Broadcasting Decision CRTC 2012-238

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Route reference: 2012-29

Ottawa, 25 April 2012

Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership, and Shaw Media Global Inc., partners in a general partnership carrying on business as Mystery Partnership
Across Canada

Application 2011-1580-9, received 6 December 2011
Public hearing in the National Capital Region
21 March 2012

Mystery – Acquisition of assets

*The Commission **approves**, subject to the applicant filing an updated payment schedule for its proposed tangible benefits, the application by Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership, and Shaw Media Global Inc. (Shaw Global), partners in a general partnership carrying on business as Mystery Partnership for authority to acquire, through the acquisition by Shaw Global of Mystery Partnership's units held by TVA Group Inc., the assets of the national, English-language specialty Category A service Mystery, and for a broadcasting licence to continue the operation of the undertaking.*

The application

1. The Commission received an application by Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership (Shaw Television L.P.), and Shaw Media Global Inc. (Shaw Global), partners in a general partnership carrying on business as Mystery Partnership (collectively referred to as Shaw or the applicant) for authority to acquire, through the acquisition by Shaw Global of Mystery Partnership's units held by TVA Group Inc. (TVA), the assets of the national, English-language specialty Category A service Mystery, and for a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions of licence as those set out under the current licence.

2. Mystery is currently jointly controlled by Shaw Communications Inc. (Shaw Communications) and TVA.

3. Shaw Global is wholly owned and controlled by Shaw Communications.

4. As a result of the transaction, effective control of Mystery will be fully exercised by Shaw Communications.

5. The Commission received an intervention by the Canadian Media Production Association (CMPA) in support of the present application, subject to general comments regarding the administration of the proposed tangible benefits package. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

6. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

   - the assessment of the value of the transaction;
   - the assessment of the proposed tangible benefits package;
   - the schedule for the payment of tangible benefits; and
   - reporting on expenditures relating to tangible benefits.

Assessment of the value of the transaction

7. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the benefits proposed in the application are commensurate with the size and nature of the transaction (see Public Notice 1999-97).

8. According to the Equity purchase agreement – Mystery (the purchase agreement), dated 22 December 2011, the purchase price for Mystery is $15,500,000. However, the purchase agreement provides for the purchase price to be adjusted in order to reflect the value of the working capital. In this regard, the applicant requested that the working capital adjustment be calculated from the date of the closing of the transaction. In accordance with its general practice, and in order to ensure predictability going forward, the Commission has calculated the value of the working capital for the present transaction as of the date of the transaction (i.e., the date of the signing of the purchase agreement), making adjustments as required pursuant to the provisions of the purchase agreement.

9. In light of TVA's current ownership share in Mystery, on completion of the present transaction, Shaw Global will acquire TVA's 50% share of that service. Accordingly, the Commission has adjusted the purchase price to take into consideration 50% of the value of the working capital. The revised value of the transaction therefore amounts to $18,143,264, as shown in the following table.

Purchase price	**$15,500,000**
Working capital (@ 50%)	$2,643,264
Adjusted purchase price	**$18,143,264**
Additions – n. a.	
Value of the transaction as determined by the Commission	**$18,143,264**

Assessment of the proposed tangible benefits package

10. As set out in Public Notice 1999-97, for transfers of ownership or control involving television broadcasting undertakings, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be directed to the communities served and to the broadcasting system as a whole. Further, in order to be accepted as a benefit, the proposed expenditure must be incremental to expenditures that would generally be considered ongoing normal responsibilities of the existing licensee.

11. The Commission, in applying its benefits test, has been consistent and rigorous in requiring that (1) expenditures proposed as tangible benefits be truly incremental; (2) such expenditures be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction; and (3) applicants demonstrate that expenditures proposed as tangible benefits flow predominantly to third parties, such as independent producers.

12. Consistent with the Commission's tangible benefits policy, Shaw proposed a tangible benefits package equal to 10% of the proposed value of the transaction (i.e., $1,550,000).

13. In accordance with the revised value of the transaction, the required value of the proposed tangible benefits package will increase from the proposed $1,550,000 to $1,814,326 (i.e. 10% of $18,143,264).

14. Shaw indicated in its application that the amount of tangible benefits associated with the current transaction would be incremental to the programs of national interest (PNI) expenditure requirement of 5% for its conventional television stations and qualifying specialty services mandated by the Commission in its group-based licence renewal decisions (see Broadcasting Decisions 2011-441 and 2011-445), and would be incremental to any existing Shaw Communications-related benefits package. Given the relatively small amount of tangible benefits flowing from this transaction, the applicant proposed to add them to the incremental PNI benefits already approved by the Commission in Broadcasting Decision 2010-782 as a result of the change in

the effective control of Canwest Global Communications Corp.'s (Canwest) licensed broadcasting subsidiaries. The incremental PNI benefits include the following four initiatives: pilot projects for scripted drama and other PNI; the production of scripted drama and other PNI; third party promotion of new PNI; and descriptive video of new PNI and other programming. Shaw indicated that it would direct 80% of the proposed benefits ($1,451,461) to the development and creation of incremental independently produced PNI, while the remaining 20% of the benefits ($362,865) would be directed to third-party promotion of incremental PNI programming.

15. In light of the above, the Commission considers Shaw's proposed tangible benefits, as amended by the revised value of the transaction, to be appropriate.

Schedule for the payment of tangible benefits

16. Shaw proposed to spread its benefits package over a period of seven broadcast years. However, the CMPA, in its intervention, argued that the benefits package should be paid out in full by the end of the 2016-2017 broadcast year so that these benefits would align with the benefits payment schedule proposed by Shaw Communications in regard to its acquisition of the effective control of Canwest.

17. The Commission notes that, as a general practice, it allows licensees a period of seven broadcast years to expend the totality of a proposed benefits package. Although the benefits stemming from the present transaction are being added to those originating from Broadcasting Decision 2010-782, the Commission does not consider that it is necessary to align the payment schedules. Accordingly, in accordance with its usual practice, the Commission **approves** Shaw's request to spread out the payment of these tangible benefits until 31 August 2019, at which date these benefits must have been fully expended.

18. The Commission reminds the licensee that the expenditures should, to the greatest extent possible, be equally distributed over the proposed seven-year period. In this regard, the Commission notes that the applicant did not provide a payment schedule detailing how the benefits would be spread over the next seven broadcast years. In order to obtain further details on the payment schedule of these benefits, the Commission **directs** Shaw to file, by no later than **25 May 2012**, an updated version of the tangible benefits payment schedule for incremental PNI that was set out in Broadcasting Decision 2010-782 for the above-noted change in effective control of Canwest's licensed broadcasting subsidiaries. The above-noted Canwest payment schedule is set out in Appendix 2.

Reporting on expenditures relating to tangible benefits

19. The Commission notes that Shaw committed not to charge any administrative fees against the benefits. Shaw also committed to file a separate annual report setting out the details of all expenditures relating to the tangible benefits associated with this transaction. Accordingly, the Commission **directs** Shaw to file with the Commission, concurrently with its annual returns, an annual report setting out the details of all

expenditures relating to these tangible benefits. A **condition of licence** to that effect is set out in Appendix 1.

Conclusion

20. In light of the above, the Commission **approves**, subject to the applicant filing an updated payment schedule of its proposed tangible benefits, the application by Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership, and Shaw Media Global Inc., partners in a general partnership carrying on business as Mystery Partnership for authority to acquire, through the acquisition by Shaw Media Global Inc. of Mystery Partnership's units held by TVA Group Inc., the assets of the national, English-language specialty Category A service Mystery, and for a new broadcasting licence to continue the operation of the undertaking.

21. Upon surrender of the current licence, the Commission will issue a new broadcasting licence to continue the operation of the specialty Category A service known as Mystery, expiring 31 August 2016, under the terms and **conditions of licence** set out in Appendix 1.

Secretary General

Related documents

- *Shaw Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-445, 27 July 2011

- *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011

- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011

- *Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010

- *Building on Success – A policy framework for Canadian television,* Public Notice CRTC 1999-97, 11 June 1999

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

Appendix 1 to Broadcasting Decision CRTC 2012-238

Terms and conditions of licence for the national, English-language specialty Category A service Mystery

Terms

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions for specialty Category A services set out in *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time.

2. (a) The licensee shall provide a national, English-language specialty Category A service devoted to mystery and suspense programming. The service will nurture and encourage short-form Canadian mysteries. It will provide a wide assortment of genre-specific programs including movies, television series, short films and documentaries that will focus exclusively on the delivery of entertaining programming on suspense, espionage and classic mysteries.

   (b) The licensee may draw programming from all the categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time.

   (c) The licensee shall ensure that no more than 15% of all programming broadcast during each broadcast month is drawn from category 7(*f*) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy.

   (d) The licensee shall ensure that no more than 10% of all programming broadcast during each broadcast month is drawn from program category 6(*a*) Professional sports and from program categories 8(*b*) Music video clips and 8(*c*) Music video programs combined.

3. In each broadcast year, the licensee shall devote no less than 60% of both the broadcast day and the evening broadcast period to the exhibition of Canadian programs.

4. Except as provided for in conditions of licence 5 and 9 and in accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming:

(a) in the first broadcast year of the licence term, 41% of the average of the previous three years' gross revenues of the undertaking;

(b) in each subsequent broadcast year of the licence term, 41% of the previous year's gross revenues of the undertaking.

5. The licensee may count expenditures made for the acquisition of or investment in Canadian programming by one or more specialty services or conventional television stations from the "Shaw Media group" in the same broadcast year towards fulfilling the requirement in condition 4 as long as these expenditures are not used by those specialty services or conventional television stations towards fulfilling their own Canadian programming expenditure requirement.

6. Except as provided for in conditions 7, 8 and 9 and in accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010 (Broadcasting Regulatory Policy 2010-167), the licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, as defined in paragraphs 71 to 73 of Broadcasting Regulatory Policy 2010-167:

   (a) in the first broadcast year of the licence term, 5% of the average of the previous three years' gross revenues of all specialty services and conventional television stations from the "Shaw Media group";

   (b) in each subsequent broadcast year of the licence term, 5% of the previous year's gross revenues of all specialty services and conventional television stations from the "Shaw Media group."

7. The licensee may count expenditures made for the acquisition of or investment in programs of national interest by one or more specialty services or conventional television stations from the "Shaw Media group" in the same broadcast year towards fulfilling the requirement in condition 6 as long as these expenditures are not used by those specialty services or conventional television stations towards fulfilling their own programs of national interest requirements.

8. At least 75% of the expenditures set out in condition 6 must be made to an independent production company.

9. (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming and/or on programs of national interest that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 4 and 6, respectively; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.

(b) In each broadcast year of the licence term, excluding the final year, where the licensee expends an amount for that year on Canadian programming or programs of national interest that is greater than the minimum required expenditure as set out in conditions 4 and 6, the licensee may deduct that amount as long as it does not exceed 5% of the minimum required expenditure in that year from the minimum required expenditure for the following year of the licence term.

(c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 4 and 6.

10. "Specialty services" in conditions 5 to 7 excludes mainstream sports and news services and specialty Category B services with less than 1 million subscribers.

11. The broadcasting undertaking licensed hereby is designated as a Category A service.

12. No less than 25% of all Canadian programs broadcast by the licensee, other than news, sports, and current affairs programming [program categories 1, 2(*a*), 6(*a*), and 6(*b*)], shall be produced by independent production companies.

13. In addition to the 12 minutes of advertising material during any clock hour in a broadcast day permitted by condition of licence, the licensee may broadcast such additional minutes of advertising material calculated in accordance with *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time.

14. The licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association.

15. In accordance with its commitment, the licensee shall file with the Commission, concurrently with the annual returns, an annual report setting out the details of all expenditures related to the tangible benefits associated with the acquisition of assets of Mystery.

For the purposes of the above-mentioned conditions of licence:

The terms "broadcast day," "broadcast month," "broadcast year," "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.

The term "broadcast week" shall have the same meaning as that set out in the *Radio Regulations, 1986*.

An "independent production company" is defined as a Canadian company carrying on business in Canada with a Canadian business address, that is owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

The definition of “Shaw Media group” is the same as that set out in *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011.

Appendix 2 to Broadcasting Decision CRTC 2012-238

Tangible benefits payment schedule for incremental expenditures on programs of national interest (PNI) approved in *Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010

(all figures are in the millions of dollars)

Broadcast year	Pilot projects for scripted drama and other PNIs	Production of scripted drama and other PNIs	Third-party promotion of new PNIs	Descriptive video of new PNIs and other programming	Total
2010-2011	1.5	-	-	-	**1.5**
2011-2012	2.0	4.2	-	0.5	**6.7**
2012-2013	2.0	4.4	0.5	0.5	**7.4**
2013-2014	2.0	7.0	0.5	0.5	**10.0**
2014-2015	2.0	15.0	1.0	0.5	**18.5**
2015-2016	2.0	15.0	1.0	0.5	**18.5**
2016-2017	-	15.0	1.0	0.5	**16.5**
Total (over seven broadcast years)	11.5	60.6	4.0	3.0	**79.1**