CAB | ACR

Via E-mail

August 4th, 2022

Ms. Janice Charette
Clerk of the Privy Council and
Secretary to the Cabinet
Privy Council Office
80 Wellington Street
Ottawa, Ontario
K1A 0A3

Dear Ms. Charette:

Re: Petition by the Canadian Association of Broadcasters Requesting That the Governor in Council Set Aside and Refer Back to the Canadian Radio-television and Telecommunications Commission for Reconsideration Broadcasting Decision CRTC 2022-165

1. This is a petition (Petition) by the Canadian Association of Broadcasters (CAB), on behalf of its TV members, filed pursuant to Section 28(1) of the *Broadcasting Act*[1] (Act), requesting that the Governor in Council set aside and refer back to the Canadian Radio-television and Telecommunications Commission (CRTC or Commission) for reconsideration Broadcasting Decision CRTC 2022-165 – *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals*[2] (Decision 2022-165). As outlined in detail below, the CAB's petition relates solely to the Canadian Broadcasting Corporation's (Corporation) ability to solicit and accept advertising, including sponsored or branded content. More specifically, the CAB is requesting that the Governor in Council refer Decision 2022-165 back to the Commission with instructions that:

- The Corporation's ability to solicit and accept advertising on its services, whether on its licensed programming undertakings or its exempt digital media broadcasting undertakings (DMBUs), should be phased out; and
- The Corporation's Tandem branded content service is inconsistent with its mandate and should cease operating immediately.

[1] *Broadcasting Act*, S.C. 1991, c. 11.
[2] Broadcasting Decision CRTC 2022-165, *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals* (June 22nd, 2022).

Executive Summary

2. The CAB believes that the Commission fundamentally erred in Decision 2022-165 by not limiting the Corporation's ability to advertise, both on its licensed programming undertakings and on its DMBUs, and by not restricting the operations of Tandem. This Petition is specifically limited to these issues and does not address any of the broader changes the Commission implemented in Decision 2022-165.

3. The Corporation is Canada's national public broadcaster. It has an expansive mandate set out in Section 3(1)(l) and (m) of the *Act*, which includes: providing a diverse range of "distinctly Canadian" programming for all residents, in both official languages; reflecting the regions, including official language minority communities (OLMCs), and actively contributing to the "flow and exchange of cultural expression"; playing a unifying role by contributing to "national consciousness and identity"; and reflecting the country's multicultural and multiracial nature.[3] This can be contrasted with private broadcasters, who are expected to tailor their programming to respond to the changing needs of their audience.[4] Put a different way, the Corporation is expected to provide something for all Canadians regardless of whether it is highly popular or profitable, while private broadcasters need to focus more on what the broader public wants.

4. It is for this reason that the Corporation receives well in excess of a billion dollars annually from the Government to support its operations, a number that has grown in recent years[5], while private broadcasters don't have direct access to public funding and must instead derive their revenues primarily from advertising and subscriptions. This forces private broadcasters to ensure their programming is more commercially appealing.

5. Unfortunately, over time, the Corporation has adopted a programming strategy driven less by its statutory mandate and more by a desire to generate revenue from advertising, causing it to become more competitive with the private broadcasting industry. In fact, in 2016 and 2017, the Corporation highlighted how eliminating advertising on its services would actually help it move in a direction that better fulfils its mandate.[6] However, in the context of its licence renewal, the Corporation changed course, indicating that it intends to pursue "all available opportunities to increase its commercial revenues and will continue to do so over the next licence term".[7]

6. Unfortunately, the regulatory framework put in place in Decision 2022-165 will allow it to do just that. The Commission has eliminated numerous requirements that were historically imposed on the Corporation to ensure that its television stations and discretionary services broadcast a certain number of hours of Canadian programming and were replaced by expenditure obligations relating to Canadian programming generally, genres of programming

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[3] *Supra*, Note 1, s. 3(1)(l) and (m).
[4] *Ibid.*, s. 3(1)(s).
[5] Based on information provided by the Corporation in the licence renewal proceeding, its Parliamentary appropriation has exceeded $1.2 billion every year beginning in 2018.
[6] *A Creative Canada: Strengthening Canadian Culture in a Digital World*, Submission by the Canadian Broadcasting Corporation in support of the Government's consultation on the future of Canadian content in a digital world (November 30th, 2016).
[7] CBC Licence Renewal Application Form TV and Radio, Q. 7.

within the Corporation's overall Canadian programming offering and programming from certain equity-deserving groups.

7. These expenditure requirements give the Corporation the flexibility to spend more than $100 million annually on non-Canadian programming. In addition, other than the commitments relating to equity-deserving groups, the Commission has not imposed any restrictions on the Corporation surrounding the nature and focus of the Canadian programming it produces. Consequently, there is a risk that the Corporation will begin directing an even greater percentage of its resources toward initiatives that derive the greatest commercial return.

8. The collective impact of the changes put in place by the Commission in Decision 2022-165 give the Corporation not only the ability, but incentive, to further veer from its mandate under the *Act*. This will have a detrimental impact on private broadcasters, who have experienced significant revenue losses in recent years, on their ability to invest in Canadian programming, and news in particular, and on the Canadian broadcasting system as a whole.

9. In December 2021, the Minister of Canadian Heritage was tasked with reducing the Corporation's reliance on advertising in specific genres of programming and ensuring that its programming can be distinguished from that offered by private broadcasters.[8] Decision 2022-165, if allowed to stand, runs directly contrary to these objectives. As a result, the Governor-in-Council must act now by referring Decision 2022-165 back to the Commission for reconsideration with instructions that:

- The Corporation's ability to solicit and accept advertising on its services, whether on its licensed programming undertakings or its exempt DMBUs, should be phased out; and
- The Corporation's Tandem branded content service is inconsistent with its mandate and should cease operating immediately.

The Petitioner

10. The CAB is the national voice of Canada's private broadcasters. Private broadcasters, including radio and televisions stations and discretionary services, play a critical role in the Canadian broadcasting system and in communities from coast to coast. Whether it's covering City Hall, providing vital information during times of crisis, entertaining and enlightening Canadians with a wide range of diverse programming, supporting artists, or fueling economic growth, Canada's private broadcasters are essential to the fabric of this country.

Background

11. On November 25th, 2019, the Commission announced its intention to conduct a public hearing beginning May 25th, 2020 to consider the licence renewal applications for the Corporation's English and French-language audio and audiovisual services, and invited

[8] Mandate letter from Prime Minister Justin Trudeau to Minister of Canadian Heritage Pablo Rodriguez (December 16th, 2021). Available at: https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-canadian-heritage-mandate-letter.

interested parties to participate[9]. Due to the COVID-19 pandemic, the start of the public hearing was postponed until January 11th, 2021.[10]

12. Leading up to the hearing, the Commission held two separate consultation periods pursuant to which parties could file written interventions. Submissions relating to the first consultation were due February 20th, 2020, while filings relating to the second consultation, which was necessary as the Corporation filed new financial information relating to its DMBUs, were due July 13th, 2021.

13. The CAB filed comments in both consultations. In its submissions, the CAB raised various concerns relating to the Corporation's proposals, including that its plan to continue, and increase, its dependence on advertising represents unfair competition to private broadcasters and would result in the public broadcaster further straying from its legislative mandate and toward a more commercially-oriented programming focus. Moreover, the CAB highlighted that the Corporation's strategy to grow advertising in its licence renewal application was directly contrary to proposals the Corporation itself had made in both the "Creative Canada"[11] and "Harnessing Change"[12] consultations. In those filings, the Corporation argued that a move away from advertising would allow it to put even more emphasis on its public service mandate, acknowledging that it could focus less on commercial return and more on cultural impact, as is appropriate for a national public broadcaster.[13] As a result, the CAB recommended, among other things, that the Corporation be required to cease soliciting or accepting advertising on its traditional broadcasting properties and its DMBUs over a period of time.[14] We note that Friends of Canadian Broadcasting also advocated for the Corporation to stop advertising on its services[15], while numerous interveners raised concerns relating to how advertising influences the nature of the programming the Corporation provides.[16]

14. In its reply to interveners concerning its reliance on advertising, the Corporation did not address its earlier statements about how advertising-supported media need to adopt a particular programming strategy, instead arguing that it had included advertising on its television services for decades and that other public broadcasters around the world also had commercial messages.[17] It then noted that:

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[9] Broadcasting Notice of Consultation CRTC 2019-379, *Notice of Hearing* (November 25th, 2019).
[10] Broadcasting Notice of Consultation CRTC 2019-379-3, *Notice of Hearing – Change of hearing date* (June 22nd, 2020).
[11] *Supra*, Note 6.
[12] The Corporation re-filed its Creative Canada submission as an Appendix to its response to Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (October 12th, 2017).
[13] *Supra*, Note 6, at p. 29.
[14] CAB Intervention in Response to Broadcasting Notice of Consultation CRTC 2019-379 (February 20th, 2020) at paras. 39 to 47.
[15] Friends of Canadian Broadcasting Intervention in Response to Broadcasting Notice of Consultation CRTC 2019-379 (February 20th, 2020) at paras. 100-105; Transcript, Virtual Hearing (January 18th, 2021) at para. 6175.
[16] For example, the Forum for Research and Policy in Communications, Peter Kent, MP, the Directors Guild of Canada and ACTRA.
[17] CBC-SRC Reply to Interventions in Response to Broadcasting Notice of Consultation CRTC 2019-379 (March 6th, 2020) at para. 33.

> "Our position is very clear. Unless and until Parliament chooses to enhance the funding for CBC/Radio-Canada and direct that we get out of advertising, we submit it would be highly inappropriate for the Commission to impose any new limitations on the ability of CBC/Radio-Canada to use advertising as a revenue source."[18]

15. At the hearing, interveners also took issue with the Corporation's new online-only branded content service, called Tandem, as anti-competitive and outside of the Corporation's mandate, as well as potentially impacting journalistic independence.[19] Tandem creates a range of advertising options, including sponsored content, product placement and branded content for corporate clients.[20] As the service only launched in September 2020, parties were not able to comment before the hearing.

16. In its final written reply, the Corporation maintained its position that without a corresponding increase in other revenue, such as the funding it receives from the Government, a loss of advertising of any kind would put it in an "untenable financial position".[21]

17. The Commission issued Decision 2022-165 relating to the Corporation's licence renewal on June 22nd, 2022, approximately 13 months after the close of the record. However, in the intervening period, there was a federal election and a new Minister of Canadian Heritage, Pablo Rodriguez, was appointed. In the mandate letter sent by the Prime Minister to Minister Rodriguez on December 16th, 2021, one of the objectives was to modernize the Corporation by:

    - Updating the Corporation's mandate to ensure that it meets the needs and expectations of Canadian audiences, with unique programming that distinguishes it from private broadcasters; and
    - Providing additional funding to make it less reliant on private advertising, with a goal of eliminating advertising during news and other public affairs shows.[22]

18. However, Decision 2022-165 does not set the stage for achieving either of these objectives. Instead, it establishes a radically different regulatory framework for the Corporation than existed historically and will give the public broadcaster significant discretion in terms of what programming it chooses to broadcast, specifically on its television stations and discretionary services, if it ensures certain commitments are adhered to relating to programming for underrepresented groups or in underserved categories. The Corporation will also be allowed to use its online properties to meet certain regulatory obligations. Moreover, not only does the decision continue to permit advertising on the Corporation's television stations and discretionary services, but the Commission saw no issue with Tandem, other than to ensure that the Corporation clearly distinguishes between branded content and news, current affairs, and public affairs programming. Decision 2022-165 makes no reference to the importance the Corporation places on advertising revenue and how that impacts its approach to

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[18] *Ibid.*, at para. 34.
[19] *Supra*. Note 2, at paras. 582-583.
[20] *Ibid.*, at para. 578.
[21] CBC-SRC Final Reply to Interventions in Response to Broadcasting Notice of Consultation CRTC 2019-379 (March 17th, 2021) at para. 66.
[22] *Supra*, Note 8.

programming on its services, especially under the new regulatory framework established by the Commission.

The Basis for the CAB's Petition

19. The CAB believes that the Commission fundamentally erred by not limiting the Corporation's ability to advertise, both on its traditional broadcast properties, such as its television stations and discretionary services, and on its DMBUs, and by not restricting the operations of Tandem. This Petition is limited to these issues. The CAB does not take issue with the regulatory approach the Commission took in Decision 2022-165, other than as it relates to advertising issues.

20. There is a direct link between the Corporation straying from its mandate and its ability to advertise. Had the Commission constrained the Corporation's advertising opportunities, there would be no rationale for it to offer mass appeal Canadian and foreign programming that is readily available from private broadcasters, regardless of any other programming flexibility it may have been afforded. However, as the Corporation now is able to use its DMBUs to meet its regulatory obligations – along with significant flexibility to air programming, either on its licensed services or exempt DMBUs that is not only more commercially driven, but, potentially, not even Canadian – it has both the capability and incentive to veer from its mandate because no limits have been put in place relating to the Corporation's ability to advertise. As a result, Decision 2022-165 clearly derogates from the attainment of the objectives of the broadcasting policy set out in Section 3(1) of the *Act*, specifically Sections 3(1)(l) and (m). The CAB expands on these points in detail below.

The Commission's Decision Encourages the Corporation to Further Deviate from its Mandate Under the *Act*

21. The Corporation is the country's national public broadcaster. It has an expansive mandate set out in Sections 3(1)(l) and (m) of the *Act*:

> (l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;
>
> (m) the programming provided by the Corporation should
>
> (i) be predominantly and distinctively Canadian,
>
> (ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
>
> (iii)actively contribute to the flow and exchange of cultural expression,
>
> (iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
>
> (v) strive to be of equivalent quality in English and in French,
>
> (vi) contribute to shared national consciousness and identity,

> (vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
>
> (viii) reflect the multicultural and multiracial nature of Canada;[23]

22. The Corporation's mandate can be contrasted with the specific expectations for the private broadcasting sector, laid out in Section 3(1)(s) of the *Act*, which states that:

> (s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,
>
> (i) contribute significantly to the creation and presentation of Canadian programming, and
>
> (ii) be responsive to the evolving demands of the public;[24]

23. While both the Corporation and private broadcasters must also contribute to meeting many of the other objectives outlined in Section 3 of the *Act*, there is a clear delineation between what is expected of the national public broadcaster and of the private sector. More specifically, the Corporation is to provide a diverse range of "distinctly Canadian" programming for all residents, in both official languages. It must reflect the regions, including official language minority communities (OLMCs), and actively contribute to the "flow and exchange of cultural expression". It is to play a unifying role by contributing to "national consciousness and identity" and reflect the country's multicultural and multiracial nature. This can be contrasted with private broadcasters, who are expected to tailor their programming to respond to the changing needs of their audience. Put a different way, the Corporation is expected to provide something for all Canadians regardless of whether it is highly popular or profitable, while private broadcasters need to focus more on what the broader public wants.

24. It is for this reason that the Corporation receives well in excess of $1.2 billion annually from the Government to support its operations, a number that has grown in recent years[25], while private broadcasters don't have direct access to public funding and must instead derive their revenues primarily from advertising and subscriptions. This forces private broadcasters to ensure their programming is more commercially appealing.

25. As noted above, the Corporation itself acknowledged the influence advertising can have on a broadcaster's programming in connection with its proposal to transition to an advertising-free model in 2016:

> "Our focus would be more firmly on the needs of citizens, creators and our industry partners <u>without the constant preoccupation of monetizing each of our initiatives</u>.
>
> It would create greater opportunities to find and nurture new talent. It would create more room for <u>distinct Canadian programming, made by Canadians, featuring Canadians and telling the stories Canadian creators want to tell</u>.

[23] *Supra*, Note 1, s. 3(1)(l) and (m).
[24] *Ibid.*, s. 3(1)(s).
[25] *Supra*, Note 5.

We would focus less on commercial return and more on cultural impact, exploring more ways to help Canadian content and creators thrive and grow. <u>We would be able to commission programming that takes risks and has the time to find an audience without being overly driven by the need to deliver immediate success</u>."[26]

[Emphasis added.]

26. The type of programming focus the Corporation describes above is not something that should be aspirational. **It is supposed to be the central focus of its current mandate.** What is clear is that the Corporation has lost its way. As was noted in CAB's first intervention, programming like a Canadian version of *Family Feud*, a foreign format game show, and licensing foreign titles like *Kung Fu Panda*, *Garfield* and *Portlandia* for its streaming service CBC Gem prove this.[27] Continuing to allow it to depend on advertising in various forms as part of its revenue model will only drive it further off course.

27. Unfortunately, the regulatory approach the Commission has adopted in Decision 2022-165 compounds the problem. The Commission has eliminated numerous requirements that were historically imposed on the Corporation to ensure that its television stations and discretionary services broadcast a certain number of hours of Canadian programming. For example, under the exhibition requirements in place during the previous licence term, the Corporation's English and French-language television networks had to ensure that 75 per cent of their programming overall and 80 per cent between 6 pm and midnight was Canadian. These exhibition requirements were over-and-above the obligations set out in the *Television Broadcasting Regulations*[28] (TV Regulations), which specified that the Corporation's stations had to ensure that 60 per cent of the evening broadcast period (and no amounts at other times) had to be Canadian. In Decision 2022-165, exhibition requirements were largely replaced by expenditure obligations relating to Canadian programming generally, genres of programming within the Corporation's overall Canadian programming offering (i.e., programs of national interest, like dramas and documentaries) and programming from certain equity-deserving groups (Indigenous producers, OLMCs, racialized Canadians, Canadians with disabilities, Canadians who self-identify as LGBTQ2, and women who self-identify as belonging to these communities). While these obligations may seem extensive on their face, the Corporation is being given significant additional flexibility to broadcast more commercially driven programming, whether it is Canadian or not.

28. The expenditure requirements imposed by the Commission give the Corporation the flexibility to invest 15 per cent of its programming budget for its audiovisual services in non-Canadian programming. Based on the most recent financial information available from the Commission, this could be more than $100 million for the Corporation's English and French-language audiovisual services (when its online streaming operations for which data is not available are factored in). It could schedule such foreign content prominently on its licensed television stations as they are only subject to the baseline minimums relating to Canadian content exhibition in the *TV Regulations*[29] and it is in no way limited with respect to how much of the catalogs of its DMBUs can be comprised of non-Canadian programming.

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[26] *Supra*, Note 6, at p. 29.
[27] *Supra*, Note 14, at para. 33.
[28] *Television Broadcasting Regulations*, 1987, SOR/87-49, s. 4.
[29] *Ibid.*

29. In addition, other than the commitments relating to equity-deserving groups, the Commission has not imposed any restrictions on the Corporation surrounding the nature and focus of the Canadian programming it produces. It also has broad flexibility in terms of the number of hours of programming it can devote to any type of programming (other than limited obligations relating to local programming in certain markets). As a consequence, there is a risk that the Corporation will begin directing an even greater percentage of its resources toward initiatives that derive the greatest commercial return.

30. The situation is further exacerbated by the creation and launch of the online-only Tandem service. Now that the Corporation's regulatory obligations are shared between its traditional broadcast properties and its DMBUs, which will only increase the Corporation's investment in the digital space, branded content that appeals to mass audiences is likely to feature more heavily in its programming strategy. The CAB seriously questions how producing sponsored content for private corporations is an appropriate use of resources by a public broadcaster largely funded by a Parliamentary appropriation.

31. As noted above, eliminating advertising on the Corporation's audiovisual services would eliminate any incentive for the public broadcaster to direct its programming resources to areas that directly compete (and are well-served) by the private broadcasting industry, regardless of any additional programming flexibility afforded by Decision 2022-165. This would allow the Corporation to refocus its strategy on initiatives more consistent with its mandate under the *Act*.

The Corporation's Ability to Sell Advertising has a Disruptive and Unfair Impact on a Market Already in Decline

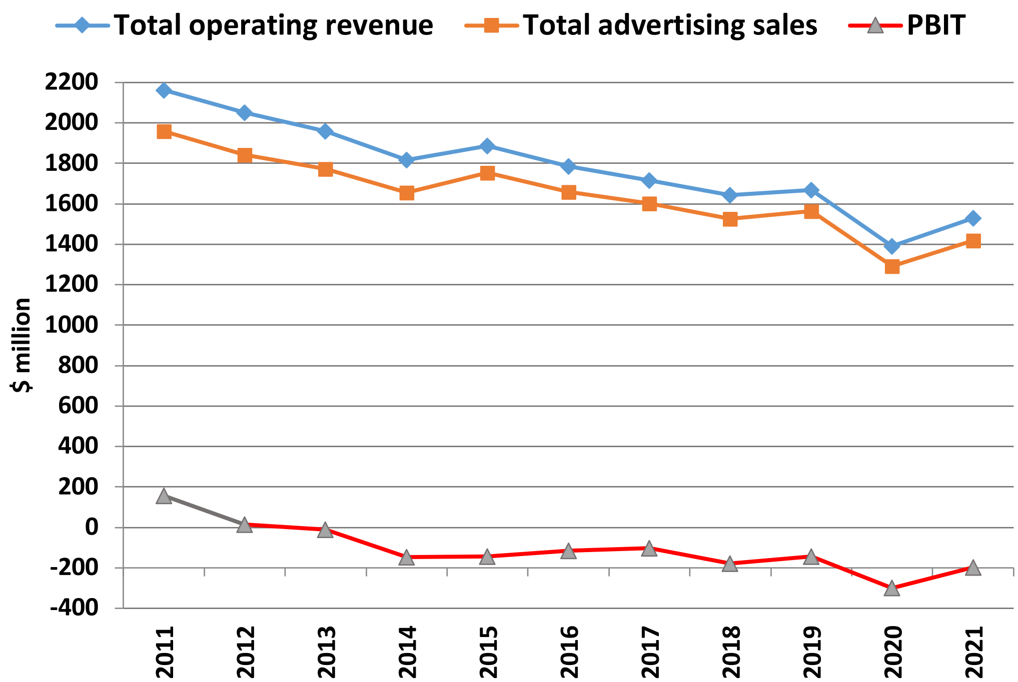
32. In addition to encouraging the Corporation to stray from its mandate, continuing to allow it to solicit and accept advertising has a destabilizing impact on the Canadian broadcast advertising market, one that will only increase if Decision 2022-165 is not modified.

33. In recent years, Canadian television advertising specifically has seen significant declines, as companies are increasingly directing their spending to digital platforms. As has been well documented, the situation was exacerbated by the Covid-19 pandemic, with hundreds of millions in advertising revenues evaporating virtually overnight.

34. The impact has been particularly profound for private conventional television, the most vulnerable part of the Canadian television industry and the sector that invests the greatest amount in television news, and on local news in particular. In 2019 (the last full year before the pandemic), private conventional television advertising was $394 million lower than it had been in 2011. Advertising revenues fell a further $273 million in 2020 and were still lower in 2021 than they had been in 2019.

35. Private conventional television in Canada lost money in every year from 2013 to 2021. The cumulative loss over that period was more than $1.3 billion.

Exhibit 1.
Private conventional television – trends in total operating revenue, total advertising sales, and PBIT, Canada, 2011-2021:

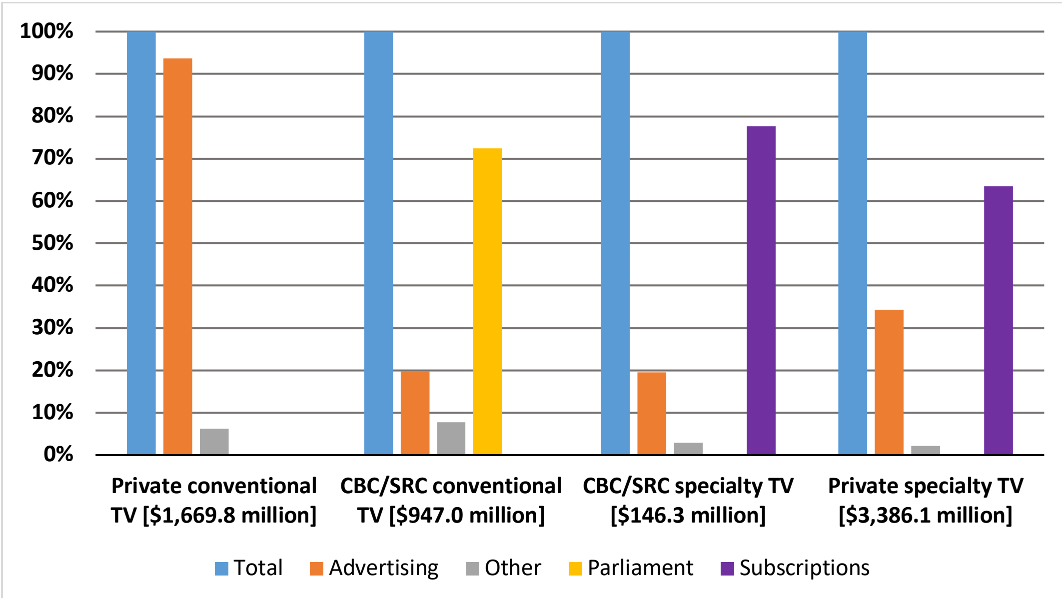


SOURCE: Statistics Canada

36. However, based on the most recent publicly available financial information, the Corporation does not appear to have been dramatically impacted by these trends, largely because its reliance on advertising as an overall percentage of its various sources of revenue is relatively modest. As outlined below, in 2019, of the nearly $1.1 billion in total revenues attributable to its regulated audiovisual operations, advertising represents under 20 per cent or $217 million. This can be contrasted with the private television sector, which is highly dependent on advertising as a revenue stream.

Exhibit 2.

Total operating revenue, and sources of revenue, for selected sectors/participants in the television market, Canada, 2019:



SOURCE: CRTC; Statistics Canada

37. The Corporation's ability to advertise has also resulted in unfair market conditions for some time. This is especially true in the French market where the total operating revenue of the Corporation's French-language conventional television service was approximately $458 million in 2019. Based on the estimates for the entire conventional television industry in Canada, it appears that the Corporation's French-language conventional television services may have larger revenue than the combined revenues of all private conventional French-language stations. This allows the Corporation to compete for programming with private French-language stations and derive significant advertising revenue from the market.

38. In addition, it is not uncommon for the public broadcaster to "undercut" the market in order to generate any revenue that it can knowing that advertising revenue is not its main source of funding and that its Parliamentary appropriation provides an appropriate backstop. As Québecor Média Inc. ("Québecor") noted in its intervention, the Corporation routinely offers radical discounts on its advertising that no private broadcaster could ever match.[30]

39. Decision 2022-165 will empower the Corporation to further grow its reliance on advertising as a source of revenue to the detriment of the private broadcasting sector, which does not have access to over a billion dollars in Government funding annually. As outlined in the table below, private television is the largest spender on television news, and has the largest audience. It provides a vital connection between and among Canadians, particularly at the local level.

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[30] Québecor Intervention in Response to Broadcasting Notice of Consultation CRTC 2019-379-3 (July 13th, 2020) at para. 19.

Exhibit 3.
Spending on News by Canadian television services, and shares of news viewing by Canadians to those television services, 2019:

	Spending on News		Share of news viewing to Canadian services (%)
	($ million)	%	
Private conventional television	374	75.4	85.1
CBC/SRC conventional TV	122	24.6	14.9
Conventional television	496	100.0	100.0
Private discretionary services	157	64.9	64.2
CBC/SRC discretionary services	85	35.1	35.8
Discretionary services	242	100.0	100.0
Private services - total	531	72.0	75.9
CBC/SRC services - total	207	28.0	24.1
Total services	738	100.0	100.0

NOTES:

1. Spending data are for the 2019 broadcast fiscal year.
2. Viewing data are for the 2019 calendar year, for all persons 2+.

SOURCE: CRTC; Numeris; Communications Management Inc.

40. Allowing the Corporation to direct more resources toward distorting the advertising market puts at risk the contributions private broadcasters make to the Canadian broadcasting system, including their investment in news programming.

41. The Corporation's impact on the private broadcasting sector is not only limited to the television market. While the Corporation was required to stop advertising on two of its radio networks – Radio 2 and ICI Musique – in 2016 after a three-year trial because it had not maintained its level of investment in its radio operations, that merely resulted in the Corporation shifting advertising to its DMBUs, where it competes directly with commercial radio in local markets across the country. In fact, even though it is prohibited from advertising on its radio properties, this has not stopped the Corporation from selling advertising around the same radio programming when it appears online.[31]

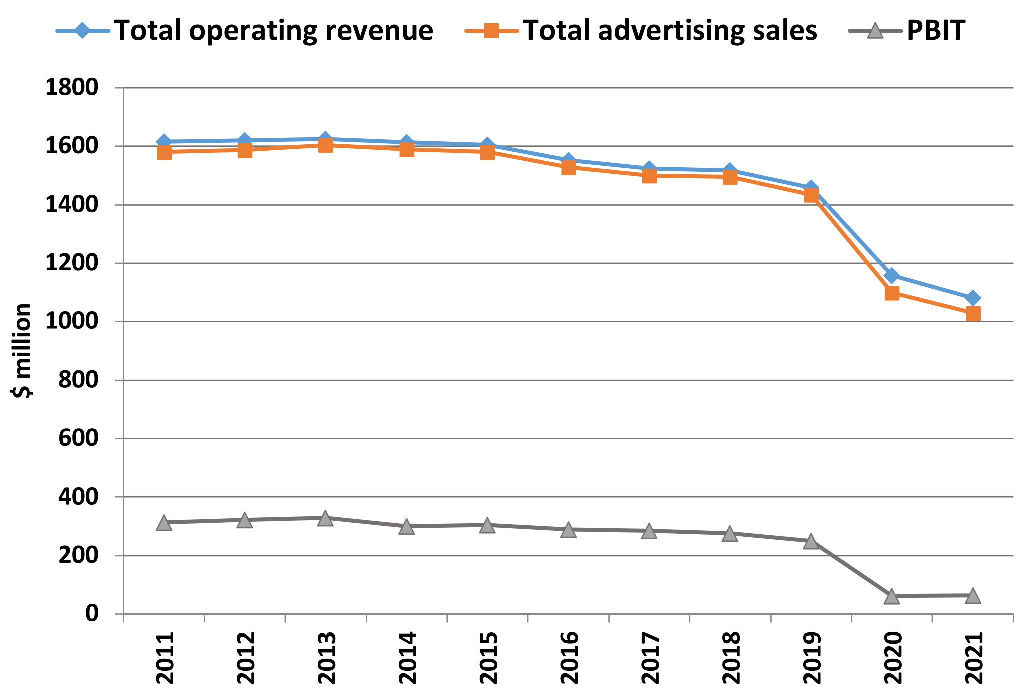
42. As outlined in the exhibit below, private radio is also seeing declining revenues and profitability. It was hit equally hard by the pandemic and is not expected to see revenues return to pre-2020 levels for the foreseeable future, if ever. More specifically, in 2019, private radio advertising revenue was $145 million lower than it had been in 2011. That fell

[31] *Supra*, Note 30, at para. 23.

a further $336 million in 2020, and fell again in 2021 (when private radio advertising was $69 million lower than in 2020). Having a Government-funded competitor for a limited pool of advertising dollars only makes the situation worse.

Exhibit 4.

Private radio – trends in total operating revenue, total advertising sales, and PBIT, Canada, 2011-2021:



SOURCE: Statistics Canada.

43. Based on the foregoing, the only way to prevent the Corporation from further distorting the market and growing its reliance on advertising revenues is to take prompt action to phase it out of advertising.

Conclusion

44. The Corporation has already indicated that advertising influences its programming strategy in a way that is inconsistent with its mandate. Decision 2022-165 will send it further off course by giving it broad flexibility to invest in foreign programming and schedule it across its licensed and exempt services. This will have a detrimental impact on the private broadcasting sector, which does not benefit from the significant Government support that is available to the Corporation, impacting private broadcasters' ability to invest in Canadian programming and news specifically, and the Canadian broadcasting system as a whole.

45. The CAB submits that the Corporation's licence renewal must set the stage for the future direction the Government sees for the public broadcaster. The Minister of Canadian Heritage has already been tasked with ensuring that the Corporation's programming is more readily distinguishable from what the private sector offers and increasing its Parliamentary

appropriation to eliminate advertising in certain genres of programming. In fact, the Corporation itself has noted that it would be prepared to stop advertising should it been given additional resources. Unfortunately, Decision 2022-165 does not do that. As a result, the Governor in Council needs to act now by referring Decision 2022-165 back to the Commission for reconsideration with instructions that:

- The Corporation's ability to solicit and accept advertising on its services, whether on its licensed programming undertakings or its exempt DMBUs, should be phased out; and
- The Corporation's Tandem branded content service is inconsistent with its mandate and should cease operating immediately.

46. All of which is respectfully submitted.

Yours sincerely,

Kevin Desjardins
President
Canadian Association of Broadcasters

c. The Honourable Pablo Rodriguez, Minister of Canadian Heritage
Claude Doucet, Secretary General, CRTC
Bev Kirshenblatt, Executive Director, Corporate and
Regulatory Affairs, CBC/Radio-Canada