



**TRANSCRIPT
OF PROCEEDINGS**

SPARK AND CANNON

Telephone:

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

PRODUCTIVITY COMMISSION

DRAFT REPORT INTO THE BROADCASTING SERVICES ACT 1992

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

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON TUESDAY, 14 DECEMBER 1999, AT 1.09 PM

Continued from 13/12/99

PROF SNAPE: We resume our hearings. Welcome to this, the second day of the hearings in Melbourne on the draft report of the Productivity Commission on broadcasting. Copies of the draft report have been available since 22 October and if anyone present has not received a copy and would like one, they should contact members of the commission's staff who are present.

The commission wishes to thank those people and organisations who have responded to the draft report, either in further submissions or in arranging to appear at the hearings. The submissions are available here today, outside, for viewing, and are on the Web site of the commission. These submissions and comments will help us to improve the report, which will be submitted to the Treasurer early in March. The timing of the release of the final report is under the control of the government.

As in the case of the earlier hearings, transcripts of these hearings will be made and should be available on the commission's Web site within three days of the relevant hearing. Copies will be sent to the relevant participants. At the end of the scheduled hearings for today I shall invite any persons present to make an oral presentation should they wish to do so. Now I turn to our first participant for the day, who is Mr John Schwartz, and I would ask him to identify himself and his position for the transcript and then to speak to his submission.

MR SCHWARTZ: My name is John Schwartz. I'm a lecturer in media studies at Swinburne University. I was invited to make this submission after a radio broadcast I made back on 19 November when I was talking about the draft proposal. I understand that Dr Gentle and yourself listened to that broadcast and a couple of days later I was asked to make a submission, a written submission, and then speak to it here today. That's basically the background to my being here.

PROF SNAPE: Good. Thank you very much for this submission, which we have read. Now we would invite you to speak to it.

MR SCHWARTZ: Well, the main thing I was arguing in this submission, certainly on my spot on 3LO, was that there are aspects of the draft report that I was rather critical of in terms of the recommendations that you made, specifically the recommendations 9.3 where you recommended that the Australian content regulations for commercial TV be simplified and better targeted in their social and cultural objectives by removing the overall quota content of 55 per cent. You went on to talk about the fact that in subscription television the Australian programming content should also be scrapped.

Basically I suppose I have recommended or urged a rethink on this one, basically arguing that there should be an increase, if anything, of the Australian content, certainly for drama, documentaries and children's programming; that the 55 per cent local content requirement should be retained and that I still think that subscription or pay television requirements should be there, if not even doubled, because I think that 10 per cent is very low anyway, even though they haven't been able to measure up to that. But in a nutshell they were my basic observations.

PROF SNAPE: Good. Would you like to elaborate a little on your recent piece?

MR SCHWARTZ: Okay, so go through all the arguments?

PROF SNAPE: Just summarise them.

MR SCHWARTZ: Well, I think it's important to note that when you talk about in your draft report that the 55 per cent content has basically been met by having local news, sport, game shows and infotainment programs, you make the point that these are relatively cheap programs to make and they just basically have been created to fill the 55 per cent quota. I think that's largely true. However, I think it's a different argument to then suggest that this therefore can't have any stated cultural or social objectives or whatever social, and cultural objectives are there are minimal and maybe don't actually even qualify for being that. I think that's a difficult assumption to actually make. It requires a whole host of value judgments and perhaps a whole host of understandings about how people make use of television.

PROF SNAPE: I think that just following your segment - or maybe it was still part of it - there was some discussion with the host, with Mr Branigan on that show, in which reference was made to quota fillers.

MR SCHWARTZ: That's right.

PROF SNAPE: The inference of that was in fact that if it was not explicit, it was implicit very strongly that they were of little use for the social and cultural objectives and that they were simply made to fill the quota.

MR SCHWARTZ: I think that might be the point of view of FACTS and Mr Branigan, who might call them fillers. Certainly some have argued that they are fairly worthless in terms of cultural objectives. But I'm arguing that I think it's a very difficult line to draw, to say that, "This program is worth more, this program is worth less." I mean, it's the old question of who decides and on what basis do they decide what's culturally and socially important for audiences.

I think it goes back, as I've argued here, to the old days of the Australian Broadcasting Control Board back in 1973, when they listed a number of Australian programs and they talked about the fact that they were going to give certain points, and they gave points for particular kinds of programs. It was a system that I think was very difficult to implement and to actually work, because the value judgments there were simply saying that certain programs by definition were going to be more socially and culturally important than others.

As I've argued in the submission, I think that's a very difficult thing to say: that different audiences at different times of the day, for different reasons, might find a certain type of Australian program that you or I or anyone sitting in this room mightn't find particularly important or interesting, socially or culturally, might in fact

still be seen by others in that way, certainly if there was Australian content. I guess I'm arguing that to have the cheaper Australian shows on, as part of the quota content for Australian content, would still be preferable to having the equivalent kinds of American shows, let's say, on air. I think that it's clear in the way in which FACTS argue that for them it's always much cheaper to get American content, no matter what level - whether we're talking about drama or documentaries or children's or infotainment-type programs, it's always going to be cheaper.

PROF SNAPE: Well, we have two points there, don't we. We have what they want - of course is profit - and so what they're seeking is the maximum difference between the cost and the revenue, not just cheapness as such. I would doubt whether it can be just the cheapest possible show. One will be seeking in fact to get the maximum difference between the cost and the advertising revenue, and the advertising revenue is related strongly to the size and nature of the audience, both the nature as well as the size of the audience. So therefore one just can't concentrate on the cost side.

MR SCHWARTZ: No, and I think that it's very important then to talk about notions of cultural identity and the whole issue about the importance of Australian content on Australian television for those sorts of notions of identity.

PROF SNAPE: We attempted in our draft report in fact to highlight what the objectives were and to target the instruments - that is the subquotas and target the instruments and the means - to those objectives, the cultural and the social objectives. We quite explicitly didn't treat this industry like any other industry, which I'm afraid you made reference to at the end of your broadcast, that we did in your view treat it like any other industry. Since we had spent a considerable part of the report saying it wasn't like any other industry, I at least didn't think that was a very fair representation of the draft report.

MR SCHWARTZ: Well, in defence of what I was saying, I think that the point - that when you get rid of a quota content and you have the things for documentaries, for children's television and for drama and you say, "Well look, we're going to stick with what we've got here and keep the regular number of hours" - clearly I think that is a plus. I think that's a good point.

PROF SNAPE: That was precisely why we weren't treating it like any other industry. As we also did on the cross-media rules, we weren't treating it like any other industry.

MR SCHWARTZ: I'm clearly saying that there's an aspect of that which I agree with. However, I still think that any opportunity - as you've said in your own report - any opportunity of relaxing the overall 55 per cent content will be taken up by the commercial networks primarily to increase their American or overseas kind of content. That I think is a real concern, because clearly in their submissions to you - and they have made this rather public - they're not keen, and they were never particularly keen, to continue an overall 55 per cent content. This was something that the Australian Broadcasting Tribunal and Authority I think initially sort of - - -

PROF SNAPE: Well, I don't think in the submissions to us in fact they have said that. They have in fact commented on the burdensome nature, as they saw it, of the children's requirements. I don't think that they have referred in their submissions to the burdensome nature of the overall requirement as such, which of course they meet.

MR SCHWARTZ: Yes, they certainly do meet that, as you say, because a lot of the things that they do are cheaper to produce etcetera. However, I think the overall concern here is that I think that you do need some regulations, some really firm guidelines, about these things. In my recommendations I have actually said that if you keep the 55 per cent overall content but actually within that 55 per cent perhaps even double the amount that they produced in terms of dramas, documentaries and children's programs, it still wouldn't be a hugely onerous task in terms of what I think their overall capacity to make profits indicate.

What my report is actually saying - that when you look at the overall amount of hours that are devoted to drama, it's really very, very small in overall terms. I think it's 175 hours. I have measured that that's around 2 per cent of the total amount of time that television is aired over a year. So we're actually saying that if they get 175 hours, that becomes 2 per cent of the overall amount of television that is screened. So to say that that's a hugely onerous task when, as I say later on, they're making incredible profits - or very large or significant profits. I take on page 6 of my recommendation a thing from 1999 figures that show that the 10, 9 and 7 networks made in this order - 194, 177 and 84 million dollars' profit - increases by 16 to 28 per cent in relative terms. They have done actually very well.

For them to continue to argue that they can't afford to have Australian content I think goes beyond the idea of what their social obligations are. I think they have got an obligation when they hold a licence and I think that part of that obligation is to have Australian content. While we all acknowledge Australian content is far more expensive than overseas content, I think that 175 hours a year for Australian drama, or 32 hours a year for children's drama or 15 hours a year for Australian documentaries, is still a very, very low figure.

I mean, maybe because I have plucked the figure out of the air or whatever - but I think even doubling those figures, which for them would be giving them heart attacks - but I mean, just to double those figures within the 55 per cent and therefore maybe determine the amount of infotainment or cheaper sort of programs that you refer to, still within the 55 per cent ruling, would be I think a way to ensure - - -

PROF SNAPE: If I were FACTS - and I'm not, as should be very clear from the transcripts of previous hearings, if not the report - I would then say that, "If you're going to put that increased burden upon us, upon these channels, networks, in the context of an environment that's going to be more competitive in the future, that I would want - and you're going to put that social obligation upon us to do that, in other words you're requiring something for it - then I'll want some more quids. I want something back for it."

MR SCHWARTZ: I think the government have said that they're not going to allow a fourth commercial licence until - I think it was 2007 or thereabouts. So that gives them at least another eight years or thereabouts - or seven years - to meet those obligations. Again, as I say, the ideas that they can produce these massive levels of profit - I mean, I make the point that a free-to-air television licence is a licence to print money. That I think has been proven over a number of years.

PROF SNAPE: I don't think Channel 10 would have agreed with you in 1990.

MR SCHWARTZ: Certainly there was a major problem after the 1987 takeovers, with former owners of those things, and that had a lot more to do I think with the way those takeovers occurred after 1987, rather than the day-to-day running of those stations and the profits that were being made. They were largely deficits that were created by too much borrowing from Mr Skase and Mr Bond and Mr Lowy. I think in those, let's say, less than heady days in the late 80s, the reasons why the stations didn't do so well have less to do, as I say, with the overall performance of the stations and had more to do with the huge amounts of debt that they had incurred in borrowing money.

MR SIMSON: Could I just get you to comment on some observations that are contained in an article in yesterday's Financial Review, by Mark Latham. I'll quote what he says:

Content quotas are based on the flawed assumption of a static and homogeneous Australian culture. In practice, all cultures need to grow and evolve over time. They are alive in the choices and interests of their people. To limit choice is to limit the vitality of Australian culture. In a world of converged information technology, content quotas are a dead letter. A new policy approach is needed.

Could you comment on that?

MR SCHWARTZ: Well, I clearly don't agree at all with Mr Latham on that particular point. I think if we've had any homogeneity within the way Australian television has operated since the 50s, we have got a very Americanised - or certainly a domination of American content. I think in a sense, by arguing for more local content, I'm actually arguing for some diversity of the overall things, especially on prime time television. I agree that it's a very different community, a very diverse and multicultural community that needs a lot more content coming from different sources. I think the problem that we have had is the fact that the commercial networks, especially at prime time, have shown such a huge amount of American content over the last four decades that it has been difficult to differentiate very often between them, except maybe Channel 10 now have more than the others.

MR SIMSON: So what's the point of having the quotas then, if they're not working?

MR SCHWARTZ: Well, I think the quotas need to be there for a whole host of reasons. I think we need to keep putting pressure on the networks to not continue to always fulfil these time-slots with American programs and perhaps even to say that more of them should be put on at prime time to create Australian content. I think the argument that Mr Latham probably doesn't - that we probably disagree on, is that Australian programs have in the past proved to be very popular even though there's not that many of them in terms of the prime time slots, and while they're very popular they add, I think, a significant contribution to our sense of identity, to our own sense of culture.

PROF SNAPE: But I think the punch was in the last sentence that was read out there. I don't think you focused on that last sentence. Could you read that last sentence again - the last two sentences perhaps.

MR SIMSON:

In a world of converged information technology, content quotas are a dead letter. A new policy approach is needed.

And he said earlier in the context of this sentence that:

The new technologies are wiping out the effectiveness of content quotas and other forms of cultural protectionism. It is difficult to see how the Internet can be regulated, let alone subject to an Australian content quota.

MR SCHWARTZ: I didn't address that, you're right, and I will now. I think it's important for me to say that I think a lot of the things about the new technologies and the Internet have been grossly oversimplified and argued to a whole number of reasons that then say, "Look, it doesn't matter what you do on free-to-air commercial television. It doesn't matter what you do on the mainstream traditional old medias." I'm of a view, in terms of access, in terms of the way we talk about mass media as distinct from maybe the narrowcasting and niche marketing things, yes, it's clear that there are certain Australians that do get information from the new technologies.

But while we sit in this sort of period of time - and I'm even suggesting maybe for the next decade and while we're talking about legislation that pertains to that next period - what we are actually dealing with now I think is still a thing where most people get most of their information from, the traditional media forms, and to talk about the fact that we now get so much extra from the new media, even with subscription television, I think is just overstating the argument.

MR SIMSON: Could I take you to page 8 of your submission where you say at the top there that - where you argue that commercial licences, television licences, operate in what you call an exceedingly lucrative market and they would hold no social or cultural responsibilities or obligations if these quotas were scrapped. Let me turn it around the other way. If, for example, our draft recommendation were accepted to

allow new entrants into free-to-air, should the free-to-air stations then still continue to be under an obligation to show local content?

MR SCHWARTZ: I think so, yes.

MR SIMSON: But why is that? If they were paying a fair price for the public access that they enjoy, that they were in a competitive environment, in a fully competitive marketplace, why should they still then be subject to quotas?

MR SCHWARTZ: Because I think that's part of the social obligation of the industry. I think that's part and parcel of what they're in there for. It's not just to say, "Look, have a licence and make as much money as you can in a competitive environment." This is where Prof Snape was saying, "It's not just another industry," and that's why I absolutely agree. If you're going to give a fourth licence I think the exact same rules should apply. It will be tougher if there's a fourth licence out there, I agree. It will be tougher for the four, let's say, players to maybe - and when and if that does happen maybe we should review the overall amounts, the 55 per cent, that's 175 hours, whatever we're talking about. I think that should be considered, whatever.

MR SIMSON: Just before you go on, because that's an interesting point you've just made, that if there was an additional player, for example - to use your example, not mine - of a fourth free-to-air, that may then warrant a reconsideration of the 55 per cent. Would that be on the argument that there's another fourth player that by definition would be increasing the amount of drama and other content by, I suppose, a third or whatever it is.

MR SCHWARTZ: I think my understanding is that the three existing players have always argued to keep it at three because it's only at that level that they can actually make the profits to kind of then produce it. If we play around with the edges of 55 per cent or still talk about 175 hours, 32 hours or 15 hours for the various categories we've got here, I think that's okay to play at those edges but I still think there needs to be a firm and fair regulatory authority that can enforce the situation with four players, let's say, in the future, that they still have this obligation, they still have this thing within this industry to produce and to encourage employment and opportunities for the Australian film and television industry to create local content because we need to talk about this level on both sides of it. I'd be talking so much about audiences and people watching the stuff and listening to the stuff but also part of the argument I think can say that with the success of Australian content in exporting and creating obviously revenue for the companies, it's been a well documented sort of phenomenon. I think that needs to also be encouraged.

I think your own report suggests that had it not been for previous regulators, such as the Australian Broadcasting Control Board, Australian Broadcasting Tribunal, that stuff may not have been made and therefore exported, and therefore jobs were created and therefore balance of payments deficits reduced etcetera.

PROF SNAPE: No, we don't go at all onto balance of payments. We deliberately

don't because the position of the commission generally is that the export of any particular item is not to be encouraged for balance of payments reasons or whatever. I mean, that is not ideological. That's straight economic analysis. So we haven't gone into employment creation because we don't think employment as such is - if you apply that then you try to encourage every industry in the country. So employment creation as such is not an objective which we have gone into; balance of payments is certainly not one that we have gone into. We've tried to identify the social and cultural aspects of this industry to encourage the social and cultural aspects while conscious, as we've been told in many submissions, that in order to generate those social and cultural, there may be a critical mass required for that industry.

We're cognisant of that and we perhaps could have paid more attention to that aspect of it. So that's the theme - the lines we've been going. We have not based any argument upon the employment or the balance of payments considerations because both of those you could apply to any industry in the economy and you can't assist every industry in the economy.

MR SCHWARTZ: No, I agree, you can't assist every industry in the economy but in relation to this inquiry that you're having on broadcasting, it's difficult then to say, "Look, we're not going to look at those criteria about creating employment and jobs and export earnings."

PROF SNAPE: No, it's not difficult to do that because if we did that we'd do it for every industry and that every industry that we addressed we'd encounter - as we do - the same argument from participants and our conclusion would then be, "Okay, we have to assist every industry." Now, that's not on. So we're not in fact looking at employment generation, we're not looking at multipliers, we're not looking at balance of payments considerations because they all apply to every industry in the economy and this industry is not special in that regard. What it is special in is the cultural and social dimensions of it, and as we emphasised throughout the report, that is what makes this industry different from other industries.

MR SCHWARTZ: But it also makes it similar to other industries that can do that. So I mean we're at loggerheads here because I still think that - - -

PROF SNAPE: No, I'm sorry, we're not at all at loggerheads. We have said that there are social and cultural implications of this industry that don't apply to other industries. They may apply to some industries, they may apply to the arts, they may even apply to universities but they don't apply to making widgets and we have made that very, very clear that this is what distinguishes this industry from other industries and that is what we're trying to target in our recommendations. I can't see any difference here.

MR SIMSON: Where's the science in this 55 per cent rule?

MR SCHWARTZ: I don't think there's too much science involved. I think these are figures that the ABT originally tried to get - I think from originally 30,

35 per cent. I guess they were looking at other countries and looking at seeing what was happening - I think on one of your appendices you list a number and I guess that must have happened years ago in trying to say, "Should it be half or roughly half or just a bit over half at whatever level?" I think it was the Australian Broadcasting Tribunal that went to the over the half rule at one point. The points system that the control board had way back was again, I don't think trying to look at a particular overall percentage, but I think they were keen at least to have a system where we had a sizeable percentage - whether it was a third, a half or whatever - that was on our screens.

I don't think it's an unreasonable thing to ask that half our content or roughly half the content on our screens should be coming from this country, I think in terms of the culture and the social objectives that we keep talking about for those reasons on that level. I keep coming back to the other points but I think that's still not an unreasonable thing to say that. I think in terms of saying it's a science, I agree with you, it's a figure that probably is bargained and I'm not exactly sure how.

MR SIMSON: Can we just go back to Mr Latham's point though:

In a world of converged information technology content, quotas are a dead letter. A new policy approach is needed.

And what he said earlier was:

The new technologies are wiping out the effectiveness of content quotas and other forms of cultural protectionism.

Have you got any bright ideas as to better ways of achieving those audiovisual cultural ends rather than what some might see - certainly FACTS sees - as the heavy hand of some of the content regimes?

MR SCHWARTZ: You mean if we don't have any quotas we don't have any quantum for any particular category?

MR SIMSON: The point that Mr Latham is making is that in a converging environment it's going to be more and more difficult to be able to, through a quota mechanism, enforce a certain level of local content. I mean, he makes the point about the Internet, for example, how you're going to measure, how you're going to police, regulate on the Internet. We're seeing problems already occurring in the pay TV area where of course that's an expenditure based mechanism, it's not a time based mechanism, but that has worked quite imperfectly on the basis of the evidence that we've had before this inquiry.

If you then start to look at the hybrids that are going to emerge in terms of broadband delivery of video based content - I mean, have you got any bright ideas as an academic as to how this can be done better, given that as viewers shift from free-to-air to pay, to Internet, to other forms of delivery, by definition fewer people

are going to be spending "less time" watching local content arguably, unless that local content happens to appear through the natural forces of program decision-makers.

MR SCHWARTZ: I mean, I think when we get to a point where we have television that's broadcast on the Internet and we talk about that as potentially something that might happen in the foreseeable future, then we have to look very clearly at maybe doing again the kinds of considerations about maybe some of the things - and I guess there are some ways in which we do try to regulate the Internet. I know it's almost impossible to do so, in terms of all the debates that are being had on pornography or whatever else. I know that's very, very difficult. But it will still come to a point, I think, where we talk about those things in the future when we're talking about broadcasting on the Internet where we have to make maybe separate decisions and separate things on that particular issue.

But at the moment I still think we can still make separate decisions about what's on free-to-air television, and we can make separate decisions - as I've done in my submission - about what we do for subscription television. I think those different mediums - if you just take those two, for example - can be given different rules, can have different applications to them given their nature.

MR SIMSON: In the case of subscription television, I as a consumer are paying for that service. You can argue in the case of free-to-air you're in effect paying for the service through the price of goods a la the advertising, but let's just keep that out of the - - -

MR SCHWARTZ: Yes.

MR SIMSON: There's certainly a very direct link between the consumer and what he or she wishes to watch through purchasing a channel service or a group of channels from an operator. I mean, why should my choice be affected by a regulation that says as part of that package that's offered to me, a certain per cent of a particular package has to be local content? Why shouldn't the market decide that, that if I want local content and there's enough of me to want local content, presumably the channel operators would put on local content or local content channels?

MR SCHWARTZ: It's the old story, I think, in the same way as it was with free-to-air television that if - - -

MR SIMSON: No, the difference is one is free and one I'm actually paying my good money for. If there's sufficient demand from people wanting to buy local content, which is effectively what we're doing, why is there need for regulation? In fact in your case you're arguing for more regulation.

MR SCHWARTZ: Yes, because in every inquiry, in every submission that happened from the 1970s onwards about whether we should or whether we should not introduce pay TV into this country, governments of all political persuasion always had as a basic thing that there would be a problem with Australian content on pay TV.

That's why it was a sort of a unilateral kind of thing that was saying, "Look, we've got to have some Australian content," and they came across this figure of 10 per cent, at least for drama channels only. I agree with you that for a lot of channels it's not going to be applicable at all. You can't watch the BBC or CNN and expect to see 10 per cent - but for drama channels, when they're showing films or repeats, repeats of old particular programs, I can't see why the legislation as it stands now for drama channels that says 10 per cent of the repeats of the American and British films that they continue to put on move-type channels specifically targeting drama - and that's what it was - - -

MR SIMSON: But it's not repeats because it's not time based; it's expenditure based. The way the pay television rule works, it's expenditure on programming; it's not time based.

MR SCHWARTZ: Okay. But why can't we still say to those owners of the various channels, of Foxtel or whatever, of Optus Vision, that they can have all these programs and have most of them having 100 per cent foreign content, as they do, but just on the drama channels, for exactly the same reasons as we've argued for the free-to-air networks, cultural and social objectives and that, we still have the presence of old Australian repeats of whatever. They surely aren't so expensive in terms of the costs involved here, and yet the popularity of these programs in the past indicates that there would be a market for it.

PROF SNAPE: What about an alternative scenario of having an Australian channel?

MR SCHWARTZ: That's an interesting sort of idea.

PROF SNAPE: Don't give me too much credit, because there are "must carry" rules in the United States on the cable, where they must carry some local - local in that sense doesn't mean American; it means more local than American - content, for example.

MR SCHWARTZ: I think that's a very positive sort of idea. If we had an Australian-based thing it would be interesting to see how popular it was doing repeats of films, old episodes of whatever, but without that and without then regulating the network owners to say, "Let's have an Australian thing," I think the legislation saying at least 10 per cent of drama content alone was a reasonable one. Now, I understand from - - -

PROF SNAPE: What would be preferable in your view?

MR SCHWARTZ: Then they went down to I think it was 7 per cent and - - -

PROF SNAPE: No, would it be preferable to have a "must carry" or an Australian channel or two amongst the 40?

MR SCHWARTZ: That would be part of the basic package?

PROF SNAPE: You could have various aspects of that. Yes, it could be part of the basic - instead of requiring an expenditure or a time or whatever.

MR SCHWARTZ: I think it would be really good to have an Australian channel almost exclusively being an Australian channel, but again I would wonder why on a movie channel you couldn't have one in 10 movies being an Australian one or a channel that specialised in repeats of sitcoms or soapies.

PROF SNAPE: I suppose if one works on the "why couldn't they do it?" basis, one could say why couldn't they do anything. You could say, "Why couldn't they legislate that 50 per cent has to be Australian sport or 50 per cent of the songs have to be Australian?" I mean, the "why couldn't they" doesn't take you anywhere because it's not based on an analysis. It's not based upon a particular objective. Now, let's look at particular objectives and tie our recommendations to the objectives. That's what we're required to do by our terms of reference.

MR SCHWARTZ: What's interesting, you mention music now on - - -

PROF SNAPE: No, but you just focus on what I said please.

MR SCHWARTZ: Sorry.

PROF SNAPE: That if we are looking at particular objectives and we're looking at the means to achieve those particular objectives, then what is the best way to go? Is it to have an Australian channel, is it to be in fact required that a certain amount of all of them be Australian, or what is the best way? That's what we're required to do.

MR SCHWARTZ: Okay. In my opinion I'd say both. The Australian channel would be a great idea. I think it would be a very innovative and a good idea. I think it would be resisted but I think it's a good idea to push, and as well as that let's say 10, 20 per cent requirement for all drama channels. That would be my - - -

PROF SNAPE: And sports? You're prepared to let them look after themselves?

MR SCHWARTZ: Sports are very - I mean, I think they're not having too many problems fulfilling their quota with Australian sport.

PROF SNAPE: They've also fulfilled their quotas in other directions too. I mean, the free-to-air have. What about news? Do you want half of that Australian?

MR SCHWARTZ: On pay TV we're talking?

PROF SNAPE: Yes, if you like, or you could even think about the free-to-air news services too. Do you want half of the news services to be Australian news?

MR SCHWARTZ: I think a much higher percentage should - for a free-to-air - - -

PROF SNAPE: To be required so that on the Channel 7 news at 7 o'clock or 6 o'clock you say, "Three-quarters of your news items must be Australian?"

MR SCHWARTZ: Are you saying that the report is reporting from overseas or whatever? That's still an Australian news item.

PROF SNAPE: I'm asking what your recommendations would be.

MR SCHWARTZ: I must admit with things like that, to get into news and current affairs, I think that there should be a very, very strong Australian component of all - - -

PROF SNAPE: What about newspapers? Should they be required to be 90 per cent Australian news?

MR SCHWARTZ: You mean Australian reporters reporting news from overseas?

PROF SNAPE: No, I'm talking about the newspapers. We've been talking about one form of media and the broadcasting and you're saying that the drama and the children's and the overall should be 55 per cent. It would seem to me a lot of the arguments that have been put forward in this and the cultural-social thing and the arguments you've been putting forward would apply equally to newspapers.

MR SCHWARTZ: Yes, of course, I think Australian newspapers and Australian magazines should carry a very large percentage of - - -

PROF SNAPE: No, that they should be required to carry it, because that's what we're talking about here. We're talking about requirements that the free-to-air broadcasters and the pay TV broadcasters should be required to take a certain amount of Australian content. Why wouldn't we apply that argument to newspapers?

MR SCHWARTZ: I guess historically it has never worked that way. Historically there has always been a division in terms of what the print media have ever - I mean, we've never - - -

PROF SNAPE: I'm trying to encourage you to think of the logic of the arguments that you've been putting forward to us and apply that same logic to newspapers.

MR SCHWARTZ: I guess historically that has never worked. Historically we've never had a regime where - - -

PROF SNAPE: Why not?

MR SCHWARTZ: It goes back to the whole I think argument - - -

PROF SNAPE: Should we have it, is what I'm asking.

MR SCHWARTZ: With the print media?

PROF SNAPE: Yes.

MR SCHWARTZ: Look, in an ideal world and the situation where we could do a thing like that. I think the print media will always talk about freedom of speech, freedom of the press, "We're allowed to do what we like."

PROF SNAPE: I'm talking about what should be there. Should we have Australian content requirements on newspapers? On the basis of your argument so far, here is a very persuasive medium going out there, getting to everyone. They're reading it and so on. Why shouldn't we on the basis of your argument have Australian content requirements on newspapers?

MR SCHWARTZ: It's a lovely idea, it's a really good idea. I think it would be impossible to implement or to do it for a whole host of historic reasons, as I say. But the principle that you're enunciating I do agree with.

PROF SNAPE: I don't see why it would be any more difficult to implement that in the drama section of the newspapers, in the book review section of the newspapers, in the news and the sports section and even the media section, we would in fact put a 50 per cent or a 75 per cent Australian content requirement on those sections of the newspapers.

MR SIMSON: Indeed, some countries do have regulations of that type that relate to both editorial content and in some cases advertising. So it would not be an impossible thing to do if you - not me, I hasten to add - thought that was "a good idea".

MR SCHWARTZ: And the Press Council would have none of it.

PROF SNAPE: No, leave the - we're talking about principles.

MR SCHWARTZ: I'm agreeing with your principle.

PROF SNAPE: Okay, well, it's consistency. You refer on page 8 to the High Court ruling and New Zealand being incorporated. Do you know off the cuff how much New Zealand content is actually being carried on - - -

MR SCHWARTZ: At the moment?

PROF SNAPE: Yes - - -

MR SCHWARTZ: The figure I've got is between 20 and 25 per cent of - - -

PROF SNAPE: No, you didn't focus on my question. I said, do you know how much New Zealand content is being carried, I was going on to say, on Australian television?

MR SCHWARTZ: I think it's very minimal. I'm not sure of the actual figure but I think it's still a very low figure here.

PROF SNAPE: I think that's very true, so the fears that were there have not been justified, fulfilled?

MR SCHWARTZ: At the moment they certainly haven't been a large factor here. That's not to say that's what's going to happen in the future. I think the principle that I was concerned with here with the High Court ruling because of the trade agreements that we've got with New Zealand was the concern that this was now going to therefore again diminish the Australian content at whatever percentage. It was 1, 2, 3, whatever, then it was just going to be a kind of a ridiculous situation perhaps when we talk about Australian content now including that of another country. That just as a principle was the concern. I know that it's a very low percentage at the moment. That's why it was the point that I made there.

PROF SNAPE: Yes, I think at the time the argument was that New Zealand was a much lower cost country and so if we were simply looking at the cost side they were going to take us to the cleaners, but that somehow hasn't happened.

MR SCHWARTZ: Not at this point in time, no.

PROF SNAPE: Do you think it is going to happen?

MR SCHWARTZ: I don't think it's going to happen in a very major way, it's going to be a very large percentage, but it's again a principal issue. I think if you're going to make an Australian content law and then basically - I mean, where do we then go from there? Do we then say, if we have a new agreement with Fiji or some other country, that their content will also constitute part of Australian content? It's not a good precedent I think to have as a part of the ongoing way we look at Australian content.

PROF SNAPE: I think the other side of it is a question of in the nature of things how much demand there is for Australian content anyway, so one doesn't need the legislation, just as occurs in some other media forms too. I think, suspect actually, that if you go to the Australian content of the newspapers, to go back there, you'll find it's way above the percentages we're talking here and that just happens because that's where the demand is. We don't want to read about Fiji all the time.

MR SCHWARTZ: But the demand can also be manipulated a bit, can't it, when you put on certain particular programs all the way through? So in a sense the demand

for Australian content will only really be truly measured if you have Australian content or to listen to.

PROF SNAPE: It's very difficult to measure in the abstract, that's true. You say that Hey Hey It's Saturday and The Midday Show were spiralling in costs. Was that really the reason that they were axed?

MR SCHWARTZ: They were a number of reasons and obviously the ratings were part of it, although they were still reasonably good ratings for the time slots. Again, evidence I saw there clearly suggested that there were spiralling costs, and especially with Hey Hey It's Saturday that it was obviously a program that they were now considering on those grounds as well when it was in fact finally axed.

PROF SNAPE: Or was it that it wasn't targeting the - I spoke before about not only the size of the audience but the nature of the audience.

MR SCHWARTZ: Yes, the demographics and - - -

PROF SNAPE: Were they getting the right audience in terms of advertising?

MR SCHWARTZ: I think it was just - to give you an example, it's perhaps a program that I didn't watch all that often, but it was an example of something that was quite sad. There were I think a number of and a large size of a particular audience that really found that particular program really important for their own Saturday nights or whatever. But again the fact that it was spiralling in costs, the fact that maybe it was felt that you could replace that program with something else and eventually something that may not be Australian at all.

PROF SNAPE: Okay, thank you very much. We've been fairly forthright in our questioning of you but that we because we are trying to elicit the arguments in there that were sometimes implicit in what you had said rather than explicit, and we are required, as you would note from our terms of reference, to clarify objectives and also to relate the particular instruments to the objectives. Just on that point, you may note that our terms of reference are such that - this is our terms of reference, not us just making our minds up to do it this way:

To take account of the competition principles agreement, which specifies that any legislation -

or regulation, I interpolate -

that restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and the objectives can be met only through restricting competition.

In other words, the onus that we have to go with in this inquiry is an onus that requires any restriction of competition, any regulations which do that, to be justified,

not in fact to have to justify the removal but justify their retention. They're our terms of reference that we have to satisfy, so the onus is on the retention, those arguing them. That's why we've been fairly pushy in our questioning.

MR SCHWARTZ: I understand.

PROF SNAPE: Good. Thank you very much for coming and also for accommodating our change of time.

MR SCHWARTZ: Not a problem.

PROF SNAPE: It was very kind of you to do it. We've had a couple of withdrawals this morning that have enabled us to use our time more expeditiously. So thanks very much, Mr Schwartz.

MR SCHWARTZ: Thank you.

PROF SNAPE: The AFL are going to break the banner at 2.15. If they were here already we could go earlier, but in fact they're still in the changing rooms, so we'll adjourn until they arrive, which is scheduled at 2.15.

PROF SNAPE: We resume our hearings and we welcome the AFL, the Australian Football League and we have two representatives of the AFL who are going to present the submission and we would ask if you could identify yourselves separately for the transcript please.

MR BROWNE: Chairman, my name is Jeffrey Browne. I'm a consultant to the AFL.

MR JACKSON: My name is Wayne Jackson. I'm the chief executive officer of the AFL.

PROF SNAPE: Thanks very much and thank you very much for your submission which we've read and it looks as if it's going to be very helpful to us and we appreciate you coming today and who would be speaking to it?

MR BROWNE: I'll be speaking to that, chairman.

PROF SNAPE: Thanks, Mr Browne.

MR BROWNE: Chairman, thank you for the opportunity to come today. We did read with interest the draft report when you commented that no sporting organisation had made a submission to you on anti-siphoning at least. In our case, that shouldn't be taken as a lack of interest in that issue. We're vitally concerned about anti-siphoning and we've come here today to address you principally on that issue as well as datacasting. By way of opening, chairman, we note the terms of reference of this inquiry and we note that the competition principles agreement directs that restrictions on competitions should only be retained in legislation or in regulatory framework if it benefits the community as a whole and if there is no other means of achieving the desired objective.

We say that doesn't apply in relation to anti-siphoning and we say that should not apply in relation to a restricted definition of datacasting. The AFL supports and warmly welcomes an inquiry of this type to really reposition regulatory policy to take the emphasis away from restriction; to as you have said in your draft report, an enabling regime which creates competition and therefore greater opportunities for organisations like the AFL. Chairman, the submission is principally in three parts and I hope you don't mind if we spend some time introducing ourselves to you as an organisation. We do that because the objects of the AFL are commonly misunderstood.

The AFL is a significant sporting enterprise but it essentially plows back all of its revenue into the sport, into development programs and in no way does anyone get fat from AFL football. We have great needs out there in the community which we need to continue to service and we need to grow our income from new sources of revenue as well as improve our ability to deal in existing revenue rights such as broadcasting in a traditional sense to enable us to continue to operate. If I can just make an observation as well, chairman. The AFL, not unlike the broadcasting regime,

is in a state of convergence. AFL developed from the VFL competition which was 12 Victorian based clubs. We are very much in a transitional period from a semi-professional to a professional sport. We are having to meet demands from players, clubs, sponsors, all sorts of business partners, which are all taking this game to a new professionalism.

We have more full-time footballers playing in the AFL than we ever had before. In fact, it has become quite difficult - not impossible but quite difficult for an outstanding young AFL player to combine his career in football with a course of study or other employment. So we need to look at how we can meet the demands on us to bridge that gap and to take our sport into a truly professional sporting enterprise. The Australian Football League is over a hundred years old and is Australia's only indigenous game. It's a major lifestyle component for millions of Australians. In 1999, earlier this year, the AFL commissioned its own socioeconomic impact study of AFL football and it's relevant to take you to some of the findings of that report to illustrate the extent of AFL football.

It engages nearly 450,000 players from all levels, from the professional level down to junior level including Auskick programs at schools and local communities. It attracts across the board nearly 14 million spectator attendances per annum. That's the 199 figure. AFL football is a major employer in Australia. There are nearly 6 million volunteer working hours devoted to football in each year and the industry itself directly employs nearly 9000 paid employees. The total financial contribution of Australian football to the Australian economy in 1998 was estimated to be \$1.7 billion. The AFL generates approximately \$100 million in turnover and of that \$100 million approximately one-third amounts to income from its broadcast revenue.

The AFL accounts for its surplus by distributions to AFL clubs who have over 450,000 registered members, funding grassroots football development programs throughout Australia and devoting approximately \$17 million to that. The AFL provides significant financial support for stadium development right throughout Australia. The AFL has a major stake in the Colonial Stadium at Docklands. It, before December next year will pay its \$30 million in relation to that project, a project that would not have been possible without the AFL's financial contribution and its commitment to schedule a minimum number of games at that stadium. That effort has been matched at the Gabba in Brisbane where there's a substantial redevelopment. The Great Southern Stand at the MCG was developed on the basis of an AFL commitment to a certain number of games and almost every major sporting venue, team sport venue in Australia in every capital city has been developed and made possible, or the development has been made possible with AFL support either in terms of scheduling commitment or direct financial injection.

The AFL also conducts significant community initiatives. It conducts traineeships. We sponsor a number of young athletes in various forms of training and industry. We have programs which we have instituted in remote parts of Australia for Aboriginal communities and have a wide range of interests in various charities right throughout Australia. One feature of the AFL which we are absolutely proud of is the

fact that it's almost self-funding. We receive very little support from government apart from \$450,000 which is not an insignificant amount but in terms of a percentage of the AFL's revenue it's only a very, very small component. In order to achieve that degree of independence and to continue to operate as a free enterprise operation, the AFL requires an opportunity - needs an opportunity to protect its broadcast rights revenue, in fact to grow that revenue, being its most significant single source for a new digital technology.

The extent to which the AFL continues to grow its revenue depends on our ability to be able to deal more commercially in existing rights and that brings the anti-siphoning provisions directly into focus and our ability to develop new rights, new digital rights, and we see datacasting as a unique opportunity for AFL to be able to expand into that area and create greater competition for transmission of its services and to actually grow its broadcasting revenue. Anti-siphoning is an issue that has been the subject of some submissions before this commission. The AFL largely agrees with the thrust of the submissions put to you by ASTRA. In the AFL's opinion the anti-siphoning provisions are flawed, seriously flawed and irrelevant. We say that for the following reasons: the extent of pay television penetration has grown significantly to 16 per cent, over one million households, 3.4 million viewers.

I note in the draft report that the commission noted that that had seemed to tail off recently and that may simply be a product of the fact that sports such as AFL football is not available on an exclusive basis to pay television and cannot in any way contribute to increased subscriptions. The AFL knows from experience that the football public is interested in watching live sport, not replayed sport. The other feature of the anti-siphoning provisions of course is that they haven't encouraged the free-to-air broadcasters to exercise their rights and it has been put to you that only 33 per cent of events on the list are shown live. In fact, what the free-to-air broadcasters have done is set themselves up as sports brokers from a statutory monopoly.

The initial concern that sports such as AFL would migrate from free-to-air to pay television, we say isn't supported by overseas experience. It's certainly not supported by the experience in the United States. We acknowledge that the pay television penetration is approximately 70 per cent and that may have something to do with it but the other example that's often put is the example of Premier League soccer in the United Kingdom where that sport was actually shown on pay television but the result of that was that it did actually drive pay TV subscriptions to a point that the public became satisfied with the level of cover. The other feature is that the anti-hoarding provisions have failed. They've failed to prevent hoarding. The ABC and SBS have not been willing to take up those rights and understandably we say to remind viewers of the free-to-air broadcast through high ratings periods.

The evidence is that because of the anti-siphoning provisions there is less sport being broadcast on Australian television. That's a critical issue for the AFL. It limits our capacity to develop our sport, to expose our sport, to satisfy our supporters and to provide opportunities for all of our partners and the participants, including our

players. The AFL submits that the benefit to the AFL and our industry from increasing the amount of television coverage of AFL on television would be obviously to increase our broadcast rights revenue. More opportunities to expose our product to be able to show two matches live when they're being played concurrently will produce extra rights revenue for the AFL.

The AFL's second-most or one of its primary sources of revenue behind broadcast revenue is sponsorship and advertising. Sponsorship value is directly affected by the amount of television coverage. We see many examples of that. We know that a fence sign at a ground where AFL matches are played is worth considerably more in a television viewing position than it is on a part of the ground that is not exposed.

Sponsors will pay more and support broadcasts if their message can become part of the telecast. The other advantage of course is the increased exposure to our existing supporters who now reside in many states across Australia and can't always travel to see their team. It also gives us an opportunity to increase our promotion and development initiatives, particularly in the developing states of New South Wales and Queensland. Whilst Australian football is a national sport, the dominant winter team sports in New South Wales and Queensland is rugby league, with a large following developing for rugby union.

In order for the AFL to penetrate those markets in the western suburbs of Sydney - outside of the city of Sydney and city of Melbourne it is the largest catchment area in terms of population of anywhere in Australia, much bigger than Perth or Adelaide - it's an area where the AFL are working very hard to develop a following. Its commitment to Stadium Australia is an example of that. In order for us to penetrate those areas we need to be able to show our games on television and principally on pay television in those areas initially because our product isn't strong enough in those markets or those markets aren't mature enough to take a prime time live telecast on free-to-air television. We need to be able to develop our product and to actually convert it from a pay television or a datacast product into a genuine free-to-air product.

The only way we can get into those areas, apart from exerting pressure on our free-to-air broadcaster which is a constant battle for us, is to actually find a medium that will take us at the moment and pay television and datacasting offers us those opportunities. We say that the decision in relation to how a broadcaster ought to be allocated between free-to-air television, pay television, and datacasting or other digital services, ought to be on the basis of what's in the best interests of the sport. The best entity to determine what's in the best interests of the sport are those who are charged with its care and control. The AFL is restricted at the moment in relation to the decisions it can make in relation to broadcasting by the anti-siphoning provisions that directly adversely affects on its ability to generate new customers, to develop its game and to conduct the programs to which I've referred.

The AFL notes that in the submissions that have been put to you so far, a

number of suggestions in relation to modifying the anti-siphoning provisions and we've classified those on the basis of four models for the purpose of comment and without in any way detracting from our submission that the anti-siphoning provisions ought to be done away with. The reduction model, the one put to you by the pay television broadcaster, we say, merely reduces the problem. It doesn't address the conceptual inadequacies behind anti-siphoning. It doesn't acknowledge the stated objective of this inquiry, that this regime, the regulatory regime for Broadcasting Australia, should move from a restrictive regime to an enabling one. What the reduction model does is simply reduce the extent of the problem.

The second model which we've referred to as the buy-out model is one which emerged from the Sport 2000 task force report to government. We say it actually contains an extraordinary proposition for dealing with this problem by suggesting that a sport such as the AFL could pay to buy its way off the list. That payment would then be pooled and used as a pool of money to assist a whole range of other sports. We say that's an unfair tax. It fails to recognise the fact that any incremental revenue that the AFL can achieve for an increased broadcasting has already been fully committed to the programs that we've spoken about. It enables us to complete our programs. We don't have buckets of money left over to go supporting other sports who are in fact our competitors.

The third model is that proposed by the commission in its draft report and that, we say, makes far more sense to us. It allows the market to determine the allocation. It establishes a level playing field between free-to-air broadcasters and pay television broadcasters by ensuring that either of those or each of those have access to AFL product, but on the basis that each can't exclude the other in relation to any contract. The AFL submits that that model ought to be amended slightly, and recognising the public interest that underlies the need to protect the availability of AFL football to the mass audience.

When pay television reaches a certain penetration - and that could happen either across the board or regionally in the interim - we say that there ought to be an ability then for an organisation like the AFL to contract exclusively with a pay television broadcaster. Provided there was sufficient exposure of the product, a sports rights holder would benefit from the ability to be able to deal exclusively. That contingency, if it's built into the commission's model for amending the anti-siphoning provisions, would create immediate competition between free-to-air and pay television broadcasters for the right ultimately to deal exclusively and would enhance the future value of our rights by being able to deal on an exclusive basis.

Datacasting is the other opportunity that the AFL has identified as a new digital right which will allow it to develop new income and in turn fund the programs which I've referred to. The AFL submits that datacasting should be defined liberally as contained in the draft report. The AFL submits that that will have certain advantages. Firstly it will create competition. It will create competition for pay television broadcasters and free-to-air broadcasters. The AFL accepts the fact that there must be a distinguishing characteristic for datacasting services and of all the models

proposed, submits that the subscription option is the one that ought to be adopted to distinguish a datacasting service from a television broadcast service.

PROF SNAPE: That's the third - option 3 - that you're referring to?

MR BROWNE: Yes, chairman, it is. The AFL has a painful reminder of the problems that can arise from a lack of competition in the market for broadcast services. We refer to that in our submission as a keep off the grass arrangement. What we say is that datacasting, by introducing another competitive option, minimises the potential for agreements between what at the moment are a limited number of broadcasters in relation to how various sporting products should be allocated as between them. The AFL notes that in the past there have been situations where it has been faced with the prospect of having no bidder for its rights or having one low bidder for its rights.

To illustrate the extent of that problem, chairman, I should point out that the AFL hasn't always been in the shape that it's in at the moment. The AFL developed from a VFL competition, a competition between 12 Victorian based teams, who in 1985 were struggling. The competition was \$8 million in debt. We had only one bidder for our television services for a fraction of the value that we said it was worth. The AFL reacted to that by wholesaling to a wholesaling house who eventually sold that under sublicence to the ABC for a publicly acknowledged figure of \$1 million.

PROF SNAPE: 1 million?

MR BROWNE: \$1 million 1987.

PROF SNAPE: When you said "publicly acknowledged", do you mean that that was the fee or that was - - -

MR BROWNE: I think it's no secret, chairman, that that was the fee. I'm mindful of confidentiality in relation to the arrangements that were made between the wholesaler and the broadcaster but I think that's - - -

PROF SNAPE: Because I was just trying to get the nuance there, that's all, thank you.

MR BROWNE: Yes. In any event, my point is that we believe that was a fraction of the retail value of that right at the time. It was more about at a time where it was created or forced on us at a time when we were really in desperate straits and we're here today - as we're out in the market now - inviting approaches for new television rights to commence from 2001 but certain bidders may not bid. I'm not suggesting that that's the result of a similar type of arrangement but there are programming demands. Certain other sports have prior stakes. The Nine Network has a commitment to rugby league which makes AFL a difficult commodity during prime time. The fact is that there is very little competition at the moment for our product.

We have an excellent relationship with the Seven Network but our options, the need for us to create our options, can only be enhanced by introducing greater competition into that market. We say datacasting is a means for us to achieve a more competitive environment. We don't say that's unfair to anybody, we say that's absolutely fair.

PROF SNAPE: The implication is collusion there?

MR BROWNE: My example was an example from the past where there was evidence of collusion. At the moment we have no evidence that there is collusion but we do have evidence that some broadcasters are showing us that they may not bid for our rights and are giving us a whole host of reasons for it. In order for us to obtain a competitive bid for our sports rights after 2001 we need to have at least two interested parties.

MR SIMSON: You don't have that at the moment amongst the free-to-air's?

MR BROWNE: We have two interested parties; we haven't developed our negotiations to a point to which we know that that is real interest.

MR SIMSON: Mr Browne, if we put the Ten Network to one side and we go to the point that you made about the Nine Network and its interests in rugby league and perhaps you could even add cricket to that, just so we're clear on what you were saying earlier, you were indicating that significantly reduces the opportunity for them to be a serious bidder, or to put it another way, to keep off the grass.

MR BROWNE: I'm not suggesting that there's a keep off the grass agreement between C9 and C7, what I've suggested - and on what you've related to me - is that C9 may have other reasons for not bidding. They may have good commercial reasons for not bidding because their programming is already jammed with another sport or they might want to show movies.

MR SIMSON: Is that why or one of the reasons why you're eager to see a situation where pay television can then become a serious competitor for your product?

MR BROWNE: Absolutely, absolutely. We make no criticism of a free-to-air broadcaster that has other programming commitments or recognises that its principal marketing in New South Wales and Queensland is a different market for our product than for rugby league or some other product. But the effect of it is that a sport like AFL has some interest from all networks, a lot of interest from one, and we won't really know until we get into negotiations whether we've got a true competitive environment under the current regime.

MR SIMSON: But of course PBL or 9 could have an interest in the pay rights, couldn't they?

MR BROWNE: Yes, they could. Their interests in the pay rights would depend

upon - would certainly be heightened by relaxation or abolition of the anti-siphoning provisions.

MR SIMSON: But in the absence of the relaxation or the abolition of the anti-siphoning provisions, am I right in saying that it makes it very difficult for PBL/9 to show a serious interest in the pay rights?

MR BROWNE: Well, it does. We would submit that it makes any pay television broadcaster less interested in our rights. The anti-siphoning provisions in fact make that very much a second prize. It really condemns them to replay sport or a live coverage of matches which the free-to-air broadcaster doesn't want because they're not popular.

MR SIMSON: Because the free-to-air broadcaster has first call.

MR BROWNE: Yes. In fact I referred to in the submission the fact that they cherry pick, not only in terms of the whole range of events but on a round-by-round basis where the matches which are popular will be shown on free-to-air; the others are hardly a television product, in some cases anyway.

PROF SNAPE: Could I bring you back for just a moment or two to the last half of the sentence - the last sentence - on page 31 where you're referring to "keep off the grass" etcetera. It's in paragraph 6 of datacasting, where you say:

It creates at least the possibility that some broadcasters may be dissuaded from bidding for certain rights in order to protect an investment in certain other sporting rights which a competitor may otherwise bid for.

So that would suggest keep off the grass, that, "You keep off my grass and I'll keep off your grass."

MR BROWNE: What I've referred to in that sentence, chairman, is that that is a possibility, for so long as the current regime exists, for so long as there isn't greater competition for the broadcast of AFL matches, that is a distinct possibility.

PROF SNAPE: But you wouldn't go further beyond possibilities at the moment?

MR BROWNE: No, but I would emphasise that it's a reasonable possibility by virtue of past experience.

PROF SNAPE: So you've got a whiff of it in the past and you're not sure if it's still around. Okay, thank you. Sorry we interrupted your flow, but that was a fairly important point.

MR BROWNE: Thank you for allowing us to emphasise that, chairman. The datacasting model, as I mentioned, which the AFL submits ought to be adopted is the broadcast-like model in terms of content and quality, available on a subscription basis,

not limited in the way suggested by option 1 in the options paper by limiting the time, screen size or frame rate of moving pictures; not limited in the way suggested by option 2 to an interactive format, which we say would deny accessibility to a range of passive consumers and created definitional problems in terms of the degree of interactivity required to meet the test. It's only the broadcast-like subscription option which we say creates a sound business case for datacasting. It's only that model that will really drive, will get people interested in that as a medium and allow us to take advantage of it.

We say if we're able to tap that as a new source of broadcasting revenue, a new digital service, it will enable us to expose our product to create real competition and enable us to continue to fund our operations and the programs that we've referred to earlier in our discussion.

PROF SNAPE: I think there's a fourth option being put around in a perhaps more recent paper, which would be to limit the bandwidth so that on a multiplex, for example, if a seven megahertz was given to a multiplex, the multiplex would then lease out bandwidths and to limit say to one and a half megahertz bandwidths or two megahertz bandwidths. You wouldn't find that satisfactory?

MR BROWNE: Can I say in answer to your question, chairman, that I read that in the press and I actually rang the department to see if I could obtain some more information about exactly how this was to work and I was told that there is no such paper publicly available, that they received many requests and that it was in fact a cabinet paper. I note that the coverage of that particular option was criticised by the subscription broadcasters on the basis there was a limited bandwidth; seven megahertz wasn't nearly enough for them. I think I've referred to elsewhere in this submission that we say that a datacaster ought to have sufficient bandwidth. Whatever that is, I'm not sure. It depends on competition, how it's dealt with, what price it's sold for, all of those options. What we say is that bandwidth should not be used as a restriction on a datacasting service and consistent with what we say is a general proposition that any new regime for broadcasting services should be an enabling one, not a restrictive one.

PROF SNAPE: Thank you.

MR SIMSON: Mr Browne, just to follow on from some of the earlier questions. Why isn't "keep off the grass" collusion?

MR BROWNE: "Keep off the grass" is collusion.

MR SIMSON: Good, thank you. Could I just take you to just understand a key thrust of what you in an ideal world would like to achieve with your broadcasting rights which, as you point out, are a significant portion of your revenue. In an ideal world would you like to be offering pay the exclusive rights and pay to be in effect your first point of mass market because of the reasons that you explained earlier in terms of programming issues, regional issues in the case of the western suburbs, the

capacity of pay to charge and therefore pay you? Have I got that right, that that's where you'd like to get to, where your mass market is basically delivered in the first instance by pay?

MR BROWNE: No, we can't say that as a matter of principle. The AFL has a mass market objective, as you correctly say, needs to expose its product as wide an audience as possible. We accept that pay television penetration isn't sufficient for us to look at pay television as a first port of call, but it can be in some instances. In New South Wales, for instance, where the free-to-air broadcaster may not carry out signal in prime time because of other programming commitments and priorities, we would like to be able to deal with a pay TV broadcaster in that market on an exclusive basis to create an opportunity for us to go prime time live on television. That may in fact be the only option for us in that market to achieve those objectives. So the reality is that at the moment, and for some time, we think, it would be a combination of free-to-air and pay television broadcasts.

PROF SNAPE: But the pay televisions tend to have national programs, don't they, and not to operate on a regional basis?

MR BROWNE: They can operate on a regional basis, and certainly they understand the greater popularity for say the Sydney Swans in the Sydney market as opposed to other capital cities in Australia.

MR SIMSON: They can split their signals, I understand.

MR BROWNE: Yes, they can.

PROF SNAPE: And there's no problem with you negotiating for them to do that?

MR BROWNE: No. We're encouraged by some discussion we've had about that, but I suppose those discussions, chairman, were brought about because we're looking for ways to get around these anti-siphoning provisions. We're looking for chinks and findings ways where we could actually go and put a proposition that wouldn't excite a free-to-air broadcaster to the extent of it prohibiting us from doing it because he wouldn't be able to show it.

PROF SNAPE: This relates to your point on page 27, which was point 10 under a heading. It was where you were talking about the anti-siphoning model of the commission and a modification that you would have to that, that when pay TV penetration reaches a certain level or alternatively after a certain period of time - but let's focus on the first, when penetration reaches a certain level - the AFL should be free to negotiate an exclusive arrangement with a pay TV broadcaster. Was that meant to be penetration on a national basis or within a particular area?

MR BROWNE: On a national basis as a proposition, chairman. What followed from that paragraph that you've referred to was a further paragraph that suggested that the ability to deal exclusively with a pay TV broadcaster ought to be considered

in advance of that national penetration on a regional basis.

PROF SNAPE: But presumably there would be an attraction there if it - you say should be considered on a regional basis, thank you.

MR BROWNE: Yes.

PROF SNAPE: But could that regional basis be feasibly a leap to a broadcast licence area? I mean, you've got the broadcast licence areas for the free-to-air, which may not correspond geographically to anything which the pay TV people can do. Is there a problem of fitting one onto the other?

MR BROWNE: I'm not sure that I exactly understand.

PROF SNAPE: The licence areas for free-to-air broadcasting divide the country into a number of licences. There is a licence area, for example, drawn around Canberra and the environs - I can't tell you exactly where it goes. Would it be possible to isolate that area for pay television so that one is able to say when the pay television has reached the crucial point, that we then negotiate for that area so that we get the exclusive rights? Do you see the problem of mapping a two-wave area? If it's not possible to isolate parts of the country on the same basis for both free-to-air broadcasting and pay television, then you get a problem with your regional proposition.

MR BROWNE: Yes. If it possible to isolate a region and there is sufficient pay television penetration within that region and the free-to-air and pay television are in fact substantial competitors in that region, the AFL believes it ought to be able to deal exclusively with that area.

MR SIMSON: Mr Browne, could I just reconcile a couple of sentences. On page 18, halfway down, of your submission you say:

Initial concern that sporting events such as AFL matches would migrate from free-to-air to pay is contrary to the United States experience, where there has been no such migration.

Yet on page 27 you say under point 10, second paragraph:

The unregulated environment in the United States works largely because of the high degree of penetration of pay TV, approximately 70 per cent. The value of sporting rights would be increased substantially if a sporting organisation was able to deal exclusively with a bidder which could satisfy the mass marketing objective.

I'm having trouble reconciling those two sentences.

MR BROWNE: The first reference acknowledged the fact that there is sufficient

pay television penetration in the United States, approximately 70 per cent, so that there ought to be no problem or no concern about migration in that environment because a 70 per cent penetration is sufficient to satisfy the mass marketing objective.

MR SIMSON: But in the United States, where it has in fact gone to 70 per cent - I'm now going back to page 27 and I'm reading those two sentences together that I've read, and they do follow one another - where you then use the term, the phrase, "mass marketing objective," are you not implying in that that in fact pay is performing a mass marketing objective in the United States with regard to sporting events?

MR BROWNE: Yes, it is.

MR SIMSON: How does that reconcile in with the earlier sentence, where you say that it hasn't migrated to pay?

MR BROWNE: No, I said migration isn't it a problem because it doesn't matter; if there's sufficient pay television penetration migration isn't a problem. The conceptual problem with the anti-siphoning provisions at the moment is that all the evil that was contemplated by them is that there would be a migration from free-to-air to pay. I've indicated in the United States that that isn't the case, but I've acknowledged the reason for that is that there is sufficient pay TV penetration. We say migration isn't a problem in that market, it isn't a problem where pay television penetration is sufficient to satisfy a sufficient number of viewers. We also say that the concern about the migration that occurred in the United Kingdom with Premier League soccer being broadcast on BSKYB was in fact dealt with by a market reaction by actually increasing subscriptions to an extent that the pay television coverage greatly increased as a result of that particular sport being able to drive additional subscriptions. So the market addressed the problems.

MR SIMSON: But, all other things being equal, if you had a significant level of pay penetration would not the pay operators dollar for dollar be in a position to pay the AFL more for the television rights than the free-to-air because there is that subscription flow of income and not just relying on advertising income?

MR BROWNE: Are you suggesting in that example that the advertising options would be equal to both free-to-air and pay?

MR SIMSON: No, I'm not implying that. I'm just asking for your opinion, whether in a situation where pay achieved a significant penetration in Australia you believe it would be in your commercial interests in terms of the dollars that would come back to the AFL to provide the exclusive licence to the pay rather than to the free-to-air?

MR BROWNE: If because of the subscription income the assumption is that the particular operators would have greater financial capacity to bid for the rights, then that's true. What I have pointed out in the submission is that the greater financial strength and distribution of the free-to-air networks and their current market advantage and their long history with sport would see them bidding very aggressively

for these rights. I mean, sometimes a network will take a product like AFL as a loss leader, for instance. There are a whole lot of commercial considerations that would influence the amount that a bidder would be prepared to pay.

MR SIMSON: Yet, as you pointed out in your opening remarks, you believe a key issue is for the broadcasters to be able to show the events live. You said that people like watching these events live.

MR BROWNE: Yes.

MR SIMSON: In the absence of multichannelling on free-to-air there's only a certain number of time-slots. On pay that's not the case, is it?

MR BROWNE: It's not the case, but again that problem can be dealt with by a sport in terms of scheduling. In fact, what the AFL has been forced to do by virtue of the current situation is to try and limit as much as it can concurrent matches. We have been forced to schedule to show big matches on different days across a weekend and during the week so we get television exposure.

PROF SNAPE: You said your total revenue in 99 was about a hundred million and you said orally about a third of that was broadcast revenue. Are you free to say how much of that third was for the finals as against the rest of the season?

MR BROWNE: I could if I would but it's not possible for us to dissect the rights fee to tell you that.

PROF SNAPE: It's a package, is it?

MR BROWNE: Yes, it is.

PROF SNAPE: Okay. I'm trying to get to situations where there isn't simultaneous - there isn't more than one match being played at a time and that's obviously in the finals that - - -

MR BROWNE: Not always, but towards the end of the finals that's the case.

PROF SNAPE: - - - generally is the case. If you were then selling a final and looking at the finals, would you get more from exclusive rights than the proposed non-exclusive rights?

MR BROWNE: We can only really speculate on that.

PROF SNAPE: Let me say why I am asking - starting on this line of questioning which may or may not develop and it's because it has been said to us that if there were non-exclusive rights then the return to the sporting bodies would be lower because they can in fact get more from either exclusive rights or else from the current arrangement where it is first bite, and substantial first bite to the free-to-air.

MR BROWNE: That may be so. The critical issue is that the sport should have the ability to decide how it dealt with its rights, exclusively or non-exclusively. We see lots of examples where - - -

PROF SNAPE: Yes, but let's rule out the exclusivity and compare the existing situation with the anti-siphoning with non-exclusive rights.

MR BROWNE: Can I suggest that there is some evidence that dealing on a non-exclusive basis may in fact create greater revenue and the National Football League in America which negotiated its television rights deal last year for \$16.8 billion in fact awarded the rights to five networks.

PROF SNAPE: So the AFL would be comfortable, from a revenue basis, of having non-exclusive rights as compared with the current situation?

MR BROWNE: It's a difficult question to answer in isolation. We would need to be able to determine whether there was a greater return to us for exclusivity or not. The best answer I can give you is that it may be but it may be not.

PROF SNAPE: You see earlier in the earlier hearings, and I forget exactly when it was at this juncture, it was put to us that sporting bodies would oppose non-exclusive rights because they couldn't get as much revenue. That's one reason we were very keen to get a submission from a sporting body, particularly one such as yourselves.

MR BROWNE: Yes. Chairman, would you pardon me for a moment. I'll just discuss it with - - -

PROF SNAPE: Yes, do you wish to have a short intermission? Do you wish to consult with anyone else or are you - - -

MR BROWNE: No, chairman. Our view is that we wouldn't feel terribly disadvantaged if our rights were non-exclusive.

PROF SNAPE: You would not feel terribly disadvantaged if they were non-exclusive?

MR BROWNE: No.

MR SIMSON: Just so I'm clear on this, as we sit here today and you're undertaking that the renegotiation of the rights I think post-2001, under the existing anti-siphoning rules you effectively can't split the pay rights from the free-to-air rights, can you?

MR BROWNE: Yes, we can't.

MR SIMSON: You can't.

MR BROWNE: We can't split live rights.

MR SIMSON: Live free-to-air rights.

MR BROWNE: Live free-to-air rights.

MR SIMSON: From live pay television rights, you can't.

MR BROWNE: Yes, we can't do that.

MR SIMSON: So that really means, in the context of the point that you were making earlier about the commitments of other networks, particularly the Nine Network, that you've only got one network to deal with under the current rules. There's really only one network seriously at the table under the current rules.

MR BROWNE: That's dealing with all of the AFL matches. The AFL could split it rights between two free-to-air broadcasters.

MR SIMSON: Could you just talk to that, how that would occur?

MR BROWNE: A network may, because of other program commitments, not have the ability to broadcast say on a Sunday or a Saturday night or a Monday night. That might be a difficulty that every other network has but the AFL could offer three games a week to one network and five games to another network. That's possible.

MR SIMSON: Is that a practical option from the perspective of broadcasting in terms of the facilities and the infrastructure that would be required by a network? Is that something that's seriously possible?

MR BROWNE: Yes, it is, because the infrastructure required to cover major sport is not too different. The Nine Network has a sufficient number of OB events and commitments to rugby league and cricket that could equally apply to broadcasting AFL. There wouldn't be greater or more substantial investment from their point of view to be able to take AFL games. In fact, the Nine Network are on record as being interested in a split rights package.

MR SIMSON: That's an interesting scenario. You could have split free-to-air rights. I then just go on to the next scenario. Under the existing rules as they sit, what would that mean for the possibilities as far as the pay rights are concerned then?

MR BROWNE: Under the existing rules that would be virtually impossible for a pay TV broadcaster to show live AFL unless one of the free-to-air didn't want to show a match and then that particular match was delisted.

MR SIMSON: Or unless the particular group that had the free-to-air rights also had

some pay rights.

MR BROWNE: Yes, if they negotiated that between themselves. In fact, that's the case - - -

MR SIMSON: Or negotiated with themselves as the case might be.

MR BROWNE: Yes, with themselves or their partners, yes - them and their partners. At the moment the rights to both pay television and free-to-air television are held by the Seven Network for AFL. They in fact sublicense the pay television rights.

MR SIMSON: Okay, but you won't be taking that approach next time where you'll be basically splitting the pay and the free-to-air rights.

MR BROWNE: We don't know whether we'll do that but we'd like the option to be able to do that.

MR SIMSON: The suggestion with regards to Telstra in The Australian newspaper this morning, just so that we're clear on this again, does that relate to the potential for free-to-air rights or is that speculation - I notice Mr Jackson is quoted in the article. Does that refer specifically to pay and/or Internet rights?

MR BROWNE: I'm a bit confused by the article and I don't think that's my problem. I think that's the way it's written.

MR SIMSON: We were too.

MR BROWNE: I think what the suggestion is from sources who aren't identified, is that Telstra would be very interested in on-line rights; that it would be interested in pay television rights because of its interest in Foxtel but it has - - -

MR SIMSON: Just to go through this - excuse me for interrupting. Just so I'm clear on this, for Telstra to be able to have the pay rights and to have an involvement with the pay rights through Foxtel, they would nonetheless require assent from a free-to-air who had the rights.

MR BROWNE: At the moment.

MR SIMSON: At the moment, sorry, yes. Okay, go on.

MR BROWNE: And they must be anticipating that there be some sort of a sanction to confine their comment to that because they then go on to say they're not interested in free-to-air rights because of the operation of the anti-siphoning provisions. I don't really know what that means, I think, other than for them to acknowledge that it's a mess in determining what rights you can define out of free-to-air and pay television because of the current anti-siphoning rules.

MR SIMSON: Is there a way around this for the AFL where the AFL could in effect become a joint venture operator with a broadcaster, that is, instead of licensing the rights you in fact became a broadcaster. Is this something that could be considered?

MR BROWNE: It's something to be considered. If the infrastructure ramp-up for the Nine Network to take on AFL was considered too great it would certainly be much greater for us, unless of course we did it in a joint venture with an existing broadcaster.

MR SIMSON: Sorry, could you just explain that again.

MR BROWNE: We are not in a position at the moment obviously to become a broadcaster of our product. We would need to find a strategic partner with infrastructure to enable us to do that. That's an option that the AFL has not eliminated.

MR SIMSON: And you're saying there would be a greater incentive to do that if Nine was not at the table.

MR BROWNE: No.

MR SIMSON: I misheard you then. Going back to the - you made a reference - - -

MR BROWNE: My first point. No, I was harking back to something you said earlier about whether it was feasible for two free-to-air networks to broadcast AFL and I thought what you were referring to was the actual cost of production - - -

MR SIMSON: So let's just follow this scenario through a bit. If the AFL were to become a joint venture broadcaster, that would then provide you with considerably more freedom with regards to your pay rights, wouldn't it, even under the existing legislation?

MR BROWNE: Because we would control the attitude of the free-to-air broadcast.

MR SIMSON: Absolutely because you're a broadcaster.

MR BROWNE: Yes, if those were the terms of the joint venture that enabled us to control it to that extent, yes. Presumably the other broadcaster partner in the joint venture would want to get some value for their commitment to it.

MR SIMSON: Of course.

MR BROWNE: And we would anticipate that that would involve a level of restriction.

MR SIMSON: It depends on how the dollars flow.

MR BROWNE: It does.

MR SIMSON: But in the absence of there being a change to the anti-siphoning rules it would be a way in which you would be able to, for want of a better term, get around it by achieving those marketing objectives that you've identified by wishing to use strategically pay television to help your code.

MR BROWNE: I don't know that it solves the problem because what we would do in that situation would be because of our position in a joint venture influence the attitude of the free-to-air broadcaster to make more product available to pay television. I mean, whether that was a better position for us or whether we'd be better off simply licensing the whole of the right, we wouldn't know. We would have to look at that very carefully but I wouldn't assume that that would be necessarily a better position for us.

MR JACKSON: May I make a comment. You could also assume your broadcast partner will want to be broadcasting your very best games which therefore will have an impact on whatever is left available for the pay broadcaster.

MR SIMSON: But by the very nature of the joint venture relationship, in other words, who your partner is, that could well give you much greater flexibility with regards to pay as well.

MR JACKSON: It could do.

PROF SNAPE: Have you attempted to remove games from the anti-siphoning list.

MR BROWNE: No, we haven't attempted to remove the games. It's been an issue that because both the free-to-air and pay TV rights were granted to the Seven Network, the Seven Network have sublicensed the pay television rights and that's an issue that they have been able to regulate as a component of that contract.

PROF SNAPE: So you haven't sought a contract which would in fact not cover all the games and would in fact enable you to apply to have some games removed from the list?

MR BROWNE: We're coming to the end of a long-term contract so that's not a feature of that contract.

PROF SNAPE: Thank you.

MR SIMSON: Could I take you to your comments on datacasting. Could I just first off understand the scope that you believe you've got to broadcast over the Internet, without in a legal sense bringing yourself into the definition of a broadcaster. Could you give your interpretation of that please.

MR BROWNE: We have established a Web site which we are enhancing together with our partners in that venture. That doesn't have the same regulatory regime as a broadcast. We are looking at developing that. We're noting changes in technology will allow us to get better resolution into moving pictures on the Internet site and see that as a developing source for us. The AFL Web site has not been a profitable venture to date but we're hoping that it will, and our partners are hoping that it will and that's sustaining the investment in that. We see datacasting as an opportunity for us to use some of the unused broadcast spectrum to deliver a service much like that that we might ultimately imagine our Web site could contain.

MR SIMSON: Just before we get onto datacasting as it relates to the broadcast spectrum, can we just go back to the Internet spectrum or the Internet pipe or pipes, if I could put it that way. If your licence arrangements permitted, that is, if you so chose to construct your licence arrangements, do you believe that you'd be able to broadcast live action of a game over the Internet without being deemed to be a broadcaster?

MR BROWNE: If it was deregulated to that extent.

PROF SNAPE: Under current regulations.

MR BROWNE: Under current regulations - yes, we think it would under current regulations because of the difference that the regulations create between a service like you've described and a broadcast service.

PROF SNAPE: Is this because you have to pay for it, for the Internet or what?

MR BROWNE: Yes, and also as I understand it - and I'll have to take your question under advisement to some extent - because it isn't regulated as a broadcast service, that the regime is different and there are other opportunities for content providers via the Internet that aren't available to television broadcasts.

MR SIMSON: We may come back to that in a moment but just now moving on to your datacasting point where you do on page 32 say under point 8:

the ability to provide a service which appears "broadcast-like" in content and quality but that access should be distinguished on the basis that the datacast service be available only by subscription.

So what you'd like to do is to make a datacast service available over the broadcast spectrum but on a pay-for basis.

MR BROWNE: Yes.

MR SIMSON: Okay. Could that service be split from the free-to-air licence as we now know it? Could that be another tier of licensing arrangements that you have with

a group?

MR BROWNE: It could be. Yes, it could be.

MR SIMSON: Do you believe that could be done without infringing the anti-siphoning laws?

MR BROWNE: I think it ought to be done without infringing the anti-siphoning laws. I think the anti-siphoning laws ought to be removed so that datacasting wouldn't suffer the same impediment with particularly broadcasters - - -

MR SIMSON: No, no, but it sits today, as the anti-siphoning laws sit today, do you believe that you could offer a pay-for datacasting service without infringing the anti-siphoning laws?

MR BROWNE: That's our understanding of it, yes.

MR SIMSON: Okay. So you've got a bit of room to move, haven't you? On your definition of Internet broadcasting, you've got a bit of room to move there. On your legal interpretation of the datacasting laws as they relate to anti-siphoning, you've got some room to there as well.

MR BROWNE: Yes. I was offering you a view about what our understanding was without offering you a legal interpretation.

PROF SNAPE: You might have a look at the definition of "broadcasting service" in section 6 of the Broadcasting Services Act and see how we go on it. It would be very borderline, I think. Could you go back to anti-siphoning and then get away from your own very specific interest for a moment, but where you're thinking of that list. If you went to the sort of recommendation that we were inclined towards - which are words I think for the non-exclusive - would you retain a list of sports or would you want it to apply to all sports?

MR BROWNE: Yes, we wouldn't retain a list.

PROF SNAPE: There would be no list at all, so it would apply to all sports?

MR BROWNE: Yes.

PROF SNAPE: Okay. So there would be non-exclusive rights to all sports. Let us suppose that a channel on pay TV, presumably, it was a content supplier to pay TV, had in fact been fostering a particular sport and putting money into developing a particular sport - beach volleyball, to take one example - and they had really been pouring money into developing this. Don't you think that they should then be given under that proposal - or would you think that they should be given the ability to have the exclusive rights then?

MR BROWNE: The ability to deal exclusively ought to be a component of the negotiation with the rights holder. What we're keen to see is an opportunity for the AFL as a sports rights holder to deal with either pay television or free-to-air. Those considerations that you've referred to may bear upon that commercial negotiation and persuade - - -

PROF SNAPE: But that's your first-best position, not to have any - - -

MR BROWNE: Yes, it is.

PROF SNAPE: On your second-best position, which is to have non-exclusive rights but no list at all, then do you think there should be exceptions to that if there's been a particular investment for development of a particular sport?

MR BROWNE: No, because I say that that ought not to be a regulation that ought to be an issue for commercial negotiation between the parties.

MR JACKSON: And if they have been investing they're in a substantially better starting position.

PROF SNAPE: Yes.

MR SIMSON: Looking at the gathering of players in this so-called converging environment that could be interested in your product, could you just talk with us for a moment about the so-called new players that are emerging, such as a telco or a Telstra, and where you see those sort of groups as being able to add value to your business, either alongside or in addition or perhaps instead of the so-called traditional media outlets?

MR BROWNE: What we've addressed in our submission is the advantage to the AFL which is brought about by competition for the transmission of images of AFL matches. However, that occurs through a telco, through pay television, through free-to-air, the principle is and our proposition is that we need more options than we currently have. We know that the telcos are interested in us. It may be that a telecommunications company might buy the whole lot and then sublicense some of the other components of it to a free-to-air broadcaster, to a pay television broadcaster and exploit the online rights. We simply want to be able to treat with a bigger range of customers than we have now, and the range that we have now is limited by the operation of the anti-siphoning provisions, and we say that our options would be enhanced if a broadcast-like subscription based datacast service was introduced.

What they would bring to the mix in terms of their distribution, their ability to be able to contribute to content, we don't really know, except that if there are more people out there competing and showing their wares and displaying their abilities as against each other, we think we're going to get a better product.

MR SIMSON: But going to the scenario you mentioned a second ago, or the

possibility you mentioned a second ago, where a Telstra purchased all the rights, in effect then brokered them on your behalf to the various mediums. Is that right?

MR BROWNE: That's a possibility, yes.

MR SIMSON: What would be in it for a telco to do that, apart from securing the online rights which arguably would have, as we sit here today certainly, on a medium-term scenario, the least value of any of those other rights?

MR BROWNE: Nothing other than just that. They may see their investment in the future of that particular medium as sufficient for them to get interested in buying the package and sublicensing the other components.

MR SIMSON: Unless the telco considered it might one day become a TV network or - - -

MR BROWNE: I'm not suggesting that.

PROF SNAPE: Well, that has been a very, very helpful submission and a very helpful exchange too in elucidating certain points and we thank you very much for it and for coming along today. We thank you and for those others who have contributed to your submission. Thank you very much.

MR BROWNE: Thank you, chairman and commissioner.

PROF SNAPE: We'll break for a moment or two.

PROF SNAPE: We'll resume the hearings and we welcome Mr Kings and Mr Cameron and I think you gave a submission - you did give a submission on the earlier occasion I think. We don't have a written submission on this occasion.

MR KINGS: That's correct.

PROF SNAPE: We welcome you and if you would like - I think you know how the game is played and if you could like to identify yourselves separately for the transcript service and then make your presentation please.

MR KINGS: Thank you very much. My name is Richard Kings. I go under the banner of the chairman of RKR Radio which is an interest that I have over many years and it does a lot of funny work in the community radio sector. In the past I have been the vice-president of Inner FM in Melbourne, the foundation vice-president, and I'm currently the deputy chair of Melbourne Pulse Radio. This afternoon we'll be addressing the community radio sector and its perceived problems as we see it.

PROF SNAPE: Thank you. Mr Cameron?

MR CAMERON: Yes, my name is Graeme Cameron. I'm the group manager development of Macquarie National Network which is an organisation looking into the training and development areas of various industries.

PROF SNAPE: Thank you very much. I hope you've seen the draft report.

MR KINGS: Yes.

PROF SNAPE: We would be grateful if the comments could be directed towards the draft report. Thank you.

MR KINGS: Thank you indeed. First of all, we appreciate the opportunity to come this afternoon and whilst the community radio sector is probably not a big issue in the overall commission's brief, we necessarily have a few things to say and would like you to, with your indulgence, listen to our story. Basically we believe - or I believe - there has been a marked failure in the community radio sector and that has been brought about by the fact that it has many deficiencies which makes it extremely inefficient and causes all sorts of problems for all the people involved in it and it equally has many deficiencies of management, its procedures, its accountability in finance, in public standards and its overall ability to become a feasible operation within the Australian structure.

Throughout my involvement with the community radio sector I've found that it has big problems in affecting people's behaviour. It doesn't always do what it should do and operates very badly and doesn't really address the criteria under the Broadcasting Services Act and therefore it operates with a quasi regulatory position of codes of practice. The codes of practice which were worked out by the CBAA in consultation with the community radio sector some years ago went to address the

operations of community radio but failed miserably in obtaining the required outcomes. In short - and I don't wish to say it this way but it's amiss. The codes of practice do not in any way, shape or form give the community radio sector an opportunity to grow and develop and to become its best either under the perceived notions of best practice or world standard or in any way possible under competition.

When we say market failure, you could say that although community radio is not a profit organisation it still is a market. It's a market because it involves many thousands of people across the nation both at national, state and local level. The operations of community radio involve probably a couple of hundred million dollars at a conservative estimate so it's not exactly a small sector when you add up all the money going through it, largely under the auspices of incorporated bodies, they can all the same be sued and can sue and their surpluses at the end of the day are quite large. Radio being a capital intensive industry means that community radio of course has to buy the same equipment as a commercial broadcaster. There is no distinction save for some provisions under taxation where they might be able to be given a tax break to buy equipment with.

Nonetheless, these community radios which are often thought of as poor and puny by the industry are operating on quite substantial amounts of money and therefore they cannot be considered all that small. We wish to talk about the things like the content of community radio and its management and finances and its elections where it simply does not help any of the community whatsoever. Under the Broadcasting Services Act it is believed that it should be able to provide the service at its licence renewal that it made available in its submission originally. 90 per cent of community radios do not attain the community interest sector that they originally were licensed under. In fact, it has become quite a mismatch of vested interests of people competing for different types of things. The sorts of individuals who frequent the community radios are often people who have no interest in the radio per se. They're after a small incentive of some other nature which is not in the best interests of the sector.

By way of background, if we could take the Melbourne example of Inner FM which started with some marvellous ideas. A group of people who were interested in community radio when the system was set up in the early 80s took it upon themselves to create something which was the biggest thing which was ever going to hit that community and it was initially brought together by a group of individuals who were members of parliament, councillors, local businessmen, all people of repute within the community and it was started. The best ideas under the sun didn't eventuate. What people thought would turn in to be something of quite magnificent proportions, something to be held up in the community as a pedestal of community involvement over the years ended up being just a mess of individuals trying to compete with each other and producing a substandard and basically laughable community broadcaster.

We thought we were alone. We weren't. We looked around the industry and we found similar examples all over the place. Good people trying to do good things were thwarted in their abilities at the outset. The vested interests are all those who

seek to make it something that it's not and this is the sad cry of the community radio sector. It should encourage the services to be responsive and of public interest. It does not do that at all. It should provide a means of addressing complaints by which people in the community and indeed, people inside the community radios should be able to be given a fair hearing and it's on this basis alone that the codes of practice in the community radio standards do not hold up at all.

It could be said that if you have a complaint, in whatever capacity at community radio level, you have to complain under the codes of practice adopted by the CBAA and that industry to the - for want of a better word - people perpetrating the crime. Probably 90 per cent of the complaints are against the station to which they're complaining. There could be all sorts of reasons why they're complaining. Often people are aggrieved by the process by which they have been put through but what's the point of complaining to a station which then turns around and says, "We deny liability. We haven't done anything wrong therefore your complaint ends there."

PROF SNAPE: What is the nature of the complaints that you're concerned about? Do they fall under any sort of general headings.

MR KINGS: Yes, they do. If I could go back to my original writings on this topic, to the duty of care I placed before the commission prior to these hearings and the complaints are set out in numbers 1 to 6 initially on page 2. The management, the credentials of those seeking election to the boards or quasi committees of management, their demonstrated capacity to perform in such roles and also the elections of those committees of management - - -

PROF SNAPE: These are process in the management of it rather than the content of the broadcasting. Is that correct?

MR KINGS: Sorry?

PROF SNAPE: This is complaints relating to the management of the station rather than to what is broadcast. Is that correct?

MR KINGS: Correct, yes.

PROF SNAPE: Thank you. I'm sorry that I somehow don't have that earlier submission with me. I thought I did but I don't. It will be upstairs. If you can continue.

MR KINGS: I suppose the easiest way is to just refer back to this to get an idea of - - -

PROF SNAPE: We don't want to traverse the territory that you did last time. We do have the earlier submission and we also have the earlier - when you appeared at the hearings last time and what we would ask you to do is to concentrate on any new material or the response most particularly to the draft report, because these are

hearings on the draft report and so we don't wish to reiterate matters which we covered last time to which we can refer of course.

MR KINGS: Right. The areas of the draft report in particular - there is absolutely no transparency of these elections or management procedures at local level of community broadcasting. The committees of management refuse often to provide their members and/or the general public with any information which might be going on about them. They're often seen as being very tightly controlled to the extent that they could actually rig elections and organise things which should normally be above board and open to the community to context. They simply fail in that respect. So the public interest is not at all being taken up in regards to the sector at all.

The restrictions in public interest - there are too many instances where all their operations are clandestine or conducted in a very tightly controlled environment where the members of the association have no input whatsoever to the overall operations. These committees of management are entirely a law unto themselves. When they're challenged by outside or within they can simply promptly disregard the interests of the members, their feelings or their attitudes and virtually ride roughshod over everything without any effective means of redress. If people have a problem at community radio level there is no means of redress outside the codes of practice.

MR SIMSON: Mr King, just so we - in the interests of time and ensuring that we capture the thrust of what you want us to do with our draft report, what are you recommending?

MR KINGS: I'm recommending that the codes of practice applicable to community radio be abolished; that a new structure be put in place which would ensure proper standards of management, operations, conducting of elections to their committees of management be regulated with a new system. That new system might have to be a rehash of the old tribunal system but understanding the thrust of regulatory reform where we don't want too much burden to be held by regulation, nonetheless, after years of operation the system needs to be looked at and revised. The best way to do this is to come up with an independent board perhaps which can oversee the operations of community radio and make sure that it's open, transparent, fair and equitable in all its dealings. This goes against the thrust of regulatory reform, I agree, but when people in the community who are volunteers are aggrieved and they do not have any other except being shamed because they've been badly treated by community radio, which is in some areas more respectable than the local government authority or the council, it's now time to bring back some kind of control over the industry for its better operations.

PROF SNAPE: This applies to all segments of community radio?

MR KINGS: Yes.

PROF SNAPE: Including the classical music channels?

MR KINGS: I haven't had personal experience with the classical music channels, but if they're operating under the banner of community radio I would imagine that they would have the same sorts of problems as the rest of the sector.

MR SIMSON: Isn't what you're suggesting antipathetic to the whole nation and the community?

MR KINGS: It is, yes, regretfully so.

MR SIMSON: Clearly you've had some particular concerns, particular problems, but how can you be certain that this is so endemic to justify the sort of shift that you're recommending?

MR KINGS: Simply because of the numbers. There's a misnomer in the industry that's it's poor and puny, as I stated before. It's not. It involves thousands of people, literally tens of millions if not a couple of hundred million dollars when you add it all up. It's not a small environment when you take it in its overall context. The sorts of money floating through this semi-autonomous not-for-profit organisations is quite remarkable. The money is often misspent, misappropriated. It's not accountable. The types of people it attracts, this sort of money, for whatever reasons, don't have the best interests of the community, and of course I don't want to say this but it can have an influence on the political outcomes of a community.

If you look at it, if for example under a hypothetical situation - and it has happened, where committees of management have actually had to, where appropriate step in and stop it - certain groups would like to gain control of community radio for political purposes. That's not good, because at the local level, let alone the impact it may have at state and federal, is that if there was a push it would not be inconceivable, particularly in this day and age where politics and globalisation are so easily accessible, that people could take control of such an organisation.

PROF SNAPE: Okay. I think the point there is very clear that you're making and when combined with your previous submission we can refer back to that. Thank you very much for coming. I'm sorry, Mr Cameron, yes.

MR CAMERON: Sorry, I take a different tack from where Mr Kings is.

PROF SNAPE: My apologies. I thought that sitting together you were of one mind.

MR CAMERON: No, I take a different tack from where Mr Kings stands but resulting in similar sorts of aspects. I look at community broadcasters as overall complying with the codes of practice that have been outlined and set up through the CBAA and I believe that they were approved by the ABA back in 1995. But primarily I see the CBAA, the membership of which is made up of the licensed community broadcasters and aspirant radio stations - of the 160 licensed community broadcast stations, 132 of those or some 82.5 per cent are members of the CBAA. I

also find that of the 150 aspirant radio stations, 100 of those or some 66 per cent are members of the CBAA. So I see that the CBAA is a representative body which has a monopoly or, you could say, is the cartel that is running the community broadcasting sector.

Bearing in mind when you add those two groups together, the aspirants and the licensed community broadcasters, they have representative representation of 74 per cent of the industry. The complaints that have been made under the code of practice since 1995, the year in which the code of practice was adopted by the ABA, total some 15. A third of these complaints concern broadcasters in Melbourne, and these include one complaint from 3ZZZ, two complaints from 3WRB and two from 3CCC, and they stem from an internal difference of opinion, that is, members or community groups who broadcast within those three groups having a difference of opinion with the management or staff of the radio stations.

In mentioning this I go back to I think it's section 10, the codes of practice and compliance part, which Mr Kings has already raised. Now, the Department of Communications and the Arts has identified shortcomings within the codes of practice. This is outlined in written communication between both Mr Kings, myself and Ruth Ashe, who is the director of the community broadcasting section of the department, whereby, whilst it is generally accepted that codes 1, 2, 3, 4 and 5 are easily complied with, codes 6 and 7 must be addressed. Code 6 deals with complaints, code 7 deals with providing information to the public on how to make complaints. It's quite clear that the majority of community broadcasters and aspirants fail in providing information to their listeners or to their members on how to make complaints about programming, management procedures and the like.

I'd like to bring on board here that I believe that most of the management problems within community radio stem from lack of training or lack of qualified people to appropriate certain aspects of the industry. I look at codes of practice and primarily I believe personally that they are not worth the paper they're written on unless they're embedded in legislation. I also see that if you've got finance that you're dealing with - and Mr Kings has already identified that this is a multimillion dollar industry when you look at as a wide industry. When you look at it more specifically, the radio stations are dealing with maybe 2 or 3 hundred thousands dollars each per annum in turnover in revenue.

PROF SNAPE: Could we move on to the recommendations please. We've got a description of the industry.

MR CAMERON: Yes, sure. In doing this I'd like to see the industry as a whole look at not so much the codes of conduct but industry standards applicable to say the marketing, the accounting and financing industry and also the management sectors.

PROF SNAPE: So it's not something that we can - we're concerned about making recommendations and working on our draft recommendations so that they either become changed or they finish up in one form or another in final recommendations.

It's very hard to make recommendations or regulations about management. I mean, management can be good or bad but you can't regulate that it's going to be good or bad.

MR CAMERON: Sure, I realise that. But if you can't regulate it then there are codes of conduct within these other industries that can be applied to community broadcasting as a whole, like the standards that are set by the ASC, the Australian Securities Commission, the Office of Fair Trading, the ACCC and the like that can be used as guidelines to achieve the standard is required by management of community broadcasters.

PROF SNAPE: So one is looking to accountability, I think, if one wants to put it under one heading. Is that - - -

MR CAMERON: That is exactly what we're looking at, and furthermore that those within the industry have some sort of formal qualification, and it could be sought as a statement of attainment from a qualified institution or recognised training provider.

PROF SNAPE: We don't even require that of economists, I might say.

MR CAMERON: But I believe that that would also have overtones to the commercial radio industry, where they can at least say, "Well, you have some sort of qualification in performing certain tasks and outcomes." I don't believe there's much more I can say save than the CBAA does seem to have some sort of control over the industry as a whole. If you break up that control and you allow - we don't even have compulsory unions any more, so why should an industry have the whole say in how the industry is run?

PROF SNAPE: It's not compulsory, however, is it?

MR CAMERON: No, it's not compulsory but I think you'll find that the membership and the management of the CBAA sort of twist the arms of those within it by way of funding, because the federal government waived funding to the CBAA and through the CBAA they allocate it to their members. So if you're not a member you don't get allocated any funds. I think that's where we're at. Thank you.

PROF SNAPE: That's a very clear statement. Thank you very much for it. We'll be next moving on to another branch of community radio, where I think we've got a triple representation, 3CR, 3ZZZ, National Ethnic Multicultural Broadcasters Council.

PROF SNAPE: As I mentioned, we have a trio. Welcome. If you would like to identify yourselves and who you're representing individually please.

MR FRANCIS: My name is Bruce Francis. I'm the executive officer of the National Ethnic and Multicultural Broadcasters Council, which is the national representative bodies in the community broadcasting sector.

MR TOLHURST: My name is Tim Tolhurst. I'm the station manager at community radio 3CR.

MR BASTOW: My name is Nick Bastow. I'm the station manager of 3ZZZ. We're a full-time ethnic language community broadcaster.

PROF SNAPE: I think all three of you were here on a previous occasion, were you?

MR TOLHURST: No, the last representative of 3CR was Jan MacArthur and she has left and I've taken over her position in the last five weeks.

PROF SNAPE: Okay, welcome back to two of you and welcome to the third. Who is going to start off?

MR FRANCIS: I will. Just a couple of words in relation to the previous submission. Having been a previous station manager of a station which didn't belong to the CBAA and having received substantial amounts of government funding, I'd like to point out that the statement that the CBAA controls government funding to community broadcasters is completely false.

PROF SNAPE: Is it funnelled through or - - -

MR FRANCIS: No, it is provided through the Community Broadcasting Foundation and that is how funds are allocated and in fact my understanding of the regulation is that in fact membership of an organisation in no way can be a criteria for funding. We'd mainly like to direct our remarks, as we've indicated, to the draft report, having read the draft report and having made some written comments to you.

PROF SNAPE: Yes, thank you. We've got the submission and we are grateful, as you can see, if your comments can be on the draft report.

MR FRANCIS: Yes, I think our written report was specifically on the report and that's what we'd like to stick to. First of all, we welcome the commission's acknowledgment of community broadcasting and the diversity that it brings to broadcasting. We think that's important and again we very much welcome that recognition that's in the report.

Secondly, on the issue of indigenous licensing category, we very much welcome the recommendation that there should be a separate indigenous licence category, and

further we believe that such a category must be backed up by an appropriate allocation of spectrum so that in fact an indigenous broadcaster becomes a truly national service that's available to all indigenous Australians. I point out at this stage for instance that in the major capital cities of Sydney and Melbourne there is no indigenous service and that what broadcasting is provided is provided either through an aspirant broadcaster or through existing general broadcasters, where a number of hours of programming will be set aside for indigenous broadcasting.

The next issue we'd like to address is the issue of spectrum allocation and a number of aspects of this. Coming from the community broadcasting sector, it's important to us that it's acknowledged that spectrum is a public asset and is owned by the public and that, as the report points out, there are particular social, cultural and diversity objectives that we wish to pursue in relation to broadcasting. It is of a concern to us that the allegation of spectrum and the allocations of licences will be separated and of further concern to us is the suggestion that there should be some economic value placed on spectrum allocated to the national broadcasters and to community broadcasters.

Given that the social, cultural and diversity objectives cannot in all their aspects and diversity be fully equated to economic value, we find the proposition slightly troubling. We also think that what it actually does in a de facto sort of sense, or what it will do in a de facto sort of sense, is actually put economic value rather than the broadcasting objectives we wish to achieve at the pinnacle of decision-making and that hence the desirable outcomes in terms of those social, cultural and diversity objectives will not be achieved and in fact in the long term will be undermined.

In relation to specifically the allegation of licences within the community broadcasting sector and I guess the division of licences between the existing broadcasting sectors, we do believe there needs to be some process which can look at those objectives and allocate licences in an appropriate fashion. We also believe that in the community broadcasting sector there are many, many aspirants in the sector at the moment, not all of whom will be licensed under the current process that's under way. I think in Melbourne for instance there's something like 23 aspirants and we expect there to be probably two licences allocated to the community broadcasting sector. There needs to be some way and some process and some independent process of actually assessing the different communities of interest and how the community's welfare and the community's overall interests can be best looked after in terms of allocation of those licences.

I think when you look at community broadcasters and particularly our sector of ethnic community broadcasting you see a phenomenal amount of energy and a phenomenal amount of broadcasting going on, and the benefits to the community are enormous. There are strictly broadcasting benefits and there are non-broadcasting benefits. I've just come back from our national conference, which we held in Perth this year. We had 100 delegates to that conference. We raised money to fly delegates from as many stations as possible to that conference so they could participate and we looked at a range of issues around cultural identity, around innovation, around

cultural programming and arts programming, around issues of defamation, training, how to become trainers. As a sector we provided both a certificate 2 and a certificate 3 training course for broadcasters, which looks at the whole range of skills that are required to be a broadcaster.

Those things cannot be easily valued. The fact that if there weren't community licences or national licences, there would be very little if any non-English language broadcasting is something that is very hard to value. What economic value do we place on the fact that people actually receive information that they understand which enables them to participate in a meaningful way in their communities and in the Australian society? If you look at the training that's undertaken, we've trained now in excess of 2000 ethnic broadcasters. The benefits not only reflect in the quality and the nature of their programming but it also reflects in the qualities and skills of those people and the skills they then take on as members of their communities or their many communities to those communities and into the Australian economy.

PROF SNAPE: I wonder if I may just comment. I think your comments here are being prompted by our draft recommendation that a value be put on the spectrum and so therefore you're speaking to the benefits. I perhaps should explain the rationale a little bit more and then you may or may not get some comfort. Perhaps the way to do that is to use the same example that we used in the hearings in Sydney, when we were again receiving a submission on behalf of community radio when similar concerns were expressed.

The principle that I said that we were applying here was a principle of accountability, which I think would be generally endorsed as accountability. We are simply attempting here to say, let us try to measure the value of the resources which are being used in this manner. Just as if it were the ABC and the valuation that if they were getting a free building by the government, if one was trying to measure the amount of resources going to the ABC in one year one then should in fact include that free building that was being given to them as part of the community resources that were being allocated to it. There's a valuable resource here in spectrum being allocated for use not only by the national broadcasters but by the community broadcasters, and it was simply to get a full measure on the resources and the value of the resources which were being allocated.

That's not to deny that there are enormous benefits arising from both the national broadcasters and the community broadcasters and also not to deny that many of those benefits cannot be quantified, and we haven't tried to quantify them. But the example that I gave in Sydney, which eventually was to say, that if I'm saving a whale I don't wish to value the whale, but I will still want to know whether it cost \$10 to save the whale or \$2 billion, I think I said, to save the whale. That's not to say that I'm putting a value upon the whale, but I would certainly want, if I'm allocating my own resources, to know how many of those resources are being allocated to this task and the value of them, and similarly if we're talking about national resources, as a taxpayer etcetera I would want to get as good an estimate as I can as to the value of those resources being allocated to the task. That's not questioning the value of the

activity but simply to say for accountability of the allocation of resources we need to do that.

In many ways the spectrum can be compared to land. They're both scarce national resources. We would want to know the value of land which was being allocated to various activities, worthy activities, if the taxpayer is in fact doing that allocation. Similarly for the spectrum, to get a full accountability we would want to know the value of the spectrum being allocated. That is the sole basis of our draft recommendation.

MR FRANCIS: I understand that. What I'm saying is that accountability is in fact two-sided thing, and if you're actually looking at accountability then you also need to be looking at what you're actually getting in terms of a return. The return is not measurable and, because the return in that sense is not measurable in economic terms, what you end up with is a resource-driven economics rather than outcome-driven economics. That in the long term creates an understanding or can create a misapprehension within the community and within I suppose the political leadership of the nation in terms of what is actually provided to community broadcasters and what benefit is actually coming from it.

PROF SNAPE: I think government has an allocative question here, and we're trying to shed as much light as we can upon this allocation of resources. Ultimately decisions have to be made. We're trying to inform these decisions as much as we can.

MR FRANCIS: Yes, but in fact land or spectrum or air has a value only if it's actually placed within an economic market where a value is actually applied to it. We would argue that spectrum is a public asset and it doesn't necessarily - - -

PROF SNAPE: I'm not quite sure that I agree with you, because even if one is operating completely within the non-market sector for the allocation of land, one will still have to decide whether one allocates some land to a public hospital or to a park.

MR FRANCIS: Indeed.

PROF SNAPE: That is completely within an allocative sector which is, in and the example I gave, out of the non-market sector. It doesn't mean that there's no choice, there's no scarcity. That's what we're about.

MR FRANCIS: Yes, but I'm saying we think there are other ways of actually going through that process and we think that some independent process, which the ABA is one example of in its current form as a process of doing that, which doesn't actually require that every bit of spectrum is valued in terms of a market value for what would be in fact a commercial broadcaster.

PROF SNAPE: Okay, we take your point on that and we understand the point.

MR FRANCIS: The other issues I wish to speak to briefly are in fact in relation to

digital broadcasting. Again, it's a very big issue for our sector. Although I think around \$25 million comes into the sector in one way or another through about 163, 164 community broadcasting stations, a lot of stations are in fact very poor and, even at an average of about 120, 130 thousand dollars worth of gross income, it means that the prospect of digital broadcasting is in fact going to be a difficult financial decision for stations.

It also means that it's important for us and important I think for the diversity, cultural and social objectives of broadcasting that community broadcasting migrates fully to digital broadcasting and is not left in some unused ghetto of AM or FM broadcasting. So I guess we just want to stress again that we think that digital broadcasting is coming. We are interested very much in being part of that and we believe that we'd like to reinforce the commission's view that community broadcasting should be part of that. The idea of spectrum allocation within a digital environment is an issue that we have some concerns about. We appreciate that the commission is recommending that there be an allocation left - once migration takes place of all the current players that there will be an allocation for further national and community broadcasting licences. What we're concerned with however is the notion that any spectrum that's not allocated at that point in time is then sold off and that that be seen as a perfectly adequate way of allocating that excess spectrum.

The issue of community television is one that is of concern to us and it's a fairly new phenomenon and it has had some difficulty in establishing itself. The recommendations of the commission we find to be of interest in terms of taking that debate about the role and place of community TV a little bit further. Again, we think that in the short to medium term that community television will become a source of diversity and a source of training and skills development and understanding for the sector about the nature of the media and particularly about the nature of television.

We also note the comments about spectrum allocation and one of the recommendations of the submissions in the first round that the Community Broadcasting Association of Australia could possibly allocate licences. We don't believe this is an appropriate measure.

PROF SNAP: It wasn't our recommendation.

MR FRANCIS: It was somebody else's recommendation but it was - - -

PROF SNAPE: It was a suggestion by someone.

MR FRANCIS: Yes, it was somebody else's but it was highlighted in the commission's report and we would like to say, as I think the CBAA does, that that is not an appropriate thing.

PROF SNAPE: It has received universal disapproval.

MR FRANCIS: We add our voice to that. The issue of narrowcasting and some of

the difficulties in the recommendations that that's an issue that needs further exploration is also a recommendation that we would endorse. We think it's a strange category and it needs some further thought and planning. The other two issues I wish to touch on briefly fall outside, in a strict sense, the ambit of community broadcasting and they are the issues of foreign ownership and of cross-media ownership.

PROF SNAPE: We noted your comments there, yes.

MR FRANCIS: We are I guess however concerned because we see ourselves as playing a fairly strong part in diversity and local content and we wish to see both those issues strengthened rather than weakened. We welcome, I guess, that the commission has put down a whole lot of steps and necessary requirements before cross-media ownership could be done away with but I guess we see (a) we would be opposed to any deregulating of foreign ownership. We think that the cultural objectives of broadcasting and that Australian culture needs to be strengthened and that foreign ownership will in fact undermine the strengthening of Australian culture and its expression through the media. I guess we see that the convergence of technologies that are coming into place in terms of broadcasting and broadcasting options actually strengthens the need to ensure that the big players in the media industry do not actually take over those new forms of receiving information for the community.

PROF SNAPE: Good. Thanks very much for that, Mr Francis. Mr Tolhurst, do you wish to speak to you - - -

MR TOLHURST: Just very briefly. Firstly, I would endorse most of what Bruce says, particularly the aspect of isolating the value of community radio from value in other terms or as expressed in dollar terms. For us that's a particular concern because 3CR has a policy which incorporates no commercial sponsorship of any kind and that's fairly unusual in the community radio sector but because of I guess our history and our philosophy about radio and independence it's a position we take. It makes our lives difficult quite often in fundraising and providing facilities and that sort of thing but it's something we've done for over 20 years.

It's important to 3CR and the background of that is that last week I think a bill went through parliament which actually increased the sponsorship allowable time to five minutes per hour. I have to say that seems to have been welcomed across the community sector but it's not by us so I guess in endorsing Bruce's comments I really want to say that there perhaps needs to be some statement or some recognition - and to use your example of land - maybe community radio is a bit like heritage land. It's special to the identity of Australian people and to the Australian community and I think that's probably all I want to add on that.

PROF SNAPE: I didn't want to raise the question of land rights.

MR TOLHURST: That's why I said heritage land.

PROF SNAPE: Thank you very much. Mr Bastow?

MR BASTOW: I guess I'll obviously endorse what both Bruce and Tim have said. I'd just like to raise two specific issues that I think come out of our perception of the report at 3ZZZ and we're speaking now as an ethnic language community broadcaster so one that does very little broadcasting, if any, in English really. The major issue that's facing us at the moment is, as Bruce has said, the migration to digital broadcasting as I discussed in the previous submission. I think in many ways ethnic language community broadcasters or ethnic language broadcasters are in a position - have some of the most to gain from digital broadcasting with a potential for channel splitting and increased access to programming time that that would ensure.

What I guess we would hope may occur is that there would be some recommendation that the government should provide some assistance in this migration to the new digital spectrum, new lands. We think that what potentially risks happening is that if the community sector, in which we include ethnic community broadcasters, doesn't have the funding available to it to make that leap, then for a range of regulatory reasons those sort of lands may be actually all fenced in, enclosed, and additionally it would sort of condemn community broadcasting to be stuck on sort of - as Bruce described - a ghetto frequency of AM or FM which we think would be extremely undesirable. We think that would be a shame in the end if community broadcasting is simply excluded from new technology through cost.

Just on this point of I suppose economics, the other thing that does concern is that some of the services that community broadcasting - and obviously particularly in my case ethnic community broadcasting - are services that aren't economically viable in a sort of market sense. Bruce is correct that if you were to remove current ethnic community broadcasting and government ethnic language broadcasting through SBS there would be virtually no ethnic language broadcasting in Australia except for some of the very large communities and that would effectively exclude a whole - of our 60 communities would effectively exclude 57 of them.

PROF SNAPE: We do have a network of commercial Arabic services.

MR BASTOW: I mean specifically Melbourne as I understand it there currently is a Greek broadcaster, Italian and there is a Turkish broadcaster in Melbourne who I think operates just outside the broadcast bands.

PROF SNAPE: Where the Arabic ones are on the - - -

MR BASTOW: But I mean, I think it's worth pointing out - and I make no comment of the service but that still leaves Vietnamese, Spanish - you know, I could go through the other 55 but that would be wasting your time. I think that the other recommendation that did pose some concern to us is that a proposed splitting of the spectrum allocation and broadcast licence allocation systems, we believe that potentially has the capacity to reinforce a view that in some ways community broadcasting is a second class of broadcasting and to some extent is a poorer cousin

after commercial and government broadcasting.

We have observed I suppose as a licensed station the delays involved in the allocation that currently exists within the aspirant broadcasting system which everybody clearly seems to recognise as undesirable. We believe that in the end simply splitting this process may in fact risk that whole process becoming even longer and that ultimately, however sort of undesirable recommending increased resource allocation is, that those things may be better undertaken through simply providing the ABA with the resources to accomplish speedier licence allocation systems. That's a perception issue but I mean, I think it's probably having seen through the hoops that people have gone through to simply - we risk duplicating that. Thank you very much.

PROF SNAPE: Thanks very much. You've made your points very clearly and we thank you for doing so and for your submissions both on the earlier occasion and this and particularly for coming before us. Thank you very much and I think our last participants today are HCJB Radio, Voice of the Andes I think in Australia.

PROF SNAPE: We resume and we welcome David Maindonald and Ross Ramsay. If you would introduce yourselves for the transcript please.

MR MAINDONALD: I'm David Maindonald, the Australian director of HCJB Australia.

MR RAMSAY: Ross Ramsay, managing director of Bramex Pty Ltd, consultants to HCJB.

PROF SNAPE: We don't have a written submission from you this time. I think we did on a previous occasion and we asked you to speak today. Thanks.

MR RAMSAY: Thank you, chairman. Just to recapitulate very quickly on HCJB, HCJB is a mainstream Christian broadcaster promoting strong family and cultural values. It's part of an international federation which has been operating with an impeccable reputation since 1931. It has made programs in Australia for the last 25 years plus. It's an Australian organisation formed as an Australian company limited by guarantee and controlled by an Australian board of 10 people.

It August 97 it applied to the ACA for an international broadcasting licence to broadcast Christian programs internationally. That application was eventually rejected on the basis that no policy existed allowing this type of broadcasting. The objective in reappearing here today is to bring to the attention of the commission the Broadcasting Services Amendment Bill (Number 4), which was introduced into the parliament last week on 8 December. It's a bill in relation to international broadcasting services. Our second objective in coming is to assist the commission in forming a view whether this bill is necessary or reasonable. We just note at this stage the draft report of the commission does not cover international broadcasting services.

PROF SNAPE: No, we acknowledge that. As you would appreciate, we had a lot on our plate and one or two things slipped through the cracks.

MR RAMSAY: It's probably more timely now that the legislation is in the parliament. Chairman, first we'd like just to cover the key points of the bill, in case you haven't had the opportunity to read it. Firstly, an applicant for an international broadcasting service applies to the ABA for an international broadcasting licence, a new type of licence. It may also have to obtain an additional licence from the ABA, depending on the nature of the particular type of service, for example, whether it's commercial or whether it's narrowcasting or whatever.

The ABA checks that the applicant first is an Australian company, secondly that it is a suitable applicant, and it's worthy of note that there appears to be no specific time limit on the ABA to do this process. That's not that we're aware of at the moment. The ABA then refers the application to the minister for foreign affairs. I'll refer to him the MFA for short. The MFA decides whether the application is contrary to the Australian national interest. The one criterion in relation to this is the effect on international relations, so it's very broad indeed. The MFA should do this in 60 days

but is not obliged to meet this deadline. The MFA either directs the ABA not to issue a licence or advises that there's no objection. The MFA is not obliged to give reasons, for the interesting reason that it may be not in the national interest to say why it is not in the national interest. The MFA decision is not subject to the AD(JR) Act to give reasons for the decision. The ABA must allocate a licence if the MFA has advised no objection.

The applicant then goes to the ACA for a radiocommunications licence, so there may be two or three licences involved: one or two from the ABA, one of which could be a class licence, plus one from the ACA. This total procedure could take perhaps six months or longer. For example, the MFA may not act within 60 days and the ACA has up to 90 days to issue a licence. There are exempt categories. There are three exemptions: the ABC, the SBS and satellite-based operations with what I've called pass-through programming. That is, the programming is controlled from overseas, originates from overseas, comes into an earth station and is passed to the satellite.

PROF SNAPE: That's passing through Australia. It's coming into Australia and out again?

MR RAMSAY: Yes. The ABA is to make guidelines covering international broadcasting services, but the act provides no criteria for these guidelines. So they're the key points of this bill which is now before the parliament.

Chairman, I'd like to now cover the HCJB view on this legislation. Firstly, we think it's unnecessary, as the same effect could have been obtained through the government issuing criteria for use in connection with section 100 of the Radiocommunications Act. We've put this to government on a number of occasions but, given the fact that it is now government policy to have legislation, we support it but only as a means to solving a problem, namely, getting HCJB a licence, and I think we indicated this at our last hearing.

Even so, we point out a number of concerns with this legislation. The first is a basic assumption that the private sector must be heavily regulated while the public sector is exempt, specifically the ABC and the SBS. We think that history shows that the public sector has equal potential to embarrass the government as the private sector. The second is that the private sector is at total ministerial discretion, with no requirement to provide reasons for adverse decisions. We feel that this is perilously close to censorship. If the minister for foreign affairs feels that a particular applicant would act contrary to the national interest, that is, it would have an adverse effect on international relations, then it is not clear to us why he should not state that. It should be fairly obvious what the reasons are. We think that's really contrary to the whole idea of public sector openness.

The third point is that the ABA is given no criteria for the guidelines. You may recall that last time we talked about guidelines and in fact we included them in our submission, and in response to your question about guidelines we said again that we

supported them only on the basis that we saw it as a necessary step for us to get a licence, and because that was a necessary step we put together guidelines ourselves which were mainly based on the Asian Broadcasting Union guidelines.

So the ABA has no criteria, so we feel that the criteria for the guidelines ought to be stated in the legislation. An alternative, and a preferable alternative, would be that the ABA is required to consult with the potential applicant or perhaps generally about what the criteria ought to be or about draft guidelines themselves. We also feel that the public sector broadcasters ought to be bound by the same guidelines as the private sector broadcasters. Our final concern we touched on earlier, and that is about the timing of the whole procedure, especially the let-out for the minister for foreign affairs to go beyond 60 days for an unspecified period. We think if there has to be a test by the minister that he ought to be limited to a specific time-scale. That is the essence of our submission, chairman, and thank you again for having us here to cover these additional matters.

PROF SNAPE: That's a very clear statement of it, Mr Ramsay. Thank you for being so clear. I think that we probably went over the territory, this potential reasons, last time. Part of our problem here on this particular question is that we haven't had any other submissions on this matter and we haven't had any submissions, for example, from DFAT saying, "These are the reasons that these criteria are put in there," so we can but try to guess what they are. I suppose one doesn't have to go too far down the line of secret service matters before one can guess at what the reasons are, or MI5 and all that sort of thing, and one can guess at why they may have taken that particular approach. But we take your point and we see the point which you have argued on it, and we shall endeavour not to leave it on one side on this occasion. Thank you very much.

MR RAMSAY: Thank you, chairman.

PROF SNAPE: That's the last scheduled participant for today and, as I normally do, I would invite anyone present to make an oral submission should they wish to do so. But, as I see there are no takers to that invitation, I would thank all for their participation in these hearings in Melbourne and suspend the hearings. They will resume in Brisbane on Friday, scheduled to begin at 8.30 am. Thank you very much.

AT 4.46 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 17 DECEMBER 1999

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