

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CIV 2017-485-445
[2017] NZHC 3206**

BETWEEN	NZME LIMITED First Appellant
AND	FAIRFAX MEDIA LIMITED Second Appellant
AND	FAIRFAX NEW ZEALAND LIMITED Third Appellant
AND	COMMERCE COMMISSION Respondent

Hearing: 16–20 October, 24–27 October 2017

Counsel: D J Goddard QC, A S Butler, S C Keene, T J Pilkington,
M W McMenamin and C M Marks for the Appellants
J A Farmer QC, J D Every-Palmer QC, F J Cuncannon,
P I C Comrie-Thomson and G Spittle for the Respondent

Judgment: 19 December 2017

RESULTS JUDGMENT OF DOBSON J AND PROFESSOR RICHARDSON

[1] The summary from the end of the Court’s judgment in this appeal is in the following terms:

Summary

[370] We have dismissed the appeal against the Commission’s clearance decision. We have not found a likelihood of an SLC in the advertising market for Sunday newspapers, and dismiss the prospect of one of the appellants introducing a paywall for their online publication, post a merger. In other respects we come to the same conclusions as the Commission on the prospects of an SLC in the reader market for online national news, reader market for Sunday newspapers, and both advertising and reader markets for

community newspapers in the 10 areas in the North Island where the appellants' existing community newspapers compete.

[371] We have also dismissed the appeal against the Commission's refusal to grant an authorisation for the proposed merger. We have upheld the jurisdiction of the Commission to consider detriments beyond economic or financial detriments applying in the market in which the Commission had found the likelihood of an SLC, and in particular for the Commission to take into account the material detriment arising from loss of media plurality. The Commission was also entitled to place significant weight on the prospect of reduced quality of the products produced by the merged entity.

[372] In the evaluation of public benefits and detriments, we have found that sufficient benefit to the public to warrant an authorisation cannot be made out.

[373] The appellants' complaints of inadequate or improper process on the part of the Commission in the course of its work on its determination do not constitute criticisms that require us to assess the merits of the substantive appeal any differently. It was legitimate for the Commission to select those with whom it conducted post-conference interviews, and whilst the terms of the Commission's instructions to BDO as an external accounting expert might have been dealt with more felicitously, that aspect of the Commission's process does not lead to a justiciable error.

[374] The Commission is entitled to costs.

[2] In accordance with a process agreed with the parties, the full terms of the judgment have been distributed to the parties on a restricted basis for them to consider the adequacy of the extent to which references to confidential matters will be redacted in the form of the full judgment that is to be issued publicly. Unless unexpected difficulties arise in dealing with confidential material, the Court anticipates issuing the redacted version of the judgment by 5.00 pm today.

Dobson J

Solicitors:

Russell McVeagh, Auckland for Appellants

Meredith Connell, Wellington for Respondent