



Broadcasting Notice of Consultation CRTC 2010-783

PDF version

Ottawa, 22 October 2010

Notice of hearing

9 May 2011

Gatineau, Quebec

Review of the regulatory framework relating to vertical integration

Deadline for submission of interventions/comments: 7 March 2011

The Commission hereby initiates a public proceeding to review its regulatory framework relating to vertical integration.

*As part of this proceeding, the Commission will hold a hearing commencing on **9 May 2011** at the **Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.***

*The Commission will accept comments from interested parties that it receives on or before **7 March 2011.***

[\[Broadcasting interventions/comments form\]](#)

Background

1. In Broadcasting Decision 2010-782, also issued today, the Commission approved an application by Shaw Communications Inc. (Shaw), on behalf of Canwest Global Communications Corp. (Canwest Global), for authority to transfer the effective control of Canwest Global's licensed broadcasting subsidiaries to Shaw, through a wholly owned subsidiary of Shaw known as 7316712 Canada Inc.
2. This is but one example of a growing trend of industry consolidation and vertical integration taking place in the Canadian broadcasting industry. Others include the transfer of control of TVA to Quebecor Media Inc. in 2001 (see Decision 2001-384) and the transfer of five Citytv stations to Rogers Media Inc. in 2007 (see Broadcasting Decision 2007-360). Most recently, on 10 September 2010, BCE Inc. (BCE) announced its intention to seek the Commission's approval for a share transfer pursuant to which BCE would acquire sole control of CTVglobemedia Inc.
3. For the purpose of the Commission's regulatory framework, "vertical integration" refers to the ownership, by one entity, of both programming and distribution undertakings, or, both programming undertakings and production companies.

4. The Commission has examined issues arising from vertical integration on a case-by-case basis when considering applications for new services or for transfers of ownership or control involving broadcasters and independent production companies. The Commission acknowledges that the potential for preferential treatment exists in such cases yet remains of the view that vertical integration can lead to benefits, such as cost savings and increased efficiencies. Appropriate safeguards, where required, are applied either broadly by regulation or on a case-by-case basis in the form of conditions of licence or expectations.
5. During the proceeding leading up to Broadcasting Decision 2010-782, several interveners expressed concerns that vertically integrated distributors have the potential to behave in an anti-competitive manner, to the detriment of the Canadian broadcasting industry. These parties proposed several safeguards in addition to those already in place to further dissuade anti-competitive behavior including, where they do not already exist, reverse onus provisions as they apply to undue preference or disadvantage allegations.
6. Some parties requested, moreover, that the Commission provide more clarity regarding what types of conduct would constitute an undue preference or an undue disadvantage. Providing more clarity before a complaint arises would, they argued, reduce complaints and assist the Commission in dealing with any remaining complaints on a timelier basis.

The public hearing

7. In light of this growing trend of industry consolidation and the transition to digital technology, the Commission will hold a public hearing to consider whether it is appropriate that it expand upon existing safeguards, including in particular the reverse onus provisions as they apply to undue preference or disadvantage allegations, so as to better take into account systemic changes in the broadcasting industry. It is the Commission's preliminary view that the reverse onus provisions should be made generally applicable to all programming undertakings as well as to all broadcasting distribution undertakings.
8. In this hearing, the Commission also intends to review and, where appropriate, update the issues examined in Broadcasting Public Notice 2005-35. Without limiting the range of issues set out in that notice on which parties may wish to comment, the Commission highlights in particular "Possible suspension of proposed changes in distribution pending dispute resolution," identified in paragraphs 29 to 33 of that notice. The Commission's preliminary view is that a party to a dispute should generally be held harmless during the period in which the Commission is considering the dispute.
9. The Commission notes that the aim of this public hearing is to put in place norms for commercial interaction amongst interested parties within the broadcasting sector that would provide all players with a fair opportunity to negotiate for such key elements as programming rights and details of carriage. With specific regard to programming

rights, the Commission reiterates its view that generally it prefers to see distribution of programs on a non-exclusive basis, as this enhances consumer choice and furthers a competitive workplace.

10. It is not the intention of the Commission to interpose itself into the wholesale commercial environment, but to regulate or, alternatively, establish guidelines only where measures appear warranted by the record of this proceeding. In this regard, parties will be expected to present a compelling case that any specific *ex ante* and/or *ex post* measures are necessary and in the best interests of the Canadian broadcasting system.

Public proceeding

11. The Commission will hold a public hearing commencing on **9 May 2011** at the **Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec**, to address the matters set out in this notice.
12. The Commission invites written comments that address the issues and questions set out above. The deadline for filing written comments is **7 March 2011**. The Commission will only accept submissions that it receives on or before that date. It cannot be held responsible for postal delays and will not notify a party whose submission is received after the deadline date. The submission will not be considered by the Commission and will not be part of the public file.
13. Following the public hearing, interested parties may have an opportunity to file brief final written comments.
14. Parties wishing to appear at the public hearing, either in person or by video conference from one of the Commission's regional offices, must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing. While submissions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out herein have been followed.
15. Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Procedure for filing comments

16. Interested parties can file their comments to the Secretary General of the Commission in **only one** of the following formats:

by using the

[\[Broadcasting interventions/comments form\]](#)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at

819-994-0218

17. Submissions longer than five pages should include a summary.

18. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Important notice

19. All information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.

20. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

21. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

22. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own

search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

23. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of documents

24. A list of all comments will also be available on the Commission's website. An electronic version of all comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.
25. The public may examine public comments and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec
H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba
R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta
T5J 3N4
Tel.: 780-495-3224

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010
- *Transfer of effective control of 1708487 Ontario Inc., 1738700 Ontario Inc. and CHUM Television Vancouver Inc. to Rogers Media Inc.*, Broadcasting Decision CRTC 2007-360, 28 September 2007
- *Good commercial practices*, Broadcasting Public Notice CRTC 2005-35, 18 April 2005
- *Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001