

Messrs Cook and Edwin, Hauraki Enterprises and Brierley Investments Ltd. had given evidence to the Tribunal in the course of an inquiry to advise the Minister of Broadcasting on certain shareholding matters relating to radio broadcasting in New Zealand, part of which involved Radio I.

It is not necessary to traverse the details. It is sufficient to say that this application was based on the fact that there were differences between the approach to the management of Radio I taken by Messrs Cook, Edwin and the majority of the present directors on the one hand and Hauraki's nominee on the board (P. B. Nelson) and A. I. Gibbs on the other. They had hoped that the matter might have been resolved one way or the other by the Tribunal's report but as this has not yet been given to the Minister and there had been a continuing unsatisfactory relationship between some members of the board, the managing director and some shareholders, it was considered that it was not in the interests of anybody for the existing position to continue. It had therefore been decided that Hauraki Enterprises Ltd. would purchase the shares of the other major shareholders which would leave all the shares in the hands of Mr A. I. Gibbs and Hauraki Enterprises Ltd. except for about 10 percent.

The applications made to the Tribunal were limited to seeking the consent of the Tribunal to the acquisition of prescribed interests in a second AM station in Auckland under regulation 20 (4).

In support the following arguments were put to the Tribunal:

1. That Hauraki had had a longstanding and significant shareholding in Radio I.

2. The only feasible solution to the differences between the existing shareholders (other than the acquisition of shares by one party from another) was litigation which would be detrimental to all parties and to the small shareholders.

3. The effect upon competition would be minimal because there are 7 commercial stations in Auckland and Radio I and Radio Hauraki are not directly competing in the sense of seeking identical audiences.

4. Hauraki would immediately apply to convert from AM to FM and would be prepared to undertake to make such an application forthwith. That would further lessen the competition for audience between the two stations.

5. The two stations had high cost structures and BIL wanted some rationalisation but they would be programmed separately.

The application was also supported by Mr Gibbs because it brought to an end a potentially litigious situation.

C. J. Thompson, a director of Hauraki and an employee of BIL gave evidence in support.

The existing directors were Mr Nelson, a chartered accountant appointed by Hauraki, Mr Gibbs, a substantial shareholder of Radio I and also a director of Hauraki, together with Messrs Cook (chairman), Edwin (managing director), A. L. Margan and P. R. Warren, all of whom were parties to the proposed transfer of shares. In total they represented some 90 percent of shareholders, and there was no significant individual parcel among the remaining 10 percent.

The Tribunal was informed that upon the agreement to transfer the shares being approved it was proposed that the existing directors who had sold their shares would resign and Mr McDonald, chairman of Radio Hauraki, would also become a director and chairman of Radio I Ltd. Mr Ross Weavers, an Auckland sharebroker, would be appointed a director and the existing directors Messrs Gibbs and Nelson would remain directors. Both Mr Gibbs and Mr McDonald would then be directors of both Hauraki and Radio I.

Mr Thompson assured the Tribunal that apart from the possibility of joining the news dissemination service being set up in Wellington and the sports news service there was no proposal to combine the news operations.

They would maintain separate autonomous independent editorial control, but Hauraki may take a voice feed from another station later if it became an FM station.

Savings would be made by combining in the cost of a traffic plane and company secretarial and financial services. They would be competing for advertising, but there would be continued use of PRISM. The research done by Radio Hauraki is at present provided on a contract basis to Radio I, but the stations would be independently programmed.

Hauraki on FM would be targeting the 20-29-age group but with less talk. There would be no change in the target audience of either station. Mr Thompson indicated that it was likely that Hauraki would apply to simulcast for a period of 5 years, but it was conceivable the Tribunal may not grant that. Hauraki would accept a period in accordance with the Minister's direction (3 months). It was not proposed to carry on a dual operation or separate programming for Hauraki on AM and FM.

Mr Thompson said BIL had:

1. 52.6 percent of Hauraki. Hauraki owned 24.9 percent of Radio I Holdings Ltd.

2. 100 shares in each of Stereo FM, Independent Broadcasting Co. Ltd., Manawatu Radio Ltd.

3. Less than 5 percent of Northland FM Ltd. directly and indirectly (including a small parcel owned by Hauraki).

4. 14.8 percent in Capital City Radio ("CCR") in which Hauraki has 30 percent). When reminded that CCR Ltd. had advised the Registrar of the purchase of shares by BIL, taking its shareholding to 15.5 percent, Mr Thompson corrected this figure. This directly gave BIL a prescribed interest in CCR.

5. Forty percent of New Zealand Ltd. (An application to increase this to 51 percent was refused by the Commerce Commission and an appeal to the High Court has been heard but no decision given yet).

New Zealand News Ltd. has 14.6 percent of CCR and 25 percent of Hawke's Bay FM Ltd. through Hawke's Bay Newspapers Ltd. These shareholding interests by New Zealand News are by regulation 19 also ascribed to BIL.

6. 27.4 percent of Radio Avon Ltd. of which only 15 percent has been registered. The balance is held in the name of the vendor.

7. Less than 4 percent in Radio Otago Ltd. and 4 percent in Radio Foveaux Ltd. But Radio Avon Ltd. has 24 percent of Otago and 25 percent of Foveaux.

It was submitted on behalf of BIL that in law it does not have a prescribed interest in Radio Avon Ltd. because the excess over 15 percent had not been registered. A nominee of BIL, Mr Croft, a director of CCR had been appointed a director of Radio Avon Ltd.

Mr Laing submitted that, since the Tribunal had consented under regulation 20 to Hauraki having a 30 percent shareholding in CCR, the prescribed interest in CCR thus gained by BIL was also consented to and saved by the consent given to Hauraki.

It was further argued that since Hauraki's shareholding in Radio I was saved by regulation 12 of the 1981 regulations, that regulation 12 extended to protect BIL and exempted it from being deemed to have a prescribed interest in Radio I Ltd.

The Tribunal asked if Hauraki was prepared to give an undertaking to lodge its application within a limited period and confirm that the application for the FM warrant would be in respect of the same target audience as Hauraki's present audience. It was also asked to indicate whether it would confirm that Radio I would be separately programmed (including news services) and whether it was prepared to undertake that if the FM warrant application was declined by the Tribunal Hauraki would divest itself of its shares in Radio I Holdings Ltd.

An oral undertaking was given in respect of these matters and later that day an undertaking was presented in writing but with an added proviso that the divestment would not occur until an application had also been considered and refused in respect of Radio I. The Tribunal considered this to be different from the undertaken given orally during the hearing and asked for a further written undertaking in the original terms.

We then received another written undertaking which dealt with the point raised. However it was different in another respect and that difference had not been brought to our attention. The undertaking was changed to limit the undertaking to divest to the shares now being acquired. (Mr Laing did bring to our attention that this undertaking was given only by Hauraki not by BIL and we accept that).

The Tribunal also asked for confirmation of BIL shareholdings held in other radio companies as Mr Thompson's evidence differed slightly from that stated in the BIL annual report.

Subsequently a statement was filed by Mr Thompson setting out the position regarding shareholdings.

Only when the Tribunal drew attention to the fact that it would appear that BIL would need a consent under regulation 20 to have a prescribed interest in more than two stations and appeared to have needed that consent for some time, was there added to the application a statement that the applicant applied for all necessary consents.

The Tribunal considered this casual approach quite unsatisfactory.

The Tribunal considered the application insofar as it related to the holding of prescribed interests in two warrants in Auckland to be a reasonable one. The Tribunal considered it was not in the interests of radio in Auckland for the dispute between shareholders to continue, but primarily it considered the application justified on the special circumstances that Hauraki would be applying for an FM warrant immediately so the situation would only be temporary. In view of that fact and that the regulations permitted the holding of one FM and one AM warrant as of right, the Tribunal was prepared to grant the application in that respect.

The applicant was therefore informed on 22 December that the Tribunal had approved the application for consent subject to the undertakings given. It was also told that a written decision was being prepared and would be issued after the Christmas/New Year vacation.