Writers Guild of Canada

Change of Effective Control – Shaw/Canwest

Oral Presentation to the September 21, 2010 Public Hearing
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[**Kelly Lynne Ashton**]

Good morning. My name is Kelly Lynne Ashton and I am the Director of Policy of the Writers Guild of Canada, a national association representing over 2000 professional English-language screenwriters. To my [left] is David Kinahan, Director of Communications of the Writers Guild.

[Introduction]

The WGC is supportive of Shaw's acquisition of Canwest because it ensures that Canwest can continue as a major national network comprised of both its conventional networks and more recently acquired and integrated specialty networks. The restructuring of Canwest means that Canadian audiences will continue to have a choice of programming over several different platforms.

However, the WGC's support is subject to a number of concerns that we have regarding Shaw's proposed application of the CRTC's benefits policy and proposed allocation within the benefits package. We had grave concerns regarding the valuation of the transaction but were quite pleased to hear Shaw agree that the transaction has a value of over $2 billion, as confirmed by the Commission after your detailed review.

[Benefits Policy]
The Commission has also confirmed its policy that it expects to see 10% of the value of the transaction in a benefits package. However, Shaw has taken the position that Shaw should be exempted from aspects of the policy because a) the intangible benefits are so great that they should take the place of some of the tangible benefits and b) Canwest is in such financial difficulty that full tangible benefits cannot be paid.

A policy is not something that can be ignored by stakeholders at their whim. Policies are more flexible and adaptable than regulation or statute but they must still be interpreted and applied in each relevant case. The Commission's benefits policy is very relevant to this transaction and must be applied to the facts presented to the Commission. The WGC does not believe that Shaw has made their case for exemption from the benefits policy. The intangible benefit of maintaining Canwest as a consolidated multiplatform national network with significant financial resources is a worthy one, but at no time has Commission policy said that intangible benefits could be substantial enough to substitute for tangible benefits. Tangible benefits are to be spent to benefit the Canadian broadcasting system so that the transaction is not merely of benefit to shareholders and to assure the Commission that the purchaser in question is the best possible purchaser for the Canadian broadcasting system.

We find it particularly hard to accept Shaw's argument that it cannot possibly pay the full amount of benefits because Canwest is in such dire financial shape that Shaw will have to plug money into Canwest to keep it afloat. Such an assertion is in stark contrast with Canwest's own Q3 press release on July 15, 2010, which announced that for the nine months ending May 31, 2010, television revenue was up 7% from the prior year and operating profit was up 33% and that 'these results are indicative of the industry-leading revenue performance of Canwest's specialty and conventional television operations'[1].

[1] Canwest News Release dated July 15, 2010, "Canwest Global Communications Corp. Reports Third Quarter 2010 Results"

The evidence suggests that, while Canwest suffered from the burden of excessive debt, it is otherwise a healthy business. As did all other advertising-dependent businesses, its revenue dipped last year when major advertisers were hit hard by the recession. Now it has bounced back and appears to be thriving. We see no evidence of the financial distress Shaw refers to as its argument to avoid tangible benefits. In fact, we understand that Shaw executives were quite upbeat in their May 3rd call with analysts.

The financial distress argument is also used by Shaw to justify including the outstanding Alliance Atlantis benefits in the calculation of benefits payable under this transaction. The Commission has clearly stated on numerous occasions that purchasers are to assume the existing benefits package obligations of the sellers. There are no conditions under which this aspect of benefits policy has been waived. Even if financial distress were such a condition, neither Canwest nor Shaw would qualify.

Yesterday Mr. Chairman, you said that what was now left to do was to put a price on the value of the intangible benefits of maintaining Canwest and taking over the Alliance Atlantis benefits. Commission benefits policy looks for both tangible and intangible benefits from a transaction. The Commission has never put a price tag on the intangible benefits and respectfully, we do not think you should start now.

[David Kinahan]

[Allocation of Benefits Package]

As to the actual benefits package proposal, we have concerns about the allocation. The WGC believes that Shaw should be proposing a benefits package of 10% of the value of the transaction, which the Commission set at $2.047 billion. That would result in $204.7 million, not including their commitment to fulfill the outstanding Alliance Atlantis benefits of approximately $95 million.

In their benefits proposal, Shaw allocates $23 million to building digital transmitters in non-mandatory markets -- that expenditure is a cost of doing business for a national network and not an appropriate inclusion in a benefits package which must benefit the entire broadcasting system.

Digital transmitters are also a capital expenditure, which has traditionally been identified by the Commission as a self-serving expense.

We support Shaw's allocation of benefits to the development and production of scripted programming however the allocation is insufficient. Past practice in the last few years has been that approximately 65% of onscreen benefits go to drama. If the Commission determined that the benefits package was $204.7 million, for example, and if the entire package was onscreen benefits, then the allocation to scripted programming should be $133 million rather than the $22 million set out in Shaw's letter. As well, the allocation for development within the amount for scripted programming requires review and adjustment. We propose that development account for 5% of the overall amount for scripted programming. This would be a more appropriate allocation and one consistent with past practice both in front of the Commission and with other funding agencies. Using this formula, if $133 million was set aside for scripted programming then $6.65 million of that amount would go to development of scripted programming. As well, the WGC would like to work with Shaw to shape the details of the development program to ensure that it is effective and works both for Canwest and for the industry, and ultimately Canadian audiences.

We are also concerned with the proposed allocation to new media content innovation. While this is a very timely proposal we would like to ensure that any such funding go specifically to the development and production of new media content related to scripted programming funded under this benefits package. Some of the examples provided in the July 12th letter are not content but applications, promotion or digital technology for television programming. As an example of what we are looking for we draw the Commission's attention to the project "Autotopsy" which was produced as an interactive extension of the television series "Crash and Burn" which was broadcast by Showcase. "Autotopsy" tells a story in an interactive and immersive way, using the characters and setting of the television series. What we do not support is funding for websites that promote a television show and are produced inhouse, promotion through seeding discussion boards or building apps for channels to deliver content on iPads. These are examples of new media creation that are a cost of doing business and should be covered by the broadcasters. We suggest that perhaps the Commission consider requiring that Shaw transfer the new media content funds to a third party fund with experience in new media and convergent content financing such as the Canada Media Fund.

There are also key principles that should apply to the entire benefits package. We were concerned about incrementality and are pleased that Madame Cugini clarified that point yesterday. We are also very pleased that Madame Cugini and the Chair confirmed that these benefits will be spent over a 7 year term which is to start within 90 days of approval. We request that the Commission consider also requiring that Shaw spend the benefits equally over the seven-year term, as the Commission did with the Alliance Atlantis benefits, in order to ensure regular expenditure.

[Consolidation]

Finally, we are concerned that the size and consolidated nature of the new entity that will result from this transaction could potentially dominate the content marketplace. We do believe that certain safeguards can be imposed, chief among them being a requirement for successful negotiation of terms of trade. Terms of trade are important to the maintenance of a sustainable independent production sector and distinct rights markets, all of which supports a Canadian talent pool.

[Kelly Lynne Ashton]

[Conclusion]

In summary, the intangible benefits presented by Shaw acquiring Canwest are important to the Canadian broadcasting system but do not outweigh the need for tangible benefits. The Commission has the right and obligation to insist on a tangible benefits package of 10% of the valuation of the transaction – the entire transaction. We urge the Commission to apply its benefits policy to this transaction in a manner consistent both with the policy and with past precedent in order to ensure transparency and consistency. This is essential to the integrity of the system and to ensuring that Canadians benefit from this transaction.

We would be happy to answer any questions that you might have. We also ask for the opportunity to review and comment on the revised benefits package that you have asked Shaw to file with the Commission after this proceeding.