Broadcasting Decision CRTC 2010-942

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Ottawa, 17 December 2010

Corus Entertainment Inc., on behalf of its wholly owned subsidiaries 591991 B.C. Ltd. and Metromedia CMR Broadcasting Inc.
Montréal, Longueuil, Saint-Jérôme, Trois-Rivières, Sherbrooke, Lévis, Québec and Gatineau, Quebec

Application 2010-1092-5, received 30 June 2010
Public Hearing in Montréal, Quebec
28 September 2010

Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.

The Commission ***approves in part*** *an application by Corus Entertainment Inc. (Corus), on behalf of its wholly owned subsidiaries 591991 B.C. Ltd. and Metromedia CMR Broadcasting Inc., to transfer their ownership and control of Corus to Cogeco inc. (Cogeco).*

The Commission ***approves****, by majority decision, Cogeco's request to be granted an exception to the Common Ownership Policy (the Policy) in relation to the number of radio stations that it is authorized to operate in the Montréal radio market.*

The Commission relies on guidelines in the form of regulatory policies, information bulletins or other non-mandatory measures to guide it in exercising its discretionary authority. Such documents serve, among other things, to publicly inform applicants, as well as the general public, concerning the position it proposes to take on a matter. The Commission may not, however, use such instruments to limit the discretion granted to it by Parliament. Therefore, where there is a clearly established rule, the Commission must strike a balance between consistency in its decisions and the need to consider each application on its merits, based on the circumstances specific to that application.

The Commission considers that granting the requested exception is consistent with section 5(2) of the Broadcasting Act *(the Act), which states that regulation and supervision of the broadcasting system should be flexible, readily adaptable to the different characteristics of English- and French-language broadcasting and to the different conditions under which broadcasting undertakings that provide English- or*

French-language programming operate, and takes into account regional needs and concerns.

*The Commission also considers that granting the requested exception contributes to attaining the various objectives of the broadcasting policy for Canada and more particularly to the objective set out in section 3(1)(*c*) of the* Act*, which recognizes that English- and French-language broadcasting, while sharing certain common aspects, operate under different conditions and may have different requirements.*

The Commission is mindful of the importance of maintaining a major predominantly spoken word radio station such as CHMP-FM in the Montréal market, and it considers it imperative to ensure the long-term viability of the only French-language spoken word commercial radio station in that market. In addition, the Commission notes that CHMP-FM is the only other French-language spoken word radio station focussed on news and information other than the Canadian Broadcasting Corporation's CBF-FM in the Montréal market. From this standpoint, its programming makes a significant contribution to the diversity of radio programming in that market. In reaching its decision, the Commission has also taken into consideration the exodus from the AM band in the Montréal market and listeners' marked preference for the FM band.

By putting in place the COGECO Nouvelles agency, Cogeco will provide revitalized leadership in news radio and will help breathe new life into local and regional news programming. This agency will complement the other news sources available in Quebec. The Commission is of the view that CHMP-FM is large enough to ensure the implementation of the COGECO Nouvelle strategy and considers that denying the request for an exception to the Policy would jeopardize the imperative objective of increasing the spoken word and news content of radio stations throughout Quebec.

The Commission considers that approval of the requested exception will improve the competitive position of French-language private radio not only in Montréal but throughout the province of Quebec and will increase the quality and diversity of news and public affairs programming by allowing Cogeco the necessary means to carry out its recovery plan in this regard.

In light of all of the above, the Commission considers that all of the elements proposed by Cogeco, in conjunction with other arguments made by parties, form an indivisible whole. Cogeco's proposal represents a significant benefit for the broadcasting system in Quebec and justifies granting the requested exception.

The Commission ***denies*** *Cogeco's request to convert CKOY-FM Sherbrooke into a rebroadcasting transmitter for CKAC Montréal. The Commission considers that such a conversion would result in the loss of a local voice in the market and that it would not represent the best use of the frequency currently occupied by CKOY-FM. Further, to ensure that Cogeco remains at all times in compliance with the Policy as it relates to the number of radio stations a licensee may operate in a given market, the Commission requires that Cogeco divest itself of CKOY-FM no later than one year from the date of this decision and that in the interim ownership and control of the station be transferred to* *a trustee pursuant to terms of the voting trust agreement addressed in Broadcasting Decision 2010-943, also issued today*

Consistent with the revised guidelines for the application of the Policy, the Commission determines that CIME-FM Saint-Jérôme will not count towards the calculation of the number of French-language radio stations operated by Cogeco in the Montréal market in light of the small population found in the overlapping area between its principal service area and the Montréal market as determined by BBM Canada. Accordingly, the Commission considers that the acquisition of CIME-FM by Cogeco is in compliance with the Policy and does not raise any other concerns.

Since Cogeco committed to divesting itself of two stations in the Québec radio market, namely CJEC-FM Québec and CFEL-FM Lévis/Québec, the Commission is of the view that the transaction is in compliance with the Policy and that it does not raise any additional concern for the market. The Commission accordingly requires that Cogeco divest itself of CJEC-FM and CFEL-FM no later than one year from the date of this decision and that in the interim ownership and control of the stations be transferred to a trustee pursuant to terms of the voting trust agreement addressed in Broadcasting Decision 2010-943.

Since Cogeco had only one radio station in the Trois-Rivières radio market prior to the transaction, the Commission considers that the acquisition of CHLN-FM Trois-Rivières by Cogeco is in compliance with the Policy and does not raise any additional concerns.

Since Cogeco had no radio stations in the Ottawa-Gatineau market prior to the transaction, the Commission considers that the acquisition of CJRC-FM Gatineau by Cogeco is in compliance with the Policy and does not raise any additional concerns.

Regarding the regional stations CHLN-FM Trois-Rivières, CHLT-FM Sherbrooke and CJRC-FM Gatineau, the Commission considers that Cogeco's proposal of enhanced conditions of licence relating to hours of local programming, spoken word material and the broadcast of local news is not only acceptable but will make it possible for the radio programming offered in these localities to distinguish itself fully from the programming offered by its Montréal flagship.

The Commission imposes ***conditions of approval*** *on Cogeco relating to the exception to the Policy granted for the Montréal market. These conditions are set out in the appendix to this decision.*

A concurring opinion of Commissioner Tim Denton is attached to this decision.

Introduction

1. The Commission received an application by Corus Entertainment Inc. (Corus), on behalf of its wholly owned subsidiaries 591991 B.C. Ltd. (591991 B.C.) and Metromedia CRM Broadcasting Inc. (Metromedia), to transfer their shares and effective control from Corus to Cogeco inc. (Cogeco) or one of its wholly owned subsidiaries (the proposed transaction).

2. 591991 B.C. is the licensee of the French-language commercial radio programming undertakings CFOM-FM Lévis, CFEL-FM Lévis/Québec, CHLT-FM and CKOY-FM Sherbrooke, CKAC Montréal, CJRC-FM Gatineau and CHLN-FM Trois-Rivières.

3. Metromedia is the licensee of the French-language commercial radio programming undertakings CKOI-FM Montréal, CHMP-FM Longueuil, CIME-FM Saint-Jérôme and its transmitters CIME-FM-1 Val-Morin and CIME-FM-2 Mont-Tremblant, and CFQR-FM Montréal, an English-language commercial radio programming undertaking.

4. Following the proposed transaction, effective control of 591991 B.C. and Metromedia will be exercised by Cogeco, a corporation controlled by Gestion Audem inc.

5. Cogeco has a diversified portfolio and provides services in the cable distribution and broadcasting sectors. Through its wholly owned subsidiary Cogeco Diffusion inc. (Diffusion inc.), Cogeco owns five French-language commercial radio programming undertakings in Quebec. It should be noted that since 2000, Corus has spent more than $200 million in purchasing and implementing stations in the Quebec radio market.[1]

6. The price paid by Cogeco for the shares of 591991 B.C. and Metromedia is $80 million. Cogeco also proposed to allocate a tangible benefits package equal to 9% of the value of the transaction over a seven-year period.

7. The following table lists the Cogeco- and Corus-owned commercial radio programming undertakings affected by the proposed transaction by market.

Call sign and location	**Predominant programming**	**Licensee / Ownership group** ***(on 31 August 2010)***
Montréal market		
Francophone stations		
CFGL-FM Laval *(Rythme FM)*	Music	Diffusion inc. [Cogeco]
CKOI-FM Montréal	Music	Metromedia [Corus]
CHMP-FM Longueuil	Specialty spoken word	Metromedia [Corus]

[1] Intervention by Ms. Sylvie Courtemanche of Corus during the hearing.

CKAC-AM Montréal *CKAC-DR-2 (digital)*	Specialty spoken word (sports)	591991 B.C. [Corus]
Anglophone station		
CFQR-FM Montréal	Music	Metromedia [Corus]
Saint-Jérôme market		
CIME-FM Saint-Jérôme *Transmitters:* *CIME-FM-1 Val-Morin* *CIME-FM-2 Mont-Tremblant*	Music	Metromedia [Corus]
Sherbrooke market		
CFGE-FM Sherbrooke *(Rythme FM)* *Transmitter:* *CFGE-FM1 Magog*	Music	Diffusion inc. [Cogeco]
CHLT-FM Sherbrooke	Specialty spoken word	591991 B.C. [Corus]
CKOY-FM Sherbrooke	Music	591991 B.C. [Corus]
Québec market		
CJEC-FM Québec *(Rythme FM)*	Music	Diffusion inc. [Cogeco]
CJMF-FM Québec	Music	Diffusion inc.[Cogeco]
CFOM-FM Lévis	Music	591991 B.C. [Corus]
CFEL-FM Lévis/Québec	Music	591991 B.C. [Corus]
Ottawa-Gatineau market		
CJRC-FM Gatineau *CJRC-DR-2 (digital)*	Specialty spoken word	591991 B.C. [Corus]
Trois-Rivières market		

CJEB-FM Trois-Rivières *(Rythme FM)*	Music	Diffusion inc. [Cogeco]
CHLN-FM Trois-Rivières	Specialty spoken word	591991 B.C. [Corus]

8. Cogeco proposed to operate all of the stations acquired from Corus that are located in the Montréal market and asked the Commission for an exception to the Common Ownership Policy (the Policy) to acquire and operate the predominantly spoken word station CHMP-FM as well as the music station CKOI-FM, in addition to the station CFGL-FM that it is already operating. Cogeco also proposed to divest itself of CFEL-FM and CJEC-FM in the Québec market and to convert CKOY-FM Sherbrooke to a rebroadcasting transmitter for CKAC Montréal.

9. The Commission received and examined 132 interventions in support of the proposed transaction and the associated exception to the Policy, including several from local, provincial and national elected officials belonging to different parties, from unions and from the broadcasting industry, as well as interventions opposing the application and others offering general comments. The interventions and Cogeco's replies have been placed on the public record for this proceeding, which is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

10. After examining the application in light of applicable regulations and policies and taking into account the interventions and Cogeco's replies, the Commission considers that the primary issue to be addressed in its determination on the proposed transaction is whether it is appropriate to grant Cogeco an exception to its Policy in the Montréal market, and is of the view that it is also appropriate to consider other aspects of the transaction. Accordingly, in this decision the Commission will address the following points:

- the Montréal radio market;
    - the request for an exception to the Policy for the acquisition and operation of CHMP-FM;
    - the creation of the COGECO Nouvelles agency; and
    - the diversity of voices;
- the Sherbrooke radio market;
    - the conversion of CKOY-FM to a rebroadcasting transmitter for CKAC;

- the other radio markets affected by the transaction;
- the value of the transaction; and
- the tangible benefits.

The Montréal radio market

Cogeco's proposal

11. During the hearing, Cogeco indicated that the proposal raised major issues for the entire commercial radio industry in Quebec and noted that its application had three main objectives:

    - to restore and enhance competitive balance in the radio market in Quebec;
    - to give back to Quebec regional stations a strong and distinct news voice and to provide a lasting solution to their financial situation; and
    - to maintain a private commercial radio alternative that offers consistent and credible news and public affairs programming in the Montréal market.

12. To do so, since it already operates an FM station in the Montréal market, namely CFGL-FM, Cogeco requested that the Commission grant an exception to the Policy to authorize it to acquire and operate the predominantly French-language spoken word station CHMP-FM, which is a key component of its recovery plan, in addition to CKOI-FM. This plan is based on the enhancement of the local programming of these stations as well as access to the programming, content and expertise derived mainly from CHMP-FM, the only private commercial predominantly spoken word radio station in Montréal focussing on news and public affairs.

13. Cogeco proposed to create the COGECO Nouvelles agency, which will supply the local stations CHLN-FM Trois-Rivières, CHLT-FM Sherbrooke and CJRC-FM Gatineau with spoken word content focused on news and public affairs, thus enabling them to devote more resources to local and regional programming. Cogeco added that these stations specifically targeted in its recovery plan would benefit from access to programming, content and expertise from CHMP-FM.

14. The news agency's infrastructure would notably include the implementation of an Intranet network to provide member stations with real-time access to all the news produced by the agency. The agency would be fed content by journalists from all member stations. The newscasts would be produced locally by journalists in each of Cogeco's stations, thus meeting the specific needs of each station's listeners. The stations would then be in a position to devote more resources to local and regional programming.

15. Further, Cogeco proposed to provide its services free-of-charge to groups operating fewer than three French-language radio stations in Quebec's small markets as long as they agree to supply COGECO Nouvelles with news from their markets. The service's content will also be available free-of-charge to community radio stations.

16. In total, Cogeco estimated that this new information service would employ 33 full-time journalists and that it would allocate over $3 million in each broadcast year to this service.

17. Cogeco indicated that CHMP-FM would play a key role in coordinating COGECO Nouvelles. Cogeco explained that a total of 12 full-time journalists would supply content to the Montréal French-language stations CHMP-FM, CKOI-FM, CKAC Sports and CFGL-FM (Rythme FM). Also, seven arts and entertainment reporters from Cogeco stations would cover Quebec cultural activities as well as Francophone cultural activities in Ottawa and Eastern Ontario. There would also be four journalists assigned to the regional stations CHLN-FM and CHLT-FM, four to CJRC-FM and one to CIME-FM. The number of journalists on staff for the stations in Québec would increase to five to ensure daily coverage of the National Assembly, which no other commercial radio station currently offers.

18. The COGECO Nouvelles agency would adopt a news policy based on generally accepted news broadcasting practices. The head of content for COGECO Nouvelles would be responsible for ensuring that the program directors in each station strictly apply this policy and prioritize the interests of their respective audiences and local markets.

19. With the support of CHMP-FM and Cogeco Nouvelles as news providers, Cogeco proposed to reintroduce local news and public affairs programming in the schedule of the regional stations in Trois-Rivières, Sherbrooke and Gatineau. This programming would reflect the concerns and issues of these markets and would air in the early morning and at noon.

20. Additionally, at the hearing, Cogeco committed to filing with the Commission a plan for the implementation and operation of the COGECO Nouvelles agency.

21. Cogeco submitted that if the Commission were to deny the exception to the Policy for CHMP-FM for Montréal's French-language market, this predominantly spoken word station would no longer be able to support the programming of other predominantly spoken word, regional market stations acquired from Corus, which are running high deficits. The impact of such a denial, according to Cogeco, would be dramatic and could jeopardize the survival of these regional stations. It would also mean abandoning the creation of the COGECO Nouvelles agency and the related investment in news and public affairs programming.

22. Cogeco noted that the presence of a single French-language commercial AM station in Montréal did not allow the flexibility implicit in the current Policy to be applied. Cogeco indicated that this market is characterized by a significant migration of French-language listeners to English-language music stations.

23. According to Cogeco, the proposed transaction does not in any way dilute the diversity of editorial voices or news sources available to the public in the French-language Montréal media market. Cogeco stated that the French-language Montréal market will continue to have multiple news sources, including print media and conventional and specialty news television, as well as numerous websites originating in the local market.

24. Cogeco submitted that its predominantly spoken word programming would contribute significantly to the diversity of radio programming in this market. It noted that its programs would inform the public through numerous newscasts, commentary and interviews with the people in the news.

25. Cogeco also stated that it intended to restore a competitive balance that in its opinion was sadly lacking in the French-language radio market owing to Astral's dominant position in Quebec. Cogeco submitted that healthy, sustainable competition was not possible in the French-language private radio market without the introduction of a second major player, one that would be able to compete with Astral's 21 radio stations, many of which are operated as part of a network. Cogeco stated that it feared that unless this market is rebalanced, the French-language arm of the Canadian broadcasting system will continue to under-perform relative to its English-language counterpart, as is currently the case,[2] to the ongoing detriment of the French-language private radio industry's listeners, advertisers and partners.

26. Cogeco stated that it did not intend to make major programming changes to the music stations. However, it explained that it wanted to shift the music portion of its predominantly spoken word stations, including CHMP-FM, to a Contemporary Hits format to bring in a younger audience and target men in the 25-54 age group.

Interventions

Request for an exception to the Policy

27. A great number of interventions were submitted in support of the proposed transaction, notwithstanding the fact that it requires that the Commission grant an exception to the Policy. These interventions came from various sources, including political sources, the broadcasting industry and individuals. Independent broadcasters such as CKRS (Radio Saguenay), the Groupe Radio Simard (GRS) and the Association des radiodiffuseurs communautaires du Québec (ARC du Québec),

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[2] Study by l'Observatoire de la culture et des communications du Québec, 2009 report; cited in Appendix 2 of Cogeco's supplementary brief.

to name but a few, manifested their support for the request for an exception submitted by Cogeco, even though they were generally inclined to defend the Policy.

28. GRS stated that in its view the benefits to creating a competitor large enough to rival Astral and capable of helping regional broadcasters through the COGECO Nouvelles project outweigh the possibility of creating a precedent by granting an exception to the Policy in this case. It submitted that the Quebec broadcasting system was imbalanced as a result of Astral's dominance both with respect to tuning and revenues and that this imbalance had negative consequences for small regional independent stations.

29. The Coalition de citoyennes et citoyens de l'Estrie supported the proposal, noting that the role played by regional stations was becoming more important than ever since the production of local news by other media has become almost nonexistent. For its part, the Conférence régionales des élus de l'Outaouais stated that Cogeco's proposal would allow for the consolidation of the regional media offering that was crucial to the region's development and underscored the importance of ensuring a strong French-language local and regional news presence in the Outaouais.

30. Astral opposed the application, noting that exceptions to the Policy are extremely rare and that there is no technical or financial rationale that could justify an exception for the Montréal market stations included in the transaction. Astral also noted that the concentration that would result from such an exception would compromise the competitive balance in the largest French-language market in Canada.

31. According to Tietolman Tétrault Média (Tietolman Tétrault), granting an exception would result in an overly high concentration of ownership in Montréal by allowing two dominant groups to control the market. Tietolman Tétrault also noted that there are various options beyond an exception to the Policy that would allow Cogeco to implement its recovery plan and create COGECO Nouvelles, such as operating a predominantly spoken word station on the AM band. Tietolman Tétrault added that Cogeco's application was nothing more than an attempt to prevent the entry of a competitor on the FM band in the Montréal market.

32. The Association québécoise de l'industrie du disque (ADISQ) neither opposed the transaction nor the Commission's granting Cogeco some flexibility by allowing it to own three same-language FM stations in Montréal. However, ADISQ noted that its support was conditional on CHMP-FM's retaining its predominantly spoken word format because Cogeco would then own the same number of French-language FM music stations in Montréal as Astral. ADISQ also expressed concern about the concentration of ownership that would result from the transaction in the Montréal market and, on a larger scale, in the province of Quebec.

33. ARC du Québec was of the view that, if the Commission were to grant the exception to the Policy, exceptional conditions should be imposed to ensure that format diversity is maintained, the increased profitability will be used to fund a newsroom, and the local orientation of regional media is continued.

The COGECO Nouvelles agency

34. Most interveners in support welcomed the creation of a news agency to provide content to independent radio stations in Quebec, among others. Several interveners echoed the arguments of Cogeco to the effect that independent stations, as well as the regions themselves, would greatly benefit from the COGECO Nouvelles agency both as a result of the content to which they would have access and due to the sharing of their own content – two facets of a unique opportunity to breathe new life into these regional stations, according to these interveners.

35. At the hearing, GRS indicated that in its view one of the greatest challenges facing small regional broadcasters was to manage costs while ensuring that their programming was comparable to that offered by networks that serve all of Quebec. According to GRS, the creation of COGECO Nouvelles was therefore the most important result of the proposed project. GRS also noted that in the past it had had to rely on services provided by networks (first Radiomédia, then more recently Corus Nouvelles) and welcomed the fact that Cogeco now proposed to continue and enhance this service for small regional stations.

36. For its part, the Coalition pour la survie de CHLN-FM (the Coalition) submitted that this agency would contribute not only to increasing the quality of the news provided by CHLN-FM but also to increasing awareness of the region elsewhere in Quebec since the operating model proposed for this agency provides for a sharing of content and the use of this content by all of the member stations.

37. ARC du Québec suggested that the creation of a news agency could be attractive on several levels: the availability of regional, national and international news that would allow its member stations to focus their resources on local coverage and greater visibility for their journalists and their stations.

38. Tietolman Tétrault indicated that Cogeco could implement its COGECO Nouvelles strategy by operating a predominantly spoken word station on the AM band or by converting CHMP-FM to the AM band. However, the intervener indicated that, if it were given the opportunity to acquire CHMP-FM, it would convert that station to a music format.

39. Tietolman Tétrault submitted that the “COGECO Nouvelles” concept was similar to the “Corus Nouvelles” format, with the changes to its name and staff being the only difference. Tietolman Tétrault also noted that the proposed news service would be mainly a regional and national service in terms of content and thus not really a local service.

40. Tietolman Tétrault expressed concerns about the creation of a system for sharing news with Quebec's community stations. The intervener submitted that that this system would substantially reduce spending on researchers and journalists and did not correspond to the Commission's vision for community stations.

41. The Bloc Québécois (the Bloc) submitted that compelling CHMP-FM to convert to the AM band would not have an impact on the concentration of market share since the combined market shares would be the same after the conversion.

42. ARC du Québec noted that several aspects of the project still need to be clarified, notably with respect to existing agreements with employees, intellectual property, the agency's ability to meet its commitments, its expectations with respect to the community radio stations and more precise objectives for regional development and the agency's overall operation. While ARC du Québec's advocated a prudent approach, it acknowledged that the potential spin-offs could be positive for its members.

Diversity of voices

43. With respect to diversity of voices, interveners in support of the transaction noted that the increase in regional media coverage was not only synonymous with a vibrant democracy but also a reflection of the importance of regional news and public affairs in Quebec society. Further, representatives of independent stations in Quebec expressed their satisfaction that Cogeco's proposal would come to support efforts to ensure the survival of independent radio in Quebec for years to come.

44. The Fédération nationale des communications, representing 2,100 journalists in Quebec, submitted that Cogeco's proposal would serve to ensure the survival and recovery of regional radio by directing more resources to local and regional programming.

45. The Bloc also intervened to the same effect, noting that the important changes that the radio landscape has undergone in recent years make it imperative to take all the means necessary to ensure the survival of Quebec radio and its diversity. According to the Bloc, the current transaction will ensure the development of Quebec broadcasting for years to come. The Bloc also noted that this would be a good time to begin a review of the Policy.

46. For its part, the Fédération professionnelle des journalists du Québec (FPJQ), usually resistant to ownership consolidations and representing some 2,100 journalists and news professionals, was of the view that Cogeco's proposal would lead to an increase in the diversity of radio voices in its most important facet for democratic life: news and public affairs programming. The FPJQ also noted that Cogeco's proposal would increase the quantity and quality of news in all the regions served by the stations involved.

47. Additionally, the Coalition submitted that it was the listeners from the region served by this station who would benefit the most from the creation of healthy competition.

48. Tietolman Tétrault submitted that French-language radio in Quebec was at risk of becoming an oligopoly, which it claimed was completely at odds with the interests of citizens who are entitled to real diversity both in news and music programming. According to the intervener, limiting all forms of competition in this way could stifle musical creativity, emerging artists and news choices in the Quebec market and there is a risk that a number of Francophone listeners will turn to English-language and American stations or simply abandon radio for media that provide more diverse content.

49. ADISQ stated that although the proposed transaction raises legitimate concerns that should be addressed, it may offer significant leverage for Quebec's music industry, if certain conditions are met. It expressed concerns, however, that two groups, Astral and Cogeco, would own all of the commercial non-specialty music stations in Montréal and almost all of the music station networks spread out across the greater part of Quebec. ADISQ expressed concerned that this more limited access to the decision-making centres responsible for the music programming of these stations could adversely affect musical diversity in this market and across Quebec. ADISQ therefore suggested that the Commission impose different obligations and measures on Cogeco to ensure greater musical diversity in these markets.

Cogeco's reply

50. In reply, Cogeco acknowledged that the vast majority of predominantly spoken word stations in Canada operate on the AM band but noted that stations in French-language markets were systematically leaving the AM band and submitted that it was simply no longer possible to own two AM stations in a market like Montréal.

51. Cogeco added that the request for an exception was still consistent with the spirit of the Policy because it concerned a predominantly spoken word station and it would be impossible to change CHMP-FM's specialty format without Commission approval. Cogeco noted that it would then own two music and two predominantly spoken word stations in the Montréal French-language market, which it submitted would ensure programming diversity and encourage a competitive balance of broadcasters in the market.

52. Cogeco also submitted that the request for an exception was based on the characteristics of the Montréal market, where French-language stations have to compete with English-language stations to attract Francophone listeners and where many French-language listeners are migrating to English-language stations.

Commission's analysis

The Common Ownership Policy

53. The Commission relies on guidelines in the form of regulatory policies, information bulletins or other non-mandatory measures to guide it in exercising its discretionary power in an effective manner.[3] Such documents serve, among other things, to inform applicants publicly about the criteria it will consider in its decision-making process and consequently to ensure a level of consistency and transparency.

54. However, where there is a clearly established rule, the Commission must strike a balance between consistency in its decisions and the need to consider each application on its merits, based on the circumstances specific to that application.[4] The Commission may not use such instruments to limit the discretion granted to it by Parliament.[5]

55. The Policy states that in a market where eight or more commercial stations operate in a given language, as in the case of Montréal, a person may be permitted to own or control up to two AM and two FM stations in that language.

56. In elaborating the new Policy, the Commission sought to establish a reasonable and acceptable balance between the goal of preserving a diversity of news sources in a market and the advantages of allowing an increased consolidation of ownership in the radio industry. The Commission consequently sought to develop a model that provided for a certain amount of consolidation, while taking into account the objectives of preserving a diversity of voices and maintaining competition.

The Montréal radio market

57. Montréal's French-language radio market is currently comprised of eleven commercial stations (excluding ethnic, community and religious stations), including eight FM and three AM stations. The stations are owned by eight separate ownership groups:

- Corus (3): CHMP-FM, CKOI-FM, CKAC
- Astral (2): CITE-FM, CKMF-FM
- Cogeco (1): CFGL-FM

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[3] The CRTC is authorized and encouraged to issue such guidelines by the common law, the *Broadcasting Act*, and the *Telecommunications Act*. See: *Capital Cities Comm.* v. *C.R.T.C.*, [1978] 2 S.C.R. 141 at paragraphs 170-171; see also *Ainsley Financial Corp.* v. *Ontario (Securities Commission)*, (1994), 121 D.L.R. (4th) 79; *Broadcasting Act*, section 6, and *Telecommunications Act*, section 58.

[4] *Dawkins v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 639

[5] *Maple Lodge Farms Ltd.* v. *Government of Canada*, [1981] 1 F.C. 500, affirmed [1982] 2 S.C.R.2

- Jean-Pierre Coallier (1): CJPX-FM
- RNC Média inc. (1): CKLX-FM
- Alexandre Azoulay (1): CJMS (St-Constant)
- Placements P. Marchand inc. (1): CJVL
- Yves Sauvé (1): CJVD-FM

58. Consistent with Broadcasting Information Bulletin 2010-341, the Commission has not included CIME-FM in the Montréal market for the purposes of this analysis, since the station's overlapping area comprises less than 5% of the market. Consequently, the common ownership issue resulting from the proposed transaction involves only three French-language FM stations: CFGL-FM (currently owned by Cogeco) and CKOI-FM and CHMP-FM (currently owned by Corus).

59. In 2009, the Montréal French-language commercial radio market generated over $100 million in advertising revenues, while posting a profit before interest and taxes (PBIT) margin of 19.6%. Additionally, the Astral, Corus and Cogeco stations together accounted for over 95% of the market's total revenues, meaning that the other groups in the market shared a modest percentage of the revenues.

Is the request for an exception to the Common Ownership Policy justified?

60. On the one hand, the Commission notes that if the transaction were approved as proposed, Cogeco would own a total of three FM stations in Montréal's French-language market (CFGL-FM, CKOI-FM and CHMP-FM) and would benefit from over 55% of the market's revenues, as compared to Astral's share of approximately 39%. However, in the Montréal's English-language market, the situation would be more or less reversed, as Cogeco's 29% share of revenues would be lower than Astral 67% share of revenues. In other words, Cogeco and Astral would garner a roughly equal share of the total revenues for the English- and French-language Montréal radio market, accounting together for 95% of the market's revenues.

61. In terms of radio tuning, Cogeco's share following the transaction would be approximately 40% in Montréal's French-language market, as compared to Astral's share of approximately 20%. However, the Commission notes that Astral's audience share in the English-language market is over 50%. This share is significantly greater than Cogeco's share would be with the acquisition of CFQR-FM, which would represent its only English-language station in the Montréal radio market. As in the case of the overall distribution of total revenues for the market, Cogeco and Astral would garner a roughly equal share of the combined French- and English-language radio tuning in Montréal's radio market following the transaction, accounting together for approximately 75% of tuning in the market.

62. Moreover, the Commission notes that the disparity between the consolidated revenues for the Montréal market obtained by Astral and Cogeco and their consolidated tuning share is largely attributable to the fact that the CBC/SRC garners roughly 14% of Montréal English- and French-language radio tuning but does not rely on advertising as a revenue source.

63. Approval of the transaction and the exception to the Policy requested by Cogeco would thus contribute to increasing the concentration of revenues and radio tuning share in the Montréal market by permitting two groups, as opposed to three as at present (namely, Astral, Cogeco and Corus), to dominate with respect to revenues and tuning share.

64. While recognizing the impact of an exception to the Policy on the concentration of revenues and tuning share, the Commission nonetheless considers that several characteristics of this market and of the Quebec radio market support a decision to grant the exception requested. Among other factors, the Commission notes that, as indicated by Cogeco, though it is difficult to quantify, the significant migration of French-language listeners to English-language stations is indeed a reality in the Montréal radio market.

65. The Commission acknowledges that the Policy, and more particularly the fact that it allows one person to hold up to two FM stations in a given language in the same market, may contribute to a particularly significant concentration of revenues in a bilingual market. In a market the size of Montréal, the viability of many stations, whether they operate in the French or English language, is made possible by the size of the Francophone and Anglophone populations in the market, which is generally not the case in unilingual markets.

66. Transactions such as the one discussed in this proceeding can be subject to examination by both the Commission under the *Broadcasting Act* and by the Competition Bureau under the *Competition Act*. These dual examinations are conducted independently and can lead to different results. This dual responsibility was recognized in the *Competition Bureau and CRTC interface* document dated 8 October 1999. Neither a decision by the Commission nor one by the Bureau shall be seen under any circumstances as impacting the other body’s responsibility to reach its own decision carrying out its independent responsibilities under its enabling statute.

67. The Commission considers that granting the requested exception is consistent with section 5(2) of the *Broadcasting Act* (the Act), which states that the Canadian broadcasting system should be regulated and supervised in a flexible manner that is readily adaptable to the different characteristics of English- and French-language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate, and takes into account regional needs and concerns.

68. The Commission also considers that granting the requested exception contributes to attaining the various objectives of the broadcasting policy for Canada and more particularly to the objective set out in section 3(1)(*c*) of the Act, which recognizes that English-language and French-language broadcasting, while sharing certain common aspects, operate under different conditions and may have different requirements.

69. The Commission further notes that contrary to Canadian English-language markets, where the vast majority of predominantly spoken word stations operate on the AM band and post sound financial results, French-language markets are experiencing an exodus from the AM band. This trend had already begun with the conversion of the Canadian Broadcasting Corporation's (CBC) La Première chaîne to the FM band in 1997, which was approved by the Commission due to the abandoning of the AM band[6] and was followed by the conversion of the stations CHLT, CHLN and CJRC in 2006. The conversions and the closures of the majority of commercial predominantly spoken word AM stations resulted in a substantial decrease in AM stations in Quebec and confirmed a marked preference by French-language listeners for the FM band.

70. Furthermore, the Commission considers that compelling CHMP-FM to convert to the AM band is not appropriate. The Commission is of the view that as mentioned by the member from the Bloc, the market share for CHMP-FM would be the same at the date of closing of such a conversion as on the eve, which would therefore have no impact in this respect. However, the Commission considers that the same market share for the station on the AM band would see a predictable decline given the migration of many listeners away from the AM band, which would result in less tuning to spoken word radio in Montréal than is currently the case. The combined market share would decrease and the objective of diversity of voices in the Montréal market would therefore be adversely affected.

71. The Commission is of the view that the viability of a major predominantly spoken word station on the FM band in the Montréal market is singularly important. CHMP-FM plays an important role in the Montréal market, while ranking second in tuning share[7] and posting solid financial results. CHMP-FM is also the only alternative in the Montréal market to the CBC's French-language predominantly spoken word news and public affairs station.

72. The Commission considers that Cogeco's strategy, which is to make CHMP-FM and COGECO Nouvelles the core of its recovery plan, will contribute to increasing spoken word and news content on the stations across the proposed system. In this respect, the Commission is of the view that it would not be prudent to sever

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[6] See *Approval of the application by the Canadian Broadcasting Corporation to convert AM station CBF Montréal to the FM band on frequency 95.1 MHz*, Decision CRTC 97-293, 4 July 1997.

[7] Second place for commercial radio listening, Montréal francophone market 2+, BBM Fall 2010 survey

CHMP-FM from the network of regional stations and that the viability of stations providing predominantly spoken word content in the smaller regional markets like Sherbrooke, Trois-Rivières and Ottawa-Gatineau would be supported by the presence of CHMP-FM operating at the core of the system from the Montréal market.

73. The Commission also considers that approving this transaction, and in particular granting of the exception to the Policy, will enhance the competitiveness of French-language private radio stations not only in Montréal but across the province of Quebec. Moreover, the Commission notes that with respect to revenues and tuning share in the markets of Sherbrooke, Trois-Rivières and Ottawa-Gatineau, Astral dominates by a wide margin. Consequently, Cogeco will face a significant challenge to ensure the recovery of the stations in these markets. The characteristics of the Quebec broadcasting system, particularly the prominence of network programming and brands like NRJ, Rock Détente and Rythme, have contributed to the emergence of groups of stations with significant resources that occupy dominant positions throughout the province.

74. That said, the Commission considers that as indicated by the Coalition de citoyennes et citoyens de l'Estrie, the Conférence régionale des élus de l'Outaouais and the Fédération nationale des communications, the strategy proposed by Cogeco will indeed enable the regional stations to offer a greater variety of content to listeners in their markets and will enhance the quality and diversity of radio services, while providing Cogeco with the means to implement its recovery plan.

75. The Commission notes that the criteria used in the past to grant exceptions to the Policy do not provide any justification relevant to the current application for the Montréal market. CHMP-FM is profitable and is not subject to any technical considerations that could justify the exception. The Commission is however of the view that if in examining a request for an exception it had to limit itself to the criteria established in previously granted exceptions, no exception could see the light of day in the first place. The Commission therefore considers that it must examine each application on the basis of the circumstances specific to that application. In this case, it is considerations relating to conditions of licence and operation in the French-language market that held the Commission's attention.

76. The Commission notes that Cogeco voluntarily revised its initial commitments so as to provide more predominantly spoken word and news programming in regional markets, as described further in this decision. Cogeco further committed to providing its programming to independent private broadcasters that operate fewer than three radio stations in small Quebec markets, based on terms deemed acceptable to the latter, as well as to community radio stations. As stated by the Bloc, these commitments will make a significant contribution to enhancing local and regional news.

77. The Commission further notes the support of certain interveners for the exception and a review of the Policy in light of the important changes that the communications industry has undergone in the last decade. It nonetheless considers that a review of the Policy at this time would put an end to the transaction or delay it for several months, even a year, without the certainty that the establishment of a revised Policy would have made it possible in the first place.

The creation of the COGECO Nouvelles agency

78. The Commission notes that COGECO Nouvelles will supply regional stations with news and public affairs programming. These regional stations will have access to news content throughout the week, allowing them to devote more of their resources to their own local and regional programming. The Commission considers that COGECO Nouvelles will make it possible to continue news and public affairs programming in Quebec and allow Cogeco to ensure the recovery and viability of these stations. Further, the Commission considers that by creating the COGECO Nouvelles agency, Cogeco will put news radio back on top and breathe new life into local and regional news programming. This agency will complement the other news sources available in Quebec.

79. The Commission considers that COGECO Nouvelles will contribute to Cogeco’s recovery plan by enhancing the role of regional stations. The Commission also considers that it will contribute to the economic, artistic and touristic development of the region, and by extension the Quebec radio broadcasting system, through the production of content and the increased regional coverage that will result from it.

80. The Commission notes the novelty of the concept of COGECO Nouvelles as proposed. In fact, while a parallel could be drawn with similar projects that have previously been put in place (e.g. Corus Nouvelles), the Commission considers that Cogeco is breaking new ground by sharing its content with independent and community broadcasters and implementing a news sharing system.

The Diversity of Voices Policy

81. In Regulatory Policy 2008-4 (Diversity of Voices Policy), the Commission determined that diversity in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements (public, private and community), plurality of editorial voices within the private element and programming diversity.

82. Plurality within the private element refers to the number of voices belonging to separate owners. Such undertakings make use of their own news and programming resources. In this way, a diversity of voices is preserved because no one person – no one voice – within an element has sole responsibility for choosing the programming provided. Plurality of editorial voices refers to the number of these voices to which Canadians are exposed.

83. The Commission notes that the control over access that can result from market dominance is likely to have an impact on programming diversity. In this respect, one of the objectives of the Commission in its Diversity of Voices Policy was to ensure that Canadians have access to programming diversity, notably with respect to local, regional and national content. Programming diversity means, among other things, the availability of different genres and formats.

84. Additionally, ownership consolidation within the private element raises concerns about reduced local reflection, particularly in news coverage. The Commission considers that any benefits related to increased consolidation should include improvements to the quality of the programming offered, including news and information programming offered at both the local and national level.

85. The Montréal market has several French-language news sources, including public, private and community elements. It is served by 2 private and 2 public television stations, 12 private and 2 public radio stations, 5 community radio stations, 1 campus station and 3 daily newspapers. The market is also well served in terms of musical diversity thanks to the presence of public, community, campus, specialty, ethnic and religious stations. The main challenge facing the Montréal market is to maintain not a predominantly music but rather a predominantly spoken word format.

86. The Commission notes that Cogeco's proposal rests on the contribution of CHMP-FM, which is a leading player in Montréal's French-language radio market. Because CHMP-FM is the only private French-language news and public affairs station operating in Montréal, the Commission considers that its predominantly spoken word programming contributes significantly not only to the diversity of radio content in this market as an alternative to the CBC's La Première chaîne, but also to the viability of spoken word radio in Quebec. The Commission notes that although this format has experienced difficulties, it has nonetheless made a remarkable recovery in the French-language Montréal market thanks to CHMP-FM. It is thus appropriate to take steps to ensure the continuation of the success in Montréal and to help spread this success to the regions for the benefit of all those citizens who expect to receive such a quality service at home and that it reflect their local and regional reality. The Commission considers that Cogeco's proposal is clearly in accord with this objective.

87. In light of the foregoing, the Commission considers that Cogeco's proposal will enhance and prove highly beneficial to the radio market in the province of Quebec.

88. The Commission notes ADISQ's concerns over less access to the decision-making centres responsible for music programming on Quebec stations and the resulting impact on musical diversity. However, the Commission considers that several of its proposals would be better addressed in a proceeding to review the commercial radio policy rather than in a proceeding to consider a transaction and consequently will not examine these proposals at this time.

Commission's determinations

89. In light of all of the above, the Commission considers that the various components of Cogeco's proposal for an exception to the Policy, combined with the interventions in support of this proposal, make for an exceptionally compelling case. Given the case made by Cogeco, the Commission is of the view that it is appropriate to grant Cogeco an exception to the Policy for the Montréal market. Accordingly, the Commission **approves** Cogeco inc.'s request for an exception to the Common Ownership Policy to allow it to acquire the French-language commercial radio stations CKOI-FM Montréal and the predominantly spoken word French-language specialty radio stations CHMP-FM Longueuil and CKAC Montréal and to operate these stations in addition to the station it already operates in the Montréal market, namely CFGL-FM. The Commission also **approves** Cogeco's acquisition of the English-language station CFQR-FM Montréal. The Commission notes that all of the conditions and aspects considered in reaching this determination, whether they be of a factual, legal, regulatory or policy nature, constitute an indivisible whole and that the absence of any one of these conditions or aspects makes any comparison with the current situation irrelevant. Consequently, the Commission underscores that it would not under any circumstances have granted an exception to the Policy if the application had involved the operation by Cogeco of a third FM music station in the Montréal market.

90. The Commission finds it appropriate to require, as a **condition of approval**, that Cogeco file a plan within 60 days following the date of this decision for the implementation and operation of the COGECO Nouvelles agency, as it committed to at the hearing. This **condition** is set out in the appendix to this decision.

Sherbrooke radio market

91. The Sherbrooke radio market comprises five commercial FM stations. These stations are owned by three separate ownership groups:

- Astral (2): CIMO-FM, CITE-FM-1
- Corus (2): CHLT-FM, CKOY-FM
- Cogeco (1): CFGE-FM

92. Astral currently dominates the Sherbrooke market in terms of radio tuning share, revenues and profitability. Additionally, Corus stations CHLT-FM and CKOY-FM and Cogeco station CFGE-FM are struggling financially.

93. If the transaction were approved as proposed, the Sherbrooke radio market would be controlled by two groups, Astral and Cogeco. However, the Commission notes that the transaction could allow CHLT-FM and CFGE-FM to benefit from synergies that could enhance their competitive positions and consequently their financial performance.

94. With respect to local programming, CHLT-FM is currently required to broadcast not less than 42 hours of such programming each week. Cogeco has committed to increasing that level to 50 hours per week following the transaction.

95. CHLT-FM is also currently required to broadcast not less than 21 hours of spoken word programming in each broadcast week. Cogeco has committed to increasing that level to 24 hours and 46 minutes during each broadcast week following the transaction.

96. The station is further required to broadcast not less than 3 hours and 35 minutes of news in each broadcast week. Cogeco proposed to increase this level to 4 hours and 20 minutes each week.

97. Cogeco indicated that in this market, there would be a total of four journalists assigned to the radio stations: in the morning, two full-time reporters assigned each to one station, and in the afternoon, a news desk editor for both stations, with one journalist/reporter working in the field. The applicant also stated that the design and content of the newscasts would be adapted to reflect each station's audience and format.

98. Cogeco intends to retain CHLT-FM's predominantly spoken word format but is planning to transition the station's music programming to a Rock format.

Conversion of CKOY-FM

99. Cogeco asked to be authorized to convert CKOY-FM to a rebroadcasting transmitter for CKAC Montréal in the Sherbrooke market to improve the health of the advertising market and enable Astral's competing stations to become profitable.

Interventions

100. Astral and Evanov Communications Inc. (Evanov) were both of the view that converting CKOY-FM to a rebroadcasting transmitter for CKAC is not the best use of the frequency. According to these interveners, the conversion is a way for Cogeco to circumvent the Commission's Policy. They also shared the view that the conversion of CKOY-FM to a retransmitter would inevitably result in a substantial loss of local programming and diversity of editorial voices for listeners in the market. Astral and Evanov further submitted that Cogeco had not indicated any technical issue that would justify the application and had not shown beyond the shadow of a doubt, as the Commission requires, the existence of a demonstrable economic need that would impact the future viability of the radio stations in the Sherbrooke market.

101. Evanov submitted that a better option would be to require Cogeco to divest itself of CKOY-FM to allow a new broadcaster to serve the market with a local station. In this respect, Astral noted that Cogeco's wish to divest itself of the station was insufficiently publicized prior to the transaction, if at all. Astral added that before

approving Cogeco's application, the Commission should ensure that there was truly no potential buyer interested in continuing to operate CKOY-FM as a local station.

102. Tietolman Tétrault opposed Cogeco's plan to convert CKOY-FM to a rebroadcasting transmitter for CKAC Montréal. According to the intervener, it is contradictory for Cogeco to offer sports programming originating in Montréal as a means of ensuring the recovery of regional stations in Quebec and solving CKOY-FM's problems. Tietolman Tétrault added that it might be interested in buying the station and suggested that Cogeco divests itself of it.

103. ADISQ opposed converting the Sherbrooke station to a rebroadcasting transmitter for the programming of CKAC Montréal. ADISQ recalled the highly competitive climate when the licence was issued in 2003 to Groupe Génération Rock and when it was bought by Corus in 2007 for $1.1 million. ADISQ recommended that the Commission deny the application to convert the station and direct Cogeco to divest itself of a station in the Sherbrooke market to comply with the Policy.

Cogeco's reply

104. Cogeco stated that it did not receive any expressions of interest for the acquisition of CKOY-FM, adding that it strongly doubted that a buyer would appear to operate CKOY-FM as a French-language music station given the station's heavy financial losses since coming on the air.

105. Cogeco also submitted that it would be easier to achieve balanced competition in a market with four players, particularly given that the two Astral stations in the market are dominant. In short, according to Cogeco, its proposal would improve the health of the advertising market in Sherbrooke and enhance the financial viability of stations that compete with Astral.

Commission's analysis and determinations

106. In light of the foregoing, the Commission **approves** the application by Cogeco inc. to acquire the assets of CHLT-FM from Corus Entertainment Inc.

107. The Commission generally authorizes the addition of transmitters to broadcast the programming of an originating station either to address technical deficiencies of the signal of this station in its authorized service area or to extend the signal of the originating station in adjacent communities where such transmitters broadcast programming that reflects the local communities served by airing local news and promoting local community events.

108. However, the Commission considers that the conversion of CKOY-FM to a rebroadcasting transmitter for CKAC Montréal would result in the loss of a local voice in the market and would not constitute the best use of the frequency currently assigned to CKOY-FM. The Commission is also of the view that the conversion does not meet the criteria set out in this respect. Accordingly, the Commission

denies Cogeco's application to convert CKOY-FM Sherbrooke to a rebroadcasting transmitter for CKAC Montréal.

109. Also, to ensure that Cogeco remains in compliance with the Policy at all times, the Commission requires that Cogeco divest itself of CKOY-FM no later than one year from the date of this decision and that in the interim the ownership and control of the station be transferred to a trustee pursuant to the terms of the voting trust agreement addressed in Broadcasting Decision 2010-943, also issued today.

110. As a **condition of approval**, the Commission also finds it appropriate to require that Cogeco file an application within 60 days following the date of this decision to amend its conditions of licence relating to local programming, spoken word programming and local news for the predominantly spoken word station CHLT-FM Sherbrooke, as it committed to at the hearing. This **condition** is set out in the appendix to this decision.

Other markets affected by the transaction

Saint-Jérôme radio market

111. The Commission notes that the population within CIME-FM's overlapping area represents less than 5% of the population of the Montréal market. Accordingly, CIME-FM is in compliance with the revised guidelines for the application of the Policy for radio.

112. One full-time journalist will be hired to cover the Laurentides market and thus enrich the content of CIME-FM Saint-Jérôme. According to Cogeco, the breakdown of news may vary based on events, but it estimates that it will be approximately 60% local and regional and 40% national and international.

Commission's determination

113. In light of the foregoing, the Commission concludes that the acquisition of the radio station CIME-FM Saint-Jérôme by Cogeco inc. raises no concerns with respect to the Policy. Accordingly, the Commission **approves** the application by Cogeco inc. to acquire the assets of CIME-FM Saint-Jérôme from Corus Entertainment Inc.

Québec radio market

114. The Québec radio market comprises ten stations, of which nine are FM stations and one is an AM station. These stations are owned by six separate ownership groups:

- Corus (2): CFOM-FM, CFEL-FM
- Astral (2): CITF-FM, CHIK-FM
- Cogeco (2): CJMF-FM, CJEC-FM
- RNC Média inc. (2): CHOI-FM, CHXX-FM

- Jean-Pierre Coallier (1): CJSQ-FM
- Michel Cadrin (1): CHRC

115. In order to remain in compliance with the Policy, Cogeco proposed to divest itself of CJEC-FM and CFEL-FM.

Commission's analysis and determinations

116. The Commission considers that the transaction complies with the Policy and could even promote diversity if CJEC-FM and CFEL-FM are sold to separate groups that are not currently operating in the Québec market.

117. Further, the Commission notes the addition of a journalist assigned to the daily coverage of the National Assembly, which no other commercial radio station currently offers.

118. The Commission **approves** the application by Cogeco inc. to acquire the assets of CFOM-FM and CFEL-FM from Corus Entertainment Inc.

119. The Commission however requires that Cogeco divest itself of CJEC-FM and CFEL-FM no later than one year from the date of this decision and that in the interim ownership and control of the stations be transferred to a trustee pursuant to terms of the voting trust agreement addressed in Broadcasting Decision 2010-943, also issued today.

Trois-Rivières radio market

120. The Trois-Rivières radio market comprises four FM stations, which are owned by three ownership groups:

- Astral (2): CIGB-FM, CHEY-FM
- Corus (1): CHLN-FM
- Cogeco (1): CJEB-FM

121. CHLN-FM, which Cogeco proposes to acquire, has the lowest radio tuning share and revenues in the market.

122. With respect to local programming, CHLN-FM is currently required to broadcast not less than 42 hours of such programming each week. Cogeco has committed to increasing that level to 50 hours per week following the transaction.

123. CHLN-FM is also currently required to broadcast not less than 21 hours of spoken word programming each broadcast week. Cogeco has committed to increasing that level to 24 hours and 46 minutes per broadcast week following the transaction.

124. The station is further required to broadcast not less than 3 hours and 20 minutes of news in each broadcast week. Cogeco proposed to increase this minimum to 4 hours and 20 minutes each week.

125. Cogeco indicated that in this market there will be a total of four journalists assigned to the radio stations: in the morning, two full-time reporters assigned each to one station, and in the afternoon, a news desk editor for both stations, with one journalist/reporter working in the field. The applicant also stated that the design and content of the newscasts would be adapted to reflect each station's audience and format.

126. Cogeco intends to retain CHLN-FM's predominantly spoken word format but is planning to transition the station's music programming to a Rock format.

Commission's analysis and determinations

127. Although the Trois-Rivières radio market would be controlled by two groups, the Commission considers that the transaction could allow CJEB-FM and CHLN-FM to benefit from synergies that could enhance their financial performance.

128. In light of the foregoing, the Commission **approves** the application by Cogeco inc. to acquire the assets of CHLN-FM from Corus Entertainment Inc.

129. Furthermore, as a **condition of approval**, the Commission finds it appropriate to require that Cogeco file an application within 60 days following the date of this decision to amend its conditions of licence relating to local programming, spoken word programming and local news for the predominantly spoken word station CHLN-FM Trois-Rivières, as it committed to at the hearing. This **condition** is set out in the appendix to this decision.

The Ottawa-Gatineau radio market

130. The Ottawa-Gatineau French-language market comprises five FM stations owned by three ownership groups:

- Astral (2): CIMF-FM, CKTF-FM
- RNC Media inc. (2): CHLX-FM, CFTX-FM
- Corus (1): CJRC-FM

131. With respect to local programming, CJRC-FM is currently required to broadcast not less than 42 hours of such programming per week. Cogeco has committed to increasing that level to 50 hours each week following the transaction.

132. CJRC-FM is also currently required to broadcast not less than 21 hours of spoken word programming in each broadcast week. Cogeco has committed to increasing that level to 24 hours and 46 minutes per broadcast week following the transaction.

133. The station is further required to broadcast not less than 3 hours and 7 minutes of news in each broadcast week. Cogeco proposed to increase this minimum to 4 hours and 20 minutes each week.

134. Cogeco indicated that in this market, the newsroom will have four journalists, one of whom will be assigned to daily coverage of the proceedings of the House of Commons, which no other commercial radio station currently offers. A sports reporter will cover Ottawa Senators games in French.

Commission's analysis and determinations

135. Because Cogeco does not currently own any stations in the Ottawa-Gatineau radio market, the proposed transaction has no impact on concentration of revenues or radio tuning share.

136. In light of the foregoing, the Commission **approves** the application by Cogeco inc. to acquire the assets of CJRC-FM Gatineau from Corus Entertainment Inc.

137. Furthermore, as a **condition of approval**, the Commission finds it appropriate to require that Cogeco file an application within 60 days following the date of this decision to amend its conditions of licence relating to local programming, spoken word programming and local news for the predominantly spoken word station CJRC-FM Gatineau, as it committed to at the hearing. This **condition** is set out in the appendix to this decision.

Value of the transaction

138. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.

139. Cogeco is paying $80 million for the shares of 591911 B.C. and Metromedia. Consistent with Commission practice, the value of the assumed leases, i.e., $17.7 million, is added to the price paid. Therefore, the value of the transaction is $97.7 million.

Value of the transaction (M$)	
Purchase price	80.0
Additions to purchase price:	
Assumed leases	17.7
Value of the transaction	**97.7**

Tangible benefits

140. During the hearing, Cogeco committed to paying tangible benefits representing 9% of the value of the transaction. Cogeco will therefore pay tangible benefits over a seven-year period totaling $8.793 million, which is 9% of the revised value of the transaction.

141. Because Cogeco committed to paying tangible benefits based on the value of all the stations, including those it would sell, and to avoid double payment of tangible benefits, Cogeco also requested at the hearing that the Commission not require the buyers of these stations to pay tangible benefits. Pursuant to the current decision by the Commission, this request would involve the stations CFEL-FM Lévis/Québec, CJEC-FM Québec and CKOY-FM Sherbrooke.

142. The Commission notes that although Cogeco decided to pay tangible benefits for assets of which it will divest itself, the Commission cannot make a ruling on an issue that will be the subject of subsequent applications.

143. The new policy on tangible benefits was adopted in Broadcasting Public Notice 2006-158. Subsequently, in Broadcasting Regulatory Policy 2010-499, the Commission adopted a new approach to funding the campus and community radio sector through basic Canadian Content Development (CCD) from commercial radio stations and tangible benefits packages associated with ownership transactions.

144. The Commission amended the formula so that 0.5% of the value of a commercial radio transaction will be allocated to the Community Radio Fund of Canada (CRFC). The amount allocated to FACTOR or MUSICACTION will be reduced from 2% to 1.5%. As a result, the contribution will be allocated as follows:

- 3% to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% to FACTOR or MUSICACTION;
- 1% to any eligible CCD initiative, at the discretion of the purchaser;
- 0.5% to the CRFC.

145. Because the new policy on tangible benefits came into effect on 22 July 2010, Commission staff asked Cogeco in a deficiency letter to provide it with a new distribution of tangible benefits to comply with the new policy.

146. Cogeco proposed tangible benefits amounting to $7.2 M over seven years, to be distributed as follows:

	Total over seven years	Total each year
4% to MUSICACTION	$3.2M	$457,143
3% to Fonds Radiostar;	$2.4M	$342,857

0.5 % to Community Radio Fund of Canada (CRFC)[1]	$400,000	$57,143
The remainder, 1.5 %, to various projects ($1.2M), allocated as follows:		
CRFC[1]	$440,000	$62,857
Rencontres de l'ADISQ	$350,000	$50,000
Annual contest "Fais ta marque" devoted to emerging artists in Quebec	$210,000	$30,000
Canadian Broadcast Standards Council (CBSC) for the translation to French of past decisions concerning radio stations	$140,000	$20,000
Annual contest "Journaliste en devenir" for the training of new journalists in Quebec	$60,000	$8,571

[1] Cogeco committed to allocating an additional $440,000 to the CRFC over and above the required $400,000, for a total of $840,000 ($120,000/year).

Commission's analysis and determinations

147. The Commission considers that the various initiatives proposed by the applicant are eligible and consistent with the Commission's CCD policy, as set out in paragraph 108 of Broadcasting Public Notice 2006-158.

148. However, since the value of the transaction as determined by the Commission is $97.7 million, the total tangible benefits that Cogeco will be required to allocate amount to $8.793 million, i.e. $1.6 million more than what was originally proposed. Consequently, as a **condition of approval** the Commission requires Cogeco to submit a proposal, within 60 days following the date of this decision, for the allocation of the additional $1.6 million that it has committed to contribute. The proposal must be consistent with the Commission's policy as set out at paragraph 144.

149. Further, in conjunction with the licensee's filing of annual returns over the next seven broadcast years, Cogeco is directed to file with the Commission a report detailing the allocation of the tangible benefits.

Conclusion

150. In the Commission's view, the acquisition of the Corus stations by Cogeco approved subject to the conditions set out in this decision is in the interest of the broadcasting system in the Quebec Francophone market as a whole and will allow citizens to participate more fully in the country's democratic life. The Commission nonetheless remains aware that in granting Cogeco the exception requested for the Montréal

market, it is putting in place an extraordinary situation with conditions that are equally constraining for Cogeco. Consequently, the Commission wishes to reiterate that this exception is fundamentally and directly tied to CHMP-FM's predominantly spoken word specialty radio format and that any violation or any amendment application regarding CHMP-FM's format by Cogeco or its successors will immediately trigger a review by the Commission of the appropriateness of this exception. Further, the Commission underscores that it would not under any circumstances have granted an exception to the Common Ownership Policy if the application had involved the operation by Cogeco of a third FM radio music station in the Montréal market.

Secretary General

Related documents

- *CFEL-FM Lévis/Québec, CKOY-FM Sherbrooke and CJEC-FM Québec – Transfer of effective control*, Broadcasting Decision CRTC 2010-943, 17 December 2010

- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010

- *Diversity of voices*, Regulatory policy – Broadcasting Public Notice CRTC 2008-4, 15 January 2008

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

- *Commercial Radio Policy 1998*, Broadcasting Public Notice CRTC 1998-41, 30 April 1998

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

Appendix to Broadcasting Decision CRTC 2010-942

Conditions of approval

The licensee shall file a plan within 60 days following the date of this decision for the implementation and operation of the COGECO Nouvelles agency, as it committed to at the hearing.

The licensee shall file an application within 60 days following the date of this decision to amend its conditions of licence relating to local programming, spoken word programming and local news for the predominantly spoken word stations CHNL-FM Trois-Rivières, CHLT-FM Sherbrooke and CJRC-FM Gatineau, as it committed to at the hearing.

The licensee shall submit a proposal, within 60 days following the date of this decision, for the allocation of the additional $1.6 million in tangible benefits that it has committed to contribute. The proposal must be consistent with the Commission’s policy as set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

Concurring opinion of Commissioner Tim Denton

While this decision is ably defended in the majority opinion, it would have been greatly preferable to have had a hearing on whether a policy change is required or desirable, generally across Canada or for the French-language market, before we made this particular decision. Given this decision, I think that it would now be desirable for the Commission to consider the relevance of the common ownership policy across Canada generally. Such was not the order of events, as it happened. However, I see no reason in principle why the characteristics of the French-language market – to the extent they are relevant to the application of the common ownership policy – should not be recognized by our policy-making.