



**TRANSCRIPT  
OF PROCEEDINGS**

**SPARK AND CANNON**

Telephone:

Adelaide	(08) 8212-3699
Melbourne	(03) 9670-6989
Perth	(08) 9325-4577
Sydney	(02) 9211-4077

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO THE BROADCASTING SERVICES ACT 1992**

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

**TRANSCRIPT OF PROCEEDINGS**

**AT MELBOURNE ON THURSDAY, 10 JUNE 1999, AT 9 AM**

**Continued from 9/6/99**

**PROF SNAPE:** Welcome to the Productivity Commission inquiry into Broadcasting. This is the fourth day of hearings in Melbourne and is scheduled to be the last one. You will have noticed that the terms of reference for this inquiry into Broadcasting are available on the table outside, as is our copy of the issues paper in case people haven't caught up to that yet.

Proceedings are transcribed and we have a transcription service here. The transcripts will appear normally on the Web site of the commission within about three days of the relevant hearing, and we send hard copies of the transcript to the relevant parties. At the end of today's hearings I shall, as I normally do, ask anyone present to make an oral presentation should they wish to do so.

We begin today with John Fairfax Holdings Ltd and from Fairfax we have two representatives, and I would be grateful if they could identify themselves separately for the benefit of the transcription service.

**PROF HILMER:** Thank you, Prof Snape. I'm Fred Hilmer and I'm chief executive, John Fairfax Holdings Ltd.

**MR DEWS:** I'm Nigel Dews, I'm director of interactive business inside Fairfax.

**PROF SNAPE:** Thank you very much. I think the transcription service will be able to recognise your voice quite easily. What they make of it is another matter. I think, Prof Hilmer, you're intending to open the bowling for Fairfax, so I pass it over to you. We thank you for your very helpful submission and the very helpful attachments to it also, and we invite you now to speak to it.

**PROF HILMER:** Thank you very much, Prof Snape. We made an effort in our submission to state fairly clearly what we believed to be the position that we would like the commission to take. I don't really want to take a lot of time going over that because I believe you have had a good opportunity to read it and digest it. So perhaps I might just take a couple of minutes to highlight the main points and then have a dialogue about it with you.

Our basic point is that we are urging that competition policy replace the current regulation of ownership and access. Those are the two major areas, the regulation of ownership and the regulation of access to scarce resources; those are the two major areas of current media law about which we have concerns. Our reasons for doing so are driven in part by this issue of convergence, but in particular when we talk about convergence, as we said in the submission, we focused on the digital delivery platform, the convergence in the delivery part of the value chain rather than the convergence in the production of the material or convergence in the editing of the material.

We believe it is the convergence at the digital end which is really posing a significant competition issue for this industry. The reason that there is a competition

issue for the industry in convergence comes about because there are limited pipes from the producers of content through to the potential audience for the content. We believe that as a content company it's very important for us, and for others who want to produce content, to have competitive access to consumers. That is, as we've said, not just an issue of the pipes, but it is also an issue of the connectors to the pipes, the set-top boxes or whatever devices are used, and the programming of those boxes so that as a consumer when you want to see content that we at Fairfax may seek to get you to look at, you don't have to have a PhD in computer science to find that particular channel on your particular device.

So we believe that these are really the critical competition issues and that resolving those issues from our point of view then would make ownership restrictions unnecessary, and you could then allow a freer market to work. For that to occur, the other major point is it's critical in our view that a lot of care be given to the detail of the recommendations and the implementation. I hear that our submission is now being picked up by the NATO negotiators in Kosovo who are saying that the devil is in the detail and it is all in the sequencing of the change.

It's the same issue here. It is, what will an access regime look like? What will come first, what will come second, what will come third? What will the processes be? What sort of resources will be available to the people who have to regulate in order to allow a competitive market to develop? I think that set of issues is at least as important to us as defining an end-point for the industry. So in short that's the view that we have sought to explain to you.

We have two attachments. We have an attachment that looked at the technical issues, and Nigel Dews, who is responsible for the division in the company where that was prepared, is here to talk to us today but he is hoarse. We also have a submission that I asked Associate Professor Gans of the University of Melbourne to prepare. Unfortunately he is teaching today but has indicated that if you would like to talk to him he would be prepared to come at another time and expand on any of the points in his paper on the economic issues that we have relied on in our submission.

**PROF SNAPE:** Thanks very much, Prof Hilmer. I wonder if we can draw up some aspects of it. A number of people have given submissions in which they have referred to the Fairfax submission, as you would know, including Media Alliance and including also the Friends of Fairfax who are going to join us this afternoon. They have been pointing out the importance of diversity, of diverse voices. They associate that to a significant extent with diversity of ownership. You would be aware that our terms of reference give particular emphasis to plurality of opinion as well as fair and accurate coverage of matters of national and local significance. The diversity receives considerable emphasis in those terms of reference.

The point that many have been making is that the general competition laws referring to supermarket trading and what have you may not be adequate to cope with this diversity and something more than the general principles of the Trade Practices Act and the ACCC would be required. I take the point that you talk here about the

importance of access, achieving access in various ways, and that may in itself be dealt with under the normal laws of the Trade Practices Act or perhaps supplemented by something like the telecommunications provisions in that act. I think the attitude of a number of those who have commented on your position would be summed up by saying that's not enough; that that would not ensure the diversity of sources of information, of voices, in what people are arguing is this crucially important thing in a democratic society of sources of information of news. Would you like to comment on that, please?

**PROF HILMER:** Yes. The issue of diversity is an important issue, we understand that from your terms of reference, and it is an issue that clearly we as a media company that concentrates on news and current affairs have considerable sympathy for. I think you can, however, confuse ends and means. We believe that the end of diversity can be well served by means that rely on a market properly constructed and properly regulated to operate in this area. If you look at the most diverse production of media content, it seems to me that that occurs in the least regulated parts of the industry, whether it is the production of films, whether it is the proliferation of Web sites that have allowed various people to take niche positions on the Internet and broadcast in a way that is very accessible to people. If you look at the areas where there is very little diversity, it is in the areas of media that have been very heavily regulated. I mean, the worst cases would be the state-owned media organisations in a number of the more recent bloc-type countries.

We believe again that if you implement carefully and in the sequence and with the processes that we have urged here, you do not have an overnight change in the industry but you will see the evolution of new players, you will see existing players develop new forms. You will see companies, and we believe our own company, strengthening their position on the basis of their ability to take content and put it into new forms and into new media. And all of those forces, including the entry of new players or the entry of overseas players into these new media and the content that is available in a content-hungry world, is going to enhance diversity. We do not have an issue with the goal of diversity, that it is an important part of public policy or it is an important platform in a free society, but in many other areas, most other areas, we rely on markets to deliver us diversity, and we believe there is no reason why that can't happen here if the transition which has created these oligopoly structures in this industry is carefully managed.

**PROF SNAPE:** Coming to content, we do see a great deal of vertical integration. We see media enterprises attempting to earn in some cases football clubs, football competitions, sources of sport. There are other areas where there seems to be very substantial economies of scale and scope in vertical integration, and many of the commentators are suggesting that in fact when you have got the major sources of content tied up, then you are not going to get very much competition.

**PROF HILMER:** I wonder if I could come at that in terms of thinking about a number of the different segments. There is not just one media market, it is a highly segmented market, and people make various bets at various times in terms of their

ability to tie up a particular content. You can look at sport as one area, you can look at movies and access to movies - big name movies is another area. You could look at news and current affairs, and that is harder to see how one could tie up the content unless one could own all the outrageous people in society. But some of those efforts at vertical integration always sound overwhelming and threatening when they occur, but their efforts at the end of the day have to survive in a market provided you have a contestable market at work.

We have seen efforts to reorganise particular sports. Again I'm not an expert on this but some of the forays into vertical integration around cricket and around some of the football codes have done considerable damage and haven't been seen as great commercial triumphs. It is not always clear to me that vertical integration is a good strategy, it is a strategy that lots of businesspeople and lots of industries like to follow because they believe it exposes them to less risk if they own the whole chain. But at the end of the day each link in the chain has to be strong or the chain breaks.

I have more faith that if the owner of the vertically integrated content doesn't do a good job, then new audiences will be developed by people who will find other content, whether it is other forms of sport or whether they'll find other sources of movies or other sources of entertainment. Certainly in terms of the field which we are in, which is news and current affairs and the provision of information to people, I think the ability to in any sense monopolise that vertical integration is very low. I think our success as a news/current affairs information organisation depends in part on our ability to get access to the news, and that occurs because of the skills of the people that we have. Secondly, our ability to package that and interpret it and comment on it in a way that readers find they would like to have access to.

**PROF SNAPE:** On the vertical integration and economies of scale and scope that would tend to drive it, we see that you would like access to the pay TV platform through the Internet, and you're seeing significant economies coming from that for your enterprise, otherwise I guess you wouldn't be seeking it. We have got a submission from the Media Alliance casting doubt upon those economies, suggesting it's not really economies but just a way of trying to monopolise things, to paraphrase. The ABC on the other hand spoke of significant economies of scale and scope arising from them having both radio and television in the same house. Would you like to comment on the economies of scale and scope that you see in this, as to whether it really is something of economic significance or, as some portray it, the intent of being able to control both as simply a way of firming up an oligopolistic structure?

**PROF HILMER:** I am not sure, Prof Snape, that I understand the first part of the question which is the issue of the access to the pay TV as something we want to do for reasons of economies. We don't want to do that for any reasons of economies of scale. We don't actually want to own yet another cable network but what we would like to do is to have access to the network and we are prepared and quite happy to do that on appropriate terms. We aren't seeking vertical integration in that sense at all.

The other part of the question dealt with where are there economies. Are there economies in news production? Are there economies in other kinds of program production? Are there economies in the marketing of our product to advertisers and to consumers? I think that is an interesting area and one in which different companies are going to make different bets and take different views, and people are going to be right for a while and then wrong for a while, because it is a very fluid area. In every one of these cases there are pluses and minuses. There are clear economies and we have two major broadsheets, The Herald and The Age, and you can say there are clear economies in doing more of the production together. Nevertheless we don't do that because we say those economies would cost our company in terms of the ability to tailor those two particular products to their quite different markets.

The flip side of the economy of scale argument is that you tend to get into more a one size fits all and you tend to lose focus. They're the tensions in strategy, a focus strategy that is aimed at a consumer vis-a-vis a cost strategy which is just do it at low cost, capture the economies and the people will stomach it. Again the ABC has a view that they think at this stage - and I've had this discussion with them - there are great economies in radio and TV. I would be interested to see how that plays out. That's not something that is commonly done around the world, and they are pioneering and they may be making a good bet. But if you come back to your earlier point, the essence of diversity and vibrancy of an industry is that people can make those bets, they can then learn from them and they can change them. They're more likely to do that well in a market that is regulated within a competition framework, than in a market that says, "You can do this with this bit and this with this bit, and you can be here and there and not try that." That's what we're concerned about.

**MR SIMSON:** Prof Hilmer, what are you proposing would be the additional tests or checkpoints, if any, that would be placed within the orbit of the Trade Practices Act in the context of considering whether a merger between a newspaper group, such as yourself, and a television group was indeed in the public interest? To quote the Broadcasting Services Act as it applies at the moment:

The parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.

In other words, what I'm asking is what tests should be applied in the case of the media if we were to do away with the cross-media ownership rules that are not applied to a maker of baked beans?

**PROF HILMER:** Mr Simson, are you asking whether there ought to be additional tests in terms of competition principles or are you asking whether the public interest test that currently exists in the competition laws, in our view, needs to be either redefined or made more specific for this industry?

**MR SIMSON:** The latter.

**PROF HILMER:** That is frankly not an issue that we have addressed in the submission. Let me just give you a reaction to it, something that we thought about. I see our submission in the context of this process - I understand that this is your first round of hearings in order to do your first report and then there will be a chance to come through the process again, as we understood it, and refine. What we're trying to do here is really put markers in the ground in terms of a direction and dialogue with you about the issues, and think from our own point of view about the issues, and refine. We haven't tried in here to get into the drafting issues that might occur or might be required, for example, to rewrite an access regime. We haven't got into that.

At this stage public interest in the competition laws is very broadly defined. I don't think it is entirely fair to say, "Well, it's the baked beans test. That's what it's about." It's not about that. There are a number of issues that have to be dealt with that raise community concerns that are deeply held. Media is not the only thing the community is concerned about. It seems to me that that's an issue that needs to be explored but it's a public policy issue. We're saying that competition law understands or is able to accommodate a public interest test in addition to an economic analysis of concentration in market power. We're saying that's something that needs to be considered but it's really a public policy issue. It's an issue for the makers of public policy more than an issue, I believe, for us if I wear my hat as the head of Fairfax, rather than an old hat I've worn, which is trying to develop public policy.

**MR SIMSON:** Sure, but in wearing your hat at Fairfax, as was alluded to earlier, the public interest issue to many participants in this inquiry has been and is pivotal in discussion with regards to changes to, for example, cross-media ownership rules. Are you acknowledging that there would need to be some specific redefinition or definition of public interest issues as they relate to media if the cross-media ownership rules were to be subjugated or replaced by the Trade Practices Act in its various elements?

**PROF HILMER:** I believe that if you were to recommend and the government were to move towards the implementation of sequencing, timing, processes and resourcing that we've outlined in this submission, then there will be time to see how the act works and there won't be a need to redefine it at this stage. If you want to go big bang, then there may be a public policy issue but it's not clear to me that you need to redefine it at this stage. It's an issue perhaps we might want to comment on further but at this stage I'm not prepared to say or advocate to you to change or refine the public interest test, particularly in the context of what we see is a gradual implementation focusing on access as opposed to - you know let's throw up everything in one go.

**MR SIMSON:** But could I just throw to you some of the elements that have been raised in the context of public interest and influence by participants before this inquiry, which they see as important in the context of considering the cross-media ownership rules. They include the nature of entities that might be contemplating a merger. For example, we heard this week from the CEO of Southern Cross that he argues that his

talkback radio stations are more influential than his music radio stations. So in that context a coming together of a radio group which had substantial talkback stations would be, in his mind, more significant from a public interest perspective than if it was music stations.

Similarly, we have heard from participants about issues relating to whether one of the parties that might come together has business interests that go beyond their media interests; for example, whether they have ownership in a casino, and the significance of reportage on a casino in a town such as Melbourne, and the influence and public interest issues associated with that. There are also issues relating to regional Australia, where some have argued that a coming together of a local radio station, a local newspaper and a local TV station could represent a significant diminution in diversity - more so, arguably, than in a metropolitan area. We have heard a lot about the issue, particularly in the submissions that we're hearing later today, of editorial independence.

I am just mentioning these as matters that participants have raised, and seeking a reaction from you as to whether these are matters that you think would be important in considering whether a merger should occur in the absence of cross-media.

**PROF HILMER:** I'll see if I can take a couple of those, not all of them, and give you some thoughts. The idea that we look at the nature of entities in light of their influence is an interesting argument but I'm not sure it doesn't miss the point. Because if I'm not allowed, for example, to buy a talkback radio station but I can buy a music station, then I'll buy a music station and if I want talkback I'll make it a talkback station. At the end of the day I'm buying either access to an audience or I'm buying spectrum. The nature of an entity is not God-given and permanent. The nature of an entity is a function that we, the managers of the entity, seek to make it. You need to look at this. I think you are raising very difficult questions that are just going to tax very creative minds and they're going to find their way round them.

I'm concerned about that as an issue because it does assume that entities are unchangeable and it also assumes that the existing owner, who has this "influential" talkback show, won't change it. I would submit he'd change it pretty quickly if he wasn't making a commercial return, and you'd get lots of music, as we've seen as stations change their format, as newspaper groups change their position and as television stations change their mixes in order to get at different, more profitable slices of markets. I think it's an interesting issue but I'm not sure it isn't a bit of a red herring.

Should media companies be regulated differently because of their ownership of different kinds of business? That is again an interesting issue and one that instinctively I find it difficult to agree with because, at the end of the day, our franchise depends upon consumers trusting our product and they're only going to trust our product if we manage our product in a way that allows basically the truth to get out and fair comment to appear. It is again another version of the vertical integration argument: if I could only own the media then I'll always get good press. If I could only own my

supplier then I'll always get low prices. If I could only own the distribution outlet then I'll always be able to get to market.

It seems to me that this is just a special case of the vertical integration argument and, to me, it is not a particularly compelling case. It's value-laden - I accept that. You take it as a casino - we're right about the casino - but it's all right for me to own an airline even if I say nice things about the service in the airline that might not correspond with what you, as an airline passenger, feel: so airlines are okay but casinos aren't. It's laden with political judgments, and I think to legislate those judgments is something that parliaments do from time to time. I am delighted to live in a free society but I don't advocate that kind of legislation but I certainly don't stop that process.

**PROF SNAPE:** The competition policy isn't allowed to operate in this sorting-out way in all areas and, to return to baked beans, you might argue that if you're selling poisoned baked beans then the market will in fact sort that out fairly soon and those baked beans will go off the market but in the meantime you might have killed a lot of people, and so we have food safety laws to ensure that you just don't leave it to the market in that case.

People have been making some submissions: the comparison between, if you like, the poison that might come from distorted information and the poison that might come from faulty baked beans, and we don't leave it to the market to sort out in the latter case because of the consequences upon the people who are going to suffer. The argument put forward by some people is that we shouldn't leave it in the case of the media because of the poisoned minds and the damage that might occur until the market, as you say, sorts it out and those that are giving the misinformation fail. That might take a very long time and a great deal of mischief and, indeed, wars, in some cases, might have occurred in the meantime. I am not suggesting that we would have the wars in Australia but some of the comments upon the importance of the freedom of the press and diversity of information and sources relates back to the distorting effects of the control of the media in the past.

**PROF HILMER:** Freedom of the press is an absolutely fundamental belief, I think, not just of our organisation but certainly me as an individual - someone who understands living in a democracy is a very special thing - and so that is not an issue with me at all. The baked bean analogy - in a sense of we regulate poisoned baked beans - simply says we need, as a community, to understand what it is that the media might do that might be equivalent to poisoned baked beans and have regulation and we have certain regulation that does constrain the freedom of speech. We don't have unconstrained freedom of speech; that's why there are laws such as defamation laws that we have to work within.

There are also to the extent - if we go back to Mr Simson's analogy of the company that owns a particular facility and basically in its newspaper or on its TV station or radio station or Internet site, promotes that facility in ways that are simply untrue, I would be interested as to whether the deceptive and misleading

conduct sections of laws that we have in place already mightn't be extended to deal with the issue of truth, which is, to me - untruth is like poison in the baked beans. We have a number of ways in which we do that.

When you get to the sort of more insidious issue of there is only one voice in the media and that one voice will tell Australia that it ought to go war, I think we are so far from that and that the proposals that we put in terms of an evolution to a competitive market will in fact take us further from that that I am just not concerned about it. I think it is crying wolf. We have very diverse opinions from our media in this country and I don't see that being squashed in any significant way; in fact, I see it being enhanced by the proposals that we've made.

**MR SIMSON:** Mr Hilmer, just thinking about for the moment freedom of the press in Fairfax, could you explain to us what you believe the concept of "editorial independence" means, please?

**PROF HILMER:** We operate a number of different newspapers and we operate a number of Web sites and for us to do that successfully requires us to win the trust and the confidence of people so that when they buy the Age or the Fin Review or Herald or they click onto one of our sites that they have a belief in the integrity of what is there; that's fundamental to us - it is fundamental to our business and it is fundamental to our practice. What that means from our point of view is that where our journalists or our editors want to write about an issue then they ought to be able to write about that issue provided that what they write is of good quality and provided that what they write is accurate and not in any way a breach of the law - and also provided that what we write and what we put together is appropriate in the package that is represented by the various mastheads and Web sites. So if we have a sports section but a sports writer thinks, "I want to have some political commentary," I think editorial independence would not go so far as for us to say to him, "Sorry, that doesn't go there."

We have a lot of very talented people who have considerable freedom within limits to write and report on the situations that they find but they have to do that within the context of a quality standard. That's absolutely critical, and they have to do that within the context of understanding for whom we write because of who reads us. So it's those kind of parameters that then have led us to things such as our concepts, our codes with respect to editorial freedom.

**MR SIMSON:** How could we be certain that that concept, as you have explained, could or would not be compromised by another owner who - to return to the previous discussion - had a wide variety of non-media interests or other agendas, political or otherwise? What, in the way that you run Fairfax, would ensure that if there was a different bunch of people at the board table they could not push down on the editors?

**PROF HILMER:** Again, it is important to see that question in the context of the submission, which is to develop in a steady and sensible way the competitive market. The articulation that I just gave you of editorial freedom is an articulation that rests on

a couple of things but it rests on what is good business practice. In other words, it rests on what is sensible for Fairfax to do in order to be able to continue to go forward as a successful company and continue to put out its papers and get into new fields.

An owner that wants to conduct bad business generally has a number of disciplines that are brought to bear on them, so I don't think in any market there is ever going to be any guarantee that people who own assets won't do things from time to time that are done - and again that is the nature of the market system - to open up opportunities for other people to the extent that another owner of our paper drove it in directions - I think that person would probably lose most of the talented staff; I think that person would probably lose a significant amount of the readership. If you look at our company, for example, we have very little in the way of assets: when you buy Fairfax you're not buying bricks and mortar; you are buying a masthead that is built on reputation and skill.

Any owner that didn't understand that would be simply destroying their own wealth. Again, in our market system, we rely on the incentive of people to protect wealth and to build wealth for themselves and investors. We rely on that in order to get what we think are good outcomes, not just in a commercial sense but also in a societal sense. The environment that we want to see, which is a more competitive environment with a number of strong players, is the best protection, but that won't occur.

**MR SIMSON:** We have, in a number of submissions, seen examples of where the submitters have argued that journalists working for a newspaper group - and there have been examples brought to bear in the case of both Fairfax and News here in what we have received - because of other interests of their proprietors have laid off or felt under pressure not to report something or to take a particular line on something - and there are examples through the submissions here today. You made the point earlier that, at the end of the day the ultimate sanction is that if you told sufficient untruths you would be dragged before the ACCC for misleading conduct. I put it to you that would be at the extreme end, and the concerns that have been expressed to us are not driving a newspaper to a rack and ruin by being continuously deceptive, they are more subtle than that, and, again, I'd be interested in your reaction to that.

**PROF HILMER:** Again, I can't comment on what people have said. You are always going to get stories in every industry about pressure being brought to bear on somebody to do something, to look after a particular friend, to give a job to one's relative. To think that from time to time in an industry we are going to get perfection in terms of conduct and moral hazard - I think things are going to occur at the margin. So I'm not really concerned about that. It's certainly not practice that's widespread or prevalent in any sense that I've been aware of since I've been in the industry.

Again I take your point about the subtlety and maybe it goes back to the question that Prof Snape asked me about that the poison seeps in over time, because these aren't single events. A single story doesn't redefine a newspaper; a single bad

program doesn't redefine a television channel; a single series of bad events on the Net doesn't redefine a Net site. These are reputations that build over time and they change over time but they change and the impact on reputation, I think, is actually a lot quicker than we think. That's been our own experience, without getting into specifics, with some of our mastheads. If you lose franchise, you lose franchise very quickly, and it takes you a long time to build it back. When you have strong franchise, it's something you really want to protect.

The best protection though for all of these things is that there are a reasonable number of strong players. If we have a reasonable number of strong players, then we believe our proposal will allow strong players with natural advantage based on skill and performance to get stronger. I think that's the best protection for the industry and for the community in terms of diversity.

**PROF SNAPE:** Just taking that point up: if Packer were to take over Fairfax or PBR - just take over Fairfax - and the scenario developed that you mentioned before of some journalists becoming dissatisfied, etcetera, how many alternative employers - employment enterprises - would a financial journalist have?

**PROF HILMER:** I think the answer to that question is changing quite rapidly because the barriers to entry in some of the new media - again assuming the scenario develops as we're advocating - would actually give people sets of opportunities in the future that they didn't have. Financially it's very interesting because one of the most successful new entrants, for example, on Wall Street - and, Nigel, if you'd like to talk about it - is the street.com, which is actually a significant financial publisher.

The other point that you would need to be careful about but I don't think it's very different, and a point I talk about with some sensitivity, is that most organisations at a particular point in time depend on the performance of relatively few people - even large organisations. There are a number of people coming through who are excellent and who will be those few people in time, and there are people who may have been those people and are not those people now. Those people are really a scarce resource and have very significant market power in terms of doing other things in this country.

We've seen disaffected and very talented people start quite interesting media ventures in this country, or they can go into some of the new forms of media, or they can leave the country for a period and enter one of the global forms of media where the Australian expertise is valued - an Asian edition of the Wall Street Journal, a Dow Jones which has aspirations. That is an answer that, in the old days, might have been answered differently to the way it will be answered in the evolving world that we are arguing for in our submission.

**PROF SNAPE:** At the moment, in the scenario that I just gave you, it would be basically two strikes and you're out.

**PROF HILMER:** In the scenario that you gave me I think, if the situation were intolerable for the more talented and critical people, you would see some very

interesting start-ups and you would see - and, Nigel, maybe you would like to talk about it - no shortage of capital to fund them. The easiest thing to fund these days is a start-up attacking traditional media. Now, if you'd like to ask Mr Dews something.

**PROF SNAPE:** Mr Dews.

**MR DEWS:** Each piece or each section of the paper in the old world can create a dynamic Web site or an interesting potential datacasting service in the new world. There are large numbers of people with large amounts of cheaply raised cash searching for talented and scarce resources in the content creation area to build those sites and have a go at the traditional franchises.

**PROF SNAPE:** Thanks. I know it's very difficult for you to speak. Could I just take it a little bit further and refer to Prof Flint's submission to us last Friday when he came to us with the chairman of the ABA, though I emphasise that in this section of his submission he was speaking as an individual and not on behalf of the ABA, and I quote from the transcript:

There has been a significant devolution within the media from proprietors and from editors to individual journalists; a devolution of authority to the journalists. There has been a blurring of news and opinion. Opinion, which was once the preserve of the editor has now gone down to the journalists, so once there was a significant power in owners with editors reporting to owners, that has been defused and that has been a cultural change.

The Age reported that address on Saturday and in a sort of picture at the top of the business section, referring to that report later on, had the caption, "Media Fairytales" and that view, I think, is being reflected in the submission not only from Friends of Fairfax but also from the Media Alliance. Is Fairfax's position fairly close to what Prof Flint was saying or is Fairfax's position that this is a fairytale?

**PROF HILMER:** Do I get a third choice? I think from what Prof Flint described is not all that far from - I mean, I didn't see a lot of his transcript - the way in which we run our company because, as I said, I think our integrity depends on our journalists exercising in a quality way judgments about what to write about and how to write about it. I think it confuses though the issue of "what is" in a particular time with what might be or could be and, again, we have chosen to operate that way; we believe it is good business. Someone else might choose to operate a different way; they might think that that's good business. There is nothing again that is determined that says, "You must run a media company that way."

One of the great choices you have in any company is how you want to operate and organise it. There is no rule book; there is no law. That's what managers are paid to do - to figure out what is the best way to run companies. I think Prof Flint can make whatever observation he wants on that issue but it is an observation. It is certainly not an empirically-based rule and there is no requirement that firms be run that way. If you take his argument to extremes, then you say ownership doesn't

matter, and I have difficulty - just given my own background - to think ownership doesn't matter when the whole market system depends on ownership, property rights, contestability and the interplay of those forces giving people the incentive to do good things for consumers.

**MR SIMSON:** Mr Hilmer, could you talk with us about media markets in Australia from, in the first instance, a consumer's perspective? For example, do you believe that as you observe the coverage of news and information and comment by the electronic media in this country - and let's talk specifically about the commercial free-to-air television stations and radio - that newspapers are becoming more or less important as the providers of news information and comment to Australian audiences?

**PROF HILMER:** Let me, Mr Simson, say that I don't have a lot of this data at hand and in my head, but I am always worried about belief questions because, at the end of the day, what matters is facts. My belief is only a good belief if it is supported by facts, and if it is not supported by facts, then the Age will write about it as a fairy story. What I would need to know to answer that question is - I mean it is an empirical question. It is what do people listen to; what has happened to viewership; what has happened to readership - not just in the superficial sense of the first cut, Morgan - you know, do you look at this thing, but when I look at the paper, how much time do I spend with it; how do I actually interact with it or engage with it: when I look at the television am I looking at the television or am I actually having the television on while I'm reading the paper, talking to my wife, scolding my kids, or whatever I do when I watch television.

If you look at the rawest data what we do see is a decline in free-to-air television viewership and what we do see is fairly steady readership of the major newspapers, so as a first cut, I would say, newspapers look okay. In order to go to the next level, go behind the readership, I can look at the time people spend with newspapers. I have data on that, so again I know people are spending about the same amount of time with the paper today as they spent in the past and, in fact, slightly more with the bigger weekend papers, so they are just not buying them; they seem actually to be spending tiny bits more time with them.

On the basis of that I would say, from a consumer's point of view, there might be some minor shifts in the importance but newspapers are holding up and TV has some drift but part of that is going to pay TV and probably, in total, the media landscape hasn't changed dramatically in my view, but, as I say, I don't have enough of the data. I believe. The other point of belief is that I do believe that the better we get at what we do the more important and successful we'll be, so to some degree again this trend of the newspaper isn't something that is just given. The trend is going to be, in part, the result of how good we are at reporting and writing, packaging and editing, printing and delivering on time, so that to some degree these aren't just trends but they're the result of the energy and skill that we are able to bring to bear. What I am arguing for again - if I come back to it - is an environment that gives us the incentive to keep building that energy and using it, and building those skills and using them, and

not being confined to a walled garden or being shut out of areas where we have got skills and can use them.

**MR SIMSON:** The justification for what you put before us - in part justification you have mentioned this orally today - are the opportunities that are emerging in the new media for content. In the case of Fairfax could I just read you a sentence from the submission of the Friends of Fairfax who we will be hearing from later today. They are referring specifically to what they claim is happening with your Internet sites:

What is happening is the big players are reworking, republishing their journalism for publication in different forms.

And a similar theme has come out of the submission of the NEAA, so the question is the extent to which what you are doing on the Internet is really adding to diversity in terms of our brief, our terms of reference - plurality of news, information, comment and opinion.

**PROF HILMER:** Would you like Mr Dews - - -

**MR SIMSON:** Whoever you choose.

**MR DEWS:** I think I would start by saying initially our Web sites were very much our existing news content republished in almost identical form on the Internet as to the way they appear in the paper. Over time we have learnt from consumers that they actually want to consume different kinds of things; readers and users of the sites want to have different kinds of experiences on-line and learn different things about the news and information that may primarily originate from our newspapers. Let me give you an example: not only can we provide commentary on an election but we can provide a forum in which people can discuss a recent debate that perhaps was on television or perhaps was held publicly.

The content from that forum can then be translated into the newspaper, should the editors of a paper choose to use it in the paper - some interesting things in the commentary - or it could just be an effective use of the Internet medium, so in effect we have provided a forum for a different kind of media experience, using the interactive elements of the Web sites and as bandwidth improves and as access improves, we will be able to provide more of those different kinds of media experiences.

**MR SIMSON:** Thank you. I think you claim indeed that the Fairfax family of Web sites are the most trafficked in aggregate in Australia. Is that correct?

**MR DEWS:** I think we're one of the three groups of companies claiming the most traffic content sites in the country.

**PROF SNAPE:** Including the ABC I think.

**MR DEWS:** Yes, that makes four.

**MR SIMSON:** If I could just pursue that for a moment because if we look at - and the term has been used in Joshua Gans' paper and I think also by you, Mr Hilmer - the vertical value chain for a media group, you have your newspaper, your newspaper group, you are building as we acknowledge a substantial presence in the on-line area. Could you talk with us about the implications for our earlier discussion, that is of another owner in the absence of cross media taking control of Fairfax, in the context of the additional asset that's being built in these portals. To cut to the chase, by example the ninemsn Web site is one of the top three also, I understand. If Packer were to take Fairfax you would have two large portals under the one roof. Would that be of or not be of concern to you from the context of our earlier discussion on public interest and influence?

**PROF HILMER:** We're really getting into sort of the new areas of competition law that will be tested if we apply it to the industry but what you come back to is how the ACCC might define a market. I'm not sure if that's the direction in which your question is heading.

**MR SIMSON:** No, Mr Hilmer, I wasn't actually attempting to be that specific. I was throwing to you for your reaction a scenario whereby two of the largest three or four Web portals in the country were to come under the one roof in an ownership sense in addition to the traditional media assets, and in this case it might be a TV network and a newspaper business that we were discussing earlier.

**PROF HILMER:** If you could just help me a bit, Mr Simson. What specifically would you like me to talk about? Give you a picture of the business?

**MR SIMSON:** No, my question is the extent to which you believe that would be of public interest concern in the context of our terms of reference which deals with influence and diversity.

**PROF HILMER:** Yes. I think our view is that this area is so dynamic and the barriers to entry are so low, and there are so many powerful overseas players already active here, that the pecking orders are changing so fast that we don't really see any public interest in seeking to regulate the Web. I think the Web will be what the Web will be, and if we were foolish enough to think that we could buy up all the competing Web sites and that was going to give us strength on the Web, I think we would waste a lot of our shareholders money.

**MR SIMSON:** And of course there's nothing to prevent - except perhaps Prof Fels may have something to say about this - PBL or the ninemsn sites being merged in a separate entity with the Fairfax sites as we see here today, is there?

**PROF HILMER:** I don't know, because I wasn't sure whether that was the question you were asking me, and the answer to that is it's a question on which I would have to

take advice, but at this stage what we're trying to do on the Web is to develop a strategy around content that builds on the strength of our group and create off that a number of businesses. That's where we're driving very hard and we don't see at this stage an idea that we have a powerful car site and if we had the other car sites it would be better - is a relevant consideration in the development of that strategy because buying up inferior sites that we believe aren't as good as ours, say, car sites, doesn't stop the next person starting a car site. So that the way we will win in the car site market is by having our drive site as the best site.

That's our focus and that's why I'm not seeing that as a jugular vein issue at this time. The jugular vein issue on the Web is building the site that is so good in terms of its content and its functionality that people will choose it. I think it's going to be that sorting that will occur. A lot of what goes on in the Web is actually still quite hard to use and you don't get what you want without a lot of clicks and a lot of pain, a lot of slow downloads, and that's what we've got to worry about; not about buying imperfect things.

**MR DEWS:** I think also it's the aggregate traffic which is a distorted one. There are individual products within each of those portfolios, the ninemsn portfolio and our portfolio products, and each individual product has a large number of other competitors. In fact the ninemsn portfolio and the Fairfax portfolio overlaps only in a limited number of products. There are a large number of competitors for each of those products that are neither in the PBL or Fairfax group, but they aren't people that necessarily rate in those overall traffic statistics but they may be people who are very significant in any one small site.

**MR SIMSON:** One of the points that Associate Prof Gans makes in his paper is that an offset - in fact perhaps a highly significant offset - to concentration that might otherwise occur amongst owners of various media is the ability for contracting or free contracting amongst content providers. That is, the access of content providers to the owners of the media products, whether it be a Web site, for example - and Associate Prof Gans didn't make this example but we've certainly had a lot of evidence on it, although Mr Hilmer of course did emphasise it - access of content of providers to pay television distribution platforms as well. I would just be interested in your view as to the extent which you see consistent with your argument some reciprocity here whereby if you were to receive what you wanted or what you think should happen in public policy in Australia in terms of access to delivery platforms and so on, as espoused in your papers, that you should also provide as a major player, arguably an oligopoly, access to your platform for your on-line platforms, arguably your printing presses, for other new entrants to these industries. In other words it bites both ways, the access argument. I would be interested in your reaction to that.

**PROF HILMER:** Access is a big issue in competition law and it's an issue that you need to draw lines around because you have always a balance between access and property rights. In particular where you have either natural monopolies or you have monopolies or oligopolies that are a result of government decisions, like spectrum allocation, then there's generally a good case for access, and one has a relatively easy

time in finding what we tend to refer to as an essential facility. If you look at the reverse side of your argument there is no problem in access to the Web and we're delighted if lots of people access our sites, the more the better, and in fact we put a lot of effort into seeking for that to occur.

The old chestnut about, is the printing plant an essential facility - in no city where we operate do we have the only printing plant. There's always at least one other major printing plant and we have a number of people building printing plants that are producing product that is giving us quite a hard time. I don't think under any stretch of competition law would one see a printing plant as an essential facility. I understand it's a great debating point but it's simply not the case. There are some wonderful arguments, and the most amusing argument to me when I did the competition work - it came up in a US court - was that Kodak had great ability to do research and development and other companies couldn't do this research and development and so the Kodak research and development ought to be an essential facility and everybody should have access to it.

The consequence of doing that with property rights is that at the end of the day no-one will make risky investments, and the court just said, "That's absurd." Essential facilities are typically a government granted scarce resources, or natural monopolies like the pipelines, and we pretty well confined them to that in the creation of the competition regime that we have in the country, and what we're seeking to do is to apply them here. I think we're seeing the ACCC beginning to make access declarations, and you will have noticed in the last few days access declarations being made in the US with respect to some of those pipelines, and that's what we're focusing on.

**PROF SNAPE:** Would you extend it then to the free-to-air pipelines, to which, of course, access is restricted? There are three of them in the commercial area and they've been guaranteed that there will only be three until 2008 or so. Should they be declared? Would you have interest in having access, particularly if they're going into a multi-channelling mode?

**PROF HILMER:** I think the more fundamental question is the question of how the spectrum is cut up and how the spectrum is going to be available to those of us who wish to use spectrum to get into some of these new areas.

In our view there's plenty of spectrum, provided we were prepared to cut it up differently than is the case to date. So what we have is an artificial situation, and we also have a transitional situation. I understand that we're arguing here for care being given to transitional regimes. When you move from one state to a more competitive state I think we'd like to see spectrum opened up. I think we'd like to see an allocation of a reasonable amount of spectrum made available so that we could bid for it, and we'd like to be able to use it in datacasting initially in a way that is not so restrictive that all we can end up doing is putting up lantern slides that nobody wants to look at.

That will already start to change the competitive environment. We'd like to see in time the other restrictions on free-to-air come back. I certainly wouldn't oppose them coming back faster. But I understand there's a transitional issue that is always dealt with when you do reform. Is 2008 too long? Is it 2008 or 2006? A review in 2005, so yes, it seems a long way off in what's a very fast moving area and we would be quite keen to see things happen a little more quickly, and these are political matters about the pace of reform.

**PROF SNAPE:** It was by 2005, I think, actually, not in 2005.

**PROF HILMER:** By 2005.

**PROF SNAPE:** So you might find a window there.

**PROF HILMER:** Yes, we'd love a window created. Any time you want to create windows we're there.

**PROF SNAPE:** I took your point before about putting some pegs in the ground - and then there's another set of hearings later on and submissions, etcetera - but have you given consideration at this early stage as to if the lines that you're indicating were to be followed how the ACCC should define the market?

**PROF HILMER:** No. I'm happy to chat about it with you, Prof Snape, but no we haven't. Let me come back a moment because you have got to understand what has been done in the time. We had about a month to do this, in reality less than a month; we had to get a lot of work done. If the direction in which we're heading is a direction that you find productive and want us to pursue we're happy to pursue it. But the whole issue of the access regime is the new section of the Trades Practices Act - going to work on that. Do you need new sections like the Telecommunications Act? Should it have a pro-competitive bias like the first Optus regulation? Should it have a competitive neutral bias? Should it have a bias to the incumbent? I think there are a whole series of quite difficult next order questions that, if I might, I'd really like to take a rain check on because I simply didn't have the time to address them. I'm happy to chat about them with you, but I really don't want to put a view that I haven't had a chance to debate with my colleagues and really think through.

**PROF SNAPE:** No, that's fair enough. You'll note, however, that we apologise for giving the participants so little time. 12 months seems a long time for an inquiry, but it isn't.

**PROF HILMER:** No, I understand that.

**PROF SNAPE:** Particularly when one is aiming for a draft report which was within seven months of when we got the terms of reference.

**PROF HILMER:** I do think the issue you raise, I accept that, but I thought we would have at least two opportunities to dialogue and we could be more focused the next time.

**PROF SNAPE:** Yes.

**PROF HILMER:** I do think the issue though of market definition of important issue. I think in a draft report I'd understand you isolating that as an issue which you'd like some thought addressed to.

**PROF SNAPE:** We are, as you would know, in the terms of reference required to be examining alternative arrangements to those that exist at the moment. We're also required to be giving options, and so we won't be in the situation of saying this is where we think we're going and only considering that particular option; we have to consider a number of options. Also, I think it's fairly clear at this early stage that these options come in packages, so that one really does have to consider packages of options, and that means that of course various combinations of things have to be investigated in some depth in order to develop those options. So I think it's probable that there won't be a single path that we are sort of indicating that we want more information on. When you come to the terms of reference there will probably be several.

**MR SIMSON:** Mr Hilmer, could I return to the discussion we were having earlier about the media marketplace, and the difference between a newspaper marketplace and a television marketplace. Why would you conceivably want, if you had the opportunity, to purchase a television broadcaster? What are the business benefits in scale or scope that could come to your shareholders from that?

**PROF HILMER:** The new forms of media that are developing are going to involve - I'll use the current word - a convergence. They're going to require a convergence of different types of product. So if you have a look, as we've been doing recently, at some of the products that people are thinking about in digital TVs, as I say, we have good skills in the production and the publishing of text material and to some degree graphic static material. We don't have skills in the production of moving material. We don't have skills in the production of pictures.

The issue, and it's really raised to some degree in the Gans paper, is to what degree can you do that through contracting, and what degree do you do it through ownership, and it depends on exactly the issues that were outlined there: how well-defined are our property rights? Can we write long-term contracts? What are the transaction costs? What's the regulatory environment?

Now, I can see though that as we start to do things in digital TV and on a Web going in broadband we will want more moving picture content, but we'll also want not just the content; we will want the publishing skills. It was very interesting to us when we visited one of the production houses that were doing digital TV content that they found that the Web designers were the wrong people to write the pages. They tended

to write pages that you looked at at an arm's length as opposed to writing pages that you looked at across a room, and the use of colour and movement and graphics and pictures and sound was just a skill set that those people didn't have.

Where does that skill set sit today? It sits in the television industry. When I say we are interested in that, the interest is in getting access to the skill base that will continue to be used in its own environment, but I believe that we could get access to it and will need to get access to it, either contractually or through building our own capability or through some other kind of arrangement, in order to go to the next stages in the new electronic forms of distribution.

**MR SIMSON:** Could you expand on that also, please, in the context of the advertising marketplace, the benefits that may or may not accrue to you from a commercial perspective, from an advertising sales perspective, in being able to conceivably hypothetically bring two bodies such as that together.

**PROF HILMER:** At this stage there hasn't been the driving consideration for it. What we're finding in the Web is that selling advertising space in what is a different media which has different performance requirements and behaves differently, requires in most cases dedicated salespeople. There aren't economies in the sense that I go and call on a client and: "Let me tell you what we could do on the Web, let me tell you what we can do in print." There's quite a degree of expertise that's required to work with a client and say, "This is effective print." There's another set of expertise that's required to say, "This is an effective use of the Web," which is much more complicated, as you'd appreciate, than just, "Here's a pretty banner - flash, flash, flash." How can you get the behaviour of the consumer working in a way that an advertiser is prepared to value?

It hasn't been that issue that's been driving our consideration at this point. It's been more, "Let's think about the environment in which we can develop the skills we'll need to have the content that will attract the audience." When we get the audience and we do a good job with them, then the advertising will follow.

**MR SIMSON:** In terms of access to delivery systems - and this is an important thrust of your submissions to us - how important is the Telstra cable access? Could I just mention that we had a submission from Paul Budde a week or so ago, who argue that there would in fact be three or four different types of delivery systems into the household on a medium-term time-frame, but clearly you place a lot of importance on that Telstra cable. Is that a fair comment?

**MR DEWS:** Yes, I think the cable is very important. Fred was describing these integrated services when we have the two different kinds of skill sets. It's not as simple as saying, "Gee, the Web will be as good as TV." You hear people saying, "Look at these moving pictures. Soon they'll be as good as television." Well, fantastic. Why don't you just turn on your TV? It's actually about developing a new kind of content for a new interactive medium, and the first place that that's actually now possible at speeds that aren't as painful as watching paint dry is on broadband

cable through the broadband cable network. As we've emphasised in our paper, the timing of all these things is critical.

The skills will be initially developed in the broadband network and the initial consumer acceptance will be on services offered across that broadband cable network. Then the different forms of that media will be developed for the different kinds of pipes into the house. But the first of those, the one of those that isn't theoretical, that has been well defined, is the broadband cable.

**MR SIMSON:** We've also had a number of submissions from groups - for example, including NTL, who recently purchased the national transmission agency - who argue that on a medium-term time-frame delivery or the receipt of that content is going to be more important for consumers in most cases over the PC, rather than over their TV set.

**MR DEWS:** I think there's a great debate there, Stuart, about the difference between what people are going to do with their TVs and their PCs, and will the TV win or will the PC win? I think in certain applications the PC is going to win and in other applications the television is going to win. We don't want to bet on a device. We want access to homes and we'll let the consumers choose which devices they want to use for which applications.

**MR SIMSON:** It is important, though, in the context of the points that you argue with regard to the need for access to set-top boxes, for example, whoever's set-top box that is, whether it's a Foxtel set-top box or an Optus set-top box. If the information can be delivered to a PC you don't necessarily need that, do you?

**MR DEWS:** But, you see, you need - as Fred was explaining - different kinds of content for different sorts of applications. When I want to relax I want to lie on a couch and flick through something with my remote control. When I want to research something I might want to sit six inches from the screen and delve deeply down through that information. These different devices will be very good at receiving the information in different formats, all over the Internet in a digitised format for these different applications.

**PROF HILMER:** I wonder if it would help if we just gave you a - - -

**MR SIMSON:** Thank you.

**PROF HILMER:** It's something that was brought to our attention when we were in the States. It just shows the varying pipes that either exist or might exist, who the current infrastructure access owner is, and the download for a 10-megabyte file, which is about 10 newspapers. So it's fairly considerable - not Saturday, 10 Monday to Friday broadsheets. You can see here why we need to get down the chain. You asked us the question about why are we concerned about access to Telstra; you see the number of times the word Telstra appears. Some of the ones that are quite fast and down the bottom, where there is at this stage no Telstra appearing, are exactly the

areas where we believe we'd like to see deregulation and access for ourselves into the spectrum. It's quite dramatic, going from the old Net where it will take you 25 minutes and you'll go out and have a meal, down to digital datacasting where for the same amount of data you're talking 25 seconds. We want to be at the bottom end of that, and that area is still contestable, subject to it not being tied up either by contract or regulation.

**PROF SNAPE:** You're happy for this page to be included as a subsidiary submission?

**PROF HILMER:** Absolutely, yes. It's supplementary information and we're happy for it to be publicly released.

**MR SIMSON:** In a related context, Mr Hilmer, should Telstra be allowed to be involved in content?

**PROF HILMER:** I don't really have an issue with that. I think it really highlights the issue of access far more sharply if they were. It's an interesting question and I have to deal with it. In electricity, the whole question of should the transmission line be able to generate - it's clearly cleaner, when you're taking a government asset and you can cut an industry up, to not have them involved. But if you have an appropriate access regime and you have reasonable transparency, reasonable price-setting rules for those elements of the essential facility, then you might say that there are ways to handle that. It's not a simple question. It's not a yes/no question. It's a "yes under these circumstances, no under these circumstances" question.

But to say you can have an access position, you can have an access regime that allows you to shut out competitors, and then you can take that oligopoly or monopoly position and use that power to distort other markets, I don't think it is good if you're a player in that other market and I don't think it's very good public policy.

**MR SIMSON:** Because as Mr Dews' paper illustrates, I think it's in the staff paper, in the case of the Foxtel channels there was significant ownership in those actual channels by either Telstra or by the Foxtel or related parties.

**PROF SNAPE:** It's, I think, on page 7. Is this the point that you're referring to, Stuart. I think it's - - -

**PROF HILMER:** Page 11.

**PROF SNAPE:** Page 7 referred to the - - -

**MR SIMSON:** There's actually a table there, a list of the Foxtel channels.

**PROF SNAPE:** Yes. One way in which you could have access would be, perhaps as I understand, is in the United States, when a cable owner is first of all required to give some access to some local authorities, or local community-type things, and

secondly I gather that the owner of the cable is not able to own all the channels. Some of those channels therefore can be owned by other parties. Would you favour that type of approach, or is it the simple declaration approach that perhaps the ACCC might go with?

**PROF HILMER:** I think that the basic point we're making is that access is really important and, as we were saying before it's an area that we would give more thought to, and you might give us a couple of options with respect to. Now, we will then test those options or come up with others. At this stage what we had had in mind is basically an extension of the access principles that we currently have in place in Australia. But given the time that we've had on the issue, and that all of us have had on the issue, I'd be delighted to think of other options and to comment on them. At this stage we just haven't developed a detailed set of options and the going-in position is, we have an access regime, it's working in telecommunications, it's working in electricity, it's working in gas. Why can't it work here?

**PROF SNAPE:** I should mention that there will probably only be about three or four weeks between the draft report and when we'll need, at the very latest, the next lot of submissions, that is the submissions that comment on the draft report. So it might be wise to start thinking of it before - - -

**MR SIMSON:** We're dealing in Internet years.

**PROF SNAPE:** Yes, think of it before the draft report comes - - -

**PROF HILMER:** I guess my only request of you is that if you know the dates that we know them fairly soon, because I would hate to think they were the three weeks I'd planned to take holidays in.

**PROF SNAPE:** Well, the dates are - we've said the draft report. We're hoping for towards the end of September or early October. I think you'll probably say that means early October and I may not disagree. And then there would be the draft hearings.

**PROF HILMER:** So we would have about three weeks.

**PROF SNAPE:** The draft hearings will be in November, possibly running through to early December.

**PROF HILMER:** Yes.

**PROF SNAPE:** That would be it.

**PROF HILMER:** I don't think that's really the issue because I think out of the hearings, I mean out of having done this, we understand the next set of issues. So we're not going to do nothing and then start in October. But that period in October will give us a bit of focus and a few sleepless nights.

**PROF SNAPE:** Don't take your holidays then.

**MR SIMSON:** Consistent with that next set of issues, Mr Hilmer, obviously we didn't clarify things earlier. Could I just clarify an earlier question I asked you: with regards to access for content providers to major Internet gateways, you made the point, which of course is true and valid, that anyone can set up a Web site, sure. But increasingly the gateways and the portals are growing in editorial and commercial significance. The question, and I was coming out on this earlier, was whether large portal or gateway owners such as yourselves should also provide access to content providers in similar vein that you argue in your paper. You should have access in similar vein to the points you make in your paper about the relatively closed content access that exists on pay television in Australia today.

**PROF HILMER:** Do you want to have a - - -

**MR DEWS:** Yes, sure. I think there are two issues in your question, Stuart, one is about aggregation of content, which is what the much overused word "portal" typically refers to and, you know, what content bundles people choose to put together when they put them on the Web. The other one is about gateways to the Web which would typically be an ISP or an infrastructure provider. Someone who is allowing you to host your content or provide access to users of the Web. Now, the way people choose to put their content on the Web is really up to them, if you want to be an agglomeration of various things or you want to be a very specific or highly targeted site. However, if people can't get to your site because they either can't get access to an ISP or the ISP has such a large number of customers that they exert some large amount of market power that prevents your sites from being viewed, then there is an access issue.

Today, in the Internet space, in the dial-up Internet space, there are more than 400 or may even be 600, 4 to 6 hundred ISPs, in the Australian marketplace. There are two or three very large ones, but to date there are a large number of ISPs. In the broadband world, however, there is only one provider today of broadband cables who can allow us to do the kinds of things at the kinds of speeds we were indicating in the table.

**MR SIMSON:** I appreciate your argument and for clarity I'm not referring to the bottlenecks or barriers that can assist in terms of access either to an ISP, Internet ISP or a broadband ISP or whatever. I was referring to the market size, the critical mass of a large portal such as yourself or Ninemsn or any of the other ones that you might want to mention. The access that content providers other than your staff, or to use the analogy of - let's go back to what you say in your paper - the pay television one, should have to that audience that is aggregated around that particular on-line marketplace.

**PROF HILMER:** Yes, let me have a go at that. I think we're getting into very sort of hypothetical ground here. I mean if you look at it from the point of view of competition principles, if the Internet evolved so that there was only one portal and

everybody looked at it and nobody else who wasn't in that portal could get viewed - I mean I think you clearly have a competition issue. What have we got today? What are we talking about today, the five portals, six portals, three portals, four portals that are major, and then how many minor? I mean if you go to any of the cities there will be at least 10 quite significant entry points into the Web. So from my point of view there is no competition issue at all and in fact if someone has attractive content, they're generally able to get some bidding among the portals for, "Yes, I'd like that content on my site."

I think if the market starts to fail to the point that we get one portal, then we could have this discussion, but I think that's extremely hypothetical. I mean in competition terms we really don't - you clearly have a problem with one, you have some problems with two, you have perhaps issues with three, depending on structure. After that - I mean you go back to Stiegler's work - you start not having significant issues in well-defined markets.

**MR SIMSON:** Fair enough. I'm positing that down the track you get much larger, it doesn't matter how you do that, and whether there are issues of access for you also in terms of access to you, as you're suggesting in your submissions, that you have concerns about access to others.

**PROF HILMER:** When we have the same degree of influence and control of the portal market as, say, Telstra has over the bandwidth market, then I'd be happy to sit down with appropriate regulators and discuss that. But I think that's extremely hypothetical.

**PROF SNAPE:** Well, you'll be relieved perhaps to know that we've exhausted the list of questions and where we are seeking elaboration obviously we are going to be looking forward to your next submissions. Is there anything else that you would wish to say at this stage?

**PROF HILMER:** No. I guess on behalf of both of us, thank you for the dialogue and the questions and also I think for tackling this in the broad manner that I think this subject requires. I think that people initially jumped on this and said, "This is about media and ownership," and I was delighted, in the terms of reference that you put out and in the dialogue we've had, that we've really focused on competition in the media industry. You know, if we can help you in thinking through those issues then we're delighted to be of assistance. We think it's an important area and we think, as a company, we can gain if the market is deregulated in the manner, and according to the detailed sequences, that we've outlined.

**PROF SNAPE:** Thank you very much. Of course, the terms of reference go much broader than the things that we've been discussing today and they also include matters of content, children and Australian content and various other matters which we haven't been addressing today but we have been with other participants. Anyway, we won't now throw those at you.

**PROF HILMER:** Thank you.

**PROF SNAPE:** But we thank you very, very much for your participation, your very helpful submission and its attachments and the discussion today. We'll now adjourn until 11 o'clock when we've got the Australian Film Commission, Film Finance Corporation and Film Australia who, together, have put in a joint submission, submission number 107. Thank you very much.

**MR SIMSON:** Thanks very much.

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**PROF SNAPE:** Welcome - a troika: the Australian Film Commission, the Australian Film Finance Corporation Ltd and Film Australia Ltd who have given a joint submission, which is number 107, and appearing together. We have two representatives from these three organisations who are going to speak, and I would be grateful if you could identify yourselves separately for the benefit of the transcript.

**MS IRELAND:** Thank you. Kim Ireland, policy adviser with the Australian Film Commission. Thank you for the opportunity to address you this morning and also for accepting our late submission. We apologise for that. I also want to apologise on behalf of Sharon Connolly, the chief executive of Film Australia, who had wished to attend this morning to specifically address you on documentary issues. Unfortunately she's unwell but she did want me to indicate that she's very happy to continue to work with the commission on documentary-specific areas which sometimes vary with drama and children's programming, which is the bulk of what we've addressed in our submission.

**PROF SNAPE:** And Michael Ward.

**MR WARD:** Good morning.

**PROF SNAPE:** Could you identify yourself so the voice is on the transcript.

**MR WARD:** Yes, Michael Ward. I'm the policy manager for the Australian Film Finance Corporation.

**PROF SNAPE:** Thank you. Ms Ireland, you're going to speak to the submission?

**MS IRELAND:** Yes. We were intending to just briefly summarise our submission but we weren't really sure whether you wanted us to do that. Is that what you'd like us to do?

**PROF SNAPE:** Yes, a brief bringing up or just running over the major points fairly briefly would be very helpful, thank you.

**MS IRELAND:** Thank you. We're just going to start by just distinguishing between the three agencies briefly for you. Film Australia is a Commonwealth-owned production and distribution company. It manages the national interest program which is a five-year contract to produce, distribute and market a hundred Australian documentaries. In particular it's different from the AFC and the FFC in that it's not a funding agency or a broadcaster. The Australian Film Commission is the Commonwealth's primary development agency in the film and television area, and it interprets that development role quite widely. It's involved in some industry development, professional development. It's involved in promoting Australian film internationally, research analysis and monitoring of the industries and it also directly invests in script development as a means of providing a pool of scripts for the production sector.

**MR WARD:** The Australian Film Finance Corporation, which is usually referred to as the FFC, was established in 1988 as a company wholly owned by the Australian government. It's the government's principal film and television direct investment agency, and it replaced the accelerated taxation concessions which had operated until that time. It was established to provide a predictable capped level of government investments from the television industry to provide a greater level of budget scrutiny and differential investment treatment of different production categories, and to contribute to more stable and predictable overall production levels.

**MS IRELAND:** If we just run through that little description of each because sometimes it difficult to work out why we all exist. The government set us up to have distinctive and different roles, but within their cultural policy framework. So we're not in competition with each other and, in particular, we have a common interest in the issues that the commission is looking at with respect to local content regulation. So that's why we've chosen to make a joint submission and address you jointly.

Our submission is premised on the basis that the local content is regulated because of the social and cultural importance of broadcasting services, and the belief that the public interest benefits of regulation outweigh the costs. Content regulation is by far the most far-reaching of the various cultural support mechanisms that the government has, because of television's access and popularity and pervasiveness. So we think it's reasonable, and we've argued that it's reasonable and necessary, to place social and cultural obligations on broadcasters, given the benefits they get in accessing the spectrum and the potential conflict between their social and cultural obligations and their commercial imperatives.

We think those obligations are too important to leave to self-regulation or to the vagaries of the market. It's our belief that content regulation is integral to achieving the objectives, the social and cultural objectives of the Broadcasting Services Act, and to meeting the community's expectations, particularly their expectation of ensuring a diversity of choice for those audiences in being able to choose between Australian and foreign programming.

Essentially our submission argues that although the current system isn't perfect and there are areas we think that could be improved, we still think that the current requirements are, on the whole, modest, reasonable flexible and not an onerous burden on broadcast licensees. Something we've highlighted in our submission is the important relationship between objects B and E of the Broadcasting Services Act which we think recognises a critical relationship between the production and the outcome that that produces, which is the programs for audiences. So in other words, in order to achieve a diversity of Australian programming for audiences, there does need to be a viable production industry to make those.

We think the system supports a diversity of program formats within which networks can choose how to meet their obligations and ensure a wider range than would otherwise occur without the regulation. Those regulations and requirements

are subject to ongoing regular review by the specific industry regulator, the ABA, which is required in its reviews to weigh community interests as well as the broadcaster's commercial interests and the interests of the production sector.

Our submission goes on to argue that cultural goods are different to pure commodities, and that without the intervention of regulation, countries with a population base as small as Australia just wouldn't be in a position to produce domestic programming which presents local views, perspectives and concerns. Our concerns arise particularly in the areas of the high costing of those productions, being drama, children's programming and documentaries, which are most vulnerable to a lower-cost imported programmings.

The Australian production sector is competitive and cost efficient in international terms and does compete in an international market and it's required to do so because of the current subsidy system and the current market system in Australian broadcasting. It makes it essential that they access private finance, and a lot of that is from international sources. Their production costs are substantially lower than their major international competitors, being the US, the UK, Canada, Germany and others.

However, in international terms producers aim to recover all or the majority of their costs from their home markets. The marginal costs of duplication and broadcasting to greater audiences means that the fixed costs of production remains high but sales into secondary markets are able to made at the level at which the market will bear, which usually bears no relationship to those production costs. So that in essence creates two domestic markets, and our research indicates that the price differential can vary between a 10:1 to a 400:1, depending on the program type, the country or the type of broadcasting services, but it is always the rule that it is cheaper to buy imported programming than to produce locally. Therefore, because of this economic reality, that's one of the reasons that the government has chosen to support broadcasting through regulation and subsidy.

Our submission does go on to talk about the current tests and why we think that's flexible and why that works. I won't go into that in any detail now, unless you wish to discuss it later. One thing that we do talk about is whether local programming is quota or demand driven and whether regulation is really required and whether it would otherwise be programmed because of ratings. Our conclusion is that that's not the case, that in fact there is clear audience demand for Australian programmings, but it's not always the case that it rates well. It also is often the case that programs may start slowly and take some time to build their audience.

We argue that specifically ratings are pretty much irrelevant in the case of children's programming, and that the evidence looking over time shows a close relationship between quota levels and the levels that are actually broadcast. In the end, we think that regulation provides at this present point in time a safety net that since the late 80s actual levels of programming, expenditure and hours broadcast have declined in a period when Australian programs were rating well. Therefore, the economic argument that the fact that imported programming is always cheaper is just

overwhelming in this area, that it is still cheaper to program imported programming than to program a highly-rated Australian program. So in the end it is possible to be efficient and profitable without requiring top rating programs.

We've also addressed, in our submission, some of the issues to do with international trade treaties and support mechanisms and indicates that we believe the government should continue its cultural support mechanisms in international trade forums, so not give that up. I won't go into that in any detail, and I'm happy to answer questions on that if you are particularly interested in those areas. We would particularly address the forthcoming WTO round and the changes to the standard as a result of the CER treaty with New Zealand.

**MR WARD:** As indicated in our submission, like the AFC and Film Australia, the FFC appears before the commission to address local content issues exclusively, and content here that primarily we're interested in because it's part of our business and also, as we argue in the submission, we believe it is significantly at risk, are drama and documentary programs. Further, our approach presumes an ability to separate content issues from carriage, an approach that we assert is important in attaining cultural policy objectives.

In our view, regardless of the mechanisms for delivering programs to audiences, the critical questions are the programs and the audiences. In the end, the audiences watch programs not delivery systems. The core of our submission is the view that, whatever the system, Australian audiences should retain the ability to choose to watch a range of program forms and genres and that choice is enhanced by the ability to choose between local and imported programs. As we argue, without regulatory intervention, that choice is limited.

There are issues with the local content regime, especially its ability to deliver sufficient levels of revenue to sustain a diversity of local content, especially in the areas of high budget drama and children's drama programs. These agencies previously argued to the Australian Broadcasting Authority for improvements in reporting on compliance, for example, and we also have issues in relation to representation of Australian ethnic diversity, particularly in relation to indigenous and non-indigenous people. Nonetheless, the key element of the current quota system is that it ensures the broadcasting sector make a contribution to the cost of providing Australian programs. The ultimate objective is to provide a choice for Australian audiences.

We believe that cultural diversity is a fundamental policy objective here in terms that broadcasting usually refers to diversity of ideas and opinions, ownership, media institutions and broadcasting services, structural diversity, program types and sources of information and entertainment. The pursuit of policy strategies designed to further these goals is linked to the continuing notion that holding a broadcast licence is a form of public trust carrying an obligation to contribute to certain social and cultural aspects of society. We've also, in addition to the things that Kim spoke about, addressed the issue of content regulation on paid television in particular and what has

been effectively a voluntary regime, the difficulties with such a voluntary regime and indeed some of the difficulties associated with an expenditure requirement.

We've also talked about the impact of digitisation on content creation and, in particular, the issue about fragmentation of revenues in a digital environment and/or converged environment where an increase in the number of outlets can have an impact on the amount of revenue that flows back to content creators, in effect reducing the amount of revenue that's flowing back because of the increased number of outlets, and the issue, as we refer to in the submission, of the bundling of rights where, in effect, rights holders are paid no more for what is in fact a payment for an increased number of outlets.

There is a relationship there to another major factor having impact on smaller countries and independent production entities in relation to what we refer to as output deals; that is, where global television program markets be increasingly dominated by a small number of large transnational vertically integrated media companies who, with program purchasers, apply arrangements with broadcasters around the planet. That makes it extremely difficult for independent production entities to compete at a global level and that relates back to the issues about market failure and the economics of delivering programs in markets where the deficit that has been financed, particularly for higher budget programs, is being sought from overseas sources. I'm sorry I've had to rush through that a bit. I'm happy to elaborate on that either today or at any other time, if that's an issue of concern to the commission.

**PROF SNAPE:** Thanks very much for that introduction. We are grateful to you for your submission, which is very helpful. A couple of points: in it you state that the commission wishes to explore whether it - and then you go on to a couple of points. I just state the obvious. It's not just us being difficult or quixotic or whatever. We are in fact required in the terms of reference to be exploring options.

**MS IRELAND:** Yes, of course.

**PROF SNAPE:** It's in the context that we are trying to do that. I notice that you do address some alternatives to the content, particularly a subsidy arrangement, and give some interesting data there. Then you go and talk about subscription television and the method that it is used there. We understand that the legislation had a problem with it and they are trying to fix that up, so we're not concerned with exploring that problem. What I don't think you did consider was the application of the method which is used in subscription television to free-to-air television; that is, a requirement on Australian drama as it applies to this subscription, that instead of specifying there has to be X number of hours of Australian drama, one specifies that for expenditure on drama by channels that half, or whatever percentage you'd like to put in there, of that expenditure must be on Australian drama.

One could then go exploring another possibility of combining that with some subsidy and saying that X per cent of the expenditure on drama must be on Australian drama and the government would match it on a dollar-for-dollar basis or a 50 cents

per dollar or some other formula basis, so that you build in a subsidy as well to that. The channels would then be free presumably to say, "We'll spend a lot on a few things or we'll spend a little on a lot of things." They would then have a choice as to where they were going. There would be no formula other than dollars to be differentiating between different types of the genre, and so on.

It seemed to me that since you did have these two things in your submission and they were separate, it might have been an idea to think about joining them together; that is, using the same approach. Have you given any thought to that approach being applied to free-to-air television? I might also mention that you basically point out, for the funding on subscription, that the channel doesn't have to show it itself. It's in the sense like a transferable thing. They can buy it and sell it to another channel because it didn't fit into the main thrust or the nature of that channel that would have compromised that channel. One could then say the similar thing might be able to be done on the free-to-air - that they could sell it to another.

**MR WARD:** Can I just begin with the fact there has been quite an amount of discussion about the idea of a program expenditure requirement for free-to-air television as an alternative to the current arrangements. That occurred both within the review of TPS14 and also, to a greater extent, at the time that the broadcasting authority was reviewing the content standard in relation to the CER issue. I think it would be fair to say there is certainly a range of views from those people within the industry, and broadly within the community that we have consulted with - certainly the FFC has consulted with - that of course that is a way to apply the content regulation.

Where we would begin at the moment is that in relation to the issue of flexibility for the broadcasters, the current system does provide a degree of flexibility and we would argue an increased degree of flexibility since the reform was introduced on 1 January 1996. The ability to make program decisions on the basis of more expensive or less expensive formats is there and is recognised in the point system, which effectively, when introduced or when proposed by the then Australian Broadcasting Tribunal, was linked to an expenditure model, not an overall expenditure model but in fact a per hour expenditure model.

The ABA at that time had 1.1 points for serial drama, 2.2 points for series drama, 3.5 points for telemovies, miniseries and feature films. The idea about linking it on a per hour basis was that this then recognised the issue of the expense or the different cost of producing those programs and the relativities between the cost of producing drama and other program forms. So it is not unlike the idea that you're canvassing here and it has been canvassed more widely, but it goes to the heart of the issue about the cost and the deficit which is addressed at a per hour level. So of course you could do the overall program expenditure model but you wouldn't be addressing that other issue of expenditure on a per program basis.

The other point that I wanted to make there is one of the concerns about a program expenditure model, at least in terms of how it's operated with pay television,

and this may be related to the issue of having a non-binding requirement at the moment, and effectively a voluntary requirement. It lacks quite an amount of transparency and quite an amount of lack of compliance data available to the general community.

**PROF SNAPE:** That could be overcome fairly simply though, I should imagine.

**MR WARD:** One would hope so. We are still waiting to see how that would operate but, yes, we have argued to the ABA that there are issues about compliance reporting, which admittedly have improved in recent times, but remain even with the current free-to-air system. On the point you raised about the issue of matching subsidy, effectively what occurs now is that for those eligible Australian programs in which the Film Finance Corporation can invest, as defined under division 10BA of the Income Tax Assessment Act, which are children's miniseries, documentaries, feature films, telemovies and adult miniseries, we publish annual guidelines which are quite specific and, in relation to those formats where we will co-invest, we have a requirement that producers have a television licence presale.

The average level of private sector participation or marketplace attachment is 50 per cent; that is, it is roughly a fifty-fifty matching of public funding with other sources of finance. There is in a way the kind of matching - we would want to call it the subsidy on a per program basis because it has a requirement for the broadcast - but it works in effect in a manner which you've described. So in a way what you've described is absolutely possible but we would want to investigate how that improves on the current system first.

**PROF SNAPE:** Off the top of my head I can see that it is more flexible because you are not introducing definition of distinctions between categories; you are giving a much greater choice. So it just comes to a dollar basis and you are not saying for this type of genre you're going to get one point, 1.1, and for this you are going to get 2.5 or whatever, and when you go that route there are of course arbitrary distinctions. On the other hand I can see that it could have a problem with determining how much it has paid for in-house productions and there is a transfer pricing problem in there and one would have to address that, but that is just off the top of my head - a couple of problems. But I was wondering if you have any public literature on the consideration of that system that you referred - you did in fact say some consideration had been given to it in the past.

In our consideration of options - as we are required to consider options - it does seem, on reflection, a fairly obvious option to consider; that one would need in fact to be considering the pros and cons of it and it may or may not be something that we put in the draft report; we're not anticipating at that stage. It may turn out to be such a furphy that we go no further with it or whatever. I mean, some assistance on the consideration you have given to it would be of help to us.

**MR WARD:** Certainly.

**MS IRELAND:** No problem.

**MR SIMSON:** Would you mind turning to page 24 of your submission, please, direct funding - and I would just like you to take me through this arithmetic, where we have got a total of 111 million in network expenditure in the subquotas, including pay television. That is what the networks are spending at the moment to fulfil their time-based, quota-based obligation. Is that correct?

**MR WARD:** Yes.

**MR SIMSON:** With the exception of the pay TV, which is expenditure-based, but we won't confuse it.

**MS IRELAND:** No, it's not time. When you said "the time base" - it's the expenditure on adult drama, children's drama, documentaries and then the pay television requirement. It doesn't cost the additional expenditure for the other kind of genres that make up the transmission quota.

**MR SIMSON:** It is only for the subquota areas?

**MS IRELAND:** That's right. It's only for the subquota areas.

**MR SIMSON:** Fair enough, so we'll just focus on the subquota areas.

**MS IRELAND:** Yes.

**MR SIMSON:** If I add that 111 million to the 113 million, which is the Commonwealth government's total allocation for film agencies in the year ahead, that comes to 224 million. Now, some of that money has clearly been used to produce that subquota content.

**MS IRELAND:** Yes.

**MR SIMSON:** That's correct, but is it fair to say that if we're looking at a subsidy equivalent of the quotas is 224 million the operative figure or do we need to add other things on to that for the purpose of the subquotas with which we are dealing here? How do we actually come out with a subsidy equivalent that relates to those two pots of money - one is an expenditure, one is finance?

**MS IRELAND:** I think in fact that the closer figure - the 224 million - is not the correct figure because that factors in, if you look at our footnote, all the costs to those other organisations, so it is in fact more than a subsidy equivalent. The closest sub-subsidy equivalent would be the 101 million that is currently spent on licence fees for adult drama, children's drama and documentaries. We would calculate that just by saying that if you just substitute what the networks currently pay for that in licence fees then that is what you would need to provide - - -

**MR SIMSON:** Plus the financing support from the Commonwealth agencies though?

**MS IRELAND:** Yes, that's right, but that already exists.

**MR SIMSON:** Yes, correct.

**MS IRELAND:** And what it recognises, I suppose, is that even at this point in time - that's right, they don't meet the entire production cost, so 101 million is pretty close to what a subsidy equivalent would be but it is not the entire production cost.

**MR SIMSON:** No, because it has only got those subquotas. If we were to put the other ones in what would it be, roughly?

**MS IRELAND:** Michael, do you have a sense of what you spend on TV?

**MR WARD:** You mean other than - - -

**MS IRELAND:** Are you talking about government subsidy for television?

**MR SIMSON:** No, no, no. In addition to the subquotas.

**MS IRELAND:** I see.

**MR WARD:** You mean all-Australian programming?

**MR SIMSON:** Yes.

**MR WARD:** For 1997-98, according to the ABA's broadcasting financial results, it is \$566 million.

**MR SIMSON:** But how much of that is subject to quota?

**MR WARD:** Subquota?

**MR SIMSON:** Yes.

**MR WARD:** Sorry. Only these three areas.

**MR SIMSON:** But all of that counts points, doesn't it, in one way or another?

**MR WARD:** I just think the one caveat in answering yes to that is that during the period in which this expenditure is referring there may be some commercial television production fund projects that would pay for it. If you take those out, and that fund has now ceased - that was a specific exclusion from the requirement - then the answer

to your question is yes, all program expenditure on new Australian drama, children's programming and documentary, provided it met the ABA definitions - - -

**MS IRELAND:** Nothing is broadcast that's not.

**MR WARD:** All that expenditure, yes, meets those requirements now.

**MR SIMSON:** And is it fair to say that out of that 500 or so million, the bit that is at risk in the absence of some regulation are those subquotas? The rest because it is news and sport and other matters would tend to happen anyway.

**MR WARD:** We have argued that, yes.

**MS IRELAND:** Yes. We think those subquotas are most at risk. We think the other areas have a natural protection built into them but that is in the current regime, of course. I mean, those things will no doubt be under some threat and more multichannelling - - -

**PROF SNAPE:** It's 55 per cent currently, isn't it, 6 am to midnight?

**MS IRELAND:** Midnight, yes.

**PROF SNAPE:** That that's pretty well irrelevant. What bites is the subquota, either subquotas.

**MR WARD:** When you look down at the compliance figures, yes, most broadcasters actually exceed 55 per cent, yes, in the last year's reports you have information. The only caution I would make on that is that the recent reports of reductions in Australian program production are staffing and other program commitments that have been in the areas, I believe, of the commercial broadcasters - at least Channels 7 and 9 - that include sport and news and current affairs programs, as I understand it. I don't have the detail of that. That is unusual and I noted it at the time as being unusual - I haven't noticed that happening at least for almost a decade - and it is unexpected for us who have always taken the view that at the very least the most exposed area, if you like, are those areas that we refer to because of their higher cost and also the greater propensity for drama anyway, and probably documentary import replacement. There certainly isn't the same potential for that for news and current affairs and sporting programs.

**MR SIMSON:** Of that 113.68 million estimate, how much of that would relate to the subquotas?

**MR WARD:** Of the 113, \$48 million is an allocation for the Film Finance Corporation. Roughly speaking about half of that investment, plus about half of our recoupment on previous investments, are invested in television drama programs.

**PROF SNAPE:** So it is half of 48 million plus half the revenue that you're getting rolling in from the past.

**MR WARD:** Yes, which is around about \$17 to 25 million a year at the moment, so in very broad terms that is around about \$30 million. Unfortunately, I have to keep subtracting here because you have got to take out of that investments in programs that are screened on the ABC.

**MR SIMSON:** Okay, fair enough.

**MS IRELAND:** And a percentage of it would also be Film Australia's expenditure but, unfortunately, I can't tell you that off the top of my head, but we could get back to you with that figure.

**MR SIMSON:** But about half of it relates to television. Is that right?

**MR WARD:** Yes.

**MR SIMSON:** Of that 113 million?

**MR WARD:** No, of the 48 million.

**MS IRELAND:** No, of the 48.

**MR WARD:** We are down to a figure in our Film Finance Corporation investment of around \$24 to 30 million a year.

**MR SIMSON:** Of the balance of the money that the Film Finance Corporation doesn't spend of that 113.58, how much of that 113.68 less the 48 would also be spent by somebody else on subquotas?

**MS IRELAND:** A small amount. We could get back to you with a more accurate figure - - -

**MR SIMSON:** Would you mind?

**MS IRELAND:** - - - because it would encompass the Children's Television Foundation and Film Australia.

**PROF SNAPE:** We are trying to get the dimensions of the subsidy equivalent; you can see the thinking there.

**MS IRELAND:** Yes.

**MR SIMSON:** Just going back to Prof Snape's first question, the interesting thing from our perspective is that you have got an expenditure-based support or regulatory

mechanism on pay between channels and flexibility in terms of being able to make up or make down on quota, and then you have also got flexibility between pay and free-to-air in terms of being able to count content for the subquotas.

**MS IRELAND:** Yes.

**MR SIMSON:** Why have one system for one and another system for another - an expenditure-based system on one and a quota-based system on the other? It just seems messy, that's all.

**MR WARD:** A point I would like to make there, and I meant to make it before, is that it is important to note that although there is the flexibility between the services on pay television, the condition still fixes to the licensee.

**MR SIMSON:** Sure, that is understood.

**MR WARD:** And in free-to-air the licensee is - it is not between the licensees.

**MR SIMSON:** But you could still have that.

**MR WARD:** As long as the condition still fixes - if there was a breach then it could still fix to the licence condition, and so the system recognises that licence - subscription broadcasting will be operating a range of broadcasting service channels and within those predominantly drama channels, there is the opportunity, because of the streaming of those channels, to allow them to shift that requirement and meet the requirement across the range of channels, noting that an expenditure on new Australian drama programming may not be appropriate for a service that is about showing old films. It just wouldn't fit within the requirements for that service.

**MR SIMSON:** Where this also gets interesting is at the moment we have got free-to-air and pay. We had a dialogue with Telstra earlier this week as to they're a content provider, they're building content, should they be subject to quotas, and there are other groups who will be building content for broadcast with a small "b".

**MR WARD:** Yes.

**MR SIMSON:** In terms of equity and competitive neutrality the discussion we're having with you is whether you might be better off having one system that perhaps even has a more pervasive or a broader reach across broadcast forms rather than trying to pick a different system and leave some completely out of the picture anyway, such as Internet, for example.

**PROF SNAPE:** And there could be thresholds going across different forms if that were the way of thinking, too. Just as at the moment pay television only has 10 per cent and there is a bigger requirement put on free-to-air, you may want to think about thresholds on different forms, although I think with technological

conversion the less we can define it in terms of specific existing forms of broadcasting, possibly the better.

**MS IRELAND:** Yes.

**MR WARD:** We are on the record as having put forward the view because the legislation did canvass it, that it was appropriate, when the review of the pay television 10 per cent requirement was made, to move to a 20 per cent requirement and Film Finance Corporation certainly still holds that view. There is nothing in principle that is of concern to me and perhaps what is being suggested, in terms of a program expenditure requirement, so long as one goes back and looks at the principles behind it - the principle behind the content regulation - and ensures that there is a potential for a meeting of the cultural diversity requirements and also particularly I'm not quite sure in what you put forward is would there be, for example, a specific requirement, for example, for children's time?

**PROF SNAPE:** Hypothetically, of course, one could make that distinction if one wished to. We are starting from our terms of reference, of course, and the diversity and those matters are addressed in the terms of reference and in the existing act, so that's where we're starting from and the options that we are considering. Of course, children are treated differently at the moment and we actually want to consider that as an option.

**MR WARD:** As I say, there are certainly views that we have canvassed previously where there is support for that idea and we are happy to go back and sort of draw out the research we have done previously and present it.

**PROF SNAPE:** That would be very helpful.

**MR SIMSON:** We would also be interested in the point you made a second ago in terms of the checks and balances that you feel that you would need if you were to move to an expenditure based requirement to satisfy what you see as the other points; how that regimen would be put in place.

**MR WARD:** Yes.

**PROF SNAPE:** Could I refer, just for clarification, to what in our version is at about the fourth-last page in a whole bundle of stuff. That's probably the easiest way of describing it. It's appendix (iv), if you start at the back and come forward, Expenditure by Commercial Television on Australian Programs, 92-93 to 97-98. We encountered a similar table in another submission. It was - I forget which one - anyway, it doesn't matter which one it was, but it's what happened - if you look at the very first line in that - between 92-93 and 93-94.

**MR WARD:** Prof Snape, I had the good fortune to be in the audience the day you asked that question - - -

**PROF SNAPE:** Good.

**MR WARD:** - - - and I took it upon myself to go away and have a look and, analysing the Australian Broadcasting Authority broadcasting financial results for between the period 1988-89 and 1997-98, it appears to me from the figures - they have the figures; I'm happy to provide you with my working out - in that looking overall between 92 and 93 and 93-94, and then looking back to the previous year, there had been after three consecutive years - and I haven't looked earlier than that but this is a period generally recognised as a decline in profitability into a period of net loss for the broadcasters - after three consecutive years of increasing losses culminating in 1991 with a combined commercial broadcasting sector loss of \$237 million, the sector returned to profitability in 91-92, as it invariably has been in for most of the last 40 years; that combined profit being \$171.4 million in 91-92.

However in 92-93 there was a 34 per cent cut in profit, reduction in profit, and as revenues had increased, total expenditure, including program expenditure, had increased at a much greater rate. In response to that - and I'm looking merely at the figures - there was a significant reduction in costs. There was a 6 per cent cut in costs overall in 1993-94. There was a 6 per cent - almost a 7 per cent cut in Australian and overseas program expenditure. There was a 9 per cent cut in Australian program expenditure and that 18 per cent cut in Australian drama expenditure.

So what was occurring there was, it appears - something that is happening again this year, in response to the bottom line - a reduction in cost. A most obvious or one of the areas of cutting expenditure is in program expenditure and we would argue that this 18 per cent that is three times the overall level of cost reductions - the 18 per cent cut in Australian drama expenditure - goes to one of the points that we'd be making in our submission, and we have made previously other inquiries that Australian drama programming is very susceptible to reductions in programming, reduction in expenditure and is more susceptible than other areas.

**PROF SNAPE:** So it's the belt-tightening; it's the Australian drama. It does show how important it is in selecting a base period to do any percentage changes and I notice that yours is just a percentage change on the last year which shows a significant increase in Australian drama; in fact, a higher percentage increase than the foreign drama. As you pointed out, it's quite a volatile figure and it's quite important which figure one uses as a base. One can get - in either direction - misleading percentage changes according to what you choose.

**MS IRELAND:** But it's clearly also one of the vagaries of moving to an expenditure model; is that it would be hard to predict in a given year what those levels of expenditure and therefore production would be.

**PROF SNAPE:** Yes, except that if one did it on an expenditure but proportionate basis you would not have the point that you were just making that it's Australian drama that goes up and down because it would go up in step with drama as a whole, if one was working on a fixed percentage figure, which on your argument would in

fact provide some insulation because, as you're pointing out, it's the foreign drama does not have the same amplitude as the Australian.

**MS IRELAND:** True.

**MR SIMSON:** Could I take you to page 35 of the submission, please, where you say:

Free-to-air operators are being given considerable protection from full exposure to competition to cushion them from cost pressures which could arise from an increase in the number of players in the limited market -

and then you say -

leading to a reduction in the quality of service provided to the community.

Isn't that an argument for more free-to-air operators?

**MS IRELAND:** Sorry, what we were saying there - and I realise clumsily now - is that bringing more operators in could lead to a reduction in quality of service provided to the community so that that's one of the government aims; is not to do that, not to reduce quality.

**MR SIMSON:** But even as you say, they're being given considerable protection from full exposure to competition.

**MS IRELAND:** Yes.

**MR SIMSON:** This has been an issue for us - and for those people who have sat through this, I am starting to sound like a broken record - but on the one hand we have got people such as yourselves and SPAA, the Writers Guild, the Screen Directors - all railing against their terms of trade with the free-to-air operators in local contention and the deterioration they say that has been occurring and how they're doing these things and doing those things and this whole argument. Yet, we pose the question to them, as we have done to you today, "Aren't you better off with more competition in the marketplace?" "Oh no." I mean, it's a real - - -

**MS IRELAND:** We're not saying no. Sorry, I didn't realise that you were posing that question to us. We actually don't have a final view at this point on new players in the market and I should just apologise for that to some extent. The Australian Film Commission, at least, has almost an entirely new commission so they have really only just begun to engage with these issues. So we don't have a final view on that but we wish to work with you on exploring that and analysing the impact of any alternatives in that area.

I mean, we start from the premise that increased services should carry local content and that they should have that obligation and our concern is that the

production industry is fairly finely balanced economically so we just wouldn't want to rush into saying automatically it's a great idea because there are significant cost pressures on producers when their market gets fragmented, as Michael referred to in his earlier introduction. So we think we need to just do some more work on it.

**MR SIMSON:** I think you have really hit on an interesting question there. The extent to which the pressures on the local production industry are, as you put it - your term, not mine "finely balanced" - the extent to which that is because of lack of competition with the purchases of their product.

**MR WARD:** That is true, and I would echo the comments that Kim has made about being open to the view that you're putting. One of the themes though, in our submission, is the relationship in Australia and elsewhere between revenues and expenditures in program expenditure; so market size, hourly costs, hourly licence fees, etcetera. If what is being proposed resulted in increased demand for Australian programming and also dealt with the concern about terms of trade that you have heard expressed, then it would be hard to imagine anyone opposing it at all. One would have to be confident that that is the outcome: one, that the concern would be, I think, or is, that this increased fragmentation of - that there wouldn't be an increased fragmentation of revenues that would lead to a reduced licence fee level.

I can tell you that's a concern because it was raised with me yesterday by a number of parties that in fact the advertising revenue growth or revenue growth would not be sufficient to offset the reduction in revenues across - than before free-to-air broadcasting.

**MR SIMSON:** The question we're exploring though is the extent to which there's actually a connection between the two.

**MR WARD:** Yes.

**MR SIMSON:** I mean, the extent to which there is actually a real connection between the two and it doesn't reflect a connection between the size of the advertising market and the terms of trade of the production industry and the deterioration that has occurred in the production industry and, thirdly, the amount of local programming that may or may not be produced in a situation where a fourth commercial free-to-air was licensed and - - -

**PROF SNAPE:** The point might be amplified by saying that advertising revenue has not decreased through the nineties. It has increased. Yet, we have the several participants saying that the licence fees have been squeezed over that period and they have attributed it somehow, I think, to increased oligopolistic power or belt-tightening or what have you and, somehow, lack of competition that has forced those licence fees down. So even though advertising revenue has gone up they're arguing that the licence fees have gone down.

We are then saying, "Wouldn't it be better, as you would have heard if you went to Sydney, if there was another bidder for your services, because competition, generally speaking, tends to raise the price of things? When more people are tending to buy your product you can charge a bit more for it and yet we have got the answer of, "No, the price might go down." Well, it's just about the only industry we have ever heard that has said, "We don't want more buyers of our product or more competition in the buying market for the product."

You may, in considering this, like to have a look at the transcript that several people gave us on this and our raising the question how three turns out to be the magic number that's just right and it would be worse with two and it would be worse with four. But that's where it went, except with the directors yesterday, and they were the exception to this, and in the transcript from yesterday which you might like to see, they did acknowledge the possibility and indeed, the probability, that four would tend to make it better.

**MR WARD:** Improve their terms of trade.

**MS IRELAND:** Yes, we share the view that it's absolutely worth exploring. We quite agree that revenue has increased and licence fees have - the reality is they have decreased and there's been a lot of pressure, and yes, that doesn't make sense.

**PROF SNAPE:** Yes, it's caught me on the hop here. I'll just check through to see if I've marked other things. We've been speaking fairly broadly in our questions and therefore have been going across many areas rather than in fine detail. Just a clarification on page 32 of the submission. It's in the middle of the page. I could probably find the answer to this if I went back to the original source that you're quoting there, but you say, "If BTCE estimates hold in this range it could be anticipated that pay television will have something in the region of two and half million subscription households or approximately 35 per cent of all television. I don't think you tell us when that would hold.

**MR WARD:** Sorry, yes, the BTC report refers to, I think, the year 2004-5 or 2005-6. But I'm pretty sure it's 2004-5, but would be happy to check that for you.

**PROF SNAPE:** Okay.

**MR WARD:** I think it's the earlier year.

**PROF SNAPE:** Right.

**MR WARD:** And that's the mid-range of their predictions.

**PROF SNAPE:** Okay. I also had a bit of trouble following the argument on page 39 that you're quoting - and relating to the CER agreement, that submission to the Senate committee inquiry saying - it's the fourth dot point there - but "the

inclusion of New Zealand programs is likely to exert downward pressure on the licence fees paid by broadcasters in both countries".

**MS IRELAND:** Yes, I'm happy to explain that to you. We did quite a bit of work in that area in response to the fact that the New Zealand production industry when arguing both in the High Court and with the ABA, that in fact it was a good thing for both industries to allow them access to the Australian television quota. So what we did was - we did some modelling, essentially, about replacement of Australian programming with New Zealand programming, and it was the basis for our argument in the ABA, that in fact a minimum licence fee should be introduced, is precisely because of the issue of the secondary market pricing. That New Zealand programs recover, like most primary producers, the bulk of their production costs in New Zealand. They would continue to sell into Australia at secondary market prices, and therefore compete with Australian programming directly in those quota areas.

So what we're really saying is it's our view that over time some New Zealand programming will replace Australian programming in those quota areas. However, it's not in the interests of either the New Zealand broadcasters who might be paying for the licence fee in New Zealand for that original production, or the Australian networks that might contribute to that cost. It's really not in their interests to continue to pay the same licence fee that they would. So they're going to do what happens now; licence fees will decrease and they will pay less. They will just pay a smaller contribution to the overall cost.

So in our view, it won't result in increased production in either country, and therefore the total value will remain the same in both countries, and again, there's no incentive for the licence fees to be increased because they'll just share the costs between them. Because there is no local content quota in New Zealand, Australian programs will continue to sell into New Zealand at secondary market prices too. Sorry, does that make it any clearer?

**PROF SNAPE:** Well, I'll have a look at the transcript and see whether it does. I was in my mind trying to think through a model in which there is market segmentation. You've got two markets and each is segmented, and, if you like, producers in each can, to use the pejorative term, "dump" into the others. Then you in fact remove the segmentation of markets so that each can no longer extract as much as the economic rental; whatever one in each of them.

**MS IRELAND:** For instance, a similar thing occurs where Australian programs have become more popular in international markets, and a program like Neighbours is a good example. As the sales of that program have increased internationally the licence fee that the broadcaster in Australia is prepared to pay for that has decreased, because that producer can recover more costs on their international sales.

**PROF SNAPE:** I think what you're saying there is that the market power of the buyer on the Australian market is such that they can force down the price that they're buying at.

**MS IRELAND:** Yes, that's right.

**PROF SNAPE:** Well, that would not occur if there were more bidders for that same product, presumably, on the Australian market.

**MS IRELAND:** Yes. And really, the same analogy would apply with a New Zealand program; that the New Zealand broadcaster will say, "But you can now sell this to an Australian network," and they'll want to buy that because it will be a cheap way of filling their quota - "We won't pay you as much".

**PROF SNAPE:** There's a fair degree of competition on the New Zealand market, isn't there, amongst buyers?

**MS IRELAND:** Sorry, sir.

**MR WARD:** A degree of competition amongst the suppliers, are you talking about?

**PROF SNAPE:** No, amongst the buyers of the programs in New Zealand. There isn't the content requirement, I know, but there are several channels that are competing against each other.

**MS IRELAND:** Yes, three channels.

**PROF SNAPE:** And one might expect that that degree of competition might keep the prices up there.

**MR WARD:** Well, it depends. I can only give you anecdotal evidence of Chris Anderson at a seminar that I attended when he was in charge of whichever service it was - TV3 in New Zealand - stating that they had a policy of paying \$US1500 per hour per program, or whatever it was. I'll check all of those facts for you, but that's again an issue of market power.

**PROF SNAPE:** Yes.

**MS IRELAND:** Licence fees paid for a broader programming in New Zealand is low, very low, and it is about the size of their market. And Australian programs, although they do well in New Zealand and sell into New Zealand, they still sell at those kind of prices, between \$NZ1000 per hour up to \$5000, which is sort of nothing, really.

**PROF SNAPE:** I'll think more about that argument. You say it's set out in your submission to the Senate committee?

**MS IRELAND:** Yes.

**PROF SNAPE:** If we don't have that - I think we do have it, don't we?

**MS IRELAND:** I'm not sure. We can extract it for you and send it down.

**PROF SNAPE:** Yes, if you could then. Well, I think that takes me through my list. One question: page 7, you say, "The government has endorsed the broad thrust of the Gonski report." Where did you do that?

**MS IRELAND:** It's hard to find that. It's happened in a number of contexts. It's happened in various media statements and in the fact they have made decisions about funding as a result of the Gonski report. So there isn't actually a nice response you can turn to and refer to. But if you'd like me to elaborate on that I can do that too.

**PROF SNAPE:** Something that's been endorsed by actions rather than words. Is that correct?

**MS IRELAND:** A bit of both, yes. Michael is just reminding me that there was a ministerial statement which was at an industry conference, so we can dig that out and - - -

**PROF SNAPE:** If you could chase that up that would be helpful to have that to substantiate it. Thanks.

**MS IRELAND:** Okay. I'm pretty sure that was the SPAA conference, actually, but I'm not sure.

**PROF SNAPE:** Okay, I think that takes us out. We thank you very much for your helpful submission, and also the discussion of it, and if you were able to contemplate and to give consideration to the things we've been discussing, then that would also be very helpful.

**MS IRELAND:** Sure.

**PROF SNAPE:** Thank you very much.

**MS IRELAND:** Thank you.

**PROF SNAPE:** We will now have the Media Entertainment and Arts Alliance coming on in a moment. We now welcome the Media, Entertainment and Arts Alliance and we have two representatives from the alliance. We would ask you, if you would, separately to identify yourselves and your positions with the alliance for the transcript.

**MR BURTON:** Tom Burton, and I'm the federal president of the Media, Entertainment and Arts Alliance.

**MS BRITTON:** And I'm Anne Britton. I'm the joint federal secretary of the alliance.

**PROF SNAPE:** Good, thank you very much. Now, we've got your submission. Thank you very much for that. We got it a little bit late and in the tentative date digested it in the time we've had available. I'm not sure which of you is going to speak first but whoever it is, would you summarise your submission, thanks.

**MR BURTON:** Thanks very much. Perhaps just a couple of disclosures to get them on the record. Tom Burton, and I hold shares in Fairfax and in Telstra. Both, I think, are subject to the broad parameters of this, and I am also the on-line editor for the Sydney Morning Herald which is my day job. So I'm the federal president of the Media Alliance, and that's an honorary position, as it currently stands.

We come here, I suppose, broadly putting a consistent position which we've put now probably for the better part of a decade about some of the issues that confront this commission. The two areas I think we'd like to focus upon are the cross-media rule and the Australian content rules. We appreciate the commission has got a very wide brief, but they're the two we were hoping to perhaps expand on and give the commission some assistance.

The position we broadly come from is there is a very strong public interest in a society which through its own eyes vigorously questions itself. Now, that is, if you like, our starting position in how we look at this whole issue of diversity and priority and views and news. It's our contention that the best way this is achieved is by both a strong - and I emphasise "strong" - and diverse media.

Our basic proposition is that, perhaps borrowing an analogy from the banking regulation, as the government sees it, at the moment we have what's loosely called a "four-pillars policy" in banking, and our contention is that within this broad area the government should seek to adopt what we would describe as a "four-silos policy"; that is, four content silos built around the four majors as we see the industry as it's currently structured. In the content industry that's the ABC, PBL through its various interests, News Ltd and Fairfax.

We look at the industry and observe that while distribution is perhaps becoming less of an issue - obviously through new media, digitalisation - that it still is a considerable bottleneck, and as far as we can see it will remain so, particularly given some of the recent changes to embargo further players on the broadcasting scene.

But in any case, even if there is a relaxation on the distribution side, that the real bottleneck is increasingly at the content level of the industry where there are very high barriers to entry, both in the cost of content in the marketing of the content; marketing being a very big cost that often isn't factored in for start-ups and new players and become increasingly one of the critical areas of advantage that current brands and incumbents enjoy. In that context we note that all the traditional players, the four silos as we describe them, zero cost their content into their new interactive arms, into their digital arms.

That means that these companies can essentially charge nothing for their content, whereas new players come in and have to fund the salaries of new journalists, start-up costs, etcetera, associated with that content. So the traditional players are taking their content, moving across into their new distribution arms, but in fact aren't paying for that content in any sort of economic sense, other than through their normal operations. So they have this massive advantage. They are able to leverage that content base across, whereas new start-ups basically contend having to run at high cost with very limited revenues.

Focusing on the cross-media rule itself, we've never claimed that it's a perfect rule but in our consistent approach to this we've never been able to find a better rule. We note that it's widely applied internationally; it's not a bit of maverick regulation. It's applied in the US; it's applied in the UK. We contend the reason it is, despite many attempts to perhaps find a better way to regulate in this industry in terms of diversity, that this is, despite all its flaws, the most practical least subjective way of regulating diversity.

We see no particular economic damage from this cross-media rule. Indeed the sector itself has been booming and the cumulative index on the A6 for this sector has over the last five years I think has gone up 160 per cent. There's no actual empirical evidence that companies are being damaged by this or that consumers are getting less choice. We do say in a practical sense - and we note that the commission has got this wide brief to be practical - that there are significant implications of removing the cross-media rule.

If we could perhaps just focus on one particular town, take Brisbane, for example. If the Courier Mail was able to buy - it's a monopoly town in terms of a major metropolitan paper - Channel 7, for example under a liberalised regime, you would have the proposition of a major metropolitan paper with a broadcaster which raises the obvious problem of what that does for the other broadcasters and any start-ups in that market. I think similarly in Perth, with Western Australian Newspapers, similarly in Canberra with the Canberra Times and, say, Prime, it's a very simple proposition to remove the cross-media rule. It would lead to, in our view, very quickly immense concentration in these particular markets.

Having observed the changes last year where there was an embargo put on new broadcasters, we say this even more so becomes imperative that we don't try and seek

to further concentrate the market by allowing these same broadcasters which are now a protected species to move into other media markets. We think the new media sector obviously promises diversity and we've very hopeful of it and excited by it and delighted that journalists are seeing new avenues of both employment and creativity there but we note that it remains pretty much still a niche market. 27 per cent of Australians have access to the Net in broad terms but of those only 6.7 per cent use it for media. The biggest use of the Net is e-mail, for example. I think it's important to see these numbers in context with the mainstream media which obviously has massive reach and remains the traditional supplier of news and views in the Australian context.

The most significant of that is of course the broadcasting medium with its massive reach and in our view a medium which allows Australians to tell stories about Australians through an Australian's eyes, and perhaps I could just ask Anne to give a couple of comments on the Australian content side, where she is far better placed than I am perhaps to talk.

**PROF SNAPE:** I did notice a change of style halfway through the submission.

**MS BRITTON:** While we're speaking of the submission I will apologise up-front for our late arrival. Despite this spectacular digital age in which we live our computers have somehow or other managed to crash at the crucial time. What I thought might be useful, rather than summarising our submission, is maybe touch on some of the areas where we agree with other organisations and some of the areas where we're somewhat apart. I think the first point that's self-evident from reading the submission is that there's a general agreement that Australia has been successful in delivering a free-to-air service which compares favourably with those that are available elsewhere in the world. There doesn't seem to be any disagreement that we have been successful in delivering diversity, Australian content and programs of quality.

The second point where there is obvious agreement is that the Australian content is a desirable objective, and I think FACTS make this point, television is arguably our most popular art form, and it's very important for national self-identity that we see something of ourselves, something of our stories and something of our lives on that screen. The third point where there is general agreement is that the structure of the television market internationally means that at least in the foreseeable future will there will always be a massive price differential between domestically sourced program and foreign program, and I think again there's no disagreement there. However, I think from that point on we start to see a little bit of - or some split in that consensus.

If I look at the FACTS submission, in summarising how I would read it, the FACTS submission says Australian content is very expensive for us, and this is the reason the government decided to put in place the embargo until 2008, and that's the old quid pro quo argument, which of course has served broadcasters well for the last 40 years. However, what emerges from looking at the submission of individual broadcasters and of FACTS is a very critical analysis of the current regulations. FACTS, for example, argues that the current program quotas are conservative, that

somehow or another they have prevented innovation in broadcasting, and the drama quotas in particular and the children's quotas also have outlived their usefulness.

I suppose that's where we do fiercely disagree. We say a crude transmission quota will not realise government policy objectives. The Australian content regulations allow broadcasters to meet their obligations using any number of options. They can decide to invest in high cost one-off drama; they can decide to invest in long-running serials. There are a number of options available to them. We believe this push to abandon the subquotas in favour of the transmission quota would be dangerous and would lead us back to a situation that we saw before the subquotas came on board in the early 70s where quota was essentially picked up via the so-called quota-quickies; cheaper programs that met the quota obligation of the networks. So I might leave it at that, but that's a very clear point of difference between ourselves and the broadcasters.

**PROF SNAPE:** Good. Thanks very much for that introduction. There are many points at which you could pick it up as you would have gathered from our inquiries with others. I wonder if I could pick up what's on page 10, and I'm not quite sure if you will have the same page 10 as I've got, but it's a page on which there are two headings, The Industry Booms and Editorial Democracy. Are we all in sync?

**MS BRITTON:** Yes.

**MR BURTON:** Yes.

**PROF SNAPE:** Then right at the end of the page where it's talking about editorial democracy and the fact that they are constantly being - "At the end of the day power and control rests with the owners." I'm not sure if you were here for the Fairfax discussion earlier - you were?

**MR BURTON:** Yes.

**PROF SNAPE:** I don't think that Fairfax would have disagreed with that. They would agree with that, to say it does because the owners ultimately must have power, control, but if they do stupid things they go broke or that they would lose market share to other people and that the market would bring them back into line. Where would you see the difference between you there?

**MR BURTON:** I think, from a working journalist's point of view, there are lots of influences on what pushes you in one direction or another, but I think if I could refer you perhaps to one of the attachments here from Michelle Grattan who, certainly in my experience, is one of the most professional and balanced journalists I've ever worked with and she takes up this point about influence and what roles proprietors have vis-a-vis editorial. Her contention is it's naive to say they have no influence. I think she was attacking a particular point that Peter Costello was claiming, that journalists have got all the power and these poor proprietors sit around not knowing what to do with them.

I think in reality it's a balancing exercise and probably so it should be. Like all professional groups you allow your professionals to focus and do their job within professional principles and proprietors try and give them the tools and the outlets to do that, and a good media organisation keeps all that within some sort of balance. I think what Prof Hilmer was referring to is that, if you like, the Fairfax franchise has picked out a certain area of media, which is, if you like, relatively high end, and for them to move away from that, to say take a more dummy-down approach, if you like, it would clearly damage their commercial interest, and I think that's pretty obvious. But within a practical working environment it's a balanced exercise and good proprietors and good shareholders understand that and understand it's attention but it's one that is what good media is all about.

**PROF SNAPE:** But are you suggesting, and I don't want to tie it down to Fairfax as you work for Fairfax - would the alliance feel that that balance is, as it stands today, is not appropriate?

**MR BURTON:** I think our broad view is that (1) the trends in the current media are towards huge commercialisation, much stronger commercialisation in the industry than previous decades, and that's making it much more difficult for journalists in a sense to carry out their craft of reporting news in an independent manner. The commercial interests are becoming so much stronger. We see in numerous media organisations them buying various franchises, sport franchises, stadiums, rights to certain broadcasts, etcetera, and then seeking to maximise that franchise by marketing it through their own organisations and to a certain extent seeking to minimise other organisations reporting on the same franchise. It happens often in sport.

So the environment is one I think - which this commission is looking at - of much more commercialisation in the industry than has been the trend. Again, without wanting to keep quoting Michelle, she actually did a very nice monograph on this last year. We attached it because it just instructed us from a working point of view what those pressures are.

**PROF SNAPE:** We have read that, I might say. We did read it earlier in the piece as a matter of fact.

**MR BURTON:** That was in a sense to sort of set the context, if you like, of the environment that we now work in. We're not necessarily whinging about that but just making the point that that's the environment of highly commercial interest now and that's why it becomes even more important to maintain some sort of structural diversity at the ownership level in order to allow people to get on with, you know, the lifting of the rocks exercise, which is what some people would say.

**PROF SNAPE:** You could contrast, I think, the vision which you have and the vision which Prof Hilmer was giving us, and perhaps Prof Flint was also the other day, that they would portray yours as a fairly static view of saying, "This is the situation as we've got it today and if you joined a couple of the parties together then you would have such and such a situation." The view of the world which was being portrayed by Prof Hilmer was a dynamic one of so long as it can be contestable - and that's why he

was emphasising the access to essential facilities - then if in fact some excessive market power is tried to be exercised in that, then the market will sort it out.

**MR BURTON:** That's a pretty familiar sort of mantra from within that sort of framework. Our basic argument is that it's not very contestable. It's got a very high fixed cost of entry into this market, and even with the new media it's proving to be extremely difficult for new players to get in at the top level. There are lots of low-level media sites out there but with top level, very quickly it has emerged that the four content houses have moved to dominate the Australian Web market, for example, in terms of distribution.

**PROF SNAPE:** Yes, though not quite as much as you stated here, I think. I think that on the Sky News you will in fact find some Australian content.

**MR BURTON:** By original journalists? By journalists actually producing a story for Sky News?

**PROF SNAPE:** Perhaps I should let Mr Simson speak to that.

**MR BURTON:** I know Stuart operates his own content factory.

**MR SIMSON:** We do provide original programming to Sky News.

**MR BURTON:** Right.

**MR SIMSON:** Can I just take you to page 5 of your submission, please. Down the bottom you say there:

International experience is that there are few synergies between print media and broadcast media.

You make the point that TV is packaged in a highly formatted way, radio news is different again because it's based on actuality and critical time lines. Over the page you say:

As any working journalist will attest, the news culture of the three media just do not make them compatible for integration, other than for cross-promotion.

What's the problem then with the cross-media rules? What's the problem in having a television owner take out or merge with a newspaper business?

**MR BURTON:** In Australia, if you allow that to happen, you will very quickly see those four content houses merging almost certainly to three. Then focusing on those particular markets we were just talking about, for example, you could see highly concentrated markets where an operator can operate both a TV station and a newspaper. I think the point you're making is doesn't this argument say, "Well, so what?" because you can't mix them together.

**MR SIMSON:** I'm just recounting what you seem to be saying to us here is these are different markets.

**MR BURTON:** Yes.

**MR SIMSON:** They're either different markets or they're not different markets.

**MR BURTON:** The point we're trying to make here is there actually aren't many economies of scale to be had between these various sectors. When you actually go and look for them, good media actually is very highly focused media and it's the reason why newspapers tend to stick to newspapers, and broadcasters tend to stick to broadcasting. Successful media is highly focused. There is little economic proof that for a newspaper company to survive or to grow, it has to become a broadcaster. It may seek to move into that business as a matter of diversification but it's not within the content industry and from the point of view of consumers, there's no advantage to consumers that somehow Fairfax can own Channel 7, for example. They don't get a particular benefit from that.

**MR SIMSON:** But if you, as content suppliers, are supplying to different markets as you've described them here, does it matter who owns you if you're supplying to different markets and with different needs and different requirements, as you've described them here?

**MR BURTON:** Very much, is our contention. Ultimately proprietors and ownership impinge upon the diversity of the structure. It's a very simple proposition, from our point of view. We used to have a sticker that we put around, which was called Two Too Few. It was a very simple sort of way of saying allowing the three commercial outfits to go to two is just not going to be enough. It just comes back to a very simple matter of numbers in the Australian context. We'd love it to be like England, where there are eight newspapers in London, etcetera - but there aren't, and we've got these four organisations which essentially dominate the content side of the game.

We can't see an argument that allows them - if they put the proposition, "Gee, if we could just get into broadcasting or just get into newspapers, we'd then be able to conquer the world." That's being a bit flippant about it but that's the sort of proposition. From a working journalist's point of view, our contention is it just doesn't work like that. What Laurie Oakes does each night is incredibly different to what Michelle Grattan does. It's like cheese and chalk in approach and thinking. There aren't any particular advantages to the public in allowing these two organisations to get together - from just a working content point of view, public interest point of view. We think there's significant damage to be had in the Australian context by allowing them to get together and we can't see the upside that justifies that sort of change.

**MR SIMSON:** You go on to say on page 6 that in terms of online product there is not any evidence that structural separation of print and broadcast media is impeding the development of online products.

**MR BURTON:** That's our contention, yes.

**MR SIMSON:** So that you would not see it in the interest of the people who you represent for Fairfax, for example, or News Corp, for example, to be able to acquire broadcast interests.

**MR BURTON:** I don't see any economic benefit and I don't see any public benefit.

**MR SIMSON:** I mention the latter in context of your - - -

**MR BURTON:** No, I don't see any public benefit that comes from that. If News Ltd want to acquire AV material, which I think is getting to the core of it, they can buy it. They can buy it off their 25 per cent-owned Foxtel or they can buy it from anyone else - ditto Fairfax, ditto anyone else. Acquiring the content can be - you know, there's no barrier to getting this material.

**MR SIMSON:** Mr Burton, what scenario would you be happy with? In a number of points in the submission you point out that there is a restriction on the number of commercial free-to-air. Both you and Ms Britton have referred to that. At what point would you, as a professional organisation, be prepared to countenance a relaxation or a doing away with cross-media? If, for example, hypothetically, the free-to-air embargo on numbers was lifted, what other things - if that's even in the plot - would you want to see as precursors to changing this?

**MR BURTON:** It's a very good question. It's similar to banking. At what point should we abandon the four pillars test? Peter Costello and others will say, "When we see there's significant competition." Then you say, "What does that mean?" and they said, "Well, we want to see the small business banking margins come down. Then we want to see this and we want to see that." Using a bit of Canberra language, it's a smell test. When you see significant enough players out there of strength and diversity, that's the time to do it.

I hope it happens. I'm absolutely optimistic that over time it will happen, particularly if we get a much more logical regime in the new media in terms of regulation. This shall allow new players to emerge and will give us some of that diversity. Some changes to tax laws, etcetera, might help as well but at the moment - and I can't see that in the next five years that's going to happen under the current regulations. Really we're looking for a fifth pillar and a sixth pillar, and once you see it then I think that is the time you can say perhaps that's the time.

**PROF SNAPE:** You do point out that you're reluctantly, as you say, countenancing the relaxation of the foreign investment rules, presumably partly because you would see that as providing some of the competition.

**MR BURTON:** Absolutely. We've had that position now for over a decade, well before some of the other parties seem to have adopted this position. Our position has always been, "Look, any way we can get diversity, let's have it." So fuel the system

with as much capital as you can, foreign interest, etcetera, and let's hope this allows new players to emerge.

**PROF SNAPE:** Telstra.

**MR BURTON:** Telstra brings its own particular issues in terms of their control over the broadband network but that's another issue.

**PROF SNAPE:** Prof Hilmer was speaking about the access considerations there that Telstra is developing as a content supplier.

**MR BURTON:** Probably an aggregate. They don't originate much, they tend to buy (indistinct) business products and other sorts of things.

**PROF SNAPE:** Perhaps not so much in the news area but I think they're investigating other areas.

**MR BURTON:** They've had ambitions to be in there. That's pretty clear. All the more, the better. They are the sort of organisation that's got deep pockets but they do bring their own set of regulatory problems, I think.

**MR SIMSON:** Mr Burton, you heard our discussion, I think, with Mr Hilmer this morning about what may need to be done in addition to a public-interest test under the Trade Practices Act if the cross-media ownership rules were relaxed. I canvassed a number of possible issues or tests - editorial independence, whether the new player had a lot of other business interests, whether it was a regional player or not a regional player, whether it would be putting talkback radio together with a newspaper, or music - whatever. Could you, and hopefully Ms Britton, talk with us a little bit about those test or issues, the things that are uppermost in your mind in considering whether a merger between cross-media would be a good thing, or would it be a bad thing on a case-by-case basis?

**MR BURTON:** We've discussed this for hours - well, years, to be frank - because structural regulation is not a fantastic way to operate. Each time we come back to it. Why? Because it works and is working, in our contention. When you go to look at the various tests - and we're not alone in doing this. The UK had a very long process and started playing with concepts like share voice tests. The problem they raise is you get yourself into this extraordinary subjective process about is the Women's Weekly more influential than the Sydney Morning Herald, and is Neil Mitchell better than John Laws, or whatever. That is, in our view, not a role that government should play.

The first principle is avoid subjective tests. The politicians have already got enough of a conflict of interest with media anyway to allow them to start getting into some sort of de facto content regulation. Secondly, avoid licensing of any sort for broadly the same reasons. When you actually look at the Trade Practices Act, the commission has been very consistent on this all the way through. It does not see a market for news and views. It has consistently defined the market outside that regime. Until it does, if you sought to regulate this area we'd say no, there is no

market for news and views. It has been its consistent position, based on precedent. I happen to disagree with that quite violently but that's its view.

**MR SIMSON:** But that's a matter of interpretation by the ACCC and ultimately a matter of the legislation which the ACCC operates.

**MR BURTON:** And a matter of legal precedent. They've based that on certain cases.

**PROF SNAPE:** Yes, but just as there are special provisions for Telecom in the Trade Practices Act, that can be handled legislatively.

**MR SIMSON:** So this is where we're coming from in terms of trying to explore this dialogue with you. I'm not encouraging you to change your position in terms of the cross-media ownership rules as they sit at the moment. I'm asking you a separate question, which is that if for right or wrong reasons a government were to do away with the cross-media ownership rules and they asked you what would be the key elements that you'd wish to have addressed in a public-interest type test, what would they be? We'd be interested in hearing what are the particular things that trouble you.

**MR BURTON:** At top level, structural diversity of ownership. That's our mantra that's been our line - some maintenance in a structural sense of the number of players exercise, and how you achieve that, whether you seek to do that through a share of advertising or a share of circulation or some proposition like that.

**PROF SNAPE:** Over what market?

**MR BURTON:** Within the various media markets that exist, ie here in Melbourne, within the Melbourne market.

**PROF SNAPE:** But how have you defined media?

**MR BURTON:** In that sense, I suppose by location.

**PROF SNAPE:** Yes, but are you including print, radio, television, pay television, Internet, magazines? Where do you define that communications market? How are you defining that communications market? What are the boundaries?

**MR BURTON:** We tend to have this, if you like, working definition of news and views. Now, is Who Weekly news or is it not? Now, the publishers of Who would say, "Of course it is." That's where it tended to concentrate because we'd taken a view of, "What's the public interest we're trying to maintain here?" It's about strong news and views. It's about a society that can question itself, lift the rocks and not be scared to and get an answer. Now, whether Who Weekly does that or not, I'm sure we could have a debate about, but at some point there obviously becomes a line to draw, very difficult to draw, and that's why we tended to pull back from any subjective test around there.

**MR SIMSON:** But need it be that subjective? I mean in terms of a set of tests under a public interest umbrella, if, for example, an issue is the extent to which a prospective - one of the matchmakers had other business interests that are written about because they're significant business interests in this country, wouldn't that be more of an issue in the public interest than another media group getting together with another media group where they did not arise because they were more pure media groups.

**MR BURTON:** Arguably. I suppose I'm trying to be helpful here. Certainly that could be one criterion you could apply: what are the other commercial interests that are brought to bear within this marketplace? You know, you quickly get into some pretty subjective areas and it becomes a difficult sort of proposition to regulate around. So I'm not quite sure how helpful that becomes, but clearly that's an issue. You know, we're not against media organisations having diverse commercial structures. What we're trying to seek is to have enough major media organisations so that when PBL are busily there promoting, when News Ltd are busily there promoting, Super League is another mob out there saying, "Well, hang on, maybe this has got a few other wrinkles to it." So it comes back pretty quickly to some practical sort of propositions, just having enough players that consumers, readers, audience can say, "Well, hang on, there's an alternative view here and I can get an alternative view."

**MR SIMSON:** But in the case of newspapers, I don't think the ACCC would ever allow a merger of two newspaper groups in the one city. I mean that's almost inconceivable. So that how does a relaxation of the cross-media rule compromise that? I mean if you take your Super League example, you've got two newspaper groups. If those two newspaper groups also happen to have broadcast arms it wouldn't make any difference to there being competing newspaper groups taking pot shots at the coverage of the other newspaper group on Super League or Olympics or trips to see powerful media players or anything else.

**MR BURTON:** Well, as I understand there is no bar on one newspaper group owning another other than what exists in the Foreign Takeovers Act and the Trade Practices Act.

**MR SIMSON:** There is no bar, but it would be problematic in the extreme if Allan Fels allowed the Herald Sun and the Age to - - -

**MR BURTON:** Yes, I mightn't be able to take the technical position, but it's not part of the Broadcasting Services Act.

**PROF SNAPE:** Although some have advocated that and there's a failing firm argument if one was to go out of business. In fact was that in your submission or - - -

**MR BURTON:** No - - -

**MR SIMSON:** Now, it was in the Press Council's.

**MR BURTON:** I think it's a matter of public interest. You know, we'd always push the view we'd like to keep multiple ownership of newspapers. Anyone who's worked in Brisbane or Adelaide or Hobart or Perth understands this very well. It's just a very difficult environment to operate in. I don't mean so much basically from a journalistic point of view but also just from a consumer's point of view.

**MR SIMSON:** Can I take Ms Britton to the area of local content, please?

**MS BRITTON:** Yes.

**MR SIMSON:** In discussion you may have also have heard this with Mr Hilmer, and certainly an interesting discussion we had with Telstra earlier in the week, who are getting into content and others are getting into content. Could you please give us your view as to the extent to which local content regulations should extend to other new media beyond both pay and free-to-air, which is the case at the moment, into Internet and other visual broadband forms and so on.

**MS BRITTON:** Well, in relation to pay, it's a source of great disappointment to us that the government has proceeded with such a low hurdle in relation to Australian content demand. I look at the program for today for pay for the Foxtel channels and other providers, and other than a 20-year rerun of Sons and Daughters and a repeat of Young Talent Time, in the area of drama I can't see an Australian program. So I think it's sort of a telling point that the style and the form of regulation is tremendously important.

In relation to the Internet I cannot see at this stage - a big caveat on that, I think it's a bit of a wait and see - I cannot see an effective way to regulate for Australian content. I mean there may be one. I can't see it. Also in relation to drama, I think the experience would appear at this stage, and we address it briefly in our submission, that the so-called bitcoms have come and gone and that it would not appear at this stage that that's going to be an area where we'll see significant drama production in the traditional form.

Now, let's wait and see in five years' time because it's still highly experimental. I know, for example, that Telstra are looking at a number of programs at the moment but very much in their infant stages at this time. But to come back, I think one of the issues is going to be post-2008. When the environment at that point changes, what form of regulation are we going to look at? Are we just going to drop it altogether because the three-station rule goes? We say it obviously will need to be revised, but I think it is too early at this stage to say what form of regulation it should take, but we would certainly continue to have the view that a form of Australian content regulation will be essential if a reasonable level of Australian programming is to be delivered.

**PROF SNAPE:** You probably caught up with our comments in past submissions or past hearing days, about the worries about the simulcast period and the bringing to a conclusion of that, and that it might get extended very much into the future because of the incompatibility of the digital and analog transmissions which of course would be a worry if one is looking for competition coming in in 2008 or whenever, that there

would, I imagine, be a strong argument for perpetuating that freeze on new entrants as long as the simultaneous transmission is occurring. So unless you've got some comment on that we probably won't go over it again, but if you have, then fine.

But you heard the discussion, I think, earlier which we had with the previous participants, that is the troika of the Film Corporation, Film Finance Corporation and Film Australia, to do with exploring the possibility of a change to an expenditure rule for the free-to-air and not necessarily at the 10 per cent level. You would have heard the discussion there. Do you see possibilities in a change in that way which would, in some ways, give greater flexibility and get away from the arbitrary rules between categories and give greater flexibility?

**MS BRITTON:** I didn't hear the discussion but I think I could fill in the gaps.

**PROF SNAPE:** Would you like me to elaborate on what we said?

**MS BRITTON:** Yes, that would be useful.

**PROF SNAPE:** Yes, it was to say at the moment for the pay televisions we have an expenditure rule and yes, there has been a hiccup in the legislation but that's going to be fixed, presumably. So not looking at the hiccups in its implementation but concentrating on the principle, the principle is an expenditure principle and in that context it's on drama but one can think of other categories as well as drama if one wants to, and that 10 per cent of expenditure on drama by drama channels should be on Australian drama. Well, bringing that across to the free-to-air, instead of the current content rules one, as a possibility, might be to say that for expenditure on drama by the free-to-air, and just concentrating on drama for illustrative purposes, that at least a certain percentage of expenditure on drama should be on Australian drama, say 50 per cent just for illustrative purposes. One also could, if one wished, couple that with a subsidy.

There are two points of course but you might say that it's going to be matched by on a dollar-to-dollar or 50 cents per dollar basis by a subsidy as well. So one could easily put a subsidy arrangement into that expenditure if one was going in that direction. Part of the thing on the pay television is that it works like a transferable quota in the sense that if you're an old film channel then you don't have to interrupt your schedule by putting an Australian film on it, you can in fact transfer that or sell that requirement to another channel and they will do it for you. There's another possibility that transferability could occur between free-to-air channels and again you get a degree of flexibility. So it would be a more flexible system that exists at the moment, get rid of some of the arbitrary distinctions that are there between genre.

**MS BRITTON:** Yes.

**PROF SNAPE:** Have you, as an association alliance, thought about that as an alternative model and, if you have, what is your reaction?

**MS BRITTON:** I think every time there's a major review of the Australian content rules the expenditure test is raised. We have never been a fan of the expenditure test and I have to say that my Sons and Daughters example possibly bears out that there should be some caution. But I mean of course to some extent it depends where the hurdle is. I mean if the expenditure test is that 90 per cent of expenditure needs to be devoted to Australian programming, clearly we would have a very different view than if it were 5 per cent. Having said that, one of our non-core activities as an organisation is we spend a lot of time identifying how much licensees have paid for Australian programming and how much foreign licensees have paid, in terms of how our members have paid. It's a big part of our organisation.

I must say I would seriously doubt whether or not the government would be prepared to invest the sort of money you would need to, to determine what is in fact the real expenditure made on Australian programming. Let's look at Australian series at the moment. They are financed by way of an up-front cash licence fee, by way of an equity participation in the local market for on-sell into pay and to new media uses and in terms often of an equity participation in terms of foreign sales. I like the idea of accrued hours test because it's transparent and it's possible to tick the box at the end of the year to make a determination whether or not these minimal hurdles have been achieved. I don't think that's possible with an expenditure test. I think it is virtually impossible to determine what each network would have spent on a per-unit basis on an Australian program.

**PROF SNAPE:** Even if they were buying them all in? I can see the problem if they're produced in-house.

**MS BRITTON:** Well, even if they're buying them all in, there's an arbitration in the Federal Court in three weeks' time on the very question of what one particular network has spent on an Australian TV series. It's relevant for the purpose of the calculation of the performance residuals. It's extremely difficult. You know, we've spent a lot of money on lawyers trying to give us some advice on what precisely the dollar figure is because it's that mixture that I was referring to earlier. This is an independent production at arm's length with the network and it's part equity, it's part-financed by a distribution advance from the network. It's a very, very complicated arrangement and increasingly I think that is the case both within Australia and overseas as to how product is financed. But I come back to the point that I raised earlier and it touches on your idea of flexibility.

The current rules - how inflexible are they? If you read the submission of facts, for example, I think you could be forgiven for thinking that commercial networks in this country were somehow being held back from moving into this new world of innovative programming. Nothing at the moment stops them, under the current rules; for example, filling all their drama quota by buying innovative new feature films that have been shown at TrotFest or innovative student films - - -

**PROF SNAPE:** Shown at where?

**MS BRITTON:** TrotFest, the short film festival. That's an option for them.

**PROF SNAPE:** I thought it was the Trotsky Film Festival.

**MS BRITTON:** Sorry, no, Trotskyism is dead in the film industry, it would appear. It is the commercial networks who have made a decision to primarily fill their Australian drama quota from long-running series and serial formats which primarily are about cop shops and surrounding hospitals. That's a commercial decision they have made. That's not one that is forced on them by either the regulator or via the independent producers. So I think that this notion of if only we had a little bit more flexibility - I mean, they can do it in a number of ways. They can meet Australian content rules by primarily screening feature films, by picking up low budget innovative programs, as the ABC does, for example. They could do it by exclusively doing sketch comedy programs. They could exclusively do one Australian serial. There are many options available to them. I cannot help think when I hear the old flexibility argument raised that this is code for, "We think the hurdle is too high. We don't want to be devoting that sort of money on Australian programming."

**PROF SNAPE:** I see your point. The facts of the submission was not my starting-off point in this, I can assure you. It was rather more that there are different points for different types of productions, and that requires some arbitrary definitions, and one could easily think of crossover things - does it fall into one or the other? - and some bureaucrat somewhere has to make that decision. As you point out, there may be disadvantages too in the alternative in determining what is expenditure and what is not expenditure. Simply, as you know, our terms of reference require us to be considering alternatives and options, and it's in that context that we're doing it. We would be grateful for any guidance we can get on advantages and disadvantages of alternative arrangements such as the one that we've been given - that I was illustrating.

**MS BRITTON:** Could I just pick up on that issue of the financial expenditure test, because as you'll be aware this was the issue of great debate in 92 when the broadcasting services bill was on the table. One of the things I think that is forgotten in terms of the current Australian content rules, and in particular the subquota rules, is that it is really a mix of an expenditure test, an accrued quota test anyway, because again if we look at the drama example, it rewards programs which generally cost more to purchase than those which cost less to purchase. So, for example, Neighbours achieves less points than a feature film which has a much higher licence fee.

It's crude, and of course that's not always the case, but I think there would be general agreement within the industry that that mixture of crude hours quota and a financial expenditure or a financial incentive test has served well. I have a fundamental scepticism that it would be possible, that (1) it would be possible to accurately assess what was in fact spent by the networks, but also if the hurdle was set - say, the hurdle was set at where it is now, 80 per cent, and I would imagine there would be serious debate about whether that would occur, arguably - I mean, the contrary argument would be put to you by the broadcasters who might say, "Well, if I'm in such a good position that I can screw the Australian producer down and get

programs at cheaper prices and I've decided for a range of programming reasons to pick up a more expensive premium US product, why should I be penalised?"

I suppose in the imperfect world of regulation what we're saying is it is a pretty low hurdle. It can be achieved in relation to drama at three hours per week, and I think having spent a lot of time looking at alternative models, I think the Australian Standards shape up pretty well.

**MR SIMSON:** Do you believe in the situation where there was a fourth commercial free-to-air - do you believe that local content would suffer? I'm assuming that the current regulations continue, because of course that's been a major argument that the free-to-air's have put to us.

**MS BRITTON:** I won't pretend. We haven't done any economic modelling on that. Obviously, we're familiar with the argument. I believe that if the market were to be completely opened up at this stage, Australian content would suffer. However, the population of Sydney and Melbourne has virtually doubled over the last 20 years or so. I find it difficult to believe that a fourth commercial network, providing that Australian content regulation was in place, would disadvantage the networks to such an extent that they could no longer afford quality Australian programming.

**PROF SNAPE:** Would it tend to bid up the licence fees?

**MR BURTON:** In theory, it would bid down, wouldn't it?

**MR SIMSON:** Licence fees is an ambiguous term. In this case we're referring to licence fees - - -

**MS BRITTON:** Programming.

**MS SIMSON:** - - - that are paid for the content providers.

**MS BRITTON:** Not if they joined the group of people who set what those licence fees are. As you will be aware, there's a certain sameness in the licence fees paid by the three networks. So it depends how the market operated.

**PROF SNAPE:** There is a fair bit of evidence on concentrated markets in other areas, particularly that if you get to four it becomes very hard to hold the line and you would be much more likely to get a competitive outcome than two or even three.

**MR SIMSON:** Because it's been put to us that the terms of trade, which many in the production industry were deteriorated, particularly in terms of the amount of licence fees that have been paid.

**MS BRITTON:** Yes, and we don't disagree with that. I suppose the point I'm making is I don't think we're in a position to make a useful assessment as to whether or not those licence fees would go up, but if the current practices continue whereby it would appear that there is some sameness as to the fees that are paid, obviously they

wouldn't be affected. I think it's the who knows, but certainly if the question is do we think that Australian content would be unachievable with a fourth network, I think the answer is no. I see no evidence for that. The advertising market has expanded. The revenue base has expanded. I don't believe that a fourth network would destroy the industry.

**MR SIMSON:** Mr Burton, can I take you to the MEAA's new code. I'm referring to page 11 of your submission. Just explain to us, if you wouldn't mind, what the purpose of the code is. To what extent is the code designed to protect editorial independence of your members and the mastheads and the groups that they work with?

**MR BURTON:** I don't think it is designed to protect editorial independence from proprietors, if that's the question. It's designed to protect, if you like, professional independence and to maintain a code around what professional independence actually means in the pretty murky world of journalism. So it's not designed per se to be, "This is the way we stop Rupert or Kerry monsterring us." It's designed to ensure within a working journalist's environment that there are certain principles complied with.

**MR SIMSON:** Thank you. I note also in your submission, going over to page 12, that in the context of new publishers, publishers have introduced some of their own codes, and you allude to other ways in which I take it - this is my word, not yours, the integrity of your profession as being chipped away. Of course, Michelle Grattan, in her monograph, as you pointed out, has three or four other issues that are expanded on that. Could you just talk about how far this process has gone?

**MR BURTON:** In terms of, if you like, the commercialisation process?

**MR SIMSON:** The extent to which you feel as an organisation that the integrity of the atmosphere, of the environment in which your professional members work, has been increasingly compromised, if that's what you believe. We are trying to get the gist of what you're saying.

**MR BURTON:** Yes. I think there's been a much sharper focus on, if you like, the commercials of the industry in the last 15 years. We don't complain about that, and media is a capitalist venture at the end of the day but it's the environment we work in, and we try to say, in terms of maintaining, if you like, the principles we work in, I suppose most obvious is in, if you like, vertical integration issues where we see media organisations buying into certain assets, franchises, however you like to describe them, and even if it's just an almost anecdotal way of making the observation, but this Saturday night, Australia plays Ireland in Brisbane - it's a big rugby test - we've been told - "we" being the Sydney Morning Herald, we can't take photographs for the Internet for that test. We say, "Hang on, our core business is text and photos. We've always reported the news. That's what our game is," and indeed News Ltd had supported us in that position consistently.

**MR SIMSON:** Had supported you?

**MR BURTON:** Has consistently supported us. When this issue has come up, as it has in recent - last year, they have consistently supported us and said, "Look, this is our position. Our core business is this, and we're not going to be impeded in it," etcetera. The claim now is, "No, News Ltd owns through Foxtel, quote 'the net rights' for this event," and they're going to seek to maintain the, quote "exclusivity" of those net rights. So it's just a practical way, if you like, of showing how quickly these vertical integration issues start to impede on the ability for the public to get what we call fair report, fair coverage. I'm not saying News are the only people who do this. The whole sports area is very contentious in its rights areas and at broadcasting level it's particularly contentious, and it's probably the most problematic area in day-to-day journalism.

**MR SIMSON:** Can I put it to you that that may in fact, however, be a problem with the way the regulatory environment currently sits, which is, to use your term, crude, and somewhat arbitrary. You've got the cross-media ownership rules but that's not stopping other deals being done between various groups, the Foxtel ownership, the owners of the channels on that. There are numerous examples of news and PBL doing things together and Fairfax and others. All this is happening in a relatively unregulated environment, and I suppose that's one of the things that interests us because if you're concerned about these sorts of things, such as having access to your footy photo next Saturday night, whether this arbitrary approach is the preferred approach, whether it is worthwhile taking a look at a public interest approach to this that perhaps could address some of these issues.

**MR BURTON:** It would be fantastic if this commission came up with a better way of looking at this whole public interest issue of concentration diversity. Worldwide people have been struggling with this core concept, which is right in front of me here, the one we're discussing. To date, particularly in the Anglo-Saxon world, they've all fallen back to exactly the same position that Australia has got. Paul Keating likes to suggest he invented the cross-media rules. Well, they exist in the US, they exist in the UK, they're broadly similar in all those markets, because eventually public policy-makers have just found it very difficult to find a different way of dealing with it.

**MR SIMSON:** Just to extend the point - we did put this point to Mr Hilmer this morning - the ACCC may or may not take an interest but as we sit here today, if Fairfax wished to hive off or float its on-line interests, arguably PBL could buy those or could buy a large chunk of those - or Telstra could or Optus could, even conceivably News Corp. The issue we are trying to explore with you is what would appear the relatively narrow slice that's taken with the cross-media ownership rule as it sits while all this other activity and potential activity could occur

**MR BURTON:** Certainly, but I think it's useful to keep the context - the numbers that are in our submission. Most Australians get their news and views from three sources: radio; television and newspapers. The net market is a pretty elite market and hopefully growing, and it appears to be growing pretty rapidly, but to say, "Look, we think there's this great white hope out here called digitisation," or whatever, and

somebody would say, "Let's move away from our current set of regulations," I just think would be an extraordinarily rash sort of - - -

**MR SIMSON:** We are not suggesting we could even recommend that, but what we have been canvassing is as an option. I don't think we have been canvassing that would happen in a void, in fact to the contrary. What we have been pressing with you is some assistance perhaps as to how this could be adjudicated under an ACCC public interest - - -

**MR BURTON:** Yes, I'm not meaning to be difficult here. We've sought on many occasions to look for a different way to do this because there are some obvious difficulties with the current regulation. We've researched it, spent a lot of money researching in fact how you might do it, but not come up with anything that's in any way compelling that we could see would assist the commission at this stage.

**PROF SNAPE:** Thank you very much for your submission and also for the discussion, which has been most helpful. Some of the things that we've mentioned you might, in retrospect, and thinking about them, be able to give us a little more help with. If you are, then we'd look forward to a supplementary submission before the next round of hearings or at the next round of hearings. If you can think of those things beforehand, that would be a great help to us in getting to the draft report. So thank you very much for your participation. We'll adjourn now and resume at 2 o'clock when we have HCJB Australia, followed by Matsushita. Thank you.

(Luncheon adjournment)

**PROF SNAPE:** Okay, let's resume our hearings. We welcome HCJB Australia Ltd. We have two representatives from that organisation and we would ask you if you would separately identify yourselves for the transcript, please.

**MR MAINDONALD:** David Maindonald, Australian director of HCJB.

**MR RAMSAY:** Ross Ramsay. I'm the head of a consulting firm which assists HCJB.

**PROF SNAPE:** Fine. Who is to speak to the submission?

**MR RAMSAY:** I will be doing the main speaking, chairman.

**PROF SNAPE:** Thanks very much, Mr Ramsay.

**MR RAMSAY:** David has asked me to speak on their behalf. I'll just preface the remarks by the fact that firstly, we apologise for the late submission. That was partly due to the fact that we believe the draft legislation directing affecting this matter is about to be issued, and we felt that we would be able to make a better submission if we'd seen that draft legislation. However, in consultation with the government over the last few days we discovered that it's not likely to be available for another week or so.

I would like to mention also that we believe that the licence application which has been the reason for our submission - we believe that there is likely to be a positive outcome. However, we thought it best to bring this matter to your attention because this draft legislation has to go before the parliament. We believe it will be suitable for our purpose, but of course, it has to go through both the house and the Senate, and we can't fully predict the outcome. Therefore, we would like to put these matters before you so that hopefully you would reach conclusions along the lines that we submit, and this may be of some influence when the matter is considered before the parliament.

With those introductory remarks I would like to mention that HCJB applied for a licence in August 97; that is approaching two years ago. It applied for a licence to conduct international high-frequency broadcasting with the objective of broadcasting Christian programs into Asia particularly, but also to some other countries. The base for these broadcasts would be a station to be constructed at Kununurra in Western Australia, and HCJB would invest something like \$15 million to do this, and it would in the long term employ about 25 people permanently on that station, including a few Aboriginal people.

Now, just to cover the nature of international high-frequency broadcasting. It is one of the oldest forms of broadcasting. When radio technology was invented right back at the start of this century or a fraction before it, only frequencies down in this part of the spectrum could be used.

**PROF SNAPE:** This is what we used to call short wave is it?

**MR RAMSAY:** Yes, short-wave. Exactly. The common name for high-frequency broadcasting is short wave. You may remember the old short wave radios with many bands on them.

**PROF SNAPE:** Indeed.

**MR RAMSAY:** Now, the short wave - or high frequency sits between medium frequencies and very high frequencies. The medium frequencies are used for the common AM radio which you know and which is used for local transmissions, and you know that sometimes at night you can hear distant stations.

High frequency is in the band three to 30 megahertz and it is characterised by the fact that it reflects from the ionosphere above the earth and therefore can travel very long distances, of the order of thousands of kilometres, in one or two hop, transmissions.

Now, this short wave broadcasting has been going on for at least seven decades, and it has been very common throughout the world. Many nations have short wave broadcasting. It tends to have been dominated by government-owned broadcasters, very often for propaganda purposes, but there also has been substantial non-government high-frequency broadcasting. Prominent amongst those groups have been Christian broadcasting groups such as HCJB World Radio International, which is part of a federation to which HCJB Australia Ltd is affiliated.

Now, the purpose of the broadcasting from HCJB's point of view is very simple and clear: it's to broadcast a Christian message to these nations. Now, the regulatory situation in Australian has been such under the Broadcasting Services Act, that we believe under the current legislation that this is legally possible. Now, the regime is such that that spectrum is not in the designated broadcasting bands and is therefore covered by the Radio Communications Act. There is no prohibition in this act, and there is a facility in the Radio Communications Act to allow this broadcasting to occur.

Now, this point of view has been put to the government and it hasn't been rejected by the regulatory agencies, nor in our discussions with the government. However, for policy reasons the ACA which is the organisation which would have to issue the licence under the Radio Communications Act has not issued the licence upon application, and that is because the policy position of the government has been that short wave broadcasting is reserved to Radio Australia, and the reason for this has not been a publicly stated reason until recently, but the reason in fact is the fact that it is not really controllable in content; that is, non-government organisations could project material overseas which causes problems for the Australian government.

Now, this material might be perhaps propaganda by a foreign government organisation operating from Australia or it could be the type of transmission that

broadcasts racial hatred or whatever, and the government has felt it is not willing to take this risk. Now, we have therefore put to the government the proposition that the risk is controllable, and the risk is controllable through the Broadcasting Services Act; that it can use powers in that act to control content.

Now, we are not sitting here advocating content controls as a matter of policy for broadcasting generally. We have simply put this proposition to the government because we see it as the only way of getting a licence to be subject to content controls, and we believe because of the nature of HCJB - and we know, of course, that HCJB would not broadcast material of this nature, but is willing to accept a regulatory framework which puts this onus on HCJB to do this.

The government, after significant internal debate, has decided that international high-frequency broadcasting will be allowed - and you see the media release attached to our submission which was put out by Ministers Alston and Downer. That says there will be a content licence under the Broadcasting Services Act, and that Radio Communications Act licence to allow the broadcasting will be subject to that content licence under the Broadcasting Services Act. Now, that's the policy position.

The legislation, as I mentioned at the start, is being drafted and we expect it will be introduced into the parliament by the end of this session, and that it will be passed in the Spring session. We hope that the policy points which we have advocated in the submission regarding content will be picked up so that there is a framework under which we can operate.

Now, we also understand from the government that it is very concerned that there be no foreign ownership in this area. Now again, we are not advocating tests of foreign ownership simply because we believe these things are appropriate. For the same reason that we have put forward content rules we have put forward foreign ownership rules simply so that HCJB is enabled to get a licence. HCJB has taken great pains to make sure that it totally meets the provision of the FAT Act, which is the relevant act, to be clearly an Australian organisation. So it meets two tests: One, it's an Australian organisation; Second, it will meet the content controls that the government feels are necessary.

Now, what we are really putting forward for consideration of the commission is that this regulatory situation ought to be rectified at the earliest possible moment. We're a country which believes in free speech. There are umpteen international precedents for non-government high-frequency broadcasting, and we would hope that HCJB is able to use that to broadcast its Christian message in the very near future. They have the land, they have the approvals from the government - well, they're still in process, but it has the strong support of the government of Western Australia to do it from its territory, and we hope that this situation will be resolved very soon.

**PROF SNAPE:** Good, thanks very much, Mr Ramsay. The note that appears and the joint signatures of two ministers refers to any international broadcasting services, I think, with a content licence. Can you broadcast other than on the short wave?

**MR RAMSAY:** Yes.

**PROF SNAPE:** Internationally?

**MR RAMSAY:** Yes. The other sorts of broadcasts are typically satellite broadcasts.

**PROF SNAPE:** Yes.

**MR RAMSAY:** For a country like Australia the only effective way of getting the distances for broadcasting - well, there are only two effective ways: one is by short wave, simply because of the distance to other countries. There is nobody else near us except North Queensland, and the other way is via satellite. This is one point which we haven't really brought out in the submission, but is really a strange policy position at the moment. For the last three or four years there has been non-government satellite broadcasting from Australia to South-East Asia. You can sit in Hong Kong or Southern China and receive, for example, the ABC news or 60 Minutes or whatever. It's a composite program which is broadcast from Australia via the Palapa satellite, the Indonesian satellite, with time leased on that satellite, and it has a considerable footprint in South-East Asia. So this has been continuing in a non-regulated manner for some time. But under the terms of that media release that will be brought into the same sort of regime.

**PROF SNAPE:** So any transmission from Australia internationally broadcast would have to have a content licence?

**MR RAMSAY:** Yes.

**PROF SNAPE:** That's really a fairly strong requirement. We haven't had content licences as such within Australia, have we?

**MR RAMSAY:** I'm not aware of any and that has been simply because Radio Australia has a long tradition of operation, it was presumably the policy, because it was formed so long ago that it wasn't considered to be a problem, and 40 or 50 years ago there was a huge amount of propaganda being broadcast on international short wave radio by government organisations, and in fact there still is, but less so than there was in the cold war. I guess Radio Australia was seen to be pretty innocuous compared with this.

**PROF SNAPE:** Yes, it's the obverse of it that I'm really looking at and thinking about. From time to time it has been suggested that within Australia some content licences may be issued. For example, a new radio licence may be issued for, let us say, Scottish folk music, or what have you, or dance music or something else, in an attempt to define the type of broadcasting that would be on it. That has not occurred and I think in one submission it was suggested recently that the suggestion that might

happen is now fading somewhat, but here we have in fact precisely that being done in an international licence.

**MR RAMSAY:** I come back to the point that the only reason that HCJB is advocating these things is it sees it's the only way that it will actually get the licence.

**PROF SNAPE:** I understand your motivation. I'm just trying to go from the particular to the general.

**MR RAMSAY:** Yes, from the particular to the general it's a tricky issue. There have been lots of arguments in front of the commission, I know, about internal matters within Australia regarding content, how much it should be regulated. One can argue, sitting in the government seat, that relationships with foreign governments and foreign peoples are important and there are guidelines issued by the Asian Broadcasting Union and they take account of matters such as cultural sensitivities, racial hatred and so on.

In fact when you read those guidelines, which are attached, they are fairly broad guidelines. In fact one would say that they're really very broad considering some of the sensitivities in the area regarding sex and religion and so on. They are certainly broad enough from HCJB's point of view. In fact HCJB would be very comfortable operating within those guidelines. Those were actually formed by representatives of broadcasting organisations throughout Asia and many of the representatives there would have been from government-owned corporations. For example, the ABC would have been part of it and similar organisations in other countries.

**MR SIMSON:** Just out of interest, what form will this content take? How prescriptive will it be? Will it be to the point of your program line-up or your run-down?

**MR RAMSAY:** We think it will be fairly broad. Again that's why we had hoped to see the draft legislation before coming to talk here, but we understand that the government will probably go along the lines of the Asian Broadcasting Union guidelines.

**PROF SNAPE:** I think it's a very clear position that you have and a very clear statement of it. It is something different. The 113th submission that we've had is rather different from the other 112, but it is obviously a valid concern. Is there something you wish to add?

**MR RAMSAY:** Yes, there's just one thing David wanted to mention. Perhaps David would like to make that - - -

**PROF SNAPE:** Mr Maindonald may wish to speak?

**MR MAINDONALD:** I just wanted to say that we have been on the air since Christmas Day 1931 and our international broadcasting record is impeccable and negative programming from our point of view does not work. We have no desire to upset the reputation of the country of Australia - in fact like we have done out of the country of Ecuador is we have been known as the Voice of the Andes, HCJB, Quito, Ecuador. You may have even heard it in years gone by. We have carried the reputation of that country, its peoples, to the world and we would do the same from here.

**MR RAMSAY:** David of course is referring to the federal organisation.

**PROF SNAPE:** Yes, of course.

**MR RAMSAY:** We made the point in the submission that the Australian organisation is totally independent. It has its own Australian board of directors, it's responsible for its own funding. What it gets from the federal organisation is technical know-how and there is an overall code of conduct for the whole organisation.

**MR MAINDONALD:** That we would be working to.

**MR RAMSAY:** Yes, but you're looking at an autonomous group in Australia.

**PROF SNAPE:** Thank you very much for that. It is, as I say, a new position and one which is very interesting and we will follow the outcome with interest, the legislation. Thank you very much.

**MR RAMSAY:** Yes, and thank you for listening to us.

**PROF SNAPE:** We will now be switching to Matsushita, or is it the Australian Electrical and Electronic Manufacturers Association? I think that both hats are being worn. Which hat are you wearing?

**MR HENDERSON:** Matsushita Electric Co, manufacturer.

**PROF SNAPE:** So you're wearing that hat?

**MR HENDERSON:** Yes.

**PROF SNAPE:** We welcome Matsushita Electric Co Australia Pty Ltd. We have two representatives from Matsushita and we would invite you to identify yourselves separately and then - I'm not sure which of you will be speaking, Mr Henderson perhaps - if you would then wish to speak to your submission, please.

**MR HENDERSON:** My name is Ross Henderson. I am a director and general manager of the TV factory of Matsushita Electric Co of Australia Pty Ltd.

**MR O'KEEFE:** My name is Tim O'Keefe I am a director of Digital Business Consulting, an independent consultant who has been working with Matsushita.

**PROF SNAPE:** Thank you very much. Mr Henderson.

**MR HENDERSON:** I guess our submission comes from earlier submissions talking about the simulcast period and set-top boxes and we thought it opportune that we may like to look at that from a manufacturers point of view, but if I could firstly look at the Australian colour television market just quickly to give you some idea and background to the way we look at this whole process, the colour television market in Australia is about 1 million colour TV sets per year. It is broken down into a number of screen sizes and sometimes referred to in metric measurements and sometimes in imperial, but I've used the metric 34, 48, 51, 59, 63, 68 and 78 centimetre screen sizes.

Of those screen sizes 28 per cent of the Australian market is represented by the 68 centimetre and above area, so 72 per cent in small screen size. If we just quickly look at high definition TV, the Australian government mandate for high definition TV then would affect that area of large screen size. So when we look at high definition we are really looking at the top end of the market. That basically is the background to the Australian market. If we look at it terms of pricing, in 1998 in the 68 centimetre category the average price paid in that area was around \$1300 and the 78 centimetre, around \$2450 was the average price paid for analog colour television sets.

Of those sets, 99.9 per cent of those sets have an aspect ratio of 4 by 3. Digital broadcasting requires an aspect ratio of 16 by 9. TV sets of that aspect ratio have previously been sold in Australia, continue to be sold in Australia, but at this point in time have been unacceptable in the marketplace as a screen size. Various reasons

could be offered for that. Our experience on introducing such models were that they were perceived by the consumer to be of a smaller screen size than that 4 by 3 aspect ratio. Other problems were that broadcast at the time was in 4 by 3 and not 16 by 9 and therefore, presented on TV, tended to be stretched horizontally.

**PROF SNAPE:** It stretched the people instead of just having a black spot?

**MR HENDERSON:** Yes. You would still fill the screen and you didn't necessarily letterbox the picture. You stretched the screen out horizontally. But just to give you an example, in one Sydney shop the other day there was a rather large screen, 16 by 9, TV set with a sign on it, "Was 799 now 199," and in fact our own company had to almost give away the last 200 TV sets of 16 by 9 that we've had since 1993. So it presents in itself some difficulties.

Looking at that as the background, and now we're converting from analog to digital, and when we look back at the analog system that we have had, as we know, for some 50-odd years, there has not been a lot of changes. It has gone from black and white, or monochrome, to colour; stereo has been added, but of course it takes a lot of bandwidth to transmit little information. Digital of course changes all that, and while we all welcome the move to digital I think there are some things that we need to look closely at. The simulcast period of course is one that is of interest to us.

From a manufacturing point of view, if we did have revolution rather than evolution, we would be very happy to maintain two production facilities manufacturing both analog - and digital equipment is quite expensive, so the faster it happens, the better it would be from our point of view. But I think we have to accept that the TV set in a household today is a very simple product. We have significant calls into our customer care centre when people don't understand why the picture is not a clear picture, in other words the TV set has purity problems. When the customer plugs the TV set in, plugs the antenna in and then rotates it into position, the earth's magnetic field will influence what the consumer is going to see in the end result of the picture, especially in larger screen sized TV sets. As you go into smaller pitch TV sets for higher resolution, like into high definition, so the problem becomes greater.

The point that I am making: a TV set is a very simple product to the consumer. It's one that they like to take out of the box. They like the channel tuned in so that as soon as it's switched on they're receiving the picture; they're getting some response from the TV set even before they put it into the correct position where they're going to view it. That's what causes the purity problem, because it's not in position, it's taken out of the box, it's plugged in and rotated and that causes purity problems on the TV set - and a lot of the initial recalls that we get into our customer care centre are how to fix that problem. So when we look at this area, what we are faced with as a manufacturer and a supplier of consumer electronics equipment is how do we educate the consumer and how do we change the consumer (a) from four by three to sixteen by nine; from a simple product to something that becomes a little bit more complicated.

When we look around the world at the simulcast periods around the world we can see, for example, in the USA where digital has already commenced, they're looking at finishing in 2006 but that's dependent on, of course, the penetration. In the UK it's starting around the end of 1998 looking out towards 2008, again depending on penetration, where they will finish. Japan, around 2003 commencing and so far they're talking about something like 2010.

When we look at some worldwide figures on the take-up of digital terrestrial TV sets or set-top units, in the USA, Europe and Japan the information that we're receiving right now varies from time to time and from different sourcing. One of our major competitors in their projections is planning that still around 70 per cent of TV sets being sold in the year 2005 will still be analog TV sets. So in a total of 60 million, 43 million will be analog, 17 million will be digital.

In Australia we tend to think that we might do it a little bit more quickly but we can't say at this point in time exactly how quickly that will be. Part of the problem with that is that we still don't know what the consumer proposition will be. The regulations have taken out a number of things that could have been the killer applications or the drivers. We don't know whether the Australian consumer wants multichannelling but multichannelling is restricted to the national broadcasters. We don't know whether they're looking for more channels.

Enhanced services - we don't know what that is right now - so again we can't say what the simulcast period is likely to be at this point in time. If we said that the driver was high definition we would have to say that we're going to have a very long simulcast period because high definition - as I explained earlier - 28 per cent in the large screen sized area that on today's pricing we're going from \$2450 for an analog TV set to a 32-inch wide screen in high resolution CRT costing around \$6000. Of course, as time progresses and as quantity increases, those prices come closer together and so more people would add up.

In some of the work that we have done through IEMA, and through the Digital Broadcasting Industry Action Agenda, I think we're saying something like 25 per cent penetration of digital product into the marketplace by around 2005. So at that point in time, the time of review, that's not a very high level. So again there are, as we said, some things that have been taken out from our point of view that could have been the drivers towards the consumer taking up digital.

When we look at what is happening in the UK right now, for example, and if we look at datacasting as being a killer application or the application that drives the consumers along, we're not sure that that is the answer right now. We can't say that it is. We can't say that it is not. I use some information taken on an NOP poll in April 1999: 61 per cent of people surveyed said that picture quality was the most important feature of changing to digital. It then went into more channels and sound quality. They were at the top of the requirements in the UK. That's the UK market. Again, we have not been able to survey - there has been no survey that has been made

available to us. We have not, at this point in time, been able to show the consumer what will be available to try and survey consumers on what the likely demand will be.

I guess, in essence and in summary to that, number 1, we don't know what the consumer proposition is right now and therefore we can't say what the drivers will be to convert them from analog to digital. In the longer term we understand and we know the direction and the reasons and we all agree with the changes to digital. There is no argument about that. It's simply, at this point in time, there is no way that we can develop a consumer proposition that would allow us to make a commercial decision on how long we're going to be running analog or digital equipment.

That, of course, is talking very broadly. If we then break it down to, "What will the product be? Will it be a set-top unit or will it be an integrated digital TV set?" again, that's a very difficult direction to take. If we consider and look at the UK: in the UK the major number of suppliers have tended to take the direction of integrated TV set. When they talk about integrated, that means it's integrated for receipt of digital terrestrial broadcasting. You then take the set-top unit for cable and satellite. Of course, they use the DVB standard so there is a certain amount of interoperability to the product.

In the US it is somewhat different. In the US they have display devices and to receive digital signals you buy a set-top unit. Again, they have less amount of interoperability because they use DVB for satellite and cable but they use ATFC for terrestrial. Again, they have taken the set-top unit. As a manufacturer, to us, the set-top unit is the initial direction to take, firstly because it allows a lower-cost entry into the marketplace or for the consumer into the technology. They could use their current analog TV set as they do with digital satellite which is available today. The same thing would happen with terrestrial. So it is a lower cost entry and - - -

**PROF SNAPE:** But you have got a four by three problem there, have you?

**MR HENDERSON:** Yes. There is potentially a four by three problem. It is one that we're still working with. Again, if there is an increasing amount of letterboxing taking place on TV today anyway, in normal broadcast, where, if you like, the consumer is being conditioned to a 16 by 9 aspect ratio; but if you spend \$6000 on buying a screen and you see half of it turn black, the consumer is not going to be a very happy person. Again, on some information out of the UK, even with DVB there are some problems with set-top boxes and digital terrestrial signal back to analog TV sets and artefacts and whether, in fact, the picture quality will, in fact, be any better than the analog system that we have today in the initial instance.

We have presentations from some suppliers in the UK saying that the digital standard definition picture is as good as the best analog reception. So that is simply saying that it's the same; it's not any better. Again, we need to look at those things. Those things are things that are happening today but it's in the early days. They will progress, there will be improvements. When colour was first introduced, colour looked good on 34-centimetre TV sets but it wasn't until the early 1990s that people

started to move into the larger screen sized TV sets when the technology of larger screen picture tubes improved to a point where a reasonable picture could be reproduced.

So we have had colour since 1974 introduced in 1974, so almost 16 years later we really did have significant improvement in picture quality in large screen sized sets. So at this point in time, from a manufacturing point of view, it's hard for us to say again what we will be providing with the consumers. The four by three problem is just one that if we are transmitting in 16 by 9 exactly what we're going to be able to reproduce on the analog TV set and our engineering people are still currently working on that problem until October-November of this year. I'm not going to know the results of that.

**MR SIMSON:** Excuse me for interrupting. That only relates to people receiving the signal via a set-top box and analog TV, doesn't it? You don't have the four by three problem on a digital TV.

**MR HENDERSON:** Again it depends, at the end of the day, on how the product is finally featured and it doesn't necessarily mean it's healthy; it doesn't necessarily mean that all digital TV sets will be 16 by 9. In the US, for example, they're not. The majority of sets being sold in the US, digital sets, standard definition, are in four by three aspect ratio.

**PROF SNAPE:** And that is because the original matter which is being broadcast was in four by three?

**MR HENDERSON:** I think, yes. I think again it comes back to the reasons what does the consumer want? In the US right now, in fact, the retailers are selling off digital back to analog.

**MR SIMSON:** Just repeat that.

**MR HENDERSON:** In the US right now, retailers are selling off digital back to analog TV sets.

**PROF SNAPE:** Why is that?

**MR HENDERSON:** There are a various number of reasons. Firstly, again, it comes back to 16 by 9 aspect ratio. It still has been available for a long time but in some countries it's still not accepted as a large screen size. So there's a consumer perception that 16 by nine is smaller. There are also other reasons, in terms of broadcasting technical problems, picture quality, a host of reasons why the retailer - education of the retailers, education of the consumers. We also have to look back at what is the make-up of all the platforms in the USA. Of course, terrestrial is not a major part of the USA market or not the same major part of the USA market as it is in Australia. Cable and satellite play a completely different part over there.

So there's a host of problems, as we understand it right now. I have not been to the US to witness it for myself. I will be there in the next month or so to have a look at it but our advice is that retailers, at this point in time - and it's quite well published - in fact, I will give you the example because it used our company. Sony, our major competitor, has released a pure flat analog TV set that uses a pure flat picture tube. One retailer in the San Francisco Bay area - I don't have the article with me but I could make it available to you - displayed a new Sony pure flat analog TV set against a Panasonic 16 by nine digital TV set and he sold every one off, from the digital set to the analog TV set: picture quality, presentation. The retailer just did not understand the technology; could not explain it to the consumers and therefore sold them back to analog product.

**PROF SNAPE:** I think I am feeling a little bit - just as I started to feel that I was understanding something in this, I now find that I don't, but I am comforted to see that you as the manufacturer don't really understand the consumer pattern of demand in this either.

**MR HENDERSON:** I am not trying to create the wrong impression here. We certainly agree we have to change to digital. As the manufacturer that's the direction we want to take. But what we're saying is that this is not a process that's going to happen overnight. At this point in time, within Australia, we cannot say and we would not make commercial decisions on what will be the direction we will take in terms of product profile, very simply because we don't understand the consumer proposition at this point in time. We can't do that because datacasting - the final "What is datacasting?" has still not been announced. What are enhanced services? It has still not been announced. So we can't determine the final product profile at this point in time.

**MR SIMSON:** What about the set-top box? Is that simple enough at this point to be able to find a set-top box that would enable people with analog receivers to receive digital?

**MR HENDERSON:** At this point in time there's no set-top box that I know of that's been fully developed that would work in Australia. So the set-top box that we're planning on has to of course be able to decode high definition which is different to other requirements. I will say at this point in time I don't have a problem with high definition and if I can give you an example of why I don't have an objection to high definition - and will be a way of the future. Not so long ago we used monochrome monitors for PCs then we went to VGA, then we went to SVGA and then we went to XVGA. The reason for doing that was better resolution.

We had black and white TV sets. We went to PAL. We then introduced SBHS video. What that was doing all the time was increasing the line resolution, and we would go to standard definition, we'd go to high definition. At the end of the day it's the same as a PC monitor, it improves the resolution of the picture and gives people more enjoyment. On the one hand I don't have a problem with high definition, but

there is a price to buying high definition at this point in time. At some time in the future of course, high definition with Dolby AC3 sound is home entertainment.

**MR SIMSON:** Could I just go back to my question though which you'd started to answer, which was at this point of time the basic set-top box that would enable a digital signal to be converted for an analog receiver, you then said that this isn't defined at this point. Could you just flesh that out for us in terms of that particular - - -

**MR HENDERSON:** In terms of the box itself, that would not be difficult to meet. We have at this point in time digital satellite set-top boxes which convert a DVB signal to an analog TV set. The front-end modulation would change, and with a few different chip sets to handle the high definition and Dolby AC3, you would then come back to a box that would be able to handle a digital terrestrial signal. It's just that those chip sets at this point in time are not fully developed, but by 2001, we're saying it's not a problem. We'll have working boxes by the end of this year. So the product itself, the set-top unit, is not a difficult - it's essentially the same as digital satellite available today: change the front-end a few chip sets.

**PROF SNAPE:** A basic box that did just that, how much do you think that would cost?

**MR HENDERSON:** We have not finalised costing at this point in time to build that. If I looked at our estimates right now, I would say at retail, and again there is a question of distribution, but at retail we would probably be looking around a thousand dollars.

**PROF SNAPE:** If there was an order for 5 million of them?

**MR HENDERSON:** I'm sure we could do something but just exactly what that was, I wouldn't like to quantify that.

**PROF SNAPE:** The thrust of this question, if you've been following us elsewhere, is that we see that the simulcast period might go on indefinitely; that once we get to 2007 and so on and very few people have got digital sets and there's socio-economic reasons for deferring it because poorer people don't have them, etcetera, and won't be able to afford them and have got equity problems and so on, and so it goes on indefinitely. So we say what would be the cost of being able to provide a box which would make it so that people are no worse off, that they can have the digital signal coming in, and receive it on their analog set through this and they are no worse off than they were before, that is, they're getting a good signal on their analog set.

If we say, "Yes, we might be able to solve that problem as it comes up in 2007 in the capital cities," then why not do it earlier and do it as soon as possible after 2001 on an extensive basis so we can switch off the analog signal much sooner, and with all the availability of spectrum and potential of greater competition and so on that that would entail? Then it comes down to a matter of cost. If it cost \$5 then a lot of

organisations would probably do it for nothing to get their name on it or whatever. If it cost 5000 then you're in trouble.

**MR HENDERSON:** If we look at the basic box today, and what I'm talking about is retail pricing. I'm not talking cost to build the box. There are some figures I've seen through the submissions. So (a) I'm talking retail pricing. If I look at a simple satellite box today at retail, I would say that that would be in the mark of 5 to 6 hundred dollars. I'm talking post-GST at this point in time. It may be a bit early.

**PROF SNAPE:** A 10 per cent variation is no huge range.

**MR HENDERSON:** I've used 10 per cent tax in that calculation, but to retail the box in that area you're looking at around 5 to 6 hundred dollars. So in terms of a terrestrial box, if you could think of it in the same way - the reason I can't go back to costs is that they're not my company's costs and prices that were looked at back here, and I do know the costs of some other boxes, which I can't disclose. But in terms of looking at it in retail value, to look at a digital terrestrial box capable of high definition, and one question I believe that would need to be addressed is if we are in the business of putting boxes into homes to convert to digital, you also need to have that box available and be able to be used with the services as they become available. So building in, and the point that I'm getting at there, is do we have an on-board modem for interactivity?

If we talk about interactive TV, which could again be one of the drivers for a hasty take-up of digital technology, and I think recent programs on two of the commercial stations have shown evidence of an early form of interactivity and what it can do. If you then start building in modems and those sorts of things into set-top boxes, again we're talking at different levels, but a basic box at retail level, if you use the comparison of 5 to 600, then certainly a simple digital terrestrial box would not be that much more. The front-end modulation, about the same cost - - -

**PROF SNAPE:** And in three years' time the price would be half that?

**MR HENDERSON:** We use about 15 per cent per year reduction, on memory, so yes, it would be about half that.

**PROF SNAPE:** So in three years' time we might think of a figure of 250 to 300?

**MR HENDERSON:** Yes, it's quite feasible.

**MR SIMSON:** How simple would it be to have a set-top box, a basic box which starts at 500 bucks, that you can actually put this extra functionality on to as a consumer as you want it, so that you don't have to then go out and buy another set-top box?

**MR HENDERSON:** With a common interface a lot of those things can be added. The model as we're building it right now, as it starts to come together, is one where

(a) we need interoperability, and in the pricing that I've quoted, we haven't looked at interoperability. If we then start to look at interoperability, we're talking 500, 600 dollars at retail level for a single platform box. If you then start talking interoperability, then it depends on the level of interoperability that you want to go to, and there's some very complex questions in what is interoperability. There are groups now working together, including Standards Australia, to try and define what is interoperability, and what level of interoperability should we go to. It is a feature cost that we must look at to determine what is the best level of interoperability.

In terms of looking at the box, again in a single purpose box, and looking towards the future and those things that drive the consumer in those sorts of prices, the cost of building a fully interoperable box or including the front-end modulation into a box would increase the price quite significantly.

**MR SIMSON:** I'm just thinking about this in a sort of social community context. On the one hand there is the incentive to try and get these boxes to people that will release the spectrum. On the other hand you'd have to be careful that early on you didn't push out on a mass basis through any facility, no matter how stunted by the taxpayer or OzEmail or whoever else might be prepared to fund free set-tops - you would have to be careful, would you not, that that was not one that was so basic that it didn't allow the consumer - because you could have a real social/political problem on your hands, couldn't you?

**MR HENDERSON:** Yes. There are boxes in the marketplace now receiving digital signals that are not upgradable to other platforms - that's the point that I was getting to. Again certainly our company's philosophy is (a) we don't want to put boxes out there that turn black when certain signals are transmitted. We want to give people upgradability, we want to future proof their investment. If I look towards the future, our vision of the future is that the TV set will become modular as the audio systems have in the past so that you will have the display device and you'll have the receiving unit. The receiving unit will receive digital and if you want to then upgrade from a display device that gave you analog into a high definition you could move in that direction, you would not have to replace the receiving unit. So that's one of the directions of the way we think of the home entertainment system.

**MR SIMSON:** Sorry, you lost me on that point. I thought that if you wanted high definition you had to buy an HD TV receiver. Are you suggesting that you might be able to - - -

**MR HENDERSON:** Have a separate receiver and display?

**MR SIMSON:** If you wouldn't mind just clarifying what you said a second ago. I didn't quite follow it.

**MR HENDERSON:** Yes. The way we look at it is that it's modular so you start out with the basic receiver, and if I could use the example of a plasma screen today. Plasma screen technology has the receiving unit completely separate from the screen

device so that you may buy a plasma screen today of let's say 480 lines, 800 pixels and tomorrow you go out and buy a 10-80 line and 19-20 pixels. Your receiving unit should be capable of doing that. So that's our vision - to make it upgradable for the consumer, that he doesn't go out - because again, a TV set, simple product, the consumer buys it and expects it to have a life of between eight to 10 years.

It's not like a PC. A TV set is not one of these things that upgrades every second year or is out of date a couple of months after it's purchased, or is one of those devices that has to be upgraded. Again, this is the learning process or the process we have to take the consumer through - is this upgradability. So we would see the early devices would be, again, a scalable and upgradable model. You may start out with a single platform unit and build it as you go along.

**PROF SNAPE:** But that device, the box that you were talking about at five or six hundred would be an upgradable box?

**MR HENDERSON:** Yes, at this point in time that box - yes. It has a common interface in it.

**PROF SNAPE:** You see, we're coming at this at the other end, I think, from what a lot of the industry has been coming at in talking about all the whiz-bang things that could be done and everything else, and that's a great picture. We're trying to think there's a blockage to this conversion, there's a blockage to the release of the analog spectrum, and that blockage is going to occur at the basic level. Let's see if we can find a way or explore with participants whether there is a way in which that blockage can be removed so that people are no worse off - and this is always, in government policy, a problem.

As we can see in the recent debate of the GST: who's going to be worse off? If you can address that problem that no-one in fact is going to be worse off then you can go on to all the other marvellous things, and that's where we're coming at it, to see if there's a way of reducing that blockage. If it can be done in 2007, fine, but if it can be done then, then perhaps it can be done much earlier, in which all that spectrum could be opened up. But as you say, the key thing would be that people aren't left with something that is no use; that they then have the options of going up higher levels if they wish to.

**MR HENDERSON:** Yes, that's certainly an interesting concept, one that we would need to explore, because we've not looked at exactly what we could plug in and how much we could plug into a set-top box. I mean, I would think we could add most things to it. After all, the top end of the scale of set-top boxes is the PC, and that really is a set-top unit at the very top end. So yes, it's an interesting way of looking at it. It's not one that we've looked at necessarily because we've sort of taken the period as it was, and again, because at this point in time we can't build the consumer proposition. We've never looked at having a mass number of boxes out there and making them all upgradable with all the features that may be added later on. We would have to look at that.

**MR SIMSON:** The thing that strikes me in what you've said is that at this stage with barely not even two years to go till the flag goes up you're still working on a consumer proposition.

**MR HENDERSON:** Well, let me say the UK is still working on it and they introduced it six months ago.

**MR SIMSON:** I mean, your comment just highlights the complexity of the issues facing the consumer, doesn't it?

**MR HENDERSON:** Yes.

**MR SIMSON:** More than that, what you've highlighted in your submission is the culture, the television culture, of consumers; the way they've dealt with TVs in terms of the consumer expenditure as a brown good, for example, differently to, as you've explained, the way they look at the purchase of a PC or maybe a motor vehicle or anything else..

**MR HENDERSON:** Yes, very differently, and that's why putting another hat on, as chairman of the Digital Broadcasting Industry Action Agenda, we identified as one of the most important items the education and training of retailers and consumers because the whole process is a culture change that we're going to have to take these people through, and that's why we have used that phrase, "It's an evolution, not a revolution," because we have to take them through that process.

Certainly, if they were presented with a box - and all other things being equal, of course, they were presented with a box and said you're not going to receive an analog signal because the average consumer is not worried about how the signal gets to them. If you give them a box, well then, that is somewhat different; they're not concerned in what format the signal comes, so long as what they're viewing is simple, easy for them to use.

**PROF SNAPE:** I think that a picture you gave us a few minutes ago of the modular television set and the comparison of the stereo system for me, anyway, is useful, and again, it is I think something we haven't had put to us previously.

**MR HENDERSON:** Yes. Having said that, again, one of the difficulties we face in marketing to the consumer is that the consumer has moved away from the modular audio system to the all-in-one. Sorry to throw the confusion on you, but that's the way in which we have to look at the way in which we need to educate the retailers and consumers.

**PROF SNAPE:** But that occurred in technological change, perhaps.

**MR HENDERSON:** Yes.

**PROF SNAPE:** As the different parts of the stereo system are developing at different paces from each other - and they unpacked it, and that seems to me a very good analogy in this case.

**MR HENDERSON:** Yes.

**MR SIMSON:** And only packed it back, only bundled it back, when technology says you can bundle it back.

**PROF SNAPE:** Exactly.

**MR SIMSON:** So you may end up with the opportunity to unpack and then pack it back in a digital TV sense at a later time.

**MR HENDERSON:** Certainly. What I'm introducing there or supporting is the complexity of the whole process. Again, to think of the TV as modular, the home entertainment system will be modular. It's not the home theatre system, it's the home entertainment system and it will be modular. There will be audio systems, PCs, keyboards, set-top units. There will be, if you like, a central processor where consumers in the longer term will open and close their blinds on computers and turn microwaves on and off by computers, and the same device will run their TV set and allow them to receive cable, satellite, terrestrial. That's the wonderful world of digital technology, but it's the complexity in getting to that process and how we do that.

**PROF SNAPE:** That's very helpful. I think, as I indicated a few minutes ago, you got me into a state of confusion and I think I now see a little bit of light. So I thank you for bringing me to the light point, anyway, and if it's necessary for you to go on a path like as in the Magic Flute then so be it.

**MR HENDERSON:** Well, it's been difficult for us, but we feel like we're getting there. It's a long process.

**PROF SNAPE:** Thank you very much for that, and I'm sure if the staff have got questions, and I'm sure there will be questions along this line of technology, we might get back in touch with you to get any guidance.

**MR HENDERSON:** A pleasure.

**PROF SNAPE:** Thank you very much.

**MR HENDERSON:** Thank you.

**PROF SNAPE:** We received a submission from H.S. Lilburn and Associates, and in this submission there are matters which are commercial-in-confidence, and for the first time in this set of hearings we are in fact going to request that people leave because it is a commercial-in-confidence matter that we will be discussing with them. There is tea and coffee next door and a few biscuits are probably there too. I think our

schedule is to resume at 4 o'clock in open session when we have got the Friends of Fairfax. That was the scheduled time we'll aim to get back at that time. So I'm afraid that apart from members of the staff of the commission we have to ask for a clearing. The transcript of this will be confidential.

Continued in Transcript-in-Confidence

**PROF SNAPE:** We now resume in open session and we welcome Friends of Fairfax. There is one friend present, and if you would like to identify yourself for the transcript.

**MR MOORE:** I am Matthew Moore.

**PROF SNAPE:** It's not a structured organisation so you're not president or - - -

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

**PROF SNAPE:** You're a spokesman for Friends of Fairfax.

**MR MOORE:** I'm a spokesman for Friends of Fairfax. That's how I've been asked to appear here.

**PROF SNAPE:** Would you like to speak to the submission?

**MR MOORE:** Yes, I'll give you a few words. I'm 15 years at the Sydney Morning Herald where I've worked in a number of reporting and management jobs. I'm currently the Olympics editor. I'd like to disclose that I do own shares in the company and I've had a long involvement with this loose organisation, as you correctly describe it, called Friends of Fairfax. Friends of Fairfax is a loose coalition of journalists and others in the community who support a pretty simple idea which was actually plagiarised by Tom Burton from the Media Alliance earlier in the day, and that is two is too few. That's with respect to media owners.

We've over the years had support from a lot of pretty well-known people. Two former prime ministers, Gough Whitlam and Malcolm Fraser, have expressed their support for that simple idea of maintaining media diversity, as have other politicians, bureaucrats, academics and many corporate figures. I come here today to put a pretty simple view, and that is that there must be a third commercial force in the media. Others who have appeared before you today have talked about media experiences, but I am here to talk to you a bit about journalism, the harder end of journalism, the journalism that a lot of people at Fairfax care deeply about, and that is the journalism that involves disclosure, often of information that some people in society don't want disclosed.

That sort of journalism requires certain characteristics. It requires, in our view, a critical mass of journalists and a proprietor with a strong commitment to providing the necessary resources that good journalism depends on over a sustained period of time. But, more than that, it requires competition. You need to benchmark yourself against others to compete on a daily basis. I've heard you asking others for advice or perhaps guidance on some sort of framework to improve the operation of the media, and I don't know that I can really give you a new framework to make it work better. What I do know and what I do say though is to tear down the cross-media laws and have a diminution of the media ownership in this country would be a deeply retrograde step.

In our view, media ownership is already so concentrated that journalism is sometimes compromised, and further that commercial interests of the biggest media proprietors constrains them reporting in certain areas, and I'm happy to answer questions about those remarks.

**PROF SNAPE:** Good. Perhaps you might like to elaborate on your last one.

**MR MOORE:** I'm going to talk about my experience as a working journalist, and I'm going to talk about the area that I know about, which is the Olympic Games, an area I've reported full-time for two and a half years which I've covered on and off for 10 years, and I'm not having a deliberate go at other proprietors because I think Fairfax also has faults in the way it reports on affairs that are close to its heart. Let me give you an example about a little Olympic story we reported three weeks ago about a bicycle race. The Olympic road cycling race for more than two years was to have been held in eastern Sydney, and we reported on the front page of the Herald three weeks ago that the board of the Sydney Organising Committee of the Olympic Games had made a provisional decision to move it to western Sydney.

We reported in that story they had done so under pressure from the Rupert Murdoch owned Fox Studios, and we quoted the chief executive of Fox Studios, Kim Williams, in that story saying, "Yes, we told the Olympic organisers it was untenable to isolate our Fox Studios during the Olympic Games just so you could hold Olympic bicycle races there." We carried that story for eight days, and so did the rest of the media. Channel 9, 2UE, the ABC all reported on it but it was eight days before a word appeared in the Murdoch papers. Maybe there was some other reason for it but it is very hard to think other than it was not reported because of the difficulty they have in covering an issue where Fox was directly involved, was a major player.

We had the minister for the Olympics, Mr Knight, confirming the race was to be moved to western Sydney. We had the general manager of sport at SOCOG, Bob Elphinstone, on radio talking the day our story appeared, that, yes, the major reason we were moving the race was because of the problem of Fox and how they didn't want to have the start and finish of the race outside their studios. You have to understand that the Olympic Games will inconvenience a lot of people in Sydney when they are staged - advantage a lot but inconvenience a lot, and the government and the organisers have been quite insistent about saying, "We can't make compensation or compromises for people." So it was in that context that that was, from my point of view, a pretty telling example of some of the difficulties that big media companies can have in reporting on issues when they have some involvement that leads to a conflict of interests, as they had there with Fox.

I could tell you also about Olympic sponsorship. Both Fairfax and News Ltd are sponsors of the Olympic Games. It's the first time newspapers have ever sponsored the Olympic Games and they have been able to - SOCOG has been able to sign them up because there's only two of them. In America or England it would be unthinkable to try and sign up nine different companies. Normally there is only one

company per category. In Sydney, the Olympic Games, with newspapers there's two. As part of that sponsorship News Ltd has bought the rights to certain news stories, and that, in my experience in journalism, is a new development. We've seen particular people who have been newsworthy sell their stories to the media, but we haven't seen, in my experience information normally regarded as news sold as part of a sponsorship deal. Yet you see that in this sponsorship arrangement. The Olympic torch, for example, is a specially designed in-secret structure that 10,000 people will carry around the country, and the design of that torch was given exclusively to News Ltd, which ran it, not surprisingly, on the front pages of its papers around the country as part of their sponsorship deal.

Similarly, they have had exclusive access to information normally regarded as news on Olympic tickets. When the Sydney Organising Committee employed the Australian of the Year, Mark Taylor, to lead their ticketing campaign, that information was given exclusively to News Ltd papers, quite deliberately and quite openly as part of that contract. Within SOCOG they talked about this arrangement as an arrangement involving promotional material, but on any normal news judgment that would be little news stories: the design of the Olympic torch, employment of the Australian of the Year, and news stories, and to see those traded as part of a sponsorship deal was surprising and disturbing. I can go on if you like.

**PROF SNAPE:** Yes. The Friends of Fairfax were very much involved a few years ago with the ownership of Fairfax and commenting on that. What's the position, if there is a position, of Friends of Fairfax with respect to foreign investment now?

**MR MOORE:** The position actually has been the same right throughout the debate since Warwick Fairfax lost control of the company, and that has been not to oppose foreign ownership. There was quite a vigorous internal debate about whether we should have a philosophical position supporting or opposing foreign ownership but the debate came down to one thing only, that three owners is better than two, and if one of them happens to be foreign, then so be it. It's better that you have one foreign owner and two local owners. So when Conrad Black had the controlling interest in Fairfax we welcomed him. We welcomed him when he took that interest and we issued statements saying so at the time and the position hasn't changed. It's been consistent for 10 years or more.

**MR SIMSON:** Mr Moore, I might be missing something here but when you say three owners are better than two, what do you mean by that? We've got three commercial free-to-air networks and we have two major newspaper groups, just looking at the TV, and we have other major radio groups, just looking at TV and radio. So what do you mean by three better than two?

**MR MOORE:** I guess I'm really talking about the big media houses. I made the observation earlier that significant journalism requires big resources and large numbers of people over a sustained period. So I talk about the Murdoch organisation, the Packer organisation and the Fairfax organisation as the big three employers of journalism. Obviously there's hundreds of media organisations.

**MR SIMSON:** We also have the ABC, of course.

**MR MOORE:** I was talking about commercial ones.

**MR SIMSON:** Fair enough, but let's not distinguish for the moment. Let's look at, and this is your point, ownership diversity. You have the ABC. You have three commercial free-to-air networks and you have two newspaper groups. What you are saying to us is that of the three commercial free-to-air networks, one is substantially larger in your mind than the other three from a content generation perspective.

**MR MOORE:** Yes, because of its other interests.

**MR SIMSON:** Because of its magazine interests?

**MR MOORE:** I guess all of its interests, yes, its magazine, its Internet. I don't know how many journalists it employs but it would be far more than the other television networks, for example, if you brought all their products together.

**PROF SNAPE:** If some of the cross-media rules were relaxed it might enable, say, Southern Cross to in fact become a much larger media group than it currently is.

**MR MOORE:** Yes. The great fear we have is that unless you maintain some restriction on one consuming another and some form of cross-media laws, then there is a risk if you just relax the laws and do no more that a company like Fairfax could be swallowed.

**MR SIMSON:** That's correct, and the operative - and may I say that you're to an extent begging the question that we have canvassed - as you've heard us today, we have asked a number of people - that you said if you do nothing more, but take a group such as Southern Cross and Mr Bell for Southern Cross appeared here this week, they want to grow their business. They are in radio, city and some regional and they've got some country, some regional TV, plus Adelaide. They have got the Channel 10 affiliate. They have got an affiliate in Adelaide. You almost seem to be saying to us that because of your concern with Packer, no-one else should have a chance to build a larger media group by amalgamating cross-media interests which could, in turn, ironically, provide some more competition for the Packers and the Murdochs of the world.

**MR MOORE:** My concern is not with Packer. If Packer wants to buy Fairfax, that's fine, provided he sells his other interests, as he would be required to do under the present rules. I just look at the history of media policy in this country and I notice we are getting fewer and fewer players, and that is my concern. We can all hypothesise about what might happen but at the moment there is some certainty, and I would not like to see that certainty undone, and lead to a reduction in the serious journalistic effort that is undertaken in this country.

**MR SIMSON:** But to go back to the response you gave the previous question, if a framework, to use your term, were developed that addressed the specific concerns that you have as the Friends of Fairfax, in the context for example only, of the Trade Practices Act, taking account of issues such as other media interests, other non-media interests that proprietors might have, why stop others such as the Southern Crosses of the world, just for example, having the opportunity to grow their business?

**MR MOORE:** I don't oppose the idea of people opposing their business, as I've said. I don't know how many times I can say it. I come really with only that one view, don't destroy the protection we currently have and enjoy if there's a - the level of journalistic effort we now have. I don't know that my theorising on what could happen with the Trade Practices Act and other bits of legislation to try and protect journalism, is really going to add to this debate. We have had a pretty simple view because ultimately politicians will make a decision on this and their record is not one that has really contributed enormously to increasing the level of journalism.

**PROF SNAPE:** I'm not going to be drawn into commenting on politicians of course but, simply to say, I think that the process that we have got within this particular inquiry is a very transparent one and we're trying of course to get aired as transparently as possible the arguments.

**MR MOORE:** Sure.

**PROF SNAPE:** Whatever the politicians do at the end of the day is their business in the context of a democracy and what we see as part of our process is, in a sense, part of that democratic process of trying to expose the arguments as fully as possible. I think that coming to the key sentence, perhaps, or one of your key sentences, and you say, "In the absence of any other mechanism to maintain or increase the number of media owners," and that I think is a retention of the existing. We then come to those other mechanisms and I suppose it is possible, in light of the discussion we've been just having, to think of other mechanisms which in fact are not as rigid, that is that they guard against the sort of thing that you are concerned with, and yet they don't lock other developments of the nature that we've just been talking about. So in being required under our terms of reference to consider options we are in fact required to be going along those paths. Are you able to give us any help in thinking along those lines?

**MR MOORE:** I could go back to my committee but at the moment I was asked to come here and to put to you the view I had, particularly because the chief executive had been the only voice really speaking for Fairfax and since we've been around I think we've had a dozen chief executives, and they come and go pretty quickly out there at Fairfax, and he may not be around - who knows for how long. But I was asked to come here and to provide a view to you reflecting that of the journalistic staff at Fairfax and on that particular issue that contrasted with the view you had had from Mr Hilmer.

**MR SIMSON:** Just on that, Mr Moore, I think you were here this morning when

Mr Hilmer spoke?

**MR MOORE:** I heard half of what he said, I think, yes.

**MR SIMSON:** Interestingly, or perhaps somewhat ironically, the dialogue we have been having with you this afternoon, questions we've been throwing up to you this afternoon with regards to paraphrase other mechanisms, is identical to the questioning we had with Mr Hilmer who is coming at this from another direction to you, in terms of what other mechanisms could sit there as well. So we're asking the same questions of people coming at the cross-media ownership rules from absolute opposite directions.

**MR MOORE:** Yes.

**PROF SNAPE:** If you are consulting on an ongoing basis with your friends then it could be helpful if we were to get some positive input rather than just, you know, the sentence that I read out before.

**MR MOORE:** Sure.

**MR SIMSON:** Mr Moore, are the Friends of Fairfax, or what's the position of the Friends of Fairfax as to the emergence of alliances, mainly in new media, of existing media players. I'm thinking here of pay TV and in some of the on-line areas as well; these areas that are not subject to cross-media and obviously at this point are not in breach of the Trade Practices Act, where these people with whom you expressed some concern are rapidly building businesses - and some say it's actually to an extent a reflection or a reaction to the constraints that they're facing in their traditional business. They are then going off and starting to circle the wagon, so to speak.

**MR MOORE:** Yes, it's a matter of history that that's the way regulation has been drawn up in this country, to allow that to occur. I return really to my central theme, and if that adds to the real journalistic effort, then that's fine, but you're right, they are sort of circling the wagon and we've had this debate over and over again for 10 years really, about cross-media laws and certain people, how they restrict the market and what should be allowed to occur - restrict growth. It's not our view.

**MR SIMSON:** Could we also, as we did with the EEA, seek your comment on Prof Flint's view of what has been evolving in the relationship between journalists and the relevant influence perspective, where he said - and I will just read from the transcript again:

There has been a significant evolution within the media from proprietors and from editors to individual journalists, a devolution of authority to the journalists. There has been a blurring of news and opinion, opinion which was once to preserve the editor, has now gone down to the journalists. So once where there was a significant power on owners with editors reporting to owners; that has been diffused and that has been a cultural change.

Could you comment on that for us, please?

**MR MOORE:** I think you can make a point that perhaps there's more comment encouraged from journalists rather than just editors in papers, but broadly I would disagree with it. It varies obviously from company to company but I think, if you have a look at the examples I've talked to you about at News Ltd, my understanding is journalists wrote stories on the plans to relocate the bicycle race, but the stories don't appear. There is a process of self-censorship goes on and there is a clear understanding among journalists about what are sensitive articles and what are not sensitive articles. In some organisations more articles are more sensitive more often than in others, and that is the reality that journalists deal with every day. I think a lot of the guts of what Flint says there is wrong and manifestly so.

**PROF SNAPE:** Is this because of the atmospherics or because of specific instructions?

**MR MOORE:** It's reality. I mean you sit around in a news conference at News Ltd, for example, and there's a story on the front page of the Herald about Fox, and no-one is going to get in there and say, "Hey, let's follow up this story." That's not what happens. It's just one of those things that will get brushed over. When Fairfax - to return to my Olympic area - Fairfax had responsibility for a thing called Olympic Volunteers. We were responsible for the program to attract 50,000 volunteers from the community to donate time to work on the Olympic Games.

In the Daily Telegraph in Sydney, that News Ltd paper, the call for volunteers was not reported because I guess a view was taken it's not an issue for us, we are about tickets, and even though there's probably many of their 400,000 newspaper buyers who might be interested in applying as a volunteer that issue was not covered. I don't know why. I don't know whether someone says, "Do not report this," or whether a news editor just says, "No." I mean why was it that none of the Murdoch papers reported the break-up of Kate Fischer and Jamie Packer when every paper in the country did? Why did it happen? Did they all sit around and make the same decision? I don't know.

**MR SIMSON:** Mr Moore, could you tell us what you think editorial independence means, as a working journalist?

**MR MOORE:** I'm not up on my definitions, but I guess that it means the freedom and the resources to cover some of the important issues of state and of concern to society and to report them without undue influence from those who are involved; to report them fairly and without influence from particularly the proprietor.

**MR SIMSON:** In your previous examples, some of the Olympic ones and so on, they are areas where possibly - and I understand that you said you couldn't be definite about it - but that's possibly where there could have been influence from management acting on direction from the proprietor?

**MR MOORE:** Yes, stated or unstated. Similarly in Fairfax. I think in the submission I mentioned - I think I said last June; it may in fact have been the end of 1997 - that both the Herald and The Age had a story about the then editor-in-chief of the Sydney Morning Herald, John Alexander, flying to the Pacific for a meeting on a yacht owned by Kerry Packer. This meeting was at a time when once again the cross-media laws were being debated in the public arena. At the Herald that was a very sensitive story. The editor-in-chief of the paper did not want the Herald to carry a report about how he had flown into the Pacific for a sojourn on a boat owned by Kerry Packer.

Similarly at The Age it was regarded as a very sensitive story. The then chief executive, Bob Muscat, was involved, I know, in talking to editors and editors-in-chief about that story and other senior people in the company. As it turned out a story was not published in The Age but one was published in the Sydney Morning Herald. There were real repercussions for the journalist involved in working on stories like that because they really hurt people and they damage their careers, and it's a hard thing to do. It's a bit easier in Fairfax because we don't have the extensive commercial interests that some other companies have, but you don't need to be a rocket scientist if you work at the Bulletin to say, "Are we going to do a big story on Kerry Packer's tax problems that he has been having?" I mean you just don't turn to the Bulletin for those sort of articles. It's not a great career move.

**PROF SNAPE:** Where does this view, you point out in page 2, that on some stories the lack of diversity makes little difference - - -

**MR MOORE:** My point is - - -

**PROF SNAPE:** Where has that come from?

**MR MOORE:** There was a lot of debate here this morning about stories and whether they're biased or truthful or honest or accurate accounts. A lot of media diversity and the reasons they're having it, comes down to what actually gets published. It's the stories that aren't in a newspaper that are often important rather than the way stories that are in newspapers are covered. It's what doesn't get covered. In one newspaper - towns it's very easy - you can see it, whenever there's a newspaper strike the reader wouldn't tell the difference. They would pick up a newspaper, it's full of copy, there's nice pictures, there's words. There's information pouring in from a thousand sources, and many of it is harmless enough information. It's press releases; it's reasonably straightforward material; it's accounts of car accidents; of police arresting people; of straightforward court stories. It's easy to fill up your papers with stuff like that.

I don't know whether you get a better account of a court story in a town where there's two people - two newspapers or three newspapers than one. If it's a simple account of a guy who has been convicted for break enter or whatever; it's a little story. You see where you've got competition - you can't put all your resources into

covering those easy court stories or police round stories because you will be fearful your opponent will knock you off on a more serious story.

**MR SIMSON:** We discussed with the MEAA earlier whether they might take a different view if there was an increase in the number of commercial free-to-air operators in Australia, let's say to four. In other words, there was another player in there. Would that cause you to moderate your position on the cross-media ownership rules?

**MR MOORE:** If there was a fourth network?

**MR SIMSON:** Yes.

**MR MOORE:** No.

**MR SIMSON:** Why not?

**MR MOORE:** Because real journalistic effort is housed, as I've said earlier, in three or four places in this country. You can have another television network, but I'm interested in the journalism, not just another bit of broadcasting. TV stations typically have about eight journalists working for them and a company like Fairfax has closer to 800. I just don't know that that's going to really change the equation very much as far as the community, the readers, getting served on some of the difficult stories.

**MR SIMSON:** That was in fact a discussion we had earlier with one of the participants. What you are suggesting to us is the serious end of news and information. Newspapers are the dominant player in providing a service amongst the media.

**MR MOORE:** I think that's still the case, yes.

**MR SIMSON:** If that's the case and the news and information interests of Packer, for example, are not as important as the news and information interests of Fairfax, because you said that a broadcast network might have - your figure, not mine - eight or 10 or whatever journalists. Is this concern from the Friends of Fairfax really about Kerry Packer the person, the individual?

**MR MOORE:** No, it's not. As I've said, and we've said often enough, if Kerry Packer wants to buy us, that is fine. That is not the issue. It is about the number of independent, separate, competitive players.

**MR SIMSON:** Fair enough. He would in that situation divest his broadcast interests - he may have to do something with his magazines, depending on what ACCC said - but if he divested his broadcast interests, even though they are not, in your mind, nearly as significant as the journalistic interests of a newspaper group.

**MR MOORE:** He's entitled to do that at law now and we're happy to live with the present law. That's our position. I don't want to venture into what would be an ideal world and go back 20 years and redo the whole legislative framework, but I think you'd probably end up with a little bit more competition than we've got now, because I think it's dangerously little for a society like ours.

**MR SIMSON:** Could I take you to page 3 of your submission, please - and I'd like to quote it back to you just for some elaboration - where you are arguing that what the big players are doing - and this is on the Internet - are reworking, republishing their journalism for publication in different forms. As you say in the first sentence of that paragraph:

Friends of Fairfax reject the argument that the Internet and other new publishing avenues increased the diversity of news and opinion.

**MR MOORE:** I'm talking about real news. We're talking about journalism there. Obviously it's another outlet but it doesn't add much to the journalistic effort because, what happens at Fairfax - I think as Tom Burton was saying here earlier today - is we write the stories. In fact, in some ways it almost diminishes it because, with tight constraints on budgets in organisations now, you take some of the resources that would have gone into the journalistic effort and you employ them in reworking this material so you can place it on an Internet site, but they don't go out there and work on stories.

**MR SIMSON:** You don't consider that serious journalism then?

**MR MOORE:** Obviously the Internet - any outlet can involve serious journalism but the experience at the moment is not that there's substantial new resources going into those areas. It's the resources of already providing material for the newspapers and then it's just being moved over.

**PROF SNAPE:** A lot of the Broadcasting Act and the different regulations between various forms of broadcasting are based upon degree of influence, in that different types of broadcasting services are able to exert in shaping community views in Australia. You've been talking about the serious journalism end of things. I understand that there are also people that speak about the role of the media in shaping the way we think about ourselves - the nature of society, of how different groups are portrayed, etcetera - and they generally are arguing - I think if I can summarise it correctly - that free-to-air television is far and away the most influential form of that type of influence. Is that how you would see it?

**MR MOORE:** I don't know that I've thought a whole lot about it, to be honest, but obviously it's far and away the most consumed media. Newspapers tend to be often the first place of publication for a lot of ideas, which are often picked up by other outlets and reworked and repackaged and improved and refined and re-presented. I don't know if that's easy just to separate the two.

**PROF SNAPE:** Let's shift it to newspapers and shift it to London, UK, and compare the influence in shaping community views in the UK and compare the Times with the front page of the Sun and the screaming headline that one might get on the front page of the Sun. The example I've used a couple of times earlier is clobber-slobber. Which would you judge as being more influential in shaping community views - the Times or the front page of the Sun?

**MR MOORE:** I don't know that I can give you an honest answer to that. I mean, each influences views in its own market, I guess. Sometimes a clever headline will transverse and cross over a market and will cross over the normal barriers of the lines that divide different markets. I think you could easily argue that the Times is far more influential than the Sun on some issues. I think you could argue the Sun is far more influential than the Times on others. It will depend on the issue; it will depend on the way it's covered, and it will depend on a host of other factors.

**PROF SNAPE:** The example I gave is a serious issue. It wasn't what do we think of a particular footballer. It is an attitude to - - -

**MR MOORE:** If we decide the Sun or the Times is more important, then what flows from that? I think the important thing is, in London, there is a big variety of views.

**PROF SNAPE:** So what flows in part is if we are trying to go down the path and find alternative means to achieve the same end or to be giving options, which is what we are required to do, it does matter because one is trying then to find some way of trying to measure influence. So you may in fact have been more relaxed about the merger between the Times and the Daily Telegraph than between the Sun and, I don't know, Daily Mail?

**MR MOORE:** I don't envy you trying to make a definitive statement about which one is more influential.

**PROF SNAPE:** We are trying to get some help, not sympathy. Perhaps I can leave it with you.

**MR MOORE:** Yes, we will put it in our extra submission.

**PROF SNAPE:** Thank you. I think that's probably about the right note to finish on and to thank you very much for your submission. We appreciate the position that you're in in representing an organisation that has a loose structure like that and to speaking for it.

**MR MOORE:** It's got its advantages.

**PROF SNAPE:** Yes, perhaps if you can contemplate a little bit more on some of the matters that we are required to address and, if you can give assistance on it, it would

be appreciated in a supplementary submission perhaps, or whatever. We thank you very much for that, for the submission and for appearing before us.

I now turn to the usual thing that I do at the end of the day and say that I invite any persons present to make oral presentation should they wish to do so. You can't say that you weren't asked - every day. So on that note we now close this round of hearings and thank all participants for their participation. At this stage the commission goes into its shell somewhat and the timing for the draft report is late September or early October. After a few weeks' interval we will then have a second round of hearings for people to tell us how we've got it all wrong. So thank you very much and we close the set of hearings.

AT 4.40 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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