ENTERTAINMENT

Mr. Lynton R. Wilson
Chair
Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON
K1A 0H5

January 11, 2008

via e-mail & fax

Dear Sir:

Re: Submission of Corus Entertainment Inc. to the Competition Law Review Panel

A. Executive Summary & Introduction

1. Corus Entertainment Inc. (Corus) is pleased to have this opportunity to comment upon Canada's competition policy and thereby assist the Competition Policy Review Panel (Panel). This is an important review and to the extent that this written brief requires explanation and expansion we would pleased to meet in person with the Panel.

2. Corus is one of Canada's most successful integrated media and entertainment companies. The many elements that make up Corus deliver compelling, engaging, informative and interactive content to millions of Canadians every day. The programs we produce also win audiences and awards throughout the world.

3. The advent of digital technology can create great opportunities for Canadians. In so doing, however, digital technologies also pose a threat to the existence of Canadian media as we know it. The reality of the Canadian market – small and surrounded by larger media entities – is exacerbated by digital technology which increases fragmentation and removes borders as well as barriers to entry.

4. Our view is that Canadian players cannot continue to compete under the existing regulatory regime. We need an industrial strategy for production. We need a policy and regulatory structure that supports the development of Canadian-owned but globally competitive, large companies, that are able to experiment with new technologies without increasing layers of taxes and rules. Without this, we will fail, and diversity will be diminished as Canadian players fall by the wayside.

5. The Corus proposals request that the various regulatory systems must adapt to allow us, not just to compete, but to survive and thrive. We respectfully recommend that the Government of Canada adopt a set of principles which we characterize as the "Corus Big Six":

   a. Embrace the merits of fostering a Canadian-owned and globally competitive industry;

   b. Increase the probability of success of the Canadian media industry by encouraging the creation of larger and stronger enterprises.

   c. Develop a Canadian industrial strategy that supports the creation of high quality Canadian content from all Canadian producers including producers that are affiliated to Canadian broadcasters.

   d. Recognize that private media enterprise success is what will lead to a stronger cultural system, not the current system of progressive fees, conditions and tariffs.

   e. Allow Canadians to experiment.

   f. Recognize that our small market requires that government continue its support of research and development in intellectual property.

6. The Canadian broadcasting system is more diverse than it has ever been since the first radio station launched in Montreal in the last century. Canadians have a plethora of choice. Although today's Canadian media industry is strong and vibrant the fundamental business premises of this industry are undergoing major and fundamental changes as a result of the advent of new media which offers limitless unregulated media choices and opportunities. It is not only new media that are changing the environment but also the arrival of foreign services in large numbers that are competing for content, viewers, subscribers and advertisers without any of the obligations that Canadian licensees carry.

7. This brief will expand on these points and respond specifically to some of the questions posed in the consultation paper.[1] Our comments are mainly focused on policies relating to investment and competition policies.

B. Corus Entertainment

8. Corus is one of Canada's most successful integrated media and entertainment companies. The many elements that make up Corus deliver compelling, engaging, informative and interactive content to millions of Canadians every day. Our entertainment and informational assets are achieving results that make

[1] Sharpening Canada's Competitive Edge, October 30, 2007

Corus an industry leader in Canada, and a small, but significant player in the international marketplace. We believe that our success contributes to a stronger Canadian broadcasting and production industry, a stronger economy, and to stronger communities across Canada. A complete description of Corus is available at www.corusent.com.

9. The Corus impact on the Canadian economy is widespread. Our 3,000 employees work in 25 Canadian cities located in five provinces. Our 52 radio stations serve most of the largest Canadian markets including Toronto, Vancouver, Montreal, Calgary, Quebec City, Kitchener-Waterloo and Edmonton. We also own, operate, or have an interest in eleven specialty or pay television networks as well as three local broadcast television stations. Corus is also one of Canada's largest producers of high quality Canadian radio and television programming. Nelvana - our children's programming division sells programming and related merchandise in 175 countries. As such Corus is one Canada's largest exporters of television programming.

10. At the same time as Corus is investing at home we are doing so abroad. We are part owners in television networks that operate in the United States, Europe and in Asia. The intent is to create pipelines for our programs in foreign markets and to also provide us with negotiating leverage in these foreign markets by establishing our own distribution capability.

11. We recognize that an environment where Canadians have the ability to access a wide variety of information and entertainment means that we need to provide high-quality content each day. Our ratings, financial performance, and industry awards suggest that we are on the right track.

12. Corus is also dedicated to leadership in the area of new technology utilization. We recognize the importance of making content available to our audiences on both traditional and new platforms such as mobile television and video-on-demand. Corus was also an early adopter of HDTV for our pay movie channels.

13. Corus has the building blocks for success in the digital environment but we recognize that there is much work to be done to stay relevant to our audiences and customers.

C. Our Business Environment: Competitive and Evolving Rapidly With the Advent of Digital Technology

14. The initial introduction of digital technology changed the traditional television broadcasting and production businesses:

   a. Digital compression enabled the delivery of more channels of traditional linear television. This increased the number of Canadian services and also introduced foreign services to the Canadian market.

b. Digital editing technology and video capture reduced the costs of professional production and newsgathering. This greatly reduced the barriers to entry to the production business.

15. These changes had a great impact on the broadcasting industry but they were incremental

16. The second phase of the introduction of digital media was the popularization of the media tools and the birth of interactivity. We are now in the era of transformational and very disruptive change due to the application and use of digital interactive media (DIM) by both professional and an emerging amateur class of media. Ordinary people are quickly learning how to use this technology. Of course this technology is also changing other sectors of the Canadian economy as well.

17. To predict where the media environment might evolve to and the impacts, one must understand the attributes of digital media.

18. **Bits**: Analog media had a variety of elements and structures. In digital form everything is made up of bits. It is these combinations of one's and zeros that make up every digital file. These bits are arranged in files or databases that are easily networked through a variety of means. Databases can have a variety of forms. A web site is merely one type of database with the navigation tools to connect to the Internet.

19. **Copy ease & Plasticity**: Digital media are easily copied, and each copy is identical. The one-millionth copy is of the same quality as the first. Digital media are also easily adaptable – they are very plastic. Rights management becomes an issue. One must track and protect one's rights while at the same time ensuring that infringement of others' rights does not occur. Tariffs and administration become complex and expensive. The Panel is no doubt aware of the impacts of this on the music business. This attribute will soon impact upon television in profound ways as well.

20. **Equivalence**: These attributes of digital media make them equivalent. A newspaper database is essentially no different than a television program or photograph. In the analog world we treated them differently from a regulatory and business perspective. If they are all bits why treat the copyright protection of the photograph differently than that of music? Why are web sites and newspapers not regulated while specialty TV licensees have a mountain of obligations? This is a question that we also need to ask about the regulation of competition.

21. **Compactness**: Digital media are compact. Vast amounts of data can be stored or easily transported to single or multiple users of this data. For example at the Consumer Electronics Show in Las Vegas this month several manufacturers were showing "jump drives" that could hold 400 full length high definition films. This

also translates to 1,200 standard format films or 2,000 hours of television or 250,000 songs. IBM showed a USB key that can download a 1.9GB HD feature film in 60 seconds. For Corus it would mean that our archive of 3,200 program titles that cost us over $1 billion to produce would fit on a key ring and it could be placed there during someone's lunch break.

22. **Networks**: Databases are networked in a variety of ways. The Internet is one example of an open standard digital network. The transport of digital media is relatively much easier than analog works. In this regard the development of networks and the ease of transmission have shrunk the importance of geography. We have RAI and BBC in Canada providing diversity but also competing with us. The consumption of digital interactive media is relatively borderless.

23. This transition to DIM is shaping the television market into four elements as explained in an IBM study entitled Navigating the media divide[2]:

    a. Traditional Media – This is the regulated system where professionally made and branded content is delivered through a "walled" conditional access environment and with dedicated devices. A small exception to the access element would be broadcasters received over the air which is a small minority of Canadian homes. This is where most of licensed Canadian media operate today.

    b. Walled Communities – This model is based on distribution of niche and user or community generated content within a conditional access environment through dedicated devices. This could include the developing digital cable box and IPTV systems.

    c. New Platform Aggregation – This model makes professionally produced content available in open channels, without dedicated access providers or devices. Corus is experimenting with this area through its relationship with entities such as Coolroom[3] where people can download our programs.

    d. Content Hyper-syndication – This is the extreme model which relies upon both user-generated content and open distribution platforms. This is the world of YouTube and MySpace.

24. Similarly in radio, the transition to digital has meant increased competition. But just as today's technology no longer respects borders, it also no longer respects the assumptions of scarcity on which the regulatory model is based. First,

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[2] *Navigating the media divide – Innovating and enabling new business* models by Saul J. Berman, Steven Abraham, Bill Battino, Louisa Shipnuck and Andrea Neus. IBM Global Business Services, 2007. The document is available at: http://www-935.ibm.com/services/us/index.wss/ibvstudy/gbs/a1026258?cntxt=a1000062
[3] Please see www.coolroom.com

consumers now have an ever-growing array of choices of audio content, including, but not limited to:

- Conventional AM or FM radio;
- Digital terrestrial radio;
- Satellite/subscription radio;
- The Internet, on computers, or on portable devices that can or will be able to receive wireless broadband due to WI-FI initiatives being undertaken in Toronto and other urban centres;
- iPods and other similar portable devices;
- Radio over cell phones; and
- Peer-to-peer networks that enable listeners to also become programmers.

23. While this paints a picture of growing fragmentation and of a changing audience, it is useful to understand how the current technological transition is different, both in nature and in scope, from technological changes in the past. What is happening today is not analogous to the change from AM to FM – it is very different, with very different implications.

24. Until very recently, the radio business operated on an assumption of universal access to and by consumers, within a defined geographic area. In other words, if a consumer purchased a radio, he or she was able to tune in to all of the stations on the AM or FM band that could be received in that geographic area.

25. Today, however, both of those assumptions – universal access and defined geography – are being challenged. As new digital alternatives are introduced, consumers are not always able to tune across all platforms, but, in many cases, they now are able to tune across greater (or even unlimited) geography.

26. For example, two new satellite/subscription radio services have been licensed by the CRTC, requiring new receiving units for consumers. Those new units, generally, can receive AM and FM, but only one of the two satellite subscription services. Consumers purchasing radios capable of receiving digital terrestrial radio will also get AM and FM, but not the ability to receive either of the satellite services. And devices that might receive audio services over wireless broadband may or may not also receive some of the other platforms.

27. At the same time, the consumers' relationship to audio content has changed, perhaps more dramatically than anything else in the business. Portable radios date, in practical terms, to the 1950s, with the introduction of transistor radios.

Those portable devices were able to receive audio content that had been formatted and packaged by radio stations. By the 1980s, the portable device of choice for young people was the "Walkman" or a similar device. For the most part, those devices were able to play content that had been packaged by someone else.

28. Today, however, the portable device of choice is an iPod or other MP3 player, and the content is no longer packaged by a radio station or a record company – it is packaged by the consumers themselves. And consumers now are creating their own broadcasts – called "podcasts" – that can be received by their peers via the Internet.

29. That transition from industry-packaged to consumer-packaged – and consumer-created – is one of the fundamental consequences of new technology, and one of the fundamental challenges that radio and related industries, such as music, will have to face going forward.

30. The challenge for all players in the Canadian media system is managing the transition to a purely digital environment. Spectrum scarcity remains an issue for radio and for linear television. Access to carriage remains an issue for Canadian operators as well. Content is easier to make with digital technology and Canadians may dominate Facebook.com with home made content but the creation and marketing of high quality content remains an expensive challenge. The size of the Canadian market and its increasing fragmentation exacerbates the problem.

31. So the fundamental challenge remains for Canadians. How do we continue to gather the resources to compete on a global basis to ensure that Canadian stories continue to be told?

32. There is no question that the advent of digital interactive media has added a great deal of complexity to both the business and policy considerations regarding all media, not just broadcasting. This trend will continue. We are also probably further along in the transition to a digital environment than we think. Most production and distribution of programming is done utilizing digital technology. Similarly, the Internet has become a part of the daily lives of a majority of Canadians.

33. Our "back office" operations have also embraced digital technology. The "IT" department has become a crucial element of any broadcast, production or regulatory operation. Similarly at home the "Geek Squad" or other such computer service providers have taken on the important role that was occupied by the TV repairman in the 50's and 60's.

34. From a market perspective, the reality is that our two important constituencies, listeners and advertisers, are already immersed in the world of digital media.

35. The Panel should consider one simple area to assess the overall change on her use of media. Consider the simple thing called e-mail. In 2004 Corus staff generated or responded to just over two million e-mail messages. This year we anticipate that the overall traffic will be about 500 million messages. This method of communication does not often get considered when the changes in the system are assessed. We tend to focus on delivery of programs. But e-mail is enormously capable and it does it all. We send and receive text messages, audio and video files, photographs, graphics and anything else that is digital in nature.

36. The advent of the digital era poses perplexing challenges for all players in the system. The challenge for the CRTC and the government at large is that it has no legal or practical jurisdiction over much of the activity that will define the content creation and distribution environment of the future. The challenge for companies like Corus is the transition from a fully regulated environment to one that is open entry. Our fear is that the Canadian regulatory regime will stifle our ability to compete and hence survive.

37. So how do we regulate the system at this juncture? What rules do we keep for the analog system as it transitions to a digital world? What policies will continue to work as the media environment changes? Most importantly, what is it that we are intending to accomplish through regulation?

38. The problem that Corus and other regulated companies have with the current regulatory regime is that their mandates have become confused, cloudy and ineffectual. Each new business and technological challenge is met with incremental regulation coupled with new fees, tariffs and reporting requirements. The regulatory regime is desperately trying to manage value chains that disappeared years ago.

39. The result is that regulated Canadian media companies are subject to a complex array of rules that inhibit our capacity to compete and innovate.

Corus Recommendations:

a. **Embrace the merits of fostering a Canadian-owned globally competitive industry;**
b. **Increase the probability of success by encouraging the creation of larger and stronger enterprises.**

40. The Panel's consultation paper asks *"Should Canadians be concerned about foreign takeovers of Canadian firms? How important is domestic control and ownership of Canadian business activities to Canada's economic prospects and ability to create jobs and opportunity for Canadians? "*

41. Corus believes that the constraints on foreign ownership[4] of regulated Canadian companies remain an important and relevant element of Canadian broadcast regulation. As discussed below we do not have the scale to compete, even in our own market, without regulatory intervention of this kind. Meanwhile Canadian media companies do not have a problem with access to investment capital. As such we do not recommend any changes to these rules. We can continue to embrace a Canadian-owned industry as the system transitions to a borderless, unregulated-able environment.

42. However, while it is true that companies such as Corus have performed well in the past, in this time of unprecedented technological change and global flows, we cannot take the future prosperity of our sector for granted. Our view is that the agencies responsible for regulating our industry are not sufficiently aligned behind the broad government policy of competitiveness and prosperity.

43. Achieving such alignment is an important strategic priority for our government, regardless of which party is in power. Canadian regulation of the communication industry is internally focused and needs to be re-framed to consider our relative position versus successful media and communications companies in the United States and abroad. The regulatory mandate must be re-framed in the context of technological change. We compete with these companies for capital and therefore for the tools necessary to innovate, create jobs and prosper but they don't face the same regulatory hurdles that we do.

44. Canadian regulation is incremental and focuses on subsidizing failure as opposed to recognizing success. The recent policy to increase Canadian television expenditure commitments in brackets based on operating margins represents the introduction of one-sided telecom rate of return regulation that has no place in a competitive environment like Canadian television. Our success in television is due to programming excellence and customer service, not rate regulation. Canadian services do not benefit from fixed carriage rates and hence should not be forced to adopt indexed cost obligations. In telecommunications regulations an index system would correspond to a floor on revenues. This does not exist in broadcasting regulation, and will not, and hence the indexation of obligation costs should be set aside.

45. It is almost impossible to find an example of a specialty TV service that has had a subscriber rate increase in the past 10 years. Our success, therefore, is due to effective cost control and excellent performance by our programming and sales and marketing teams. The same is true in radio, where the industry greatly improved its competitive ability but was taxed by the Copyright Board in a manner that acts like a type of indemnity for the music industry, which has seen a drop in revenues resulting due to the introduction of DIM.

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[4] Direction to the CRTC (ineligibility of Non-Canadians) SOR/97-192 and Direction to the CRTC (ineligibility to Hold Broadcasting Licenses) SOR/85-627.

46. The current tariffs as submitted combined with the CRTC mandated Canadian Content Development payments, all of which go to the same recipients, are vaulting past a level that represents over 20% of radio gross revenues. This level is for the same copyright works that have always been used by radio. The difference now is new rights layered upon the same works and new government administration costs.

47. We submit that the Panel should recommend that copyright tariffs be consolidated and levels set that are commensurate with historical practice. The fact is that broadcasting is one sector where the music industry business model thrives but we should not be made the bankers for another industry in turmoil.

48. The single most effective way to stimulate the distinctiveness of the Canadian broadcasting system is to encourage increased contributions to artists and producers through economic growth rather than through progressive taxes on profits. Economic growth will drive the contributions we make while preserving our capacity to compete. Indexed and regressive taxation and smothering administration will not.

49. The Government of Canada should adopt an industrial policy that recognizes that the Canadian broadcasting system now competes with a range of unregulated domestic and foreign services. It is Corus' view that the best chance we have to achieve our cultural goals and to maintain a private sector presence in media is by recognizing this reality. The policy must look forward to what will be rather than what was the past.

50. In a borderless digital world the challenge for Canadian media remains what it has always been. How do we provide a service to Canadians that they will embrace and support through their viewing, subscriptions and endorsement of public policy supports?

51. One of the myths of our times is that media are concentrating. It is a given that markets are more fragmented now than they have ever been. With respect to English-language discretionary services, the following services were available at the end of 2006:

- 30 analog specialty services;
- 15 digital category 1 specialty services;
- 51 digital category 2 specialty services;
- 7 pay television services;
- 11 pay-per-view services; and
- 15 video-on-demand services.

52. These are the Canadian services. Over 100 foreign services also operate in the Canadian market.

53. Canadian companies are attempting to re-aggregate fragments to maintain economies of scale. However this consolidation is not creating market shares

nearly as large as they were in the past. When this Broadcasting Act was last amended in 1991 the Canadian television environment was dominated by CBC, CTV and Global. Discretionary channels were limited and they had limited audiences. Consider the number of Canadian and foreign services today and the share each owner group has of the market. Consider the Internet market where the Canadian presence is negligible in both in share of audience traffic held by Canadian web sites and in revenue.

54. We need to rethink our policy on industry consolidation. We have made this recommendation in the past and continue to believe that Canada needs to encourage the creation of strong media companies.

55. We walk a tight rope in our industry. On one side of the rope lie our cultural obligations, on the other, protection from foreign interests. It's a system cobbled together by a series of puts and takes recognizing our scale limitation that on an isolated basis looks flawed but in total works reasonably well.

56. Going forward however, creating or securing programming rights in a separate Canadian rights market will be essential for continued success and we need companies strong enough to be viewed as viable partners in the delivering of expensive intellectual property. We need to remove the barriers to our growth as program producers, distributors and broadcasters of great Canadian programs.

57. Why do we need large integrated companies?

58. We should start by defining big. Canadian big is not big on a world scale. If we took the entire Canadian media industry our total revenues would not rank us in the top five media companies in the United States. For example, Clear Channel in the US owns almost 1,200 radio stations (among other entities) and its latest quarter (March 31, 07) results showed revenues of US$ 1.6 billion which exceeds the entire annual Canadian radio industry revenues last year. Similarly the recently reborn CBS Radio Inc. owns about 180 radio stations and has annual revenues approaching US$ 2 billion.

59. Even if we combined the total revenues of the entire Canadian media industry, the Canadian total would not rank in the top five media companies in the United States. For example, the media networks division of The Walt Disney Company had more <u>segment operating income</u> in 2006 (US$662 million) than Corus had in <u>total revenue</u> (C$726.3 million). The content division of Time Warner had $10.7 billion in revenue in 2006, almost five times the size of the entire Canadian television advertising market. And each day they become more direct competitors for our viewers, advertisers, subscribers and employees.

60. Coupled with the economic and behavioural impacts is the operational change that is sweeping the media world. It has become clear that the development, creation, production, protection and management of intellectual property will require enormous scale.

61. Consider the economic power of the web site search engine Google. This web operation reported revenues of US$ 10.4 billion in 2006. Google's operating costs were reported at over US$ 7 billion. Their spending on research and development was listed at US$ 1.2 billion. So Google is spending on R & D just under what the entire Canadian radio industry will generate in revenue this year. Their cost of running their operations is higher than the total advertising revenue spend in Canada on TV, radio, newspapers, magazines, outdoor and Internet media combined.

62. Why does size and integration matter in the content world? It matters for all of the reasons that were stated by the Nordicity Group Ltd. study[5] prepared for the Department of Canadian Heritage in 2004.

63. The first need of all program producers and broadcasters is access to capital. Corus radio stations get access to finance capital and non cash resources such as management skill and promotion by our other media. This is the risk capital that facilitates the script and music development, technology acquisition, and development of people that are crucial to telling great Canadian stories.

64. We anticipate that the transition to digital broadcasting will challenge our ability to attract the requisite capital to make this transition. We are confident that this investment capital is available in Canada however our task is more difficult if the regulatory regime is too strict.

65. Creating content is also about human resources. An intellectual property industry has to find a way to train and otherwise take care of the intellectuals who create the content. We have a strong infrastructure of schools and universities in Canada but these only take us to a certain point. Our company established Corus University in recognition of the need to train all of our people on an ongoing basis on a full spectrum of subjects to ensure that our people stay current. We have the premises and training team that do this almost every day. This commitment to knowledge and training are some of the reasons why people love working at Corus.

66. A small company could never do this.

67. Another important aspect of this is management training. Canada needs a strong corps of managers to operate its cultural industries. Almost all sectors of the Canadian cultural community are facing this. Formal training is only one part of management training. Experience in a variety of roles is the best way to foster the development of cultural managers to operate the complex mechanisms of the IP world. Only large entities have the ability to develop managers by offering

[5] Profile of Small and Medium-sized Enterprises in the Canadian Cultural Industries, Nordicity Group Ltd. Prepared for the Department of Canadian Heritage, March 2004.

them a variety of experience to improve their skills. A crucial aspect of the skills required arises from the complexity of exploitation of works.

68. As discussed above, today the rights and revenue world for programming is much more complex and not for the faint of heart or wallet. Merchandising, new broadcasting technologies such as VOD, hand held devices, and other ancillary rights provide new opportunities.

69. The result of this however is complexity. Financing any type of content requires a skill set that was unheard of in the past. This requires highly talented managers as well as complex infrastructures to protect, track and capitalize on all rights.

70. A large organization can assemble this team, train it and create the systems needed.

71. Probably the most important reason for having strong players is having the ability and resilience to have a project fail. Creating great Canadian Content is much like oil and gas exploration. It requires an enormous amount of trial and error development activity to hit upon a great story that resonates with Canadian and hopefully foreign audiences. This requires both the resources and a tolerance for high risk. This means that we need entities that can survive the errors. Unfortunately the history of the Canadian system is laced with stories of entities that did not have the strength to survive.

72. Corus has become one of the largest content creation companies in Canada because we have an integrated company built upon a comprehensive strategy. Most of the large content producers have fallen because they could not attract the capital to invest in development of projects and people. They could not withstand the pitfalls of the content creation business and they did not have the strength to battle in foreign markets. Many people don't think of radio stations as content creators but each day our staff does just that. The introduction of "pod casting" illustrates this well and suggests that we need to look at a radio show in the same way that we look at a TV show. It is all content.

73. The Corus vision is to be globally recognized as Canada's most influential entertainment company. One way we will achieve this is by being a superlative story teller in a variety of media.

74. We also need the resources to acquire content and to keep the best people working here in Canada. While we watched Paul Haggis accept two Academy Awards almost three years ago, it was not hard to think that this was yet another example of the "brain drain" to better financed markets. We need to build the resources to keep the best people here in Canada.

75. The Panel must start look at the bigger picture and recommend that we stop regulating on an insular domestic basis which results in merely regulating detail

as opposed to achieving clear Broadcasting Act objectives of creating compelling and high quality Canadian content rather than merely regulating details.

76. The implementing tools of the policy goals should be structured to encourage vertically integrated and independent production companies without distinction. Due to the difficult economic circumstances we face in film and television financing and production the policies should not rely on independent producers alone. The same is true for radio, where content creation is also of paramount concern. Despite their passion and creative vision, and the continued support of various levels of government, it may not be enough. Strong vertically integrated media companies have the overall financial strength to survive the borderless new media world. In this sense they are a best bet to achieve the goals set out for the Canadian system.

77. The Panel must also be very cognizant that increasingly, Canadian companies are dwarfed by emerging colossal vertically integrated companies such as Time Warner, NewsCorp, and Viacom, as noted above. We need to develop large Canadian companies not only to compete against these but indeed to maintain a Canadian privately-owned system in addition to the CBC and NFB. The days of regulating the Canadian system as if it exists separately from the rest of the world are over forever. Canadian consumers have already recognized this and they don't hesitate to advise us when they think that they are missing something. Our regulatory regime must adapt and allow the relatively small Canadian companies to adopt strategies to deal effectively with this external threat. The adoption of new technologies such as high definition production and distribution will require enormous amounts of capital and this spending will not create one new script. Our size matters in so many ways.

Horizontal Integration

78. When all media become aggregations of bits delivered via various networks, the notions of "vertical" and "horizontal" start to lose their original meaning and relevance. The question becomes what level of regulatory intervention is required to successfully make the transition to a fully digital environment. In our view the regulation should be light and permissive rather than restrictive. The notion of searching for methods to incent creativity and risk are preferred to constraint or prohibiting certain behaviour through regulation.

79. Canadian media companies should be permitted to structure themselves in order to best meet the demands of the viewer/listener/reader. We should be permitted to find ways to compete on a global basis.

80. The demands of each medium are different but regulation should not attempt to constrain how media companies provide services. There is nothing inherently wrong with an integrated newsroom of newspaper, web site, TV and/or radio.

Consumers are the best influence on quality of news. If it is not done well, they have many other choices.

81. Media companies have already learned that each audience requires a particular level of service. The fears of "one reporter does it all" have not materialized. In any case the number of news sources available to Canadians is unprecedented.

Vertical Integration – Programming and Production

82. Section 3 of the Broadcasting Act sets the creation and distribution of Canadian Content as the primary goal.

83. The creation of content is a process fraught with risk. The history of independent production is that we have not, in 25 years of trying, been able to foster a truly viable industry. What we have now for the most part are operations that live a hand to mouth existence. They move from project to project. The environment is getting harder and this will not change.

84. We should remove the regulatory and policy road blocks to broadcasters creating content in all genres. Canadian broadcasters create the best in news, public affairs, sports and lifestyle programming each day. It is time to allow them to produce drama as well.

85. Broadcasters must be permitted to exploit rights across all platforms. The best opportunity for ensuring Canadian reflection across all platforms is by allowing for vertical integration. The system will benefit from entities that are able to exploit programming across all platforms especially given the fact that the independent production sector has still not settled on how programming created by this sector can be exploited across the various media platforms – this puts Canada behind the global media environment – not in front and once behind it is very difficult to make up for lost time.

Vertical Integration – Programming and Distribution

86. Each cable or satellite distribution company already has significant programming interests. This has resulted in program, owner and source diversity. It has also resulted in excellent programming that Canadians want to watch and support. It has created exports.

87. The rules as they apply to vertical integration need revision. As currently structured they inhibit the development of new services at a time when we need to compete with foreign content.

The Benefits Policy

88. While we assess the merits of allowing consolidation and the creation of large media companies to ensure survival, we also need to question the on-going long

term benefit of high-public benefits taxes - 10% for TV, 6% for Radio, instituted at a time when multi-billion dollar transactions were not contemplated.

89. The significant benefits triggered in a given transfer of ownership and control effectively suppresses the value of properties in Canada, which inhibits the growth of the financial health of the industry that funds the many essential elements of the Canadian content creation industry. This form of progressive taxation is not in the best interests of the industry or our cultural goals.

90. The CRTC abandoned in 1996 the requirement that cable companies pay benefits as it found that sector of the industry was competitive and that in such an environment public benefits should no longer be paid:[6]

"Given that entry to the cable industry has been restricted to date, and in the absence of competing applications for authority to transfer the ownership or effective control of existing cable undertakings, the benefits test has served the purpose of ensuring that the Commission, in dealing with such transfers, is presented with the best possible proposal, taking into account the size and nature of the proposed transaction. However, with adoption by the Commission of a policy that removes all or most of the existing licensing restrictions on market entry and which, in fact, encourages the imminent entry of new competitors using a variety of distribution technologies, the underlying rationale for applying the benefits test in considering future applications for authority to transfer the ownership or control of distribution undertakings has essentially disappeared."

91. It now time to consider setting aside the benefits policy for broadcasting as well. The television and radio sectors are now effectively open markets.

92. Failing that, the significant benefits amounts should be established on a sliding scale with a cap. The proposals set out below would still deliver sizeable benefits packages.

Radio:

- The increase in annual and applicant CCD payments is generating sufficient resources to fully support the existing music funds and other development activity.

- For transactions up to a valuation of $5 million, no benefits would be payable but existing commitments must be fulfilled.

- For transactions up to a valuation of $5 to 10 million, the fee would be 6% of the purchase price.

[6] see Public Notice CRTC 1996-69

- For transactions where the value is above $10 million but less than $20 million of the purchase price, the benefits payable would be 5% on the incremental amount plus the base fee.

- Over $ 20 million to $30 million, the benefits payable would be 4% on the incremental amount.

- Over $30 million, the benefits payable would be fixed at 3% on the incremental amount with a cap established at transactions of $50 million and over.

- This formula would still result in significant benefits of $2.1 million on a $50 million transaction.

- No benefits would be payable for operations that are losing money at the time of the transaction but existing commitments must be fulfilled. There would no exceptions to this rule as is presently the case. The notion of exceptions to a rule results in a lack of transparency and predictability to the regulation of the system.

Television:

- The same principles should apply for television and there is also no defensible reason why one media entity should pay more, as a base, than another.

- For transactions up to a valuation of $20 million, no benefits would be payable but existing commitments must be fulfilled.

- For transactions up to a valuation of $20 to 50 million, the benefits payable would be 6% of the purchase price.

- For transactions where the value is above $50 million but less than $100 million, the fee on the incremental amount would be 5% plus the base amount.

- Over $ 100 million to $500 million, the fee on the incremental amount would be 4%.

- Over $500 million, the fee on the incremental amount would be fixed at 3%.

- A cap should be established at $ 1 billion so benefits on top of the base would <u>not</u> be payable.

- The Commission should also consider allowance of investments in new media as well as the establishment of endowments to create benefits of lasting value and contribution as allowable benefits.

Corus Recommendation: Allow Canadians to Experiment & Maintain R&D Funding

93. Theories of evolution contend that variation is necessary to successful adaptation to new environmental conditions. Some variations fare better in a given situation, and they survive (or thrive); others die out. Any biologist will tell you that mono-cultures are precarious – in a forest made up mostly of elms, Dutch elm disease leaves a barren field in its wake. The trick is that nobody knows in advance what the environment will require for survival – especially when the environment is uncertain. The broadcasting environment over the next ten years will be extraordinarily uncertain as new technologies take root. To increase the chance of surviving (and thriving) in the public interest, the industry must have the latitude, freedom and resources to experiment – not just with formats, but also with the best ways to deliver programming across and within formats.

94. Some experiments will work; others will not. Some experiments will be impossible for us to anticipate, and others may be deemed unacceptable over time by the regulators or the public. However, if the regulations are excessively rigid, we may end up with a vulnerable mono-culture, and that result is almost certainly not in the public interest.

95. It is with this perspective that we encourage the regulatory structure to allow us to experiment in digital broadcasting in radio and television with a minimal or no pre-ordained regulatory structure. We need to experiment to find the recipe that will entice the public to buy a new receiving device to consume the new digital signals. Mere signal quality enhancement has not been enough to get consumers excited thus far. We need a more compelling and unique offer to give digital broadcasting a chance for success.

96. Foreign players are able to offer this and those players are entering our markets in greater numbers. We need the flexibility to compete and survive.

97. Corus recommends that the Government of Canada continue to support research and development in intellectual property. Tax credits and funds such as Telefilm Canada and the Canadian Television Fund are crucial to the continued viability of program production in Canada. These mechanisms help to fuel the innovation that makes the Canadian broadcasting and production system competitive.

D. Conclusion

98. The fundamental question that needs to be addressed in broadcasting and production policy-making is similar to that which was faced by the airline industry. Do we establish policies that foster the survival of a Canadian presence by endorsing the existence of big players or do we continue to struggle toward ends such as diversity of ownership, value chain management of production, and meeting cultural/political goals without regard to industrial strategy?

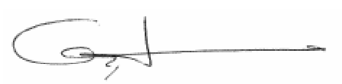
99. Corus meets Canada's cultural goals by creating and distributing award-winning high quality programming.

100. As noted above, if we continue the regulatory course we are on it is our view that the question will become moot. Canadian players cannot continue to compete under the existing regime. We need an industrial strategy for production. We need a policy structure that supports the development of Canadian-owned but globally competitive large companies.

101. It is not too late to change it but we are running out of time. If Canadian media cannot experiment without increasing layers of taxes and rules, we will fail. Diversity will be diminished as Canadian players fall by the wayside, mere road kill on the interactive digital superhighway.

All of which is respectfully submitted,

Corus Entertainment Inc.



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