

In respect of these matters, it is interesting to note that Mr Thomas attributes to Mr Boyd-Bell's having touched on this issue with Mr Fernyhough, an indication that Professor Schmitt's view may already have been "disseminated".

At a later stage Mr Thomas makes reference to matters becoming obsessive, contagious and paranoid.

In this instance Mr Boyd-Bell opened his questioning of Mr Fernyhough by asking how fashionable it was for a holding company to set up four subsidiaries who essentially sell the same product. It was at this point that the description of the New Zealand wines and spirit business was given at length by Mr Fernyhough.

The reference to fashionability, was clearly based on the reference Mr Fernyhough made earlier, about it being "the conventional wisdom in business circles these days."

And to suggest therefore that there is something sinister about Professor Schmitt having the temerity to discuss with Mr Boyd-Bell matters relating to the Tribunal's hearing, displays a degree of oracle consultation to guess at the Tribunal's thinking which is distorting understanding of these hearings.

Mr Boyd-Bell is an experienced broadcaster who understands and has experience of broadcasting structures. He proceeded to discuss the matter with Mr Fernyhough in terms of regional local news magazine programmes and the actual autonomy. In fact the subject was not a new one and was an obvious one to be raised.

It will be recalled that Mr Fernyhough went on at some length with Mr Boyd-Bell, about matrix organisations, hierarchical companies, cultures and tensions. This coverage of the material certainly does not need any further expansion from Mr Frankham.

(c) It is proposed to call some evidence in respect of an up to date position regarding the introduction of a corporate shareholder. The Tribunal does not know what the evidence is. A draft of the evidence is to be submitted in writing to the Tribunal and a decision will then be made on whether or not it is to be received. In view of the unavailability of Mr Fernyhough this would have to be dealt with next year anyway.

In applying for leave to introduce evidence about a condition that no shareholding interest will exceed 20 percent, Mr Thomas says that Mr Fernyhough and Professor Schmitt agreed that it was three corporate shareholders which would be necessary to control the company and says that Professor Schmitt then added "or two and a friend". He says that Mr Fernyhough sought clarification and Professor Schmitt repeated the comment or the substance of it, and that before Mr Fernyhough could reply, Professor Schmitt said he would not press the point.

Professor Schmitt's statement, says Mr Thomas, conveyed the impression that major corporate shareholders of the status of those backing ITV (or any corporate shareholders for that matter) will or may enter into surreptitious agreements with other ostensibly independent shareholders for the purpose of controlling a company.

There was no question of anything underhand in any questioning. It canvassed rights and the exercise of rights.

I would be very surprised if most people who are as aware of commercial transactions as Mr Thomas, were not aware of the freedom which major corporate shareholders have, as do any shareholders, to form alliances.

But Mr Thomas does not accurately set out what happened. Professor Schmitt put to Mr Fernyhough that he had said that because ITV had four or five corporate shareholders, there was no chance of one gaining control. Professor Schmitt asked whether there was a binding agreement against the sale of corporate shares from one corporate shareholder to another or by two or three of them to one new shareholder.

Mr Fernyhough replied that there wasn't and it was a matter which he intended to raise, but there had been no consideration of it. Professor Schmitt then asked whether the mere existence of four or five of them to start with operated to prevent a gain of control. It was Mr Fernyhough who said that where there are five, if you have one party who sells, it does not affect control if it was sold to an existing party. There was then a discussion about negative control, and it was then Mr Fernyhough, not Professor Schmitt, who said that you had to get two shareholders, at least two, to get to 51 percent.

Professor Schmitt said, "Well, or one and a friend." Mr Fernyhough asked what he meant by that and he repeated, "One and a friend, I mean collusion among three might be a bit difficult to control, but one and a friend, one owning two lots of shares operating with a friend.

(Both corporate and non-corporate shareholders are proposed for ITV.)

There was nothing pejorative about the reference to the possibility of a shareholder gaining control and it was a matter Mr Fernyhough said he intended to raise with the corporate shareholders.

(d) Mr Thomas wishes to call evidence with regard to Mr Reynolds and the Chase organisation so far as his residence is concerned.

The Tribunal considers this a reasonable continuation of the past evidence, provided it can be put briefly. It may be lodged with the Tribunal in draft form and the Tribunal will rule on what evidence may be received. Generally we will receive concise evidence as to the factual situation.

The question of legal professional privilege is outstanding and submissions have been expected from Ms Elias and Mr Thomas.

(e) The position regarding Mr Brierley's residence with some new evidence to be produced. Although the matter was well flagged earlier, it is clearly in the interests of all concerned to have the best evidence available on both this and the Chase position and the same ruling applies as with the evidence relating to Chase and Mr Reynolds.

(f) All except one party wish to see the shareholders' undertakings. These were promised by Mr Fernyhough, when there were references to deeds. It seems a reasonable extension of that promise to allow the documents, if they are now available, to be produced. Mr Fernyhough may do so.

They can be attached to brief written evidence on the point and then leave to cross-examine can be sought if required.

(g) Communication Investments Ltd's position seems to have been confused by company searches. It is appropriate that the position be now clarified as a factual one and the Tribunal ought to be put in possession of those facts. Again, brief written evidence may be given on the point.

Memoranda No. 1 and 2

Mr Thomas has applied in respect of nine sets of schedules to produce rebuttal evidence because of what he describes as misrepresentation and misuse of statistics deliberately undertaken by other parties, because significant quantities of the detail used and the conclusions reached are based on misinterpretations or misunderstandings and the use of inaccurate and misleading assumptions in the comparison of figures which by their nature were not comparable.

In respect of those schedules which Mr Thomas numbered D, F and G, the Tribunal has pointed out that the schedules are to be produced by a TV3 witness. There will be an opportunity to cross-examine that witness on the compilation of the schedule and therefore any application to produce evidence is deferred. Mr Thomas accepts that.

In the case of the schedule marked H, the evidence proposed to be given by ITV is of no probative value. It simply comments on SCTV and denies that it should change the basis of its calculation of stockholding of overseas programmes. It amounts to both argument and argumentativeness.

The remaining batches of schedules were filed by SCTV and will not therefore be produced by a witness from that company.

Although there may be some exceptions, the Tribunal's recollection is that each of the points sought to be made was in fact made by the witness to whom the schedule was put or by another witness from ITV. If, when the transcripts are available, Mr Thomas can satisfy us that this is not the case, we will reconsider the matter.

But the Tribunal does not consider it appropriate for further witnesses to be called to make the same point as a previous witness has made at the time. (It may or may not decide it appropriate in any specific instance to call further evidence for other reasons.)

For example, we recall Mr Wall referring at length to the fact that the multi-line rate card was not taken into account, and his repeated explanations of how that could affect the position.

In the synopsis given of the proposed evidence we very much doubt whether in any case, the proposed evidence would add anything to the sum of knowledge of the Tribunal.

For instance, B simply says that the assumptions were rejected as misleading and inaccurate, a matter which was indeed questioned by the Chairman at the time.

C is already said to have been dealt with in detail in ITV's memo in response to matters raised by Professor Schmitt.

The response to E was a reference to the BCNZ not being as good a model on which to base salaries comparisons. That was mentioned in evidence by ITV witnesses.

However, the Tribunal does not have all the transcripts in question and if it is subsequently seen that these points were not dealt with by the witnesses, Mr Thomas may file a further memorandum on that respect.

In relation to ITV programme shortfalls (Memo No. 2), Mr Hutchings made the statements in evidence which it is now desired to repeat in evidence.

Signed for the Tribunal:

B. H. SLANE, Chairman.