The Tribunal accepted the force of the submissions made by the Corporation. It appeared clear to the Tribunal that there was a desire to enlarge the inquiry in respect of the application to one in which the merits of the arrangements for the production and supply of programmes to the BCNZ by Northern Television would be examined and considered in the public interest.

The Tribunal did not consider this application was the appropriate vehicle for that consideration.

It may well be that, if there was a concluded contract between the parties, parts of that contract would be relevant to the present application. But there was no such contract. The BCNZ had indicated, however, that it would impose the normal conditions requiring programme suppliers to comply with rules and legal requirements and retain the right of the Corporation to require deletions and alterations and to keep to an agreed programme format.

The Tribunal considered that all the arrangements between Northern Television and the BCNZ were not relevant to the sole question before us, namely, whether or not the Corporation should be permitted advertisements (or advertising programmes as they are known in the Act) during certain hours on Fridays between 25 June and 17 December 1982. If a concluded agreement had been entered into, one or two clauses, such as those regarding the advertising content, would have been relevant to the determination of the application. A draft of such provisions is not.

Sight must not be lost of the basis of the proceedings. The question that the Tribunal has to decide is not whether the internal arrangements between a programme supplier and the Corporation are adequate or suitable or desirable but whether the broadcast of commercials on Fridays is to be approved or not.

The Tribunal made it clear that it would not conduct an investigation into existing or future arrangements between these two organisations. If, as was suggested by ATN, the agreement entered into proved to be in breach of the Act or the warrant conditions there were remedies under the Act which could be pursued when an actual broadcast had taken place.

The Tribunal therefore declined to make an order for production of the contract or a draft copy thereof and confirmed that that would have been its decision in relation to a subpoena.

At the request of Mr Giles we have set out above the reasons for our decisions on these preliminary matters.

Hearing—The Tribunal indicated it would be prepared to hear argument as to whether the present application or an application for an amendment to the warrant was the appropriate procedure. It was not prepared to hear argument as to whether or not any different type of application or procedure was also required before broadcasting could legally be undertaken.

The Tribunal does not undertake supervision of proposed broadcasting activities but deals with applications that are made to it. While it can, in appropriate circumstances of its own motion, amend a warrant, it is not appropriate that an application for one sort of consent or approval should trigger off a general inquiry as to whether or not some proposed arrangements (which were not yet concluded) would constitute a breach of another section of the Act.

With one exception there is no power in the Act for the Tribunal to prevent the broadcast of any programme. In the view of the legislature, it is undesirable that the Tribunal should have the power to prevent broadcasting of any particular programmes except under one particular procedure which has to be invoked by the Minister of Broadcasting. It is therefore undesirable for the Tribunal to consider possible future breaches of the Act or to give interpretations in advance of events or before the factual position is established.

In evidence Mr A. W. Martin, Director-General of Television New Zealand, said that the purpose of the application was to enable the Corporation to enter into a contract for the supply of a series of hour-long magazine programmes which would be broadcast each weekday morning between 1100 hours and noon for an initial experimental period of 6 months. The particular time zone was not much sought after by advertisers. To generate sufficient revenue it would be necessary to have the advertising capability for every weekday morning.

As a result of an inquiry by the Tribunal in respect of an unrelated application, the Corporation indicated through Mr Martin in the present case that it could offer a *quid pro quo* on an advertising day. The Corporation did not schedule advertising during periods when children's programmes were broadcast, even on those days when advertising was permitted. Therefore, advertisements were not broadcast on Television One between 1030 hours and 1100 hours and between 1430 hours and 1600 hours on weekdays. He suggested that, if there was to be a compensating adjustment, it be that the network show no commercials between 1030 hours and 1100 hours on Wednesdays and Thursdays.

In cross-examination Mr Martin confirmed that there was no other similar arrangement with a contractor for the supply of programmes. He indicated that the programme could be taped beforehand but the present plan was to send it out live (or more correctly to send it direct from Northern Television for transmission as it may well contain some recorded material).

The Corporation would retain the right to refuse commercials although this would not generally be exercised before broadcast. It would have the same rights as it had with its own commercials which were pre-assessed. It expected that Northern Television would do the pre-assessment in respect of commercials shown on this programme. He said it would not be in the interests of Northern Television to allow breaches of the rules or standards to occur.

In answer to Mr de Bres, Mr Martin agreed that the existing rules (which imposed a maximum of 9 minutes per hour average advertising content over a day's programme and no more than 20 minutes in any period of 2 hours) would apply.

He said, however, that it was proposed to limit advertising to 11 minutes per hour for the 1 hour programme. The Corporation would be prepared to accept a condition to that effect. He thought there would be both recorded and live advertisements but he was not aware of any proposal for sponsorship of programmes.

He considered the proposed programmes would be of advantage to the Corporation which could not have provided a programme as costly as the type proposed to be broadcast by Northern Television, without employing more staff and re-organising to try to gain extra advertising revenue. He thought the proposal would be marginal financially.

Mr de Bres was concerned to maintain the non-commercial 2 days per week as sacrosanct. In the opinion of the PSA the BCNZ was already required to obtain more revenue from advertising than it should. There should be less commercial time on television rather than more. The *quid pro quo* proposed lost its effect because it occurs on another day. People would be left with the impression that there was advertising on Friday and thus the benefit of freedom from advertising on a particular day of the week was lost. Furthermore, the programme would adjoin children's programming with which the Corporation chooses not to associate advertising. Mr de Bres submitted that the days rather than the hours should be non-commercial.

The Tribunal is satisfied that the programme will provide an increase in local programming in substitution for imported programmes and that this is desirable in the public interest.

The Tribunal has decided that it will permit the advertising on condition that the Corporation desist from advertising continuously for 1 hour per week at a time during which it at present regularly broadcasts commercials. The time can be selected by the Corporation.

In doing so the Tribunal has taken into account such of the provisions of section 80 as are relevant to the application. Apart from the public interest, to which we shall refer again shortly, the needs of the audience have to be borne in mind. The proposal is a new one and is entitled to a trial for a reasonable period. The Corporation remains responsible for the quality of the output and compliance with the Act, the Regulations, and the Rules and Standards.

It should be clearly understood that if there is a failure to observe the legal requirements, the Corporation will not be able to avoid that responsibility because the advertising or programme material was supplied by a contractor. It will have to decide what measures it must take to ensure compliance with the rules and standards.

The desirability of an advertising outlet or the attractiveness of advertising charges, were not put forward as arguments for granting the application. The advertising limit of 11 minutes, having regard to the preceding and succeeding commercial free time, is not unreasonable. There will be practical limits of audience reaction if advertising gets out of balance with normal advertising scheduling of Television New Zealand.

The arguments as to the undesirability of regular exceptions to the non-advertising day, have some weight in respect of any long-term application.

The Tribunal has accepted in the past, particularly in relation to special occasions or sporting events, that there might be some intrusion on the non-commercial day (other than Sunday) for special reasons and, in some cases, if there is a consequent surrender of advertising time on another day.

We consider the latter is important from the point of view of the consumer, the television viewer. There should be no reduction by gradual erosion of the normal non-commercial content. That should be decided on a proper application in which the issues are dealt with.