The Parliament of the Commonwealth of Australia

TO PAY OR NOT TO PAY?

Pay Television and Other New Broadcasting-Related Services

Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure

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NEW BROADCASTING-RELATED SERVICES

Terms of Reference

Examine the possibilities for the development of, and the appropriate means of regulating, new broadcasting-related services, including in particular Pay Television, having regard to the 1989 Report on Future Directions for Pay Television in Australia by the Department of Transport and Communications.

ABBREVIATIONS AND GLOSSARY OF TERMS

ABC	Australian Broadcasting Corporation - the provider of the Australian national broadcasting service.
ABT	Australian Broadcasting Tribunal - the regulatory authority for broadcasting matters.
Aussat	Aussat Pty Ltd - a government owned company providing broadband telecommunications services via satellite.
Bandwidth	The width (in Hertz) of a band of frequencies available for communications signals.
Basic Services	The channels and services offered to a cable subscriber for the minimum monthly subscription fee.
Broadband	General term used to describe communications equipment that operates over a relatively large frequency range. A cable system would be described as broadband if it could carry one or more video services.
Broadcasting	The transmission of signals over the air intended for reception by the general public, without the payment of a fee.
CLC/Centre	Communications Law Centre
The 1982 CSTV Report	Report from the Australian Broadcasting Tribunal, August 1982, *Cable and Subscription Television Services for Australia.*
CRTC	Canadian Radio-Television and Telecommunications Commission - the regulatory body for broadcasting matters in Canada.
DBS	Direct Broadcast Satellite Service - A term in general use to mean a television signal transmitted directly from a satellite to the television set.
Decoder	The device that recovers and reconstitutes an encoded signal.
DOTAC/Department	Department of Transport and Communications.
FARB	Federation of Australian Radio Broadcasters - the industry body representing commercial radio stations.
Feeder Cable	The part of the cable network from which the connection is made to individual subscribers.
GHZ	(Gigahertz) - One thousand million Hertz(Hz).

HACBSS	The Homestead and Community Broadcasting Satellite Service, provides ABC radio and television services via AUSSAT satellite to individual earth stations. The service enables people in remote areas to have access to a national television and radio services.
Headend	The primary transmission point in a cable network.
Hub	A distribution point in a cable network - fed from the headend the hub branches the television signals out into lower levels of the network. (See subscriber hub.)
ITN	Independent Television Newcastle Pty Ltd
Interactive System	A system that allows two-way communication between subscribers and service providers.
IPPV	Impulse pay-per-view - A system whereby the subscriber can on 'impulse' request to view a particular program for which a specific payment is required (see PPV).
ISDN	Integrated Services Digital Network - A concept for an end-to-end digital 'telephone' network with common user interfaces for all services.
Hoyts	Hoyts Entertainment Ltd.
MDS	*Multipoint Distribution System - A radio frequency* transmission system which operates using microwave frequencies; used in Australia to distribute video and information services and usually pay television in the U.S.A.
MHz	Megahertz - One million hertz.
Microwave	A generic term applied to radio frequency signals that have a frequency above 3GHz and generally below 30GHz.
Must carry rules	A requirement that cable television infrastructure providers must carry the existing local free-to-air broadcast television signals.
Narrowcasting	Programming aimed at particular audiences in contrast to broadcasting to the general public.
Optical fibre	A thin glass fibre used to transmit light and capable of carrying large amounts of information, including a large number of television channels.
Opto-Electronics	Generic name for electronic devices that deal with the interaction of light and matter, for example laserdiodes, photodiodes, optical fibre couplers and connectors which generate, receive, split and join laser beams.
PBAA	Public Broadcasting Association of Australia.

Pay television	Television services for which a charge is made on the viewer.
The 1989 Pay TV Report	Department of Transport, Communications, February 1989, *Future Directions for Pay Television in Australia.*
Satellite	In the context of this report a communications satellite - A spacecraft carrying communications repeaters (transponders).
Satellite downlink	Transmission from the satellite to the earth station(s).
Satellite uplink	Transmission from the earth stations to the satellite.
Transponder	A system on a communication satellite that receives an incoming signal, and frequency shifts, amplifies and transmits the signal back to earth.
Telecom	Telecom Australia - the national telecommunications carrier.
UHF	Ultra High Frequency - frequencies in the 300 MHz to 3 GHz range.
VAS	Value Added Services - Services which add substantial elements to the carriage of the signal or enhance basic services, (telephone answering, viewdata or electronic mail for example).
VCR	Videocassette recorder - device for recording view signals 'off air' or playing pre-recorded tapes on a conventional television receiver.
VHF	Very High Frequency - Frequencies from 30 to 300 MHz.
Videotext	Interactive text and graphics transmission, usally utilising the telephone network.
VAEIS	Video and Audio Entertainment and Information Services.

[Note: Glossary of Terms taken from the 1989 Pay TV Report]

PREFACE

This has been a long and time-consuming inquiry as is evident from Appendix 1 which contains details of its conduct, witnesses and evidence. Close to 100 submissions were received, almost all of them substantial, including 11th hour proposals for the structuring of pay television, made during the Committee's report preparation stage.

I thank Members for their interest and in particular the other two Members of the sub-committee, Mr David Jull, Member for Fadden and Mr John Langmore Member for Fraser, who were responsible largely for the collection of evidence and participated keenly in the preparation of the sub-committee's report to the Committee.

Pay television is the major emphasis of this report. It is a complex subject made unnecessarily difficult by the vague and imprecise use of words such as 'monopoly', 'natural monopoly', 'complementary' and the so-called 'broadcasting' and 'publishing' models of regulation.

A close examination of the subject, however, discloses some clear issues. The basic and overriding issue is: why have it? Once this threshold is passed and indeed in its passing, is the issue about the nature and character of the service.

If the service is purely commercial then there is really very little to do. It would not be much more than to stipulate a date for introduction and then to let market forces take their course and their toll.

The Committee sees pay television in a different light. Whilst acknowledging and providing for the commercial imperative the Committee is of the firm view that pay television should be structured in such a way so as to realise very important non-commercial objectives such as the promotion of diversity of ownership and diversity of programming by local and community channels in a pay television system. The combined effect of these objectives is the promotion of pluralistic views in Australian society.

The Committee model satisfies all these objectives. It should be supported for the carefully articulated reasoning of the report. Other alternatives could promote cartels and prohibit the realisation of the highly desirable non-commercial objectives. Australian society would be the loser.

JOHN SAUNDERSON MP
Chairman

22 November 1989

RECOMMENDATIONS

The recommendations of this report are arranged in the order of the chapter of the report in which they appear. Where appropriate additional headings are provided.

The Committee recommends that:

CONCEPTS AND ISSUES

Definition of Broadcasting

1. the *Broadcasting Act 1942* or replacement legislation contain a technology-neutral definition of broadcasting which permits appropriate regulation of program content.

(paragraph 2.9)

WHY PAY TV? (AND WHY NOT?)

2. the Government announce immediately an in-principle decision to introduce pay television in Australia.

(paragraph 3.63)

DELIVERY SYSTEMS

Selection

3. (a) the primary method of delivering pay tv in Australia be cable/MDS;

   (b) for areas that do not have cable the system chosen should be the one best able to meet the criteria used by the Committee in its analysis; and

   (c) the progressive transfer to a full cable system be one of the conditions of the pay tv licence.

(paragraph 4.50)

Telecom as Common Carrier

4. (a) Telecom Australia be made the common carrier for cable pay television, as prescribed in legislation; and

   (b) the legislation prohibit Telecom Australia from being a pay television operator and from influencing or determining the program content of such television.

(paragraph 4.54)

ESTABLISHMENT ISSUES

Market Structure

5. the market structure for pay television in Australia contain the following three elements

   - multi-channel systems;
   - a large number of markets based on present broadcasting areas with more than one market for each capital city; and
   - exclusive franchises for each market.

(paragraph 5.24)

Ownership and Control

6. **General**

   (a) the government establish ownership and control regulations for a pay tv industry in Australia;

   Concentration

   (b) no pay tv licensee be permitted to hold more than eight pay tv service licences in Australia;

   (c) no pay tv licensee be permitted to hold more than four pay tv service licences in a State;

   (d) no pay tv licensee be permitted to hold more than one pay tv licence in each capital city;

   (e) no pay tv licensee be permitted to hold beneficially licences which permit access to more than twenty per cent of the total Australian audience;

   Cross-Media

   (f) cross-media rules similar to those governing existing commercial television services apply to a pay tv industry in Australia;

   (g) no free-to-air television licensee be permitted of itself either directly or indirectly through subsidiary companies or through affiliates to hold or control a pay tv service licence in its own coverage area;

Foreign Ownership

(h) the government establish foreign ownership and control rules for pay tv similar to those applying to existing commercial television station operations;

Vertical Integration

(i) vertical integration between pay tv service providers and program suppliers/packagers be permitted; and

(j) vertical integration between carriers and program suppliers/packagers be permitted where such activities fall within the charter of the carriers.

(paragraph 5.44)

REGULATORY ISSUES

Local and Community Programming

7. (a) community programming on pay tv be truly local in character and not a vehicle for national programs distributed by particular groups;

(b) while MDS transmission systems are used for distribution of pay tv to homes, service providers be required to allocate one channel, at least, for community programming;

(c) when cable distribution to homes becomes practicable, service providers be encouraged to reach agreement with local communities on the number of channels to be made available for community programming;

(d) service providers be required to contribute two and a half per cent of gross revenue to community programming;

(e) the Australian Broadcasting Tribunal determine to whom community program services licences be allocated using criteria similar to those of public radio;

(f) service providers be required to commence community programming from the commencement of the second year of operation of the service area by area; and

(g) program standards for community programming be the same as those for commercial programming on pay tv.

(paragraph 6.10)

Program Standards

8. (a) the government establish clear program standards guidelines for pay tv, after consultation with the Australian Broadcasting Tribunal, which will recognise the relationship which will exist between service providers and subscribers and will provide an appropriate level of freedom for viewers to choose the types of programs they wish to see;

   (b) notwithstanding the recommendation immediately above, program standards for family viewing, children's programs as well as those dealing with racial villification be the same as those applying to free-to-air television; and

   (c) the legislation should require licensees, as a condition of their licenses, to make available, on request by a subscriber, a device which permits the subscriber to prohibit viewing of a particular channel or program at times the subscriber can select.

(paragraph 6.21)

Program Siphoning

9. (a) siphoning of programs or events from broadcast television to pay television be regulated;

   (b) programs or events that cannot be siphoned be promulgated in a special list issued by the Minister under regulation;

   (c) provided that these programs or events are shown on broadcast television, they not be debarred from pay television; and

   (d) the anti-siphoning provisions be reviewed five years after the introduction of pay television.

(paragraph 6.43)

Consumer Protection

10. (a) pay tv service licensees be required, as a condition of their licences, to provide a facility for dealing with consumer complaints and that the operation of those facilities be monitored by the ABT to ensure that consumer complaints are dealt with effectively by the licensee; and

   (b) pay tv service licensees be required to insure subscribers against loss of subscriptions if, for any reason, the licensee is unable to continue to provide a service.

(paragraph 6.52)

Australian Content

11. (a) there be no local content regulation of pay tv in Australia; and

    (b) the need for local content regulation be reviewed five years after the commencement of such services.

(paragraph 6.66)

Advertising

12. (a) advertising on pay tv be limited to the equivalent of ten per cent of that available to free-to-air television as laid down in the ABT's Television Advertising Condition No 11;

    (b) advertising on pay tv be permitted only before the commencement and at the conclusion of programs;

    (c) there be no limitation on the volume of sponsorship permitted on local and community programming channels on pay tv; and

    (d) a review of the need for any variation to these recommendations be conducted five years after the commencement of pay tv services in Australia.

(paragraph 6.86)

Must Carry Rules

13. 'must carry' rules not be imposed for an Australian pay tv system.

(paragraph 6.90)

Licensing

14. (a) applicants for licences be screened for fitness and propriety and technical and financial capability by the Australian Broadcasting Tribunal prior to the calling of tenders;

    (b) the tender specify the major requirements for licensees which would be incorporated into licence conditions;

    (c) licences for each pay tv service be awarded to the highest bidder under tender;

    (d) the licence period be 10 years;

    (e) subject to non-observance of licence conditions, program standards and suitability, licence renewal be automatic; and

(f) the Australian Broadcasting Tribunal select the most suitable applicant in each service area for local and community programming.

(paragraph 6.105)

OTHER

VAEIS Services

15. VAEIS services which fall within the proposed new definition of broadcasting be regulated by the Australian Broadcasting Tribunal under the *Broadcasting Act 1942*.

(paragraph 8.13)

Legislation

16. (a) there be a separate part dealing with the establishment and regulation of pay television in the *Broadcasting Act 1942*; and

(b) wherever possible the emphasis should be on legislative guidance rather than regulatory discretion.

(paragraph 8.15)

1: INTRODUCTION

Terms of Reference

1.1 The amended terms of reference of the Committee are as follows:

> Examine the possibilities for the development of, and the appropriate means of regulating, new broadcasting-related services, including in particular Pay Television, having regard to the 1989 Report on Future Directions for Pay Television in Australia by the Department of Transport and Communications.

1.2 The amendment to the terms of reference was made by the Minister for Transport and Communications, Hon Ralph Willis MP at the request of the Committee. The original reference from the former Minister which was received on 18 November 1987 asked the Committee to have regard to the 1982 *Report on Cable and Subscription TV Services* by the Australian Broadcasting Tribunal (the 1982 CSTV Report). The then Minister made the suggestion that unlike the reference on the role and functions of the Australian Broadcasting Tribunal, the new broadcasting-related services reference 'could well be undertaken over a considerably longer time frame'.

1.3 The receipt of submissions was delayed by requests for extensions of the deadline of 17 February 1989 caused by the release on 9 February of the Departmental report. Most of the submissions referred to this document rather than to the 1982 CSTV Report. In this circumstance the Committee sought this appropriate amendment to its terms of reference. Nevertheless some comment on the 1982 CSTV Report is necessary.

The 1982 CSTV Report

1.4 The 1982 CSTV Report is a 5 volume report (plus an unnumbered volume) which deals with cable television (CTV) and radiated subscription television (RSTV) and contains 77 recommendations.

1.5 The 1982 CSTV Report has three important characteristics. First, it extends the regulatory scheme of free-to-air television into pay tv by proposing a comprehensive scheme of regulation for CTV and RSTV governing restrictions on market entry, licence grants and renewals, and licence conditions and sanctions. It thus extends into pay tv what is today called the broadcasting model of regulation.

1.6 The second feature of this report is that it extends into pay tv the concept of the social responsibilities of broadcasters. CTV system licensees would have to provide, by law, channels for childrens' programs, for educational purposes and for public access broadcasting. It thus continues the concept of the licence being held in public trust.

1.7 The third important characteristic of the report is the trade-off. In return for restrictions on market entry and competition, licensees are required to accept various conditions and restrictions on the operations of the services.

1.8 But over and above this it is useful to identify the underlying strategy of the report. The report uses a **bargaining strategy in its decision making.** It is bargaining with the government of the day when it recommends against Telecom being the common carrier of cable, for private enterprise in cable ownership and construction, and against the Australian Broadcasting Corporation or the Special Broadcasting Service owning or operating an RSTV licence.

1.9 It is bargaining with the television networks which opposed the introduction of CTV and RSTV by offering them ownership of a CTV system licence, one licence per area, protection of the commercial viability of existing television stations, ownership of the cable, and no advertising on CTV or RSTV.

1.10 In return the report asks for a comprehensive pattern of regulation of pay tv with the Tribunal at the helm.

1.11 The 1982 CSTV report is bargaining with various sectional interests; with those who want public access, childrens' programs, Australian content and so forth by recommendations on statutory provisions, licensing criteria and licence conditions. In return the report expects support for its trade-off position.

The 1989 Pay TV Report

1.12 *Future Directions for Pay Television in Australia* (the 1989 Pay TV Report), a two volume report prepared by the Department of Transport and Communications and released on 9 February 1989 is quite different from the 1982 CSTV Report. Part of the difference stems from the fact that the latter made recommendations but its terms of reference precluded the 1989 Pay TV Report from doing this or from arguing for particular policies. The Departmental report lists options and the advantages and disadvantages of each option.

1.13 Although both reports support the introduction of pay television, one explicitly (1982) and the other implicitly (1989), the differences between them are fundamental. The 1982 CSTV Report is regulatory. It extends into pay television the broadcasting model of regulation. The implied position of the 1989 Pay TV Report is for the freeing up of the market and competition rather than for detailed regulation. The report says there is a direct relationship between buyer (viewer) and seller (pay tv provider) and makes it clear that the freer this relation is, the greater is the possibility of the benefits from pay tv being maximised. This freer relationship is also associated with having competition and entry into the market as a pre-condition for the introduction of pay tv. Thus although the 1989 Pay TV Report postulates two models of regulation, the broadcasting model and that of less or reduced regulation, the publishing model, the unstated preference is for the latter. It is said that the trend overseas is for less regulation.

1.14 This report is both descriptive and analytical with the latter starting at chapter 9. A quick impression of the report can be gained from reading the Executive Summary and the last chapter (13). After dealing with the question of whether or not Australia should have pay television the 1989 Pay TV Report concentrates on six types of issues:

- choice of delivery systems
- ownership of infrastructure
  - Aussat and Telecom as common carriers
- establishment issues
  - ownership and control, licence allocation, service areas
- industry issues
  - 'must carry' rules, rates, technical
- programming issues
  - Australian content, siphoning, childrens' programs
- regulation
  - types and methods.

The Government Inquiry

1.15 In September 1986 the then Minister for Communications announced a minimum four year moratorium on the introduction of pay tv. The aim of the moratorium was to protect the investments required by commercial broadcasters in response to the policy of commercial television 'equalisation', which seeks to provide residents of regional Australia with the same services as residents of capital cities. The moratorium can be lifted by proclamation on or after September 1990.[1]

1.16 It should be recognised that the Departmental report is a Government document produced entirely for executive decision making. The Minister for Transport and Communications has said that its purpose is purely to set out the options and elicit public comment by 31 May 1989. A decision on whether to introduce pay tv into Australia would be made by the Government in the second half of 1989.[2]

1.17 The Committee would expect its report and those presented earlier to influence policy in this important area of new services. Its inquiry has already made some impact. The advantage of the parliamentary inquiry over the executive one is the process of public inquiry which presents better opportunities for testing accuracy, relevance and indeed the personal preferences of those who advance particular points of view.

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[1] Department of Transport and Communications, *Future Directions for Pay Television in Australia*, February 1989, Canberra, p.3. Referred to in later citations as The 1989 Pay TV Report.

[2] Media Release, Minister for Transport and Communications, 9/89, 9 February 1989.

The 1988 Committee Report

1.18 Under a section called The New Technologies, the Committee report on *the role and functions of the Australian Broadcasting Tribunal* made some general comments on the implications for regulation of the new and developing technologies. It reached no definitive position on this matter because of the existence of the reference on new broadcasting-related services, in particular pay television.

1.19 The report said that the basic problem with the current regulatory regimes is that they are based on the method of delivery. This has resulted in similar services delivered by different technologies being regulated in dissimilar ways in different Acts of the Parliament. The report went on to say that the type of change the Committee was made aware of most was regulation in a single Act of all services which fall within a more expansive definition of broadcasting. This would mean that VAEIS and pay television would come under the same regime as current radio and television stations. The Tribunal would thus have responsibility for all broadcasting-type services.[3]

[3] Australia, Parliament 1988, *The Role and Functions of the Australian Broadcasting Tribunal: Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure*, Parliamentary Paper No 263/1988, Canberra, p.2. Referred to in later citations as PP 263/1988.

2: CONCEPTS AND ISSUES

What is Broadcasting?

2.1 The terms of reference include possibilities for the development of new broadcasting-related services. The Department says that the possibilities for the development of such services will depend on a combination of technological development, economics (viability of the new services) and government regulation.[1]

2.2 The development of new services will be determined probably by developments overseas such as that on High Definition Television. As long as owners or operators are required to undertake community service obligations the task will fall on government to decide whether and when a particular new service gets the go ahead in Australia, and under what terms and conditions. To make these and other decisions it is necessary that 'broadcasting' encompasses new services.

2.3 In its 1985-86 Annual Report the Australian Broadcasting Tribunal said that the Broadcasting Act does not deal properly with converging technology at a time when the distinction between 'broadcasting', 'radiocommunications' and 'telecommunications' as a whole is becoming increasingly irrelevant. The Tribunal submission added that the Broadcasting Act is still flawed because it rests upon a technically based definition of broadcasting, so that some services could be regulated under any of four different Acts, the regulatory regime depending on which Act was used.[2] The Department said the result is that new services with an identical product (programs) will not be covered by the Act.[3]

2.4 The rationale for regulation lies in the power of broadcast services to influence public opinion and attitudes. The Committee's 1988 Report quoted the view that television deals with the particularly sensitive commodities of ideas, information, thought and opinion compounded by the public perception of the mass media as opinion makers, image formers and culture disseminators. This is what makes television broadcasting unique.[4] A Canadian report said that broadcasting is much more than just another industry. Radio and television have enormous power to inform, sell products, sway opinions and above all to provide large numbers of people with a shared experience.[5]

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1 Submission no 9, p.1.
2 Submission no 1, pp.4,5.
3 Department of Transport and Communications, Broadcasting Review Group, *Review of Broadcasting Regulation, Discussion Paper*, July 1989, p.4.
4 PP 263/1988, p.22.
5 Minister of Supply and Services Canada, 1988, *Canadian Voices: Canadian Choices, A New Broadcasting Policy for Canada*, p.5 ISBN 0-662-55972-X.

2.5 It is clear therefore that broadcasting needs to be regulated for its content and because the boundaries of what constitutes broadcasting are becoming increasingly blurred, definitions have to be freed from any one or more technologies. In other words a technology-neutral approach is necessary in which broadcasting is defined in terms of its content, that is programming.[6]

2.6 The Canadian report says that its definition of broadcasting itself is a broad one, to encompass all technologies which are now used or may in the future be used:

> 'broadcasting' means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programs
>
> (a) made on the demand of a particular person for reception only by that person, or
>
> (b) made solely for performance or display in a public place.

2.7 The specific scope of regulation is then focused through the definition of 'program':

> 'program' means sounds or visual images, or a combination of sounds and visual images, intended to inform, enlighten or entertain but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

This means that broadcasting is specifically defined not by its technology, which it may share with other non-broadcasting uses, but by its content.

2.8 Thus broadcasting is technology-neutral in two important ways. First, broadcasting is not confined to any specific technology or set of technologies. Second, the term does not inhibit the development of broadcasting technologies for non-broadcasting purposes. Therefore, the term encourages the optimum use of available technologies, and should permit new distribution patterns (e.g., direct-to-home satellite service) to develop.[7]

2.9 In view of the foregoing the Committee recommends that:

> **the *Broadcasting Act 1942* or replacement legislation contain a technology-neutral definition of broadcasting which permits appropriate regulation of program content.**

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[6] Canadian Voices: Canadian Choices, p.11.
[7] Canadian Voices: Canadian Choices, p.11.

What is Pay Television?

2.10 The extended definition of broadcasting should go some way in introducing consistency in approaches to regulation and in removing artificial distinctions between 'broadcasting' and 'narrowcasting'. The extended definition would thus cover new broadcasting-related services, including pay television which is the major interest of this report. It is therefore necessary to know what is pay television, what are its essential characteristics and how it is different from free-to-air television, particularly commercial television.

2.11 Pay television is also known as subscription television. It makes specific television services available on the payment of a fee. This definition embraces SKY channel, which is a VAEIS service available in clubs, hotels and the like but is prohibited in domestic premises. It is not the pay tv which occupies the major part of this report. This report deals primarily with domestic, entertainment, information, subscription television services. The term 'pay tv' appears to have taken firm root in Australia, so this term, rather than subscription television will be used throughout this report. Its meaning does not cover paid services outside the home.

2.12 The United States is said to have the most mature pay television system in the world. Appendix 2 contains some information on the US system which is called cable television. Cable television has grown rapidly in the United States and in 1988 there were 45 million subscribers and over 8000 systems achieving a market penetration rate of 51%.[8]

2.13 To receive the cable service the subscriber pays an installation fee and a monthly fee (basic service) of $US 11 on average. The subscriber receives access to the free-to-air broadcasting television channels in the area (in many areas of the US because of poor reception this is a significant benefit), public access channels if they are available, and a number of basic channels. This number varies from area to area and it is possible that more basic channels are offered in the larger markets and less in the smaller ones.

2.14 There are over 40 basic cable services on offer and they cover separate channels for sports, children, music, news and weather, the arts and special and general audience channels. Among the most popular channels are ESPN (Entertainment and Sports Programming Network), CNN (Cable News Network), Nickelodeon (a children's programming service) and Lifetime (womens programming).

2.15 Apart from public access, access to broadcast television and basic cable, the subscriber can get two additional services but has to pay for both. The Department calls the first a premium service but in the US it is called a pay

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8 US Department of Commerce, National Telecommunications and Information Administration, June 1988, *Video Program Distribution and Cable Television: Current Policy Issues and Recommendations,* (NTIA Report 88-233).

channel. There are 8 pay channels and 5 of these are movie channels. Home Box Office is the most popular. It is presented on 6,700 cable systems and has 14.6million subscribers who pay about $US 10 a month to the cable operator.

2.16 Finally there is the pay per view service where the subscriber requests and pays for a particular program and is permitted access to it. There are 3 ppv services in the USA. [9]

2.17 This brief description of US experience helps to identify what pay tv is and how and to what extent it is different from what there is in Australia at the moment. The DOTAC report refers to the direct and contractual relationship between provider and subscriber.[10] Rowe says that this relationship leads the pay tv operator to maximise that type of program material that maximises consumer satisfaction. In other words, the continuation of the contractual relationship depends on whether the subscriber believes he or she is getting value for money. The value for money decision is assisted by the viewer having a detailed prior knowledge of program availability before the monthly payment is made.[11]

2.18 This then is the essential and distinguishing characteristic of pay television: its creation and continued existence is dependent on whether subscribers and potential subscribers believe they receive or will receive value for money from it. Among other things, therefore, pay tv has to be sufficiently different from current television, both national and commercial.

Relationship with Free-to-Air Television

2.19 There is the question of whether the way the respective programs are sold on pay tv and commercial television make them quite different even in appearance. The DOTAC report says that '(i)n a sense, existing commercial broadcasters are in the business of selling audiences to advertisers while pay television providers sell programs to viewers.'[12] FACTS has taken fundamental issue with this statement. It says the 'correct characterisation of advertiser supported television is that it is in the business of selling programs to audiences and, having captured an audience, selling the audience to advertisers'.[13]

2.20 This appears to be a sterile debate. It can be said that both systems attempt to maximise revenue but they do this in different ways with different implications. Advertiser supported television attempts to maximise its audience and/or target audience in order to maximise advertising revenue. It attempts to do this program by program. Pay television attempts to maximise the number of subscribers and to achieve this it has to differentiate its product sufficiently from free-to-air (both national and commercial) for subscribers to accept they are getting value for money. The number of channels is a necessary element in this differentiation.

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9 For sources see Apendix 2.
10 The 1989 Pay TV Report, pp xvii and 1.
11 D Rowe, Pay TV, *Choosing the Right Wheelbarrow*, Broadcast, October 1988, p.21.
12 The 1989 Pay TV Report, p.9.
13 Transcript of 31 July 1989, p.660.

2.21 But perhaps the major difference between the two systems is not the direct relationship between buyer and seller (pay tv) or anything else put to the Committee. The major difference is the greater sensitivity of commercial television to the number of hours of television watching. In other words, a reduction in the number of hours of television watching may not affect revenue as much for value for money pay tv as it would for audience maximising commercial television. This is also the view of a major US cable operator, Cox Cable Communications which says that because of the more eclectic nature of programming offered by a pay service, it is not typical for a subscriber to consume large blocks of television.[14]

A Complementary or Competitive Service?

2.22 The question of whether pay tv complements or competes with commercial broadcasting is important. If it is considered to complement, and no-one has said what this means, then it would be a different industry, perhaps as different as radio is from television. Then, depending on its nature there might be limited concern about cross-media rules and more concern about the creation of monopoly. But if pay tv competes with commercial television there would be more concern about cross-media and ownership rules and less concern about monopoly because frankly there would be none.

2.23 The Communications Law Centre says that pay tv is a different industry and not in direct competition with commercial television. FACTS wants it structured in such a way that pay tv is different and DOTAC believes that it has elements of complementarity and competitiveness.[15]

2.24 Pay tv is not a perfect or clear substitute for broadcast television. One has to be purchased and having one does not necessarily exclude the other. But nevertheless, pay tv has the potential to affect adversely commercial broadcasting. The DOTAC report says that the introduction of pay television in the United States has had significant impacts upon existing broadcasters. There has been a significant loss of audience share to cable television which has also increased its share of advertising revenue and there has been some siphoning of sports programs from broadcast tv. The report also describes the competitive response of broadcasters.[16]

2.25 The word 'complement' and its derivatives as they apply to pay tv obviously does not refer to the economists concept of complementary goods, that is, goods whose characteristics are interrelated so that an increase in demand for one usually leads to an increase in demand for the other. If one accepts that for

[14] 'Future Directions for Pay Television in Australia', A submission by Cox Cable Communications to the Australian Government, October 1989. Cox Cable sent the Committee a copy of this submission.

[15] Submission no 35, Appendix C, Section 2, Submission no 19, pp.4,5 and Transcript of 31 July, 1989 p.589.

[16] The 1989 Pay TV Report, pp.56.

pay tv to complement commercial television it has to add to without taking away, then it is difficult to see how pay tv is anything but in competition with *commercial television, albeit in an indirect and possibly peculiar way.*

2.26 This conclusion is important. It has a direct bearing on approaches to *concentration and diversity of ownership and control and to the question of* monopoly in pay tv.

2.27 The VCR which has a market penetration in Australia of 60% in 1988, is another factor in the monopoly-competition equation.[17] Consumer reports given to the Committee by the Australian Consumers' Association indicate that both in the US and Canada the main reason for subscribing to pay tv was more movies. It is said that one can rent three or four movies for the price of the monthly fee of a pay movie channel or get them for free from public libraries. [18]

2.28 Home videos may not be a substitute for pay tv. In terms of convenience, availability and range it may not be a perfect substitute for a pay tv movie channel. But the impact of the VCR on Home Box Office in the US as referred to by the study commissioned by the Australian Film Commission, consumer studies and common sense suggest that the VCR is a close substitute for a pay tv movie channel.[19]

Approach to the Report

2.29 *The different issues associated with the development and regulation of pay* tv and other new services should be tackled preferably by adopting some general approach or strategy. The DOTAC report does this by constructing two *regulatory models - the broadcasting model and the publishing model.*

2.30 The fundamental difference between the two models is what the report calls 'a threshold issue' - the separation of carriage and content. If the cable pay tv operator is allowed to control the cable system then monopoly becomes a reality and the monopolist has to be regulated. 'Content' regulation represents the familiar trade-off. In return for this privileged position the monopolist would be required to accept a range of social obligations and restrictions. This is called the broadcasting model of regulation and is similar to the general approach of the 1982 CSTV report.

2.31 The other approach is the separation of carriage and content, where the cable pay tv operator is not allowed to control the cable system. This creates the pre-condition for the prevention of monopoly by freeing up the market so that participants have no option but to behave competitively. This is called structural regulation though one cannot be certain what structure is being regulated.

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[17] Submission from the Australian Film Commission, no 66, p.9.

[18] *US Consumer Reports*, September 1987, p.548, 550 and *Canadian Consumer*, March 1985, p.33.

[19] Submission no 55, p.37.

Structural regulation permits pay tv to be regulated in essentially the same manner as other industries in the economy. The industry with which analogies are drawn is publishing and so we get the publishing model.

2.32 The DOTAC report says the two models are not mutually exclusive. In evidence the Department said they demonstrated extremes and that government may decide to take different parts from the different models in putting together a package for developing and regulating pay tv. If this is the case the model building in the report offers no relief for a general approach or strategy.[20]

2.33 The Committee does not believe its report can be guided in any meaningful way by the model building in the DOTAC report. The Committee believes there are several basic questions about pay tv in Australia the answers to which affect both its development and the nature of regulation. The most important and indeed the only threshold question is whether pay tv should be introduced in Australia.

2.34 Once the answer to this question is given in the affirmative, it then appears to the Committee that the structuring of pay tv will be governed by the following considerations:

(a) is pay tv another form of television in terms of its social impact?

- if so, consistency would require similar regulation in respect of licensee suitability and undue concentration of ownership;

(b) is pay tv to be treated purely as a commercial product or should it be regulated in order to guarantee the achievement of non-commercial objectives?

- if the latter, this flows into choice of delivery systems and other requirements;

(c) does the direct relationship between subscriber and provider reduce the need for regulation?

- if so, this affects both the character and extent of regulation;

(d) is there a particular market structure which permits the realisation of both commercial and non-commercial objectives?

- that is a multi-channel, small service area, exclusive franchise system?

(e) to what extent is it necessary to protect commercial broadcasting and/or those who may view only national or commercial broadcasting?

2.35 The importance of these and other questions will become evident as the reader progresses from chapter to chapter. It will also become obvious that there are several matters raised in the DOTAC report not covered by the Committee, for example, technical regulation.

[20] The 1989 Pay TV Report, pp.85-93, 144-146 and Transcript of 31 July 1989, p.581.

2.36 The Committee is of the opinion that its inquiry has thrown up these sorts of questions. It is the answers to these rather than construction of different models that will assist in the construction of a pay tv system that is relevant for Australia.

3: WHY PAY TV?
(AND WHY NOT?)

Introduction

3.1 If there is a threshold issue in this area, one that just has to be resolved because otherwise discussion cannot proceed further, then the question of 'why pay tv' is that issue. But because the question may leave the impression that the onus is on those who want it to prove it, the Committee has added the 'why not pay tv' question as well.

3.2 There are several approaches to these questions and they can be summarized as follows:

(a) **The choices**

- more free-to-air;
- public television;
- pay tv based on the 'on balance' net social value approach;
- pay tv based on the market (why not pay tv) approach;

(b) **The delay consideration arguments**

- because of equalisation;
- until certain studies are completed; and
- because of certain completed studies.

The Alternatives: More Commercial Television

3.3 The 1988 Report discussed control of entry into the market. It said that what was at issue was whether entry should be determined by regulation (Minister or Tribunal) or by the market through, for example, a tender process. In respect of an additional commercial television station the report had this to say:

> It is not certain that an additional commercial television station will greatly increase diversity of choice by offering more variety in programs, it may simply continue the general similarity of programming that exists between the three current commercial channels. It has been claimed that in the USA an additional five or six stations would be required before such diversity could be expected. It has also been claimed that in France, increasing the number of channels has not greatly increased diversity of choice. [1]

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1 PP 263/1988, pp.27,28.

3.4 Increasing the number of commercial television stations, even if one was to ignore current circumstances and concentrate on the longer term, is not a superior option to pay tv because it does not promote an adequate diversity of choice.

The Alternatives: Public Television

3.5 Whilst pay television is included specifically, the terms of reference are quite deliberately broader. They cover the present and the future. Thus VAEIS services such as Sky Channel (present) and public television (future) need to be addressed in this report.

3.6 The major submissions supporting the introduction of public television were made by the Communications Law Centre, the Public Broadcasting Association of Australia (PBAA) and Television Unlimited. The submissions from the public television associations were similar. PBAA said that before the government introduces new services it should take immediate steps to introduce public television on a permanent basis. Both organisations said that there should be provision for the delivery of public television and other non-commercial services when new services are introduced.

3.7 Several advantages were claimed for public television. These included diversity of ownership (owned and operated by the community that watches it), diversity of programming (programs that do not currently appear on television), catering for minority tastes and local audiences about issues and events important to them.[2]

3.8 In principle the Committee supports the establishment of public television in Australia and acknowledges the efforts of organisations like PBAA, Television Unlimited and the CLC to this end. The major impediment appears to be taxpayer dependency but there may be some light at the end of this tunnel.

3.9 PBAA and the CLC wants public television on the remaining UHF frequency. It is clear from the evidence that not only would this require federal funding but also that this funding would be open ended.

3.10 Public radio derives 32% of its 'far too meagre income' from Commonwealth subsidies and grants, according to PBAA. This represented over $3 million in 1987-88. The organisation expects a similar 30% for public television but is not asking for that 'at this stage'. Television Unlimited says that government should not fund public access television and that historically it has not funded public broadcasting, contributing 'only ... 30 per cent of its revenue' which is 'not much when you are running stations.'[3]

[2] Submissions nos 3 and 6.

[3] Submission no 3, p.6, Transcript of 20 March 1989, p.202 and Transcript of 19 April 1989, p.425.

3.11 What is clear from this is the expectation of federal funding. Given the emphasis and importance of localism, once Commonwealth funded public television commences it would be difficult not to fund groups who want to start public television in other areas; and there are about 40 television licence areas. Thus Commonwealth funding could become open ended.

3.12 The Government recognises this. It has been reported that government needs to be assured that public television is reasonably self-funding for otherwise after establishment there would be enormous political pressure for financial assistance or advertising on public television.[4]

3.13 The provision of local and community programming channels on pay tv may well be the best or the only opportunity for advancing the cause of public television. Initially capacity will be limited but with the extension of cable there will be sufficient capacity for public, educational and government channels. A delivery system that could promote localism would be in the best interests of public television.

3.14 One must question whether there is sufficient capacity and demand in Australia for both public television on UHF and non-commercial channels on pay tv. The former could tie up permanently a scarce resource thus denying its alternative uses such as national or commercial broadcasting or educational or other types of non-entertainment pay tv.

3.15 Finally and perhaps most importantly federal funding of local and community programming on pay tv could be limited. This could result from a sharing of facilities and the imposition of a small levy on the pay tv licensee which could fund such programming on pay tv. The Committee recognises that this represents a consumer subsidy rather than a taxpayer subsidy but this may be the only way of starting community programming and other forms of public television.

3.16 The matters discussed in the immediately preceding paragraphs will be developed further in the chapter on regulatory issues. Suffice it to say at this stage that public television is not a suitable alternative to pay tv, and that its interaction with pay tv and government policy on the former should be dealt with together.

The Case For Or Against Pay TV Based On: (1) The Net Social Value Approach

3.17 Neither additional free-to-air television or public television are adequate alternatives to pay tv. The threshold question then is why have it at all? The Committee has identified two basic approaches to this question, namely:

- the 'net social value' approach; and
- the 'market' approach.

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[4] Melbourne Age TV Guide, 7 September 1989.

3.18 The net social value approach requires the weighing up of the major advantages and disadvantages of pay tv to reach an 'on balance' conclusion as to whether or not it should be introduced in Australia.

3.19 The Tribunal's 1982 CSTV Report (Vol.1 - Part A) contains a detailed and comprehensive examination of the case for and against pay tv. This examination is preceded by a history of the development of communications in Australia which includes the rationale for regulation and its direct linkage with the merit system for awarding licences. The examination itself is of the likely social impact of the new services. The starting point for this, according to the report, is the dissatisfaction with television which, springs from something much more complex than simply the desire for 'more choice'. Briefly, what many people want, says the report, is programs with fewer mainstream values and of greater minority appeal and better programming which results from a more widely defined social agenda of disparate and heterogeneous social values.

3.20 These views flow into later analysis although the report recognises that the 'new medium should create a direct relationship between audience and operators in which programming must appeal directly to subscribers and be sufficiently satisfying to attract continued support'.[5]

3.21 The Committee will concentrate on the benefits of pay tv when delivered by cable. The 1982 CSTV Report discusses the concept of localism and concludes that the smaller the franchise the greater is the input of local programming of interest to the local community. This is also the view of the Committee which will argue later that localism and the ability to provide community programming should be a criterion in selecting delivery systems.

3.22 The 1982 CSTV Report also refers to the benefits of 'narrowcast' television channels on education and a children's channel as contributing positively to the welfare of particular interested audiences and of cable enhancing the quality of life by offering a wider variety of information sources.

3.23 The report takes these and other factors into consideration in weighing up the 'social balance sheet' of pay tv. Its emphasis appears to be on the new technology giving less powerful minority groups access and thus fostering a truly pluralistic society by offering 'a variety of genuinely alternative versions of social reality'. The report conclusion is worth highlighting:

> If such an outcome were to occur, then it could be established that the introduction of the new technology were in the 'public interest' as the community as a whole would be exposed to real diversity in programming.

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[5] The 1982 CSTV Report, Vol.1-Part A, paragraph 2.106.

3.24 This is an appropriate juncture to examine the contested question of whether pay tv increases program diversity. After all, particularly with the completion of equalisation, the majority of Australian households will have five free-to-air television channels so that it could be said that considerable diversity already exists.

3.25 It should be noted that one of the criticisms of commercial television is its 'sameness'; that in order to compete for the advertising dollar all three commercial networks produce programs that appeal to mass audiences. If programs are classified by type, e.g. news, current affairs, sport, movies and so forth, it could be claimed that there is program diversity. But multi-channel television, particularly when delivered by cable, has the capacity to increase and extend this diversity by offering specialised services to particular markets or groups, for example, a 24 hour news channel, a sports channel and a movie channel.

3.26 Multi-channel capacity also allows for 'niche' viewing and in the US there are special channels for children (Nickelodeon, a children's programming service and the very popular Disney channel). There is also a channel that has women's programming (Lifetime).

3.27 In short, the sufficient diversity argument is not convincing. The Committee will counter in paragraphs 3.59 to 3.61 the FACTS claim that pay tv will affect adversely the quality of commercial television.The diversity argument will be answered in the marketplace. As stated earlier for pay tv to survive it has to differentiate its product in order to offer value for money. Put simply, this is the test of the diversity argument.

3.28 But this is only one aspect of diversity. There is the non-commercial aspect of localism and community programming which is dependent on the success of pay tv. Taken together it is quite clear that pay tv, particularly when delivered by cable, should produce a significant increase in diversity.

3.29 Another aspect of diversity is of ownership which can promote the presentation of different points of view of social reality referred to in paragraph 3.23. It thus promotes the public policy goal of maximising competition in what US Justice Holmes calls the 'free market of ideas'.[6] This diversity of ownership, when combined with the opportunities cable offers for local and community programming, is a significant social benefit of pay tv.

3.30 A number of reasons can be advanced against the introduction of pay tv in Australia. The DOTAC report lists some of these - an inappropriate use of the community's resources, a reduction in time for more rewarding pursuits, the risk of offending community standards and the danger of creating a class of 'information poor' citizens who cannot afford or cannot get pay television.

[6] NTIA Report 88-233, p.4.

3.31 The concept of 'information rich' and 'information poor' is an emotionally charged one. It is also misleading. The creation or extension of groups or classes of persons who are rich or poor in terms of information is an outcome of the extension of cable to uses other than what is defined as pay tv, that is domestic, entertainment, information subscription television services. In other words what *one should be talking about is the 'entertainment rich' and the 'entertainment* poor'.

3.32 References to information rich and poor was made in the 1982 CSTV Report in the context of the interactive capabilities of cable television. That report claimed that the better educated and more affluent groups will be the first to take advantage of the interactive capabilities. This may widen the gap between the two groups but over time cable penetration may broaden access to information.

3.33 There are references to information poverty in some submissions[7] but it is the one from the Communications Law Centre that contains the most comprehensive discussion of this matter. The information poor are divided into two groups. The first is those who live outside the metropolitan areas. The conclusion reached is that '(a)ny policy on improvements in information or entertainment services should ensure that such services are made available throughout Australia'. The second group is the economically disadvantaged and the concern here is with access.This covers 'siphoning' of programs away from free-to-air broadcasters, the displacement of free public services (e.g.libraries) by commercial data provision services and the significant cost to the subscriber. [8]

3.34 Universality of access and investment cost to the consumer are criteria used by the Committee in selecting delivery systems. The Committee report also contains recommendations which seek to prevent the 'siphoning' of programs from free-to-air television. Thus some of the concerns over entertainment poverty have been met. The displacement of free public services is not part of pay tv and may or may not eventuate whether or not there is pay tv. Finally, one must question whether it is possible or desirable to have policies designed specifically for the economically disadvantaged who cannot afford pay tv. Generally speaking the disadvantaged in society are assisted by general policies aimed at for example improving standards of living, reducing unemployment and also by the social security system.

3.35 There is also the concern that with pay tv, Australian television will be flooded with cheap overseas imports. If there is one thing that has become abundantly clear since the Committee first commenced its 'television inquiries' in February 1988, this is that there is an overwhelming demand for quality Australian product. Many believe that pay tv in Australia will not survive unless the subscriber is fed this type of diet. ' 'Moreover, as Cox Cable 'Communications

[7] FACTS, submission no 19, p.17

[8] Submission no 35, pp.9,10.

says, the cheap imported material argument runs counter to the basic nature of the service and its needs to attract and retain subscribers because of the quality and relevance of the program material offered.[9]

3.36 Most of the other reasons advanced for not having pay television are either matters associated with decisions individuals should make, parental responsibility or ones which can be controlled. On balance, therefore, the Committee concludes that the advantages of having pay television in Australia outweigh the disadvantages so that there is a net social value in introducing pay tv. Thus pay tv if properly managed provides net social benefits by:

- increasing diversity not only through market driven programming but also by local and community programming; and
- promoting the plurality of views in Australian society through diversity of ownership and non-commercial programming.

The Case For Or Against Pay TV Based On: (2) The Market (Why Not Pay TV?) Approach

3.37 The second view poses the 'why not pay tv' question which says that that question should be answered in the marketplace. If we do not ban socially harmful goods such as tobacco products why should pay tv be a prohibited product? Thus the introduction of pay tv should not be a 'public interest' decision for tribunals or governments but a decision for individuals. Eventually the success or failure of this product should be tested in the marketplace like any other product.

3.38 The 'pure' market approach sees pay tv as essentially a commercial product and nothing more, subject to the general rules that apply to other products. A less rigid approach could recognise the importance of non-commercial objectives. The Committee concludes that the 'why not pay tv' approach is a valid method of dealing with the desirability of introducing it in Australia.

The Delay Consideration Arguments: Because of Equalisation

3.39 Use of the two basic approaches lead to the same conclusion, that pay tv should be introduced in Australia. But many arguments have been put to the Committee on delaying its introduction and it is these matters that are examined.

3.40 There is in operation at present a four year moratorium on the introduction of pay tv in Australia which can be lifted on or after 1 September 1990. Its aim is to protect the investments of commercial television required by equalisation - see paragraph 1.15. In effect FACTS wants the moratorium extended by about five years. It says the introduction of pay tv should not be

[9] Submission to Australian Government, p.36.

considered until 1993 by when equalisation (commonly called Aggregation), which will place extraordinary demands on the financial resources of regional broadcasters, would be completed.[10]

3.41 The purpose of the moratorium was to give commercial television outside the capital cities some protection against competition from pay television.Its effect is also to protect capital city commercial television. It is very likely that the date for the introduction of pay tv thought of in 1986 has slipped and will slip even further. It is now unlikely that pay tv can be introduced before July 1991, more probably after June 1992 according to DOTAC.[11] In these circumstances the Committee sees no reason why the moratorium should be extended.

The Delay Consideration Arguments: Until Studies Are Completed

3.42 Proposals for these studies were made by the Communications Law Centre. The Centre wants a comprehensive study which would establish current levels and types of demand for pay tv services and another comprehensive study proposed by their consultant of the potential economic viability of pay tv services in Australia, and the industry's likely impact upon Australia's balance of payments.[12]

3.43 The arguments for a study of economic viability by government relate to the responsibilities of government. It is said that for political and administrative reasons a study of economic viability is needed to avoid allocating scarce public resources (radio spectrum) or public financed infrastructure (Aussat satellite or Telecom cable) to enterprises that prove not to be economically viable.[13] Interestingly, this argument should apply to every part of the spectrum including MDS users and every new service requiring investment provided by every public enterprise.

3.44 While it is true to say that governments approve the forward business plans of public enterprises, it is the enterprises themselves that are responsible for investment decisions. Governments hold public enterprise management accountable for such decisions and if they are poor, then government should take appropriate action.

3.45 Another argument in favour of a study of economic viability by government relates to the nature of regulation. This says that the nature and scope of regulations will be influenced significantly by an assessment of their economic viability and government decisions on advertising, anti-siphoning and so forth 'are all economic issues affecting the potential viability of pay tv services'.[14]

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[10] Submission no 19, p.2.
[11] Transcript of 31 July 1989, p.571.
[12] Submission no 35, pp.59,60,62,63 and Appendix C, Section 3.
[13] As above, Section 3.
[14] As above, Section 3.

3.46 There are other simpler and cost-effective ways of testing economic viability. Once decisions are made on the regulatory framework for pay tv then the licensing process will bring forward applicants who believe they can operate a profitable business. Their market research should have shown them this. Thus responsibility for success is placed squarely on those who think they can benefit from that success - the potential service provider.

3.47 The fact is that there is a certain amount of market research on pay tv being undertaken in Australia. Telecom has conducted qualitative research on this subject and gave some of these results to the Committee. This showed that the whole issue of pay tv was difficult for people to understand, a view shared by the AFC which said that new video services are fairly difficult to pre-sell.[15]

3.48 Strategic Technology Management Pty Ltd gave the Committee on a confidential basis the executive summary of its research report, *Pay Television: The Australian Options and Their Impacts*. The study concludes that given its revenue and cost assumptions there is potential for a viable pay television industry which has certain specified characteristics.

3.49 The ongoing research of Hoyts Entertainment shows that there would be sufficient market penetration to make pay tv in Australia sufficiently viable over a medium period of time. Most of the research has been with groups to whom the concept of pay tv was explained. About 55%-60% of those interviewed favour pay tv with higher support from blue-collar workers and the under 16 year old group.[16]

3.50 From questioning of witnesses the Committee also found out that Telecom is undertaking another survey.[17] Telecom says that this quantitative market research will assess the demand for pay tv as a function of pricing levels for various combinations of pay tv channels. Such information will determine the rate of investment for optical fibre connection from hub to home.[18]

3.51 This shows that studies that cover economic viability are being undertaken and by appropriate groups. Government studies would waste resources. The Committee agrees with the DOTAC view that viability is best left to those who want to be pay tv providers.[19]

3.52 The study of the impact of pay tv on Australia's balance of payments recommended by the CLC is based on the statement that the current account deficit is now well recognised as Australia's major economic problem and the Tribunal's view (1982) that pay tv would be a net user of foreign exchange.[20]

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[15] Transcript of 4 October 1989 p.728.
[16] Transcript of 31 July 1989, pp.636-639.
[17] Transcript of 4 October 1989, p.746.
[18] Submission no 83, p.7.
[19] Transcript of 31 May 1989, p.573.
[20] Submission no 35, Appendix C, Section 3.

3.53 Basically, the proposed study has the clear implication that imports required for pay tv and by inference all other imports which could lead to 'large' increases in net imports should be evaluated for suitability. If the study concludes they are their importation should be allowed, if not such imports should be banned or controlled.

The Delay Consideration Arguments: Because of Completed Studies

3.54 Two financial and economic studies which argue that the introduction of pay tv should be deferred or deferred indefinitely were presented to the Committee by the Federation of Australian Commercial Television Stations (FACTS). The Whitlam Turnbull study was sponsored by Network Ten and the yet to be completed Access Economics study was sponsored by the Australian Television Network.

3.55 Detailed examination of the studies is at Appendix 3. Both studies are very unconvincing in their efforts to defer the introduction of pay tv into Australia. To a large extent their deficiencies stem from unrealistic assumptions which determine the outcomes or conclusions. The Whitlam Turnbull study is flawed by a number of assumptions which are extremely difficult to sustain partly because of their arbitrary nature and which critically affect the negative predictions of the model of the effect of pay tv on commercial broadcasting. The basic assumptions are unrealistic and the use of other assumptions gives a completely different picture.

3.56 The conclusions drawn by Access Economics seemed to be directed to questioning the validity of the view that the introduction of pay tv would produce greater diversity of choice for viewers and establishing that the consumer would suffer economic disadvantages from the introduction of pay tv. In this case also the conclusions were dependent on assumptions which were not demonstrated to be justified, particularly the assumption that a pay tv operator would behave like a monopolist. This is an assumption which clearly does not seem appropriate given the substitutes that would be available.

3.57 It is public knowledge that the commercial television networks are facing enormous problems, most of them self-inflicted. Few would dispute the claim that the prices paid in 1987 for commercial television stations were inflated and partly as a result of this a huge debt has to be serviced. It is also clear that the conglomerate business enterprises are in financial difficulties and this too is having its impact on commercial television. Add to all this the industry view that the attempts of the previous owner of the Ten Network to become the leader of commercial television in Australia failed and also resulted in increases in program costs and the present difficulties of the networks become obvious. The longer term threat to commercial television in Australia and other countries is changed methods of advertising and new technology. Both threaten mass advertising and consequently the revenue that can be obtained from television advertising.[21]

[21] R Rothenberg of the New York Times, *Adapt-or-die: Latest Advertising Slogan*, Australian Financial Review, 20 October 1989.

3.58 By themselves the current financial problems of the networks are hardly a reason for deferring the introduction of pay television in Australia. It should be noted that pay tv cannot be introduced overnight and that the earliest commencement date is about July 1991 or even later. In addition there is the question of the speed of market penetration so that we are looking at a time frame beyond the year 2000 before adverse consequences become a problem for commercial television - assuming of course, that there is a problem.

3.59 Another argument put to the Committee by FACTS is the adverse impact of competition on revenue and the consequential reduction in the quality of programs as a result of the introduction of pay tv. It is the same argument put to the Committee in the previous inquiry on the effect of increasing the number of commercial free-to-air operators.

3.60 This argument is inconsistent with FACT's own description of the essential characteristics of commercial television. In respect of Australian content and drama quotas the organisation has claimed that regulation is unnecessary because what is shown on commercial television is driven by consumer preference. A similar position pertains to programming generally. In challenging the DOTAC differentiation between commercial television and pay tv, FACTS says that before it can deliver audiences to advertisers it has to 'sell' programs to viewers. In other words, if a program is not sufficiently popular, as measured by the ratings, its chances to bring in advertising revenue are limited.

3.61 Now if there is diversion of advertising revenue to pay tv, or to any other method of advertising, the ability of the networks to reduce quality depends very much on viewer response, the very quality that enables commercial television to 'sell' programs to viewers and thence audiences to advertisers. If the response is negative, the networks will just not be in a position to do what they claim they will do. Therefore, in the face of increased competition, or reduced revenue, their options will include better targeting of audiences, increased efficiency or reduced profits rather than a reduction of quality.

Conclusions

3.62 A bewildering array of arguments have been put and reasons advanced for not having, for delaying or for delaying the consideration of having pay tv. These arguments have been examined and rejected. Some difficulties have been accommodated (e.g.anti-siphoning rules) thus removing perceived difficulties.

3.63 The overall and overwhelming case for pay tv is not only that it offers a commercial product available to citizens of many western democracies[22] but that it also offers excellent opportunities for the achievement of non-commercial objectives. In these circumstances the Committee recommends that:

> **the Government announce immediately an in-principle decision to introduce pay television in Australia.**

[22] New Zealand is to get a 3 channel pay tv service - news, sport and movies - in June 1990 - Financial Review 1 November 1989.

4: DELIVERY SYSTEMS

Background

4.1 Technology currently provides four obvious options for the delivery of pay tv in Australia - UHF, MDS, DBS and cable. A map which shows the coverage of direct broadcast by satellite (DBS) and the trunk routes of optical fibre (cable) is located before the seciton on UHF. A table on the comparative advantages of delivery systems is at the same location.

4.2 Current technical knowledge permits the use of more than one technology for distributing television signals to a particular area although it is customary to identify the delivery system by the technology which delivers the signal to the television set. Thus like broadcast television, pay tv on UHF could be distributed first by satellite or by cable but as long as UHF delivers the signal to the television set, the delivery system would be called UHF.

4.3 Because no one system is capable of delivering pay tv to the whole of Australia it will be necessary to have more than one system - a hybrid. Hybrid systems also refer to areas that are serviced by more than one system.

4.4 It is also possible to identify all the initial or 'feeder' technology used. Thus satellite - MDS would indicate that programs are delivered by satellite and then via MDS to the household. A similar meaning would attach to cable - MDS. Such identifications would be necessary whenever it was considered necessary to prohibit or promote a particular technology to be the initial or feeder technology in a delivery system.

The Role of Government

4.5 The arguments to support the option of leaving the selection of delivery systems to entrepreneur(s) are reasonably simple and well established. Touche Ross says that pay tv 'is a commercial opportunity, not a social service or community service obligation'. If the objective is to provide a commercial service 'without cost to the taxpayer, then private investors must be able to choose the most cost-effective delivery method available'. It submits that, given the diversity of options for delivery, '(g)overnment is not in a position to measure, or estimate in any meaningful way, which method of delivery will be the most cost-effective for a given, or any, pay-tv operator'.[1]

4.6 The Australian Telecommunications Users Group (ATUG) submitted that the decision should be left to the market place to resolve and that no technology should be excluded by regulation. It seemed to favour the utilisation of cable technology in the long term.[2]

[1] Submission no 24 pp.2,3.

[2] Submission no 12.

4.7 The Department suggests that while it is possible for the government to prescribe delivery systems this 'would inevitably have some significant commercial implications which would be difficult to assess' because there are too many unknowns.[3] The Department said that a more appropriate approach would be for operators to be licensed to provide services without specification of delivery systems to be employed. That decision should be left to the licensee.[4]

4.8 Some submissions to the Committee, including particularly that from the Communications Law Centre (CLC), have argued that provision should be made in the establishment of pay tv for the availability of channel capacity for public, educational and government use. The Centre asked the Committee to adopt the following objective of broadcasting-related services: 'ensuring the genuine diversity of programming, to include the potential for local originated, community programming, and educational, informational and children's programming'.[5]

4.9 Arguments in support of some government intervention come together quickly into two inter-related issues. The first is what governments wish to achieve from pay tv or its regulation which is a relevant issue needing debate at the outset. The second and related issue is whether commercial objectives should be the sole determinant of the manner in which pay tv should be introduced and managed in Australia.

4.10 In chapter 3 the Committee has argued that pay tv is much more than a commercial product. If managed properly it offers significant opportunities for promoting the plurality of views in Australian society by increasing diversity of ownership and diversity of non-commercial programming. Thus the Committee agrees with the views and sentiments expressed in the CLC submission and the Tribunal's 1982 CSTV report. It should be recognised, however, that selecting a system that delivers such non-commercial goals is something the market cannot achieve. Hence the need for government to select and nominate the system(s) to be used to deliver pay tv.

4.11 The Department hedges its bets on the role of government in selecting a delivery system. Its February 1989 report and later explanation of it advocated a market solution. This later explanation also recognised that having local and community programming 'is a very desirable element to have in a pay television service' and that decision-makers may need some guidance on the mechanisms that might be used. DOTAC now wants the pay tv operator to choose the delivery system 'as far as possible'.[6]

Selecting Delivery Systems: The Criteria

4.12 The Committee uses five criteria in its selection of the most appropriate pay tv delivery system for Australia. These are:

(a) number of channels;

[3] 1989 Pay TV Report, p.140 and Transcript of 31 July 1989, p.586.

[4] 1989 Pay TV Report, p.140.

[5] Submission no 35, pp.7,12.

[6] Transcript of 31 July 1989, pp.584-594.

(b) costs to the subscriber;

(c) universality of access and timing;

(d) diversity of ownership; and

(e) capability to accommodate more advanced systems.

4.13 It was said earlier that the survival of pay television will depend on whether the consumer (viewer/subscriber) believes he or she is getting or will get value for money. Thus at minimum, pay tv has to be sufficiently different from broadcast television, both commercial and national. Channel capacity is crucial to the task of differentiation because it can promote diversity of program choice. The number of channels is also important in that a sufficient number can permit local and community programming, another aspect of diversity of choice. A large number of channels increases the potential for competition and reduces the cost of the delivery system to the subscriber.

4.14 While the number of channels available and the costs to the subscriber can be considered to be primary factors in the Committee's deliberations, another criterion is universality of access to pay tv facilities and the timing of that access. There has been a number of views which reflect concern that access be as universal as practicable, both from the point of view of consumers (that access be as widely available as possible) and potential service providers (that there be a sufficient number of subscribers to render their investment viable).

4.15 The potential for increasing diversity of ownership is another criterion used in the selection process. It is related to the policy objective of preventing undue concentration of broadcasting services. Suffice it to say that because of its capacity to influence public opinion there are special rules for broadcasting and pay tv comes under or should come under the new definition of broadcasting.

4.16 Interactive services permit the introduction of services such as game and quiz shows with the home audience participating directly in the program. Services which are essentially unrelated to television such as electronic banking, security, home shopping and educational services may also be offered.[7]

4.17 Such services are beneficial but cannot be included as a determining factor in selecting a delivery system because it is doubtful if the argument can be sustained that their introduction depends on the introduction of pay tv. Nevertheless their introduction could be advanced by cable television.

4.18 In the event of all delivery systems not meeting the criteria, or not meeting them adequately, the initial or feeder technology would have to be specified - e.g. cable/MDS. But obviously any one system would not be able to serve all of Australia so that in some areas there would be one system and in other areas another - a hybrid. For example, in the remote areas or sparsely populated areas the type of system used would be determined mainly by the availability of the technology.

[7] The 1989 Pay TV Report, p.16.


DARWIN
39 dBW
KATHERINE
KUNUNURRA
DERBY
BROOME
COOKTOWN
CAIRNS
TOWNSVILLE
TENNANT CREEK
MT ISA
PORT HEDLAND
KARRATHA
NEWMAN
ALICE SPRINGS
LONGREACH
ROCKHAMPTON
CHARLEVILLE
CUNNAMULLA
BRISBANE
BOURKE
LIGHTNING RIDGE
GERALDTON
KALGOORLIE
PT AUGUSTA
BROKEN HILL
COBAR
52 dBW
WHYALLA
PERTH
47 dBW
NEWCASTLE
MILDURA
SYDNEY
52 dBW
ADELAIDE
39 dBW
47 dBW
CANBERRA
52 dBW
ALBURY
ALBANY
BENALLA
BENDIGO
39 dBW
MELBOURNE
PORTLAND
WARRNAMBOOL
HOBART
TELECOM: -
Optical fibre
Microwave radio
Coaxial cable
Existing Systems (1989)
Proposed System (to 1993)
Satellite Foot Prints

COMPARATIVE ADVANTAGES OF DELIVERY SYSTEMS

DELIVERY SYSTEM / CRITERIA	UHF	MDS	DBS	CABLE	CHOICE (Cable/MDS)
Effects of the Number of Channels	Number : 1 Diversity : Limited Localism, etc : Limited Potential for Competition : None **P**	Number : 3 to 10 (a) Diversity : Satisfactory Localism, etc : Satisfactory Potential for Competition : Satisfactory **S**	Number : 6 Diversity : Satisfactory Localism, etc : None Potential for Competition : Satisfactory **S**	Number : 40 (b) Diversity : Excellent Localism, etc : Excellent Potential for Competition : Excellent **E**	Same ratings as for MDS. The major difference is that the hybrid offers a start June 1991 with a later switch to full cable thus achieving all the high ratings for cable whilst avoiding the poor rating on universality of access and timing.
Investment Costs to Subscriber	Low **G**	Medium $540-$820 (c) **S**	Medium $520-$1000 (d) **S**	Medium **S**	
Universality of Access and Timing	Reach : 96% (e) Start : June 1991 (f) Coverage : 96% **G**	Reach : 100% Start : June 1991 (g) Coverage : Progressive (h) **G**	Reach : 94% Start : April 1992 Coverage : 94% **G**	Reach : 60% (i) Start : 1994-95 Coverage : Progressive (j) **P**	
Potential for Increasing Diversity of Ownership	Good. (k) **G**	Good. (l) **G**	Limited. (m) **P**	Good. (n) **G**	
New Services Capability	None **P**	None **P**	None **P**	Yes **G**	

NOTES:

(a) from 3 or more in capital cities to 10 in areas where no other MDS services compete for frequencies
(b) co-axial; unlimited with fibre optic
(c) Submission No. 49
(d) Submission No. 80
(e) as for free-to-air, percentage of population
(f) 18 months from date of decision, ie 1.1.90
(g) as for UHF
(h) depends on investment decisions
(i) major metropolitan and provincial centres
(j) 60% unlikely before 2000
(k) based on existing service areas about 40 markets
(l) as for UHF
(m) national market
(n) as for UHF

The ratings are as follows:
P – poor; **S** – satisfactory; **G** – good and **E** – excellent.

Selecting Delivery Systems: The Options - (a) UHF

4.19 UHF broadcast transmission can be delivered as a radiated terrestrial service with the signal encoded to ensure that only subscribers can view the picture. It would probably be limited to one channel in most areas achieving 96% penetration starting from about eighteen months after a decision was made to proceed with pay tv.[8] The eighteen month period is required to enact legislation, define licence areas and process licence applications which are factors which would affect any of the options of delivery. They would be critical presumably only for technologies which are available now - UHF and MDS.

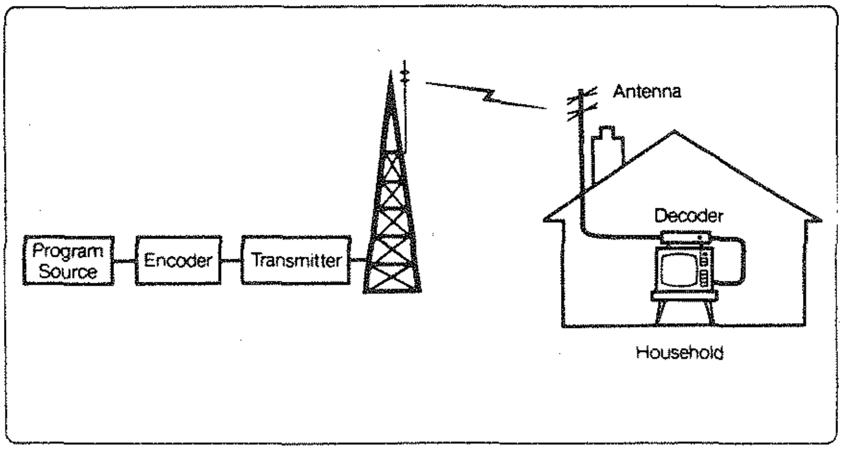

Figure 3.2 Diagrammatic explanation of pay television provided via RSTV.

Source: The 1989 Pay TV Report, p. 18

4.20 Submissions to the Committee were divided on the value of UHF as a distribution medium for pay tv. Touche Ross expressed concern about the long-term competitive advantage of monopoly power which would rest with a service provider on UHF where only one channel is available.[9] The Communications Law Centre favoured the introduction of pay tv through UHF (with later transfer to cable as that technology becomes available) so that eventually the UHF channel could be made available for public television. The Centre wanted the pay tv operator(s) to be required to transfer free of charge to

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[8] The Minister for Transport and Communications as reported in the Canberra Times, 10 February 1989

[9] Submission no 24, p.2.

public television the UHF infrastructure developed for pay tv. In this way pay tv on UHF was seen as a way of 'kick-starting public television'.[10] The capital cost of this infrastructure is $20 million.[11]

4.21 UHF broadcast transmission has the advantage that it can be established relatively quickly and at relatively small cost to the consumer and national investment. It has the potential to increase ownership diversity, by service areas being based on similar numbers as the present (40 or more), could be made available in most areas of the country where tv is available now and would provide an avenue for some limited local and community programming. Its disadvantages are that, for most major city locations, it can only accommodate one channel which would limit substantially the expansion of program diversity (choice) and does not have the capability of cable delivery to accommodate more advanced communications systems. That latter limitation would not be a significant concern if UHF transmission was seen only as an interim delivery system until more appropriate technology became readily available.

4.22 Even as a temporary option it excludes consideration of UHF for other purposes - eg. another national broadcaster, or other purposes such as education or even subscription television of a non-entertainment type. There are two additional disadvantages of UHF even as an interim system. The first is that, with introduction likely to be not before mid-1991 at the earliest, a UHF operator would not have sufficient time to break even and return a profit before alternative technology is expected to be available.[12]

4.23 The second additional disadvantage of UHF is restricted channel capacity - one or arguably two channels at the most. The Committee is concerned that this small capacity could risk the long term viability of pay television because of its reduced ability to differentiate the product from that on existing television and hence its adverse impact on value for money of pay tv. It is true that France has a single pay tv channel called *Canal plus* said to be very successful. By itself this is no guarantee of similar success in Australia where circumstances, particularly competition from five free-to-air broadcasters, are very different.[13]

4.24 Although the UHF option has some advantages the Committee does not support it even as an interim delivery system. The main reasons are limited channel capacity which could put at risk the long term success of pay tv, as well as there being insufficient time for UHF to break even prior to the availability of other technologies. The channel should be reserved for possible alternative uses - for national broadcasting, educational purposes or even for a different type of pay tv.

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[10] Submission no 35, p.28 and Transcript of 12 April 1989, pp.348,349.

[11] 1989 Pay TV Report, pp.82 and 72. The capital cost of $4m per service multiplied by 5 for the five capital cities.

[12] 1989 Pay TV Report, Vol 2, p.144.

[13] The Australian Film Commission submission on Canal plus, no 77 and Transcript of 4 October 1989, p.724.

Selecting Delivery Systems: The Options - (b) MDS

4.25 MDS is a point to multi-point delivery system which would involve the line of sight transmission of encoded signals from a program source (transmitters) in an area to receivers in private homes by way of SHF with reception on specially acquired aerials with appropriate decoding capability attached. The Committee has been advised by DOTAC that based on the existing frequency allocation plan, MDS can provide good quality reception on 3 channels in capital city locations and up to 10 channels in locations in which there is no current MDS technology use. If the frequency allocation plan were changed to increase the availability of MDS channels for pay tv, the number of good quality reception channels available in capital city locations would increase. Such a system could be operational within about eighteen months of a decision to establish pay tv facilities and penetration to consumers would be limited only by the economics of the system.

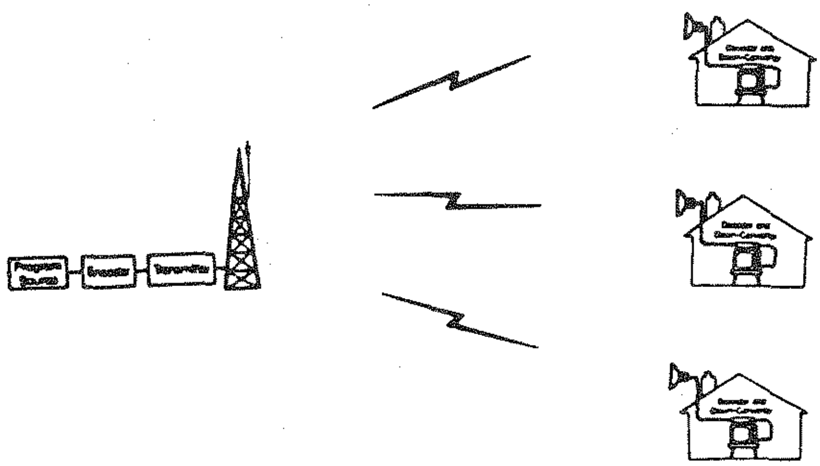

Illustration of Typical MDS Delivery System

Source: DOTAC

4.26 The DOTAC report recognised MDS as a delivery mechanism but did not consider it further because 'the then Minister for Transport and Communications announced that MDS will not be used as the primary delivery system for pay television'.[14] There were numerous submissions on the possibility of utilising MDS technology for pay tv distribution. Generally these were from organisations which wished to utilise MDS technology for the delivery of a pay tv service quickly.

[14] 1989 Pay TV Report, p.71.

Current operators of VAEIS systems proposed to the Committee that the technology should be preferred because it is readily available and there is experience in place in major cities on which to base a successful pay tv service. There was a recognition generally that MDS might be overtaken eventually as a transmission method by cable systems but it was argued, no doubt with some justification, that MDS would have a role always in those areas where cable would not be economic. Independent Television Newcastle (ITN) favoured the introduction of a pay tv system which would permit MDS operators to receive six channels of program feed from Aussat's B-series satellites and the insertion of local program features by the MDS operators. ITN also envisaged subscribers who did not want to receive local programming being able to subscribe directly to the satellite service by installing their own DBS aerial.[15]

4.27 As a carrier for pay tv MDS has the advantages that it can provide, in most locations, 10 pay tv channels and has the potential to cater for program diversity and diversity of ownership. There is scope for making the service available to a substantial proportion of the community and for the provision of some local and community programming. Disadvantages for MDS technology are that whilst it is cheaper on a per channel basis for the consumer it may be more costly as a system than UHF. If it were to be the final system, it does not have the capability to accommodate the introduction of more advanced (interactive) systems in the future.

4.28 It should be recognised that in identifying MDS as an option it has to be used with an initial or feeder technology such as satellite or cable. This is because there is no method of connecting the large number of MDS service areas. MDS needs to use other systems, either satellite or cable, as feeders.

Selecting Delivery Systems: The Options - (c) DBS

4.29 Direct Broadcasting (DBS) by satellite could be delivered into homes by encoded signals from Aussat B-series satellites to specially designed earth stations to receive transmissions broadcast on a national basis with each consumer (household) needing an earth station. DBS can provide up to six channels reaching 94.4% of the population through relatively low cost individual earth stations in the majority of cases. It is expected that the Aussat B-series satellite which would provide such a service will be ready for operation during the second quarter of 1992.

[15] Submission nos 5,43,56 and 59.

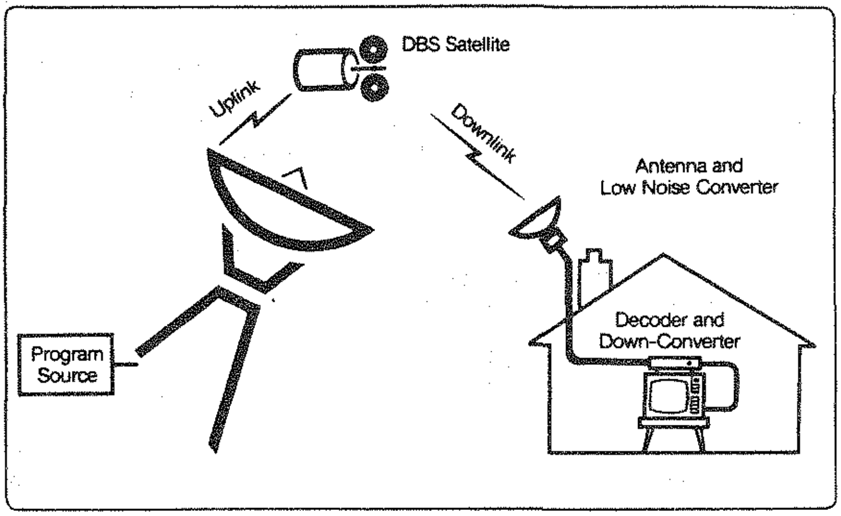

Figure 3.3 Diagrammatic explanation of pay television provided via Direct Broadcast Satellite (DBS).

Source: The 1989 Pay TV Report, p. 19

4.30 DBS systems are a readily available and proven technology. They have been used for both Homestead and Community Broadcasting Satellite Services and Remote Commercial Television Services (RCTS) in the remote localities of Australia for some years. The West Australian Government advocates DBS as the primary method for delivery of pay tv. This conclusion is based on pay tv having to meet the objective of simultaneous universal access and choice of which equity of access is an integral part. The second submission acknowledges that the Aussat spot beam on its B-series satellites will not reach 15% of the State population. It says the Western RCTS service area covers all non metropolitan WA including the 15%. An agreement between one or more of the pay tv operators and the RCTS licensee could deliver pay tv programming during the RCTS downtime.[16]

4.31 The Touche Ross submission is critical of cable as a delivery system for pay television and complementary of DBS. The advantages it claims for DBS include maximum audience reach from day one which improves the prospects of commercial viability, the minimisation of total investment and maximisation of the use of productive resources, and low marginal cost. The conclusion reached is that in a free market DBS is the most cost-effective means of delivering pay tv to the subscriber.[17]

[16] Submission no 47, pp.1,4 and 5.
[17] Submission no 24, pp.2-5.

4.32 Clearly, the company has powers of analysis not available to governments! Thus the latter are not in a position to pick the most cost-effective delivery system[18] but Touche Ross is!!

4.33 Initially the WA Government supported DBS because it was the only system that could provide simultaneous universal access.[19] It later changed its view by adding delivery during RCTS downtime when it realised that DBS would not cover all of WA. It should be noted that the RCTS option for remote areas of Western Australia is not the only option. Others include the combination of RCTS with MDS or cable with MDS. Neither is the RCTS option the least expensive or the most convenient. For households that have neither an earth station nor a VCR the establishment cost could be as much as $4000. This figure does not include the regular cost of video tapes nor does the proposal allow for the significant inconvenience of changing tapes during the downtime hours.[20]

4.34 In paragraphs 4.13 to 4.18 the Committee stated and explained its selection criteria for choosing a delivery system. Equity of access was one but not the only criterion. It is obvious that no one system can meet all the criteria to the maximum and there are severe limitations in restricting the criteria as is the case in submission number 47.

4.35 Direct broadcast by satellite scores well in respect of equity of access and timing. The effect of having six channels gives DBS reasonable opportunities for program diversity and some, although limited, potential for competition. But DBS has some significant disadvantages. It can provide little diversity of ownership because it serves the national market and therefore there are no opportunities for local and community programming. It cannot provide for advanced television capacity. But perhaps the biggest disadvantage is cost to subscribers. The cost of earthstations outside the 52 dBW contour are said to be over $1000 a station and outside the 47 dBW contour (see map) Aussat sees pay tv being delivered only by community ownership arrangements.[21] This could affect adversely market penetration of pay tv in these areas. Further there is the investment loss for metropolitan subscribers who switch to the bigger capacity cable technology when it becomes available.

4.36 Overall DBS has some significant disadvantages and is not able to meet or meet adequately many of the criteria. In these circumstances the Committee is not disposed to recommend DBS as a delivery mechanism for pay tv.

Selecting Delivery Systems: The Options - (d) Cable

4.37 Cable distribution utilises coaxial and/or optical fibre technology to reach households in a manner similar to the provision of ordinary telephone services. Depending on the technology used, it can provide up to forty channels (coaxial)

[18] presumably this means the least cost method of delivery
[19] Submission no 10, p.5.
[20] $3000 for the dish plus decoder - submission no 47, p.3 - and say $750-$1000 for the VCR.
[21] Transcript of 4 October 1989, p.768.

or more (with optical fibre) and it is expected that by 1994, broadband service capability will have reached the point in its development that it will be practicable to commence reticulation to about 60% of households. Reticulation, to the 60% level which would be to capital cities and major provincial centres, would probably take from six to ten years depending on the demand for pay tv and other broadband services.

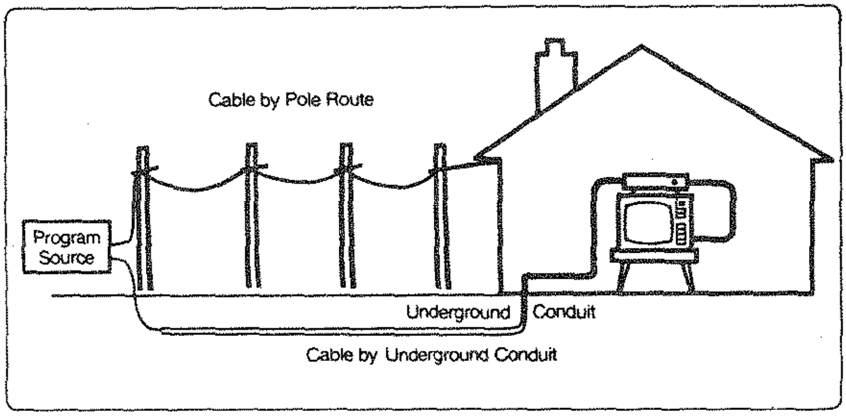

Figure 3.4 Diagrammatic explanation of a cable pay television system.

Source: The 1989 Pay TV Report, p. 20

4.38 Generally speaking, there is recognition in the evidence of the comparative advantages of cable as a delivery system. Because of this, Hoyts says that it is essential that policy formulation have the development of cable as its ultimate objective.[22] Perhaps the only or major dissent to this point of view came from Touche Ross. The company has several criticisms of cable. One is that '(t)o force any untried and potentially uneconomic technology (for example, the Telecom option) onto investors and the unsuspecting public is to threaten not only the future of pay tv in Australia, but to undermine Australia's image as a modern free enterprise economy'.[23]

4.39 Telecom's rebuttal says that optical fibre is a tried and proven method of communications carriage and has been used in the trunk network and inter-exchange network for some years. It refers to its pilot residential studies in Sydney and Melbourne and to the shared costs of the associated optoelectronic equipment.[24]

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[22] Submission no 37, p.15.
[23] Submission no 24, p.3.
[24] Submission no 63, p.1.

4.40 Telecom is not alone in this view. A researcher at Bell Communication Research Inc in the United States says that early indications are that optical fibre to the home 'is viable in terms of both technology and economics'. The article refers to several telephone companies in their common carrier capacity either having begun or having announced plans to begin transporting cable television signals over fibre.[25]

4.41 Another major criticism of cable by Touche Ross is that unlike the UHF and DBS options the majority of its costs fall on the carrier who then has to recover these costs from operators and users. The allocation of these costs make cable very unattractive whilst the number of users is relatively small and since it will take almost a decade to reach a satisfactory penetration rate, the conclusion made by Touche Ross is that 'it seems clear that the commercial success of pay-tv will be totally compromised by a decision to use cable'.[26]

4.42 What the company has done is to rearrange the estimates of expenditure (mainly investment costs) of the three delivery systems as shown in the 1989 Pay TV Report (page 74) to show where the incidence of costs fall - carrier, operator and, by a process of subtraction, the subscriber. Market penetration rates are then used to obtain costs per subscriber. The following is the result:

REVISED COSTS SHOWING COST INCIDENCE

	UHF	DBS	CABLE
Total System Costs ($m)	260	1,890	5,700
Carrier Costs ($m)	Nil	10?	5,000
Operator Costs ($m)	20	50?	Unknown
Total Subscriber Costs ($m)	240	1,840	700
Costs per Subscriber ($)	250	500	250
Assumed Penetration Rate (%)	20	50	50

Source: Touche Ross, submission no 24, p.5.

4.43 It is difficult to fathom the purpose of these numbers. The DOTAC report says (p.73) that its table 'provides a summary guide to the value of opportunities associated with the three delivery systems'. There is no valid reason to be critical of a delivery system because the majority of the costs fall on the carrier who has to recover them from operators and users. What the submission fails to realise is

[25] P W Shumate, Jr., Optical fiber reach into homes, Spectrum February 1988, pp.43,44.
[26] Submission no 24, p.5

that optical fibre delivers broadband services and can also be used to carry television signals. There is therefore no case for attributing all the investment costs to pay tv and then drawing conclusions from it. In any event, where investments have a long gestation period it is just not possible to expect anything more than negative returns in the early years and it does not make sense to abandon investment for this reason alone.

4.44 Some months after receipt of the Touche Ross submission Telecom, at the request of the Committee, provided some detailed information on costs. The organisation said if pay tv was to be introduced from September 1990 (the earliest it can be introduced in terms of the moratorium) the cable technology of optical fibre/coaxial would be the only one feasible. The cost (pillar to house) would be about $50,000 per 100 homes passed in metropolitan areas. Telecom provided a more detailed costing for optical fibre based on cost trends saying that the cost per customer would be $900 in 1994, falling to $500 in the year 2000.[27]

4.45 Interestingly, when one introduces channel capacity into the calculations, either for cost per subscriber or total system costs, cable, with a minimum 40 channel capacity, has an enormous comparative advantage as can be seen from the next table:

DELIVERY SYSTEMS: COSTS PER CHANNEL[1]

	UHF	DBS	CABLE
Total System Costs per Channel ($m)	260	315	142.5
Costs per Subscriber per Channel ($)	250	83.3	6.3

[1] Channel capacity of 1(UHF), 6(DBS) and 40(Cable)

Source: Derived from previous table.

4.46 Cable scores extremely well in terms of channel capacity. Its additional capacity gives it a substantial comparative advantage over other delivery systems in relation to program diversity, localism and community programming and the potential for competition between pay tv providers. Capital costs to subscribers are medium, it has the potential to provide diversity of ownership and cable is the only delivery system that has the capacity to provide for new services some of which would be interactive.

[27] Submission no 58.

4.47 The only drawback of cable, a short-term limitation, is in respect of access and timing. Information provided by Telecom shows cable to the home would not be available before 1994 and then would be available only progressively.[28] This choice, of using cable as it becomes available as the only mechanism does not satisfy the criterion of universality of access and timing.

Selecting Delivery Systems: The Preferred Solution - Cable/MDS

4.48 In these circumstances the options are to use MDS in conjunction with either satellite or cable, or both, so that all the selection criteria can be satisfied. It should be recognised that MDS is only a stop-gap solution which will have to give way to cable when it becomes available. It is clear from the table on comparative advantages of delivery systems that cable should be the pay tv delivery system in the long-term. The superiority of cable is recognised by almost everyone. Care should be taken not to put in place short-term measures which inhibit the introduction of cable. The use of indirect broadcasting by satellite with MDS as the primary method of delivering pay tv, particularly with 'soft entry' pricing and long-term contracts for satellite delivery (see paragraph 7.10), would inhibit the introduction of cable. Therefore, the committee does not support the satellite/MDS optim of primary delivery for pay tv.

4.49 There will be areas of Australia that cannot be serviced by cable-MDS. For these areas the system that is best able to meet the criteria should be chosen. This could be satellite-MDS or satellite-UHF or something else.

4.50 In view of the foregoing the Committee recommends that:

(a) the primary method of delivering pay tv in Australia be cable/MDS;

(b) for areas that do not have cable the system chosen should be the one best able to meet the criteria used by the Committee in its analysis; and

(c) the progressive transfer to a full cable system be one of the conditions of the pay tv licence.

Telecom as Common Carrier

4.51 Unlike in 1982 when the Tribunal reported on pay television, Telecom Australia has made considerable progress in the laying of fibre optic cable. Telecom has informed the Committee of its decision to lay optical fibre on the main cable sections of the customer access network, that is between the local telephone exchange and the neighbourhood pillar. The objective of the investment is to provide the potential ability to connect 60% of Australian homes for broadband services commencing in 1994.[29]

[28] Submission no 81.
[29] Submission no 81.

4.52 *It is therefore almost academic to talk of other providers of optical fibre* outside Telecom, including such providers for the final stages of cable. It is a move that would be impractical because of the broadband nature of the services provided.

4.53 Any move to duplicate the Telecom services would be wasteful and a misdirection of resources given particularly the virtually unlimited capacity of *fibre optic cable. Therefore, Telecom should be the common carrier for cable* pay television. Telecom should not be allowed to be a pay tv operator and neither should it have any say in influencing or determining program content. The former would take it outside its charter of responsibilities, the latter would give it regulatory powers it should not have.

4.54 In view of the foregoing the Committee recommends that:

(a) **Telecom Australia be made the common carrier for cable pay television, as prescribed in legislation; and**

(b) **the legislation prohibit Telecom Australia from being a pay television operator and from influencing or determining the program content of such television.**

4.55 Tied in closely to the method of delivery are other establishment issues relating to structure of the system and covering issues such as the separation of *carriage and content, the number of markets, exclusive franchises, single or* multiple channel systems and ownership and control. It is these matters that the next chapter discusses.

5: ESTABLISHMENT ISSUES

SEPARATION OF CARRIAGE AND CONTENT

Background

5.1 The question as to whether there should be separation of carriage and content in an Australian pay tv system arises primarily because of concerns about the potential for monopoly which may arise if they are not separated and the power that such a monopoly might provide to an operator. In considering the issues, one needs to define the concepts clearly.

5.2 For a pay tv system, carriage can be defined easily as the technology used to deliver pay tv signals to subscribers. In the course of its deliberations the Committee has noted that current technology provides four technically acceptable delivery mechanisms - UHF, MDS, DBS and cable. It is, of course, possible to use a combination of these delivery mechanisms, both within service areas and from area to area.

5.3 Content definition is a little more complex because there is room for debate about which aspects of the service provided should be included in such a definition. The one used by DOTAC has the effect of including the whole of the operations of pay tv operators but excludes program production and service distribution.[1]

5.4 The Department has expressed the view that the separation of carriage and content is a threshold issue which needs, presumably, to be resolved ahead of all other issues if pay tv was to be introduced to this country. It seemed to base that view on the conclusion that the ultimate structure of the industry would depend on the decision. If carriage and content were not separated it would be necessary to adopt a regulatory regime which controlled the content of pay tv and it suggested that such a system would confer monopoly powers on operators (similar to those experienced in the United States). If there was separation of carriage and content, there would be less scope for monopoly powers for operators and it would be sufficient to regulate the industry in a structural way which would leave operators no option but to act competitively.

5.5 It is not really clear from the report whether the Department was seeking to avoid the creation of an environment which would permit the establishment of monopolies for pay tv operation or whether it was seeking to avoid the development of an opportunity for Telecom Australia to become a pay tv operator. In the final event the Department chose to restrict its assessment to a statement of the advantages and disadvantages of the content and structural models which it had described.

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1 The 1989 Pay TV Report, p.86.

Comment

5.6 The position which the Committee has reached, in so far as it affects carriage and content separation, is really a by-product of its view about the role of Telecom in an Australian pay tv system. In paragraphs 4.52 to 4.54 of this report, there is a clear exposition of the reasons which lead the Committee to conclude that it would be academic to consider other providers of optical fibre capacity outside Telecom.

5.7 The recommendations adopted by the Committee in relation to Telecom's role for pay tv in Australia have the effect in the long term of separating carriage and content and, for that reason, the threshold issue perceived by the Department has been resolved (if that was really necessary). In the short term, of course, the Committee's recommendations concerning delivery options has the effect of permitting the development of services in which carriage and content will not be separated. The Committee considers that its long term solutions and the likely speed with which Telecom will address the installation of fibre optic cable means that the problems which might arise (if any) would be relatively short-lived.

MULTI-CHANNEL SYSTEMS, MARKET SIZE AND EXCLUSIVE FRANCHISES

Introduction

5.8 The establishment of a particular market structure lies at the heart of policy development for pay tv and the desirable amount of regulation for that structure. The Committee has argued that government has a role to play in choosing delivery systems primarily because of the need to achieve both economic and non-commercial objectives which are linked to the very reason for having pay tv. It is been noted also that such objectives can only be realised if pay tv is a commercial success. The Committee's approach to market structure is therefore influenced by three factors:

- increasing diversity of programming, both commercial and non-commercial;
- promoting diversity of ownership; and
- ensuring the commercial viability of pay tv.

A Single or Multi-Channel System?

5.9 A single channel system is one which allocates each channel separately so that there could be as many operators as there are channels. A multi-channel system is one where several channels are allocated to one operator.

5.10 There is a strong case for having a multi-channel system and it is not an outcome based on the application of either the broadcasting model or the publishing model. The advantages of the pay tv systems of the US and Canada are a product of their market structure- multi-channel, exclusive franchises, operating in a large number of markets.

5.11 An examination of these systems as undertaken in Appendix 2 shows the advantages of the multi-channel system. The first advantage as mentioned by Hoyts is the increase in program diversity through cross subsidy. In other words the minority interest channels or niche viewing may not be undertaken under a single channel system but becomes marginally attractive with multiple channels. Single channel systems, Hoyts adds, promotes the sameness of high interest/high revenue programs and thus loses the achievable goal of promoting diversity.[2]

5.12 A single channel system cannot increase program diversity by promoting non-commercial objectives. The CLC says it is not possible to get public, educational and government (the PEG channels of the US) with single channels because these PEG channels have to be cross-subsidised to promote diversity.[3]

5.13 The conclusion reached by the Committee is that multi-channel systems are far better positioned to increase diversity of program choice than single channel systems and could even be more viable commercially. This is also the view of Cox Cable Communications which says that the provision of program diversity requires 'narrowcasting' which is only possible in a multi-channel one operator system because without it minority interest programs may not be viable.[4]

A National or Smaller Markets?

5.14 The DOTAC report says that service areas should reflect the most cost effective way of reaching the market for those services, conditioned only by considerations such as ownership or control requirements. It says there appear to be two major options, urban areas and a national area. The former would approximate the present broadcasting areas and its advantages are 'well recognised'. The disadvantage is that it tends to 'freeze' pay tv into relatively uneconomic units. The national service area would optimise the market available to applicants, allowing economies of scale. Its advantages are greater likelihood of viability, minimal prices to subscribers and consistency with any delivery system.[5]

5.15 Given the crucial importance of establishing an appropriate market structure for pay tv, this 'conclusions without reasons' approach of the DOTAC report is very disappointing.

5.16 Economies of scale resulting from larger markets would result in the larger market having lower average costs than the smaller one. It is said that cable operators in the US incur significant fixed costs that are largely independent of

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2 Submission no 37, pp.31-34.
3 Transcript of 12 April 1989, pp.365-366.
4 Cox Cable submission to Australian Government, pp.17,18.
5 The 1989 Pay TV Report, pp.107-109.

the number of subscribers served - e.g. market research, billing. Therefore, a multi-system operator can spread these fixed costs over a large customer base and reduce units costs per subscriber. It is also said that 'any economies of scope or scale peak at relatively low levels; above a certain size, moreover, there may well arise significant inefficiencies and diseconomies of scale'.[6]

5.17 The US experience is inconclusive as to the existence of economies of scale in bigger markets. Moreover, because the Committee's proposals do not prevent an operator from owning more than one pay tv system economies of scale could be available under an urban service areas market structure.

5.18 Hoyts says that pay tv should be based on relatively small markets and Sydney, for example, could be broken into four separate markets.[7] The Department questions whether this would be economic[8] but it all boils down to program supply. If as in the US the pay tv operator is a retailer then the small markets option is viable. If not it is not. Put in another way, the small markets option would preclude the latter and guarantee the former.

5.19 The Committee favours a large number of small markets for pay tv based on the present broadcasting boundaries with the capital city markets being broken up into as many as four for Sydney and Melbourne. Such an approach in combination with a multi-channel system increases program diversity, promotes diversity of ownership while at the same time ensuring commercial viability of pay tv.

Exclusive Franchises?

5.20 The Hoyts proposal was for what the company inappropriately termed 'natural monopoly' or exclusive franchises or single licences for a particular market. The proposal is really part of a package which consists of multi-channel systems in a relatively larger number of small markets served by one operator per market. The benefits of the package are program diversity brought about by cross-subsidies.

5.21 The major objection to exclusivity is the bestowing of monopoly in a given market, or at least a significant economic advantage over a non licence holder. Thus, according to some, exclusivity forms the basis for regulation to prevent abuse of market power by means of the broadcasting model of regulation.

5.22 The monopoly argument is exaggerated. The Committee has already discussed this question at paragraphs 2.22 to 2.28. The conclusion drawn is that pay tv if introduced would be in competition with broadcast television and the VCR. The substitutes are not perfect but particularly with the VCR and the pay tv movie channel are sufficiently close to restrain the abuse of alleged monopoly power.

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6 NTIA Report 88-233, pp.79-82.
7 Submission no 37, p.31-34.
8 Transcript of 31 July 1989, p.611.

5.23 There is also the public benefit test of exclusivity. Given the characteristics of Australian industry (competition among the few), the view that the small size of the Australian market may not support more than two operators,[9] the increase in program diversity, and the existence of substitutes for pay tv, the Committee concludes that there is net public benefit from exclusive franchises.

Recommendations

5.24 In view of the foregoing the Committee recommends that:

- **the market structure for pay television in Australia contain the following three elements**
  - **multi-channel systems;**
  - **a large number of markets based on present broadcasting areas with more than one market for each capital city; and**
  - **exclusive franchises for each market.**

5.25 These recommendations should lay the foundations not only for the successful introduction of pay tv in Australia but also for the achievement of non-commercial objectives. Competition in these markets can be introduced at a latter stage and the Committee has made provision for this in its selection of delivery systems.

OWNERSHIP AND CONTROL

The Case for Regulation

5.26 Issues relating to the need for rules or special rules for the ownership and control of pay tv can be broken down into two component parts, namely:

- whether pay tv has characteristics similar to commercial broadcasting which require application of similar rules; and
- if so, whether such rules require adjustment to cater for the market structure of pay tv.

5.27 Hoyts separates the question of regulation of ownership and control into three elements. It argues that delivery system operators in its pay tv model should be public utilities (subject, presumably, to regulation in the normal way for those operations) and that those utilities should not be permitted to operate a pay tv service. The pay tv service operator is seen by Hoyts as being in a retail relationship with subscribers (different from existing television services) and, for that reason, it argues for no regulation other than an interest by government in the fitness and propriety of the operator (ie. a 'publishing' model approach). On foreign ownership and control, Hoyts suggests service operators should be regulated only through Foreign Investment Review Board rules and, for

[9] Strategic Technology Management, confidential submission.

cross-media ownership, control should be exercised through the Trade Practices Commission. For program suppliers/packagers, Hoyts suggests there be no ownership and control regulations.[10]

5.28 But because the company offers no real explanation as to why pay tv is different to broadcast television in terms of influencing public opinion, it is difficult to do more than state its views.

5.29 The DOTAC report discusses ownership and control issues under concentration, vertical integration, cross-media and foreign ownership and control. Referring to an earlier departmental publication it says that the major reason for imposing strict rules on the ownership and control of commercial television licences has been the power of the medium to influence public opinion.[11] The Committee endorsed these views in its 1988 Report.[12]

5.30 Although the DOTAC report recognises some of the special characteristics of commercial broadcasting, such recognition does not flow into the options. This is because of the importance placed on the separation of carriage and content which flows into the options of content regulation with strong regulation of ownership and control under the broadcasting model, and light regulation of ownership and control under the publishing model. Under the latter the view is that, with free or open market entry and no shortage of channel capacity (with fibre optic cable), 'there may be no need for regulations to restrict the potentially monopolistic behaviour other than those applying to industry generally'. Later on, this view is qualified with the statement that 'there may be arguments for restrictions on foreign ownership of pay television generally or at least of news and current affairs services'.[13]

5.31 Freedom of entry and availability of sufficient channel capacity are preconditions for the existence of a large number of players. By themselves, they do not guarantee such numbers. Television in Australia reflects the general characteristic of Australian industry in that competition is among the few (oligopoly) and there is no basis for accepting that pay tv will be any different. But whether the market structure is competitive or oligopolistic is not relevant if there are special reasons such as potential to influence public opinion which attach to broadcasting. Therefore, **ownership and control regulation is not related to the presence or absence of restrictions on market entry but rather to the setting of limits of concentration in order to prevent undue influence of public opinion by the few.** In short, the existence of conduct regulation or the publishing model is irrelevant as an option for regulation of ownership and control of pay tv.

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[10] Submission no 37, pp.17-21.
[11] The 1989 Pay TV Report, p.97.
[12] PP 263/1988, pp. 26, 27.
[13] The 1989 Pay TV Report, pp.97,103 and 145.

5.32 The proposed new definition of broadcasting with its emphasis on program content (see paragraph 2.9) brings pay tv under its umbrella. Such television is no different from commercial broadcasting in its power to influence public opinion and the Department has acknowledged that other countries 'certainly apply greater restraints on broadcasting than many other industries'.

5.33 The Committee sees no reason to change the views or conclusions it formed in its 1988 report. There is a clear case for regulation of ownership and control of pay tv. The Department says that it is the responsibility of governments to reach this (or a different) conclusion.[14] The Department has thus retreated behind the protective shield of Ministerial responsibility. This makes quite irrelevant the options on ownership and control in the DOTAC report.

The Extent of Regulation

5.34 The type and extent of regulation of ownership and control depends on the market structure that is established. The proposed model of the Committee establishes about 40 markets which provide a multi-channel pay tv service under an exclusive franchise system. In the capital cities there would be several markets with four in Sydney and Melbourne and a lesser number in the other capitals.

5.35 Grounds for regulating the ownership concentration of pay tv services also apply to the issue of cross-media ownership. There is, of course, no direct Australian experience on which to draw although provisions in the United States preclude the licensee of a local television broadcast station from owning a cable system within its station's coverage area. There should be a similar provision in Australia. In addition, rules governing cross-media ownership as they apply to existing commercial television services should be extended to pay tv in Australia. The reasons for including pay tv is similar to the reasons for introducing the rules in the first place. Such reasoning is not diluted by the open entry of structural regulation.

5.36 There are also grounds for providing foreign ownership and control regulation similar to that for television station operations in existing broadcasting legislation, and for similar reasons - the importance of broadcasting and its potential to influence public opinion.

5.37 The major submission from the Communications Law Centre contains a rationale for having ownership and control restrictions. It sees problems for preventing undue concentration at least in the short and medium terms because of channel scarcity and recommends the extension of current regulation on foreign ownership and control and cross-media rules to pay tv. [15]

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[14] Transcript of 31 July 1989, pp.602, 600 for the two references in this and the previous paragraph.

[15] Submission no 35, pp.64-67.

5.38 The ACTU submits that foreign ownership of pay television services should be prohibited. Further, appropriate cross-media ownership rules should be developed for the pay sector to prevent undue concentration of media ownership.[16]

5.39 The large number of markets will provide a firm basis for ensuring that there is well established diversity of ownership. In order to guarantee continuation of that diversity and prevention of undue concentration, the following ownership and control rules should apply in respect of industry concentration:

(a) no pay tv service operator may hold beneficially more than four service area licences in one State;

(b) no pay tv service operator may hold beneficially more than one licence in each capital city;

(c) no pay tv service operator may hold more than eight licences in total in Australia; and

(d) no pay tv service operator may hold beneficially licences which give access to more than twenty per cent of the total Australian audience.

5.40 The CLC also wants the Trade Practices Commission to investigate the involvement of film distributors in pay tv. It says there are three major film distributors and some of them have expressed an interest in pay tv. Their involvement would give these distributors 'an undue control over program supply or distribution'. If film distributors are considered part of the same market as pay tv matters of market domination could be scrutinised by the TPC. If not, there would be no such scrutiny and hence the proposal for TPC inquiry.[17]

5.41 Briefly, the CLC issue gets subsumed under vertical integration, which occurs in an industry when a single firm undertakes successive stages in the production process for a particular good or service. For the purpose of this analysis the term refers to situations in which the pay tv operator also has an interest in program supply. The term also covers the reverse situation, of program suppliers (film distributors and others) becoming pay tv operators.

5.42 Overseas experience could be relevant and the United States National Telecommunications and Information Administration examined, very thoroughly, the question of vertical integration of pay tv operators into program supply. Its conclusion was that:

16 Submission no 33, p.21.
17 Submission no 35, pp.67,68.

> In sum, common ownership of cable systems and cable programming services does not appear to affect adversely the supply of cable programming or the diversity of viewing choices for cable subscribers. While ownership affiliation does indeed increase the probability that a service will be carried by a particular system, carriage of affiliated services generally does not occur to the exclusion of unaffiliated services. This conclusion is strong with respect to pay services, though less definitive with respect to basic services. There is thus scant justification for a policy restricting vertical integration within the cable industry because of fears that it may produce market dislocations within the cable industry.[18]

5.43 While the above remarks were directed to a pay tv industry which is mature and well established, there does not seem to be any reason to conclude that an Australian industry would have different experiences. On that basis, the Committee considers that there should be no controls over vertical integration of service providers and program suppliers/packagers. It should be recognised that the proposed model of the Committee with its diversity of ownership (40 markets) and restrictions on ownership and multi-channel capacity reduces the potential for vertical integration. There should be no limitation, however, on carriers being associated with the development of program material should that activity fall within their charter.

Recommendations

5.44 In view of the foregoing the committee recommends that:

General

(a) the government establish ownership and control regulations for a pay tv industry in Australia;

Concentration

(b) no pay tv licensee be permitted to hold more than eight pay tv service licences in Australia;

(c) no pay tv licensee be permitted to hold more than four pay tv service licences in a State;

(d) no pay tv licensee be permitted to hold more than one pay tv licence in each capital city;

(e) no pay tv licensee be permitted to hold beneficially licences which permit access to more than twenty per cent of the total Australian audience;

[18] NTIA Report 88-233, p.102.

Cross-Media

(f) **cross-media rules similar to those governing existing commercial television services apply to a pay tv industry in Australia;**

(g) **no free-to-air television licensee be permitted of itself either directly or indirectly through subsidiary companies or through affiliates to hold or control a pay tv service licence in its own coverage area;**

Foreign Ownership

(h) **the government establish foreign ownership and control rules for pay tv similar to those applying to existing commercial television station operations;**

Vertical Integration

(i) **vertical integration between pay tv service providers and program suppliers/packagers be permitted; and**

(j) **vertical integration between carriers and program suppliers/packagers be permitted where such activities fall within the charter of the carriers.**

5.45 Restrictions on ownership and control will require rules on prescribed interests and so forth similar to what should apply to commercial broadcasting. The 1988 report argued for a simplification of the existing ownership and control rules and it is these that should be applied to pay tv.[19] Other matters relating to ownership and control are discussed in the section on licensing.

[19] PP 263/1988, pp.59-74.

6: REGULATORY ISSUES

LOCAL AND COMMUNITY PROGRAMMING

Background

6.1 Issues associated with local and community programming have received a considerable airing in this report so far. They have been discussed in the section on public television (paragraphs 3.5 to 3.16), in the section on the net social value approach to why pay tv (paragraphs 3.17 to 3.36) and have been used as a selection criterion for delivery systems - chapter 4, see in particular paragraphs 4.5 to 4.14 and the table, Comparative Advantages of Delivery Systems.

6.2 Briefly, the emphasis on local and community programming is based on a firm belief that pay tv is something more than a commercial product. Localism is a non-commercial objective made possible by the increased channel capacity of the new technologies. It permits access to less powerful minority interests and thus fosters a more pluralistic society. Such programming also increases diversity.

6.3 Although the Committee was aware of the benefits of such programming the submission from the Communications Law Centre provided a wealth of information on such programming, particularly in the US and Canada. Hoyts expressed concern about public access seen in the US as a right which has produced some of the worst excesses of pay tv in that country.[1]

Comment

6.4 Issues which need to be addressed in this context include:

- what type of community programming should be required;
- how many channels in a multi-channel system should be provided for community programming;
- how such programming should be financed;
- methods which might be used to select program providers; and
- the type of programming standards which should apply for community programming.

6.5 The type of community programming is a matter for resolution between each particular service provider and the local community. Community programming is clearly a matter of local concern and there should be mechanisms in place which ensure that such channels present material which is truly of a local nature and do not become vehicles for national groups seeking to use community channels to spread particular philosophies. To permit the latter approach would fly in the face of the arguments put by those seeking better community involvement, which the Committee supports.

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1 Transcript of 31 July 1989, p.629.

6.6 When considering the number of channels which should be made available for community programming on pay tv, it is important to recognise that, in the early stages of the model suggested by the Committee, there would be only limited capacity on an MDS system in major centres of population. For that reason, the Committee favours a requirement, as a licence condition, that one *community channel be provided on pay tv services which utilise MDS technology* for delivery to homes. In the longer term, as cable systems are introduced and become widespread, it would be possible to provide additional capacity for community programming. The Committee is not convinced that there should be a licence requirement for the provision of greater capacity but believes licensees should be encouraged to reach agreements with local communities on the extent of capacity. In the United States, the franchise allocation process has, in some areas, included opportunities for applicants to bid for franchises on the basis that preference will be given to those who demonstrate most willingness to provide community channel capacity. This has been the cause in some cities of a Dutch auction with substantial over-provision of facilities and increased costs of about $US5.60 per subscriber per month.[2] The Committee does not favour such an approach for an Australian pay tv system.

6.7 Financing community programming could present some problems in a new pay tv industry. It is interesting to note that in Canada the CRTC, the regulatory authority, has advised operators that they are expected to keep a target of 10% of gross revenue clearly in mind for the funding of community channels. The Committee is not convinced that such a level of requirement would necessarily be warranted in Australia, particularly for the infant stages of the industry and suggests two and a half percent of gross revenue to community programming. As with public radio in Australia, it can be assumed that the Government will be prepared to consider the provision of funds to assist pay tv community channels to commence. In the long term, however, the Committee expects that these channels will be funded by the levy from pay tv operators, sponsorships and community donations.

6.8 On the aspect of timing, it may not be practicable for community programming to commence from the date of commencement of pay tv services. The Committee will propose that community programming be scheduled to start for each service area from the commencement of year two of that pay tv service.

6.9 There will be a need to select from among the applicants wishing to provide community programs area by area, those who should be permitted to distribute the service. This will be particularly so in the MDS stage of the Committee's proposed solution. The most appropriate selection process would be one conducted by the Australian Broadcasting Tribunal using criteria similar to that for public radio. In that context also, programming standards for community programs should be the same as those applying to commercial programs carried on pay tv services.

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[2] NTIA Report, 88-233, pp.28-29.

Recommendations

6.10 The Committee recommends that:

(a) **community programming on pay tv be truly local in character and not a vehicle for national programs distributed by particular groups;**

(b) **while MDS transmission systems are used for distribution of pay tv to homes, service providers be required to allocate one channel, at least, for community programming;**

(c) **when cable distribution to homes becomes practicable, service providers be encouraged to reach agreement with local communities on the number of channels to be made available for community programming;**

(d) **service providers be required to contribute two and a half per cent of gross revenue to community programming;**

(e) **the Australian Broadcasting Tribunal determine to whom community program services licences be allocated using criteria similar to those of public radio;**

(f) **service providers be required to commence community programming from the commencement of the second year of operation of the service area by area; and**

(g) **program standards for community programming be the same as those for commercial programming on pay tv.**

PROGRAM STANDARDS

Background

6.11 Submissions generally expressed the view that there is a need to regulate the standard of programs shown on an Australian pay tv service. Most of those who addressed this issue suggested, however, that, because pay tv is different from free to air television in its relationship with viewers, there is a case for the development of slightly more relaxed standards for pay tv.

6.12 The DOTAC report drew attention to the various provisions which govern today the classification of visual material for public consumption with reference to film censorship, ABT rules and customs provisions all having a place. It appeared to conclude that there was a case for a lesser degree of regulation for pay tv because of the discretionary nature of the relationship between subscriber and provider.[3]

6.13 The Communications Law Centre argued that program standards for pay tv should be the same as for broadcast television in respect to violence, children's programs, racial vilification and obscenity. It suggested also that there would be a need to limit the access to pay tv facilities of those who wished to represent

3 The 1989 Pay TV Report, pp.127-129.

extreme views on religion and politics, although it did not suggest how that type of regulation might be determined. For adult programming, the CLC proposed that standards adopted should accord with the standards used for cinema and video distribution.[4]

6.14 Hoyts proposed that the special nature of the subscriber/provider relationship was sufficient to justify the adoption of a publishing model approach for program standards.[5] The Australian Film Commission considered that program standards powers for a pay tv regulatory authority should be the same as those for the ABT in relation to free-to-air broadcasting but that objectives should be specified which show a more tolerant approach for pay tv.[6] The Video Industry Distributors Association confined its comments to indicating that the question of classification of programs required considerable thought.[7]

Comment

6.15 It has been argued that there is a case to justify treating pay tv operators and subscribers on a basis which is different from the standards which are applied to free-to-air broadcasting. The case for that difference rests essentially on the nature of the relationship between subscribers and service providers and the freedom which subscribers would have to discontinue subscriptions if pay tv operators channelled unsuitable program material onto viewers' screens.

6.16 While recognising the general validity of that argument, the Committee considers that community standards in relation to issues such as children's programs and family viewing times would require that program standards on pay tv should, for those areas at least, be handled on a 'like with like' basis. For that reason the Committee concluded that program standards for pay tv family viewing and children's presentations should be identical with those for free-to-air television. (This leaves at issue the manner in which pay tv operators will be required to have children's programs classified) The attitude of the Committee to this issue was reflected in its report on the role and functions of the ABT where it recorded that 'to the extent that such services (as pay tv) ... are similar to those of broadcasting, the standards that apply to broadcasting in respect of violence, children's programs, etc. should also apply to such services.'[8]

6.17 There remains the question of program standards for other types of programs including what is called 'adult programming'. The Committee has made no recommendation on what should or should not be shown on pay tv, believing that in the case of the former the question should be determined by the operator because of his/her direct relationship with the viewer. The issue of 'adult programming' is raised in two different contexts.

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4 *Submission no 35, pp.52,53.*
5 Submission no 37, p.22.
6 Submission no 48, p.34.
7 Submission no 64, section 6.
8 PP 263/1988, para. 6.72.

6.18 First, a newspaper reported that the Committee would be recommending a pay tv channel for x rated movies.[9] This is incorrect. The Committee has received no submissions on this issue and makes no recommendation on it.

6.19 The second context is the reported view that with the advent of pay tv children would have access to adult programs 24 hours a day.[10] Such concerns are not new. An indication of how they can be dealt with is in the US Cable Act of 1984 which stipulates that in order to restrict viewing which is obscene or indecent, upon the request of a subscriber a cable operator **shall** provide a device (by sale or lease) by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber (Section 624). An appropriate recommendation will be made.

6.20 The Committee proposes that the matter of program standards should not rest with a pay tv regulatory authority but should be addressed by government prior to the issue of invitations for applications for licences. Government should consult with the ABT in the context of existing program standard restrictions, establish clear guidelines and then announce the basis on which program standards will be managed sufficiently prior to the invitation for applications so that potential service-providers will be fully aware of the conditions under which they will be required or expected to operate.

Recommendations

6.21 In view of the foregoing the Committee recommends that:

(a) **the Government establish clear program standards guidelines for pay tv, after consultation with the Australian Broadcasting Tribunal, which will recognise the relationship which will exist between service providers and subscribers and will provide an appropriate level of freedom for viewers to choose the types of programs they wish to see;**

(b) **notwithstanding the recommendation immediately above, program standards for family viewing, children's programs as well as those dealing with racial villification be the same as those applying to free-to-air television; and**

(c) **the legislation should require licensees, as a condition of their licenses, to make available, on request by a subscriber, a device which permits the subscriber to prohibit viewing of a particular channel or program at times the subscriber can select.**

[9] Canberra Times 14 October 1989, p.3.

[10] The view of a research officer, Australian Council for Children's Film and Television, as reported in the Hobart Mercury of 28 October 1989.

PROGRAM SIPHONING

Background

6.22 'Siphoning' is the obtaining of exclusive rights by pay tv providers for programs which otherwise would have been shown on free-to-air television. Siphoning therefore debars viewers who do not have or cannot afford pay television from watching those kinds of programs they watched before the advent of pay television.[11] Those programs which are said to be susceptible to siphoning are major or national sporting events such as the Melbourne Cup, football finals and test cricket, international sporting events like the Olympic Games and one off special events - e.g. Royal weddings.

6.23 With the exception of Hoyts the other submissions that expressed a view on this subject were in favour of anti-siphoning rules for pay tv. The company does not concede the arguments for such rules but accepts their inevitability.[12]

6.24 Some of the arguments for and against anti-siphoning rules cancel one another out and are of little use in discussion. For example, the Department says that without rules broadcasters could suffer because of a reduction in quality of programming; and that with rules pay tv operators could be affected adversely - for the same reason![13]

6.25 The basic argument in favour of anti-siphoning rules relates to the protection of equity. FACTS says there is a significant question of equity in exclusive rights for major events because those who cannot afford pay tv or cannot get or do not want it would be denied access.[14] The CLC argument is somewhat similar.[15]

6.26 The case against relates to not inhibiting pay tv. The Centre, which favours rules, says that strong anti-siphoning rules would inhibit new pay services from establishing a subscriber base.[16]

Overseas Experience and VAEIS Services

6.27 Overseas, two approaches can be identified. The first is based on monitoring the frequency of siphoning and imposing anti-siphoning regulation as the need arises. Canada has adopted a monitoring approach, warning pay television service providers that as pay tv is complementary to broadcasting they should not compete for programs with broadcasters.[17]

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[11] The 1989 Pay TV Report, p.126.
[12] Submission no 37, p.29.
[13] The 1989 Pay TV Report, p.126.
[14] Submission no 19, p.16.
[15] Submission no 35, p.57.
[16] Submission no 35, p.56.
[17] The 1989 Pay TV Report, p.126.

6.28 The second approach is based on the establishment of regulations to facilitate some kind of control over the frequency and extent of siphoning. In the United Kingdom pay tv operators may not acquire rights to certain 'listed' programs or can do so only if broadcasters have been given the opportunity to acquire the rights under comparable terms and conditions.[18] These listed programs number ten and are all sports programs - e.g. Wimbledon, the Derby and the FA Cup. There is also a category of 'restricted' or 'protected' events which may be sold to broadcasters on an exclusive basis with the proviso that no single cable company can carry them to the exclusion of others.

6.29 The alternative television medium with the potential to siphon programming from broadcast television are the VAEIS services. The VAEIS guidelines have an anti-siphoning clause which states that VAEIS operators will not exercise any rights they may have to programs in such a way that would preclude their viewing by the general public on broadcast television.[19]

Comment

6.30 The Committee endorses the basic argument for anti-siphoning regulation, namely the equity argument that those who do not have access to or cannot afford pay tv should not be debarred from watching major or national events. National programs which are associated with national identity should be accessible to all Australians. The equity argument is the overriding one and provided it is met there is no reason why certain programs or events should be excluded from pay tv.

6.31 There are four ways of preventing program siphoning. The first is monitoring with regulation as the need arises. The second and third are the special list and the no exclusive rights options respectively referred to in the DOTAC report.[20] The fourth is a system of dual rights proposed by Hoyts under which events would be available to both free-to-air and pay television.

6.32 To choose between options it is necessary to apply selection criteria. For an option to be suitable it should possess the following characteristics:

(a) identify clearly or prevent in an equally effective way major or national events that could be siphoned from broadcast television;

(b) not debar such events being shown on pay television; and

(c) is clear, simple and easy to administer.

6.33 Canada uses the monitoring option. Unfortunately, there are few facts about this option, of how it works, of whether it has the capacity of meeting the overriding criteria and of whether it is clear, simple and easy to administer.

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[18] The 1989 Pay TV Report, p.126.
[19] The 1989 Pay TV Report, p.126.
[20] The 1989 Pay TV Report, P.127.

FACTS says that 'the reality is that pay television services will have quite limited audience reach for some - perhaps many - years after their introduction'. This is probably correct so that monitoring is a feasible option.[21]

6.34 The monitoring option has two drawbacks. First, it could close the gate after the horse has bolted, at least to some extent. And second, it is not a clear and explicit expression of intention. It therefore does not meet criterion (a).

6.35 The second option is the special list, put forward first by the Department and later by the Communications Law Centre. Under this option a list of special events or programs would be promulgated and pay tv operators would not be able to offer any promulgated event or program.[22] The special list meets criteria (a) and (c) but not (b).

6.36 The third option is of prohibiting the pay tv operator from acquiring exclusive rights to any program. Once again, there is insufficient explanation of how this option works. Presumably there is no list, presumably the legislation would indicate the type of program or event to which the 'no exclusive rights' order would apply.

6.37 The Department states, without explanation, that the necessary regulation for this option is complex and difficult to administer and that breaches and complaints 'are usually examined only after the program has been broadcast'.[23] If this is so, the no exclusive rights option may not always meet criterion (a) and would not meet criterion (c). It would therefore be inferior to the special list option.

6.38 The fourth option is dual rights; that provided programs promulgated on a special list are shown on free-to-air they may also be shown on pay tv. Hoyts says that the dual rights option 'would probably result in a lower rights payments being offered by free-to-air television operators' which is 'likely to be more than off-set by the additional payment made by the pay television operator'.[24] If this results in the loss of advertising revenue for broadcast television this should be accepted as part of the competitive process. Further, FACTS does not see siphoning as a short term problem. The dual rights option satisfies all three criteria.

6.39 Choice between the special list option and the dual rights option which also requires a special list, hinges on criterion (b) - not debar such events being shown on pay television. The Committee supports the dual rights option because it is the only one that meets all three criteria.

21 Submission no 19, p.16.
22 The 1989 Pay TV Report, p.127.
23 The 1989 Pay TV Report, p.127.
24 Submission no 37, p.30.

6.40 In evidence the Department implied that anti-siphoning rules may be more difficult to operate because 'third parties are taking out rights to programs and on-selling those rights to other operators'.[25] This seemingly new development reinforces the need for a special list and the need for the 'owner' of the event to be aware of the rules before entering into negotiation with third parties.

6.41 A final matter is who should do the regulating. Initially the Communications Law Centre said the special list should be compiled annually by the regulator after consultation with the industry.[26] The Committee pursued with witnesses the alternative of regulation by the Minister and the Centre appeared to favour this approach.[27]

6.42 The Department said that the question of who should do the regulating depends on whether anti-siphoning is seen as an administrative or political type of decision.[28] The basic reason for introducing anti-siphoning rules is to protect equity and this is a matter requiring political judgement and accountability to the Parliament. In these circumstances the Committee considers that the special list should be compiled by the Minister under regulation prescribed in legislation.

Recommendations

6.43 In view of the preceding analysis the Committee recommends that:

- **(a) siphoning of programs or events from broadcast television to pay television be regulated;**
- **(b) programs or events that cannot be siphoned be promulgated in a special list issued by the Minister under regulation;**
- **(c) provided that these programs or events are shown on broadcast television, they not be debarred from pay television; and**
- **(d) the anti-siphoning provisions be reviewed five years after the introduction of pay television.**

CONSUMER PROTECTION

Background

6.44 A number of submissions addressed generally the aspects of pay tv which will affect consumers. The issues raised included many which fall quite appropriately within the scope of regulatory functions undertaken traditionally by bodies which administer such rules in the broadcasting industry (eg. Australian content, ownership and control, etc.). The Australian Consumers Association

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25 Transcript of 31 July 1989, pp.617, 618. See also p.633 (Hoyts).
26 Submission no 35, p.56.
27 Transcript of 31 July 1989, pp.701,702.
28 Transcript of 31 July 198[illegible], p.519.

however, raised specifically its perception of the need for the establishment of a structure of regulation, designed particularly for pay tv, to protect consumers from unfair practices on the part of pay tv service providers.[29]

6.45 The Association referred to studies undertaken in the United States and Canada which suggested a degree of dissatisfaction among consumers in those countries with programming, schedules, billing procedures, access to service providers and a number of other aspects of the service in those countries. In the face of that evidence, the Association argued that there were strong grounds for insisting that, prior to the introduction of a pay tv service in this country, government should ensure that clear responsibilities be assigned to relevant regulatory agencies to ensure that the public's right to consultation on services and to redress in cases of unfair market practices are established from the outset.

6.46 In essence, the envisaged controls were seen to fall within broadcasting legislation (for issues related to service performance by licensees) and trade practices and other relevant consumer protection legislation (for protection of consumers in their transactions with service providers).

Comment

6.47 The arguments reflect a perception that there is a need to protect consumers from pay tv service providers by legislation and regulation. A number of submissions have suggested that there is a case for very limited regulation of a pay tv service because there is a direct relationship between the consumer and the pay tv provider. Consumers are able, in the view of the proponents of limited regulation, to influence the behaviour of the service provider by virtue of the requirement for periodic payment of subscriptions.

6.48 In relation to many aspects of consumer protection, the Committee has been persuaded that the direct relationship between subscriber and service provider is sufficiently different from existing television industry arrangements to justify a less stringent regulatory regime. There is however a case for consumer protection in relation to some aspects of a pay tv service.

6.49 Existing consumer protection legislation will provide some avenues for subscribers seeking redress against normal commercial situations which will arise in their dealings with pay tv service providers. However, subscribers should be provided with some additional avenues in respect to those aspects of a pay tv service which relate to misrepresentation of service quality. There is a case for requiring pay tv operators to adopt procedures which are similar to those applying to existing free-to-air television stations for dealing with consumer complaints.

[29] *Submission no 76.*

6.50 It can be expected also that pay tv entrepreneurs will seek, through the offer of discounts, to encourage subscribers to make payments in advance of the provision of services (eg. quarterly, half yearly and annual subscriptions). Such subscribers are at risk should the service provider be unable, for whatever reason, to continue to provide a service.

6.51 Appropriate regulatory provisions should be put in place to protect these subscribers by requiring licensees to take out insurance cover which will permit the reimbursement of subscribers in the event that a pay tv service is not provided as specified in the agreement between the parties.

Recommendations

6.52 The Committee recommends that:

(a) **pay tv service licensees be required, as a condition of their licences, to provide a facility for dealing with consumer complaints and that the operation of those facilities be monitored by the ABT to ensure that consumer complaints are dealt with effectively by the licensee; and**

(b) **pay tv service licensees be required to insure subscribers against loss of subscriptions if, for any reason, the licensee is unable to continue to provide a service.**

AUSTRALIAN CONTENT

Background

6.53 This aspect has attracted two distinct points of view. On the one hand, organisations like the Australian Film Commission, the Australian Council of Trade Unions, the Australian Writers Guild and the Communications Law Centre have come out in favour of regulation of the amount of Australian content which should be transmitted on pay tv.[30] On the other, Hoyts Entertainment Ltd and the Federation of Australian Commercial Television Stations have asked the Committee to permit the program providers to make that decision for themselves.[31]

6.54 It could be argued that the approach taken by the proponents of regulation of Australian content may have been influenced by statements about pay tv by Ministers (Hon M Duffy in 1984 and Senator the Hon G Evans in 1988) that, when introduced, one of the subsidiary objectives of a pay tv system would be to support the Australian program production industry.[32] It is important to recognise that some of the proponents of regulation of Australian content and the Department indicate that there are probably grounds for arriving at rules for such

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[30] Submission nos 35 (p.43), 48 (pp.31,32), 33 (pp.17-21) and 21.

[31] Submission nos 37 (pp.22-27) and 19 (p.14).

[32] Guidelines for RSTV Services Media Release 27 February 1984 and Departmental Review of Pay TV Policy, Media Release 19 April 1988.

content on pay tv which are different from those set down for free-to-air broadcasters. Such a conclusion might be supported because the direct relationship between the pay tv service provider and the customer (the householder) is specifically different from that existing between free-to-air broadcasters and viewers.

6.55 The practical options suggested by the Department for regulating Australian content on a pay tv service for Australia are:

- the percentage time and points options;
- the expenditure and revenue options; and
- the licensing option.

6.56 In each option the regulatory process would require the operator of a pay tv system to devote resources in one way or another to meet the regulator's perception of an appropriate level of Australian programming for Australian viewers.[33]

6.57 The CLC is opposed to uniform Australian content regulation based on what is applied to broadcasting. The Centre advocates the licensing process as the determinant of the level of such content where presumably the Tribunal would take into account the characteristics of the service.[34]

6.58 The ACTU favours the regulation of Australian content on pay tv because it is not convinced that potential operators would be influenced sufficiently by current levels of demand for Australian programming. It believes that the operators would prefer lower priced foreign programs.[35] The Australian Writers Guild regards the Australian content issue as important and records the view that there is probably limited point in introducing the new technology if the introduction of pay tv:

- leads to a reduction in viewer options (which might occur if competition made Australian programs too costly); and
- does not result in a richer Australian cultural scene (in terms of programs made for Australians by Australians).[36]

6.59 Hoyts stated that it seemed now to be beyond 'reasonable doubt' that Australian viewers prefer Australian programming. It wondered why 'we bother to continue regulating for Australian content at all'.[37] FACTS submitted the view that the '... direct relationship between the subscriber and the provider of a pay service should itself effectively control programming of Australian content ...'[38]

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[33] The 1989 Pay TV Report, p.12.
[34] Submission no 35, pp.43-48.
[35] Submission no 33, pp.17-21.
[36] Submission no 21.
[37] Submisison no 37, p.23.
[38] Submisison no 19, p.14.

Comment

6.60 The question of whether or not Australian content on pay tv should be regulated is based on views as to whether in the past the growth of such content on commercial television has been quota driven. In its role and functions report the Committee said both points of view are assertions and expected the Tribunal's report on the regulation of Australian content to address this issue.[39]

6.61 Therefore, while not necessarily agreeing with the views of Hoyts or FACTS, the Committee has concluded that initially there should be no regulation of Australian content on pay tv. The primary reason for this conclusion, that it would not be appropriate to regulate for Australian content on pay tv, is that there is no satisfactory basis for determining in advance an appropriate level of Australian content.

6.62 The question which has not been addressed by the proponents of content regulation (and which probably cannot be resolved) is how an Australian regulator could be expected to determine, in advance of any experience with the new medium, what level of program content on a pay tv system can be specified safely for Australian productions of one type or another. There is potential for misallocation of resources, if the regulator 'gets it wrong'. Such occurrences could impinge on the costs of the industry, both for start up and on-going costs, in a manner which could limit the capacity of operators to provide an effective service.

6.63 This conclusion is reinforced by the Canadian experience. With the introduction of pay tv in that country, the regulatory authority (the Canadian Radio-Television and Telecommunications Commission-CRTC) set rules which required program providers to carry a specific proportion of Canadian content and to spend a specific proportion of program expenditure on Canadian programs. The Canadian approach was influenced by national concern that operators would simply carry large volumes of low quality US material. 'The requirements have been seen as a contributing factor in the failure of three of the six operators licensed in 1983'.[40] New rules have been recommended which will set requirements at a level lower than those expected of free-to-air broadcasters.[41] There is no information available to the Committee which indicates whether those new rules have, or have not, affected the viability of Canadian pay tv operators.

6.64 There is a number of subsidiary reasons for concluding that regulation of Australian content on a pay tv system would be inappropriate. The Department has said that the mere introduction of pay tv will boost Australian program production. It cites the Horan, Wall and Walker report 'The Economic Effects on Existing Broadcasters of Introducing Pay Television' which concluded that, given the current popularity of Australian drama with domestic audiences, the

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[39] PP 263/1988 p.79.
[40] The 1989 Pay TV Report, p.26.
[41] Submission no 35, Appendix A, p.13.

introduction of pay tv is likely, in the medium to long term, to boost the production of Australian programming. There is some excess capacity in the Australian program production industry at present and this is discussed at Appendix 4.[42]

6.65 Another factor militating against regulation of Australian content on an Australian pay tv system arises from the costs of social obligations. If operators are to be required to provide free channels and make a contribution for the carriage of local and community programming, these could be passed on to subscribers. There is a case, however, for proposing that, during the implementation phase of pay tv in Australia, which can be expected to extend over several years, no obligations additional to those on local and community programming should be imposed on the infant industry. The spectre of the Canadian experience needs to be kept in mind.

Recommendations

6.66 The Committee recommends that:

(a) **there be no local content regulation of pay tv in Australia; and**

(b) **the need for local content regulation be reviewed five years after the commencement of such services.**

ADVERTISING

Background

6.67 The views in the submissions on this issue are split evenly between those who predict dire results for the existing commercial television operators if advertising is permitted on pay tv and those who consider that no great harm and possibly some benefit would arise from the inclusion of a form of advertising on the new medium. Broadly speaking, the attitudes appear to reflect the commercial interests of their proponents.

6.68 The Federation of Commercial Television Stations (FACTS)[43] has suggested that the viability of existing television operators and the quality of programming on free-to-air television will be threatened if there is revenue diversion to pay tv. That view is supported by the ACTU.[44]

6.69 The Australian Association of National Advertisers (AANA) suggested that consumer demand for television services would need to increase significantly over present levels if the operations of both pay tv and free-to-air television stations were to be viable.[45] Recent trends in major television markets indicate that people are viewing less television, the trend is down and, in the United States,

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[42] The 1989 Pay TV Report, Vol 1, p.124.
[43] Submission no 19, pp.10-11.
[44] Submission no 33, p.22.
[45] Submission no 28, p.8.

cable television had diverted revenue from broadcast television without making any contribution to overall revenue growth. In a report prepared for the AANA by Peter J Cox and Associates, the author states 'I do not believe that the introduction of pay tv will significantly increase the size of advertising revenue available so market share will have to be taken from other operators, either television, radio or print'.[46]

6.70 As further evidence of the need for caution, the AANA noted that there had been a tendency for some time for advertisers to seek forms of advertising other than the traditional media.

6.71 In contrast, the CLC[47] and Hoyts say there is valid reason for allowing advertising on pay tv. Hoyts suggest that the volume of advertising that would be attracted to pay tv would be small and likely to be of a nature which would not normally be placed with broadcast television stations. Hoyts also argues emphatically that advertisers have a right to access to the new mass communications services represented by pay tv.[48]

6.72 The CLC concludes that, for reasons similar to those put forward by Hoyts, there are grounds for accepting that there will be no significant adverse effect on existing commercial television services from the advent of advertising on pay tv.

6.73 The DOTAC report states that advertising on pay tv is likely to have a limited financial impact on either pay tv operators or commercial broadcasters until high levels of penetration of pay tv are achieved. It commented also that prohibition of advertising on pay tv would protect commercial broadcasters from its introduction to some extent (although there may be some impact from audience diversion affecting advertising rates). It suggested also that to permit advertising on pay tv would interfere with the direct relationship between the service provider and the subscriber. The Department noted that in a recent year there had been a nine per cent fall in the audience ratings of the US networks which appeared to be partly the result of competition from pay tv (although this occurred in a market situation in which pay tv had been established for a long time).[49]

6.74 Consultants to the Department of Transport and Communications suggested that the impact of pay tv on the advertising revenues of commercial television broadcasters would be governed by whether there is advertising on pay tv and by the extent to which audiences are attracted to the new medium from existing broadcasters. Factors which are likely to affect the outcome were seen by the consultants to include:

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[46] *The Australian Market for Pay TV* - November 1988, Peter J Cox, p.7. Appendix B, Submission no 28.
[47] Submisison no 35 - Appendix C - Section 2.
[48] Submission no 37, pp.27-28.
[49] The 1989 Pay TV Report, pp.xxvii, 2,45-50.

- the expectation that there will be limited penetration of pay tv in the early years of its introduction;
- the limits on the amount of advertising on pay tv which will be practicable without affecting the willingness of viewers to continue to subscribe; and
- the relatively low rates available for block advertising.

The consultants concluded that pay tv was likely to supplement rather than displace existing broadcasters, at least until pay tv market penetration approaches 50% and that advertising rates for existing broadcasters would not be affected substantially.

6.75 Overseas, approaches to advertising on subscriber television vary. In the United States advertising has been presented traditionally only on basic services and premium services have had to rely on revenue from subscriber contributions.[50] In recent times there has been some limited advertising on premium services. In Canada advertising is not permitted on 'pay' services which are akin to the US basic channels but is permitted on the speciality channels to a maximum of 8 minutes an hour. Advertising of a limited nature (like Australian sponsorship) is permitted on community channels. In the United Kingdom, some advertising has been permitted on subscriber television. The evidence available to the Committee indicates that practice overseas is for only a relatively small amount of advertising on pay tv.

Comment

6.76 The principal arguments against advertising on pay tv appear to be based on the expectation that there will be a major impact on the revenue base of the existing commercial television operators. Experience overseas seems to suggest that there will be some impact if pay tv carries advertisements but that the impact would be likely to be relatively minor in the short term. In the United States, in particular, advertising revenue in the cable tv industry grew steadily from a modest 2.3% of revenue in 1980 to 9.0% in 1986.[51] Growth of that nature would not have a significant impact on broadcast television revenues.

6.77 The Committee was not convinced by the evidence submitted by FACTS that the advent of pay tv advertising would have a disastrous effect on the quality of programming - see paragraphs 3.58 to 3.61. Experience overseas has indicated that diversion of advertising revenue from free-to-air television to pay tv did not occur quickly and will occur only after pay tv penetration has reached levels significant enough to attract advertisers. In addition, advertisers overseas have tended to utilise pay tv channels for advertisements of a nature different from these shown on free-to-air television.

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[50] Submission no 48, Attachment B, p.13.

[51] NTIA Report, 88-233, p.14.

6.78 The Committee did not accept that it should recommend the community be denied access to pay tv (with or without advertising) because the existing networks were faced with high interest burdens arising from purchases in recent years. Those purchasing decisions were the exercise of entrepreneurial judgements and, if these judgements were not correct, it is not valid to argue that the community be required to protect the owners from competition on that basis alone. The recent sale of one of the networks and the change in debt arrangements and the prospect of another ownership change with similar consequences show how misguided such an approach would have been.

6.79 The Committee considered also that the moratorium on the introduction of pay tv at least until 1990 was sufficient protection for the existing television industry to offset the cost impact of aggregation.

6.80 It seems logical to consider pay tv in a different light from free-to-air television. If the presentation of programs on pay tv is to be significantly different from free-to-air television, it needs to have a different appearance. There are grounds, therefore, for adopting, as a general principle, the attitude that subscription television should be expected to fund itself from the subscriptions of viewers.

6.81 There have been, however, some suggestions that the type of programs which will attract pay tv viewers will be used by advertisers who do not place advertisements now with free-to-air television. If that occurs a decision that there be no advertising of any sort on pay tv could deter some forms of program sponsorship which would not have any significant effect on the viability of free-to-air television. This would not only be undesirable in terms of the diversity of programs available on pay tv but would, to the extent that the programs were shown, also add to viewer costs. There may be opportunities, therefore, arising from limited advertising on pay tv to open up new markets to the advantage of both viewers and advertisers.

6.82 For those reasons, the Committee concluded that there is scope for permitting some advertising on pay tv. Such advertising could be expected to start at a low level and to grow only as market penetration of pay tv is achieved.

6.83 It could be argued, however, that the trend away from advertising on television would lead, with the introduction of pay tv, to the fragmentation of markets for advertising as demand for the new medium grows through viewer support. Advertisers could not be expected to welcome the need for increased expenditure to achieve market penetration at former levels and, for that reason, would exert downward pressure on advertising prices to the detriment of television industry revenue.

6.84 On balance, the Committee considers that a limited amount of advertising should be permitted on pay tv and that it should be set at a level equivalent to ten percent of the level permitted on free-to-air television (see ABT Television Advertising Condition no 11). In addition, pay tv operators should be permitted to show advertisements in blocks only at the beginning and end of programs. This will ensure that such advertisements do not interfere with the artistic integrity of the programs and that the advertisements are presented in a way different from free-to-air.

6.85 There is a case, however, for treating the local and community channels in a different manner from the rest of pay tv channels. Those channels will be expected to fulfil socially desirables objectives and will depend heavily on community and other forms of support for survival. It is proposed, therefore, that there be no limitation on the volume of sponsorship permitted on those channels.

Recommendations

6.86 The Committee recommends that:

(a) **advertising on pay tv be limited to the equivalent of ten per cent of that available to free-to-air television as laid down in the ABT's Television Advertising Condition No 11;**

(b) **advertising on pay tv be permitted only before the commencement and at the conclusion of programs;**

(c) **there be no limitation on the volume of sponsorship permitted on local and community programming channels on pay tv; and**

(d) **a review of the need for any variation to these recommendations be conducted five years after the commencement of pay tv services in Australia.**

MUST CARRY RULES

Comment

6.87 This issue has not been addressed extensively in evidence put before the Committee. In essence it arises from the practice in North America where cable tv operators are required to carry the signals of all free-to-air television broadcasts in the area for which they hold a franchise. That requirement rests on the generally poor reception of free-to-air television signals throughout many areas of North America and, if the signal was not carried by the cable operators, viewers would not in many instances receive those signals at all. For most areas of Australia that situation does not exist.

6.88 The Communications Law Centre considers that a requirement for 'must carry' rules in Australia for pay tv would have the effect of ensuring that, for those relatively small proportions of the Australian community who do not have good reception of free to air tv, there would be an improvement.[52]

6.89 It is clear that to impose a 'must carry' rule during the early stages of pay tv in Australia (before cable services are available widely) would limit severely the viability of operators who would have available only a very small number of

[52] Transcript, 31 July 1989, p.701.

channels. In some instances as few as three channels might be available and there are, or will be reasonably soon, in most tv areas of Australia five free to air channels. 'Must carry' would be impractical in such circumstances and, even in areas for which ten MDS channels are available, there could be real concerns about the viability of a service for which 'must carry' rules were imposed. With the advent of cable services, capacity would not be a problem.

6.90 As indicated above, the circumstances which appear to have been the catalyst for the 'must carry' rules in North America do not apply generally in Australia. Free-to-air television stations in Australia are expected to provide a service for all of the area for which they hold a licence and, to a large extent, the quality of signals is very high. In general, therefore, the Committee considers that the question of whether a pay tv operator should carry local free to air tv broadcasts is one which should be settled by the operator in interaction with potential subscribers. If the demand is present, an astute operator will seek to provide the service and the needs of viewers will be met in this way.

Recommendation

> **The Committee recommends that 'must carry' rules not be imposed for an Australian pay tv system.**

LICENSING

Background

6.91 The DOTAC report contains a discussion of four methods of licensing which is defined as 'formal permission to undertake an activity which is otherwise prohibited' and also as being 'an inevitable part of any regulatory system'. It attaches a licensing mechanism to 'economic rent' (excess profit) which should accrue to the community rather than the operators. The report says that restrictions on the number of licenses would generate economic rent which would be eliminated if there was relatively open entry into the market.

6.92 Four licence allocation methods are discussed - auctions, tenders, lotteries and 'over the counter' sales. In theory, according to DOTAC, auctions ration available supply to those who value it most and so achieve an efficient allocation of resources. Tendering, which requires applicants to indicate adherence to a set of criteria and how they would meet those criteria, is a variation of the auction process and one which is more commonly used than auctions. The licence need not be awarded to the highest tender. Lotteries allocate available supply on a random basis and should only be used when there is likely to be little economic efficiency gains to be achieved through the use of other rationing systems. 'Over the counter' allocation of licences is only suitable where supply is plentiful.[53]

[53] The 1989 Pay TV Report, pp.103-105.

6.93 The Communications Law Centre does not support any of these alternatives. It supports licence allocation by the Tribunal after a public inquiry process as 'the only proper way of evaluating the merits of the various applicants' proposals'. According to the Centre, 'the only way of ensuring a real diversity of programming is to examine the programming proposals of each of the applicants in order to select the applicant whose service can most fully meet the objectives of Government policy on broadcasting and broadcasting-related services'. Licence renewal and the period of the licence thus permit the Tribunal to review the adequacy of the service provided.[54]

6.94 Hoyts says the most advantageous licensing approach is the one which involves an assessment of the relative merits of competing applications by an independent body. If the wish is to associate this process with a form of tender or closed option 'there is no fundamental reason why the both cannot sit happily together'.[55]

Comment

6.95 The section on licensing has been left deliberately to the end of this chapter. This is because the character and nature of licensing is for the most part an end product of other matters discussed.

6.96 As a result of the conclusions drawn and recommendations made on these matters, the regulatory authority, that is the Australian Broadcasting Tribunal, would have 5 major functions. These would be:

- the initial screening of applicants to operate a pay tv system in terms of fitness and propriety, and the technical knowledge and financial capabilities;
- supervision of changes in ownership and control and enforcement of the ownership and control provisions of legislation;
- selection of the most suitable applicant in each service area to deliver local and community programming;
- monitoring of program standards, advertising restrictions and consumer complaints; ;and
- checking that various licence conditions are met.

6.97 The Committee does not support the awarding of pay tv licences by the Australian Broadcasting Tribunal based on the 'merit' system of awarding them to the most suitable applicant. In its report, The Discussion Paper on Review of Broadcasting Regulation: A Critique, the Committee asked whether the deficiencies of the existing licensing system are a product of the exclusive licensing criteria or a product of the merit system of awarding commercial and radio television licences. It said the system 'inevitably involves subjective and

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54 Submission no 35, pp.30-32.

55 Transcript of 31 July 1989, p.632.

discretionary judgements' (these were the words of the Discussion Paper), added that the merit system results in 'massive windfall gains worth millions of dollars that accrue to the successful applicant', and then drew the following conclusion:

> (i)n these circumstances it is no wonder that legalism and legal challenge exists, and probably will continue to exist irrespective of whether the (licensing) criteria are exclusive or not.[56]

6.98 There is another compelling reason for not having the merit system. Pay tv is a service whose success will depend on whether or not sufficient subscribers believe they get value for money for that service. Given the fairly direct relationship between subscriber and operator it is dangerous to interpose the regulatory authority between them. The responsibility for assessing what type of programs are best suited to subscribers should, in the main, lie with the provider who may have to undertake a fairly substantial amount of market research, both initial and ongoing. It would be an unnecessary impost on the taxpayer if this work were undertaken by the Tribunal.

6.99 The Committee is of the opinion that given the nature of the product - a broadcasting service - and the need to realise non-commercial objectives, there should always be a licensing system for pay tv. The auction method of licence allocation may not be able to cope with the various requirements and could also discriminate against local ownership. The tendering system does not have these disadvantages but like the auction system and unlike the merit system if can capture any economic rent that exists. The Committee supports awarding the licence to the highest bidder under the tender system. An appropriate recommendation will be made.

6.100 The Committee does not support award of the licence to someone other than the highest bidder. This introduces the disadvantages of the merit system discussed in earlier paragraphs.

6.101 Use of the tender system means that the market rather than government or the Tribunal would determine commercial viability. The 1988 Report took no stand on commercial viability. It discussed the two options, viability determined by the Tribunal or, the market, and said more consideration would be given to this matter in the reference on new broadcasting-related services.[57]

6.102 The DOTAC report says that generally speaking the longer the licence period the more incentive for operators to invest in a high quality system through the creation of a stable and certain environment.[58] Given that performance will be determined by the subscriber there is hardly a case for review by the Tribunal. In its critique the Committee introduced the concept of effective competition as

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[56] Australia, Parliament 1988, *The Discussion Paper on Review of Broadcasting Regulation: A Critique: Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure*, Parliamentary Paper No 194/1989, p.23.

[57] PP 263/1988, pp.38-41.

[58] The 1989 Pay TV Report, p.106.

limiting the extent of program regulation and questioned the need to increase diversity of choice by regulation, particularly with the introduction of pay tv and local and community programming.[59]

6.103 In these circumstances the Committee believes the licence periods should be for 10 years and licence renewals should be virtually automatic. The only qualifications would be non-observance of licence conditions or program standards, and suitability.

6.104 The Committee sees the licence allocation system being divided into three separate parts. The first is the clearing of the decks for the introduction of tendering. The Tribunal would vet applications for suitability - fitness and propriety, etc. The second is the calling of tenders and the award of the licence to the highest bidder who meets the tender specifications. The third stage is the selection by the Tribunal of the most suitable applicant to provide local and ocmmunity programming.

Recommendations

6.105 In view of the foregoing the Committee recommends that:

(a) applicants for licences be screened for fitness and propriety and technical and financial capability by the Australian Broadcasting Tribunal prior to the calling of tenders;

(b) the tender specify the major requirements for licensees which would be incorporated into licence conditions;

(c) licences for each pay tv service be awarded to the highest bidder under tender;

(d) the licence period be 10 years;

(e) subject to non-observance of licence conditions, program standards and suitability, licence renewal be automatic; and

(f) the Australian Broadcasting Tribunal select the most suitable applicant in each service area for local and community programming.

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59 PP 194/1989, pp.5,6.

7: AN ALTERNATIVE PROPOSAL

The Alternative Models

7.1 An alternative model to the one developed by the Committee as detailed in the next chapter was put by Independent Television Newcastle Pty Ltd (ITN) and Aussat in separate submissions.[1] The two submissions are of the 11th hour variety made to the Committee during its report drafting stage. To take evidence on them and call for public comment would have put back the reporting stage well into the Autumn sittings of 1990. Given the length of this inquiry which commenced in mid December 1988 with the press advertisements calling for submissions, the delayed receipt of submissions caused by the 9 February 1988 release of the DOTAC report and the Minister's undertaking not to make a decision on the introduction of pay tv until the Committee had reported,[2] the Committee was not prepared to accept further delays.

7.2 The two proposals are very similar and the diagramatic presentation of the ITN program delivery model is at the next page.[3] The ITN proposal can be broken down into three stages. The first is the licensing of program suppliers. There would be 2 groups of 3 licensees, each providing one program type that is complimentary to the other two program suppliers in the group - e.g. movies and news/documentaries in group 1 and sport, light entertainment in group 2.

7.3 The calling of tenders would allow the government regulatory body to choose between groups of operators rather than single channel operators. The ITN proposal requires potential program suppliers to form into groups for the purpose of tendering.

7.4 The second stage is the formation of the program management company (pmc) which consists of the six licensees each of whom would be an equal shareholder/member of the company. Aussat and Telecom would have varying degrees of representation with the pmc. The pmc would co-ordinate and control for the groups activities such as marketing, promotion and advertising, franchising, the collection of subscription revenues and their allocation (eg to Aussat, Telecom).

7.5 The third stage is the determination of the market. Four technologies, all related to DBS are identified in the Aussat/ITN proposals:

- DBS: this technology will be used for delivery direct to the majority of metropolitan an urban homes throughout Australia

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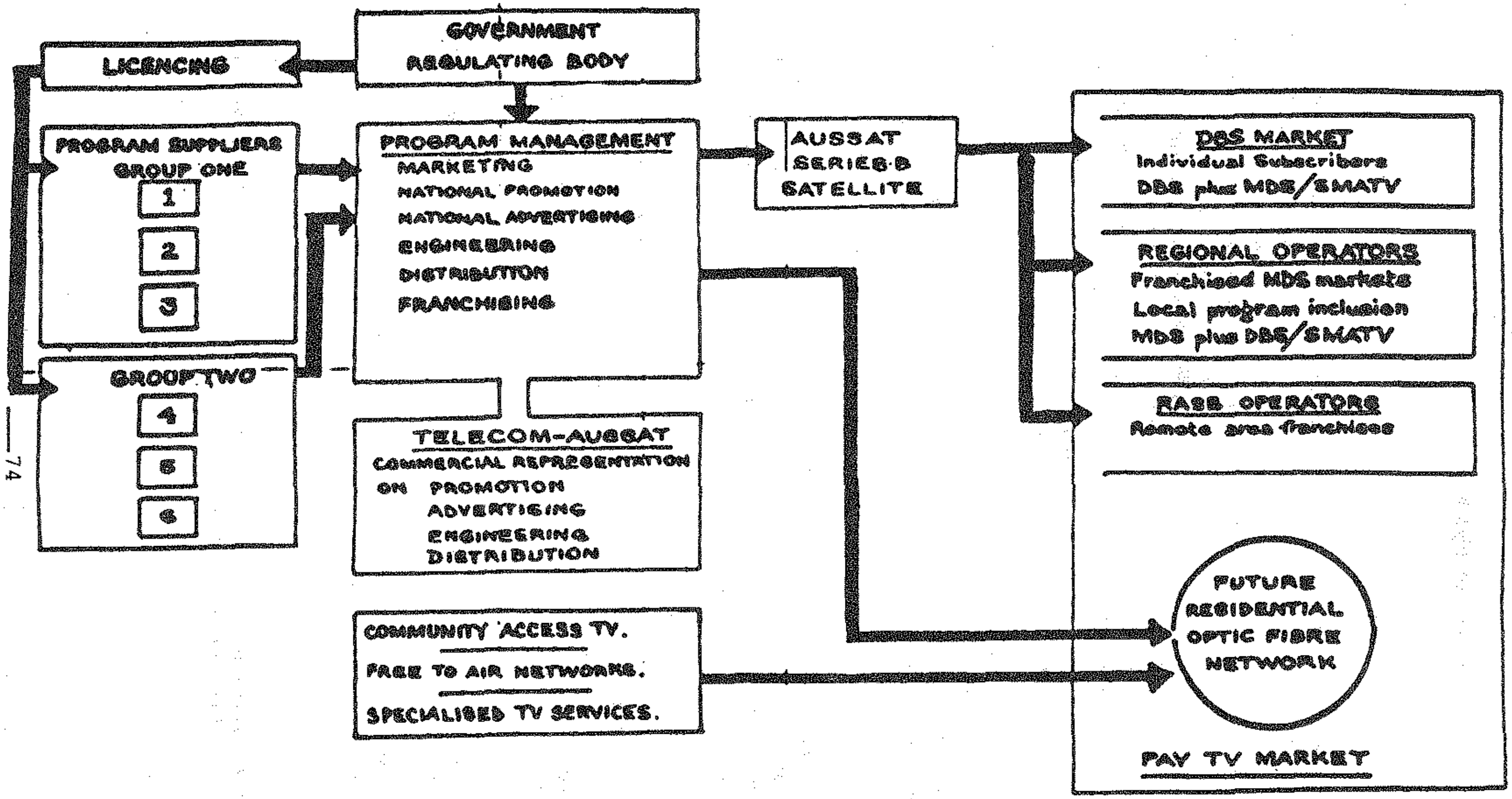
1 The Aussat submission was a paper delivered on 31 October 1989 to the 1989 Television and Radio Industry Conference.

2 The Australian 12 October 1989.

3 Submission no 82.



PROGRAM DELIVERY

DRAWN: 7 11 89

- MDS: this technology will be used for distribution of DBS Pay TV channels and possibly local programmes to consumers in selected metropolitan, urban and provincial areas where localized markets can support commercial development of such systems.
- SMATV: this technology will be used for distribution of DBS Pay TV channels within hotels, apartment blocks, flats and other high rise buildings throughout major metropolitan and provincial centres
- Remotes Area Satellite Broadcasting: this technology will be used for delivery of selected DBS pay tv programming to remote area viewers in addition to the current services provided by these operators.

7.6 As optical fibre spreads throughout Australia the local franchised operator would then provide his national and local service, including new specialised services (e.g. data banking) by cable. Other local operators could then be franchised to access the broader channel capacity of cable in the same market.

7.7 The Aussat proposal has some additional features. The major one is 'soft entry pricing' with the DBS delivery system being offered at very attractive prices during the early fragile years with somewhat higher delivery charges in later years as the subscriber base grows. It appears that this will require pay tv operators to enter in 5 to 10 year contracts with Aussat.

7.8 Other features of the Aussat proposal include plans to implement innovative retail marketing and subscriber management strategies in partnership with licensees.

Comment

7.9 The Aussat/ITN proposals are reasonably well thought out clear attempts which show, for the first time, how pay tv can be implemented. The proposals have prompted the Committee to describe in the next chapter how its own system can be implemented. Interesting though these proposals are the Committee is not able to accept their broad thrust for two sets of reasons.

7.10 The first is that DBS still fails to meet many of the Committee's selection criteria - see paragraphs 4.30 to 4.37 and 4.49 to 4.51. It is also clear now that Aussat's soft entry pricing will preclude the use of cable until early in the 21st century thus denying to everybody the significant benefits of the optical fibre technology.

7.11 The attempt to cater for local and community programming by having a satellite/MDS delivery system in markets which can support commercially such programming, (and the extra cost of MDS) is unrealistic. It is very unlikely that the option will be taken up. Such non-commercial programming needs to be subsidised or cross-subsidised and is unlikely to survive otherwise. The experience of public radio and concern about public television (see paragraphs 3.5 to 3.16) underline this need. Thus market driven localism and community programming is self-defeating.

7.12 The Aussat/ITN proposals confer enormous benefit, power and privilege on the six successful tenderers or the two so-called consortiums. This power is buttressed by a system which prohibits entry of new players into the important area of program supply. The program management company allocates regional franchises and it is difficult to see beyond favouritism and more privilege for subsidiaries. The collection and allocation of all revenue, including monies payable to Aussat or Telecom, must give the pmc some tidy gains on the short-term money market.

Conclusions

7.13 The Aussat/ITN proposals are not capable of minor adjustment which could satisfy the Committee. Their inability to satisfy localism and community programming, their impediments to the introduction of optical fibre, the power and privilege given to consortium members and the restrictions on new sources of program supply do not make the Aussat/ITN proposals attractive.

8: CONCLUSIONS

The Committee Model

8.1 The success of any pay tv system depends on its ability to provide a value for money service that attracts sufficient subscribers to make it commercially viable. This has to be the overriding objective in the establishment of any pay tv service. It is related directly to the ability of the operator to differentiate the product sufficiently from that offered by free-to-air broadcasters.

8.2 But pay tv should not be seen purely as a commercial service. Its ability to meet non-commercial objectives such as local and community programming and diversity of ownership are criteria that have to be applied to produce the most desirable type of pay tv system for Australia.

8.3 The application of all these criteria have produced the following broad results:

Delivery Systems

- the primary method of delivery pay tv be cable/MDS, with the progressive transfer to full cable over time
  - for areas without cable the system chosen should be the one(s) best able to satisfy the Committee criteria.

Market Structure

- should contain the following elements
  - multi-channel systems;
    - including channels required by law for local and community programming
  - a large number of markets based on present broadcasting areas with more than one market for each capital city;
  - exclusive franchises for each market; and
  - rules on ownership and control of pay tv
    - concentration, cross-media and foreign ownership but excluding vertical integration.

Regulatory Matters

- as far as practicable regulation should not come between the direct relationship of subscriber and provider, thus resulting in
  - a licensing system based on tender not merit, long licence periods with automatic renewal

    - the only exception being the selection of those that operate the local and community channels
  - no regulation of Australian content less (than free-to-air) regulation of program standards and some regulation of advertising
- special protection for viewers and subscribers
  - anti-siphoning regulation; and
  - consumer protection rules.

Legislation

- as far as possible rules and requirements should be prescribed in legislation rather than given to the Tribunal under discretionary powers.

8.4 It now remains for the Committee to explain how its proposed model would work. There are six stages in this process:

8.5 **First Stage:** The Government announces a decision to introduce pay tv in Australia coupled with or followed by decisions on delivery systems, market structure, licensing methods, technical and other rules, and, a timetable for the introduction of legislation.

8.6 **Second Stage:** During this period while the legislation is being developed the government would identify the service areas for the award of licences and after this call for expressions of interest for licences. These expressions of interest would be referred to the Australian Broadcasting Tribunal for decisions on 'fit and proper' and technical, financial and managerial capacity to operate a pay tv service **after** the legislation has passed both Houses.

8.7 **Third Stage:** The Committee would expect prospective pay tv operators to undertake their market research, decide initially what types of programs they want to provide and even enter into agreements with program suppliers, existing and potential. It is also possible that at this stage or after the award of tenders the promotional work on pay tv would begin.

8.8 **Fourth and Fifth Stages:** These would be passage of the legislation followed by the calling of tenders. The tenders would require the provision of a multi-channel service (a minimum of channels could be specified) together with requirements for local and community programming and a levy from gross revenue for the operation of such programming.

8.9 **Sixth Stage:** This would cover the awarding of the tender to the highest bidder coupled with the signing of the licence. After this a pay tv service can commence when that operator is ready.

8.10 Other issues would also have to be settled. These include the portability of the licence and its withdrawal if the licensee is unable to commence provision of a service within a reasonable period of time. But the most important of these other issues is to put in place a mechanism to allow for the introduction of local and community programming. This requires the introduction of such programming a year or 18 months after the commencement of pay tv in that service area thus permitting better indications of revenue and giving the ABT sufficient time to select the most suitable applicant.

Other Services

8.11 The problems of regulating new services was covered in the 1988 Report and submissions from CLC, DOTAC and the Tribunal. Solutions to these problems should be assisted by the proposal to have a technology-neutral definition of broadcasting. Therefore, VAEIS services like Sky Channel should be brought under the Broadcasting Act. At present such services licensed under the *Radiocommunications Act 1983* are required to abide by the VAEIS guidelines which however have no legislative endorsement as they are a voluntary agreement between the VAEIS service providers and the Minister.[1]

8.12 At this point in time the Committee does not see anything more than the need for the guidelines to receive legislative backing and for monitoring by the Tribunal. In the future there is the question of the viability of Sky Channel. There are complaints about the service representing value for money for hoteliers[2] and the Committee must question whether Sky Channel will survive the introduction of pay tv.

8.13 Be that as it may, and in the interests of consistency the Committee recommends that:

> **VAEIS services which fall within the proposed new definition of broadcasting be regulated by the Australian Broadcasting Tribunal under the *Broadcasting Act 1942*.**

Wider Issues

8.14 The inquiry and report together with the other three Committee reports on broadcasting (with particular emphasis on television) has brought to the fore a large number of general issues which when taken together, impinge on future directions for the development and regulation of broadcasting in Australia. Although the Committee has not given detailed consideration to these general issues, three are worth noting.

8.15 The first is consistency of policy which has been dealt with. The second is legislative structures and the Committee's aversion to modules is on public record[3] The clear preference in pay tv is for a separate section of legislation within the Broadcasting Act. If this entails repetition, it is a small price to pay for

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1 The 1989 Pay TV Report, p.36.
2 The Melbourne Age, 30 June 1989 and The West Australian, 8 July 1989.
3 PP 194/1989, pp.9-11.

increased clarity. Further wherever possible there should be legislative guidance rather than regulatory discretion. This should apply for example to local and community channels. In view of the foregoing the Committee recommends that:

(a) **there be a separate part dealing with the establishment and regulation of pay television in the** ***Broadcasting Act 1942;*** and

(b) **wherever possible the emphasis should be on legislative guidance rather than regulatory discretion.**

8.16 The last recommendation leads into the third issue, matters relating to the role and functions of the Australian Broadcasting Tribunal. The issue is a specific one, namely whether governments and Parliaments have consciously and regretably delegated some or 'too much' of policy making functions to a regulatory body, thus diluting the accountability of government to the elected Parliament for broadcasting regulation. This is the view of some, a view that requires careful consideration in its own right and irrespective of other reforms in or near the pipeline.

JOHN SAUNDERSON MP
Chairman

22 November 1989

DISSENTING REPORT
OF

MR J L SCOTT MP AND MR L R T O'NEIL MP

1. Pay tv is a facility not available in Australia today. On the basis of the evidence put before the Committee, the lack of research into demand for the service and the potential economic impact of the introduction of this technology, we do not support the basic recommendation that the Government announce immediately an in-principle decision to introduce pay television in Australia.

2. We have come to that conclusion for a number of reasons which are canvassed briefly in the following paragraphs.

Public participation

3. A major concern is that there has been insufficient public discussion about the potential impact that pay tv would have in Australia. We concede that the public was invited to make submissions to the Committee but the facts are that, with the exception of the presentation made by the Australian Consumers Association, there has been no real public reaction. It can be argued from our experience in discussions with members of the general public, that such a result occurred because there is a lack of understanding among Australians about the impact on free-to-air television and the cost of pay tv. In those circumstances, we consider that it would be entirely unacceptable for the Government to proceed to introduce pay tv without conducting some properly designed and managed research into the existence of demand for the service. We are not convinced that the public would support the introduction of pay tv if it was properly informed about its impact and implications.

Consumer costs

4. There can be no doubt that pay tv will be seen by many as an attractive source of alternative entertainment. It can be expected that pay tv sales people will, like encyclopaedia vendors, ensure that householders are pressured to subscribe with arguments such as 'you would not want to deny your children access to a "Disney" channel'. Against that scenario the question of consumer costs is an aspect for concern.

5. On the basis of statistics included in the majority report, it could cost an individual subscriber up to well in excess of $800 to be connected to an MDS pay tv system and the ongoing monthly charges would be likely to be of the order of $15 to $20 for basic services. If the subscriber pays for premium channels also, the costs, based on United States experience quoted in Appendix 2 to this report, would be in excess of $A18 per channel. While the monthly charges could be expected to be about the same, the installation cost for a fibre optic cable system are not known yet, although Telecom has indicated a cost of about $400 in a

recent survey of public interest. We can not support a proposal which would introduce such a substantial drain on household expenses, particularly for low income families.

Effect on existing television

6. There has been considerable concern expressed in evidence before the Committee about the impact of pay tv on existing free to air television stations. Although the particular economic arguments submitted have been dealt with in Appendix 3 to this report, we are not convinced that the potential impact on future programming for free to air television has been determined accurately. Even if there was only a small likelihood that free to air programming would suffer with the introduction of pay tv, then we submit that it would be unacceptable to proceed. The impact of any diminution in the quality of free to air programming would fall quite unfairly on those who decide, for whatever reason, not to subscribe for pay tv. It is not acceptable to expect people to pay for quality programming which they can receive now free.

Videos in Australia

7. There is an equally valid argument against proceeding now with pay tv in the strength and readily apparent viability of the video hire industry in Australia. Evidence commonly available indicates that Australia enjoys a video recorder penetration rate of about 60% of television households which is one of the highest rates in the world (see paragraph 2.27 of this report). One of the reasons given for the success of pay tv in North America is the desire of subscribers to get access to more movies (see paragraph 2.27 of this report). It is clear that, for the majority of television households in Australia, the facility to achieve that objective exists already in this country. There is reason to suggest that access to videos will provide most of the benefits of pay tv for Australian households without the considerable additional expense of such a service.

8. Indeed, if we can come back to the question of costs to consumers again for a moment, our research indicates that it would be possible for a family to hire about fourteen first run videos over night and up to twenty four ordinary videos for a week for the cost of pay tv over a month. Those calculations are based on November 1989 Adelaide video prices and the United States installation, monthly basic and monthly premium service rates shown in Appendix 2 to this report. They do not support the assertion made in paragraph 2.27 of this report which suggests that the cost would be equivalent only to the hire of three or four movies.

Communications technology

9. We recognise, of course, that technology in the communications area is constantly changing. It is a fact, however, that developments in television technology are at a particular point now which should encourage us to pause awhile. We refer specifically to resolution of the current international debate on common standards for High Definition Television which we are assured is just

around the corner. It would be unfortunate if, by proceeding now, we committed Australia for some years to the utilisation of outdated, 'second hand' technology. A short wait might well pay off in terms of quality of transmissions and costs to the Australian community.

International views

10. We recognise that the Committee received advice from some overseas sources supporting the introduction of pay tv in Australia. We were impressed, however, with comments by Sir Denis Foreman, Deputy Chairperson of Granada Television in the United Kingdom, during an interview with ABC radio's PM program on 14 November 1989. Sir Denis said,

> Well, there's a good deal of rubbish talked about pay television. I don't think it works unless you've got a very, very big attraction, and it won't work, except for feature movies - and good feature movies, better than you can get off air - and also perhaps big sporting events and very, very big occasions like Commonwealth Games and things like that. **I reckon you need a very big audience before pay tv works.** It's a very expensive thing to install and to operate, and there are ideas in Europe that you can run it like a little book shop and you can have a purchase subscription and a drama subscription. This I do not believe. I think it's going to be mass viewing because you've got to pay for it. You've got to pay something like $20 a month to get the subscription, and you may have to pay, on top of that, some more for special, choice articles. (Emphasis added.)

These views from a respected international source who was in this country to address the recent conference Television 2000 - Choices and Challenges, support the conclusions we have reached.

Economic Impact

11. Finally, there is a clear argument for delaying the introduction of pay tv arising from the current economic issues facing this country. The Government is pursuing a strong policy designed to control the rate of growth in domestic demand and it would be, in our view, irresponsible to introduce a service which, in the short term at least, will contribute virtually nothing to local productivity and which will need to draw heavily on imported products (with consequent effects on the Balance of Payments). These are areas of real concern to the economy today and warrant careful thought.

Conclusion

12. For all of these reasons, we submit that there is a strong case for proposing now that the existing moratorium on the introduction of pay tv be extended until:

- there has been extensive consumer interest research into the demand, if any, for pay tv;
- it can be demonstrated that there will be no adverse effects from the introduction of pay tv on the quality of existing free to air television programming;
- The *current developments in communications technology have been* resolved and it can be established that an Australian pay tv system will operate on the most modern available technology; and
- the introduction of such a service would have a less significant impact on the economic imperatives facing this country today.

J L SCOTT MP **L R T O'NEIL MP**

23 November 1989

APPENDICES

CONDUCT OF THE INQUIRY, EVIDENCE AND WITNESSES

Conduct of the Inquiry

1. The House of Representatives Standing Committee on Transport, Communications and Infrastructure was appointed under Sessional Order 28B on 24 September 1987. The Committee is empowered to inquire into and report on any matter referred to it by either the House or a Minister.

2. On 17 November 1987 the Chairman wrote to the then Minister for Transport and Communications seeking a reference on regulation in the Australian radio and television industry, including new services and technology. The Minister replied the next day giving the Committee terms of reference for two inquiries, one into the role and function of the Australian Broadcasting Tribunal and the other into new broadcasting-related services. He said it would be helpful if the inquiry into the ABT was completed by the end of March 1988.

3. The Committee reported on the role and functions of the ABT in December 1988. In May 1989 it issued a supplementary report which extended the trustee system recommended in the 1988 report to the interests in licences held by persons who are found later by the Tribunal to be no longer eligible or otherwise unsuitable to hold those interests.

4. The reference on new broadcasting-related services was advertised in the metropolitan daily newspapers in mid-December 1988. The advertisements invited submissions from interested persons and organisations by 17 February 1989. Unfortunately the release on 9 February 1989 of the report by the Department of Transport and Communications, *Future Directions for Pay Television in Australia*, resulted in considerable delays in the receipt of submissions.

5. On 30 November 1988 the Committee appointed a sub-committee comprising Mr Saunderson (Chairman), Mr Downer and Mr Langmore to inquire into and report to the Committee on the new broadcasting-services reference. On 1 March 1989 Mr Downer was discharged from membership of the sub-committee and Mr Jull was appointed in his stead.

6. The sub-committee took evidence at public hearings on 10 occassions and inspected Telecom's research laboratories in March 1989. On 31 July 1989 it took additional evidence from selected witnesses - the Department, Hoyts, FACTS and the Communications Law Centre - on specific issues which had been notified in writing to the witnesses and incorporated in the transcript of that day. On 4 October 1989 similar evidence was taken from Aussat.

7. The sub-committee report was presented to the Committee on 22 November and adopted with dissent.

Evidence

8. The evidence consists mostly of written submissions made to the Committee and oral evidence taken by the sub-committee at public hearings. The written submissions which have been authorised for publication will be bound in several volumes and separate sets sent to the National Library and the Parliamentary Library. A set will be retained in the committee secretariat.

9. The submissions authorised for publication and listed in alphabetical order of the person/organisation making then are as follows:

Submission No.(s)	Person/Organisation
17,45	AAP Reuters Communications Pty Ltd
38	Amos Aked and Swift Pty Ltd
8,32,80	Australia's National Satellite System (AUSSAT)
28	Australian Association of National Advertisers
18,72	Australian Broadcasting Corporation
1	Australian Broadcasting Tribunal
42	Australian Caption Centre
76	Australian Consumers' Association
33	Australian Council of Trade Unions (ACTU)
48,66,77	Australian Film Commission
13	Australian Film Television and Radio School
54	Australian Jockey Club
26	Australian Record Industry Association Ltd
12	Australian Telecommunications Users Group
21,44	Australian Writers Guild
51	Bradner A Cranfield
74	Broadcast Communications Ltd
36	Broadcast Technical Services Pty Ltd
23	Communications Consultants Pty Ltd
35,40,67	Communications Law Centre
20	Department of Aboriginal Affairs
71	Department of the Arts, Sport, the Environment, Tourism and Territories
9,29,31,49,79,85	Department of Transport and Communications
52	Drillich H
4	Family Broadcasting Network

Submission No.(s)	Person/Organisation
19,68,69,70	Federation of Australian Commercial Television Stations (FACTS)
11	Federation of Australian Radio Broadcasters
10,47	Government of Western Australia
37,55,73	Hoyts Entertainment Limited
5,43,56,59,65,78,82	Independent Television Newcastle
16	Integrated Communication Limited
62	MM Cable Telecommunications
15	Network TEN Australia Pty Ltd
3,41	Public Broadcasting Association of Australia
22	Richard J Rowe and Associates Pty Ltd
53	Rickley Communications
14,39	Scientific Atlanta Pty Ltd
61	Sydney Turf Club
7,30,46,58,60,63,75, 81,83,84	Telecom Australia
6,50	Television Unlimited
2	The Australian Children's Television Action Committee
27	Totalizator Agency Board of NSW
24	Touche Ross Services Pty Ltd
64	Video Industry Distributors Association Ltd
57	Judith Wiencke

10. Oral evidence was taken at 10 public hearings as follows:

Canberra: 8,9 March, 10,12 April, 4 October

Sydney: 20,21 March, 27 April, 31 July

Melbourne: 19 April

11. Copies of the proof transcripts of proceedings were sent to witnesses. The corrected proofs will be bound and sets sent to the National Library and the Parliamentary Library. One set will be retained in the committee secretariat.

Witnesses

The following witness appeared before the sub-committee and were examined:

Organisation/Witnesses	Date(s) of Appearance
AAP Reuters Communications Pty Ltd	
Mr Barnett Blundell General Manager	21. 3.89
Mr Brian Perkins Corporate Relations Manager	21. 3.89
Dr David Vu Product Development Manager	21. 3.89
Amos Aked Swift Pty Ltd	
Mr Thomas Amos Consulting Engineer and Partner	27. 4.89
Mr David Swift Director and Partner	27. 4.89
Mr Brian White Consultant	27. 4.89
AUSSAT Pty Ltd	
Mr William Gosewinckel Managing Director and Chief Executive	21. 3.89 4.10.89
Mr Richard Johnson General Manager	21. 3.89 4.10.89
Dr Wayne Nowland Manager Communications Business Division	21. 3.89 4.10.89
Australian Broadcasting Corporation	
Mr David Hill Managing Director	21. 3.89
Mr Bruce Donald General Manager Legal and Administrative Services	21. 3.89
Mr Gerald Moriarty Assistant Managing Director (Resources)	21. 3.89

Organisation/Witnesses	Date(s) of Appearance
Australian Broadcasting Tribunal	
Miss Deirdre O'Connor Chairman	20. 3.89
Ms Ruth Medd General Manager	20. 3.89
Mr Michael Minehan Principal Executive Officer Legal Section	20. 3.89
Australian Consumers Association	
Ms Marie Sylvan Manager Policy and Public Affairs	4.10.89
Ms Jacqueline Isles Policy Officer	4.10.89
Australian Council of Trade Unions	
Mr Kevin Morgan	19. 4.89
Mr Peter Moylan Industrial Officer	19. 4.89
Ms Sue-Ellen Bussell Committee Member	19. 4.89
Ms Anne Britton	19. 4.89
Australian Film Commission	
Mr Jock Given Policy Adviser	4.10.89
Australian Telecommunications Users Group	
Mr John Robertson Issues Manager	20. 3.89
Communications Law Centre	
Mr Stuart Cunningham Researcher and Policy Adviser	12. 4.89 27. 4.89 31. 7.89
Ms Holly Raiche Researcher and Policy Adviser	12. 4.89 27. 4.89 31. 7.89

Organisation/Witnesses	Date(s) of Appearance
Department of Transport and Communications	
Mr Roger Neil Smith First Assistant Secretary Communications Policy and Planning Division	8. 3.89 10. 4.89 31. 7.89
Mr William Raymond Ellis First Assistant Secretary Broadcasting Policy Division	8. 3.89 10. 4.89 31. 7.89
Mr Christopher Mark North Assistant Secretary Communications Policy and Planning Division	31. 7.89
Mr Geoffrey William Luther Assistant Secretary Technology Planning Branch Communications Technology Division	8. 3.89 10. 4.89
Mr James Thomas Webster Head Pay Television Policy Review Section	8. 3.89 10. 4.89 31. 7.89
Mr David Luck Research Leader Bureau of Transport and Communications Economics	8. 3.89 10. 4.89
Federation of Australian Commercial Television Stations	
Mr Leonard Mauger Chairman	20. 3.89
Mr Tony Branigan Member, Federal Council	20. 3.89 31. 7.89
Mr Bob Campbell Member, Federal Council	20. 3.89
Mr Robert Delamont Member, Federal Council	20. 3.89
Mr Allan Robert King Member, Federal Council	20. 3.89
Mr Stephen John McKew Member, Federal Council	20. 3.89

Organisation/Witnesses	**Date(s) of Appearance**
Federation of Australian Commercial Television Stations	
Dr David Christopher Chessell Director Access Economics	31. 7.89
Dr Kerry Schott Executive Director Whitlam Turnbull	31. 7.89
Mr Stephen Mark Ryan Associate Director Whitlam Turnbull	31. 7.89
Federation of Australian Radio Broadcasters	
Mr Martin Joseph Hartcher Federal Director	20. 3.89
Hoyts Entertainment Ltd	
Mr Paul Norman Oneile Managing Director	27. 4.89 31. 7.89
Mr Richard John Rowe Consultant	27. 3.89
Independent Television Newcastle Pty Ltd	
Mr George Lindsay Frame General Manager	20. 3.89
Mr John Augustus Larkin Chairman	20. 3.89
Mr Donald George Lindsay Marketing Director	20. 3.89
Integrated Communications Ltd	
Mr Richard Stockton Jabara Director	19. 4.89
Mr Brian Walsh Consultant	19. 4.89
Public Broadcasting Association of Australia	
Ms Grada Hulshoff Executive Director	20. 3.89
Ms Elizabeth Nola McRae Vice-President	20. 3.89

Organisation/Witnesses	Date(s) of Appearance
Telecom Australia	
Mr John Manson Burton Director of Strategic Planning	9. 3.89
Mr Norman John Draper Director of Staff Relations	9. 3.89
Mr John Vincent Murphy Manager Pay TV Task Force Group	9. 3.89 19. 4.89
Mr Andrew Morrison Day Forward Network Planning	19. 4.89
Television Unlimited	
Ms Bronwyn Evans President	19. 4.89
Mr Stevan Middleton Member	19. 4.89
Totalizer Agency Board of NSW	
Mr Allen John Windross General Manager	27. 4.89
Mr Kenneth Thomas Page Mareketing Director	29. 4.89
Mr Richard John Rowe Consultant	27. 4.89
Touche Ross Services Pty Ltd	
Mr John Alfred Gardner Senior Consultant	19. 4.89
West Australian Government	
Mr Phillip Grame Skelton Director Office of Communications Department of Computing and Information Technology	19. 4.89

THE UNITED STATES OF AMERICA

DEVELOPMENT OF CABLE TELEVISION[1]

1. In the beginning cable TV was not even called that. It was called community-antenna television, or CATV, and its sole purpose was to bring broadcast channels to places that otherwise could not get them.

2. In 1948 an appliance salesman, John Walson, strung a cable - a stretch of twin-lead antenna wire - from a mountain-top aerial to his store below in the Appalachian coal-mining town of Mahanoy city. The wiring was a ploy to sell television sets, then a new-fangled invention. The TV sets sold like hotcakes but buyers demanded to be hooked into the antenna since their sets were useless without it. Walson obliged, for a monthly fee, and cable TV was born.

3. CATV systems sprouted around the country. But law and technology presented two formidable obstacles.

4. We do not know when, how, or why CATV became transformed into pay TV, where the viewer pays a monthly subscription for the service which he or she gets. At the request of movie house owners and television networks, the Federal Communications Commission (the FCC) clamped severe regulatory curbs on the movies and sports that cable TV could carry and forbade cable from carrying advertising. The growing cable industry battled back in court and before the FCC. By 1980 the regulatory curbs were overturned.

5. In the early days of cable the way to relay distant signals was with microwaves transmitted and received with ground-based antennas. This was not practical for long distances. For example, *Home Box Office* (HBO) which started in the early 1979's first transmitted from the top of a skyscraper in New York City and reached only into Pennsylvania with the signal, clearly limiting any visions of large-scale, national cable networks.

6. The satellite changed all that. A cable channel like HBO could beam its microwave transmissions to Satcom (a communications satellite launched in 1975) and relay them back to virtually anywhere on the ground. Dish antennas at local cable systems could pluck the signals from the air, then amplify them and shunt them over coaxial cables directly to subscribers' television sets. National distribution of cable channels had become a reality.

7. The industry never looked back. Today (1987), nine satellites orbit the Earth beaming more than 50 cable channels to the 7800 cable systems that dot the USA.

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[1] Based exclusively on (US) Consumer Reports, September 1987, given to the Committee by the Australian Consumers' Association.

8. It appears that the development of pay television in the USA can be attributed to 4 major factors, namely:

- the presence of cable infrastructure, installed initially to bring broadcast channels to places that could not get them;
- the satellite which made nation-wide distribution a reality;
- the dismantling of regulations which was hindering the development of pay TV; and
- the existence of sufficient demand, particularly for movies and "niche" programming[2] which made pay TV an economically viable proposition.

HOW THE SYSTEM WORKS: WHAT THE VIEWER GETS

The Exclusive Franchise System

9. There are 7,800 operating cable systems in the USA serving some 20,000 communities.[3] Cable companies operate under a franchise (a licence in our terminology) granted by a city or county government. Usually only one franchise is given for a particular area and these are called 'local monopolies'. Fewer than one per cent of cable-TV systems operate with any direct competition. If you want, or need, cable you must get it from the company that holds your area's cable franchise.[4] Bigger cities are divided into several areas with one franchise being awarded for each area; for example Los Angeles is divided into 4 areas, New York, into 7.

10. In return for the franchise a municipality can set rules benefiting its citizens ensuring that the company will wire the entire area rather than just the neighbourhoods likely to produce the most subscribers. Franchises guarantee a share of revenue for the municipality and local access channels.[5]

11. The franchise is for a specified area and the operator is a person who provides cable service over a cable system in which the operator owns a significant interest, directly or indirectly.

12. To receive the cable service the subscriber pays an installation fee and a monthly fee (basic service) of $US11. The subscriber receives access to the broadcasting television channels in the area, public access channels, if they are available and a number of basic channels.[6] This number varies from area to area and the impression gained is that more basic channels are offered in the larger markets and less in the smaller ones.

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[2] ibid, p.548

[3] Broadcasting/Cablecasting Yearbook 1987, Turner Broadcasting System Inc. p.D-3. Siars Pty. Ltd. referred this publication to the Committee

[4] Consumer Reports (USA), September 1987, p. 553

[5] As above, pp.553, 554

[6] Broadcasting/Cablecasting Yearbook 1987, p.D-3

Basic Cable

13. There are over 40 basic cable services on offer and they cover separate channels for sports, children, music, news and weather, the arts and special and general audience channels. Among the seven most popular of these channels are -[7]

Cable Service	No. of Systems	Nov. 86 subs
ESPN (Entertainment and Sports Programming Network)	14,260	38,500,000
WTBS (Antlanta's superstation - sports, movies, variety and news)	11,119	38,456,000
CNN (Cable news network - full time)	9,955	35,834,000
MTV (a 24 hr a day music video channel in stereo)	3,679	29,800,000
Nickelodeon (a children's programming service)	4,510	27,600,000
Lifetime (Women's programming)	3,050	27,100,000
A and E Arts and Entertainment (Variety)	2,300	22,000,000

Pay and Pay Per View

14. Apart from public access, access to broadcast television and basic cable, the subscriber can get two additional services but has to pay for both. The Department calls the first a premium service but in the USA it is called a pay channel. There are 8 pay channels and 5 of these are movie channels. Home Box Office is the most popular. It is presented on 6,700 cable systems and has 14.6 million subscribers who pay about $US10 a month to the cable operator.[8]

15. Finally there is the pay per view service where the subscriber requests and pays for a particular program and is permitted access to it. There are 3 ppv services in the USA.

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7 Yearbook 1987, pp.E-8 to E-10
8 Yearbook 1987, p.E-10

Samples of Franchises

16. To give an indication of what particular systems provide we have picked four franchises though not necessarily at random. The first is Ardmore, Alabama and the relevant information is as follows:

Ardmore, Alabama[9]

(Smaller TV market)

Subscribers:	662	Channel usage: TV (9), pay cable (1), basic (5), available but unused (24)
Homes passed:	1135	
Charges:		Pay cable: Showtime, $9.75/month, 360 subscribers
installation	$25	
monthly	$11	
franchise fee	3%	Basic Cable: CBN, CNN, ESPN Nickelodeon, WTBS
Channel capacity:	36	

17. This system started in August 1982. The total subscription for basic and pay cable is close to $US 21 a month, and over 50% of subscribers take pay. Although there are 24 unused channels, there is no public access television.

18. The relevant information on two franchises, both in the top 100 TV market, one in Los Angeles, the other in New York (serving Manhattan and Roosevelt Island) is as follows:

[9] Yearbook 1987, p.D-9

Los Angeles[10] (Top 100 TV Market)		**New York**[11] (Top 100 TV Market)
42,546	Subscribers	219,600
110,000	Homes passed	400,000
	Charges:	
$30	installation	$20.95
$10	monthly	$12.33
3%	franchise fee	-
58	Channel capacity	36
	Channel usage:*	
14	TV	12
9	Pay cable	4
21	basic cable	16
5	automated	9
10	access	5
1	other local origination	3

Pay Cable

(HB0, $10.95/month, Showtime 9.95/mo**, Disney, $9.95/mo Premium showcase, etc)

(HBO, Cinemax and Sports, each $13.50/Select TV, 168,000 subscribers)

Basic Cable

(A&E, CBN, C-SPAN, ESPN, Nickelodeon, Lifetime, FNN, MTV, etc)
(public, govt. educational, public affairs, etc)

(A&E, CBN, C-SPAN, ESPN, Nickelodeon, Lifetime, Home-Shopping)

(public, govt. UN, access religion, local news, local, preview, Chinese)

** charges taken from a different LA franchise

* some shared

19. The total cost for basic and one pay channel is around $US20 to 21 for Los Angeles and about $US26 for New York. Perhaps one can say that the Los Angeles subscriber gets better value for money? More than 50% of subscribers in New York take pay.

[10] Yearbook 1987, pp.D-32, D-33
[11] As above, p.D-167

20. There are two interesting points worth making about Los Angeles and New York. The former is divided into 4 franchise areas. The earliest start for cable in Los Angeles was March 1957. The last of the 4 started in October 1985, some 28 years later. In this latter franchise area only 10% of the homes have been passed by cable.[12]

21. In New York there are 7 franchise areas. The earliest start for cable was June 1966, the latest in May 1986, some 20 years later. In this latter franchise area only 4% of the homes have been passed by cable.[13]

22. The second feature about the franchise areas in Los Angeles and New York is the small number of subscribers required for a pay cable channel. In one Los Angeles franchise there are a mere 30 subscribers for the Bravo channel. At $5.95 a month this channel grosses just under $US 2150 a year for the operator. In New York the figures are lower. Galavision has 5 subscribers each paying $13.50 a month, with the operator grossing around $US 800 a year.[14]

23. San Antonio (Texas) is interesting. All the homes in the franchised area are passed by cable. The subscriber is offered a choice of three monthly rates for basic cable - $5 for nine channels, $6 for 18 and $7 for 32 channels.[15]

REGULATION OF PAY TELEVISION

Before the 1984 Cable Act

24. We do not have much detailed information on regulation before the Cable Communications Policy Act of 1984. In the mid-1960's the FCC introduced the "must carry" rules to ensure that cable customers would still be able to receive local television. It ordered cable systems to carry the broadcast stations in their area. The industry considered the rule a burden - channel slots are precious - and fought the "must carry" rule in court. Eventually the original sweeping rule was declared unconstitutional.

25. Recently (1987) the FCC adopted a compromise must-carry rule. The new regulation still requires that certain channels be carried but lets cable systems with the smallest capacity for example to carry only one non-commercial broadcast channel. This rule is under court challenge.[16]

Reasons for 1984 Cable Act

26. Prior to the passage of the Cable Act uncertainty was a hallmark of cable regulation in the USA. This uncertainty was the result of conflicting approaches to regulation by federal, state and local authorities. At the federal level the FCC sought to deregulate the industry. The state level oscillated between the extremes of extensive regulation and a laissez faire approach.

[12] Yearbook 1987, pp.D-32. D-33
[13] Yearbook 1987, pp.D-167
[14] Yearbook 1987, pp.D-32, D-167
[15] Yearbook 1987, p.D-248
[16] Consumer Reports (USA), September 1987 p.555

However, the most pervasive level of regulation was at the local level where municipalities, counties and other political sub-divisions of the states had sought to participate actively in the regulation of cable matters.[17]

27. Cable television in the USA is regulated by the FCC and by state and local governments. The Cable Communications Policy Act of 1984 imposed additional regulations on cable systems but more importantly it set limits on state and local regulation.[18]

The 1984 Cable Act: Terms and Conditions of Franchises

Award of Franchise

28. A franchising authority may award one or more franchises within its jurisdiction. It should be noted that almost all the franchises awarded to date are single or exclusive franchises for a particular area.

29. We do not have any information that sets out the different ways by which a franchise is awarded eg. auction, tender or evaluation.

30. The franchise so awarded is for the construction of a cable system or operation of a cable system. Our understanding is that the cable service is provided by the owner of the cable system (see S.602(4) of the Act).

31. There are two factors associated with the awarding of a franchise that are worth noting. First, in awarding a franchise the franchising authority 'shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local cable area in which the group resides' (S.621(e)).

32. The second is that the franchising authority may establish requirements for facilities and equipment but may not establish requirements for video programming or other information services. The authority may enforce any requirements within the franchise for facilities and equipment and for broad categories of video programming or other material (s.624 (b) (1) and (2)).

Requirements of franchise holder

33. There are at least 4 things the cable operator (franchise holder) is required to do under the 1984 Cable Act. The cable operator is required to supply subscribers an input selector switch. The reason is the deregulation of must carry rules. After 15 January 1992 carriage of local broadcast stations will be at the discretion of the cable operator. The input switch which connects to both the cable service and the antenna will enable the viewer to select between cable service and off-the-air television signals.[19]

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[17] Submission from the Australian Film Commission (No.48), Attachment B, p.10. The attachment is a report on US experience prepared by Allen Allen and Hemsley.

[18] Yearbook 1987, p.D-1

[19] Yearbook 1987, p.D-2

34. The second is that the franchise authority may require the cable operator to designate channel capacity for public educational or governmental use. The franchise authority has the power to enforce provisions of the franchise for services, facilities or equipment proposed by the operator for such channels (S.611 (a) to (f).

35. The Communications Law Centre says that these PEG channels provide service and community information, coverage of local events, information and educational programs of various types. Many systems also have "local origination" channels, which provide locally produced programs with some assistance from the cable operator. 'The access channels play a significant role in the achievement of diversity in the mature cable industry of that country'.[20]

36. The FCC had promulgated rules concerning the use of these channels. A supreme court decision in 1979 overturned these regulations so enabling various States to enact their own access requirements. However, under the authority of another supreme court decision the FCC has pre-empted locally imposed programming bans and mandatory provisions for access channels.[21]

37. Perhaps as a result of these contests the factual position is not clear. The CLC says that the concept of free PEG channels has become well established and in many cases is a de facto rule of market operation.[22] But an American publication says that about one fifth of the country's cable systems offer public access channels.[23] This may be the result of the supreme court decision, after which cable systems started to drop stations, particularly those that ran community programming not available elsewhere.

38. A third requirement is that a cable operator is required to designate channel capacity for commercial use by persons unaffiliated with the operator. The number of channels is a percentage of the total of activated channels. Its purpose 'is to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems'. (s.612(a) and (b)(1)). The supreme court challenges and rulings also cover these channels.

39. Finally the Cable Act of 1984 says that cable services that are obscene or otherwise unprotected by the constitution of the USA shall not be provided or can be provided subject to conditions. In order to restrict the viewing of programming which is obscene or indecent, a cable operator shall provide, by sale or lease, a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber (s. 624 (d) (1) and 2(A)).

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[20] Submission No. 35, p.7
[21] Submission No.48, attachment B, p.12
[22] Submission No.35, p.37
[23] Consumer Reports (USA), September 1987, pp.550-555

Franchise fees

40. The Cable Act of 1984 provides that a cable operator may be required to pay franchise fees not to exceed 5% of the operators gross revenue. The franchising authority may require additional payments in accordance with the franchise to defray the costs of providing PEG channels (s.662).

Rate Regulation

41. Prior to the enactment of the Cable Act of 1984 local authorities could regulate rates for basic cable service. The Act gave the FCC the authority to make regulations to allow a franchising authority to regulate basic cable if the cable system is not subject to effective competition (s.623 (a), (b) (1) and (b) (2). Subsequently the FCC ruled in effect that there is effective competition if the franchise area can get 3 or more on-air channels.

The 1984 Cable Act: Renewal of Franchises

42. The period of a franchise is 3 years and there are provisions for public inquiry and participation in the renewal process. The main objectives of the renewal process are to:

- identify the future cable-related community needs and interests; and
- review the performance of the cable operator under franchise during the then current franchise term (s.626(a).

43. The franchising authority has to decide whether to grant or deny the proposal for renewal and has to consider whether -

(a) the cable operator has complied substantially with the material terms of the existing franchise and the applicable law;

(b) the quality of the operator's service has been reasonable in the light of community needs

- *includes* signal quality, response to consumer complaints and billing practices;
- *excludes* the mix, quality, or level of cable services or other services provided;

(c) the operator has the financial, technical and legal ability to provide the services, etc. as set out in proposal; and

(d) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. (S.626 (c)(1)(A) to (D))

44. Any denial of a proposal for renewal has to be based on one or more adverse findings made with respect to factors (a) to (d) of the preceding paragraph. Any decision of a franchising authority on a proposal for renewal is not final until all administrative review by the State has occurred or the opportunity has lapsed.

45. The final decision of the franchising authority can be appealed to a court. If the renewal is denied and the final decision of the authority is upheld by the courts, then, if the authority acquires ownership of the cable system or effects its transfer to another person this shall be at 'fair market value' (S.627(a)).

46. There is also provision for the franchise to be revoked for cause. In this case acquisition or transfer of the cable system has to be at an 'equitable price'.

The 1984 Cable Act: Ownership Restrictions

47. At a local level the Act directly prohibits anyone who is a licensee of a local television broadcast station, directly or through affiliates, from owning a cable system within the stations coverage area (S.613(a)). Other than for certain exceptions the Act prohibits a telephone company from acting as a cable TV operator by providing video programming to those within the telephone service area (S.613 (b)).

48. The Act does not specifically restrict ownership of cable television systems by a national TV network but current FCC rules do generally prevent ownership of cable systems by the national networks ABC, CBS and NBS. However, TV networks can own companies that supply programs to the cable TV industry. For example, Capital City/ABC owns the ABC TV Network and also has interests in 3 cable TV program suppliers: Sports Network EPSN, Health Channel, Lifetime, and the Arts Entertainment Network.[24]

49. It is said that the US cable TV industry is becoming concentrated in two ways. First, individual cable systems are being brought up by big, multi-system operators (MSO) companies that operate more than one separate cable system. The biggest MSO is Tele-Communications Inc (TCI) based in Colorado. The company owns more than 600 cable systems which bring TV to some 6 million households in 44 states. The second largest MSO is American Television and Communications (ATC) a subsidiary of Time Inc. Its subscriber count is 3.5 million spread over 660 cable companies in 32 states.[25]

(The two MSO's own *600+660x100 ÷ 7,800* or *16%* of the cable systems).

50. This trend of increasing domination by MSO's is explained by technological and economic reasons. The technological reasons relate to the increased capacity available to the MSO operators and decreasing marginal costs

[24] Submission No.48, attachment B, p.4

[25] Consumer Reports (USA), September 1987, p.554

as homes passed by cable reach saturation point. The economic factors include the maturing of the industry as homes passed and connected by cable move down the social economic scale.[26]

51. The second feature of concentration is vertical integration. The biggest system operators often own the very cable channels that their systems show. This development is concentrating power over what viewers watch into fewer and fewer hands. Through its subsidiary ATC, Time Inc. owns cable systems. It also owns two pay movie channels HBO and Cinemax. Apparently there is a big difference between nation-wide carriage of Times pay movie channels when compared with its competitors on ATC cable systems; a difference that favours the Time channels.[27]

52. However, there are other factors which limit the use of market power that results from increasing concentration. The first is the increasing predominance of basic over premium services. With the domination of the MSO's basic services have become more successful both as a proportion of the total market and in comparison with premium services. This success is attributed to an increase in the number of available channels (more niche markets?) and greater preference for basic with lower socio-economic groups.[28]

53. A second factor is growth in pay per view. There is also the alternative of increasing competition by allowing the telephone companies to carry cable TV.

COMPETITION AND DEREGULATION

Complaints

54. As cable television gains an ever-stronger foothold in the USA, an army of cable critics has begun to muster. Its ranks include consumer advocates, cities, broadcast television, the motion picture industry and even the operators of small cable systems.

55. The major complaints are in relation to service disruptions, picture quality, billing (eg the high cost of adding or dropping pay channels) and difficulties in contacting the cable company. This lacklustre service is attributed to local monopoly-fewer than 1 per cent of cable systems operate with any direct competition. If one wants or needs cable one gets it from the company that holds the cable franchise for the area.[29]

56. Allentown, Pa. is the largest city in which two companies compete for the same residents' business. The competition appears to have brought customers better-than-average service and equipment. Both systems offer an after-hours service. Both offer more than 40 channels (36 is the standard in the industry) and both offer relatively low rates for basic service - about $1 a month less than the

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26 Submission No.48, attachment B, p.4

27 Consumer Reports (USA), p.554

28 Submission No.48, attachment B, p.5

29 Consumer Reports 1987, pp.552, 553

industry average. But Allentown is unusual in that almost every household in the city subscribes to cable-reception is otherwise impossible. Places in which fewer homes subscribe might not be able to support two competing operators.[30]

57. It is said that along with rate deregulation the Cable Act of 1984 made the renewal of franchises almost automatic. Consumer advocates say that both provisions rob local government of ways to safeguard the interests of cable subscribers in the price and quality of service.[31]

Competition from Broadcast TV

58. It is interesting to find out how there is competition in the American system. Clearly there is hardly any direct competition between cable operators because almost all of them have exclusive franchises, or, what is referred to as local monopolies. But there is indirect competition from broadcast television. The Cable Communications Policy Act says that where viewers receive sufficient over-the-air television there is 'effective competition' with cable. The FCC subsequently ruled that there was effective competition if any place can get three or more on-air channels. This ruling was made in respect of rate regulation.

Competition for Carriage on Cable Channels

59. But competition exists for what is shown on cable; and it is brought about partly at least because the number of program suppliers is greater than channel capacity. Standard capacity is 35 channels but we do not have any standard distribution of channels. In the Los Angeles and New York examples, channels are allocated to broadcast television (how or why we do not know), for access and local origination purposes, for basic cable and pay cable. There are over 40 national basic cable services and others competing for space on the basic channels and about half a dozen or so premium (pay) services also competing for space.[32]

60. It is said that the growth of pay movie channels has been dented seriously by the VCR; one can rent three or four movies for the price of the monthly fee.[33] It is also said that there has been steady growth in the amount of channels offered to subscribers. In 1979 viewers were offered (and accepted) 12 basic and 5 premium services on average. In 1988 the figures had increased to 40 and 10 respectively.[34] It is possible that standard capacity has increased. Be that as it may, it is clear that the basic competition in the American system is competition for what the subscriber watches.

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[30] *Consumer Reports* 1987, p. 554
[31] Consumer Reports 1987, p.555
[32] Yearbook 1987, p.E-10
[33] Consumer Reports, September 1987, p.550
[34] Submission No.48, attachment B, pp. 4, 5

61. Another aspect of this competition is market penetration of pay-per-view. In 1986 2.1 million American homes were wired for pay-per-view. In the following two years this number more than tripled to 6.8 million. This type of service is becoming less costly to provide with the increasing use of impulse technology, which avoids special booking of the requested program.[35]

Operation of Cable Operators and Competition

62. Cable operators operate in different ways. They can contract for packaged programs like Home Box Office, lease a channel to a pay program operator or secure packaged programming directly from a supplier. Service providers are programmers or distributors. HBO is a programmer offering exclusive rights to program and selling the channel directly to subscribers. HBO offers programs to the Multiple System Operator (MSO) and once this is accepted it is the HBO's role to sell the service to potential customers which it does independently of the MSO.[36]

63. Viacom Enterprises, the tenth largest multiple system operator in the US, is a distributor. It acquires program material by licence from various producers and distributes them through its cable networks and various services. It packages programs for distribution on other MSO's. It derives its competitive strength by offering blocks of programs which compete more effectively with pay (premium) services such as HBO.

64. There is a certain picture of competition which emerges and which shows its existence at various levels. These can be summarised as follows:

- cable TV competes indirectly with broadcasting television;
- pay services compete
  - with one another
  - with basic services and
  - with VCR
- basic services compete
  - with one another
  - with pay services
- pay per view compete
  - with pay and basic services.

65. It is also said that the US cable industry is becoming more concentrated. MSO's are becoming prominent and vertical integration is increasing. We do not think this represents a clear case of increase in market power because of the growing competition between basic and pay services. Nevertheless, it helps to fill out the picture of competition in the USA.

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[35] Yearbook 1987, p.D-3 and Submission No.48, attachment B, p.2
[36] Yearbook 1987, p.D-3 and Submission No.48, attachment B, p.7

CANADA[37]

DEVELOPMENT OF CABLE TELEVISION

66. Cable television began in Canada for much the same reasons as it developed in the United States; to import television signals into areas which could not receive those signals. This process commenced in the 1950s and, within a few years, it was followed by the importation of signals from United States stations.

67. Originally operators' capacity in the system was restricted by the Canadian Radio-Television and Telecommunications Commission (CRTC) to the signals which could be received by a standard 12 channel VHF television receiver. In 1972 that restriction was lifted and the CRTC began authorising licensees in larger metropolitan areas to provide an augmented service through a converter attached to a TV receiver. All of these services were for a basic system only (no premium services) and the steady growth achieved to current levels of penetration (well over 60% of television households) was attained primarily through those basic services.

68. Cable television in Canada has been regulated closely by the CRTC. Cable operators are required by regulation to include priority signals (including educational, community and local free to air channels) in their basic service. Since 1982, discretionary services (premium programming) can be carried for the payment of fees additional to those required for the basic service.

69. Particular attention is paid in Canada to the preservation of Canadian culture and heritage in the face of perceived sensitivity to the dominance of the United States over some aspects of Canadian life. For that reason, rules regarding Canadian content in programming have been particularly strong. Originally, requirements for Canadian content covered both time and money rising to 50% towards the end of the licence period. There was difficulty in meeting those requirements.

70. When premium services were introduced in 1982, the CRTC set objectives for the new services which included:

- contributing to the realisation of the objectives of the Broadcasting Act;
- increasing the diversity of programming in Canada;
- making available high quality Canadian programming from new sources by providing opportunities and revenue sources for Canadian producers otherwise unable to gain access to the broadcasting system.

[37] With the exception of the information on current services the material for this section on Canada has been drawn largely from submission (no 35) of the Communications Law Centre.

71. The launch of premium services in Canada has been called a disaster. Of the six licences issued after the introduction of services during 1982, only one was still in business in 1986. Since that time there has been a substantial restructuring of the premium service area and there has been slow but steady growth.

CURRENT SERVICES

Description

72. By 1988 there were 913 operating cable systems in Canada serving over 6 million subscribers which is nearly 67% of the total television households in the country. *The average subscriber fee is $C10.67 per month.* [38]

Cable Service	No. of Systems	1988 subscribers
Canadian Satellite Communications Inc (basic)	774	1.25 million
Much Music	500	1.1 million
TSN (The Sports Network) (basic)	310	611,000
First Choice Superchannel (the Movie Network) (pay)	215	480,000
Musique Plus (basic)	95	353,000
Superchannel (pay)	130	185,000
Atlantic Satellite Network 51		NA[39]
C-Channel	NA	NA
CFMT-TV	NA	NA
Chinavision Canada Corp (pay)	NA	NA[40]

[38] Broadcasting/Cablecasting Year Book 1988, page D-313.
[39] Educational programs
[40] All chinese programs. More than 60 hours per week at a retail price of $20 a month.

Cable Service	No. of Systems	1988 subscribers
The Telemine Company Inc (pay)	NA	NA
TVOntario	NA	NA[41]

Source: Broadcasting/Cablecasting Year Book 1988, p.E-10.

Samples of Franchises

73. *To give some indication of what particular systems provide we have* selected a small franchise and the systems available in two larger cities for comparison. The first is Bowden in Alberta and the relevant information is:

Bowden, Alberta

Subscribers:	272	Channel usage: TV (11), pay cable (1), basic (12), access (2) - unused (9)
Homes passed:	473	Pay cable: Superchannel, $16.93/month, 21 subs
Charges: installation Monthly	 $40.52 $18.75	Basic cable: Canadian Home Shopping, MuchMusic, Sportsnet.
Channel capacity		35

Source: Broadcasting/Cablecasting Year Book 1988, page D-314.

74. This system started in March 1981. The total subscription for basic and pay cable is nearly $C36.00 per month and a very small proportion of subscribers take pay. There are two public access channels providing community programming and educational services.

75. The first of our two larger cities is Calgary which has two services providing programs to different parts of the city (apparently exclusive franchises).

[41] Educational programs for cable systems in Ontario.

Calgary Rogers Cable TV		Calgary Cable
90,000	Subscribers	122,206
118,000	Homes passed	153,182
	Charges:	
$35	installation	$45
$10	monthly	$10.31
31	Channel capacity	30
	Channel usage	
11	TV	10
2	Pay cable	2
9	basic cable	7
6	automated	8
1	access	2
4	other local	4

Pay cable

Superchannel ($13.95 - $19.95/mo), Chinavision ($20/mo)	Superchannel ($13.95/mo), Chinavision ($20/mo)

Basic cable

A&E,CNN,Headline News,FNN, TNN, MuchMusic,House of Commons,Sportsnet,Lifetime	House of Commons, Lifetime,A&E,CNN,FNN, TNN,MuchMusic, Sportsnet.

Each service also provides access to FM radio transmissions.

76. The other major city chosen for comparison is Ottawa which has two services providing signals into different geographical parts of the city and surroundings, apparently on exclusive franchise arrangements..

Ottawa Cablevision		Skyline Cablevision
102,223	Subscribers	105,000
131,908	Homes passed	108,000
	Charges:	
$25	installation	$25
$10	monthly	$9.90
34	Channel capacity	60
	Channel usage:	
18	TV	17
2	Pay cable	2
8	Basic cable	9
3	automated	6
-	access	1
1	other local	2

Pay cable

Ottawa Cablevision	Skyline Cablevision
First Choice, Super Ecran	First Choice ($15.95/mo), Super Ecran ($15.95/mo)

Basic cable

Ottawa Cablevision	Skyline Cablevision
FNN,TNN,CNN,A&E, MuchMusic,The Sports, Headline News.	Learning Channel,Sportsnet, MuchMusic, A&E,CNN,TNN,FNN, Canadian Home Shopping, CFTN-TV, House of Commons

Bothe services provide radio transmissions as well.

REGULATORY FRAMEWORK

77. Although there have been arguments put that, because cable companies are primarily retailers of broadcasting services from other sources, they should be treated from a regulatory point of view, like publishers, in Canada, however, regulation has been justified by the need to affirm national sovereignty and to create opportunities for Canadian expression. The CRTC regulates both free-to-air and cable television but the different services are subject to different rules.

Must carry rules

78. The regulations specify Television Service Priorities' which require the cable operators to carry all local free-to-air television signals (including educational transmissions) and to provide a community channel which must be used solely for community programming.

Grant, renewal and sale

79. The broadcasting legislation has detailed provisions for granting, renewal and transfer of licences, including a provision that the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

Revenue

80. Cable operators main source of revenue is subscribers fees which are set by the CRTC. Advertising is not permitted on basic services but is carried on premium services. There has been some criticism that allowing advertising on premium services is diluting advertising revenue to the point that broadcasters are unable to meet Canadian content requirements.

Content control

81. Program standards are set by the CRTC. In relation to Canadian content, the regulations require that over 50% of cable channels provide Canadian programming over non-Canadian services. Community channels are included when calculating the 50% figure. Canadian content rules were set according to both time and money and there has been difficulty in meeting them.

Community access

82. Cable operators are required to provide a community access channel as part of their basic service. The programs must be produced by the operators or by members of local communities. Cable operators are required to support community broadcasting with a reasonable proportion of their gross revenue and the CRTC has suggested about 10%. By 1986, operators were spending in excess of $40 million on community services.

AN EXAMINATION OF THE ECONOMIC STUDIES PRESENTED BY THE FEDERATION OF COMMERCIAL TELEVISION STATIONS

1. At the Committee hearing of 31 July 1989 in Sydney the Federation of Commercial Television Stations (FACTS) presented two economic studies on the impact of pay television on commercial television. One was by Whitlam Turnbull commissioned by Network Ten and the other by Access Economics commissioned by the Australian Television Network. Both studies were presented by their authors at the hearing.

2. The following is an assessment of each study.

THE WHITLAM TURNBULL STUDY

Introduction

3. Initially FACTS suggested that the viability of existing television operators and the quality of programming on free-to-air television will be threatened if there is revenue diversion to pay tv.[1] Since then the Whitlam Turnbull study uses quantitative financial analysis to draw the following conclusions:

- the introduction of pay tv prior to the year 2000 would result in losses and very substantial losses if pay tv carries advertising, losses so large that the viability of the industry would be threatened; and
- losses of that magnitude would result in substantial cost cutting by existing commercial television licensees with unfavourable effects on program quality.[2]

4. The conclusions drawn in the paper are based on quantitative financial analysis of the impact of the introduction of pay television on the revenue and expenditure of commercial broadcasting from 1982-83 through to the year 2004-2005. Projections of revenue and expenditure are for the period 1988-89 to 2004-2005.

5. Projections of revenue and expenditure are given separately for two delivery systems, direct broadcast by satellite (DBS) and cable. These projections are for the capital cities, and, other areas, and for each there is a table for no pay tv, pay tv without and with advertising for DBS and cable. Thus there are 12 tables. Footnotes indicate the assumptions used. The attachment to this appendix contains the tables for the capital cities and comments on the study deal mainly with the projections relating to the capital city markets.

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[1] Submission no 19, pp.10,11.

[2] Submission no 68, pp.1,2. Referred to in latter citations as the W-T Paper.

Comments

The Consultants Report

6. Before comment is made on the study it should be pointed out that it ignores the 100 page consultants report, The Economic Effects on Existing Broadcasters of Introducing Pay Television, which appeared in Volume 2 of the DOTC Pay TV Report released on 9 February 1989.

7. The consultants report was a qualitative assessment of the impact of introducing pay television using a number of models. It did not assess impact in numerical terms. Briefly, the consultants identified 3 factors affecting impact - the number of channels, the rate of penetration and the regulatory environment, e.g. whether advertising is allowed, requirements for Australian content, whether siphoning would be regulated and ownership and control rules. They also isolated two types of impact - on advertising revenues and program expenditures.

8. The Whitlam Turnbull study covers ground similar to that covered in the consultants report but the former is a quantitative assessment. It has 3 major assumptions which affect the projections of earnings of commercial broadcast television - market penetration of pay tv, increases in the costs of Australian and foreign programs as a result of the introduction of pay tv and the reduction in advertising revenue for the same reason.

9. A major question mark that hangs over the W-T paper is whether it has a serious methodological flaw because it ignores certain regulatory variables which could impact on commercial broadcasting. For example, how valid are expenditure projections which do not take into consideration the presence or absence of rules on Australian content and program siphoning on pay tv? The W-T paper ignores these factors but the consultants' report does not.

Market Penetration Rates

10. Market penetration affects the earnings of commercial broadcasters in two ways in the study. Its immediate impact is on expenditure, on the costs of Australian programs, of foreign programs and on other program costs. Its other impact is advertising revenue if advertising is allowed on pay tv.

11. The study assumes that pay tv under DBS will start in 1992-93 and that the penetration will be the same as for the VCR so that by 1998-99 the market penetration for pay tv will be 58 per cent of households. Introduction of pay tv by cable is assumed to commence in 1997-98. 'However because cable is connected to the home for telephone and other services it is also assumed that Pay TV on cable diffuses faster than Pay TV delivered by satellite. Hence it is assumed that the diffusion process is complete after two years'.[3] In other words, the 58 per cent market penetration is achieved in the year 1999-2000.

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[3] W-T Paper, p.27.

12. The importance of market penetration rates are not the rates themselves but their impact. Thus rates different to the one used by Whitlam Turnbull taken together with different assumptions on expenditure and revenue could affect fundamentally the picture constructed by and the conclusions reached by Whitlam Turnball. The paper says that given that pay tv is similar to videos and has similar costs when distributed by satellite, that it seems reasonable to assume that market penetration would also be similar. One can equally say that given all this it is reasonable to assume slower penetration! The assumption in the Whitlam Turnbull study is not complete. A large number of reasons can be given for quicker or slower rates of penetration.

13. Be that as it may there is some similarity of outcomes in the consultants report and the study.

MARKET PENETRATION OF PAY TV USING DBS ONLY

Consultants' Report		**Whitlam Turnbull Study**[1.]	
Year	Penetration (%)	Year	Penetration (%)
1992 - 93	12.0	1992 - 93	4.1
1993 - 94	20.0	1993 - 94	9.5
1994 - 95	28.0	1994 - 95	19.2
1995 - 96	35.0	1995 - 96	33.2
1996 - 97	41.0	1996 - 97	43.9
1997 - 98	46.0	1997 - 98	57.7
1998 - 99	51.0	1998 - 99	58.0

1. figures of VCR diffusion in paper.

Sources: Whitlam Turnbull study pp. 21,22 and the 1989 Pay TV Report, Vol. 2, p. 195.

14. The faster market penetration by cable (58% in two years) in the study is attributed to its connection to the home for telephone and other services. This is a *non-sequitor*. Further, there is no grounds for assuming there will be optical fibre connections to the home by 1997-98. This is also the view of the Department.[4]

Impact on Expenditure

15. One of the biggest impacts of the introduction of pay tv on commercial broadcasting according to the study is on program costs. This is more pronounced for DBS than cable. For DBS these costs are close to two and a half times greater than the loss of advertising revenue whereas for cable they are less than the loss of such revenues.

[4] Submission no 85, attachment 3.

16. For both DBS and cable all program costs are assumed to grow at 8% per annum, the same rate as nominal GDP until the arrival of pay tv. With the advent of pay tv it is assumed that these costs will increase by a further 5%, that is by 13% per annum in nominal terms. The reason given is that '(m)ore competitors are bidding for major sports finals (so) the cost of purchasing increases.'[5]

17. The reason for cost increases of Australian programs is increased competition for major sporting finals. The unstated assumption here is the absence of anti-siphoning rules. If one removes this assumption and assumes the existence of anti-siphoning regulation which will cover major sporting events there is no case for projecting cost increases caused by the advent of pay tv. Nevertheless, if such cost increases are left in, it is somewhat incredulous to believe that this single factor of increased costs is compounded year after year for 12 years (DBS) and 7 years (cable).

Impact on Advertising Revenue

18. The other big impact of the introduction of pay tv on commercial broadcasting is the loss of advertising revenue. With advertising permitted on DBS the final and ongoing effect of the 58 per cent market penetration according to the Whitlam Turnbull study 'is assumed to be the equivalent of one additional free-to-air commercial broadcaster. The advertising revenue going to the existing free-to-air commercial broadcasting industry falls by 25%'.[6] The 25% is arrived at by dividing the market into four (with pay tv) rather than three (without pay tv) competitors. It should be noted that the projected revenue loss in the year 2004-2005 (DBS with advertising capital cities) is 18.8% and not 25%.[7]

19. The Whitlam Turnbull study says that when cable pay tv is permitted to carry advertising 'it is assumed that the effect on advertising revenues is equivalent to two new free-to-air commercial broadcasting stations. Advertising revenues to the existing broadcasters falls by 40% ... (with the result that) the industry is no longer commercially viable.' The 40% is arrived at by dividing the market into five (with pay tv) rather than three (without pay tv) competitors. It should be noted that the projected revenue loss in the year 2004-2005 (cable with advertising, capital cities) is 28.2% and not 40%.[8]

20. The projections of advertising revenue diversion to pay tv are based on unexplained and unsupported assumptions which particularly as they relate to cable make them look ridiculous. The most mature pay tv system is in the United States where there are no restrictions on advertising. The consultants report says that cable advertising rose from $US58 million in 1980 to $US735 million in 1985. Network billings (estimates of net time and program billings rather than actual

[5] W-T Paper, pp.22 and 25.

[6] W-T Paper, p.22.

[7] ($3869.5m - $3141.0m x 100 divided by $3869.5m.

[8] (3869.5m - $2776.8m x 100 divided by $3869.5m).

revenues) rose from $US5,147 million to $US8,313 million in the same period. The conclusion drawn is that 'the networks still had 91.8 per cent of advertising revenue from the two media.'[9]

21. This report says the factors limiting the amount of advertising on pay tv are low penetration levels and concern over how much advertising subscribers will accept. It adds that it remains unclear whether any decline in free-to-air audiences as in the US will affect the commercial television broadcasters' ability to maintain advertising rates.

Conclusions

22. Projections of revenue and expenditure are sensitive to the percentages used. Virtually all the assumptions and percentage figures used in the study are questionable.

23. On the revenue side the figures used for diversion of advertising revenue to pay tv, of 20% for DBS and 30% for cable, are based on unexplained assumptions and are entirely foreign to the experience of the US which has the most mature pay tv system in the world. Alternative rates, based on US experience could be 10% (generous), 8% (actual), or, 5% (actual plus some regulation of advertising). When such rates are used when market penetration of pay tv is greatest the revenue diversion gets reduced considerably, when compared with the figures in the Whitlam Turnbull study.

24. The expenditure projections are more sensitive to the percentages used because of their compounding nature. The consultants report uses a 6% annual rate of increase, Whitlam Turnbull 8%.[10] The use of 6% rather than 8% produces massive differences. Expenditure on Australian programs is by far the largest and in 1987-88 accounted for 47.5% of all expenditure. A projected 6% rather than 8% increase (and later 13%) to the year 2004-2005 when pay TV is delivered by DBS results in Australian program costs of $1245.1 million in that year rather than the $3,081.3 million in the study.

25. This number crunching can be taken a bit further. If one assumes revenue diversion of 5%, for the reason given in paragraph 23 and 6% cost increases for Australian programs, there is a massive turnaround. Instead of a deficit (loss) of $1,941.0 million in the year 2004-2005 when pay tv with advertising is delivered by DBS as per Whitlam Turnbull there is now a surplus (profit) of $441.6 million.[11]

26. What all this figuring highlights and emphasises is the sensitivity of outcomes to different assumptions. Unless assumptions are tested carefully, rather than pulled out of a hat like the revenue diversion figures in the study, the projections and conclusions add very little to serious discussion.

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[9] 1989 Pay TV Report, Vol 2, p.184.

[10] Ibid, p.193.

[11] A revenue difference of $546.4m and an expenditure difference of $1836.2m.

27. Other assumptions or figures in the paper can also be challenged. For example, although it may be permissible in an accounting sense to include the debt of the networks on the expenditure side one can question this inclusion as a case for delay in the introduction of pay tv.

28. The Department is extremely critical of the study. It says the absence of sensitivity analysis 'severely undermines the credibility of the model's predictions'. DOTAC questions virtually every assumption made in the Whitlam Turnbull study - the assumptions on market penetration of pay tv, conservative increases in advertising revenue, the assumption on revenue diversion, impact on costs and treatment of interest charges.[12]

Summing Up

29. *The Committee did not avail itself of the Network Ten offer to feed its* assumptions (the Committee's) into the Whitlam Turnbull model. The assumptions and resulting calculations made by the Committee indicate the serious shortcomings of the study.

30. The Committee concludes that:

(a) **the DOTAC conclusion, that 'the study by Whitlam Turnbull is flawed by a number of assumptions which are extremely difficult to sustain and which critically affect the predictions of the model and its postulated negative impact on the existing commercial television broadcasting industry' is absolutely correct;**

(b) **the study is also flawed by its failure to take into account such regulatory variables as anti-program siphoning rules;**

(c) **the basic assumptions made in the study are unrealistic;**

(d) **the study fails to recognise the sensitivity of its assumptions; and therefore**

(e) **the WhitlamTurnbull study is unconvincing in its efforts to postpone the introduction of pay television into Australia.**

[12] Submission no 85, attachment 3.

THE ACCESS ECONOMICS STUDY

Introduction

31. In its presentation to the Committee on 31 July 1989, FACTS submitted two chapters from a paper by Access Economics which purported to demonstrate that the introduction of pay tv in Australia was economically undesirable. The chapters dealt with different aspects of the concept.

The Programming Choice Arguments for Diversity

32. The Access Economics chapter on this topic describes what it claims is the underlying theory used in the Future Directions report to support the concept of program diversity as a principal objective for pay tv. It proceeds then to demolish that theory by demonstrating that relaxation of the various assumptions of a simple Programming Choice Model (PCM) can yield substantially different programming decisions. Essentially the Access Economics argument is that duplication of program type will not necessarily follow from the existence of a TV transmission oligopoly and that the PCM is 'not a useful guide to policy because the model contains no robust conclusions'.

33. Models do not contain conclusions; they do contain assumptions and theory and the best way of utilising models is to test them with real hard data. The approach taken by Access Economics makes no attempt to use real data. Neither does it recognise the differences between the market choices facing free-to-air TV broadcasters (selling audiences to advertisers) and the operators of pay tv services which are designed, in the absence of advertising, to sell programs to subscribers. In its evidence to the Committee on 31 July, FACTS disputed the suggestion that free-to-air television is concerned with selling audiences to advertisers. It claimed that, before it could sell an audience, it had first to sell the program to viewers. While that may be true partially, it is difficult to be convincing about this claim when the a major concern expressed by FACTS is the possible impact of pay tv, even without advertising, on the economic viability of existing television networks.

34. The Future Directions report proposes firmly that a principal objective for a pay tv service is to increase the diversity of choice available to viewers. It does not appear to rely on the PCM to support that proposal and, for that reason, the Access Economics chapter on programming choice could be classed as irrelevant. It could be argued with justification that, in most circumstances, an increase in the number of TV programs available to viewers will increase their opportunities to make efficient use of their income, time and preferences. If viewers are given (through pay tv) the opportunity to influence the selection of programs available, the impact on their efficient use of resources can be expected to be even greater. It appears that the Future Directions report had that benefit in mind.

35. Other assumptions which appear to have been made by Access Economics and which do not match the real world in which a pay tv service would operate include perceptions that pay tv would be conducted on a pay per view basis

instead of periodical subscriptions, that pay tv operators would choose to screen programs identical to those on free-to-air television and that there is no differentiation between the markets (subscribers/advertisers) which has resulted in a very clear and separate market structure in pay tv operations overseas.

36. In essence then the Access Economics chapter on programming choice suffers from:

- the adoption of unrealistic assumptions;
- an unacceptable and perhaps distorted interpretation of the basis for the Future Directions report's conclusions about the relevance of program choice and diversity;
- a failure to use real data in its analysis of the effects of the programming choice theory; and
- an apparent unwillingness to recognise the real complexity of the market place.

Economic Value as the Prime Objective for Television Broadcasting

37. This chapter rejects the proposition that benefits in the form of efficiency will flow from the introduction of pay tv and that some equity problems will arise from the establishment of such a service. It sets out also to demonstrate that there is no significant difference between free-to-air tv and pay tv in terms of economic benefit to the community overall. The analysis of that latter point rests, however, on the questionable premise that there is only one pay tv operator which operates as a monopoly price setter. It ignores also the proposition that viewers may wish to pay for a new product and that, in those circumstances, the more options that are made available to viewers the better off they are.

38. The chapter argues, in section one, that it is proper to assess the alternatives for tv programming possibilities against the economic welfare which will flow to the community from the various options. That conclusion is reasonable provided that the analysis takes into account the full costs and benefits, including those which may not be susceptible to financial quantification (e.g. the opportunity cost of viewers' time). It is difficult to use this approach, however, in criticism of the Future Directions report which is solely about pay tv.

39. The proposal in section two of the chapter is that the introduction of pay tv in Australia will lead to a substantial reduction in the value of television to viewers. The proposition assumes that the present cost of free-to-air television is zero and that a pay tv operator would operate as a profit maximising monopolist. The section does not substantiate either of those assumptions.

40. In section three of the chapter, Access Economics suggests a redistribution of income away from the poor to the rich with the advent of pay tv. This seems to imply that pay tv will completely replace free-to-air commercial operators but it also does not address the issue of how low-income people spend their time and money. There are indications that videos and colour television sets are well represented in relatively low-income households in Australia and that spending

on apparent substitutes for pay tv is already considerable as a proportion of household disposable income. The apparent assumptions in this part of the Access Economics paper are not substantiated. It is difficult to envisage how an increase in choice of programs available to consumers could lead to a reduction in equity of resource distribution unless the pay tv system were funded publicly from reduced expenditure on welfare payments.

41. Section four of the chapter contains a range of assertions about the impact of pay tv on commercial free-to-air television. It claims that pricing under pay tv will be inefficient, in an economic sense, based apparently on the premise that a pay tv operator will act like a profit maximising monopolist. It suggests also that economic welfare (to the community as a whole) will be greatest under commercial free-to-air television in all cases where it would be profitable for either pay tv or free-to-air television to screen the program. That claim seems to rest on the premise that a subscriber influenced pay tv service operating on a break even basis would not show programs at a greater net economic welfare level than a commercial television station. This seems hard to credit if, in the case of pay tv, the viewers are paying to see what they wish and do not have to suffer the same level of advertising as that appearing on free-to-air television.

42. This chapter of the Access Economics paper is flawed because (as is the case with the former chapter for some items) it overlooks:

- the complexity of the market place;
- the possibility that viewers may wish to purchase a new product and that, the more options which are made available, the better off the viewer is;
- the need to consider the trade offs in quality which might influence viewers; and
- the need to construct a model which takes account of all the price aspects including the cost to viewers of the time spent in watching, for example, advertisements.

ATTACHMENTS TO APPENDIX

Table 5A: The Earnings of the Commercial Television Broadcasting Industry: Capital Cities 1990-2005
No Pay TV Case

CAPITAL CITIES	1982-83 $M	1983-84 $M	1984-85 $M	1985-86 $M	1986-87 $M	1987-88 $M	1988-89 $M	1989-90 $M	1990-91 $M	1991-92 $M	1992-93 $M	1993-94 $M	1994-95 $M	1995-96 $M	1996-97 $M	1997-98 $M	1998-99 $M	1999-2000 $M	2000-01 $M	2001-02 $M	2002-03 $M	2003-04 $M	2004-05 $M
Revenues																							
Advertising	575.8	680.4	766.1	840.1	856.1	984.4	1,063.2	1,148.2	1,240.1	1,339.3	1,446.4	1,562.1	1,687.1	1,822.1	1,967.8	2,125.2	2,295.3	2,478.9	2,677.2	2,891.4	3,122.7	3,372.5	3,642.3
Other Broadcasting	65.0	85.4	99.9	101.2	45.4	61.4	66.3	71.6	77.3	83.5	90.2	97.4	105.2	113.6	122.7	132.6	143.2	154.6	167.0	180.3	194.8	210.4	227.2
Total Revenues	640.8	765.8	866.0	941.3	901.5	1,045.8	1,129.5	1,219.8	1,317.4	1,422.8	1,536.6	1,659.6	1,792.3	1,935.7	2,090.6	2,257.8	2,438.4	2,633.5	2,844.2	3,071.7	3,317.5	3,582.9	3,869.5
Expenditures																							
Australian Programs	260.2	298.2	363.0	373.2	365.2	462.4	499.4	539.3	582.5	629.1	679.4	733.8	792.5	855.9	924.3	998.3	1,078.1	1,164.4	1,257.6	1,358.2	1,466.8	1,584.2	1,710.9
Foreign Programs	74.7	118.2	120.6	154.9	172.5	116.5	123.5	135.8	146.7	158.4	171.1	184.8	199.6	215.6	232.8	251.4	271.5	293.3	316.7	342.1	369.4	399.0	430.9
Other Program costs	20.3	20.5	34.2	30.6	46.6	54.7	59.1	63.8	68.9	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4
Agency Commission	50.9	60.3	68.5	75.2	80.9	93.0	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1	255.0
Licence Fee	38.6	45.7	36.3	48.3	51.0	56.3	68.9	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1
Technical Expense	11.5	9.1	12.1	12.0	26.7	33.3	35.3	37.1	38.9	40.9	42.9	45.1	47.3	49.7	52.2	54.8	57.5	60.4	63.4	66.6	69.9	73.4	77.1
Sales Expense	37.1	43.6	52.0	55.7	27.6	35.2	37.3	39.2	41.1	43.2	45.4	47.6	50.0	52.5	55.1	57.9	60.8	63.8	67.0	70.4	73.9	77.6	81.4
Administration	79.0	83.3	99.1	97.1	73.4	38.0	40.3	42.3	44.4	46.6	49.0	51.4	54.0	56.7	59.5	62.5	65.6	68.9	72.3	76.0	79.8	83.7	87.9
Interest	n.a.	n.a.	n.a.	n.a.	36.1	59.7	152.0	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6
Depreciation	18.5	18.7	20.6	24.4	27.8	23.5	26.3	29.5	31.0	32.5	34.1	35.8	37.6	39.5	41.5	43.6	45.7	48.0	50.4	52.9	55.6	58.4	61.3
Total Expenditures	590.8	697.6	806.4	871.4	907.8	972.6	1,116.5	1,201.4	1,280.3	1,365.3	1,456.8	1,555.5	1,661.8	1,776.3	1,899.6	2,032.6	2,175.9	2,330.3	2,496.7	2,676.1	2,869.4	3,077.9	3,302.5
Broadcast Earnings	50.0	68.2	59.6	69.9	(6.3)	73.2	13.0	18.4	37.1	57.5	79.8	104.1	130.6	159.4	190.9	225.2	262.5	303.2	347.5	395.6	448.0	505.0	567.0
Growth Assumptions:																							
Advertising							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Foreign Programs							6.00%	10.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Program costs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	6.00%
Agency Commission						7% of advertising revenues																	
Licence Fee						7% of advertising revenues																	
Technical Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Administration							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Interest						From accounts to 1988-89, then constant to 2005																	
Depreciation							12.00%	12.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

Table 58: The Earnings of the Commercial Television Broadcasting Industry: Capital Cities 1982-2005
CASE 1 Pay TV delivered by DBS with NO Advertising

CAPITAL CITIES	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93
	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M
Revenues											
Advertising	575.8	680.4	766.1	840.1	856.1	984.4	1,063.2	1,148.2	1,240.1	1,339.3	1,446.4
Other Broadcasting	65.0	85.4	99.9	101.2	45.4	61.4	66.3	71.6	77.3	83.5	90.2
Total Revenues	640.8	765.8	866.0	941.3	901.5	1,045.8	1,129.5	1,219.8	1,317.4	1,422.8	1,536.6
Expenditures											
Australian Programs	260.2	298.2	363.0	373.2	365.2	462.4	499.4	539.3	582.5	629.1	710.9
Foreign Programs	74.7	118.2	120.6	154.9	172.5	116.5	123.5	135.8	146.7	158.4	179.0
Other Program costs	20.3	20.5	34.2	30.6	46.6	54.7	59.1	63.8	68.9	74.4	84.1
Agency Commission	50.9	60.3	68.5	75.2	80.9	93.0	74.4	80.4	86.8	93.7	101.2
Licence Fee	38.6	45.7	36.3	48.3	51.0	56.3	68.9	74.4	80.4	86.8	93.7
Technical Expense	11.5	9.1	12.1	12.0	26.7	33.3	35.3	37.1	38.9	40.9	42.9
Sales Expense	37.1	43.6	52.0	55.7	27.6	35.2	37.3	39.2	41.1	43.2	45.4
Administration	79.0	83.3	99.1	97.1	73.4	38.0	40.3	42.3	44.4	46.6	49.0
Interest	n.a.	n.a.	n.a.	n.a.	36.1	59.7	152.0	159.6	159.6	159.6	159.6
Depreciation	18.5	18.7	20.6	24.4	27.8	23.5	26.3	29.5	31.0	32.5	34.1
Total Expenditures	590.8	697.6	806.4	871.4	907.8	972.6	1,116.5	1,201.4	1,280.3	1,365.3	1,499.9
Broadcast Earnings	50.0	68.2	59.6	69.9	(6.3)	73.2	13.0	18.4	37.1	57.5	36.7
Growth Assumptions:											
Advertising							8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting							8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs							8.00%	8.00%	8.00%	8.00%	13.00%
Foreign Programs							6.00%	10.00%	8.00%	8.00%	13.00%
Other Program costs							8.00%	8.00%	8.00%	8.00%	13.00%
Agency Commission						7% of advertising revenue					
Licence Fee						7% of advertising revenue					
Technical Expense							6.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense							6.00%	5.00%	5.00%	5.00%	5.00%
Administration							6.00%	5.00%	5.00%	5.00%	5.00%
Interest						From accounts to 1989-90, then constant to 2005					
Depreciation							12.00%	12.00%	5.00%	5.00%	5.00%

CAPITAL CITIES	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05
	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M
Revenues												
Advertising	1,562.1	1,687.1	1,822.1	1,967.8	2,125.2	2,295.3	2,478.9	2,677.2	2,891.4	3,122.7	3,372.5	3,642.3
Other Broadcasting	97.4	105.2	113.6	122.7	132.6	143.2	154.6	167.0	180.3	194.8	210.4	227.2
Total Revenues	1,659.6	1,792.3	1,935.7	2,090.6	2,257.8	2,438.4	2,633.5	2,844.2	3,071.7	3,317.5	3,582.9	3,869.5
Expenditures												
Australian Programs	803.3	907.7	1,025.7	1,159.1	1,309.7	1,480.0	1,672.4	1,889.8	2,135.5	2,413.1	2,726.8	3,081.3
Foreign Programs	202.3	228.6	258.3	291.9	329.9	372.8	421.2	476.0	537.8	607.8	686.8	776.1
Other Program costs	95.0	107.4	121.3	137.1	154.9	175.1	197.8	223.6	252.6	285.5	322.6	364.5
Agency Commission	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1	255.0
Licence Fee	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1
Technical Expense	45.1	47.3	49.7	52.2	54.8	57.5	60.4	63.4	66.6	69.9	73.4	77.1
Sales Expense	47.6	50.0	52.5	55.1	57.9	60.8	63.8	67.0	70.4	73.9	77.6	81.4
Administration	51.4	54.0	56.7	59.5	62.5	65.6	68.9	72.3	76.0	79.8	83.7	87.9
Interest	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6
Depreciation	35.8	37.6	39.5	41.5	43.6	45.7	48.0	50.4	52.9	55.6	58.4	61.3
Total Expenditures	1,650.7	1,819.7	2,009.0	2,221.2	2,459.3	2,726.5	3,026.3	3,363.0	3,741.2	4,166.0	4,643.5	5,180.2
Broadcast Earnings	8.8	(27.3)	(73.3)	(130.7)	(201.5)	(288.1)	(392.8)	(518.8)	(669.4)	(848.6)	(1,060.6)	(1,310.7)
Growth Assumptions:												
Advertising	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Foreign Programs	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Other Program costs	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Agency Commission												
Licence Fee												
Technical Expense	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Administration	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Interest												
Depreciation	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

Table 5C: The Earnings of the Commercial Television Broadcasting Industry Capital Cities 1982-2005
CASE 2 Pay TV delivered by DBS WITH Advertising

CAPITAL CITIES	1982-83 $M	1983-84 $M	1984-85 $M	1985-86 $M	1986-87 $M	1987-88 $M	1988-89 $M	1989-90 $M	1990-91 $M	1991-92 $M	1992-93 $M	1993-94 $M	1994-95 $M	1995-96 $M	1996-97 $M	1997-98 $M	1998-99 $M	1999-2000 $M	2000-01 $M	2001-02 $M	2002-03 $M	2003-04 $M	2004-05 $M
Revenues																							
Advertising	575.8	680.4	766.1	840.1	856.1	984.4	1,063.2	1,148.2	1,240.1	1,339.3	1,426.2	1,510.6	1,575.7	1,614.3	1,670.7	1,747.0	1,836.2	1,983.1	2,141.8	2,313.1	2,498.1	2,698.0	2,913.8
Other Broadcasting	65.0	85.4	99.9	101.2	45.4	61.4	66.3	71.6	77.3	83.5	90.2	97.4	105.2	113.6	122.7	132.6	143.2	154.6	167.0	180.3	194.8	210.4	227.2
Total Revenues	640.8	763.8	866.0	941.3	901.5	1,045.8	1,129.5	1,219.8	1,317.4	1,422.8	1,516.4	1,608.0	1,681.0	1,728.0	1,793.4	1,879.5	1,979.4	2,137.7	2,308.7	2,493.4	2,692.9	2,908.4	3,141.0
Expenditures																							
Australian Programs	260.2	298.2	363.0	373.2	365.2	462.4	499.4	539.3	582.5	629.1	710.9	803.3	907.7	1,025.7	1,159.1	1,309.7	1,480.0	1,672.4	1,889.8	2,135.5	2,413.1	2,726.8	3,081.3
Foreign Programs	74.7	118.2	120.6	154.9	172.5	116.5	123.5	135.8	146.7	158.4	179.0	202.3	228.6	258.3	291.9	329.9	372.8	421.2	476.0	537.8	607.8	686.8	776.1
Other Program costs	20.3	20.5	34.2	30.6	46.6	54.7	59.1	63.8	68.9	74.4	84.1	95.0	107.4	121.3	137.1	154.9	175.1	197.8	223.6	252.6	285.5	322.6	364.5
Agency Commission	50.9	60.3	68.5	75.2	80.9	93.0	74.4	80.4	86.8	93.7	99.8	105.7	110.3	113.0	116.9	122.3	128.5	138.8	149.9	161.9	174.9	188.9	204.0
Licence Fee	38.6	45.7	36.3	48.3	51.0	56.3	68.9	74.4	80.4	86.8	93.7	99.8	105.7	110.3	113.0	116.9	122.3	128.5	138.8	149.9	161.9	174.9	188.9
Technical Expense	11.5	9.1	12.1	12.0	26.7	33.3	35.3	37.1	38.9	40.9	42.9	45.1	47.3	49.7	52.2	54.8	57.5	60.4	63.4	66.6	69.9	73.4	77.1
Sales Expense	37.1	43.6	52.0	55.7	27.6	35.2	37.3	39.2	41.1	43.2	45.4	47.6	50.0	52.5	55.1	57.9	60.8	63.8	67.0	70.4	73.9	77.6	81.4
Administration	79.0	83.3	99.1	97.1	73.4	38.0	40.3	42.3	44.4	46.6	49.0	51.4	54.0	56.7	59.5	62.5	65.6	68.9	72.3	76.0	79.8	83.7	87.9
Interest	n.a.	n.a.	n.a.	n.a.	36.1	59.7	152.0	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6
Depreciation	18.5	18.7	20.6	24.4	27.8	23.5	26.3	29.5	31.0	32.5	34.1	35.8	37.6	39.5	41.5	43.6	45.7	48.0	50.4	52.9	55.6	58.4	61.3
Total Expenditures	590.8	697.6	806.4	871.4	907.8	972.6	1,116.5	1,201.4	1,280.3	1,365.3	1,498.5	1,645.7	1,808.3	1,986.6	2,185.9	2,412.1	2,667.9	2,959.5	3,290.8	3,663.2	4,081.8	4,552.5	5,082.0
Broadcast Earnings	50.0	68.2	59.6	69.9	(6.3)	73.2	13.0	18.4	37.1	57.5	17.8	(37.7)	(127.3)	(258.7)	(392.5)	(532.5)	(688.5)	(821.8)	(982.1)	(1,169.8)	(1,388.9)	(1,644.2)	(1,941.0)
Growth Assumptions:																							
Advertising	Reduced Revenue Case						8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs							8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Foreign Programs							6.00%	10.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Other Program costs							8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Agency Commission						7% of advertising revenues																	
Licence Fee						7% of advertising revenues																	
Technical Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Administration							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Interest						From accounts to 1989-90, then constant to 2005																	
Depreciation							12.00%	12.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

Table 68: The Earnings of the Commercial Television Broadcasting Industry Capital Cities 1990-2005
Pay TV Delivered by CABLE with NO Advertising

CAPITAL CITIES	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05
	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M
Revenues																							
Advertising	575.8	680.4	766.1	840.1	856.1	984.4	1,063.2	1,148.2	1,240.1	1,339.3	1,446.4	1,562.1	1,687.1	1,822.1	1,967.8	2,125.2	2,295.3	2,478.9	2,677.2	2,891.4	3,122.7	3,372.5	3,642.3
Other Broadcasting	65.0	85.4	99.9	101.2	45.4	61.4	66.3	71.6	77.3	83.5	90.2	97.4	105.2	113.6	122.7	132.6	143.2	154.6	167.0	180.3	194.8	210.4	227.2
Total Revenues	640.8	765.8	866.0	941.3	901.5	1,045.8	1,129.5	1,219.8	1,317.4	1,422.8	1,536.6	1,659.6	1,792.3	1,935.7	2,090.6	2,257.8	2,438.4	2,633.5	2,844.2	3,071.7	3,317.5	3,582.9	3,869.5
Expenditures																							
Australian Programs	260.2	298.2	363.0	373.2	365.2	462.4	499.4	539.3	582.5	629.1	679.4	733.8	792.5	855.9	924.3	1,044.5	1,180.3	1,333.7	1,507.1	1,703.0	1,924.4	2,174.6	2,457.3
Foreign Programs	74.7	118.2	120.6	154.9	172.5	116.5	123.5	135.8	146.7	158.4	171.1	184.8	199.6	215.6	232.8	263.1	297.3	335.9	379.6	428.9	484.7	547.7	618.9
Other Program costs	20.3	20.5	34.2	30.6	46.6	54.7	59.1	63.8	68.9	74.4	80.4	86.8	93.7	101.2	109.3	123.6	139.6	157.8	178.3	201.5	227.7	257.2	290.7
Agency Commission	50.9	60.3	68.5	75.2	80.9	93.0	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1	255.0
Licence Fee	38.6	45.7	36.3	48.3	51.0	56.3	68.9	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	148.8	160.7	173.5	187.4	202.4	218.6	236.1
Technical Expense	11.5	9.1	12.1	12.0	26.7	33.3	35.3	37.1	38.9	40.9	42.9	45.1	47.3	49.7	52.2	54.8	57.5	60.4	63.4	66.6	69.9	73.4	77.1
Sales Expense	37.1	43.6	52.0	55.7	27.6	35.2	37.3	39.2	41.1	43.2	45.4	47.6	50.0	52.5	55.1	57.9	60.8	63.8	67.0	70.4	73.9	77.6	81.4
Administration	79.0	83.3	99.1	97.1	73.4	38.0	40.3	42.3	44.4	46.6	49.0	51.4	54.0	56.7	59.5	62.5	65.6	68.9	72.3	76.0	79.8	83.7	87.9
Interest	n.a.	n.a.	n.a.	n.a.	36.1	59.7	152.0	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6
Depreciation	18.5	18.7	20.6	24.4	27.8	23.5	26.3	29.5	31.0	32.5	34.1	35.8	37.6	39.5	41.5	43.6	45.7	48.0	50.4	52.9	55.6	58.4	61.3
Total Expenditures	590.8	697.6	806.4	871.4	907.8	972.6	1,116.5	1,201.4	1,280.3	1,365.3	1,456.8	1,555.5	1,661.8	1,776.3	1,899.6	2,095.9	2,315.8	2,562.3	2,838.7	3,148.6	3,496.5	3,886.9	4,325.2
Broadcast Earnings	50.0	68.2	59.6	69.9	(6.3)	73.2	13.0	18.4	37.1	57.5	79.8	104.1	130.6	159.4	190.9	161.9	122.6	71.2	5.5	(76.9)	(179.0)	(304.0)	(455.8)
Growth Assumptions:																							
Advertising							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Foreign Programs							6.00%	10.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Other Program costs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Agency Commission						7% of advertising revenues																	
Licence Fee						7% of advertising revenues																	
Technical Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Administration							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Interest						From accounts to 1987-88, then constant to 2005																	
Depreciation							12.00%	12.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

Table 6C: The Earnings of the Commercial Television Broadcasting Industry Capital Cities 1990-2005
Pay TV Delivered by CABLE WITH Advertising

CAPITAL CITIES	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05
	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M	$M
Revenues																							
Advertising	575.8	680.4	766.1	840.1	856.1	984.4	1,063.2	1,148.2	1,240.1	1,339.3	1,446.4	1,562.1	1,687.1	1,822.1	1,967.8	1,912.7	1,836.2	1,735.2	1,874.0	2,024.0	2,185.9	2,360.7	2,549.6
Other Broadcasting	65.0	85.4	99.9	101.2	45.4	61.4	66.3	71.6	77.3	83.5	90.2	97.4	105.2	113.6	122.7	132.6	143.2	154.6	167.0	180.3	194.8	210.4	227.2
Total Revenues	640.8	765.8	866.0	941.3	901.5	1,045.8	1,129.5	1,219.8	1,317.4	1,422.8	1,536.6	1,659.6	1,792.3	1,935.7	2,090.6	2,045.3	1,979.4	1,889.8	2,041.0	2,204.3	2,380.6	2,571.1	2,776.8
Expenditures																							
Australian Programs	260.2	298.2	363.0	373.2	365.2	462.4	499.4	539.3	582.5	629.1	679.4	733.8	792.5	855.9	924.3	1,044.5	1,180.3	1,333.7	1,507.1	1,703.0	1,924.4	2,174.6	2,457.3
Foreign Programs	74.7	118.2	120.6	154.9	172.5	116.5	123.5	135.8	146.7	158.4	171.1	184.8	199.6	215.6	232.8	263.1	297.3	335.9	379.6	428.9	484.7	547.7	618.9
Other Program costs	20.3	20.5	34.2	30.6	46.6	54.7	59.1	63.8	68.9	74.4	80.4	86.8	93.7	101.2	109.3	123.6	139.6	157.8	178.3	201.5	227.7	257.2	290.7
Agency Commission	50.9	60.3	68.5	75.2	80.9	93.0	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	133.9	128.5	121.5	131.2	141.7	153.0	165.3	178.5
Licence Fee	38.6	45.7	36.3	48.3	51.0	56.3	68.9	74.4	80.4	86.8	93.7	101.2	109.3	118.1	127.5	137.7	133.9	128.5	121.5	131.2	141.7	153.0	165.3
Technical Expense	11.5	9.1	12.1	12.0	26.7	33.3	35.3	37.1	38.9	40.9	42.9	45.1	47.3	49.7	52.2	54.8	57.5	60.4	63.4	66.6	69.9	73.4	77.1
Sales Expense	37.1	43.6	52.0	55.7	27.6	35.2	37.3	39.2	41.1	43.2	45.4	47.6	50.0	52.5	55.1	57.9	60.8	63.8	67.0	70.4	73.9	77.6	81.4
Administration	79.0	83.3	99.1	97.1	73.4	38.0	40.3	42.3	44.4	46.6	49.0	51.4	54.0	56.7	59.5	62.5	65.6	68.9	72.3	76.0	79.8	83.7	87.9
Interest	n.a.	n.a.	n.a.	n.a.	36.1	59.7	152.0	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6	159.6
Depreciation	18.5	18.7	20.6	24.4	27.8	23.5	26.3	29.5	31.0	32.5	34.1	35.8	37.6	39.5	41.5	43.6	45.7	48.0	50.4	52.9	55.6	58.4	61.3
Total Expenditures	590.8	697.6	806.4	871.4	907.8	972.6	1,116.5	1,201.4	1,280.3	1,365.3	1,456.8	1,555.5	1,661.8	1,776.3	1,899.6	2,081.1	2,268.8	2,478.1	2,730.4	3,031.7	3,370.2	3,750.5	4,177.9
Broadcast Earnings	50.0	68.2	59.6	69.9	(6.3)	73.2	13.0	18.4	37.1	57.5	79.8	104.1	130.6	159.4	190.9	(35.8)	(289.4)	(588.3)	(689.4)	(827.4)	(989.5)	(1,179.4)	(1,401.1)
Growth Assumptions:																							
Advertising	Reduced Revenue Case						8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Other Broadcasting							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
Australian Programs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Foreign Programs							6.00%	10.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Other Program costs							8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Agency Commission						7% of advertising revenues																	
Licence Fee						7% of advertising revenues																	
Technical Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Sales Expense							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Administration							6.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Interest						From accounts, then constant to 2005																	
Depreciation							12.00%	12.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

PROGRAMMING CAPACITY OF THE AUSTRALIAN INDUSTRY

Background

1. Submissions to the Committee on this issue have included a number of views which indicate that opinion is firmly divided on the capacity of Australian programmers to respond to an increase in the demand for product which might accompany the introduction of pay tv. In essence, representatives of existing users of Australian programs, the Australian National Association of Advertisers (ANAA) and the Department of Transport and Communications (in its oral evidence to the Committee) expect that the introduction of any form of pay tv will lead to an increase in the price to existing broadcasters for the acquisition of of those programs.[1] The Communications Law Centre (CLC), the consultants to the Department for its 'Future Directions' report and the Australian Film Commission (AFC) consider this may not be the result.[2]

2. In its oral evidence FACTS asserted, without any further justification, that competition would result in a higher price for all parties.[3] This matter was not addressed directly in the FACTS written submission to the Committee but the conclusion appears to be based on the premise:

- that there is no excess capacity in the Australian program producing industry; and
- that, if that were the case, the industry does not have the capability to respond to any increase in demand in the time frame for the run up to the introduction of a pay tv service.

3. The ANAA appears to support that view, citing an observed (historic) increase in program costs as the justification and, presumably, an expectation that the trend will continue.[4] It did not specify any rationale for further increases attributable to the introduction of pay tv.

4. A similar view was espoused by the Department.[5] This appears to be in conflict with its conclusions at Page 52 of Volume 1 of its report, Future Directions for Pay TV in Australia and the general conclusions of its consultants as reported in Appendix F at pages 191/2 of Volume 2 of that report.

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1 Transcript, 31 July 1989, p 569.
2 Department of Transport and Communications; Future Directions for Pay Television in Australia, Volume 2, Appendix F, pp 191/2.
3 Transcript, 31 July 1989, p 651.
4 Submission No 28, pp 15/16.
5 Transcript, 8 March 1989, p36. Transcript, 31 July 1989, p 569.

5. In contrast to these views, the CLC and the AFC both suggest that there is a degree of spare capacity in the industry at this time, arising, in part, from the withdrawal of taxation concessions to the industry in recent years. They submit also that the industry has the capacity to gear up quickly to increase production of quality Australian programs in response to a decision to introduce pay tv in Australia. In support of those views the CLC cites the conclusions of the Smythe report ('A Report on the Capacity of the Australian Film and Television Production Industry to Produce Higher Levels of Drama Programs for Australian Television' - Mervyn Smythe and Associates). CLC asserts that the report found that the Australian program production industry was highly competitive and that supply of programs can be regarded as highly responsive to changes in demand. It concluded that the industry was able to escalate production very rapidly and that there appears to be a significant degree of under utilisation of capacity.[6]

6. The AFC relied for its conclusion on a report by Horan Wall and Walker in its 1987 report on 'The Availability of Quality Programming' for the Department of Transport and Communications *Review of National Broadcasting.* That report indicated that the industry has 'demonstrated flexibility to new production levels...'[7]

Comments

7. These arguments suggest that the industry is able, for most categories of programs, to respond quickly to changes in demand, that, in the short term, the supply of programs will be sufficient to meet the needs for additional programming and that, in the longer term, the industry is capable of accommodating a new medium of transmission. The only area in which there may be some doubt about this issue is in relation to the supply of high quality drama.

8. In that context, the Film Commission does qualify its conclusions by observing that there is a sufficient case for arguing that there would be fairly stiff competition for 'premium product' and that the price of such programs could be expected to rise with the introduction of pay tv. For other classes of production, however, there is a firm indication that there is already excess capacity and it is reasonable to conclude, therefore, that there is no demonstrated reason for reaching a conclusion that the prices of Australian programs will rise simply because of the introduction of an additional purchaser.[8]

9. There is already a considerable degree of competition for high quality programming from the existing 'free to air' suppliers and the addition of a further medium should not be expected, of itself, to provide a basis for an increase in price. It can be expected that suppliers will seek the best possible price but there does not seem to be grounds for concluding that they could justify an increase or be motivated to seek such an increase until the excess industry capacity has been

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6 Submission No 35, pp17/18
7 Submission No 48, p17.
8 Submission No 48, p21.

absorbed and the industry has to engage in further capital expenditure to meet the demand for Australian programs and/or seek additional program resources at a higher cost.

10. For highly popular programs, for which it may be desirable to ensure that no one medium should be able to secure exclusive rights for transmission (siphoning), there will be a case for special arrangements and this aspect is dealt with elsewhere in this report.

Conclusion

11. There is a case, arising from submissions to the Committee, for concluding

- that, in the short term at least, there is no valid reason for expecting program prices to rise with the introduction of pay tv; and
- that it could be expected that, for the longer term, a reasonable volume of acceptable Australian programs would be available for the introduction of such a service.