

# INVESTIGATION INTO CONTROL

News Corporation Limited/Seven Network Limited

A report on the Australian Broadcasting Authority's investigation into possible breaches of section 57, 60, 64 and 131 of the *Broadcasting Services Act 1992*, by News Corporation Limited

Australian Broadcasting Authority  
Sydney, NSW  
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## **COMMON ABBREVIATIONS USED IN THIS REPORT**

ABA	Australian Broadcasting Authority
ACE	Australian Capital Equity Pty Limited
the Act	<i>Broadcasting Services Act 1992</i>
Ashblue	Ashblue Holdings Pty Limited
ASX	Australian Stock Exchange
Australis	Australis Media Limited
Centaurus	Centaurus Corporate Finance - a merchant bank acting as adviser to SNL at the Board meeting of 11 May 1995
CEO	Chief Executive Officer
EGM	Extraordinary General Meeting
Foxtel	Foxtel Group - including licensee company, Foxtel Cable Television Pty Limited - a joint venture between News Corporation Limited and Telstra Corporation Limited
GWN	Golden West Network
Grundy's	RG Capital (Australia) Pty Ltd
Joint Venture	the Foxtel joint venture
News	News Corporation Limited
nominee director	director of SNL appointed by one of the major shareholders: News, Telstra and Mr Stokes
Optus Vision	Optus Vision Pty Limited
pay television	television programming provided to subscribers only. It is delivered to the home by various means, including satellite, cable or microwave dish. It is currently provided in Australia by three services Optus Vision, Foxtel and Galaxy.
PMT Consortium	The PMT Consortium was formed in April 1993 between News, Telstra and the Nine and Ten networks to pursue involvement in pay television. PMT is an acronym of the first letters of the names of three of the group's largest partners: Mr Kerry Packer, Mr Rupert Murdoch and Telecom. PMT dissolved in September 1994 without having taken an active role in the emerging pay television industry.
RM Williams	RM Williams Holdings Limited
Satellite Licence A	A licence which allows the provision of up to 4 subscription television broadcasting services with the use of a satellite. The licence is held by Continental Century Pay Television Pty Ltd
Satellite Licence B	A licence which allows the provision of up to 4 subscription television broadcasting services with the use of a satellite. The licence is held by New World Communications Pty Ltd
SNL	Seven Network Limited
State Super	State Authorities Superannuation Board

Sunraysia	Sunraysia Television Limited
SuperLeague	Alternative rugby league competition organised by The News Corporation Limited which was intended to be shown on Foxtel and the Nine Network.
Swan Television	Swan Television and Radio Broadcasters Pty Limited, a subsidiary of Sunraysia and licensee of STW in Perth
Tallglen Pty Limited	Wholly owned subsidiary of SNL set up to be its vehicle for participation in pay television.
Telstra	Telstra Corporation Limited

## **ALPHABETICAL LISTING OF PERSONS REFERRED TO IN THIS REPORT**

Mr John Atanaskovic	Partner, Atanaskovic Hartnell (solicitors)
Mr Frank Blount	Chief Executive Officer of Telstra Corporation
Mrs Dulcie Boling	Director of SNL (nominee of News)
Mr Mark Booth	Chief Executive Officer of the Foxtel Group
Mr Robert Campbell	former Managing Director of SNL
Mr Malcolm Colless	General Manager, Business Development of News Ltd
Mr Geoffrey Cousins	Chief Executive Officer of Optus Vision Pty Limited
Mr Ken Cowley	Chairman and Chief Executive of News Ltd
Mr Ivan Deveson	former Chairman of SNL
Mr Gary Fenton	Director, Sport, SNL
Mr Neil Gamble	Chief Executive Officer of Australis Media Limited
Mr Peter Gammell	Managing Director of Australian Capital Equity Pty Limited
Mr Ian Holmes	former Chairman of SNL
Mr Will Jephcott	Director of Centaurus Corporate Finance
Ms Vicki McFadden	Director of Centaurus Corporate Finance
Mr Tom Mockridge	Group Administration, News Ltd
Mr Rupert Murdoch	Chairman and Chief Executive of News Corporation Ltd
Mr Sean O'Halloran	Former Director, Broadcast Policy, SNL
Mr Kerry Packer	Chairman of Publishing and Broadcasting Limited
Mr Ken Parker	employee of ACE
Mr Gary Rice	Managing Director of SNL
Mr Peter Ritchie	Director of SNL
Mr Paul Rizzo	former Director of SNL (nominee of Telstra)
Mr Michael Robinson	former Director of SNL
Mr Philip Saggars	Business and Legal Affairs Director, SNL
Mr Kerry Stokes	Chief Executive Officer of ACE and Non-executive Chairman of SNL
Professor Murray Wells	Director of SNL

## **CHRONOLOGY**

### **OUTLINE OF EVENTS FROM NOVEMBER 1989 TO APRIL 1996**

November 1989	Receivers and managers appointed to Qintex, the principal company in the Seven network group.
August 1991	A four person Board appointed to Seven following the restructuring of the ownership and financial arrangements of the network. That Board consisted of Messrs Ivan Deveson (Chairman), Peter Ritchie (Deputy Chairman) and Michael Robinson as non-executive Board members, and Mr Robert Campbell as the sole executive director of the company.
March 1993	Mr Geoffrey Cousins joined the Board as non-executive director.
April 1993	Tallglenn Pty Limited, a wholly owned subsidiary of Seven, entered a consortium agreement relating to participation in pay television. Other members of the consortium (the “PMT” consortium) were Telstra, News, and the Nine and Ten networks. The group was formed primarily to bid for the satellite B licence (it was prohibited from bidding for the A licence because of cross-media restrictions).
18 June 1993	The Board of Seven Network Limited (SNL) recommended to the network’s banking syndicate a recapitalisation of the network involving a public float. The syndicate indicated its support for the recapitalisation.
29 June 1993	Prospectus issued offering for subscription shares and debentures in SNL. 15% of the shares and debentures were to be offered to News and 10% of the shares were to be offered to Telstra, each of whom had agreed to take them up.
6 August 1993	SNL was publicly listed on the Australian Stock Exchange. News and Telstra held 14.9% and 10%, respectively, of the share capital after the float. News nominated Mrs Dulcie Boling as a director while Telstra nominated Mr Paul Rizzo. Both these directors were subsequently endorsed at a meeting of shareholders.
9 September 1994	The PMT consortium was dissolved.
20 September 1994	First Optus Vision consortium was established. The joint venture between Optus Communications, Continental Cablevision, the Nine and Seven Networks was established to develop a broadband network which would deliver telephony, entertainment and interactive services to residential premises.
28 October 1994	Mr Geoffrey Cousins resigned as a director of SNL. The SNL Board decided that it was important to find a replacement who had



television experience.

- November 1994 SNL's Managing Director, Mr Robert Campbell, was authorised by the SNL Board to increase advertising rates between 3-5% for the next calendar year.
- 11 November 1994 News and Telstra signed a Heads of Agreement which formalised their decision to jointly pursue new media business opportunities, particularly pay television through Foxtel.
- 24 November 1994 The then Minister for Communications and the Arts, Mr Michael Lee, released a policy statement regarding new cable networks. The statement allowed access by pay television service providers to the proposed Telstra and Optus cable networks, possibly as early as 1997, but no later than 1999.
- 25 November 1994 First Optus Vision Consortium announced dissolution. In an announcement to the Australian Stock Exchange SNL advised that their withdrawal from the first Optus Vision consortium was "prompted by the Government's new regulatory framework for broadband networks." SNL further advised that it would continue to develop strategies for the company's involvement in pay television, and that "involvement will be carefully considered and options remain open".
- 15 December 1994 The Foxtel cable company, a joint venture between News and Telstra, commenced operations with the appointment of Mr Mark Booth as CEO.
- 25 December 1994 News and Australis Media Limited (holder of satellite subscription television broadcasting Licence B) signed a Heads of Agreement subject to Telstra's approval. The agreement dealt with reciprocal programming and distribution understandings between the two companies.
- 1 January 1995 The second Optus Vision consortium was established. The participants were the same as for the first consortium except that SNL was not initially involved.
- 28 February 1995 SNL wrote to News Ltd, Telstra, Foxtel and Optus Vision to invite them to participate with SNL in a pay television venture.
- Early March 1995 Senior management of SNL became aware that a large shortfall in advertising revenue was expected, and that an urgent and unplanned increase in advertising rates would be necessary to cover the shortfall. This shortfall was of the order of tens of millions of dollars.

22 March 1995	Meeting between SNL executives (including the Chairman Mr Ivan Deveson) and News (including Mr Rupert Murdoch and Mr Ken Cowley) at the offices of News Ltd, Sydney.
30 March 1995	Messrs Campbell, Ritchie, Deveson and Mrs Boling had lunch with Mr Kerry Stokes in Perth to discuss Mr Stokes becoming a director of SNL. After this lunch, the matter of recruiting directors with industry experience was discussed at a meeting of the SNL Board in Perth. Mr Stokes' name was raised as a possible new director, as were several other individuals with experience in television or related industries including Mr Ian Holmes. The Board resolved that directors ought to be limited to a personal shareholding of 3% in SNL.
31 March 1995	Mr Geoffrey Cousins became the first CEO of Optus Vision.
2 April 1995	SNL's base advertising rates for agencies and clients were increased by 10%.
4 April 1995	Meeting between Messrs Ivan Deveson, Robert Campbell, Sean O'Halloran, Mark Booth, and Ken Cowley, to discuss SNL's possible involvement with Foxtel in pay television. Mr Cowley proposed that SNL sign a "standstill" and confidentiality agreement as a condition for obtaining information from Foxtel.
5 April 1995	SNL declined to enter into the "standstill" and confidentiality agreement proposed by News.
10 April 1995.	Mr Geoffrey Cousins (CEO of Optus Vision) made a presentation regarding pay television to the SNL Board.  Mr Kerry Stokes, through Ashblue, began to buy issued share capital in SNL.
18 April 1995	Mr Stokes became a substantial shareholder of SNL with a relevant interest in the issued ordinary share capital of 6.54%.
21 April 1995	Mr Stokes and associated companies increased their relevant interest in SNL to 13.01%.
24 April 1995	Foxtel (including representatives of their major shareholders News and Telstra) made a presentation to the Board of SNL regarding an investment by SNL in Foxtel's pay television venture. The presentation was primarily made by Mr Frank Blount (CEO of Telstra).
27 April 1995	SNL Board discussed its pay television options. The Chairman of SNL advised the Board of SNL that an offer from Foxtel regarding participation by SNL in Foxtel's pay television venture would not be received by 8.00 pm that evening. A letter from Foxtel to the

	Chairman of SNL was received which requested an extension of time in which to present to SNL details of their proposed offer to SNL inviting SNL to invest in Foxtel's pay television venture
28 April 1995	Mr Cousins of Optus Vision made a presentation to the SNL Board. The Board resolved to enter into a pay television alliance with Optus Vision Pty Ltd.  Directors Mrs Boling and Mr Rizzo were given a briefing on the Board's decision. Mrs Boling and Mr Rizzo had not participated in the Board's consideration of the pay television matter.  Ashblue notified SNL of its intention to requisition an Extraordinary General Meeting to remove Mr Ivan Deveson as a director and calling for the appointment of Mr Kerry Stokes and Mr William Rayner as directors of SNL.
1 May 1995	Mr Ian Holmes agreed to become an independent director of SNL. SNL announced to the ASX that, subject to due diligence and completion of final documentation, it was to join Optus Vision.
11 May 1995	The SNL Board decided unanimously to ask Mr Deveson to resign as Chairman and director of SNL. Mr Ivan Deveson submitted his resignation to the SNL Board. He was replaced on the Board and as Chairman by the new independent director, Mr Ian Holmes. The Board announced that it intended to seek the appointment of an additional independent director.
16 May 1995	Mr Kerry Stokes and associated companies increased their relevant interest in SNL to hold 17.57% of the issued share capital of the company.
19 May 1995	The ASX was notified by way of a change in substantial shareholder notice that Mr Kerry Stokes' company interest in SNL had increased to 18.99% of the ordinary shares.
22 May 1995	SNL announced to the Australian Stock Exchange that, following a period of due diligence, it had signed the shareholders agreement, thus becoming a shareholder in Optus Vision. The deal was said by SNL to have both programming supply and platform equity aspects and to represent "an outstanding arrangement for our shareholders".
22 May 1995	Mr Stokes and a company associated with him, Ashblue, wrote letters to the directors of SNL which threatened to hold the directors personally responsible if SNL signed the final documentation which would make them participants with Optus Vision in a pay television venture.
31 May 1995	Mr Kerry Stokes and Mr William Rayner were appointed as directors of the SNL Board, effective from 1 June 1995. Ashblue

	withdrew its requisition for an EGM of SNL.
13 June 1995	Ashblue and Mr Stokes increased their proportion of issued ordinary share capital in SNL to 19.97%.
22 June 1995	Mr Robert Campbell resigned as Managing Director of SNL. The SNL Board decided that the company's Chief Operating Officer, Mr Chris Chapman, would lead the executive team at SNL until a replacement Managing Director could be located.
27 June 1995	Mr Ian Holmes resigned as Chairman of SNL, and the Board elected Mr Kerry Stokes as the new non-executive Chairman. The Board confirmed that it intended to appoint two new independent directors as soon as it was possible, and would continue to search for a new Managing Director.  Mr Sean O'Halloran, SNL's Director of Broadcasting Policy, resigned.
28 July 1995	Telstra nominee, Mr Paul Rizzo, resigned as a director, and it was announced to the ASX that Telstra Corporation Limited had foregone the opportunity to nominate a representative to the SNL Board.
28 July 1995	Professor Murray Wells was appointed as a director of SNL.
24 August 1995	Mr Gary Rice was appointed Managing Director of SNL.
9 October 1995	Mr Robinson indicated he would not seek re-election as a director of SNL.
9 November 1995	SNL announced it had acquired 72% of Sunshine Broadcasting Limited, a regional television network.
24 November 1995	Mr Allan Jackson, the Chairman of BTR Nylex Limited, was appointed as an independent director on the SNL Board.
27 December 1995	SNL announced that it had signed an agreement to acquire Golden West Network from the Australian Capital Equity Group.
14 February 1996	SNL announced that it had renegotiated the agreement to acquire the Golden West Network from ACE. The re-negotiated agreement provided for the acquisition of GWN through the issue of Seven shares. The transaction was subject to a finding by an independent expert that the re-negotiated agreement was fair and reasonable to shareholders other than ACE and its associates. It was also subject to the approval of shareholders at an extraordinary general meeting.
12 March 1996	The independent directors of SNL recommended that the company's shareholders vote in favour of the acquisition of GWN.

4 April 1996

Extraordinary General Meeting of SNL shareholders to vote on acquisition of GWN (meeting adjourned to 16 April 1996).

## **CHRONOLOGICAL RECORD OF PERSONS EXAMINED**

The following persons have been examined:

26 April 1995	Robert Campbell, CEO, SNL
27 April 1995	Ivan Deveson, Chairman, SNL
2 May 1995	Sean O'Halloran, director, Broadcast Policy, SNL
3 May 1995	Ken Cowley, Chairman, CEO, News
3 May 1995	Geoff Cousins, CEO, Optus Vision
4 May 1995	Kerry Stokes, CEO, Australian Capital Equity Limited
5 May 1995	Dulcie Boling, director, SNL
5 May 1995	Frank Blount, CEO, Telstra
8 May 1995	Paul Rizzo, director, Telstra, director of SNL
17 May 1995	Neil Gamble, CEO, Australis
18 May 1995	Ivan Deveson, Retired Chairman, SNL
23 May 1995	Vicki McFadden, director, Centaurus
24 May 1995	Will Jephcott, director, Centaurus
28 May 1995	Mark Booth, CEO, Foxtel
30 May 1995	Peter Ritchie, CEO, McDonalds, director of SNL
31 May 1995	Sean O'Halloran, director, Broadcast Policy, SNL
1 June 1995	Paul Rizzo, director, Telstra, director of SNL
20 June 1995	Ian Holmes, Chairman, SNL
29 June 1995	Michael Robinson, Partner, Arthur Robinson Hedderwicks, director of SNL
26 July 1995	Malcolm Colless, General Manager, Business Development News Ltd
1 August 1995	Dulcie Boling, director, SNL
18 September 1995	Ken Cowley, Chairman, Chief Executive, News Ltd
14 November 1995	Geoff Cousins, CEO, Optus Vision
29 November 1995	Michael Robinson, Partner, Arthur Robinson Hedderwicks, ex director of SNL
11 January 1996	Gary Rice, CEO, SNL
2 February 1996	Philip Saggars, Business and Legal Affairs Director, SNL

## **1. Background**

### **1.1 Complaint by Optus Vision**

The ABA is conducting an investigation under the *Broadcasting Services Act 1992* (the Act) into the control of Seven Network Ltd (SNL), following a complaint received from Optus Vision dated 18 April 1995.

The ABA had been monitoring the control of SNL since the announcement in mid 1993 that News was to become a core shareholder in the company. At that time, the ABA closely examined the arrangements through which News and Telstra became core shareholders in the company.

The complaint alleged (among other matters) “the commission of offences against the Broadcasting Services Act (“the Act”) concerning proscribed control of the Seven Network commercial television broadcasting licences” by News. The complaint alleged that:

- News was in a position to exercise control of the Seven Network’s commercial television broadcasting licences, as a result of an associate relationship between News and Telstra, within the meaning of section 6 of the Act. The associate relationship was alleged to have been established through the Foxtel joint venture, and the investments by News and Telstra in SNL and Australis;
- News and Telstra were seeking to influence SNL so that SNL would join the Foxtel joint venture into pay television;
- there was concerted action between Mr Stokes and News in relation to SNL;
- the coverage by SNL of the developments relating to SuperLeague had been totally consistent with the editorial approach and coverage in the newspapers published by News.

Subsequent to receiving the initial complaint triggering the investigation, the ABA received further information from Optus Vision dated 24 April 1995 concerning SNL’s deliberations about pay television. Optus Vision alleged that pressure had been applied by News to SNL executives and Mr Ivan Deveson in relation to the approaching decision about pay television.

If the ABA found evidence that confirmed the above allegations, this could be relevant to the question whether News could have been in breach of the cross media and foreign ownership restrictions set out in the Act.

### **1.2 Initial Terms of Reference**

On 19 April 1995, the ABA commenced an investigation into these matters and issued terms of reference for the investigation:

Whether News Ltd or Mr Kerry Stokes or any person associated with those persons have breached any provision of the Act since 1 January 1995, in particular:

- whether News Ltd, or any person associated with News Ltd, has breached paragraph 60(b) of the Act which prohibits a person from being in a position to exercise control of a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence and accordingly whether News Ltd, or any person

associated with News Ltd, has committed an offence pursuant to section 66 in respect of any such breach;

- whether News Ltd has breached subsection 57(1) of the Act which prohibits a foreign person from being in a position to exercise control of a commercial television broadcasting licence and accordingly whether News Ltd has committed an offence pursuant to section 66 in respect of any such breach;
- whether Mr Stokes or any person associated with Mr Stokes has breached subsection 53(2) of the Act which prohibits a person from being in a position to exercise control of more than one commercial television broadcasting licence in the same licence area and accordingly whether Mr Stokes or any person associated with Mr Stokes has committed an offence pursuant to section 66 in respect of any such breach;
- whether there has been a breach of subsection 64(1) by any of Mr Stokes, News Ltd or any person associated with either of those persons;
- whether News Ltd has provided a commercial television broadcasting service without being licensed to do so, in breach of section 131;
- whether News Ltd and /or persons associated with Mr Kerry Stokes are in a position to exercise control of Seven Network Limited and/or any commercial television broadcasting licence controlled by Seven Network Limited; and
- whether any person associated with Mr Stokes, News Ltd and/or Telstra are associates in relation to the control of any of the commercial television broadcasting licences controlled by Seven Network Limited.

On 26 May 1995, the ABA made a finding that Mr Stokes was not in a position to exercise control of Sunraysia and its subsidiary Swan Television, the licensee of the Channel Nine affiliate in Perth. As a consequence of this finding, the original terms of reference of the investigation were narrowed on 1 June 1995.

### **1.3 Current Terms of Reference**

The present terms of reference of the investigation are as follows:

- whether News Ltd, either alone or together with an associate, is in a position to exercise control of Seven Network Limited and/or any commercial television broadcasting licence controlled by Seven Network Limited;
- whether News Ltd, either alone or together with an associate, has breached paragraph 60(b) of the Act which prohibits a person from being in a position to exercise control of a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence and accordingly whether News Ltd, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;
- whether News Ltd, either alone or together with an associate, has breached subsection 57(1) of the Act which prohibits a foreign person from being in a position to exercise control of a commercial television broadcasting licence and accordingly whether News



Ltd, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;

- whether News Ltd, or an associate of News Ltd, has breached subsection 64(1) of the Act, which requires a person who becomes aware that he or she is in a position to exercise control of a licence to notify the ABA in writing of that position;
- whether News Ltd has provided a commercial television broadcasting service without being licensed to do so in breach of section 131 of the Act.

#### **1.4 Seven Network Limited's Acquisition and Disposal of Sporting Rights**

On 2 November 1995, the ABA was advised that Mr Geoff Cousins of Optus Vision had further information which was relevant to the ABA's investigation into the control of Seven Network Limited.

Mr Cousins was examined on 14 November 1995. He raised matters relating to the acquisition and disposal of sporting rights by SNL which were relevant to the terms of reference of the investigation.

The ABA has investigated these matters, which are discussed in Chapter 6, below.

## **2. Principles Used To Determine Whether Control Exists**

### **2.1 Meaning of “foreign person”, “company interest” and “control” under the Act**

#### **Foreign person**

The expression “foreign person” is defined in section 6 of the Act:

“foreign person” means:

- (a) a natural person who is not an Australian citizen; or
- (b) a company, wherever incorporated, where natural persons who are not Australian citizens hold company interests in the company exceeding 50%; or
- (c) a company, wherever incorporated, where:
  - (i) a company referred to in paragraph (b); or
  - (ii) natural persons who are not Australian citizens and a company or companies referred to in paragraph (b);

hold company interests in the company exceeding 50%;

#### **Company interest**

Section 6 of the Act states that where a person has a shareholding interest, voting interest, dividend interest or winding-up interest in a company, the term “company interests” refers to the percentage of the person’s interest.

Where a person holds two or more of those interests, the term “company interests” refers to the interest which confers the greatest percentage. Different types of “company interests” are not added.

Section 8 further defines the expressions shareholding interest, voting interest, dividend interest and winding up interest.

#### **Control**

As noted by the Department of Communications in a 1986 report on future policy directions, “control” is a much looser concept than “ownership”:

“Control” is a far more elusive relationship [than ownership]. Generally speaking it will be understood to mean a relationship in which one party exercises restraint or direction upon the free action of another, ie it implies domination or command. It refers to a person in a position to impose his will upon another.”

(The Department of Communications, 1986, Report on Ownership and Control of Commercial Television, Future Policy Directions),

In relation to the definition of “control” in clause 6 of the Broadcasting Services Bill, the Explanatory Memorandum states:

“Control” is a term fundamental to the operation of the ownership and control provisions of the Act. It is intended that it have a very broad meaning, covering a wide range of formal and informal arrangements whereby a person becomes in a position to exercise control over a broadcasting service licence, a company or a newspaper. This term maintains the meaning of “control” as used in the 1942 Act.

Section 6 of the Act defines in an inclusive way the methods by which control can be achieved and includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

Schedule 1 of the Act sets out the mechanisms that are to be used in deciding whether a person is in a position to exercise control of a company or licensee (s7). Clause 2 of Schedule 1 is set out in Appendix B of this Report.

Clause 2 of Schedule 1 of the Act sets out ways in which a person, either alone or together with an associate, will be in a position to exercise control of a commercial television or radio broadcasting licence. In broad terms that clause provides that a person is in a position to exercise control of a licence or a company if the person alone or together with an associate is in a position to :

1. exercise (whether directly or indirectly) control of the licensee or company: clause 2(1)(a);
2. exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee: clause 2(1)(b)(ii);
3. exercise (whether directly or indirectly) control of significant proportion of the operations of the licensee in providing broadcasting services under the licence or the operations of the company: clause 2(1)(b)(iii) and 2(1)(c);
4. veto any action taken by the board of directors of the licensee or the company: clause 2(1)(d)(i);
5. appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company: clause 2(1)(d)(ii); or
6. exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company: clause 2(1)(d)(iii);
7. or where the licensee or the company or more than 50% of its directors
  - act, or are accustomed to act; or

- under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person: clause 2(1)(e).

The ABA determined that clauses 2(1)(d)(iii) and 2(1)(e) of Schedule 1 of the Act were most relevant to the issues raised by Optus Vision and Mr Deveson.

## 2.2 Direction or Restraint

The word “direction” appears in clause 2(1)(d)(iii)(see item 6 above).

“*Direction*” is relevantly defined in *The Macquarie Dictionary*, Second Revised Edition, in the following ways:

1. the act of directing, pointing, aiming, etc.
6. order; command.
7. management; control.

The word “*direct*” is defined in the following ways:

1. to guide with advice; regulate the course of; conduct; manage; control.
2. to give authoritative instructions to; command; order or ordain (something).
9. to give commands or orders.

In the ABA’s view, in the context of the Act, the phrase “to exercise direction” refers to more than mere guidance, instruction or advice. It requires authority over a substantial issue affecting the management or affairs of the company.

The word “*restraint*” also appears in clause 2(1)(d)(iii)(see item 6 above).

“*Restraint*” is defined in *The Macquarie Dictionary*, as follows:

1. restraining action or influence.
3. the act of restraining, or holding back, controlling, or checking.

For example, control over a company’s budget is of significance because a budget can act as a restraint over the management or affairs of a company in terms of clause 2(1)(d)(iii).

## 2.3 Substantial issue affecting the management and affairs of a company

The expression the “affairs of a company” is an expression of wide import: *Bond Corp Holdings v Sulan and Ors* (1990) 2 ACSR 435. In that case Malcolm CJ at page 442-3 cited the *Oxford Dictionary*:

“affair” means primarily:

‘What one has to do, or has to do with; what has to be done; business, operation. *More vaguely* a thing that concerns any one; a concern, a matter...’

The secondary meaning of “affair” is:

- a. Ordinary business or pursuits of life...
- b. Commercial or Professional business.”

The expression “affairs of a body corporate” has also been defined in section 53 of the Corporations Law to include the “(a) the ... business, trading, transactions and dealings ... of the body” and “(c) the internal management and proceedings of the body.”

The word “*substantial*” is defined in *The Macquarie Dictionary*, relevantly as follows:

- 2. of ample or considerable amount, quantity, size, etc. [not adopted]
- 8. of or pertaining to the essence of a thing; essential, material, or important.

The expression substantial has the effect of narrowing the application of the provision. In the ABA’s view the expression “a substantial issue” in this context refers to an issue of significance or import rather than an issue which is large in size or quantity.

## **2.4 Acting in accordance with the directions, instructions or wishes of, or in concert with a person**

The expression “act in accordance with the directions, instructions or wishes of, or in concert with a person” appears in clause 2(1)(e) of Schedule 1, see item 7 above. The expression also appears in paragraph (d) of the definition of “associate”.

### **Act, or are accustomed to act**

This expression appears in clause 2(1)(e) of Schedule 1 and in para. (d) of the definition of ‘associate’.

It should be noted that clause 2(1)(e) of Schedule 1 does not use the expression “have acted” or “has acted”. In the ABA’s view, this means that the action must either exist at the relevant time or be part of a practice or custom. This interpretation of the provision is in line with the other parts of Schedule 1 which refer to a “significant proportion” and a “substantial issue”. It is not meant to catch a single immaterial instance of authority being exercised in relation to a matter but rather the continued or habitual subversion of one person’s will to another.

### **Acting in accordance with directions instructions or wishes of**

The ABA is of the view that to act in accordance with the directions, instructions or wishes of another person requires more than the mere coincidence of the act and the advice given. To interpret this provision otherwise would be to capture conduct or contracts with all kinds of parties who happen to come to a consensus or agree to enter into contractual relations with a company. What is required in terms of the expression “to act in accordance with a person’s directions, instructions or wishes” is the submission of

one's will to the will of the "controlling" party or the subordination by one party to the wishes of another.

### **In concert with**

The phrase "in concert with" appears in clause 2(1)(e) of Schedule 1 and in para (d) of the definition of 'associate'.

This expression has in other contexts been interpreted to require some form of common purpose or object. This was the view of McPherson J in *Adsteam Building Industries Pty Limited v Queensland Cement and Lime Co Pty Limited* (1984) 7 ACLC 829 at 832:

..I cannot see that it is possible for persons to "act in concert" towards an end or an object, or even to simply act in concert, unless there is at least an understanding between them as to their common purpose or object.

McPherson J in that case further stated in relation to the term "understanding" that it is to be given a broad meaning, and encompasses the other terms, namely "contract or arrangement":

"understanding is sufficiently wide to encompass and subsume the other expressions [contract or arrangement] used";

In *AMIEU v Meat and Allied Trades Federation of Australia* (1991) 104 ALR 199 at 215, French J held that the commonality of purpose requires a consensual element between the two parties:

The phrase "in concert" has been construed variously in the cases as involving knowing conduct, the result of communication between the parties and not simply simultaneous actions occurring spontaneously. It has been said to involve contemporaneity and a community of purpose which requires a consensual element... the term ... does not apply to groups ... who,... engage in similar conduct for their own respective purposes ...

Renard and Santamaria, in *"Takeovers and Reconstructions in Australia"*, at para [430] in the context of company law, state:

we are left with the clear impression that the criteria of an understanding or an arrangement between two parties apply equally in determining whether they are associated. There must be a meeting of minds, a mutual expectation about the actions and attitudes of each of the parties. Merely being members in common of the same company or organisation, or coincidentally holding similar views on a matter is insufficient to form a basis for being associated.

The ABA's view is that the concept expressed in the words "in concert with" requires a joint understanding between the parties, and is not intended to cover parties who "engage in similar conduct for their own respective purposes".

The expression "in concert with" therefore requires both joint action and an understanding between the parties as to their common purpose or object. It requires consent obtained or reached as a result of communication between the parties.

Merely being members in common of the same company or organisation, or coincidentally holding similar views on a matter is insufficient.

## **2.5 Company interests as indicia of control**

The holding of company interests is one way in which a person may be in a position to exercise control.

Where a person has company interests exceeding 15% the person is regarded as being in a position to exercise control of the company. (Schedule 1 subclause 1(1)).

There may be cases where the holding of company interests of 15% or less does place a person in a position to exercise control of the company (Schedule 1 clause 1). In the example given in the Act, a person may hold company interests of only 10%, but no other person holds company interests of more than 2% and those other persons do not act in concert.

In such cases the Act suggests the ABA may find that a person with company interests of 10% may, in all the circumstances, be in a position to exercise control of the company.

## **2.6 The expression “in a position to exercise control”**

The Full Court of the Supreme Court of Victoria in *Equiticorp Industries Ltd v ACI International Ltd* [1987] VR 485 at 489 held, in a different context, that a person would be “in a position to control” a particular level of voting power where that person had:

..an enforceable and presently and immediately existing right enabling the voting power to be controlled. It must be more than control in certain eventualities. (per Murphy, Fullagar and Gobbo JJ)

The ABA’s view is that the expression “in a position to exercise control” refers to a presently exercisable power, whether or not the power has been invoked, and whether or not control is in fact being exercised. There is no requirement that the power be a legally enforceable right.

In practice however it is difficult to determine that a person is in a position to exercise control, in the absence of a legal right to that effect, where there are no instances of the actual exercise of control.

## **2.7 Associates**

The full text of the definition of ‘associate’ s6(1) of the Act is set out in Appendix A of this report.

The introductory words of the definition of “associate” indicate that it applies in three situations:

1. control of a licence;
2. control of a newspaper; and
3. control of a company in relation to a licence or newspaper.

Thus, the term “associate” is to be considered in the context of determining whether a person is in a position to exercise control.

This is also emphasised in Schedule 1. Subparagraph 1(1) of Schedule 1 states:

“Control - general

This Schedule is intended to provide a means of finding out who is in a position to exercise control of commercial television broadcasting licences, commercial radio broadcasting licences, newspapers and companies and a means of tracing company interests.....

In some cases, it may be important to look at whether there exists *any agreement, arrangement or an accustomed course of conduct between particular people which has the effect of placing a person in a position to exercise control of a licensee or company*. In this respect, the definition of “associate” in section 6 of this Act is important.”

Paragraphs (a) - (e) of the definition of associate state that persons are associates as a result of certain relationships; but the exempting provision in the concluding words of the definition provides that persons are not associates if the ABA is satisfied of certain matters.

Thus, certain family relationships (paragraph (a)), partnerships (paragraph (b)), beneficiaries and trustees of a trust (paragraph (c)), persons who act or are accustomed to act in a certain fashion (paragraph(d)) and company relationships (paragraph (e)) create a form of deemed joint action or influence but these relationships do not of themselves cause the persons to be associates in relation to a particular company, licence or newspaper if the ABA is satisfied under both limbs of the exempting provision. (see below).

### **Joint Action: scope of “directions”, “instructions”, “wishes” and “acting in concert”**

Unlike parallel provisions in the takeover provisions of the Corporations Law, the definition of “associate” in section 6 of the Act does not specify the kinds of subject matter to which concerted action, directions, wishes or instructions must relate in order for persons to be associates.

In the ABA’s view, reference in the definition of “associate” to “acting in accordance with the directions, instructions or wishes’ of another, or “acting in concert” with another must be taken to refer to action within the scope and purpose of the Act itself. Such action need not relate directly to the operations of the company, licence or newspaper in question. However in practice the ABA will always consider, through the operation of the exempting provision, whether the persons in question act together or exert influence on each other in relation to a particular company, licence or newspaper.

### **The exempting provision**

The definition of “associate” is qualified by an exempting provision which appears at the end of the section:

...persons are not associates if the ABA is satisfied that they do not act together in any relevant dealings relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper.

This means that even if the relationship between two persons is deemed to constitute an associate relationship by paragraphs (a) to (e) of the definition, the ABA may nevertheless conclude, on the basis of appropriate evidence, that they are not associates for the purposes of the Act.

In deciding whether to apply the exempting provision, the ABA must consider whether the parties act together “in relevant dealings” and whether one is in a position to exert influence over the “business dealings” of the other relating to the company, licence or newspaper in question.



Both limbs of the exempting provision must be satisfied if the exempting provision is to apply. That is, the ABA must be satisfied that they do not act together in any relevant dealings but also that neither is in a position to exert influence over the business dealings of the other in relation to the relevant company, licence or newspaper.

“Relevant dealings” is a wide term, and its application will depend on the particular facts. In considering the “business dealings” limb of the exemption, the ABA is of the view that it must first examine the business dealings of each person in relation to the company, licence or newspaper in question and then consider whether either person is in a position to exert influence over the other’s dealings of that kind.

### **Whether associates are in a position to exercise control**

Finding persons to be associates is a separate exercise from finding those persons to be in a position to exercise control of a licence.

A number of the heads of control set out in Clause 2 of Schedule 1 to the Act provide that a person is in a position to exercise control if they, **either alone or together with an associate** (or the person and an associate of the person acting together), are in a position to do various things.

Subparagraphs 2(1)(a) - (d) of Schedule 1 require that a person together with an associate be in a position to do something. The ABA is of the view that, for the purpose of these subparagraphs, to establish that a person *together with* an associate is in a position to exercise control does not require proof of *joint intention* to control. For example, if each associate had three directors on a board of ten directors, it would not be necessary to establish that the associates intended to act together to exercise control. It is inherent in the nature of their associate relationship that they will act together and/or that one will influence another.

However, subparagraph (e) requires that, for example, a company act in accordance with the directions of a person and an associate of the person *acting together*. The ABA will therefore be required to consider joint action by the person and the person’s associate in relation to the directions.

### **Company Interests and Deemed Control**

The “deemed control” provision in clause 6(1) of Schedule 1 of the Act requires a particular person to have company interests exceeding 15% for that person to be regarded as being in a position to exercise control. There is no provision that the company interests of an associate should be added for this purpose. Nor is there any provision in the Act which identifies any circumstances in which one person is deemed to have the company interests of his associate.

In the view of the ABA, the definition of associate does not affect any issue of deemed control.

### **3. Relationships between major shareholders**

#### **3.1 Whether News (or any associates of News) and Mr Stokes are associates in relation to control of SNL**

The ABA examined this issue in light of the fact that the timing of Mr Stokes' decision to acquire a substantial shareholding in SNL and a number of seats on the SNL Board coincided with the allegation that News was in a position to exercise control of SNL. Mr Stokes' request that SNL defer its decision in relation to pay television was also made while the ABA was investigating this allegation.

The ABA has examined the following matters which could give rise to a finding of an associate relationship between Mr Stokes and News. These matters are as follows:

- there is a personal relationship between Mr Stokes and Mr Cowley,
- in the past News and Mr Stokes have had business dealings with each other. For example, News assisted in financing Mr Stokes' purchase of the *Canberra Times*,
- Mr Stokes and Mr Cowley each own shares in RM Williams Holdings Limited.

#### **The relationship between Mr Stokes and Mr Cowley**

##### *The evidence of Mr Cowley*

Mr Cowley stated that he regarded his relationship with Mr Stokes as one of friendship, but not a close friendship. He has never met Mr Stokes' family or been to his home.

Mr Cowley testified that he spoke to Mr Stokes approximately 12 times a year by phone. Mr Cowley stated that he had been aware of Mr Stokes' interest in SNL since it was floated and Mr Stokes was unsuccessful in gaining a shareholding at that time. Mr Cowley confirmed that Mr Stokes spoke to him in April 1995 to advise him that Mr Stokes had purchased 4.6% of the shares of Channel Seven, and that he intended to go to 10 percent.

Mr Cowley stated that he had a brief conversation with Mr Stokes at a Christmas drinks function hosted by Mr Stokes in Sydney in December 1994.

Mr Cowley stated that he had some concern when Mr Stokes and Grundy's both commenced to buy shares in SNL shortly after Mr Stokes and Mr Holmes were approached by the Board to become directors. He was concerned that the company was in play, and the Board had an agenda which was not disclosed to News. He accepted Mr Deveson's assurance that the company had no knowledge of the motivations of Mr Stokes and Grundy's in buying shares.

##### *Mr Stokes' evidence*

Mr Stokes testified that his relationship with Mr Cowley is a business rather than a personal relationship.

Mr Stokes and Mr Cowley first met in 1980 or 1981. At that time, Mr Stokes met with Mr Murdoch and Mr Cowley in relation to program rights for a breakfast time television program. Mr Stokes did not buy the program rights, as he had already signed a deal with Mr Packer.

Mr Stokes stated that he speaks to Mr Cowley by telephone approximately half a dozen times a year. The calls concern business matters, including the progress of RM Williams Holdings Limited. Recent topics of conversation include newsprint prices

(whether News knew of any special deals), the SNL advertising rates problem, and Mr Stokes' Boyer lectures. Mr Cowley disagreed with the views expressed by Mr Stokes in the Boyer lectures about media ownership.

Mr Stokes testified that he spoke to Mr Cowley in April 1995 to advise Mr Cowley that he had purchased shares in SNL.

Mr Stokes testified that Mr Cowley was mistaken in his assertion that Mr Cowley and Mr Stokes spoke at a Christmas drinks function held by Mr Stokes in his Sydney office in December 1994. Mr Stokes stated that he was absent from Australia from 7 December 1994 until 25 January 1995. Mr Stokes said that his Sydney office held a Christmas drinks function in his absence.

Mr Stokes stated that Mr Cowley was also mistaken in his assertion to the ABA that Mr Cowley and Mr Stokes speak by telephone 12 times a year, or once a month. Mr Stokes repeated that he spoke to Mr Cowley no more than 6 times a year.

Mr Cowley's evidence is consistent with that of Mr Stokes, subject to several minor differences.

### **The Canberra Times Loan**

#### *Evidence of Mr Stokes*

Mr Stokes first dealt with News Ltd and Mr Cowley in relation to a financing deal made between himself and News when he purchased the *Canberra Times*.

Mr Stokes purchased the *Canberra Times* from Mr Kerry Packer in July 1989. The price of the newspaper was set by Mr Packer at \$110 million. Mr Stokes could only get access to \$60 million from his own resources. Mr Stokes expressed interest in purchasing the *Canberra Times* to Mr Trevor Kennedy (an employee of Mr Packer at the time). Mr Kennedy suggested that Mr Stokes approach News Ltd in relation to financing the remainder of the purchase price.

Mr David Gonski acted as Mr Stokes' agent in the negotiations with News. Mr Atanaskovic acted for News. Mr Stokes' understanding was that Mr Peter Chegwin of News was responsible for giving instructions to Mr Atanaskovic. Mr Stokes had direct communication with Mr Gonski and Mr Atanaskovic, but not with Mr Chegwin or Mr Cowley, to his recollection.

Mr Stokes was told that News could provide the funds to purchase the *Canberra Times* if News was given an option to buy the newspaper. Mr Stokes gained the impression that News was gambling on a change to the cross media rules (News could not purchase the paper unless the cross media rules were changed). Mr Stokes did not regard it as likely that the cross media rules would change. Mr Stokes formed the view that he would benefit in either case: if the laws were changed, and News exercised the option, he would make a profit, and if News could not exercise the option, he regarded it as a low risk source of funding.

A memorandum of understanding was prepared between Mr Stokes and News Ltd, which was never executed. He nevertheless regarded himself as bound by the agreement. At a later time, News began to experience financial difficulty. Mr Stokes at that time offered to repay the loan of \$40 million, and this offer was accepted by News although News suffered a loss on the repayment.

Mr Stokes financed the repayment through increased borrowings from the Westpac Bank, and by borrowings from the Bank of Scotland.

Mr Stokes gained the impression that both News and Mr Packer were keen for Mr Stokes to purchase the newspaper so that another competitor did not purchase the newspaper.

Mr Stokes' understanding is that the *Canberra Times* loan has been repaid in full, and there is no ongoing obligation to or association between himself and News, in relation to the *Canberra Times* or any other issue.

#### *The evidence of Mr Cowley*

Mr Cowley's evidence was consistent with that of Mr Stokes. The debt has been repaid in full, and was undertaken by News for consideration of an option to purchase the newspaper if cross media restrictions were relaxed.

A point of conflict between Mr Stokes and Mr Cowley was that Mr Cowley testified he had some contact with Mr Stokes during and after the purchase by Mr Stokes of the *Canberra Times*. Mr Cowley testified that he assisted Mr Stokes to appoint a general manager and an editor to the company. Mr Cowley asserts that he suggested the appointment of Ms Michelle Grattan as editor of the *Canberra Times*.

The ABA notes that the arrangements proposed by News were not improper in terms of the broadcasting legislation of the time.

### **RM Williams Holdings Limited**

#### *The evidence of Mr Stokes*

Mr Stokes testified that Mr Cowley approached him about a proposal to invest in RM Williams Holdings Limited which was experiencing financial difficulties. Mr Stokes agreed to a small investment on the understanding that Mr Cowley took some responsibility for the management of the business.

The company then went into receivership. The Board of Australian Capital Equity ("ACE") and Mr Stokes decided to invest more money rather than lose the money already invested. The further sum required to "rescue" the company was approximately \$20 million. The "rescue" included a plan to restructure the company, and an invitation to Mr Cowley to participate in the rescue.

The rescue was effected through a company named Strathig Pty Limited, which is a company in which Mr Cowley's family and ACE each own shares. Mr Stokes' understanding is that Mr Cowley owns 50 per cent of the shares in Strathig. ACE lent money to Strathig, half of which was repaid within six months. The remaining sum of money, approximately \$7 million, is still owed to ACE by Strathig. Mr Stokes estimated that Strathig is presently worth approximately \$14 million, and so regards his loan to Strathig as fairly safe. Mr Stokes is a director of Strathig but indicated in May 1995 that he did not intend to remain a director<sup>1</sup>.

ACE owns 40 per cent of the RM Williams company separately to its investment in Strathig. This investment has doubled in value. Mr Stokes is not a director of RM Williams Holdings Limited.

Mr Stokes stated that the primary carriage of the RM Williams investment is handled in his company by Mr Ken Parker, Mr Peter Gammell, the Managing Director, and Mr Geoff Knox, a director.

#### *The evidence of Mr Cowley*

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<sup>1</sup> According to ASC records, Mr Stokes is no longer a director of Strathig.

Mr Cowley's evidence was consistent with that of Mr Stokes. He testified that his investment in RM Williams was entirely separate to his position as Chief Executive of News, and is a personal matter.

He testified that he approached Mr Stokes as he was aware of Mr Stokes' admiration for RM Williams.

### **Mr Stokes' successful attempt to gain two seats on the SNL Board**

The ABA also investigated whether Mr Stokes' seeking and ultimately gaining two seats on the Board reflected an associate relationship between himself and News.

Mr Stokes issued a requisition to the company requiring it to hold an Extraordinary General Meeting. Several different versions of the requisition were lodged. The requisition called for Mr Deveson to be removed as Chairman, and for Mr Stokes and his deputy Mr William Rayner to be appointed as directors. In several of the versions, the requisition also called for Mr Stokes to be appointed as Chairman.

However, the matter did not proceed to a vote at an EGM. Mr Stokes reached an agreement with SNL through which he obtained two directors seats, but not the Chairmanship.

Mr Ian Holmes gave evidence to the ABA about the process of reaching an agreement with Mr Stokes in this matter. He stated that SNL reached agreement with Mr Stokes rather than face the destabilising prospect of an EGM in the full glare of publicity, where the company's position might not be successful.

Mr Holmes was appointed as Chairman on 11 May 1995. He gave evidence to the ABA on 20 June 1995.

Mr Holmes was responsible for the conduct of the negotiations with Mr Stokes which led to a resolution of the requisition issued by Mr Stokes.

#### *Evidence of Mr Holmes*

Mr Holmes stated that initially there was a strongly held view on the SNL board that Mr Stokes should be offered only one seat. The Board's view changed as Mr Stokes' shareholding increased to a point where it was marginal whether he was entitled to one or two seats. The Board's view was that as Mr Stokes' shareholding increased, his demand for two seats was reasonable, particularly as he became the major shareholder, as distinct from the second or the third shareholder.

The Board was keen to resolve the situation above all else. Mr Holmes stated the Board wanted to resolve the situation because it was not going to be a nice process to go to an EGM which would expose the company to public war. The Board's view was that it would be best to avoid that if possible.

The Board considered it was a strong possibility that its position would not be successful if the matter proceeded to a vote at the Extraordinary General Meeting. The Board's perception of the shareholders' attitudes to the EGM was as follows:

- The Board was not certain whether News and Telstra would support Mr Stokes.
- News and Telstra were dissatisfied because of the company's decision to go with Optus Vision in the pay television decision.
- Many of the shareholders, including the major shareholders, were dissatisfied with the company's performance over the rate card problem.
- Some institutions had sold some shares in the company.

- There was a general feeling among the shareholders that major changes needed to be made in the company, and there was a question mark about whether the change of Chairman to Ian Holmes was sufficient.

Mr Holmes made public statements to the effect that SNL would not agree to more than one seat while privately not remaining committed to this position. He regarded it as important that the company did not give ground completely, and negotiations were focussed to this end.

SNL reached an agreement with Mr Stokes that Mr Holmes would retain the chairmanship, Mr Stokes would drop the threats of litigation set out in his correspondence of 18 May 1995, and Mr Stokes would get two seats on the Board. The matter did not proceed to public vote at an EGM.

Mr Holmes was directly questioned about what factor caused the Board to change its position on offering two seats to Mr Stokes. He referred to the fact that the Board preferred to avoid a public fight at the EGM, and to resolve the matter. Finally, as stated above, the Board's view was that an offer of two seats in the end was reasonable, given that Mr Stokes' shareholding increased during the time that the Board was considering the matter and he became the major shareholder.

The evidence suggests that there is a friendly business relationship between Mr Cowley and Mr Stokes, which has continued through the RM Williams shareholding, part of which is held jointly by Mr Cowley in his personal capacity.

The loan of \$40 million dollars (for the purchase of the *Canberra Times*) by News to Mr Stokes has been repaid in full, and there are no outstanding obligations

The ABA accepts the evidence of Mr Stokes that his share buying activities in SNL were triggered by his own long held desire to own a controlling interest in one of the three Australian commercial television networks and were not related to any instruction, direction or wish of News. The evidence of Mr Deveson, confirmed by Mr Cowley, that Mr Cowley was genuinely surprised and concerned about Mr Stokes' share buying confirms this view. Mr Deveson gave evidence that Mr Cowley phoned him to ask what he knew about Mr Stokes' (and Mr Holmes') intentions once the share buying commenced.

The ABA accepts the evidence of Mr Stokes that, after being visited by members of the SNL Board, including Mr Deveson, where Mr Stokes was offered a seat on the SNL Board so long as he restricted his shareholding to 3%, he saw an immediate opportunity to acquire a strategic interest in SNL.

There is no evidence which the ABA has discovered which indicates that Mr Stokes has acted or now acts in accordance with the directions, instructions or wishes or in concert with News, or News and an associate acting together, in relation to any of his dealings at SNL. Recent events such as the agreement between Fox and the Nine network tend to indicate that News and Mr Stokes do not act together in relation to dealings at Seven.

## FINDINGS

On the basis of the evidence before it, the ABA finds that:

*There is no evidence that Mr Stokes has acted in association with News by buying into SNL.*

*The relationship between Mr Cowley and Mr Stokes has not been a factor in the purchase of shares in SNL by Mr Stokes.*

*There is no evidence of an association between Mr Stokes and News in the process through which Mr Stokes gained two directors' seats on the SNL Board.*

## **CONCLUSION**

*Mr Stokes and News are not associates in relation to control of SNL.*

*Mr Stokes and Mr Cowley are not associates in relation to control of SNL.*

## **3. 2 News and Telstra**

News and Telstra have had business dealings together over a period of time, apart from their respective shareholdings in SNL. The ABA has heard evidence of the following dealings between News and Telstra:

- The PMT consortium;
- Offshore development of broadband services in the Asian Pacific - memorandum of understanding dated June 1993;
- Heads of agreement to establish by means of a joint venture a leading broadband video home entertainment business in Australia (November 1994).
- News, Telstra and Australis Media Limited signed a heads of agreement dealing with reciprocal programming and distribution understandings (December 1994).
- A more specific umbrella agreement to establish by means of a joint venture a leading broadband video home entertainment business in Australia (March 1995).
- An agreement between a News subsidiary, a Telstra subsidiary, and Foxtel Digital Cable Television Pty Limited ("Foxtel Digital") to enter into a partnership in the business of providing subscription entertainment services to subscribers.

The ABA examined Mr Frank Blount on 5 May 1995 in relation to matters relevant to this investigation. A summary of his evidence follows:

### **The PMT consortium**

News and Telstra joined this consortium formed in April 1993 to pursue involvement in pay television. The consortium consisted of News, Telstra, and the Nine and Ten networks. PMT dissolved in September 1994 without having taken an active role in the emerging pay television industry.

### ***Evidence of Mr Blount***

The demise of PMT had a great deal to do with Telstra and News forming a firmer relationship. I went on record fairly early that the best thing that could happen to us is to all agree to get out by mutual agreement, and if we did that I could form a partnership with somebody I could work with who really wanted to do something and what I had in mind was News.

## **Memorandum Of Understanding on offshore development of broadband services in the Asia Pacific**

Mr Blount stated that three events were closely juxtaposed in time, though not strategically. These events were the formation of PMT, Telstra's acquisition of a shareholding in SNL (see evidence below) and discussions relating to a possible Asian joint venture between News and Telstra.

News and Telstra signed a memorandum of understanding (MOU) in June 1993, which included an intention to cooperate in relation to Asian ventures.

### *Evidence of Mr Blount*

[Mr Blount stated he met with Mr Rupert Murdoch in Hong Kong, at about the time of the float of SNL and the formation of PMT,] "to talk about an offshore Australian broadband MOU all about the same time.... PMT was being formed. What we were attracted to there was offshore development, not Australian development, but offshore development of broadband services in the Asian Pacific primarily.

My recollection is we didn't make a lot of progress but we made a lot of attempts during that ensuing ... nine months to a year after the MOU was signed....."

Mr Blount gave evidence that the memorandum of understanding signed in June 1993 was subsumed into the heads of agreement signed by News and Telstra in November 1994.

## **Heads of agreement between News and Telstra**

News and Telstra entered into a Heads of Agreement on 11 November 1994. The ABA has obtained a copy of this agreement which states relevantly at clauses 1.4 and 1.5:

1.4 The purpose of these Heads of Agreement is to record the basis on which News and Telstra will, in pursuit of that common objective ["participation together in business opportunities presented by the convergence of the technologies involved in their existing businesses"], work together in a manner consistent with the regulatory environment in Australia to establish by means of a joint venture a leading broadband video home entertainment business in Australia.

1.5 These Heads of Agreement set out the key matters agreed between the parties relating to the scope of the joint venture and its territorial reach and its management and control, the terms upon which Telstra and its subsidiaries will provide broadband network facilities to the joint venture and the manner and terms upon which the joint venture will obtain programming content.

### *Evidence of Mr Blount*

We were going to bring the infrastructure and certain management expertise at running subscriber management systems and cable management systems ... they [News] were going to bring content, and their ability to also assist in the running of customer service operations for pay television operations.

The heads of agreement has a much broader scope than pay television in domestic Australia; it really is trying to cement the relationship we started with an MOU which as you know is a pretty loosely worded document.... Heads of agreement was much more specific about the things we were going to do....

## **Programming agreement between News, Telstra and Australis**



On 25 December 1994 News and Australis Media Limited signed a heads of agreement, dealing with reciprocal programming and distribution understandings. The agreement by News was subject to Telstra's approval.

Mr Blount stated that the agreement came about as a result of a programming coup by Australis with the Hollywood studios in relation to movie rights.

Mr Blount stated that Telstra negotiated separately with Australis, and became a signatory to the agreement struck by News and Australis, some weeks after the News/Australis agreement was signed in December 1995:

"It [the agreement between News and Australis] couldn't be confirmed until they got back to discuss it with me and that caused another .. several weeks of negotiation between me and Australis and News; not so much with News, but me with Rod Price, to make sure I understood what they had agreed to on my behalf, and to get a little better deal for Telstra during that ensuing whatever it was - five weeks.

Mr Blount stated that Telstra had not delegated authority to News to negotiate on Telstra's behalf with Australis:

"First of all, they didn't have any authority to clinch any deal. Everything had to be confirmed by their 50 per cent partner, which was me, which was Telstra. When I got back, I got into intense negotiations then as a starting point using the agreement they had put together .... to make sure we were doing the right thing by Telstra and we did get, I think, substantial improvement in the terms and conditions after we bargained long and hard.

Mr Blount stated that the agreement between News, Telstra and Australis was finalised in late January 1995.

### **Umbrella agreement - broadband video home entertainment sector**

News and Telstra entered into an umbrella agreement on 9 March 1995. The ABA has obtained a copy of this agreement which states relevantly at clauses 2.1 and 2.2:

- 2.1 This agreement is intended to set out the terms of the Alliance between News and Telstra and the overall structure of the businesses to be established within the scope of the Alliance and to identify the relevant entities and contractual arrangements that will initially be established in order to accomplish the business objectives set out in clause 2.2.
- 2.2 The parties agree that the objectives of the Alliance are:
  - (a) to establish through Joint Venture Entities, leading businesses within the broadband video home entertainment sector in Australia..

Clauses 3.1 and 3.2 state:

- 3.1 The scope of the Alliance is all businesses within the broadband video home entertainment sector which comprise businesses which provide or manage the provision of Services. The purpose of this clause 3 is to define Services and by doing so to define the scope of the Alliance.
- 3.2 In this agreement **Service** means, subject to clauses 3.3, 3.4 and 3.5, a service that:

- (a) delivers to a Residential Subscriber either a Video program on a Television or an Audio Program via a Set-Top Unit...

Thus, the agreement relates to services “delivered by means of telecommunications” to “residential subscribers”, whether video or audio.

### **Programming Agreement Between News, Telstra and Australis**

On 9 March 1995, Telstra also entered into a heads of agreement with News, the News/Telstra joint venture, Australis Media Holdings Pty Limited and Galaxy Network International Pty Limited. The agreement set out in general terms program supply arrangements between Galaxy and Foxtel and certain cross equity arrangements.

### **The Foxtel television partnership agreement**

This agreement provides at clause 2.1:

#### **Objective and Scope**

The Partners [a News subsidiary, a Telstra subsidiary, and Foxtel Digital Cable Television Pty Limited] agree to enter into and carry on in partnership the business of managing the business of the Broadcaster [Foxtel Digital Cable Television Pty Limited] so that the Broadcaster establishes a leading business of providing Subscription Entertainment Services to Subscribers on Television in Australia.

This agreement is in effect a specific development of the arrangements already put in place through the heads of agreement and the umbrella agreement.

### **News and Telstra as shareholders in SNL**

Both News and Telstra have substantial shareholdings in SNL, with News holding 15% and Telstra 10% equity in the company.

The ABA considers that the following matters are relevant to the question of a possible associate relationship between News and Telstra:

- The decision by Telstra to become a shareholder in SNL,
- the pay television decision made by SNL on 28 April 1995.

### ***The decision by Telstra to become a shareholder in SNL***

The evidence of Mr Blount is that Telstra decided that the shareholding in SNL would be an ideal way for Telstra to learn more about the “content business”.

#### ***Evidence of Mr Blount***

The decision to become involved in SNL as a shareholder came about because one of our market staff, Harvey Parker, probably because of his association with Malcolm Colless from News, had approached me about us [News and Telstra] trying to do something together in the pay television business and that we [Telstra] needed to learn more about the broadband business. What better way to do that than to have a board seat and to have one of our senior executives participate in a content business. So ... we decided after a lot of due diligence with our board and with discussions with Ivan [Deveson] to perhaps take up some shareholding in the float that did culminate in a 10 per cent interest in the company. ....[Mr Blount stated that through the shareholding, Telstra obtained] a board seat at the same time. The intention was principally to learn

more about the content business by having a board representative and to be a shareholder in a content business.

Mr Blount stated that although the involvement of Telstra in PMT and in the SNL float were closely juxtaposed in time, they were separate decisions:

PMT was an active discussion which means, I was talking to Kerry Packer to Rupert [Murdoch], to Channel Ten and all of those people about the same time .... Separate from that, but close juxtaposed in time, we [Telstra] had Harvey Parker coming forward saying, "We really ought to be getting into the broadband business and we need to learn more about it". He heard there was going to be an opportunity to get into Channel 7 and he really is the one that proposed the paper that went to the board that said maybe we ought to think about putting some equity in Channel 7 and getting a board seat....

There were no inter-dependencies between PMT, Channel Seven and us laying out a broadband cable decision to my knowledge; there's no connectedness there at all. In fact, it was a big issue at the board to make sure there was no connectiveness. We're not doing this because there's a connection; we're doing this as stand alone decisions.

### ***The pay television decision***

#### *Evidence of Mr Blount*

Mark Booth had the conduct of the negotiations on behalf of Foxtel with Seven. Prior to Mr Booth's appointment, there were no major negotiations concerning pay television.

I had been getting all kinds of signals, either through Paul Rizzo, our board member at Seven, or I've gotten direct contact, ... would I please make contact with Ivan Deveson or with Bob Campbell, and it was always about, why don't you guys give us some time, we really want to, quote "join the camp". My response always was, we're not trying to lock you out of any discussions, but the fact is, I don't have any more people to put on this.... we just couldn't take another party entering into a discussion at that time, I just couldn't accommodate them. So I kept trying to keep peace with Ivan because of my shareholding there. Give me a few weeks, if I can wrap this up, then we'll put the team with Channel Seven. ... I kept saying, look, ... tell me what you need in writing, what would you like to have - what is your proposal? If you do that for me at least I'll have something on the record and then I start going to work on that as soon as I could and that's when we finally got a letter in late February.

We finally got a letter about 28 February, ... and I said, we'll get back to you as quick as we can and that took place ... I called them to let them know I've received it [the letter] and made sure I understood the content of it. I think that was probably Bob Campbell, it could've been Ivan but the point I want to make is during this time, there were lots of entrees coming from them saying why don't you guys give us attention.

After the Australis agreement was signed in March, Telstra was able to give more attention to the overtures from SNL.

#### *Evidence of Mr Blount*

Finally we said, now we can meet with Channel Seven and that took place on 17 March. We met at News with Cowley and me and Craig Cameron, my business development person, Ivan Deveson, Bob Campbell, Cowley, Blount - Mockridge may have been there, I just don't remember. We then listened to their offer through that letter... By the way, this is important, on the advice of counsel, I started the meeting up front by saying I want on the record to note that I'm here, not as a share owner of Channel Seven, I'm here as a partnership in Foxtel and I was even told by my counsel not to come to this meeting

to meet individually with you, that was I'd meet with you then let Ken [Cowley] meet with you but I've now gotten counsel that says that if I disclaim that up front and make sure you understand that if anything turns to what are we doing together as a group with Channel Seven, I'm walking out of the door. To which I remember very well, Ken Cowley says something like, after I got through with my speech, the same applies to me. [Ken Cowley] basically said the same thing, "I agree with Frank and you can just register that for me. I'm here as a partner with Foxtel and MOCO [the proposed holding company in the Foxtel structure] and we're here to listen to your proposal for participating in this joint venture in some way".

When asked whether News negotiated with SNL on Telstra's behalf in relation to pay television, Mr Blount replied:

Their [News'] key people were tied up just like mine. There was Mockridge, Chisholm, Bruce McWilliam - the lawyer, Ken Cowley himself.... It really was those four, four or five key people, they were the same ones locked up with us, day and night. So, my sense was there was no ability for me to go say well News, you go do it. By the way, even if there were, I would prefer to have a joint approach to that because frankly I felt like that the deal that Australis and News - that News did with Australis wasn't as tight as I would have liked to have had it and I would rather have been at that table. So, I said I've learned from that, next time I'm going to be there, to have my interest personally looked after at the same time....

Representatives of Telstra and News met in the week from 17 March 1995 (following the initial meeting with SNL representatives) to 22 March to develop the proposal which Foxtel would put to SNL in relation to pay television:

We developed [the proposal] during that ensuing week with Mark Pearson, Craig Cameron and my people. The board [of Telstra] decided to authorise me to make that deal if News agreed with it.

Mr Blount stated he met with News representatives including Mr Murdoch and Mr Cowley on 22 March 1995 in Sydney:

We did have a fairly lengthy discussion for probably an hour and a half in the board room at News going over not only their offer but our proposal to counter that offer. That is to come back and say here is how we will respond....

The purpose of this [meeting] was to take Rupert [Murdoch] through what we were going to propose to do in terms of offering a sports channel and a seat on the board and what was our back up position if that didn't work and if we go further and if so how much further, what was our bargaining strategy and we spent probably an hour, and hour and a half on that. He agreed, we all agreed that that was going to be our proposal to offer to Seven. I left the country and it was going to be Ken Cowley to get in touch with Ivan and make that offer while I was away...

Mr Blount then was in contact with Mr Cowley and Mr Booth to see if a proposal could be developed to "sweeten the deal" for SNL:

After I returned on 1st, 2nd or 3rd, [April] whatever that was, I think I probably had two or three phone calls from Cowley, one or two or three from Mark Booth, talking about what we were trying to do to sweeten the offer to Channel Seven and present something to them that maybe satisfied their needs.... So, the next thing I know is I get a call from Ken [Cowley] one day, it must have been about a week before 24 April. Maybe around the 17th, I don't know exactly, and he was suggesting that we really need to be heard by the board of Channel Seven and how did I feel about going before the board of Channel Seven to make a presentation because he really wondered whether or not the true

package that we were offering was getting through to the management - the chairman and the management - the CEO to the board.

Mr Cowley suggested that Mr Blount, Mr Booth and Mr Cowley make a presentation to the Board of SNL:

*Evidence of Mr Blount*

I said fine as long as it's done here in the context of the two partners of Foxtel, not the owners of stock in the company, back to the same notion I had at the meeting that day with Bob, Ivan and Ken at News. And then I'm the one, as I recall, that said, wait a minute, why don't we just write a letter - and it is now a matter of record - jointly signed by both of us which says we really think it's in the share owners interests of Channel Seven to hear us out at the full board meeting as opposed to going through just the management.

A letter on Foxtel letterhead was sent to SNL. Mr Blount and Mr Cowley signed the letter as shareholders of Foxtel. The letter was sent on the Wednesday before the presentation to the SNL Board.

Mr Blount and Mr Booth on behalf of Foxtel made a formal presentation to the SNL board on Monday 24 April 1995.

*Evidence of Mr Blount*

So Mark [Booth] and I went over the board meeting on that afternoon ... - we did a little bit of preparation in terms of what I was going to do to kick it off and then he was going to make the basic proposal and then I'd come back, wrap up and they would respond to any questions. I got called at home on Anzac Day from Mark Booth as I recall, telling me that he'd like my approval to work on another proposal which was a pure service provider arrangement, that the board had decided on Monday night late. By the way I also got this from Paul Rizzo who evidently had been alerted Monday night as a board member ... [I was informed] that the whole ground rule had changed and they now didn't want to have equity, they wanted us to go put together just a pure service provider arrangement which would probably include us having to negotiate something with Australis and with News and with Seven to do what they were suggesting we would do.

SNL suggested that Foxtel prepare a proposal on the basis that SNL would supply programming to Foxtel, and would not become an equity partner in Foxtel. Mr Booth and Mr Blount worked to prepare a proposal on this basis, but were under a tight deadline of 48 hours.

*Evidence of Mr Blount*

I said, For gosh sakes, Rod Price is in London about to go to the United States, Rupert [Murdoch] and Ken [Cowley] I believe were both in London, we're over here. It's now 48 hours before the Channel Seven imposed deadline that you've got to have something in on Thursday night ...[at] eight o' clock. ... I said, all I tell you is we'll do the best we can. So we worked like little beavers for about 48 hours and finally Mark Booth called me back on Thursday night and said, I think our best choice is just to withdraw. This is crazy.... In the middle of that Ken Cowley wrote on his own, I found out later, to have the date moved, have the deadline moved to give us more time. They refused in writing and Mark Booth had also written one [letter] to Bob Campbell, I believe, asking for the same thing and they were both refused, to which we just finally said around at seven, six

thirty on Thursday night, we're just going to withdraw and that's about the history as I know it.

### *Evidence of Mr Deveson*

In the context of Mr Deveson's account of the receipt by the board of a letter dated 27 April 1995 from Mr Ken Cowley, Mr Deveson described the reaction of the Telstra nominee, Mr Paul Rizzo to receiving the letter. [Mr Cowley's letter in effect warned the SNL directors to bear in mind their personal liability in relation to the pay television decision.] Mr Deveson described how the original deadline of 10:00 am had already been moved to 8:00 pm, and the board did not wish to extend it further. Mr Deveson and the other directors who were discussing the letter from Mr Cowley returned to the main board room to inform the News and Telstra nominees of the developments. By Mr Deveson's account Mr Rizzo was "absolutely surprised" by the letter, and he immediately phoned the CEO of Telstra, Mr Blount, to tell him of the initiative. Mr Rizzo informed the meeting that Mr Blount had no knowledge of the letter. Mr Deveson testified that Mr Rizzo's reaction convinced him it was a News initiative, and that Foxtel were not a party to the letter.

### **Role of Mr Rizzo**

Mr Rizzo advised the ABA in a letter dated 24 April 1995 that:

Since my appointment, I have never participated in any discussions at Board meetings in relation to Foxtel or Optus Vision. If the subject of Foxtel or Optus Vision arises for consideration as an agenda item at a Board meeting, I leave the room while that agenda item is considered and any decision made in relation to it. If a Board meeting is called specifically to deal with Foxtel or Optus Vision, I do not attend that meeting at all...there has never been any suggestion by anyone at Telstra to me that I use my position as a director of the Seven Network to influence its decision in relation to Foxtel or Optus Vision. In fact, my fellow executives at Telstra are aware that I have excluded myself from any involvement in the discussion of Foxtel or Optus Vision at the Seven Network Board level.

### *Evidence of Mr Rizzo*

Mr Rizzo testified that on 28 February 1994 he absented himself from an SNL board meeting due to a potential conflict of interest. He stated that his awareness of the need to exempt himself from discussion and decisions on the Seven board about their strategic involvement in pay television would have started around about that time.

Mr Rizzo testified in the context of questioning related to his (and Telstra's involvement in the pay television decision) that he was "pretty ignorant of what was actually going on".

The minutes of the SNL Board support Mr Rizzo's testimony. The minutes of the Board meeting of 29 August 1994 note that:

The Chairman advised that, at his request, Mr Paul Rizzo had agreed to absent himself from the meeting whilst a matter of sensitivity and conflict with regard to Telecom was discussed.

Minutes of the Board meeting of 30 September 1994 state in relation to the discussion of Optus Vision that:

The Chairman advised that, at his request, Mrs Boling and Mr Ward [alternate for Mr Rizzo] had agreed to absent themselves from the meeting because of potential conflicts.

## **CONCLUSION**

In the view of the ABA, it is not necessary in the context of this investigation to reach a conclusion as to whether Telstra and News are associates in relation to control of SNL. This is because the ABA has formed the view (discussed in detail in the chapters below) that, whatever view is taken of the relationship between Telstra and News, there is no evidence that News is, together with Telstra, in a position to exercise control of SNL.

#### **4. SNL's Consideration of Competing Proposals for Pay Television Alliances**

Optus Vision alleged on 24 April 1995 that, on a number of occasions, pressure had been applied by News personnel to SNL executives and Mr Ivan Deveson in relation to the approaching decision about pay television. The ABA has investigated these alleged instances of pressure, and these are considered in this part of the report.

The ABA also examined written statements submitted by Mr Deveson to the ABA.

If the ABA found evidence that confirmed the above allegations, this could be relevant to the question of whether, in terms of clause 2(1)(d)(iii) of Schedule 1, News was, either alone or together with an associate, in a position to exercise, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of SNL.

Oral and documentary evidence obtained by the ABA demonstrated that the Board and senior management of SNL devoted considerable time and effort to reaching a commercial agreement with a pay television operator, and viewed the issue as an important one for the company. The sporting rights held by SNL were considered to be major assets for the company. The Board considered the matter regularly at Board meetings, and viewed a number of presentations by pay television operators about their proposals. Major milestones and decisions about pay television were announced by SNL to the Australian Stock Exchange. Media commentary at the time of the pay television decision emphasised the strategic significance of the decision.

#### **FINDING**

*Based on the evidence before it, the ABA finds that the consideration by SNL of competing proposals for agreements with pay television operators was a "substantial issue affecting the management or affairs of" SNL, within the meaning of clause 2(1)(d)(iii) of Schedule 1.*

#### **4.1 Background : competing proposals for a strategic alliance**

From at least mid-1994 to the day of the Board's final decision, SNL had been assessing the commercial benefits of forming an alliance with the Optus or the News/ Telstra groups.

On 28 February 1995 SNL wrote to Optus Vision and Foxtel to offer them the possibility of participating with SNL in a pay television venture. Extensive discussions took place between executives of SNL and executives of Foxtel, News and Telstra, and of Optus Vision in relation to possible agreements. Mr Sean O'Halloran, Director, Broadcast Policy, SNL, was primarily responsible for the conduct of these discussions and negotiations on behalf of the SNL Board.

Optus Vision, led by Mr Geoffrey Cousins, made a presentation to the SNL Board on 10 April 1995. Foxtel (including representatives of its joint venture partners News and Telstra) also made a presentation on 24 April 1995 to the SNL Board, led by Mr Frank Blount (Telstra) and Mr Mark Booth (Foxtel).



The SNL Board set a deadline of 8 pm on 27 April 1995 for the two contenders for an alliance with SNL to submit their best proposals to the Board. The deadline had been extended from 10 am the same day at Foxtel's request. However, only the Optus Vision consortium submitted a proposal.

The Board minutes of 27 April 1995 indicate that the Board also considered a letter from Foxtel at that meeting. Foxtel requested an extension of time for its offer proposal until 5 May 1995. The minutes record that the delay was said by Foxtel to be due to SNL reorienting its preference away from an equity position to one focussed on program supply and channel participation. The view of the Board was that Foxtel would not be capable of delivering a competitive offer by 5 May 1995.

The ABA also heard evidence from Mr O'Halloran and Mr Campbell that there was a consensus within the SNL Board to make a pay television decision sooner rather than later, because SNL's commercial bargaining power was then optimal.

#### *Evidence of Mr Campbell*

Mr Campbell was asked what, in his view, was the catalyst for the SNL pay television decision. He replied that the view of the SNL Board was that if the decision was delayed much longer their leverage would dissipate. Mr Campbell said that SNL believed that at that time they had their maximum leverage to get the best deal out of one or the other of the contending pay television operators and if SNL were to leave it much longer that leverage might not be as acute as it was then.

At the Board meeting on 27 April 1995 the Chairman (Mr Ivan Deveson) advised the Board that Foxtel had indicated that an offer would not be delivered by 8.00 pm, and nor would a presentation be made to the SNL Board on the following day.

The minutes record that the SNL Board noted that News and Telstra had been on formal notice since 28 February 1995 that the Board would be making an in-principle decision on pay television at its meeting on 28 April 1995.

The Board met the next day (Friday 28 April 1995) to discuss again, and finalise, the pay television decision. The SNL Board decided, subject to due diligence processes, to enter into an agreement with Optus Vision Pty Ltd.

Immediately after the Board meeting, the News and Telstra nominee directors on the SNL Board (Mrs Boling and Mr Rizzo) were informed of the decision by SNL. These directors had not participated in the decision making process.

On 22 May 1995 it was announced by SNL that, following a period of due diligence, it had signed the shareholders' agreement with Optus Vision. It announced that the deal had both programming supply and platform equity aspects and that it represented "an outstanding arrangement for our shareholders".

#### **4.2 Did attempts by News to influence the decision place it in a position to exercise control of SNL?**

In evidence to the ABA a number of witnesses referred to situations in which News had allegedly attempted to influence SNL. The ABA has considered a number of instances where News may have sought to direct or restrain the pay television decision which the Board was to make on 28 April 1995.

**Summary of instances of alleged pressure:**

- a meeting in Osaka, Japan, between Mr Deveson and Mr Cowley on 30 November 1994 where Mr Cowley allegedly accused SNL of being “too independent”;
- a meeting between News and SNL executives at News Ltd in Surry Hills on 13 December 1994 where Mr Cowley allegedly asserted that the cross media rules would soon be changing, enabling News to take a larger shareholding in SNL;
- at the same meeting, Mr Cowley allegedly suggested that a second executive from News could be put on the SNL Board;
- a meeting between News and SNL executives at News Ltd in Surry Hills on 22 March 1995 where Mr Murdoch allegedly expressed displeasure that SNL were “still talking to Optus Vision”;
- a meeting between News and SNL executives at News Ltd in Surry Hills on 4 April 1995, at which senior News executives allegedly proposed a confidentiality and “standstill agreement”;
- after this meeting, Mr Cowley allegedly accused Mr Deveson of “leading the charge” to Optus Vision;
- at the same time, Mr Cowley allegedly suggested to Mr Deveson that News should secure a second seat on the SNL Board.
- a telephone conversation on 13 April 1995 between Mr Cowley and Mr Deveson where Mr Cowley allegedly said to Mr Deveson that he should not make any decision on pay television without “negotiating the thing through him”.

### **4.3 Meetings with News**

**30 November 1994**

Mr Deveson gave evidence in a written statement to the ABA, which was confirmed in his testimony, that he had a meeting with Mr Cowley in a hotel in Osaka at 3:00 pm on 30 November 1994.

*Evidence of Mr Deveson*

Mr Deveson testified that when he and Mr Cowley met in Osaka, Japan, Mr Cowley said he thought the SNL Board was being “too independent”. Mr Deveson said that he

was shocked to hear this comment. Mr Deveson said that he hadn't given the independence of his Board any thought whatsoever. In his view the SNL Board was operating as a normal board should and he was shocked at hearing the word independent used against him.

In his written statement to the ABA dated 25 April 1995 Mr Deveson also noted that at the meeting Mr Cowley had said that News was unhappy that SNL had joined Optus Vision in 1994.

#### *Evidence of Mr Cowley*

Mr Cowley said that during that meeting [in Osaka] he was expressing his disappointment that there seemed to be a hostile attitude towards News from the Seven Network.

Mr Cowley was asked whether he would have expressed that to Mr Deveson at their meeting in Osaka, that he was concerned that they were perhaps a bit too independent. Mr Cowley said that he wouldn't have used the words "too independent" but he felt that there were benefits to the Seven Network if they had a closer and warmer relationship. Mr Cowley said that was basically the thrust of that meeting.

Mr Cowley said that Optus Vision would have been one of the issues discussed. When asked whether one aspect of the "hostile attitude" was Seven's attitude towards Optus Vision, or their continuing talking to Optus Vision, Mr Cowley replied that it wasn't at that stage.

There is some conflict between the evidence of Mr Deveson and Mr Cowley regarding the precise detail of the conversation. The ABA is satisfied that Mr Deveson reasonably understood Mr Cowley to be conveying disapproval of the conduct of the Seven Board, whatever the precise words used.

### **13 December 1994**

The ABA heard evidence that at a meeting between News and SNL executives at News Ltd's offices in Surry Hills, Sydney, Mr Cowley made certain comments in relation to the cross media rules and a second Board seat for News.

#### *Evidence of Mr O'Halloran*

Mr O'Halloran gave evidence that at the meeting between News and SNL executives Mr Cowley indicated that forthcoming changes to the existing cross media limits would enable News to lift its stake in SNL. Mr O'Halloran said that Mr Cowley gave no justification for this assertion.

#### *Evidence of Mr Cowley*

Asked was it possible that during the meeting he indicated that forthcoming changes to existing foreign and cross media limits will enable News to lift its stake in Seven to 25 per cent and that News will take the opportunity to do

so, Mr Cowley testified that there was a good chance he did say it, but he did not recall it. He did not believe that it was a negotiating tactic. He did not think that he was trying to terrorise them about the future.

#### *Evidence of Mr O'Halloran*

Mr O'Halloran also gave evidence that Mr Cowley suggested that one way of underwriting the possibility of more meaningful things happening between the two companies [News and SNL] would be to put a second executive from News onto the Seven Board.

#### *Evidence of Mr Cowley*

Mr Cowley did not remember inviting Mr Deveson and Mr Campbell to consider making a second board seat available for News.

While Mr Cowley does not specifically recall these matters, the ABA accepts Mr O'Halloran's recollection that the matters were raised.

### **22 March 1995**

The ABA heard evidence that Mr Murdoch had expressed his displeasure that SNL directors were associating with the Optus consortium.

#### *Evidence of Mr Deveson*

Mr Deveson gave an account of a meeting between SNL and News Executives on 22 March 1995 at News' offices in Surry Hills. He described how Mr Murdoch had opened the meeting by expressing his disappointment that he (Deveson) was "still talking to Optus Vision". Mr Deveson said he thought it was a serious comment.

#### *Evidence of Mr Campbell*

I think there was one throw away comment made by Rupert Murdoch, who said "Oh, God, you're still speaking to Optus Vision", said, in my view, in a tongue in cheek manner, knowing full well that we were continuing negotiations with Optus Vision.

#### *Evidence of Mr Cowley*

When asked whether it was possible that Mr Murdoch opened the meeting by expressing his disappointment that the Network was still talking to Optus Vision, Mr Cowley replied that Mr Murdoch may have. Mr Cowley said that Mr Murdoch may have had some opening joust with Mr Deveson but it was a pretty relaxed sort of meeting and it was a meeting of no importance so Mr Cowley really did not recall whether Mr Murdoch did or not.

The ABA is satisfied that Mr Murdoch made remarks to the effect of those ascribed to him by Mr Deveson.

### **4 April 1995**

(i) Standstill Agreement

The ABA heard evidence that at a meeting at News Ltd in Sydney on 4 April 1995, senior News executives urged SNL directors to sign a confidentiality and “standstill” agreement which would have had the effect, if signed, of preventing SNL from engaging in further negotiations with Optus Vision for three months. The agreement was put forward by Mr Booth of Foxtel and Messrs Mockridge and Cowley of News. Mr Deveson, Mr Campbell and Mr O'Halloran from SNL were also present. The ABA heard evidence that the agreement had been proposed because SNL had requested more detailed financial information from Foxtel and a request was subsequently made by Foxtel that SNL should therefore enter into a confidentiality and standstill agreement.

The ABA obtained a copy of the proposed agreement. Clause 2 required that, during the term of the agreement, the parties not “enter into discussions with any other person or entity”. The ABA considers that this clause and the clauses encompassing exclusive dealing and confidentiality arrangements between News and SNL were not inappropriate in themselves, if the agreement was entered into by SNL on the basis of its independent judgement of the merits of doing so.

*Evidence of Mr Sean O'Halloran*

Mr O'Halloran testified that either Mr Cowley or Mr Booth said that SNL would need to sign a confidentiality agreement before News would take its proposal further. Mr O'Halloran then said that he asked whether the agreement was a conventional one requiring no disclosure of confidential information or was it something of more substance. He said that someone from News' side then said that it was a little bit stronger than that. Mr O'Halloran testified that having read a particular clause he made the observation that it was a standstill that stopped SNL from even talking to Optus Vision. He said that was the way that it unfolded, but it was actually tabled as a "confidentiality agreement".

Asked whether during that meeting there was any pressure brought to bear on SNL by any one of Messrs Booth, Cowley or Mockridge to sign a substantive agreement, Mr O'Halloran replied: “No, only in the sense that their position was that they wouldn't be telling us any more about Foxtel until we had signed the agreement”.

(ii) Second Seat on Board

The ABA heard evidence that at this meeting Mr Cowley suggested to Mr Deveson that News should secure a second seat on the SNL Board.

*Evidence of Mr Cowley*

When Mr Cowley was asked whether he would have suggested this at the meeting as well as suggesting that Mr Booth occupy that position as “one of the negotiating cards on the table”, Mr Cowley replied “Correct”.

Asked what the SNL executives' attitude was to that, Mr Cowley replied “they just took it on board. I think they may have indicated to me that it may be difficult”.

(iii) Accusation of partiality

*Evidence of Mr Ivan Deveson*

Mr Deveson testified about another meeting which took place on 4 April between Seven, News and Foxtel executives. After the meeting Mr Deveson requested a private meeting with Mr Cowley. At that meeting Mr Cowley accused Mr Deveson of “leading the charge” to Optus Vision. Mr Deveson said “that’s when I felt the inevitability that I was done. Somebody had told him [Mr Cowley] I was leading the charge and it destroyed my credibility with News and when you destroy your credibility with News you have got to expect the inevitable”.

*Evidence of Mr Cowley*

Asked if he would have suggested to Mr Deveson that he was in fact “leading the charge to Optus Vision”, Mr Cowley replied that he didn’t recollect saying that to him. He said that he did remember Bob Campbell ringing him to say that Ivan Deveson was not “leading the charge” to Optus Vision.

While Mr Cowley does not specifically recall these matters, the ABA is satisfied that Mr Cowley made the remark ascribed to him by Mr Deveson.

#### **4.4 Discussions between Mr Cowley and Mr Deveson**

The ABA heard evidence about a number of conversations which allegedly took place between Messrs Cowley and Deveson.

*Evidence of Mr Deveson*

Mr Deveson testified that two days after his meeting with Mr Cowley and Mr Murdoch at News Ltd on 22 March 1995, a “media blitz” began in the press concerning his performance as chairman of SNL. In an effort to get Mr Cowley to reverse this situation Mr Deveson rang Mr Cowley several times to express his concern. [These events are discussed more fully in the next chapter which deals with Mr Deveson’s resignation as Chairman of SNL]. Mr Deveson gave evidence that at 6:00 pm on 13 April 1995 while engaged in a conversation with Mr O’Halloran at the Sheraton Wentworth, Mr Cowley had rung him to discuss several matters. Mr Deveson said that Mr Cowley had said to him, among other things, that he (Deveson) should not make any decisions about pay television without “negotiating the thing through me”.

Mr Deveson said that he thought it was “another sort of swing at my integrity”, that Mr Cowley was “challenging me to be fair”.

*Evidence of Mr Cowley*

Mr Cowley was asked whether he recalled saying to Mr Deveson that he should not make a decision on pay television without negotiating the thing through him. Mr Cowley testified that it was possible that that was said. He also said, “yes that’s my understanding of that” but added “I don’t know why I would say that. I mean I was negotiating on behalf of Foxtel with the Seven Network so why - I mean, if I said it, I

don't know why I would have said it. If I did, so what? I mean, I was only stating the position”.

While Mr Cowley does not specifically recall these matters, the ABA is satisfied that Mr Cowley made the remark ascribed to him by Mr Deveson.

#### **4.5 Letter from Mr Cowley to Mr Deveson**

On 27 April 1995 News Ltd (Mr Ken Cowley) also wrote to the Chairman of SNL to convey News’ concern as a shareholder that SNL’s decision in relation to a pay television alliance was being made too quickly. Mr Cowley requested that the letter be passed to all other SNL Directors and that they consider their personal liability. Several witnesses told the ABA that they found this letter threatening. At the request of the Board, SNL’s solicitors immediately sought advice from senior counsel on whether the Board could proceed to make a decision in the light of this letter.

#### *Evidence of Mr Deveson*

Mr Deveson was asked in his testimony what the other Board members’ reactions were to receiving the letter. He said that he could only recall Mr Robinson’s response. Mr Robinson’s view was that he was confident that SNL was acting within its rights, but that he was also anxious to secure a high level legal advice. Mr Deveson testified that on the morning of 28 April 1995 Mr O’Halloran advised the Board that senior counsel’s advice was to the effect that SNL should accept the Optus Vision proposal if the Board thought that it was the best offer at the time.

#### **4.6 Analysis of evidence**

##### **Individual Instances**

The ABA accepts that some witnesses, particularly Mr Ivan Deveson, perceived that News sought to put pressure on them in relation to the decision about pay television.

The ABA is satisfied that each of the alleged instances took place in one form or another. That does not in itself demonstrate that, for example, News was in a position to exercise direction or restraint over a substantial issue affecting SNL. To make such a finding, it would also be necessary to reach a view that, through the behaviour described above, News exercised, or was capable of exercising, direction or restraint over such an issue.

In the absence of evidence that this was the case, or where there is evidence that strongly undermines any inference that direction or restraint had been exercised, it would not be open to the ABA to find that News was in a position to exercise control of SNL.

In each of the above cases, the ABA has considered whether there was any immediate effect relevant to control. In many cases, the explicit outcome sought by News executives was not achieved. No second Board seat was offered to News. SNL did not enter into the proposed standstill agreement. The SNL Board did not defer the decision on pay television.

There was no suggestion on the part of Mr Deveson that he had altered his approach as Chairman of SNL in response to the pressure he felt he had experienced. Nor was there evidence that any SNL executives had become more negative about Optus Vision because of the incidents described above.

In the view of the ABA, there was no immediate effect relevant to control evident as a consequence of any of the above incidents.

### **Pattern of Behaviour**

The ABA has also considered whether, taken together, there was any cumulative effect relevant to control. In other words, did the totality of these instances, or some of them suggest a breach of the Act? The ABA considers that the major decision examined in this chapter - the decision by SNL to become commercially involved with a pay television operator - would be the best indicator of such a cumulative effect.

In the view of the ABA, there is no evidence of such a cumulative effect. The decision to join Optus Vision was clearly against the interests of Foxtel, and thus of News.

### **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*News was not, either alone or together with an associate, in a position to exercise, whether directly or indirectly, direction or restraint over the pay television decision.*

### **CONCLUSION**

*News was not, either alone or together with an associate, in a position to exercise, whether directly or indirectly, direction or restraint over a substantial issue affecting the management or affairs of SNL.*



## **5. The Resignation of Mr Deveson**

This part addresses the following issues:

- whether the Board, when it asked Mr Deveson to resign, acted under the direction or restraint of News, whether acting alone, or in association with Telstra or Mr Stokes;
- whether the Board acted in accordance with the directions, instructions or wishes of, News, whether acting alone, or in association with Telstra or Mr Stokes;
- whether the Board acted in concert with News, whether acting alone, or in association with Telstra or Mr Stokes.

Mr Deveson resigned on 11 May 1995 at a Board meeting of SNL after being requested to do so by unanimous decision of the Board. Mr Deveson's press statement issued on resignation stated that his resignation was "due to the ongoing demands for my resignation by News Corporation and Mr Kerry Stokes, who together own 28% of Seven Network Limited, and the inherent destabilisation of the Company".

The ABA considers that the position of Chairman is a strategic one in most company boards, and therefore considers the question of who occupies the position a central one. Other Board members of SNL gave evidence that the stability and strategic direction of the company was linked to the question of whether Mr Deveson remained or resigned as Chairman.

### **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*The resignation of Mr Deveson was a "substantial issue affecting the management or affairs of" SNL within the meaning of clause 2(1)(d)(iii) of Schedule 1.*

#### **5.1 The composition of the Board and conduct of Board meetings in the period leading up to Mr Deveson's resignation on 11 May 1995**

The composition of the Board as at 24 April 1995 was as follows:

Mr Ivan Deveson, chairman and independent director

Mr Robert Campbell, ex officio director

Mr Peter Ritchie, independent director

Mr Michael Robinson, independent director

Mr Paul Rizzo, Telstra nominee

Mrs Dulcie Boling, News nominee.

All of these directors had been directors of SNL since it was floated on 6 August 1993.

Mr Ian Holmes was appointed as a director on 1 May 1995. He had been approached by the Board following its decision to seek independent directors

with television experience. He agreed to become a director, and accepted the company policy of limiting directors to a 3% shareholding<sup>2</sup>. Mr Ian Holmes agreed to become Chairman at the Board meeting on 11 May 1995, following Mr Deveson's resignation.

The ABA obtained copies of the minutes of Board meetings from 6 August 1993 to 29 May 1995.

At the Board meeting of 27 April, Mr Deveson had sought the support of each member of the Board for his continuation as Chairman. The minutes for 27 April record that "Mr I. Deveson and Mr R. Campbell have the full support of the Board at this time". However, Mrs Boling gave evidence, supported by other SNL directors, that she indicated at this meeting that she did not support Mr Deveson.

## **5.2 Market forces affecting the stability of SNL**

The SNL directors and the Centaurus witnesses Ms McFadden and Mr Jephcott (discussed below) gave evidence that there were significant factors affecting the stability of SNL in the period leading up to Mr Deveson's resignation on 11 May 1995.

These included:

- i) the push by Mr Stokes for a substantial shareholding in SNL
- ii) the poor relationship between SNL and its institutional investors and advertisers which resulted from the "rate cards problem" (see below)
- iii) the attitude of the major shareholders, particularly News and Mr Stokes
- iv) comment in the press on the company's performance.

### **(i) The share buying strategy and push for Board representation by Mr Stokes**

The Board met with Mr Stokes at a lunchtime Board meeting held in Perth on 30 March 1995 to approach him about becoming a director of SNL. The Board advised Mr Stokes that company policy was to limit directors to a 3% shareholding.

Mr Stokes rejected the offer to become a director on those terms.

On 10 April 1995 Ashblue, a company associated with Mr Stokes, commenced buying shares in SNL.

Between 11 and 18 April 1995, Ashblue acquired a 6.5% holding. By 21 April 1995, it had acquired 13% of the company.

On 21 April, Mr Stokes advised Mr Deveson that he was seeking representation by two directors' positions on the Board. He stated he wanted executive authority to work with the managing director and to review the company's operational matters.

Mr Stokes continued to buy shares in SNL, and by 13 June had, through his company Ashblue Holdings Pty Limited, acquired a holding of 19.97% (including a 3.3% option to convert shares).

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<sup>2</sup> The policy was adopted by the Board on 30 March 1995.

On 28 April 1995, Ashblue requisitioned SNL for an extraordinary general meeting of SNL to remove Mr Deveson as a director, and to appoint Mr Stokes and his deputy Mr William Rayner as directors.

Mr Stokes at this time began to visit the institutional shareholders to gather support for the requisition.

On 18 May 1995, Ashblue wrote to the Directors of SNL to register its concern at the imminent proposal for SNL to join Optus Vision. Ashblue cautioned the Directors to defer the proposal until they had satisfied themselves about a number of issues raised by Ashblue, consulted with shareholders and properly considered alternatives.

#### *Evidence of Mr Holmes*

In early June 1995, Mr Stokes and the new Chairman of SNL, Ian Holmes, met to discuss coming to a settlement about Mr Stokes' request for Board representation. In mid June an agreement was reached: Mr Stokes would get two non executive seats on the Board, would agree to Mr Holmes remaining as Chairman, and would drop threats of litigation expressed in letters to the SNL directors.

In the view of the ABA, Mr Stokes' acquisition of interests in SNL was a significant factor in destabilising the company at that time. This was because of the conflict between Mr Stokes and the SNL Board about appropriate Board representation, which led to Ashblue's requisition, and the direction SNL was pursuing in relation to pay television.

Mr Stokes was also highly critical of the company's performance and of key personnel in SNL, particularly Mr Deveson. Ashblue's requisition specifically sought Mr Deveson's removal. Mr Stokes gave a presentation to the Board on 28 April in which he was critical of Mr Deveson and SNL management. In the view of the ABA, Mr Stokes' public criticism of Mr Deveson made it inevitable that the Chairman's position would have to be reviewed at some point.

#### **(ii) The "rate card problem" - advertising revenue shortfall**

A serious problem with the company's advertising rates began to surface in March 1995.

Senior management of the network became aware that SNL faced a shortfall in advertising revenue in the order of tens of millions of dollars. This would lead to a serious fall in projected earnings for the network for that financial year. The Board minutes of 30 and 31 March 1995 recorded that :

Mr Campbell explained that the effect of the rate agreements entered into with the advertising agencies late last year was for a reduction in rates of about 8% for the period through to Easter, as compared with the rates for the corresponding period in 1994. This contrasted with the 3-4% increase which Mr Campbell had recommended and which the board endorsed. Mr Campbell further informed the Board that it was not until the first weeks of March when the inventory was fully booked that it had become apparent that the rates agreed with the advertising agencies were starkly different from those approved by the Board.

On 9 March SNL announced that it had begun renegotiating advertising agency arrangements for 1995. SNL's base advertising rates were increased by 10%, effective from 2 April 1995.

### ***The relationship with advertisers***

Press reports at the time indicated that many advertisers cancelled advertising contracts with SNL following the unilateral decision to increase rates.

SNL directors gave evidence that SNL had to commence a process of rebuilding the advertisers' confidence in the network by opening up channels of communication.

### ***The relationship with institutional investors***

There were three major institutional shareholders in SNL. As at September 1994, these were the National Mutual Life Association (8.2%), the State Authorities Superannuation Board (7.1%) and the Australian Mutual Provident Society (3.9%).

Mr Deveson maintained that the Chairman and the Board should not be held responsible for the ad rate problem. Whether or not that should have been the case, SNL Directors gave evidence that the confidence of the institutional investors in the SNL Board had been eroded following the problems with the advertising rates and the intervention of Mr Stokes.

### ***Evidence of Mr Ritchie***

Mr Ritchie testified that he was starting to believe, as a result of visits to the institutional shareholders at this time, that SNL was probably going to have to change Chairman.

### **(iii) The attitudes of the major shareholders**

The three major shareholders were Ashblue (a company controlled by Mr Stokes) (19%), News (14.9%) and Telstra (10%).

As noted above, Mr Stokes openly criticised the management and Board of the company in the press, stating publicly his demand for an executive seat on the Board, and two Board seats.

News and Telstra did not publicly criticise the company. There was some press speculation (see below) that News was critical of the management and Board of SNL. Mr Cowley publicly stated his support for Mr Deveson as Chairman of SNL on 19 April 1995. In its report to the SNL Board dated 5 May, Centaurus also noted that News did not support Mr Deveson.

### ***Evidence of Ms McFadden***

Ms McFadden stated that she was aware that News was dissatisfied with Mr Deveson's performance as Chairman, because Mr Deveson reported this to her, and through her contact with financial journalists, not associated with News, who speculated on this matter.

There is no evidence that Telstra was critical of the company's management.

### **(iv) Press reports concerning the company's performance**

As discussed above, articles critical of the company's performance appeared regularly in the financial press after the rate card problem became public.

The articles largely focussed on the company's performance, but also criticised the management and Board, most specifically Mr Campbell and Mr Deveson.

Mr Deveson testified to the ABA that he experienced pressure from a series of newspaper articles he suspected were orchestrated by News. Mr Deveson regarded unfavourable comment in the press concerning his role as Chairman as a story that originated in News. This was because the initial stories suggested that News was not happy with his performance. He also believed that journalists working for News had been critical of his performance. Finally, he felt that Mr Cowley should have been more active in contradicting the stories that had appeared in the press stating that News did not have confidence in Mr Deveson.

The ABA obtained from Mr Deveson copies of the articles which he suggested demonstrated this campaign by News.

Mr Deveson was interviewed on oath by the ABA on 27 April 1995 and 18 May 1995. On both occasions, he testified that he was the subject of a "press campaign" orchestrated by News, criticising his role as Chairman of SNL.

#### *The evidence of Mr Deveson*

Mr Deveson and Mr Campbell met with Mr Murdoch and Mr Cowley at News headquarters in Holt Street Surrey Hills on 22 March 1995.

Mr Deveson gave evidence that it was a cordial meeting, apart from one remark made by Mr Murdoch to Mr Deveson: "you should not be talking to Optus Vision". There was no other criticism of Mr Deveson, Mr Campbell, or SNL made at that meeting. A story appeared in the *Sydney Morning Herald* on 23 March 1995 suggested that at that meeting, Mr Murdoch criticised the performance of the SNL executives and SNL.

Other stories appeared, some of which criticised the performance of SNL, and some of which criticised the performance of Mr Campbell and Mr Deveson. Some of the articles referred to the speculation that News was dissatisfied with the performance of Mr Deveson and Mr Campbell. In April, the press commented on the share buying strategy of Mr Stokes and on the requisition issued by Mr Stokes through Ashblue.

Mr Deveson provided copies of the following articles to the ABA:

Mark Westfield, *The Australian*, 1 May 1995. This article reported: "Legal letters will almost certainly be heading the way of SNL chairman Ivan Deveson, given that he was under threat of losing his job over this issue [SNL's decision to go with Optus Vision] when he pressed the Board into returning to Optus Vision after quitting the group last November."

Joshua Frith, *The Australian*, 11 May 1995. This article reported: "Mr Ivan Deveson may soon announce his resignation from the chairmanship".

Sue Lecky and Ben Potter, *The Sydney Morning Herald*, 11 May 1995. This article reported: "Seven's credibility with investors has

been hammered due to its bungling of advertising rate negotiations earlier this year and the resulting impact on second-half year earnings, expected to be only marginally better than last year's despite a buoyant market."

*The Daily Telegraph Mirror*, 11 May 1995. This article reported: "Mr Stokes' Ashblue Holdings Ltd withdrew the second meeting requisition on Tuesday. Its new requisition drops a resolution regarding Board numbers but continues to press for the removal of Seven chairman Ivan Deveson...The new move is in case Mr Deveson resigns before the meeting. However Mr Deveson is showing no signs of bowing to Mr Stokes' stated aim of becoming Seven's executive chairman."

The ABA has analysed the material contained in these articles, and in other articles about SNL which appeared in major Australian newspapers between 22 March and 11 May 1995. A summary of the articles appears at Appendix C to this report.

The articles in the press commented on the performance of SNL, in particular:

- a rumour that News was dissatisfied with Mr Deveson's performance as Chairman
- a rumour that News was dissatisfied with Mr Campbell's performance and with the company's performance
- the rate card problem
- the requisition to the company issued by Mr Stokes.

The ABA notes that the Fairfax press initially gave more prominence to the rumour that News was dissatisfied with Mr Deveson, Mr Campbell and the company than the News press. Responsibility for the rate card problem was generally attributed to Mr Campbell as Chief Executive.

In the view of the ABA, the crucial issue is whether, in asking Mr Deveson to resign, the Board was acting in accordance with the wishes of News, as reflected or revealed in articles in the press.

#### *The evidence of Mr Ritchie*

Mr Ritchie testified that he recalled press articles in relation to SNL and Mr Deveson. Mr Deveson spoke to Mr Ritchie about his concern about the press articles. Mr Ritchie's impression was that Mr Deveson was overreacting to some extent to the articles.

Mr Ritchie said he did not get his impression of the major shareholders' attitudes to Mr Deveson from the press reports. He said he saw the press reports about Mr Deveson for what they were - an attempt to put pressure on or destabilise Mr Deveson.

Directors who participated in the decision cited a number of reasons why they had sought the resignation of Mr Deveson. Even those who, like Mr Ritchie, believed there was a press campaign against Mr Deveson, had sound commercial reasons [see below] for seeking his resignation unrelated to the attitude of News as speculated upon in these articles.

In the view of the ABA, the market instability was sparked off by the ad rate problem and was reinforced by the efforts by Mr Stokes to obtain representation on the SNL Board. It was exacerbated by the fact that the company was receiving poor press coverage over this issue, but not to a significant extent by specific criticism of Mr Deveson in the press.

## **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*The press articles about SNL did not direct or restrain the decision of the Board in relation to the resignation of Mr Deveson.*

*The Board did not act in accordance with News' wishes as speculated upon in the articles.*

### **5.3 The conduct of the Board meeting on 11 May 1995**

Mr Deveson resigned as Chairman and as a director of SNL at this meeting, and Mr Holmes was appointed Chairman. This was the first Board meeting attended by Mr Holmes following his appointment as director on 1 May 1995.

The composition of the Board at the commencement of the Board Meeting of 11 May 1995 was as follows:

Mr Ivan Deveson, chairman and independent director

Mr Ian Holmes, independent director

Mr Robert Campbell, ex officio director

Mr Peter Ritchie, independent director

Mr Michael Robinson, independent director

Mr Paul Rizzo, Telstra nominee

Mrs Dulcie Boling, News nominee.

Ms Vicki McFadden is a director of Centaurus, a merchant bank acting as adviser to SNL at the time of the 11 May Board meeting. She was present as observer at that Board meeting. She gave evidence in the ABA's investigation on 23 May 1995.

#### *Evidence of Ms McFadden*

Ms McFadden and her Centaurus colleague Mr Will Jephcott prepared the Board's agenda and a paper dated 5 May 1995 discussing the issues of Board composition and senior management. Centaurus prepared this paper at the request of the Board to assist the Board in taking action against market instability.

The ABA obtained copies of these documents. The agenda paper (dated 10 May 1995) listed six issues, as follows:

## “SEVEN NETWORK LIMITED

### BOARD COMPOSITION

#### MAIN DECISIONS

1. Should Bob Campbell remain as managing director?
2. Number of directors for Stokes
3. Balance of independents versus aligned directors/executive directors
4. Should the chairman be non executive?
5. Should the chairman be a nominee or representative of a major shareholder?
6. Should Ivan Deveson remain as chairman?”

Early in the meeting, the Board resolved, at Mrs Boling’s suggestion, that the discussion of the Chairman’s position would be discussed first.

Ms McFadden gave the following account of the Board’s deliberations on the Chairman’s role:

#### *Evidence of Ms McFadden*

Mr Deveson vacated the chair and left the room. Mr Robinson assumed the chair in Mr Deveson’s absence. Mr Robinson then asked each director in turn for their views. Mr Ritchie [present by phone] was asked first: his view was that it would be in the company’s interests for the chairman to be changed. He was followed by Mr Paul Rizzo who also thought it was in the company’s interests for the chairman to change. Mr Rizzo specified that he thought either Ian Holmes or Michael Robinson should assume the role as chairman and that he would like Ivan Deveson to remain on the Board. He stated his views were personal, not those of Telstra. Mr Holmes was asked to comment next. This was the first meeting which Mr Holmes attended as a director, and his views were not specific. Then Mr Bob Campbell was asked to comment. He commented in general terms, as he was afforded the opportunity by Mr Robinson not to comment at all because he was the executive director. Then Mrs Boling was asked to comment and she was of the view that Mr Deveson should be removed from the chair and from the Board. Then Mr Robinson stated he did not share the view initially that Mr Deveson should resign, but because of the other views expressed at the meeting he would follow that view.

Thus, the Board came to a consensus view that Mr Deveson should be asked to resign as Chairman. The consensus view was that the chairman could not remain if he did not have the full support of the Board.

Different directors had different views and different reasons for coming to this decision. Some commented on lack of industry experience, some commented on the objections of major shareholders, some were more personal and some commented on the advertising rate error.

The directors who commented on the objections of the major shareholders were Mr Rizzo and Mr Ritchie.



Mrs Boling attributed responsibility to Mr Deveson for the advertising rate error.

There was comment about speculation in the market concerning the effect of the Stokes requisition on the Board's decision.

Mr Jephcott testified to the ABA on 24 May 1995. Mr Jephcott is a Director of Centaurus, and a colleague of Ms McFadden. He was also present at the Board meeting on 11 May 1995.

He assisted Ms McFadden in drafting the papers referred to above, and was a co-signatory to the papers with Ms McFadden.

His account of the Board meeting largely confirms that of Ms McFadden.

#### *Evidence of Mr Jephcott*

Mr Jephcott confirmed that the meeting reordered the suggested agenda, so that the discussion of the managing director's role was moved from first place, and the discussion of the Chairman's role moved up the agenda from sixth position. Mrs Boling suggested this change to the agenda, and Mr Rizzo supported her, and the Board was in general agreement.

Mr Deveson then absented himself, the chair being filled by Mr Robinson in his absence. Mr Ritchie spoke first, followed by Mr Rizzo, and a consensus view was reached.

Mr Ritchie's view was that the speculation and instability was not good for the company. Mr Ritchie believed Mr Deveson did not have sufficient industry experience. Mr Ritchie was keen to resolve the issue between SNL and Mr Stokes as quickly as possible to avoid instability so the company could get on with business.

Mrs Boling stated she was talking personally, not for Ken Cowley. She supported the view that Mr Deveson should resign.

Mr Jephcott stated that he gave advice to the meeting of the prospects of success in a battle over the chairmanship at the EGM requisitioned by Mr Stokes. He advised that the prospects were uncertain. The company would need the support of Telstra and all the institutional shareholders and this could not be guaranteed.

A number of the Board were concerned that Mr Stokes would move to a higher percentage and therefore increase his leverage at the requisitioned EGM. The Board recognised that it was not possible to say that Mr Stokes would "not get the vote". Views were expressed that he was a very determined man and would continue to seek significant representation, if he did not succeed this time. Thus the company's instability would continue.

#### *The evidence of the directors*

Each director who was present at the 11 May 1995 Board meeting was interviewed about the conduct of that meeting. Their evidence confirms that of Ms McFadden and Mr Jephcott.

Mr Ritchie testified to the ABA on 30 May 1995. The ABA considered that Mr Ritchie was crucial in the formation of an opinion by the Board, as he was

the first director to speak, and his views carried authority as Deputy Chairman.

Mr Ritchie had raised the issue of whether the Chairman should be changed at a meeting between the SNL Board and Centaurus on 3 May 1995.

#### *The evidence of Mr Ritchie*

Mr Ritchie attended the Board meeting of 11 May 1995 by telephone, and therefore did not take the chair when Ivan Deveson left the room. Michael Robinson assumed the Chair as the next most senior director who was present in person at the meeting. Mr Robinson asked Mr Ritchie to speak first to the agenda item number 6, namely whether Mr Deveson should remain as Chairman.

Mr Ritchie stated that he did not support Ivan Deveson to remain as Chairman because Mr Deveson did not have the support of the institutional shareholders. He proposed that Mr Deveson be replaced by Mr Holmes or Mr Robinson. Mr Ritchie also believed that Mr Deveson did not have the support of Mr Stokes or News. He framed his views to the Board to suggest that the company needed a Chairman who had more general support of the shareholders. Although Mr Ritchie did not necessarily agree with the views of the shareholders, his perception was that Mr Deveson did not have the support of any of the shareholders, and therefore could not remain as Chairman.

Mr Ritchie's opinion of Mr Deveson as Chairman was that he was more than adequate. However, in the last 6 to 9 months, in Mr Ritchie's view, he had lost touch.

Mr Ritchie stated that the instability of the company was not one of the reasons he had for calling for the resignation of Mr Deveson. His main reasons were that the company needed a leader who was more recognised and accepted by the business community, and a stronger Chairman who could deal with management in a firmer way.

## **5.4 The role of Mrs Boling**

#### *Evidence of Mrs Boling*

Mrs Boling gave evidence to the ABA on 5 May 1995 and 1 August 1995. She testified that at a Board meeting on Thursday 27 April, she said that Mr Deveson should stand down as the chairman. Mr Deveson asked the Board to express its support of his performance as Chairman of the Board. Mrs Boling stated that she could not offer her support to Mr Deveson as Chairman, and that he should resign. The other directors supported Mr Deveson at that time, and he did not resign.

Mrs Boling stated that her formal connections with News were severed before she commenced her directorship and that she regarded herself as an independent agent, not connected to News.

She also said that until earlier in 1995 her office space in the Ansett building and secretarial services were paid for by News. At the time of

her appearances before the ABA, she was working from home, and retained the services of the secretary paid for by News.

Mrs Boling testified that it was her practice to provide a written report on SNL Board meetings to Mr Cowley. She provided copies of some Board papers to Mr Cowley. Mrs Boling testified that she considered it an important aspect of her role as nominee director to report to News.

Mrs Boling occasionally contacted Mr Cowley by telephone to discuss issues raised in the Board papers and to report to Mr Cowley. Mrs Boling stated that Mr Cowley rarely gave her advice or suggestions on how she should conduct herself in her role as director.

Mr Cowley confirmed this. Copies of reports and Board papers provided to Mr Cowley were obtained by the ABA.

Mrs Boling was the first director to call for Mr Deveson's resignation, at the Board meeting on 27 April 1995. At the meeting on 11 May 1995, she was instrumental in reordering the agenda on 11 May so that the discussion of Mr Deveson's position became the first item on the agenda.

## **5.5 The Board's Decision**

The ABA is of the view that the major factors affecting the Board's decision to ask Mr Deveson to resign were as follows:

- a perceived need to take action to end market instability;
- the perception by the directors that Mr Stokes was determined to oust Mr Deveson;
- uncertainty over the possible outcome of the EGM called for by Ashblue;
- a perception by some board members that Mr Deveson lacked institutional support and relevant industry experience;
- some board members' perception of the attitudes of major shareholders to Mr Deveson as Chairman of SNL, including institutional shareholders, Mr Stokes and News;
- some directors attributed to Mr Deveson responsibility for the advertising rate error.

In the view of the ABA, there was an interaction between these factors that worked to the disadvantage of Mr Deveson. The problem with ad rates lent credibility to Mr Stokes' criticisms of the SNL Board. Mr Stokes' criticism of Mr Deveson may well have contributed to the negative view of Mr Deveson that developed among some institutional shareholders.

While Mr Ritchie and Mr Rizzo cited the objections of the shareholders to Mr Deveson, neither attributed any particular weight to the objections of News. In the view of the ABA, it was the widespread nature of the dissatisfaction that these directors perceived among shareholders that contributed to their decision not to support Mr Deveson.

## **FINDINGS**

On the basis of the evidence before it the ABA finds that:

*Mrs Boling's involvement in the Board's deliberations was not the major factor behind the Board's decision to request Mr Deveson to resign.*

*The Board reached a consensus view that Mr Deveson should resign.*

*Mr Ritchie's views were strongly influential in the formation of the consensus.*

*The attitudes of the major shareholders were considered by the Board.*

*The consideration given by the Board to the attitudes of the major shareholders did not amount to direction or restraint by News*

*The Board of SNL acted independently of News in its decision to ask Mr Deveson to resign as Chairman of SNL.*

## **CONCLUSION**

*News was not, either alone or together with an associate, in a position to exercise, whether directly or indirectly, direction or restraint over a substantial issue affecting the management or affairs of SNL and its licensees.*

*SNL did not act in accordance with the directions, instructions or wishes of, or in concert with, News or of News and an associate acting together, or the directors of News in relation to this matter.*

*More than 50% of SNL's directors did not act in accordance with the directions, instructions or wishes of, or in concert with, News or of News and an associate acting together, or the directors of News in relation to this matter.*

## **6. Seven Network Limited's Acquisition and Disposal of Sporting Rights**

This Part addresses the following issues:

- the possibility of News Ltd exercising direction or restraint over SNL, in particular, in relation to the broadcast rights to certain sporting events (clause 2(1)(d)(iii) of Schedule 1);
- the possibility that under an informal arrangement or understanding SNL was expected to act in concert with News Ltd (clause 2(1)(e) of Schedule 1).

On 14 November 1995 the ABA examined Mr Geoffrey Cousins, Chief Executive Officer of Optus Vision Pty Limited. It was Mr Cousins' basic contention that at the instigation of News, SNL has attempted to thwart the terms or the spirit of the Sports Programming Licensing Agreement (the SportsVision Agreement) between SportsVision and SNL (see below) to the advantage of News and Foxtel.

The ABA has investigated these alleged instances of direction or restraint, in particular the ABA has considered the following evidence:

- Correspondence between SNL and SportsVision Australia Pty Ltd (SportsVision) and between SNL and Foxtel regarding broadcast and pay television sports rights to certain sporting events and SNL's dispute with the Australian Rugby Football Union (the ARFU)
- Correspondence between Optus Vision, SportsVision and SNL in relation to the broadcast and pay television rights to the AFL.
- The Sports Programming Licensing Agreement between Tallglen Pty Limited and Sportsco Australia Pty Limited.
- Testimony from Mr Geoffrey Cousins, CEO of Optus Vision.
- Testimony from Mr Gary Rice, CEO of SNL.
- Testimony from Mr Philip Saggars, Business and Legal Affairs Director of SNL.

The ABA considered the amount of resources, in time, money and experience which SNL has and does devote to acquiring sporting rights, on-selling pay television rights to sports events and airing sporting events. The ABA is of the view that SNL has invested considerable resources in acquiring and disposing of sporting rights. Sports programs are key elements in attracting audiences to free-to-air and pay television services and represent substantial expenditure by those services. The ABA is aware that sporting rights are vigorously pursued by both free-to-air networks and pay television operators because they bring in substantial advertising revenue and attract subscribers.

## **FINDING**

*The decisions made by SNL about purchasing and selling pay television rights to certain sporting events are “substantial issues affecting the management or affairs of” SNL within the meaning of clause 2(1)(d)(iii) of Schedule 1.*

## **6.1 Background:**

### **The Sports Programming Licensing Agreement**

On 19 May 1995 Tallglen Pty Limited (the SNL company set up to be SNL’s Pay television joint venture vehicle) signed an agreement with Sportsco Australia Pty Limited (SportsVision), known as the Sports Programming Licensing Agreement (the SportsVision Agreement). Pursuant to this agreement SNL must provide to SportsVision the pay television rights to specified sporting events which are held by SNL. In addition, obligations are created regarding other pay television rights held or acquired by SNL which SNL decides to make available for pay television services.

Clause three of the SportsVision Agreement grants to SportsVision exclusively, a licence for the pay television rights for the events listed at paragraphs 1.1, 1.3, and 1.4 of Schedule 1 which refers to Australian Football League (AFL) matches.

Other rights which are listed in Schedule 1 are subject to negotiation.

The mechanism to negotiate the rights to the Olympics is set out in clause 3.5. Clause 3.3 states that clause 3.5 “applies to such pay television Rights for the Olympics as Seven decides to make available for pay television services during the First Term” (Emphasis added). Thus, the rights which are to be made available are at the discretion of SNL. Under clause 3.5 if SNL decides to make available the Pay television rights to the Olympics, SportsVision has a right of first and last refusal. This means that the pay television rights must be first offered to SportsVision and if SNL is dissatisfied with the amount offered by SportsVision they may negotiate with other parties. If SNL comes to an acceptable agreement with another party they must then go back to SportsVision and offer them the same deal (Emphasis added).

Clause 6.2 deals with sports programming rights which SNL acquires after the signing of the agreement. This clause also gives SNL the option of not making the rights available.

As indicated above, clause 3.5 gives SportsVision a right of first and last refusal over those rights.

### **Statements By Mr Cousins**

Mr Cousins testified that he met with Mr Saggars from SNL, on 27 October 1995. Mr Cousins stated that Mr Saggars commented that the management of SNL, in particular, Messrs Rice, Bateman and Stokes, were in regular contact with News and were taking instructions from News in matters related to the purchase of sporting rights and decisions on whether to make certain sporting rights available to pay television services. Mr Cousins also stated that Mr Saggars had stated SNL was in regular contact with Foxtel and was also taking instructions from Foxtel in regard to these matters.

## **6.2 Has News sought to influence SNL's decisions regarding pay television rights to sporting events?**

In evidence to the ABA Mr Cousins, on behalf of Optus Vision, detailed a number of instances where he suspected News had attempted to influence the decision making process of SNL. The ABA has considered these particular instances where News and/or Foxtel may have sought to direct or restrain SNL in making decisions regarding the broadcast rights to sporting events.

### **Summary of instances of suspected involvement:**

Mr Cousins detailed the following instances:

- News had an arrangement with SNL to buy both the free to air and pay television rights to the South African cricket and to sell the free-to air rights to SNL. This would bypass the SportsVision Agreement.
- SNL did not bid for the pay television rights to the Winter Olympics so that an associate of Foxtel would be free to acquire the pay television rights.
- SNL did not pursue its rights with regard to the dispute between SNL and the Australian Rugby Football Union (the ARFU) over the free-to air and pay television rights to the Rugby Union thus denying SportsVision the opportunity to acquire the pay television rights under the SportsVision Agreement. SNL will instead rely on obtaining the free to air rights held by News under the SANZA Agreement (a joint venture between each of the rugby union organisations in South Africa, New Zealand and Australia).
- SNL was going to “warehouse” the pay television rights which it has to the Atlanta Olympics, thus denying them to SportsVision under the SportsVision Agreement, to the advantage of Foxtel. Mr Gary Rice, CEO of SNL, was quoted in the press as saying that SNL may “quarantine” the pay television rights to the Atlanta Olympics.
- Senior management of SNL instructed Mr Saggars to find a way to remove from SportsVision some of the pay television rights to the AFL so that these rights could be given to Foxtel.
- Mr Saggars was directed by senior management of SNL to “screw Optus Vision”, and extricate SNL from the SportsVision Agreement.

## **6.3 South African Cricket**

### *Evidence of Mr Cousins*

Mr Cousins stated that there is a pattern of behaviour developing which makes it clear to him that News is directing SNL in a number of respects. Mr Cousins

testified that the situation of bidding for sporting rights was a clear example. Mr Cousins stated that News directly bought the South African Cricket free-to-air rights which, in his opinion, is an unusual situation since News is not a free-to-air operator. Mr Cousins testified that it is the view of Optus Vision that the reason for this is that if SNL buys the free-to-air and pay television rights directly the pay television rights have to go automatically to Optus Vision (SportsVision).

Mr Cousins stated that if News bids for the rights and News has an arrangement to give the free-to-air rights to SNL then the free-to-air rights can be given to SNL and the pay television rights can go to Foxtel. The SportsVision Agreement does not catch that type of arrangement.

Mr Cousins has stated that News bought both the free-to-air and pay television rights to the South African Cricket in order that SNL might have the free-to-air rights and Foxtel have the pay television rights without bringing into play the provisions of the SportsVision Agreement. If SNL had both sets of rights an obligation would arise under the SportsVision Agreement on the part of SNL to negotiate with SportsVision before offering them to Foxtel.

On 5 December 1995 the ABA sent Notices under section 173 of the Act to Mr Kerry Stokes, Chairman of SNL; Mr Gary Rice, CEO of SNL and Ms Judith Howard, Company Secretary of SNL. The Notices asked questions related to the allegations raised by Mr Cousins on behalf of Optus Vision. With regard to the allegation about the South African Cricket, SNL stated on behalf of Messrs Stokes and Rice and Ms Howard that “none of Messrs Stokes and Rice nor Ms Howard has had discussions in relation to the acquisition by Seven of free to air rights to international cricket matches played in South Africa, nor in relation to any negotiation for the acquisition of those rights. They are not aware of any such discussions having taken place”.

Mr Cousins was unable to present evidence other than his own speculation as to the motives of News and SNL. That speculation arose as a result of Mr Cousins’ belief that representatives of News and SNL were in continuous communication with each other (see below). However, Mr Cousins was unable to provide evidence to substantiate his assertion of an arrangement between News and SNL, and none of the evidence gathered by the ABA establishes any such relationship.

The ABA therefore accepts the response of SNL, and is of the view that Mr Cousins’ suspicion has not been substantiated.

## **FINDING**

On the basis of the evidence before it, the ABA finds that:

*There is no basis on which to conclude that SNL had an arrangement with News to buy the free-to-air rights to the South African cricket.*

## **6.4 Winter Olympics**

SNL has acquired the free-to-air broadcast rights to the 1998 Winter Olympics but has not acquired the pay television rights to those Olympics. Mr Cousins, on behalf of Optus Vision, stated that there exists a pattern of association between News and SNL where News buys the free-to-air rights to sporting events and then sells them to SNL in order to



circumvent the SportsVision Agreement. If SNL had bid for both sets of rights the pay television rights would have had to be offered, on the basis of a right of first and last refusal, to SportsVision under the SportsVision Agreement. The pay television rights to the Winter Olympics were acquired by Premier Sports, a company associated with the Galaxy/Foxtel service.

There is conflicting evidence about SNL's reasons for not acquiring the Pay television rights to the Winter Olympics.

#### *Evidence of Mr Cousins*

Mr Cousins said that it was "most unusual that SNL did not apparently bid for the pay television rights to the 1998 Winter Olympics". Mr Cousins further stated that "in every other instance Seven has bid for both the free-to-air and the pay rights but in this instance Seven only bought the free-to-air rights and the pay rights were bought by Premier Sports an associate of Galaxy/Foxtel. This gets around the agreement we have" (the SportsVision Agreement).

Mr Cousins stated that in his opinion SNL's decision to bid only for the free-to-air rights was unusual because the larger sum of money involved in bidding for both sets of rights made it easier to secure the broadcast rights.

Mr Cousins claimed that he did not know of any other instances prior to this situation where any of the free-to-air networks has bid only for the free-to-air rights and has not also made a bid for the pay television rights.

Mr Cousins stated that this situation was also discussed with Mr Saggars in the meeting on 27 October 1995 within the context of discussing instances where it appeared SNL were attempting to thwart either the letter or the spirit of the SportsVision Agreement. Mr Cousins stated that he said to Mr Saggars that he was not surprised because he had seen a pattern developing in SNL's behaviour.

In reply to the ABA notices sent to Messrs Stokes and Rice and Ms Howard on 5 December 1995 SNL stated on their behalf that "Seven had initially made a bid for the pay television rights for the Winter Olympics but was advised that those rights had already been contracted to another party". SNL further stated that none of Messrs Stokes and Rice nor Ms Howard had had any discussion with Optus Vision, or News/Foxtel about the acquisition of broadcasting rights for the 1998 Winter Olympics (and) that they are not aware of any such discussion having taken place.

In relation to SNL's bid for the Winter Olympics Mr Rice is reported in *The Australian* on 10 November 1995 as saying "we started bidding for the full package but the price was escalating. At the end of the day I am interested in our core business which is free-to-air".

#### *Evidence of Mr Cousins*

Mr Cousins stated that Optus Vision was never consulted by SNL regarding the amount that they were prepared to pay to have the right to broadcast the Winter Olympics on SportsVision.

The ABA does not find it necessary to resolve the conflicting evidence regarding the reason for SNL not acquiring the pay television rights. In the view of the ABA, SNL's

decision not to bid for the pay television rights to the 1998 Winter Olympics was a commercial decision based either on a belief that the price was too high or that those rights were not available. Both of these reasons are commercially appropriate. The ABA does not regard the apparent inconsistency as significant, particularly as there is no evidence apart from Mr Cousins' speculation to indicate that the decision was in fact made in response to a direction from News.

The ABA notes that the SportsVision agreement imposed no obligation on SNL to bid for any pay television rights or to consult with Optus or SportsVision about any such decision.

The ABA notes that SNL has concluded a deal with the International Olympic Committee for all Australian broadcast rights (including pay television rights) for summer and winter Olympics to the year 2008.

## **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*There is no basis on which to conclude that News either alone or together with an associate has exercised, directly or indirectly, direction or restraint over SNL's decision not to bid for the pay television rights to the 1998 Winter Olympics.*

### **6.5 Rugby Union**

There has been a dispute between the ARFU and SNL in relation to both the free-to-air and pay television rights for certain Rugby Union events conducted in Australia. In a letter dated 14 November 1995 from SNL to SportsVision, SNL stated that it has been advised by senior counsel that it was uncertain whether SNL had any agreement with the ARFU as to free-to-air or pay television broadcast rights to domestic tests, Bledisloe Cup Tests, State of the Union matches or the Super 12 series. SNL further stated that any contractual arrangements were informal. Mr Cousins stated that an arrangement was made between News and SNL that SNL would not proceed against the ARFU on the grounds that News would deliver to SNL the free-to-air rights to the Rugby Union.

#### *Evidence of Mr Cousins*

Mr Cousins stated that Mr Stokes had said to him that SNL did not believe it was worth pursuing the matter with the Rugby Union (the ARFU) because the ARFU would not have the money to pay damages to SNL and that SNL would probably end up with the free-to-air rights in any event. Mr Cousins also testified that Mr Stokes had said to him that SportsVision did not have a direct case itself with the ARFU. Mr Cousins stated that he believed that SportsVision did have a direct case.

Mr Cousins also stated that he believed that SNL's advice from its lawyers was to the effect that a binding agreement exists between SNL and the ARFU. Mr Cousins said that Mr Erskine of International Management Group (IMG) (who had negotiated that agreement on behalf of the ARFU) had told him that in his opinion a binding agreement existed.

Mr Cousins stated that an arrangement was made between News and SNL for SNL not to proceed against the ARFU on the grounds that News would simply deliver the free-to-air rights to SNL and that SNL therefore need not pursue the matter.

In a letter dated 14 November 1995 from SNL to SportsVision SNL stated that it was reserving its right to seek damages against the ARFU for wrongful repudiation of the agreement with SNL but it did not at that point intend to enforce the agreement against the ARFU because:

- of the uncertainty regarding the existence of any agreement;
- of the time and cost involved in pursuing the matter through the courts;
- of advice that even if SNL has an agreement with the ARFU, a court will not force the ARFU and other rugby organisations to conduct matches;
- SNL does not have the power to restrict the actions of the New South Wales, Queensland, South African or New Zealand Rugby Unions, without whose co-operation, any injunction against the ARFU would be worthless;
- legal proceedings or injunctions against the ARFU may jeopardise the ARFU's player contracts or the ARFU itself so that if they were to conduct matches they would be commercially of little value to SNL.

In reply to the ABA Notices sent to Messrs Stokes and Rice and Ms Howard on 5 December 1995 SNL stated on their behalf that Mr Rice had discussions with representatives of News/Foxtel in relation to the possibility of News supplying SNL with free-to-air broadcast rights to certain Rugby Union matches. SNL stated that the substance of the discussions was that SNL would be prepared to purchase the free-to-air broadcast rights for these events from News/Foxtel subject to:

- 1) satisfactory commercial terms being agreed;
- 2) News/Foxtel satisfying SNL that it has the legal capacity to make available those rights to SNL.

#### *Evidence of Mr Rice*

Mr Rice stated that Seven had received opinions from two Queens Counsels but that he did not know what the situation was with the rights. He said that SNL had been promised the free-to-air rights by News but that there was no official deal between News and SNL. News has free-to-air and pay television rights to Rugby Union matches under an agreement with the ARFU referred to as the SANZA Agreement.

Mr Rice also said that he did not care where the rights came from though the focus had been on getting the rights through News. When asked whether the dispute with the ARFU bore any relevance to SNL's dealings with News Mr Rice said that it was unclear what the real situation was with the ARFU 'agreement' and that he (SNL) simply wanted the rights.

Mr Rice also stated that Mr Cowley had told him "don't worry, Rugby Union will come to you". Mr Cowley had said this to Mr Rice a 'couple of times'. In reply to

the question “Has News or Foxtel made any approaches to Seven directly or indirectly for Seven to agree (not) to pursue its rights to seek damages against the ARFU or to come to a commercial rather than a legal settlement of the matter?” Mr Rice replied “No”.

### *Evidence of Mr Saggars*

Mr Saggars testified that in his opinion the agreement which SNL had with the ARFU was not a clear contract. SNL had received advice that there is a distinct possibility that SNL would not be able to enforce the agreement.

Apart from speculating about the possible motivations of SNL, Mr Saggars observed that it is legitimate and may be justified, especially when SNL had been given very inconclusive advice, not to take their rights further.

Mr Rice and Mr Bateman have indicated to Mr Saggars that SNL will get free-to-air rights to the Rugby Union from News. SNL has received legal advice that it can buy those rights without infringing the rights of SportsVision and SNL’s obligations to them under the SportsVision Agreement.

The ABA is of the view that there exist a number of commercial and legal reasons which could justify the decision taken by SNL not to pursue litigation against the ARFU regarding the broadcast rights to certain Rugby Union matches. In particular, legal advice received by SNL suggests that the existence of a binding agreement is uncertain (testimony of Mr Saggars). When this is added to the costs which are involved in commercial litigation, it was not unreasonable of SNL to explore other avenues to secure free-to-air rights to Rugby Union matches.

News appears to have secured a binding legal agreement with the ARFU to acquire both the pay television and the free-to-air rights to Rugby Union matches which SNL wants to broadcast. If SNL wished to acquire the free-to-air rights and avoid the cost and uncertainty of litigation with the ARFU it would not be unreasonable to enter negotiations with the current holder of those rights.

## **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*There is no basis on which to conclude that News either alone or together with an associate has exercised, directly or indirectly, direction or restraint over the decision by SNL not to pursue its rights to seek damages against the ARFU. The SNL decision was driven by bona fide commercial considerations.*

### **6.6 Atlanta Olympics**

SNL holds both the free-to-air and pay television rights to the Atlanta Olympics. As outlined above the Olympics are covered by the provisions of the SportsVision Agreement. The ABA heard an assertion from Mr Cousins that SNL had decided not to offer the pay television rights for the Atlanta Olympics to SportsVision because of a

commitment to News. Mr Cousins claimed that the consequence of this would be that Foxtel would not have to compete with another pay television operator holding those valuable Olympic rights.

Mr Rice was quoted in *The Australian* on 10 November 1995 as saying that SNL may not grant any pay television rights to the Atlanta Olympics, but may 'quarantine' them.

#### *Evidence of Mr Cousins*

Mr Cousins stated that SportsVision had already held discussions with SNL regarding the Atlanta Olympics in relation to what product would be available, what events would be telecast and the sums of money involved.

Mr Cousins commented that it is "unheard of for a free-to-air network to buy the pay television rights to a key event of that kind which clearly cost a very great deal of money and then not to on-sell them". Mr Cousins stated that the whole basis of SportsVision entering the SportsVision Agreement with SNL was that those rights were available. Mr Cousins is of the opinion that the decision taken by SNL in this matter must have been motivated by a commitment to News.

#### *Evidence of Mr Rice*

Mr Rice stated that SNL had not yet made a decision regarding the pay television rights to the Atlanta Olympics. Mr Rice confirmed that he had previously made a statement that SNL may choose not to sell the pay television rights to the Atlanta Olympics.

Mr Rice said that SNL will not provide the Atlanta Olympics to pay television if it will detract from the potential audience that Seven can get. On the other hand he also said it was 'probably highly unlikely' that pay television rights will not be sold.

When asked what the relevant considerations are to SNL's decision on whether or not to on-sell the pay television rights to the Atlanta Olympics Mr Rice replied "Money is the important consideration" as well as the desire not to "offer anything that's likely to have any sort of adverse impact on our (Seven's) coverage".

Mr Rice stated that neither he, Mr Kerry Stokes, Chairman of Seven, nor Mrs Howard, Seven's Company Secretary, have had or intend to have any discussions with representatives of News or Foxtel in relation to these rights. When asked whether any such discussions are scheduled or planned Mr Rice replied - "no".

#### *Evidence of Mr Saggars*

Mr Saggars testified that SNL had not yet made a decision as to whether to on-sell the pay television rights to the Atlanta Olympics but that he thinks SNL is going to make an offer to Optus Vision. Mr Saggars stated that there "is a want within SNL to sell the rights". Mr Saggars testified that there is a difference of opinion between SNL and Optus Vision regarding SNL's obligations but that it is SNL's view that if they decide to sell the pay television rights to the Olympics they must give Optus Vision a right of first and last refusal.

On 22 November 1995 Mr Barnett, CEO of SportsVision, wrote to Mr Rice outlining his concerns regarding Mr Rice's statement published in *The Australian* on 10 November

1995. In this letter Mr Barnett states that the possibility of SNL not on-selling its pay television rights concerns him because he believed that he (SportsVision) had agreed to an oral offer for the Atlanta Olympics from SNL executives on 8 May 1995, the rights fee being set at \$2.5m.

#### *Evidence from Mr Rice*

Mr Rice stated that after receiving the letter from Mr Barnett he investigated whether or not any oral offer was made or accepted and had come to the understanding that there was not. He indicated that it was a most unusual claim by Mr Barnett given that no details of the amount or kind of events to be on-sold had been settled yet Mr Barnett claimed a price had been set.

There is no provision in the SportsVision Agreement which obliges SNL to enter negotiations with SportsVision regarding the sale of the pay television rights to the Atlanta Olympics. Before SportsVision is entitled to the rights of first and last refusal SNL must decide to make the rights available to Pay television. It is within the discretion of SNL whether to offer the rights or not.

Nonetheless, in the view of the ABA it would be unusual for SNL not to seek to defray the cost of an expensive program of this kind by on-selling the pay television rights.

The evidence of Mr Saggars indicates that SNL wants to sell the pay television rights to the Olympics to Optus Vision and is planning to make an offer. The ABA accepts that a decision has not been reached and that in Mr Rice's opinion it is likely some rights will be on-sold. SNL is merely considering options. There is no evidence on which to conclude that the factors which are relevant to the decision are being influenced by News.

## **FINDING**

On the basis of the evidence before it, the ABA finds that:

*There is no basis on which to conclude that either News either alone or together with an associate has exercised, directly or indirectly, direction or restraint over SNL in the decision making process in relation to the sale of pay television rights to the Atlanta Olympics.*

## **6.7 Australian Football League/Super League**

Mr Cousins gave evidence that he had met with Mr Saggars at the SNL offices on 27 October 1995. The meeting was arranged by Mr Saggars.

#### *Evidence of Mr Cousins*

Mr Cousins stated that Mr Saggars told him that Messrs Rice and Bateman had asked Mr Saggars to find a way to remove from SportsVision some of the pay television rights to the AFL so that those rights could be given to Foxtel. According

to Mr Cousins, Mr Saggars explained the SportsVision Agreement to Messrs Rice and Bateman, informing them that it contained binding contractual arrangements.

Mr Cousins stated that Mr Saggars had told him that Messrs Rice and Bateman told Mr Saggars that it was his job to find a way around the contractual arrangements and that perhaps he might look at some situation where a new form of the game might be started that would not be covered by the SportsVision Agreement or by any other means. Mr Cousins asserted that Mr Saggars said that he was given an instruction that he should simply remove these rights by whatever means he could find.

Mr Cousins testified that Mr Saggars told him that he, Mr Saggars, was receiving instructions directly from Mr Rice and Mr Bateman. Mr Cousins stated that Mr Saggars told him that he was in no doubt that those instructions were a result of discussions with News.

The ABA obtained copies of correspondence between Optus Vision and SNL regarding this matter.

As a result of his conversation with Mr Saggars, Mr Cousins wrote to Mr Stokes on 13 November 1995 to tell him that he had been informed by a senior member of staff at SNL that that staff member was instructed to break the SportsVision Agreement in relation to the AFL rights and to find a way to distribute some or all of these rights to Foxtel.

In a letter dated 13 November 1995 Mr Stokes informed Mr Cousins that all of the senior staff at SNL (including Mr Saggars) who deal with Optus Vision and SportsVision are “fully aware of our company’s commitment always to fulfil all its legal obligations both to Optus Vision and SportsVision”.

In the ABA Notices sent to Messrs Stokes, Rice and Ms Howard on 5 December 1995, the ABA asked whether any discussions were held between any representative of Seven and any representative of News or the Foxtel Group in relation to the free to air and pay television rights to AFL held by SNL, or the negotiation of future broadcast rights to AFL matches.

SNL replied to that notice on behalf of Mr Rice, stating that he has had a discussion with representatives of News in relation to whether SNL is able to provide to News/Foxtel pay television rights to AFL matches. The reply further stated that Mr Rice informed those representatives, after making enquiries with regard to SNL’s legal position, that SNL could not at that point provide those rights to News/Foxtel.

#### *Evidence of Mr Rice*

On 12 October 1995 Mr Rice met with Mr Murdoch, Mr Cowley and Mr Chisholm (Chief Executive of International Television Group of The News Corporation Limited Group). Mr Rice stated that it was indicated to him that Mr Murdoch wanted to meet to discuss the plans Mr Rice had for the network and other general matters. Mr Rice testified that the subject of Super League was raised by Mr Murdoch and a discussion of the amount of programming Mr Rice would want for SNL followed. Mr Rice’s understanding at that time was that SNL would receive free to air rights to the Super League from News.

Mr Rice also stated that at this meeting, after the discussion about the Super League, Mr Murdoch indicated that News would like some AFL rights for Foxtel. Mr Rice testified that he told Mr Murdoch that he did not know what SNL could do about giving Foxtel some AFL rights because of the SportsVision Agreement. Mr Rice testified that he had wanted the 'ideal position' in which SNL gave AFL rights to Optus Vision and Foxtel in order to get more money for the AFL rights which had been a large cost for SNL. Mr Rice stated that Mr Murdoch then said that perhaps Mr Rice may be able to find a way at some stage.

Mr Rice stated that there was no pressure on him to provide the AFL rights to News and that he did not understand the discussion with Mr Murdoch as giving rise to a possible tit for tat situation in which SNL would get some rights to Super League in return for providing AFL rights to News/Foxtel. Mr Rice claimed that at the meeting the AFL rights were a separate topic of conversation from the Super League rights. While Mr Rice stated that there was no pressure from News he conceded that 'when Mr Murdoch says he would like some AFL rights it does ring a bit of a bell'. Mr Rice told Mr Murdoch that he would find out whether SNL could provide any AFL rights to News/Foxtel.

As a result of that conversation Mr Rice asked staff at SNL, including Mr Saggars, to have a look at the SportsVision Agreement to ascertain whether it was possible to provide some AFL rights to News/Foxtel. Mr Rice was informed that the SportsVision Agreement did not allow SNL to offer any AFL rights to News/Foxtel. Mr Rice stated that after this the SportsVision Agreement and the possibility of giving AFL rights to News/ has not been revisited at SNL.

Mr Rice testified that he is not happy about the SportsVision Agreement. Mr Rice stated that in his opinion, the pay television rights which go automatically to SportsVision under the SportsVision Agreement (which includes AFL) "are worth considerably more than we (SNL) are getting for them".

Mr Rice was asked whether he had given any instructions to senior staff at SNL as to how to behave and deal with Optus Vision. Mr Rice testified that he had not.

Subsequently, News/Foxtel entered an agreement with the Nine network to provide them with the free to air rights to the Super League. The recent Federal Court decision about Super League will affect the obligations arising out of this agreement.

### *Evidence of Mr Saggars*

Mr Saggars testified that at the meeting he had with Mr Cousins on 27 October 1995 he told Mr Cousins that there was a want within SNL to give some AFL programming to Foxtel and that he had been asked to investigate that. Mr Saggars stated that he told Mr Cousins he had received directions and instructions to see whether it would be possible to give AFL rights to Foxtel, but that it "was not an instruction that had to be done irrespective of the method".

Mr Saggars testified that the extent of the instructions from either Messrs Stokes or Rice was to make certain that anything to which Optus Vision were entitled under the SportsVision Agreement was checked to ascertain whether SNL could also sell the programs elsewhere if possible. Mr Stokes had never "couched that in terms of being a favour to News". Mr Saggars stated that he believed Mr Stokes thought SNL had sold its programming too cheaply.



Mr Saggars testified that he expressed to Mr Cousins that it was his belief, based on observation, that SNL executives, Mr Rice in particular, were attempting to do everything in their power to do that which News or Foxtel asked for. Mr Saggars explained that the reason for this was that SNL was hoping to get the Super League free-to-air rights from News. Mr Saggars does not believe that SNL were taking instructions from News or Foxtel.

Mr Saggars testified that he had been told by Mr Rice that Mr Rice would like to be able to sell AFL rights to Foxtel but that he, Mr Saggars, was not aware of any meeting between Mr Rice and News or Foxtel in which AFL rights were discussed, though he presumed this to be the case. Mr Saggars testified that he had never been asked to breach the SportsVision Agreement.

There is conflicting evidence regarding what was said by Mr Saggars to Mr Cousins at the meeting on 27 October 1995. Mr Cousins testified that Mr Saggars had told him that Mr Saggars had been instructed by senior executives at SNL, including Mr Rice, to remove AFL rights from SportsVision any way he could. Mr Saggars denied that this was so, testifying that the instruction was to ascertain whether SNL could sell sporting rights, in particular the AFL, to Foxtel. This is what Mr Saggars did. Mr Rice testified that he had asked SNL staff, including Mr Saggars, to ascertain whether SNL could give any AFL rights to Foxtel. Mr Saggars also testified that that was the case.

Mr Cousins testified that Mr Saggars had told him that senior executives of SNL were in constant contact with and receiving instructions from News and Foxtel. Mr Saggars testified that senior executives of SNL are in constant contact with News and were doing everything in their power to do what News or Foxtel asked for but that he does not believe that it amounted to taking instructions. Mr Rice testified that he was not pressured by News to provide AFL rights to News.

The evidence of Messrs Rice and Saggars, while different in emphasis and perhaps perception, is substantially in agreement. The evidence of Mr Cousins does not concur with that of Mr Rice and significantly, his recall of the conversation with Mr Saggars is at variance with the account given by Mr Saggars.

The substantial concurrence between Messrs Rice and Saggars has led the ABA to give more weight to their evidence. The ABA accepts that there exist commercial and business reasons to explain the desire of SNL executives to provide AFL rights to News/Foxtel. Mr Rice had a meeting with Messrs Murdoch, Cowley and Chisholm at which Super League and the AFL were discussed. Mr Rice wished to be able to provide AFL rights to News. Mr Rice wanted to acquire Super League rights from News, and to this end he instructed Mr Saggars to look at the SportsVision Agreement and was informed that SNL could not provide News with any AFL rights.

## **6.8 The SportsVision Agreement**

### *Evidence of Mr Cousins*

Mr Cousins testified that Mr Saggars told him at the meeting of 27 October 1995 that Mr Rice and Mr Bateman told Mr Saggars that it was Mr Saggars' job to find a way around the SportsVision Agreement to provide AFL rights to Foxtel. Mr Cousins stated that when Mr Saggars explained that the SportsVision Agreement prevented SNL from providing AFL rights to Foxtel the answer given to Mr Saggars

by Mr Rice and/or Mr Bateman was “well we are going to find a way to screw Optus Vision and help Foxtel” and it was Mr Saggars’ job to do that and he was instructed to get on with it.

Mr Cousins testified that Mr Saggars told him that senior executives at SNL were taking instructions from News and from Foxtel with regard to sporting rights matters. When asked if Mr Saggars had indicated whether or not he was receiving any instructions or directions from anyone at News himself, Mr Cousins replied that Mr Saggars had told him that his instructions were coming directly from Messrs Rice and Bateman but that he, Mr Saggars, was not in any doubt these instructions were as a result of discussions with News.

The ABA obtained copies of correspondence between Optus Vision and SNL regarding this matter.

In a letter dated 13 November 1995 Mr Stokes informed Mr Cousins that all of the senior staff at SNL (including Mr Saggars) who deal with Optus Vision and SportsVision are “fully aware of our company’s commitment always to fulfil all its legal obligations both to Optus Vision and SportsVision”.

#### *Evidence of Mr Rice*

Mr Rice testified that soon after his appointment as Managing Director of SNL he asked Mr Saggars whether it was possible to extricate SNL from the SportsVision Agreement. This was because Mr Rice believed, and still does, that the SportsVision Agreement does not offer SNL the best opportunities to exploit the rights which SNL has. Mr Rice is of the opinion that the pay television rights which go automatically to SportsVision under the SportsVision Agreement are governed by terms which substantially discount the value of the programs. In addition Mr Rice stated that the desire to extricate SNL from the SportsVision Agreement is also in part due to frustration within SNL with the lack of information they get from Optus Vision despite being a substantial shareholder in that company. Mr Rice stated that he was advised that it was not possible for SNL to extricate itself from the SportsVision Agreement.

Mr Rice testified that after he met with Mr Murdoch on 12 October 1995 he asked staff at SNL to have another look at the SportsVision Agreement to ascertain whether SNL could provide any AFL rights to Foxtel. Mr Rice stated that he said “can we have another look at this one more time and see if there is anything we can do and if we can’t do anything legally then lets think about whether or not there is some commercial proposition that we can put to Optus Vision”. He was advised that they could not. Mr Rice said the issue has not been revisited.

Mr Rice was asked whether he had given any instructions to senior staff at SNL as to how to behave and deal with Optus Vision. Mr Rice testified that he had not.

#### *Evidence of Mr Saggars*

When asked whether he said to Mr Cousins that he had directions or instructions to “screw Optus Vision” or words similar to that Mr Saggars replied that he did not recall that part of the conversation. Mr Saggars stated that it was possible he may have said that he had been asked by Mr Rice to make life difficult for Optus Vision. Mr Saggars stated that he was trying to convey to Mr Cousins why he was having

difficulty in discharging his role as the representative from SNL on the boards of Optus Vision and SportsVision.

Mr Saggars explained that at this time, that is, the first couple of months after the appointment of Mr Stokes as Chairman of SNL, there was a climate of distrust from within SNL towards Optus Vision. Mr Saggars stated that this was due, at least in part, to public statements made by Mr Stokes expressing his dissatisfaction and disagreement with the investment of SNL in Optus Vision. According to Mr Saggars, Mr Stokes had attacked the investment as a bad business decision even before he came to the SNL board. Mr Stokes had expressed these views directly to Mr Saggars on a number of occasions. Mr Saggars is of the opinion that Mr Stokes would prefer that SNL was not in pay television at all, because it is too risky.

Mr Saggars testified that Mr Rice and Mr Stokes have instructed him to check anything to which Optus Vision was entitled under the SportsVision Agreement to see whether SNL could also sell the programs elsewhere. Mr Saggars stated that soon after Mr Stokes was appointed to the board of SNL advice was sought regarding whether SNL could extricate themselves from the SportsVision Agreement. The advice was that it was not possible.

Mr Saggars testified that it was not true that he had told Mr Cousins that senior executives of SNL were taking instructions from News or Foxtel in relation to the sporting rights.

Mr Saggars testified that he never been asked to breach the SportsVision Agreement.

As noted above, the testimony of Mr Cousins and Mr Saggars regarding what was said at the meeting between them on 27 October 1995 is in conflict. Mr Cousins testified that Mr Saggars told him that he was instructed by Mr Rice and Mr Bateman to 'screw Optus Vision'. Mr Saggars did not recall exactly what he said to Mr Cousins but stated he had indicated that he had been told to make life difficult for Optus Vision. Mr Rice testified that he had not given any instructions to senior staff at SNL as to how to behave and deal with Optus Vision/SportsVision.

Mr Saggars testified that he was asked by Mr Rice to ascertain whether it was possible for SNL to extricate itself from the SportsVision Agreement. Mr Rice also testified that he had asked Mr Saggars whether it was possible to extricate SNL from the SportsVision Agreement.

There was clearly a desire on the part of some senior executives and the Chairman of SNL to extricate SNL from the SportsVision Agreement. This appears to be due to a belief held by Messrs Stokes and Rice that the investment in Optus Vision was a bad business decision. Mr Rice is of the opinion that the SportsVision Agreement has resulted in SNL providing sporting rights to SportsVision for less than their market value. In this context, the ABA is of the opinion that it was not unreasonable for Mr Rice to ask Mr Saggars to investigate the possibility of extricating SNL from the SportsVision Agreement

## **FINDINGS**

On the basis of the evidence before it, the ABA finds that:

*A meeting took place between Mr Cousins and Mr Saggars on 27 October 1995 at which they discussed the attitude at SNL toward Optus Vision/SportsVision and the instruction that Mr Saggars had received from Mr Rice to investigate the possibility of extricating SNL from the SportsVision Agreement.*

*Mr Saggars was instructed by Mr Rice and/or Mr Stokes to look at the SportsVision Agreement and to interpret SNL's legal rights and obligations in relation to it.*

*Mr Rice's actions reflected a commercial desire to have free-to-air rights to Super League.*

*Mr Rice's actions are consistent with an attitude that the investment in Optus Vision was a bad business decision and that the entry into the SportsVision Agreement was also a bad business decision because in Mr Rice's view the sporting rights are substantially discounted.*

*There is no basis on which to conclude that any agreement existed between News and SNL which was designed to undermine the SportsVision Agreement.*

*Mr Rice's intention in wishing to extricate SNL from the SportsVision Agreement and instructing Mr Saggars to investigate that possibility was not the result of direction by News or an associate of News.*

## **CONCLUSION**

*News was not, either alone or together with an associate, in a position to exercise, whether directly or indirectly, direction or restraint over a substantial issue affecting the management or affairs of SNL and its licensees.*

*SNL did not act in accordance with the directions, instructions or wishes of, or in concert with, News or of News and an associate acting together, or the directors of News in relation to this matter.*

*More than 50% of SNL's directors did not act in accordance with the directions, instructions or wishes of, or in concert with, News or of News and an associate acting together, or the directors of News in relation to this matter.*

## **7. Company Interests In SNL**

This part of the report considers the company interests of SNL. It should be noted that on 6 January 1996 the *Broadcasting Services Amendment Act 1995* came into force, providing that, among other things, if a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company. Exemption from deemed control, on the basis of submission of proof to the contrary, is no longer available.

Company interests are defined in Section 6 of the Act as follows:

‘company interests’, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

Shareholding interests, voting interests, dividend interests and winding-up interests are defined at Section 8 of the Act.

Subsection 8(1) of the Act defines a shareholding interest as follows:

- (a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and
- (b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company.

Voting interests are defined in subsection 8(2) of the Act as follows:

For the purposes of this Act:

- (a) a person has a voting interest in a company if the person is **in a position to exercise control of votes** cast on a poll at a meeting of the company: and
- (b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.

For the purposes of the Act, subsection 8(3) of the Act defines a dividend interest as follows:

- (a) a person has a dividend interest in a company if:
  - (i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or
  - (ii) under the memorandum and articles of association of the company, a share of any profits of the company is to be, or may be, paid or credited to the person otherwise than as dividends on shares; and

- (b) the percentage of interest is:
- (i) if subparagraph (a)(i) applies - the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a percentage of the total of all dividends to which members of the company become entitled at that time; or
  - (ii) if subparagraph (a)(ii) applies - the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.

Subsection 8(4) of the Act defines a winding-up interest as follows:

- (a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members, whether as a result of a winding-up or otherwise; and
- (b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.

On 9 April 1996 SNL advised the ABA that the issued capital of SNL at 1 April 1996 was:

Ordinary shares of 50c each, fully paid	290,608,675
Convertible debentures, unsecured, of \$2.00 each	16,335,325
Options issued under the Executive Option Plan	3,230,000
Options, exercise price of @ \$3.40	600,000

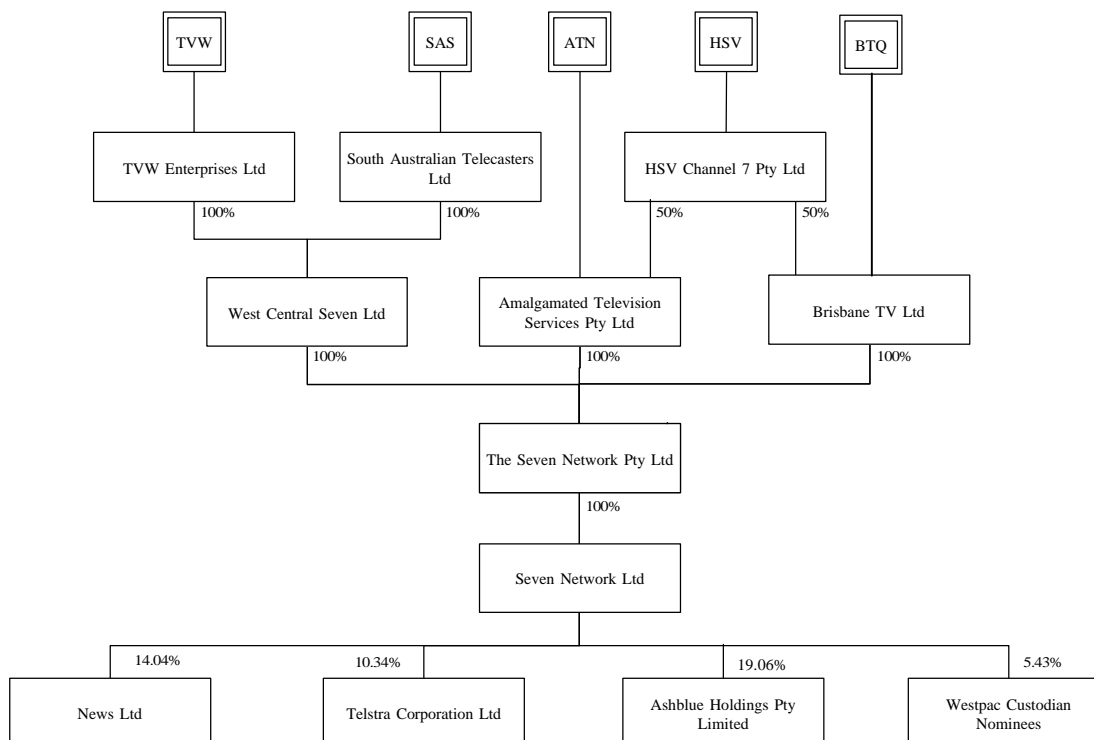
On 19 March 1996 the principal shareholders in SNL were:

Ashblue Holdings Pty Ltd (19.06%)	55,305,442
News Ltd (14.04%)	40,754,600
Telstra Corporation (10.34%)	30,000,000
Westpac Custodian Nominees (5.43%)	15,763,493
National Nominees Limited (3.80%)	11,017,413
MLC Limited (3.18%)	9,239,305
State Authorities (2.99%)	8,680,700
Australian Mutual Provident (2.85%)	8,265,036

Queensland Investment (1.87%)	5,428,900
Chase Manhattan Nominees (1.65%)	4,785,034

### Diagram: the shareholding structure of SNL at 19 March 1996

The Seven Network Ltd: ownership as at 19 March 1996



### News Ltd

The ABA considered the level of News' company interests in SNL for the purposes of determining whether News was to be regarded as being in a position to exercise control of SNL under Clause 6 of Schedule 1 of the Act.

At 19 March 1996 News held 40,754,600 of the ordinary shares in SNL, which was 14.04% of the total capital issued in that class.

## 7.1 Convertible Debentures

As at 6 March 1996 the total number of \$2.00 (face value) convertible debentures on issue in SNL was 16,459,325. Of these, News Ltd held 4,926,300 units or 29.93%.

In order to calculate the total company interests held by News in SNL and the licensee companies it is necessary to determine whether the convertible debentures held by News constitute company interests for the purposes of the Act.

### **Voting Interests**

In determining whether the convertible debentures constitute company interests it is important to note that the right to vote attaches to a share. Therefore, the convertible debentures will only give News a voting interest where News has an enforceable, present and immediately existing right to convert the convertible debentures into shares.

If News converted its debentures into ordinary shares and added them to its 14.04% of the ordinary issued shared capital, their total company interests would represent approximately 15.48% of the capital of Seven Network Limited.

If there will be a breach of the Act or the *Foreign Acquisitions and Takeovers Act 1975 (FATA)* then the Notes may not be converted. Clause 9(a) of the Terms and Conditions of Issue provides:

A Debenture holder must not convert on its or its nominee's behalf any of its Debentures and no such purported conversion has any effect if in doing so it would be in breach of or would cause any person to be in breach of any Statute.

If there will not be a breach of either Act then the Notes may be converted, and would then give rise to immediate, present and existing company interests.

To determine whether the convertible debentures are convertible at any given time it is necessary, hypothetically, to convert them and determine whether they will result in company interests which would place News in breach of the Act.

A breach of the Act would arise if conversion of the debentures resulted in News holding company interests of more than 15%, as is presently the case. News would then be regarded, under Clause 6(1) of Schedule 1, as being in a position to exercise control of SNL. This would result in a breach of s.60(b) of the Act.

Therefore, News cannot at present convert its debentures.

### **FINDING**

On the basis of the evidence before it the ABA finds that:

*News has no present and immediately enforceable right to convert the convertible debentures to shares and therefore the convertible debentures do not confer voting interests on News.*



## **Dividend interests**

As discussed, News holds 4,926,300 units or 29.93% in SNL. Under the Terms and Conditions of Issue of the convertible debentures the holder is entitled to an annual interest payment calculated at a specified rate. Under clause 6(1)(c) of the Terms and Conditions of Issue the interest is payable as follows:

...the interest payable to a Debenture holder with respect to Debentures held by that Debenture holder is equal to the amount of the Distribution that the Debenture holder would have received if, as at the date the entitlement to the Distribution determined, all of the Debentures of that Debenture holder and all other Debenture holders had been converted into shares.

The ABA received advice from the Office of General Counsel, Attorney-General's Department on 15 March 1995 regarding the status of convertible notes (and debentures). This advice stated that 'As a matter of form, the Noteholder is entitled to 'interest', not to a dividend. As a matter of substance, whilst the term 'dividend' is not defined in the Act, general company law principles suggest that a dividend is something that attaches to an issued share'. Accordingly, the interest payment on convertible debentures cannot be regarded as a dividend payment in terms of s.8(3)(a)(i) of the Act.

The ABA's legal advisers have consistently found this to be a significant, albeit technical, distinction. The ABA has accepted this advice.

## **FINDING**

On the basis of the evidence before it the ABA finds that:

*The entitlement to interest payments on the convertible debentures does not constitute a dividend interest for the purposes of the Act.*

## **Winding-up interests**

In general company law, the nature of the interest which a noteholder or a debenture holder obtains in a company is fundamentally different to that of a shareholder. Shareholders, or members, have an interest in the equity capital of the company, whereas noteholders and debenture holders have an interest in the debt capital of the company. Noteholders and debenture holders have a right to be repaid for the amount of the debt and generally rank before shareholders in a winding-up. The terms of issue of the debentures at clause 7.2(c) specifically provide that this is the case in the event of a winding-up of SNL.

Under the terms of issue, the noteholder rank behind the senior indebtedness in a winding up (clause 5.3) but since they are regarded as creditors on a winding up, their redemption rights rank ahead of the members (clause 7.2.(c)). Noteholders therefore stand ahead of the members in a winding-up.

Clause 7.2(a) provides that:

On a Winding-Up, if a Debenture holder requests, the relevant Debentures must be redeemed by the Issuer.

Clause 7.2 (c) of the Terms and Conditions of Issue specifies that:

Each debentureholder agrees that on a Winding-Up its rights in respect of redemption of its Debentures are rights as a creditor of the Issuer which may be proved in the Winding Up subject to the provisions of clause 5 and paragraphs (a) and (b).

As the debenture holders rank ahead of the members in a winding-up they are not entitled to a share of the property of the company that could be distributed among the members. For this reason, the interest which accrues to the noteholders in a winding-up of SNL is not a winding-up interest within the meaning of subsection 8(4).

## **FINDING**

On the basis of the evidence before it the ABA finds that:

*The convertible debentures do not constitute a winding-up interest for the purposes of the Act.*

## **CONCLUSION**

*News does not have company interests in SNL exceeding 15%.*

## **8. Conclusion**

### **Terms of Reference**

- whether News Ltd, either alone or together with an associate, is in a position to exercise control of Seven Network Limited and/or any commercial television broadcasting licence controlled by Seven Network Limited;

*The ABA finds that News, either alone or together with an associate, is not in a position to exercise control of Seven Network Limited and/or any commercial television broadcasting licence controlled by Seven Network Limited*

- whether News Ltd, either alone or together with an associate, has breached paragraph 60(b) of the Act which prohibits a person from being in a position to exercise control of a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence and accordingly whether News Ltd, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;

*The ABA finds that News has not breached section 60(b) of the Act.*

*The ABA finds that News has not committed an offence pursuant to section 66 of the Act in respect of any such breach.*

- whether News Ltd, either alone or together with an associate, has breached subsection 57(1) of the Act which prohibits a foreign person from being in a position to exercise control of a commercial television broadcasting licence and accordingly whether News Ltd, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;

*The ABA finds that News has not breached section 57(1) of the Act.*

*The ABA finds that News has not committed an offence pursuant to section 66 of the Act in respect of any such breach.*

- whether News Ltd, or an associate of News Ltd, has breached subsection 64(1) of the Act, which requires a person who becomes aware that he or she is in a position to exercise control of a licence to notify the ABA in writing of that position;

*The ABA finds that News has not breached section 64(1) of the Act.*

- whether News Ltd has provided a commercial television broadcasting service without being licensed to do so in breach of section 131 of the Act.

*The ABA finds that News has not breached section 131 of the Act.*

## **Appendix A - Definition of “associate”**

“Associate”, in relation to a person in relation to control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper, means:

- (a) the person’s spouse (including a de facto spouse) or a parent, child, brother or sister of the person; or
- (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust - the trustee of the trust; or
- (d) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

in accordance with the directions, instruction or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or

- (e) if the person is a company - another company if:

- (i) the other company is a related body corporate of the person for the purposes of the Corporations Act 1990; or

- (ii) the person, or the person and another person who is an associate of the person under another paragraph are in a position to exercise control of the other company; but person are not associates if the ABA is satisfied that they do not act together in any relevant dealing relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company licence or newspaper;

## **Appendix B - Clause 2 of Schedule 1 to the Act**

### **PART 2 - WHEN PERSON IS IN A POSITION TO EXERCISE CONTROL**

#### **When person is in a position to exercise control**

**2.(1)** For the purposes of this Schedule, a person is in a position to exercise control of a licence or a company if:

- (a) the person, either alone or together with an associate of the person, is in a position to exercise control of the licensee or the company; or
- (b) in the case of a licence:
  - (i) the person is the licensee; or
  - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee; or
  - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence; or
- (c) in the case of a non-licensee company - the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the company; or
- (d) the person, either alone or together with an associate of the person, is in a position to:
  - (i) veto any action taken by the board of directors of the licensee or the company; or
  - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or
  - (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or
- (e) the licensee or the company or more than 50% of its directors:
  - (i) act, or are accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Paragraph (1)(b) does not apply to the provision of programs by a person to a licensee under an agreement for the supply of programs to a licensee if the conditions of the agreement relate only to the programs so supplied or their promotion.

(3) An employee of a licensee or of a non-licensee company is not, except through an association with another person, to be regarded as being in a position to exercise control of a licence or a company under subclause (1) purely because of being an employee.

(4) More than one person may be in a position to exercise control of a licence or a company.

## **Appendix C - Summary of Newspaper Articles**

### **Wednesday 15th March 1995**

Jane Schulze, The Herald Sun, 15 March 1995. “The Seven Network could face a severe revenue shortfall after advertisers this week snubbed a move by the network to persuade them to pay an extra 10 per cent above agreed advertising rates.”

### **Wednesday 22nd March 1995**

Elizabeth Knight, The Sydney Morning Herald, 22 March 1995. “Seven Network chief Bob Campbell’s grab for additional revenue last week through a ... hike in advertising rates will probably work ... But ... it will only serve to highlight how foolish Seven was in setting the rates that it has charged for the first four months of the year.”

### **Thursday 23rd March 1995**

Joshua Frith, The Australian, 23 March 1995. “Seven’s chairman, Mr Ivan Deveson, and Mr Campbell were seen entering the Sydney headquarters of News Ltd, which publishes *The Australian*, yesterday afternoon. “A spokesperson for the chief executive of News Ltd, Mr Ken Cowley, said later Mr Deveson and Mr Campbell had a long standing appointment to meet Mr Cowley....

“Mr Campbell described as ‘absolutely’ untrue market rumours yesterday afternoon that he was about to leave Seven.”

Ben Potter and Emily Mychasuk, The Sydney Morning Herald, 23 March 1995. “A flying visit to Australia by Mr Rupert Murdoch has raised the heat on Seven Network’s chief executive, Mr Bob Campbell, and chairman Mr Ivan Deveson to lift the performance of the network....

“Insiders said while Mr Campbell’s performance was regarded as satisfactory, there was disenchantment over the role of the chairman, Mr Deveson. “However, sources close to Seven said these concerns had not been raised at yesterday’s meeting as far as they were aware.”

Mark Furness, The Financial Review, 23 March 1995. “Mr Murdoch met separately with Seven’s managing director, Mr Bob Campbell, and chairman, Mr Ivan Deveson.”

Elizabeth Knight, The Sydney Morning Herald, 23 March 1995. “The hierarchy at the Seven Network must have been very nervous last night following Rupert Murdoch’s arrival and his eagerness to make a quick visit to the network’s two key directors. “If the talk around the sharemarket yesterday is correct, then Murdoch wasn’t planning to congratulate the management on a job well done.

“...the conjecture about the News Corp camp’s relationship with Seven was even enough to prompt a wave of rumours that Seven chief executive Bob Campbell might be on the way out.

“The rumours are wrong. He is still there...“From accounts of yesterday’s meeting between Murdoch and Ken Cowley with Campbell and Seven chairman Ivan Deveson, there weren’t attempts to displace any Board members or management...“The head of sales at Seven was sacked over the rate negotiations, but there is a school of thought that accountability for any major blunder should ultimately rest with the chief executive– even if it isn’t directly his fault... “It is still possible that Cowley and Murdoch were just paying a friendly visit. But

it is more likely that Murdoch no doubt has a clear agenda and a clear strategy - one that may leave Deveson and Campbell a bit uneasy.”

Alan Jones, 2UE, 23 March 1995. Rupert Murdoch has spoken to Bob Campbell, ATN7 about drafting Seven into Foxtel.

### **Friday 24th March 1995**

Ben Potter, The Sydney Morning Herald, 24 March 1995. “Seven Network Australia has conceded it was losing money at the advertising rates it set last December for this year, forcing it to seek to lift them by 10 per cent from next month.... “Sources close to the network maintained yesterday that these topics were not discussed when Mr Campbell and Seven’s chairman Mr Ivan Deveson met Mr Rupert Murdoch and Mr Ken Cowley, the head of News Corp’s Australian operations, on Wednesday.”

Ben Potter, The Age, 24 March 1995. “Seven Network Australia has conceded it is losing money at the advertising rates it set last December, forcing it to seek to lift the rates by 10 per cent from 2 April....“But sources close to the network say these topics were not discussed when Mr Campbell and Seven’s chairman, Mr Ivan Deveson, met Mr Rupert Murdoch and Mr Ken Cowley, the head of News Corporation’s Australian operations, on Wednesday.”

(same article syndicated to the Age and the SMH)

### **Saturday 25th March 1995**

AAP, The Australian, 25 March 1995. “Mr Campbell confirmed he had met Seven chairman Mr Ivan Deveson, Mr Murdoch and Mr Ken Cowley, the chairman and chief executive of News’s Australian arm, News Limited, on Wednesday. “‘A range of issues were discussed but the agenda of Seven’s performance was not an issue,’ Mr Campbell said, responding to speculation that Mr Murdoch was unhappy with the company’s returns.”

Ben Potter, The Age, 25 March 1995. “Rupert Murdoch ... and the chairman of News’s Australian arm, Ken Cowley, met Seven’s chief executive, Bob Campbell, and the chairman, Ivan Deveson, on Wednesday but Seven’s performance and its recent fiasco with ad rate negotiations were not high on the agenda, sources say. “But these issues can’t be far from Murdoch and Cowley’s minds...”

“Rumours at the time of the meeting that Campbell and Deveson had fallen on their swords proved wrong. Murdoch is legally unable to control Seven, and any suggestion he was seeking to exercise influence would alert the Australian Broadcasting Authority. “But [Murdoch] carries a big stick, and is said to give executives ‘two strikes’...“There is a view that Campbell and Deveson have had their two strikes. News is said to be disenchanted with Deveson’s role as chairman, and the Seven Board lacks people – apart from Campbell – who are steeped in the television industry.”

Daily Telegraph Mirror, 25 March 1995. “Mr Campbell confirmed a meeting was held between himself, News Corp Ltd’s chairman and chief executive Rupert Murdoch and News Ltd chairman Ken Cowley, and Seven’s chairman Mr Ivan Deveson on Wednesday. “A range of issues were discussed but the agenda of Seven’s performance was not an issue,’ Mr Campbell said, responding to speculation Mr Murdoch was unhappy with the company’s returns.”



AAP, The Herald Sun, 25 March 1995. “Speculation surrounding the involvement [in Foxtel] of Seven, which is 15 per [cent] owned by News Corp and 10 per cent by Telecom, intensified this week after News chief Rupert Murdoch met Mr Campbell and Seven chairman Ivan Deveson in Sydney.”

Ben Potter, The Sydney Morning Herald, 25 March 1995. “Rupert Murdoch ... and the chairman of News’s Australian arm, Ken Cowley, met Seven’s chief executive, Bob Campbell, and chairman, Ivan Deveson, on Wednesday but Seven’s performance and its recent fiasco with ad rate negotiations were not high on the agenda, sources close to the camps said. “But these issues can’t be far from Murdoch and Cowley’s minds...“Rumours at the time of the meeting that Campbell and Deveson had fallen on their swords proved wrong. Murdoch is legally unable to control Seven, and any suggestion he was seeking to exercise influence would alert the Australian Broadcasting Authority. “But [Murdoch] carries a big stick, and is said to give executives ‘two strikes’...“There is a view that Campbell and Deveson have had their two strikes. News is said to be disenchanted with Deveson’s role as chairman, and the Seven Board lacks people – apart from Campbell – who are steeped in the television industry.”

The Adelaide Advertiser, 25 March 1995. “Mr Campbell confirmed a meeting was held between himself, Mr Murdoch, News Limited’s chairman Mr Ken Cowley, and Seven’s chairman Mr Ivan Deveson on Wednesday.

““A range of issues were discussed but the agenda of Seven’s performance was not an issue,” Mr Campbell said, responding to speculation Mr Murdoch was unhappy with the company’s returns.”

The Hobart Mercury, 25 March 1995. “Mr Campbell confirmed he attended a meeting on Wednesday with Mr Murdoch, News Limited chairman Ken Cowley and Seven chairman Ivan Deveson.

““A range of issues were discussed but the agenda of Seven’s performance was not an issue,” Mr Campbell said, responding to speculation Mr Murdoch was unhappy with the company’s returns.”

## **Monday 27th March 1995**

Neil Shoebridge, Business Review Weekly, 27 March 1995. “The managing director of Seven Network, Bob Campbell, has suddenly become very unpopular in the advertising industry.”

Ben Potter, The West Australian, 27 March 1995. “Rupert Murdoch ... and the chairman of News’ Australian arm, Ken Cowley, met Seven’s chief executive Bob Campbell and chairman Ivan Deveson last Wednesday, but Seven’s performance and its recent fiasco with advertising rate negotiations were not high on the agenda, sources close to the camps say. “But these issues cannot be far from Mr Murdoch and Mr Cowley’s minds...“Rumours at the time of the meeting that Campbell and Deveson had fallen on their swords proved wrong. “Mr Murdoch is legally unable to control Seven and any suggestion he was seeking to exercise influence would alert the Australian Broadcasting Authority. “But [Murdoch] carries a big stick, and is said to give executives ‘two strikes’...“There is a view that Campbell and Deveson have had their two strikes. News is said to be disenchanted with Deveson’s role as chairman, and the Seven Board lacks people – apart from Campbell – who are steeped in the television industry.”

### **Monday 3rd April 1995**

Ian Verrender, The Sydney Morning Herald, 3 April 1995. “The atmosphere was congenial. More than that, it was downright friendly. In fact, the talk revolved around just about everything except the Seven Network....“While News Ltd is the biggest shareholder in Seven, it is constrained by two crucial pieces of legislation ... Murdoch cannot be seen to have any influence over the network’s operations. “In reality, he didn’t have to exert any direct pressure. Talk of the visit quickly leaked out to the financial press, who conveniently drew their own conclusions. Murdoch was content to allow them to deliver the message. A deft media hand, it saved him from getting involved in a corporate skirmish or a potentially messy spat with broadcasting regulators.”

### **Wednesday 5th April 1995**

Steve Lewis and Mark Furness, The Financial Review, 5 April 1995. “Democrats officials claim there is a ‘prima facie case that [News] has a reasonable degree of control over Seven’.”

Maria Ceresa, The Australian, 5 April 1995. “‘News Ltd has created the impression that Seven is a pawn in its Star League game plan,’ Senator Lees said.”

### **Monday 10th April 1995**

Neil Showbridge, Business Review Weekly, 10 April 1995. “Agency executives say Campbell is accepting responsibility for Seven’s failure to correctly estimate the demand for TV advertising time in 1995 and price its inventory accordingly. Company insiders say Campbell was misled by some of the people who handled the rate and contract negotiations in December. “Seven executives dismiss the rumours that News Corporation, which owns 15% of Seven, wants Campbell fired. They say the advertising rate debacle was not discussed at the March 22 meeting of Campbell, Seven chairman Ivan Deveson and News executives Rupert Murdoch and Ken Cowley.”

### **Wednesday 12th April 1995**

David Luff, Telegraph Mirror, 12 April 1995. This article made no mention of Mr Ivan Deveson.

Mark Drummond and Sue Lecky, The Sydney Morning Herald, 12 April 1995. “Mr Stokes is close to News Ltd’s chief executive, Mr Ken Cowley.”

Courier Mail, 12 April 1995. This article made no reference of Mr Ivan Deveson.

Bryan Frith, The Australian, 12 April 1995. “Seven’s recent action in unilaterally raising its advertising rates to attract volume, raised eyebrows, with Seven managing director Mr Bob Campbell and chairman Mr Ivan Deveson generally regarded as responsible for the debacle.”

Mark Furness, The Financial Review, 12 April 1995. “But while Mr Stokes acts independently, he has worked closely on certain deals with News Ltd chairman Mr Ken Cowley...“A controversial decision to break advertising agreements and impose a 10 per cent rate rise has damaged Seven’s standing with advertisers, adding to pressure on managing director Mr Bob Campbell as he tries to chart a course for the network”.

Mark Drummond and Sue Lecky, The Age, 12 April 1995. “Mr Stokes is close to News Ltd’s chief executive, Mr Ken Cowley.”

### **Thursday 13th April 1995**

Ivor Ries, The Financial Review, 13 April 1995. “Investor confidence in chairman Ivan Deveson and managing director Bob Campbell has been undermined and will take time to rebuild.”

AAP, The Canberra Times, 13 April 1995. “Media analysts said they were baffled about Mr Stokes’ reasons for building up a stake in Seven Network with many labelling the move as a ‘passive investment’.”

Mark Drummond, The Age, 13 April 1995. “Mr Gammell ... said any suggestion of an association between Mr Stokes and Mr Rupert Murdoch, who controls 15 per cent of Seven through News Limited, was totally unfounded. ‘They are totally independent activities,’ Mr Gammell said. ‘We don’t even know what Rupert Murdoch is up to. ‘Analysts speculated yesterday that Mr Stokes would increase his shareholding in Seven to about 15 per cent and seek Board representation.’”

Luke Collins, The Herald Sun, 13 April 1995. “Perth businessman Kerry Stokes appears to have added another 2.3 per cent of Seven Network to the 2.2 per cent stake snapped up on Tuesday.... ‘In a bid to strengthen the level of media experience on its board, Seven yesterday announced the appointment of the chairman of Grundy Group, Mr Ian Holmes, as a director.’”

Sue Lecky and Mark Drummond, The Sydney Morning Herald, 13 April 1995. Perth businessman Mr Kerry Stokes continued his buying spree in the Seven Network yesterday amid increasing speculation his aim is a shareholding of up to 15 per cent and a seat on the Board.... “But any suggestion of a link between Mr Stokes and Mr Rupert Murdoch ... was unfounded.... ‘Seven’s managing director, Mr Bob Campbell, and chairman, Mr Ivan Deveson, have come under fire over the company’s mishandling of advertising rate negotiations, which resulted in lower revenues for the first three months of the year.’”

Sally Jackson and Joshua Frith, The Australian, 13 April 1995. “Perth media owner Mr Kerry Stokes consolidated a 5 per cent stake in Seven Network Ltd yesterday, as the future of its managing director, Mr Bob Campbell, became more uncertain.... ‘Last night, Seven’s chairman, Mr Ivan Deveson refused to comment directly on suggestions that Mr Campbell was under a cloud.... ‘Mr Campbell and Mr Deveson attracted harsh criticism last month after Seven was forced to unilaterally raise its ad rates 10 per cent after making a huge technical blunder and offering discount rates to attract volume.... ‘Mr Deveson was guarded about Mr Stokes’s appearance on the company’s share register.’”

Mark Furness, The Financial Review, 13 April 1995. “There were suggestions yesterday that Mr Stokes – who is generally regarded as being close to the News camp – planned to seek a Board seat as part of his Seven play. Mr Holmes’s appointment, negotiated mainly by Seven chairman Mr Ivan Deveson, has closed off that option in the short term.”

Elizabeth Knight, The Sydney Morning Herald, 13 April 1995. “Bob Campbell told analysts a few weeks ago that when he and Seven chairman Ivan Deveson met with Murdoch and

Cowley there was no discussion of the network's performance – incredible as this may seem."

David Luff, 13 April 1995. "Perth businessman Kerry Stokes yesterday raised his holding in Seven Network Ltd dangerously close to the threshold breaching Australia's cross-media ownership laws."

### **Friday 14th April 1995**

Stephen Bartholomeusz, The Age, 14 April 1995. "It should be said that Seven's board and its chief executive, Bob Campbell, have shown courage in resisting the intense pressures from News to join Foxtel. It would be easy, and there would be few public criticisms, if Seven were to cast its lot with the marginally more powerful of the two pay consortiums, although the Trade Practices Commission is said to be somewhat uncomfortable with that prospect."

David Luff, Telegraph Mirror, 14 April 1995. "Mr Stokes was refused a spot on the Sunraysia board by chairwoman Eva Presser and has not yet considered vying for a role with Seven."

Mark Drummond, The Age, 14 April 1995. "Analysts have speculated that Mr Stokes planned to build a stake of about 15 per cent in Seven and seek board representation, though Mr Gammell would neither confirm nor deny this yesterday."

Mark Drummond, The Sydney Morning Herald, 14 April 1995. This article made no reference to Mr Ivan Deveson.

### **Saturday 15th April 1995**

Deborah Brewster, The Weekend Australian, 15 April 1995. This article made no mention of Mr Ivan Deveson.

Bryan Frith, The Weekend Australian, 15 April 1995. "Mr Kerry Stokes could be pitching for much higher stakes in his raid on Seven Network Ltd than has been generally realised – he may have ambitions to run the company..." "There has been considerable criticism of Seven because of its attempt to force on advertisers a 10 per cent increase in rates after earlier undercutting its competitors.

"The market has generally seen managing director Mr Bob Campbell and chairman Mr Ivan Deveson as most responsible, though it is suggested Mr Campbell acted on his own without the knowledge of the board. "It is thought that since Seven offered Mr Stokes a directorship, he has raised his sights and it is suggested he not only wants to be chairman but executive chairman. Whether that ambition is realistic would depend on News and Telstra regarding Mr Stokes as preferable to Mr Campbell and Mr Deveson."

Mark Westfield, The Weekend Australian, 15 April 1995. "Kerry Stokes' aggressive raid into the share register of Seven Network is a build-up to a proxy battle for control of the network, but in particular a push to remove the chairman, Ivan Deveson..." "Although {Mr Stokes} is acting independently, he can be expected to have views on Deveson sympathetic to the network's two largest shareholders, News Limited (publisher of *The Australian*) and Telstra Corp. "Between them the three shareholders speak for more than 30 per cent of capital when the Stokes stake is added to News' 15 per cent and Telstra's 10 per cent. This is sufficient to remove Deveson on the floor of a meeting. "Although the position of chief

executive Bob Campbell seems to be safe for the time being, he may be a collateral casualty from the firepower being ranged against the chairman.

“It is a matter of whether Deveson steps down gracefully, or is removed by his largest shareholders...

“Deveson went from car-maker General-Motors Holden in 1987 to preside over the demise of Nissan as a manufacturer in this country...“Although the removal of Deveson is an early step in this rapidly unfolding corporate situation, the appearance of Kerry Stokes also has longer term implications for Seven.”

Ben Potter, The Age, 15 April 1995 “How much pressure can Seven Network’s chairman, Mr Ivan Deveson, and the chief executive, Mr Bob Campbell, absorb?

“As if it wasn’t enough to have Mr Rupert Murdoch and Telstra breathing down their necks, and a relatively lacklustre profit performance and embarrassing, profit-snapping advertising rate bungle to boot, they are now being circled by another canny media proprietor, the Perth businessman Mr Kerry Stokes...“Conflicting versions of last month’s meeting between Mr Deveson, Mr Campbell, Mr Murdoch and Mr Ken Cowley still circulate. The official version is the discussion was an amicable one and did not cover Seven’s performance. The unofficial versions are that the Seven men got a dressing down, or that News, aware of the legal restrictions, simply let the fact that the meeting was taking place leak out and the press did the rest.”

Ben Potter, The Sydney Morning Herald, 15 April 1995. “How much pressure can Seven’s chairman, Ivan Deveson, and chief executive, Bob Campbell, absorb? “As if it wasn’t enough to have one of the world’s toughest media barons, Rupert Murdoch and Australia’s biggest company, Telstra breathing down their necks, and a relatively lacklustre profit performance and embarrassing, profit-snapping advertising rate bungle to boot, they are now being circled by another canny media proprietor, the Perth businessman Mr Kerry Stokes... “[News] has let it be known that it is dissatisfied with Seven’s performance, especially the network’s inability to maintain its 1993 ratings momentum and to negotiate ad rates last December that ensured it stayed profitable in the difficult June half year. “News has also let it be known that it is dissatisfied with the performance of the chairman, Deveson. “It regards the performance of the chief executive, Campbell, as satisfactory...“Conflicting versions of last month’s meeting between Deveson, Campbell, Murdoch and Ken Cowley, News’s top man in Australia, still circulate. “The official version is the discussion was an amicable one and did not cover Seven’s performance. The unofficial versions are that the Seven men got a dressing down, or that News, aware of the legal restrictions, simply let the fact that the meeting was taking place leak out and the press did the rest.”

## **Tuesday 18th April 1995**

Michael Yiannakis, Telegraph Mirror, 18 April 1995. “There is ... increased speculation that Mr Stokes plans to lift his interest to 15 per cent and has his sights set on gaining a seat on the Seven board.”

Joshua Frith, The Australian, 18 April 1995. “Seven Network Ltd chief executive Mr Bob Campbell last night strongly defended the broadcaster in the face of industry criticism which has fuelled intense speculation about the security of his position and the jobs of other senior management...

“Mr Campbell’s comments follow a wave of marketplace speculation that he and Seven’s chairman, Mr Ivan Deveson, will soon leave the company. “The speculation was triggered originally by Seven’s advertising rates fiasco early this year when the network signed

heavily discounted deals ... and then had to reverse itself and increase rates by 10 per cent after it became apparent Seven's revenues faced a mauling... "Some accounts have blamed Mr Campbell and Mr Deveson for the fiasco and others have singled out Mr Campbell..."

Mark Furness, The Financial Review, 18 April 1995. "The future of Seven Network Ltd chairman Mr Ivan Deveson is in doubt as interests associated with Mr Kerry Stokes and Mr Reg Grundy dig in alongside Mr Rupert Murdoch's News Corp Ltd and Telecom to chart a new course for the network..."

"Some institutional and strategic shareholders in Seven are unhappy with the performance of Seven under Mr Deveson..." "There has been speculation by sources close to the News camp that Mr Stokes, whose associations with News Ltd chairman Mr Ken Cowley are well known, has ambitions to nudge aside Mr Deveson and Mr Campbell and become executive chairman. "Mr Deveson negotiated the appointment of Mr Holmes to the Seven board last week, and Mr Deveson apparently regards the Grundy group – which is also the largest shareholder in Seven affiliate Sunshine Broadcasting Ltd – as an ally. "But there are signs that the Grundy-Sunshine camp will not side with Mr Deveson and is planning a pragmatic approach that will take note of what News, Telecom and the Stokes groups bring to a strategic partnership."

Michael Yiannakis, The Herald Sun, 18 April 1995. This article made no mention of Mr Ivan Deveson.

Courier Mail, 18 April 1995. This article made no mention of Mr Ivan Deveson.

### **Wednesday 19th April 1995**

Mark Furness, The Financial Review, 19 April 1995. "Mr Peter Gammell, [is] a director of Mr Stokes's Australian Capital Equity..." "Mr Gammell would not comment on speculation that Mr Stokes was interested in taking over Mr Deveson's job as chairman at Seven. But he said that 6.5 per cent was 'not a commanding investment in anything'."

Luke Collins, Courier Mail, 19 April 1995. "A representative of Mr Grundy could be an ally for embattled Seven chairman Mr Ivan Deveson, who has come under pressure from major shareholders in recent months regarding the network's performance..." "Seven's senior management, particularly Mr Deveson and managing director Bob Campbell, has come under intense pressure from some of the company's biggest shareholders in recent weeks. "Large investors are understood to have questioned a number of Seven's actions, including its pay television plans and an advertising debacle that forced it to lift rates by 10 percent to cover a revenue shortfall..." "That push could see Mr Stokes appointed Seven's executive chairman, forcing the removal of Mr Deveson and Mr Campbell."

Terry McCrann, Herald Sun, 19 April 1995. "The simpler, more realistic conclusion is that Mr Stokes saw an opportunity – presented by the fall in the Seven share price after its advertising schemozzle – and grabbed for it."

Luke Collins, Herald Sun, 19 April 1995. "A representative of Mr Grundy could be an ally for embattled Seven chairman Mr Ivan Deveson, who has come under pressure from major shareholders in recent months regarding the network's performance. "Large investors are understood to have questioned a number of Seven's actions, including its pay-TV plans and an advertising debacle that forced it to lift rates by 10 percent to cover a revenue shortfall."

Hugh Lamberton and AAP, The Canberra Times, 19 April 1995 “Mr Stokes has been portrayed as a possible agent of change at Seven, with some investors disappointed with existing management under chairman Ivan Deveson and managing director Bob Campbell. “There has been a suggestion that Mr Stokes could gain support from other major shareholders for changes to the board and the direction of Seven. Rupert Murdoch’s News Corporation – with which Mr Stokes is believed to have a good relationship – holds just under 15 per cent of Seven shares and Telstra about 10 per cent.”

Mark Drummond, Sue Lecky and Ben Potter, The Sydney Morning Herald, 19 April 1995. “Mr Kerry Stokes said yesterday his plans for Seven Network were totally independent from those of its biggest shareholder Mr Rupert Murdoch – a friend to who he had not spoken for 18 months...

“And Seven’s embattled chairman Mr Ivan Deveson and managing director Mr Bob Campbell are accelerating their decision on which of the rival pay television ventures to join in the hope this will diffuse the campaign that they believe their 14.9 per cent shareholder News Corp is running against them.

“The Seven camp suspects Mr Stokes is working with News on the basis of past associations, but they have no hard evidence...“Sources said yesterday that Mr Deveson and Mr Campbell, under pressure from the network’s handling of advertising rate negotiations, could not count on the Bermuda-based Mr Grundy as an ally, but he was not hostile either. “Mr Stokes, on the other hand, has made it clear he wants up to 10 per cent of Seven and almost certainly wants a board seat. “Mr Deveson attempted to stave off pressure from Mr Stokes by offering him a board seat several weeks ago if he would restrict his buying to 3 per cent.”

Deborah Brewster, The Australian, 19 April 1995. There was no comment regarding Mr Ivan Deveson.

Terry McCrann, Telegraph Mirror, 19 April 1995. “The simpler, more realistic conclusion is that Mr Stokes saw an opportunity – presented by the fall in the Seven share price after its advertising schemozzle – and grabbed for it.”

Mark Drummond, Sue Lecky and Ben Potter, The Age, 19 April 1995. “The Perth businessman Mr Kerry Stokes said yesterday his plans for Seven Network were independent of those of its biggest shareholder, Mr Rupert Murdoch, a friend to who he had not spoken for 18 months...

“And Seven’s chairman, Mr Ivan Deveson, and managing director, Mr Bob Campbell, are speeding up their decision on which pay TV venture to join in the hope that this will diffuse the campaign they believe News Corp – which holds 14.9 per cent of Seven – is running against them.

“Seven and its advisers suspect Mr Stokes is working with News, but they do not have the evidence...

“Sources said yesterday that Mr Deveson and Mr Campbell, who have been under pressure over advertising rates, could not count on the Bermuda-based Mr Grundy as an ally, although he was not necessarily hostile...“Mr Stokes is believed to have said he wants up to 10 per cent of Seven, and a board seat...“Mr Deveson offered Mr Stokes a board seat several weeks ago if he would limit his buying to 3 per cent.”

**Thursday 20th April 1995**

Sally Jackson, Joshua Frith and Deborah Brewster, The Australian, 20 April 1995. “Industry sources predicted Mr Stokes would end up with between 15 per cent and 19.9 per cent – above which he would be compelled to launch a full takeover – and seek Seven’s executive chairmanship.

“That would displace the present chairman, Mr Ivan Deveson, and possibly managing director Mr Bob Campbell as well, and would require majority board support...

“However, Mr Ken Cowley, the chairman and chief executive of News Ltd, yesterday backed Mr Campbell and Mr Deveson’s management abilities. “We have never offered any criticism to their faces or behind their backs,’ he said. “Mr Cowley said he was not aware of Mr Stokes’ intentions at Seven.”

**NOTE:** There were two photos; one of Mr Stokes and one of Mr Campbell. The respective captions were “Buying spree: Mr Stokes” and “Under threat: Mr Campbell”

Mark Drummond, Ben Potter and Sue Lecky, The Sydney Morning Herald, 20 April 1995. This article reported: “Mr Stokes had ... said he was entitled to two seats on the ... board after lifting his holding to 13 per cent...“Seven’s chairman, Mr Ivan Deveson, said last night he would welcome Mr Stokes onto the board. “Mr Stokes, who Seven suspects is acting with the tacit approval of 15 per cent shareholder News and 11 per cent shareholder Telstra, is widely expected to seek Mr Deveson’s job as chairman...“[Mr Stokes] said he did not have a view on what Seven should do but would [sic] call a shareholders’ meeting if not consulted, although he thought it unlikely this would happen because ‘both Mr Deveson and [Seven’s managing director Bob] Campbell are extremely reasonable people’. “Mr Stokes said: ‘I would have thought, given our position, we’d be looking for at least two seats’ and that the question of whether he would replace Mr Deveson as chairman ‘would be a matter of my discussion with the company’. “He made it clear he was dissatisfied with Seven’s recent ratings performance, cost (the highest in the industry) and its bungling of the crucial advertising rate negotiations, but that he had not decided if changes were required in top management.”

Sally Jackson and Joshua Frith, The Australian, 20 April 1995. “The battle for control of the Seven Network took a dramatic turn last night when the Australian Broadcasting Authority announced it would investigate whether Perth-based media proprietor Mr Kerry Stokes or News Ltd were in breach of the Broadcasting Services Act...“Yesterday’s move fuelled speculation Mr Stokes was pushing for a seat on Seven’s board and angling for a position as executive chairman.”

Mark Furness, The Financial Review, 20 April 1995. “The Australian Broadcasting Authority has launched an investigation into moves on the Seven Network Ltd by Mr Kerry Stokes.”

**NOTE:** In a text box referring to an article on the back page is written “While Seven’s Ivan Deveson was publicly cajoling News Corp and Telecom to get real ... time was running out for him.”

Mark Drummond, Ben Potter and Sue Lecky, The Age, 20 April 1995. “Mr Stokes had ... said he was entitled to two seats on the ... board after lifting his holding to 13 per cent ... Seven’s chairman, Mr Ivan Deveson, said last night he would welcome Mr Stokes on to the board.



“Mr Stokes, who Seven suspects is acting with the tacit approval of 15 per cent shareholder News and 11 per cent shareholder Telstra, is widely expected to seek Mr Deveson’s job as chairman...

“[Mr Stokes] said he did not have a view on what Seven should do but would [sic] call a shareholders’ meeting if not consulted, although he didn’t think this would happen because ‘both Mr Deveson and (Seven’s managing director Bob) Campbell are extremely reasonable people’.

“Mr Stokes said: ‘I would have thought, given our position, we’d be looking for at least two seats.’ He said the question of whether he would replace Mr Deveson as chairman ‘would be a matter of my discussion with the company’. “He made it clear he was dissatisfied with Seven’s recent ratings performance, cost (the highest in the industry) and its bungling of the crucial advertising rate negotiations, but that he had not decided if changes were required in top management.”

Elizabeth Knight, The Sydney Morning Herald, 20 April 1995. “Kerry Stokes has now positioned himself to exact some revenge on Seven chairman Ivan Deveson and Bob Campbell for being involved in thwarting his ambitions to join News Corporation and Telstra at the boardroom table two years ago...“Stokes ... was shafted at the last minute. And the word is that Ivan Deveson was responsible, in response to concerns that the troika would be too powerful a bloc within the Seven structure...”

“Campbell and Deveson would have had a good chance of receiving institutional support had Seven not made its well publicised advertising rate bungle...“Yesterday’s on-market swoop by Stokes took his holding to around 13 per cent and puts serious pressure on Deveson and Seven chief executive Bob Campbell.”

Ivor Ries, The Financial Review, 20 April 1995. “But while Deveson was publicly cajoling News Corp and Telecom to get real, and acknowledge any pay-TV deal between Seven and major shareholders would need to win the approval of minority shareholders, time was running out for Deveson himself. “Perth-based investor and *Canberra Times* proprietor Kerry Stokes made a new \$60 million plunge into Seven Network shares, upping his stake in the company to 13 per cent and his overall investment to around \$120 million...“Stokes is unimpressed with Seven’s recent performance, and those close to him say that in recent days he has become determined to replace Deveson as chairman. If that comes to pass, a move to topple managing director Bob Campbell may also be on the cards...“A close supporter of the Seven chairman said last night that Deveson ‘has now accepted that his days or hours are numbered.’...Stokes’s likely move to stiff-arm Deveson out of the executive suite is likely to lead to claims that the Perth entrepreneur is acting in concert with News Corp and Telecom to achieve a commonly desired outcome: getting Seven into bed with Foxtel. “Those claims – based on Stokes’s well-known links with News Corp and Ken Cowley – are unlikely to withstand intense scrutiny.”

Stephen Bartholomeusz, The Age, 20 April 1995. “Seven Network’s fate now appears almost certain following yesterday’s uncontested doubling in the size of Kerry Stokes’s shareholding”.

Luke Collins, Courier Mail, 20 April 1995. “Some of Seven’s biggest shareholders – including News Corp (15 percent) and Telstra (10 percent) – are reportedly unhappy with the performance of Seven’s senior management, particularly chairman Ivan Deveson and managing director Bob Campbell.”

David Luff, Telegraph Mirror, 20 April 1995. “The West Australian entrepreneur said last night he would confront Seven chairman Ivan Deveson to push for a role in the network’s direction...

“Shareholder dissatisfaction with management, chiefly chairman Ivan Deveson and managing director Bob Campbell, have surfaced in the last few months.”

Bryan Frith, The Australian, 20 April 1995 “The most obvious way for Mr Stokes to exercise proprietorial influence would be to become the executive chairman of Seven, in place of the existing non-executive chairman, Mr Ivan Deveson.”

David Luff, Herald Sun, 20 April 1995. “The West Australian entrepreneur said last night he would confront Seven chairman Ivan Deveson to push for a role in the direction of the network.”

Hugh Lamberton, The Canberra Times, 20 April 1995. “Mr Stokes – widely expected to seek the executive chairmanship of Seven – is now the second-largest shareholder on the register...

“It would ‘not be appropriate’ for him to comment on whether he wanted to replace current Seven chairman Ivan Deveson or on the future of managing director Bob Campbell.”

## **Friday 21st April 1995**

David Morgan, 7:30 Report (Brisbane), 21 April 1995. “Mr Stokes now says he wants to run the Seven Network as Chairman.”

Media Australia, 21 April 1995. “Early speculation suggested Stokes may go as high as 15 per cent and could even seek a position on Seven’s board, however, the latest reports are now suggesting that Stokes could be seeking to replace Seven’s chairman, Ivan Deveson, and possibly its chief executive, Bob Campbell... “At the same time, the Australian Broadcasting Authority is examining the relationship between both News Ltd and Telecom in regard to their respective 15 and 10 percent stakes in Seven.”

David Luff, The Adelaide Advertiser, 21 April 1995. “Mr Stokes said he planned to take on a hands-on management role to determine the future direction of the network. “Seven chairman Mr Ivan Deveson is expected to confirm Mr Stokes’ appointment to the network’s board after lengthy negotiations between the pair yesterday.”

Heather Jacobs, AdNews, 21 April 1995. “SYDNEY: The Seven Network has backed down on its original bullish demands for a 10% rate increase across the board, according to a number of media directors.”

## **Saturday 22nd April 1995**

Sue Lecky and Mark Drummond, The West Australian, 22 April 1995. “Kerry Stokes has maintained pressure on the Seven Network to give him board representation...

“Earlier this week, Mr Stokes demanded that he replace Mr Ivan Deveson as chairman and be given a second seat at the board table after accumulating a 13 per cent shareholding in the network...

Mr Stokes said that responsibility for the ad revenue problems must rest with the management and the board, but that this did not necessarily mean Seven’s managing director, Mr Bob Campbell, should be replaced.”

Ian Davis, The Canberra Times, 22 April 1995. “Directors from the Seven Network Ltd are expected to consider media proprietor Kerry Stokes’s demand for two board seats, including the executive chair, at board meetings next week...“While praising current chairman Ivan Deveson as ‘delightful person’, Mr Stokes said he lacked media experience. ‘I think he would be the first person to admit that, so it’s difficult for him to test management properly on these areas.’”

### **Sunday 23rd April 1995**

Jim Whaley, Business Sunday, 23 April 1995. “Kerry Stokes wants to be executive chairman and there are claims he and the company’s other major shareholders NewsCorp and Telstra are in some sort of association to control Seven and prevent it doing a deal with rival Pay TV operator Optus Vision.”

### **Tuesday 25th April 1995**

Stephen Bartholomeusz, The Age, 25 April 1995. “The ABA is investigating the issue of whether Mr Stokes and News, and/or Telecom, are associates in relation to control of Seven and whether Mr Stokes and/or News are in breach of the Broadcasting Services Act....“Mr Stokes would need News and Telecom’s support – or an acceptance by the current board that News and Telecom would provide voting support if called on – to become executive chairman of Seven.”

Sue Lecky, The Sydney Morning Herald, 25 April 1995. “The ABA ... is investigating an alleged association between News and Seven’s 13 per cent shareholder, Mr Kerry Stokes...“Mr Stokes, who has outlaid about \$120 million on Seven shares in the past fortnight, wants to replace Mr Ivan Deveson as the network’s chairman and secure a second board seat for his group. “Meanwhile, Seven moved yesterday to quash reports it had backed down on the re-negotiation of its advertising rates, which were unexpectedly increased by 10 per cent after the network’s misjudgement of demand in the first few months of this year.”

### **Wednesday 26th April 1995** Rosemary Ryan, Telegraph Mirror, 26 April 1995.

“The Seven Network Ltd has denied it has backed away from its 10 per cent advertising rate increase.”

Jane Schulze, Herald Sun, 26 April 1995. “The Seven Network yesterday issued a statement rejecting claims of a backdown on its 10 per cent increase in advertising rates.”

### **Thursday 27th April 1995**

Terry McCrann, Telegraph Mirror, 27 April 1995. “[Kerry Stokes] has dropped his original demand to become Seven’s executive chairman, and is now asking for two seats and an ‘operational role’ in the network...“For if Seven were to accede to the request, it would probably put both (non-executive) chairman Ivan Deveson and chief executive Bob Campbell in untenable positions and probably see them depart...

“It is doubtful whether either of [News Corp or Telecom] want to give him effective control of Seven, knowing that neither would then be able to ‘sack’ him this side of the abolition of the cross media restrictions.”

The Canberra Times, 27 April 1995. “SYDNEY: Seven Network Ltd will hold its long-awaited board meeting today and tomorrow to discuss the company’s pay-TV plans and

consider media proprietor Kerry Stokes' demand for two board seats, including the executive chair."

Mark Furness, The Financial Review, 27 April 1995. "The Seven Network has rejected a request by Mr Kerry Stokes for two board seats, including the job of executive chairman, forcing Mr Stokes to reconsider plans for his 13 per cent investment in the network that included the removal of the chairman, Mr Ivan Deveson."

Terry McCrann, Herald Sun, 27 April 1995. "[Kerry Stokes] has dropped his original demand to become Seven's executive chairman, and is now asking for two seats and an 'operational role' in the network... 'For if Seven were to accede to the request, it would probably put both (non-executive) chairman Ivan Deveson and chief executive Bob Campbell in untenable positions and probably see them depart...' 'It is doubtful whether either of [News Corp or Telecom] want to give him effective control of Seven, knowing that neither would then be able to 'sack' him this side of the abolition of the cross media restrictions.'"

### **Wednesday 3rd May 1995**

AAP, The Hobart Mercury, 3 May 1995. "Seven believed it could successfully defend Ivan Deveson's position as chairman and ward off Mr Stokes' demand for two board seats."

### **Friday 5th May 1995**

Bryan Frith, The Australian, 5 May 1995. "[Mr Stokes] has requisitioned a meeting of Seven shareholders to seek the removal of the chairman, Mr Ivan Deveson, and the appointment of himself and one of his executives, Mr Bill Rayner... "The government has not thought through the implications of its latest proposed change ... When it does it may realise that the change will produce ... political flak..." "The flak will come from the conspiracy theorists and it will be misguided. It will be based on the assumption that Mr Murdoch's News Corporation, its pay TV partner and fellow Seven shareholder, Telstra and Mr Stokes are acting in cohorts to control."

Jennifer Hewett, The Financial Review, 5 May 1995. "Kerry Stokes is determined not to be a footnote.

"The vehemence of his assault on the current chairman of Seven, Ivan Deveson, and the performance of the current management is eloquent testimony to that..." "As chairman, he says, he would be the 'interface between the board and management' – helping the board to develop a strategy and ensuring management fully understood and could achieve it.

"Are you listening Ivan Deveson?"

### **Thursday 11th May 1995**

Joshua Frith, The Australian, 11 May 1995. "And there was heavy speculation yesterday that Seven's chairman, Mr Ivan Deveson, may soon announce his resignation from the chairmanship....

"Mr Stokes has been pushing ahead with his campaign to oust Mr Deveson by taking his arguments for change to the key institutional shareholders in Seven."

Sue Lecky and Ben Potter, The Age, 11 May 1995. "The second issue is the appropriate board structure, with Seven's major shareholders – News Corp, Telstra and Mr Stokes – holding 40 per cent of the capital. "Mr Stokes – who has 13.8 per cent of Seven – has

requisitioned a meeting of shareholders to sack the chairman, Mr Ivan Deveson, and appoint himself and another nominee, Mr Bill Rayner.”

Daily Telegraph Mirror, 11 May 1995. “Mr Stokes’ Ashblue Holdings Ltd withdrew the second meeting requisition on Tuesday. “Its new requisition drops a resolution regarding board members but continues to press for the removal of Seven chairman Ivan Deveson.”

### **Friday 12th May 1995**

Joshua Frith, The Australian, 12 May 1995. “Mr Holmes was voted in [to the chair of Seven] after Mr Ivan Deveson quit as chairman at a meeting of the Seven board yesterday in Melbourne.

“Mr Deveson later issued a statement blaming ‘ongoing demands for my resignation’ from both The News Corporation Ltd ... and Mr Stokes. “In an apparent allusion to allegations that News and Mr Stokes had acted in concert, Mr Deveson’s bitter resignation statement referred to News and Mr Stokes’ ‘inherent destabilisation of the company’.”

Mark Westfield, The Australian, 12 May 1995. “Mr Kerry Stokes has increased pressure on the Seven Network ... even though chairman Mr Ivan Deveson quit yesterday....Mr Stokes had originally wanted a special meeting to sack Mr Deveson ... but the former motor industry executive buckled under the pressure from the Stokes camp and elected to fall on his own sword.”

Hugh Lamberton, The Canberra Times, 12 May 1995. “The chairman of the Seven Network, Ivan Deveson, resigned yesterday, blaming destabilisation by entrepreneur and *Canberra Times* chairman Kerry Stokes, and Rupert Murdoch’s News Corporation. “Mr Stokes has placed great pressure on Mr Deveson in the past few weeks, strongly criticising Seven’s recent performance and questioning his credentials....“In a statement, Mr Deveson said the action of his resignation ... had been taken after the board resolved ‘to maintain the principle of continuing to prefer to have an independent chairman who is not a major shareholder and is responsible to all shareholders – a principle that I have maintained continuously. “Mr Deveson described the decision as a ‘personal disappointment’ caused by ‘the ongoing demands for my resignation by News Corporation and Mr Kerry Stokes ... and the inherent destabilisation of the company’.”

David Luff, Daily Telegraph Mirror, 12 May 1995. “Seven Network Ltd chairman Ivan Deveson quit yesterday, bowing to the relentless demand for his head from the station’s two largest shareholders News Corporation Ltd and Kerry Stokes....

Mr Deveson ended his four-year reign as chairman with a scathing attack on the manoeuvrings of News Corp and Kerry Stokes to oust him from the chairmanship.““(I resigned) due to the ongoing demands for my resignation by News Corporation and Mr Kerry Stokes, who together own 28 per cent of Seven Network Ltd, and the inherent destabilisation of the company,’ he said....“News Corp declined to comment on Mr Deveson’s claims.”

Stephen Bartholomeusz, The Age, 12 May 1995. “The only surprise about Ivan Deveson’s retirement as chairman of Seven Network is in its timing. Mr Deveson is known to have recognised some time ago that the personal attack on his chairmanship by Kerry Stokes and, less visibly, News Corporation, was destabilising the company and increasing the risk that Mr Stokes might achieve his objective of grabbing effective control of the Seven boardroom.”

Sue Lecky, The Sydney Morning Herald, 12 May 1995. “The chairman of the Seven Network, Mr Ivan Deveson, yesterday succumbed to relentless pressure from the company’s two major shareholders, Mr Rupert Murdoch’s News Corporation and Mr Kerry Stokes, by agreeing to resign from the board.... “The appointment of Mr Holmes as chairman will form a major part of Seven’s efforts to win back the confidence of the investment community, which has laid much of the blame for Seven’s poor performance and bungled advertising rate negotiations at Mr Deveson’s feet. “Mr Deveson cited the on-going demands by News Corp and Mr Stokes for his resignation... “Mr Deveson’s parting comments about the reasons for his departure will almost certainly add fuel to allegations News and Mr Stokes are acting in concert to illegally control the network.”

Robert Fidgeon, Herald Sun, 12 May 1995. “Seven Network chairman Ivan Deveson yesterday succumbed to the strain of repeated calls for his resignation and has left the position.... “The resignation of Mr Deveson was not unexpected.... “Mr Deveson went to ground yesterday after releasing a statement in which he said that his action was due to ‘the ongoing demands for my resignation by News Corporation and Mr Kerry Stokes...’ “And with a slightly bitter tinge, Mr Deveson said that a recent newspaper editorial had stated that the courage [sic] of Seven in joining the Optus Vision pay-TV consortium was ‘almost enough to restore one’s faith in human nature’.”

Ian Porter, The Financial Review, 12 May 1995. “The career experience of Ian Holmes represents the other extreme of the spectrum when compared with that of outgoing chairman Ivan Deveson.”

Paul Syvret, The Financial Review, 12 May 1995. “Ivan Deveson has resigned as Seven Network chairman in an attempt to restore some stability to the company, which is under siege from Perth media proprietor Mr Kerry Stokes.”