³⁶
480. In assessing the extent to which community newspaper advertisers have sufficient countervailing power to constrain the merged entity, we reviewed the Commission's findings in *Times Media*.³³⁷ In that decision, the Commission was advised that advertisers could effectively discipline an increase in price of community newspaper advertising by threatening to leave or actually leaving the publication. Based on the information we have gathered in this investigation, we have reached a different view.
481. We do not consider that community newspaper advertisers would have sufficient countervailing power to substantially influence the pricing decisions of the merged entity. While national advertisers or advertising agencies may have some degree of countervailing power, we do not consider that this would apply to local advertisers.
482. As discussed above, the majority of community newspaper advertisers are local advertisers. For these local advertisers, community newspapers are a valued form of advertising that is not easily substitutable with other forms of advertising. Therefore, although community newspapers are dependent on advertisers for revenue, we consider local advertisers would be similarly dependent on the merged entity for advertising.
483. We do not accept the Applicants' submission that community newspaper advertisers' "perceptions of value" would be sufficient to constrain the merged entity from increasing price of community newspaper advertising. While some of the advertisers we spoke with indicated that they would not accept an increase in price, a number of other advertisers indicated that they would absorb an increase in price due to a lack of other alternatives.³³⁸
484. We are not satisfied that a sufficient number of local advertisers would refuse a price increase of 5-10% to constrain the merged entity. Our view is consistent with the differences in [], the Applicants' internal documents, and the views of other local advertisers.

³³⁶ *Mergers and Acquisitions Guidelines* above n 39 at 41.

³³⁷ Fairfax New Zealand Limited and Times Media Group Limited (Commerce Commission Decision 561, 14 October 2005).

³³⁸ For example, see Commerce Commission interviews with [] (20 September 2016), [] (20 September 2016), [] (20 September 2016), [] (9 September 2016), [] (30 September 2016), [] (23 September 2016), [] (21 September 2016).

Real estate exception

485. The Commission notes that real estate advertisers may have more alternatives available to them than other local advertisers. In particular, the Property Press which is a specialist real estate advertising publication published throughout the North Island by Bauer Media. Similarly, digital real estate options such as TradeMe and realestate.co.nz may be a closer substitute to community newspapers for real estate advertisers than for other local advertisers.

486. []³³⁹

487. For these reasons, the Commission has excluded real estate advertisers from its analysis. In doing so we note that, in 2015, real estate advertising made up only []% of advertising revenue generated from community newspapers across the areas of overlap.³⁴⁰

Entry and expansion by competing community newspapers

488. Having determined that the proposed merger would eliminate an existing competitive constraint within the overlap areas, the Commission considered whether potential entry by a new community newspaper would constrain the merged entity from exercising market power in any of the markets of concern.

489. We assessed whether entry by new competitors or expansion by existing competitors is likely to be sufficient in extent and occur in a timely fashion to constrain the merged entity and prevent a substantial lessening of competition. This is referred to as the 'LET test'.³⁴¹

Applicants' views

490. The Applicants submitted that there are no material barriers to entry in starting a community newspaper, such that the threat of potential entry would constrain the merged entity.³⁴²

491. In making this submission, the Applicants referred to a number of existing independent community newspaper publishers that could readily expand into the markets of concern to constrain the merged entity. In particular, River City Press, Sun Media, Wellington Suburban Newspapers, and NorthSouth Multi Media.

491.1 River City Press is an independent community newspaper based in Wanganui that was established in 1985. It competes with NZME's community newspaper, the *Wanganui Midweek*. The Applicants submitted that River City Press could readily expand into Taranaki and Manawatu.

³³⁹ Based on 2015 calendar year.

³⁴⁰ NZME and Fairfax data.

³⁴¹ *Mergers and Acquisitions Guidelines* above n 39 at 37. The elements of the LET test are discussed more fully in the Reader Markets section.

³⁴² Application at 73.

- 491.2 Sun Media is an independent news publisher based in Tauranga that was established in 2000. Sun Media publishes a weekly community newspaper, *The Weekend Sun*. Given the size of *The Weekend Sun* (80-90 pages with a circulation of 65000), Sun Media considers that it competes with both NZME's daily and community newspaper in Tauranga region, *The Bay of Plenty Times* and *Bay News*, respectively. The Applicants submitted that Sun Media could readily expand into Rotorua, Hamilton, Taupo, Napier and Hastings.
- 491.3 Wellington Suburban Newspapers (WSN) is an independent news publisher that was established after acquiring four Wellington-based community newspapers from NZME in 2013.³⁴³ The owner, Les Whiteside, also owns a community newspaper in Marlborough called *The Blenheim Sun*. The Applicants submitted that WSN could readily expand into Kapiti and Manawatu.
- 491.4 NorthSouth Multi Media (NSMM) is a Northland-based independent publisher that owns *The Kaipara Lifestyler* (a weekly community publication in the Kaipara district with a circulation of around 10,000) and six monthly farming newspapers around New Zealand. The Applicants submitted that NSMM could readily expand into Whangarei.

Others' views

492. In assessing whether the LET test is likely to be satisfied in each of the markets of concern, the Commission spoke with Sun Media, WSN, River City Press and NSMM.
493. None of these independent publishers have plans to expand into any of the areas of overlap, nor was any of the view that they would start up a new community newspaper or expand an existing community newspaper to replace competition lost by the merger.
[³⁴⁴]
494. The independent publishers said that there would be considerable risk in starting-up a community newspaper in direct competition with the merged entity. In particular, the scale of the merged entity is such that a new entrant would not be able to compete with the merged entity on price. NSMM said that if it tried to start-up a competing community newspaper, Fairfax would respond aggressively by dropping prices.³⁴⁵
495. Each of the independent publishers has observed aggressive pricing of community newspaper advertising by either NZME or Fairfax.

³⁴³ *The Porirua News, The Independent Herald, The Cook Strait News and Wainuiomata News*. Wellington Suburban News have subsequently closed the *Porirua News*.

³⁴⁴ Commerce Commission interviews with Sun Media (16 September 2016) and WSN (28 September 2016).

³⁴⁵ Commerce Commission interview with NSMM (13 October 2016).

- 495.1 Mr Whiteside explained that *The Blenheim Sun* []³⁴⁶.
- 495.2 Sun Media said []³⁴⁷. Sun Media said it could not compete with that price, as \$[] is []³⁴⁷.
- 495.3 River City Press was of the view that the price that NZME [] and “[]”³⁴⁸.
- 495.4 NSMM said that it used to charge \$[]³⁴⁹. NSMM said that NZME and Fairfax “don’t play nice” with competition.³⁴⁹
496. The independent publishers said that they have been able to compete by having long-standing relationships with the local advertisers and being able to provide a better service. Each of the independent publishers’ community newspapers are well-established, the most recently established being WSN (formerly CityLife) which began publication 10 years ago.
497. In order to build these relationships with local advertisers, the independent publishers were of the view that a new entrant would need to be local to the community it services. WSN explained that a new publisher needs to be “getting involved in the community, going to events”.³⁵⁰ However, the independent publishers were of the view that it can be difficult to build these relationships and it can take a long time.
498. Sun Media provided an example of its unsuccessful attempt to enter the Hauraki region by launching a community newspaper called *The Peninsula Sun*. It stopped publication after nine weeks after being unable to attract readers and advertisers in the area.³⁵¹
499. NSMM said that it recently took over a small community newspaper in rural Canterbury; however, it was misguided in its ability to run such a publication remotely. As such, it leased the newspaper to a local person.³⁵²
500. Les Whiteside said that *The Blenheim Sun* was able to get an advertising base in Marlborough because Countdown New Zealand supported the paper from ‘day one’. However, Mr Whiteside was of the view that entry in this fashion would be more

³⁴⁶ Commerce Commission interview with WSN (28 September 2016).

³⁴⁷ Commerce Commission interview with Sun Media (16 September 2016).

³⁴⁸ Commerce Commission interview with River City Press (16 September 2016).

³⁴⁹ Commerce Commission interview with NSMM (13 October 2016).

³⁵⁰ Email from WSN to the Commerce Commission (26 September 2016).

³⁵¹ Commerce Commission interview with Sun Media (16 September 2016).

³⁵² Commerce Commission interview with NSMM (13 October 2016).

difficult now as it is hard for independent community newspapers to attract national advertisers.³⁵³

501. Notwithstanding the above, the independent publishers said that if a new entrant was able to build an advertising base, it would take years to get a return on investment.
502. River City Press estimated that a new entrant would need to invest at least \$100,000 to start up a new community newspaper and it would take three to five years to return a profit.³⁵⁴ WSN estimated that for the first three months of operation, a new entrant would need at least \$50,000 to set up a new community newspaper.³⁵⁵ NSMM was of the view that starting up a community newspaper in an area that does not face competition from another publisher would still cost a lot and take a long time to get established.³⁵⁶

The Commission's view

503. We consider that the four independent publishers highlighted by the Applicants would be the best positioned to enter or expand into each of the areas of overlap, post-merger.
504. We have not identified any local publishers in the areas of overlap that we consider would be better placed than WSN, Sun Media, River City Press and NSMM to start-up a community newspaper and effectively compete with the merged entity. We have also assessed each of the parties listed in Table 5.
- 504.1 *Western Community News* is a volunteer-run newspaper published by a local community centre.³⁵⁷ The community centre offers a range of services to “contribute to the wellbeing” of the Hamilton West community,³⁵⁸ including the publication of *Western Community News*. Given the community centre’s social objective to support its local community, we do not consider that *Western Community News* is more likely to expand than WSN, Sun Media, River City Press and NSMM.
- 504.2 *Bay Buzz* is a magazine rather than a community newspaper. Its focus is on investigative journalism rather local community news.³⁵⁹ If *Bay Buzz* were to expand to compete with the merged entity’s community newspapers, it would be a significant departure from its current course of business. Because WSN, Sun Media, River City Press and NSMM are already in the business of producing community news, we consider that they are more likely to expand than *Bay Buzz*.

³⁵³ Commerce Commission interview with WSN (28 September 2016).

³⁵⁴ Commerce Commission interview with River City Press (16 September 2016).

³⁵⁵ Email from WSN to the Commerce Commission (26 September 2016).

³⁵⁶ Commerce Commission interview with NSMM (13 October 2016).

³⁵⁷ <http://www.stuff.co.nz/national/politics/83295637/Western-Community-News-lashed-over-water-meters-stance>

³⁵⁸ <http://www.westerncommunitycentre.org/what-we-offer>

³⁵⁹ A selection of articles from the *Bay Buzz* can be found here <http://www.baybuzz.co.nz/articles/>

- 504.3 Neither *Opunake and Coastal News* or *Patea and Waverly Press* are distributed in Stratford. Therefore, both newspapers would need to expand into a new area to constrain the merged entity. This puts these two publishers in a similar position to WSN, Sun Media, River City Press and NSMM. Given the small size of *Opunake and Coastal News* and *Patea and Waverly Press's* current operations, we do not consider that they would be more likely to expand than WSN, Sun Media, River City Press and NSMM.
- 504.4 Taranaki Farming Lifestyles and Manawatu Farming Lifestyles are published by NSMM.
505. The first element of the LET test is the likelihood of entry. Entry is likely if, given a price increase post-merger, the expected profitability of entry is positive.³⁶⁰ In considering the likelihood of entry we also assess the relative risk of entry and expansion compared to alternative investments.
506. In this case, even after a post-merger price increase, we consider that entry is unlikely to be profitable. This is because an independent community newspaper would face high costs of production compared with NZME and Fairfax but lower sales over which to spread those costs and, therefore, a new entrant would be unlikely to be a cost-effective competitor.
507. This view was shared by all four of the independent publishers that we spoke with. Despite the respective scale that these independent publishers have, each expressed the view that they are currently unable to compete on price with NZME and/or Fairfax. We consider that this would remain the same post-merger.
508. In *Marlborough Express* the Commission concluded that there were no significant barriers to entry or expansion for the publishing of a community newspaper. The Commission held that:
- Having regard to the general increase in community newspaper numbers in New Zealand and the low entry barriers, Commission staff conclude that the merged entity will face adequate competitive constraint from the potential entry into the market or expansion of another community newspaper.³⁶¹
509. In *Power Plant Productions* the Commission also held that there were no significant barriers to entry and expansion in print media markets. The Commission also considered that the extent of entry “will largely depend on market conditions at any given time”, and that there were many players that would consider entry.³⁶² In *Power Plant Productions*, the Commission identified “many parties” as likely or potential entrants into the relevant market.

³⁶⁰ Where expected profits are based on costs that include the opportunity cost of entry.

³⁶¹ Independent Newspapers Limited and The Marlborough Express Newspaper Company Limited (Commerce Commission Decision 329, 2 October 1998) at [57].

³⁶² Wilson and Horton Limited and Power Plant Productions Limited (Commerce Commission Decision 445, 7 December 2001) at [89] to [99].

510. The Commission does not consider that the physical barriers to entry, such as office space, computer and photographic equipment, skilled staff and access to printing services are materially higher than they have been when looked at previously by the Commission.
511. However, in our investigation we have not identified any party that would consider entry or expansion into any of our community newspaper markets of concern.
512. The Commission also emphasised in *Power Plant Productions* that irrespective of the barriers to entry into newspaper markets, entry would only act as a constraint should it be likely in commercial terms. The Commission stated:

An economically rational firm will be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment, including allowance for any risks involved.³⁶³

513. We note that, in general, the sales of community newspaper advertising exhibit flat to declining revenues. Accordingly, for new entry to occur a new publisher would have to win advertising customers from the merged entity. Given the potential for the market to shrink further in the short to medium term, we consider that a new entrant would be unlikely to achieve a satisfactory return on its investment. For these reasons, we are not satisfied that entry or expansion is likely in any of the 10 areas of overlap.

Conclusion

514. The Commission considers that community newspaper advertising provides local advertising customers with a platform to reach a large number of potential purchasers relatively cheaply, and to target a demographic that is not a high user of digital platforms.
515. There are a number of reasons why an advertiser may not use alternative advertising services, such as Facebook, flyers and radio. They may not be as cost effective (relative to their reach), may not reach the high value audience that the advertisers are seeking, or may not provide the same level of permanence and coverage as is provided by print advertising. Advertisers told us that one of the benefits of community newspapers is that they remain in the household for a few days and have more opportunities to be read by different people in the household.³⁶⁴
516. The Commission considers that in the 10 areas of overlap, NZME and Fairfax's community newspapers are each other's closest competitors, and that the data shows that competition between these overlapping newspapers has resulted in NZME [] and decreasing advertising prices in those areas. The Commission considers that with the merger this price competition would be lost.

³⁶³ Independent Newspapers Limited and The Marlborough Express Newspaper Company Limited (Commerce Commission Decision 329, 2 October 1998) at [93].

³⁶⁴ Commerce Commission interview with [] (6 June 2016).

517. The Commission has not identified any potential entrants into any of the areas of overlap. We consider that even if an entrant were to be identified, any entry would likely be unprofitable given the scale disadvantage that an expanding firm or new entrant would face, and a generally declining pattern of revenue from community newspapers.
518. For these reasons, the Commission is not satisfied that the proposed merger will not, or would not be likely to substantially lessen competition in the markets for the supply of community newspaper advertising in:
- 518.1 Whangarei;
 - 518.2 Hamilton;
 - 518.3 Rotorua;
 - 518.4 Taupo;
 - 518.5 Napier;
 - 518.6 Hastings;
 - 518.7 Stratford;
 - 518.8 Palmerston North;
 - 518.9 Horowhenua; and
 - 518.10 Kapiti.

Competition between *The New Zealand Herald* and Fairfax's community network

519. The proposed merger would result in NZME acquiring Fairfax's network of community newspapers in Auckland (Auckland communities).³⁶⁵ Fairfax's Auckland communities overlap with the NZME's *The New Zealand Herald*.
520. Similar to other community newspapers, the Auckland communities are published for free on a weekly or bi-weekly basis and almost exclusively cover news that is local to the area that they service. The Applicants noted that "by bundling up several [Auckland] community newspapers, an advertiser can get similar eyeball exposure to using the Herald".³⁶⁶
521. The Commission assessed whether the aggregation of *The New Zealand Herald* and Fairfax's Auckland communities would enable the merged entity to unilaterally increase the price of advertising in *The New Zealand Herald* and/or the Auckland communities. In particular, we considered whether advertising across a bundle of

³⁶⁵ *Auckland City Harbour News, Central Leader, East & Bays Courier, Manukau Courier, North Harbour News, North Shore Times, Nor-West News, Papakura Courier, Western Leader, Rodney Times and Waiheke Marketplace.*

³⁶⁶ Application at Appendix 13.

the Auckland communities is substitutable for advertising in *The New Zealand Herald*.

The Commission's view

522. The Commission does not consider that *The New Zealand Herald* and the Auckland communities place a significant constraint on each other for advertising such that a substantial lessening of competition is likely.
523. None of *The New Zealand Herald* advertisers that we spoke with considered advertising in a group of the Auckland communities to be a substitute for advertising in *The New Zealand Herald*. These advertisers advised that readers of paid newspapers are more valuable, as they are more likely to be engaged (having purchased the newspaper) and are more likely to be from a higher-socio economic demographic.
524. Conversely, advertisers in the Auckland community newspapers seek to reach local readers in particular suburbs of Auckland. These local audiences are not as effectively reached through *The New Zealand Herald* as it covers the broader Auckland area, rather than focussing on particular suburbs. In addition, given that the Auckland communities are distributed for free, they target a different audience demographic than the paid *The New Zealand Herald*.³⁶⁷
525. For these reasons, the Commission is satisfied that the proposed merger is unlikely to result in a substantial lessening in competition in respect of the price of advertising in *The New Zealand Herald* and/or the Auckland communities.

³⁶⁷ Commerce Commission interview with The Cheesecake Shop (6 September 2016).

Section 4: Reader markets

526. In this section we assess the effect the proposed merger could have on readers of New Zealand news produced by NZME and Fairfax. If the Applicants are close competitors in the production of New Zealand news that is distributed across their print and online products, the proposed merger could provide the merged entity with increased market power.
527. Depending on the level of competitive constraint provided by other news providers and the two-sided nature of the markets in which the Applicants operate, the merged entity could then use any enhanced market power either to raise the price and/or reduce the quality of its print and online products.
528. For the reasons discussed in this section, we are not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the following reader markets:
- 528.1 online New Zealand news.
 - 528.2 Sunday newspapers (the *Sunday Star Times* and *Herald on Sunday*).
 - 528.3 community newspapers in newspapers in 10 areas of overlap.
529. In each of these markets, we consider that competition is an important driver of the quality of New Zealand news that is produced, to the benefit of readers. Further, we consider that competition in the online New Zealand news and Sunday newspaper markets acts as a constraint on the price that is charged to readers.
530. As the two largest producers of New Zealand news, we consider that the Applicants place a strong constraint on each other. In the absence of this competition, we do not consider that other publishers of New Zealand news and the two-sided nature of these markets would likely be sufficient to constrain the merged entity from increasing the price of online New Zealand news (through the introduction of some form of paywall) and the cover and subscription prices of Sunday newspapers.
531. Further, in the absence of competition between the Applicants, we consider that the merged entity would have the ability and incentive to decrease the quality of New Zealand news produced in each of these markets, with flow-on effects for the quality of newspapers generally. We consider that these decreases in quality are likely to be substantial, to the detriment of readers.
532. As set out in the Counterfactual section, we considered our competition analysis over the next two years using similar with and without the merger scenarios. Based on this counterfactual, we consider that these price increases and quality decreases are likely to be substantial compared to without the merger.
533. We begin our analysis by defining the relevant reader markets that the Applicants compete in. We then go on to assess how the proposed merger would be likely to affect readers in each of these markets.

Reader markets of concern

534. The Applicants submitted that the relevant reader market is the “New Zealand market for the provision of print and online news and information services.”³⁶⁸
535. In support of a broader market definition, the Applicants submitted that the ACCC in *Seven West Media* concluded that “that content competition between different kinds of media, eg, print newspaper, online, TV, and radio would be a constraint on the merged entity”.³⁶⁹
536. We disagree with the market definition proposed by the Applicants.
- 536.1 For the reasons set out in the Advertising Market section regarding our discussion of the different media platforms, we are of the view that print and online platforms are not sufficiently close substitutes to provide a strong constraint on each other. While we acknowledge that in some instances print and online platforms might be substitutable, we consider that given the different characteristics of these platforms, it is appropriate to define discrete print and online markets for the purpose of our analysis.
- 536.2 In terms of the product dimension proposed by the Applicants, we agree that “news” is an important component of the relevant market. However, we consider that the Applicants’ inclusion of “information services” broadens the market erroneously.³⁷⁰ In our view, New Zealand news content is a separate product market where only certain participants, including the Applicants, compete.
- 536.3 The Commission notes that in *Seven West Media*, the ACCC did not consider it necessary to conclude on whether print newspapers and online news websites were in the same or separate markets.³⁷¹ We have taken a similar approach to the ACCC in that we considered the extent of cross-platform constraint imposed by TV, radio, online and print platforms. For the reasons discussed below, we consider that while other platforms may provide some constraint, it is appropriate to define separate print and online markets.
537. Therefore, the Commission considers that there are three categories of reader markets within which competition could be substantially lessened by the proposed merger. These are the markets for the creation of New Zealand news content for publication.³⁷²

³⁶⁸ Application at [12.24(b)].

³⁶⁹ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [183].

³⁷⁰ In our Draft Determination we referred to online news and information. However, we do not consider it is correct to refer to information services.

³⁷¹ ACCC informal review of Seven West Media Limited proposed acquisition of The Sunday Times publication and website from News Limited (15 September 2016).

<http://registers.accc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751046>

³⁷² As described in the advertising section, we do not consider that there is material overlap in the geographic areas in which NZME and Fairfax’s regional and metropolitan newspapers are sold. However, given the digital-first nature of the Applicants’ businesses, we consider that a reduction in the quality of

- 537.1 online;
 - 537.2 in Sunday newspapers; and
 - 537.3 in community papers in 10 areas of overlap.
538. In defining the markets of concern, we have identified several relevant market dimensions and characteristics, each of which is assessed below:
- 538.1 Product dimension – in defining the relevant product market (New Zealand news content), we considered the extent to which readers demand:
 - 538.1.1 news created by professional news organisations such as NZME and Fairfax; and
 - 538.1.2 location-specific news.
 - 538.2 Supply chain (functional) dimension – this refers to the upstream creation of content and the downstream distribution of that content across two-sided platforms;
 - 538.3 Distribution platforms – there are several media platforms across which New Zealand news content is distributed, ie, print, TV, radio, and online; and
 - 538.4 Online content format – online New Zealand news content may be published in either text, video, or audio format.

Product dimension (New Zealand news)

539. In this section we define what is meant by New Zealand news content and address the extent to which readers demand location-specific news content.

What news content means

540. While the Applicants have not sought to define news content, their submissions indicate that a broad range of content could conceivably be defined as news, including:³⁷³
- 540.1 observed events which can be shared by bystanders on social networks or by word of mouth, for example photos of a fire that are shared on Twitter;
 - 540.2 press releases, media announcements and other first-party publicly released information, for example a press conference held by John Key concerning his resignation on his Facebook page;
 - 540.3 blogs/commentary, for example kiwiblog.co.nz and thespinoff.co.nz; and

online New Zealand news would be likely to have flow-on effects on the quality of regional and metropolitan newspapers.

³⁷³ Application at [14.4] - [14.10]; Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [66].

- 540.4 events, commentary and analysis that are uncovered, reported and produced by professional journalists and editors, for example many of the stories that appear on stuff.co.nz and nzherald.co.nz.
541. At one level, news can be defined as “newly received or noteworthy information, especially about recent events”.³⁷⁴ At this literal level, news can be generated and shared by anyone, from word of mouth to more sophisticated communication methods, such as a Facebook post or blog.
542. Further, in terms of observed events and press releases, we accept that these can be produced and disseminated by anyone and, in some instances, these sources of information might be a close substitute for ‘breaking news’ content published by a professional media organisation.
543. However, while readers can learn of an event through their own observations, through word of mouth or a press release, we consider that readers have a high demand for news that contains in-depth analysis, different perspectives and is credible and trustworthy. We are of the view that professional media organisations are in a specialised position to produce this type of news content, in particular given the investment required in developing a trusted brand and the professional and ethical journalistic standards they uphold.
544. An example of this is the Kaikoura earthquake. Although a large proportion of New Zealanders would have quickly known about the earthquake by feeling it, word of mouth or social media, millions of New Zealanders still turned to professional media organisations for more detailed information from a credible source. This was supported by a submission from Fairfax’s current editor-in-chief (Central region):³⁷⁵
- Just look at the biggest news story this year - the Kaikoura earthquakes - and the massive audience that went straight to stuff.co.nz. On the day of the quake, 3.6 million people went to Stuff. Fairfax absolutely sets the news agenda and we are proud of that fact.
545. Similarly, while in theory anyone can provide commentary or have an ‘opinion’ on an event, readers demand credible commentary, opinion and analysis from professional media organisations that often collate information from a variety of sources. On the other hand, blogs tend to attract small audiences, are heavy on opinion, and have limited original news and current affairs.
546. The difference between blogs and professional media organisations was reflected by the Law Commission in its extensive 2013 report on the news media, which notes that “while New Zealand has an active blogging community, including over 200 individual and collective blogs largely concerned with commentary and debate on

³⁷⁴ Oxford Dictionary definition of “news”, <https://en.oxforddictionaries.com/definition/news>

³⁷⁵ Submission from Bernadette Courtney to the Commerce Commission (19 November 2016) at 2.

New Zealand news and current affairs, only a small proportion of these provide reportage and *generate* original news with any regularity.”³⁷⁶

547. The Applicants pointed to the ‘fake news’ phenomena as evidence of the ability for people to disseminate news content to large audiences via social media.³⁷⁷ While we agree that social media has allowed this, we disagree that this has lessened the importance of news content created by trained professional journalists. In fact, there is evidence to suggest that the advent of fake news has increased the demand for news content that is credible and trustworthy.
548. In a recent Reuters Institute survey of 143 “editors, CEOs and digital leaders” of existing digital news brands, 70% of the respondents were of the view that the distribution of fake/inaccurate news has strengthened the position of news brands online. One respondent noted “as a provider of high quality news we’re needed more than ever”.³⁷⁸
549. Further, an internal NZME strategy document from October 2016 records that “[]” and that “[]”.³⁷⁹
550. Accordingly, we accept that, to some extent, all forms of news production could form part of a broad news content market, particularly from the Applicants’ perspective in which they are seeking to attract as many viewers as possible using a broad range of content in order to maximise advertising revenue.
551. However, we have focused our analysis on the competition effects of the merger with closest reference to the reduction in competition of news content that is produced by mainstream news media organisations, like NZME, Fairfax, TVNZ, MediaWorks and RNZ.

Demand for location-specific news

552. The Applicants further submitted that “it is not direct content competition between NZME and Fairfax that drives content quality”.³⁸⁰ This claim was on the basis that their respective print publications are in separate geographic markets, and that the shift to operate on a “digital first” basis has not had an impact on the quality of news online or otherwise.³⁸¹ This submission appears to suggest that, to the extent that competition matters, only competition from competing news organisations located within the same regional area is relevant.

³⁷⁶ Law Commission “The news media meets ‘new media’ - Report 128” (March 2013), at [4.59].

³⁷⁷ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [86].

³⁷⁸ Reuters Institute for the Study of Journalism Journalism, Media, and Technology Trends and Predictions 2017, Digital News Project 2017, at 9.

³⁷⁹ Annex 122 - FY17 Strategy Overview and High Level Budget Summary (12 October 2016), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

³⁸⁰ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [180].

³⁸¹ Ibid at [178-179].

553. Similarly, at the Conference Fairfax stated that while NZME is a competitor for national news, it is less of a competitor for local news.³⁸² For example, Fairfax said that in the South Island “NZME isn’t really part of that landscape at all for us” due to it only having a handful of reporters.³⁸³
554. These submissions appear to draw a bright line between news that is intrinsically national in character (such as news about the elections) and news that is derived from a particular location. To this extent, we have assessed whether the relevant product market should be further delineated into not only New Zealand news (as distinct from international news) but into national New Zealand news, where the Applicants compete along with others, and local news, where the Applicants submitted that they do not compete.
555. The Commission recognises that there is an important location-specific aspect of the demand for some news. In particular, demand by consumers for news content includes international, national, regional and local content. Content that relates to areas outside of these locations is not necessarily substitutable for readers who want to read that specific content, in the same way that sports news is not a substitute for political news.
556. Consistent with this, the Commission considers that the market is not any wider than New Zealand news. However, the Commission also considers that a relevant market consisting of New Zealand news,³⁸⁴ rather than narrower markets, best isolates the key competition issues that arise from the proposed merger.
557. The Commission does not consider that the market is wider than New Zealand news because, while there is a demand for international news in New Zealand, this is in addition to, and in many cases unlikely to be closely substitutable for, New Zealand-specific news. For example, consumers wanting information on New Zealand politics prior to the upcoming national election are unlikely to consider reporting on international news events to be a substitute.
558. The importance of New Zealand news, as distinct from news targeted towards readers outside of New Zealand, is demonstrated by the Applicants’ continued emphasis on news they produce rather than what they purchase (syndicated news).
559. In relation to meeting reader demand by creating content in-house or syndicating content from elsewhere, Murray Kirkness, New Zealand Herald digital editor, stated:³⁸⁵

On a regional sense it’s very difficult to buy content in. Even in a New Zealand-sense it’s very difficult to buy content in that is relevant to New Zealand audiences.

³⁸² Commerce Commission Conference (December 6) transcript at page 7.

³⁸³ Commerce Commission Conference December 6 transcript at page 8.

³⁸⁴ New Zealand news is not limited to news or events that occur domestically. For example “What does Brexit mean for Kiwis?” <http://www.stuff.co.nz/business/81651887/the-great-oe-what-brexit-means-for-kiwis>. This article refers to an international event but provides a New Zealand-specific context that would not be produced by international media organisations.

³⁸⁵ Commerce Commission interview with NZME (15 June 2016).

... five years ago, no one would have thought that we would be competing with The Guardian. And we can obviously buy in similar content to The Guardian in terms of world news etcetera... What we can't do is buy in – the Bay of Plenty Times, can't buy in Bay of Plenty Times specific [news] – you have got to pay to create that yourself.

... on a slightly different scale, that's the same even for The Herald say. If we looked at a pie chart of what content is created from our newsrooms as opposed to what we buy in, it would be something like 75% would be created by us. And then if you look at what our audience was, the digital analytics would tell you that it was about the same. The most valuable content to us is the stuff that is relevant to our audience, and by in large that is created by us.

560. Data indicates that each of Fairfax and NZME produce a large amount of New Zealand news content. Over the last ten months, on average, [] articles published on stuff.co.nz were produced by Fairfax.³⁸⁶ Similarly, [] articles published on nzherald.co.nz were produced by NZME.³⁸⁷ Further, data shows that of the 2.6 million people who access dedicated news and current event sites in New Zealand, 2.4 million access New Zealand news categories.³⁸⁸
561. This position was supported by MediaWorks' view that readers are primarily interested in domestic news content, with the key question that media firms typically need to consider when creating content being 'how does this affect me [the reader]?'³⁸⁹ Given this characteristic of reader demand, MediaWorks considers that there is a distinct market for New Zealand news which is separate from the market for international news.³⁹⁰
562. These trends were also supported by TVNZ which considered that "New Zealand news is a discrete service for which overseas news, blogs or general information services are not substitutes" and that there is a "distinct demand" for domestic content.³⁹¹
563. The Commission considers there are three main categories for New Zealand news in which the Applicants and various other players compete:³⁹²
- 563.1 national news – news that is intrinsically national in character in that it is not specific to any particular area of New Zealand;
- 563.2 local news that is of national interest – news that stems from a particular area of New Zealand but is also of interest to consumers located outside of that area; and

³⁸⁶ Based on ten month average during May 2016 – February 2017. Fairfax data.

³⁸⁷ Based on ten month average during May 2016 – February 2017. NZME data.

³⁸⁸ Nielsen "Media Trends 2016: How New Zealanders consume newspapers, magazines, TV, radio & digital" (2016) at 12.

³⁸⁹ Commerce Commission interview with MediaWorks (29 June 2016).

³⁹⁰ Submission from MediaWorks to the Commerce Commission (30 September 2016) at [3.4].

³⁹¹ Submission from TVNZ to the Commerce Commission (14 September 2016) at [5.4] and [5.6].

³⁹² These three categories have an element of a geographic market. However, we nonetheless consider them under the product market definition since what is at issue is not the extent to which supply of the same product from a different location is a substitute but rather whether the product from another region is sufficiently the same to be considered a substitute in the first place.

- 563.3 local news which is really only of interest to those located within a particular area.³⁹³
564. The Applicants (along with others) compete directly in the first two of these categories as demonstrated by their national news coverage and the related resources involved in such coverage. A Fairfax study of *The Dominion Post* and *The Press* reader preferences indicated that the primary topic of interest was national news, sought after by []% and []% of *The Dominion Post* and *The Press* readers, respectively.³⁹⁴
565. In the case of local news, we consider that there are some news stories that are particular to a local area but are nonetheless of interest to New Zealanders more widely. Examples of such stories include the 2017 Christchurch fires and the 2016 Kaikoura earthquake, but can also include stories where the location is secondary to its interest to New Zealanders. Examples can include items such as certain crime stories and social phenomena. For example, a story of mistreatment of elderly residents in a retirement home in one local area may be of interest and relevance more widely.
566. In the case of such stories, if one news producer does not have staff located within a region, they can redeploy staff to that region, as was done in the case of the Kaikoura earthquake. Alternatively, a local story that proves of wider interest may be reflective of similar incidents in other areas, allowing for the further investigation of the issue in other areas. For example, in the case of the retirement home story, it may prompt similar investigations in other areas. This type of competition, while local in its origin, is not specific to one particular local area.
567. Given this, the Commission considers that any bright line between national and local news would be artificial and would not accurately reflect the degree of competition across New Zealand news producers for content that may be of national interest.
568. However, the Commission recognises that there could be reader demand for local news for which news from another area is not substitutable.³⁹⁵ A Dunedin resident wanting Otago-specific news is unlikely to be satisfied with news relating to, say, the Northland region.
569. Evidence of this includes a Fairfax study which found that local news was sought after by []% and []% of the readers of *The Dominion Post* and *The Press* respectively. This study also stated:³⁹⁶

³⁹³ The Applicants further delineate local news to ‘hyper-local’ news which is generally referred to in the context of news published in community newspapers.

³⁹⁴ Annex 68 - Project Meteor. Dom Post and The Press Reader Study (2 October 2015), attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

³⁹⁵ Annex 26 - Communities Presentation. Trade Communications (November 2016), contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (12 July 2016).

³⁹⁶ Fairfax presentation, Annex 68 - Project Meteor. Dom Post and The Press Reader Study (2 October 2015), attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

Newspaper readers' 'wants' aren't that different across the country... overall they are looking for detailed local news and involvement in their community...

570. This same sentiment was expressed in relation to hyper-local news produced by independent community newspaper publishers, who explained that readers of community newspapers desire hyper-local news that is local to their community.³⁹⁷
571. As outlined in the discussion on geographic markets in the context of advertising, the Applicants overlap in the production of such hyper-local news stories within certain communities, but not in others.
572. We do not consider, however, that each Applicant's coverage in a particular geographic area requires us to distinguish between strictly local stories and New Zealand news stories more specifically.
- 572.1 It is difficult to know in advance which news stories will be strictly local in character. This is reflected in the fact that many local news stories are published on the Applicants' respective websites.
- 572.2 Local news stories may also attract at least some readers from outside a region and so, to some degree, readers' presence on a website will drive demand. Given that it is essentially costless to place such stories on websites once they are produced, it makes sense to publish them on the websites. This is consistent with the Applicants' choice to make such local news available on their respective websites, although only some local stories are given prominence on the front page of stuff.co.nz and nzherald.co.nz.
- 572.3 Not seeking to explicitly identify and then exclude such local news items from the relevant market of New Zealand news does not impact our analysis since it does not undermine our view that the Applicants (along with others) compete in national and local news of wider interest.
- 572.4 Our competition analysis separately considers the reduction in quality of hyper-local news in overlapping community newspapers.

Supply chain (functional) dimension

573. To accurately assess the different markets that would be affected by this proposed merger and to evaluate the competitive forces at play, it is important to consider the chain of supply in the news media industry more generally.
574. Throughout the news media industry, organisations have various degrees of vertical integration across two functional levels. Some producers operate only in the upstream market by producing content. An example is BusinessDesk which produces business-focused news and commentary which is sold to a range of publishers, including NZME.

³⁹⁷ Commerce Commission interviews with Wellington Suburban Newspapers (28 September 2016) and River City Press (26 September 2016).

575. Other firms operate only at the downstream distribution market and are not involved in the production of content, including news content. These platform operators include social media networks, third party aggregators, and online search engines, such as Facebook, Twitter and Google.
576. Vertically integrated firms, such as NZME and Fairfax, operate at both the upstream and downstream levels. These firms both produce and purchase news content and distribute that content over their own platforms, eg, newspapers, websites, and apps.
577. It is common for many vertically integrated firms to distribute some of their own content over other parties' platforms. For instance, NZME, Fairfax and others distribute news content they have produced over social media networks and via third party aggregators (eg, Facebook, Twitter and Google). Similarly, in some cases media firms will distribute their content over other news producers' distribution platforms. For example, TVNZ has an agreement with Fairfax whereby some of TVNZ's 1News video content is hosted on Fairfax's stuff.co.nz platform and Stuff mobile app.³⁹⁸ Fairfax has a similar arrangement with RNZ for its audio content.³⁹⁹
578. The relationship between news content producers, regardless of whether they are vertically integrated or not, and downstream distributors, is no different from that between input providers and distributors in other industries, in that it involves a mutually beneficial commercial relationship. In particular, the use of news content is to the benefit of distributors since it attracts viewers to their sites and, therefore, advertisers. For news content producers, distribution by third-parties increases the reach of their news stories and, therefore, also the news producers' own ability to sell that advertising.
579. This commercial benefit is reflected in either an advertising revenue sharing agreement, or, more indirectly, in increased advertising sales by both the distributors and the news content producers.
580. As noted in the Commission's *Mergers and Acquisitions Guidelines*, a merger may affect one level of the supply chain differently to others. To account for that, we generally identify separate relevant markets at each level of the supply chain affected by the merger.⁴⁰⁰ In this merger, the Applicants overlap both in the production of news content and, because they are both vertically integrated, in its distribution. However, the set of market participants at the two functional levels differ. In particular, the distribution level, as noted above, includes the likes of social media networks, which do not participate in the upstream news content production market.
581. Consequently, the Commission has defined two separate functional markets for New Zealand news the:

³⁹⁸ "Fairfax chooses One News for online video content" <http://tvnz.co.nz/view/page/816457/1199083>. 1 News Now has its own subsection within stuff.co.nz (<http://www.stuff.co.nz/national/1-news-now>).

³⁹⁹ <http://www.radionz.co.nz/news/business/309620/rnz-to-share-content-with-stuff>

⁴⁰⁰ *Mergers and Acquisitions Guidelines* above n 39 at [3.36] – [3.37].

- 581.1 upstream production of New Zealand news content; and
- 581.2 downstream distribution of that content across two-sided platforms.⁴⁰¹
582. The primary focus of our competition analysis is in the upstream production of New Zealand news content and how this is accessed by consumers. However, we recognise that the desire to attract consumers at the distribution level influences the quality of content that is produced to some degree. We assess this influence separately in the competition analysis section below.

Distribution platforms

583. New Zealand news content is distributed across a number of platforms, mainly online, print, radio and television. The Applicants overlap in the production of New Zealand news in the online format and in printed newspapers.
584. As established in the Advertising Market section, the relevant geographic markets imply an overlap only in Sunday newspapers and certain community newspapers. In the case of Sunday and certain community newspapers, we considered whether online, TV and radio form part of those reader markets.
585. In relation to New Zealand news published online, the Commission considered whether New Zealand news published on radio, television and print is in the same relevant reader market.⁴⁰²
586. In summary, the Commission's view is that while cross-platform competition provides some competitive constraint on New Zealand news that appears online and in Sunday and community papers, other distribution platforms are not sufficiently close substitutes to form part of the relevant markets.
587. We consider that of those consumers who value the attributes of digital platforms, an insufficient number are likely to see print, TV and radio as close enough substitutes so as to discipline either a small but significant price increase (eg, by way of the introduction of a paywall) or quality decrease by a hypothetical monopolist of all New Zealand news published on digital platforms. This is similarly the case for Sunday newspapers and community newspapers (in respect to a quality decrease only)⁴⁰³ with the addition that other print publications are also not sufficiently close substitutes so as to be included in these markets.
588. This platform-specific product market distinction is notwithstanding that the New Zealand news market is characterised by varying levels of competition both within each platform and across platforms, which inherently makes drawing bright lines to

⁴⁰¹ In the downstream distribution market for New Zealand news content, the overlap between the Applicants and other platform operators such as third party aggregators and social media networks is in the sale of advertising, ie, on the advertising side of the these platforms. This competition is addressed in the Advertising Market section.

⁴⁰² When considering print, we exclude from consideration the Applicants' print publications that are essentially their online publications in newspaper format.

⁴⁰³ For the reasons stated in the community newspaper section we do not consider that the merged entity likely have the ability and incentive to introduce a cover price for the community newspapers.

separate product markets difficult. We recognise this by considering the significance of any cross-platform constraint in our competition analysis. However, to define the relevant markets more widely than individual platforms would fail to isolate the key competitive issues that arise from this proposed merger.

589. In summary, the basis for our consideration is as follows:

- 589.1 different platforms have different attributes;
- 589.2 those attributes engender different, complementary demand as evidenced by multi-sourcing across platforms, different consumption times across the day, and consumer surveys in regard to valuations of media characteristics;
- 589.3 there is a longer-term trend of consumers moving towards the digital platform, but this underscores rather than undermines digital's attributes and the demand for such attributes; and
- 589.4 despite this trend, there continues to be sizeable demand for print and a willingness to pay for it, suggesting that the trend is not at a point where print is no longer a relevant market in-and-of-itself.

590. Each of these points is considered in turn below.

Different attributes

591. Each platform has its own particular attributes that are not well, or not at all, duplicated by the other platforms:

- 591.1 Online news has benefits in terms of immediacy, convenience, selection and time spent. It offers the opportunity to access content that is updated continuously, and the opportunity to access that content from almost anywhere. Unlike TV or radio news, the individual has greater freedom to select what news items they consume, when they consume it, and how much time they spend on any given news item. Like print, online news in text form, in particular, allows for in-depth coverage of a news item and allows quicker consumption of content than watching video.⁴⁰⁴
- 591.2 Print-based news has some of the advantages of online news; that is, freedom of selection in regard to content, source, time spent, time of consumption and depth of coverage⁴⁰⁵ (although not necessarily with the same convenience of online). Print publications (along with their online electronic equivalents) tend to be trusted more relative to online news.⁴⁰⁶

⁴⁰⁴ Reuters Institute for the Study of Journalism "The future of online news video" Digital News Project 2016, at 12.

⁴⁰⁵ Compared to typically shorter TV and radio news updates.

⁴⁰⁶ News Works NZ, "Newspapers are but one expression of the modern news brand" (2013) at 17. News Works NZ is a commercial entity of the Newspaper Publishers' Association. It advocates for news media brands including stuff.co.nz, *The New Zealand Herald*, and *The Otago Daily Times* throughout New Zealand

However, print is not updated as regularly as online news and, therefore, cannot present breaking news with the same immediacy as digital.

- 591.3 TV-based news can have a graphic impact on its viewers which print cannot match. Given time constraints, there are limits to the number of stories that can be reported and so TV news tends to focus on headline news bulletins and may be more focused on stories where there is visual element.
- 591.4 Radio can have some of the features of TV such as brevity and focus on headline news, although radio stations dedicated more specifically to news may have more in-depth coverage than TV. Since it is an audio experience only, radio can be consumed while doing other things such as driving. Radio can also break news with the same immediacy as digital.
592. We note that the advent of the internet has, to some degree, blurred the distinction between different platforms. For example, radio and TV news broadcasts can now be streamed online. We considered these dynamics when considering the extent of competition online.

Demand for these differing attributes

593. The different platforms serve somewhat different functions to end-users both in terms of the type of demand they serve (eg, in-depth, up-to-date) and how they serve it (eg, audio, text, video). These functional differences appear to be sufficiently important to consumers such that there is strong tendency to multi-source news across platforms. That is, consistent with these platforms serving different purposes, consumers do not choose one platform over another, but rather will consume news across all platforms.
594. This can be seen in Table 7. Of those who use the internet to obtain their news, 88% also use TV, 77% also use the radio, and 48% continue to use daily newspapers. This type of multi-sourcing is similarly the case for daily newspaper users. Of these readers, 88% also use the internet for their news, 92% also use TV, and 79% use the radio.

Table 7: Cross-platform multi-sourcing, Q4 2015 – Q3 2016

	Percentage of internet users who use other news media	Percentage of daily Paper users who use other news media	Percentage of TV users who use other news media	Percentage of radio users who use other news media	Percentage of magazine users who use other news media
Internet		88%	89%	92%	90%
Daily Paper	48%		51%	51%	57%
TV	88%	92%		91%	91%
Radio	77%	79%	78%		79%

Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definition of news media and news programming are defined by Fairfax. Newspaper figures are against a readership of people aged 15+, all other media is 10+.⁴⁰⁷

595. The differences in demand across platforms are further demonstrated by how New Zealanders describe their attributes such as reliability, credibility, and timeliness. A survey of New Zealanders indicated that over 70% describe the internet as “makes me feel very informed and knowledgeable about topics of interest”, “best for getting an in-depth look at what’s happening in the world around me”, and “allows me to follow the latest developments in breaking news stories”. Other media are described this way by, at most, 46% of New Zealanders in the case of newspapers in regard to feeling informed and knowledgeable.⁴⁰⁸
596. Newspapers are also described by more New Zealanders as “reliable”, “credible”, “dependable”, and “trustworthy” relative to other media; although, even while rating higher than any other media, newspapers are described in this way by no more than 40% of respondents.⁴⁰⁹
597. These distinctions across platforms are supported by TVNZ. TVNZ maintained that its online news content is ancillary to its core broadcasting services,⁴¹⁰ and considered that its 6pm TV news programme plays a different role to its online offering; summarising the day’s events and providing the “story behind the story”.⁴¹¹

Long term trends

598. This analysis does not suggest that preferences are static and that consumers are not shifting their news consumption from traditional platforms (TV, radio and print) to online. In fact, Fairfax research suggests that online news is now many consumers’

⁴⁰⁷ Online – website visitation in a month; newspapers – weekly reach; TV – reach of news programming in a month; radio – stations listened to last 7 days; magazines – reach is an issue period. RNZ radio is not included in these figures because Nielsen does not collect information regarding its radio ratings.

⁴⁰⁸ News Works NZ, “Newspapers are but one expression of the modern news brand” (2013).

⁴⁰⁹ “Newspapers are but one expression of the modern news brand”, News Works NZ (2013) at slides 16-17. <http://www.newsworks.nz/about>

⁴¹⁰ Submission from TVNZ to the Commerce Commission (14 September 2016) at [6.17].

⁴¹¹ Commerce Commission interview with TVNZ (27 June 2016).

primary news source.⁴¹² This research estimated that, on average, 54% of consumers' news content in a typical week is sourced from online sources, 21% from TV, 13% from traditional newspapers, and 9% from radio.⁴¹³

599. The rise in online news consumption has occurred relatively recently. In 2015, 60% of the population read news online, up from 25% in 2008.⁴¹⁴ And, 2015 marked the first year that the number of people only reading online news exceeded the number of people only reading print news.⁴¹⁵ Fairfax research indicated that this trend continued into 2016,⁴¹⁶ with []% of people surveyed stating that they have increased their consumption of online news, up from []% in 2015.⁴¹⁷
600. In keeping with this trend and further underscoring the distinction of online from the other platforms, New Zealand's main media firms have changed the structure of their news businesses and content publication processes to reflect the importance of digital media. Within the last two years NZME, Fairfax, TVNZ and MediaWorks have shifted largely to 'digital-first' news operations that deliver content first to consumers via online news websites. This means that each of the main media firms typically publish most of their stories (or versions of their stories) online first, rather than waiting to break stories on TV, print or radio platforms.
601. NZME and Fairfax typically publish news for online consumption first and then select articles to be included in print in various newspapers the next day. Similarly, TVNZ and MediaWorks often publish stories online first, although these stories typically form the basis of their TV and radio broadcasts.
602. While, we consider the print platform forms a separate market, we note that the effects of the merged entity being digital-first is that any reduction in quality online as a result of the merger will have an impact on the quality of news printed in newspapers.
603. In addition, when describing print as a separate market, there may be different levels of substitutability for types of news between markets. For example, updates on breaking news may be more substitutable for online news, whereas in-depth

⁴¹² [] (June 2016), attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

⁴¹³ Respondents ('National sample') were asked: *In a typical week, what proportion of your news do you get from...? For each item listed please allocate a % figure to a total of 100%. The remaining 3% is recorded as 'Other'. For the 'Fairfax' sample of participants, when asked the same question, the participants sourced 31% of their news from newspapers and 35% from online sources. This suggests different consumption of newspapers between different demographics.*

⁴¹⁴ Nielsen "Media Trends 2016: How New Zealanders consume newspapers, magazines, TV, radio & digital" (2016) at 11.

⁴¹⁵ Ibid.

⁴¹⁶ [] (June 2016), attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 September 2016).

⁴¹⁷ Respondents were asked: *Compared to 6 months ago, are you reading each of the below MORE or LESS frequently (or the SAME)...?. []% answered more and []% answered less, resulting in a net share of []% consuming more.*

reporting may not be. In any event, there are still certain consumers who primarily access their news through print and the editorial package provided in a newspaper is not necessarily easily substitutable for those who require it.

604. Despite the trends of increased online consumption, leading to falling circulation amongst daily and weekend newspapers, print continues to play an important role in many New Zealanders' news consumption. There remains a sizeable group of readers who continue to consume daily newspapers. The total circulation of daily newspapers is around 420,000 per day,⁴¹⁸ which is equivalent to a quarter of all households in the country.⁴¹⁹
605. This consumption of newspapers occurs despite the majority of content contained within the Applicants' newspapers being readily available free of charge on stuff.co.nz, nzherald.co.nz and their respective mobile apps.
606. More generally, there has traditionally been, and continues to be, a large number of readers who are willing to pay for daily or weekend newspapers regardless of the provision of free news and information content both online, and via TV and radio broadcasts. We consider this indicates that for a significant proportion of the population, content published on other platforms and formats is not necessarily a close substitute for print products.

Sunday newspapers

607. As discussed in the advertising section, the Commission is of the view that the Applicants' Sunday newspapers are in the same relevant geographic advertising markets. We see no reason to diverge from this assessment in the case of reader markets.
608. Moreover, we consider print is a discrete market. There is no reason to treat the Sunday newspapers differently. We note that readers of Sunday newspapers also source their news from other platforms. For example, 63% of Sunday Star Times readers also go to the stuff.co.nz and 80% also watch 1 News weekly TV coverage.⁴²⁰
609. Also, as per above, there is a willingness to pay for Sunday newspapers even though online, TV and radio news content is available for free.
610. The Commission further considers that within print, given similarity in price and content, the *Sunday Star Times* and *Herald on Sunday* are likely to be each other's closest competitors with limited competitive constraint provided by the likes of magazines. This is addressed within the competition analysis section.

⁴¹⁸ Retrieved from <http://newspaper.abc.org.nz/>.

⁴¹⁹ Statistics NZ estimates that there are 1.7 million households (Dwelling and Household Estimates, June 2016 quarter). Because there may be more than one reader per household/organisation, the effective reach of daily newspapers is likely to be higher. Nielsen reports that in 2016, 53% of New Zealanders read a daily newspaper each month. Nielsen "Media Trends 2016: How New Zealanders consume newspapers, magazines, TV, radio & digital" (2016) at 9.

⁴²⁰ Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definition of news media and news programming are defined by Fairfax.

Community newspapers

611. We treat the community papers the same as Sunday newspapers in being part of a separate market. We consider that community newspapers provide hyper-local news content to particular geographic markets.
612. Further, not only does the above discussion on differences in attributes across platforms and the demand for those attributes apply to community newspapers, but TV and radio also provide little by way of the hyper-local content of the community papers in the 10 areas of overlap.⁴²¹
613. The platform with the most substitutable hyper-local content is online. The main online platforms with similar local content to the community newspapers are those of the merging parties: Fairfax's neighbourly.co.nz and NZME's community newspaper websites.⁴²² As such, it would make little difference to the competition analysis if these online platforms were included in these relevant community newspaper markets.

Regional and metropolitan newspapers

614. As discussed in the advertising section, each of the Applicants' regional and metropolitan newspapers are sold in distinct geographic markets. For example, the *Dominion Post* is mostly sold in the Wellington region compared with the *Hawke's Bay Today* which is mostly sold in the Hawke's Bay area.
615. We consider that this is a reflection of the fact that, in addition to publishing national New Zealand news, these newspapers also publish local news from their respective local areas. Given that readers of regional and metropolitan newspapers demand both national and local news content,⁴²³ we consider newspapers that focus on local news from other geographic markets are unlikely to be close substitutes for readers.
616. Given the limited substitutability between the Applicants' regional and metropolitan newspapers, we do not consider that the proposed merger would be likely to provide the merged entity with the ability and incentive to increase the price (both cover and/or subscription) of these regional and metropolitan newspapers. However, in terms of the quality of news contained in these newspapers, the likely implications of the proposed merger are more complicated.
617. As described above, for national news and local news of national interest, we consider that competitive constraints are not limited to news organisations that operate within the same geographic area. To the extent that regional and

⁴²¹ In the 10 areas of overlap, the Applicants have not identified any local TV or radio stations that provide a constraint in terms of hyper-local news. In any event, we do not consider that TV and radio have the same attributes as print.

⁴²² This relates to the 10 areas of overlap. In some other areas where the Applicants' community newspapers do not overlap, there are independent websites with community news. For example, theweekendsun.co.nz has hyper-local news relevant to Tauranga.

⁴²³ As illustrated in Fairfax's survey discussed above, which found that local news was sought after by []% and []% of the readers of *The Dominion Post* and *The Press* respectively.

metropolitan newsrooms publish these types of stories, the proposed merger could have the effect of reducing the quality of these newspapers.

618. However, given the digital-first nature of the Applicants' newsrooms, a reduction in the quality of online New Zealand news content of this type would flow through to regional and metropolitan newspapers that this content is republished in. To this extent, we have not assessed the effect of the proposed merger on individual regional and metropolitan newspapers but note that a reduction in the quality of online New Zealand news would be likely to have flow-on effects to the quality of regional and metropolitan newspapers.

Online content formats

619. In the context of the online platform, there are three main formats in which New Zealand news is published: text, audio, and video. Unlike traditional distribution platforms, the advent of the digital platform has removed the constraint on publishers producing just one format of news.
620. We observe that the main media firms have traditionally had relative strengths in different content formats which relate to the traditional distribution platforms that these firms operated on, such as video (TVNZ, MediaWorks), audio (MediaWorks, NZME, RNZ) and text (Fairfax, NZME).
621. We also observe that these strengths are reflected in their online offerings. For example, TVNZ's 1newsnow.co.nz is heavily focused on news in a video format, whereas rnz.co.nz is more focused on audio. However, the digital platform has allowed news media companies to produce content across all three formats, for example, both text and video news content is available on stuff.co.nz and nzherald.co.nz.
622. As outlined above, from a consumer-perspective, different content formats are likely to have differing strengths and weaknesses in their effectiveness of conveying news content and for reaching consumers. At various times and for various news content, the different formats can be either substitutes, complements, or neither substitutes nor complements.⁴²⁴
623. Preferences are not likely to be static but rather vary by news story. For instance, in the case of a visually spectacular news incident, consumers may prefer video over text- or audio-based stories. Other stories may be more effectively conveyed through text, such as a large 600 word article.⁴²⁵ For other stories, the preference may be to have both video and text coverage.
624. This variability and the consequent complementarity of format within the digital platform is evidenced by the fact that Fairfax entered into agreements to host TVNZ's video content and RNZ's audio content on stuff.co.nz website, but not host these respective firms' text content.

⁴²⁴ Commerce Commission Conference (6 December 2016) transcript at pages 39 - 40.

⁴²⁵ Commerce Commission interview with E tū (2 August 2016).

625. The complementarity is further evidenced by NZME's recent investments in its journalists' video capability so that they can publish news content in multiple formats.⁴²⁶ This development is also evidence that while the main news media organisations have relative strengths in content format, they are also seeking to enter to each other's traditional formats. This is similarly the case for TVNZ and RNZ producing more text-based content on their sites.
626. Overall, the Commission considers that there are many stories in which these content formats are not close substitutes in that a consumer would forgo, for example, looking at a video of an event in favour of only reading about it should the quality of the video decline. This is described in more detail in the competition assessment below.
627. Nevertheless, given that the main media firms have extended, at least to some extent, into all three formats within the online platform, the Commission considers that it is appropriate to include all three formats within the same relevant market. We, however, note that firms that produce content in the same format, or primarily in the same format, are likely to be closer competitors.

Competition analysis

628. Following the approach outlined in the market definition section above, the Commission has analysed the competitive effects of the proposed merger in the following markets:
- 628.1 online New Zealand news;
 - 628.2 Sunday newspapers; and
 - 628.3 community newspapers in 10 areas of overlap.
629. Before undertaking the assessment of these individual markets, we acknowledge the Applicants' submission that because New Zealand is a small open economy, it often means that it is necessary to have a higher concentration of market shares in order to achieve efficient scale.⁴²⁷
630. The Commission notes that while a smaller economy's markets may be more concentrated, this does not mean that we should not undertake a full competition analysis of each application on a case-by-case basis. The authorisation regime also allows the Commission to consider whether a merger should be authorised in the public interest despite a substantial lessening of competition arising from an increase in concentration of market shares.

Online New Zealand news

631. Post-merger, NZME and Fairfax would cease competing in the provision of online New Zealand news.

⁴²⁶ Commerce Commission Conference (6 December 2016) transcript at page 11.

⁴²⁷ Fairfax/ NZME "Factual Submission on the Draft Determination" (25 November 2016) at [130].

632. We are concerned that the proposed merger could lead to an increase in price and/or a reduction in the quality of online New Zealand news produced by the Applicants, such that a substantial lessening of competition is likely.
633. The Applicants submitted that the merged entity would be constrained from increasing the price and/or decreasing the quality of online New Zealand news because:
- 633.1 the Applicants compete with a number of other existing online New Zealand news providers that readers would switch to in the event of an increase in price and/or decrease in quality;
 - 633.2 existing and/or future rival publishers will face low barriers to entry and/or expansion, such that an attempt by the merged entity to increase price and/or decrease quality will be unprofitable in the short term; and
 - 633.3 the two-sided nature of the online New Zealand news market would constrain the merged entity, as an increase in price and/or decrease in quality of online New Zealand news content would result in fewer readers and, therefore, a reduction in online advertising revenue.

Existing competition

634. To determine whether the proposed merger would increase the Applicants' market power in the provision of online New Zealand news, the Commission considered the extent to which the Applicants compete against each other and the position of the Applicants vis-à-vis other producers of online New Zealand news.

The Applicants' views

635. The Applicants submitted that the merged entity would continue to face strong competition in the market for online New Zealand news. In particular, the Applicants considered that TVNZ, MediaWorks and RNZ's online news websites (1newsnow.co.nz, newshub.co.nz and rnz.co.nz, respectively) are "serious competitors" and would continue to act as a strong constraint on the merged entity.⁴²⁸ In particular, national stories that are produced from New Zealand's large cities.⁴²⁹
636. In terms of their respective websites, the Applicants submitted that it is "just a matter of time" before these competitors catch up with stuff.co.nz and nzherald.co.nz.⁴³⁰ For example, at the Conference, the Applicants said that TVNZ's redesigned 1newsnow.co.nz has achieved "phenomenal growth" over the last 18 months.⁴³¹ Similarly, the Applicants submitted that newshub.co.nz has grown

⁴²⁸ Submission from Russell McVeagh (on behalf of Fairfax/NZME) to the Commerce Commission (23 December 2016) at 14.

⁴²⁹ Commerce Commission Conference (6 December 2016) transcript at page 7.

⁴³⁰ Commerce Commission Conference (6 December 2016) transcript at page 9.

⁴³¹ Commerce Commission Conference (6 December 2016) transcript at page 11.

“substantially” over the last year and that rnz.co.nz “out-paces just about everybody else”.⁴³²

637. The Applicants supported these submissions by showing the recent month-on-month growth (measured by monthly unique audience) of 1newsnow.co.nz, newshub.co.nz and rnz.co.nz.⁴³³ The Applicants were of the view that these companies would continue to grow, providing an increasing constraint on the merged entity.⁴³⁴ The Applicants also pointed to the extensive restructuring and product development that each of TVNZ, MediaWorks and RNZ have undertaken to evidence that they are becoming increasingly strong competitors online.⁴³⁵
638. Aside from these three main competitors, the Applicants listed a number of other New Zealand-based rivals with an online news presence. For example, Allied Press (odt.co.nz), scoop.co.nz, Bauer (noted.co.nz), thespinoff.co.nz and nbr.co.nz.⁴³⁶

Competitors' views

639. TVNZ, MediaWorks and RNZ considered that the merged entity would be dominant and also noted that it would have significant scale advantages. MediaWorks submitted that the merged entity would become the “dominant digital news organisation”, noting that it would account for 95% of online page impressions in the market.⁴³⁷ Likewise, TVNZ considered that the proposed merger would create a vast disparity between it and the merged entity in terms of audience reach.⁴³⁸
640. Further, TVNZ said that its core offering is its broadcasting services, with its online content being an ancillary offering.⁴³⁹ To this extent, TVNZ said “[
]”.⁴⁴⁰
641. RNZ indicated that it was putting a lot of energy into its website as well as distribution of its content on social media platforms. However, it considered that it was on a different path to the privately-owned media publishers. Because it is publically-funded, RNZ explained that it does not need to chase popular stories to attract eyeballs for advertisers. Rather, it can take a more “pure” news approach, covering stories that reflect its obligations as a publically-funded broadcaster.⁴⁴¹

⁴³² Commerce Commission Conference (6 December 2016) transcript at page 9.

⁴³³ Submission from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (23 December 2016) at 14.

⁴³⁴ Ibid.

⁴³⁵ Application at [14.5(a)] and [14.5(b)]; Fairfax/NZME Response to SOPI submissions (29 July 2016) at [18].

⁴³⁶ Application at [14.5].

⁴³⁷ Based on total page impressions in July 2016 across newshub.co.nz, tvnz.co.nz/news, stuff.co.nz and nzherald.co.nz. MediaWorks' submission at [4.1] (30 September 2016). rnz.co.nz was not included in MediaWorks' analysis.

⁴³⁸ TVNZ submission on SOPI (12 September 2016) at [6.15].

⁴³⁹ Submission from TVNZ to the Commerce Commission (14 September 2016) at [6.17].

⁴⁴⁰ Ibid.

⁴⁴¹ Commerce Commission interview with RNZ (12 July 2016).

642. Competitors also considered that the Applicants' strengths lie in their comprehensive national coverage that is derived from their newsrooms around New Zealand. MediaWorks expressed the view that readers are primarily interested in local content.⁴⁴²
643. TVNZ said that it could []⁴⁴³ TVNZ currently employs reporters in Auckland, Wellington, Christchurch and Dunedin and only covers local stories if they become national news.⁴⁴⁴
644. However, we note that TVNZ is currently going through a consultation process with proposed changes to the size and location of its newsroom. The proposed changes involve a "net loss of staff"⁴⁴⁵ ([]⁴⁴⁶) and a redeployment of its newsroom by widening its footprint into "several regions that generate a significant amount of news already, but which [TVNZ currently] service out of [its] main bureaux".⁴⁴⁷ Reports indicate that this redeployment could involve some reporters from its main bureaux (Auckland, Wellington, Christchurch and Dunedin) shifting to Queenstown, Bay of Plenty, Northland and Hawke's Bay.⁴⁴⁸
645. RNZ advised that it only publishes stories that are of national interest, in accordance with its obligations as a publically-funded broadcaster.⁴⁴⁹ Therefore, it does not cover stories that are of local interest. RNZ indicated that the vast majority of its staff are located in Wellington and Auckland.⁴⁵⁰
646. In terms of smaller publishers, the Commission spoke with Newsroom and Bauer about newsroom.co.nz and noted.co.nz, respectively. Neither of these publishers consider that their websites are competitors to stuff.co.nz or nzherald.co.nz, noting that they, unlike the Applicants, are not in the business of producing up-to-date current affairs. Rather, both Newsroom and Bauer advised the Commission that they produce significantly smaller number of stories and focus on longer-form investigative journalism.⁴⁵¹

Journalists and editors' views

647. The Commission spoke with and/or received submissions from a number of current and former journalists and editors of NZME and Fairfax, including interviewing E tū (a union which represents journalists in New Zealand).

⁴⁴² Commerce Commission interview with MediaWorks (29 June 2016).

⁴⁴³ Commerce Commission interview with TVNZ (27 June 2016).

⁴⁴⁴ Ibid.

⁴⁴⁵ <http://www.stuff.co.nz/business/industries/90754084/Newsroom-changes-will-lead-to-net-loss-of-staff-says-TVNZ-boss>

⁴⁴⁶ Email from TVNZ to the Commerce Commission (11 April 2017).

⁴⁴⁷ Ibid.

⁴⁴⁸ <http://www.stuff.co.nz/business/industries/90754084/newsroom-changes-will-lead-to-net-loss-of-staff-says-tvzn-boss>

⁴⁴⁹ Commerce Commission interview with RNZ (12 July 2016).

⁴⁵⁰ Ibid.

⁴⁵¹ Commerce Commission interviews with Bauer (8 February 2017), Newsroom (9 February 2017).

648. In general, the journalists and editors were of the view that stuff.co.nz and nzherald.co.nz compete with each other to attract audiences. Fairfax’s current group editor submitted that the growth of stuff.co.nz and nzherald.co.nz is “unprecedented” and that both are “very much competing for traffic and resulting revenues and it would not make sense for one to simply mirror the other”.⁴⁵² A former editor-in-chief of *The New Zealand Herald* described the competition between nzherald.co.nz and stuff.co.nz as “intense”.⁴⁵³
649. There was a divergence of views between the Applicants’ current and former editorial staff regarding the extent to which 1newsnow.co.nz, newshub.co.nz and rnz.co.nz compete with the Applicants’ websites. Some of the Applicants’ current editors submitted that these websites are significant competitors.⁴⁵⁴
650. In contrast, The E tu journalists we spoke with were of the view that these competing websites would place little constraint on the merged entity, a key reason being the small amount of content these websites produce relative to stuff.co.nz and nzherald.co.nz.⁴⁵⁵
651. Similarly, former MediaWorks’ news chief, Mark Jennings, was of the view that there was no chance of newshub.co.nz and 1newsnow.co.nz competing with the Applicants because of their comparative lack of journalistic resources.⁴⁵⁶

The Commission’s view

652. The Commission acknowledges the Applicants’ submissions that the existence of a range of competitors provides some constraint, including constraint from other distribution platforms such as TV and radio.
653. However, the Commission considers that the Applicants are each other’s closest competitors for New Zealand online news and considers it unlikely that existing competitors have sufficient scale and editorial resources to act as a significant constraint post-merger. In particular, the Commission is persuaded by the views of existing competitors as to their position in the market relative to the Applicants.
654. In reaching this view, the Commission also considered:
- 654.1 the extent of the Applicants’ production of online New Zealand news relative to their competitors;
 - 654.2 consumption of the Applicants’ websites relative to other New Zealand news websites;

⁴⁵² Submission from John Crowley to the Commerce Commission (25 November 2016) at 3.

⁴⁵³ Commerce Commission interview with Newsroom (9 February 2017).

⁴⁵⁴ Submissions from Patrick Crewdson (Fairfax) (22 November 2016), Sinead Boucher (Fairfax) (25 November 2016) and Shayne Currie (NZME) (28 November 2016) in response to the Commerce Commission Draft Determination.

⁴⁵⁵ Ibid.

⁴⁵⁶ Commerce Commission interview with Newsroom (9 February 2017).

654.3 consumption of the Applicants' news content via Facebook relative to other New Zealand news producers;⁴⁵⁷ and

654.4 the Applicants' internal documents.

Applicants' production of online New Zealand news relative to their competitors

655. Measured by the number of stories published, Fairfax and NZME are the two largest producers of online New Zealand news by some margin. As outlined in Table 8, excluding externally sourced content (ie, syndicated stories), there are nearly three times the number of self-created articles published on stuff.co.nz and nzherald.co.nz than on 1newsnow.co.nz, newshub.co.nz and rnz.co.nz combined.⁴⁵⁸

Table 8: Production of online New Zealand news

Firm	Total online articles published/month ⁴⁵⁹	Self-created online articles/month ⁴⁶⁰	Editorial staff
Fairfax	[]	[]	[] ⁴⁶¹
NZME	[]	[]	[] ⁴⁶²
TVNZ	[]	[]	[] ⁴⁶³
MediaWorks	[]	[]	[] ⁴⁶⁴
RNZ	[]	[] ⁴⁶⁵	[] ⁴⁶⁶

Source: Fairfax, NZME, MediaWorks, TVNZ and RNZ data.

⁴⁵⁷ This assessment was in response to the Applicants' submissions that the usage data we have relied on from Fairfax is unreliable because it does not include content viewed natively within social media, in particular Facebook Instant Articles and embedded videos.

⁴⁵⁸ MediaWorks was unable to provide the Commission with its article numbers split between syndicated- and self-created content. Therefore, we have conservatively assessed this on the basis that all of MediaWorks' articles are self-created.

⁴⁵⁹ Based on 10-month average from May 2016 to February 2017, inclusive.

⁴⁶⁰ Based on 10-month average from May 2016 to February 2017, inclusive.

⁴⁶¹ 3237936 Staff Costs 15.09.2016 (1) - v1, attached to an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (7 February 2017). Fairfax's total editorial staff numbers have fallen from [] in the Draft Determination. The majority of the reduction was from [] sub-editing roles.

⁴⁶² 3117363 Employee summary by function - v1.XLSX, attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (4 July 2016).

⁴⁶³ Described by TVNZ as "a crude make-up of producers and reporters". TVNZ also employs [] operational staff (camera/live) that we have excluded as editorial staff. Email from TVNZ to the Commerce Commission (5 October 2016).

⁴⁶⁴ The Newshub newsroom is staffed by [] people, including [] camera operators which we have excluded as editorial staff. Email from MediaWorks to the Commerce Commission (19 April 2017).

⁴⁶⁵ RNZ estimated that []% of its articles would be self-created, Commerce Commission phone call with RNZ (21 March 2017).

⁴⁶⁶ This figure has increased from [] in the Draft Determination. RNZ advised us that the RNZ newsroom employs [] staff; however, its digital team ([] staff) and its national radio team ([] staff) also create news and current affairs content. Therefore, on a conservative basis, we have recorded RNZ's newsroom as [] editorial staff. Email from RNZ to the Commerce Commission (10 April 2017).

656. NZME and Fairfax also hire relatively large numbers of editorial and journalist staff and spend considerable resources on the production of original content. The merged entity would control the largest newsroom and national network of reporters and journalists in the country, employing over 300 more editorial staff than the three next biggest mainstream media organisations combined.
657. Based on current numbers, the merged entity would have around [] editorial and journalistic staff compared with TVNZ which has [] journalists (described as a “crude make-up of producers and reporters”),⁴⁶⁷ MediaWorks which has [] journalists (including “reporters, producers, editors, directors, graphics experts and others”) and RNZ which has [] staff that create news and current affairs (across online and radio).⁴⁶⁸
658. The merged entity would also have an extensive regional presence compared to TVNZ, MediaWorks and RNZ. Apart from a few independent websites such as Allied Press’s odt.co.nz and the Ashburton Guardian’s guardianonline.co.nz, the evidence of the competing firms is that they do not have the same regional focus. This means that the merged entity is able to offer more comprehensive news coverage to readers. This is likely to provide the Applicants more scope to publish local stories that become of national interest.
659. Furthermore, as discussed in the market definition section, given the complementarity of online text, video and audio news content, we consider that to the extent that 1newsnow.co.nz, rnz.co.nz and newshub.co.nz produce video and audio content, this news content is unlikely to act as strong as a constraint on the Applicants as their text-based news content is on each other.
660. In particular, we observe that 1newsnow.co.nz is heavily video-based. As such we consider that this video content is unlikely to be a strong constraint on the text-based news published on nzherald.co.nz and stuff.co.nz. This view is consistent with stuff.co.nz hosting TVNZ’s video content. If TVNZ’s video content was a strong head-to-head competitor with text-based content on stuff.co.nz, we consider that such an arrangement would be less likely.
661. Similarly, we consider that much of RNZ’s audio-based news content is unlikely to act as a strong constraint on the merged entity. This view is consistent with stuff.co.nz hosting RNZ’s audio content.
662. That said, we also observe that TVNZ, MediaWorks and RNZ also produce online text-based news content and the Applicants also produce online video content. However, we maintain the view that these competitors have significantly fewer editorial resources than the Applicants such that they are unlikely to provide a strong constraint. As outlined below, these competitors are producing less output and their online websites are consumed significantly less than stuff.co.nz and nzherald.co.nz.

⁴⁶⁷ As described above, TVNZ is currently going through a restructure with a proposal to reduce the size of its newsroom by [].

⁴⁶⁸ As set out in the Counterfactual section we are of the view that without the merger the relative size of the Applicants’ newsrooms and their competitors is likely to remain similar.

663. The disparity in the Applicants' production and quality of online New Zealand news relative to their competitors is reflected in this year's finalists for the 2017 Canon Media Awards (which the Applicants have indicated are an appropriate reflection of the extent of competition).⁴⁶⁹ The Applicants had significantly more finalists than any other publisher of online New Zealand news.
664. For example, the Applicants make up 36 of the 46 finalists in 'reporting' category, with no finalists from TVNZ or MediaWorks (RNZ had five finalists). Similarly, in the category for 'best coverage of a major news event', the Applicants make up six of the seven finalists (RNZ had the other).⁴⁷⁰ In fact, across all nominations, TVNZ had no finalists and MediaWorks had four.
665. As outlined above, the Applicants also referred to a number of smaller or niche news websites. The Commission considers that websites such as the nbr.co.nz, newsroom.co.nz and noted.co.nz produce a much smaller amount of news than the Applicants. For example, newsroom.co.nz said its plan was to post around [],⁴⁷¹ significantly fewer than the 400 – 500 articles posted per day by stuff.co.nz.⁴⁷²
666. Furthermore, these smaller producers focus their content towards relatively niche groups of readers (for example NBR focuses on business news) and do not attract large, mainstream New Zealand audiences.
667. The Applicants pointed to limited examples of international news providers publishing New Zealand news, for example theguardian.com publishes some New Zealand news from freelance journalists.⁴⁷³ Given the minimal amount of New Zealand news these providers produce, the Commission does not consider that these websites would be likely to constrain an exercise of market power by the merged entity.

Usage data

668. The Commission considers that online usage data of the Applicants' websites supports the view that the Applicants are each other's closest competitors in the delivery of New Zealand online news and that the relative usage of 1newsnow.co.nz, newshub.co.nz and rnz.co.nz is much more limited.
669. Figure 1 shows the number of unique browsers that each website attracted on a weekly basis for the six-month period between 1 August 2016 and 30 January 2017. A unique browser is a proxy for the number of individual devices from which a

⁴⁶⁹ The Applicants submitted that the number of high-profile digital news/information awards that TVNZ and RNZ won at the 2016 Canon Media Awards is reflective of "increasing competition" in the online New Zealand news market". Fairfax/NZME "Response to SOPI Submissions" (29 July 2016) at [21].

⁴⁷⁰ 2017 Canon Media Awards Finalists. <http://canonmediaawards.co.nz/winners-finalists/2017-finalists/>

⁴⁷¹ Commerce Commission interview with Newsroom (9 February 2017).

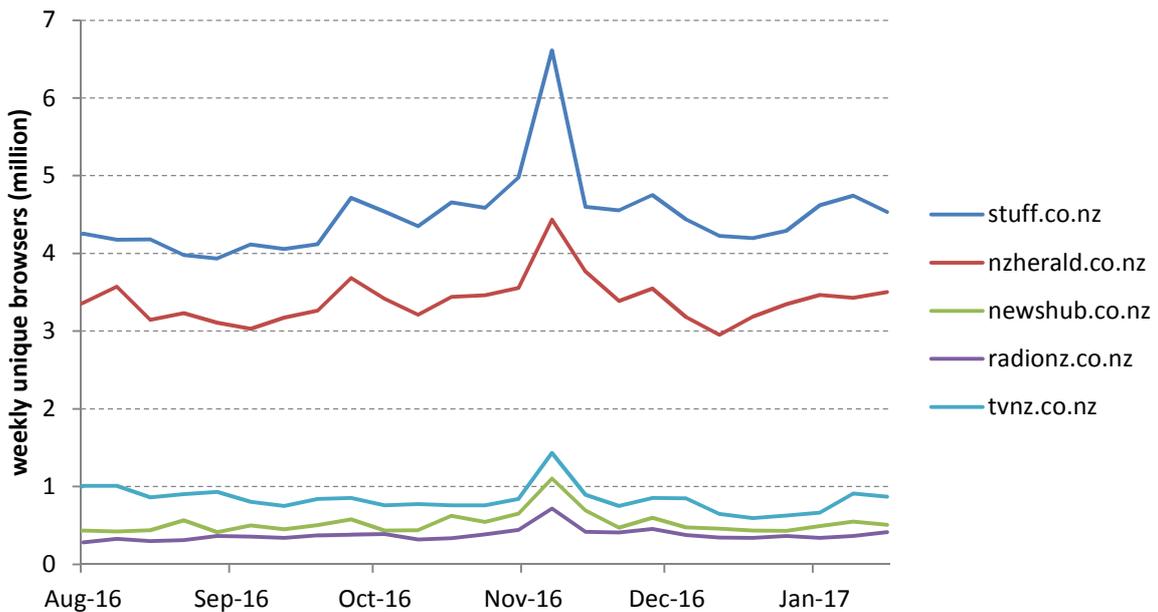
⁴⁷² Commerce Commission Conference (7 December 2016) transcript at page 16.

⁴⁷³ Submission from Russell McVeagh (on behalf of the Applicants) (10 October 2016) at 18.

website is accessed.⁴⁷⁴ It includes browsers on desktop and mobile devices (but not via apps). This data includes all traffic to each website regardless of where the browser was referred from. For example, a link from Facebook back to nzherald.co.nz is captured in Figure 1.⁴⁷⁵

- 670. Figure 1 shows that during this period, the number of unique browsers to stuff.co.nz has been increasing and has averaged around 4.5 million unique browsers per week during this period. Likewise, there has been an average of around 3.4 million unique browsers per week going to nzherald.co.nz. In contrast, the website with next highest number of unique browsers, tvnz.co.nz (which includes the entire tvnz.co.nz website, not just 1newsnow.co.nz), has averaged 800,000 unique browsers per week.
- 671. As evident in Figure 1, the Commission does not accept the Applicants’ submissions that newshub.co.nz, 1newsnow.co.nz and rnz.co.nz are growing at such a rate to suggest that they are likely becoming an increasing constraint on stuff.co.nz and nzherald.co.nz.

Figure 1: Total unique browsers (individual devices) on New Zealand news websites, per week between 1 August 2016 and 30 January 2017



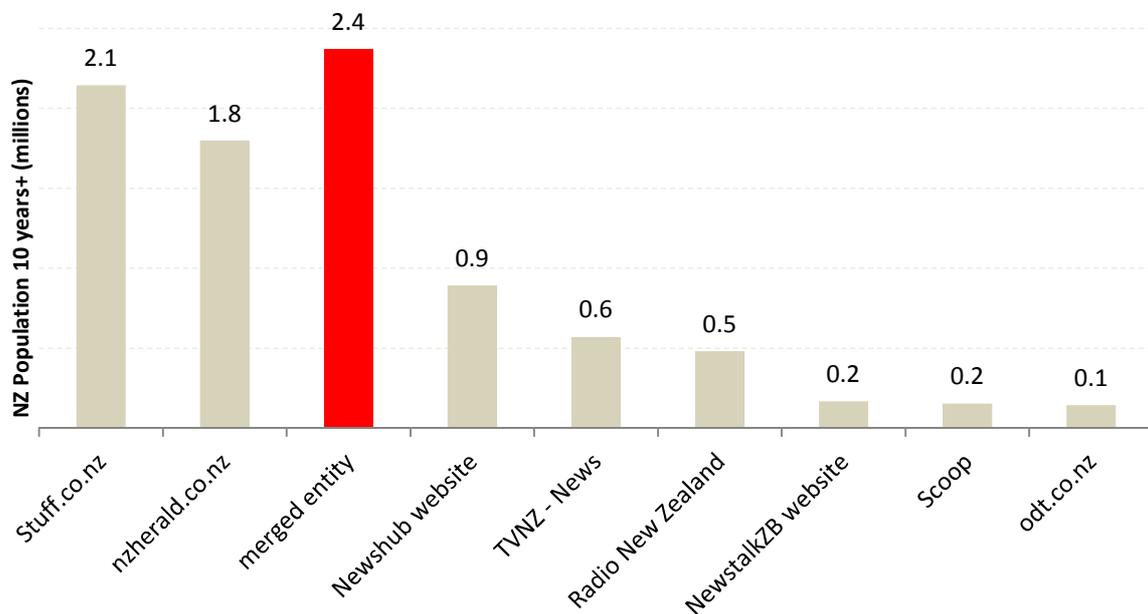
Source: Information provided and sourced by Fairfax from Nielsen Market Intelligence (New Zealand Domestic, Traffic By Brand (website data), period: weekly, 01/08/16 - 30/01/17.

⁴⁷⁴ Unique browsers do not reflect how many individual readers go to a particular website, but rather how many different devices/browsers (for example, desktop browser, iPhone browser etc.) visit a particular website. Given that we have used the same metric for all parties, we consider that unique browsers provides an appropriate reflection of the consumption of the Applicants’ websites relative to their competitors.

⁴⁷⁵ It does not include articles that are viewed natively within Facebook (such as Instant Articles), we address these points below.

672. Further, the Applicants' websites attract significantly more unique browsers than their competitors. This is also reflected in the reach (the number of individual New Zealanders that access a particular website over a certain period) that the Applicants' websites achieve compared to their competitors.⁴⁷⁶
673. As outlined in Figure 2, over the previous year, the Applicants had an average combined reach on their websites of approximately 2.4 million unique visitors per month.⁴⁷⁷ This represents around 60% of New Zealand's population aged 10 years and over. In contrast, the average monthly reach of the next biggest online New Zealand news website, newshub.co.nz, is 22.5%. The equivalent figures for the TVNZ-news website⁴⁷⁸ and rnz.co.nz are 14.3% and 12.1%, respectively.

Figure 2: Monthly reach of New Zealand web brands, Q4 2015 – Q3 2016 (unique audience)



Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online

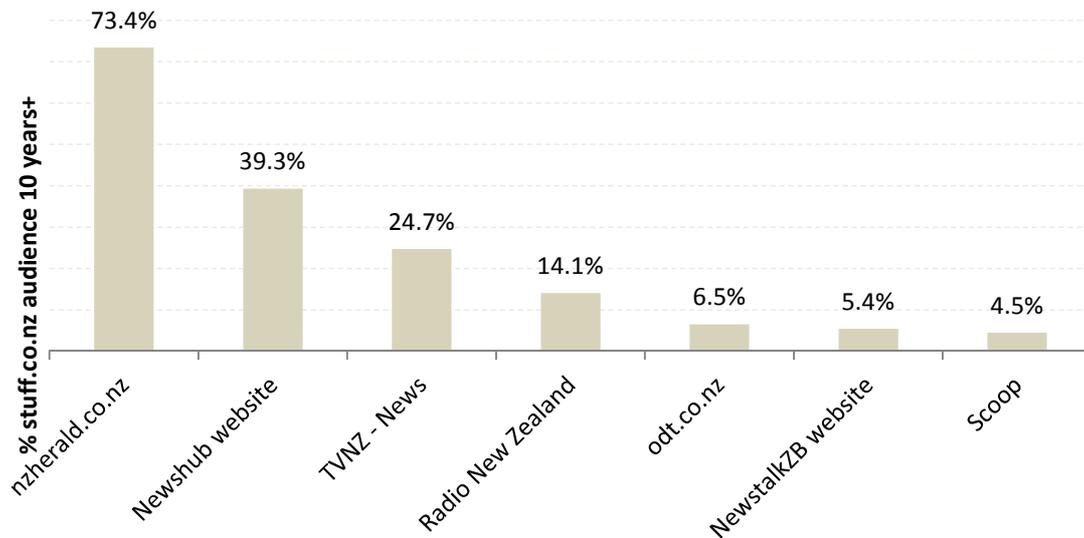
674. It is also useful to consider the proportion of nzherald.co.nz and stuff.co.nz readers that source New Zealand news from multiple other news websites (we refer to this as multi-sourcing). Multi-sourcing provides an indication of the extent to which readers switch between New Zealand news websites to read different news items and/or perspectives from other publishers of online New Zealand news.

⁴⁷⁶ In Figures 2-4, an individual is counted as a viewer if they visited a website at least once in that month.
⁴⁷⁷ The merged entity total is calculated as the stuff.co.nz total plus 0.125*the nzherald.co.nz total to account for 87.5% of nzherald.co.nz viewers also visiting stuff.co.nz.

⁴⁷⁸ In Figures 1-4, TVNZ refers to TVNZ News which represents TVNZ's own news classification or 'custom rollup' as defined by Fairfax.

675. Figure 3 indicates that of the readers that view stuff.co.nz at least once per month, 73% of these readers also visit nzherald.co.nz at least once a month.⁴⁷⁹ Less than 40% of these stuff.co.nz readers also visited newshub.co.nz at least once per month. Around 25% of stuff.co.nz readers also visited TVNZ-news website.

Figure 3: Percentage of stuff.co.nz users that access other web brands at least once a month, Q4 2015 – Q3 2016 (unique audience)

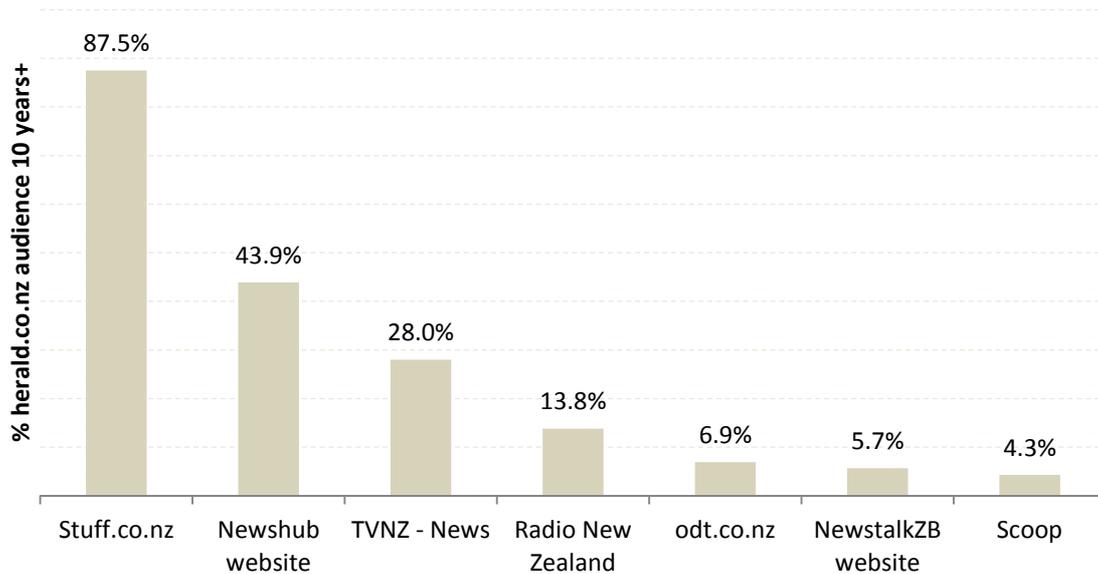


Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definitions of news media and news programming are defined by Fairfax.

676. Similarly, Figure 4 indicates that that 87.5% of readers who visit the nzherald.co.nz site at least once per month also visit stuff.co.nz. The next highest New Zealand news website visited by nzherald.co.nz readers is newshub.co.nz with 44% of readers multi-sourcing with this site. TVNZ-news website and rnz.co.nz are next at 28% and 14%, respectively.

⁴⁷⁹ In Figures 2-4, the data does not account for frequency or volume of individuals' consumption. Because of this, it likely provides a conservative estimate for highly consumed websites and likely overstates true multi-sourcing.

Figure 4: Percentage of herald.co.nz users that access other web brands at least once a month, Q4 2015 – Q3 2016 (unique audience)



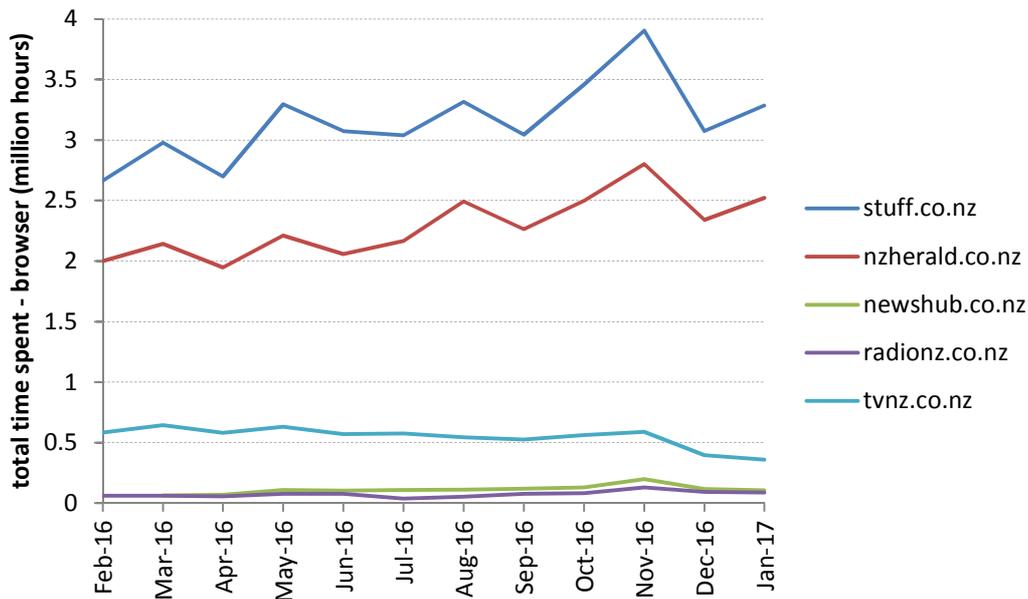
Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definition of news media and news programming are defined by Fairfax.

677. Further, because unique browser and reach data provide a limited picture of how many devices/individuals are going to these websites, the Commission also obtained ‘volume-based’ statistics regarding the consumption of online New Zealand news websites. These statistics include measures such as total time spent on each website and total page impressions (clicks) for each website. This information provides insight into readers’ consumption of the different publishers’ content once they have arrived at the website.
678. Figure 5 shows the total time spent on various New Zealand news websites accessed on web browsers on desktop and mobile devices (but not via apps). Over the last year, readers have spent a combined 65.3 million hours on stuff.co.nz and nzherald.co.nz. In contrast, readers spent 8.6 million hours on tvnz.co.nz, newshub.co.nz and rnz.co.nz combined.⁴⁸⁰
679. Further, the difference in the time that readers spend on the Applicants’ websites relative to competing websites is increasing. Between February 2016 and January 2017, the time readers spent on stuff.co.nz and nzherald.co.nz increased by a total of 620,000 and 520,000 hours, respectively. The increase was considerably lower for newshub.co.nz (40,000 hours) and rnz.co.nz (33,000 hours) and was negative for tvnz.co.nz (-200,000 hours).⁴⁸¹

⁴⁸⁰ Given the launch date of newshub.co.nz, February and March 2016 are not included in this data. However, we do not consider that this has a material impact on the data presented.

⁴⁸¹ We do not have data for rnz.co.nz in February 2016, therefore this value was calculated from the difference between March 2016 and January 2017.

Figure 5: Total time spent on New Zealand news websites per month, February 2016 – January 2017 (browsers only)



Source: Information provided and sourced by Fairfax from Nielsen Market Intelligence (New Zealand Domestic Traffic By Brand (website data), period: monthly, 01/02/16 - 31/01/17)

680. Figure 6 shows the total monthly page impressions of online New Zealand news websites over the last year. Over the last year the total combined number of page impressions on the Applicants' websites (3.6 billion) is over 10 times greater than those obtained by tvnz.co.nz, newshub.co.nz and rnz.co.nz combined (342 million).
681. The Commission notes that the number of page impressions on stuff.co.nz has been falling on a month-by-month basis. It is not clear to us why this is the case.⁴⁸² Given that we observe an increase in nzherald.co.nz page views during the same period, it could be due to readers switching between the two websites.
682. While the downward trend could also be, at least in part, due to Fairfax's use of Facebook Instant Articles,⁴⁸³ we do not consider that Instant Articles are likely to be the main reason for this trend. This is because Instant Articles [].⁴⁸⁴ Given this position, we do not consider that the inclusion of page views derived from Instant Articles in Figure 6 would be likely to reverse the downward trend that is observed.

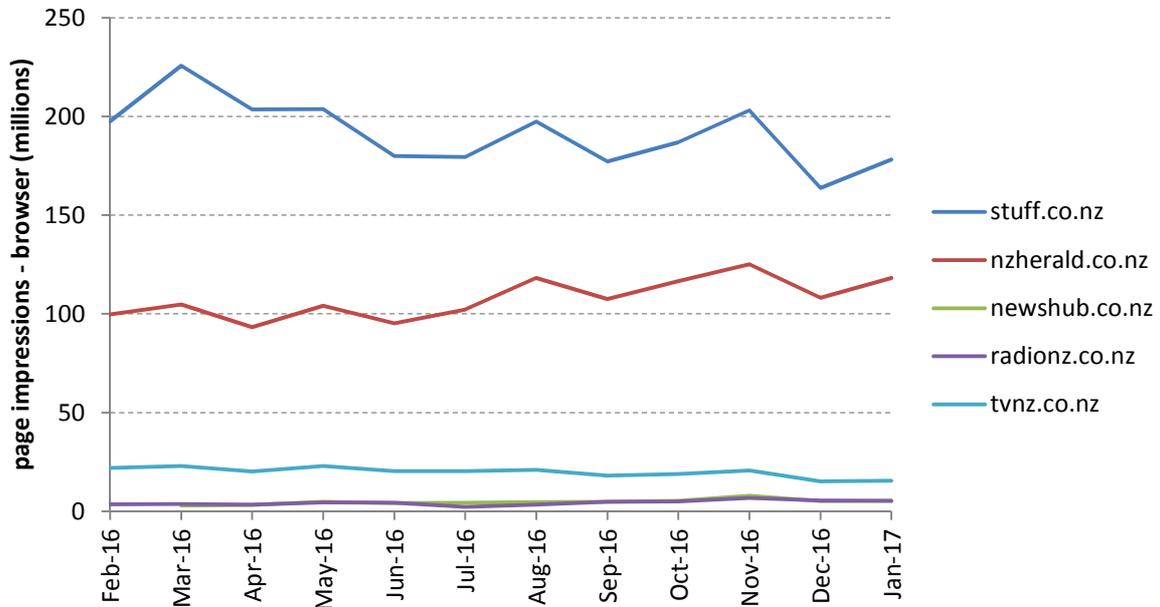
⁴⁸² Similar data showing the 'average daily page views' on stuff.co.nz provided by Fairfax and sourced from Adobe Analytics, showed an increasing trend of average daily page views. This difference could be a result of different methods of data collection. We have not graphed this data as we do not have identical data for competing websites; however, we note that page impressions on stuff.co.nz may not be falling to the extent indicated in Figure 6.

⁴⁸³ Consumption of Instant Articles is excluded from the usage data.

⁴⁸⁴ For the period February 2016 to January 2017, based on the data provided by Fairfax, the highest proportion of average daily page views derived from Instant Articles was in December 2016 where []% of the total average daily page views from stuff.co.nz content were derived from Instant Articles.

683. We also note that NZME does not use Instant Articles and so all of NZME’s articles that are posted on Facebook are linked back to nzherald.co.nz.⁴⁸⁵ Page impressions derived from these articles that are linked from Facebook are captured in the usage data.

Figure 6: Total page impressions on New Zealand news websites, per month Feb 2016 – Jan 2017 (browsers only)



Source: Information provided and sourced by Fairfax from Nielsen Market Intelligence (New Zealand Domestic Traffic By Brand (website data), period: Monthly, 01/02/16 - 31/01/17)

684. The data in Figures 1-6 do not include reach and consumption of content via the various media organisations’ mobile apps. However, as illustrated in Figures 7 and 8 below, consumption of New Zealand news via apps follows a similar trend to the consumption of New Zealand news via desktop and mobile browsers.

685. Figure 7 shows that, during this period, the average monthly number of unique app browsers (the number of active app users per month) for the Stuff app is []. Likewise, the NZHerald app has attracted on average [] unique browsers. In contrast, the app with the next highest average number of unique browsers is the [].

686. In terms of consumption, Figure 9 shows that the Applicants’ apps gain significantly more page views than their competitors’ apps.⁴⁸⁶

⁴⁸⁵ Email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁴⁸⁶ Each of NZME, Fairfax and MediaWorks advised the Commission that the way in which users navigate their apps by ‘swiping’ through pages means that the number of page views in Figure 8 may not be an accurate reflection of the number of pages that were actually read. This effect is likely to be constant between the Applicants’ apps and the Newshub app. Further, to the extent that the 1NewsNow and RNZ apps do not face this problem, there is nothing to suggest that consumption of these apps is likely to be

Figure 7: Total monthly unique app users on New Zealand news apps, February 2016 to January 2017

[]

Source: Fairfax, NZME, MediaWorks, TVNZ and RNZ data

Figure 8: Total page views of New Zealand news apps, February 2016 to January 2017

[]

Source: Fairfax, NZME, MediaWorks and TVNZ data

687. RNZ app page views are not included in Figure 8 because RNZ's current app acts solely as a streaming platform for its radio broadcasts therefore its app does not republish articles that are on rnz.co.nz.

[

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688. [

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Existing competition on Facebook

689. In response to similar usage statistics presented by the Commission in our Draft Determination, the Applicants submitted that the statistics are unreliable as the data does not capture videos and links that are viewed natively on social media, in particular, Facebook Instant Articles and embedded videos.⁴⁸⁸ These are articles/videos that are consumed natively within the Facebook distribution platform rather than being linked back to the Applicants' own website (ie, in the usage data, this consumption is captured as part of facebook.com, rather than stuff.co.nz, for example).

690. In our view, the omission of content that is viewed natively within Facebook would not materially alter the consumption patterns we have observed. To assess the Applicants' submission, we observed the extent to which Stuff, NZHerald, Newshub, 1NewsNow and RNZ content is consumed on the Facebook distribution platform.

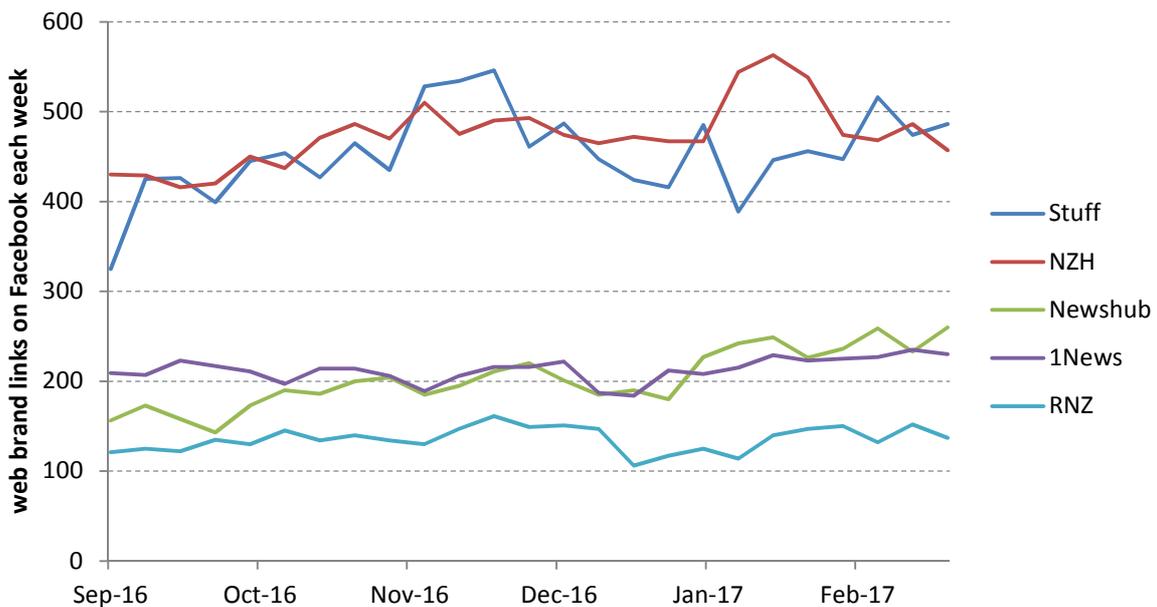
significantly different to the trends that we have observed in Figures 1 – 8 in relation to 1newsnow.co.nz and rnz.co.nz.

⁴⁸⁷ Commerce Commission interview with RNZ (21 March 2017).

⁴⁸⁸ Submission from Russell McVeagh (on behalf of the Fairfax/NZME) (23 December 2016).

691. To make this assessment, we obtained data from Social Bakers.⁴⁸⁹ This data captures the number of articles posted on the respective Facebook pages of Stuff, NZHerald, Newshub, 1NewsNow and RNZ,⁴⁹⁰ including both Instant Articles which are viewed 'natively' within the Facebook mobile app (not captured in the usage data above) and articles which are linked back to the parties' websites (captured within the usage data).
692. Figure 9 shows that over the last six months, the Stuff and NZHerald Facebook pages posted significantly more articles on Facebook than their competitors.

Figure 9: Total number of articles (including Instant Articles) posted on Facebook per week



693. None of the parties post significant volumes of 'embedded videos' on Facebook. For the period October 2015 to February 2017 inclusive, Fairfax via the Stuff Facebook page posted, on average, 107 embedded videos per month. This was more than each of the other competitors. By comparison, over the same period, Fairfax posted, on average [] articles (some of which include videos) on stuff.co.nz per month.⁴⁹¹
694. Given the low volume of embedded videos posted on Facebook, we do not accept the Applicants' submission that the absence of embedded videos from the usage data is likely to make our use of the data unreliable.
695. To assess the consumption of news produced by Stuff and NZHerald on Facebook vis a vis their main competitors, we obtained data relating to the number of 'reactions' from Facebook users. This captures the number of Facebook users that have 'liked',

⁴⁸⁹ NZME used data from Social Bakers in response to the Commission's information request of 20 December 2016. ComCom slides - social media content - v1 (undated), contained in an email from Russell McVeagh (on behalf of NZME) sent to the Commerce Commission (23 December 2016).

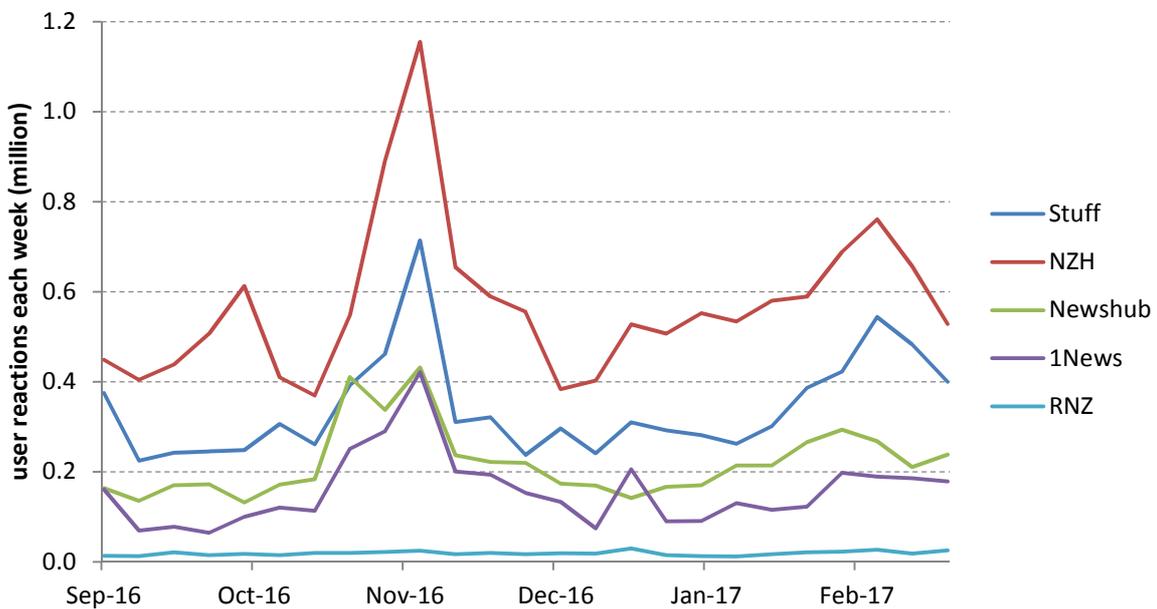
⁴⁹⁰ These posted stories do not appear to be exclusive to Facebook users, rather they are linked stories from the parties' own websites.

⁴⁹¹ Fairfax data.

shared and commented on every article and embedded video posted by each of the competing publishers on Facebook.

696. We acknowledge that this is not a precise measure of the true consumption of these parties' articles on Facebook (for example, a Facebook user may read an article but decide not to react to it). However, for the purposes of assessing the Applicants' submissions, we consider that it is a reasonable proxy for assessing the extent to which the Applicants' articles are consumed on Facebook relative to their competitors.
697. Figure 10 shows that over the last six months, the articles posted by the Applicants on Facebook have received considerably more 'reactions' than their competitors.

Figure 10: Total reactions (likes, shares, comments), September 2016 – February 2017



698. Therefore, we consider that there is no evidence to suggest that the absence of Instant Articles and embedded videos from the usage data means that the trends we have observed are unreliable or inaccurate. In particular, there is no evidence to suggest that TVNZ, MediaWorks or RNZ online news is consumed more on Facebook than the Applicants such that it would significantly distort the usage data and the trends we have observed.
699. Finally, in keeping with our consideration that the omission of Instant Articles from the usage data is unlikely to have a significant effect on the trends, we note that NZME has chosen not to use Instant Articles.⁴⁹² Rather, all links posted on Facebook are linked back to nzherald.co.nz and, therefore, are captured in the usage data. If Instant Articles are a key means by which readers consume online New Zealand news, it is less likely that NZME would have made this decision.

⁴⁹² Submission from Russell McVeagh (on behalf of NZME) (26 January 2017) in response to the Commerce Commissions information request of 20 December 2016.

The Applicants' internal documents

700. As well as usage data, the Applicants also provided a number of internal documents which support the proposition that they are each other's closest competitors for online New Zealand news.

701. For instance, in the discussion on paywalls below,
[].

702. Further,
[].⁴⁹³

703. Similarly,
[⁴⁹⁴ 495].⁴⁹⁶

704. []⁴⁹⁷
[]"⁴⁹⁸

Conclusion on existing competition

705. Based on the data collected, the views of industry participants and the Applicants' own internal documents, the Commission considers that NZME and Fairfax are likely

⁴⁹³ [].

⁴⁹⁴ []

⁴⁹⁵ []

⁴⁹⁶ [].

⁴⁹⁷

[].

⁴⁹⁸ [].

to place a substantial constraint on each other in the online New Zealand news market and this would likely be lost as a result of the merger.

706. We consider that NZME and Fairfax are each other's closest competitors by some margin. In terms of the level of production of New Zealand news content, the merged entity would be significantly stronger than the other competitors. This difference in production is reflected in the extent to which the Applicants' online news content is consumed relative to their competitors.
707. The Applicants submitted that in an online world, strong competitors are only 'a click away'.⁴⁹⁹ If this were the case, and 1newsnow.co.nz, rnz.co.nz and newshub.co.nz were strong competitive constraints on the Applicants, we would not expect to see such divergence in the consumption of these competitors' online news websites.
708. Rather, we are of the view that Fairfax and NZME are significantly better resourced to produce online news content that readers value. As such, we are not satisfied that online New Zealand news produced by other competitors is likely to provide a significant constraint on the merged entity and thereby prevent the merged entity from decreasing the quality of online New Zealand news and/or introducing a paywall (ie, increasing price).
709. Furthermore, for the reasons set out in the next section, we are not satisfied that existing competitors are sufficiently well placed to expand their production of online New Zealand news to provide a likely constraint on the merged entity from exercising its increased market power.

Entry and expansion by competing online New Zealand news producers

710. Having determined that the proposed merger is likely to eliminate the two closest competitors in the market for online New Zealand news, and that existing competitors are unlikely to provide a strong constraint, the Commission has considered whether potential entry by a new online producer of New Zealand news, or expansion by an existing producer, would be likely to constrain the merged entity from exercising its increased market power post-merger.
711. We assess whether entry by new competitors or expansion by existing competitors is likely to be sufficient in extent and occur in a timely fashion to constrain the merged entity and prevent a substantial lessening of competition. This is referred to as the 'LET' test.⁵⁰⁰

The Applicants' views

712. The Applicants submitted that there are low barriers to entry and/or expansion to producing and distributing online New Zealand news, such that the threat of potential entry would constrain the merged entity from decreasing the quality of online New Zealand news and/or introducing a paywall.

⁴⁹⁹ Fairfax/NZME "Factual Submission on Draft Determination" (25 November 2016) at [273]; Fairfax/ NZME: Cross submission on TVNZ and MediaWorks SOPI Submissions (10 October 2016) at [20].

⁵⁰⁰ *Mergers and Acquisitions Guidelines* above n 39 at [3.95].

713. In making this submission, the Applicants were of the view that TVNZ, MediaWorks and RNZ could all readily expand in order to constrain the merged entity and would “simply need to continue to produce attractive content that engages New Zealanders.”⁵⁰¹
714. The Applicants submitted that:⁵⁰²
- 714.1 TVNZ and MediaWorks are “equally able to monetise” online New Zealand news as NZME and Fairfax;
 - 714.2 brand awareness is less important in a small country like New Zealand, and, in any event, TVNZ, MediaWorks and Radio New Zealand all have strong and trusted brands facilitating expansion;
 - 714.3 consumers have a strong preference to multi-source between different news websites, so in the event the merged entity tried to exercise market power, consumers would switch to competing websites;
 - 714.4 hiring journalists is not a barrier to expansion; and
 - 714.5 rival publishers can use newswire services (such as AAP Newswire) to generate additional news content.
715. In support of these submissions, the Applicants pointed the Commission to a number of examples of new entrants, including the recent start-ups of newsroom.co.nz, newsie.co.nz and noted.co.nz.
716. The Applicants also made submissions in relation to future trends in the consumption of news:
- 716.1 Online video is becoming an increasingly important channel by which readers consume online New Zealand news. Given TVNZ’s and MediaWorks’ strength in producing video news for TV, the Applicants suggested that these companies will become increasingly strong competitors in the online New Zealand news market as demand for online video grows,⁵⁰³ and
 - 716.2 Social media usage has facilitated a fundamental change in the means by which consumers reach a piece of news, with social media platforms increasingly becoming the predominant channel for consumers to access news/information online.⁵⁰⁴ As a consequence, any barriers to entry or expansion in the growing online environment have been lowered.⁵⁰⁵

⁵⁰¹ Fairfax/NZME “Cross submission on TVNZ and MediaWorks SOPI Submissions” (10 October 2016) at [23].

⁵⁰² Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [193].

⁵⁰³ Commerce Commission Conference (6 December 2016) transcript at pages 6 and 9.

⁵⁰⁴ Application at [6.28] and [6.29].

⁵⁰⁵ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [9].

Competitors' views

717. All of the main news media organisations identified by the Applicants indicated that there are significant barriers to entry in the online news market, given both the costs of running a national news organisation and the creation of content.
718. MediaWorks told us that providing online news coverage on a national and local basis requires substantial scale and significant investment, both in up front capital and on an ongoing basis.⁵⁰⁶ It said that the Newshub newsroom employs more than 200 people across Auckland, Wellington, Christchurch and Dunedin at an annual cost of around \$[] per annum.⁵⁰⁷
719. Furthermore,
[

].⁵⁰⁸
720. TVNZ was of the view that there are significant costs in setting up a news gathering operation, from building content management systems to hiring journalists, producers and camera crews.⁵⁰⁹ TVNZ said that the business case to make the investment needed to develop the requisite level of online capability is dependent on the advertising revenue the platform is able to generate which in turn is dependent on the audience reach.⁵¹⁰
721. [

].
[]".⁵¹¹
722. Similarly, TVNZ advised that it is [] and the headcount across TVNZ has reduced by around a quarter in recent times to reflect the declines in TV revenue and the increasing costs of being online.⁵¹² While TVNZ previously told the Commission that
[],⁵¹³
the recent proposed changes to TVNZ's newsroom may extend its coverage in some regions.
723. Under the proposal, TVNZ would reduce the number of editorial staff it hires and redeploy the remaining editorial staff across a wider geographic footprint.⁵¹⁴

⁵⁰⁶ Submission from MediaWorks to the Commerce Commission (30 September 2016) at [4.3].

⁵⁰⁷ Submission from MediaWorks to the Commerce Commission (30 September 2016) at [4.3].

⁵⁰⁸ Commerce Commission interview with MediaWorks (29 June 2016).

⁵⁰⁹ Submission from TVNZ to the Commerce Commission (14 September 2016) at [5.11].

⁵¹⁰ Ibid at [6.12].

⁵¹¹ Email from MediaWorks to the Commerce Commission (30 September 2016).

⁵¹² Commerce Commission interview with TVNZ (27 June 2016).

⁵¹³ Commerce Commission interview with TVNZ (27 June 2016).

⁵¹⁴ Email from TVNZ to the Commerce Commission (11 April 2017).

Therefore, while the proposal may increase TVNZ's ability to compete with the Applicants in some regions, overall TVNZ would have fewer editorial resources. This is consistent with TVNZ's historical downsizing of its newsroom.

724. RNZ held a slightly different view in relation to the costs required to set up an online news gathering operation. It advised us that its website cost \$[] to build and indicated that "the digital world is dirt cheap compared to traditional broadcast".⁵¹⁵ However, RNZ agreed that there are significant costs involved with content creation and it indicated that it had [].⁵¹⁶
725. Newsroom did not share the Applicants' view that there are no barriers to entry in the market for online New Zealand news. It said that []. Newsroom's owners told us that they "are probably the only two [people] in the country that could even think of starting a business like this" and that is because they are "highly experienced and very well connected".⁵¹⁷

The Commission's view

726. We consider that entry and/or expansion by a competing producer of online New Zealand news is unlikely to be sufficient to constrain the merged entity from exercising market power. In particular, we are of the view that entry and/or expansion by a competing producer of online New Zealand news is unlikely to be sufficient in extent and to occur in a timely fashion to constrain the merged entity.
727. In reaching this view, the Commission considered:
- 727.1 expansion and entry in the context of the elements of the LET test, with a particular focus on expansion;
 - 727.2 the extent to which MediaWorks and TVNZ have a future advantage as video producers; and
 - 727.3 the role of Facebook in lowering distribution barriers.

The LET test

728. The LET test entails a consideration of whether entry by new competitors or expansion by existing competitors is likely to be of sufficient extent in a timely fashion so as to constrain the merged entity and prevent a substantial lessening of competition.⁵¹⁸
729. The likelihood of entry and expansion depends on firms' expected profitability of entry and expansion. Relevant considerations include whether expected revenues resulting from any investment are outweighed by the anticipated cost of the

⁵¹⁵ Commerce Commission interview with RNZ (12 July 2016).

⁵¹⁶ Ibid.

⁵¹⁷ Commerce Commission interview with Newsroom (9 February 2017).

⁵¹⁸ *Mergers and Acquisitions Guidelines* above n 39 at [3.91]-[3.112].

investment, and the risks around both those factors. The risks of entry and expansion largely depend on the extent to which costs are sunk and so are not recoverable should entry/expansion fail.⁵¹⁹

730. Any entry/expansion must occur not only within a reasonably short period following a price increase and/or decrease in quality (or some other exercise of market power), but must also be of sufficient extent within that period so as constrain the substantial lessening of competition.

The LET Test – Likelihood

731. The Commission first considered whether entry and/or expansion is likely. We considered the question of expansion first because we consider that existing competitors would be best placed to grow their production of online New Zealand news to compete with the merged entity.
732. For the reasons set out below, we consider that the likelihood of *expansion* in the digital New Zealand news market is low. This is because the expected profitability of expansion in response to a price increase and/or a reduction by the merged entity in quality is low.
- 732.1 The Applicants’ main commercial rivals in the online New Zealand news market – TVNZ and MediaWorks –
[
].⁵²⁰ TVNZ [] and,
rather than expanding, the size of its newsroom has reduced by around a quarter in recent times to reflect the declines in TV revenue and the increasing costs of being online.⁵²¹ This is consistent with TVNZ’s recent announcements that it will be reducing the size of its newsroom.
- 732.2 The Applicants’ submissions concerning the competitiveness for online advertising suggest low likelihood of significant expected profitability in the market. In particular, as discussed in the advertising section, New Zealand is a small market in which the likes of Facebook and Google along with other established parties compete vigorously for online advertising. Further, the Applicants noted that Facebook and Google have been capturing an increasing share of digital agency advertising spend.⁵²²

⁵¹⁹ Other factors that impact the riskiness and so the likelihood of expansion include the time period over which costs must be recovered before the cost must be renewed and the expected response of rivals to entry (including any strategic response).

⁵²⁰ Commerce Commission interview with MediaWorks (29 June 2016).

⁵²¹ Commerce Commission interview with TVNZ (27 June 2016).

⁵²² PwC “Fairfax Counterfactual Report” (25 November 2016) at [11].

- 732.3 While RNZ, as a not-for-profit organisation, does not face a commercial imperative, it can only expand if it receives further funding. No such increases are planned and so cannot be relied upon to eventuate.⁵²³
733. We do not consider that an exercise of market power by the merged entity would significantly change the expected profitability and, therefore, likelihood of expansion by rival publishers. As such, we are not satisfied that the threat of expansion by a rival publisher would be likely to constrain the merged entity from increasing the price and/or decreasing the quality of online New Zealand news.
- 733.1 As discussed in the paywall section below, we consider that the merged entity would likely have the ability and incentive to introduce some form of paywall over at least some online New Zealand news content. We are of the view that a 'soft' paywall could be introduced without risking significant numbers of readers switching to competing news websites. We do not consider that such a paywall would be likely to entice large-scale expansion by a rival publisher. The merged entity would be, and would likely remain, the largest online New Zealand news website.
- 733.2 As set out in the quality section, we consider that the merged entity would be likely to reduce the quality of online New Zealand news. We consider that there are a number of dimensions to quality some of which may not be easily noticed by readers. As such, a reduction in quality of news may not be noticed by readers or, even if noticed, may not cause readers to switch from consuming the merged entity's news content. If this were to occur, then the merged entity could reduce quality but not lose readers and, therefore, retain advertisers. This would be unlikely to significantly increase the expected profitability of expansion for rival publishers.
734. In respect of the likelihood of *new entry*, the same points in regard to the expected profitability of expansion apply. Also relevant to new entry is the extent to which costs are sunk and the ability of the entrant to access inputs. Newsroom stated that while there are plenty of journalists, they are difficult to hire without first having a revenue base for their salaries.⁵²⁴ These factors suggest that the likelihood of new entry is also low.
- 734.1 We consider that there are significant sunk costs increasing the risks of entry. The main sunk costs of entry into online news publishing are investments in brand, bespoke website development and human capital associated with set-up time.

⁵²³ RNZ's funding has not been increased since 2010 <http://www.nzonair.govt.nz/search/funding/radio/radio-nz#fundingForm>. RNZ did not seek extra funding in the May 2016 Budget after reportedly accepting it is not a priority for more Government spending, <http://www.stuff.co.nz/national/politics/77035685/Radio-NZ-will-not-seek-extra-cash-in-May-Budget-despite-seven-year-freeze> .

⁵²⁴ Commerce Commission interview with Newsroom (9 February 2017).

- 734.2 The Commission considers that brand awareness is important. The low reach of smaller online New Zealand news brands such as scoop.co.nz is consistent with this. Further, the Applicants acknowledged the importance of brand for growth. For example, NZME considered that growing digital brand awareness is [].⁵²⁵ Consistent with this is the Applicants' continued promotion of their products. In 2016 Fairfax spent \$[] million⁵²⁶ and NZME \$[] million⁵²⁷ on marketing and promotion. While these figures cover the marketing of the entirety of their respective business, we consider that it is likely that at least some portion of this spend will benefit their online brands, in particular given the increasing consumption of online news.
- 734.3 While RNZ indicated that its website cost [],⁵²⁸ NZME has recently spent \$[] million on a new content management system for nzherald.co.nz.⁵²⁹ Similarly, over the last two financial years Fairfax has invested \$[] million toward "Stuff product innovation".⁵³⁰ Each of NZME and Fairfax considered the investments to be necessary to provide an attractive online offering to consumers. Given that these costs are not easily recoverable should expansion fail, these expenditures are inherently risky.
- 734.4 In a market with low expected revenue, any sunk cost takes on greater relevance due to the associated reduced likelihood of recovery from advertising revenues.
735. The importance of having an effective digital platform that can handle audience traffic is reflected in NZME's internal documents. For example, NZME notes that "[]".⁵³¹
736. Also relevant to the likelihood of entry is the ability of a new entrant to access inputs. As suggested by Newsroom, while there may be journalists available to hire, they are difficult to hire without first having a revenue base for their salaries. The experience of TVNZ and MediaWorks also illustrates that even when reputation is

⁵²⁵ Annex 122 - FY17 Strategy Overview and High Level Budget Summary (12 October 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁵²⁶ PwC "Fairfax Counterfactual Report" (25 November 2016) at Appendix E.

⁵²⁷ PwC "NZME Counterfactual Report" (25 November 2016) at Appendix E (we have included NZME marketing costs and staff costs attributed to marketing).

⁵²⁸ Commerce Commission interview with RNZ (12 July 2016).

⁵²⁹ ARC content management system. The NZME Board approved the expenditure in FY15 but it was not spent until 2016. Submission from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁵³⁰ Annex 104 - FY17_ Stuff Product Innovation FY17_Business Case (26 April 2016) and Annex 100 - FY16_Product Innovation_Business Case (8 May 2015), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (26 January 2017).

⁵³¹ Annex 122 - FY17 Strategy Overview and High Level Budget Summary (12 October 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

well-established in other platforms, [] in online news.^{532 533}

The LET test – Extent and Timeliness

737. The Commission recognises, however, that despite low expected profitability, the major news media organisations have expanded online and there are examples of de novo entry, including newsroom.co.nz and newsie.co.nz, which entered in 2017. We have therefore still considered whether entry and expansion would be likely to be of sufficient *extent* and *timely* to constrain a substantial lessening of competition.
738. The Applicants submitted that journalists can be hired incrementally, are mobile and are costs that the merged entity will continue to face, so do not constitute a barrier to entry. In making this submission that Applicants cite the judgement of the Court of Appeal in *Southern Cross*.⁵³⁴
739. While we accept that journalists can be hired incrementally and may be mobile, we do not consider that demonstrates that barriers to entry such that expansion by rival publishers would be sufficient in extent and timeliness to constrain the merged entity. Rather, we consider that a condition of expansion for rival publishers would be the need to significantly expand the size of their newsrooms. We do not consider that rival publishers are likely to satisfy this condition, through incremental expansion, to a sufficient extent and within a reasonably short time period to constrain the merged entity.⁵³⁵
740. For TVNZ or MediaWorks to increase their editorial resources to a level at which they would provide a meaningful constraint on the merged entity would require significant investments.
741. The editorial resources of each of TVNZ, MediaWorks and RNZ would be significantly less than that of the merged entity. Assuming, a post-merger rationalisation of [],⁵³⁶ the merged entity's newsroom would still be around [] employees. This would be [] larger than MediaWorks' newsroom and [] larger than each of TVNZ and RNZ. Combined, TVNZ, MediaWorks and RNZ's newsrooms would still be smaller than the merged entity's.
742. In the case of RNZ, such expansion would require an increase in its budget for which there are no plans. RNZ indicated that an increasing proportion of its budget is being

⁵³² Commerce Commission interview with TVNZ (27 June 2016).

⁵³³ Commerce Commission interview with MediaWorks (29 June 2016).

⁵³⁴ *Southern Cross* above n 36.

⁵³⁵ This is consistent with the Courts' move away from the language of 'barriers' to expansion to the term 'conditions' of expansion – a more expansive concept. *Mergers and Acquisitions Guidelines* above n 39 at 5.

⁵³⁶ PwC "Indicative Synergies Analysis Refresh" (21 October 2016). The report []

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dedicated to online news only (around []%), and that allocation of budget is becoming increasingly blurred between radio and online as RNZ seeks to meet audience demands.⁵³⁷

743. Further, expansion by TVNZ would be inconsistent with recent announcements that it has made regarding a restructure of its newsrooms. In these announcements, Kevin Kenrick, TVNZ chief executive, stated that “for a sustainable business going forward, it will mean less staff.”⁵³⁸ It was reported that this proposal would involve a ‘net loss’ of fewer than 10 staff.⁵³⁹
[]⁵⁴⁰
744. The low likelihood of competitors expanding sufficiently in a short period is also illustrated by TVNZ’s, MediaWorks’ and RNZ’s relatively low online market shares despite having entered with brand awareness and high usage levels within their traditional platforms. The most recent of these websites, newshub.co.nz, launched over a year ago.
745. Further, the Applicants also submitted that to expand rival publishers could use newswire services like AAP Newswire to generate additional news content. While newswire services would provide extra content, the same content could also be published by the merged entity. During FY15, NZME spent \$[] on syndicated content.⁵⁴¹ Similarly, in FY16, Fairfax spent \$[] on syndicated content.⁵⁴² These are not insignificant costs if a rival publisher wanted to expand to achieve similar coverage through syndicated content as the merged entity.
746. Further, the Applicants use a wide range of newswire services, including AAP Newswire. As such, it would be difficult for rival publishers to establish a point of difference to the merged entity by purchasing syndicated content. This is consistent with our view that an expansion of self-created online New Zealand news is the most important condition that a rival publisher would need to satisfy in order to constrain the merged entity.
747. While the Applicants provided some Australian examples,⁵⁴³ they did not point to any new or potential entry from any international news organisations that provide New Zealand news other than freelance journalists or on one-off events that are of international interest, such as the Kaikoura earthquakes.⁵⁴⁴ We are of the view that entry of this type from international news organisations would not be sufficient in

⁵³⁷ Commerce Commission interview with RNZ (12 July 2016).

⁵³⁸ http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11819769

⁵³⁹ <http://www.stuff.co.nz/business/industries/91968008/Television-New-Zealand-outlines-newsroom-cuts-to-staff>

⁵⁴⁰ Email from TVNZ to the Commerce Commission (11 April 2017).

⁵⁴¹ 3117369 Contributors data - v1, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (5 July 2016).

⁵⁴² 3117125 Content and News Services FY16 - v1, contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (5 July 2016).

⁵⁴³ Submission from Russell McVeagh (on behalf of the Applicants) (10 October 2016) at [37].

⁵⁴⁴ Ibid. [38].

extent to constrain the merged entity. This type of entry is irregular and very limited in volume, and as such it is unlikely to be sufficient in extent to constrain the merged entity.

748. We also consider that an international publisher would be required to make significant investments in New Zealand in order to act as a real constraint on the merged entity. We do not consider that the introduction of a paywall and/or reduction in the quality of online New Zealand news would be likely to entice international organisations to produce online New Zealand news of sufficient extent to constrain the merged entity.
749. This is not to say that the Commission considers further expansion by existing firms or new entry to be unforeseeable. But rather, any new entry or expansion would be unlikely to be of sufficient extent and timeliness, to be an effective constraint on the merged entity.

Future of video news content

750. At the Conference, the Applicants each suggested that the consumption of news via online video format is growing, such that as traditional TV broadcasters, TVNZ and MediaWorks would become increasingly strong competitors in the future. In particular:
- 750.1 Simon Tong, then CEO of Fairfax, said “[online] video in particular is the fastest growing area of news consumption and so Television New Zealand and MediaWorks are very well placed as that part of the market grows”,⁵⁴⁵ and
- 750.2 Michael Boggs, CEO of NZME, said that video “is our fastest growing product ... so obviously we have got some key competitors in that space, television networks of Television New Zealand and MediaWorks”.⁵⁴⁶
751. These submissions suggest that online video is becoming increasingly substitutable for text-based online New Zealand news.
752. While we acknowledge that the consumption of video-based news may be growing, we do not consider that this is necessarily at the expense of text-based news. Rather, we consider that the growing ability for news publishers to create online video-based news is likely leading to increased consumption, rather than readers substituting from text-based news content for video-based news.
753. Our view is consistent with a recent report by the Reuters Institute which found that the growth of video is largely driven by “technology, platforms, and publishers rather than by strong consumer demand.” The report also notes that while video is a “powerful and compelling” way to capture some stories, text-based news content is still valuable for both “young and old” such that it is “hard to see video replacing text

⁵⁴⁵ Commerce Commission Conference (6 December 2016) transcript at page 6.

⁵⁴⁶ Commerce Commission Conference (6 December 2016) transcript at page 9.

in terms of the range of stories and the depth of comment and analysis traditionally".⁵⁴⁷

754. In any event, we do not agree with the Applicants' submissions that TVNZ and MediaWorks' are necessarily in an inherently stronger position than NZME and Fairfax for producing online video-based content. We note that both NZME and Fairfax have made significant investments in developing their video capability and do not appear to be in a weaker position to produce online video than competitors. This is reflected in this year's Canon Media Awards, where Fairfax and NZME make up 17 of the 20 videography finalists, with TVNZ not featuring (Newshub has three finalists).⁵⁴⁸
755. Our view is consistent with the Reuters Institute report which found that, in some cases, traditional TV news broadcasters have struggled to adapt to producing online video news content.⁵⁴⁹

Role of Facebook

756. The Applicants submitted that social media (Facebook in particular) has lowered the barriers to entry and/or expansion for rival publishers of online New Zealand news. Rival publishers therefore do not need to invest in their own brand and/or distribution platform as they will be able to reach a sufficient number of consumers of online New Zealand news through Facebook and so constrain the merged entity.
757. We acknowledge that social media is undoubtedly growing in influence in terms of how consumers access news. The Reuters Institute reports that "the biggest change in digital media has been the growth of news accessed via social media sites like Facebook, Twitter, Instagram, and Snapchat. In the United States, to take one example, the percentage of people saying they use social media as a source of news has risen to 46% of our sample – almost doubling since 2013".⁵⁵⁰
758. However, we do not accept that social media will lower the costs of entry and expansion sufficiently to overcome our view outlined above about the likelihood of entry and expansion and its extent and timeliness to counter a substantial lessening of competition. In particular, we are not satisfied that a rival publisher would likely enter and/or expand using Facebook as its key distribution platform to a sufficient extent that it would provide a significant constraint on the merged entity.
759. Facebook and other social media are not new phenomena. Facebook has been available since 2004. As such, TVNZ, MediaWorks and RNZ's expansion efforts online have been in an environment that has included Facebook.

⁵⁴⁷ Reuters Institute for the Study of Journalism "The Future of Online News Video: Digital News Project 2016" (2016).

⁵⁴⁸ <http://canonmediaawards.co.nz/winners-finalists/2017-finalists/>

⁵⁴⁹ Reuters Institute for the Study of Journalism "The Future of Online News Video: Digital News Project 2016" (2016).

⁵⁵⁰ Reuters Institute for the Study of Journalism "Reuters Institute Digital News Report 2016" (2016).

760. It is also of note that news content consumption via Facebook is still relatively low.^{551 552}
- 760.1 Recent Fairfax⁵⁵³ and NZME⁵⁵⁴ data show in the last year that, of the total page views derived from desktop browsers on stuff.co.nz and nzherald.co.nz, only []% and []% were by readers that were linked from Facebook, respectively. Whereas, in the case of stuff.co.nz, []% of page views were derived from consumers going directly to stuff.co.nz, and in the case of nzherald.co.nz, []%.
- 760.2 Similarly, in terms of the total time spent on nzherald.co.nz, only []% of that time was spent by desktop readers that were linked from Facebook. The vast majority ([]%) of time spent was spent by desktop readers that went directly to nzherald.co.nz.
- 760.3 In terms of mobile browsers, of the total time spent on the nzherald.co.nz mobile website, the majority ([]%) were direct browsers, and []% were derived from readers linked from Facebook. Similarly, in terms of total page impressions on the stuff.co.nz mobile website, the majority ([]%) were from direct browsers, and []%⁵⁵⁵ were derived from readers linked from Facebook.
761. We do not consider that these trends are likely due to the Applicants' passive use of Facebook. We note that both have been active in utilising Facebook to grow their audiences. For example, Fairfax has a []⁵⁵⁶ Similarly, NZME advised the Commission that it is focused on driving audiences to nzherald.co.nz, including via Facebook.⁵⁵⁷
762. Moreover, as indicated in the competition analysis section, the use of Facebook has not had a notable recent impact on the usage of 1newsnow.co.nz, newshub.co.nz and rnz.co.nz. The total page impressions and time spent on these websites have been relatively flat over the last year (see Figures 5 and 6).
763. The Applicants submitted that with the increased use of mobile devices, this will change. They indicated that Facebook is the key platform by which mobile readers consume news, and that consumption of online New Zealand news via mobile

⁵⁵¹ As we consider Facebook to be the most influential and popular social media platform in New Zealand, we see it as an appropriate proxy for the extent to which social media is impacting on the production of online New Zealand news.

⁵⁵² The remaining page views and time spent were linked from other websites, including from Google.

⁵⁵³ Annex 112 - Commerce Commission Audience data 09.02.17, contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 February 2017).

⁵⁵⁴ Annex 144 - Data for CC - Updated, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (14 February 2017).

⁵⁵⁵ Including Facebook Instant Articles.

⁵⁵⁶ [], contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (12 July 2016).

⁵⁵⁷ Email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

devices will continue to increase, meaning that Facebook will play an increasing role in how New Zealanders' consume news.⁵⁵⁸

764. We agree that readers are consuming an increasing amount of online New Zealand news via mobile devices. For nzherald.co.nz, between February 2016 and January 2017, monthly page views from mobile devices increased from [] million to about [] million, while views via desktop browser remained relatively stable around [] million page views.⁵⁵⁹ The metric we have available for stuff.co.nz is average daily page views rather than monthly, but it demonstrates an even greater growth rate for views via mobile devices on stuff.co.nz over that same period. Average daily page views via mobile devices on stuff.co.nz increased from [] (February 2016) to about [] (January 2017), while views by desktop browsers demonstrated a downward trend from about [] million daily views to about [] million over the same period.⁵⁶⁰
765. The portion of total page views derived from mobile browsers on stuff.co.nz and nzherald.co.nz (excluding apps) using Facebook were not inconsequential: []%⁵⁶¹ and []% were linked from Facebook, respectively. However, the majority of mobile page views came from mobile browsers going directly to stuff.co.nz and nzherald.co.nz.
766. However, we consider the growth of the use of mobile and the number of views stuff.co.nz and nzherald.co.nz derived from mobile browsers through Facebook links are not indicative of what a new entrant or an existing smaller player could expect to achieve. Growth in mobile device usage to obtain news services and the use of links on Facebook to stuff.co.nz and nzherald.co.nz do not assure the successful growth of the likes of Newsroom, Scoop, TVNZ, MediaWorks, RNZ and others.
767. News publishers can get a link to one of their articles on a Facebook user's feed in a number of ways, including:
- 767.1 a Facebook user posts a link to the news item such that it shows up on that person's friends' feeds;
 - 767.2 a Facebook user 'likes' a New Zealand news publisher and so will obtain news items in their feed from that news publisher (the news items made available to Facebook in that way is up to the news publisher); and
 - 767.3 the friends of a Facebook user who has liked a New Zealand news publisher will see this in their own feeds, and a general link to that news service provider (rather than, typically, a particular news item) will be provided.

⁵⁵⁸ Application at [6.28].

⁵⁵⁹ Annex 144 - Data for CC - Updated, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (14 February 2017).

⁵⁶⁰ Annex 112 - Commerce Commission Audience data 09.02.17, contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 February 2017).

⁵⁶¹ Including Facebook Instant Articles.

768. However, getting a link on Facebook is the necessary first step. It must also be clicked on.
769. Where a news publisher's links show up in a Facebook user's feed depends on Facebook's algorithm.⁵⁶² A change in the algorithm, which is at Facebook's discretion, can greatly impact the likelihood of news items being clicked on. For example, at the Conference Fairfax stated that "internationally, businesses that have been set up, risen to prominence on the back of Facebook's algorithm and then had their fortunes plummet when the algorithm changed."⁵⁶³
770. Changes in Facebook's algorithm, or approach to distribution of news, would be out of the control of a new or existing publisher looking to expand via Facebook. This would increase the risk of a new or existing publisher relying on Facebook as their key distribution platform.
771. As such, for Facebook to be a successful avenue for increasing a New Zealand news publisher's online viewers, the news publisher must still get Facebook users' attention and convince them to 'like' them, and then further convince them to click through to the news item, or get their attention to share a post. Noting that this is in an environment where the positioning and so the likelihood of click-through is at the discretion of Facebook.
772. Further, to date, Facebook has largely acted to expand a news publisher's viewership rather than replacing 'conventional' means through which online news is consumed. While Facebook referrals on mobile devices have grown, so have page views on mobile devices that go directly to nzherald.co.nz and stuff.co.nz (by []% and []% for nzherald.co.nz and stuff.co.nz, respectively, in the year to January 2017), and, as noted above, overall links through Facebook remain relatively small. This suggests that, for larger online New Zealand news publishers at least, conventional means of accessing consumers are important.
773. In keeping with this, are NZME and Fairfax's recent investments in their online websites.
774. In summary, the Commission considers that Facebook and other social media provide another avenue for promotion of any product, including those of New Zealand news publishers. However, given the trends we have observed and the risks and uncertainties inherent in relying on Facebook to distribute news, we are not satisfied that the role of social media is sufficient to change our view that the LET test is not likely to be met. In particular, we do not consider that entry or expansion would likely be sufficient in extent and timeliness to constrain the merged entity.

Conclusion on entry/expansion

775. We are not satisfied that entry and/or expansion by a competing producer of online New Zealand news is likely to be sufficient to constrain the merged entity from

⁵⁶² Fairfax "Response to NZCC RFI" (24 January 2017).

⁵⁶³ Commerce Commission Conference (6 December 2016) transcript at page 29.

exercising market power and prevent a substantial lessening of competition in the online New Zealand news market. In particular, the Commission considers that entry and/or expansion by a competing producer of online New Zealand news is unlikely to be sufficient in extent and would not occur in a timely fashion to constrain the merged entity.

776. Given our view on the insufficient constraints on the merged entity from existing or future competitors, as set out below, we considered whether the merged entity would have the ability and/or incentive to increase price and/or decrease quality of online New Zealand news.

Introduction of a paywall

777. The Commission has considered whether, in the absence of competition between the Applicants, the merged entity would be likely to increase the price of accessing online New Zealand news over and above what would be likely to occur without the merger. Such online payments are commonly referred to as paywalls.
778. We have adopted the term paywall for the purpose of our analysis; however, paywalls can take various forms. For example, a ‘soft’ paywall may be only over some content or it may be metered where payment is only triggered once a reader has viewed a certain number of articles. We could have similarly used the term ‘paid digital subscriptions’.
779. Further, the Commission acknowledges that paywalls are not necessarily detrimental and, faced with a continuing decline in print revenues, the Applicants may seek to rely on paywalls for some of their revenue without the merger.
780. Nevertheless, we are concerned that the proposed merger could allow the merged entity to introduce a paywall that is more expensive and/or restrictive than would otherwise be likely to occur without the merger. For example, a more restrictive paywall could cover more content and/or have a lower ‘metered’ amount.

The Applicants’ view

781. The Applicants asserted that consumers are unwilling to pay for online news and information and that the merger would not alter the constraints the Applicants have faced to date in implementing a paywall.⁵⁶⁴
782. The Applicants submitted that it is not competition between stuff.co.nz and nzherald.co.nz that has prevented either party from implementing a paywall. Instead, it is:⁵⁶⁵
- 782.1 the need for online news/information providers to attract attention to their content, via social media and other intermediated platforms, in a digital world where there is almost limitless competition for consumers’ attention (and also limitless competition for advertisers’ expenditure);

⁵⁶⁴ Application at [9.20] and Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [55(c)].

⁵⁶⁵ Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [54]-[59].

782.2 consumers unwillingness to pay for general news/information content in the context of significant competition; and

782.3 the two-sided nature of the market and the impact on advertising revenues from the introduction of any paywall and, therefore, the inevitable and significant reduction in readers that would result.

783. Despite these submissions, NZME told the Commission that it does “[]”, but has “[]”.⁵⁶⁶

The Applicants’ internal documents

784. The Applicants’ internal documents show that [].

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⁵⁶⁶ Commerce Commission interview with NZME (7 March 2017).

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795. In response to these documents, NZME submitted

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Fairfax

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]. Fairfax made this decision as it considered that the potential revenue that could be generated from a paywall was too low in relation to the advertising revenue that would be put at risk.⁵⁸⁴

⁵⁷⁷ [

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⁵⁷⁸ Annex 122 - FY17 Strategy Overview and High Level Budget Summary (12 October 2016) contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁵⁷⁹ Editorial Development Programme - Project Noah CMS Proposal (29 July 2016) contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁵⁸⁰ RM.003.00004 (23 August 2016) contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (23 February 2017).

⁵⁸¹ RM.003.00005 (12 December 2016) contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (23 February 2017).

⁵⁸² Email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (22 February 2017).

⁵⁸³ Annex 11 - Fairfax Media - Project 'Nirvana' Research (14 December 2012), contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (7 July 2016).

⁵⁸⁴ Commerce Commission Conference (6 December 2017) transcript at page 36.

798. []”⁵⁸⁵

The Commission’s view

799. The Applicants submitted that readers are unwilling to pay for the New Zealand news that they currently publish online. They supported this submission by claiming that paywalls introduced overseas have been unsuccessful.⁵⁸⁶ However, NZME also indicated that []⁵⁸⁷

800. Notwithstanding the success or otherwise of paywalls overseas, we have assessed the likelihood of some form of paywall in relation to the market dynamics and competitive constraints in New Zealand based on the evidence before us, including evidence from [].

801. Given the Applicants’ submissions, and the contribution that a paywall could make to the Applicants’ falling revenues, the Commission has focused its analysis on whether the merged entity would be likely to introduce a paywall that is more expensive and/or more restrictive than a paywall/s that could be introduced by the Applicants without the merger.

802. [] and the lack of constraint that would be provided by existing and potential competitors post-merger, we consider that the merged entity would have, or would be likely to have, the incentive and ability to introduce some form of paywall post-merger. We consider that this paywall would likely be more expensive and/or restrictive than a paywall/s that could be introduced by either of the Applicants without the merger.

803. The Commission’s view is that both NZME and Fairfax have currently decided against introducing some form of paywall primarily because of the threat of readers switching to their competing online news websites and the risk of putting advertising revenue at risk.

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⁵⁸⁵ Annex 16 - Fairfax New Zealand. Strategic Plan FY15-FY17 (28 May 2014), contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (7 July 2016).

⁵⁸⁶ Application at [9.24]; Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [281].

⁵⁸⁷ Email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (22 February 2017).

806. [].⁵⁸⁸ In addition, Fairfax’s internal documents noted that “digital opportunities” in New Zealand are different than in Australia, including that “penetration by international sites is not as significant in NZ as that seen in Australia”.⁵⁸⁹
807. The Applicants have not disputed the Commission’s [], rather they submitted that the Commission should instead focus on Fairfax’s paywall experience in Australia, []”.⁵⁹⁰ That model indicated that revenue derived from a paywall would be outweighed by the risk of a loss of advertising revenue.⁵⁹¹
808. Other than this assertion, the Applicants have not provided any evidence to suggest that []. Further, we observe that []. We also note that the dynamics of the Australian market may be different to New Zealand, as Fairfax has acknowledged.⁵⁹²
809. The Applicants submitted that the two-sided nature of the market means that the merged entity could not institute a paywall because any revenue generated from the paywall would be outweighed by the loss of readers and, therefore, advertising revenue.⁵⁹³ The Commission acknowledges that the two-sided nature of the merged entity’s online platforms could provide some degree of downward pressure on the price and/or restrictiveness of a paywall.
810. However, we consider that in the absence of competition from Fairfax, the merged entity would be likely to introduce some form of paywall. We consider that the merged entity would likely have the ability to do this without losing a disproportionate amount of advertising revenue through a loss of readers. In particular, because we do not consider that other existing and/or future publishers of online New Zealand news would likely be sufficiently close substitutes for readers.
811. We acknowledge that smaller competitors that publish particular types of news content, such as nbr.co.nz (business news), might provide some constraint over the type of content that the merged entity would likely put behind a paywall. However, given the size of the merged entity’s newsroom relative to other competitors (including smaller competitors), we consider that the merged entity would be able to

⁵⁸⁸ Annex 11 - Fairfax Media - Project 'Nirvana' Research (14 December 2012), contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (7 July 2016).

⁵⁸⁹ Annex 16 - Fairfax New Zealand. Strategic Plan FY15-FY17 (28 May 2014), contained in a letter from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (7 July 2016).

⁵⁹⁰ Fairfax /NZME “Factual Submission on Draft Determination” (25 November 2016) at 277.

⁵⁹¹ Commerce Commission Conference (6 December 2017) transcript at page 36.

⁵⁹² Annex 16 - Fairfax New Zealand. Strategic Plan FY15-FY17 (28 May 2014), contained in a letter from Russell McVeagh (on behalf of Fairfax) sent to the Commerce Commission (7 July 2016).

⁵⁹³ We discuss the two-sided nature of the market in more detail in the following section on quality.

provide unique content (as both Applicants currently do) that some readers would be prepared to pay for.

812. Further, our view is that introducing some form of ‘soft’ paywall (such as a metered paywall), potentially over one of stuff.co.nz or nzherald.co.nz, would likely minimise the loss of readers and, therefore, advertising revenue. For instance, by leaving one website ‘free’ the merged entity would likely be able to capture a number of readers that decide to switch from the website with the paywall. As such, while there may be a reduction in total page impressions, this may have little negative impact on advertising revenue as long as the merged entity did not suffer material loss in its overall reach, which is one of the key attributes sought after by advertisers.
813. Based on the Applicants’ own documents and the lack of constraint that would be provided by existing and potential competitors post-merger, we are not satisfied that the merged entity would not be likely to introduce some form of paywall post-merger. We consider that this paywall would be likely to be more expensive and/or restrictive than a paywall/s that could be implemented by NZME and/or Fairfax without the merger.
814. Therefore, having regard to the potential price impacts of the merger, the Commission is not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the online New Zealand news market.

Reduction in quality

815. Having determined that the Applicants are each other’s closest competitors in the market for online New Zealand news and that existing and/or future rival publishers are unlikely to constrain the merged entity, we have assessed what impact competition between NZME and Fairfax has on the quality of the online New Zealand news that is produced. In carrying out this assessment, we considered how quality could be impacted over the next two years using the relevant with and without the merger scenarios as described in the counterfactual section.
816. For the reasons discussed in this section, we are of the view that competition between NZME and Fairfax is a substantial driver of the quality of online New Zealand news. As such, we are not satisfied that the proposed merger would not have, or would not be likely to have, the effect of substantially lessening competition in the online New Zealand news market.
817. In forming this view, we considered the two-sided nature of the market, but we are not satisfied that this feature of the market is likely to provide a sufficient constraint on the merged entity from substantially reducing the quality of online New Zealand news.
818. Lastly, the Commission acknowledges the Applicants’ submission that the merger will increase the quality of news through the effective redeployment of duplicative editorial resources.

819. We recognise the possibility that this redeployment could offset the detriments that arise from a reduction in the quality of online New Zealand news to at least some degree. As this claim is a dynamic efficiency that would result from the proposed merger, we have addressed this submission in the Benefits and Detriments section.

What is quality?

820. Assessing the quality of news content in reader markets presents several challenges. Unlike for some other products or services, news content cannot be easily assessed based on factors like product reliability or timeliness of service. Subjective opinions on the quality of news will vary across readers.

821. This is consistent with the Applicants' submissions. While the Applicants have claimed that the merger will increase quality, they acknowledged that they "cannot quantify those benefits", rather, their assessment is purely qualitative.⁵⁹⁴ This view was shared by NERA which noted that "the dimensions of quality can be wide ranging, particularly in regards to news content, and this can make assessing quality changes difficult and subjective".⁵⁹⁵

822. With the exception of public service broadcasters, decisions around the presentation style and content covered by news media organisations are typically made in an attempt to attract the most readers so as to provide access to these readers for advertisers. This was recognised by NERA. In response to third party submissions suggesting that news that covers "click-bait" topics is of lower quality, NERA submitted that "from a competition economics perspective, quality is what makes a product attractive to consumers".⁵⁹⁶

823. The Commission makes no judgement as to how individual news media organisations attempt to profitably attract readers. What the Commission is interested in is assessing is how decisions made by the merged entity could be affected by the proposed merger to the detriment of the quality of the online New Zealand news market.

824. We consider that there are a number of dimensions of quality that are of value to readers. Changes in some of these dimensions of quality may be more apparent to readers than others. These dimensions relate to both the quality of news content and the presentation and delivery of news content to readers.

825. In terms of online New Zealand news content, we consider that the dimensions of quality include:

825.1 coverage of important and relevant news topics;

825.2 coverage of a variety of perspectives, opinions and viewpoints on common news topics;

⁵⁹⁴ Application at [20.8]-[20.9].

⁵⁹⁵ Application Appendix 13 at 26.

⁵⁹⁶ NERA "Response to SOPI Submissions" (29 July 2016) at 2.

- 825.3 in-depth analysis and investigation; and
- 825.4 timely and accurate reporting.
826. In terms of the presentation and delivery of online New Zealand news, we consider that the dimensions of quality include:
- 826.1 the design and format of the online platforms; and
- 826.2 inventive ways of presenting individual stories.
827. The Applicants' submissions have been consistent with these dimensions of quality. In suggesting that the proposed merger would increase quality, the Applicants and NERA submitted that:
- 827.1 the merged entity would increase quality by providing a greater variety and diversity of news content, which includes the need for the merged entity to "engage consumers from across the spectrum of views,"⁵⁹⁷ and
- 827.2 journalistic quality includes "accuracy, objectivity, analysis and investigation".⁵⁹⁸
828. We consider that competition between journalists is likely to improve the quality of reporting, analysis and investigation undertaken to produce a story, including the time taken to publish stories, the accuracy of the reporting and the coverage of particular stories.
829. We consider that competition between news media organisations is likely to encourage decisions which increase the quality of online New Zealand news. These decisions are made at both an editorial level and a corporate level.
830. In terms of decisions made at an editorial level, we consider that competition drives news media organisations to produce news that is higher quality than their competitors. For example, by being the first to break a new story or by digging deeper to find new angles or information on an existing story.
831. In terms of decisions made at a corporate level, we consider that competition can have an impact on news media organisations' decisions around resourcing and investment which can, in turn, affect the quality of online New Zealand news. For example, the level of investment in editorial resources and innovation.
832. With these dimensions of quality in mind, we have assessed what impact the loss of competition between NZME and Fairfax would be likely to have on the quality of online New Zealand news.

⁵⁹⁷ Application at [20.17].

⁵⁹⁸ Application at Appendix 13.

The Applicants' views

833. The Applicants submitted that the merged entity would not be commercially incentivised to reduce the quality of online New Zealand news as this would lead to readers switching to alternative news websites. In particular, the Applicants stated that the merged entity would not risk doing anything that might reduce the “attractiveness, range, or reach of its product” given the two-sided nature of the market.⁵⁹⁹
834. In addition, the Applicants submitted that the proposed merger would increase quality as the merger would reduce duplication between NZME and Fairfax’s journalists, allowing them to “invest in better quality journalistic content and greater breadth of coverage” to the benefit of competition.⁶⁰⁰ Moreover, the Applicants considered that the merger would allow for greater investment in journalist training and enhanced investigative resources, which would lead to better quality journalism.⁶⁰¹
835. The Applicants also submitted that it is not competition between NZME and Fairfax that produces quality news content; rather that ‘internal plurality’ ensures that editorial resources act independently to produce high quality content, regardless of the external competition faced.⁶⁰² The Applicants submitted that the Press Council and their own internal codes of ethics are key safeguards to ensuring that internal plurality would continue post-merger and, therefore, protect the quality of news that is produced.⁶⁰³
836. The Commission received a number of submissions from current editors of NZME and Fairfax supporting the Applicants’ submission that internal plurality exists. In particular, these editors suggested that, regardless of competition faced, professional integrity dictates that editors would continue to make independent editorial decisions and produce stories that are accurate and objective and contain high quality analysis and investigation.

The Applicants’ submissions on the effect of the two-sided market on quality

837. The Applicants submitted that the merged entity would have no incentive to reduce the quality of news produced. This is because a reduction in the quality of news would risk losing audiences and, therefore, risk losing advertising revenue.
838. As an example, the Applicants said that “the adoption of a political bias would simply result in consumers that disagree with that bias switching to any of the alternative news / information sources available, eroding audience levels and ultimately advertising revenue.”⁶⁰⁴

⁵⁹⁹ Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [33].

⁶⁰⁰ Application at [20.8]; Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [34].

⁶⁰¹ Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [37].

⁶⁰² Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [180(a)].

⁶⁰³ NZME/Fairfax “Cross Submission to NZCC” (5 December 2016) at [42].

⁶⁰⁴ Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [46].

839. Rather, the Applicants submitted that the merged entity would be “incentivised to increase the number of unique views, regardless of the number or extent of competitors that they face, as they need to attract consumer attention to drive advertising revenue ... which therefore incentivises them to produce quality content that appeals to as many consumers as possible.”⁶⁰⁵
840. The Applicants also submitted reports from NERA and Professor Randal C. Picker of the University of Chicago.⁶⁰⁶
841. In its report, NERA submitted that this incentive is particularly strong given the increasing competition for advertising from Google and Facebook means that that there is even stronger pressure on news media to maintain quality and lower prices to attract audience attention.⁶⁰⁷
842. In relation to the issue of whether the cost savings that could arise from reducing the quality of content would be sufficiently large to offset any subsequent reduction in advertising revenue from reduced consumption by readers, NERA stated that this “is ultimately an empirical question”.⁶⁰⁸
843. NERA put forward several reasons why any such cost-reducing quality reductions are unlikely to be profit maximising. These include their view that there are high fixed costs associated with news media businesses which means that such firms would be sensitive to losses in advertising revenues. NERA also pointed to evidence that both NZME and Fairfax are concerned with growing their audiences which is consistent with the academic literature suggesting that the cross platform externality from readers to advertisers is relatively strong.⁶⁰⁹
844. NERA also pointed to the behaviour of newspapers that have regional monopolies on the reader side of these two-sided platforms. NERA referred to empirical evidence from a study of prices for various newspapers in Australia in the 1990s that indicated that those that had reader-side monopolies were no less constrained than those that faced a competing publication.⁶¹⁰
845. NERA also pointed to the ACCC’s recent decision in relation to Seven West Media’s acquisition of certain media assets held by News Limited in Western Australia. In this

⁶⁰⁵ Application at [20.6].

⁶⁰⁶ Randal C. Picker “Commentary on News Media Quality Issues in Fairfax/NZME Proposed Acquisition” (15 October 2016), attached to a submission from Russell McVeagh (on behalf of the Applicants) (October 2016); “Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition” (25 November 2016), attached to a submission from Russell McVeagh (on behalf of the Applicants) (November 2016); Application at Appendix 13; NERA “Review of Draft Determination” (25 November 2016), attached to a submission from Russell McVeagh (on behalf of the Applicants) (November 2016).

⁶⁰⁷ NERA “Review of Draft Determination” (25 November 2016) at [33].

⁶⁰⁸ Ibid at [31].

⁶⁰⁹ Ibid at [31]-[33].

⁶¹⁰ Ibid at [32].

case, the ACCC acknowledged the constraint from the two-sided nature of media platforms.⁶¹¹

Current and former editors and journalists

846. E tū journalists gave insights into the competition between journalists from competing news media organisations. They described that, journalists “being generally competitive people, want to scoop the opposition, and they are embarrassed if the opposition scoops them”. This competition leads journalists to compete to find stories and new information that may not otherwise have been gathered without the presence of competition.⁶¹²

847. E tū journalists gave examples of where the level of competition influences journalistic production:

My comments are predicated on the undeniable fact that journalists produce their best work when in a competitive environment. Once the element of competition is removed, the tendency is for journalists to slip into “cruise” mode. That is a natural human reaction and there are countless examples in New Zealand journalism. In Wellington I worked at various times for The Evening Post and The Dominion and there is no doubt we worked better and were more driven when we had an opposing newspaper. In more recent years it was evident to me that reporters on The Dominion Post (a combination of the two newspapers) suffered because of the removal of that element of competition. The public therefore suffered too – it was receiving only one version of significant stories, or sometimes no version at all.⁶¹³

... I occasionally cover [Select Committee Hearings] and one of the considerations my Board will want to know is were any other media there. And if not, then the tendency will be not to cover the meeting immediately. And possibly hold the material for later use.⁶¹⁴

848. The E tū journalists acknowledged that the competitive nature of journalists can also extend to internal competition within organisations, for example journalists within one organisation may compete with each other to be the first to publish a story. However, they did not consider that internal competition would be sufficient to outweigh the loss of competition between external publishers.⁶¹⁵

849. The E tū journalists were also concerned that as advertisers become more powerful they will be able to dictate what news is covered and what is not. Conversely, E tū also noted that one “commercial player” was worried that if the merged entity wrote a damaging article about it, then it would be unable to go to a rival to tell its side of the story.⁶¹⁶

⁶¹¹ NERA “Review of Draft Determination” (25 November 2016) at [34].

⁶¹² Submission from E tū to the Commerce Commission (5 July 2016) at 2.

⁶¹³ Ibid at 13.

⁶¹⁴ Commerce Commission interview with E tū (2 August 2016).

⁶¹⁵ Ibid at 2.

⁶¹⁶ Commerce Commission interview with E tū (2 August 2016).

850. A former editor of Fairfax shared the view that competition between journalists improves the quality of reporting, noting:⁶¹⁷

Over my entire career the one thing that has been the spur, the challenge, to great journalism has been competition. The fear that somebody would get a story that you should have got and that's a huge powerful force to make you do better. And so when I read of the intention to merge the organisations, I just thought "heavens we're going to lose a lot".

851. In terms of the effect that competition may have on editorial decision making, the current editors of NZME and Fairfax submitted that an important role of an editor is to make decisions about what stories to cover and what stance to take on particular issues. In making these decisions, editors seek to attract readers by meeting their preferences. As noted, the Group Editor of Fairfax submitted that NZME and Fairfax are "very much competing for traffic and resulting revenues and it would not make sense for one to simply mirror the other".⁶¹⁸

852. These views were supported by Sinead Boucher, Group Executive Editor of Fairfax, and Shayne Currie, Managing Editor of *The New Zealand Herald*. Ms Boucher submitted to the Commission that "an editor's role is to encourage and source the widest possible range of voices, opinions and perspectives for his or her audience."⁶¹⁹ Mr Currie added that "if we believe a columnist from an opposition media company has presented a newsworthy view, we will sometimes pick this up as a news story and try to expand on it. The success or otherwise of a columnist's work comes down to audience numbers, engagement and feedback."⁶²⁰

853. Mr Currie provided a number of examples of where *The New Zealand Herald* has chosen to take a particular stance/angle on an issue:⁶²¹

In reality, the newspaper takes an editorial stance on an issue-by-issue basis – and after thoughtful consideration and debate among senior editors. We have, for example, in recent weeks, supported Helen Clark's bid for the United Nations top role and the Unitary plan for Auckland (with tweaks); criticised the Reserve Bank's monetary policy; supported more liberal liquor laws and light-rail to Auckland Airport; and we have been critical of the Government's "piecemeal" approach to housing, refugees and the care of the mentally ill.

854. The current NZME and Fairfax editors also submitted that they make their decisions independently, free from any influence from ownership. One current Fairfax editor noted "there is no single voice or line dictated across the company ... if we were to sing from the same song sheet, it would be a complete turn-off to our readers and our advertisers".⁶²²

⁶¹⁷ Commerce Commission interview with Clive Lind (20 December 2016).

⁶¹⁸ Submission from John Crowley to the Commerce Commission (25 November 2016) at 3.

⁶¹⁹ Submission from Sinead Boucher to the Commerce Commission (25 November 2016) at 6.

⁶²⁰ Submission from Shayne Currie to the Commerce Commission (28 November 2016) at 5.

⁶²¹ Ibid at 4.

⁶²² Submission from Bernadette Courtney to the Commerce Commission (21 November 2016) at 4.

855. The former editors of NZME and Fairfax observed that the role of an editor is to decide on the editorial approach that best meets the demands of readers. These former editors also noted that, in their experience, editors generally make independent decisions and take internal codes of conduct seriously.⁶²³
856. That said, these former editors were of the view that the loss of competition between NZME and Fairfax would reduce the merged entity's incentive to invest in editorial and journalistic resources. They considered that the loss of competition would result in rationalisations of editorial and journalistic resources post-merger. The former editors considered that such rationalisations would have a significant effect on the quality of New Zealand news as there would be a reduction in the range of news and perspectives available to the public.⁶²⁴
857. Although the former editors were of the view that internal codes of conduct are taken seriously by editors and journalists alike, they noted that there are limitations to what they protect. In particular, they said that internal codes of conduct only cover ethical considerations, such as the way in which journalists should behave, but do not dictate the editorial decisions about what stories to cover or what stance to take on a particular issue.⁶²⁵
858. Similarly, the former editors were of the view that the Press Council was limited as to what it could protect. For example, while the Press Council helps to ensure that news items are fair and based on fact, it cannot govern what stories or stance on an issue an editor chooses to cover.⁶²⁶

Competitors' views

859. TVNZ, MediaWorks and RNZ advised that one key source of news comes from monitoring competing New Zealand news websites, in order to provide a different angle/viewpoint in order to attract audiences. TVNZ advised that it "lives and breathes" other news websites for ideas for stories, looking at "what angles do we have or don't we have that they may have, so that happens every minute".⁶²⁷
860. Similarly, MediaWorks said that it routinely monitors NZME, Fairfax, TVNZ and RNZ and will follow up with their own leads on stories that are of interest. MediaWorks explained that it is able to confidently monitor these websites as it knows that the stories will be credible and fact-checked. MediaWorks said that it monitors NZME and Fairfax the most often given the large number of reporters they have.⁶²⁸
861. MediaWorks described this as the 'eco-system' of news, where the different media companies "feed and prompt each other into covering stories". In its view, the

⁶²³ Commerce Commission interviews with Gavin Ellis (21 December 2016) and Clive Lind (20 December 2016).

⁶²⁴ Commerce Commission interviews with Gavin Ellis (21 December 2016) and Clive Lind (20 December 2016).

⁶²⁵ Commerce Commission interview with Gavin Ellis (21 December 2016).

⁶²⁶ Commerce Commission interview with Gavin Ellis (21 December 2016).

⁶²⁷ Commerce Commission interview with TVNZ (14 October 2016).

⁶²⁸ Commerce Commission interview with MediaWorks (13 October 2016).

merger would result in fewer stories being generated leading to a reduction in the quality of news produced across the ‘entire eco-system’, as there would be fewer journalists “making calls, banging on doors, ... checking sources.”⁶²⁹

862. MediaWorks said that the merged entity would face less competitive pressure to invest in journalists, resulting in a reduction in the quality of content that is published.⁶³⁰ Similar views were shared by RNZ. Also referring to the news ‘eco-system’, RNZ said that there was a risk that the merger would result in fewer angles being covered as a result of a reduction in competition.⁶³¹
863. MediaWorks also considered that the need for media diversity is “particularly true” in New Zealand, where relationships with commercial organisations can have a “significant impact on a media players’ advertising revenue.”⁶³²

Interested parties

864. Corporate advertisers, which are often the subject of news stories produced by news media organisations, provided the Commission with examples of how competition can lead to a greater variety of viewpoints being produced and potentially more quickly than would otherwise occur without competition.
865. [] said that competition between media firms creates “tension” between different media outlets competing to tell a story first. In terms of positive public relations, [] said the merger would reduce this competitive tension and potentially have a negative effect. Conversely, [] said that there would be “one less person digging around” in the event that a [] mistake led to potential negative public relations, so this would be an offsetting positive effect of the merger from [] perspective.⁶³³
866. [] explained that its “biggest concern” with the merger was that any negative stories about [] would only be covered by one editorial voice. It said that the merger would reduce the ability for companies to tell their side of the story. [] explained that “at the moment you could then go to the other paper and give your side of the story, whereas if you take that option out, where else have you got to go and who’s held accountable? Because the editors aren’t held accountable.”⁶³⁴
867. Likewise, [] was concerned that the proposed merger would remove any “counter-balance” between NZME and Fairfax. [] gave an example of the media’s reaction to it []. [] said that Fairfax “held on to

⁶²⁹ Commerce Commission interview with MediaWorks (13 October 2016).

⁶³⁰ Commerce Commission interview with MediaWorks (29 June 2016).

⁶³¹ Commerce Commission interview with RNZ (12 July 2016).

⁶³² Submission from MediaWorks to the Commerce Commission (30 September 2016) at [6.2].

⁶³³ Commerce Commission interview with [] (13 September 2016).

⁶³⁴ Commerce Commission interview with [] (23 September 2016).

the story for weeks” whereas other media publishers tended to show a different side to the story.⁶³⁵

868. Similar to some large advertisers, Trade Me considered that competition between NZME and Fairfax leads to its press releases being more widely covered by the media than they otherwise would be without competition.⁶³⁶ Trade Me has also offered exclusive rights to reports it produces to either Fairfax or NZME before they are made public. On these occasions NZME and Fairfax effectively compete with each other to offer the greatest coverage of Trade Me’s information and the associated press release.

The Commission’s view

869. To assess the Applicants’ submissions, the Commission considered whether the merged entity is likely to have the ability and incentive to decrease the quality of online New Zealand news that is likely to be produced following the merger. In doing so, the Commission considered the views of competitors, current and former journalists and editors of NZME and Fairfax and academics.
870. As described above, the Commission considers that NZME and Fairfax are each other’s closest competitors in the production of online New Zealand news. We consider that competition between the Applicants leads them to produce higher quality online New Zealand news than would be likely to exist in the absence of this competition.
871. As set out in our description of quality, we consider that quality is impacted by both the quality of the news itself and the quality of how that news is presented. We are of the view that competition from competing news media organisations is likely to encourage decisions that increase the quality of online New Zealand news. This includes both decisions made at an editorial level and at a corporate level.
872. To assess the effect of the proposed merger on quality, we have first assessed the impact of competition on decisions made at an editorial and journalistic level. In particular, the likely effect that competition between NZME and Fairfax has on the day-to-day quality of news that is produced.
873. Secondly, we have assessed the impact of competition on decisions made at a corporate level. In particular, the likely effect that competition between NZME and Fairfax has on the:
- 873.1 investment in editorial resources;
 - 873.2 investment in how news is delivered to readers; and
 - 873.3 variety and diversity of editorial approaches.

⁶³⁵ Commerce Commission interview with [] (28 June 2016).

⁶³⁶ These releases relate to data held by Trade Me which may be of general news interest and/or specific interest to the business community. For example, data relating to the employment and property markets.

874. Having reached the view that the proposed merger would be likely to result in a reduction in the quality of online New Zealand news, we have gone on to assess whether the Press Council and/or the Applicants' own internal codes of ethics would be a sufficient constraint to alleviate any concerns we have.
875. Finally, we address the Applicants' submissions in relation to the constraint from the two-sided market. For the reasons below, we consider that the two-sided nature of the market is not a sufficient constraint to alleviate our concerns.

Effect of competition on day-to-day reporting

876. We consider that competition can and does increase the quality of reporting, analysis and investigation undertaken to produce a story, including the time taken to publish stories and the accuracy of the reporting.
877. This is consistent with the Applicants' own internal documents which suggested both NZME and Fairfax are striving for reader's attention. For example, an internal NZME strategy document from March 2016 indicated that NZME is []".⁶³⁷ We consider these are dimensions of quality.
878. This is consistent with comments made by Shayne Currie at the Conference that NZME "are trying to get new angles all the time and develop the story and keep it fresh as possible" and that "the digital audience is looking for fresh angles".⁶³⁸ NZME also employ significant resources to break stories and develop new angles, highlighting the importance of these aspects of quality to readers. In terms of the Auckland newsroom, Mr Currie estimated that half of NZME's Auckland newsroom work on breaking news and developing new angles.⁶³⁹
879. Competing news media organisations confirmed that rival publishers compete with each other to break news stories and report news angles or new pieces of information on existing stories. This competition was referred to as the 'eco-system' of news, which results in competing news media feeding off of each other to develop more detailed stories.⁶⁴⁰ We consider that this competition is likely to increase the quality of online New Zealand news, as news media organisations face increased competitive pressure to beat their rivals to a new story or a new piece of information or analysis, for example.
880. We also consider that the competition can act as a check-and-balance on the accuracy and objectivity of reporting. We are of the view that mistakes or one-sided views are more likely to be picked up when there is strong competition from competing online New Zealand news producers.

⁶³⁷ [] (March 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁶³⁸ Commerce Commission Conference (7 December 2016) transcript at page 35.

⁶³⁹ Commerce Commission Conference (7 December 2016) transcript at page 53.

⁶⁴⁰ Commerce Commission interview with MediaWorks (13 October 2016).

881. Given that the proposed merger will remove competition between the two largest online news publishers within New Zealand's 'eco-system' of news, we consider that there is a real chance that the merger would result in a substantial reduction in the quality of online New Zealand news available to readers.
882. For example, in the absence of competition from Fairfax, NZME is less likely to have an incentive to 'dig deeper' to find a new piece of information or a 'fresh' angle if there is less pressure that a rival publisher will beat them to that information or angle. Similarly, the proposed merger is likely to reduce the incentive on the merged entity to find and report stories as quickly as would occur without the merger.
883. As the 'eco-system' of news flows beyond just online New Zealand news, we consider that the reduction of competition between the two largest producers of online New Zealand news could have flow-on effects to the quality of New Zealand news that is available in general (regardless of the method of distribution). There will be fewer stories for other companies, like MediaWorks and TVNZ, to 'build off'.
884. In response to similar concerns that were in the Draft Determination, a number of the Applicants' current editors and journalists submitted that competition from other media organisations plays no role in the quality of their work. Rather, quality is derived from their own professional integrity and work ethic.
885. While we acknowledge these views and accept that journalists and editors are driven by the sense of professional standards, we remain of the view that competitive pressure is material in driving the quality of news that is produced.
886. Furthermore, these submissions seem to imply that all journalists produce work that is of equal quality. However, we are of the view that different journalists inevitably produce content of differing quality.⁶⁴¹ This is likely reflected in the difference in salaries that the Applicants' pay their journalists.
887. In response to a reduction in competition and, therefore, less competitive pressure to attract audiences, we consider that the merged entity would be likely to have less incentive to invest in editorial resources. We consider that this would be likely to include not only the number of journalists hired, but that the merged entity could also reduce the amount it invests in journalism and/or invests in journalist training. Such decisions may not affect the volume and variety of stories produced, but could reduce the quality of article, for example, a journalist may be given less training or less resources for in-depth analysis, such as travel expenses.

Effect of competition on investment in editorial and journalistic resources

888. Competitors highlighted the expense associated with producing online New Zealand news. Given the magnitude of these costs, the Commission's view is that it is likely that the merged entity would respond to the reduction in competition by reducing

⁶⁴¹ This is consistent with []. Annex 25 - Briefing Paper APN v FXJ in New Zealand - website, content coverage capability (3 July 2014), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (12 July 2016).

costs in a manner that is likely to negatively affect the quality of New Zealand news that would be produced without the merger.

889. Consistent with this view is the Applicants' suggestion that the merged entity would be able to achieve efficiencies by
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890. In addition,
[

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891. For example, Ms Boucher publically stated that "my own job would be one most at risk, as a merged company could only have one editorial chief".⁶⁴⁴ Similar views were submitted by Mr Currie. In the same submission, Mr Currie also noted that he has ultimate responsibility for NZME's editorial resources, including working with other senior editors to decide the editorial stance taken by the *New Zealand Herald* on an issue by issue basis.⁶⁴⁵

892. Further, the Commission considers that
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[]⁶⁴⁷

[

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893. For instance,
[

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[

⁶⁴² Application Appendix 14 at 6-8.

⁶⁴³ Ibid at 10; Email from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (27 April 2017).

⁶⁴⁴ Submission from Sinead Boucher to the Commerce Commission (25 November 2016).

⁶⁴⁵ Submission from Shayne Currie to the Commerce Commission (28 November 2016).

⁶⁴⁶ Email from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (27 April 2017).

⁶⁴⁷ Application Appendix 14 at 1.

⁶⁴⁸ Ibid at 6.

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894. We consider that the reductions of editorial staff are likely to have a significant effect on the quality of online New Zealand news that would be produced with the merger. We are of the view that NZME and Fairfax currently compete to invest in and deploy their editorial resources in a manner which they consider will best attract readers of online New Zealand news. This involves editors allocating resources to produce news that is varied in terms of the topics that are covered and the perspectives and viewpoints discussed.
895. We consider that competition between the Applicants and the different views and experiences of NZME's and Fairfax's editors leads them to making different decisions as to how to best attract audiences. Further, readers benefit from this competition as it results in a larger variety of news topics and different perspectives on the same stories being available to readers.
896. Editors are also responsible for the placement and prominence of selected stories. Given that there is likely to be different editorial perspectives regarding what stories to give prominence, we consider that competition between editors is likely to improve the quality of online New Zealand news as a greater variety of stories are promoted to readers.
897. Given these different perspectives, we consider that a rationalisation of editorial roles due to a reduction of competition is likely to result in a degradation of quality of news produced by the merged entity, as there would be reduction in the variety of editorial decision-making. In particular, there is likely to be a concentration of editorial opinions around what topics to cover and what stance, angle or perspective to write on particular issues and what stories are given prominence.
898. Furthermore, we consider that the reduction in competition as a result of the merger and the desire to reduce costs is also likely to result in a reduction in the number of journalists. A rationalisation of journalistic resources (including journalists, reporters and columnists) that are responsible for writing news stories is likely to have the effect of reducing the volume and variety of online New Zealand news that would be likely produced without the merger.
899. Given that there are constraints around the number of stories that an individual journalist can produce,⁶⁴⁹ a reduction in the number of journalists hired by the merged entity is likely to have the effect of reducing the volume of stories that are available to readers. We consider a reduction in volume of stories is also likely to reduce the variety of online New Zealand news to the degradation of quality.
900. We accept the Applicants' evidence and submissions that NZME and Fairfax's journalists are, by and large, different – even when reporting on the same subject matter – and provide readers with different information which increases the variety of news available to readers. As described by Fairfax's Group editor "it would not

⁶⁴⁹ For example, time.

make sense for [NZME and Fairfax] to simply mirror the other”.⁶⁵⁰ This is also consistent with the fact that 87.5% of nzherald.co.nz readers also visit stuff.co.nz. We would not expect this if both companies were producing the exact same news and perspectives.

901. The Applicants’ submissions have been consistent with this view. The Applicants submitted that “as individuals, every journalist writes from a different perspective, shaped by his or her own personal set of experiences and ideologies. There are as many different views as there are journalists within an organisation.”⁶⁵¹
902. Even in relation to “commodity news” (a term used by the Applicants to cover news stories that are “freely and easily available to any media organisation”), the Applicants submitted that a news media organisations’ competitive advantage is in the “speed to publish and quality of writing and presentation”.⁶⁵² This indicates that competition encourages the timely production of high quality online New Zealand news, even if it covers a “commodity news” topic.
903. We consider that an important means by which NZME and Fairfax’s online New Zealand news is differentiated comes from individual journalists competing to apply their own judgement and interpretations when writing about a given news event. For example, judgements around what information or perspective a journalist considers to be relevant for a particular article. We accept the Applicants’ submission that these judgements may differ for a number of reasons, including the prior experience or beliefs of a particular journalist.⁶⁵³
904. We consider that these differences are valued by readers and that the Applicants are likely to produce a greater variety of stories without the merger.
905. We acknowledge that in the without the merger scenario the Applicants may retrench from certain publications and, therefore, could hire fewer journalists and editors. However, we consider that competition between NZME and Fairfax is likely to lead to each of them retaining journalists, resulting in significantly more variety and perspectives than would occur with the merger.

Effect of competition on investment and innovation in the presentation of online New Zealand news

906. In addition to the impact that competition has on the quality of news content that is produced, we are also of the view that competition is likely to lead to greater investment and innovation in the way that online news content is presented to readers. This includes investments in website development and investment in how stories are delivered to readers. We are of the view that these sorts of investments

⁶⁵⁰ Submission from John Crowley to the Commerce Commission (25 November 2016).

⁶⁵¹ Fairfax/NZME “Response to NZCC Conference Questions” (23 December 2016) at [8(b)].

⁶⁵² NZME “Response to NZCC RFI” (2 February 2017) contained in an email from Russell McVeagh to the Commerce Commission (14 February 2017).

⁶⁵³ Fairfax/NZME “Response to NZCC Conference Questions” (23 December 2016) at [8(b)].

are likely to enhance the quality of readers' consumption of online New Zealand news.

907. The Applicants submitted that website development is inexpensive. For example, they point to a number of overseas websites that use WordPress an "off the shelf" content management system.⁶⁵⁴ Implicit in this submission is that readers are mostly concerned with the content, rather than attractiveness of the distribution platform.
908. As outlined above, we agree that the quality of content is an important driver of reader demand; however, we also consider that competition can improve quality through greater investment and innovation in publishing platforms than might otherwise occur without the merger. For example, we note NZME's recent investment in and partnership with the *Washington Post* to license the Arc digital publishing content management system (CMS) and redesigning the nzherald.co.nz website.⁶⁵⁵
909. NZME described these investments as "a significant step in NZME's aim to stay at the forefront of publishing technology" and "that Arc would accelerate the Herald's growing audience reach".⁶⁵⁶
[]⁶⁵⁷ This supports the view that readers value the way in which news content is presented and published.
910. In addition, the business case prepared for NZME's investment in the Arc CMS notes that this investment is, in part, in response to
[]⁶⁵⁸ The business case also indicates that not all content management systems are like-for-like, for example, NZME notes that []⁶⁵⁹
911. Similarly, over the last two years Fairfax has committed \$[] to "Stuff product innovation".⁶⁶⁰ The business case for the later investment stated that one rationale of the project was to []

⁶⁵⁴ Fairfax/NZME "Cross-submission on TVNZ and MediaWorks SOPI Submissions" (10 October 2016) at [33(a)].

⁶⁵⁵ NZ Herald, Washington Post team up for new digital tools, website (24 February 2017) http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806944

⁶⁵⁶ Ibid.

⁶⁵⁷ Editorial Development Programme - Project Noah CMS Proposal (29 July 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (22 February 2017).

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

⁶⁶⁰ Annex 104 - FY17_Stuff Product Innovation FY17_Business Case (26 April 2016) and Annex 100 - FY16_Product Innovation_Business Case (8 May 2015), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (26 January 2017).

⁶⁶¹ Fairfax had also invested another \$[] in its content management system in 2014, with an aim to [].⁶⁶²

912. We are of the view that competition between online news providers is likely to lead to greater investment and innovations of this type. Further, we consider that these types of investments and innovations are likely to improve the quality of reader experience for readers of online New Zealand news. As such, we consider that faced with a reduction in competition, the merged entity would likely be less incentivised to invest and innovate in the presentation of its online New Zealand news. We are of the view that this would be likely to lead to a reduction in quality for readers.
913. Similarly, in an internal document from May 2016, NZME sets out its strategy for “[]” in order to become a “[]”.⁶⁶³ As part of this strategy, NZME identified a number of other innovations relating to the presentation of individual stories on nzherald.co.nz. []. We consider that innovations of this type also improve the quality of online New Zealand news.⁶⁶⁴

Effect of competition on the variety and diversity of editorial approaches

914. We consider that the diversity of editorial approaches between different organisations is another important driver of the quality of online New Zealand news. This diversity is one of the components of media plurality and, therefore, to some extent overlaps with our discussion of plurality disbenefits from the merger in the Benefits and Detriments section.
915. As already discussed, we consider that the proposed merger would be likely to result in a narrower range of information, opinions and perspectives that are available to readers. In particular, we consider that the loss of competition from the proposed merger is likely to reduce the incentive of the merged entity to invest in editorial resources and is likely to reduce the competitive pressure on individual journalists and editors to find new information, opinions and perspectives when carrying out their day-to-day work.
916. Further, if the largest publisher of online New Zealand news were to produce news that favours certain personal, commercial or political positions, we consider that this would likely be a reduction in the variety of news and perspectives available to readers, and could degrade quality. Such editorial decisions would include choosing to avoid coverage of controversial issues and discretely pursuing a particular policy

⁶⁶¹ Annex 104 - FY17_Stuff Product Innovation FY17_Business Case (26 April 2016), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (26 January 2017).

⁶⁶² Annex 94 – FY15_Project Athena - WCMS CQ5_Business Case (11 July 2014), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (24 January 2017).

⁶⁶³ [] (March 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁶⁶⁴ Ibid.

stance, including the omission of news which might be against the merged entity's views.

917. Such an editorial approach need not apply to all online New Zealand news content, but could apply only in relation to specific issues that the merged entity's owner/s may have a specific interest in.
918. We consider that competition between competing news media organisations provides a constraint on publishers taking such editorial approaches. Faced with strong competition, such a change in editorial approach would likely risk readers switching to a rival publishers of online New Zealand news. Or, rival publishers covering stories that were chosen to be left unreported.
919. The Commission acknowledges that the Applicants' current editorial approaches to producing online New Zealand news do not appear to be outwardly dictated by specific personal, commercial or political objectives other than seeking to maximise audience by producing quality news content to attract readers.
920. However, the Applicants acknowledge that they have taken 'campaigning' attitudes to some issues of particular interest to the editors. The Applicants submitted that in "recent weeks" *The New Zealand Herald* has chosen to take a number of 'stances' on issues, including "criticis[ing] the Reserve Bank's monetary policy" and "support[ing] more liberal liquor laws".⁶⁶⁵
921. Further, we note a recent internal document from Fairfax Media in Australia that set out the future editorial strategy and direction for the Sydney Morning Herald, The Age, Brisbane Times and WA Today. It provides a useful demonstration of how news media organisations can adopt particular editorial approaches.⁶⁶⁶ For example, this document indicates that Fairfax Australia plan to take a "pro-investor, pro-consumer view of business". We note that this editorial approach appears to be inconsistent with the claimed editorial approach of Fairfax New Zealand (an editorial approach that is free from bias).
922. Given the competitive position of the Applicants relative to competing publishers of online New Zealand news, we consider that competition between the Applicants is likely to provide a constraint on the degree to which the Applicants would be likely to change their editorial approaches.
923. For example, without the merger, if nzherald.co.nz were to change its editorial approach to align with commercial interests, readers would have a viable alternative in stuff.co.nz. As evidenced in Figures 3 and 4 above, there is already a high degree of overlap in online audience between stuff.co.nz and nzherald.co.nz.

⁶⁶⁵ Fairfax/NZME "Factual Submission on Draft Determination" (25 November 2016) at [42].

⁶⁶⁶ The memorandum is dated 5 April 2017 and includes the name of several employees including, Fairfax Editorial Director Sean Aylmer, Fairfax Media's National Editor James Chessell, Sydney Morning Herald Editor Lisa Davies, and The Age Editor Alex Lavelle.

924. In the absence of this competition, we consider that there would be significantly less constraint on the merged entity. We consider that such a change in editorial approach would be likely to reduce the quality of online New Zealand news available to readers, as there would be a likely reduction in the variety of perspectives and news topics that are covered.

Press Council and Internal codes of ethics

925. We note that the Press Council and internal codes of conduct may provide some constraint on the decisions that the merged entity may take, such as constraining journalistic decisions that would contravene ethical journalistic practices. For example, constraining reporters from deliberately writing an article which is misleading.
926. On 24 February 2017, NZME provided the Commission with an executed deed poll in favour of the Press Council.⁶⁶⁷ The deed poll contains two key undertakings that the merged entity will:
- 926.1 retain a charter which will include principles of editorial conduct; and
- 926.2 remain a member of the Press Council and will comply with its Statement of Principles.
927. We acknowledge the deed poll; however, we do not consider that it represents a sufficient constraint against a substantial reduction in quality post-merger.
928. In particular, our concerns relate to editorial decisions that the merged entity could take in the absence of competition from Fairfax (such as investment in editorial resources, reducing journalist numbers and changes to editorial approaches), as well as the role competition plays in fostering a wide variety of perspectives within the ‘eco-system’ of news.
929. By contrast, the deed poll is a commitment to preserve status quo mechanisms intended to maintain professional standards, including “Key Principles” for inclusion in an editorial code of ethics. These principles are geared around good journalistic conduct: accuracy, balance, absence of prejudice, integrity and independence, not editorial decision making.
930. Further, the Press Council plays no role in editorial decisions (for example, decisions around as what stories to cover); it acts on complaints rather than pro-actively monitoring media markets.

Effect of two-sided market on quality

931. We consider that for the purposes of this analysis it is appropriate to first define the one-sided (reader) market, and then to consider the constraint generated by the other side of the platform on this market as a separate second step.

⁶⁶⁷ Except in certain circumstances, the deed poll would be operational from the date the proposed merger is completed.

932. In relation to the advertising side of the platform, we consider that the cross-platform externality effects operate largely one way, ie, advertisers benefit from access to more readers, but readers do not generally perceive a benefit from being subject to more advertisers or more advertising.
933. The Commission acknowledges that the two-sided nature of the merged entity's online platforms would provide some degree of countervailing incentive to maintain a degree of content quality.
934. However, we are not satisfied that such countervailing incentive from the potential loss of advertising revenue through the loss of readers from reductions in the quality of online New Zealand news would necessarily be sufficiently large to counter the benefits of cost-savings associated with reducing quality.
935. First, a key consideration for advertisers is reach, typically measured by the number of unique individual readers attracted to a website.⁶⁶⁸ If the merged entity reduced quality by reducing the overall volume and variety of articles published, such changes may have little effect on the merged entity's total reach of individual readers.
936. Consequently, while revenue could be affected to some degree because fewer total page views could translate to lower total advertising revenue, such revenue losses may not be substantial if overall reach is not significantly affected. This may be especially true if, as is the case here, it is not uncommon for online advertising inventory to remain unsold.⁶⁶⁹ Furthermore, evidence from the Applicants suggested that a large proportion of the traffic they acquire on any given day is typically derived from a relatively small proportion of the total content they produce.⁶⁷⁰
937. A further reason as to why the two-sided nature of the market may be insufficient to prevent a reduction in quality is that it may not be apparent to readers that some dimensions of quality have been reduced. For example, readers are unlikely to be aware of stories or additional pieces of information that go unreported. Similarly, readers will not necessarily be aware that they are worse-off if a specific story is not reported on from a different perspective, for example.
938. These factors, along with the strong position in the market that the merged entity would have post-merger, means that the Commission considers that there is a real chance that the merged entity could undertake quality-reducing cost reductions without putting a significant amount of advertising revenue at risk.

⁶⁶⁸ Commerce Commission interview with Starcom (28 June 2016).

⁶⁶⁹ NZME "Response to NZCC Questions" (12 October 2016), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (12 October 2016).

⁶⁷⁰ In response to a question of whether all stories create the same number of views, NZME confirmed that relationship varies and is not linear, with its top 10 stories getting proportionally more views. Commerce Commission Conference (confidential session) NZME (7 December 2016) at transcript page 22; A Fairfax internal document records that []% of stuff.co.nz stories received less than 1000 page views, Annex 48 - [] (April 2016), contained in an email from Russell McVeagh (on behalf Fairfax) to the Commerce Commission (1 September 2016).

939. Essentially, the Commission is not satisfied on the evidence that the answer to the empirical question, as identified by NERA,⁶⁷¹ is that the merged entity would be likely to maintain quality at current levels. The Applicants submitted no empirical evidence or studies on the effect that quality changes of online news has on reader demand.⁶⁷² As such, we are not satisfied that the merged entity would be constrained from making such quality reducing cost reductions from the advertising side.
940. In response to similar conclusions that were reached in our Draft Determination, the Applicants submitted that the ACCC reached a different view in relation to the constraint that the two-sided nature of market imposes on quality.⁶⁷³ In that case, the ACCC considered that, on balance, the constraints imposed by other competing producers of Western Australian news and the two-sided nature of the market would be sufficient to constrain the merged entity.⁶⁷⁴
941. As set out above, we have taken the same approach as the ACCC by considering both the constraints from competing publishers of online New Zealand news and the nature of the two-sided market. For the reasons discussed, based on the facts before us, we are not satisfied that these constraints would be sufficient to constrain the merged entity from substantially decreasing the quality of online New Zealand news.

Conclusion on quality

942. For the reasons described above, we consider that there is a real chance that the proposed merger would result in a significant reduction in the quality of online New Zealand news such that a substantial lessening of competition is likely.
943. We consider that there are a number of dimensions to quality. We acknowledge that because some of these aspects of quality are related to the number of journalists and editors hired by the Applicants, quality could reduce in the without the merger scenario as the Applicants retrench from certain publications and, therefore, could hire fewer journalists and editors.
944. However, as set out in our counterfactual assessment, we consider that in the next two years the level of retrenchment from certain print publications is likely to be similar in the with and without the merger scenarios. Therefore, to the extent that fewer editorial resources are hired as a result of these retrenchments, the resulting reductions in quality are likely to be similar in the with and without the merger scenarios.

⁶⁷¹ NERA "Review of Draft Determination" (25 November 2016) at [31].

⁶⁷² NERA did refer to a published theoretical paper (Chaudri, 1998) regarding Australian newspaper prices in the 1990s. This paper relies on observations from the author's unpublished PhD thesis (Chaudri, 1995) which the Commission has been unable to obtain. Therefore, we are unable to evaluate the underlying analysis.

⁶⁷³ Fairfax/NZME "Factual Submission on Draft Determination" (25 November 2016) at [182].

⁶⁷⁴ ACCC informal review of Seven West Media Limited proposed acquisition of The Sunday Times publication and website from News Limited (15 September 2016)
<http://registers.accc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751046>.

945. However, we consider that the loss of competition between NZME and Fairfax is likely to lead to significantly greater level of rationalisation of editorial resources than would likely occur without the merger. As a result, with the merger, over the next two years, we consider that there would likely be a substantial reduction in the quality of online New Zealand news that is derived from investment in editorial resources compared to the without the merger scenario.
946. In addition, a primary driver of other aspects of quality is competition, such as the quality of day-to-day reporting, decisions regarding editorial approaches and decisions around the presentation of online New Zealand news. We consider that these aspects of quality would likely reduce with the merger, but would remain without.
947. Furthermore, we are not satisfied that there would be sufficient competition from competing publishers of online New Zealand news to constrain the merged entity. In addition, we are not satisfied that the two-sided nature of the market would be likely to constrain the merged entity.
948. In relation to the two-sided nature of the market, the Applicants' submissions are theoretical and have not been supported with empirical evidence on whether lost advertising revenues would be outweighed by cost savings due to reduction in quality. Faced with a real risk of the merger leading to a reduction in the quality of online New Zealand news, we are not satisfied that this theoretical constraint is sufficient to alleviate our concerns.
949. Lastly and as discussed in the market definition section, given the Applicants' digital-first newsrooms we consider that a reduction in the quality of online New Zealand news is likely to have flow-effects to the quality of regional and metropolitan newspapers. In particular, in regards to stories of national interest that are published online and then republished in the merged entity's regional and metropolitan newspapers.
950. Therefore, having regard to the potential quality impacts of the merger, the Commission is not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the online New Zealand news market.

Sunday newspapers

951. Post-merger, NZME and Fairfax would cease being independent competitors of Sunday newspapers. As a result, all three of New Zealand's Sunday newspapers, the *Herald on Sunday*, *Sunday Star Times* and *Sunday News*, would come under common ownership.
952. We are concerned that the proposed merger could lead to a substantial lessening of competition as a result of an increase in price (including both the cover price and subscription price) and/or a reduction in the quality of the Applicants' Sunday newspapers.

The Applicants' views

953. As a starting point, the Applicants submitted that the *Sunday Star Times* and the *Herald on Sunday* are “essentially complementary to each other” and, therefore, the merger will not result in a substantial lessening of competition. In making this submission, the Applicants pointed to the *Herald on Sunday's* relative strength in sales in the Auckland and Northland regions in comparison to *Sunday Star Times*.⁶⁷⁵
954. Similar to the online news market, the Applicants also submitted that it is not competition between NZME and Fairfax that constrains price and/or quality, rather it is the competitive constraint from other news/information platforms (including online) and the need to remain relevant to advertisers.⁶⁷⁶
955. In support of this, the Applicants submitted that the prices of Saturday editions of metropolitan newspapers have not increased to the same extent as weekday editions and that price increases for Saturday newspapers are similar to the rate of price increases observed for Sunday newspapers.⁶⁷⁷ The Applicants submitted that this suggests that the same constraint (ie, substitution to online New Zealand news websites) applies to both Saturday editions of metropolitan newspapers and on Sunday newspapers.⁶⁷⁸

The Commission's view

Competition between Sunday newspapers and the constraint from other publications

956. The Commission does not accept the Applicants' submission that the *Sunday Star Times* and *Herald on Sunday* are “essentially complementary” and that, therefore, there would be unlikely to be any competition concerns resulting from the merger. As previously described in the advertising section, we note that both Sunday newspapers have wide coverage throughout the North Island.
957. We observe that neither newspaper appears to market itself as covering one particular geographic region. For example, *Sunday Star Times* markets itself as “New Zealand's largest Sunday newspaper”⁶⁷⁹ and the *Herald on Sunday* is marketed as “WE'RE NUMBER ONE! New Zealand's biggest-selling and best-read Sunday newspaper”.⁶⁸⁰
958. Furthermore, the Applicants' own internal documents are consistent with our view that the *Sunday Star Times* and *Herald on Sunday* are competitive alternatives, vying for Sunday newspaper readers. For example, an internal NZME ‘readership update’

⁶⁷⁵ Application at [14.41].

⁶⁷⁶ Application at [14.38].

⁶⁷⁷ NERA “Review of Draft Determination” (25 November 2016) at [40]. NERA submitted that the Saturday editions of metropolitan newspapers and Sunday newspapers annual average cover price increase have been around []% to []%.

⁶⁷⁸ NERA “Review of Draft Determination” (25 November 2016) at [41] – [42].

⁶⁷⁹ Contact the Sunday Star-Times (22 September 2016), <http://www.stuff.co.nz/sunday-star-times/84552702/contact-the-sunday-startimes>

⁶⁸⁰ Front page of the *Herald on Sunday* (30 April 2017).
<http://nzherald.newspaperdirect.com/epaper/viewer.aspx>

document notes that [].⁶⁸¹
 Similarly, an internal Fairfax document records that the [].⁶⁸²

959. Therefore, we are of the view that the *Sunday Star Times* and the *Herald on Sunday* are close substitutes. As such, readers currently have the choice between these two alternatives. We consider that this choice is likely to be determined by readers' preferences and perceptions as to the quality and/or the price of each newspaper.
960. For the reasons outlined in the advertising section, the Commission considers that the *Sunday News* covers considerably different content such that it does not appear to be a close substitute for either the *Herald on Sunday* or the *Sunday Star Times*. As described by Fairfax *Sunday News* is geared towards sports lovers and contains "an ultimate sports lift-out".⁶⁸³
961. Our view is supported by Jonathan Milne, current editor of the *Sunday Star Times* and *Sunday News* (who was also formerly an editor of *Herald on Sunday*), who submitted that readers of the *Sunday News* are focused on sport and the readers are such that "many would never switch to another Sunday paper".⁶⁸⁴
962. As well as having similar cover prices (*Sunday Star Times* (\$3.50) and the *Herald on Sunday* (\$3.40)),⁶⁸⁵ the *Sunday Star Times* and *Herald on Sunday* seek to attract similar readers. This is consistent with the Applicants' internal documents and the views of Jonathan Milne. Mr Milne described the *Sunday Star Times* as "New Zealand's national paper, with a higher representation of readers who demand in-depth and intelligent analysis... This is reflected in high-end brand advertising in its news pages and in the glossy Sunday magazine".
963. The *Herald on Sunday* describes itself as a "provocative, compact newspaper that provides uncompromising, agenda-setting news".⁶⁸⁶ This is consistent with Mr Milne's view, he described the *Herald on Sunday* as a "popular, mass-market paper that hits the news hard and makes entertainment fun. Its readers demand a sharp, concise, agenda-setting read".⁶⁸⁷
964. As such, in assessing whether the merged entity would likely have the ability and/or incentive to increase the price and/or decrease the quality of Sunday newspapers in New Zealand we have focused on the competition between *Herald on Sunday* and *Sunday Star Times* (for the purpose of our analysis these two newspapers are collectively referred to as Sunday newspapers; this excludes the *Sunday News*).

⁶⁸¹ Annex 55 - Readership Update; Q1 - Q4 2015, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (19 August 2016).

⁶⁸² Annex 64 - Fairfax Media. Fairfax Brand Health. Wave 2 (August 2014), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (15 September 2016).

⁶⁸³ Fairfax *Sunday News* marketing material, <http://advertise.fairfaxmedia.co.nz/sunday-news>

⁶⁸⁴ Submission from Jonathan Milne to the Commerce Commission (25 November 2016).

⁶⁸⁵ Observed prices at 23 April 2017.

⁶⁸⁶ *Herald on Sunday* advertising material, <http://advertising.nzme.co.nz/news/herald-on-sunday/>

⁶⁸⁷ Submission from Jonathan Milne to the Commerce Commission (25 November 2016).

965. We also consider that Sunday newspapers are not close substitutes for daily metropolitan newspapers and magazines. Sunday newspapers sometimes contain more in-depth, long-form journalism which is not necessarily suitable for inclusion in a daily metropolitan newspaper. Further, there are no daily metropolitan newspapers that are published on Sundays. With the merger, the competition between Sunday newspapers would be lost.
966. While magazines such as the *Listener*, *Metro* and *North & South* produce some long-form investigative journalism, we do not consider that they would sufficiently constrain the merged entity from reducing the quality of Sunday newspapers.
967. Two of these magazines (*Metro*, *North & South*) are monthly publications so are not published as frequently, and none of these magazines provide the same degree of up-to-date news as Sunday newspapers. For example, these magazines do not include new stories from the latest news cycle. Rather these magazines are designed to be read at any time over the issue period and do not have such short-lived, time specific content as Sunday newspapers.⁶⁸⁸
968. We acknowledge that the fall in overall circulation of Sunday newspapers is likely to be, at least in part, due to some readers switching to online New Zealand news websites, including stuff.co.nz and nzherald.co.nz. In addition, smaller competitors such as newsroom.co.nz and rnz.co.nz that produce more longer-form journalism may be more substitutable for readers of Sunday newspapers.
969. However, for the reasons outlined in the market definition section, we consider that the print platform constitutes its own separate market. Despite news from the Sunday newspapers being available for free on stuff.co.nz and nzherald.co.nz a large number of readers still purchase these newspapers. Over the last year, the average weekly circulation of the *Sunday Star Times* and *Herald on Sunday* were 88,000 and 89,000, respectively.⁶⁸⁹ Combined, these figures are equivalent to around 10% of all households in the country.⁶⁹⁰
970. Therefore, although other news platforms or types of publications may complement Sunday newspapers, we consider that the NZME and Fairfax are each other's closest competitors in the market for Sunday newspapers. As such, we have gone on to consider the likely effect of the proposed merger on the price and/or quality of Sunday newspapers.

⁶⁸⁸ In relation to the type of content produced by NZME and Fairfax, Bauer said "I don't think they [the Applicants] are doing the sort of long form journalism that we are trying to do with the likes of *Listener* and *North and South*." Commerce Commission interview with Bauer (8 February 2017). Further, Bauer advertises both *North South* and the *New Zealand Listener* as magazines rather than newspapers.

⁶⁸⁹ <http://newspaper.abc.org.nz>

⁶⁹⁰ Statistics NZ estimates that there are 1.7 million households (Dwelling and Household Estimates, June 2016 quarter). Because there may be more than one reader per household/organisation, the effective reach of Sunday newspapers is likely to be higher than 10% of individuals. Nielsen reports that in 2016, 17% of New Zealanders read a daily newspaper each month. Nielsen "Media Trends 2016: How New Zealanders consume newspapers, magazines, TV, radio & digital" (2016) at page 9.

Impact on price

971. We consider that the merged entity would be likely to increase subscription prices and retail cover prices for Sunday newspapers nationwide as a result of the loss of the competitive constraint currently imposed by the merging parties in this market.
972. The *Herald on Sunday* is only circulated in the North Island, whereas the *Sunday Star Times* is circulated across both the North and South Islands. Therefore, while the *Sunday Star Times* faces competition from the *Herald on Sunday* in the North Island, the *Sunday Star Times* does not currently compete in the South Island.
973. Despite this, we observe that the cover price of the *Sunday Star Times* is the same across New Zealand. While this could indicate a lack of pricing constraint between the two Sunday newspapers, we consider that there could be marketing constraints that act as a disincentive on Fairfax to charge more for the *Sunday Star Times* in the South Island. Specifically, given the transparency of cover prices, we consider that such cover price discrimination could have negative marketing consequences for Fairfax.
974. However,
[

].⁶⁹¹

975. This may be consistent with
[]⁶⁹²
[]⁶⁹³
[]⁶⁹⁴

976. Given declining reader numbers and advertising revenues, we cannot discount the likelihood that, post-merger, cover price increases in the North Island would be applied equally in the South Island. This is consistent with the trends of other daily

⁶⁹¹ In the Draft Determination the Commission considered that Fairfax was operating a “one-price model” and it did not appear that Fairfax was price-discriminating subscribers in the South Island.
[]

⁶⁹² NZME “Response to NZCC RFI” (26 January 2017), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁶⁹³ []

⁶⁹⁴ []

newspapers in New Zealand that face limited or no competition, where we have observed increasing cover and subscription prices.⁶⁹⁵

977. Research, submitted by NERA, into increasing cover and subscription prices alongside declining readership and advertising, suggested that this is indicative of a rebalancing of prices between readers and advertising. This research indicated that the falling demand from advertisers for print advertising has reduced newspaper publishers' ability to subsidise readers at the expense of advertisers.⁶⁹⁶ This is consistent with recent increases in cover and subscription prices implemented by the Applicants.⁶⁹⁷
978. Since 2013,⁶⁹⁸ increases in cover and subscription prices for Fairfax's *The Dominion Post* and *The Press* have ranged between []% and []%. Similarly, cover and subscription prices for NZME's print publications (*The New Zealand Herald* and regionals) have risen on average between []% and []%.⁶⁹⁹ This is despite a decline in circulation for all the above newspapers.⁷⁰⁰ Advertising yields have also decreased for these newspapers.⁷⁰¹
979. Similar trends are observed for the Applicants' Sunday newspapers. The cover and subscription prices for Fairfax's *Sunday Star-Times* have risen by []% and []%, respectively, since 2013. Similarly, cover and subscription prices for NZME's *Herald on Sunday* have risen between []% and []%, respectively, since 2013. As with the Applicants' regional and metropolitan newspapers, a decline in circulation is observed.⁷⁰² A similar reduction in advertising yields is also observed.⁷⁰³
980. The average rates of increase in cover and subscription prices are larger for weekday newspapers that face little to no competition when compared to Sunday newspapers

⁶⁹⁵ For example, the cover and subscription prices for Fairfax's *The Dominion Post* have risen by []% and *The Press* by []% since 2013.

⁶⁹⁶ Adithya Pattabhiramaiah, S. Sriram and Shrihari Sridhar "Rising prices under declining preferences: The case of the U.S. print newspaper industry" (2013) Working Paper.

⁶⁹⁷ Application at [9.21].

⁶⁹⁸ For the figures cited in this and the preceding paragraphs in relation to Sunday newspaper prices and circulation trends, we assessed the rates of change for the calendar years 2013 to 2015, inclusive. The one exception is the change in cover prices of Fairfax's newspapers which have been assessed on the period of 2013 to mid-2016 (week 32).

⁶⁹⁹ We excluded the increase in cover price for Saturday versions of these publications from this reported range.

⁷⁰⁰ In particular, there has been an average decline of []% for *The Dominion Post* and *The Press* since 2013 and a []% decline for *The New Zealand Herald* and NZME's regional papers. NZME and Fairfax data.

⁷⁰¹ Advertising yields (measures as total advertising revenue over column centimetres of advertising) have decreased by []% and []% for *The Dominion Post* and *The Press*, respectively, since 2013. The advertising yield for *The New Zealand Herald* decreased by []% in the same period. Source: NZME and Fairfax data.

⁷⁰² *The Sunday Star Times* had a []% decline in circulation since 2013 while *The Herald on Sunday* has had a []% decline in circulation. Note the decline in circulation for *The Herald on Sunday* excludes the circulation of sponsored or free copies. Source: NZME and Fairfax data.

⁷⁰³ The advertising yields declined by []% and []% respectively for *The Sunday Star Times* and *The Herald on Sunday* since 2013. Source: NZME and Fairfax data.

where the Applicants' mastheads compete in the North Island. The Applicants' submissions have been consistent with this.⁷⁰⁴

981. We consider that any changes in costs are likely to be similar across the newspapers. We have no reason to consider that there exists another reason why the different sets of newspapers would face different rates of price increases.
982. To determine whether a substantial lessening of competition is likely, we assessed the amount by which the merged entity could increase cover and subscription prices for Sunday newspapers post-merger. To do this, we have used the difference in the average rates of price increases for the print publications where the Applicants currently face little to no competition and its Sunday newspapers since 2013.
983. Applying this approach, we found that the difference in average cover price increases between weekday print publications that currently face little to no competition and the Sunday newspapers ranges from []% to []%.⁷⁰⁵ For subscription prices, we found that the difference ranges from []% to []%.⁷⁰⁶
984. The observed difference suggests that, post-merger, prices could increase by more than 5% for both cover and subscription rates. We consider that a price increase of this magnitude indicates that a substantial lessening of competition is likely post-merger.⁷⁰⁷
985. We acknowledge the Applicants' submission that the price increases for Saturday editions of metropolitan newspapers suggests that online news is acting as a constraint on both Saturday and Sunday newspapers.
986. We also acknowledge that online news may have some constraining effect on the extent to which prices are raised for Saturday editions and Sunday newspapers in the face of declining advertising revenues. However, it is not clear to us that the constraint from online news is the only factor constraining the price of both Saturday editions and Sunday newspapers.
987. Advertising revenues for Saturday editions appear to be faring relatively better in comparison to other publication days. For example,
[

⁷⁰⁴ Fairfax/NZME "Factual Submission on Draft Determination" (25 November 2016) at [312].

⁷⁰⁵ The average cover price increase for Fairfax's Monday to Friday *The Dominion Post* and *The Press* since 2013 is []% whereas the increase in price for *The Sunday Star Times* is []%. The average cover price increase for NZME's Monday to Friday *The New Zealand Herald* and regional newspapers is []% whereas the increase in price for *The Herald on Sunday* is []%. Source: NZME and Fairfax data

⁷⁰⁶ The average subscription price increase for Fairfax's *The Dominion Post* and *The Press* since 2013 is []% whereas the increase in price for the *Sunday Star Times* is []%. The average subscription price increase for NZME's *New Zealand Herald* and regional newspapers is []% whereas the increase in price for the *Herald on Sunday* is []%. Source: NZME and Fairfax data

⁷⁰⁷ The High Court indicated that a price increase of 4-5% provides a general guide as to a price increase that would indicate a 'substantial' lessening of competition. *Woolworths* (HC) above n 41 at [145] and [156].

].⁷⁰⁸ More generally, NZME stated that the Saturday edition of *The New Zealand Herald* is the largest contributor to its print business.⁷⁰⁹

988. In our view, this suggests that at least part of the reason why the prices of Saturday editions of metropolitan papers have not increased to the extent observed for weekday editions is because of the relatively higher contribution advertising revenues make to Saturday editions. We consider that this would somewhat alleviate the need to increasingly fund Saturday editions of metropolitan newspapers through increased cover and subscription prices.
989. In contrast, advertising revenues do not appear to be making a significant contribution to Sunday newspapers.⁷¹⁰ However, the prices of Sunday newspapers have not increased at the same rate as weekday newspapers. We consider that part of the reason prices for the *Sunday Star Times* and *Herald on Sunday* have not increased to the extent of weekday editions of regional and metropolitan newspapers is due to the constraint each newspaper places on the other.
990. For these reasons, we are not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the Sunday newspapers market. We are not satisfied that the merged entity would not be likely to increase the price of Sunday newspapers by at least 5%.

Impact on quality

991. As described in the online New Zealand news market, we consider that competition is likely to lead to an increase in the quality of online New Zealand news. Similarly, we consider that competition between the *Sunday Star Times* and the *Herald on Sunday* is likely to increase the quality of Sunday newspapers.
992. Each of NZME and Fairfax have specialised teams of editorial resources that are committed to the production of the *Herald on Sunday* and *Sunday Star Times* newspapers. These resources are allocated in a manner which best attracts readers to their respective Sunday newspapers. We consider that competition of this type can improve the quality of these newspapers, both in terms of the quality of the articles and presentation.
993. We consider that this competition is likely to lead to increased variety for readers, to the enhancement of quality, including a greater range of coverage of news topics and diversity of views and perspectives of common news stories.

⁷⁰⁸ Fairfax & NZME Factual Submission on Draft Determination (25 November 2016), at [112(c)]. Advertising revenues were around \$[] for the Saturday edition of *The New Zealand Herald*, in comparison to below \$[] for all other publication days.

⁷⁰⁹ NZME “Response to NZCC RFI” (26 January 2017), contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017).

⁷¹⁰ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [112(c)].

994. We consider that the merged entity would be able to reduce editorial resources that are deployed in producing Sunday newspapers because the Applicants no longer compete and that this is likely to have the effect of reducing quality.

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995. Such rationalisation would reduce the variety of content in Sunday newspapers. As described above, there are differences in the editorial approaches between the *Herald on Sunday* and *Sunday Star Times*. We consider that consumers benefit from the competition between editors and that this would be likely to be lost as a result of the merger.

996. Or, short of rationalising an entire Sunday newspaper (and editorial team), the lack of competitive constraint could lead the merged entity rationalising a proportion of editorial resources but continue to produce both the *Sunday Star Times* and *Herald on Sunday*. In doing so, the merged entity may reduce the risk of losing readers, but such rationalisation would still be likely to have the effect of reducing quality (including choice of Sunday newspapers).

997. Furthermore, we consider that readers of Sunday newspapers value high quality reporting and analysis. As the competing Sunday newspapers are seeking to maximise readers, we consider that this competition is likely to have the effect of increasing the quality of reporting and analysis. Faced with strong competition, this is likely to occur through greater investment in journalists and/or journalists working to higher standards. Faced with less competitive pressure, we consider that the quality of reporting and analysis of the merged entity's Sunday newspapers could reduce.

998. Further, for the reasons described in the online New Zealand news section, we are not satisfied that the two-sided nature of the Sunday newspaper market would be sufficient to constrain the merged entity from having the ability and incentive to decrease the quality of Sunday newspapers.

999. We consider that the merged entity could still benefit from making quality-reducing cost-savings (such as the rationalisation of its Sunday newspapers) even if it resulted in fewer readers and, therefore, less advertising.

[

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Conclusion Sunday newspapers

1000. For these reasons set out above, we are not satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening

⁷¹¹ []

⁷¹² Application Appendix 14 at 15.

competition by increasing prices and/or reducing quality in the Sunday newspapers market.

Community newspapers

1001. Post-merger, NZME and Fairfax would cease being independent competitors of community newspapers in 10 areas of overlap. We are concerned that the proposed merger could lead to a reduction in the quality of community newspapers that are currently being produced by the Applicants in the 10 areas of overlap, such that a substantial lessening of competition is likely.
1002. We do not consider that the merged entity would be likely to increase the price for these community newspapers. We observe that community newspapers are free of charge regardless of the level of competition that they face. For example, a number of Fairfax's South Island community newspapers face no direct competition from other community newspapers but nonetheless remain free.
1003. The Applicants submitted that the merged entity would be constrained from reducing the quality of community newspapers for the same reasons outlined in relation to online New Zealand news. That is, the merged entity would continue to face competition from other sources of hyper-local news and that, in any event, it is not competition between NZME and Fairfax that drives quality, rather it is the two-sided nature of the markets and the need to produce high quality local news to attract audiences and advertising.
1004. For the reasons outlined in the advertising section, in the 10 areas of overlap, we do not consider that there are existing competing community newspapers that would be sufficient to constrain the merged entity. Further, we do not consider that entry by a new competing community newspaper in these areas would be sufficient in likelihood, timeliness or extent to constrain the merged entity.
1005. For the reasons already described, we consider that competition between NZME and Fairfax is likely to increase the quality of New Zealand news that is produced. We consider that this also applies at a hyper-local level. We are of the view that competition between competing community newspapers is likely to increase the quality of local news that is produced.
1006. Similar competitive dynamics that were noted by competing publishers of online New Zealand news were also noted by competing publishers of community newspapers. For example, Sun Media described how competition between it and NZME in the Bay of Plenty drives editorial diversity at a hyper-local level.⁷¹³

Yes and we usually do [break stories first], we're pretty good at getting first. [NZME] are [a] little bit better at getting the story behind the story because that's all that we leave them... they kind of sweep up the crumbs and every now and again they'll get a gem out of that. Well that's kind of competition when you look at it as a whole, it works, it keeps everybody on their toes. If that was taken away it will be quite sad really from an editorial ethic point of view.

⁷¹³ Commerce Commission interview with Sun Media (16 September 2016).

Section 5: Vertical and conglomerate effects

1012. Our analysis of the advertising and reader markets has considered the potential unilateral effects that could arise from the proposed merger. There are also potential vertical and conglomerate effects that arise. We consider these below.

Vertical effects

1013. A vertical merger between an upstream input provider and a downstream producer of a final product could allow a merged firm to cease supplying the input to its rivals altogether or constructively refuse to supply by making the terms of access uncompetitive (hereafter, foreclosure refers to both refusal and constructive refusal to supply the product). Such foreclosure could have the effect of reducing competition in the downstream market. For a foreclosure strategy to be successful, the vertically integrated firm must have both the incentive and the ability to foreclose its rivals.

1014. Presently, NZME is involved in a news sharing service, NZME News Service, with independent newspaper publishers.⁷¹⁴ While the independents generate their own local and regional news, they are dependent on the NZME News Service for national content that NZME has produced for its own publications. As part of the news sharing service, the independents also provide local and regional news to NZME.

1015. Each of the independents publishes daily newspapers that contain a bundle of news which is local, regional and national in nature. The independents rely on national news content to maintain their circulation. This is because many of their readers require the bundle of news.

Independent publishers

1016. The independents that participate in NZME News Service are Otago Daily Times (Allied Press), Ashburton Guardian, Gisborne Herald, Greymouth Star, Westport News and Wairarapa Times-Age.

Concerns of independent publishers

1017. Concern has been expressed by some of the independents⁷¹⁵ that the merged entity may cease providing independent publishers with national news content and that a lack of national news content would degrade the quality of the independents' newspapers to the extent that they would either exit the downstream regional newspaper market or otherwise be rendered less competitively effective.

1018. Because of the different formats in which their news is gathered, the independents do not consider national content from TVNZ, MediaWorks, RNZ and the like to be substitutable for the content provided by the NZME News Service.

⁷¹⁴ Fairfax sources and produces its own national and regional content which it has done since it withdrew from the New Zealand Press Association news syndicating service in 2011.

⁷¹⁵ Commerce Commission interviews with [] (8 July 2016) and [] (7 July 2016).

1019. One independent⁷¹⁶ also submitted that in the event that NZME News Service was to cease and the independent exited, it doubted whether the merged entity would attempt to cover news from its area and, that if this was the case, then regional New Zealand and New Zealand as a whole would “be the losers”.

How the proposed merger could substantially lessen competition

1020. One theory is that the merged entity could cease providing national news content to the independents to shift the readers of the independent newspapers to the merged entity’s news websites in search of national news. It would do this to increase the number of viewers on its news websites,⁷¹⁷ potentially enabling it to increase the price of its digital advertising inventory. The merged entity would pursue this strategy only if it were more profitable than the provision of its news service.

1021. Alternatively, the merged entity could withdraw the provision of national news content from the independents to weaken their publications so it could either enter more profitably the independents’ markets with its neighbouring publications or acquire the independents at a reduced price.

Applicants’ views

1022. NZME and Fairfax submitted⁷¹⁸ that there will be no change to their incentives to offer news syndication post-merger. This is because:

1022.1 the news content provided by the independents provides NZME and Fairfax with additional content to show to consumers (ie, it grows audience); and

1022.2 it is an additional revenue stream for content that has already been produced so the additional revenue has a zero incremental cost.

The Commission’s view

1023. Our view is that the merged entity is unlikely to withhold national news content from the independents.

1024. As the Applicants submitted, the news service provides an additional revenue stream for which there is little cost. The merged entity may not be able to recover the loss of this revenue through an increase in readers of its news websites and subsequent increase of its digital advertising inventory.

1025. We acknowledge that the merged entity could, for example, seek to weaken the *Otago Daily Times* by no longer providing it with national news content and

⁷¹⁶ Submission from Westport News Company (24 June 2016).

⁷¹⁷ As the independents are the only publishers of daily newspapers in their respective regions, the merged entity would not have competing newspapers with which to capture the readers and so would not have an incentive to refuse to supply news content for purposes of enhancing its market power in regional daily newspaper markets.

⁷¹⁸ NZME/Fairfax “Response to Submissions” (29 July 2016).

increasing the number of its journalists in Dunedin with a view to establishing its own newspaper.⁷¹⁹

1026. Nevertheless, even if the merged entity managed to weaken and then acquire an independent in this way, the acquisition would not change the market structure, given that the independents are presently the only publishers of daily newspapers in their respective regions.
1027. Accordingly, the Commission's view is that the proposed merger is unlikely to give rise to vertical effects that would result in a substantial lessening of competition.

Conglomerate effects

1028. A conglomerate merger involves the acquisition of a complementary good or business, or the acquisition of a firm that trades in a separate but related market. Conglomerate effects often do not lead to competition problems by themselves and are often associated with efficiencies, but may also in some cases lead to competition concerns if the bundling of products prevented rivals obtaining sufficient scale to be viable. Alternatively, bundling might take the form of predatory pricing.

How the proposed merger could substantially lessen competition

1029. The merger would result in the overlap of the Applicants' Sunday papers, as well as a number of their North Island community newspapers.⁷²⁰ There would be no overlap in metropolitan or regional newspapers. In addition, NZME's radio network would be added to Fairfax's print assets.
1030. The concern of newspaper competitors is that the combination of NZME's radio/print/digital assets and Fairfax's print portfolio (particularly in the South Island) and digital assets could enable the merged entity to offer bundles that other newspapers, radio networks or websites are unable to match either because they cannot offer an equivalent bundle or because a component of the bundle is priced below cost. To this extent, their ability to compete with the merged entity could be lessened to such an extent that they may exit the market.

Applicants' views

1031. The Applicants submitted:⁷²¹

1031.1 The starting point is that if purchasers prefer such bundles, any increase in the availability of such bundles, or any reduction in price, is pro-competitive. Moreover, NZME already is able to offer an advertising bundle spanning print, online, and radio advertising in many parts of the North Island, and there has been no evidence of those bundles materially affecting competition in any of those areas.

⁷¹⁹ We understand that Fairfax currently has four or five journalists based in Dunedin.

⁷²⁰ NZME does not currently own any newspaper assets in the South Island, with the majority of newspapers in the South Island being owned by Fairfax and Allied Press.

⁷²¹ NZME/Fairfax "Response to Submissions" (29 July 2016).

1031.2 Finally, there is nothing to prevent these print competitors from partnering with other radio providers (eg MediaWorks), to offer their own competing bundle to advertisers. For example, Allied Press and MediaWorks could partner together in Otago to offer a cross-media print, digital, radio and TV advertising bundle.

The Commission's view

1032. The Commission's view is that the proposed merger is unlikely to result in a substantial lessening of competition through the merged entity's ability to bundle different types of advertising inventory.
1033. Currently, in the North Island, NZME is able to (and does) bundle radio advertising with print advertising inventory to some customers. In addition, it offers metropolitan/regional and/or community print advertising bundles. We have found no evidence that NZME is pricing those bundles below cost.
1034. It appears that NZME's radio and print bundles are not presently impeding the ability of other newspaper publishers to compete with NZME. In the Bay of Plenty region, Sun Media has been able to compete successfully with NZME despite it having a regional newspaper, the Bay of Plenty Times, three community newspapers, the Bay News, Katikati Advertiser and Te Puke Times as well as radio stations.
1035. Sun Media's flagship newspaper, The Weekend Sun is a free weekend newspaper distributed in Tauranga with a circulation of 66,600.
1036. Regarding its performance, Sun Media told us:
- The Sun is really, really strong we're putting out 60-odd pages every week. This week we've put out our largest paper ever, about 80 pages. So we're kind of flying in the face of the trend of newspapers supposedly being in decline.
- We consider ourselves to be one of the more successful community newspapers in the country and in particular with Sun Live it's taken us even out of that to the category into a serious news player.⁷²²
1037. Not all print advertisers want a bundle of different types of advertising. As described in the print advertising sections above, advertisers choose the type of newspaper in which to advertise for a number of different reasons, including reader demographics, reach, the type of messaging the advertiser is trying to achieve, and timing – for instance, many retail chains would not advertise in Sundays because by Sunday “the action is over”.⁷²³
1038. Similarly, radio is not suitable for a significant number of advertisers. Radio is better suited to advertisers wishing to emphasise brand or presence rather than say describing the attributes of a product. As outlined above, a similar rationale applies to an advertiser's reasons for advertising online.

⁷²² Commerce Commission interview with Sun Media (16 September 2016).

⁷²³ Commerce Commission interview with Strategy Design and Advertising (7 July 2016).

1039. To this extent, it is likely to be a small subset of all advertisers for whom there is value in bundled print/radio and/or online advertising. Even if this were not the case, competitors to the merged entity would have counter strategies available to them through their ability to enter into arrangements with MediaWorks' radio network⁷²⁴ and/or other providers of digital advertising.

Other effects

Withdrawal from News Works NZ

1040. A number of newspaper publishers expressed concern that the combined entity would withdraw from the National Advertising Bureau's media booking service, News Works NZ, and undertake the placement of national advertising campaigns itself. The publishers submitted that if the merged entity were to withdraw from that service then the independents would lose valuable revenue that they derive from advertising placed in their publications by News Works NZ as part of national advertising campaigns. This, they said, could cause them to founder or even exit the regional newspaper markets.

Applicants' views

1041. The Applicants submitted that:

- 1041.1 national advertisers require national advertising coverage and so post-merger would still require advertisements placed in the independent publications;
- 1041.2 the Applicants have no incentive to make the process of booking print advertising more difficult for the customers that prefer to purchase nationwide print campaigns; and
- 1041.3 each of the Applicants currently participate in News Works NZ as it advocates for the use of print newspaper advertising to drive sales of print advertising inventory, and that NZME and Fairfax would want that advocacy to continue post-merger.⁷²⁵

News Works NZ

1042. News Works NZ is the commercial arm of the Newspaper Publishers Association. Its roles are to coordinate the placement of national advertising campaigns in newspapers throughout the country, advocate for and market newspaper advertising, and to undertake and disseminate advertising research.

1043. News Works NZ provides a one-stop shop for advertisers and advertising agencies. Advertisers and agencies are also able to book advertising space directly with

⁷²⁴ NZME faces vigorous competition throughout the country from MediaWork's national radio network which has a market share of 53% compared with the 38% share of NZME's radio network - <http://www.gfk.com/en-nz/insights/report/radio-audience-measurement>

⁷²⁵ NZME/Fairfax "Response to Submissions" (29 July 2016).

publishers. Typically News Works NZ places advertising in metropolitan, regional and Sunday paid newspapers but not community newspapers.

Independent publishers' views

1044. *The Ashburton Guardian* told us that the volume of national advertising is rapidly declining. It advised that six years ago national advertising made up [] of *The Ashburton Guardian's* revenue and that two years ago that had dropped to []%. Around [] of the national advertising placed in the *Ashburton Guardian* is placed by News Works NZ with the other [] being placed directly by advertisers. The advertising placed by News Works NZ equates to approximately [] of the *Ashburton Guardian's* total annual revenue.⁷²⁶
1045. Allied Press also noted the rapid decline of national advertising placed in the *Otago Daily Times*. Grant McKenzie, CEO Allied Press, considered that if News Works NZ were to cease placing national advertising, national advertisers may choose to place their advertising in only the merged entity's publications and not advertise at all in the *Otago Daily Times* which covers just 5% of the country's population.⁷²⁷
1046. [] obtains around [] of its revenue from advertising placed by News Works NZ. It told us that without the News Works NZ advertising, the [] would have to go directly to national advertisers such as [] and try to convince them that they need to advertise in []. [] considers that if it lost the revenue it gets through advertising placed by News Works NZ it would be unprofitable.⁷²⁸

The Commission's view

1047. The Application attached a report from PwC which estimated the benefits arising from the proposed merger.⁷²⁹
[]
1048. []
1049. We consider that for the following reasons, the merged entity is likely to continue to participate in News Works NZ.
1050. In our interviews with advertising customers who run national advertising campaigns we were advised that a national campaign typically requires placement of advertising

⁷²⁶ Commerce Commission interview with *Ashburton Guardian* (20 September 2016).

⁷²⁷ Commerce Commission interview with Allied Press (16 September 2016).

⁷²⁸ Commerce Commission interview with [] (22 September 2016).

⁷²⁹ See the Benefits and Detriments section.

across all regions in order to reach all customers. News Works NZ CEO, Brian Hill, confirmed this to be the case saying that the merged entity “could not altogether cut a particular region” such as those where the independents are because advertisers need to reach their customers in those regions.⁷³⁰

1051. While advertisers can go directly to publishers to place advertisements, News Works NZ reduces transaction costs for national advertisers by being a one-stop shop. To this extent, the merged entity would be disadvantaging national advertisers if it were to leave News Works NZ and book advertising only in its own publications. We consider that this would be a risky strategy at a time when print advertising is declining markedly.
1052. News Works NZ also advised us that in response to the decline in print advertising, it undertakes research and advocates for print advertising. For example, research undertaken by News Works NZ recently shows that advertising in regional papers is still a very effective way of reaching people in those regions. News Works has undertaken advertising to advertisers to this effect.
1053. Given the decline in print advertising, we consider that the merged entity is likely to want to continue to benefit from the newspaper research and advocacy undertaken by News Works NZ. However, even if it did withdraw, the remaining members of News Works NZ would continue to be able to offer advertisers the benefits of one-stop shop in their newspapers. The value of advertising in those publications does not depend on the participation of the merged entity in News Works NZ.
1054. For these reasons, we consider that the merged entity is likely to continue participating in News Works NZ and, even if it did not, no competition issues are likely to arise in respect of national advertising.

⁷³⁰ Commerce Commission interview with News Works NZ (10 October 2016).

Section 6: Public benefits and detriments

1055. As we have identified a substantial lessening of competition in the Reader and Advertising markets in terms of section 67(3)(a) of the Act, we must now consider whether we can be satisfied that the proposed merger will result, or be likely to result, in such a benefit to the public that it should be permitted in terms of section 67(3)(b) of the Act.
1056. If the Commission is not satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, or the Commission is in doubt as to whether the acquisition will create a public benefit, it must decline an authorisation under section 67(3)(c).
1057. The burden of proof lies with the Applicant to satisfy the Commission on the balance of probabilities that the public benefit is such that the Commission should authorise the merger.
1058. The legal framework we adopt in balancing the benefits and detriments arising from the proposed merger are discussed in Section 2. The key legal principles are set out below.
1059. The test for granting an authorisation is deliberately broad and evaluative.⁷³¹
1060. Benefits and detriments should only be included in the balancing exercise if:⁷³²
- 1060.1 they are likely – that is, there is a real chance they will be realised if the merger proceeds; and
 - 1060.2 they are causally connected to the merger, in that they are not also likely without the merger.
1061. Relevant detriments are detriments that are caused by the merger, including inefficiencies arising from the lessening of competition. Detriments will frequently include allocative (welfare losses from increased prices/reduced quality), productive (higher costs over time) and dynamic efficiency losses (reduced incentive to innovate).
1062. A public benefit is any gain to the public of New Zealand that would result from the proposed transaction, including cost savings and efficiencies. While efficiency gains are relevant, they do not displace “other public benefit matters”.⁷³³ In assessing public benefits, a “net” approach is taken whereby any costs or ‘disbenefits’ incurred in realising the benefits are deducted.⁷³⁴ Any negative consequences of the merger that are not captured in the detriments category may be netted off in this way.

⁷³¹ *Godfrey Hirst 2* (CA) above n 56 at [41].

⁷³² *Godfrey Hirst 1* above n 38 at [123] and *Godfrey Hirst 2* (HC) above n 58 at [71].

⁷³³ *Godfrey Hirst 2* (CA), above n 56 at [18] and [31].

⁷³⁴ *Godfrey Hirst 1* above n 38 at [74].

1063. Changes in the distribution of income are generally not relevant as they do not change the overall public benefit.⁷³⁵ An exception may be made for transfers between New Zealanders and Non-New Zealanders.⁷³⁶
1064. The Commission must attempt so far as possible to quantify the benefits and detriments of the merger rather than rely on a purely intuitive judgement.⁷³⁷ But the Commission cannot be compelled to quantify qualitative variables or engage in ‘false scientism’.⁷³⁸ Quantification cannot dominate the Commission’s approach.⁷³⁹
1065. In quantifying benefits and detriments, the Commission:
- 1065.1 may adopt a range for a likely detriment or benefit;⁷⁴⁰
 - 1065.2 may adopt a point within a range, based in part on an assessment of probabilities, if it is able to on the available facts;⁷⁴¹
 - 1065.3 must not attribute greater certainty to the estimated benefit or detriment than is warranted on the facts;⁷⁴²
 - 1065.4 may take uncertainty into account by adopting conservative estimates;⁷⁴³ and
 - 1065.5 should not adopt a particular point within the likely range, such as a mid-point, where other points in the range are just as likely.⁷⁴⁴
 - 1065.6 must take into account any shortcomings of the quantification of benefits and detriments, including doubts about the reliability of the calculation or where the quantification is necessarily abstract.⁷⁴⁵
 - 1065.7 should draw on a careful examination of the facts when exercising its judgement, rather than speculate and rely on intuition.⁷⁴⁶ The application of economic theory informs the Commission’s value judgement, including in assessing its quantification.⁷⁴⁷

⁷³⁵ *Air New Zealand* above n 42 at [241] and *AMPS-A* (HC) above n 68 at 531.

⁷³⁶ *Air New Zealand* above n 42 at [242] and *AMPS-A* (HC) above n 68 at 531.

⁷³⁷ *AMPS-A* (CA) above n 68 at 446-447.

⁷³⁸ *Godfrey Hirst 2* (CA) above n 56 at [36] – [37].

⁷³⁹ *Ibid* at [38].

⁷⁴⁰ *Godfrey Hirst 1* above n 38 at [104].

⁷⁴¹ *Ibid* at [103].

⁷⁴² *Ibid* at [105].

⁷⁴³ *Ibid* at [116], [189]-[190], [209], [228], [327].

⁷⁴⁴ *Ibid* at [199].

⁷⁴⁵ *Air New Zealand* above n 42 at [416] and *Godfrey Hirst 1* above n 38 at [98] and [324].

⁷⁴⁶ *Air New Zealand* above n 42 at [51]; *AMPS-A* (CA) above n 68 at 666.

⁷⁴⁷ *Air New Zealand* above n 42 at [117]; *AMPS-A* (CA) above n 68 at 666.

1065.8 must, where it cannot quantify a benefit or detriment, exercise a qualitative judgement as to the nature and significance of the unquantified benefits or detriments.⁷⁴⁸

1065.9 give independent and even decisive weight in appropriate cases to qualitative factors. These are not to be treated as a supplementary function to an otherwise arithmetic exercise.⁷⁴⁹

1065.10 must avoid double-counting benefits (including disbenefits) or detriments.⁷⁵⁰

1065.11 must, in the end, integrate both its qualitative and quantitative assessments into its final decision on whether or not it is satisfied that the merger is likely to result in such a benefit to the public that it should be permitted.⁷⁵¹

1066. We apply these principles below.

Approach to assessing benefits and detriments

1067. We analyse the benefits and detriments that are likely to result from the merger to determine whether an acquisition results in such a benefit to the public that it should be authorised. If benefits and detriments that are said to result from the merger are also likely to occur without the merger, then we exclude them from our assessment as not being merger-specific.

1068. In order to take into account the likely benefits and detriments that might arise from this merger we have modelled two scenarios: 'digital and print' and 'digital plus limited print'. In this section we explain why we have adopted these scenarios.

1069. We use the term 'scenarios' rather than 'counterfactuals'. This is because we do not consider that there are multiple likely counterfactuals, rather there is one counterfactual that includes the varying trajectories for print publishing. In doing so, we have taken into account all outcomes that have a real chance of occurring without the merger.⁷⁵²

1070. The 'digital and print' scenario reflects our view in our competition assessment that the Applicants would continue to focus on their online news businesses and maximise the value of their profitable print publications without the merger. We include this scenario in our assessment of benefits and detriments because we consider that print retrenchment at a gradual rate is a likely outcome over five years.

1071. However, the Commission recognises that it is difficult to predict precisely the level of rationalisation that would occur without the merger. Therefore, to take into

⁷⁴⁸ *Air New Zealand* above n 42 at [414] and *Godfrey Hirst 1* above n 38 at [102].

⁷⁴⁹ *Godfrey Hirst 2* above n 56 at [38].

⁷⁵⁰ *Godfrey Hirst 1* above n 38 at [75] and [116].

⁷⁵¹ *Ibid* at [38].

⁷⁵² Although not considering multiple counterfactuals, we consider that this addresses the Applicants' submissions in NZME and Fairfax response to NZCC counterfactual letter (22 March 2017).

account the likely benefits and detriments that would arise from the merger, we also considered what would happen if there was a faster rate of print retrenchment (for example, if the Applicants each moved to weekend only mastheads or to publishing metropolitan mastheads one to two days a week). We describe this as the ‘digital plus limited print scenario’.

1072. This second scenario takes into account that there would be lower cost-savings attributable to the merger if print retrenched faster. On the other hand, there may be merger-specific benefits in this scenario from print generally remaining more viable for longer compared to without the merger.
1073. The Commission considers that the digital plus limited print scenario takes into account the Applicants’ submission outlined above that the merger could extend the lifetimes of the merged entity’s publication business and the benefits that could arise from this compared to the scenario where print is limited and there is a potential reduction in journalists.
1074. We did not include further rationalisation scenarios that were not likely (ie, that the Applicants would retrench their online news businesses), including that []. This because the Applicants have not satisfied the Commission that this scenario is likely in the next five years.
- 1074.1 As outlined above, the Applicants’ print publications are forecast to continue to be profitable over a five year period (see Attachment A). The Applicants are continuing to earn profits from these publications, and we consider that it is unlikely that they would not continue to maximise the profits from those publications.
- 1074.2 As also outlined above, the Applicants are seeking to transition their businesses to become more digitally focused and are making positive public comments about this transition and the current growth of these businesses.
- 1074.3 The Applicants provided the Commission with the November 2016 reports from PwC []⁷⁵³.
- 1074.4 The Applicants are currently profitable businesses with strong consumer demand for their news products. []

⁷⁵³ PwC “Fairfax Counterfactual Forecasts” (25 November 2016) and PwC “NZME Counterfactual Forecasts” (25 November 2016).

1074.5 We consider that, as they have done in the past, the Applicants would
[
].

1075. In taking this view, the Commission considered the likely outcomes with and without the merger over the next five years. Although we do not adopt multiple counterfactuals, we consider that this approach is consistent with the Applicants' submission that we need to consider all likely counterfactuals when assessing benefits and detriments.⁷⁵⁴
1076. We acknowledge that the likely benefits and detriments of the proposed merger could fall somewhere between these two scenarios. However, we take this into account in conducting the balancing exercise at the end of our benefits and detriments assessment.
1077. We consider the highest end of the range for likely detriments, and the lowest end of the range for likely benefits, to assess the lower estimate of the overall net impact of the proposed merger. Similarly, we consider the lowest end of the range of likely detriments and the highest end of the range of likely benefits to assess the upper estimate for the overall net impact of the proposed merger. We do this when comparing the with the merger factual scenario against both the digital and print and digital plus limited print outcomes.
1078. The Commission undertook its benefits and detriments analysis over a five year timeframe. The Commission often assesses benefits and detriments over both five and 10 year periods. However, we consider that the dynamic nature of the market in this authorisation makes it less insightful to assess benefits and detriments over this extended timeframe. Even applying this approach, benefits and detriments in later years are less likely to be able to be estimated with any certainty.⁷⁵⁵
1079. We explain the 'digital and print' and 'digital plus limited' print scenarios in further detail below.

Digital and print

1080. We consider that without the merger the Applicants would maintain their digital publishing businesses and maximise the value of their profitable print publications in the next five years. We refer to this as the 'digital and print' scenario.
1081. We consider that in a 'digital and print' scenario the Applicants would continue to retrench less profitable publications or regions, while maintaining other print publications that continue to contribute to profits. We consider that the level of print retrenchment with and without the merger in this scenario would be similar.
1082. To do so, we have adopted a pragmatic approach and used current financial information to estimate the benefits and detriments we are able to quantify over a five year timeframe. This enables us to develop a sense of the scale of quantified

⁷⁵⁴ NZME/Fairfax "Rresponse to Commerce Commission Counterfactual Letter" (22 March 2017) at [19].

⁷⁵⁵ See Re Carter Holt Harvey Ltd/Elders Resources NZFP Ltd (1990) 2 NZBLC (Com) 104,549, 104,555-6.

benefits and detriments attributable to the proposed merger. Although not precise, we expect that:

- 1082.1 using current financial information is likely to overstate the quantified benefits attributable to the proposed merger. Given our view that the Applicants would retrench their respective print businesses absent the merger, we consider some cost savings would not be merger specific, as they would likely occur anyway; and
- 1082.2 using current financial information is likely to overstate the detriments associated with post-merger price increases. In particular, given we consider the Applicants would retrench their print businesses absent the merger, prices may be increased regardless to meet costs previously met by rationalised publications, and so would not be merger specific.

1083. We do not consider the overstatement of benefits and detriments necessarily cancel each other out, as we are unable to determine the degree to which each is overstated. Instead, we take this overstatement into account when balancing the quantified and non-quantified benefits and detriments.

Digital plus limited print

- 1084. In addition, we have also considered the benefits and detriments of the proposed merger if a greater rate of print retrenchment was observed absent the proposed merger over the next five years. That is, without the proposed merger, the Applicants reduced their print publications to make cost savings. For example, the Applicants could retrench to one weekend newspaper edition or one to two daily metropolitan mastheads a week within the next five years. We refer to this as the ‘digital plus limited print’ scenario.
- 1085. We have taken this approach in recognition of the fact that there is inherent uncertainty in the level of print rationalisation that will occur absent the proposed merger and that, to assist us in applying our judgement, we should consider what the benefits and detriments would be if print retrenched at a faster rate over the next five years without the merger. This uncertainty is illustrated in some of the evidence provided by the Applicants. Further, we consider that this approach takes into account what the Applicants describe as the “unique pathway” created by the merger, because in this scenario print publications would last for longer and the Applicants would continue to invest in their online news businesses.
- 1086. For instance, in response to plans to reduce publishing days for the *Marlborough Express*, Mr Boyle of Fairfax, stated that:⁷⁵⁶

[

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⁷⁵⁶ Commerce Commission interview with Fairfax (10 March 2017) at 8.

1087. NZME reported variances in trends for print revenue declines and digital revenue increases.⁷⁵⁷

1087.1 In December 2016 board documents, NZME noted that
“[]”.

1087.2 For digital revenues, NZME notes that
“[]”.

1087.3 Further, in relation to costs, NZME notes that
“[]”.

1088. Fairfax has also reported variances in print and digital revenues. Greg Hywood, Chief Executive and Managing Director noted that:⁷⁵⁸

Our NZ business saw total revenue down 9% in local currency terms. Excluding magazine disposals, revenue was down 6%. Weakness in print was partially offset by strong digital growth of 21% and significant expansion in the contribution of Events. Circulation revenue declined 8% with volume declines offsetting improvements in yield. Cost management continued, with an 8% reduction in operating costs, notwithstanding a continued investment in digital and events.

1089. To assess what the ‘digital plus limited print’ scenario would look like, we had regard to the costs savings the Applicants said would come from
[]⁷⁵⁹.

1090. Additionally, we considered the Applicants’ submissions that downsizing their businesses without the merger would lead to an inevitable reduction in regional publications and coverage, journalists employed, and viewpoints and stories covered.⁷⁶⁰

1091. We also took into account previous board documents and strategies of the Applicants reflecting broad strategies to rationalise print offerings and concentrate on digital offerings:

⁷⁵⁷ NZME Board Paper – CFO Report (10 December 2016), at 32 – 33, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (14 February 2017).

⁷⁵⁸ Fairfax Media Limited 2017 Half-Year Results announcement (22 February 2017), at <http://www.fairfaxmedia.co.nz/Investors/financial-results>

⁷⁵⁹ [] – See Fairfax/ NZME: Response to Commerce Commission’s Counterfactual Letter (22 March 2017) at [4(a)].

⁷⁶⁰ Ibid at [52].

1091.1 For example, a 2015 Fairfax board paper noted that “[]”. Further, this paper noted that Fairfax needed to []”.⁷⁶¹

1091.2 Similarly, a 2015 NZME board document noted that “[]”. In response, the board document contemplated []”⁷⁶²

1092. We assess the likely benefits and detriments on the basis that some of the Applicants’ print publications would exist for longer with the proposed merger than in the ‘digital plus limited print’ scenario. As such, the Applicants could employ more editorial staff and produce more output compared to without the merger.⁷⁶³

1093. Similar to our assessment of the digital and print scenario, we adopt a pragmatic approach to assess the benefits and detriments we are able to quantify. In particular, for modelling purposes, we assume that the Applicants would cease producing overlapping print publications (ie, Sunday and community newspapers) within two years absent the proposed merger.⁷⁶⁴

Structure of our assessment

1094. Our assessment of the benefits and detriments is structured in the following way:

1094.1 First, we provide our assessment of benefits and detriments we are able to quantify. We do this for both the ‘digital and print’ and ‘digital plus limited print’ scenarios. Our assessment of the quantified benefits relates to the production efficiencies attributable to the proposed merger. On the other hand, our assessment of quantified detriments relates to efficiency losses and detrimental wealth transfers attributable to the proposed merger. We conclude with a summary of the net impact of the proposed merger on a purely quantified basis.

⁷⁶¹ Fairfax Future for publishing (27 May 2015), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 February 2017).

⁷⁶² Annex 156 - NZME Transformation & Strategy Key Priorities for FY16 (14 December 2015), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (14 February 2017). We consider the statement that []]. As demonstrated by NZME’s following statements, []].

⁷⁶³ We are unable to quantify such a benefit but do take into it account qualitatively.

⁷⁶⁴ We have chosen to model such a scenario by assuming that the Applicants would cease producing overlapping print publications within two years absent the merger in recognition that a move to a ‘digital plus limited print’ business is unlikely to be immediate. However, as discussed previously, we cannot predict the exact form of retrenchment that would occur in a ‘digital plus limited print’ scenario, and in particular, at what time such a transition would occur.

- 1094.2 Second, we turn to our assessment of benefits we are unable to quantify. This includes our assessment of the benefit of reduced duplication and increased variety in reader markets under both the ‘digital and print’ and ‘digital plus limited print’ scenarios. We also assess the benefit of extended production of print publications and reduced downsizing of editorial resources under the ‘digital plus limited print’ scenario.
- 1094.3 Third, we turn to our assessment of the disbenefit of a loss of media plurality. We are also unable to quantify this disbenefit. We assess this under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.
- 1094.4 Fourth, we provide our assessment of the unquantified detriments relating to a loss of quality in the reader markets. We do this under both the ‘digital and print’ and ‘digital plus limited print’ scenarios. We conclude with a summary of our assessment of unquantified benefits, disbenefits and detriments.
- 1094.5 Finally, we conclude with our evaluative judgement. We balance the assessed benefits and detriments under the ‘digital and print’ and ‘digital plus limited print’ scenarios and provide our judgement of whether the proposed merger is likely to result in such a benefit to the public that it should be permitted.

Quantified benefits and detriments

1095. In this section, we provide our assessment of benefits and detriments we are able to quantify.⁷⁶⁵ We do this under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.
1096. Our assessment of the quantified benefits relates to the production efficiencies attributable to the proposed merger.
1097. Our assessment of quantified detriments relates to efficiency losses and detrimental wealth transfers attributable to the proposed merger. These include the allocative, productive and dynamic efficiency losses.

Production efficiencies

1098. The primary quantifiable benefits of the proposed merger arise from the proposed reductions in duplication of a number of the Applicants’ business operations. As noted in the Commission’s Authorisation Guidelines, there are a number of ways that a merger may improve productive efficiency, but an increase in productive efficiency typically involves a reduction in the costs of producing a given output.⁷⁶⁶

⁷⁶⁵ We assess quantified benefits and detriments over a five year time period and use a 10% discount rate. This approach is broadly consistent with approaches previously taken by the Commission, including Cavalier Wool Holding Limited and New Zealand Wool Services International Limited [2015] NZCC 31 at [385] – [386].

⁷⁶⁶ *Authorisation Guidelines* above n 54 at footnote 56.

1099. The claimed production efficiency benefits from the proposed merger have been grouped under the following operational categories to reflect those parts of the business where cost savings would arise. These include Sales, Marketing, Editorial, Printing, Procurement and Distribution, Management, IT, Premises and community and Sunday Paper Rationalisation. The production efficiency benefits were estimated by PwC based on information provided by the Applicants. Because the Applicants have not undertaken any specific post-merger implementation planning, there is uncertainty regarding the precise values for each of these categories, hence the Applicants provided estimate ranges.⁷⁶⁷

Timing of claimed costs savings

1100. The Commission notes that where it has accepted claimed production benefits from the proposed merger, we have assumed that the cost savings would be implemented at the start of the five year period we are considering.

1101. We note that the majority of claimed cost savings relate to []. In particular, claimed cost savings relate to [] for Sales, Marketing, Editorial, Management, Information Technology and community and Sunday newspaper rationalisation. We consider that, in practice, implementing [] is likely to take time.

1102. A further example of where cost savings may not occur immediately post-merger are cost savings relating to premises. The Applicants claimed that cost savings could be achieved if the merged entity [] is likely to take time and is unlikely to be implemented at the start of the five year period we are considering. As a result, some claimed cost savings may not be achieved at the start of the five year period we are considering. We consider this holds for both the scenarios.

1103. However, we are unable to assess the extent of costs savings that may be achieved at a later time. As a result, we continue to assume that the cost savings would be implemented from the start of the five year period we are considering, noting that this may overstate the true extent of claimed cost savings over five years.

‘Digital and print’ scenario

Relevance of continued print retrenchment absent the proposed merger

1104. We consider that the production efficiencies quantified using current financial information is likely to overstate the benefits attributable to the proposed merger. Our view is that the Applicants would continue to implement cost saving initiatives absent the proposed merger.

⁷⁶⁷ In particular, where the Applicants’ management views []. See PwC “Indicative Synergies Analysis Refresh” (21 October 2016). Except where another reference is added, reference to PwC’s analysis refers to this report.

1105. Such a view is consistent with the continued costs savings by the Applicants in the past. For example, Fairfax reduced costs by 12% in 2015⁷⁶⁸, 8% in 2016⁷⁶⁹ and 8% for the first half of the 2017 financial year.⁷⁷⁰ Similarly, NZME reports that costs are down []% compared to last year in recent reports submitted to its board.⁷⁷¹ To provide an indication of the magnitude of these reductions, a 1% reduction in 2017 budgeted costs, would equal approximately \$[] million each for Fairfax and NZME.⁷⁷²
1106. While we recognise that the production efficiencies estimated by PwC focus on synergies that would be achieved by combining the Applicants' respective businesses as opposed to usual operational cost reductions, we consider that some claimed cost-savings would be likely to be achieved regardless of the proposed merger. In light of the Commission's view that without the merger there would be gradual print retrenchment, we consider that some production efficiencies through cost savings, for example those related to downsizing of editorial, management, marketing, IT and premises, would not be merger specific.
1107. However, we have no means of predicting the exact magnitude of production efficiencies that would be achieved without the merger, nor when they would likely occur. As a result, we continue to use the quantified benefits estimated using current financial information, noting that they are likely to be overstated and take this into account in our qualitative assessment.

Sales

Agency and direct sales to national customers

1108. Both Applicants sell advertising inventory to the same advertising agencies and large corporate customers. These customers are relatively few in number.

[

]

⁷⁶⁸ Fairfax 2015 Results Announcement (13 August 2015), at <http://www.fairfaxmedia.co.nz/Investors/financial-results>.

⁷⁶⁹ Fairfax 2016 Results Announcement (10 August 2016), at <http://www.fairfaxmedia.co.nz/Investors/financial-results>.

⁷⁷⁰ Fairfax 2017 Half-Year Results Announcement (22 February 2017), at <http://www.fairfaxmedia.co.nz/Investors/financial-results>.

⁷⁷¹ NZME Board Agenda– CFO Report, (12 December 2016), at 32 – 33, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (14 February 2017).

⁷⁷² Fairfax's publishing business' 2017 financial year costs are budgeted to be \$[]million – see Fairfax Fairfax Media FY17 Budget, at 32, contained in an email from Russel McVeagh (on behalf of Fairfax) to the Commerce Commission (14 February 2017). NZME's 2017 financial year costs are budgeted to be \$[] million – see NZME "Board Agenda FY17 -Budget Presentation" (12 December 2016), at 7, contained in an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (14 February 2017).

1109. []

1110. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in an agency and national customer sales cost saving benefit of between \$[] million to \$[] million over the course of one year, and one-off merger-related costs of between \$[] and \$[].

Sales operations

1111. Both Applicants incur advertising costs in relation to their sales operations.
[]

1112. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a sales operations cost saving benefit of between \$[] to \$[] over the course of one year, and one-off merger-related costs of between \$[] to \$[].

Direct sales

1113. Both Applicants sell advertising inventory to a large number of smaller customers. For example, each individual community paper typically has hundreds of customers each year. In many instances the direct sales teams of the Applicants target the same customers.

1114. The duplication that would be
[]

1115. The Commission accepts these figures as reasonable estimates, at least in the short term, and considers that the proposed merger would be likely to result in a direct sales cost saving benefit of \$[] million over the course of one year, and one-off merger-related costs of \$[].

Marketing

Subscriber management

1116. Both Applicants undertake subscriber management activities to maximise subscription revenues.

[

]

1117. The Commission accepts these estimates and considers that the proposed merger would be likely to result in a subscriber management cost saving benefit of between \$[] and \$[] over the course of one year, and one-off merger-related costs of between \$[] and \$[].

Research and insights

1118. Both Applicants have in-house teams which analyse Nielsen and other data for internal and external purposes.

[

]

1119. [

]

1120. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a research and insights cost saving benefit of between \$[] to \$[] million over the course of one year, and one-off merger-related costs of \$[].

Trade marketing

1121. Both Applicants undertake trade marketing targeted at the same customer base which

[

].

1122. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a trade marketing cost saving benefit of between \$[] and \$[] over the course of one year, and one-off merger-related costs of \$[].

Consumer marketing – staff

1123. Both Applicants employ staff to undertake consumer marketing targeted at the same customer base which

[

].

1124. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a consumer marketing cost saving benefit of between \$[] to \$[] million over the course of one year, and one-off merger-related costs of \$[].

Consumer marketing – external spend

1125. Both Applicants undertake external consumer marketing spending which

[

].

1126. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in consumer marketing cost saving benefit of \$[] million over the course of one year.

Editorial

1127. The Commission accepts the estimates provided by PwC for the purposes of quantifying the benefits arising from [].

[

1128.

1128.1

1128.2

1128.3

1128.4

1128.5]

1129. PwC estimated that the proposed merger would result in

[

⁷⁷³

⁷⁷³ []

].

Table 8: []

[]	[]
[]	[]
[]	[]-[]
[]	[]-[]
[]	[]-[]
[]	[]-[]
[]	[]-[]

1130. As well as
[]

].

1131. Based on PwC’s estimates, the Commission considers that the proposed merger would be likely to result in a [] cost saving benefit of between \$[] million and \$[] million over the course of one year, and one-off merger-related costs of between \$[] million and \$[] million.

[]

1132. []

]

1133. Based on PwC’s estimates, the Commission considers that the proposed merger would be likely to result in a [] cost saving benefit of \$[] million over the course of one year, and one-off merger-related costs of \$[].

[]

1134. []

]

1135. Based on PwC's estimates, the Commission considers that the proposed merger would result in a [] cost saving benefit of between \$[] to \$[] over the course of one year, and one-off merger-related costs of \$[].

[]

1136. [

]

1137. Based on PwC's estimates, the Commission considers that the proposed merger would be likely to result in a [] cost saving benefit of between \$[] to \$[] over the course of one year, and one-off merger-related costs of \$[].

Syndication and contributor costs

1138. Both Applicants purchase syndicated content from content sources, including on a subscription basis and from freelance contributors.

[] PwC estimated that this would result in a []% reduction in syndication costs paid to content providers and a []% reduction in contributor costs from an alignment of content.

1139. Based on PwC's estimates, the Commission considers that the proposed merger would be likely to result in a cost saving benefit of \$[] million over the course of one year.⁷⁷⁴

[]

1140. [

]

1141. PwC initially considered that reductions through aligned technology and businesses and rolling out a consistent content management system across the merged entity could result in a significant []. PwC initially estimated that this would result in costs savings of between \$[] and \$[] million.⁷⁷⁵

1142. [

]

⁷⁷⁴ This may have a disbenefit of negatively affecting financial viability of local content providers. As we have no means of assessing the impact of such a disbenefit, we do not discuss it any further.

⁷⁷⁵ PwC "Indicative Synergies Analysis" (12 May 2016).

1143. [] PwC has estimated this net benefit to be between \$[] million to \$[] million, with one-off merger-related costs of between \$[] million to \$[] million.

1144. Based on PwC estimates, we consider that the proposed merger would be likely to result in a lower [] cost saving benefit of between \$[] million to \$[] million over the course of one year, and one-off merger-related costs of between \$[] million to \$[] million.

[]

1145. []

]

1146. Based on PwC's estimates, the Commission considers that the proposed merger would be likely to result in a staff cost saving benefit of \$[] over the course of one year, and one-off merger-related costs of \$[].

Printing, procurement and distribution

Newsprint costs

1147. Both Applicants currently purchase large volumes of newsprint under separate contracts. PwC modelled that post-merger the Applicants may be able to obtain procurement savings from aligning newsprint costs. PwC has estimated that this would result in a cost saving of between [] to \$[] million.

1148. PwC initially estimated cost savings of between [] to \$[] million,⁷⁷⁶ but reduced estimates of cost savings after accounting for the fact that a common supplier now supplies both Applicants with 40 gsm rather than 42 gsm paper. Both Applicants use 42 gsm paper for a portion of their papers. The cost savings have been reduced in part due to 40 gsm having a lower price than 42 gsm.

1149. The Commission accepts these figures as reasonable estimates and, correcting the upper bound figure to account for total tonnage figures (as opposed to the "good copy" quantities only), considers that the proposed merger would be likely to lead to cost-saving benefits of between [] to \$[] million over the course of one year.

⁷⁷⁶ PwC "Indicative Synergies Analysis" (12 May 2016).

Other procurement savings

1150. Both Applicants purchase a large amount of inputs, including communications services, electricity, IT services, consumables, print materials costs, and repairs and maintenance services. The Applicants claimed that post-merger they may be able to obtain savings through []. PwC estimated that this could result in savings of between [] to []%.
1151. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in potential procurements savings of between [] to \$[] million over the course of one year.

Consolidation of print distribution in Auckland

1152. Both NZME and Fairfax currently independently distribute several publications in the upper North Island.
[]
1153. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a [] cost saving benefit of \$[] over the course of one year, and one-off merger-related costs of \$[].

Management*Executive team*

1154. Both Applicants employ a number of people in senior executive roles.
[]
1155. PwC estimated that this would result in a cost saving of \$[] million over the course of one year, with a one-off merger-related cost of \$[] million. The Commission considers that this figure overestimates the likely actual benefit to the extent that senior executives employed by the merged entity would have greater responsibilities than currently and would
[]].
1156. We have not sought to estimate the exact extent to which [] to account for higher responsibilities due to inherent uncertainty in gauging the exact nature of the senior executives' roles post-merger. We continue to use estimates provided by PwC, noting that they are likely to overestimate costs savings associated with [].
1157. With that caveat, the Commission considers that the proposed merger may result in a [] cost saving benefit of \$[] million over the course of one year, and one-off merger-related costs of \$[] million.

General management

1158. Both Applicants employ a number of people in general management roles.

[

] ⁷⁷⁷

1159. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a [] cost saving benefit of \$[] million over the course of one year, and one-off merger-related costs of \$[] million.

Human resources

1160. Both Applicants incur staffing costs in relation to human resource functions.

[

]

1161. The Commission accepts these figures as reasonable estimates [], but notes that, in our view, there are likely to be additional one-off merger related human resources costs relating to the integration of NZME and Fairfax. We consider that these additional one-off costs would relate to an additional six consultants required for between four to six months each at a rate of \$20,000 per annum.

1162. Consequently, we consider that the proposed merger would be likely to result in a [] cost saving benefit of between \$[] million to \$[] million over the course of one year, and one-off merger-related costs of \$[] to \$[].

Financial processing

1163. Both Applicants incur costs in relation to financial processing functions, although each has structured their financial processing functions differently. Fairfax has outsourced its operations offshore to TCS in India. In contrast, NZME has established its own financial processing centre in Whangarei (GFS) where it not only undertakes its own financial processing functions but also those of its former parent company APN. []

⁷⁷⁷

[

]Email from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (27 April 2017).

1164. []

1165. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a [] cost saving benefit of between \$[] million to \$[] million over the course of one year, and one-off merger-related costs of \$[].⁷⁷⁸

Group finance

1166. Both Applicants undertake group finance functions.
[]

1167. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a [] cost saving benefit of \$[] million over the course of one year, and one-off merger-related costs of \$[].

Information technology

IT: Support services

1168. Both Applicants employ staff to undertake considerable IT network support activities, including those relating to telephony, storage, printing and helpdesk functions, but excluding NZME's radio engineers.
[]

1169. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a [] cost saving benefit of between \$[] million to \$[] million over the course of one year, and one-off merger-related costs of between \$[] to \$[].

IT: Platforms and apps

1170. Both Applicants currently run separate IT platforms and apps. The Applicants claimed that the proposed merger would provide scope for the consolidation and harmonisation in this area. PwC estimated that this would result in a one-off implementation cost of \$[] million, although they note that synergies would be determined by the extent to which the separate entities would build shared functionality, integrate NZME's radio business and invest in merging IT roadmaps.

⁷⁷⁸

[]

1171. The Commission accepts this estimate and considers that there is likely to be a one-off implementation cost estimate related to consolidation and harmonisation for IT platforms and apps. However, the Commission notes that there is uncertainty around this estimate given it is dependent on the extent to which the separate entities would build shared functionality, integrate NZME's radio business and invest in merging IT roadmaps.

IT: SAP

1172. Fairfax Australia requires that all of its business, including Fairfax, use SAP. []. The Applicants claimed that Fairfax could either migrate to NZME's JDE system or to a new ERP system to replace both.

1173. Migrating Fairfax to JDE is estimated as adding operating costs of \$[] on top of what is currently being paid by NZME, resulting in a saving of \$[] million per year. Fairfax estimated that operating an ERP system capable of handling its requirements to be \$[], resulting in a savings of \$[] million. In both scenarios, PwC has estimated that a one-off implementation costs of \$[] million.

1174. The Commission accepts these figures as reasonable estimates and considers that the proposed merger would be likely to result in a cost saving benefit of between \$[] to \$[] million over the course of one year, and one-off merger related costs of \$[] million.

IT: Staff

1175. Fairfax is charged \$[] million by Fairfax Australia for services provided in the form of IT systems and governance. NZME has its own IT systems and governance which the Applicants claimed are partially scalable. The Applicants claimed that upon merging, IT strategic management would be undertaken by the merged entity management. PwC estimated that this would result in net savings of \$[] million per year.

1176. The Commission accepts that these figures as reasonable estimates and considers that the proposed merger would be likely to result in a cost saving benefit of \$[] million per year.

Premises

1177. Both Applicants require premises in various locations throughout the country. []

1178. PwC estimated cost savings based on a calculation of current lease costs per person employed. PwC's resulting estimate of the benefit of avoided lease costs is between \$[] million to \$[] million. The Applicants suggested that [] buildings are of high quality and would be sublet relatively easily.

1179. In the Draft Determination, the Commission considered that this range of avoided costs was too high for two reasons. First, we considered that lease costs per FTE was a more appropriate method of calculation than lease cost per person employed (headcount). This adjustment reduced both the upper and lower bounds of PwC's estimated range by \$[].
1180. Second, we considered that lease costs were not necessarily as scalable as suggested by the Applicants.
[

]
1181. Similarly, the Commission has not been presented with a specific merger integration plan. This means that there is considerable uncertainty as to the extent to which the merged entity would seek to cancel or sublet specific leases. Consequently, the Commission used a range of likely avoided lease costs of between [] to \$[] million.
1182. In response, the Applicants submitted that they view the PwC estimates as the most likely cost savings that would be achievable in respect of premises. In particular, the Applicants submitted that:⁷⁷⁹
- 1182.1 []
- 1182.2 []
1183. Based on these estimates we use a range of likely avoided lease costs of \$[] to [] million.

Paper rationalisations

Community papers

1184. There are 10 areas where NZME and Fairfax both publish overlapping community papers.
[

⁷⁷⁹ NZME/Fairfax "Factual Submission on the Draft Determination" (25 November 2016) at [330] – [333].

]

1185. PwC estimated

[

780

]

1186. The Commission accepts these figures as reasonable estimates. Consequently, we consider rationalisation of community papers would be likely to result cost saving benefits of between \$[] to \$[] million over the course of one year, and one-off merger-related costs of \$[].

1187. However, as previously noted, we cannot exclude the real chance that one of the overlapping community newspapers in each of [] areas would be closed within a two year period. This would eliminate the scope for these production efficiency benefits with the merger beyond year two. While we continue to use estimates provided by PwC, we note that they are likely to overestimate costs savings attributable to the proposed merger.

Sunday newspapers

1188. NZME currently publish the *Herald on Sunday* and Fairfax publishes the *Sunday Star Times* and the *Sunday News*.

[

]

1189. PwC estimated

[

781

]

1190. The Commission accepts with these figures as reasonable estimates and considers that the proposed merger would be likely to result in a cost saving benefit of between [] to \$[] million over the course of one year, and one-off merger-related costs of \$[].

Management fees

1191. Fairfax currently incurs a management fee of \$[] million per year from Fairfax Australia for the provision of services including strategic management, internal audit and treasury.

⁷⁸⁰ []

⁷⁸¹ []

1192. The Applicants claimed that upon merging, both parties expect to change the management structure such that the strategic management of the business and other services provided by Fairfax Australia (other than internal audit and treasury) would be undertaken by the merged entity. The Applicants also claimed that NZME internal audit and treasury teams are partially scalable, resulting in additional savings of standalone costs. PwC estimated that the likely avoided costs range from \$[] million to \$[] million.
1193. The Commission accepts these figures as reasonable estimates. We consider that the proposed merger would be likely to result in costs savings of between \$[] million to \$[] million over the course of one year.

Finance costs

1194. The Applicants currently incur finance costs in relation to lending. Post-merger these costs would increase as a result of:
- 1194.1 a higher interest rate of []% being charged on the \$[] million of debt currently held by NZME as opposed to the current rate of []%; and
- 1194.2 increased borrowing costs (at []%) as a result of the \$[] million of lending required to fund the cash payment to be paid to Fairfax as part of the transaction.⁷⁸²
- 1194.3 The structure of the merger transaction had not been confirmed at the time of the PwC's analysis, so the Applicants have not provided an estimate of this additional cost. However, the Commission considers that these additional finance costs would range from \$[] million to \$[] million over the course of a year.

Merger transactions costs

1195. The Applicants would incur costs involved with undertaking the merger transaction and integrating NZME and Fairfax. These include costs associated with merger integration planning and implementation, including hiring external consultants. These costs would not include advisory costs that have already been incurred and would likely be incurred during the merger authorisation process regardless of the Commission's ultimate decision.
1196. Based on estimates provided by the Applicants,⁷⁸³ the Commission considers that these costs would be likely to be in the range of \$[] million to \$[] million.

⁷⁸² We recognise that instead of debt financing, the Applicants may use equity. Such equity investment would come with an expectation of a return to capital. However, unlike interest related cost of financing, there is no legal obligation to make such a return to equity investors.

⁷⁸³ Commerce Commission interview with Dale Bridle (Fairfax), Ramesh Vedachalam (Fairfax) and Brendan Jones (PwC) (3 October 2016).

Total production efficiency benefits

1197. The Commission estimates that the total production efficiency benefits would likely be between \$40 million and \$55 million over the course of a year, whereas one-off merger-related costs would likely be between \$20 million and \$21 million. These costs are broken down by the major cost categories in Table 9.
1198. However, as outlined above, this estimate of costs savings potentially overstates the production efficiency benefits as it takes into account cost savings that could arise in any event without the merger, and therefore are not merger specific efficiencies.

Table 9: Total production efficiency benefits

Benefit (cost) category	Annual – low (\$m)	Annual – high (\$m)	One-off – low (\$m)	One-off – high (\$m)
Sales	[]	[]	[]	[]
Marketing	[]	[]	[]	[]
Editorial	[]	[]	[]	[]
Printing, procurement and distribution	[]	[]	[]	[]
Management	[]	[]	[]	[]
IT	[]	[]	[]	[]
Premises	[]	[]	-	-
Community paper rationalisation	[]	[]	[]	[]
Sunday paper rationalisation	-	[]	[]	[]
Management fees	[]	[]	-	-
Finance costs	[]	[]	-	-
(Merger transaction costs)	-	-	[]	[]
Total	\$40 m	\$55 m	(\$20 m)	(\$21 m)

‘Digital plus limited print’ scenario

1199. There is inherent uncertainty in the level of print retrenchment that would occur absent the proposed merger and, in particular, the exact form and rate of retrenchment. As discussed previously, under the ‘digital plus limited print’ scenario we considered the benefits attributable to the merger if a greater rate of print retrenchment was observed absent the merger over the next five years. We are of the view that merger-specific savings would be substantially lower. It is likely that with an increased rate of print retrenchment in a ‘digital plus limited print’ scenario, many cost-savings would arise regardless of the merger within the five year period we are considering.
1200. For example, in this scenario we consider that there would be additional cost-savings without the merger, including staff costs related to editorial resources. We would also expect further cost-savings related to downsizing of management, marketing and IT, as well as reduced premises costs.
1201. In recognition of greater print retrenchment without the merger, (which would reduce the scale of production efficiency benefits related to print after a certain point), we have assumed that annual cost-savings related to newsprint costs, the consolidation of print distribution in Auckland and the rationalisation of community and Sunday newspapers fall to zero from year three onwards. This helps provide us with some sense of how the production efficiency benefits would be smaller in this scenario, although we note that other cost categories would also be affected in a similar manner, at least to some extent.
1202. Under this approach, the annual cost savings and one-off-merger-related costs are the same as summarised under Table 9 above. However, the five year net-present-value of productive efficiency benefits are lower than that calculated under the ‘digital and print’ scenario, as summarised under Table 10 below.

Table 10: Summary of benefits under ‘digital and print’ and ‘digital plus limited print’ scenarios

Scenario	5-year NPV
‘Digital and print’	\$145 million to \$210 million
‘Digital plus limited print’	\$144 million to \$199 million

1203. As stated above, we consider that there is a real chance that the production efficiency benefits could be lower than the ranges indicated in Table 10 above, and substantially lower in the digital plus limited print scenario. In particular, we consider that there would be further cost-savings under either scenario related to the downsizing of editorial, management, marketing, IT, and premises without the merger. We cannot predict with certainty the extent and timing of such cost-savings.

However, we take this into account in balancing the likely benefits and detriments of the proposed merger.

Productive, dynamic and allocative efficiency losses

1204. In this section, we provide our assessment of likely quantified detriments from the proposed merger. These detriments relate to efficiency losses and detrimental wealth transfers attributable to the proposed merger. We undertake this assessment under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.

Efficiency losses in the ‘Digital and print’ scenario

1205. The Applicants submitted that there would be no material detriments arising from the proposed merger. On the advertiser side, the Applicants submitted that they compete in a converged advertising market with global and local competitors. On the reader side, the Applicants submitted that cover and subscription prices are constrained by the potential effects on advertising revenues of losing circulation or readership. Further, quality is constrained by the numerous sources of news coverage.⁷⁸⁴

1206. We assessed the level of detriment that could arise from the loss of competitive constraint that the Applicants impose on each other in the markets for:

1206.1 community newspaper advertising in the Whangarei, Rotorua, Hastings, Napier, Manawatu, Horowhenua, Kapiti, Taranaki, Taupo and Hamilton areas.^{785 786}

1206.2 Sunday newspaper advertising;

1206.3 Sunday newspapers; and

1206.4 online New Zealand news.

1207. We consider that the detriments arising from a loss of competition from the proposed merger in the above markets would result in price detriments. We also consider that there would be quality detriments in reader markets.

1208. In this section, we estimate only those detriments related to price effects, as well as productive efficiency and some dynamic efficiency detriments. We have not attempted to quantify the likely quality detriments associated with a loss of

⁷⁸⁴ Application at [21.1] – [21.3].

⁷⁸⁵ As noted under the Advertising section, we consider that real estate advertisers have more alternatives available to them than other local advertisers. Examples include the Property Press, which is published throughout the North Island, and other digital options which we consider are closer substitutes to community newspapers for real estate advertisers than for other local advertisers. We exclude real estate advertising in community newspapers from the detriments calculated in this section as a result.

⁷⁸⁶ Further, as noted under the Counterfactual section, our range of efficiency losses for community newspapers advertising in the [] start at zero as we cannot exclude the real chance that at least one of the overlapping community newspapers in these areas would be rationalised within a two year period. We follow a similar approach for our estimates of detrimental wealth transfers in these regions.

competition as a result of the proposed merger. These are discussed in a separate section below.

1209. In undertaking the assessment of detriments identified above, the Commission has used the following categories – loss of productive efficiency, loss of dynamic efficiency and loss of allocative efficiency.

Approach to quantifying efficiency losses

1210. We have used current financial information to estimate the efficiency losses that arise from the proposed merger. As noted above, our estimates using current financial information are likely to overstate detriments arising from post-merger price increases when comparing the factual against the ‘digital and print’ scenario.⁷⁸⁷

1211. We provide further details below.

Loss of productive efficiencies

1212. One outcome that can be associated with a loss of competition is that a firm gaining market power has less incentive to minimise costs and to avoid waste. Organisational slack may creep into operations, and costs may increase, because a satisfactory level of profit is assured even when the firm is less than fully efficient.
1213. On the other hand, a firm seeking to maximise its profits will have an incentive to minimise its costs, irrespective of the level of competition in the market. For this reason, the Commission does not assume that reductions in competition will necessarily lead to productive inefficiency.⁷⁸⁸

Setting the range for productive inefficiency

1214. While we consider that competition is an important driver of productive efficiency, the weight to be given to competition as a factor driving productive efficiency is difficult to quantify.
1215. As noted already, the media industry has been subject to significant change in recent years due to changes in technology and consumer demand, with print revenue and readership in decline. Traditional media models in the form of print newspapers are facing increasing challenges from other modes of delivery.
1216. In contrast, digital media has been growing, with many consumers switching their news consumption from print to digital media, or supplementing their print news consumption with online news. As discussed previously, this has led to the Applicants adopting a ‘digital-first’ strategy, with an increasing focus on video and audio in addition to text content.⁷⁸⁹

⁷⁸⁷ In particular, given retrenchment by the Applicants of print publications without the merger, prices may be increased to meet costs previously met by rationalised publications and so would not be merger specific.

⁷⁸⁸ *Authorisation Guidelines* above n 54 at [68]-[71].

⁷⁸⁹ Application at [9.3].

1217. We consider that the changing trends in technology and consumer demand are likely to maintain pressures for internal efficiency, especially with respect to print advertising and production.
1218. Nevertheless, we cannot fully discount the detrimental impact that a loss of competition could have on incentives to minimise costs and to avoid waste. Without day-to-day pressures from a close competitor and a lack of a competitive benchmark against which a firms' management can be measured, there is a real chance that a firms' management will become less productively efficient.
1219. We considered productivity growth across sectors when setting the range for likely productive efficiency detriments. These productivity growth measures may provide an indication of the range of productive efficiency losses that may arise from the proposed merger. Productivity growth across all industries from 1997 to 2012 was 0.8%, with productivity growth in the Information Media and Telecommunications industry higher at 2.4%, though not statistically significantly so.⁷⁹⁰ The above range of productivity growth measures indicates that there may be some productive efficiency loss from a loss of competition as a result of the proposed merger.
1220. Overall, we consider that any loss of productive efficiency associated with the proposed merger would be minimal. Given the productivity performance observed across all industries, we propose to use a range of between zero and 1% of pre-merger variable costs to estimate productive efficiency losses as a result of the proposed merger in the markets we consider there would likely be a substantial lessening of competition.

Quantification of loss of productive efficiency

1221. Based on the range which the Commission considers is appropriate, ie, that the likely productive efficiency losses would be between zero and 1% of pre-merger variable costs, we estimate that productive efficiency losses are likely to have a value of between zero to \$[] million on an annual basis.

Loss of dynamic efficiency

1222. Dynamic efficiency typically refers to improvements made by firms over the long term concerning product quality, product variety, and cost efficiency through innovations in processes, equipment or managerial practices. A loss of a competitor might cause a firm to invest fewer resources in such improvements.
1223. As is the case with the loss of productive efficiency, it is difficult to measure with any precision the cost to society of a lessening in dynamic efficiency attributed to a substantial lessening of competition in a market. Even if firms possess market power, they still have an incentive to innovate and achieve dynamic efficiency as doing so would lead to increased demand for their products and maximises profits. Consequently, a qualitative element is typically a significant part of this assessment.

⁷⁹⁰ Our calculations are based on data from Statistics New Zealand. We note that the productivity growth measures mentioned are likely to also incorporate an element of dynamic efficiency.

Setting the range for loss of dynamic efficiency

1224. We consider that dynamic efficiency losses are likely to be limited with respect to community and Sunday newspaper advertising and the supply of Sunday newspapers.
1225. We consider that newspaper print advertising and supply are likely to be characterised as ‘mature industries’. The Commission considers it unlikely that innovations in relation to newspaper print and supply would entail radically new products or processes. Rather, innovation is likely to be related to improvements of existing processes and incremental in nature.
1226. As a result, the Commission’s view is that the dynamic efficiency losses associated with the merger with respect to community and Sunday newspaper advertising and the supply of Sunday newspapers is likely to be minor and in the range of zero and 0.5% of sales.
1227. We consider there are likely to be dynamic efficiency losses associated with online New Zealand news. We consider that the loss of each other’s closest competitors for online New Zealand news as a result of the proposed merger would likely mean that the merged entity would invest fewer resources into product quality, product variety, and cost efficiency through innovations in processes, equipment or managerial practices.
1228. We have not, however, sought to quantify the dynamic efficiency losses associated with online New Zealand news.⁷⁹¹ We discuss the dynamic efficiency losses for online New Zealand news qualitatively below.

Quantification of loss of dynamic efficiency

1229. Using the range of zero to 0.5% of total sales revenue for community and Sunday newspaper advertising, and the supply of Sunday newspapers, the estimated potential detriment is likely to have a value of between zero to \$[] million on an annual basis.

Loss of allocative efficiency

1230. In general, when the price of a product increases because of a loss of competition (for example, as a result of a merger), the quantity demanded for that product will fall as some consumers switch to alternative products. These alternatives may meet consumers’ requirements in a less satisfactory way and/or are more costly to produce than the products they replace. Alternatively, consumers may simply make fewer purchases, losing the benefit that they would otherwise obtain from a product. In effect, the net result is that resources are allocated less efficiently.

⁷⁹¹ We have been unable to quantify dynamic efficiency losses as a result of the proposed merger in the usual way as we consider that the price, and therefore revenue, for online news without the merger could be zero. In addition, we have not been provided with or are unaware of any reliable estimates of potential dynamic efficiency impacts in this industry.

1231. Allocative efficiency losses can include both price and non-price effects (such as quality effects). Non-price effects are assessed qualitatively.⁷⁹²
1232. The size of the allocative efficiency price effects depend to a large extent on the degree of price increases post-merger.⁷⁹³ The higher the price increase, the larger the loss of allocative efficiency.

Estimating allocative efficiency loss

1233. To estimate the potential loss of allocative efficiency due to price effects, we determine the likely price increases and determine the likely impact this would have on the quantity of products purchased in the various markets post-merger.
1234. In modelling provided by NERA (on behalf of the Applicants), price increases post-merger were estimated through merger simulation modelling on the advertising side.⁷⁹⁴ Results of NERA's modelling suggest price increases between 5% and 10%.⁷⁹⁵ NERA's amended modelling uses a maximum price increase of 5%.
1235. In response to the Draft Determination, the Applicants reiterated their view that newspaper advertising and online advertising are in the same market. Accordingly, the Applicants submitted that there would not be any material price increase in newspaper advertising prices post-merger. At the very worst, the price increases should be assumed to be no higher than 5% as per NERA's merger simulation findings.⁷⁹⁶
1236. As discussed previously in the advertising section, we consider print advertising is in a separate market, as online advertising provides an insufficient constraint on print advertising products. Accordingly, we do not use price increases suggested by NERA's merger simulation findings.
1237. We consider each of the markets of concern below in turn and outline our approach to determining the likely allocative losses associated with the proposed merger.

Estimating allocative efficiency loss for Community newspaper advertising

1238. As outlined in the Advertising section, we are not satisfied that the proposed merger will not have, or would not be likely to have the effect of substantially lessening competition in markets for the supply of community advertising in the 10 areas of overlap identified.

⁷⁹² *Authorisation Guidelines* above n 54 at [67].

⁷⁹³ It also depends on the elasticity of demand, that is, the sensitivity of buyers to changes in price.

⁷⁹⁴ NERA does not apply merger simulation modelling to estimate price increases post-merger on the reader side due to the view that there is a relatively strong cross-platform externality between the reader and advertising sides, ie, the demand for advertising is strongly affected by the number of readers. In contrast, NERA's survey of research finds evidence of weak or non-existent relationships between advertising and demand by readers and, accordingly, applies merger simulation models to the advertising side of the market. See Application Appendix 13 at 27.

⁷⁹⁵ Application Appendix 13 at 38.

⁷⁹⁶ NERA "Review of the Draft Determination" (25 November 2016) at [87].

1239. As previously discussed, there was no consensus among local community newspaper advertisers as to the extent of the price increase that would prompt them to switch to another form of advertising. However, the majority of those who said that they would continue to advertise in community newspapers would do so at a price increase of at least 5 to 10%. In light of this, we use a range of 5% to 10% as the likely price increase from the proposed merger.⁷⁹⁷

Estimating allocative efficiency loss for Sunday newspaper advertising

1240. As previously discussed, we are not satisfied that the proposed merger will not have, or would not be likely to have the effect of substantially lessening competition for the supply of print advertising in the market for Sunday newspaper advertising.

1241. We consider that the proposed merger would remove each of the merging party's closest Sunday newspaper advertising competitor in the North Island, being *The Herald on Sunday* in the case of Fairfax, and the *Sunday Star Times* in the case of NZME.

1242. We therefore consider that it is likely the merged entity would raise advertising prices post-merger for both *The Herald on Sunday* and the *Sunday Star Times* across both the North and South Islands. Advertisers such as []⁷⁹⁸ and []⁷⁹⁹ stated that there was a risk that there would be price increases post-merger. However, we did not receive views on the maximum price increases advertisers would absorb before switching to alternative providers.

1243. We considered the two-sided nature of the Sunday newspaper advertising market in reaching a view of the likely post-merger price increase. We note the lack of definitive evidence that newspaper readers necessarily care about advertising.⁸⁰⁰ This suggests that there might not be a strong price constraining effect from a risk of reduced readership as result of reduced advertising due to higher post-merger advertising prices.

⁷⁹⁷ As noted previously, our range of efficiency losses for community newspapers advertising in the [] start at zero as we cannot exclude the real chance that at least one of the overlapping community newspapers in these areas would be rationalised within a two year period. We follow a similar approach for our estimates of detrimental wealth transfers in these regions.

⁷⁹⁸ Commerce Commission interview with [] (26 August 2016).

⁷⁹⁹ Commerce Commission interview with [] (23 September 2016).

⁸⁰⁰ For example, Fan's empirical results support her assumption that newspaper readers do not care about advertising (Ying Fan (2013), "Ownership Consolidation and Product Characteristics: A Study of the US Daily Newspaper Market" *American Economic Review*, 103(5), 1598-1628). Filistrucchi et al (2012) find that readers do slightly prefer advertising, although the effect is "not very pronounced" (Lapo Filistrucchi, Tobias J. Klein and Thomas O. Michielsen (2012), "Assessing Unilateral Merger Effects in a Two-Sided Market: An Application to the Dutch Daily Newspaper Market" *Journal of Competition Law and Economics*, 8(2), 297-329). In contrast, Kaiser and Song (2009) find that advertising does increase the demand by readers, at least in respect of magazines on which their analysis focuses (Ulrich Kaiser and Minjae Song (2009), "Do Media Consumers Really Dislike Advertising? An Empirical Assessment of the Role of Advertising in Print Media Markets" *International Journal of Industrial Organisation*, 27(2), 292-301).

1244. However, as discussed previously, we also recognise that online and other print alternatives (such as magazines) would continue to provide some constraint on Sunday newspaper advertising, albeit insufficient to constraint the merged entity from increasing the price of Sunday newspaper advertising. In light of this, we use a range of 5% to 10% as the likely price increase from the proposed merger.

Estimating allocative efficiency loss in Reader Markets for Sunday newspapers

1245. As discussed in the Reader Markets section, we are not satisfied that the proposed merger will not have, or would not be likely to have the effect of substantially lessening competition for Sunday newspapers. In particular, we consider it likely that the merged entity would likely increase subscription prices and retail cover prices for the *Herald on Sunday* and the *Sunday Star Times*.

1246. As detailed in the Reader Markets section, the Applicants have implemented increases in cover and subscription prices in light of falling circulation and reduced demand from advertisers for print advertising.⁸⁰¹ This is consistent with research into declining readership and advertising which finds that falling demand from advertisers for print advertising has reduced newspaper publishers' ability to subsidise readers at the expense of advertisers.⁸⁰²

1247. We note that the rate of increases in cover and subscription prices across the Applicants' print publications has differed, with average rates of increase in cover and subscription prices larger for weekday newspapers that face little to no competition when compared to the *Herald on Sunday* and the *Sunday Star Times*. Our analysis indicates that the difference in average cover and subscription price increases ranges from []% to []%⁸⁰³ and []% to []%,⁸⁰⁴ respectively. The observed difference suggests that price could rise by more than 5% for both cover and subscription rates post-merger.

1248. However, we note that the price increases for regional newspapers have differed. The recent price increases for Sunday newspapers outlined above may also indicate that the market may not support greater price increases. In light of these factors, we consider that the likely price increase for both cover and subscription rates for Sunday newspapers is likely to be 5%.

1249. At present, the Applicants' respective Sunday newspapers overlap only in the North Island. However, as outlined in the Reader Markets section, we cannot discount the

⁸⁰¹ Application at [9.21].

⁸⁰² See Adithya Pattabhiramaiah, S. Sriram and Shrihari Sridhar "Rising Prices under Declining Preferences: The Case of the U.S. Print Newspaper Industry" (2013) Working Paper.

⁸⁰³ The average cover price increase for Fairfax's Monday to Friday *The Dominion Post* and *The Press* since 2013 is []% whereas the increase in price for the *Sunday Star Times* is []%. The average cover price increase for NZME's Monday to Friday *The New Zealand Herald* and regional newspapers is []% whereas the increase in price for the *Herald on Sunday* is []%. Source: NZME and Fairfax data.

⁸⁰⁴ The average subscription price increase for Fairfax's *The Dominion Post* and *The Press* since 2013 is []% whereas the increase in price for the *Sunday Star Times* is []%. The average subscription price increase for NZME's *The New Zealand Herald* and regional newspapers is []% whereas the increase in price for the *Herald on Sunday* is []%. Source: Fairfax and NZME data.

likelihood that price increases in the North Island would be applied equally in the South Island.

1250. As a consequence, the range of the estimated allocative efficiency loss incorporates the likely price increases to both the North and South Islands.

Elasticities

1251. To estimate the allocative efficiency loss that would arise from these potential price increases, we must also assess the likely elasticities of demand for the various markets of concern.

1252. In modelling provided by NERA on behalf of the Applicants, allocative efficiency losses are calculated using a range of elasticities. In particular, elasticities of:

1252.1 -0.2 to -1.02 for community newspaper advertising;

1252.2 -0.2 to -1.04 for Sunday newspaper advertising; and

1252.3 -0.2 to -1.68 for Sunday newspaper supply.

1253. NERA's estimates for community and Sunday newspaper advertising and Sunday newspaper supply are based on recent studies that capture the impact of online substitution, as well as critical loss analysis. The studies used suggest elasticities of -0.7 and -1.2⁸⁰⁵ for newspaper advertising and -1.75 for newspaper readers.⁸⁰⁶

1254. We have undertaken critical elasticity analysis to help inform the range of elasticities used.⁸⁰⁷ On the basis of results from our critical elasticity analysis, the following range of elasticities are used:

1254.1 -0.2 to -0.92 for community newspaper advertising;

1254.2 -0.2 to -1.01 for Sunday newspaper advertising;

1254.3 -0.2 to -1.22 for retail Sunday newspaper supply; and

1254.4 -0.2 to -1.68 for subscription Sunday newspaper supply.

⁸⁰⁵ Lapo Fillstrucchi, Tobias J. Klein and Thomas O. Michielsen "Assessing Unilateral Merger Effects in a Two-sided Market: An Application to the Dutch Daily Newspaper Market" (2012) 8.2 JCLE 297-329 [Assessing Merger Effects in Two-sided markets] and Ying Fang "Ownership Consolidation and Product Characteristics: A Study of the US Daily Newspaper Market" (2013) 103.5 AER 1598-1628.

⁸⁰⁶ "Assessing merger effects in two-sided markets", above n 865..

⁸⁰⁷ We use the breakeven critical elasticity approach and a linear demand. See Gregory Werden "Beyond Critical Loss: Tailoring Applications of the Hypothetical Monopolist Paradigm" US DOJ Antitrust Division Economic Analysis Group Discussion Paper No. 02-9. We note, as do the Applicants, that applying the standard formula for critical loss analysis in a one-side market may not be the correct approach, as it does not account for the cross-platform externalities between newspapers and online websites, advertisers and readers. However, this approach is likely to be conservative, as the full impact of a price increase on demand is likely to be underestimated, meaning that the critical elasticity is over-estimated. Detriments are higher at higher elasticities and so this approach is conservative.

Estimating allocative efficiency loss for online New Zealand news

1255. At present the Applicants do not charge consumers for access to online news. Allocative efficiency price effects therefore arise only where a paywall is introduced by the merged entity. As discussed in the Reader Markets section, we consider that there is a real chance that the merged entity will do so.
1256. We are unable to adopt our usual approach to calculating the allocative inefficiency loss associated with the introduction of a paywall on one or more of the merged entity's website. That is because prices for online New Zealand news are currently zero, which makes our usual method mathematically impossible.⁸⁰⁸

Modelling of allocative efficiency losses for online New Zealand news

1257. Although our usual approach cannot be adopted, []⁸⁰⁹ provides a basis for quantifying the likely allocative efficiency losses associated with the introduction of a paywall.⁸¹⁰ []
1258. We view a metered paywall as a means of price discriminating across low and heavy users. We consider that three broad groups of readers are potentially affected by a paywall:
- 1258.1 heavy users who would likely subscribe;
 - 1258.2 heavy users who would not subscribe; and
 - 1258.3 moderate to light users who would not be (or only rarely be) affected by the paywall. We do not consider this last group any further.
1259. The first group of heavy users who would be likely to subscribe demonstrate a willingness to pay that is equivalent or greater than the price, so there is no deadweight loss associated with this group. That is, given that the price is a fixed fee for unlimited consumption, no one in this group would consume more news had the price been lower. The subscription fee does, however, result in a transfer from these readers to the merged entity.

⁸⁰⁸ Zero prices mean that calculations for elasticities and changes in quantities are mathematically undefined and indeterminate, respectively. The usual approach to calculating quantity reductions and associated allocative efficiency detriments and wealth transfers therefore cannot be used.

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1260. The second group consists of readers who may have subscribed had the paywall subscription price been lower. We do not know, and have no information to help inform, the shape of their demand. We consequently adopt two extremes:

1260.1 One, no readers value viewing a website more than []. That is, no matter how low the paywall subscription price, they would be unwilling to pay for more than [].

1260.2 Alternatively, we assume that if the paywall subscription price had been marginally lower, then more readers would have viewed a website more than []. We assume that this relationship is approximated by a linear demand curve.⁸¹¹

1261. [

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1262. We use the number of unique browsers⁸¹² that visited nzherald.co.nz in the year to September 2016⁸¹³ and undertook a simple modelling exercise to estimate the number of readers that would choose to subscribe to a [] priced [].

1263. [

⁸¹¹ We note that this is unlikely to be the true underlying demand curve. In particular, it is likely that demand is largely horizontal at price zero for a certain portion of consumers who choose to switch to alternative providers as a result of a paywall. This is consistent with Hsiang Iris Chyi "Willingness to Pay for Online News: An Empirical Study on the Viability of the Subscription Model" (2005) 18(2) JME 131-142, at 133, which suggested that demand for news is typically completely horizontal when free, with any increase in price resulting in a complete reduction of quantity consumed. We also consider that there is a subset of readers who have a positive willingness to pay for viewing online news, but whose willingness to pay does not meet the price of a digital subscription. These may be readers who have a willingness to pay for specialised or local content news or if the reader cannot access the same content on a free website (see the survey of reasons for willingness to pay for online news in Manuel Goyanes "An Empirical Study of Factors that Influence the Willingness to Pay for Online News" (2014) 8(6) JP 742-757, at 743). The underlying demand curve may consequently be more accurately described as relatively "L-shaped". The estimated dead weight loss under the assumed linear demand may consequently overstate the true allocative efficiency loss.

⁸¹² By unique browser we mean the number of unique devices accessing nzherald.co.nz.

⁸¹³ We have the total number of page impressions on nzherald.co.nz year to date September 2016. We also have the total number of page impressions and unique browsers that visited stuff.co.nz in the same period. Figures for stuff.co.nz suggest that unique browsers generate on average [] page impressions a year. We use this figure to calculate an estimated number of unique browsers that visited nzherald.co.nz for the year ended September 2016. Our calculations suggest that [] unique browsers visited nzherald.co.nz year to date September 2016. Source Fairfax and NZME data.

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1264. []:

1264.1 [

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1264.2 [

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1264.3 [

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1264.4 [

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1265. The resulting figure provides us with the number of unique readers that would be subject to a paywall.⁸¹⁵ To estimate the number of unique readers that would choose to subscribe, we assume a []% conversion rate.⁸¹⁶ This calculation suggests that

⁸¹⁴ [

]

⁸¹⁵ This resulting figure suggests that 6.4% of all readers would be subject to a paywall.

[

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⁸¹⁶ That is, we assume that []% of all unique readers would choose to subscribe to a

[

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[] unique readers would choose to subscribe after implementation of a [] paywall. We note that the analysis is sensitive to the conversion rate used, and using the []% conversion rate used by [], for example, would generate higher combined allocative efficiency and detrimental wealth transfer losses.

1266. The difference between the number of unique readers that choose to subscribe and the number of unique readers that would be subject to a paywall provides an estimate of the group of readers who may have subscribed had the price of the paywall been lower.

1267. As outlined above, we adopted two extremes when we calculated the allocative efficiency loss related to this group of readers:

1267.1 One, that no matter how low the paywall, they would have no willingness to pay. Allocative efficiency loss would be zero as a result,⁸¹⁷

1267.2 Two, we assume that more readers would have subscribed had the subscription price been lower. We assume that this is approximated by a linear demand curve.⁸¹⁸ Allocative efficiency loss using this method amounts to \$[] million.⁸¹⁹

1268. The revenue generated by the paywall from readers that choose to subscribe represents the wealth transfer as a result of the paywall. Absent the paywall, readers that subscribe would have viewed more than [] for a price of zero. The payment made, in the form of the subscription, therefore constitutes a transfer from consumers to the merged entity.

Conclusion on allocative efficiency losses for online New Zealand news

1269. As noted previously, we consider that in both the 'digital and print' and 'digital plus limited print' scenarios, the Applicants would continue to retrench or rationalise print publications. There is a real chance that a paywall could be instituted without the merger, and may even be necessary to cover costs previously met by retrenched

⁸¹⁷ As noted by the Applicants (see NERA "Review of the Draft Determination" (25 November 2016) at [113]-[116]), our calculations used the residual demand curve faced by [], rather than a market demand curve for national online news. We accept that readers subject to a paywall who switch to alternative websites may gain materially the same surplus previously gained by consuming news on [], meaning there is little to no lost surplus. We consider our adoption of zero allocative efficiency loss accounts for such a scenario.

⁸¹⁸ The implicit slope of this demand curve is -0.0012. That is, a 1% reduction in the annual price of the paywall results in a 0.12% increase in the number of subscribers. This implies that a 1% reduction in price would lead to an additional [] unique consumers subscribing.

⁸¹⁹ The relatively large allocative efficiency loss is a result of the relatively larger number of readers, ([]) who would be subject to a paywall that choose not to subscribe when compared to readers modelled as subscribing ([]). As noted above, the use of a linear demand curve may also overestimate the true allocative efficiency loss should there be a subset of readers who do not have a positive willingness to pay regardless of the subscription price.

or rationalised publications. We acknowledge that a paywall may not necessarily be detrimental as a result.

1270. We also consider that there is a real chance that the merged entity would not impose a paywall within five years. If so, then no allocative efficiency losses would arise within the timeframe of our analysis.
1271. We are, however, of the view that the merged entity would be likely to impose a paywall, and would impose a paywall with a higher price, or that is more restrictive, than would occur without the proposed merger. As a consequence, we consider that there is still likely to be allocative efficiency losses with the introduction of a paywall post-merger.
1272. In light of these views, we continue to use the allocative efficiency losses implied by [], noting the maximum allocative efficiency loss estimated (ie, \$[] million) may be overstated due to our assumption of a linear demand curve. However, we consider that the range of likely allocative efficiency losses related to the paywall should start at zero to account for the scenarios referred to at [1269] and [1270] above.⁸²⁰
1273. The overall range of total potential allocative efficiency losses on an annual basis is between \$0.3 million to \$18.3 million depending on the size of the price increase and the elasticity of demand.
1274. The estimated allocative efficiency losses are broken into the following components in Table 11.

Table 11: Estimated allocative efficiency losses by category

Estimated price increase	Annual detriment
5% to 10% price increase for community newspaper advertising	[]
5% to 10% price increase for Sunday newspaper advertising	[]
5% price increase for Sunday paper cover prices	[]
5% price increase in Sunday paper subscription prices	[]
Allocative efficiency losses from paywall	Zero to \$[]
Total	\$0.3 million to \$18.3 million

⁸²⁰ As a consequence, our range of detrimental wealth transfers related to the implementation of a paywall also starts at zero.

Wealth transfers

1275. If the proposed merger allowed the merged entity to exercise market power by raising prices it would, in addition to the associated allocative efficiency loss, result in a transfer of wealth from consumers to the merged entity. Where one group gains at the expense of another in this manner, the transfer of wealth is not generally included in the Commission's analysis of benefits and detriments. This is because there is typically no net impact to New Zealand from such a transfer.⁸²¹

1276. However, an exception to the approach of ignoring such transfers is if one or more groups are non-New Zealanders. The Authorisation Guidelines state:⁸²²

Wealth transfers may become relevant where the transfer is between New Zealanders and non-New Zealanders. This is because the public benefit test focuses on benefits to New Zealanders. As a result, transfers of wealth from non-New Zealanders to New Zealanders may be a public benefit. Similarly, transfers of wealth in the opposite direction may be a public detriment.

However, in addition to considering the direct effects of wealth transfers, we also consider any effects on non-New Zealanders that may ultimately feedback to impact New Zealanders. For example, if a transaction would lead to a New Zealand firm charging higher prices to tourists, that would result in a transfer of wealth from those tourists to the New Zealand firm resulting in a public benefit. However, equally, those higher prices could lead to fewer tourists coming to New Zealand, which in the longer term could negatively affect New Zealanders.

1277. As made clear by the *Air New Zealand/Qantas*⁸²³ decision, not only does the nationality of those who receive the wealth transfer as a result of their exercise of market power matter but so might the nationality of those who incur the price increase (in the case of *Air New Zealand/Qantas*, the foreign tourists).

1278. To determine the nature of wealth transfers, it is first necessary to determine the residency status of those who would receive the transfers, ie, the shareholders of the merged entity, as well as those who may incur the burden of any price increase. The implications of this is that the nationality of both the owners of the merged entity and those purchasing advertising or news may be considered when determining how the wealth transfer is to be treated in the benefits and detriments analysis.

1279. This is not to say that all returns that non-New Zealanders receive from investments in New Zealand should necessarily be considered detrimental transfers of wealth to foreigners. New Zealand benefits to a large degree from the inflow of foreign capital and returns to this are a necessary incentive for such inbound investment.⁸²⁴

⁸²¹ This is distinct from allocative efficiency impacts described above, which relate to the lost consumer and producer surpluses arising from lower quantities of output bought and sold in the market.

⁸²² *Authorisation Guidelines*, above n 54 at [54] and [55].

⁸²³ *Air New Zealand* above n 42.

⁸²⁴ This position was endorsed by the Court of Appeal - see *Godfrey Hirst 2* above n 56 at [42].

1280. In addition to determining the residency status of those who receive wealth transfers and those who incur the burden of any price increase, we must determine the magnitude of wealth transfers. Determining the magnitude of wealth transfers in turn entails an assessment of whether transfers comprise supra-competitive returns.
1281. Supra-competitive returns are those returns which are over and above those needed to incentivise efficient investment. They may arise from the exploitation of market power. These can be distinguished from competitive returns to capital that are necessary to incentivise efficient investment.

Residency status of relevant groups

1282. In determining benefits and detriments to the public of New Zealand, New Zealanders are considered to be those who are domiciled in New Zealand.⁸²⁵
1283. As stated previously, post-merger NZME would acquire all of the shares in Fairfax. In exchange, NZME will pay \$55 million in cash and issue shares equal to a 41% shareholding in NZME to Fairfax Corporation Pty Ltd. Fairfax Corporation Pty Limited is an Australian registered and owned company that presently holds 100% of the shares in Fairfax.⁸²⁶
1284. As at 10 April 2017, NZME's New Zealand-based shareholding amounted to []%.⁸²⁷ For the purposes of calculating wealth transfers, we treat the percentage of NZME's New Zealand-based shareholding as shares owned by New Zealand domiciled shareholders.
1285. We note the Applicants' general submission that NZME has a strong expectation that New Zealand-based shareholders will increase their holding in NZME after the transaction with Fairfax.⁸²⁸
1286. However, as acknowledged by the Applicants,⁸²⁹ it is not possible to accurately predict the specific level of future New Zealand shareholding in NZME. Accordingly, present figures for NZME's New Zealand-based shareholding provided a grounded way of doing so. We continue to use the above figure as a result.
1287. Post-merger, we understand that 41% of the shareholding of NZME would be held by Fairfax Corporation Pty Ltd. To achieve this, we assume that NZME would issue additional shares equivalent to 69.5% of the current shareholding in NZME to Fairfax Corporation Pty Ltd. Assuming no other material change in the current NZME share register, the net result of this would be that []% of the merged entity would be New Zealand-owned post-merger.

⁸²⁵ *Authorisation Guidelines* above n 54 at footnote 44.

⁸²⁶ Pre and post completion adjustments could result in a greater or lower amount of cash or shares being paid to Fairfax at <https://www.nzx.com/companies/NZM/announcements/288557>.

⁸²⁷ Email from Russell McVeagh to Commerce Commission (21 April 2017).

⁸²⁸ Submission from NZME and Fairfax on the Commerce Commission's Draft Determination (25 November 2016) at [328].

⁸²⁹ *Ibid* at [329].

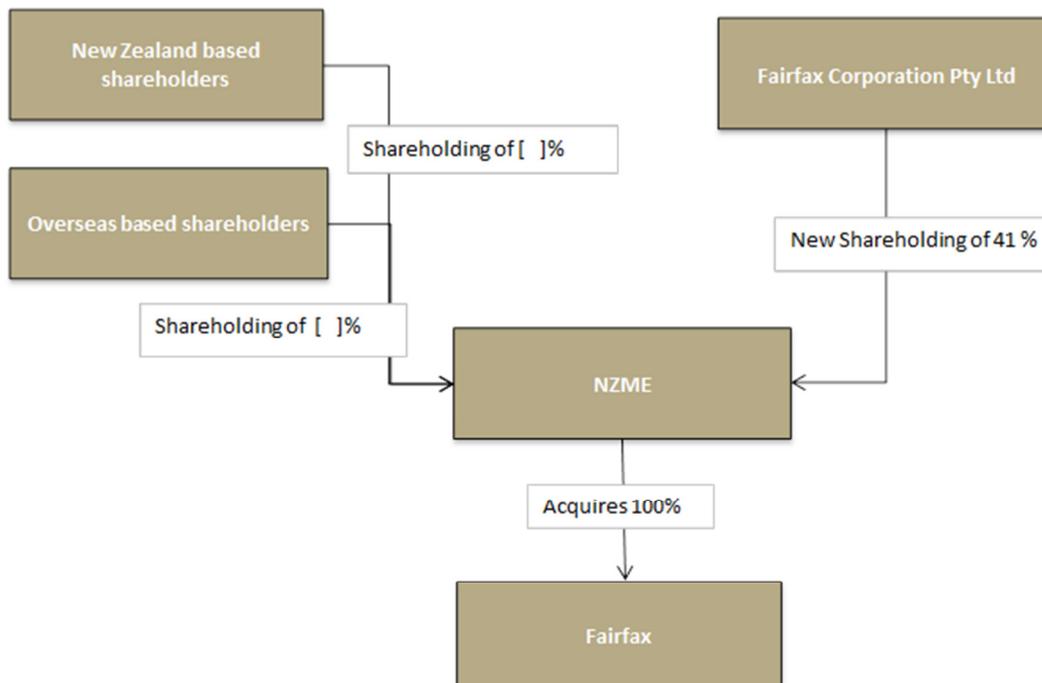
1288. In summary, for the purposes of calculating wealth transfers, we consider that:

1288.1 []% of the merged entity would be owned by New Zealand-domiciled shareholders; and

1288.2 []% of the merged entity would be owned by overseas-domiciled shareholders.

1289. Figure 11 below provides a simplified view of the post-merger structure.

Figure 11: Simplified post-merger structure



1290. We have also considered the residency of consumers who would purchase advertising and news from the merged entity. The Commission recognises that some purchasers of advertising and news may be non-residents. However, it is difficult to come to a firm conclusion on the likely residency of such consumers due to the varying identity and ownership structures of such consumers. As a conservative measure, we assume that all consumers of advertising and news are New Zealanders, as under this assumption all transfers to foreign shareholders of the merged entity would be treated as detrimental.⁸³⁰

⁸³⁰ We also note that the economic incidence of increased prices to advertising consumers may be borne by ultimate consumers of the goods or services being advertised. We have not assessed the likely rate of any such pass-through.

Components of transfers

1291. The total net wealth transfer received by the merged entity can be divided into two components. The first component is the transfer from New Zealand consumers of advertising and news to foreign shareholders of the merged entity. This component accounts for []% of all wealth transfers arising as a result of the proposed merger. We treat such transfers as detriments. This is because the negative impact arising from transfers of wealth from New Zealand consumers of advertising and news is not offset by the gains to New Zealand shareholders but instead accrue to non-New Zealanders.⁸³¹
1292. The second component that arises from the proposed merger is the transfer from New Zealand consumers of advertising and news to New Zealand shareholders of the merged entity. This component accounts for []% of all wealth transfers arising as a result of the merger. We treat such transfers as neutral. This is because the negative impact arising from transfers of wealth from New Zealand consumers of news and advertising are offset by gains to the New Zealand shareholders of the merged entity.

Magnitude of wealth transfers

1293. As discussed in the Counterfactual section, we consider that with the merger the Applicants would continue to retrench less profitable publications while continuing to publish their profitable print publications.
1294. The Applicants submitted that any post-merger price increase, and consequent wealth transfer from New Zealanders to foreigners, should be regarded as simply enabling the merged entity to have a better chance at covering costs and being able to invest, ie, any rents would be functional, not functionless.⁸³² The Applicants pointed to the following evidence as support for this submission:⁸³³
- 1294.1 [];
- 1294.2 the share prices of each Applicant’s parent company has not recovered since the GFC, despite share markets in general experiencing a recovery;
- 1294.3 []; and
- 1294.4 more generally, news media businesses globally have been struggling to remain profitable in the face of online competition.

1295. We note that the report on the Applicants’
[

⁸³¹ Changes in the distribution of income are generally not relevant as they do not change the overall public benefit. An exception may be made for transfers between New Zealanders and Non-New Zealanders – see *Air New Zealand* above n 42 at [242] and *AMPS-A (HC)* above n 68 at 531.

⁸³² NERA “Review of the Draft Determination” (25 November 2016) at [94].

⁸³³ *Ibid* at [93].

].⁸³⁴

1296. In light of our view that the proposed merger would remove the closest competitors in the reader and advertising markets identified, we are unable to exclude the real chance that some post-merger price increases would be supra-competitive for a time. However, we consider that the submissions above are consistent with our view that there is a real chance that transfers would cease being detrimental within the five year period we are considering.
1297. If the price increases imposed by the merged entity are not supra-competitive, then no allocative efficiency losses would arise, and no wealth transfers would arise. Consistent with our approach to allocative efficiency losses outline earlier, we consider that supra-competitive prices are likely to be imposed post-merger, although we acknowledge that the paywall related allocative efficiency losses could range between zero and \$[].
1298. As a result, we consider that there is a real chance that some post-merger price increases would be supra-competitive for a time as they arise from an exploitation of market power. Components of wealth transfers that accrue from New Zealanders to non-New Zealanders as a result of such post-merger price increases would be considered a detriment as a result.
1299. However, given our view that gradual print retrenchment is likely with the proposed merger, we consider that there is a real chance that transfers would cease to be detrimental within the five year period we are considering, as they could be necessary to meet costs for remaining digital and print operations.
1300. As with our assessment of benefits and efficiency losses, we cannot predict precisely when the transfers would cease having detrimental effects. As a result, we continue to calculate an upper estimate of detrimental wealth transfers using current financial information and over a five year period, noting that it may overstate the true value.

Total wealth transfers

1301. The potential size of the total transfer to the merged entity has been estimated for price increases and elasticities detailed under Table 12 below.
1302. We consider that the total net transfer from New Zealand consumers to foreign shareholders of the merged entity should be considered as a detriment. Consequently, we have reduced transfers by []%, to account for the New Zealand shareholders of the merged entity.

⁸³⁴ NERA “Economic Profitability Analysis” (27 September 2016) at [11].

1303. Finally, the transfer estimates are scaled down by an assumed effective marginal tax rate on foreign shareholders of 28%.⁸³⁵ This accounts for the fact that it is only the after-tax portion of these amounts that may be transferred to non-New Zealanders.

Table 12: Estimated price increases, elasticities and total wealth transfers

Estimated price increase	Elasticities	Estimated transfer
5% to 10% price increase for community newspaper advertising	-0.2 to -0.92	[]
5% to 10% price increase for Sunday newspapers advertising	-0.2 to -1.01	[]
5% price increase for Sunday Paper cover prices	-0.2 to -1.22	[]
5% price increase in Sunday Paper subscription prices	-0.2 to -1.68	[]
Wealth transfer from paywall	[]	[]

1304. In summary, we calculate that the net detrimental wealth transfer to non-New Zealanders under the print plus digital scenario ranges from approximately \$1 million to \$6 million per year.

Efficiency losses in the ‘Digital plus limited print’ scenario

1305. As outlined above, we have also considered what detriments would be if, absent the proposed merger, there was a greater rate of print retrenchment, which we refer to as the ‘digital plus limited print’ scenario.

1306. To provide a sense of the likely detriments when comparing the factual against the ‘digital plus limited print’ scenario, we have assumed that the Applicants would cease producing overlapping print publications (ie, community and Sunday newspapers) within two years absent the proposed merger.⁸³⁶

1307. We discuss our approach in more detail below.

⁸³⁵ This is based on the corporate tax rate.

⁸³⁶ We have chosen to model such a scenario in recognition that a move to a ‘digital plus limited print’ business is unlikely to be immediate. However, as discussed previously, we cannot predict the exact form of retrenchment that would occur in a digital plus limited print scenario, and, in particular, when such a transition would occur.

Estimating productivity and dynamic efficiency losses

1308. As stated above, we have assumed that the Applicants would cease producing overlapping print publications (ie, community and Sunday newspapers) within two years absent the proposed merger to account for a greater rate of print retrenchment absent the proposed merger.

1309. The net result of our simplifying assumptions is that productivity and dynamic efficiency losses on an annual basis are:

1309.1 zero to \$0.1 million in productivity efficiency detriments; and

1309.2 zero to \$0.3 million in dynamic efficiency detriments;

1309.3 for two years of the five year period we are considering.

Estimating allocative efficiency losses

1310. In the 'digital plus limited print' scenario, prices may be raised to meet unavoidable costs previously met by certain print publications. To the extent that price increases are likely to occur regardless of whether the proposed merger proceeds, they would not cause detriments attributable to the proposed merger.

1311. In order to estimate the likely detriments in this scenario, we have made the following assumptions:

1311.1 We assume that with greater print retrenchment in a 'digital plus limited print' scenario, there is a real chance that prices would have to increase over time to cover costs. We have assumed price increases are necessary at the end of year two and, therefore, do not count as detriments for years 3 to 5.

1311.2 We therefore assume that:

1311.2.1 efficiency losses arising in community and Sunday newspaper advertising and Sunday reader markets are the same as for the print and digital scenario for years one to two of the five year period we model.⁸³⁷

1311.2.2 efficiency losses arising in community and Sunday newspaper advertising and Sunday reader markets fall to zero from year three of the five year period we model.

1311.3 We continue to use the allocative efficiency losses implied by our paywall modelling to take into account a paywall that is more expensive and/or restrictive than would otherwise occur without the proposed merger, noting

⁸³⁷ We note that with greater retrenchment in a 'digital plus limited print' scenario, it is possible that prices in overlapping print publications may increase regardless of the proposed merger within this period, so would not be considered allocative efficiency losses attributable to the proposed merger. Our allocative efficiency loss estimates would consequently be overstated.

the maximum allocative efficiency loss estimated (ie, \$[] million) is likely to overstate the true allocative efficiency loss.

1312. We consider that this accounts for the fact that in the 'digital plus limited print' scenario, prices in overlapping print publications may be increased regardless to meet costs previously met by retrenched or rationalised print publications.⁸³⁸
1313. The estimated allocative efficiency losses in the 'digital plus limited print' scenario are broken into the following components in Table 13.

Table 13: Estimated allocative efficiency losses by category

Estimated price increase	Annual detriment
5% to 10% price increase for community newspaper advertising	[]
5% to 10% price increase for Sunday newspaper advertising	[]
5% price increase for Sunday paper cover prices	[]
5% price increase in Sunday paper subscription prices	[]
Allocative efficiency losses from paywall	[]
Total	\$0.3 million to \$18.3 million

Note: As described above, community and Sunday advertising and Sunday reader allocative efficiency losses are assumed to arise only from years 1 to 2. Allocative efficiency losses for online New Zealand news arise throughout the five year period we are considering. As a result, the figures in this Table are the same as in Table 11 above.

Wealth transfers

1314. To the extent we consider that post-merger price increases are likely to be supra-competitive, the resulting wealth transfers from New Zealanders to non-New Zealanders as a result of such transfers would be considered a detriment as a result.
1315. However, as outlined above, given our view that gradual print retrenchment is likely with the proposed merger, we consider that there is a real chance that transfers would cease to be detrimental within the five year period we are considering, as they would be necessary to meet costs for remaining digital and print operations.
1316. We take a similar approach to that taken for estimating allocative efficiency losses under a 'digital plus limited print' scenario:

⁸³⁸ As stated above, this approach alternatively accounts for possible rationalisation of community and Sunday print publications.

- 1316.1 We assume that detrimental wealth transfers arising in community and Sunday newspaper advertising and Sunday and national online news markets arise for years one to two of the five year period we model.
- 1316.2 We assume that detrimental wealth transfers arising in community and Sunday newspaper advertising and Sunday news markets fall to zero from year three of the five year period we model.
1317. We continue to use the detrimental wealth transfer implied by our paywall modelling to take into account a paywall that is more expensive and/or restrictive than would otherwise occur without the proposed merger over the five year period. However, we note that the maximum detrimental wealth transfer estimated (ie, \$[] million) for a five year period is likely to be overstated.
1318. A summary of our assessment of detrimental wealth transfers under the ‘digital plus limited print’ scenario is provided in Table 14 below:

Table 14: Estimated price increases, elasticities and total wealth transfers

Estimated price increase	Elasticities	Estimated transfer
5% to 10% price increase for community newspaper advertising	-0.2 to -0.92	[]
5% to 10% price increase for Sunday newspapers advertising	-0.2 to -1.01	[]
5% price increase for Sunday Paper cover prices	-0.2 to -1.22	[]
5% price increase in Sunday Paper subscription prices	-0.2 to -1.68	[]
Wealth transfer from paywall	[]	[]

Note: The totals presented in this table are the same as in Table 12.

1319. The net result of our assumptions is that detrimental wealth transfers are approximately between \$1 million and \$6 million on an annual basis for two years for all but the paywall, which is assumed to persist for five years.

Summary of the quantified benefits and detriments

1320. In this section, we bring together the quantified benefits and detriments we have assessed under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.

1321. As we have explained, we have estimated quantifiable benefits and detriments on the basis of the current financial information we currently have. We have done this for our assessment of the quantified benefits and detriments under the ‘digital and print’ and ‘digital plus limited print’ scenarios to take into account the likely levels of print retrenchment over the next five years.
1322. We also considered the likely detriments if the Applicants cease producing overlapping print publications (ie, Sunday and community newspapers) within two years absent the proposed merger. We have done this to assist us with informing our assessment of the magnitude of the detriments under the ‘digital plus limited print’ scenario.
1323. We have treated all production efficiency gains that would be obtained by the merged entity as public benefits. This is despite the fact that some proportion of these gains flow directly to foreign shareholders in the first instance. This approach, consistent with the case law,⁸³⁹ recognises that enabling foreign shareholders to undertake such cost minimisation can provide significant benefits New Zealand in the form of incentivising efficient inbound investment.
1324. However, we treated wealth transfers of the proposed merger as a detriment, noting that this was likely to overstate the true value over five years.

Quantifiable benefits and detriments in the ‘digital and print’ scenario

1325. Tables 15 to 16 below summarise the Commission’s quantitative assessment of the detriments and benefits arising under the ‘digital and print scenario’. We provided a five year forecast to illustrate the net impact of the benefits and detriments.

Table 15: Summary of benefits – ‘digital and print’ scenario

Category	Evaluation	5-year NPV
Sales	Mix of one-off costs and ongoing benefits	[]
Marketing	Mix of one-off costs and ongoing benefits	[]
Editorial	Mix of one-off costs and ongoing benefits	[]
Printing, procurement and distribution	Mix of one-off costs and ongoing benefits	[]
Management	Mix of one-off costs and ongoing benefits	[]

⁸³⁹ *AMPS-A* (HC) above n 69 and *AMPS-A* (CA) above n 68. This approach was most recently upheld in the Court of Appeal in *Godfrey Hirst 2* above n 56.

Category	Evaluation	5-year NPV
Information technology	Mix of one-off costs and ongoing benefits	[]
Premises	Ongoing benefits	[]
Community rationalisation	Mix of one-off costs and ongoing benefits	[]
Sunday rationalisation	Mix of one-off costs and ongoing benefits	[]
Management fees	Ongoing benefits	[]
Merger transaction costs	One-off cost	[]
Finance costs	Ongoing costs	[]
Total quantified benefits		\$145 million to \$210 million

Table 16: Summary of detriments – ‘digital and print’ scenario

Category	Annual figure	5-year NPV
Allocative efficiency	\$0.3 million to \$18.3 million	\$1.3 million to \$76.5 million
Productive efficiency	[]	[]
Dynamic efficiency	[]	[]
Wealth transfers	\$1.3 million to \$6.3 million	\$5.3 million to \$26.2 million
Total of quantified detriments		\$7 million to \$104 million

1326. The net impact of the quantifiable benefits and detriments under the ‘digital and print’ scenario is summarised below:

Table 17: Estimated net quantifiable impact – ‘digital and print’ scenario

Time frame	High detriment/low benefits	Low detriment/high benefits
5 years	\$41 million	\$204 million

1326.1 Under the benefits and detriments we modelled under the ‘digital and print’ scenario, we estimate that the proposed merger would result in quantified net benefits of \$41 million to \$204 million over five years.

1326.2 The figures above demonstrate that under both high detriments/low benefits and low detriments/high benefits, the net impact is positive. The spread of these estimates is wide, reflecting the uncertainty of the estimates.

1327. We consider that there would be some cost savings in the ‘digital and print’ scenario that would not be likely to be merger specific due to ongoing cost savings and the retrenchment of some print publications without the merger. These would be greater in the ‘digital plus limited print’ scenario which we detail below.

Quantifiable benefits and detriments in the ‘digital plus limited print’ scenario

1328. Tables 18 to 19 below summarise the Commission’s quantitative assessment of the detriments and benefits arising under the ‘digital plus limited print scenario’. We provided a five year forecast to illustrate the net impact of the benefits and detriments.

Table 18: Summary of benefits – ‘digital plus limited print’ scenario

Category	Evaluation	5-year NPV
Sales	Mix of one-off costs and ongoing benefits	[]
Marketing	Mix of one-off costs and ongoing benefits	[]
Editorial	Mix of one-off costs and ongoing benefits	[]
Printing, procurement and distribution	Mix of one-off costs and ongoing benefits	[]
Management	Mix of one-off costs and ongoing benefits	[]

Category	Evaluation	5-year NPV
Information technology	Mix of one-off costs and ongoing benefits	[]
Premises	Ongoing benefits	[]
Community rationalisation	Mix of one-off costs and ongoing benefits	[]
Sunday rationalisation	Mix of one-off costs and ongoing benefits	[]
Management fees	Ongoing benefits	[]
Merger transaction costs	One-off cost	[]
Finance costs	Ongoing costs	[]
Total quantified benefits		\$144 million to \$199 million

Table 19: Summary of detriments – Digital plus limited print scenario

Category	Annual figure	5-year NPV
Allocative efficiency	\$0.3 million to \$18.3 million	\$0.6 million to \$67.7 million
Productive efficiency	[]	[]
Dynamic efficiency	[]	[]
Wealth transfers	\$1.3 million to \$6.3 million	\$2.4 million to \$20.4 million
Total of quantified detriments		\$3 million to \$89 million

1329. The net impact of the quantifiable benefits and detriments under the 'digital plus limited print' scenario is summarised below:

Table 20: Estimated net quantifiable impact – ‘digital plus limited print’ scenario

Time frame	High detriment/low benefits	Low detriment/high benefits
5 years	\$55 million	\$196 million

1330. Under the benefits and detriments we modelled in the ‘digital plus limited print’ scenario, we estimate that the proposed merger would result in quantified net benefits of \$55 million to \$196 million over five years.
1331. The figures above demonstrate that under both high detriments/low benefits and low detriments/high benefits, the net impact is positive. Similar to our assessment of the quantified benefits and detriments under the ‘digital and print scenario’ the spread of these estimates is wide, reflecting the uncertainty of the estimates.
1332. In recognition of greater print retrenchment under the ‘digital plus limited print’ scenario, , we assumed that annual cost-savings related to newsprint costs, the consolidation of print distribution in Auckland and the rationalisation of community and Sunday newspapers fall to zero from year 3 onwards.
1333. However, we consider that in the ‘digital plus limited print’ scenario, the productive efficiency benefits arising from merger-specific cost savings would likely be lower than those outlined in Table 18 above.
1334. This is because it is likely that in the ‘digital plus limited print’ scenario we would expect additional cost savings from the ‘digital and print’ scenario due to greater print retrenchment. These additional cost savings include editorial resource savings. We would also expect further costs savings related to downsizing of management, marketing and IT, as well as reduced premises costs to be achieved regardless of the merger. We cannot predict with certainty the extent and timing of such cost-savings.
1335. When comparing the factual against the ‘digital plus limited print’ scenario, quantifiable detriments are lower. This is driven primarily by the reduction in allocative efficiency losses as a result of less merger-specific price increases.
1336. We take the results suggested from our quantitative analysis as indicating that the quantified net impact is likely to be positive, with estimates using current financial information suggesting that quantified net benefits of between \$55 million and \$196 million over five years.

Conclusion on quantified benefits and detriments

1337. We have estimated the quantified benefits and detriments:

- 1337.1 Under the ‘digital and print’ scenario, we estimate that the proposed merger would result in quantified net benefits of \$41 million to approximately \$204 million over five years.

- 1337.2 Under the ‘digital plus limited print’ scenario, we estimate that the proposed merger would result in quantified net benefits of \$55 million to approximately \$196 million over five years.
1338. As noted in the discussion above, there are significant assumptions that overstate the benefits and detriments. In particular, the analysis:
- 1338.1 assumes that all cost savings would be realised from the start of the five year period we are considering, and so would likely overstate the true value of cost savings over a five year period, as we consider some cost savings are likely to be realised at a later point;
- 1338.2 likely overstates the merger specific cost savings (in particular, for the ‘digital plus limited print’ scenario) related to downsizing of editorial, management, marketing and IT, as well as reduced premises costs without the merger; and
- 1338.3 likely overstates allocative efficiency losses and detrimental wealth transfers, and in particular, allocative efficiency losses and detrimental wealth transfers in relation to a payroll.
1339. The figures above demonstrate that under both high detriments/low benefits and low detriments/high benefits, and in both scenarios, the net impact is positive. The spread of these estimates is wide, reflecting the uncertainty of the estimates.
1340. We do not consider that the facts and analysis available to us enables us to determine a point within the available range of benefits and detriments.

Unquantified benefits

1341. In this section, we assess the likely benefits we are unable to quantify with the proposed merger. This includes our assessment of the potential benefit of reduced duplication, increased variety and reduced free-riding in reader markets under both the ‘digital and print’ and ‘digital plus limited print’ scenarios. We also assess the potential benefit of extended production of print publications and reduced downsizing of journalistic resources under the ‘digital plus limited print’ scenario.
1342. We take these unquantified benefits into account when weighing up the likely benefits and detriments from the proposed merger.

Reduced duplication, increased variety and reduced free-riding

1343. The Applicants submitted that a benefit of the proposed merger would be not having to reduce quality in the reader markets. The Applicants indicated that the proposed merger would result in a reduction in duplication and free-up journalistic resources to report on an increased number of stories. The Applicants considered that the

proposed merger would allow them to “to invest in better quality journalistic content and greater breadth of coverage” to the benefit of competition.⁸⁴⁰

1344. Professor Picker indicated that even if the market were to be defined as narrowly as to include only NZME and Fairfax, the proposed merger could have a positive impact on the quality of news produced. Broadly, Professor Picker submitted that the proposed merger would lead to increased variety and reduced free-riding:⁸⁴¹

1344.1 First, post-merger, if an advertiser-funded model were to remain, then the merger may increase the quality of news as the merged entity would not need to compete to provide content that appeals to the majority of reader preferences, but rather could provide a more diverse range of content that attracts a broader range of readers. Additionally, if the merged entity adopted a paywall, then the value that readers attach to content will be taken into account in producing that content.

1344.2 Second, where there is limited legal protection for intellectual property, competition may reduce the quality of content that is produced. This is based on the idea that in competitive markets, news media firms have less incentive to invest in quality content of a durable nature,⁸⁴² for example investigative journalism, because free-riding from competing publishers prevents the original firm from recovering the cost of producing the work in the first place.

The Commission’s view

1345. Conceptually, we agree that a reduction in duplication and the possible freeing-up of journalistic resources to report on an increased variety of stories, and reduced free-riding, could result in an increase in dynamic efficiency in reader markets.⁸⁴³

1346. We recognise that there may be benefits associated with reductions in duplication of content and the freeing-up of journalistic resource. Studies indicate that mergers may lead to increased media variety.⁸⁴⁴

⁸⁴⁰ Application at [20.8] and Fairfax/NZME “Response to SOPI Submissions” (29 July 2016) at [34].

⁸⁴¹ Randal C. Picker “Commentary on News Media Quality Issues in Fairfax/NZME Proposed Acquisition” (15 October 2016), attached to a submission from Russell McVeagh (on behalf of the Applicants) (October 2016). See also NERA “Competition Analysis and Quantification” (27 May 2016), at 26, citing Harold Hotelling “Stability in Competition” (1929) *Economic Journal* 39, 41-57 as conceptualising why the Applicants may presently be producing content that appeals to the majority of reader preferences.

⁸⁴² The potential for free-riding depends on the durability of the content. News items that have a short-life, such as clickbait may lose value before it can be appropriated.

⁸⁴³ We consider that increases in dynamic efficiency can be characterised as an increase in demand for news content, providing readers with greater surplus (ie, the difference between the higher willingness to pay and the effective price for the quality of news consumed).

⁸⁴⁴ For example, Przemyslaw Jeziorski “Effects of Mergers in Two-sided Markets: Examination of the US Radio Industry” (2014) 6(4) *American Economic Journal: Microeconomics*, 35-73, and Andrew Sweeting “The Effects of Mergers on Product Position: Evidence from the Music Radio Industry” (2010) 41(2) *The RAND Journal of Economics*, 372-397, find that mergers as a result of the removal merger restrictions under the US Telecommunications Act 1996 lead to more product variety. Similarly, Lisa George “What’s Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets” (2007) 19(3)

1347. However, although such benefits are possible, we are not satisfied that there is a real chance the proposed merger would lead to increases in the quality of news produced as submitted by the Applicants.

Increased variety

1348. We are not satisfied there is a real chance that the merged entity would be incentivised to invest in, and would invest in, a more diverse range of content that would attract a broader range of readers. If it was profit maximising to invest in a wider range of content,⁸⁴⁵ we would expect both Applicants to already be producing a wider range of content, and to produce that content in the future. The merged entity would not be incentivised to invest further.

Reduced free-riding

1349. We accept that in theory there is the potential for free-riding to reduce the profit from a story, reducing or even eliminating the incentive to report it. To the extent that the merger may reduce the opportunity for free-riding, including through the imposition of a paywall, the merger may result in some additional news items being reported.

1350. We were not, however, provided with any evidence regarding the scale to which free-riding presently operates as a disincentive to the production of durable content, particularly durable content such as investigative journalism.

1351. While we consider that, in theory, there is a real chance of a benefit from reduced free-riding, we are not satisfied it is likely to result in any material benefits.⁸⁴⁶

Conclusion

1352. We are not satisfied there is a real chance that the proposed merger would lead to material benefits from increases in the quality of news by reducing duplication and freeing-up journalistic resources to report on an increased number of stories,

1353. We consider there is a real chance that the proposed merger would lead to a reduction in free-riding. We are not satisfied, however, that this would lead to any material benefits.

1354. We consider this view holds for our assessment of the proposed merger against both the 'digital and print' and 'digital plus limited print' scenarios.

Extended production of print publications and lower reduction in editorial resources

1355. The Commission considers that the cost savings attributable to the proposed merger could provide two additional benefits:

Information Economics and Policy, 285-303, finds that increased concentration may reduce the duplication of genres.

⁸⁴⁵ We consider it would be profit maximising where the increase in reach and advertising revenues derived from producing a more diverse range of content outweighed the costs of doing so.

⁸⁴⁶ Further, we are not satisfied that any benefit, if it were likely, would be material.

- 1355.1 First, lower fixed costs are likely to defer the closure date of print publications that continue to contribute towards corporate overheads and extend the longevity of such publications. This is likely to provide readers of such print publications with prolonged consumer surplus;
- 1355.2 Second, lower fixed costs are likely defer the date at which the Applicants would need to consider restructuring their respective businesses. This would likely enable editorial resources to be maintained with the merger. This in turn would result a greater volume of news stories in both print and online news sources.
1356. We do not consider that these benefits are likely in the ‘digital plus print’ scenario, as we consider retrenchment would be similar to that with the proposed merger.
1357. We consider that there are likely to be benefits in the ‘digital plus limited print’ scenario, given the increased rate of retrenchment of print without the merger in this scenario.

Extended production of print publications in the ‘digital plus limited print’ scenario

1358. The Applicants submitted that the proposed merger would provide the Applicants with a longer period of positive cash flow. This would allow the Applicants to maintain the number and quality of its journalistic coverage, while at the same time growing its digital revenues to a point that they are sufficient to support the New Zealand publishing business’s large fixed cost base.⁸⁴⁷
1359. The Applicants provided further details of the benefits the synergies from the proposed merger would provide. In particular, they submitted:
- 1359.1 The anticipated synergies would reduce the
[
],⁸⁴⁸
- 1359.2 At an individual publication level, some regional publications may
[
],⁸⁴⁹
- 1359.3 Further, extending the
[

⁸⁴⁷ NZME/Fairfax “Response to Commerce Commission Questions Arising from the Conference on 6 and 7 December 2016” at [76]. NERA also reported the additional benefit of
[

]. See NERA “Summary of the Factual versus Counterfactual” (22 December 2016) at [8]-[10].

⁸⁴⁸ PwC “Impact of Synergies” (17 March 2017) at [6].

⁸⁴⁹ Ibid at [7].

].⁸⁵⁰

1360. We agree that if the proposed merger extended the production of particular print publications, there would likely be benefits in the form of additional consumer surplus. In allocative efficiency terms, this is additional surplus (ie, the difference between readers' willingness to pay and the effective price they pay) readers gain from print publications that would otherwise be retrenched or rationalised absent the proposed merger. Similarly, we also recognise that there may be additional surplus for advertisers who have the benefit of being able to advertise in print publications that would otherwise retrenched or rationalised absent the proposed merger.
1361. As discussed previously in the Counterfactual section, we consider that the Applicants would rationalise or retrench print publications that are no longer profitable on a standalone basis (ie, not generating a positive financial contribution towards corporate overheads) regardless of the proposed merger.
1362. We consider that the synergies from the proposed merger relate largely to corporate overhead costs, such as marketing, IT, premises and management cost savings. We consider that such costs are typically considered fixed costs and would not necessarily enable particular print publications to start generating a positive financial contribution towards corporate overheads, or continue to do so for a longer period.
1363. However, we acknowledge that reductions in corporate overhead costs as a result of the proposed merger may postpone or prolong the decision to rationalise or retrench publications that continue to make positive, albeit declining, contributions.
1364. Whether the proposed merger would extend print production depends on the rate of retrenchment in the counterfactual.
1365. We are satisfied that, compared with the 'digital plus limited print' scenario, the lower overhead costs would result in extended production of print publications with the merger. In addition, to the extent that the rationalisation reduces variable costs of print, we consider print output could be maintained at a higher level.
1366. In the face of declining circulation and advertising revenues, the Applicants have implemented increases in print cover and subscription prices to cover costs.⁸⁵¹ NZME has also instigated pricing strategies which aim to
 “[
]”.⁸⁵² We consider such strategies to be price discrimination strategies aimed at deriving the maximum willingness to pay of readers so as to continue to fund production of print publications.

⁸⁵⁰ Ibid at [8].

⁸⁵¹ Application at [9.21].

⁸⁵² NZME “Response to NZCC RFI” (26 January 2017).

1367. We consider that the Applicants would be incentivised to continue to raise print cover and subscription prices, and to continue to pursue price discrimination strategies, if there are a sufficient number of consumers with a sufficiently high willingness to pay to cover the cost for producing print publications.
1368. However, the Applicants' submissions generally disclose declining demand for print indicating a trend of reduced willingness to pay for print across many consumers.⁸⁵³ In combination with the price discrimination described above, this suggests that there is not a significant amount of prolonged consumer surplus to be lost absent the merger.
1369. In short, while the Commission accepts that in the 'digital plus limited print' scenario there is likely to be some benefit of prolonged surplus without the merger. We are satisfied that these benefits may be material, but not of the same order as the plurality disbenefit and quality detriments discussed later.

Lower reduction in editorial resources in the 'digital plus limited print' scenario

1370. In the 'digital plus limited print' scenario, the downsizing of editorial resources and, consequentially, a reduction in the output of news, may be greater without the merger than it would be with the proposed merger. This could offset the allocative efficiency losses due to a reduction in quality due to a loss of competition which we discuss below.
1371. In a scenario provided by the Applicants, absent the merger both Fairfax and NZME cut editorial costs equivalent to half the amount of operational cost savings the parties have realised over the previous years. By year five, this is modelled as reducing Fairfax's editorial budget to \$[] million and NZME's to \$[] million. As percentages of current journalistic expenditure, these are approximately []% and []%, respectively. The Applicants submitted that this would result in roughly similar numbers of journalistic staff to that of MediaWorks and TVNZ currently.⁸⁵⁴
1372. The Commission accepts that with the greater retrenchment present in the 'digital plus limited print' scenario, it may be the case that the Applicants reduce editorial resources over and above what is likely with the proposed merger. Given the particular role the Applicants play in setting the agenda for news produced by other publishers such as TVNZ, MediaWorks and RNZ, the detrimental effect on the volume of news from a reduction in editorial resources in this scenario may be felt more widely.
1373. However, we are not satisfied that the Applicants would reduce cost solely by reducing editorial expenditure in light of greater retrenchment without the merger.

⁸⁵³ This is supported by []. See for example, Fairfax response to information request Annex 48 - [] at 15 and Annex 122 - FY17 Strategy Overview and High Level Budget Summary (12 October 2016), attached to an email from Russell McVeagh (on behalf of NZME) to the Commerce Commission (26 January 2017) at 18.

⁸⁵⁴ See NERA "Review of the Commission's Proposed Counterfactual" (21 March 2017) at [27(b)] and [28].

Estimation of the reduced quality loss

1374. We have sought to approximate the likely reduction in editorial resources in a scenario where there is greater retrenchment without the merger, that is, of the type of the digital-only scenario in the Draft Determination. We compare this with an approximation of the editorial resources that would be reduced with the proposed merger. Such a comparison allows us to gauge the likely reductions in editorial resources with the merger and without the merger in the digital plus limited print scenario.

1375. We use PwC's analysis of the
[

],⁸⁵⁵

1376. We have sought to approximate the percentage reduction in operating costs that would be required to enable Fairfax and NZME to operate as 'digital-only' going concerns on the basis of the financial information estimated by PwC.⁸⁵⁶ This approach allows us to approximate the reduction in editorial resources that would be required for 'digital-only' Fairfax and NZME operations. Our approach is set out below:

1376.1 We calculated the percentage reduction in operating costs that would be required to make 'digital-only' Fairfax and NZME operations going concerns in FY2022, ie, EBITDA of at least zero. This suggests that Fairfax and NZME would have to [].

1376.2 Assuming that the reductions in operating costs would be applied equally across all costs categories
[

respectively.⁸⁵⁷

],

⁸⁵⁵ PwC "Fairfax Counterfactual Report" (25 November 2016) at Appendix G, and PwC "NZME Counterfactual Report" (25 November 2016) at Appendix G.

⁸⁵⁶ By going concern, we mean at least a break-even EBITDA.

⁸⁵⁷

[

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1377. As percentages of current editorial expenditure projected out to FY2022, yearly editorial expenditure of [] yearly editorial expenditure for Fairfax and NZME respectively.⁸⁵⁸ In combination, our approximations suggest that Fairfax and NZME share of yearly editorial expenditure as ‘digital-only’ firms would stand at []% of what is currently spent. []% of combined current yearly editorial expenditure equates to approximately \$[] million. Current combined yearly editorial expenditure, projected out to FY2022, is approximately \$[] million.
1378. As discussed previously the reader section, we consider the synergies analysis prepared by PwC⁸⁵⁹ provides a useful indication of the extent to which the merged entity could rationalise editorial resources. We consider that the rationalisation of editorial resources envisaged by the Applicants is likely to reduce the quality, variety and volume of news produced by the Applicants with the merger.
1379. In terms of the pure reduction in editorial expenditure with the merger, the PwC report suggests that the Applicants would spend []% to []% less in comparison to combined current editorial expenditure.⁸⁶⁰ This suggests that the Applicants would spend []% of what is currently spent on editorial expenditure with the proposed merger.

Caveats to our estimations

1380. We note that our calculations are based on reductions in costs to make ‘digital only’ Fairfax and NZME operations going concerns (ie, EBITDA of at least zero). This is likely to underestimate likely reductions in editorial expenditure, given both the Applicants would be looking to earn an economic return on their investments.⁸⁶¹
1381. However, we also note that our approximations are likely to overstate the reductions in editorial expenditure in some respects:
- 1381.1 As discussed previously, we consider that the merged entity would continue cost saving initiatives in light of continuing declines in print revenues. We are of the view that this would likely mean further reductions in journalistic resources through decreased editorial expenditure over a five year period. The difference between editorial expenditure with the merger compared to a ‘digital plus limited print’ scenario without the merger is therefore potentially smaller than our approximations would suggest.

⁸⁵⁸ Based on information sourced from PwC, NERA reports that Fairfax and NZME’s current expenditure on journalists and editorial staff represents \$[] and \$[] respectively – see NZME/Fairfax: “Response to the Commerce Commission’s counterfactual letter” (21 March 2017), at [27(a)]. We have projected this out total out a further five years, assuming an inflation rate of 2%.

⁸⁵⁹ PwC “Indicative Synergies Analysis Refresh” (21 October 2016).

⁸⁶⁰ The PwC report estimates that there would be between \$[] to \$[] million in annual cost savings in editorial expenditure as a result of the proposed merger – PwC “Indicative Synergies Analysis Refresh” (21 October 2016) at 9.

⁸⁶¹ In addition, we note that our approximations assume that PwC’s [] remain unaffected within a five year period.

- 1381.2 Our approximations use PwC’s analysis of the [] for both Applicants as a starting point. As noted in the Counterfactual section, we consider that in a ‘digital plus limited print’ scenario, the Applicants would continue to have some form of print, albeit in a reduced form in comparison to with the merger scenario. This reduced form of print may support larger editorial expenditure than suggested by our approximations.
1382. In relation to reductions in editorial expenditure with the merger, we note that the PwC report indicates that the merged entity could rationalise around [].⁸⁶² As noted under the reader section, [].⁸⁶³ Further, we have not accounted for reductions in editorial expenditure from the rationalisation of overlapping community and Sunday publications.⁸⁶⁴
1383. Additionally, as noted previously, we are of the view that the PwC report may not be a true reflection of the extent to which the merged entity could reduce editorial resources in the absence of competition between the Applicants. For instance, PwC has not undertaken a detailed investigation into the merged entity’s regional paper rationalisation.⁸⁶⁵ Given the Applicants’ digital-first approaches and the mobility of journalists, we consider that the removal of competition between NZME and Fairfax would be likely to lead to further rationalisation of the Applicants’ editorial resources beyond those which overlap geographically, such as those in regional publications that do not currently overlap.
1384. In light of the above, we are of the view that the suggested []% to []% reduction in editorial expenditure derived from the PwC report potentially underestimates the true extent of reductions in journalistic resources associated with the proposed merger.

Conclusion

1385. As the above discussion demonstrates, there is inherent uncertainty in predicting the exact form of retrenchment that may occur in a ‘digital plus limited print’ scenario and the exact extent and nature of journalistic downsizing that would occur absent the proposed merger when compared to the with the merger scenario.
1386. The Applicants submitted that in downsized and consolidated businesses without the merger, cost savings would come [].⁸⁶⁶ Further, the Applicants

⁸⁶² PwC “Indicative Synergies Analysis Refresh” (21 October 2016) at 11.

⁸⁶³ Application at Appendix 14 (page 10); Email from Russell McVeagh (on behalf of NZME and Fairfax) to the Commerce Commission (27 April 2017).

⁸⁶⁴ PwC “Indicative Synergies Analysis Refresh” (21 October 2016) at 14-15. As cost savings from the rationalisations of community and Sunday publications are provided on an aggregated basis, we are unable to establish the exact reduction in editorial expenditure these rationalisations entail.

⁸⁶⁵ Ibid at 18.

⁸⁶⁶ Fairfax pointed

[]–

scenario, and consequently larger output of news, the exact magnitude and extent of such a difference is inherently difficult to predict in terms of the extent of merger specific benefits.

1392. In conclusion, the Commission is satisfied there is likely to be some benefit, in the digital plus limited print scenario, from the extended production of print publications and lower reduction in editorial resources. We are satisfied that these benefits may be material, but not of the same order as the plurality disbenefit and quality detriments discussed later.

Effects of a loss of media plurality

1393. In this section, we provide our assessment of the disbenefit of a loss of media plurality under both the 'digital and print' and 'digital plus limited print' scenarios.

1394. As outlined in the legal framework section, the Commission considers that in reaching its decision it should take account of the negative consequences that fall both within and outside the markets where the substantial lessening of competition occurs. The latter are in a broad sense costs that society would incur to realise the benefits of the merger.

1395. In the Commission's view, the impact of the proposed merger on media plurality is a relevant consideration in assessing whether the merger is likely to result in such a benefit to the public that the merger should be permitted.

1396. Submitters and expert media advisers identified media plurality as an important contributor to democracy and Government accountability. A significant reduction in plurality would affect all New Zealanders, whether they consume news media or not.⁸⁷²

Summary of Commission's view on plurality in the digital and print scenario

1397. It is estimated that the combined reach of the merged entity would be approximately 3.7 million New Zealanders, which is roughly equal to the total adult population.⁸⁷³ It would have the largest newsroom and network of reporters and journalists in the country, the two largest New Zealand news websites, one of New Zealand's largest commercial radio companies, and nearly 90% of daily circulation of New Zealand's daily newspapers. This high level of influence over New Zealand's news media consumption across a range of media platforms by a single commercial enterprise would be unusual when compared with other modern liberal democracies we are aware of.

⁸⁷² We have found it useful to consider the negative consequences of the proposed acquisition as a single topic rather than through separate analyses of 'in market' and 'out of market' consequences. We have accordingly dealt with both 'in market' and 'out of market' loss of plurality together for convenience and, as discussed below, evaluated this loss of plurality against the other benefits and detriments of the merger.

⁸⁷³ NZME Board paper, 5 September 2016. New Zealand population over the age of 15 is estimated at 3.8 million, see http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/NationalPopulationEstimates_HOTPA30Jun16.aspx.

1398. The Commission considers that the merger would result in a significant reduction in external plurality that would not be offset by other media organisations. As outlined in the Reader Markets section, we also consider the constraints on entry and expansion remain significant such that new entry or growth of other existing organisations cannot be relied on to meaningfully increase plurality in the next five years.
1399. In addition, the Commission does not consider there is a real chance that internal plurality within the merged entity would be sufficient to outweigh any likely reduction in external plurality. First, the Commission is not satisfied that we should assume either the preservation of, or increase in, internal plurality with the merger, given likely future consolidation and cost reduction. Second, we consider that level of internal plurality displayed by the merged entity would be largely discretionary on the part of the owners, because we do not regard the existing, largely voluntary, regulatory structure as a sufficient safeguard to preserve internal plurality. Third, we do not consider that the two sided nature of news media markets provides a sufficient safeguard to internal plurality.
1400. It is the Commission's view therefore that there is a real chance that this merger would materially diminish media plurality. Given the importance of the news media to a well-functioning democratic society, we consider that any adverse effects from reduced plurality have the potential to be substantial.

What is media plurality?

1401. Media plurality includes both diversity of content and influence over media content. We have used the following definition of media plurality:
- 1401.1 ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and
- 1401.2 preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.⁸⁷⁴
1402. Both these facets of plurality are relevant to this merger, which raises the prospect that a diminished range of perspectives become available and consumed, and/or that influence over public opinion and the political agenda is concentrated within one organisation.⁸⁷⁵
1403. Media plurality manifests itself in a number of ways. For example, it may be reflected in differences in editorial choice and resourcing, availability of different perspectives

⁸⁷⁴ We have adopted Ofcom's definition of media plurality. Ofcom "Measuring Media Plurality" Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport, 19 June 2012, [3.8] – [3.10], as referenced in Dr David Levy and Robin Foster "Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission's Draft Determination Document, (16 November 2016)" at 6. This definition is similar to that in Ireland's Competition and Consumer Protection Act 2014.

⁸⁷⁵ No disagreement with this point was raised by the Applicants in response to direct questions at the Conference. Commerce Commission Conference (7 December 2016) transcript at pages 1 - 2.

on key issues, different news and story coverage, and the extent and choice of investigative journalism and other reporting. It can also be present in the placement or prominence given to certain stories or viewpoints.

1404. There are two different sources of diversity of viewpoints – between organisations and within organisations. These sources are described as external and internal plurality.⁸⁷⁶

1404.1 **External plurality:** external plurality refers to the number of media organisations under separate ownership, ie, plurality between organisations.

1404.2 **Internal plurality:** the diversity of perspective and content from within a given organisation.⁸⁷⁷ Internal plurality depends on how far an organisation and/or regulatory factors enable, support or promote a range of internal voices and opinions.⁸⁷⁸

Why does media plurality matter?

1405. As a starting point, the importance of the role of the media in maintaining democracy is widely acknowledged. The Law Commission noted in its recent report on new media that:

Many people are unaware of the fact that in most western-style democracies, including our own, the law accords the news media a special legal status. As a result the news media have legal privileges and exemptions which are not available to ordinary citizens ... these are intended to ensure the news media are able to perform their democratic functions. Some of these legal provisions give the news media privileged access to information or places, enabling them to fulfil their function as the public's "eyes and ears"; others are designed to protect news gathering and publishing activities to ensure that these processes are not unjustifiably fettered.

1406. Further, as noted in a recent UNESCO report and by the Commission's experts Dr David Levy and Robin Foster, freedom of the press is underpinned by a media environment that is free from legal restriction, and provides for plurality and independence.⁸⁷⁹ The reason why media plurality is key to this dynamic is that it ensures:

1406.1 citizens are informed by accessing and consuming a wide range of viewpoints across a variety of platforms and media owners; and

⁸⁷⁶ Ofcom, Measurement framework for media plurality (5 November 2015) at [3.17], and Robin Foster, Measuring media plurality: a checklist (15 September 2016) at 3.

⁸⁷⁷ Broadcasting Authority of Ireland, Report on Ownership and Control of Media Businesses in Ireland 2012-2014.

⁸⁷⁸ Ofcom, Measurement framework for media plurality (5 November 2015) at [3.17], and Robin Foster, Measuring media plurality: a checklist (15 September 2016) at 3.

⁸⁷⁹ Foster and Levy report at 1; citing World Trends in Freedom of Expression and Media Development, UNESCO 2014 at 15 <http://unesdoc.unesco.org/images/0022/002270/227025e.pdf>

1406.2 prevents too much influence over the political process by one media owner.⁸⁸⁰

1407. There is widespread support for the maintenance of media plurality.⁸⁸¹ As outlined by the Commission's experts Dr Levy and Mr Foster:

There is general agreement in the democratic world that news and other media play an essential role in informing citizens thereby enabling their participation in public debate and democratic decisions. A thriving news sector ensures that people have access to information about the events and decisions which affect their lives, and have a better understanding of the world in which they live. It exposes its readers to views and analysis which both support and challenge their own ideas, and – through its investigative reporting – can shed light on important issues of the day and hold the powerful to account.⁸⁸²

1408. As a consequence, many jurisdictions have implemented regulations to ensure media plurality⁸⁸³ and various public organisations and NGOs monitor media ownership and plurality.⁸⁸⁴

New Zealand's regulatory framework and the role of public service broadcasters

1409. Unlike other jurisdictions, New Zealand media ownership is not subject to any sector specific legislative measures to promote media plurality, such as restrictions concerning cross-ownership of media platforms.

1410. New Zealand's print and online news media may choose to participate in a self-regulatory body, the Press Council. TV and Radio Broadcasters are regulated by an independent Crown entity, the Broadcasting Standards Authority (BSA) in relation to their broadcast content.

1411. The contribution of New Zealand's state owned media broadcasters is not as extensive as other jurisdictions. The Commission's experts Dr Levy and Mr Foster noted that New Zealand has a low level of public service news provision.⁸⁸⁵ As will be discussed in more detail below, TVNZ has a commercial, self-funding mandate⁸⁸⁶ and RNZ's reach is only around 13% of the population. In contrast, in many other

⁸⁸⁰ Ofcom's report measuring media plurality (19 June 2012) at 3.5.

⁸⁸¹ See for example Dr Julianne Molineaux et al, Submission to the Commerce Commission (8 July 2016).

⁸⁸² Dr David Levy and Robin Foster "Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission's Draft Determination Document" (16 November 2016) at 2.

⁸⁸³ For example, Australia, the United Kingdom, Ireland and Canada,

⁸⁸⁴ Examples include: the Broadcasting Authority of Ireland; in the UK the University of Westminster's Communication and Media Research Institute funded by the Arts and Humanities Research Council; the Bertelsmann Foundation; and in New Zealand the AUT's Journalism, Media and Democracy Research Centre.

⁸⁸⁵ Dr David Levy and Robin Foster "Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission's Draft Determination Document" (16 November 2016) at 10.

⁸⁸⁶ TVNZ "Submission on Statement of Preliminary Issues from NZME/Fairfax merger" (14 September 2016).

jurisdictions public service broadcasters have a much greater reach and are provided with higher levels of funding.⁸⁸⁷

The scope of media plurality

1412. Consistent with our competition analysis, our assessment of media plurality concerns New Zealand news.⁸⁸⁸ This is because we consider that news is the primary contributor to the democratic function of media plurality outlined above. We also note that a range of media platforms are relevant to media plurality, ie, television, radio, print and online.
1413. Across these various platforms news providers that are involved in the investigation, creation, reporting and publishing of news content, including those that have established, trusted news brands, have an important role in providing plurality. Other smaller or niche players may also have a role although
1414. NERA on behalf of the Applicants submitted that the Commission should give appropriate weight to the role of blogs and other non-commercial sites that may have small audiences.⁸⁸⁹ NERA's view was that blogs can have an important impact on plurality even if they only occasionally produce content that is distributed to, or influences, a wider audience. NERA also considered that bloggers and other individuals could readily expand their activities and presence in response to any perceived reduction in plurality.⁸⁹⁰
1415. The academics we spoke with had a different perspective.⁸⁹¹ One of these, Dr Peter Thompson, expressed the view that stories being broken by bloggers were the exception rather than the norm, and that it is more typical for bloggers to draw from journalism undertaken by mainstream media.⁸⁹²
1416. Similarly, Dr Levy and Mr Foster noted:

⁸⁸⁷ For instance see: Reuters Institute for the Study of Journalism "Digital News Report 2016", pages 35, 46, and 79; Nordicity "Analysis of Government Support for Public Broadcasting" (prepared for CBC/Radio-Canada, 11 April 2016) at page 9. Note that public funding provided to public service broadcasters may be used for more than the production of news content, for example, cultural programming.

⁸⁸⁸ We provide a more detailed discussion of our definition of New Zealand news in the Reader Markets section.

⁸⁸⁹ NERA "Review of the Draft Determination" (25 November 2016) at 19-20.

⁸⁹⁰ NERA "Review of the Draft Determination" (25 November 2016) at 20.

⁸⁹¹ Dr Julienne Molineaux (Auckland University of Technology), Associate Professor Donald Matheson (University of Canterbury), Dr Merja Myllylahti (Auckland University of Technology), Dr Sean Phelan (Massey University Wellington), Dr Peter Thompson (Victoria University Wellington) and Associate Professor Geoff Lealand (University of Waikato).

⁸⁹² Commerce Commission interview with Dr Peter Thompson (22 December 2016). Mr Thompson noted that "...we're seeing current affairs for example shuffled off to weekend mornings where they can't do any harm to the schedule." at 8.

...even if news stories originate among the smaller niche players and bloggers, it is the authority, reach and sustained, consistent and comprehensive activity of the larger established players which often gives those stories national prominence and currency.⁸⁹³

1417. In assessing the role of online news, we considered how different types of online news and commentary, such as blogs, contribute to plurality. However, as noted in the Law Commission's report, only a small percentage of this material concerns original news and current affairs and attracts mainstream audiences:

First, and most significantly, we concluded that this proliferation of publishers is enriching public debate and has the potential to strengthen democracy by increasing participation in public affairs, widening the sources of information available to the public and providing a greater diversity of opinion. It is also providing a new form of accountability for the mainstream news media as bloggers and others critique aspects of the mainstream media's coverage of political and other events.

However, we also noted a number of caveats: despite the massive proliferation of publishing online, only a small percentage of this new publishing activity is focused primarily on the generation and dissemination of original, local, news and current affairs. For example, we identified only a small number of professional, internet-native entities for whom this was the primary focus: these included sites such as *Scoop*, *NewsWire*, *BusinessDesk*, *allaboutauckland.com* and *interest.co.nz*.

...

Similarly we noted that while New Zealand has an active blogging community, including over 200 individual and collective blogs largely concerned with commentary and debate on New Zealand news and current affairs, only a small proportion of these provide reportage and generate original news with any regularity.

Even the most prolific and high profile bloggers attract only a small fraction of the audiences which mainstream media sites attract each day. In order for a story broken on a blog site to gain momentum, it typically must percolate up through the social media ecosystem into the mainstream media.⁸⁹⁴

1418. We share the Law Commission's view that the contribution of this commentary to mainstream news is small but beneficial. However, we do not consider that this contribution is adequate to alleviate our concerns about the loss of media plurality brought about by the merger.

How we measure media plurality

1419. To assess the impact of the merger on media plurality we considered both quantitative and qualitative measurements of media plurality.

⁸⁹³ Dr David Levy and Robin Foster "Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission's Draft Determination Document" (16 November 2016) at 13.

⁸⁹⁴ Law Commission "The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age" (2010) at [4.56] to [4.60].

1420. First, focussing on external plurality, we used three categories of (largely quantitative) measures that assist with measuring media plurality.⁸⁹⁵
- 1420.1 **Production/availability:** the number of different news sources available on each media platform and across all media.
- 1420.2 **Consumption:** the number of consumers using different sources of news media across all media platforms and the frequency of time they spend consuming it.
- 1420.3 **Impact:** the influence of news content consumption on how people’s opinions are formed.
1421. Second, we considered relevant qualitative factors, also referred to as “contextual factors”, such as the regulation and oversight of the news media and the impact of these factors on internal plurality.⁸⁹⁶ We considered the degree of editorial control exercised by owners within media organisations, governance models and the range of internal voices and whether such mechanisms are sufficient to safeguard plurality.

The impact of the market dynamics on plurality

1422. We acknowledge that our assessment of plurality is being undertaken in a dynamic market and that there is a degree of disruption currently occurring in the media sector.⁸⁹⁷ Dr Levy and Mr Foster commented in their expert review:

Plurality is not a static, fixed state of the world. Changes in markets and technologies are having a profound impact on the extent of and effectiveness of news plurality. As we discuss later in this paper, some have argued that digital developments have opened news markets to a wide range of new entrants, and encouraged more share of news content, hence enhancing plurality. Others note the increasing financial pressures faced by established news providers. Any serious plurality assessment must take these changes into account.⁸⁹⁸

1423. As already outlined, the shift in focus from traditional media towards increased publication and consumption of news online is continuing apace.
1424. As a result, the medium to long term implications of the proposed merger are harder to assess in comparison to the static effects. Consistent with our competition analysis, we assessed plurality on the basis of the current strength of media

⁸⁹⁵ Ofcom “Measuring Media Plurality” (5 November 2015) at [1.17] – [1.19]. Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 6-7 which also states that the Ofcom measures “provide a good guide for assessing both existing and future sufficiency of plurality in New Zealand”.

⁸⁹⁶ Ofcom “Measuring Media Plurality” (5 November 2015) at [1.20]. Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 6-7.

⁸⁹⁷ Fairfax/NZME “Factual Submission on Draft Determination” (25 November 2016) at [51] – [52].

⁸⁹⁸ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 8.

participants with the expectation that the relative strength of these participants would be likely to remain largely the same.⁸⁹⁹

1425. In doing so, we recognise that the contribution to plurality from regional print publications, and the amount of material that these publications contribute to the merged entity's online news sites, could diminish over the next five years with the retrenchment of print publications regardless of the merger.
1426. However, we also consider that it is likely that some level of journalism would remain in these regions within this period. This is because without the merger we expect that the Applicants would continue to cover the regions or smaller independent owners would either take over or establish themselves to the extent that Fairfax and NZME sell or cease publications in these areas.

The Applicants' views on media plurality⁹⁰⁰

1427. The Applicants provided submissions on several different aspects of media plurality.⁹⁰¹ The Applicants disagreed with the preliminary views expressed by the Commission in our Draft Determination that there would be a significant reduction in external plurality with the merger. The Applicants also submitted that, irrespective of any possible impact on external plurality, there is currently a high degree of internal plurality within NZME and Fairfax which would continue within the merged entity. The Applicants submitted that this level of internal plurality would be sufficient to mitigate any concerns about a loss of external plurality.

Applicants' views on external plurality

1428. The Applicants,⁹⁰² and Professor Picker,⁹⁰³ all pointed to the degree of consumer multi-sourcing across different news content producers as evidence that the current level of external plurality is relatively healthy and would not be unduly reduced by the merger.
1429. The Applicants also submitted consumers have an increasingly diverse range of options to access news and information and that there is significant external plurality of views available.⁹⁰⁴ They pointed to competition from TVNZ, Newshub, RNZ, and a range of other New Zealand print and digital news/information competitors (such as Allied Press, NBR, Bauer's *The Listener*, etc) that publish New Zealand news content and are in a position to expand their online presence.⁹⁰⁵

⁸⁹⁹ We note that it is possible that the current levels of concentration could either diminish, if recent entrants were to grow their audience substantially, or increase, if one or existing players were to leave the market or downsize their current operations.

⁹⁰⁰ Note that many of these views relate to aspects addressed in the Reader Markets section.

⁹⁰¹ The Applicants' submissions regarding the legality or otherwise of the Commission's incorporation of media plurality impacts are addressed in the Legal Framework section.

⁹⁰² Fairfax/NZME "Factual submission on the Draft Determination" (25 November 2016) at [4], [11].

⁹⁰³ Professor Randal C. Picker "Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition" (25 November 2016) at [7].

⁹⁰⁴ Fairfax/NZME "Response to Submissions" (29 July 2016) at [89].

⁹⁰⁵ Submission from Fairfax/NZME to the Commerce Commission (29 July 29) at [18].

1430. Specifically, the Applicants suggested that there are low barriers to entry to publishing content online and so new entry and/or expansion by existing organisations is relatively straightforward. This could mean that the ongoing shift to online consumption of news content could facilitate increased plurality.
1431. The Applicants submitted that the increasing importance of social media and third party aggregators for reaching audiences is another reason why the Commission should not be overly concerned with a potential reduction in external plurality from the proposed merger.⁹⁰⁶
1432. NERA suggested that plurality concerns should be of greater concern if there is a bottleneck in the distribution of news content and there is vertical integration between content creation, publishing and distribution, so that those who create content also have control over its distribution.⁹⁰⁷
1433. NERA stated that while bottlenecks in distribution used to exist in relation to traditional media firms prior to the internet, this is no longer the case. As the internet is effectively an open access platform, content creators are able to distribute content for little incremental cost either via their own digital platforms or via third parties that have vast audiences (eg Facebook). NERA pointed to Fairfax's internal survey result and suggested this indicated that, in 2016, Facebook accounted for 15% of the share of New Zealanders' news consumption in a typical week.⁹⁰⁸ Other social media and blogs accounted for 3% and 2%, respectively.
1434. NERA also stated that while the Commission has indicated it can be more difficult for content producers to monetise audiences obtained via social media and third parties aggregators than via producers' own platforms, external plurality can also be provided by individuals and organisations that do not have a commercial objective.⁹⁰⁹ For instance, because public service broadcasters such as RNZ are unconcerned with advertising revenue, they are strongly incentivised to expand their audience through existing social media and third party aggregators, which are low cost distribution channels.
1435. The Applicants pointed to the importance of sustainability of news media firms when assessing plurality.⁹¹⁰ The Applicants referred to a report on the impacts of digital disruption to the news media in Canada which suggests "...content fragmentation, revenue consolidation and indifference to truth has overtaken simple concentration of ownership as the main threat to holding public officials to account and reflecting Canadian society back to its citizens."⁹¹¹

⁹⁰⁶ Russell McVeagh, letter to the Commission Fairfax/NZME: Taking Stock (27 February 2017).

⁹⁰⁷ NERA "Submission on the Draft Determination" (25 November 2016) at [47].

⁹⁰⁸ NERA "Submission on the Draft Determination" (25 November 2016) at [51].

⁹⁰⁹ NERA "Submission on the Draft Determination" (25 November 2016) at [52] and [53].

⁹¹⁰ NZME/Fairfax "Response to Commerce Commission's Counterfactual Letter" (22 March 2017) at [50] to [58].

⁹¹¹ Public Policy Forum "The Shattered Mirror: News, Democracy and Trust in the Digital Age" (January 2017) at 3.

1436. The Applicants also pointed to the report provided by the Commission’s experts which includes “sustainability of business models” as a relevant factor when assessing plurality.⁹¹² The Applicants submitted that the downsizing which would occur without the merger needed to be weighed against the longer life expectancy of their print products and the higher journalist numbers that would be associated with the merger.
1437. The Applicants also criticised aspects of the usage data acquired and analysed by the Commission in our Draft Determination, particularly in relation to the use of Facebook’s Instant Articles service. Our response to these comments is detailed in the Reader Section, although we summarise some specific points in response in our analysis below.

Applicants’ views on internal plurality

1438. The Applicants also made submissions on internal plurality following the Draft Determination. The Applicants submitted that within both NZME and Fairfax, there exists a strong culture of diversity of voice and editorial independence which would ensure that plurality and diversity of voice is maintained with the merger.
1439. The Applicants further submitted that “[t]he merged entity will have the same economic incentives as each of Fairfax and NZME do today to commit to these ethical standards of balance, accuracy, independence, integrity, and adherence to Press Council decisions.”⁹¹³
1440. At the Conference, and in further submissions, the Applicants submitted that there is no central editorial oversight of the angle taken towards a story, or the views and opinions expressed. The Applicants stated that internal plurality is driven entirely by the journalists within the organisation.⁹¹⁴
1441. The Applicants further stated that diversity of viewpoint is a result of:
- 1441.1 the idea of fairness, impartiality and balance being deeply rooted in the journalistic profession, and that editors work to ensure that different perspectives are given equivalent prominence;
 - 1441.2 every individual journalist writes from a different perspective, shaped by his or her own personal set of experiences and ideologies; and
 - 1441.3 there is no centralised oversight of the material published on either Fairfax’s or NZME’s websites. Regional editors and subject editors (such as sport,

⁹¹² Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 4, 7 and 11.

⁹¹³ Fairfax/NZME submission to the Commerce Commission (29 July 2016) at [100].

⁹¹⁴ NZME/Fairfax “Response to Commerce Commission Questions Arising from the Conference” at [7].

business, entertainment etc) each have autonomy over the stories they publish and are not obliged to modify or reconcile their respective views.⁹¹⁵

1442. The Applicants submitted that the merger would have no impact on the merged entity's commitment to observe principles of independence, fairness, standards of accuracy, ethical behaviour, and advocacy on behalf of the communities that NZME and Fairfax currently serve.⁹¹⁶

1443. During the Conference, a number of current editors and journalists from NZME and Fairfax spoke to the level of independence and debate that exists within these organisations.

1444. Joanna Norris, Fairfax's South Island editor-in-chief, stated:

If we look at the biggest story of the week, which is the resignation of the Prime Minister, we simply didn't sit down and say what is our collective position on the legacy of the Prime Minister for example, or who the likely replacement should be, it just simply doesn't happen. We form an independent view, as do our journalists.⁹¹⁷

1445. Patrick Crewdson, Editor of stuff.co.nz, outlined an example of how a story is dealt with in Fairfax:

You'll remember the case recently of the young man, Losi Filipo, the rugby player who was initially spared a conviction for assault because the judge decided that it would have an unfair impact on his career. So we published a wide range of news reporting on that topic, but also a wide range of opinion covering almost every conceivable angle on that story.

So we published a very wide diversity of views. Part of the reason for that was that there was a large number of editors who were commissioning those views...and the thing about the way those were commissioned is that they were all done completely independently.⁹¹⁸

1446. Sinead Boucher, Managing Editor for Fairfax NZ, noted that the only time a story would be refused publication would be if it did not meet Fairfax's standards of quality or ethics. In other words, if a story was not fair, balanced or accurate or otherwise needed to be checked for legal risk.⁹¹⁹

1447. Shayne Currie, Managing Editor for NZME stated:

At the same time in different parts of the organisation and network, individual editors of the regional newspapers are having similar meetings on their own editorial stances on what could be the same topics or very relevant topics to their own areas of the country. But at no stage am I, as Managing Editor, influencing any of those calls.

⁹¹⁵ Ibid at [8].

⁹¹⁶ NZME/Fairfax submission on the Commerce Commission's Draft Determination (25 November 2016) at [44].

⁹¹⁷ Commerce Commission Conference (7 December 2016) transcript at page 6.

⁹¹⁸ Commerce Commission Conference (7 December 2016) transcript at page 7.

⁹¹⁹ Commerce Commission Conference (7 December 2016) transcript at page 8.

It's up to the individual editors of those publications to determine the stance of the newspaper, and often the newspapers might have opposing views. In fact there's a very famous case of the Herald on Sunday taking an opposition viewpoint to the daily Herald – they have separate editors – on the location of a waterfront stadium in Auckland.⁹²⁰

1448. Both NZME and Fairfax emphasised that the size of both organisations, in terms of the number of journalists and the number of different publications, coupled with the immediacy of digital publishing makes it impossible for them to have a consistent editorial voice or viewpoint.⁹²¹
1449. Ms Boucher also stated that Fairfax, as an organisation, had undergone significant consolidation over its history and, instead of damaging editorial independence or plurality, it has been enhanced through this consolidation.⁹²²
1450. The Applicants noted that any reduction in journalists from the merger would be a small proportion of the claimed cost-saving efficiencies from the merger.⁹²³ Accordingly, such a cost reduction would be a pro-competitive productivity enhancing public benefit that would enable them to invest more in increased variety and quality of journalism.
1451. The Commission also received views from a number of the Applicants' employees, including 33 editors who expressed support for the merger as the best means sustaining overall journalistic resources in the face of ongoing negative financial trends.⁹²⁴ This support is based on their view that the merger would not affect journalistic integrity and independence, and therefore would not negatively affect plurality.
1452. The Applicants also considered that with the merger they would face the same commercial incentives to maintain a diversity of content that appeals to as wide a group of readers as possible, so as to achieve the greatest audience, and thereby present the most attractive proposition to prospective advertisers.⁹²⁵ The Applicants stated:

As media entities, NZME and Fairfax want to encourage debate, and cover as many different angles as possible, to drive audience attention and page views. As the

⁹²⁰ Commerce Commission Conference (7 December 2016) transcript at page 9.

⁹²¹ Fairfax/NZME "Response to Submissions" (29 July 2016) at [90] to [94]. Commerce Commission Conference (7 December 2016) transcript at page 15.

⁹²² Commerce Commission Conference (7 December 2016) transcript at page 23.

⁹²³ Fairfax/NZME "Response to Submissions" (29 July 2016) at [11 (c)].

⁹²⁴ See for example, submissions on the Draft Determination from Bernadette Courtney (22 November 2016); Geoff Collett (25 November 2016); Jeremy Rees (25 November 2016); Joanna Norris (25 November 2016).

⁹²⁵ Fairfax/NZME "Response to Submissions" (29 July 2016) at 28 to 30; Professor Randal C. Picker Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition (25 November 2016) at [13].

Commission has heard, New Zealand does not have the population to make partisan, ideologically uniform publications commercially viable.⁹²⁶

1453. The Applicants stated that there are strong commercial reasons why the merged entity would be incentivised to maintain not only the quality and quantity of content, but also the diversity of views within its publications. Because of the two-sided nature of the merged entity's media products, the Applicants suggested that the merged entity would maintain and publish a range of views and opinions so as to attract a wide range of consumers.
1454. This point was further supported by evidence provided on behalf of the Applicants by Professor Picker and NERA.⁹²⁷
1455. The Applicants submitted that the Overseas Investment Act 2005 provides a degree of protection against the possibility that a controlling stake in the merged entity could be acquired by non-New Zealand citizens who could seek to utilise the merged entity's news content publishing to the detriment of the New Zealand public.⁹²⁸ The Applicants pointed to the public interest test as applied by the Overseas Investment Office, as well as an explicit Ministerial approval process, as safeguards. The Applicants suggested this process would effectively give the Government veto power over certain acquisitions by non-New Zealand citizens.

Media experts' views

Professor Picker

1456. Professor Picker also considered that the increasing importance of social media and third party aggregators for reaching audiences is another reason why the Commission should not be overly concerned with a potential reduction in external plurality from the proposed merger.⁹²⁹
1457. Professor Picker outlined recent experience in Spain where a legislative change led Google to cease publishing news content (via Google News), content that was produced not by Google but by separate news media organisations.⁹³⁰
1458. The result of this change in Spain was that news consumption of Google News users fell by 16%. At the same time, former Google News consumers increased their total consumption of the top five news websites in Spain. Professor Picker inferred that this demonstrated that these consumers were being directed to a wider range of news content via Google News than when they accessed news content directly.

⁹²⁶ Fairfax/NZME response to submissions (29 July 2016) at [8(f)].

⁹²⁷ Professor Randal C. Picker "Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition" (25 November 2016) at [13] and NERA "Review of the Draft Determination" (25 November 2016) at 15.

⁹²⁸ Commerce Commission Conference (7 December 2016) transcript at pages 26-29 and Fairfax/NZME "Response to Questions Arising from the Conference" (23 December 2016) at [20]-[24].

⁹²⁹ Professor Randal C. Picker "Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition" (25 November 2016) at [8]-[10].

⁹³⁰ Professor Randal C. Picker "Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition" (25 November 2016) at [8] and footnote 7.

1459. Professor Picker suggested that the Spanish experience illustrated the ‘amplification effect’ of social media and third party news aggregators in which new and smaller players are assisted in entering and expanding by being able to access an audience through these third party platforms. In his view, the growing influence of such third party platforms should work to alleviate concerns the Commission may have in regarding the possibility of reduced plurality into the future as a result of the merger.
1460. Professor Picker considered that the financial incentive for the merged entity as a mainstream media organisation, and news media firms more generally, is to provide a diverse array of content and a wide range of perspectives so as to attract as large an audience as possible.⁹³¹ This would reduce any plurality concerns.
1461. Professor Picker raised the issue of ‘payment plurality’ and the potential for the merger to allow the merged entity to implement different revenue gathering strategies which would be used to fund a wider variety of content.⁹³² As a specific example, Professor Picker suggested that if the merged entity were better able to sustain a paywall, this could allow consumers to self-select the type of content they preferred: either free content supported by advertising revenue; or content for which there is a direct charge.
1462. Professor Picker considered that relying on direct payment to fund at least some content could influence content production decisions in ways that may be more beneficial to consumers than relying only on advertising revenue.

Dr David Levy and Robin Foster

1463. To assist us in this assessment, the Commission engaged experts Dr David Levy and Robin Foster with specific knowledge and experience on media plurality matters.⁹³³
1464. Dr Levy and Mr Foster carried out an expert review of the Commission’s Draft Determination, provided input into the Commission’s investigation, and Mr Foster appeared before the Commission at the Conference.

⁹³¹ Professor Randal C. Picker “Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition” (25 November 2016) at [13].

⁹³² Professor Randal C. Picker “Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition” (25 November 2016) at [15]-[16].

⁹³³ Dr David Levy is a director of the Reuters Institute for the Study of Journalism at Oxford University. Dr Levy is the editor of the annual Reuters Institute Digital News Report and was formerly head of Public Policy at the BBC. He was also previously a member of a commission established to review the future of French public broadcaster (France Télévisions) and is currently a member of the Content Board of Ofcom and the UK Statistics Authority.

Robin Foster is an economist and specialist in media policy and regulation at UK-based media consultancy, Communications Chambers. Mr Foster has appeared as an expert witness on media plurality matters at the Leveson Inquiry in 2012 and the House of Lords Communications Select Committee inquiry into media plurality in 2013. He has also provided advice on media plurality to the Broadcasting Authority of Ireland, the BBC, and News Corp, and held senior executive positions at the BBC, the Independent Television Commission and Ofcom.

1465. Dr Levy and Mr Foster considered that a thriving news sector ensures that people have access to information about the events and decisions which affect their lives, and have a better understanding of the world in which they live:

It [a thriving news sector] exposes its readers to views and analysis which both support and challenge their own ideas, and – through its investigative reporting – can shed light on important issues of the day and hold the powerful to account.⁹³⁴

1466. Dr Levy and Mr Foster noted that there is concern that in the absence of any government intervention, the commercial media market may not always provide the range or variety of content which society would like, or place too much power in the hands of a few, powerful, media providers.

1467. Dr Levy and Mr Foster considered that there are several contradictory trends on the impact of digital technologies on the supply and consumption of news. They note that some aspects of plurality are clearly enhanced by new developments as there is more scope for market entry, especially for those trading in opinions and arguments:

Consumers have more effective means of finding and accessing news, and sharing stories via social networks, which arguably should mean that everyone has access to a wider range of perspectives on the news than ever before.⁹³⁵

1468. However, Dr Levy and Mr Foster also highlighted that the long term commercial viability of digital news providers remains uncertain. While digitisation has meant that some costs of news gathering have reduced, they consider that few new entrants can support the scale and scope of newsgathering typically provided by established news providers:

Inevitably, many new sources of news focus on less-costly options such as opinion or commentary, user-generated content or recycled news, rather than original in-depth reporting.

...

There are still significant barriers to entry which are likely to deter the emergence of new large-scale news providers. These include the challenge of building a sizeable newsgathering capability, the need for investment in the technology which enables effective digital distribution, and the challenge of creating brand awareness and trust among consumers.⁹³⁶

⁹³⁴ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 2.

⁹³⁵ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 18.

⁹³⁶ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 18.

Others' views

1469. The Commission received a number of submissions from interested parties regarding the importance of media plurality, and the impact on plurality of this merger. The Commission also consulted widely with current and former industry participants, academics, other media organisations, and other interested parties and public organisations.⁹³⁷

Former Fairfax and NZME editors

1470. The Commission received submissions from eleven former editors who considered that the merger would be detrimental to the public and that it would not “be healthy, particularly in a society like New Zealand's that has so few checks and balances in its constitutional arrangements.”⁹³⁸

1471. These former editors accepted that the Applicants are undergoing profound change in the face of digital disruption, but considered that predictions of the demise of print, including those by the Applicants,⁹³⁹ have been overstated.

1472. In relation to competition, these former editors also considered that:

Throughout the country coverage and financial performance are improved by the knowledge that competitors will take advantage if positions are not guarded.

1473. Following this submission, the Commission interviewed several of these individuals, including Dr Gavin Ellis, a former editor-in-chief of the NZ Herald and currently Senior Lecturer at the School of Social Sciences at the University of Auckland, who had also provided several submissions to the Commission. Dr Ellis agreed with the Applicants that the current editors and journalists of the merging parties are committed to good journalism. Dr Ellis also noted that as the newsrooms exist today, there is a very high level of devolved authority with editors making autonomous decisions on what to publish.

1474. However, Dr Ellis expressed the view that the ongoing trend of reduced print revenues has resulted in, and will continue to cause, the ongoing centralisation of editorial structures. He was concerned that with the merger, the current level of devolved authority would be compressed and the structure of the organisations would be altered such that decisions can be made by fewer people, but affecting more publications. Dr Ellis stated:

And that is something that can affect plurality if, for example, you find a decision being made, “oh well, we’ll use this across all of the publications” rather than one.⁹⁴⁰

1475. Dr Ellis also noted:

⁹³⁷ For example, the Commission sought views from the Ministry of Culture and Heritage, responsible for advising the government on policies and issues involving the broadcasting sector.

⁹³⁸ Submission on the Draft Determination from eleven former editors (25 November 2016) at 1.

⁹³⁹ Greg Hywood, Chief Executive Fairfax Australia, spoke of “end game”, Commerce Commission Conference (7 December 2016) transcript at page 22.

⁹⁴⁰ Commerce Commission Conference (7 December 2016) transcript at page 18.

So yeah sure the journalist does make the initial decision but there's an overlay to this and if you go into a newsroom now like NZME Central or The Dom Post, one of the screens you'll see will be their web analytics. And the web analytics will tell you what is trending, what subjects are trending, if you look down you can see general trends and subject matter and so on. And increasingly these are the determinants of what the angle of a story will be, what will drive the analytics. And that's taking the decision making somewhat out of the hands of the journalist.⁹⁴¹

1476. Dr Ellis considered that while editors are free to allocate the resources that are made available to them, the issue is the extent of those resources and the impact that increasing commercial pressures (in terms of advertising and budget constraints) have on editors to maintain the "bulwark" between the editorial side and the commercial side.⁹⁴²

1477. Dr Ellis also stated:⁹⁴³

"...it's not to say that you remove alternative voices. It's a matter of the weight that you give. And if one person is capable of determining the weight that is given to a particular point of view and the best example of that we have is Rupert Murdoch himself who doesn't need to explicitly tell his editors what they should or should not put in their papers because he appoints people who are like minded.

Now it doesn't need to be an explicit daily telephone call, "You will do this," or "You will do that," if the editor-in-chief has the power to determine who is appointed to positions of editor, doesn't that mean that that person is capable of ensuring that throughout the organisation like-minded people are appointed?

Do you see what I mean? There are more than one way of asserting editorial power and if it devolves from a single person, then that power can be applied in many, many different ways. It's not simply a matter of "But look we carried a Green Party point of view as well as a National Party point of view."

That's a simplistic way of looking at the issue, it's a complex nuanced issue of power and the use of power and it can be done in many, many different ways.

1478. Tim Pankhurst, former editor of a number of newspapers and CEO of the NZPA, considered that the merger would lead to a rationalisation in the Applicants' parliamentary press gallery teams.⁹⁴⁴ He considered that this would lead to a narrowing of voices which "is a significant threat to our democratic process."

1479. Mr Pankhurst also did not consider that any additional ethical safeguards that the merging parties put in place would be effective in safeguarding plurality. Mr Pankhurst considered that:

There are already governors on behaviour and codes of ethics, they are givens. We have those in place and I don't think they're threatened but absolutely a threat is

⁹⁴¹ Commerce Commission interview with Dr Gavin Ellis (21 December 2016) at 9.

⁹⁴² Commerce Commission interview with Dr Gavin Ellis (21 December 2016) at 4.

⁹⁴³ Commerce Commission interview with Dr Gavin Ellis (21 December 2016) at 19.

⁹⁴⁴ Commerce Commission interview with Tim Pankhurst (21 December 2016).

the diversity of voices and just the range of things that are covered. That is very definitely a risk.⁹⁴⁵

1480. In relation to internal plurality, Clive Lind, former Editorial Development Manager at Fairfax, referred to instances overseas where stories that would displease the owner of a given publication are not reported by that publication.⁹⁴⁶ Mr Lind stated he has never seen this type of behaviour in New Zealand and considered that the likelihood of the merged entity not reporting certain stories for this reason were low.⁹⁴⁷ Mr Lind stated, however, that “it’s just one of those things you will really never know.”
1481. Mr Lind agreed with the Applicants that editorial ethics and codes of conduct are followed within the organisations, but did not consider that the existence of these codes and the individual ethics of the journalists would allay his concerns that the proposed merger would impact on readers. Mr Lind stated:⁹⁴⁸

I mean codes of conduct can only go so far. I would be fair to say that you will probably not find a code of conduct in all the newsroom walls in newsrooms throughout the country.

...

But the codes of conduct, well you know, we think they’re important and I still think there important, they’re not in the back of everybody’s mind as they’re doing things. And there are enormous pressures within newsroom(s) anyway to churn stories out.

1482. Mr Lind also noted that it is the editors’ responsibility to allocate resources to different stories. Mr Lind indicated that an editor-in-chief would have the ultimate say on how editorial resources were allocated in the event there was a difference of view amongst editorial staff regarding what stories to cover.⁹⁴⁹

Independent academics

1483. Six additional independent academics co-authored a submission opposing the proposed merger.⁹⁵⁰ All of the authors are academics in New Zealand universities who have conducted research on the New Zealand media industry and the profession and performance of journalism.⁹⁵¹
1484. The Academics submitted that the proposed merger would reduce competition, resulting in detrimental consequences for product quality for news consumers and

⁹⁴⁵ Commerce Commission interview with Tim Pankhurst (21 December 2016).

⁹⁴⁶ Commerce Commission interview with Clive Lind (20 December 2016) at 12.

⁹⁴⁷ The view that []
Commerce Commission Conference (7 December 2016) (confidential session with RNZ) transcript at page 14.

⁹⁴⁸ Commerce Commission interview with Clive Lind (20 December 2016) at 13.

⁹⁴⁹ Commerce Commission interview with Clive Lind (20 December 2016).

⁹⁵⁰ Dr Julienne Molineaux et al, submission to the Commerce Commission (July 2016).

⁹⁵¹ Dr Julienne Molineaux (Auckland University of Technology), Associate Professor Donald Matheson (University of Canterbury), Dr Merja Myllylahti (Auckland University of Technology), Dr Sean Phelan (Massey University Wellington), Dr Peter Thompson (Victoria University Wellington) and Associate Professor Geoff Lealand (University of Waikato).

the New Zealand public at large. In their view, the proposed merger would reduce the plurality and diversity of news coverage to the detriment of New Zealanders.

1485. In the Academics' view, the public benefit of journalism is that it gives expression to different perspectives and voices, referred to as the "marketplace of ideas".
1486. The Academics considered that the public benefits derived from journalism are more likely to accrue in "diversified and open markets", and are considerably less likely in more concentrated markets. They note that plurality is, in part, a function of the number of journalists employed to produce stories. In the Academics' view, any reduction the number of journalists would reduce the quantity and quality of stories produced.
1487. The Academics disagreed with the Applicants' submission that the duplication of content between different media agencies is 'wastage'. In the Academics' view, democracy functions best with many voices and perspectives, and they considered that seemingly "objective" reportage can be marked by all kinds of "subtle, and sometimes not so subtle, differences in their representation of an event or issue".⁹⁵²
1488. Post-merger, the Academics considered that the concentration of voices would risk reducing the plurality and diversity of New Zealand news coverage, to the detriment of New Zealanders. Such levels of concentration increase the risk that media power would be abused, and reduces the likelihood of journalism holding the powerful to account.
1489. The Academics submitted that the New Zealand media industry is already concentrated with weak levels of plurality on a global scale. The Academics noted that if the merger proceeded, the merged entity would have an 89.3% share of newspapers in New Zealand.⁹⁵³ As set out in Table 21, the Academics noted that this would put New Zealand second in the world behind China (state-owned) in terms of concentration of newspaper ownership.

⁹⁵² Dr Julienne Molineaux et al submission to the Commerce Commission (8 July 2016) at 16.

⁹⁵³ Based on circulation.

Table 21: Daily newspaper ownership – Market share of top company, 2016⁹⁵⁴

Country	Owner	Percentage
China	Government of China	100%
New Zealand	Merged entity	89.3%
Egypt	Government of Egypt	72%
Australia	News Corporation and associated Murdoch companies	57.5%
Chile	El Mercurio SAP	54.9%
Ireland	Independent News and Media	52%
Turkey	Dogan Group	46.4%
Switzerland	Tamedia	44.3%
Portugal	Cofina	42.4%
Sweden	Bonnier	41.3%
Russia	Komsomolskaya Pravda	39.6%
South Africa	Naspers Group	35%
UK	Murdoch Group	32.5%
Brazil	Globo Group	28.4%

Source: Dr Julienne Molineaux et al, submission to the Commerce Commission (July 2016)

1490. Dr Thompson also highlighted a general trend of reduced investigative and current affairs reporting by TVNZ and MediaWorks over recent decades as a result of increased commercial pressures.⁹⁵⁵

1491. A further factor noted by Dr Thompson was the likely difference in news consumption patterns by different sections of the audience. In particular, a minority of highly media literate individuals are more likely to search out different news sources and take advantage of the increasingly wide range of news content produced and published across various distribution channels. In contrast, the majority of news consumers do not spend time searching for different perspectives across different news sources.

“So for Joe Blogs coming in after a hard day at work, most people aren’t going to spend a great deal of time seeking out alternative news sources. So it’s relatively educated people or people whose jobs includes the engagement with a news media, I think are likely to find alternative sources.

But you have to look at the sources of news for the large mass of the population. And most people are time-bound. Most families have two parents working and they’re struggling to keep paying the mortgage. You’ve got people working 2 or 3 jobs – they don’t have hours every day to sit around hunting down the news and cross-checking it.

So part of the fundamental function of news is to ensure diversity of viewpoints and to help keep each other honest.”⁹⁵⁶

⁹⁵⁴ For overseas market shares Academics sourced Noam “Who Owns the World’s media?: Media Concentration and Ownership around the World” Oxford: OUP (2016).

⁹⁵⁵ Commerce Commission interview with Peter Thompson (22 December 2016) at 9.

New Zealand Political Studies Association

1492. The New Zealand Political Studies Association (NZPSA) represents over 200 members. Its aims include fostering the study and research of political phenomena, and encouraging the dissemination of such information. NZPSA state that its members have published extensively on the media and on media competition in New Zealand.⁹⁵⁷
1493. NZPSA submitted that political scientists consider the media important because it “informs people about events, facilitates political learning, ensures surveillance of politics and economics, promotes public discussion and civic engagement, and helps create a sense of community.”⁹⁵⁸
1494. NZPSA submitted that the proposed merger would “reduce competition and be damaging to the democratic process and the public interest”. It is of the view that a “well-functioning information market” should be considered a public good. As such, the “requisite threshold” should apply to mergers that threaten to reduce the breadth and depth of this public good.
1495. NZPSA was of the view that the proposed merger would have negative political consequences and erode democracy as there would be fewer points of view represented, less discussion of politics and less surveillance of politics and business.

Coalition for Better Broadcasting

1496. The Coalition for Better Broadcasting (CBB) is an independent charitable trust which states that its primary interest is to “inform civic debate and policy formation in regard to public service broadcasting, although media convergence extends the scope of [its] concern to other platforms and content providers, particularly those which support public interest journalism.”⁹⁵⁹
1497. CBB submitted that the role of news media to inform the public and hold powerful institutions to account was a “fundamental tenet of contemporary democratic society”.⁹⁶⁰ It considered that this is particularly important in New Zealand, where the concentrated and deregulated nature of our media sector has led to a “stronger dependence on the dominant companies not only to maintain competition and consumer choice but to act as a check on each other’s editorial integrity and journalistic quality.”
1498. To allow a functioning democratic debate, CBB considered that a plurality of editorial views is “obviously important”. In its view, the proposed merger would result in the merged entity having an “unacceptable concentration of editorial power” which

⁹⁵⁶ Commerce Commission interview with Peter Thompson (22 December 2016) at 9.

⁹⁵⁷ New Zealand Political Studies Association submission to the Commerce Commission (30 June 2016).

⁹⁵⁸ New Zealand Political Studies Association submission to the Commerce Commission (30 June 2016) at 1 citing Kemp, G (2010) *Democracy, the public and the media*. In R. Miller (ed) *New Zealand government and politics* (5th ed.) Auckland: Auckland University Press at 385-397.

⁹⁵⁹ Dr Peter Thompson, a joint submitter with the other academics is also a member of the Coalition for Better Broadcasters.

⁹⁶⁰ Coalition for Better Broadcasters submission to the Commerce Commission (10 July 2016).

would threaten the effectiveness of the media to inform the public and hold powerful institutions to account.

1499. While CBB acknowledged that media convergence has led to commercial challenges for the news media, in its view the merger would require the public to “shoulder the risk of detrimental market and democratic outcomes in order to allow two already major news media companies to consolidate their market position”.

Other industry participants

1500. The Commission also sought views from other industry participants. These included Tim Murphy, former Editor of the New Zealand Herald, and Mark Jennings, former head of news at MediaWorks. Mr Murphy and Mr Jennings now jointly own and operate newsroom.co.nz.
1501. Mr Murphy expressed a view that plurality would be lost with the merger not only in relation to editorial resourcing decisions, but also in relation to the different perspectives that reporters bring to reporting on the same issue.⁹⁶¹

... I don't think plurality and diversity of view comes under just what you as an editor or editorials columns choose to say or do, the plurality I see are in the different views and different reports and different interpretations from journalists on the ground ...

1502. Mr Murphy referred to an example of Prime Minister Bill English's Waitangi Day speech, which was covered by several different news media organisations, including both Applicants. Mr Murphy's view was that having different news media organisations covering the event meant that “different viewpoints, interpretations and political kind of judgements were made.”

Additional views

1503. In addition to the views of the former editors, Academics, NZPSA, and CBB, other interested parties have expressed concern regarding a reduction in media plurality resulting from the proposed merger. These interested parties included:

- 1503.1 journalists;
- 1503.2 independent publishers;
- 1503.3 advertising agencies;
- 1503.4 advertisers; and
- 1503.5 members of the public.

⁹⁶¹ Commerce Commission interview with Newsroom (9 February 2017).

The Commission’s view on the effect of the merger on media plurality

1504. The Commission’s view is that it is likely that the proposed merger would significantly reduce media plurality.
1505. The merger would result in an increase in the concentration of ownership in news media in New Zealand. External levels of plurality would be reduced by removing the variety in reporting and perspectives that the Applicants provide. The merger would also result in a single media firm having control over a significant proportion of the news and information that is consumed by New Zealanders.
1506. We also do not consider that competing news websites and blogs are likely to expand to compensate for the loss in external plurality caused by the merger. Additionally, domestic news media organisations with a specific public service broadcasting objective play a lesser role than commercially-focused organisations, in contrast with a number of other jurisdictions.⁹⁶²
1507. The Commission acknowledges that there is some degree of internal plurality already within NZME and Fairfax. There is, however, no guarantee that current or increased levels of plurality would continue post-merger.
- 1507.1 First, as outlined in the Reader Markets section, ongoing trends of declining revenues mean that there is likely to be a further retrenchment of journalists and a more centralised editorial structure. Additionally, the analysis provided by [].
- 1507.2 Second, internal plurality is largely a matter of owner discretion, in that the regulatory framework and internal codes of conduct cannot be relied on to prevent any change in structure or editorial approach by current or future owners of the merged entity.
1508. The Commission is therefore not satisfied there is a real chance that internal plurality within the merged entity could be relied on to compensate for a significant decrease in external plurality.
1509. The Commission sets out its reasons for reaching this view below. To undertake our assessment, we first reviewed the current level of external plurality and considered how this could change as a result of the merger. We then considered whether internal plurality would be sufficient, and likely to be sustainable, to replace the loss of external plurality.

Levels of external plurality

1510. To gain an understanding of how external plurality could be affected by the merger, we considered a range of data and information across the categories for measuring media plurality identified above.

⁹⁶² Reuters Institute for the Study of Journalism “Digital News Report 2016”.

- 1510.1 Availability/production measures;
- 1510.2 Consumption and reach measures; and
- 1510.3 Impacts measures.

1511. We detail our assessment of each of these categories below.

Production/availability measures

1512. The main assessment of the state of media ownership in New Zealand is the 2016 edition of the annual Journalism, Media and Democracy Research Centre (JMAD) New Zealand Media Ownership Report. Although this report does not provide measures of concentration, it details the ownership and board structures of the main media organisations. This report found that the recent trend of increased ownership of news media firms by financial institutions has continued.
1513. We have also reviewed an international comparison of media plurality across OECD and EU countries recently undertaken as part of the Sustainable Governance Indicators project by the Bertelsmann Foundation.⁹⁶³ In a comparison across 41 countries New Zealand ranks last equal with Romania and Turkey on media pluralism, with a score of 4 out of 10, see Table 22 below.

Table 22: Sustainable Governance Indicators – Access to information, media pluralism

Extent to which media ownership structure ensures pluralism (out of 10)	Country
10	Finland, Germany
9	Denmark, Estonia, Norway, Poland, Sweden, Switzerland
8	Ireland, Spain, USA
7	Cyprus, Czech Republic, Italy, Latvia, Lithuania, Luxembourg, Mexico, Portugal, Netherlands, UK
6	Belgium, Canada, Greece, Iceland, Israel, Japan, Malta, Slovakia
5	Australia, Austria, Bulgaria, Chile, Croatia, France, Hungary, Slovenia, South Korea
4	New Zealand , Romania, Turkey

1514. In this respect, the Commission's experts noted that:

Pre-merger, the current situation in New Zealand is different to any of these comparator countries. Judged by the number of major providers, the New Zealand news market is

⁹⁶³ See: http://www.sgi-network.org/2016/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism. The Bertelsmann Foundation is a non-profit organisation based in Germany with programs designed to strengthen society (<https://www.bertelsmann-stiftung.de/en/about-us/what-motivates-us/our-mission/>). The Sustainable Governance Indicators project is a platform built on a cross-national survey of governance that identifies reform needs in 41 EU and OECD countries (<http://www.sgi-network.org/2016/>).

already more concentrated, there is relatively little routine use of news sources from outside New Zealand certainly compared say to Ireland which as stated has widespread use of UK news sources, and as noted above the level of public service provision in New Zealand is relatively low.

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

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

Finally, while some have argued that the rise of online news renders redundant approaches to plurality based on newspaper or broadcast sources, this is not currently the case in countries such as New Zealand where the most regularly used news sources online are provided by the dominant providers offline. The argument that online news makes traditional concerns for plurality obsolete does not – at least at present – stand up to scrutiny given existing patterns of news provision, use and impact.⁹⁶⁴

1515. We consider that the producers of domestic news content can be broadly characterised as a small number of large, New Zealand-based mainstream news producers – Fairfax, NZME, TVNZ, MediaWorks and RNZ – and a larger number of smaller producers such as Allied Press, NBR, BusinessDesk, Newsroom, Sun Media, Bauer, Scoop, Wellington Suburban Newspapers, and others. These producers are also typically vertically integrated in downstream distribution markets via their own media platforms, ie, websites, print publications, TV broadcasts, or radio stations.
1516. In terms of comparative size of these organisations, as outlined in the Reader Markets section, each of Fairfax and NZME produce more than three times the number of stories than either of TVNZ or MediaWorks, and collectively employ around [] editorial and journalistic staff as compared to approximately [] similar staff members employed by TVNZ, MediaWorks and RNZ combined.⁹⁶⁵ The number of journalists at smaller media organisations is minor compared to these firms.
1517. According to estimates provided by the Applicants, as outlined in the production efficiency section, the merged entity could reduce the total editorial staff employed by the Applicants to around [] post-merger. We note that this estimate is uncertain

⁹⁶⁴ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016)” at 10 -11.

⁹⁶⁵ RNZ has a newsroom of about [] staff. TVNZ has a staff of about [], described by TVNZ as “a crude make-up of producers and reporters”. MediaWorks said that the Newshub newsroom is staffed by [] people, including reporters, producers, editors, directors, graphics experts and others (see Table 8).

given that the Applicants have not undertaken detailed merger implementation planning. Nevertheless, the proposed merger would not alter the fact that the merged entity would employ a significantly greater number of journalists than all other news media organisations.

1518. We therefore consider that the merger would have a significant impact on plurality in terms of the availability and production of news in New Zealand by different news media organisations. Because of the merged entity's size, the merger would lead to the production of New Zealand news content becoming considerably more concentrated.

Consumption and reach measures

1519. The Commission obtained data that relates to the consumption across online, TV, radio and print platforms as well as the consumption and reach of various domestic news media organisations. This has enabled us to build an understanding of the relative levels of usage of different platforms and different news media organisations.

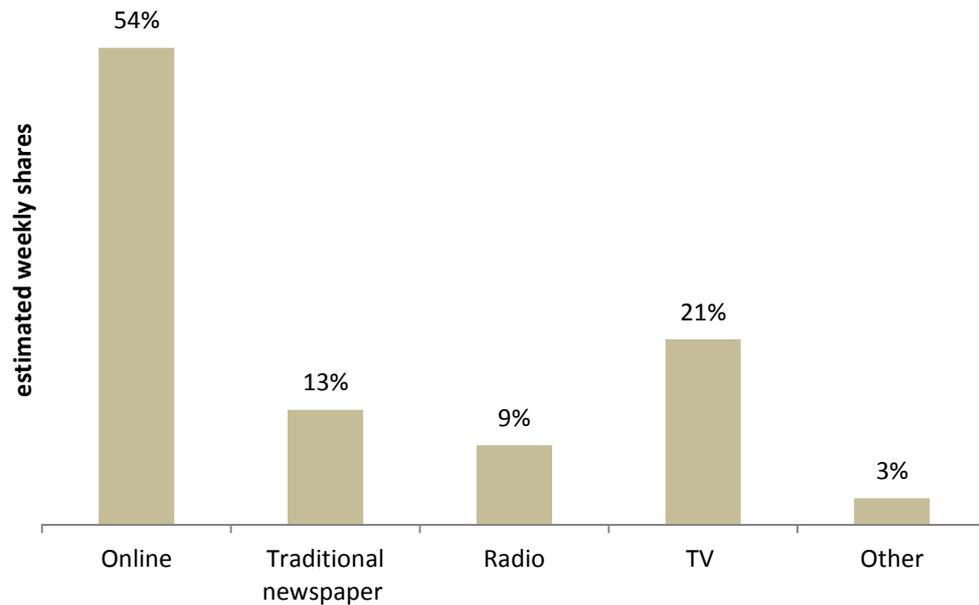
General news consumption across platforms and news media organisations

1520. To assess the relative importance of different platforms, the Commission considered a survey carried out by Fairfax on the habits of New Zealand news consumers. This survey indicated that across the population online news typically accounts for the largest share of news consumed on a weekly basis (see Figure 12).⁹⁶⁶ The average share was estimated at 54% in 2016. The next highest source is TV, at 21%. Print sources account for an average of around 13% of individuals' typical news consumption, with radio is at 9%.⁹⁶⁷

⁹⁶⁶ Fairfax Annex 67 - [

].

⁹⁶⁷ What is contained in traditional newspapers is not noted in the source material.

Figure 12: Shares of news consumption in a typical week in New Zealand, 2016

*Online consists of online NZ news sites (25%), online international news sites (9%), Facebook (15%), other social media (3%), blogs/other commentary (2%).

1521. These figures relate to responses to the question “In a typical week, what proportion of your news do you get from [source]?” While this survey provides a useful pointer to the average importance of different sources across the population, this survey does not necessarily reflect actual patterns of consumption either by platform or news media organisation as the amount of news content consumed will vary for different individuals.⁹⁶⁸
1522. To further consider the actual consumption patterns, Table 23 provides a broad overview of the relative share of the main news media organisations within each platform. Newspaper consumption is measured on the basis of the daily circulation figures. Online consumption is based on monthly page views on internet browsers and apps, as well as time spent on websites (accessed via browsers).⁹⁶⁹ TV and radio consumption are on the basis of monthly viewers and weekly listeners, respectively.

⁹⁶⁸ For example, it may be that those who consume little news content get the majority of it from social media, whereas those who consume large amounts of news content may obtain the majority of it from New Zealand news websites. For this reason, the data cannot be used to support NERA’s claim that Facebook accounts for the third greatest share of overall news consumption.

⁹⁶⁹ These figures exclude content that is viewed natively within Facebook (for example, Instant Articles and Facebook embedded videos). However, for the reasons outlined in Section 5 we do not consider that the exclusion of content viewed natively within Facebook is likely to materially affect the trends we observe in Table 13.

Table 23: Consumption of news by media type

Print - daily newspapers	Daily circulation (1 Jan - 31 Dec 2016)	Online	Browser page views (million) monthly average (Feb 16 - Jan 17) ⁹⁷⁰	App page views (million) monthly average (Feb 16 - Jan 17) ⁹⁷¹	Browser total time spent (thousand hours) monthly average (Feb 16 - Jan 17) ⁹⁷²	TV	Viewers monthly (Q4 2015 – Q3 2016) ⁹⁷³	Radio	Listeners weekly (Q4 2015 - Q3 2016) ⁹⁷⁴
Fairfax	193,348	Fairfax	191	[]	3152	TVNZ	2,744,000	RNZ	535,200
NZME	181,158	NZME	108	[]	2295	MediaWorks	2,338,000	NZME	469,000
Allied Press	37,394	TVNZ	20	[]	547	Sky Network	311,000	MediaWorks	214,000
Independent		MediaWorks	6	[]	138				
Ashburton Guardian	4,283	RNZ	4	[]	75				
The Gisborne Herald	5,904	Allied Press	3	[]	43				
Wairarapa Times-Age	5,521	Sun Media	3	[]	39				
Westport News	1,600	NBR	1	[]	21				
		Bauer	0	[]	2				

1523. As shown in Table 23, the Applicants account for a high share of news content consumed via both print and online. Combined the Applicants account for around 90% of daily newspaper circulation. In relation to the consumption of online news, the Applicants together account for around 89% of total page views from New Zealand news websites, excluding mobile apps. If available app data is included this proportion increases to []%. Similarly, the Applicants account for around 86% of total time spent on New Zealand news websites, excluding mobile apps.

1524. We also note that other consumption data outlined in the Reader Markets section, also show the high share of online news consumption that is accounted for by the Applicants.

1525. One aspect of the online consumption data outlined above not included is consumption of news content that is hosted on Facebook, as distinct from links hosting on Facebook which re-direct readers to news media organisations' own

⁹⁷⁰ Information provided and sourced by Fairfax from Nielsen Market Intelligence. Definitions of news media and news programming are defined by Fairfax. Monthly, twelve month average 1/02/16 - 31/01/17). (Fairfax: Stuff.co.nz; NZME: newstalkzb.co.nz, nzherald.co.nz; TVNZ: tvnz.co.nz; MediaWorks: newshub.co.nz, tv3.co.nz; RNZ: radionz.co.nz; Allied Press: odt.co.nz; SunMedia: sunlive.co.nz; The National Business Review: nbr.co.nz; Bauer: listener.co.nz, metromag.co.nz)

⁹⁷¹ NZME, Fairfax, MediaWorks, TVNZ and RNZ data.

⁹⁷² Above n 970.

⁹⁷³ Information provided and sourced by Fairfax from Nielsen CMI Fused. Definitions of news media and news programming are defined by Fairfax. Free to Air and Pay TV, period Q4 15 - Q3 16 Nov 16.

⁹⁷⁴ Information provided and sourced by Fairfax from Nielsen CMI Fused (excluding RNZ). Definitions of news media and news programming are defined by Fairfax. Radio NZ reports weekly cumulative audience for RNZ National 10+ population, for the period April 24 to October 22 2016, <http://www.radionz.co.nz/about/audience-research>.

websites or apps.⁹⁷⁵ For this reason, subsequent to our Draft Determination, we obtained additional data regarding the consumption of New Zealand news content via Facebook.

1526. As outlined in the Reader Markets section, while the amount of news content consumed via social media such as Facebook is growing, the use of Facebook has not had a notable recent impact on the usage of TVNZ's, MediaWorks' and RNZ's websites. The total page impressions and time spent on these websites have been relatively flat over the last year and the proportion of news content consumed via Facebook remains relatively low.
1527. In particular, of the total page views derived from desktop browsers on stuff.co.nz and nzherald.co.nz, only []% and []% were by readers that were linked from Facebook, respectively. Similarly, in terms of the total time spent on nzherald.co.nz, only 4% of that time was spent by desktop readers that were linked from Facebook.
1528. In terms of mobile browsers, of the total time spent on the nzherald.co.nz mobile website, the majority ([]%) were direct browsers. Similarly, in terms of total page impressions on the stuff.co.nz mobile website, the majority ([]%) were from direct browsers. Additionally, there is no evidence that there is a substantial volume of consumption accounted for by Facebook's Instant Articles.
1529. Consequently, we consider that the online consumption data referred to above provides an accurate reflection of overall online consumption despite the fact that these figures do not include all Facebook-related consumption.⁹⁷⁶
1530. The range of consumption metrics outlined above across the different types of media makes it difficult to come to precise conclusions regarding the relative size and importance of the various news sources across platforms. Nevertheless, we consider that the data is strongly suggestive that the merging parties account for an overwhelming share of news consumed via print and digital platforms. Given the role played by these platforms, particularly digital, we consider that this means that the Applicants together account for a substantial share of the consumption of all New Zealand news content.

Reach of news media organisations

1531. To further understand the importance of various platforms and news media organisations, the Commission has considered measures of reach – which is the number of people exposed, at least once, to a particular platform or product during a given period.
1532. A complicating factor in evaluating reach is that reach across all platforms is not measured over the same period. For instance, online and TV reach is typically measured on a monthly basis, while that of newspapers and radio is weekly. This

⁹⁷⁵ The Applicants raised this as an issue with the online consumption data we included in our Draft Determination Fairfax submission to the Commerce Commission 24 January 2017 and NZME submission to the Commerce Commission 26 January 2017.

⁹⁷⁶ See Figures 5 and 6 in the Reader Markets section for more detail.

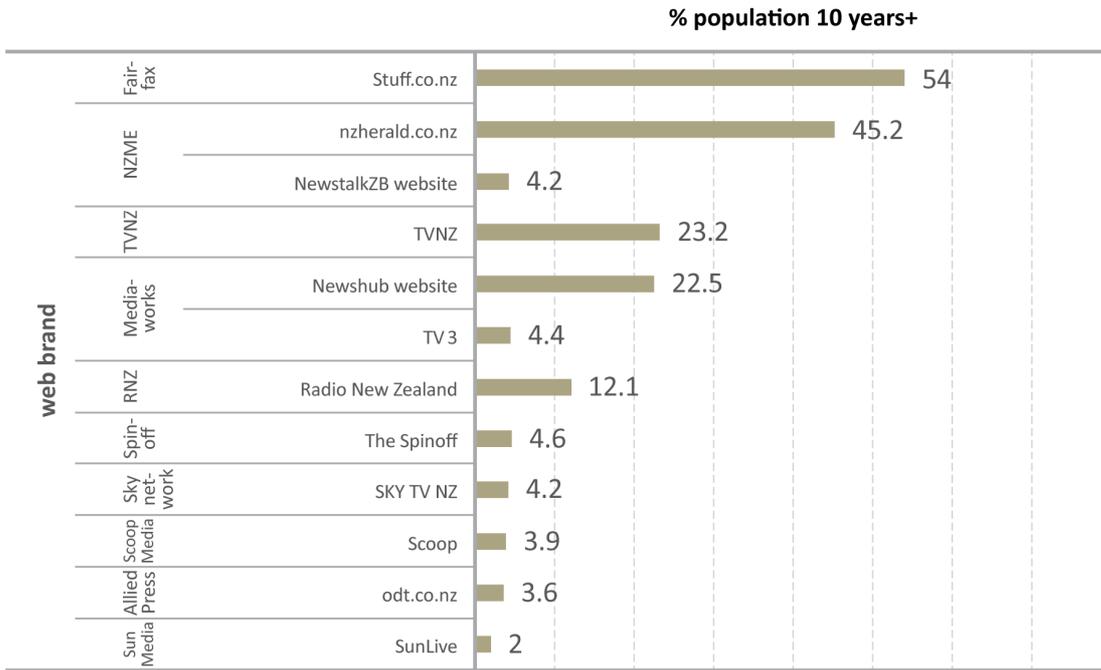
tends to overstate the reach of websites and TV relative to newspapers and radio, since it is more likely that a given person will access a product over the course of a month than over the course of a week.

1533. Similarly, reach does not include all platforms in all cases. In particular, online reach does not include consumption via mobile apps. Additionally, some organisations are not included in some statistics. For example, nbr.co.nz is not included in online reach data, although the print edition of the NBR is included in print reach data. Additionally, some weekly reach data is available for some TV products.
1534. Consequently, it is not possible to provide definitive like-for-like reach comparisons across all news media organisations across all platforms. However, we have assessed reach statistics on a platform-by-platform basis and fed this into our overall understanding of consumption patterns.
1535. Figure 13 below illustrates the monthly reach of various news media organisations via their digital platforms. It illustrates that, in terms of disaggregated reach⁹⁷⁷ across the different news organisations' products, stuff.co.nz leads, reaching 54% of the population aged 10 and over on a monthly basis. This site is followed by nzherald.co.nz with 45%.
1536. The online reach of each the next two biggest organisations, TVNZ via 1newsnow.co.nz and MediaWorks via newshub.co.nz, are both around half that of either of the Applicants, at 23% each. RNZ's online reach is the next largest at 12%, with no other (measured) news media organisation having a total reach of more than 5%.⁹⁷⁸

⁹⁷⁷ Reach is measured for New Zealanders over the age of 15 for all print products and over the age of 10 for all other media.

⁹⁷⁸ Reach figures for NBR's website are not available. However, the Commission does not consider that it is likely that the NBR would have a higher reach than other smaller players, ie, it would likely be less than 5%.

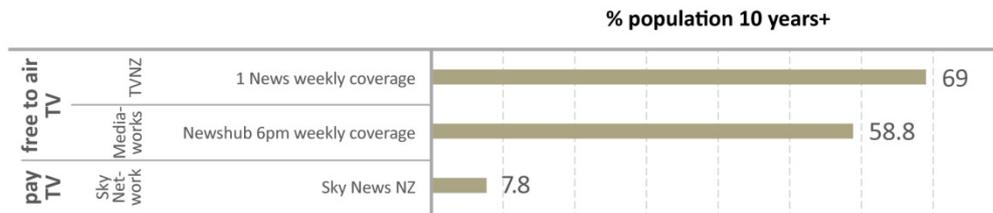
Figure 13: Total reach by digital news media, 2016



Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definitions of news media and news programming are defined by Fairfax.

1537. Figure 14 below illustrates the monthly reach of the main TV operators of their flagship TV news selected various news media organisations via their TV platforms. The figure below illustrates that monthly reach of TVNZ’s 1 News at 6pm is around 69% on a monthly basis.⁹⁷⁹ The monthly reach of MediaWorks’ Newshub at 6pm is around 59%. Both of these are substantially higher than Sky News TV.

Figure 14: Total reach by TV news media (selected programmes), 2016



Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definitions of news media and news programming are defined by Fairfax.

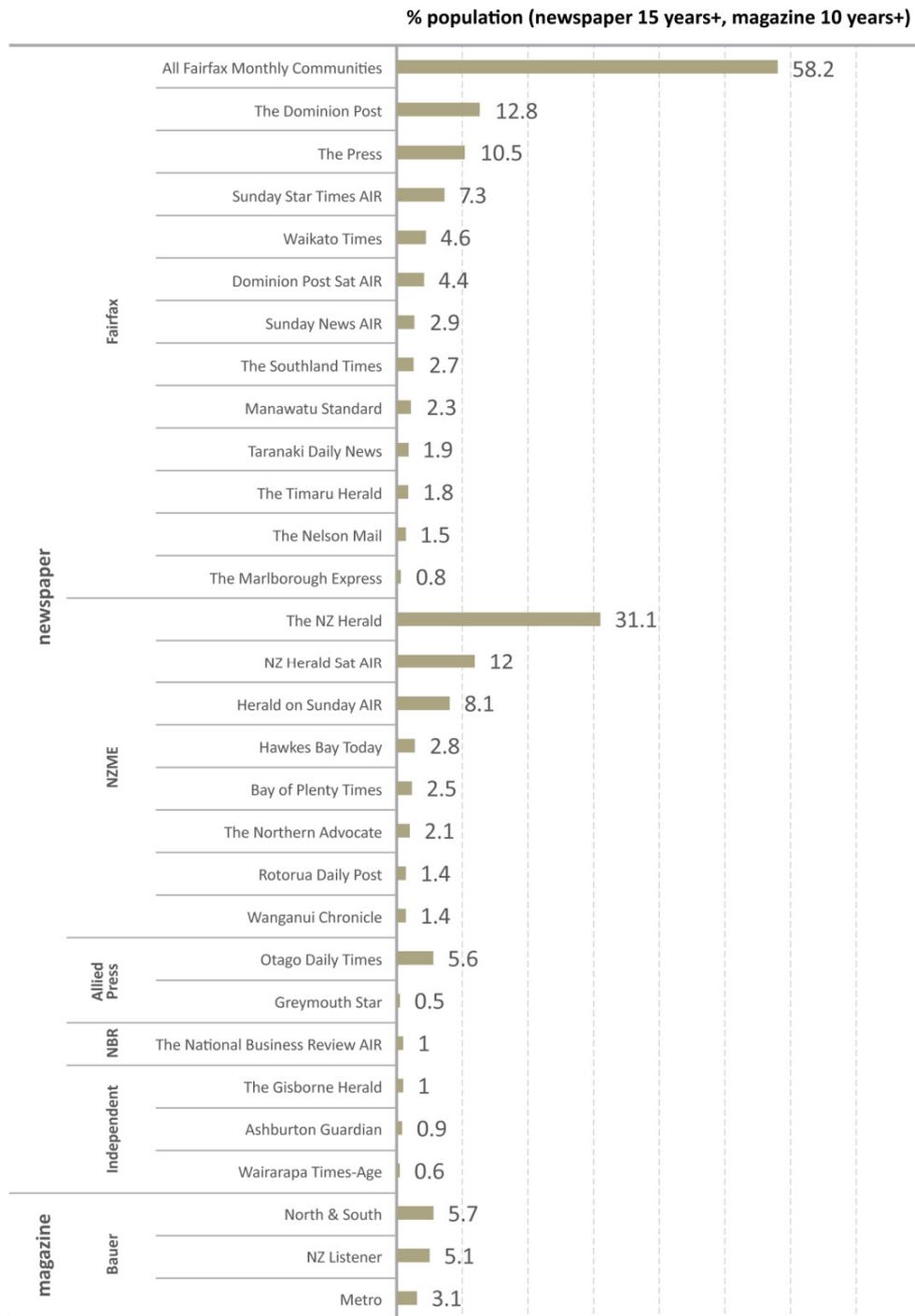
1538. Figure 15 below illustrates the weekly reach of various news media organisations via their print platforms. Note that as reach for print products is estimated on a weekly

⁹⁷⁹ This data does not include reach of content via the various media organisation apps; however, as indicated in the Reader Markets section, the pattern of consumption of New Zealand news via apps is similar to the consumption of New Zealand news via browsers.

basis, these figures are likely to be relatively lower than the similar reach estimates for online and TV, which are based on a monthly basis.

1539. The merging parties account for the overwhelming share of audience reached by newspapers. As an example, the reach of just one of NZME's 31 papers, *The New Zealand Herald*, is 31%, and the Saturday version of that paper is 12%. Similarly, of Fairfax's 75 papers, *The Dominion Post* has the greatest reach at 13% followed by *The Press* at 11%.
1540. In addition to the merging parties, this includes magazine publisher Bauer, Allied Press, NBR, and three independents publishers. Even acknowledging the decline in newspaper readership, the reach of the Applicants' publications is considerably larger than that of any other print publishers.

Figure 15: Total reach by print publications, 2016

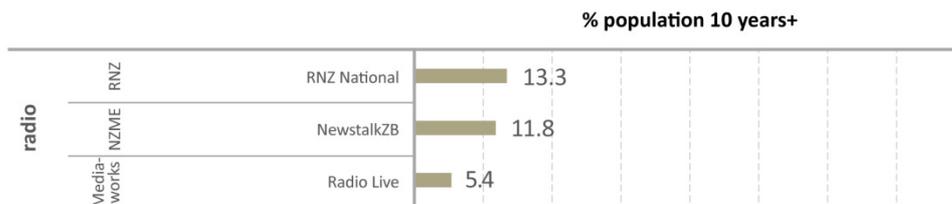


Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online. Definitions of news media and news programming are defined by Fairfax.

1541. Figure 16 below illustrates the weekly reach of various news media organisations via their radio platforms. As with print, reach is understated relative to online and TV because reach is measured on the basis of listenership over the last seven days rather than the previous month.

1542. Based on the various organisations news and information stations, as opposed to music-focused stations, RNZ’s weekly reach for its radio broadcasts in 2016 was the highest at 13%.⁹⁸⁰ The next highest reach is that of NZME’s Newstalk ZB, at 12%. Both of these stations are significantly higher than MediaWorks’ Radio Live, which has a weekly reach of 5%.
1543. Of note is that overall, the total reach of all radio is 59%, down 12% since 2014, with a particular decrease in audience amongst 15-39 year olds.⁹⁸¹

Figure 16: Total reach by radio (selected stations), 2016



Source: Information provided and sourced by Fairfax from Nielsen CMI Fused (excluding RNZ). Definitions of news media and news programming are defined by Fairfax. Radio NZ reports weekly cumulative audience for RNZ National 10+ population, for the period April 24 to October 22 2016, <http://www.radionz.co.nz/about/audience-research>.

1544. The reach figures outlined above are particular to specific products (eg, mastheads, websites, programmes) rather than entire organisations. Therefore, the collective reach of each of these organisations is greater than the reach of individual products.⁹⁸²
1545. Nevertheless, overall it is clear that the Applicants reach a large share of New Zealanders via their various products. This is not only in terms of the relative popularity of particular products such as their websites, but also because of the number of their products. Fairfax has a total of 78 news products and NZME has 35.⁹⁸³ For example, the monthly reach of Fairfax’s 63 community papers alone is 59%.
1546. In contrast, TV has nine news products,⁹⁸⁴ and MediaWorks has eight.⁹⁸⁵ Allied Press, the third largest print publisher, has three products.

⁹⁸⁰ Note that RNZ’s reach data is estimated separately to commercial radio stations. Source: Glasshouse Consulting presentation to NZ on Air, Where are the audiences? (2016) at slide 12.

⁹⁸¹ Glasshouse Consulting “Presentation to NZ on Air, Where are the Audiences?” (2016) at [slides 15 and 27].

⁹⁸² Note that individual reach figures per product cannot be aggregated since it would entail double-counting of those people who are reached by an organisation via multiple channels. For example, an individual may be exposed to both the print version of the NZ Herald and nzherald.co.nz.

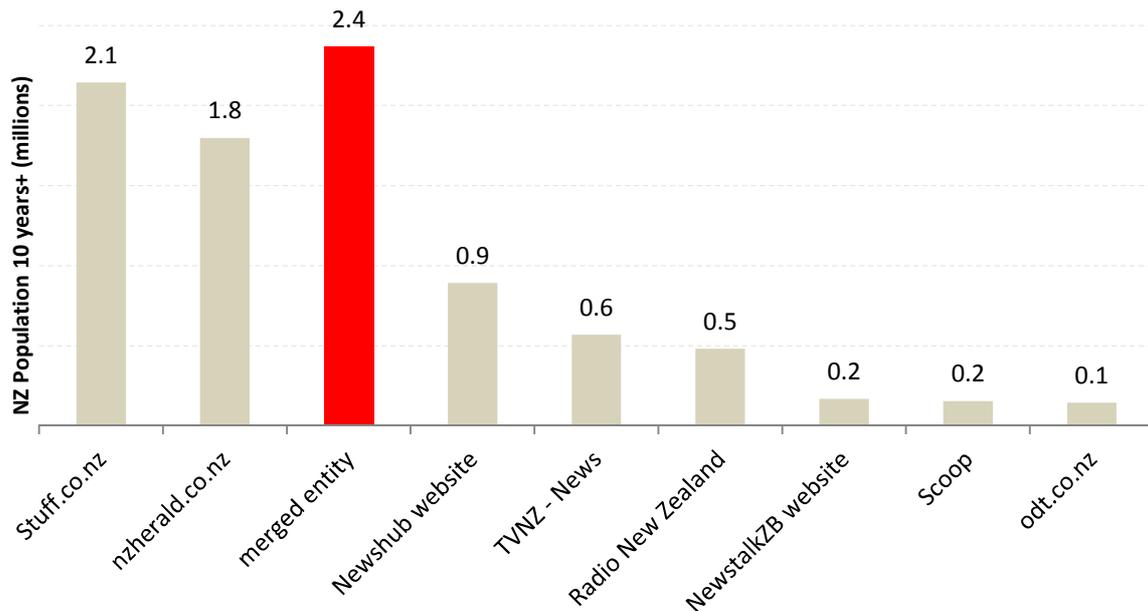
⁹⁸³ For Fairfax this includes nine daily newspapers, two paid weekly newspapers, two websites, two magazines and 63 community newspapers. For NZME this includes of six daily newspapers, two paid weekly papers, three websites, one radio station, and 23 community papers

⁹⁸⁴ As noted we only have the reach figure for TVNZ’s One News 6pm. The other news products are Breakfast, One News Midday, Q+A, Seven Sharp, Tagata Pasifika, Te Karere, and Tonight.

⁹⁸⁵ The other news products are Newshub Late, Prime, The Project, The Nation, and The AM Show.

1547. To further consider the impact of the merger, we have also considered the estimated reach of the merged entity within specific platforms. For instance, Figure 17 indicates that the average combined monthly reach of the merging parties' web brands is 2.4 million New Zealanders.⁹⁸⁶ The reach of Newshub's website is 900,000 New Zealanders aged 10 and over. TVNZ's 1 News Now website and RNZ's website have similarly low relative reach figures of 600,000 and 500,000, respectively.

Figure 17: Monthly reach of New Zealand web brands, Q4 2015 – Q3 2016 (unique audience)⁹⁸⁷



Source: Information provided and sourced by Fairfax from Nielsen CMI Fused Q4 15 - Q3 16 Nov 16 TV/Online.

Multi-sourcing by news consumers

1548. Having considered the reach of various platforms and products, the Commission has also obtained data that indicates the degree of multi-sourcing by consumers.⁹⁸⁸ Multi-sourcing is indicative of the extent to which New Zealanders benefit from the external plurality currently available to them in that it demonstrates the various sources of news they use. The multi-sourcing data relating to the four largest domestic media organisations is shown in Table 24 below.⁹⁸⁹

⁹⁸⁶ An individual is counted as a viewer in this data if they visited the website at least once that month.

⁹⁸⁷ The merged entity total is calculated as the stuff.co.nz total plus 0.125*the nzherald.co.nz total to account for 87.5% of nzherald.co.nz viewers also visiting stuff.co.nz.

⁹⁸⁸ Report by Nielsen (1 November 2016) commissioned by the Commerce Commission. Multi-sourcing estimates based on reach of all news products for each news media organisation with the exception of mobile apps.

⁹⁸⁹ The table cells indicate the percentage of media users indicated in the column heading that also use the products of the organisation in the row heading. For example, the percentage of Fairfax users that also use TVNZ products is 83.2%. Note that these figures are based on varying time periods over which reach is measured. Consequently this data is likely to overstate the reach of those media that are measured monthly (websites and TV) versus those that are measured weekly (print and radio). To this extent the

Table 24: Multi-sourcing by major news organisation, 2016⁹⁹⁰

	Percentage of Fairfax users who use other news products	Percentage of NZME news users who use other news products	Percentage of TVNZ news users who use other news products	Percentage of MediaWorks news users who use other news products
FAIRFAX NEWS		86.4%	79%	78.8%
NZME NEWS	74.1%		68.1%	68.1%
TVNZ NEWS	83.2%	83.6%		90.6%
MEDIAWORKS NEWS	82%	82.6%	89.6%	

Source: Nielsen CMI Q3 2015 - Q2 2016, August TV/Online Fused. Base: All People 10+.
Definitions of news products agreed with the Commerce Commission.

1549. These figures indicate that Fairfax and NZME users regularly turn to each other's products, as well as the products of TVNZ and MediaWorks.⁹⁹¹ In particular, 74.1% of Fairfax readers also use NZME products, and 86.4% of NZME users also use Fairfax products. While TVNZ and MediaWorks would remain highly used alternatives with the merger, the benefits of the dual usage of Fairfax and NZME would be lost.
1550. As in the case of the reach data, the data above are likely to overstate the degree of multi-sourcing to the extent that some New Zealanders use one or two primary sources for much of their news, but occasionally view content from rival news brands. For example, a Fairfax user that uses Fairfax products on a daily or weekly basis and only use MediaWorks products once a month, would still be captured within this multi-sourcing data.⁹⁹²
1551. As outlined in the Reader Markets section, particularly Figures 3 and 4, there is also a high degree of multi-sourcing between NZME's and Fairfax's websites. The level of multi-sourcing between these two websites is higher than between either of these websites and any other news media organisations' websites. This suggests that, at least in relation to the consumption of New Zealand news content on digital platforms, the degree of external plurality that would be lost would be higher with this merger than if either of the Applicants merged with any other news media organisation.

Summary of consumption measures

1552. Overall, the Commission considers the Applicants to be important providers of news services, particularly via their print and digital products. We also recognise the importance of linear TV news, particularly in terms of reach. However, even taking

degree of multi-sourcing across some platforms may be overstated. Therefore, the Commission has also separately examined the reach of the various news organisations within different platforms above.

⁹⁹⁰ Newspapers – weekly coverage, Online – monthly fused Online Ratings, Radio – stations listened to last 7 days, TV – monthly fused TV Ratings.

⁹⁹¹ RNZ is not included in these figures because Nielsen does not collect information regarding its radio ratings.

⁹⁹² Similar to the reach data, the multi-sourcing data does not include consumption of content via the various media organisations' mobile apps.

that into consideration, the reach, consumption and multi-sourcing figures available to the Commission suggests that external plurality would be significantly impacted by this merger. This is particularly the case since TV news typically does not have the depth and breadth of news coverage as text. We considered this further in the below discussion of impact measures.

Impact measures

- 1553. In addition to measures of availability and consumption of news content, it is useful for the Commission to consider the relative impact of content published on each media platform. This is because some media platforms may have a greater impact than others, and may therefore contribute more to overall media plurality. For instance, listening to a 3 minute radio news bulletin may have less impact than 30 minutes spent reading an entire newspaper. Moreover, consumers may consider some sources to be more credible than others, increasing that source’s impact and therefore contribution to plurality.
- 1554. The Commission is not aware of any research that specifically seeks to measure and compare the impact of different New Zealand news media organisations. In the absence of any such research, the Commission has reviewed various other research that to some degree considers the importance of different sources.
- 1555. A study commissioned by News Works⁹⁹³ found that New Zealanders rate newspapers, a medium in which the merging parties account for the overwhelming share of publications, as more reliable, credible, dependable and trustworthy. The medium that rates the next highest on these features is TV (see Figure 18).

Figure 18: How New Zealanders describe different media, 2013⁹⁹⁴



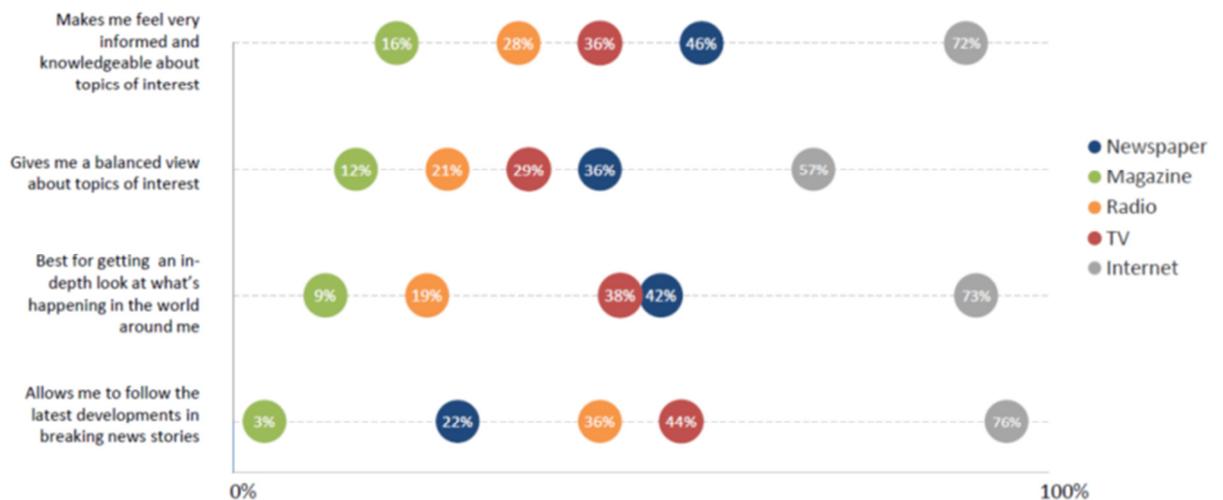
Source: News Works

⁹⁹³ New Works NZ is a commercial entity of the Newspaper Publishers' Association. It advocates news media brands throughout New Zealand like Stuff, NZ Herald, The Dominion Post, The Press, and Otago Daily Times among others (<http://www.newsworks.nz/about/>).

⁹⁹⁴ New Works NZ “Newspapers are but one expression of a modern news brand” (2013) at slide 16.

1556. In relation to attributes related to content and timeliness, the same survey found that New Zealanders rate the internet most highly, followed by, in all categories but one, newspapers (see Figure 19). As discussed in the Reader Markets section, the Applicants are the pre-eminent sources of New Zealand news online and also have well-known national and regional brands across print and radio platforms.

Figure 19: New Zealanders' views of content and timeliness, 2013⁹⁹⁵



1557. As discussed in the Reader Markets section and further below, the Commission does not consider that radio and TV generally have the same depth and breadth of news coverage as text-based news. While TV and radio broadcast regular news bulletins, more in-depth programming is more often broadcast outside of peak times or on niche channels.

1558. The Commission also considered the importance of the Applicants in setting the news agenda and breaking stories that are picked up by other mainstream media organisations. As discussed in the Reader Markets section, the Commission understands that it is common place for journalists at each of the main media organisations to monitor each other's news output to ensure that they are not missing important news stories.

1559. This, according a senior industry figure, is because stories published by these organisations will have been confirmed, fact-checked and cleared by these organisations' legal teams.⁹⁹⁶ This senior industry figure outlined that the Applicants are the media organisations that provide the greatest number of stories that are picked up by others. This is because of the greater output, largely stemming from the larger network of journalists the Applicants have in comparison to the three broadcasters, TVNZ, MediaWorks and RNZ.

⁹⁹⁵ New Works NZ "Newspapers are but one expression of a modern news brand" (2013) at slide 17.

⁹⁹⁶ Commerce Commission interview with MediaWorks (13 October 2016).

1560. As outlined in the Reader Markets section, and as suggested by the Applicants, the demand for video-based news content appears to be growing. However, we do not consider that this is necessarily at the expense of text-based news.⁹⁹⁷

Changes to external plurality following the merger

1561. Based on the various measures and analysis outlined above, it is the Commission's view that this merger would lead to a substantial immediate increase in concentration across the news media sector.
1562. The Commission considers that consumption of New Zealand news content is currently highly concentrated, particularly in comparison to many other jurisdictions, including those of a similar size. In particular, the Applicants account for a large share of both the production and distribution of New Zealand news. This is particularly the case across both print and digital platforms, where the merged entity would publish and control the overwhelming majority of New Zealand news content consumed based on a wide range of measures, as detailed both in this section and the Reader Markets section.
1563. The merger would result in an increase in this concentration of production, availability and consumption of New Zealand news. As outlined above, the merged entity would have control over a significant proportion of the news and information that is consumed by New Zealanders. Further, online news is an increasingly important distribution platform, as evidenced by the various impact measures, and the consumption of the Applicants' websites is many times greater than the next most popular news websites. Although it is becoming less important, the Applicants also control a large share of print news media, which appears to be considered by news consumers to be the most credible and trustworthy news source.
1564. Based on the available evidence regarding production, consumption, and impact, and the difficulties other players face in either entering or expanding, the Commission is not satisfied that the highly concentrated pattern of consumption of New Zealand news online would reduce significantly over the next five years.
1565. In this context, it is our view that the merger would result in a significant decrease in external plurality. For the reasons outlined below, the Commission considers that this significant reduction in external plurality would not be offset by other media organisations as the Commission also considers constraints on entry and expansion remain significant.

Plurality from other mainstream media organisations

1566. The Commission acknowledges that, following the merger, a large proportion of the population would get some of their news from other media organisations and via other platforms. In particular, they would obtain news from TV and/or radio broadcasts from the likes of TVNZ, MediaWorks and RNZ. However, this does not resolve our external plurality concerns.

⁹⁹⁷ See also, as outlined above, Reuters Institute for the Study of Journalism "The future of online news video", Digital News Project 2016.

1567. While TV continues to be an important news source, there appears to be a trend of decreased viewing of traditional (linear) TV broadcasts, and online has become the dominant news source, particularly among younger members of the public. While the decline in TV is yet to match the decline in print, if it continues, this could place TV as a source of news content in jeopardy.
1568. Whereas radio does not appear to be facing any of the decline that TV and especially print appear to be experiencing, the two major news content stations that are not owned by the merging parties (MediaWorks' Radio Live and RNZ) have a much smaller reach than that of the merging parties. For instance, Radio Live's daily reach is 3% and RNZ's is 13% of the population aged 10 and over.
1569. Radio and TV news often do not have the range and depth of news coverage of text-based news, particularly in relation to regular news bulletins. Nevertheless, there are in-depth TV and radio programmes that present and discuss newsworthy matters in detail.
1570. In fact, one area where some journalists suggested that the Applicants' rivals may be strong was political coverage. One journalist in particular mentioned that the Parliamentary press gallery is one of the more competitive environments, noting TVNZ's strong presence.⁹⁹⁸ However, such in-depth TV programmes are often screened outside of peak viewing times or on niche channels which do not draw large, mainstream audiences. Examples include Q + A on TVNZ, The Nation on TV3, or Native Affairs on Maori TV.
1571. The Commission acknowledges that one of the Applicants, Fairfax, currently hosts content produced by other media firms (TVNZ, RNZ, Newsroom) on its digital platforms (ie, stuff.co.nz and the stuff app). This helps these organisations reach a wider audience, and to that extent may contribute to improving the current degree of plurality.
1572. However, even if current content sharing arrangements were to continue post-merger, the ultimate decision on whether to publish a specific story or piece of content created by TVNZ, RNZ, Newsroom or any other firm (eg, Business Desk) would be made by the merged entity.⁹⁹⁹ Therefore, the merged entity could choose not to host or publish any specific content or story that it considered was not in its own interests for whatever reason. Alternatively, the merged entity could edit content produced by others in a manner that is more consistent with the merged entity's interests to the detriment of readers.¹⁰⁰⁰ As a result, the Commission does not consider that such existing content-sharing or hosting arrangements alleviate our external plurality concerns.
1573. Also, other large scale news media organisations (in particular TVNZ and MediaWorks) routinely monitor the Applicants' websites and publications for news

⁹⁹⁸ Commerce Commission interview with E tū (2 August 2016).

⁹⁹⁹ For example, see Commerce Commission interview with [] at 8 and 9.

¹⁰⁰⁰ One interested party suggested that at least on one occasion, such an editorial choice was made by one of the Applicants. Commerce Commission interview with [].

stories. Content published by the Applicants forms an important source of news for these organisations. If the merged entity ceased to investigate and cover certain stories, whether as a result of merger-related cuts to editorial staff or because of editorial choice, this would flow-on to some of the content that these TV and radio broadcasters would otherwise cover.

Plurality from small media organisations

1574. The Commission does not consider that the smaller and niche domestic media organisations play as strong a role in the production and distribution of New Zealand news content. These organisations have far fewer resources, have much less reach amongst the public and do not appear to be monitored to the same extent by the major organisations.
1575. As outlined above, many of these smaller players, especially blogs, often provide opinion on news content produced by one of the main news organisations rather than original news content. Although there may be occasional isolated instances where smaller players produce news content that has a large impact, the Commission does not consider this could be relied upon to replace a loss in external plurality resulting from the merger.
1576. In contrast, the merging parties have substantially greater news gathering resources, well-known national and regional brands, and operate across print, digital and radio.

Plurality from public broadcasting

1577. The Commission considers that the impact of the merger on external plurality is unlikely to be constrained by public sector broadcasters in New Zealand. Compared to other jurisdictions, there is comparatively limited funding for public interest content in New Zealand. Although TVNZ and RNZ are publicly owned, TVNZ has a commercial focus and they do not receive the level of funding or have the level of coverage equivalent to the BBC or the ABC, for example.
1578. In particular, RNZ's funding has been frozen in nominal terms since 2010.¹⁰⁰¹ This constitutes a decrease in funding in real terms since 2010 of 7.3%.¹⁰⁰² More broadly, New Zealand allocates a relatively small amount of public funding to public service broadcasting compared with many other OECD countries.¹⁰⁰³
1579. Also relevant to an assessment of public broadcasting is NZ on Air, the government media funding agency that funds a range of domestic content to add diversity and

¹⁰⁰¹ Radio New Zealand received \$31.816 million annually for its operating costs, 2009-10 to 2015-16. <http://www.nzonair.govt.nz/search/funding/radio/radio-nz#fundingForm>

¹⁰⁰² This constitutes a decrease in funding in real terms since 2010 of 7.3% (when expressing 2017 Q1 \$31.816 million in 2010 Q4 terms). CPI index: <http://www.rbnz.govt.nz/-/media/ReserveBank/Files/Statistics/tables/m1/hm1.xls>

¹⁰⁰³ Nordicity, "Analysis of Government Support for Public Broadcasting prepared for CBC/Radio-Canada, 11 April 2016" at 9. This shows New Zealand has the second lowest level of public funding for public sector broadcasters amongst a group of 18 OECD countries. We note that public funding provided to public service broadcasters may be used for more than the production of news content, for example, cultural programming.

choice for New Zealand audiences on radio, TV, and online.¹⁰⁰⁴ NZ on Air announced it intends to change its funding approach to remain flexible in light of what it considers to be “a fast-changing, converging media environment.”¹⁰⁰⁵

1580. The Commission acknowledges that NZ on Air funding is likely to assist in widening the range of domestic news that is available to New Zealanders. This is because, as outlined in its most recent proposed funding strategy, some of its funding will be directed to factual content, including documentaries, specialist journalism, and informational content. This includes funding RNZ.
1581. However, the Commission does not consider that NZ on Air can be relied on to ensure that any reduction in media plurality arising from the merger would be offset. This is because of the relatively ad hoc and specialised nature of the content that is funded, and there is no indication that this would change or that its funding would increase. For instance, funding may be provided in relation to content regarding a specific issue that may be presented in, say, a one-off documentary. Furthermore, a large share of NZ on Air funding is directed to non-news content, such as drama, music and other cultural or artistic content.
1582. We note that New Zealand’s largest publicly owned media organisation, TVNZ, does not have a public service objective.¹⁰⁰⁶ In 2011, the New Zealand Government abolished the TVNZ Charter in favour an annual Statement of Performance Expectations (SPE), which is more commercial in its focus.¹⁰⁰⁷ The SPE states that TVNZ must provide high quality content that:
- 1582.1 is relevant to, and enjoyed and valued by, New Zealand audiences; and
- 1582.2 encompasses both New Zealand and international content and reflects Māori perspectives.
1583. Although the SPE sets out the scope of TVNZ’s functions and intended operations, it does not refer to the provision of news or the requirement for independence and impartiality. However, TVNZ is still subject to broadcasting standards as set by the Broadcasting Standards Authority which include “balance”:

¹⁰⁰⁴ See <http://www.nzonair.govt.nz/about-nz-on-air/how-we-invest/>

¹⁰⁰⁵ NZ Media Fund is effective from 1 July 2017. See <http://www.nzonair.govt.nz/news/articles/nz-on-air-responds-to-changing-audiences-with-change/>

<http://www.nzonair.govt.nz/digital/>

<http://www.nzonair.govt.nz/document-library/nz-on-air-funding-strategy-2017/>

¹⁰⁰⁶ Up until 2011, TVNZ had, among other things, an obligation to “provide independent, comprehensive, impartial, and in-depth coverage and analysis of news and current affairs in New Zealand and throughout the world and of the activities of public and private institutions” (The TVNZ Charter,

http://images.tvnz.co.nz/tvnz/pdf/tvnz_charter_01.pdf

¹⁰⁰⁷ See

http://images.tvnz.co.nz/tvnz_images/about_tvnz/Board%20Approved%20Statement%20of%20Performance%20Expectations%2031st%20May.pdf

broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.¹⁰⁰⁸

1584. In contrast, RNZ has a public service charter, the Radio New Zealand Charter (the RNZ Charter).¹⁰⁰⁹ One of the purposes of the RNZ Charter is to provide reliable, independent, and freely accessible news and information. In addition, RNZ is obliged to provide comprehensive, independent, accurate, impartial, and balanced regional, national, and international news and current affairs. However, we note that RNZ's website covers less news than the Applicants and the reach of its radio platform is only around 13% of the population.¹⁰¹⁰
1585. In contrast, in the UK the BBC is the most popular news source both online, where it is used by 51% of the population on a weekly basis, and across traditional TV, radio and print platforms, where it is used by 66% of the population on a weekly basis.¹⁰¹¹ Over both online and traditional platforms, the BBC has a reach more than twice as large as the next largest news media organisation.
1586. In Australia, the ABC is the equal top most popular news source online, level with News.com.au with a weekly reach of 29%.¹⁰¹² Over traditional TV, radio and print platforms, the ABC is the third most popular source with 38% reach, narrowly behind Channel 7 News and Channel 9 News which have 41% and 39% respectively. SBS is the fifth most popular news source over traditional platforms with a reach of 21%.
1587. In Ireland, RTE is the most popular news source both online, where it is used by 42% of the population on a weekly basis, and across traditional TV, radio and print platforms, where it is used by 59% of the population on a weekly basis.¹⁰¹³

New entry unlikely to significantly increase plurality in the next five years

1588. This high level of concentration means that the future development of the news media sector in New Zealand is an important factor in our analysis. The Commission is not satisfied there is a real chance that this concentration would be materially eroded by new or recent entry over the next five years. While there are recent instances of new entry or expansion, such as newsroom.co.nz, newsie.co.nz, and noted.co.nz, these media platforms account for a very small share of current news consumption. There is no guarantee that these firms will necessary grow audience and/or obtain financial sustainability. More detailed discussion on our reasons for this position, particularly the barriers to effective entry and expansion, are outlined in the Reader Market section.
1589. As set out in the Reader Markets section , the other main news media firms suggested that there were significant barriers to entry and expansion in the online

¹⁰⁰⁸ Broadcasting Standards Authority "Broadcasting Standards in New Zealand Codebook" (April 2016) at 39.

¹⁰⁰⁹ <http://www.radionz.co.nz/about/charter>

¹⁰¹⁰ Glasshouse Consulting "Presentation to NZ on Air, Where are the Audiences?" (2016) at slide 12.

¹⁰¹¹ Reuters Institute for the Study of Journalism "Digital News Report 2016" at 35.

¹⁰¹² Reuters Institute for the Study of Journalism "Digital News Report 2016" at 79.

¹⁰¹³ Reuters Institute for the Study of Journalism "Digital News Report 2016" at 47.

news market. These barriers include both the costs of running a national news organisation and the difficulty of monetising content created and published online.

1590. We also consider that incumbency and the possession of an established news brand is likely to be a major advantage in attracting and retaining audiences online. For instance, many users may favour using a limited number of apps on their mobile devices, particularly for news content.¹⁰¹⁴ Therefore, organisations whose apps have already achieved a high rate of market penetration are likely to be in an advantageous position compared to smaller rivals and new entrants.
1591. We also consider the views of Dr Levy and Mr Foster regarding the entry and expansion of rivals are relevant, particularly their view that there “... are still significant barriers to entry which are likely to deter the emergence of new large-scale news providers.”¹⁰¹⁵
1592. We acknowledge that, as highlighted by the Applicants, social media networks such as Facebook can facilitate external plurality by providing a low cost distribution channel for media organisations and others to reach larger audiences.
1593. However, we do not accept NERA’s view that external plurality is less of a concern if there is no significant bottleneck in the distribution of content. While we agree that there is no significant distribution bottleneck or significant technical barriers to publishing content, as outlined by the Applicants themselves, it is typically relatively difficult to derive substantial revenue from these open distribution channels.
1594. We also consider that the production and publication of content should not be considered in isolation of consumption patterns. As indicated above, consumption data is also crucial for generating a complete picture of existing levels of plurality and the changes from the proposed merger. Simply because it is possible for a wide range of content and perspectives to be published online does not necessarily imply that this content will be consumed by a large proportion of consumers.
1595. We acknowledge that some studies indicated that some consumers of news content via social media tend to be less aware of news brands, which the Applicants

¹⁰¹⁴ Reuters Institute “Digital News Report 2015”, Executive Summary: “Surprisingly, given the amount of time spent in apps generally, people in most countries say they are likely to access news via a mobile browser. This suggests that news may not always be a primary destination but will often be found through links from social media or email. Only the UK bucks the trend, with the mobile app preferred (46%) over the browser (40%) and 10% saying they use them about the same. On average people use a small number of trusted news sources on the mobile phone. The average across all countries is 1.52 per person, significantly fewer than on a tablet or computer. We also find that, even though 70% of smartphone users have a news app installed on their phone, only a third of respondents actually use them in a given week, reinforcing the difficulty many news brands have in cutting through on this crowded and very personal device.”

¹⁰¹⁵ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 18.

submitted diminishes the value of their news brands and makes it easier for other players to obtain consumers. However, we consider that existing data suggests that the majority of online news consumption in New Zealand is not sourced via social media platforms, but from news media organisations' own platforms.

1596. Furthermore, recent trends such as the 'fake news' phenomenon experienced in other jurisdictions highlight the need for and benefit of an established brand. In a recent Reuters Institute survey of 143 "editors, CEOs and digital leaders" of existing digital news brands, 70% of the respondents were of the view that the distribution of fake/inaccurate news has strengthened the position of news brands online. One respondent noted "as a provider of high quality news we're needed more than ever".¹⁰¹⁶
1597. Such a trend may well further entrench the strong position currently held by the Applicants' brands. Furthermore, the relatively small size of the New Zealand market means that new entry from major international news brands is less likely than elsewhere.
1598. The Commission also notes that Facebook has the ability to modify its content dissemination algorithm as it sees fit. The Commission notes that this can have, and indeed has had, a major impact on news media using this distribution channel.¹⁰¹⁷
1599. Consequently, we are not satisfied that the availability of social media platforms necessarily alleviates our concerns regarding the loss of external plurality.

Other matters affecting external plurality

1600. The Applicants raised several other arguments regarding external plurality. For the reasons outlined below, these did not change our view.

Regulatory policy settings

1601. The Commission does not accept the Applicants' submission that clear language in the Commerce Act would be needed to expand the remit of the Commission to media plurality issues.¹⁰¹⁸ To the contrary, we are required to consider the public benefit of this proposed merger in a setting where media ownership is unregulated and there is limited media content regulation.
1602. Existing policy settings regarding media plurality have been established in a media environment that could change substantially if the merger were to proceed. While it is possible that these policy settings could be altered post-merger, it is not possible for the Commission to predict whether and when this likely to occur, and how any alteration might impact a consummated merger.

¹⁰¹⁶ Reuters Institute "Journalism, Media, and Technology Trends and Predictions 2017", Digital News Project 2017 at 9.

¹⁰¹⁷ Commerce Commission Conference (6 December 2016) transcript at pages 23-24 and email from Russell McVeagh (on behalf of the Applicants) to the Commerce Commission (26 April 2017).

¹⁰¹⁸ Fairfax/NZME "Legal Submission in relation to Commerce Commission's Jurisdiction to Consider Plurality Issues on Jurisdiction" (25 November 2016) at [38].

1603. Consequently, the Commission has used existing policy settings as the basis from which to assess both the with and without the merger scenarios. These settings include not only the absence of any specific plurality-related regulation, but also the current funding and operations of the various publicly owned or funded organisations, including RNZ, TVNZ, Maori TV, NZ on Air, Parliament TV, etc.

Commission’s view on payment plurality and ‘free riding’

1604. In relation to payment plurality and the possibility that the merger would better enable a digital paywall to be implemented, the Commission agrees with Professor Picker that imposing a direct charge over certain content published online may incentivise a greater level of production of that content.¹⁰¹⁹ This could have some positive impact on the quality of content produced in terms of diversity, and therefore, plurality.
1605. However, it is not clear what form a digital paywall would take, in particular whether it would be limited to certain types of content or would be a more general metered paywall across all of the merged entity’s content. There is also a real chance that the merged entity would not implement a paywall at all.
1606. Consequently, the Commission cannot rely on any positive payment plurality impact necessarily eventuating. Furthermore, our paywall modelling suggests that any paywall would likely apply only to a small proportion of readers. This implies that any potential payment plurality impact that was to arise would likely be relatively small.
1607. With regard to the potential reduction in free riding on journalistic output as a result of the merger, it is our view that this may occur to some degree given that the Applicants are currently each other’s closest competitors in reader markets for New Zealand news (see the Reader Markets section). Therefore, eliminating each other’s closest competitor may reduce free riding, particularly as we understand that it is not uncommon for the Applicants to report on stories first covered by their rival (known as “matchers”).
1608. However, although the Applicants may consider such free riding as a disincentive to invest in some content, we consider that having multiple news media organisations report on the same stories brings with it real plurality benefits.
1609. As we outline in the Reader Markets section, we note that while the Applicants often produce stories on the same topic, event or issue, they often seek to differentiate these stories. This can occur by raising a different angle on the matter. An example is a story broken by NZME regarding the New Zealand citizenship of American businessman Peter Thiel. While NZME broke this story it was also picked up by a range of other news media outlets, including Fairfax. In covering this story, Fairfax

¹⁰¹⁹ Professor Randal C. Picker “Commentary on Draft Determination of New Zealand Commerce Commission re Fairfax/NZME Proposed Acquisition” (25 November 2016) at 4.

applied several different perspectives, including opinion pieces both for and against, as well as a publishing an article providing background on Peter Thiel.¹⁰²⁰

1610. The Applicants submitted that reporting on the same stories is unnecessary duplication, particularly in relation to what the Applicants refer to as “commodity news”.¹⁰²¹ Nevertheless, it is the Commission’s contention that bringing different perspectives to the same topic, event or issue constitutes a benefit of external plurality. This aspect was summarised by Mr Foster, who suggested that:

“... one man’s duplication is another man's plurality. So I think if you think about certain areas of coverage like political coverage which you refer to, it may actually be a great benefit from the plurality point of view to have that range of people in the press gallery ...”¹⁰²²

Safeguard from internal plurality

1611. Given that we consider that this merger would significantly reduce external plurality, we considered whether internal plurality within the merged entity would be sufficient to counter this loss of external plurality.
1612. Internal plurality is more difficult to measure than external plurality. Consequently, the Commission sought information from both the Applicants and other interested parties on the current degree of internal plurality, how internal plurality could be affected by the merger, and whether internal plurality could be relied on to offset the decrease in external plurality.
1613. Regarding internal plurality, Mr Foster stated that regulators should exercise “a degree of caution” in placing too much reliance on internal plurality as in practice it can prove elusive. Mr Foster noted:

There’s also an issue about however well-intentioned the organisation is in terms of protecting editorial independence that you might see within an organisation, a sort of group think can emerge so that [an] organisation, like it or not, thinks in a certain collective way about things. It may not be imposed on them in any sense but it is just the way organisations behave. There’s more chance of avoiding that if you have more entities in the marketplace.

But I think the main reservations that regulators would have if they were being asked are about how easy it is for voluntary codes to be changed and ignored should circumstances change and the experience of the different types of owners, the

¹⁰²⁰ On 23 January 2017, business reporter Matt Nippert broke the original story regarding Peter Thiel http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11787741 (we note that the time stamp of this article has subsequently changed). Fairfax followed the story with a number of their own opinion pieces, for example <http://www.stuff.co.nz/good-reads/89098077/oscar-kightley-why-thiels-nz-citizenship-is-a-bit-rich> and <http://www.stuff.co.nz/national/politics/opinion/89053005/selling-citizenship-to-peter-thiel-is-a-good-deal>.

¹⁰²¹ The Applicants did not specifically define commodity news, but said commodity news refers to stories that are freely and easily available to any media organisation and, therefore, could be considered commodity in nature. Fairfax “Response to NZCC RFI” (2 February 2017); NZME “Response to NZCC RFI” (2 February 2017).

¹⁰²² Commerce Commission Conference (7 December 2016) transcript at page 30.

proprietary owners which were referred to earlier, who may be interested in running news media organisations for very different reasons.¹⁰²³

1614. For the reasons outlined below, the Commission is not satisfied there is a real chance that post-merger internal plurality would prevent a lessening of overall media plurality. First, we are not satisfied that we should assume either an increase in, or even a durable preservation of, internal plurality with the merger, given likely future consolidation and cost reduction efforts.
1615. Second, we consider that the level of internal plurality displayed by the merged entity would be largely discretionary on the part of the owners, because we do not regard the existing, largely voluntary, regulatory structure as a sufficient safeguard to preserve internal plurality.
1616. Third, we do not consider that the two sided nature of news media markets provides a sufficient safeguard to internal plurality.

Current degree of internal plurality and impact of the merger

1617. The Commission acknowledges the evidence presented by the Applicants that journalists and editors within the merging parties have a strong sense of commitment to the accuracy, independence, fairness and ethical standards in journalism. The Commission also accepts that the Applicants currently each publish a wide range of (often differing) views on certain subjects.¹⁰²⁴
1618. Consequently, the Commission recognises that a degree of internal plurality currently exists within the Applicants' organisations. Additionally, the loss of external plurality post-merger could arguably, at least in a notional sense, be at least partially offset by an increase in internal plurality. This is because a greater number of mastheads, and associated editorial staff, could be retained within a single firm, at least immediately post-merger.
1619. However, as outlined in the production efficiency section outlining the likely benefits of the merger, this transaction would immediately result in a reduction in editorial resourcing, such as [], and so on. In particular, PWC have identified [].
1620. Additionally, the merged entity would face the same long term trends that the Applicants would face without the merger.
1621. Realisation of the benefits claimed by the merging parties would overall necessitate an immediate reduction in journalistic resources. The merger would therefore result in an immediate net loss in a number of key editorial decision-making positions and would reduce editorial resources in a number of areas.

¹⁰²³ Commerce Commission Conference (7 December 2016) transcript at pages 24 and 25.

¹⁰²⁴ For example, see comments by Patrick Crewdson Commerce Commission Conference (7 December 2016) transcript at page 6.

1622. It is the Commission's view that the very rationale of the merger, to reduce what the Applicants consider inefficient duplication of resources, would lead directly to a reduction in the same resources which generate internal plurality across important areas of news reporting.

Potential for editorial influence by future owners

1623. A number of interested parties highlighted the fact that the ownership and/or organisational structure of the merged entity could change post-merger. Some parties put forward examples of media owners ('moguls') that have instituted specific editorial positions on one or more issues and expressed concern that the same could occur with the merged entity.¹⁰²⁵
1624. While some interested parties considered it unlikely that the merged entity would be acquired by an individual ('media mogul') that would engender a certain political perspective or bias,¹⁰²⁶ others considered that changes in philosophy by either the current or future owners of the merged entity cannot be ruled out as a real possibility.
1625. The Commission agrees that there is little to prevent such a change and that this could have a significant negative impact on internal plurality. We accept that the risk of editorial interference may be reduced by the potential for public outcry or a consumer backlash. But editorial interference may be difficult for consumers to detect. The merged entity could not, as a commercial entity, be expected to conduct itself with the transparency required to make editorial interference implausible or economically irrational.
1626. In any case, as outlined by Dr Ellis, such influences can be subtle and need not be as blatant as overt political positions taken across entire publications. For example, while a media organisation may publish multiple opinion pieces on a given issue, the emphasis and prominence that is given to these pieces may differ.
1627. Similarly, decisions on whether to allocate resources to the coverage of certain topics can be influenced by the ownership of that organisation. The more centralised the structure of the organisation, a trend the Commission considers the merged entity would likely follow as print revenues continue to decline, the easier it would become to implement a single editorial approach on any given issue. As an example of increased centralisation and reduced diversity, we note that different Fairfax publications at times publish the same editorials.¹⁰²⁷
1628. The Commission also accepts that control over the editorial direction on any given issue would not need to be undertaken by explicit instruction between owners and

¹⁰²⁵ Commerce Commission interviews with Dr Peter Thompson (22 December 2016) at 10, Dr Gavin Ellis (21 December 2016) and Tim Pankhurst (21 December 2016).

¹⁰²⁶ Commerce Commission Conference (7 December 2016) transcript at page 22; Commerce Commission Conference (7 December 2016) Confidential session with RNZ transcript at page 14.

¹⁰²⁷ For example see: <http://www.stuff.co.nz/the-press/opinion/85777584/Editorial-Tasers-a-useful-tool-in-the-fight-against-crime-but-must-be-used-responsibly> which was an editorial in *The Dominion Post* and *The Timaru Herald* and *The Press*.

editors. Rather, as outlined by several former editors, owners may simply employ like-minded individuals in editorial positions. A similar effect could be achieved through the design of incentive and remuneration schemes.

1629. As Dr Levy and Mr Foster pointed out, internal plurality does not necessarily guard against ‘group think’ that can arise in organisations:

...in the absence of any form of tough and independent behavioural regulation such promises could not be guaranteed. Moreover, different concerns may arise – for example, the risk that a powerful news provider would be incentivised to avoid controversial issues for fear of upsetting one or more groups of readers, politicians or advertisers, or that – even if they are even-handed in their political coverage – they use their publications to promote their own or associated commercial interests.¹⁰²⁸

Role of editorial policies and editorial structure

1630. The Commission considers that while current editorial policies and organisational structures within NZME and Fairfax may presently support internal plurality and diversity of voice and opinion, there is no guarantee that these policies and structures would continue in the merged entity.

1631. We acknowledge that there is a range of individuals in various positions within these organisations that have control over editorial decisions across different publications and platforms. For instance, the editor for a specific regional paper can determine whether to allocate resources to a particular story independently of other editorial decision makers elsewhere in the organisation.¹⁰²⁹ It is the Commission’s view that this supports internal plurality.

1632. Nevertheless, the Commission considers that there remains a hierarchical element to the overall editorial structures of these organisations. For instance, Shayne Currie notes:¹⁰³⁰

I am the managing editor of NZME, with ultimate responsibility for the editorial teams and journalism at the NZ Herald, nzherald.co.nz, Weekend Herald, Herald on Sunday, Newstalk ZB, newstalkzb.co.nz, Radio Sport, five regional daily newspapers, more than 20 community newspapers and associated websites.”

1633. We consider that the greater editorial control provided to individuals higher up the editorial structure allows these individuals to have a greater influence on how editorial resources are allocated more widely.¹⁰³¹

¹⁰²⁸ Dr David Levy and Robin Foster “Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: Expert review of the Commerce Commission’s Draft Determination Document” (16 November 2016) at 17.

¹⁰²⁹ For instance, see Patrick Crewdson submission on Draft Determination (22 November 2016) and Commerce Commission Conference (7 December 2016) transcript at pages 33 and 34.

¹⁰³⁰ Submission from Shayne Currie to the Commerce Commission (28 November 2016).

¹⁰³¹ For instance, Joanna Norris, South Island editor-in-chief for Fairfax, outlines that she oversees editorial budgets in five regions, Joanna Norris submission on Draft Determination (25 November 2016) at 3.

1634. While Mr Currie provides examples of the diverse range of voices and perspectives that are published by NZME, he also states that the NZ Herald takes particular editorial stances on certain issues.¹⁰³² Examples include Helen Clark's bid for UN Secretary General, the Reserve Bank's monetary policy, and local and central government policies towards liquor laws, transport, housing, refugees and other issues.
1635. It is the Commission's contention that taking certain stances on specific issues is likely to influence decisions regarding how editorial resources are allocated, which in turn influences what stories are published.
1636. A recent internal document from Fairfax Media in Australia set out the future editorial strategy and direction for the Sydney Morning Herald, The Age, Brisbane Times and WA Today. It provides a useful demonstration of how centralised editorial structure may impact on internal plurality.¹⁰³³

In other topic areas we will focus on telling the biggest stories with a Fairfax voice and tone.

...

We have updated our mission statement and purpose and we maintain our commitment to reporting from the intelligent centre of the political spectrum, exploring views on either side. Our reporting remains socially progressive and economically rational.

...

We believe in the merits of market-based solutions to economic challenges and an Australia that rewards aspiration and hard work. We want to be at the political centre of the rigorous debate over how best to achieve these important objectives.

However, we will continue to strongly argue that safety nets are necessary to protect the vulnerable and that the state has an important role to play in areas such as health, education and the environment.

1637. We intend no criticism of the highlighted passages, or the prioritisation of focus areas identified in the document. They demonstrate, however, that centralisation may decrease internal plurality.
1638. Similarly, the Commission accepts that the digital-first strategies of the Applicants means that editorial staff throughout these organisations are able to publish content online regardless of whether this content would or would not be consistent with any specific overall editorial direction.
1639. However, we consider that those individuals with specific editorial control over digital platforms are able to control the prominence and placement of certain

¹⁰³² Submission from Shayne Currie to the Commerce Commission (28 November 2016).

¹⁰³³ The memorandum dated 5 April 2017 is in the name of several employees including Fairfax Editorial Director Sean Aylmer, Fairfax Media's National Editor James Chessell, Sydney Morning Herald Editor Lisa Davies, and The Age Editor Alex Lavelle.

stories.¹⁰³⁴ The ultimate power to select the individuals in these editorial roles rests with the firms owners. Therefore, such selection may ultimately be subject to the owners' commercial interests.

1640. The Commission is not criticising this editorial structure or practices of the Applicants. The Commission considers that the Applicants are best placed to determine which structure best allows them to effectively operate their publishing businesses. However, we consider that it is important to take into account that there are individuals in each of these organisations that have greater levels of editorial power that can influence the content that is published. The fewer of these individuals there are post-merger, the more concentrated is this editorial control.

Role of codes of ethics and regulatory requirements

1641. The Commission has also considered the extent to which adherence to internal codes of conduct, and the oversight of the Press Council would safeguard internal plurality in the merged entity. This is discussed more fully in the Reader Markets Section, but in essence, the Commission considers that while the Press Council and internal codes of conduct may act to ensure a level of fairness, balance, and integrity, the Press Council does not have any influence over the editorial decision-making of the merging parties. That is, neither codes nor Press Council rules can ensure that editorial resources are directed to any particular stories or topics.
1642. The fact that the Applicants signed a Deed Poll so that they would remain members and contributors to the Press Council post-merger is therefore also insufficient to ensure internal plurality.
1643. The Commission considers that internal plurality cannot be ensured by a code of ethics since such a code, no matter how laudable, cannot assure diversity of voice. The Commission also considers that neither Fairfax nor NZME's codes of ethics speak to promoting a range of internal voices and perspectives, and even if the merging parties were to make such commitments, they would be capable of amendment or revocation.
1644. Ultimately, the Applicants control what is published, and not published, on their various platforms. The Commission points to the fact that many publications in the UK are subject to the UK Press Council and have their own ethical codes but have particular editorial stances that reflect difference positions in the political spectrum and have little internal plurality. This illustrates that membership of such regulatory arrangements and implementation of such codes does not necessarily result in internal plurality.
1645. As the Commission's expert Mr Foster commented at the Conference it is difficult to regulate and enforce internal plurality:

¹⁰³⁴ For example, Patrick Crewdson submitted that as editor of stuff.co.nz he may choose to "take an editorial stance on an issue or to support a campaign, and that would obviously be apparent on Stuff". Mr Crewdson also noted that other editors (for example, Fairfax's the head of Sport) can also freely editorialise content that to be represented on stuff.co.nz. Submission from Patrick Crewdson to the Commerce Commission (22 November 2016).

...it is not an easy task and, which is why in the end the preferable approach I think in jurisdictions around the world is as far as possible to try and encourage external plurality, because of the internal plurality risks. Having said that, internal plurality is a dimension to take into account. So there is a dilemma there. Difficult to enforce, but good to have if it's there.¹⁰³⁵

1646. Furthermore, the Commission does not consider that the requirements of the Overseas Investment Act 2005 are necessarily a safeguard against plurality concerns. This Act does not apply to New Zealand citizens. The Overseas Investment Office would have no jurisdiction over any number of high wealth New Zealand citizens, including those only recently granted citizenship, who would have the financial resources to acquire a controlling interest in the merged entity. Once acquired, such an individual could subsequently control resourcing and employment decisions in a manner that could influence the news content published and consumed by a large proportion of the public.

Two-sided nature of Applicants' platforms

1647. The Applicants submitted that the two-sided nature of the merged entity's business would mean that it would be incentivised to ensure a sufficiently wide range of views and perspectives are published so as to appeal to as wide an audience as possible to maximise returns.

1648. As outlined in the Reader Markets section, the Commission accepts that the merged entity would have an incentive to appeal to a wide range of potential readers provided that it is profitable to do so.

1649. However, we are not satisfied there is a real chance that the two-sided nature of the merged entity's platforms is sufficient to guarantee that it would institute a sufficient degree of internal plurality across all important issues. While stories or events of especially high interest, such as large earthquakes or Prime Ministerial resignations, are likely to result in high demand for stories from many perspectives, many more stories that are nonetheless important are likely to have fewer editorial resources committed to them.

1650. For example, each of the Applicants may have one specialist reporter for a specific topic, say the health sector. Taken together, these reporters may produce stories on the same topic that come from different perspectives, for instance they may use different sources. Post-merger, the merged entity may decide to have only one specialist health sector reporter as this is the lowest cost method for attracting readers that are interested in health-related stories. This illustrates that the two-sided nature of the market cannot be relied on to offset the reduction in external plurality with an increase internal plurality.

1651. Furthermore, as outlined in the Reader Markets section, readers may be unaware of the reduction in plurality because they are unaware of the alternative perspective

¹⁰³⁵ Commerce Commission Conference (7 December 2016) transcript at page 27.

that they are missing out on post-merger. As a result, there may be little, if any, loss in reader numbers due to a loss in internal plurality.

The Commission's finding on media plurality

1652. In summary, the Commission has reached its view on plurality informed by the experts we have engaged, the submissions we have received, interested parties with which we have spoken, the academic literature we have reviewed, and the regulatory approach applied to this issue in much, if not all, of the rest of the OECD.
1653. In summary, the Commission considers that media plurality would be significantly reduced by the merger because:
- 1653.1 Based on the various measures and analysis outlined at [1512] to [1565], and in the Reader Markets section, the Commission is satisfied that this merger would lead to a substantial immediate increase in concentration across the news media sector.
- 1653.2 For the reasons outlined at [1566] – [1610], and in the Reader Markets section.
- 1653.2.1 The Commission considers that this would result in a significant reduction in external plurality that would not be offset by other mainstream media organisations, small media organisations, or public broadcasting.
- 1653.2.2 The Commission considers constraints on entry and expansion remain significant such that new entry or substantial growth of existing news media organisations is unlikely to significantly increase plurality in the next five years.
- 1653.3 For the reasons outlined at [1611] – [1651], the Commission is not satisfied there is a real chance that post-merger internal plurality can be relied upon to prevent a lessening of external media plurality.
- 1653.3.1 We are not satisfied that we should assume a durable preservation or increase in internal plurality with the merger, given likely future consolidation and cost reduction efforts.
- 1653.3.2 We consider that internal plurality is largely discretionary on the part of the owners of the merged entity, because we are not satisfied that applicable regulatory rules and ethical codes would prevent a substantial reduction of internal plurality. Similarly we do not consider that the two sided nature of news media markets provides a sufficient safeguard to internal plurality,
1654. Given the importance of the news media to the proper functioning of New Zealand's democracy, it is our view that the adverse effects from a reduction in media plurality would be significant. Such effects are unable to be quantified but the loss of media

plurality is an important factor in our consideration of whether the proposed merger results in such a benefit to the public that it should be authorised.

Commission’s view on plurality in ‘digital plus limited print’ scenario

1655. The above findings of the Commission, that there is a significant plurality disbenefit from the merger, apply not only in the ‘digital and print’ scenario, but also in the ‘digital plus limited print’ scenario with one possible difference.
1656. There is potentially some partial offsetting benefit to internal plurality in the ‘digital plus limited’ print scenario with the merger because the merged entity would likely employ a higher number of journalists over the five year period.

Applicants’ views on merger’s effect on editorial resourcing

1657. The Applicants also stated that without the merger the reporting resources in regional areas are likely to be the first to be rationalised whereas with the merger their editorial resources in these areas would be retained.¹⁰³⁶ They submitted that this would better ensure plurality because the areas where editorial resources would be reduced with the merger are in areas or in relation to topics where there is currently duplication (eg, politics and business).
1658. The Applicants also submitted that this would maintain higher quality reporting overall, therefore improving plurality.

The Commission’s view

1659. The Commission accepts that there could be a plurality benefit arising from a greater amount of editorial resourcing over the five year period under this scenario. While this benefit would exist, we do not consider that it is likely to be significant. The level of editorial resources in the ‘digital plus limited print’ scenario’ is uncertain.

Unquantified detriments

1660. In this section, we provide our assessment of the unquantified detriments relating to a loss of quality in reader markets. We do this under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.

Reduced quality in reader markets

Reduced quality of news due to a loss in competition

1661. As discussed previously under the reader markets section, we consider that the proposed merger would likely to substantially lessening competition such that there would be a reduction in quality of news in the reader markets identified above.
1662. In particular, we consider that competition between the Applicants leads them to produce higher quality content than would likely exist in the absence of this

¹⁰³⁶ Commerce Commission interview with Fairfax (10 March 2017) at 7 and 18; Commerce Commission Conference (7 December 2016) transcript at pages 22-23; Fairfax/NZME “Response to Commerce Commission Counterfactual Letter” (22 March 2017).

competition, by providing a greater incentive for journalists and editors to produce high quality news in their day-to-day work, a greater incentive on the parties themselves to invest in journalist and editorial resources and safeguarding against detrimental changes in editorial approaches.

1663. Further, we are not satisfied there is a real chance that the two-sided nature of the reader markets, and in particular the need to attract audiences to attract advertising revenues, would act to constrain the merged entity from cost-saving endeavours to the detriment of the quality of the merged entity's product.
1664. As we consider that NZME and Fairfax play a particular role in setting the agenda for news produced by other publishers such as TVNZ, MediaWorks and RNZ, we also consider that a reduction in quality of the merged entity's product is likely to have a flow-on effect of reducing the quality of other sources of news.
1665. We consider that reduced quality of news content in reader markets can be seen as increasing the quality-adjusted price for news content. We consider that this would have the effect of reducing the consumer surplus readers currently gain from competition between the Applicants in reader markets, as well as resulting in further allocative efficiency losses from readers who stop consuming news content due to the reduction in quality.
1666. While we do not have the means to practically, or with certainty, predict the increase in the quality-adjusted price associated with the proposed merger, the extent of the increase in the quality-adjusted price would depend not only on the change in quality, but also on the extent to which users value quality and the extent to which change is visible to them.¹⁰³⁷
1667. We consider that the likely reduction in quality as a result of the proposed merger may have a detrimental impact. In a recent paper, Ying Fan estimates a structural model for the United States newspaper market using data from 1997 to 2005. When analysing a proposed merger between two newspapers, she showed that the merger would reduce quality compared to the outcome without the merger, and that ignoring quality change can underestimate the welfare effects of a merger. Ying Fan measures news content quality using an index of non-advertising space, the number of staff for opinion sections and the number of reporters.¹⁰³⁸

¹⁰³⁷ As discussed in the Reader Markets section, we are of the view that it may not be immediately obvious that some elements of quality have been reduced. Further, readers are unlikely to be unaware of stories that go unreported because of reduced editorial resources resulting from the proposed merger. We consider that for these reasons, and the strong position the merged entity would have post-merger, there is a real chance the merged entity could undertake quality reducing cost reductions without risking its high population reach. To the extent that readers are unable to judge that quality has reduced, we view this as a negative externality which reduces how informed readers generally are of news stories and information around them. We have accounted for this negative effect in our discussion of the disbenefit of the loss of media plurality with the merger above.

¹⁰³⁸ Ying Fan, "Ownership Consolidation and Product Characteristics: A study of the US Daily Newspaper Market" (2013) 103(5) *American Economic Review*, 1598-1628. Ying Fan also accounts for local news

1668. We acknowledge that the results of Fan’s paper are based on a dataset for US daily newspaper between 1997 and 2005, and that market dynamics have changed dramatically since this time.¹⁰³⁹ In addition, Fan’s results suggest that the effect of quality reductions on welfare varies under different market conditions.¹⁰⁴⁰
1669. However, we consider it uncontroversial that ignoring quality reductions as a result of a loss of competition associated with the proposed merger is likely to underestimate detrimental allocative efficiency losses.
1670. Evidence on hand suggests that readers of online and print media currently value the quality of online and print news content. While perhaps self-evident,
[
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1671. [

].¹⁰⁴²
1672. Consumers perceive and value the quality of news content. We consider that the proposed merger is likely to lead to non-price allocative efficiency losses due to reduction in the quality of news content as a result of a loss in competition associated with the proposed merger. Although we cannot quantify the magnitude of this effect, we consider they are likely to be significant. For the reasons outlined in the Reader Markets section, we consider that the loss of competition between the Applicants would be likely to lead to a substantial reduction in quality in the online New Zealand news market.
1673. We consider our view on the detriment associated with reduced quality as a result of the proposed merger holds under both the ‘digital and print’ and ‘digital plus limited print’ scenarios. However, in the ‘digital and print’ scenario, we consider that it is likely that the difference in the journalists and editorial resources would be greater, so the detriment would be more significant in this scenario.

ratios (measured as the number local-news staff over the total number of staff) and content variety (measured as the concentration of staff in particular subject sections).

¹⁰³⁹ NERA “Review of the Draft Determination” (25 November 2016) at [126].

¹⁰⁴⁰ Ibid at [128]. In particular, the additional total reader surplus lost when taking into account reductions in quality differs in duopoly (a publisher of one newspaper buys the other and becomes a monopolist in the market) and triopoly (consolidation of the two largest newspapers in a game with three player newspapers) mergers.

¹⁰⁴¹

[
]

¹⁰⁴² We note, as discussed earlier, that some detrimental impacts on quality, such as a reduction in the volume, accuracy and volume of news content, may not be immediately obvious to readers post-merger. We discuss the implications of this under our discussion of plurality disbenefits above.

1674. The Commission is satisfied there are likely to be non-price allocative efficiency losses in the reader markets arising from quality reductions post-merger. We consider that this detriment is likely to be significant (and even more significant in the digital and print scenario).

Dynamic efficiency losses in online New Zealand news market

1675. As previously discussed in the Reader Markets section, we consider that the proposed merger is likely to reduce incentives to invest in innovations in the presentation of online New Zealand news. We consider investment and partnership by NZME with the *Washington Post* to licence the Arc digital publishing (content management) system and the redesign of nzherald.co.nz as evidence of the incentive competition provides to invest in innovations in the presentation of online New Zealand news.¹⁰⁴³ Investments by Fairfax over the past years into stuff.co.nz and its content management system have similarly been aimed at ensuring Fairfax’s online offerings remain market leading.¹⁰⁴⁴

1676. We consider reduced incentives to invest in innovations in the presentation of online New Zealand news as a form of a dynamic efficiency loss associated with the proposed merger. We consider losses of dynamic efficiency in reader markets can be seen as reducing the value of news content to readers, and therefore their willingness to pay for news content. This can be characterised as a decrease in demand for news content, providing readers with lower surplus (ie, the difference between the higher willingness to pay and the effective price for the quality of news consumed).

1677. We consider the evidence discussed in the Reader Market section demonstrates that competition between the Applicants has driven investment and innovation in the presentation of online New Zealand news, and is likely to do so in the future absent the proposed merger. As a result, we consider there is likely to be a loss of surplus associated with the proposed merger, through a loss of dynamic efficiency.

1678. Although we cannot quantify the magnitude of this effect, we consider the effect is likely to be material. That is because, as the evidence indicates, competition drives

¹⁰⁴³ NZME described these investments as “a significant step in NZME’s aim to stay at the forefront of publishing technology” and “that Arc would accelerate the Herald’s growing audience reach” – see http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806944. In the business case for this investment, NZME also noted that the investment was, in part,
[

]– NZME Editorial Development Programme, 2793624 at slides 5 and 11.

¹⁰⁴⁴ Annex 94 – FY15_Project Athena - WCMS CQ5_Business Case (11 July 2014), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (24 January 2017). In particular, Fairfax invested \$[] on its content management system in 2014, with an aim to “[]”. Fairfax also committed \$[] million on “Stuff product innovation”, the business case in the later investment stated the rationale of the project was to “[]” – see Annex 104 - FY17_Stuff Product Innovation FY17_Business Case (26 April 2016), contained in an email from Russell McVeagh (on behalf of Fairfax) to the Commerce Commission (26 January 2017).

innovation. However, we recognise that the merged entity would continue to face pressures to invest in and adapt innovation in light of the continued pressures traditional media models face.

1679. We consider our view on the detriment associated with reduced incentives to innovate as a result of the proposed merger holds under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.
1680. The Commission is satisfied there are likely to be dynamic efficiency losses in the online New Zealand news market post-merger. We consider that this detriment is likely to be material, but not of the same order as the plurality disbenefit and quality detriments discussed above.

Datawall

1681. In the same manner in which a reduction in competition could enable the merged entity to introduce a paywall, the reduction in competition could enable the merged entity to introduce a datawall.¹⁰⁴⁵ Both Applicants could currently be constrained from introducing a datawall by the ability for readers to currently switch to either of the Applicants’ websites if either Applicant required data to access their digital platforms.
1682. To the extent that some readers would prefer not to submit private data to the merged entity in exchange for accessing New Zealand news content, the introduction of a datawall would constitute a detriment to these readers in the same manner as a price increase in the form of a paywall. We consider that there is a real chance that there will be allocative efficiency detriment to the extent that some readers would refuse to provide the data that is necessary to access the datawall and so they would no longer be able to access the merged entity’s digital content. However, we note that this detriment may be offset by the benefit to the merged entity from obtaining additional data.
1683. We consider our view on the detriment associated with a datawall holds under both the ‘digital and print’ and ‘digital plus limited print’ scenarios.
1684. The Commission is satisfied there is likely to be a non-price allocative efficiency loss in the reader markets arising from the potential imposition of a ‘datawall’ post-merger in online New Zealand news market. We do not consider that this detriment is likely to be significant.

Summary of the unquantified benefits and detriments

1685. In this section, we bring together the unquantified benefits and detriments we have assessed under both the ‘digital and print’ and ‘digital plus limited print’ scenarios. We assess both scenarios against the same factual, ie, that the factual would be similar to the ‘digital and print’ scenario.

¹⁰⁴⁵ By datawall, we mean a requirement to submit and register information in order to access news content, or news content above a specified amount.

Unquantified benefits and detriments in the ‘digital and print’ scenario

1686. Table 25 below summarises the Commission’s qualitative assessment of the unquantified detriments and benefits arising under the ‘digital and print scenario’.

Table 25: Summary of unquantified benefits and detriments – ‘digital and print’ scenario

Category	Type	Evaluation
Reduced duplication and increased variety	Unquantified benefit	Benefits are not likely
Reduced free-riding	Unquantified benefit	Likely that benefit would arise, but benefit is not likely to be material
Extended production of print publications and lower reduction in editorial resources	Unquantified benefit	Benefits are not likely
Loss of media plurality	Unquantified disbenefit	Significant disbenefit likely
Reduced quality in reader markets	Unquantified detriment	Significant detriment likely
Dynamic efficiency losses in online NZ news	Unquantified detriment	Dynamic efficiency loss likely to be a material detriment, but not of the same order as plurality disbenefit or quality detriment
Reduced quality in online NZ news (Datawall)	Unquantified detriment	Likely that non-price allocative efficiency loss would arise, but detriment is not likely to be significant

1687. In terms of potential overlaps between these categories, we note that our definitions of plurality and quality overlap in that they both include diversity and variety of viewpoints for readers. As noted below, we were mindful not to double count this negative consequence of the merger.

1688. We have also considered whether there is a potential for overlap between our quantified and unquantified benefits and detriments, particularly in respect of allocative efficiency losses. However, no overlap arises as price related allocative efficiency losses are assessed as quantified detriments, and non-price allocative efficiency losses are assessed as unquantified detriments.

Unquantified benefits and detriments in the ‘digital plus limited print’ scenario

1689. Table 26 below summarises the Commission’s qualitative assessment of the unquantified detriments and benefits arising under the ‘digital plus limited print scenario’.

Table 26: Summary of unquantified benefits and detriments – ‘digital plus limited’ scenario

Category	Type	Evaluation
Reduced duplication and increased variety	Unquantified benefit	Benefits are not likely
Reduced free-riding	Unquantified benefit	Likely that benefit would arise, but benefit is not likely to be material
Extended production of print publications and lower reduction in editorial resources	Unquantified benefit	Benefits are likely, and may be material, but not of the same order as plurality disbenefit and quality detriment
Loss of media plurality	Unquantified benefit / disbenefit	Significant disbenefit likely, but offset to a limited extent by internal plurality benefit of increased editorial resources
Reduced quality in reader markers	Unquantified detriment	Significant detriment likely.
Dynamic efficiency losses in online NZ news	Unquantified detriment	Dynamic efficiency loss likely to be a material detriment, but not of the same order as plurality disbenefit or quality detriment

Category	Type	Evaluation
Reduced quality in online NZ news (Datawall)	Unquantified detriment	Likely that non-price allocative efficiency loss would arise, but detriment is not likely to be significant

1690. The same issues in relation to double counting arise under this scenario, and we address them in the same way.

Authorisation assessment

1691. The Commission must exercise its judgement, in what has been described by the Courts as a “qualitative judgment”,¹⁰⁴⁶ to determine whether in its view the merger is likely to produce such a benefit to the public that it should be authorised, notwithstanding that we have found that it is likely to substantially lessen competition.

1692. As directed by the Courts, we have endeavoured so far as is possible to make quantitative assessments of the likely benefits and detriments attributable to the merger. However, as the Courts also recognise, there is in many cases a limit to the assistance that quantification can provide, and factors that are unquantifiable should weigh no less in our assessment.¹⁰⁴⁷

1693. In this application, the unquantifiable consequences of the merger have assumed particular importance in the analysis and in our decision.

Quantified benefits and detriments

1694. We assessed the likely quantifiable benefits and detriments of the proposed merger using ‘digital and print’ and ‘digital plus limited print’ scenarios to properly evaluate the benefits and detriments that would likely be attributable to the merger. The ‘digital and print’ scenario reflects the counterfactual used in our competition analysis. The ‘digital plus limited print’ scenario reflects a faster rate of print retrenchment.

1695. Table 27 summarises the net quantifiable impact of the likely benefits and detriments over a five year timeframe in the ‘digital and print’ scenario.

¹⁰⁴⁶ *Godfrey Hirst 2* above n 56 at [35] and [37].

¹⁰⁴⁷ *Godfrey Hirst 1* above n 38 at [115] to [117].

Table 27: Estimated net quantifiable impact under ‘digital and print’ scenario

Time frame	High detriment/low benefits	Low detriment/high benefits
5 years	\$41 million	\$204 million

1696. This scenario produces a positive net quantified impact, ranging from \$41 million to \$203 million over five years.

Table 28: Estimated net quantifiable impact under ‘digital plus limited print’ scenario

Time frame	High detriment/low benefits	Low detriment/high benefits
5 years	\$55 million	\$196 million

1697. The digital plus limited print scenario also produces a positive net quantified impact, ranging from \$55 million to \$196 million over five years.

1698. The ranges for these net quantifiable impacts are large, reflecting a degree of uncertainty in relation to the values and the assumptions we made to arrive at our estimates, as set out in [1338].

1699. We accept that the net quantified impacts of the merger are likely to be positive. The Commission also accepts that a net quantified public benefit falling within either range is likely to be substantial.

1700. However, as outlined in our assessment of the quantified benefits and detriments of the merger at [1320] to [1340] above, we consider that the quantifiable net benefits of the proposed merger are less likely to be towards the upper estimates of either scenario because of several factors. First, we have assumed cost savings would be achieved immediately, when they would take time to achieve. Second, some of the cost savings that are included in the production efficiency benefits could arise without the merger.¹⁰⁴⁸

1701. In particular, although we cannot predict with real confidence the extent and timing of such cost-savings, the merger specific cost savings would be lower in the ‘digital plus limited print’ scenario because some of the cost savings would be achieved without the merger. This means that the net quantified benefits are likely to be lower in the ‘digital plus limited print’ scenario.

¹⁰⁴⁸ For example, the downsizing of management, marketing, and IT functions, as well as reduced premises costs.

1702. In considering the allocative efficiency costs of a paywall, we also note that the upper estimates of our detriments in both scenarios is likely to be overstated because some form of paywall may be efficient.
1703. We take into account the likely overstatements of the quantifiable public benefits and detriments in weighing the benefits and detriments of the proposed merger.
1704. Beyond this, we do not consider that, on the available facts, we can refine our analysis to narrow the overall range of likely outcomes across the different scenarios or to identify a particular point within that range that is more likely than another.¹⁰⁴⁹

Unquantified benefits and detriments

1705. As set out in [1064], a purely quantitative assessment is not sufficient. We must also assess the nature and significance of the unquantified benefits and detriments when determining whether an acquisition results in such a benefit to the public that it should be authorised.
1706. As previously outlined (and set out in Tables 25 and 26 above), there are significant detriments (and disbenefits) that we have been unable to quantify, together with some unquantifiable benefits in the ‘digital plus limited print’ scenario.
1707. As set out in our legal framework section at [41] to [134],¹⁰⁵⁰ efficiency considerations are relevant in the assessment of benefits and detriments but do not, as the Courts have held, exhaust society’s interest in the business conduct falling within the Commerce Act.¹⁰⁵¹
1708. The key unquantifiable consequences of the merger are likely quality effects within reader markets, and effects on the plurality of the New Zealand news media.
1709. We evaluated the unquantifiable quality detriments using measures of media quality outlined in the Reader Markets section above at [825] to [826]. We have determined that the likely magnitude of these unquantifiable quality detriments is significant (see [1661] to [1674] and also [815] to [950] above).
1710. We evaluated the unquantifiable plurality disbenefits through measures of media plurality identified at [1401] above. We have determined that the likely magnitude of these unquantifiable plurality detriments is significant as identified in [1393] to [1659] above. In reaching this view, for the reasons at [1611] to [1646] above, we do not consider that internal plurality can be relied on to prevent a reduction of external media plurality.
1711. We noted the potential overlap between plurality and quality, and avoided double counting when aggregating these negative consequences.

¹⁰⁴⁹ *Godfrey Hirst 1* above n 38 at [103].

¹⁰⁵⁰ See [79] to [109] in particular.

¹⁰⁵¹ *AMPS-A* above n 68 at 528. See also *Godfrey Hirst 2 (CA)* above n 56 at [19].

1712. We noted that there are also likely to be other unquantified detriments, including dynamic efficiency losses (see [1675] to [1680]), but consider these will not be of the same magnitude as the quality and plurality detriments above.
1713. We therefore consider that the unquantified negative consequences of the proposed merger are significant, and that these apply across the likely scenarios.
1714. We also accepted that, when compared to the digital plus limited print scenario, the merger would be likely to produce material benefits arising from the extended production of print publications and reduction in editorial resources. This is set out at [1355] to [1392], in which we concluded that these are not of the same order as the plurality and quality detriments. We also took into account some unquantified benefits from reduced duplication, and increased variety and reduced free-riding discussed at [1343] to [1354].

Balancing assessment

1715. As described above at [1064], having attempted to quantify the benefits and detriments, and having assessed the nature and significance of the unquantified benefits and detriments, we are required to exercise our judgement on the application in the round.¹⁰⁵² Whether there is ‘such a benefit to the public’ that an acquisition should be permitted is ultimately a qualitative judgement.¹⁰⁵³
1716. On balance, we are not satisfied that the merger is likely to produce such a benefit to the New Zealand public that it should be authorised. We conclude that the likely net negative unquantified consequences of the merger on New Zealand news quality and media plurality are of such significance that they outweigh the quantified and quantified net benefits of the merger.
1717. In making this judgement we have not undertaken a purely arithmetic exercise. As the Courts have noted, the need to take into account unquantifiable considerations compels that this is so. Rather, we have applied our judgement to the evidence available, and the extensive submissions on that evidence, and have formed a view on the likelihood and likely magnitude of the considerations at play. Ultimately, we have attached particular weight to the negative news quality and media plurality consequences that we regard as likely to arise if the merger were to proceed.
1718. In reaching this view, we recognise that media markets are changing. Online news consumption is growing and is also creating opportunities for new and emerging media entities to have a voice. At the same time, print revenue and readership has been in a pattern of decline, especially in recent years. We acknowledge that these dynamics are changing how news is consumed and how media companies must operate.
1719. We carefully considered the evidence and submissions put forward by the Applicants and other interested parties. We also took account of the Applicants’ view that the

¹⁰⁵² *Godfrey Hirst 1* above n 38 at [115] – [117].

¹⁰⁵³ *Godfrey Hirst 2 (CA)* above n 56 at [35].

proposed merger would allow them to invest in the delivery of news and that a combined business would be able to create “the most reliable and high quality New Zealand content” that can be sustained through these changes.¹⁰⁵⁴

1720. It is difficult to predict with a high degree of confidence what the future state of the New Zealand news industry will look like. By considering a scenario where print retrenched significantly further we were able to test what the range of benefits might be on a greater rate of print retrenchment (see [1067] to [1093]).
1721. As we note at [1338], there is reason for us to consider that the quantified benefits and detriments are less likely to be towards the upper estimate of each scenario’s range, because we have assumed cost savings occur immediately, and are unable to ascertain what cost savings would be achieved without the merger (see [1100] to [1107] and [1338]).
1722. Beyond this, we do not consider that the evidence before us allows us to narrow these ranges, or to assign relative likelihoods to the benefits and detriments within the ranges.¹⁰⁵⁵
1723. Moreover, we note that the quantified benefits and detriments have very wide ranges, reflecting the inherent uncertainty of the estimates.
1724. Taking all of these matters into account, we are of the view that the net quantified benefits of the proposed merger are likely to fall somewhere between the two scenarios that we examined.
1725. However, the unquantified negative consequences of the merger would be significant. The merged entity would become the largest provider of news services in New Zealand (see [1520] to [1560]), with the merger eliminating each applicant’s closest media rival.
1726. We do not consider that competition from other news media, existing or emerging, would be likely to be sufficient to replace the loss of external media plurality likely to occur through the merger (see [1566] to [1599]).
1727. We also do not consider that the two-sided nature of the market would itself prevent these anticipated losses of plurality and quality, as discussed at [931] to [941] and [1647] to [1651]. As set out in our analysis of the reader markets and plurality, in the absence of the close competition between the Applicants, we are not satisfied by the Applicants’ submissions that reductions in the quality of the provision and publication of New Zealand news content by the merged entity would invariably lead to a material reduction of its audience reach, and that therefore the

¹⁰⁵⁴ Application at [20.3].

¹⁰⁵⁵ We also considered whether the balance might be different if some of the factors we have dismissed as not meeting the real chance threshold were included in the assessment of benefits and detriments. We consider these factors are either too speculative or do not have sufficient materiality to change our finding that the likely detriments exceed the likely benefits of the proposed merger.

necessity of maintaining advertising revenue can be relied upon to preclude a reduction in quality.

1728. Notwithstanding that we acknowledge this challenging media landscape, the Commission is being asked to authorise a merger that would concentrate within a single organisation control of nearly 90% of all print media, New Zealand's two largest news websites, and one of New Zealand's two largest commercial radio companies. We understand this would be an unprecedented level of media concentration in a well-established liberal democracy.
1729. Plurality of the news media is essential to the maintenance of a well-functioning democracy, and a healthy democracy depends on the availability and exchange of a divergence of views. Representations made to us have highlighted the importance of these factors in informing and influencing opinions and therefore contributing to democracy and society more generally.
1730. The Commission considers that the quantified and unquantified benefits likely to be achieved by the merger do not offset the negative consequences that this merger would be likely in our view to bring to New Zealand's media landscape.
1731. We are of the view that Fairfax and NZME already exert meaningful editorial influence over New Zealand's news agenda, but that this would be strengthened by the merger. It is important that members of society – government, corporate, interest groups and private citizens – are not able to influence one provider without the opportunity for differing views to be expressed. In that respect, it is essential that a wide range of issues and topics are able to be explored and addressed from different angles by the media, and that, similarly, specific topics or issues of public interest do not go unreported or under-reported.
1732. We are concerned that the concentration of media ownership and influence proposed in this merger would be likely to adversely affect these important social protections. These potential consequences of the proposed merger are likely to be expressed first in quality alterations in readers markets, but then also more broadly on the wider public, including members of the public who are not direct consumers in the relevant media markets.
1733. In an industry where there are substantial costs of entry to achieve the scale of a large news publisher, we consider that the loss of external plurality that arises from the proposed merger is likely to be significant and potentially irreplaceable.
1734. We are not satisfied that it is likely that internal plurality can be relied upon to prevent a lessening of external plurality, for the reasons at [1611] to [1651]. Maintenance of high levels of internal plurality is in tension with the cost saving justification for the merger. Moreover, the extent of internal plurality would be at the discretion of the merged entity's ownership.
1735. Further, we do not consider that the limited self-regulatory structures that currently provide oversight of New Zealand's media are sufficient to guard against a reduction in quality or media plurality, as we discussed at [1641] to [1646]. We also do not

regard the Overseas Investment Act 2005 as a mechanism for ensuring media quality or plurality, for the reasons at [1646].

1736. Therefore, although there is likely to be a substantial quantified net benefit from the proposed merger, and the potential for an extended lifespan for print publications that could give rise to significant unquantified benefits, we are not satisfied that the public benefits of the proposed merger are such that the merger should be authorised. This is the case even if the net quantified benefits were at the top end of our estimated range across the different scenarios.

1737. When we consider the effects of the proposed merger in the round, we consider that the likely benefits of this merger (both quantified and unquantified) are outweighed by the negative consequences (both quantified and unquantified) of this merger. Whether or not some larger quantified net benefit would cause us to reach a different conclusion is not a matter that we are required to decide, but in our assessment of the evidence before us this conclusion was not finely balanced.

Conclusion

1738. In our view we are not satisfied that the merger will result, or will be likely to result, in such a benefit to the public that it should be authorised.

Determination

Clearance Decision

1739. As set out in the competition analysis section above, the Commission is not satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition by:

1739.1 increasing the price and/or decreasing the quality for readers of online New Zealand news;

1739.2 increasing the price and/or decreasing the quality for readers and/or increasing the price for advertisers in Sunday newspapers; and

1739.3 decreasing the quality for readers and/or increasing the price for advertisers in community newspapers in:

1739.3.1 Whangarei;

1739.3.2 Hamilton;

1739.3.3 Rotorua;

1739.3.4 Taupo;

1739.3.5 Napier;

1739.3.6 Hastings;

1739.3.7 Stratford;

1739.3.8 Palmerston North;

1739.3.9 Horowhenua; and

1739.3.10 Kapiti.

Authorisation Decision

1740. Nevertheless, the Commission has been asked to authorise the acquisition under section 67(3)(b) of the Act. The Commission will grant authorisation if it is satisfied that the merger will result, or will be likely to result, in such a benefit to the public that it should be permitted.

1741. Having applied our judgement to assess the application in the round in the industry context, the Commission's view is that it is not satisfied on the evidence before it that the proposed merger is likely to result in such a benefit to the public that it should be authorised.

1742. Some of the benefits and detriments arising from the merger can be quantified in monetary terms, while some benefits and detriments – including the reductions in

quality and plurality that we consider are likely to arise from the proposed merger cannot. As can be seen from Tables 27 and 28 above, the quantifiable benefits outweigh the quantifiable detriments in the five year timeframe by between:

1742.1 \$41 million (using high detriment / low benefit assumptions) to \$204 million (using low detriment /high benefit assumptions) in the 'digital and print' scenario;

1742.2 \$55 million (using high detriment / low benefit assumptions) to \$196 million (using low detriment /high benefit assumptions) in the 'digital plus limited print' scenario.

1743. However, while we cannot quantify the detriments from a reduction in quality and plurality in monetary terms, we consider that they are fundamental to a well-functioning New Zealand society and outweigh the quantified and unquantified benefits from the merger. We therefore decline authorisation for the merger.

Determination

1744. The Commission's view is that it is not satisfied that the merger will not have, or would not be likely to have the effect of substantially lessening competition in the markets identified at [1739] above.

1745. The Commission's view is that it is not satisfied that the merger will result, or will be likely to result, in such a benefit to the public that it should be permitted.

1746. The Commission declines to give a clearance or to grant an authorisation for the merger under section 67(3)(c) of the Commerce Act 1986.

Dated this 2nd day of May 2017

Dr Mark Berry
Chairman

Attachment A- NZME and Fairfax print publications financial forecasts

Attachment B – Community advertisers

During our investigation we spoke to the following parties who advertise in community newspapers.

	Region	Party name
1	Hamilton	[]
2		[]
3		[]
4		[]
5		[]
6		[]
7	Hauraki	[]
8		[]
9	Hawke's Bay	[]
10		[]
11		[]
12		[]
13		[]
14		[]
15		[]
16	Horowhenua	[]
17		[]
18		[]
19		[]
20		[]
21		[]

22	Kapiti Coast	[]
23		[]
24		[]
25		[]
26	Manawatu	[]
27		[]
28		[]
29		[]
30		[]
31		[]
32		[]
33		[]
34		[]
35		[]
36		[]
37		[]
38	Northland	[]
39		[]
40		[]
41		[]
42		[]
43		[]

44	Rotorua	[]
45		[]
46		[]
47		[]
48		[]
49	Taranaki	[]
50		[]
51		[]
52		[]
53		[]
54	Taupo	[]
55		[]
56		[]
57		[]
58		[]
59	Whangarei	[]
60		[]
61		[]
62		[]
63		[]