

COMMERCE COMMISSION

Decision No. 557

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

CANWEST RADIOWORKS LIMITED

and

RADIO FM LICENCES IN NORTHLAND

The Commission: David Caygill
Denese Bates QC
Donal Curtin

Summary of Application: The acquisition by CanWest Radioworks Limited of new Radio FM licences from Ministry of Economic Development.

Determination: Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 31 August 2005

**CONFIDENTIAL MATERIAL IN THIS REPORT IS CONTAINED IN
SQUARE BRACKETS**

CONTENTS

EXECUTIVE SUMMARY	i
THE PROPOSAL	1
PROCEDURE.....	1
STATUTORY FRAMEWORK.....	1
ANALYTICAL FRAMEWORK.....	2
THE PARTIES.....	2
CanWest RadioWorks (CanWest)	2
Ministry of Economic Development (MED)	3
OTHER INTERESTED PARTIES	3
The Radio Network (TRN)	3
INDUSTRY BACKGROUND	3
Radio Spectrum.....	3
Radio Advertising	4
PREVIOUS COMMISSION DECISIONS	6
MARKET DEFINITION	6
Product Market.....	7
<i>Radio Advertising</i>	7
<i>Radio Content</i>	8
<i>Conclusion on Product Market</i>	8
Geographic Market	8
Functional Market.....	8
Conclusion on Market Definition	9
COUNTERFACTUAL AND FACTUAL	9
Factual.....	9
Counterfactual.....	9
COMPETITION ANALYSIS.....	9
Existing Competition in the Radio Content Market	9
Existing Competition in the Radio Advertising Market	10
<i>TRN</i>	11
<i>Independent Stations</i>	11
<i>Other Forms of Media</i>	12
Conclusion on Existing Competition in the Radio Advertising Market.....	12
OTHER COMPETITION FACTORS	13
OVERALL CONCLUSION	13
DETERMINATION ON NOTICE OF CLEARANCE.....	15
APPENDIX ONE.....	16

EXECUTIVE SUMMARY

1. A notice pursuant to section 66(1) of the Commerce Act was received on 3 August for CanWest RadioWorks Limited (CanWest) to acquire the allocation of new Radio FM Spectrum Licences from the Ministry of Economic Development (MED).
2. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in either the radio content or radio advertising markets in Northland.
3. Under the proposed transaction CanWest requested that MED implement [] frequency changes to its existing licences in Northland, which would free up radio spectrum, in particular, 6 Radio FM licences. CanWest has sought to acquire these 6 new licences. The overall effect of the rearrangement and acquisition of these licences in Northland would be that the:
 - number of radio stations broadcast by CanWest in Northland would increase; and
 - coverage of CanWest's radio stations in Northland would be improved.
4. The Commission found that the proposed acquisition, together with the rearrangement of CanWest's existing licences would enable it to improve the quality of transmission of its radio broadcasting by implementing synchronous transmission. This transmission technology involves using the same frequency across multiple locations. Post acquisition, synchronous transmission would enable CanWest to undertake better marketing and branding of its stations, in so far as listeners would no longer have to adjust their radio when listening to their radio stations as they travelled around different parts of Northland.
5. In this proposed acquisition, the Commission considers the relevant market to be consistent with previous decisions, namely, the provision of:
 - content services to listeners without charge in the Northland region (the radio content market); and
 - radio advertising services to advertisers in the Northland region (the radio advertising market).
6. The Commission considers that the relevant counterfactual is the status quo since the new licenses would not be created if CanWest does not rearrange its existing licenses in the Northland region.
7. The Commission considers that in the factual scenario, six new Radio FM licenses would be available and these would be owned by CanWest. The acquisition of these licences together with the rearrangement of CanWest's existing licences would enable CanWest to introduce two new stations in Northland. These radio stations are new to Northland but are radio stations currently broadcast by CanWest in other parts of New Zealand.
8. In the radio content market, the acquisition would increase the choice of radio stations. Post-acquisition, in the Mid North and Far North of Northland, CanWest would introduce Radio Live and in Whangarei it would introduce The Rock. Further, post acquisition, listeners would continue to have the choice of listening to other radio stations. The Commission has therefore focused on the

radio advertising market, as this is where the acquisition is likely to have the greatest impact.

9. In the radio advertising market, the Commission considers that the freeing up of new Radio FM licences in Northland would lead to an increase in the overall supply of radio advertising time and would therefore reduce the price of radio advertising. However, post acquisition, in the event that CanWest increased its advertising rates, the Commission considers that there would continue to be sufficient existing competition from The Radio Network, some constraint from independent radio stations, as well as some constraint from other forms of media. The Commission considers that in the radio advertising market, there would be no significant difference in the factual compared to the counterfactual.
10. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by CanWest RadioWorks Limited of new Radio FM Spectrum Licences from the Ministry of Economic Development.

THE PROPOSAL

1. A notice pursuant to section 66(1) of the Commerce Act was received on 3 August for CanWest RadioWorks Limited to acquire the allocation of new Radio FM Spectrum Licences from the Ministry of Economic Development (MED).

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 31 August 2005.
3. The Applicant sought confidentiality for specific aspects of the Application and the provisions of the Official Information Act 1982 apply.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have, the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²
6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.³
7. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not minimal.⁴ Competition must be lessened in a considerable and sustainable way.

¹ Commerce Commission, *Mergers and Acquisition Guidelines*, January 2004.

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

³ *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

⁴ See *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

ANALYTICAL FRAMEWORK

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual) ; and
 - in the absence of the acquisition (the counterfactual).
11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market, for both the factual and the counterfactual scenarios, in terms of:
 - existing competition;
 - potential competition; and
 - other competition factors, such as the countervailing market power of buyers or suppliers.

THE PARTIES

CanWest RadioWorks (CanWest)

12. CanWest is a wholly owned subsidiary of CanWest MediaWorks (NZ) Limited, which is itself 70% owned by CanWest Global Communications. CanWest acquired RadioWorks in 2000. CanWest operates a number of radio networks that include “More FM”, “Kiwi”, and “The Breeze”. It operates a radio station on behalf of New Zealand Racing Board, known as Radio Pacific formerly Radio Trackside. CanWest also owns the TV3 and C4 television channels.

Ministry of Economic Development (MED)

13. The Ministry of Economic Development (MED) is responsible for managing the radio spectrum on behalf of the government through the Radio Spectrum Management Group. The radio spectrum is an important resource, managed by the Crown on behalf of the people of New Zealand. The Ministry allocates spectrum for commercial purposes under this regime based on the ideal that spectrum should be allocated to those who value it most.
14. In this proposed acquisition, MED is responsible for allocating any new available radio FM licences in Northland.

OTHER INTERESTED PARTIES

The Radio Network (TRN)

15. TRN is jointly owned by APN News & Media (APN) and Clear Channel Communications (Clear). APN also owns Wilson & Horton, the publisher of the New Zealand Herald.
16. TRN's main business is the provision, on a national scale, of commercial radio broadcasting services (including the provision of news and general information) and advertising through the radio medium. TRN owns 94 stations, broadcasting throughout New Zealand under brand names including "Classic Hits", "Newstalk ZB", and "Radio Sport".

INDUSTRY BACKGROUND

Radio Spectrum

17. The Applicant is seeking clearance to acquire six new radio FM licences in Northland. It states that MED has requested that it obtain Commerce Commission approval.
18. Under the proposed transaction CanWest requested that MED implement [] frequency changes to its existing licences in Northland, which would free up radio spectrum, in particular, 6 radio FM licences. CanWest has sought to acquire these 6 new licences. The overall effect of the rearrangement and acquisition of these licences in Northland would be that the:
 - number of radio stations broadcast by CanWest in Northland would increase; and
 - coverage of CanWest's radio stations in Northland would be improved.
19. The Commission found that the acquisition, together with the rearrangement of CanWest's existing licences, would enable it to improve the quality of transmission of its radio broadcasting by implementing synchronous transmission. This transmission technology involves using the same frequency across multiple locations. Post acquisition, synchronous transmission would enable CanWest to undertake better marketing and branding of its stations, in so far as listeners would no longer have to adjust their radio when listening to their radio station as they travelled around different parts of Northland.
20. Table 1 below shows the number of Radio FM licences currently held in Northland and who they are owned by. As can be seen, the main licence holders are CanWest and TRN.

Table 1: Current No. of Licences in Northland

Company	Total No. of Licences in Northland
CanWest	13
New Zealand Racing Board*	4*
Total CanWest **	17**
TRN	16
Radio NZ	11
Mai FM	2
Rhema	4
Ngati Hine Trust	2
Te Runanga a iwi o Ngapuhi	5
Others	8
Total	65

Notes: *New Zealand Racing Board holds 4 licences which are managed by CanWest.

**[].

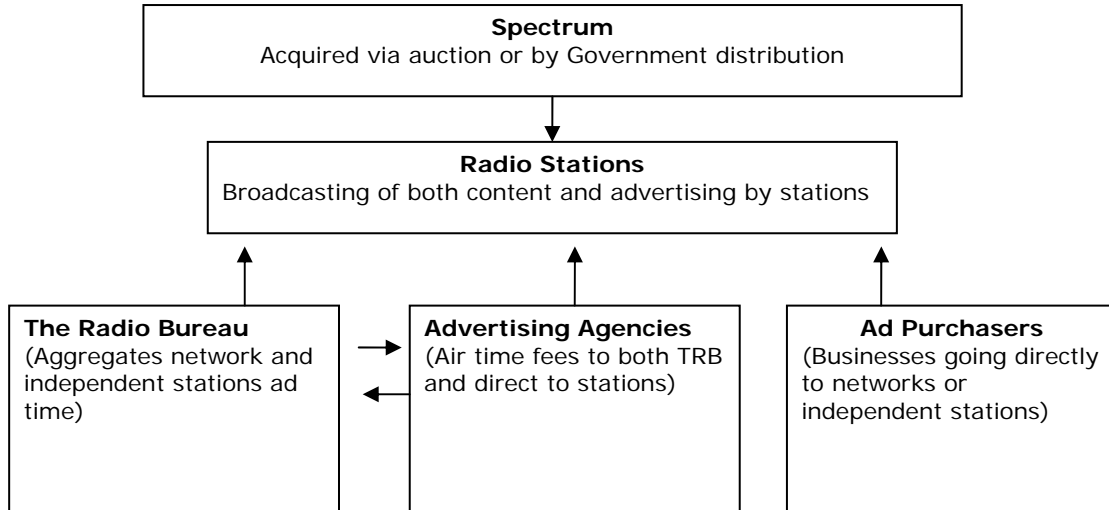
21. Table 1 shows that TRN currently has sixteen licences, []. Pre-acquisition, CanWest has seventeen licences.
22. The rearrangement and acquisition of CanWest licences involve the following: []. Further details of the frequencies on which radio stations operate currently and after the rearrangement and acquisition of CanWest's Radio FM licences can be found in Appendix One.

Radio Advertising

23. This proposed acquisition involves the provision of radio broadcasting services and ultimately the provision of radio advertising services in Northland.
24. Figure 1 illustrates that radio stations require radio spectrum to provide radio broadcasting services. This can be acquired from the government, namely MED, if it is newly available spectrum, or through a secondary trading market. For example, [] Radio stations then broadcast content which attracts listeners. Advertisers seeking to get their message to these listeners purchase air time on the stations either directly from the stations or by using advertising agencies that use The Radio Bureau, which is a joint venture between CanWest and TRN.
25. In New Zealand, advertising agencies generally represent companies who spend large dollar amounts on advertising media. Agencies typically provide advertising campaign strategy, creation and purchasing services. Direct

purchasers will often be small advertisers that typically go directly to a radio station.

Figure 1: Radio Advertising Market



26. Table 2 shows the radio stations that each of these main broadcasters currently provide in Northland. Post acquisition, CanWest proposes to introduce Radio Live in the Mid and Far North and The Rock in Whangarei.
27. The table below also shows that in addition to CanWest and TRN there are a number of independent radio stations. All of the independent stations currently broadcasting in the Northland region provide various ethnic and racial groups a means to communicate with their communities. Most of these stations operate under restrictions as to the type of content they can broadcast and the amount of advertising they can broadcast per hour.

Table 2: Broadcasting Radio Stations in Northland

Company	Broadcaster	Radio Station
1	CanWest	More FM
2	CanWest	The Edge
3*	CanWest	The Rock
4*	CanWest	Radio Live
5	New Zealand Racing Board	Radio Pacific
6	TRN	Classic Hits
7	TRN	Radio Hauraki
8	TRN	Radio Sport
9	TRN	ZM
10	TRN	Newstalk ZB
11	Radio New Zealand	National Radio
12	Radio New Zealand	Concert FM
13	Independent	Mai FM
14	Independent	Ngati Hine FM

15	Independent	Sunshine FM
16	Independent	Tai FM
17	Independent	Te Hiku FM
18	Independent	Life FM
19	Independent	NZ Rhema

Note:* Post-acquisition

PREVIOUS COMMISSION DECISIONS

28. The Commission has considered a number of cases in the provision of radio services. The most recent acquisitions, that are most relevant to this clearance, are:
- CanWest acquisition of Auckland radio spectrum, March 2004; and
 - The Radio Network acquisition of Auckland radio spectrum, March 2004.
29. In both of those acquisitions, the relevant markets were defined as the markets for:
- the Auckland region for the provision of radio advertising services to advertisers (the radio ad market); and
 - the Auckland market for the provision of content services to listeners without charge (the radio content market).
30. In each of the investigations⁵ the Commission concluded that both acquisitions would not result in a substantial lessening of competition, given the constraint of existing competition in the radio advertising market and a wide variety of content on both commercial and non-commercial stations in the radio content market.

MARKET DEFINITION

31. The Act defines a market as:
- “... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.”⁶
32. For competition purposes, market participants include all suppliers and all buyers between whom there is close competition, and exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.

⁵ The Commerce Act (the Act) provides for a voluntary notification regime for proposed acquisitions, under which parties contemplating an acquisition may submit an application for clearance or authorisation if they are in doubt as to whether their proposed acquisition might contravene s 47. If parties choose to proceed with an acquisition without seeking prior clearance or authorisation, the Commission may initiate an investigation under s 47 of the Act. The analytical and investigation process is the same as it is for clearances.

33. The Commission defines relevant markets in terms of four characteristics or dimensions:
- the goods or services supplied and purchased (the product dimension);
 - the level in the production or distribution chain (the functional level);
 - the geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic extent); and
 - the temporal dimension of the market.
34. Where markets are difficult to define precisely, the Commission initially takes a conservative approach. If the proposed acquisition can be cleared using a narrow market definition, it would also be cleared using a broader one. If the Commission is unable to clear the proposed acquisition using the narrower market, it will be necessary to review the arguments and evidence in relation to broader markets.

Product Market

Radio Advertising

35. In previous investigations involving the acquisition of spectrum, the Commission found that while other forms of advertising perform a similar function there are several features of radio advertising that make it a distinct product market. Some of these features are:
- radio advertising can be bought at short notice and is therefore useful for advertising forthcoming events;
 - radio advertising is an excellent tool for reaching a young target audience;
 - cost of producing commercials is low making it attractive for advertisers on tight budgets;
 - radio advertising is very direct and takes little effort by the consumer; and
 - local radio is a useful way to build awareness of local brands and services.
36. Industry participants have confirmed that radio advertising is not a substitute for other forms of advertising. For example, [], a local advertiser in Northland, stated radio was not a substitute for television or press. He indicated that radio was a better medium for spreading the word and getting people into the store and that product-specific advertising is included in brochures. He also stated that radio advertising required little effort for the consumer as they do not necessarily have to pay attention to it and read it.
37. Radio advertising has significant complementarities with other forms of advertising as demonstrated by the purchasing habits of both advertising agencies and direct purchasers who tend to advertise on different mediums contemporaneously. Once the proportion of the media budget is allocated to radio, buyers select an air time provider based on cost comparisons, quality of service and level of audience reach as well as audience target. However, the Commission considers that the constraint afforded by advertising forms outside of the radio advertising market is limited due the unique characteristics of radio advertising and the purchasing behaviour of radio air time buyer.

Radio Content

38. In previous investigations, the Commission considered news, information and entertainment provided by radio to exist in a complementary relationship with other forms of media. It was noted that while the news, information and entertainment content of radio was duplicated by these other forms of media, the means of delivery was sufficiently unique to place this content in its own product dimension. The Commission's current investigation raised no reason to believe that this product dimension has changed.

Conclusion on Product Market

39. For the purpose of this clearance involving the acquisition of spectrum, the Commission, therefore, sees no reason to depart from its previous decisions and considers the relevant product market to be the provision of:
- radio advertising services to advertisers (the radio advertising market); and
 - content services to listeners without charge (the radio content market).

Geographic Market

40. Radio broadcasting is oriented towards local or regional audiences in terms of news and advertising content. The extent of the geographic market for radio advertising varies depending on a number of factors including the range of frequency for which a radio station has the licensing rights. For instance, [] stated that when it buys advertising for the Whangarei region, the advertisement gets aired in most of Northland at no extra charge.
41. Further, some advertisers require local coverage whilst some require national coverage. The Commission found that local advertising makes up the largest share of radio station advertising in Northland. For instance, CanWest local advertising represented [] of their total advertising revenue in the Northland region. For independent stations the percentage is likely to be higher.
42. While national advertising is a feature of the market, the Commission considers that the impact on competition of the CanWest spectrum is best assessed applying a regional geographic market.
43. In the provision of radio content services to listeners without charge, the Commission considers that the ability to deliver radio content to listeners is restricted by the transmission ranges of stations.
44. The Commission concludes that the relevant geographic market is the Northland region for both the radio content market and the radio advertising market.

Functional Market

45. Figure 1 outlines the industry participants and the different activities that they undertake in the radio industry. The acquisition involves the acquisition of radio spectrum, an input, which is used to provide radio broadcasting services, namely radio content, to listeners and radio advertising services to advertisers.
46. In previous investigations, the Commission considered the relevant functional level to be the retail supply of radio advertising and the retail supply of radio content to listeners without charge. The Commission's current investigation found no evidence to suggest that this conclusion has changed.

Conclusion on Market Definition

47. The Commission concludes that the relevant market are the provision of :
- content services to listeners without charge in the Northland region (the radio content market); and
 - radio advertising services to advertisers in the Northland region (the radio advertising market).

COUNTERFACTUAL AND FACTUAL

48. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgment considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (the counterfactual).⁷ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

49. The Commission considers that in the factual scenario, six new Radio FM licenses would be available and these would be owned by CanWest. The acquisition of these licences together with the rearrangement of CanWest's existing licences would enable CanWest to introduce two new stations in Northland. These radio stations are new to Northland but are radio stations currently broadcast by CanWest in other parts of New Zealand. As mentioned before, post acquisition, CanWest proposes to introduce Radio Live in the Mid and Far North and The Rock in Whangarei.
50. Post acquisition, CanWest would have [] licences, on which to transmit. TRN would be the next largest licence holder in Northland with sixteen frequencies in the Northland region. []
51. The Commission considers that in the factual CanWest, TRN and independent broadcasters would continue to operate in the radio advertising and radio content market.

Counterfactual

52. The Commission considers the likely counterfactual is the status quo since the new licences would not be created if CanWest does not seek an amendment to its existing licences in Northland.

COMPETITION ANALYSIS

Existing Competition in the Radio Content Market

53. The Commission considers the proposed acquisition of radio spectrum and resulting aggregation affects the downstream radio advertising and radio content

⁷ *Air New Zealand & Qantas Airways Ltd v Commerce Commission (No 6)*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

markets. The competition effects of aggregation play out in the radio advertising and radio content markets in an indirect fashion.

54. In the radio content market, the proposed acquisition would increase the choice of radio stations as CanWest would introduce new stations to the Northland region, although these stations are currently broadcast in other parts of New Zealand. Therefore CanWest would already have the radio content for The Rock and Radio Live.
55. Given that the acquisition would increase choice, and that there would continue to be several other radio stations in the Northland region, the Commission considers there is unlikely to be a substantial lessening of competition in this market, post-acquisition. The Commission has therefore focused on the radio advertising market, as this is where the acquisition is likely to have the greatest impact.

Existing Competition in the Radio Advertising Market

56. The Applicant submitted that the proposed acquisition of six new Radio FM licences would have no impact on competition in the Northland radio advertising market and that TRN was a major competitor.
57. The acquisition of radio spectrum and any resulting aggregation affects the downstream radio advertising market. As no market share is actually acquired there is no immediate aggregation per se in the radio advertising market. There are more than ten radio broadcasters in Northland. This total includes stations that have limits on advertising time.
58. The market shares of the major broadcasters are shown in the table below. The radio content market is linked to the radio advertising market. Quality content and content that caters for specific audiences attract listeners, which in turn attract advertisers. Both listener numbers and the type of listener play a major role in the perceived effectiveness of advertising with specific stations.

Table 3: Northland Region Advertising Revenues and Market Share for 2004

Company	Market Share	Advertising Revenues
CanWest	[]	[]
TRN	[]	[]
Other	[].	[]
Total	[]	[]

Source: PricewaterhouseCoopers Radio Surveys and independent stations.

59. In the radio advertising market, CanWest had a market share of [] by revenue in 2004. It is not clear whether this market share would increase as a result of it being able to introduce new stations in the Northland region, and implementing synchronous transmission, and if so by how much. TRN had a market share of [] by revenue in 2004; the combined market share of other radio stations was approximately [].
60. The advertising agencies the Commission spoke to commented that there would be more choice and greater coverage for advertisers in the Northland region with the new stations starting up. []

]

61. Other things being equal, the availability of six new radio FM licences in Northland would increase the overall supply of radio advertising time. As a result, post acquisition prices would decrease. For example, [] said the acquisition will increase competition and cause spot rates for advertising to fall to a level where it is no longer viable for the smaller competitors.
62. However, post-acquisition, in the event that CanWest increased its advertising rates in Northland, the Commission has considered the extent to which TRN, independent broadcasters and other forms of media would constrain CanWest.

TRN

63. TRN operates five stations in Whangarei – Classic Hits, ZM, Radio Sport, Hauraki and Newstalk ZB. Classic Hits and Newstalk ZB are also available in the Mid and Far North.

64. []

].

65. []

].

66. The introduction of The Rock and Radio Live in Northland by CanWest would most likely compete with TRN's Radio Hauraki and Newstalk ZB respectively. The Rock and Radio Hauraki broadcast rock music and target a similar audience; Radio Live and Newstalk ZB broadcast talk back radio and target a similar audience.
67. [] provided the Commission with evidence to show they have lost some local advertisers to [] in the Northland region. []

]

68. Accordingly, the Commission considers that post-acquisition in the radio advertising market TRN would continue to constrain CanWest.

Independent Stations

69. The Commission interviewed a range of independent radio stations operating in the Northland region. The Commission found that these independent stations face some disadvantages when competing with both CanWest and TRN, namely:

- the limited coverage they possess;
- they have no portfolio of radio stations; and

- they have limits on their advertising airtime.
70. Some advertising agencies informed the Commission that they tended to purchase a “combination” of radio stations from either CanWest or TRN.
71. []
-].
72. [] said it would be severely disadvantaged by the acquisition unless they were on an equal playing field in terms of coverage of their frequencies. [] also noted that it carries out some advertising for free for various groups such as []
-].
73. [] also commented that the rate they charge for advertising is about 25% lower than the rates the other stations charge in Whangarei, which they have to do to attract clients.
74. On the other hand, the Commission found that there are 22 iwi stations throughout the country which are part of a Maori Media network. The network receives a lot of business from government agencies and health organisations and commercial businesses such as The Warehouse and McDonalds.
75. In the radio advertising market, post-acquisition, the Commission concludes that independent broadcasters would continue to face the same limitations they currently face, and would continue to provide some constraint to CanWest. Post acquisition, there would be no major difference between the factual and counterfactual scenarios.

Other Forms of Media

76. A number of local advertisers commented that if radio advertising prices increased, they would reduce their expenditure on radio and increase their spend on some other advertising medium. For instance [] in Whangarei stated that it would reduce its radio advertising budget and increase its print advertising if the price of radio advertising increased.
77. [] commented that if the price of radio became too expensive [] would change their budget mix. Of [] total media spend of [], [] goes on TV and [] goes on radio; the rest goes to press and online.
78. [] said the store would always use radio for advertising; however if the price of radio advertising increased, they would look at allocating their funds somewhere else.
79. [] currently advertises through More FM and The Edge with CanWest, and Classic Hits and Newstalk ZB with TRN. If the price of radio advertising increased, they would still use radio but not as much.
80. The Commission considers that other forms of media exert some constraint on the price of radio advertising and would continue to do so, post acquisition.

Conclusion on Existing Competition in the Radio Advertising Market

81. The Commission notes that CanWest’s main competitor, TRN, [] Advertising agencies and local advertisers []

] with the acquisition and many stated the acquisition would give them more choice, with the addition of The Rock radio station in Northland and the coverage of Radio Live being extended so it was throughout Northland.

82. The Commission concludes that CanWest would continue to be constrained, mostly by TRN, in the Northland region after the acquisition. TRN has five stations operating in Whangarei and two stations operating throughout Northland. CanWest would also continue to face some constraint from independent radio stations, such as Mai FM and Ngati Hine FM. Other forms of advertising, although not included in the market, would also continue to provide some constraint on CanWest. The Commission considers that in the radio advertising market there would be no significant difference in the factual compared to the counterfactual.

OTHER COMPETITION FACTORS

83. The Commission considers there to be no need to assess potential competition or countervailing power in the radio advertising market, due to sufficient existing competition and some constraint from other forms of media, post-acquisition.

OVERALL CONCLUSION

84. Under the proposed transaction CanWest requested that MED implement [] frequency changes to its existing licences in Northland, which would free up radio spectrum, in particular 6 radio FM licences. CanWest has sought to acquire these 6 new licences.
85. In this proposed acquisition, the Commission considers the relevant market to be consistent with previous decisions, namely, the provision of:
- content services to listeners without charge in the Northland region (the radio content market); and
 - radio advertising services to advertisers in the Northland region (the radio advertising market).
86. The Commission considers that the relevant counterfactual is the status quo since the new licenses would not be created if CanWest does not rearrange its existing licenses in the Northland region.
87. In the radio content market, the acquisition would increase the choice of radio stations. Post-acquisition, in the Mid North and Far North of Northland, CanWest would introduce Radio Live and in Whangarei it would introduce The Rock. Further, post-acquisition, listeners would continue to have the choice of listening to other radio stations. The Commission has therefore focused on the radio advertising market, as this is where the acquisition is likely to have the greatest impact.
88. Post-acquisition, in the radio advertising market, the Commission considers that there would continue to be sufficient existing competition from The Radio Network, some constraint from independent radio stations, as well as some constraint from other forms of media. The Commission considers that in the radio advertising market, there would be no significant difference in the factual compared to the counterfactual.

89. On balance, the Commission is satisfied that the proposed acquisition would not have, or would not be likely to have⁸, the effect of substantially lessening competition, in either the radio content or radio advertising market in Northland.
90. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by CanWest RadioWorks Limited of new Radio FM Spectrum Licences from the Ministry of Economic Development.

⁸ *Brambles New Zealand Ltd v Commerce Commission* (2003) 10TCLR868, 877

DETERMINATION ON NOTICE OF CLEARANCE

91. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for CanWest RadioWorks Limited to acquire the allocation of new Radio FM Spectrum Licences from the Ministry of Economic Development.

Dated this 31st day of August 2005

David Caygill
Deputy Chair
Commerce Commission

APPENDIX ONE

Table 1: Location of CanWest's Licences

[

]