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ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS LEGISLATION COMMITTEE

**Reference: Television Broadcasting Services (Digital Conversion) Bill
and Datacasting Charge (Imposition) Bill 1998**

FRIDAY, 12 JUNE 1998

CANBERRA

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SENATE

**ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS
LEGISLATION COMMITTEE**

Friday, 12 June 1998

Members: Senator Patterson (*Chair*), Senator Schacht (*Deputy Chair*), Senators Allison, Eggleston, Lightfoot and Lundy

Substitute member: Senator Tierney

Participating members: Senators Abetz, Bartlett, Bolkus, Boswell, Bourne, Brown, Calvert, George Campbell, Carr, Colston, Coonan, Cooney, Crane, Faulkner, Ferguson, Harradine, Hogg, Lightfoot, Mackay, Margetts, Murphy, Neal, O'Chee and Tierney

Senators in attendance: Senators Bourne, Colston, Eggleston, Patterson, Schacht and Tierney

Terms of reference for the inquiry: Television Broadcasting Services (Digital Conversion) Bill and Datacasting Charge (Imposition) Bill 1998

WITNESSES

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**CROTHERS, Mr Norm, Technical Development Manager, Australian Consumers
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**ENVIRONMENT, RECREATION,
COMMUNICATIONS AND THE ARTS
LEGISLATION COMMITTEE**

**Television Broadcasting Services (Digital Conversion) Bill and Datacasting Charge
(Imposition) Bill 1998**

CANBERRA

Committee met at 9.13 a.m.

BUN, Ms Mara, Manager, Policy and Public Affairs, Australian Consumers Association, 57 Carrington Rd, Marrickville, New South Wales 2204

CROTHERS, Mr Norm, Technical Development Manager, Australian Consumers Association, 57 Carrington Rd, Marrickville, New South Wales 2204

CHAIR—I declare open and welcome you to this third public hearing of the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Television Broadcasting Services (Digital Conversion) Bill 1998 and the Datacasting Charge (Imposition) Bill 1998. The committee prefers that evidence be given in public, but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in camera, you may ask to do so and the committee will consider your request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate.

I welcome Ms Bun and Mr Crothers to the table. The committee has before it submission No. 30 which it has authorised to be published. Are there any alterations or additions that you would care to make at this stage?

Ms Bun—No, thank you.

CHAIR—Do you wish to make a brief opening statement?

Ms Bun—Yes, Madam Chair.

CHAIR—Only if it is adding to your submission. We do not need a reiteration of it. If it is a reiteration of your submission we would prefer you to leave it because we need to move on.

Ms Bun—Probably.

CHAIR—Probably what?

Ms Bun—We will be very quick.

CHAIR—It can be detrimental to your cause but if you think it is a good idea, you do it.

Ms Bun—Thank you very much, Madam Chair. We will both make a comment. I think the submission is quite clear in terms of our objectives and how we think the current proposal fails to meet those.

Our Technical Development Manager, Mr Norm Crothers, is here today because, having worked with the Consumers Association for 21 years and having been responsible during that time for the testing and evaluation of broadcasting infrastructure—for example, television sets—in the homes of Australian consumers, and also after working quite closely with other major OECD consumer organisations around the world during that time, he would like to make a brief comment about the general justification for a kind of exclusive period for the purpose of developing HDTV for the free to air broadcasters in terms of television sets.

Mr Crothers—There are just a few things that are not clear in our submission; they are slightly additive. Consumers have been buying a lot more expensive television sets in recent times. There has been a large push to buy very large what are often called home theatres, home entertainment type products. Consumers have been doing this because they believe they can get a better quality picture and sound; they have shown an interest in that sort of thing.

However, they are already making a very substantial investment in that area and to ask them to invest again in a product such as high definition television is a very risky strategy. Consumers will feel quite misled by the sort of push that they have had lately to buy analog televisions that are very expensive. The sort of advertising that is suggesting that high definition television is just around the corner and is affordable is quite misleading because it is nowhere near around the corner and is nowhere near affordable.

This needs to be seen in balance. It needs to be explained that the use of the digital spectrum this way could give consumers a tremendous amount of new services and a really good quality set of information services and picture services from something as simple and cheap like a set top box rather than a very expensive television set, perhaps a \$15,000 television set. This should be taken into account. Consumers really need to be consulted and given a good opportunity to understand what the options are for them because they have not really had that explained and they have not really had a chance to exercise a choice and a preference.

Ms Bun—I will conclude by expanding on our brief expression of concern about the foreshadowed review of converging technologies. In the proposal it is foreshadowed for the year 2000. We have noted concerns, particularly about the care and value that Australians hold in plurality and diversity of voices in the media. We think it is very important that if this review is to have that manner of scope, that that should be made clear and debated in the community before it is accepted by default.

We wanted to clarify that, in our view, given the objective of both maximum diversity of services and diversity of players, there is a distinction between foreign ownership on the one hand and cross-media ownership on the other. From our point of view, and this may be controversial, foreign ownership is not necessarily a problem. In fact, it can enhance diversity and bring new technologies and new scope in content and delivery. However, plurality of voices in the media is an altogether different issue.

Senator BOURNE—I have a couple of questions about overseas reception of HDTV. I know it is just starting and nothing is clear, as you have just told us, but do you have any knowledge of experiences overseas on how it is working at the moment? Is reception easy? Are the set top boxes becoming available for people who want them? Are the television sets becoming available? What is going on?

Mr Crothers—It is still too early to say because there are not any actual high definition broadcasts in the US or the UK, which are the other countries we know most about and on which we have some data.

There are estimates of when and how this will happen. The estimates are that set top boxes are a fraction of the price and there are a number of players who are willing to provide this technology as soon as the signals are available to consumers. It may be as much as \$500 for a set top box, which would allow consumers to watch high definition television on their existing set without the high definition, or to select multiple channels from what is called multiplexing. What is normally used for a high definition picture can provide, say, six existing quality pictures or a mixture of those sorts of pictures with Internet web type information and services or newspaper information or something like that.

So for \$500 a consumer could use a current technology television set quite happily with a wide variety of information sources for the next 10 or 20 years, whereas the high definition television sets are still not on sale but estimates of price are going up all the time, not down. Even though increasing volume of sales are likely to lower prices in the longer term, what

we have seen with other new technologies entering the market is manufacturers trying to keep prices as high as possible. Even though that keeps demand down a bit it tends to be very profitable and allows them to recoup their development costs in the early years.

Ms Bun—You could end up with one of those little 12-inch screens that cost you \$495 for the TV and \$500 for the box to try to get the digital.

Mr Crothers—You might not want it at all.

Ms Bun—You might want your existing TV with a box, which is probable, in light of Norm's opening comments and the fact that people are investing in higher quality and higher visibility now.

Senator BOURNE—But they will not have the wide screen.

Ms Bun—They will not have the wide screen. There is another big debate in America which is about size versus performance. Americans are going for size. They like those wide screen televisions, not necessarily high definition. I think the Consumers Association has been very clear over there.

CHAIR—Ms Bun, Americans have accepted a lower standard of television than we have because of their system. They tolerate watching green faces, basically.

Ms Bun—Not any more.

CHAIR—Not quite.

Senator SCHACHT—I think purple hair has gone out.

CHAIR—Not quite, but their standard is not as good. It is not a reasonable argument. How do you think this should be overcome? Should there be some advertising campaign to advise people that they can actually use their analog television with a set top box?

Ms Bun—We have developed a policy framework which does give exclusive access to very valuable spectrum for free to a handful of players for the purpose of developing high definition. If we now intend to embark on another strategy, which is about promoting set top boxes in the context of that kind of infrastructure ownership I think there is a bit of an inconsistency. The proposal really needs to include very strong safeguards so that, in the event that take-up of high definition simply does not happen, as we believe it will not, we then have an alternative plan which maximises both revenue to public assets as well as diversity of players and content.

Senator SCHACHT—Ms Bun, the Consumers Association has accepted that we will shift to the digital format, whether it is HDTV or standard digital. Is that correct?

Ms Bun—That is correct.

Senator SCHACHT—Once that is accepted we are conscripting every television consumer in Australia to spend money to either buy a new digital receiver, whether it is HDTV or standard, or to pay money to put an appropriate converter, in the broadest definition, on top of their analog set so that after 2007 or 2008, they do not have a blank screen. So the Consumers Association is accepting that six to seven million households will have to spend money changing their present analog television set?

Ms Bun—In fact, we are warmly embracing the diversity of opportunities enabled by this technology and so we agree, Senator Schacht. Not only do we accept that the transition must happen but we think there does need to be some security for providers in that kind of an environment. Consumers do funny things when governments make decisions—look at analog phones, for example.

Senator SCHACHT—Your organisation, by its very definition, has probably the longest history of representing consumers in Australia. I know the Labor Party supports the decision of going digital and this is, in a sense, bipartisan. I know of no other decision in the history of the federation where we are contemplating saying, on a certain date, ‘As a consumer your significant consumer durable good, which is a television receiver, goes blank unless you pay some money to convert it or buy a new set.’ Does the Consumers Association have any other example of where a government, or the national parliament by legislation, has taken a decision that ultimately forces consumers, if they want this product, to spend money. Do you know of any other example?

Mr Crothers—Only in the safety area where it is quite common to do that, of course.

Senator SCHACHT—In the safety area. Some people might think it is a safety issue not to have people watching television.

Mr Crothers—No, in the safety area, it is something government does quite often and consumers accept that.

Senator SCHACHT—For example, the government is moving to the use of unleaded petrol but there is no date set when, if you have got an unleaded petrol engine car and you turn up at the petrol station, you will find there is no leaded petrol available and your car becomes useless. I think the analog mobile phone is one decision where consumers are being told that, on a certain date, their hand-held mobile phone in analog is going to be turned off. That has had some, to say the least, controversial aspects about it as consumers become aware of it. I am raising with you that this is not an insignificant decision for consumers. Is your organisation willing to say that it is in the interests of consumers in the long term to accept this decision?

Ms Bun—Absolutely, and we are committed to evaluating the various alternatives and cost price-performance benefits of what new technologies can be purchased for the home. We would note that when the UK made the decision to go digital in the future, they did it in a very different way. It is not the decision to go digital that matters, it is how you implement it and the arrangements in place and the kind of diversity and performance.

Senator SCHACHT—I understand that. I just want to get the first thing right. From your submission, you are basically saying that the commitment or the policy leading to the uptake of HDTV sets is unwise because the cost to the consumer is very high and therefore we should introduce digital television and let the marketplace, driven by consumer demand, decide whether they want HDTV or standard digital formats. Is that correct?

Ms Bun—It is correct to suggest that we would start with a question about consumer demand and the various shades of it depending on who you are in Australia today—whether you live in the country or the city, whether you have disposable income or you do not, whether you like one kind of content or another, whether you have access to purchasing in real stores or whether you might want to purchase on-line depending on where you live. All of these longer term issues we think need to be canvassed up-front. Having established that broad range of competing preferences, depending on who you are and how you consume, then let us step back and develop a framework which has the objective of maximising how best to fit that diversity of needs with enough players to deliver a competitive robust evolution of what technology is suitable for us.

After all, we start from a base which is so different from the North American base and the European base. It is so different from the Japanese who have had this technology in place and

less than two per cent of Japanese households have actually taken it up. Prices continue to be in the order of \$7,000 to \$8,000.

Senator SCHACHT—In Japan, was not HDTV delivered in an analog system by cable?

Ms Bun—It is in their satellite systems as well. Yes, you are quite right, the comparability is not direct but the notion, I think, is an interesting one. What kind of definition do you want in your set and what willingness do you have to pay for it?

Senator SCHACHT—In Japan, the cost of the sets we all know run into several thousands of dollars. It is an analog system delivered over cable, is it not?

Senator BOURNE—Satellite.

Senator SCHACHT—Was the digital HDTV system, when it was introduced in the 1980s, delivered over cable?

Ms Bun—Senator Schacht, I do believe that there is a satellite component and that possibly others testifying to this committee might be better placed to answer that question.

Senator SCHACHT—Mr Crothers, was it delivered by cable or a mixture of both?

Mr Crothers—I understand it is a mixture of both. I am not an expert on that particular aspect.

CHAIR—You make the statement about Japan with great authority. We know a little bit about it. We do not know a lot, but we know enough to know that that was a very bold statement. It really needed to be looked at in more depth. That is the problem we had with someone the other day who made a statement like that with great authority and then really did not have the facts to back it up. If it is not comparable, then to use it as an example and say the Japanese have not taken it up is not a very good way of putting forward an argument and it gets weakened. A couple of people have told us that the reason for the lack of take-up by the Japanese is the technology and that the Japanese are now moving to an alternative system. I do not know enough about it to know what they are doing. Apparently they are doing something else and they have presumed that there will be a greater take-up. One needs to be careful in giving evidence. To make a bold statement like that when it is not comparable, especially with the authority that you have of representing consumers, makes it difficult.

Ms Bun—Senator Paterson, if I could simply read from our submission the very specific comment was about the pricing difference in HDTV.

CHAIR—You said the Japanese have not taken it up. What I am saying is that under a bit more questioning that very strong comment that you made was not sustainable.

Ms Bun—The comment is written right here. Out of 11.5 million television sets sold in Japan only 210,000 were HDTV sets. They are HDTV sets with different technology. We certainly do appreciate that and that may well change. The information though that we get from the US, which of course is fundamental because it drives prices that influence what our prices here will be at an import level, is that the signals from manufacturers every six months are that prices are increasing. It will cost US\$5,000; it will cost US\$7,000—estimates. It is very complex when you have new technology. It is hard to know with certainty. It just looks slightly less affordable.

Senator SCHACHT—I have asked this of a number of people who have given evidence and I get a range of opinions but I do not think anyone has attacked me for being absolutely wrong. You may. An HDTV receiver in the digital format, because of its capacity—it has 1,100 lines and 1,800 pixels—as an information system, as a screen for the distribution of

information data in all its online forms, is a screen that will be able to provide a greater amount of information if the delivery systems are developed accordingly rather than even a standard digital screen. Am I right to suggest that?

Mr Crothers—I think what you say makes sense.

Senator SCHACHT—One of the things I am interested in more than the entertainment aspect of HDTV is to get a communications system in Australia that is more than just entertainment.

Mr Crothers—Absolutely.

Senator SCHACHT—It is absolutely about giving consumers wherever they are household access to the latest information systems that will make us, in terms of micro-economic reform, one of the most competitive countries in the world with an information distribution system equal to the best, if not the best. We would enhance people in all sorts of ways. If the HDTV screen gives people more capacity to handle information distribution, I think that is more an advantage for HDTV screens than being able to watch Adelaide Crows win a premiership.

Mr Crothers—It is not the screen. It is the box behind.

Senator SCHACHT—When you put all the box behind it and all of the connections, because the screen has 1,100 lines and 1,800 pixels, as I am told by the experts, you can then put more information on the screen at the same time whether it is eight different camera shots of the Adelaide Crows winning the premiership—which would be an important thing for me to be in favour of—or information downloaded from all around the world. Is that true technically?

Mr Crothers—The consumer could access the same amount of information on a much cheaper, smaller, simpler screen, with a much cheaper, smaller black box behind it. The diversity you are talking about is really good, but to force people to buy a really expensive box to access it is very unreasonable.

Senator SCHACHT—I will come to the cost in a moment. I am trying to get a structure in my mind about the justification for HDTV, because this is a very important issue. Irrespective of the cost, will an HDTV screen provide more information and more flexibility for information distribution for all the anticipated on-line broadband services, as well as television signals for entertainment, interactivity, et cetera, than a standard digital screen running at about 600 or 700 lines and about 1,200 pixels, or whatever it is?

Mr Crothers—Not a great deal more.

Ms Bun—There are absolutely identical sizes available for consumers in conventional non-HDTV format, and people make choices every day.

Mr Crothers—It is very difficult for a consumer to actually assimilate information in that way, anyway.

CHAIR—Excuse me, just one person at a time.

Mr Crothers—I think it is very difficult for consumers to assimilate information off a large screen, if there are lots of bits all running around. It is not a very efficient way for people to access information. You are right; 11 or 12 shots of the football is probably really good. That probably is very useful, though you may find it quite difficult to look at more than one or two pictures at a time.

Senator SCHACHT—Maybe I have exaggerated with 12 cameras; it may be three cameras.

Mr Crothers—Yes. You could have a bit in the screen with the stock exchange, and the football, and something else at the same time. You could do that on a smaller screen, with not quite as precise a definition, but you could still get the information. It is not necessary to have that very large, very expensive picture tube.

Senator SCHACHT—It still seems to me that this is an area where I am finding it difficult to get a judgment that is correct.

Mr Crothers—One of the things we would like to see is many more choices in the marketplace, so that high definition television is not the only thing that is broadcast.

Senator SCHACHT—If we take your model, which is that we do not mandate HDTV and therefore each free to air existing television would get seven megahertz, would they be able to get one channel of that seven megahertz to use for simulcast and standard digital? What would you do with the other three or four channels that would be available?

Ms Bun—In principle, we shy away from developing very specific models, and that is precisely because of the issues that you are identifying. You need to discuss, firstly, what are the areas of demand and what people want to see. After you determine that, you need to step back in a flexible multiplexing environment, to determine how best to allocate the spectrum in a way that raises significant value to the public. To answer that question, you would first have to know what are the services in demand.

Senator SCHACHT—I do not think we have in one sense the luxury of making the decisions on knowing what all the demand is because the demand is going to keep changing underneath our feet every month, every year. You might say we are parliamentarians taking a stab in the dark and we might get it dreadfully wrong. One of our major worries is that, whatever the technology and/or the structure is of trying to put some regulatory function into place, we may get it wrong, but if we do not try something, there will be no digital television at all.

Ms Bun—We would agree that the model you suggested is a lot better than the one being proposed.

Senator SCHACHT—From our point of view, although we have not made a final decision—that is, the opposition—what we have said is that the free to airs get the seven megahertz for HDTV. If they do not use it, they keep a part of it for simulcast in standard digital, which is two or three megahertz, and the rest goes back into the pot. We do not support multi-channelling, unless that goes back into the pot for bidding where the normal cross-ownership and competition rules apply. Would you support that model?

Ms Bun—We would look very closely at the simulcasting proposal before we would be able to actually address that in fairness.

Senator SCHACHT—So you do not support simulcasting?

Ms Bun—As I say, we would look very closely at the model being proposed. We would not be capable of responding here. We have put before you a set of principles that we would adopt, and those principles have to do with maximising competition.

Senator SCHACHT—I understand that but I have to say that we have got to go at least one step further. Governments over the last 50 years have had a licensing regime, and whether we like it or not we have granted people licences of the community's spectrum to broadcast. They have invested under those licensing arrangements, expecting to be able to invest and get a return for a period of time, et cetera. They have accepted renewal every three or four years, that theoretically they could lose their licence. No-one ever has. You might say that that is

a weakness of the regulatory regime, that once you have got the licence you have got it ad infinitum.

In respect of the principles you are outlining, I think we do have to say, ‘Where does the existing free to air television fit in the system?’ I will raise two issues that we cannot ignore. One is that they are there and that their ability to promote the uptake of digital television, whether it is HDTV or digital, cannot be ignored in the marketplace. Secondly, if we want to maintain Australian content rules, if you just let loose an open slather of all the new spectrum and the frequency, and anyone who wants a station and bits of digital spectrum can have it, our opportunities to impose Australian content rules disappear rapidly because there is not a big enough revenue base. Even though the stations at the moment are pretty profitable, if they went from three to 15 it might not be the case. Therefore, that is an argument about Australian cultural identity that is in the pot as well. These are issues we cannot ignore when we are dealing with your theoretical principles.

Ms Bun—Could I comment on both of those?

Senator SCHACHT—Certainly. I want you to.

Ms Bun—On the first question: certainly, the role of free to air broadcasters, given their current incumbence and power in the marketplace and ability to reach into households, is vital not only in a reasonable transition to a digital future but in terms of the current indecision that will confront the marketplace when mixed messages hit the public, as they invariably will. Between that acknowledgment and a secondary acknowledgment that, yes, for Australian content reasons we have to continue to promote that policy aspect in terms of, as you describe it, the melting pot, between those two principles and the open slather free for all is a great open space for policy development and spectrum allocation.

Rather than simply acknowledge, ‘Let’s give them a shot with all of it on HDTV, given what we know about HDTV, its market take-up issues and its technology competition issues, and then see what the best next step is,’ why not step back now? No-one, after all, is forcing us to make a decision today. The North Americans do not even have this product on the market yet.

Senator SCHACHT—I have to say that we have had evidence from FACTS, in particular—you might say, to quote Mandy Rice-Davies, ‘They would say that, wouldn’t they?’—if they do not get this legislation through the parliament by 2 July, in the last two weeks of the sitting period, chaos breaks out in the planning for the introduction of digital television in any form by the government’s deadline of 2001 to have substantial digital capacity. You are saying that we do not have to make that decision?

Ms Bun—Yes. I am saying that it is a ludicrous position that chaos will break out unless, in X months, X happens. It will not. The reason why chaos will not break out is the commercial imperative: we have millions of Australian households fully equipped to receive very high quality broadcasting content, as they do from the current incumbents, and those players, those households, have no alternative at the moment. They have nowhere to go to receive those competing signals.

To clarify that: when FACTS talk about market chaos and risk to their particular—

Senator SCHACHT—I used the word ‘chaos’. They never actually used the word ‘chaos’. I paraphrased.

Ms Bun—They use similar words, Senator Schacht. They fail to point out the luxury of their incumbence in this country, which is a very limited uptake of competitive broadcasting services

and pay. In North America we have seen the vast decline of free to air broadcasting, which now enjoys less than 50 per cent of the broadcasting into American households. Here in this country we are nowhere near that level of penetration in terms of alternatives. So what they really have is a very juicy, monopolistic incumbence position, and of course they are trying desperately to project that into a digital future.

Senator SCHACHT—Their argument is that, if the government sets a deadline in the legislation for the start of digital by 1 January 2001, for them to prepare their investment, the buying of the equipment, et cetera, they need this legislation through now. That is so that all the organising and planning operations—the decision on the system, decisions on standards, buying the equipment—can take place in an orderly manner and in a reasonable time, and the digital receivers are on the market before 2001, so that on 1 January 2001 people can start buying. That is their argument. Do you accept that that argument is valid?

Ms Bun—Not only is it valid for them; it is valid for the OzEmails that would like to broadcast Internet services to the areas where audiences currently watch television; it is valid for the Fairfaxes and News Ltds that want to project content in the same way; it is valid for other broadcasters that might like to reach multi-channelling to audiences that currently get only two TV stations. There are people in rural and regional Australia right now that do not even get the three for free from the commercial broadcasters.

So what are the best solutions? Yes, everybody that wants to achieve that outcome wants timing security and they want the policy decision to be made with certainty, so that they know how to invest. It is just that a policy decision has been made which assumes that enormous investment is required to deliver this golden egg called HDTV, which we think is shattered. That egg will not have massive take-up, certainly not in the next five to 10 years. Why should investment, for any reason other than government policy development, be limited to that particular time frame?

Senator SCHACHT—I accept the fact that there are other people who want to get in and get digital—OzEmail and all those people on the issue of data, et cetera, which I come back to. But just in terms of planning, by whoever it is who wants to get into it, the government has said 2001. Do you think that date could be put back a period without any hazard to the broader community interest?

Ms Bun—We do not think there is any reason why that should be put back. It is a good policy framework in terms of—

Senator SCHACHT—So you think the decision for the start of digital in 2001 sets a reasonable date?

Ms Bun—Depending on what the content of the decision is, yes.

Senator SCHACHT—On the issue about whoever they are: if extra licences were given or auctioned to people like OzEmail or Fairfax or whoever else wants them and those people were able to get a separate data licence and came on, what do you think would be the normal timing that those organisations, plus the free to airs, would need to prepare, including on the equipment side—the ordering and all the investment—to get it operating so that on 1 January 2001 it is going to work?

Ms Bun—Senator Schacht, we would be in no position to answer that question with real credibility. However, it has been suggested to me by some of those Internet companies, in particular, that it would take them no time. You are talking about a very different technological solution.

Senator SCHACHT—Yes, I know. I suspect that they do not have quite the same investment in ordering transmitters and translators right across Australia as some television networks might have, or regional television. I want to turn now to the service providers, the potential datacasters, et cetera. Have you seen the submissions from other people before us about what should be the definition, if there is to be a definition, of datacasting?

Ms Bun—We have seen the submissions which draw attention to the problematic fuzziness of current definitions. We would agree that, for clarity in the marketplace to exist, not only between players but actually among consumers to know what they are actually getting with this thing called datacasting, they need to be ironed down. We would not be in a position to offer technical advice about how that should go.

Senator SCHACHT—Thank you very much. I was hoping that you were going to have a stab at it, only because we have no definition that I can see before us in evidence, other than conflicting views according to people's perceived self-interest. If you go from the evidence that the individual datacaster like OzEmail put to us last Friday, their definition of what is in datacasting drifts over into broadcasting; and if you look at what the television stations see as datacasting, from broadcasting it drifts well over into data and so on. That is the problem the parliament is going to have in terms of a regulation—where you draw the line. We do not have much time to give you on it but if you do have any ideas, I would be very thankful for them because this is going to be an enormous blue between the conflicting interests. I do not know whether or not it is possible to regulate or license where they might say converging technology starts merging between broadcasting and information.

One of the things that the ABA told us in their initial evidence two weeks ago—it seems like two years ago; I suppose it might only be two weeks ago—was that there was somewhere around, at the minimum, 12 to 15 megahertz on the spectrum at the moment in the broadcast area that is not being allocated in the allocation of the seven megahertz to each of the five free to air broadcasters and that is available for allocation, if government policy so chose to make it available, for datacasting or for another channel. You could have two more seven megahertz available for HDTV players, if you chose to go that way, or, as OzEmail lobbied us, they would like to get hold of about three or four megahertz to run as specialised datacasting, whatever that definition may be. Do you favour using that 12 to 15 megahertz and putting it up to auction in the next few months for people to bid for a definition of datacasting service?

Ms Bun—We favour, of course, any additional use of spectrum that enhances those two objectives: diversity of services and diversity of players. Having said that, and coming back to your fundamental point which is spot on in terms of the potential of this technology, Australia is about the—

Senator SCHACHT—You worry me when you say I am spot on. I feel like I have been in quicksand on this inquiry for three weeks.

Ms Bun—The key future point, the point 20 or 30 years down the track, is about how we use televisions to eliminate the tyranny of distance that so many Australians currently suffer from and which causes such economic disjuncture and burden to our country. Then the question is: how do we maximise that, given that we know interactive services, information services through datacasting, really do have that kind of potential? One question has to be to look at where the audience is. It is one thing to come from a family that has 112 TV stations so that when I go home for Christmas it is ridiculous, you are just surfing around; nobody watches half of them.

The audience here in this country is on those key commercial broadcasters and, of course, the high quality, non-profit broadcasters. Yet we are offering this spectrum that is over here and no-one has the culture here of that kind of surfing because we do not have that take-up in additional stations. So the question is not, in a sense, just the spectrum, it is the usage of the spectrum that becomes the infrastructure for tearing down that tyranny. If you give control over interactive and data services to those who already have the audience, by limiting the playground elsewhere, it is a problem.

Senator SCHACHT—I accept that point as a philosophical argument. What I am putting to you is a very practical suggestion. We know that there may be 12 to 15 megahertz on the spectrum unallocated for broadcasting—even after the five free to airs each get, even though you oppose it, their seven megahertz for HDTV. To meet the demand for the development of datacasting, and say there is 15 megahertz, you could say that there are four channels of three megahertz each or even four channels of four megahertz up for bidding immediately, over the next six months, at auction, the cross-ownership rules apply, the competition rules apply so that someone cannot buy the lot, cannot have you actually go for diversity, new players, in the datacasting market—do you favour that happening as part of the policy development of introducing digital in Australia in the next 12 months, as OzEmail put to us last Friday?

Ms Bun—I would not necessarily say that OzEmail should get it.

Senator SCHACHT—No. They did not ask for it themselves. They asked to have a bidding process, an auction.

Ms Bun—Yes, indeed.

Senator SCHACHT—And if they lose the auction, it is their problem.

Ms Bun—It is a good idea. It is a solution to a problem that is not the critical problem. The critical problem in terms of data and interactive services is how to turn couch potatoes into Internet users. Now you do not do it by providing these taco channels—

Senator SCHACHT—Well we cannot whip—

Ms Bun—And it is a challenge for the nation.

Senator SCHACHT—But I cannot go out and whip them to go and become interactive. You cannot put branding irons on them or pinch their toenails off if they do not want to take it up—

Ms Bun—No, but you can—

CHAIR—Put their feet to the fire, which you were doing yesterday—

Senator SCHACHT—It is a good saying—‘Put the feet to the fire.’

CHAIR—We had all these witnesses yesterday and he was going, ‘I’ll put your feet to the fire,’ to every witness.

Senator SCHACHT—It was true. It was mostly with the minister actually, putting his feet to the fire to make some reasonable decisions.

Ms Bun—Okay, you are right—we cannot force them. But here is what the UK said in terms of policy objectives, here are the objectives that the conservative government put together and Tony Blair ran through. They start by saying:

. To provide the right climate for investment and new services—

They go on to say:

. To provide a framework which supports innovation in technology and services, including program services.

They also encourage the development of effective competition in new technology services right across program infrastructure. So it is the objectives that you set in place up-front which would never leave you at a starting point that we currently have.

Senator SCHACHT—Ms Bun, I do not disagree with the objectives. That is motherhood—we all believe in that; every witness who has come before us believes in that. But when you get down to the detail of what the actual plan of it is, there is self-interest which then says, ‘This is the best way to achieve motherhood. Trust me.’ Every one of them said that. That is their right to say that and that is what this process is about. Here is the objective and I am trying to get from you specific examples. Do these things I am putting to you actually achieve your objective—

Ms Bun—Okay.

Senator SCHACHT—not perfectly, but reasonably?

Ms Bun—If you scrapped the giveaway of the total spectrum that would be the right starting point. If you are working with that as a starting point, it is unfortunate. Control the safeguards to make sure that if it is not used it is lost and sold. And, yes, take all available existing infrastructure and use it to—

Senator SCHACHT—The phrase you would use then is: if the free to airs do not use it, they lose it.

Ms Bun—Absolutely.

Senator SCHACHT—So if they do not use it for HDTV, they lose it.

Ms Bun—And be prepared, because in three years time the inquiry will be told, ‘Oh, but we have invested all this money in it. Even if only three households bought those sets, we need to continue to have that spectrum.’

Senator SCHACHT—Do you think there is any technical problem in designing standards for the receivers so that if channels 9, 10, 7—the three commercials—do not go to HDTV, when you break up the seven megahertz into three channels of standard digital for whatever use for other people, that standard can be applied and put into the television sets so that that channel would be 9B or 10B and could be used by somebody else for several hours a day for whatever purpose?

Mr Crothers—It can be done.

Senator SCHACHT—It can be done?

Mr Crothers—Yes. And what is important is that it is done in an open way so that no-one can monopolise a particular standard to limit access for other people.

Senator SCHACHT—What I am particularly interested in, if you have ‘if you do not use it, you lose it’, is that I do not want—

Mr Crothers—That then you can actually use it?

Senator SCHACHT—Yes, you can actually use it for some other purpose and you do not technologically accidentally give a monopoly so that once they have it and they do not use it, they say, ‘Well, you cannot take it back, it is already locked into our standards and our system.’

Mr Crothers—You can have an open system and we really must have one that has a lot of players participating and setting our standard.

Senator SCHACHT—I will just conclude. I am getting the wind up from the chair here, Mr Crothers.

CHAIR—I have him trained well now!

Senator SCHACHT—If the free to airs got the seven megahertz for HDTV, with that ‘use it or lose it’ principle underlying it, some of your fears would be assuaged?

Ms Bun—We would think it was the wrong approach to take in moving towards digital broadcasting and we would take some comfort that it could be corrected.

CHAIR—I would like to make one comment about your submission, where you say it is the government’s decision to give spectrum away for free. If the free to airs were to maintain and keep analog forever, I would most probably agree with that statement. But I think it is a little false to say that when in fact you shift them along the spectrum, lend that spectrum until the digital take-up is to a level which is acceptable and can be tolerated—we will debate about the take-up—and they will come back in 10 years time and you and I can have a discussion, because I think there will be a higher take-up than you do, but we will agree to disagree on that.

I would prefer it if you could reconsider when you are speaking about this issue as to whether you should say it is giving away the spectrum for free. It really is shifting them along the spectrum, giving them that spectrum for that period of time. Of course we have concerns about the extra bits and that is what the committee has been discussing—the bits that you do not use when you are not doing high definition television—and that analog will be available. To say it is being given away for free is a bit of a misrepresentation. But you can decide on that. I would like to thank you for your contribution and for your submission.

Ms Bun—Thank you very much for the opportunity.

[10.01 a.m.]

COLLESS, Mr Malcolm, General Manager, Corporate Development, News Ltd, 2 Holt St, Surry Hills, New South Wales 2010

O’SULLIVAN, Dr John, Director of Technology, News Ltd, 2 Holt St, Surry Hills, New South Wales 2010

CHAIR—Welcome. Do you have an opening statement or wish to make any corrections to the submission you have made?

Mr Colless—Yes, Chairman, I have an opening statement.

CHAIR—But no corrections?

Mr Colless—No corrections.

CHAIR—Is the opening statement different from the submission?

Mr Colless—Yes, it is.

CHAIR—Okay. Thank you.

Mr Colless—News Ltd appears before this committee as part of a global Australian company which is at the forefront of the development of digital broadcasting. We wholeheartedly share the enthusiasm for the potential which digital broadcasting holds for the Australian public, given the right regulatory framework for it to flourish. But policy on the run will not achieve these ends. We believe there are major issues which the government should address before its policy is translated into law if the Australian public is to reap the full benefits from this new and exciting technology.

Even in the brief time this committee has been sitting, a major plank on which the government structured its digital policy has shifted dramatically. Regional broadcasters who initially estimated the costs of their digital implementation at \$90 million now say this is likely to be more than \$500 million and they are asking for significant federal government assistance in the form of tax relief and free access to the national transmission network grid to help them deliver digital TV to regional viewers.

Rural residents who have already expressed deep concern at the adverse effects on their communities of the mobile phone conversion from analog to digital could be excused for having the same fears about digital TV, despite repeated assurances from the government that they will not be relegated to second-class status. With the government determined to see this legislation through parliament as soon as possible, while at the same time minimising its contribution to the ABC's digital upgrade, rural communities could interpret this as an urban conspiracy.

Senator SCHACHT—News Ltd defending the ABC. Mr Colless, this is a warming new development.

Senator TIERNEY—Point of order, Madam Chair—interrupting an opening statement!

Mr Colless—The Federation of Australian Commercial Television Stations has argued that this legislation needs to be rushed through parliament because the industry needs certainty to underpin the substantial investment it says this conversion will require. But, in fact, the bills only provide the industry with one certainty: that the three commercial television networks will retain their cartel for at least another 10 years.

No other industry expects to be given protection of its revenue stream to support an investment decision of this nature. In fact, the government has announced that new digital commercial radio licences will be issued as that industry migrates from analog to digital.

As we have stressed in our submission, we do not believe the anti-competitive exclusivity zone, which the government plans to place protectively around the incumbent free to air industry, can be justified. Worse, it is likely to be detrimental to the efficient growth of the digital broadcasting industry, and therefore contrary to the public interest.

There are sufficient flaws in it and doubts about the government's hastily assembled legislative package to seriously question the need for this to be rammed through parliament. For example, it is the government's stated objective that standards for conditional access systems should be open to all providers of digital TV and datacasting services, but the amendments introduced by the government on 2 June narrow this application to providers of digital TV broadcasting services using the broadcasting services bands, and excludes digital data-casters from consideration under the policy objective. This is amendment 60.

We believe it is hypocritical for a government which espouses free enterprise and competition to promote this policy. News Ltd's Chief Executive, Mr Lachlan Murdoch, has made the company's dissatisfaction clear in our submission, and we take this opportunity to reinforce the view that this legislation will do little to encourage the best outcome for one of Australia's most exciting growth industries. But if the government is determined to persist with this sorry hotchpotch of legislation, we believe this needs significant change and we have proposed a number of amendments. Thank you.

CHAIR—Thank you very much. You have a free to air broadcasting system in America; is that right?

Mr Colless—We do.

CHAIR—What is the situation in the States about spectrum for free to air for HDTV? Is it being auctioned? Is it being lent?

Mr Colless—The free to air industry in America, which represents a small part of the overall television broadcasting system in America, is migrating to digital, yes.

CHAIR—And what has News Ltd in America been arguing about the spectrum?

Mr Colless—We have been arguing that we should be able to develop that spectrum for digital television.

CHAIR—And you are going to bid at an auction for it in the States? Have you been arguing for that? No is the answer, is it not?

Dr O'Sullivan—We have not been arguing for exclusivity.

CHAIR—No; have you been arguing that the spectrum ought to be auctioned for the free to airs, for anybody who wants it?

Mr Colless—No, we have not.

CHAIR—What have you been arguing? That you ought to be lent the spectrum to introduce HDTV? Is that what News Ltd has been arguing in America?

Mr Colless—News Corporation.

CHAIR—News Corporation, I mean.

Mr Colless—Yes.

CHAIR—You are arguing—

Mr Colless—No, just to put that position clear, the market in America is completely different from the market in Australia.

CHAIR—Yes, but you have got one philosophy for America and one philosophy for Australia.

Mr Colless—No.

CHAIR—You are saying you want it free in the States but you want people to bid for it in Australia?

Mr Colless—No. We are saying that, because the market is completely different in America, there is a different set of circumstances in which the free to air television network is operating. The free to air television network in Australia is a mature industry which dominates the television broadcasting market here. The situation is quite the reverse in America.

CHAIR—But the basic philosophy is no competition in the States for the spectrum, and competition for the spectrum for HDTV in Australia.

Mr Colless—No. We have not argued, as Dr O'Sullivan said, for exclusivity. We are not arguing for exclusivity.

CHAIR—No, that is not what I am saying. I am talking about you saying you want competition in Australia for the spectrum but, because we are free to air in America, we do not want to have to bid for it in the States. I just find that a difficult argument. Anyway, I think I have made the point.

Senator TIERNEY—Mr Colless, you mentioned in your statement that the legislation is being rammed through parliament. I think the argument for moving quickly has been that, for security of investment and the timing of the investment, if we do not put it through now, if

we leave it go until the next opportunity—particularly if there is an early election—we may not be able to put it through parliament until about March next year.

Would you like to comment on the timing of the introduction? The industry has argued the need to move quickly so they can get established quickly. You seem to be arguing that there is no haste. Could you perhaps expand on that point?

Mr Colless—Yes. I will ask Dr O’Sullivan to answer part of that, but, first, one of the aspects of this that we find disappointing is that it appears that the legislative structure is being put in place first and then how the thing is going to work is following on afterwards. In other words, it is a sort of cart before the horse situation. This legislation has not been put forward in the form of an exposure draft, so there has been no opportunity for community interest and other sections of the industry to comment on the likely impact of the legislation, other than in this forum. So the desire to get the legislation through and then see what impact it will have afterwards seems to us to be an illogical process. Dr O’Sullivan might answer the other question.

Dr O’Sullivan—I think the picture is being painted that it is all happening in the US and elsewhere and Australia will be left in the dust. I feel that what is happening, particularly in the US, is that they are now beginning to understand some of the difficulties that they are getting themselves into with their haste. It is not clear at all that there will be large numbers of HDTV receivers out there, or that indeed there will be great public take-up. As a result, it is not clear that Australia needs to attempt to be one of the pioneers that ends up with the arrows in their backs. There are lots of things happening around the world and, as they happen, the picture is changing.

Senator TIERNEY—One of the major issues for debate in all of this has been the exclusivity period. There was some speculation before it was announced that it would be about 2006. What we have proposed in the bill is 2008 with a review in 2005. In your submission you argue for that period to be, basically, three years early—through to 2005 with a review in 2003. Wouldn’t that create some uncertainty for investment in the industry if it was an earlier period? What is really the essence of the argument for doing all this a bit earlier?

Mr Colless—On that question of certainty, I do not see the difference. I do not believe that it would create an unacceptable degree of uncertainty. That sort of certainty is not something which applies to any other industry. Any other industry that is upgrading to new technology does not say that, unless there are no competitors in that industry for the period of time in which it is changing its technology, it will not be able to invest the money to make that change.

Our view, in fact, is that the period of exclusivity cannot be justified at all. What we have said in our submission is that, if the government is determined to proceed with the legislation, that period should be reduced to the absolute minimum, and that, by the end of 10 years, it is going to be very difficult for any new players that might come into the market to be able to compete.

Senator TIERNEY—So you are arguing that, in terms of the review time, 2003, given the American experience and to some extent the Australian experience, would be a reasonable review point? You think we would have the pattern in terms of take-up rate and speed by then to make a sensible decision on when the final—

Mr Colless—That is if it would be absolutely necessary for the industry to have reached that point before any new players could come in. I am not sure that it is absolutely necessary for an industry to bed itself down completely before competition can come into the market.

It may well be that competition in the market would lead to a more efficient take-up and a more efficient result for the public.

Senator TIERNEY—On page 11 of your submission you talk about interoperability of the digital set top boxes. It is an issue that, I suppose, has been disturbing us, particularly in the light of some overseas experience. Given that News has got a lot of overseas experience, perhaps in terms particularly of the British experience, could you explain why it is so necessary to make sure we set things up in such a way that we do have interoperability between the set top boxes?

Dr O'Sullivan—This is, I believe, a great concern for all of us. The potential exists, with the wrong choices, for the poor viewer to be left with insurmountable problems trying to get their array of equipment—the entertainment system and PC and games consoles—all working together. We have a situation in Australia where we have cable, I think we still have satellite and we have terrestrial. It is very desirable that these be able to work together in a seamless way. I understand that in the UK the regulator has requested of both DDB and BSKyB that their set top boxes for terrestrial and satellite, respectively, be able to receive each other's mode of transmission and work together. That means that things like conditional access systems have to work together; it means that the standards need to be compatible in some way.

Senator TIERNEY—I suppose that the technology buff, if we did not do that, could end up with something like one of those stereo stacks of boxes sitting up on the top of their set, having to buy new boxes with new technology.

Dr O'Sullivan—I believe that if you are not careful the technology buffs will be the only people who can get it all working together.

Senator TIERNEY—Probably so!

Senator SCHACHT—On this point—

Senator TIERNEY—On a point of order, Madam Chair: I would—

CHAIR—Sorry, Senator Schacht has a question.

Senator SCHACHT—It is on the same matter.

Senator TIERNEY—Fine.

Senator SCHACHT—Is there anything in this proposed legislation that would encourage the multiplicity of boxes? Is there anything in the legislation, on the point that Senator Tierney has raised, that the legislation is deficient about or is silent about? Are you proposing a particular amendment to the legislation to stop the multiplicity of black boxes on the top of the TV set?

Dr O'Sullivan—We believe it is relatively silent about it, and this sort of thing should be stated as a goal or an objective.

Senator TIERNEY—In your submission you seem to be arguing that new commercial broadcasting licences become available, but we have had a bit of spare spectrum for 20 or 30 years in the form of channel 6. I have not perceived any huge push for anyone to argue that perhaps they should be getting that.

Mr Colless—The government has said that that is not available for a fourth commercial network.

Senator TIERNEY—But it really has not ended up doing anything, has it—

Mr Colless—No.

Senator TIERNEY—in that time period. I have not perceived that there is any great push to review that decision and to say, perhaps, ‘If it cannot be used for anything else, let’s just put it back in the market.’ Given the new environment we are moving into, particularly with the role of the Internet, obviously with pay TV and all this competition for the consumer audience, is there really a market for yet more free to air systems in the country?

Mr Colless—FACTS would argue that there is not. We are not convinced.

Senator TIERNEY—Unused blocks of spectrum, you argue at page 2 and page 9, should be made available for allocation for datacasting and other services on a competitive multi-tranche basis. Could you explain how you think that spectrum should be made available and why you argue for a multi-tranche sale.

Mr Colless—The government has said in its policy that it intends to conduct an inquiry in 2005 into a number of aspects of the future path of digital television, one of which is whether there should be any new players in the market. It seems to us that, if the spectrum is allocated by auction or whatever process now, then it really makes that policy commitment and that inquiry meaningless. If there is no spectrum available, what can that inquiry achieve in that aspect of that inquiry? The department, in its evaluation of this, has said that there is adequate spectrum.

Senator TIERNEY—One of the issues that have been perplexing the committee is the issue of compression of digital signal, which would make a lot more spectrum available. Has News received any technical advice on that? Is there anything on the horizon that would enable broadcasters to compress the spectrum and put something like HDTV on something less than seven megahertz?

Dr O’Sullivan—There are some restrictions caused by the fact that everybody has adopted a particular compression standard. That limits the improvements to possibly small ones. But certainly, if we follow the trend over the last several years, we can expect that there will be small improvements made, maybe going up to two to one further improvement.

Senator TIERNEY—If it went in the way you indicate, how many megahertz would that then equate to?

Dr O’Sullivan—That could conceivably allow you to put two HDTV channels into one—

Senator TIERNEY—Into seven megahertz?

Dr O’Sullivan—Into seven megahertz. But I should say that for every expert you could find to say that, you would probably find one who would disagree.

Senator TIERNEY—If that happened, then just say that one of the existing free to airs decided that it could get its high definition television signal down half the pipe and then use the other half—or any spare spectrum it has—for datacasting. Under the legislation, they would have to pay a charge to ensure competitive neutrality. Do you have any problem with that approach?

Mr Colless—For the free to airs to pay it?

Senator TIERNEY—Yes, free to air would have to pay.

Mr Colless—We think that is a reasonable level playing field situation, bearing in mind that the data broadcasters themselves will be facing some big entry costs to get into this business on a licence basis, or a spectrum basis.

Senator SCHACHT—Mr Colless, the chairperson asked you about News Ltd’s view about America. I think Mr Rupert Murdoch made some statements that he was in support of the free

allocation of spectrum to the existing free to air networks in America for digital. You said that the explanation for that was that it is a different market, with different systems, et cetera. Can you give us a bit more detail of what is the difference—other than that there are 260 million of them and there is 18 million of us; the continental size is about the same, but the population distribution is quite obviously different—that means that News Ltd could argue in America for a free allocation but in Australia for an auction?

Mr Colless—One obvious difference is the size of the pay television market in America, compared with the size of the free to air market. The pay television market in America is about four times as big as the free to air market. The situation of the free to air market is completely the opposite here, where you have a fledgling pay television market, for example, which is trying to establish itself in a competitive situation against a mature free to air market. In America you have a mature pay television industry, and a free to air industry which is fighting to keep pace with that.

Senator SCHACHT—So the economics of the—

Mr Colless—The competitive economics.

Senator SCHACHT—situation in America is that the free to airs are under much more of a commercial challenge than in Australia?

Mr Colless—Yes.

Senator SCHACHT—We have only a few days left, but I would not mind getting more information on the comparison. If you could provide any, that would be useful.

Mr Colless—Sure.

Senator SCHACHT—You must have looked at the profitability of the three existing commercial television stations in Australia.

Mr Colless—Yes.

Senator SCHACHT—Can you compare that with the profitability of the equivalent in America although the market size is different? Obviously, revenues are billions of dollars different. In terms of return on capital, in terms of profitability levels after providing the service, are they remarkably different in percentage terms?

Mr Colless—They are. I can get you some information on that, if that would be helpful.

Senator SCHACHT—Are you saying that the Australian free to airs are actually very profitable?

Mr Colless—Certainly.

Senator SCHACHT—Are you saying that they are profitable because the existing licensing system, with only three commercial networks operating, means that the revenue base is very profitable for them?

Mr Colless—It is certainly a narrow funnel for the advertising dollar to go into.

Senator SCHACHT—Only five or six years ago—I was already in parliament then, although it seems a long time ago—we were actually debating whether the three free to airs could exist in Australia. There was some debate about Channel 10, which had gone bankrupt, and Channel 7, which was near bankrupt, and the banks had ended up owning two of the three networks. The evidence indicated there were real problems in the free to airs, that they were not profitable.

Dr O'Sullivan—There is a difference—

Senator SCHACHT—Is it cyclical, that they are profitable at the moment but when there is a business downturn they become unprofitable, like they were in the early 1990s?

Mr Colless—Everyone is affected by business downturns, but you cannot confuse the potential profitability of an industry with the management expertise to be able to make companies in that industry operate efficiently and profitably.

Senator SCHACHT—Are you are suggesting that the managers of those television stations in the late 1980s or early 1990s were incompetent, and that is the reason why they lost money and the banks took them over? Do not be afraid to say it, you are under privilege here, you cannot be sued.

Mr Colless—I think the historical facts speak for themselves.

CHAIR—He has to watch his back.

Senator SCHACHT—News Ltd are on that side of the room and PBL are on that side, not directly behind him!

Mr Colless—As for whether there is a lot of money in the market to be made by the free to air television industry, what I am saying is that cannot necessarily be equated with the ability of the operators of the television networks to be able to make the best use of those opportunities.

Senator SCHACHT—So the return to profitability, and by your definition, good profitability, of the three commercial networks in Australia in the last two or three years is because good managers have finally got their hands on running the places, by and large.

Mr Colless—Yes. I think the most dramatic example of that in recent times has been Channel 10.

Senator EGGLESTON—In relation to the point that Senator Schacht has just been making, one of the issues in Australia compared to the United States seems to be population. Essentially, that must have a great impact on whether or not any kind of commercial television service can be viable. Would you like to comment on what you see as the extent to which both free to air and other forms of television can grow within Australia, given the limitations of not only our total population but the fact that it is segmented into fairly small clumps around the country so that the advertising market in each of those areas is relatively small and its capacity to support unlimited expansion of television services must be limited in itself.

Mr Colless—If you look at the New Zealand market, for example, where the population is a lot smaller, you have got two television networks and a pay television network operating there profitably.

Senator EGGLESTON—So there are three altogether.

Mr Colless—They have a population of three or four million.

Senator EGGLESTON—You appear to argue, as you have said in your submission, that new commercial broadcasting licences should be available. How many, as a matter of general principle, can a population of 18 million sustain? This committee would like to have some feel for what you see as the outer perimeters of the possibilities of this small market that we have in Australia.

Mr Colless—At the end of the day that, like anything, is going to be determined by the market itself. You cannot predict the final profitability of any company when it first goes into the market. It would seem to us that the argument that there is not room in the Australian market for even one more network is hard to sustain.

Senator EGGLESTON—We have already seen one pay television network collapse presumably simply because the market could not sustain it.

Senator SCHACHT—Was the collapse of Australis incompetence or was the market not big enough, like with the problems in the early 1990s with free to air?

Mr Colless—One of the problems for the pay television industry has been the way in which the structures were put around the pay television industry when it was born. If the pay television industry had in fact been born in the sort of unshackled environment that we are talking about for the future of digital television in Australia, you may well have a number of pay television companies competing in the marketplace.

Senator EGGLESTON—In the United States, doesn't pay television almost have a monopoly in that situation, though, in each city? There is only one provider per area whereas we, in this small population, have tried to provide three providers in each area. Isn't that a factor?

Mr Colless—One of the factors in Australia, as I said before, is the whole structure, the way in which pay television came about here. Only the market will determine whether you have a number of competitors in the industry. Your main pay television operators in the country at the moment are operating cable television, which is the most costly possible way of delivering pay television to the community.

Senator SCHACHT—Do you think that, on the profitability of existing free to air and commercial television in Australia—the three networks—with the profits they are making and the revenue base, there could be a successful commercial fourth network operating in Australia?

Mr Colless—We do.

Senator SCHACHT—I presume News Ltd would be interested in bidding for it if it was not for the cross-ownership rules?

Mr Colless—That opportunity has not been presented to News Ltd at this stage—in fact, quite the contrary.

Senator SCHACHT—Because of the cross-ownership rules?

Mr Colless—Foreign ownership and cross-ownership rules.

Senator SCHACHT—Mr Colless, in your submission you have said that the issue of the moratorium on any new licences, instead of being seven, eight or ten years from the announcement three months ago, probably should be two to three years. Is that correct?

Mr Colless—That is right.

Senator SCHACHT—Is that a compromise you use—

Mr Colless—Four years is the period that we put in our submission.

Senator SCHACHT—In view of some of the public remarks of News Ltd in the last month or so, I take it that that is actually not your preferred option but that is a political compromise from News Ltd. Is that correct?

Mr Colless—Our preferred option is that there be no exclusivity period. Our proposed amendment is in the context of the government's legislation.

Senator SCHACHT—Do you want a review before the four years run out? The government has a review in 2005.

Mr Colless—We have suggested 2003 for a review. That review could take place in 2001 or at any time.

Senator SCHACHT—Yes, at any time. In the context of the government's legislation, you might have heard some of the previous evidence. Committee members have raised the fact that there is now spectrum available, at least 12 to 15 megahertz in the broadcasting band, that is unallocated, even after giving the five free to airs seven megahertz each. Do you think it is reasonable that, even now, part of that be given to a new station, a new commercial network, and be allocated by someone bidding at auction?

Mr Colless—We do not see any reason why it should not. There is in fact, as Senator Tierney raised earlier, channel 31 operating at the moment.

Senator SCHACHT—The so-called sixth licence, the sixth network, which is basically a hodgepodge of community—

Mr Colless—It is a UHF service being used by the community services.

Senator SCHACHT—Community services which are, let us say, disparate in their nature and in what they are actually doing with it and so on. It is a very good case for community television, except in regard to who pays for it. I suspect the ultimate ask will be back on the taxpayer in one form or another. I do not think that necessarily is a bad thing if the concept works well, but I know that treasuries do not like shelling out more money for these things.

The other proposal which we have had put before us on the datacasting issue is that this part of the spectrum of up to 12 to 15 megahertz should be licences issued by bidding almost immediately, separately, for new datacasters. Does News Ltd support that proposal? It is not your perfect proposal, it is not your bottom line philosophical position, but in the adjustment of the legislation we have before us it has been put that you could, without affecting the allocation of the free to airs, still use this other 12 to 15 megahertz to provide four datacasting channels.

Mr Colless—I would like Dr O'Sullivan to comment on this as well, but I think the problem with that at the moment is that a lot of statements have been made about the availability of spectrum. We believe, from what we have seen and from what we have read, that there is an amount of spectrum there that could be used over and above the spectrum that the free to airs have been allocated, or loaned. How that spectrum is to be used by the datacasters, the capacity of them to be able to use it, is not clear at the moment.

Senator SCHACHT—With what you know, would you think it unreasonable should an amendment be put to say that this extra spectrum, two or three of these channels of three or four megahertz each, could be put out for auction for a datacasting service?

Mr Colless—We do not object to that. What we are saying in this context is that, with the spectrum that is available at the moment that we have been told is there, that DoCA has set, the government should reserve some of that spectrum for subsequent review of potential new broadcasters. Having done that, then the issue that you raise we have no objection to. In other words, all the spectrum should not be allocated now so that, at a later date, there will be no spectrum available.

Senator SCHACHT—You have recommended a change to the moratorium on your licences to make them three or four years rather than seven to 2007. Do you have any objection to the planned simulcast period going to 2007 and then analog being switched off? There is a review to be done in 2005 to check how that is going. I separate the two issues: the simulcast period

is a different issue from the actual ban on any new commercial licences. I do not link them together.

Mr Colless—I do not think the legislation actually has a switch-off date for analog.

Senator SCHACHT—No, because there is a review in 2005.

Mr Colless—Yes.

Senator SCHACHT—But do you accept that at some stage there should be a switch-off date for simulcast, that analog goes off the air and it is then all digital?

Mr Colless—I would have thought that there would be no reason for the industry migrating to digital if it is still going to operate in analog. Presumably, that is a decision the market will determine, primarily by the market take-up.

Senator SCHACHT—The problem, though, is that, if you keep saying to people that there will always be analog available in some form or another, the last 20 per cent to 30 per cent will never switch. It is a bit like saying, ‘We have got to get rid of leaded petrol cars,’ but while you keep selling leaded petrol someone is always going to keep a leaded petrol car to drive around.

Mr Colless—I think there are still several hundred thousand people in England paying licence fees to watch black and white television.

Senator SCHACHT—If the government does conscript the consumer in the wider national interest, there is an issue about whether that is correct or not. But, if 2007 was the cut-off point and the free to airs hand back what is the equivalent of 35 megahertz of analog spectrum which is then available for other spectrum use, including broadcasting, would you be opposed to that?

Dr O’Sullivan—No, I do not think we would be opposed to that. But, if I could come back to the earlier question you were raising about the 10 to 15 megahertz of spectrum, I think there are a number of issues there that need to be watched out for. Firstly, if that spectrum comes in chunks of three or four megahertz, you have to realise that most of the TV receivers, PC tuners or whatever will not be able to receive that. You will need special terminals which, to my mind, will significantly reduce the number of options.

Senator SCHACHT—But if the government has various review committees on standards and systems, et cetera, and if the decision was in the legislation that that would be available, you would therefore say that manufacturers would have to ensure that the standards and the systems of the television receivers they make can receive that spectrum.

Dr O’Sullivan—At the moment, that would not be the accepted digital transmission standard for the digital terrestrial TV. They come in six, seven or eight megahertz chunks, depending on the country. That is one issue.

Senator SCHACHT—That is what is happening now. I am saying that if 12 to 15 megahertz is sitting out there in the spectrum management office over in DoCA and the government or parliament decides that we are going to make that available for bidding in lots of three to four megahertz for people who are on a datacasting service, separate from the free to airs—which is a separate issue—surely DoCA could give instruction in the standards that the new digital television sets would be able to receive that extra signal on datacasting. That is not an impossibility, is it?

Dr O'Sullivan—It is not an impossibility, but the TVs that would be capable of doing that would be different from the TVs being built for other markets in the world, and I believe the prices would go up.

Senator SCHACHT—Instead of giving it to four different datacaster stations, if we said, 'Right, there is seven megahertz for a fourth digital television network across Australia,' wouldn't that mean that the television set would have to be adapted for that as well?

Dr O'Sullivan—If you say, 'Seven megahertz for a full network,' it is consistent with all the other TVs, PC tuners or whatever. But, as a policy objective, you could say that the goal here is to maximise the efficiency of the use of the spectrum.

Senator SCHACHT—I am all in favour of that.

Dr O'Sullivan—And if you did that then you could get, I believe, a lot more than 10 to 15 megahertz.

Senator SCHACHT—I am only going on what the ABA said in this hearing. I asked them how much unallocated broadcasting spectrum is still available after you allocate seven megahertz each to each of the five free to airs, and they said 10 to 12 megahertz. So I thought there is a pot of megahertz left over that, in this argument about accessibility, diversity and developing, is available for allocation. This is a way in which maybe we can put that in the pot for allocation.

But the thing you raise, which I am very interested in, is to ensure that the review committees of the government make sure that the systems and the standards they adopt for the receivers can receive that extra megahertz. You are saying there is a difficulty about that because overseas manufacturers would not have that in the design or the standard of the receiver.

Dr O'Sullivan—No. The standards for digital terrestrial television and data are based on, depending on which country, six-, seven- or eight-megahertz channels.

Mr Colless—If you allocate a smaller band—

Senator SCHACHT—Oh I see, allocate the smaller band.

Mr Colless—that operator of that channel, if you want to call it that, would not be able to access the set-top box.

Senator SCHACHT—So we have to give him six megahertz to access it off the black top box into the receiver?

Mr Colless—Or he has to be operating within a seven-megahertz channel.

Senator SCHACHT—But, when we go to the free to airs—first of all I will ask you the question and I think I know what the answer will be—if they do not use it for HDTV, do you agree with the Australian Consumers Association that they should use it or lose it?

Mr Colless—In the circumstances in which they have been lent the spectrum, the development of HDTV is a prime part of the basis on which this arrangement has been reached. It seems to us to be an extraordinary situation if the government—or as a consequence of legislation—at some stage could say, 'Oh, that is too hard. We are going to use it for something else.'

Senator SCHACHT—So, on that basis—

Mr Colless—Use it or lose it.

Senator SCHACHT—Use it or lose it. On the basis of the discussion we had with previous witnesses about multichannelling, when they are not using it for HDTV during a 24-hour period—and we know there is not enough product for HDTV for a 24-hour broadcast—it might start off with three or four hours a day; and we are interested in looking at an indicative program to increase the levels of HDTV to encourage uptake—whatever hours it is not being used, that seven megahertz could be used for multichannelling. That is correct, isn't it?

Mr Colless—Not as I understand it under the legislation. If they are not using it—

Senator SCHACHT—No, technically—

Mr Colless—Technically, yes.

Senator SCHACHT—Technically there would be three or four channels for multichannelling in standard digital format?

Mr Colless—Possibly.

Dr O'Sullivan—There is.

Senator SCHACHT—What the legislation I think is saying, though there is some difficulty which we have to clear up with DoCA about a technical definition of what is multichannelling and what is enhancement, et cetera—and I think if you do not watch out there could be a loophole big enough to drive the *Queen Mary* and the *Queen Elizabeth* through, and I think we have to be very careful about that—is that you could then have the receiver so that someone else could use one of those channels of two or three megahertz for a separate signal when it is not being used for HDTV. Do you agree with that, Dr O'Sullivan?

If we say use it or lose it—that is for HDTV—and they are not using it for HDTV, say one of the channels says, 'We are giving up. By 2002 we are not going to try HDTV. There is not the uptake. It is too costly. There is no product'—whatever excuse they give—then we say, 'Right. You lose it. It comes back into the government pot for reallocation,' or it will still be there and there will be three or four standard digital channels given out under competition or bidding, whatever system you like, to different people to use for whatever purpose, whether straight television or a form of information service or whatever, that can be done, is that right?

Dr O'Sullivan—It would seem to me the practical way that could happen would be not by handing the spectrum back but by obliging the carrier there, the broadcaster, to transmit other bits.

Senator SCHACHT—So you have an open access regime.

Dr O'Sullivan—You have an open access regime.

Senator SCHACHT—So they could transmit the bits. You might get three or four separate channels of three or four megahertz. If it is Channel 10, there will be 10A, 10B, 10C and 10D. So I as a consumer would have a television set on which I could watch the Channel 10 program in simulcast in digital on Channel 10 digital; Channel 10A might be someone else using it for some other purpose, say, ice hockey from Alaska; and Channel 10B might be for netball from Rwanda or somewhere else. I would have a choice. That is possible?

Dr O'Sullivan—Yes.

Senator SCHACHT—If it is possible to use two or three megahertz that way in that standard, why is it not possible to allocate separately three or four bits of megahertz to a datacaster on their own back separately, if they can do it in breaking up seven megahertz for each of the free to airs, if I do not use it for HDTV? Why can't we allocate separately, off the remaining 12 megahertz, lots of three megahertz to the datacasters?

Dr O'Sullivan—If you started out to set the standard and build the receivers—and the part that is critical in the receiver is the tuner and demodulator at the very front of it—if you set out with the goal of being completely agile in what size channels, what modulation schemes, et cetera, you can do that. You can add some price to it and that price increment will come down as time goes on. What I believe you will have, if you get commercial product for digital TV receivers, is something that is made cost, is limited to the number of options the receiver can handle to simplify the circuitry and lower the cost of the receiver. You will only, I believe, have receivers able to handle one particular channel width.

Senator SCHACHT—You still have not convinced me. If you can break up the seven megahertz signal that is given to the free to airs—and they are not using it for HDTV—into lots of two or three megahertz, the standard digital, whatever that signal may put out, and be allocated to somebody else having open access regime, why can you not allocate the other 12 megahertz in the same way? If the receiver can separate each of the free to air's seven megahertz into lots of, say, three or four megahertz, why can't you allocate straight off lots of three or four megahertz for standard digital to anybody who wants to bid for it?

Dr O'Sullivan—I am sorry, perhaps I was misunderstanding you earlier.

Senator SCHACHT—We are in quicksand all over the joint on this. So I am not surprised if you misunderstood me.

Dr O'Sullivan—The way the digital receivers are structured, they are designed to receive a bit stream that is encoded onto the analog waves, and that is a fixed sized bit stream, approximately 20 megabits per second. What is carried in that bit stream could quite happily be a multiplex of different channels. The systems are designed to have that. They could be different channels—9A, 9B, 9C—or they could be some broadcast channels plus some data channels or datacasting services. That part is easy to separate out the bits. What is not easy is to separate out the megahertz.

Senator BOURNE—I have one question on that, and I am sure you have thought about this more than I have. Say you bought from the datacasting spectrum and it is not in the broadcast spectrum, it is somewhere else. Would the free to airs who have the ability to send datacasting from the broadcast spectrum have a competitive advantage over somebody who is sending datacasting from a different part of the spectrum? Considering you have that small black box that has limitations on it, is it going to be much more expensive to be able to pick up other bits of the spectrum?

Dr O'Sullivan—If you have to have a separate box, then you are possibly talking something like a web TV box with a special tuner, worth maybe several hundred dollars, that you would not otherwise have had to have purchased.

Senator BOURNE—So, if that were the case, that would obviously give a competitive advantage to the free to airs because they can datacast out of the broadcast spectrum; is that right?

Dr O'Sullivan—Yes. They could have the datacasting appear as part of their electronic program guide, for example.

Senator BOURNE—So anybody who is not actually inside that broadcast spectrum, who is somewhere else trying to datacast, is starting on a completely different footing really.

Dr O'Sullivan—If they have different chunks of spectrum handed out. If they do not have different chunks of spectrum, then they too can work to a standard TV receiver.

Senator BOURNE—Thank you.

Senator SCHACHT—Dr O’Sullivan, I do not know how much time we have on this, and maybe I am just a mug on this—and you can say you certainly are, you are a politician—but I am still trying to grip this idea. If we gave a fourth channel overall, if we allocated the megahertz in the remaining 12 to a new fourth commercial channel across Australia—there is the megahertz available, according to the ABA; they get seven megahertz—they, like the others, cannot do HDTV all the time. You then say, ‘Right, you can have three channels of three and a bit megahertz each for datacasting.’ Would that create a problem? Will we also have a problem with the standard of the television sets trying to cater for a fourth HDTV signal for a fourth commercial television network?

Dr O’Sullivan—As I understand it, if you allocate, say, three or four megahertz only to an operator, their only option is to have a non-standard receiver.

Senator SCHACHT—Let me put it this way. I am glad you have raised this problem; I will have to try this on DoCA when they turn up. Mr Stevens down there, the all-knowing bureaucrat, will explain this very decently to us. If we allocate a way around it, could we allocate the fourth channel of seven megahertz and then say, ‘Right, you have channel 11 and 11A, B, C and D,’ and each of those separately, as far as the consumer is concerned, is seen as a separate 2½ or three megahertz channel for datacasting so that when I am switching on the TV set with my remote control, when I go to channel 11, it is basically four different signals of datacasting?

Dr O’Sullivan—Yes. That would work.

Senator SCHACHT—Hallelujah, I say!

Dr O’Sullivan—That would work. You have to allocate it as that seven-megahertz channel, and then the user is not as transparent.

Senator SCHACHT—We allocate it as seven megahertz and then break it up to separate datacasting of about 2½ or three megahertz each, so you get two of them or three of them or whatever it is?

Dr O’Sullivan—Yes. You would have a multiplex of datacasters, yes.

Senator SCHACHT—Thank you. Mr Colless, you said in your opening remarks that in the whole heap of amendments—I think there are 70 amendments to this legislation that the government tabled suddenly last week—there was an amendment that gave you considerable concern and that it was not just a technical refinement. We have been informally told—we have not had a chance to check this with DoCA—that all these amendments were just finetuning the legislation and that they were in no way changing significant issues in the plan for digital development. Can you just explain which amendments you—

Mr Colless—It is amendment 60 in the—

Senator SCHACHT—What does that do that gives you concern?

Mr Colless—Amendment 60 refers to the standards for conditional access for data broadcasting. Let me put it this way: the government’s policy, which is included in the outline to the explanatory memorandum, states that the conditional access should be such that all suppliers should be able to access the market. But if you look at the way that has been translated into legislation, into the legislative amendment, then the only conclusion that you can draw is that it excludes digital datacasters from consideration. In other words, it confines us to digital TV broadcasting services.

Senator SCHACHT—It excludes datacasters?

Mr Colless—It appears from reading the legislation—and I cannot draw any other conclusion—that that amendment precludes digital datacasters from the objectives of the legislation which are to have an open access system.

Senator SCHACHT—So that means they would not get access to the spectrum available to the free to air when they are not using it for HDTV. Is that what you are saying?

Mr Colless—No, I am talking about the datacasters. This affects the datacasters only, as I read it.

Senator SCHACHT—The datacasters.

Mr Colless—The data broadcasters as opposed to digital television broadcasters.

Senator SCHACHT—In competition or access terms, does that mean that they are given some exclusivity?

Mr Colless—It appears to mean that the standards that will be established for the digital TV broadcasters do not have to be compatible or do not have to embrace datacasters.

Senator SCHACHT—The standards?

Mr Colless—Yes, the standards for traditional access.

Senator SCHACHT—The standards for access?

Mr Colless—Conditional access, yes. In other words, the way I read it—and Dr O’Sullivan might like to clarify this from a technical point of view—the set top box may not necessarily allow for the same degree of access to datacasters as it does to digital TV broadcasters.

Senator SCHACHT—Does that mean that that disadvantages independent datacasters if they have a licence?

Mr Colless—Yes.

Senator SCHACHT—Or does it advantage them?

Mr Colless—It disadvantages them.

Senator SCHACHT—It disadvantages them because they do not have access to an open transparent black box?

Mr Colless—Yes.

Senator SCHACHT—I take your point if that is true. I presume you have more QCs in News Ltd than we have for the committee, so I presume they have looked through this, have they?

Mr Colless—That is our conclusion.

Senator SCHACHT—You have had legal advice on this, have you?

Mr Colless—Yes.

Senator SCHACHT—I know you said that in your opening statement. Is there any chance, even in confidence, that you could provide that legal advice to this committee? I know we would be getting it on the cheap from you.

Mr Colless—Could I suggest an easier way to do this might be to ask DoCA for their understanding of this.

Senator SCHACHT—I will ask DoCA; don’t worry about that, to quote someone famous in history.

Mr Colless—What I can give you is a more detailed—

Senator SCHACHT—Whatever the detail is, because we can put that in a written form to DoCA as well, and get a response. Paraphrasing it back to them now I might get it partly wrong, even though they are sitting down there listening to you. But I am pleased you raised it. So you have been through all of those amendments in detail?

Mr Colless—We have looked through those amendments.

Senator SCHACHT—And that is the one that spooks you.

Mr Colless—That is the one that stands out.

Senator SCHACHT—In the explanatory memorandum that came with it, does it explain it the way you have described it to us or do you think there is a difference with the explanatory memorandum saying one thing and the clause saying another?

Mr Colless—Yes. I do not have it with me, but the outline to the explanatory memorandum for all these additional amendments seems to be compatible with the stated objectives of the government policy. The legislative amendment does not seem to be consistent with that.

Senator SCHACHT—I think that is all I have got.

CHAIR—Dr O’Sullivan and Mr Colless, I would like to thank you for your submission and your presence today.

[11.05 a.m.]

BADGER, Dr Rodney James, First Assistant Secretary, Licensed Broadcasting and Information Services Division, Department of Communications and the Arts, First Floor, CWA Building, Moore Street and Barry Drive, Canberra, Australian Capital Territory 2601

LYONS, Mr Colin Fraser, Assistant Secretary, Digital Television Group, Department of Communications and the Arts, 38 Sydney Avenue, Forrest, Australian Capital Territory 2603

PELLING, Dr Simon, Director, Digital Television Group, Department of Communications and the Arts, 38 Sydney Avenue, Forrest, Australian Capital Territory 2603

STEVENS, Mr Neville, Secretary, Department of Communications and the Arts, CWA Building, Moore Street and Barry Drive, Canberra, Australian Capital Territory 2601

LUTHER, Mr Geoffrey William, Executive Manager, Spectrum Marketing Group, Australian Communications Authority, PO Box 78, Belconnen, Australian Capital Territory 2616

MATSON, Mr Harry, Executive Manager, Spectrum Planning and Standards Branch, Australian Communications Authority, PO Box 78, Belconnen, Australian Capital Territory 2616

CHAIR—I welcome officers from the Department of Communications and the Arts and the Australian Communications Authority.

Senator SCHACHT—Madam Chair, a number of people who have given evidence both today and previously are here in the audience. I think that at some stage if we raise questions as a result of what we have heard in evidence, both written and orally, over the last couple of weeks, it might be useful to ask those people to come also to the table. We can then ask them to put the case direct to the department because I do not want to paraphrase some of this technical stuff and find that I get it wrong. We have done this before, I think, on the deregulation of the Telecommunications Act. It worked very successively and the committee got quickly to the nub of some issues. It may not be necessary but it might be useful if we

can reserve our right to do that. I notice FACTS is there; I notice News Ltd is there. OzEmail is there and most of the other usual suspects are down the back. It might be useful if we can call on them if we need to.

CHAIR—If we need people from OzEmail or from FACTS or from somewhere else, I think that might be appropriate.

Senator SCHACHT—Firstly, Mr Stevens and officials, the day after our last hearing, there were a whole heap of amendments dumped on the members of the committee and the parliament, running to dozens of pages and 70 or 80 amendments. Why were all of those amendments suddenly necessary when in fact the department has been considering this legislation since July of last year?

Mr Stevens—Those amendments in many cases flowed from the discussions and the consultation we had with particular parties following the introduction of legislation into the parliament. That was the first opportunity they had to see the legislation. They had a chance to go through it and we discussed in detail with them their views of it and many of those amendments flowed from those discussions to get greater clarity to the concerns that were expressed.

Senator SCHACHT—I have to say I thought this just proved again that the process the government has adopted in introducing this digital legislation is very hurried and, in fact, this proves that your legislation should have gone out as an exposure draft for several months and then been considered by a committee with all the evidence and the public debate. What you have done here is ram this whole thing, concertinaing it down into two or three weeks. As a result, we are picking up all the time, as you have, endless changes needed to the legislation to make it work. We have just had evidence from News Ltd that they have had a chance to at least read the amendments. They think that one of them is quite significantly different from what the explanatory memorandum says. You may say they are wrong.

We had last Friday, Mr Stevens, two representatives turning up at short notice from GTS4 and SES8 in South Australia, who come from a solus regional market, explaining for the first time to the committee that, in a solus market, the moratorium on any new commercial licences was not going to operate.

It had basically been misunderstood. We may not have read the legislation correctly. Obviously we did not have the time. We thought that this moratorium on new licences was everywhere for everybody. They suddenly turned up last week explaining they have a real difficulty not only with the moratorium but with the operating of multi-channelling, their economics, et cetera. I now think that the way this is being handled really makes it very difficult, for some of us on this committee at least, to respond in the week after next or, in two weeks of parliament, to deal with all of this legislation. Everyone is saying to us that if we get this wrong we are going to make a terrible mess of the introduction of digital television.

Did the government consider at any stage having an exposure draft out for a couple of months at least before we had the hearing of the committee?

Mr Stevens—The timetable is essentially based on trying to achieve some certainty of industry to achieve the 2001 start-up date. While there have been some changes and amendments as you say, I do not think they go—

Senator SCHACHT—Some changes!

Mr Stevens—In many cases they are very technical changes and they do not go to the essence of the legislation.

Senator SCHACHT—It is always the devil in the detail in this stuff and we find a loophole has been created and someone walks off as a rent seeker with a big hit in their pocket. It may be a datacaster, it may be free to air or it may be whoever. I just think it is an extraordinary thing to say. With no prior warning, you dump on us pages of amendments in the middle of last week which we have to deal with in a report which we have now got to write in the next few days and table by the beginning of the following week. It is just not a process with which I feel comfortable that we are going to get most of this right.

On the timetable: in the ABA discussion paper of July last year—the last discussion paper anyone has issued publicly on digital television—they said the legislation did not have to be introduced until October of this year for a start-up date of digital television a year earlier than the government is allowing under this present legislation. If the ABA say in their own discussion paper that that is the timetable, why has DoCA or the government changed the timetable and become desperate for the legislation to be introduced and passed by 2 or 3 July for a start-up date that is a year later than the ABA's recommendation?

Mr Stevens—For a range of reasons. There have been developments since the ABA paper. We have had discussions with the industry that has made it very clear to us, in the case of a number of players, that they need the legislation as quickly as possible. It is quite clear there are some complexities in regard to definitions of programming and of multi-channelling which need to be started and completed as soon as possible if we are to give certainty to people before the 2001 date. All the advice we have had is that it is necessary to pass this legislation as quickly as we can to get on with the work involved in the legislation and to give certainty to the people so they can introduce these services from 2001.

Senator SCHACHT—That is not the advice of a lot of the people giving evidence to this committee. It certainly is from FACTS, no doubt. But I have not got that evidence from the Australian Consumers Association today. We did not get that evidence from News Ltd today. We did not get that evidence from OzEmail last week.

Mr Stevens—I can only say it is our opinion, Senator.

Senator SCHACHT—So all those opinions do not count?

Mr Stevens—I am not saying that at all. I am simply saying, in our view, having taken account of the various views, that it is necessary to have the legislation passed so we can in fact get on with the task of developing the various regulations which will underpin the regime.

Senator SCHACHT—The statutory authority that is responsible for regulation for the Australian commercial television industry, which is the Australian Broadcasting Authority, have put on record in July last year in their discussion paper a quite different timetable. When we had them before us, they gave us no evidence why that had to be changed.

Mr Stevens—I cannot speak for the ABA but I can say that the government's decision is not exactly the same as was in the ABA paper. There have been some additional complexities which need to be worked through.

Senator SCHACHT—Additional complexities. What are the additional complexities?

Mr Stevens—We have a number of reviews which have to be completed as quickly as possible, in regard to multi-channelling, enhanced programming and datacasting. These were not aspects which were fully considered in the ABA report.

Senator SCHACHT—I see. Why did we not then have an exposure draft earlier this year of the legislation, or the end of last year, if it is so desperate to have it passed by July of this year? Why did we not have the exposure draft of the legislation in January or February for two or three months so that all of these issues could be properly aired? This is just good process which, Mr Stevens, you usually are not bad on. On this occasion, DoCA—it may not be your fault; it may actually be the minister's fault—have got it wrong.

Mr Stevens—We will agree to disagree on that one.

Senator SCHACHT—We are going to have to agree to disagree because you are a very loyal public servant to your minister, as we have seen endlessly in estimates, and that is your job. I respect that completely.

All of those amendments that were tabled last week you say are just refining. They do not change the principles of the legislation?

Mr Stevens—Yes.

Senator SCHACHT—Before I come to the News Ltd query, which you obviously heard, one thing about this legislation, Mr Stevens, is that when you go through it, it basically says to hand all of the decisions on the introduction of digital television over to the minister, to have reviews that report to the minister and there may or may not be disallowable instruments.

The legislation itself does not set a number of issues about systems, standards, et cetera. They are all missing. They are left to these review committees to report to the minister and there may or may not be a disallowable instrument. Parliament is handing over, under this legislation, a very big pig in a poke and that is another weakness in this legislation.

Mr Stevens—My understanding is that all the regulations will be disallowable instruments.

Senator SCHACHT—You know as well as I do, as a very experienced public servant, that once you enter the issue of disallowable instrument, it gives all the advantage to the government of the day. If you put a regulation up and it is disallowed, you then go back and write another one. We cannot amend the instrument in the parliament. You either reject it or accept it.

The government keeps putting it up and, usually by exhaustion, will get its way over a disallowable instrument. The Senate or the House of Representatives, usually the Senate, might knock it off a couple of times. You might fiddle at the end but, by and large, the decisions about the introduction of digital television will be in the hands of the bureaucracy and the minister, not in the hands of the parliament.

Mr Stevens—No, I do not accept that. If I could give an example. One of the reviews which has to be undertaken is in regard to enhanced services, which has been a subject of some debate before this committee. The legislation says that the kinds of enhanced services which will be permitted will be those which are incidental and directly linked to television programs. The review we are undertaking, in fact, is constrained by those words. The intent is very clear. We are simply saying that we need to do some work, some review, some consultation, to determine the exact nature of regulations to give effect to what is a very clear policy decision. I think that is the case with this particular piece of legislation. The policy framework is very clear.

Senator SCHACHT—The policy framework is not very clear. It may be clear in your mind and the government's mind, but I do not think it is very clear so far, in view of the evidence we have received about definitions. You raised the dreaded issue of the definition of enhancement and incidental and digital signal. When we had FACTS before us, the definition

they gave publicly—I congratulate them on being so open about this—made it quite clear that they expected the definition to allow a form of multi-channelling.

Mr Stevens—I can only say the government has made clear that multi-channelling will not be permitted and that this particular piece of legislation stops it.

Senator SCHACHT—The example they gave, quite openly—and I respect them for doing that—was that there would be two separate signals broadcast at the same time by a television station, with a television news service in the Melbourne metropolitan market which reaches Geelong. Channel 10 would be the normal news service at 6 o'clock, or whatever time it is, and a separate signal would go out parallel to that, under the digital format, which would be part of the same news service but would have in it specific reference to news stories for Geelong. So the consumer would choose, wherever they lived in that market, which signal they would watch. That was described by FACTS as enhancement, but it is actually two different signals. Can you tell me whether that is multichannelling or enhancement.

Mr Stevens—Let me make sure we are talking about the same issue because it is a complex area.

Senator SCHACHT—That is my point.

Mr Stevens—It is complex; there is no argument about that. If you are talking about the ability of a regional broadcaster to broadcast two digital TV news programs, that would not be covered, in our view, by this particular piece of legislation. That would not be permitted.

Senator SCHACHT—What would be permitted by the term 'enhancement'?

Mr Stevens—As I say, we are to have a review to determine the exact extent of this, but a couple of examples that come to mind would be replays and progress summaries of sporting matches that might be being televised at that particular point, a more detailed coverage of some news items that might be broadcast as part of a news service, perhaps different camera angles of a particular—

Senator SCHACHT—That is what Mr Branigan from FACTS was describing.

Mr Stevens—I did not hear his evidence. I have read his evidence but I had not heard it directly. I was giving an example where, in the case of a regional broadcaster—

Senator SCHACHT—What about metropolitan?

Mr Stevens—The situation is the same. If a metropolitan broadcaster wanted to broadcast two news services at the same time, one was a national service and one was a regional service, in our view that would not be permitted under this legislation.

Senator SCHACHT—You mentioned replays.

Mr Stevens—Yes, of a particular match while it is in progress. So if you are watching an AFL football match, for example, you might want to watch again the Crows score another goal during the match.

Senator SCHACHT—Say that again.

Mr Stevens—For example, if there was an AFL match being televised, the Crows versus Collingwood, and the Crows scored a goal, you might be very keen to watch that goal again.

Senator SCHACHT—I see, so then they switch to Channel 7A or 7B and ask for the reply.

Mr Stevens—That is correct, while that match is in progress; or you might like to see a camera angle watching just the Crows captain play.

Senator SCHACHT—But it is too separate signals, isn't it?

Mr Stevens—Yes. There is no question of that. You are talking about signals coming down through the spectrum. It is two programs at once, Senator.

Senator SCHACHT—I have to say, Mr Stevens, I think the *Queen Mary* has left the dock and is about to sail through the loophole.

Mr Stevens—I do not accept that, Senator. We make it very clear. The legislation says the programming—we are talking about programs now—has to be incidental and directly linked. That very much circumscribes the review which will determine the exact parameters that will be permitted under this enhanced program provision. The policy position about multichannelling is very clear. An example I have given you is one that we believe would be able to be covered in that particular—

Senator SCHACHT—It is two different signals going out.

Mr Stevens—I might ask for our technical people to try to explain it.

Senator SCHACHT—Put it this way: at the same time, the consumer on the receiver has a signal being put out by the same broadcaster on two different clicks on the dial or the remote control, even though it is showing Modra from four different angles kicking the goals for the Crows and winning the premiership. I notice you used the example to soften me up.

Mr Stevens—It is worth a try.

Senator SCHACHT—It is worth a try, but not even on this are you going to get me too softened up, even if you offer me Modra kicking 10 goals from eight different camera angles!

Mr Stevens—We have to recognise that the broadcast is what actually happens in the match, not what we would want to happen.

Senator SCHACHT—I understand it is the same match at the same time. Let us say that is on Channel 7B, looking at Modra kicking goals or replay. Could Channel 7C show Mark Bickley, also being replayed, kicking goals?

Mr Stevens—If he is in the same match, yes.

Senator SCHACHT—So you could have one match with the three other channels all showing different angles of the same match?

Mr Stevens—That is correct.

Senator SCHACHT—That is three different signals going out?

Mr Stevens—No. It is one signal; it is three programs.

Senator SCHACHT—So, for the consumer, three channels are tied up with one program and you say that that is only enhancement?

Mr Stevens—That is correct.

Senator SCHACHT—I have to say that not only has the *Queen Mary* left the dock but it is halfway across the ocean, through this loophole.

Mr Stevens—There is a very big distinction between what I have said is an enhanced program and multichannelling. Many people understand multichannelling to be quite separate programming streams. For example, on one channel you might have a news program, on another channel you might have a sports program and on another channel you might have a movie. That is what people often think about as multichannelling.

Senator SCHACHT—But Mr Branigan—

CHAIR—Let Mr Stevens finish.

Mr Stevens—That is not to be permitted. The concept of enhanced services, with different camera angles of a same program, is a very different concept from multichannelling.

Senator SCHACHT—I can see now that Mr Branigan, to give him his due, in his description would claim that what you have described is actually allowed. He is saying that the Channel 9 news service for metropolitan Melbourne had gone out on Channel 9 digital, standard Channel 9. What he is saying is that at the same time we are enhancing that program on the next channel and we have dropped out four or five bits of the Channel 9 metropolitan news. For five or eight minutes we have instead prerecorded interviews with Gary Ablett—who has got some hero status, I understand, in Geelong. That goes in at the same time but it is a different content. Mr Branigan's evidence was very clear: he sees that as enhancement and that that would be allowed under your definition. I see that as two different programs.

CHAIR—Mr Stevens, suppose, as another example, that you have a news story and you substitute in the other channel some local content about what is happening to farmers in a particular area. In the overall one you are using more generic content, whereas in the local one you are using local picture. Would that be seen as multichannelling or is that seen as enhancement? That is the problem I think we have got.

Mr Lyons—I think if it is, effectively, a separate program then it is going to be considered to be multichannel. The point to be made, though, is that the legislation sets the legal parameters for what is incidental and directly linked in terms of enhancements. But nothing will be allowed unless the regulations allow particular kinds of enhancements. So it is not a question of saying, 'Is this allowed or not allowed?' It is a question of whether, first of all, it falls within the general legal parameters, and whether, secondly, there are specific regulations that authorise the particular kind of enhancement that you have in mind.

Senator SCHACHT—Can you tell me, Mr Lyons, whether anywhere under law it has yet been defined what enhancement means?

Mr Lyons—The words that are used in the legislation are 'incidental and directly linked' and there has been some case law on the word 'incidental'.

Senator SCHACHT—Incidental in terms of communications?

Mr Lyons—Yes. Incidental, effectively, means subordinate, as I understand it.

Mr Stevens—There have been a High Court decision and a Federal Court decision in regard to the definition of incidental, and we are happy to provide those cases to you.

CHAIR—Do you have a summary statement of those cases?

Mr Stevens—I can read out what I have got, but I am not a lawyer.

CHAIR—Would you provide them for us and also summarise it for us.

Mr Stevens—Both the full Federal Court and the High Court adopted a dictionary definition of incidental. This is in a case of Winfield dancers in a pre-match entertainment before the rugby league grand finals. So it is a broadcasting issue. Both the full Federal Court and the High Court adopted a dictionary definition of incidental as happening or likely to happen in fortuitous or subordinate conjunction with something else.

CHAIR—Suppose, again, that I decide to run the broadcast and I am broadcasting in two areas. I have a picture of a farmer that everyone knows in Gippsland, in area A—I am not sure where all the things are—and when I am broadcasting to area B I have the same story but I substitute a local personality. I do not know how it would stand up under that definition. That is what we are trying to understand.

Mr Stevens—I think that is right, and that is really why the act requires the government to undertake a review: to determine exactly the issues you are referring to. I think it is fair to say that there are clear-cut cases that simply would be in or would be out, and there are some grey areas which depend upon the circumstances of the situation. What the review is designed to achieve is to set regulations to cover those areas which, at first blush, may or may not be in. What I can say is that there are very clearly things that would not be in and there are very clearly things that probably would be in. We can look at particular examples which may or may not be in, depending upon the circumstances of the situation, and that is what the regulations are designed to cover.

CHAIR—The regulations have in their EM an expansion of what is meant by that, to say what is not in, in particular, and what may be grey.

Mr Lyons—The regulations would need to come before parliament and say that there are particular kinds of enhancements which would be allowed and which would be treated as incidental and directly linked, and it would describe those particular kinds of examples. Everything else, even if it fell within the definition of what was incidental and directly linked at law, would not be allowed unless the regulations specifically allowed that particular kind of enhancement.

CHAIR—One of the problems with this is that it is so difficult to define it in law. An EM gives a spirit of what is meant and EMs are used when it is interpreted. So the explanatory memorandum in this case would need to be written very carefully to try and reduce the amount of grey.

Mr Lyons—Yes, I agree with that. I do not think that the regulations will be trying to define the concept, necessarily, of what is incidental and directly linked but to define particular kinds of enhancements. I agree with you that, within that, they should be very descriptive of the intention and purpose of what is to be allowed.

Senator SCHACHT—Irrespective of the definition of enhancement, in the way you have described its general operation, Mr Stevens, what concerns me is that a free to air commercial television station can now lock up access to the seven megahertz, when they are not using it for HDTV, and keep everybody out under a very simple device. To go back to my good old example of football: you will have Channel 7 showing football in standard digital; Channel 7A has got an enhancement or incidental—under that definition—showing from camera A at the match, which is always showing what Mr Modra is doing in kicking goals and being hit and so on. That locks up that three megahertz. What is on 7A is locked up. Channel 7B has got, if it is a match against North Melbourne, camera C always showing Wayne Carey kicking goals, beating people up, et cetera. The 7D signal is camera whatever number showing the umpires running around doing terrible things. Suddenly, all the megahertz, all the store is locked up under so-called enhancement of the signal to provide three different camera angles, essentially, of a football match.

That means nobody else has got access to the seven megahertz. So the stations can choose to say, 'We are not having HDTV today, but we are having enhancement. What we are doing stops anybody else'—under the theory we have been discussing—'from having access for datacasting or other services.' They cannot get it because Channel 7 says, 'No. We are using all the capacity to provide three different camera angles.' So that means that, for every program they can, to stop people having open access they can find very clever ways to ensure that each program they put to air on the main channel has got an enhancement shown on the other.

I have to say that that is not the intent or the idea that I thought we were discussing. I have to say, Mr Stevens, that I would have thought that someone like you—a well-known economic rationalist about open markets—would have been horrified at the idea that someone could use this device to capture forever the full seven megahertz when they are not using it for HDTV.

Mr Stevens—The point about digital television is that there are a number of different options that can be adopted by television stations. High definition television is one option. Enhanced programming is another option. In theory, multichannelling is another option. The government has said that multichannelling will not be permitted in the short term.

Senator SCHACHT—No.

Mr Stevens—Enhanced programming is permitted in the short term. It is up to the free to air TV stations to choose how they wish to give a viewer the best possible experience, consistent with the regulations in the legislation.

CHAIR—Senator Schacht, I warmed to your argument to a point and then I have another concern about it.

Senator SCHACHT—Fine. This is an open discussion.

CHAIR—If I have spent a fortune on my digital TV or my box on top of my analog, but especially if I have spent money on digital TV—and we have been told by the ACA that it is going to cost us an arm and a leg, but I do not necessarily agree with that—and Channel 7 is running three pretty ordinary standard definition TV matches and I am going to see another football match in high definition TV, I will decide which one I am going to watch. I understand the problem you have about the other bit being blocked on purpose but, if I want three, then that is what I will go for as a consumer. If I want high definition television, that is what I will go for. The stations will decide what people want. If people want to watch three aspects of TV, then who are we to say that we want to jam up the other bits of the spectrum? But I can see the point of view you are putting.

Senator SCHACHT—I would accept that argument philosophically, Madam Chair, if there were a lot more free to air television stations operating so that you would have a broader choice. But with only three operating and they are given this right and access for HDTV development—which we have supported—that means, if the three stations adopt a similar technique, there are only basically three programs going out with some enhancement. It is not HDTV.

I am willing to put up with the intervention in the marketplace to say, ‘This is the development of HDTV to get the take-up of HDTV television sets.’ But this process does not encourage the take-up of HDTV because they can sit on the full spectrum for ever and a day, saying, ‘We’ve got a couple of hours of HDTV, but all the rest we’re going to do in standard digital and this is how we’re going to use the enhancement or incidental.’ That, I think, strengthens the argument that maybe a further licence should be issued to put some more competition in the market. I want Mr Stevens to explain to me how we stop each of the commercial stations doing what I have described.

CHAIR—Mr Stevens, just before you do that: if the free to air were hogging the spectrum by enhancing and especially if consumers came forward and said, ‘This is not what we thought we were getting. We thought we were getting high definition television,’ under the review, could you not stipulate how much high definition television there had to be? If people were saying, ‘We don’t like this standard television with three views. We would prefer to have high

definition television,' doesn't the review enable that to happen and to stipulate how many hours of high definition television there ought to be?

Mr Stevens—Yes. The legislation allows the government to set regulations as to the amount and time of high definition television.

Senator SCHACHT—That is good. So does the government have any view that we should start off in 2001 with three hours of HDTV per station?

Mr Stevens—The government has not at this stage indicated the exact number of hours. This is subject to further consideration. It has said the provision is there to do this and it intends to do it.

Senator SCHACHT—But over the period, because of the practicality which I accept through the simulcast period, in the first few years there will be many hours where HDTV will not be mandated to be shown under any indicative plan because there is just not the product available. When that is not being shown, I am in favour of those channels being a multichannel available to others to use in various forms to add diversity to our marketplace.

Mr Stevens—I guess I can only say that is not what the legislation currently provides for.

Senator SCHACHT—It what? It doesn't—

Mr Stevens—The legislation does not provide for what you are seeking.

Senator SCHACHT—As I say, that is where one of our disputes is. So what you provide in legislation is you ban multi-channelling for commercial television but you allow the spectrum of seven megahertz each to still be basically under the monopoly control of each television station, irrespective of whether they are HDTV broadcasting, and, if they are not, they are able to use it in some other form but no-one else can use it?

Mr Stevens—Subject to meeting the regulations in regard to high definition television, yes, there will be the flexibility on the part of a free to air television station to determine whether they wish to use it for more high definition television or they wish to use it for a bit of datacasting or they wish to use it for enhanced programming.

Senator SCHACHT—So they have the control when they are not using it themselves for enhancement or for HDTV. Will they be their own gatekeeper on giving access to anybody else to use it for one of the channels for some data broadcasting?

CHAIR—I just mistook what you said there, Mr Stevens. What did you say they can use it for?

Mr Stevens—They will have ability to use it, under particular circumstances to be defined, for datacasting, high definition television or enhanced programming.

CHAIR—But not datacasting that other people will be bidding for at other parts of the spectrum?

Mr Stevens—No, we are just talking about the seven megahertz which has been allocated to them—

CHAIR—No, I am talking about not allowing them to do the type of datacasting which, if they did not have this, they would have to pay for in a bid in the other spectrum?

Mr Stevens—What we have said is that, if they are to do datacasting of that sort, they will have to pay a price equivalent to what the datacasters are paying for the spectrum.

CHAIR—That was not clear in what you said.

Mr Stevens—I am sorry. It is under the terms and conditions of legislation.

CHAIR—I know that, but you did not say that.

Mr Stevens—I apologise. They certainly have to pay to do that.

CHAIR—So they can datacast, but they will be in the market for the amount of spectrum they are using.

Mr Stevens—They can datacast, but in terms of the payment of a fee to government there will be a level playing field between them and other datacasters.

Senator SCHACHT—How do you work out the level playing field cost for the datacasting licence when no-one else has got a datacasting licence separately?

Mr Stevens—We intend to do that once we have allocated datacaster licences, to use that as the benchmark for determining the fees to be charged at a free to air television station.

Senator SCHACHT—Which part of the spectrum are you using to issue separate datacasting licences?

Mr Stevens—This is the broadcast spectrum I am talking about.

Senator SCHACHT—Yes, but where? You will be giving 35 megahertz to the five free to air stations.

Mr Stevens—We have already heard, I think, in previous evidence that there is some spare spectrum available for allocation to datacasters. There is to be a technical review to look at the actual amount of spectrum that is available from area to area, but there is significant spectrum available to be allocated to datacasters.

Senator SCHACHT—I have to say this is news to me. You have the government's policy now. This was not clear in the initial statements on the legislation and drawn to my attention or I have missed it—I missed a few things on this on the way through that keep popping up. You are going to conduct a review and at some stage in the next year—I presume that is about the time length—the review is going to say that that other 12 to 15 megahertz the ABA identified to us the other day is going to be sold off in lots to independent datacasting people?

Mr Stevens—That is correct.

Dr Badger—That is what you were discussing with News Ltd.

Senator SCHACHT—Of course. But can you draw to my attention in the second reading speech where it is clear that that is what the review is going to do, because I have to say I missed it. I may be at fault, but this is news to me.

Mr Lyons—There were two bills put before parliament. One was the Datacasting Charge (Imposition) Bill 1998 and that bill has its own second reading speech, which I am not sure I have with me at my moment.

Senator SCHACHT—This is the dot point on the review of consultative arrangements which says that a review of the regulatory arrangements should apply to the allocation of spectrum for datacasting and for the transmission of a community television service. Is that the dot point?

Mr Lyons—Yes.

Mr Stevens—Can I refer you to page 2 of the minister's press statement when he announced this decision. I will read it in full:

The FTAs will be able to use that portion of their loaned digital spectrum not utilised for DDTB to provide datacasting services, but will be charged fees for providing these services. The fee regime, which will be put in place following a report from the Australian Communications Authority (ACA), will ensure

that there is a level playing field between FTA and non-FTA datacasters (i.e. the FTAs are charged an equivalent price to that paid on a competitive basis for unused spectrum not required for the digital conversion of FTAs).

Available broadcasting spectrum not required by the FTAs for digital conversion will be allocated on a competitive basis for the transmission of datacasting services—which will commence at the same time as the transmission of DDTB. Existing FTAs will be precluded from bidding for this additional spectrum.

I think it is fairly clearly set out in that segment.

Senator SCHACHT—Okay.

CHAIR—Mr Stevens, would you anticipate that the free to airs would not be allowed to datacast until there was at least some other part of the spectrum available to others to datacast, otherwise they would be first in the field?

Mr Stevens—Certainly, we are looking for a level playing field there.

CHAIR—Including onset, the time of switch on?

Mr Stevens—Yes.

Senator BOURNE—What about community television? Is community television automatically considered in there? I know you have it in that dot point, it is in there, but—

Mr Lyons—One of the review issues to be considered is the regulatory arrangements that should apply to the allocation of datacasting spectrum. That review has to be directed towards the objectives that a community television service be provided free of charge in standard definition mode using that spectrum.

Senator BOURNE—Within the broadcast spectrum, not from somewhere else—

Mr Lyons—The broadcast spectrum, yes.

Senator BOURNE—Thank you.

Senator SCHACHT—Thank you for bringing it to my attention. In the mass of information swirling around, at times one keeps forgetting what one has read from time to time. I am glad you have pointed out to me that that is in the review process. What is the time scale for the review?

Mr Stevens—All the reviews that I have talked about will commence as soon as legislation is passed and will be completed as quickly as possible.

Mr Lyons—They must be completed before 2001.

Senator SCHACHT—Well before 2001.

Mr Stevens—I would hope some would be completed by the end of this year.

CHAIR—Would you see the one about datacasting as a matter of urgency? It was indicated to us, and I cannot evaluate it, that that is moving at a pace and they need access to it.

Mr Stevens—There are a number of different reviews which go to datacasting. There is the technical review in regard to the spectrum planning, to identify the amount of spectrum available and its location. There is also a review by the Australian Communications Authority in regard to the fee regime to be charged for that spectrum. Each of those reviews has to come together but, yes, I believe there is some urgency about both of them.

CHAIR—ASTRA in its submission expressed concern that pay per view or movies on demand may be available to datacasters under the legislation. Is that right? If so, would that enable datacasters to compete with pay TV, or does the legislation prohibit that? When we get to datacasting will people be able to datacast for movies?

Dr Badger—The objective of having the classification of datacasters and the reason for having the review process and the consultation with industry is to ensure that datacasting, particularly that entered into by the free to air broadcasters, does not provide an unfair environment in which they could compete with existing suppliers such as the pay TV industry. Without wishing to prejudge the outcome of the review process, I would imagine that the definitions or the regulations that would apply to datacasting would preclude them from offering a movie on demand service.

CHAIR—But the demand might be so high from consumers because they could say, ‘I can get this movie downloaded in a short amount of time, rather than having my television and my video taken up while I am downloading a film onto my video through cable.’ The demand would be there because I can get it quickly. I am not a technical expert, but it would seem to me that if you can compress the film, transmit it, and I can save it in a very short time, it is going to be much more attractive to me as a consumer than downloading it onto a video recorder. You might say, ‘Well, put all this in the legislation.’ But can you conceive that the community will come and say, ‘We want movies to be datacast’?

Dr Badger—I can certainly envisage a demand for a service which did that. Whether that would be permitted under the datacasting regulations is a different situation. The definition of datacasting is there to ensure that we have an arrangement where people who are providing datacast services do not end up with positions in which they have unfair competitive advantage over other players. That is the principle.

CHAIR—I hope that someone else is chairing this committee when we get to the point where people want films on the Internet.

Dr Badger—There is another part of the process which the bill recognises. This bill deals essentially with the conversion to digital. There is a recognition that there are a large number of changes occurring in the process by which people deliver video type programs. We have another review of the process, which is to look at the general environment in which video type programs are being delivered, to ensure that we do have a balanced and effective regulatory environment because we are dealing with an area in which there is tremendously fast technological change and there is the ability, quite correctly as you identified, to perhaps eventually download movies across what is the conventional Internet. Part of the review process that we have in train in this, which is called a convergence review, is to identify possible other changes that we need to make to the regulatory environment so that we can cope with the dimensions of technological change.

Senator SCHACHT—The ABA told us in evidence that maybe 12 or 15 megahertz was available in the spectrum that could be allocated. How much do you think would be allocated to meet the datacasting independent licences process once that review is completed? What are you looking at using?

Mr Stevens—I think that is premature at this point. We will not be making any decisions until we actually see the amount which is available. It will depend upon the area concerned. It is not something we can generalise across Australia on and there is conflicting advice as to how much might be available, which is why we want to look at it on a systematic basis.

Senator SCHACHT—What happens if the conflicting advice comes up or the advice element comes up and says, ‘We’ve issued too much spectrum for other reasons in Sydney. There is no spectrum available on the Sydney commercial market for datacasting’? Is that a possibility to happen?

Mr Stevens—No. I do not believe so. I think most of the uncertainties are on the up side rather than the down side of that ABA estimate. We believe there could be more spectrum available in some areas than the ABA are estimating, not less.

Senator SCHACHT—So the minimum in any market is 12 megahertz available or 15 megahertz or 30 megahertz—the minimum.

Dr Badger—We cannot add much to the ABA's estimate of at least 12 to 15. We know there are two. There is the fully planned sixth channel and, if you like, a digital partner to that, which people have basically identified already in the earlier studies. So that gives you something of the order of 14 and it does look like there are other blocks of spectrum—perhaps another six—that you can see just by looking at spectrum allocation now.

The first decision that you have to make is on the standard you use. The standard will determine the way in which you do the planning process for your coverage and that will determine how much spectrum you use up, where and when. After that you will know whether you have got something of the order of 15 or whether it is something of the order of 30. In advance of that you cannot really do anything else but guess.

Senator SCHACHT—On the principle of access for new licences for datacasting, new players coming in, which is a principle, Mr Stevens, you have very kindly outlined in the minister's statement for me, if the spectrum is not available, that becomes a useless proposition.

Mr Stevens—What we are saying is we have no reason to doubt the ABA's estimates of that spectrum—and it could well be more.

Senator SCHACHT—So there is 12 megahertz available. As you may have heard, I went through a long period of discussion with a previous witness from News Ltd about how the standard in the TV set for the consumer would operate. He said that you would have to put that out in lots of seven megahertz and divide it up. Do you agree with his description of that?

Dr Badger—Fundamentally, the end of the discussion I agree with.

Senator SCHACHT—Where we got to: you put it out as separate seven-megahertz amounts and then you break it into—

Dr Badger—Essentially, if you do not put it out in seven-megahertz blocks then what we expect to be the design of the receivers will mean that the receivers will not recognise the signal. However, it is also true that, if you did send it out in smaller blocks, people could have set-top boxes to pick it up. But if you are talking about the essential set, then seven megahertz because that is the way—

Senator SCHACHT—Fine, and if it shows that you can fit 3½ megahertz per datacast, that means there will be two datacast channels in the seven megahertz.

Dr Badger—You would have two, three, four datacast providers sharing the multiplex operating at a seven megahertz.

Senator SCHACHT—And as far as the consumer is concerned, how that is received at his set does not matter, but when he reads the program in the paper that day he can choose which one he wants, and there is a simple definition of 7A, B, C, D, or whatever it is.

Dr Badger—Yes.

Senator SCHACHT—The licence allocation in the minister's statement for datacasting is a flat fee set by the ACA. Is it the ACA or the ABA?

Mr Stevens—The ACA will do a review as to what that fee structure should be.

Senator SCHACHT—Is the flexibility in the review for that fee structure to be either just a flat fee, or a fee on turnover?

Mr Stevens—I believe there is ample flexibility given to the ACA to come to any conclusion in regard to those issues.

Dr Badger—It is worth noting that at the moment the FCC in the United States is conducting a review not unlike that, looking at the way at which it will apply charges for the use of ancillary services in its allocation to existing broadcasters in the US.

Senator SCHACHT—Irrespective of whether that is useful to us, it is all useful in the discussion. So there could be a fee based on turnover like a normal licensing fee for free to air television?

Mr Stevens—That is not ruled out.

Senator SCHACHT—Therefore, that would become the standard, which you would apply when free to air television do their own datacasting, that they would be charged for.

Mr Stevens—It would be a possibility.

Senator SCHACHT—A possibility or actual?

Mr Stevens—The intention is to have a level playing field. It depends a little bit on what the ACA review determines should be the appropriate fee structure for a datacaster.

Mr Lyons—The legislation requires the ACA, before setting a charge for residual datacasting by broadcasters, to report to the minister on the extent to which that fee meets competitive neutrality principles, which was basically the level playing field issue that Mr Stevens referred to.

Senator SCHACHT—So again the devil is in the detail of the regulation once it is tabled.

Mr Lyons—The charge will be set—

Senator SCHACHT—In regulations.

Mr Lyons—It is going to be set by an ACA determination.

Senator SCHACHT—Is that a disallowable instrument?

Mr Luther—Yes.

Senator SCHACHT—Mr Stevens, concerning the earlier issue I raised about free to airs blocking off those other channels by this enhancement, if they were actually broadcasting in full HDTV, using most of it, I always thought the enhancement meant that that was in that signal; that once I chose that channel—for example, if I were watching a Crows football match—I could then be my own selector of which angle I want. On a HDTV screen you might have up in the corner the four or five inserted camera shots and then you prove to bring up on the bigger screen which one you want to follow for a certain period of time. That was always—I am obviously mistaken—the enhancement I thought would be allowed; it would take more kilobits or megabits to provide it but it would be in one signal.

Mr Stevens—It is essentially in one signal but there is a technical issue about how much signal can be sent down the seven megahertz. If you are going to use it for high definition then you cannot at the same time send different streams of programming down.

Senator SCHACHT—So when the HDTV seven megahertz are being used for a fully fledged cast of a sport, football, which to get full quality uses it, are you then saying there is no enhancement available?

Dr Badger—Fundamentally, that would be true. You would be using the full megabit capacity to—

Senator SCHACHT—Just to get the simple picture.

Mr Stevens—Particularly for sport.

Senator SCHACHT—Particularly for sport, because of the movement.

Mr Stevens—Yes.

Senator SCHACHT—So what you are saying is the only way the enhancement will be available is to go to standard digital signal on one, which is the simulcast signal, and then use the other—what I still call channels in my wrong technological description—but that would be the way you get that multi choice?

Mr Stevens—Yes, that is essentially right. It is the choice of the TV station as to how it wishes to use the spectrum. It can have a limited number of standard definition programming streams or it can have a high definition programming stream.

Senator SCHACHT—I am glad you explained that to me because I was under a misapprehension. What that really shows, in this commitment to HDTV, is that there are now ways in which I can see, in the longer term, commercial stations saying they are going to opt out of HDTV.

Mr Stevens—No, that is not correct because—

Senator SCHACHT—They will say they can provide with standard digital signal all those enhancements which we have just been through on those other channels. If we just go to HDTV then Mr and Mrs Consumer get the big HDTV signal in full colour and glory, but you have got no other choices about it. The way you get choice of the enhancement is just to have a standard digital signal with other channels operating, other sets being used, to provide those other camera angles and so on.

Maybe I am too suspicious but what I can see happening is commercial television saying, 'This is actually a better service than HDTV because you get a range of options on the main signal which you do not get on HDTV,' and therefore create a demand that they actually have a form of multi-channelling with the enhancements. I am glad you raised it because I think that now is an issue.

Mr Stevens—Can I just say—

Senator SCHACHT—That is different from promoting HDTV.

Mr Stevens—The government has said that it will require broadcasters to broadcast a minimum proportion of their program in HDTV. If that were to change it would require a change in the legislation, it would not be a matter for broadcasters to make their own judgment about what they wished to do. The amount of HDTV, the minimum standard, will be set by the government—

Senator SCHACHT—Not in legislation.

Mr Stevens—Legislation provides for the setting of standards, yes.

CHAIR—If there is increased demand and the public is saying, 'We want more HDTV,' then there is a mechanism for increasing the time of HDTV.

Mr Stevens—There are a number of mechanisms. The TV stations themselves may choose to increase it or the government could change the regulation and increase the amount of HDTV time required.

CHAIR—If the amount of time dedicated to HDTV increases to the point where the free to airs argue that they now do not have enough spectrum to do their datacasting and they have been precluded from purchasing spectrum at the other end, and I imagine that could be about the time that analog is going, would there have to be consideration given to the fact that the level playing field is uneven because most of it has been taken up with HDTV and they are now squashed out of the datacasting market?

Mr Stevens—When the simulcast period ends there will be obviously a lot more spectrum available of allocations for a range of purposes and at that stage we would certainly have to have a look at how we would allocate that spectrum and the regulations and conditions under which people could bid for it.

CHAIR—And whether they were eligible or not—

Mr Stevens—Certainly.

CHAIR—depending on how much HDTV.

Mr Stevens—We are talking about a few years in the future?

CHAIR—Yes.

Mr Stevens—Yes, certainly.

Senator SCHACHT—Mr Stevens, in those amendments you dumped on us last week, News Ltd in their evidence this morning queried in particular amendment No. 60: the standard of additional access for datacasting. They say that, although the explanatory says one thing, the actual wording means datacasters could be excluded from the open access to the standard in the television, if not the black box. Have you got a response to that?

Mr Stevens—Yes. It certainly is not the intention to try to restrict the open access objective which is very clearly spelt out in both the minister's statement and in the explanatory memorandum. I would like to take a little bit of legal advice on the issue that has been raised by News Ltd and get back to you.

Senator SCHACHT—Get back to us as soon as possible.

Mr Stevens—It was not the intention to try to restrict it, I can say that.

Senator SCHACHT—I accept that it was not the intention, but when you dump so many amendments—we all try for perfection—one always gets a bit worried that in the hurry of this legislation, which is what it is, little things will slip up. It is no fault of yours or anyone else's; it is just a fact of life.

Mr Stevens—I will take legal advice on the issue and see whether it does unintentionally restrict the matter.

CHAIR—I have read the legislation but I cannot now remember exactly all the functions of all the review committees. Have any of the review committees—

Senator SCHACHT—Not Robinson Crusoe!

CHAIR—We have been here for three days on estimates, as you know.

Mr Stevens—As I well know.

CHAIR—I will not speak for Senator Schacht, but our brains are a bit addled, having been here for—

Senator SCHACHT—Also, Mr Stevens gets paid more than we do. That is why he can be here for four days.

CHAIR—I do not know how many hours we have been sitting here but it has been since Tuesday morning, and every night. Is one of the committees charged with the specific responsibility of looking at the issues of convergence? That was what I was really concerned about before.

Mr Stevens—Yes, there is. There is a requirement to conduct a review into the issue of convergence before January 2001. It is one of the early reviews.

CHAIR—I do have a feeling that 2001 is a bit far off.

Mr Stevens—We have to do it before then. It is one of those reviews which will commence once legislation has passed through parliament.

CHAIR—Could it be done earlier?

Mr Stevens—It certainly will be done well before January 2001.

CHAIR—Could the date be brought back? I am talking about convergence, in particular, because it seems to me that the rate of change is so fast that just putting a little bit more pressure on to get that review done—

Mr Stevens—I am reluctant to single out this particular review over others in regard to urgency, because I think there is urgency that all the reviews be conducted before 2001. It would be our intention to do it just as quickly as we could, because many of them do require a degree of consultation with the industry and the outcome of those reviews will affect the commercial plans of particular broadcasters. So I am reluctant to single out one over another and say that we should do that one earlier rather than later.

CHAIR—We might agree to disagree on that, Mr Stevens.

Senator SCHACHT—Mr Stevens, there is something that might be useful for the record, and certainly to keep our minds clarified—I agree with the chair; after four days of estimates I think I might still be on an estimates committee. Some of the material you put in this briefing paper was actually covered yesterday in estimates, and vice versa. I refer to the discussion paper you provided to this committee, called ‘The government’s policy on the introduction of digital terrestrial television broadcasting’. At page 7 there is a heading ‘Reviews and consultative arrangements’. On that page and over at the top of page 8, I think, is where you outlined the four review committees. Is that right?

Mr Stevens—Certainly that page looks at reviews, yes.

Senator SCHACHT—There are two lists of reviews provided for by the Digital Conversion Bill. The review in the last dot point under ‘Before 2001’, as you pointed out to me, concerns a regulatory regime for allocating new licences for data. Right?

Mr Stevens—Yes.

Senator SCHACHT—Would all the reviews listed in the dot points under ‘Before 2001’ be by one separate committee?

Mr Stevens—No.

Senator SCHACHT—Then there are more under ‘Before the end of 2005’.

Mr Stevens—They may well be. They are reviews; they are not committees, as such.

Senator SCHACHT—There must be someone sitting on the review.

Mr Stevens—The minister will still determine exactly how each of these issues will be conducted. It will depend upon the issues concerned. In some cases, it could well be a

committee of industry people; in other cases, there may be a different approach taken. They outline the intent of a review rather than the mechanism.

Senator SCHACHT—Under ‘Before 2001’ there are seven reviews shown as dot points. Will the same group of people advise the minister on those seven? They read:

- . a review of the scope of ‘incidental and directly linked’ . . .
- . a review of whether the ABC and SBS will be able to undertake limited multichannelling
- . a review of the definition of ‘datacasting’
- . a review of whether any legislative amendments are needed to deal with convergence between broadcasting services and other services—

which is something Senator Patterson has just raised—

- . a review of whether any legislative amendments are needed to deal with the retransmission of commercial FTA services on pay-TV services . . .

You have got a review of that, but the government has already announced that in other legislation it is going to ban retransmission of commercial services on pay TV.

Dr Badger—No, it has not announced that it is going to ban it. It has announced that there should be commercial arrangements entered into between the players.

Senator SCHACHT—It is the same thing. The way the legislation is drawn up, if free to air says, ‘If you don’t pay us \$1 million a minute, you’re off air.’ That is the problem with that legislation.

Mr Stevens—If I can come back to your original question—

Senator SCHACHT—There are all those dot points. They read as if each, individually, could be a separate review. I just want to get some idea of the structure of how all of those seven dot point reviews before 2001 are going to be conducted, and by whom.

Mr Stevens—Let me try and answer that question. The government has established a high-level consultative committee which will have a role in oversighting the consultation process in regard to the various issues relating to the introduction of digital television.

Senator SCHACHT—You mention that in the bottom paragraph.

Mr Stevens—Yes. That is an overarching consultative committee which will look at the various issues. The actual mechanism for conducting the individual reviews is something the minister has still to determine.

Senator SCHACHT—Would I be mistaken to believe that what you call the high-level consultative committee, made up of all the usual suspects in the industry, is not going to be automatically in charge of those seven dot points being reviewed before 2001?

Mr Stevens—No. That is a matter for the minister to determine. Certainly at this stage all we have said is that this high-level consultative committee will be a high-level consultative committee. The actual mechanism for the particular reviews is still to be determined by the minister.

Senator SCHACHT—Do you think it would be possible, or should have been possible, to give us a bit more definition about these reviews, in view of the importance of the decisions they are going to make before the legislation is actually passed?

Mr Stevens—I think we have provided a fair bit of information, but we are happy to provide some more to the committee.

Senator SCHACHT—Where?

Mr Stevens—I think we have defined what they are about.

Senator SCHACHT—As seven dot points of one line each?

Mr Stevens—There is a range of other documents that have been issued. We will try and bring it together for you in one document.

Senator SCHACHT—What, the press statement?

Mr Stevens—There is also the explanatory memorandum and the legislation itself. We would be very happy to bring it together for you.

Senator SCHACHT—This is the last chance we get to speak to you before we go off and write the report, unfortunately, in view of the timetable.

Mr Stevens—We will try and give you a bit of paper as quickly as we can.

Senator SCHACHT—The high-level consultative committee itself will not make definitive decisions on those review points before 2001. It will advise the minister in a separate way whether the review process has got it right or wrong, or warn the minister that maybe the reviews have barked up the wrong tree?

Mr Stevens—It is essentially a consultative committee, that is right. It will not be making decisions on those particular issues.

Senator SCHACHT—The first one is:

. a review of the scope of 'incidental and directly linked' programming (ie enhanced programming)

Is there any consideration yet given in the bowels of DoCA as to whom you would be advising the minister should be conducting that review?

Mr Stevens—I am sure we have given some thought to it, but again I do not have that to hand at the moment. It has not been raised with me yet. It is one of the issues that are being worked on at the moment in the department.

Senator SCHACHT—You would know the old, famous Bob Menzies quote, 'It doesn't matter about the legislation. It is who you appoint that counts.' I would say on a number of these points that who gets appointed to conduct the review is going to be a pretty useful indication of where maybe that review is going to end up. Is it going to be just bureaucrats? I am not using that in a pejorative sense. You are all very good people.

Mr Stevens—I am underwhelmed! That is a matter for the minister to determine as to what expertise he will try to introduce. I think that quite clearly, in many cases, we will need to get expertise that goes well beyond what a bureaucracy may be able to provide. I should say, though, in regard to the scope of the reviews, that they are set out in the legislation. They are constrained by the policy decisions and framework in the legislation. So, for example—

Senator SCHACHT—Only in the sense that at the end of the day there is a disallowable instrument on their finding.

Mr Stevens—I will give the example of the ABC and the SBS regarding the ability to undertake limited multi-channelling. The terms are set out in the legislation. I believe, from memory, it talks about non-commercial and in keeping with their charter. It is in the explanatory memorandum, I am sorry. It does refer to both those issues as being the criteria to be used for conducting that review. So the framework has been set out. Within that particular framework there is a need to give greater definition to what might be possible, and that is what the review is about. So it is not open-ended.

Senator SCHACHT—Just draw my attention, in the explanatory memorandum—I do not think it is actually in the legislation—

Mr Stevens—No, it is in the explanatory memorandum, I am told.

Senator SCHACHT—The explanatory memorandum, yes; which does have some standing in a court of law. I accept that, of course. What does the explanatory memorandum, for the record—to refresh my memory, Mr Lyons or Mr Stevens—say about the details and the scope of the review of the incidental and directly linked programming and IE enhanced programming? What does it say as guidelines for that review?

Mr Lyons—It says:

Subject to the Ministerial review to be conducted to determine the scope of these regulations (see cl. 56 of proposed Schedule 4 to the BSA), it is envisaged that this condition would allow commercial television broadcasting licensees to transmit multi-view programming and other incidental video material directly linked to the analog simulcast. The regulations could, for example, permit different visual representations of the same event, filmed within the confines of the event, such as the ability to view the event from different camera angles.

Senator SCHACHT—I have got to tell you that added nothing to what we have already had before us in the discussion, and it still leaves wide open where we could go.

Mr Lyons—The legal parameters are set by the words ‘incidental’ and ‘directly linked’.

Senator SCHACHT—Yes, legally, but then, when you go on to describe its possibilities, obviously—

Mr Lyons—It does not circumscribe the outcome of the review; that is right.

Senator SCHACHT—So the review is wide open. That is why they say—

Mr Lyons—It is wide open in the parameters of what is legally—

Senator SCHACHT—Legally, incidentally and directly linked. And, whatever you come up with, if someone thinks they are the loser by this definition, they will be back before the court arguing that the definition is wrong.

Mr Lyons—First of all, the regulations have to be able to authorise that.

Senator SCHACHT—All right. I understand that. In the end, no matter how good we are, I suspect that someone will challenge it if they think they can get a commercial advantage. No matter how good you are at this review, no matter how good we are at drafting regulations, sooner or later someone will say, ‘This is worth \$100 million, \$50 million or \$5 to us; we will have a go.’

Mr Lyons—Every piece of legislation—

Senator SCHACHT—Of course. Can you give me, then, a review of the definition of datacasting from what is in the explanatory memorandum as the guideline for that review? After some evidence we have had earlier, the datacasting definition can mean anything anyone wants it to mean, almost.

Mr Lyons—My only comment on that, Senator, is what it cannot mean is the broadcasting service.

Senator SCHACHT—What does that mean?

Mr Lyons—‘Broadcasting service’ is defined in the Broadcasting Services Act.

Senator SCHACHT—Explain to me what you have in the explanatory memorandum as the guideline for the review on the definition of datacasting.

Mr Lyons—I am just struggling to find the part of the rather voluminous EM.

Senator SCHACHT—I am very pleased that you are struggling as I am. This is a most encouraging development.

Mr Lyons—Only to find something very quickly. In relation to definitions, it says:

Another example of a key definition is that of a 'datacasting service'. One of the policy objectives underlying the commercial and ABC/SBS television digital conversion schemes is that commercial television broadcasting licensees and the ABC and SBS should be permitted to use any spare transmission capacity that is available on the digital transmission channels for the purpose of the transmission of datacasting services—

Senator SCHACHT—What is the guideline in the definition for datacasting?

Mr Lyons—That says:

The term 'datacasting service' is defined in clause 2 of Schedule 4 to the BSA to mean a service (other than a broadcasting service as defined in s. 6 of the BSA) 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 and the service is not of a kind specified in the regulations.

Senator SCHACHT—But all digital is data.

Mr Lyons—The current position is that people who transmit other than broadcasting services are not subject to content regulation.

Mr Stevens—The essence is quite clear, though. We are trying to avoid datacasting services becoming a de facto broadcasting service. That is what the intent of this legislation is. It is very hard to define in black letter law what datacasting services will look like in the year 2003. There needs to be flexibility to enable the government to keep the policy intent, that it not be de facto broadcasting.

Senator SCHACHT—I do not disagree with the difficulty but, in your explanatory memorandum, other than relying on what the Broadcasting Services Act now says about what broadcasting means, that could be turned upside down—and is being turned upside down—by convergence, by technology. For example, OzEmail gave evidence that they would see downloading first release movies as datacasting, though on the broadcasting side movies on television are a significant part of broadcasting services in the commercial market. Would someone be able to use datacasting, if the capacity was there, to download a movie from a video shop in New York, or Melbourne or Adelaide, then store it and replay it a later stage? Would that conflict with the broadcasting definition?

Dr Badger—Without knowing precisely how they are going to transmit and receive, it is a bit hard to say. But if you, say, were broadcasting using a part of a broadcaster's antenna to broadcast to a whole range of people a movie which they would all download overnight and watch the next day, then, from my understanding of the Broadcasting Services Act, that would be a point to multi-point service and caught by the Broadcasting Services Act.

Senator SCHACHT—But if they did it individually because they were surfing on the Internet and found that there was a video shop in Los Angeles that had a movie they wanted to see and the capacity was in the technical side of the system to download it, et cetera, and they paid their credit card number and it was downloaded—

Dr Badger—That is right, and that brings us back to the issue that Senator Patterson raised about the general review of convergence issues because, at the moment if you are dealing with, say, cable mode and it is over your cable system, if you have got enough bandwidth capacity, you could do that now without going anywhere near the broadcasting services band. Once

again, it underpins that we are dealing with rapidly moving, complex issues. It is very hard, particularly when you have got no experience of the provision of these services, to provide definitions at this time.

Senator SCHACHT—I have to say I do not think the explanatory memorandum—and I do not blame anybody for this—goes much further in explaining how the reviews are going to be conducted, or whether the reviews are really defined so that they do not go off on a number of different but quite reasonable investigations and inquiries because of the evidence they will receive.

Mr Stevens, with those first ones by 2001, you have not yet got any deadlines other than you would like to get them all to report as quickly as possible?

Mr Stevens—I would expect some will be done by the end of the year.

Senator SCHACHT—Again, all of them, the content of the people conducting the review, is totally in the hands of the minister?

Mr Stevens—Yes, that is correct.

Dr Badger—The minister in his original announcement gave commitments, for example, on the reviews which would determine standards and that sort of thing, that there would be a wide cross-section of industry people involved in the review process. There has been that commitment.

Senator SCHACHT—The standards issue is not covered in the review—seven dot points before 2001—is that right?

Dr Badger—No, that review was announced. It is not in the statutory reviews. It was announced as being the most urgent decision to be taken with a process in—

Senator SCHACHT—Systems and standards; right?

Dr Badger—Yes.

Senator SCHACHT—That is obviously not the one before 2005?

Dr Badger—No.

Senator SCHACHT—It has not been covered by the high level consultative committee?

Dr Badger—No. An announcement was made at the—

Senator SCHACHT—I just want to go on. It says on the top of page 8:

In addition a planning committee will be established to provide more focused advice on detailed planning and technical standards issues associated with implementation.

Is that it?

Dr Badger—That is it.

Senator SCHACHT—Has that planning committee in the second paragraph on the top of page 8 been established?

Dr Badger—No, I have had preliminary discussions with the people representing the pay-TV industry and the free to air industry about the establishment of that. However, I should also point out that at the moment there is a process involved by which the broadcasting industry is looking at the standards process which is the first—

Senator SCHACHT—Which is through Standards Australia, is it? Were they a part of it?

Dr Badger—Standards Australia is part of the process but there is this FACTS—

Senator SCHACHT—They have a standards committee of their own which includes Standards Australia. Is Standards Australia involved? Can Mr Branigan tell us?

Dr Badger—I have just asked Mr Branigan whether Standards Australia was represented at this stage on the FACTS standards committee and he has said no.

Senator SCHACHT—When do you expect the consultations by the committee on the planning of technical standards—your discussion with people who could be on it—to be completed and its work to start as a committee?

Dr Badger—Certainly we would expect a decision on the technical standard by October or November. I would envisage the first meeting of that group in July, as soon as the legislation is passed.

Senator SCHACHT—Are you saying that you could not establish this committee without the legislation?

Mr Stevens—I think we are reluctant to formally establish these committees until the legislation is passed in parliament, in case there are some changes made by the parliament.

Senator SCHACHT—The process could have been quite different. The minister, by his own decree and administrative powers and with access to funds, could have established the committee to report back to him on what the standards and the system should be and then report to parliament, saying during the debate on the legislation, ‘I have had a report from the committee. This is the committee’s transparent membership. They have done all of this work. This is the system and this is the standard. As part of the debate, we know what we are getting when we pass the legislation.’ It could have been done that way. There is nothing legally to stop him doing it that way if he wanted.

Mr Stevens—No, not legally. There has been a lot of work done on standards already, of course. There have been test transmissions, so it is not as though we are starting from scratch.

Senator SCHACHT—It would have been possible for the parliament to know what standard and what system we were going to go to, which is a pretty important issue.

Dr Badger—The constraint, at the moment, on that process is the evaluation process the broadcasters themselves are involved in. They have been involved with a range of people on a very extensive assessment of the relative merits of the two potential standards—the European and the American—and they are not finished their deliberations yet. We could have started the process much earlier, but we would not be able to make any definitive recommendation to anybody until that process finished.

Senator SCHACHT—If you had asked them to start a bit earlier, we could have had this information before us by the time the legislation was being debated.

Dr Badger—There is a constraint—

Senator SCHACHT—There is a different process that was legally possible. The government chose not to go that way, and I understand that. You are not going to formally announce this committee until the legislation is carried?

Mr Stevens—That is our current intention.

Senator SCHACHT—If the legislation is not carried because of the vagaries of the Senate—you know as well as I do, Mr Stevens, with only two weeks to go and a zillion other bills to be considered, this bill might not get through because of no fault of the Senate and

us devotees of the issue—there is nothing to stop you going ahead and appointing that planning committee to get on with the work, is there?

Mr Stevens—Not legally.

Senator SCHACHT—Not legally.

Mr Stevens—No.

Senator SCHACHT—It is not the desired outcome of the government but, legally, there is nothing.

Mr Stevens—I think we would want to start progressing this issue as quickly as we could.

Senator SCHACHT—The government's high level consultative committee lists in the material here the peak representative bodies. What stage of planning are you at, anticipating the legislation being carried, for the establishment of that consultative committee?

Mr Stevens—I anticipate meeting as soon as the legislation is passed.

Senator SCHACHT—Again, it is not illegal for that committee to be established by the minister without the legislation?

Mr Stevens—No, not at all, but there are some slightly different issues here in the sense that one of its roles will be to advise on the various reviews that are in the legislation. For parliament to change some of those parameters, it would affect the work of the group.

Senator SCHACHT—Of course it could affect the work of the group, but it would not be the first time in the history of the parliament that work has been affected by subsequent changes or amendments to a bill. That is a fact of life we all live with.

Mr Stevens, one issue I am interested in is that I notice this committee will have manufacturing industry representatives. In the legislation is there any arrangement or structure in place where industry development issues can be dealt with over the issue of manufacturing the transmitting equipment, the receiving equipment, the cabling equipment, the black boxes and everything else that is going to come with digital television?

Mr Stevens—There is nothing in the legislation at the moment.

Senator SCHACHT—So the only industry development plan that could be possible is under existing generic legislation with the Department of Industry, Science and Tourism. Is that correct, or does that not even exist either?

Mr Stevens—You would have to ask the department concerned to give you a definitive answer on that.

Senator SCHACHT—Mr Stevens, have you or your officers had any discussions with the industry department about what industry development plans there will be?

Dr Badger—We have had preliminary discussions with the industry department about these issues.

Senator SCHACHT—Have they suggested they would like some legislative requirement in the legislation that, if we go into digital—

Dr Badger—At this stage they are considering the issue, as far as I know.

Senator SCHACHT—When we carried the deregulatory legislation last year for telecommunications, after some discussion between the opposition and the government, an amendment was put in on industry policy in that area. Does that industry plan in any way able

that to be used for digital? I know that is in telecommunications, but would that legislation in any way be appropriate or used by DIST in some form?

Mr Stevens—That legislation applies only to licensed telecommunications carriers. So I do not think, in its current form, it could be. If you are getting at if there is a way in which it could be extended, that might be a possibility. I would have to look at it.

Senator SCHACHT—I know that the opposition is very keen to look at an amendment to the legislation to outline a process of an industry development program. If DoCA could take it on notice to have discussions with you, I am not asking you to get the minister to agree but at least put it on the record that we want to have a look at an amendment. I raise it with you because I think it might be easier for you to at least look at the drafting scope of an amendment that is going to be workable in the legislation with all those arguments Foreign Affairs and Trade put up about WTO and the end of motherhood and other things when you talk about these things. I would like by the time—not for the committee's report, which is going to be done next week—the debate takes place for the government to have a response or some view about an industry development program.

Mr Stevens—That is fine.

Senator SCHACHT—I think this is an opportunity the country would be stupid to miss out on. If we are going to let major foreign manufacturers have access to a major domestic market here in receivers, in transmitters, et cetera, I think we have every right to say that we want something done in Australia to create jobs and have some of the wealth generated in this country. I do not think that is an unreasonable thing and I think it can be done within WTO regulations.

CHAIR—Mr Stevens, with the free to airs, when they bid to datacast for that extra spectrum when they are not using it for HDTV—and you said there was going to be a level playing field—are they permitted to datacast the same sort of material as datacast by the datacasters on the other part of the spectrum when they have purchased it? Is that right?

Mr Stevens—Yes. But I suspect that, in the case of FTAs, it is not quite that simple because there are no restrictions on their broadcasting. They are subject to the normal broadcasting requirements. In a sense, we have defined datacasting as not broadcasting. What I am trying to say is that they can use part of that spectrum for enhanced programming which would not be available to a datacaster.

CHAIR—If they are not using the spectrum, and you said to us before that they could purchase—

Mr Stevens—Yes, but they will have to pay a fee.

CHAIR—the additional spectrum for datacasting, are they going to be treated differently, in terms of regulations, to the other datacasters?

Mr Stevens—No.

CHAIR—So they are doing the same thing. If I am a free to air and I have a subsidiary company which is a datacaster, or part of my company is datacasting, are you saying that they could datacast the same things? I presume they will be like the datacasters down the spectrum.

Mr Stevens—Yes.

CHAIR—If you force by regulation or demand from the public more and more HDTV, they have less and less spectrum for datacasting, and they say, 'We're datacasters too because you've let us be datacasters but we haven't got the same amount of time on the spectrum as

the datacasters down the spectrum and, assuming that we haven't got compression, we're forced to use up the useful part of it—we might have a bit for captioning or something—or some six and a bit megahertz to do our HDTV. Now we've only got five hours a day to do our datacasting and we're trying to compete with people down the way who've got 24 hours of datacasting, and we're paying the same price for that bit of the spectrum. We've got two megahertz or three megahertz. We're paying for it for six hours a day but we've paid a price that's equal to someone who paid for the same six hours but in a 24-hour slot.' Do you see what I am saying? Six hours in 24 may be a different value to six hours in nothing.

Mr Stevens—And, indeed, they may be paying a different price for the six hours they use compared with the 24 hours used by datacasters.

CHAIR—No. I am talking about the six hours of the 24 hours.

Mr Stevens—You mean the same number of hours?

CHAIR—Do you understand what I am saying? If I purchase 24 hours I can use the spectrum for 24 hours of the day for datacasting. When I am free to air and I am allowed to datacast and I purchase the time, I cannot datacast on there for 24 hours; I can only datacast when I am not doing HDTV. I might argue to you as a free to air that my six hours in that period is not as valuable as the same six hours further down the spectrum when I can use the whole 24 hours because I can refer to something that you could do at 10 o'clock tonight. I cannot do that in datacasting.

Say, for example, it reminds you to turn on your television set. We were talking about that last night. They say to you, 'We can't tell people on the Internet through datacasting that they better watch their program now because we're only allowed to datacast for six hours. You've precluded us from datacasting anywhere else in the spectrum.'

I am thinking aloud—and maybe it is dangerous to think aloud in public because you cannot eat your words, especially when they are in *Hansard*—but would there be an argument that what you give up in datacasting, not using HDTV, you get in access to the spectrum? If you are saying, 'You can be a datacaster and you pay a commercial rate for it, but we are only going to let you be a datacaster for a certain period of time,' that is not a level playing field, I would have thought.

Mr Stevens—I think I understand what you are getting at. I will make a couple of points: firstly, free to airs are essentially exactly that—free to air broadcasters.

CHAIR—Then why let them datacast?

Mr Stevens—Because we believe there could be spectrum available which is not being used at that point for digital broadcasting and we want to give them the flexibility if that is their choice. They have made it very clear to us that their prime concern is broadcasting and, indeed, they are very keen to have spectrum for high definition broadcasting and normal broadcasting.

CHAIR—So they will not want extra spectrum for datacasting?

Mr Stevens—They have not raised it as an issue with us. That is all I can say. I understand the point you are making, but the issue has not been raised with us by the free to air broadcasters that they believe they would be disadvantaged.

CHAIR—If that is the case, why can't everyone bid for those extra bits?

Mr Stevens—They are not really bidding for those bits; they are paying a fee for using those bits.

CHAIR—Why can't somebody else use those bits and they be auctioned?

Mr Stevens—I think you are raising a few very interesting technical issues about multiplexing and the ability of any system to know when that would be available and for what period. I think the government has made the decision that it is better to have a full set of megahertz given to the free to airs and to achieve a level playing field through a fee structure when they shift to datacast, rather than trying to separate out what might be broadcast use of that spectrum and what might be datacasting use which then could be auctioned off. I think it would be a very complex procedure.

CHAIR—So you do not expect the free to airs to ask for extra spectrum as HDTV increases and they start to have the amount of spectrum they can use for datacasting reduced?

Mr Stevens—No, I do not. We certainly have not so far. As I said, I believe their main game is broadcasting.

CHAIR—The other thing is, if I am a free to air and I have paid for my extra datacasting, do I pay for it in a lump sum at the beginning? As it gets squeezed out, I have paid for it and I cannot use it in the same way that somebody who has bought spectrum for datacasting per se.

Mr Stevens—No, that is something that we would have to look at in the context of the ACA examination of an appropriate fees regime. That is an issue that would need to be taken into account in setting the fee because clearly a level playing field is just that—it essentially does not try to tilt it one way or the other. That would be something that the ACA would be examining in their review.

CHAIR—Yes.

Senator BOURNE—Can I ask a hypothetical question: what if it becomes the case that the general public prefers datacasting to HDTV? What if they say, 'HDTV is nice, but I really would like this datacasting stuff.' What happens to that spectrum? Do we start looking at no HDTV necessarily? I imagine we would start off with an hour or something like that.

Mr Stevens—Obviously, we need to set down a schedule for HDTV.

Senator BOURNE—But if the general public really loves the datacasting and has no interest in HDTV—which may happen—

Mr Stevens—There will be opportunities for datacasting from other areas, but the legislation quite clearly at the moment sets down minimum requirements for HDTV. If there were that request by the public, the government of the day would have to consider it and change the legislation accordingly.

Senator BOURNE—That is interesting.

CHAIR—We have heard various figures. I have forgotten who was sitting here earlier this morning who said that some people would say you can compress it and others would say you will not be able to compress it. If technology develops and you end up needing less than seven megahertz and there is some left over, what happens to that? If it is not about as it exists currently, what happens to the extra? Is there a capacity to say, 'You only need five megahertz for high density television now, so you do not get access to the other two'? What happens to that extra which is possibly left over from compressing the signal?

Mr Stevens—As I say, we are not aware of any technology which currently lets people broadcast HD at three or four megahertz. It is a very interesting issue because, as we said

earlier, we broadcast in seven megahertz slots so it is not a question simply of trying to sell off part of the spectrum to another transmitter or another broadcaster; it would have to be done in a multiplex fashion.

Mr Lyons—Once a system is set up to use the full channel, it will use the full channel. To set up a system that uses less than the current full channel of seven megahertz would require a completely new set of infrastructure.

CHAIR—We are making legislation now on the basis that you need nearly seven megahertz to do HDTV. If it can be compressed, that means that you would have spectrum available which could be used for other purposes, but they would have to pay for it if they were using it for anything other than broadcasting.

Mr Stevens—That is certainly true. If they are using it for non-broadcast purposes, they need to pay fees.

CHAIR—Other than broadcasting.

Mr Lyons—They are going to have to pay fees for it, that is correct.

CHAIR—And they cannot multi-channel. What happens if they do not want to use it and the spectrum is just sitting there?

Dr Badger—It is just sitting there. You need the full seven megahertz of spectrum to enable you to transmit using the transmitters that will be available and to be picked up on the receivers that will be made. You cannot transmit at five megahertz. You cannot transmit using the seven megahertz multiplexer. You do not just use up part of it; you always use the full seven otherwise you cannot pick it up by seven on the receivers.

Senator SCHACHT—If you are doing multi-channelling in that seven megahertz, there is nothing to say that one of those parts of it is going for datacasting. If they are not using it and it is not being used for HDTV, if you want to regulate it, you could say, ‘You have got to give open access to somebody else to use that part of the spectrum.’

Dr Badger—Yes, provided the signal goes from the one transmitter and it is multiplexed at source.

Senator SCHACHT—Yes.

Dr Badger—The matter of what is a high definition picture is a bit of a moving feast. If you talk to an engineer about a high definition picture in a high action sporting activity, then a lot of them will argue that with present compression techniques we can do that with 18 to 20 megabits; others will argue that you could still improve the picture if you could provide up to 30 or 33 megabits. While we do not expect there to be significant increases in the compression techniques, the issue of what people perceive to be a high definition picture is not an absolute.

CHAIR—I do not know much about this, but I would think the pressure was on to compress it, especially pressure coming from places where they do not have a lot of spectra and they get overlap. There must be an incredible drive for somebody to invent something. I was reading the other day—I do not know whether you were here when I mentioned it—about some guy in Texas whose has a system where it reflects off your eye and it compresses the bit in the foveal vision. In the peripheral vision, it is standard definition, and he is arguing he can compress it by 10 times. I do not know what happens when there are five people

watching television. Maybe I should e-mail him and ask him. Maybe he has five little things reflecting off and you can press around five. That is the sort of stuff that is happening.

Dr Badger—I presume there is a mathematician somewhere who will argue that he can come up with a mathematical system. Compression takes bits of information out and a mathematician may do it much more effectively, so you would still get, with lesser amounts of information, the same essential picture.

CHAIR—This is what this guy is doing. You only need information in your foveal vision. He has got some strange name. His name was enough to put me off. If anybody else has read the article and they can remember his name, you get a prize—it is a strange name.

Dr Badger—We could get half-a-dozen engineers in the room and I think we might get more than an economist's number of answers.

CHAIR—To clarify again, you might have told us at the beginning—and I know I have read it, but I just want to have it on the record, before we actually do the report—that, concerning the switch off for the analog, we are requiring, are we not, that regional coverage is equivalent to current analog?

Mr Stevens—Yes, that is correct.

CHAIR—The scaremongers will say, 'Look what happened with mobile phones.' If it is absolutely clear that it would require the same coverage before analog—

Mr Stevens—The legislation spells out the position quite clearly.

CHAIR—I thought that. I just wanted to sure it was there on the record. Thank you.

Senator SCHACHT—The evidence we got last week from two regional television operators in South Australia, operating I think they call it a solus market—GTS 4 and SES 8—said that they did not get the same protection on the so-called moratorium on any new commercial licences that everybody else got, and they felt aggrieved about that. They said they had discussions with the government and/or the department, and the government refused to budge on that position. They said that the government's response was, 'Well, you cannot lock a market away for one operator for literally up until 2007. That would be anti-competitive.' Those are their words, not mine. I am paraphrasing a bit.

I have to say I find that a bit odd, in view of the fact that the government is proposing a moratorium for everybody else to lock people out of the market for up to 10 years. I think they put some reasonable case that, in the size of the market they are operating in, it is almost impossible for them to go into an aggregated market. The size of their population revenue base is pretty small and they do not have much scope in any direction. They feel that they are discriminated against on that level.

Apart from changing that, they think the best way they could provide in that limited commercial market, based on size, is by being allowed to have an extra channel, a multi-channel, to provide a range of extra programming to viewers. If not comparable with an aggregated or metropolitan market at least it is an extra choice. Has the government given any further consideration to their view?

Mr Stevens—Yes. There are a number of issues here. With regard to a licensee in a solus commercial market, provision already exists under the Broadcasting Services Act for them to apply for an additional licence from the ABA under section 38A, and there is an example already in the Griffith area where an incumbent licensee is providing two services, following

a decision by the ABA to grant them the second licence under section 38A. It is always open to a solus operator to seek an additional licence from the ABA, and this is in the analog environment.

Senator SCHACHT—In the analog environment, yes.

Mr Stevens—Of course, if it had two services under section 38A, they would get two additional licences to this additional spectrum under our legislation.

Senator SCHACHT—So they could end up with 14 megahertz.

Mr Stevens—Yes, that is right. There are not very many people watching it. But that is the current situation under the analog situation. In addition to that, we are going to look at the question of underserved markets in the digital environment as to whether we can do something to expand the choice available in those markets.

Senator SCHACHT—I appreciate that. Would that require some further amendment to the legislation before the parliament at the moment?

Mr Lyons—There is a specific provision in the bill for that review to be undertaken by the minister as to what legislative amendments would be appropriate to provide that level of choice. But, as an outcome of that review, you would need further legislation.

Senator SCHACHT—Is there no way that the minister can consider this so that an amendment could be put while we are dealing with this in the next three weeks?

Mr Stevens—I do not believe so, no.

Senator SCHACHT—I do not want to be difficult about this, but I think they have a reasonable case. Can you take it on notice to the minister to say—I cannot speak for the other parties—that, as an opposition, I would be amenable to having a look at an amendment dealing with it. If we can deal with it while the legislation is going through, it is neater than coming back and finding another slot in the legislative program next year or the year after.

Mr Stevens—I would be happy to do that, obviously. I guess the difficulty might be where we have a market with two commercial licences, and how we would enhance the choice in that situation where we have two licences. I am just not completely sure at this stage. That is a difficulty.

Senator SCHACHT—I can see the difficulty, and I am not underplaying it. I have to say that I am not sure that I think they ought to get 14 megahertz, even in Mount Gambier or Port Pirie. I mean, as you say, what will they use it for in a limited commercial market? It might require an amendment so that, in a solus market, if they have two analog signals they can apply for that or they can apply for an extra multi-channel under digital.

Senator EGGLESTON—I am interested in the regional issues also.

Senator SCHACHT—With the support of Senator Eggleston, and he has probably got more influence with the minister than I have, we could get up a unity ticket on this, I suspect. I do think it would be useful if you could get that amendment and look at it—

Mr Stevens—We will examine whether we can get an amendment.

Senator SCHACHT—Thank you.

Senator EGGLESTON—There is a complication in WA, for example, where there is going to be a second commercial licence by the end of the year—I mean, it is a different situation altogether from South Australia.

Mr Stevens—It does vary from situation to situation so it is a question of whether we can get a general amendment which takes account of all those situations, and that is what we would have to have a look at.

CHAIR—If that is possible. If not, there may be some other way of doing it.

Mr Stevens—I think the government has made it very clear that it is also concerned about the issue and it is certainly wanting to do something in those areas.

Senator SCHACHT—We had the two witnesses from the solus market but we also had WIN, Prime and Ten from the aggregated regional markets putting a very strong case in their submission, which is printed, about subsidies or rebates on sales tax and on licence fees to cover the capital cost of digital equipment. Today Mr Colless from News Ltd noted that the initial estimation of \$90 million in the original market is now in their submission actually \$500 million. Does the department have a view on their estimations and the cost structure in the regional area?

Mr Stevens—We have only received some of that data ourselves and we have not had a chance to assess it and to talk to experts and the NTA about those issues.

Dr Badger—In very general terms, the terms of the discussion you had last night, the numbers that the regional broadcasters are talking about are comparable with the sorts of numbers that have been talked about for the ABC regional activities.

Senator SCHACHT—Do the regionals combined have more transmitters and translators to duplicate than the ABC?

Mr Matson—When they are on UHF they might, because of the patchy coverage.

Senator SCHACHT—Senator Eggleston might confirm this: one of the witnesses was from Western Australia—

Senator EGGLESTON—From WIN, and they are going into Western Australia.

Senator SCHACHT—He mentioned a figure of something like \$20 million for the analog transmitters and translators he would need. Was that right, Alan?

Senator EGGLESTON—He said the total cost was going to be \$230 million for about 100 transmitters. It was a global cost for the whole operation.

Mr Stevens—I guess that is the point. It is not just transmitters, it is also studio equipment and all of that which has to be taken into account for regional people.

Senator SCHACHT—They are proposing rebates on the licence fee and a reduction of sales tax, which are benefits they got when the aggregated market took place. Does the government yet have a formal response? I know it is sympathetic, just as we are in opposition. Do you expect a formal response by the minister when the legislation is debated in the Senate that he would be in a position to move amendments on behalf of the government to give these rebates on sales tax and on licence fees?

Mr Stevens—I am not aware that we would be in a position to do that at this point. The general position is one of sympathy and being prepared to have a look at assisting the issue for regional broadcasters, but I do not think the government has made a decision as to the nature of that assistance at this point.

Senator SCHACHT—Would giving rebates to sales tax and licence fees require amendments, with respect to the licence fee, to the Broadcasting Services Act?

Mr Lyons—It would require an amendment to the Television Licence Fees Regulations.

Senator SCHACHT—So it could be done as a disallowable instrument?

Mr Lyons—Yes.

Senator SCHACHT—Would the sales tax exemption or rebate on the equipment require amendment to the Sales Tax Act or a regulation?

Mr Lyons—I cannot be sure on that one. It is outside our—

Senator SCHACHT—Could you take that on notice?

Mr Lyons—Yes.

Senator SCHACHT—If both can be done by regulation, I can see that it is not actually as urgent as if it requires legislation. They will get very toey if the legislation is going through and you have to tell them, 'We will come back and do further legislation.' They will see that as a salami effect and worry that they might not get it.

Mr Stevens—I make the point that the licence fee rebate was far and away the greatest source of assistance to the regional broadcasters in the equalisation issue. Sales tax was quite small by comparison.

Senator SCHACHT—I asked one of them—it might have been at a private meeting—what they were asking for in relation to the refund on the sales tax and on the licence fee. Were they asking for a complete rebate on the licence fee until it covers the cost of the investment in the capital work, or was it a proportion thereof? I think they said it was a proportion thereof.

Dr Pelling—I am not aware that they have actually asked for anything in their submission to this committee. They identified the cost of the sales tax.

Senator SCHACHT—At a private meeting, they made it very clear that they want the example when the aggregation took place to be the model.

Mr Stevens—Yes. My understanding is that they have sought licence fee rebates, sales tax exemptions and exemptions from NTA tower fees. They are the three areas.

Dr Pelling—They said that in their submission, but I am not aware that they have tried to provide any sort of quantity of what they expect from the government.

Senator SCHACHT—Can you, Mr Stevens—this is not for the committee next week but by the time of the debate—take that on notice? Can you try and do some back of the envelope figuring on that? Does the government have a view, even in sympathy, of what would be a reasonable contribution by way of rebate—a reduction of sales tax, NTA fees, et cetera—to provide to regional television?

Mr Stevens—I will see what we can do.

Senator SCHACHT—We think some of those figures are from one of their supplementary submissions. When they appeared before us, I think we asked them for figures. On the general cost in their supplementary submission: it would be useful by the time of the debate if there was a response from the government about whether their figuring overall is generous in their favour or whatever. Also, the same goes for—in regard to the supplementary submissions from FACTS on behalf of the metropolitans—the figuring that they have put forward on what it would cost them.

News Ltd strongly disputed today the cost generally of capital works. Certainly, elsewhere in the public debate News Ltd has disputed the fact that the free to air commercial

metropolitan networks have exaggerated the equipment cost, et cetera. If there is any response that you can get your hand on to look at those figures, I think that would be useful because that relates very much to such issues as the moratorium on new licences, the simulcast period and return.

Also, could you make any comment about the profitability of the three commercial network stations—the return they are presently getting? News Ltd did make the comment very strongly that they are very profitable at the moment and look like being for the foreseeable future.

On that profitable basis, they are arguing for another licence to be issued. But above all else, there is no justification for a moratorium of the length that the government is proposing. If the minister can provide a comment in the debate at that time, that would be useful.

Mr Stevens, I noticed that the ABA July discussion paper of last year made no mention of the proposal that there should be a ban or a moratorium on new commercial licences for any period at all in the digital environment. When I read that discussion paper, I noticed it talked about simulcast and it talked about a period of introduction, et cetera. I cannot recollect that it actually said new commercial licences should not be issued for a period of time during what you might call the ‘introductory period’. Have I got that wrong? I stand to be corrected.

Mr Stevens—This was in their discussion paper?

Senator SCHACHT—Of July last year. There is so much stuff floating around; as you have discovered a couple of times today, I have not been totally able to recollect everything.

Mr Stevens—Would it be helpful if we took that on notice and got back to you? Otherwise we would have to look for it now.

Senator SCHACHT—I do not believe it was in the July paper. What I am leading to is: who put the proposal to the government then to provide a moratorium on any new commercial licences?

Mr Stevens—I would just make the point there was an outcome of the section 215 review announced by the minister in regard to a free to air market rule last December.

Senator SCHACHT—Into what?

Mr Stevens—Whether there should be an initial commercial television licence in the analog environment. He made a decision on that last December following a review, which indicated there was no net benefit in having an additional licence. That was subsequent to the ABA paper.

Senator SCHACHT—But that was in the analog market; that was in terms of analog. Did the minister receive any submissions, particularly from the free to air commercials, on a proposition that there should be a moratorium on new commercial television licences for any period for their support for the introduction of digital television?

Mr Stevens—I am sure they raised it as an issue in discussion. Whether it was a formal submission I would have to check.

Senator SCHACHT—Would you take that on notice?

Mr Stevens—Yes.

CHAIR—Are there any more questions?

Senator SCHACHT—I will think of some after we have adjourned, but I cannot think of them right now.

Senator BOURNE—If the National Transmission Network Sale Bill 1997 did not go through by some quirk of fate—and this is up next—would this bill require a lot more amendment before it could be dealt with?

Mr Lyons—It would require no amendment.

Mr Stevens—I do not believe so.

Senator BOURNE—So it does not matter whose hands it is in; it will be okay.

Mr Lyons—There is no legal issue there.

Mr Stevens—It would require the government to provide capital, I think, for the National Transmission Agency to build digital transmitters.

Senator BOURNE—But that would be the only issue and it is not legislative.

CHAIR—I would like to thank the officers.

Senator SCHACHT—Can I ask one thing? I am not asking people to sprint forward, but I wondered if any of the people we asked to attend as observers today feel that there is something that they want to put before us strongly, can they let us know by the end of the day or in writing? I do not think we can go on with any more cross-examining of witnesses, but we did ask some people to attend to hear DoCA's response. I wondered if we could say to them that if they have got any additional things they wish to put to us after they heard the evidence from DoCA today, could they take the opportunity to do so by close of business?

CHAIR—By close of business today and no more than an A4 page.

Senator SCHACHT—I agree with that.

CHAIR—Thank you. I would like to thank the officers from DoCA for their attendance. All I can say is I am glad that I will not be here in about 2015 or 2020. There is a committee hearing into bioscience or biomedicine and some difficult issues are going to come up. This is tough enough!

Senator SCHACHT—Or three dimensional television.

CHAIR—Three dimensional TV, yes. I am glad somebody else is going to be dealing with that. I have to say that we have found it one of the more stimulating and interesting hearings and we would like to thank all those who have participated. I would like to thank the staff who have also got a big weekend ahead of them and I would like to thank *Hansard*. Thank you very much. I declare the committee hearing closed.

Committee adjourned at 1.07 p.m.