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**COMMERCE COMMISSION**

**DECISION NO. 294**

Determination pursuant to the Commerce Act 1986 (the Act) in the matter of an application for clearance of a business acquisition involving:

THE RADIO NETWORK OF NEW ZEALAND LIMITED

and

C93FM (CHRISTCHURCH) LIMITED

**The Commission:** Alan Bollard (Chairman of Division)  
Peter Allport  
Roger Taylor

**Summary of Proposal:** That the Radio Network of New Zealand Limited or any of its interconnected bodies corporate ("the Radio Network") acquire all of the radio licences held by and all of the shares in C93FM (Christchurch) Limited ("C93FM"), and will, within 12 months of the date upon which clearance is given, dispose of, or procure the disposal of, all its interests and rights in licence number 0016/04056 under the Radiocommunications Act 1989, which licence is currently used in connection with 94.5FM.

**Determination:** Pursuant to s 66(3)(b) of the Act, the Commission determines to decline to give clearance for the acquisition.

**Date of Determination:** 26 May 1997

M2338

MEMORANDUM

To: Alan Bollard  
Peter Allport  
Roger Taylor

From: John Preston  
Guy Launder  
Lisa Weir

Date: 26 May 1997

Subject: **Commerce Act 1986: Business Acquisition: The  
Radio Network of New Zealand Ltd/C93FM  
(Christchurch) Limited**

**Working Day 10: 26 May 1997**

**Confidential material in this report is contained in square brackets**

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THE PROPOSAL

- 1 On 12 May 1997, the Commission registered a notice from The Radio Network of New Zealand (“the Radio Network”) seeking clearance for the proposed acquisition of all of the radio licences and all of the shares in C93FM (Christchurch) Limited (C93FM).
- 2 The notice is for the same assets as were the subject of a clearance notice from the Radio Network dated 13 March 1997. That notice resulted in Commission Decision No 286 of 27 March 1997 which declined to give clearance to the proposal.

3 The proposal also includes an undertaking that the Radio Network will, within 12 months of the date upon which clearance is given, dispose of, or procure the disposal of, all of its interests and rights in connection with 94.5FM should the Commission determine to clear the proposal. A copy of the undertaking together with further details relating to the radio frequency licence which the applicant has undertaken to divest are contained in Appendices A and B. In terms of section 69(A)(3) of the Commerce Act 1986 (“the Act”), this undertaking is deemed to form part of the proposal for which clearance is sought.

4 Section 66(3) of the Commerce Act 1986 (“the Act”) requires the Commission either to clear or to decline to clear a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. On 22 May the Commission sought an extension to allow further consideration of this matter. However, this extension was declined by the applicant. Therefore, the due date for a decision is 26 May 1997.

5 This report concludes that staff are not satisfied that implementation of the proposal would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the provision of radio advertising services in Christchurch.

6 Therefore, it is recommended that the Commission decline clearance to the proposal.

## THE PARTIES

### **The Radio Network of New Zealand Limited (“Radio Network”)**

7 The Radio Network’s main business is the provision of commercial radio broadcasting (including the provision of news and general information) and advertising through the radio medium. The Radio Network is 33.3% owned by Wilson & Horton Limited (“Wilson & Horton”), 33.3% owned by Clear

Channel Communications Inc (“Clear”), 19.4% by Australian Provincial Newspapers Holdings (“APN”), and 14% by New Zealand Capital Partners Limited (“NZCP”), each company holding its interest in The Radio Network directly or through subsidiary or associated companies. The Radio Network operates nationally. It owns licences for 99 radio frequencies, five of which are in the Christchurch area. It broadcasts on two FM stations in Christchurch, being 91ZM and Classic Hits 98 FM. 91ZM is then repeated on an additional FM frequency in the area. The Radio Network also broadcasts it's Newstalk ZB program on an AM frequency in the area, and currently holds one unused AM frequency in Christchurch.

- 8 Wilson & Horton is a publishing and printing company 45.15% owned by Independent Press Limited, which in turn is 50% owned by Independent Newspapers Plc (“INP”), and 50% by the O’Reilly Family Trust of Australia. INP is 30% owned by Tony O’Reilly of Ireland and Mr O’Reilly’s family interests.
- 9 APN is a company listed on the Australian Stock Exchange. It operates solely in Australia as a publishing company and, through its shareholding in Australian Radio Network Pty Ltd, as a radio broadcasting company. The ultimate parent company is Kelsal Pty Ltd which in turn is owned by INP.
- 10 Clear is a public company listed on the New York Stock Exchange. It is a radio and broadcasting company operating in the United States.
- 11 NZCP is a privately owned non-trading holding company [ ]

## **C93FM (Christchurch) Limited (“C93FM”)**

- 12 C93FM engages in broadcasting, programming, production and sales of advertising in the Christchurch region. It owns two FM and one AM radio frequency in the Christchurch area. C93FM currently runs two radio stations, being Classic Rock 93FM (which is simulcast on Classic Rock 1260AM), and Easy Listening i94.5FM (“i94.5FM”). C93FM is privately owned by two businessmen, Ian Harris and Roger Crozier.

## **BACKGROUND TO THE RADIO BROADCASTING AND NEWSPAPER INDUSTRIES**

- 13 The Commission has previously assessed business acquisition proposals involving newspapers, radio and other media outlets. The most recent acquisition involving print was Wilson & Horton’s acquisition of Northern Publishing Limited in May 1995. With respect to the radio media, in October 1996 the Commission considered The Radio Network’s proposed acquisition of all of the share capital of Fifeshire FM Broadcasters Ltd in Nelson.
- 14 Until 1989, the radio broadcasting industry was characterised by a regulatory regime much tighter than present with controls on entry and other aspects of radio broadcasting (eg. advertising). This regulation ended with the repeal of the Broadcasting Act and the enactment of the Radiocommunications Act 1989, which established a new structure for management of the radio spectrum frequency.
- 15 The Radiocommunications Act created two forms of tradable property rights - management rights and frequency licences, both of which may be granted for periods of up to 20 years. Management rights, which can only be created by the Crown, give the owner the right to issue frequency licences in the radio spectrum that is covered by the management right. Frequency licences, which are tradable, are usually offered by the Crown through public tenders. There is

no requirement on how the frequency licence may be used, or on whether it should be used at all.

- 16 Frequency licences can be purchased from the owners of these licences. In addition, new frequencies can, in certain circumstances, be engineered by the Ministry of Commerce and purchased by tender.
- 17 Frequency licences can also be reserved by the Crown for special use. Under Schedule 7 of the Radiocommunications Act, the Crown reserves certain frequencies for the preservation of Maori language and culture. The rights conferred by the frequency licence must be for the purpose of providing a radio station that, in terms of programming, is directed primarily at a Maori audience; and has as its primary purpose the promotion of Maori language and culture. The Crown also reserves certain frequencies for community access radio stations, and educative radio stations attached to tertiary institutions. Radio stations that are preserved under this schedule typically face restrictions on the level of advertising they can carry, as well as the format and content of their broadcasting programmes.
- 18 The total number of registered frequency licences nationwide is currently estimated to be 638. All of these frequencies relate to specific transmission sites. Further, in a survey carried out in mid-1995, the Ministry of Commerce found that around 80% of all radio frequency licences throughout New Zealand were currently being utilised.

#### *Radio broadcasting in Christchurch*

- 19 The proposed acquisition relates to radio broadcasting predominantly in the greater Christchurch area.<sup>1</sup> It is noted that radio frequencies might reach districts further away, although the advertising revenue gained from those areas is likely to be minimal. The licensed frequencies in the greater Christchurch area are set out in Appendix A.

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<sup>1</sup> For the purposes of this application this area has been defined as Christchurch City and the surrounding districts of Banks Peninsula, Waimakariri, Selwyn and Hurunui.

The parties operating commercial radio stations in Christchurch on the AM and FM frequency transmission bands are as follows:

- The Radio Network operates two FM radio stations in Christchurch (91ZM and Classic Hits 98FM). 91ZM is transmitted on two frequencies in the area (ie. 91.3 and 89.2) to ensure coverage throughout Christchurch. In addition, The Radio Network also operates Newstalk ZB on an AM frequency in the area. One unused AM frequency is also owned by The Radio Network in the area.
- C93FM also operates two FM stations in Christchurch (ie. Classic Rock C93FM and i94.5FM). Classic Rock C93FM is repeated as an AM station also.
- Frader Group Limited, owner of MORE FM, operates one FM station in Christchurch (ie. 92 MORE FM). 92 MORE FM is transmitted on two FM frequencies (ie. 92.1 and 95.3) in the area to ensure even coverage throughout Christchurch. In addition, MORE FM owns an FM frequency with coverage that is limited to the Lyttleton area (99.7), and currently leases a further FM frequency to Radio Rhema (Life FM 99.3). Commission staff understand that the 99.3FM frequency is to revert back to MORE FM as at 1 July 1997.
- Radio Pacific Limited (Radio Pacific) is a publicly listed company with its largest shareholder being the Totalisator Agency Board (TAB). It broadcasts a news, talk-back and racing programme through 26 stations nationwide, these stations being split into six distinct regions. In Christchurch Radio Pacific broadcasts on an FM frequency (93.7).
- The Ngai Tahu Maori Trust Board operates a Maori/Polynesian iwi commercial radio station on an FM frequency in Christchurch (90.5).

- The Canterbury University Student Union runs a radio station on an FM frequency (ie. RDU, 98.3). This radio station is reserved under Schedule 7 of the Radiocommunications Act, and is precluded from sale to outside parties.
- The Christchurch Polytechnic runs a radio station on an FM frequency called Beetles FM (96.1). This radio station is run for only three months of each year and acts as a training facility for students wishing to enter the radio broadcasting industry.
- Six additional radio stations operate in the Christchurch area on a predominantly non-commercial basis. Three of these stations are owned by Radio New Zealand (ie. National Radio, Concert FM and AM Network); one by The Radio Preservation Society (Radio Ferrymead 3XP); and one by the Canterbury Communications Trust (linked to the Polytechnic). In addition, Christian Broadcasting (Radio Rhema) owns three AM frequencies in the area, only one of which is currently being used. Radio Rhema currently leases an FM frequency (99.3) from MORE FM on which it broadcasts it's Life FM programme. Two of Radio Rhema's frequencies are reserved under Schedule 7 of the Radiocommunications Act.

20 In addition to the above, there is one unused frequency in the Christchurch area which is owned by Worldwide Broadcasting Limited.

### *Radio Advertising*

- 21 Commercial radio stations commonly provide news, information, music, other entertainment and advertising. Advertising revenue is the source of almost all of the revenue of commercial radio stations. For the year ending March 1996, around \$158 million was spent on a national basis on radio advertising. This represented around 11.9% of total advertising expenditure throughout New Zealand.
- 22 Advertisers in radio can be split into two main groups - national and local (which are generally similar to the agency and retail split). It is customary for national advertisers to place advertisements either themselves or through an advertising agent. Those wishing to advertise nationally on radio will often use the Radio Bureau to purchase radio advertising space. The Radio Bureau sells advertising on behalf of almost all commercial radio stations throughout New Zealand.
- 23 Local advertisers account for the majority of advertising on radio. On average, commercial radio stations derive around 70% of advertising revenue from local advertisers, with the balance from national advertisers. These percentages will vary between individual radio stations and between different geographic regions. For example, in a small provincial town, local advertising is likely to account for as much as 80-90% of advertising revenue. In this instance, local radio advertising in Christchurch commonly equates with around 70-80% of total advertising revenue.
- 24 When establishing advertising revenue market shares in the radio industry, the Commission, has in the past and will again in this decision, add together the revenue that each station attracts from both local advertisers and advertising agencies. Commission staff believe this gives the only accurate account of the total revenue that each radio station in the Christchurch area attracts.

- 25 The predominant method of establishing market share of the radio advertising services market by the radio stations has been for the stations to provide to Coopers and Lybrand their own revenue figures on a monthly basis. Coopers and Lybrand then prepare a monthly report, using that unaudited information, showing each station's market shares as a percentage of area sales, market growth trends for both the station and the area, and the relative size of the market per area.
- 26 It should be noted that a number of the smaller radio stations do not participate in this survey, although the stations that do<sup>2</sup> account for almost 95% of the total advertising revenue share in the Christchurch market.
- 27 A second survey is carried out in the Christchurch region by Research International, an independent research company. Twice each year during February/March and August/September it surveys a number of households for a six or seven week period. As a result of the information it collects, Research International produces a number of reports including statistics of the audience market share that each radio station has won over the past six months. Research International is contracted by the Industry Research Committee to carry out these surveys and is considered to be independent and reliable in providing those statistics. The radio stations then use these statistics to prove to advertisers that their radio station is listened to by a certain percentage of the population, and thus the advertisers message will be communicated to those listeners.
- 28 The applicant has argued in this application that since Decision 286 was released there has been a substantial change in both the listenership and advertising revenue market shares in the Christchurch region. It has stated that this is directly attributable to the departure of the popular breakfast show hosts Simon and Phil. It also states that previous experience shows that the loss of audience and revenue share is likely to continue and take a considerable time to win back. Those two issues are discussed in detail later in the report.

### *Radio News and Information*

- 29 Radio stations, both commercial and non-commercial, act as an important source of news and information on an international, national and local level. There are currently two major providers of radio news bulletins - Radio New Zealand, and IRN Ltd (IRN) which is a 100% owned subsidiary of GWR Group plc (now The Radio Network). Some private radio stations source their news bulletins from Radio New Zealand, while others use IRN. These bulletins are generally packaged in a format tailored to the specific radio station's requirements. Commercial radio stations may also use their own staff to provide local news and information to supplement the above services.

### THE RELEVANT MARKETS

- 30 In Decision 286 as well as its previous decisions relating to radio broadcasting, the Commission has concluded that commercial radio stations operate in two separate markets. These markets are generally considered to be linked in a symbiotic relationship. Those markets are:

- the provision of news, information and entertainment services to listeners without charge; and
- the provision of radio advertising services to advertisers attracted by the listener profile of the stations concerned.

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<sup>2</sup> The stations that do participate in this survey are 91ZM, 98FM, Newstalk ZB, C93FM, i94.5FM and 92 MORE FM.

### *Product/Functional Markets*

- 31 As stated in Decision 286, the Commission has previously given consideration to the issue of market definition when assessing business acquisition proposals involving newspapers, radio, television and other media outlets.
- 32 From staff enquiries in this area it has become evident that most advertisers consider that each of the above advertising mediums perform different functions and are complementary, with the degree of complementarity depending on the product. No advertiser believed that they could realistically choose not to use radio advertising at all, even if the price were to increase relative to other media. While they may reduce the amount of advertising they did on radio if the price were to escalate dramatically, most advertisers believed that due to the immediate and targeted impact of radio advertising, they would be unable to withdraw completely from this medium.
- 33 Comments by advertisers in the Christchurch region are consistent with previous enquiries by the Commission in The Radio Network/Fifeshire FM clearance application, and The Radio Network/GWR Group clearance. Therefore, the Commission is of the view that while it appears that radio, television, newspaper and other developing advertising mediums such as the internet, may compete to a limited extent, these different mediums are largely complementary advertising services.

### *Geographic Markets*

- 34 As noted in previous reports, radio tends to be oriented towards a local or regional audience in terms of news and advertising content. The extent of the geographic market varies, depending on a number of factors. For radio, coverage is determined by the range of the frequency for which a radio station has the licensing rights. Some stations might reach a confined area, while others cover a wider area due to the power of the transmission, the nature of the

transmission site and the topography of the area from which the signal is transmitted.

- 35 Having regard to the above considerations, it is appropriate to define the affected geographic markets according to region. In reviewing the likely competitive impact of this proposal it is proposed to define the relevant geographic markets as being confined to the greater Christchurch area.

### **Conclusion on Market Definition**

- 36 Enquiries by Commission staff have confirmed the Commission's previous decisions that commercial radio stations operate in two markets:

- The market for the provision of news, information and entertainment services to listeners without charge; and
- The market for the provision of radio advertising services to advertisers attracted by the listener profile of the stations concerned;

which are geographically defined as the greater Christchurch area.

- 37 Both of the markets identified above are the same as those used in Decision 286.

### **ASSESSMENT OF DOMINANCE**

- 38 Section 66(3) of the Act, when read in conjunction with s47(1) of the Act, requires the Commission to give clearance to a proposed acquisition if it is satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market, or, conversely, to decline to give clearance if it is not so satisfied.

39 Section 3(9) of the Act states that a person is in a dominant position in a market if:

“... that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”

40 That section also states that a determination of a dominant position shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

41 In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing factors and any other relevant matters that may be found in a particular case.

42 A dominant position does not necessarily involve absolute control or monopoly. The Court of Appeal stressed in the *Port Nelson*<sup>3</sup> case that “...dominance reflects the ability to act to a large extent independently...”, but not necessarily to act totally without regard to competitors, suppliers or customers. Nevertheless, to be in a dominant position a company must be able to act, within the limits of commercial reality, without significant competitive or consumer constraints.

43 For the purposes of assessing whether a dominant position might be acquired or strengthened as a result of the proposed acquisition, it is intended to discuss each of the markets separately.

**The Market for the Provision of Radio Advertising Services to Advertisers  
Attracted by the Listener Profile of the Stations Concerned**

### *Market Shares*

- 44 Although market share alone does not establish a dominant position, a substantial market share may be a strong indication of dominance. See *Magnum/Dominion Breweries* (1987) 1 NZBLC (com) 104,073 (“While it is understandable that the presumption of dominance increases as market share rises, it is the cumulative impact of various factors that is important in determining whether or not a dominant position would be acquired or strengthened”.)
- 45 According to the Commission’s *Business Acquisition Guidelines*, a dominant position in a market is unlikely when, after the acquisition, the combined entity will possess:
- a market share of less than 40% in the relevant market(s); or
  - a market share of less than 60% and one or more competitors to the combined entity possesses at least a 15% share of the relevant market(s).
- 46 If either of the foregoing situations apply, the proposed acquisition will generally fall within a “safe harbour” and the acquisition is unlikely to lead to the creation or strengthening of a dominant position. Where market shares fall outside the safe harbours additional examination is required.

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<sup>3</sup> Port Nelson Ltd v Commerce Commission (1996) C.A.169/95.

## Christchurch

- 47 The Radio Network, with three stations, and C93FM, with two stations, are two of the principal operators of commercial radio stations in the greater Christchurch area. MORE FM is the only other major commercial radio broadcasting company operating in this geographic region. The national network of Radio Pacific includes a signal into the Christchurch area, although Radio Pacific derives limited radio advertising revenue from the region.
- 48 The Ngai Tahu Maori Trust Board, the Canterbury University Student Union, the Canterbury Communications Trust and the Christchurch Polytechnic provide some radio advertising in the Christchurch area. However, these parties are all minor players in terms of advertising revenue generated in the region.
- 49 In the Commission's Decision 286, staff estimated the market shares for the radio advertising revenue services market in the greater Christchurch region for 1996 shown below, by totalling the revenue figures provided by the radio stations listed in the following table. Market shares were then calculated as a percentage of that total revenue for the calendar year ending 31 December 1996<sup>4</sup>. Those figures were:

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<sup>4</sup> For the calendar year ending 31 December 1996, Commission staff estimated a total of \$20,899,830 was generated in the Christchurch region.

## Current Total Revenue

% Share

The Radio Network [ ]  
] 100

50 The above figures are the only reliable, quantifiable estimation we have of market shares in the Christchurch advertising revenue market and are an average of the 12 month period. However, it is to be noted that these figures do not take into account market developments since 31 December 1996.

51 This new application from the Radio Network raises two issues. It is on the basis of these developments since the original application that the applicant claims that sufficient constraint will exist for the combined entity from new entrants and existing competitors. The issues of contention are:

- the impact of breakfast personnel moving from 91ZM to MORE FM; and
- the proposed viability of the divested frequency i94.5FM and its competitive impact.

52 Each of these issues will be considered in turn.

### **Effect of Talent Change**

#### *Breakfast Hosts*

53 The applicant contends that the move of Simon Barnett and Phil Gifford (“Simon and Phil”) from the breakfast show on 91ZM to MORE FM’s breakfast slot has resulted in a diminished market share for the Radio Network’s 91ZM.

Simon and Phil commenced their new position with MORE FM on 1 April 1997.

- 54 In its initial application, the Radio Network claimed that Simon and Phil's imminent departure would directly result in a loss of advertising revenue market share by [ ] for the Radio Network group, and in particular, about [ ] for 91ZM. This was based on the assumption that a certain percentage of Simon and Phil's loyal listeners would cease listening to 91ZM and follow the personalities to a rival radio station, i.e. MORE FM.
- 55 The applicant states that the actual impact on 91ZM of the departure of Simon and Phil has been greater than predicted in the first application. It states that there has been a very sharp decline in the 91ZM breakfast ratings and that this has impacted severely on 91ZM's overall performance with a [ ] drop in market audience share for 91ZM between March 16 and April 30.
- 56 The applicant contends that breakfast hosts are crucial to a radio stations audience and advertising revenue market share. It states that Simon and Phil are an unique phenomenon in Christchurch with universal appeal and it believes it will take at least two to three years to rebuild the 91ZM breakfast ratings performance.
- 57 It states that a significant audience change occurred in the very first week that Simon and Phil were heard on MORE FM and that there were no other factors which could account for that drop. It also provides previous examples of radio stations in Auckland, Hamilton and Palmerston North that it claims have lost considerable audience and revenue market share as a result of established breakfast hosts departing from those stations. In support of these New Zealand examples the applicant has also provided two examples of situations in the United States of America which it states demonstrates the effect of breakfast personality changes on a stations advertising revenue.

- 58 The applicant contends that 91ZM will face a similar situation and that despite selection of new hosts, marketing and programming, if the audience do not like the new breakfast hosts the stations ratings will not be generated and consequently there will be a decline in revenue.
- 59 MORE FM has stated that while it is important to have good breakfast hosts, the relevance of this is limited and the format of the station is the most important factor in retaining an audience. It stated that the acquisition of Simon and Phil was a strategic coup and that when a breakfast team shifts there is a tendency for the listeners to follow them and trial the new programme. However, if the audience doesn't like the rest of the format they are less likely to remain with that station. In signing Simon and Phil, MORE FM hoped that it would be able to increase both the audience and advertising revenue shares for the station. It has also stated that considerable planning and promotion has occurred in order to give the new breakfast hosts the best possible start. MORE FM has said that experience has told them that there is no guarantee that any change in audience numbers will necessarily result in a change of advertising revenue.
- 60 Radio Otago in a submission to Commission staff stated that the ongoing effect of the move by Simon and Phil has been exaggerated by the Radio Network. While it agrees that breakfast hosts are an important component of achieving good breakfast audiences, no radio personality is irreplaceable. Radio Otago expects that the move of Simon and Phil will have a short term detrimental effect on 91ZM and a short term positive effect on MORE FM, although it states that the Radio Network is of a size that it can well afford to take effective steps to minimise the effect. It stated that in its own opinion the move will not materially alter the long term prospects or market share of 91ZM.
- 61 Radio Pacific, in a submission to Commission staff, stated that the emphasis placed by the Radio Network on the loss of certain personalities is exaggerated. It said the performance of a radio station depends on a variety of factors including music format, promotion, branding, personalities, programming and perception. It also states that the Radio Network is placing a major investment

in its new breakfast team to retain ratings of 91ZM and that predictions of future revenue market shares are highly speculative. Radio Pacific stated that its own experience of obtaining a high profile breakfast host such as John Banks, in a blaze of publicity, has not led to an increase in the station's revenue share.

- 62 Commission staff believe that the change of Simon and Phil from 91ZM to MORE FM has had some impact on both the audience and revenue shares of the respective radio stations. Staff agree that breakfast hosts do play an important part in the success of a radio station although to what degree is disputable. Commission staff believe that the content of programming, promotions, service and music formats all also play a significant part in the success of a radio station.
- 63 As in Decision 286 Commission staff believe that radio personalities are not considered 'irreplaceable' and that, as with all employees, these personalities are subject to the requirements of performing in that position, as well as any eventuality which may require them to leave a particular radio station, or the broadcasting industry at any time.
- 64 Commission staff have been provided with several New Zealand and overseas examples, where it is claimed by the applicant, that successful breakfast hosts have left stations with a resulting significant and sustained fall in audience and advertising revenue share. On the other hand a number of industry participants have provided examples where this has not been the case or where high profile personalities have not attracted additional revenue. Commission staff believe that it is not possible to attribute the loss of significant and sustainable market share purely to the loss of radio personalities. While it is easier to accept that there might be some short term changes in the audience patterns based on radio personality changes, Commission staff cannot assume those changes would be for the long term or even medium term.

#### *Audience and Revenue Share*

- 65 As was stated in the Commission's Decision 286, it is clear that the applicant's argument relies on the assumption that all listeners and advertisers that may leave 91ZM following Simon and Phil's departure will automatically switch to MORE FM. However, Commission staff believe that the possibility of viewers and advertisers choosing to shift to alternative stations operated by the Radio Network or C93 in the near future should not be overlooked. Likewise, MORE FM have indicated that it would expect some audience to trial MORE FM although they will not necessarily remain with the station, while others may shift from MORE FM as a result of Simon and Phil coming to the station.
- 66 In order to assist the Commission in predicting what sort of effect the change in radio personalities will have on the future advertising revenue market shares, Commission staff have taken note of submissions from the applicants, other industry participants and existing advertisers in the Christchurch market.
- 67 Commission staff have spoken to a number of advertisers in the Christchurch area who advertise on radio. These included the names of advertisers provided by the applicant who had decreased their advertising with 91ZM, as well as other advertisers that were spoken to during the investigation of the first application.
- 68 Most of the advertisers spoken to indicated that they had increased their advertising spend with MORE FM at the expense of 91ZM. Most of the advertisers also said that their prime reason for switching to MORE FM was to follow Simon and Phil. Of the advertisers that have shifted towards MORE FM almost all of them indicated that they had based their decisions on 'gut' feelings or personal perceptions rather than as the result of statistical data provided by any audience survey.
- 69 Of particular interest is that almost all of the advertisers indicated that their decisions regarding radio advertising mix were reassessed on a regular basis and that none of the advertisers spoken to had entered into any long term advertising contracts with MORE FM or any other of the radio stations. Most of those

advertisers said that they were free to change the stations that they advertise with if the present circumstances change.

70 While many of the advertisers spoken to are reasonably small clients in relation to the amount they spent on advertising on the radio, some of the larger spenders told Commission staff that they had been slower to change their advertising mix and were more likely to await the next audience survey statistics before deciding whether they would change radio stations to any great deal.

71 While some of the advertisers felt that MORE FM was now in a stronger position to act as a constraint to the merged entity, others remained concerned with the market power the Radio Network would still have if MORE FM was its only competitor.

72 As stated earlier in this report Coopers and Lybrand produce monthly surveys for the radio stations in Christchurch. The only figures that are currently available since the shift of Simon and Phil are for the month of April 1997. These figures show that total advertising revenue market share for 91ZM has dropped from [ ] in March to [ ] in April. At the same time MORE FM's revenue share has increased from [ ] to [ ] over the same period of time.

73 Of interest is the performance of the other Christchurch radio stations that have not been affected by personality changes. For the month of April 1997 Newstalk ZB<sup>5</sup> and 98FM's share has fallen from [ ] to [ ] and the share of C93 and i94.5FM has fallen from [ ] to [ ].

74 Commission staff note that the Coopers and Lybrand statistics show that the monthly revenue figures do frequently fluctuate. During the 1996 calendar year 91ZM's monthly share fluctuated from a low of [ ] in April to a high of [ ] in December. Newstalk ZB and 98FM figures show a low of [ ] in December and a

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<sup>5</sup> The applicant has stated that the figures for Newstalk ZB and 98FM, and C93FM and i94.5FM are collected together in the one figure.

high of [ ] in March. For the corresponding period MORE FM's share fluctuated from a low of [ ] in March to a high of [ ] in January.

- 75 The applicant has said that the apparent fluctuations during the year are due to three main factors, those being retail seasonality, the level of competition by existing competitors and the retail trading conditions. Commission staff agree that retail seasonality and retail trading conditions will impact on total revenue, but note that the figures that are referred to in this report are the stations' percentage of the actual advertising revenue, and are therefore not affected by changes in the total amount of money spent on radio advertising.
- 76 The applicant states that it is difficult to accurately forecast how long it will take 91ZM to recover audience share, to an audience rating performance similar to the pre-loss situation.
- 77 MORE FM has stated that its total revenue share for the month of April 1997 has been encouraging. It states that the figures are likely to be an exception due to the extensive marketing it has carried out to advertise the arrival of Simon and Phil. It said that it spent in the vicinity of [ ] in the lead up to their arrival on advertising with television, the print media and increasing its own signage and promotions. MORE FM stated that this expenditure was considerably higher than it would normally spend and that it is currently experiencing a 'honeymoon' period. MORE FM said that the April and May months are likely to be the most difficult months for 91ZM while it gets its new breakfast hosts established.
- 78 MORE FM also said that the revenue share for each month can fluctuate for a number of reasons and history tells it that market share can be just as quickly lost as gained. It pointed out that for the month of April 1995 in the Coopers and Lybrand survey it held a [ ] revenue share before falling back to a low of [ ] in the following March .

- 79 Radio Otago said that there are three options a radio station can take to increase its market share those being, obtaining better talent, discounting its advertising rates and increasing its own visibility. Radio Otago expressed surprise that the Radio Network had not yet introduced any of these options in order to protect its market share.
- 80 Commission staff also note that in a newspaper article published in the Dominion, dated 20 May 1997, the chief executive of the Radio Network was reported to say she was confident of not losing any advertising revenue after a drop in ratings in its Auckland music stations. While this statement relates to a different geographic market with perhaps different market conditions, it does indicate that the applicant's chief executive does not consider that lost audience share always correlates with lost advertising revenue share.
- 81 In assessing this situation the Commission has to be satisfied as to how the changes in the market shares will be affected in the medium and long term, rather than the short term. In this case it is very difficult to accurately predict what will happen to the market shares in the future. Given the preceding factors, Commission staff believe that given their highly variable nature, it would be very difficult to reach a realistic and quantifiable conclusion on the combined market share of the proposed merged entities in the medium or long term.
- 82 Likewise, Commission staff are not convinced that the apparent shift of advertising revenue to MORE FM will necessarily be sustained for the medium or long term. Commission staff believe that as the result of MORE FM's acquisition of Simon and Phil, 91ZM's radio advertising revenue market share is likely to have dropped by several percentage points in the short term. This drop would be, at worst, commensurate with the apparent increase in market share by MORE FM for the month of April, i.e. [ ]. This is tempered however by the variable nature of market shares in the relevant market. It is to be noted that the Coopers and Lybrand statistics have shown significant short term fluctuations over the past few years when there have been no radio personality

changes with the relevant stations. This would indicate that there are other significant factors that influence where advertisers spend their dollar.

- 83 Commission staff understand that MORE FM has planned and promoted a strategy to win as much audience and revenue share from 91ZM. In doing so neither MORE FM, other industry participants or Commission staff believe that the Radio Network will not instigate defensive strategies to win back market share. The Radio Network is of such a size that its competitive response should not be underestimated. Of note is the Radio Network's recent acquisition of the Energy Group's radio award finalists from New Plymouth, Katrina Smith and Rik van Dijk ("Katrina and Rik"), to host 91ZM in Christchurch. As noted in the previous decision also, Paul Holmes has recently started as host on Newstalk ZB's breakfast show in Wellington, and may be available to do the same in Christchurch.
- 84 As in the previous application, due to a number of factors that might have an effect on the future advertising revenue market share of the various radio stations, Commission staff are unable to predict with any precision, changes to market shares both in the short and longer terms. While it is a possibility that the combined entity could even increase its market share, the Commission is only interested in a realistic indication of the lowest level of market share the combined entity may hold in the Christchurch market as a result of the changes discussed above.

#### Conclusion on Market Share

- 85 Commission staff believe that due to the additional information provided in this application, being for such a short period of time, they cannot rely on that data to be sufficiently indicative of what is likely to happen to the advertising revenue market shares in the medium to long term. Therefore, they are unable to give this data sufficient weight to enable them to be satisfied that there will be a significant reduction in the proposed combined entities market share in the medium to long term.

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## Effect of the Divestment

- 86 In Decision 286, staff determined that a clear barrier to entry existed for a potential entrant into the Christchurch market in their inability to gain access to a suitable frequency. As part of the applicant's new application therefore, the Radio Network has given an undertaking to dispose of all of its interests and rights in i94.5FM should this proposal be cleared by the Commission, thereby offering an available frequency for tender in the Christchurch area.
- 87 The 94.5FM frequency is presently located at Ouruhia in Christchurch which is approximately 3 metres above sea level. The frequency has a strength of 48 dBw's (as opposed to 49 dBw's for most other FM frequencies in the area). The location of the frequency enables transmission throughout the Christchurch area.
- 88 It appears that the 94.5FM frequency was originally intended for the Sugarloaf site (the highest transmitting location in Christchurch). However, the frequency was apparently moved by the present owners (C93FM) to Ouruhia to enable full coverage of the Christchurch region without the need for an additional frequency to in-fill the Sumner/Heathcote area (as is necessary for frequencies transmitted from Sugarloaf). In its application, the Radio Network has suggested that should it be required, an application could be lodged with the Ministry of Commerce to relocate the frequency to Sugarloaf. To do so would mean that an in-fill frequency would be needed to enable coverage in the Sumner and Heathcote areas. However, it has been suggested that if the frequency were to transmit from Sugarloaf, problems with the reception of the frequency from where it is currently located would be eliminated.<sup>6</sup>
- 89 Each of these points have been raised with the Ministry of Commerce. Having considered these issues, the Ministry believes that the 94.5FM frequency is of a

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<sup>6</sup> It has been suggested by MORE FM that given the low height of the Ouruhia site, the 94.5FM frequency was likely to be affected by the topography of the Christchurch area, thereby reducing radio clarity. If the frequency were to shift to Sugarloaf however, it appears that this problem would be eliminated as the signal would beam directly down onto the Christchurch area, and would not be obstructed by any landmarks or buildings.

quality comparable with similar FM signals in the area. The Ministry of Commerce has stated that while this frequency could possibly be transferred to Sugarloaf, a full engineering evaluation would need to be completed, and other factors considered, before this could be confirmed. The fact that the frequency currently transmits from the lower point of Ouruhia was not considered to pose any significant constraints on the frequency. Further, the slight difference in power between the 94.5FM frequency and other FM frequencies in the area was not considered to be of any real importance.

90 On the basis of the above information, it appears likely that this frequency is of comparable strength and coverage to enable an acquirer to transmit a radio format in the Christchurch region. Therefore, it is plausible, on the face of it, that a new entrant (ie. either new to Christchurch or new to commercial radio broadcasting), or an existing participant, could acquire i94.5FM and broadcast in the Christchurch market. Further, given that this frequency is to be tendered within a 12 month period following the Commission's approval of the acquisition (should this occur), entry could be timely, although it might be preferable if divestment was to occur in a shorter period.

91 In its application, the Radio Network has recognised that any new entrant competitor in the Christchurch market is most likely to be an existing radio operator. This assumption is based on the level of present competition within the industry as a whole throughout New Zealand, and the recent industry rationalisation of Radio Pacific and the Energy Group. In particular, the Radio Network has identified a potential entrant in Radio Otago as a network interested in acquiring i94.5FM and entering the Christchurch market. The Energy Group/Radio Pacific has also been identified as a party capable of establishing a music format radio station in the area on 94.5FM. Another scenario would involve an existing competitor, such as MORE FM, acquiring the frequency to establish an additional (or add-on) radio station in the Christchurch area.

#### *Potential New Entrants*

- 92 The applicant maintains that a 5-8% advertising revenue market share gained over a three year period would be sufficient for a new entrant to establish itself in a metropolitan area and act as an effective constraint on the merged entity. In Decision 286 the Commission indicated that a new entrant would need to achieve a level of advertising revenue market share equivalent to 10% or higher, over a three year period, so as to act as a sufficient constraint on the proposed combined entity, to remove dominance concerns. Entry at any lower level would place little constraint on the Radio Network/C93FM entity. While Radio Otago acknowledged that a market share of 8-10% could be viable in most provincial areas, a metropolitan area such as Christchurch, where several established players currently exist, would suggest that a new entrant would need a higher market share to remain viable. Commission staff believe therefore, that a new entrant would need to achieve and maintain a market share of at least 10% over a three year period in order to act as a sufficient constraint on the proposed combined entity.
- 93 In order for a new entrant to get anywhere near achieving this level of market share, it would be necessary that it implement a format which traditionally generates high levels of radio advertising revenue. The Radio Network have suggested that a new entrant could run a partly automated (pre-recorded) format on the station (which would reduce its operating costs), and still perform at a viable level. This could be done by using pre-recorded formats in place of announcers to cover overnight and weekend shifts. Commission staff note however that radio stations using this type of format have not traditionally achieved the level of market share believed necessary in this scenario.
- 94 At present, i94.5FM broadcasts an easy listening format targetted at the 35 plus age group. Radio advertising revenue market shares for i94.5FM have traditionally stayed at around [ ]. Radio Otago believes that given the older target audience, and the perception that this group is not as easily influenced by the promotional media as younger audiences, easy listening formats do not tend to generate high levels of radio advertising revenue. This conclusion is

supported by MORE FM. Commission staff believe that, for a new entrant to continue with an easy listening format on 94.5FM, it seems likely that a level of market share below 10% would be generated. This level of entry would be unsustainable and would place little constraint on the merged entity.

- 95 Radio Otago have suggested that in order for a new entrant to establish a viable market share, a classic rock type format would be necessary. Commission staff understand that traditionally classic rock formats, such as those employed on C93FM, MORE FM and 91ZM, have generated high levels of radio advertising revenue. This is illustrated by the Energy FM classic rock format used in Taranaki which has an average of 18% of radio advertising revenue market share. In Christchurch, these three stations alone (ie. C93FM, MORE FM and 91ZM) accounted for approximately [ ]<sup>7</sup> of the total radio advertising revenue market for April 1997. A further [ ] of the advertising revenue was accounted for by the combined Newstalk ZB and 98FM stations.
- 96 Given the present market concentration of the classic rock format in Christchurch however, it appears unlikely that a fourth station would be capable of achieving the same levels of radio advertising revenue. Both Radio Otago and Radio Pacific/the Energy Group have suggested that the format is already saturated in the market, and for a fourth party to instigate this format would result in sub-standard returns to that party. The Commission agrees with this view.
- 97 To enable an entrant a reasonable chance at getting viable market share, both Radio Otago and Radio Pacific have stated that two frequencies would be needed. This is because, to succeed financially, radio station operators need to target more than one section of the listening audience through more than one frequency. The reason for this is reflected in the growing trend for advertisers to buy advertising services from stations that provide coverage to wide groups of potential customers targetted by two or more stations. This reasoning

appears consistent with current industry practice where new parties have entered a particular geographic region and set up multiple frequencies in order to establish an effective radio advertising service<sup>8</sup>. Further, this point is illustrated by Radio Otago's recent sale of its North Island radio stations to the Energy Group. According to Radio Otago its inability to properly compete in areas where it did not have viable access to two FM frequencies was the main reason behind Radio Otago's recent sale of its North Island stations.

98 It is on this basis that Radio Otago has informed Commission staff that it would not be interested in acquiring 94.5FM alone should it be divested by the Radio Network. In Radio Otago's opinion, for a new entrant to establish a sustainable and viable business in an area, it is necessary that it have access to two radio frequencies in order to establish its core product and develop a viable market share.

99 The above view is shared by Radio Pacific who has also indicated that neither it, nor the Energy Group, would be interested in acquiring 94.5FM alone and entering the Christchurch market with a music format. Further, Radio Pacific has elaborated on the value of a second station by illustrating that the primary worth of a second station is to strengthen the overall ratings of the entity's group, the value being in the incremental revenue increase. This is illustrated by Energy's experience that the addition of an automated or add on station has over time contributed approximately 3% to the group's overall market share.

100 The Commission notes that the necessity for a new entrant to have access to two frequencies has been disputed by the Radio Network who have used the example of MORE FM in Auckland which has been a stand alone operation since 1993. It is important to note however, that as far as Commission staff are aware MORE FM is the only radio operator to successfully enter the

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<sup>7</sup> This figure is made up of April radio advertising revenue figures for MORE FM [ ], 91ZM [ ] and C93FM [ ]. Given that C93FM's total revenue figure incorporates i94.5FM's revenue figure also, [ ] was deducted from the total to allow for this.

<sup>8</sup> An example of this was the entry of The Radio Works into the radio advertising market by its establishment of three radio stations in Tauranga, Hamilton and New Plymouth. The additional example of C93FM's own move to add i94.5FM to its

metropolitan areas of New Zealand since deregulation of the industry in 1990. Based on present information, Commission staff are not aware of other operator has been successful in achieving this goal. In addition, the fact that MORE FM is currently establishing a second station in the Auckland area, and re-acquiring a frequency in Christchurch, suggests that the importance of a second station to generate additional radio advertising revenue should not be overlooked.

101 The possibility of a new entrant currently outside the radio broadcasting industry successfully entering the Christchurch market and establishing a viable operation would be small. While the Commission does not dispute that such entities may wish to purchase the frequency if it were to be divested, the viability of them doing so must be questioned. Given that these parties would encounter considerable start-up costs, and would compete with parties having experience, expertise, reputation and economies of scale, it appears unlikely that such an entrant would be successful.

102 Radio Pacific, Radio Otago, MORE FM and the applicant have provided the Commission with information containing estimated start-up, anticipated revenue and operating costs for a competitive new entrant station in the Christchurch region. Commission staff note that each of these parties is experienced in establishing radio stations in both metropolitan and provincial markets. The financial modelling provided by the applicant as well as Radio Otago and Radio Pacific show that under certain conditions, entry is barely viable, and in other conditions, produces unsatisfactory returns. As discussed earlier, the Commission believes that if a new entrant were to enter the market, the extent of that entry would not exceed the threshold level of 10% in the first three years. Below this level, the new entrant would be unable to effectively constrain the combined entity. Based on the financial modelling of each of the parties, entry at this required level would be commercially unsustainable over a three year period. It seems unlikely therefore, that entry to the Christchurch market for radio advertising services would be sustainable.

### Conclusion on Constraints by Potential Competitors

- 103 When looking at potential entry, for the threat of market entry to be a sufficient constraint on the exercise of market power, entry of new participants must be likely, sufficient in extent, timely and sustainable. As indicated by the above points, while the divestment of 94.5FM may make entry timely, that entry does not appear probable, with the extent and sustainability of such entry being unlikely to act as a sufficient constraint on the combined entity. Therefore, it appears unlikely that potential entrants to the market via the acquisition of 94.5FM would constrain the combined entity.

### *Existing Radio Operators*

104 Excluding the Radio Network and C93FM, MORE FM is the only other major commercial radio broadcasting company operating in the Christchurch region. If MORE FM were to acquire the licence to i94.5FM, it is plausible that the frequency could be used in a viable manner. However, this eventuality is tempered by two factors. First of all, MORE FM is unsure as to whether it would be interested in acquiring 94.5FM and secondly, there are no guarantees that the Radio Network would be willing to divest the station to MORE FM as the second largest operator in the Christchurch market should the proposal be cleared.

105 MORE FM has indicated to Commission staff that should it acquire the 94.5FM frequency, it would be likely to continue the station on its present easy listening format. However, [ ]

106 Several other small radio operators exist in the Christchurch market. The majority of these players, with the exception of Tahu FM and Beetles FM, operate on a largely non-commercial basis. Given this situation, it appears likely that if one of these non-commercial ventures were to successfully tender for 94.5FM, the current radio advertising revenue derived by the frequency would be re-distributed amongst the existing players, thereby arguably decreasing the combined entity's market share to a small degree (probably less than 1%).

### Conclusion on Constraints by Existing Competitors

107 From the above it appears that if an existing competitor such as MORE FM were to acquire 94.5FM, the station could be used in a viable manner. However, Commission staff are not satisfied that, based on present information, such an acquisition would result in an existing competitor establishing enough market share to effectively constrain the combined entity.

### *Constraints by Customers*

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- 108 Staff spoke to a number of Christchurch radio advertisers. Of those, only one considered it would have sufficient bargaining power to prevent the combined entity from increasing advertising rates. From all indications, large advertisers in the area generally “pick and choose” who they deal with at the moment. However, most advertisers foresaw a definite opportunity for the combined entity to substantially increase advertising rates, with little ability for the advertisers to negotiate. Consequently, customers would provide little constraint on the combined entity’s behaviour.
- 109 Commission staff were told that the majority (possibly up to 80%) of advertisers on radio stations in Christchurch spent less than \$1,000 per month on advertising. For these businesses, radio advertising is necessary and no choice exists for them to utilise other advertising mediums. Any loss of existing competition in the Christchurch area as a result of the proposed acquisition is feared.

### *Other Matters*

- 110 Both advertisers and competing radio stations in the Christchurch area previously expressed a concern at the ability of the combined entity to offer ‘packages’ of radio advertising on a range of their radio stations at prices which advertisers could not refuse. It was a common concern that the merged entity could offer coverage on a number of its own radio stations at the same price as its competitors who in turn could only offer advertising on one or two stations. There is a concern that if this took place and advertisers of the rival radio station were targetted with cheap deals, the shift in market share and advertising dollars could be quite dramatic. Given the fact that existing radio advertising service providers in the area are restricted in their ability to compete on this basis, this could have (and is expected to have should the proposal go ahead), a detrimental effect on competition in the radio advertising services market in the Christchurch area. This view is still shared by a number of the advertisers staff spoke to.

### *Conclusion on the market for the provision of radio advertising services in Christchurch*

- 111 Given that short term changes in market share are insufficient to reliably indicate market trends in the medium to long term, Commission staff are not satisfied that conditions have changed sufficiently since Decision 286 so as to alter the Commission’s view on this matter. Further, staff do not believe that entry by a new radio operator via the establishment of a radio music format on i94.5FM would be sustainable or sufficient in its extent.

### **The Market for the Provision of News, Information and Entertainment Services to Listeners without Charge**

- 112 Each of the companies broadcasting in the Christchurch area are involved, to varying degrees, in providing news, information and entertainment services in

the area. In addition, these services are provided by non-commercial stations, such as Radio New Zealand, which operates Concert FM and National Radio.

113 If the proposed acquisition were to go ahead, the activities of The Radio Network and C93FM would be combined in relation to the provision of news, information and entertainment services to radio listeners in the area. While this proposal would aggregate the interests of The Radio Network and C93FM, this would not result in any significant reduction of competition in relation to the provision of news and sports news services. Public radio would continue to provide news bulletin services, together with more in-depth coverage on programmes such as National Radio's Checkpoint and Morning Report.

114 In addition, competition would continue, to varying degrees, from a wide range of alternative media outlets, including:

- daily and community newspapers;
- national weekly newspapers;
- magazines;
- regional and national free-to-air television;
- pay television; and
- other information technology services (e.g. the Internet).

*Conclusion on the market for the provision of news, information and entertainment services in Christchurch*

115 Implementation of the proposal would not result in any person acquiring or strengthening a dominant position in the market for the provision of news, information and entertainment services to radio listeners.

## CONCLUSION

- 116 Based on the information available at this time, staff conclude they are not satisfied that implementation of the proposal would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the provision of radio advertising services in Christchurch.
- 117 Staff conclude that implementation of the proposal would not lead to the combined entity acquiring or strengthening a dominant position in the market for the provision of news, information and entertainment services to radio listeners.

## RECOMMENDATION

- 118 Having had regard to the factors set out in section 3(9) of the Act, and based on the information available at this time, staff are not satisfied that the proposed acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the provision of radio advertising services in Christchurch.
- 119 It is recommended that, in terms of section 66(3)(b) of the Act, the Commission decline clearance to the proposal.

Investigators

Chief Investigator

Manager

## DETERMINATION ON NOTICE OF CLEARANCE

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3) (b) of the Commerce Act 1986, we hereby decline to give clearance for The Radio Network of New Zealand Limited or any subsidiaries of that Company to acquire all of the radio licences and all of the shares in C93FM (Christchurch) Limited.

Dated at Wellington this                      day of                      1997

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Alan Bollard  
Chairman

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Peter Allport  
Deputy Chairman

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Roger Taylor  
Member