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COMMERCE COMMISSION

DECISION NO. 286

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of s 105 of 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 subsidiaries of that company acquire all of the radio licences and all of the shares in C93FM (Christchurch) Limited.
- Determination:** Pursuant to s 66(3)(b) of the Act, the Commission determines to decline to give a clearance for the acquisition.
- Date of Determination:** 27 March 1997

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MEMORANDUM

To: The Radio Network/C93FM Division

From: John Preston
Lisa Weir
Guy Launder

Date: 27 March 1997

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

Working Day 10: 27 March 1997

Confidential material in this report is contained in square brackets

THE PROPOSAL

- 1 On 13 March 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 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. Therefore, the due date for a decision is 27 March 1997.
- 3 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 radio advertising services in Christchurch.

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

THE PARTIES

The Radio Network of New Zealand Limited

- 5 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 its Newstalk ZB program on an AM frequency in the area, and currently holds one unused AM frequency in Christchurch.
- 6 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.
- 7 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.

8 Clear is a public company listed on the New York Stock Exchange. It is a radio and broadcasting company operating in the United States.

9 NZCP is a privately owned non-trading holding company []

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C93FM (Christchurch) Limited

10 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.

BACKGROUND TO THE RADIO BROADCASTING AND NEWSPAPER INDUSTRIES

11 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.

12 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.

- 13 The Radiocommunications Act created two forms of tradable property rights - management rights and licences, both of which may be granted for periods of up to 20 years. Radio spectrum rights, which can only be created by the Crown, give the owner the right to issue licences for frequencies in the radio spectrum that are covered by the management right. Licences, which are tradable, are usually offered by the Crown through public tenders. There is no requirement on how the licence may be used, or on whether it should be used at all.
- 14 Licences for frequencies 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.
- 15 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 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.
- 16 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

17 The proposed acquisition relates to radio broadcasting predominantly in the greater Christchurch area.¹ 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. 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 2 FM stations in Christchurch (ie. Classic Rock C93FM and i94.5FM). Classic Rock C93FM is repeated on 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).
- 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).

¹ For the purposes of this application this has been defined as Christchurch City and surrounded by the districts of Banks Peninsula, Waimakariri, Selwyn and Hurunui.

- 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 its Life FM programme. Two of Radio Rhema's frequencies are reserved under Schedule 7 of the Radiocommunications Act.

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

Radio Advertising

19 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 1995,

around \$156 million was spent on a national basis on radio advertising. This represented around 10.9% of total advertising expenditure throughout New Zealand.

- 20 Advertisers in radio can be split into two main groups - national and local. 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 National Radio Bureau to purchase radio advertising space. The Radio Bureau sells advertising on behalf of almost all commercial radio stations throughout New Zealand.
- 21 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.

Radio News and Information

- 22 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 (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

- 23 In 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.

Product/Functional Markets

- 24 The Commission has previously given consideration to the issue of market definition when assessing business acquisition proposals involving newspapers, radio and other media outlets. In reaching its view on market definition involving media acquisitions, the Commission has taken into consideration a number of factors. As noted in a staff report dated 25 May 1995 on a proposal involving Wilson & Horton and Northern Publishing Ltd:

- for advertising purposes, each media category has its own characteristics, although there is a degree of complementarity;
- advertisers will use a range of media to take advantage of the strengths and characteristics of each media outlet;
- the differentiation in the nature of the advertising service provided means that they are largely complementary from the viewpoint of advertisers; and
- there is flexibility in the media mix that an advertiser will use, which results in a degree of competitiveness at the margin.

25 The strength of radio is its immediacy, the scope it provides to play advertisements frequently, its relatively low cost to the advertisers, its ability to reinforce awareness in a specific locality, and its potential to target specific listeners according to age and other demographic factors. Other mediums for advertising offer alternative benefits, such as television with its ability to develop visual awareness and image of a product, and newspapers with their durability and ready availability.

26 Most advertisers considered that radio and television performed different functions and were complementary, with the degree of complementarity usually 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. 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.

27 These 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

- 28 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.
- 29 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

30 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 a package 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 differentiated as the greater Christchurch area.

ASSESSMENT OF DOMINANCE

31 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.

32 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...”

33 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.

- 34 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 non-exhaustive factors and any other relevant matters that may be found in a particular case.
- 35 A dominant position does not necessarily involve absolute control or monopoly. The Court of Appeal stressed in the *Port Nelson*² 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.
- 36 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 in Christchurch

Market Shares

- 37 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”).)
- 38 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).

39 If either of the foregoing situations apply, the proposed acquisition will generally fall within a “safe harbour” and the acquisition is likely to be cleared.

Christchurch

40 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.

41 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.

² Port Nelson Ltd v Commerce Commission (1996) C.A.169/95.

42 Estimated market shares for radio advertising in the greater Christchurch market are:

	Current Local Revenue % Share
The Radio Network	[] ³ 100

* These stations operate on a largely non-commercial basis and only do limited radio advertising.

43 In addition to the above, four radio stations operate in the Christchurch region on a largely non-commercial basis. These stations air limited radio advertisements, but given their very small audience shares and their negligible radio advertising revenue, they are not commonly included in any analysis of radio advertising market share and revenue in the Christchurch region.

44 Post-acquisition the combined entity of The Radio Network and C93FM would have [] of the market for radio advertising in the greater Christchurch area.

45 This level of market concentration falls outside the 'safe harbours' cited in the Commission's *Business Acquisition Guidelines*. In assessing whether dominance could arise from a proposed acquisition, several factors are considered. Previous reports dealing with these markets have discussed several factors of importance.

Barriers to Entry

³ These percentages are derived from total revenue figures provided by the radio stations listed in the table. Market shares have been calculated as a percentage of the total revenue in the radio advertising services market for the year ended 31 December 1996, ie. [].

- 46 The nature and height of entry barriers must be determined before the threat of new entry, which might constrain the conduct of the combined entity, can be properly evaluated.
- 47 In this scenario, the principal requirement for a party interested in commercial broadcasting is gaining access to a suitable frequency. Information obtained from the applicant and the Ministry of Commerce indicates that no unallocated radio frequencies (ie. frequencies without a current licence holder) exist in the Christchurch area. Therefore, in order for a potential entrant to gain access to a radio frequency, it would need to either successfully tender for a newly engineered frequency from the Ministry of Commerce, or purchase an existing frequency from a current frequency licence holder in the Christchurch area.
- 48 The Ministry of Commerce has informed Commission staff that the only area where radio frequencies could be developed or engineered would be in the FM 101-108 MHz band. At present, the Crown is considering making FM frequencies in the 101-108 MHz band available to prospective and existing radio stations. This would result in a further 300 radio licences being made available nationally. However, in order for this to occur, existing radio telephone (RT) users on this FM band would need to be catered for. Clearly, the current users, such as courier and taxi companies, will need to be diverted to a viable alternative frequency before the Ministry can consider the problem of engineering suitable frequencies and tendering them out to interested parties. Given the logistics of the proposal therefore, the Ministry of Commerce has indicated that this proposal, if adopted, will not be operational for at least another three years.
- 49 At present there are 22 radio frequencies/licences in the Christchurch area. If the proposal goes ahead, seven of these will be owned by The Radio Network/C93FM group. Of the remaining radio stations competing in the market, only one group has shown interest in leasing or selling the rights to its FM frequency. The Christchurch Polytechnic currently operates Beetles FM as an educative radio station for its students. However, the Polytechnic has informed the Commission that if it were to tender or lease its frequency, this

would not occur in the near future. Further, it appears that if the Polytechnic were to tender or lease its frequency, it would do so on the basis that the students would still have full access to the station for three months of the year in order to continue their training. This condition of sale would therefore effectively preclude any viable commercial operation from taking over the licence.

- 50 Further, from previous investigations into the radio advertising markets, it has been determined that in order for a viable commercial radio station to enter a market effectively, it would require access to multiple frequencies. This 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.⁴ It appears clear that for a new entrant to “make a go of it”, an operator must secure additional frequencies to protect its core product and expand its market share at a later date.
- 51 Typically a radio station is set up to appeal to a targetted demographic group. Advertisers that wish to target such a demographic group will buy advertising space from that radio station. In order to achieve full coverage for an advertised product however, it is usually common for a party to buy advertising space on more than one station. Therefore, radio stations which sell radio advertising services generally require more than one frequency in order to gain as much advertising revenue from advertisers as possible.
- 52 It is generally accepted that personnel with the expertise necessary to operate a radio station are widely available, with the cost of plant and equipment being relatively modest. Currently, programme formats are available in New Zealand for purchase by prospective or existing radio stations for around \$60,000 per year.⁵ In addition to this, of course, is the requirement for new entrants (whether using a prepared format or not) to attract listeners and advertisers. New entrants

⁴ 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 operations in Christchurch indicates the need to establish multiple frequencies in order to gain a reasonable share of the advertising market revenue.

⁵ This excludes the additional costs of a computer to run the programme (approximately \$80,000) and a satellite dish to receive the signal from the company, Median.

to the Christchurch market would need to establish and develop brand awareness in the face of other competing brands, including those belonging to the proposed combined entity.

- 53 While the expertise necessary to operate a radio station is available, and the operating costs are considered low, the inability of new potential competitors to gain access to a radio frequency in the Christchurch area would act as an effective constraint on potential competing radio stations. Therefore, the barriers to entry are likely to be sufficiently high so as to preclude potential new entrants in the short term.

Constraints by Existing Competitors

54 As previously stated, The Radio Network and C93FM hold the two largest shares of the radio advertising market in the Christchurch area. MORE FM is the only competitor which would be likely to increase its market share of advertising revenue and possibly become more competitive with these entities. To this end, there are two current factors that may influence the future market shares of the respective radio stations.

55 The first is the move of Simon Barnett and Phil Gifford (“Simon and Phil”) from 91ZM to MORE FM. Radio stations tend to place some importance on the radio personalities they are able to obtain for breakfast shows. The applicant claims that the breakfast show is very important in attracting audiences and, as a consequence, advertisers to their programme. This view is supported by other radio stations. The applicant claims that Simon and Phil’s departure will directly result in a loss of revenue market share by [] for The Radio Network group, and in particular, about [] for 91ZM. This is based on the assumption that a certain percentage of Simon and Phil’s loyal listeners will cease listening to 91ZM and follow the personalities to a rival radio station.

56 Discussions with MORE FM indicate that they expect the arrival of “Simon and Phil” to have a positive effect on both their audience and advertising revenue market shares. Commission staff were told that MORE FM hopes to increase its advertising revenue by [] by the end of 1997. It has said it can realistically expect to increase its revenue market share from its existing [] and hopefully towards [].

57 In order for MORE FM to achieve these levels it requires existing clients of 91ZM to either shift to or increase their expenditure with MORE FM. MORE FM have told Commission staff that the majority of its clients have enthusiastically greeted the move by “Simon and Phil” although they have indicated that they want to see proof that the change of personalities will result in a lift in audience numbers prior to them committing to spend more with the

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station. One of the largest spenders of advertising revenue in Christchurch and the South Island has confirmed that some evidence will be required, and stated that it might take six months before sufficient data is available to justify altering how it spends its radio advertising dollar.

58 At the same time, the Commission has been told by Radio Pacific that there are examples where high profile personalities have changed stations, yet the audience has not grown significantly for the acquiring station. Examples of this are Kevin Black who changed from Radio Hauraki to 89FM, and Pam Corkery who left Radio Pacific in a much publicised shift to take up a position as night-time talk host on Newstalk ZB.

59 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 C93FM should not be overlooked.

60 In response to the move of "Simon and Phil" to MORE FM, it is reasonable to expect that The Radio Network will instigate some defensive strategies. Of particular note is the recent publicity indicating Newstalk ZB's possible contract with Paul Holmes to host its breakfast show in Wellington and Christchurch. It is clear that the change in breakfast host in this scenario could reduce the market share for other competing radio stations in the Christchurch area (eg. Radio Pacific), in a similar way to that claimed by the applicant with respect to MORE FM's acquisition of "Simon and Phil". Commission staff also note that radio personalities are not considered 'irreplaceable' and that, as with all employees, these personalities are subject to the requirement of performing in that position, as well as any eventuality which may require them to leave the radio broadcasting industry.

61 []

62 The second factor to be considered is the possibility of MORE FM commencing a second radio station in Christchurch. []

63 []

64 Further, C93FM's own i94.5FM station established in August 1995 is still struggling to gain market share. Having operated for approximately 18 months, i94.5FM currently has a market share of []. Given this example [], Commission staff do not believe that if MORE FM were to establish a new radio station this would increase the market share of MORE FM to any substantial degree.

65 In addition to the above frequency changes for MORE FM, it has also been suggested by the applicant that MORE FM may move to utilise its currently unused frequency, 99.7FM. At present, this frequency is very low powered, thereby only allowing it to provide coverage in Lyttleton. Lyttleton is not currently included in radio ratings in the Christchurch area by any of the radio stations. [].

66 In addition to the above frequencies owned by MORE FM, the Frader Group also repeats its 92.1 MORE FM channel on frequency 95.3 in the South Shore area of Christchurch. This allows MORE FM to ensure radio coverage throughout Christchurch.

67 []

68 The remaining commercially run radio broadcasting operators are unlikely to act as any realistic constraint on the combined entity. As illustrated earlier, Radio Pacific is the largest of the alternative radio broadcasting operators, with an estimated market share of only []. []. In addition, it is unlikely that with a joint advertising market share of only [] the remaining radio stations would act as any real constraint on The Radio Network/C93FM entity.

- 69 It is noted that the combined entity is likely to face limited constraint by inter-media competition. Advertising on regional and local television, community newspapers and by direct marketing exercise competitive pressures on the radio advertising market.
- 70 Given the preceding factors, Commission staff believe that the future market shares of advertising revenue for the existing competitors in the Christchurch market are dependent on a number of variable factors. While Commission staff do not intend to come to a conclusion as to what the combined market share of the proposed merged entities will be, it believes that reasonable estimations of approximate market shares are of use.
- 71 Commission staff believe that it is likely that MORE FM could possibly increase its revenue market share by several percentage points on the basis that the move by “Simon and Phil” is successful in attracting both additional audiences and advertisers as well as a second radio station. Likewise the proposed entity could possibly lose up to an equivalent share of the advertising services market. This is tempered however by a number of unknown scenario’s including The Radio Network’s anticipated reaction to MORE FM’s acquisition of 91ZM’s breakfast hosts and the possible opening of a second MORE FM radio station in the area. [].
- 72 Due to a number of factors that might have an affect on the future advertising revenue market share of the various radio stations, Commission staff are unable to predict with any exact accuracy as to what those market shares will be, both in the short and longer term. 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 possible changes discussed above. Commission staff believe that, in considering all circumstances, the minimum level of market share of the combined entity would be [].

Constraints by Potential Competitors

- 73 In order for the threat of market entry to be a sufficient constraint on the exercise of market power, entry of new participants in response to the exercise of market power must be likely, sufficient in extent, timely and sustainable.

“It is the ease with which firms may enter which establishes the possibility of market concentration over time; and it is the threat of the entry of a new firm or a new plant into a market which operates as the ultimate regulator of competitive conduct.”⁶

Likelihood of entry

- 74 To alleviate concerns about market dominance, the theoretical possibility of entry is an insufficient constraint on the exercise of market power. In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational business will be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment.⁷
- 75 No actual prospective new entrants have been identified through staff enquiries. Further, with no radio frequency licences likely to become available for at least three years, the possibility of a new entry would be slight.
- 76 In addition, the applicant has not identified any potential entrants, with the exception of [] possibly utilising its presently unused AM frequency in Christchurch. While it is clear that barriers to entry to this party would be low (given its pre-existing licence to a frequency in the area), it is unlikely that [] would have any real impact on the market for radio advertising services. Given the [] it appears clear that the [] biggest role would be in the market for the provision of news, information and general entertainment. Further, there is no indication that [] intends to sell its frequency.

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⁶ Queensland Co-operative Milling Association Ltd, Re: Defiance Holdings Ltd (1976) 25 FLR 169.

⁷ *Business Acquisition Guidelines*

77 However, it appears that even if the frequency currently owned by [] were to be tendered, it is doubtful that a potential entrant to the radio advertising services market could reasonably utilise this frequency in order to gain sufficient market share. Industry practice and consumer preferences dictate that for a viable commercially run radio station giving prominence to music to operate effectively, it must do so on an FM frequency. This is because AM frequencies do not achieve the same level of clarity of music and stereo sound which is now commonly expected by consumers. Therefore, it is unlikely that this frequency would support a commercially viable radio broadcasting and advertising operation.

78 Given these factors, the only way that a potential radio station could enter the Christchurch area would be if it were to purchase a licence for an existing radio frequency in the area. However, as already established, the likelihood of this occurring is small due to the improbability of any existing radio frequency licence holder offering its licence for sale.

79 Considering the absence of current offerings of frequencies for sale, the fact that no potential entrants have been identified, and the delayed tender of new frequencies by the Ministry of Commerce, staff are of the view that entry in the short term is unlikely.

Extent of entry

80 The threat of entry must be at a level and spread of sales such as to be likely to cause market participants to react in a significant manner. Entry which might only occur at relatively low volumes or in localised areas should not be considered to represent a sufficient constraint.⁸

81 If the proposal were to go ahead, the market share of the combined entity in the Christchurch radio advertising services market would be in the approximate band

of []. To act as a sufficient constraint, a new entrant would be required to obtain a large share of the market within two to three years.

82 In order for a potential entrant to operate a viable commercial operation in the Christchurch region, industry participants have indicated that a market share of 8-10% would be needed. However, from previous indications, it appears that a market share of this amount is unlikely to act as a real constraint on the combined entity. Examples of entry into other provincial areas in the last three years show the following market shares have been obtained:

- []

83 While these examples indicate that new entry into those particular markets may be viable, those markets differ from the present scenario in that the new entrants in those markets were establishing their first radio stations that would be targetted at an audience that is likely to attract most of the advertising revenue. Commission staff understand that while a reasonable initial market share could be obtained with one format (as in those examples), the introduction of a second format, which is likely to be a prepared format, is unlikely to achieve the success of the first station. In addition, entry in the above examples was into provincial markets that did not have the same level of competition that the metropolitan Christchurch market has.

84 Consequently, it does not seem likely that a new entrant would gain sufficient market share to act as a constraint against a well established operator.

Timeliness of entry

85 To effectively constrain the exercise of market power to the extent necessary to alleviate concerns about market dominance, entry must be likely to occur before consumers in the relevant market are detrimentally affected to a significant extent. For most markets, entry which cannot be achieved within two years from

⁸ *Business Acquisition Guidelines*

initial planning is unlikely to be sufficiently timely to alleviate concerns about market dominance.⁹

- 86 As already stated, no frequencies are likely to become available in the near future, whether by selling existing frequencies, or the re-engineering of frequencies. Therefore, entry of a potential competitor is unlikely to be timely.

Sustainability of entry

- 87 Generally, entry is sustainable only if it is likely to be profitable at price levels which, in the long term, are similar to those prevailing prior to the business acquisition which might otherwise be of concern.¹⁰
- 88 Radio Pacific has 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 believe that this financial planning information provided by Radio Pacific is indicative of actual operating costs of competitors in radio broadcasting markets throughout New Zealand.

⁹ *Business Acquisition Guidelines*

¹⁰ *Business Acquisition Guidelines*

- 89 In order to establish a competitive new entrant radio station in Christchurch, Radio Pacific anticipates that the approximate establishment costs would be:

Frequency	\$250,000
Transmitter	\$ 50,000
Studio	\$250,000
Preoperation Expenses	\$ 50,000
Working Capital	\$100,000
TOTAL	\$700,000

- 90 Figures obtained from a Coopers & Lybrand report dated 31 December 1996 indicate that the total radio advertising revenue derived from the Christchurch market was as follows:

1994:	\$18,156,108
1995:	\$18,327,820
1996:	\$19,814,587

- 91 Radio Pacific estimates that for a radio station achieving a 5% rating and revenue share, its operating revenue would be \$1 million. A basic Profit and Loss statement for such a party is anticipated to read as follows:

Revenue	\$1,000,000
Commission/Variables	\$ 200,000
Amortisation of startup costs	\$ 70,000
Staff Costs - 10 @ average \$35,000 per annum	\$ 350,000
Operating Costs (50%)	\$ 350,000
Net Profit Before Tax & Interest	\$ 30,000

- 92 On the basis of the above figures, it would be clear that with a 5% market share of advertising revenue, a new entrant would be only likely to make approximately \$30,000 (before tax) in its first year of operation. This return on a capital

investment of \$700,000 (ie. 4.3% before interest and tax) would be considered to be inadequate. Therefore, in the financial modelling exercise provided by Radio Pacific entry at this level or below would be commercially unsustainable. While this data relates to one particular operating scenario, it seems unlikely that entry to the Christchurch market for radio advertising services would be sustainable.

Conclusion on Constraints by Potential Competitors

- 93 It is clear that the major barrier to entry, access to radio frequencies, will preclude potential entrants from infiltrating the Christchurch market in the near future. Further, no potential entrants have been identified. In addition, it appears that entry to an extent which would provide a constraint is unlikely, and entry below that level appears to be unsustainable.

Constraints by Customers

- 94 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.
- 95 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

- 96 Both advertisers and competing radio stations in the Christchurch area expressed a real 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 realistic 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.

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

- 97 Post-acquisition the combined entity would have between [] of the radio advertising services market. If the proposal were to proceed, the combined entity is likely to face insufficient constraint from its main existing competitor, MORE FM, and other small players such as Radio Pacific and inter-media competition. Further, potential entry to the market is highly unlikely given the inability of parties to access radio frequencies, and no potential entrants have been identified. Staff are not satisfied that on the basis of analysis of available data, entry into the Christchurch market is likely, sufficient, and sustainable.

- 98 Accordingly, there are unlikely to be any significant competitive constraints on the combined entity in the Christchurch market. Therefore, the proposed acquisition would result, or would 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.

Assessment of Dominance in the Provision of Radio News, Information and Entertainment to Radio Listeners Market

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- 99 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.
- 100 If the proposed acquisition were to go ahead, the activities of The Radio Network and C93FM (as well as its other radio station i94.5FM) 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.
- 101 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

- 102 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

- 103 It is concluded that the implementation of the proposal would result, or would 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.

RECOMMENDATION

- 104 Having had regard to the factors set out in section 3(9) of the Act, 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.
- 105 It is recommended that, in terms of section 66(3)(a) 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

Alan Bollard
Chairman

Peter Allport
Deputy Chairman

Roger Taylor
Member

The Seal of the Commerce Commission
was affixed hereto in the presence of:

Alan Bollard
Chairman of the Commission

Date: / /1997

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APPENDIX ONE

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