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**Remarks to the
Standing Senate Committee on Transport and Communications
Hearing on: the current state of the Canadian media industries;
emerging trends and developments in those industries; the media's
role, rights, and responsibilities in Canadian society; and, appropriate
future policies relating thereto.**

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Introduction

Good afternoon Madame Chair and members of the Committee. It is a pleasure to appear before you today.

As Acting Commissioner of Competition, I welcome this opportunity to participate in your public consultation process as you undertake a study of the current state of the Canadian media industries.

Today I will first provide some background on the Competition Bureau, our role and responsibilities. I will then address the specific issues on which the Committee has indicated an interest in hearing my views.

Overview of the *Competition Act* and the Competition Bureau

As you know, as Acting Commissioner of Competition, I have a specific responsibility for the maintenance and enhancement of competition in the Canadian marketplace. My staff at the Bureau has considerable expertise at assessing issues related to competition, and we are responsible for enforcing a modern and effective *Competition Act* and to act as advocates of competition.

We strive to ensure that Canada has a competitive marketplace and that all Canadians enjoy the benefits of competitive prices, product choice and quality service.

Enforcing the *Competition Act* in Media Industries

I would like to make a few comments on how the *Competition Act* is applied to media industries. As a law of general application that covers all businesses in Canada, the *Competition Act* has no specific provisions regarding broadcasting, telecommunications, newspapers or other media. Also, the *Competition Act* is essentially an economic law. When we apply it to specific cases, we do so using an analytical framework common to all

products and services. In applying the law, we very carefully take into account the structure of the industry, the environment in which it works, and the markets for its products.

In most markets, the product sold directly to the final consumer is the most significant. But in media markets, advertisers, not the final consumer are often the most important players from a competition policy perspective.

Cases to date have stressed the important role that media markets play in providing an audience to advertisers. These advertising markets can be local or national, depending on the situation. We have found that because of their different characteristics, newspapers, radio and television often serve different advertising markets.

Once we have defined the markets, our review under the merger provisions of the *Competition Act* (S. 92) considers the likely economic impact of any increase of concentration in the relevant markets when an acquisition or merger takes place.

The key test in these provisions is whether the proposed transaction will substantially lessen or prevent competition. Only if that is the case can a transaction be challenged before the Competition Tribunal.

Just as with any other market, we look at all competitive aspects of a transaction -- price, quality, product choice. But the dominant focus has been on advertising markets because they have been the prime source of revenue.

This has a number of implications with respect to overall media concentration and diversity of voices. For example, an acquisition that merges ownership of newspapers in different cities may not create a substantial lessening of competition if the advertising market is local. Similarly, if an acquisition merges a television station and a newspaper in

the same city, that may not pose a significant issue if the television and newspaper advertising markets are found to be separate.

There are situations where our efforts indirectly encourage diversity. For example, our review of the recent *Astral* transaction raised competitive concerns under the *Competition Act*. The remedy in this case, which was aimed to address our competitive concerns, also promoted continued diversity of ownership in five radio markets as a by product.

Madam Chair, as you can see, the *Competition Act* is not intended nor designed to deal with the question of “diversity of voices.” In certain cases, maintenance of the “diversity of voices” may result. This is an indirect effect of our primary focus, the maintenance of competition.

The Bureau’s Advocacy Role in Media Industries

Madame Chair, so far I have been speaking within the limits of the technical enforcement of the *Competition Act*. However, I also have a duty to act as an advocate of competition in Canada. And, of course, choice is a hallmark of competition.

Canadian culture is squarely based on a democratic government which in turn needs diversity of voices to live up to its ideals. Diversity of voices can be achieved through diversity of media outlets, diversity of ownership, including ownership forms, and diversity of media products.

I understand that witnesses in these hearings have expressed a wide range of views on the current state of the diversity provided by media industries – with some extolling the impact of new technology such as the Internet and others expressing concerns about the number of Canadians who are taking advantage of these opportunities. The Competition Bureau is squarely positioned in favour of increased consumer choice. An increase in the number of owners of media outlets can increase consumer choice,

especially if the various owners have different objectives. By encouraging diverse ownership forms, one can also promote a variety of objectives.

Indeed, the entry of a single owner with a unique objective may sometimes contribute more to product variety than several new owners who are all driven by very similar objectives. For example, university radio stations and other not-for-profit media outlets often generate programming that is quite different from more traditional media.

Many of the proposals suggested by other witnesses in these hearings may provide ways to promote diversity including liberalizing foreign ownership restrictions. In my role as an advocate of competition in Canada, I would encourage the Committee to consider these options.

The Competition Bureau interface with the CRTC

Of course, the Competition Bureau is not alone in its interests in media industries. Both the *Competition Act* and the *Broadcasting Act* apply to radio and television industries. I understand the CRTC is scheduled to appear before this Committee on September 25th. I would like to make a few brief comments on the interface between us and the CRTC.

In 1999, the Competition Bureau and the CRTC signed a Memorandum of Understanding which describes the authority of the CRTC under the *Telecommunications and Broadcasting Acts* and that of the Bureau regarding the telecommunications and broadcasting sectors. The interface document deals with a range of competitive issues including access, merger review, competitive safeguards and various marketing practices. The document deals only with matters related to competition.

The Heritage Committee has recommended clarifying the roles of the Bureau and the CRTC with respect to broadcasting. We would welcome such a review.

We believe that ensuring a diversity of voices is important for democracy. As an advocate of competition I believe that product choice is an important component to ensure such diversity exists. However, this issue, I believe is more cultural than economic and for that reason is a natural adjunct to the CRTC's mandate to maintain and enhance Canadian culture. An effective policy framework requires both the Competition Bureau and the CRTC to play important but quite different and distinct roles. The dual challenge is to enable the forces of competition to work in the marketplace and not be thwarted unnecessarily by regulations, while ensuring that regulatory interventions achieve their key objectives.

Conclusion

Madame Chair, as Acting Commissioner of Competition , I can cover only a portion of the important issues and questions being pursued by your committee.

Nevertheless, Madame Chair, as a final point, while your committee is interested in general question of media concentration, the Act does not empower the Commissioner to conduct general enquiries into such questions. Such a power is proposed in the recent Competition Bureau discussion paper which proposes a number of amendments to the *Competition Act* and is currently under discussion. I am delighted to have been asked to appear before you. I look forward to your questions.