



## Broadcasting Decision CRTC 2008-206

Ottawa, 22 August 2008

**Corus Entertainment Inc., on behalf of 1708484 Ontario Inc.**  
Across Canada

*Application 2008-0382-6, received 7 March 2008*  
*Broadcasting Public Notice CRTC 2008-61*  
*11 July 2008*

### Change in effective control

*The Commission **approves**, subject to certain **conditions**, the application by Corus Entertainment Inc., on behalf of 1708484 Ontario Inc., for authorization to effect a change in the effective control of 1708484 Ontario Inc.*

### Introduction

1. The Commission received an application by Corus Entertainment Inc. (Corus), on behalf of 1708484 Ontario Inc. (1708484), for authorization to effect a change in the effective control of 1708484, pursuant to subsection 10(4)(a) of the *Specialty Services Regulations, 1990*. 1708484 is the licensee of the English-language specialty programming undertaking known as Canadian Learning Television (CLT).
2. In Broadcasting Decision 2008-141, the Commission approved an application by CTV Limited (CTV) to acquire various assets through a corporate reorganization involving the wind-up of its wholly owned subsidiary Learning and Skills Television of Alberta Limited, the parent corporation of 1708484, into CTV. Accordingly, the present transaction would be effected through the transfer of all the issued and outstanding shares currently held by CTV in the capital of 1708484 to Corus. As a result, effective control of 1708484 would be exercised by Corus, a corporation controlled by JR Shaw through its direct holdings and through a Voting Trust Agreement.
3. The Commission received interventions in support of this application. The Commission also received interventions commenting on the application by the Alberta Motion Picture Industries Association (AMPIA) and the Canadian Film and Television Production Association (CFTPA). The interventions and the applicant's reply can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### Commission's analysis

4. After examining the application and the interventions, the Commission finds that the issues to be determined relate to the value of the transaction, the tangible benefits, the incrementality of the tangible benefits, the associated reporting requirements, the charging of administration fees, program rights and Terms of Trade, and regional representation.

### **Value of the transaction**

5. In its intervention, the CFTPA urged the Commission to continue its practice of including operating lease commitments and assumed debt and liabilities in the value of transactions for the purpose of calculating benefits.
6. Corus replied that this issue was thoroughly addressed in its application and during the deficiency phase of this process.
7. Based on the terms of the purchase agreement dated 6 March 2008, the value of the transaction is \$73,000,000. However, it is the Commission's practice to include in the value of the transaction all of the considerations passed between the purchaser and the vendor, including any conditional consideration that may become due, for whatever reason, subsequent to the closing of the transaction. In this regard, the purchaser will be assuming commitments in the amount of \$13,685. Consequently, the revised value of the transaction will amount to \$73,013,685.

### **Tangible benefits**

8. Pursuant to the Commission's Tangible Benefits Policy, as set out in Public Notice 1999-97, Corus proposed a tangible benefit package of \$7,300,000, representing a financial contribution of 10% of the proposed value of the transaction, to be allocated as follows:

#### **Programming-related tangible benefits (\$6.325 million)**

- a) *Script and concept development funding*: Up to \$1 million may be made available over a seven-year period to assist in the purchase of underlying rights, the creation of scripts, bibles, outlines and treatments of Canadian programming offerings that fit within categories 5(a) Formal education and 5(b) Informal education, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*; and
- b) *Licence fee contributions*: A minimum of \$5.325 million will be made available over a seven-year period in the form of a license fee top-up for original Canadian program offerings that fit within categories 5(a) and 5(b).

If the demand for script and concept development support does not result in the expenditure of \$1 million, then any unused development monies will be allocated to the licence fee contribution funding stream.

### **Social tangible benefits (\$975,000)**

Corus proposed to establish a number of grants and bursaries totalling \$975,000. Currently, CLT has relationships with a number of colleges and universities in Alberta, namely, Alberta College of Art & Design, Athabasca University, Bow Valley College, Grant MacEwen College, Mount Royal College, Northern Alberta Institute of Technology, Olds College, Southern Alberta Institute of Technology and the University of Alberta. Corus proposed to provide each school with a grant of \$75,000, payable over a seven-year term, to support initiatives in broadcasting or broadcasting-related fields.

9. Corus committed to distributing the monies as evenly as possible over the seven years and to allocating a minimum of 75% of the programming-related tangible benefits to independent producers. Corus also indicated that it would accept a condition of licence requiring it to allocate a minimum of \$1 million to its *Script and concept development funding* initiative, subject to the demand for the initiative warranting this level of expenditure. As noted above, in the event that the demand for the initiative for script and concept development support does not result in the expenditure of \$1 million, the licensee would reallocate the unallocated funds to the licence fee contribution funding stream. Accordingly, as a **condition of approval**, the Commission directs Corus to submit an application to amend the licence for CLT to add a condition of licence to this effect within 30 days of the date of this decision.
10. Further, given that the revised value of the transaction set out above (\$73,013,685) requires an adjustment in the associated benefits (\$7,301,368), the Commission directs Corus to allocate the additional \$1,368 to its licence fee top-up initiative.

### **Incrementality of the tangible benefits**

11. In Public Notice 1989-109, the Commission stipulated that benefits should be incremental, i.e. not part of the normal responsibilities of the existing licensee.
12. The CFTPA indicated in its intervention that, in its view, in order for the Commission to ensure that all on-screen benefit funds flowing from this transaction are incremental to the system, a condition of licence to this effect must apply to all of Corus's programming services.
13. AMPIA also proposed that Corus make a commitment concerning incremental programming whereby CLT would pre-license new programming and not acquire broadcast windows for older, already completed programming.
14. To ensure that the spending within the framework of its proposed tangible benefit initiatives would be incremental to (i.e. over and above) the existing Canadian program expenditure (CPE) requirement for CLT, as set out in its conditions of licence, Corus indicated that it would track the CPE and the tangible benefits separately (as reported in the annual returns) and would not include expenses related to tangible benefits when calculating the CPE of CLT. Corus further indicated that it would accept a condition of

licence stipulating that, for the purpose of fulfilling the CPE requirement set out in the conditions of licence of CLT, it may not include any expenditure related to programming that has been funded out of the benefit package approved by the Commission with respect to the transfer of effective control of CLT from CTV to Corus. Finally, with regard to incremental programming, Corus stated that CLT would be pre-licensing new programming and not acquiring broadcast windows for older, already completed programming.

15. The Commission is satisfied with Corus's commitments regarding incrementality. Accordingly, as a **condition of approval**, the Commission directs Corus to submit an application within 30 days of the date of this decision to amend the licence for CLT to add the proposed condition of licence relating to CPE and benefit expenditures.

#### **Reporting**

16. The CFTPA stated that the Commission should require Corus to report annually on actual benefit spending to allow the Commission to monitor progress in this area.
17. As noted earlier, Corus indicated that a portion of the funds associated with the *Script and concept development funding* initiative may be reallocated to the *Licence fee contributions* initiative if demand for the *Script and concept development funding* initiative does not warrant the level of funding currently devoted to that initiative. Consequently, to enhance the transparency of this transaction and the associated tangible benefits, the Commission directs Corus to file annual reports with the Commission detailing the tangible benefit expenditures. Further, as a complement to these annual reports, the licensee must, as proposed, clearly identify the annual expenditures associated with the tangible benefits in its annual returns. As described in paragraph 14 above, these reports must also clearly demonstrate the incrementality of the tangible benefit spending.

#### **Administration fees**

18. With respect to the issue of administrative fees, the CFTPA indicated that the Commission should explicitly state that Corus is not to charge any administrative fees with respect to management of the CLT benefit package.
19. The Commission notes that Corus has committed to not charging any administrative fees. Corus is reminded that the Commission considers that it is inappropriate for any administrative fees to be charged when approval has been given to a licensee to self-administer benefit spending. Accordingly, no administrative fees may be charged by Corus.

#### **Program rights and Terms of Trade**

20. The CFTPA and AMPIA both expressed concerns related to program rights and Terms of Trade.

21. In recent transaction decisions and in Broadcasting Public Notice 2007-53, the Commission has underscored the importance of Terms of Trade agreements. Accordingly, the Commission expects Corus to provide draft or signed Terms of Trade agreements with independent producers as part of its licence renewal application. The Commission will examine the role of independent production at the time of licence renewal.

#### **Regional representation**

22. The CFTPA and AMPIA also raised concerns about CLT's western-based operations and urged the Commission to seek assurances that CLT maintain its Edmonton facilities. However, the Commission notes that the maintenance of the Edmonton facilities is a business decision, not an area in which it can intervene. Nonetheless, the Commission expects Corus to maintain relations with independent producers from all regions of Canada in order to reflect and ensure a diversity of voices and adequate regional representation. The Commission expects Corus to demonstrate its initiatives in this area at licence renewal.

#### **Determination**

23. Based on all of the above, the Commission **approves**, subject to the fulfillment of the two **conditions of approval** set out above, the application by Corus Entertainment Inc., on behalf of 1708484 Ontario Inc. (1708484), for authorization to effect a change in the effective control of 1708484.

Secretary General

#### **Related documents**

- *ACCESS – The Education Station, BookTelevision and CourtTV Canada – Acquisition of assets (Corporate reorganization)*, Broadcasting Decision CRTC 2008-141, 14 July 2008
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

*This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*