CAB | ACR

Via GC Key

July 13, 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2019-379-3 – The Canadian Broadcasting Corporation/Société Radio-Canada (CBC/SRC or "the Corporation") Licence Renewal Applications – Comments on "New Information"

1. This is a second intervention filed by the Canadian Association of Broadcasters (CAB) on behalf of its private radio and TV members in response to the above-referenced Notice of Consultation (Notice).

2. The new information filed by CBC/SRC outlines in broad strokes the extent of the Corporation's digital activities and confirms many of the concerns expressed in our February intervention. We comment below on this information as it relates the Corporation's plans to:

- Continue, and increase, its reliance on advertising; and
- Have unfettered discretion to use its parliamentary appropriation to compete with private media in the digital space.

New information disclosed by CBC/SRC

3. The new information filed by CBC/SRC consists primarily of a document entitled "Aggregate financial summary for all of CBC/Radio-Canada's services". The document summarizes the revenue and expenses for all of CBC/Radio-Canada's services in broad categories, consistent with the Corporation's previous filings in this process, and as between licensed broadcasting and unlicensed digital services for the broadcast years 2018-19 to 2022-23.

CBC/SRC Digital Activity

4. As confirmed by the new information, the extent of CBC/SRC's current and planned diversion of resources from licensed to digital activities, over which it continues to argue that the Commission should have no oversight, is startling.

5. The Corporation's disclosure reveals that CBC/SRC's spending on digital services was $265 million in 2018-19, and is forecast to grow to $368 million in 2022-23. Included in this amount is $203 million in alleged "non-programming services" (that CBC/SRC states are primarily alphanumeric text) which is projected to grow to $282 million in 2022-23.

6. CBC/SRC's digital revenues include $33 million in advertising revenue in 2018-19 growing to $42 million in 2023, and $11 million in subscription revenue in 2018-9 growing to $23 million in 2022-23.

7. The questions raised by this disclosure are myriad. In particular:

- How much parliamentary appropriation is being used for digital services, as between the three categories identified by CBC/SRC (French broadcasting; English broadcasting and non-programming)?
- Would further disaggregation of CBC/SRC's digital revenues and expenses (including parliamentary appropriation) be in the public interest?
- In particular, how much of CBC/SRC's digital expenses are going to (a) news content and (b) infrastructure (given CBC/SRC claim referenced in para. 12, above)?
- Has Parliament approved the diversion of so much of CBC/SRC's parliamentary appropriation to non-programming services?
- Is the Canadian government, or any government department, providing any oversight over CBC/SRC's digital non-programming service activities, including the extent to which it may distort or provide unfair competition to private media?
- What precisely is CBC/SRC including in its definition of non-programming services? As "Amounts reflect content and production spend projected primarily on CBC.ca/Radio-Canada.ca"[1], why are many of them not considered programming costs? Would/does the CRTC agree with CBC's inclusions/exclusions?

8. As pointed out by Ontario Association of Broadcasters (OAB) in the initial round of interventions:

> Regardless of whether or not CBC charges for advertising, any new radio or digital service that directly competes for listeners or viewers will impact the revenue of existing broadcasters and other Canadian content creators.
>
> …
>
> By allowing the CBC to redirect funds from parliamentary appropriations set up for unique broadcast services, towards digital services which duplicate private sector

[1] Note 4, Aggregate financial summary

initiatives, the CRTC would inadvertently be contributing to the demise of independent news voices. Clearly, this would not be in the public interest.

9. At minimum, we respectfully urge the Commission to satisfy itself that digital activities deemed "non-broadcasting", rather than merely ancillary, are appropriately done so, and confirm whether or not some body, be it the Commission or Government, is providing appropriate oversight.

10. In the CAB's view, the new information confirms the need for a greater understanding, and potentially safeguards, in respect of CBC's digital activities. Absent a clear direction from Government for such a material diversion of resources to non-programming services and a better understanding of how this diversion of funds aligns with the CBC/SRC's mandate and furthers the public interest, the only thing that is clear is the very real potential for negative impact on the private media sector. Unless and until the Commission receives such necessary assurances, we believe the CRTC must actively consider imposing regulatory conditions in this proceeding.

11. Intervenors have proposed two basic approaches to this end. The Directors Guild of Canada (DGC), Canadian Media Producers Association (CMPA), Alberta Media Production Industries Association (AMPIA), and Friends of Canadian Broadcasting (FCB) have called for some form of direct regulation of CBC/SRC's digital activities through new digital or overall CPE requirements. CAB and Québecor Média inc. (Québecor) have proposed more of an indirect approach, including new CPE and PNI expenditure requirements on each of English- and French-TV. The CAB, OAB, and Québecor have also proposed safeguards on CBC/SRC's competing digital activities.

12. At least two intervenors (Writers Guild of Canada (WGC) and l'Association québécoise de la production médiatique (l'AQPM)) have, however, to some extent agreed with the Corporation's position that such matters be deferred to some future proceeding.[2] The CAB fundamentally opposes such an approach. While different from CAB in approach, CMPA also holds the view "that the Commission can and should regulate CBC's digital platforms now."[3]

13. Not only is it unclear what such a "future" proceeding would accomplish that could not be determined now, these renewal proceedings are an appropriate and really the only practical regulatory way that the Commission can introduce necessary oversight in a timely manner.[4]

14. Whether the Commission chooses an "indirect" or "direct" approach is ultimately up to it, but to not act at all would be contrary to the public interest, including being prejudicial to the ability of private broadcasters to compete in the market and uphold their regulatory obligations.

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[2] WGC para and L'AQPM para IV.

[3] CMPA Intervention, para 4.

[4] In theory, the Commission could introduce regulations at some later date, or issue a short-term renewal so that some broader proceeding could be held first, but the most reasonable and practical decision would be to address the matter in these proceedings. Moreover, an advantage of the CAB's more "indirect" approach is that it does not break new ground – it is entirely consistent with past Commission practice.

CBC/SRC Advertising

15. As the Commission is aware, private broadcasters have been experiencing 50% plus advertising revenue declines due to COVID-19. We anticipate some level of recovery over the next few months, nevertheless 30% declines from normal levels well into the 2021 broadcast year are expected, and permanent structural effects are possible.

16. While we would normally assume that CBC/SRC is experiencing similar declines (albeit on a much smaller portion of their overall revenues), the Corporation has yet to provide any disclosure on point. By the time of the public hearing, the impact of COVID-19 on the Corporation's revenues and operations will be better known, and an important data point.

17. The only valid basis for the Corporation to not disclose data on the financial impact of COVID-19 would be if that impact is not "material".

18. The inference, through non-disclosure, that the Corporation might deem the impact of COVID-19 as immaterial has significant consequences, as it would suggest that either (a) the impact of COVID-19 on CBC's advertising revenues is not material or (b) advertising revenues themselves are, in total, not material to the Corporation.

19. The relevance of this should be self-evident. In our intervention, the CAB supported the move to an advertising free CBC/SRC, and urged the Commission to establish a timeline and process for so doing in this proceeding. Restrictions on TV and/or digital CBC/SRC advertising were also proposed by OAB, FCB and Québecor.

20. If, like private broadcasters, CBC advertising revenues are 30-50% lower than expected (and especially if net adverting revenues for the Corporation are lower still), this makes movement towards an ad free CBC/SRC an even more achievable and desirable goal. If, however, CBC is not suffering the same advertising revenue declines as private broadcasters, then it could demonstrate, as the CAB believes may be the case, that the Corporation is unfairly competing with private media, by charging less than market rates.[5] If that is the case, the argument for CBC eliminating or having restrictions imposed on advertising is different, but no less compelling.

Omissions from CBC/SRC disclosure

21. The CAB notes that in their interventions, diverse parties such as the DGC, WGC, CMPA, OAB, Québecor, and FCB have, like the CAB, raised concerns about the poor level of CBC/SRC's disclosure, including information on its digital activities.

22. We also note that the Corporation chose in its Reply not to acknowledge or respond to numerous valid intervention submissions, including the many arguments for some kind of Canadian Programming Expenditure (CPE) based approach, analogous to, or building on, that which applies to private television broadcasters.[6]

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[5] The CAB is aware of anecdotal evidence that the Corporation is being quite aggressive on digital rates and that SRC may be behaving more aggressively than CBC English.

[6] See, for example, interventions from DGC, CMPA, WGC and FCB.

23. As do other interveners, the CAB finds this pattern of non-disclosure and non-responsiveness concerning for a public broadcaster. Fortunately, given that there are almost six months remaining until the Oral Hearing now rescheduled for 11 January 2021, there is ample time to correct it.

24. In our view, this should include disclosure of data that is not provided in the Corporation's Aggregate financial summary:

- Changes that may result from the impact on revenue and expenses of the Covid-19 pandemic;[7] and
- Forecasts for the full proposed licence term to 2024-2025.[8]

25. As a matter of principle, the CAB believes that the greatest possible disclosure from, and accountability for, the public broadcaster is in the public interest – at least to levels that are consistent with that required of and provided by private broadcasters.

26. Consistent with normal Commission practice, financial information filed to support a licence renewal should include all material assumptions, be as up to date as possible and be for the proposed term. Given the extent of advertising losses suffered by private media due to COVID-19, it would be surprising, if not irregular, for the Corporation to not have also suffered, and continue to expect, material advertising revenue, and operational impacts. Only disclosure will make this clear.

27. In addition, at absolute minimum, as suggested in our first intervention filed on February 20th, CBC/SRC should be required to disclose such aggregate historic and forecast local programming and/or local news exhibition hours and expenditures as it can, and specifically detail the extent to which "accounting changes in news spending reflects the shifting of funds from spending on traditional platforms to spending on digital platforms".[9]

28. The CAB urges the Commission to require the Corporation to file such additional information and ensure it is made available prior to the oral hearing.

29. All of which is respectfully submitted.

Sincerely,

Lenore Gibson
Chair, CAB Board of Directors

cc. CBC/SRC

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[7] June 12 CBC response to CRTC information request.

[8] CBC/SRC's filed projections are only to 2022-2023: Note 1, Aggregate financial summary.

[9] Per CBC/SRC Reply.