

Intelligence MEMOS



From: Jeffrey Church and Benjamin Dachis

To: Jean-Pierre Blais, Chairman of the CRTC

Date: February 2nd, 2017

Re: **GOOD TV, BUT BAD ECONOMICS: CRTC'S ORDER ON US SUPER BOWL COMMERCIALS**

This weekend, because of a Canadian Radio-television and Telecommunications Commission (CRTC) order, Canadians will be able to watch US Super Bowl commercials on the FOX broadcast, instead of having Canadian commercials substituted into the US broadcast. While we appreciate the entertainment value of the US commercials for some is greater than the benefit of Canadian commercials, the ability of Canadians to watch them elsewhere (such as YouTube), along with the reduction in the value of Canadian commercials on Canadian channels, and the harm to the CRTC's reputation from not considering how changes in its policy regime affect incentives for investments all indicate that the CRTC has fumbled the ball.

Two years ago, the CRTC [issued a ruling](#) that, starting this year, banned *just* for the Super Bowl the usual practice by Canadian networks of simultaneously substituting Canadian advertisements for US advertisements on US signals carried on broadcast distribution networks in Canada.

The CRTC in making its [order](#) banning simultaneous substitution did so on the basis that it was “not in the public interest” and that it was necessary to exclude the Super Bowl from simultaneous substitution to fulfil “the policy objectives of the [Broadcasting] Act.” The CRTC made this move based on about 100 complaints in 2013 and their determination that the US ads are “integral to the event itself”.

In issuing its order, the CRTC noted that Bell had entered a multi-year contract with the National Football League (NFL) for the Canadian broadcast rights for the Super Bowl based on the expectation of simultaneous substitution. Bell [estimates its loss](#) of advertising revenue for the duration of its contract with the NFL to be at \$80 million. However, the CRTC rejected that the interception in advertising revenue to Bell, or the existence of a contractual right whose value depends on the consistency of the rules, can prevent the CRTC from changing the rules of the game.

The issue is much broader than the CRTC sacking Bell. Companies enter into commercial arrangements based on the stability of the regulatory regime. The social harm is that companies cannot trust the CRTC to not arbitrarily move the goalposts in its regulatory regime in a manner that renders investments unprofitable. Hence, the CRTC has reduced the incentive for any firm that might be under its jurisdiction to make investments. That makes all of us worse off.

There is an easy solution: the CRTC could wait until the clock runs down on the existing contract for the elimination of the simultaneous substitution. Then everyone would know the new rules of the game before making investments.

How did the CRTC get away with calling the wrong play? The *Broadcasting Act* allows for fuzzy thinking when comparing benefits to costs. The CRTC does not have to apply [analytical economic rigour](#) demonstrating that the benefits it perceives are greater than the costs. Instead because the *Broadcasting Act* has multiple objectives, it can simply assert that one objective (in this case unaltered programming) is more important than other objectives.

Rather than celebrate its order on US commercials in the Super Bowl as a touchdown for Canadians, it looks like the CRTC ran to the wrong end zone.

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