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Broadcasting Notice of Consultation CRTC 2013-106

Astral Broadcasting Undertakings – Change of Effective Control

Re-Proposed Merger of Bell Canada Enterprises & Astral Media Inc.

Final Written Comments of the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) & OpenMedia.ca

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TABLE OF CONTENTS

Introduction

1. The Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC), on behalf of its client, the Open Media Engagement Network (OpenMedia.ca), is pleased to offer these final comments with respect to the re-proposed merger of Bell Canada Enterprises and Astral Media. In these final comments, we set out our ongoing view that the proposed merger is not in the public interest and should not be approved. We maintain this view in spite of aforementioned efforts by the Competition Bureau to impose substantial divestitures and behavioural restrictions on the merged entity. As elaborated below, more recent proposals on the record of this proceeding similarly fail to address the concerns we highlighted in our initial comments.

I. Missing the forest for the trees: Vertical harms not addressed

2. In seeking to justify its proposed merger and to minimize any imposed safeguards, Bell adopts a myopic view of the implications of its proposal. Specifically, while rightly pointing out that this is a media transaction, it disregards the vertically integrated reality in which this media transaction is occurring. This approach undermines several elements of Bell's merger justification, and is perhaps best captured in the following testimony it presented to the Commission:

> …as a point of principle we said, "Okay, we are coming forward here on a media transaction. We recognize we are vertically integrated, but the issue is the additional content, the viewing share, revenue share, all those factors that Bell would acquire as a result of this transaction on the media side. So it's not about Bell TV.[1]

This narrower focus leads Bell to conclude that there is neither evidence of past harm, nor concern over future harm. However, this ignores the broader context into which Astral's media offerings are being integrated. This broader context not only exacerbates potential for harm in the media context by the vertically integrated nature of Bell, but also raises problems across all integrated Bell offerings. That is, in fact, the nature of vertical integration, which lets

[1] M. Bibic, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7759.

companies leverage market power in related distribution/content channels across *all* related markets.[2] It is this very cross-market leveraging that is precisely the problem.

3. As noted, this general misunderstanding resonates in several elements of Bell's justification. As a starting point, its repeated assurances that its post-divestiture concentration ratios are acceptable are problematic on two related fronts. First, Bell continues to rely on the 35% viewing shares threshold set out in the Commission's Diversity of Voices framework as a reference point for assessing the ongoing capacity of its post-divestiture holdings to impose detrimental impact.[3] As noted by several parties to this proceeding, including CIPPIC/OpenMedia.ca,[4] and as acknowledged by the Commission in its refusal to approve the previous merger proposal,[5] 35% is not a meaningful threshold for assessing the ability of a vertically integrated entity to act in a competitively harmful or undesirable manner. Vertically integrated entities can cause competitive harm at far lower thresholds particularly where, as here, an entity enjoys significant market power in *multiple* related services and distribution channels.[6]

4. Second, Bell continues to argue that the increased market power and viewer shares it will enjoy post-merger in lucrative pay and specialty services should not concern the Commission. Specifically, it argues that, while there have been significant increases in Bell Media wholesale rates, these are unrelated to its existing lucrative services (predominantly sports offerings) as the price of those specific sports offerings has *not* increased when measured on a per subscriber basis.[7] This categorically ignores the nature of the concern. The concern is that Bell leverages its control of lucrative offerings such as TSN as well as its higher cross-channel market power to force competitors to choose between *extremely* high a

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[2] For a brief overview, see CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, pp. 3-10 and, in particular, paras. 16-20.
[3] G. Cope, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 6, 2013, TRANSCRIPT, vol. 1, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0506.html>, line 251.
[4] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, paras. 23-26.
[5] Broadcasting Decision CRTC 2012-574, Astral Broadcasting Undertakings – Change of Effective Control, October 18, 2012, Route Reference: Broadcasting Notice of Consultation CRTC 2012-370, <http://www.crtc.gc.ca/eng/archive/2012/2012-574.htm>, paras. 53 and 65.
[6] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, paras. 23-26.
[7] K. Crull, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, lines 7412-7429.

la carte options or *extremely* high penetration guarantees.[8] Perhaps more importantly, Bell's ability to leverage these lucrative offerings in unique ways to limit the ability of competitors to compete with its *other* service offerings needs to be accounted for.[9] In this context, we note that post-merger, Bell will control 5 of the top 17 revenue-generating pat/specialty services in Canada which will provide them with significant cross-platform leverage capacity.[10] Measuring increased cost of services such as TSN on a per subscriber basis does not provide any insight into the harmful effects of such practices.

5. Third, with respect to French language services specifically, Bell argues that allowing this merger will actually lead to a *more* competitive French language market in Quebec. The rationale presented for this conclusion is that, post-divestiture, Bell will control lower total viewing share in French language specialty services than Astral currently controls and less viewing share than Québecor.[11] As a result, Bell argues, "the consumer will win in Quebec

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[8] L. Audet, Cogeco Cable, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 8, 2013, TRANSCRIPT, vol. 3, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0508.html>, lines 4422-4436; Novus Entertainment, Written Intervention, Broadcasting Notice of Consultation CRTC 2013-106, April 5, 2013, para. 5; K. Crull, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7418 [my emphasis]:

> For both Cogeco and Eastlink, **as a result of voluntarily adopting our penetration-based rate option**, they will actually pay less for our 24 non-sports services in 2013 than they did in 2010 under the previous deal. Over the five-year course of our new agreement, the compound annual growth rate for our non-sports services for Cogeco and Eastlink is expected to be zero.

[9] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, Section III.

[10] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, para. 31:

> In 2011, 17 specialty/pay services comprised 49% of all pay/specialty revenues.34 The 6 highest revenue generating properties produce 26% of all pay/specialty revenues.35 Bell currently controls 3 of these highly lucrative channels (TSN, RDS and Discovery). Under the previous merger proposal, a post-divestiture merged Bell/Astral would have controlled 7 of the top 17 and 4 of the top 6 revenue-generating pay/specialty properties. While the Competition Bureau's imposed divestiture reduces this number, a merged Bell will still control 5 of the top 17 and 4 of the top 6 revenue generators.

[11] G. Cope, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7463:

> 7463 We will sell six of Astral's French-language specialty services -- more than half -- leaving us with 22.6 percent viewing share, less than Astral has today and 8.4 percent lower than Québecor. With more content and more competition, the consumer will win in Quebec and in that marketplace.

and in that marketplace."[12] This approach once again fails to account for the vertical leveraging and vertical harms that Bell will be able to wield in Quebec post-merger.

6. Finally, Bell's reassurances with respect to ongoing access to non-linear rights post-merger do not adequately address the adverse incentives that are operative in a vertically integrated entity. Bell claims confidence in its capacity to "get TV Everywhere deals done with BDUs without Commission intervention…", as has been the case with its linear rights.[13] Bell further states that it currently offers its TV Everywhere as a package or, alternatively, à la carte.[14] The concern in this context is that the capacity of non-linear rights for direct revenue generation is marginal and hence their value to a non-integrated broadcast distributor is more in the nature of an important, but costly 'add on'. By contrast, a fully integrated entity such as Bell can extract *significant* indirect value from retaining non-linear rights by leveraging such rights in order to make other media, distribution and service offerings more compelling to customers. The record of this proceeding suggests that these underlying incentives remain operative in spite of Bell's assurances. Indeed, while Bell *now* offers non-linear rights in either a TV Everywhere package or à la carte, it is not at all clear that these paired offerings provide for any more flexibility than Bell offers for its *linear* offerings,[15]

II. Existing Regulatory Frameworks & the Public Interest

7. Despite suggestions to the contrary during the course of this hearing, existing regulatory frameworks remain inadequate to safeguarding the public interest in a post-merger broadcasting and telecommunications context. Specifically, the current negotiation/final offer arbitration framework has been presented as capable of preserving the public interest.

(a) Negotiations & Final Offer Arbitration cannot secure the Public Interest

8. We do not agree. First, it is important to recognize the limitations of final offer arbitration as a mechanism for resolving increasingly complex and multi-faceted value tradeoffs. As explained by an early analysis of the appropriateness of FOA for resolving CRTC matters:

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[12] *Ibid.*
[13] K. Crull, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, lines 7433-7435.
[14] *Ibid*.
[15] See para. 4 above.

> Mandatory FOA is best suited for disputes involving amounts of money or the appropriate method for calculating money. The more issues there are, the more complex the case becomes, and complexity increases both the risk of error and the potential for undue harshness in a ruling against the losing party. In our immediate context, an ideal type of case would involve the determination of access fees for one year or for some other limited period determined in advance to be "commercially reasonable". Limiting the issues in this manner also tends to assure that comparable offers will be submitted.[16]

It is clear that broadcasting negotiations are never as straight forward as a simple negotiation over price of access. At minimum, an accurate assessment of negotiated positions relies upon cost as *well* as restrictions such as penetration rate obligations and other conditions, as noted by Bell in oral testimony:

> I think I might add, Mr. Chair, what would trouble me -- and if I'm following, rates alone are a very narrow view of the agreements that we do with distributors. Rates must always be taken in conjunction with volume. So unit rate by itself in isolation can't be used as a term. That's why we were much more comfortable with commercially unreasonable terms as the metric, which include rates and other conditions.[17]

On this basis, the FOA mechanism appears ill-suited to resolving the more nuanced aspects of broadcasting negotiations in an effective manner. This is, indeed, reflected in the experience of those entities who have undergone such negotiations in the past.[18] Further, an accurate assessment of the public interest in the context of these negotiations requires an understanding of the *broader context* of the negotiations. For example, without a completed understanding of comparable à la carte rate offerings which are not part of the *direct* package reflected in final offers, it may be difficult to accurately assess whether the public interest is being reflected in a particular negotiation/Final Offer Arbitration or not.[19]

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[16] S.J. Reiter, "Structuring Baseball's 'Final Offer' Arbitration Process for use in Proceedings Before the CRTC", A Report commissioned by the CRTC, Broadcasting Notice of Consultation CRTC 2009-411, <http://www.crtc.gc.ca/eng/publications/reports/reich09.pdf>

[17] K. Crull, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7707.

[18] See CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, paras. 36-37.

[19] On this point, see footnote 8 above.

9. Even beyond the complexity and multi-faceted nature of these negotiations, which extend well beyond 'price', the broader, industry-wide impact that such negotiations inevitably have further impedes the utility of FOA as a mechanism for securing the public interest in these contexts [emphasis is mine]:

> FOA works best to resolve money disputes between individual parties. Baseball's system is undermined because each dispute tends to be handled as part of ongoing labor management conflict and may have implications affecting broader interests. The interests of the immediate parties often are treated as far secondary to group interests. This affects the submissions, decisions to settle, conduct of the hearings.
>
> I don't know the extent to which disputes before the Commission might have significant industry-wide effects. Similar to Baseball, if the interests of the immediate parties become secondary to group interests and subject to group control or coordination, FOA might not work as well as it should.[20]

Considerations of the broader public interest impact of a given broadcasting negotiation will by necessity have significant industry-wide effects and will require a consideration of a broader, multi-faceted assessment of many competing factors. This suggests that Final Offer Arbitration alone will *not* be an effective mechanism for ensuring those elements of a given negotiation are effectively accounted for. In most scenarios, it might be sufficient to rely on negotiating parties and market forces to secure the public interest. However, as entities become more concentrated and become subject to more cross-incentives as a result of greater integration, this becomes less the case. As currently formulated, the broadcast negotiation process lacks any mechanism for the Commission to ensure a given agreement (or set of 'Final Offers') does, in fact, accord with the public interest.[21]

(b) Post-Merger Market Uniformity Will Cause Ongoing Challenges

10. The greater concentration and integration that will characterize the market post-merger will exacerbate the current negotiation/FOA-based mechanism to secure the public interest. In

[20] S.J. Reiter, "Structuring Baseball's 'Final Offer' Arbitration Process for use in Proceedings Before the CRTC", A Report commissioned by the CRTC, Broadcasting Notice of Consultation CRTC 2009-411, <http://www.crtc.gc.ca/eng/publications/reports/reich09.pdf>.
[21] As noted in the hearing of this matter: See Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7568 *et. seq.*

this context, the disappearance of Astral as the last significant independent broadcaster in Canada has ramifications beyond the increased concentration that Bell will enjoy as a result. Sans-Astral, Canada's market becomes significantly more uniform, as competitive pressures from independent broadcasters will disappear. The loss of Astral will also impact the ability to assess what the status quo *should* look like, as Canada will lack a strong independent point of reference for broadcast packaging and conditions.[22] The notion that Astral should be retained in light of its status as a 'vigorous and effective competitor' is strengthened by the record of this proceeding, where multiple parties have noted that Astral is their "number one partner in terms of platform innovation".[23] Astral was, for example, one of the first entities to conclude deals on non-linear rights, even developing an innovative 'one-stop' cross-provider platform for HBO Go.[24] Meanwhile Bell Canada did not even make these available until after its first failed attempt to approve this merger.[25]

(c) OTT, YouTube & Hulu Canada

11. Relying on integrated companies to determine, in the context of negotiations, what is in the 'public interest' is a particular concern when assessing the future of non-linear and multi-platform access to content in Canada. We point to the example of Hulu in the United States, which developed as an online platform which provided, in a centralized location, access to significant amounts of content to U.S.-based viewers. Under what scenario, one might ask, would Bell agree to negotiate with an

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[22] As elaborated upon in: CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, Broadcasting Notice of Consultation CRTC 2013-106, Astral Broadcasting Undertakings – Change of Effective Control, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, paras. 13-16.

[23] K. Crull, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7434.

[24] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, para. 48.

[25] See, for example, K. Engelhart, Rogers Communications Inc., Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 7, 2013, TRANSCRIPT, vol. 2, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0507.html>, lines 2555-2560:

> Prior to its first application, Bell Media refused even to offer us content from its specialty services for distribution on our VOD and online platforms. More recently, it has changed tactics. It has offered to provide multiplatform rights to specialty and conventional content as part of the TV Everywhere service. Contrary to Bell Media's suggestion, it is pricing that content at five to 10 times normal market rates, and well above what we currently pay other domestic and foreign suppliers.
>
> Bell Media used a similar approach for wireless content. It offered its BDU customers that content for a fee of $8 million, then it distributed it to its own Bell Mobile customers on an exclusive basis while it engaged in protracted negotiations with Rogers and TELUS and eventually offered it for a minimum guarantee of $3 million.

independent 'over the top' distributor in order to ensure availability of its content on such a platform? As noted in our initial comments, independent entities such as Astral openly view the prospect of online and OTT distribution as an opportunity while integrated entities such as Bell view these same prospects as threats or, at best, a chance to lock customers in to ancillary Bell-owned distribution channels.[26] Under the terms of the New Media exemption, any independent Canadian service seeking to establish an online portal similar to Hulu's would currently enjoy *no* protection.

12. In fact, in this proceeding Bell repeated its arguments that the growing presence of OTT services such as Netflix should militate in favour of granting its proposed merger. The argument appears to be that the Commission should accept and even *encourage* greater concentration and integration levels than would have been the case historically, so that Canadian distributors will be able to compete more effectively with online distributors such as Netflix.[27] Although the Commission has confirmed that OTT continues to operate as a complimentary, not substitutive, element of Canadian broadcasting,[28] Netflix is often presented an entity with immense international resources on the cusp of swallowing Canadian broadcasting whole. These characterizations, however, often focus on the greater *international* revenues and viewing shares commanded by Netflix, while ignoring the reality that having an international footprint leads not only to cross-border revenue streams, but also the need to *compete* with international content providers.[29] A direct comparison of Canada's 6 top-revenue generating pay/specialty channels (four of which will be controlled by Bell post-merger) to Netflix' *non-U.S.* revenues and subscribers is more reflective of the competitive environment Netflix is faced with when negotiating for Canada-specific content distribution rights. Such an analysis yields a different comparison altogether, as all but two of these top 6 offerings exceed Netflix in terms of subscription numbers *and* revenues.[30]

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[26] CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, paras. 47 and 49.
[27] G. Cope, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 6, 2013, TRANSCRIPT, vol. 1, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0506.html>, lines 248-252.
[28] Broadcasting Decision CRTC 2012-574, Astral Broadcasting Undertakings – Change of Effective Control, October 18, 2012, Route Reference: Broadcasting Notice of Consultation CRTC 2012-370, <http://www.crtc.gc.ca/eng/archive/2012/2012-574.htm>, para. 62.
[29] As an example, in BCE Inc. and Astral Media Inc., Supplementary Brief, ABRIDGED, January 31, 2013, 2013-0244-7, para. 84, which compares Netflix Inc.'s international revenues to the Canada-based revenues of TMN and TMN Encore.
[30] See CIPPIC/OpenMedia.ca, Written Intervention, April 5, 2013, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, Table 1: Putting Lucrative Content in Context.

13. It is decidedly in the public interest to encourage innovative platforms such as Netflix and Hulu and, particularly, ones that are not integrated to a distribution or broadcasting service. Unfortunately, integrated distributors do not share this view, leaving an open question as to whether negotiated agreements are sufficient to preserving similar facets of the public interest.

III. Proposed Safeguards Will Not Fix These Problems

14. Bell's proposed safeguards will not address these concerns. Putting aside for the moment the fact that these safeguards will necessarily occur within the context of Final Offer Arbitration, they are flaws in numerous ways, including:

- its proposed safeguards will only apply to its Media services[31] and therefore will be powerless to remedy the various cross-service/distribution channel harms that a post-merger Bell will be able to impose;[32]
- the inclusion of references to 'prevailing business models' (12(j)) as a consideration for assessing whether a Final Offer reflects fair market value or not is deeply problematic in light of the market uniformity that will prevail post-merger.[33] This is also problematic in light of post-merger Bell's greater market power and increasing ability to impose its packaging preferences and business models onto the market in general. Along the same vein, There are no clear limits on excessive minimum penetration levels. While à la carte rates are a listed as a point of reference, there is no mechanism to assess the reasonableness of these;
- the lack of any 'public interest' criteria in the list of factors used to assess whether a given offer reflects fair market value or not;[34] and

[31] M. Bibic, Bell Canada, Oral Testimony, Broadcasting Notice of Consultation CRTC 2013-106, May 10, 2013, TRANSCRIPT, vol. 5, <http://www.crtc.gc.ca/eng/transcripts/2013/tb0510.html>, line 7758.
[32] We touch on a few of these above, but a more detailed accounting of these can be found in our Written Intervention, April 5, 2013, <http://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf>, Section III: Specific Problems.
[33] Astral Media Inc. and BCE Inc., Reply Comments, Broadcasting Notice of Consultation CRTC 2013-106, Application No. 2013-0244-7, May 10, 2013, Exhibit J.
[34] S.J. Reiter, "Structuring Baseball's 'Final Offer' Arbitration Process for use in Proceedings Before the CRTC", A Report commissioned by the CRTC, Broadcasting Notice of Consultation CRTC 2009-411, <http://www.crtc.gc.ca/eng/publications/reports/reich09.pdf>, pp. 46-47:

> **Of course, specific evaluation criteria should be established and made known to the arbitrators and the parties**. The criteria should be broad enough to permit consideration of anything commercially reasonable that would be considered by willing buyers and sellers on equal bargaining footing: e.g., cost of developing the broadcast system and providing the required service; appropriate profit; customary past charges between the same or other parties for similar access to

- while the cost of the programming service is listed as a salient consideration (12(i)), there is no consideration of the linear and non-linear value extracted by Bell from the content in question. Without such consideration, there is no mechanism to take into account the cross-platform competitive advantage Bell gains from its high levels of concentration and integration.

15. Even with these concerns addressed, however, many problems remain that cannot be addressed so readily. First, these safeguards will still be operative largely within the context of Final Offer Arbitration – a mechanism that is ill-suited to safeguarding the public interest against the threats posed to it by this merger. While most voluntary wholesale agreements can be presumed to be in the 'public interest', the counter-incentives active in a uniform, converged Canadian telecommunications market raise real and tangible risks that even voluntary agreements will harm the public interest. At minimum, all agreements should be subject to review against public interest criteria, even if these are ultimately insulated by a presumption of some sort. Second, the loss of Astral as the last maverick competitor will have implications beyond Bell's operations, yet the proposed safeguards will only apply to Bell. Third, independent new media services will not benefit from any of these protections yet, arguably, these may be most in need of such protections. Will we ever get a Canadian Netflix or Hulu? Not under current conditions.

16. Overall, the merger of Bell and Astral, even in its post-divestiture format, will have, in our view, such tectonic impact that it should be avoided. Its approval will require a rigorous commitment to a far more interventionist regulatory approach than has been the case in the Broadcast sector and one that the Commission may not wish to undertake.

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television signals; accepted industrial methods for calculating price, etc. **Certainly, public interest should be referenced**.