



**OUTLINE OF SUBMISSIONS OF THE
MEDIA, ENTERTAINMENT & ARTS ALLIANCE (MEAA)
OPPOSING THE MERGER OF
NINE ENTERTAINMENT CO HOLDING LIMITED (NINE)
WITH FAIRFAX MEDIA LIMITED (FAIRFAX)**

Wednesday, September 12 2018

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BUILT ON INTEGRITY, POWERED BY CREATIVITY

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MEAA submits:

1. MEAA opposes the proposed merger of Nine and Fairfax (**merger**) on the basis that the merger would contravene the *Australian Competition and Consumer Law (the Act)*.
2. MEAA implores the Australian Competition and Consumer Commission (**ACCC**) to share the same view, for the reasons submitted below.
3. MEAA draw the ACCC's attention to the 1147 submissions on this proposed merger by MEAA members and supporters. A sample of these submissions is attached at *Annexure B*.
4. MEAA, its members and supporters submit that it is probable that the merger, if approved, will result in the loss of distinctive voices in the media, a reduction in the resources available to conduct long-form and investigative reporting, and lower levels of public confidence in the Australian media.
5. MEAA believes that particular damage will be done to Fairfax's regional newspaper footprint.
6. MEAA further submits that the ACCC should refrain from further considering the merger until the ACCC's Inquiry into Digital Platforms has been completed.
7. To the extent the merger parties continue to seek the merger, then the ACCC should conduct a formal review of the merger pursuant to section 90(7) of the Act. Having done so, it should then only grant authorisation for the merger if it is satisfied:
 - a) The merger will not be likely to substantially lessen competition; or
 - b) The likely public benefit from the proposed acquisition outweighs the likely public detriment.
8. MEAA contends that the above requirements cannot be satisfied.
9. A merger between Australia's highest-rating commercial television network, highest rating radio news and news talk broadcaster and second-largest newspaper proprietor can only result in reduced media diversity in Australia – already one of the most concentrated media markets in the world.
10. In broadcast licence areas servicing 15 million Australians, the number of individual media voices (i.e. controllers) will fall if the merger is approved. In two areas, Tamworth and Newcastle, the number of media voices will fall to the statutory minimum.
11. The merger appears to be designed to appeal to advertisers rather than the public to whom the news media provide a fundamental democratic building block, i.e. a "free press".¹
12. The ACCC should consider both the unilateral effects and the co-ordinated effects arising from what many commentators consider to be the single most consequential change in Australian media ownership in over 30 years,² and the first media merger of this scale and magnitude, in Australian history.

¹ See further: Associate Professor Andrea Carson, *Nine-Fairfax merger rings warning bells for investigative journalism – and Australian democracy*, *The Conversation*, 1 August 2018.

² Denis Muller, *A modern tragedy: Nine-Fairfax merger a disaster for quality media*, *The Conversation*, July 26, 2018.

MEAA

13. MEAA is the largest and most established union and industry advocate for creative professionals in Australia. It has 15,000 members, including 5500 people working in media, communications and journalism.
14. MEAA has considerable interest in the merger. MEAA's members make up a large percentage of individuals and employees likely to be affected most severely by the merger, including newsroom staff and journalists.
15. It is MEAA's mission to:
 - a) Campaign for press freedom and the public's right to know;
 - b) Campaign and bargain for the best employment outcomes for members;
 - c) Promote high-quality journalism through MEAA's Journalist Code of Ethics; and
 - d) Reward excellence and promote professional development through the Walkley Foundation.

Democratic Accountability

16. The announcement and proposed merger scheme, released by Nine and Fairfax to the ASX on 26 July 2018 (**merger announcement**) promises to enhance "brand" and "scale" and to deliver "data solutions" combined with "premium content".
17. The proposed conglomeration of the multi-platform media company is said to allow for horizontal aggregation in the supply or acquisition of content and advertising opportunities.
18. However, the merger parties overlook the fundamental importance of their underlying businesses to Australian news, journalism and public interest. This is because democracy is predicated on the widest possible participation of an informed citizenry.³
19. Although it may be submitted by Fairfax and Nine that the Merger is a necessary business decision, the news media isn't just a form of business, and cannot be considered as such, it provides important public interest functions that underpin democracy in Australia.
20. Andrea Carson of the University of Melbourne has stated:

"This concern about concentration of media ownership is premised on a public interest notion that news media is not a commodity like other products. It is ascribed a special role in society that is important to a healthy democracy – to provide a well-informed citizenry, and to enable critical scrutiny of political and other elites in their exercise of power.

Fewer voices means more power to a few, more convergence of content and less diversity, and a real danger of less scrutiny.

*Critical scrutiny involves having a variety of perspectives and diverse viewpoints that are evidence-based, so that citizens can make up their own minds. The quality of a democracy relies on the idea that voters have every opportunity to be well informed when they cast their vote."*⁴

³ Associate Professor Andrea Carson, *Nine-Fairfax merger rings warning bells for investigative journalism – and Australian democracy*, The Conversation, August 1, 2018.

⁴ Associate Professor Andrea Carson, *Australian media at a crossroads amid threats to diversity and survival*, The Conversation, May 10, 2017.

21. Newspapers like the *Sydney Morning Herald*, *The Age*, the *Newcastle Herald* and the *Australian Financial Review* have a strong record of using their commercial activities to subsidise expensive investigative journalism to strengthen democratic accountability by exposing wrongdoing.

Contribution to Society - Investigative Journalism

22. Robust and inquiring media organisations continue to play a vital role in ensuring maintenance of the rule of law.⁵ Fairfax mastheads have produced more award-winning investigative reporting than any other commercial outlet, for example, Fairfax investigative journalists exposed systemic child sex abuse in the Catholic Church, leading to a Royal Commission and a national redress scheme,⁶ and contributed to the investigation of banking in Australia, leading to the banking Royal Commission.⁷
23. The ABC program *Four Corners*, through its joint collaborations with Fairfax has provided Australians with investigative stories for over 50 years. Examples of these joint investigations from the past 12 months are contained in the case studies at Annexure A.
24. There is little doubt that the collaboration with *Four Corners* will cease to continue following the merger.

NZME and Fairfax v Commerce Commission [2017] NZHC 3186 (NZME and Fairfax)

25. MEAA refers the ACCC to the recent experience observed in New Zealand in relation to the proposed merger between New Zealand Media and Entertainment (**NZME**) and Fairfax, wherein the NZ High Court considered the exact issues that arise in the current Merger, in the merger of NZME and Fairfax.
26. The proposed merger between NZME and Fairfax was ultimately blocked by the High Court on the basis that the merger would substantially lessen competition and in doing so reduce media plurality and the quality of news in NZ. Both media plurality and quality of news were held to be so fundamental to the public and of such real and national significance that any benefits of the proposed merger could never outweigh the detriments.
27. The High Court held that “weighing all aspects of the opposing views put to us, our own view is that the importance of the likely loss of media plurality and the prospect of reduced quality of the products by the merged entity comprise detriments justifying greater weight than the quantifiable and unquantifiable benefits we have identified.”⁸
28. The New Zealand legislation (*Commerce Act 1986*) provides an almost identical test to the Act, which the ACCC should apply. First, the Commission must be satisfied a merger “would not have, or would not be likely to have, the effect of substantially lessening competition in a market” or second, despite the risk of decreased market competition, the merger would nonetheless result in such a benefit to the public that it should be permitted.
29. Given the similarities of the issues in the dispute, the timeliness of the decision, the similarities of legislation to be followed, and the significance of the merger, noting no such Australian media merger has ever been dealt with, MEAA says the NZ High Court decision is strongly persuasive authority that the ACCC should follow.

⁵ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 at [250].

⁶ See: Joanne McCarthy and her work on over 350 articles to expose systemic child sex abuse in the Catholic Church and elsewhere, leading to a royal commission and a national redress scheme, Walkley Winner, 2013 <http://www.walkleys.com/walkleys-winners/2013_gold_walkley_joanne_mccarthy/>

⁷ See: Adele Ferguson, *The Cost of Whistleblowing and the need for a Banking Royal Commission*, *Sydney Morning Herald*, May 5, 2016.

⁸ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 at [305].

Undermining Broadcasting Legislation

30. The rule of five separate media voices in metropolitan licence areas and four in regional areas (the 5/4 rule) under the *Broadcasting Services Act 1992* (**Broadcasting Act**) continues to be undermined. The 5/4 Rule was already heavily compromised in 2014 when the Department of Communications reported that:

In regional and remote markets, the level of diversity at a market level falls away. In 73 of the 105 licence areas (some 70 per cent), the number of voices is either at the minimum level, or below it.⁹

31. Under the proposed merger, licence areas where both Fairfax and Nine hold broadcast licences will see the number of licence holders – and voices – decline.
32. Should there be no intervention with respect to the merger by the ACCC, Australia risks being monopolised by heavily syndicated metropolitan-centric news.

The Relevant Market

33. MEAA accepts that the merger should not be judged against the past or the status quo, if the market is changing rapidly, the future shape of the market is the relevant matter to consider.¹⁰ A reasoned market assessment cannot be made without resolution of the market impact major digital platforms such as Google and Facebook are having on the Australian news and information (media) sector.
34. Notwithstanding the fundamental challenges being posed to the sector by digital platforms of scale, the market may be described as news and entertainment. It may be considered that there are two levels of market that will be effected by the merger, first being Australia-wide access to digital content, and the second being localised markets of TV and print, however, given the increasing convergence of media it is impossible to decipher specific market boundaries, particularly when considering the roll-out of identical content on multiple platforms, for example, the Nine News is broadcast on television and online.

News Ownership and Diversity

35. In the context of the merger, maintaining diversity of control over the mainstream media is an important component in the functioning of a healthy democracy. Without a sufficient measure of diverse views expressed by competing and distinctive voices, the risk arises that undemocratic or improper conduct by those in positions of power will not adequately be brought to the public's attention.¹¹
36. Australia already has an unusually high level of media concentration with News Corporation having a 57.5% share (in 2011) of the Australian newspaper market making it the highest share of any democratic country studied by the Bertelsmann Foundation's Sustainable Governance Indicators.¹²
37. Table 3.1 from ABC *Media Watch's* report on the Finkelstein Review below reveals a starker picture still.¹³

⁹ *Media Control and Ownership, Policy Background Paper no. 3, June 2014*, Department of Communications, page 18

¹⁰ *ACCC v Australian Competition Tribunal* [2017] FCAFC 150; *Application by Tabcorp Holdings Ltd* [2017] ACompT 1.

¹¹ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 at [244].

¹² *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 at [253]-[255].

¹³ http://www.abc.net.au/mediawatch/transcripts/1205_finkelstein.pdf

38. The second largest press company, Fairfax, controlled 28% of all daily newspaper circulation in 2011.¹⁴ See further the extracted table 23-1, from the review published by Eli M. Noam in 2016 below.¹⁵

Table 3.1: Newspaper concentration—international comparisons

Country	Share of total daily newspaper circulation held (per cent)		
	Top 1	Top 2	Top 4
Australia	58	86	99
Switzerland	45	62	76
Israel	44	64	91
Ireland	44	57	70
Portugal	41	77	94
France	41	61	82
Turkey	38	53	78
South Africa	36	64	96
United Kingdom	34	54	74
Taiwan	32	56	96
Netherlands	30	58	90
Brazil	30	52	70
China	30	51	60
Sweden	29	45	67
Canada	28	54	77
Finland	27	43	57
Russia	24	47	76
Korea	24	44	70
Germany	22	31	41
India	22	29	42
Mexico	20	34	56
Japan	19	35	48
Spain	18	36	59
Italy	16	31	43
United States	10	14	22
Poland	61

Source: International Media Concentration Research Project, <<http://internationalmedia.pbworks.com>>

Table 23-1. Daily Newspapers (Market Shares by Circulation)

	1984	1988	1992	1996	2000	2004	2008	2011
News Ltd. (News Corp., Murdoch, US/UK/AUS)	25.0	56.2	58.1	56.6	57.2	57.7	57.8	57.5
The Herald and Weekly Times (HWT)	46.4	News Ltd.						
Fairfax Media Rural	23.7	18.9	20.2	21.5	22.0	21.4	28.6	28.5
Seven West Media (Kerry Stokes)			8.3	8.6	8.1	7.8	7.7	8.1
APN News & Media (Independent News & Media) (Ireland)	0.8	4.5	5.5	5.5	5.2	5.3	5.3	5.3
Others	2.7	18.5	5.6	5.1	3.5	2.4	0.6	0.6
# of Titles in Circulation	56	53	49	48	48	48	48	48
Total Circulation (mil copies)	4.5	4.0	3.3	3.2	3.1	3.1	3.0	2.8
Total Revenue (mil US\$)	1,459	2,104	1,567	2,784	2,901	3,427	5,447	4,900
Total Revenue (mil A\$)	1,694	2,648	3,096	3,544	4,858	4,929	5,697	4,653
C4	96.6	81.5	92.1	91.7	92.5	92.2	99.4	99.4
HHI	3,343	3,530	3,888	3,777	3,864	3,904	4,246	4,212
N (>1%)	4	4	5	5	5	5	4	4
Noam Index	1,672	1,765	1,739	1,689	1,728	1,746	2,123	2,106

Source: Audit Bureau of Circulation for circulation data; Australian Press Council for ownership data.

¹⁴ The Hon R Finkelstein QC, Report of the Independent Inquiry Into the Media and Media Regulation, Report to the Minister for Broadband and the Digital Economy, 28 February 2012, p. 58 - 59.

¹⁵ Eli M. Noam, Table 23-1, Daily Newspapers (Market shares by circulation), Who Owns the World's Media?: Media Concentration and Ownership Around the World, 2016.

39. Although circulation figures are now more difficult to source due to companies withdrawing from formal audit processes, the most recent figures indicate that Fairfax still holds approximately 25% of newspapers by circulation, while News Corp – which acquired APN titles in 2016 – now has an approximate 65% share.
40. In relation to the presence of Fairfax in digital and print news, MEAA notes the following statistics from the Nielsen company:
- a) smh.com.au (Fairfax) is currently fourth on Current News and Global Events rankings, at **3,700,000 visitors per month**;
 - b) from March 2017-March 2018, **6.1 million Australians read the *Sydney Morning Herald* or *The Age* in print or digital**; an
 - c) The **total cross-platform audience** (print, web and app) for the *Australian Financial Review*, *The Age* and *Sydney Morning Herald* over an average seven day period in the year to March 2018 was **8.775 million**;
 - d) According to *The Australian Financial Review*, its monthly audience increased to **2.024 million** as at August 2018.
41. Of Fairfax's 160 titles, it has:
- a) 16 Metro Local Newspapers and associated websites in NSW.
 - b) 135 Regional Newspaper titles and associated websites throughout Australia, including:
 - i. Approximately 100 in regional NSW and the ACT;
 - ii. 10 in regional Victoria;
 - iii. 6 in regional Queensland and Northern Territory;
 - iv. 2 in Tasmania;
 - v. 8 in regional South Australia; and
 - vi. 9 in regional Western Australia.
42. Although Fairfax has over 160 online news publications, it also has an extensive portfolio of over 30 entertainment, lifestyle and sports websites.
43. Nine's online news presence is via its website nine.com.au and streaming of its television Nine News broadcast via 9Now. **9Now has a monthly unique audience of 2,558,000**. The 9Now App is the number one free to air commercial video on demand application across both engagement (1 hour 41 min per person) and reach (**1.496 million users**).
44. Nielsen digital ratings for digital news platforms reveals that nine.com.au (Nine) is second on Current News and Global Events rankings at **4,790,000 visitors per month**, and smh.com.au (Fairfax) is currently fourth on Current News and Global Events rankings, at **3,700,000 visitors per month**.¹⁶
45. Following the proposed merger, these platforms would have a **monthly audience reach of almost 8,500,000**. This is about 3 million more visitors than first-ranked site, news.com.au.
46. *Entertainment, lifestyle and sport*. The balance of Nine's digital presence is through its online streaming through 9Now and Stan, as well as sport, lifestyle and entertainment platforms, including:
- a) PedestrianTV;
 - b) honey.nine.com.au;
 - c) homes.nine.com.au;
 - d) style.nine.com.au;
 - e) celebrity.nine.com.au;

¹⁶ Nielsen digital ratings for April, 2018

- f) wwos.nine.com.au; and
- g) pickle.nine.com.au.

Nine - Television broadcasting.

47. For comparison, Channel Nine, during prime-time in 2017 (6 pm until midnight) was the number one network across all demographics. See the below ratings extracted from Media Week.¹⁷

48. In relation to Nine’s television broadcasting reach, MEAA notes:

- a) **Nine Network had 28.0% audience share for 2017**, up from 26.8% in 2016;

18:00-MN					
	Network	Network	Network	Network	Network
Ppl 25-54	30.3%	28.9%	22.5%	11.8%	6.4%
Ppl 18-49	30.7%	28.8%	23.3%	11.3%	6.0%
Ppl 16-39	30.3%	29.1%	24.0%	10.9%	5.8%
GB + Child	31.9%	28.3%	21.8%	12.5%	5.5%
Total Ind.	28.0%	29.5%	18.0%	17.2%	7.3%

Source: Oz Tam, Consolidated 28 Data, Network FTA Share excluding spill, SYTD 2017 Weeks 7-48 excluding Easter Weeks 15+16 WC 9/4/2017 & WC16/4/2017.

6pm-midnight, 5 City Metro

- b) **Nine News attracts up to 1 million viewers nationally for its flagship 6pm New Bulletin** on Mondays to Thursdays and on Sunday evenings. Nine News is the highest rating News bulletin in Sydney, with an average 2017 Sydney audience of 280,000 each night; and
- c) Despite not having a broadcast licence in regional areas, Nine news and information programs, together with Nine branding, dominate regional television offerings through the syndication arrangement with Southern Cross Austereo (SCA), in 19 substantial regional markets.
- d) Southern Cross Austereo, as a syndication partner of Nine Entertainment Co., airs Nine News and current affairs programs in Regional Victoria and Queensland and Southern NSW with an overall population of 4 million people.¹⁸

Fairfax - Radio broadcasting

49. Macquarie Radio (majority owned by Fairfax) is Australia’s dominant news and news talk radio station and includes:

- a) 2GB Sydney;
- b) 2UE Sydney;
- c) 3AW Melbourne;
- d) 4BC Brisbane;
- e) 6PR Perth; and
- f) Macquarie Sports 954 and 1278.

50. In relation to its reach MEAA notes:

- a) Almost **1.9 million people listen to Macquarie Radio each week**; and

¹⁷ <https://mediaweek.com.au/tv-ratings-2017-nine-network/>

¹⁸ SCA’s five-year affiliation agreement with Nine, commenced on 1 July 2016, in Southern NSW, Regional Victoria and Queensland

- b) Sixty-one Macquarie Media programs are syndicated to other radio stations, including 7 news broadcasts and over twenty News Talk programs.
51. In relation to Sydney reach, the Sydney Radio Ratings Survey 4, 2018, indicated:
- i. 2GB had **471,000 breakfast listeners** (5.30am to 9am) and **348,000 morning listeners** on Mondays to Fridays;
 - ii. From noon to 6pm, 2GB had approximately **270,000 listeners**;
 - iii. 2GB had a 16.6% share of breakfast listeners, 18% of morning listeners and between 10 and 12% for the noon to 6pm period; and
 - iv. It was Sydney's leading radio station by some distance, with 14.5% of all listeners across the week compared to second-placed WSFM's 10.6%.
52. In relation to Melbourne reach, the Melbourne Radio Ratings Survey 4, 2018, indicated:
- a) 3AW was the dominant radio competitor with an overall **14.3% audience share**. The second-placed competitor was on 10.8%; and
 - b) In the breakfast and morning slots, 3AW's audience share was 19.2% and 15.7% respectively. Afternoon to evening programs enjoyed audience shares of 9.6% to 13.6%.
 - c) Macquarie Radio also has a strong presence in the Brisbane radio market (4BC) and in Perth (6PR), with the latter recording an 8% share of Perth's morning radio audience.¹⁹

Consolidation of the Market

53. As per the above statistics, it is clear that the present state of concentration in the Australian media is a matter for concern. During the inquiry into the *Broadcasting Legislation Amendment (Media Reform) Bill 2016*, evidence was provided by three eminent professors, including the following, who noted:
- a) Professor Michael Fraser:
"It is notorious, in terms of news and current affairs, that we, among the democracies, have the least diversity in our newspapers and have very little in television."
 - b) Professor Rodney Tiffin:
"Media concentration in Australia is amongst the highest in the world. Our daily press is the most concentrated in the world...Our pay TV industry is the most concentrated in the world."
 - c) Professor Graeme Turner:
"[It] is important that we are alert to the likelihood of any relaxation of media ownership restrictions making what is already an undesirable situation any worse."²⁰
54. The merger will inevitably lead to a narrower range of content and monopolisation of content choice.
55. Irrespective of Nine and Fairfax's intentions, MEAA submits that the financial imperatives will inevitably result in a significant loss of plurality, despite the aspirations of editorial staff.
56. These imperatives are commonplace following merger processes. What is probable but difficult to quantify is the impact on consumer products that follow a merger. In this respect, we refer the ACCC to Ying Fan's analysis of a media merger in Minneapolis in the United States. Fan found that when

¹⁹ See Perth Radio Survey 5, 2018

²⁰ Evidence to Senate Environment and Communications, Inquiry into Broadcasting Legislation Amendment (Media Reform) Bill 2016, Proof Committee Hansard, October 24, 2016, pp. 9, 21 and 28.

two prominent media entities merged, there was a decline in product quality, the local news ratio fell and price manipulation occurred in the discrete market under review. The welfare outcome for consumers following the merger was poor.²¹

57. Editorial aspirations were considered carefully by the NZ High Court in NZME and Fairfax. The Court concluded that even the best intentions in this regard are inadequate to materially reduce the likely detriments that will be experienced as cost pressures and efficiencies take primacy for management and shareholders:

*Internal plurality is a discretionary matter, competitive forces provide an external constraint that is materially more compelling in providing for diversity of views and quality of news reporting. Any internal plurality is therefore inadequate to meet broader plurality concerns associated with the Merger.*²²

Lessening of Competition

Is the merger “likely” to substantially lessen competition?

58. In assessing any merger the ACCC is required to consider whether any such merger would breach section 50 of the Act:

Section 50

(1) A corporation must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or

(b) acquire any assets of a person;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

Note: The corporation will not be prevented from making the acquisition if the corporation is granted an authorisation for the acquisition under section 88.

(2) A person must not directly or indirectly:

(a) acquire shares in the capital of a corporation; or

(b) acquire any assets of a corporation;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Note: The person will not be prevented from making the acquisition if the person is granted an authorisation for the acquisition under section 88.

(3) Without limiting the matters that may be taken into account for the purposes of subsections (1) and (2) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market, the following matters must

(a) the actual and potential level of import competition in the market;

(b) the height of barriers to entry to the market;

(c) the level of concentration in the market;

(d) the degree of countervailing power in the market;

(e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;

(f) the extent to which substitutes are available in the market or are likely to be available in the market;

(g) the dynamic characteristics of the market, including growth, innovation and product

²¹ See: Ownership Consolidation and Product Characteristics: A Study of the US Daily Newspaper Market, Ying Fan, American Economic Review 2013, 103(5): 1598-1628

²² NZME and Fairfax v Commerce Commission [2017] NZHC 3186 [276].

differentiation;

(h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;

(i) the nature and extent of vertical integration in the market.

(4) Where:

(a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;

(b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted an authorization to acquire the shares or assets; and

(c) the person applied for the grant of such an authorization before the expiration of 14 days after the contract was entered into;

the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:

(d) the application for the authorization is disposed of; or

(e) the contract ceases to be subject to the condition;

whichever first happens.

(5A) For the purposes of subsection (4), an application for an authorisation is taken to be disposed of 14 days after the date of the making by the Tribunal of a determination of the review

(6) In this section:

market means a market for goods or services in:

(a) Australia; or

(b) a State; or

(c) a Territory; or

(d) a region of Australia.

59. It is accepted that the meaning of “likely” in s50 is not settled and may include “probable”, “material risk” or “some possibility”.²³
60. The merger has not included any proposed terms as to how Nine and Fairfax intend to avoid conduct which would lessen competition.
61. The merger will undoubtedly be bad for Australian democracy and diversity of voices in what is already one of the most concentrated media markets in the world. The merger threatens the editorial independence of news rooms at Nine, the *Sydney Morning Herald*, *The Age*, *Canberra Times*, *Illawarra Mercury*, *Newcastle Herald* and Macquarie Media.²⁴
62. Fairfax operates hundreds of media businesses, including metro and community based publications and radio broadcasts. Nine mainly operates national television broadcasts. Both Fairfax and Nine, however, provide the public with news, entertainment and current affairs, and both have content online. The likely future is that the conglomerate of Nine and Fairfax will have an omnipresent voice over Australian media content.
63. The next question to be asked is whether the effect of the merger will be substantial, that is, “meaningful or relevant to the competitive process”.²⁵ In this situation, we consider the effect of the merger to be substantial.

²³ *AGL v ACCC (No 3)* [2003] FCA 1525

²⁴ MEAA, *MEAA Rejects Nine's Takeover of Fairfax*, 6 July 2018.

²⁵ French J *AGL v ACCC (No 3)* [2003] FCA 1525.

64. Whilst a substantial amount of the services provided by Fairfax and Nine are available online and are open to compete in the global market where there is arguably strong competition,²⁶ the reality is that Fairfax and Nine are competing in a market to provide Australian domestic news and media, not global news and media. The global information market does not adequately serve Australian domestic news needs, due to economies of scale and perceptions as to Australia's newsworthiness. As the NZ High Court recognised, recycled news on an online platform is not production of news content.²⁷
65. The High Court in *NZME and Fairfax* drew the distinction between those generating news and those disseminating the news produced by others. It noted that 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.²⁸
66. MEAA notes the following areas of key consideration for the ACCC as to whether the merger will lessen competition:
- a) **Legal barriers to enter the market** - Australia has legislative controls on media ownership pursuant to the *Broadcasting Services Act 1992* as well as general laws regarding trade and corporations. In relation to entry into the online market, however, MEAA refers to the NZ High Court in *NZME and Fairfax*, who considered that collators and distributors of online news do assist in promoting plurality by inviting readers to access numerous sources of news. A valid distinction should still be drawn between the production and distribution of news. Fifteen recyclers of the product of two producers of news are still only making two views available. Therefore it is inappropriate to test barriers to entry by considering the position of entities such as Facebook and Google.²⁹
 - b) **Concentration leading to practical barrier to entry to the market** - Following the proposed merger, saturation of the market by Nine and Fairfax content would likely create an effective barrier to the entry of individual media content to the market.
 - c) **Level of concentration in the market**; MEAA notes there are currently five major commercial news media companies in Australia; Fairfax, NewsCorp, Seven, Ten and Nine, after the merger there will only be four. It is more likely than not that approval of the Nine/Fairfax merger will result in further proposed mergers, which in turn will usher further dramatic reductions in media diversity and content.
 - d) **Likelihood of increased prices or profit margins** - if the merger facilitates sustained increases in prices or profit margins above competitive levels, this could be indicative of an increase in market power and a reduction in competition, even if Nine/Fairfax does not exercise that power by increasing prices, rather than caused by synergies and cost cutting.³⁰
 - e) **Extent to which substitutes are available in the market**; there are a number of news companies that are accessible to the Australian public, largely online, however, independently-owned Australian media organisations are rare and as noted, there will only be three other equal competitors should the merger proceed. New Australian news and information market entrants are generally of small or limited scale. Of the larger entrants, such as the *New York Times*, production of Australian stories is limited. MEAA note that the digital ratings for online media sites from April 2018 had seven long-established Australian media companies in the top 10, with all of them in the

²⁶ See: *Expedia, Inc – proposed acquisition of Wotif.com Holdings Limited* (ACCC Public Competition Assessment, 13 January 2015).

²⁷ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [99] - [100].

²⁸ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [58].

²⁹ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [99] - [100].

³⁰ Millers Australian Competition and Consumer Law Annotated.

top five. This is now a long-standing trend. Foreign media companies, with the exception of *The Guardian*, provide negligible coverage of Australian stories. MEAA further note that should regional media operations (principally via regional newspapers) be curtailed, it is unlikely that substitute product will be made available. Where newspapers close, local news and information is not produced or disseminated.

- f) **Precedent** - A merger of a print/digital news entity and a TV/digital news/entertainment entity means that it will be easier for future consolidation to occur, for instance if News Corp wished to merge with one of the few remaining players.

Public Interest

Does the likely public benefit outweigh the likely public detriment?

67. As per the ACCC guidelines and section 90(7) of the Act, the ACCC should consider all the public detriments likely to arise from the proposed acquisition for which authorisation is sought can be taken into account.³¹
68. MEAA considers that the public benefits of the merger will not outweigh the detriment associated with a lessening of competition in the relevant markets.
69. In NZME and Fairfax, the unquantifiable detriments arising from the merger were primarily on the loss of media plurality which provides a diversity of viewpoints and editorial approaches under the existing competitive ownership structure. The High Court held that *the loss of quality of what would be produced by the merged entity as a significant unquantifiable detriment*³² and *sufficient benefit to the public to warrant an authorisation cannot be made out.*³³
70. Although the ACCC maintains authority to enforce undertakings to be imposed in the merger, MEAA again refers to NZME and Fairfax, wherein it was considered commitments by the appellants to maintaining divergent editorial policies, so as to maintain internal plurality within the merged businesses, would not be adequate to maintain the external plurality that presently exists. The loss of plurality was found likely to be significant and potentially irreplaceable. The Commission treated the relative importance of maintenance of plurality as so significant that its conclusion on the point was not a finely balanced one.³⁴ The NZ High Court agreed.
71. The NZ High Court found the merger of NZME and Fairfax would lead to a reduction in the quality of news content as a result of loss of competition. Further, the merger parties played a particular role in setting the agenda for news produced by other publishers and were concerned that a reduction in quality of the parties output would also have a flow on effect in reducing the quality of other sources of news. Concluding that these detriments, although unable to be quantified specifically, were significant, and clearly outweighed the significant quantifiable benefits that were projected to arise from the merger.³⁵

Reduction in quality and diversity

72. It is Nine and Fairfax's position that the merger will be commercially beneficial for the entities and would reduce costs. The reality is, condensing journalistic and editorial resources would be so

³¹ See *Re Australian Association of Pathology Practices Incorporated* (2004), ATPR 41-985 at [94].

³² *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [308].

³³ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [372].

³⁴ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [29].

³⁵ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [31] - [33].

compelling an area for cost reduction that it would be difficult to justify completing the merger without doing so in a material manner.³⁶ The NZ High Court considered it was inevitable that the NZME and Fairfax merger would scale back journalistic and editorial resources, as well as managerial resources, which would in turn reduce quality. The NZ High Court was satisfied that there would be a material reduction in the scope of topics reported upon, and the diversity of views expressed within them. That would constitute a reduction in quality.³⁷

73. The NZ High Court considered it foreseeable that such adverse changes in quality could occur without readers of their online sites being aware that it had occurred.

74. MEAA sees no reason why the proposed merger should be treated any differently by the ACCC. The merged entity will not maintain all standards. There are greater financial imperatives to cut costs.³⁸

Reduction in services and job losses

75. The merger will lead to job losses in addition to the more than 3000 journalist positions lost since 2008, including a reduction in the number of journalists reporting, which will likely undermine the diversity of news.

76. The merger of Macquarie Radio and Fairfax in 2015 was reported to have resulted in an approximate reduction of 10% of roles across the combined business.³⁹

77. Fairfax and Nine in their merger announcement stated:
“The merger is expected to deliver annualised pro-forma **cost savings of at least \$50m** which will be fully implemented over two years. The Proposed Transaction, on a pro forma basis, reflecting the full benefit of the cost savings, is expected to be earnings per share neutral for Nine shareholders, prior to any consolidation adjustments.”⁴⁰

78. The NZ High Court in NZME and Fairfax took the view, in a similar instance to the merger, that the merged business would not be economically incentivised to provide coverage on what readers want:
*The commercial reality is that the extent to which they can achieve variety and diversity of news content will be dictated by management decisions.*⁴¹

79. MEAA has witnessed dramatic reductions in journalistic resources at several prominent regional titles during the past five years. In this time, the *Herald* in Newcastle has seen its newsroom fall from about 120 employees to approximately 30. For the *Illawarra Mercury*, newsroom numbers have fallen from about 100 in 2013 to about 20 now. MEAA submits that a merged company will not have the incentive to maintain regional news titles, especially those that service smaller communities. Since the proposed Nine/Fairfax merger was announced on July 26, MEAA has identified signs that regional media services, especially newspaper services, will not prominently figure in Nine’s future operations.

80. Nine CEO Hugh Marks when asked what the merger would mean for Fairfax’s regional newspaper responded noting “those other businesses that may not fit that high-growth model may be better serviced by being part of some other environment”.⁴²

³⁶ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [75].

³⁷ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [76].

³⁸ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [86].

³⁹ Miranda Ward, *Macquarie Radio to Cut 10% of Staff*, *Mumbrella*, May 1, 2015.

⁴⁰ Emphasis added

⁴¹ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 [77] - [79].

⁴² Anne Davies and Martin Fraser *Fairfax assets could be on-sold as key shareholder supports Nine takeover* *The Guardian*, August 2, 2018.

81. MEAA notes ACMA's 2017 report into local content in regional Australia. This report found that traditional media sources (particularly TV and print) are "the principal way that regional Australians access local content and local news, despite an overall decline in free-to-air audience ratings and print newspaper circulation, and the closure of several local newspapers and TV news services."⁴³ TV and local print newspapers were the most preferred and trusted sources of news and information.
82. ACMA also reported that, "despite the significant increase in awareness of, use and preference for social media and websites, overall trust in these sources for local news remains low relative to traditional media sources".⁴⁴

⁴³ ACMA Report, page 10

⁴⁴ ACMA Report, page 11

Recommendations:

83. MEAA is of the view that:
- a) The ACCC should oppose the merger on the basis that the merger, if it proceeds, will contravene the Act;
 - b) The ACCC should release a Statement of Issues which addresses the following areas of concern:
 - i. Co-ordinated effects;
 1. Merging markets - monopolisation;
 2. Muted competition; and
 3. Tacit coordination;
 - ii. Media regulation concerns; and
 - iii. Public interest;
 - c) If the merger parties wish for the merger to occur notwithstanding the ACCC's opposition, then the ACCC, at the request of the merger parties, should conduct a formal review the merger pursuant to section 90(7) of the Act.
84. Notwithstanding the above, and in the event the merger progresses, MEAA submits that the ACCC should obtain undertakings from the Merger parties pursuant to s 87B of the Act.
85. The s 87B undertakings should encompass the following:
- a) An Editorial Independence sub-committee be established with a minimum of six independent non-executive sub-committee members to oversee and maintain the editorial independence of the Fairfax businesses;
 - b) The newsrooms of Nine and Fairfax will not be merged;
 - c) Nine and Fairfax journalists will continue to be employed within their existing entities (with a proposed timeframe, for example three years);
 - d) Fairfax publications, in particular regional publications, will remain in circulation (with a proposed timeframe, for example three years); and
 - e) Nine will adopt the *Fairfax Media Charter of Editorial Independence* (below).

Fairfax Media Charter of Editorial Independence

- That the proprietor(s) publicly declare a commitment to the fundamental and longstanding principle of editorial independence.
- That the proprietor(s) acknowledge that journalists, artists and photographers must record the affairs of the city, state, nation and the world fairly, fully and regardless of any commercial, political or personal interests, including those of any proprietors, shareholders or board members.
- That editorial staff shall not be required to work other than in accordance with the Australian Journalists' Association code of ethics.
- That full editorial control of the newspapers, within a negotiated, fixed budget, be vested with the editors of the papers and that the editors alone shall determine the daily editorial content of the newspapers.
- That the editors alone shall hire, fire and deploy editorial staff.
- That the editors shall not sit on the board of the owning company or companies, or any non-publishing subsidiary companies, and shall not be directly responsible to the board but to its appointed management.
- That the editors must at all times carry out their duties in a way that preserves the independence and integrity of the mastheads.

Adopted by

- *The Age*, 28 March 1988

- The Board of John Fairfax Limited, 2 May 1988
- *The Sunday Age*, December 1990
- The *Sydney Morning Herald*, *Sun-Herald* and *Australian Financial Review*, 21 February 1991

86. The ACCC should conduct market inquiries and invite further submissions to address whether the 87B undertakings are:
- a) Comprehensive;
 - b) Enforceable; and
 - c) Addresses the concerns set-out in this submission.
87. Any significant changes to the proposed 87B undertaking clauses would necessitate further public consultation from interested parties, including inviting further submissions as to the changes.

Conclusion:

88. The proposed Merger is a very significant event in Australian media history in that it will undoubtedly change Australia media and news diversity and quality forever. Critically, whatever is lost will never be replaced.
89. As recently foreshadowed by the NZ High Court, large media mergers of the kind proposed by the merger are likely to substantially lessen competition and do unquantifiable damage to media diversity and quality, two fundamental necessities for the existence of democratic societies. This is a timely reminder and warning against allowing such a merger to take place in Australia.
90. Given the significance of the likely implications of the proposed merger, MEAA has considerable and well-founded concerns that the merger, if it proceeds, will be contrary to the Act.
91. MEAA therefore opposes the merger and contends that the ACCC do likewise.
92. Finally, should the ACCC wish to consider allowing the merger to proceed, MEAA requests that the ACCC proceed by first preparing a detailed Statement of Issues for consideration and public debate.

Annexure A: Case Studies - Joint Investigations between Fairfax and Four Corners

- a) Investigations into the Australian Tax Office (ATO): *Blowing the Whistle on the tax office's 'cash grab'*⁴⁵, "New ATO commissioner to hear taxpayer appeals 'inevitable': watchdog"⁴⁶ and "Watchdog to investigate ATO's debt-collection tactics"⁴⁷
- i. Following the investigation by *Four Corners* and Fairfax Media, a new investigation was instigated by the watchdog, Inspector-General of Taxation Ali Noroozi, who uncovered allegations by ATO whistle-blower, Richard Boyle. The article explores the instruction of employee to apply standard garnishees and announcement of the review by Mr Noroozi;
 - ii. This investigation exposed the actions of the ATO, as informed by Mr Boyle. After the ATO attempted to settle various sanctions against Mr Boyle for inappropriately accessing files and remitting interest incorrectly, offering a confidential payout and a statement of services to leave his job. Instead he took to the media thanks to journalist investigators; and
 - iii. Enlightens readers on the increased complaints following the Boyle investigation, receiving a total of 2168 complaints. This represented an increase of more than 60%, with 62 specifically mentioning the Four Corner program. Mr Noroozi told Senate Estimates a review would be complete by the end of the month and suggests his long calling for a new second commissioner.
- b) Investigations into banking: *Commonwealth Bank Whistle-blower's case set to settle*⁴⁸, *Insider's view to CBA financial planning scandal, ASIC to investigate CBA's life insurance arm*⁴⁹
- i. Revealed the unethical conduct in CommInsure, CBA's life insurance arm. The Australian Securities and Investments Commission (ASIC) will investigate allegations that the Commonwealth Bank's life insurance arm is denying heart attack claims by deliberately using an outdated definition buried in the policy; and
 - ii. Dr Koh revealed CommInsure pressured his assessment of customers to avoid payouts; delaying payouts to terminally ill customers; and refusal to honour claims to former staff who were medically retired. Dr Koh alleges he was sacked by the bank in 2015 for being a whistle-blower.
- c) Investigation into Aveo retirement village; *Aveo retirement village investigation has put the sector under a spotlight*⁵⁰ *Bleed them Dry until they die - Aveo residents*⁵¹ and *Hundreds sign up for Aveo class action*⁵²
- i. The investigation revealed the questionable nature of the Aveo surveys of residents indicating whether they were happy, felt safe etc. The highlighted commentary provided by Aveo residents suggested otherwise: 'all they seem to want is your money and nothing else', not what we want in a fair-go society. Only a fraction of residents fill them in and in one village some of those who filled them in had dementia. These theme echoed by residents at villages across the country who believe the surveys are flawed, was at the centre of this investigation; and
 - ii. Following a joint investigation hundreds of former Aveo resident have signed up to two separate class actions against the retirement village giant. The investigation uncovered a serious of questionable business practices finding that the Aveo had

⁴⁵ <https://www.smh.com.au/business/the-economy/blowing-the-whistle-on-the-tax-office-s-cash-grab-20180404-p4z7rj.html>

⁴⁶ <https://www.smh.com.au/business/the-economy/new-ato-commissioner-to-hear-taxpayer-appeals-inevitable-watchdog-20180605-p4zj1w.html>

⁴⁷ <https://www.smh.com.au/business/the-economy/watchdog-to-investigate-ato-s-debt-collection-tactics-20180516-p4zjft.html>

⁴⁸ <https://www.smh.com.au/business/banking-and-finance/commonwealth-bank-whistleblower-s-case-set-to-settle-20180525-p4zhge.html>

⁴⁹ <https://www.smh.com.au/business/banking-and-finance/asic-to-investigate-cbas-life-insurance-arm-20160306-gnbmox.html>

⁵⁰ <https://www.smh.com.au/business/aveo-retirement-village-investigation-has-put-the-sector-under-a-spotlight-20170630-gx2490.html>

⁵¹ <https://www.smh.com.au/interactive/2017/retirement-racket/bleed-them-dry/>

⁵² <https://www.smh.com.au/business/banking-and-finance/hundreds-sign-up-for-aveo-class-action-20171124-gzscfz.html>

been engaging in practices that included churning residents, fee gouging, misleading marketing promises such as emergency and safety services. The class action will seek sale omissions which Aveo has been charging residents.

- d) Investigations into 7-Eleven; *7-Eleven: Investigation exposes shocking exploitation of convenience store workers*⁵³ and *7-Eleven: a Sweatshop on every corner*⁵⁴
 - i. Investigation exposed the collusion between 7-Eleven franchisees on a scam known as the “half pay” scam. The investigation found many of its staff were being paid as little as \$10 an hour before tax with the company’s own figures suggesting up to two-thirds of its stores had been ripping off their workers; and
 - ii. Further joint investigations uncovered systematic wage fraud, falsification of payroll records and other illegal practices. With a review of 225 stores, 69% had payroll compliance issues. Four corners uncovered log books, court documents financial record accounts of individual stores and CCTV footage that reveals people that were not on roster to work had actually been working at the store.
- e) Investigations into the Gay marriage plebiscite; *Gay marriage plebiscite to cost the economy \$500 million*
- f) Investigations into the Lindt Café siege: *Lindt café siege inquest: police waited too long, coroner finds*⁵⁵
- g) Investigations into Yooralla disability: *Yooralla disability provider faces rape, corruption allegations*⁵⁶
 - i. This joint investigation explored one of Australia’s largest disability providers ‘bungled’ the handling of rape and sexual harassment cases with some of its facilities are riddled with corruption and mismanagement thanks to the leaks documents and whistle-blowers. The revelations exposed in the joint inquiry showed Yooralla continued to employ rapists or corrupt staff despite clear warnings they were preying on disabled clients.
- h) Investigation into Chinese operations in Australia: *China’s Operation Australia: The Party Line*⁵⁷
 - i. The article alluded the Chinese communist party is waging a covert campaign of influence in Australia - an aggressive form of “soft power” - and while loyalty’s are rewarded, dissidents live in fear. The investigation revealed the story of a University student that the agents had intelligence about his plans to participate in protests in Brisbane. That terrified his father in China who feared that was too being ‘watched and tracked’.

⁵³ <https://www.smh.com.au/business/workplace/7eleven-investigation-exposes-shocking-exploitation-of-convenience-store-workers-20150828-gja276.html>

⁵⁴ <https://www.smh.com.au/business/workplace/7eleven-a-sweatshop-on-every-corner-20150827-gj8vzn.html>

⁵⁵ <https://www.smh.com.au/national/nsw/lindt-cafe-siege-findings-police-waited-too-long-coroner-finds-20170524-gwbrkr.html>

⁵⁶ <https://www.smh.com.au/national/yooralla-disability-provider-faces-rape-corruption-allegations-20141123-11s58m.html>

⁵⁷ <https://www.smh.com.au/interactive/2017/chinas-operation-australia/soft-power.html>

Annexure B: Snapshot of MEAA Member and Supporter Submissions to the ACCC

The following are extracts from a small portion of the 1147 submissions from MEAA members and supporters which were forwarded to the ACCC via a portal set up on the MEAA website (found at fairgofairfax.org.au). Members and supporters were invited to contribute to the ACCC merger review process by email and social media communications.

“As a rural/regional based journalist I am concerned that the merger of Fairfax Media with Nine Entertainment will lead to a reduction in independent journalism in these regions. I began my career in the mid-1980s and since that time have seen a continuing reduction in the number of qualified journalists working in regional and rural areas. Without local journalists who understand the issues communities will be even more at risk from poor decisions made by governments at all levels and there will be no local news to inform people what is happening in their towns - good and bad. Democracy relies on this information from local councils all the way to Canberra. We have the ABC but they do not have the resources to cover every council meeting and every development application. Don't let our voice disappear because it will be replaced probably by ill-informed social media posts.”

- Louise, North Rothbury, NSW

“The merger of Nine and Fairfax should not go ahead due to the following:

1. It would significantly reduce competition in the media landscape.
2. If it goes ahead three of the top ten outlets will be from the same company.
3. It would reduce media diversity and media opinion.
4. It threatens the integrity of important news making across the country.
5. It will significantly reduce opportunities for investigative journalism to break important stories that affect Australians.
6. Government will be less scrutinized and will be less answerable to Australians with a reduction in diversity of media outlets.
7. It significantly reduces the opportunity for Australians to access a variety of quality news across the country.
8. If Australians do not have access to diverse and quality news and governments are less answerable to the people, it will undermine our democracy.

If the worst happens and the merger does go ahead, Fairfax and its mastheads should keep their name and culture so that the decades of integrity they have built up can continue to thrive. Additionally it is imperative that Nine signs up to the charter of editorial independence.”

- Annette, Bexley NSW

“I am extremely concerned by the takeover of the Age. I value press freedom and the rigour and professionalism of the reporting of The Age. We need diversity in media not more concentration of newspapers and a consequent narrowing of reporting. We need press freedom without commercial considerations directing reporting and perhaps leading to biased reporting. There are serious issues of conflict of interest with this take over. I am concerned that the fruitful collaboration of The Age with the ABC will no longer be possible.”

- Jeanette, Gilleston VIC

“I don't believe it's in Australia's best interest to have such a huge media empire controlling so much of the information provided to us. We need more independent journalists and news feeds, not one corporation controlling the majority of what is published, provided to Australians. Please do not allow this merger to go ahead.”

- Ruth, Rockhampton QLD

“Quite aside from the current political debacle and the great influence some media outlets have contributed to that, it is imperative that no more power and influence be given to them. We need a robust, impartial and democratic Fourth Estate, not one behemoth that takes political sides and influences so significantly the very democracy we live in, especially when the national broadcaster - the ABC - is being stripped of funding and autonomy limiting its ability to produce impartial and well-researched news. This merger potentially and dangerously leads to the corporatisation of our very government.”

- Sally, Upper Brookfield QLD

“I am against watering down diversity of opinion and reporting in the media. By limiting competition in media ownership itself, all diversity is certified to one [owner] and usually that means one type of point of view, especially with more jobs on the line for those who supply such reporting and opinion pieces.”

- Giulietta, Corrabare NSW

“It is very worrying that the media in Australia is in so few hands which makes it very difficult for individual voices or opinions. My earlier life was spent with a multitude of outlets/opinions, so I had a very diverse range to call upon. With information from all sectors of the community available, the general public was much better informed. We didn’t have to worry so much about “Fake News”, and we weren’t force fed the same slant on everything by all types of media - TV, radio, print and electronic. When the media is condensed down to just a few voices - this is the beginning of the end of Democracy as we know it. I’m 75 so it won’t be my problem so much, but my heart cries for the losses the next generations will suffer.”

- Eileen, Coffs Harbour NSW

“Surely it is evident, when the Prime Minister of Australia complains of media bullies in a leadership battle, that far too much media concentration has occurred in this country. Surely it is evident, when one impartially examines the outcome of the amalgamation of the SevenWest Group and the resulting partial cross-promotion of programs between The West Australian and Channel 7, that media concentration has gone too far. What is the value of anti-competition laws if all that is achieved is fewer jobs, fewer media outlets and an abuse of those outlets for the benefit of their owners? Where is the public or community benefit? It is always argued that mergers have a financial imperative. If they don’t happen, a newspaper or TV station will be financially damaged. Yet each merger results in reduction of jobs and job opportunities and a most important reduction in diversity of our media. There must be a line in the sand. Media operators - and I have launched and owned my own independent newspaper in Perth - must not operate to the obvious detriment of the community they serve. Enabling the merger of Nine and Fairfax will further decimate media diversity and community choice. Like Seven West Group we will see blatant cross-promotion (appearing as “news”) between different platforms, as well as the reduction of jobs and job opportunities. I oppose the merger. I support the examination of what is left of Australia’s media with a view to requiring and imposing greater diversification.”

- John, Belmont WA

“I have long been a reader and supporter of the Fairfax newspaper, the *Sydney Morning Herald*. The investigative journalism in this paper is something I have valued and that I have grave concerns over with the proposed merger of the Nine Entertainment Co. and Fairfax Media. I am concerned that the takeover will have huge consequences for independent journalism. I am concerned that our media in Australia already lacks diversity and independence and that this merger will kill off the last of it. There seems to be an attack on true independent journalism in Australia. Changes to laws that prevented this type of merger in recent years, along with cuts to the ABC, are changing the landscape of mainstream media in Australia. I don’t think media will be able to be trusted anymore. The ramifications of this takeover will be huge. Regional and rural areas will likely lose publications and jobs will go. I am concerned as someone from regional NSW what it means for our local Fairfax media - both the *Newcastle Herald* (which has lost jobs anyway over recent years) and our local *Newcastle and Lake Macquarie Star*, and the *Maitland Mercury* which serves my area. These newspapers all serve a role and purpose in our regional life - bringing the stories of the broader area through the larger *Newcastle Herald* and focusing on community in the local newspapers. Should these be

lost in the merger or changed it will be a massive blow to our community. I strongly hope the ACCC listens to audiences and consumers and hears the genuine concerns of the Australian community on this merger deal.”

- Gayle, Metford NSW

“I don’t believe this merger will benefit the Australian consumer in any way. The proponents of the merger will of course explain that the merger will ensure a stable, holistic and high quality media landscape for the Australian consumer. However I believe a monopoly of any sort, especially in the media is nothing but detrimental, especially given the media’s theoretical purpose of education, balanced reporting, and the encouragement of healthy debate. Please consider this when making your decision.”

- Guy, Coburg, VIC

“Fearless, independent journalism is essential to maintaining voices of reason and diversity in our media and in our world. Already our media heavily biased and we as a country cannot afford to allow this to increase or grow in any way if we wish to live in a fair and truly democratic society. Such a takeover is a direct attack on independent thought and reporting, and in that on a just and fair society. True investigative journalism must be allowed and not controlled or heavily influenced by one overarching agenda/corporation. This also greatly increases the risk of independence being compromised by the commercial interests of the proprietor and its advertisers? Our country does not need a media oligarchy, and it is your job to ensure that this does not happen.”

- Brie, Tennyson QLD

“Allowing Nine Entertainment Co. to further consolidate their hold over the Australian media landscape would be a catastrophic mistake. With public broadcasters being gutted and the transition to a digital media landscape causing smaller, independent media organisations to be forced to consolidate or be annihilated, we face the very real, very terrifying prospect of Australian media being consolidated under a bare handful of corporate interests. In just the past couple of days we have seen what power the media can exert over political dialogue, with the public leadership spills in the Liberal party being directly attributable to the power of corporate media. Allowing Nine to take over one of the last remaining independent media outlets in Australia will further empower corporate media interests to exert their will over political discourse and public policy. A critical and free press is an essential fourth pillar of a democratic system of government. Permitting Nine to take over Fairfax is a grave mistake.”

- Ben, Wonthaggi VIC

“As an engaged citizen I rely on diverse media perspectives to ensure I understand the full picture of the issues impacting our country and the planet. Australia’s media landscape is already one of the most concentrated in the world. The merger of Fairfax and Nine is untenable, and increases the very real risk of a homogenous media landscape that only represents corporate and lobbyist interests instead of the issues that impact the Australian population. It is in the best interests of the country that this merger be prevented.”

- Sophie, Coogee NSW

“With the ultra-concentrated media market in Australia, with total national domination by News Corp - this merger reduces any alternative voice significantly. Once this takeover is complete, there will be fewer voices in the middle ground where most Australians reside. Not only is it anti-competitive but also anti free speech that reflects the spectrum of Australian voices.”

- Roland, Robina QLD

“There is no doubt whatsoever that this takeover will impact very negatively on the freedom of expression and the diversity of views across the Australian media and beyond. Throughout Australian, and indeed world history and journalism, a diverse media has always underpinned the very democracy of our nation. The proposed takeover will, in one blow, markedly diminish this diversity and lead quickly to a narrowing of

control of all media across the country. It is also highly likely to increase foreign ownership of Australian media taking out of the hands of Australian citizens the ownership or control of our media. There are many ways in which this takeover will negatively affect the quality of life in Australia: democratic representation and free articulation of differing viewpoints will diminish; accuracy and truthful reporting of events in the news media will be compromised; the representation and flourishing of Australian media and culture in all its forms, including music, art, satire, regional Australia, the health of the environment and so on will decline. The deleterious effects will also reach down into the local realm and across regional Australia, stifling free expression and democratic views. Having been involved with, and studied the media over four decades, I am entirely convinced that this is a retrograde step that will have marked negative consequences on Australian society, economy, politics, and culture. I strongly urge the ACCC to reject this takeover in the interests of Australian democracy and a more balanced economy and society that gives free expression to the citizens of this country.”

- Peter, Perth WA

“I feel that it would be a huge mistake to let Fairfax be taken over by Nine. What would it mean in Tasmania the *Examiner* and *Advocate* newspapers stopped and our local news on some mainland station just like happened already in Tasmania with Win abandoning local news already?”

- Jonathon, Tomahawk TAS

“I am strongly opposed to Nine Entertainment’s takeover of Fairfax Media, and also opposed to the changes to law made by the current government that allowed it to happen. Strong, independent investigative journalism is a cornerstone of a free and democratic society. We are fast moving towards a place I could not have imagined Australia reaching even 20 years ago, with laws on the one hand threatening ordinary citizens and journalists alike for telling the truth about things the government has done, and on the other hand enabling the dismantling of the oldest and one of the most trusted media empires in the country. I will no longer be reading Fairfax press once it is part of an entertainment empire - I am interested in genuine reporting, not fuff. I fear for the fate of my local weekly paper, the *Blue Mountains Gazette*, along with many other local papers around the country - local papers tend to be light weight on journalism but importantly they provide some of the glue that holds a local community together.”

- Christine, Blackheath NSW

“The acquisition of Fairfax Media by Nine Entertainment will destroy what little there remains in Australia ‘independent’ journalism. This government-sanctioned big fish eating the little fish is in the best interest of no-one but the big fish. The takeover will delete a formidable competitor in the news / media industry and effectively assists in creating a near monopoly in certain regions of Australia. Let’s keep the greatest number of active voices and opinions in Australia to enhance our democracy. Say NO to the takeover.”

- Manuel, Eastwood NSW

“The recent leadership spill in the Liberal party is the latest evidence of the pernicious impact of traditional media platforms (print, radio and television) being influenced too heavily by a limited set of vested interests. These vested interests are unelected, some foreign owned, and without a long term national perspective. Former Prime Ministers Malcolm Turnbull and Kevin Rudd and journalist Chris Uhlmann have in recent days articulated their concerns about this level of interference in the democratic functioning of Australia’s polity. The proposed merger of Nine and Fairfax will further concentrate the ownership of traditional media platforms and therefore further limit the voices that can be heard by the broad Australian population. While there is no doubt that these traditional media platforms are in decline, the social media platforms that could develop to replace them do not espouse editorial and quality processes to assure standards in information provision and have not been able to demonstrate the willingness or capacity to manage malicious interference. The national public broadcaster, the ABC, is under constant budgetary pressure from all stripes of Government and perhaps even some editorial pressure depending on the political crisis of the day. It alone cannot provide the diversity required from a national news media. In this environment the changes to the media ownership legislation allowing further concentration of ownership represents a significant threat

the diversity of voices and also to the diversity of coverage. The inevitable result of this proposed merger will be the sale and/or closure of regional newspapers and broadcast programs - the urbanisation of news coverage so that Australian media has a singular preoccupation with Sydney and Melbourne. In Tasmania the impact will be the likely closure of two daily newspapers the *Examiner* in Launceston and the *Advocate* in the North West leaving the News Corporation owned *Mercury* in Hobart as the only Tasmanian regional newspaper. Already television newsrooms in Tasmania are being wound back with Tasmanian news being delivered from interstate with little or no contextual understanding attached to it. If the objective is to assure a vibrant and relevant media to inform and represent a diversity of views across Australia then this proposed merger, allowed for under the changed media ownership legislation, will not meet that objective. The result of further media concentration is solely providing a commercial advantage to a smaller group of media proprietors with no complementary advantage to Australian society."

- Alexander, North Hobart TAS

"I believe there has been journalistic independence in Fairfax, and this may not continue. Verbal assurances are meaningless (they mean nothing in politics, why should it be different in this case?) Journalistic independence would have to be enshrined legally in some way for it to be meaningful.

Will journalists, who I believe to have integrity, such as Peter Hartcher, Matt Wade, Ross Gittens, Jacqueline Maley, Nicole Peterson, Jessica Irvine, Tony Wright, David Crowe lose their jobs in the merger? Would be they allowed freedom of expression? Would someone like Clementine Ford lose her job, be seen as too extreme? Would journalists such as Adele Ferguson and Kate McClymont be allowed investigative freedom? Investigations by the latter two, combined with the ABC, have been extremely important in exposing issues of national importance... I hope you will seriously consider these issues when making a decision."

- Margaret, Byron Bay NSW

"As an Australian journalist that cut my teeth in community radio and independent publications in the magazine sector, it is disappointing and frightening to hear the encroaching homogenisation of media content. What an unbelievable state of affairs that one company... can have access, reach and influence on the populace in this way. How are you meant to uphold the fundamental principles of the public sphere, democratic communication and critical debate, holding government and individuals to account, when one outlet can control all lines of information? If it wasn't a reality, it'd be a farce, a dystopic nightmare come to life. Silencing the outlets that continually produce independent media through volunteers, shoestring budgets and blood, sweat and tears is no doubt a... myopic view."

- Leona, Bedford WA

"I feel concerned about the future of independent journalism, and community journalism, not to mention the thousands of Fairfax employees who would stand to lose their jobs during this merger. The *Sydney Morning Herald* is my most trusted, go-to news source. Its online presence has only made it more accessible for me in recent times... What I love about Fairfax media is the variety of diverse voices we receive. Fairfax is synonymous with quality journalism of great integrity... I value fearless, independent journalism. It is important to have sources who will talk about what no one wants to talk about. I believe that this takeover will have a hugely negative impact on investigative journalism in this country. I believe that this merger increases the risk of these stories being compromised, diluted, or shut down, by the commercial interests of the proprietor or its advertisers."

- Sarah, Burraneer NSW

"The proposed takeover of Fairfax Media by Nine makes no sense. The concentration and power that such a single platform will have severely limits individual voices or those of alternative media. Instead we'll be left with a voice so strong, so overpowering that it will have the ability to topple governments, crush competitors and push potentially unpopular rhetoric that'll shape Australia for years to come."

- Andrew, Redfern NSW

“Independent journalism is a vital instrument of a Democracy. Don’t let our Democracy be emasculated by a media monopoly.”

- Neil, Foster North VIC

“Please do not approve this merger. Australia has a long history of politicians favouring media moguls at public expense. That’s not democracy. Please don’t make a bad situation worse.”

-Ava, Pyrmont NSW

“PLEASE do not allow this to take place... Already, media concentration in Australia is too high - in fact, we are one of the worst countries in the world for media concentration - and Australians deserve better. If we value freedom of choice and freedom of opinion, then we have to allow for a range of perspectives to be present in our media. This means having a range of news corporations, not super corporations.”

- Ashleigh, Kaleen ACT

“We are a relatively small country. We need diversity in our information sources. Media moguls already have too much influence in society; e.g. recent toppling of our Prime Minister. Please stop the greed and the lust for power. Don’t give credence to new laws which will fail the Australian public. Competition is already weak in the media; please consider “big picture” and do not allow this merger.”

- Diane, Southport QLD

“This merger is firmly against the public interest. The public has a right to independent journalism to be able to make informed decisions around political and social issues. Nine is a reputable entertainment channel but will be severely compromised in its remit to oversee the Fairfax news outlets independent of bias. There will be strong pressures to follow the clickbait and bottom line demanded by marketing interests, e.g. by promoting news stories that serve the interests of programming and brands on the TV channel. Please seriously consider the interests of consumers when deciding on this issue.”

- Michele, Darling Point NSW

“The importance of media diversity cannot be overstated. Australia has seen massive concentration of media ownership over the last 30 years which has coincided with a massive reduction in our democracy.”

- Michael, Doreen VIC

“I am opposed to the takeover of Fairfax by Nine for the following, but not exhaustive, reasons. There is an ever shrinking diversity of views over an ever increasing mass of subjects. This combined with the attacks on the ABC and depleting of its funds will result in few differing voices giving their points of view. Fairfax is known for working in conjunction with the ABC to bring stories to light that would not have had such depth and exposure if reported separately. It is imperative that independent voices are heard so that we, the public, can come to our own conclusion based on a variety inputs. We have seen what can happen when voices are silenced and we have very recently seen what happens when too few voices are heard... It is my view that this takeover be blocked.”

- Peter, Nimbin NSW

“We live in north east Victoria. Our regional paper is owned by Fairfax. Local content has been reduced in recent years and with the proposed merger this paper will probably close. This will drastically affect media competition, diversity and information... This proposed merger could affect our democracy. The Fairfax papers have always been at the forefront of investigative journalism. If the cuts to ABC news continue who will provide the means to investigate corruption in our society? This merger will further entrench the ‘dumbing down’ of news as well as the spread of ‘fake news.’ This merger will be the death knell of independent, accurate journalism.”

- Alan and Joan, Indigo Valley VIC

“The media ownership laws in this country have led to the muscling out of diverse voices in our media landscape. Here in Newcastle, this proposed takeover by Nine of Fairfax will result in the perverse outcome of both the only local television station and the only local newspaper being owned by the same company... Newcastle is not some backwater, but the sixth largest city in Australia and a key cultural and tech/innovation hub. We deserve better than a media market that will become the monopolistic plaything of people who’ve never set foot in the place.”

- Amelia, Newcastle NSW

“I am very concerned about the consolidation of Australia’s print, radio and television media in a few corporate hands. The existence of a diversity of opinion and diversity of methods of making and communicating media communications to Australian society are signs of a healthy ecosystem. Monocultures require a great deal of control and the elimination of diversity and journalistic depth that Fairfax provided the Australian community. Regulation to ensure the monopolising of Australian media does not occur is the role of our legislators - the Australian government. I am deeply concerned that allowing Nine to takeover Fairfax will result in narrower journalistic coverage - this is not to the benefit of all Australians.”

- Sarah, Eltham VIC

“In my locality there is limited local input via television, radio and newspaper as much is imported from another area. I would like to have more local information available. While not knowing the full implications of what this takeover will mean, I have noticed that each time there is a “merger” we end up with less local content and more from elsewhere. I use both newspaper and TV from the separate sources because of the varied content available... I am also concerned that this will reduce the choices I have available to me and the quality of the journalism. I would ask that the ACCC prevent this from taking place.”

- Carolyn, Dubbo NSW

“I rely on independent journalism and diversity in media – free of influence from vested interests and powerful commercial pressure – in order to feel secure that our institutions, our economy, our democracy and many aspects of life in Australia are subject to healthy scrutiny and that there is accountability where appropriate. My quality of life and that of my elders and children and my fellow community members are greatly dependent on a healthy democracy, which the press/media has been an important part of. This is our culture, it is part of our heritage and we want to pass it on to the next generations. I read the *Brisbane Times*, and sometimes *The Age* and *The Sydney Morning Herald* articles. The value of newspaper reporting as a profession that has evolved into the new media era is immeasurable and shouldn’t be thought of as a commodity – it belongs to all of us. We who read the news and current affairs have a real stake that should not be discounted. We are stakeholders. We should not be seen as mere consumers of media, but rather, as active players in the democratic institution that is the fourth estate. The press, the media, independent journalism – protects us all. I call on those in positions of responsibility in these organisations and government to rise above commercial interests and “business as usual” and see that this is a crucial time. Journalism is being attacked in the US. That is very dangerous... We cannot allow a lesser standard of journalistic scrutiny to become the norm because “it’s all too hard”. Think about all the issues that require press coverage so that citizens have a chance to know what’s going on. So that shysters can’t get away with doing the wrong thing. So that problems are aired and better ways of doing things have a chance. Please take this seriously – for all our sakes, and our future generations. “

- Helen, Annerley QLD