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AN AGREEMENT FOR THE ALTERNATE COVERAGE OF SPORTING EVENTS

INTRODUCTION

It was alleged that there exists an agreement between CVM Television and Jamaica Broadcasting Corporation (JBC) Television, which later became known as Super Supreme Television (SSTV) and has now been renamed Television Jamaica (TVJ), on the live televising of major local sporting events. The allegation makes reference to the coverage of cricket matches in a Test and One-day series between India and the West Indies that were played at Sabina Park, the country's premier cricket oval. The staff of the Commission was informed that the arrangement allowed one station to televise the One-day matches and the other the Test matches. It was also alleged that the agreement provided for the alternate live broadcasting of the World Cup Qualifying football matches that were played at the national stadium.

BACKGROUND TO THE SECTOR

The Jamaica Broadcasting Corporation (JBC) commenced operations in or around 1959 as a government owned and operated television station. It operated for some thirty-four years as the sole television station in the country, offering both local and foreign programmes. In 1993 CVM television, a privately owned and operated television station, came into being as Jamaica's second television station and offered JBC its first real competition. In mid–1997 JBC was sold to the owners of one of Jamaica's premier radio stations, Radio Jamaica Rediffusion (RJR), which has a broadcasting history dating back to 1950. This ushered in a new era in the electronic broadcasting sector in Jamaica, with the merging of two different electronic media, i.e., radio and television. In 1998, a third television station emerged offering mainly religious programming; namely LOVE TV.

The Caribbean television stations have banded together to form the Caribbean Broadcasting Union (CBU), which plays a pivotal role in the acquisition and dissemination of broadcasting rights for major international sporting events, in particular, athletics e.g., Olympics, and cricket.

The broadcasting of sporting events typically attracts above average listenership and viewership. This seems to be true all over the world and Jamaica is no exception. Interest in cricket and athletics have more or less grown at a steady pace over the years, however, the recent fame of the Reggae

Boys sparked huge interest in football and has increased viewership and by extension sponsorship for the broadcasting of live World Cup qualifying matches.

THE IDENTIFICATION OF ANTI-COMPETITIVE OR EXCLUSIONARY PROVISIONS

Section 17 of the Fair Competition Act, 1993 (FCA) requires the Fair Trading Commission (FTC) to determine whether or not an agreement contains provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market.

Section 18 of the FCA also states:

For the purposes of this Act, a provision of an agreement is an exclusionary provision if–

(a) *the agreement is entered into or arrived at between persons of whom any two or more are in competition with each other; and*

(b) *the effect of the provision is to prevent, restrict or limit the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons either generally or in particular circumstances or in particular conditions, by all or any of the parties to the agreement or, if a party is a company, by an interconnected company.*

THE DEFINITION OF MARKETS

From the above, it is clear that in order to determine substantial lessening of competition or the potential for substantial lessening of competition or to determine whether or not the supply of goods or services is being restricted or limited in any way, a relevant market must be defined.

Reference is made to the following Australian case, Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co. Ltd. (1989), wherein the following approach was put forward:

> *"In identifying the relevant market it must be borne in mind that the object is to discover the degree of the defendant's [enterprise's] market power. Defining the market and evaluating the degree of power in that market are part of the same process, and it is for the sake of simplicity of analysis that the two are separated.*

> *Accordingly, if the defendant is vertically integrated, the relevant market for determining degree of market power will be at the product level, which is the source of that power... After identifying the appropriate product level, it is necessary to describe accurately the parameters of the market in which the defendant's product competes: too narrow a description of the market will create the appearance of more market power than in*
>
> *fact exists; too broad a description will create the appearance of less market power than there is... The process of defining the market by substitution involves both including products which compete with the defendant's and excluding those which because of differentiating characteristics do not compete."*

It is also strongly felt that the market should encompass the maximum range of business activities and the widest geographic area within which, given a sufficient economic incentive, buyers can switch from one supply source to another and sellers from one production flow to another. Further, emphasis should be placed on the long-run substitution possibilities rather than the short-term transitory ones.

The market should always be viewed as a multi-dimensional concept – with a product dimension, a space and time dimension, and its functional levels.

Section 2-(3) of the FCA defines a market as:

> *"[A] market in Jamaica for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them."*

The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, in response to a change in relative prices of the products concerned. A market is the smallest area in which all such substitution possibilities are encompassed. It is in this area that a hypothetical monopoly supplier could exert market power.

An adequately defined market will include all products which are regarded by buyers or sellers as being not too different ('product' dimension), and not too far away ('geographical' dimension). A market defined in these terms is one within which a hypothetical profit maximizing sole supplier of a product could impose at least a *small* yet *significant* and *non-transitory increase* in *price* (the "***ssnip"*** test), assuming other terms of sale remain unchanged. It will also include those suppliers currently in production who are likely, in the event of such a *ssnip*, to shift promptly to offer a suitable alternative product, or offer their product to alternative acquirers.

Normally, the production, distribution, and sale of products proceed through a series of vertical functional levels. Therefore, the functional levels that may be affected by the application of the *ssnip* test must be determined as part of the market definition. For example, the market between the manufacturers and wholesalers might be called the "manufacturers market," while that between wholesalers and retailers is usually referred to as the "wholesalers market." Regarding the time dimension, it is the long-run substitution rather than the short-run substitution that is of concern in determining the limits of a

market. If a product may be substituted in the short-run then the definition should include the substitute. However, if for example, it is necessary to construct a new plant with immense capital outlay in order for the threat of effective competition to become a reality, then it is arguable whether the firm posing the threat should be regarded as forming part of the market.

The Relevant Market

Television programming is very important to the viewing public and viewers are important to television stations. However, except for cases of subscriber television, cable or satellite services; where a pay–per–view or a periodic charge is levied on the viewer, the provision of programming is free to the viewing public. Goods or services that are not priced are most times referred to as **externalities**. Airtime is, however, very costly and must be paid for; this is paid for by advertisers, i.e., companies, firms or individuals who place advertisements with the television station. Unlike most externalities, which tend to cause distortions, the above externality is often times incorporated into the pricing of the advertising slot. This is exhibited in the variation in pricing at prime time, where advertising slots are highly priced, and non-prime time where more "moderate" rates are most times available. During prime time the number of viewers is normally much larger than at other times assuming no special programming or coverage. A comparable product is advertising space in a print medium or advertising spot in radio programming. While not perfect substitutes, these are alternate media through which the advertiser may reach his targeted audience.

The closeness of these substitutes will depend on the comparison that is being made; for example, an advertisement done via radio may reach a different audience from that done via the print media. Similarly, an advertisement transmitted via radio may not have the same impact on the targeted audience as that transmitted via television. It can be argued that the radio and television products are closer substitutes, in comparison to print and radio or print and television. The general point is that the two television stations would be in direct competition given that they are offering the same product, but they both are constrained by competition from imperfect substitute products offered by radio and to a lesser extent the print media. The relevant market can therefore be defined as the market for electronic advertisements.

ECONOMIC ANALYSIS

It is the Commission's understanding that prior to the establishment of CVM Television, the rights to broadcast a sporting event would fetch a very low price. This, of course, makes good economic sense, since JBC had no competition, the owners of these rights had no choice but sell at whatever price offered by JBC. With the advent of CVM the price of these rights started to increase and by 1995 they were being sold at premium prices in the market place. These prices would also reflect the public's interest in the particular sporting event; and in that regard would explain, at least partially, the premium placed on the broadcasting rights for World Cup Football qualifying matches. At first, Jamaica Football Federation (JFF), the governing body for Jamaica's national football programme would sell rights to televise live to both television stations. It is our understanding that this arrangement was short–lived, as the media houses – seeking to maximize revenue from these events – influenced the adoption of an exclusive sale arrangement. Assuming that an agreement exists between CVM and SSTV (Currently, TVJ): the aim of this paper is to assess how this would impact on the relevant market and by extension consumer welfare.

It is logical to assume that viewership would be greater during the broadcasting of a live sporting event of major importance to the potential viewing public. Given this expectation, it is also natural to expect that advertising spots would sell at a premium during the broadcasting of these events. If both stations agree to alternate live broadcasting of these major sporting events, the premium price paid for advertising spots is expected to fetch a higher premium. The premium price ought to be higher for the simple reason that such an agreement would lessen competition. In other words, since CVM Television, for example, would be the only station broadcasting the major sporting event live, they can demand: a higher price for advertising spots; more from programme sponsors; and more from purchasers of crawl messages[1].

The extent of this premium is limited only by the ceiling that the advertiser places on his valuation of his preference for television vis-a-vis radio. Therefore, although a premium price would accrue to the sole broadcaster of

[1] These messages run across the screen during the live broadcast and normally display the company's logo and tag line or slogan.

the event, the magnitude of this premium would be constrained by the willingness of the customer to choose an alternate electronic medium, given his utility. If the premium charged by the sole broadcaster of the event is greater than the additional expected benefit the customer would gain from advertising on this station, the rational customer will have to consider his alternatives. These include advertising on another television station, advertising on the radio, or advertising in or through some other medium, for example, billboards at the venue.

Likely Impact on Consumer Welfare

It might be instructive to look at the immediate impact on the advertising public, as well as, the indirect impact on the consumers of the goods and services being advertised. If both television stations agree to alternate the live broadcasting of major sporting events, then as stated earlier, this will "drive-up" the price of advertising spots for the media house that is broadcasting exclusively. Therefore, impacting negatively on consumer welfare. This must be weighed against the likely intensifying of competition in the market for the rights to broadcast sporting events, which is expected as media houses start placing a premium on major sporting events[2].

On the other hand, the final consumers could be asked to pay more for goods and services due to increased advertising costs. However, the relationship between price and advertising is not linear and not necessarily positive. It is strongly believed that this relationship could be negative if market prices are sufficiently discounted by the improved product information.

An externality worth mentioning, is the improved programming choice that the viewing public would benefit from under this arrangement. It is also worth noting that these events are most times sporadic and at best seasonal. We can therefore argue that competition would not be substantially lessened, since the customer who wishes to advertise his product still has alternatives, albeit of less appeal. The advertiser is expected to make a decision based on the net benefit of switching his advertisement from one medium to the next.

[2] As discussed earlier in the paper the Jamaica Football Federation no longer sells these rights to both stations but sells instead to the highest bidder on an exclusive basis.

Empirical Evidence

The following data show how the viewership is divided among the television stations:

Table 1

SHARE OF TELEVISION VIEWERSHIP

YEAR	TVJ	CVM	LOVE
1997	49%	51%	WAS NOT IN EXISTENCE
1998	46%	51%	3%
1999	50.2%	48.4%	1.4%

Source: Market Research Services Limited's Electronic Media Survey, 1999 & 1997

The potential audience for all the electronic media is shown in Table 2 (below):

Table 2

POTENTIAL ELECTRONIC MEDIA AUDIENCE 1995 – 1999

YEAR	RADIO	TV	VCR	SATELLITE	CABLE
1995	1751	1210	294	714	839
1996	1,763	1,194	136	723	899
1997	1,635	1,209	133	729	1,016
1998	1,552	1,388	94	588	1,310
1999	1,627	1,416	92	425	1,467

Source: Market Research Services Limited's Electronic Media Survey, 1999

The staff sought to examine the actual effect, if any, on the pricing of advertising time before and after the agreement. As was explained before, we would expect the price for advertising time to be higher if only one station carried a live broadcast of the event, compared to the price if both stations had live broadcasts.

The first World Cup Qualifying match, in the final elimination round was played at the National Stadium, March 2, 1996 between Jamaica and USA and was broadcast live by both local stations existing at the time, i.e., CVM Television and JBC. CVM Television charged a rate of $20,000 for a 30 seconds spot[3] during the match. Subsequent to this match, both stations agreed to alternate live broadcast of matches played in Jamaica. It is our understanding that the price for the 30-second spot during the Jamaica vs. El Salvador qualifying match, which was played May 18th remained at $20,000 in spite of the arrangement.

Is there any rationale for this seemingly strange result? We hypothesized that the arrangement was in its embryonic stage and therefore the demand might not have been reflective of the new arrangement. We also argued that the motive for the arrangement was driven in part by the viewing public's objection to both local television stations offering the same programming simultaneously, thereby offering no alternate choice to viewers. This might be consistent with the fact that JBC was government-owned and operated, while CVM was the "new kid on the block" and might have been afraid of incurring the wrath of the viewing public. These should be weighed against the fact that the prices provided only covered advertising spots, therefore, possibly ignoring changes in the price of sponsorships and crawl messages.

From Table 2 (above) it is also possible to argue that radio might have been an important constraining factor in 1996, given the reduction in television viewing and increase in listening of radio, albeit marginal, when compared with the previous year.

CONCLUSION & RECOMMENDATION

The staff found no evidence to suggest that competition was significantly lessened in the electronic advertisement market. The staff argued that while some level of price increase is likely during the exclusive broadcasting of major sporting events, these events are most times sporadic and at best seasonal, thereby suggesting that any price increase would not be sustainable. It was also important to point out that the exclusive arrangement would serve to intensify the competition for broadcasting rights associated with major sporting events.

Finally, the point was made that it was difficult to predict how it would affect the final consumer of the goods and services being advertised. It was therefore

[3] *Data obtained from CVM's sales department.*

recommended that the matter not be pursued and instead the industry be allowed time to evolve.

