



Broadcasting Public Notice CRTC 2007-139

Ottawa, 14 December 2007

Call for comments on ways to streamline the determination of the allocation of the value of the transaction in changes in the effective control of a broadcasting undertaking

*In this public notice, the Commission sets out the methodology that it uses to calculate the value of the transaction in changes in the effective control of a broadcasting undertaking. As these transactions often involve radio and/or television undertakings, which must provide a tangible benefits package, as well as broadcasting distribution undertakings and/or non-regulated undertakings, which are not obligated to provide a benefits package, the allocation of the calculated value of the transaction between these different undertakings is often a complicated process for both the applicant and the Commission. The Commission is committed to simplifying the information required in its application process. This public notice therefore calls for comments on the development of a simplified methodology for allocating the calculated value of the transaction between those undertakings which must provide a tangible benefits package and those undertakings which are not so required. The deadline for comments is **14 January 2008**.*

Introduction

1. The Commission has stated, on numerous occasions in public notices and decisions involving applications for authority to change the effective control of broadcasting undertakings that, because it does not solicit competing applications in such cases, the onus is on the applicant to demonstrate that the application constitutes the best possible proposal under the circumstances.
2. Among other things, the applicant must satisfy the Commission that the proposed transaction is in the public interest. Specifically, the Commission, in its deliberations as to how the public interest would best be served, must be satisfied that the strength of the applicant's human and financial resources are sufficient to give it the capability to improve the undertaking in question and to make a contribution to the enhancement of the Canadian broadcasting system.
3. An applicant that proposes to change the effective control of a radio or television programming undertaking is therefore expected to propose a specific package of significant and unequivocal tangible benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. Moreover, the Commission must be satisfied that the proposed benefits package is commensurate with the size and nature of the transaction.

4. In this regard, the Commission generally expects applicants to make commitments to clear and unequivocal benefits representing a financial contribution of 10% of the value of the transaction as accepted by the Commission for television undertakings, and of 6% of the value of the transaction as accepted by the Commission for radio undertakings.¹ Benefits are not required for transactions involving broadcasting distribution undertakings (BDUs) or unregulated undertakings.

The Commission's approach to determining the value of the transaction

5. Prior to 1998, the Commission generally considered the value of the transaction, for the purpose of an applicant's proposed benefits package, as being equivalent to the purchase price or to the amount actually paid by the buyer. This amount usually included existing assumed liabilities and any acquisition premiums. The Commission assessed each application on its own merits and did not use any benchmark or formula with respect to the type or amount of benefits.
6. In Public Notice 1998-41 (the 1998 Commercial Radio Policy), the Commission introduced the "value of the transaction" concept as the basis on which to calculate the financial benefits contribution for radio transactions. Subsequently, the Commission introduced the same value of the transaction concept in Public Notice 1999-97 (the 1999 Television Policy) to calculate the financial benefits contribution for television undertakings. These policies did not define "value of the transaction," allowing the Commission to use a case-by-case approach to reach its determinations.
7. In the absence of a definition for the value of the transaction, the Commission stated, in Decision 2000-86 approving the transaction by which CTV Inc. obtained a controlling interest in NetStar Communications Inc., that it would "expect applicants, in future transactions, to demonstrate that the measure they have used to determine the value of the transaction is the most appropriate under the circumstances."
8. Subsequently, in the course of its examination of the transfer of effective control of Le Groupe Vidéotron ltée to Quebecor Média inc.,² the Commission retained Professor Jean-Marc Suret, Professor of Finance and Director of the School of Accounting at Laval University in Québec, to provide an independent evaluation of the value of that transaction. Professor Suret addressed the application of the concept of the value of the transaction and set out the following definition from the International Business Brokers Association (IBBA):

¹ For television, this approach was set out in Public Notice 1999-97 and maintained in Public Notice 2007-53. For radio, this approach was set out in Public Notice 1998-41.

² See *Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001

Transaction value - The total of all consideration passed at any time between the buyer and seller for an ownership interest in a business enterprise, and may include, but is not limited to, all remuneration for tangible and intangible assets such as furniture, equipment, supplies, inventory, working capital, non-competition agreements, employment and/or consultation agreements, licences, customer lists, franchise fees, assumed liabilities, stock options, stock or stock redemption, real estate, leases, royalties, earn-outs and future considerations.

9. Using a case-by-case approach in its decisions, the Commission has arrived at an approach to the valuation of the transaction in changes in the effective control that is consistent with the IBBA definition set out above. Under this approach, the value of the transaction includes, among other items, the negotiated purchase price plus the value of certain liabilities and financial commitments. In cases where there are additional considerations or contractual obligations that must also be undertaken by the purchaser as part of the acquisition, such as payments for non-competition or employment agreements, their value is included in the value of the transaction as well.
10. In this regard, in addition to the negotiated purchase price, the Commission generally includes the following liabilities and commitments in the value of the transaction:
 - assumed long-term liabilities (e.g., net long-term debt including debt related to capital leases);
 - assumed commitments disclosed in the notes to financial statements (e.g., operating leases, other commitments);
 - break-up fees paid;
 - payments or commitments that are entered into by the purchaser, directly or indirectly, as a result of the purchase (e.g., employment/consulting agreements, non-competition agreements); and
 - any purchase or control premiums.
11. The Commission does not include in the value of the transaction liabilities such as deferred income taxes and minority interests where, as of the date of the transaction, the payment date of the liability is unknown.
12. In share transactions, the Commission determines the value of the transaction based on the economic interest of the number of shares acquired and, in making additions such as assumed debt to the value of the transaction, it includes these elements in the same proportion as the economic interest. On the other hand, elements that are solely to the benefit of the purchaser, such as purchase or control premiums and break-up fees, are allocated in total to the value of the transaction.
13. The amounts for the elements added generally reflect their value either as of the date of the transaction or as disclosed in the financial statements for the most recently completed fiscal year.

Concerns regarding the allocation of the value of the transaction

14. In those transactions that include radio and/or television undertakings, which must provide a tangible benefits package, as well as BDUs and/or non-regulated undertakings, which are not obliged to provide a benefits package, it is necessary to allocate the value of the transaction between these subgroups of undertakings in order to ensure that the appropriate benefits requirement is applied to each. As a percentage of the value of the transaction, the benefits requirement is 10% for television undertakings and 6% for radio undertakings.
15. The Commission has generally allocated the value of the transaction between these undertaking subgroups in accordance with the respective value that each undertaking subgroup represents of the total value of the enterprise being acquired. However, since it is the responsibility of the applicant to propose a benefits package based on its own calculated allocation, the Commission has on occasion required applicants to provide an independent valuation report to support their calculated enterprise value and subsequent allocation between the undertaking subgroups. The Commission has recently requested that such reports be prepared to the level of detail set out in Appendix A of the Canadian Institute of Chartered Business Valuators (CICBV) Standard 110.
16. Different valuation techniques may be used in preparing a valuation and, depending on the technique chosen, information required may include past transactions, past financial results, financial projections, as well as growth and discount rates, all with different underlying variables and assumptions. These valuations can be very complex and costly to prepare for the applicant and time-consuming for the Commission to assess. For this reason, the Commission is open to considering suggestions as to a simpler methodology for determining the allocation between the various undertaking subgroups within the enterprise.
17. For example, an alternative method of valuation could involve an allocation methodology whereby the allocation would be made in accordance with the proportion that each undertaking subgroup's respective past earnings before interest, taxes, depreciation and amortization (EBITDA) represents of the aggregate historical EBITDA of the enterprise as a whole. Under this method, EBITDA would be derived from the financial statements for the most recently completed fiscal year of the vendor and may be adjusted to take into account operations after the close of the fiscal year up to the date of the transaction, as necessary.
18. Another methodology could involve adjusting past EBITDA to take into account expected synergies and projected EBITDA for unlaunched or immature undertakings once they reach maturity. Past EBITDA would be determined as stated in the previous paragraph. Synergies would be determined by the applicant, and EBITDA at maturity for unlaunched or immature undertakings would be based on assumptions of markets and growth. The values to be added to the past EBITDA could be determined without any discounting to determine the appropriate percentages for the allocation of the value of the transaction.

19. Other methodologies may also be acceptable to determine the allocation of the value of the transaction as between television and radio and undertakings not subject to benefits. The Commission's objective in this process is to simplify and standardize the allocation of the value of the transaction. The methodology that is chosen must, however, stand the test of reasonableness, be consistent and be the most appropriate under the circumstances.

Call for comments

20. The Commission calls for comments on the development of a simplified methodology for allocating the value of the transaction when the transaction involves radio and television undertakings, which must provide a tangible benefits package, and broadcasting distribution undertakings and/or non-regulated undertakings, which are not obligated to provide a benefits package. In particular, parties are invited to provide, in detail, alternative valuation methodologies acceptable to the Commission that applicants could use in such circumstances. Comments are to be submitted no later than **14 January 2008**.
21. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedure for filing set out below has been followed.

Procedure for filing comments

22. Interested parties can file their comments to the Secretary General of the Commission:

- by using the
Broadcasting Intervention/Comments Form

OR

- by mail to
CRTC, Ottawa, Ontario K1A 0N2

OR

- by fax at
819-994-0218

23. Submissions longer than five pages should include a summary.
24. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

25. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
26. Documents received electronically or otherwise will be put on the Commission's web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
27. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
28. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents at the following Commission offices during normal business hours

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

Related documents

- *Determinations Regarding Certain Aspects of the Regulatory Framework for Over-the-Air Television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- Decision CRTC 2000-86, 24 March 2000

- *Building on Success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998.

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>