

CANADIAN COMPETITION RECORD

REGULATORY AND TRADE DEVELOPMENTS

CRTC RADIO REGULATIONS REVIEW - A ZERO-SUM GAME

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For most of the past decade, the financial condition of the Canadian commercial radio sector as a whole has been poor. Only recently has the sector's performance improved with a modest upswing in advertising revenues.

Reflecting this earlier situation, the Canadian Radio-television and Telecommunications Commission (the "CRTC") had in the early 1990s adopted policies which basically capped new entry in most commercial markets and provided for somewhat increased flexibility in format shifting and advertising placement to provide some room for individual licensees to generate increased advertising revenues, along with some greater room to acquire low cost non-local or syndicated programming.

The results of a comprehensive review of the CRTC's commercial radio policy begun in mid-1997 and released on April 30, 1998 (Public Notice CRTC 1998-41) reflect a general satisfaction with the policy *status quo* that relatively good times for a regulated industry can permit the regulator to embrace. In effect, the policy combines some commercial freedom and opportunities for economies of scale particularly in

relation to concentration ownership and control, and freeing up unoccupied frequencies for licensing, with some tighter operating restrictions and more onerous cultural requirements.

The Commission's "new" policy does not derogate from its basic tenets:

- (1) that, among broadcasting undertakings, the commercial radio sector bears a relatively high responsibility for reflecting local or community interests and values; and
- (2) that the Canadian music content quota system (when coupled with elaborate programming format controls to maintain radio station diversity to support copyright payments to a diverse Canadian musical industry), is the main success story of CRTC broadcasting regulations, (ranking perhaps with the stimulation of a diverse cable based specialty television service sector through tying arrangements known as "tiering" with complementary U.S.-based cable networks.)

The CRTC's 1998 Commercial Radio Policy contains the following main elements:

- (1) Common ownership in a Market: Previously, the CRTC had restricted a

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person to ownership of a maximum of one AM and one FM undertaking operating in the same language in the same market. To stimulate greater investment and efficiencies, the Commission has, in markets with less than eight commercial radio stations operating in a given language, elected to permit a person to own or control up to three stations operating in that language with a maximum of two stations in any frequency band. In markets with eight commercial radio stations or more operating in a given language, a person may own or control up to two AM and two FM stations in that language.

- (2) **Local Management Agreements ("LMAs"):** These agreements provide for common technical, sales, promotion and administration activities among separate licenses usually in the same market or among jointly controlled licenses. These arrangements were fairly readily accepted by the CRTC during unprofitable times, in order to permit some cost savings that would not undermine programming commitments. As a *quid pro quo* for its liberalized common ownership stance, the CRTC has put a temporary freeze on LMAs related to ownership changes and has established a separate proceeding to assess whether further administrative consolidation through LMAs may affect programming diversity and among radio services in a market.
- (3) **Benefits Test:** Traditionally the CRTC has, as a condition of approving transfers of ownership or control in a broadcasting undertaking, required that the target commit

to providing new specific benefits to the broadcasting system as a whole. Generally, this has taken the form of a contribution to an independent mechanism for supporting Canadian artistic production measured as a percentage of the value of the transaction, which for the radio sector has been in the range of 10%. The objective is to ensure that the public, and not just shareholders, gains from a merger. Despite strong efforts from the industry to eliminate this requirement for commercial radio undertaking acquisitions, the CRTC has elected to retain the test, at 6% of the value of the transaction for profitable undertakings, and unsurprisingly to maintain its 1993 policy of foregoing the requirement in acquisitions of unprofitable undertakings.

- (4) **Radio Market Policy:** In 1991, to protect unprofitable incumbents, the CRTC adopted a policy of not considering additional commercial radio stations in a given market unless the three criteria relating to group profitability, individual profitability, and revenue growth were satisfied. The net effect of this policy had been to freeze the number of licensees in all markets, except Toronto where the spectrum was basically full anyway. The CRTC has now removed this policy but it will continue to publish the market performance data. It remains to be seen however whether there is now a sufficient commercial basis for new commercial radio entry given the continuing level of CRTC format and Canadian content regulation.

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- (5) **Canadian Music:** The CRTC has elected for higher overall Canadian musical content requirements, presumably on the assumption that the inventory of Canadian music can support more play time without undermining the overall attractiveness of commercial radio services. The CRTC has raised from 25% to 35% the minimum requirement for Canadian "category 2" (popular) musical selections on English language stations during the daytime period. However, the CRTC has elected not to reduce its other Canadian content minima, or to change the complex definition of a "Canadian" selection. Somewhat higher quotas will apply to Canadian musical content on French language stations reflecting the traditionally higher levels of Canadian selections on stations.
- (6) **Local Programming:** The CRTC concluded that there would be no changes to its policy of requiring at least 1/3 of FM station programming to be locally produced.
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