QUEBECOR MEDIA

June 7, 2002

Legal Affairs

Louis Saint-Arnaud
Direct line: (514) 380-1962
Fax: (514) 985-8834

Mr. Michael Sullivan
Acting-Assistant Deputy Commissioner of Competition
Criminal Matters Branch
Competition Bureau
50, Victoria Street
Gatineau, Quebec
K1A OC9

Re : Draft Enforcement Guidelines for illegal trade practices

Dear Sir:

Please find enclosed a document containing comments by Quebecor Media Inc. and its wholly-owned subsidiary Vidéotron Ltée on your Draft Enforcement Guidelines for illegal trade practices.

We thank you for having giving us the opportunity to comment on these.

If you have any question, please do not hesitate to call me.

Louis St-Arnaud.

Louis Saint-Armaud
Vice President, Legal Affairs
and Secretary

LSA/ls

Encl.

c.c. Pierre Karl Péladeau
Jean-François Pruneau
Laurence Dunbar, Johnston & Buchan

Competition Bureau

DRAFT ENFORCEMENT GUIDELINES

FOR ILLEGAL TRADE PRACTICES:

UNREASONABLY LOW PRICING POLICIES

COMMENTS BY QUEBECOR MEDIA INC.
AND VIDEOTRON LTÉE

June 6, 2002

Introduction

These comments are filed by Videotron ltée ("Videotron") in response to the Competition Bureau's request for public comment on the draft *Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies* dated March 8, 2002.

Videotron commends the Competition Bureau for engaging in the process of updating its enforcement guidelines concerning unreasonably low pricing practices to reflect changes in the marketplace and evolving economic theory since the guidelines were first released in 1992. The Competition Bureau's Enforcement Guidelines play an important role in providing certainty for businesses and consumers on the manner in which Canadian competition laws will be enforced. It is therefore critical that the Enforcement Guidelines be amended from time to time to reflect developments in economic theory and the marketplace.

Videotron has reviewed the draft guidelines from its perspective as a provider of communications services. The issues raised by nascent and rapidly evolving markets for new communications services and their implications for the enforcement of the unreasonably low pricing provisions of the *Competition Act* are discussed in the remainder of these comments.

Markets for New Communications Services

In rapidly evolving markets for new communications services anti-competitive practices must be checked early in order to protect against the establishment of a dominant or monopoly market structure. If anti-competitive practices are left unchecked, a market for a new communications service may quickly and irreversibly become dominated or monopolized by a single service provider through anti-competitive practices such as predatory pricing. Once dominance has established a foothold it can be extremely difficult to introduce a competitive market structure, as recent experience with local telecommunications competition has demonstrated.

These concerns are exacerbated where, as in the Canadian communications market, a single player, BCE, continues to hold a monopoly in the most lucrative Canadian communications product market – local telephone services. It is absolutely imperative that competition rules preclude BCE from leveraging its continuing monopoly in the local telephone market to acquire a dominant or monopoly position in nascent markets for new communications services.

Most companies operating in competitive markets cannot engage in predatory pricing for any period of time, as they do not have the financial resources to fund this type of activity. However, a company which operates in both monopoly and competitive markets can use monopoly rents acquired in one market, to cross-subsidize prices for goods and/or services offered in competitive markets. In other words, the company uses monopoly revenues from one market to buy market share and drive out the competition through below-cost pricing in competitive markets.

The new market for digital programming distribution services provides a good example of this type of behaviour and the potential damage to a competitive market structure. The digital programming distribution services market is a new but rapidly growing market that is poised to overtake and completely replace the analog programming distribution market over the next few years. In a very short period of time, BCE's affiliate, Bell ExpressVu, has been able to acquire the largest single share of this new market through extremely aggressive below-cost pricing of digital programming distribution services. These pricing activities are funded through revenues earned by BCE from its local telephone monopoly.

BCE clearly has access to massive financial resources that are not available to other entrants in this market. It is also clear that there are substantial barriers to entry into the digital programming distribution market. It follows that if BCE is allowed to establish a dominant position in the market, it will be extremely difficult to introduce a competitive market structure. In circumstances like this, it is absolutely critical that the unreasonably low pricing prohibitions be enforced quickly and effectively. If they are not, consumers may be denied the benefits of competition for a very long period of time.

Implications for Enforcement of the Unreasonably Low Pricing Provisions of the *Competition Act*

Videotron wholeheartedly supports and congratulates the Competition Bureau for the introduction of a new section in the guidelines specifically addressing low pricing resulting from market expansion. As noted in the draft guidelines, "there may be circumstances in which a well established firm expands into a new market and attempts to advance its market position by engaging in unreasonably low pricing . . . Such an entrant could finance its low-pricing strategy from its earnings in other markets, a parent with deep pockets or superior access to financing, and consequently be able to enter a new market and sustain losses for an extended period of time."

The new digital programming distribution services market appears to be a case in point.

In new markets characterized by rapid innovation and change, a player may seek to leverage its dominant position in other more traditional markets to acquire a dominant position in an emerging market through anti-competitive below cost pricing, unless enforcement action is taken quickly.

In these circumstances, care must also be taken to ensure that costs are not artificially deflated through allocations of avoidable and unavoidable costs by a multi-product firm. In this regard, the assessment of avoidable costs over a reasonable period of time that is consistent with the structure of the market and estimates of the time to enter the market in issue, will be important.

Conclusion

In conclusion, Videotron wishes to thank the Competition Bureau for providing Videotron with the opportunity to comment on the draft guidelines.