



Broadcasting Decision CRTC 2012-443

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Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited
Across Canada

Applications 2012-0081-5 and 2012-0083-1, received 23 January 2012

Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control

*The Commission **approves** the applications by Rogers Communications Inc. (RCI) and BCE Inc., on behalf of Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited (collectively, the licensees) for authority to effect a two-step transaction that will result in a change of effective control of the licensees to 8047286 Canada Inc., a corporation jointly controlled by RCI and BCE Inc.*

The applications

1. The Commission received applications pursuant to section 10(4)(a) of the *Specialty Services Regulations, 1990* (the Regulations) by Rogers Communications Inc. (RCI) and BCE Inc. (the applicants), on behalf of Toronto Maple Leafs Network Ltd. (TMLN), Toronto Raptors Network Ltd. (TRN), Gol TV (Canada) Ltd. (GTC) and 2256247 Ontario Limited¹ (2256247 Ontario) (collectively, the licensees), for authority to effect a two-step transaction that would result in a change of effective control of the licensees to 8047286 Canada Inc. (8047286 Canada), a corporation jointly controlled by RCI and BCE Inc.
2. Section 10(4) of the Regulations requires a licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking. Similar requirements exist under the *Pay Television Regulations, 1990*, the *Radio Regulations, 1986*, the *Television Broadcasting Regulations, 1987* and the

¹ In Broadcasting Decision 2011-498, the Commission approved an application by 2256247 Ontario Limited for a broadcasting licence to operate a new specialty Category B service to be known as Live Music Channel. As set out in the terms section of the appendix to that decision, the Commission will issue a licence for this service once 2256247 Ontario Limited has, among other things, informed the Commission in writing that it is prepared to commence operations and has provided the Commission with a launch date for the service.

Broadcasting Distribution Regulations. Such prior approval is required where companies wish to acquire or increase their holdings in broadcasting licensees, even if those licensees form part of a larger unlicensed commercial undertaking.

3. At the present time, ownership of TMLN and TRN resides with Ontario Teachers' Pension Plan Board (Teachers) and Kilmer Sports Inc. (Kilmer) through a combination of direct interest in TMLN and TRN and indirect interest through Maple Leafs Sports & Entertainment Ltd. (MLSE), which is also owned by Teachers and Kilmer. Kilmer is in turn owned and controlled by Mr. Lawrence Tanenbaum. Through a shareholders' agreement, both TMLN and TRN are controlled by their respective boards of directors. TMLN, in turn, owns and controls 80.1% of the voting interest in GTC and 100% of the voting interest in 2256247 Ontario.
4. TMLN and TRN own directly and indirectly, through their licensed subsidiaries GTC and 2256247 Ontario, the Category 2 specialty programming undertakings NBA TV, Leafs TV and Gol TV (collectively, the licensed assets), as well as the Category 2 specialty programming undertaking Mainstream Sports and the specialty Category B service Live Music Channel. The Commission notes that NBA TV, Leafs TV and Gol TV are currently in operation, whereas Mainstream Sports and Live Music Channel have not yet launched.
5. In regard to the first step of the transaction, pursuant to a securities purchase agreement and to a share purchase agreement, 8047286 Canada would first acquire the 48.9% voting interest held directly by Teachers in TRN and TMLN, and would then acquire the 66.07% voting interest held by Teachers in MLSE.
6. 8047286 Canada is equally owned by 7680147 Canada Inc. (7680147 Canada) and 8018235 Canada Limited (8018235 Canada), each holding 50% of the voting interest.
7. 7680147 Canada is owned by BCE Inc. (74.67% voting interest) and 7549083 Canada Inc. (7549083 Canada) (25.33% voting interest). 8018235 Canada is a wholly-owned subsidiary of RCI.
8. In turn, 7549083 Canada is owned by BCE Master Trust Fund (BCE Fund) and controlled by its trustee, RBC Dexia Investor Services Trust (RBC Dexia).
9. Following the completion of the first step, Teachers would no longer hold any interest in MLSE, TMLN or TRN, and 8047286 Canada would hold all of the interests previously held by Teachers.
10. In regard to the second step, the parties would then undertake a corporate reorganization, which would result in 8047286 Canada holding 75% of the voting interest in TMLN and TRN, and Kilmer holding the remaining 25%. As a result, TMLN, TRN, GTC and 2256247 Ontario would be jointly controlled by BCE Inc. and RCI pursuant to the terms of a shareholders' agreement.

11. According to the valuation report dated 31 December 2011 and prepared by Ernst & Young LLP, the value for 100% of Leafs TV and of NBA TV, and 80.1% of Gol TV, is evaluated at \$51.113 million. No value was assigned for the unlaunched services Mainstream Sports and Live Music Channel.
12. The applicants proposed a tangible benefits package of \$3,833,475, which represents 10% of the value of the 75% voting interest they would hold in TRN and TMLN [i.e., (75% x \$51.113 million) x 10%]. The applicants indicated that these benefits would be directed to the Sports Production Initiative, a newly-created, self-administered fund devoted to the development of Canadian sports-themed programming. The applicants also committed to pay the \$559,689 in benefits outstanding from the transaction regarding the change of effective control of GTC approved by the Commission in a letter decision dated 24 April 2009.
13. In many instances, such applications for approval are subject to a public process which in turn informs the Commission in its decision making. It is Commission policy to scrutinize applications for acquisition of assets or for changes in effective control of licensees in a manner comparable to its examination of applications for new broadcasting licences. The Commission's approach to processing applications for changes in effective control was set out in Public Notice 1993-68 and amended in Broadcasting Information Bulletin 2008-8-1. Consistent with the approach outlined in that information bulletin, the Commission published the relevant applications for public comment in Broadcasting Notice of Consultation 2012-295.
14. The Commission received interventions in support of these applications from the Canadian Soccer Association and Futbolfilms. It also received interventions in opposition from Bragg Communications Inc, operating as Eastlink, and an individual, as well as interventions offering general comments on the applications from the Public Interest Advocacy Center (PIAC), TELUS Communications Company (TELUS), MTS Inc. and Allstream Inc. (collectively, MTS Allstream), and Cogeco Cable Inc. (Cogeco). The public record for these applications, including the applicants' replies, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings." In its analysis, the Commission has considered all interventions received in this proceeding.

Issues

15. When deciding whether to approve a proposed ownership transaction, the Commission must be persuaded that the applicants have established that an approval is in the public interest. The Commission must also be assured that approval will not impede the ability or willingness of the licensee to meet its obligations under the *Broadcasting Act* (the Act), the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction), and any relevant regulatory policies and regulations. Further, in Broadcasting Public Notice 2007-53, the Commission reiterated its view that, in the absence of a competitive process for ownership transactions, the contribution of benefits in the amount of 10% of the value of an ownership

transaction remains an appropriate mechanism for ensuring that the public interest is served.

16. After examining the applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- whether the entity satisfies the criteria, set out in the Direction, to be considered “Canadian”;
- whether the calculation of the value of the transaction is appropriate and consistent with Commission practice;
- whether the tangible benefits package is reasonable and acceptable;
- the payment of outstanding tangible benefits flowing from the acquisition of Gol TV;
- whether the Commission needs to put into place safeguard measures to counter possible anti-competitive behaviour resulting from the level of concentration in the broadcast of sports programming resulting from the present transaction; and
- the submission by the applicants of constituting documents and agreements, and of other information.

Satisfying criteria to be considered “Canadian”

17. The Commission has the authority under the Act to regulate the broadcasting system in Canada to achieve the policy objectives set out in subsection 3(1) of the Act. Section 3(1)(a) of the Act states that that the Canadian broadcasting system shall be effectively owned and controlled by Canadians.

18. Furthermore, the Direction states that no broadcasting licence may be issued, and no amendment or renewals thereof may be granted, to an applicant that is a “non-Canadian” (i.e., a person or entity that is not “Canadian”). A “Canadian” includes a “qualified corporation,” which the Direction defines as follows:

“qualified corporation” means a corporation incorporated or continued under the laws of Canada or a province, where

(a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians;

(b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the

issued and outstanding voting shares of the corporation and not less than 80 per cent of the votes; and

(c) in the case of a corporation that is a subsidiary corporation,

(i) the parent corporation is incorporated or continued under the laws of Canada or a province,

(ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66 2/3 per cent of all of the issued and outstanding voting shares of the parent corporation and not less than 66 2/3 per cent of the votes, and

(iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where:

(A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 per cent of the issued and outstanding voting shares of the parent corporation and less than 80 per cent of the votes,

(B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or

(C) less than 80 per cent of the directors of the parent corporation are Canadian.

19. As stated above, 8047286 Canada, the entity that will acquire the effective control of the licensees, will be equally owned by 8018235 Canada (a wholly-owned subsidiary of RCI) and 7680147 Canada (owned by BCE Inc. with a 74.67% voting interest). The applicants were unable to confirm and establish “Canadian” status for the other shareholder of 7680147 Canada, 7549083 Canada (25.33% voting interest), a corporation owned by BCE Fund and controlled by its trustee, RBC Dexia. They have therefore requested that BCE Fund, RBC Dexia and 7549083 Canada be treated as if they were non-Canadian entities. The Commission notes that this request was made without prejudice to the right of the applicants to assert and establish “Canadian” status for those entities in other proceedings.

20. The Commission further notes that in treating those entities as non-Canadian, more than 66.67% but less than 80% of the voting shares and voting interest in 7680147 Canada is controlled by Canadians (BCE Inc. holding 74.67% of the voting interest).

This situation triggers the requirement set out in the Direction that the corporation and its directors do not exercise influence over the programming decisions of the licensees. In order to comply with the terms of the Direction, the applicants committed to amend the licensees' by-laws to establish an Independent Programming Committee (IPC), which would have the effect of excluding directors, officers and employees of BCE Inc., BCE Fund, RBC Dexia, 7549083 Canada, 7680147 Canada and 8047286 Canada from participating in the programming decisions of the licensees.

Applicants' requests regarding the Independent Programming Committee

21. In Broadcasting Decision 2007-429, the Commission approved, subject to certain conditions, an application for authority to transfer effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc. (Canwest). As noted in that decision, Canwest, in response to certain Commission concerns, proposed to establish an IPC and set out, in a revised Unanimous Shareholders' Agreement, the following definition for "programming decisions":

"programming decisions" means all decisions of any kind relating to or affecting television programming broadcast by the Corporation and its Subsidiaries and includes all decisions relating to the content and presentation of the programming of the Corporation and its Subsidiaries, including all decisions relating to the funding of programming and the allocation of programming funds within the budget approved by the board.

22. In their applications, the applicants proposed the following amended definition of "programming decision," which differs slightly from that proposed by Canwest in that it concentrates on types of decisions that are made at an executive level and that relate to which matches to broadcast, which programs to purchase or produce, and how to allocate the programming budget:

"programming decisions" means all decisions relating to the selection and acquisition of programs to be broadcast or otherwise distributed or exhibited by the Corporation and its subsidiaries, including decisions regarding which programs to produce in-house, and all decisions relating to the funding of programming and the allocation of programming funds within the budget approved by the board.

23. The applicants argued that the production of the content of live sports events is often done by employees of the licensees "on the fly" during the event and, therefore, that none of these programming decisions can be referred to a programming committee. They also argued that decisions relating to the production of programming should not generally rest with the programming committee as they often do not rest with the licensees themselves at all.
24. Further, the applicants contested the Commission's requirement that the by-laws dealing with IPC's cannot be revised or amended without the prior approval of the

Commission as long as one or more of the conditions set out in section (c)(iii) of the Direction (under “qualified corporation”) is occurring. They noted that this requirement was not required of Bell or Bell Media in prior circumstances, and indicated a preference for any mandated pre-approval to be made part of the Commission’s decision instead.

Commission analysis and decisions

25. The Commission notes that the definition of “programming decision” imposed on Canwest has been used for other licensees that broadcast live content. Further, the Commission has never interpreted this definition to include live editing of sporting or other events.
26. The Commission also notes that the inclusion of a prior approval mechanism in a licensee’s by-laws has been required in previous instances as a way to ensure compliance with the Direction at all times.
27. The Commission considers that the applicants’ revised definition of “programming decision” is overly restrictive, and that the definition of “programming decision” for the present transaction should reflect that imposed on Canwest in Broadcasting Decision 2007-429. It also considers that the requirement for prior Commission approval of any revision or amendment of the by-laws is a proper mechanism to ensure compliance at all times. Accordingly, the Commission requires that this requirement be added to the by-laws of the licensees.

Value of the transaction

Value of the entire transaction

28. As set out in Broadcasting Public Notice 2008-57, the Commission determines the value of the transaction for the purpose of calculating the tangible benefits by using the value of the transaction as a whole. As a next step, such a value is allocated between licensed and unlicensed assets. As such, all elements derived from the transaction are taken into consideration, including the assumed debt and leases, and the value of any acquisition premium.
29. According to the applicants, the purchase price for the entire transaction is \$1.32 billion. The applicants assigned a value of \$795.30 to the purchase of the shares of each of TMLN and TRN, for a total amount of \$1,590.60, which they considered to be a nominal value.
30. On the basis that only a nominal value has been ascribed to the shares, the applicants retained Ernst & Young LLP to perform a separate valuation for the licensed assets. The resulting value was calculated as \$51.113 million, broken down as follows: Leafs TV, \$19.371 million; NBA TV, \$20.879 million; and Gol TV, \$10.863 million (80.1% voting interest). Considering that the transaction involves the purchase of a 75% voting interest in the three services, the value of the transaction proposed by the applicants amounts to \$38,334,750. The Commission notes that no value has been

assigned by the applicants to Mainstream Sports or Live Music Channel since these services have not launched and since, as stated by the applicants, are not currently in a position to launch.

31. Because of the method chosen by the applicants, the Commission is not in a position to reconcile the value assigned to the licensed assets with the entire transaction, which makes it difficult to ascertain if all the usual elements (for example, assumed debt, leases and possible acquisition premium) were appropriately included in the \$51.113 million.

32. In order to reflect the general practice set out in Broadcasting Public Notice 2008-57, the Commission has based its calculations on the provisions of the purchase and sale agreement, including the negotiated purchase price for the entire transaction, as well as those of any other ancillary agreements involving the purchasers or the vendors, and any party related to them. As a result, the Commission has made adjustments for the following elements:

- Assumed debt: The Commission has included the value of assumed debt disclosed in the notes to MLSE's financial statements.
- Assumed leases: The Commission has included the value of assumed leases disclosed in the notes to MLSE's financial statements. However, the financial statements clearly identify certain leases that are unrelated to the licensed assets (in the amount of \$62 million, representing close to half of all leases). Accordingly, the Commission has not included this amount in the value of the transaction.
- The Commission has included the value of the 5% voting interest granted to Kilmer, a holding company of Mr. Tanenbaum.

33. In calculating the appropriate adjustments to be taken into consideration in its determination of the value of the transaction, the Commission's general practice is to reflect their value as of the date of the transaction (in this case, 9 December 2011, the date of the Share Purchase Agreement). When the information required is not available as of that date, the Commission instead relies upon values available as of a date as close as possible to the date of the transaction. In the context of the present transaction, the Commission has relied on MLSE's financial statements dated 30 June 2011, which are the latest statements filed by the applicants. As a result, adjustments have been made for the assumed leases and debt using values available from these statements.

34. As part of the negotiations and agreements surrounding the transaction, there is a 5% voting interest that is to be transferred to Kilmer, which would increase its current 20% voting interest in TRN and TMLN to 25%. It has been the Commission's general practice to consider multiple transactions and/or steps inherent to a specific transaction as being one transaction. For example, in Broadcasting Decision 2006-309, the Commission expressly reserved its right to review not just the final step of

such transactions, but the entire sequence of events, including all previous steps, in order to determine the appropriateness of any proposed tangible benefits package. In the context of the present transaction, the Commission has determined that the 5% voting interest issued to Kilmer was a necessary step for the conclusion of the transaction and is therefore an element to be considered as part of the transaction for the purpose of determining the value of the transaction.

35. Taking into consideration the adjustments noted above, the Commission has determined that the value of the entire transaction is \$1,759,214,009, as set out in the table below.

Elements of the calculation: value of entire transaction		Amount
Purchase price – entire transaction (representing 75% of total equity)		\$1,320,000,000
Additions	Assumed debt	\$372,593,510
	Assumed leases	\$66,424,000
	Total for 100% of MLSE	\$439,017,510
	Total adjusted at 75%	\$329,263,133
Sub-total		\$1,649,263,133
Addition	5% granted to Kilmer ($\$1,649,263,133 / 75\% \times 5\%$)	\$109,950,876
Value of the entire transaction		\$1,759,214,009

Value ascribed to the licensed assets

36. The next step was to allocate the value of the entire transaction (\$1,759,214,009) amongst the licensed and unlicensed assets. In order to determine the appropriate percentage to be applied to the value of the transaction, the Commission relied on the applicants' valuation report.
37. Based on a review of the valuation report, the Commission notes that the value of the licensed assets was identified as being distinct from the value of the legal entities in which they are held. For this reason, some assets and liabilities have been excluded from the valuation report in the calculation of the licensed assets. The applicants also explained that these assets were valued as stand-alone operations; as a result, their value would be equal to an amount a purchaser would pay for them on their own. Consequently, the Commission concludes that the valuation report does not reflect the value of the assets to the current purchasers. This is further demonstrated by the fact that the valuation report does not provide any additional synergies/revenues that would normally accrue to the licensed assets and to the purchasers as the result of the transaction. The Commission is of the view that these underlying assumptions would significantly reduce the value assigned to the licensed assets.

38. The Commission has calculated the value of the transaction attributable to the licensed assets based on the following:
- adjusting the weighted average cost of capital (WACC);
 - determining the equity value of the licensed assets; and
 - determining the percentage resulting from taking the equity value of the licensed assets over the amount paid to acquire 75% of MLSE's equity.
39. While the Commission reviewed the valuation report in its entirety, it relied on the discounted cash flow (DCF) method for its adjustments, as this method provides for a more detailed identification of assumptions and impact. The Commission notes that in Broadcasting Public Notice 2008-57, it stated its preference for this method as it applies to most circumstances and is one that generally better assesses the value of assets.

Adjustments to the weighted average cost of capital

40. Adjustments to the WACC are based on assumptions relating to capital structure, maturity of the services, and market risk.
41. Capital structure provides the percentage of financing through debt and equity: the higher the equity, the lower the value. Different industries generally target or carry a capital structure most suited to their operations. In the valuation report, there are assumptions as to the capital structure of the licensed assets as if they were in an early state of their development and financed on their own. As a result, the applicants used two different capital structures: 20% debt/80% equity, and 0% debt/100% equity.
42. The Commission notes that the structure that has generally been used in the valuation reports filed with it over the years is 25% debt/75% equity. Further, the licensed assets of the present transaction will not be managed as stand-alone undertakings, but as part of a conglomerate, which facilitates access to debt-financing and to better financing conditions. For this reason, in regard to the present transaction, the Commission has determined that 25% debt/75% equity is appropriate.
43. The maturity of a service is determined by the stage at which it finds itself during its life cycle, for example, the moment the service launches, the point at which it reaches full development, or the moment it enters its decline. In regard to the present case, the applicants considered that the licenses assets are in early-stage development, a stage that translates into higher risk and lower value. Flattening growth rates for NBA TV and Leafs TV indicate that they are expected to reach maturity during the projection period. In regard to Gol TV, the Commission notes that based on the financial information available, it is the only unprofitable service of the three; its losses are attributable in part to clauses in its distribution agreements that will be expiring in the future. In addition, valuation for such long-term investments would normally be based on long-term projections, which would take into account operations at maturity.

Furthermore, it is expected that the undertakings would benefit from being part of two entities with strong sports ventures. As such, the Commission determines that the value of the licensed assets would marginally be impacted by the risks associated with an early-stage development.

44. The market risk premium represents the additional risk of investing in the stock market as opposed to risk-free forms of investments: the higher the premium, the lower the value. This premium reflects data covering decades. Even in the years of the recent economic turbulence, the Commission received reports with market risk premiums lower than the 6% used by the applicants for the present transaction. The Canadian historical risk premium amounts to 5% and reflects past economic cycles, including strong growth and severe downturns. The Commission is of the view that the 5% historical market risk premium represents a more stable figure reflecting the market risk associated with a long-term investment.
45. To support its WACC, the applicants referred to similar WACC for comparable services in previous transactions. The Commission notes, however, that the risk-free rates at the time of those transactions were 0.5% to 1.7% higher than they are now, and that the size premium used was 1% higher than that used in the current valuation. The Commission is of the view that these significant differences should be taken into account in determining comparable WACC.
46. The Commission has therefore adjusted the WACC to 8.3%, as set out in the table below (the notes provide the rationale for the adjustments to item lines).

Factors used to calculate the weighted average cost of capital		Applicants' low	Applicants' high	Commission adjusted
Cost of equity	Risk free rate	2.5%	2.5%	2.5%
	Beta ^a	1.2	1.0	0.9
	Equity risk premium ^b	6.0%	6.0%	5.0%
	Cost of equity - industry	9.7%	8.5%	7.0%
	Specific risk			
	Size premium	1.8%	1.8%	1.8%
	Specific ^c	1.2%	1.7%	0.8%
	Cost of equity – services	12.7%	12.0%	9.6%
	Equity % ^d	80.0%	100.0%	75.0%
Cost of debt	Pre-tax debt rate	6.0%	6.0%	6.0%

	Tax rate	25.0%	25.0%	25.0%
	After-tax cost of debt	4.5%	4.5%	4.5%
	Debt % ^d	20.0%	0.0%	25.0%
	Weighted average cost of capital	11.0%	12.0%	8.3%

a. Beta – Adjusted to extract impact of early-stage development

b. Equity risk premium – Historical long-term rate

c. Specific risk premium – Adjusted to extract the impact of early-stage development and to take into account that the services will be part of dominant sports conglomerates

d. Capital structure

47. The WACC is used in the DCF calculations to arrive at the enterprise value. The applicants used a WACC of 12% for Leafs TV and Gol TV, and 11% for NBA TV. The Commission also used a WACC of 1% less for NBA TV, but based on the revised WACC of 8.3% for Leafs TV and Gol TV. As such, the adjusted WACC for NBA TV is 7.3%.

Equity value of the licensed assets

48. In general, the Commission allocates the value of the transaction based on the values provided in the valuation report, which usually reflect the enterprise values and encompass the entire transaction. In the present case, taking into consideration the information available, the Commission adopted an alternate approach. In light of the applicants’ treatment of debt, the Commission considered it more appropriate to allocate the value based on equity value rather than on enterprise value. It used the applicants’ calculation to determine the equity value of the licensed assets, which amounts to \$42,247,500, representing the 75% purchased voting interest. This is set out in the table below.

Approach for allocating the value of the transaction		Total	75% purchased
Applicants’ approach	Enterprise value (valuation report)	\$51,113,000	\$38,334,750
	Equity value	\$51,368,000	\$38,526,000
Adjusted by the Commission	Enterprise value	\$58,524,000	\$43,893,000
	Equity value	\$56,330,000	\$42,247,500

Percentage of equity value of the licensed assets

49. The Commission has therefore calculated the value of the licensed assets to be 4.3% of the value of the purchased shares, as set out below:

Licensed assets – Purchased equity value	42,247,500
Price paid for the shares (equity)	991,461,338 ²
Percentage for licensed assets (42,247,500 / 991,461,338)	4.3%

Value ascribed to licensed assets

50. In consideration of the above-listed calculations, which take into account the Commission's general practice as well as assumptions used in the applicants' valuation report, the Commission considers it appropriate to apply the 4.3% to the value of the entire transaction to derive the value of the transaction for the licensed assets. As the value of the entire transaction amounts to \$1,759,214,009, as noted above, the resulting value of the transaction for the licensed assets amounts to \$75,646,202 (\$1,759,214,009 x 4.3%).

Tangible benefits package

51. In Public Notice 1999-97, the Commission set out its expectation that applicants make commitments to clear and unequivocal tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission. In the absence of a competitive process for ownership transactions, the Commission considers that this tangible benefits mechanism continues to be appropriate for ensuring that the public interest is served.

52. As noted above, the applicants proposed a tangible benefits package of \$3,833,475. However, since the value of the transaction for the licensed assets amounts to \$75,646,202, the Commission has calculated the value of the tangible benefits package to be \$7,564,620. As mentioned previously, the applicants indicated that the entire amount of these benefits would be directed to the Sports Production Initiative, a self-administered fund devoted to the development of Canadian sports-themed programming.

Intervention by the Public Interest Advocacy Center

53. PIAC questioned whether BCE Inc. and RCI should be responsible for the administration of the Sports Production Initiative. It argued that if this becomes the case, these tangible benefits may flow to the beneficiaries of the transactions rather than to the broadcasting system as a whole. PIAC further submitted that all tangible benefits packages, including this one, should include a contribution to the Canadian

² As defined in section 2.2 at page 11 of the Securities Purchase Agreement, the purchase price in the amount of \$1.32 billion includes \$328,538,662 for the subordinated unsecured shareholder long-term debt. Consequently, by difference, the amount paid solely for the shares amounts to \$991,461,338.

Broadcasting Participation Fund (CBPF). In this regard, it submitted that a contribution equal to 1% of the tangible benefits package (i.e., \$75,646) to the CBPF would be appropriate.

Commission analysis and decisions

54. As set out in Public Notice 1999-97 and Broadcasting Public Notice 2007-53, applicants are generally expected by the Commission to direct tangible benefits to the communities served and to the broadcasting system as a whole. Further, in order to be accepted as a benefit, the proposed expenditure must be incremental to expenditures that would generally be considered ongoing normal responsibilities of the existing licensee.
55. The Commission, in applying its benefits test, has been consistent and rigorous in requiring that (1) expenditures proposed as tangible benefits be truly incremental; (2) such expenditures be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction; and (3) applicants demonstrate that expenditures proposed as tangible benefits flow predominantly to third parties, such as independent producers.
56. The applicants indicated that the Sports Production Initiative would be devoted to the development of Canadian sports-themed programming, such as documentaries, for broadcast by the licensees and the applicants' related programming services. The benefits would be pooled into a single fund to create a critical mass for this initiative and provide a "one-stop shopping" opportunity for the production of high-quality sports-themed programming. Proposals would be welcomed from producers across Canada, to ensure regional reflection.
57. The applicants further indicated that this initiative would be administered by BCE Inc. and RCI staff at their sole expense. All of the programming created in this initiative would be incremental to programming that the licensees and applicants' programming services would ordinarily produce or acquire through Canadian programming expenditures. The entire benefits package would flow to third-party independent Canadian producers.
58. Due to the relatively small size of the proposed initiative and the applicants' desire to spend it on high-quality programming initiatives, they requested that they not be required to spend the amount evenly over the normal period of seven consecutive years. Specifically, they requested the flexibility to spend any of the expected yearly spending commitments the year prior or following that commitment, at their discretion, in order to ensure that there are sufficient funds available to achieve the desired results. This would mean, for instance, that in year one, they would be permitted to spend their full year one and year two commitments, if they chose to do so.
59. In regard to tangible benefits, the applicants agreed to use the regulated programming expenditures of the licensees and affiliated programming undertakings as reported in

their most recent annual returns as a baseline from which to measure the incrementality of spending related to the tangible benefits initiative. This baseline incrementality for the 2008-2009 to 2010-2011 broadcast years is set out in the table below for Leafs TV, NBA TV and Gol TV.

Service	2008-2009	2009-2010	2010-2011*	Average
Leafs TV	\$3,788,746	\$3,711,579	\$3,527,556	\$3,675,960
NBA TV	\$718,619	\$125,855	\$438,158	\$427,544
Gol TV	\$841,553	\$829,194	\$2,176,752	\$1,282,500

*The figures for the 2010-2011 broadcast year do not include, in the Canadian Programming Expenditure calculation, Canada Media Fund licence-fee top ups, as per the Commission's determination in Broadcasting Regulatory Policy 2010-167.

60. In addition, the applicants committed to file annual reports with the Commission by 30 November each year, detailing the fund's progress in fulfilling its tangible benefits, including regional reflection. Accordingly, the Commission directs the applicants to adhere to that commitment.
61. In regard to the concerns expressed by PIAC that permitting the applicants to self-administer the fund might result in the tangible benefits flowing solely to the "beneficiaries of the transactions," the Commission notes that the proposed tangible benefits are consistent with the Commission's policy in this regard and with recent decisions³ in relation to transactions. Further, the Commission's general approach is to require that tangible benefits monies flow predominantly to independent producers, whereas, in this case, the applicants have proposed that the full 100% be directed to such producers. Finally, the Commission notes that the sole producer that submitted comments in this proceeding supported the applicants' proposal, including the tangible benefits package.
62. As noted above, PIAC submitted that all tangible benefits packages, including that for the present transaction, should include a contribution that is equal to 1% of the tangible benefits package and that would be directed to the CBPF. The Commission notes that the tangible benefits proposed by the applicants are consistent with current policy given that the Commission has accepted the establishment of self-administered funds in previous decisions of this nature; all the money will flow to third parties, specifically, independent producers; and the applicants will be required to file annual reports. The Commission further notes that PIAC's submission relates to a broader discussion that would need to be dealt with through a policy review. Consequently, the Commission does not consider it appropriate to impose such a requirement in regard to the present transaction.

³ See Broadcasting Decisions 2007-165, 2007-429, 2008-69, 2008-72, 2010-193 and 2010-710 for examples where the Commission has approved tangible benefits packages that have been directed to self-administered funds.

63. In light of the above, the Commission considers the proposed tangible benefits package to be reasonable and acceptable, subject to the adjustment set out in paragraph 53 above. Given that no tangible benefits were proposed for the two unlaunched services (i.e., Mainstream Sports and Live Music Channel) the Commission considers that programming expenditures for those services should not be counted towards the benefits expenditures approved above.

Payment of outstanding tangible benefits flowing from the acquisition of Gol TV

64. As set out in Public Notice 1999-97, in addition to requiring applicants to provide tangible benefits representing 10% of the value of a transaction, the Commission expects applicants to assume any outstanding benefits from prior transactions.

65. In Broadcasting Information Bulletin 2009-323, the Commission approved, pursuant to its streamlined procedure, the change in effective control of GTC from Insight Sports Ltd. to TMLN. In this regard, the Commission notes that there are outstanding benefits flowing from that transaction to the amount of \$559,689, which are payable over seven broadcast years ending 31 August 2017. The Commission further notes that, as noted above, the applicants have undertaken to honour the existing commitments.

Concentration of sports programming

Positions of parties

66. Cogeco, Eastlink, PIAC, MTS Allstream, TELUS and the individual each expressed concerns relating to concentration of ownership in sports programming and the potential for anti-competitive behaviour by the applicants.

Commission analysis and decision

67. In the Commission's view, the programming services in question (i.e., Leafs TV, NBA TV, Gol TV and the two unlaunched services) will have no material impact on the market or negotiating power of the applicants. The Commission notes that these services operate within a limited genre and that broadcasting distribution undertakings are not required to distribute them. Moreover, the two largest of these services, Leafs TV and NBA TV, are limited by condition of licence to providing only a small amount of live sports programming, which prevents them from competing directly with the Category C sports services.

68. The Commission notes that it has recently adopted a detailed *Code of conduct for commercial arrangements and interactions* as part of its policy framework for vertically-integrated companies set out in Broadcasting Regulatory Policy 2011-601, as amended by Broadcasting Regulatory Policy 2011-601-1. In the Commission's view, this code, in conjunction with the Commission's dispute resolution and other processes, provide a mechanism to address allegations of potential abuse of market power in the context of a commercial negotiation, which is the focus of the concerns expressed by interveners.

69. The Commission further considers that the chief concern of interveners is not the licensed assets that are part of this transaction, but rather the unlicensed sports assets (the Maple Leafs NHL team, the Raptors NBA team, etc.), the ancillary broadcast rights related to those assets, and the increased market/negotiating power that these rights may grant to the incumbent sports services already operated by the applicants – namely, TSN/RDS in the case of BCE Inc. and Sportsnet in the case of RCI. Neither these services nor the assets of MLSE are before the Commission as part of this transaction.
70. Accordingly, the Commission does not consider it necessary to impose additional safeguards to prevent anti-competitive behaviour as part of its determinations on the present transaction.

Submission by the applicants of constituting documents and agreements, and of other information

71. The Commission, for the purposes of updating its records, requires executed copies of the constituting documents and agreements, as well as updated information related to the composition and nomination of the board of directors of various corporations, as listed in the appendix to this decision. The Commission directs the applicants to file with the Commission, within 30 days of the date of this decision, the documents and information specified in the appendix to this decision.

Conclusion

72. The Commission has reviewed the applicants' proposal, as well as the public comments received in response to Broadcasting Notice of Consultation 2012-295. In this instance, the Commission has been persuaded that approval of the proposed transaction would be in the public interest, subject to the adjustments outlined throughout the present decision. Accordingly, the Commission **approves** the applications by Rogers Communications Inc. and BCE Inc., on behalf of Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited for authority to effect a two-step transaction that will result in a change of effective control of the licensees to 8047286 Canada Inc., a corporation jointly controlled by RCI and BCE Inc.

Secretary General

Related documents

- *Notice of applications* received, Broadcasting Notice of Consultation CRTC 2012-295, 17 May 2012
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as amended by *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011

- *Live Music Channel – Specialty Category B service*, Broadcasting Decision CRTC 2011-498, 16 August 2011
- *A guide to the CRTC application process for changes in effective control and certain transfers of shares of broadcasting undertakings as well as for the acquisition of assets of broadcasting undertakings*, Broadcasting Information Bulletin CRTC 2008-8-1, 23 December 2010
- *Allocation of tangible benefits associated with the change in ownership of The Biography Channel*, Broadcasting Decision CRTC 2010-710, 24 September 2010
- *Vision TV – Acquisition of assets; CHNU-TV Fraser Valley and CIIT-TV Winnipeg – Change in effective control; ONE: The Body, Mind and Spirit Channel – Change in effective control; Classical Digital, CFZM, CFMZ-FM, CFMZ-DR-1 Toronto, and CFMX-FM Cobourg – Corporate reorganization*, Broadcasting Decision CRTC 2010-193, 30 March 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2009-323, 2 June 2009
- *Acquisition of assets – CHNM-TV and CHNM-DT Vancouver and their transmitters in Victoria*, Broadcasting Decision CRTC 2008-72, 31 March 2008
- *Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVglobemedia Inc.*, Broadcasting Decision CRTC 2008-69, 27 March 2008
- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings – Information bulletin*, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc.*, Broadcasting Decision CRTC 2007-429, 20 December 2007
- *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Change in effective control*, Broadcasting Decision CRTC 2006-309, 21 July 2006

- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Application of the Benefits Test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993

Appendix to Broadcasting Decision CRTC 2012-443

Documents and information to be filed by the applicants

Rogers Communications Inc. and BCE Inc., on behalf of Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited, shall, within 30 days of the date of this decision:

- submit to the Commission an executed copy of the following Shareholders' Agreements:
 - o among 8047286 Canada Inc., Kilmer Sports Inc., Maple Leafs Sports & Entertainment Ltd. and Toronto Maple Leafs Network Ltd.;
 - o among 8047286 Canada Inc., Kilmer Sports Inc., Maple Leafs Sports & Entertainment Ltd. and Toronto Raptors Network Ltd.; and
 - o among BCE Inc., 7549083 Canada Inc. and 7680147 Canada Inc.
- submit to the Commission an executed copy of all constituting documents (for example, articles of amendment changing the capital structure) of the following corporations:
 - o Toronto Maple Leafs Network Ltd.; and
 - o Toronto Raptors Network Ltd.
- submit to the Commission the updated board of directors, which includes the identification of the Chief Executive Officer (CEO) or the person performing functions that are similar to the functions performed by the CEO, as well as information regarding who nominates each director, for the following corporations:
 - o 2256247 Ontario Limited;
 - o Gol TV (Canada) Ltd.;
 - o Toronto Maple Leafs Network Ltd.
 - o Toronto Raptors Network Ltd.
 - o 8047286 Canada Inc.; and
 - o 7680147 Canada Inc.
- submit to the Commission the amended by-laws for 2256247 Ontario Limited, Gol TV (Canada) Ltd., Toronto Maple Leafs Network Ltd., and Toronto Raptors

Network Ltd., which contains the revised wording for the definition of “programming decision” that reflects the definition imposed on CanWest MediaWorks Inc. in *Transfer of effective control of Alliance Atlantis Broadcasting Inc.’s broadcasting companies to CanWest MediaWorks Inc.*, Broadcasting Decision CRTC 2007-429, 20 December 2009, and reads as follows:

“programming decisions” means all decisions of any kind relating to or affecting television programming broadcast by the Corporation and its Subsidiaries and includes all decisions relating to the content and presentation of the programming of the Corporation and its Subsidiaries, including all decisions relating to the funding of programming and the allocation of programming funds within the budget approved by the board.

Further, the amended by-laws must include the following provision:

The sections of the by-laws related to the Programming Committee cannot be revoked or amended without the prior approval of the Commission for so long as one or more of the conditions set out in section (c)(iii) of the *Direction to the CRTC (Ineligibility of Non-Canadians)* is occurring.