



**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**DRAFT REPORT INTO THE BROADCASTING SERVICES ACT 1992**

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

**TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON TUESDAY, 7 DECEMBER 1999, AT 9.02 AM**

**Continued from 6/12/99**

**PROF SNAPE:** Welcome to this second day of the hearings in Sydney on the draft report of the Productivity Commission on broadcasting. Copies of the draft report have been available since 22 October and if anyone present has not received a copy and would like to have one they should contact members of our commission staff who are present. The commission wishes to thank those people and organisations who have responded to the draft report, either in further submissions or in arranging to appear at the hearings. These submissions are available here today for viewing and on the Web site of the commission. These submissions and comments will help us to improve the report which will be submitted to the treasurer early in March. The timing and release of the final report is under the control of the government.

As in the case of the earlier hearings, transcripts of these hearings will be made and should be available on the commission's Web site within three days of the relevant hearing. Copies will be sent to the relevant participants. At the end of the scheduled hearings today I shall invite any persons present to make oral presentations should they wish to do so. This morning we have the Australian Broadcasting Authority and we welcome them, and we thank you for your submission which we received yesterday afternoon. The lateness of it has caused us a few problems. Of course we were having hearings yesterday, but we have been able to read it, perhaps not as thoroughly as we would have liked, and we'll see how we go.

I'd ask now the participants in the usual way to identify themselves separately for the transcription service and then, Prof Flint, I think you're going to start off, are you?

**PROF FLINT:** Thank you, chairman. David Flint, chairman, Australian Broadcasting Authority.

**MR TANNER:** Giles Tanner, general manager of the Australian Broadcasting Authority.

**PROF FLINT:** Thank you, Mr Chairman, Mr Commissioner. Firstly may I express my apologies for the lateness of our submission. I can explain it, but of course that doesn't assist you because we've put you in a difficult position. The reason of course was that we were involved in some other activities, and the drafting of our submission required considerable input from various parts of the authority and then melding them together, which unfortunately took more time than we expected.

We would wish to compliment the commission on the draft report. It is an excellent report. It will stand both in the draft and I'm sure in the final version as a particularly useful reference to all persons interested in broadcasting. Whether or not all of your recommendations are adopted, I'm sure it will make a considerable contribution to the debate.

Our approach in our submission follows that of our original submission - that is, we see ourselves as amicus, friend of the inquiry. We're aware of course of our

position, that there are matters of policy which are for the parliament and for the government, but we feel that we should as far as possible put forward our knowledge and expertise, and it will be seen, for example, in a number of areas of the submission we make suggestions of a technical nature which are not meant to be pejorative but which are meant to assist the commission in some technical matters, which I must admit I myself find difficult to fully comprehend.

The report covers a number of areas, and perhaps it might be best if I and Giles Tanner respond to some of the matters that you may wish us to expand upon. I realise of course that you've had a limited opportunity to see this.

**PROF SNAPE:** Thank you, and we realise the position that you are in, in that you are here, if you like, as a friend of the commission and of the court and that you are constrained in what you can say. You've pointed out and made in this submission a great many details which we will have a closer look at, and we thank you for the corrections of facts which you've given to us in it also. But I must say we are somewhat disappointed that in the submission you have stopped - appeared to stop - at this detailed level, but we'll come back to some of these details later on.

Our draft report of course was based on submissions, a great number of them, written and oral. There were in those submissions a great number of comments on and criticisms of, in many cases, the planning and complaints processes, of the conversion process, and the problems of transmission, and our draft report has tried to evaluate and digest these and look at the big picture and make recommendations. But I think that some people might interpret your submission with its concentration on detail - it could be interpreted as to kill by a process of a thousand minor cuts, and many of these I think miss their target somewhat, but we can come on to those in later discussion.

So I wonder if it would be possible for you now to look at the larger issues. For example, is the complaints procedure working properly? Is the process of conversion working properly in view of the later information that has occurred since a year or so ago when the regulation impact statement, etcetera, was put forward? What about ethical standards? The process for the implementation and the enforcement of ethical standards in journalism and reporting, is that working properly, and are our draft recommendations ways of making that, if it's not, work properly?

We got the impression, as I said, of necessity reading this through fairly quickly, that everything in the paddock was fine - that is, in terms of the larger picture - and we didn't get responses to the major thrust of our recommendations in it, and so I wonder if there's anything under the control of the ABA that the ABA thinks isn't working well and, if so, do our draft recommendations address these problems?

**PROF FLINT:** I think you've raised, Mr Chairman, three matters: the complaints procedure, ethical standards, and digital conversion. Those are the three matters you particularly drew attention to, and I might invite Mr Tanner to follow in a moment. But may I say in relation to both the complaints and ethical standards, as you would be aware we have a major investigation proceeding at the moment. There's a hearing 7/12/99 Broadcasting 1082 D. FLINT and G. TANNER

and there will be further examinations - and that is essentially in the area of complaints and ethical standards - and I think it would be inappropriate for us to be saying in a submission to this commission what our views are on the way in which those matters are working when at the moment a hearing has just been completed and we're about to produce a report on very specific matters concerning Radio 2UE and where we're about to examine matters relating to other commercial radio stations.

If we were to indicate the way we were thinking as to whether those are working we may well compromise the whole process, because it's very clear that some people are quite willing - as I experienced myself, even though they were rather tardy in joining the hearing - to threaten to rush off to the Federal Court for various matters, and we're very mindful not to compromise findings which may be made and the whole process of determining whether the codes are working and what we should do about that.

**PROF SNAPE:** I take the point about the specifics, and indeed in our draft report we were careful not to make any reference to anything that was occurring at the moment in that regard. But I think there are more general questions which would not be involved there - for example, in the way that journalists in general collect information, the sort of things which of course were addressed by the Press Council and for which there is an accountability process but which doesn't seem to be - and so that I think takes it aside from the current issues there. So there is a larger question as well as the specific one, and I understand the constraints upon the specific.

**PROF FLINT:** Can I ask Mr Tanner to speak on digital conversion, which seems to me to be working in the sense that the legislative scheme is being complied with. We are proceeding to produce the digital conversion plans and I think we're completely on target as far as we can be in relation to the current legislation, but I'm sure Mr Tanner would have more information on that.

**MR TANNER:** Prof Snape, I might comment on two of the issues you've raised.

**PROF SNAPE:** I might say that those three which I raised were meant to be illustrative rather than exhaustive.

**MR TANNER:** But I think they are quite major areas of your report. I suppose the in-overview comments I had on the complaints part of the report, if I can defend our very detailed level of comments on the complaints. What parliament gave the Australian Broadcasting Authority in 1992 is a system of regulation of content that is complaints driven, exceptions based, and that has a number of potentially controversial features, features that have proven objectionable to some interest groups over this eight-year period and to some people in parliament, but it does I suppose represent a balanced and coherent scheme, and if you wish to change a part I think it's very important that the commission focus on what the new whole will look like and what, for example, the resource implications are going to be at the end and the implications for the division of roles between industry and the ABA.

I would argue that the complaints scheme, which has as its first line of attack the development of voluntary codes that address community concerns, is very strong in the area of community safeguards, if that is shown not to work, and I think the current commercial radio inquiry, the ABA has in fact a wide range of powers it can choose from if it makes a finding that the current code scheme in some particular is not providing appropriate community safeguards.

There are some features of the scheme, though, which not everyone agrees with and in the end that's a political judgment and it's not a judgment the ABA has seen fit to make; for example, the voluntary nature of these codes. That is, they are not mandatory until the ABA makes a particular part of a code mandatory via a condition or a standard. That is simply unacceptable at a gut level, at a values level, to some people and some politicians. That's not an issue the ABA has put a view on but it's a quite coherent view that these issues and this industry are too important to have that.

The curtailed right of the public to complain to the ABA or the government has long proven controversial with a lot of complainants, who are used after 50 years of much tighter regulation, I suppose, or much more extensive regulation of the media to a right to complain to the government. Now, in 1992 there was a very conscious choice to move away from that and to attempt to promote a greater focus on service and addressing community needs within the industry. The way parliament saw fit to do that was by limiting the ability of complainants to require the ABA to take action to investigate, unless they had complained to the industry and they had either not received a response within 60 days or they had received a response and it was unsatisfactory. That remains I think a controversial feature of this scheme with many people, but it is part of a balanced and coherent scheme that was put in place in 1992.

I think a third feature which has at times proved controversial is that unlike the previous system with its regular renewal inquiries there's no opportunity, except when something as large as the commercial radio inquiry comes along, for a public airing of major issues, and I think some of your recommendations go directly to this by proposing a much more public process of codes development. Our comments on that are about detail and we think they're useful comments of detail. For example, it may be that that may not be appropriate to very small sectors of industry. That's not intended to kill the big picture proposal by a thousand cuts, however.

**PROF SNAPE:** In fact, just to illustrate, I think there was only one of our recommendations that was endorsed in the 40 pages and that was a draft recommendation to keep something as it is.

**MR TANNER:** I think that's probably a misrepresentation of what we were trying to do in the report.

**PROF SNAPE:** But that's the way it reads.

**MR TANNER:** Well, I regret that. It seems to me that a number of things in the report are ideas rather than proposals; that is, certain details which are where the

political issue will be decided have not been addressed or resolved, and I'm actually coming to an example here. By pointing out things that need to be thought through, our intention - by someone, not necessarily by the commission in its report; maybe this is the work of the department in developing a more detailed proposal - we're trying to point out where in our experience of where the sensitivities lie here work is going to have to be done.

If you'll allow me to follow this line of talking about the complaints process, the commission proposes at one recommendation that codes of practice once made by industry should become mandatory. Now, that's a perfectly reasonable proposal and after what I have said that is going to be something which is going to accord with the beliefs of a lot of people in political life and public life and in the community. The ABA makes no comment on that. It's a policy issue for the parliament. The point of detail, if you like, that we tried to raise in our submission is that under the current scheme that we have the ABA is not required to investigate a complaint unless the member of the public has gone to the broadcaster and is dissatisfied with the response or has not received a response.

Under a proposal in which the codes become mandatory, it was not clear to me whether the ABA would continue to be obliged to investigate all complaints that were made to it. It would seem to me that once the codes become mandatory it would be difficult to deny people the right to go directly to the regulator. Now, some thought would then need to be given to whether you wish the regulator to be required to investigate, instead of dozens of complaints per month, thousands of complaints potentially per year, and some thought would need to be given I suppose to developing a new philosophical scheme which thought through exactly what the role of industry was in handling complaints if the complainant is entitled to go directly to government as well and what the resource implications and what the discretions of the ABA would be.

Now, that was really not intended to be death by a thousand cuts. I think the position that the code should become mandatory is perfectly defensible and is going to be popular with a lot of people that I have had dealings with at the ABA, and it was certainly not the ABA's intention to discourage you from pushing that recommendation. However, what we were suggesting was you would need to work out this kind of detail before you have something which is not merely an idea but which is a proposal that can go through. So I really do apologise if that sounds like death by a thousand cuts but that is far from our intention.

At the end of that discussion, tucked away in our 40 pages, we make the offer that our staff are available to talk this through with your officers if that's helpful in crafting a proposal which perhaps adds a couple of extra details: the ABA would not be required to investigate all complaints but could set priorities itself, thereby meaning it would operate under existing resources, etcetera. So I do apologise if that's the impression, but I actually don't think, for example in that case, that's in fact our intention.

**PROF SNAPE:** Thank you.

**MR TANNER:** I won't say much about the issue of ethical standards, except to comment that until now basically the ABA has allowed the codes process to run, and the codes have addressed those issues that the industry decided after its consultation were the issues of community concern, and in fact if you look at the codes they closely resemble, in the areas they cover off, the issues identified in the act and that in turn closely resembles the issues that were once addressed in standards before 1992.

I think the commercial radio inquiry demonstrates the potential that exists in the current scheme to address a community concern that is perhaps arguably not being adequately addressed. It makes a very good test point of the powers that are actually already there, but there's simply nothing before the ABA that would give it reason to have a view on whether other areas that have not been raised in that inquiry, such as the issue of journalistic ethics, are things that we should be inquiring into now, and perhaps that's a deficiency in the scheme - that we're not hunting up more issues of potential community concern that may not be covered off.

Turning to the issue you raised of digital conversion, I guess both the ABA and the commission are operating behind the eight ball in the sense that, rather than having a greenfield here, we have a set of decisions which have resulted in the partial enactment of a scheme of conversion, and a great deal of technical planning has already proceeded so that, even as we argue about the recommendations, the ABA is producing digital channel plans which will substantially allocate all the remaining spectrum which is suitable for use by digital television.

Now, that's a point we've made both in relation to analog and in relation to digital. It's difficult to know how to address recommendations which are asking government to take a totally different tack, and the ABA isn't the agency to weigh into that debate. It simply would not be a proper role for the ABA, I consider, to have views on that. Our task, whatever our private views may be, is to implement what parliament has told us to do.

But, as our submission mentions at the front, we do think that whether or not the commission persuades parliament to radically change tack on digital conversion, there are still some extremely good ideas that could be, so to speak, salvaged from the report. One of these is the idea - and I use the word "idea" carefully here, rather than the word "proposal" - of spectrum clearing. There are several reasons why I raise that, but the main one is that at present the plan under the digital legislation is that clearance - the end of the simulcasting period will occur eight years after the commencement of the simulcast period or such longer period as prescribed by the minister.

Now, when you look at this particular industry, I guess a dominating feature of it is what you might call the universal service expectation that television viewers and their elected representatives have about the television system. That has always suggested to me that however short you make the potential simulcast period - that is, only eight years - if there is still a significant percentage of the population with analog-only equipment at the end of that time, it is axiomatic that the simulcast period

will simply extend till that problem goes away. Similarly, if there are any holes or deficiencies in digital coverage - that is, the availability of digital signals - you could take it as axiomatic that the analog system will stay on. Those I guess are my observations and they are based on my knowledge of the way the politics in this industry plays out.

The current legislation I think is lacking in any mechanism such as you're contemplating for allowing the market to address that problem, and I think that's an extremely fruitful area for further exploration, irrespective of the approach that the government decides to take on digital after considering your report. The ABA is aware that Fairfax for example has made a submission suggesting that a much more radical and immediate version of spectrum clearing could be run, and in fact they've put forward an estimate that the total market value of the spectrum exceeds the cost of distributing digital receivers to all viewers and, presumably, of getting a digital signal to all those viewers.

The ABA is in absolutely no position and has absolutely no evidence or material it can draw on to test the validity of that claim and, as you can see from our submission, our director technology, who has written a lot of the parts on digital television costs, has been trying as hard as anyone in government or in the commission to work out exactly what these boxes are going to cost. It's an area which at the moment is extremely uncertain. However, what the ABA is going to look at is whether there are perhaps a range of shorter term options. We are for example looking at whether or not there might be low fruit; that is, it might be possible to yield one or more channels in a market where there's high demand by selective clearing in nearby markets where relatively small numbers of people are served by a set of analog channels.

Now, we're going to look at that to see whether or not there are some scenarios. We propose to leave the job of developing or proposing mechanisms by which clearing could occur to the commission, though I suppose I'd comment that I would have thought it would be more attractive to government to come up with a mechanism in which the cost of clearance is borne by the successful bidder, subject to some sort of code of principle, rather than a model by which the government clears in the anticipation that the market value of what spectrum results will pay the cost that it's incurred.

I think the ABA would want to make submissions, if you want to go further down that line, about how very thorough and adequate any code of principles of clearance would need to be, given the expectations that viewers have about the television system, and I also don't want to hold out the hope that there is a lot of low fruit. This is something I've asked our engineers to look carefully at and we are currently working on it. One of the features of the current analog and digital plan is the way they intermesh, and once you actually posit a particular site and say, "Well, why don't we turn off the analog transmitters there?" it's a bit like starting to unravel a jumper. You find that in fact the reason those channels are low power is because they're reused by other low power services only a few kilometres away.



But if we can find some ideas there, some short-term ideas, then we will volunteer them, and that's work we're advancing on. So I suppose there's a big comment and a little comment there. The big comment is I think notions such as spectrum clearing are really going to prove very very important if a 15 or 20-year simulcast period is unacceptable to you, and I can well understand why that could be unacceptable. That's I guess the important comment. The minor one is that the ABA is taking a look and will make a further submission on the practicability or the opportunities we see for shorter term spectrum clearing.

Now, the issues such as Fairfax has raised really the ABA is in no position to comment on and, obviously if it were its role, would work with industry and government to further explore any option which was developed. I hope that's useful, but once again I hope that doesn't sound like death by a thousand cuts.

**PROF SNAPE:** Thank you for that.

**MR SIMSON:** Just as a brief, more general observation, the terms of reference we were given by the treasurer and the government required us to look at economic and competition issues related to the Broadcasting Services Act but also very much to also analyse it from the perspective of other issues, social, cultural and diversity and all those other issues associated with the act. But most specifically the terms of reference also referred to the phenomenon of digital convergence and the implications of that for the operation of the act and I suppose the content of the act ultimately.

And so in approaching our draft report we were almost working on two fronts, broadly speaking. One was taking account of technological convergence in making recommendations or ideas - proposals in some cases, sure - that reflected the need for perhaps significant change in terms of the regulatory and legislative framework to enable Australia to take advantage of the digital phenomenon. However, we're also conscious, in tackling those economic competition principle type issues, we're also mindful of the other frame of our terms of reference, to look at the potential social implications and related implications of what could be quite significant change in the economic and competition policy framework, because there are recommendations in our report relating to regulation that if adopted would have quite far-reaching implications.

They were not made in a vacuum, and this is one of the reasons why we are particularly sensitive to the issues relating to codes of practice and standards and whether complaints procedures are working well or not working well; whether the administrative machinery of government is functioning well and it's meeting the expectations of the various stakeholders in the industry.

It's our view that the pace of change is going to actually increase the obligation on regulators - in this case, yourself, because you are here today - to do more rather than less in areas such as standards and compliance and these other areas, because the more you break down the legislative boundaries on the economic front where you can put nice boxes and circles around bunches of players and applications and so on and

so forth, the greater the obligation to work in a more rigorous way, we believe, in terms of protecting the public interest in those sorts of areas I just mentioned.

I just wanted to mention that to help provide a context to the draft report and the reason we went about it, and why - as Prof Snape mentioned earlier - we are particularly sensitive to ensuring that the status quo is questioned and that we recognise that in many cases a number of these processes were put in place - as you pointed out, in 1992 and in some cases even earlier - and it's our view that, frankly, all of that is going to have to be in some way or another relooked at in the context of technological convergence. So I just wanted to make general observation, if that is helpful at all.

**PROF FLINT:** One of the things I think I should again stress is that in the current inquiry there are areas of the act which haven't yet been tested, which haven't yet been used. The code that we are looking at is one which is news and current affairs. It's not just in relation to the precise programs which were looked at, it's the whole area of news and current affairs, which does go into areas in your report. That's why - because of the sensitivity of that - that it does put us in some difficulty.

The other area in relation to many of your recommendations - if we were to take a position, we would be effectively entering the debate - for example, in relation to ownership and control. If we were to take a strong position on that, it would then make us participants in what is really a debate for the legislature and for the government, and I think we would see ourselves creating something of a mischief there which we don't think appropriate. We have a way of putting our views directly to government on these matters, if the government wants them - as we feel we should. But it is difficult for us as a friend of this inquiry to take firm policy positions where we don't think it appropriate.

That doesn't mean that we don't want to help the inquiry and, as Giles Tanner says, our staff is available, in particularly the technical and policy areas, to tell you what we're doing and what our staff thinks would happen if certain of your recommendations were followed. What we are not putting forward is a view of the board of the authority on these matters. We see ourselves very much as a friend, not as a submitter in the sense of, say, the major television proprietors and so on.

**PROF SNAPE:** No, we understand the situation - at least I hope we understand the situation - in which you're in in that regard. I wonder if we could turn to some of the specifics. In the comments on The Road to Digital Television which begin on page 10, it implies that we misunderstand the relationship between some of the technical things. Of course, we were trying to write this so people could read it, and we may or may not have succeeded. We know that as soon as we started to get into anything too technical people wouldn't read it - and nor could I write it.

But nevertheless we do understand the difference between bits and bandwidth, contrary to what is suggested in the comments that are here. We do know that information is carried in bits but it is a bandwidth which is available to carry these bits. We do know that it is sent out in seven-megahertz widths. So when we said that

two megahertz could be carried, we were quite aware that it has to go out in seven megahertz, but two megahertz is enough for a standard definition television signal, etcetera. So we may have presented things wrongly, but we do understand that.

We have had a very helpful submission from NTL. They appeared yesterday. They have given us a table there of the options, and perhaps your technical man might like to have a look at that table. It's a fairly straightforward one. It is a conversion, and it uses a conversion of bits into megahertz, which is based on the ABA's terrestrial broadcasting planning handbook, so it is therefore an authoritative source for doing so. But we sought to express things in terms of bandwidth with that conversion going in the background. So it may not have been the best way of expressing it, but it wasn't actually that we misunderstood what was going on there.

**MR TANNER:** Sorry, just to clarify then: there was a report in the Herald this morning I noticed that you were once again putting the view that a way of distinguishing datacasting might be to limit them to only one or two megahertz. Now, once again, everybody at the ABA - including me - reads that to mean that you envisage some sort of narrowband transmitter operating on a slice of a seven-megahertz channel. What you are telling me is that you intend that - if you like, metaphorically - you would envisage that a seven-megahertz channel would still be used by a single DVB transmitter using the DVB digital standard, but that one-seventh or two-sevenths of the 19.3 megabits per second, or whatever it is planned for, would be multiplexed. I apologise, we have found that extremely confusing, which is why we have volunteered this.

**PROF SNAPE:** Thank you for that, but in fact in the discussion yesterday I said "on a multiplex" and that may not have got into the newspaper report. But I made it quite explicit that the multiplex would be seven megahertz and the data - and that would in fact be divided up in a way which could limit the amount of bandwidth or bit stream available for any of the datacasting. So I can't of course take responsibility for how it was reported in the press, but you will find that in the transcript.

**MR TANNER:** Thank you for clarifying that.

**PROF SNAPE:** But going on from there, as you say, it could have been clearer, and we should have perhaps explained the shortcut that we were taking there to make it more readable. Of course, then to go on as to what could be achievable with high definition, and whether there would be standard definition that could be fitted alongside it - and, as I said, this NTL table does give a very useful setting out of what would be available if it was 1080i for the high definition, and it's saying that on the seven megahertz there would be no opportunity, in general, for a standard definition. On the other hand, if the high definition - it's still high definition - was done in 720p then there would be space available for one standard definition. If it was done in 576p there'd be width available, too, and so on. So I think that if everyone is agreed that that is a good statement of the possibilities, then we can leave on one side that discussion and go ahead with that.

**MR TANNER:** That is entirely consistent with what we have attempted to advise you in this submission.

**PROF SNAPE:** Yes.

**MR SIMSON:** Just on this point, I - perhaps again in haste - have read your submission as still basically anchoring the way forward in the context of the mandating of high definition television at a high standard, and not a possible simulcast of SDTV and a high definition - whatever that ended up to be, whether it was 720i or - - -

**PROF SNAPE:** 720p.

**MR SIMSON:** 720p - or 1080i or whatever. Is that correct? I am referring to page 12 of your submission in particular where you comment, in the second-last paragraph - our reference, page 118 - where you say:

It is possible to take quite the reverse arguments for HDTV, extolling its leverage potential, the likely minimal cost differential in set-top boxes -

which we will come back to in a moment -

and its facilitation of new programming and services within an increasingly convergent media environment.

**MR TANNER:** I think you should understand that one of the ABA's contributions to the current conversion to digital is that our director technology has convened the Standards Australia committee that has been developing standards for digital television transmission and reception. These debates that the Productivity Commission's report very much weighs into about the opportunities and threats of mandating an HDTV-only chip that would really be necessary if this country were to go down a path where broadcasters were going to be required to go HDTV but not required to simulcast - those debates have often boiled down to arguments about the retail cost of set-top boxes under various scenarios.

I think a feature of those debates has been, from the point of view of our director technology - and I am going to have to verbal him a little bit here because he's not here to defend himself - that practically any position you want to run can find an advocate. That is, there are people that will tell you that there is going to be, in effect, almost no difference within two or three years between the retail costs of set-top boxes with HDTV chips which are going to be (indistinct) compatible and set-top boxes without. Indeed, there are people that will tell you that no-one will be manufacturing SDTV-only chips. On the other hand, there are other people out there that will tell you that there is going to be a very large differential in cost - and clearly that is a massive, I think, political issue, as we have seen in the public debate - and that that cost may continue in the future because we are, in effect, mandating a customised local set rather than the general one.

Now, the director technology I guess is very concerned that the Productivity Commission report basically goes along with one strand of that evidence, and is satisfied by one group of people that wish to emphasise the major differential. I think he felt constrained to put the sort of material he has got from the other side. I guess the comment I would make, if this helps, is that a great deal in this debate seems to hinge on a question that we can't yet answer, which is just how much the boxes are going to be costing, and just what the differential is going to be between that and a standard definition only box, and what that differential will be in the second generation and onwards. I think if we asked that question and found that the difference would be minimal it might have an entirely different set of policy implications than if we find that the difference in the first generation is quite large.

**MR SIMSON:** There are two issues, aren't there? One is the actual cost of the box, and I am interested to hear you say that at this point in your words "nobody really knows what they're going to cost" because that makes it tough for you and it makes it tough for the government, and it makes it tough for anyone trying to make a determination as to which way to go.

**MR TANNER:** Well, it does. That's a personal observation and maybe that's not helpful.

**MR SIMSON:** It is actually quite helpful.

**MR TANNER:** It occurs to me that if that factor is still fundamentally very difficult to ascertain, and there are widely divergent views, but if that's still the case - and I have to say here that the government and the department are doing much more work on this than I've done, right now as we speak, and so may be better placed than me to comment on this - but if that is the case I think there are some dangers in reaching hard and fast policy positions.

**MR SIMSON:** Okay, but I think it's perhaps because of that uncertainty that we took the approach that we did because there is the issue of price differential, and with this uncertainty, perhaps implicit in what we were doing and the approach we were taking was to err more on a conservative side and say you're probably better off not banking on or mandating an HDTV-only solution in this uncertain environment because if one group of people who are saying these set-top boxes are going to cost a lot of money actually prove to be correct, then we can have a pretty major problem for ourselves in terms of getting this country into the digital era. But the second issue doesn't just relate to price, it relates to spectrum, and another reason why we took the position that we did with regards to arguing the mandating HDTV-only option was not the correct course was because it is so spectrum hungry, and that has now been validated very clearly by the NTL submission yesterday, and the other groups were advocating at the least a simulcast of SDTV and perhaps a lower than a 1080i standard for the high definition. So it's not just a question of price, it's also a question of spectrum.

**MR TANNER:** Let's draw that right out because in the end what you come down to is a political choice and the ABA won't have a view on this in the end. You do raise the prospect that maybe greater compression rates in future will remove this problem, but at present that hasn't happened. At present the situation is that, if you go for a must multicast in standard and HDTV option and then permit the importation or manufacture of large number of sets that are standard definition chip only, or set-top boxes, you immediately create a legacy problem that will ensure that unless compression rates change you will never in practice have the option of moving to 1080i or whatever it is. You will have locked in a lower level of HDTV.

That may not be a bad thing, and it may be that 1080i for the long-distant future is never going to work, but that's not a call the ABA can make. I would merely make the comment that if you go down the standard and HDTV path, while you can have lower levels of HDTV, on present compression technology you won't have in future the option of anybody in the market, in practice, I think, going to full HDTV, at least not using the broadcasting services bands. It may be that satellite or cable isn't similarly constrained.

The ABA doesn't have a view on whether that is a good or a bad thing, but I think that's totally consistent with what NTL has told you. I should say too, I should apologise if the tone of that chapter comes across as a little adversarial. As I say, there has been a lot of debate inside Standards Australia and perhaps there was a feeling, if that was authored, that you'd accepted one set of voices - but it's certainly not our intention to push a particular barrow in this debate.

**PROF SNAPE:** Well, it does come across that way, I must say, and our draft recommendations were attempting to keep options open, and we in fact recommended that it be standard definition with the option of high definition. We didn't say anything about reducing the amount of bandwidth that was available, etcetera. So the bandwidth would be there for the high definition, even at 1080.

**MR TANNER:** Sorry, it's not clear how it would be if you have a significant number of standard definition only set-top boxes in the market, because that will mean that commercially any manufacturer is not going to want their set to go black, therefore they're going to have to keep simulcasting if they go to HDTV in standard. Now, there aren't enough bits to both simulcast in standard and go to 1080i. There are enough bits to go to HDTV and, as you say, it's always possible - I'm not an engineer but I understand it's always possible that compression ratios may change. I just make that observation, that's all.

**PROF SNAPE:** Yes, but it is possible to go - - -

**MR TANNER:** So whichever way you turn you're actually setting off options as well as creating options, I suppose.

**PROF SNAPE:** I see that but going to 720p of course would, as we understand, allow for simulcasting of standard - - -

**MR TANNER:** Absolutely, and we have no problem with that.

**PROF SNAPE:** But we're also very concerned to get rapid uptake and I think we all see that rapid uptake of digital is crucial to unlocking the spectrum and is the crucial factor.

**MR TANNER:** Which throws you back to the question of chip price differential.

**PROF SNAPE:** That's what I was coming to, the chip price differential. We then have two things; either that there is going to be a substantial difference in the future between the high definition and the standard definition, in which case you mandate matters, and if you mandate the high definition and there is a large differential in the two, you have tied that spectrum and there continues to be a large differential, you have continued to tie that spectrum up into the future. So if there is going to be a continual large differential, mandating high definition is a bad idea at 1080 because in a sense you will never, or not for a very long time going to get - if the argument is the other way, which some of the companies are putting forward, is that there's going to be a minuscule differential, then it doesn't matter. You don't have to mandate high definition.

So either way the mandating of high definition is in a sense a bad idea. As there is uncertainty and the differential may stay large it seems to be a bad idea to mandate high definition because if there is a small difference it doesn't matter, they'll go to high definition. So voluntary. So whichever way you come at it, a big price difference or no price difference, you don't get an argument for mandating high definition on its own.

**MR TANNER:** As long as by high definition you mean not 1080i, that's true.

**PROF SNAPE:** Yes. I mean, that doesn't come through. It seems to me that's a fundamental logical position which is crucial in this, and we would have hoped that that might have come through. The other thing that I might say doesn't come through here is it tries to separate in this argument the screen size, and says, "Leave the screen size on one side and just concentrate on the rest of the works and the price of that," but that, as we have been told by many people, is irrelevant and not a valid distinction because if you can only see the distinction difference between high definition and standard definition on a large screen and the general submissions that we've had - it has to be 90 centimetres or greater to see the difference at normal viewing distance - then the large screen is crucial to the equation because you don't get any benefit from the high definition unless you have the large screen. So you can't say, "Leave the screen size on one side and just concentrate on the rest of the works," and that's what, on page 15, the argument here is. That's not a valid argument.

**PROF FLINT:** Your conclusions may be glaringly obvious and logical but they are not conclusions which have unanimous support in the policy area. These are matters

of debate, presumably in the cabinet for example, and certainly in the industry, and that is why the ABA finds it - the ABA doesn't agree that it's glaringly obvious.

**PROF SNAPE:** Well, no-one, I think, has disputed in the hearings that unless the screen is a very substantial size - and the general figure we've had is 90 and I think no-one has said less than 70 centimetres in size - that from normal difference you will not be able to distinguish between standard definition and good quality, which I think means at least 720p, or 1080i high definition. So therefore the screen size is crucial.

**MR TANNER:** Perhaps I could make a distinction then. The screen size is crucial to whether or not HDTV - and the cost of screens is going to be crucial to whether or not HDTV proves to be a successful application here. But the cost of screens is not - I mean, the key issue, it seems to me for the initial introduction uptake is the cost differential in set-top boxes which goes back to the cost of chips only. What we're talking about - if you're satisfied that at present HDTV is only going to be a premium product of limited interest to anyone because of the high cost of sets - is keeping open that option.

What we've discussed is that the multicast option keeps open the option of HDTV but apparently not the option of what you might call a similar quality top range HDTV. So I guess in that sense the cost of screens is a furphy in terms of the debate about whether or not the mandating of HDTV is an impediment on day one to rapid uptake. That really comes straight back to the question of the chip.

**PROF SNAPE:** That's the chip. I was talking of sets.

**MR TANNER:** I suspect that's what we were trying to say. Certainly the cost of sets is important in evaluating the medium and long-term prospects for HDTV, and we don't expect those costs are going to stay static.

**PROF SNAPE:** Well, much of this is in chips, but the paragraph I was referring to was in sets, and that's where the screen size comes in. The way this is written comes across as advocacy for the position that was adopted.

**MR TANNER:** I regret that. I hope this has clarified our position somewhat.

**MR SIMSON:** Mr Tanner, the other point - just on this - which is an interesting observation you made earlier, and I know it was just in passing - where you used the time period 15 to 20 years in terms of a possible analog switch-off under some circumstances. That's the thing that's really concerning us. The government in its legislation has an earlier date obviously, in terms of the simulcast period, but it's an indicative one only; it's not mandated because the process is not in place to be able to deliver that. If you go to page 12 again of your submission, and paragraph 1.18, that same paragraph I read earlier, the last sentence of that says - in what we saw as your advocacy for your current position:



If anything, these would contribute to opening up the use of BSB to achieve greater diversity and competition in the post-simulcast period.

Our concern is actually getting to the post-simulcast period. So that you and us to an extent, I think, in debating this are almost at two different planes. If nobody had a television set and we did not have a conversion problem, you could come up with arguably a somewhat different set of recommendations to a situation where that is not the case. So that last sentence is the one that threw us a bit, that:

If anything, these would contribute

these are the arguments for HDTV as it has been mandated -

to opening up the use of BSB to achieve greater diversity and competition in the post-simulcast period.

As we make clear in our draft report we don't think we're going to get to post-simulcast period in our lifetimes on the basis of current policy. So this is a major issue and, because of the ABA's expertise in this area, we are looking for guidance within the boundaries of what you can reasonably do because of your political and policy constraints to help sort this out.

As we discussed earlier, if we don't know the price - none of us can sit here today and say we really know what the price of that set-top box is - that is really the first stake in the ground. That's a major stake in the ground. Yet we know that's not the way, we know at the time that HDTV was mandated last year there was not a lot around in government circles on this issue in terms of what the price would be. To a large extent it was something that was almost assumed would be there, it would be affordable. We read the newspaper this morning and we see some of the manufacturers talking about perhaps 18 months before there could even be a set-top box in the country, almost of any standard, that could do the switch.

**MR TANNER:** Well, you've covered a lot of issues there. I'm not sure which to comment on. I mean, clearly we can understand that if the product is expensive that may slow take-up. That won't be the only factor in determining when you turn the system off because take-up is for people that want the product. I can assure you there will be plenty of Australians that won't buy the set-top boxes even if they're cheap. They will wait till their analog set wears out, and it's those Australians that will determine the switch-off date, I suspect - hence my remarks about spectrum clearance is a very promising line of inquiry.

But I certainly take the point that rapid uptake and cheap boxes during the simulcast period is going to be very important. There are a set of issues about when these things can come onto the shelf and I guess those have the implications which I'm sure the government is currently considering about 2001 and various aspects of the current scheme. The ABA is really in no position to weigh into that debate, except to the extent we have a director of technology that has worked with industry through

Standards Australia to try and get answers to some of these very very difficult questions.

**MR SIMSON:** On spectrum clearing, the late submission - is that a late submission to us, by the way?

**MR TANNER:** Yes.

**MR SIMSON:** You will have to make certain assumptions though, in terms of canvassing options for spectrum clearing, as to what the standard is - whether it's mandating 1080i or a simulcast of SDTV and HDTV because - - -

**MR TANNER:** Of course we will. More than that, we will have to make certain assumptions about what will and won't be allowed to be carried on these extra services. There is currently a debate about the definition of datacasting - - -

**MR SIMSON:** Yes.

**MR TANNER:** - - - which must have an effect on the market value of the spectrum. So apart from anything else the ABA is not a team of accountants with a large amount of expertise and time to actually build these kinds of models. What we can comment on is the aspects of this problem that we can contribute something to. We are actually an expert technical planning organisation, for example, and I think we're fairly seasoned in terms of knowing where the sensitivities are in terms of viewers, listeners and their elected representatives.

**PROF FLINT:** And undoubtedly the closing off of the analog system will be one of the most sensitive issues in the country.

**MR SIMSON:** Absolutely. Mr Tanner, could I just change the subject for a moment - and Prof Flint - to the issue of the public interest test on page 19 of your submission. You seem to be suggesting here that it's possible that you could actually bring under the umbrella of your authority a number of the issues that could relate to a public interest test in preference to them being encompassed in the Trade Practices Act. You mentioned the inherent tension in here between - and this was explained also yesterday by Prof Hilmer in a not dissimilar context - the appropriateness or otherwise for the Trade Practices Act to be the body that should look at these things as opposed to another body as you mentioned, Prof Flint, in your first discussion with us about this. Could you just talk a little bit more about this because I suppose what's more important is not so much process but its outcome and we would be interested just to hear what your thoughts are as to how that could actually be brought within your orbit.

**MR TANNER:** I actually think one of the difficulties in debating the control rules has been the lack of an always clear debate about what the policy objectives are, with consequently a great deal of uncertainty and, when one analyses the memoranda and goes back over history, you find multiple and sometimes conflicting objectives which

include - well, a whole range of things, including actually competition. That's certainly been cited at various stages to defend particular ownership and control rules.

There's a lot of history to this but there has not been much, I think, really coherent analysis of what the policy objectives are and certainly the ABA has volunteered in this submission that the notion of ensuring diversity of voice is a coherent and discernible possible policy objective for a number of these rules, such as, for example, the cross-media rules. I guess once you've worked out what your motive is, and if your motive is ensuring diversity of voice, I think you then find that you've clearly separated it from competition policy. You shouldn't have two different sets of rules, even with one regulator obviously, which are both pursuing in totally different ways what is basically a competition objective. We seem to have pretty good competition rules where the policy objectives, I think, are by comparison very clearly enumerated.

If the objective is a public policy objective which is, if you like, related to the special nature of the broadcasting industry and a special role that it plays as the medium in which public debate occurs and our democracy is informed, then I suppose the question arises of what is the best piece of legislation to handle that under. At present, the Broadcasting Services Act is one that sets out the special objectives for that industry, and what kind of regulator and what kind of expertise background are considerations you would want to bring to that task. Now, the ACCC has a massive series of tasks which include crucially the operation of the competition laws in this country and all the ABA is suggesting in this is that it may in fact balance the discussion to look at the alternative possibility that a diversity of voice tests, which is industry specific and has a totally discrete goal, may be well dealt with under a different scheme of regulation.

You could argue that either way. When you are creating and merging functions - and I understand there's a counter-argument that you might want to have a content regulator and an industry structure regulator. I mean, you can run it various ways but when you are moving functions around between government agencies, I think you have to continually ask yourself what kind of agency, what kind of mix of skills and preoccupations you are looking to create in each agency. The suggestion is that it might balance the discussion to look at the alternative, which is the diversity of voice test, if that's one of the underpinning rationales. It might require a different kind of regulator, if you like, or at least to be handled under a different piece of legislation.

**PROF SNAPE:** I guess there are two questions there. I mean, the questions here that we're addressing and the diversity is going to come up in the context of mergers, takeovers and so on in general, I think.

**MR TANNER:** It comes up in a very different way. Competition policy is ultimately about ensuring, for example, that mergers don't result in an increase in market power, which involves a decrease in the quality of services that are provided to consumers, or the quantity or the cost or whatever. Diversity of voice - - -

**PROF FLINT:** If I could come in on that point, it would be strange, would it not, if you had the ACCC ruling on mergers which it said weren't caught by its act because of its concept of market?

**PROF SNAPE:** I think that's where we come to. I mean, the question as to when there's going to be a decision made by someone is going to come up presumably in the context of changes in the status quo which might in fact involve a reduction in the number of voices. So they are going to come up in the context of mergers, etcetera. So that triggers the question. The ACCC may say, "We've got no problem under our normal criteria," but there is this other criterion that is there and it's a question of then who gets triggered at that point and whether it's administered through the ACCC or whether it's administered by some other body. But nevertheless the trigger for the whole examination would presumably come from some merger between the enterprises.

**PROF FLINT:** Yes, but it would be a merger, as you rightly point out, most likely one outside of the Trade Practices laws. It wouldn't be one proscribed.

**PROF SNAPE:** It may be or it may not be.

**PROF FLINT:** Yes.

**PROF SNAPE:** And the sequencing there may be that the ACCC would say, "Under our normal criteria this doesn't get up," so it doesn't have to go on to the additional test and you wouldn't want to have to invoke that other additional test in fact if it wasn't going to get through the normal criteria. So that other test would then get added on to it. It's a question of then, only when in fact it has jumped the hurdles of the ACCC, they say, "Okay, having jumped those hurdles, we now subject it to that other test," and it's a question then of who would be - - -

**MR TANNER:** I suppose my comment was that the ACCC actually does not closely examine all mergers and acquisitions. For example, it's of no interest to the ACCC that a particular radio licence is acquired in Dubbo. It's highly unlikely ACCC will even use its informal section 50 process to examine such an acquisition, but that may very well, depending on how you define your share of voice test, have the implications to share a voice. So, given the ACCC doesn't automatically look at all acquisitions and mergers, including for example licensing decisions, really whether or not your observation is correct depends on what you think in the end is a good diversity of voice rule.

**PROF SNAPE:** I think we take the point. We will reconsider how they mesh together but one wouldn't want to have two completely separate bodies which didn't have connections between them, so that you didn't build in a sequencing of decision on any particular case.

**MR TANNER:** Yes, I can certainly see how, depending on the diversity of voice test you come up with, you could very well build in such a sequencing very

effectively. It's an odd kind of test, however you look at it. It's a kind of structural issue which is not entirely like any other work that the ABA looks at and it's certainly not as closely allied, I think, to basic competition and merger principles as some would argue. That would be my feeling, but I think it would probably really help this discussion if we were having a lengthy dialogue about it, to really close in on whether we want a diversity of voice test, what it might look like and what is practicable for government to achieve in a rapidly changing conversion environment. I hope you noted our introductory remarks on control.

**PROF SNAPE:** Yes, we did.

**MR TANNER:** I think it really would be useful in this debate to start out with a bit of clarification of what it is in the public interest we're trying to achieve.

**PROF SNAPE:** Yes, we had hoped for more - not from you - but for more submissions on what might go into that public interest test than so far we've got. Maybe more will come in.

**MR SIMSON:** Is this an area where the ABA could be of assistance in the final report in terms of - is this an area that you've given thought to as to the what or the how a public interest test in terms of diversity of voice, or how it was to be worked out or administered, could operate in our draft? We perhaps put this more in the idea category and the proposal category in terms of the lack of detail that we're able to flesh around but on the other hand we did receive, notwithstanding a lot of prodding of people who appeared before us - we did not receive a lot of information from people as to how something like this might work.

**MR TANNER:** Pardon my ignorance about the detail of your inquiry, but did you consider and have regard to the discussion paper and the submissions that were received by the department during the previous review of the cross-media rules which in the end resulted in no change? It would now be about two years ago. Certainly that is the most comprehensive airing - that discussion paper is the most comprehensive airing of policy issues involved in diversity of voice. I think in terms of the submissions in response there was a number of public - interested parties did put views on where they stood, so there has been a - - -

**PROF SNAPE:** We have looked at that. I don't think we'll look again.

**MR TANNER:** Yes.

**PROF SNAPE:** I wonder if we might sort of go through a little bit, without going to every point of course. On page 4 - a comment at the top on our page 69 is the easiest way of identifying it, I think, where there has been a misunderstanding there, and no doubt we should have expressed it more clearly, about the spectrum and broadcaster. It suggested that there would be a loss of services to audience. Well, what we are looking at there is that the owner of spectrum could be the broadcaster but, having lost the broadcast licence, they would still own the spectrum and they

could lease the spectrum to someone else. There would no doubt, under the current arrangements anyway, be plenty of applicants to use that spectrum, so it is not that we just lie idle. One of the ideas is that spectrum owners could be different from the broadcasters and so there seems to be a misunderstanding of what we were about there.

At the bottom of page 5 in about the fourth-last line you refer to the delays in the ABA in the planning timetable and you say "involvement in considering matters related to viability or sustainability of existing and aspirant broadcasters". We're not quite sure how viability got into it. How is viability in the act, in your requirements? Why is the ABA required to assess viability, or why does it choose to? In other industries, even those industries in which there are licences, there is no viability test. So why does the ABA want to get involved in this viability test?

**MR TANNER:** It's a dangerous term to use because "viability" unfortunately was a term of art in the previous Broadcasting Act 1942 and had a very specific meaning there and, in fact, I think served as a very major obstacle to new services coming on air. We certainly don't wish to suggest that anything like that test can be read into, on any legal reading, the current criteria in section 23 and in the objects of the act, and I think there is a good analysis of this in the Gilbert and Tobin report on the planning process that was commissioned early on in the life of the present government to look at why the processes are taking so much longer - because the ABA - I mean, I think we talked about this during the first hearing, about how there may be an expectation on the part of the act's authors that the ABA would use the market to test carrying capacity.

Unfortunately we believe the cumulative effect of the relevant provisions is that the ABA must form a view of some kind that, if it plans a new commercial community service, on the balance of probabilities, if you like, it can reasonably anticipate that will increase the number of services of that type in a market. I guess that draws the ABA into some consideration of whether it's feasible for the market to expand. We're not saying that is desirable, and that's not a policy position that we defend. We believe it's a corollary of the current legislation and the requirement that the ABA only make decisions that promote the objects of the Broadcasting Services Act; also that it have regard to all those factors set out in section 23. We came to that view after extensive canvassing of the legal issues and certainly extensive canvassing of alternative views, and those legal opinions that we received are, I believe, set out in the Gilbert and Tobin report quite clearly.

**PROF SNAPE:** You would see our draft recommendation that those parts of the act be deleted, the non-technical parts of that section 23?

**MR TANNER:** We actually have no view on that but it would certainly return the legislation to the position that I think the act's authors believed they had got us to in 1992, to be honest. The real difficulty we're raising here, I suppose, is that by the time that amendment goes through analog planning will be pretty well finished. The suggestion I would make - I hope this is not perceived as a cut again - is that issues

about what happens after that and, if you like, transition from one scheme to another, might be a fruitful starting point. The problem we really have is that your report appears to be redesigning the planning process so it would have run better if we start in 1992, and we've got no problems with the idea that that would have speeded things up. We have no problems with the observation that in a policy sense I think a lot of people expected we were going to use markets rather than in any way being drawn into second guessing outcomes.

The trouble is that at the moment as we sit here analog opportunities to transmit new services will be largely exhausted by the time you could possibly get changes through parliament. In the case of the VHF bands and UHF spectrum used by television, all the other spectrum - the taboo channels - is likely to have been allocated to digital services or datacasters. So if you're proposing a new scheme it's really not as simple as redesigning section 23. The whole of Part III of the act is about to become pretty well obsolete because of the completion of analog planning and because Part III wasn't designed to deal with digital. Part III, for example, conflates systematically channel with service. That's a pre-digital assumption. You really need to rewrite Part III and come up with a new scheme for what is going to happen in the future.

The ideas you bring to this could very well be introduced into such a rewrite. I suppose my reading of the chapter 4 recommendations was that really they read best as what we could or ought to have done in 1992 rather than what we should now be doing or what our opportunities are to do in the year 2000. I really do apologise if that's what you're calling "death by a thousand cuts", because that's far from our intention there.

**PROF SNAPE:** I think while we can see that you've almost completed the planning under the existing criteria and we need to think more about this, our thinking was that with different criteria you could in fact find quite a few more spots in the existing plan; in other words, the existing plan can be revisited with the new criteria. You have gone through it, you have got your records, and the simplest way would be to go back and say, "Okay, we made that decision by taking into account viability criteria. Now let's revisit that decision and see what the decision would be on the new criteria." So to say that the planning is finished full stop - - -

**MR TANNER:** Let's have a talk about that. I can see the point you're raising. We have not reached spectrum exhaustion in remote and regional Australia by any means. There are large numbers of channels actually planned in remoter localities such as Longreach. We have tables of them. As you get into more congested areas, such as the agricultural districts of Victoria, New South Wales, Queensland and around the cities, frequently the licence area plans have, in fact, exhausted or all but exhausted spectrum. It is always possible that if you know a demand is for a particular low-power channel at a particular site you might find you can operate another service just by squeezing it in.

It is possible to increase the number of services there, too. Obviously there are cities in the world that have more radio services than Sydney. But the price of that is

changing the protection ratios that we use in our plans. In other words, the corollary of having more services would be reducing the coverage of some existing services or at least replanning them. Also, there are some additional channels that could be found by taking, I guess, painful planning decisions. For example, Channel 3, which covers a large part of the FM band, is still in operation in Newcastle. If we could resolve the public policy issues about the somewhat smaller coverage areas of UHF to the satisfaction of fringe viewers, there might be the option of a bit more FM through planning Channel 3.

So it's not true to say that the job is finished and we've reached spectrum exhaustion, but I guess it is true to say that we have, in the more densely settled areas, largely reached spectrum exhaustion, or will have when we finish licence area plans unless you make those painful decisions - which you can make, but I guess there is a question mark in my mind. In the example of television we now have a migration path that will see the end of the television and we will see enormous amounts of spectrum freed up, once we have found a way to turn it off. It seems to me the problem for television is not to redesign Part III of the legislation, it's to leapfrog right over Part III, leave it behind us, and talk about the shape of the digital world and the post-simulcast world, and how we get to it. That's your policy problem.

**PROF SNAPE:** For television but not for radio.

**MR TANNER:** In the case of radio we actually have the problem that digital conversion doesn't seem as real and yet it would seem to me that it is as inevitable, or at least that the substantial digitisation of mobile audio entertainment and information will be in the next decades. So whether it's particularly fruitful or profitable for government now to be focusing on how to revamp analog planning when we have reached that point of analog exhaustion, unless we go through various amounts of pain - there's a policy call there. I suppose you can detect that I'm a little sceptical, but really, it's not the ABA's role to say that.

**PROF SNAPE:** I guess the planning process has gone ahead on certain criteria and those criteria then have limited what can be done in various ways. Of course, various parts of those criteria might have been the binding factor in particular areas.

**MR TANNER:** Yes.

**PROF SNAPE:** A constraining factor.

**MR TANNER:** Yes.

**PROF SNAPE:** Then, as we are encouraged to in our terms of reference, you know our terms of reference and where the onus lies - anything has to be justified.

**MR TANNER:** Yes.



**PROF SNAPE:** Not any change justified, but the retention justified under our terms of reference.

**MR TANNER:** Yes.

**PROF SNAPE:** We then say, "Okay, we look at the terms - new set of criteria - to what extent does that remove the constraints that were on the previous planning process?" It may be that that is a matter in which the staff might wish to have a little bit more discussion and to take up your kind invitation to pursue these matters to see - but it would be surprising, having viability in there through the back door, if one takes viability out that the same set of decisions would have been taken across the country.

**MR TANNER:** Yes. Perhaps here is the question then. I guess what I take from the report in total, from not just the recommendations but also the hints and questions, supposing one were to have a scheme - that's what I suspect you have more in mind - where a planning body, and you have views on that, is given a capacity requirement which the government has developed for national and community services and you've got various ideas about how that capacity requirement may be developed; the planning body then has a charter to plan for maximum productivity, it must meet that planning requirement and markets will then be used to test demand for the remainder.

That, I suppose, is the sort of scheme I was seeing between the lines in your recommendations and that's a fine scheme. In fact it sounds an awful lot like what I suspect various authors of the act thought they had in 1991 and which we ended up with something somewhat different from. My next question is: okay, if we move to that, to what are we going to apply it? It seems to me that the answers to that are that in the case of television we've actually moved beyond anything like the Part III scheme.

We are now in a digital world where the problems, the planning problems are totally different and the problems of accommodating and funding national and community services - the community issue is a different issue and so on. So we're left with radio. There is spectrum still available to which we could apply that new scheme throughout regional and remote Australia. There may be some opportunities in metro Australia. Would you see such a model applying to a digital model? Would you see it perhaps being handed over to the planning and steering committee of the department which is working on digital radio options? I suppose that's the sort of question I'd like to take further with your officers. I can see the kind of vision that you have. I'm rooted in the here and now, that's my job. I'm rooted in a particular planning status, if you like, and I am interested to talk about how we turn that idea into a proposal, if you like.

**PROF SNAPE:** Yes, fine.

**PROF FLINT:** Could I ask a question on one of the matters that comes from that: am I right in assuming that you're suggesting that the reservation of national and community spectrum in radio be matters for government, or is that to be a matter for the ACA?

**PROF SNAPE:** That would be a matter, I think - the way it was implemented - it would be the ACA that was implementing it, to achieve the government's objectives. I suppose that would be the correct way of describing it.

**PROF FLINT:** But that wouldn't be technical.

**PROF SNAPE:** No.

**PROF FLINT:** Because one of the matters, of course, when we're looking at viability and demand, is to look at the balance between commercial and community.

**PROF SNAPE:** It would be technical in the sense that there would have to be a reservation to meet the objectives within the technical constraints in any place.

**PROF FLINT:** I see.

**MR SIMSON:** Just to change the subject again for a moment, if we could jump - if you wouldn't mind - to page 26 of the submission and your defence of the 55 per cent transmission quota. What we were trying to do there, in putting a question mark against that and also the production quota for advertising, was try and relate these processes to social and cultural objectives and bring some science to it; arguably, not terribly perfectly, but we had a discussion yesterday with the participants as to where do you draw the line in the sand on these things? How does the making of an advertisement for a particular product actually extend or support social and cultural objectives in a case where that product might be, for example, a multinational product or a product that is of a global nature?

In the case of the 55 per cent overall quota, as you know, we supported the subquotas for drama and documentaries and children's, because they were quite specific; it's quite clear what we're putting our hands on there. In the case of the overall transmission quota, it's basically anything or everything, whether it's a bit of news, no matter how much that might reflect on a piece of Australian identity or culture or a piece of sport or a piece of infotainment or whatever. In the case of drama and these other subquotas, there is something you can put your hands on and they are quite tangible, so that is the reason we question that 55. Could you just counter that with us? We've obviously read what you have had to say here and clearly you don't agree with what we've said. Could you just argue that with us, as to why you do see the 55 per cent as supporting social and cultural objectives?

**PROF FLINT:** Could we take that on notice? But saying that, I would like to say something about it. When you argue that television should reflect the nation, that it should be Australian, we don't make judgments about the quality of programs and you

can come, for example, to a program which is a light panel program and there is an advantage, we think, in having that program Australian rather than, say, an American program, an Australian Oprah Winfrey rather than an American one. In times of economic tension and crisis, there will be a considerable incentive on the broadcaster to go to the import rather than the Australian because of the cost differential and, although there may be a demand and an interest by viewers for Australian product, if there are economic difficulties, it may well be that broadcasters will choose the imported product.

**MR SIMSON:** Excuse me, Prof Flint, could you speak up a little bit.

**PROF FLINT:** Yes, certainly. What I was saying is that, notwithstanding all the goodwill in the world, there are times when these matters will be driven by cost and there is no doubt that the cost of an imported program will invariably be cheaper than an Australian program, even if you come to the news. I remember when one of the commercial channels introduced CNN in the evening, rather than an Australian news broadcast, and the MEAA objected to that because they said, "Well, really, you're just using an American news program and you're not using Australian news programs with Australian presenters presenting some Australian news and some overseas news. This is American and it's not reflecting Australia." I think that is the argument behind the overall quota that television, which is so intrusive, which has such an effect on Australians, which goes right into their living rooms, should reflect the nation.

I can remember when I was a boy and you went to the cinema, you hardly ever saw an Australian program. They were always imported and they were usually American. The only Australian programs you heard were on the radio, the only drama you heard was on the radio and it was Australian drama and there is, I think, an important factor in having these quotas. If you go to advertising, although our concern is about what actually appears, there has to be some regard to what goes behind that and the advertising industry has been a very important school for the learning of the necessary skills, because so much money goes into advertising, which is then flowed on to the Australian film industry. A lot of people have learned all of what they know and been able to develop and hone their skills through advertising, so there is, I think, relevance in a requirement that there be an Australian quota.

The American audiovisual industry is so enormous it is in a dominant position in the world. I think three-quarters of cultural exports in this field are American and they can underprice any Australian product.

**PROF SNAPE:** We had quite a discussion about some of those aspects first thing yesterday morning with the Australian Film Commission and the Film Finance Commission there and, since you're taking it on notice, I wonder if the person who is drafting the response might have a look at the transcript of yesterday morning and particularly the discussion there that is relating to the growth of co-productions and the training that that has given.

**PROF FLINT:** Yes.

**MR SIMSON:** Page 20, please, Prof Flint, your submission comments in response to the question we threw up in our draft report regarding the audience reach rule, and you say there that really - which I think is an interesting one - the case for the rule has much more relevance in an analog environment than a digital environment, because in a digital environment you have multichannelling and the opportunity for many other ways of ensuring diversity of channels and programming. Is that the thrust of what you're saying there?

**MR TANNER:** Basically, I guess the submission here is that whatever the original rationale for the 75 per cent rule and whatever the problems with that rule - and I guess the major problem is really that once you control Sydney and Melbourne, you control network programming decisions and the control rule itself, I think, recognises that by having a let-out so that control is not conferred merely by a program supply agreement. In effect, those programming decisions that it required in the past only a Sydney and Melbourne licence to determine, really do determine the content of 90 to 95 per cent of what is seen in Wagga or Darwin. Having said that, the 75 per cent rule has seen, inevitably, the development of some quite major regional broadcasters and those regional broadcasters, to a greater or lesser extent, have developed a regional focus in the few per cent of programs that they are able to make locally.

Often subregional too, so we have different programs within the same market, Canberra, Wollongong may have different news, advertising and different variety, news, magazine-type programs. The ABA, without having a policy view on the desirability of this rule continuing, was making the point that you might encounter an argument that, for example, politicians from those regional constituencies may feel that addresses in some way the desire that the people have in communities in Australia to see local issues addressed in a local way, rather than as has been flung at me in other cities, the Parramatta Road car crash or the political story from across the border. Those things cause great annoyance to ordinary viewers. We're making that point without, I hope, knocking down the idea of reviewing the rule, and we also looked at ways forward in that and it did occur to us that one of the limitations of analog is really done away with in digital.

Digital does, in fact, open the door - depending on the model which is taken and what is mandated - for other ways of addressing regional concerns. Certainly the ABC is looking at how it might use its multichannelling capability in trying to persuade government to mandate that, and I'm sure one of the key ideas they're looking at is addressing regional and local needs, so in advancing this potential argument, the ABA doesn't endorse it, so don't misunderstand us. Once again, we're trying not to kill it by a thousand cuts, but we're certainly well aware of how these policy debates go and that's why we're speaking out, and we're also looking for ways forward and ways out. Please don't take the submission as a trenchant position on the desirability of retaining the current rule, for example.

**MR SIMSON:** I actually read it the other way. I actually interpreted your comments as reflecting how that could be overtaken, possibly, in a digital environment.

**PROF SNAPE:** The multichannelling does seem to have quite a lot of potential in that regard. The ABC in its intentions is showing how it might be done.

**MR TANNER:** Yes. Certainly in years gone by, I used to use the 75 per cent rule as an example of a rule that had a very unclear policy rationale, but the way that the politics in this industry work is that anything which happens, which becomes the status quo as a result of the rule, can usually find its defenders when the time comes for it to change.

**MR SIMSON:** Precisely.

**MR TANNER:** It's not too hard to see how regional people in the current climate, where we are very politically focused on the rights of the regions and empowering the regions, might have become quite fond of their regional operators.

**MR SIMSON:** Mr Tanner, it's precisely that philosophy that made us question the 55 per cent transmission quota and the 80 per cent advertising one also - was that generality of those ones.

**PROF SNAPE:** We noted in the comments on chapter 9 that there's a great deal of research which is under way or about to be under way or being scoped, which is in fact quite consistent with the draft recommendations we have there, but there are still some pretty fundamental things, I think, which aren't being looked at. In fact, if one's looking at children's television, the most fundamental thing is how many children watch it? No-one can tell us. I mean, if one was to be researching the effects of children's television, I would have thought the very first thing that one would be looking at is how many people watch it? Yet, if that information exists, no-one has been able to supply it to us, so there are some very fundamental things there as one is trying to get to the link between the quotas and the policies and their stated objectives.

Of course, it's very easy to look at compliance, that they do so much, but then to actually link what is going on to their fundamental objectives - and that's what we were trying to get at and we welcome some of the indications of what you've set out there as some of the research which is being anticipated, but still I don't see any mention of that absolutely fundamental point.

**MR TANNER:** I think something of a consistent theme of both our meetings and of your report has been a wish that the ABA use its research capacity in its role to ask more fundamental questions about, I guess, the policy assumptions underlying parts of its own rules or even parts of the Broadcasting Services Act, and I think the ABA will look with a great deal of respect and give careful consideration to any proposals that

come out of your report on where we should be directing our research dollars. They are limited, of course, but I think that the questions you raise are often germane.

**PROF SNAPE:** Does the ABA have a view - and this is a technical matter that may not be applicable; you may or may not be able to answer - on the feasibility of single frequency networking?

**PROF FLINT:** Single frequency networks? We have the report, don't we?

**PROF SNAPE:** Yes.

**MR TANNER:** I've just answered the same question for the benefit of the Senate. The situation is that the ABA is determined to maximise the use of single frequency networks, constrained only really by the time-frame that it has to roll these things out. But what it has done is it has basically held back decisions on in-field translators for all digital channel plans it has completed to date while a special consultative group with industry and government, which is convened by our director of technology, Mr Greenie, does two things - (1) it develops general planning rules for fully exploiting single frequency network potential of the DVB technology and, (2) it looks at the particular case study, the very disappointing outcome in terms of datacasting capacity in the Sydney area.

The state of play on that is that we're fairly transparent about that process. We're happy to give you any amount of information about what issues are outstanding, but I am extremely loath to make promises about likely numbers. All I can say to you is that the work has so far proven very fruitful and promising. We certainly have an NTL report before us, which shows options for increasing the number of additional channels that will be available in Sydney through fuller exploitation of SFNs and the committee will evaluate that. Ultimately, the ABA will then evaluate that and it will be the ABA's call.

But in doing that the ABA is going to have regard to some tests that we believe are necessary and that are going to be conducted over this month and January. An interim report on how the committee is going will be presented to the ABA at its next meeting this month, but a final report is unlikely to resolve that Sydney issue until at least after the tests. Now, at that time the ABA will then look at what options the single frequency networks give it, what counter-arguments there may be, counter public interest considerations that may stand against particular ways we could exploit that technology, but I think broadly the ABA is pretty bona fide in seeking to fully exploit SFN technology consistent with the public interest.

**PROF SNAPE:** At the moment it looks promising, I think is - - -

**MR TANNER:** I think that's as far as I would like to go.

**PROF SNAPE:** Yes.

**MR TANNER:** It seems to me that, just as with the issue of receiver prices, we can in fact frame entire policies based on particular guesses about productivity, which may look a bit sick if the spectrum productivity equation turns out differently, so I am pretty loath to pre-empt that, but it's something the ABA is taking very seriously and which has actually I think to date been welcomed by both sides, if I can use that term, in the debate.

**PROF SNAPE:** There's a sort of gap in our draft report, or it's very thin on this digital radio. Would you care to add to your previous comments on digital radio and its prospects?

**MR TANNER:** Certainly. I actually think that's a fairly fundamental question. I think where I was trying to lead with that discussion about the actual things that would result from changing section 23 and getting into Part III of the legislation is, if digital radio is imminent and if there continues to be bipartisan support for a conversion model, that may be a debate you wish to enter into. There is a process. I'm happy to go through that process, but I expect you're already aware of it.

**PROF SNAPE:** No, it's really I suppose do you think it is imminent? It would seem to us that, in terms of the quantity of spectrum, it is not as pressing a matter for two reasons: one is that analog radio in total isn't as hungry of spectrum as television, although there is shortage in particular areas.

**MR TANNER:** Certainly.

**PROF SNAPE:** Secondly, the transition period is likely to be much longer for radio, or may be much longer for radio, than it is for television and so therefore the switch-off may be a long way away.

**MR TANNER:** Can I offer some observations then. This is an issue which goes to the desirability of a clearance model, a conversion with clearance model. I'm not aware at this stage of anywhere in the world where there are applications for re-use of that FM spectrum pressing to come in, so there doesn't seem to be - I mean, with television in the situation it is we have this fantastic technology which will enable us to get vastly more out of those bands. It's being introduced everywhere, it seems inevitable, whereas FM doesn't seem to have waiting in the wings such a clear new market application for that spectrum, so perhaps that goes to the issue of urgency. I suspect once the world begins heading towards a conversion model that all markets are happy with we'll see a very quick change in that situation, but at the moment our engineers are telling me they're not really aware of what that spectrum is needed for in the same way as they are with analog television. That's one issue.

The next issue is that I guess while digitisation, while the supplanting of all analog media by digital media, electronic media, seems inevitable - and I'll explain what I mean. We're now seeing Internet-style services delivered over mobile as opposed to fixed telephone links to what are in fact computers, mobile telephones. That's a demonstration that digital services are already able potentially to offer mobile

entertainment, audio information entertainment. Now, we may be decades away from a commercial application that begins to bite into the radio market, but the capacity of digital technology to compete with analog radio over the next decades would have to be fairly uncontroversial.

It's one thing though to say that digitisation is inevitable if radio is going to stay competitive, it's another thing to say that there is a clear path that has a clear business plan to back it up for digital conversion in the next couple of years, and one of the things which is striking to me in the discussions that have taken place to date are that, while there's an increasing commitment in the radio industry to taking up the government's digital conversion offer and showing a good response, there's continued uncertainty about whether Eureka DRB is the technology which is going to sell and is going to have a business case that stacks up.

There remains a lot of uneasiness about the extremely high cost of digital radio receivers, which have really yet to come down to the point where there's even a car market for them, and there's a continuing wish, I think, to keep options open on other potential technologies. Certainly our commercial industry for a long time looked very carefully at America where alternative in-band, on-channel, or in-band adjacent channel technologies were being examined. There's been a cooling on those recently because there's not been much progress, but there are other technologies in the wings. The Japanese, for example, have developed an adaptation of aspects of the Eureka system which has got some different characteristics.

There are also a lot of practical problems in terms of how conversion would work. We will soon know how much capacity there is on L-band.

**PROF SNAPE:** Is that the right band?

**MR TANNER:** I'll come to that. The L-band certainly doesn't have vast amounts of capacity - I can volunteer this as an observation - unless you have a clearance program, so there's going to have to be a good business case for this before we're going to be putting the existing users of L-band to the cost and inconvenience of clearance. L-band does have limitations in terms of its propagation characteristics. You need I think five transmitters to cover Sydney adequately rather than one with VHF FM which causes parts of the industry to be very hopeful that there will be a VHF planning option.

The ABA is working closely with the government and the planning steering committee on exploring whether such an option exists, but I don't think I'm giving anything away by saying that, given the demands and the prior stake that digital television and datacasting have on this and given the very different markets that are served by television and radio, which are going to make it quite difficult to co-site, there are likely to be quite major problems in finding a lot of VHF capacity that's suitable for conversion. Now, whether that's true, and the extent to which that's true is something the ABA is going to model as part of its regional digital television channel plans over the following months, but I don't think I'm giving anything away to



say that it's going to be quite difficult, even though I think commercial industry is very hopeful that VHF options exist.

So there are going to be some quite major problems. There are question marks over the business case for Eureka still, I think, and there are also issues of practicability and spectrum availability that must be worked through. So we simply are not as far along the conveyor belt and we've not reached the point of certainty that we've reached with television, and any conversion model which is developed is likely to reflect that by being much more open-ended and much more I think facilitative of perhaps continued trials, but the ABA is really, you have to understand, in many ways a bystander on this. We have a fair amount of standing as an expert body. We are the planners of the VHF spectrum, but I'm speaking really as only one contributor to the planning and steering committee process which is running.

But I do think though that the question is fundamental, because I think where I was trying to lead the discussion with rewriting Part III is that there's no point going through the political pain and trouble of rewriting Part III unless you have a ready answer to the question, isn't it really all over and we're in the sunset for this analog technology? Now, depending on your view and your judgment, I think you can make a judgment on how much trouble we should take over redrafting Part III to pursue public policy objectives you identify.

**PROF FLINT:** I think Mr Tanner is saying it's not imminent.

**PROF SNAPE:** I think that is what we thought, too. That was why we had our priorities.

**MR SIMSON:** Mr Tanner, could I just extend on one point you did mention there, which was the Wallis application protocol, because that's something, for want of a better term, that's taken off since the last time we had our discussion with you.

**MR TANNER:** Yes.

**MR SIMSON:** This is a question you may wish to take on notice, but in this morning's Financial Review a gentleman by the name of Prof Reg Cootes, a communications expert described in the paper, says - and he's speaking in the context of Australia:

The regulatory framework does not exist in Australia for administration of this new media -

this is the so-called third generation technology -

environment created by the technology.

He said that there's a lack of experience in delivering content, understanding the issues. These issues included the rules on censorship and "the cultural and social

issues tied up in broadcasting". So the issue that is being raised here is a new delivery mechanism, and my question to you then, and in the context of your previous observation and your previous answer where you referred to this, is this something that's of interest to the ABA? How are you getting your hands on it?

**MR TANNER:** It's become quite a topical issue in fact. We're receiving an increasing number of inquiries about the application of our act to radio services, so-called, that are obtainable from the World Wide Web over the Internet. Now, I guess the big observation to start with is that one of the things that convergence means, one of its many meanings, is that forms of entertainment and information traditionally delivered by point to multipoint broadcasting, which has a particular regulatory scheme and a particular tractability to regulation - you can ban it, you can license it, you can mandate content and turn it off if you don't like it because it's locally originated - is converging in terms of what it's going to sound like or look like to the viewer or the listener with services that are deliverable using Internet protocols and which are I suppose inherently more global and less tractable to some aspects of the current broadcasting regulatory model.

For example, if someone says to me, "How does your legislation deal with the radio service over the Internet?" I suppose my strict legal answer is going to be, "There is some uncertainty, to be honest, about whether the definition of broadcasting, which switches on the application of my act, applies to an Internet service," and that's because for example you could argue the toss about the legal meaning of a dial-up service, which is one of the exemptions from the definition of broadcasting. If you assume it is, and the ABA has gone publicly out in the past saying that an Internet-sourced radio service is a radio service, if you take that legal view then, sure, we have a licensing scheme which was designed for new services like this. We have a class licence, the open narrowcasting, and other class licences - the subscription narrowcasting class licence that will probably apply to all of Internet radio - and that basically means that no Internet radio provider has to come to the ABA to get permission.

So I could say I suppose at one level that we address that, but that doesn't really answer the question, because you might go on and say, "Well, what if the radio service comes from Seattle or Portugal?" I say, "Okay, well, we're coming into a bit of a practical problem here, because my class licence prohibits for example tobacco advertising." All broadcasting licences actually have a prohibition on tobacco advertising. But there's nothing I can do about that online service which has originated from Portugal or from Seattle.

Now, what's occurring over the coming decades, rather than over the coming months, is a convergence in terms of what the information and entertainment product looks like between services that are delivered by traditional point-to-point broadcast media and services that are able to be delivered via the Internet system, and in the end that's the fundamental - as I'm sure you must be aware - philosophical challenge that faces all broadcasting regulators all round the world, and I think we're seeing early signs that one response is basically a kind of two-track universe in which broadcasting regulation barrels on but you're getting a totally different kind of regulatory response

to the converging services that are coming in through the Internet. I say "converging" because Internet services at present look quite different by and large from broadcasting, but Internet radio is the harbinger.

**MR SIMSON:** Would it be fair enough to say on that second track that it's more hands-off?

**MR TANNER:** It would be fair enough to say of the second track it is fundamentally less tractable to many aspects of our current regulatory model, and one of the tensions in your own report is that you can see strong public interest arguments for strengthening the regulatory response to some public interest concerns on traditional media and you must be conscious in framing those that convergent may, at some point, result in the de facto convergence of those media with Internet-sourced - I'm using Internet in the wider sense as a way that computers talk to one another over the telecommunications system - media, effectively sound the same, but where - I mean, I think you're seeing in the online legislation the kind of new regulatory models which governments are attempting to explore. They are very much more about user empowerment through things which are inherently, I guess, going to be the user's concern in the end - filtering products, things like that. They are very much more of that international collaboration but various things which are features of broadcasting regulation are going to be quite difficult to apply in that environment.

**PROF SNAPE:** Yes, and indeed in the content regulation we have asked people to try and tell us how the objectives might be pursued in the convergent environment, and we haven't had too much success so far.

**MR TANNER:** You're asking people to look more than five years ahead often. Internet is totally protean and Internet products - I think it is a mistake to treat the Internet as an alternative medium. What it is actually is a system that carries media and, at present, because of basically bandwidth limitations as much as anything else, the media it carries don't much resemble television and radio, although we are getting tinny Net radio. If those bandwidth limitations are beaten - that is, if you can cheaply get four or 10 megabits per second into my home through a fax modem 10 years from now - the Internet products I source may not look like alphanumeric and still picture Web sites. They may very well look like television.

**PROF FLINT:** The Indians have had a similar sort of issue in their wish to control the satellite broadcasts that come into India and then are relayed by people using cables illegally. They have their legislation as 19th century colonial legislation, which isn't really designed to deal with this. I think they have tried to, as I understand it, control it in two ways, but then it's not real control. One is by controlling the advertising and attaching penalties to Indian advertisers who advertise on an unauthorised service and, of course, the obvious controls they can have over the cable delivery of a satellite service, but it's had a major impact on India. It probably has had a very good impact on India in some ways, in that the foreign services coming into India have stimulated local programs.

**PROF SNAPE:** We thank you very much for your patience this morning with us, and also for the contribution; for being with us. We look forward to the extra bits that you're referring to. Also thank you very much for the invitation for the staff to discuss matters further. Your staff have already been very helpful to us and we look forward to further collaboration in that way. Thank you very much.

**MR TANNER:** Thank you very much.

**PROF FLINT:** Thank you, Mr Chairman. Thank you, Mr Commissioner.

**PROF SNAPE:** We will now have a 10-minute break and we do have a bit of constraint, as we have been told, on the next participants but I think we need to draw breath for a few minutes and resume at 11.15.

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**PROF SNAPE:** We will resume the hearing now and we welcome the Australian Association of National Advertisers. We have a faxed submission which we have just received but perhaps we will ask you, first of all - each of you separately - to identify yourselves for the transcript, your name and position, and then whoever is going to speak first if they would speak to the submission.

**MR KENNEDY:** Good morning, Prof Snape and Mr Simson. My name is Paul Kennedy. I'm the president of the Australian Association of National Advertisers and the vice-president of marketing for Carlton and United Breweries.

**MR KOLTAI:** My name is Robert Koltai. I am a vice-president of the association and I am director, corporate affairs and general counsel of Colgate-Palmolive Pty Ltd.

**MS MORTON-STONE:** Good morning. I am Sara Morton-Stone and I am the general manager of the association.

**MR BAKER:** I'm David Baker, a director of AANA, and also chief executive of media agency, AIS Media.

**PROF SNAPE:** So we have quite a few advertising dollars here today.

**MR KENNEDY:** Yes. As you have just received the supplementary submission, I will, by way of background, go through that - where we are.

**PROF SNAPE:** Thank you.

**MR KENNEDY:** This supplementary submission from the AANA to the Productivity Commission is in response to your invitation to comment on the commission's draft report broadcasting of October 1999. AANA is pleased to have the opportunity to comment on the draft report and to participate in the commission's public hearings. The AANA is Australia's peak industry body representing the marketing and advertising interests of a diverse range of major corporations, as well as some of the largest advertising agencies, media buyers and other advertising industry service providers.

The AANA represents more than 85 per cent of all national main media advertising expenditure and speaks for some of Australia's largest advertisers, including companies such as our board members, Coles Myer, Coca-Cola, Carlton and United Breweries, Colgate-Palmolive, Procter and Gamble, Toyota, Unilever, Nestle, McDonalds. AANA's fundamental charter is to protect the advertiser's commercial freedom of speech. Underpinning this are our three key objectives of further developing and encouraging a more efficient and competitive market for media and advertising services, representing our members on matters of significance and, thirdly, empowering our members to produce advertising which is more efficient and effective than non-members.

At the outset AANA provided a submission in response to the commission's

initial invitation for written submissions to this inquiry. It is the AANA's primary contention that the broadcasting services market should operate without current regulatory barriers to entry in an environment of free and open competition. Consistent with that fundamental principle AANA supported the application of a public benefits test in matters of spectrum access and datacasting and the deregulation of foreign ownership and cross-media limitations.

In short, the test for public benefit should remain at the core of all the decision-making framework. Guided by this perspective the public interest is not served by a structure where small groups could be made more powerful and, equally, in the context of public interest companies should be judged by their behaviour, not their nationality or their current business type. The AANA also supported a modified ABA administration and the continuation of a degree of regulation, particularly in relation to Australian content.

For advertisers, our most important relationship is a relationship established and developed for the consumer. Hence many of the issues here impacting on the consumer subsequently have the capacity to affect the advertiser's relationship with that consumer. From a global perspective the age of digital has already arrived. Many consumers around the world are already enjoying the attendant benefits of digital technology, which is all about the convergence of telecommunication, broadcasting media and computer technology. The fundamental issue here for Australia is, with the best interests of consumers in mind, determining the number of participants or players in the landscape and which delivery model for digital will offer the best results for the greatest number of Australians.

Our comments on the draft report: the AANA notes and concurs with the basic principles of broadcasting policy espoused by the commission in its draft report. In particular we support the view that the commission should focus on balancing the social, cultural and economic dimensions of the public interest, having regard to technological convergence to the extent it may impact on broadcasting markets and the range of service offerings to consumers. Secondly, a market characterised by more open competition is needed and that deregulation of the broadcasting industry will enable a free and more open market to develop.

Thirdly, a public benefit test should be applied in all matters relating to access and allocation of spectrum resources and datacasting. Fourthly, the allocation of access to the spectrum should not be allowed to be monopolised in such a manner as to promote or permit anti-competitive or restrictive practices and, lastly, the spectrum is a valuable public resource and the public should receive a fair and appropriate return for use of that spectrum. The AANA advocates that the role of a regulatory environment should be one of encouraging competition, not to restrict it. The AANA notes the commission's proposal to achieve a more competitive environment by a particular legislative amendment. The AANA recognises that there may well be a variety of approaches to such a legislative amendment and would encourage the commission to recommend the course of action which they consider would most rapidly bring about the desired structural changes.

The AANA notes and supports the commission's view that foreign investment in broadcasting should be handled in accordance with Australia's foreign investment policy and that restrictions on foreign investment ownership or control in the BSA should be repealed. The AANA also supports reform of cross-media ownership rules. We would, however, urge the commission to ensure that the preconditions which it has proposed are not allowed to become an excuse for the delay or, worse, the shelving of such reform. The AANA supports the proposition that it is desirable to remove the cross-media ownership rules as currently formulated, being consistent with the principle of establishing an open and competitive market.

A further submission in relation to high definition television: the AANA notes the commission's proposal that high definition television should be permitted but no longer mandated. If that were to be the case AANA submits that there should be review for the allocation of the relevant portion of the spectrum earmarked for HDTV. Indeed, if HD transmission continues to be mandated AANA would recommend such review. Consistent with the basic principles which AANA has espoused in relation to other matters raised in its submissions, AANA submits that the commission should be guided by the following matters in this regard: (a) the opening up of HDTV and the industry generally to competition; (b) the application of a public benefit test to the allocation of scarce resources - in this case, the spectrum; (c) ensuring that the community obtains a fair return from the use of the spectrum.

At this stage the AANA would encourage the commission to consider the following views: firstly, that the degree of definition which has been proposed for HDTV has not really been proven to be the optimum standard; secondly, acknowledging the very real benefits offered by digital TV, that the proposed benefits of such high definition as proposed do not outweigh the costs to the public in terms of the alternative potential range of services; thirdly, that there is a real risk that the allocation of portions of the spectrum earmarked for HDTV could result in an anti-competitive framework by significantly limiting the spectrum available to subsequent competitors wishing to enter the market and the attendant potential range of services; fourthly, that the commission at this stage may not be satisfied that the public is aware of the very real costs which would be associated with a changed HDTV, costs which will ultimately be borne by the advertisers and consumers.

The AANA is not satisfied there is a substantial proof that there is a real consumer demand for digital broadcasting at the high end of definition. Indeed, reports of cost of receivers - some as high as \$15,000 per set - would suggest that this type of broadcasting would be enjoyed by a small percentage of the Australian population. Above all, it does not make sense to create a new mass medium that is elitist in its delivery, to be accessed by only a small group of affluent consumers.

AANA wishes to support a more competitive broadcasting environment whilst minimising the costs of converting to digital transmission. It supports the move to digital transmission but does not wish to see the information superhighway unnecessarily blocked by the premature allocation of the spectrum in the absence of a

discernible need or demand from the public for digital transmission with such a high level of definition. Thank you.

**PROF SNAPE:** Thank you very much, Mr Kennedy. Is there anything in an introductory way that others would like to add? Okay. I suppose the surprise in this is that there is no mention of our draft recommendation that the Australian production quota of 80 per cent for advertising be removed.

**MR KOLTAI:** Perhaps I could comment on that. It wasn't addressed in our submission but that is by way of an omission on our part. By way of comment on it, in broad terms we would support that recommendation. The quota, as is the case with other features of the regulation of this industry, is nothing more than a structural or protectionist measure which preserves very high cost structures in Australia and was brought about in an environment several decades ago when this industry was in its infancy and when protectionist measures were negotiated by the then entrants. That level of protection is no longer appropriate in today's environment and it is about time that all aspects of this industry, including the production end of the industry, had to face the realities of competition to address their own internal cost structures.

**MR SIMSON:** The supporters of that particular regulation or rule point out that in fact more than 80 per cent of advertising is being produced locally. It is not as if it is on the border of 80; in fact significantly more than 80 is being borne. Could you just elaborate on how that regulation is preserving as you put it "high cost structures"?

**MR KOLTAI:** My understanding is that there was a point in time where the quota was a hundred per cent and some years ago - and I don't know when - that was liberalised to the current 80 per cent.

**MR SIMSON:** About 10 years ago.

**MR KOLTAI:** In my experience, there are alternative and more cost-effective locations within the near region for production. New Zealand is very competitive and very high quality and it's my understanding that the spread of the burden among advertisers is not uniform, because the quota is, I believe, total media, not per advertiser.

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

**MR KOLTAI:** On one view, the quota itself reinforces what might be loosely called "industry behaviour" in establishing their cost of production. It is one aspect, it must be one aspect, that because it is protectionist, that encourages or creates an environment in which a particular industry feels comfortable with maintaining cost structures.

**MR SIMSON:** Indeed, to just go back to your previous observation, how would you run it anyway? I mean, you've got an extremely diverse industry. If you're not going to be doing it at the level of a firm, for example, which clearly it is not, is it just



luck that it comes out at a particular percentage or does the AANA have oversight in trying to get it to come out somewhere?

**MR KENNEDY:** No, I think - - -

**MR SIMSON:** It's luck.

**MR KENNEDY:** It's luck, it's a random act.

**MR SIMSON:** But your point is that because the industry is aware of it, the culture of the industry in terms of its business practice, is to tend to get the ads made locally, at risk of contravening the rule. Is that a fair summary?

**MR KOLTAI:** That's my understanding.

**MR KENNEDY:** I perhaps can comment on that as well, having worked both in a multinational environment where you are facing that piece of legislation at the moment, and also for a domestic company where we produce all of our ads, and there are a couple of things that have happened over recent years, particularly when you look at the growth of advertising by the telcos who put out an enormous amount of advertising each year and, of course, they're all locally generated. There are a number of other industries recently that have got a lot more active in mainstream media, so the plus 80 per cent is actually on a growing market. When you look at it from the other side, the companies who want to pick up multinational ads there, they really have to manage themselves within that structure.

However, it is apparent - and we've had example where it's been cheaper to shoot ads in New Zealand. It's been cheaper for us, at one stage, to even go and shoot ads in Hollywood than have the Australian production done. One simple reason for that is between the Australian feature film industry and the advertising industry, there are so many producers out there and it becomes a demand and supply situation, where we're frequently seeing top-quality Australian producers in short demand because of feature films and, consequently, their costs rise, based on availability.

**PROF SNAPE:** So in fact, there's no point of enforcement and there's no point at which the television stations are saying to you as advertisers, "We can't have that foreign one on, because we're running under our 80 per cent."

**MR KENNEDY:** I've never come across it.

**MR BAKER:** No, it hasn't.

**MR KOLTAI:** The enforcement would be self-enforcement by the networks.

**PROF SNAPE:** But how are they, in fact, bringing that enforcement to the advertisers?

**MR KOLTAI:** I think they'd probably keep a record and if the 80 per cent is exceeded in a particular period, then the next one that comes along may miss out.

**PROF SNAPE:** So they are knocking ads back, are they?

**MR KOLTAI:** Not that I'm aware of.

**MR BAKER:** No, it's their responsibility. It's my understanding that it's their responsibility, the networks' responsibility, to keep a scoresheet and they do keep the scoresheets and, at this stage, it's well within the 80:20 ratio.

**PROF SNAPE:** So they're not having to knock anything back?

**MR BAKER:** No. I think there is another element, too, on this. Infomercials fits into an interesting category, where at the moment they fit neither, I think, in an advertising situation, nor do they fit in a programming situation, and in some situations, they can take two, three, four, five hours of program a day. That's another element that could influence these percentages as well, in the longer term.

**MR SIMSON:** Do you have any information that you could provide to us on notice with regard to cost structures, because this is a very important issue for us, that could be helpful to us? Comparisons, for example, between here and New Zealand or Hollywood or anywhere else; evidence that supports the point that you made, Mr Kennedy, with regard to availability to producers and other relevant crew, would be helpful.

**MR KENNEDY:** We'll take it on notice.

**MR SIMSON:** Yes, please.

**PROF SNAPE:** The point that we've encountered many many times in this inquiry is the point that can be called the "fixed advertising pie" or the "fixed revenue pie". The idea is that if there is an additional free-to-air commercial television station, that there would still be the same amount of advertising revenue, but it would be cut up four ways rather than three ways; that if multichannelling was allowed in the digital age, so that you would have, hypothetically, Channel 9, A, B and C, all in the Nine Network - and similarly with Seven and Ten, etcetera - that again, there would be a fixed advertising pie and these extra signals that were going out would not generate additional revenue and so it's this fixed pie has been coming at us from very many quarters.

It comes from the people from some of the suppliers of content and particularly from some of the organisations representing actors and directors, etcetera, and a fear, if you like, that it would just be all spread thinner. This is a bit counter-intuitive to economists, I guess, and I would wonder whether you would like to comment on it.

**MR KENNEDY:** Yes. David, do you want to comment?

**MR BAKER:** Yes. Over the last 10 years, ad revenue has grown at about twice CPI and in the television industry in the last five years, it's grown at about three times CPI growth, so advertising has been a fairly positive and buoyant industry for some time. I don't have with me figures of what happened precisely when we went from a two-network situation to a three-network situation, but with competition - when the third networks were introduced in the 60s and in regional areas more recently, there was greater competition at the time and greater sales efforts by the networks that generated, I think, some additional revenue - I'm not saying giant leaps forward, but additional revenue - and there was price rationalisation, I know, at those times, so it did have an adverse effect on the profitability of the existing networks, but after a period, all networks operated profitably.

**PROF SNAPE:** In that case, I guess you're adding a third to two and, at least for quite a long time, I suppose that the three all pretty much targeted the same audience. Ten in recent times has altered its targeting and is targeting a different audience. The question, I suppose, is would a fourth or additional network, in fact, tend to target - once you've already got three there, would they tend to target new audiences?

**MR BAKER:** Yes. I'd just like to say that if we can look across another industry, the magazine industry that over the last five, 10 years, we've seen the introduction of an enormous number of new titles and that has stimulated a lot of interest in magazines. It may have had some adverse impact on the growth of rates for maybe the mass-circulating magazines, but it has driven more dollars into the magazine market in whole, in total.

**PROF SNAPE:** Again, just looking at it from the outside, one would think that if, say, Nine or Seven or Ten, were sending out three signals, then you as advertisers would be looking at the target audiences. Presumably, Nine is not going to send out three signals that compete with each other; they will in fact be trying to target separate segmented markets or separate markets there and, as advertisers, that would attract you?

**MR KENNEDY:** What we're talking about there is very fine segmentation and TV remains, and has been for a long period of time, the most cost-effective mass media tool reaching consumers. That will enable you, by programming and selection of ads, to reach your consumers in a more targeted manner. When you look now, there is still enormous wastage in sending out an ad here which may appeal to 18 to 24-year-old males, when you're hitting males 18-plus, so there's no question that a multichannelling idea like that would enable us to be more specific to our target and, really, what we're seeing is massive fragmentation anyway. I mean, we have the Internet going on, we have billboards, we have cinema growth, we have a massive fragmentation of media opportunities anyway and it's our job as marketers to discern which is the most cost-efficient way to reach our target with the most appropriate message.

That will go on, no matter what, and we certainly would think it's appropriate

that we're given the best opportunity to reach those consumers. Certainly on your question about the advertising pie, there's no doubt that many advertisers would like to use TV who don't use it now and have to use other less expensive forms than TV, so while TV is cost-efficient, it's also the most expensive.

**MR SIMSON:** Do you regard the Australian television industry - as clients of the industry, I suppose, do you regard it as competitive? I mean, year after year, they increase rates. There's the argy-bargy at the end of the year, you know, "Is that going to go up three or five or six or whatever per cent or 10 per cent?" But it's almost a given that rates will rise, almost irrespective of your ratings in some cases. Is this something that, from an economic perspective, from a competitive perspective, rings alarm bells with you or is this something that is the norm overseas as well as here?

**MR KOLTAI:** I don't think it would be fair to describe the market in classical terms as being a competitive one, because it has a number of obvious structural deformities. One is that the number of licensees is limited by a regulatory process. The other is that the amount of television commercials, in the case of radio and television, is also regulated, so having regard to those sorts of structural factors that are brought about by the regulatory regime, you couldn't characterise this as a truly competitive market. It is a different market.

**MR SIMSON:** To go back to Prof Snape's question, in an environment where there will be a multiplicity or a growth in services, datacasting to multichannelling, to - as was mentioned by Mr Kennedy a minute ago - other forms of new media, would it be your view, as people who spend money on marketing, that this is likely to grow the marketing pie or not grow the marketing pie? From a business strategy perspective in flogging products and services, is this a fairly fundamental change we're seeing at the moment or is it that, as Prof Snape said, many people have put to us and of course most importantly the networks, that the pie is fixed - it will just be divvyed up differently?

**MR KENNEDY:** I don't believe at all that the pie is fixed and given up. In fact I look at an increase in our media budgets. I look at increases in our marketing budgets in total by our company of competitors and other members of our board and industry body. We're all increasing year after year as we find, hopefully, new effective ways to reach consumers. That advertising pie is certainly growing, there's no question about that and, the varieties we have, we think we could have even more variety and more choice which really is fundamentally correct.

**PROF SNAPE:** I think we have to distinguish two things, if we may - sort of the normal growth over year that would occur, even if there were no change in the market structure, and the growth which - or the change - which might be attributable to a change in structure.

**MR KENNEDY:** Yes, I think I'll come back to what happens with our total marketing budgets and how they continue to increase, because they are continuing to increase in the healthy economic conditions we've been currently in. Most companies

are having to make choices of how they spend that money. When you look at the enormous growth of sponsorship, everyone said no-one's going to be able to afford to sponsor everything with the Olympics coming up because all the money has gone to the Olympics. Well, lo and behold, we're still seeing record numbers of sponsorship dollars going in there. So the marketing industry in Australia, I believe, is in a very healthy state at this point in time and I have no doubt that the marketing pie will continue to grow, irrespective of what the networks might think about their piece of it. The question is how competitive is that piece of the pie versus other pies in the marketing dollar. That is the fundamental issue.

**PROF SNAPE:** How would the multiplication through multichannelling or through new networks or through other means through the broadcasting media, broadly interpreted - how would that tend to affect the allocation to broadcasting?

**MR KENNEDY:** Certainly my view would be that will enable us to have more choice to decide where we spend that money and I think we would see growth in broadcasting in total because it still remains the most effective way to reach consumers, both from overall broadcasting and particularly the TV media. It would be our preferred stance of advertising.

**MR BAKER:** I think you would see a complete restructuring of the pricing and so in response to your question, professor, I think it will impact both ways. At the moment allocations are going up two, three times - the growth of CPI - because there is a pricing structure that has developed over the years. With a restructuring of the market, the pricing structure there - or the pricing will have to be restructured and at the same time there will be growth. This will stimulate growth.

**PROF SNAPE:** Are you suggesting in part that the advertising rates on the three networks may in fact go down with more competition?

**MR BAKER:** Yes.

**MR KOLTAI:** It's usually the - - -

**MR KENNEDY:** It's usually the outcome.

**MR KOLTAI:** - - - experience in truly competitive markets that cost structures come down - costs come down. I think the other thing that could be added to the discussion about the proposition that the advertising pie is finite is it's far too simplistic and it assumes that the market in which advertisers compete is static, that there will be no new goods or services. It's far too simplistic.

**MR SIMSON:** In fact I was going to ask that, particularly in the case of a couple of you who produce consumer products or consumer goods - the extent to which the structure that we've been talking about this morning in the broadcasting sector is an impediment to new product launch, that you want to launch a brand of beer to a particular niche that may not, in your view, be going to have that mainstream brand

clout to justify having to go along to David and book a bunch of schedules on Nine or wherever . Could you just comment on that proposition?

**MR KENNEDY:** Certainly the smaller the product the harder it is to make TV economically stack up: (1) because of the high cost of production, and (2) because of the high cost of media per se. Certainly you notice that most small brands would appear in some of the other media, for example, magazines, newspapers, radio even is very cost effective from that point of view. Often one would say, "Well, that's because of the cost of production," but often we will produce the ad and actually use it on cinema which, once again if it's targeted correctly, is very cost effective relative to what it cost to buy mainstream TV. It is a problem with mainstream TV that it is only three channels, only three options, you have in any particular time-slot.

**MR KOLTAI:** I think it could be said, just by way of addition, that in broad competition terms it could be argued that the very high costs associated with the production of advertising and the purchase of advertising as a commodity could restrict or could be a barrier to the introduction of new goods and services in broad terms.

**MR SIMSON:** That in turn could expand the advertising path.

**MR KOLTAI:** Exactly.

**PROF SNAPE:** So you would see that you could have products of Colgate-Palmolive which would be for a narrower group of the audience which might be targeted by a particular multichannel?

**MR KOLTAI:** Indeed, or alternatively there could be new competitors for Colgate-Palmolive that have more niche products or more targeted products that may currently be excluded from entry because of the high costs.

**MR SIMSON:** Mr Baker, in your experience in negotiations with the networks - I mean, you're a major media buyer - how much leverage do you actually have? I mean, to what extent - I'm revisiting the question I was asking earlier about competitive environment and you all gave some interesting observations on this - but at the end of the day how much leverage do you actually have in negotiation - in the Australian context?

**MR BAKER:** Well, this is the time of the year that negotiations take place and so they're happening as we speak.

**PROF SNAPE:** It's a good time to stake out a position.

**MR BAKER:** I think we have considerable - but again we're operating and negotiating within the confines of an oligopoly and there is the difficulties at that stage so that the playing within that market means that we can, I think, maximise benefits within the constraints of a three network marketplace here. Moving across to other

media - newspapers - you'd know only too well there is also constraints in negotiating at that level as well.

**PROF SNAPE:** Are you able to play one network off against the other?

**MR BAKER:** Yes, you can play one - and you can play one media off against another as well - but there are constraints and I think it's possibly analogous to I suppose - you know, you can see great centre three-quarter partnerships in rugby or there may be great opening partners in cricket. They don't have to call. They just know when they have to run or they just know when they catch the ball. I think when you're negotiating within this marketplace, this is what you're negotiating against. Buyers - you know, they like to take on this opposition and you like to unsettle them in these negotiating processes and of course that's what our job is, to unsettle the great partnerships - the centre three-quarter partnerships and the opening batsmen and sometimes, I suppose, you do attempt to intimidate. It's all part of the process but, again, you are negotiating against very very strong fighters.

**MR SIMSON:** To what extent, Mr Baker - you mentioned the issue in these negotiations of looking at alternative media options - to what extent though is television media a substitute for newspapers, as for magazines, as for outdoor and so on, because again this is an important issue when it comes to market definition with the Trade Practices Act of course but it's also an issue with regard to the deliberations we've been having on the cross-media ownership rules and so on. Could you just comment in general broad terms about the extent to which there is substitutability between these segments?

**MR BAKER:** I think we'd just be talking on the margin really.

**MR SIMSON:** Okay.

**MR BAKER:** It would be a marginal move. That could be significant to a player. I mean, it could be significant, you know, to shave 1, 2, 3 or 4 per cent but it could never be seen as being a prime threat.

**MR SIMSON:** So if a major network also owned Fairfax, to what extent would they be able to bring leverage across display advertising in the case of the newspaper and obviously the television advertising in the case of the network?

**MR BAKER:** Well, that did happen, let me say that. That happened until just recent times - 10 years ago. I think you can reflect yourself on what happened 10 years ago and before.

**MR KOLTAI:** Yes, I think it is possible but I think the important thing is that ultimately this particular market is regulated by competition policy, namely the Trade Practices Act, in the same way that other markets are. So that if pricing practices occur, which are either collective or if a particular player acquires a portion of the market that results in substantial lessening of competition in that market, then we do

have a regulatory framework to deal with that. That's the important thing.

**PROF SNAPE:** Or on the other hand, the regulatory framework treats the advertising markets in different media as separate markets?

**MR KOLTAI:** Because of the regulatory framework provided outside of the Trade Practices Act?

**PROF SNAPE:** No, I mean frequently - well, we've been told and a submission from the ACCC has pointed out - that under the Trade Practices Act it is unlikely that a merger between Murdoch and Seven, or Murdoch taking Seven over, would be prevented and the reason is that their definition of a market relates to advertising and that they treat the television market for advertising as a separate market as the advertising market in the newspapers. So they have got a focus under their interpretation of the Trade Practices Act and the Trade Practices Tribunal interpretation of that, that these are separate markets.

**MR KOLTAI:** I accept that, if that's their current view, but there are other competitors in this market and the Trade Practices Act can be used by those competitors to convince a court to come to a different view of the market.

**PROF SNAPE:** So if hypothetically - and it's in this industry rather difficult to take hypotheticals that one can't immediately link to a particular company - a television network which also owned magazines tried to tie in the two advertising markets and to set conditions that you put ads in one as a condition of having it in the other, etcetera, are practices which might infringe the Trade Practices Act - might - then you would take action?

**MR KOLTAI:** Yes. Potentially there's the misuse of market power provisions of the act and there's the arrangements in restraint - - -

**MR BAKER:** In my experience I haven't seen that. I've never seen that. I've seen, I think, the reverse.

**PROF SNAPE:** The reverse - that is, a clear separation of the - - -

**MR BAKER:** No, not the reverse. Have you thought about using another medium and benefits for maybe using another medium?

**MR KENNEDY:** In fact, I think that's true. I've seen a couple of examples where we've used cross-media, a number of opportunities there, and there's been an incentive to do that. I think in this whole area of convergence we're about to see, that's going to be more prevalent, and it's something perhaps I guess ultimately the ACCC will need to consider its market definitions, because this convergence is certainly happening.

**MR SIMSON:** How does the market for buying and selling from a competitive perspective differ from America?



**MR BAKER:** There isn't the up-front sales situation that occurs in America with networks where they have a much greater up-front marketplace. As well as that, there's network selling there versus spot selling. I would think that if there were a lot more opportunities, television opportunities, in the future, a market could develop here that might be more like an American market.

**MR SIMSON:** It's more spot here?

**MR BAKER:** Yes.

**MR SIMSON:** So when you say "up-front selling", you're talking about locking in a certain amount of buy six or 12 months in advance.

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

**MR SIMSON:** That's more the practice here than in America.

**MR BAKER:** No. In America there is network buying, so you'll buy the country. You'll buy a spot which covers all of America, like on NBC, so it will be broadcast around. In Australia in the main you just buy Channel 9, maybe Sydney, and you might buy it also in Brisbane and in Melbourne and in Adelaide and in Perth, but they are five separate transactions.

**MR KENNEDY:** I think the question was more relating, was it not, to the fact that you would lock in your money and say how much you were committing to the networks?

**MR SIMSON:** I was just asking whether that's more prevalent here than in America.

**MR KENNEDY:** Yes, certainly the commitment to the networks is more prevalent here than in the US.

**MR SIMSON:** Is that something that the networks demand, or is that something that you like?

**MR KOLTAI:** Only three of them.

**MR KENNEDY:** I think my experience has been enticement to buy this rate. It requires a commitment up-front on what our base level of expenditure is, whereas in the US my experience there was it was far more on a week-to-week situation, what you want to do, and things change, but here you make the commitment and you achieve a favourable rate for making the commitment, or a more favourable rate.

**MR SIMSON:** Casting your eyes forward say three or four years, we've been told

that if you're launching a product and you wish to gain some brand recognition for it, particularly in the consumer end, you really have to use television, and that free-to-air or mainstream television is going to be predominant for a number of years - three, five years at least - and that pay television will not reach that status; that even though it may end up in 35, 40 per cent of Australian households for example, perhaps even more, the people, the marketers, are still going to need to use the mainstream free-to-air to get that reach, that coverage. Could you comment on that?

**MR KENNEDY:** As I think we've said in your original documentation, I think over 90 per cent of Australian homes have a TV, so TV will always be the most effective way of reaching consumers, no question. When we look at the issues regarding pay TV - and whilst they're making substantial inroads into our households - it's still a relatively small base. So I think that TV is always going to be, at least in the near future, the most cost-efficient and the most widespread way of reaching mass awareness, and we're talking about mass medium here in particular.

**MR BAKER:** Again, if you look at America, using America as an example, free-to-air will be at the forefront in the foreseeable future.

**PROF SNAPE:** So you're saying that mass advertising is the way it's going to continue in the future. Here we come back to segmentation and if it's all being much more tailored to particular markets, then - as we've been told that it is - is mass advertising the way of the future?

**MR BAKER:** I'll just say one thing on the mass advertising. It will continue, all right, mass advertising, but mass advertising to segments, effectively communicating to a segment of audience. That is the future.

**PROF SNAPE:** But is television as we have known it the best way of doing it?

**MR BAKER:** Today some programs deliver that today and that's exactly how you buy it today with a television network. You may have a restricted target group. It might be - I don't know - people over the age of 54 or something like that - you know, retirees. That is a slice of Australia, and there are particular programs - and you buy programs - that deliver that.

**PROF SNAPE:** In the future will television be the best way of targeting that particular age group?

**MR KOLTAI:** I think advertisers will increasingly get more sophisticated in their targeting. In its crudest sense advertisers try to reach a particular audience and each product or service differs in relation to the sort of audience that they're seeking to reach. Another feature of the status quo is that in the case of television its mass reach is fairly predictable, because we know that an audience is going to be watching the news on one of the three commercial networks at approximately the same time, watching a variety show at approximately the same time, watching a movie at approximately the same time, and there seems to be patterns in programming, so that's

the status quo and that delivers audiences that differ in terms of age groups and what have you. The quality of that research, incidentally, for those audiences is controlled by the media themselves. But if that audience becomes fragmented by alternative either broadcasting or narrowcasting opportunities then that will enable advertisers to be more focused in how they find that audience.

**MR KENNEDY:** If we were to take one commercial example there and we talk about mass versus niche for example, yes, mass advertising always remains the same. Look at a product like Coca-Cola, which is a mass product. I would dare say most people in this room would enjoy Coca-Cola at some stage and probably our families would too. Now, in that spectrum across this room we have a vast variety of types of people, ideas. Looking forward, you can see that a company like Coca-Cola for example would change to different types of advertising to different types of people, so while still using the medium in a mass form it would be segmenting its message to various types and groups.

**MR SIMSON:** There was one other question if you would just bear with me. The only further point that I did raise earlier but I wouldn't mind mentioning again is any statistical evidence that you can provide would be of use in supporting some of the matters that we've been discussing today. If it were possible to cast your eye back over the areas that you can see are of interest to us, and if there is information that you have. we would appreciate it.

**PROF SNAPE:** Including data on advertising rates, please. Good, well, thank you very much. It's been most helpful to have you with us and to be given a perspective in a direction that we really haven't had before on these matters that we've been talking about, and it's been very helpful to us. If you can give us those data, the staff might be in touch with you, Sara, on that matter if they want some amplification. Thank you very much.

(Luncheon adjournment)

**PROF SNAPE:** We now resume the hearing, and we welcome the Advertising Federation of Australia and we'd be grateful if each of you would identify yourselves separately for the transcript so the transcribers can recognise the voices.

**MS BRYDON:** Thank you, professor. I'm Lesley Brydon, executive director of the Advertising Federation.

**MR GARDNER:** Andrew Gardner, managing director of APL Digital.

**MS DIAMOND:** And I'm Helga Diamond from the Advertising Federation. I'm research and communications manager.

**PROF SNAPE:** Thanks very much. Ms Brydon, are you going to start us off?

**MS BRYDON:** Yes.

**PROF SNAPE:** We have received a submission from you this morning, and we've had opportunity to read quickly through it, and if you'd like to speak to it.

**MS BRYDON:** Yes. I'm sorry, I tried to attend the earlier hearing so I'd have a better understanding of your format, but I shall touch on the key messages in this, rather than go through it in detail.

**PROF SNAPE:** Thank you.

**MS BRYDON:** I imagine that would be best.

**PROF SNAPE:** Yes.

**MS BRYDON:** But perhaps to begin, our organisation does represent 78 major agency groups in Australia, with 120 officers, so it is the largest representative body of advertising agencies. Our surveys show that our members are responsible for something like \$5 billion worth of advertising expenditure, but that covers a spectrum of advertising, including broadcast, direct marketing, sales promotion, radio and, indeed, a growing proportion of the Internet.

In commenting on your recommendations, we have focused on issues that we think are specifically relevant to advertisers and agencies, as opposed to looking at the broader picture issues. We believe basically that the digital environment in Australia, the media environment, must be allowed to develop; must be fostered and allowed to develop at the same pace as major overseas markets. It's important that we're not left behind. Australian advertising likes to see itself at the cutting edge of advertising and, indeed, as Andrew will tell you, we are looking at developing export markets for the work we're doing so it's particularly important that we do have freedom of access to the best available technology and the most relevant technology.

Many of the advertisers in Australia - and you heard from the AANA this morning - are global advertisers, and they'll want to communicate with people in the same way as they do in other international markets. But, likewise, Australian advertisers are increasingly going to want to innovate, explore new more cost-effective ways of delivering advertising, and to take advantage of all the opportunities. We also believe that whatever standards are introduced, that the environment must be economically viable for advertisers. I think it's fair to say that advertising has funded certainly the development of television in Australia and, likewise, it will play an important role in the development of digital.

We believe it will continue to be fundamental to the viability of free-to-air television, and that free-to-air television will also be of primary importance to many Australian consumers who haven't yet been able to access cable television or other forms of technology. So we believe that free-to-air television will be a fundamental part of the media environment and will continue to be supported by advertisers. But new media players will also want to derive income from advertising as well as from subscription and pay-per-view services, etcetera.

In formulating policy, we particularly ask the government to consider a couple of issues. Firstly, the HDTV mandate: I think it's fair to say that once a significant number of householders have access to HDTV, that advertisers might want to take advantage of it, but certainly in the early stages - at least everything we've read about it and what we've looked at overseas - indicates that the audiences are far too limited in the early stages for HDTV to be a viable option for advertisers. I think even when it is flourishing, if it does, it will still only be major global advertisers who will be able to afford to move to HDTV. We think the vast majority of Australian companies who need to advertise, particularly retailers and people in regional areas who change their ads frequently, will want to have flexibility and audience reach as being their absolute priorities, ahead of quality vision and sound.

We also think that the Australian market generally is a very small market for television, so the sets that people buy - people here, I understand, change their television about every eight years, which is not very often, so when they do invest in new television sets they should be compatible with whatever is happening overseas, rather than creating a new standard that might not necessarily be relevant to what's happening overseas.

We are also concerned from an advertising perspective that HDTV will require additional production budgets. We think this will not be advantageous to advertisers, particularly if people are viewing through set-top boxes rather than high-quality digital sets, so that expenditure would not be justified for most advertisers. We also know that Australian production houses are upgrading to digital but mostly to standard definition rather than high definition, and we therefore feel that is an acceptable standard for most Australians. We think affordability is definitely the key to success and we think advertisers will want to have access to standard definition television predominantly and to other opportunities, rather than necessarily high definition.

We've commented on the individual opportunities for advertisers with multichannelling and datacasting and I don't think I need to go into that. We think we need to see increased competition, though, in the marketplace in order for the cost of advertising to go down, and we don't believe that the budgets will grow. We've seen, I think, as companies have moved into new media, there's been a proportion of that media budget move from commercial television across to Internet, say, but we don't think we've seen any significant overall growths in media budget. But you might like to comment on that later.

**MR GARDNER:** Yes.

**MS BRYDON:** I'll just finish going through this. We have been keeping an eye on the international experience, particularly in the US and the UK. We know that HDTV has proven to have some limitations for advertisers in the US and it's very difficult to tell how that's going to develop. There's no meaningful information coming out of that. But we do know that advertisers are looking at things such as enhanced programming, advertiser funded TV - this to overcome the ability of consumers to flick advertising and not watch it at all - targeted opportunities, certainly based on demographic, psychographic, local or regional - that is, zipcoded communications - interactivity of growing importance to advertisers, and e-commerce options as well.

In the United Kingdom we know that HDTV hasn't been allowed to get off the ground there, but we believe that advertisers are taking advantage of the range of opportunities and that it is developing as a fairly healthy advertising environment. So they're the key issues that we wanted to comment on in relation to the policy for television. We have advocated relaxing the foreign ownership restrictions, but we do to some extent support the Australian content regulations. I know Andrew wants to comment on that because we also see tremendous opportunities for the Australian industry in opening up the market a bit. So whilst we see a need to protect the creative and production industries here to some extent, we feel in the longer term the opportunities may be more fruitful if there is a relaxing of that.

I think that covers the major points in our submission. We'd conclude by saying we support diversity. We'd need to consider, I think, what's best for Australian consumers, what's accessible, what's affordable, and if it's affordable to consumers then it will be relevant to advertisers. If it's not, then it won't be.

**PROF SNAPE:** Thanks very much, Ms Brydon. There are a number of points there that we would like to take up. Perhaps we might start as we did with our previous participants and ask about the advertising recommendation and the 80 per cent Australian content requirement on that. In the written part you didn't make comment on that, but orally you just did.

**MS BRYDON:** Sorry, I think we did. Did it fall off the end? There is a reference to Australian content.

**PROF SNAPE:** Maybe I fell off the end. You're quite right.

**MS BRYDON:** It's a brief reference.

**PROF SNAPE:** Yes. I fell off the end. I apologise.

**MS BRYDON:** It's fair to say we've got mixed views on that. Representing a fairly wide-ranging industry one can expect that's possible. If I could just speak first, we understand that the making of Australian television commercials constitutes about a third of the production industry in Australia - that is the production of documentaries and film. The figures I have from the Screen Producers is that commercials make up about a third of that.

**PROF SNAPE:** A third of television production or a third of the film and television?

**MS BRYDON:** A third of the total.

**PROF SNAPE:** A third of the film and television?

**MS BRYDON:** Film and television. Hang on, I'll dig that up for you while we speak.

**PROF SNAPE:** That's in value, is it?

**MS BRYDON:** In dollar value. They're the figures I have from the Screen Producers. If I've misinterpreted those, we'll know in a moment.

**PROF SNAPE:** Thank you.

**MS BRYDON:** It's there. I do understand, though, it is very important to underpin the viability of that industry. It's a young vibrant industry which I think is showing some real potential in terms of its ability to innovate. We've seen the role of film companies here in making movies like Matrix and so on.

**PROF SNAPE:** What do you mean by, "It's a young industry"? It's been around for 43 years.

**MS BRYDON:** Sorry. It's young compared to a lot of others. I mean communications in television and so on is quite - - -

**PROF SNAPE:** But if you're looking at an infant industry, television advertising has been around for 43 years in Australia, so it could hardly be regarded as a young industry.

**MS BRYDON:** Perhaps if I could say it is a growth industry, it is a modern industry in the sense that communications are increasingly becoming more innovative. The nature of our entertainment and the way in which we get it is changing, so it needs to be a modern vibrant industry.

**PROF SNAPE:** You're making me feel quite young, which is nice.

**MR SIMSON:** Could I just clarify that. I would have thought from a perspective of your members whose interests would be in having the maximum flexibility - I would have thought, maybe wrongly - in terms of sourcing suppliers of production services for advertising and in the least cost manner, that any regulation saying, "You have to make 80 per cent of your ads plus in Australia," as opposed to you, if you wanted to, getting them done somewhere else or 60 per cent done somewhere else or whatever, would have been in the interests of your members. Why is it that you're interested in supporting the 80 per cent rule?

**MS BRYDON:** Well, I think we would support it for social and cultural reasons, apart from anything else but, as I said, we do have mixed views on this and I'm actually going to ask Andrew if he'd like to comment and give you the other view because we do see opportunities with changing that.

**MR SIMSON:** Right, okay.

**MS BRYDON:** We feel it's something that has to be handled very sensitively, I think is the point that I'm making, because I don't think that we want to see foreign product - too much foreign product here - in terms of advertising. I also think market forces will prevail because I don't think consumers will like it a lot.

**PROF SNAPE:** Well, if the consumers don't like it, it's not necessary to mandate it.

**MS BRYDON:** Well, that's possible too. That's right. At the moment I gather it's only 7 per cent that comes from overseas.

**MR SIMSON:** Yes, I think it's shooting at 90 per cent plus anyway.

**MS BRYDON:** Yes, so it's not affecting advertisers to change that. But I would hate to see our airwaves - personally as a consumer hate to see our airwaves filled with foreign commercials but I'm going to ask Andrew to comment on that because it won't necessarily be a question of television commercials. There's a host of other obviously new production opportunities.

**PROF SNAPE:** I should just remind you of our terms of reference in this case - in this situation - and if something isn't achieving its objective or if it is not necessary or if there are other ways of achieving the objective except regulation, then we have to recommend that that regulation goes. I mean, the terms of reference are such that any regulation which restricts competition has to be justified to remain.

**MS BRYDON:** Can they be justified on social and cultural grounds?

**PROF SNAPE:** Of course, yes, they can be justified on social and cultural grounds but they have to be justified - yes, and indeed we're required to look at the social and



cultural as well as the economic grounds. But it has to be justified. The onus is on those who wish to retain them.

**MS BRYDON:** Well, you might like to comment, Andrew.

**MR GARDNER:** Certainly I hold a contrary view to the concept of retaining these restrictions, mainly from the experience that we're undergoing in the Internet environment. We hold a view of what I call the Swedish model, which is where we're taking - just as the Swedish have taken with a population the size of Australia, expertise in automobiles, furniture and telecommunications to the world. So we're now doing that with film and Internet developments and our experience has been that Australian design and Australian production is in fact in demand overseas, notwithstanding the fact that there is huge demand for these sorts of services and products, that there aren't enough people to fulfil the production capabilities and, as we're finding with most of the Internet development organisations, we are already exporting great quantities of work to the United States, Europe and Asia. So from a cultural and a - - -

**MR SIMSON:** Sorry, could I just clarify that, please. When you say exporting, you're exporting finished product?

**MR GARDNER:** Finished product.

**MR SIMSON:** Good, thank you. Sorry, yes.

**MR GARDNER:** That we have completely developed in this country.

**MR SIMSON:** Yes, okay.

**MR GARDNER:** What we're finding is that, while there is some cultural and historical, I suppose, pressures to retain these sorts of restrictions, we've in fact found it an advantage that we don't have those restrictions within the Internet industry. It has helped us to establish overseas markets and it's helped us to establish local markets. Equally what we've identified is, in discussions with major international organisations - and I can cite several of those, should it be necessary - we've identified to those organisations the importance of localising any material that is produced overseas and consequently we have been responsible for them in turn making that material Australianised and suiting the Australian environment.

So we are finding that we're winning at both ends by being able to export our creative capabilities and then also taking responsibility for transforming the creative material once it comes into the country.

**MR SIMSON:** This is specifically Internet-related content?

**MR GARDNER:** Certainly it's Internet related. However, I would say that covers the spectrum of written graphic design, audio and video products, so it really does cover across the board.

**MR SIMSON:** This morning the Australian Association of Advertisers told us that the difficulty they were having was in finding enough local resource to be able to produce the ads and they've mentioned specifically good producers, for example, to be able to do it. The cost of producing the ads in Australia they saw as a problem.

**MR GARDNER:** We find that a specific advantage.

**MR SIMSON:** Okay - and therefore they were saying to us, "Get rid of the 80 per cent rule." The point they made, which seemed something of a dichotomy given that it's already well above 80 per cent anyway - it's not as if it's on the margin - 90 per cent. We would be interested in your feedback on this because they said that it's more of a cultural issue in that each of the networks keeps a scorecard as to what percentage of ads are being produced locally but, more importantly, at the level of the production industry, the agencies and so on for example are still - in their mind-set each agency doesn't have an 80 per cent quota. It's a global thing across agencies and creative shops.

The business culture seems to be that, "Well, we've got to produce them using Australian resources." Maybe that's partly a function of a lack of measurement and partly a reflection of the fact that it used to be at 100 per cent until about 10 years ago and now it's back to 80 per cent, but in any event I'm just passing on to you the Association of National Advertisers this morning had a problem with it. From your perspective you don't see there's a problem because you think you're competitive anyway?

**MR GARDNER:** Exactly. The exchange rate gives us enormous advantages and, while we're probably paying at dollar for dollar the same prices - for example, our US counterparts - with the exchange rate it makes us very much more affordable to take advantage of. It's our objective to in fact stop the brain drain to the United States and keep those people in the country and, by offering them global activities, they become very much excited by being involved in the bigger picture. So that helps us to achieve an end in terms of retaining that skill base in the country.

I find these sorts of restrictions about content tend to be hangovers from the old tariff days. I don't think in the new environment that we're entering into they're going to be absolutely necessary and in fact could be hindering our opportunity of developing export bases.

**MS BRYDON:** I told you we're nothing if not balanced in our views.

**MR SIMSON:** Plurality of opinion doesn't hurt.

**PROF SNAPE:** It's a federation, we note. So thank you for those two views. Is there a third one?

**MS DIAMOND:** No.

**MR SIMSON:** Could we just go to another subject which is another interesting point of your submission on page 2 where you say that Australian TV production houses are upgrading to digital but only to SDTV. Now, this is a very important point. It's certainly not one that I've heard before. My first question is, is the government aware of that? Are the policy-makers aware that the production end of a business accounting for I think you mentioned a third of the total production in Australia of filmed television documentaries and ads is only going to be geared to produce SDTV material?

**MS BRYDON:** At the moment they're producing ads that will not go to the highest - sorry, they have equipment to produce ads that will not go to the highest definition. That's my understanding from one of my members - from a number of my members.

**MR SIMSON:** So you would actually have to install new equipment to - - -

**MS BRYDON:** That's my understanding from our members.

**PROF SNAPE:** That means that they're in fact not doing it on film?

**MS BRYDON:** Well, they do some work on film but they're producing work on tape as well, but my understanding from the feedback we've had from members is that they can't produce in the highest definition television, which is the one that has been mandated, as I understand.

**MR GARDNER:** Part of that will be because there is no point investing in that technology until such time as the decision has been made. Once the decision has been made to invest in which direction is going to be taken, then people will be no doubt considering their next step in that regard.

**MR SIMSON:** It's interesting, isn't it, because what you are saying in here is that - let's assume for a moment the government's policy stands of mandating only a very high definition of television and not, as has now been speculated, simulcasting standard definition and high definition. That means that, for your members who would be key drivers of this - because unless you've got the equipment and you're the ones who are producing the ads, in some cases selling the ads where the agencies are also media buying houses - I mean, you are a potential blockage to providing the funding to the networks, ie the advertising dollars to the networks, that in turn would be a driver of producing programming in high definition.

**MR GARDNER:** I wouldn't see that necessarily as a blockage. I guess the relevant point there will be that it will ultimately be our customers that are guiding us, with the marketing spend now being diversified significantly, particularly with the Internet's

introduction into this country and also the uptake of that activity and therefore the new learnings that people are having to go through. The cost to suddenly implement this sort of equipment and then add those fundamental - or pass those costs on to our clients - is quite considerable. Now, most of our clients are still coming to terms with how the Internet is going to impact their business and therefore they are spending enormous amounts of money on e-commerce solutions and business solutions for delivery of those services to the consumer. For them then to fund the agency's introduction of high definition television equipment will be seen as a very negative reality.

**PROF SNAPE:** So it is equipment. As I recall I think it might have been in discussion in the last round of hearings that we were being told that the problem in going to high definition is that, whereas with standard definition you can be standing in front or making your advertisement in front of a picture of a wall, once you go into high definition you'll actually have to have a wall because you can pick the difference. So the production facilities - the production of it - will be more expensive because you can no longer simulate the sets in that regard. Is it in the equipment as well as in the sets, etcetera, that there will be additional expenses?

**MR GARDNER:** And I would imagine also in the quality of the actual production or the scripts themselves. What activities are undertaken in those advertisements therefore have a much higher production cost just in preparing them to deliver them at the level of experience you're expecting from high definition television.

**MR SIMSON:** And indeed you also make the point in your submission that global advertisers will be producing materials in SDTV rather than HDTV.

**MS BRYDON:** Certainly in the UK that's true and we do understand that there's very little being produced in HDTV in the USA.

**MR SIMSON:** If you are an Australian company that wants to produce an ad for the global market or at least for a market outside Australia or in addition to Australia, there's absolutely no incentive to do it in HDTV.

**MS BRYDON:** No.

**MR SIMSON:** Your production cost is going to be relatively high.

**MS BRYDON:** No We would say that if the television networks are dependent on - they are funded by advertising and will be more dependent on advertising than other forms of media who have subscription and income from other sources. We don't believe they will be able to depend on advertisers to support the HDTV. We've talked to FACTS about this and they have said that, well, if we produced commercials in SDTV, then they will upgrade them to enable them to be shown. We don't believe that's going to be a - - -

**PROF SNAPE:** We understand that you can't really upgrade in terms of the quality of what you see at the end significantly above its origin.

**MS BRYDON:** Well, that's what we would accept, yes. We think that's right, so we think if they're depending on getting advertising to support HDTV television, I don't know where it's going to come from. It won't come from Australian advertisers. There may be some from global advertisers.

**PROF SNAPE:** It won't necessarily be advertising which itself is in high definition standard, even though it's been converted to be shown on a high definition transmission.

**MS BRYDON:** No, that's right.

**MR SIMSON:** Multichannelling: what you say in your submission here is that you think it is potentially something that your clients would want.

**MS BRYDON:** Yes.

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

**MS BRYDON:** Perhaps you're better equipped to do that, are you? Do you want to comment on it initially?

**MR GARDNER:** Well, I guess the reality here is that the targeting of any message that the clients of advertising agencies have is already being diluted significantly, and they are looking at ways in which to make sure they can deliver those messages to the end consumer and target those to that end consumer. Multichannelling gives them the capacity to do that and that's already a process that's started. Mass communications is being identified as limiting in their direction and their growth and from the direction that the industry is taking multichannelling is a natural progression for that.

**PROF SNAPE:** I was interested in your comment that you didn't see the budgets growing.

**MS BRYDON:** That's anecdotal feedback that we have through many of our members. How do we know? I guess if the incentives are there to do it. But we don't see any clear - - -

**PROF SNAPE:** I think you may have heard some of the discussion this morning. Even if there were to be a total budget for advertising and that total budget was fixed, would you not expect if through multichannelling or through new broadcasting mechanisms that television broadcasting - or broadcasting was a more effective form of advertising then there would at least be a switch from other forms to broadcasting, if it became a better way of targeting niche audiences.

**MS BRYDON:** You mean the commercial television channels?

**PROF SNAPE:** Yes.

**MS BRYDON:** A better way of targeting?

**PROF SNAPE:** Yes, through multichannelling, for example. Say you've Channel 9, A, B, C, just not Channel 9, and if you've got Channel 9, A, B and C, presumably they're not going to compete against each other. They will in fact be - A and B and C will be targeting different audiences, which means that you will in fact have a better targeted stream going out, which means that it's a more efficient and more effective advertising platform.

**MS BRYDON:** Yes. Actually that raises a question too which we have been discussing, and that is the way these audiences are measured, because at the moment part of an advertiser's budget is allocated to finding out audience data and measuring the reach of the ad. With the complexity of the media I think measuring audiences is going to be more expensive and that will also have to come out of existing budgets.

**PROF SNAPE:** Yes, but it will only be more expensive if it's more effective.

**MS BRYDON:** Well, the costs of measuring it will be the same, I would think, but if it's more effective then it's more efficient advertising so people are prepared to pay a premium for advertising if it's delivering a higher proportion of results, or if it's accessing a very qualified audience.

**PROF SNAPE:** Well, I think that the people at the association this morning found it very difficult to believe - in fact they rejected the concept of a fixed advertising pie.

**MS BRYDON:** You're talking the big advertisers there, remember. AANA represent major national advertisers. Our members have advertisers from across the spectrum, small and medium companies as well, and it may well be different for them.

**PROF SNAPE:** Presumably all of them wish to target their advertising more effectively.

**MS BRYDON:** Indeed.

**PROF SNAPE:** And it may be that the small companies have a greater interest in that than many large because smaller companies are probably more likely to be making niche products than the mass products, which might be coming out of the large advertisers, so you might even turn your comment around and say it's the small and medium ones that may be more concerned with the targeting of it, and the more effective the advertising can be, the more they would be prepared to invest in it, or the more effective the advertising medium is, the more they will in fact switch over to that medium.

**MR GARDNER:** I would certainly agree with that, and the experience that we're going through at the moment is the identification of customer relationship management tools and techniques and by therefore developing those tools and techniques to be able to do targeted promotions and advertising, and whether that be directed through whatever medium, whether it be television, print, radio or the Internet, it's those techniques that they're now distributing through their organisations that help deliver that. I think what we're finding is in fact from our perspective the marketing budget is also becoming part of the IT budget, and so that's where we're getting our additional interest from so that it's not distracting from the traditional forms of advertising, and that's making that an even more blurred activity as to where those funds ultimately will be coming from.

**MR SIMSON:** In a situation where the restriction was lifted on the number of network operators, from three to four or five or whatever it turned out to be, what impact do you believe that would have on your industry? Would it be a good thing or a bad thing?

**MS BRYDON:** A fourth network?

**MR SIMSON:** Yes, for example.

**MS BRYDON:** A fourth television network?

**MR SIMSON:** Yes.

**PROF SNAPE:** On which industry are we talking about?

**MR SIMSON:** No, I was referring to the members of - - -

**PROF SNAPE:** The advertising - - -

**MR SIMSON:** Yes, the members of the federation.

**MS BRYDON:** Well, I know that for the most part our members feel - the ones I've talked to feel that at this point we'd quite like to see how things evolve with the current options, the three stations. I mean, further down the track there may be room for more but at the moment we're talking about a whole new era of broadcasting, anyway, and we feel that to assimilate that in the first instance would be a priority before considering a fourth channel.

**PROF SNAPE:** You don't think the members think that they may be able to secure better advertising rates when there are more to choose from, or networks to choose from?

**MR GARDNER:** There's another prime time news to advertising. That's probably going to be countered with a loss of quality in products that are being sent to air, because of the dilution of the market.

**PROF SNAPE:** And that comes back to the fixed pie bit again.

**MR GARDNER:** That does come back to the fixed pie.

**MS DIAMOND:** I actually asked some of our members, media buyers, when this inquiry was conducted a few years ago and their view was - I inquired actually extensively through George Pattersons and in several - and they actually said that at the moment with the three commercial channels you can easily get - there's easily empty spots at most times, and what advertisers tend to target is specific programs, which drives up the rate for a program, so a lot of advertisers like to advertise in something like Melrose Place which at the time demanded the highest prices, while other programs were much much cheaper, and they felt a fourth channel wouldn't make any difference really, in terms of the price - - -

**MS BRYDON:** That's what you were saying. That's what Andrew is saying, yes.

**MS DIAMOND:** It's the program - - -

**MS BRYDON:** It's the quality of the program and the audience that will matter, and they will pay for that quality.

**PROF SNAPE:** Even then I suppose if you've got Melrose Place on one, or whatever is the highest rating program on the other, you've got two other channels that still carry advertising, and it's not as if suddenly there is no advertising on those two other channels or if there is I haven't noticed it. So, presumably, if there was another channel that was competing with those other two, then the rates would be lower.

**MS BRYDON:** But they're already competing with pay TV and other forms of media too, aren't they? I mean, they are not just competing with each other. They're competing with the whole pie and the whole potential pie.

**MR SIMSON:** The analogy was made yesterday I think by Prof Snape with regard to the announcement last week of Richard Branson to introduce a new airline, no regulation, no restriction on numbers, and the response publicly of both Qantas and Ansett - "Well, okay, we've got another airline coming in. Let's meet the competition. We'll put on more flights, we'll reduce our costs, we'll do better things with our regional operators. It's going to be fun." That industry does not have a barrier to a third domestic airline. This is a very special case. What's so special about the number - in your view, from the perspective of your federation, do you believe that the number of networks should be regulated - commercial free-to-air networks should be regulated to three?

**MS BRYDON:** No, not in principle we wouldn't, but I think what we've got to look at is what the consumer wants, and I can't answer that necessarily. But what I do know is that the free-to-air networks are supported by advertising and if the



advertising dollar is being spread over a wider area is this going to be viable? I don't know.

**PROF SNAPE:** I guess what we're trying to elicit here are the views of the advertisers and the effectiveness, and their interests themselves.

**MR GARDNER:** I think if we look at just an example of the way in which this is evolving, I mean, the evolution of ninemsn is an example of how Channel 9 is already moving into new areas and identifying the fact that it's going to be looking for new revenue sources. It doesn't necessarily see the introduction of new television channels or alternative television channels as a major threat, although naturally it's going to protect its position on that when it's in any discussion relating to it. I think the marketplace has already been identified in terms of advertising dollars as being diluted and distributed already into more forms. I think ultimately the number of particular commercial channels isn't relevant.

**PROF SNAPE:** Okay.

**MR GARDNER:** Sorry. Just to finish on that. Market forces would make the decision, no more or less than in the airline industry.

**PROF SNAPE:** Good. We've got the elaborations that we were seeking and sometimes we've got two views.

**MS BRYDON:** It is an association, as we said.

**PROF SNAPE:** Yes. I'm just reminded - the same reminder that I got with respect to the association this morning, that if you do have the data to support the arguments, that we are hungry for data.

**MS DIAMOND:** It's 33 per cent. It's exactly one-third, including - - -

**MS BRYDON:** This is the Screen Producers analysis.

**PROF SNAPE:** Okay. That's in their submission, is it?

**MS BRYDON:** Yes, it is.

**PROF SNAPE:** Okay, good. We just got that today. But if you do have other data which would be relevant to us, the staff would like to talk to you about that and we'd look forward to any further data that you have.

**MS BRYDON:** Yes.

**PROF SNAPE:** And thank you very much for your submissions and for appearing before us.

**MR GARDNER:** Thank you very much.

**MS BRYDON:** Thank you.

**PROF SNAPE:** You've been most helpful. Thank you very much.

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**PROF SNAPE:** We now welcome OzEmail and thank you for your supplementary submission, which is very brief, six lines in fact, which we have digested thoroughly. I think you know the procedures. If you would identify yourselves for the purpose of the transcript and then maybe an elaboration of your submission. Thank you.

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

**MR RAMSAY:** And I'm Ross Ramsay of Bramex Pty Ltd, the head of the company, and Bramex is a consultant to OzEmail.

**PROF SNAPE:** Thank you. Mr Milne?

**MR MILNE:** Prof Snape, thank you for having us back and while we, as you've noted, don't have a great deal to add to our original submission, we thought that it was important to just come back again and go on the record, seeing as how the opportunity existed once again, and to say that in broad terms we certainly support the draft findings of the Productivity Commission in virtually every area, but certainly all of the areas that are directly relevant to OzEmail's interests and in particular the datacasting area.

I think as an overview the things we would want to say are that we believe that this is really an extremely important decision that's in front of Australia at the moment, that it's really I don't think too dramatic to say that it's a nationhood decision. We don't think that this is a decision at the moment that's in front of us in relation to digital TV. We don't think it's a decision about TV, we don't think it's about whether we have necessarily better pictures or worse pictures or how they're delivered. We think the television is actually a side show.

What this is really about is, do we grasp the opportunity with the advent of DVB-T in Australia, do we grasp the opportunity to have datacasting, and if we do grasp that opportunity, if we put all of the right settings in place so that there can be a datacasting industry, then we think that it's very much to the advantage of all Australians. The way it will be of advantage to all Australians is that if the correct settings are in place - and perhaps I'll come to those in a minute - then all Australians will find that the commercial environment will be present which will allow a rapid take-up of the digital technology and with that a rapid take-up of connectivity, and that's the real point for us.

The real point is not digital TV but connectivity because while it might be a bit of a long story to tell, the fact is, we believe, that if there is a datacasting industry and if there is sufficient space for a reasonable number of datacasters to compete, then they will create a commercial environment which will mean that very likely the set-top box that's required, both to receive a datacasting service and to receive digital TV, will be provided either free or at a negligible cost.

The UK experience teaches us that if there is a subscription component to this digital TV world, then the subscription services - in the UK's case it's pay TV but nevertheless they are a subscription service - will provide the box for free, and we

have got ample examples of that happening in our own environment where we see that the mobile phone network operators effectively say, "We'll pay the 50 or the 100 dollars for the handset and we'll give that to our customers for free if they would just take our subscription service and we'll claw back the cost of the initial handset over time and once we've paid that off we'll be home free and we'll start making money on the service." I think exactly the same sort of model will apply in the datacasting world in Australia and exactly that model has already applied in the UK as you will be aware, where you can buy a digital set-top box to simply receive digital free-to-air TV, and you pay 2 or 3 hundred pounds for it, or you take a pay TV service and you get the box for free. So that's a very important kind of business setting for us.

What happens is, if you do have these subscription services, if you do have a datacasting business, the boxes will be rolled out extremely fast because that will be a compelling offer for all consumers, and that means that not only will the spectrum that's being used for the transition period be able to be returned to the people of Australia and therefore used for more services - not only that but in many different ways Australia will be spared the cost of a protracted and drawn out and possibly a disastrous changeover period to digital TV. I mean, we shouldn't delude ourselves that this digital TV thing could absolutely fail if the take-up is not quick enough.

It does seem to us, from our investigations, analysis and research, that if there are datacasters there will be this extra sort of fiscal momentum to get set-top boxes sitting on top of TV sets. So that's one advantage. The other advantage of course for Australia is the service that will be available to them. Not only will we have rolled out the changeover to digital TV rapidly but we will now have a situation where the vast majority of those set-top boxes will actually be connected with a return path via, let's say, a 56K modem. Now, it might be more than a 56K modem, they might be plugged into cable or they might have other technologies that connect them back to base, as it were, but the vast majority of those set-top boxes that the datacasters will provide will certainly have a return path of some description. So they will be connected to the Internet and will be passing data around.

Datacasters will use the circuit that they've established, the network that they've established, to pump a large amount of data up to say 20 megabits per second of data into that set-top box and to provide a return path via a 56K dial-up connection to call for that data on occasions, and that will be of advantage to the subscribers. But that quite aside, as a side benefit the subscribers will also effectively get Internet on television. So if we get this rapid take-up we're talking about a situation therefore where most Australians - because that's what I think we'll be talking about here - will take a kind of a free offer for a free set-top box that gives you digital TV plus other interactive services and that number of most Australians will therefore be connected to the Internet.

I don't think there are many people today who would argue that Australia would benefit if most of their citizens were connected to the Internet in terms of productivity and that's where I think it comes down to. So I really honestly believe that we're not seeing this quite right at the moment, that the debate up until this point has been about

media barons slugging out for access to the spectrum, and about digital TV and high definition and these kinds of things. The real point of this is I honestly believe that a decision confronts our nation which is of the order of magnitude of the decision to do the Snowy Mountain scheme or to run a four-lane highway up the Pacific Highway up to Brisbane or to put standard gauge between Adelaide and Darwin. I believe that going forward, getting our citizens connected and being early in the game - early in the wireless/Internet game - will be of huge advantage to our nation. So that's why we think it's important.

What are the settings that we need to make it happen? I think they're pretty simple, without going into the fine detail. First of all we need sufficient spectrum for datacasters to be able to datacast on, and in my opinion that means at least three discrete full seven-megahertz channels per capital city. We need a standards environment that doesn't ambush datacasters, and in that standards environment what that basically means is that we must have the capacity to send and receive - all services must be capable of being sent and received on standard definition. High definition must be an option. I'm not saying there shouldn't be high definition, of course there should be, but given that the best information that anybody is able to provide so far suggests that about 5 per cent of people somewhere way down the track, maybe 2008, will have taken up high definition.

We think that's not a driver, it's just a furphy. What we think is a driver, and what has been a driver in all the other markets that we've seen so far, is standard definition. If we have world standard straight vanilla DVB-T standard definition television, it means that all devices that currently work in the DVB-T and DVB-S and DVB-C environments, if we had interoperability, will be capable of functioning in Australia. That means that manufacturers can build cheap devices, they can get the economy of scale for building cheap devices and they can ship them straight into Australia. If we have our own weird Australian standards, as is currently proposed, then most of the devices that are currently built simply won't work here, and the manufacturers will have to build new devices especially for Australia and they will be more expensive.

So we think that it's important that the standards are put in the right place. We think it's important that there is sufficient spectrum, and the final thing is that we think that the legislation must define datacasting sufficiently loosely to encourage datacasters to start the adventure of datacasting. There are currently four proposals being floated around by press release, all of which in my opinion will not foster a datacasting industry in Australia. In my opinion the legislation that we have at the moment, which currently says datacasting is not television, that will do. We would be prepared to start on that basis - well, I think we would, all things being equal.

It does seem to me that we have a number of bodies in Australia, the ACCC, the ABA and others, who are capable of regulating and providing guidance, capable of testing things, so for my money, the looser the definition of datacasting, the better. I am sure that there are many players out there who, if they felt they had half a chance of getting this business off the ground, would be prepared to make the kind of investment that is going to be required to be made. But if the settings are not right, if

sufficient spectrum isn't provided, if the standards are not sufficiently open, then there won't be a datacasting business in Australia, and if there is not we will have missed really one of the greatest opportunities that I have seen since I've been in this whole media and technology area.

**PROF SNAPE:** Thanks very much for that. You will have noticed that in our draft report we suggested or recommended that the definition of datacasting should be as liberal as possible. We have also, on reflection, been concerned - well, as in the draft report we are concerned that it not be a source of litigation because if one left it too ill-defined, then while people may be prepared to go in, they might be hit by litigation two minutes later, which might in fact prevent it. So it is an extremely litigious industry.

We did see that there was a case for retaining a distinction between broadcasting and datacasting only because if datacasting were to be broadcasting then it would be subject to the cross-media rules and the content regulations. So for that reason, if for none other, one could see that there needed to be some distinction between the two and that's why we in fact didn't go down the path of no distinction and said it should be as liberal as possible. But you have been emphasising that sufficient bandwidth be available for it, and I think you were referring to being able to send 20 megabits a second which would imply that a datacaster would require a full seven-megahertz band.

**MR MILNE:** Yes.

**PROF SNAPE:** Which in turn would imply that under the current arrangements there may be only one datacaster for Sydney.

**MR MILNE:** I think there's a couple of things to say about this. The idea of all the datacasters being multiplexed on one seven-megahertz channel has been floated. I think it's a particularly bad idea. It involves technological challenges that haven't been met anywhere else in the world - exactly that form. It would involve a sort of form of cooperation which also hasn't been achieved perhaps anywhere else in the world - or that might be not be true.

**PROF SNAPE:** Why would it require cooperation if the multiplex is owned independently and - - -

**MR MILNE:** There could be scenarios under which the multiplex could be owned by say NTL and OzEmail - - -

**MR SIMSON:** Foxtel, Fairfax or whatever.

**MR MILNE:** That's right, it could be. But the most important point about that is that however many of us shared that multiplex would be reduced in our capacity. The important thing there, I think, not to make any bones about it, is that would preclude one very important service which is the download of videos, which I see as being very vital to the success of - - -

**MR SIMSON:** You would need five megahertz for that, would you?

**MR MILNE:** To do it effectively you would. You could trickle charge it down if you had say three or four megahertz, but effectively if you've got seven megahertz, if you've got a 20 megabit throughput, if that's effectively say five TV stations of bandwidth, then you can put one TV station's worth through in a fifth of the time. So what that really equates to in the simplest terms is that we could download movies in less than real time. You go bzzzzz and blast the movie into the set-top box, and that might take 10 minutes or 15 minutes and the movie is ready for you to see.

**MR SIMSON:** Why wouldn't you be a broadcaster then?

**MR MILNE:** You wouldn't be a broadcaster because broadcasters can't do that. Broadcasters don't download movies for you to see at your leisure. Broadcasters do not provide an asynchronous service.

**MR SIMSON:** So this gets back to the point you made in your original submission, that the difference between a datacaster and a broadcaster is a back channel.

**MR MILNE:** We think there's a range of things. There are things like back channels, there are things like the synchronicity, if you like, of the service. A TV station is a synchronous service. I have to be at home with my TV turned on at 7 o'clock if I want to see Richard Morecroft read the news.

**MR SIMSON:** Can I just pick you up on that because there is a new device that has been marketed in the US called a personal - you will help me with the terminology on this - there is now a big bunfight - - -

**MR MILNE:** It's a video-recorder.

**MR SIMSON:** A digital video-recorder that as I understand can sit on top of a television and basically program and record what you want and play it back to you. This has got nothing to do with datacasting or back channels or anything.

**MR MILNE:** And nothing to do, I'd proffer, with broadcasting either, in that it is a client side recording device - it's just the same as a VCR. I can program my VCR to record at any particular time.

**MR SIMSON:** True.

**MR MILNE:** And while its functionality is less than the - - -

**MR SIMSON:** No, but I am just mentioning this because what then is the difference between that device and the device you were just mentioning 60 seconds ago in terms of justifying your distinction between a broadcaster and a datacaster.

**MR MILNE:** A broadcaster is an organisation which broadcasts material at certain times, whether or not there's a device hanging on the receive end to record it, but a datacaster, I'd say, is an organisation which as part of its charter provides asynchronous information in just the same way that OzEmail does.

**MR SIMSON:** Asynchronous means that it's on demand by the user?

**MR MILNE:** No. An example of asynchronous communication would be email. You can send it when you like but I can read it when I like, and downloading a video I think in the way that's proposed for datacasting is asynchronous. By and large the Internet is asynchronous.

**MR SIMSON:** You can send it when you like and I can download it when I like.

**MR MILNE:** And you can read it - - -

**MR SIMSON:** Sorry, watch it when I like.

**MR MILNE:** That's right, but if you want to watch Channel 2's news tonight, you have to be there at 7 o'clock, that's the end of the story, unless you connect a device to it, but that device has got nothing to do with Channel 2. It's also actually illegal.

**MR SIMSON:** Can I just check this: is it correct that the government has explicitly ruled out Internet access through datacasting?

**MR MILNE:** I don't think that's accurate. I don't think the government has specifically ruled anything, to the best of my knowledge, in or out. They're only proposing various views.

**MR SIMSON:** Have they actually proposed that datacasters would not be able to provide Internet access though?

**MR MILNE:** Not to the best of my knowledge.

**MR SIMSON:** Because that would be a pretty extraordinary thing to do, wouldn't it?

**MR MILNE:** It would be utterly extraordinary. I'm sure that FACTS hasn't proposed such a view. It would be utterly extraordinary and it would be a total waste of a resource that belongs to Australians.

**MR SIMSON:** Could we just come back to this issue of the spectrum that you believe you need for your own business model, which is a good shunt because you want to, amongst other things, have videos that can be downloaded. What we know is that even then if the country were to go for less than a 1080i HDTV and say have, on the current speculation - and I say it's only speculation - a simulcast of say 720p or



576p plus a standard simulcast, in terms of the amount of megahertz then left, there would be yourselves, you'd hope, and would there be room for anybody else?

**MR MILNE:** I'm sure that Ross will have a comment on this, but the issue in terms of spectrum is not in fact whether and in what flavour of HD the broadcasters might broadcast, because they will broadcast using their seven megahertz of spectrum and they will either use it all in order to broadcast 1080i high definition or they will use less if they broadcast in a lower definition. The issue is an issue of single frequency networks. It's the way that the spectrum is planned that's important and it's the way that the free-to-air's plan to fill in the gaps in reception. At the moment with analog TV, you broadcast on a certain frequency and, where there's a gap, you fill in the gap with a different frequency. If you use the same frequency it sort of clashes and it doesn't work. The beauty of course of digital is that you can use single frequency and digital - - -

**PROF SNAPE:** We think we can.

**MR MILNE:** - - - has the intelligence to be able to understand. The broadcasters maintain that that remains to be seen. People in Europe are not of that view. DCA, Digital Convergence Australia, has consulted on this and all of the people that have been spoken to, which include NTL who have responsibility for what used to be the NTA, which include BCL, or TVNZ who run the New Zealand version of the NTA and also the Malaysian version I think of the NTA - these people all tell us that single frequency networks are not a problem.

I hasten to add that it is not the case with television transmission that you can get perfect reception to all of the people all of the time and there are those people who speak against single frequency networks who are inclined to say, "Oh, look, this group over here of 200 users won't be able to get perfect reception, so that therefore defeats all of the arguments for single frequency networks," but that's exactly the case at the moment. We can't provide perfectly good television in Australia at the moment. We provide the best that we can. The characteristics for single frequency networks will change but the frequency planners tell us that we can provide a better than adequate result using single frequency networks. Ross, perhaps you've got a comment.

**MR RAMSAY:** In very simple terms, single frequency transmissions have been around for a long time in paging networks. When you have a pager you receive the same signal which is put out in precisely the same form from perhaps half a dozen places in a city. Granted, that's a very different rate at which it happens because we're talking about kilobits instead of megabits, but the principle is there and it works there.

**PROF SNAPE:** We've had NTL speaking to us yesterday and telling us about their tests that they have been running on the greater distances that they think would be necessary in Australia than has been apparently used elsewhere, and it looks as if it's encouraging according to them, and the ABA has concurred that it's looking optimistic also, but I think they were making the point it still has to be proven.

**MR RAMSAY:** Yes.

**MR MILNE:** I think the assumption up until now is that we won't have single frequency networks; there's lots of spectrum out there; we'll use the spectrum in the way that it's been used before, because there's nobody out there who wants to use the spectrum. I think that was really the assumption, perhaps not unreasonably, of the planners when we started down this digital TV track. I think that really one of the things that's happened is that the viability and the desirability of datacasting has emerged during the process and people are now starting to understand the importance of actually saying, "Well, we must have single frequency networks."

**PROF SNAPE:** But as I understand the situation, for the next few years - it will be different of course when we get the switch-off of analog and it will be particularly different when we've got the switch-off of analog if we have single frequency networks. That will open up all sorts of chunks of stuff, but in the interim while we've still got analog going my understanding would be that there will be available for datacasting in the Sydney area a seven-megahertz band which is, if you like, dedicated to datacasting and there may be bits in the broadcasters' bands - "bits" is the wrong word - pieces in the broadcasters' band which they would be able to use for datacasting or would be able to lend to someone or lease or come to an arrangement for someone else to use as datacasting when they're not using the full seven megahertz themselves. That means that over this period the possibilities of datacasting are quite limited.

**MR MILNE:** Yes.

**PROF SNAPE:** And that if a datacaster says, "We want seven megahertz for datacasting," then there's only space for one datacasting with that bandwidth in Sydney.

**MR MILNE:** If that were true, but the DCA has asked TVNZ or BCL - I'm pretty sure it's BCL that is their name - to conduct a survey for us to do some spectrum planning on our behalf and their results came back quite different from that. Their results came back suggesting that in the general Greater Sydney area there was space for at least three full seven-megahertz channels if single frequency networks were mandated and that there were at least three and in some cases eight full seven-megahertz channels that would be available in all capital cities.

**PROF SNAPE:** Those three would be available in the interim period while the analog simulcast is continuing?

**MR MILNE:** Yes.

**MR RAMSAY:** And even that I think tends to be a little conservative.

**MR SIMSON:** Just to clarify, we've been further advised on this issue that the DCITA options paper on datacasting rules out Internet access because Internet provides access to broadcast programming over the Net, such as CNN, BBC Online,

Internet radio, etcetera. That was the basis on which we made that observation earlier. Anyway, you haven't heard of that?

**MR MILNE:** No. I can make a general sort of point about that, which is that it does seem to me that history is littered with cases of the failure to stop an oncoming express train, and technology tends to be a bit like that. It tends to be the case that if you can do something technologically then it tends to be done, and the Net is certainly an indicator of that, and if it's possible to provide a datacasting service then I'd be pretty sure that in the end we will have one.

**MR SIMSON:** Yes, I was going to ask you about that. Let's say that the government takes a decision that you disagree with that basically means that you can't datacast.

**MR MILNE:** In the free-to-air spectrum?

**MR SIMSON:** Yes, over the digital spectrum, because they've limited it to certain genres, you can only have one minute or one second of video every 30 minutes or whatever; it just becomes impossible to deal with. What would you do then? If you can talk about it, what's option 2 for OzEmail if from your perspective the government stuffs up?

**MR MILNE:** The option for anybody else who wants to go down the track of providing, let's say, wireless Internet or wireless interactive services is of course to go to an alternate area of spectrum. One that people are already turning to is satellite and MDF, and there's a variety of other spectrum that's out there. It has one huge disadvantage from a business model point of view, which is, for example, with a satellite broadcast service the user basically at the moment is required to and is likely to continue to be required to put in a satellite dish which, any way you cut it, costs about \$1000.

You might subsidise the cost of putting in the dish and you might get three different people paying for the cost of the dish so that the consumer might only pay 3 or 4 hundred dollars in the end, but the cost of putting that dish in in small numbers - you know, it's pretty hard to get much change out of a thousand bucks, putting a dish on somebody's house. Then they've got to put a card in their computer specifically, and you need to be a bit of a techo to do that, or they need to buy a set-top box which is specifically for datacasting and isn't much use for anything else. So the business model falls to pieces.

**MR SIMSON:** What about the cable?

**MR MILNE:** Well, for cable, what OzEmail could do is try and do a deal with Telstra, who are renowned for their generosity when it comes to sharing their HFC around, and also Optus, so we're pretty well locked out of that. Our alternative there is to start an action with the ACCC. That will take us a couple of years and, in the end, access to the HFC will almost certainly be declared and then we would fight tooth and nail, area by area by area, in order to have access to the HFC cable. So

that's kind of an ongoing disappointment, if you like, to us. We can buy plenty of satellite spectrum but we've got an uneconomic model.

It's very difficult to see how a datacasting service as sort of envisaged and as you will have learnt about through these hearings can fly effectively, unless it's via the free-to-air spectrum. The great beauty of the free-to-air spectrum is that we already have in place largely the broadcast network infrastructure across Australia. It's a huge investment that's been made to put that stuff out there. A huge amount of work has been done to site the transmitters.

Now, there's a big job to get access to those sites and to do the deals which will provide us access to those sites, but the sites are out there. In addition to that, the technology is a robust and world-standard technology. But, most of all, all consumers have effectively got the gear. They've all got an antenna on the roof. Whether it's VHF or UHF is another question, but basically they've all got an antenna on the roof and they've all got a telly. All that needs to be provided is the set-top box, so that's the only investment that needs to be made, but with any of the other forms of spectrum you've got to provide the set-top box, the broadcast network and the receive device.

**MR SIMSON:** Can I just clarify this in my mind: what's the difference between datacasting in terms of what the consumer gets using the digital spectrum that you've just referred to and me being connected to Telstra Big Pond cable and being able to pull off a video or play a video or get data? Is there any difference?

**MR MILNE:** No.

**MR SIMSON:** It's simply a question of access, isn't it?

**MR MILNE:** Really it is.

**MR RAMSAY:** There is a big difference of course in the coverage.

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

**MR RAMSAY:** Because an awful lot of Australia just doesn't have that access.

**MR SIMSON:** To cable. No, I appreciate that. It's datacasting by another name, isn't it?

**MR MILNE:** OzEmail's datacasting service in the year 2003 will be theoretically capable of - providing the technology was in place - would look exactly the same if you accessed it off cable as if you did it off free-to-air.

**MR SIMSON:** And indeed you'd look at a number of distributive - - -

**MR MILNE:** I'm sure that most competitors would do that, yes.

**PROF SNAPE:** What about off-band datacasting - off the broadcast band?

**MR MILNE:** Again it's a business model concern there, in that the situation, the user experience, which would be most likely to give rise to the most successful datacasting businesses will be that user experience where the user can go and buy a set-top box or have a set-top box delivered to them, they can plug it into their TV and then they can find the datacaster on the dial basically. They can go, you know, 7, 10, 9, 2, SBS, OzEmail, Fairfax, news, datacasting services. That's the most desirable thing to be found.

**MR SIMSON:** Sorry, I've just been lost in this. What do we mean by off-band in this context?

**MR MILNE:** I presume what you mean is - - -

**PROF SNAPE:** Off the broadcasting bands.

**MR MILNE:** Yes, using like UHF but not within the broadcasting bands.

**PROF SNAPE:** Exactly.

**MR SIMSON:** I see.

**MR MILNE:** In the end what we would have to do to be able to do that - and certainly it could be done - is that the aerial would still work but you'd have to have an extra special set-top box.

**PROF SNAPE:** You'd have to have one that tuned it to - - -

**MR MILNE:** Yes.

**PROF SNAPE:** Is that a costly item?

**MR MILNE:** It's a bit more costly, yes, a bit more costly.

**PROF SNAPE:** But that might be cheaper than some of your other options.

**MR MILNE:** It might be better than satellite, yes, that's right.

**PROF SNAPE:** Yes, better than satellite and more common than cable.

**MR MILNE:** Yes.

**MR SIMSON:** So, Mr Milne, the issue that you raised right at the start of your presentation today as to what you see as datacasting being a driver for the take-up of digital - that is, to put it bluntly, the installation of set-top boxes - really is an issue then in terms of the parameters that the government decrees are available for

datacasting. That is, what genre, how much video and so on, is a very significant question then, isn't it?

**MR MILNE:** Extremely.

**MR SIMSON:** In that the more tightly that's defined or the more narrowly that's defined, I suppose you'd argue the less incentive that will be for more people to invest in a set-top box to take it up, and in the context of a group such as you, who may not actually just be able to ring up Ziggy and get access to the cable. It is a key issue of access then too, isn't it, in terms of datacasting services?

**MR MILNE:** Absolutely. That's absolutely correct, in my view, and I think that the environment that we move to, if there are successful datacasters, will be such an interesting environment from the user point of view that it will be - it will be an interesting environment from a user point of view but I should just make the point that I was speaking yesterday to an organisation - and I'm sure I'll get the name wrong but I'm pretty sure it was called the Australian National Association of Health Insurers or something to that effect.

They're very keen to enter the datacasting debate and the reason is that their research has indicated to them an absolutely colossal saving that can be made going forward in the provision of health care to Australians if they could effectively provide a terminal in people's homes. They've understood the datacasting discussion that's gone on and they've seen that yes, this would be a way to make a very simple sort of "point and click" terminal available in the homes of people who have got TV sets but don't consider themselves to be computer experts.

They see this as being vital for health insurers and for the nation, and they think the cost of providing health care to our ageing population can be significantly impacted by this technology. That's one example. Distance education, which Australia has had a great history of - I think we've got the most tremendous potential to provide distance education, asynchronous distance learning, via this technology and going forward where you use the download capacity to download videos and demonstrations and lectures and those kinds of things.

Distance medicine is another thing that Australia has got some history of. Distance medicine has been a kind of a dream of broadband networks for a long time and been largely not delivered but in a way that we might not be able to exactly describe right now, if you've got 24 megabits of data into a box and a broader distributive network, I know that there are a lot of people who'll be very interested in that from the point of view of distance medicine. So this general idea of connectivity can be used for health care, for education and for the delivery of government services.

There is not one government department in Australia who doesn't have a document this thick describing how they are going to deliver their services in the future online. But the show stopper for all of those thick documents is Internet

penetration. So Australia just stands to benefit hugely from being connected and I believe this is one of only two or three technologies that I can think of which has the potential business model to provide that sort of rapid take-up of connectivity.

**PROF SNAPE:** In the various things that you were envisaging in your own plan that you indicated earlier that we'd be doing through datacasting, I understood that it was this zipping through of compressed data - that is sending a video in 10 minutes, for example - would require a wide bandwidth in order to do it. What else would it be that you required a wide bandwidth for? Why couldn't you operate with say one and a half megahertz?

**MR MILNE:** I think the answer is you could. You could make a datacasting service that would operate on, for example, a two or three or four-meg throughput, and that's in current terms quite a lot of bandwidth. It's just that again our experience of bandwidth is that if you've got it you use it. It seems to be the way it is. It's a bit like computer power. You finish up developing the applications that will use that amount of bandwidth and the applications improve, basically. So I think that what you'll find is that if you had a datacasting service that had, for example, a two-meg throughput, that it would have a paucity of multimedia. If you had a 24-megabit throughput you would find that it would be very rich in multimedia - in video content.

**PROF SNAPE:** I guess I've been trying to get people's reactions to what you described as the dumb idea earlier on, and that is if there is only say seven megahertz available - one slice available - and one does need a definition of datacasting which makes it different from broadcasting, and if one wants to get on with it, so that you don't have litigation stopping it or putting blocks in it forever, then a definition in terms of a limited bandwidth available to any one datacaster would achieve or could achieve those objectives; and that it would go through a multiplex perhaps independently owned and so that there would be contractual arrangements with the multiplex owner, operator and the various datacasters. I was trying to see why is that so unattractive?

**MR MILNE:** It's certainly possible to conceive of. It's just that it's not as attractive as having the full seven megahertz. I'm sure that we could provide a much better service with seven megahertz than we could with - - -

**PROF SNAPE:** But there may only be one datacaster and therefore one loses the competition. We're saying another objective is that there may be several datacasters, which then leads you, instead of trying to define it in terms of frames per second or other quite artificial - if you like - restrictions, to say "Okay, there's the amount of bandwidth you have. You can do anything you like on that bandwidth, and that's datacasting. It isn't broadcasting because we haven't given you enough to be a full broadcaster."

**MR SIMSON:** Can I just clarify one other technical issue - sorry, are you going to answer that?

**MR MILNE:** No, I think that we've discussed - - -

**MR RAMSAY:** Could I just make a point? I think it highlights one of the key differences between broadcasting and datacasting, because broadcasting is really one size fits all. There is the program there to be watched at that particular time and you watch it, whereas the Internet is - there's much more inherent choice in it. To provide that choice you need a big data stream and each person who takes a piece of that data stream will take a piece. This person will take that piece, that person will take the other piece, and a third person will take a third piece. So there's just a different concept behind it.

**MR SIMSON:** But what if I'm playing off my Web site at a particular time of day - at 10 o'clock in the morning - a particular piece of video? It hasn't been requested by anyone; I'm broadcasting a piece of video off a Web site. Now, why aren't I a broadcaster?

**MR MILNE:** I would say at the moment you're not considered to be a broadcaster. I'd say it's very clear that you're not a broadcaster. For a start, in that particular environment, you're not using wireless spectrum but even if you were using wireless spectrum to - - -

**MR SIMSON:** But hang on, Foxtel and pay TV doesn't use cable - that uses cable, okay, so that's not a differentiating point. Pay TV uses cable.

**MR MILNE:** Sure.

**MR SIMSON:** It doesn't use the wireless spectrum.

**MR MILNE:** Okay, but I think the big difference between the Internet and pay TV is again, with pay TV, I have to tune to that channel at 6 o'clock in order to see that movie, whereas with a stream of video on the Internet you can request it. You say, "Show me that video now," and you can - - -

**MR SIMSON:** No. If you tune to my Web site at 10 o'clock, can't I be streaming off my Web site, at 10 o'clock in the morning, a piece of video? So long as they've downloaded real video player and real media player and that sort of jazz, if they click in at that time they're going to be seeing a piece of streaming video.

**MR MILNE:** Yes, you can do it in a synchronous way.

**MR SIMSON:** So why aren't I a broadcaster then?

**MR MILNE:** Well, in that particular instance you would say that the differences between you and Channel 7 at that particular time would probably have to do with things like frame rates, the technology that you were using, the size of the video, the quality, etcetera. For me the problem is that you can always - if we go down the path of really trying to tightly define the difference, every time I've done that personally I've come up with the first glance of something that looks pretty convincing. Then, in further argument, I've always gone through and gone, "Oh, well, there's an exception



to that, there's an exception to that, there's an exception to that," so to really try to tightly define it I think is a really difficult - - -

**MR SIMSON:** I'm just trying to understand what we're actually talking about.

**MR MILNE:** I think with a broad brush though, what you say about television is that television happens on a TV, it uses wireless spectrum. It's synchronous, it's 25 frames a second, it's full screen. If you're not there you miss it and you don't have any way of controlling it apart from turning it on or off, basically. If you want to have any effect on it at all you've got to ring the blokes at the channel. Those last things are very different from a datacasting model or from an Internet model. I can affect the thing that I am seeing in a variety of ways. I've got a two-way communication with the sender of the data and, what's more, in most cases I don't have to be at any particular time to see it. The nature of the Net and the nature of datacasting is it's there when I want it. It's time-shiftable. That's inherent in the circuit, if you like. It's inherent in the network that's established between the purveyor and the user.

**MR RAMSAY:** And at that time you don't have to take the whole chunk. You can select a piece of it.

**PROF SNAPE:** We had, in one of our draft reports, some ideas about clearing spectrum, which I'm not quite sure you've been able to have a look at, but the idea is in fact to provide incentives to clear out spectrum, if possible ahead of time, to facilitate all the wonderful things that you're talking about. You've not been able to have a look at that?

**MR MILNE:** I'm afraid I'm not familiar with it.

**MR RAMSAY:** I did read it and I must say that we were very pleased with the whole report but that bit was a little bit difficult to understand. There was the market concept of putting it up for auction but it wasn't clear how it would accelerate the 2008 date. Ideally the 2008 date - it's very good that the report has said it ought to happen at 2008 rather than some indeterminate time but it would be even better if this mechanism was able to bring it earlier than 2008, perhaps whereby the proceeds of whatever market process is proposed could cross-subsidise set-top boxes and thereby shut down analog earlier.

**PROF SNAPE:** I wonder, if you were able to have a rethink about that and if you were able to have a look at Fairfax's most recent submission which they were discussing yesterday and in which they're talking about what they see as the profits that would be available from freeing up the spectrum and from the new activities through the digital - for the conversion - that some comments, if you are able to give them, on means to get the spectrum cleaned out, after having a look at those, would be most appreciated.

**MR MILNE:** Sure.

**PROF SNAPE:** It's been very much a theme in our draft report to, "Let's get this digital conversion achieved," and in order to do that, one needs to get the analog switched off; one needs to get the spectrum cleared out.

**MR RAMSAY:** In the whole framework, the single most important issue you've identified already, and that's the single frequency networks.

**MR MILNE:** I may also just make a kind of observation or aside, which is that there's been a general assumption that if sufficient spectrum is available that it will be auctioned to datacasters. We can be reasonably confident, given recent auction results, that the price achieved in an auction room will be fairly high but I'm still wondering why the default position is that there should be an auction when in fact the free-to-airers are currently enjoying a whole free channel, and the channel that they are paying for is provided to them on the basis of their revenue.

In other words, if they have a good year of advertising, if the crop's good, they pay more. If they have a bad year they pay less. I'm wondering why it ought to be necessarily the case that datacasters should simply go into an auction room. One reason is it would probably generate more money for the government. But if what we're aiming for is to get a datacasting industry and make use of the spectrum, then it may well be that there's a different allocation method that might be more desirable.

**PROF SNAPE:** I think that's been a very useful discussion, and helpful. So we thank you very very much for coming and endorsing so much of our work, for which we're grateful. It's unusual for the commission to be in that situation, for people actually to come along and say, "We agree with you," and we'll try not to get too carried away with that. But there are those who disagree as well and we could be getting those also.

Thank you very much for that. You are our last participants for today. As usual, I should ask if there's anyone present who wishes to make an oral presentation and, if not, then I'll say thank you very much and we'll close the hearing for today, to be resumed tomorrow. For tomorrow we've had a shuffling around with the timetable, so we'll be resuming our hearings at 9 o'clock tomorrow morning. Thank you very much.

AT 4.32 PM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 8 DECEMBER 1999

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