



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

DRAFT REPORT INTO THE BROADCASTING SERVICES ACT 1992

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 8 DECEMBER 1999, AT 9.01 AM

Continued from 7/12/99

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

As in the case of earlier hearings, transcripts of these hearings will be made and should be available on the commission's Web site within three days of the relevant hearing. Copies will be sent to the relevant participants. At the end of the scheduled hearings today I shall invite any persons present to make oral presentations should they wish to do so.

And now I turn to our first participant for the day and ask him to identify himself for the transcription service and then to speak to his submission.

MR GIVEN: My name is Jock Given and I'm the director of the Communications Law Centre.

PROF SNAPE: Jock, I'd just better mention that the microphone is transcription only and it's not amplification.

MR GIVEN: Okay.

PROF SNAPE: We've tried to rearrange the room so the acoustics are a bit better.

MR GIVEN: Okay. Thank you. The response we're making to the draft report only addresses some specific issues where we thought that perhaps our interests were particularly relevant, particularly given some recent experience in relation to the 2UE inquiry which we think has highlighted some issues which may be especially relevant to the Productivity Commission's terms of reference.

We begin by addressing the recommendations on codes and standards, much of which we would broadly support. The proposed objective to promote public interest and freedom of expression, no difficulties with that. We think that's a good idea. As you'll see from our submission into the 2UE inquiry, which I understand you've already received, but we can provide further copies of as well, one of our recommendations there was that the Broadcasting Services Act should be amended, it's objects should be amended to include a further new object, being to ensure effective disclosure to audiences of relevant interests, including contracts, arrangements and understandings held by licensees and their employees, independent contractors, suppliers and sponsors.

To us the 2UE process has highlighted some fairly significant gaps in the Broadcasting Services Act as it stands at the moment, both in the self-regulatory arrangements, but we think the policy problems identified are big enough that they deserve a legislative response and that's one of the arms of that. That's on 10.1.

10.2, no difficulties with all of that. We think that's all fine. 10.3: broadly our concerns I guess with 10.3 and 10.4 are just a little bit with how far those recommendations go. We think that the basic model of codes and standards is a quite good one but that there is a graduated level of response or graduated level of regulatory intervention. There are areas which are relatively well handled by self-regulatory arrangements and where the sanctions that apply only apply essentially after a history of breaches. But there are program standards where a more direct, a more intense sanction might be appropriate in the event of any kind of breach.

Now, the 2UE process I think has highlighted that for us again. I think we would think that if there is a failure to effectively disclose a relevant interest of the kind that we talked about in that, we think it would be appropriate for there to be the possibility of an immediate response to that, an immediate sanction to be imposed where that situation arises. We wouldn't, however, want to see immediate sanctions imposed in every area where we felt a news/current affairs/talkback entertainment, whatever we would call them, presenter or announcer made an error of fact in providing information. We don't want to see governments or regulators necessarily finding journalists or on-air presenters for inaccuracies of fact. We do, however, think it's appropriate that they might have a more direct sanction of that kind where they fail to disclose relevant interests to their audiences.

PROF SNAPE: An immediate correction?

MR GIVEN: I think it's going to depend on the nature of the error that is made. Basically I think the culture of journalism and the processes that are in place to handle that don't always work as well as they should. We support the recommendation that there be a greater attention to on-air corrections, publication of information where breaches are found. We think that kind of thing is good, helps the transparency of the process, perhaps helps the broadcasters to take it a little more seriously, but we're just very wary of scaling up too much the nature of the government regulatory response where people are doing things which are part and parcel of the daily business of journalism which is sometimes making errors.

MR SIMSON: Can I just interrupt there for a second. In the context of both 10.3 and 10.4 the reason we recommended the way we did in the draft is because on the evidence that was presented to this inquiry it is extremely rare for any correction ever to be made on commercial television.

MR GIVEN: Yes.

MR SIMSON: Extremely rare. So I don't think it's adequate to suggest it's all part of the cut and thrust of journalism and so on. Basically we've had evidence that strongly suggests that it is extremely rare. In the case of one network they said it's policy not to make corrections. And so what we've basically got is a non-practice here, and that's the reason why we were perhaps tighter than you thought we should be.

MR GIVEN: The issue for us is only that judgments about what is accurate and what isn't accurate in relation to news and current affairs are going to vary a bit. There is going to be quite reasonable disagreements about particular matters. The argument will not be about a journalist saying something happened when it didn't happen. That may well be appropriate for - - -

MR SIMSON: Straight factual inaccuracy. I'm not talking about comment. I'm talking about straight factual inaccuracy.

MR GIVEN: No, but that's what I mean. If you've got a situation where someone says that the Prime Minister said X yesterday and he didn't say it - - -

MR SIMSON: Let's not worry about the Prime Minister so much because he's a big enough fellow to look after himself, and he's a politician, after all, but what about the more important case of an ordinary citizen - and this is again the thrust of some of the evidence we had last time - who is maligned or defamed or whatever?

MR GIVEN: We think the practices in the broadcasting industry at the moment could be better in publishing, acknowledging errors where they have occurred. My concern is just that there is a great difference between a person who is shown in a news bulletin or described in a news bulletin to have done something that they didn't do, and someone who is shot in a certain way which they believe may marginally misrepresent their place in a particular environment.

MR SIMSON: Mr Given, look, just so we're clear on this, we're not talking about things at the margin. We're talking about errors of fact and just for the record we're not responding - this recommendation was not a response to the 2UE inquiry. In fact I can't remember the exact timing on this but I can assure you that the recommendation we made here was in direct response to the evidence we'd received at our inquiry. It had nothing to do with 2UE. We're not talking about things at the margin here. We're talking about what seems to be a practice of the networks not to correct basic errors, so there is no practice. We're not talking at the margin (indistinct) or we're not talking about a prime minister, we're talking about basically a non-practice to correct errors, and so that tells us the system is not working, and that's why we went harder on this. You're saying the system is working or the regulatory system is working. All we're saying is that's not what we were told at our inquiry.

MR GIVEN: I'm simply cautioning against putting in place a system - - -

MR SIMSON: Well, what do we do?

MR GIVEN: A system where we necessarily assume that a sanction which is appropriate in certain circumstances is going to be appropriate in all circumstances.

MR SIMSON: Tell us what to do. Tell us what to do, because it's not working at

the moment. We've come up with a recommendation. Tell us what to do to get these networks correcting errors on air.

MR GIVEN: The issues that I've addressed in here in 10.3, that the ABA be given the power to issue directions for action to broadcasters found to be in breach of a relevant code of practice: broadly my view is that if the matter is of sufficient significance to require immediate sanctions to be imposed by the regulator, then it should be made a program standard. And the last two points under 10.3 seem to me to sort of draw codes and standards into two similar - a format. I think it's entirely appropriate that there be a culture introduced and a practice introduced where information about breaches of codes is provided in the same time slot at a relevant time, that sort of thing, but if that doesn't occur then maybe you might want to see a sanction behind that.

What I don't want to see is a situation where someone comes to the broadcasting authority to complain about an error of fact in a news bulletin and the broadcasting authority has the ability - or that there is an ability to impose a fine of some kind at that stage. That's what we don't want to see.

MR SIMSON: What about the actual management of complaints? We had the contrast between the practice of the ABC, which seems to have a strong process in place for actually managing complaints, and the process of some of the other networks which seem to have little if no process in place whatsoever.

MR GIVEN: I think one of the key things that should happen there - and I'm just not well enough across how each of the individual broadcasters handles it - but my impression is that the range of complaints handling - as you've indicated, there is a range of complaints handling practices which doesn't always give the regulator or anyone else a good idea about the scale of complaints or what they're about. My understanding is that people will often not report on complaints which are made about things which are not covered by codes. As I say, I'm not properly across the way individual stations do it but it seems to me if complaints are made that the reporting process should be telling someone - I mean, I'm sure those things are told to management if people are complaining about something that's not subject to the code.

It seems to me it would be very useful if the relevant regulators were also being told about the whole complaints experience, not just complaints that are made about matters covered by codes. It seems pretty obvious that if you don't know about complaints that are being made outside the codes, you mightn't be terribly well informed about what you might want to make codes about in the future.

PROF SNAPE: Okay. I interrupted earlier, sorry.

MR GIVEN: No, that's fine. Yes, 10.4 - I think the example there, for example the final point:

The ABA may exercise its powers to direct licensees to take certain actions in

response to complaints about fair and accurate coverage.

To highlight that point, I think that matters of disclosure of relevant interests should be the subject of a program standard and that should bring program standard-like sanctions into play. I certainly don't want the ABA to be put in a position where one of the first responses you would make if you think there has been inaccurate coverage of something to do with you in a television news bulletin - I actually think the right place to complain is the broadcaster in the first instance. It may be that it's got to move a bit more quickly and you've got to be able to get better resolution and, if you're not happy, get to the Broadcasting Authority a bit more quickly, but I actually think it's not the right situation for us to be getting fairness and accuracy style complaints straight to the ABA, because what can they do other than go to the broadcaster then and say, "What's your view about it?"

The other particular area we raise where I think the idea of immediate sanctions is a problem is, for example, program classification. I don't think it's appropriate that simply because there is what may be a relatively minor breach of program classification that there are necessarily sanctions. I think it is more appropriate generally that that be something that goes to the broadcaster; they give their reasons; if you're not happy with those you take it to the Broadcasting Authority; and if there is a repeated practice of that, that may well be appropriate for something tougher to be put in place - a condition on licence. I think that's a quite sensible way to respond to that sort of stuff.

MR SIMSON: Mr Given, I'm sorry to harp on this, but when was the last time you heard any of the commercial networks make an on-air correction?

MR GIVEN: I haven't.

MR SIMSON: No, nor have I.

PROF SNAPE: But the process I think that we're seeing is that if someone is named as being involved in an incident or having done something when it's clear that that person has not done it and it's on the news - I think you are suggesting that they should be able to get in touch with the station immediately and that the station should have a normal practice of making a correction immediately - that is, if it's a news service, perhaps in the same time-slot the following day - that sort of interpretation of "immediately". If they don't do it, then the person would complain to the ABA and the ABA would be able to take sanctions in some form.

The incentive effect of this of course, if those sanctions were significant, is that the stations would be much more inclined to do it immediately, a practice which apparently they currently don't do, though there is of course, as they said, the problem that if it was something which might finish up in the court, to carry a retraction would have legal implications and one has to get around that. But that's the process which you're endorsing?

MR GIVEN: I think so. I mean, if I'm being a little bit obscure about it, where I'm coming from is that regulators don't always get these things right. Sometimes regulators have very different views and what I want to see is a dialogue and a contest between broadcasters and regulators about what is appropriate to screen and what is not appropriate to screen. There have certainly been celebrated examples, one I can't remember the details of in the UK, where a newspaper was required to publish a retraction on something, or a correction. It totally disagreed with the finding that was made about it, it published the correction or the findings that it was required to publish, and it ran side by side in its editorial pages its own copy, essentially an advertisement, explaining why it disagreed with the findings.

I think that's quite a healthy process: that there is a process for the public to complain, get redress, but broadcasters are not simply always lying down and saying that the rules are right or that the process of regulation, the decisions made about the rules, is right as well. I just want to see that kind of contest happen. I think practices can be better, but I don't simply want to assume that the Broadcasting Authority is always going to get it right.

PROF SNAPE: I don't think anyone would assume that that would ever occur and the sort of process that you describe might be appropriate, where one can say, "We've been told to do this but we don't agree with it in the circumstances." That might be appropriate, and you are indicating there a sort of marginal case, one in which there was dispute. We have had submissions about what would have appeared to be a gross error, not marginal at all, in which nothing has been done. One, I think, needs a process that is going to be able to get redress for these without, as you say, leading to a situation in which the marginal cases are not addressed in some reasonable way.

MR GIVEN: That's right, and I don't think we'd agree with that, but the problem is always - - -

PROF SNAPE: I'd say you meant you don't disagree with that.

MR GIVEN: I don't disagree with what you've said. But the broad issues about reputation in relation to defamation - no-one has any difficulties with the broad concept that people - or most people don't have any difficulties with the broad concept that you shouldn't be able to go out and tell lies and malign and destroy someone's reputation without sanction. The cases, however, get fought at the margins about it and they tend to get fought not by the mythical ordinary Australians who have had something said about them; they tend to get fought by powerful people. The provisions of the Broadcasting Act, as we have seen, are quite often used by politicians in election campaigns as well to try and straighten out their opponents. That's the kind of situation that I am concerned about: that we set up a scheme to catch the big fish and we end up actually providing a mechanism that is used for all sorts of other purposes. I think the broad thrust of what you're saying is totally right, but I do want to keep the focus on the dangers at the margins.

PROF SNAPE: Thank you.

MR GIVEN: We agree with the suggestions about online content stuff - happy to see that occur. In relation to ownership and control, I've just provided a couple of articles which may be of use. You may have seen them already - but a couple of articles that may be helpful in relation to the public interest test, one that Paul Chadwick, who then worked at the Communications Law Centre, wrote in 1992 in response to the print media inquiry, the so-called Lee Committee, which looked at the issue of amendments to the Trade Practices Act to respond specifically to mergers in the print media.

The really key point that I think Paul makes in that article about looking at the then UK precedents on this was - and if you've got that article, if you look to page 46 - it's the "Print media inquiry treads so lightly it makes no impression" article - 46 and about sort of two-thirds of the way down, where it talks about "likely impact of the merger on free expression of opinion, fair and accurate representation of news, economic viability of the publication". I think one of the key points Paul makes is that if there is to be any kind of special public interest test, it's got to have more than those kinds of highly generical philosophical statements about likely impact on fairness and accuracy, the presentation of news, likely impact on free expression of opinion, because it's simply too difficult to get teeth into that kind of process.

So it has to concentrate on the structural issues about the lessening of diversity, lessening of numbers of players, rather than the precise impact on content, because if you get into that game the judgments are likely to be even more subjective than they're going to have to be if you're talking about the threshold issues of lessening of diversity, lessening of voice, lessening of numbers of players. That's not to suggest that those things are easy to measure either, but I think if you start getting into the issue of saying, "This merger between these two companies, what's it going to do to free expression of opinion?" - I think that's going to be quite a difficult thing to gauge.

MR SIMSON: So could you give us some examples of the sorts of things on a structural - we're talking about non-economic ones because the economic ones are covered in the normal cut and thrust of the Trade Practices Act. Could you talk about some of the structural non-economic benchmarks that could be used in such a test?

MR GIVEN: Yes. I thought the stuff - and I'll just find the page to it - that the UK test set out is a very useful way to handle that, precisely because it focuses on more measurable things.

MR SIMSON: What page are you on, Jock?

MR GIVEN: This is on 186.

PROF SNAPE: 186 of the draft report?

MR GIVEN: The draft report, that's right, the two issues at the start: the desirability of promoting plurality of ownership in the broadcasting and newspaper

industries and the desirability of promoting diversity in the sources of information available. It is not demanding an inquiry into the relationship between particular owners and particular content. It is taking as given the fact that a diversity of sources is a good thing and it tries to ensure that we maintain and enhance the diversity of sources. I think the kind of trap that Paul was suggesting we don't get into is: we don't want to have to ask ourselves, "How does Mr Murdoch run his papers? Does he give people more or less editorial freedom?" and therefore if Mr Murdoch is involved in a merger, we're going to have to look at that merger in a different way from the way we look at it if we're looking at the Fairfax press or at Channel 7 or something like that and I think that's advice we would certainly accept in that.

MR SIMSON: Just before you get off that then, in the context of those first two bullet points on page 186, how do you then move that from the subjective to the objective in terms of measurement?

MR GIVEN: The way I think you do it - the work that - this thing here, the Congdon, Graham, Green and Robinson work *The Cross Media Revolution: Ownership and Control*, from the UK in 1995, basically sets out in the Bill Robinson piece at the end of it table 13, *Assessment of Market Share Measurement Units Put Forward To Date*. I mean, I accept his conclusion that none of the kinds of measures you would use necessarily provide you with a satisfactory answer on its own, that you need to look at a range of things because some of them are helpful some of the time. I think the best example of how a particular measure which is superficially very attractive can in practice be highly misleading was the work that was done by News Ltd for the 1996 cross-media ownership review that the government ran, the review that sort of went nowhere, and they did a lot of work on time use, which I think was very interesting and very helpful.

PROF SNAPE: On?

MR GIVEN: On time use of different media, and said, "Let's try and measure influence, concentration, those kinds of things, by looking at time use." Whilst superficially that seemed quite a sensible thing to do, what it revealed to you was that people spend much more time watching television and listening to radio than they do reading newspapers and therefore if you simply worked through time use, companies that owned television stations were much more powerful and influential than companies that ran newspapers. Clearly there are some subjective factors or there are other factors you've got to graft into it before you decide that the Daily Telegraph is massively less influential than Channel 10.

So the various measurement units: time use, audience shares, revenue, the kind of revenue-weighted audience share and reach, which are the various forms of measurement they use - now, I would agree that each of them tells you something and you probably need to work through each of them in exactly the way the ACCC would go through indices of market power, and if it reaches a certain answer on certain indices it would say, "This seems to us to be a problem but we'll look at the other factors around the edge of it to decide if it's really a problem." I think that's the same

kind of exercise you're going to have to go through here. What I think might be helpful in the legislation is to provide a little more flesh to that kind of test, without being so prescriptive that you lock people into a situation where you say, "If there is a merger that would result in media which has a certain time use, audience share, reach, etcetera, then it must be stopped."

MR SIMSON: A bit like the creative elements test or the content regulation.

MR GIVEN: I spent a little bit of time in my life designing the creative elements test, so I might not be quite so critical of it. But, yes, I think a mix of things that puts some flesh on those bones without being so prescriptive as to deliver some unforeseen consequences in particular cases.

MR SIMSON: Thank you.

MR GIVEN: On the planning and licensing stuff, there are a number of things which we are interested in but we have only chosen to comment in a few small areas there. While I understand where the recommendation about section 23 is coming from, I think it misunderstands the nature of planning decisions which are made under the Radiocommunications Act or the Broadcasting Services Act. It sees planning as an exercise in deciding where transmitters are going to go, what frequencies they can transmit on and what power they can transmit on. The decisions about where to put those transmitters you can't simply abstract from the questions about numbers of services that you want to try and facilitate in particular areas, because that's the way electromagnetic radiation works.

You can structure the use of particular bits of the spectrum to deliver very different kinds of social and industrial outcomes, and I guess the key intervention that we've made in Australia has been to say we will structure the use of this spectrum so that in radio we make different numbers of high-power services available in regional areas from your metropolitan areas, whereas in television we structure the use of the UHF and VHF spectrum in a way that delivers the same number of services across metropolitan and regional Australia.

You don't have to be that interventionist about it, but even under the Radiocommunications Act in setting yourself up for spectrum licences, you have some significant sort of social and political decisions which are being made in the way you choose to structure an auction process, and they can relate to simple things such as, "What do we think there's going to be demand for out there at the moment?" Clearly at the moment we're hustling around looking for spectrum for third generation mobiles or whatever, because people are telling us that's what they want. So we think, "Okay, we'd better work out how to do that."

We're thinking that the spectrum is more likely to be needed in Sydney and Melbourne than it is in Bourke and Longreach, so we have organised auctions to accommodate that. Now, it's not to suggest that we need to be as interventionist as we have been in broadcasting, but I just think to simply strip away so-called

non-technical criteria and think that there is a set of criteria left which can adequately inform the decision-making process - I'm just not sure that's right.

Community broadcasters: I guess we're just not persuaded that there's a big enough problem with the existing merit based selection process. In particular, if you were going to change it, who else would you get involved, and we certainly wouldn't support the idea of the organisation that represents the aspirant broadcasters being involved in decisions about who the best ones - - -

PROF SNAPE: No, we weren't advocating that in fact.

MR GIVEN: If I've misinterpreted - but we're not persuaded that the independent regulator isn't the best body to be making those decisions. The category of indigenous broadcast licence: broadly we support it, although we'd note that you wouldn't necessarily need to create a whole new category of licence or, if you could, it could still be a community broadcasting licence for particular purposes and certain regulatory steps could hang off a certain kind of community licence, rather than a whole new category of licence. That may purely be a drafting issue with it but it may be that it's a simpler thing to do by implementing as a kind of community licence, but I don't express a strong view either way.

Broadly, the idea of establishing a vehicle for indigenous broadcasters to - essentially, if I'm reading the recommendation right, it's about giving them a more firm place in the planning and structure than they've got at the moment, and if this is the way to do that I think that's fine.

PROF SNAPE: What about an indigenous broadcasting authority?

MR GIVEN: We are certainly not opposed to that but I haven't - without getting out and doing our own talking with indigenous broadcasting groups and finding out a little more about their views, I'm just reluctant to express a concrete view about it. But we're certainly not opposed to that idea at all. Program siphoning: broadly, I suppose I was, as much as anything, interested in the recommendation that there might be a specific kind of regulation other than the existing program siphoning rules; for example, a recommendation that exclusive rights to sports programs not be able to be secured by pay TV or free-to-air TV.

I suppose our view at the moment is, as we indicated in the submission, we think that the broad idea - from the audience's point of view the broad idea of ensuring that major events continue to be shown on free-to-air television is an appropriate one. We think that probably the list of national important events is a little bit longer than any reasonable assessment of what events that are really nationally important might be, but that the way the government has gone about addressing that - the ability to get events off the list - if it's going to encourage better coverage of them on television overall, particularly by better coverage on pay TV, we think that appears to have worked quite well.

The issue is really just to question the suggestion that a different intervention would be required other than Trade Practices law, which we suspect is going to have an increasing role in this area over time. We really just question why you would need to specifically say you can't have pay TV - pay TV and free-to-air can't get, for example, exclusive live coverage rights - knowing that it's probably not that likely that that's going to - the likelihood that pay TV and free-to-air are going to simultaneously cover a major - anything other than the absolute top echelon of sort of nationally important events. We just wonder whether the Trade Practices Act perhaps is good enough to handle that stuff at the moment or perhaps we should see how it goes because it hasn't really been put to the test yet.

PROF SNAPE: So you're not concerned that when a free-to-air channel buys up the rights to two major events which are occurring at the same time and obviously under current arrangements can't show both live - you're not concerned about that?

MR GIVEN: We are concerned about what happens to the - but I'm not sure how we would - what I'm not terribly enthusiastic about is legislation that tries to force a broadcaster to show a particular event.

PROF SNAPE: That's not what our recommendation would do because our recommendation says that neither could get exclusive rights. In those cases it would be fairly reasonable, I thought, to assume that if one was playing one major event the other would be likely to play the other one when they are on at the same time. That wasn't forcing anything.

MR GIVEN: I suppose thinking about how the sporting bodies are likely to respond to it - - -

PROF SNAPE: We do hope that we're having a submission from the AFL next week. That is a gap in the submissions that we have received; that we haven't received any from sporting bodies and that we would like to hear how that would occur but there are views that - we've had views given both ways, that on the one hand it might reduce the contract price; on the other hand that it might increase it when you've got two contracts and not one.

MR GIVEN: It may also affect large sports and small sports differently in that for a small sport - I mean think of a sport like track and field which may be interested in getting coverage from a pay TV operator and can - although interestingly, leading up to the Olympics, it's started to get some free-to-air coverage as well but it's been one of the points - I understand the smaller sporting bodies have said that they're quite interested in being able to do deals with pay TV and have never been able to do them with free-to-air. The pay TV companies may be more reluctant to do a deal if they can't get some sort of guarantee of exclusivity.

That might be a different story at the high end of sports, with AFL and cricket and Rugby League, where there has tended to be in any case I think a likely marketplace outcome. As has occurred in the UK, it is structuring a package of the coverage for

pay and coverage for free-to-air in an open marketplace. Pay TV generally takes most of the jewels but also sells to free-to-air television a nevertheless quite high quality range of games, highlights, packages, etcetera.

PROF SNAPE: How would the Trade Practices Act work in this area?

MR GIVEN: I guess the various provisions about whether, for example - I won't pretend to be an expert but whether use of market power may be evident in securing rights to a particular event on the basis of past arrangements or securing rights to an event into the future without any intention to exploit the event and essentially preventing someone else getting access to an event.

PROF SNAPE: But at the moment the broadcasting legislation enables them to do that, and presumably that legislation overrules the Trade Practices Act.

MR GIVEN: I'm not sure that the Broadcasting Services Act necessarily says anything about which broadcaster needs to acquire those. The competition issue seems to me to be whether the same broadcaster is acquiring rights to two events, not whether free-to-air broadcasters get it as opposed to pay TV.

PROF SNAPE: Anyway, we're talking outside your area of expertise there.

MR GIVEN: Yes.

PROF SNAPE: But I think that's looking a bit - well, and mine too.

MR GIVEN: We certainly share the concern about the specific situation you refer to, which is an event which audiences are used to being able to see on free-to-air televisions - arrangements arising whereby they can't see it on free-to-air television. We share that concern. But when that has come up in relation to the Ashes cricket and Wimbledon with Channel 9 during the relevant years, our response has been to be wary of government intervention to force broadcasters to show particular programs, even though we share their concern. It's a question of finding a solution which is better than what has been occurring anyway.

PROF SNAPE: That's what we have tried to do and here we see the tension between desire that the government has expressed to have these events available on free-to-air television for social reasons, etcetera, and the greatly inhibiting effect that the current legislation has claimed to have on the development of pay television in that they see this as something which can drive submissions at major sporting events, and which they have put to us inhibits them greatly. Now, the argument is that if you gave the pay television the ability to have exclusive rights, then you may lose it - although that's not the experience in some parts of the world and particularly in the United States. You may lose it on free-to-air television, so we are trying to find a balance through all of this and that's what our recommendation tries to do.

MR GIVEN: But the recommendation won't fix that problem about two events

being free-to-air rights to two simultaneous events being held by the same broadcaster. It seems to me that the response that has occurred to that is actually in the marketplace and, as I understand it, Seven has got the rights to the next Ashes tour and that possibly the sporting bodies have - you know, powerful as Nine may be in securing free-to-air television rights to sport in Australia.

PROF SNAPE: Okay, well, we might move on then to the next one, which was Australian content on your list, I think.

MR GIVEN: Yes, we're not conscious that many other organisations are talking about this or have talked in these hearings already. On the advertising point we only indicate there that I think this is an area which is a bit underexplored at the moment. I know the Film Commission published work in about 1994 and, other than the ABS work on the whole - the 1996-97 numbers they've published on film, television and video production - there really hasn't been much systematic analysis of this sector, so I think it's not as well understood as it needs to be.

I think also - as far as I know anyway - there hasn't been a really systematic assessment of what has happened since the liberalisation of the quota arrangements here. I think that when I was working at the Film Commission we were doing that work. The thesis was that - or one of the potential theses was that, although the numbers of commercials which were taking advantage of the liberalisation - were significantly below the maximum amount which would have been allowed; that is, they're not showing 20 per cent foreign commercials. The effect on production activity, total production volumes in the sector in Australia, may be much more substantial than that because obviously the commercials which would be no longer shot in Australia would tend to be the higher production value commercials.

Secondly, the change to the rules about advertising were not only to allow 20 per cent foreign instead of no foreign and some exceptions, they were a change to the criteria which make up an Australian commercial and I don't think the impact of that has been - so to look merely at the numbers and say there weren't any foreign commercials - it's now 7 per cent, 11 per cent, something like that - was not adequate. It's really only a suggestion that I think it needs to be - the impact needs to be looked at more carefully before we get rid of that rule.

MR SIMSON: Mr Given, just to go on to this, I think we agree that there is a lack of research and analysis with regard to this. In fact you could almost rephrase the first sentence of the note you've given us as to say that the regulation relating to these matters does not appear to be well founded in research and analysis, and that's the problem. I mean, under the terms of reference of our inquiry we have to establish whether regulations are to be retained if the benefits to the community as a whole outweigh the costs. In the context of the 80 per cent rule on advertising and the 55 per cent transmission quota, we have received very little, what you would call, research and analysis.

We have received a lot of anecdotal evidence and, to some extent, hyperbole

but very very little research and analysis. Indeed, when you test some of the proponents of these rules, you can actually see the discussion moving fairly quickly from cultural and social benefits to really not much to do with that at all, but critical mass and then to industry support or critical mass for the industry as a whole, which should at the end of the day be good for cultural and social objectives of the act. Now, there's very little for us to put our hands on here and of course you're aware that we have supported in the draft the subquotas because it's easy to put your hands around those things. Have you any research or analysis that can assist us in this regard to support the case for retaining the 80 per cent rule on ads and the 55 per cent transmission quota?

MR GIVEN: No, and that's why we indicate that it would be a good idea if that were done. The two bits of information - I think - I'm not sure it's right to say it is not founded in research and analysis because, when it was put in place or when it was reconfirmed through the Australian content inquiry, there was a significant process of research gone on then. It's just that's pretty old now.

MR SIMSON: It's 10 years old.

MR GIVEN: The world has moved on a long way. There was a piece of work which we commissioned - I mean, in the days when I was at the Film Commission we commissioned from Irvin Smythe about advertising production but I think it's dated 1994 and that was not very long after the liberalisation of the rules. So again time has moved on quite a way since then. We need to know more about that. My suggestion is that the Broadcasting Authority and the communications research unit in DOCITA would be well placed to do that, but obviously someone has got to fund the resources to do it. Where I come from I hear all those arguments that people put about critical mass and all of those sorts of things. I don't have the basis on which to test them thoroughly either but I think, if there's a possibility that this rule is important, it's a good idea that we test it through before we knock it over.

PROF SNAPE: That's not consistent with our terms of reference. Indeed, there's been a general, I think, lack of appreciation on this issue that we have terms of reference for this inquiry and that submissions therefore have to be directed to the terms of reference. The terms of reference very clearly state where the onus is in these matters and the onus is not on having to establish that those regulations should go. The onus is very clearly on us having to establish that those regulations should stay and that has been - I mean, that's a vacuum in terms of the submissions.

MR GIVEN: Well, I understand that from your point of view. From my point of view - - -

PROF SNAPE: But that is the inquiry's point of view.

MR GIVEN: Sure.

PROF SNAPE: It's not our point of view. It's our terms of reference.

MR GIVEN: Yes.

MR SIMSON: I was just wondering, Mr Given, given your previous statement a minute or so ago, how you can say in your note that advertising is an important industry - which we don't argue with that - and advertisements "are significant cultural artefacts". We just don't know that, do we? There's no evidence of that.

MR GIVEN: I think I do. I think the - yes, I would be surprised if we - I mean, my sense in talking, for example, about the drama quota - one of the points and the reasons I will also be wary about touching the transmission quota - but I don't want to, you know, discuss detail on that because there are plenty of other people doing it, but the point I would always make in relation to drama and documentary is that, although I think those programs are particularly - the economic circumstances of that kind of program, children's programs as well - is a particular feature of them. I don't think it's at all right to say that the cultural impact of drama documentary children's programming is necessarily greater or less than a whole range of other kinds of cultural products. I would put cooking programs and advertisements and news and current affairs and Funniest Home Videos alongside all of those things as cultural artefacts which express and develop culture.

So if for no other reason than advertising occupies around about getting on towards 20 per cent of screen time, it would seem to me surprising if we thought that programs were important cultural artefacts but the stuff that takes up 20 per cent of screen time and funds the business isn't.

MR SIMSON: It depends what it is. I mean, it depends what the content is. Another problem I have with this 80 per cent is in a global - yes, I know it's a terrible term - but in a globalising economy there is a rule in place that is dictating to Australian business, to Australian marketers, that they have to market or produce advertisements in a certain way; that they have to - at least eight out of 10 times - at least - produce ads that have Australian content and that seems to me to be a serious intervention into the discretion of people who are trying to run businesses.

MR GIVEN: There are all sorts of serious interventions into businesses. I make one point about this. I think the six out of 10 elements test of what makes up an Australian commercial is actually a pretty straightforward test to get through if you want to do a commercial which has got a lot of foreign elements in it. So I think we need to remember that 80 per cent sounds very high but what goes in to getting yourself into the 80 per cent is not all that tough. The second thing - - -

MR SIMSON: Could you just expand on that for a moment. I'd be interested to just get your - - -

MR GIVEN: Yes. I mean, I don't have the - - -

MR SIMSON: Not in detail but just give me a feel as to what is going through your

mind on that.

MR GIVEN: Well, I don't have the set of 10 criteria through it but you could have very key creative elements in the composition of a commercial made up by non-Australians or non-Australian content and it could still count as an Australian commercial. You don't have to be wholly Australian in any sense to count as an Australian commercial. My memory of it is you could have overseas talent, you could have an overseas director, you could have overseas music put into it, I think, and probably something else and still be an Australian commercial. So it's not a hard test to get through. An indication of that is that, as far as thinking that it's constraining anyone, it seems to me the regulation is cast at a level which can be better seen as a safety net than as something which is significantly driving commercial activity at the moment. Clearly the networks have got the capacity to show more foreign ads. I appreciate that's a double-edged argument because, if we're at the edge, we'd be saying this shows how important it is, so I think it's difficult to argue that it's constraining much.

The other broad point I'd make is that we make policy judgments about the kinds of constraints that are there. I mean, we're harping on the 2UE inquiry. Mr Laws and Mr Jones feel that there's all sorts of things that they should be able to do which we think are totally inappropriate and we think that governments have got a job to point that out.

PROF SNAPE: But if in fact the thing is not constraining, I think our terms of reference oblige us to recommend that it goes.

MR GIVEN: I appreciate that. From my point of view I hear the arguments from people that this - - -

PROF SNAPE: But I can't dispute our - if that logic is correct, one can't dispute our draft recommendation because we have to make the draft recommendation in the light of our terms of reference.

MR GIVEN: But one would assume that you would need to look not only to last year's performance but to potential performance in the future, and my view would be that this regulation is not significantly constraining anyone, but it's set there as a sort of target-cum-safety net. As I say, I don't want to argue strongly in favour of it. I'm simply saying I just don't think I know what is happening in this industry at the moment.

PROF SNAPE: Okay. Well, let's move on. The pay TV requirement: I guess it's only to make the obvious point that I guess the reason we haven't spent much time on this one at the moment is we're conscious that the government has introduced legislation on this which we understand is - I'm conscious that it's not ideal in the time-frame of your inquiry, but we just wanted to note that that's probably a reason for us not addressing that particular point in more detail. The final issue about digital - - -

MR SIMSON: Mr Given, just before you get onto the final issue, the question of content regulation in a converging environment, the extent to which it should extend to Internet broadcasting, etcetera: I know we asked you this last time, but I'm just wondering if you'd had an opportunity to give it any further thought. What you've said in (5) and what we've said in our draft relates to existing media, not new media. What are your thoughts in terms of whether it should or should not be extended into new media?

MR GIVEN: I understand the sense of frustration within this inquiry about the lack of brand-new approaches to addressing this issue in a new environment. I guess my feeling is that it's perhaps not surprising that there are not brand-new plans for how you would go about assisting Australian content, because in a way, although this is a new environment we're experiencing, it's not necessarily radically different in relation to these issues. The task of assisting Australian cultural production is a very old one. It's been going on not since the 70s or since the 50s, it's been going on for 150 years, since musicals and whatever were brought here. It is a task that has gone on in every new cultural form that has come along - books, publishing, the theatre, somewhat earlier than film and television, which is possibly a slightly - well, we can be slightly introspective about thinking that this policy challenge started in the 1970s when the film and television industry were kicking off a little bit.

The kinds of models in a sense are not that exciting, because they're pretty straightforward. There are a number of ways you can go about helping people to produce media content or cultural products which you think face particular economic disadvantages, given the global nature of cultural production and distribution. You can give people money to make it; sometimes you can give it to them; sometimes you can invest it on soft terms in their projects. You can give them special tax treatment on how they invest their own money into productions they undertake. You can set up institutions whose job it is to do it and you can give them public money, whether they be libraries, national broadcasters, film, TV and radio schools. You can put special requirements on the activities of players in the marketplace by quotas, by requiring them to spend money in certain kinds of ways.

Now, I think Australia has been quite inventive in how it's gone about this over time. In a sense I don't have brand-new models, but it does seem to me if we look at our experience of the last five years we have actually changed quite a lot of things in response to a new environment. We're changing more things now; we will continue to change them.

The only final point I'd make is if we compare the recommendations here, where I think there is a sense of frustration about the lack of new ideas, with what is being proposed in the area of ownership and control, no-one has come to this inquiry with any new ideas about ownership and control. What we've said is essentially we have a very tried and tested, road-tested model about handling competition issues. It's called the Trade Practices Act. We think it works quite well. We think it's very flexible. It's going to be able to handle the way things happen in the future. We're going to draft in

a specific public interest test in there, and that's going to be our model. We're going to move this into that. So I don't think the failure to have brand-new models is necessarily a sign, when people are talking about - - -

MR SIMSON: Okay. I just wondered if you had any - - -

PROF SNAPE: Okay, on digital you say you don't wish to make any further comments there.

MR GIVEN: It's not at all that we're not interested in the issue, fascinated by the issue and think it's important, but simply we've said a lot and we know you've got lots of people talking to you and advising on that.

PROF SNAPE: I think that's taken us through. We've asked the questions all the way through your presentation rather than all at the end and we thank you very much for that and for your help through the inquiry. If staff have got more questions they will be back in touch with you to try and tax you a little bit more.

MR GIVEN: Okay. Thanks very much for the opportunity.

PROF SNAPE: Thank you for your help. We'll now be moving on to the ABC.

PROF SNAPE: We welcome the Australian Broadcasting Corporation and we would be grateful if you could introduce yourselves in the usual way, separately, for the transcription service, please.

MR KNOWLES: Colin Knowles, head of technology, Australian Broadcasting Corporation.

MS JAKUBOWSKI: Liz Jakubowski, senior policy adviser, ABC corporate policy.

MR WARD: Michael Ward, policy adviser, network television.

PROF SNAPE: Thanks very much. I think Julianne Schulz is in Canberra, isn't she?

MR KNOWLES: Yes.

PROF SNAPE: Thank you very much and thank you for your submission and oral submissions, a number of them now, and for the latest one and the comments on the draft report. Who is going to start off?

MR KNOWLES: I'll take the lead on it, professor. The submission itself I think is actually quite compact and succinct and we'll just focus on those issues which are of specific interest to the ABC. I think out of the issues that are there, rather than go through them all in detail, because I'm sure your capability of reading is adequate, but I'd just like to draw attention particularly to the questions about indigenous broadcasters and community broadcasters.

We hadn't had any contact with the group at all in fact prior to seeing their submission in relation to your inquiry. Since then we have actually met with them and talked to them about the issues. We certainly support the concept of there being an indigenous broadcasting organisation which could be created to acquire the capacity for broadcasting. What we have difficulty with though is the concept that they would be given a big slice of the ABC's transmission capacity because of the fact that it would make our capacity to address the requirements of the legislation, both in terms of whatever HDTV quotas we might face, plus the flexibility which we believe the government will give us in relation to multichannel and datacasting options.

Indeed, our own plans encompass the concept of being able to expand some of that type of programming in the multichannel environment, which of course is much more difficult to do in the present single-channel environment and we've talked to them about those sorts of issues, and of course in the future with spectrum, the possibility of having spectrum available to be able to assign to such groups, it would open up some possibilities. In the short run of course - and they I agree I think - producing an adequate program to fill a channel becomes a real challenge in the early days.

The ABC has been very active in encouraging indigenous broadcasting, both radio and TV, and in training and so forth and so on. We see that role continuing, and

one of the advantages that would flow from a separately funded organisation is that they would have greater capacity to be able to in fact commission new programming and so forth that would be over and above that we might do under our charter. I guess the same sorts of arguments apply to the carriage of community broadcasting if it had been carried on the ABC.

I think some of the arguments about that perhaps got lost a little bit in the discussion. It was a perception, for example, that the ABC was everywhere, therefore it would be good to get upon, but it ignores the fact that the ABC doesn't have any digital anywhere at the moment and therefore such multiplex capacity doesn't even exist at this moment in time as distinct from our existing network, which of course is virtually everywhere. So I don't think there's anything special about the corporation in terms of its capacity to deliver a service across Australia at this moment in time, and indeed we would expect that rolling out across Australia is going to take seven to 10 years anyway depending on the extent to which the government is prepared to fund that infrastructure creation, and that's an issue which we don't yet know the answer to.

PROF SNAPE: At current planning there's going to be no spare room on your multiplexes.

MR KNOWLES: There will be periods of time when, yes, certainly there will be some spare capacity, depending on what time of the day it is.

PROF SNAPE: Of course.

MR KNOWLES: There will be other periods in fact where things become a little bit congested, depending on how the market actually evolves, particularly if we have to do the so-called triple-cast. This will leave us very little space at all in terms of having to send SDTV, HDTV, and everything else down the pipe at the same time, as well as the analog simulcast.

PROF SNAPE: The analog would not continue on the same apparatus.

MR KNOWLES: No.

PROF SNAPE: So it's really only the simultaneous standard and high that - - -

MR KNOWLES: Which uses up basically the whole channel, doesn't leave you much to play with.

PROF SNAPE: That depends I think on the specification of the high in part. Even if you go down to the minimum one there's not much left if you want to send any data and program guide information down the channels though. It's certainly doubtful whether you can squeeze an extra couple in there.

MR SIMSON: Can I just clarify one point in terms of what your intention is with

extra services. I note in an article in the Australian this morning it says that the ABC has scaled back plans to use the digital spectrum to offer extra channels. Is that so? Have you revised your plans in terms of your roll-out of channels?

MR KNOWLES: No, what we're saying is that in the early days we will have a situation where we've got a very small number of viewers and creating a whole lot of content for multiple services is problematic. We think also there will be a degree of confusion amongst the viewers in the early days who will not be accustomed to the point where a service might appear on and off and accessing services through their electronic program guide, for example. So our intention for the early commencement is to in fact create a more continuous program stream rather than one which is more intermittent which will cover the mixture of information and knowledge, which we've already put up together as two separate plans, and we will be focusing a little more on the data delivery side of the business and then as time goes on we build the receiver base which would justify it - the audience then would justify - particular extra content, then we'll do it.

We also are having discussions with various other carriers, such as pay TV operators, in terms of the possibility of them carrying in addition this second channel or whatever we produce and, likewise, their interest is more in a service which is quasi continuous rather than something which is intermittent, which the earlier plan actually envisaged there were periods of the day when we would have a full service and other times when we would have - we would have say three services running in parallel and other times we would have less than that.

I would think that two or three years out when we have a receiver population growing then the whole question of what's being carried in terms of multiple programs gets expanded and we haven't yet really addressed the question of enhancements onto programs and enhancements, of course, may well take up some of that extra capacity as well, so really there isn't a major move other than the fact that in the short run we think we might concatenate some of this programming together to make a little bit more sense and then expand out later.

MS JAKUBOWSKI: Can I just add, it is not a scaling back. It is basically just a re-packaging of what we have been talking about.

MR SIMSON: Okay. Just for interest, do you distinguish then between datacasting and your new channels or are they one and the same thing for you?

MR KNOWLES: No, no, datacasting is a separate animal. There are two elements of that. Firstly, it's data which might be enhancing a program - in other words, data going with the program because it's providing subsidiary information. The next is data which might be quite separate and the ABC has done some demonstrations of its longer-term vision about datacasting, which might be the possibility of having things like non-linear access to news, local regional news that doesn't - - -

MR SIMSON: I think we saw a demonstration of it at Southbank.

MR KNOWLES: Yes, so that sort of thing is what we have in mind in the longer run in the datacasting domain. The only reason I say "the longer run" is because it depends on the technology being available in a set-top box or in the receiver itself and it largely depends on there being local storage in that box or on the receiver. While there are boxes around being sold as what are called "personal video recorders" they really do add a significant premium to the cost of the box in the short run and they're not currently integrated into what would be digital data receivers. They are a separate box, so - - -

MR SIMSON: You can put them on an analog receiver.

MR KNOWLES: Yes, and you're looking at a cost at the moment of one of those of around about 7 or 8 hundred dollars US.

MR SIMSON: That's another subject.

MR KNOWLES: Yes, it's a different issue, so if you look at putting that inside the set-top box we don't envisage that the average manufacturer is likely to put that in the set-top box in the first generation while they're still trying to pull the cost down.

MR SIMSON: Sorry to interrupt you. Go on.

PROF SNAPE: But what bandwidths were you looking at for your datacasting there?

MR KNOWLES: Maybe six to eight megabits.

PROF SNAPE: So you're really going for a full band?

MR KNOWLES: That will vary from time to time, so approximately we say six megabits a night if we were downloading material. This is in the mature situation. In the short run we then end up with a far lower amount of data because all we would be able to offer in the first generation of set-top boxes is carousel-type options, which means you have got to basically wait until the video comes around, like teletext. If you go too slowly on that you can't offer any vision at all, so we can probably offer news updates, is our view, and at the moment you would probably have to offer that at least at two or three megabits in terms of any video stream to be able to get real streaming in the context of a carousel-type service.

PROF SNAPE: Two or three megabits uses then about - - -

MR KNOWLES: About half a channel.

PROF SNAPE: That much?

MR KNOWLES: For our digital distribution by satellite we currently use 5.5 megabits. For some material that is not enough.

PROF SNAPE: That is what? About one and a half to 2 megahertz bandwidth?

MR KNOWLES: No, you can't relate it that way?

PROF SNAPE: You can't relate it that way?

MR KNOWLES: No. Basically, you have a seven megahertz channel which gives you around about, in rough terms, 20 megabits of delivery capacity.

PROF SNAPE: Yes, that is what I was working on.

MR KNOWLES: You can't subdivide that. You actually have to keep it in the seven megahertz channel.

PROF SNAPE: Yes.

MR KNOWLES: So all you're talking about is how many megabits you need for the service. For a good quality standard definition video service encompassing the wide range of materials you might have in a life program, for example - sport and the like - you probably would want to consider around about eight megabits. Indeed, I know some broadcasters - some pay broadcasters - who perhaps use around about one and a half megabits for movies which are pre-processed. In other words, what I mean by "pre-processing", it takes several hours to process a film even if it's an hour of transmission.

For things like cartoons and so forth, which are very demanding and in fact have to have sometimes three or four times the amount of megabits and run up to eight megabits for cartoons, basically because of fast movement and action. The same applies to live sport and so while I say - we currently run about 5.5 megabits. We run into difficulties even at standard definition with things like basketball with the crowd and the parquetry flooring and so forth, which in the compression scheme, simply just gets overloaded and you start to get square boxes appearing, which becomes visually annoying for the viewer, so we're currently planning that most of our standard definition channels would run at about eight megabits to guarantee our capacity to handle a wide range of programming without compromise and then, when we come to - so therefore our main channel and our secondary channel would probably run at that rate. Then whatever is left over we'll have for some datacasting and then, if the third channel - we would also be running that and perhaps taking one or two megabits then down for data.

PROF SNAPE: Yes, okay.

MR KNOWLES: Remembering also that within that eight megabits stream we also have to carry information - other digital information - relating to the make-up of the

channels at the time, otherwise the receiver doesn't know how to pull it apart.

PROF SNAPE: Thank you. I wonder if we could go in your written submission back to your comments on recommendation 4.1, which is on page 2, where you say if licences are separated it would be possible that a former licensee whose licence had been revoked could still hold onto the spectrum and they're saying if the spectrum is unable to be recovered consumers would miss out on other services which could make use of the spectrum.

MR KNOWLES: Yes.

PROF SNAPE: I think we ran into the same - what is a misunderstanding of our recommendation - with the ABA yesterday and obviously we haven't expressed it as clearly as we might have. The draft recommendation was that spectrum and a licence and the broadcasting licence be quite separate and not necessarily owned by the same person or the same enterprise.

MR KNOWLES: Yes, well, that provision currently exists within the framework.

PROF SNAPE: Yes, so that if a broadcaster lost the licence to broadcast they, or someone else, would still hold a spectrum licence, which then some other potential broadcaster could apply to broadcast on.

MR KNOWLES: Yes.

PROF SNAPE: And as there seems to be at the present time a great excess demand to broadcast over what is available in terms of channels one could assume that there would be an applicant knocking at the door very quickly, and so it would be unlikely that it would just be going begging. It would be filled and there would be a negotiation then with the spectrum owner, whether it had been the previous broadcaster or some other enterprise with that new broadcaster.

MR KNOWLES: Yes. That's an interesting model. It's a model that is currently applied in Indonesia, where there are 15 licence holders for broadcasting services and about five channels, so there are a lot of people sitting around with businesses with nowhere to go. I think there is an interesting sort of balance between those things as to - and the UK model of course follows something similar to that with the ITV, except that it is much more managed from that point of view, that in fact licences are granted for periods of the day, but it is interesting to note that they didn't actually follow the same model when they went to their digital multiplex model; that they required the digital multiplex operators to provide a package of services within the multiplex in order to get the multiplex licence, so there are various ways of skinning the cat but I think it depends on what objective you are trying to achieve. We simply made the point that there are some frameworks of separation in the act at the moment and certainly your clarification is an elaboration on what is in the documents.

PROF SNAPE: That is what we were intending and it wasn't a matter of having to

recover the spectrum at all.

MR KNOWLES: No.

PROF SNAPE: The spectrum was there under a licensee which someone could then negotiate with another broadcaster.

MR KNOWLES: Sure, although we have some experience - I think the ABA probably might have drawn attention to the fact that they have some experience in the number of people who had acquired spectrum in relation to low-powered narrowcast services, who actually were quite happy to sit on the spectrum and not have it used for various reasons of their own, and usually commercial.

PROF SNAPE: Yes, well, we did address that elsewhere in the report actually as to whether, first of all, if that is a problem and, secondly, how to address it if it is.

MR KNOWLES: Yes.

MR SIMSON: Could I just again within 4.1 have you elaborate on the issue of what you call "scale and scope" from being both a - if you like, the content house or production house, and also the owner of transmission facilities and, in so doing, just comment that there is actually a trend, globally, at this point for broadcasters and distributors, or transmission owners, to merge - to converge - and how you see that fitting in that sort of context.

MR KNOWLES: If you look at the point that the ABC doesn't own its transmission. While we hold the transmission licences the transmission is actually provided to us by NTL for the analog service at this moment. We don't have a problem about actually owning the transmission. What we do believe in fact is that if the ABC were to have to go and acquire transmission slots for its program then it would be much more difficult to put together a coherent program stream as we currently do and getting transmission capacity if we were negotiating transmission capacity in little slots along the way.

What we have at the moment is a 24-hour program stream which we can assemble and try to address in the best way against our charter. We think if you start to separate this out too much, even if you take the ITV model, you are starting to break it up into very small segments and it makes it very hard then to run a more coherent program stream, particularly given the diversity of things we're required to address under the charter. One of the things we hoped with digital transmission, for example, is that we can address some of those things better because, at the moment, it's one or the other, so if we're doing a kids' program we can't do say financial or news programming.

PROF SNAPE: At the bottom of that page in relation to recommendation 4.5 there is a question about why should the spectrum be valued and we understand, I think, the points you are making there but the point where we were coming from was in fact

accountability; that this is a valuable asset. It is simply like valuing the building. If the building had been given by the government to the ABC quite separate from any other budgetary allocations then it would be a matter of saying that - we're getting bips coming from somewhere and we're not quite sure. Apologies. To resume, that if a building had been given separate from the normal budgetary process and one was accounting for the cost of the ABC, or what the taxpayer is in fact paying for the ABC, then it would be appropriate to include the cost of that building.

MR KNOWLES: I don't think we have any disagreement about the appropriateness of actually doing the valuation. I think what we are highlighting is the fact that it is a very complex issue of how you approach the valuation. Do you approach the valuation for its value as a mobile phone service, for example, vis-a-vis its value for a commercial service if you put out six commercial services on the market you would end up with a totally different value than you would if you put one up.

PROF SNAPE: Yes. I understand now.

MR KNOWLES: Those are the issues we are really trying to - - -

PROF SNAPE: It is, to me, an ambiguity in the first sentence where you said, "To what purpose is the spectrum to be valued?"

MR KNOWLES: Yes.

PROF SNAPE: I now understand what you are saying is, how do you value the opportunity - - -

MR KNOWLES: Yes, how do you value the opportunity.

PROF SNAPE: Not why we want to put a value on it.

MR KNOWLES: And in addition the relative values of a national broadcaster using the spectrum vis-a-vis say a commercial broadcaster or a national broadcaster vis-a-vis a telephone service.

PROF SNAPE: Okay, I take that but of course in fact to say what else would the spectrum be used for and of course if it is in the broadcasting band then it's - - -

MR KNOWLES: People will argue differently about that. There's plenty of people trying to claim the broadcasting spectrum for telecommunications these days.

PROF SNAPE: And indeed broadcasting is going beyond the broadcasting spectrum, but I understand the point. Thank you.

MR SIMSON: I had a question with regard to comments on recommendation 4.6, where you say at the end of that first paragraph, "The ABC suggests instead that a series of templates may be developed." Could you just elaborate on that as to what

you are talking about there?

MR KNOWLES: The present process of reservation originally set out to be actually fairly simple with the minister simply making a statement about how much he wanted. There was some difficulty in terms of the minister addressing that particular issue because - and I am speaking from the point of view of having been involved in this process outside of the ABC. The difficulty came when the minister said, "Look, I need more information and in order to get more information therefore some form of inquiry might be appropriate because if I reserve spectrum and there is no spectrum available, for example" - the act provided for the minister to reserve spectrum ahead of the ABA doing anything. It could mean that you are reserving spectrum which doesn't exist or you're reserving spectrum, which in fact in the competing values of the spectrum you may in fact be saying, "I'm going to reserve spectrum for a national service, but there might be other competing demands for community or commercial services that the ABA might conclude are in fact of more value."

It may also have relevance to the extent that the timing of the commissioning of such a service might be a relevant consideration. For example, if the government is running the bank roll, which it was at the time the act was drafted, then if it's not going to put the service in for eight years and other things are going to happen before that - like for example, conversion to digital - it might be that in terms of social value there's advantage in going down a different path, so that the process then evolved to the point where the ABA conducted its inquiries and the minister then took advice, rather than simply a blanket process.

In terms of a template, the existing process did in fact provide something of a template for the ABA by saying, "In general I want to reserve X number of radio services and one or two television services for national purposes and one for community television services," blah, blah, blah, "for the community." So that really gave them a template but at the same time said, "Rather than a hard and fast rule there are these other balancing issues which need to be addressed," because there is no other forum for the minister to be informed.

MR SIMSON: In the context of your comment on recommendation 4.7, just the line at the end where you refer to public interest criteria - and interestingly we've referred to public interest criteria in quite a different context in the report, and I'm just wondering if in any way those two could be analogous.

MR KNOWLES: I guess what we're really saying is that in terms of that separation certainly the management of the spectrum at the moment is - while it's under the Radiocommunications Act it's exercised under delegation by the ABA, and because of that linkage that currently occurs between the two acts there's an automatic grant of spectrum access if you have a broadcasting licence, which is one of the points that you were talking about before.

I think what at least you get out of the present process is some consideration about the utilisation of spectrum, because the approach which has generally been

taken in the radiocommunications area is you put the spectrum out; you don't care what it's used for - in other words, let the market decide what it's used for. In relation to broadcasting, all of the broadcasting receivers on the market, give or take scanners which are a different category of animal, really work in international bands of frequency allocations and they do that for a very good reason - that broadcasting, because of the necessity of a one-to-many broadcasting environment, tends to operate at substantially greater power than other types of communications services.

If you look at the broadcasting bands they're set up in a way that the most likely forms of interference from one band to the next actually fall back into the broadcasting bands where they're of lesser concern because of the high power. If you move to sort of a free open-market spectrum issue then you end up with this problem of trying to manage and perhaps getting less efficiency by not grouping like types of services, and so those are the sorts of elements that come in if you move into a pure radiocommunications model, which is sort of, "Let's sell the spectrum and use it for whatever," to one in fact which is at least taking some consideration that this is for the purposes of broadcasting. Now, governments from time to time can decide just how much spectrum they want for broadcasting, but there are still positive advantages in keeping at least the segments separate.

PROF SNAPE: I could ask how we could predict the future for the medium and longer-term needs.

MR KNOWLES: Preferably crystal ball.

PROF SNAPE: But perhaps we shan't. I suppose everyone wants the government to predict their needs into the future and reserve the particular thing for their needs so that the others take what's left.

MR KNOWLES: I guess there's one issue there in terms of public policy if you take the national broadcaster's point of view. If the government says that all Australians have a right to access the ABC services or the SBS services or whatever, then if you don't make some provision for that, the cost to the community in acquiring spectrum back, perhaps buying a channel at commercial rates, if one indeed is available, starts to become more difficult. That was an issue that was addressed at the time the current Broadcasting Act was put together, where there was in the early drafts a proposal in fact that that would happen.

PROF SNAPE: On the other hand, if one took the view that compression techniques and technology in the future was likely to go leaping ahead, then in fact it might, by in the short term reserving too much in a sense for what was thought to - you know, overestimating it in the short term would mean that you were excluding other things in the short term, which would be in there, and if those compression technologies in the future do go ahead you may not need it for in the future anyway. So the argument is not all one way I think.

MR KNOWLES: In any debate about that you actually have to look at what is

likely to happen within some reasonable time on the horizon, and in the case of compression technologies for example it would be highly unlikely to see any radical move from what is currently possible within a three to five-year time horizon because of the inertia of the technology and the receiver population. If you go out 10 years from now, well, somebody might have invented some totally left-field solution which might be so compelling that the consumers are prepared to throw away their receivers and take on the new solution.

PROF SNAPE: I was going to ask something on page 6, but do you have something?

MR SIMSON: No, you go on.

PROF SNAPE: It was very interesting to see the plans for the children's Australian programs. Do you have any estimate of the audience size for your children's programs? This is a point that we've been making several times regarding the children's quotas on the commercial free-to-air, etcetera, that the very fundamental, basic research that one might want to undertake in this, the very first thing I thought that anyone would like to look at, is the audience size, and as far as we can see those data just do not exist. Does it exist for the ABC?

MR KNOWLES: This is not my area of speciality but I am aware that there is some information I believe in the corporation, having sort of seen some in passing, which actually looks at the ratings associated with particular children's programs which surely must give some indication of the audience size inasmuch as one measures audience size under a ratings scheme anyway. We could take that on notice if it's available.

PROF SNAPE: If you could, please.

MR WARD: Just to follow up from what Colin said, we look at ratings performance for individual programs and also in the overall children's schedule. Unfortunately I don't have any of that data with me and we would have to take it on notice.

PROF SNAPE: I think the problem with the standards ratings survey is that they don't survey children and so there seems to be a gap in it and we have all this talk about the effects, the importance for children of children's programs without the most basic data of whether anyone is watching, any children - or how many children, I should say, are watching.

MR KNOWLES: Let's take it on notice, professor, and see what we've got there. I'm sure there is some information that can be made available.

PROF SNAPE: Yes, it would be very useful, and it would be the first that we've received I should say.

MR KNOWLES: We're actually quite interested in knowing which programs work as well, so we do actually do some consideration of this.

MR SIMSON: Could I just draw together a couple of strands, page 5 and more importantly page 6 where you say:

Given the ongoing importance of these objectives -

the second-last paragraph -

in a digital environment - that is, being local in a global environment - the national broadcaster's future children's program role becomes increasingly important -

that comment of yours there, then similar sort of sentiments are expressed on page 8 under section 9.7. My question is: in a converging, arguably fragmenting, broadcasting environment where it is going to be more difficult - as we discuss in 9.7 and you comment in 9.7 there - for content regulation to be applied just to be able to come up with workable regimes in a digital environment with different delivery mediums and so on, the role of the ABC as a major possibly even increasingly primary local content resource, where the commercial broadcasters are running not perhaps intentionally with other agendas and, as I've said, fragmentation is occurring in their businesses - could you comment on that from a philosophical point of view on a five-year time-frame, the importance of the ABC as a major local content, if not the major local content, player in broadcasting services?

MR WARD: Can I start somewhat wider than just the ABC encompassing the response to your question. I mean, I would agree with the general thrust of your question about the role of the ABC - clearly it's in our submission - but it would not be the exclusive province of the ABC to deliver on Australian local content. I think what's implicit, if not explicit, in parts of the submission is that there are a range of mechanisms in place that have evolved over a period of time and that will no doubt necessarily continue to evolve for meeting Australian cultural policy goals in terms of local content, and that the ABC has a critical role to play in that. So I guess I'm both agreeing with your statement but also seeing it within the context of what would be delivered in that albeit fragmented but multichannel environment. I'm just trying to come to terms with exactly what you're asking about. Were you seeking some sort of specific statement about how the role could be delivered or - - -

MR SIMSON: No, I'm not seeking a specific statement, but I'm just trying to push forward a number of years and in a fragmenting environment in terms of the pursuit of cultural audiovisual policy in this country what are the levers that a government has got at its disposal on behalf of the community? Perhaps the most significant lever it will have left or the most significant lever it will be able to influence is the ABC.

MR WARD: You'll forgive us if we suggest that's true, that the ABC is probably the most significant lever for meeting cultural policy objectives in relation to local

content. We'd have to agree with that. In meeting those goals, I'm just trying to sort of think through your question.

PROF SNAPE: Maybe I could illustrate it. I'm not sure if you heard Steve Vizard's address recently. It was in fact on 22 October, the same day as our draft report came out; that's how we remember it. He was commenting on the future and suggesting that we had not given as much attention as we should have to the Australian content requirements and the cultural policy objectives and the quotas or whatever into the future, of meeting those objectives into the future. One reason we didn't give much attention to it is that virtually none of the submissions gave any attention to it and they were all intended to be a bit backward-looking in terms of the existing situation, the existing technologies, and to try and say what should be there.

Steve Vizard was saying that looking to the future in this convergent environment where things are coming down out of the sky from abroad and directly into homes, where you've got the Internet and things are coming in, and all of this new environment is becoming so much more important and difficult for the government to be imposing its current types of policy on, as policy instruments for the objectives, what is left or what is then - saying that increasingly the ABC, being the government's instrument if you like, a direct instrument in these matters, would become the source of Australian content and these cultural objectives. That I think is the background.

MR KNOWLES: I think it's one thing to be the source. Yes, the corporation would produce programming to the extent to which it has resources to do it and to which it is able to balance that against all of the other competing program creation things. As a delivery vehicle, of course there's another dimension as to where you can acquire the programming, but the program ultimately has to be created somewhere and it won't all be created only within the ABC.

We do a very big job on children's programming now, amongst all of the other things and I would have thought - and my colleagues might have some more to say about it - that yes, there is a challenge to the government in terms of where it goes and how do you support these sorts of issues of supporting children's programming and so forth? The ABC is of the view that we certainly would be wanting to create the sort of content in the content space, whether it be delivered via data or whether it be delivered via television or radio, which is children-friendly. We might have a safe site, if you like, in terms of the material that's available and stuff which is useful.

Children's programming, of course, also has a little longer life than some other content, in that it's able to be recycled a little bit more often, but it still needs to be current and vital because otherwise it gets a bit jaded and what have you. I think it's very hard to say where you ultimately run with this, but I think that there has to be a policy which says, "Look, this is what we're trying to seek across the board. At the end of the day, it has to be useful for someone to view, otherwise, if it's not viewed by anybody, there's no point in creating it." One of the things the corporation would be concerned about, too, is that if you became - for want of a better word - the ghetto for such programming, then you may well be running a service which actually not very

many people are watching, because they never actually find you; they don't find you for other reasons.

I think that's an extreme view, because if you look at what happens on pay TV, for example, you've got children's channels and so forth which children do watch. It really depends on the quality of the content. Do you want to add something?

MS JAKUBOWSKI: Can I just add a couple of comments to what Michael was talking about. Yes, we do see ourselves as being a primary broadcaster in children's programming but, more importantly, we see ourselves as being part of the broadcasting mix which ensures that diversity occurs across different outlets. Those outlets are currently most pervasively an influence in broadcasting, but none of us really know how it's going to develop over the next five to 10 years and I think part of the problem that the commission has been grappling with - as is the industry, including ourselves - is how do we predict where it's going to develop? Even if you look at, say, when the government released its datacasting options paper last year, there were issues about datacasting which have since moved on in terms of how datacasting is supposed to be defined.

It's a very difficult time to be making predictions about how the industry will evolve, so part of our problem is actually being able to be more explicit about policy development when you're actually working in an environment where the digital framework hasn't been resolved. The convergence paper also has just been released by the department. That raises another series of issues and I noticed in the press yesterday there was an article by Reg Cootes, who is a communications expert, who says the Productivity Commission has rightly identified that this is a critical area for broadcasting policy, but how do you then relate it into telecommunications policy? Maybe the whole thing should be dealt with once some of these initial parameters are established.

So yes, we do consider ourselves to be very important in terms of pushing this important policy objective, but we do consider that the rest of the industry has a strong role to play in ensuring that you do have these sorts of services available to the whole of the Australian community across the board.

MR SIMSON: There's nothing really surfaced as to how that can be done - in the new media I'm referring to - and my comment earlier did not just relate to children's.

MR KNOWLES: I think if you talk about new media, trying to predict what you need to do in the new media is exceptionally difficult, because it comes down to questions of yes, you can get a third-generation mobile phone that can show you images, but are you actually going to use that, and to get that type of program you're going to use it a different way? While we've got the range of technical possibilities for delivery, we know nothing about how the consumer will ultimately use those products, and history is littered with failures in the consumer environment, yet there have been some remarkable successes in areas which were totally unpredictable. From our planning point of view, we're currently basically looking at about a

three-year horizon, because to go beyond that is exceptionally difficult, to say nothing of the fact that we have our funding on a three-year cycle.

PROF SNAPE: So really, when you say on page 8, "The ABC recommends that incentives be created for increasing Australian content and these be extended to datacasters and Internet services," you're saying, "Yes, it should be, but we don't really know how at this stage."

MS JAKUBOWSKI: We're saying that once we've got a better idea of even, for example, how datacasting will be defined once these basic decisions are made by government - which we expect then to be made and approved by parliament either early or midway through next year - we can then hopefully try and resolve how these issues are to be dealt with.

MR SIMSON: I just have one other question. I'm just seeking clarity as to the corporation's position on mandating HDTV. Would you give us the position on that?

MR KNOWLES: The corporation has a position that we would not want to have a service which is inferior to that being delivered by the commercial operators, because when you switch from one to the other, we would at least want to be able to look the same for a content which is appropriate. What we have said in relation to our HDTV position is that we believe that we should have some flexibility in when and how and for the content. For example, if we had a major spectacle occurring in the middle of the day that we felt was worth doing in HDTV - I'm looking a few years out for this point - then it would be appropriate to count that as your HDTV, rather than having to do something early evening, where you didn't have the content that so justified it. In other words, let's use it flexibly.

We are also of the view that what should be left is to provide the consumer of the future with the maximum range of possibilities without necessarily having to change things over again; therefore we're supportive of the view that in fact receivers ought to be capable of receiving either, but displaying it in whatever sort of display you chose to purchase, so if you want a set-top box to stick on your existing receiver, that's fine.

PROF SNAPE: In other words, of putting down standards but not requiring at this stage for the manufacture of things and not at this time mandating that a particular thing be broadcast.

MR KNOWLES: No. I think that in any event, in practical terms, it will be very difficult to - and would not necessarily be sensible to - mandate its requirements to, say, transmit everything in high definition, when in fact the content doesn't exist. But, on the other hand, I think if you look back at some of the debate that was going on, it was about saying, "If we transmit some high definition at some points in time" - it's happening in the US now - "then at least the receiver manufacturers are being kept honest, as it were; that the receivers are capable of showing pictures when the stuff hits them." That, probably, is the primary motive of making sure that the consumer

down-track is not inflicted with the possibility of having to change the receiving device yet again, because we know that that takes a long time, and also giving consumers maximum choice at the front end and, as content is generated and so justifies, then you can start to run it.

PROF SNAPE: If you're sending a high definition signal out in standard definition as well, then of course you'll always be able to receive it.

MR KNOWLES: The problem with that is it means that you actually deny the population ever gaining access to the full version of high definition.

MR SIMSON: Why is that?

MR KNOWLES: Because you need 19 to 20 megabits to transmit a full quality high definition program if you take the source level content. The 1080i format has already been agreed internationally as the international exchange format for television programs in high definition. The same format is being studied at this moment by Hollywood as a potential replacement for a large amount of film production, but they will probably use the 1080p format of 24 frames. Both of those formats, if you want to transmit them in their full quality, require around 20 megabits to solve the problem, so what you're saying in that context is that at least the programs which are created in high definition and the ones which are translated off film into high definition will be at the 1080 level of quality.

You can in fact reduce it for transmission purposes, but having reduced it for transmission purposes and then up-converting, you actually lose something. We have been doing some experiments internally in the ABC which show that if you start from a high level - or, even worse, if you start from a low level, up-convert and then down-convert and up-convert again in the receiver, you probably end up with worse than what you started with. The same applies if you down-convert and then up-convert in the receiver again; you end up with an inferior product, so in other words, you can't get anything for nothing. What is evident in the US market is that basically the receivers are either 1080 or 480 - in other words, standard definition or high definition displays - and irrespective of what transmission comes in, the thing is converted up or down, depending on the display in the receiver.

What we're really saying is that who knows what the consumer in the future wants? At the moment, thinking is somewhat constrained by the current prices of devices or current physical size of devices. Flat-panel technology has moved a long way and is likely to be one of those change elements in the equation and I have been quoted some numbers by manufacturers suggesting that by 2005, you will probably buy a 40-inch flat panel for a couple of thousand dollars and there is no physical means why it wouldn't do it. Let's not get into a debate about the cost, but once you've got that technology there, then in fact the demand may well go up. Remember that television started off at 17 lines and progressively we've been increasing it over time, but every time we've changed it, you've had to change the arrangements.

Certainly, as an interim solution, you can run at a lower level of high definition transmission and carry the standard definition beside it. What you've got to think about is, does that make sense? I know you've had difficulty getting some serious numbers about that process. Under what time-frame is that likely to make sense? Does that create you an impediment in the future for, in other words, giving the consumer choice and providing for the maximum range of opportunities? So, for example, in the future who's to say that a new licence might come on board which is predominantly material which justifies high definition?

PROF SNAPE: I'm interested to hear you say the 1080i has been adopted as an international standard and if you, in fact, then broadcast in 720p - - -

MR KNOWLES: You down-convert.

PROF SNAPE: But p, as I understand it, will give you a better signal than i, a better picture than i, at least in some circumstances. You say that's down-converting. If in fact you're doing it in p rather than i, doesn't that give you just about as good a picture?

MR KNOWLES: You have to distinguish in this thing between the display standard and the transmission standard and, as far as the transmission of p is concerned vis-a-vis i, 720p will give you an inferior end product on the best display than 1080i would give you. Obviously, the ideal would be 1080p.

PROF SNAPE: Yes, which is not on the - - -

MR KNOWLES: Well, it's not currently achievable, except the 24-frame element, which of course is now becoming, or will become, universal for a production environment. One of the reasons why Hollywood is particularly interested in the 1080p 24 format is that it is convertible almost to any other format, with the absolute minimum of degradation in terms of the quality level that those lower formats actually permit. In other words, it's almost the same universal transfer ability that existed with film and there are quite significant production values in doing it. If we assume that Hollywood does do that - which is probably highly likely, at least for a number of films, and there's plenty of evidence around that George Lucas in Star Wars used it for part of his last one and it's going to be used in all for the next one, and other people have produced series - sure, the debate is still out, but there are currently live tests going on by a number of Hollywood producers to come to some conclusions and that will be a transition at the time.

If you assume that that starts to change the mechanism, it means that across the board, both in broadcasting stations and in other content creation facilities, we actually have a universal tape machine and a universal camera, so for the first time in history, the same piece of hardware actually does the same for everywhere. That's the reason why there will be an adoption.

MR SIMSON: Just that nobody can afford to buy it.

MR KNOWLES: No, that's not true. The present price on cameras is - - -

MR SIMSON: No, I am not referring to the manufacturing end, of creation, I am talking at the user end.

MR KNOWLES: No, but as I say, if you come back to the user end at the moment, all I am saying is at the front end that you have to distinguish between what you can achieve now, which is creation, and what will ultimately become creation - nobody has 35-millimetre projectors in their house, either - to the point of coming down the track and saying, "Yes, at the present time there are some limitations in what is achievable in the home and what is affordable." And most of that is about what the display costs are.

MR SIMSON: As Mr McDonald has quoted in the Financial Review this morning: "There are widely held concerns that a high-definition standard is a rich person's TV."

MR KNOWLES: Certainly there are widely-held views of that, and that certainly is - that would have to be true for today when you think about it in terms of the fact that the current retail price for high-definition display is expensive. The current retail price of a standard-definition display is no more expensive than your current version. So that's fine. You may well choose to receive it on your standard-definition receiver today, and indeed many people a long time into the future, particularly if they're buying a small screen - a 34-centimetre or 50-centimetre screen for use in the kitchen or somewhere else - will only ever buy the standard-definition display.

MR SIMSON: But on the data we were given by NTL on 1080i you've got no room for simulcasting standard and high.

MR KNOWLES: That's right. That's right.

MR SIMSON: So what you're saying is fine in theory but, you know - - -

MR KNOWLES: No, what I'm saying, in fact, is you can still transmit the 1080i format - - -

MR SIMSON: Receive it as standard.

MR KNOWLES: - - - and the receiver would actually take that format, translate it into analogue or standard-definition digital for the purposes of display if you had chosen to buy that lower-resolution receiver. And the cost differential in that is relatively low. It's low now and it will be probably zero downstream.

MR SIMSON: But at the point that you actually wish to watch or experience the quality of the high, you've got a problem.

MR KNOWLES: But that's no different to what we have today. Those people who

want to watch large-screen TV go down the street and spend eight to 10 thousand dollars to buy a large-screen receiver. Those people who are happy to watch it on a small screen spend \$500 on a receiver. It really is a question of consumer choice. You choose what level of quality you want to watch it in. The same applies to your computer. Basically, some people used to choose VGA and ultimately nearly everybody uses an SVGA or XVGA system now. So I think it's important to distinguish between what the consumer is required to do vis-a-vis what is being transmitted, as long as the receiver is able to make sense of what it receives and then sort it out to display at whatever level you've chosen it to be.

PROF SNAPE: That is the crucial thing, isn't it, because as I understand if you've just got a standard-definition set and there's a high-definition signal coming in, then the screen goes blank. So that is the crucial - - -

MR KNOWLES: Yes, but in fact that doesn't happen in the US. All the US receivers are required to decode all the formats. Recently - in fact yesterday - somebody tossed something in front of me in relation to a new chip which Motorola have just produced which is going into consumer receivers and substantially reduces the cost of doing just that, and it fixes up the other problems that they have had in the front end of their receivers. People cast aspersions at the US market at the moment saying penetration has been low and so forth and so on.

I think there are two issues there. Firstly, the receiver supply industry hasn't been able to keep up. Secondly, 80 per cent of the US market receives its television from some form of cable and currently there are no digital services carried on any cable because the cable operators are still debating whether they have to carry it or not. They would have to change their infrastructure to do it. It's the same as if we do a deal with Foxtel to carry an ABC program, at the moment it will arrive in analogue at the consumer's premises, so therefore some of the advantages of digital simply drop away.

PROF SNAPE: Okay, thanks for that, and thanks for your comments in general and your submissions. We are very grateful for the submissions which the ABC has given to us and for your assistance and for coming along. Thank you very much. We will now break.

PROF SNAPE: We resume our hearings and welcome Heart N Soul Productions. Mr Merhi, would you like to introduce yourself for the transcript and make a presentation, please.

MR MERHI: Thank you, Professor and Mr Simson. My name is Sid Merhi, the director of Heart N Soul Productions Pty Ltd. Heart N Soul Productions is 2ME Radio also, which trades as 2ME radio, which broadcasts Arabic radio in Sydney and Melbourne. I have read the draft report and I would just like to make a couple of comments while I have the opportunity. I believe that there isn't enough at the moment in the draft report which addresses ethnic radio as a whole. I know that, Professor, the last time I was here I think you mentioned that you were surprised you didn't see enough representation from the actual ethnic people and the ethnic media itself - different parts of it.

I believe myself that ethnic radio is a very, very real part of this broadcast system that we have in the moment. In particular when you look at the census figures, which are very, very important figures, 51 per cent is a lot of people - 51 per cent of the population being of ethnic extract - who may consume ethnic radio. I noted that in the report there's a fair bit of treatment given to indigenous radio, which is fine, and I think that we would like to see commercial ethnic radio in particular become a real part of the report, if possible, because it is generating income, it is employing people, it is creating a high standard, and it is competing with other commercial players, and we think that we can provide a good level of service to the ethnic people, if we were given other things such as security of tenure - which is something that is very important.

At the moment we don't have security of tenure. The ACA allows us a period of five years maximum to have our licences and then after a period of five years we can renew it, if they so choose, to another five-year block.

PROF SNAPE: That's because you're in the off-broadcast band? Is that correct?

MR MERHI: That's because - well, what we have is what they call apparatus licences - - -

PROF SNAPE: Yes.

MR MERHI: - - - and according to the Radcom Act they can't renew these apparatus licences for periods of further than five years, from what I understand.

PROF SNAPE: Yes.

MR MERHI: It's very difficult. We're always struggling. I really and truly believe in programming. Programming is everything in broadcasting. You could be totally free-to-air and have the worst programming and no-one would listen to you, and if you've got good programming and a good system being run, you will get the listeners. But to get a good system you need good quality machinery, you need professional

people to work with you. It all costs money. And when you go out there looking for investors, the investors are going to want to see some sort of security. They look at it and say, "Five years? I can't put money into this thing because we don't know what's going to happen in the future."

If they were given a period of 10 or 15 years they could at least say, "Look, it's worthwhile putting a few bucks into this," and give it a go. That way we end up with better and more professional staff, we end up with better equipment, we end up with a more professional set-up and, ultimately, the end product will be better programming for the station. Better programming means more listeners. More listeners means more competition, and I guess that's what it's all about. At the moment we're only receiving token recognition for what we're doing and I do believe that it's a very, very important part of the whole broadcasting system in the future and it's only growing, and we'd like to see this growth continue rather than become stifled.

PROF SNAPE: That insecurity of tenure to which you're referring applies to any broadcaster that was not on the broadcast band, I suppose.

MR MERHI: Yes.

PROF SNAPE: And it also applies to narrowcasters, which have a short period. So that in itself is not something which is unique to ethnic radio.

MR MERHI: No.

PROF SNAPE: So we understand that point on the insecurity of tenure. Is there a point separately to be made about ethnic broadcasting, separate from that insecurity of tenure?

MR MERHI: There's the talk of the digital that I put up in the previous submission, I think it's still a very real issue. Even though the government hasn't adopted a specific type of delivery system yet, it would appear that Eureka is still - from what I'm hearing - at the forefront of the assault. Personally I'd prefer IBOC, because if IBOC was given more patience, IBOC would allow any existing broadcaster to use their existing frequency and just do the automatic change to digital, whereas Eureka will need a total migration. There is already talk around, and it is getting stronger and stronger, that there's not enough room for everybody on Eureka.

PROF SNAPE: On the L band.

MR MERHI: On the L band, yes. And the talks just gets stronger and stronger every day. I try and filter out the talk from the facts. It would appear that there may not be enough room on Eureka, from what I can gather, for everybody. So if someone is going to ultimately miss out, we'd like our ethnic listeners to not be the ones to miss out.

PROF SNAPE: I am just being reminded that of course all licences are only for

five years, but is your licence renewable?

MR MERHI: The difference between the commercial licence and band is that they are five-year licences as well, but there is a provision in the Broadcast Services Act, from what I understand, where unless the licensee has breached a certain condition they must be renewed automatically.

PROF SNAPE: Yes.

MR MERHI: Our licences are renewable if at the time of renewing the ACA allows it; if they haven't found what they call on top of the licence "a better use for the spectrum". They say something to the effect of, "If there is a better use for the spectrum we will notify you."

PROF SNAPE: So there is no presumption of renewal?

MR MERHI: No presumption of renewal.

MR SIMSON: Just going back to the ethnic question, why won't the community broadcasting regime continue to provide that opportunity for various ethnic groups?

MR MERHI: Mr Simson, I don't know a lot about the community broadcasting regime. From what I do know about community radio and what they do for the ethnic people, I know they hire out an hour or two hours or whatever it is to different people at X amount of dollars to put a particular program on air. But to me, as a radio programmer, I really believe that fragmented programming is probably the worst type of programming you could ever have on radio, not just fragmented programming - ribbon programming is a better way of referring to it, because it doesn't give the people - when people want to listen to the radio they want to be able to turn the radio on any time when they choose.

You can't change people's habits. When they flick the dial, when they flick the button with the radio on, they want to hear it when they're having a shower, or whenever they feel like it. They want access to a radio station they know is there all the time. To me you can't program an hour of professional radio. You really need to see the overall picture and program it properly to be able to target the audience and give them the best possible programming they can have, to continue to listen to you. You know, my community radio is doing - it's wonderful - it's wonderful for this country, but from a full 24-hour service for the ethnic people for particular languages, community radio doesn't seem to be delivering that in a professional - in a form where a lot of investment is being made to deliver optimum programming.

PROF SNAPE: Is there no available space for an AM radio which you could acquire within the broadcast band?

MR MERHI: I understand that at the moment there's no available space. I understand that there is an auction coming up in the mid part of next year, or the latter

part perhaps of next year which allows for two channels, one being the former 2EA channel which is 1386 on the AM band, and the auction for the Radio Italia frequency, 1539 which is currently on air at the moment. They're the two AM channels in the Sydney area. I believe they'll be for open narrowcasting, yes.

PROF SNAPE: Okay, so there is no narrowcasting available in the Sydney area either - bands available for narrowcasting.

MR MERHI: Which somebody could acquire now?

PROF SNAPE: No.

MR MERHI: Not from what I understand.

PROF SNAPE: Have you investigated being able to purchase spectrum from the ACA?

MR MERHI: Yes, and as part of the licence area plan next year there will be those options which have specific frequencies available.

PROF SNAPE: Right, okay. What about spectrum outside the broadcast band from the - - -

MR MERHI: There doesn't appear to be anything left.

PROF SNAPE: Nothing available. Okay.

MR MERHI: We have our own spectrum, professor, but basically we just don't want to be left out. When everybody migrates we want to migrate with them and not get - if we get left out our listeners will get left out and they're the important ones.

PROF SNAPE: I see your point there. I think that's a well-made point and I think I understand the point there. Thank you very much for it.

MR MERHI: Thank you very much, professor. Thank you Mr Simson.

(Luncheon adjournment)

PROF SNAPE: We resume our hearings now and we welcome first of all the Australian Association of Independent Regional Radio Broadcasters. We would ask you, Mr Foster, if you would identify yourself for the transcript. Might I say that the microphones here are not amplification, they are just for the transcript and so if you wouldn't mind projecting your voice just a little bit so the audience can hear also.

MR FOSTER: Thank you. My name is Desmond Foster and I'm the director of the Australian Association of Independent Regional Radio Broadcasters, which we know generally as IRB.

PROF SNAPE: Thank you. We have received your submission and if you would like to speak to it, please.

MR FOSTER: Yes, I would, thank you. When you say you have the submission, we actually sent a few dot points and we followed that up only yesterday with a little fleshing out of those points. Do you have the latter?

PROF SNAPE: Yes, we do.

MR FOSTER: Fine, thank you, Prof Snape. I think the really fundamental issue for IRB members is this question of - or the proposal in the draft to release all available frequencies for commercial purposes. We can see the force of that argument perhaps in large markets, but we've got a fundamental conflict when we come down to small regional markets. We interpret the draft to mean that releasing all available frequencies for commercial use will result in better services for the community and with respect, we challenge that assertion or assumption, in relation to small markets.

We don't deny that it would be possible to run many more stations and small markets; what we are saying is that the consequences of doing so would be - not to put too fine a word on it - I think catastrophic for the local communities which are being served by the existing services. What is at stake here is perhaps a somewhat nebulous concept that we might call localism - what that means to people in country markets and how it would be lost if this policy were adopted.

I would just like to give you an example of the way in which that philosophy has developed in the United States, for example. I am not too sure whether it's the current philosophy under the FCC, but I can remember a case only two or three years ago of an operator in a small regional American market where the station was run by a husband and wife, nobody else. The programs were canned, or supplied in some other fashion. When the proprietor went off for two weeks' holiday, he just left the tapes of the previous two weeks running. He just simply repeated the previous two weeks' tapes. That is perhaps an extreme example, but it is an example of the way things can go, if you just set out to say, "Well, we'll cram as many in, which means we've got to run them as cheaply as we possibly can."

I don't feel that we've made perhaps - we obviously haven't made sufficient impression on the commission in our original submission when we spoke about

localism. It is more than just a bit of local news. It is local community affairs, it's charities, it's a multitude of things and it also is about the involvement of station personnel in the life of a community. None of these things would be possible if the companies weren't earning enough to pay for them. That's the end of my impassioned response.

PROF SNAPE: Thank you. Yes, we understand the point that you are making there. If you don't see that community stations would in fact - because the community sector has, of course, made much of exactly the sorts of points that you've been speaking of there - - -

MR FOSTER: Yes.

PROF SNAPE: - - - and I assume that in most regional areas there is space for community stations.

MR FOSTER: Yes.

PROF SNAPE: It's not crowded out in the way they are in the city.

MR FOSTER: Yes.

PROF SNAPE: You wouldn't see that if the community - if commercial stations weren't in fact meeting the localism, there would be a strong role for community broadcasters. That is, after all, one reason that they were created.

MR FOSTER: Let me just spend a minute on community. First of all, I think the word "community" is a bit of a misnomer. If you look at that community sector you must recognise or remember that the great bulk of these stations were originally licensed not as community stations, which is simply the naming under the present act, they were originally known as public broadcasting stations. In that role they had very, very specific roles to play. They were either educational or religious, or they had some other specified and usually single purpose to pursue.

It's true that there are certainly community stations who do more than that - I certainly don't deny that - but the reality is that they don't attract more than a very small proportion of the listening. There is no case that I'm aware of where a community station could be said to deliver anything like the audience of the local commercial station. To look on community broadcasters who are not for profit as a substitute for what commercial radio stations are uniquely doing I think is a great mistake. I don't want to denigrate community broadcasting but it's not going to take the place of commercial broadcasting.

If I might just go on, the only area I think where community stations might approximate to commercial stations is where, although the licensee is not to operate for profit, the licensee employs people who are very much there for profit. It's conspicuous, I think, in some community stations that marketing directors or sales

directors and salesmen are, in some cases, receiving extremely high salaries compared with the commercial sector.

PROF SNAPE: Yes. I do recall our earlier discussion regarding the nomenclature, public versus community. But the world is not static, I guess - - -

MR FOSTER: The point is, I suppose, really - not that we base our argument on floods and fires and things like that, which is the more dramatic example, but when those things happen it is to the commercial station that invariably the state emergency service or the local emergency services come. They don't even go to the ABC as a rule because the ABC has bigger licence areas or service areas to deal with. Quite frankly the community stations just would not have the resources to bring staff into the station at a weekend when there is a flood on and provide the kinds of services that the commercial operators are doing.

MR SIMSON: I think one of the issues we were grappling with in the draft report is actually being able to put your finger on how many should sit in the market and the extent to which that can be a good call, be a correct call in a context where - or as an alternative where the market is deciding what is the right call.

MR FOSTER: Yes.

MR SIMSON: What you're saying is a microcosm of what the big players also say to us.

MR FOSTER: Yes.

MR SIMSON: What you're saying is an absolute microcosm of what the big networks are saying in terms of them not wanting any more competition or not wanting fixed advertising pies, threats to local content, no cut-back on news services

MR FOSTER: Yes.

MR SIMSON: I mean, it's all the way up and down the chain, even so that the arguments are almost a mirror image for the large fish as it is for the small fish, as you've put it today.

MR FOSTER: Yes, and I accept that. I am not an economist and I do know that every industry that's ever appeared before the commission and its predecessors has always said it will be disastrous if they have to face competition and I suspect, with respect, that might breed a degree of cynicism in those who have to make the decisions, but could I just take the point a little bit and just extrapolate? If we look at a market like Sydney, for example - take the Sydney radio market - it might well be argued that the community will benefit from more stations. I mean, it is self-evident, isn't it, that there have been stations in Sydney - there have always been some stations in loss, so some people come to the surface and make cream and others fall by the wayside. They chop and change over the years, but the important thing is with the

overall diversity and the quality of the best to the listeners remains high. What I am saying is that if you do that in a small country market it will not remain high because there will not be any resources to pay for it.

PROF SNAPE: But I suppose we have always got this tension, haven't we, between the incumbents and those who would wish to contest their market and will the quality be higher when one is a protected incumbent, and one can take it easy and one is not being driven so much by the commercial pressures, in which case one can undertake perhaps as part of - from a commercial point of view taking it easy one can engage in local activities that may be worthwhile but not profitable, or does one encourage competition so that the principal task for which the commercial licence is given - that is, to broadcast - can be focused on and can be competed and that, of course, applies across - as Mr Simson was saying - a whole host of commodities and we have always got that tension.

MR FOSTER: That's true, but we have always been conscious of the tension also. The situation - and we have also had some experience of what happens in small markets when competition does arise. What invariably happens in the radio market - I'm speaking of small markets - is that the new player elects to compete with the existing player on exactly the same footing and pursuing exactly the same target section of the audience and exactly the same type of format, because without that mainstream section neither of them is really going to be viable.

What happens in that situation is that you do not get diversity of programming. You get more intensive pursuit of the same programming and the diversity that you hope to get - it doesn't exist. It is in recognition of that that the parliament has seen fit to allow firstly prior to this legislation what was called a supplementary licence and which, under this legislation, is known as a section 39 licence and you can go through all of those 50-odd markets, where supplementary licences have been granted, and you will find that there are two separate, quite discrete programs on those two stations, proving that that does in fact produce diversity.

PROF SNAPE: Because they are both under the same control?

MR FOSTER: Yes.

PROF SNAPE: And therefore they're not going to compete against each other and we do discuss that type of market development quite extensively in the report and the problem, if they are under competing ownerships, of competing for the same market. We do discuss that.

MR FOSTER: Yes.

MR SIMSON: And we recommend that the so-called two-door market rule in the case of radio could be relaxed because, as you have pointed out, you would have different formats under the same owner - - -

MR FOSTER: Yes.

MR SIMSON: - - - but the interesting thing is that's under the same owner, so what you're saying is that's all right - - -

MR FOSTER: Yes.

MR SIMSON: - - - but it's not all right if there is another person who has got a chance to come in and have a go at that space, so it really is entrenching the position of the incumbent, isn't it?

MR FOSTER: What we're really saying is that before you get to that point really any logical examination of the market would lead you to the likely consequences and what we're saying is we don't really believe in the sorts of markets we're talking about - that putting a third station in is desirable, either for the incumbents or for anybody else. There is nothing in it.

MR SIMSON: But, Mr Foster, in that situation where let's say the incumbent in line with our recommendation wished to have a number of formats, a number of licences, why shouldn't someone else be able to come in and compete at the same time? I mean, why should the incumbent just have the opportunity to extend their franchise almost unlimited and mop up all the rent that's available in that marketplace? Basically what you're doing is entrenching a monopoly situation.

MR FOSTER: No, I'm sorry. We're not trying to entrench anything. What we're saying is that you must look at the circumstances. We're not saying you must not do this or that or add another station. What we do contest is that you take the broad brush and say it can happen everywhere. What we're saying is each market should be looked at on its merits and you should be able to make some conclusions about the likely effect of that but not to adopt a doctrinaire approach which says, "This is going to apply to all the markets without even looking at them."

PROF SNAPE: If I were to be taking a small market which currently has one commercial broadcaster and if I am a broadcaster who wishes to get into that market I would have at least two options. The two options would be in fact to try and buy the first one out, and if it was clear that that market would only support one broadcaster and I reckon I can do the job better then I would go and offer a price for that and that would be the easier way, in a sense, to do it. If, for whatever reason, they're not interested in my good offer to do this and because I reckon I can do it better than they can do it, it would be a good offer - for whatever reason they're not interested.

MR FOSTER: Yes.

PROF SNAPE: The other option is to try and see if there is space for another broadcaster there and to enter in and essentially drive the other person out by competing in the other same space and doing it better. If it was a small market and, as I postulated, would only support one broadcaster, why do you say the - and the

outcome of either of these is going to be providing a better service for the local consumers because I'm going to be making it a better service so therefore getting more advertising revenue, so I'm either being more efficient in delivery or in fact providing a more demanded service. Why do you rule out the possibility of being able to compete through a second licence as against buying out the person when you've got those - buying out the current owners?

MR FOSTER: You keep saying, why do we take that view, but I do come back every time to say it depends on the market. We don't want to - - -

PROF SNAPE: I was trying to take a small market, which is what you represent.

MR FOSTER: Okay. The commission has made a lot of the importance of developing technologies and the opportunities that exist and really speaking I think the view you have expressed, with respect, assumes that stations will stay the way they are now - they'll be the same kinds of stations, the same type of people and sorts of operations competing with one another. What we haven't looked at - it's easy to come in and make a buck, if you like, out of these small markets if you've got a frequency.

One way to do it of course is to just relay your programs through the place - just to network them out through the country from some central point. Another way might be to deliver them by satellite. There are so many alternative means of delivery available these days that we're not talking any more about the old line, the station versus station situation. I say - we argue - it is not good for a local community if the conventional-type station's revenue goes down and services have to be reduced, because they will not be replaced by somebody sending a program from 500 kilometres away.

MR SIMSON: But, Mr Foster, why need that be the case? That is a possible outcome.

MR FOSTER: Yes.

MR SIMSON: I acknowledge that but an equally possible outcome, as Prof Snape was postulating, is that somebody comes in and they want to provide a fair dinkum local service. They want to compete with the incumbent and they want to let the best station win. It doesn't necessarily apply that you are going to get a network program or it's going to be inferior or it is going to come from 500 kilometres at all. It may or it may not.

MR FOSTER: It is not a case of "let the best station win". It's a case for the operator of saying, "How do I survive here? How do I survive in this new environment?" and what he does is cut his costs.

PROF SNAPE: And the outcome might be as you're envisaging as one of the possibilities. Another outcome is that they cut their costs one way or another and are

not providing as good a local service as they were before. Now, that may then lead to - if in fact there is spectrum available - if there is spectrum available - for someone who does provide that good local service to come in. Alternatively, under the current arrangements there is provision for a community broadcaster to start up and to provide that very localised service, which if it in fact was meeting the market in the way you describe - meeting the demand - would be much listened to because it is providing the local service that people demand.

MR FOSTER: I have got to say I cannot envisage a situation where community broadcasters will fill this role unless there is some dramatic change in the conditions which apply to them.

PROF SNAPE: Which conditions have you got in mind?

MR FOSTER: Essentially that they are not for profit.

PROF SNAPE: Okay. The five minutes rule.

MR FOSTER: Yes.

PROF SNAPE: The four - to become five - minutes rule is in there, yes.

MR FOSTER: Yes. Then you have a situation of course where you have an operation which is charging rates to advertisers and which is able to charge rates to advertisers at substantially lower than the normal market value because they're not paying the labour costs which have to go into the operation of an ordinary radio station.

MR SIMSON: Yes. In the context of what you have got to say under draft recommendation 8.4 on cross-media - I mean, your argument is very much about the - in the context of what you have just been saying and we have been discussing just now and in the context of what you say under 8.4 - is very much the threat to the viability of the incumbent.

MR FOSTER: Yes.

MR SIMSON: But what if your local TV or radio station - sorry, your local newspaper, for example, or television station, but let's take a newspaper because that is a better example - were able under the cross-media arrangement buy up the local radio station and because of the synergies involved was able to provide a superior local news service and other content services to the community. Wouldn't that be a step forward?

MR FOSTER: That's not the scenario we are looking at of course.

MR SIMSON: Why not?

MR FOSTER: The scenario we're looking at and that part of the cross-media issue that we're concerned with is where the newspaper buys the television station or the television station buys the newspaper and they then set out to collaborate and to offer advertising at rates which are destructive to the radio station. That's really the only aspect of that with which we are concerned.

MR SIMSON: Okay. You're not concerned about the actual ownership?

MR FOSTER: No. I mean, in many ways from the radio proprietor's point of view it would be a good thing because the value of his property goes up if newspaper and television interests are free to buy it. We're not looking at it from that aspect.

MR SIMSON: But wouldn't it be to the benefit of the local business owners and the local advertisers if they were able to get cheaper advertising rates?

MR FOSTER: In the short term that might be right, yes. It might be.

MR SIMSON: It might be right in the long term, too. Prof Snape gave the example on Monday of the announcement last week of Richard Branson, that he's coming in to launch a new airline.

MR FOSTER: Yes.

MR SIMSON: Catches a plane into Australia and sees a few politicians. Has a press conference and makes an announcement that he is going to start flying in June next year. No major barriers to entry. No cross-whatever or no limit on the number of people who can operate. Response from Qantas and Ansett was - well, Qantas's share price went down, but they both said, "We'll meet the competition. We'll use our regional airlines to do this. We'll cut our prices here. We'll put on low fares here. We'll put on new fair packages." It's competition.

MR FOSTER: Yes.

MR SIMSON: And if it all happens, arguably the Australian traveller will be better off.

MR FOSTER: Yes.

MR SIMSON: The difficulty we have is distinguishing between different markets in terms of letting the markets work.

MR FOSTER: I quite agree, that is your difficulty and, with respect, it seems that you would like to have the one solution for everything, and what I guess we're trying to say - and not meaning to be offensive - is that in the real world you can't do that in some of these very small markets. We don't accept that the policy or the principle - forgive me, I'm not an economist, but we just don't see that in practice it's going to work in a very small market. I accept what you say about Branson. It might also be

true of Channel 9 and Channel 10, for all we know.

MR SIMSON: No, they don't want any competition.

MR FOSTER: No, I know they don't.

MR SIMSON: They don't want any more players in there.

PROF SNAPE: You might in fact have noted that one reason that we suggested a change in the cross-media rules from their current state is that the current cross-media rules apply equally to small markets as well as big markets.

MR FOSTER: Yes.

PROF SNAPE: And so we were in fact doing what you are telling us to do and saying that is one of the disadvantages of the current cross-media rules, as well as the fact that they're also looking backwards in terms of technology rather than forward, and that was why we proposed another way of going about it, to do precisely what you're in fact saying. So you may feel that we haven't been sufficiently sensitive to small markets in one dimension but that was one of the factors driving our recommendation in another, so I guess we're only half guilty.

MR FOSTER: I guess we are sensitive about the attitudes to the small markets because we do believe they frequently tend to be overlooked in the overall picture. A classic example I suppose would be Prof Hilmer's evidence, if I read the Herald correctly - if they've reported him accurately. I would hope they did. I gather he gave the impression that we could drop the cross-media ownership rules and make a guinea pig of small radio so that the ACA or the ACCC could get some practice in making the decisions. I mean, the idea of regional radio as a guinea pig struck me as rather amusing. But it's rather typical of the attitudes that develop when people are looking at the big picture and the big media.

PROF SNAPE: Okay. Thank you very much for bringing this again to our attention. It's very valuable to have that input so that we make sure that we don't treat everything the same way and we do give the relevant consideration to different types of markets. So thank you very much indeed, Mr Foster.

MR FOSTER: Thank you.

PROF SNAPE: We now welcome the Community Broadcasting Association and I think you know our practice, that we'd ask each of you to identify yourselves separately for the tape to start off with. I'm not sure who's going to speak to the submission first but over to you then.

MR THOMPSON: My name is Michael Thompson. I'm the general manager.

MR MELVILLE: My name is Barry Melville. I'm the policy adviser.

PROF SNAPE: Of the Community Broadcasting Association?

MR MELVILLE: Of the Community Broadcasting Association of Australia.

PROF SNAPE: Thank you.

MR THOMPSON: I'll get Barry to address the document initially.

PROF SNAPE: Thank you.

MR MELVILLE: We don't really have a lot further to add, Prof Snape, but perhaps you might have questions. We made a brief supplementary submission in response to the commission's draft report and the issues insofar as they affect Community Broadcasting are basically four, I guess, that are of particular interest to us. I'll list them. That might be a good starting point. Number 1, the proposal for there to be, if you like, a blanket sale of all non-commercial spectrum. We believe this leaves little flexibility for future needs. Number 2, the proposal to evaluate spectrum which is used for non-commercial broadcasting: I guess we would query what the policy or other purpose is for that.

PROF SNAPE: Or ideology, I think you said.

MR MELVILLE: Yes.

MR THOMPSON: Yes. I think we'd emphasise that.

MR MELVILLE: Number 3, digital transition: not a lot to say at this stage but I guess depending upon the sort of final direction that you take, we'd like to see that we fit in there somehow in that the landscape as we perceive it over the next five years is that community broadcasting stations will have to have direct government assistance or some form of industry cross-subsidy or perhaps both. And 4, a kind of a housekeeping issue for our sector in a sense, but a very important one, and that is the question of licence allocations and the role of the ABA.

You seem to be canvassing for options in the area of merit selection for licences. We've got a few points to make about that, too. We think there's probably not too many other workable alternatives at this stage.

PROF SNAPE: Good. Thanks very much for that listing. You've also of course got the separation of indigenous licences from the community licences which you in fact endorse, I think, in principle.

MR MELVILLE: Sure. Yes, we've endorsed that wholeheartedly.

PROF SNAPE: Yes. It's interesting to hear that you do that because it's in a sense something being taken away from your coverage, but you feel is better attended to on a separate basis.

MR MELVILLE: Well, it is and it isn't. It's been probably a little bit of a pea and thimble trick, so to speak, to squeeze indigenous broadcasting into the community broadcasting sector in any case. I certainly don't think it's been of any disbenefit to the development of the sector but I think the problem has been more for indigenous broadcasters in terms of how they resource and set up and professionalise their outfits, and also the issue of what a BRAC station is, that special category of services in remote areas. You can make them fit within the community broadcasting sector but they're meant to serve a much broader purpose than meet just purely community needs.

MR THOMPSON: There was an issue with the codes of practice at the time we had our own stations agree to a set of codes, and I might say that those haven't been controversial like some other sectors but at the time there was some querying by the Aboriginal sector and we met at the ABA to try to thrash through how those codes could be changed to suit the indigenous sector, and I think there is probably almost a tacit agreement that it's a separate sector already and that many of the codes for community broadcasting probably don't fit, particularly in the case of BRACs, which, as Barry has said, are in very isolated areas and probably there would be very little comprehension of philosophy behind the codes amongst the people who broadcast and, in any case, a lot of those BRAC stations tend to take a lot of material from satellites, some of it with commercial content, which of course is prohibited in the case of Community Broadcasting. So, just to sum up on that, I think there's a de facto separation already and we wouldn't see it as a problem if it became in effect what happened.

PROF SNAPE: Yes. And the point you make about some of that BRAC material being in fact commercial in the sense that it doesn't fit in the community sector at all - - -

MR THOMPSON: No. The act does provide for BRAC stations to be able to take advertisements.

PROF SNAPE: You speak about the blanket sale of commercial spectrum and how that might in fact inhibit things in the future. I suppose there's always an argument both ways on this, that as one looks to the future one doesn't know how things are going to develop and one doesn't know how compression technologies are going to develop. There's a whole host of things in this area. I've said many times that the

only thing certain in this industry is uncertainty. So if one is allocating to the future, one might over-provide or one might under-provide. Now, you're talking about an under-provision, but it is quite possible that there might be an over-provision for the non-commercial sector because of the way the technologies evolve in the future.

Now, if one has over-provided and locked that out in the interim, then one has locked out other services in the interim, and so naturally you make the assumption that you want to make sure that there's going to be enough there in the future for you, but the other side of that coin is that if in fact it was over-provided because of the way technologies have developed, then of course other alternatives, other options, have been ruled out in the interim. There are costs both ways.

MR THOMPSON: Can I answer that. In practical life, the pressure is on us and not the commercial sector. When I go to the steering committee meetings to discuss the development of digital radio - in which we've insisted right from the beginning and the government has indicated that it accepts that view, that community stations should have the same capacity, the same bit rate, as national and commercial stations, and where there's potentially a shortage of capacity, as there is in the case of digital radio, particularly if there's spectrum set aside for satellite services - then the question comes not to the others but to us, saying in virtually every case, either, "But you people can't afford it and it's probable that you should stay on FM because if with the conversion to digital you go on a multiplex with these other services, funded either fully by the government or through the commercial sector, your people won't be able to afford the rent and so on unless you get a subsidy." Just generally, with the case of digital conversion which is going to require, as Barry has said, some assistance from the government, probably to the tune of around \$25 million, there's no guarantee that that money is there, although in the past governments of both persuasions have said that we won't be left on the sidelines.

But the question which we constantly face is, "Well, at the moment your people often have services with low-powered transmitters. You can't afford to be up there" - I think in this case of Sydney, 150 kilowatts for a commercial service for metropolitan coverage. I think our top station has 10 to 12 kilowatts for metropolitan coverage. So if we're assuming that we're the ones that are going to be under the gun and the ones where there's going to be a shortage rather than the commercial sector, then I think the practical situations we face every day would allow us to believe that that's the way life is.

PROF SNAPE: I think as far as radio is concerned, digital radio is in such an uncertain state that it is very difficult to be making recommendations on digital radio at this juncture for us. Digital television of course is rather more imminent and we're able to do that. We have of course made recommendations there but we floated the idea, as you can see, of a subsidy from the government for a multiplex to be carrying the signal for community television, and to put it out to tender just like a number of bus services are put out to tender, if you like, and requiring that the lowest subsidy wins the tender. Is that an attractive option for you?

MR THOMPSON: Barry is our television expert.

MR MELVILLE: I'm sorry to pause. It's a hard one to say because I think - I rang Dr Gentle when I was reading the draft report and I was a bit thrown, I must admit, by "the lowest subsidy" but I guess whatever a commercial player - a multiplex operator - would be prepared to pay by way of cash subsidy, you take - I don't understand the market mechanism well enough - - -

PROF SNAPE: The idea is you compare it with a number of bus routes that are operated in some cities by private enterprise and the government said, "There should be such-and-such a bus route." Okay. "We know that with the fare structures that we're putting in place, it won't make money; you can't make a profit. We want it done, so tender for the lowest subsidy from the government to run it." So the tenderers will say, "Well, we need a million dollars a year from the government in order to subsidise that." Someone else says, "We can do it for 300,000," and then the lowest tender, that is the lowest subsidy, wins. So we were looking similarly for the multiplex.

MR MELVILLE: But for a specified provision of service.

PROF SNAPE: Yes, that is to carry your signal on a multiplex.

MR MELVILLE: And to be quite definite about its parameters and its specifications. The only thing that could be variable would be the cost.

PROF SNAPE: The price.

MR MELVILLE: Yes, the price. Look, that's probably as useful and would ultimately be as well appreciated as the government's current standing offer which is for a datacast operator to simply meet the cost as part of their overall operating cost.

PROF SNAPE: The reason we went from that is the government policy for some years has been to make subsidies apparent, and community service obligation payments apparent and obvious, so that subsidies are not concealed - to make them very obvious. In this way it would become apparent to everyone what it is and who is bearing the cost, whereas if you impose arbitrarily on a particular datacaster that they have to do this, that may not be the best vehicle to take it. It might have been that there was a commercial broadcaster who on their multiplex might have been perfectly happy for a payment - or one of the public broadcasters to carry it if they were subsidised in that way.

MR MELVILLE: That last point you make is where there is quite genuine support amongst the community television trial licensees that I've spoken to, and that is the suggestion that the commission has made that we not just be limited to carriage on a datacaster platform if - by whatever mechanism, by the one you suggest or some other form of cross-subsidy - community television outfits were able to get their signal carried on television multiplexes as well as or as an alternative to datacasting

transmission equipment. I think the more the better in terms of the options for getting out there across the - - -

PROF SNAPE: Okay. So you're comfortable with that line of reasoning.

MR MELVILLE: Yes. Just for the transcription record, when I read through in my opening the first point, I said "blanket sale of all non-commercial spectrum". Prof Snape corrected me. I meant "blanket sale of all commercials".

PROF SNAPE: In fact I wrote it down as you said it, exactly as you were saying, and I realised that it was wrong.

MR SIMSON: Could you just talk to us a little bit about the digital conversion process. Where is it up to? Just give us an update on where you think that's up to.

MR THOMPSON: For radio?

MR SIMSON: For radio.

MR THOMPSON: How do you see yourselves coping with it - your members coping with it - in radio?

MR MELVILLE: Mike is on the steering committee.

MR THOMPSON: It's a bit of a mystery, I think, for practically everybody exactly where it's up to because there have been considerable changes in the acceptance, I suppose, of the Eureka 147 system by the commercial sector, and they seem to blow hot and cold or some of them want to get into it quickly and some of them not so quickly, and there has recently been a suggestion that the Japanese system be looked at, and the Japanese came out here and explained and demonstrated their system. There is also the potential for the American in-band system but they haven't been able to develop one that works. There's a kind of prospective date of 2001 but there seems to be a real issue in getting the horses up to the barrier.

Our problem is that those parties that wish to get it moving - and at the moment one of those is NTL, the privatised NTA, are anxious to begin experiments, and they've approached us recently to participate in experimental transmissions in Sydney and Melbourne, and I think that they've set the costs at about \$25,000 for each station in each place. Our technical adviser thinks that it will probably end up being quite a bit more than that. I guess we're wanting to go back to the minister and saying, "Well, look, this is happening," and I think there is no provision for any money.

The government has indicated a number of times in the past that we won't be left at the post and I guess what we're worried about is that these kinds of experimental broadcasts will proceed with the national and commercial sector on some kind of waffly understanding that in some future time the community sector will be there with them, and it's our view that the way life works is that if we're not there

all the way in the end we'll get a raw deal, we won't be there at all. So I guess in our previous attempts to get some money put in a bucket for this purpose the first time was with the sale of the NTA where we sought from the Democrats and the ALP to get some money put aside. In fact that agreement didn't happen. We tried again with the second tranche of the Telstra sale; it hasn't happened. We've had some informal indication from the minister that we'd be looked after but nothing is in writing of course, and it's now at the stage where money has to go on the table.

PROF SNAPE: Do you have to convert? I mean, at some point the analog - do you have to go to digital?

MR THOMPSON: No, we could sit there in the way that the AM operators on radio sat there over the years, didn't convert or couldn't convert to FM and got lost. If you wanted to slowly wipe out the community - - -

PROF SNAPE: How did they get lost? We're talking about 2UE and 2GB, aren't we?

MR THOMPSON: And an awful lot of others that haven't done so well.

PROF SNAPE: And 3AW.

MR THOMPSON: Yes.

MR SIMSON: But your most profitable stations in Sydney and Melbourne are AM stations.

MR THOMPSON: Yes, but there was a long period - that's a particular format, a talk format which is not necessarily the formats the community stations have. There were periods, particularly in the 80s, when most of those stations were doing very poorly. In the commercial sector they were able to see that through. If they were community stations they may well have gone to the wall. We believe that to be there it would be like saying to the ABC, "Okay, the ABC doesn't need to go digital. Nobody needs to. We can have only commercial stations go digital," but we would have a much poorer system in the end. If we're not there in the race and part of all of this it will be a much poorer system for Australia in the end because the community sector is not there. So we would reject entirely any view that we should be put in a ghetto and left on FM.

PROF SNAPE: Okay.

MR MELVILLE: I might just fill in a little about television if I might while we're still on digital. I think Mr Simson's question originally a few minutes ago was about where we're up to in terms of transition to digital. I think it's safe to say that of the five operating stations under the current community television trial, without denigrating, little has been done in terms of actually equipping for digital transmission. They've been struggling to maintain their analog operations and I guess there are two

key sets of questions that need to be answered - and probably will be answered within the next few weeks - that will determine the next stage of evolution.

One is the issue of what has been looked at by the Australian Communications Authority in their current review into regulatory arrangements that should apply to datacasting and that's the issue of what actual free carriage or carriage free of charge implies. The government's promise is that carriage will be provided free of charge. There is debate within the scope of that review about whether that includes just picking up a signal and transmitting it or whether it involves equipment. The reason why that is key is because until that's worked out community television stations won't know whether they will be able to take their own analog signal and simply transfer it down an ISDN line or a microwave link to a multiplex carrier who will then convert the analog signal into a digital transmission, or whether they need to actually generate a digital signal themselves at their own transmission point. These questions are still being defined within sort of technical regulatory debates.

Of course the second set of questions are the ones that we are waiting to hear in the context of any cabinet announcements in the next week or two about the future of digital television datacasting. Everything that we have said in terms of community television and policy positions to date, including the stuff that we have put to this commission, has been predicated on the desire of current participants in community television to operate in a simulcast mode in both analog and digital, and depending on whether cabinet decides we can retain our rights to analog or whether we must make a one-off transition to digital would determine a whole lot of things, everything from equipment to how you run your stations, and a whole series of things would follow. So we're a little bit in limbo really with any kind of firm position on how we would resource the change for community TV from analog to digital.

PROF SNAPE: Maybe we go to ideology, which gets thrown at us from time to time. The point is on your page 3. The ideology is accountability, which you may or may not regard as ideology. But the rationale is accountability, and let me perhaps explain it in the same way that I put it to the ABC this morning. If the ABC gets an allocation of money each year for their services, if they are also given a building which was quite separate from the other funds which they were getting, then for accountability purposes - that is, to the taxpayer who is ultimately funding it - one would want to include the value of that building in the allocation to the ABC so people know what the ABC is costing.

Now, the analogy here is that spectrum is a valuable resource that has alternative uses, so we were saying that as far as the ABC - and to continue on the ABC for the time being - so that it is accountable to the Australian people as to what the costs of providing the service are, what costs are, that in fact a value of the spectrum - that is, the scarce resource which could be used for other purposes - that value of the spectrum should be public so that people again can see, the general population can see what the resources are in total and the value of the resources in total which are being allocated to the ABC so that one can make a judgment about the costs and put the benefits against the costs.

So bringing that same analogy into community broadcasting, there is a valuable resource that has alternative uses in the community being allocated to the community broadcasting. So one can see what the value of the community - the cost, if you like, to the community of supplying that valuable service is, community broadcasting, then a value should be estimated on it, for pure accountability reasons, and that's all.

MR MELVILLE: There are a couple of issues there. One is that you've acknowledged that there are alternative uses for the same resource, but you'd be using the criteria that applied to one particular type of usage - that is, the running of commercial services. You seem to be suggesting that you'd use that as the evaluating mechanism for spectrum that is used for another purpose, and I guess what we're trying to argue is that might be okay in a really basic opportunity cost sense, but it doesn't translate to any real subsidy to community broadcasting, or in fact to national broadcasting, for that matter.

The other issue that occurs to me is that at this point in time where licence fees in commercial broadcasting are based on a percentage of their revenue and not on their use of spectrum, already you could say at this point in time, if you use your rationale, that the government is currently providing a subsidy to any broadcaster, whether you be commercial or non-commercial in terms of allowing use of spectrum as a public resource.

PROF SNAPE: We also have recommendations of course about the - - -

MR MELVILLE: About bringing fees in line with spectrum.

PROF SNAPE: Yes, and that we in fact do suggest that of course a licence for spectrum should be separated from that - for commercial, should be separated from the licence to broadcast and that a value, the appropriate values one way or another, for the commercial sector be attached to the spectrum. It's just a way that we were seeing of bringing consistency here with the - consistent with what the government is doing in other areas, of trying to estimate what the costs of providing either directly or indirectly - as in community broadcasting - for particular services is so that they can be evaluated against the benefits of making these explicit - - -

MR MELVILLE: You've put your finger right on it, because when we wrote to - the commission wrote to you in May of this year suggesting a type of contingent value analysis of the benefits of community broadcasting, and I think it would arguably be a fairly imbalanced picture if the government were able to, for accounting purposes, quantify the opportunity cost of spectrum without on the other hand being able to place some value on the outputs or the total overall social and cultural capital of the sector as well.

PROF SNAPE: I think the normal procedure would be in fact to make those evaluations as far as one can, and there are various ways in which we may be very reluctant to put valuations and the prime one of course is what is the value of human

life, which we're very reluctant to do, but that nevertheless does not stop us from finding out what the costs of straightening a road are.

MR THOMPSON: I guess we're worried about the potential for simplistic views about accountability. Our stations don't have and will never have, in the main, the ratings that commercial services have. In country areas, however, where there are something like 15,000 volunteers who are part of the community that these stations - I think we said this in our first submission - have the potential and often in actual terms add substantially to the social cohesion of those communities in a way which it might be very hard indeed to put a dollar figure towards because - - -

PROF SNAPE: We wouldn't suggest that type of thing should be evaluated, any more than in other contexts I would try to put a value on a human life. But that doesn't necessarily mean one shouldn't then go to see what the costs are of in fact saving lives by straightening a road or whatever.

MR THOMPSON: Sure. But the danger you can see is that the costs are all put up there and then the value is not recognised because it's not - I mean in the commercial world it's easy. You just put a dollar value on everything. If you can't do that, then there's a great potential to dismiss it as virtually worthless.

PROF SNAPE: I take the point you're making, but nevertheless you may in fact take quite a different attitude to saving one whale if it was going to cost you \$10 from if it was going to cost you 20 billion, and if I'm going to save a whale I'd like to know if it's 10 or 20 billion dollars - and that is without valuing the whale.

MR THOMPSON: All right, I can't argue with that.

MR MELVILLE: It depends on whether it's an old or a young whale - how healthy it is.

PROF SNAPE: Anyway, that's the rationale there and, as I say, if you want to call it ideology, the ideology is accountability. We dealt with digital. We've got the licence allocation and the role of the ABA, and of course we were fairly speculative there in what we were trying to look at, and saying are there other ways in which one can decide on how to allocate so that one can get closer to the community or closer to those who are, if you like, going to be the audience of particular community broadcasting? I think it's fair to say that so far we haven't got any substantial alternative suggestions.

MR MELVILLE: No, we have none. It's not that we're saying that the current operations of the ABA are flawless in any way, but the general concept I think we are comfortable with. The problems with looking at alternatives - I mean it's clear to us that merit selection is necessary for community licensing. It can't be done, we would suggest, in an ad hoc localised way. I note somebody else's proposal that you put down in draft about municipal councils perhaps having a role. It's interesting, and certainly would bring it closer to each local community, but would probably fail in

terms of its consistency across the board for the sector. It can't be done by the CBAA. We can't really have a role in it. We can't select favourites.

PROF SNAPE: That was someone else's suggestion.

MR THOMPSON: I'm glad about that.

MR MELVILLE: But I'm trying to eliminate. Probably what you're left with at the end of the day is - you could go down to the sort of micro level and suggest alternative processes for the ABA to go through, or some such authority. Yes, you could have community based panels, you could bring together say in the future digital carriers and service providers with local community groups. You could certainly widen the circle of consultation, either at the beginning of the planning stage - something like the LAP process so-called that the ABA has just been through - or at the licence allocation stage.

The ABA does it on both ends of the process. They go out into the country, they have whistlestop tours of various locales at the start of the planning process, and they make broad judgments about the community interest. But the trouble is that invariably the ABA has then had a six or seven-year delay between that initial consultation process and then being in a situation where they can finalise a licence area plan and get around to having allocation inquiries. We've yet to see metropolitan - which I guess would be the hardest and the most complex of the licence allocation inquiries, and they're due to kick off next year, but that's when the ABA will then be consulting people and judging competing applications for community licences in a big way. I guess we reserve judgment on their process, but yes, it might be possible to look at ways of insisting that their process goes closer to the affected communities.

PROF SNAPE: But apart from the lag, you're not uncomfortable with the process, insofar as you've seen it brought to fruition so far?

MR MELVILLE: It's been fraught at times, but in general concept, yes, merit selection is a process that seems to work and broadly has support across the community broadcasting sector.

MR THOMPSON: Unless you have God to do it, somebody has to do it, and I think probably the ABA does it as well as could be expected.

PROF SNAPE: You may then of course have discussions as to whose God - - -

MR MELVILLE: Not here, I hope.

PROF SNAPE: Anyway - - -

MR MELVILLE: That's going to happen probably within the next year or two, and the ABA is going to have to decide about that, with competing interests, including Christian groups and Islamic groups and many other different groups.

PROF SNAPE: I was closer to the bone than I thought. I think I've asked the questions which I wished to and Mr Simson has. Thank you very much for that elaboration, and just as you've helped our understanding, I hope that we've helped you in understanding our point on a couple of issues there, too. Thank you very much for that and for your submissions and helpful contributions. We will now be moving on to the Federation of Australian Radio Broadcasters.

PROF SNAPE: We welcome the Federation of Australian Radio Broadcasters and their representatives here today, and we'd ask you if you would identify yourselves separately so your voices are on the transcription tape, please.

MR BACON: My name is David John Bacon. I'm the chief executive officer of the Federation of Australian Radio Broadcasters Ltd.

MS MEREDITH: My name is Tracey Meredith and I'm legal adviser to the federation.

MR CARROLL: Graeme Carroll, manager public affairs for the federation.

PROF SNAPE: Thank you very much. We've only received your submission fairly recently and we've been looking at it fairly quickly, so we may not have digested the full messages that you're giving us there, so I wonder if you could speak to it, to highlight the major points, remembering that we have only actually got it pretty recently, and so it's not as if we've been able to digest it for a week or two.

MR BACON: Sure.

PROF SNAPE: And also to mention that the microphone in front of you is not amplification. It's only for the transcription service, so if you could project your voices somewhat, thank you.

MR BACON: They say you should never start with an apology, but something has happened to my throat today so I'll try and make myself heard. We had some opening remarks that we wanted to make, and thank you for the opportunity to speak to our submission. The overview points that we would like to make to you are that audience potential must be considered in any analysis of the Australian broadcasting market, given the globalisation of communication and entertainment fragmentation of audience through further national and international media options, will have an impact, in our opinion, on the trading conditions of the Australian mass media.

The second point which we would like to make relates to Australia as a market, in that Australia should not appropriately be considered as one broadcast market. It's important to have regard to the different public interest issues and competitive environments surrounding Australian broadcast mass media. Television and radio make different contributions to the Australian mass media environment, and in turn different considerations arise between those broadcast sectors, and as between metropolitan and regional operations within the sectors. The commission has focused, in our opinion, largely on the television industry in formulating its recommendations. We are also of the view that if diversity of opinion in mass media is a legitimate public interest objective, that cannot be presumed to be a necessary consequence of increased availability of spectrum.

The fourth viewpoint that we did want to make is that the content of commercial broadcasting mass media is connected to the viability of the service.

Smaller margins mean less dollars for program content, and unrestricted competition in commercial radio must have an impact on the margins, particularly in the smaller markets. We have in our submission made some responses to the specific recommendations. Did you want me to talk to those?

PROF SNAPE: If you could just summarise your major responses, please.

MR BACON: Perhaps I can give you a top line on those - - -

PROF SNAPE: Yes, please.

MR BACON: - - - rather than just wittering on. The first one is that the industry doesn't support separate spectrum and broadcasting licences for commercial radio. This is the issue of splitting them. We don't support that recommendation. We think that the present system of price based allocation of licences and the annual licence fee linked to revenue is the appropriate way of allocating the scarce spectrum. The commission is proposing that the planning criteria at section 23 of the BSA reflect only technical considerations. We think that there need to be other public interest considerations there as well.

On the issue of ownership and control, commercial radio does have a foreign ownership provision, and in fact some of our members are owned by overseas interests. On the issue of cross-media ownership, we believe this is an issue that needs to be considered on a market-by-market basis, again reflecting our views on city versus country and television versus radio. In terms of the codes of practice and compliance, we believe that commercial radio is probably addressing most of the issues which you have raised, in that we do have public consultation in the development of our codes and the like. We don't see any huge differences of opinion in philosophy as far as the codes of practice.

Finally, we don't think it's necessary that the ABA should develop standards dealing with fair and accurate coverage of ethical news gathering and reporting practices. We think these are adequately addressed in our codes and by the journalists' code of ethics.

PROF SNAPE: Okay, thank you very much for that summary there, and we can I think probably use that as a basis for looking through. It looks as if the missing piece of paper has arrived.

MR BACON: It would appear so. It was pretty efficient.

PROF SNAPE: Thank you very much. Just ticking off a couple of those that I think are probably fairly easy: yes, with ownership and control we realise that foreign investment is already in there, and I suppose you would argue that seeing a number of your members are in fact foreign owned, it hasn't caused the sky to fall in?

MR BACON: No, I don't believe so and I think it probably grants some of them

access to information and resources that they might not have had. So I think that is something that has contributed to the diversity of commercial radio.

PROF SNAPE: Right. On the cross-media rules you would note in fact that one of the reasons that we suggested the changes that we have was in fact to treat it on a market-by-market basis, whereas the cross-media rules as they exist at the moment apply equally to small country areas - an amalgamation between a local newspaper and a radio or television station there - as they do into the capital cities, into the major networks and the major newspapers. So it was partly for that reason that we made the draft recommendations that we have. It wasn't the only reason, but that was one reason. So does that mean that we have addressed that market-by-market basis in our draft recommendations adequately?

MR BACON: I think our members were also anxious that in any tests that were developed to decide whether this was a good thing or not, that it go beyond probably the scope of the Trade Practices Act and look at some of the social impact issues, perhaps.

PROF SNAPE: That was the additional parts that we recommend should go - that there should be a media-specific test added to the Trade Practices Act for just that reason.

MR BACON: Yes.

MS MEREDITH: I think, professor, when you actually look at our submission in detail you will see that one of the qualifications, one of the caveats, that we place on the lifting of the cross-media rules is that we do say that in our view the formulation of the proposed public interest test and its application in practice would in fact be all-important to the lifting of those restrictions.

PROF SNAPE: Yes.

MS MEREDITH: We think that that's a fairly simple formulation, but in practice it may turn out to be quite a complex and difficult test to develop.

PROF SNAPE: Do you wish to give us some help on how to formulate that? Because I think what you're saying is that in principle you are comfortable - in principle - with the way that we have got that draft recommendation, but what matters is the detail, and we are asking people to make suggestions on that detail.

MS MEREDITH: To be perfectly honest, we haven't addressed our mind to the actual detail of how that public interest test could be formulated. I think we'd probably be happy to do so in due course. It's a very interesting concept which has many different components to it, depending upon how you approach it. I think that's probably all we can say. There is another caveat that we raise in the context of your proposals, and that is that I think the commission has suggested that all mergers and acquisitions, or all mergers and acquisitions above a particular size - I am not quite

clear where you stand on that, but all of those mergers would be subject to a pre-clearing-type arrangement whereby there'd be an application and then some sort of regulatory test applied, and also a public consultation process.

We have grave difficulties with that because we really don't think that that works in the marketplace, and it would have significant implications for the speed, economy and efficiency of transactions.

PROF SNAPE: Doesn't that apply already, with respect, under the Trade Practices Act for other industries?

MS MEREDITH: It applies to mergers in certain contexts, but it's unclear whether or not you are proposing that in fact this test should be applied also when it comes to actual acquisitions at an allocation stage. We weren't quite sure how you were approaching that. In the context of the radio industry, for argument's sake, where there is a licence up for grabs, if you like, is it proposed that in fact we would have to go through some sort of public interest test before we could apply for that licence, or at auction, participated in it - in a price based allocation system?

PROF SNAPE: Without going into detail, if there was a licence that was up for sale and that was in fact potentially to be bought by a newspaper interest, then it would require that clearance, yes.

MS MEREDITH: And even on allocation of a new licence?

PROF SNAPE: On allocation of a new licence that would apply there also, yes.

MS MEREDITH: So there would be presumably some sort of time frame between notification of a price based allocation regime - - -

PROF SNAPE: Yes.

MS MEREDITH: - - - coming up, and then there'd have to be a public consultation process before in fact you could - - -

PROF SNAPE: If it was to be acquired by another media group. Now, at the moment, of course, you've got within the definition of the current act - and that constrains it because one of the problems is that of course new media are not covered - - -

MS MEREDITH: No, that's right.

PROF SNAPE: - - - and that's one reason that we've gone in this direction. But if it was to be a media company that was acquiring it, if it fell within the current act it would be to say, "Bad luck, you can't have it."

MS MEREDITH: Yes.

PROF SNAPE: Now, under our test it would be, "You may be able to have it." So it's in fact opening a door, or may be opening a door.

MS MEREDITH: Yes.

PROF SNAPE: While you're saying that may delay the procedures, on the other hand, it may open up the market to other potential buyers.

MS MEREDITH: Yes.

PROF SNAPE: So it's going both ways on that one.

MS MEREDITH: That's true, and I guess that comes back to another point that we made earlier in our submission, which is that you don't necessarily know whether or not diversity is going to occur when you allocate the spectrum as such, because if you look at the media business, I guess from an Australian perspective, and even from an international perspective, it tends to have established media participants. It doesn't attract wildly different business interests to media. We accept that in the future - - -

PROF SNAPE: That's to the additional media.

MS MEREDITH: That's true. We accept that in the future that may change somewhat, and I guess there's the example of Telstra and possible other people out there wishing to put a toe in the media pond, but it seems to us that when you look at that public interest test, and if you assume that a large number of the people are going to be perhaps existing players, that that may add a further complication to how you interpret public interest and diversity of opinion.

PROF SNAPE: Yes, of course, and I take your point there. I think that sometimes the new entrants are underestimated. We see, yes, the mergers amongst the big people, but how many of the Internet companies did we even know of - the names - five or 10 years ago? I mean, there are a tremendous number of new entrants coming in.

MS MEREDITH: That's true, and again I suppose it comes back to this distinction between old and new media. I guess no-one really knows where this is going to go, but in terms of traditional broadcast media and, in particular, commercial radio broadcasting services, we see that obviously as having a fairly important part in the Australian landscape for a number of years to come.

MR SIMSON: That's true, but increasingly your operators are looking at themselves as being fundamentally content producers who have licences, and a number of your members are looking at how they can cut and slice that content across a number of media, new media. The classic is Internet radio, for example, and how that could be an opportunity. So that, as Mr Bacon pointed out at the start, yes, there is fragmentation occurring - no doubt about that - and that's potentially a threat, but

it's also potentially an opportunity. So in the context of the recommendations that we've made on how spectrum should be dealt with, if you just look at this from one perspective and just look at it from an existing perspective of traditional media, sure the hypothesis you put forward could arguably - because of the threat to viability of some players - could potentially lead to less diversity, or certainly arguably not more diversity.

But we're not dealing with the status quo and our terms of reference have asked us to take account of convergence, to take account of the digital era, in making our recommendation. So that in making our recommendations about spectrum and splitting and so on, we have done that in the context of not necessarily yesterday, or not even necessarily today, but what we see as happening in the context of the digital era, because - as was indicated - freeing the spectrum, because there are going to be so many new players available and new opportunities for existing players, should increase diversity. It should not necessarily reduce diversity.

MR BACON: I don't think we can automatically assume that that will happen. There is somewhat of a paradox here, too, I think. Again it comes back to this market-by-market comparison. In the metropolitan areas, for example, while we have had over the past, I suppose 15 or 20 years, the advent of FM and the introduction of those sorts of services to the larger metropolitan areas with different owners, we've tended to see I guess a focus on the areas where the audiences can be maximised, whereas in the regional areas where the existing operator has been issued say section 39 licences to introduce, then diversity has arrived. You finish up with an operator who will use his FM licence for music for a younger audience and his AM for talk, say. So I guess the theories don't necessarily translate into the outcomes which we would expect. There are a lot of other things going on as well.

MR SIMSON: I suppose a starting point on this is that there's a spectrum and there's a limited amount of spectrum. There are traditional players and there are new players and what we're trying to do is to take as much of a hands-off approach as we can to people being able to use that spectrum to provide services without trying to predict that the traditional players will remain here or here or here or the new players will remain here, here or here. The Internet radio phenomenon is one that we'd appreciate some comment from you on because hardly a day passes without seeing an announcement in the paper that somebody has started an "Internet radio service", relatively inexpensively in some cases, in that case not even using the radio spectrum; using the Internet, cables, wires, anything you like. How do you see this matrix fitting then?

MS MEREDITH: You would no doubt have had the experience, as probably all of us have in this room, of connecting to the Internet and finding that they can listen to a radio service in Toronto or New York or some other place, so it's not only I guess local Australian broadcasters that are Internet streaming, which in that context I think is not much more than an add-on to a broadcasting service, and in the case of radio I suppose it's another delivery method which may be denied in many markets because of an absence of - you know, putting radio services on cable is not a particularly

attractive proposition for either the audience or the cable supplier. But no doubt this Internet streaming will continue in the context of extending the commercial radio broadcast services in Australia.

But what it does mean, I guess - and it's the issue that we raised first-up - is that it has significant consequences for fragmenting of audience, and the price that commercial radio can ask for its advertising dollar is very much based on the number of people listening to the service. So as participation rates for commercial radio decline, assuming that there will be all these new services coming on line, then the availability of people to support commercial broadcasting, and in particular commercial radio, presumably will also decline. So I guess we think that these services will have an impact. We think they will have an impact in the metropolitan markets very much sooner than they will have an impact in the regional markets, and that was another thing we were going to ask you in fact.

Did you see any sort of distinction between new media opportunities, if you like, and the take-up rate in regional markets versus metropolitan markets, because in our view they're two very different markets and they will progress at very different rates and in particular in commercial radio over the next years. So the criteria that you apply to perhaps metropolitan markets - and bear in mind also in metropolitan markets you have generally media players that have significant resources and can in fact invest in media alternatives or communication alternatives, if you want to call them that, in the regional markets - a lot of the regional markets - commercial radio does not have that economic power, so you will be looking at operators who may be solus operators and they may never be able to move out of that situation.

MR SIMSON: Later this afternoon, in fact following your presentation, we have Austar, who is a regional operator, arguably one of the more innovative new media players in the country in regional markets that is bundling telephony, telephone, high-speed Internet access - probably got Internet radio sitting somewhere on its list, probably doing some deals with some of your members, who knows - to get content. So you can't necessarily say that the metropolitan markets or the regional markets will be more or less progressive, for that very reason - in terms of responding to your question of take-up of new media.

MR BACON: I guess we're concerned about viability and, you're right. Don't misunderstand. We see new media as an opportunity and our members are actively exploring opportunities, particularly in the lead-up to the discussion on digital, but I think, just in support of what Tracey was saying, that our regional operators haven't been able to take any real increases in advertising rates in some time and radio's share of advertising revenue has stayed around the 8 per cent now for probably close to, what, a decade at least.

Now, the metropolitan operators have increased their share quite well, and they've done particularly well, and it's been the inability of the regional operators to be able to get any real increases in advertising rates which have really I guess held back the average and have kept them in this position where, as Tracey mentioned, their

market power and their opportunity to broaden and to participate in the new media and to stay abreast of the developments which are happening rapidly might be diminished just because of their weakness in their local market. We've got some data, incidentally - that's what we were waiting on - if you'd like to have it, on those rates that might illustrate that point.

PROF SNAPE: Yes, we would. We're data hungry, actually, so we'd be very grateful for that.

MR SIMSON: Just continuing that discussion, it's just a big call in our eyes to then say that because of, as you say, those economic pressures in some of your markets, that improvements shouldn't be made, as we're trying to advocate, to the way a scarce resource is allocated - that is spectrum - in a situation where there are going to be increasing demands from non-traditional players to have access to that spectrum. It's a big call to basically say, "Because we've been under pressure on our ad rates, because we've been under pressure in some markets," and so on, that the status quo should continue to remain, otherwise it will always remain, won't it?

MR BACON: Is it your understanding that there's a lot of spare spectrum available, because I don't think that that's our understanding.

MR SIMSON: No. I think the driver in this case was to ensure that spectrum is allocated in the most efficient way, not necessarily - - -

PROF SNAPE: No. We understand that there is not spectrum available and in fact one of the driving forces in our major recommendations in the television area of course is to free spectrum up - - -

MR BACON: Yes, I read that.

PROF SNAPE: - - - and has been, if you like, a prime mover.

MS MEREDITH: Professor and Mr Simson, if I could just say this: I think the point that we're making is not so much that there may not be ways of opening up the market, if you like, in certain areas for certain new purposes, but it's more the point that it may require more than one solution or different solutions, having regard to different market conditions and broadcast sectors at the moment. That's really our point, that we're not sitting here trying to say to you, "Well, the world must stay as it is," because the world clearly will not stay as it is but, in making that transition we simply say that perhaps some recognition has to be given to the fact that commercial radio is a very different market in metropolitan and regional areas, and no doubt you've heard that before in relation to many other businesses but there are different circumstances that perhaps warrant possibly a different solution in different markets.

MR SIMSON: Just cast your minds forward let's say five years and let's take Mr Bacon's scenario in terms of this continuing pressure on rates, whether it be regional - it doesn't matter which market you're talking about. Where are your

members going to be in five years? How are these people who have been basically unable to increase their rates or have been under rate pressure for some time - are they going to be in business in five years? What sort of business are they going to have? Are they going to be hybrids of new media and traditional commercial radio stations? What's the scenario on a medium to long-term time-frame?

MR BACON: I suppose in trying to predict the future, look at the past, and you can see that now we've got 220-odd commercial radio licences now in Australia but we have only 39 owners and perhaps that could be the way things could go in the future, that we have an increased concentration of ownership. I don't think we've seen any stations go into liquidation but it's interesting to note that in the regions in the 97-98 financial year 27 per cent of them were running at a loss, and I think we would probably then see that those stations would be sold and someone who was operating a network and able to introduce economies of scale would probably be able to carve some sort of a niche. So I guess if we were trying to blue-sky it, that could be one of the possible scenarios, that we'd have an increased concentration of ownership.

The other thing which is most difficult to predict which the industry is wrestling, along with government, is the impact of digital radio, the additional services that radio operators might be able to provide which would enhance their services and make them appealing as well, and that seems to be at the moment a technical solution that's eluding a lot of people. Europeans have embraced a system which has very low consumer uptake at the moment after its first year of operation, and so that's going to be a key factor as to whether consumers can be persuaded to buy new receivers, to take that. But, looking forward, I would expect that there would be some form of digital programming available to people, certainly in the capital cities. I don't know whether it will have made it to the regionals in five years' time.

MS MEREDITH: Mr Simson, the other thing to bear in mind of course is that radio really has had, if you like, a competitive overlay in the last say four years in particular, in that quite a number of new services have been allocated as a result of the planning process. To some extent the industry doesn't know, I don't think, the answer to that question in those regions because those services haven't really cut in and come on line and had an impact in the marketplace out there, so that may have some impact on the shape of - - -

MR SIMSON: Perhaps Mr Willmot might like to comment on this. Again on say a five-year scenario, what do you think will happen to the demand for radio services in terms of people just spending - consuming their media on commercial radio as opposed to consuming it on the Internet or TV or Web TV or any other? Where is it going to go, do you think?

MR BACON: The trend along with newspapers - I guess traditional media is probably the best way to describe it - has shown a slight drop from about 1987. People were listening to about 22 hours a week. They're now listening to about 19 hours a week.

MR SIMSON: What time-frame is that?

MR BACON: That's since 1987, so a decade, I guess, yes. So I guess that's the trend at present, and that's the same I believe for television. I don't know whether you've had evidence but that's our reading; the same is happening to television, and we know that's I think the case with newspapers. So people are getting their media in other places and also probably just not consuming as much.

MS MEREDITH: Having said that, I think, David, it's fair to say that we don't think radio is going to cease being a part of people's lives. In fact we think that it may well be a very important part of people's lives and possibly a more important part of people's lives because who knows how this new media is going to shape up, but one thing I think we'd all agree at the moment is that it looks fairly complicated from a customer's perspective.

There will be lots of options. People will participate in those options, but the question is - and certainly the radio industry isn't the first industry to raise this issue, but the distinction between the amount of effort that people are willing to put in to acquire news and information and the amount of effort that people are willing to put in to be entertained may ultimately end up meaning that people go in different directions for different reasons. Presently radio of course is in the nice position of providing both: news and information, and entertainment. It may well be that while commercial radio will continue to be a very important medium, the sorts of content of commercial radio may change, having regard to the new programming alternatives.

MR SIMSON: I saw the other day that you're now able to access radio over your mobile phone.

MR BACON: The third generation mobile phones will provide a very broad range of services, and perhaps that's an opportunity for our members of course - somebody has got to provide it.

PROF SNAPE: May we turn to the separation of spectrum and licence, and we're seeing there on your paragraph 2.6 that the commission proceeds on the premise that, "The current arrangements do not provide an adequate return to the community for the commercial use of scarce spectrum." Actually our emphasis was not on adequacy so much as efficiency. The point there was that there is a scarce resource in spectrum, and the question is there how can we allocate it in the most efficient way. We're talking about the commercial sector - leave the non-commercial sector out; it's what you're interested in and that's the focus just now of the discussion - but for the commercial sector, that it should be allocated. This scarce resource is most efficiently allocated to those who have the greatest demand for it - that is, those who can use it most efficiently, having, for various reasons, divided it into broadcasting bands and other bands, etcetera.

So it was for this efficiency reason that we had that those who could use it most efficiently would in fact be paying for it, and then the price would be related to the

scarcity. Now, whether it was to be a once and for all auction or whether it was to be an annual charge and a rental - and the easiest analogy here to think of is in terms of land. Land is a scarce resource and different communities find different ways of allocating that scarce resource. Some have freehold, some have leasehold from the government on behalf of the community in allocating it, so we have got analogies there, and we haven't said one versus another in terms of that. We've said there are simple ways of pricing it and this way should be investigated.

Then that would in fact first of all go to those who put the greatest value on it. They would have the property rights to that spectrum which they could either use for broadcasting purposes themselves or in fact engage in a commercial relationship with those who wish to broadcast on it. So if a broadcaster, for example, was found to be in violation of something which warranted the removal of the broadcast licence, if they also happened to be the owner of the spectrum, they haven't lost their car as well as the licence to drive it; they can still in fact rent out the car, that is the spectrum, to someone else.

So by the separation of that we thought it was a focus then on where the scarce resource is. There's no scarce resource in the sense of a licence to broadcast any more than there is in a licence to drive a car. The scarcity occurs at the point of the spectrum itself. So we were saying, "Put the price on that spectrum." At the moment the proportion of the revenue which is taxed 9 per cent in television and what is it, 3 something in radio, I think, bears no relationship to the scarcity of the spectrum itself, and there is no incentive to use the spectrum efficiently in that pricing system. So it was not simply to get a better return to the government, it was in fact to have a more efficient allocative mechanism in the commercial sector.

MR BACON: I wonder if I might ask a question on that. Assuming technical differences could be overcome, do you envisage in that scenario that perhaps someone who has got a piece of spectrum and today is running a commercial radio service, that he could in fact sell it to a telco operator who could put some sort of data transmission service - is that what you had in mind?

PROF SNAPE: That would be a separate consideration as to whether you were in fact going to reserve the broadcasting spectrum only for broadcasters, and that was a secondary consideration, that it is possible of course, that if technologically it was found that that was not going to cause problems because of spacing between particular uses, etcetera, then our logic would lead to that. If there were to be technological problems of doing that, then I think we would back off it. I am just reminded that the apparatus licence is specific; we were sort of separating it into three points. At the moment one licence does all three. It's an apparatus licence that goes with the broadcasting and gives you the spectrum that is necessary. We say there are three separate decisions in there. Let's separate them because only one of those things is where there is economic scarcity and that's the spectrum.

MR BACON: Yes, I understand.

MS MEREDITH: Professor, could I ask a question on that note as well. If your concept is that you could trade in spectrum, perhaps within a confined concept, say a broadcasting service, how would you be able to control the nature of the service?

PROF SNAPE: You control the nature of the service through the broadcast licence.

MS MEREDITH: But if a broadcaster has some control, some property rights in a piece of the spectrum and in fact that is tradable as such, would it be possible for the broadcaster to say, "Well, I've decided I'm not going to operate this broadcasting service for which I have a licence any more, but I will sell this spectrum space to you down the road because you want a particular type of service and I don't want to provide that"?

PROF SNAPE: There are two separate questions there. There's the decision on the broadcast licence, there's the decision on the spectrum. You may wish to cease broadcasting and then if you have spectrum you could in fact lease that spectrum to someone else, and similarly if you wish to sell the spectrum you could in fact sell the spectrum - you know, if you were running short of money and you've got this spectrum but you have got a broadcast licence and you are doing it, you could sell the spectrum to someone else and then come to a commercial relationship with them that you continue to broadcast on that spectrum. So you have got those possibilities there which are not possible now. At the moment there is no secondary market in spectrum.

If you want to sell a radio station and it's approved, you're selling the whole package. There's no secondary market in spectrum which is separate from the broadcasting licence and in fact at the moment it's all apparatus specific. You have got an apparatus licence that is embracing the whole three things. We recognise very explicitly here that there are transmission problems in that. At the moment those three things are bundled together so that one has some transmission problems if one is in fact endeavouring to go to a new situation. We asked for some suggestions how that could be done and we also got some comments that in fact we would suggest that the transition to the other type of licence initially be made revenue neutral, and exactly on what basis, whether it would be a licensed area or a proprietor, etcetera, is one of the things that we would need further consideration of. But it would be revenue neutral so that it doesn't become, if you like, a way of clobbering the existing owners of it, but it's a way to a transition to a more efficient way of addressing these questions. So that was the whole driving force there.

MR BACON: Yes. I suppose - and this is just a reaction to what you have been saying there. Using the building analogy again, I guess if you do get this separation of the two we could have quite a number of people with a broadcasting licence leasing the spectrum or whatever. Often with buildings you find the owner decides to knock it down and put something else there - from a factory to a shopping centre, I suppose. If the owner of the spectrum decided that he would sell it to a telco or someone else who is just offering him more money, I guess there would be the danger that people may lose their broadcasting service as a result of a transaction somehow like that. So

I guess it would weaken this tenure issue of the continuation of a service, particularly in non-metropolitan areas.

PROF SNAPE: Again non-metropolitan may or may not be a separate consideration, but we come back to what I said before, that if there were no technical barriers, technical problems with having a multiple use - and that is an important caveat - then in fact it would be going to that use for which there is the greatest community demand, and I emphasise again that we are talking about the commercial sector, and that it would be in fact substituting another service which was more highly valued in the market, just as if you might start growing grapes instead of pineapples just because it was a higher valued service on that bit of land. That is the framework of our thinking, anyway.

MR BACON: I guess that sort of brings us back to some of our earlier remarks about the social contribution and what commercial radio does for its local community which I guess is in addition to the commercial value that it has as well.

PROF SNAPE: We take that point, yes.

MR SIMSON: Could I just go to point 8 where you state in 2.15:

The common ownership of competing cross-media in one market -

and these are your words, not mine -

must inevitably place some pressure on operatives to be less diverse in the opinions they express.

In radio it has been put to us that you would have common ownership but more formats. In fact common ownership can actually lead to an increase in diversity of services. For example, look at the way Southern Cross operates in Melbourne or 3AW and one - I can't remember the band - - -

MR BACON: No, I understand your point.

MR SIMSON: And arguably those second or third stations - and we in fact recommend some further relaxation in that area - just may not exist, may not be viable. You could say in response quite correctly that the mix there is a new station and a music station, not necessarily two new stations. But particularly in the case of radio it has been put to us that common ownership can certainly increase the number of services you have and in fact in terms of diversity, not necessarily in news or opinion, it actually can lead to more services existing, and indeed they just simply wouldn't exist whether they were news, music - they just wouldn't exist because they wouldn't be viable without the economies of scale and synergies that you have.

MR BACON: Yes, I think I supported that point in some of my earlier remarks of saying that particularly in the regions where we have had the section 39 licences we

have had a diversity of programming. I think this point is in relation if you had common ownership of the newspaper and the radio station, for example, in a market, and that was our concern. One of our concerns was that radio would perhaps lose its identity as a primary medium in some places and become just an add-on service to perhaps the television station or the newspaper. Just given its - as we talked about earlier - market power, of the three it probably has the least market power. In a transitional phase radio could perhaps be the one which is taken over and therefore we would be concerned that for a while anyway it would lose its identity and role and would become just an adjunct to either a television station or perhaps the local newspaper.

MR SIMSON: But in reality isn't there an increasing trend towards syndication of news services in radio - television as well but certainly in radio? And so I ask the question to what extent - - -

MR BACON: I think - - -

MR SIMSON: So that you could then put up an argument that in a situation where you've got increasing syndication of radio services, a local newspaper, having common ownership for example with a local radio station, could actually increase the local content that's available on that radio station compared with or compared to there being no common ownership. In fact not at these hearings but at the previous hearings we've had examples given to us where, even without common ownership, local radio stations are in fact sourcing their news from local newspapers.

MS MEREDITH: Can I just add something on that?

MR BACON: Of course, yes.

MS MEREDITH: It's probably true, in the context of syndication of news, and there are reasons for that, the primary reason being the expense of operating a national and international news service, and the high expectations of the community in that regard these days. But I guess the point that we were making is it's not so much in cases where you get - it's not syndication of news but opinion, and the commission itself I think has identified that what is meant by diversity of opinion is a somewhat vexed issue and how do you define that?

That comment was really leading to the fact that where you get common ownership of cross-media, whether it's newspaper and radio or newspaper and television, etcetera, it's unlikely that commonly-owned media will approach life from a different political perspective. If by diversity of opinion you include that as a criteria, then we really raise the point that that may have implications for lifting cross-media laws.

MR SIMSON: I suppose I can only recount to you some of the evidence we've had from previous people but in the case of Southern Cross, for example, you quiz them about the extent to which they try to -

Mr Tony Bell, for example, about the extent to which they intervene in what their talk

show hosts can say or not say. He will say publicly that there's very little hands-on intervention except in terms of responsible codes of conduct, etcetera, etcetera in areas of political comment and so on - very hands-on. So even within one radio station it's relatively diverse.

In theory what you say may be right but in practice - I'm just querying whether, if you had a common ownership between a newspaper and a radio station, the extent to which that owner in a situation where they say - certainly we've had evidence from some that they don't attempt to impose their views, and I suppose 2UE is a classic - but the extent to which they don't attempt to impose particular views, the extent to which that would happen in common ownership of a newspaper.

MS MEREDITH: Let me say not for one minute are we suggesting that there's any sort of contrivance on opinion in competing media but what we're really saying is that it's - and it may or may not be right. We're raising it as an issue, saying that it's a corporate culture issue that may have a bearing on the concept of diversity of opinion.

MR SIMSON: I suppose the other point is that it's just different media. A radio station is a different business to a newspaper, to a - - -

MS MEREDITH: Quite powerful in combination.

MR SIMSON: Well, arguably yes, but you could also say it could be arguably suicidal. It would be counter to their commercial interests to have that level of homogeneity that you seem to be implying in terms of news and opinion across newspapers.

MR BACON: I guess, as Tracey said, we raised it as a concern I think amongst the current owners. I think we find ourselves in great agreement with Tony Bell in that current owners do not intervene but I guess we raise it as a concern as a potential for the future.

PROF SNAPE: I wonder if we could go to the last part of your submission and what your summary at the beginning was indicating as the fourth point that you raised where we are talking about - I'm sorry, it was the fifth and sixth points you raised - which is to do with codes of practice and compliance, and also with the fair and accurate coverage. I know that events going on elsewhere in this city probably make it difficult to be too explicit about it but I was rather surprised at the implication of what you're saying there, which was everything was okay, that you were satisfied, that you didn't see that there was any problem with the ethical standards and the compliance, etcetera, in the radio sector.

MR BACON: I hope I didn't mislead you, to give the impression that we thought that everything was okay, and I apologise if I gave that false impression. We did, in our submission - we can certainly talk about this because it's on the public record. In our submission to the ABA inquiry we did say we felt that there was a gap in the codes, an area that was not covered, and that was where announcers and personalities

had third party agreements, if you like, and that we felt that listeners were entitled to be aware of those sorts of issues. We have proposed that the codes be amended to reflect that.

PROF SNAPE: But you didn't like the suggestion, the draft recommendation that we had, that once matters such as that are agreed as part of codes, that when they're high-level matters such as that they should then become conditions of the licence.

MR BACON: I think we operate in a process of co-regulation really, rather than self-regulation, with the ABA and that seems to be the philosophy of the Broadcasting Services Act. Therefore I guess it would require a major policy shift on the government's behalf to move away from that.

PROF SNAPE: Would you in fact be in favour of such a move? That's the point.

MS MEREDITH: Professor, could I just add something which you may or may not be aware of. It's the scheme of the codes system under the Broadcasting Services Act. The scheme obviously is to place the onus upon media in a co-regulatory environment, not a self-regulatory environment. There really is already - and this is part of a submission that we made to the ABA - there is already, as part of the legislation, an ability to make the codes a condition on a licence and it arises this way, and it's part of the very neat regulatory scheme of the legislation that you develop codes of practice and they're co-regulatory codes. If in fact you breach those codes then the ABA has available to it the sanction of putting a condition on your licence.

We think it's quite a nice scheme because it allows for self-regulation and co-regulation, if you think that that's a good thing to promote self-responsibility in an industry, but then if that fails there is the sanction of having a condition imposed on an individual licensee without taking it to the rest of the industry. It seems to us that while you're suggesting that in a way, and in a more productive way, it already exists.

PROF SNAPE: Are you satisfied that that has been working in practice?

MS MEREDITH: Yes. I think the answer to that has to be yes and it has to be yes even in the context of this inquiry because this inquiry demonstrates - - -

PROF SNAPE: Which inquiry?

MS MEREDITH: The present ABA inquiry.

PROF SNAPE: Not this inquiry?

MS MEREDITH: I'm sorry, I do apologise. It demonstrates that in fact they do work, because where there is a breach of the codes then it is open to the regulator to impose a condition on an individual licensee, rather than take away the whole notion of co-regulation across an industry. It depends how you regard co-regulation in the first place but obviously this government took that step because it formed the view

that it was an efficient use of resources to pursue that option. We would say that there's been no evidence that there's widespread noncompliance with the codes or that it's not operating to actually provide regulatory protection to the community. When that does happen - and this is a very good instance of where there have been issues raised that are public interest issues - then there is a facility under the present legislation to deal with that in a discreet manner in relation to particular licensees.

PROF SNAPE: Without making any judgment or even implying any judgment on events that have been in the public domain of late, you would suggest that the publicity itself, probably, that has attended those things would make radio station proprietors and television station proprietors more cautious in the future?

MS MEREDITH: We certainly make no comment in relation to the particular facts in issue before the Australian Broadcasting Authority at the moment but what we say is - - -

PROF SNAPE: Nor was I.

MS MEREDITH: I understand that.

PROF SNAPE: I'm simply saying - that's why I confined it to the publicity.

MS MEREDITH: Absolutely. It really demonstrates publicly how these things work and that they do work, and everyone has gone through this process and no doubt there is a heightened emphasis on codes of practice.

PROF SNAPE: I think some people might feel that the wheels of the gods grind fairly slowly.

MR SIMSON: And if you look at the history of the ABA situation in this case and how it was revealed and how it came to be put before the ABA and how it came to be an issue, this was not something that arose out of the normal processes of co-regulation and the normal processes of oversight of co-regulation. This was something that was drawn to people's attention by a show called Media Watch.

MS MEREDITH: That's true.

MR SIMSON: And so this is not necessarily a good example of the show being on the road.

MS MEREDITH: No, but with respect, I'm not talking about particular circumstances in issue. I'm just talking about matters of principle.

MR SIMSON: We're trying to come to the point of actual practical reality and whether this has actually come out - whether where we've got to today in this particular case has occurred more by accident rather than good process and good regulation and good co-regulation. So the issue that we're raising here is whether -

you know, arguably, if Media Watch didn't exist, whether the way the processes are working is adequate in ensuring that the thing is good.

MS MEREDITH: That goes to the whole issue of co-regulation, and to move away from that it seems to us that you can't go down this route in a half-hearted fashion because the government has opted for a co-regulatory regime and, as I say, within the context of that co-regulatory regime there are sanctions and they exist at certain steps along the way.

MR SIMSON: If people become aware of the problem.

MS MEREDITH: Certainly. But, with respect, there's probably no circumstance in life that will be 100 per cent foolproof and you must adopt a position that looks at the broader interest and the broader elements.

PROF SNAPE: Our draft recommendations still embraced the importance of the co-regulatory system because we said that the codes should be developed by the industry in consultation with the ABA and they should have some elements in them that aren't there at the moment, and that then those crucial parts of them that we're talking about should become conditions of the licence. So in fact whereas you're saying that there is a remedy now, that it would become a condition of a particular broadcaster's licence, our draft recommendation is that the standards that we are talking about should in fact become conditions of the licence ab initio, rather than retrospectively.

MS MEREDITH: You see, that reverts to the old position under the Broadcasting Act before it was repealed, where a program standard in fact did form a condition on a licence. A breach of a program standard was a breach of a condition on a licence, and compliance with program standards was part of the conditions of your licence. So it really comes down to an issue of - and might I add, in the context of the codes as they presently exist, that if there is sufficient evidence that a code is not working, the facility is there for the ABA to actually impose a standard in any event. So it's really a question of do we go back to where we were which was, in essence, the substance of your recommendation, which is a program standard, and in fact that program standard becomes a condition of your licence. That is essentially the position under the Broadcasting Act 1942 which was repealed in 1992.

MR SIMSON: Just a pointier way of going about it, isn't it?

MS MEREDITH: It may be, but I'm just saying that in 1992 the government opted to take a step away from that and just say, "Look, we'll move to co-regulation but, if you get it wrong, this is the regime of remedies that we have available to us." In essence they're putting what you're suggesting slightly further down the line, but those remedies still exist - - -

PROF SNAPE: But, correct me if I'm wrong, were the arrangements under the previous regime to which you were referring agreed between the regulator and the industry?

MS MEREDITH: Not at all. The program standard was imposed - - -

PROF SNAPE: That's the difference with what we're suggesting, you see. We're suggesting that you in fact get agreement between the regulator and the industry on these particular codes, particular conditions, and then, having agreed them, they become conditions on the licence.

MS MEREDITH: Yes, well, I guess that's slightly different certainly in theory from the position under the Broadcasting Act, although I will say this: there was a reasonable amount of consultation in the development of program standards obviously under the previous regime; that didn't happen in isolation. So I guess it comes down to whether or not - which way you want to go. One way, if you go down the route you're suggesting, in our view to add it to the self-regulatory process would simply add to the costs of both broadcasters and the ABA. We're not sure, given that there are these remedies presently available under the legislation, whether or not that's warranted.

PROF SNAPE: I think that in many other areas of co-regulation there are sanctions to breaches. This is perhaps unusual that there isn't an immediate sanction for breach. The sanction for breach here is a sort of retrospective attachment onto the licence. We'd say that it's rather different from other areas.

MS MEREDITH: It is, professor, but in the broadcasting industry I can tell you that a condition on your licence is regarded as a very serious result, and not to be taken lightly. To have a condition placed on one's licence is a significant - - -

PROF SNAPE: Do radio stations carry corrections when they make an error of fact?

MS MEREDITH: It's part of the new code.

MR CARROLL: It's part of our new code.

PROF SNAPE: What are the provisions in the new code for that?

MR SIMSON: Just while you're looking this up, when you say "the new code" which code is this?

MR CARROLL: The existing code that we have says that:

Factual material is presented accurately and that reasonable efforts are made to correct substantial errors of fact at the earliest possible opportunity.

So that element is already embodied in the codes that we have.

PROF SNAPE: That's in the existing code?

MR CARROLL: That's right.

PROF SNAPE: Now, if I were to be wrongly named as being in a brawl and you carried that, for some peculiar reason, on a news service on radio and I was able to establish very easily that it wasn't me, that it was someone else, as a matter of practice would the radio station carry a correction of that? Rather than what's in the code, as a matter of practice would they do so?

MR CARROLL: Not being intimately involved with the operation of a particular station - but I would imagine that, yes, the station would be obliged to go down that course of action. Of course, there may well be other legal implications that would prevent that and that would need to be taken into consideration at the time.

PROF SNAPE: You might have noticed that as far as television is concerned, and we are fairly specific in the draft report on this matter, we were told by a television station that it was not normal practice, or in fact it was much stronger than that: it was not the practice to carry corrections on air. That was the advice of their lawyers, not to do so.

MR SIMSON: This new code, how new is it, by the way?

MS MEREDITH: 26 October it was registered.

MR CARROLL: We've revised all but the codes of practice which relate to news and current affairs and advertising, which are part of the current inquiry by the ABA, and we will deal with those revisions at the completion of that inquiry. But the remainder of the codes were revised and registered by the ABA some two months ago.

MR SIMSON: How long had this process been going on in working out these new codes?

MR CARROLL: We had been through a rather lengthy process which took about two years, which involved public consultation and considerable consultation with other industry groups.

MR SIMSON: Does this particular code to which you refer on correction, "substantial errors" - does that relate just to radio or does that relate to TV as well?

MR CARROLL: No, this is specifically to commercial radio.

PROF SNAPE: How did you go about the public consultation?

MR CARROLL: In agreement with the ABA we put advertisements on every

station throughout the country for a period of six weeks, whereby we offered copies of the codes to listeners and sought their comments on the codes that we were putting forward.

PROF SNAPE: Did you have public hearings?

MR CARROLL: No, we didn't have public hearings as such.

MR SIMSON: What does "substantial" mean?

MR CARROLL: "Substantial" in?

MR SIMSON: In the context of the code, what does "substantial" mean? How do you interpret "substantial" in terms of the code as you read it earlier, the word "substantial"?

MS MEREDITH: It's a matter of degree having regard to the facts. Really, the codes have to be interpreted having regard to the facts of the issue. The very concept of having living codes means that they have to have some flexibility and you couldn't, and shouldn't, write them as a piece of legislation, although I might add that even in legislation we seem to get fairly imprecise results from time to time.

MR SIMSON: But I'm just wondering about the extent to which that's substantial as a lawyer - from your perspective as a let-out. I mean, why have the word "substantial" in there? As you've just said, in the context of the facts the word "substantial" is a pretty powerful qualification to that bit of the code, isn't it?

MS MEREDITH: Because it could involve, for argument's sake, getting the wrong score in a football match on a Saturday afternoon.

MR SIMSON: That could be substantial to a lot of people. That could be life or death.

PROF SNAPE: It could be a lot of money placed on the result too.

MS MEREDITH: You could perhaps tell that I'm not a football fan. Leaving that aside, it's to demonstrate that point that you could have errors of fact that are in fact very minor and it would completely clog up the system to be trying to deal with those from a procedural point of view. Can I just add one small matter, professor, and it's in relation to the example you gave and Graeme's response to that example. Yes, obviously part of the problem is that if we did something terrible like that to you, you no doubt would be talking to your lawyer at the same time about defamation proceedings. Of course, once that's invoked then there are genuine restrictions on what the licensee can do by way of correcting the error, and sometimes they can do nothing if it's a significant defamation matter.

PROF SNAPE: There is a way around that. I think the Press Council have some

ways around that particular problem. The specific example that we were given and which we in fact refer to in the report - the threat of lawyers came the other way around in fact - was a complaint having been made by a mother about her child being named as being in a brawl. The response from the channel was, "Take us to court."

MR SIMSON: As James Packer said to Paul Keating a few weeks ago.

PROF SNAPE: So it seemed to be a very unhelpful approach to the matter.

MR SIMSON: And Paul Keating said, "My pocket is not deep enough."

PROF SNAPE: Anyway, I think that we've finished with our questions to you and we thank you very much for the submission and the attention that you've given to it. You have been able to clarify some of the matters to us in this and we hope that we've been able to clarify one or two to you in our reasons on particular points. Thank you very much for coming and for your help.

MR CARROLL: Thank you.

PROF SNAPE: We have Austar next on the agenda, but I think that it's probably time for a cup of coffee.

PROF SNAPE: Thank you very much. We've now got Austar Entertainment Pty Ltd, and we welcome Mr Bruce Meagher. If you'd just identify yourself on tape and then we can get under way.

MR MEAGHER: Yes, Bruce Meagher, head of corporate affairs for Austar.

PROF SNAPE: Thank you. Thank you very much for your submission, as well as for your earlier submission of course. Would you like now to speak to it?

MR MEAGHER: I don't really have anything particular to add, unless you wish to flesh anything out. But I think the submission pretty much speaks for itself.

PROF SNAPE: Okay. Well, we may address a few items in it. It is, of course, part of a submission emphasising how everything is hanging together in terms of quid pro quos and you pull one thing out and the building collapses.

MR MEAGHER: Yes.

PROF SNAPE: I wonder, starting towards the front of it, you refer there to the restriction for anti-siphoning. You're saying in addition to a conversion device, it's unfair for the TV and pay TV industries to have this restriction where the anti-siphoning regime does not apply to online rights. Now, I suppose the point is that the government has made it fairly clear that they want major sporting events to be available on free-to-air television.

MR MEAGHER: Yes.

PROF SNAPE: We've got in our draft recommendation that neither pay TV nor free-to-air should be able to have contracts which excludes the other. How would you extend that to other media?

MR MEAGHER: In terms of the online?

PROF SNAPE: Yes, in particular.

MR MEAGHER: I'm not sure there's any particular need to. I mean, the point simply is that no attempts have been made to regulate other media. We think that's appropriate. So I suppose it was merely drawing out the fact that the government had, for some reason, singled out pay TV. But we would be comfortable with a regime that prohibited exclusive rights. I don't believe that any rights owner would be likely to give its rights for an online version of an event and then exclude either subscription or free broadcast media. I just think it's commercially almost inconceivable that that would happen, so I don't really think that there's any need to include them.

PROF SNAPE: So you're not saying that the non-exclusivity provision should also be extended to online rights? You don't see it's necessary to do that?

MR MEAGHER: I don't think that any particular point would be served, no.

PROF SNAPE: Good.

MR MEAGHER: Again, I think it comes back to a point that it's in the interests of the rights owners, particularly those for major sporting events with substantial sponsorship interests, to ensure broad-as-possible coverage. That's one of the reasons, and probably the main reason, why those events wouldn't disappear from free-to-air.

MR SIMSON: Could I just, in this context of quid pro quos, challenge you on the issue of multichannelling?

MR MEAGHER: Yes.

MR SIMSON: Because it seems to me that the loser out of this is the consumer. I mean if we accept your rationale, basically what you're saying is that the free-to-air broadcaster shouldn't be able to multichannel.

MR MEAGHER: Yes.

MR SIMSON: Because of restrictions that are placed on you which basically means that, for years, consumers won't have the benefit of multichannelling which, on the American experience, is being shown as a key driver or a key area of demand from consumers in the use of digital services. So ultimately the loser is the consumer because they can't experience multichannel services.

MR MEAGHER: Well, for a start, they can through the subscription services. But, yes, I'd have to agree with that. But I suppose the thing is that that's an evil created by the government's initial misguided policy decision. I think the whole point of our submission is that one thing flows from another, that if you create an environment where one party gets substantial protections - both no right for anyone else to compete in their markets, so they have that protection, and then a right of entry into effectively another market with a lower cost of entry, plus the legacy of 40 years of oligopoly if that's the word, profit-making, in order to boost them into that - then there's a manifest injustice involved. Possibly one of the unfortunate consequences of trying to remedy that is that the consumers do suffer.

Our view is that the spectrum should have been sold to whoever wanted to buy it and if the Nine Network or the Seven Network, or anybody, had bought that spectrum at auction, they would be entitled to do whatever they wanted with it and we would have no case to argue that they should be restricted. But that's not the situation we find ourselves in.

MR SIMSON: To what extent is multichannelling and the channels of pay TV genuinely substitutable? From what I read and hear, what the networks are planning

to do with multichannels is pretty different to what Austar is offering, and other pay TV operators are offering, as channels.

MR MEAGHER: The key drivers, I think, in pay TV, in multichannel subscription televisions, are movies and sport. I could see no reason why a clever free-to-air operator would not seek to set up a movie channel and a sports channel. If you've got the protection of the anti-siphoning list to ensure that you can get the sporting content and deny your competitor access to it, why wouldn't you do that? It seems to me that that would be a very sensible commercial strategy if you were able to multichannel and basically starve the rest of the industry, or our industry, of the key commercial advantages that we have.

MR SIMSON: Yes, but your industry in particular, and Austar - you can take credit that this is a good example of this because you're going well beyond offering pay television services. I mean, even if what you just said is correct, you're now putting together a vertically integrated bundled offering of high-speed Internet access, of pay, of telephony, of other services which I've either forgotten or you haven't even announced yet, so it's more sophisticated than simply saying, "Our pay TV business is just a bunch of channels." Austar's business is going well beyond just simply a bunch of channels.

MR MEAGHER: Yes, that's true, but (a) once you have access to the spectrum and unfettered rights to use it, there would be nothing to stop the networks doing any number of those things as well, and secondly, we at the moment have 18 per cent penetration in our markets. The growth of our business is predicated on our core business continuing to grow and continuing to generate revenues. If that business was stopped and probably even reduced - because if you were being offered a movie and premium sports service at no cost, why would you pay for it - then we wouldn't be able to fund those other businesses. They're simply not going to be making money for us.

MR SIMSON: I'm not trying to be difficult on this, but I'm wondering to the extent that life's moving on. The argument that was put 18 months ago when the parliament first considered all these terrible trade-offs and quid pro quos was very much as you put it: multichannelling substitutable for - and enhanced programming, for that matter - but certainly multichannelling substitutable for pay channels. That would damage the pay television industry, and then of course there were other quid pro quos to put in place - anti-siphoning and all that sort of stuff, which you've got problems with.

But Austar, your company has shown that there's much more to life, from a perspective of business strategy, and that the opportunity you use in your case, the satellite technology, is presenting a whole bundle of other commercial opportunities, and you're saying here today, deny consumers over the free-to-air spectrum multichannel services, even though Austar is about to make a profit on the basis of your own publicly announced statements.

MR MEAGHER: It may only be a question of timing; it may be that, yes, we've

moved on. But the real concern that we have is, have we moved on far enough? Have we yet as a company or as an industry developed critical mass to the extent that we could sustain a serious onslaught from a related industry which is highly profitable, which has the advantage of incredibly strong brand recognition and a number of others that have attributes that give it substantial advantage, plus the fact that it doesn't have to face the barrier to entry that we face? We still have to pay substantial amounts of money every year for transponders, for satellite transponder capacity, whereas here we're talking about, yes, some start-up costs but essentially free access to the broadcast medium.

I see what you mean and I certainly agree with you that the problem with this whole conundrum we face is that the consumers are the ones that are potentially disadvantaged by the whole thing.

MR SIMSON: One of the ironies of this is that multichannelling is potentially a driver for digital services generally. It's potentially a driver for people to - it will be a driver for people purchasing the set-top boxes which, as you point out, so long as they're standard set-top boxes - they're not high definition set-top boxes - could actually increase demand and facilitate the uptake of pay television channels. You say this in your submission.

MR MEAGHER: Yes, that's right. But the networks argue of course that it's high definition television that you have to have.

MR SIMSON: But, hopefully, life is moving on, and just on the basis of the speculation in the newspapers, if life is moving on and there is going to be - hypothetically, let's say life does move on and we see a situation where there is at least a simulcasting situation of standard and some form of high definition - whatever it is - that would be good for your industry, wouldn't it, because there'd be standard set-top boxes that would facilitate more readily access to pay.

MR MEAGHER: That may well be the case, yes. But if the government is going to review their decision to that extent, then I see no reason why they don't go to the next step and say, "Okay, we'll give the networks an amount of spectrum that they need to move into the digital environment, but we concede that HDTV is not the be all and end all, enough to broadcast a digital version of their existing analog, maybe on a multiplex basis, and then we'll auction the rest of the spectrum," and if Nine wants to do HDTV or multichannelling, fine, let them do it, but maybe we might buy some of it. I think there are a number of obvious players who might also. So if we're revisiting the fundamentals, why not revisit the real fundamentals?

MR SIMSON: Could I put to you a proposition.

MR MEAGHER: Sure.

MR SIMSON: By not multichannelling, by the networks not multichannelling, or multichannelling not being allowed for the networks, and for the networks going for -

at least three of the networks - perhaps two of the three networks going for the highest definition of digital television, that they're arguably in a strategic sense shooting themselves in the foot because basically what that's doing is encouraging operators such as you, or it's giving you an opportunity to develop in other non-digital broadcasting space - in your case satellite, in the case of others cable, and in some cases MDS - Internet or satellite delivered interactive services that can be substitutes for some of these other services that could have been delivered if the regime had been configured differently in the digital broadcasting area.

MR MEAGHER: Yes, I think that's a fair assessment. But I still come back to the point, though: if the networks made an error on technology or commercial grounds and convinced the government of a proposition that is wrong, I don't see why the government should turn around and say, "You were wrong and we were wrong, but you can still keep the spectrum. You can do all these other things. Now that you've worked out all these other things that put you in an advantageous competitive situation, because we recognise that was what would have happened. That's why we put all these fences around you. We'll just get rid of the fences and we'll give you" - I mean that just doesn't seem - that's a windfall.

MR SIMSON: Sure, spectrum has been allocated. But hypothetically, if the government were to change its view and to allow a simulcast or say there must be a simulcast of standard in addition to high, that arguably would be a pretty significant change in policy over where we were a year or so ago when this was decided. It's not something the networks like. From what they're saying publicly, it's not something they want.

MR MEAGHER: It would drive take-up.

MR SIMSON: It would drive take-up. It would drive the conversion process. Arguably it would ensure that the spectrum that had been allocated to them was used more efficiently and more quickly. In that situation where if you want to continue the quid pro quos, where there's a change, why would it be so unreasonable for the government then to change policy on multichannelling?

MR MEAGHER: I haven't thought specifically about that, how that quid pro quo works, but I'm not sure that doing the simulcast is all that onerous on the networks. From a technical point of view, I'm not sure that there's a - - -

MR SIMSON: No, but from the perspective of driving take-up of digital, of arguably switching off the analog earlier, releasing spectrum and making more efficient use of the extra seven megahertz per group in the meantime, it would be a pretty significant change, I would have thought.

MR MEAGHER: I assume the networks do believe what they've said about the actual time-frame for the analog switch-off and all that. That's not just plucked from the air. They assume that on their HDTV model that it is - - -

MR SIMSON: All I'm putting to you is a proposition that we could be in nursing homes by the time multichannelling comes if everybody has their own self-interest in this, and multichannelling is one of the more certain things that we're actually learning in this inquiry from people, relatively independent people in this process, is the capacity to use the digital spectrum for multichannelling is something that consumers want, something they really want, and yet on the basis of what you're putting to us today, no go; don't allow.

MR MEAGHER: For us really the bottom line on it is that we've made significant investments predicated on certain assumptions, and in our case \$700 million-odd invested in the regions, and it's a fairly big shift to permit a different form of broadcasting that until now has been contemplated.

PROF SNAPE: On the other hand, you also made those investments on the basis that the anti-siphoning rules were in there.

MR MEAGHER: True.

PROF SNAPE: And if our draft recommendation were to - if in fact we said that we were inclined to recommend that way, to be more careful - inclined to recommend that there be non-exclusive contracts, that would be a very significant change for you on that, and that would be a significant plus for you.

MR SIMSON: In addition to any change on simulcasting SDTV. So I mean life is not standing still.

MR MEAGHER: Possibly - underline that.

PROF SNAPE: You do mention here - and thank you for the point of giving us a solution on page 8, to put us out of the uncertainty that we had before.

MR MEAGHER: Right.

PROF SNAPE: Two or three people have helped us in that way.

MR MEAGHER: I'm sure they have.

PROF SNAPE: And NTL has given us a rather useful chart that we've been referring to quite a bit. Your point here, and NTL's also, is based on going the high definition of 720p rather than 1080i. We've been told earlier today that the international standard that is being adopted for high definition in terms of not of transmission but in fact of recording is in fact 1080p and that Hollywood is in fact going to that standard too for filmmaking of 24 frames a second.

MR MEAGHER: Right.

PROF SNAPE: Is that correct? 24 frames? Anyway - per something. If 1080p is being adopted as an international standard for this and then we are in fact shifting to 720p rather than 1080i, is that a problem?

MR MEAGHER: My technical knowledge doesn't run to that, but I can certainly ask our engineers.

PROF SNAPE: If you wouldn't mind, so that we do have an answer.

MR MEAGHER: No, I'm sure they'll know an answer. There may be a relatively simple conversion process.

PROF SNAPE: Yes. It would be helpful if we could have a variety of views on that one because we find that even the technical people - - -

MR MEAGHER: Have different views.

PROF SNAPE: - - - seem to disagree, or maybe it's our understanding that often they seem to disagree anyway - so if you could find if there is any problem on it.

MR MEAGHER: I will.

MR SIMSON: Are you concerned, as you say on page 9, that there is a risk that broadcasting-like licensing conditions and artificial restrictions may be placed on the Internet and emerging interactive services?

MR MEAGHER: I'm not sure that we're necessarily concerned. We just wanted to emphasise that we wouldn't want to see that sort of thing as a by-product of regulation of datacasting in the broadcasting services bands. It's very hard to distinguish really between so many of these services and it's really just a question here of medium. I suppose that maybe it's accessibility that's the key driver but each regulation is created to address a specific set of circumstances.

MR SIMSON: But you don't know of anything in the wind on this?

MR MEAGHER: No.

MR SIMSON: You're not implying that - - -

MR MEAGHER: Not suggesting that, no.

MR SIMSON: - - - the rules on datacasting might be applied to what might be loosely termed Internet broadcasting - with a small "b".

MR MEAGHER: No, merely flagging I suppose that - to make sure that it doesn't happen.

PROF SNAPE: On page 12 you refer to some Austar channels having a high percentage of Australian content where there is no quota, while others with voluntary quota may not. Do you have any data on the Australian content of your various channels?

MR MEAGHER: We do and I can get that for you.

PROF SNAPE: That might be useful. Yes, please, across the various channels if you could.

MR MEAGHER: We take the view that a blanket rule about Australian content, and particularly new Australian drama, is inappropriate to a service that has a niche, and it's patently silly to say that a channel for old movies should be spending on new Australian drama - or should be showing it anyway. I think we've actually come essentially to a resolution with the government on that issue. The legislation has been introduced.

We accept that there will be a quota and we may even actually move to a fairly constructive position where, to give us some flexibility in an agreement with the production industry, that will include some form of payment for pre-production or script development or other things which are essential to that industry that mean that you can make an investment without it having necessarily having eventually to get into - to be filmed.

PROF SNAPE: So you did actually say a screening quota there, did you?

MR MEAGHER: No, not a screening quota.

PROF SNAPE: A revenue quota.

MR MEAGHER: It's a revenue quota.

PROF SNAPE: Yes.

MR MEAGHER: Sorry, expenditure quota.

PROF SNAPE: When you give us this data, if you could perhaps indicate the sort of Australian content it is too, that would be helpful. What's your reaction to "must carry" requirements?

MR MEAGHER: Must carry? For cable networks we think it's a sensible way to go. Certainly it's something that ASTRA I think would be perfectly happy with.

PROF SNAPE: I'm sorry, I should perhaps elaborate just for my own clarity. I suppose one can say "must carry" in terms of must carry to the free-to-air channels but there are also provisions of must carry local content in some areas or must carry -

in the US, for example, there are provisions for must carry what would essentially be community-type television stations in particular areas as well.

MR MEAGHER: Right. I think it really does depend very much on the technology deployed. We offer a national satellite service to 2.1 million homes across an area which is almost the size of the United States of America. It would be very very difficult and completely uneconomic for us to break that down too much into local programming. We certainly are looking at the possibility of creating specific non-metropolitan content based channels which would have local content in them.

We already have a weather channel that we operate, for example, which goes into some detail in providing localised weather throughout regional Australia. When we were looking at what sort of channel we'd set up, one option was a current affairs type thing. It was actually concluded after a bit of market research that the most practical thing for people in our regions was a weather channel but we're now also looking at other ones.

I think trying to mandate those sorts of things is very very difficult but I also think that as you build a large enough revenue base it becomes much easier to produce those sorts of channels. It's desirable to do it if you can afford to do it because obviously people like to get information about their local communities.

PROF SNAPE: Desirable commercially or desirable politically?

MR MEAGHER: I would have said both. The two might happen to go hand in hand.

PROF SNAPE: But it would be a commercial proposition.

MR MEAGHER: Yes, I think so. For example - and just leaving aside the broadcast medium where, as you may know, we're launching a high-speed Internet service. We will have, by the end of next year, 60 points of presence with substantial caching facilities at each of them. It's our intention to develop local content based in each of those regional centres, so that in Armidale you'll have an Armidale part of the portal to go to and there'll be community information, and local businesses will be able to use it for e-commerce or advertising and whatever other services may be appropriate there.

That's easily achievable because of the distributed nature of the architecture of the network. If you are simply pumping out a satellite signal nationally it becomes much harder. I think on a cable network you can probably manage to produce more localised content and address that, so I think it really is very much a matter of the medium.

MR SIMSON: And that service you just described, that localised service, that's a satellite Internet service?

MR MEAGHER: Actually the one that we're setting up is essentially going to be MMDS.

MR SIMSON: So that's satellite beamed to local dishes?

MR MEAGHER: There will be satellite or possibly terrestrial cable to a mast which then pumps out the signal to MDS dishes. We will also have a satellite service for those places the MDS signal won't reach. There's no reason why you couldn't grab the cached content from the Armidale cache and hook it up onto the satellite that's - - -

MR SIMSON: So whose cable?

MR MEAGHER: Who has cable?

MR SIMSON: Whose cable is Austar using for this?

MR MEAGHER: We're leasing capacity Telstra lines. We're using - sorry, whereabouts though do you mean?

MR SIMSON: Well, anywhere, because I understood that basically your distribution means was satellite.

MR MEAGHER: That's for the pay TV service, yes.

MR SIMSON: But that's not for your high-speed Internet access?

MR MEAGHER: The main technology we will use for high-speed Internet is MMDS.

MR SIMSON: But linked to cable?

MR MEAGHER: Linked to a cable. At each of those sites you'll have three things. You'll have a tower, which communicates with the homes; you'll have an ISDN or larger terrestrial cable link which is leased capacity frame relay - you know, we have a virtual private network lease linking all those points of presence. There will also be satellite dishes, certainly a receiver dish, so that some of the content - for example, you may - - -

MR SIMSON: The national content or whatever.

MR MEAGHER: Or out of the states. A request goes through the landlines out to a large cache in farming centres, say uplinked and back down straight to the head end, and then distributed on the MMDS so - - -

MR SIMSON: And this is quite separate to your pay TV service.

MR MEAGHER: That's quite separate.

MR SIMSON: This is an Internet service.

MR MEAGHER: That's right.

MR SIMSON: Is this broadcasting?

MR MEAGHER: No, it's point-to-point.

MR SIMSON: So going to page 13 of your submission:

These services, together with Internet services, raise the issue of what is encompassed by the definition of broadcasting in the BSA and whether Internet services that contain video streaming will be caught within the definition.

MR MEAGHER: Hopefully they won't be and I don't believe they will be, so long as the definition continues to distinguish between point-to-point and point-to-multipoint, which it currently does. But it's a live issue in terms of this whole convergence question as to where broadcasting ends and the news services begin.

MR SIMSON: I also read that Austar is moving into metropolitan markets.

MR MEAGHER: We're certainly looking at it for the broadband Internet strategy.

MR SIMSON: The one you just described.

MR MEAGHER: That's right, yes.

PROF SNAPE: You gave us a very helpful sequencing of reforms and a lot of people have been telling us that we should give more attention to the paths and the implementation, etcetera, and that is a helpful chart that you gave. We note that you leave removal of prohibition on multichannelling right to the end, or almost to the end, and we can see the reasons for that sequencing, I guess. You've also got the sequencing of the amendment to the Trade Practices Act in fact after some of the other things as well, and then finally the cross-media restriction - removal of that. There's quite a long time period in there before you get everything done, isn't there?

MR MEAGHER: Yes. This of course is predicated on not changing the fundamental decisions of the spectrum gift and retaining the lack of competition in free-to-air up until some point. We're assuming that that's not going to change straightaway. I suppose it's allowing for the political reality. As you can see, it's not a timetable that necessarily couldn't be done sometime in the next couple of years.

MR SIMSON: I'm sorry to harp on this but I keep on coming back to this issue of

consumers, and just play back to you a statement on page 9. It's in a different context but it's a statement that can sit alone:

It would be foolish to narrowly restrict a new technology with much potential to provide innovative news services to all Australians.

MR MEAGHER: We don't disagree with that, and we don't disagree with that in the context of digital broadcasting. It's just that, having made some fairly fundamental policy decisions that distort the regulatory regime, unfortunately we are where we are. So it's a consequence that flows from that initial policy decision. If that policy decision were undone then a thousand flowers could bloom.

PROF SNAPE: I wonder if I could again come to just the paragraph after that one where you say that if our draft recommendations were to be implemented there would be no need for datacasting definition or licensing at all. The reason that we didn't go to getting rid of the regulatory artifice, if you like to call it that, completely was that if we had then datacasters would be defined as broadcasters and would be subject to the cross-media rules and to the content requirements.

MR MEAGHER: Right.

PROF SNAPE: I don't think anyone is advocating that they should automatically be subject to those requirements, so we stopped short of saying, "Get rid of that regulatory artifice," and said, "Yes, we therefore need to maintain some distinction or else it will be caught into that net." With that lying behind it - and that was the reasoning behind - we said that datacasting should be defined as liberally as possible. Do you have any ideas as to how you would prefer it to be defined when you have that reason that we had for saying definition is necessary otherwise it would be caught by those cross-media rules, etcetera?

MR MEAGHER: I suppose the first thing is though that if the restriction for three only commercial broadcasters disappeared and I suppose then the question, "Do you need the cross-media rules at all?" then there would be no need and maybe you would have to revisit the whole question of some of the other content regulation, but that could be quite a profitable exercise and there are obviously issues of the children's programming and various other things, so it opens it up. How to define datacasting is I think one of the most difficult things in this whole debate and I frankly can't offer you a good definition. I mean, it may be more a case of somehow trying to define it as not being broadcasting and leaving it at that. Precisely how you do that I'm not sure, but - - -

PROF SNAPE: Sounds a good field for the lawyers.

MR MEAGHER: Could well be but I have got a feeling that anything out of this is going to be a good field for the lawyers.

PROF SNAPE: Yes, well, one thing we had been floating a little bit - perhaps I

should put that in the singular rather than the plural - was in fact a definition that was related to bandwidth or, if you like, a bit rate at converting the bits into a bandwidth which should take the bits and thinking of a multiplex and saying any datacasting couldn't get more than say 20 per cent of the space on the multiplex or 10 per cent or something of that nature, which would be fairly easy to define and, once having done, you wouldn't presumably have the lawyers into it in the same way you would on most of the other definitions.

MR MEAGHER: No, but again you would potentially restrict what might be - and you know at present we don't know what - - -

PROF SNAPE: Yes, but anything is going to be restrictive. I mean, that is the problem. The definition has to be restrictive.

MR MEAGHER: Just thinking about this, by defining it as not broadcasting - I mean, if there were a clear enough definition of broadcasting in relation to continuity of programming, continuity of video, you could get a fair way down the track, I would have thought - and I mean most datacasters are not going to want to run 24-hour pure video. Also again, whether it is a point-to-point - whether it is, you know, on demand by the receiver as opposed to broadcast and therefore necessarily point-to-multipoint, there are a number of touchstones for what is a broadcaster that you could probably draw on, I would have thought.

PROF SNAPE: Right. Why wouldn't you go in your sequencing to a much earlier removal of a restriction of the issue of new free-to-air licences? You have got that right down in number 10.

MR MEAGHER: I think that really, as I said, this is predicated on - we have just made some assumptions about what political will there is to move on that and, yes, you could move that up.

PROF SNAPE: Okay. This is a political sequencing as much as a - - -

MR MEAGHER: I think it is attempting to be realistic.

PROF SNAPE: I see. We are slightly puzzled about Austar's foreign ownership and how that fits into the legislation.

MR MEAGHER: The broadcasting licences that operate all of our services are held by Australian companies that meet the requirements of the Broadcasting Services Act and that is not Austar itself and Austar does not formally control those licences. However, Austar has a US parent.

PROF SNAPE: Austar has a US parent and then there are a number of licence holders. How are they linked to Austar?

MR MEAGHER: Essentially they permit us to use the licences by some form of

contractual arrangement. I am not exactly aware of the details. It's something that has been worked through very carefully with the Broadcasting Authority and the Broadcasting Authority is satisfied that we comply with the law.

PROF SNAPE: And so it somehow finds a path around all those parts of the act which define control - - -

MR MEAGHER: And tracing and all that sort of stuff.

PROF SNAPE: Of tracing control and all that.

MR MEAGHER: As I say, the ABA has been over this and they're satisfied the way we operate complies with the act.

MR SIMSON: So you had a good bunch of lawyers?

MR MEAGHER: We comply with the act is really - - -

PROF SNAPE: Yes. It's no accident I suppose that most of the representatives of the companies - major companies - that we have been seeing in this are lawyers.

MR MEAGHER: I do think, however, it does make it clear - we really do believe at this stage that that is an anachronistic rule that the restriction on foreign ownership - I mean, Austar is actually the only new significant entrant in the Australian media market in 20, 30, 50 years, and if it weren't for the support of the US parent it is unlikely we would be here, so we certainly think that those rules are out of date and - - -

PROF SNAPE: And a lot of the technology that you have been discussing with Mr Simson a little while ago and the innovative way in which you have been operating, is that traceable to the US parent?

MR MEAGHER: In terms of the actual - - -

PROF SNAPE: Technologies, the structures - - -

MR MEAGHER: Ideas.

PROF SNAPE: Ideas, structures.

MR MEAGHER: The essence of it is, yes. In fact in relation to the MMDS - certainly satellite and a lot of the commercial and some of the engineering are aspects we derive, but a lot of the technical innovation has been driven out of Australian engineers. We are quite fortunate that we have a team of engineers who are pretty much - they're amongst a very few in the world who have been working consistently with MMDS technology for the past five years and they have actually led quite a bit of

innovation. We have introduced a number of innovations in our digital set-top box, which we have suggested back to box manufacturers and which are now essentially being exploited back out to other satellite - - -

PROF SNAPE: Where are they made?

MR MEAGHER: The boxes are actually made in Asia. The current lot were made in Thailand. There's a company called ADB, Asian Digital Broadcasting, which manufactures them for us but, as I say, in terms of things like the memory capacity, for example, in the box which will assist us in our interactive television applications which we're about to launch, a number of those things are innovations which have come out of Australian engineering in Austar.

PROF SNAPE: That has been most helpful again and we thank you very much for it. We're also very pleased that you find so many of our draft recommendations palatable. It's an unusual experience for the commission that some of the major participants in this inquiry actually find our major draft recommendations acceptable and, as I say, we usually run into a whole lot of hostility.

MR MEAGHER: I'm sure.

PROF SNAPE: So thank you very much for your contribution.

MR MEAGHER: All right, and I will come back to you on those two questions.

PROF SNAPE: We will now close the hearings for today after I have extended my usual invitation; that is, if anyone is present who wishes to make an oral presentation - we have no takers, so we will close the hearings for today and resume at 9 o'clock tomorrow in the same place. Thank you.

AT 4.58 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 9 DECEMBER 1999

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