



Broadcasting Decision CRTC 2006-197

Ottawa, 23 May 2006

Complaint by the Canadian Broadcasting Corporation concerning the simultaneous distribution of multiple feeds of The Sports Network

In this decision, the Commission finds that The Sports Network Inc. breached its conditions of licence when it broadcast NHL hockey games on the TSN specialty service using two national feeds that were distributed simultaneously by broadcasting distribution undertakings (BDUs). The licensee must ensure that it does not permit the simultaneous distribution of separate feeds by BDUs unless it obtains appropriate authorization.

Complaint

1. On 17 January 2006, the Canadian Broadcasting Corporation (CBC) filed a complaint with the Commission alleging that The Sports Network Inc. (the licensee) had breached the conditions of the licence of the specialty service The Sports Network (TSN) by broadcasting NHL hockey games using two simultaneous, national feeds on at least three occasions between October 2005 and December 2005. These games were distributed by cable broadcasting distribution undertakings (BDUs) on an analog as well as a digital basis.
2. In the view of the CBC, conditions 1(a) and 1(d) of TSN's licence do not permit the broadcast of two simultaneous feeds that can be accessed in a given marketplace. These conditions of licence read as follows:
 1. (a) The licensee shall provide a national English-language specialty service which shall consist of programming dedicated exclusively to all aspects of sports, that is, programming covering professional and amateur sports events, sports newscasts, magazine shows, interviews, commentaries, documentaries, audience participation programs, instruction and training programs that promote physical fitness.
...
 - (d) The licensee may distribute separate regional programming in place of its national service to affiliated distribution undertakings provided that the hours devoted to such regional programming do not exceed 10% of the licensee's quarterly program schedule.

3. According to the CBC, the conditions set out above do not allow the licensee to multiplex the TSN service and effectively transform it from a single service into two services, even on a temporary or occasional basis. The CBC therefore requested that the Commission direct TSN to comply with its conditions of licence and, in particular, to cease its practice of broadcasting two or more simultaneous national feeds of NHL hockey games.
4. In support of its position, the CBC cited a Commission letter entitled *Complaint by TSN Concerning Distribution of Multiple Feeds of CTV Sportsnet by Direct-to-Home (DTH) Distributors* dated 7 May 1999 (the Sportsnet determination), in which the Commission ruled that the simultaneous distribution of more than one of Sportsnet's regional feeds by a BDU was contrary to the terms of Sportsnet's licence.
5. The CBC further argued that, if TSN were permitted to multiplex its service in the manner described above, then all specialty services should be permitted to do so as well. In the CBC's view, permitting all specialty services to multiplex their services would constitute a radical change in the broadcasting environment, since services that would normally be carried on a single channel could evolve into multiple services operating under a single licence. The CBC also considered that such an approach would raise significant issues regarding access to BDU distribution capacity.
6. As well, the CBC submitted that, if TSN were permitted to multiplex its service in the manner described above, it would obtain an unfair advantage in the market for programming rights, enhancing its already dominant position in sports broadcasting to the detriment of other broadcasters. Specifically, the CBC was of the view that TSN would be in a position to acquire packages of rights that include simultaneous sports events by paying a higher price for a package than would otherwise be reasonable, since TSN could rely on a national audience, and hence national advertising, for all of the simultaneous sports events. The CBC considered that conventional television stations would be especially disadvantaged under such an approach, given their inherent inability to multiplex their services.

Licensee's reply

7. In reply, the licensee argued that condition 1(d) of TSN's licence permits it to offer more than one feed on a limited basis, that is, for up to 10% of the quarterly program schedule, provided that the "split-feed" is comprised of "regional programming." In the licensee's view, there is no question that, after a year without NHL hockey, the live broadcast of the season opening games of five of Canada's six NHL teams (Ottawa, Calgary, Edmonton, Vancouver and Toronto) constituted programming of regional interest.
8. In addition, the licensee submitted that such an interpretation of condition of licence 1(d) is consistent with the Commission's previous characterization of TSN's ability to offer more than one feed and is in keeping with the concept of "regional programming" utilized by the Commission in the context of Sportsnet's 2004 licence renewal.

9. In the licensee's view, the provision of two separate feeds of one network on a national basis is typical of the distribution model used by direct-to-home (DTH) BDUs, whereby two or more signals of the same conventional television network are often offered to viewers as time-shifted distant signals. The licensee noted that the CBC has itself benefited from this distribution model by showing different NHL games on CBC East and CBC West feeds that are both distributed nationally by DTH BDUs.
10. Ultimately, in the view of the licensee, to alter the current model at this time would deprive viewers of the programming diversity they have come to expect in the digital distribution environment, thereby hindering the transition to digital distribution. Moreover, it would restrict TSN's programming flexibility in a manner that would put it at an unfair competitive disadvantage to both the CBC and Sportsnet.

Commission's analysis and determinations

11. The Commission is of the view that the Sportsnet determination provides guidance on the issue of the provision of split-feeds of a broadcaster's signal to a BDU that is relevant to the current complaint. For the purpose of clarification, it is important to distinguish between "split-feed" signals and "time-shifted" signals. Split-feed signals are multiple signals provided by a broadcaster that offer different programming, where authorized and to a degree specified by Commission authority. Time-shifted signals offer the same programming at different times in order to provide BDU subscribers with multiple opportunities to view the programming provided by a broadcaster.
12. The Sportsnet determination resulted from a complaint filed by TSN Inc. on 23 November 1998 respecting Sportsnet's simultaneous provision of all four of its regional feeds for distribution by DTH BDUs. At that time, TSN Inc. submitted that, if allowed to continue, this distribution, which, in its view, effectively created three unlicensed specialty television services, would have a negative impact on all Canadian broadcasters and confer an inappropriate advantage on Sportsnet.
13. In the Sportsnet determination, the Commission cited *Structural Public Hearing*, Public Notice CRTC 1993-74, 3 June 1993, in which it determined that, although no special authorizations would be required of pay television undertakings to multiplex their programming on separate channels, licensees of other types of services would be required to obtain such authorizations due to the capacity constraints of BDUs. The Sportsnet determination confirmed that licensees of specialty services must obtain explicit authorizations to multiplex their services.
14. The Commission drew a distinction between authorizing separate feeds of signals and allowing those separate feeds to be distributed simultaneously by a specific BDU. Absent explicit authorization, a specialty service may only provide one of its feeds, if more than one exists, to be distributed by a BDU in a given region.

15. The Sportsnet determination also noted, however, that the Commission would be prepared to consider an application by Sportsnet to authorize the distribution of all four of its regional feeds in a single region on a digital basis only. The Commission considered that such distribution would provide DTH BDUs with the ability to distinguish themselves from analog cable BDUs and provide an incentive for analog cable BDUs to implement digital distribution more quickly.
16. Subsequent to the Commission's determination, Sportsnet applied for, and in *CTV Sportsnet Inc.*, Decision CRTC 2000-10, 18 January 2000, received approval to deliver all four of its existing regional feeds to individual BDUs on a digital only basis. Sportsnet confirmed that the programming offered on the multiplexed signals would not differ in any way from the programming provided on the existing four regional feeds.
17. In the context of the current complaint, the Commission notes that the licensee has the authority, granted by way of a condition of licence in *Licence amendments for TSN*, Decision CRTC 97-290, 3 July 1997, to provide a limited amount of programming on a separate feed.
18. In its original application for the authority to provide a limited amount of regional programming, TSN stated:

This is an application by The Sports Network ("TSN") to amend its licence to allow the Network to "split" the Network's national feed on occasion in order to simultaneously provide *either* its national service *or* separate programming of regional interest to its affiliated distribution undertakings. The regional programming TSN is proposing to offer would ... be available *in place of* its national service at no extra fee to the subscriber or the distribution affiliate.
(emphasis added by the Commission)
19. In the view of the Commission, the licensee did not request the simultaneous distribution of two feeds by its affiliated BDUs, nor did the Commission approve such distribution at that time.
20. Given the distinction that the Commission has drawn between authorizing separate feeds of a service and allowing those separate feeds to be distributed simultaneously by a specific BDU, the Commission determines that the licensee requires explicit authorization to permit its separate feeds to be distributed simultaneously by a given BDU.
21. Accordingly, the Commission finds that the licensee breached its conditions of licence when it broadcast NHL hockey games using two national feeds for simultaneous distribution by BDUs. The licensee must ensure that it does not permit the simultaneous distribution of separate feeds by BDUs unless it obtains appropriate authorization.

22. The Commission is of the view, however, that it may be appropriate in certain circumstances to permit the multiplexing of specialty services. Accordingly, it would be prepared to consider an application from the licensee to authorize the simultaneous distribution by BDUs of its separate feeds in a single region on a digital basis only.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>