



NEWS RELEASE

18th March 2004

The Competition Authority highlights breaches of competition law in relation to acquisition of NewsTalk 106

The Competition Authority has today (18th March) published its full determination on the acquisition of News 106 Limited (NewsTalk 106) by Radio 2000 Limited (98FM). The Authority has determined that the acquisition will not substantially lessen competition and may now be put into effect.

However the published determination also outlined the failure of the parties to notify the transaction to the Authority within the time period set out in the Competition Act 2002. The Competition Authority has taken the view that, in a further breach of the law, the acquisition by Radio 2000 of NewsTalk 106 had been put into effect before clearance had been received from the Authority. Under the Act any merger or acquisition which is put into effect prematurely is void.

The determination has been published on completion of the formal merger and acquisition process under the Competition Act 2002. The Authority cleared the transaction on 5th March following an initial assessment on competition grounds (Phase 1) and referred the matter to the Minister for Enterprise, Trade & Employment for further consideration. The Minister had 10 days (up to 15th March) to refer the acquisition back to the Authority for a full investigation (Phase 2) or to block the transaction. The Minister has not exercised either of these powers and therefore the determination of The Competition Authority is final.

Speaking on the publication of the determination Edward Henneberry, Director of the Mergers Division in The Competition Authority said: "This case highlights that, where a merger or acquisition is concerned, businesses must be very careful to ensure they maintain separate and independent operations until The Competition Authority has made its determination. The Authority gives high priority to investigating any allegations that parties have put a merger or acquisition into effect before the expiry of the mandatory waiting period. If the parties are found to have "gun-jumped" i.e. breached the pre-merger waiting period, then the transaction is void and legal certainty cannot be guaranteed."

The Authority's determination relates to the proposal whereby Communicorp Group Limited ("Communicorp") would acquire indirect control of 53.12% of News 106 Limited. This proposal was notified to the Authority on 13th January 2004. Communicorp, through its subsidiary European Radio Corporation Limited, holds 75.18% of Radio 2000 Limited (t/a 98 FM). Radio 2000 also owns 33.33% of Maypril Limited (t/a Spin 103.8 FM). Communicorp, through its subsidiary La Touche Investments Limited, owns 26.99% of East Coast Radio Limited (t/a East Coast FM). Prior to the present acquisition Radio 2000 held 45.97% of the shares of News 106 Limited (t/a NewsTalk 106 FM).

The Competition Authority determination outlined the failure of the parties to notify the transaction to the Authority within the time period set out in the Competition Act 2002. The rights issue which brought Radio 2000's shareholding in NewsTalk 106 to 53.12% closed on 1st October 2003 and should have been notified to the Authority prior to that date. The Authority,

having fully considered the matter, found insufficient evidence to seek a criminal penalty, as it was not apparent that any officer of NewsTalk 106, Radio 2000 or Communicorp knowingly and wilfully authorised or permitted the breach of the law.

In addition The Competition Authority has taken the view that the acquisition by Radio 2000 of NewsTalk 106 had already been put into effect in contravention of section 19(1)(a) of the Competition Act 2002. That section provides that a merger or acquisition that is put into effect before the Authority makes a determination allowing it to be put into effect is void. In forming the view that the acquisition has already been put into effect, the Authority has relied on evidence including:

- The Board of Directors of NewsTalk 106 ceded operational control to Radio 2000 in September 2003, and
- The rights issue which is the subject of the notification closed on 1st October 2003

In the opinion of the Authority any such merger or acquisition remains void until such time as the Authority issues a clearance determination.

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