

Decision No. 20/86
BRO 134/85

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of applications by BRIERLEY INVESTMENTS LTD. and HAURAKI ENTERPRISES LTD. for consent under the Broadcasting Regulations and in the matter of applications for approval to act as directors by R. A. BRIERLEY, B. A. HANCOX, P. D. COLLINS, T. J. N. BEYER, D. N. CHALMERS, S. J. CUSHING, W. M. LOEWENTHAL and D. H. McDONALD and in the matter of applications for approval to act as directors by D. H. McDONALD, P. B. NELSON, J. A. MCCREADY, C. J. THOMPSON, J. K. W. ISLES, A. I. GIBBS and C. R. BIDWILL:

Chairman: B. H. Slane.

Member: Ann E. Wilson, Robert Boyd-Bell.

Counsel: S. P. Bryers for the applicant. N. C. Anderson, Q.C., and J. B. Thomson for the Broadcasting Corporation of New Zealand. A. C. Sorrell for Stereo FM Ltd.

Appearance: A. J. Simpson for the New Zealand Public Service Association Inc.

Hearing: Auckland, 5 August 1986.

INTERIM DECISION

THE applications made arise out of a decision of the Broadcasting Tribunal (Decision No. 5/86) in which Hauraki Enterprises Ltd. ("Hauraki") and Brierley Investments Ltd. ("Brierley") sought the Tribunal's consent pursuant to regulation 20 (4) (b) of the Broadcasting Regulations 1977 to Hauraki Enterprises Ltd. and Brierley Investments Ltd. having prescribed interests in the radio warrants for Radio Hauraki (1XA) and Radio I (1XI).

Consent is now sought to hold prescribed interests as set out:

Brierley: Hauraki Enterprises Ltd., Capital City Radio Ltd., Radio I Ltd., Radio Avon Ltd.

Hauraki: Capital City Radio Ltd., Radio I Ltd.

We do not intend to repeat the circumstances set out in that decision.

Brierley has investments directly and indirectly in several warrant holders:

Hauraki is 59 percent directly owned by Brierley.

Capital City Radio Ltd. is 16 percent directly owned by Brierley. In addition New Zealand News Ltd. owns 15 percent and Hauraki 30 percent.

Hauraki owns 61.2 percent of Radio I Holdings Ltd.

Brierley owns 28 percent of Radio Avon Ltd.

A previous holding in Foveaux Radio by Radio Avon Ltd. was subsequently disposed of, as was Avon's interest in Radio Otago.

In addition, we were informed that Brierley has nominal shareholdings in most public listed companies, including warrant holders which are public listed companies.

Nevertheless, in July Brierley advised the Tribunal that it had sold its shares in Foveaux Radio and Radio Otago. Subsequently the Tribunal was advised that New Zealand News had disposed of its shares in Hawke's Bay FM Ltd.

In support of the application, Mr Bryers called evidence from Mr J. A. McCready, managing director of Hauraki Enterprises Ltd. and Mr C. J. Thompson, an employee of Brierley and a director of both Hauraki Enterprises Ltd. and Capital City Radio Ltd.

We do not find it necessary to traverse the evidence. The Tribunal has a good deal of information about the background relating to the various interests in private radio stations in New Zealand. It has also heard the cross-examination by and submissions from Messrs Anderson and Simpson. Mr Sorrell for Stereo FM Ltd. did not oppose the applications in principle.

The Tribunal has decided to consent to the acquisition of the prescribed interests on the basis of conditions or undertakings to be given by the applicants.

The Tribunal is satisfied that the interest proposed to be held in the three centres that are the subject of these applications, provided they do not become 100 percent owned, will on balance provide more advantages to the development of private radio in New Zealand and the development of broadcasting generally, than would the refusal of those consents.

Although we have made reference before to the way in which such acquisitions were made and held without applications for consent, the Tribunal has now made its position clear. Any party who faces the Tribunal in future without having sought consents in doubtful cases can expect a severe view to be taken of the situation.

We have noted that there was no opposition from within the private radio industry although the broadcasting industry is known as one with a variety of views. The position of the PSA, that the strengthening of private radio industry by some common ownership would lead to dull programming, rang a little hollow considering the Tribunal's knowledge of the number of radio stations owned and operated by one owner, the Broadcasting Corporation of New Zealand.

The Tribunal does not consider the present levels of ownership objectionable but any further increase in the levels of ownership in these or other stations by Brierley interests should require the consent of the Tribunal.

There was one element which caused us considerable concern. This is the fact that a Brierley subsidiary is New Zealand News Ltd., the publisher of newspapers in Auckland and Christchurch as well as in other centres. Although the interest of New Zealand News in Capital City Radio was acquired before Brierley invested in New Zealand News, we must regard the companies as very closely associated.

We therefore consider it undesirable that the interest in the Avon station should exceed 30 percent, which is the maximum permitted under the news media condition applicable to that warrant.

We also consider there should be no increase or change in news media ownership without the consent of the Tribunal in Radio I, Radio Hauraki or Radio Windy. The levels are already high following the Tribunal's consent to Radio Otago having an interest in Radio Hauraki, which we saw as some balancing of the news media influence by Brierley in Auckland.

The warrant holders must be willing to consent to a news media restriction in the same terms as the Radio Avon warrant but with the Tribunal consenting to in excess of 30 percent to meet the specific ownership position now.

There is no indication that there has at any time been any Brierley interference in editorial decisions or indeed for that matter in basic daily programming matters.

The impression we clearly have is of a more professional approach between the owners and their directors and management. We find that the introduction of independent radio news and sports services have strengthened the stations.

The Tribunal will hear submissions from counsel as to how best the conditions which the Tribunal wishes to effect should be imposed, whether they be by undertaking or otherwise.

The warrants in respect to Radio Hauraki and Radio I will have to be amended to impose a news media ownership condition.

The Tribunal will also require the deeds offered securing editorial independence of news and current affairs programmes.

For that reason this decision has been made an interim one; the final decision will embody detailed conditions.

On that basis, the Tribunal is prepared to approve the applications made by the directors of Brierley Investments Ltd. and Hauraki Enterprises Ltd.

Signed for the Tribunal:

R. BOYD-BELL, Member.

Decision No. 21/86
BRO 36/86

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of an application for a short-term broadcasting authorisation by the AUCKLAND COUNTRY MUSIC AWARDS INC.:

Deputy Chairman: Ann E. Wilson.

Member: Robert Boyd-Bell.

REASONS FOR DECISION

THE applicant applied for a short-term authorisation for an AM radio broadcasting station at Grafton Oaks Motel, Auckland for the period of 28 days from 30 September 1986 to 27 October 1986, to transmit from 6 p.m. to midnight weekdays and 9 a.m. to midnight on weekends and public holidays (Labour Day).

The purpose stated was to support and promote the New Zealand Country Music Association's "Junior and Intermediate Country Music Entertainer of the Year" event and country music in general, for international "Country Music Month of October".

Commercial content was sought, with a limitation of 4 minutes per clock hour.

Transmission power was 250 watts, with a stated coverage area of greater Auckland and outlying communities.

The draft budget indicated a potential surplus of income over expenditure of \$1,474.