



Comment and BNN Interview on the proposed acquisition of Astral by Bell

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I invite you to visit our web site at www.lya.com to watch my interview of Friday, Sept 14th on the issues raised by the proposed acquisition of Astral by BCE and of the different options for a decision by the CRTC.

In a nutshell, the Greenberg family, the key shareholders of Astral, wants to sell the company, Bell wants to buy it and almost everyone else that provides telecom service, except Shaw, is against it. Views range from blocking the transaction altogether (Quebecor, TELUS, Cogeco, Eastlink, MTS Allstream) to forcing the divestiture of the English TV assets of Astral (the Rogers ask).

Once upon a time, there was a concept referred to as Separation of Carriage (or Networks) and Content, meaning that those providing content should not be the same as the network operators. Even though some parties still argue the benefits of the separation of carriage and content (for example, as did TELUS in its July 2010 submission on the Government's consultation on Foreign Investment in telecommunications recommending structural recommendation), those days appear to have long come and gone for most stakeholders in the Canadian Communications industry. But is it a good thing? Maybe not as the industry seems to have successfully backed itself into a corner now that most broadcasters have been acquired by telcos, with Astral being the last, and not the least, large jewel up for grabs.

It is only a year ago this month that the CRTC published its Broadcasting policy on vertical integration with the associated code of conduct, well after the acquisition of all major over the air broadcasters by telcos. Bell argues that they fully respect the vertical integration rules as set out by CRTC even though Mr. Cope stated at the hearing on Monday that

"I think the vertical integration rules go too far. That's my own view. I think they take flexibility and creativity out of the marketplace completely" (at par. 510 of the CRTC transcript)

while almost everyone else tends to say that they are not working properly. Opponents of the deal appear to have underestimated Bell's ability and motivation to leverage the current rules to maximize value for content and its strong focus on migrating customers of all types of content (including fixed and mobile broadband) to their own network. Would you switch mobile carrier to access specific content? If many would have answered no to this question a few years ago, it would appear that the environment and consumer behaviour now are different as consumers relish access to premium content on their smartphones and tablets.



Quebecor forcefully characterized the proposed transaction as a point of no return in harming competition for Francophone TV viewers and arguments made by Videotron and TVA on the importance of the current fees paid for the Astral's French specialty channels content and on the implications for advertising revenues for French TV were compelling.

Final Offer Arbitration has certainly left Cogeco with a sour taste in its mouth as Mr. Audet stated during the hearing that they paid more for their content after the FOA than the initial offer they had received (a well-known risk of FOA).

The CRTC also asked many interveners about the suitability of the proposed \$40 M benefit package offered by Bell to enhance broadband access in the Northern territories. The opponents to this deal also opposed this benefit often in similar terms as those stated by MTS Allstream in its August 9 submission "Using \$40 million of the benefits package to fund modernization of the Northwestel network, particularly when this Bell subsidiary has been found by the Commission to have been lax in this area, should not even begin to be considered. It is a blatantly anti-competitive proposal." Bell indicated on Monday at the hearing that the acceptance or not of this offer as part of the benefits package was not a deal breaker.

So for all other carriers, this proposed transaction could be characterised as "Too Big and too Bell!". But, Astral executives strongly argued that Bell was their best option as a buyer, that this deal would create a major Canadian player to compete with foreign offerings and that they would continue to do deals with the other distributors post acquisition.

So what could the CRTC do? This is a CRTC with a new Chair, Mr. Jean-Pierre Blais, and a first big test. Mr. Blais and the other commissioners expressed appropriate skepticism to the arguments of almost all interveners during the hearing. We would expect that the CRTC would place a significant emphasis on the impact on consumers in its decision. Of course the CRTC could fully deny or approve this deal, as proposed. It could also approve it but with significant divestiture of TV assets (in French as in English, if it accepts the arguments of all opponents) in addition to the divestiture of radio stations as proposed by Bell, in which case Bell would have to decide if it still wants to move forward. Of course, all of these options could also be coupled with a tightening or significant review of the vertical integration framework and its Code of Conduct to ensure the availability of content for everyone on all network platforms under reasonable terms and conditions.

As always, your comments and feedback are welcome either by phone or by e-mail at lya@lya.com.