



August 7, 2018

[CB-CDA 2018-178]

NOTICE OF THE BOARD

File: SODRAC v. CBC – Licences [Redetermination (2008-2012); Determination (2012-2018)]

QUESTIONS FROM THE BOARD

Questions to SODRAC and CBC

Question 1

CBC and SODRAC both made submissions on possible proxies for CBC's efficiency gain.¹ The Board is considering the use of "total factor productivity" (TFP) of the "broadcasting and telecommunications"² industry from 1993 to 2010 as a proxy for CBC's efficiency gain in television broadcast-incidental copies (BICs) as a result of the improvement in technology during this period. The Board would increase the price of the 1992 Agreement by the same percentage increase as the increase in the TFP index between 1993 and 2010. This consideration is based on the following understanding.

The Supreme Court's ruling requires that the Board examine the value (efficiency) gain due to investment in technology. In economics, efficiency is measured by productivity. Economic theory explains that technological improvements increase efficiency through increasing production for a given cost or decreasing cost for a given level of production. A good economic indicator to measure these gains is the increase in TFP. Statistics Canada calculates TFP for many industries, including the broadcasting and telecommunications industry.³

The Board is aware that TFP is an aggregate measure which captures the efficiency gain of the entire industry, including CBC. The Board is also aware that this measure captures the efficiency gain not only due to BICs, but also other inputs. However, assuming that CBC is not too different from the rest of the industry in terms of risk, investment in technology, and efficiency

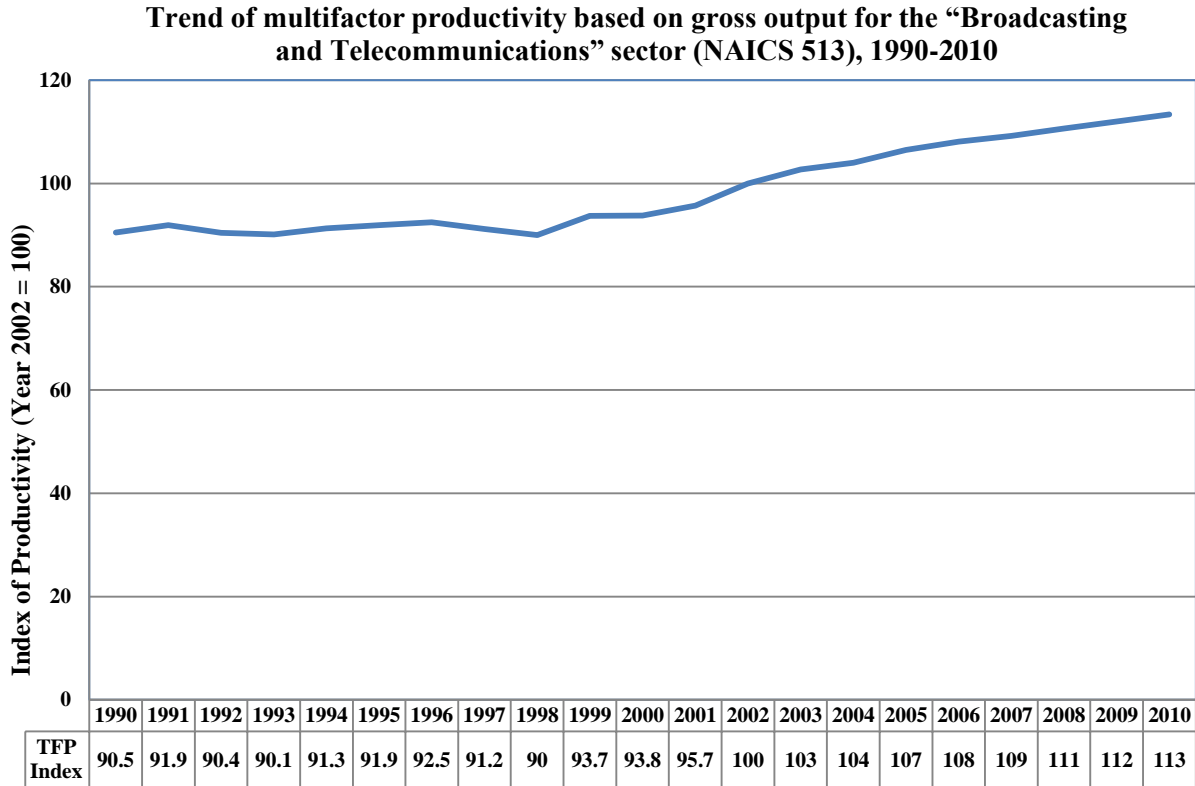
¹ SODRAC-27 at para 137; CBC-2 at para 137.

² North American Industry Classification System (NAICS) 513.

³ The following paper explains how TFP (or MFP) is calculated at Statistics Canada: Baldwin, J.R., and W. Gu, (2013) "Multifactor Productivity Measurement at Statistics Canada", *The Canadian Productivity Review*, 31, Statistics Canada Catalogue no. 15-206-X. Ottawa: Statistics Canada, <https://www150.statcan.gc.ca/n1/en/pub/15-206-x/15-206-x2013031-eng.pdf?st=NEHxTJw8>; Statistics Canada, CANSIM Table 383-0022.

gain, the TFP can be a reasonable proxy for CBC’s efficiency gain due to adoption of the New Copy-Dependent Technology (NCDT).

The following figure presents the path of TFP in the broadcasting and telecommunications industry.



Source: Statistics Canada, CANSIM Table 383-0022
The data for 2008-2010 are extrapolated

Parties shall provide their comments on the Board’s understanding and possible use of TFP for the broadcasting and telecommunications industry to proxy for CBC’s efficiency gain.

Question 2

To set royalties for television, internet television, radio, and internet radio BICs in Determination (2012-2018), and to address the potential shortcomings of the methodologies advanced by the Parties, the Board is considering a proxy for the value of exempted copies as a whole, as opposed to each specific types of copies. Such a proxy can be found by looking at the market agreements which were reached after the introduction of exceptions because it is reasonable to assume that the Parties had these exceptions in mind when they were negotiating to reach an agreement for 2012 and after. One such agreement is the Settlement Agreement in the *Commercial Radio Tariff, Reproduction (CSI, Connect/SOPROC, and Artisti: 2012-2017; 2018)* submitted to the Board on September 15, 2017 (see attached). The Parties shall provide their comments on the possible use of this agreement as a proxy for the value of exempted copies as a whole for television, internet television, radio, and internet radio BICs. In doing so, Parties may address

adjustments accounting for additional exceptions and differences among the various methods of program delivery (radio versus television, conventional broadcasting versus Internet broadcasting, etc.).

Question 3

On March 28, 2018, SODRAC wrote to the Board, explaining that an agreement has been reached between SODRAC and CBC on a few matters related to Determination (2012-2018). The Board is of the view that the agreement could be useful in setting the royalties for television BICs and the royalties for Synch fee category III (commissioned works) for 2018.

The Parties shall file all agreements with the Board which are the object of the March 28 letter. Furthermore, if any of these agreements contain rates defined on a per-unit basis, the Parties shall file any data they have for the number of such units for past years, as well as any estimates of such units for 2018.

Question to CBC

Question 4

If the Board were to use the 1992 Agreement between SODRAC and CBC as a proxy to set royalties for BICs (the Historical Approach, as referred to by the Parties), could the Board compare the historical shares of in-house production and commissioned production to contemporary shares to make adjustments to the 1992 Agreement royalties similar to the adjustment Dr. Reitman conducted?⁴

CBC shall provide the Board with the shares of (i) in-house production (including co-production where CBC retained at least 50% of the ownership), and (ii) commissioned production in CBC's total production for each year of the period of 1991-2018, where the shares are calculated based on broadcast minutes as in Exhibit CBC-2 at para 142. If CBC does not know the exact shares, it shall supply its best estimate and indicate that this is the case. If possible, CBC shall support the figures with existing documents.

Parties shall provide responses to the questions by no later than **Friday, August 31, 2018**.

Parties may provide replies to responses to questions 1 to 3 by no later than **Friday, September 14, 2018**.



Gilles McDougall
Secretary General

⁴ CBC-2 at paras 141-142.