

## EXECUTIVE SUMMARY

1. The Commissioner of Competition is pleased to provide this submission by the Competition Bureau (“Bureau”) in response to the request by the Canadian Radio-television and Telecommunications Commission (“Commission”) for comments with respect to Broadcasting Notice of Public Hearing CRTC 2006-1, *Review of the Commercial Radio Policy*. The Bureau believes that the Commission has chosen an advantageous time to conduct this review, highlighting in its Public Notice both the current success of the commercial radio industry and the uncertainty surrounding its future growth.
2. In this submission, the Bureau will focus primarily on issues related to radio station mergers and local management agreements (“LMAs”), as well as on the regulatory approach to activities over new and emerging distribution platforms.
3. In particular, the Bureau encourages the Commission to consider the following points:
  - LMAs have the same competitive effects on advertising markets as a consolidation in ownership and should be subject to the same competitive analysis.
  - Although radio stations compete for listeners, they also compete for local advertisers, who supply them with their revenues. Where the Commission undertakes an assessment of the impact of a radio station merger on competition for those advertisers, it should do so in accordance with well-recognized competition principles. These principles are reflected in the Bureau’s *Merger Enforcement Guidelines* (“MEGs”) and are consistent with the approaches taken in the United States, Australia, and the United Kingdom.
  - Where the Commission approves a radio station merger or LMA that will likely result in a significant increase in local advertising rates, but does so with a view to implementing one or more of the objectives under the *Broadcasting Act*, it should clearly explain to stakeholders how it has balanced these interests and how permitting such anti-competitive behaviour is justified in the circumstances.
  - The Commission should exempt new and emerging distribution platforms from licensing, as it did in the 1999 New Media proceedings. As new media and traditional media converge, the Commission should then work towards achieving a consistency and neutrality in its regulation by deregulating traditional broadcasters as they adapt to compete with new ones.
8. The Bureau wishes to note that the Commission, in considering the functional substitutability of various media, has previously concluded that advertising on print, television, and other media were effective alternatives to advertising on radio. The

Bureau's own analysis, using its method of market definition, has consistently held that the relevant product market was limited to radio alone. This approach is supported by jurisprudence from several other countries, as well as the expert report from Dr. Ralph Winter.

9. As Dr. Winter's report illustrates, radio advertising has no sufficiently close substitutes, and thus competition principles would not justify expanding the product market to include other media in a radio station merger or LMA. Radio provides a reach and frequency of advertising as well as an immediate and intrusive nature that cannot be duplicated by other media. Radio advertising is also highly flexible and cost-effective relative to other media, and advertisers have indicated a general unwillingness to switch to other media in response to a small but significant increase in price.
10. In addition, in a competitive analysis of a radio station merger or LMA, it must be noted that it is difficult for competitors and potential entrants to respond to a post-merger price increase. Absent a format change, stations are unlikely to increase the number of advertising minutes they offer in response to higher prices, so a radio station merger may have a greater potential to lessen competition than a merger to a similar concentration in a conventional product market. It is also unlikely that the establishment of a new, significant competitor, through format change, expansion, or new entry, can be relied upon as a potential means of restoring competition after a radio station merger or LMA.
11. Proper market definition using competition policy principles is thus critical to assessing the competitive effects of a radio station merger or LMA. Defining the relevant product market as being wider than radio risks allowing radio advertising markets to become too concentrated to the detriment of those advertisers, who supply commercial radio stations with their principal business. However, where the Commission decides to accept such increased concentration in pursuing other policy objectives, it should explain in a clear and comprehensive manner, how it has balanced these competing interests, and why such anti-competitive conduct is justified by the circumstances.
12. Finally, the Bureau wishes to comment on the Commission's potential role in licensing or exempting from license activities over new distribution platforms, such as file-sharing, podcasting, and audio streaming. As the Bureau submitted in the New Media proceedings, policies favouring competition and reliance on market forces, not regulation, should be applied to new media services so as not to distort the competitive process and stifle innovation. In the interests of maintaining neutrality in its regulation, however, the Commission should consider deregulating traditional media as they begin to converge with newer platforms. Should market forces prove insufficient in providing the necessary incentives to meet the Commission's cultural policy objectives, the Commission should rely on the least intrusive means of encouraging and developing that content.