CAB | ACR

Canadian Association of Broadcasters

L'Association canadienne des radiodiffuseurs

January 11, 2008

Via Email: competitionreview@ic.gc.ca

Mr. L.R. Wilson
Chair
Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON
K1A 0H5

Re: CAB's Response to the Competition Policy Review Panel Consultation Paper *Sharpening Canada's Competitive Edge*

Introduction

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country. The CAB is pleased to participate in this important review of competition and investment policies.

2. The CAB is particularly interested in the issues raised in the Panel's consultation paper concerning foreign ownership restrictions in the broadcasting sector. The majority of CAB members submit that there is no compelling reason to change the current foreign investment rules for the broadcasting sector – all of the reasons that the current set of rules were put in place remain valid, and under these rules, the Canadian broadcasting sector provides unprecedented levels of content choice for Canadians and has created a highly competitive broadcasting sector. The broadcasting sector continues to meet the policy objectives of the Broadcasting Act by ensuring that there is a growing number of Canadian programming choices and that all Canadians have access to that programming.

3. Canadian private broadcasters offer consumers a wide range of broadcasting services – television and radio - in 40 different languages. These services have advanced with technology including HD, VOD and subscription satellite radio and television services enabling consumers to receive news, information and entertainment in virtually every region of the country.

4. The Canadian broadcasting industry also plays a role in the Canadian economy in a broad sense. First, it serves as an important indicator of the health of the overall economy since its primary source of revenue – advertising – is driven by the general health of the country's business sector. Second, television and radio continue to be among Canadians' preferred sources for news and information. A recent public survey found that 80% of respondents indicated that television was their first choice for general news and 48% turned to radio.[1] The same poll also highly ranked television and radio as trustworthy choices for news. It is therefore broadcasters who serve as the main vehicle for providing Canadians with information about their country's economy and culture.

5. The CAB further notes that threats to the competitiveness of the Canadian broadcasting system stem not from questions of limited foreign ownership. As noted in Broadcasting 2007: Report on the Industry released by CAB on November 5, 2007, the industry indices challenging the current economic model include the weaker advertising market in Canada as compared to the US and the UK, the on-line audio and video activities of consumers, the unbridled growth of internet advertising, significant increases in expenditures required by regulation and the increasing regulatory burden itself.

6. Canadian broadcasters compete not only with foreign services available in Canada, but now also with the information and entertainment available on the internet and other new media platforms. All of these services are unregulated, in contrast to Canadian television and radio services which are subject to numerous and detailed restrictions and requirements.

7. In addition, a central issue affecting the competitiveness of the broadcasting sector is the spiraling and unjustified copyright burden that particularly hampers Canadian radio broadcasters' ability to reinvest in Canadian content and their operations.

Current foreign investment policies for Canadian broadcasting are still valid

8. In April 1997, the Governor in Council issued a Direction to the CRTC ("Ineligibility of Non-Canadians") requiring 80% of the voting shares and votes of each broadcasting licensee to be held by Canadians and that 66.6% of the voting shares and votes of each licensee's holding company are similarly held by Canadians. This Direction also sets out additional restrictions on non-Canadian activity to ensure that the broadcasting sector is effectively owned and controlled by Canadians as follows:

---

[1] IDC Canada, *ITAC Media Choice & Trust Poll*, 2007.

> *"Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, other than the beneficial ownership and control of the voting shares of a qualified successor by a Canadian carrier or its acquiring corporation, the applicant is deemed to be a non-Canadian."*

9. In other words, according to the Governor in Council's 1997 Direction to the CRTC, non-Canadians may own up to 20% of the voting shares and votes of a broadcaster directly and up to 33.33% of the voting shares and votes of a holding company that owns a broadcaster. In effect, this allows a non-Canadian to own up to 46.7% of a Canadian broadcaster, provided that the non-Canadian does not otherwise exercise effective control over the broadcaster.

10. Page 43 of the consultation paper describes the policy imperative behind these current investment policies as they apply to the broadcasting sector:

> *"In Canada, our relatively small, diverse population and the availability of U.S. broadcasts limit the degree to which market forces alone can ensure the provision of a range of Canadian news and entertainment programming in both official languages."*
>
> *"Canadian ownership rules in broadcasting and broadcasting distribution, established under the Broadcasting Act, ensure that Canadian news and entertainment programming is made from a Canadian perspective and with Canadian audiences in mind."*

11. These policy imperatives are central to the regulatory system along with the distinct Canadian rights market.

12. The CAB submits that these policy assumptions remain valid. In a recent speech to the Canadian Association of Broadcasters' annual convention (Ottawa, November 6, 2007) the Minister of Canadian Heritage reaffirmed the Government's commitment to the core policy principles underpinning the Canadian broadcasting system:

> *"Canada 's* Broadcasting Act, *crafted and adopted by Parliament following serious study and debate, sets out policy objectives that stand the test of time.*
>
> *The Act states that 'the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada'.*
>
> *Our policy objectives are not solely economic, but also cultural and social – anchored in the commitment that Canadians have access to content that speaks to their realities and aspirations."*

13. Some have argued that advances in new technologies have obviated these objectives – that the ability of Canadians to create, share and access content online means that there is no longer any need for a policy framework that ensures Canadians have access to broadcasting content produced by, and for, Canadians.

14. The CAB rejects this view, and submits that despite – if not because of — the recent explosion in new media options for consumers, the challenges of scale and relevance are as acute as ever. It is only by maintaining rules that are designed to preserve a broadcasting system that is owned and operated by Canadians that the objectives of the Broadcasting Act will be achieved in today's media landscape.

The Canadian broadcasting system has never been more competitive

15. The broadcasting sector is a major source of direct employment in Canada. There are more than 23,000 Canadians employed in the broadcasting sector. The Broadcasting industry revenues as a whole increased slightly as a percentage of GDP over the period 2002 to 2006. Radio and television broadcasting revenues as a percentage of GDP remained relatively stable at 0.10% and 0.35% respectively. Television revenues in Canada have grown over the past five years from almost $4 billion 2001/02 to slightly over $5 billion in 2005/06 on a compound annual growth rate (CAGR) of 6.2%. Radio revenues increased from slightly over $1.1 billion to over $1.4 billion based on a CAGR of 6.4%.

16. Arguments are occasionally tabled to the effect that Canada's current foreign investment rules somehow deprive Canadians of content choices, or deprive broadcasters of capital they need to remain competitive. Both of these arguments are false.

17. The current ownership rules have not hampered the competitiveness of the Canadian broadcasting system. To the contrary, the Canadian broadcasting system is highly competitive, as Canadian broadcasters face increasing competition from both regulated and unregulated sources.

18. The rise of unregulated competition from online content providers has been well documented. The launch of the CRTC's New Media Project is working towards a public hearing to examine the impacts and possible regulatory response to competition from unregulated media providers in Canada. See: http://www.crtc.gc.ca/eng/media/media3.htm In this respect, the CAB submits that new media raises questions about the sustainability of obligations imposed on regulated entities, namely traditional broadcasters.

19. The rise of regulated competition facing Canadian broadcasters has also been well documented. The CAB's July 2007 submission to the CRTC's Diversity of Voices proceeding (Broadcasting Public Notice CRTC 2007-5) conclusively demonstrates that the contemporary media environment has been transformed into an ever expanding universe of content choices, both Canadian and non-Canadian.[2] In fact, a CRTC decision on Diversity of Voices is to be released in the next few weeks and, based on the evidence put forward during that proceeding, it is reasonably expected that the CRTC will conclude that Canadians enjoy a diversity of media choices.

---

[2] http://www.cab-acr.ca/english/research/07/sub_jul1807.pdf The submission includes appendices with further information on the increasing competition for audience share and advertising dollars in Canadian broadcasting, as well as an overview of ownership and foreign investment rules in comparable international markets.

20. The current foreign investment and ownership rules are not a barrier to competitive market entry, and do not restrict content choices for Canadians. To the contrary, barriers to entry in the Canadian broadcasting system have come down, and are dropping all the time.

21. For example, the data show that since 1997 many new companies or individuals have entered the pay and specialty sector, the newest and fastest growing sector of the television broadcasting industry, offering a wide variety of new broadcasting services. Simply put: there are many more media owners in this important sector of the industry today than 10 years ago.

22. Since 1997, 21 individuals or companies have entered the Canadian pay and specialty sector (the fastest growing element of the Canadian broadcasting system) offering 39 different services. These new entrants account for over half (54%) of all the entities offering Canadian pay and specialty services and their services accounted for almost a quarter (24%) of the Canadian pay and specialty television services available to consumers in 2005/06. The CRTC has further reduced barriers to entry for specialty and pay services in successive proceedings since 2004, including those for Canadian and non-Canadian third-language services.

23. While the pay and specialty television sector has provided the greatest opportunity for increased competition, new entry also has occurred in other sectors over the past ten years.

24. For example, Milestone Media Broadcasting Ltd. has entered the commercial radio sector, with ownership interests in new urban-formatted radio stations in Toronto and Edmonton. A new local ethnic over-the-air television station was recently launched in Vancouver. Sirius Canada Inc. and Canadian Satellite Radio Inc. launched the satellite radio industry in Canada, offering new competing services. The CRTC is preparing to hear two new applications from HDTV Canada and YES TV Canada for competitive HD Television networks.

25. The Canadian broadcasting system is also characterized by increasing competition from non-Canadian broadcasters. The current foreign ownership limits have not encumbered the presence of foreign broadcasting services available to Canadians. As of December 31, 2001 there were 77 non-Canadian programming services authorized for distribution in Canada. As of December 31, 2006 that number had more than doubled to 162 (in 25 languages, from 32 countries). Clearly, our foreign investment rules do not prohibit access by Canadians to the best international content available.

26. The CAB submits that under the current foreign investment rules, Canada's broadcasting system has become increasingly competitive, with low barriers for new entrants, whether they be regulated or unregulated, Canadian or foreign. Moreover, the evidence demonstrates that there is room for greater foreign investment under current ownership limits.

27. The CAB further notes that the current level of integration between programming services, cable and telcos, at both the ownership and operating levels, suggest that any liberalization in ownership rules on the telecom side would likely have an immediate and direct impact on the broadcasting sector. Proposals for liberalization in either the telcom or BDU sector should be carefully assessed in this regard.

28. The CAB submits that this level of integration between broadcasters, BDUs, telcos and ISPs is key to ensuring the ongoing competitiveness of Canada's media sector. Content now crosses borders with little or no regard for national origin. Audiences now have direct access to unlimited supply of content provided by international media companies whose scale dwarfs the entire Canadian media sector. This means we need strong, integrated Canadian media companies if Canadians are to have access to Canadian media choices in the future.

29. While outside of its direct scope, the CAB also notes that the ability of Canadian broadcasters to own and operate local and national newspapers adds to the competitiveness of the Canadian media sector in general. Common media ownership allows a cross-purposing of national content that provides much needed lift and scale in a sea of unregulated content choices.

30. In this regard, the CAB further notes that, in December 2007, the United States Federal Communications Commission reduced the barriers to broadcaster/newspaper cross-ownership in the United States, allowing cross-ownership of television stations and newspapers in large markets. That decision was made following a debate which turned on many of these same considerations. To institute such a barrier in Canada would be to move backwards as the media age moves forward.

Excessive copyright obligations hamper the competitiveness of the Canadian radio broadcasters

31. The CAB strongly submits that the current approach to copyright in Canada severely threatens the long term competitiveness of the Canadian broadcasting sector, particularly for private radio broadcasters.

32. Private radio broadcasters are faced with a copyright system that is stalled in the past, and characterized by an increasing burden of tariffs, and an increasing complexity for rights owners, users, and regulators alike.

33. Currently, private broadcasters pay royalties under nine different tariffs to four different collectives, with radio broadcasters alone paying almost $70 million annually for the use of music they broadcast on air. This is set to increase substantially in the face of a newly proposed reproduction right tariff filed on behalf of the Canadian Recording Industry Association (CRIA) through the Audio-Video Licensing Agency (AVLA) and the Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec (SOPROQ). The record labels are now demanding an additional payment

close to $50 million annually for the right to make technical reproductions that are secondary to playing the music over the air – a right for which radio broadcasters already pay.

34. The current condition of collective administration in Canada is characterized by an increasing burden of tariffs, an increasing complexity for rights owners, users and the regulator alike, and an inefficient operating model. Furthermore, it matters in the competitive environment described earlier, where regulated and unregulated content providers now operate side by side. The new unregulated competitors access the market from wherever they choose to originate as a result of technology that neutralizes borders. It creates a competitive advantage for service providers originating from the U.S. These US broadcasters enjoy a far more permissive copyright environment, with copyright payments that are a fraction of what their Canadian competitors face, often to reach the same audiences in border areas.

35. The radio industry as a whole faces an annual copyright burden increase of up to 157% from current levels (from $74 million to $190 million annually) assuming revenues remain constant. This at a time when fully 38% of all radio broadcasters in Canada (231 stations) realized a loss in 2006 – this in an era when the economy as a whole is doing well, and advertising revenues are growing across the media sector.

36. There are 318 smaller all-music radio broadcasters in Canada. On average, they have revenues of $612,000 per annum. They have average expenses of $678,000 per annum. Under proposed copyright increases, they would face an additional $24,000 in annual tariff payments. Add that to their $66,000 average annual loss, and they face a total average annual loss of $90,000, which amounts to 15% of revenues. For low revenue music stations, losses (before taxes) would grow from -9.0% to -12.5%.

37. This is clearly not a competitive business model. Jobs, programming, and current levels of community service will be at risk. It has been estimated that for every 1% increase in copyright payments, a radio station has to eliminate one full time employee. As the evidence shows, copyright payments have grown at a far greater rate than revenues – an unsustainable formula that threatens the overall competitiveness of the Canadian broadcasting system.

38. The CAB has long advocated for a revamp of Canada's system of allocating copyright obligations, which, in our submission, is a far greater threat to the competitiveness of the broadcasting system than Canadian ownership rules.

Conclusion

39. Canada's policy makers have long understood the imperative of fostering strong national players. Canadian legislators and regulators have built and elaborated upon the policy framework that permitted a domestic broadcasting industry to flourish and thrive across the border from the world's most prolific entertainment powerhouse.

40. That reality is as acute today as at any point in Canada's history, yet the Canadian broadcasting market grows more competitive each day and continues to provide Canadians with an enormous amount of programming choices. In this environment, rules that ensure Canadians have content choices produced by Canadians are as essential as ever.

41. Our current foreign investment rules do not hamper the competitiveness nor the offering of the broad choice of services offered to consumers through the Canadian broadcasting system. Copyright rules, on the other hand, threaten to drown private radio broadcasters in ever-increasing, multilayered and uncompetitive obligations. The future competitiveness of the Canadian broadcasting sector depends not on loosened foreign investment rules, but an urgent need for Copyright reform.

42. The CAB appreciates the opportunity to provide these comments and requests the opportunity to appear before the panel to answer any questions that may arise.

Sincerely,

Original signed by Glenn O'Farrell

Glenn O'Farrell
President and CEO

c.c. The Honorable Jim Prentice, Minister of Industry
Richard Dicerni, Deputy Minister, Industry Canada
The Honorable Josée Verner, Minister of Canadian Heritage
Judith A. Larocque, Deputy Minister, Canadian Heritage
Mr. Justice William J. Vancise, Chairman, Copyright Board of Canada
Konrad Von Finckenstein, Chair, CRTC