

Oral Presentation of the Public Interest Advocacy Centre, Consumers' Association of Canada, Council of Senior Citizens' Organizations of British Columbia, National Pensioners and Senior Citizens Federation, and Option consommateurs

Broadcasting Notice of Consultation CRTC 2013-106
Application of Astral Media Inc. on behalf of Bell Canada Enterprises
(Application 2013-0244-7)

Delivered May 7, 2013

1. Good morning Mr. Chair, Mr. Vice Chair, Commissioners of the panel and CRTC staff. My name is Janet Lo and I am Legal Counsel with the Public Interest Advocacy Centre (PIAC). On my left is John Lawford, Executive Director and General Counsel at PIAC. Today we appear on behalf of PIAC, the Consumers' Association of Canada (CAC), the Council of Senior Citizens' Organizations of British Columbia (COSCO), the National Pensioners and Senior Citizens Federation (NPSCF), and Option consommateurs (OC). With us is Dr. Dwayne Winseck, Professor at the School of Journalism and Communication at Carleton University and lead researcher in the Canadian Media Concentration Research Project.
2. Bell and Astral claim that their proposal will result in only "very minor incremental changes" to market shares and that the main opposition to their application comes from their broadcasting distribution competitors. But we are here today, speaking on behalf of consumer and public interest groups, **to oppose** this second proposal for Bell to acquire Astral Media – and we note that other public interest groups on the written record of this proceeding such as CIPPIC and OpenMedia.ca also oppose the transaction. We do not believe that this proposed acquisition of Astral by Bell – even with the proposed divestitures and safeguards – is in the public interest and we urge the Commission to deny the application.

3. Bell's version of the public interest envisions a bigger Bell that provides more Bell services and content to consumers on Bell platforms – or on a competitor's platform, but at Bell's price and on Bell's terms. But we believe Canadians and the public interest deserve better and that more is not always better.
4. We believe that the public interest in reviewing a merger proposal, such as the one before us, lies in maintaining – and where possible, enhancing – a healthy diversity of voices and ensuring strong competition between players in the broadcasting system.
5. In defining the public interest, the needs and expectations of Canadians as citizens and consumers must be key considerations. Our groups have appeared before you in previous proceedings emphasizing the need for more affordable access and more flexible choices for television services. In our view, the market is not meeting the consumer expectation for choice, flexibility and affordability – and this application does not promise to better meet these consumer needs either.
6. The public interest test is a high standard – as it should be – and we do not believe that the proposed transaction meets this high bar. When the Commission denied the last proposal by Bell-Astral, the Commission considered the concerns related to competition, ownership concentration in television and radio, vertical integration and the exercise of market power to be “very substantial and fatal to the application.” We believe the same concerns remain with the present application and they are substantial.
7. This transaction reduces the diversity of voices in the private element of the Canadian broadcasting system by eliminating Astral, the largest remaining independent broadcaster. The transaction also further concentrates an already heavily concentrated market by increasing Bell's size and earmarking divestitures for another large vertically integrated player.

8. Moreover, this transaction prevents effective competition from delivering the affordable choice and flexibility that Canadians deserve – the same choice and flexibility that the Commission in 2011 expected vertically integrated entities to make significant strides towards.
9. Even though the incremental viewing and revenue shares of the proposed Bell-Astral arguably fall within the thresholds outlined by the Commission's *Diversity of Voices* policy, Bell's already significant position and the level of concentration in the broadcasting industry raise significant policy concerns that require further scrutiny by the Commission. Dr. Winseck will explain the results of his revenue analysis.

[DR. DWAYNE WINSECK]

10. Assessing media concentration trends is not easy, and can be controversial. To do so, researchers in the International Media Concentration Research Project use revenue as our base because it makes comparisons across media, time and with the rest of the world easier and more reliable.
11. My analysis examines revenue shares in four broadcasting submarkets: radio; conventional television; specialty and pay television; and total television in English- and French-language Canada and all of Canada. I also examine the evolution of revenue shares in these markets over time.
12. The data shows that the impact of the proposed Bell-Astral merger will be most significant in the following five areas:
 - a. the national radio market;
 - b. the English-language radio market;
 - c. the national pay and specialty television market;
 - d. the English-language pay and specialty television market; and

- e. the French-language pay and specialty television market where Bell's market share would rise from 27% to 59.2% following the acquisition of Astral.¹
13. The concentration ratio of the top 4 firms (CR4) and HHI scores are important metrics to assess the cumulative market share of firms in each market and to evaluate media concentration trends. Based on 2012 revenue data, the CR4 and HHI scores in all broadcast product markets show a highly concentrated tight oligopoly. The proposed Bell-Astral transaction will result in a significant increase in the CR4 and HHI scores of pay and specialty television in the English-language, French-language and overall Canadian markets.
 14. Lastly, media concentration researchers also study the concentration of the broader "network media ecology" which accounts for all telecom, media, and internet holdings under common ownership. Seen in this light, Canada already has the highest cross-media ownership consolidation and vertical integration levels of the 28 countries examined by the International Media Concentration Research Project – a ranking that will be solidified if this deal is approved. Bell-Astral's revenue share in the French-language network media ecology would also be 40%, nearly double that of Québecor which is at 20.9%.

[JANET LO]

15. The ownership concentration that Dr. Winseck describes is the exact opposite of the competitive market that Canadians deserve. Concentrated broadcasting markets in the hands of a tight oligopoly of vertically integrated players are not in the public interest, especially as these players do not typically pass on efficiencies to Canadian consumers. Moreover, vertical integration has not produced more vigorous competition – either through pricing or packaging

¹ This is based on newly released data on 2012 revenues for individual pay and specialty television services.

innovations – in the retail distribution market. These large players continue to increase prices in the retail market, and competitive intensity is dampened by the bundling of television services with other communications services.

[JOHN LAWFORD]

16. Bell a fait valoir que « le marché francophone tirera parti d'une concurrence qui se fait attendre depuis trop longtemps ». Cependant, cette « concurrence » a un coût immense, soit l'élimination du plus grand radiodiffuseur indépendant restant – Astral. Nous continuons d'être sceptique face aux promesses selon lesquelles l'intégration verticale apportera plus de concurrence au Québec. Grâce à cette transaction, Bell fera l'acquisition de la part importante qu'Astral détient dans les services de télévision payante et de télévision spécialisée – un marché dans lequel Québecor a peu d'actifs (seulement 19,3% du marché). Après cet achat, Bell contrôlera 59,2% du chiffre d'affaires. Ce niveau de contrôle par Bell ne sera pas bénéfique pour les consommateurs.

17. While we are pleased to see an appropriate contribution to the tangible benefits package for the Canadian Broadcasting Participation Fund, we oppose the funds set aside for the “consumer education” component of the benefits package. In our view, these funds would likely be channeled to create descriptive products rather than to truly address consumer concerns about choice and affordability. Thus, we suggest that the Consumer Education component be rolled into the Broadcasting Participation Fund and earmarked to fund consumer research to define what Canadians need to achieve real empowerment as consumers and citizens in the broadcasting retail market.

[JANET LO]

18. Finally, we are not satisfied that the safeguards proposed by Bell and Astral will be sufficient to address the impact of a larger Bell

in the Canadian broadcasting system. In our view, Bell's proposed conditions of licence will not guard against Bell's incentive and ability to act anti-competitively by requesting commercially unreasonable rates or imposing restrictive conditions that undermine a competitor's ability to offer better prices or innovative packages. We do not believe Bell and Astral have met their burden to propose workable safeguards; therefore their application should be denied.

19. The Commission must properly safeguard and promote healthy, fair and vigorous competition in local retail markets that will benefit consumers. The trend of increasing BDU pricing, which has outpaced CPI, suggests that the current level of competition is insufficient to protect consumers. Moreover, the current level of concentration among a few vertically integrated entities has not translated into significant strides that ensure greater consumer choice and flexibility in television services. Allowing broadcasting markets to become even more concentrated with larger vertically integrated players like Bell is not in the public interest and, thus, the proposed application should be denied.

20. Thank you for the opportunity to present this morning. We would be pleased to answer any questions.