

always remained with I.B.C. and had not been influenced by either I.N.L. or I.P.L.

In evidence for I.N.L., Mr Robson produced a report by a firm of Wellington sharebrokers on the private broadcasting industry with which he broadly agreed. He considered that *Radio New Zealand* had stolen a march on the private industry. It now dominated. Better competition from the private stations was needed. There was a need for greater emphasis on management training and management expertise in the private radio industry. He said that I.N.L. had adopted a policy of in-service training.

He also said that each entity in the I.N.L. group had editorial independence, independent executive responsibilities and management decentralised from I.N.L. group head office. It would be I.N.L.'s policy to apply that to I.B.C. which would retain its individual character and local independence. He said I.B.C. would gain advice on news and local programme content and assistance in advertising sales with a scope for joint advertising sales promotions with I.P.L. the publisher of the *Waikato Times*. Mr Robson confirmed broadly ownership of media in the area which was fully canvassed at the Tribunal hearing in 1977. He claimed however that there were a variety of programmes and news sources available from a range of stations which could be heard in the area. In conceding there may be 1 news service for *Radio New Zealand*, he said there was a different presentation of news on the commercial and non-commercial networks. The *Waikato* was covered by daily newspapers, the *New Zealand Herald* and the *Auckland Star* besides I.P.L.'s daily newspaper.

We accept that the *New Zealand Herald* does provide a newspaper service to Hamilton. But the *Auckland Star* and the non-Hamilton radio services are not directed to the local audience and cannot be regarded as alternative sources of local or regional news. The differences of presentation between *Radio New Zealand* commercial and non-commercial news are not significant in the context of this application.

I.N.L. would also give financial backing to an application for a FM warrant by I.B.C. It was planned that such an application would involve a 75 percent participation by I.B.C. and a 25 percent of the shares offered to *Waikato* shareholders. This would reduce the net content of I.N.L.'s investment in the FM station to a little over 38 percent.

The Tribunal has given consideration to the factors which were previously considered in the application for amendment to the warrant and which it considers should be taken into account in respect of this application.

It has also taken into account the development of FM broadcasting. In that respect on the recommendation of the Tribunal, Government policy is to provide no impediment to newspaper companies being involved in the ownership of FM stations. The Tribunal, on balance, has therefore not placed any weight one way or the other on the benefit that this shareholding increase might bring to any application that might be made by I.B.C. or any other company in relation to a FM warrant.

The situation remains that the Tribunal previously expressed its concern (for the reasons stated in Decision No. 3/77) that, in a city with only 1 local daily newspaper and basically 2 radio news services, 1 of those radio news services should be owned or controlled by the owners of the newspaper.

There is no need for the Tribunal to restate the reasoning which led to its previous decision. It does not resile from the concerns expressed in that decision. Primarily it was concerned to protect the independence of 1 of 2 radio news services.

However, we have now taken account of a number of factors. The proposal before it is not an application for a simple amendment to the warrant to permit news media ownership beyond 30 percent but is a specific application by a specific company which will remain in force only in respect of that company.

It has also been impressed by the fact that no attempt has been made by I.N.L. to influence the editorial direction or control of news and current affairs on the station.

The Tribunal accepts that the I.N.L. role has been to maintain an investment and not an active participation in the business. An ownership of more than 50 percent of the capital will change the character of that investment to one of active business participation.

It believes however that there would be benefits accruing from that association, but is concerned that there be adequate safeguards to preserve for the listeners in the area an independent source of news which is not associated with or influenced by either the owners of the newspaper company or those involved in the running of that company or by its newspapers, editors.

The Tribunal considered an objection from a shareholder who said that other shareholders would be prepared to take up the capital and maintain a local presence. Mrs E. L. F. A. Tompkins submitted that shares should be held by individuals and companies residing and carrying on business in the station's area. Shareholders would be willing to buy the shares now offered. However we were told that there were parcels of shares now available on the market but there was a dearth of buyers.

It has also considered the objections from Mr B. N. Meltzer who presented submissions on behalf of himself and 5 others because of its tendency to create a monopoly.

The submission emphasised the competition which it said should occur, the danger of the station losing its local bias when controlled by a national concern and the possibility of *Radio Waikato* losing its relatively independent status in news content, advertising and music content.

The submission said that I.N.L. would possess the resources to engage in price cutting with which smaller radio stations could not compete. This would be relevant when applications are made by smaller groups wishing to enter the market and obtain FM broadcasting licences.

The Tribunal on balance does not consider that it should place prime importance on the economic competition which to some extent is regulated by the provisions of the Commerce Act. It is significant that there was nobody else in the newspaper or radio industry on this occasion who objected on the grounds of a dominance by I.N.L.

The Tribunal has therefore given the most consideration to the protection of the independence of the news and current affairs programmes of *Radio Waikato* and the strengthening of the warrant holder.

The Tribunal must be concerned that the increased shareholding would give control of I.B.C. to the I.N.L. group which would enable the appointment of its directors and thus the control of the conduct of the station and the engagement of news staff. However, it did consider that if satisfactory arrangements could be made for the independence of the news operation, which might well require greater independence of the editor than would normally be contemplated by a board of directors, the Tribunal would be prepared to grant the specific consent. (In considering news it regarded the current affairs programming as part of the news operation.)

The Tribunal has been influenced by I.B.C.'s leaving the station in the hands of local directors. If that position is maintained and the independence of the news and current affairs programmes guaranteed then the ownership control could be relaxed in respect of this shareholder on conditions.

The Tribunal therefore made the following statement after retiring to consider its decision:

"The Tribunal is not satisfied on the evidence that the consent in the form sought should be granted, and we would in the normal course give our reasons later.

"The Tribunal would be prepared to consider consent in terms of the warrant condition if—

1. The warrant holders, I.P.L. and I.N.L., entered into a formal arrangement to maintain the independence of *Radio Waikato*'s news gathering and presentation and the independence of the editor of *Radio Waikato*.
2. Such an arrangement were effected in a way that would ensure any breach would be a breach of the condition of the warrant.

"The consent, we should say, if granted, would in no way imply any endorsement of any application made for a FM warrant by any company.

"We are, as I have said, aware of the time constraints about acquisition of shares and trust that what we have said may be sufficient to satisfy any contractual arrangements with Mr Waddington. It may be possible for some deed to be entered into in respect of which an undertaking for its enforcement would be given and incorporated as a condition of the warrant.

"If an immediate consent is required for contractual reasons I have mentioned, the Tribunal would be prepared to grant it on the undertaking of counsel or of I.N.L. itself to divest itself of the shares it acquires from Mr Waddington if the matters mentioned above were not completed to the satisfaction of the Tribunal within 3 months or such other time as may be approved by the Tribunal."

After receiving instructions, Mr Maclaren made the following statement:

"I.N.L. is prepared to enter into arrangements as to the independence of news, current affairs and the News Editor of I.B.C. Secondly that I.N.L. undertakes to divest itself of the shares acquired from Mr Waddington if the aforementioned arrangements required by the Tribunal are not effected within 3 months or such other time as the Tribunal may approve."

The Tribunal then said that on the basis of the undertakings given by Mr Maclaren consent would be granted.

The Tribunal indicated it would give its reasons for the decision in writing.

The Tribunal has not laid down the methods which should be used to attain the end nor set about, at this stage, defining the independence it referred to. Rather it considers it appropriate for the warrant holder, I.N.L. and possibly its own executive staff to consider what might be placed before the Tribunal for