



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON FRIDAY, 28 MAY 1999, AT 9.04 AM

Continued from 27/5/99

PROF SNAPE: Welcome to this fifth day of the hearings in Sydney. The terms of reference of this inquiry are available near the doorway and there are copies of the issues paper if people wish to see them. As we can see the proceedings are all transcribed and the transcripts are generally available within about three days of the relevant hearing and they are on the Web site and are available then in hard copy also for those who would like it in that copy; much cheaper on the Web site, I must say. At the end of today's hearings, I shall invite any persons present to make oral presentations should they wish to do so. Today, to start our proceedings, we welcome the Australian Broadcasting Authority. We have four people at the table from the authority and I would ask each of them in turn to identify themselves and their position in the authority for the transcript.

PROF FLINT: Thank you, Mr Chairman, I'm David Flint. I'm chairman of the authority.

MR TANNER: I'm Giles Tanner. I'm the general manager of the authority.

MR CORKER: I'm John Corker. I'm general counsel for the authority.

MS WRIGHT: I'm Andree Wright, director of policy and program content.

PROF SNAPE: Thank you very much. Prof Flint, are you going to speak to the submission?

PROF FLINT: Yes, if I may, chairman. Firstly, the authority thanks you for the opportunity for us to put in a submission and to meet the oral submission and also the opportunity to have a dialogue with you on the matters that you would wish us to comment on. We see our role essentially as *amicus curiae*, a friend of the court, as it were. We are here, we believe, to assist and we come as the creation of the parliament under the act into which your examination is proceeding. We wish to provide you with information on that and I think at this point I would indicate I am ready and my colleagues are ready to assist in the ways that you would wish us to.

PROF SNAPE: Thank you very much for your submission. It's a very helpful setting out of the processes of the authority and the legislation under which is acting and regulations under which it is acting. There have been a number of submissions which have suggested that in this day of convergence or in this time of convergence of technologies that maybe having separate acts for broadcasting and telecommunications perhaps creates some problems in that some forms of transmission and the digital technology as to whether it's actually transmitted and called a telecoms or whether it's broadcasting is becoming very, very blurred and having separate acts for the two does create problems at times. Do you have a view on that? Are you seeing those problems to which some of the participants in the submissions have been referring?

PROF FLINT: I would think, chairman, if there was one single act it would still have to contain many of the provisions, the separate provisions, which you find in the

two acts. I suppose some of those submissions would also be about there being two authorities. I notice that around the world there are different ways of dealing with this issue. Some countries have two. Some have one, the most famous I suppose is the United States with the FCC. I myself see no difficulties in our method of cooperation with the Australian Communications Authority by having cross-membership and by the degree of cooperation which occurs between the staffs of the two organisations. I don't see this as a significant issue.

On the other hand, I could see that it may well be a matter of government policy at some stage to address the issue again. If we were consolidated into one body, in many ways we would still I think have to operate as separate branches and so on and we would have to find within the organisation the sort of cooperation which already exists between the two organisations.

PROF SNAPE: I suppose there are two elements: one is the organisational one and the other one is the acts themselves. I can understand what you're saying about the strands that you would possibly need. Are there tensions between the two acts in the way things are regulated which are creating problems?

PROF FLINT: I suppose there are always going to be tensions between acts as there are within an act. I'm not aware of operational difficulties so serious that we are minded to suggest there should be changes. But may I suggest that some of the staff may wish to comment on this because they would have a closer knowledge of this.

MR TANNER: I think in the early 90s when this scheme of regulation was being framed, the key distinction policy-makers had in mind was the distinction between content regulation and carriage regulation and the Broadcasting Services Act which is about content regulation primarily was an act which was confined to multipoint services. Obviously one of the things convergence has done is removed the distinction between telephone point to point and what is blurred on that, and audiovisual and audio-entertainment information which is point to multipoint and that blurring proceeds to pace and digital is one further step in that blurring. That doesn't necessarily invalidate the distinction between content and carriage as useful distinctions.

I suppose what is interesting in the Broadcasting Services Act is the fact that it creates a regulator that is a content regulator. The online legislation which is now going through parliament will I think reflect to some extent that post-convergence blurring by taking the content regulatory role into particular types of point-to-point service. What is interesting about the 92 legislation is that it gives the ABA a fairly substantial role in one aspect of carriage legislation which is the planning parts of the radiofrequency spectrum used by free-to-air television and radio.

PROF SNAPE: I think Optus in their submission - sorry, does someone - - -

MR CORKER: Just one comment in terms of the overlaps between the acts in the areas of codes of practice - I'm not sure this has really arisen as a practical problem -

but there is an overlap between the areas in which carriage service providers under the Telecommunications Act and television broadcasters under the Broadcasting Act, areas of codes of practice in which they're indicated, they can make codes in relation to. One in particular was this code about dealing with customers of the licensees, including methods of billing, fault repair, privacy and credit management. It's an odd aberration in an otherwise list of codes of practice to do with content.

MR TANNER: John, I think it might cut the other way too in that I suspect there is somewhere in the power to make codes under the communications legislation, codes that - - -

PROF SNAPE: Could I just mention again that those mikes are only for the transcript and if people are to here you need to either use the other mike or throw one's voice a bit.

MR SIMSON: Prof Flint, on page 14 of your submission you say this:

The rules regulate for diversity of ownership as a proxy for diversity of views. A diversity of ownership does not ensure diversity of views, it merely provides an opportunity for diversity of views. A reduction in the number of owners will also result in a reduction in the number of organisational cultures and a likely reduction in the range of views and the depth of treatment of those views. A range of variables impact on the diversity of views in the media, including the views and interests of individual journalists and their editors, a commercial imperative to readership or audience and the management and practices and organisational culture.

We've had a number of people appear before us this week who are advocating change in the cross-media ownership rules and/or the foreign ownership rules and a number of said, "Trust us." Could you comment on that please in the context of your submission?

PROF FLINT: Certainly. I should point out that in another life when I was chairman of the Press Council - and this of course is not presenting an authoritative view but merely acting in full faith - I prepared a position and it was a paper which went to the full Press Council in which all of the press proprietors were represented, plus members of the public. This was for the review that Senator Alston had. That was essentially that the competition laws provided the appropriate regulation of the market but if there were concerns about bias in news and information, that is something more than just the normal matters that competition laws address, that perhaps a more effective way of achieving that sort of thing might be through a share of voice approach. We had in there a model for a share of voice approach. That wasn't something that was taken up.

But if I can come to the present situation and say that I assume that the public purpose of cross-media and foreign investment restrictions is really about a fear that there will be biased reporting from just one source or a few sources. That I think is

the whole *raison d'être* of this legislation. It's not the normal competition matter, it's really a social or public policy issue. That can be addressed and is addressed in a number of ways. I gave a speech in Taipei which I'd be happy to let you have a copy of in which I said that one of the ways in which we in Australia established a model to overcome this was diversity beyond the market. The proposition that I was trying to put was that particularly in the broadcasting area, just having a commercial sector doesn't necessarily provide you with diversity any more than the Australian solution which is very long standing and similar to the Canadian solution which was to establish an independent public broadcaster. That was rather novel because the mainland Europeans have government controlled radio. The Americans have commercial radio but we have this dual system which took the British model but added it to the commercial model.

That, I suspect in principle has achieved a greater diversity than a mere commercial market would provide. That was one of the ways I think we can do that. There are, I must say, assumptions about the influence of owners in what you have raised with me which may not be as true today as they once were because there have been significant developments - and again I'm speaking as a professor, I suppose, rather than as chairman of the authority - there have been changes which I adverted to in the speech I gave to the Sydney Institute the other night and that is there has been a significant devolution within the media from proprietors and from editors to individual journalists, a devolution of authority to the journalists. There has been a blurring of news and opinion. Opinion, which was once the preserve of the editor, has now gone down to the journalists. So once where there was a significant power in owners, with editors reporting to owners, that has been diffused and that has been a cultural change.

So I think that some of the assumptions behind the sort of restrictions that we have may well have changed. That's not the view of the authority. It's just my personal view. The view of the authority is that this is a matter for the legislature. The authority of course, except in direct advice to the government, cannot take part in that. What we have done, in applying the laws that we have before us, has been to apply them as much as we can to the letter of the law. If we see discrepancies between the way the law is acting and what we take to be the legislative policy, then we inform the government of that. But outside of that we don't think that it's appropriate for the authority to be part of the debate.

MR SIMSON: Do you believe that a possible way around this may be to have the ACCC have public interest provisions sit alongside generic competition or economic considerations, in considering whether or not a change in ownership structure was desirable? I'm assuming here that the cross-media ownership laws, for example, discontinued - ceased to exist - whether you could adequately examine, investigate, important public interest issues under the aegis of the ACCC, a strengthened ACCC in this particular area?

PROF FLINT: The ACCC already has a role in relation to matters of public interest and that is where they find that a merger is in breach of the competition laws, it is

possible to seek, as I understand it, an authorisation that they can permit to proceed if there's a public interest. So they would have had experience in that. There have been criticisms of I suppose another ACCC - not the same people - but of their approach for example in relation to the proposed takeover by the West Australian of the evening newspaper, which I think was the daily news, where they refused the authorisation.

If there were to be public interest considerations it would seem to me that they should be considered separate and apart. They shouldn't be all mixed up. One should first make the competition decisions, so that there is a very clear and separate opinion about the economic issues, and the public interest matters should be considered separately, whether by a separate body - I think probably by separate people and a separate body, perhaps the ABA, dare I say it. But I would think that there is a virtue in separating out the competition issues in the same way that your commission gives advice on economic matters to government, as the old IAC did, which means that the government will always receive economic advice which may be sometimes what it doesn't want to receive, but at least there is a body which gives the economic advice separate from the public interest issues.

MR SIMSON: Given your considerable experience with the Press Council and on the ABA and in many other forums and groups, you believe that a group such as the ABA, for example, could get its head around the important issues relating to a particular case, where for example an owner of a TV station wanted to buy a newspaper or vice versa, or a television station wanted to buy a radio station or vice versa? Given your considerable experience, you believe that the important issues could be flushed out and an assessment made on balance as to whether that would be desirable?

PROF FLINT: I think it would be healthy to have a separate body - or, if you did it all within the ACCC, a separate group - which in a separate stage of the process made that sort of determination. In the United States, with the FCC, it's done essentially by the same people, as I understand it, though on the other hand there are also the antitrust bodies in the United States. I would see a great advantage, if you were going to approach it that way, in having a separate process, with separate people - perhaps within the same body - but separate people doing it.

MR SIMSON: One of the particular concerns that has been raised with us is newspaper or media owners who have other businesses other than simply media, who have fingers in a whole pile of pies in other industry sectors that, by nature of the Australian media marketplace, are reported on and must be reported on frequently. Could you perhaps also offer an opinion as to whether that would represent or could represent a different situation to a pure media owner, such as someone who doesn't own or have any extraneous non-media interests in terms of consideration of this? I'm again reflecting very much on your Press Council experience on this particular one.

PROF FLINT: I can recall one of the leading editors telling me how he had to train new people on the board that they couldn't bring in, to the board, matters relating to

other business interests and expect special consideration. I think that that is a long-standing tradition. For example, when one of the major newspapers here - it was essentially owned by a family - I can remember people would try and contact members of that family to see that their names didn't appear in the newspaper. Their names still appeared, because of the professionalism of the editors and the journalist. I would expect that the professionalism of editors and journalists is such that they normally resist that sort of pressure. It doesn't always happen but on the whole I think it usually comes through somewhere.

PROF SNAPE: Could I just come back to a couple of the remarks that you made a few moments ago, and first of all to say we would be very interested in receiving copies of the two speeches to which you referred, Taiwan and also the recent one. It has been suggested to us that while it may be so that, as you said, there's more devolution to the journalists in terms of opinion and less direct interference, if that did occur in the past - but there's less scope for it now than there may have been in the past. But two points that have been made are in terms of atmospherics: that direct interference isn't necessary if the atmosphere, if the climate is known and that that is constraining, that one knows within the organisation what is acceptable and what is not; but secondly, the relatively small number of alternative employers that exist. It has been suggested for example that financial journalists perhaps have three possible employers at the moment, in the main, and that if there were certain mergers that have been talked about they would only have two. Would you like to comment on that aspect of influence, if you like - those two aspects?

PROF FLINT: I think that media proprietors are ephemeral. They come and go very quickly in the course of time. When I was a boy we didn't know anything at all about Rupert Murdoch, he wasn't known in the Sydney media market, and suddenly here he is dominating. Things do move on. The Fairfax family, for example, was a dominant part of the media scene. They too have moved on, away from the media.

PROF SNAPE: We did know the Murdoch family in Melbourne however.

PROF FLINT: In a different form, true, yes. But I don't think these things are ever frozen. You can't take a snapshot and say, "That's the media and that's how it's going to be forever." When you come for example to financial journalism, it's not that long ago when there was no financial newspaper and very little attention to financial matters on the broadcast media. Now we have a number of newspapers with very strong financial roles and one newspaper which is purely financial. Of course, the sources of employment are not unlimited but we have in the country other sources now. For example, on cable you find broadcasters who are giving out information in relation to finance. I don't think it's as serious a problem as it's sometimes painted.

MR SIMSON: Professor, would you mind just expanding a little bit on the comments you made in your opening remarks with regard to what I think you were saying was the increasing diversity of information that's available now? I think you have just touched on it in the context perhaps of cable. But could you provide an assessment for us, as you see it, in the context of other media as well - the Internet -

and the extent to which in a real way, in a real sense, the diversity, the availability of news, information, comment and opinion is greater now and it may become greater than it was some time ago?

PROF FLINT: Yes. Well, it isn't that long ago that the only sources of information in this city were the newspapers and the ABC, because the commercial news broadcasters relied totally on the newspapers. It isn't that long ago, comparatively speaking, that it was possible in the United Kingdom for the media proprietors and the BBC to agree together not to divulge information. It was possible to seal off information in the UK - and I'm talking about the abdication crisis - whereas that same information was widely known and reported in newspapers and the radio on the US and in France. That sort of thing is no longer possible. You can't seal off a country from the media.

We have incredible growth in sources of information. We have the newspapers, the radio, the growth of talkback programs, with commentaries and television and pay television, and the Internet which allows you to source newspapers all over the world on the very day that they're printed. So if anything, we have more information than we have ever had. We have this mixture of information with opinion. Once upon a time there was a much more strict idea of attempting to only be objective and not to mix opinion and facts in the same columns. Now we have by-lined articles and photographs of the journalist. We have, in the broadcast media, journalists interviewing journalists, getting opinion. So we have an enormous amount coming to us. I don't see in any way a shortage. I only see an increasing growth of this, so that we ourselves have to be our own editors, as it were.

PROF SNAPE: On page 17 you refer to a difference in a definition of a foreign person between the Broadcasting Services Act and the Foreign Acquisitions and Takeovers Act. In the one case it's based on citizenship and in the other case it's based on residency. Is this a problem for you or would you wish to elaborate on that comment?

PROF FLINT: I think I might ask John Corker to speak on that.

MR CORKER: We deal with the definition of a foreign person based on citizenship. We haven't had a problem in terms of the fact that the treasurer, under the Foreign Acquisitions and Takeovers Act, deals with it on the basis of residency. As a matter of practice, the Foreign Investment Review Board seek our comment on investments in the media or applications for investment in the media that come to them. Basically we indicate whether or not there's any problem under the Broadcasting Services Act. So in a sense when they're looking at foreign acquisitions based on a concept of residency, they also look at it, through us, through the concept of citizenship.

So perhaps through the two mechanisms both concepts are considered, even though the test obviously under the Foreign Acquisitions and Takeovers Act is quite a different test, one of whether it I think substantially affects the national interest - a

very general test - whereas ours are quite specific rules under the Broadcasting Services Act.

PROF SNAPE: In terms of your experience, you don't see a problem or a preference to change that definition or whatever?

MR CORKER: No, I don't think so. I think that the areas of problems, if there are problems in the foreign tests for the Broadcasting Services Act, are tracing back through chains of companies to actually find the person behind the chain of companies, that's the foreigner, who is in fact controlling the companies. Often it's quite obvious but to trace it as a matter of law can often be quite difficult.

PROF SNAPE: And it's equally difficult in both cases?

MR CORKER: I think it would be equally difficult if it was residency as well, yes.

PROF SNAPE: Yes. On a similar line - and it's arising from a suggestion from Macquarie Bank yesterday and it's to do with foreignness relating to fund managers. It's a difference between the Broadcasting Act and the acts which relate to Qantas, for example. Under the Broadcasting Act a foreign fund manager is deemed to be foreign even though the bulk of the funds which they're managing, and therefore the responsibilities to the owners of those funds - their fiduciary responsibility to them - are Australians', whereas under the Qantas Act in that case they're deemed to be Australian and not foreign. So there's a difference. Macquarie Bank was saying this has created a number of problems in terms of investment and that when an Australian fund, the assets of which are owned, or the funds of which are owned, predominantly by Australians are taken over by a foreigner, then that no longer qualifies for Australian ownership, whereas in the case of Qantas it would. Would you prefer that the act be changed to go along the Qantas lines?

PROF FLINT: That's a matter that we're aware of and we have drawn the government's attention to it. We ourselves don't have a preference but we thought it important that the government be aware of this position. It's really a matter for the government to decide whether, as a matter of policy, this should be changed.

PROF SNAPE: Would you find it more difficult to monitor in one form than the other, because monitoring is your responsibility?

PROF FLINT: The more complicated a matter is, the more difficult it is to monitor. As Mr Corker has said, there is this problem of tracing. This, of course, increases the amount of work we must do. But we don't really judge things on the amount of work we should do. We feel that that really is a matter for the government to determine. The legislature having decided that there should be restrictions on foreign investment, we do what the government wishes us to do.

PROF SNAPE: I take that point. But on the other hand, if monitoring was very easy in one case and extremely difficult in the other case and on other matters there

wasn't much to choose, they would obviously go for the simple monitoring one because that would be enforceable whereas the other one is not.

PROF FLINT: Yes.

PROF SNAPE: So really I'm trying to get to that which is, in a sense, within your domain I think, to be judging whether the monitoring would be significantly more difficult in one case than the other.

PROF FLINT: I think it would be easier. Would that be right?

MR CORKER: I'm not sure there actually would be much difference between either model. There are difficulties now with establishing whether or not a funds manager is a foreign person, and more particularly difficulties about establishing what its level of company interests are in a particular media property because of the vast amounts of unit holders that there are and knowing often their nominee companies and having to look behind them to see whether they're foreigners. I mean, there already are a number of difficulties with the administration of that regime. I think that has been drawn to government's attention for some time. In fact under the last Labor government there was a bill circulated in the parliament to address some of these issues. It's quite a complex area. But it never sort of reached - - -

PROF SNAPE: But as far as you're concerned it's six of one and half-a-dozen of the other?

MR CORKER: I think it is, yes, and I don't think it's an easy question to ask without seeing the way in which the legislation is actually constructed to deal with the issue.

PROF SNAPE: Well, I assume that it would be somewhat like the Qantas legislation, so in fact you would have a model in front of you.

MR CORKER: Yes, I understand there are significant difficulties with administering that legislation, as well. We provided some advice to the people who drafted that legislation.

PROF SNAPE: Thank you.

MR SIMSON: Prof Flint, there has been a great deal of discussion at this inquiry this week between ourselves and participants over the issue of planning of the digital spectrum. On the one hand there are groups who are representing the free-to-air television stations, the commercial free-to-air, who are very keen for the spectrum to be planned around, as they see it, the delivery of a signal to people watching that signal on nice, high digital television sets. They're keen for this to be done, as proposed by the government, over a period, with simulcast of analog and digital signals at least until I think 2008. There are others who are most concerned to free up as much of the spectrum as early as possible so that the spectrum can be made

available for new uses - datacasting for example, perhaps even, prospectively in the case of one participant, for a fourth commercial free-to-air television station. My first question relates to whether you see it as a desirable objective to free up the spectrum as soon as is possible. A concern that has also been expressed this week is that it may take well after 2008 for it to be free because there will still be some people with analog TV sets who may not have had made available to them a set-top box to convert the signal.

An issue that we have raised is how long this might drag on for, with spectrum locked up for both streams, at the cost or at the expense of it being available to new entrants. I would be interested in whether you have a view on that or an opinion and how you see the planning from where you sit.

PROF FLINT: As I understand it the policy is to free up the spectrum. Once you've made provision for the existing broadcasters, you then free up the rest of the spectrum. Subject to my colleague's comments, that's what we are doing. The schedules for doing this are very tight but we have to produce drafts and then plans which will allow for the broadcasters to commence in digital in 2001 - and then to make provision in the rest of the spectrum for that to be freed up. We are looking at all the best ways we can achieve that, for example, in the overlap areas.

As to the analog spectrum, we know that this is eventually to be handed back. But apart from economic considerations and considerations of access to the full use, the unfettered use of the digital spectrum, there are of course political and social considerations. The social considerations relate to those people who are dependent on their analog services. Obviously the government no doubt would wish to ensure that nobody is disadvantaged. Obviously the wealthy will be able to afford digital first, because it will be expensive first. There will be a vast number of people who won't be able to afford digital. As the prices go down they will, but there will still be a number of disadvantaged people who will cling to their analog sets. There will need to be measures taken to see that if they were obliged to go to digital, it would not be at their own cost. I suppose there will be solutions found. I'm not sure if any of my colleagues would wish to add - would you?

MR TANNER: I'm not sure which part to comment on, on what you've put to us. You raised a number of points. I'm wondering which ones we can helpfully comment on. I suppose on the issue of turning off the analog system, while no government has ever I think attempted to make redundant such a popular piece of consumer hardware before, a ubiquitous piece of it - I mean, I can't think of any precedent - certainly the government has turned off analog television systems in the past. It has done that, for example, in the context of clearing the FM band for radio over the last 15 years. Those services have typically been moved to the UHF spectrum. So we have some experience of what the issues that are raised are when you turn off an analog channel.

I guess the lesson from that, the really banner headline lesson, is that if a few hundred households don't get the new signal you have a first order of magnitude political problem until you can fix that. I think that the decision to turn off the analog

network is going to be a very weighty one. When you look at that eight-year period and you look at the sort of speed at which people turn over their television sets, it's very difficult to imagine that in the ordinary course of things there won't be quite a large residual population of analog receivers. I also find it - I suppose shaped by my band 2 clearance experience - as difficult to see full clearance to turn off the analog system proceeding until it is relatively easy for viewers to continue to receive television.

MR SIMSON: We may have this incorrect but it has been put to us that indeed you don't have to throw out your analog TV set. So long as you have the most basic set-top box that will enable that signal to be converted to analog, you can keep your TV set. It has been put to us by some groups this week that set-top box could become ubiquitous. Indeed one group, OzEmail, put to us that they're aware of players who will give away set-top boxes, and potentially they said even give them away to every household in Australia to get a critical mass. Now, if that were to occur, that solves the problem, doesn't it?

MR TANNER: It does, and I guess that depends a bit on what the killer application proves to be. If you get a set-top box on analog you won't be able to get high definition television, any more than you could get colour on your old black and white set after it switched on, but you will be able to presumably enjoy some of the range of multiple streams of programming. Enhanced programming is allowed - and we assume that will mean different strands of programming at times - and perhaps the data services as well. So if someone wants to give everybody a box or if everyone finds that such an attractive application that they take it up, yes, that might help.

PROF SNAPE: It has been in the context of the problems to which you were alluding that a large number of mainly disadvantaged people, who are not able to receive the new signal - will be a major political problem for a government at the time of considering switching off. So it will be a problem currently, as anticipated, in 2008. There could be a lot of pressure, as you were suggesting, to extend that date and to continue to lock up, therefore, the analog spectrum - which is being used for analog transmission - further into the future.

What we were doing was trying to explore ways which, as you said, no-one would be worse off. The basic box we were exploring, as a way of ensuring that no-one was worse off - if they wished to go to more sophisticated boxes to get all the joys that have been told to us and all the other attributes from the new system, then fine, but at least one would be able to ensure that no-one was worse off. Indeed, if one could find that solution then one might even be able to bring the date closer to now. If one were to adopt that solution much earlier then we would be able to free up that system much earlier. That's the scenario that we have been trying to explore. OzEmail, as Mr Simson was mentioning, suggested that it may not even be a problem for government if in fact there are commercial incentives for people to solve that problem.

But one of our kick-off points from this was to say, "Look, all that spectrum is being frozen." A lot of spectrum under the analog system - and, as we understand, much more than is required under the digital system to give the same amount. So are there solutions that we can find there to perhaps even bring forward the date, so as to free up the spectrum?

MR TANNER: I guess that's the other side of the coin. There are some things the ABA can tell you about and some that we can't. One thing that we can tell you is that yes, as long as the analog system remains on, it puts enormous breaks on spectrum productivity for digital services, because the analog system for example requires different frequencies for each infill translator. So a channel in Sydney isn't just a Gore Hill big banger; it's also five translators around places like Manly and Kings Cross, each one of which uses a different frequency. When turning on digital in the simulcasting period our engineers have to ensure they don't wipe out any of those. That means that even though this is a brilliant technology which is able to use, without causing interference, channels that couldn't be used by analog - the so-called taboo channels between the analog channels - there's only a minority of those that we're able to use without wiping out this or that translator or neighbouring area transmitter.

The result is that during the simulcast period the numbers of channels we're able to find over and above those required, to give same coverage to existing broadcasters and a seven-meg channel each - seven megahertz wide channel - are quite small. Indicatively, the Sydney digital channel plan, where there's a particular problem with spectrum capacity, has only been able to find in the short term one additional high-powered seven-megahertz channel that would be available after requirements of conversion are satisfied.

Now, the ABA has held back on finalising its decision on infill translators and translators in the central coast as it's not satisfied that there are not solutions that might avoid the need for those translators. So the ABA is certainly playing this so as to give to existing broadcasters everything that is held out to them in the policy principles in the legislation but to do so in a way which does maximise spectrum productivity. But those initial numbers are fairly small. In Melbourne we have come up with two additional channels, on top of those needed for high-powered broadcasting.

There are one or two extra channels potentially becoming available over the course of the next decade, which require decisions that - well, there's going to be a cost to getting hold of them. There is, for example, channel 31 used for the community television trial. There is an option of retuning the Channel 10 frequency so that you create an extra seven-megahertz wide channel, what is called channel 9A. Both those come at an obvious cost. We felt that the cost of the Channel 10 one in the short term was simply prohibitive, but perhaps in the longer terms the problems that deterred us are going to grow smaller. As the uptake of digital set-top boxes comes in, it will become less and less of a problem. So there are some options, that come at a cost, for slightly increasing that number. But the numbers really are quite small, of extra channels that we can make available.

Now, that's what we can tell you about, in gory detail, if you need that. What we can't tell you about - and if I could, I'd probably be in the South of France now rather than here - is whether that particular technology, as a broadband point to multipoint technology, forgetting digital data to people's homes, as opposed to the many other broadband technologies that are coming on stream or likely to come on stream, is essentially a sideshow or just another technology or whether it really, as the first cab off the rank, is going to assume enormous importance in terms of first mover advantage or whatever in positioning telecommunications content - you know, converged industries if you like - in moving into broadband browser driven entertainment and information. That's a call that we can't make. I know you have received a number of submissions from others on that subject.

MR SIMSON: That's a very interesting point because a number of people have pointed out to us that there is going to be, as you've just indicated, a wave of alternative broadband delivery mechanisms that will offer a number of the facilities that are proposed, in the datacasting and other areas, over the digital broadcasting spectrum.

I would appreciate your comment also on the issue that you were covering in the answer to the previous question and that is the actual television set as opposed to the set-top box. We have had a fair bit of discussion this week with participants and quite a number of people have put to us that the actual take-up of new televisions is going to be quite slow, because of cost and price. We have had some informal technical submissions also to the point that for a lot of people they're not going to pick the difference between what they see on an analog set, perhaps a fairly good analog set perhaps, as opposed to what they would see on a high definition TV set. One participant made the point that particularly if they were standing at the back of the room or sitting in a lounge room chair not close to the particular receiver - and yet the issue of actually receiving this new signal on a high definition television set seems to us to be at the core of the argument of the free-to-air channels for this conversion.

I would be interested if you've got a view on that, because we are getting conflicting views as to what is the real priority here in terms of making available this digital spectrum for broadcasting. Is it for new services and other opportunities or is it for what many people see as a small number of people who are going to be able to afford, even over a period of time, a four, five-year time-frame, these high definition TV sets?

PROF FLINT: I suppose one could say that of any new technology. For example, colour television - when it first came out it was expensive. One would expect that the price will keep on going down. In my personal experience where you really do notice the difference is in a large screen and in the cinemascope screens. Of course, it's very attractive for drama and very attractive for sport. Whether it makes much difference when you're watching Oprah Winfrey, I don't know. But it is good for some programs. That will, one expects, become attractive over time. You're right, with the smaller sets it isn't so obvious.

I still find great difficulty in detecting a great difference between FM and AM but lots of other people do. I find FM and CDs have a very interesting sound but it's still an artificial sound and it's not a real sound. So tastes I think will be attracted to the big screen and the high definition screen. The decision to go into this is a commercial decision. The broadcasters will spend a lot of money to do this. Presumably they believe that it is in their interests to do so.

The ABC and SBS will, we assume, multichannel so that they will be able to use up more content that's available. For example, one assumes the ABC will be able to do what it does very well in radio, that is have a single channel devoted to news and information, so that we will have an Australian equivalent of BBC and CNN. They will also be able to do what the BBC does and have ABC parliament and parliamentary committees, and the Productivity Commission will be viewable by citizens who want to see that. So there will be great things I think for people with digital sets or with boxes on the top of their sets which will allow them to see more free-to-air.

PROF SNAPE: We get into enough trouble unseen.

MR TANNER: Is what you were also getting at that high definition television? Are you talking about the decision to have a full channel for each broadcaster? Is that the issue you're - - -

MR SIMSON: No. I'm actually really investigating what is the real driver for this. There seem to be different agendas here. There's the agenda of the commercial free-to-air, which is to use this new digital spectrum, with the objective of delivering material to people on high definition television sets, not via a set-top box to an analog set but on high definition television sets.

MR TANNER: Yes.

MR SIMSON: We had a discussion with them this week about the option that we discussed with you a few minutes ago of fast-tracking, the uptake of a basic box to free spectrum that would then be available to other people who wished to use that spectrum. They were not impressed with that argument, because they argued that - and this was particularly PBL. PBL argued that, "Look, the main game here is getting people to watch television on HDTV sets. The main game is not indeed multichannelling, datacasting and use of the spectrum for other purposes."

MR TANNER: I guess I'd just make the comment then that this technology posed a quite interesting challenge for government in working out what conversion of existing services to digital means, because it's a technology that enables you either to multicast - estimates vary from three to six signals at a time on the one channel, at conventional, what we call PAL quality - or to provide as little as one high definition picture using the full and most generous form of HDT which has been developed. Because of that confusion, I think different jurisdictions have come up with different definitions of

conversion. It's well-known that the United Kingdom has gone for a definition of conversion in which it put more than one broadcaster onto a channel. That's obviously more spectrum efficient but what you rule out by doing that is the option of moving to full HDTV because no broadcaster gets an adequate bit stream to be able to carry the full HDTV signal.

So I think the decision about HDTV has to be seen as a crucial underlying assumption in the decision to give broadcasters a whole channel each. It gives them a very high ceiling. It allows them to move to full HDTV even at very, very bit rate intensive kinds of picture.

MR SIMSON: But it also ties up a lot of spectrum, doesn't it?

MR TANNER: It does.

MR SIMSON: For what could be a long time.

MR TANNER: That's right, but you really have to make that judgment I suppose, whether or not HDTV is important. I suppose you've got to realise that free-to-air television is to some extent in competition - and will be to a greater extent in the years to come - with other forms of television, notably pay, which also have the ability to migrate to digital and don't have any kind of similar bit rate limitations on them. Whether or not HDTV is the way of the future is not my job, as a lawyer working for the government, to judge. But if it is, then they are free to move to it. Now, with the seven megahertz per service decision, so are the free-to-air. Now, there's a judgment call there about whether or not HDTV is a fufphy or in fact is going to be a natural upgrade that as it becomes affordable Australians will progressively take up, and it's a judgment call about whether or not you want your free-to-air service to be capable of matching the technical quality, no matter what happens, of the subscription services. In making these comments I'm not aware of any plans by subscription to move to digital HDTV at present.

PROF SNAPE: What was the driving force to go to the highest definition standard?

MR TANNER: I'm perhaps not the best person to comment on that. The standard has been developed internationally; in fact there's two standards, a European and American.

PROF SNAPE: No, for us to adopt that highest standard for the free-to-air programs.

MR TANNER: The policy process which led to this decision until the government really took the challenge on last year with the minister's announcements back in March last year, there was a public process run actually by the Australian Broadcasting Authority. It was run by one of the ABA's general managers, Colin Knowles, and it was run using a group or a committee consisting of representatives of a number of government agencies and also a number of broadcasters. Groups of broadcasters that

took a major interest in it were the free-to-air; the national and the commercial broadcasters, and I would say that that group from early on formed a consensus that the goal was to be able to exploit HDTV as one of the features of this international developing standard.

So when the ABA actually made its final recommendations to the government, which I think was late the year before last, it recommended that conversion should proceed after a simulcasting period that each broadcaster should obtain a full channel precisely to allow high definition television. It also recommended some other things. It didn't totally - I mean, the government has made some departures. For example I recall that the ABA recommended that broadcasters should also be free to fully exploit the capacity to deliver multichannel services. Now, that's been modified and limited in the government's decision, but the HDTV has been picked up by the government. So I think that's been the push that's come out of the policy development process that led in, and the government has picked that up and endorsed that key part of it I think.

PROF SNAPE: Was there public participation in that debate - in the process that you just referred to?

PROF FLINT: If I could comment on that, I wasn't involved at this stage, but I understand that there was no - and my colleagues will correct me; there was no opposition, no opposing submissions at the time which I think is an indication of how quickly things change. There wasn't great interest in the spectrum apart from the broadcasters. That of course has all changed since, but at that stage in what was quite a - if I am correct, from being outside and seeing what seemed to be a transparent process, there did seem to be no interest, but I might check that with Mr Tanner.

MR TANNER: That's basically my recollection, too, and in terms of the way the process was run, it was not a high profile public process like the one that you're running at the moment; we didn't hold public hearings, but there were two reports published and two available from the ABA if you want to read them. So it was run as a public process, but there were only a certain number of groups in industry that really extensively participated in it.

PROF FLINT: And there was nobody at that time proposing datacasting, was there?

MR TANNER: Not that I recall. The emphasis was very much on the use of the digital technology for television, either for simulcasting at PAL quality or for migration to high definition television.

PROF SNAPE: Was the general public invited to make submissions?

MR TANNER: I have to take that on notice. I'm happy to give you a run-down on how it was actually conducted. It proceeded over a number of years as a fairly sort of low key policy review, but two reports were published with press releases and a fair

bit of a tense by the ABA to raise interest in the subject in the wider public. I would say though that it's attracted an enormous amount more interest once the government became interested in the ABA's report.

PROF SNAPE: Yes. I wonder if I might switch the focus onto influence, and influence of course is fundamental in the act. It's what the act in a sense is built on; degrees of influence - "Degree of influence in that different types of broadcasting services are able to exert in shaping community views in Australia," a phrase which I should know off by heart by now, but I read just to make sure I get it exactly right, and I wonder whether - you do mention a number of studies in your submission; research that you've been doing in this area. I wonder if you would be able to tell us about the studies that you're doing on influence or how you view influence, the results of any research that has been undertaken. Is it showing the degree of influence of different types of broadcasting, and what is really meant by influence in shaping community views in Australia? A small subject, but fundamental to part of our terms of reference, I might add.

PROF FLINT: I'll ask Mr Tanner to add to what I have to say, but our principal concern in this area would be in relation to the codes; the codes of practice, and in relation to the standards, and there we have a statutory obligation in registering the codes of practice to ensure that they reflect community standards, and a lot of our research is about that sort of thing. What for example have people been concerned about when they've been watching television, and what were their principal concerns, and that has been very useful to us in the development of the codes of practice.

For example when we were looking at the FACTS Code, there was a lot of interest by people in public life, members of parliament and so on, about questions relating to sex and nudity and violence. We found that about - if I remember rightly, the last piece of research we did, about one-third of those who were asked the question, "Have you seen something which concerned yourself on television?" we found that about one-third said yes, and a very big concern was violence about matters that they had seen on news and current affairs, and then it went down the scale. Those we publish, and that does help us in our work in trying to ensure that the codes reflect what the community is concerned about.

There seems to be a view that television needs higher regulation because it has more influence. I wonder sometimes myself whether that is so; whether for example talkback radio may well be even more influential because talkback radio allows a very lengthy exposure of an issue, more than I suspect you get with the reading of a newspaper column on that question. It allows the commentator to throw something into the public discussion, it allows a lot of feedback with members of the public, and it allows that to mature, for example, in a breakfast session or mid-morning session over more than an hour - couple of hours, and that is a long time to put an issue before the public which is something which as an issue of the day is not available so much to newspapers because people are not passively obliged to stay with one column; they can turn the page over and go to something else.

It doesn't happen, I don't think, to the same degree with television because these things are much more reduced in the time that you're exposed to them. A typical news program on television has I suppose about - on commercial television, no more than 15 minutes, if that, of news because of weather and sport, and advertisements. You get much more from radio. I wouldn't discount radio as an influential medium, but we must do constant research to find out about specific issues - not so much about whether you're influenced by this, but whether you are concerned by the media.

MR SIMSON: And as you point out in your submission on page 22, the ABA has a range of sanctions available to it if it finds a breach of code of practice. We have had some submissions and some comments from participants in the last week who have been disappointed at the response from the industry to complaints that they have about their treatment or particular issues that have arisen in terms of content, and I think their criticism has been directed primarily at the TV stations, but I was just going to ask have you implemented sanctions against a TV channel or owner for breach of the code, and what is the follow-through on a complaint that I think in the first instance needs to go to the channel, does it not, before it hits you?

PROF FLINT: Until 1992, we had only - the ABT as I understand it had only the nucleus action; that is you essentially turned the station off. You withdrew its licence or failed to renew the licence or suspended it. In 1992 the act introduced graduated response to this, a system of co-regulation as you rightly say where complaints go first to the broadcaster, and if the complainant is dissatisfied or if the broadcaster doesn't deal with the complaint within a period of time - 60 days - those unresolved complaints come on to the broadcasting authority.

It would be open to us not to impose a pecuniary sanction at that stage, but it would be open to us in appropriate cases to begin the process to impose a condition on a licence. So you'd have to impose a condition if you wanted to go down a path of rigorous sanctions, but before that there are other sanctions, and one of the greatest sanctions I think is inserting into the marketplace of ideas the views of the complainant. For example it may well be that an apology, a rectification speedily done is much more effective than extracting a large amount of money through, for example, a defamation case.

MR SIMSON: Prof Flint, I'll just interrupt if you don't mind for a moment there, because that's been a particular point of complaint that we've received; that the broadcasters don't apologise, and as - or retract or do what newspapers - as you'd been fully aware of from having wearing your previous hats - do on a regular basis, "We were wrong," and indeed there was one commercial free-to-air station who provided evidence to us this week who said it was their policy not to do it.

PROF FLINT: Do we have the name?

PROF SNAPE: Well, it's on the transcript as a matter of fact, and I think it was in the discussion with FACTS group, and there are various representatives of theirs, but more explicitly it was suggested or stated that if a person was wrongly identified as

being in a fight and named, and the question was would a correction - when it was established that it was the wrong person; my example was that in fact it was Stuart rather than me who was in the fight - would the channel carry a correction the following day, and the answer was, "No, our lawyers tell us never to make corrections."

PROF FLINT: I would suggest they change their lawyers. The board has consciously adopted a policy that we will expect stations to apologise and correct as soon as they become aware of having done something wrong, and we've applied that in a couple of cases.

PROF SNAPE: On air?

PROF FLINT: On air. We asked one broadcaster to correct on air in the same program - that is the evening news program - what we considered to be a serious error, and they did that, and we will be pursuing that with some vigour. One of the purposes of my speaking at the Sydney Institute the other evening with the theme, "Sorry' is the hardest word," was to emphasise that that will be our policy, and when we come to look at the unresolved complaints that come to us, and we find that the station hasn't done this, we will take a more serious view of the matter. Now, I was - - -

PROF SNAPE: How long would it take to come to you in this case?

PROF FLINT: Well, more than 60 days, and that's one thing that - - -

PROF SNAPE: That's a problem, is it not?

PROF FLINT: Yes. One thing that - I'm wondering about whether 60 days is too long.

MR SIMSON: The damage is done.

PROF FLINT: Yes.

PROF SNAPE: I've been accused of being in a brawl for at least 60 days when it was him, and my damage - and that mud will stick.

PROF FLINT: Yes. Even using the existing delay of 60 days, we think that in dealing with unresolved complaints, we can make it very clear to the broadcasters by example that we expect immediate corrections once they know something is wrong. I was explaining the present process. If we found that there was a pattern of actions reflected in complaints, we could I think legitimately then proceed to the next phase, and that is impose a condition which allows other triggers to come into place, eventually even leading to the question of the licence. We haven't found that, though we have threatened it, and we've threatened it in particular where we've found the complaints handling process to be deficient; for example where in a radio station

people are writing in not necessarily to the station, but they're writing direct to the announcer - the talkback announcer.

Now, there's some grey area where you have to draw a distinction between what is a complaint and what is just a letter to a talkback announcer, and we've managed in most cases where we've had this problem of getting in place through consultation a decent complaints handling process, but we're trying to make it clear to the stations - radio and television - that we expect immediate corrections where these become obvious. In the case that you've cited, the case where they've named the wrong person, then we would definitely expect them to do so, and you've encouraged us into being stronger on that point. I think it's a serious error, and it's completely unacceptable to allow a wrong like that to continue.

PROF SNAPE: I might say that while the names in that case were changed, it was put to us by a person in Brisbane that exactly that situation had occurred; that to which I am referring, with no satisfaction and essentially the response, "Take us to the courts."

PROF FLINT: We will follow that up because that is just wrong.

PROF SNAPE: That I must say is just an anecdote, and that - - -

PROF FLINT: And of course going to the courts is not an option for most people - the costs, the risks of a defamation case, are so great that only the very rich or those who are paid by the government to undertake defamation cases could do so.

PROF SNAPE: I wonder if I could just return to the influence just for a moment, and the point that you made of talkback radio as compared with television was an interesting one which we had been turning around a little bit in discussion in the hearings, and seeing that the degrees of control within the act are based upon degrees of influence, and if in fact - that that is the foundation stone of the various types of regulations and various forms of relation within the act, and if in fact - well, I suppose it's first of all influence on what, and the sort of example that you were giving was perhaps with political views. There are also people who have talked about influence in the nature of society; that people by observing television and the dramas and whatever is going on television or observing other forms of media, take that as the prevailing view of society, and that helps to form - it doesn't reflect society; it helps to form the nature of society.

Perceptions of people - now, some of these things may be lying within your codes, but not completely within your codes. For example if talkback radio was much more important, were to be much more important in formulating these types of views than free-to-air television, then the distinctions within the act in terms of regulation would be the wrong way round, and if you were getting research and in your research you were finding this, then presumably you would wish to draw it to the attention of the government.

PROF FLINT: What the act as I understand it is talking about there is cultural influence. What I was talking about was influence on specific policy, political influence. The act I'm sure is talking about cultural influence. This is confirmed I think in the research, for example when people are - when the broad mass of people are asked, "What is the medium which you find most believable?" strangely they say television and come down to newspapers at the end. When they rank different professions, in which they rank professors very highly, they rank journalists lowly, but the interesting thing is that television journalists ranked higher than print journalists, and I think this is because people typically feel that they are seeing something and therefore it is more believable; they have actually seen it.

I'm sure what the act is talking about is cultural influence. That is why for example there's this local content standard that - Australian content standard that you have for programs on television because television has this enormous cultural influence on society which is not on specific political issues of the day, but the way in which people relate to one another and to society, the structures that they have, the family, language and so on, dress; all of these have, one would expect, a greater influence than has, say for example, the newspaper today. I think that's where the act is directed, and that's why they say that the regulation of television should be more rigorous than that of say radio.

PROF SNAPE: In a sense that's shifted, hasn't it, I guess because the original regulation of radio, etcetera, was perhaps rather more directed at political influence, and if one goes back to the Menzies quotation which occurs in your submission for example, I think that it was really political perhaps more than cultural in those days.

MR TANNER: Perhaps if I could just comment on that as well. A couple of comments - one is that I think that certainly cultural influence - if you look at the kind of regulation contained in the act, I think cultural influence is pretty well paramount given the standards, but the control rules to me suggest that there's a wider - that in fact the whole range of forms of influence is perhaps contemplated. Just to go back to the beginning of your series of questions on this, professor, the ABA's submission tries to make the point quite strongly that the way the act works is that it assumes - you know, if you take that initial statement to be the touchstone for the act that levels of regulation are according to influence, the amount of regulation on free-to-air commercial television is considerably greater than that on any other form of broadcasting.

It then sort of tapers away; commercial radio, pay television and community radio seem to come in second, a very distant second. It's a little hard to pick them apart in terms of presumed influence. I just had a quick consultation, though the ABA actually monitors codes and does a lot of research into popular concerns about the media so that it can monitor the codes, we haven't to my knowledge undertaken research which goes to that question of whether one form of medium is more influence than another by any criteria. It's just not a question the ABA, I guess, as a regulator rather than as a policy agency has asked. So we actually don't have our own research to hand over to you on this.

MR SIMSON: Indeed, just on that point, it has occurred to us - and I don't put it any more strongly than that - that there may be a role for that to happen, and perhaps in the context of Prof Flint's earlier answer to the questions today on how public interest could be looked at in particular circumstances, certainly I do query the extent to which on an ongoing basis - not just - but perhaps diversity also in terms of news, information that this is monitored, is looked at, that there is on an ongoing basis an entity or a body or a group of people who a government or an authority or anybody can call on for advice on these matters, and I think that particularly in the context of if there were to be a move to some form of entity that we were discussing or that Prof Flint was discussing with us in answer to the first couple of questions today, that would be quite important perhaps. What do you think?

PROF FLINT: I would agree. I think that universities should be at the forefront of this sort of thing, and there are some centres that do some interesting research, but if you had a body which had that public interest role, it would need to be well informed. It would need to have the sort of research that you indicated. It seems to me that with television, it is such an intrusive medium. It goes straight into the house - free-to-air goes in, and there isn't the same degree of control that you have with other forms of the media, but it must obviously have a significant effect. I would find it very difficult to believe that it wasn't, from a cultural point of view, of a normal significance to Australia, but you can always take that too far. For example in England it was thought that with the introduction of the BBC, that it would eventually lead to the disappearance of regional access. It certainly didn't.

MR SIMSON: Prof Flint, in answer to a previous question a short time ago, you did refer to the local content standard with regard to drama. I think that's what you were referring to. You may not have mentioned drama, but there is a local content standard of course that relates to drama. We'd be interested in getting some perception on this because again we've had conflicting evidence or conflicting statements made to this inquiry this week as to for example the extent to which the content drama is important - sorry, the content quota for drama is important in ensuring that the TV networks, the TV stations commission and show drama, or putting it another way, the extent to which they do it anyway out of commercial necessity because people like watching it.

This is an important issue because the commercial free-to-air in particular have put very strongly to us this week that in a situation where they faced more competition - hypothetically a fourth commercial free-to-air for example - that the expenditure on areas such as local drama would suffer because they argue that the advertising pie is fairly fixed and it has to be divvied up four ways rather than three ways, and therefore they wouldn't have as much money to spend, and it's people who are at the coalface in looking at the content quota on drama and talking with all the players, we'd be interested in some thoughts on this particular subject if you wouldn't mind.

PROF FLINT: There was a time in this country before television when the cinema was the principal form of visual entertainment, and that was completely dominated mainly by American product. The American industry is dominant in the world. It's the second biggest export of the United States - cultural exports - after I think aircraft. It dominates the international export field by about three-quarters I think, and when those exports are made, they are exported at whatever price the local market will bear. For example in one Caribbean Island, the sort of programs for which we pay a few thousand here sell for I think \$US80 an hour. Some liken this to dumping, but whether it is or not is not a matter for me to debate, but the fact is that the price of the foreign product could always be below the actual cost of producing an Australian equivalent. This suggests - this has obviously indicated to the parliament that there would have to be requirements as to Australian content, and this is no doubt seen as part of the quid pro quo.

Here you have a limitation on the number of players, the spectrum isn't absolutely full, and part of the price of that in the view of the government and the parliament - it's not only the payment of licence fees, but also requirements as to local content, and the legislation mandates the ABA to develop a standard, and in our wisdom we've concluded that there shouldn't just be an overall quota - 55 per cent - that we should also direct the make-up of that quota because - not that we suspect that this would happen, but it could happen that you could have foreign drama - no Australian drama; foreign drama, and all the quiz programs and news and sport being Australian.

Now, we don't think that's desirable. We think that there should be a degree of drama. Australians should be seeing Australians, and Australian themes appearing on their television screens. Now, we know that these quite often rate very well, and there's an incentive for the broadcaster to buy these. There is a fear - and I'm sure this is the reason of the legislation; there is a fear that if one went to all American drama, the others might do it, too, and that then Australians would not be seeing Australian drama on television. You'd still have the same number of people watching television. They might have preferred to have watched Australian drama, but they can't. In the same way that within the lifetime of many of us when you went to the cinema, you never ever saw an Australian film. You might see the odd British film, the odd European film. You mainly saw American films, and culturally parliament has adopted a policy that there should be an obligation to have Australian drama on television so that Australians can actually see it, and there is fear that without that, there wouldn't be - apart from the ABC, there wouldn't be Australian drama on television.

PROF SNAPE: On that content point, you mention on pages 23 and 24, an explanatory memorandum to the act. I apologise for my ignorance, but whose explanatory memorandum is that?

PROF FLINT: That's the minister's when he would have introduced the legislation.

PROF SNAPE: So it's, as it were, the second reading speech.

PROF FLINT: Yes, and they table an explanatory memorandum with the speech.

PROF SNAPE: What is the status of that.

PROF FLINT: Mr Corker will no doubt correct me on this, but now under the rules of interpretation, courts are directed to the memorandum to explain anomalies, for example.

MR CORKER: In certain circumstances. Under the Acts Interpretation Act, it's an extrinsic material which can be used by the courts to assist in the interpretation of the act where there's an ambiguity.

PROF SNAPE: The particular point in that that I noted, just for clarification on it, was in the dot points on page 24. It says, "Facilitate the development of local production industry," whereas under the Australian content standard, it was the third dot point there, and that refers to a local production industry which sounded like industry assistance as such, and we've been trying to unpack this a little bit to see whether the promotion of Australian culture which has been the objective here is inextricably tied in a way which cannot be untied to the promotion of the industry itself; whether industry promotion and cultural promotion are locked together in a way that can't be unlocked.

PROF FLINT: You are quite right, professor. The act itself doesn't refer to that, but the memorandum does, and I think to an extent that there's a link which you can't avoid, if you're going to have a local content standard, then that must then mean that you are going to give assistance to the local industry. That to an extent has been changed by the High Court's decision in relation to New Zealand material because presumably there is some assistance also from the New Zealand industry, but in applying the provisions of the act, we have been guided by the provisions of the act. That is to say we have assumed considerations of facilitating or encouraging the local industry and look more to the results, and that has been our intention.

You did ask what status does the explanatory memorandum have. When I went to law school it would have had no status, but as Mr Corker has mentioned, in more recent years, the Acts Interpretation Act directs courts to look at these documents. I think - - -

PROF SNAPE: Yes, to look at when there was a conflict I thought you said.

MR CORKER: Only when there's an ambiguity or something is so manifestly - it's section 15AB of the Acts Interpretation Act.

PROF SNAPE: Okay.

PROF FLINT: I must assure you - - -

MR CORKER: "Manifestly absurd or unreasonable." So it's limited use in the sense that the law is the law as stated in the act, and the extrinsic material is only used in those circumstances.

MR TANNER: I think that the ABA has I think at times been quite keen to make clear that it is not an industry protection standard but is a standard which is promoting the objects of the Broadcasting Services Act, but there is a fundamental policy problem which I suppose does make the two issues a bit inextricable; the cultural goal and the assisting the local industry goal. If you look at the history of reviews of the standard and developments of standard, and even if you look at the judgment in the High Court case recently, you'll find that there is an initial attraction when people consider how to best pursue the cultural goal to what you might call look and feel tests, because the theory is that if you use a look and feel test, then that's not an industry protection; it's neutral to anybody to do it providing they are producing stuff which has the Australian look and feel.

What invariably happens is that there is or what has happened in the past is that there's the initial attraction to this notion. There is then the thinking through of it, and there is a coming to terms with the problem that defining an Australian look and feel is beyond the power of any group of government officials; that Australian culture is much too protean and far too much part of a very large world, and it's a very, very complex and diverse culture. Inevitably there's the intensity to come back to the idea that there be a safeguard of Australian look and feel, Australian relevance is to look at the participation of Australian in the creation and the technical inputs to the product.

So I think the ABA - and I think to an extent the ABT before it - have been keen to pursue a cultural objective and not an industry protection objective, but they have seen, I think each time it's come up, the option of a more look and feel kind of test as simply not one which is workable when you examine it. So they're driven back to saying, well, are Australians involved in the creation of this, because that surely is a test no-one can quibble with. I don't know if - - -

PROF SNAPE: Well, the quibble could be for example if Les Murray's poems were being recorded in England by a full production team in England, and then broadcast on a channel back here. That would not get much in terms of Australian culture, etcetera, whereas perhaps a spaghetti western made in Sydney with Australian actors cast and everything else would, whereas on a look and feel test, you might say that Les Murray's poems were reflecting Australian culture rather more than the spaghetti western.

MR TANNER: I guess that cuts the other way because Australians like to interpret Shakespeare. That's perhaps part of their heritage as well.

PROF SNAPE: Indeed. Italian opera is part of Australian culture which I think there was a recent Yes, Minister program which had some comment on that in the English context.

MR SIMSON: Prof Flint, may I just quickly turn to page 11 of your submission; licensing of services, and the last sentence of the second paragraph which says that:

Licence fees represent a turnover tax and bear no relation to the economic value.

For the use of the spectrum, Prof Snape has pointed out this week that the balance sheet value of the licence fees of the free-to-air amounts to some billions of dollars collectively. The turnover tax as you describe it or the licence fee represents I think a couple of hundred million dollars a year. I suppose I've got a simple question. Are you saying they're too high or too low?

PROF FLINT: We were stating a fact as we see it. Obviously they do bear no relation to economic value, though they do represent the gross receipts - they do represent a proportion of the gross receipts. So in a way I suppose they do reflect some aspects of value, but it's not as though we take a valuation of the asset and then say, "This is the tax you must pay on that." It's not as though it's a capital tax, but I think the theory behind them is that, well, you're getting spectrum which is public property or using that; you get five-year licences which unless you misbehave are renewed. They are in the nature of property rights like leases; therefore you should pay something to the crown for that.

MR SIMSON: Thank you.

PROF SNAPE: There have been some comments from aspiring community radios that they have been aspiring for a very long time - a decade I think or - it couldn't be a decade, could it?

PROF FLINT: No, it couldn't be a decade.

PROF SNAPE: No, it couldn't be a decade, but close to it - in at least one case in a submission that we had, and I was wondering why it is that we are getting this comment of the aspirations being unsatisfied for so long. It seemed to be a comment on the planning process rather than any fault on - at least there was no declared fault on their side.

PROF FLINT: The 1992 act which gave the planning process to the authority gave an enormous task to the authority because this is essentially the planning of the whole continent, and with a rather small team of people. If you put it in, say, the European context, you begin to realise the enormity of the task. The authority took a decision at that time that it ought to obviously prioritise which it has to do under the act, and prioritise on the basis that the least served areas ought to be done first. Perhaps in retrospect one might have said, "You should do the areas in greatest demand first," but anyway that was the plan taken, and that has gradually been done, and it is an enormous process.

Before you can complete the planning of a licensed - it is only after you've completed the planning of a licensed area that you can then proceed to grant licences. The process of doing a plan for an area means the engineers have to do all sorts of tests to see what is actually available over and above the existing licences and what has been reserved by the minister in relation to the national broadcasters and that means of course that there will always be a degree of overlap from the neighbouring licence areas because each one isn't really discrete and that means that you must publish drafts and listen to submissions on those drafts and eventually come to the final conclusion and then publish that and then set up the process of selling off the commercial licences and by a process of merit selection deciding which community licensees ought to get theirs, a long process, and doing it gradually across the whole country from the remote to the areas most in demand.

This means of course that the aspirant community broadcasters, which is something the ABA established itself which was then given legislative form - the aspirants tend to be congregated in the areas of greatest demand, the capital cities and the nearby areas such as the Gold Coast and the central coast. Those areas are the ones which are going to be last served. There is a process which allows any aspirant which reaches a minimum threshold criterion to be allowed to broadcast. That has been established by parliament. This means that you get a larger number of aspirants. Given the nature of community broadcasting, it is not unknown for community groups to have disagreements among themselves and to establish other but similar community groups so that you get an increasing proliferation of aspirant community broadcasters.

This must mean that with the channels we've set aside for them to broadcast on, that there are more and more people saying, "We want to have a go too." We have to treat them equally so we have them coming on and going off and coming on and going off for three months at a time which allows them some access to the existing broadcasting band. When the plans are published for the capital cities and the nearby areas such as the Gold Coast, then we will know how many stations will be available for new commercial ventures and how many will be available for community ventures. Then we can call for applications to provide permanent community licences to those that we think best fill the criteria but it obviously means that in that interim period, which is beyond our control, they must take their turns and they unfortunately have to be patient.

We've also found of course that our engineering teams have been required to also do the digital planning where there is a very tight timetable established by the parliament. The government has come to our aid by giving us a temporary once-off grant and now in the latest budget a grant over the period of the triennium which will allow us to complete the planning so that we can confirm the decision we took not that long ago to have two separate teams, one doing the analogue planning and doing that, trying to keep to a reasonable schedule on that; and the other doing the digital.

MR SIMSON: Is this TV and radio?

PROF FLINT: Just TV planning, because the radio hasn't - we're not yet planning that - the TV planning, where there is a tight schedule established by the parliament where they must be broadcasting on 1 January 2001.

PROF SNAPE: Is there a way of expediting - and no doubt you could have contemplated this - expediting this process? It seemed to me that, as you just described it, that the engineering aspect of it was something which put quite a lag into the whole ambit of trying to establish the engineering aspects of it. Are you able to subcontract the engineering aspects of it, so that it's not just your own team of engineers that is doing it?

PROF FLINT: That's being investigated. But it's not just the engineering process. It's the legal process, which requires community consultation. We don't just suddenly issue a plan. The engineers have to eventually come up with a draft, which then goes through further periods of consultation so that the process has to be transparent and something which the community is happy with. As to a separate process, there's not one that we can do by ourselves whereby you could grant a permanent community licence before the planning. There may be ways in which, with political assistance, that could be done.

MR TANNER: I wouldn't mind commenting too on that, I suppose from a historical perspective, as I worked at key stages in setting up the planning process and also managed it for a while during the middle, when it went through its worst periods of delay, and then got moving. I think we have been fairly frank about the planning process and its key shortcoming, which is the disappointment of the original scheme of the act in terms of speed, in our submission. We have referred to the Gilbert and Tobin report as well, which also looks into why it was taking so long. I think the government has taken one key step designed to speed the process up and that is it has given the ABA additional resources in the current budget. But as the chairman has said, given that the ABA is now planning digital, that will merely allow it to proceed to the end of analog planning, rather than delaying that for another couple of years while it goes over the hardest part of the digital hump.

But the point I want to make really is that the planning regime was designed in 1992 explicitly to free up the spectrum and to make the remaining parts of the radio frequency spectrum, free-to-air spectrum, available for analog services. There were expectations as to speed. Those expectations were encouraged by the departmental authors of the act and also by the new ABA. What we encountered as we moved through the process - and remember that we had to adhere closely to the meaning of the law because we were in an area of government which has traditionally been beset by litigation, as it affects the commercial interests of, for example, incumbents or potential competitors, depending on which way your decisions go. They have a tradition, up till 1992, of litigating extensively. The ABA has had careful regard to the law at every step. What has happened over the course of the last seven years is that view of the law and what is required is somewhat different and somewhat more demanding than what was originally envisaged has developed.

I think it's also fair to say the engineering task was underestimated too. The key reason for that is that the department bequeathed to the ABA a set of detailed channel plans for radio; unfortunately those plans were based on the existing national transporter, now NTL, what were National Transmission Authority sites. There has been enormous amounts of replanning, as radio stations haven't wanted to use those sites. So the engineering task certainly has been larger than expected as well.

I don't know if it's of interest to you but basically the original scheme had in mind that the ABA would come up with lists of channels in each area. It would do that publicly. The minister would then play a key role in determining the characteristics of the service, whether they were community or national, by using his power to reserve frequencies. The ABA would then decide what happened to the rest by auctioning them. Those that were not taken up for commercial radio could then be dropped through, under section 34, for other uses. I think the authors of the act envisaged that they would be dropped through to what is now the ACA to administer.

That was great. It was a really neat scheme. A number of amendments to the Broadcasting Services Bill were made between 1991 and 1992 which had the effect that the legislation has proved different and more complex. The absolutely key difference is that the ABA has turned out to be able to determine the category of service itself. The upshot of that is that no minister since that discovery has been at all interested in using reservations, except to reserve existing national services. Rather, the whole job of determining the mix of services in areas has been left to the ABA. The ABA has done that in a litigation climate. It has done that very thoroughly and very carefully. It has never been successfully litigated in one of its decisions.

Now I think it has realised one key part of 1992's legislation. It has made available the last remaining parts of the radio frequency spectrum for analog in a very spectrum efficient way and it's continuing to do that. But it has not done that inside the time-frame that was expected. That has caused huge problems for the key aspirant sectors. As I say, I think we're very frank about that in our own submission.

MR SIMSON: We've also had some people say to us, in submissions and verbally, that they have been concerned about the delays in the planning process on completing FM. Also, there are people who are keen to know what's happening on digital. This is radio.

MR TANNER: Yes. I mean, what can I say? Because of the delays and because of the speed at which digital is arriving, digital television has if you like overtaken the ending of analog planning on the road. Digital radio looks perhaps not quite so immanent but it's coming pretty soon. I don't think that's going to detract significantly from the value of an FM channel for a while yet though. I think FM radio is the unchallenged, mature, technology of choice for point to multipoint mobile audio entertainment and information. I wouldn't be setting my FM stations yet.

PROF FLINT: If you had a map of Australia and the areas which were finished and handed out were marked in red, most of the country would be covered. It's because of our decision, taken years ago, to come down to the capitals last, that there are areas still unresolved. Those are the areas where most people live. But that decision was taken - that one ought to look first at those which were least served - and I can see the arguments for that. Perhaps we should have started the other way round but that wasn't how we did it. They are in the process of conclusion now. We can only hand out the community licences once they are concluded - unless of course they've got a reservation and a direction to do otherwise, but that would raise other issues.

MR TANNER: I might just add one more issue to your consideration of the plight of the temporary community services. To some extent as a result of the delay but I think must more as a result of the fact that spectrum is a scarce commodity and there are areas of intense demand, the number of aspirants now outruns, in a number of areas, the number of channels that are ever likely to be made available. So the end of planning is going to see the permanent allocation of community stations in markets, and that will be a great relief for the winners but it may be the end of any access to the airwaves for others. That is part of the overall dilemma facing the aspirant community sector which we shouldn't forget.

In Melbourne we only have the option of I think four more high-powered FM frequencies. That has to satisfy all demand for commercial as well as community. In Sydney we have stumped up five, of which only three are of sufficiently high power to be full city services. The numbers in Brisbane are not so tight, and Adelaide. I believe Perth is fairly tight. I mean, there are a lot of problems with the lack of capacity left with the analog FM spectrum.

PROF SNAPE: Digital would solve that?

MR TANNER: It depends what you do with digital, doesn't it.

PROF SNAPE: Well, potentially digital would solve that, let's put it that way.

MR TANNER: Digital is a source of new capacity.

PROF SNAPE: Could I just briefly - because I know that we have been holding you for a very long time - just speak on pay television and the ownership of the channels that are within Foxtel and Optus. We have a submission that's in fact coming up later in the afternoon, today, which is making a point about what is perceived to be the problem of ownership of the channels, that in fact - in contrast, say, to the United States where the typical system with cable is that there is the required carriage, then the owner of the cable owns a lot of the channels, but then there are some other channels under the legislation, as I understand it, which the owner of the cable does not own, so that other people then have in a sense legislated - or the possibility for others is legislated to own those channels. I wonder if you could comment on that.

The question I suppose is fairly obvious - but as to whether you see a problem with the current situation in Australia, where all the channels are owned by the cable operators, or in Austar's case the other delivery system - whether this is perceived to be a problem for access and that another system might be preferable?

MR TANNER: I think the first thing is that the ABA's role in subscription television is actually confined to giving out content licences. Even the competition implications of that act we refer to the ACCC for advice on. So we're strictly a content regulator. There are very, very basic control rules, very, very basic suitability rules. Yes, we are conscious that in America they have concepts of dedicated community channels, which we don't have in our current law, and they are interesting ideas, particularly as you're looking to the future of concepts like community television post-analog spectrum.

I think the very big issue you're raising - I wonder if we're the right body to comment on. I think it's the ACCC which has been forced to grapple with the implications for competition in converging industries of pay television ownership and control. We have seen an awful lot of billions of dollars spent on a cable roll-out by two telecommunications companies, both of which have their own allied pay television companies. The issues there seem to be far larger than competition within the pay television industry. But whether the ABA is the body to advise you on those issues I'm not sure.

PROF FLINT: There may well be an existing answer in I think section 46 of the Trade Practices Act, providing for access where you have a single supplier, but I'm not sure. It is, as Mr Tanner says, something where when we get the application we refer it to the ACCC for their comment.

PROF SNAPE: Yes, I recognise the primary responsibility was there. I thought that you may have encountered some problems with it, on which you might wish to comment, but I take that as you said it.

MR TANNER: We do encounter problems. For example, during the problems that Galaxy encountered, we had people losing services, and naturally some members of the public and politicians turned to the broadcasting regulator, wanting to know why it is that the services had been lost. The issues there are - to the extent that government intervened - had been dealt with as part of the administration of the Trade Practices Act. There was little the ABA could do. It was sitting on the sidelines and it was really not able to do things that would affect the plight of people who lost Galaxy or who subsequently got it again from other franchisees.

PROF SNAPE: Good, thank you very much. You've been very patient and very helpful, and as a friend of the court you have been very friendly. So thank you very much for that and I'm sure that we're going to be back in touch with you on many points. Thank you for your offer of cooperation, a cooperation which has already been manifest in many ways, so thank you very much for that.

PROF FLINT: Thank you, chairman. I assure you that if the commission needs further information, either in a formal hearing or directly, the authority will provide it.

PROF SNAPE: Thank you very much. Now we're having Mr Budde but we'll adjourn for 10 or 15 minutes. It has been a fairly long session and I think we need a bit of leg stretching. So 10 or 15 minutes and we'll resume with Mr Budde.

PROF SNAPE: We now resume and we have with us Paul Budde Communication Pty Ltd. We have the most submissions from any organisation so far, that is we have four separate small submissions which are really part of a series I think. Mr Budde, we would ask you to identify yourself for the tape, and your position, and then if you would speak to your submissions please.

MR BUDDE: My name is Paul Budde. I'm the managing director of Paul Budde Communication. We are a telecommunications and broadcasting consultancy company. We operate from Bucketty in the Lower Hunter Valley. We publish a range of newsletters, reports, both printed and on the Web. It's basically market research that is our key sort of element. We have a network of 30 people around the world, and that gives me also an excellent opportunity for instance to check what's happening with things like digital television in other parts of the world, because I'm in direct contact basically with most of the key players in all the same level of me around the globe and that makes it possible for me to put things into perspective as well.

PROF SNAPE: Thank you very much, Mr Budde. Would you like to speak to the submissions now please?

MR BUDDE: Perhaps what I would like to do is to follow up on what you just mentioned - four separate submissions. I have been involved with the Productivity Commission for a number of years. I don't know for how long exactly but for a number of years and basically what it means is that if the Productivity Commission is involved in a particular sort of survey or research then we offer them our services but free of charge. At the same time, I then try to follow up interesting sort of things that are happening in relation to an inquiry that's taking place. So that's actually what's happening.

I came across - because television, as you know, it's happening as we speak - specifically in the United Kingdom and the US. So what I have done is follow up all my original submission - and that's basically my original submission, the first sort of thing that I sent in. The rest are basically add-ons, like here you see some of the evidence that I was trying to use to say, "Hey, this is going on with digital television, and here you see what's happening in the US, the UK etcetera." So please see that in that sort of a situation.

Now, my basic sort of argument is that we are on the brink of an enormous revolution in broadcasting and that will be totally different from the way we have been looking at broadcasting for the last 50 or 60 years. It basically means a democratisation process. Until very recently, because of a number of reasons, including spectrum, there has been a sort of a monopoly in the broadcasting industry. You know, monopoly - three, four, five players is still very much a monopoly. So in that sort of situation the new technology is going to make it possible for a large range of people - who could not afford to become involved in this market either because of the lack of money and otherwise the lack of facilities like spectrum broadcasting equipment and whatever. Now, that's going to change totally and individual people can actually participate in the whole broadcasting industry through the new technology, basically on the digital technology.

What digital technology basically does is it turns the television system into a computer system. It becomes a very large - call it local area network or wide area network, whatever you want to call it - but it becomes a huge computer network. Now, if you compare broadcasting with a big computer network then what you can see is that you have a lot of individual interaction possible in that whole situation. You've got a large range of applications. The applications in the local area network in the Productivity Commission is different from the applications used in an environment of a local community or a suburb or whatever. But all of them basically, from a technical point of view, will be computer sort of networks.

If you look at broadcasting as computer networks then on the entertainment side - what broadcasting is now very much used for - you will see that people will be able to interact far more with the entertainment that becomes available. Now, entertainment is very, very individual. What you laugh at, I might not laugh at. What you like, you don't like. At the moment we get three or four channels - exactly the same channels with exactly the same time news, with exactly the same soaps, with exactly the same movies. That of course is not what we as human beings want. We want choice. We want to have our own input in what we like to see as entertainment or education or news or whatever, at times that we want it. That is possible with digital television.

The key issue in digital television is absolutely nothing to do with HDTV. I have been involved with HDTV since 1986. I was a consultant to Philips when they arrived. Some of you might recall that. In 1986 they had an enormous show in the Opera House in Sydney, introducing HDTV in Australia. Already at that stage I mentioned this is a dead duck. Nobody wants pretty pictures. Nobody is interested in that. But 15 years later on we're still trying to believe the broadcasters that are saying, "We all love pretty pictures." Go to America, you've got the worse television quality-wise that you can see, and never ever in the history of television in America have they ever tried to improve the quality of the television.

So if the Americans are not going to do it, why on earth should we suddenly believe that digital television, from a pretty pictures point of view, is suddenly going to make it in Australia. It's absolutely not true. It will not happen. I'll bet my life on it. That's not going to happen. The first result - very, very clearly visible in the United States and in the UK, where it has been introduced - nobody is really interested in pretty pictures, everybody is interested in the interactive part. Interaction in broadcasting, that's the clue, that's where we want to go.

Now, what the Australian government in its infinite wisdom is doing - splitting technology, you are ruining the whole thing. You are ruining the whole possibility of this new technology, where the basic part of it is that interactive part, not the pretty picture part. So if you ruin that whole part by splitting the technology - and Australia has been extremely good in trying to do that, without any success whatsoever in the past - the Australian government - why suddenly do you think they should have it right now that by splitting the technology, having pretty pictures for the broadcasters and interactivity for some of the other players, is going to work.

The unique thing is, keep the whole altogether. Make sure that we can have this interactive entertainment, interactive education, interactive broadcasting, whatever you want to do over the network, but allow of course competition in it. It should be an absolute shame if the democratisation process that you see happening in this technology is stopped in Australia because a couple of the media barons just want to keep the whole thing for themselves. That would be really a shame. It would be a crime against the Australian people if that would happen. That's why I'm so passionate about the whole thing.

What we should look at - we've got the unique opportunity to bring interactive services to other people who own a PC. The people who own a PC, they have already the possibility to make choices. There's a large group of the population that don't have a PC and are not going to buy a PC in the next five or 10 years, or perhaps not in their life. There are people that are typically older than 50, 60 years - very few of them are going to use PCs in their homes.

That group of population can be used - we can use the digital television to actually also bring them into the superhighway and the information highway on their level, and that can be done through a television. I think it would be a shame if that sort of opportunity is missed, that we miss out on that opportunity as a country. Other countries around the world will do it. The industry gets a real boost out of it. Look at the UK industry. The whole industry is evolving around digital television. It's just fascinating to see that evolving. We are killing that all off because we don't want to have this interactivity and broadcasting mixed together in the same sort of way.

PROF SNAPE: Good, thank you very much. As you say, you have passion with it and we understand your feelings in that regard. What we have been testing with a few people - and you may have heard it referred to with the ABA, in our discussions with the ABA before - was the possibilities of being able to bring forward in time the time at which it is no longer necessary to broadcast analog as well as digital, that is so that there isn't a blockage, if you like, of people who are unable to receive the new signals but that by technology of chips or boxes to make it so that no-one is worse off, by everyone having a box or a chip which makes it possible for their analog set to receive a digital signal.

MR BUDDE: Yes.

PROF SNAPE: Have you investigated at all or thought about the possibilities in that regard? It would then enable a freeing up of the spectrum, which under current arrangements is going to be reserved for the analog transmissions until 2008.

MR BUDDE: Yes.

PROF SNAPE: Unless the problem is addressed in 2008 there's a possibility that it would be extended simply because a lot of people wouldn't be able to receive a new signal. Have you addressed that in your thinking at all?

MR BUDDE: It's a very, very tricky element in the whole thinking process, because on one side there's no reason to stop introduction of digital television now. It's available now. Technology is there. In October we will see the first interactive services based on the sort of scenario that I painted in the United Kingdom. Okay, it will be slow. The pictures might not be as pretty or whatever. It's a start, you know. We have to start somewhere. We can't just turn the whole thing into a million dollar sort of thing from start. We have to learn. So we need a process of learning and not only in the technology side but also in what sort of content.

I wouldn't have a clue what sort of content we are going to see on digital television. Nobody can predict that. Everybody has these sort of images in their head about education and shopping and that sort of stuff. But I'm pretty sure if we sit down in five years' time we would laugh at ourselves and say, "Why didn't we think of that, that that sort of application has happened?" So it's very difficult to predict what's going to happen over the next five, 10 years. It's already difficult to predict what's happening after next year for example. So that's the first sort of problem that we have.

If the government here is splitting the technology in broadcasting on one side and interaction on the other side then I don't believe that more than, let's say, 30, 40 per cent of the population by the year 2008 is interested in digital television. So at that stage you still have 60, 70, 80 per cent of the population who will still be on analog television. Do you want to switch them off? You'll get exactly the same story as with the mobile technology that you've got now and you've got all sorts of arguments and all sorts of bandaids you have to put in place to overcome that problem.

The reason why you have this problem with mobile, because there is not sufficient competition in mobile communication. If you do exactly the same in broadcasting, if there's not sufficient competition in broadcasting communication then for heaven's sake let's keep the analog network for the year 2025. If you want a genuine sort of approach to digital television and you link the two together and you've got digital television - and digital television as interaction and broadcasting together - then you've got an enormous great chance that people are going to change over voluntarily very, very quickly. By that time my estimate is that by the year 2003 and 2004, the majority of the people will be then on digital television.

So by 2003, 2004, you will have more than 60 per cent of the population on digital television if you let the forces of competition and you let the forces of creativity in people's minds to use the technology to develop truly interactive digital television. If you can establish that then more than 60 per cent of the population - - -

PROF SNAPE: But we would have to free up spectrum, wouldn't we, for all these innovative things that you're talking about?

MR BUDDE: Yes. I think on one side it will be a natural process. If you allow the competition going - and that's not the case as we speak in Australia, so that's one

problem we have so there won't be competition under the current sort of regime. But if you get competition in that sort of market then I'm pretty sure that by the year 2002 we're sitting around a table saying, "How can we solve this? There's an enormous demand for it. There is business to be made, people like it." If you just look at the fact that at this very moment people are spending between 70 and 80 dollars a month on telecommunications. In the year 2006, the same people are going to spend \$150 on telecommunications.

Telecommunications in the year 2006 includes digital television. That is communications in the year 2006. 20 per cent of the \$150 people will spend in the year 2006 will be traditional telecommunications. 80 per cent will be based on new applications, on Internet, on digital television, multimedia etcetera.

MR SIMSON: If I can interrupt for one second. Your point is they might be spending that money in 2006 but they won't be spending that money on digital television to watch, as you put it - your quotes, not mine - pretty pictures on a nice set because you obviously believe, to use your term, that's a dead duck - again your term, not mine.

MR BUDDE: Exactly.

MR SIMSON: They'll be spending that money on digital television to access other services, interactive services, new applications which have got nothing to do with a spanking new HDTV set. Is that a fair - - -

MR BUDDE: Absolutely correct.

MR SIMSON: The other point that we've been exploring - and Prof Snape touched on this a second ago - is that that's fine predicting that but there's got to be the spectrum. As presently planned, the existing free-to-air have got to have spectrum to simulcast both analog and digital until 2008. As we heard from the ABA this morning - and we know there will be some spectrum available for datacasting and these other interactive services. But as currently planned it's locked up, is it not?

MR BUDDE: That's correct. On one side that's true, and it would be really a pity if we do lock that up in that way but on the other side, basically what we're talking about, if you move away from digital television as looking at it in a traditional broadcasting sense, then digital television becomes a new access technology. So if you've got access technologies then we start looking at the copper cable, the telephone cable that comes in, the HDF network that Optus Vision and Telstra are using; the LMDS that AAPT is going to introduce.

MR SIMSON: But there are other broad band applications.

MR BUDDE: Yes, but what I'm saying is that what you see - if digital television, if you look at it - first of all if I can continue on that technical point of view. In my opinion there will be three and five choices in-house for the information highway, at least three to five. In businesses it will be between seven and 10. So there will be

different access technologies that can be used. The conversion that we have been talking about for 10 years, we can see it all around us. Look at the Internet, the conversion is happening. We can have television, radio on the Internet. It is only the start. The Internet didn't exist three, four years ago. Imagine what happens in the year 2006. We have full-blown radio and television over the Internet. So the distinction between traditional broadcasting and the new multimedia is totally gone.

So by the time that you and I say, "Okay, I want to look at movie XYZ tonight or an opera from Venice," or whatever, then I don't necessarily have to use a digital television network, I can use the - - -

MR SIMSON: Or the digital spectrum.

MR BUDDE: That's what I'm saying - - -

MR SIMSON: You could be using an Optus cable, whoever's cable.

MR BUDDE: Exactly, yes. So the broadcasters by monopolising the spectrum - continue to use the monopolising behaviour that they have done for the last 50 or 60 years, then they will price themselves totally out of the market. If you lock up that sort of technology - and there is a demand in the market - what do you think if AAPT is saying, "We can't use it," they will find something out themselves.

MR SIMSON: So they will find another way of accessing interactivity.

MR BUDDE: They'll find another way. If you and I want to pay for this opera in Venice or this sports match that happens in Brazil or whatever and the broadcasters are not going to deliver it, the other technology will be able to do it, so that will be used. It would be a real pity if you couldn't use the spectrum because the spectrum could be very efficient, very effective for certain applications. It has reached the superhighways as follows: if you've got three or five superhighways they're not duplicates. Some highways are excellent for video, other highways are better for education. So you make choices - some are expensive, some are cheap.

You've got tollways, you've got freeways, you've got all that sorts of stuff and it's up to us individuals to make a decision, do we want a very fast service or do we want it in full-blown HDTV. Whatever, we make the choice and we pay for it. We have access technologies that we can choose from. These access technologies, if one is not explored to the same sort of possibility as, for instance, could be done in the UK or in the US, then we will start looking at other access technologies.

MR SIMSON: But of course one effect, irrespective of how people might access these interactive services, whether they do it either using datacasting over the digital spectrum or over their PC via a cable network or whatever, one of the effects of the policy or the spectrum plan as it exists is that for the commercial free-to-air operators there is really not room, is there, for another fourth operator as the current roll-out of that spectrum is the current roll-out of digital as planned.

MR BUDDE: True, but if you look at new technologies - and I forgot the name but I can look it up and get it to you - in transmission that basically becomes available, they estimate - and by the way, Rupert Murdoch is one of the big investors in that - around 2001, 2002, that you can use the current spectrum and you split it up another 30, 40 or 50 times. So what you see happening, there's a hell of a lot happening in - you know, what we see as the limitations of spectrum technology now, will not be the limitations of spectrum technologies in five years' time.

Why I'm so hesitant in answering this question is that if the government doesn't get the policy right and doesn't have converging technology, converging policy and have these 15 different regulators in place - the ABA, the ACA, the ACCC or whatever - there's absolutely no cohesion in the government policy towards the multimedia, the sort of new world that we are going to. If there's absolutely no cohesion in the governments or the policy then I'm very reluctant to say to people who are not going to buy this pretty picture show stuff from 7, 9 and 10, to tell them, "Listen, we push it through your throat if you like it or not. By the year 2008 we switch it off." If the government has a cohesive policy in that respect and say, "Now listen, this is more than pretty pictures," then I fully agree we should try to get a changeover much, much earlier happening. It would be good for us as human beings, we can have more choice, we can have more confident applications in education, in health care, in community services.

We were talking about narrowcasters earlier. The amount of people that would like to use community service sort of based applications, we could fit a hell of a lot of them in digital television spectrum at a very low cost.

PROF SNAPE: Or into the existing analog television.

MR BUDDE: Exactly, by allowing that technology to happen.

PROF SNAPE: That's what we've been trying to explore here, is the opportunities and the possibilities by finding a way of facilitating an earlier release of that spectrum but without it making anyone worse off because that's obviously going to be the barrier for people - the elderly, the poor, the relatively low socioeconomic groups - who are unable to afford a whiz bang television set. But if they can receive a chip or a box which enables them to continue to receive what they're currently receiving but in digital form translated into their analog set then that would remove the blockage to the release of the spectrum which is being reserved for the continuation of the analog transmissions.

MR BUDDE: But I think if you look at the new developers in broadcasting - you look at pay television, for example, it's a blue collar sort of service. Blue collar people who so-called can't afford it in Australia are paying \$50 a month. We pay the highest amount of money for pay television around the world. I mentioned a year, two years ago, I said, "This is not going to happen. People are not going to \$50 for pay television. That has to go down to \$25 like the rest of the world is charging." People in the blue collar sort of area are willing to pay \$50 a month for pay television. These

people are ready to go onto digital television. These people like television as an access technology - - -

PROF SNAPE: They will like your pretty pictures?

MR BUDDE: No, they're not going for the pretty pictures, absolutely not. But they're not stupid people. They might be poor but they're not stupid. They like to participate in the information highway on their level. Their information highway level might be different from yours or mine or whatever but, you know, they still like the information highway, but the information highway for them might be more slanted towards entertainment than towards information. But who cares, it is still an information highway and you can still, by opening up the information highway, get away from the pretty pictures sort of stuff. You can have education, health care, documentary, all sort of stuff in a very interactive way aimed at that part of the population. Leave it to the marketeers and they will find out lots of applications for that group because that group is willing to pay money.

PROF SNAPE: Do you have data on the socioeconomic break-up of people who are subscribing to pay television? At the moment you alluded to it.

MR BUDDE: I don't know exactly how detailed we are. I've got something.

PROF SNAPE: Do you have data on that?

MR BUDDE: Yes, we've got some information on it but perhaps not as detailed in all the other classes. But we've got in any case some information.

PROF SNAPE: Is that data which can be made available?

MR BUDDE: Yes, of course.

PROF SNAPE: We may get in touch with you about that.

MR SIMSON: Mr Budde, earlier this week OzEmail predicted that a number of the new datacasters or some new datacasters may in fact even give away the set-top box or the chip or in whatever form, whatever piece of technology is used to convert the digital signal to an analog signal, so if the overwhelming population have got just analog sets, they continue to - they don't get blacked out. Could you comment on that, given this competitive marketplace that you see evolving, whether or not this issue of access to digital will be solved by the marketplace in a relatively inexpensive way without people as is currently predicted having to go out and spend 300, 250, 350 dollars on the set-top box that is being prescribed by various authorities.

MR BUDDE: Yes. My comment on that is as follows that one of the problems we see in the market is that the broadcasters are not really interested in us viewers, they're interested in the advertisers. That's where they make the money. If you look at the telecommunications companies and the Internet people, they don't rely on advertising, they will have to offer the service that people want, otherwise they don't use them.

That will also happen - the broadcasters have an enormous problem, not next year, not in the next two or three years but over time they will have an enormous problem that the advertisers don't like them any more because they're not delivering the products that we people want. There is a people power movement going on. Look at telecommunications as an example, the same will happen in broadcasting where people will say, "We don't take it any longer, Telstra. We don't take it any longer, Channel 7. This is what we want. If you don't give it to us we'll find other ways."

What you see happening is, as I mentioned, this process of democratisation in the whole media telecommunications converging industry. At the same time on the other side, the advertisers, the people who would like to use the whole converging sort of technology to make money out of it - there's absolutely nothing wrong with it - are going to look for new opportunities. It's not just having this commercial on the Channel 7 or 9 or 10, you know, that they make the money. That's what I call olde-worlde stuff. That's not how we people would like to use advertising information. We are looking for information that interests me as a person. The new technologies go to make that possible.

We can have individual profiles if you want it or not. I can block it as an individual. I can say, "I don't want anybody to have my profile, but I would love to have some people in my profile, but I get in the morning the news I want, that I get in the evening the evening the entertainment I want, and that some intelligence in the digital television system say, "Hey, Paul, do you know there is a movie on the Slovenian television and we can subtitle it for you. Do you want it?" and I will say, "Yes, great." So if I have that profile in it, then I get that sort of information. Now, once you've got that sort of situation going, then you can build what I call communities of interest. You build communities of interest around content products that you provide. When you've got communities of interest, you will have advertising people who are interested in you.

Now, these advertising people are going to assist you using that sort of information. That can be by providing a set-top box, that can be by providing another device or whatever. Now, the set-top box will be exactly the same as the car in the street now. Everybody can say, "Listen, the only thing that I need is four wheels, is an engine and is a steering wheel, and that's my car." Listen, if that would be true, we wouldn't have the millions of different sort of cars we've got now. Set-top boxes will be exactly the same. There will be set-top boxes that cost you \$50 to produce, and the BSKYBs of this world or the other advertisers of the world, they will say, "I'll buy them and you get them free of charge," but I want a Rolls Royce. Okay, I go to the shop and buy one for a thousand dollars, and I don't know what they're doing, but I buy that one myself.

So you will have the full range of set-top boxes from \$50 to a thousand dollars and perhaps more, and some of the \$50 stuff can be given away free of charge when I have my MasterCard or visa card or if I buy my Olympic tickets or whatever. You can package some content in it. You can package some advertising next to - if you look at the picture, the movie, there might be a buyer on the bottom, "Buy visa." If you say, "I get this box free of charge and I accept that," so be it, fantastic, and there

will be an enormous amount of creativity from advertisers who are now totally barred from creativity. The only thing what the advertisers can do is buy themselves an expensive slot on 7, 9 and 10. So it's no wonder that these companies - 7, 9 and 10 - would like to keep the status quo going for as long as possible, because you see they are not stupid. They know exactly the sort of things I'm talking about, and they would like the government and everybody else to stay on their side for as long as possible. They have been extremely successful for 50 years, so why wouldn't they be successful for the next 10 or 15 years.

MR SIMSON: So if you had to take a stab at it, would you predict that just the forces of the marketplace that you've just been alluding to would mean that relatively quickly - and you can put a timing on this for us - people will have at least a basic set-top box; something that will enable them to get a basic level of interactivity over their TV set.

MR BUDDE: It's happening at this very moment as we speak in the UK, BSKYB is looking into the whole thing and giving them free of charge. It's happening.

MR SIMSON: I heard about that.

MR BUDDE: It's not future talk, it's not blue sky sort of stuff. This is happening at this very moment. The only thing is in Australia we block the whole thing off because we are not allowing the interaction that the OzEmails and the BSKYB would like to make the money out of in the future. We don't allow that to happen in Australia by exploiting the technology.

MR SIMSON: Excuse me for interrupting, but that will happen at least in some limited form because the government under policy has said that there will be some spectrum at least available for datacasting.

MR BUDDE: True, but then we get another Internet version on the television basically. What I'm saying is that what we are missing out by doing that is the fantastic opportunities that you have to mix full-blown entertainment as we know it in broadcasting with full-blown interaction that is becoming available through datacasting, Internet technologies and whatever. We don't sort of allow that sort of in a natural way to happen by saying, you know, we give away - you know, in my opinion if the government would have liked to, you know, look after their media mates in a situation like they'd be doing now - what I'd like to do is say, okay, let's have open competition. We've got this new digital television. We want to do that. "Okay, guys, you are such poor people" - the Packers and the News of this world - "we really have to give you some extra money to upgrade your television system. Here you've got some money to do it."

That would have been a way if you want to look after your mates, do it in that way, but not by blocking the rest of the world out of this new development. So have the new development going, have competition in it, allow new people to participate, let creative minds flow, and at the same time if you want to look after your mates,

then give them some extra money to do it out of the taxpayer's pocket if you want to do it that way.

PROF SNAPE: That's a creative suggestion.

MR SIMSON: I think this is in your first submission. You say on page 2:

We estimate the value of the total new interactive multimedia market will be around 75 billion by the year 2006.

That's of course a global - - -

MR BUDDE: No. That's the market in Australia.

MR SIMSON: Are you seriously suggesting by 2006 - - -

MR BUDDE: Yes, sir.

MR SIMSON: Just very briefly, what do you define as the market there? What does that include?

MR BUDDE: What the market includes is that at the moment we basically have - call it three markets. We've got the telecommunications market that's worth around \$3 billion at the moment; we've got the broadcasting market in the broad sort of format, that's let's say around \$10 billion; and we've got some entertainment, games, that's now classified as outside these two industries. What you see happening is the converging is happening. If you look at telecommunications as I indicated before on these new access technologies of which digital television will be one, you can have voice running as well, because voice will be data, video will be data, and you'll have voice applications. You can have videoconferencing over digital television and what have you.

What you will see happening is what's now called the telecommunications element in it talking to each other, the calls, they will be free of charge. They won't be charged for that any more, but it will be packaged. You just don't get them for nothing. You get your information highway package; included in that at no extra cost will be what's now called telecommunications. So the telcos of this world are not stupid. They are not saying, "We're sitting there and biting our tongue and wait till that's going to happen," they are moving up into the multimedia side. They're developing content, they're developing all sorts of applications that we now call broadcasting because they have to make some money. If nobody is going to pay for telephone calls, what are they going to do?

So they are moving up the value chain and going into content what is now broadcasting. So these people are stimulating content, and they will stimulate the democratisation process; in other words have as many content providers as you can find, get them on your network, and ask the people, "Do you want to pay for it? If you pay for it," etcetera. Now, that sort of market, that converging market together

is growing from - if you now only look at telecommunications - \$30 million to a \$75 billion market where we are starting to use a hell of a lot of entertainment, education, news services, etcetera, in a totally different way, and we are going to spend as individual people, as I mentioned before, around \$150 mark per month on that sort of service, but once again it would be a total failure to not take into account the sort of enormous changes that are going on with the telecommunications industry where people, you know - look at Telstra on Friday. I think they dropped prices by 40 or 50 per cent in long distance - in international calls.

So they are not going to continue to discount, and you can quietly say, "Nothing is happening in broadcasting." Of course you know you are going into the broadcasting market, and that will be the combined market - will be the \$75 billion.

MR SIMSON: Is there any further information you can provide to us in a written form that fleshes out your estimate as to how the market's going to grow and the various components of that on any time-frame that you choose?

MR BUDDE: Yes.

MR SIMSON: Thank you very much.

PROF SNAPE: Good. Well, that's a very interesting presentation and challenging. I think we shall look at it very seriously, and if you would be so kind as to supply us with the other information about which we were speaking, we'd be grateful, and we thank you very much for your oral presentation and also for your submissions and look forward to more in the series.

MR BUDDE: Okay.

MR SIMSON: Thanks very much.

MR BUDDE: My pleasure.

PROF SNAPE: So we'll now adjourn for lunch, and we shall resume at 1.15 pm when we've got TVG Communications Pty Ltd. We'll now adjourn.

(Luncheon adjournment)

PROF SNAPE: We shall resume, and welcome to this after lunch session. We welcome TVG Communications Pty Ltd, and we have one representative, and I'll ask Mr Nehl if he would identify himself for the purpose of the transcript, and then speak to his submission.

MR NEHL: My name is Andy Nehl, I'm one of the directors of TVG Communications Pty Ltd which is a company established back in 1995 for the purposes of setting up and establishing a pay TV channel.

PROF SNAPE: Thank you, and if you'd like to speak to your submission.

MR NEHL: Basically my submission talked briefly about the experiences our company had in trying to establish a pay TV channel. That particular pay TV channel was one that was quite innovative based on a large amount of Australian content, a minimum of 65 per cent Australian content, and also as far as that content was concerned, I guess quite innovative in terms of utilising material that would be produced from independent film makers and small production companies and people that produced cultural product that basically had very little opportunity to get screened on the mainstream television services in Australia, be they commercial or the ABC or SBS.

I guess the regulatory environment in which particularly pay television was established in Australia we found was not one that was conducive to being able to start up a channel as an independent company, first of all because pay TV licences were restricted until 1 July 1997, and so you could still potentially establish a channel, but you had to do it with the cooperation and in partnership with one of the established licensees such as Foxtel, Optus Vision, Austar or Australis, and we basically had discussions with Foxtel and Optus and Austar about that, and while there was some interest from those carriers - particularly a lot of interest from one of the carriers - we didn't end up establishing a channel as far as they were concerned at the time.

We also spoke to a number of other companies as far as investment was concerned and in trying to I guess find people to invest in pay television in Australia, you basically had to approach strategic media players who know the business and understand the nature of the investment, and I guess some of the long-term nature of the investment and the fact that there would be losses for the first few years in pay television in Australia because of the audience side. Basically non-strategic players that don't really understand the industry and I guess venture capitalists who you might approach for other funding for investment for a start-up company weren't really applicable to us because I guess they were expecting a higher rate of return sooner than would be being delivered, and you know basically don't have that understanding of the industry.

So we approached most of the major media players in Australia, two of which had substantial I guess foreign investment components to their organisations, and found again broad interest in our proposal across the board, and very serious interest

in a proposal from two of the players, and we entered into some months of cooperative financial modelling with those particular players and again ultimately to this point we haven't established the channel as yet because as far as the investors were concerned given, I guess, the conditions available from the carriers of pay TV it still, from their point of view, wasn't worth taking the risk until the number of television households in Australia that are subscribers increases which it has been doing.

As I stated in the submission, where I think the previous Australian government made a mistake was by not separating content from distribution and this was the main focus of what I would be talking about here today is the need for some kind of separation between content and distribution. I suggested in that submission the ideal model, given the enormous amount of money required for infrastructure whether it's cable roll-out or satellite roll-out or MDS roll-out meant that basically it was going to be an enormous cost burden on whoever was operating pay TV and because it was structured that way rather than having - and particularly having a dual cable roll-out which just basically was far from being something that encouraged competition was something that we saw even at the time was a - you know, didn't make sense because it would be just putting extra cost burdens and increasing the time with which both carriers and/or channel providers could actually get a return on their investment because they would have so much extra to pay off.

The fact that that decision was made severely limited the number of channels that could start up because it was necessary then to initially give a monopoly on content, give exclusivity on content to the people that were establishing the infrastructure. So anybody wanting to start up content or channel provision in pay TV had to go through those carriers and the carriers have got a massive cost burden because of the dual infrastructure and it makes them far less likely to take risks on something that's new and innovative, even though taking the risk on something new and innovative may well have been financially beneficial for them which was what we argued because we felt our channel had a fantastic opportunity to tap into a market that wasn't being served. I guess, probably everybody who has got a new company thinks that's what their company is going to do. It's very hard for anybody to make any kind of value judgment, "That would have worked and would have been better for the company or not."

The carriers are in a position that they basically were less likely to be able to take risks. They were also in a monopoly position on pay TV licences until 1 July 1997 and then effectively, they are still in an exclusive circumstance at the moment because we, as a company starting to start up an alternative channel to what's there, basically we can't afford to roll out a separate distribution infrastructure, we can't afford to put up our own satellite, so we basically have to go through the existing carriers. Having, I guess, a circumstance where the carriers are major investors in content themselves, whether it's through investment in their own channels that they have started up in Australia or channels that they have got long-term licensing agreements from and content that they have got long-term licensing agreements on from overseas and you have a circumstance where it's much harder - because they are

the people that control the distribution, they are also the people who have major investments in content and it is actually the content which drives the industry. It is the content that consumers buy when they take out a pay television subscription, it is also the content which fulfils the cultural and social needs of the company.

When they have a monopoly on the distribution or those particular companies have exclusivity on the distribution and they're going to maintain that because of the economics of the distribution and they have control of the content, I guess by definition if they're looking after the interests of their shareholders, they aren't really that interested in fostering competition as far as content is concerned. So I guess we stated in our submission that we thought the ideal situation would have been to have the distribution infrastructure being run by one company and allow as many players as possible to fulfil or have a go at establishing channels and seeing if their channel succeeds, it succeeds; if their company goes broke, they go broke.

But it would open up the door to so many other players if we had one infrastructure distribution system. As I also say in the submission, we believe we're heading towards having one pay television infrastructure distribution system now because of the economics of the situation where Australis basically has folded. I guess most people in the industry when it started that we talked with, everybody was always of the opinion that one of the companies was either going to go broke or have to merge, and ultimately we might end up with two carriers or ultimately we would end up with one carrier, and I think effectively we probably will end up with one carrier, either - if not through mergers or through another company going broke, through content distribution deals between the two, and sharing of territories of distribution infrastructure and things of that nature.

So we're heading towards ending up in a situation of having the one ideal, one carrier distribution system that I talked about, but now far from being ideal, that distribution system is also a major investor in content, and controls the vast bulk of the content supply which isn't good for competition, isn't good for new companies starting up.

PROF SNAPE: Thank you very much for that, and we understand the situation. Going back a little when you were - the time that you were referring to in trying to negotiate an access to a channel, what was the risk for the owner of the cable or the - I can understand if you were going to be putting across content which they regarded as competing with their own content on another channel, but you said that there was a risk. What was the risk?

MR NEHL: I guess the risk varies, and again I don't know. Part of it, say, depends, and it's something that you'd have to ask Foxtel and Telstra about their relationship to each other, and I don't know - I'm just thinking about to what degree I should reveal the nature of what was said by executives of some companies that might have been commercial in confidence at the time or - - -

PROF SNAPE: I wonder if you can put it in a way which - you know, in some

conceptual way which would not breach any commercial in confidence, but as I look at it, you've got - to put it in its simplest, you've got a cable there, you've got some channels being used, you've got other channels not being used, you're not going to put over pornography or something that's going to land them into some sort of strife like that, I presume - not from the description that you give of your intended channel - and if it's not going to compete, that's a separate question, the competition, but if you can sort of just give us a feel, where's the risk?

MR NEHL: The risk comes from two areas. The risk comes from basically potentially diluting the number of - diluting their potential revenue from subscribers, but depending on the nature of the arrangement that you enter into for the supply of the channel, and if say you're arguing that - as we did - our channel should be included in the basic package of the carriers and we basically argued that our channel, unlike a lot of their other channels would actually be a real subscription driver, would give people a strong reason to subscribe, would be economically in their interest, we'd also conduct our own aggressive marketing campaign quite separately to their own expenditure on it. We viewed our channel as being a major subscription driver for them.

PROF SNAPE: Okay. That's a sort of commercial risk.

MR NEHL: Yes.

PROF SNAPE: And you may say, "Well, it was the nature of the contract which you were trying to get with them which they found unacceptable."

MR NEHL: Well, we discussed the nature of those contractual arrangements - what their offer would be and what our offer would be - but in a situation if you are going to be a channel sharing in a basic package, and until 1 July 1997 there was no advertising, so your revenue stream comes from subscriptions, and so if you are a channel negotiating going on board with a carrier, you want to get a certain amount per subscriber per month from the basic package. So on whatever amount of - you said they rated per subscriber per month, even if it's 2 cents per subscriber per month that you get for entering their basic package, then you're not - that's 2 cents that you're not getting so it's potentially - - -

MR SIMSON: 2 cents they're not getting.

MR NEHL: It's 2 cents they're not getting. So that's one reason why it's a potential.

PROF SNAPE: Well, that sounds just like a commercial decision that you wouldn't derive enough extra revenue to compensate for the diversion of the revenue.

MR NEHL: That's right. I guess as one particular, you know, carrier offered us, say, 10 to 15 cents per subscriber per month for taking our channel - and that was what was potentially on offer, and that was at the time what they were paying for potentially a channel that was imported from - where most of the content was

imported from the United States, and it's basically very cheap.

PROF SNAPE: That wasn't enough to interest you?

MR NEHL: That wasn't enough to interest us before advertising started. It was still potentially enough to interest us after advertising started, whereas at the time their own channels that might have been Australian produced channels that they had investment in, they'd be paying at a rate of around possibly 90 cents or a dollar per subscriber per month, and after advertising comes in, there's other different commercial considerations of whether they get a share of advertising on your channel and what share of advertising they might get. The other reason with - one reason that was mentioned to us in our discussions with Foxtel was at the time back in 1995 that Foxtel had to pay Telstra for each extra channel that went on that they took on board. So the internal relationships of Foxtel and Telstra as far as channel provision are, apart from that basically, since the cable infrastructure is there - presumably the actual real costs of adding on an extra channel are fairly minimal.

PROF SNAPE: Well, I understand that, but you still have to pay for the fixed costs of getting that cable and that channel there. So far I don't quite see where there is, if you like, an anticompetitive blockage rather than just a commercial decision that might have been taken in a fully competitive environment, if you understand.

MR NEHL: As far as the decision, say, made by the carriers, we don't have any criticism of the carriers as being anticompetitive in that instance. They were making commercial decisions on, you know, not diluting their revenue stream, and on I guess their assessment of whether our channel would be the potentially subscription driver and worth that assessment. What we see as being initially anticompetitive in that instance was the way in which the government had legislated and regulated to set up pay TV in the first place.

PROF SNAPE: No, I see that. But I mean, I'm still wondering whether in fact a government - if in fact the counter-factual had come into existence and that was that there was in fact a separate company or companies controlling the cables, to shorthand it, to call it the cables - and that they then negotiated with the content suppliers for a number of channels etcetera. May they not have similarly decided that your product wasn't attractive to them enough to give one of what will ultimately be a scarcity of channels?

MR NEHL: Quite possibly, but there's also the situation where the carrier is also a major investor in its own channel.

PROF SNAPE: I understand that and that's where we come to a potentially anticompetitive action, but I don't see that that was necessarily - I said potentially - I don't see that that was necessarily evidence that that is driving decisions at this stage.

MR SIMSON: Could I just interrupt because - I think just to support what Prof Snape has said. There are a couple of other issues I think relevant to this. The

first is, notwithstanding the fact that the carrier who's also involved in the content provision, as you've pointed out, can also be an investor and an owner of some of the content channels, there is the issue of whether the Australian pay TV market - cable market in this case, because there is Austar out there, which has another suite of channels, and Optus as well - but whether there's room for more than one substantive pay TV operator, particularly in the metropolitan area. Austar is carving out a market in regional Australia. That's point number 1.

Point number 2, from the perspective of the pay TV operators, is the extent to which they're concerned about adding more channels, further fragmenting their market, the extent to which they have made, rightly or wrongly, a business decision about an optimum number of channels, no matter who owns them, who invests in them. There's quite a bit of debate about this, as you know, as to cable operators in the US who are literally up to a hundred, even more channels, yet people only tend to use a few. The others are some difficulty. That's not in any way to detract from the point that you've made, which Prof Snape emphasised, which is the potential anticompetitive nature of the duality of ownership of the carriage and the content provision perhaps. But there are other business issues out here, in terms of size of Australian market and how many channels they want to have anyway, that could have made it difficult for you or could make it difficult for anyone else trying to get a channel.

MR NEHL: I basically agree. The size of the Australian market means, as we have said in our thing, there ideally should have just been one pay TV operator that was involved in distribution. In the United States - like, we went to the United States and Europe researching our channel in 1995, before setting it up. In the United States distribution is separate from content provision. You've got a company like Century that has a significant territory in the west coast and in LA and whatever. They aren't in the business - or majorly in the business - of producing channels. They run HBO and MTV and ESPN and all the other 75 or 100 channels that they run. We're not suggesting that the Australian carriers were anticompetitive in deciding not to take our channel on. They were making sound commercial decisions as they saw them at the time. We're not suggesting that.

I guess we're not concerned with the past and the fact that we haven't got our channel happening yet. We're much more concerned about the future and the competitive nature of the industry for the future. If, say, it was a situation like in the United States where a distributor like, say, Century in Los Angeles comes to deciding whether they're going to take on your channel or take a new channel from somebody else, I guess they are able to make that decision without the potential of having to make all those commercial considerations for their own channels that they have investment in.

MR SIMSON: And potentially you may even have double trouble because it's possible that to have a commercially viable channel you actually need to be carried by at least two of the three carriers in Australia, that is Foxtel and Optus, or Foxtel and Austar or some combination of that.

MR NEHL: Yes.

MR SIMSON: Of course, what you've said is that two of those are carriers - that is the cable ones - are carriers and content providers. So you've actually got to probably potentially crack two nuts to get your channel.

MR NEHL: All three of them - even Austar has some investments in content as well.

MR SIMSON: Of course.

MR NEHL: It doesn't have as much as Foxtel though.

MR SIMSON: You're quite correct. So you would argue that Austar is in fact a carrier too, because it's not by cable in this case but it is delivering the signal.

MR NEHL: Yes.

MR SIMSON: Thank you.

PROF SNAPE: Good. I think it's a very clear point that you've got there, for which we're very grateful.

MR NEHL: I guess another point I just wanted to make - the content versus distribution system for the future - because if you do take on board our argument that we effectively are moving towards having what is one carrier in the future, whether all the companies end up merging or whether they end up carrying similar channels through arrangements where basically Austar mostly carries material that is also on Foxtel, if new players are going to enter that market and start up a new channel it's a similar situation to new players entering the telephony market or the Internet ISP market and their relationship with Telstra, where you've got them being concerned about anticompetitive pricing or unfair pricing from Telstra in its own interest. So for the future, if we do move into this one carrier environment or an effective one carrier environment, the new players that want to enter the game - we argue we need to see some separation of content and distribution, and then some regulation to ensure that new content providers are going to be treated on the same basis as content providers in which carriers have an investment.

Part of the distribution infrastructure also relates to the billing of pay TV subscribers. You've got to basically use the carrier and the billing system that's involved with the carrier, so you've got to basically make sure that you have the same kind of billing system, the same kind of billing rates being provided to your channel as another channel. That isn't to say that some channels that are higher rating channels negotiate possibly better deals with the carriers in relation to some aspect of circumstance, but there needs to be a minimum level at which any new player enters the market - that that distribution happens on an equivalent fair basis as the ones in

which the carriers have investment.

There's an interesting comparison, say, to the electricity industry, which has recently been split up and corporatised in New South Wales - not yet privatised - where basically the decision was made that electricity producers would be different from electricity distributors, because that was seen as being a key to being competitive there. Basically if we are going to achieve some of the cultural ends of having a diversity of content and new and innovative content, new players being able to emerge in Australia, we need to separate or have at least some - it's hard to separate once, I guess, the current carriers and distributors already have such a major investment in content. It would be hard politically and economically to separate that totally. But we need to, we suggest, allow for some proportion of content to be guaranteed to be separate from distribution as far as regulation is concerned, which will also contribute to a diversity of media ownership, which is I guess generally seen as being a worthwhile thing for a whole range of cultural and social and political and economic reasons.

PROF SNAPE: You speak a little bit about Australian content. Have you given any thought to a system where there could be perhaps an overall Australian content requirement, however specified, across a distribution system such as the Foxtel cable - that it could in fact be transferable between channels so that you may say, "Total of 5 per cent of ours," or whatever the criterion is, but in fact you could have trading across channels?

MR NEHL: We think that's basically a good idea and we're in favour of that idea, because obviously I guess quite a lot of the channels that are broadcast - the content comes from overseas. As far as giving consumers a diversity of choice, when most of an Australian content is expensive to produce, I think consumers would like access to a lot of that overseas produced material but they would also like access to more Australian produced material. Particularly in our self-interested case - because we're a high Australian content channel with a minimum of 65 per cent - that would have encouraged carriers to take us on board because we would be dramatically helping them meet their Australian content requirement.

PROF SNAPE: Indeed, they could have paid you to do it. I mean, if they had a requirement of 10 per cent of whatever, which they didn't wish to supply for one reason or another, they could in fact pay you to do their 10 per cent.

MR NEHL: Well, you know, that would be a fabulous situation. We weren't interested in being - we see our proposed channel as being a very economically viable channel on its own without needing that but - - -

PROF SNAPE: But of course Australian content, as is being told to us by so many people particularly in the drama area, is more expensive than the cost for equivalent quality of importing another and so if you had tradeable quotas, as they would be with you being paid to pick someone else's up, then that would be a good thing.

MR NEHL: Far more expensive to produce if you're, you know, talking of - instead of paying 400 to 500 thousand dollars an hour for an Australian-produced drama and the rights to run it on air for a couple of years compared to, say, pay \$1500 instead of 4 to 5 hundred thousand dollars for an overseas-produced drama that's already paid back its production costs in its country of origin, you get that scale of economic cost of Australian produced material. It's just so obvious, but I guess our approach was actually - we were going to produce Australian content at a very low cost. Part of the concept of our channel was also being a low-budget channel, but I think we're definitely - and I guess suggest in our submission that a 10 per cent overall Australian content provision be introduced for - - -

PROF SNAPE: Where you use the word "amortise", you mean really it could be - - -

MR NEHL: Transferable.

PROF SNAPE: - - - transferable.

MR NEHL: Yes.

PROF SNAPE: Well, thanks very much for that.

MR NEHL: Thanks very much.

PROF SNAPE: That's very, very helpful, Mr Nehl, and we now look like we've got a slight pause while - our next participant is running a few minutes late, and so we'll pause until she arrives. Thank you very much.

PROF SNAPE: We shall now resume, and we welcome Prof Marie Bashir, and she has given us a short submission and is going to speak to it, and I think add some extra, and so, Prof Bashir, if you would identify yourself for the transcript, and then speak to your submission, we'd be grateful. Thank you.

PROF BASHIR: Certainly. My name is Marie Roslyn Bashir. I live in Mossman, Sydney, and I'm clinical professor of psychiatry in the department of psychological medicine, faculty of medicine, University of Sydney, and area director of Mental Health Services for the central Sydney area. Thank you.

PROF SNAPE: Thank you for that, and if you'd now speak to your submission, we'd be grateful.

PROF BASHIR: First I would like to express my appreciation at the opportunity to raise some issues which I believe are relevant to one of the commission's enunciated policy guidelines which refers to having over-arching concern for the wellbeing of the community as a whole rather than just the interests of any particular industry or group, and as director of Mental Health Services for the central Sydney area, an area which extends from the city to Homebush Bay, and as clinical professor of psychiatry as I outlined earlier, and a child and adolescent psychiatrist of many years' standing responsible for the establishment and service provision of many programs for vulnerable young people, I would like to present some concerns which are shared by many professional colleagues in diverse disciplines involved in the development and wellbeing of Australians, particularly the young.

The prospect of further deregulation of media ownership and the opening of the field to foreign participants, particularly in regard to implications for television and its impact on children and young people is of considerable concern. Despite the episodic critics of the present system who attempt to persuade decision-makers towards deregulation, arguably to serve their own ends, the current system has served the Australian people well. Whilst in no sense imposing a climate I believe of censorship, the current model has allowed the development of an attitude of open inquiry of social justice and responsibility, and an accurate awareness of Australia and of the wider world, and this perception has been referred to many, many times in envious terms by prestigious colleagues from North America and Europe, and I'm referring particularly to people working with children and adolescents in the great centres of the northern hemisphere.

This is a positive model despite the presence of some content, mainly on commercial media, the like of which has been shown in a number of prestigious studies to exacerbate dangerous behaviour and social problems in vulnerable individuals. Abandonment of the cross-media ownership laws together with the unrestricted entry of foreign players, particularly the large media industrial conglomerates, is very likely I believe to impose on Australian audiences an escalation in such material with risk of deleterious consequences. These "consequences" have been preoccupying eminent researchers in the United States of America for several years, and before we are persuaded to abandon the current safeguards in the name of

enhanced economic competitiveness, consideration of recent published studies is appropriate.

In the October 1998 Journal of the American Academy of Child and Adolescent Psychiatry, Singer et al, social scientists, have written on viewing preferences, symptoms of psychological trauma, and violent behaviours amongst children who watch television. They refer to a recent national television violence study which analysed the amount nature and content of televised violence in the American context for the years 1994 through 1995. Some of the relevant findings include these facts: (1) the majority of television programs there contain violence - some violence. Perpetrators go unpunished in 73 per cent of all violence scenes, and violence is rewarded almost as often as it is punished. Thirdly, 47 per cent of all violent interactions show no harm to the victims, and only 16 per cent of all programs depict long-term negative consequences of violent behaviour.

One in four violent interactions on television involve the use of hand gun - this is the US of course - only 4 per cent of all programs espouse an anti-violence scene. Public broadcasting channels present violent interactions least often - 11 per cent of the programs - while premium cable channels present violent programs 85 per cent of the time. Movies are more likely than other types of programs to depict violence in life-like settings, 85 per cent, and to include blood and gore, 28 per cent. Only 13 per cent of reality-based programs depicting violence present alternatives to violence.

The professor of communications at Boston University, Carol Rivers, suggests that teenagers in the inner city community are especially vulnerable to the media's glorification of force. I quote directly from the Singer paper which refers to the American Psychological Association report Violence and Youth: Psychology's Response, Washington DC. I quote:

There is no doubt the viewing of televised violence increases the likelihood that aggressive attitudes and behaviours will subsequently be adopted by the child viewer. Scientific and academic support for these and related conclusions have come from the American Academy of Paediatrics, the American Medical Association, the National Institute of Mental Health, the National Commission on the Causes and Prevention of Violence, the US Public Health Association, the National Parent/Teacher Association, the US Attorney-General's Task Force on Family Violence, and the National Education Association.

From the respected film critic, Michael Mevdev, in his book Hollywood versus America (Harper Perennial 1992) comes a chilling description of his perception of the contemporary relationship between the American entertainment industry and its recipients, and I won't sort of draw the connection between media, films and other forms of entertainment now connecting up with one another in our society. He says:

As a nation, we no longer believe that popular culture enriches our lives. Instead tens of millions of Americans now see the entertainment industry as an

all-powerful enemy; an alien force that assaults our most cherished values and corrupts our children. The Dream Factory has become the poison factory.

Of course this expression of deep disillusionment was voiced long before the tragedies of Columbine High and other recent school shooting. It is noteworthy that adult viewers are also affected according to a University of Washington study by Dr Brandon Centerwell. He asserted in the Journal of the American Medical Association that prolonged exposure to violent TV programs in the US produced 10,000 extra murders every year. Mevdev comments:

In a stunning display of corporate arrogance, the major entertainment conglomerates disregard the conclusions of all the leading researchers and continue to insist that their work has no harmful impact on society.

Already in the Australian context, concerns are being expressed regarding the increasing vulnerability of our youth with behavioural problems such as conduct disorder, and emotional problems such as depression affecting as many as one in five. Violence against self - that is suicide and drug use - particularly amongst young Australian men is amongst the highest in the world. It may be argued that deregulation and the opening of markets will bring economic riches to some, the few, but the cost to the wider community may be incalculable. It does well to recall the words of an 18th century English statesman Edmund Burke who noted that, "The greater the power, the more dangerous the abuse."

Recently I was invited to participate as a delegate at the New South Wales drug summit whose procedures provided a rare opportunity for the community at large to become more familiar with this widespread and destructive problem. Very moving were the accounts of various users regarding their addiction, and the lives of disadvantage and degradation which in many cases preceded the habit, but in almost all are inevitable consequences. We should note the statistics of the rising death rate, not only in the young, disaffiliated, disadvantaged, poor, but also in the educated and well-employed and ostensibly trouble-free young adults whose experimentation with mood-altering substances has been repeatedly modelled as glamorous, sophisticated and indicative of success in many media portrayals.

Perhaps I am presenting too pessimistic a perception of possible consequences, but activities to date of our local organisations who seek further deregulation in order to expand their territories give little cause for confidence in altruism. Seemingly healthy competitiveness is swept aside as coalitions swarm to dictate with little if any consultation with consumers on what they should consume. A recent example of this was reputedly presented to this commission by the commercial networks regarding Australian content, and their request for self-regulation of this because they confidently "know what the viewers want". Whilst the prime focus of this inquiry is on issues of media, we observe that the profits and power generated in part at least from these mega sources can flow on to diverse fields which may impact significantly on seemingly unrelated but critical areas such as the natural environment.

For example the Perisher Blue ski resort has announced that it is to build accommodation for 1300 people in the Kosciusko National Park despite the objections of the National Parks Association and other conservation groups. Some international commentators - for Dr Nawal El Saadawi on the BBC recently - asserted that the large media industrial conglomerates seek to unite the world into one market requiring a standardised unified world culture where the essence is the same even if the form varies slightly from place to place. The risk then lies in the creation of an apathetic an apolitical population which is inimical to enhancing our unique and evolving Australian identity and for supporting our cultural diversity.

The media of our time has an astounding capacity for concentration, centralisation and control as a result of scientific and technological advances. It now has vast outreach to all parts of the globe. This also means that wealth, the means of production of trade, as well as political power can be concentrated and centralised in the hands of the few whose accountability is negligible. The decision to present these concerns to the commission was made with difficulty, and only after considerable reflection on the issues of the state, and my recollection of another message attributed to Edmund Burke, "It is necessary only for the good man to do nothing for evil to triumph."

I would like to emphasise that this presentation is not a request for any greater control than exists at present; nor to prescribe a formula implying that the groups to whom I relate have the answers, meaning psychiatry, mental health workers, physicians and paediatricians. Rather it is to emphasise the need to examine carefully the dividends beyond the mere financial and economic in the short term which may appear to result from deregulation, but rather to guard and to preserve the valuable framework upon which we may continue to build in the interests of our society, particularly our young people.

PROF SNAPE: Thank you very much, Prof Bashir. You had me worried about Edmund Burke there for a couple of times because you may also recall the statement he made about the French Revolution and his reflections upon the French Revolution, and his lament that the age of sophists and economists was now upon us.

PROF BASHIR: Exactly.

PROF SNAPE: So I got in first on that one. Thank you very much for that. There are many aspects of competition and regulation which we are addressing and required to address in the terms of reference, and a heavy emphasis in the terms of reference is not only upon the cultural and social as well as the economic aspects of what we were asked to look at, but also there's a very heavy emphasis upon diversity, and much of what you are saying envisaged a world where there was a greater concentration and perhaps less diversity - at least in ownership I think that you are talking about - but apart from the cross-media and foreign investment aspects to which you are alluding, we are also concerned about or addressing the questions of for example the number of commercial channels that might or at least the regulatory structures which might enable more commercial channels to come for example - - -

PROF BASHIR: Indeed.

PROF SNAPE: - - - in which one might expect that there might be, if that were to happen, greater diversity in sources of at least commercial television. Would you see that as making the situation that you're talking about - and you quoted a lot of US references in terms of violence and their effects, etcetera etcetera, and you associated that in coming to Australia with greater concentration of ownership, would you then think that if there was greater diversity of ownership or greater diversity of the number of commercial channels, then that would be better from your point of view in terms of the type of adverse influence that you were talking about because you were associating those adverse influences with greater concentration of ownership into global enterprises.

PROF BASHIR: That's right.

PROF SNAPE: Does the negative hold; that if you are going to be going to greater diversity in a number of channels that there will be fewer harmful influences of the sort that you were describing?

PROF BASHIR: I think that entirely depends on what regulations exist for content. I mean, there's in many respects great diversity and greater choice in the American setting, but down those channels are coming material which has been described by Mevdev and others as toxic to that society, and there are many aspects of that society apart from the economic - quite apart from economic which people from within would say is a disintegrating society. When you talk about diversity, are you talking about the range of the smorgasbord being offered in terms of entertainment or viewing - - -

PROF SNAPE: It has many dimensions I think in terms of our terms of reference which speak about, for example, plurality of views; in other words, diversity of sources of information, diversity of ownership, diversity of programming. It has many dimensions I think which are embraced one way or another by the terms of reference or by what the terms of reference refer to. I was just picking up one aspect because you were warning against the concentration of ownership and of foreign ownership, and you were linking that to - you didn't use the word, but I shall - globalisation because I think that's what was implicit there.

PROF BASHIR: Yes.

PROF SNAPE: So I'm trying to say now does this mean that if one sets up frameworks for more diverse ownership and more diverse control and that, that in fact that has beneficial effects?

PROF BASHIR: It may do. I mean, my concern as expressed is that the larger and more powerful the giant, the greater the risk of abuse. That's not levelling that at any one or several groups, but I think this is sadly a logical consequence.

MR SIMSON: Professor, reflecting very much on the comments you were making about children's violence and stereotypes and so on that clearly you see as very harmful, the follow-on from that that - that's clearly something that concerns you at the moment on television.

PROF BASHIR: It has for some time, and all of my colleagues.

MR SIMSON: So let's just look at where we are at the moment. In your view is the existing self-regulatory regime - let's talk Australian television because that's our brief. Is it not working? Is it not being properly enforced? Before we get to the issue of changes to further regulation with other players and in terms of where we sit at the moment with the existing players, does something more need to be done to tighten up on that in your view?

PROF BASHIR: No. I really think that at the moment, the structures that exist would appear to me to be adequate. A lot needs to be done in terms of addressing problems in our society, and these actually are beginning to be picked up right across the nation. I don't want to bore you and go into details that are tangential, but there's a project now being funded in New South Wales called Families First where you've got a vulnerable, a disintegrating family or a family in crisis, the supports are sent in including resources of various descriptions before things get to the stage where the young people may be drifting into crime or violence or whatever.

What I'm attempting to state, and perhaps didn't adequately, is that if we go further down the pathway of deregulation and open the doors to all-comers, and also reinforce the ever-expanding nature of the ones we've got, it's going to be much more difficult to dictate or to reduce content that is going to have an adverse effect.

MR SIMSON: That's only though if the regulators don't continue to do their job. In answer to my previous question you said that you don't wish the current regulations to be tightened or the system to be changed. So you'd only have a problem, would you not, if - to use your example in your letter to us - there was a change in cross-media and Mr Packer or Mr Murdoch got something more. That would only be a problem if the regulators dropped the ball, wouldn't it, and if the existing codes and so on didn't work.

PROF BASHIR: There are ways of manoeuvring the regulators through.

MR SIMSON: What do you mean by that?

PROF BASHIR: I mean there are ways of having laws changed. It depends on the skilled use of power because of the power of the media on what it can deliver.

PROF SNAPE: That brings us, I think, to a concept which is fairly fundamental to the general set of regulations which we have under the Broadcasting Services Act, and that is degrees of influence.

PROF BASHIR: Yes.

PROF SNAPE: Do you know of studies which would be useful to us or can you tell us about studies of influence and the measurement of it of various types of media on people in different dimensions? One dimension is the underlying perception of their role in society, the perception of other people. There is also, of course, influence into particular political or other social questions. Do you have studies to which you could - - -

PROF BASHIR: Not off the top of my head, but I could - - -

PROF SNAPE: To which you could refer the staff perhaps or refer us in subsequent correspondence - - -

PROF BASHIR: I'll certainly seek that out, Prof Snape.

PROF SNAPE: Yes, because that's one of the things that we're trying to grapple with and we're not getting very - well, we haven't got very far down the - it's early days in our inquiry yet, but we haven't got very far down that track, and if you could assist us, particularly studies which are in fact concerned with measurements and empirical studies rather than if you like opinion pieces.

PROF BASHIR: Yes. I'm just jotting this down.

PROF SNAPE: That would be very helpful to us if you could, and I note in your area - I'm sure you're very concerned about the influence that comes and the ways in which it came, but it's an area in which it seems to me, I should say, rather that it seems to us - seems to me that there are a lot of opinions.

PROF BASHIR: Yes, that's true.

PROF SNAPE: But there is very, very little that I've seen that is solid empirical work.

PROF BASHIR: It would be important then for me, and then to pass on to you, to pursue further research that's being done in these quarters.

PROF SNAPE: And what we're concerned about - because we're not going to be in the business of setting standards. That's for parliament.

PROF BASHIR: No. I realise that.

PROF SNAPE: But what we're concerned about is regulatory structures with those dimensions. So if perhaps you could - the staff may be in touch with you on that, and could pursue that avenue, it would be very useful to us.

PROF BASHIR: Yes, indeed. I could ask some of my American colleagues about this perhaps, too.

PROF SNAPE: And if there are any in Australia, that would be even more useful.

PROF BASHIR: Even better, yes.

PROF SNAPE: Thank you very much. That's been very helpful, Prof Bashir. We'll have a short break perhaps for - they're not here yet? I think they're aiming at 3 o'clock, aren't they? We'll resume at 3 o'clock with Optus. We'll have a cup of tea or coffee.

PROF SNAPE: We'll resume our hearings, and we welcome Cable and Wireless Optus, and there are three people at the table, and we'd ask each of you, if you would, to identify yourselves and your positions in the company for the benefit of the transcript, please.

MR SUCKLING: My name is Adam Suckling. I am group manager of regulation at Cable and Wireless Optus.

MR MAY: My name is Christopher May, and I'm manager of business development for Optus Multimedia.

MR FEENEY: My name is David Feeney, and I'm an economic analyst with Optus.

PROF SNAPE: Thank you very much and, Mr Suckling, I think you're going to lead off.

MR SUCKLING: Sure. I should say also we will be joined by Christopher Keely who is from the pay TV division of Optus. Is that possible?

PROF SNAPE: It is very possible, but we'd like his voice on at this stage so that the transcript person can recognise, if he's - - -

MR SUCKLING: He's not here yet.

PROF SNAPE: In that case he can identify himself when he's coming.

MR SUCKLING: He's actually invisible; he'll say something soon. No, he's on his way; he's just delayed.

PROF SNAPE: Okay. Well, we'll attend to that when he comes.

MR SUCKLING: I suppose firstly I'd like to thank the commission for the opportunity to set out views, and as I understand these proceedings, I have about 10 minutes to make what is hopefully a sort of pithy and informative statement which summarises the essence of our submission, and then you will come to us and ask questions once I've finished.

PROF SNAPE: Well, that's pretty well the way it works out, but there aren't any time allocations, but rather than read your whole submission - and we have read it - it's best that you just speak to it, highlight it, and you take the time which you think is appropriate to do that.

MR SUCKLING: Okay. No problem. I guess my presentation then breaks into five parts which I'd like to cover in the next 10 minutes. One is convergence and regulation, the second is the allocation of spectrum, the third is the market power of free-to-air in what we call a second-best world, the fourth is anti-siphoning laws, and the fifth is interoperability and the importance of making sure that various technology that is used is interoperable. So turning to the first question of convergence and

regulation, I suppose the major point here that we would like to convey is that in our view, there is a need for some quite substantial changes to the regulatory and the legislative framework that governs telecommunications and communications and television, and the reason mainly for that is that there are - as everyone knows and as you read about every day in the paper - a huge amount of changes which are taking place in the IT telecommunications and communications industry, and in essence these industries are converging.

The convergence of those industries means that current approaches to the regulation of telecommunications and of communications leads to some anomalous results. For example, the cross-media rules that apply to newspapers and commercial radio do not apply to the incumbent in telecommunications, so that it would be possible for Telstra for example to buy a major newspaper or a commercial TV station. Our first recommendation, proposal, suggestion is that a thing that Productivity Commission should consider is to see if the - many of the competition regulations that are currently contained in the Broadcast Services Act would be moved to the Trade Practices Act, and that would bring consistency to things such as mergers and acquisitions, it would bring consistency to questions of access which is very important - and we've seen people at this inquiry talking about the question of access previously - and we think it would be possible to introduce some form of a public benefit test which captured those objectives of the Broadcasting Services Act as it currently is to protect things like diversity and polarity, all those sorts of things.

So that I suppose is our first big picture view which is outlined in our presentation. The second point I would like to make covers digital spectrum and how that is allocated. I suppose, as you'll have seen from our submission, there are sort of three major points that we would like to make in relation to digital spectrum. The first is that clearly the free-to-airers were gifted the seven megahertz bands in order to introduce high definition to them. In our view, they should use that spectrum for that purpose. If new developments such as single frequency networks, which is a technological advancement, which means that spectrum of this kind can be used more effectively - and this has been trialled in places like Germany and Brazil and Ireland as we comment on. If that sort of technology means that any of that spectrum is freed up, it rightly should be returned to some sort of pool and reallocated.

The second point in relation to spectrum I think that we make is that spectrum that is currently managed by the ABA should be reallocated - the responsibility for management of that should be reallocated to the ACA. The reason for this is that the ACA has - this sort of spectrum can be used for a whole gamut of things, many of them - things like mobile telephony and so on, and it would bring consistency if that spectrum was allocated and managed by the ACA. Finally I suppose there is the question of what would happen with the current analog spectrum as the free-to-airers move towards digitalisation, and I think that that should also be managed in a manner which advances competition. Turning now - and I'm aware I've only got 10 minutes, so I shall - - -

PROF SNAPE: No. That was your time, not mine.

MR SUCKLING: Maybe I've got 15 now. I turn now to our third major point which is how do you deal with the market power of free-to-air in an environment - in a sort of second-best environment where the free-to-air have been gifted spectrum which can technically potentially be used for the purposes other than merely broadcasting pay TV signals, and I suppose we think that if there isn't some consistent regulation across the entire communications sector, if there isn't some consistency and some rules to prevent the misuse of the spectrum which was gifted, if it is used for other purposes, it would lead to some quite pernicious distortions and undermine consumer welfare.

So to that end, what we propose in our paper - and this is consistent with things we have said publicly and Astra has said publicly on other occasions - is that there should be stringent and comprehensive prohibition on using digital spectrum for multichannelling, and equally there should be a moratorium on the ability of free-to-air to datacast because we live in this second-best world. If the spectrum is allocated and if people buy it and if there are competition rules which are reasonable, and people purchase the spectrum under those conditions, well, they should be able to do what they like with it, but as I say, we believe we are in a second-best world and you need to correct the distortion that may potentially have been created if this spectrum is used for purposes other than what it was granted for.

The fourth point I'd like to cover is in relation to the anti-syphoning rules. Clearly the anti-syphoning rules are put in place to protect certain programs that are of some sort of national significance or that all Australians would like to watch, you know, and there are things such as the Melbourne Cup I guess which would fall into that category, and certain football finals. However, the list is far broader than simply a few major events like that, and there are other people at this inquiry who have pointed out all of the very strange anomalies that you have in relation to that list, but it essentially means that there is a whole sleigh of programs which the public would want to see and they can't currently see it. So we would say that the anti-syphoning rules should be freed up, that a good number of those programs should be taken off those rules, that the free-to-air should be able to buy the rights to some big major events, but there should be dual rights to those events, and we should also be able to broadcast them.

The final point I suppose I'd like to make is in relation to the very important question of interoperability. Quite clearly - and my colleagues know a little bit more about this than me, but quite clearly the all-important thing in this business is to control - and I think it's the nirvana that many people are after - the gateway into the home, and if that gateway is set up on proprietary systems that one player controls, we think that would undermine competition, but it is very important to make sure that the standards for the set-top boxes and the transmission are open and interoperable so that anyone can provide a signal into that house. I know certainly in the telecommunications arena, there is always a lot of discussion about how far should

regulators intervene to ensure interoperability or to set technical standards and this sort of thing.

Certainly our experience has been that you can work in industry as we currently are doing to set these standards, but if that doesn't work, sometimes it is necessary for the government to step in and mandate a standard to make sure that there is a common interoperable standard. I think that in broad terms is all we'd like to say in this opening statement.

PROF SNAPE: Thank you very much, Mr Suckling. I hope it's not all that you would like to say, so we'll try you. That was very helpful as is your submission very helpful, too. I wonder if I might just try to make sure that I'm understanding what you're saying in terms of the public interest factors and the regulatory framework which you've got. It's on page 7 to 8, of my copy anyway, of your submission. As I understand it, what you're saying is that there should be a single set of rules across a single framework for all communications, that what one could call the economic dimensions of those rules in terms of competition get dealt with by the ACCC and the social and cultural aspects in terms of content get dealt with by the ABA.

MR SUCKLING: Yes.

PROF SNAPE: But with respect to the former, the economic rules, that you would countenance a diversity test which runs beyond the diversity tests or, if you like, the competition tests that are applied to other industries.

MR SUCKLING: Yes, and I suppose we think that's correct and we think that clearly the objectives of the Broadcasting Services Act are very clear and stated up-front and those objectives have underpinned public policy in this area for a long period of time. We think that having, let's say, things additional to a competition test is not totally inconsistent with some additional provisions that are already in the Trade Practices Act to deal with industry-specific characteristics. So in the telecommunications industry, for example, which I know better than broadcasting, there's the two provisions, the provision to deal with anti-competitive conduct under Part XIB and then there are the provisions to do with access under Part XIC. So you have hit it in a nutshell.

PROF SNAPE: Good. That's a good start - from my understanding, I meant. This would apply across all communications, so when you're specifying diversity rules that go beyond those which are applicable in other areas that it would then go to all forms of digital communication, all forms of communication?

MR SUCKLING: Yes, that is the proposal.

PROF SNAPE: Digital or all forms of communication?

MR SUCKLING: No, all forms of communication.

PROF SNAPE: Okay. Are there problems with defining the boundaries of that?

MR SUCKLING: Look, there may be problems in defining the boundaries and I suppose at an inquiry like this, we haven't delved - of course all of these things, when you come to draft them, you do find these problems - you know, what to do with this or that - but in broad terms, we think it would be a useful way to go forward. I suppose we think that it would bring the industry in line with what Hilmer recommended when he said you should have one industry regulator to look at all competition aspects and hence we have the super regulator, if you will, in the ACCC. In regard to absolute specifics, we sort of get into a kind of GST thing - you know, is it going to be included on the icing on the cake? I'm afraid we don't have that level of detail - but just as a general principle, I suppose, is what we're saying.

PROF SNAPE: Okay. When you then go to the ABA and you're looking at the cultural and social dimensions of it, would you differentiate between different forms of communication, as of course there is the differentiation at the moment in terms of the act according to so-called degree of influence. Would you retain differentiation in a similar manner and if so, on what basis?

MR SUCKLING: Sorry, can I just be clear on that? The way in which we saw it is that the ABA would be responsible for looking after content, but in terms of the competition test, an element of the competition test in the Trade Practices Act which would be administered by the ACCC would include this public interest test. In relation to that question, I don't know the specific - - -

PROF SNAPE: At the moment, there's greater regulation of content for free-to-air television than there is for, say, free-to-air radio and so on, and indeed, the different regulatory conditions in the act are all related or based upon a degree of influence and that's the cornerstone - - -

MR SUCKLING: Sure. Yes, I'm sorry, we would seek under our proposal to maintain some of those controls.

PROF SNAPE: Some of those controls, and differentiation according to the form of the communication.

MR SUCKLING: And differentiation, yes.

PROF SNAPE: So in that sense, we come back to differentiating between different forms of communication which in the one sense, you were trying to get around by getting the same framework for all and yet when we come down to the cultural and social aspects, you would again have a differentiation according to the type of media that you're talking about.

MR SUCKLING: Yes, that specific thing we haven't looked at in absolute detail, but I can see exactly what you're saying. But in terms of the mergers test and certainly the access test, that that would be things that should - - -

PROF SNAPE: That's the economic ones, yes.

MR SUCKLING: - - - be the neater ones, the public interest test doesn't as neatly fit into that paradigm, but I suppose we think it rightly sits there because it's a thing you should take into account when looking at these issues.

PROF SNAPE: You see the problem. On the one hand, we want homogeneity, a homogeneous system covering the whole lot, but when we start hitting this degree of influence in the cultural and social dimensions, then you're prepared then to countenance that in fact there would be differentiation which of course breaks that uniform mould.

MR SUCKLING: Yes.

PROF SNAPE: Okay.

MR SIMSON: I'm interested in your comment on page 5, 2.4, that you do consider the cross-media rules are the weak link in the development of a competitive communications market. A similar sentiment was expressed to us this week by PBL, for example, and some others who are seeking some amendment in this. Could you just indicate from the perspective of your own corporation, do you actually see the possibility of your business, over and above of course what you were already doing in cable with Optus Vision, also diversifying - or however you wish to describe this - your business interests, whereby you may take a media interest or become a broadcaster or a newspaper owner? In terms of the picture as to where Optus might end up, is this a possible part of the plan?

MR SUCKLING: I think we would say, I suppose, that in relation to this entire area, there is some regulatory uncertainty as to what's going to happen. There is regulatory uncertainty in the extent to which the free-to-air may be allowed to multichannel or datacast. There is uncertainty as to what may happen with spectrum in the future, digital spectrum.

MR SIMSON: Sure.

MR SUCKLING: I'm not aware of any plans now to do any of those things that you're saying, but in time, when there is more certainty in relation to those sorts of things, that may change. But I couldn't stand here now and say - - -

MR SIMSON: I wasn't attempting to pry. What I was trying to do was understand your motivation in wanting this change because looking at this superficially, unless you intended to become a player, it's a free kick for some of your competitors if this was changed. You made the point already that Telstra - you could say Optus, for that matter - could purchase, say, a newspaper, I think you said.

MR SUCKLING: We say Telstra could purchase a newspaper or TV station.

MR SIMSON: As you could.

MR SUCKLING: Yes.

MR SIMSON: I'm just wondering what's your motivation in wanting this change?

MR SUCKLING: I think the motivation is really as simple as this: when we sat back and looked at the regulatory regime and said, "Look, where really is this going in the long term? This is an inquiry which is looking to the future," it goes at least over eight to 10 years - potentially that sort of impact - how would you set up a framework that would offer some sort of consistency across industry sectors? So that is really the motivation. I can't point to any - - -

MR SIMSON: Okay. It's interesting, because PBL indicated to us earlier this week that on a 10-year view - certainly a longish view - of how the communication/broadcasting/media markets might look, that there would in fact be a fair amount of cross-ownership between telcos and media companies and broadcasters, as of course we're already starting to see in America on a large scale, and in the UK for that matter.

MR SUCKLING: I don't know if one of my colleagues would - I think it's quite clear that that is the way the industry is moving. This conversion is sort of everywhere. Optus's corporate aim is to offer a bundle of integrated communications packages to people, be that TV, be that Internet access, be that telephony. The precise strategic alliances that we come to in order to do that, I just have to say is a bit up in the air.

MR MAY: The thing I would add to that is when you look at this whole issue, you have content players and you have access providers and the thing that we don't want in Australia is someone controlling all of the content, because then it doesn't matter who the access providers are, the dominance in one area is not to anyone's benefit. Similarly, you don't want dominance of a single access provider because if you have that, then it doesn't matter how many content providers you have, you have got a non-level playing field. The question is access providers becoming content providers - well, again, you don't want dominant access providers also being dominant content providers.

PROF SNAPE: In fact you are both.

MR MAY: I don't think we're dominant in any field, and that's the issue. It's the dominance issue.

PROF SNAPE: You are, however, both a gateway or an access controller and a provider. Are you suggesting that it would be better if those two, across the industry, were divorced from each other?

MR MAY: No. The test is the dominance issue. The point we're making is about using trade practices as having the ability to look at things on a case-by-case basis.

MR SUCKLING: I think also, if I could say, there's the question of course which is the issue of the question and the test that's often applied in these sorts of things and this is the test that the ACCC will apply in seeking to declare or not declare services of significant market power. In relation to access, for example, I think it would be quite difficult - or at least we're trying to convince the commission of this - to mount a case that in relation to access, we are in any way dominant because in access terms over the PSDN, Telstra still has 99 per cent of the customers and we have 1 per cent of the customers or thereabouts directly connected to us. So in actual fact, yes, it's true we provide content to people over our HFC network, but in relation to controlling the gateway or access, it is really quite minimal compared to the incumbent, who as I say have 99 per cent of homes in Australia connected up.

MR SIMSON: But your HFC network is a significant network.

MR SUCKLING: That is correct.

MR SIMSON: And to be consistent with what you're saying, should not prospective datacasters be also allowed to have access over your HFC network for the purposes of reaching customers?

MR SUCKLING: Yes. I think the ACCC is in the process now of looking to see whether it should declare our HFC network in relation to pay TV analog and clearly the test that they need to establish is whether declaring something is in the long-term interests of end users which is to say whether it advances competition, whether it promotes any kind of activity and whether it encourages investment and infrastructure. Our argument in relation to that is that we think that sort of market is relatively competitive because there are a series of different access mechanisms.

PROF SNAPE: I'm sorry?

MR SUCKLING: Sorry, there are a series of different access mechanisms to the home. But to the extent that the access to the home needs to be regulated or there needs to be some sort of oversight into it, we would say you need to look at it in a framework which takes into account both the free-to-air networks and all of the control that they have through that, as well as our network, but you can't sort of look at it discretely. If in that context it was deemed that some sort of access was right and proper, of course we would abide by that.

MR SIMSON: Just so I'm clear as to what you're saying, you're saying it's only fair for your cable, your HFC cable into people's homes - which is currently being used for - I don't think you've launched a cable modem service yet, have you - - -

MR MAY: We have a trial on.

MR SIMSON: - - - which is currently only being used for pay television - - -

MR SUCKLING: And some telephony.

MR SIMSON: And some telephony services - that that should only be declared if, at the same time there's access to a Foxtel cable presumably, that is to the Telstra cable, to the digital spectrum from free-to-air as well - is that right? You're saying it's all or nothing?

MR SUCKLING: I suppose what we're saying, we're saying in the context of this inquiry, yes, you shouldn't asymmetrically recommend mandated access to our networks without looking at the networks of the free-to-air which potentially can provide the same functionality.

MR SIMSON: I'm just wondering how fair that is because if I was a subscriber to Optus and the cable comes into my home - now, I've currently hooked that up for pay TV.

MR SUCKLING: Yes.

MR SIMSON: I want to use that, and I currently look at the free-to-air also that are being transmitted over the same cable. I couldn't care less, frankly, whatever happened to the digital spectrum, because I want to be able to access other's datacasting services over the cable that I've already paid for, as a customer.

MR SUCKLING: Sure, yes.

MR SIMSON: So I'm just wondering where the equity is from a consumer's perspective.

MR SUCKLING: I suppose I think that - and in relation to the potential delivery mechanisms into people's homes, there are a variety of them for pay TV services. There's satellite, there's MDS or there's cable. We actually have a commercial incentive to offer people to get onto our cable. I think the arguments are not dissimilar to the way in which we sell wholesale access. So you will recall the commission did an inquiry into whether it should declare roaming air between mobile networks. We said to the commission that time, "Look, there's commercial incentive to get people onto our network to sell services. Don't declare a sort of mandated declaration of this. It is a clumsy way to go. It's not in the LTIE. It is better to let people come to commercial arrangements in order to settle it. I think we would say the same here: that if declaration is going to happen it shouldn't be asymmetrical but that markets should be given - that we would have an incentive to offer services getting onto our network.

PROF SNAPE: That was the ACCC that you were referring to as the commission?

MR SUCKLING: Yes, sorry, the other - the ACCC.

MR SIMSON: You also say in your submission that the free-to-airers shouldn't be able to datacast. I'm just wondering how fair that is to the free-to-airers, given that because you've got cable and you've got a business called Optus Vision, you've got your pay TV business, and you'll be shortly launching a cable modem business, over which datacasting can occur - - -

MR MAY: Well, more than datacasting.

MR SIMSON: Absolutely. Don't get me wrong, I'm not suggesting that's the only reason you do it - more than datacasting but certainly including datacasting - why it's fair to then say to the free-to-airers, when you've already got an access point into the home, that those people who can't afford or don't want to or aren't lucky enough to have an Optus cable or a Foxtel cable, they can't access a datacast service off a free-to-air, using a digital spectrum.

MR SUCKLING: I suppose what we would say in relation to that is, "Look, it all comes down to the question of living in this second best world." I don't have to tell economists in the room that you need to get the right market signals going. The free-to-airers have been gifted this spectrum and not paid anything for it. The explanation for that is that they're going to use it for high definition TV and so on. Our only point is that you will lead to a lot of distortions if we on the one hand have had to spend an inordinate amount of money putting an HFC network down into the ground, over a very, very short period of time, that this network, as I say, cost us lots of money in quite a risky environment, and that the free-to-airers would be getting a leg-up if they could use the spectrum - that they had been given for another purpose - for this purpose, and that if that spectrum was available on the open market or freely sold off, well, then you would be in an entirely different scenario.

MR SIMSON: Perhaps, but I'm thinking of this not from the perspective of the free-to-airers or Optus; I'm thinking of this from the perspective of the ordinary consumer. An ordinary consumer who for whatever reason doesn't have a Foxtel subscription or an Optus subscription, doesn't want to take on a big cable business modem, cable modem - or your cable modem when you go commercial with it - but they would like to be able to put a set-top box on top of their analog TV and be able to access some data, right. You're saying you can't do that.

MR SUCKLING: I suppose we're saying you can do it under - an inquiry into competition is about I guess providing a level playing field so that people can compete for the customers on an equal footing and in that sense, over time, prices would head towards costs, and that a better way of making sure that those customers can get access to that is to have some form of price option of that spectrum. I suppose what we are saying is, yes, in the context where the free-to-airers have been given a gift, they shouldn't use that spectrum for datacasting. If there's other spectrum that's available, that can be put up.

MR SIMSON: What, forever?

MR SUCKLING: Well, for the eight-year period. As I said to you, if the spectrum can be used more effectively, the current spectrum that has been given can be used more effectively by the single frequency networks, there will be spectrum left over. But that should be allocated by - as all spectrum in Australia is. I mean, we're building a mobile network and we had to go out and buy the 1800 spectrum.

PROF SNAPE: So you would then be quite comfortable, if a way were to be found to bring forward that date at which the analog gets switched off, to drop the restrictions at that time?

MR SUCKLING: If the mechanism - if it released spectrum which could be put up freely and there were auction rules around that, as there is usually for the allocation of spectrum, that looked at issues of power and so on - market power - I think the answer would have to be yes.

MR MAY: But the issue is market power. The problem you have with a free-to-air network having access to a datacasting access network - so they are a dominant content player with now a dominant access point. The point that needs to be made about a datacasting service is that today there is no barrier to the home, because it comes in off the current TV antenna. So you have virtually a hundred per cent penetration of access, whereas today we have homes passed of - in the country 2 million, around that, a little over 2 million - but in terms of actual connections, people who are connected, people that we can get to, it is less than that. Of course, a very small percentage at this point in time have we actually penetrated. That's because there is a high cost to connect each consumer.

To a free-to-air, there is very little cost to get access to that home because of the penetration of the datacasting frequencies. That's a really important point. What you will find is a dominant content provider, with dominance in access to the home, will dominate that industry. The problem will be that for another datacaster or another provider of data services to come into that market they are at a significant competitive disadvantage. I would argue to you that it would be unrealistic to think that you would have other datacasters coming into the market. Therefore, what we would propose is that you keep that delay. There should be a delay period before the dominant players are allowed to compete on an equal footing, because they have an enormous advantage.

MR SIMSON: How many subscribers do you have to Optus Vision - 250,000 or - - -

MR KEELY: 210,000.

PROF SNAPE: Sorry, the missing person has arrived. For the benefit of the transcription service would you identify yourself and your position in the company.

MR KEELY: My name is Chris Keely. I'm head of business affairs for Optus

Television.

MR SIMSON: You have 210,000 subscribers to Optus Vision. At this point there is not one set-top box sitting on top of an analog television in this country. You have a head start at least of 210,000.

MR MAY: They're analog boxes, they're not digital. They can't datacast.

MR SIMSON: Correct. I stand corrected. They can be converted but I'm not trying to - I stand corrected.

MR MAY: Well, they can be replaced.

MR SIMSON: Yes, good point. Before lunch we heard Mr Paul Budde, who gave evidence to us - a telecommunications commentator, analyst - and he said actually the opposite to what you've just said, in terms of how he sees the market unfolding. He believes that there's actually going to be such a plethora of broadband alternatives to the home - and to business, but he specifically mentioned the home - that it is actually quite possible that datacasting over the digital spectrum, to TVs, could be old hat. He believes that that may not even be the main game in terms of datacasting; that people such as yourselves, who have the cable - and satellite dishes in the case of Austar and others - that that's really how it's going to be used.

MR MAY: Okay. I think the key to this is the fact that it is very unlikely that a consumer will purchase two set-top boxes. Therefore, speed to market is critical. Now, I agree - we're not disagreeing at all with Paul. There will be any number of digital broadband access devices to the home. We had a session this morning with people from Motorola who are bringing the teledesic low earth orbiting satellites to this country. You know, there are ones that we haven't even thought about that will be providing access to the home. So let me make the point just as an aside, so when you start questioning about high speed data access point having some degree of dominance - I mean, that is far from the truth, because there will be any number of access devices to the home.

Now, to your point, will datacasting be the dominant path and are we all wasting our time here worrying about it? The reason we need to worry about it is the point that I've made to you earlier: if you have content providers who are dominant players in the marketplace that currently have significant free-to-air content, newspaper or magazine based, who have significant Web or Internet content today gaining access to an access device that is completely ubiquitous, then I would argue that there is a real risk, that that becomes the only broadband network in the country.

MR SIMSON: But as you pointed out a second ago, people are not wishing to have multiple set-top boxes. You've already got an analog set-top box sitting on top of 210,000 TVs around the country. Doesn't that give you a head start in converting that set-top box to another set-top box because presumably people are going to wish to continue receiving the Optus service.

MR SUCKLING: But I suppose one of the things Chris is saying and one of the points in our papers is that, yes, that is true; we have those set-top boxes, but I think we would take issue with the argument that that gives us a head start in the sense that we would say that most of the free-to-air has the ability or the mechanism to deliver these into people's homes which is beamed down the aerial at very, very little cost. In that sense they have sort of national reach, and if we're going about sort of head starts, our argument would be that they in that sense have a significant head start because the costs of installing that aerial because of the sort of business model that's been used is much lower than the cost of connecting up houses, and they are broadcasting into every home in Australia and could use that to flog off the necessary equipment to do datacasting.

PROF SNAPE: Coming back then to the question of bringing forward if possible the date in which the analog gets switched off, would you still want to keep the band that you are talking about on the free-to-air for your level playing field?

MR MAY: Absolutely. I mean, it's pretty immaterial whether you bring that forward or not. I think the point about the analog frequencies is that it's about the time it takes to convert the population across to digital. This is clearly to the consumer benefit to move to digital platforms, and we need to provide a regulatory environment that allows a very efficient transition where the market forces apply to get consumers to convert.

PROF SNAPE: Yes. The scenario that some of you would have heard before that we've been putting forward during the week is if a way is in fact found available so that everyone with an analog set can in fact receive the digital signal on the analog set through a set-top box or through a chip and that that can be distributed one way or another very close to 2001, then the problem of tying up all that analog spectrum for a simultaneous signal has gone, and the secret, as many people have said, already, unless we get something like that, we can foreshadow that in the year 2007 or 8 we'll have a whole stock of people who are generally perhaps of low socioeconomic status or aged who have got sets which are not able to receive the digital, and so that will get put off in time and put off in time, and so that whole spectrum will be tied up for analog for a long, long time to come.

The thing that we're trying to explore is, is there a way of getting over that hump to make sure no-one is worse off, and if so if we can find that fairly soon in the process, get that very early, then we might be able to switch off much closer to 2001 than to 2020 or whenever. Now, that of course would mean that that analog is no longer tied up; we've got all the magic of digital and additional spectrum that we've been told about that could come in much earlier, but your point about the free-to-air having the head start would still apply.

MR MAY: Yes, absolutely.

PROF SNAPE: So your argument would be that even if we were able to get that

switch off of the analog much earlier on and free up all that spectrum, you would still want the lead to be in the saddles of the free-to-air.

MR MAY: I wouldn't express it like that. I mean, I think - - -

PROF SNAPE: I'm sure they would.

MR MAY: They're standing on the trampoline and, you know, we're saying keep them so that they cannot dominate the industry.

PROF SNAPE: For how long would you put that burden upon them that they - - -

MR MAY: Again 2008 is the date and it can be reviewed in 2005. I mean, I think this comes back to the whole concept of some form of case-by-case analysis of the market, the players in the market. I think the critical thing is that you talk about getting digital set-top boxes into the home. Digital set-top boxes are \$US200 today. Some people would say 180, and it depends, but around that sort of figure. It will continue to come down, but it's not going to go, you know, much below a hundred US.

PROF SNAPE: We've had some views that it might, and one thing - - -

MR MAY: Look, it might.

PROF SNAPE: What was suggested to us is in fact it would probably before long become possible with just a chip in the television set, and that for a basic - we're talking about a sort of basic chip or basic box which would make sure that no-one was worse off, and that's the level of the chip that we're talking about.

MR MAY: Yes. I think if you look at a digital set-top box today, it's really got three chips. Two, three years ago it had about 10 chips. So a lot of that has happened. We've come down the cost curve from 1995 when the boxes were some \$US450. We are now well below half the cost of when that technology was launched.

PROF SNAPE: This is the boxes that you're hanging on houses now, is it?

MR MAY: A digital set-top box that transmits video signals is essentially - a box is a box is a box, you know; it has a receiver, it has a de-multiplexer, it has a de-encoder, and then it has a recorder to put it into PAL format. Each of those steps inherently is a chip in itself, and there's been a lot of integration of those chip sets, but I think it's wrong to think that you will get a single chip in the television, and I would argue you actually don't want that because as soon as you put a single chip in the television, it then limits that television to receive only one broadband access device, and I think we should be going to a model that says in the move to digital for the Australian consumer, we want every home to have a set-top box. We don't want four or five set-top boxes, but we want a set-top box to be able to be modified relatively easily by the consumer to receive cable or digital terrestrial or satellite - a low

earth-orbiting satellite or a geostationary satellite, LMDS. I don't think you can have a single box do everything is the point I'm trying to make to you.

PROF SNAPE: I appreciate that.

MR MAY: But I think you can create an architecture that allows some degree of flexibility that means consumers are not going to have to go out and buy multiple boxes, and importantly what that means is that when the free-to-air's finally are allowed to datacast, there will be a platform there upon which they are able to operate just like anybody else is able to.

PROF SNAPE: When talking about the basic box, I was looking at one that no-one is worse off with. I wasn't of course ruling out choice, nor that that might be able to be expanded by chips or additions to meet a whole lot of other objectives.

MR MAY: Right, or importantly that a company like Optus, if a consumer has a basic box, is able to come in with a relatively easy modification, and you made the point earlier about being able to modify a box relatively easily. That is a level playing field.

PROF SNAPE: And yet that's not where we are at the moment, is it?

MR MAY: It's not.

PROF SNAPE: You've got a box and Foxtel's got a box, and they're not at all interoperable.

MR SUCKLING: No, but I think that as we sort of said in our opening, it's not a good situation, but we are working in industry for - one of my colleagues was going to come; he's not here - just precisely to advance the thing, to design and make sure that a box can be produced which has interoperability.

MR SIMSON: On page 13 - - -

MR MAY: Just before that, if I can make one point. It's very important to understand - you're absolutely correct on the analog boxes that were put on the cable system, but in the case of satellite, it is exactly the opposite. There is a satellite platform in place today offering pay TV services for all of the carriers that is a common box, and that's really important, and I think you should have a very close look at that model to see what can be achieved by industry with some perhaps fortuitous guidance from government by stipulating a standard where you now have the possibility of total interoperability across that satellite platform, and as a result, consumers benefit because you can take a set-top box purchased by manufacturer A and another consumer can purchase manufacturer B, and they can both use those set-top boxes on the one platform. The key to that is you'll have competition between manufacturers of CPE, and that is the best way to bring price down.

MR SIMSON: Sorry, what's CPE?

MR MAY: Consumer premise equipment.

PROF SNAPE: That's, what - - -

MR MAY: That's the set-top box.

MR SUCKLING: Customer premise equipment.

PROF SNAPE: That's the set-top box.

MR MAY: It's really dish, cabling, interface, whatever.

MR SIMSON: Could I just go to page 13, 4.8 where you say that:

The pay television operator is to be exposed to competition from datacasters which offer essentially comparable services such as video-on-demand services.

How are they essentially comparable? Just to expand, I thought that pay television operators, they have a series of channels, they have program guides for those channels, and they broadcast those channels and you go in as an Optus Vision user, and you choose what channel you want to watch, as you do free-to-air. In the case of a datacaster, you have as an individual, subscribed - you have selected a piece of data or a piece of content or a piece of video on demand. I'm just querying how you're lumping the datacasting service into the same pot as a pay television service.

MR KEELY: I think the concern is that it may be possible for datacasters to provide to consumers the same or similar programming material as pay television operators, or indeed other broadcasters, but without being subject to the same regulatory regimes or costs.

MR SIMSON: I was just dithering I think, but just querying the extent to which they are essentially comparable services.

MR SUCKLING: Yes. I think the point is, as Chris has made, the point we're generally trying to make in the section.

PROF SNAPE: Could you tell me without giving me the full commercial details, but what is the basis on which, if I was to be a television contents supplier I would be able to gain access to a channel on Optus?

MR SUCKLING: This is a question which has come up in relation to a man called Mr Boulos from TARBS who wanted to broadcast over - - -

PROF SNAPE: Mr who?

MR SUCKLING: A gentleman called Mr Boulos who runs a company called TARBS, who wanted to broadcast over infrastructure some Malaysian channels, some

ethnic channels and night movies, and we were in commercial negotiations with him and wanted to offer him access to our broadband network and sell him space on it. There is though a thing that should be said, that as the broadband network currently is - and this will not be the case when we move to digitalisation, but as it currently is, it is constrained in its capacity. There aren't, when you put all of the Optus channels on it, a lot of other channels that are left over.

For the sort of four that are currently left over we are prepared to have commercial negotiations and from what I understand from the commercial people we were quite close to signing a deal with him, but it never came off because he preferred to go with Foxtel and he also is using Pan Am Sat I think for satellite. So the basis really is: currently is the space available and is the commercial price that that person is willing to access our network something that we are happy with, in the same way it is with satellite where we provide services, you know, all around the country.

PROF SNAPE: So you've got what, about close to 40 channels, isn't it?

MR SUCKLING: That's correct, I think 44. That leaves a small number of three or four which are, you know, free. But clearly under digitalisation which we're currently looking into the number of channels that would be available would be far greater.

PROF SNAPE: Just as a point of clarification the satellite delivery such as Austar, do they have the same channel limitation in terms of number of channels, as a cable delivered service?

MR SUCKLING: I don't know the answer to that - yes, and no. They currently operate off three transponders. All of the satellite broadcasters, Foxtel, Austar as you say - and we currently offer some distribution services and we have some trials running. We all operate off the same transponders. The important thing to understand with capacity when you get to digital - and here we're not talking about high definition TV, we're talking about standard definition TV - is that it works with digital compression. Therefore, you know, how big is a channel? A channel is not defined as having a certain size because by its very nature the data rate you require for a channel goes up and down.

So when there is a lot of action and movement in a particular picture you need to send more data. Less, you need to send a little data. So we currently have those configured. I believe it's around 12 channels for each transponder. So today the services are limited to approximately 36 channels - - -

PROF SNAPE: On the satellite service.

MR SUCKLING: On the satellite services. We've been using three transponders but there's no problem. In fact there are very much plans in place to add fourth, fifth, six satellite transponders.

PROF SNAPE: It goes up in steps of - - -

MR SUCKLING: It does.

PROF SNAPE: You don't just get one extra channel.

MR SUCKLING: Well, it's a step function. But also the fact is that the technologies are improving all the time and the ability to compress signals, the digital algorithms that are used to actually compress the signals, they've improved significantly since 1995 when the technology was launched to now where you have things such as statistical multiplexing where we could in theory put more channels on there. So if you look at each of those transponders there is a percentage of additional space there which you could transmit data and do data casting off those transponders themselves. So there is no real technical constraint to the volume or number of channels. Once you start digitising you get the 200, 500 channels in the sky type concept.

PROF SNAPE: So as you said, there were only four available so you were saying that's a pretty scarce resource for you and - - -

MR SUCKLING: This is currently on the effect of seeing that project, yes.

PROF SNAPE: Currently, yes.

MR SUCKLING: But certainly - sorry, I mean at risk of repeating myself, you know, there are plans to upgrade that so it's digitised and then why wouldn't you get - if people want it we're in the business of making money off our infrastructure, that's what we'd be seeking to do.

PROF SNAPE: But you're also a supplier of content yourself and so if I - - -

MR MAY: I think we're an aggregator of content.

PROF SNAPE: Aggregator, but also supplier.

MR MAY: We did generate some - - -

PROF SNAPE: Yes, and so if I came in with a program which was competing - or a channel specification which was closely competing with one of yours, you may not be too keen on it.

MR SUCKLING: Well, yes. But I mean, I think that, you know, you have to say the model is not dissimilar to the current retail-wholesale model that we have in Optus where the industry services group who are responsible for selling space on all of our infrastructure provide about 30 per cent of the revenue to Optus and, you know, we have access to our mobile network, to our intercapital city network and to our international network, because it's good business. I can't see that this would be, you know, different from that.

MR MAY: I think also the perception you're putting there on competing services and not really having access - Chris can talk about this a lot better than I can, but the fact is that it's all about consumer demand and the key content, that is, movies, sport documentaries, that content - the rights to that content is now completely owned by various players. So it really would be very hard for someone to come in for example and start a new sports service, because the content is tied up.

MR SIMSON: I think that's precisely the point that Prof Snape was driving at. We've had submissions from a couple of people, not Mr Boulos but a couple of other people who thought that they had pretty good channel ideas and haven't been able to secure access for their channel. The point that they make is that there is a need to separate carriage from content. But of course in a way the pay television industry has evolved in this country that's not so, in both your case and in Foxtel's case - and that makes it tough, that makes it difficult, for content providers. When you've got a group that has an interest in both carriage and content it makes it tougher for a third party or other party content providers to get on the platform. You've either got existing arrangements or you're making your own or whatever.

MR SUCKLING: I suppose in relation to - sorry, just very quickly, in relation to that we are happy to provide you with an additional submission which outlines to you when we've been approached by people for access to our cable, the constraints on it, but our willingness to provide access where we can to that person.

PROF SNAPE: That would be helpful. Thank you very much.

MR KEELY: I guess there are two ways of examining - or two issues that emerge here. One is the provision of access on the distribution mechanism to providers of content and the second is the issue of our aggregation of content. You may find, or you were mentioning that there were groups of individuals coming forward, saying that they were having difficulties in supplying content to pay TV providers, getting deals - - -

PROF SNAPE: Getting access to a supplier, yes.

MR KEELY: Getting access to the content or - - -

MR SIMSON: No, they're people who are making content, producing content. They think they've got a good channel idea but they can't - - -

MR KEELY: We won't buy it.

MR SIMSON: You won't buy it, you won't put it with your bunch of channels because you've got some competing channel or whatever.

MR MAY: I mean, I think the point that needs to be made there is that of the channels that Optus Television broadcast and narrowcasts, there are a wide range of suppliers of those channels and there are national suppliers, there are international suppliers. Recently we added two services. We added a third Greek service,

Greek-Australian television, which is a bi-lingual service produced locally here in concert with some Greek providers. That's a third Greek service from a local independent supplier and we recently added Australia's first Christian television channel which is locally supplied aggregated from a preponderance of material apparently that was available internationally and here in Australia.

So we would have - and I'm pulling a figure out of the air - a dozen suppliers, if not more, of individual channels and we're adding those. We're looking to see what is the highest quality material or where there is an audience demand for particular programming. So I guess in reality there is quite an active market in the provision of channels and provision of content for channels. We're also always licensing that sort of material for channels. But mainly we are buying those channels in from suppliers who come forward and from our perspective leave aside the question of foreign language programming where we get a number of proposals on a regular basis. We don't have that many proposals from groups or individuals to provide us with new channels.

MR SIMSON: Just for clarifications, what do you narrowcast?

MR MAY: The narrowcast services are - World Movies for instance is a narrowcast service; the Adults Only service is a narrowcast - - -

MR SIMSON: Sorry, does this mean a premium service?

MR MAY: World Movies is, yes, a premium service.

MR SIMSON: Sorry, I'm not trying to confuse things here, but I just want to understand the difference.

MR MAY: You mean the ABA definition between broadcasting and - - -

MR SIMSON: No, but the - - -

MR SUCKLING: How do we define it?

MR SIMSON: I'm just trying to clarify if the narrowcast service is part of your pay TV regimen.

MR MAY: Yes, indeed.

MR SUCKLING: So they're just additional channels you can buy, aren't they?

MR MAY: Absolutely. They're essentially add-on channels.

MR SUCKLING: Okay, that's all right. That's all I need to know.

PROF SNAPE: Something which has cropped up during the week quite a bit, and we had a discussion with ASTRA yesterday, but since we've got Optus here today rather than ASTRA I'll ask again. It's anti-siphoning - favourite subject.

MR SUCKLING: Us too.

PROF SNAPE: Of your's I meant.

MR SUCKLING: Right, sorry. I thought you were displaying a particular bias, but clearly not.

PROF SNAPE: No. We don't have any positions.

MR SUCKLING: No, of course not.

PROF SNAPE: Other than sitting at this table. You make mention of the continuation of a list. If one was going to a situation of having both on the pay television and on the free-to-air the requirement that any contracts be non-exclusive for sports, and if that is - I think it is possibly the position that you endorse, why do you need a list at all? Why don't you just say that for all sports, simply no sport from tiddlywinks through to the AFL grand final simply cannot - the rights cannot be acquired on an exclusive basis by either pay or free-to-air television?

MR SUCKLING: That's a good question. We thought about this, and it seems that in a country where sport is very, very highly valued, we thought that there might be some benefit just in terms of getting up a proposal that would fly; that there could be some special events where there were - where the free-to-air could have - you know, where there was sort of a definite sense that they would be reserved for the free-to-air, but as you say they'd be dual rights. Now, I do take your point that that on the face of it might seem a little bit contradictory or unnecessary, but I guess we just thought that it had been such a consistent in policy for a while, there are some particular events that are dear to people's hearts and that it would be a pragmatic thing to put up the proposal that we have.

PROF SNAPE: I see. So it was a political strategy rather than a logical strategy.

MR MAY: There is a logic in it as well. They tend to be single events. They don't have the option of multiple events within an event like a tennis competition where the free-to-air are unable to supply all of the events and so forth. The Melbourne Cup is, what, five minutes or whatever it takes, and there's no technical benefit to having multichannelling.

PROF SNAPE: And you normally don't get an ad in the middle of it, I guess.

MR SUCKLING: You just get them running down the bottom or on the sides as they run around.

MR SIMSON: I mean, I notice that you copped some flak for dropping - you've - quote "infuriated the Australian Football League by dropping live coverage of games into New South Wales and Queensland."

MR SUCKLING: Yes. Do you want to talk to that, Chris, or should I?

MR KEELY: What is the - - -

MR SIMSON: I'm quoting from a newspaper article yesterday in The Australian which said: "Pay TV concern" - they're describing you as a concern:

Optus Vision has infuriated the AFL by dropping live coverage of games into New South Wales and Queensland.

I'm only raising this not as a cheap shot, but because here is a situation where if this article is correct - if this article is correct - you have rights, you're not using them, and you've got a major sports association - again if this article is right - up in arms about it. As you know, we've had a lot of submissions from ASTRA and others about not being able to get access to this and access to that, and yet here's an instance which does not seem to be an insignificant instance if this article is right where it's going the other way.

MR KEELY: Just briefly, because it's a detailed issue - the matter is resolved by Channel 7 and Optus Television through rescheduling of the overflow channel for Channel 7 sport, C7 sports. So as I understand it, that situation has now been resolved and Channel 7 has issued a press release indicating that the matter is now resolved.

PROF SNAPE: Could I refer to paragraph 426, the second dot point under there which appears on page 17. It's part of your desirable policy list and it says:

All transmissions should be made available in HDTV format from the commencement date for digital television. This will be possible because programs that have not been produced in HDTV format -

which will basically be all of them -

can be up-converted to HDTV by a simple conversion process.

But while that might be transmitted in HDTV, it would certainly not be - as I understand what has been told to us - it wouldn't be received in anything like the quality that one might expect with HDTV. Unless, as I understand it, the thing has been made in a high definition and kept in a high definition form right from the making until it is received at the other end, then you lose quality. So you certainly won't be getting the quality. All that would do is to use up most of the available seven megahertz - depending on what's being transmitted - to give you a picture which is probably not much better than you have at the moment if in fact it was made in analog.

MR MAY: Well, it is a better picture. It certainly doesn't have the resolution of HDTV, you're correct, but the alternative is what, to transmit it in what - standard definition?

PROF SNAPE: Transmit it in the form in which it's been made.

MR SIMSON: I'm just wondering why you have got to from day one, when maybe half a dozen people have got an HDTV set, force the free-to-air to transmit - what you're saying is all transmissions, not some - all transmissions should be made available in HDTV format. Why would you want to do that?

MR MAY: Well, why wouldn't you want to do it?

PROF SNAPE: I presume the reason is that you use up the whole of the spectrum in so doing and thereby prevent them from doing anything else with the rest of the spectrum.

MR MAY: An HDTV format does not use the full seven megahertz, so there's always spare.

PROF SNAPE: Yes, but I mean, by specifying that - correct me if I'm wrong, because I'm not into the technology so far as I have been hearing it - but by requiring it be transmitted in the high definition would in fact use up much more of those seven megahertz spectrum available than if it was transmitted in the form in which it was made if it was of a lesser standard.

MR MAY: Yes, you don't get any improvement on the resolution. Let me add, given the fact that a hundred per cent of people have analog TVs and if you use a set-top box presumably for most of those people - that is those people that don't have an HDTV, and even when we get to 2008 a large proportion, a very large proportion, probably won't have HDTV - - -

MR SIMSON: Or a set-top box, not a large - well, some don't.

MR MAY: But when you switch off the analog presumably everyone will have some means, whether it's a chip in the TV - I mean, at the point where you switch that off, the penetration of HDTV will be relatively low - that people with those analog television sets won't see the improvement anyway. So your point to us is, if there's no benefit, why force them to do it.

MR SIMSON: From day one, yes.

MR MAY: Yes, and it's a very simple answer: that it is for HDTV, so why wouldn't you have them producing it all the time. If you're saying that there's no benefit to the consumer of doing it, my point to you is, well, there's not going to be benefit to the majority of the consumers anyway because they don't have HDTV.

MR SUCKLING: I think we would say also that really if the intent was just to sort of ensure that the free-to-air's used all of that spectrum all of the time then the ambit claim, if I can put it like that, would be that they would need to broadcast in high definition 24 hours a day all the time. But we accept that that is not - - -

PROF SNAPE: But that's what this says, isn't it? That's what that sentence says.

MR MAY: But what you're proposing is to allow them to broadcast HDTV when they have a program that has been created in HDTV.

PROF SNAPE: No, that's not what it says.

MR MAY: No, I'm saying that this is what you're proposing.

PROF SNAPE: Yes, I see.

MR MAY: Your proposal is that they would do that, and then during the alternate period you would say that they would broadcast in standard definition. Is that what you're saying?

PROF SNAPE: Well, I thought that that is certainly - I'm not advocating it. I'm setting that as an alternative proposition, which I must say up till now I had always thought was what would happen: that is, when they were broadcasting a program which was in HDTV they would broadcast it in HDTV; if they had one which was in standard definition they would broadcast it in standard definition. But I just presumed - - -

MR MAY: I think the majority of movies and so forth would be analog, off film or whatever, and so they convert that.

PROF SNAPE: Yes, but that will be converted to standard. I mean, they won't be able to go - is that right?

MR MAY: Let's be fair. I mean, there is a range of media which they have. The point we're making is that if you allow them total flexibility, the natural course of action is for them to try to minimise their transmission rates wherever they can, to create extra spectrum, and therefore you're creating an environment where they are controlling the quality of the programming that they are broadcasting. I think that's the fundamental issue: that if you are not prescriptive, you know, if you're given your spectrum, if you're not prescriptive you will have an environment where you will need to set up some sort of body that is checking what they're transmitting in. Even when they have HDTV quality media, are they actually transmitting it as HDTV? Who makes that decision? If it's standard definition quality - I mean, today we take our media and we transmit it in a particular format. We don't play around to create extra bandwidth. We transmit it as digital over the satellite for example and it is the simplest way to manage that.

MR SUCKLING: You'll see also there's a sort of qualifying bullet point, the final one about the - you know:

At the commencement of digital TV in Australia at least two hours of programs produced in HDTV should be broadcast by the free-to-air during the prime time per day.

PROF SNAPE: That's the last dot point under 4.26:

At the commencement of digital TV in Australia at least two hours of programs produced in HDTV should be broadcast by the free-to-air during the prime time per day.

That didn't seem to me to be a qualification, it seemed to me an additional thing. It said that you have to do everything in HDTV and in addition have a minimal of two hours.

MR SUCKLING: I'm sorry, yes. Okay, you're right.

MR SIMSON: Could I - are you happy if I change the subject now?

PROF SNAPE: Yes, go ahead.

MR SIMSON: I may have overlooked this and please - but could you just explain your position with regard to the number of free-to-air licences in Australia, the restriction on the number of free-to-air licences at least until 2007?

MR SUCKLING: Yes, our position would be broadly consistent with the ASTRA position that was put the other day, which as I understood it - and certainly this is our position - is that in broad terms we would see that, in relation to pay TV the markets that we go to, the customers and the advertising revenues would not necessarily be hugely impacted by a new free-to-air coming in.

MR SIMSON: Would not be hugely impacted?

MR SUCKLING: No.

PROF SNAPE: We spoke to ASTRA about the adherence to the Australian content drama standards. That was in of course an industry-wide perspective. Would you like to speak to that with an Optus hat on today, rather than an ASTRA hat on?

MR KEELY: Well, just to reiterate that the current drama rules do not impose a compulsory obligation on the licence holder, because of flaws in the drafting - and Optus, as well as the other industry participants, are cooperating with the government now to put together a regime that does actually operate as was intended. In this context Optus, with a number of drama channels, has been quite a significant contributor to Australian content in a number of areas.

As I have mentioned before, there is a non-compulsory regime for drama. Optus has contributed, through its very heavy investment in two major channels - the movie network channels, which are three movie channels, which has licensed probably around about 50 or 60 Australian feature films and has invested in three Australian feature films. Recently Optus announced a major \$2 million investment in a miniseries to be produced for first time broadcast on pay television. Our intention at this stage is it will be broadcast only on pay television. The Disney channel, which is exclusive to Optus, was handed a plaudit in the ABA's recent announcement of results for 1997-98, as a channel that was foremost amongst those in meeting its Australian content obligations, voluntary though it is.

The broader point is that across the whole pay TV environment and also on Optus there are many hundreds of hours of new programming that is Australian programming every week. Foremost amongst these are the news channels: Sky News, which is a shared Australian and British produced news channel, which produces a very significant number of hours of new programming each week; and sports services, where the coverage of the two major football codes, Australian Football League and the NRL, is a very significant number of hours each week. I can't give you precise figures, but I guess as a whole Optus Television is very representative of the other two platforms in having quite a significantly Australian service.

PROF SNAPE: Okay, thank you. I think that we have taxed you enough. We thank you very, very much for your helpful and constructive submission and also for the discussions that we have been engaging in. That comes to the end of the scheduled program. I'm not going to play the national anthem but as I usually do at the end of the day, I would ask if there are any persons present who would wish to make an oral presentation. There aren't. So thank you very much and we will now suspend the hearings, concluding this round of hearings in Sydney. The hearings will be resumed in Melbourne on Monday week, so 7 June in Melbourne, 9 o'clock, in the hearing rooms of the Productivity Commission which are in Collins Street. Thank you very much.

MR SUCKLING: Thank you.

AT 4.30 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 7 JUNE 1999

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