The Corporation presented no evidence that reasonable efforts had been made to present significant points of view within the period of interest.

Further, while Mr Bayliss did not use the term "rationalisation" as Mr Frawley alleged, he did say "we're concentrating on those things we're good at". The Tribunal finds it difficult to distinguish between that process and rationalisation.

The Tribunal finds that, while Mr Frawley over-stated his case, he did have some grounds for complaint.

The topic was controversial and should have been identified as such.

Mr Bayliss had opinions on the topic, which were sought and broadcast.

Some, at least, of those opinions as broadcast are open to challenge. For example, the unequivocal statement that "we (New Zealand) benefit" from such off-shore manufacturing and that profits or dividends are remitted back to New Zealand.

(The examples Mr Bayliss himself used of Fisher and Paykel and Allflex as successful "new life in the Corporate field" both developed under a regime of some economic protection different from current economic policy.)

Other significant opinions ought also to have been presented within the period of current interest.

The complaint is upheld.

In so ruling, the Tribunal does not endorse all the comments which Mr Frawley made regarding Mr Bayliss. The issue in essence is one of balance under section 24 (1) (e).

Co-Opted Members:

The Tribunal co-opted Mr Stephenson and Professor Schmitt as persons whose qualifications and experience were likely to be of assistance in dealing with this complaint. They took part in the deliberations of the Tribunal but the decision, in accordance with the Act, is that of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.

Transcript attached.

Transcript of Interview Broadcast on Radio New Zealand—Complaint 6/86

Wednesday, 5 February 1986.

Presenter: Following a report that PDL industries are moving their heater manufacture offshore because of currency changes and high costs, the export institute has warned that there could be an exodus of exporters because of the instability of the deregulated economy. However economist, Len Bayliss, says there's nothing new in the trend of establishments moving on and off-shore.

Len Bayliss: To some extent, it seems to be accelerating because our economy is going through a process of change and we're concentrating on those things we're good at. Some of those things where the manufacturers or the firms concerned are setting up overseas subsidiaries . . . . . others of them have a very high labour cost and depend upon exports to some extent and are moving over to where the labour costs are cheaper so that they can survive.

Reporter: Now when somthing like the PDL shift happens, it does in the long-term mean that there are that many fewer jobs in New Zealand. Does New Zealand just have to sort of grin and bear it?

Bayliss: Well, of course, not necessarily. I think the process of job creation is going on all the time. I mean, there are jobs terminating and firms going bankrupt, or winding down, or so on—and there are new . . . . . there's some new life in the corporate field. For instance, there are firms like Fisher and Paykel, for instance, which 40 years ago was a relatively small firm. It's now a very large and very efficient firm. Allflex, the ear-tag makers, started off with nothing 20 years ago and now has hundreds of employees in Palmerston North.

Reporter: In the long term, is there any advantage to the country in New Zealand firms going offshore to produce?

Bayliss: Well, by and large, the straight answer to that question is yes—and presumably a firm is going overseas because it is profitable to it and because it sees better business opportunities. Obviously there are direct benefits to Singapore and Australia in terms of new factories and new jobs and so on. But these firms will be remitting profits, or dividends, back to New Zealand. So we benefit.

Presenter: Economist, Len Bayliss, talking to Peter Minson.

Ends

Decision No. 11/87
COM 1/85

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by the GROUP OPPOSED TO ADVERTISING OF LIQUOR (CLIFFORD REGINALD TURNER).

WARRANT HOLDER—CAPITAL CITY RADIO LIMITED (Radio Windy).

Chairman: B. H. Slane.

Members: Ann E. Wilson and Robert Boyd-Bell.

Co-opted Members: Brian W. Stephenson and Wayne Sellwood.

DECISION

MR Clifford Reginald Turner, on behalf of the complainant, the Group Opposed to Advertising of Liquor ("GOAL") complains of a Lion Breweries commercial for a competition. It was broadcast on Radio Windy about 11 a.m. on 31 October 1984.

The Commercial:

The dialogue in the 29 second commercial is set against a buzz of conversation of the kind to be heard in a crowded bar. Two male voices are talking animatedly as they enthusiastically tear the tabs off cans and discover, presumably from the tabs, the number of points they have gained in the competition. Beer is not mentioned, nor is the advertiser's name. A voice-over invites listeners "to be in the draws for 10 world holidays in New Zealand's great tear tab competition," and says that an entry form with details is available from liquor outlets.

A transcript of the commercial, reconstructed from a recording, is appended to this decision.

The Complaint:

For GOAL, Mr Turner argued that the advertisement was in breach of Advertisement Rule 1.11.5 which prohibits advertising referring to any lottery or competition which requires the purchase of liquor to participate.

Radio Windy's Response:

By letter dated 16 January 1985 Radio Windy's Managing Director Mr Doug Gold responded that, having obtained the rules of the contest from Lion Breweries' agency, he was satisfied that it was not necessary to purchase alcohol in order to enter the contest. He said:

> "There is very clear evidence that numerous people collect tear tabs and, when appropriate, bottle tops to enter these contests from friends and from locations where alcohol is consumed without actually purchasing the liquor themselves. Accordingly, an individual may enter the contest without having purchased liquor themselves".

Decision:

The Tribunal accepts that proof of purchase was not necessary for entry into the competition. A would-be contestant could collect tear tabs from anyone prepared to part with them. Nevertheless, the design of the competition was such that *someone* had to purchase liquor in order for anyone to obtain the tear tabs with the numbers printed on them and it was made clear that entry forms were to be obtained from liquor outlets. The question is, is this design of competition caught by Rule 1.11.5 of the Radio Advertisement Rules?

The rule states:

> "1.11.5 No advertisement may include reference to any lottery or competition which requires the purchase of liquor to participate".

The rule refers to the "purchase of liquor". It is silent as to whether this is meant to cover the purchase of liquor generally, or is confined to prohibiting any requirement that the contestant personally purchase liquor. The choice is between construing the rules permissively or restrictively.

We think the restrictive approach is correct. The scheme of the rules generally is that alcohol may not be advertised at all, unless the advertisement fits squarely within one or more of an intricate and (as we have said before) somewhat ill-defined array of exceptions.

The complaint is therefore upheld.

The Tribunal accepts that Radio Windy may well have considered that the advertisement was not in breach of the rule. The exact point has not previously been decided. Mr Turner conceded that the management of Radio Windy may have thought that, because no reference was made to liquor or to Lion Breweries, the rule was not breached.