

COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE

1 August 2005

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
Wellington

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

*1 What is the business acquisition for which **clearance** is sought?*

*1.1 Identify **what** is to be acquired and **who** is to acquire it.*

The "business" being acquired is the allocation of new Radio FM Spectrum Licences from MED acting pursuant to statutory powers under the Radiocommunications Act 1989 (the Radio Act).

This is neither a "business" nor an acquisition as such – rather it is essentially a rearrangement of frequencies in Northland with what is called synchronous transmission. This means using the same frequency across multiple sites rather than different frequencies. The consequence is to enable RadioWorks to establish one additional radio station in Northland and allows the creation of one additional frequency in the Mid North and Far North.

MED has indicated that it will grant these licences which, together with variations to certain other existing licences, will form a radio network broadcasting in Northland.

1.2 Attach a copy of any contract or agreement relating to the proposed acquisition.

A table is attached setting out the licences being allocated by MED and identifying which of those licences is new. This clearance is sought in relation to the issue of the new licences only. Clearance is required as a result of the operation of s138 of the Radio Act.

MED Policy is that new licences are to be allocated by a contestable auction process. MED accepts that a contestable process is inappropriate in relation to the issue of these new licences. This is because the new licences are to be part of a RadioWorks Network; they cannot and will not stand alone. The licences can only be operated by the holder of certain existing licences – in all cases RadioWorks.

The Person Giving Notice

2 *Who is the person giving this notice?*

Brent Impey
Chief Executive Officer
CanWest RadioWorks Limited
Private Bag 92 624
Symonds Street
Auckland

Phone 09 366 5928
Facsimile 09 366 5999
Mobile 021 925 302
E bimpey@mediaworks.co.nz

Confidentiality

3 *Do you wish to request a confidentiality order for:*

3.1 *The fact of the proposed acquisition?*

No

3.2 *Specific information contained in or attached to the notice?*

Yes, in respect of the information relating to advertising revenue at 16.2

3.2.1 *If so, for how long?*

Permanently

3.2.2 *Why?*

To protect the commercial interests of the participants in the market

Details of the Participants

4 *Who are the participants (ie the parties involved)?*

The only participant is CanWest RadioWorks Limited. RadioWorks is a wholly owned subsidiary of CanWest MediaWorks (NZ) Limited which is itself 70% owned by the interests of CanWest Global Communications (a Canadian Media company). The remaining 30% of the MediaWorks shares are in public ownership following a float of the company on the New Zealand Stock Exchange in July 2004.

The contact details for RadioWorks are as given for Brent Impey above.

9 *What are the business activities of each participant?*

RadioWorks operates a number of radio networks in New Zealand - MORE FM, RADIO LIVE, SOLID GOLD, THE BREEZE, THE ROCK, THE EDGE and KIWI FM. It also operates, on behalf of the owner New Zealand Racing Board, Radio Trackside, the station until recently known as Radio Pacific.

10 *What are the reasons for the proposal and the intentions in respect of the acquired or merged business?*

RadioWorks is establishing a new Network to provide broadcasting services to the Northland area, it has requested that MED modify technical aspects of some of its existing licences and issue new licences to enable it to complete the Network. The Network will introduce two new stations to the Mid and Far North – Radio Live and The Rock – and one new station in the largest market of Whangarei – The Rock.

The Network will improve and diversify radio reception to Northland listeners. The establishment of this Network allows for synchronous transmission of certain of the radio brands. This is achieved by the alignment of nearby frequencies on the same signal. This allows for more efficient use of the spectrum and the ability for listeners to tune to one frequency to listen to the brand across a larger area than was possible before. A freeing up of frequency by the synchronous use of other frequencies will mean that all operators will be able to expand its service to Northland listeners. I am aware that TRN, the major competitor plans similar work in the near future.

Once the RadioWorks' Network is established Northland listeners will have access to additional radio stations in their area.

- In Whangarei - **The Rock**
- In Mid North – **Radio Live** and **The Rock**
- In Far North – Radio Live and **The Rock**

Of that new service only those stations shown in bold are affected by the issue of new licences – the other station will be delivered from an existing frequency. The additional new frequencies, shown in the table in the Whangarei location are to effect an improvement to coverage for Whangarei.

Details of the existing radio operators are set out in Part III below.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 *Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?*

This arrangement, which cannot be described as an acquisition, does not alter current market operating conditions – no issue of horizontal aggregation arises.

Differentiated Product Markets

- 12 *Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).*

The market will continue to operate as it does currently – listeners will enjoy an enhanced service and advertisers will place their product precisely as they do currently – sales at local and national level will be handled in the same way.

Vertical Integration

- 14 *Will the proposal result in vertical integration between firms involved at different functional levels?*

No, functional operation will remain unchanged.

- 14.1 *Are the “acquirer” (or any interconnected or associated company as identified in questions 5.1.1 -5.1.4) and:*
- the business to which the assets relate, **or***
 - the ‘target company’ (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2) engaged at different functional levels of the same product market(s)?*

There is no true acquisition and no target company to which this question could apply.

- 15 *In respect of each market identified in questions 11 and/or 14 identify briefly:*

- 15.1 *all proposed acquisitions of assets of a business or shares involving either participant ... notified to the Commission in the last three years ...*

No proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) have been notified to the Commission in the last three years. The Commission carried out a detailed review of the Auckland radio market *Investigation Report on TRN Radio Spectrum Acquisition ref 1.2/J6272*. Aspects of that report are relevant to the operation of the radio market generally.

- 15.2 *any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.*

RadioWorks is consistently building its radio operation. The only activity relevant to this market is this proposal and the fact that this market is part of the arrangement between New Zealand Racing Board and RadioWorks to establish a separate NZRB network with NZRB owning and eventually operating Radio Trackside (formerly Radio Pacific) which carries racing material during racing time and Radio Pacific material in non racing time.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

16 *In the market or markets, who are the suppliers of competing products, including imports?*

For the purpose of this section the material is divided into three markets

- Whangarei
- Mid North
- Far North

Whangarei

In Whangarei the existing competitors are

- The Radio Network (TRN) five stations – Classic Hits, ZM, Radio Sport, Hauraki and Newstalk
- Mai Media – one station – Mai FM
- Iwi – one station

RadioWorks has three stations MORE FM, Radio Pacific*, The Edge.

Note: Radio Pacific, while operated by RadioWorks, it is owned by NZRB.

Mid North

In the Mid North the existing competitors are

- TRN – two stations- Classic Hits, Newstalk
- Iwi – two stations
- Community Radio – two stations

RadioWorks has three stations MORE FM, Radio Pacific*, The Edge

Far North

In the Far North the existing competitors are

- TRN two stations Classic Hits, Newstalk
- Iwi – five stations
- Community Radio – two stations

RadioWorks has three stations – MORE FM, Radio Pacific*, The Edge

16.1 Please identify the owners of those suppliers (including ultimate owner/s).

TRN is jointly owned by APN News & Media (APN) and Clear Channel Communications (Clear)

Mai FM is owned by a trust associated with Ngati Whatua

Iwi and Community Radio are owned by community and local groups. Contact details can be provided if required.

16.2 What are their estimated market shares, both in terms of productive capacity and of sales?

In the Northland market

Listener share (the market for the provision of news, information and entertainment services without charge)

| Share 10years+ | 2000 | 2001 | 2002 | 2003 | 2004 |
|-----------------------|-------------|-------------|-------------|-------------|-------------|
| TRN | | | | | |
| RadioWorks | | | | | |

Advertising share (the market for the provision of radio advertising services to advertisers attracted by the listener profile of the stations concerned)

| Share Advertising Spend | 2000 | 2001 | 2002 | 2003 | 2004 | YTD 2005 |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|-----------------|
| TRN | | | | | | |
| RadioWorks | | | | | | |

Note: Only TRN and RadioWorks participate in the surveys which establish these figures. My best estimate is that the other participants in the market may account for a real 10% of the spend – that would of course have an equal effect to reduce the percentage share to both TRN and RadioWorks.

Sources of Estimates:

16.3 Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

Independent radio survey results provided to participants by PricewaterhouseCoopers Performance Comparison Reports. The figures have been rounded and are provided on the terms they are provided to participants – that they are unaudited.

Other Considerations

16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

This proposal has no impact on the ability of other participants to enter the market.

Conditions of Expansion

17 *The following listing gives different types of market conditions that may affect the ability of existing firms to expand:*

· Frontier entry conditions

The primary difficulty relates to availability of spectrum as there is little or no spectrum left to be allocated by MED.

· Legislative/regulatory conditions

Allocation of spectrum is controlled by MED which has agreed to the grant of these new licences as it recognises the unique operating environment for RadioWorks given the existing licence holdings it has at present.

· Industrial/business

Other opportunities for expansion of broadcasting service to Northland relate primarily to the development or spread of new and existing alternative technologies

- Narrow channel spacing (below 800 kHz)
- Terrestrial digital audio band (DAB)
- Satellite DAB
- Internet Radio

· Other

None of the competitors in the market are able to replicate the conditions that make the issue of these licences possible for RadioWorks simply as a function of the "fit" with existing licences.

The effect of the issue of the license is to that extent neutral as not one of the competitors could utilise the licences because of the placement of the licences in the system.

Coordinated Market Power

23 *Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.*

I believe that the effect of this proposal is neutral to the operation of the competitive market. No aspect of this proposal will lessen competition.

THIS NOTICE is given by CanWest RadioWorks Limited

CanWest RadioWorks Limited confirms that:

- * All information specified by the Commission has been supplied;

- * All information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
- * All information supplied is correct as at the date of this application/notice.

CanWest RadioWorks Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this **1st** day of **August 2005**.

Signed by Brent Graham Impey:

Chief Executive Officer

I am a director of the company and am duly authorised to make this application.

To the Registrar,
Business Acquisitions & Authorisations,
Wellington

| Licences | New Licences | Location |
|----------------------------|--------------|-----------|
| 91.20 MHz at Russell | | |
| 90.00 MHz at Maungataniwha | ✓ | Far North |
| 90.40 MHz at Russell | | |
| 90.00 MHz at Hikurangi | | |
| 90.00 MHz at Parahaki | | |
| 92.40 MHz at Hikurangi | | |
| 92.40 MHz at Parahaki | ✓ | Whangarei |
| 92.40 MHz at Horokaka | | |
| 91.60 MHz at Maungataniwha | | |
| 92.00 MHz at Russell | | |
| 91.60 MHz at Hikurangi | ✓ | Mid North |
| 91.60 MHz at Parahaki | | |
| 91.60 MHz at Horokaka | ✓ | Whangarei |
| 94.00 MHz at Hikurangi | ✓ | Mid North |
| 94.00 MHz at Parahaki | | |
| 94.00 MHz at Horokaka | ✓ | Whangarei |