by Lawson Hunter

Lawson Hunter, director of the combines investigation and research branch of the bureau of competition policy, department of Consumer and Corporate Affairs, has recommended major reduction in the Canadian content requirements as being preferable to “the drastic step” of permitting a monopoly in Canadian pay-TV.

Hunter’s startling presentation was made on the first day of the Canadian Radio-television and Telecommunications Commission (CRTC) hearing July 1984 to place the two licensees in question within the parameters of licence conditions for the Canadian content rule and the market needs of a pay-TV channel. In this regard, it is clear that Canadian content requirements fail to take account of the production industry’s capability to satisfy pay television’s programming requirements. This structural element of the pay-TV industry has a negative impact on the licensees’ business and does not provide the benefits the Commission intended should accrue to the program production industry.

**Alternatives**

In lieu of resolving the structural problems of the pay-television industry in the manner proposed by First Choice and Allarcom, the Director recommends that the Commission consider revising the Canadian content formula for pay-TV in Canada and retain the current competitive structure of the industry. There are three basic approaches which merit consideration in revising the present content formula. These are:

1. Substantially lower the 30% Canadian content time quota stipulation, perhaps to 15%, while retaining the Canadian programming expenditure commitments.
2. Reducing both the content time quota and lower programming expenditure commitments, for example, to 30% of total revenues and 40% of total expenditures.
3. Reducing the content time quota as in (ii) above and reducing the programming expenditure commitments altogether, while imposing a tax on pay-TV operators which would be directed towards increasing the revenue of the Broadcast Production Fund.

**Conclusions**

1. Eliminating competition between the pay-television licensees will not resolve the underlying poor financial position because the creation of a monopoly structure does not address the primary problem. After restructuring, the licensees have no alternative but to approach the Commission to vary the conditions for the reasons enumerated earlier. At that time, the Commission will deal with two regional monopolies rather than two competing entities. Consequently, the Commission’s leverage to require adherence to the 30% condition is substantially reduced. It is the Director’s proposal that the system of content obligations must be revised now. The problems arising out of the Canadian content obligations can be addressed for pay-television companies if the market is maintained.
2. The reliance on shelf rather than new product, aggravated by a high time-quoterule, appears possibly to have yielded windfall income to those holding the rights to Canadian programming because licensees find themselves in an uncompetitive position in dealing with those groups. As a result, considerable amounts of money which would have been directed into production in a more efficient manner has been under-naturally dissipated.

3. If the Canadian content criteria are revised as proposed, while maintaining the competitive structure of the industry, all of the Director’s proposals would have the following advantages:
   a) The viewer retains a service alternative which will ensure the availability of quality foreign programs, and quite possibly a more highly differentiated choice once pay-TV licensees are able to spend more for individual Canadian productions;
   b) the Canadian producer/distributor is able to sell projects to two major buyers, either exclusively or not, as well as being to obtain greater financial participation from each pay-television licensee. As well, the total number of pay-TV subscribers will be larger as a result of competition, thus contributing more overall to the Canadian producer/distributor;
   c) reducing the Canadian content requirements will permit the reduction of wholesale and retail price levels, should the licensees wish to do so. This, in turn, would reduce the churn generated by the currently high price charged for pay television services. This would contribute to the profitability of the pay television companies. In view of the preceding factors, it is conceivable that the cost of programs acquired by Canadian pay-television companies may lead to the production of higher quality programs with higher viewer satisfaction levels and a greater potential to earn revenues in other markets.

4. The major differences in the advantages of the above proposals are:
   a) Approach No. 1: a greater concentration of programming funds in fewer productions and a more realistic target for the number of Canadian titles. This may lead to the production of higher quality programs. The Director believes satisfaction levels and a greater potential to earn revenues in other markets.
   b) Approach No. 2: a somewhat greater concentration of programming resources in fewer productions, with the commensurate benefits indicated in (ii) above, coupled with a lessening of the financial burden on pay-television licensees which would positively encourage their survival.
   c) Approach No. 3: a transfer of some or all of the stipulated Canadian programming expenditures to Telefilm would provide greater public scrutiny and targeting of the subsidy to Canadian programming.

**Recommendation**

The Director realizes that such fundamental changes to Canadian content rules require further study as to their implications for the pay-television industry and the program production industry. The Director recommends that, before deciding on the joint application, the Commission should explore the various alternatives which allow the retention of competition.