

Foreign Ownership and Consolidation in Canadian Broadcasting:

Can We Eat Our Cake and Have It Too? Canadian Content under a Liberalized Broadcasting Sector

**Prepared for:
Insight Information
Telecommunications and Broadcasting:
Current Regulatory Issues and Policy**

Nordicity Group Ltd.



May 1, 2007

Keeping Up with the Joneses

- Economic nationalism is alive and well in many of our peer countries.
 - **France** has protected industries - recent pre-empting of a Pepsico's takeover of Danone
 - **Spain** and **Italy** have recently resisted foreign takeovers of energy and telecom firms
- In Broadcasting:
 - **U.S.** still has 25% limit
 - **France** has 20% limit on non-European investors
 - **Australia** recently did away with its 35% limit; but still maintains a national-interest test for all transactions
 - **U.K.** removed limits in 2003, but still has a national-interest test to fall back on

Foreign Ownership in Canadian Telecom

- **Cost-of-capital** argument for liberalizing foreign ownership in telecom
- **BCE auction** provides supporting evidence for the cost-of-capital argument:
 - Canadian pension money is playing a large role
 - But foreign capital is driving the BCE share value higher, and thus the cost of capital lower
- The arguments against domestic control of telecom facilities are dwindling.
 - We are left with the “head office” argument

Asymmetric Rules on Foreign Ownership

- The BCE transaction is going to respect the existing foreign ownership limits.
- The “corporate-ownership-asymmetry tax” would probably be even more distortionary than any head-office tax.
 - Stifle the proliferation cable-based IP telephony in Canada
 - Telco-TV would also be in question
 - Hinder bundling

Foreign Ownership in Broadcasting

- Canadian media companies have been very innovative of late in bringing foreign capital into broadcasting transactions
- The economic arguments for foreign ownership in broadcasting are less compelling than in telecom
 - Broadcasting plays a very important social policy role
 - But, broadcasting services are not as vital to economic efficiency as telecom services
- HD-enabling infrastructure is going to require significant capital – why not do it at the lowest cost.

The Billion Dollar Question

- ***Can the CRTC effectively regulate foreign-owned broadcasting licensees?***
- Canadian governments effectively regulate pharma, auto, retail, etc.
- Communications services are unique
 - Often do not respect borders – travelling by air or IP
- The proliferation of broadband distribution platforms could put a large share of Canadian audiences under foreign ownership – à la grey-market DTH.
- If the future is one of lawful distribution of broadcast programming, then our concern might be less.

Leap of Faith or Calculated Risk?

- We have few, if any, concrete examples of foreign companies outwardly abusing or furthering the demise of a host country's communications-industry regulations.
- We need to approach ownership liberalization in broadcasting as a calculated risk – compare the potential benefits and costs
 - Could foreign ownership raise the value of a Canadian broadcasting licences – and thereby make the cost of shirking much higher?
 - Could foreign owners be more inclined to move audiences to un-regulated platforms that render our exhibition rules ineffectual?

Implications for Foreign Ownership

- There is little reason for the broadcasting sector to have more relaxed foreign ownership rules than the telecom sector.
- If the federal government moves to liberalize foreign ownership of telecom, it must be prepared to prevent any asymmetric regulation in the carriage space.
- We can, therefore, maintain our Canadian-content regime at the programmer level, without the risk of losing the benefits that may come from foreign capital at the carriage and distribution level.

Maybe we can eat our cake and have it too!

Assessing Media Concentration

U.S.

Four key principles:

1. No entity can hold more than 39% (reach) of the national TV market
2. No combinations among the four major national TV networks
3. Newspaper-broadcasting cross ownership not permitted
4. An entity may hold a TV station and a radio station in a single market (and more radio stations in larger markets)

CTVglobemedia is already offside; and holding two TV stations in the same market would be an absolute no-no.

U.K.

Key principle of media cross ownership:

- A person may not acquire a Channel 3 TV licence if he/she holds a 20% market share in the newspaper market.

CTV is analogous to Channel 3.

G&M holds about 25% of the Toronto market.

We have a cross-media ownership problem that the CTVglobemedia-CHUM merger could only aggravate.

France

Key principle of media cross ownership:

- No person may hold a television licence and 20% of the newspaper market in a local area.

We have a cross-media ownership problem that the CTVglobemedia-CHUM merger could only aggravate.

Sweden

Approach to media ownership issues:

- No ownership restrictions beyond normal competition law.

Given that Canada's Competition Bureau has not blocked the CTVglobemedia-CHUM merger, it would go ahead.

The Australian Points System

- In 2006, Australia introduced points-based system for assessing media concentration
- Each media operation (associated newspaper, commercial TV operation, commercial radio operation) = 1 point
- Each media group = 1 point
- Fewer than 5 points in a metropolitan area = “unacceptable media diversity situation”
- Control of TV, radio and newspaper in a licence area = “unacceptable 3-way control situation”

Ottawa Media Market

Before CTVglobemedia-CHUM Merger

	News-paper	TV	Radio	Total
CTVglobemedia	1	1	--	1
CHUM	--	1	1	1
Canwest	1	1	--	1
Rogers	--	1	1	1
Standard Radio (Astral)	--	--	1	1
Newcap (Hot 89.9)	--	--	1	1
Evanov (Jewel-FM)	--	--	1	1
Total points	--	--	--	7



After CTVglobemedia-CHUM Merger

	News-paper	TV	Radio	Total
CTVglobemedia	1	1	1	1*
Canwest	1	1	--	1
Rogers	--	1	1	1
Standard Radio (Astral)	--	--	1	1
Newcap (Hot 89.9)	--	--	1	1
Evanov (Jewel-FM)	--	--	1	1
Total points	--	--	--	6

* Unacceptable 3-way control situation

Monopsony Power in Canadian TV

- Herfindahl-Hirschman Index (HHI) - U.S. Department of Justice tool for screening mergers
- Highly concentrated marketplace: HHI > 1,800
- Increase of 100 points in concentrated marketplace raises anti-trust concerns

Expenditures by Canadian Television Broadcasters on Licence Fees for Original Canadian Programming (Independently Produced)

Before Proposed TV Transactions

	\$M	Share	HHI
CTVglobemedia	19	15%	234
CanWest	12	10%	94
CHUM	17	14%	188
Alliance Atlantis	5	4%	16
Astral Media	5	4%	16
Corus	5	4%	16
CBC	61	49%	2,420
Total	124	100%	2,985

Total (excluding CBC)	63	100%	2,189
------------------------------	-----------	-------------	--------------

After Proposed TV Transactions

	\$M	Share	HHI
CTVglobemedia	36	29%	843
CanWest	17	14%	188
Astral Media	5	4%	16
Corus	5	4%	16
CBC	61	49%	2,420
Total	124	100%	3,483

Total (excluding CBC)	63	100%	4,119
------------------------------	-----------	-------------	--------------

Concluding Thoughts

- Canada's foreign ownership rules in broadcasting are not out of line with our peers; but we should avoid ownership asymmetry if it arises.
- Compared to our peers, we have a serious cross-media ownership situation that the CTVglobemedia transaction may aggravate.
- Canada is a small market, but it is much larger than Sweden and Australia. If we use the small-market argument to tolerate cross-media ownership, is that not a basis for opening the Canadian market to foreign capital.
- In a discussion of media-industry consolidation, we need to be cognizant of the risk of monopsony power in the content-acquisition market.