



Broadcasting Public Notice CRTC 2008-96

Ottawa, 20 October 2008

Regulatory policy

Request to add The Sportsman Channel to the lists of eligible satellite services for distribution on a digital basis

*The Commission **denies** a request to add The Sportsman Channel to the lists of eligible satellite services for distribution on a digital basis.*

Introduction

1. The Commission received a request dated 18 January 2008 from Shaw Communications Inc. (Shaw) for the addition of The Sportsman Channel (TSC), a non-Canadian, English-language satellite service originating in the United States, to the lists of eligible satellite services for distribution on a digital basis (the digital lists).
2. Shaw described TSC as a full-time, national video programming service dedicated exclusively to hunting, fishing and shooting, and to the lifestyle of men and women engaged in such sports.
3. The Commission's approach to the addition of English- and French-language non-Canadian services is set out in Public Notice 2000-173. Under this approach, proposals for the inclusion of a non-Canadian service on the digital lists are assessed in the context of the Commission's policy that generally precludes the addition of new non-Canadian satellite services if the Commission determines them to be either totally or partially competitive with Canadian specialty or pay television services, including all specialty and pay television programming undertakings whose licence applications have been approved by the Commission.
4. The Commission uses a case-by-case approach to determine whether or not a non-Canadian service proposed for addition to the digital lists would be competitive with an authorized Canadian service. Factors considered by the Commission in its assessment of the competitiveness of a non-Canadian service include the nature of the service, the language of operation, the genres of programming provided, and the target audience. The Commission also considers relevant the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
5. The Commission assesses the factors noted above in order to determine the amount of overlap between the sponsored non-Canadian service and the relevant Canadian services and thus the extent to which the non-Canadian service might compete with the Canadian services. The more significant the overlap, the more likely it is that the non-Canadian service will be found to be competitive with the Canadian services.

6. In Broadcasting Public Notice 2008-34, the Commission called for comments on the proposed addition of TSC to the digital lists. The Commission stated that it would rely primarily on the comments filed to identify the Canadian pay and specialty services with which TSC might be totally or partially competitive and which therefore should be included in the assessment of the competitiveness of the service. The Commission asked that parties wishing to argue that TSC would be competitive name the specific Canadian pay or specialty service(s) with which they considered the service would compete and provide details to support their views, such as comparisons relating to nature and genre of service, programming schedule, programming sources and supply, and target audience.

Comments received

7. The Commission received comments in opposition to the addition of the service to the digital lists from Wild TV Inc. (WTI), the World Fishing Network Limited (WFNL), the Canadian Film and Television Production Association (CFTPA), CTVglobemedia Inc. (CTVgm) and the Canadian Association of Broadcasters (CAB).
8. WTI considered TSC to be totally competitive with its national Category 2 specialty programming undertaking known as Wild TV. It argued that TSC's programming is identical in nature to Wild TV's programming and is designed to reach exactly the same target audience (sportsmen and sportswomen of all ages). WTI further argued that TSC is essentially a duplication of the service that Wild TV already provides, since at least 31 of the programs carried by both services are identical. In this regard, WTI stated that it currently has a program supply arrangement with Intermedia Outdoor Holdings (Intermedia), a television production company that also owns TSC. Wild TV is therefore concerned that, in the event the request is approved, it might be extremely difficult for it to continue to license much of the programming it currently does from Intermedia.
9. WFNL considered TSC to be competitive with its national Category 2 specialty programming undertaking known as World Fishing Network (WFN). It noted that a significant amount of programming on TSC (approximately 40%) is dedicated to fishing programs and that four programs on TSC are currently available on WFN. WFNL further stated that, in the past, it has been precluded from acquiring five different programs, either because those programs were licensed exclusively to TSC, or because the rightsholder was not willing to provide WFN with programming exclusivity due to an existing agreement with TSC. Finally, WFNL argued that both WFN and TSC target the same demographic (i.e., males from 25 to 54 years of age).
10. Echoing the concerns expressed by WFNL and WTI, the CFTPA, CTVgm and the CAB all submitted that TSC would be either totally or partially competitive with Wild TV and WFN, and this, on several levels, including the nature of service, the programming schedule, the target audience, programming genres and the language of programming. CTVgm also submitted that the addition of TSC to the digital lists would not foster the growth of the domestic pay and specialty sector and would add nothing to the diversity of programming available to Canadians.

Reply from the sponsor

11. Shaw contended that the addition of high quality non-Canadian services to the digital lists is essential to ensure the ongoing strength and relevance of the Canadian broadcasting system. It argued that denying such additions would undermine the public interest in maximizing choice and programming diversity. Shaw added that choice and diversity are essential tools for facing competition from unregulated and illegal sources.
12. Referring to an Ipsos-Reid survey stating that Canadians generally object to artificial regulatory restrictions on choice and want more non-Canadian services, Shaw submitted that popular services will not be negatively impacted by the introduction of similar non-Canadian services. In regard to the present request, Shaw, noting that it carries WFN and that Star Choice has added both WFN and Wild TV to its programming line-up, stated that existing WFN and Wild TV customers want more – not less – programming that suits their unique tastes.
13. Noting that only four programs on WFN directly overlap with programs on TSC and that the programming overlap between TSC and Wild TV is also relatively small, Shaw submitted that the comments by WFN and WTI overstated any competitive overlap with TSC.
14. Finally, Shaw submitted that the addition of TSC to the digital lists would drive penetration of WFN and Wild TV because of the increased incentive for broadcasting distribution undertakings (BDUs) to add these services as part of a package that includes TSC and because of the likelihood of an increase in subscribers to all three services.

Commission's analysis and determinations

15. The Commission considers that there is significant overlap in the nature of service between TSC and Wild TV, given that both services dedicate 100% of their programming schedules to programs related to hunting, fishing and shooting. In regard to significant specific programming title overlap between the two services, a total of 31 programs on TSC are currently available on Wild TV; these 31 programs represent 43.5 hours – approximately 26% – of Wild TV's weekly 168-hour programming schedule.
16. The Commission also considers that there is overlap between TSC and WFN in regard to their nature of service, given that both services devote, respectively, some or all of their schedules to fishing-related programs. A review of their programming schedules shows that WFN dedicates 100% of its programming to fishing-related programs, whereas TSC dedicates a significant proportion of programming time – about 40%, or about 70 hours per week – to fishing-related programs, with the balance consisting of programs related to hunting and shooting. In terms of specific programming title duplication, there are four programs on TSC that are currently available on WFN, representing approximately 10 hours of WFN's weekly programming schedule. Finally, the Commission considers that there is also evidence to suggest that TSC will compete with WFN for target audience.

17. In light of the above, the Commission concludes that TSC would be competitive with both Wild TV and WFN. Accordingly, the Commission **denies** the request by Shaw Communications Inc. for the addition of The Sportsman Channel to the digital lists.

Other matters

Moratorium on additions to the digital lists

18. Noting that a decision is pending regarding the test that the Commission should apply when assessing requests to add new non-Canadian services to the digital lists, the CFTPA, the CAB and CTVgm recommended that the Commission impose a moratorium on additions to the digital lists until such time that it either confirms its existing policy with respect to authorizing non-Canadian programming services for distribution in Canada, or sets a new policy.
19. Shaw objected to the above-noted recommendation, describing such a measure as an anti-consumer proposal that would undermine consumers' confidence in the openness of the system and the fairness of the regulator.
20. The Commission notes that the suggestion of such a moratorium was raised, and subsequently rejected by the Commission, in the proceeding to consider Shaw's request to add Big Ten Network to the digital lists,¹ which was approved in Broadcasting Public Notice 2008-78.

Capacity

21. Both CTVgm and the CAB submitted that limited channel capacity should be allocated first to Canadian services before the addition of further non-Canadian services is contemplated.
22. In reply, Shaw argued that, should it not be able to allocate scarce capacity to services that deliver the greatest value to their customers, customers will turn to other media alternatives.
23. As noted in Broadcasting Public Notice 2008-78, capacity issues are not generally taken into account in the assessment of whether a non-Canadian service should be added to the digital lists. Rather, other rules, such as access rights for specialty services, the definition of "available channel," and the preponderance rule, apply to ensure that BDUs dedicate most of their capacity to the distribution of Canadian services.

¹ See Broadcasting Notice of Public Hearing 2007-10.

Secretary General

Related documents

- *Addition of Big Ten Network to the lists of eligible satellite services for distribution on a digital basis – Regulatory policy – Broadcasting Public Notice CRTC 2008-78, 5 September 2008*
- *Call for comments on the proposed addition of The Sportsman Channel to the lists of eligible satellite services for distribution on a digital basis – Notice of consultation – Broadcasting Public Notice CRTC 2008-34, 18 April 2008*
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007, as amended by Broadcasting Notices of Public Hearing CRTC 2007-10-1 through 2007-10-7*
- *Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only, Public Notice CRTC 2000-173, 14 December 2000*

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