

## ‘Don’t Dismantle First and Ask Questions Later’

By Glenn O’Farrell

The Canadian broadcasting system has attracted international recognition for its diversity and inclusion of Canadian programming alongside the very best the world has to offer, under the supervision of the CRTC. Canadians now have access to more choices of national channels, both conventional and discretionary, than nearly any country in the world on a per capita basis, as is obvious in the following table.

**Television Choice - Various Countries, 2005**

Country	Population (millions)	# of nationally-available channels	# of channels per million people
Canada	32.27	403	12.49
UK	60.22	358	5.95
France	62.70	257	4.10
Japan	127.77	313	2.45
US	296.68	535	1.80
Germany	82.46	125	1.52
Indonesia (2007)	234.69	87	0.37
India	1,091.00	175	0.16

Notes: excludes local/community channels. Includes only foreign and domestic channels available across the country. Sources: OECD, *Communications Outlook 2007*; OECD *Observer* No. 264/265; FCC, *Twelfth Annual Report to Congress*, 2005; Ofcom, *The Communications Market 2006*; Telecommunications Regulatory Authority of India, *India Telecommunications Services Performance Report* July-Sep. 2005; CIA, *World Factbook (Indonesia)*.

However, in the pages and pages filed by BDU companies for next week’s CRTC public hearing regarding the regulatory framework for broadcasting distribution undertakings and discretionary programming services, it is absolutely remarkable to note their core assumption that Canadians want cable and satellite companies to decide which channels they can watch.

The BDUs have presented no evidence whatsoever to support this “dismantle now and ask questions later” approach. Is it not therefore fair to ask whether such a fundamental reorganization would first require either rewriting the *Broadcasting Act* or at least a direction from government?

The only broadcasting related intervention from government we’ve seen lately was

announced a little more than a month ago regarding the Canadian Television Fund. I don't seem to recall any direction from government to mutilate the CRTC's mandate – to regulate and supervise all aspects of the Canadian broadcasting system – so that BDUs can step in and call all the shots.

Instead, we think next week's hearing should focus on the imperative to move from analog success to digital excellence.

The CRTC licensed its first specialty channels in 1983, (concurrent with the launch of the Broadcast Fund, by the way), and since then, has built multiple pillars to support the growth of the specialty and pay sector and the goals set out in the *Broadcasting Act*. The plan was to encourage the development of a diverse mix of program services, to ensure Canadians receive and can access as many as possible and to give Canadian channels pride of place among the imports chosen to complement home-grown fare.

Canadians can be proud of the choices, diversity, contributions to public policy and audience impact realized by discretionary services. As the Canadian Association of Broadcasters will submit in its appearance April 10, today's specialty and pay framework does need some streamlining, but not the wholesale deregulation some BDUs want to see.

The transition to digital transmission and multiple new media platforms naturally means the rules governing content production and distribution will evolve. The CRTC's proposed preponderance model will certainly be debated. The CAB is recommending it be modified to ensure subscribers receive services that are predominantly Canadian overall and within each subscription package. If the Commission adopts an "effective" preponderance rule and if it stipulates the access rights of core discretionary services, the system would be the healthier for it.

In our view, this measure matches the current realities with numerous legislative requirements. For instance, how can you fulfill the mandate of the *Broadcasting Act*, which requires the Canadian broadcasting system to provide "a public service essential to the maintenance of national identity and cultural sovereignty" without effective preponderance of Canadian services?

The CAB considers that existing analog discretionary services and Category 1 digital channels must have genre recognition, "core" status and access to BDU distribution. Given the very high levels of direct contribution they make to the system in terms of

Canadian program spending and exhibition, how could anyone justify dismantling the regulations that enable them to succeed with Canadian viewing audiences?

Much has been said about consumers' alleged interest in receiving HBO, ESPN and U.S. cable channels directly. The reality is that almost all of the programming on HBO is already here. A 250-program title analysis of highest ranked U.S. cable telecasts was undertaken and filed with the CRTC last October. Of these 250 popular programs, only six were not already available in Canada.

This hearing will be as vital to over-the-air broadcasters as it will be for discretionary services.

Financial reckoning -- for conventional broadcasters these days, it's a painful process with forecasts predicting balance sheets featuring negative PBITs. This contrasts sharply with the operating profit margins being reported for BDUs which still exceed 20%. It's obvious, then, why protection of program rights is a fundamental concern for OTA stations.

Any weakening of the "second pillar" of the OTA distribution framework, simultaneous substitution, would wreak further havoc on the sector's financials.

Program rights protection is also at the heart of the distant signals issue. Where broadcasters' programs are being carried in distant markets, and not simulcast, broadcasters believe the best way to ensure rights are respected is program deletion. But the CRTC has refused to enforce its own program deletion regulation and has asked broadcasters to negotiate compensation instead. Research demonstrates that current agreements compensate for no more than 25% of the actual economic impact of distant signals. The CAB is suggesting a market-based solution in the form of a retransmission consent regime which would not require CRTC intervention.

As Canadians move towards high definition television in 2011, the regulatory framework must adapt. Let's opt to build on one success and craft another in the digital age.

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