Broadcasting Decision CRTC 2012-239

PDF version

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 Men TV General Partnership
Across Canada

Application 2011-1581-6, received 6 December 2011
Public hearing in the National Capital Region
21 March 2012

The Cave – 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 Men TV General Partnership (Men TV G.P.), for authority to acquire, through the acquisition by Shaw Global of Men TV G.P.'s units held by TVA Group Inc., the assets of the national, English-language specialty Category A service The Cave, and for a broadcasting licence to continue the operation of the undertaking.*

The Commission also ***renews*** *the broadcasting licence for The Cave until 31 August 2016 under the terms and* ***conditions of licence*** *set out in Appendix 1 to this decision.*

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 Men TV General Partnership (Men TV G.P.) (collectively referred to as Shaw or the applicant), for authority to acquire, through the acquisition by Shaw Global of Men TV G.P.'s units held by TVA Group Inc. (TVA), the assets of the national, English-language specialty Category A service The Cave (formerly known as Men TV). Shaw also requested the renewal of the broadcasting licence for The Cave

until 31 August 2016, [1] under the same terms and conditions of licences as those set out under the current licence.

2. The Cave is currently owned by TVA (51%) and Shaw Television L.P. (49%), and is controlled by TVA.

3. Shaw Global is wholly owned and controlled by Shaw Communications Inc. (Shaw Communications).

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

5. Shaw stated that it would adhere to the standard requirements for Category A services set out in Broadcasting Regulatory Policy 2011-443.

6. In Broadcasting Notice of Consultation 2011-525, the Commission announced that it would consider an application filed by Quebecor Media Inc. (QMI), on behalf of TVA, to renew the broadcasting licence for The Cave. However, in light of Shaw's present application, QMI, in a letter dated 27 February 2012, requested that its licence renewal application be withdrawn. As a result, the comments received in regard to QMI's licence renewal application that pertain specifically to the licence amendments requested by QMI will not be considered as part of this application. The Commission notes that Shaw Global is not requesting amendments to the broadcasting licence for The Cave and, as noted above, has proposed to operate the service under the same terms and conditions of licence as those in effect under the current licence.

7. 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 and the status and obligations of The Cave. 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

8. 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;

[1] The Commission notes that the broadcasting licence for this service was renewed administratively from 1 September 2007 to 31 August 2009 in Broadcasting Decision 2006-319; from 1 September 2009 to 31 August 2010 in Broadcasting Decision 2009-145; from 1 September 2010 to 31 August 2011 in Broadcasting Decision 2010-562; and from 1 September 2011 to 31 August 2012 in Broadcasting Decision 2011-417.

- the schedule for the payment of tangible benefits;
- reporting on expenditures relating to tangible benefits;
- the inclusion of this service within the Commission's group-based licensing regime;
- the expenditure requirement on programs of national interest; and
- adherence by The Cave to a terms of trade agreement.

Assessment of the value of the transaction

9. 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).

10. According to the Equity Purchase Agreement – The Cave (the purchase agreement), dated 22 December 2011, the purchase price for The Cave is $2,000,000. 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.

11. Further to the above, the Commission also includes the value of assumed debt in the value of the transaction. The applicant argued that such inclusion is not warranted, since the value of assumed debt was identified in the agreement as a deduction in determining the value of the working capital. The Commission notes that purchase agreements generally provide for the purchase price to take into account the value of the working capital. Whereas in certain agreements the working capital is defined, in others it is not. It is the Commission's practice to include in the value of the transaction the purchase price as defined and agreed to by the parties. Once the purchase price is identified, the Commission makes adjustments, if applicable, such as adding in the assumed debt, to determine the value of the transaction. Consistent with its general approach, for the present transaction, the Commission has added the value of assumed debt to the agreed purchase price.

12. In light of TVA's current ownership share in The Cave, on completion of the present transaction, Shaw Global will acquire TVA's 51% share of that service. Accordingly, the Commission has adjusted the purchase price to take into consideration 51% of the value of the working capital. The revised value of the transaction therefore amounts to $2,168,188, as shown in the following table.

Purchase price (per the purchase agreement)	**$2,000,000**
Working capital (@ 51%)	-$835,635
Adjusted purchase price	**$1,164,365**
Additions/Subtractions (@ 51%)	
Assumed debt	$1,003,823
Value of the transaction as determined by the Commission	**$2,168,188**

Assessment of the proposed tangible benefits package

13. 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.

14. 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.

15. 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., $200,000).

16. In accordance with the revised value of the transaction, the required value of the proposed tangible benefits package will increase from the proposed $200,000 to $216,818.80 (i.e., 10% of $2,168,188).

17. 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 ($173,455.04) to the development and creation of incremental independently produced PNI, while the remaining 20% of the benefits ($43,363.76) would be directed to third-party promotion of incremental PNI programming.

18. 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

19. 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.

20. 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.

21. 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

22. 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.

Inclusion of this service within the Commissions group-based licensing regime

23. In its intervention, the CMPA opposed a request by Shaw, set out in Shaw's application, that The Cave be excluded from the Commission's group-based licensing regime. In its reply, Shaw stated that it did not object to the inclusion of The Cave in the group-based licensing regime, provided that such inclusion is effective as of 1 September 2012 and that the treatment of its present application is not delayed. In support of this start date, Shaw explained that it wishes to avoid complications relating to partial year cost allocations and Commission reporting requirements.

24. In regard to the above, the Commission notes that The Cave, as a specialty Category A service, is eligible to be included in the Commission's group-based licensing regime, pursuant to Broadcasting Regulatory Policy 2010-167 and Broadcasting Decision 2011-441. The Commission also notes that, consistent with its determinations set out in Broadcasting Decision 2011-441, and consistent with the commitments made by the Shaw Media group for all of its services included in the group-based licensing regime, it established a minimum group CPE level of 30% for that group. This group CPE level was implemented through conditions of licence imposed on the various qualifying conventional television stations and specialty services as set out in Broadcasting Decision 2011-445. Furthermore, all qualifying specialty services controlled by a designated group continue to have individual CPE requirements imposed by condition of licence. The Commission notes that the CPE for The Cave is currently set at 39%.

25. In light of the above, the Commission considers it appropriate to include The Cave in the Commission's group-based licensing regime. Further, the Commission considers Shaw's proposal regarding implementation to be appropriate, considering the timing of the present ownership transaction. Accordingly, **conditions of licence** to that effect and consistent with those established for the other Shaw Media group services in Broadcasting Decision 2011-445 are set out in Appendix 1.

Expenditure requirement on programs of national interest

26. Consistent with the Commission's determinations set out in Broadcasting Decision 2011-441 and with the commitments made by the Shaw Media group in the proceeding leading up to that decision, the Commission established a minimum PNI expenditure requirement, defined in its group-based policy, of 5% for that group. As set out in that policy, no less than 75% of PNI expenditures must be directed to an independent production company. The group PNI expenditure requirement level was implemented through conditions of licence imposed on the Shaw Media group's various qualifying television and specialty services, as set out in Broadcasting Decision 2011-445.

27. In light of its determination above that The Cave is eligible to be included in the group-based licensing regime under the Shaw Media group, and in accordance with determinations set out in Broadcasting Decision 2011-445 in regard to the Shaw Media group's PNI expenditures, **conditions of licences** to that effect, applicable to The Cave, are set out in Appendix 1.

Adherence by The Cave to a terms of trade agreement

28. In its intervention, the CMPA suggested that The Cave be subject to the same condition of licence relating to adherence to a terms of trade agreement that was imposed on all of the Shaw Media group’s other programming services for which the broadcasting licences were renewed under the Commission’s group-based licensing regime. In its reply, Shaw stated that it did not oppose the inclusion of such a condition of licence, but again requested that it be effective as of 1 September 2012.

29. The Commission notes that a condition of licence relating to adherence to a terms of trade agreement with the CMPA was imposed on all qualifying services in the group-based licensing regime. Further, it considers that Shaw’s request is reasonable in light of the Commission’s determination above that The Cave’s inclusion in the group-based licensing regime be effective as of 1 September 2012. Accordingly, the Commission considers it appropriate to require The Cave to adhere to a terms of trade agreement with the CMPA as of that date. A **condition of licence** to that effect is set out in Appendix 1.

Conclusion

30. 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 Men TV General Partnership, for authority to acquire, through the acquisition by Shaw Media Global Inc. of Men TV General Partnership’s units held by TVA Group Inc., the assets of the national, English-language specialty Category A service The Cave (formerly known as Men TV), and for a new broadcasting licence to continue the operation of the undertaking.

31. The Commission also **renews** the broadcasting licence for The Cave until 31 August 2016. 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 The Cave, expiring 31 August 2016, under the terms and **conditions of licence** set out in Appendix 1.

Secretary General

Related documents

- *Development of a regulatory framework for the French-language television market, licence renewals for Astral Media Inc., Quebecor Media Inc. and Serdy Media Inc., and review of certain conditions of licence for V Interactions Inc.*, Broadcasting Notice of Consultation CRTC 2011-525, 24 August 2011

- *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

- *Administrative renewals*, Broadcasting Decision CRTC 2011-417, 12 July 2011

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

- *Administrative renewals*, Broadcasting Decision CRTC 2010-562, 9 August 2010

- *A group-based approach to the licensing of private television services,* Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

- *Administrative renewals*, Broadcasting Decision CRTC 2009-145, 17 March 2009

- *Administrative licence renewals*, Broadcasting Decision CRTC 2006-319, 28 July 2006

- *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 2012-239

Term and conditions of licence for the national, English-language specialty Category A service The Cave

Term

The licence will expire 31 August 2016.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence 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 dedicated to men's lifestyle. It will provide programming related to the luxury market, the gourmet market, men's beauty and fitness, the book and music market, outdoor adventures and leisure sports from Canadian men's perspectives.

   (b) The licensee may draw programming from all the program 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 not 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.

   (d) The licensee shall ensure that all programming drawn from program categories 6(*a*) Professional sports and 6(*b*) Amateur sports consists of leisure sports, such as boating, flying and motorcycling.

   (e) The licensee shall ensure that not more than 10% of all programming broadcast during each broadcast month is drawn from program category 7 Drama and comedy as a whole.

3. In each broadcast year or portion thereof, the licensee shall devote no less than 50% of both the broadcast day and the evening broadcast period to the exhibition of Canadian programs.

4. As of 1 September 2012, 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 devote to the acquisition of or investment in Canadian programming:

   (a) in the first broadcast year of the licence term, 39% of the average of the previous three years' gross revenues of the undertaking;

(b) in each subsequent broadcast year of the licence term, 39% of the previous year's gross revenues of the undertaking.

5. As of 1 September 2012, 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 of licence 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. As of 1 September 2012, except as provided for in conditions of licence 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 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. As of 1 September 2012, 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 of licence 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 of licence 6 must be made to an independent production company.

9. (a) As of 1 September 2012, 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 of licence 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 of that year, the full amount of the previous year's under-expenditure.

   (b) As of 1 September 2012, 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 of licence 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) As of 1 September 2012 and 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 of licence 4 and 6.

10. “Specialty services” in conditions of licence 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. 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.

13. As of 1 September 2012, the licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association.

14. 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 relating to the tangible benefits associated with the acquisition of the assets of The Cave.

For the purposes of the above 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 2012-239

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**