

Astral Media inc.
2100, rue Sainte-Catherine Ouest
Bureau 1000
Montréal (Québec)
H3H 2T3

Tél. : (514) 939-5000
Tél. : (514) 939-5017 - ligne directe
Fax : (514) 925-7707
marpin@corp.astral.com
www.astralmedia.com



December 21st, 2004

Michel Arpin
Conseiller principal/Senior Adviser
Affaires réglementaires et
gouvernementales/
Regulatory and Government Affairs

Ms. Annie Galipeau
Compétition Bureau
Place du Portage I
50, Victoria Street
Gatineau (Que.) K1A 0C9

**Re : Consultations on the Information Bulletin on the Regulated Conduct
Defence**

Dear Ms. Galipeau,

Astral Media Inc. (Astral) is pleased to participate in the consultations by the Competition Bureau on its Information Bulletin on the Regulated Conduct Defence.

Astral licensed operations are subject to regulation by the Canadian Radio-Television and Telecommunications Commission (CRTC) with respect to various commercial activities. Among the most important competition law issues for the broadcast industry at this time is the overlapping jurisdiction of and interaction between the Competition Bureau and the CRTC relating to transactions and other commercial activities by media companies regulated by the CRTC. These include, notably, instances where a transfer of effective control under the *Broadcasting Act* is also a «merger» within the meaning of the *Competition Act*.

The continuing uncertainty for broadcasters regarding the applicable legislative, regulatory and procedural rules and practices on a given transaction is an industry-wide matter of concern. The regulated conduct defence is central to this broader issue.

In this regard, it should be recalled that Parliament has declared in section 3(2) of the *Broadcasting Act* that :

«The Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy... can be best achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.»



As a matter of unambiguous legislative intention and public policy, that authority is the CRTC. It is the view of Astral that the CRTC should have sole jurisdiction in relation to all aspects of media mergers, as the agency with the most specialized expertise and broadest authority with respect to the broadcasting industry. As the attached table shows the *Broadcasting Act* has granted to the CRTC the necessary powers to regulate all aspects of the Canadian Broadcasting system. In the execution of its mandate, the CRTC has implemented all the necessary provisions to ensure that the objectives of the *Broadcasting Act* including mergers are under its jurisdiction. Regarding this specific aspect, we refer the Bureau to section 11(4) of the Radio Regulations. Similar regulations have also been established for television : section 14(4); specialty television : section 10(4); pay television : section 5(4) and distribution : section 4(4).

Astral is of the opinion that the Competition Bureau continues to have the opportunity through section 125(1) of the *Competition Act*, at the request of the CRTC, on its own initiative, or on direction from the Minister, to make representations before the CRTC in respect of matters of competition, and may intervene to contribute to the discussion of competitive issues in the broader context of a transaction the CRTC is considering in the public interest.

For the reasons outlined above, Astral considers that the regulated conduct defence should be interpreted to exempt broadcast commercial transactions and activities that are subject to CRTC regulation from the application of the *Competition Act*.

In conclusion, Astral respectfully submits that the above approach will foster the stated purpose of the 2002 Information Bulletin on the Regulated Conduct Defence - «greater fairness, predictability and transparency» - for the broadcasting industry. Astral appreciates the opportunity to provide its comments in this consultation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michel Arpin', with a stylized flourish extending from the end of the signature.

Michel Arpin

BROADCASTING ACT

S. 3(2), 5(1)

