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Dear Interested Party

### **Request for submissions: Nine's proposed merger with Fairfax**

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Nine Entertainment Co Holdings Limited's (**Nine**) proposed merger with Fairfax Media Limited (**Fairfax**) (the **proposed merger**).

Nine and Fairfax are both ASX-listed companies with a wide range of media assets. Details regarding their assets and the proposed merger can be found at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- how closely Nine's and Fairfax's media platforms (for example, print, digital or online, TV or radio) compete in the supply of content (such as news and information) to consumers and the supply of advertising space to advertisers
- the impact on choice and volume or range of the news and information available to consumers (for example, will there be less variety of topics covered; less compelling presentation of issues; less vigorous investigation of issues; increased proportion of advertising) due to a reduction in competition
- the impact on prices for consumers, advertisers and content suppliers
- whether there are particular media platforms (for example, print, digital or online, TV or radio) or geographic areas that will be affected by changes in competition.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **5pm on 7 September 2018**. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: *Submission re: Nine - Fairfax*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Nigel Vise on 03 9290 1468, Zac Sotidis on 03 9658 6487 or Stella Leung on 03 9658 6444.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

***Confidentiality of submissions***

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner  
General Manager  
Merger Investigations

## Attachment A

### Nine

Nine is an ASX-listed Australian media and entertainment company. Its main business activities involve its free-to-air television business, digital publishing assets, on-demand video services and television content production and distribution.

Nine sells advertising opportunities across its free-to-air television, digital and video media assets, including premium offerings (which typically involves advertising across platforms and integration into content). It operates an advertising sales platform, 9Galaxy, which automates the buying and selling of non-premium television airtime, and will be expanded to also cover broadcast video on demand (BVOD) and streaming inventory.

#### *Television and video assets*

Nine operates five linear channels of content: 9Nine (HD and SD), 9Gem, 9GO!, 9Life and 9Extra. Nine's television broadcast licences cover Melbourne, Sydney, Perth, Adelaide, Brisbane, Darwin and Northern NSW (servicing the following regions: Newcastle and Hunter, Central Coast, Tamworth and North West, Mid North Coast, Northern Rivers and the Gold Coast).

As part of its program supply arrangement with Southern Cross Austereo, Nine also produces weekday regional news services in Southern NSW, Victoria and Queensland. Nine has also granted an exclusive licence to Southern Cross Austereo to broadcast 9Nine, 9Gem, 9Go and 9Life in those regional areas.

Nine's BVOD service, 9Now, supplements its free-to-air offering by providing viewers with free online catch-up services and live streaming. Nine is also a 50% joint venture partner (with Fairfax) in Stan, a subscription video on demand (SVOD) platform.

#### *Digital media assets*

Under the umbrella of Nine.com.au, Nine operates the satellite sites of 9Honey, 9news.com.au, 9Pickle, 9Finance and wwos.nine.com.au. Nine also owns PedestrianTV, a youth publishing business, and is a majority stakeholder in CarAdvice, a publisher of online automotive editorial content in Australia.

#### *Other assets, ventures and partnerships*

Nine's other businesses and investments include interests in Future Women, Literacy Planet, RateCity, Yellow Brick Road, Australian Premium Ad Exchange (with Fairfax), Your Money and TX Australia Pty Ltd. Nine has a long-running strategic relationship with Microsoft, selling Microsoft's suite of advertising products while leveraging its technology, data, insights and innovation. Nine also has a strategic agreement with data exchange company, Data Republic.

### Fairfax

Fairfax is an ASX-listed company with a portfolio of information, marketplace and entertainment assets. It publishes metropolitan, agricultural, regional and community newspapers, financial and consumer magazines. The group also includes several classified, transaction and social websites. It sells subscriptions, as well as advertising opportunities to advertisers across its platforms.

### *Print and digital media assets*

Fairfax's Australian Metro Media (AMM) business unit publishes:

- print mastheads including *The Sydney Morning Herald*, *The Age*, *The Australian Financial Review* and *The Sun-Herald* and corresponding websites
- digital-only publications such as [BrisbaneTimes.com.au](http://BrisbaneTimes.com.au) and [WAToday.com.au](http://WAToday.com.au).

Fairfax's AMM business unit is responsible for Fairfax's lifestyle brands and publications, which include Good Food, Essential Baby and Traveller as well as Fairfax's investments in other digital-focused businesses including AllureMedia (digital publishing), RSVP Oasis (online dating), Drive (motoring), Weatherzone (weather services), Skoolbo (online education), Healthshare (e-health) and beauty (Bellabox).

Its Australian Community Media business unit publishes more than 160 regional publications and community based websites including:

- 14 regional daily newspapers such as *The Canberra Times*, *Newcastle Herald*, *The Examiner* (north east Tasmania), *The Border Mail* (Albury-Wodonga), *The Advocate* (north west Tasmania), *The Courier* (Ballarat) and *The Illawarra Mercury* and their corresponding websites
- a significant number of non-daily regional newspapers mainly in NSW but also in other states and territories
- agricultural publications including *The Land*, *Queensland Country Life*, *Farm Weekly Overview* and [FarmOnline.com.au](http://FarmOnline.com.au)
- specialist publications including *Australian Senior* and related publications.

### *Domain*

Fairfax has a 59.4% shareholding in real estate media and technology services business Domain Holdings Australia (Domain). Domain provides property marketing and other real estate content for residential, new development and commercial properties through brands such as Domain, Allhomes and Commercial Real Estate.

Domain also provides:

- data and technology services to real estate agencies through customer relationship management (CRM) software, property data subscriptions and research, and property inspection management tools
- home loan brokerage, utilities product comparison and connection, and home improvement and local trade services

Brands include Allhomes, Review Property, [Commercialrealestate.com.au](http://Commercialrealestate.com.au), APM PriceFinder, MyDesktop, Homepass, Compare & Connect, Domain Loan Finder and Domain Insure.

### *Radio assets*

Fairfax has a 54.5% interest in radio broadcaster Macquarie Media Limited. Macquarie Media Limited is a national network of news and talk stations, including 2GB in Sydney, 3AW in Melbourne, 4BC in Brisbane and 6PR in Perth, as well as Macquarie Sports Radio.

### *Other*

Fairfax has a shareholding of approximately 47% in Australian Associated Press Pty

Limited, an agency that provides news content to Australian media organisations. Other shareholders include News Corporation and West Australian Newspapers.

Fairfax is also a 50% joint venture partner (with Nine) in SVOD service Stan.

### **The proposed merger**

On 26 July 2018, Nine and Fairfax announced their intention to merge their businesses via a scheme of arrangement. Under the proposed merger, Nine shareholders will own 51.1% of the combined entity with Fairfax shareholders owning the remaining 48.9%.

### **ACMA**

The Australian Communications and Media Authority (ACMA) enforces media diversity and control rules. On 26 July 2018, ACMA publicly stated that, based on the information available at the time, the merger between Nine and Fairfax would be compliant with the media diversity and control rules administered by the ACMA. More information about those rules is available on ACMA's website:

<https://www.acma.gov.au/Industry/Broadcast/Media-ownership-and-control>

### **ACCC approach to media mergers**

The key purpose of the merger provisions of the *Competition and Consumer Act 2010* (the Act) is to protect *competition* in markets in Australia, including media markets, by prohibiting mergers or acquisitions that are likely to substantially lessen competition in any market.

In this matter we will consider the likely effect of the proposed merger on competition as it affects readers and viewers, advertisers and those selling content to media outlets.

For readers and viewers, the ways in which a reduction in competition in the media industry might manifest include:

- reduced volume or range of news or other content (for example, less variety of topics covered, less compelling presentation of issues, less vigorous investigation of issues, increased proportion of advertising)
- less choice for consumers in terms of the content produced (that is, less diversity of views provided or fewer different “angles” taken on stories)
- higher prices (for example, more content behind paywalls).

For advertisers a reduction in competition might manifest itself through higher prices or lower levels of service. For sellers of content to media outlets, a reduction in competition might manifest itself through lower prices paid for that content.

The “substantial lessening of competition” test which we must apply focuses on the extent to which the merger parties constrain each other, and the effect that removal of this competitive constraint will have on prices, quality or choice. It is not the same as a diversity (range of views) or plurality (number of voices) test and is not a public interest test. However, the potential impact on diversity and plurality can be relevant to assessing whether there is a lessening of competition.

Further details about the ACCC's approach to assessing mergers in the media sector is set out in the ACCC's *Media Merger Guidelines 2017*.

## Attachment B

1. If you are representing a business or organisation in providing your submission, please provide a brief description of the business or organisation.
2. Please outline the reasons for your interest in the proposed merger, including any commercial relationship/s with either of Nine or Fairfax.

The questions below have been separated into categories, however, you can answer any questions from any category. Competitors or other media companies should please consider all questions.

### Questions for consumers/readers/viewers

3. To what extent do Nine and Fairfax compete with one another for the supply of content (such as news or information) to consumers? In your response, please identify:
  - a. the Nine and Fairfax media platforms (for example, print, digital or online, TV or radio) and brands that compete with each other
  - b. how Nine and Fairfax compete (for example, by being the first to break a story, by the range of their stories, by the extent of their investigation, by presenting stories in a compelling fashion for consumers/readers/viewers, by taking a different “angle” on a story)
  - c. whether your response is different in certain geographic areas compared to others. If so, please explain in which geographic areas you consider Nine and Fairfax compete most closely.
4. Please identify and describe other media suppliers that compete with Nine and Fairfax for the supply of content (such as news or information) to consumers. In your response, please identify:
  - a. these media suppliers’ specific media platforms (for example, print, digital or online, TV or radio) and brands that compete with Nine’s and Fairfax’s media platforms and brands
  - b. how these media suppliers compete with Nine and Fairfax (for example, by being the first to break a story, by the range of their stories, by the extent of their investigation, by presenting stories in a compelling fashion for consumers/readers/viewers, by taking a different “angle” on a story)
  - c. whether your response is different in certain geographic areas compared to others. If so, please explain in which geographic areas you consider these media suppliers compete most closely with Nine and Fairfax.
5. If the proposed merger proceeds, do you consider that the content offerings of the merged Nine-Fairfax is likely to change compared to Nine’s and Fairfax’s current offering? How will it change and why will it change? Will any change be due to less competition?
6. If the proposed merger proceeds, do you consider that there will be an impact on the choices available to consumers/readers/viewers? Please explain the reasons for your view. Please provide examples. Will any change be due to less competition?

7. Are there any particular aspects or features of Nine's or Fairfax's media platforms (for example, print, digital or online, TV or radio) or brands that you value, which means that a different media platform or brand is not a suitable alternative? Please identify the specific aspects or features (for example, local news/entertainment or lifestyle/sports content, a particular format/package of content, frequency of publication).
8. For readers of Fairfax publications (including papers or online sites), what other sources of news or information do you have which you consider to be substitutes, if any? If the price of the Fairfax publication you purchase (or access online) increased or the quality declined (for example, less variety of topics covered, less compelling presentation of issues, less vigorous investigation of issues, increased proportion of advertising), what would you switch to for your news? Would it be another written publication (that is, newspaper or online), or other source of news such as television, radio or magazines?
9. For viewers of Nine News or current affairs programs, what other sources of news or current affairs do you have which you consider to be substitutes, if any? If the quality of the Nine News or current affairs programs were to decline (for example, less variety of topics covered, less compelling presentation of issues, less vigorous investigation of issues, increased proportion of advertising), what would you switch to? Would it be another free-to-air television station, radio, magazines, online, print or other source?
10. For listeners of Macquarie Radio (for example, 2GB, 3AW, 4BC and 6PR), what other sources of news, views or information do you have which you consider to be substitutes, if any? If the quality of the Macquarie Radio programs were to decline (for example, less variety of topics covered, less compelling presentation of issues, less vigorous investigation of issues, increased proportion of advertising), what would you switch to? Would it be another radio station, television, magazines, online, print or other source?
11. For readers/viewers of Domain (print, digital or online), what other sources of real estate information do you have which you consider to be substitutes, if any? If the quality of the Domain offering were to decline, what would you switch to for your real estate information?
12. For viewers of Stan, what other sources of video entertainment do you have which you consider to be substitutes? If the quality of the Stan offering were to decline, what would you switch to for your video entertainment?
13. The merged Nine-Fairfax would have a 100% ownership of Stan subscription video on demand (SVOD). Will this have an impact on competition in SVOD, news or other content?

#### **Questions for advertisers**

14. Please identify the media platforms (for example, print, digital or online, TV or radio) that you use for advertising and identify the specific Nine and Fairfax publications, TV or radio channels or websites that you use. In your response, please explain what (if anything) distinguishes Nine's and Fairfax's platforms (including Domain) from other advertising channels.
15. Do you consider print, digital or online, TV and radio advertising to be a substitute for each other for advertising? Please explain why or why not. If you advertise on a single media platform only, please explain why.



16. Are there fewer available advertising opportunities in particular geographic areas? Please identify these specific geographic locations.
17. If there was an increase in the price of advertising and/or a reduction in audience reach (for example, readership, viewers or listeners) of the media platforms that you currently use for advertising, what would you do? Would you switch to another media platform? Please explain why or why not and provide examples.
18. Do you purchase online display advertising (that is, digital advertising on websites) from Nine and/or Fairfax? If yes, please explain whether you consider Nine and Fairfax websites to be suitable alternatives for each other and provide examples. What other websites could you use?
19. Have you ever used the presence of Nine to negotiate a more favourable advertising arrangement with Fairfax or vice-versa? If yes, please provide details.
20. Have you observed other media suppliers changing their offers for advertising arrangements in response to offers from Nine or Fairfax? If yes, please provide details.
21. If the proposed merger proceeds, will there be an impact on your ability to negotiate favourable commercial arrangements for advertising opportunities? Please explain why or why not and provide examples.

#### **Questions for content suppliers**

22. To what extent do Nine, Fairfax and other media suppliers compete to acquire your content? In your response, please describe any requirements that you have for acquirers of your content (for example, access to particular types of delivery platforms or actual or potential audience reach).
23. If the proposed merger proceeds, will there be an impact on your ability to negotiate favourable commercial arrangements for the supply of content (for example, news stories) to media suppliers? Please explain why or why not and provide examples.
24. What will Fairfax's ownership stake in Australian Associated Press mean for competition in the provision of content after the merger?

#### **Other information**

25. Do you consider that the merged Nine-Fairfax would have an increased ability to bundle content, bundle advertising opportunities or cross-promote? If yes, please explain whether and how these practices may impact on competition.
26. If the proposed merger proceeds, will there be an impact on new entry or expansion by media suppliers? In your response, please identify any barriers to entry or expansion (for example, financial, technological, reputational, regulatory, etc.).
27. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed merger under section 50 of the Act.