12/5/99

PRODUCTIVITY COMMISSION INQUIRY

INTO

BROADCASTING LEGISLATION

AND REGULATION

SUBMISSION BY OZEMAIL LIMITED

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LIST OF ABBREVIATIONS

ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Commission
ACA	Australian Communications Authority
ACCC	Australian Competition & Consumer Commission
ACIF	Australian Communications Industry Forum
BSA92	*Broadcasting Services Act 1992*
DCA98	*Television Broadcasting Services (Digital Conversion) Act 1998*
FTA	Free to Air
HDTV	High Density Television
MDS	Multipoint Distribution System
RA92	*Radiocommunications Act 1992*
SBS	Special Broadcasting Service
Spectrum	Radio Frequency Spectrum
TA97	*Telecommunications Act 1997*
TPA74	*Trade Practices Act 1974*
TV	Television

OZEMAIL POLICY POINTS

Format of Submission

The main body of this submission covers matters of core importance to OzEmail. Answers to the specific questions asked in the Productivity Commission Issues Paper are attached at Annex B.

Focus of the OzEmail Submission

This Submission focuses on the phenomenon of technological convergence and its potential impact on broadcasting and related markets.

A significant shift in regulation is necessary to enable consumers to obtain the full benefits quickly of new and diverse service options. Change should facilitate:

- early provision of these services at prices affordable to the community generally,
- entry by new service providers to these wider markets available through new technology,
- enhancement of the quality of FTA transmissions by existing service providers, and
- substantial participation by Australian industry in software and hardware development and supply and marketing of products.

The shift in regulation should recognise that the two converging markets, broadcasting and telecommunications, are each dominated by a few major players controlling formidable barriers to entry. With the objective of creating competitive markets sustainable in the long term, a changed regulatory environment should ensure that new players have a reasonable business chance of surmounting those barriers, especially access to spectrum, infrastructure and customer equipment.

Broadcasting and Datacasting

Broadcasting

The concept of broadcasting is widely understood, particularly in relation to its delivery through the radio frequency spectrum. It is a **point-to-multipoint one-way service.** Its legal definition in the BSA92 Section 6(1) emphasises the delivery of **programs.** That Act in Section 11 defines several types of broadcasting service. In essence these are:

- FTA national broadcasting services provided by the Government (Section 13), by implication intended to appeal to a wide section of the population.

- FTA commercial broadcasting services (Section 14) intended to appeal to the general public,

- FTA non-profit community services (Section 15) by implication intended to appeal to a wide section of the population within a limited geographic area,

- Subscription broadcasting services (Section 16) intended to appeal to the general public (Pay TV and pay radio), and

- Subscription narrowcasting services (Section 17 and 18), each clearly intended for limited audiences, limited purposes or periods of time.

The reality is that the TV broadcasting services bands of the spectrum designated under the RA92 Section 31 are almost totally occupied by the 2 FTA national and 3 commercial TV broadcasting services, with a few community TV broadcasting services in some cities. Subscription broadcasting services are either in spectrum outside the TV broadcasting services bands (MDS or satellite) or carried by cable/fibre systems, though there is no legal bar to their transmission in the broadcasting services bands.

BSA Section 34 permits subscription broadcasting services in the broadcasting bands, given certain conditions, but it is most unlikely that any licences will be issued in those bands in the next decade.

Effectively there is an oligopoly of 3 powerful FTA commercial players for the mass market of TV programs and associated advertising. The 2 national TV services offer some additional competition, the ABC with programs and the SBS with advertising revenue. The oligopoly is fundamentally based on the bandwidth limitations of the spectrum, the current broadcasting technology and the way the ABA has planned the spectrum under the BSA92 Part 3.

The method of planning leading to the current level of spectrum occupation is based as much on economic and regulatory factors as technical factors. The current spectrum situation can change dramatically with the advent of digital transmission. Spectrum matters are discussed below and in Annex B.

Datacasting

The concept of datacasting is not widely understood, mainly because the terminology is new. The central concept of broadcasting, the program, is missing. By contrast, selection and receipt of data in a **"non-program"** form via the internet is now familiar to a broad cross-section of the general public.

Datacasting has as much in common with telecommunications services as it does with broadcasting services, a fact implicitly recognised in its legal definition in the DCA98 Schedule 2:

> ***datacasting service*** means a service (other than a broadcasting service) that delivers information (whether in the form of data, text, speech, images or in any other form) to persons having equipment appropriate for receiving that information, where the delivery of the service uses the broadcasting services bands.

Datacasting is legally different from broadcasting. However a proportion of datacasting may also look and feel like TV, especially Pay TV, as datacasting may deliver information in the form of images and speech, as shown by the definition above.

The commonality with telecommunications is that datacasting may look and feel like the Internet and that data may be delivered tailored to individual customer preference. This preference is most effectively exercised if there is a return path via modem to the datacaster, either via telecommunications or radiocommunications. The customer can transmit instructions on data requirements to the datacaster.

If greater legal separation between broadcasting and datacasting is required, the presence of an effective back channel for the majority of customers might be the key distinguishing feature.

As with the FTA broadcasting industry, the telecommunications industry still tends to be oligopolistic, with 1 massive player in Telstra owning most of the fixed infrastructure, 1 large player in Optus owning nearly all the remaining infrastructure, and a group of minor players owning little or no infrastructure. Telstra and Optus have most of the market power.

Legislative Implications

The implications of the discussion above is that datacasting is a truly convergent service sitting astride both the broadcasting and telecommunications industries, especially where a back channel is available to the customer. Convergence must therefore be examined in terms of both broadcasting and telecommunications legislation which for many years have operated with different objectives, regulatory regimes and methods of operation. The following table highlights some of the principles and outcomes.

BSA92	**TA97**
To 1986 (approx) FTA commercial oligopolies of 3 players in major cities and commercial monopolies elsewhere. National FTA competition from the ABC.	To 1991 Legal monopoly of all of all infrastructure and services by Government (Telecom, OTC, Aussat).

1986 - 1992 "Equalisiation" by enlarging FTA service areas outside major cities to provide up to 3 FTA commercial services elsewhere. National FTA competition provided by ABC and SBS.	1992 – 97 Legal duopoly of fixed infrastructure – Telstra and Optus Legal triopoly of mobile infrastructure – Telstra, Optus and Vodaphone Full competition in services with few players other than the 3 above Major regulation of service packaging, prices and access to facilities and products, to allow effective competition by Optus and service providers against Telstra.
1992 - present Legislation allowing greater diversity of services and covering broadcasting other than through the spectrum. 3 FTA oligopolies continuing but with competition from subscription broadcasting services, satellite and cable, effectively dominated by Telstra (Foxtel) and Optus Vision.	1997 – present Full competition in infrastructure and services, with Telstra and Optus still dominant. Major regulation of service packaging, prices and access to facilities and products to enable effective competition by new entrants against Telstra, Optus and Vodaphone.
Current Key Points LIMITATIONS ON COMPETITION SUBSTANTIAL BROADCASTING SERVICES ACT CONTENT REGULATION INFRASTRUCTURE HEAVILY SPECTRUM ORIENTED FOREIGNERS NOT ALLOWED IN FTAs (beyond 15%)	Current Key Points OPEN COMPETITION PRIMARILY TRADE PRACTICES ACT REGIME WEIGHTED TOWARDS NEW ENTRANTS NO CONTENT REGULATION (except some pornography rules) INFRASTRUCTURE HEAVILY CABLE/FIBRE ORIENTED (except mobile) FOREIGNERS WELCOME (to 100% except Telstra)

Both sets of legislation emphasise the interests of the customer, avenues for customer complaints, competition, efficiency of provision Australia-wide service, innovation, diversity of services and development of the industry. However, as shown in the table above, there are key differences affecting key objectives, principally competition.

FTA broadcasting is limited legally by a maximum number of licences, foreign ownership restrictions, cross media restrictions and spectrum planning. Telecommunications competition is regulated primarily by the open regime of the TPA74, with unlimited entry to the market and major protection of minor players from those who are dominant or who have bottleneck control.

Datacasting is the epitome of convergent services. If Australia is to reap the benefits of these services, the regulatory regime needs to move closer to the telecommunications/TPA model than the broadcasting model. This could be achieved either by:

- amalgating the TA97 and BSA92 with the BSA92 effectively becoming part of the TA97 with additional objectives and rules, for example regarding Australian content and FTA program standards, or

- retaining parallel Acts with both strongly linked to the TPA74.

OzEmail prefers amalgamation of the Acts. The more open regime of telecommunications is better suited to a future of more diverse services enabled both by new technology and the reduction of spectrum scarcity through digitisation.

An essential element of changed legislation is to weight it towards new entrants for a period, just as the *Telecommunications Act 1991* enabled Optus and Vodafone to start against a Telstra monopoly. The replacement TA97 is now weighted to allow new entrants to start against Telstra, Optus and Vodafone.

Spectrum Planning for TV broadcasting and Datacasting

Spectrum planning is a critical issue affecting the capacity of the Government to licence datacasters in the period up to 2009. Unless this happens, datacasting will be limited to the current oligopoly players. Without wider competition than an oligopoly, innovations and new services will follow the usual oligopoly path, namely that Australia will be an importer of software and intellectual property created by those who start earlier overseas.

This opportunity is already slipping away. Australia may forfeit the opportunity to be an innovator and exporter of software and intellectual property in this new field.

Datacasters could be begin transmitting now in the analog mode, if they could obtain licences to use spare TV broadcasting services spectrum.

Australian TV Channel allocations are listed in Annex A. The TV broadcasting services band channels are as follows:

Band	Channels	Remarks
Band 1 VHF	3	not suitable for digital
Band 2 VHF	3	mostly now allocated to FM radio
Band 3 VHF	9	to be reduced to 8
Band 4 UHF	8	
Band 5 UHF	34	

Potentially available for digital and existing analogue including translators are 8+8+34 = 50 channels. Some fundamental technical planning rules illustrate why fewer than 50 analog TV services can be provided in each geographic area:

- because analog TV receivers are designed to be simple and affordable, for each channel used for analog TV, the channel adjacent to it must be unused in the same geographic area, otherwise interference would ruin the picture,

- a channel used in 1 geographic area cannot be used in the adjacent geographic area (eg Melbourne, Geelong), again because of interference, and

- to fill "holes" in coverage and extend geographic service areas, translators must be used, consuming more channels subject to the restrictive rules above.

The net effect is that of the 50 channels, fewer than 10 may be available for use in many geographic areas. The actual number is dependent on a number of factors, principally terrain and the need for translators. Sometimes fewer translator channels could be used by substituting microwave links which do not use the standard TV channels.

Digital transmission radically changes these rules, for example, in some circumstances:

- adjacent channels for digital and analog services may be used in the same geographic areas,

- the same digital channels can be used in adjacent geographical areas, provided that the program is exactly the same, and

- translators can use the same frequencies as "parent" transmitters.

However between now and 2009, both analog and digital channels must coexist, increasing spectrum scarcity for datacasting. Spectrum scarcity should "vanish" from 2009. The critical issue of how to licence a sufficient number of datacasters before 2009 to provide real innovation and competition depends on the way the ABA plans and manages the broadcasting spectrum.

The DCA98 empowers and requires the ABA to take account of datacasting in spectrum planning (by inserting into the BSA92 new Sections 34(1)(f), (3), (4) and (5) and in DCA98 Schedule 4 Section 13).

These sections could be strengthened by requiring the ABA to plan a minimum number of channels for datacasting for the period to 2009, say "at least 3", on an equal status with the requirement for FTA national and commercial channels. This might mean that different techniques are needed to meet the translator requirement, but OzEmail believes that such a minimum figure is realistic.

Cost of Spectrum

The original FTA commercial TV broadcasters in the 1950s received spectrum free in return for obligations to provide services under a given regulatory regime. The Commonwealth collects a premium above normal income taxation for these oligopoly licences through annual taxation of revenue. This system enabled the broadcasters to undertake the substantial investment needed to establish infrastructure and services without up-front taxation and recognised that large negative cash flows precede positive cash flows and eventually profits.

By the late 1980s the opinion of economists and then Governments moved towards allocating spectrum for mass market services by auction rather than "beauty contests". Australia moved initially to a hybrid model for telecommunications. The "2nd Telecommunication Licence" (Optus) had large "beauty contest" obligations in roll out and industry development plus a money bid. Of the total bid of $800M, around $300M was attributed to the value of spectrum for mobile service. Similarly the later Vodafone winning bid was $140M.

A proportion was allowed to be paid over several years, but the net effect was that initial mobile competition in Australia was fettered by around $440M of early payments during the initial investment and negative cash flow stage. Mobile customers are still paying higher prices as a result.

The satellite and MDS Pay TV licences brought bids totalling $200M, all with up-front payments. This very high cost was one of the major reasons for the subsequent bankrupting of Australis, which lead to loss of service to customers, job losses in the industry and lesser competition against remaining players in the market.

Recently 800MHz and 28/31GHz licences have brought $380M and $66M respectively. The jury is out on whether the services using the spectrum will be economic.

Similarly in the USA some spectrum auctions have been resounding financial successes for the Government. However a number of enthusiastic bidders subsequently were unable to pay. Their business cases did not support the bids.

The message in allocating spectrum for datacasting is that new entrants should not be saddled with high up-front spectrum fees. A Government success in early revenue raising would be directly contrary to its real objectives of greater competition, affordable prices, innovation in service provision and flow on benefits in developing and exporting Australian software and hardware.

The "beauty contest" method of allocation can be fair and effective if properly structured. It can incorporate taxation of revenue if a return above income taxation is considered necessary in policy terms, for example parity with existing broadcasters in the same spectrum bands. Alternatively an extended auction bid payment period could be allowed, say at least 5 years.

Any up-front payment will restrict new entrants in competing effectively with existing broadcasters who already own infrastructure and operating businesses and who may use part of their existing frequency allocations for datacasting.

Current policy is to charge the existing broadcaster a fee for datacasting to provide parity with new datacasters. This partly balances the playing field but ignores the proven experience in telecommunications, namely that monopolists and oligopolists confronted with new competition will cross subsidise from their existing strength in their current core businesses. Telstra did exactly this with its flexiplans when Optus entered the market.

Summary of Key Points

OzEmail is one of Australia's leading ISPs with widespread points of presence in metropolitian and regional Australia. It is poised to deliver innovative new datacasting services and believes that early entry to the market is the key to success against much larger players with strong businesses in broadcasting and telecommunications.

To succeed it needs a regulatory environment which:

- enables early access to spectrum, starting with analog and moving to digital transmission,
- allows payment of Government spectrum taxes timed with positive cash flows and profits, not requiring crippling up-front payments,
- delivers actual access to infrastructure through a regulator willing to enforce access rules currently provided under the DCA98, TA97 and TPA74,
- regards the TA97 regime as more appropriate to content regulation for datacasting than the BSA92 regime,

- clearly separates datacasting from broadcasting in a practical sense, perhaps through the existence of widespread use of a back channel by the customer.

More detail is contained in Annex B, which suggests answers to many of the Productivity Commission questions.

Annexes: A. TV Broadcasting Channels
B. Answers to Productivity Commission Questions

ANNEX A

TV BROADCASTING CHANNELS

Channel Numbers and Frequency Limits

VHF			*UHF*		
BAND I			**BAND IV**		
0	45-52	MHz	28	526-533MHz	47 659-666 MHz
1	56-63	MHz	29	533-540MHz	48 666-673 MHz
2	63-70	MHz	30	540-547MHz	49 673-680 MHz
			31	547-554MHz	50 680-687 MHz
			32	554-561MHz	51 687-694 MHz
BAND II			33	561-568MHz	52 694-701 MHz
3	85-92	MHz	34	568-575MHz	53 701-708 MHz
4	94-101	MHz	35	575-582MHz	54 708-715 MHz
5	101-108	MHz			55 715-722 MHz
					56 722-729 MHz
					57 729-736 MHz
			BAND V		58 736-743 MHz
BAND III			36	582-589MHz	59 743-750 MHz
5A	137-144	MHz	37	589-596MHz	60 750-757 MHz
6	174-181	MHz	38	596-603MHz	61 757-764 MHz
7	181-188	MHz	39	603-610MHz	62 764-771 MHz
8	188-195	MHz	40	610-617MHz	63 771-778 MHz
9	195-202	MHz	41	617-624MHz	64 778-785 MHz
9A	202-209	MHz	42	624-631MHz	65 785-792 MHz
10	208-215	MHz	43	631-638MHz	66 792-799 MHz
11	215-222	MHz	44	638-645MHz	67 799-806 MHz
12	223-230	MHz	45	645-652MHz	68 806-813 MHz
			46	652-659MHz	69 813-820 MHz

Notes: 1. The dial markings on some older UHF tuners show only approximate channel numbers
2. No new assignments will be made to television services in Band II
3. No new assignments will be made to television services on channel 5A
4. New services on channels 10 and 11 may be assigned to channel 10 (209-216 MHz) and channel 11 (216-223 MHz)

ANNEX B

ANSWERS TO PRODUCTIVITY COMMISSION QUESTIONS

1. Notes

The bold headings from 2.1 onwards are the bold headings of the Productivity Commission Issues Paper.

The question numbers in italics comprise:

- The 1st and 2nd digits are the page number of the Productivity Commission Issues Paper on which the question appears,
- The 3rd and 4th digits are the order of the questions on that page of the Productivity Commission Issues Paper.

Not all question are answered but those not answered are included in sequence in this paper for ease of reference.

2.1 The changing nature of broadcasting

10.01. What major developments do you anticipate in the broadcasting industry in the short to medium term?

The TV industry is likely to:

- introduce HDTV slowly after digitisation as programming becomes available,
- use its capacity outside HDTV time for enhanced programs (eg multi angle sports), multi channelling and 1-way datacasting,
- attempt to enter 2-way datacasting to fight off new competition from datacasters, and
- attempt to obtain Pay TV transmission capacity to compete with pay TV operators, perhaps by "migrating" their datacasting to pay TV.

10.02. What major developments do you expect in related areas including but not limited to telecommunications and internet technology in the short to medium term?

New players will enter the datacasting market, depending on spectrum availability, and perhaps "migrate" some of their datacasting time to pay TV. Both old and new players will compete strongly in the financial transactions market.

10.03. What implications does technological convergence have for you or your business, and what implications does it have for broadcasting policy?

Convergence is critical to the continuing existence of the business, the most important issue being that in implementation of broadcasting policy new players are not in practice shut out of the market by:

- spectrum scarcity, or
- existing broadcasting players leveraging on their current broadcasting market dominance.

Broadcasting policy must include the TPA74 , including its access rules, to reinforce those in the DCA98, allowing new datacasting players into the market very soon.

10.04. What are, or might be, the impacts of existing Australian broadcasting policy on the development of new broadcasting and related services?

Broadcasting policy, by retaining its current oligopoly structure in players and types of services, could stifle new competition and exacerbate the current trade imbalance in programs and software development.

10.05. What non broadcasting legislation is impinging on the development of new broadcasting and related services?

The TA97, RA92 and TPA74 will all affect the development of new broadcasting services.

10.06. Is there sufficient coordination between the various regulatory instruments governing broadcasting and related industries to ensure that innovation is not stifled? Is a more comprehensive approach required?

The existing key acts, the BSA92, TA97, RA92 and TPA74 are coordinated in their operation but a policy shift of the BSA92 towards the TA97 and the TPA74 is needed. This is covered in more detail in the main part of our submission.

11.01. What is the structure of the Australian broadcasting industry including related industries and sub-sectors such as content providers? Who are the major players? What are the important alliances?

11.02. What are some of the competitive advantages and disadvantages of the various sectors of the local industry? What are some of the limitations?

11.03. What are the relationships between broadcasting and other media? How significant is competition between different forms of media?

Broadcasting is intimately related to datacasting in that:

- common infrastructure is used either via the radio frequency spectrum or cable/fibre (the latter use is not within the legal definition but in a broad sense it is),
- common set top boxes can and should be used,
- some content of both services will look and feel the same.

Competition between the 2 is likely to cause both to be more innovative and service oriented to avoid one taking "viewing time" from the other.

11.04. What other linkages are there with the wider economy, particularly with respect to the area of electronic commerce?

Datacasting is likely to be a major medium of electronic commerce for residential users.

2.2 The public interest and the objectives of broadcasting policy

Box 1 **Objectives of the *Broadcasting Services Act 1992***

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and

(c) to encourage diversity in control of the more influential broadcasting services; and

(d) to ensure that Australians have effective control of the more influential broadcasting services; and

(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

(f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and

(g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(i) to encourage the provision of means for addressing complaints about broadcasting services; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

Source: Broadcasting Services Act 1992.

11.05. Implicit in the objectives is the notion that in the absence of government intervention, Australia's broadcasting industry would not address these problems adequately. Do you agree or disagree? Please give reasons.

We mostly disagree, believing that most problems could be adequately addressed by the ACCC under the TPA74, which contains strong anti competitive rules including an access regime. This regime might have to be strengthened to be more specific about broadcasting infrastructure along the lines of the TPA74 Parts XIB and XIC and might incorporate the access rules of the DCA98 Schedule 4.

Our belief is predicated on the ability of the datacasting, internet and pay TV industries to provide competition in markets which are near substitutes for broadcasting, this ability being dependent on preventing the 3 FTA commercial broadcasters and the 2 major telecommunications players increasing their market power.

The policy objectives which might not be achieved in the absence of government intervention are those relating to:

- Australian control and Australian character, and
- Respect for community standards and child protection.

Regarding Australian control, its necessity is dubious given the public perception that it entrenches the influence of Australian "media moguls" and the fact that other key Australian industries have substantial foreign ownership without detrimental effect on Australian sovereignty.

Regarding Australian cultural identity, represented by Australian programs, such requirements could equally be handled under other general government legislation and policies on industry development incentives.

Community standards and children's programs will probably require continuing specialist legislation as the electorate would never tolerate an open slather regime on pornography and violence.

11.06. Does this list adequately describe the social, cultural and economic problems which broadcasting legislation should address? If not, please indicate what should be changed, added or removed

Our previous answer indicates that the list is adequate. In fact it may be too extensive in view of other current national policies and legislation which could be made applicable.

12.01. From the consumers' perspective which objectives are becoming more (or less) relevant and why?

Items (a) (b) (c) (f) above are becoming more relevant because technology is enabling a wider range of services to be delivered and consumer expectations in service delivery continue to rise. Oligopoly environments rarely provide the incentives to innovate and change as quickly as more competitive environments. Whether these objectives need to be achieved through this Act is covered in other questions.

Item (d) is largely irrelevant to the consumer and can conceivably detract from consumer interests. This is not to say that the industry should be foreign owned. The possibility of foreign ownership should exist to keep existing players on their toes.

Social dimensions of the public interest

12.02. Does the current broadcasting policy framework support access to adequate broadcasting services throughout Australia, including regional or remote areas? What could be done to improve matters?

The current framework has already achieved remarkable coverage given the size and population dispersion. The most effective improvements would be:

- Increasing the effective capacity of broadcasting services spectrum to allow more services faster, as stated in the main body of the submission,
- Lowering Government charges and fees, especially for spectrum use,
- Increasing effective competition in the telecommunications market to lower transmission costs to rural and remote areas – a process already underway, including competition in satellite services – again the lowering of charges for spectrum use is important.

12.03. Does the existing framework provide and ensure fair and accurate coverage of matters of national and local significance?

13.01. Does the current policy framework provide adequately for the use of different technologies and infrastructure to provide broadcasting services, including in regional or remote areas?

13.02 Are the current regulations on control and ownership, foreign investment and cross-media, effective in promoting plurality of opinion and preventing concentration of political power in the hands of a few?

In an answer above we have questioned why, with expanded competition from substitute services, foreign ownership and investment should be an issue. Cross media rules, to the extent that they are necessary to avoid concentration of political power, could equally be placed in the TPA74. Cross media rules should be necessary only if general competition rules fail.

13.03 Does existing regulation ensure diversity in news, current affairs and political commentary?

Diversity in these matters is greatly assisted by the presence of the ABC and SBS. It should be further helped by the datacasting/Pay TV market providing substitutes.

13.04 Is existing regulation of political broadcasting appropriate and is it achieving its objectives?

13.05 Does the existing framework of broadcasting policy provide adequately for community standards to be upheld?

13.06 Does the existing framework of broadcasting policy meet the needs of Australian children?

We believe that the existing framework is effective and provides a model for substitute markets on which to base codes of practice.

13.07 How important are media other than television as either sources of potential benefit or harm to children? Please explain and give examples.

Films, video and the Internet are the other predominant sources of benefit or harm to children. Films and videos are more likely than broadcasting to harm children as pornographic and violent material is more readily available to them if parental control is lax. Harmful sites exist on the Internet but overwhelmingly it is a source of positive material. Parental control is the key but parents need effective gateways built into home software.

13.08 Are there means other than content regulation for meeting the needs of children?

Content regulation is probably the best method of meeting the needs of children, the major alternative being continuing education programs aimed at parents and teachers on the need to exercise control over harmful material. However parental control and teacher control would cover only the negative aspects of programming, ignoring the positive.

13.09 Are existing educational broadcasting services adequate, or do they take full advantage of the opportunities available with new technology? What should be done, if anything, to improve educational services?

Existing educational broadcasting services are not interactive and therefore do not have the potential of two way datacasting/Internet sevices. The best way to improve services is to facilitate the expansion of datacasting and Internet services. In this regard OzEmail has already deployed an extensive infrastructure in NSW providing services to the State's 2246 government schools. It is currently extending its network to service the needs of TAFE in Queensland.

13.10 Are existing arrangements adequate to meet the broadcasting needs of community groups, including indigenous and ethnic communities?

13.11 Do different regulatory regimes and spectrum availability for different types of broadcasting affect the ability of community groups to broadcast effectively?

13.12 To what extent does availability of, or access to, physical infrastructure affect community broadcasting?

13.13 Are there social objectives that are ignored or treated inadequately by existing broadcasting policy?

13.14 What challenges do the new broadcasting technologies pose for achieving Australian social objectives?

New broadcasting technologies should enhance Australian social objectives if these are defined as providing increased availability to audiences of a diverse range of services. The real challenge is to increase competition to ensure that speedy innovation and provision of the service occurs. There are undoubtedly heavy costs involved for service providers. Government should be aware that Government taxation and fees (other than income tax) can limit their ability to provide them.

Promoting Australian identity and culture

14.01 What do you perceive as being the Australian cultural objectives which can be promoted by broadcasting?

14.02 Is broadcasting policy achieving Australian cultural objectives?

14.03 What are the implications of new media types for the portrayal of Australian culture?

14.04 What are the strengths and weaknesses of the current broadcasting policy framework for the promotion of Australian culture in Australia and abroad?

14.05 What opportunities do new forms of broadcasting provide for promotion of Australian culture in Australia and abroad?

Economic dimensions of the public interest

14.06 How have restrictions on entry and competition affected the structure, conduct and performance of the broadcasting and related industries?

Restrictions on entry are already hampering datacasting, for which OzEmail has been attempting to gain entry since mid 1998.

14.07 Have government controls on the number of licences and other regulation restricted or promoted more diverse or innovative programming, and facilitated or retarded growth of the industry?

See 14.06

14.08 What are the implications of such controls for the industry to compete globally?

As mentioned above, timing is critical. The USA dominates many industries because it started them, for example the PC and associated software idustries. Whoever is early into the datacasting industry will have a first mover advantage in intellectual property and software for this new industry. Australia could be among the first but current regulation is preventing start up.

15.01 Can the cultural and social objectives be met with less regulation of competition? Or is more regulation of commercial broadcasting necessary to achieve them?

Achieving cultural and social objectives can be met with less regulation of competition. They can be achieved through specific content requirements and industry codes of

practice. Such regulation may still be appropriate for traditional TV broadcasting "programs" but not for the "non program" element of datacasting.

15.02 Are there alternative, better, means by which to meet the objectives?

The legislation could list principles on which industry codes of practice are to be based, leaving the industry to formulate codes and observe them. This could be backed up by an ABA power for use if the code of practice fails.

Codes of practice are widely envisaged under the TA97 and the Australian Communications Industry Forum (ACIF) has been established by the industry with the specific purpose of creating them.

2.3 The economics of broadcasting

15.03 What are the main markets relevant to broadcasting? How are they changing?

15.04 What are the main sources of economies of scale and scope, and what are the implications for the future competitiveness and structure of the Australian industry?

15.05 What are the most significant competitive relationships affecting broadcasting? How are they likely to change as digital broadcasting is introduced?

Provided that new datacasters actually succeed in entering the market, existing broadcasters will face competition from services which are partial substitutes for conventional broadcasting.

15.06 To what extent are broadcasting services, widely defined, likely to become business services, rather than education, entertainment or information services? Is Australia's regulatory regime adequate to deal with the issues that are likely to emerge?

They will become business services in the sense that they will connect business with residential customers, especially where a back channel is provided. Such services will look and feel like the Internet. They will be complementary or parallel to other business services, for example financial transactions over the Internet, but will not replace them.

15.07 Please describe major sources of revenue and regulatory constraints on revenue.

15.08 Should there be different regulations on advertising revenue for FTA and subscription television?

While the number of FTA commercial TV broadcasters continues to be very limited, the ratio of advertising time to program should be regulated in the interests of the FTA viewer. In a more competitive environment viewers would simply switch away from channels with excessive advertising, making such regulation unnecessary.

For subscription services there should be no advertising quantity restraints as consumers have the option of not subscribing to the service. Regulation of content regarding trade practices and community standards should be the same for both.

15.09 Are advertising markets becoming more or less fragmented between alternative media?

15.10 How are advertisers responding to the increasing range and diversity of broadcasting services?

16.01 What are the implications for broadcasting of changes in the measurement of advertising effectiveness?

16.02 Is advertising expenditure on FTA broadcasting tending to be more focused on the particular demographics of audiences?

16.03 What are the implications for the business of broadcasters of large parts of their revenues being dependent on single events (for example the Olympics) or entertainment segments (for example Australian rules football)?

16.04 On the costs side of the business, what are the key trends in:

- *operating costs for news and program purchases and production; and*
- *capital expenditure (including for digital transmission)?*

16.05 What are the trends in operating margins?

2.4 Australia's current broadcasting regulation

Principles of regulation

Box 2 **Regulatory Policy under clause 4 of the BSA**

1. The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.
2. The Parliament also intends that broadcasting services in Australia be regulated in a manner that, in the opinion of the Australian Broadcasting Authority (ABA):
   (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services; and
   (b) will readily accommodate technological change; and
   (c) encourages:
      (i) the development of broadcasting technologies and their application; and
      (ii) the provision of services made practicable by those technologies to the Australian community.

Source: Broadcasting Services Act 1992

17.01 What do you understand by 'the degree of influence...in shaping community views in Australia'? Views about what?

A degree of influence is an ability to create or change views on a subject. That ability can be objectively measured by the physical fact of market coverage and by market research on who within the coverage actually listens and whether views are formed or changed.

Whether the views matter is highly subjective. There are probably a few matters which a simple majority, say 66% of the population, would agree are core matters, namely,

- Australia's national sovereignty and the ability to maintain it (eg through effective national defence),
    - national and state economic policy and performance,
    - effect of these on the individual (the rich and poor),
    - true and corruption free separation of powers in government, business and the judiciary,
    - a minimum level of behavioural standards (eg pornography and violence),
    - concentration of non-elected power, and
    - existence of substantial discrimination against classes of people.

17.02 Which forms of broadcasting have the most influence in shaping community views in Australia?

National and commercial FTA TV, because of their blanket coverage of the nation and the power of visual images above the pure aural impact of radio.

17.03 Is 'degree of influence' still an appropriate criterion for designing and applying broadcasting regulation? If not, can you suggest alternative regulatory principles?

Degree is an appropriate criterion. In a democratic society an excessive power to shape opinion has the same potential for oppression, for large groups of society to individual persons, as excessive market power has in commerce. The concept of regulating high degrees of influence is similar to other important concepts such as separation of powers of the Parliament, executive and judiciary and the TPA74 powers controlling oligopolies.

Such regulation would be less necessary with greater competition in all broadcasting and related services.

17.04 Does the Act adequately address the public interest in media?

17.05 Can influence be measured, and if so, how?

See 17.01

17.06 What are the strengths and weaknesses of the implementation of the regulatory principles of the BSA? How could implementation be improved?

17.07 Should the regulatory principles be changed to reflect technological change and the erosion of distinctions between delivery platforms? If so, how?

We have suggested above that technological change requires a move more towards the principles of TA97 regulation with fewer special rules for broadcasting and greater access to broadcasting services spectrum for convergent services. The current pace envisaged by legislation is too slow.

18.01 Should the regulatory approach be technologically neutral, that is, not distinguishing between means of delivery? Or, do the different delivery platforms justify different regulations?

Preferably the approach should be neutral, except that:

- If content is to be regulated, it is more appropriate to regulate free mass market one-way services than those services for which people pay and choose the content, and
- Spectrum scarcity justifies regulatory methods of allocation of capacity.

Ownership and control

18.02 What are the advantages and disadvantages of the current broadcasting ownership and control restrictions? Could the ownership and control provisions be improved to reflect better the social, cultural and economic dimensions of the public interest?

See 11.05 and 18.03

18.03 Will technological convergence and competition between the traditional broadcasting services and other newer services reduce or increase the need for special limitations on control and ownership? What form should they take?

Technological convergence and competition should reduce the need for special limitations on ownership and control, provided that:

- an interim regulatory regime designed to enable new players to enter the market quickly applies, and
- the full force of the TPA74 applies to the industry.

Given appropriate "degree of influence" controls, there is no evidence that foreign ownership would be any more or less advantageous than in other sections of the economy.

18.04 Should there be different forms of regulation of control and ownership for different media?

No, given a sufficient level of competition.

19.01 If you are of the view that efficiency gains can be achieved through the relaxation of these provisions, can you quantify these gains?

19.02 If you are advocating that the ownership and control provisions be relaxed, should the changes occur simultaneously or are there benefits from sequencing or phasing the changes? For example would there be benefits from relaxing foreign ownership before amending the cross media rules?

19.03 Are limitations on control and ownership necessary to achieve the objective of diversity of opinion? Are there other policy instruments that should be considered?

See 18.03

19.04 Should there be special limits on foreign ownership applying to television, radio and newspapers? If so, why? If you are of the view that special limits are appropriate, should they be extended to other platforms such as telecommunications or the internet, and if so, how?

The TPA74 and a forceful ACCC are all that is required.

19.05 Are foreign owners more or less likely than Australian owners to influence the editorial policy and/or content of their Australian media?

Probably not. See also 19.04

19.06 Are Australia's general policies on foreign investment inadequate for the broadcasting industry, and if so, in what ways?

See 19.04

19.07 If you are advocating that cross media rules be maintained, should their scope be broadened to reflect the effects of convergence in technologies, services and markets? If so, how?

19.08 What are the implications of the restrictions for the Australian industry's ability to compete in global markets?

Reduction of creativity in Australia, a drain of talent to overseas employment and further trade deficits.

19.09 What lessons regarding ownership, control and diversity can we learn from other countries?

Program standards

20.01 What are the advantages and disadvantages of Australian content regulation? Is it effectively implemented? How could it be improved?

See 20.02

20.02 Should Australian content continue to be regulated? Do consumers want such regulation of content?

The current Australian content rules for FTA broadcasting appear to work well for both producers and viewers. There is therefore no prime facie argument for changing them. The link between them and the higher Government objective of reflecting a sense of Australian identity probably exists but is not quantifiable.

Preferably such rules should not be required. Given that sweeping changes in the amount of competition, ownership, control and Australian content could occur simultaneously, a gradual approach on the level of Australian content could be implemented.

A combined strategy of lowering mandatory levels over time, perhaps 5 years, and mandating that the industry develop codes of practice aiming at particular levels, could be tried. If the industry appeared to be heading in a politically unacceptable direction then re-regulation might be needed.

For subscription services, as covered earlier, there is no logical justification for such rules in services for which the consumer can choose whether or not to subscribe.

20.03 How should Australian content be measured?

20.04 Is some Australian content more important than others? If so, why?

20.05 Different approaches to regulating Australian content are adopted for the different forms of broadcasting. Is this appropriate? How could this issue be approached in the context of technological convergence?

The current rules target oligopoly services with wide market appeal and influence. It is appropriate that narrowly based services and those for which customers choose to pay should not be subject to them. The best way of maximising Australian content, as covered above, is to enable new players in datacasting to start early and invent their own content here before others do overseas.

20.06 Is there any need to impose Australian content standards on the commercial FTAs when the preservation of cultural and social values could be pursued through the national broadcasters, in particular the ABC?

20.07 To what extent do the national broadcasters (the ABC and SBS) provide services that are competitive with, rather than complementary to, other media sectors? What are the implications of any such competition generally, and for content requirements and other regulations on other broadcasting sectors in particular?

20.08 What are the effects on competition between broadcasting sectors such as FTA and subscription television of the current regulatory framework?

20.09 Alternatively, should there be universal content standards applicable to all broadcasters of a particular type, such as FTA television?

21.01 What lessons can we learn from experience with content regulation in other countries?

21.02 What are the advantages and disadvantages of regulating children's television?

21.03 How relevant is regulating the commercial FTA channels when children can switch to other less regulated communications services such as subscription TV, the internet, or radio?

21.04 What evidence is there of the reach and impact of children's television in Australia or in other countries?

21.05 What are the strengths and weaknesses of a self regulatory approach to program standards through the development of codes of practice? Please provide examples and evidence, if available.

The strengths are:

- Less formal, complex and costly procedures, and
- Greater commitment by participants in the development of codes.

The weakness is that it is harder to deal with infringements.

21.06 Are there inconsistencies in the codes of practice applying to different forms of broadcasting?

21.07 What are the strengths and weaknesses of codes of practice for regulating advertising?

As for 21.05. However the TPA74 provisions should remain.

21.08 Do the codes achieve the Government's objectives as expressed in the BSA? Do they adequately reflect community attitudes toward broadcasting?

21.09 How binding are the various forms of Australian content requirements on choices made by television programmers? Are they ever exceeded? If so, why?

21.10 Are the maintenance of Australian content requirements the best way of supporting Australian content providers? Could the same objective be achieved by other means?

22.01 Do the current provisions hamper the production of programs suitable for international sale?

22.02 Is regulation an appropriate way to address the issue of quality in programming? How should quality be assessed?

22.03 What should be the appropriate balance between legislation, standards and codes of practice?

Digital conversion

23.01 What are the advantages and disadvantages of requiring conversion to digital transmission technology according to the schedule prescribed from 1 January 2001? Is this timetable achievable or realistic?

There are several advantages:

- the earlier the process starts, the earlier analog transmissions can cease, thereby substantially reducing spectrum scarcity,
- reduction in spectrum scarcity will enable convergent technologies such as datacasting to operate competitively among themselves and as a partial substitute for FTA broadcasting,
- conversely broadcasters with enhanced services will compete with convergent technologies.

The timetable is achievable as most of the fundamental transmission structure exists. The changeover of receivers will present problems regardless of the start dates.

Starting early should also provide opportunities for Australian industry in associated hardware and software.

23.02 What are the costs and benefits of simulcasting analogue and digital signals for eight years? Are there efficient alternative measures that could be adopted to ensure that households continue to receive television broadcasts on their existing sets?

The period of 8 years is too long, because:

- A smaller digital audience will exist in the earlier years, and
- Many consumers will put off the purchase of new hardware as long as possible, just as they have done with the AMPS/GSM mobile conversion.

These factors will not help the economics of providing new services enabled by the conversion. Earlier change can be achieved with effective national marketing by both the government and private sectors.

23.03 What are the advantages and disadvantages of restricting FTA television broadcasting to the existing operators until 2006?

The main advantage of the restriction is that more spectrum could be made available in this period for datacasting, allowing that industry a better chance of competing with FTA broadcasters. The restriction on start up should be maintained until current FTA broadcasters return spectrum used for analog transmission, otherwise there will be further restriction prior to 2009.

The disadvantage is the continuation of the current FTA oligopoly.

23.04 What are the advantages and disadvantages of preventing multi-channelling?

23.05 What are 'enhanced' services and 'data casting'?

These are best described by example as they will appear in multiple forms. For example an enhanced FTA service may show several angles of a sporting event on the screen.

Datacasting will sometimes have the look and feel of the Internet, especially when a back channel is provided. At other times it may look more like Pay TV, often with additional features such as simultaneous screening of financial data text superimposed on video.

23.06 What are the likely costs and benefits of digital conversion to community and indigenous broadcasters?

23.07 Are you aware of any studies in Australia or elsewhere, of consumer demand for digital television in general, and high definition television in particular? Please specify.

23.08 How readily available are digital television sets likely to be, and at what prices? What is the expected time frame for households to acquire digital television sets? What sorts of services (such as interactive services) are Australian households likely to demand?

See 23.02. Availability is a function of demand in the consumer electronics industry. Demand can be created by good marketing.

23.09 Is digital television likely to become an important medium for business transactions? If so, please amplify.

Digital TV will be like analog TV with enhancements. Datacasting is the medium for business transactions, mainly with residential customers.

2.5 The role of the Australian Broadcasting Authority

Box 3 **Government broadcasting bodies**

The Australian Broadcasting Authority is the principal body responsible for administering the *Broadcasting Services Act 1992*. Among other tasks, it administers the broadcasting planning regime, restrictions on ownership and control of broadcasting licences, and programming and content requirements.

The Australian Communications Authority (ACA) was formed by a merger of AUSTEL (the telecommunications regulator) and the Spectrum Management Agency (the allocator of spectrum). It plays a role in planning use of the entire radio spectrum and advises the Minister on parts of the spectrum to allocate for broadcasting purposes. It licenses all users of the radio spectrum except those licensed by the ABA (under delegation from the ACA). It also administers competitive regulation of the telecommunications industry (embodied in the Trade Practices Act).

The Australian Competition and Consumer Commission (ACCC) administers the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983* and has additional responsibilities under other legislation, such as the BSA, including monitoring cross-media ownership and reporting to the ABA whether the allocation of a subscription television broadcasting licence would result in a substantial lessening of competition in a market.

The Administrative Appeals Tribunal (AAT) may review certain designated decisions of the ABA, on application by designated persons.

The Commonwealth Department of Communications, Information Technology and Arts (DoCITA) deals with telecommunications services, management of the electromagnetic spectrum, television, radio and the internet.

24.01 What are the costs and benefits of the current regulatory structure?

25.01 What have been the strengths and weaknesses of the division of responsibilities between the ACA and the ABA?

The division of the ABA and ACA has been appropriate, given the significant differences in the regulatory regimes of telecommunications and broadcasting covered in the table on pages 7 and 8. However there is some tension in the dual responsibilities for spectrum

between the ABA and the ACA, especially as radiocommunications are less regulated even than telecommunications.

With the advent of convergent services the need for continuing separation is questionable. We argue on page 9 that the legislation and environment of broadcasting should move towards that of telecommunications. If this occurs, then the amalgamation of the ABA and ACA would be appropriate.

25.02 What implications does the current regulatory structure have for the ability of the regulators to respond efficiently and effectively to technological change?

Co-regulation

Box 4 **Industry associations**

The Federation of Australian Radio Broadcasters (FARB) represents commercial radio broadcasters and is responsible for the commercial radio industry code of practice.

The Federation of Australian Commercial Television Services (FACTS) represents commercial television broadcasters and is responsible for the commercial television industry code of practice.

Australian Subscription Television and Radio Association (ASTRA) represents subscription and narrowcasters and is responsible for the subscription and narrowcast industry code of practice.

The Community Broadcasting Association of Australia (CBAA) represents the community broadcasting industry and is responsible for the community broadcasting industry code of practice.

The Australian Communications Industry Forum (ACIF) represents all participants in the telecommunications industry and is responsible for the development of telecommunications consumer codes.

The Telecommunications Access Forum (TAF) represents the telecommunications carriers and carriage service providers and is responsible for the access code for telecommunications.

26.01 Has this been achieved?

26.02 What are the strengths and weaknesses of the current system? What are the administrative and compliance costs of separate codes of practice for each type of broadcaster?

26.03 What are the costs and benefits of the current system? Is it excessively legalistic?

26.04 Are there alternative approaches to achieve the government's objectives which are less legalistic?

Planning and licensing of new services

26.05 What are the strengths and weaknesses of the ABA's planning processes?

The strength is that spectrum is available to cover all audiences and generally interference-free reception is available. The weakness is that change is inhibited by fortuitous reception and new entrants for new services are unable to obtain spectrum. However this may be as much due to general regulatory policy as technical policy.

26.06 What is the role of industry peak bodies in the planning process?

26.07 What progress has been made in spectrum planning by the ABA?

A new digital plan has just been announced. Time is needed to examine it.

26.08 What is the appropriate balance between raising revenue from the sale of commercial licences for purposes such as data casting and promoting competition in broadcasting when allocating broadcasting licences?

This topic is covered on pages 11 and 12 of the main body of our submission.

26.09 What progress has the ABA made in detailed planning for digital conversion?

See 26.07

26.10 How do provisions of the BSA affect the planning process? (For example, providing for merit based community licence allocations versus price based commercial licence allocations).

26.11 Are ABA planning processes fair and efficient? How could they be improved?

27.01 Has the ABA adopted relevant principles of good decision making (for example, transparency, consultation, natural justice and assessing the impacts (costs and benefits) of different options)?

The ABA has a very open approach.

27.02 What are the administration and compliance costs associated with ABA planning processes?

27.03 Are these BSA Section 23 criteria consistent with the objectives of the Act as a whole?

27.04 How should these criteria be interpreted and applied? How should the ABA deal with internal inconsistencies between criteria?

Section 23(f) on demand for spectrum for services other than broadcasting services now needs greater prominence to allow for datacasting.

Licensing and fees

27.05 How scarce is the radiofrequency spectrum in Australia? How will its supply be affected by digital conversion? Do the current licensing arrangements create scarcity artificially?

Spectrum scarcity is a function of supply and demand, occurring only when demand exceeds supply. The best way to eliminate scarcity is to increase supply, which is the opposite of the current broadcasting method of restricting demand via the prohibition of additional licences.

The supply of spectrum is finite and cannot be increased for broadcasting except by restricting non-broadcasting services. However its supply can **effectively** be increased by use of more efficient transmission methods. There are several major techniques for increasing efficiency of spectrum use, namely:

- Digital transmission, which enables:
  - lower usable signal strengths and therefore greater re-use of spectrum in a geographic sense, and
  - lower adjacent channel interference and therefore fewer guard bands of unused spectrum,
- digital compression, enabling more information to be transmitted through the same amount of spectrum,
- cellular techniques enabling greater re-use of spectrum, and
- better quality receivers, requiring lower signal inputs and having better capabilities for rejection of interference.

The net effect is that digitisation and other techniques, if properly applied, will reduce scarcity by enabling many more services to use the same spectrum. A major complication is the long 8-year period of simulcasting analog and digital programs. See also pages 9, 10 and 11 of the main body of the submission.

27.06 To what extent do current licence fees reflect the level of scarcity of the radiofrequency spectrum?

Licence fees have a negligible relationship with the level of spectrum scarcity in relation to broadcasting. The level of scarcity is a function of the current regulatory system, which is heavily influenced by non-technical considerations.

27.07 What principles should govern the levying of licence fees? Should the same principles apply to all forms of broadcasting, regardless of platform?

If broadcasting moves to a more open competitive environment, the principles of fees under the TA97 and RA92 would be more appropriate in the long run. If there is no licence scarcity, the justification for special fees and taxes disappears. In the transitional period, revenue based fees are more appropriate.

As a broad principle, the only justifiable taxes are those levied to recover regulatory costs directly applicable to the industry and general income taxes for general revenue purposes. All other taxes distort investment to a greater or lesser degree and do nothing for the development of the industry to which they are uniquely applied.

27.08 Should the basis of licence fees be changed? Should the level of licence fees be changed?

See 27.07

27.09 Should licence fee revenue be earmarked for specific broadcasting purposes?

Yes. See 27.07

27.10 What are the advantages and disadvantages of the current licence fee structure as it applies to different classes of broadcasting and within specific broadcasting types?

27.11 Should consumers as well as producers directly pay licence fees?

No. There is long experience to show that such licence fees are very difficult and costly to collect. For FTA they may also be regressive.

Ownership and control

28.01 Is the ABA the appropriate body to deal with ownership and control issues? Is the relationship between the ABA and bodies such as the ACCC clear and consistent?

See 25.01

28.02 Are ACCC and Trade Practices Act concepts and tests of markets and competition consistent with BSA concepts of influence, diversity and plurality?

Yes. This is covered in the main body of our submission.

28.03 Are the mechanisms for determining control (set out in Schedule 1 to the Act) appropriate?

28.04 What are the strengths and weaknesses of current mechanisms for dealing with breaches of ownership and control provisions, particularly foreign ownership?

28.05 Is the ABA administration of ownership and control provisions fair and efficient?

28.06 Has the ABA adopted relevant principles of good decision making (for example, transparency, consultation, natural justice and assessing the impacts (costs and benefits) of different options)?

28.07 What are the administration and compliance costs associated with ABA administration of ownership and control provisions?

Program standards and content regulation

28.08 What are the strengths and weaknesses of the public consultation processes in the development of codes of practice?

28.09 What are the administration and compliance costs associated with self-regulation of content regulation?

28.10 Do the codes achieve the objectives of the BSA? Do they adequately reflect community attitudes toward appropriate broadcasting?

28.11 Is there a better approach to achieving the objectives of the BSA?

We have argued in the submission that a move towards TA97 and TPA74 regulation should occur.

Complaints

29.01 Is the service provider the appropriate first contact for complaints about program content and codes of practice?

Yes.

29.02 Are codes of practice dealing with complaints consistent for different categories of broadcaster? Should they be?

29.03 Is there sufficient transparency in the handling of complaints? Should complainants be notified of reasons as well as results of ABA investigations?

29.04 Are complainants adequately aware of their rights under the Act and codes of practice?

29.05 Is there a better approach to dealing with complaints?

Appeals

29.06 What are the advantages and disadvantages of current appeals arrangements?

30.01 Is the list of reviewable decisions and eligible applicants appropriate?

30.02 Does this approach have implications for the consistency, transparency, certainty and effectiveness of ABA administration?

30.03 What are the administration and compliance costs of this method of review?

2.6 International Agreements

30.04 What is the effect of the ITU Radio Regulations on Australian broadcasting?

The effect is substantial, including for satellite broadcasting. The ITU provides a framework of technical standards for a large degree of compatibility of mass-market consumer equipment, thereby lowering costs. Without ITU coordination, satellite broadcasting would not be possible. There would be no system of avoiding interference to the degree that much of the spectrum would not be usable.

Closer Economic Relations Agreement

30.05 Do you anticipate that there will be a significant increase in New Zealand content broadcast in Australia as a result of this decision?

30.06 In what manner does New Zealand content compromise the objectives of "developing and reflecting a sense of Australian identity, character and cultural diversity"? (BSA Act 3(e)) Does this matter?

30.07 What effects have the recent redrafting of local content rules had on the Australian broadcasting services sector?

31.01 What opportunities are opened by this ruling for Australian programming in the New Zealand market?

31.02 Should the relevant terms of the CER agreement be reconsidered?

General Agreement on Trade in Services

31.03 What are the potential implications for the local industry and the Australian community more generally of a broad market opening commitment of the audiovisual sector in future GATS negotiations?

31.04 What threats and opportunities for Australian service providers would be created by more liberal world trade in audiovisual services?

Agreement on Trade Related Aspects of Intellectual Property

31.05 What implications would revision of TRIPS (for example, prohibiting parallel importing of relevant material) have for the broadcasting and related industries and consumers?

31.06 What other implications for the industries and consumers arise from the TRIPS Agreement or its revision — in particular, its coverage of copyright (the Berne Convention)?

The Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (The Florence Agreement)

32.01 What implications, if any, are there for the broadcasting and related industries arising from the Florence Agreement?

32.02 What implications for the industries would arise from the ratification of other provisions of the Florence Agreement?

Other international agreements

32.03 What other international agreements are relevant?