Appendix 1

Communic@tions Management Inc.

The unintended consequences of the CRTC's decision to remove simultaneous substitution from the Super Bowl.

Prepared for Bell Media □ **June 30, 2017**

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This report has been prepared to help place into context the CRTC's decision to end simultaneous substitution for a single television program – the Super Bowl – starting with the 2017 game. While it is only a single program, it is also the largest single application of the simultaneous substitution rule in Canadian broadcasting, so the impact of the decision will be substantial, and will extend beyond television into broader economic and societal issues.

The report begins with a brief history of the origin of simultaneous substitution, as part of the Trudeau Government's policies to support Canadian broadcasting in the 1970s. It also documents how federal government and CRTC policies were co-ordinated, in order to recognize the broader impacts of the then-new policies.

The report deals with the economic rationale for simultaneous substitution, and finds that simultaneous substitution remains an important foundational element to help support Canadian programming.

It also documents that removal of simultaneous substitution in the 2017 Super Bowl had the following impacts:

- It reduced audiences and revenues for the Super Bowl on Canadian services, and resulted in an audience of almost 3.4 million Canadians watching the Super Bowl on U.S. stations.

- The Super Bowl, without simultaneous substitution, re-opened the door to cross-border selling by U.S. border TV stations, despite the provisions of Section 19.1 of the *Income Tax Act*.

The data indicate that removal of simultaneous substitution creates two main sources of negative economic impact:

1. <u>First, the reduction in the economic footprint of Canadian conventional television</u>, which is a function of both reduced audiences and the re-emergence of cross-border selling by U.S. stations. (The lost value of the economic footprint is estimated at $986 million if all simultaneous substitution were to be removed; for the Super Bowl alone it was $45 million.)[1]

2. <u>Second, the increase in American commercials directed at Canadians</u>, which has the potential to tilt the balance of consumer purchasing (in-store and online) away from Canadian businesses and toward American businesses. (The lost value of consumer purchases is estimated at $2.462 billion if all

[1] The "economic footprint" includes direct revenues of conventional television, spending on programs, and purchases from supplier companies.

simultaneous substitution were to be removed; for the Super Bowl alone it was $113 million.)

In addition to negative economic consequences, there are also societal issues:

- A reduction in the resources available for local news and information.

- The CRTC Super Bowl decision has the potential to create very large audiences in Canada for American pharmaceutical commercials that do not meet Health Canada standards.

- The CRTC Super Bowl decision will also create increased potential exposure for American financial services commercials that might not meet Canadian standards.

When all of these impacts are considered, we believe the CRTC's simultaneous substitution decision raises three important – and interlocking – questions for public policy:

1. How will the decision affect the ability of the regulated television industry to survive the current transition that is being driven by new technology and new business models, while maintaining – and improving – the ability to produce and deliver Canadian content?

2. How do we recognize – and measure – the impact of a regulatory decision that has economic, societal and cross-border consequences that may be greater outside the regulated industry than within the regulated industry itself?

3. How do we resolve the policy conundrum that has been created when a regulatory change by the CRTC (simultaneous substitution) appears to have reduced the effectiveness of an Act of Parliament (Section 19.1 of the *Income Tax Act*)?

There is precedent (from the Trudeau Government in the 1970s) to ask the CRTC to delay certain regulatory policies in the interest of dealing with broader economic and cross-border issues.

Given the results documented in this report, that precedent could be followed today, to examine current regulatory tools, and to develop more effective tools for the future of Canadian content.

This report has been prepared to help place into context the CRTC's decision to end simultaneous substitution[2] for a single television program – the Super Bowl – starting with the 2017 game. While it is only a single program, it is also the largest single application of the simultaneous substitution rule in Canadian broadcasting, so the impact of the decision will be substantial, and will extend beyond television into broader economic and societal issues.[3]

To create that context, we have examined the history and economics of the simultaneous substitution policy, and we have also looked at the likely economic and non-economic impacts of the CRTC decision. We have then attempted to place these findings within a public policy context, consistent with the public policy process when simultaneous substitution was first introduced.

This report has been divided into six sections:

I. The historical and economic context for simultaneous substitution

II. The CRTC's recent revisions to the simultaneous substitution policy

III. The 2017 Super Bowl – what actually happened?

IV. Assessing the economic impact

V. Additional societal issues

VI. A suggested public policy solution

[2] The CRTC defines simultaneous substitution as "the temporary replacement of the signal of one television programming service with another service that is broadcasting the same program at the same time at the request of the latter. Usually, an American signal is replaced with a Canadian signal." The result for consumers is that they see exactly the same program, but they see the commercials appearing on their local broadcast station, rather than commercials from another market or another country. The CRTC has also noted: "This allows Canadian broadcasters to earn a reasonable return on their investment in acquiring non-Canadian programming so they have the financial resources to contribute to the Canadian broadcasting system in the form of the production of Canadian programming."
[3] Within the television industry, the main impact of simultaneous substitution is on English-language conventional television broadcasters.

I. The historical and economic context for simultaneous substitution

History

From the time it was created in 1968, the CRTC had been concerned about the challenge posed to the Canadian television system by the rapid growth of cable television, and the ability of cable television to bring distant signals into Canadian markets, thereby duplicating and devaluing the ability to sell advertising in the U.S. programs that Canadian stations had purchased.

The CRTC issued a series of statements, culminating in a major policy paper on July 16, 1971, titled "Canadian Broadcasting 'A Single System': Policy Statement on Cable Television". In that paper, the CRTC set out a number of possible policies to be used to compensate for the impact of the out-of-market signals.

Those policies included a system whereby cable operators would compensate local Canadian TV stations for the use of those stations' signals. In this regard, the CRTC stated:

> Stated simply the fundamental relationship is: <u>television stations are the suppliers, and cable television systems are the users</u>.
>
> Thus the basic principle involved is: <u>one should pay for what he uses to operate his business</u>. Even if there were no damage or if the cable television systems increased profits of the television stations this principle would still be true. ...[4]

Then, in a section titled "Restoring the Logic of the Local Licence", the CRTC went on to make three additional policy proposals. In introducing these policies, the Commission stated:

> The policy which follows in no way diminishes the programme choice of the viewer, but eliminates harmful and needless duplication.[5]

The three additional proposals were:

1. Simultaneous substitution – essentially the policy in place today;
2. Commercial deletion and substitution (in non-substituted programs), which the CRTC experimented with on a selective basis; and

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[4] CRTC, "Canadian Broadcasting 'A Single System': Policy Statement on Cable Television," July 16, 1971, p. 21. Note that the underlined portions of the CRTC's document were underlined in the original – the emphasis comes from the CRTC.
[5] *Ibid.*, p. 26.

3. A request to the Government of Canada to amend the *Income Tax Act*, to remove the ability of Canadian advertisers to deduct the cost of commercials placed on non-Canadian stations, if those commercials were aimed at Canadians.[6]

While the fee-for-carriage proposal was not proceeded with at that time, the other three policies were put in place – the first two by the CRTC, and the Trudeau Government subsequently amended the *Income Tax Act*.

By the mid-1970s, there was a strong negative reaction from U.S. border television stations, who launched legal action in Canada, and who convinced the U.S. Congress to enact retaliatory tax measures.

Throughout this period, it is clear that this was viewed as a matter of broad public policy, with the CRTC in close touch with two of the Trudeau Government's Ministers of Communications, first Gérard Pelletier, and then, with his successor, Jeanne Sauvé.

A key event in the policy development process took place on January 21, 1977, when the CRTC issued a Public Announcement titled "Commercial Deletion". That announcement stated:

> In its July 1971 cable television policy statement the Commission described several methods to reduce the economic impact of the penetration of United States television stations in Canada in order to enhance the capacity of the Canadian broadcasting system to achieve national broadcasting objectives. One of the methods proposed was the removal of commercials from incoming U.S. television signals, known as commercial deletion.
>
> Random commercial deletion was implemented and continues to be practised at present in Calgary, Edmonton and some parts of Toronto. In addition, the Commission has made it a condition of a number of cable television licences in various parts of Canada that plans for commercial deletion be developed by cable television licensees in conjunction with television broadcasters for the further implementation of commercial deletion, and that the Commission be informed of the development of such plans by specified dates.
>
> On October 18, 1976, the Commission informed the appropriate cable television licensees that the dates on which the required reports on plans for commercial deletion were to be submitted had been extended to August 31, 1977.
>
> The Commission has now been informed by the Minister of Communications, the Honourable Jeanne Sauvé, that the Government

[6] *Ibid*., pp. 26-29.

> fully supports the objectives which have led the CRTC to institute the commercial deletion policy, but considers that the feasibility of other methods of achieving the same objectives should be examined by the Commission before commercial deletion is further implemented. In addition, the Government considers that time should be allowed for an assessment of the effects of Section 19.1 of the Income Tax Act and of simultaneous program substitution.
>
> The Commission welcomes this indication of Government support for the objectives of its regulatory policies. …[7]

Thus, it is clear that the simultaneous substitution policy was not developed in isolation or piece-meal; it was, in fact, part of an overall approach, involving both the CRTC and the federal government.

Is simultaneous substitution a "benefit"?

From time to time, it has been suggested that simultaneous substitution constitutes a "benefit" to conventional television broadcasters – that it somehow bestows upon those broadcasters extra revenue that would not otherwise be available in the market in a normal operating situation.

But it is clear from the CRTC's statements in the 1970s that simultaneous substitution is not, in fact, something "extra" – the CRTC's reference to "restoring the logic of the local licence" indicates that it is a mechanism designed to compensate local television stations for the market and copyright disruption represented by duplicate programs coming into the market via distant signals.

If one were to create an analogy with a physical structure like a building, then simultaneous substitution would <u>not</u> be analogous to adding an additional floor to the building; it <u>would</u> be analogous to shoring up the foundation.

Why has simultaneous substitution been so important?

The answer is simple – without simultaneous substitution, Canadian conventional television broadcasters would see much-diminished profits (or no profits at all) from the popular U.S. programs they carry, thereby reducing the ability of those conventional TV broadcasters to cross-subsidize less-profitable Canadian programs.

The internal cross-subsidies within Canadian conventional television have been documented many times over the years by the CRTC and others, and they are a function of the difference in market sizes between Canada and the U.S., and of the costs of acquiring programs relative to their actual production costs.

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[7] Canadian Radio-television and Telecommunications Commission, Public Announcement, "Commercial Deletion", January 21, 1977, as published in *The Canada Gazette, Part 1*, January 29, 1977, pp. 528-529.

In fact, in its 2008 Annual Report, the Canadian Broadcasting Corporation stated: "Canadian Television Production is not Profitable", and referred to a study that indicated that, for almost every program genre, in both official languages, Canadian programs could not realize an "economic surplus".[8]

For that reason, numerous public policies have been established over the years, ranging from the CBC itself, to the Canada Media Fund, to provisions in the *Income Tax Act*, to CRTC regulations – and simultaneous substitution is an important part of that package of policies.

Putting a dollar value on simultaneous substitution

Although simultaneous substitution is not an extra "benefit", it is still possible to put a value on its contribution to the foundation of private conventional television.

Numerous studies have been done on this question, dating back to at least the 1980s. All of the studies concluded that simultaneous substitution was a valuable and important contribution to the foundation of Canadian conventional television broadcasting.

The most recent of these studies is by Armstrong Consulting, titled "The Economic Value of Simultaneous Signal Substitution for English-Language Private Television Broadcasters / Update to 2012/13", June 25, 2014.[9] The study's three key conclusions were:

1. Simultaneous substitution had a "principal impact" value of about $242 million to $266 million in advertising revenue.

2. If simultaneous substitution were to be removed, there would be reduced resources to spend on programs, resulting in a further advertising revenue loss in the range of $173 million to $191 million.

3. There would be a reduction in spending on Canadian programs, in the amount of $110 million to $122 million.[10]

The Armstrong study also found that the value of simultaneous substitution now is going up as a function of total conventional television advertising.[11] Thus, absent alternative foundational support mechanisms, simultaneous substitution may be even more important in the medium term, as public and regulatory policies grapple with the future of conventional television.

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[8] CBC/Radio Canada, Annual Report 2007-2008, p. 41.
[9] Prepared for Bell Media and other broadcasters.
[10] This confirms the way that simultaneous substitution supports the internal cross-subsidization effect noted above. If the profitable programs are no longer profitable, there will be less to spend on Canadian content.
[11] Because simultaneous substitution is usually found in the higher-rated programs, this confirms the theoretical expectation that, in a fragmented market, there will be increased pressure on middle-ranked programs, and advertiser-supported services will focus even more on higher-rated programs.

The link between simultaneous substitution and Section 19.1 of the *Income Tax Act*

As noted above, simultaneous substitution was not the only tool introduced in the 1970s to protect Canadian conventional television from copyright devaluation and advertising revenue erosion. The other main policy tool was what now is Section 19.1 of the *Income Tax Act*, which does not allow advertisers to deduct the cost of advertising placed on border television stations, if that advertising is aimed at Canadians.

Thus, we have had two policies working in tandem – one, an Act of Parliament, and the other, a regulation of the CRTC. And it is useful to understand how closely those two tools have been linked.

Simultaneous substitution generally applies to the top-rated programs. Without that substitution, the border stations from which those programs are picked up by Canadian BDUs could attempt to monetize the audience they receive in Canadian markets by selling commercials in those programs to Canadian advertisers. Indeed, that is what occurred in the 1970s.

Yet, one might ask: Wouldn't the tax-deductibility provisions have put an end to that, without simultaneous substitution? The answer is "no" – because, in response to those provisions, many U.S. border stations simply discounted the amount charged to Canadian advertisers to compensate for the fact that those advertisers could not deduct the expenses for corporation income tax purposes.

Simultaneous substitution reduced the inventory in the top-rated programs, leaving only lower-rated programs for the U.S. border stations to sell in Canada. Thus, from the 1970s into the 1990s, simultaneous substitution reduced the amount of cross-border selling, by limiting the discounting to lower-rated shows.

Then, with the fragmentation of audiences from specialty and pay services, the audiences of lower-rated programs on conventional television were further reduced.

So cross-border selling did not go away immediately, but it was reduced and/or held in check, with simultaneous substitution playing a major role.

One might also note that the potential for discounted cross-border selling is not evenly distributed across Canada. If the U.S. border station is from a smaller market than the Canadian market into which its signal is BDU-delivered, then it will have an incentive to discount rates to get around the tax-deductibility issue – because the rate it charges might still be the same as, or even greater, than the rate it charges to its own local market advertisers.

We have reviewed the population data for the main Canadian television markets, and for the main U.S. television markets whose signals are delivered to those Canadian TV markets. The greatest differential between Canadian and U.S.

markets, based on where BDU-delivered signals come from, occurs in the comparison between Toronto-Hamilton and Buffalo, NY. The next-greatest differential appears to be between Calgary/Edmonton and Spokane, WA.[12]

At the other end of the spectrum, there is the example of Winnipeg, with a much-larger market, Minneapolis-St. Paul, MN, as the main source of BDU-distributed signals.

Finally, we would note that U.S. border stations now have greater flexibility to adjust advertising rates than they did 20 or 30 years ago, because they now receive a substantial additional revenue stream in the form of retransmission fees.

Analyses of the value of Section 19.1 of the *Income Tax Act*

There have been a number of analyses of the value of Section 19.1 of the *Income Tax Act*. One of the most recent of these is a report prepared by Nordicity for the Canadian Broadcasting Corporation, in October 2013, titled "Analysis of Government Support for Public Broadcasting and Other Culture in Canada."

The Nordicity report provided a range of estimates for the value of Section 19.1, based on data for 2010-11. Using those estimates as a guideline, it appears reasonable to assign an estimated 2016 value of $120 million to Section 19.1.

[12] These are not the only U.S. signals coming into these markets; other signals are often also distributed to give consumers a "time-shift" option.

II. The CRTC's recent revisions to the simultaneous substitution policy

On 24 April 2014, in Broadcasting Notice of Consultation CRTC 2014-190, the CRTC launched Phase 3 of "Let's Talk TV" – a formal review of the Canadian television system.

In that Notice of Consultation, the Commission indicated that the review would include consideration of simultaneous substitution:

> **Simultaneous substitution**
>
> 54. Simultaneous substitution is the temporary replacement of the signal of one television programming service with another service that is broadcasting the same program at the same time at the request of the latter. Usually, an American signal is replaced with a Canadian signal. Sometimes, a Canadian signal from a distant market is replaced with a local signal. Simultaneous substitution occurs primarily in the English-language market. This allows Canadian broadcasters to earn a reasonable return on their investment in acquiring non-Canadian programming so they have the financial resources to contribute to the Canadian broadcasting system in the form of the production of Canadian programming. The Commission introduced regulations for simultaneous substitution for cable BDUs in 1972 and for DTH BDUs in 1995. Those requirements are now set out in sections 38 and 51 of the current *Broadcasting Distribution Regulations* (the BDU Regulations).
>
> 55. Many Canadians have access to U.S. television stations affiliated with the CBS, NBC, ABC and FOX commercial networks and the non-commercial PBS network. Their signals (known as the U.S. 4+1 signals) are available across Canada and are made available as part of the basic service on most BDUs. A second set of U.S. 4+1 signals is sometimes made available to subscribers on a discretionary basis. Canadians also have access to distant signals from Canadian television stations. The availability of such signals provides multiple opportunities to view a given program.
>
> 56. When broadcasters buy programs from Canadian and U.S. producers or networks, they pay to have exclusive broadcast rights in certain markets. Simultaneous substitution assists television stations in maintaining advertising revenues from these programs. Specifically, television stations use simultaneous substitution to maximize the audiences for their programs, which enables them to charge a higher advertising rate. Replacing the U.S. feed with the Canadian one also ensures that advertising dollars remain in the Canadian market.

> 57. Simultaneous substitution was envisioned as a mechanism that would not be disruptive to viewers, that is, the program substituted is the same on both signals and broadcast simultaneously. However, errors made in performing substitutions and other problems as well as special events, such as the Super Bowl, have made it an irritant to consumers and a frequent source of complaints. In 2013, for example, the Commission received 458 complaints regarding simultaneous substitution, the majority of which related to the English-language market. Of these complaints, 20% were related to Super Bowl commercials, as viewers would have preferred to see the U.S. commercials instead of the Canadian ones.[13] The rest pertained to improperly done substitution, especially during live sports events that run into overtime. Some participants in Phases 1 and 2 suggested that this practice be restricted or banned outright.
>
> 58. Another criticism of simultaneous substitution rules is that they have had the unintended consequence of tying the broadcast schedules of Canadian programming services to those of U.S. broadcasters. To take advantage of simultaneous substitution, Canadian broadcasters must organize their schedules to match those of U.S. networks. This restricts their ability to schedule and promote Canadian programs to Canadian audiences effectively, especially in prime time.
>
> 59. Further, the actual value of simultaneous substitution may be relatively small. Although the value of simultaneous substitution has previously been estimated at approximately $200 million annually, there are no up-to-date estimates of its value to Canadian broadcasters. This calls into question the efficiency and policy rationale for simultaneous substitution.
>
> 60. In light of the above, the Commission requests comments on whether simultaneous substitution remains an appropriate mechanism to enable local stations to maximize audiences and advertising revenues.[14]

On 29 January 2015, the CRTC issued the results of its deliberations on simultaneous substitution, in Broadcasting Regulatory Policy CRTC 2015-25, “Measures to address issues related to simultaneous substitution”.

With respect to the technical issues of improperly-done substitution, the Commission put forward new regulations to deal with that question.

On the question of the policy itself, the Commission stated, at paragraph 14:

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[13] As noted by the CRTC, there were 458 complaints, of which 20 per cent – or 92 complaints – related to Super Bowl commercials.

[14] Broadcasting Notice of Consultation CRTC 2014-190, 24 April 2014, paragraphs 54-60.

> While the Commission recognizes the challenges of quantifying the actual financial benefits of simultaneous substitution for broadcasters, it generally agrees that the estimated value of advertising revenue attributable to substitution in the 2012-2013 broadcast year was approximately $250 million.[15]

At paragraph 22, the Commission then set out this modification to the long-standing practice of simultaneous substitution:

> Further, given the comments received from Canadians and the fact that the non-Canadian advertising produced for the Super Bowl is an integral part of this special event programming, distributors will no longer be allowed to perform simultaneous substitution for this event as of the end of the 2016 NFL season (i.e. for the January/February 2017 broadcast of the Super Bowl). The Commission notes that the existing commercial arrangement relating to the broadcast of this event by CTV provided for its broadcast over a number of years. However, the Commission is of the view that the above determination will provide the broadcaster with a reasonable period to make adjustments. The broadcaster may choose to waive simultaneous substitution for 2016 if it considers that viewer and subscriber demand warrants such a measure.[16]

Subsequently, on 19 August 2016, in Broadcasting Regulatory Policy CRTC 2016-334 and Broadcasting Order CRTC 2016-335, the CRTC confirmed its decision to remove simultaneous substitution from the Super Bowl, starting with the 2017 game.

In the following parts of this report, we will deal with the impact of the CRTC decision, in both economic and non-economic terms.

[15] Broadcasting Regulatory Policy CRTC 2015-25, 29 January 2015, paragraph 15. (This is consistent with the "principal impact" estimate provided in the Armstrong Report, noted above.)
[16] *Ibid.*, paragraph 22.

A reduction in audience and revenue for Canadian television

Super Bowl LI, between the New England Patriots and the Atlanta Falcons, was broadcast on Sunday, February 5, 2017, without simultaneous substitution. Using data provided by CTV, we have been able to summarize the actual results from that telecast, and those data are shown in Figure 1.

Figure 1.
Super Bowl LI (2017) – Summary of CTV audience and revenue metrics, without simultaneous substitution (English-language services):

AUDIENCE METRICS	REVENUE METRICS
***WITHOUT SIMULTANEOUS SUBSTITUTION**:*	
AVERAGE TOTAL AUDIENCE FOR THE GAME (PERSONS 2+): **7,866,000** ON CTV + CTV Two + TSN: **4,472,000** ON FOX (U.S.) STATIONS **3,394,000**	ESTIMATED LOSS OF ADVERTISING REVENUE TO CTV BECAUSE OF VIEWING CAPTURED BY FOX STATIONS: **- $11 MILLION**

SOURCE: CTV.

As can be seen from Figure 1, the Super Bowl delivers one of the largest total audiences in Canadian television. But, for the 2017 game (Super Bowl LI), a substantial part of that audience was not realized on Canadian stations, but on Fox stations delivered to Canadian markets on BDUs, because of the absence of simultaneous substitution.

It should also be noted that the Super Bowl not only exists on its own as one of the largest audience attractions in Canada, but it also provides an opportunity to package advertising sales in the NFL season and playoffs, and, in some cases, with other programs. Thus, any reduction in audience for the Super Bowl itself can have an additional impact on that packaging ability.[17] (Along with that packaging ability, the Super Bowl is also an ideal place to promote other programs.)

[17] In this context, it is important to reiterate the importance of programs that can be "spikes" in terms of audience and viewer interest, particularly in the current fragmented television environment. Thus, the reduction in revenue for the Canadian broadcast of the Super Bowl, without

The Super Bowl, without simultaneous substitution, re-opened the door to cross-border selling by U.S. TV stations

In addition to the audience and revenue losses noted above, which were generally expected, there was another important development, which does not appear to have been anticipated by the CRTC – the removal of simultaneous substitution re-opened the door to cross-border selling by U.S. television stations.

The actual market behaviour for the 2017 Super Bowl forces us to revisit a long-standing policy concern. As reported in *The Globe and Mail* on February 8, 2017:

> A regulatory decision that opened up the U.S. broadcast of the Super Bowl to Canadian viewers – including those flashy big game ads – has also handed some Canadian advertising money to American TV stations.
>
> On Sunday, the Fox affiliate in Buffalo aired an advertisement from Canadian chain Pizza Pizza during the game; the Fox station in Spokane, Wash., sold ads to Leon's Furniture Ltd. and a group of Canadian Mitsubishi dealers.[18]

And an article posted online by *The Buffalo News*, on January 30, 2017, indicated that WUTV (the Fox station in Buffalo) might have sold more spots in Canada if the uncertainty over the CRTC regulatory change had been resolved earlier.[19]

We noted above that the U.S. markets that are substantially smaller than the Canadian markets into which their signals are carried are Buffalo and Spokane. It should come as no surprise, then, that those were the first two markets to take advantage of the removal of simultaneous substitution.

We also noted that the Super Bowl telecast, because of its enormous audience, creates packaging opportunities for broadcasters, who might combine a Super Bowl buy into a package of other football games, or other spots generally. By opening the Super Bowl to U.S. television station cross-border selling into Canada, the CRTC has, effectively, transferred some of that packaging advantage from Canadian to American broadcasters.

Thus, the removal of simultaneous substitution from the Super Bowl had an important unintended consequence, and may have created a conundrum for public policy: <u>A regulatory change by the CRTC (simultaneous substitution) appears to have reduced the effectiveness of an Act of Parliament (Section 19.1 of the *Income Tax Act*).</u>

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simultaneous substitution, would involve more than just a proportional reduction based on audience; its relative ranking in comparison to the U.S. telecast would also be a factor.

[18] Susan Krashinsky Robertson, "The CRTC's Super Bowl toll: Ad dollars, ratings go south", *The Globe and Mail*, February 8, 2017, page B1.

[19] Alan Pergament, "WUTV, local Fox affiliate, already is a Super Bowl winner", *The Buffalo News*, January 30, 2017 [accessed online at: http://buffalonews.com/2017/01/30/wutv-local-fox-affiliate-already-super-bowl-winner/.]

In this section, we will assess the economic impact of the removal of simultaneous substitution from the Super Bowl. Our approach is straightforward:

1. First, we will estimate the likely impact from the total removal of simultaneous substitution; and

2. Second, we will use that as the basis for assessing the impact from the removal of simultaneous substitution in the 2017 Super Bowl.

<u>We believe that any analysis of simultaneous substitution must extend beyond estimates of impact on the television industry only. If advertising is a catalyst for commerce, and if removal of simultaneous substitution would shift the balance within commerce from Canadian to American, even to a small degree, then that, too, must be part of the impact assessment.</u>

Therefore, we will assess the impact of the removal of simultaneous substitution from the Super Bowl in three general areas:

1. Economic impacts related to the Canadian television industry;

2. Consequential impacts in the general economy; and

3. Additional societal impacts.

Economic impacts within the television industry

As noted above, it is possible to estimate the core economic losses from the removal of simultaneous substitution, as well as consequential economic losses within the television industry, in terms of further losses in advertising revenue and lower spending on Canadian programs.

An additional concern should be noted here – without simultaneous substitution, advertising opportunities and efficiencies would be reduced, and advertising dollars would be less plentiful for the remaining (non-substituted; lower-rated) programs.

But where will that money go? Might it simply be redistributed elsewhere in the television system, perhaps resulting in different revenue shares for different services or owners, but not resulting in an overall loss to the system? Unfortunately, this is one case where the evidence tells us that the result could be less than a "zero-sum game".

First, consider the type of program represented by the Super Bowl – the highest-rated program, a major live event, and less prone to commercial-skipping (whether the ads are American or Canadian). Duplicating the reach and audience ratings of that kind of program through an accumulation of lower-rated programs would be difficult; the accumulation of those lower-rated programs would not deliver the marketing "spike" that comes with being associated with the higher-rated program.

Second, the actual experience of Canadian television advertising provides an additional important indicator. According to CRTC data, CBC/SRC conventional television had total advertising revenue of $475 million in 2014. In 2015, with the removal of the NHL and the non-recurrence of the Winter Olympics, that fell to $220 million – a decline of $255 million.[20]

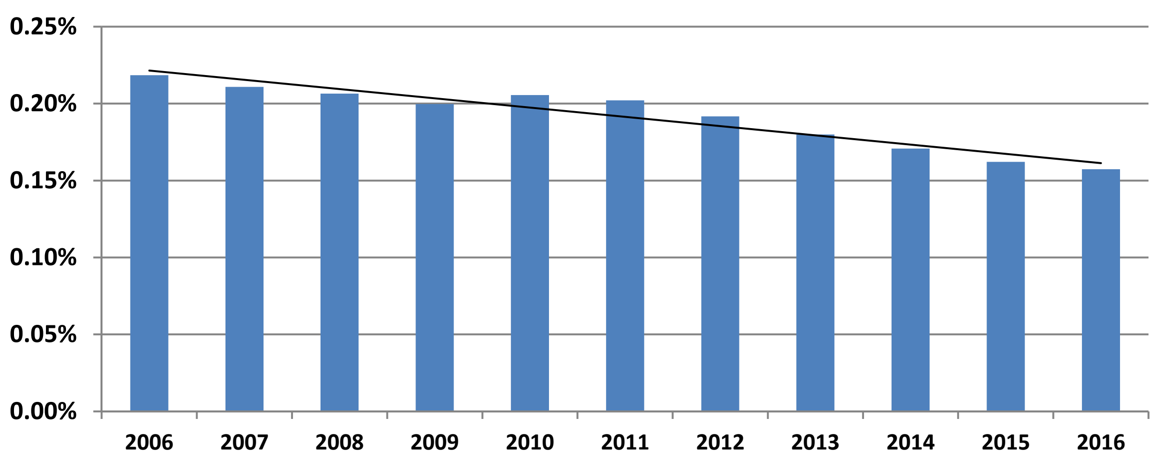
In theory, that money might redistribute itself elsewhere in the system. If so, then the total advertising revenues in the Canadian television system (all conventional and specialty services) might have been the same in 2015 as they were in 2014.

However, total television advertising in Canada declined from 2014 to 2015, which means that some or all of the advertising dollars associated with a high-profile sporting event (the Winter Olympics) did not simply get redistributed elsewhere within the Canadian television system.

Thus, the result for the system was indeed less than a "zero-sum game" – advertising dollars left the Canadian television system.

In fact, as indicated in Figure 2, television advertising as a function of GDP has been declining in recent years, which means that assumptions about dollars being redistributed within the television system are unlikely to be fulfilled.

Figure 2.
Television advertising (all Canadian conventional and specialty services combined) as a percentage of GDP, Canada, 2006-2016:



SOURCE: Statistics Canada.

[20] CRTC, *Conventional Television Statistical and Financial Summaries, 2011-2015*, p. 13.

And, with the re-opening of the door to cross-border selling, as indicated by the 2017 Super Bowl, those U.S. border stations now will add to the competition for any dollars that might be redistributed by advertisers.[21]

Will advertising dollars leave the Canadian media system?

In addition to the re-emerging competition from U.S. border stations, there are, of course, many other competitors for Canadian advertising dollars – radio, newspapers, magazines, and a variety of powerful online alternatives, some of which are Canadian, and most of which are not.

While some dollars may leave television for those other media, there is also the real possibility that, for at least some advertisers, they will spend less in total on Canadian media – for example, a Canadian subsidiary of an American company that, without simultaneous substitution, might feel it is getting the reach it needs in Canada through a combination of the U.S. spots coming into Canada plus a somewhat-reduced Canadian advertising budget.

For companies that do not have that "spill" advantage, if some of their advertising dollars leave the system, that could, in turn, have a negative impact on the sales of the companies doing the advertising.

Estimating the impact on Canadian conventional television

On June 20, 2017, Statistics Canada released the data for 2016 revenue and expenses for the Canadian television industry, including private conventional television.[22] We will use those data as the framework for assessing the impact of the complete removal of simultaneous substitution.

The data are summarized in Table 1. As indicated in Table 1, we have:

1. Adjusted the Armstrong study estimates slightly to reflect recent revenue trends; and

2. Focused the loss from U.S. border station selling in Canada on those losses attributable to the removal of simultaneous substitution, even if Section 19.1 of the *Income Tax Act* is not changed.

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[21] It is clearly too early to speculate whether the U.S. border station threat might evolve beyond local stations aimed at cross-border local markets. (The commercials themselves may be for local, national, or regional advertisers.) However, we would note that almost all of the border stations that might take advantage of a removal of simultaneous substitution are located in about eight or nine U.S. markets. Taken together, and without simultaneous substitution in place, the combined television audience in Canada for the stations from those markets could equal or exceed some Canadian conventional networks. Thus, it is at least theoretically possible that some advertisers could treat a combination of stations in those U.S. markets as a proxy for Canada.
[22] See CANSIM #357-0001.

Table 1.

Basic data for advertising and impacts, Canadian private conventional television, 2016:

Revenue or impact item	Value, 2016 ($ million)	Notes
Private conventional TV advertising revenue – total	**1,660**	As reported by Statistics Canada.[23]
Private conventional TV advertising revenue – English-language[24]	**1,400**	Estimate, based on CRTC data for 2015.
Estimated core value of simultaneous substitution	**240**	This is slightly lower than the "principal impact" estimate in the Armstrong study, to take into account revenue changes since the year on which that study was based, but is consistent with the finding that the proportion accounted for by simultaneous substitution is increasing.
Secondary economic impact if simultaneous substitution removed	**160**	This is also slightly lower than the range estimated in the Armstrong study, for the same reason as noted above.
Estimated value of Section 19.1 of the *Income Tax Act*.	**120**	Estimate, based on Nordicity Report for CBC.
Private conventional TV advertising revenue in most vulnerable markets[25]	**840**	Based on a special tabulation by Statistics Canada for private conventional TV in selected CMAs.
"Vulnerable" portion of estimated value of Section 19.1	**72**	The "vulnerable" markets account for about 60% of English-language private conventional TV advertising.
Total potential direct loss to Canadian private conventional television	**472**	This is the sum of core value + secondary economic impact + "vulnerable" portion of value of Section 19.1.
Likely re-distribution of ad dollars:		
To non-Canadian television	**72**	
To other non-Canadian media, or leaving the system	**?**	The precise proportions moving to other non-Canadian media, or leaving the system, are difficult to estimate at a time of rapid change and the trend toward online alternatives.
Total loss to Canadian media	**?**	
Moving to other Canadian media	**?**	

SOURCE: Statistics Canada; Communications Management Inc.

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23 According to Statistics Canada, 2016 was the fourth year in a row in which private conventional television in Canada had negative profit before interest and taxes. Over the last four years, private conventional television has lost over $400 million.

24 The CRTC and Statistics Canada include multilingual stations in the "English" totals for conventional television.

25 As discussed above, the "most vulnerable" Canadian markets are Calgary, Edmonton, and Toronto-Hamilton, to which one could add the Montreal Anglophone market – based on the fact that those Canadian markets receive U.S. border station signals from smaller U.S. markets.

The "multiplier effect" for television revenues

As noted above, the loss to Canadian conventional television from the full removal of simultaneous substitution would have been $472 million in 2016. To calculate the full impact on the Canadian economy, one can apply "multipliers", to estimate the "ripple" effects of that loss, in terms of both dollars and jobs.[26]

Using the latest available multipliers from Statistics Canada, we estimate that the above-noted reduction of $472 million would translate into an overall economic reduction of $986 million, and a potential loss of almost 5,800 jobs.[27]

That is a key set of numbers, because it reflects the impact on the "economic footprint" of the Canadian television industry of a regulatory change that directly affects the Canadian television industry.

Thus, we can see that the television sector would be hit particularly hard, with the ultimate net negative impact on the overall economy depending on how much of Canadian television's lost advertising is transferred to other Canadian media.

Loss attributable to the absence of simultaneous substitution in the Super Bowl

We can relate the CTV loss of $11 million on Super Bowl LI (Figure 1) to the "core value" loss estimate of $240 million if all simultaneous substitution were to be removed (Table 1). That results in a factor of 4.6 per cent, which can be applied to estimated loss totals to yield the estimate for the economic impact of removing simultaneous substitution from the Super Bowl.

In the case of the negative economic impacts noted above, the Super Bowl share of the overall impact on the Canadian economy from the loss within the television sector would be $45 million.

The impact on Canadian program production

As noted above, the Armstrong study estimated the loss in spending on Canadian television programs at $110 million to $122 million, if simultaneous substitution were to be totally removed. While conventional television advertising revenue has gone down since the last reference year for the Armstrong study, the overall loss may be higher than predicted by Armstrong, as a result of re-opening U.S. border TV station selling in Canada. We believe a reasonable estimate of the loss in spending on Canadian television programs would be $120 million. (Much of that

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[26] The multipliers used here are for 2013, the most recent published by Statistics Canada. The multipliers used for television are the Statistics Canada multipliers for "radio and television broadcasting".
[27] Some of those jobs would be in conventional television itself, along with jobs in supplier companies (e.g., production), and jobs stimulated by the spending power of employees of those companies.

loss in production spending is likely captured in the "multiplier" data for television.)

Consequential impacts in the general economy

Within this category of impact, three factors are considered:

1. Tilting the economic balance in favour of U.S. advertisers and against Canadian advertisers;

2. The important link between advertising and the online marketing ecosystem; and

3. The impact on retail sales and e-commerce in Canada.

Will the balance be tilted in favour of U.S. advertisers and against Canadian advertisers?

Many Canadian companies are not subsidiaries of U.S. companies, and they often compete vigorously against American subsidiaries. If the removal of simultaneous substitution means increased viewing of commercials for American companies, how will that impact their Canadian competitors?

This is true for manufacturers and retail chains, and it is also true in the specific case of cross-border shopping. In many Canadian markets, including Vancouver, Winnipeg, Toronto and Montreal, there is a constant retail attraction to major U.S. shopping destinations (including discount malls) within reasonable driving distance. While that attraction waxes and wanes with the value of the Canadian dollar, it is still an ever-present competitor for Canadian retailers.

If simultaneous substitution is removed, it will increase the ability of retail destinations south of the Canada-U.S. border to reach potential Canadian customers.

Case in point – Manitoba and Minneapolis

In the Super Bowl 50 broadcast in 2016 (the last Super Bowl with simultaneous substitution), in both Canada and the U.S., local stations got a number of advertising slots for local sales and/or local promotion. (Super Bowl 50 was carried on CBS in the U.S.)

In that context, it is interesting to examine the experience of CKY-DT, the CTV station in Winnipeg.

One of the major local advertisers on CKY-DT in Super Bowl 50 was Travel Manitoba, the travel promotion agency of the Government of Manitoba. It purchased commercials with the goal of encouraging more in-province tourism by Manitobans.

Manitoba viewers who watched that Super Bowl saw those Travel Manitoba commercials, rather than the local commercials that were carried on WCCO-TV, Minneapolis, the CBS affiliate whose signal had been substituted by CKY-DT.

But what if simultaneous substitution had not been in effect? What commercials might Manitobans have seen on WCCO-TV? Well, they might have seen a commercial for Mall of America (the largest shopping mall in the U.S.), which has been a Minneapolis local advertiser in the Super Bowl telecast in the past.

Thus, we can see how the removal of simultaneous substitution in the Super Bowl could shift the balance – fewer Manitobans exposed to commercials encouraging them to see more of their own province, and more Manitobans exposed to commercials for an attractive cross-border shopping destination.

The important link between advertising and the online marketing ecosystem

The Super Bowl is a prime example of the important link between advertising and the online marketing ecosystem. Many advertisers (in Canada and the U.S.) use television commercials to build awareness, and to encourage viewers to visit their Web sites. Once there, those viewers often become part of the marketing information system of those Web sites, with additional links to e-commerce.

In February 2017, eMarketer released online the Executive Summary of a report titled: "Ecommerce in Canada 2017: The Digital Disruption of Retail".[28] The report estimated the value of e-commerce by Canadians at C$34.04 billion in 2016, and projected that would rise to C$55.78 billion in 2020.[29] The report also referred to digital buyers in Canada as "omnichannel" consumers, and went on to note:

> This omnichannel consumer exhibits key traits: shopping and transacting more on mobile; **looking across the border** for better assortment and price; and relying more heavily on digital options during the busy holiday season.[30] [Emphasis supplied.]

It is clear that, to the extent that Canadian viewers might be responding to U.S. Web links, there is a greater likelihood that they will become part of the U.S. online marketing system, either in addition to, or in place of, Canadian companies.

[28] Available at: https://www.emarketer.com/Report/Ecommerce-Canada-2017-Digital-Disruption-of-Retail/2001981.
[29] *Ibid.*
[30] *Ibid.*

Table 2.
Estimated impacts on retail trade and e-commerce, if simultaneous substitution is removed completely, and estimated impact from removal in Super Bowl only:

Economic Factor	Impact on retail trade and e-commerce
1. Tilting the balance – impact on retail trade: If the removal of simultaneous substitution shifts the balance in favour of American and against Canadian retailers, and if that impacts Canada's retail trade by only two-tenths of one per cent, that would still have meant a direct impact of **$1,102 million** in 2016.[31]	**$1,102 MILLION**
2. Impact on the online marketing ecosystem: In 2012, Statistics Canada found Canadians spent C$18.9 billion online, with 82% ordering from Canada, 63% ordering from the U.S., and 21% ordering from another country (respondents could indicate more than one country, if applicable).[32] Using those data, one can estimate that about 38 per cent of the dollar volume was accounted for by online purchases from the U.S.[33] More recent estimates put online purchases by Canadians at about C$34 billion in 2016.[34] If 38 per cent of those purchases were made from U.S. online sellers, then the amount of online purchases going from Canadians to the U.S. in 2016 would have been C$12.9 billion. It is not unreasonable to assume that, if U.S. commercial TV advertising had unrestricted access to Canadian consumers, the use of commercials to attract online customers might increase the U.S. share of Canadian e-commerce from 38 per cent to 42 per cent. In 2016, that would have meant an additional **$1.36 billion** leaving Canada.	**$1,360 MILLION**
ESTIMATED TOTAL IMPACT ON RETAIL TRADE AND E-COMMERCE	**$2,462 MILLION**
Estimated economic loss – simultaneous substitution removed from Super Bowl only (4.6% of total)	***$113 MILLION***

Estimating the impact on retail trade (in-store and online)

In Table 2, we have estimated the impact on retail trade and e-commerce from tilting the balance away from Canadian advertisers and toward American advertisers, as a result of removing simultaneous substitution.

As indicated in Table 2, the total impact on Canadian retail trade (in-store and online) could have been $2.462 billion in 2016.

The amount attributable to the removal of simultaneous substitution from the Super Bowl only would be 4.6 per cent of that, or $113 million.

31 According to Statistics Canada, retail trade in Canada was $551 billion in 2016; two-tenths of one per cent of that would be $1,102 million.
32 Statistics Canada, "Individual internet use and e-commerce, 2012", published in *The Daily*, October 28, 2013.
33 Assumes average dollar amounts of purchases are similar regardless of country of seller, and the calculation is as follows: 63 ÷ (82+63+21) = 38%.
34 See: eMarketer, noted above, at Footnote 28.

In terms of jobs, the likely job losses from the impact on retail and e-commerce would have been about 4,800 with the total removal of simultaneous substitution, and about 220 attributable to the removal of simultaneous substitution from the Super Bowl only.[35]

The two main sources of negative economic impact

As we analyze the data, it is clear that removal of simultaneous substitution creates two main sources of negative economic impact:

1. First, the reduction in the economic footprint of Canadian conventional television, which is a function of both reduced audiences and the re-emergence of cross-border selling by U.S. stations; and

2. Second, the increase in American commercials directed at Canadians, which has the potential to tilt the balance of consumer purchasing (in-store and online) away from Canadian businesses and toward American businesses. As can be seen from the data, even a small amount of such "tilting" can have a substantial economic impact.

Figure 3 provides a graphic illustration of those impacts.[36]

The negative impacts may also be summarized, as follows:

For conventional television, the total removal of simultaneous substitution could result in a direct advertising loss of $472 million, which would be part of a broader economic loss in gross output of $986 million, and a potential loss of 5,800 jobs.[37]

Then, as a result of the tilting of the balance of advertising, there could be an additional negative impact on Canadians' consumer spending in Canada (in-store and online) of $2.462 billion, and a potential loss of 4,800 jobs.

Thus, the total potential loss from removing all simultaneous substitution is $986 million in the economic footprint of Canadian television, $2.462 billion in retail sales, and 10,600 jobs.

For just the Super Bowl, the total potential loss is estimated at $45 million in the economic footprint of Canadian television, $113 million in retail sales, and almost 500 jobs.

Text continues on page 23 …

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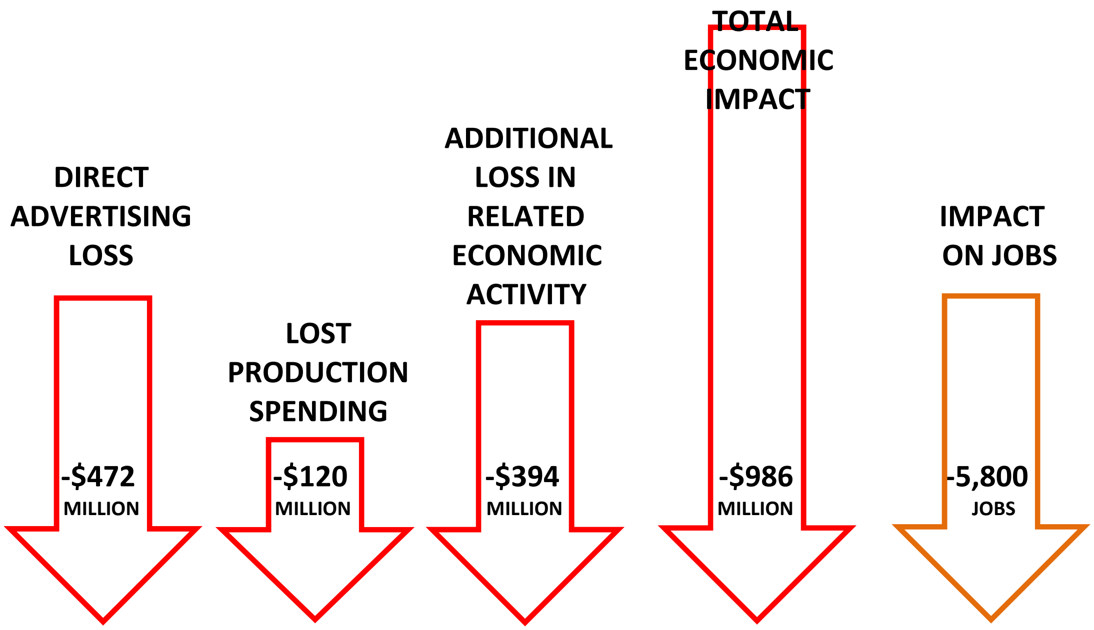
[35] The jobs estimates are based on Statistics Canada multipliers from 2013 (the most recent available) applied to data for "retail trade".
[36] The estimates in Figure 3, and summarized below, are based on data for 2016.
[37] As noted above, some of those jobs would be in conventional television itself, along with jobs in supplier companies (e.g., production), and jobs stimulated by the spending power of employees of those companies.

Figure 3.
Summary of the impacts on the television economy, and on the retail economy (in-store and online), from the removal of simultaneous substitution:

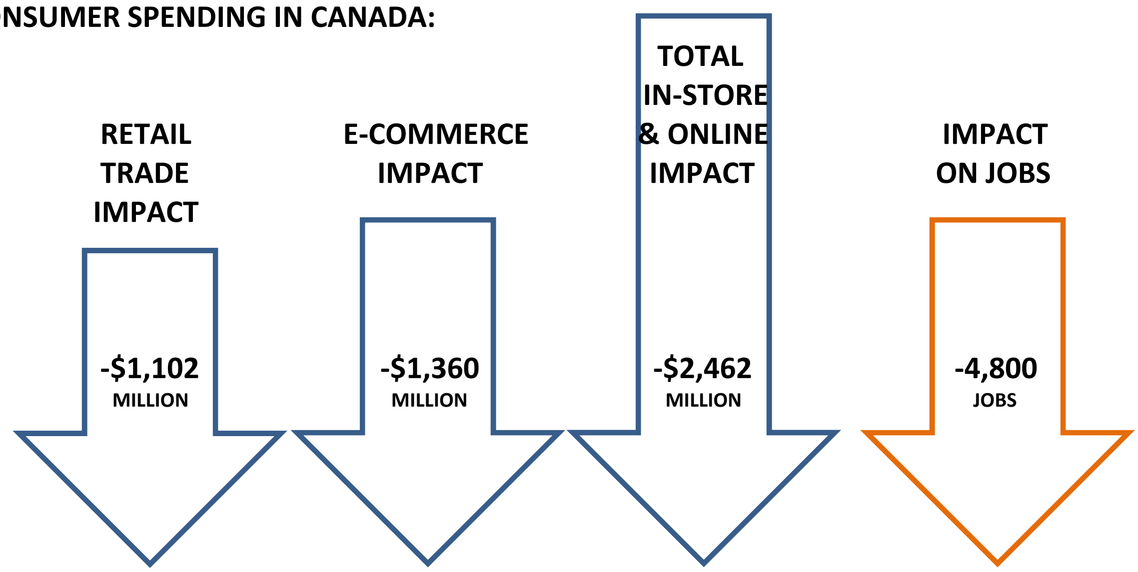
IMPACT ON THE CANADIAN TELEVISION ECONOMY:



AMOUNT ATTRIBUTABLE TO THE SUPER BOWL: -$45 MILLION -270 JOBS

NOTE: Some of the losses shown above may be partly mitigated by transfers of spending to other Canadian media, but that will not change the devastating effect on television broadcasting and production.

"TILTING THE BALANCE" – IMPACT ON CONSUMER SPENDING IN CANADA:



AMOUNT ATTRIBUTABLE TO THE SUPER BOWL: -$113 MILLION -220 JOBS

In addition to the economic data summarized above, there are also societal issues associated with changes that would reduce the revenues of Canadian conventional television stations, or that would create a larger audience in Canada for American commercials that might not adhere to Canadian standards on role portrayals, or commercials for the marketing of goods and/or service for which the Canadian standards are significantly different than American standards.

Three of those societal issues are noted here:

- Local news and information
- Prescription drugs
- Financial services

Local news and information

It is clear that the total removal of simultaneous substitution would reduce revenues on conventional television stations, which would, in turn, reduce the resources to produce local news and information.

Those who have noted that conventional television is only part of the total television market miss the point when they compare the value of simultaneous substitution to overall industry totals. Other industry components (specialty, pay, etc.) do not have the same ability or obligation to produce local news.

As long as that is the case, the removal of simultaneous substitution, without corresponding changes in support mechanisms and/or obligations, would represent a serious societal problem for many communities in Canada.

The CRTC Super Bowl decision has the potential to create very large audiences in Canada for American pharmaceutical commercials that do not meet Health Canada regulations

The standards governing prescription drug advertising are substantially more stringent in Canada than in the United States. In that regard, it is important to note what occurred in the 2016 Super Bowl American broadcast.

One of the commercials seen in the 2016 game – but not widely seen in Canada – was considered so controversial that it drew a rebuke from the Obama White House. The commercial was designed to publicize a drug called Movantik, whose purpose is to help relieve constipation caused by the taking of opioids.

As reported online by *USA Today*:

> **White house pushes back against Super Bowl ad**
>
> WASHINGTON – The White House criticized a pharmaceutical industry ad airing during Sunday's Super Bowl, saying it could help fuel an opioid addiction crisis.
>
> The advertisement was intended to raise awareness of opioid-induced constipation, and was paid for by two drugmakers marketing a drug to treat it. But in the midst of an administration proposal to spend $1.1 billion more on treatment for prescription drug and heroin abuse, a top White House official suggested that the ad went too far.
>
> "Next year, how about fewer ads that fuel opioid addiction and more on access to treatment," said White House Chief of Staff Denis McDonough in a tweet Monday.[38]

As indicated in Figure 1, had that commercial been broadcast in the 2017 Super Bowl, without simultaneous substitution, almost 3.4 million Canadians might have seen it, even though it is unlikely to have met Health Canada standards.

It is true, of course, that many Canadians already see some U.S. prescription drug commercials when watching lower-rated and syndicated programs for which simultaneous substitution is not used. <u>However, the sheer size of the Super Bowl audience transforms that question, from a relatively small amount of exposure, to one of the largest television audiences in Canada</u>.

Because of the size of the Super Bowl audience, we believe this might also be considered as a question of public policy.

Financial services commercials from the U.S. may also be subject to different rules than in Canada

A number of Canadian financial services firms were advertisers in the Canadian telecast of the 2016 Super Bowl, and those firms would have been subject to the rules and regulations governing financial services in Canada.

Early in 2016, Canada's Finance Minister, Bill Morneau, put in place new mortgage rules, in an effort to cool overheated housing markets in some cities. Those rules came into effect on February 15, 2016, eight days after the 2016 Super Bowl.

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[38] Gregory Korte, "White House pushes back against Super Bowl ad", *USA Today*, February 8, 2016 [accessed online at www.usatoday.com.]

In that context, it is interesting to note that one of the financial services commercials in the U.S. broadcast of the 2016 Super Bowl also attracted considerable criticism on a public policy basis.

As reported in *The New York Times* on February 10, 2016:

> To people with fresh memories of the housing collapse, the most disturbing advertisement during the Super Bowl on Sunday wasn't the one featuring a creepy "PuppyMonkeyBaby" climbing all over a Mountain Dew drinker. Rather, it was the one for the new Quicken Loans "Rocket Mortgage," which aims to make it easier to get a mortgage using a mobile device.
>
> The ad raises profound, and problematic, questions of what the United States' growth strategy should look like, even if the intent was only to get people to use a mortgage app. In short: We now know how flawed the mid-2000s growth strategy, built on soaring consumer debt, really was. But we haven't found any great ideas for how to replace it.[39]

The Quicken Loans situation was also reported in *Advertising Age*, and the headline in that publication neatly sums up both the controversy and the important link between Super Bowl ads and attracting viewers to the advertiser's Web site:

> How Quicken Loans is Responding to Backlash Over Super Bowl Ad
> Company Says Commercial Drove Thousands of Visits to Its Site[40]

As was the case with pharmaceutical advertising, the financial services category may also raise questions of public policy.

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39 Neil Irwin, "The Super Bowl Ad That Set Off Economic Alarm Bells", *The New York Times*, February 10, 2016, p. B2.

40 Jeanine Poggi, "How Quicken Loans is Responding to Backlash Over Super Bowl Ad", *Advertising Age*, February 8, 2016 [accessed online at http://adage.com.]

The CRTC's simultaneous substitution decision raises three important – and interlocking – questions of public policy:

1. How will the decision affect the ability of the regulated industry to survive the current transition that is being driven by new technology and new business models, while maintaining – and improving – the ability to produce and deliver Canadian content?

2. How do we recognize – and measure – the impact of a regulatory decision that has economic, societal and cross-border consequences that may be greater outside the regulated industry than within the regulated industry itself?

3. How do we resolve the policy conundrum that has been created when a regulatory change by the CRTC (simultaneous substitution) appears to have reduced the effectiveness of an Act of Parliament (Section 19.1 of the *Income Tax Act*)?

With respect to all three questions, we note:

- Simultaneous substitution remains an important part of the economic foundation of the conventional television system.

- In the short to medium term, its importance may actually grow.

- While simultaneous substitution may at some point cease to have the same positive impact, removing it now, in whole or in part, does not make economic sense, particularly in the absence of alternative scenarios and alternative support mechanisms for local conventional television.

A useful public policy precedent

With that in mind, in may be useful to apply a precedent from 1977 to the current situation. As noted above, in 1977, Communications Minister Jeanne Sauvé instructed the CRTC not to proceed with one of its additional policies on non-Canadian commercials, because there were broader issues at stake – including the application of changes to the *Income Tax Act*, and U.S.-Canada relations.

While the current issues are not identical, we believe it is fair to say that broader issues are also at stake today with respect to simultaneous substitution.

Therefore, it would be logical to suspend the Super Bowl policy at this point, to allow further consideration of the "unintended consequences" noted above.