

# Torlys on Technology and Communications

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## Media Ownership Policy Changes for Canada

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The Canadian Radio-television and Telecommunications Commission (CRTC) released a public notice clarifying how it will approach future M&A transactions in the media sector. The notice will have a significant impact on strategic media consolidation in Canada by setting out new policies in three areas: cross-media ownership of broadcasters and newspapers; total television audience share; and the control of programming distributors, which the CRTC refers to as “broadcasting distribution undertakings” (BDUs), such as cable and satellite providers. The notice also reaffirms existing policies on the common ownership of radio and television.

### Cross-Media Ownership of Broadcasters and Newspapers

Generally, the CRTC will not approve transactions that result in one entity owning or controlling media outlets in more than two of the following categories in the same market: local radio stations, local television stations and local newspapers. In assessing transactions under this policy, the CRTC will consider the transaction’s impact on the number of editorial voices in local markets. The CRTC will look at factors relating to the relevant market, including the ownership of new media outlets, such as the Internet, and the use of new media as a source for local news and information.

A number of other countries have addressed cross-media ownership in different ways. Late last year, the U.S. Federal Communications Commission (FCC) amended its ban on cross ownership of a newspaper and a television station in a market to allow a newspaper to own a smaller broadcaster in a larger market in which there are a certain number of media outlets.

### Total Television Audience Share

The notice sets out a graduated approach to transactions that result in an increase of total television audience share – that is, the share of total hours tuned to television, including pay, specialty and over-the-air television, based on BBM Nielsen data. It is measured separately, on a national basis, for English and French language markets. The approach is as follows:

- Generally, the CRTC will not approve a transaction resulting in one entity controlling more than 45% of total television audience share.
- The CRTC will carefully examine transactions resulting in one entity controlling between 35% and 45% of the total television audience share.

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- In the absence of other policy concerns, the CRTC will expeditiously process transactions resulting in one entity controlling less than 35% of the total television audience share.

In analyzing transactions under this policy, the CRTC's focus will be the diversity of programming voices in the market. The CRTC will consider the regulatory framework; the impact on news and public affairs programming; the safeguards for access to BDUs; the arrangements between licensees and independent producers; the prevalence of new media as a source of television; and any views of the Competition Bureau.

The policy does not restrict audience share increases that result from competition or the introduction of new services.

This new policy resembles the FCC prohibition against owning over-the-air television stations that have an aggregate national audience reach exceeding 39%.

### Control of BDUs

Generally, the CRTC will not approve a transaction resulting in one entity being able to control all BDUs in any market or otherwise effectively controlling programming distribution in that market.

The notice indicates that, currently, the BDU market includes two separately owned satellite providers and, in more urban areas, a cable provider. Some consumers in Canada have access to other technologies, including the delivery of television via phone lines. In addition, radio and television is increasingly available via the Internet.

In analyzing transactions under this policy, the CRTC's focus will be the diversity of programming voices in the market. The CRTC will consider the regulatory framework; the market share of other BDU services; the impact of unregulated distribution services, such as the Internet; the impact on the relative negotiating power of BDUs and programming service providers; the impact on community channels or programming; and the relevant market's size and majority language.

### Common Ownership Policies for Radio and Television

The notice reaffirms the CRTC's common ownership rules for radio and television, which are as follows:

- **Radio:** In markets with less than eight commercial radio stations operating in a given language, an entity may own or control three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight stations or more operating in a given language, an entity may be permitted to own as many as two AM and two FM stations in that language.
- **Television:** Generally, an entity is not permitted to own more than one over-the-air station in one language in a given market. However, the CRTC has made a number of exceptions to this policy over the years in recognition of the need for locally focused programming in small cities adjacent to larger centres.

### Future Regulatory Initiatives

The public notice also refers to the following future regulatory initiatives that relate to the guidelines discussed above:

- The CRTC will review, no later than 2013, information and trends regarding sources of news and information and will, if necessary, make adjustments to the cross-media ownership policy to reflect those trends.
- The regulatory framework governing pay and specialty television will be reviewed by the CRTC at a public hearing in April 2008. 