



## *Public Competition Assessment*

3 May 2011

### *Fairfax Media Limited - proposed acquisition of Southern Independent Publishers Ltd's Kiama Independent and Lake Times newspapers*

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#### **Introduction**

1. On 14 December 2010, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition by Fairfax Media Limited (**Fairfax**) of two newspapers based in the Illawarra region of New South Wales: *Kiama Independent* and *Lake Times* (**proposed acquisition**). These newspapers are currently owned by Southern Independent Publishers Pty Ltd (**SIP**). The ACCC decided that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any market in contravention of section 50 of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*) (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.
3. The ACCC considered that a meaningful Public Competition Assessment could not be provided without certain information being disclosed. As this information remained confidential until the transaction had been completed, the ACCC delayed the release of this Public Competition Assessment.

#### **Public Competition Assessment**

4. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.

5. This Public Competition Assessment has been issued because Fairfax Media Limited's proposed acquisition of SIP's *Kiama Independent* and *Lake Times* newspapers was considered to raise issues of interest to the public.
6. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to circumstances where the ACCC's assessment of the competition conditions in particular markets are changing, or are likely to change.
7. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
8. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources.

## **The parties**

### *The acquirer: Fairfax Media Limited*

9. Fairfax is an Australian media company with an integrated metropolitan, rural, regional, print and online digital presence. It has publications in each state of Australia and the Australian Capital Territory (ACT). Fairfax mastheads include *The Sydney Morning Herald*, *The Age*, *The Australian Financial Review*, *BRW* and *The Sun-Herald*.
10. In the Illawarra region, Fairfax publishes the *Illawarra Mercury* and *The Advertiser*.
11. The *Illawarra Mercury* is a paid daily newspaper which is distributed throughout the Illawarra region, with a weekly circulation of around 27,000 Monday to Friday and over 38,000 each Saturday. The cover price is \$1.20 Monday to Friday and \$2.00 on Saturday. Fairfax has an online presence corresponding to its Illawarra Mercury newspaper ([www.illawarramercury.com.au](http://www.illawarramercury.com.au)).
12. Fairfax also distributes *The Advertiser*, a free weekly newspaper with a weekly circulation of over 98,800. The Advertiser is published in 3 editions: *The Kiama Advertiser*, *The Wollongong Advertiser*, and *The Shellharbour Advertiser*.

*The target: Southern Independent Publishers Pty Ltd's Kiama Independent and Lake Times newspapers*

13. SIP is a newspaper publisher based in Kiama, wholly owned by IPMG Pty Ltd (**IPMG**). IPMG is an Australian owned group of print, interactive, communications and media companies.
14. *Kiama Independent* is a paid weekly newspaper, with a circulation of 3,000 and a cover price of \$1.20. Its distribution is centred in the Kiama district. SIP also publishes the following website: [www.kiamaindependent.com.au](http://www.kiamaindependent.com.au)
15. *Lake Times* is a free weekly newspaper, with a weekly circulation of 47,000. Its distribution is largely based within the Lake Illawarra area. SIP also publishes the following website: [www.laketimes.com.au](http://www.laketimes.com.au).
16. SIP also publishes *The Wollongong and Northern Leader* in the Illawarra region. *The Wollongong and Northern Leader* is a free weekly newspaper, with a circulation of 25,000. It is distributed throughout the Wollongong district.
17. *The Wollongong and Northern Leader* was not subject to the acquisition.

### **The proposed transaction**

18. Under the proposed acquisition, Fairfax was to acquire the *Kiama Independent* and the *Lake Times* (**the SIP Newspapers**). The proposed transaction involved the acquisition of mastheads and business assets relating to these newspapers.

### **Timing**

19. The following table outlines the timeline of key events in this matter.

Date	Event
11-Nov-2010	ACCC commenced review under the Merger Review Process Guidelines.
03-Dec-2010	Closing date for submissions from interested parties.
14-Dec-2010	ACCC announced it would not oppose the proposed acquisition.

### **Market inquiries**

20. The ACCC conducted market inquiries with a range of industry participants, including regional advertisers, other media sources in the region, and possible alternative acquirers of the target newspapers. Submissions were sought in relation to the substantive competition issues.

### **With/without test**

21. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the “with” position) to the likely competitive environment if the transaction does not proceed (the “without” position or counterfactual).

22. Identification of the counterfactual was critical to the ACCC's assessment of this matter.

***Counterfactual or 'without' position***

23. The ACCC conducted market inquiries and carefully considered the information available to determine the likely outcome 'without' the proposed acquisition.
24. It was put to the ACCC that, in the absence of the proposed acquisition, the *Kiama Independent* and *Lake Times* would effectively exit the market.
25. To assess whether the relevant 'without' position should differ to the prevailing state of competition in this case, the ACCC considered the following issues:
- whether, in the absence of the proposed acquisition the SIP Newspapers would be in imminent danger of failure;
  - the likelihood that the assets could be successfully restructured absent the proposed acquisition; and
  - whether, in the absence of the proposed acquisition, the SIP Newspapers would be likely to exit the relevant market(s) and cease to represent an actual or potential source of supply (or other constraint) in the relevant market(s). This included consideration of the likelihood that the SIP Newspapers would be purchased by another competitor or independent buyer.

**Imminent prospect of failure and likelihood of successful restructure**

26. Prior to forming its view, the ACCC conducted a rigorous analysis of information that was provided by SIP and other industry participants in relation to these issues.
27. On the basis of its inquiries, the ACCC was satisfied that in the absence of the proposed acquisition or an alternative party acquiring the SIP publications, both the *Kiama Independent* and *Lake Times* would imminently cease to operate and it was unlikely that the assets could be successfully restructured.

**Likelihood that the assets would exit and cease to represent an actual or potential competitive constraint**

28. The ACCC considered whether it was likely that the SIP Newspapers could be sold to another party. The ACCC considered information provided by SIP and other industry participants on this issue.
29. The ACCC's inquiries verified SIP's submission that it was unlikely that another party would acquire the SIP Newspapers.
30. The ACCC concluded that it is unlikely that the SIP Newspapers, or assets associated with the SIP Newspapers would be acquired by any other party if the proposed acquisition did not proceed and accordingly, would exit and cease to represent an actual or potential competitive constraint on any relevant market. It is on this basis that the proposed merger has been assessed.

### **Areas of overlap and market definition**

31. The activities of the Fairfax and SIP Newspapers overlap in the supply of newspaper advertising opportunities to advertisers, the acquisition of content from local content suppliers and the supply of content to readers in Kiama, Lake Illawarra and surrounding areas.
32. The circulation areas of the merger parties' newspapers are as follows:
  - SIP's *Kiama Independent* (paid weekly) and Fairfax's *Kiama Advertiser* (free weekly) are primarily circulated within the Kiama district.
  - SIP's *Lake Times* (free weekly) and Fairfax's *Shellharbour Advertiser* (free weekly) are primarily circulated within the Lake Illawarra area.
  - Fairfax publishes the *Illawarra Mercury* (paid daily) which is distributed across a broad geographic area which encompasses Wollongong, Kiama and Lake Illawarra.

### ***Advertising markets***

33. Targeted market inquiries undertaken by the ACCC revealed the following information regarding the markets in which the merger parties' newspapers operate in relation to the supply of advertising opportunities:
  - Newspaper advertising in local newspapers was likely to form a separate market to advertising in national or metropolitan newspapers, magazines, other forms of print advertising such as direct mail or letterbox advertising, or advertising via other media such as local television, radio, and internet outlets.
  - Market inquiries indicated that alternative forms of advertising were limited substitutes for most local advertisers, who comprised the majority of customers of local newspapers.
  - Local advertisers seek to advertise to audiences based within their local area. Accordingly, local newspapers distributed outside each of these areas would be unlikely to be close substitutes.
  - Regional newspapers that covered both the Kiama District and the Lake Illawarra area such as Fairfax's *Illawarra Mercury* were considered to be, at best, at the margins of the relevant markets. Market inquiries indicated that the *Illawarra Mercury* primarily provides content for a wider audience across the Illawarra region. It attracts larger regional or national advertisers at higher advertising rates and accordingly, is unlikely to be a viable alternative for a significant proportion of local advertisers.
34. However, as the ACCC's investigation was truncated by the finding that the SIP Newspapers were likely to exit the industry with or without the proposed acquisition, the ACCC did not reach a concluded view on the relevant markets for the supply of advertising opportunities. For the reasons outlined below, the ACCC found that the proposed acquisition was unlikely to result in a substantial lessening of competition, irrespective of how the relevant markets might be defined.

### ***Other markets***

35. The ACCC did not find it necessary to consider further possible markets relating to the acquisition of content from content suppliers, or the supply of content to readers, in the context of this matter. For the reasons outlined below, the ACCC found that the proposed acquisition was unlikely to result in a substantial lessening of competition, irrespective of how the relevant markets might be defined.

### **Competition analysis**

36. To demonstrate that a merger will not substantially lessen competition due to the prospective failure of one of the merger parties and the exit of those assets from the industry in question, it must also be shown that the likely state of competition with the merger would not be substantially less than the likely state of competition after the target has exited and the target's customers have moved their business to alternative sources of supply.
37. The ACCC's market inquiries identified that the proposed acquisition is likely to result in the aggregation of the only suppliers of newspaper advertising opportunities in the Kiama and Lake Illawarra areas, and potentially, the only acquirers and suppliers of local content in these areas.
38. The ACCC's market inquiries also raised some concern that the prospects for new entry in the relevant markets may be limited. In particular, market participants noted that while capital costs of new entry for a small scale newspaper were not likely to be substantial, generating a sufficient readership base to attract advertisers was considered to be a significant difficulty for a new local or community newspaper.
39. Market inquiries also showed that it would be necessary for a new entrant to offer lower prices for advertising and this may cause a new competitor to incur financial losses for a period of time until the newspaper established a sustainable readership, increasing the risks of new entry.
40. Whilst the ACCC noted these factors, it found that in the absence of the proposed acquisition, each of the SIP Newspapers would be likely to imminently exit the industry, no alternative buyer was likely to acquire the SIP Newspapers, and accordingly, they would cease to represent an actual or potential source of supply (or other constraint) in any relevant market that might be identified. Further, it was found that it would not have made any material difference to the competitive environment if the SIP Newspapers were allowed to fail and its customers had to find new suppliers, than if the businesses (with their customer base) were transferred to Fairfax. Accordingly, the ACCC found that the state of competition with the acquisition was not likely to be substantially less than the state of competition if the proposed acquisition did not proceed.

## **Conclusion**

41. On the above basis, the ACCC formed the view that the proposed acquisition by Fairfax of SIP's *Kiama Independent* and *Lake Times* newspapers would be unlikely to result in a substantial lessening of competition in contravention of section 50 of the Act.