

Speech

Notes for an address

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Thank you, Margot.

I very much enjoyed last year's Forum in Washington, and I'm pleased to be here in Brussels for this year's edition.

The Canadian Radio-television and Telecommunications Commission, or CRTC, oversees Canada's communications industry. Today I'd like to talk to you about two major developments we've been experiencing.

- One is the vertical integration of the industry, and
- The other is the explosive growth of online and mobile broadcasting, which is also known as over-the-top programming.

These developments are not unique to Canada, but our approach to them reflects the issues and priorities that have always been distinctively important in the regulation of Canadian broadcasting.

Vertical integration

First, vertical integration. In recent years, we've seen broadcasting and communications converge into a single industry. At the same time, large-scale corporate consolidation has led to the domination of this converged industry by four large integrated companies.

These four control the whole gamut of communications services: Internet access and telephone (both landline and mobile), over-the-air television stations and cable channels, as well as TV distribution via cable and satellite.

In their capacity as broadcasters, they control program rights—including the rights to the most popular programs. In their capacity as distributors, they can deliver this content to the consumer on all the available platforms: the TV set, Internet websites and mobile devices.

It is this control by one entity of both programming and distribution services that we call vertical integration. The term also applies to control of both programming services and production companies.

From a business standpoint, this strategy of having a finger in every pie is quite logical. If a company has a presence on all platforms, it continues to benefit as consumer traffic moves between its different platforms. And a company that owns a healthy amount of content can leverage this to its advantage when negotiating with other distributors or content owners.

The consolidation trend is a natural consequence of the digital revolution. We're aware of the benefits that vertical integration will bring to a country with a small market like Canada. But we need to ensure that it will also have a positive effect on innovation, competition and consumer choice.

The new vertical-integration framework

Therefore, when we reviewed the last two mega-mergers, we decided that we would hold a public hearing on the subject this past summer. As a result of that process, we announced a new regulatory framework relating to vertical integration.

It ensures that certain key interests will be protected in the new integrated environment.

- First, to protect consumers: There can be no exclusivity of television programming for new media platforms (that is, mobile devices and the Internet). Under existing Canadian regulations, programming services must be made available to all distributors. This ensures that most Canadian viewers will have access to programming that may have been acquired exclusively by the programming services. New media platforms are not regulated. However, our new framework provides that when a vertically integrated company offers a television program on its new media platforms, it must also make it available to competitors on commercially reasonable terms. This ensures, for example, that consumers are not forced to change their service provider in order to watch their favourite sports programs on a smartphone, on a tablet or over the Internet.
- There is, however, an important exception. The policy specifically permits the offering of exclusive programming to Internet or mobile subscribers, as long as it was created specifically for these platforms. This is the kind of new media innovation that should be free to develop. We know that the future lies in the new media environment. Under no circumstances do we want to regulate this environment or stifle new ideas.
- Second, to protect both consumers and competitors, whether broadcasters or distributors, from interrupted service due to contract renegotiations, we put in place a standstill rule. During renegotiations regarding distribution, broadcasters must continue to provide the service in question and distributors must continue to

provide it to their subscribers, on the same terms and conditions. This rule guarantees that Canadians will not lose access to services during a contract dispute. In addition, it allows for more balanced negotiations as a small distributor cannot be deprived of an important program or service and a small broadcaster cannot lose carriage while negotiations are in progress.

- Third, to protect competing distributors, we instituted a no-head-start rule. Any new channel licensed by the CRTC must be made available to all distributors. This prevents a vertical integrated company from giving itself an unfair head start or first-mover advantage. If terms cannot be agreed upon at the time of the first broadcast, the competing distributor can accept the last terms offered on a provisional basis and attempt to get a better result through subsequent negotiation or arbitration, or simply decline the offer. If the competing distributor accepts the service on a provisional basis, it has to honour the provisional terms until final terms and conditions can be established through negotiations. If negotiations prove unsuccessful and either party seeks arbitration, the CRTC will decide the matter through final-offer arbitration (which is also known in our part of the world as the baseball rules). Our decision is final and binding on both parties. Neither side can walk away if it doesn't like the terms and conditions we have chosen. They must live up to the terms and conditions of the chosen offer until they have been satisfied.
- Finally, to protect competition, we developed a code of conduct applicable to all players in the industry. Its aim is to ensure that negotiations between vertically integrated companies and others are conducted in good faith. It spells out expected standards of behaviour the CRTC will apply should it have to intervene in cases of allegation of undue preference.

I've given you a brief overview of our vertical integration policy, which we regard as a building block for the future of the Canadian broadcasting industry. The aim is to offer some protection to consumers as well as to independent broadcasters and distributors, while giving the largest players the flexibility to develop new business models and reap the benefits of their integration.

Online and mobile content

This brings me to a second trend we have seen in Canada recently: more and more content is migrating online and to mobile devices. This type of content is generally called over-the-top programming, or OTT, and is offered by both domestic and foreign services. In fact, when the American service Netflix wanted to expand to other countries, it used Canada as a trial market. In less than a year, Netflix has attracted over a million Canadian subscribers, a development that has our broadcasters very worried.

We refer to this content as over-the-top because it bypasses over-the-air television stations as well as broadcasting distribution companies, all of which are regulated. This raises a number of policy considerations for a country like ours.

Broadcasting regulation has always been an important tool for supporting and enhancing our Canadian cultural identity. We live next door to the most powerful producer of television entertainment in the world. A majority of Canadians speak the same language as Americans, and we share cultural similarities. We want Canadians to have access to American shows, but we don't want them to drown out our own cultural industries.

Over the years, the CRTC has established regulations to ensure that Canada and Canadians are reflected within our broadcasting system. In exchange for a licence, we require broadcasters to spend defined amounts on Canadian programming. During the evening, when most people are watching TV, at least half of the programming hours must be devoted to Canadian content. And television service providers must contribute a percentage of their revenues to funds that support the production of Canadian programming, including drama series and local news. Equally, licensed cable and satellite distributors must carry local channels and offer a preponderance of Canadian channels.

This regulated arrangement has helped sustain an industry that is capable of producing compelling programming which has found audiences at home and abroad. This contributes to our economy as well as to our national identity.

So what is going to happen to Canadian content as the unregulated over-the-top sector continues to grow and attract larger audiences? The OTT services may voluntarily contribute to the promotion of Canadian content, but they are not required to do so. And they may or may not offer Canadian content. There is no obligation to do so.

Reviews and fact-finding

So far, the CRTC has maintained a hands-off approach. After an initial review of the new media in 1999, we exempted over-the-top programming services from our regulation. A second review in 2009 confirmed that this was the right approach, and we decided to continue it. Neither the case for regulatory intervention nor the means of how it could be done was made during these proceedings.

This year, with the environment changing very quickly, we launched a fact-gathering exercise to get a clearer picture. Are new forms of broadcasting an extension of the Canadian broadcasting system? Or are consumers beginning to abandon the regulated system in favour of unregulated alternatives?

I have to tell you that the answers provided by our fact-finding mission turned out to be inconclusive. The responses we received suggest that:

- The regulated broadcasting system continues to support Canadian programming, as it has always done.
- There was no concrete evidence that Canadians are abandoning the regulated system by reducing or cancelling their television services.

- New technologies and service providers are creating opportunities for Canadian content creators and businesses in a global marketplace.
- At the same time, these trends are casting a shadow of uncertainty over established business models and the strategies we've traditionally relied upon to support the creation of Canadian content.

Judging from the varied submissions, no one really knows how OTT will evolve. Our cultural industry, however, is clearly concerned, one could even call it traumatized, and calling for drastic action. What action is not clear at this point, nor how it could be enforced. Making OTT in any form subject to our regulation might merely drive it offshore.

We have therefore decided to make over-the-top services the focus of our annual consultations with the broadcasting industry later this month. Rather than fighting this trend or trying to regulate it, we want to focus on the opportunities it provides for both Canadian viewers and broadcasters. The risks to the existing system are evident, but there are enormous opportunities for Canadian content to reach the whole world. We don't want to miss them.

Conclusion

The CRTC has the mandate to encourage the production of Canadian content. This was easy to accomplish through regulatory conditions when we had the ability to control access to the broadcasting system. But then along came the Internet and its global reach. It has put the consumer in the driver's seat—ready, willing and able to go anywhere because the Internet has no gatekeepers.

How do we promote Canadian programming in the digital environment? Should we continue to support its production or should we focus on its promotion? How do we ensure that the environment provides the maximum benefit to Canadians?

These are our challenges for the future. I'm sure that many of you here are facing similar challenges, and I look forward to our discussion.

Thank you.