



Broadcasting Decision CRTC 2014-23

PDF version

Route references: 2013-448 and 2013-448-1

Ottawa, 24 January 2014

8324433 Canada Inc., on behalf of 8504598 Canada Inc. and 8384851 Canada Inc.
Ottawa, Ontario

*Applications 2013-0589-7 and 2013-0590-5, received 16 April 2013
Public hearing in the National Capital Region
5 November 2013*

CKQB-FM Ottawa and its transmitter CKQB-FM-1 Pembroke and CJOT-FM Ottawa – Change of effective control

*The Commission **approves**, subject to certain conditions, applications by 8324433 Canada Inc. (8324433 Canada), a Corus Entertainment Inc. (Corus) subsidiary, on behalf of 8504598 Canada Inc., licensee of the English-language commercial radio station CKQB-FM Ottawa, Ontario, and its transmitter CKQB-FM-1 Pembroke, and 8384851 Canada Inc., licensee of the English-language commercial radio station CJOT-FM Ottawa, for authority to effect a change in their ownership to 8324433 Canada so that control of the stations is exercised by Corus.*

The applications follow Broadcasting Decision 2013-310, in which the Commission directed BCE Inc. to divest itself of a number of assets, including several radio stations such as CKQB-FM and CJOT-FM.

The Commission is of the view that the transaction as modified in this decision is in the public interest and advances the objectives of the Broadcasting Act. The Commission considers that the transaction will ensure a diversity of voices in the Ottawa market and that the consolidation will facilitate the creation and promotion of diverse Canadian talent.

The proposed tangible benefits package will have a positive impact on the promotion of Canadian talent by creating more opportunities for Canadian creators and artists. In particular, Corus will contribute \$954,647 over the next seven years to the Canadian broadcasting system.

*As a **condition of approval**, the Commission **directs** Corus to file, **by 24 February 2014**, applications to amend the broadcasting licences of all radio stations operated by Corus, in order to add a condition of licence to limit the potential for anti-competitive conduct.*

The applications

1. 8324433 Canada Inc. (8324433 Canada) filed applications pursuant to section 11(4) of the *Radio Regulations, 1986*, on behalf of 8504598 Canada Inc. (8504598 Canada) and 8384851 Canada Inc. (8384851 Canada), for authority to effect a change in their ownership to 8324433 Canada so that control of their programming undertakings is exercised by Corus Entertainment Inc. (Corus).
2. The applications follow Broadcasting Decision 2013-310, in which the Commission directed BCE Inc. (BCE) to divest itself of a number of assets, including several radio stations such as CKQB-FM Ottawa, Ontario, and its transmitter CKQB-FM-1 Pembroke and CJOT-FM Ottawa.
3. 8504598 Canada is the licensee of the English-language commercial radio station CKQB-FM Ottawa and its transmitter CKQB-FM-1 Pembroke. 8384851 Canada is the licensee of the English-language commercial radio station CJOT-FM Ottawa. Both corporations are directly owned by Bell Media Inc. (Bell Media), a subsidiary of BCE, which is currently under the control of the trustee Pierre Boivin, pursuant to the Voting Trust Agreement approved by the Commission in a letter of approval dated 27 June 2013.
4. 8324433 Canada is a wholly owned subsidiary of Corus, which is ultimately controlled by JR Shaw pursuant to the terms of a voting trust agreement. Corus is a corporation related to Shaw Communications Inc. (Shaw) as it is also ultimately controlled by JR Shaw. Together they form a major vertically integrated communications entity with subsidiaries in radio and television programming, telecommunications and distribution.
5. The transaction would be carried out in two steps. The first step would be affected through the acquisition by 8324433 Canada of all of the issued and outstanding shares of 8504598 Canada and 8384581 Canada. The second step of the transaction would be for 8504598 Canada, 8384581 Canada and 8324433 Canada to amalgamate and form Radio Amalco, which would be directly owned by Corus. Following completion of the transaction, CKQB-FM and CJOT-FM would be operated under the same terms and conditions as those in effect under the current licences and would be controlled by Corus, and ultimately controlled by JR Shaw.
6. Pursuant to the Share Purchase Agreement (the Agreement), the applicant would purchase the shares of 8504598 Canada for \$10 million and the shares of 8384851 Canada for \$3 million.

Interventions

7. The Commission received several interventions in support of the applications. The Commission also received a comment from TELUS Communications Company (TELUS) as well as a joint comment from the Public Interest Advocacy Centre, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of

British Columbia, the National Pensioners and Senior Citizens Federation, and Option consommateurs (PIAC et al.). The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

8. In its intervention, TELUS commented on issues related to vertical integration and the potential for anti-competitive conduct from Corus and Shaw as a group.
9. For its part, PIAC et al. expressed concerns over the growth of media cross-ownership and the possible effect the transaction would have on the diversity of voices in the Canadian radio market. In addition, PIAC et al. submitted that should the Commission approve the applications, it should consider imposing additional commitments relating to the new distribution platforms, promotion of emerging Canadian artists and local programming.

Commission's analysis and decision

10. After examining the complete public record of this proceeding, in light of applicable regulations and policies, the Commission considers that the issues that it must address relate to the following:
 - concentration of ownership and diversity of voices;
 - vertical integration and remedies against anti-competitive behaviour;
 - assessment of the value of the transaction; and
 - assessment of the proposed tangible benefits package.

Concentration of ownership and diversity of voices

11. In Public Notice 1998-41, the Commission set out its common ownership policy, which addresses the issue of diversity of voices for radio stations. This policy states that in markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.
12. In the present case, the transaction would result in Corus owning two English-language FM stations in the Ottawa radio market. The Commission therefore considers that the applications do not raise any common ownership policy concerns. Further, the Commission considers the transaction to be in the public interest as it ensures a diversity of voices given that Corus would be a new radio voice in the Ottawa market.

Vertical integration and remedies against anti-competitive behaviour

13. In 2011, the Commission set out its vertical integration (VI) framework.¹ One of the key objectives of the VI framework is to ensure that Canadians continue to benefit

¹ See Broadcasting Regulatory Policy 2011-601, as amended by Broadcasting Regulatory Policy 2011-601-1.

from a wide choice of programming and are provided with more flexibility in choosing the services to which they can subscribe. The framework is also designed to limit potential abuses of market power and to ensure fair treatment for independent broadcasting distribution undertakings and programming services. In the VI framework, the Commission acknowledged the increased potential for preferential treatment in all sectors of the broadcasting system but expressed the view that vertical integration can also lead to benefits, such as cost savings and increased efficiencies.

14. In Broadcasting Decision 2013-310, the Commission approved BCE's acquisition of Astral Media inc. (Astral) and imposed conditions of approval requiring BCE to adhere to the Code of conduct for commercial arrangements and interactions. One of the conditions of approval directed BCE to file applications to amend the broadcasting licences for all of its radio stations in order to add the following condition of licence:

The licensee shall provide commercially reasonable access to advertising availabilities to unrelated operators of broadcasting undertakings and telecommunications service providers.

15. In the context of the present transaction, the Commission must consider whether imposing this safeguard is equally appropriate for Corus's radio stations.
16. The present applications were considered at the same hearing as applications by Corus for the control of TELETOON/TÉLÉTOON, TELETOON Rétro, TÉLÉTOON Rétro, Cartoon Network, Historia and Séries+.² At the oral phase of the hearing to consider Corus's television undertaking acquisitions, Corus expressed the view that imposing a safeguard on its radio stations such as the one imposed on BCE radio stations seemed unnecessary given its current advertising inventory.
17. The Commission generally considers that factors such as convergence, integration and scale may lead to an entity's becoming so large that it is provided with the opportunity and incentive to give itself or others an undue preference. Given the importance of the Shaw/Corus entity in the Canadian broadcasting landscape, the Commission deems it necessary to establish safeguards to limit the potential for anti-competitive behaviour by Corus. The Commission is of the view that a condition of licence ensuring commercially reasonable access to advertising availabilities to unrelated operators of broadcasting undertakings and telecommunications service providers is an appropriate measure to ensure that the Canadian radio programming system remains competitive. Therefore, the Commission **directs** Corus, as a **condition of approval**, to file applications **by 24 February 2014** to amend the broadcasting licences for all of its radio stations so that they include the condition of licence set out in paragraph 14 above.

² See Broadcasting Decisions 2013-737 and 2013-738.

Assessment of the value of the transaction

18. Pursuant to the Agreement, the purchase price for both stations is \$13 million. The Agreement provides for an adjustment to the purchase price equal to the amount of working capital exclusive of cash at the date of closing. The Commission estimates the non-cash working capital to be \$1.106 million.
19. The Commission notes that Bell Media performs the treasury function for the licensees; there is no bank or cash account specifically attached to each station. While cash would be close to nil at the date of closing, Commission practice is to determine the value of the transaction as of the date of the transaction. As a consequence, the Commission estimated the value of cash for each station as of that date. To this end, it used an allocation method and the value of cash in Astral Media Radio Inc., which is the parent company closest to the licensee just before the control was given to the trustee. The amount of cash allocated for these stations is \$185,844.
20. The applicant will not be assuming any debt. However, it will be assuming leases in the amount of \$1,594,943. In addition, the Agreement provides for the licensing of “The Bear” and “Boom” trademarks for \$24,000 over a period of ten years. In accordance with Commission practice, both amounts are included in the value of the transaction.
21. Consequently, the revised value of the transaction for the purpose of determining the tangible benefits is \$15,910,787, as follows:

Value of the transaction for 8504598 Canada and 8384581 Canada

Purchase price	\$13,000,000
Working capital – excluding cash	\$1,106,000
Cash	\$185,844
<i>Adjusted purchase price</i>	<i>\$14,291,844</i>
Additions:	
Assumed leases	\$1,594,943
Trademark licences	\$ 24,000
Value of the transaction	\$15,910,787

Assessment of the proposed tangible benefits package

22. In Broadcasting Public Notice 2006-158, the Commission set out its tangible benefits policy, which requires parties seeking to acquire ownership or control of profitable

radio stations to propose a tangible benefits package equal to no less than 6% of the value of a transaction.

23. Additionally, in Broadcasting Regulatory Policy 2010-499, the Commission stated that tangible benefits must be distributed as follows:
- 3% to the Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% to FACTOR or MUSICACTION;
 - 1% to a Canadian Content Development (CCD) initiative, at the discretion of the purchaser; and
 - 0.5% to the Community Radio Fund of Canada (CRFC).
24. Consistent with the tangible benefits policy, the applicant proposed a tangible benefits package equal to 6% of the purchase price for the current transaction.
25. In accordance with Broadcasting Regulatory Policy 2010-499, and considering the revised value of the transaction, the Commission **directs** Corus to allocate its benefits contribution, amounting to \$954,647 over seven consecutive broadcast years, as follows:
- \$477,323 to Radio Starmaker Fund;
 - \$238,662 to FACTOR;
 - \$159,108 to MusicFest Canada and the National Arts Centre Orchestra Artist Training Programs; and
 - \$79,554 to the CRFC.
26. The Commission notes that the applicant will not be assuming the unfulfilled tangible benefits remaining from the previous change of ownership of CKQB-FM to Astral. As directed by the Commission in Broadcasting Decision 2013-310, these will be assumed by Bell Media.
27. The Commission considers that the tangible benefits package is in the public interest and that it will have a positive impact on the promotion of Canadian talent by creating more opportunities for Canadian creators and artists.

Other matters

28. The Commission **directs** Corus to file, **by 24 February 2014**, executed copies of the amalgamation documents.
29. The Commission **directs** Corus to file, **by 24 February 2014**, executed copies of all draft documents filed as part of this proceeding.

Conclusion

30. In light of all of the above, the Commission considers that the transaction as modified in this decision is in the public interest and advances the objectives of the *Broadcasting Act*.
31. Consequently, the Commission **approves**, subject to the **condition of approval** set out in paragraph 17, the applications by 8324433 Canada Inc., on behalf of 8504598 Canada Inc. and 8384851 Canada Inc., for authority to effect a change in their ownership to 8324433 Canada Inc. so that control of the English-language commercial radio programming undertakings CKQB-FM Ottawa and its transmitter CKQB-FM-1 Pembroke and CJOT-FM Ottawa is exercised by Corus.

Reminders

32. The Commission reminds the licensee that, in addition to the CCD obligations related to the present transaction, it must fulfill the outstanding CCD obligations related to the issuance of the broadcasting licence to CJOT-FM, as set out in Appendix 2 of Broadcasting Decision 2009-481.
33. The Commission also reminds the licensee that, as set out in Appendix 2 of Broadcasting Decision 2009-481, it must also fulfill the outstanding contribution to la Radio de la communauté francophone d'Ottawa for the support and development of its French-language FM community radio station in Ottawa.

Secretary General

Related documents

- *Historia and Séries+ – Acquisition of assets and change in effective control*, Broadcasting Decision CRTC 2013-738, 20 December 2013
- *TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network – Change of effective control; TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-737, 20 December 2013
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 6 May 2013
- *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

- *Reconsideration of Broadcasting Decision 2008-222 pursuant to Orders in Council P.C. 2008-1769 and P.C. 2008-1770, Broadcasting Decision CRTC 2009-481, 11 August 2009*
- *Commercial Radio Policy 2006, Broadcasting Public Notice CRTC 2006-158, 15 December 2006*
- *Commercial Radio Policy 1998, Public Notice CRTC 1998-41, 30 April 1998*

**This decision is to be appended to each licence.*