



**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO THE BROADCASTING SERVICES ACT 1992**

**PROF R. SNAPE, Presiding Commissioner  
MR S. SIMSON, Assistant Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON TUESDAY, 25 MAY 1999, AT 9.06 AM**

**Continued from 24/5/99**

**PROF SNAPE:** Welcome back to the resumption of the Sydney hearings. I shan't go through the introductory spiel that I give at the beginning of each city; simply to say that the terms of reference for the inquiry are available on the table outside. There is also the issues paper, if anyone isn't familiar with the issues that we're covering. It is transcribed and the transcripts will be normally available about three days after. They appear on the Web site, as well as being available on hard copy. At the end of today's hearings I shall be inviting any people to make oral presentations, should they wish to do so.

With that introduction I now turn to Network Ten, who have two representatives today, and I would ask each of you to identify yourselves for the transcription service, please.

**MS ODDIE:** Susan Oddie, general manager, business affairs, Network Ten.

**MR McALPINE:** John McAlpine, CEO, Network Ten.

**PROF SNAPE:** Thanks very much. We have your very thoughtful and helpful submission in which you have attempted to address some of the important issues that are here and we're grateful for you doing that. I am not sure who is going to speak to it first.

**MR McALPINE:** I have an opening gambit, thank you, professor. Network Ten welcomes this opportunity to contribute to these hearings. Network Ten owns and operates commercial television stations in Sydney, Melbourne, Brisbane and Adelaide. Ten also has shareholdings in its two regional broadcast affiliates, Southern Cross Broadcasting and Telecasters Australia. Following a difficult time in the 80s, the company was bought out of receivership in 1992 by a group of investors. The majority shareholding interests of 85 per cent are principally held by Australians. One of the original consortium members, a Canadian broadcaster, CanWest Global Communications, holds a 15 per cent shareholding interest and a 57 and a half per cent economic interest in Ten.

The 1998 listing of Ten Network Holdings Ltd has enabled more Australians to share in Ten's success. In the past decade Ten has carved a particular niche in the Australian media landscape as an independent contributor to media diversity. We attract our target younger audience with a mix of innovative Australian and international programming and manage costs through strong relationships with independent production houses. Popular Australian programs on Ten include The Panel, Good News Week, E News and Totally Wild. Internationally exploited Australian programs include Neighbours, Medivac, Breakers, Big Sky, Never Tell Me Never and Day of the Roses.

Ten's submission to this inquiry is based on our concern to ensure a competitive, diverse broadcasting industry in Australia with genuine diversity of views and with room for independent players such as Ten to continue to innovate and adapt. For this

reason, our submission deals with the importance of plurality of ownership in Australian media. Other industry issues are covered in detail in our faxed submission of yesterday and the detail is in hand. New technologies are changing the way media companies operate. Our competitive strategies must take into account new services such as the Internet and datacasting, increased interactivity with consumers, potential economies of scale and other changes associated with convergence.

In this changing marketplace it is important that media companies have the opportunity to grow, innovate and compete. Nevertheless, changes in technology do not lessen the need to uphold the public interest objectives of broadcasting legislation. These objectives require that there be more than one or two voices that reach and have the capacity to influence all Australians. Without this diversity, freedom of speech and democratic accountability are not assured. The traditional mode of restricting cross investment in television, radio and newspapers is no longer a feasible solution, yet at the same time convergence is increasing the likelihood of increased ownership concentration.

Ten proposes the introduction of a more objective diversity test which gives greater flexibility for corporate growth and innovation, while ensuring that there is an appropriate level of concentration in mass media. All types of media can entertain, inform and influence the views of individuals in the community. Mass media is unique, however, because it reaches a large proportion of the community at any one time. The very reason why advertisers choose to spend substantial sums of money advertising in the mass media is because of the potential to simultaneously reach and influence large numbers of people.

Ten's submission proposes the introduction of a hybrid diversity test, combining objective measures such as revenue, together with a geographic market restriction. In Ten's view, ownership across influential media would be permitted subject to a threshold test of say controlling no more than a designated percentage of the national advertising market, television, newspapers, magazines and radio combined, and a designated percentage of the advertising revenue for newspapers, magazines, radio and television in any given geographic market.

To focus on the geographic test, the second threshold test, we can use the Sydney market as an example. If PBL, which owns Nine in Sydney and also the stable of ACP magazines, were to acquire Fairfax - being one of the two major newspaper publishers in Sydney - then based on our estimates of market share, it would control close to 40 per cent of the influential media, excluding classifieds. Further, we estimate that if News Ltd were to acquire the Seven Network then in Sydney alone - which is the smallest market for news - it would control over 30 per cent of the Sydney market. On this scenario you potentially have two players in control of over 70 per cent of the influential media in Sydney. If you include a classified revenue in this market share this would be well over 75 per cent. This same scenario applies in Melbourne, with different levels attributable to each player. How could that situation be defined as "media diversity"?

We consider that in any individual geographic market any proprietor should control no more than 25 per cent of influential media. This kind of model gives greater flexibility for growth than the existing rules. Any proprietor could choose which kinds of media to invest in rather than being artificially limited by media type. Importantly, this regime would provide real opportunities for participants other than the two major existing proprietors to own influential media in any Australian market. The exact thresholds are difficult to estimate at this point because most of the information is not currently publicly available. However, collation of the information required would not be onerous. While still in concept form, we believe this kind of model warrants further study and we would be happy to work with the commission in further developing it.

There are two other major recommendations in our submission. Firstly, in our view the time has come to liberalise foreign ownership restrictions. Foreign investment is the best protection against ownership concentration, as well as offering the benefits of expertise, international exposure and increased capital for growth. Secondly, our second major recommendation is that the 75 per cent audience-reach limit applying to free-to-air broadcasters should be abolished. There is no real reason why free-to-air broadcasters should be more limited in potential audience reach than any other media. Thank you.

**PROF SNAPE:** Thank you very much, Mr McAlpine. As I said, that was a helpful submission and very interesting that you are addressing the diversity question in the way that you have. As you would know, we had asked in industry visits with the major players, including Channel 10, that they address that diversity test if they were to be considering any relaxation of existing rules. It is very nice that you have in fact addressed them in this way and we thank you for it. Miss Oddie, were you going to speak at this stage?

**MS ODDIE:** No, we will just rely on answering your questions.

**PROF SNAPE:** Thank you. If I may just pursue that diversity test: the influential media that you mention - and it would be not more than 25 per cent in any one market of the revenue; that is, the advertising revenue, I think - would that apply to regional areas, as well?

**MR McALPINE:** We really concentrated for the exercise in our initial stages - because some of the information is difficult to collate - on basically the Sydney-Melbourne scenario. There would have to be a test for those markets and I am assuming that the same principle would apply. The percentage may vary. I haven't done the homework on that, but I am assuming that something similar would apply.

**PROF SNAPE:** Yes. I guess, as you say, it is very much in the concept stage, as one would have to work around some things as to how you measure the revenue when it's nationally-based advertising, for example, and you allocate it to one particular market within the country.

**MR McALPINE:** The clarification of that, I think, is that the companies could declare quite clearly to an independent body, such as the ABA, individual market shares of revenue, excluding classifieds, etcetera. I think it's fairly easy to determine that. At the moment they choose not to disclose it for commercial reasons.

**PROF SNAPE:** Including for a national paper?

**MR McALPINE:** Yes. I mean, in the national paper - the agencies basically allocate a share by the circulation in each market, which is probably a reasonable representation.

**MR SIMSON:** Why would you exclude classifieds, when surely - let's just take the PBL or the Nine Fairfax scenario - that would be a major, if not the major, prize, particularly as they move into a convergent strategy?

**MR McALPINE:** I guess for the example the only reason we excluded it is because it's difficult to ascertain. If you included it - and I think we made some rough estimates - that would take the combined share of two proprietors to over 75 per cent. Now that might be 80. But what we could clarify a little closer was the national ad revenue and, yes, I don't disagree that there is influence attached to the classified advertising but it was very hard to get our fingers on the detail.

**MR SIMSON:** I put it to you that I suspect - I don't suspect - it may be that a PBL or a Nine could actually live with a regulation that was fairly constraining as a share of national advertising revenue if classifieds were not included in the pot, because that could well be delivering them exactly what they want to achieve in business strategy terms.

**MR McALPINE:** Yes, I agree.

**MS ODDIE:** Stuart, if I may just on that point, what we are focusing on, whilst it is the advertising market - we go back to that correlating to ability to influence mass audience, and consequently it would depend on the actual classifieds - for example, where there were classifieds with no opinion, such as for example the Yellow Pages, which didn't attach itself to a newspaper which had editorial content, then arguably there is no influence attaching to those classifieds as opposed to, for example, in the Sydney Morning Herald or the Australian.

**MR SIMSON:** That is one way of looking at it. I was actually going to raise with you a supplementary issue to the one I was mentioning a second ago, that there are two baskets of issues in cross-media: one is the influence as you come at it from the perspective of revenues. That is one way of looking at it; competition in that market. The other is editorial influence, and that is another variation on the theme of influence and the issue of diversity. I don't quite see from your submission - and we'll put it this way: I would appreciate hearing from you as to how your approach would address that second one, which is the issue that's raised certainly in submissions to us by a

number of people.

There's the revenue issue - but you can almost put that to one side and address it perhaps the way that you are - but then there is the issue of plurality of opinion, number of owners, number of owners that people have got jobs to go and work for, etcetera, etcetera.

**MR McALPINE:** We have tended to stay out of that side of the argument. You have got to assume that there is some conjunction between advertising and influence. The advertisers pay agencies and media-buying services a lot of money to ascertain where they best get their influence, so we were trying to simplify the equation as an opening gambit to simply say that even though you can look at the two as separate influences, really, at the end of the day, taking all the editorial involvement and anything else that media does in an influential sense, that's what the agencies and clients want to buy, so I think it correlates even closer than those two examples. I think you can actually put a stronger view on the influence of advertising than just separating it as a commercial issue.

**MS ODDIE:** I suppose also our test was that it promoted plurality of owners which would reflect in plurality of opinion in the underlying media.

**MR SIMSON:** Well, can I put it you that even if your threshold was quite low and certainly if you excluded classifieds that - going to your PBL or Nine/Fairfax example - however you write the revenue rule, the concern would still be expressed as to the plurality that you're going to achieve editorially. As you've just pointed out, Mr McAlpine, satisfying the clients of agencies or your advertising stakeholder or the industry's advertising stakeholder in a test like this could be one thing, but the issue that we're coming at is from a reader perspective and from an employee perspective and from a plurality of opinion, news information and comment with regard to that second approach.

**MR McALPINE:** I think diversity of ownership will encourage that. What we've seen I guess in terms of influence is if you followed the Super League scenario that operated in Sydney it was very clear which newspaper group was supporting what view on the Super League issue. So in terms of plurality of editorial comment, the only way that you can ensure that is to offer some alternative view in terms of ownership. I think ownership plays a big part in having some diverse views. If you have convergence of ownership you may end up with one or two views.

**MR SIMSON:** How would you see your formula - let's say 25 per cent, excluding classifieds - actually rolling out then on hypotheticals in terms of the number of owners that you'd have potentially owning newspapers and magazines? You mentioned two examples earlier that could occur - News taking Seven, and perhaps Packer taking Fairfax. You must have thought this through in terms of what that means in terms of the number of owners.

**MR McALPINE:** I think that just in a commercial sense limits the market to two

owners. If combined they controlled, in two newspapers with the other businesses attached, over 75 per cent of the commercial dollars available, then I don't think there's room for anyone to compete in that market.

**MR SIMSON:** I appreciate that. I'm sorry, I didn't phrase my question properly or carefully enough. In the context of your formula, how would that unravel? In the context of say your 25 per cent threshold, not including classifieds, how would the scenario be different, if you like, to simply doing away with cross-media in terms of those two hypotheticals?

**MR McALPINE:** I think the current cross-media rules are what you'd say a little loose. There are ways and means to move around the current rulings, as we've seen. I would think in that scenario if you apply the 25 per cent ruling it is very difficult for an operator to own both magazines, newspapers and television, so I think you've got to make a decision as a proprietor as to which particular medium your company chooses to invest in. So you are probably limiting the influence in terms that you either own a television licence and you're into the magazine market, or you're into newspapers and radio. I think it does limit the combination of the media, therefore allowing diversity in ownership.

**MS ODDIE:** Stuart, I suppose the question is not what will be the landscape in terms of will there be four players each owning 25 per cent each, for example, of the whole advertising market - and we're not wedded to the 25 per cent. Rather, we thought, in terms of what we had estimated, for example, it would mean that it would be unlikely that you could own two TV stations in the one market. Rather, what we were trying to achieve by the threshold percentage is that there would be definitely more room than for two players in the market. For example, there could and would be an independent strong voice, such as in Ten, which wouldn't be limited just to television, but which could actually develop and grow and compete in new media, and it would also be open for others as well.

I guess that's a key thing that we were focusing on. Realistically, Australia is a small market itself and we have two strong players as it is, and it's what would enable a number of different owners.

**MR SIMSON:** Just so I'm clear on this, you've got the designated percentages and then you've got a second test which relates to a geographic market. Is that a state-based test? I'm referring to page 12.

**MR McALPINE:** Yes. We sort of focused on the state-based thing because the combinations do change in terms of ownership and influence by state, so our view would be that to have one as a national figure as a starting point, but certainly to concentrate on the geographic markets to ensure - I mean, hypothetically Nine doesn't have any stations in Adelaide and Perth, so if you applied the national influence without looking at the geographic influence, those figures would become somewhat distorted. So the main play in our view would be the geographic a la state.

**MS ODDIE:** Or the metro market.

**MR McALPINE:** Or the metro.

**PROF SNAPE:** Can I just pursue it a little bit more. There are two dimensions at least of diversity or concentration which are relevant. One is you might say the strictly economic, and economic power that that has for example on the advertising market, and that seems to be pretty much in the domain of the ACCC, or it may be that they are looking at that and they've got various public interest tests which are around that. There's also of course the diversity or concentration with the cultural and social dimensions to it. The act refers to a degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia, and that of course may take us away from what the ACCC typically focuses on, and is talking about diversity of sources of information forming views, etcetera.

In your measure you're saying really that the advertising revenue is a proxy in some sense for the degree of influence on shaping community views in Australia, that the two will be strongly correlated. I think that's the basis of your proposition. But I'm not sure what the advertising revenues of Channel 10 are, or of say 2UE - if I've got the right radio station. Being from Melbourne I'm never quite sure, but I think I have. I would be surprised if you would argue that Channel 10's degree of influence on shaping community views in Australia was the same multiple as its advertising revenues are of 2UE's advertising revenues. Well, perhaps you'd like to address that.

**MS ODDIE:** It is true what you've said, that we're basing the advertising dollar and we're confining it to mass media penetration and, in our view, when you're looking at a market that advertisers pay in order to reach eyeballs, as David Leckie succinctly put it yesterday, or ears, if you like, in terms of radio, and in terms of influential media, then the number of people that you reach simultaneously we do believe correlates to the level of influence. Clearly there are particular programs or particular stations which editorialise more than others, and the question is how do you or should you weigh that generally. I guess what we're saying is that it's, we believe, sufficiently correlative of their reach and influence that you rely on the dollar figure.

There are different scenarios such as the UK system that looked like a weighting of the different media in terms of different levels of influence, but what we were trying to do is find a simplistic test which was sufficiently correlative of what we were trying to achieve without having so many grey areas that, (1), Australians couldn't understand and, (2), that couldn't be enforced.

**MR SIMSON:** But the bottom line of your numbers earlier, if I'm just clear on this, then, is that really Packer/Fairfax and News/Seven couldn't come about on those numbers that you mentioned?

**MR McALPINE:** Correct.

**MR SIMSON:** So basically, for all intents and purposes, the cross-media rules



would stay for them. Yes.

**MS ODDIE:** Sorry, except that for example with Fairfax as it is that would be the case, however, what this does is allow flexibility in terms of how you break up that 25 per cent.

**MR SIMSON:** Well, Fairfax would need to divest assets.

**MR McALPINE:** Correct.

**MR SIMSON:** Fairfax would need to break up for this to come about, from their perspective.

**MR McALPINE:** Yes.

**PROF SNAPE:** On page 13, which is the following page to the one that we've just been talking about, you say, "News is precisely the area in which diversity is most important," and so it's really news that you're trying to get at - is the thing which is influencing the hearts and minds, etcetera - and yet what are Channel 10's plans in terms of news and current affairs? You've been significantly reducing that, I think.

**MR McALPINE:** Actually, professor, I was going to make the point yesterday when my good colleagues were bantering with one another about the 6 o'clock slot that in real terms Ten airs more news in total hours than our good competitors. It's just that we don't concentrate that in prime time. We've chosen a different course at 5.00 to 6.00 and 10.30 to 11.30 at night. So in real terms the numbers are in excess of our competitors.

**MR SIMSON:** Isn't 10.30 sport?

**MR McALPINE:** No, 10.30 is news and then Sports Tonight, but it is a new program.

**MR SIMSON:** So it's half and half.

**MR McALPINE:** Yes.

**MR SIMSON:** If there were no local content rules, no quota rules, would you run a station without any news?

**MR McALPINE:** No, not at all. I mean, it's an integral part of your reach in the marketplace and I think you've got to have a face, and our local news is our local face.

**MR SIMSON:** Even given the demographic that you are targeting?

**MR McALPINE:** Yes. We tend to run news outside of prime time because of that

demographic skew, so a 5 o'clock news in Perth for example is the number 2 news service, and often in other markets it's the number 2 news service in terms of total viewership, so it's offering an alternative to the consumer by being at 5 o'clock.

**MS ODDIE:** And I suppose that's one of the things that we see is important with having plurality of owners, that for example Ten is a third voice in the TV market and is actually providing alternative viewing, so it's complementary, it's not always competing against, so you have more choice in terms of the programming that is available for Australians.

**MR SIMSON:** Going back to the discussion we were having a second ago, what worries you about Packer taking Fairfax? I mean, yesterday we heard, for example, when you were wearing your FACTS hat, that from an audience perspective there's a newspaper market out here and there's a television market out here, and in answer to our questions yesterday you and your colleagues made clear that you see them as two quite different markets and - - -

**MR McALPINE:** Well, there was some disagreement there, I'd suggest.

**MR SIMSON:** Well, please clarify that for us.

**MR McALPINE:** There were divergent views at the large table yesterday, but the reality is, in my view, that we do compete against other media for ad dollars. To say that we are a different market in my view is totally wrong. As I used the example yesterday, whether it's a motor car company or whatever particular franchise it is, they are going to buy the best medium available for their dollars. They don't start out saying, "We must have newspapers" or "We must have television." I think they make a conscious decision, "Where can we best sell this product?" So we do compete, in my view, for ad dollars.

**MR SIMSON:** Thanks for clarifying that. In the context of the viewer/reader from a consumer's perspective, I think the point was also being made yesterday - certainly by Mr Leckie - that in competing for eyeballs they see themselves competing against other TV stations rather than competing against newspapers.

**MR McALPINE:** That was his view, yes.

**MR SIMSON:** Do you accept that?

**MR McALPINE:** No.

**MR SIMSON:** That being the case on a Packer/Fairfax or News/Seven scenario, what worries you? What would they do? What's at stake here?

**MR McALPINE:** Well, if we stick to the original plan, obviously diversity will go back to the editorial sense. Our interest is in ensuring that there is diversity in editorial matters. But in a commercial sense I think you would agree that the

combined or independent forces that they could apply would restrict a free trading market.

**MR SIMSON:** And in an editorial sense what would happen? Would we see Laurie Oakes popping up in the Sydney Morning Herald and the Age. I mean what's your concern here in terms of the editorial "network" that might then exist between a television station and a newspaper?

**MR McALPINE:** I'm not necessarily concerned about the connection of any two media. I think it's the total media influence and the lack of diversity that's our major concern.

**PROF SNAPE:** Could I just pursue the influence a little bit more. We've been talking about influence on the consumer's pocket. That's through the advertising revenue I see it, and also through their views of news, of what's around them. What about the influence on hearts and minds more in the nature of society sense, which was what a number of people are putting to us. Yesterday it was the parents and citizens talking about the way that children and adolescents are portrayed on television which they were arguing gives the community a feeling that all adolescents are wild things, and others have talked about the ways in which the sexual attitudes of the young are portrayed, that it's not typical but it's helping to formulate the way that people think about themselves and about others, and perhaps affecting behaviour too. That's a much more subtle sort of influence. Would you like to talk about that - - -

**MR McALPINE:** It's a tough one - - -

**PROF SNAPE:** - - - and the effect of the media on that?

**MR McALPINE:** The media has certainly some influence in a whole range of areas. I think the media takes a particularly responsible outlook in terms of the attitudes we portray. I mean there are certain guidelines that all networks have to follow from the ABA's perspective in regard to what we can and can't do, so if a program portrays an attitude it's only an attitude; it certainly fits in with the guidelines of what we are able to telecast and how we should telecast that. The influence factor I'd rather not get into. I'm not that skilled in that part of the equation. But you would have to assume that a lot of the product coming out of the US, and some of their domestic product, certainly would have some opportunity to influence younger people, but to what degree I'm not sure.

**PROF SNAPE:** It's also influencing older people in their perceptions of the young that they were talking about.

**MR McALPINE:** But I think that's media generally. I don't think we can get away from that. The media does have an influence.

**PROF SNAPE:** Do you have any view as to whether diversity of ownership or other matters in that area would in fact be linking to diversity of perceptions of the

way people are portrayed and so on?

**MR McALPINE:** I doubt it. It still remains a commercial entity whatever the combination is, and I think in my view media more reflects the marketplace than dictates the trend.

**PROF SNAPE:** Where do magazines, pay television, Internet and datacasting fit into your formula?

**MR McALPINE:** We've included magazines in our revised position. It wasn't in our original submission because after reviewing influence it's hard to deny that magazines don't have influence, whether it's BRW or the Bulletin or whatever it is. So in the equation we included that. We've excluded pay and datacasting as issues at this stage because we're talking about mass media and its influence. Pay we liken to a video magazine rack. It doesn't really influence, by any definition, because they're just really running normal entertainment programs. There's not an aura there of influence.

**MS ODDIE:** I suppose also, for example, with the Internet, it can't provide information, it's just that it goes back to accessibility by the majority of Australians as to where, for example, the site is and how many people have computers, whereas the newspapers are on the doorstep, the TV is in the home. So that's why we've been focusing on that media that reaches most Australians.

**MR McALPINE:** In time, professor, it may be that with a malleable formula in the future, 10 years down the track, they may have to be taken into consideration.

**MR SIMSON:** Could we just turn to foreign investment and recommendations on that. I'm being a little bit naughty here, but I want to quote from CanWest's submission to start with.

**MR McALPINE:** You are being naughty, Stuart.

**MR SIMSON:** The bottom of page 5:

The reality is that foreigners have less reason to interfere in local domestic affairs because they are less likely to have a substantial range of other investments which could lead to the risks of conflicts of interest.

Would you like to comment on that?

**MS ODDIE:** We are obviously advocating that foreign ownership should be opened up and generally we believe that in terms of what is on air that's regulated in other ways. However, increasing the ability for foreigners to invest in our country does actually mean that there are potentially more players and more capital in the market.

**MR SIMSON:** Am I correct in saying, Mr McAlpine, that the investment CanWest has in Ten its principal investment in Australia?

**MR McALPINE:** I would say it's its only investment in Australia.

**MR SIMSON:** So do you share the concern of CanWest that other media players who have substantial other investments and businesses in other industry sectors that there is the potential of a conflict of interest being media owners as well?

**MR McALPINE:** Well, it also adds to the total influence. Yes, I agree with that comment.

**MR SIMSON:** Okay. Of course it's difficult to address that, but that's not addressed in your formula, is it?

**MR McALPINE:** No, it's not.

**MR SIMSON:** That would have to come within the orbit of a - - -

**MR McALPINE:** I'm not sure.

**PROF SNAPE:** Would you be as sanguine about foreign investment if it was Robert Maxwell rather than CanWest?

**MR McALPINE:** Sorry, I missed the opening, professor.

**PROF SNAPE:** Would you be as sanguine, as relaxed, about foreign investment in Ten if it was Robert Maxwell rather than CanWest?

**MR McALPINE:** I don't think Robert Maxwell would be as good an operator as CanWest in television terms. Yes, we've got an open mind on that. I mean the market will dictate, if the rules change, who the owners are.

**PROF SNAPE:** What I was getting at, is it more important who the owner is than where they are based?

**MR McALPINE:** I think again it comes back to diversity. If you don't allow foreign ownership to expand more than it has now you're going to have a concentration in this country that's unacceptable. So the introduction of foreign ownership, or the increase of foreign ownership, will allow that diversity which is the critical issue.

**MR SIMSON:** In considering the diversity issue, how relevant are the investments that some of the other media players are making - substantial investments in the Internet, e-commerce and other "surrounding" media and telecommunications businesses?

**MR McALPINE:** Well, it's interesting that the major media players pretty much, in

Australia, represent the greatest impact on the Internet. I mean if you take MSN and if you take Fairfax On-Line as two major media players, there is again substantial influence on the Net in terms of editorial. We've taken out the equation because we don't believe, at this stage, that it's a major influence. But in time it well may be.

**PROF SNAPE:** Again I'm being a bit naughty like Stuart in referring to CanWest but they are in their submission fairly blanket in saying abolition of existing cross-media ownership rules, as well as abolition of existing foreign ownership restrictions, whereas you're much more cautious about the abolition of the cross-media rules, and of course have been giving us your formula to substitute for it in saying that in fact the two - well, you're giving much more emphasis to that aspect than CanWest does, who appear to give no emphasis to it.

**MR McALPINE:** They may have been aware of our position as we went in, professor.

**MR SIMSON:** Is this a sign of diversity, is it?

**MR McALPINE:** I think it's a bit hard to ignore the input.

**PROF SNAPE:** You could have quoted it, perhaps, as an example of the absence of foreign control.

**MR McALPINE:** Well, there's certainly no foreign control intent. Yes, I could have made that point better.

**MR SIMSON:** Could you just comment on that for a moment because CanWest have an economic interest of over 50 per cent and a voting interest, I think, of 15 per cent.

**MR McALPINE:** Correct.

**MR SIMSON:** Just talk to us about how that works out at a boardroom level in terms of running the show locally.

**MR McALPINE:** Well, unfortunately we have a very large board. It consists of 13 persons. CanWest have three representatives. So in a normal spirited environment they have a view as the rest of the directors have a view. At the end of the day the board follows its normal pattern and what's right for the company in a total sense is what is implicated, or what is applied. So they've got a position and certainly a healthy input. They are successful operators. But it's a very diverse board.

**MR SIMSON:** So they don't control the board?

**MR McALPINE:** No.

**MS ODDIE:** Stuart, as you know we've had a lot of ABA investigations on this,

and when I first came to Ten I raised with John Studdie, our chairman, the same issue as an outsider. His comment to me was, "If you were a fly on the wall and saw our board meetings you would realise that there is no chance that CanWest controls the board." I think that's an example of the different interests that the shareholders bring to Ten and the expertise from the different areas that they have, that there are diversions of opinion and expertise which - - -

**MR SIMSON:** It's interesting, isn't it, because it's just going through my mind as to why that couldn't be appropriate for other situations in Australia, for other solutions to this cross-media problem.

**MR McALPINE:** I don't think it's ideal. I think if you are prepared to invest from an international perspective I think you should have the vote of the table.

**MR SIMSON:** Okay, but the point has just been made, and you also made the point, that the company has clearly been run well and you have a robust board and you're rating well - all these sorts of things, so there is an example here of a television company that has been run with a majority economic interest not reflected in a controlling interest. I'm just raising that question as to whether that's a model or - - -

**MR McALPINE:** I don't think it's ideal, Stuart. I think if you wanted to have other international players come into the marketplace that option may not be open to them, and also they would require - and rightly so - greater influence. If the rules change they want to have a stronger say at the boardroom table if they invest greater funds, under the current rules.

**MR SIMSON:** I appreciate that, but from a perspective of influence - which is a lot of what we've been discussing this morning - and in the context of the cross-media rules, it may not be from your perspective the best solution, but it may be a way of addressing the issue in a wider context with other players who may wish to have an interest - let's cut to the chase - in both television and newspapers. The cost of that in terms of assuring society that there is diversity and not over-influence is that maybe they cannot have control of the board. I'm just raising that as a question.

**MS ODDIE:** I mean going back to diversity, and what we're saying in our submission is that really the way of ensuring diversity is not by putting artificial constraints as to how many votes there are around the board table. Rather it's ensuring that there are more than one or two players in the market, and that's really what we focus on. There are lot of scenarios that you can put up and tests that you can try to, if you like, achieve that same balance, but ultimately we see that the objective of achieving diversity of opinion is by diversity of owners.

**PROF SNAPE:** Could I turn to economies of scale, which you mentioned very briefly on top of page 9, where you say the most significant economy of scale will be that of content. Would you like to elaborate on economies of scale? It's just the sentence at the top of page 9, but it is a very important aspect of our inquiry as we're looking at vertical integration and so on, and not only vertical integration but

integration across in a horizontal manner as well.

**MS ODDIE:** Professor, you raised that yesterday in terms of ownership of stations as opposed to affiliation arrangements.

**PROF SNAPE:** Yes.

**MS ODDIE:** And I believe that Ten's view is that you can achieve greater economies of scale more easily by owning the stations rather than by contractual negotiations to achieve the same results.

**PROF SNAPE:** Can you tell me why?

**MR McALPINE:** Well, I think if you've got economies of scale in terms of a number of outlets, you've got a greater opportunity to limit your operating costs than if you, say, have one or two. There is a scale across the networks that allows you to do a lot more things more economically if you in fact have ownership rather than a franchise agreement with another operator.

**MS ODDIE:** This is particularly happening with digital and the roll-out as well. We're looking at how best to configure the operations.

**MR McALPINE:** With digital, if we had to then go into discussion with a separate owner in Adelaide and Brisbane, for example, on how the platform should roll out, we'd probably run out of time. It certainly allows us to make good forward-thinking decisions and plan accordingly for the roll-out without discussion with other parties, and the economics will be there compared to five separate owners.

**PROF SNAPE:** At the other end of the process, however, as you say earlier on, you're contracting out a lot more of things than you did before.

**MR McALPINE:** Yes, we are, but we've still got a basic infrastructure that we're going to have to provide for digital, and we believe in our instance that the economies are there with ownership rather than franchise.

**PROF SNAPE:** Yes, the economies are there in terms of as you go, if you like, downstream into distributing your signal.

**MR McALPINE:** Yes.

**PROF SNAPE:** But not upstream into supplying your inputs.

**MS ODDIE:** That's right, and it goes back to what we see as our core business, which is: we are a broadcaster.

**MR McALPINE:** I think one of the examples that was sort of tossed around



yesterday was that it used to be that you could basically only have one licence and then it was changed to two, and the difficulties you had - I forget who mentioned it yesterday; it might have been Peter Manning - in that you had a Sydney owner and a Melbourne owner and you could imagine the different views from the Melbourne perspective to the Sydney perspective in trying to get a whole raft of issues resolved.

**PROF SNAPE:** And yet that's the system that they work in the US, with a very much greater number of people that they have to negotiate with as stations.

**MR McALPINE:** The major networks still have a substantial reach and a substantial influence with the affiliates.

**PROF SNAPE:** But they have to negotiate with all those affiliates, don't they?

**MR McALPINE:** Yes, they do, but I think they're trying to change that formula now because it's not working for them. They actually pay the affiliates to carry their product.

**PROF SNAPE:** Yes.

**MR McALPINE:** Which in our view is a little back to front.

**PROF SNAPE:** But they have got the advertising revenue, haven't they?

**MR McALPINE:** They take some of the revenue in substitution, yes, but they are trying now to renegotiate those deals so that the affiliates actually pay for the product.

**MR SIMSON:** Mr McAlpine, you've been very successful in targeting a particular segment of the marketplace, a particular demographic, and that puts you apart in terms of business focus to the other stations. If you can do that, why couldn't another free-to-air station, a fourth free-to-air station, come in and focus on another segment of the market? If you're coming in as fourth operator, you wouldn't come in anyway and take on the market, would you? Wouldn't you try to find a niche or a segment, as you have successfully done, rather than take on the existing two or three operators? And if that's so, isn't the diminution of advertising dollars from a fourth operator going to be less than perhaps is being speculated?

**MR McALPINE:** On the first point, I think if you've got a fourth operator in play it does obviously two things. They, I assume, are under the same guidelines and restrictions that are required of us in terms of Australian content, drama and children's, etcetera. If the same rules apply to them, then there is a certain element that they must provide. Then they can try and find a target market within what's already not covered, and that's pretty difficult. Despite the fact that we've focused on under 40, there is still a lot of diversity of audience in our schedule, whether that be motor sport, whether that be golf or whether that be news. You might see a focus in prime time, but in other areas there's a great range of audience that we cater for. I think it would be very difficult for an operator to come into the market and say any

further, "I want to segment the market a little further than it already is."

In a commercial sense there are no indications from discussions that we have had with advertisers and information that's available to say that the market revenue would grow. It is clear to us that, beyond normal inflationary increases, you would be splitting the same pie. There is enough opportunity for advertisers with three commercial outlets to achieve what they want to achieve in terms of reach and in terms of any particular guidelines they set down. A fourth player is only going to spread the same audience, so in fact for the advertiser it will be more expensive to buy that audience than it currently is. So from a commercial point of view there is no advantage to certainly the advertiser and in my view the market will not grow at all.

**MR SIMSON:** The difficulty we have in following some of this is - I had the wrong date yesterday, but it was in fact 2007, as Mr Branigan picked me up on - that a fourth operator comes in, okay - - -

**MR McALPINE:** Well, I think we need to clarify that point. There is no ruling at this stage that there will be any introduction of any new player. It is simply that it is reviewed in 2007 as to the whole digital platform and where it goes from there.

**PROF SNAPE:** I think it's the other way round. There cannot be a new player until 2007.

**MR McALPINE:** Correct.

**MR SIMSON:** So the implication of that is you'd still be fighting. On the scenario just given, do you believe that things will have so substantially changed between now and 2007 that you wouldn't be in there fighting tooth and nail against a fourth operator in 2007 as you are now - if we're just looking at revenue increments in line with inflation?

**MR McALPINE:** If there was another competitor, you've got a scenario there - I think David Leckie's comment yesterday was that hypothetically in 2007, getting over all the hurdles that a government will have in introducing a fourth player, that the economics aren't going to change in terms of the advertising pie. What will happen is - as we're doing now - we are looking at how we look that far down the track and make our stations more efficient in terms of their operation in the event that it may open up the opportunity for competitors.

**PROF SNAPE:** Could I go back in history a little bit, and maybe it's too far back, but when Channel 10 came in as the third station did the advertising revenue increase then?

**MR McALPINE:** You're testing my memory there, professor.

**PROF SNAPE:** It wasn't Channel 10 initially, but - - -

**MR McALPINE:** It was Channel 0, yes, in those days.

**PROF SNAPE:** Channel 0, yes.

**MR McALPINE:** From history, I'd have to look back. I can't recall.

**MS ODDIE:** Professor, there's an example in the FACTS submission which highlights that the research that has been done to date shows that with a new entrant the net effect in terms of the advertising pie is only a 1 or 2 per cent increase out of the entire advertising revenue. That's in effect what we are saying would be the case, in which case there would be no significant increase in revenue. People are only going to spend so much. The advertiser only spends so much on TV advertising.

**MR McALPINE:** Where does the money come from? It just doesn't appear out of a magic pot. There is a defined budget allocation in most companies.

**PROF SNAPE:** But I suppose it comes in part from targeting different segments of the population. I don't think you carry Bernie Fraser's ads on Ten, do you?

**MR McALPINE:** Yes.

**PROF SNAPE:** You do?

**MR McALPINE:** Yes, even Bernie occasionally gets on our late-night news.

**PROF SNAPE:** Yes, but I suspect it's rather more targeted on the audience of Channel 9 than Channel 10.

**MR McALPINE:** Correct, yes.

**PROF SNAPE:** And you carry ads probably which Channel 9 wouldn't, or Seven, because of the market that you are targeting, and so there are markets there that one can presumably attack. You have successfully done that and turned the whole station around in so doing.

**MR McALPINE:** But I think it's fair enough to say, professor, that if you looked at a combination of the three networks in any form of percentage buy by an advertiser, you will find that the current market can satisfy any client's reach in terms of the number of people, the number of times they want to reach an audience. The current market - including SBS and a bit of pay, and there's all the combinations coming into the equation - provide sufficient audience for the advertiser. If you're saying they couldn't get it now, I'd agree with you, but every advertiser achieves its objectives with the existing three-market operation.

**PROF SNAPE:** I think the study that you were referring to was done in 1992 or 93, Ms Oddie, which was the Bureau of Transport and Communications study. It was

done, I think, in the early 90s at a time when Channel 10 was in receivership or just coming out. Channel 10 since then has turned itself around. In a sense it's been a reborn channel, and a channel that almost didn't exist in 92-93 has now become a very viable and financially profitable channel. In a sense it has been almost a new channel that has come in, and it has survived and the others haven't gone bust, and so something has happened to the economics with that rebirth of Channel 10 that seems to have generated the revenue that has supported three viable channels, whereas in 92 there weren't three viable channels.

**MS ODDIE:** Professor, I don't think that the introduction of Channel 10 has generated a greater revenue share, it's rather that it's been divided, and I think what FACTS has been saying in this sense is that with a new entrant there will be no additional revenue. Rather, it will mean that the revenue is divided four ways rather than three, albeit that the proportions may vary.

**MR McALPINE:** And it's fair to say that a lot of the margin, if you like, of our business has been created by the reduction in operating cost and the way we do business on a day-to-day basis. Yes, the revenue has improved over that period, but our success also comes from controlling a very strong bottom line.

**PROF SNAPE:** Do you remember what your licences were valued at at that time?

**MR McALPINE:** We'd have to ask Ernst and Young, I think. Weren't they the receivers?

**MR SIMSON:** Probably not a lot.

**PROF SNAPE:** I wasn't dealing with them, so I'm not quite sure.

**MR McALPINE:** Well, Westpac owned it and I suspect that the CanWest consortium bought it back in that period for something like \$260 million.

**PROF SNAPE:** And that was for the whole company, whereas the licences today are valued at \$326 million.

**MR McALPINE:** Probably even more than that, yes.

**PROF SNAPE:** That was a year or two ago. Currently they're valued at what?

**MS ODDIE:** It goes back to the core proposition, which is the efficiencies that John has been talking about. It goes to the profitability. I don't think the revenue share has changed dramatically over that time. Rather, it's the turnaround in operating costs.

**MR SIMSON:** Mr McAlpine, from a business perspective is it conceivable or totally not conceivable that there could be a new entrant, a fourth free-to-air, in - let's just take the largest market - the Sydney market? Could you set up and run a non-networked geographically focused fourth TV network in the main market here?

**MR McALPINE:** I guess you could, but it would seem unreasonable that one operator would be able to pick the biggest market to compete with everyone else, who has some diversity of ownership in terms of other states - if you just said to someone, "Well, don't worry about any other state, we're just going to open up a stronger advertising market." The end result is that if you introduce new competitors into the marketplace, what you are going to have to do for the consumer is change the quality of programming on Australian television. At the end of the day it will not be commercially sound for networks to produce high-quality programming in Australia if there is another competitor on the horizon. It is physically not possible.

**MR SIMSON:** Sorry to go back to the CanWest submission, but they refer in some detail to the New Zealand experience and, contrary to some of the submissions and evidence we have heard so far, at the bottom of page 4 of the CanWest submission they indicate that the entry or the development of new stations, new licences, has actually been to the benefit of consumers and viewers in New Zealand. They have obviously a self-interest in saying that; they are a stakeholder in that marketplace. Would you comment on that?

**MR McALPINE:** I think the case is a little different, Stuart. The only thing New Zealand had in real terms was the government-owned broadcaster, TVNZ, and prior to TV3's birth and CanWest's involvement at a later stage when it also got into financial trouble, that market had one channel or two channels and, in any sense, it is fair to state that the introduction of more competition would be good for the market. But I think there is a level where you can achieve that. A government-run two-signal market in Australia I would think would be hard to defend, not having more competition.

**MS ODDIE:** And I guess going back to what the commission's inquiry is about, which is consumer benefits, what we have been saying as an industry is that we have one of the best in the world quality free-to-air services and we don't want the balance to change to prejudice that. What we are trying to say in terms of Ten's submission is that we also want to ensure that there is a continuation of diversity of opinion in the media generally.

**PROF SNAPE:** And that survived the rebirth of Ten. The cost cuttings that you were referring to, plus some additional revenue to which you referred, didn't in fact result in the race to the bottom in terms of quality; in fact, people have been predicting - and we have heard it time and time again in a variety of submissions - that a fourth channel would bring what I am paraphrasing as "a race to the bottom". With Ten's cost cuttings in the last decade and some additional revenue, that didn't in fact result in a race to the bottom between the three channels.

**MR McALPINE:** No, because I think the balance at this stage, professor, is right in terms of the economics. There are sufficient revenues for the three networks to compete on a solid basis and provide the community with some of the best television in the world.

**PROF SNAPE:** And no further cost cuttings which could be taken without compromising quality, as you would argue that Channel 10 has done without compromising quality?

**MR McALPINE:** It is getting more difficult to pursue the cost angle any further and I think you will find that in terms of total operating costs we have probably reached that nexus, and I think if you go back to where the stations got into trouble back in the 90s - and in fact it was the three stations who were struggling at that stage - it was basically brought on, not because the market didn't have sufficient revenue, it was that basically the management of those networks was somewhat inept. Where the difficulties arose was that they got into a competitive scenario with offshore programming that escalated to a sense where the economics didn't work. So I think if you're using the example of history, professor, the position in those days - and hopefully not to be repeated - was the reason why those networks got into trouble wasn't because there wasn't enough revenue. They could have survived quite nicely in those days if they had managed their businesses a bit better.

**PROF SNAPE:** Right. I did ask a question before which got lost in the cross-talk. When I said that the value of the licences of Ten were now \$320 million you said, "Somewhat more", I think.

**MR McALPINE:** I think they balance it at a billion.

**PROF SNAPE:** At a billion now?

**MR McALPINE:** Yes.

**PROF SNAPE:** That's quite a hike, isn't it. So that then puts the total in fact for the three at probably well over 3 billion now. I think yesterday - - -

**MR McALPINE:** I think that's pretty right.

**PROF SNAPE:** - - - the estimate you gave was about two, but it would now be well over 3 billion.

**MR McALPINE:** That would be correct.

**PROF SNAPE:** Yes, but you don't recall what it was in 1992?

**MR McALPINE:** No, I don't.

**PROF SNAPE:** Good. Thank you very much for your participation. As I say, it was a very helpful submission in investigating these questions of diversity, etcetera, and a very interesting proposition that you have there and thank you very much for it.

**MR McALPINE:** Thank you. If I may, there were just a couple of points that - - -

**PROF SNAPE:** Yes, some amplification?

**MR McALPINE:** Yes, they're amplified from yesterday's conversation. I think when we got to the argument for no new competitors the proposition was put forward the introduction of a new competitor was based on the proposal of scarcity of the spectrum. I mean, this is basically not the case. The basis upon what was legislated was that there be no further commercial free-to-air licences until at least January 2007, and we've covered that, but I just wanted to clarify that there was a little confusion there, and not based on the premise that there would not be sufficient spectrum for another commercial free-to-air licence and, as you're aware, the ABA is still working out what spectrum will be available for datacasting as part of its channel-planning process.

Rather, the decision to extend the ban on further free-to-air licences was based on the view that the Australian market could not sustain another competitor if the current level of quality of service provided to Australian viewers for free is to continue. The decision to ban new entrants, which was reflected in the Digital Conversion Act, is consistent with the government's decision in 97 that there was no net community benefit in introducing a fourth licence in any market based on advice to that effect from the ABA and the Bureau of Transport and Communications. So we wanted to clarify the two issues that were raised in regard to new competition.

The second one, Stuart - you raised the potential new entrant, which we have clarified now, that there will be no new entrant until 2007. That was basically the clarification we wanted to put forward.

**MR SIMSON:** Thanks very much for that clarification. We will break for morning tea and after morning tea we have got an extra participant who wasn't listed originally, and that is Ramin Communications. The submission is number 79. Following that we will be having Prime Television. There is another new participant listed now for Thursday and that is News Ltd, who will now be making a presentation at the hearings on Thursday morning. Of course their submission has been with us for some days but News Ltd will be appearing Thursday morning as an addition to the previously published or circulated program.

**PROF SNAPE:** We resume the hearings after morning tea and we have with us Ramin Communications. We would be grateful, Miss da Cruz, if you could identify yourself for the transcription service and then speak to your submission. Thank you.

**MS da CRUZ:** It's Margarita da Cruz, principal consultant of Ramin Communications. Basically the argument in my submission was that the Broadcasting Act is being applied to the Internet inappropriately and it may be more appropriate to apply telecommunications regulations to the Internet and, basically, I elaborated that in various areas and various points about the evolution of the technology - cross-media ownership. It's interesting that no-one is playing up the value of datacasting and the position that existing media players have in establishing a role in the Internet and the perception that they are in fact the key players.

Advertising is another area where there is competition and its impact - introducing a new medium - so basically my argument is around the area is that it's inappropriate to apply broadcasting legislation to the Internet, as has been tried with censorship in recent days, and in fact it may be inappropriate to continue with the broadcasting regulations full stop.

**PROF SNAPE:** So what you are suggesting there is that we amalgamate the broadcasting and telecommunication legislation into one set of legislation?

**MS da CRUZ:** Yes.

**PROF SNAPE:** With any cross-media ownership provisions?

**MS da CRUZ:** It depends what your objectives are for cross-media ownership. You could take the example that in fact the datacasting application could be delivery of newspapers and magazines to home devices, in which case cross-media ownership rules could be put to an interesting test already, so I don't know that the cross-media ownership rules apply.

**PROF SNAPE:** You say at the end of your submission:

The convergence of media services and the Internet make it difficult to sustain an argument for the cross-media ownership rules.

We do have, however, as an objective of the existing legislation and in the terms of reference, the government's desire to have diversity of broadcasting services and information services, etcetera. How would you see that diversity being ensured?

**MS da CRUZ:** That diversity is currently proposed within the framework if there's radio and television within the broadcasting services. It doesn't develop datacasting applications, and how those could be used so in effect distribution of the content of the Internet can be seen as a broadcasting application, and will that put the existing electronic media owners in an advantageous position over new players who are entering via the Internet?



**PROF SNAPE:** Yes, there is a view - however, let me quote you something that was written by someone in the industry:

Despite the arguments put forward by the government, News Ltd and PBL that the Internet would add to diversity, its existence should not signal the end of cross-media regulation for the existing television and print media. This would be disastrous. While the on-line world will increasingly attract providers and consumers of information, some years will elapse before this new media form has the level of critical mass enjoyed by today's newspaper and television industry. In the meantime, we should continue to prevent any greater concentration of media ownership than we have already.

**MS da CRUZ:** So are you going to apply the cross-media ownership to Internet presence?

**PROF SNAPE:** The point here is that the Internet will take so long in fact to be providing an alternative source to the bulk of the population that we shouldn't think that it is going to have a great deal of influence right now and that we should therefore, according to this argument, continue with rules which would attempt to preserve the diversity.

**MS da CRUZ:** Through the assumption that the main media outlets are in fact newspapers, television, radio and magazines?

**PROF SNAPE:** And are going to continue to be so for a long time. This is not some quotation from someone who doesn't know something about the industry. It is a quotation from the book by Mr Daniel Petre.

**MS da CRUZ:** Whose approach you could say has recognised the value of aligning oneself with an existing media organisation to establish a position in the new media.

**PROF SNAPE:** What I am asking is, do you agree with this view that it will be a very long time before the Internet has got sufficient coverage that it can in fact be a substitute or can be regarded as a serious contributor to diversity?

**MS da CRUZ:** I think I disagree with that because there is much more content being produced on the Internet from much more diverse sources than is currently going into the standard, traditional media formats. There is an issue that in fact it's the cross-media ownership and the interests of existing media players on the Internet. Now newspapers are there, magazines are there, television and radio have tried to do complementary services via the Internet.

The other part of my argument was in fact the issue about the transition plan, where HDTV is being used. We heard the NTL yesterday argue that we shouldn't necessarily see a limitation of what the datacasting applications will be and basically the applications of that extra capacity, so the issue really is, if it is going to be

long-term before the other media influence will have this share of position with the current media, what rule should apply to their entry into that new media market, because they're certainly using their advertising and their current position and reach to develop their Internet presence.

Whether that is in fact valid, the interesting thing is that applying the commercial television and radio miles to the Internet I don't think has been overly successful, because one of the things about the Internet is that you can actually check - you don't do it on projections of audience reach - you can actually check the follow-through. The other issue is that in fact you can go to the source of the information, so in actual fact it's a different kind of model to the commercial model, whereas in fact the current media companies are trying to apply the same advertising models that apply in the one-way medium.

In fact what's happening is that statistics are available on how effective your advertising is now. Is it that someone saw your ad or someone followed through on your ad that counts? With things like advertising exploration - where you just flash an ad through - advertising companies are now asking to see whether people are following through. So you're actually going to see a diversity of advertising opportunities and much different kinds of models to the current, quite controlled models. I think the new media are going to challenge the existing media for that advertising dollar, and for reaching an audience like the 16 to 24-year-olds, which all the broadcasters talk about losing - they are in fact an extremely Internet savvy group of people.

**PROF SNAPE:** Are they yet being targeted by the advertising in any major way?

**MS da CRUZ:** I can't comment on that, but obviously what is happening is that there are demographics being released all the time about who is accessing the Internet. It's complex to do that because in fact the accuracy of those figures hasn't been established. In fact, if you talk about who signs up with an ISP, that is an inaccurate demonstration, because that's not who is in fact using the Internet service.

**PROF SNAPE:** So you can't find out who is actually pressing the button at the other end.

**MS da CRUZ:** Yes. However, you look at how new services are being delivered. For example, Sony is looking at delivering, selling music directly over the Internet. If someone was interested in new releases by Sony their source of information would be to tune into newsletters and information distributed directly by Sony.

**PROF SNAPE:** Does that include the sheet music that goes with it?

**MS da CRUZ:** Sorry?

**PROF SNAPE:** Will that include the sheet music that goes with it?

**MS da CRUZ:** In some ways any printed material is trivial in comparison to - they're talking about selling hi-fidelity audio over the Internet.

**PROF SNAPE:** Yes, but I'm talking about selling actually the print music as well as the - - -

**MS da CRUZ:** Yes, that's interesting - sorry, I'm not sure what you're getting at.

**PROF SNAPE:** You're saying that they were going to be selling their music and you were referring to the music itself. I was asking what about the sheet music which enables someone else to play it.

**MS da CRUZ:** Yes, I guess that is an application. There is an issue there, of course, of whether Sony actually buys the rights to the music or in fact the rights to the recording, so it would be much more complex than that. One of the things that has also been suggested is that you may see young bands selling their own music over the Internet which is going to change some distribution channels. There could be an interesting argument there that while the business models - there is difficulty in evolving the business models for generating revenue over the Internet - you may see very low payment - and one of the things about the culture is that if you actually feel that it's someone worthwhile, you are going to support it. So you might see the youth being prepared to fund and pay for a band that they support, rather than paying Sony music for that support, so I think you're going to see an evolution of different business models and relationships.

**MR SIMSON:** Yes. But the bottom line in terms of media consumption of the Internet at the moment is that it is being consumed by a minority of the population, generally in particular demographics and - - -

**MS da CRUZ:** What is that based on, though? In schools and universities basically any student has access to the Internet. There is an increasing number of individuals who are accessing the Internet. One of the things you actually found was that people signed up for the Internet expecting some - well, I'm not sure what they expected; whereas it's a much more interactive searching medium. As far as something like e-mail goes, if you have links elsewhere in the world it is, in fact, the only way to communicate cost-effectively in business and in private.

**MR SIMSON:** What I'm coming at is the relative penetration of the Internet in terms of media consumption, as opposed to newspapers, particularly in the context of this inquiry of mainstream television, free-to-air television. In your submission here you say Australia cannot afford to place broadcasters in the unique position of selecting and distributing free-to-air Internet content without consideration of the commercial advantages this will provide to a few operators. I mean, that's making an assumption about the value of their free-to-air content, isn't it?

**MS da CRUZ:** No. What I was actually arguing there was about the transition plan to digitisation, in that if you give the current three commercial television players

basically controlling access of the spectrum - and with the argument about HDTV being an argument about quality when in actual fact with HDTV we'll see multiple kinds of content - so in effect you may actually see PBL MSN service being delivered free to people's set-tops and their computers as an additional service to the television service. In actual fact you're going to see those kind of opportunities created by the digitalisation of the airwaves and in fact the transition to new receivers.

**MR SIMSON:** So what you're saying is that they bundle the service - whether it's the bundle with the cost of a set-top box or other products or information services that are coming through - what you're saying is they would, in effect, bundle their Web portal services with those as well, with television services?

**MS da CRUZ:** It is based on the assumption that their commercial model is delivering - the revenue model for their operation is the selling of commercial air time.

**MR SIMSON:** But even if they did that, and what you say makes some sense or some business logic, what is the problem with that?

**MS da CRUZ:** It's to do with advertising revenue which is available to other operators on the Internet. If the new media is delivered free-to-air via the ancillary services, say on the commercial television stations, then those people are in an advantageous position. Even for distributing the newspapers - I mean, it may come to the situation where your newspapers are delivered free-to-air or on a subscriber basis and that would be potentially in that side band width.

**MR SIMSON:** Maybe not in our lifetime, but - - -

**MS da CRUZ:** Sorry?

**MR SIMSON:** Maybe not in our lifetime.

**MS da CRUZ:** You can actually look at things like AAPT's recent purchase of spectrum which potentially is to use - - -

**MR SIMSON:** But that's for microwave service to small business, in that case.

**MS da CRUZ:** It's for distribution of broadband services over a wireless service.

**MR SIMSON:** Yes, and the targeting in that arrangement was just - they're targeting small business; they're not targeting the general consumer.

**MS da CRUZ:** But I think what we're going to see is an evolution of wireless services simply because the distribution of or the deployment of cable will take a lot longer, so I think what we're looking at is if there is a general demand then we're going to see an evolution of new kinds of products. What my argument was against was that - control of the spectrum should not be allocated to companies on the basis that they're going to need it to deliver their current services and their datacasting is a

trivial side issue that in fact - - -

**MR SIMSON:** Just to go back so I'm clear, the thrust of your argument is that we should, as an inquiry, be taking account of what are at the moment quite ancillary services or media services - whether it be the Internet Nine MSN for example, or the Seven Web site or whatever - we should be considering that as part of their marketplace in the context of the act?

**MS da CRUZ:** Yes, that's right.

**MR SIMSON:** Is that what you're suggesting?

**MS da CRUZ:** I'm not sure when you say "their marketplace - - -"

**MR SIMSON:** Well, their market - - -

**MS da CRUZ:** Their position in the marketplace?

**MR SIMSON:** Yes, their market space if I could use that rather than - - -

**MS da CRUZ:** Their access to spectrum - basically I think we've had the discussion about whether there's limited spectrum. In Australia I think there's more spectrum than we know what to do with, but the issues are what the applications will be of the spectrum, which will evolve internationally.

**MR SIMSON:** Yes, thank you,

**PROF SNAPE:** Good, thank you very much.

**MS da CRUZ:** Thank you very much.

**PROF SNAPE:** That's very helpful.

**PROF SNAPE:** Next we have Prime. Let's resume. We welcome Prime Television Ltd and we have three representatives. I would be grateful if each of you could identify yourselves separately for the transcription service, name and who you are representing, and then whoever is to open and speak to the submission to do so after that.

**MR CARR:** Certainly. David Carr, legal officer, Prime Television.

**MR BROWN:** George Brown, managing director and CEO, Prime Television.

**MS BROWN:** Shirley Brown, manager, corporate, Prime Television.

**PROF SNAPE:** I should mention that the microphones are in fact for the transcription service. If your voice is a bit soft or you need to speak to the people as well, there are some microphones there in addition that you could use for that purpose.

**MR CARR:** Thanks for that. If you would allow me to introduce the Prime submission, firstly, I notified the commission yesterday of a typographical error on page 3 and I have provided an electronic copy and they asked that I bring additional copies.

**PROF SNAPE:** Thank you.

**MR CARR:** Prime presents to the commission as one of the largest regional broadcasters in Australia, and it brings forward views from a particularly regional perspective. Prime has also had experience of operations in Argentina and New Zealand, so it is able to talk from that point of view as well. The submission is quite detailed and we don't propose to go through it in detail and we thought that we would leave any particular issues to you for any questions that you might have.

**PROF SNAPE:** Good, thank you very much. What is the value of Prime's licences?

**MR BROWN:** Current balance sheet, I don't think I could give you my answer off the top of my head.

**PROF SNAPE:** Roughly?

**MR BROWN:** It would be around about 200 million.

**PROF SNAPE:** Thank you. Has that been growing in recent years?

**MR BROWN:** No, I think it's been fairly static for the last couple of years.

**PROF SNAPE:** The last couple of years, yes. That's the Australian licences.

**MR BROWN:** Yes.

**PROF SNAPE:** How is the business going in Argentina?

**MR BROWN:** Difficult.

**PROF SNAPE:** May I ask you why you went to Argentina?

**MR BROWN:** Argentina is a completely deregulated market, the same as New Zealand, so as an overseas investor in those countries that had significant appeal to us.

**MR SIMSON:** Are you the largest regional operator in Australia?

**MR BROWN:** I think we would be - if not "the" we would be very close to being the largest.

**MR SIMSON:** When did you begin business as a regional operator in Australia?

**MR BROWN:** It would be approximately 10 years ago.

**PROF SNAPE:** That was based on Wagga and now you're extended out from Wagga?

**MR BROWN:** Correct.

**PROF SNAPE:** Do you feel that you're at any disadvantage not being owned by one of the networks?

**MR BROWN:** No.

**PROF SNAPE:** Or is it an advantage?

**MR BROWN:** I mean, it's an advantage and a disadvantage depending on whatever the particular element is that's under consideration. You know, not being part of a network means that you're relieved of some of the development costs that are associated with running a network in Australia, but then again another point to take is that you are also somewhat drawn along by decisions the network make which you may not necessarily agree with.

**PROF SNAPE:** Do you have the opportunity to take some of the networks' input or programs and not others, or is it take everything or nothing basically?

**MR BROWN:** No, the system that operates in Australia is basically, from our point of view - I can't speak on behalf of the Ten affiliates or the Nine affiliates - is that we

can pass on any programming that we don't wish to take. But there is a cost impost in that because you still are paying a percentage of your revenue as an affiliation fee, so you cop a double cost for a program that you may pre-empt. For example, if you elect to pre-empt a one-hour program on Friday night you are paying a percentage of your revenue in affiliation fees. By pre-empting that program you would then be faced with the cost of replacing that program by material that you may acquire.

**PROF SNAPE:** But there's no additional penalty for taking it?

**MR BROWN:** No.

**PROF SNAPE:** You're not taxed for not taking it?

**MR BROWN:** No.

**MR SIMSON:** Who is your major network affiliate?

**MR BROWN:** We're affiliated with Seven Network throughout Australia.

**PROF SNAPE:** Could you take any program from another network in substitution?

**MR BROWN:** No, that's highly unlikely.

**PROF SNAPE:** Is it prohibited?

**MR BROWN:** No, it's not prohibited. I think all affiliates have what I would call first right of refusal. If an affiliate elects not to take a specific program then I would imagine it's available to either of the other two affiliates if they so desire.

**PROF SNAPE:** And similarly, yes, you would be able to take a Nine program if whoever was broadcasting Nine in the area decided not to take it.

**MR BROWN:** Correct.

**PROF SNAPE:** But you couldn't run it at the same time in competition?

**MR BROWN:** No.

**MR SIMSON:** Could you comment on your terms of trade with Seven or, if you wish, more generally in terms of the relationship that regionals have with the network affiliates in terms of your relative bargaining power in terms of trade.

**MR BROWN:** It is purely a licensing agreement that you enter into, where they provide their programming feed to you as a percentage of revenue. Now, you normally structure that for a period of time. In some instances it's five years, in some instances it's 10 years. It can be an escalating rate over a period of time or it can be a



fixed rate over a period of time, and that comes back to your own ability to negotiate a position with the network.

**MR SIMSON:** Has it been getting easier or tougher to negotiate the sort of deal you want with the network?

**MR BROWN:** Well, it never gets easier. No, I think we are satisfied with the commercial arrangements we have in place with the Seven Network.

**MR SIMSON:** What we're searching for here is anything that's occurring in these types of relationships between affiliates and networks that could be seen to be at the border of what's fair play.

**MR BROWN:** No, I don't think there's any question of fair play. I think the matter that arises that government must address is the responsibility they're prepared to accept for localism and the need for regional areas in Australia to have an identifiable source of information that is related to their specific area. From a network's point of view, they would regard all Australians as being equal. In reality, of course, that's not the case. The reality is that in various markets around Australia, some specific programming that is of appeal in Sydney or Melbourne is of little or no appeal, and I think the essence of any government body is to ensure that that relativity of localism is maintained, otherwise you end up in a simple muzak situation where you're piping a signal around that may not be particularly suited to that area and does not satisfy the local requirements.

**MR SIMSON:** Is that being achieved at the moment, the imperative of the localism?

**MR BROWN:** Well, I mean, it's a balance that you pay and play in the sense of: to what degree are you prepared to incur additional cost to maintain that? Now, we ourselves place great emphasis on repackaging the Seven signal into a local signal with local identification and the insertion of local news. I think the Nine affiliates do something similar. I think the Ten affiliates don't. Again, it comes to this relativity of providing areas, what we call submarkets, which are areas like Tamworth or Wollongong or Newcastle, with their own specific form of television. If you don't do that, you will ultimately end up with CNN, CBS, NBC, BBC, etcetera - you will just end up with a common denominator service throughout the country.

**PROF SNAPE:** Do you provide a different service from each of your centres in what you were just describing then?

**MR BROWN:** Yes. For example, let's take New South Wales because it's a simplistic one to understand. We provide separate news services in Newcastle, Tamworth, the Gold Coast - the Gold Coast is regarded as part of New South Wales in broadcasting terms - Canberra, Wollongong, Orange, and Wagga. They all have separate news operations.

**PROF SNAPE:** Mildura?

**MR BROWN:** Mildura, no. Mildura is a new market that we only entered into two years ago. These are markets where you have to judge and weigh the size of the market and whether that market can sustain the costs that you're going to incur in doing it. We incur costs upwards of about 8 million to 9 million a year in providing local news. The reality of it is, you could walk away from that tomorrow. You would suffer some decline in revenue but not to the extent of \$9 million. It's a positioning exercise of, as I said, being identified with the local community and being part of that community and providing the service that that local community wants.

**PROF SNAPE:** We talked to FACTS yesterday and Channel 10 this morning, and we're talking about the importance or otherwise of networks owning stations. In a sense you're the other end: you've got stations but not a network, and you find that position very comfortable.

**MR BROWN:** Yes, but we operate within ourselves as a network.

**PROF SNAPE:** Yes.

**MR BROWN:** The only difference between ourselves and Nine, Seven and Ten is we are not a big originator, but we operate a far more complex technological system of distribution. For example, Prime would operate probably one of the most complex and largest terrestrial distribution systems in the world, and in a general sense Australian regional operators are seen as world leaders in the distribution of television signals over the large complex terrestrial areas, with the ability to insert and to mould those signals in various forms. For example, at any one time here in Australia we would be originating 21 different signals across something like 112 transmitters.

Now, while the programming will generally remain common, the commercial content and various forms of localism are different, so while you may be watching, for example, the Wheel of Fortune at 5.30 in Newcastle, Canberra, Wollongong, etcetera, at 6 o'clock you will be watching a significantly different program and the commercial content associated with those programs will be different.

**PROF SNAPE:** So there will be different advertisements in each of those regions?

**MR BROWN:** Yes, again because you've got to give access to local business people to use television as an advertising medium.

**PROF SNAPE:** Who are your major television competitors in these markets?

**MR BROWN:** Basically the Nine affiliates or the Ten affiliates. They break up into two different groups. The Ten affiliates in northern New South Wales and Queensland are TAL, in southern New South Wales and Victoria they are Southern Cross, in northern New South Wales it's NBN and in southern New South Wales it's the WIN group of companies.

**PROF SNAPE:** So you then are getting significant economies by having a number of stations that you can in fact share a lot of costs of technology across?

**MR BROWN:** You network them. Aggregation created a networking situation within regional Australia where we operated major centres, what we call hub centres, which are places like Tamworth or Canberra, which are basically originating stations where the various signals go out to the other areas in their various forms.

**PROF SNAPE:** I think you foreshadowed that you would give some commercial-in-confidence data on some of the efficiencies.

**MR BROWN:** Yes.

**PROF SNAPE:** Thank you. We'd be very pleased to see that. But you're not tempted to be going into networking in content yourselves?

**MR BROWN:** You can't afford to pay the sorts of rates you pay to a metropolitan broadcaster and become a producer yourself. It's difficult to run the dual business. If the affiliation system was broken down in Australia to the degree say it's been broken down in America, where you have prime access availability, then I think you would see the regional industry take on a more productive role in the area of self-origination.

**MR SIMSON:** It's interesting that in regional areas, which are clearly less populated than city areas, there are in your case the three affiliated networks - plus of course the ABC. But putting the ABC aside, there are three affiliated networks. You've explained that to greater or lesser degrees those affiliates package local content into their programming, the news and information content. You've also explained, however, that they generally run the other programming they get, you do not make your own drama or whatever, but you do operate in competition in a less populated context than the cities. I don't know if you were here this morning or yesterday, but we've heard time and again from the major free-to-air or from the free-to-air networks that they couldn't hack a fourth competitor in their marketplace. What do you think of that?

**MR BROWN:** The market would not sustain a fourth competitor in any of the Australian markets given the regulated system that you now have. If you deregulated the system on content and things like that, you could afford to let a fourth player in. Now, that's our experience in New Zealand and in Argentina where there is nowhere near the onerous regulatory process there is here. You could not start a fourth service in Sydney or Melbourne and require of it the Australian content requirements that you have on the existing originating stations now. It would be simply too onerous. If you allowed that to deregulate so that the industry per se still maintained the same volume but spread across say four operators, there is a possibility.

**MR SIMSON:** But the principal argument against a fourth free-to-air from the free-to-air is not the burden, as some might see it, of the content requirements, it's the fragmentation that they would see that would occur in advertising revenues. They

argue that the cake would be divvied up. It might grow 1 or 2 per cent but it would be basically divvied up amongst four rather than three. But that's not your emphasis. Your emphasis is much more on the cost side.

**MR BROWN:** Yes. If David Leckie or Jack McAlpine or Julian Mounter can reduce their costs by 50 or 60 million a year, they can then afford to reduce their advertising revenue by probably a similar amount. I don't know - I mean, that's a matter for them to argue.

**MR SIMSON:** Yes, sure.

**MR BROWN:** All I'm saying is that in areas where we have entered markets vis-a-vis New Zealand and in Argentina - in Argentina we're operating in a four-network configuration. In New Zealand we are effectively a fifth commercial service that's entered that market. But we have no requirements for content and therefore we are able to operate a very low-cost system and look at - particularly in New Zealand - getting to a break-even point within three years, simply because there is not the necessity to achieve a large mass audience to sustain revenue.

**PROF SNAPE:** Do you sustain that argument even though the licences in Australia together, even with all those content regulations that you have, are valued in balance sheets at well over \$3 billion?

**MR BROWN:** Yes.

**PROF SNAPE:** But that's \$3 billion is there as the value of the licence with all those restrictions imposed upon it. That would all disappear? The licence wouldn't be worth anything if a fourth competitor came in?

**MR BROWN:** I don't agree with that statement.

**PROF SNAPE:** But that was what you were saying, that you would destroy the value of the licence by a fourth person coming in.

**MR BROWN:** No, I'm not saying you'd destroy the value of the licence.

**PROF SNAPE:** But you said they couldn't exist.

**MR BROWN:** No, I don't recall saying that.

**PROF SNAPE:** I thought that was the thrust of what you were saying.

**MR BROWN:** No. What I'm saying is you could sustain a fourth licence but not under the regulatory system that you have now. If you are requiring a fourth broadcaster to maintain the levels of Australian content and you are requiring the existing operators to maintain the cost impost of maintaining that thing, it won't work. If you deregulate that environment, there is a possibility it could work.

**PROF SNAPE:** Yes. My point was with the existing regulations, with all the existing content regulations, those licences are worth in excess of \$3 billion. That's with those existing regulations.

**MR BROWN:** Yes. It may be that if you deregulate they may be worth more.

**PROF SNAPE:** Well, I'm sure that they would be, but taking the existing situation, adding another competitor in there with the existing regulations, and suddenly a fourth one couldn't exist - or the four could not exist.

**MR BROWN:** That's what I'm saying. I don't believe that if you maintain existing regulations a fourth service could exist.

**PROF SNAPE:** What are licences valued at in New Zealand and Argentina?

**MR BROWN:** Again they vary in New Zealand. We acquired 34 licences for about \$3 and a half million. In Argentina I couldn't give you the figure off the top of my head but we'd be more than happy to provide that.

**PROF SNAPE:** Thank you.

**MR SIMSON:** It's interesting that the free-to-airers argue that there should be some deregulation or self-regulation in the area of content. But they also argue that local content - we're talking particularly with drama here - is actually important to their ratings. By the way in fairness to your previous point, they don't disagree with the argument that with a fourth free-to-air they'd be up against it in being able to fund that but they do see that local drama is important ipso facto to their ratings, irrespective of what content quota say.

**MR BROWN:** Yes, because that's consumer driven. Just because you impose a regulation on either drama content or whatever quota you want, if the consumer is not acceptable of it, he won't watch it. This is the thing you see in the area of children's television where my own personal belief is we've been terribly ineffective with the rules and regulations we've set on children's content because all we've ended up doing is produce three programs that look the same, sound the same, and the kids aren't entertained by it. So what do they do? They switch off.

You could say the same - if the networks hadn't accepted a creative role and an aggressive role with drama you could have well ended up with a similar situation there. But they didn't, they were able to turn in material that is attractive to the consumer, the consumer will watch it. If you put a regulatory process in that says, "You will carry Catholicism at 12 o'clock at night", if the Catholics don't want to watch it, it's not going to achieve anything.

**MR SIMSON:** Fair enough. But you say on page 13 of your submission that "If consumers require Australian content they will turn their attention to the broadcaster

that is catering to their needs."

**MR BROWN:** Exactly.

**MR SIMSON:** In other words, in the absence of the content quotas you would argue that - - -

**MR BROWN:** The consumer will go for it. In Argentina where there are no content requirements, we carry upwards of 80 per cent of local content. There is no requirement in Argentina to have 40 per cent, 50 per cent, 60 per cent Argentina content. The fact is that all broadcasters there have access to buy in large quantities of product from overseas, vis-a-vis the USA, they elect not to because the consumer has a preference for watching locally produced material. Therefore the operator who produces local material is the one who is going to be commercially more successful.

**MR SIMSON:** The industry here in Australia is quite derogatory of the quality of the content that is produced in New Zealand, for example. In other words, that you basically scale down the quality to a lower denominator in a deregulated environment. Sure, there will still be local content produced but what is it like?

**MR BROWN:** Yes, that's an objective view that anyone could take. I certainly wouldn't think that TV1 or TV2 could be considered as downmarket services.

**MR SIMSON:** Can we turn, please, to the issue of deregulation of ownership, where your position is, in a number of points in the submission, stated quite clearly, specifically the top of page 6. "Prime believes that a self" - this is in the context of control and ownership on foreign investment and cross-media, which you argue, point number 1, "do little to promote plurality of opinion and prevent concentration of political power in the hands of a few." Could you just elaborate on that sentence for a start for us, please - the top of page 6.

**MR BROWN:** The top of page 6?

**MR SIMSON:** Yes.

**MR BROWN:** I see. This is 2.27?

**MR SIMSON:** Yes, 2.27, thank you.

**MR BROWN:** Again what we're saying here is, you know, it's not the ownership that controls opinion, it is the system, it is management, it is the working of the system that creates - - -

**MR SIMSON:** You know, there is in Australia this sort of mega journalistic view that Messrs Packer and Murdoch control everything that is written in newspapers or is carried on television. Now, I come as someone who has worked for all of these in my 39-odd years in this industry at various times - have had the pleasure or displeasure of

working for a large number of these people. There was never a situation that I've ever seen in television where there has been a proprietorial influence on news content. Now, I can't speak for newspapers because I've never worked in newspapers, but certainly in television there has never been a situation where that occurs. So simply by - what I call - creating a regulatory situation on ownership, does that protect or enforce that situation? Our argument is no, it doesn't.

**MR SIMSON:** What does?

**MR BROWN:** Plurality of ownership. Again the consumer is not a dodo. The consumer will not go to a biased news service, the consumer will not read a biased newspaper, he will walk away from it. He wants to read an opinion and a plurality of opinion.

**MR SIMSON:** Maybe I'm missing some here, but the cross-media rules are designed - putting to one side the efficacy of them at the moment, but the cross-media rules are designed at least to achieve some plurality of ownership with regards to cross-media.

**MR BROWN:** We say that is the case, but by removing that, does that change the concentration? Our argument is no, it doesn't. You can deregulate the market. Will it affect the plurality of views? Our argument is no, it won't.

**MR SIMSON:** Is that because you see fundamentally the television marketplace being different to newspapers or does it go back to the point you were making to us a second ago, that you don't believe that this political influence - or this influence in terms of the news information and content that is put into the television networks programming anyway?

**MR BROWN:** The latter, yes.

**MR SIMSON:** The latter, okay.

**PROF SNAPE:** A number of people have suggested that it's not day-to-day intervention, that it is in fact the climate that is in place, that one knows the views which are acceptable or one gets the feeling of it, and some people argue that one doesn't need day-to-day intervention to ensure that particular lines are followed; it's simply just in the atmosphere.

**MR BROWN:** A proprietor is entitled to an opinion, the same way as you and I are entitled to an opinion. The fact is, is he entitled to use something that he owns and operates to espouse that view? I would argue - and I think most would argue - that he's not entitled to use that in a television sense, and I don't think they do.

**MR SIMSON:** Could I put another example to you? Let's say that you were able to buy up the regional newspapers in the cities that you operate in. How would you run that from a content and editorial perspective between - in networking, yes or no,

between your TV interests, putting this local content in your television and your newspapers? I mean, would there not then be some more homogeneity in terms of content between what people read in the newspapers in those regional areas, in Tamworth and Wagga and so on, and what appears in your local editions of your TV shows?

**MR BROWN:** No, because I think the two run independent of each other.

**MR SIMSON:** They would run independent of each other.

**MR BROWN:** Yes.

**MR SIMSON:** You would have separate newsrooms.

**MR BROWN:** Yes. I mean, we could easily consolidate the nine-odd newsrooms that we operate now into one. I mean it is physically impossible for management, a person in my position, to monitor or to control nine individual news bulletins that are going out a day in this country. The essence is to maintain that they are being fair and accurate in their reporting and that they're not indulging in some self-gratification process. You just cannot simply exert that sort of influence across that sort of spectrum.

**MR SIMSON:** Another tangent or another bent on that is the discussion that surrounds media proprietors who have a whole bunch of other businesses which perhaps you do not - in other industry sectors - which must be reported on and the potential for conflict of interest in that situation.

**MR BROWN:** Yes, but the reality of it is that that's a global problem, and the reality of it is that Australia cannot continue to live in isolation to what's happening in the rest of the world. You cannot expect the system in Australia to continue to be what I would call a protected species in an environment that is happening throughout the rest of the world, which is a process of deregulation and, to a certain degree, consolidation in media groups.

**MR SIMSON:** Thank you. Can I take you to the second sentence in that 2.27 where you say:

Prime believes that a self-regulated industry would be sufficiently mature enough to ensure the effective promotion of plurality of opinion and the prevention of concentration of political power in the hands of a few.

Just talk to us a little bit about what sort of self-regulation you envisage: who, how, where?

**MR BROWN:** The industry has proven over the years in those areas where it has actively endorsed an underwritten self-regulation in an advertising content point of view that it has been successful, and it has been to the benefit of the consumer in



general. I think exactly the same type of thing applies here, it's beholden upon the industry to come up with a set of self-regulatory proposals that is acceptable to the community. I don't think that's a difficult thing to achieve.

**MR SIMSON:** Have you seen this occur anywhere overseas where you can actually - in the context of addressing concerns that might arise from the abolition of cross-media, for example?

**MR BROWN:** No, I don't see in the Americas or, to a lesser degree, in New Zealand, the degree of hypersensitivity towards this whole question of media proprietorial - - -

**MR SIMSON:** You think it's just because of the individuals involved here.

**MR BROWN:** Yes. I mean, they're such high-profile people.

**PROF SNAPE:** It is in the US, though. You have to be a US citizen, do you not, to own more than 25 per cent?

**MR BROWN:** Yes.

**PROF SNAPE:** So there is a considerable sensitivity there and in Europe.

**MR BROWN:** Yes, but that again, I think, is going through a deregulatory process. I mean, if you look at the broadcasting system in the South Americas where 12 years ago it was a highly regulated system, there has been a considerable breakdown in the regulatory process, and I think you'll find that that will follow through in Europe and I think it will follow through eventually in the United States, because the United States cannot be prepared to operate in an international scene and yet itself maintain a prohibitive level of foreign ownership.

**MR SIMSON:** What about the economic perspective on this? The evidence that we heard this morning from Mr McAlpine at 10.00 indicated that in a situation - let's just take Sydney for example. If Packer and Fairfax came together, that is their television and newspaper interests in Sydney, that would represent a 40 per cent of what he termed the influential media, which he then defined in terms of national advertising, not including classified, but a significant percentage of 40 per cent, would that concern you?

**MR BROWN:** As an individual?

**MR SIMSON:** No, as representing here today Prime.

**MR BROWN:** No.

**MR SIMSON:** Why?

**MR BROWN:** I mean you virtually have a situation where the size of News Corp in this country - where we all compete against News Corp in various forms, whether it's competing against Foxtel or magazines or newspapers - you know, you've already got a hundred pound gorilla. Another hundred pound gorilla is not going to make a great deal of difference, we will still all be fighting for our niches in revenue sources and in audience viewing.

**MR SIMSON:** But those hundred pound gorillas at the moment are constrained - - -

**PROF SNAPE:** It's a pretty light gorilla at a hundred pounds.

**MR SIMSON:** The gorillas, whatever they might weigh, at the moment are constrained to particular markets, that is television or newspapers.

**MR BROWN:** Well, that's the areas they prefer to operate.

**MR SIMSON:** From your perspective, if there was a change in the rules - I mean, clearly you couldn't talk about targets, but I mean from a business strategy perspective, what are the sort of things that you'd like to get into. Do you want to get into a metropolitan market, a metropolitan newspaper market?

**MR BROWN:** No, we don't - - -

**MR SIMSON:** What's in it for you at this juncture?

**MR BROWN:** I wouldn't touch a newspaper with a 40-foot pole but certainly electronic media is the area that we are specialised in, so we're very keen to be involved in the development of the electronic industry in this country. Again, this comes back to a critical mass situation. In being able to compete with other operators throughout the world, you have to have a certain critical mass. The reality of it is that any Australian operator faces constraints from a fund-raising situation because of the pure physical size of this market compared to international markets. The fact is we operate in such a restricted market where we can't go into radio. I mean, you have a ridiculous situation here where we're prepared to allow foreigners to buy our radio stations but we're not prepared to allow existing television operators to buy our radio stations.

**MR SIMSON:** So you'd want to go into radio.

**MR BROWN:** Radio is a thing that I've always shown an interest in, yes.

**PROF SNAPE:** Broadcasting not narrow casting.

**MR BROWN:** Yes.

**PROF SNAPE:** Does Austar take your signal?

**MR BROWN:** To the best of my knowledge, no.

**PROF SNAPE:** Is there any reason for that? They're presumably in some of the same markets that you're into.

**MR BROWN:** Yes, I don't think they've asked us.

**PROF SNAPE:** The Gold Coast if none other, but I think there are others, yes.

**MR BROWN:** Yes.

**PROF SNAPE:** Yes.

**MR BROWN:** No, they don't take our signal at all.

**MR CARR:** The reason is regulatory in that the technical issues that are involved with retransmitting the affiliate signal within the market that it's intended for, the pay television operators uplink from one source in Sydney and so it's the same signal distributed across their entire market, whereas the service that Prime provides is not licensed to go outside that market, so they can't technically deliver a discrete signal within the Gold Coast market, so that's the reason for the - - -

**PROF SNAPE:** That's because the pay is going nationally and not - - -

**MR CARR:** That's correct.

**PROF SNAPE:** Okay, yes.

**MR SIMSON:** Could you talk with us, please, about how you'd like the regulatory structure changed. On page 18 of your submission you refer to the costs of the structure. You say there are few benefits from the current regulatory structure. If you just talk about how you'd like to see it shaped up.

**MR BROWN:** David, do you want to make some comments on that?

**MR CARR:** Sorry, what - - -

**MR SIMSON:** 2.5.1 on page 18.

**MR BROWN:** No, we've got different pages than you, I think.

**PROF SNAPE:** 2.5.1 anyway.

**MR BROWN:** It's page 90.

**MR CARR:** Certainly those comments have been made in light of recent experiences with the regulatory authorities - not very recent, in fact more than 12 months since we last had any experience with the regulatory authorities, but what was occurring - because the regulations in relation to planning processes was so detailed and complex the authorities were faced with the difficult decision of providing detailed reasons for their decisions or simply publishing decisions and then leaving it for somebody to challenge the decision. They opted for that course which unfortunately made it very difficult for anybody affected by a decision to determine why the decision had been made.

Unfortunately, the current legislation did not allow rights of appeal against those decisions, so the ABA in particular could make a decision which affected a broadcaster without publishing any reasons and a broadcaster then was left with no right of appeal. It was for that reason that we said that the system lacked transparency and clarity in decision-making processes.

**PROF SNAPE:** It's become a very, very legalistic system though, hasn't it?

**MR CARR:** It most definitely has.

**PROF SNAPE:** And that's part of the reason, we've been told, the ABA takes a long, long time to make decisions because of that legalistic process.

**MR CARR:** It's the legalistic process and also the processes that are outlined in the act. The legislation itself requires the ABA to go through a number of steps before it arrives at a decision, which takes quite some time, and there's a wide public consultation period with that. That has led to much lengthier inquiries than was first envisaged when the new act was put forward in 1992.

Our experience over the past six months in dealing with the ABA has been quite the reverse, because they're working in a much more flexible environment in the planning for digital transition. The act is not quite so prescriptive and allows greater flexibility, and the experiences in the last six months have been very, very rewarding. There's a much more cooperative approach to dealing with these regulatory issues, and certainly we would like to see it move more towards that system rather than the current prescriptive system which requires them to go from step A to Z and to take each and every one of those steps before they can make a decision.

**PROF SNAPE:** Are consumers' interests being well represented in that more flexible approach?

**MR CARR:** I believe they are. The flexibility does not mean that they don't still have regard to their obligation or public consultation. That's being done through various consumer bodies, but again in a more flexible and relaxed environment than the adversarial system that we've seen in the past.

**MR SIMSON:** Mr Brown, from your perspective what are the major issues in the digital transition as a major - - -

**MR BROWN:** Cost impost. As I said earlier, we operate a very large and complex terrestrial broadcast system, and unlike our metropolitan friends where they are faced with updating and modifying a limited number of transmitter sites, regional operators have a very large number of sites which they have to update. Now, we are comfortable with the January 2001 start date. The question is whether the industry will be able to achieve a complete rollover of the system by 2004.

**MR SIMSON:** And that then includes the regional operators, doesn't it?

**MR BROWN:** Yes. Yes, regional operators in areas like Newcastle and Wollongong will move in parallel with metropolitan operators because of competition, but the question that really has to be answered, and I don't think anyone can give either you or I this answer at this stage, is whether the manufacturing side of the industry, meaning the manufacturers of the equipment, given that the United States is moving to digital, given that parts of Europe are moving to digital, is whether that amount of equipment is going to be readily available to meet our requirements over that window period of 2001-2004.

**MR SIMSON:** You're referring to conversion transmission.

**MR BROWN:** Yes.

**MR SIMSON:** You're not referring to the receiver or the set-top box.

**MR BROWN:** No, well, I think it's going to be both. I think it's certainly going to be both. The US, as you would know, has commenced digital transmission in November of last year. It's, I think, going to be very difficult for any of the major manufacturers - and they would be far better to talk to than I - but it's going to be very difficult for them to make any meaningful volume of suitable priced products available to the mass consumer early in the piece.

**MR SIMSON:** From your perspective what do you see as the things that you want out of digital? Is it the data casting, the multichannelling? Is it the better signal for people who can afford the \$7000 to buy the TV set?

**MR BROWN:** In reality I wish we knew. In once sense this is a movement towards new technology and enhancing your current system by simply a technological update. There's a lot of talk about datacasting; there's a lot of talk about multiple signals; there's a lot of talk about HDTV. Again, my view is that I think that that area is still very cloudy and it's still very difficult for broadcasters to fully understand and comprehend the ramifications and the impost and opportunities that will come along with that, and that's why I think the government has to give that window of opportunity to the broadcasters through until, I think, the review period is set in 2005-2006, to give them that opportunity to see what they can do and what added

services, what added value services, they can provide.

The industry got very hot and excited years ago with a thing called teletext, which has never been a huge success in this country. It's a form of data carriage that we are involved in. Again, it's this whole question of convergence. Where do we end up in four, five, six years with the Internet, with HDTV, with multiple signals, with datacasting? I would put the argument to you that in reality no-one clearly can draw that route to you at this stage.

**MR SIMSON:** You don't have a grand plan.

**MR BROWN:** There's no sort of grand plans hidden in the hip pocket, other than it is obviously something that we watch and monitor very, very carefully, and to look at developments that are happening in the United States, to have a look at developments that are happening here in Australia, and to try and position yourself in a position where you may be able to take advantage of it in some form, shape, or other. But if you said to me, "Can you specifically nominate areas that you will benefit out of it?" apart from giving the consumer a far better quality signal and better quality television reception, no, I can't.

**PROF SNAPE:** Would you be able to operate here interactive systems interacting back, say, through the telephone line in new formatting, with the new digital system, independently of the network?

**MR BROWN:** Yes, but it's very difficult to see how you could do that by maintaining a network program feed; in other words, technically you could do it, but the reality of the fact is that you are going to be taking a program feed from a network which may drive some form of interactivity which you may or may not have control over. That's the complexity of that question.

**PROF SNAPE:** But in order to tap into a particular local market, for example, you would be able to - technically you would be able to do it.

**MR BROWN:** Yes.

**PROF SNAPE:** And you would be able to perhaps charge locally for the use - for that interaction.

**MR BROWN:** Yes.

**MR SIMSON:** Realistically, looking at your marketplace in rural Australia, regional Australia, how long do you think you're going to have to broadcast simultaneously in analog and digital?

**MR BROWN:** I think 10 years is a reasonable window. I think that technological change now happens so quickly. The two drivers will be (a) programming, and (b) the availability to the consumer of reasonably priced television sets, digital

television sets, and at what level the consumer is prepared to invest in that sort of technology. As we've always seen, whether it be colour or VCRs or CDs, over a period of time the cost to the consumer falls fairly dramatically. It's hard to see someone in a regional area paying, say, \$25,000 today for a plasma digital screen where, if that cost can be brought down maybe to 2 or 3 thousand dollars, it does become a reality, given that people in this country were prepared to pay 600, 700 dollars for television sets back when the average wage was \$30 a week. But I just don't think that consumers are going to rush out and spend that sort of money for what I'd call a full-blown system at this stage.

**MR SIMSON:** So the 10 years, would that be - and I ask the question in the context of regional Australia - that would then take you to 2014 for the complete conversion.

**MR BROWN:** Yes.

**MR SIMSON:** So you believe that as a major broadcaster in regional Australia you'd need to be broadcasting in both analog and digital until 2014.

**MR BROWN:** Yes, I think that's the case. I think there's obviously room to review that as the period progresses to look how quickly the take-up is. If the take-up exceeds all expectations you may be able to terminate your analog broadcasting earlier. There may be arguments, as there have been with the telephony in this country, to delay the cessation of an analog service.

**MR SIMSON:** It would be tying up a lot of spectrum for a long time, wouldn't it?

**MR BROWN:** Yes, it will, but you've got a lot of consumers out there that have got a lot of money invested in television receivers.

**MR SIMSON:** Is your gut feel that that 10-year period perhaps from an earlier start date - let's say 2001 in the case of the metropolitan areas - 10 years is about the same for - would also be required for the metropolitan areas as well?

**MR BROWN:** Again, I think the same question is put. Nothing says that a consumer in Sydney is going to be prepared to pay more than say a consumer in Newcastle or Taree or Tamworth, so you may find a situation where the take-up in some of the suburban areas of Sydney or Melbourne may be slower than is anticipated, simply for those costs.

**PROF SNAPE:** Would it bother you if access with set-top boxes were made available to everyone, which would enable the conversion of a digital signal to analog very early in the process, so that everyone would then have the opportunity of receiving a signal that was broadcast in digital and then there would be no need to broadcast any longer in analog, thereby freeing up all the spectrum?

**MR BROWN:** I think if that can be provided to the consumer at a reasonable cost,

there would be no argument.

**PROF SNAPE:** That wouldn't bother you, giving up on the one hand the obligation of going in analog, which is a cost, and on the other hand the reservation of the spectrum?

**MR BROWN:** No. We have no desire to retain the analog spectrum once we've fully converted to digital.

**MR SIMSON:** So you're not as anxious as your free-to-air colleagues that the use that this spectrum might be put for datacasting and other services that could down the track be competitive with - - -

**MR BROWN:** Not as long as we've had time to re-establish our own industry, no.

**PROF SNAPE:** Is pay TV a bother to you?

**MR BROWN:** No.

**PROF SNAPE:** It's not making inroads?

**MR BROWN:** No. Pay television is complementary or supplementary to free-to-air. Every Rotary Club I address, that question gets put. My stock answer is pay television is to commercial television what magazines are to newspapers, they are niche forms of publication and they will have an appeal and they will reach a saturation point in the market and that will enable viewers to be more selective in what they watch, but that, while it will have some impact on free-to-air operators and free-to-air operators will have to be smarter and cleverer and most cost-effective, ultimately free-to-air is still the name of the game.

**PROF SNAPE:** I suppose it's less bother to you in the sense that you're not a network - that is a content network - and as pay television is operating on national markets and yours is not a national market that you're getting your own advertising revenue from, it's of less bother to you than it would be to the networks which are - - -

**MR BROWN:** It's not of less bother, the fact is that we generate 70 per cent of our revenue out of the national marketplace. 30 per cent of our revenue comes out of the local marketplace, so the name of the game is Sydney and Melbourne from our point of view. The reality is that as long as the environment to which the pay operators have to operate is the same environment as the FTAs, there should be no problem. If you continue to subsidise the introduction of cable or pay, whatever form it takes in this country, then you have a problem because the cost impost on the FTAs is proportionally greater than the pay impost on the cable operators. If you are insisting a 50 per cent content or 50 per cent whatever you want impost, it should be across the whole spectrum, not just selectively to the FTAs because they're a more mature system.



**MR SIMSON:** They have an expenditure-based content arrangement.

**MR BROWN:** A very generous one.

**PROF SNAPE:** Yes. Well, I think that's fine, so thank you very much for your submission and we look forward to that extra bit that you mentioned in it, of the costs, and thank you very much.

**MR BROWN:** Thank you.

**PROF SNAPE:** We'll now adjourn and after lunch we start with OzEmail at 2 o'clock.

(Luncheon adjournment)

**PROF SNAPE:** We'll resume after lunch and we welcome OzEmail who have with us two representatives and I'd ask you, if you would, to identify yourselves, each separately, for the transcription service.

**MR MILNE:** I'm Justin Milne and I'm the general manager of OzEmail Internet.

**MR RAMSAY:** I'm Ross Ramsay and I'm the head of a consulting firm which consults to OzEmail in this particular area.

**PROF SNAPE:** Thanks very much. Now, I'm not sure who's going to speak to it. You are, Justin, over to you.

**MR MILNE:** We've been very pleased to make a submission to the Productivity Commission based largely on our, I think fairly well-known, aspirations as a datacaster. I don't think I need to read through our submission or even paraphrase it too much, because it's now on the record. In general terms, as we would all know, the government has recently decided that Australia will move to digital broadcasting and this provides a lot of opportunities, including opportunities for new entrants into the broadcasting arena. The government has said that television stations will move to digital broadcasting, which we think, of course, is a good idea, and in the process of that move, extra spectrum will be made available by virtue of the extra capacity that the clean-up of the spectrum allows as we move to digital and the fact that digital spectrum effectively allows us to send about five times as much information as we were previously able to in the analog world.

The upshot of this, without going into the technical details too much, which I'm sure many of us are aware is that extra spectrum has the capacity to be created. In fact, recent initial work from the ABA has indicated that at least one extra channel has been found in all of the main capital cities and we fully expect that more extra channels will be made available and the government has already signalled that it envisages that some of these channels will be made available to datacasters. This is extremely important and potentially extremely beneficial, we think, to the people of Australia, in that effectively what it means is that you will have on the one hand, free-to-air and national broadcasters who will have the capacity to deliver digital, ie superior quality television, perhaps high definition television in some instance, and enhancements to their television services.

In addition to that, you've got the capacity for datacasters to come in, who come from a completely separate and different sort of background and will be looking to provide - let's call it interactive services largely or Internet-type services, via the broadcasting spectrum. This is, we think, extremely important for the people of Australia in that effectively what datacasting allows us to do is to leverage our existing broadcasting infrastructure, which currently allows - I think from memory - 98.9 per cent of Australians to receive a free-to-air broadcast TV signal. Effectively, that same 98.9 per cent will have the capacity, once the networks are rolled out, to receive datacasting signals, but what datacasting signals will be will be signals which won't seek to emulate what a television station does, but will seek to provide

Internet-type services and interactive-type services, a whole new range of services, to Australians.

When the datacasting service, which will effectively provide around about 20 megabits per second worth of data to an appropriately-equipped set-top box sitting on top of a television set and connected to an aerial - when that box is receiving 20 megabits per second and when it has a modem which connects it back to the Internet, it means that all those folks receiving datacasting will be getting a huge amount of data. You know, 20-odd megabits per second is a phenomenal amount of data, about 400 times faster, I think, than a 56K modem, and that's very significant. Now, the data that they will be getting will be things like Web pages, at the simplest level, it may be downloads of movies, but it also provides the capacity in Australia for us to finally conquer things like distance education and like distance medicine, because we're talking about providing large volumes of data to people incredibly cheaply, 20 megabits per second is the kind of data rate which you've effectively got to have a really thick pipe to be able to provide that in the traditional network, point-to-point kind of method, but if you're using the broadcast infrastructure of our existing TV networks, effectively our TV network infrastructure, then you can effectively provide a lot of data at very very low cost to Australians.

Just sort of leaping into the future a bit, we think the importance of this is that on current indications, the government at the moment says they envisage that the analog broadcasting television signal will be turned off in about 2008 and there's some room to move on that. If that's the case, let's just say that analog is turned off in 2008, then everybody who's going to be receiving TV in Australia at that time will be doing so via a digital signal. If they're doing so via a digital signal, then they will have a computer, either built into their television set or sitting on top of their television set, which is capable of receiving data at 20-odd megabits per second and that's a pretty reasonable computer. The cost of that computer will be low and the marginal cost of adding a modem to that computer will be negligible, so I believe that we can assume that by about 2008, most folks who are receiving television in Australia will be doing so via a connected device and we will have reached the time where televisions, if you like - television screens, by virtue of this set-top box or by virtue of the set-top box which is built into the TV - will become very intelligent devices. They will be receiving data at a very very high rate, much higher than we're used to at the moment, and they will be connected to each other and to every other device that's connected to the Internet.

I use the term "device" advisedly, because it's certainly true that every follower of these things, every consultant in the world predicts that the number of non-PC devices connected to the Internet will vastly outweigh the number of PCs connected to the Internet in the next few years, so we're talking really about an age of connectivity, where everybody is connected to everybody and everybody is connected to everything and datacasting and the use of our broadcasting spectrum will be really critical for that in Australia. Another point that I'll make about this is that - first of all I should summarise that point. We're really talking about equity of access for most Australians. We're talking about a cheap way for most Australians to be connected to

interactive services, which are going to be obvious things like banking and e-commerce and those kinds of things, also education, as I've mentioned, and also the delivery of government services.

Most government departments are currently planning to deliver their services on-line to the greatest degree possible and datacasting will be one of the ways that those services will be delivered, so the importance of this going forward just can't be underestimated. I think that for Australia, if we don't do the right things at this stage, to make sure that we take advantage of this, then we'll be losing a tremendous opportunity, because we are different in Australia from other parts of the world. Of course, a key driving country as always, when it comes to technology, is the US, but our situation in Australia is quite different from the US. The US is dominated by cable infrastructure. They've had pay TV via cable since the 50s and consequently 70-odd per cent of Americans are connected to cable right now, 50 per cent of Americans receive their free-to-air TV, not through the air like we do in Australia, but by their cable.

Therefore, their solutions to connecting people tend to be cable-oriented. However, in Australia, we're completely different. We're a vast country with huge distances to be traversed by any cable and with small packets of population in seven, or whatever it is, major centres. That means that if we want to provide a way of getting data to most Australians, it's always been the case in Australia that radio spectrum has played a great role in that, right since the 30s and 40s and the school of the air and the flying doctor services, so radio has been important in Australia and it will continue to be important in the future, so we believe that datacasting is one of the ways that this will happen.

It does seem that the government understands this fairly well. It does seem that the legislation as it stands at the moment and the way that the inquiries are being conducted indicated a comprehensive understanding of the advantages of datacasting. The thing that we think is important, however, is that we should ensure, through the process over the next six to 12 months, that we do have sort of competitive neutrality, to use the government's words. I personally think that it's extremely important that as many new players as possible are provided the opportunity to have access into the broadcast spectrum. It's very important that the free-to-air television stations, who reasonably and understandably enough will want to protect their commercial interests in this area, do not bring about a situation where new datacasters are precluded from entry. That's the most important part about this.

I think that if we've got a vibrant marketplace where we've got some new entrants competing, spending what will be a great deal of money to set up these new datacasting services, taking a great deal of risk, we should, as Australians, demand that the greatest number of people are able to compete in that marketplace. That means that the spectrum planning process will have to be satisfactorily conducted, that the finalisation of the standards in regard to digital TV - the standards will have to be finalised in such a way as to allow the maximum number of entrants into this area and to not favour existing interests. In general terms, Australians seem to be vigilant to

make sure that we do have a competitive neutrality and a vibrant marketplace for the provision of these new services. I think that's effectively what our submission is about.

**PROF SNAPE:** Thank you very much for that. In your submission you refer to, "A greater legal separation between broadcasting and datacasting is required." You might just comment on why it would be required. "The presence of an effective back channel for the majority of casters might be a key distinguishing feature." I wonder if you could elaborate on what you mean by that. First of all, why it's required, or may be required, but secondly, what you mean by an effective back channel.

**MR MILNE:** In using the words "back channel", what we mean is a modem connection to the Internet, ie a connection back to base - is where that term has come from. I think what we're really on about there is to say that it will be fundamental to datacasters and it is fundamental to where datacasters have come from, which is generally speaking most people who will be involved in datacasting will have had a history on the provision of on-line services like OzEmail or like some of the other on-line businesses fundamental to their world is the provision of a back channel. It's a two-way one-to-one kind of connection that's been made.

The provision of a back channel has never been fundamental to free-to-air broadcasters. Free-to-air broadcasting is all about sending out a signal to lots of people, sending the signal out once, and synchronistically. In other words, if you're there, you can see the news at 7 o'clock and, if you're not there, you can't. You don't have any way of saying, "Could you please send me the news again." You don't have any way of time shifting, perhaps apart from recording on a VCR, but you don't have any direct connection back to the network, back to the network operations centre. That's a fundamental notion to interactivities - a fundamental notion to the Internet and we think it will be a fundamental notion as well to datacasting, so we envisage that our customers will send us messages saying, "Could you please send me this file." "Could you please show me this Web page." "Would you please provide me a download of this movie." "Would you please register me for this service." Our datacasting service in the same way that Internet services are now, are all about two-way communications and therefore it requires a back channel or a modem connection by the Internet.

**PROF SNAPE:** Let us suppose that you are a free-to-air and you are looking to multichannel in the future and that you were in fact on one channel broadcasting cricket and on one of those channels - one of the multichannelling - you in fact are showing a number of catches and inviting people to vote for which is the best catch, and they're able to press a button to vote for that. Is that datacasting?

**MR MILNE:** Yes.

**PROF SNAPE:** So it could embrace just about everything.

**MR MILNE:** Our point is that, no, I don't think it's true it could embrace just about

everything. I don't think it embraces one-way synchronist communication. I think that is essentially what a TV station does right now. It's one way, there's no back channel, and it's synchronist. You're either there and you see it or you're not there and you don't see it, whereas what datacasting is, is the Internet and datacasting in the same way is an asynchronist medium. E-mail, for example, is asynchronist, unlike the telephone which is synchronist. If I ring you up and you're not there I can't speak to you but I can send you e-mail and, if you're not there, you can pick it up when it suits you and that's the nature of the Internet. The Internet and datacasting are very asynchronist so you'll be able to request a movie when it suits you rather than having to be there when we send the movie.

**PROF SNAPE:** Yes, I see that, but on that cricket analogy, at the moment you can ring up and tell them and vote for which catch it is. Now, the distinction between doing that and in fact just pressing a button which could go in fact again through a modem through the telephone wire doesn't seem to be very different to me.

**MR MILNE:** No, it doesn't seem to be very different to me either, but these distinctions are distinctions of course which the government has asked be made for the purposes of defining what's a datacaster and what's a broadcaster. The government has required that those distinctions be made in order to make sure that datacasters don't become broadcasters. From a technological sense it's absolutely true that at the end of the day we are all sending bits, which are zeros and ones, to television aerials which will go to a computer which will deal with those bits and they'll display them on a television screen, the same screen, and all that will change is the way that we display those bits. So if we want to step outside the legislative framework that we have, then it's certainly true logically that there is no difference; there can be no difference.

However, the government has required that we define a difference and so all of us are searching for ways to come up with that difference. The existence or no existence of a modem is one way, but I think it's our belief that there is no simple way, as I'm sure we'd all be well aware in this room, that the department of - DOCITA has a number of eight, in fact, reviews in place at the moment, one of which is concerned entirely with the definition of broadcasting and datacasting. I think everybody has got a different view on what that might be. Our view it's only one of them and not necessarily comprehensive. In fact, I think in our submission to that inquiry we provided a table which looked at a number of different criteria which could be used to describe the difference between broadcasting and datacasting. As I say, if you step right out of the legislative requirement, then it's my view that technology there's no difference.

**MR SIMSON:** The bottom line is that the information data has to be subject to request, doesn't it?

**MR MILNE:** No, in a datacasting world it doesn't have to be subject to request. To complicate matters a bit there are a couple of different sort of things that occur that are called datacasting. In the UK, Europe and the US, at the moment something

called datacasting exists and it's a difficult thing to explain as to free form because it's a bit technical. Something called datacasting exists and essentially what that does is that uses part of what is a television station's transmissions to send up small applications, small applets, which are broadcast on a repeating basis. They're put into what's called a carousel mode so that the broadcaster says, "I'm going to transmit, for example, an e-mail application and I'm going to keep on transmitting this e-mail application over and over and over again. If somebody out there wants an e-mail application, they will click on a page which will tell their set-top box to catch this application, store it in RAM for a period of time, and then allow them to do something with it."

**MR SIMSON:** But they've requested to store it, haven't they?

**MR MILNE:** They've requested to sort of catch it from a river of data, if you like.

**MR SIMSON:** But there's an action by the viewer-consumer to either store it or to request either to see it or to request to store it.

**MR MILNE:** That's right. They haven't gone through a back channel to do that, mind you. I am trying to point out the difference here of two different kinds of datacasting. They've just told their box to catch this thing, store it, and then do something with it. These applications, and the information that those applications deal with, is carouselled. It's sent out repeatedly. It's kind of a wasteful process of bandwidth but it's an economical process in terms of technology required. All of those applications in Europe and the UK and in America envisage datacasting being kind of an adjunct to broadcasting, so that the small applications that are sent up are things which are designed largely and purely to enhance a television station's broadcast.

**MR SIMSON:** But in Australia?

**MR MILNE:** But in Australia what is envisaged by the government here is the provision of seven megahertz, or effectively 21 megabits, of bandwidth solely and purely for the purpose of datacasting. This allows the datacaster to do two things: one is they can carousel data so they can do just what is happening in the UK. They can pump this data up - - -

**MR SIMSON:** Without using a back channel?

**MR MILNE:** Without using a back channel and that data is synchronised; if you're not there, you don't get it. But what datacasters could also do in Australia is use what's called data piping whereby what they do is they say, "I'm going to use some of my bandwidth" - a large part of it usually - "to simply send files one way." You can send any kind of file, any kind of data, and you simply use the DVB standards and the spectrum available as the transport mechanism is the carrier of that data just like you would down a wire. So we send the data one way, it hits the set-top box and then what happens from there is up to the intelligence of the set-top box. The set-top box

that receives that data is, generally speaking, required to be a much more intelligent set-top box than the set-top box which is just getting the small applets punted up to it in a carousel mode. For example, BSkyB uses at the moment a set-top box which is capable of receiving carousel data but not capable of receiving data-piped data.

**MR SIMSON:** But I would have requested that data pipe - the data down the pipe, wouldn't I?

**MR MILNE:** Generally speaking, you would have. Whether you do or don't you'll have a set-top box which is much more intelligent, which is probably going to be more expensive, has more capacity in it to do something with the data we send you. For example, we might decide to send you or you might request to have Word 98 or Word 2000 sent to you, so we just send a productivity application for a piece of software which your box then has the capacity to unravel and do things with. That's not what data carouselling is and that's not what the Europeans currently are calling datacasting but it is what we are going to be calling datacasting in Australia.

**MR SIMSON:** The basic datacasting, which I think you mean is carouselling - - -

**MR MILNE:** Well - - -

**MR SIMSON:** Anyway, for the basic datacasting, will the so-called basic set-top box facilitate that?

**MR MILNE:** It depends on which set-top box because there is no universal basic set-top box but at the moment most set-top boxes which have been built in the world to receive digital satellite TV are set up in a way that they can deal with carousel data.

**MR SIMSON:** That's satellite TV.

**MR MILNE:** Which effectively speaking is not much different, for our purposes, from digital television.

**MR SIMSON:** What, it's proposed here?

**MR MILNE:** Yes. In Australia right now we are doing digital satellite.

**MR SIMSON:** Yes, I notice that.

**MR MILNE:** We are doing it right now, for example. Telstra are, or Foxtel are, but DVBT, ie digital terrestrial television, is really not much different from digital satellite television. It's just that the standards - how you deal with certain bits and pieces - change and the amount of data that you can put through decreases because of the nature of the frequency. But for our purposes, that's a technical argument, I think, that's not particularly - - -



**MR RAMSAY:** There's another point. I think the original question from Prof Snape mentioned the need for a legal distinction. One of the things in our submission is that there is a significant difference between the broadcasting and telecommunications regulatory regimes. From our point of view, we would like less regulation for datacasting than currently exists for broadcasting, and we have said that free-to-air broadcasting is a different sort of thing in the sense that it is provided free to a mass market audience, as opposed to datacasting where normally there will be some sort of relationship between the two parties and where one party will be playing the other. So that distinction may be necessary if the two legal regimes - that is, broadcasting and telecommunications - remain separate.

**MR SIMSON:** I appreciate that. I actually want to refer to page 8 of your submission where you've got that table that contrasts the BSA Act and the Telecommunications Act. I just want to clarify this point in my mind. Is there anything you should be able to do datacasting on the digital signal that you can't do on a good broadband network at the moment - say a good cable network? At the end of the day what's the difference as a user in terms of content that I would be able to receive by a datacasting on digital using some of the broadcast spectrum as opposed to what I could get over the Internet over a damn good broadband link with you at the moment?

**MR MILNE:** Nothing.

**MR SIMSON:** Good. Thank you.

**MR MILNE:** I mean of course there would be a difference in the kinds of services that each would offer because you would tend to shape your services differently given sort of the economics of your network but effectively anything that you could receive one way you could probably receive the other way.

**MR SIMSON:** So this is a debate about access, isn't it?

**MR MILNE:** It certainly is. It's a debate entirely about access to public spectrum.

**MR SIMSON:** In the case of the Telecommunications Act, if I'm reading correctly, your contrast with the BSA Act on page 8, you don't appear to have any complaint about access to broadband through the Telecommunications Act.

**MR MILNE:** It's not something that we canvassed here.

**MR SIMSON:** I'm referring to the box at the bottom, these two here.

**PROF SNAPE:** We had better get that on the transcript.

**MR SIMSON:** I'm referring to page 8, the right-hand boxes in contrast to the BSA boxes.

**MR RAMSAY:** That's the bold print there?

**MR SIMSON:** Yes.

**MR RAMSAY:** It does refer to the Trades Practices Act regime and of course the Trade Practices Act regime is pretty heavy on access, on rights of access.

**MR SIMSON:** Yes, in whose favour?

**MR RAMSAY:** It's certainly in favour of new entrants.

**MR SIMSON:** That's my point.

**MR RAMSAY:** Yes.

**MR SIMSON:** I just want to clarify this. I just want to clarify that in terms of the access that you have under the Telecommunications Act at the moment to your broadband content and services that is not a source of at least major complaint at this point?

**MR RAMSAY:** No, but the fact is that the broadband infrastructure only exists in certain parts of Australia.

**MR SIMSON:** I appreciate that.

**MR MILNE:** In general terms access to wide bandwidth is something which has been progressively in Australia over the years opened up and is still very much in the process of being opened up. That's another question of course, but, yes, new entrants do have a degree of access to that, much more so than we do at the moment to broadcast spectrum.

**MR SIMSON:** Got you.

**PROF SNAPE:** The digital conversion of course requires - the act requires - that there be simultaneous analog and digital at least until 2007 and longer in the regional areas. We have had several people suggest that in fact when we come to that time there will be a very great pressure to extend that period because there will be people who don't have access to digital and so the analog will have to be continued to be broadcast and therefore that it will continue for quite a long time, that the analog spectrum, that the spectrum on which the analog transmissions are occurring, will be reserved for the current free-to-air. Is that tying up of spectrum a great bother to you?

**MR MILNE:** Absolutely. It's a waste of spectrum. What we should be doing is we should be grasping the opportunity, we believe, that is presented to us right now as we convert from analog to digital and we should be attempting to do that in the

fastest possible time-frame because if we do that then more spectrum will be freed up. Of course notionally once the analog is turned off and we are all digital then there will be at least five spare full channels, and more, that will be immediately made available for new entrants or other services, and we are talking about something mind you that is in sort of - whatever it is - eight or nine years' time from now, and if we just think back eight or nine years ago to the kind of technology that we understood then and what we've got now we could certainly sort of impute from that there's going to be technologies that we haven't even thought of yet that will be around at that time.

I certainly believe that we shouldn't be doing things now which have the side effect of protecting existing interests, which are certainly going to be important for those existing interests, which had the other consequence of locking the people of Australia out of new technologies. I believe that there isn't an informed person in the world now that doesn't understand that there has been a complete and total shift in the way that we now lead our lives and the way that we're going to live our lives in the future, that on-line services, connectivity - the Internet if you like in the broadest term - is absolutely going to be part of our lives and our business, with all the services going forward, so we mustn't do things in Australia which lessen the actions of Australians to those services.

**MR SIMSON:** But one of the ironies of that is that you talk about oligopolies and lack of competition but you believe there should be no more free-to-air networks - page 33.

**MR MILNE:** I don't remember saying that but we will just have a look.

**MR SIMSON:** You say:

The restriction on start-ups should be maintained until current FTA broadcasters return spectrum use for analog transmission otherwise there will be further restriction prior to 2009.

**MR RAMSAY:** That was page 33, was it?

**MR SIMSON:** Yes.

**PROF SNAPE:** It's at the bottom of page 33.

**MR SIMSON:** It's 23.03, the last sentence.

**MR RAMSAY:** Just bear with us a second here.

**PROF SNAPE:** It's on the bottom of our page 33, the last sentence on the bottom of our page 33. It's the last sentence of 23.03.

**MR RAMSAY:** I think the question asked for advantages and disadvantages and we answered it from the point of view of datacasters wishing to get up. The thing is if

the spectrum is not available to datacasters they can't provide a new service. We weren't advocating as a matter of policy that new FTAs should be prohibited. The point was more that there needs to be spectrum for these new services and the way that the whole procedure is structured the spectrum is tied up effectively until 2009.

Coming back to the earlier point about the analog continuing, the period allocated is quite long and there is already a precedent with mobile telephony where the digital system has coexisted with the analog system for a period. The analog system has to shutdown and that spectrum has been devoted to another purpose, namely a different form of digital mobile telephony, so the capacity of that spectrum has been vastly increased. I think we also made the point somewhere that the longer that period is strung out for the digital analog changeover the more slowly will the prices of digital television come down because there will be less market demand. People will tend to put off until the last minute with a new purchase, whereas if they really believed that it will shutdown by a certain date they are more likely to buy a new set and the demand for those sets will be high and the prices will fall.

**MR MILNE:** I think in that section 23 is that we really just dealt with the obvious, which is that if there were 10 new free-to-air licences provided then there wouldn't be much spectrum left over for datacasters. It's not that our submission is especially concerned with the entrance of new free-to-air broadcasters but if we had to choose, surprisingly, between would it be a better idea to have a new datacaster or a new broadcaster, well, we would choose a new datacaster.

**MR SIMSON:** Great irony, isn't it?

**MR MILNE:** Yes.

**MR SIMSON:** Just turn to page 15, please, of your submission, 10.01, where the issues paper asked:

What major developments do you anticipate in the broadcasting industry in the short to medium term?

And the last bullet point there, you said:

The TV industry is likely to attempt to obtain pay TV transmission capacity to compete with pay TV operators -

the TV industry in this case I think you mean the free-to-air TV industry -

perhaps by migrating their datacasting to pay TV.

Could you just explain what you mean by that?

**MR MILNE:** The idea there is that - I mean as I'm sure we're all aware - essentially a 7 megahertz spectrum which used to provide you with one free-to-air TV station.

The new regime has the capacity to provide you with five new TV stations, in that you can effectively send out five times as much TV or five channels. You can be channel 7A, B, C, D, E.

**MR SIMSON:** It's a multiple of five?

**MR MILNE:** That's right, and the opportunity exists - and I think it's probably legislatively contemplated to be avoided - for free-to-air operators to say, "Okay, channels A, B and C will be free-to-air but D and E will be paid. That's what we're talking about.

**PROF SNAPE:** Free-to-air in high definition?

**MR MILNE:** Well, of course the other thing is that at the moment the way the standards work is that you've kind of got an either/or. At the moment it's contemplated that essentially while you are transmitting in high definition you've got one and a bit channels worth. You've got somewhere between 16 and 18 megabits of your capacity required notionally to transmit in high definition, leaving you with perhaps four or five megabits left over, which could be another whole television station but it is more likely to be used for some of the services that are required to go around digital broadcasting.

So in general terms while a broadcaster is broadcasting in high definition they won't be multichannelling, if indeed they're allowed to multichannel. However if they choose, as is contemplated for the national broadcasters to be able to multichannel then they could send out five signals theoretically at the same time, five standard definition channels worth of TV, but no high definition the way the standards currently stand.

**PROF SNAPE:** So you're saying that if they were doing it in high definition there wouldn't be anything left over for anything else?

**MR MILNE:** There wouldn't be much left over for anything else. There's a bit.

**MR SIMSON:** Until analog finished?

**MR MILNE:** No, if you've got one channels worth, 7 megahertz worth of spectrum, it equates to, let's say, 20 megabits worth of throughput; indeed about 16 to 18 megabits to do high definition television, leaving you, say, four left over, which is actually enough to do another standard definition channel, but the other thing about digital TV is it requires a bit of overhead. There's a bit of other stuff you've got to send backwards and forwards.

**MR SIMSON:** But when simulcasting finishes of analog and digital that then would obviously free considerable spectrum for digital?

**MR MILNE:** That would free spectrum. Theoretically the free-to-air have to give

the spectrum back to the public and the government then decides on behalf of the public what to do with it.

**PROF SNAPE:** Do you see any way of bringing forward that date in a satisfactory way? At the moment we're up to 2007 and the argument that many people have put forward is that we really will go beyond that because there are a lot of people who often have limited means and won't have converted and the government will wish to look after those and so it will be put off further and they will have to continue broadcasting in analog and tying up all that spectrum into really the indefinite future. Do you see a way of in fact bringing it forward so that you could, while looking after the people who - that I've just been describing - you could bring forward the full conversion so you would no longer have to continue in analog?

**MR MILNE:** There's no doubt that there's a significant expense involved in taking our transmission networks and digitally enabling those. There is no doubt that there's a huge expense involved in doing that, and of course as is the way in Australia you can effectively do that and get 80 per cent of the population nailed by doing 20 per cent of the work and the last 20 per cent of the population require a huge expense of course to get to the people that are right out in the bush. I think that we as a nation have to understand the benefits of making this transition early. I think we should set our targets - we should set the bar high for ourselves - and try and make this transition early because as Ross says what that will do is really drive the market.

If the market is driven then people will - if people felt they really have to make the changeover then I think that the changeover can be made as far as consumers are concerned relatively cheaply. I mean there are many business models that exist at the moment which see broadcasters or datacasters subsidising, effectively, the - or coming to marketing arrangements which allow the set-top box to be provided very cheaply to consumers in pretty much the same way that mobile phones are at the moment, where the cost of a mobile phone is much more than a consumer finishes up paying for it but the provider of that mobile phone sort of claws back the capital cost of the phone over a period of time from the subscriptions, and that model is generally contemplated by many people looking at both the broadcasting and datacasting.

So I think that the idea that this technology will be much too expensive for ordinary consumers to afford is just a complete fallacy. I think we will find that many set-top boxes will exist in the marketplace for between \$200 and \$500 and it absolutely won't surprise me in the slightest to hear of set-top boxes being given away.

**MR RAMSAY:** There's another point about assisting people who may not be able to afford the sets; let's say there are such people. There is possibly a case for targeted assistance if the government considers that that is appropriate social policy, to subsidise people's television, and there is the point that the government is taking a huge amount out of the economy for the use of spectrum. In the last few years there has been well over a billion dollars taken out in various forms of licence fees, all of which go straight into consolidated revenue. You can pick a few examples. The

broadcasters are paying something like \$200 million per annum. The recent spectrum auction for 800 and 1800 megahertz spectrum reaped the government \$360 million. The last spectrum auction a month or so ago brought in \$66 million. Vodafone and Optus, between them, paid for the use of spectrum \$300 million.

Every figure I have mentioned so far, except the broadcasting annual licence fees, are capital sums and there are other annual fees being levied on spectrum, as well, so there is a large pot of money there. Whether the government would accept part of that being diverted towards this, I don't know. It's a matter for the government to decide whether it continues with inefficient use of the spectrum, a slower changeover than necessary, or whether it tries to get new uses out of this to lift the economy in some way because all these new businesses will pay their fees, they'll pay income taxes, so there are overall economic benefits, I'm sure, if you totted them all up, in going for a faster changeover.

**PROF SNAPE:** Could I ask what the basic set-top box would cost, which would be necessary to convert for an analog television set to receive high definition digital signal - high definition and standard digital signal - and convert it so that it would be receivable on an analog set? In other words, the basic box - the most basic box - that would render the continued broadcast of analog unnecessary?

**MR MILNE:** The best guess I can provide at the moment - because of course it depends on lots of things - is about US180 currently, on today's dollars.

**PROF SNAPE:** If you placed an order for 5 million of them?

**MR MILNE:** About US180 - maybe a bit less but, on large numbers - you know, you can buy satellite DTBS boxes for about that kind of money right now and the cost of those boxes will come down radically as we go forward. I'm talking about scaled production so that, you know, of course it will come down a bit if you do 5 million instead of 5000.

**PROF SNAPE:** Yes, and in two years' time what would you guess the price would be?

**MR MILNE:** It's just a guess at the moment but what we can certainly say is that there are now increasing numbers and probably perhaps half a dozen organisations in the world - large organisations in the world - who are effectively putting the technology which is currently in a set-top box onto a chip. It's a pretty meaty chip but, nevertheless, a lot of the technology that we're talking about now resides on a chip and the companies that are doing that include NCR, VLSI, Thompson and a few others, so that there is a big push from electronics companies at the moment to reduce the set-top box to a chip because, of course, the cost radically decreases and then it is able to be stuck inside the TV instead of being on top of the TV.

**PROF SNAPE:** On an existing old analog TV?

**MR MILNE:** On an existing old analog TV. Something that needs to be understood here is that we should talk about the TV as "the display", really. What we have got at the moment is a huge population of analog displays in Australia, which are perfectly capable of displaying standard definition television and completely and totally incapable of displaying high definition television unless you turn it back into standard definition television, which is of course a waste of time. The only way that high definition television is going to have any relevance to us in the future is if we start to have a population of high definition displays.

The computing that is in the set-top box or on the chip is another question. That is not particularly difficult. It is not particularly expensive to do the computing that is required to convert or to produce high definition television. The expense of this is in the display, so currently an analog or standard definition television, if you like, is worth say a couple of hundred bucks; currently, on the same sort of money, a high definition display is worth about \$5000, and the people that produce these displays or these screens, don't see that changing a great deal in the future, so we are really looking at a world in relation to high definition and standard definition going forward; that whatever the cost of the computing part, it is kind of irrelevant in that the real cost of high definition television is in the display and that is why most observers think - in fact, I don't know one who doesn't - that the penetration of high definition displays will be perhaps at best about 5 per cent by 2008.

**PROF SNAPE:** Yes.

**MR MILNE:** So our view is that high definition is a bit of a furphy.

**PROF SNAPE:** You see, what I am trying to get to is the blockage in the freeing up of spectrum and I am not really at this point asking how rapidly the people are going to get actually to be able to watch high definition television. At the moment it is required that digital television in high definition format be broadcast from 2001, capital cities, and that the analog continue. Now, the analog, in a sense, continuing, is the problem as far as spectrum availability is concerned, and that is what we were discussing before. So I am saying how can we free up that analog spectrum, because we can see all the political reasons that are going to be with us and, for good reasons, that are going to be trotted out year after year, that there's a whole lot of people who are not going to be able to receive any television unless it continues to be broadcast in analog, because they have got old sets and, as we age, we don't buy the new sets, etcetera.

To get over that political problem and the real problem of getting it, how can we get around it? It seems to me that one way of doing it is to supply a basic - what was a set-top box, but you're saying that it will be converted into a chip by that time, so that everyone's analog television set can in fact receive the new signals. Then immediately you can free up all that analog spectrum that was locked up and to do the wonderful things that you have been talking about.

**MR MILNE:** That's right. That is perfectly true. I mean, I think we can be pretty



confident that the cost of, let's say, the set-top box or the chip or the small amount of technology that is required to do that conversion from digital to analog display will be increasingly cheap.

**MR SIMSON:** But from your perspective, Mr Milne, to make your datacasting services pay, you need a critical mass of users. Okay? I mean, you need to get a critical mass fast. The way this is working in Internet access, for example, in the UK, where they do have timed local calls - I appreciate that - is that they are actually giving away Internet access, free access. You mentioned earlier that some of the mobile telephony operators give away mobile phones. In your business planning, are you conceding that you may give away - you may give away - the chip to get a first-mover advantage in the marketplace?

**MR MILNE:** No, I'm not, but I know of organisations who are.

**MR SIMSON:** In Australia?

**MR MILNE:** Yes.

**MR SIMSON:** Who are planning to give away access - - -

**MR MILNE:** Set-top box.

**MR SIMSON:** A set-top box or a chip?

**MR MILNE:** Yes.

**MR SIMSON:** Or whatever, do whatever.

**MR MILNE:** Yes.

**MR SIMSON:** On a scale in terms of millions?

**MR MILNE:** On a scale in terms of millions.

**MR SIMSON:** Okay.

**MR MILNE:** Hundreds of thousands.

**MR SIMSON:** Are those people datacasters or are they broadcasters?

**MR MILNE:** Datacasters.

**PROF SNAPE:** Would they be inter-operable boxes or would they be dedicated to a particular datacaster?

**MR MILNE:** I don't know.

**MR SIMSON:** Hypothetically, if you gave away chips to a few hundred thousand people or a few million people, would Fairfax be able to operate its datacasting services through that same chip or that same box?

**MR MILNE:** I'm afraid that we get into such crystal ball gazing at this stage. I mean, there are such complicated business arrangements to be come to in order to see how that would work - - -

**MR SIMSON:** Fair enough.

**MR MILNE:** - - - but what is worth saying is this: the datacasting model has many different ways to generate revenue from its customers. It has a subscription fee that is possible to be charged; it has an Internet access - ie, a back channel fee, which is possible to be charged; it has the cost of the box, which is possible to be charged - which may or may not be a source of revenue; it has transactions. I mean, one of the notions of datacasting is that people will be able to conduct transactions with a credit card or by using their accounts or whatever. Notionally, people will, in addition to that, receive advertising, which is a revenue source and, in addition to that, they may well do gambling and they may well pay for all kinds of other services, including banking and these other things - even government services - so there are a lot of different ways that a datacasting service and, indeed, Internet services have ways of generating revenue compared to free-to-air TV, which has one, which is essentially selling advertising.

So therefore in the business modelling that different distributors will employ going forward, some may well say, "Gee, the box will be the price of entry into this market." Others won't say that, but it is certainly an option. It is an option which is not out of court when you think that there are at least say half a dozen different ways of generating revenue in the datacasting world compared to effectively one in the free-to-air TV world.

**MR SIMSON:** Could you imagine a business model that would be viable in terms of giving away the set-top box or the chip to literally every Australian home?

**MR MILNE:** Easily.

**MR SIMSON:** Easily?

**PROF SNAPE:** It seems rather strange with these options around that we have chosen a path that requires the analog to continue to be broadcast for that number of years and to tie up all that spectrum with a quid pro quo apparently of no new free-to-air television stations over that period.

**MR MILNE:** It does, indeed.

**PROF SNAPE:** But I haven't heard these arguments being put forward, such as the business plan that was just outlined by Stuart here, that, "Here is a way that this isn't necessary." Has it been put in the public domain and it just passed me by or hasn't it been put in the public domain?

**MR MILNE:** I think it probably hasn't been put in the public domain. I think the fact that - - -

**MR SIMSON:** Sorry, has or has not?

**MR MILNE:** Has not. I would say in Australia a comparatively small number of organisations looking at datacasting. It's very early days. As I mentioned before, we're looking at a model in Australia which is quite different from the models that operate at the moment in Europe and in the US and so we're looking at a very risky time for business and we're in the very early days of it. You have asked me can I imagine a model like that and the answer is, absolutely, I can, but I'm not saying that it would be the model we would choose.

**MR SIMSON:** No, no.

**MR MILNE:** But I can certainly imagine a model like that. I can imagine lots and lots of different businesses who would say, "Gee, if we could get into everybody's lounge room what would that be worth to us to be able to have that real estate?" if you like. "What would that be worth to us to be able to provide our services to folks while they were watching TV?" and you could think of banks, financial institutions, gambling organisations - they can just roll on and on - who would think that that would be a really worthwhile proposition. Essentially the datacasting model takes these organisations, bundles them together into a set-top box and then provides them that access, if you like, to the living room.

**PROF SNAPE:** The problem is of course that those boxes may all be dedicated and - - -

**MR MILNE:** They may, although I think that the way this kind of standards or interoperability question will work out is that really effectively, at the moment, you have got a huge variety of boxes, if you like, in the Internet world, that run Linux, Unix, Apple, great varieties of Microsoft operating systems that have components made by a huge variety of people. They can all access the Internet and they can all access the Internet because we finish up with some standards on the Internet called HTML and Java, which has become a kind of default standard, and others, and those are the important things.

I think in the datacasting world we will find it will work out pretty much the same way. Datacaster A might use completely different technology than datacaster B - and in fact I am certain that they will - but, at the end of the day, it will be in all of our interests for our users to be able to display HTML.

**MR SIMSON:** Or a third party to come in and facilitate that with a piece of software.

**MR MILNE:** Or a third party to facilitate - - -

**MR SIMSON:** An operating system that may facilitate that.

**MR MILNE:** Just the same way that the economics of the Internet have been pretty compelling - that openness, we now understand, is just critical and mandatory on the Internet. The same thing will be true in datacasting. We really want people to be able to sit in their lounge rooms, access the services that we provide to them and also access the Internet, so we will craft our boxes in a way that they can receive and display as many as possible on the existing Internet standards - certainly HTML.

**MR SIMSON:** So in all likelihood Australian households will have, just through the forces of competition amongst datacasters, access to a set-top box/chip probably well within the time-frame that is being spoken of; that is, the 2007 time-frame.

**MR MILNE:** Absolutely, and what is more it is very likely to be extremely cheap and extremely affordable.

**MR SIMSON:** So in that situation, there could well then be scope for a review of the number of free-to-air licences.

**MR MILNE:** Yes, providing that the spectrum is planned correctly, providing that the time-frames are brought forward or adhered to, providing that there's a sufficient critical mass of datacasters to roll this thing out, providing that the government gets behind this whole change that's about to be thrust upon the Australian public. There are a lot of provisos. But you've asked me to crystal ball gaze, and you say can I see it as a possibility? Absolutely. It's a definite possibility.

**MR SIMSON:** One of the things that supports that line of thinking is what we've actually observed in terms of Internet access in Australia, which started off relatively expensively, even a couple of years ago - 45 to 50 dollars a month - and it's now well down below that, and we're seeing some examples in other parts of the world where Internet access is being given away, where - as you pointed out - it becomes a commodity, and the money is raised through products and services that are bundled with that access.

**MR MILNE:** That's certainly true. Anywhere in technology you don't see technology becoming more expensive, you don't see access becoming more expensive. The cost pressure is only down as the market increases, and then the players in that space have to find other ways to make their money.

**PROF SNAPE:** Whether there's more free-to-air television or not, I guess the important thing is that the analog spectrum, the spectrum that is being used for analog at the moment, could be freed up substantially before 2007.

**MR MILNE:** It certainly could.

**PROF SNAPE:** Whereas the arguments that we've been hearing from others is that it would be in fact tied up probably for much longer than that because they'd have to look after those who have not been able to afford to change their sets.

**MR MILNE:** I don't think it's a very compelling argument. I think that there is an argument to say for free-to-air broadcasters that going the last mile, if you like, that getting the last numbers converted to digital, will cost a great deal of money. That's certainly true. But in some ways, in some cases Australia is going to have to bite the bullet on this conversion. There will be some people who will be hurt somewhere along the line and there will be some really uneconomical parts to the whole process, but you get that when you make the decision to make this kind of change.

But I think that for us one of perhaps the key points out of this is that we should not see this as being principally about television. I believe it's not principally about television, even though we were talking about changing, converting from one form of transmission of TV to another form of transmission of TV. What this is really about is making existing public spectrum much much more useful and providing the kick-start, the means by which most Australians will be connected to the Internet, and if we do that we can take our place with the rest of the world, and if we don't do that we'll become a backwater.

**MR SIMSON:** In the case of high demographics, I could understand obviously giving away set-top boxes and chips. What would be the services, the information products, that would be of value to perhaps a lower socioeconomic household that would justify a datacaster giving away a chip? What are the services that would provide some value there?

**MR MILNE:** Shopping.

**MR SIMSON:** Could you talk a bit more to that.

**MR MILNE:** I believe that in the world moving forward, in the not too distant future we will as a datacaster - and all our competitors will in the world of e-commerce - attempt to provide people with a capacity to do things sitting in their lounge that they at present have to go and queue for, and it's my belief that in general terms if people can do something sitting down compared to doing it standing up, if you like - especially queuing - they will. We've certainly seen that that's the case with banking, we see that that's the case with exploding e-commerce of all kinds. It's not like there's not a lot of this which still has to be refined, but in general terms I believe if people can do something sitting down, they'll do it in preference to queuing.

Now, amazon, for example, is a huge success story. You can buy a book better from amazon than you can buy it in a bookshop, and amazon now provides technology which allows you to make a better purchasing decision if you buy from

them than you do if you go into a bookshop, and cheaper - including delivery. There are people like greengrocer.com starting up in Australia who are looking at doing the same thing from a Greengrocer point of view. They haven't got the critical mass yet. We know that Coles Myer and virtually everybody who is serious about being in business is looking at providing their services on-line, so I don't think we have to get particularly carried away with demographic differences. A blue-collar person goes and does banking in just the same way as a white-collar person does and banks want their business in just the same way, and so does Coles Myer and so does everybody else.

**MR SIMSON:** Fair enough. Just another point of technical clarification: do you need a return path, a back path, to facilitate those services?

**MR MILNE:** Effectively, yes. There might be some cunning work around on a few occasions, but effectively we shouldn't kid ourselves that, really, if you want people to be able to bring up a screen on their TV which shows Heinz baked beans for 39 cents and Rosella baked beans for 42 cents, and they pick the Rosella baked beans, that they need to ultimately provide that information back to Coles Myer, if that's who it is, who then sends the stuff around.

**MR SIMSON:** But the set-top box/chips that we've been talking about for the last 30 minutes would also facilitate a back path as part of the bundle.

**MR MILNE:** Correct.

**PROF SNAPE:** Even the most basic?

**MR MILNE:** Even the most basic chip. NCR and Thomson and VLSI at the moment make chips which include in the chip - which is a chip of about this size - the modem built in in software.

**PROF SNAPE:** Even the very basic type of chip that I was talking about before that solves the analog problem?

**MR MILNE:** Yes. You can of course build a chip slightly cheaper without a modem in it, but you can build it at hardly any extra expense by putting a modem in it. In fact the modem part is the least expensive part. Providing the actual port, the actual plug on the back of the box, can be more expensive these days than actually building the modem into the chip. The modem these days is just software which finishes up in a printed circuit on a chip.

**MR SIMSON:** So every Australian household then has access to the Internet?

**MR MILNE:** Correct. That's absolutely correct.

**MR SIMSON:** At page 17, 11.04, in answer to the question in our issues paper, "What other linkages are there with the wider economy, particularly with respect to

the area of electronic commerce question?" your answer is:

Datacasting is likely to be a major medium of electronic commerce for residential users.

That's what you've just been talking about.

**MR MILNE:** Yes. That's for two reasons. One is because it's facilitated by virtue of the back channel and the connection and the connectivity that we've been talking about. The other thing is that this data piping mode that we've been discussing in relation to Australian datacasting will give, for example, retailers the capacity to download onto a set-top box - for example, a multimedia catalogue.

So it's easy to imagine a situation where, say, Toyota decide they're going to launch a new range of landcruisers and they're going to do it on Sunday, 15 June. On Saturday they'd do an arrangement with a datacaster and say, "We've got this special promotional film about our landcruiser and we'd like you to download that on Saturday afternoon, so that when we launch television commercials on Sunday night we can invite people to simply click on the television commercial and go to the movie which is still on their set-top box which will show them a whole range of other features and things about our new car. It will enable them, for example, in software to look at different colours, colour combinations, different seat combinations, price up the car in a little spreadsheet that will sit on the side, and if they really are interested they can click a button and we'll shoot one around to them to take a test drive."

That's the kind of thing that's completely and utterly possible right now with datacasting technology that we know about and are looking at right now; that some of us have built in prototype. There can be business models for doing all that. Of course how much you might charge Toyota to do all that is another question. But is it possible to be done? Absolutely. Is it possible for people to see a large multimedia presentation on their TV? Absolutely - and buy the car.

**PROF SNAPE:** On page 19 you refer to, regarding Australian cultural identity, "represented by Australian programs such as" - etcetera - "could equally be handled with other general government legislation and policies on industry development incentives". If you're talking about meeting cultural objectives, etcetera, what forms of media do you feel these should be applying to, within this convergent age that we're talking about?

**MR MILNE:** It's a really difficult question, but I think it's worth bearing in mind that with a datacasting box which is connected to the Internet we're talking about two different kinds of content there. We're talking about on the one hand the content which the datacaster has received from some third party, put into a bunch of what would be called staging services, and finally decided to broadcast, to send out through the airwaves to the datacaster's subscribers or customers.

That content, it's fair to say, is handled on two or three occasions. For a start,

the datacaster would go to the owner of the actual copyright in the first place - whether it's a film or a piece of software, a picture, or whatever it might be - and would need to do a deal with the owner of the copyright, in just the same way as a television station does for example at the moment. If they want to show a film they have to go to MGM and buy the rights. If a datacaster wants to transmit a piece of software they would have to go and clear the rights with whoever owned those rights. Then they would have to take the piece of software, let's say, and handle it. It would have to go through a number of processes in order to be broadcast. Finally, it would have to go into a staging server which would cue that piece of software up, and finally broadcast it; digitise it and broadcast it out to the set-top boxes.

So I think it's not unreasonable to say that datacasters in that particular instance can take a reasonable responsibility for that software or for that content that's there, in much the same way that a free-to-air broadcaster does at the moment. A free-to-air broadcaster absolutely has the capacity to make a choice about the content that they broadcast, and so does a datacaster.

However, once the datacaster customer uses the set-top box and the modem in the set-top box to fire up that modem and hit the Internet, that's a different story. Then the datacaster has no control over what that person can do. As we're all aware, there's a debate going on - and I think the Senate is due to vote today on pornography legislation, etcetera, on the Internet. Whatever the regime is that we have in Australia at the time going forward that regulates or doesn't regulate the Internet, that should be applied to focus access to the Internet, notwithstanding the fact that they're using their TV as the display for it, and we should understand that that content is coming from a completely different source; it's technologically completely different content from the content which the datacaster is buying, wrangling, preparing and broadcasting. So you'd really be looking, in my view, at two different regimes.

**PROF SNAPE:** In fact I was trying not to get into the pornography area as a matter of fact - in any sense.

**MR MILNE:** I see.

**MR RAMSAY:** There's another point there about the industry development incentives. One thing we were suggesting there is that there are quite a number of government programs in various parts of industry which are of a nature designed to encourage certain things to happen, and what we're saying there is that, if it is desirable in public policy terms that a certain number of Australian cultural programs be made - a certain amount of Australian content - it doesn't absolutely have to be done under the broadcasting legislation, it can be done under more general legislation which is currently administered by the Department of Industry, Science and Resources.

**PROF SNAPE:** To pursue that, I think, with this convergence that you've been talking about, would that really lead in fact more to the subsidising of the desirable type of productions - that is, operating at the production level, rather than the



dissemination level? At the moment the free-to-air television is required to have a certain amount of Australian content, and they've got rules for various types of things, and so you're operating at the content providers or the dissemination level. The logic I think probably of what you're talking about leads us to go back to that sort of assistance for particular forms of content, etcetera; to go back to the providers, rather than the distributors of it.

**MR MILNE:** That's right. Effectively at the moment the free-to-air TV stations are required to provide a certain amount of Australian content, a certain amount of children's content. On the other hand, the government has a number of mechanisms by which they subsidise the producers producing children's television and producing Australian content, so that effectively if you produce an Australian feature film you can effectively attract a 50 per cent-odd subsidy or certainly a favourable investment from the government.

**MR RAMSAY:** One of the reasons for answering that way is that we come back to the point again about the differences between broadcasting and datacasting; that we're answering from the perspective of datacasters who wish to get away from the stronger regulatory environment of content which exists for broadcasting. So we're saying that a decision could be made to handle all these things under that sort of regime, and then the people who actually deliver the programs would then select their programs on merit and cost, rather than because they absolutely had to do something.

We go back to the fundamental point, too, that we've made in the submission; that where there is a one-to-one relationship - that is, the datacaster has a relationship with the recipient and the recipient pays to have something delivered - the recipient is really choosing according to his or her own criteria, rather than the government laying down certain rules about how much of a certain thing should be sent to the recipient.

**MR SIMSON:** Sorry to return to this, but with regard to the back loop, the back line, that can be some ordinary household copper wire, can't it?

**MR MILNE:** Correct.

**MR SIMSON:** Okay. And you wouldn't as a household need to put another copper wire in?

**MR MILNE:** You would not.

**MR SIMSON:** In fact, as technology is coming around the corner, it enables you to - in fact it's here - use both the phone and the Internet contemporaneously.

**MR MILNE:** That's correct. It exists right now. In fact you can be using one phone line and you can even set your top box up so that if somebody else calls in, it can show you the caller line identifier so you can decide whether to put your Internet call on hold and take that or whether or not to take the call. So there's all kinds of technology there.

**PROF SNAPE:** But that was only using one at a time.

**MR MILNE:** Using one line at a time.

**PROF SNAPE:** That was in fact choosing between the two. I thought what Stewart was saying was being able to deal with two simultaneously over the one line.

**MR MILNE:** There's technology in place to do that right now as well. The quality has to drop of course to do that, but certainly there's technology to do that.

**MR RAMSAY:** The ISDN-type technology will handle that.

**MR SIMSON:** Yes, but the ordinary household is not going to have access to ISDN.

**MR MILNE:** No, and won't need to.

**MR RAMSAY:** Well, it's likely that ISDN will soon be part of the universal service obligation, and again it's a matter of the numbers who have it; the more who have it, the lower the price will be. The price has traditionally been much higher in Australia for that particular service than it has been in the United States.

**MR SIMSON:** May I just turn to your relationship with MCI Walkom who of course are a carrier in Australia.

**MR RAMSAY:** Yes.

**MR SIMSON:** They are laying - in fact have laid, as I understand, a fibre optic cable in the CBD Sydney and have or were doing the same in Melbourne. Could you just talk to us a little bit about the relationship between - because the discussion today has been with you as a content provider. Could you talk about the relationship with MCI as a carrier in terms of how this all fits together?

**MR MILNE:** Essentially MCI owns a company called UUNet and UUNet is, I think the world's largest service provider. It is UUNet who has bought OzEmail, so we are wholly owned by MCI. I don't know really how qualified I am to talk about it but in my dealings with MCI and even with UUNet in fact are extremely limited. My job is to look after OzEmail's consumer business which is our 300,000-odd customers and the 330-odd people who look after those customers. That's what my job is.

**MR SIMSON:** I'm asking this question because groups such MCI Walkom are developing new carrier networks in Australia, arguably proprietary carrier networks. Correct?

**MR MILNE:** Yes.

**MR SIMSON:** Outside the orbit of either Telstra, outside the orbit of Optus. So there are new carrier networks emerging that will enable groups such as yourself to provide content and obviously Internet and broadband services.

**MR MILNE:** Yes, but I think it's probably worth saying that the networks -that the fibre that MCI is laying at the moment is very much with a business focus. So MCI's activities in that area and UUNet's activities in that area are very much in the business and the large connection side. MCI and UUNet are mostly interested in selling T1s and E1s and big pipes to business. That's their business. My business is the consumer business and of course datacasting comes right under that umbrella.

**PROF SNAPE:** Just very briefly I wonder if you could tell us - it's on page 21 - what you are doing with the schools in New South Wales and soon to extend to the TAFE in Queensland?

**MR MILNE:** OzEmail provides services to - I'm afraid I can't think of the rounded numbers.

**PROF SNAPE:** It says 2246 government schools.

**MR MILNE:** That's right.

**PROF SNAPE:** So I assume that's the correct number.

**MR MILNE:** That's the number - to lots of government schools, to lots of universities, and essentially what we provide to those schools and universities is on the one hand largish permanent connections to the school who might want a permanent mode or a more permanent ISDN or a larger link, which is provided to the school. And in addition to that, we have the capacity to provide dialogue access, sort of straight dialogue consumer access for the students of the school or university. So that's effectively what we do. So for many universities at the moment we actually provide the e-mail account and the dialogue access for the students of the university. So we just handle that whole Internet connection piece by doing a deal with the university. We provide the universities with a range of services, and then we provide a pre-agreed usually cheap deal, a very cheap deal, for university students, who then take one of our Internet starter kits, stick it in their machine, use their credit card and they just get a very good rate from us so long as they remain a student at the university. They don't become effectively an OzEmail customer, they just have a Joe Bloggs at ozemail.com.au address.

**PROF SNAPE:** And as they leave the university?

**MR MILNE:** As they leave university they have the option to become a permanent OzEmail customer, which we certainly hope they do.

**PROF SNAPE:** At a good rate no doubt.

**MR MILNE:** At a good rate, sure.

**PROF SNAPE:** Yes, we've been asking lots and lots of questions. I think I've got to the end of mine and pushing you fairly hard on those, and I think Stuart is through too, so we thank you very much for that very helpful submission and discussion which we've been having. No doubt a great deal of it seemed old hat to you but it's new hat to us.

**MR MILNE:** Certainly. It's a pleasure.

**PROF SNAPE:** Thank you very much, and we'll break for an afternoon tea break. When we resume we'll have Living Sound and then Austar. I should mention that there are two new participants who are going to appear: at 11 o'clock on Thursday News Ltd, who weren't scheduled before, and at 1.15 on Friday TVG Communications Pty Ltd. They're additions to the schedules that we have. Thank you very much.

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**PROF SNAPE:** We start our afternoon session after afternoon tea, and we welcome Living Sound Broadcasters Ltd. We have two representatives from them and I'd be grateful if you would introduce yourselves independently so that your voices are on the tape.

**DR ROBINSON:** I'm Ray Robinson. I'm CEO with Living Sound.

**MR LENNON:** I'm Rob Lennon, I'm part of the board of Living Sound.

**PROF SNAPE:** Thanks very much. The microphones on the desk are those which are feeding into this, and the other one is, if your voice is low, to get a broadcast to the people in the audience. Mr Robinson, are you going to speak to your submission?

**DR ROBINSON:** Yes. First of all, professor, on page 7 there's a typographical error, the last paragraph, that should be section 84(1) and (2) of the Broadcasting Services Act.

**PROF SNAPE:** Thank you.

**DR ROBINSON:** Our position is indeed as an aspirant in community radio. We've been around since 1985 and we're still an aspirant, so we've gone through a great deal of frustration trying to achieve one - not that we've done anything wrong, it's just in terms of the due processes of the legislation and indeed the regulator, and clearly that's caused a lot of frustration and a lot of disappointment amongst our community, and there's high expectations with the change in legislation in 1992 that the process would be speeded up. However, that has not occurred.

The disappointing point at this point in time is that the ABA have now had some of their resources in the planning area taken out of the analog planning and put into the digital area which indeed delays the planning process for the allocation of licences. So yet again we expect a delay in terms of the issue of the licence or attending the hearing and applying for a licence. So that's caused a lot of frustration. We come to this inquiry with a hope that these constraints of the regulator to get this work done will be addressed in terms of - it appears to the layperson that they're under-resourced for the load that they're required to do. Clearly there are other priorities in terms of servicing the commercials who do give a rate of return to the government. However, in terms of the cultural and social balance, as it's part of the legislation, we believe that we have a right, if you like, to receiving the licence. That's important to us.

So there's two issues there, I guess. One is that the ABA be resourced to indeed, clear up this process across the nation, prior to the advent of digital being addressed by the ABA. The second one is, in terms of - just jumping a little - media ownership which has been one of the thrusts today, it appears that that might be better served in another arena, such as, something similar to the ACCC. To the layperson that appears to be something which would take some of the load away from the ABA.

The other point that we would like to submit to the inquiry is that we represent

the Christian culture and we provide a diversity which is not currently available. And indeed, community - as you've already received the submissions - is indeed local. It is indeed expressing the culture of the local people, so we do provide a genuine return to the government in terms of the balance in part of the objectives of the act. Another point with respect to the return to the government, the point was made in Peter Costello's brief -or directions- in terms of the scarcity of the radio spectrum. Clearly at this point in time the scarcity issue is perhaps one that is controlled rather than proven. I say that from a naive viewpoint, so I just submit that as a consideration. Maybe the scarcity issue is something that could be tested in terms of the available frequencies.

Another point to make with respect to the rate of return is that in a competitive market it was always my understanding that the government would pick up the tab where competition throughout - there is people, for example, and those sort of things. So we see in the competitive model the government has a responsibility indeed to encourage, as the act does, the cultural and social balances and have an equal priority in terms of servicing licences to say the community sector.

**PROF SNAPE:** Thank you very much. Have you explored the possibility of narrowcasting?

**DR ROBINSON:** No, that's not an area that we see as being viable for us in terms of our particular area, and clearly that is all I can talk about. Our traditional boundaries indeed run from Helensburgh to Milton-Ulladulla, which is a distance along the coastal plain of something in the order of 150 kilometres. So to serve our community as its defined narrowcasting is not available - not a suitable approach.

**PROF SNAPE:** Do you see your community as being the Christian community or the whole community and bringing a Christian message to the whole community?

**DR ROBINSON:** It is the Christian community.

**PROF SNAPE:** So you are in fact targeting a narrow community - I mean it's a segment of the population.

**DR ROBINSON:** Yes. With respect, as it says in the submission there, in terms of the 96 census 80 per cent claim an affiliation, and as I say in the introduction in the submission there, on a sample size of about 30 per cent we expect an active population of about 60,000.

**MR SIMSON:** Under your existing licence as a temporary community broadcaster, that requires what, annual renewal, does it?

**DR ROBINSON:** You have the option of annual renewal, but I think because the LAP is close to being completed, they're putting us on a six-monthly turnaround.

**MR SIMSON:** Okay. To your knowledge how many aspirants are there? You

mentioned the resourcing of the Australian Broadcasting Authority. Are there - - -

**DR ROBINSON:** I know you have received a submission from the CBAA and I think from my memory there's about 200 across New South Wales.

**MR SIMSON:** I take it that the thrust of your answer to Prof Snape's previous question is that a narrowcast wouldn't give you the signal, the sufficient power to be able to reach the geographical area that you want to. Is that the point?

**DR ROBINSON:** That's right.

**PROF SNAPE:** But what - - -

**DR ROBINSON:** Excuse me. There's another point there in terms of what we want to put to air and to the community is much broader than the narrowcast.

**MR SIMSON:** So it's an issue of quantum and power, is it?

**DR ROBINSON:** Indeed, both, yes.

**PROF SNAPE:** So it's targeting really the Christian community as defined in the census rather than in any narrower sense.

**DR ROBINSON:** Indeed. Indeed, clearly, it's Christian community, family and friends.

**MR SIMSON:** Yes. Just out of interest, how many other Christian-based or specific Christian temporary community broadcasting licence, and for that matter, community broadcasters are there?

**DR ROBINSON:** Where?

**MR SIMSON:** In Australia.

**DR ROBINSON:** In Australia? I think there's about over 30 aspirants and about, I don't know, seven or eight in the capital cities.

**MR SIMSON:** Indeed. How many temporaries are there? How many people such as you are broadcasting specific content to the Christian community?

**DR ROBINSON:** About 30, 32, 35, something like that. That's across Australia.

**MR SIMSON:** Do you network, out of interest? Do you share content?

**DR ROBINSON:** No, not at this point in time.

**PROF SNAPE:** Have you explored that?

**DR ROBINSON:** Yes. I'm sorry, we do network with people from Melbourne and Hobart, yes.

**MR SIMSON:** I know this is outside your orbit, but I'll ask the question anyway: in the television area how many television narrowcast - - -

**DR ROBINSON:** I'm not aware of any.

**MR SIMSON:** - - - are Christian targeted?

**DR ROBINSON:** I'm not aware of any. It's something that's been on our things to look at.

**PROF SNAPE:** Are you associated with the Christian Television Association?

**DR ROBINSON:** Not formally.

**PROF SNAPE:** Not formally. It's a very specific concern you have, a couple of specific concerns. We take them and note those and thank you very much for speaking to them.

**DR ROBINSON:** Okay. Thank you kindly.

**PROF SNAPE:** Thank you for your submission. Thank you very much.



**PROF SNAPE:** We'll now move to Austar. Just while we've got a moment or two, there are a couple of changes additional to those that I mentioned before. One is at the time that was set for the Media Federation tomorrow, instead of that will be the Australian Association of Independent Regional Radio Broadcasters. We'll be filling that slot, and I believe the Media Federation will be appearing in Melbourne. No? Anyway, so the Australian Association of Independent Regional Radio Broadcasters will be late tomorrow morning, and then at midday tomorrow will be Heart and Soul. So that's two extra ones in there. It's the same person with a different hat.

We now turn to Austar and we have two representatives of Austar, one of whom I believe was wearing a different hat last time we met.

**MR MEAGHER:** Yes, indeed.

**PROF SNAPE:** Perhaps you could introduce yourselves for the transcript separately so your voices are on them.

**MR MEAGHER:** My name is Bruce Meagher. I'm head of corporate affairs at Austar Entertainment Pty Ltd.

**MR WALLACE:** Peter Wallace, director of strategy for Austar Entertainment Ltd.

**PROF SNAPE:** Thank you for your submission.

**MR MEAGHER:** So thank you very much for the opportunity to make a submission, and you have our written submission. I might just note before we commence that we are members of ASTRA, and ASTRA will be appearing tomorrow, and that we endorse their submission which canvasses many of the issues we've raised, and some others, but also in greater detail. So just for the record I wish to state that as an endorsement. I suppose we come to this in a reasonably unusual position of being one of the few recent new entrants to the broadcasting market. Austar, as you may be aware is a pay TV company, principally which serves regional Australia with the exception of Western Australia.

It's only been in existence for a few years, but in that time has expended something like \$600,000,000 in capital expenditure throughout regional Australia, and attracted some 325,000 subscribers throughout those areas. We now employ over a thousand staff spread throughout the country in 25 different offices. I suppose one of the things of which we are proud, and which perhaps is a good outcome of the entry of pay TV is the fact that we represent a group that serves people who traditionally have been underserved by many communication services. So that is certainly I think a great benefit, that the entry of new services and multi-channel services has brought.

We deliver our services by various means, the bulk of them by satellite, the next largest group by microwave, and then finally a relatively small group by HFC cable, which we've cabled Darwin. As I say, that's all been a result of an expenditure of some \$600,000,000 in capital. Our basic approach to this is that we support

competition, diversity and openness in these markets, and I suppose the real challenge for the commission and for policy-makers is to work out how to strike a balance to achieve that, and that has to be viewed in the historical context of the broadcasting industry.

Essentially that context is one of many years of protection for a particular group which has led to them being incredibly strong and profitable. On the other hand you've had, in recent times, the emergence of new entrants, particularly pay TV providers who have been subject to a number of limitations on their capacity to compete, which I'm sure you're well aware, issues such as restriction in delivery mechanisms and use of delivery mechanisms in relation to satellite, restrictions on attracting advertising revenue up to 1 July 97 and subsequent to that on the level of advertising revenue that can be attracted, restrictions obviously in relation to issues such as the sporting anti-siphoning list.

I suppose that our basic position would be that regulation, either to restrict or protect should be applied to grow competitive services, that where because of licensing arrangements people are conferred substantial benefits and protections, then it does not seem appropriate to additionally either grant them additional benefits beyond those strictly necessary or to impose obligations and restrictions on their competitors who are not similarly subject to those sorts of protections. Obviously, you have in relation to pay TV an open and competitive market where anyone can obtain a licence, and where the barriers to entry are principally a willingness to take risks and a willingness to expend capital.

On the other hand, you have a free-to-air television industry which has a traditionally protected position which has allowed it to become a very wealthy and profitable industry, and obviously we don't begrudge them that, but we merely make the point that in the whole regime it seems to us that there is an odd arrangement where privileges is rewarded and those who are investing capital and exposing themselves to risk continue to be constrained, and most obviously at the moment that's in relation to the sports anti-siphoning list.

We would argue that there are three essential things that should be done to encourage competition, to encourage new services and new service providers. The first is that we believe that there should not be restrictions on foreign ownership; secondly, we believe that regulators should strive for outcomes which encourage the most efficient use of spectrum to allow maximum benefit and maximum number of new entrants, and thirdly, and very importantly, that they should also strive for common and open standards so that consumers can obtain access to a multiplicity of services rather than being locked into a particular service deliverer or delivery mechanism by means of customer premises equipment or other equipment subject to potential lock-out through proprietary standards and the like. So I suppose that's in broad brush our principal submission. Is there anything that you - - -

**PROF SNAPE:** Good. Thanks very much for that. Tell me why Austar doesn't go into capital cities?

**MR MEAGHER:** In essence, that's an historical matter. It results out of the fact that Austar obtained the franchise from Australis to provide the services which Australis was entitled to provide, having acquired the A and B satellite licences. Australis franchised those to two companies which have both now come together as Austar to provide those services in other than the capital cities, and those arrangements have continued as a commercial matter between Austar and Foxtel, essentially.

**PROF SNAPE:** What's the commercial arrangement that does that then?

**MR MEAGHER:** It's the programming arrangements between - contracts between Austar and Foxtel.

**MR WALLACE:** Historically, franchising of Galaxy content, which was a subset of Australis content, in non-capital cities, and to some extent that's been expanded upon in terms of the supply of Optus content in addition to the original suite of Galaxy plus other content that's provided to the customers in our region.

**PROF SNAPE:** So essentially you took the Australis thing. You arranged Australis for non-capital cities, and when Australis went under, then Foxtel picked that up in the capital cities. Is that - - -

**MR WALLACE:** Foxtel had cable rights to Galaxy content in the capital cities, and, yes, it picked up satellite content rights in the capitals when Australis - - -

**PROF SNAPE:** That's the demise of Australis, but what is it which in fact now keeps Foxtel out of the country and you out of the capital cities?

**MR WALLACE:** Foxtel have always been able to provide services in our regions. They have content rights for cable in our region, and apparently to date have chosen not to provide services over cable. We do compete in the Gold Coast where we have an overlap of rights in terms of Foxtel via cable, substantially, and ourselves via MDS and I think satellite.

**PROF SNAPE:** I can see that it may not be profitable to lay cable anywhere because when there's not much density of population your system is more efficient, but that doesn't mean that you wouldn't be able to go into the capital cities with your system.

**MR MEAGHER:** Yes, I think Austar sees itself as a regional champion and it's partly historically being a franchise of Australis - originally a franchise of Australis, but also I think subsequent to that seeing strengths in providing services to regional Australia and I think less strengths in terms of providing services in the capital cities. You have to remember of course that they're very young markets and while the penetration is very encouraging I think the company has decided as a strategy to focus on those markets first. Now, how that pans out in the future remains to be seen, but

certainly in terms of the resources and the amount of capital that's been expended and needed to be expended to achieve that penetration, then it has been about focusing on those markets.

**PROF SNAPE:** Within the capital cities we have large areas that have both Optus and Foxtel, some smaller areas that have one or the other, and very large areas that have neither. Now, I'd have thought that those that have neither would have provided you with a great opportunity.

**MR WALLACE:** Well, I believe Foxtel has launched a satellite service over those areas that don't have overlap cable or non-overlap cable, so there is certainly, like other operators providing service in those areas - - -

**PROF SNAPE:** So there's no unserved area in the major cities that is now unserved by subscription television?

**MR WALLACE:** Well, not that I'm aware of. I don't know whether - presumably satellite coverage would be available to all areas of Sydney.

**MR SIMSON:** But the Foxtel satellite service was only launched relatively recently.

**MR WALLACE:** That's correct.

**MR SIMSON:** I think the thrust of Prof Snape's question is why wouldn't you have gone in and had a go at those uncabled areas with your satellite service?

**MR WALLACE:** Well, I guess partly for strategic reasons, partly for historically how the content rights were in terms of being a franchisee of Galaxy and Foxtel having cable rights - - -

**MR SIMSON:** So basically there's an agreement in place that bars you from going in there. Is that right?

**MR WALLACE:** There's content for a subset of content which was the Galaxy content. We do not have satellite rights for the capital cities. Optus hasn't chosen to date to run a satellite service in the capital cities either. We've got finite capital resources. Satellite is a capital-intensive business in terms of subsidising set-top equipment, customer equipment, down to levels that have substantial take-up in the regions, and we've chosen to concentrate initially on those regions and content is certainly part of an issue in terms of competing in that capital, but it's not - I don't believe it's - - -

**MR SIMSON:** We're just trying to clarify whether there may be a cosy deal here, that's all.

**MR WALLACE:** Sure. The answer is no.

**PROF SNAPE:** Cosy or non-cosy? On page 2 you refer - - -

**MR WALLACE:** I might just say commercially in terms of competing with the satellite service in a capital city with overlaid cable services in the majority of the area, even with content rights, and Optus has had content rights for some period of time and has chosen not to run a service itself, I think commercially there are sound reasons why, even if we had a full suite of content rights in the capitals, we may not have chosen to roll out a service.

**PROF SNAPE:** Thank you. On page 2 you refer that, "Following July 97 any person was able to purchase a pay TV licence and commence provision of a pay TV service. Are you speaking there of in fact supplying content into a pay TV service? You don't mean a new Foxtel or a new Optus, do you?"

**MR MEAGHER:** They would be entitled to obtain licences under the Broadcasting Services Act to offer subscription broadcasting services and to provide those services. That presumably would require either an investment in capital themselves to establish a delivery path or a commercial arrangement with an existing infrastructure provider to provide that content.

**PROF SNAPE:** Yes. How easy is it for our content providers to negotiate access into your system?

**MR MEAGHER:** Well, I think for the most part those arrangements have tended to be that people have sought to enter within our programming structure, so that a channel provider would seek to provide content on an exclusive or non-exclusive basis to one other or three of the delivery platforms. That has tended to be the way people have gone. To my knowledge there is one other provider who is seeking to provide some pay TV content, TARBS, and they're looking at the means of delivering it at the moment.

**PROF SNAPE:** That's an independent means of delivery rather than feeding it into the existing structures?

**MR SIMSON:** Into your program line-up.

**MR WALLACE:** Yes, I believe that's what they are targeting to do at the moment.

**PROF SNAPE:** Okay.

**MR WALLACE:** Within capacity limitations I think the judgment call would be whatever commercially makes sense in terms of providing additional content, and a subscription-based content is a broad set of content and within the particular genre of the channel - then Austar has a pay TV or a subscription provider has limited say in the editorialising of that content on that channel.

**PROF SNAPE:** But if I was setting up a content provision service which would be

of reputable quality, so not in the sense of it's not going to be pornographic or whatever and so you're not going to run into those censorship problems, you have capacity I think on your system to take more channels, to broadcast more than are currently being broadcast?

**MR WALLACE:** In an MDS, a microwave environment, the number of channels we have are being used in a satellite environment, we believe that the maximum limit of the number of transponders that we currently lease from Optus the satellite provider, in terms of providing additional channels I believe we would need to lease additional transponder capacity, so that's part of the commercial judgment call when you come along with a new channel or set of channels.

**PROF SNAPE:** So you're up to the point at which you would actually have to arrange more capacity to take it?

**MR WALLACE:** Lease another transponder.

**PROF SNAPE:** And what sort of cost is involved there?

**MR WALLACE:** I don't know in terms of what's public knowledge on those sorts of things, but of the order of \$5 million per annum. That's just a number. That's not - I mean, it's possibly less than that.

**PROF SNAPE:** So it's not cheap?

**MR WALLACE:** No, it's not cheap and it is a significant commercial move to go to that next step in terms of - - -

**PROF SNAPE:** And that's because this is in steps, and once you lease - how many more channels would you be able to take when you go up that step?

**MR WALLACE:** It depends on what's actually being shown on the channel in terms of the ability to compress those channels within the available bandwidth, but I think numbers are quoted typically at 10 to 12, depending on the mix of channels. Sporting content requires more bandwidth than news channel, which is substantially talking head.

**PROF SNAPE:** Okay. So it's a threshold question, that you've come to a threshold and then it depends what it is how many extra channels you can get on that, but if someone persuaded you to go over that, then for the next ones it would be pretty cheap to come in. There wouldn't be any additional cost to you?

**MR WALLACE:** Providing the channel still makes sense in terms of commercially what incremental price could be charged for the incremental cost and also I guess to the extent that that genre is in keeping with Austar's brand image.

**PROF SNAPE:** What do you take into account there? If you're already running a

news channel, you wouldn't run another news channel?

**MR WALLACE:** I guess it would depend on - I mean, there are a number of news channels obviously that are run over our service and over most of the subscription television operators' services. I guess it depends on what new - if it's another new channel, what else does that bring to our service and is it adequately covered by the existing range of channels.

**PROF SNAPE:** If I came in with a new sports channel would you take that?

**MR MEAGHER:** I imagine it would depend on the nature of the content, but certainly for example Austar has recently - where previously we were limited to the Galaxy range of programming, have recently entered into arrangements with Optus to take a number of its channels, including two sporting channels and three movie channels on the basis that we believe, even though there was already sport and already movies, that consumers want the full range of those services, so to get the full range of sport rather than a limited number of events.

**PROF SNAPE:** But if I was to be introducing a channel which seemed to be competitive with channels that you are already showing, then the people supplying that would try to dissuade you from letting me come on. Is that right?

**MR MEAGHER:** To be honest with you, professor, I mean, it's very hard to get into the specifics of that sort of an issue. All I can say is that from our point of view we certainly believe that in relation to the two principal genres, which are movies and sport - or two of the main ones - that we believe that having as full a service as possible is going to be the most attractive to our customers. What might be the case in other circumstances is very hard to say, and I really wouldn't like to speculate.

**PROF SNAPE:** Okay.

**MR SIMSON:** What is your minimum monthly charge?

**MR MEAGHER:** You always ask hard questions.

**MR WALLACE:** I think it's of the order of \$33.

**MR SIMSON:** Why isn't there a cheaper basic package for people, because that's almost approaching a premium. You may not see it that way but for many people \$30 a month is a premium package, is it not?

**MR WALLACE:** It's all a question of economics and your business plan and obviously in a market where people are subsidising the cost of the customer equipment, and in our markets most of our customers are satellite-based customers at this stage, and satellite equipment, satellite installation is expensive, and therefore you need to recoup that cost over time. Aggregating a number of channels together, you end up aggregating the profit over those number of channels and you provide I guess

a differentiation from some of the existing incumbents in free-to-air operators in terms of providing something of benefit at a price.

**MR MEAGHER:** Can I just say also, from our point of view, and I can only speak on this from our point of view, our customers seem to be very happy with both the range of product and the price. Churned figures are very good for Austar. A minimum number of customers - in fact it's about 5 per cent - take the basic package. The vast bulk of customers will then take - because we now have a four-tiered structure - will take a package which has either basic plus one extra tier, or basic plus two extra tiers. Now, that may be peculiar to rural and regional Australia where alternative entertainment options are more limited, but certainly all of our market research and all of our subscriber figures indicate that people are in fact satisfied and in fact are very keen to have the service because it provides them with something which otherwise they wouldn't be able to obtain.

**MR SIMSON:** Yes. You do have the advantages using the satellite technology to actually offer datacasting, don't you, to your users?

**MR MEAGHER:** We don't currently, beyond, I think, some very minimal stuff, but certainly we would be looking at some applications.

**MR WALLACE:** Over a satellite you can provide database services to the extent that you have a business plan that makes sense.

**MR SIMSON:** Without the spectrum problem that others are going to face who have to rely on free spectrum in the free-to-air area.

**MR WALLACE:** Anyone can provide a database service over any wireless technology, including satellite. There's transponders available.

**MR SIMSON:** And this is something that you're planning to develop business in, datacasting?

**MR WALLACE:** We are planning to develop a high-speed data service over satellite and potentially MDS.

**MR SIMSON:** The set-top boxes that you have in place already will facilitate that.

**MR WALLACE:** The services will effectively be run separate to the pay TV set-top box and you would share the same antenna, if there was an installation with both pay TV and data, or they could operate completely independently.

**MR SIMSON:** But the people - your 327,000 subscribers, I think - will require another - - -

**MR WALLACE:** Modem.



**MR SIMSON:** That's just for the return, but - - -

**MR WALLACE:** No, you will require another box - - -

**MR SIMSON:** Another box.

**MR WALLACE:** - - - for receiving that service, which is like a high-speed modem.

**MR SIMSON:** What will that cost in your case?

**MR WALLACE:** In terms of the - - -

**MR SIMSON:** The additional - - -

**MR WALLACE:** The business plans are still being sort of worked out in terms of what the market will pay for that service in terms of an up-front charge and an ongoing fee. I think cost prices are similar to cable modem-type prices.

**MR SIMSON:** I also understand from some comments that were made the other day by Mr Porter that you're also looking at providing some telephony services as well.

**MR WALLACE:** We've had recently a strategic review of the business where we've looked at a broad range of technologies and services outside of pay TV and we've made some decisions on some of those and we're moving towards implementation, and telephony services are one of the broad category of services that we're looking at.

**MR SIMSON:** Would you provide us with an example of you might - and I underline "might", I'm not attempting to pry into your business plan here - but just hypothetically what type of telephony service you might provide?

**MR WALLACE:** That's sort of continually reviewed as we move forward to implementation. But one example would be forms of resale of telephony, either fixed line or mobile.

**MR SIMSON:** Okay, so that the pay television business as we currently know it has the potential to become more sophisticated, doesn't it, with datacasting services and possibly also some telephony telecommunication services?

**MR MEAGHER:** Certainly it does, and I suppose the main point we would make about that is essentially that having spent a large amount of capital to establish points of presence - not in the technical sense, but offices throughout the country, a workforce, a brand and identity - then that's one of the things that we can use to move to the next step to provide multiple services, so - - -

**MR SIMSON:** I'm raising this because the debate between yourselves and the free

to air over regulation and government decision is, it seems, often considered in the narrow - that is, in terms of channels and extra channels and multichannelling, no multichannelling and so on - yet your franchise is going to be more valuable than that debate either indicates or implies, doesn't it, because of these other things you're going to get into?

**MR WALLACE:** When you say more valuable - - -

**MR SIMSON:** I mean because your business is going to go beyond simply providing pay television channels, at whatever level, one of those four levels. You're going to be also offering datacasting services, possibly also offering telephony, telecommunication services, and so that's going to be a benefit to you that goes beyond the benefit of the pay television arrangement.

**MR WALLACE:** Sure, and they're all competitive markets and we'll be competing against - - -

**MR SIMSON:** Absolutely. Yes, I appreciate that.

**MR MEAGHER:** Yes, there's nothing to stop anybody else. If, for example, we get into telephone resale there's nothing to stop anybody else - and indeed, there are tens of - what, 28 carriers, many of whom are reselling in the Internet market.

**MR SIMSON:** Just as your former employer is aggressively bundling telephony with pay television access.

**MR MEAGHER:** Exactly.

**MR SIMSON:** And, ditto, there would be nothing to stop Foxtel doing that also.

**MR MEAGHER:** Subject to any ACCC questions about - I think there are Telstra issues here.

**MR SIMSON:** Of course, yes.

**MR MEAGHER:** But I wouldn't want to - - -

**MR SIMSON:** Fair enough, because they can't bundle, yes. This is equally appropriate whether it's cable or satellite, isn't it, these sorts of discussions?

**MR MEAGHER:** In terms of - - -

**MR SIMSON:** In terms of the potential to bundle up telephony and datacasting and pay TV, it can be cable or satellite, can't it, that can facilitate that as a delivery mechanism?

**MR WALLACE:** You can potentially bundle independent of the delivery mechanism. The delivery mechanism will have a large impact on the costs of doing that and effectiveness - the economic effectiveness for the bundler to do that.

**PROF SNAPE:** If Optus can use their own cable, whereas you would have to - - -

**MR WALLACE:** Yes, we would be using - - -

**PROF SNAPE:** The return path anyway you'd be using Telstra.

**MR WALLACE:** We'd be using a range of technologies if we were bundling all those three together.

**PROF SNAPE:** You'd have to negotiate access with Telstra.

**MR MEAGHER:** That's right.

**MR WALLACE:** Or another reseller, or another wholesaler of telecommunications.

**PROF SNAPE:** Yes.

**MR WALLACE:** But in our regions in a practical sense that's almost always Telstra.

**PROF SNAPE:** Could I look at a sentence which appears near the top of page 3 in the second paragraph there. It says:

There is not a large enough customer base to enforce adequate self-regulation of the market.

I wonder, as we're talking about regulatory protection, if you'd like to elaborate on that sentence, please. It's the second sentence in the second paragraph, top of page 3.

**MR WALLACE:** I think it's just going to - in terms of critical mass of population and particularly in our regions where the population is more sparsely spread and in terms of a completely open and competitive marketplace, you know, just being aware of some of the demographic issues in terms of how that's supplied.

**PROF SNAPE:** But how would - - -

**MR MEAGHER:** Sorry, professor, just rather than be unfair, it was Mark who wrote the bulk of the submission and unfortunately couldn't be here. It might actually be more useful if we were to provide you with a written - - -

**PROF SNAPE:** If you could, please.

**MR MEAGHER:** I apologise.

**PROF SNAPE:** I thought for a moment it might be the Robert Browning problem, who said, "Well, when I wrote that God and I knew what it meant; now only God does."

**MR MEAGHER:** I'm sure Anne had very good reasons for it.

**MR SIMSON:** How concerned are you at the issue of the free-to-air at some stage being able to multichannel? Given the fundamentally different nature of your services, one would be a free-to-air service with, okay, some "pay for" on the back of it - if it was pay for multichannel, yours is a pay for exclusive service where you're not giving away free channels or a free service - what's the competitive weight here?

**MR MEAGHER:** Why would you take a multichannel service, which you had to pay for when you could have a multichannel service which you didn't have to pay for? That would seem to be the most obvious reason why we would find it a bit of a problem. Now, maybe that depends on the nature of the content, but if you've still got anti-siphoning rules, for example, where we would be precluded from obtaining rights and the networks were able to rely upon that protection to provide significantly more sport than they currently do, then that would obviously be a problem.

**MR SIMSON:** But can multichannel, from when there's a 2005 or 6 - - -

**MR MEAGHER:** 2005 I think.

**MR WALLACE:** Yes, I think there's a review.

**MR SIMSON:** Is there anything to stop them, as you understand the legislation, from that date multichannelling and actually charging for the service, charging for those bits of content?

**MR MEAGHER:** I don't think so. Those are all subject to reviews, aren't they, at some point?

**MR SIMSON:** We'll throw them up to Ms Richards tomorrow.

**MR MEAGHER:** Yes, but I think that all of those matters are - those dates arise following a review.

**MR SIMSON:** Yes, page 4, second-last paragraph down the bottom.

**MR MEAGHER:** Yes.

**MR SIMSON:** Yes:

Unlike the free-to-air operators we are subject to competition law and access to our infrastructure and set-tops should our network prove to be a bottleneck over time.

Just what does that mean?

**MR MEAGHER:** That would refer to the access regime in Part XI(C) in the Trade Practices Act, which provides for the possibility of declaration of services; indeed, some services are already declared.

**MR SIMSON:** Including your set-top boxes - have been declared?

**MR MEAGHER:** I don't believe - - -

**MR WALLACE:** I believe that if a service is declared there are a certain number of parts of that service then fall into the - - -

**MR SIMSON:** So they could be declared but have not necessarily been declared.

**MR WALLACE:** I think it's "if". If a service is declared then, you know, means of accessing that service also fall into the declaration.

**MR MEAGHER:** I think that's a matter that the ACCC is actually considering at the moment and hasn't yet determined, but it's certainly one of the things that they are looking at.

**MR SIMSON:** So you might have to open up your set-top boxes to others.

**MR MEAGHER:** That is a possibility, yes.

**PROF SNAPE:** Now, I think that in the access regime that is planned with respect to Foxtel and Optus, there were some grandfathering provisions in there for pre-existing contracts. Does that apply to you too?

**MR MEAGHER:** No, I don't believe it does. I think that arrangement was specific to cables, as I understand it.

**PROF SNAPE:** Okay, so therefore if someone was to try you on on access it wouldn't be subject to such restrictions that - - -

**MR MEAGHER:** I don't believe so, but I can check just to make sure that that's the case.

**PROF SNAPE:** If you could, please.

**MR SIMSON:** You say also at the bottom of page 4 in your subject:

We have little or no editorial control over channels that we can economically offer.

Just talk to that a little bit at the moment. What's the thrust of what you're trying to say there? I mean, I understand what you're saying, but what's the implication of it?

**MR MEAGHER:** In terms of - - -

**MR SIMSON:** Bottom of page 4.

**PROF SNAPE:** It's the editorial control over channels.

**MR SIMSON:** Right down the bottom.

**PROF SNAPE:** Last line.

**MR WALLACE:** Basically the nature of a subscription television business is that you don't actually compile and present many or any of the channels that are provided and so you buy a channel from someone for a particular fee per month and then display that on your network, and depending on individual contractual agreements and rules over censorship, etcetera, then there is limited control over what that channel will broadcast over your system.

**MR SIMSON:** Just moving to cross-media ownership for a moment, there are, as I understand it, no restrictions, apart from the ACCC restrictions on cross-media with regard to pay television.

**MR MEAGHER:** I don't believe so.

**MR SIMSON:** I don't believe so.

**MR MEAGHER:** Not since the ANB licences issue - - -

**PROF SNAPE:** Are you contemplating going into the content provision?

**MR MEAGHER:** Into content provision? We already have a level of content provision in that Austar has a fifty-fifty joint venture with Foxtel for a company called XYZ, which produces, I think, five channels for pay TV, and we also have ownership interests in a weather channel, in a pay-per-view channel, and in the adults only channel. Some of the channels within those other companies create content. For example, a channel called Arena produces a number of its own programs; Channel V, which is a music channel, also creates interstitial material and the like, so we already are in that business.

**PROF SNAPE:** Okay, and this vertical integration is an important aspect of your business?

**MR MEAGHER:** We believe so, yes.

**MR SIMSON:** Are you an Internet service provider?

**MR MEAGHER:** No.

**MR SIMSON:** But that would be on your list of things that - - -

**MR MEAGHER:** Certainly it's one of the things that we're looking at as a possibility.

**PROF SNAPE:** Thank you very much for that. There are a couple of matters that we're just hanging over there which we would be grateful if you could get back to us on. Thank you very much for that helpful submission. You're in a different place, a part of the market, from anyone else really, and so it's very interesting to have that. Thank you very much.

I said at the beginning of the day that at this stage I would ask whether anyone who is present wished to make an oral presentation. If not, again I'll say done, sold, and say that we'll be resuming the hearings tomorrow at 9 o'clock, and at 9 o'clock we will be having Publishing and Broadcasting Ltd first-up, then Mr Stewart Fist, who's got a couple of submissions, will be next, and then, as I mentioned before, the Australian Association of Independent Regional and Radio Broadcasters. So until 9 o'clock tomorrow morning we'll suspend the hearing, thank you.

AT 4.36 PM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 26 MAY 1999

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