



Broadcasting Decision CRTC 2009-706

Route reference: 2009-644

Ottawa, 19 November 2009

7202377 Canada Inc.
Across Canada

7202342 Canada Inc.
Across Canada

*Applications 2009-1028-3 and 2009-1029-1, received 15 July 2009
Public Hearing in the National Capital Region
30 October 2009*

SexTV: The Channel and Drive-In Classics Channel – Acquisition of assets

*The Commission **approves** applications by 7202377 Canada Inc. and 7202342 Canada Inc. for authority to acquire from CTV Limited the assets of the English-language Category 2 specialty television programming undertakings known as SexTV: The Channel and Drive-In Classics Channel, respectively, and for new broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences.*

Introduction

1. The Commission received applications by 7202377 Canada Inc. (7202377 Canada) and 7202342 Canada Inc. (7202342 Canada) (together, Corus Entertainment Inc., or Corus) for authority to acquire from CTV Limited (CTV) the assets of the English-language Category 2 specialty television programming undertakings known as SexTV: The Channel (SexTV) and Drive-In Classics Channel (Drive-In), respectively, and for new broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences.
2. CTV, the current licensee of the above-mentioned undertakings, is a corporation wholly owned and controlled by CTVglobemedia Inc. (CTVgm)
3. 7202377 Canada and 7202342 Canada are corporations wholly owned and controlled by Corus.
4. The purchase price for the entire transaction (i.e., acquisition of the assets of both services), based on the terms of the Letter of Intent, is \$40 million. In its applications, Corus attributed a definitive value of \$16 million to the assets for SexTV and a definitive value of \$24 million to the assets for Drive-In. Corus proposed a tangible benefits package representing 10% of the value of the transaction to be paid over a seven-year period.

5. The Commission received several interventions in support of each application, as well as interventions offering general comments on each application from the Canadian Film and Television Production Association (CFTPA) and from the Writers Guild of Canada. The interventions and Corus's reply to the interventions can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the application in light of applicable regulations and policies and taking into account the interventions and Corus's reply, the Commission considers the issues to be addressed in its determinations are the following:
 - the sale of SexTV and Drive-In two years after effective control of these services was transferred to CTVgm;
 - the assessment of the value of the transaction; and
 - the assessment of the proposed tangible benefits.

Sale of SexTV and Drive-In two years after effective control of these services was transferred to CTVgm

7. The Commission is generally concerned when broadcasting undertakings are put up for sale within their first licence term, when an application is made to change control or ownership before a broadcasting undertaking commences operations, when it receives an application to change effective control of a broadcasting undertaking that has recently been the subject of a transaction, or when an application involves a change in effective control of a broadcasting undertaking that will be immediately sold. In the Commission's view, such transactions raise issues relating to the integrity of the licensing process and the potential gain to the vendor.
8. In Broadcasting Decision 2007-165, the Commission approved an application by CTVgm, on behalf of CHUM Limited (CHUM), for authority to transfer to CTVgm the effective control of CHUM, which included the assets of both SexTV and Drive-In. Given the short period of time between that decision and the present applications, the Commission considers it appropriate to examine the circumstances that led to its approval of the CTVgm/CHUM transaction as well as the circumstances surrounding the present applications.
9. The Commission notes that the transaction approved in Broadcasting Decision 2007-165 was initiated following the death of one of the founders of what would become a leading media company and content provider in Canada, namely, CHUM, which was active in conventional television, specialty television services and radio. In that context, the Commission determined that the proposed transaction involving CTVgm was the best possible means to help both the brands and employees of CHUM going forward.

10. In regard to the present applications, Corus submitted that Commission approval would allow SexTV and Drive-In to be folded into their specialty television group and that these services would fit well with their other specialty services, complementing in particular those that target women and movie service customers. Corus further submitted that SexTV and Drive-In, as part of the Corus corporate group, would be able to access management and creative expertise, significant capital for future growth and programming enhancements, and operational synergies available through the operation of multiple specialty services.
11. The Commission notes, as explained by Corus, that the previous change in effective control of SexTV and Drive-In was part of a much larger transaction in which CTVgm acquired all of the broadcasting assets previously held by CHUM (13 conventional television stations, 20 specialty services and 33 radio stations). Further, not all of the services for which the assets were acquired, including SexTV and Drive-In, were relevant to the core operations of CTVgm as a broadcaster.
12. In light of all of the above, the Commission is satisfied that the integrity of its licensing process would not be compromised by approval of the proposed transaction.
13. The Commission notes that, in regard to its above-noted concern relating to broadcasting undertakings that are put up for sale shortly following a previous transaction involving a change in control, it will continue to examine such transactions carefully to ensure that there is no potential for licence trafficking.

Value of the transaction

14. The Commission notes that the value of the proposed transaction amounts solely to the price paid, that is, \$40 million, and that Corus will not be assuming any liabilities or lease commitments.

Tangible benefits

15. As set out in Public Notice 1999-97, 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.
16. Corus proposed a tangible benefits package totalling \$4 million, allocated as follows:
 - \$2,735,000 – Canadian programming
 - \$500,000 – Research and Development
 - \$50,000 – Stratford Institute
 - \$85,000 – Banff World Television Festival
 - \$125,000 – Canadian Film Centre
 - \$150,000 – Concerned Children’s Advertisers
 - \$125,000 – YMCA
 - \$75,000 – Foundation for Women in Film and Television
 - \$155,000 – Canadian Women in Communications

Details relating to each of the above are set out in the appendix to this decision.

17. As a general matter, the Commission reminds Corus that expenditures on tangible benefits must be incremental to program expenditures. Consistent with the Commission's approach to establishing baselines to ensure incrementality of self-directed programming tangible benefit initiatives, a three-year baseline will be calculated using the average of the licensee's past three years of expenditures on Canadian programming.
18. Corus confirmed that none of the benefits expenditures would be directed to administration fees.
19. Corus, in its proposed initiative for Canadian programming, proposed to allocate the amount of \$2,735,000 to exhibition rights for Canadian programming from the following program categories: 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school, 5(b) Informal education/Recreation and leisure, 7 Drama and comedy, 9 Variety, 11 General entertainment and human interest, and 12 Interstitials.¹ The Commission accepts the proposed allocation of tangible benefit funds, with the exception of Corus's proposal to include programming from program categories 11 and 12. It is the Commission's determination that the inclusion of these two program categories does not represent the best possible use of the tangible benefits funds. Accordingly, for the purpose of this initiative, the Commission will only deem eligible expenses relating to program categories 2(a), 2(b), 5(a), 5(b), 7 and 9. The Commission is satisfied that the proposed tangible benefits as amended above are clear, unequivocal and commensurate with the size of the transaction.
20. The Commission notes the applicant's agreement to file annual reports containing a clear identification of the annual expenditures associated with the tangible benefits, as well as reporting the expenditures related to tangible benefits as a separate line item in its annual returns for the acquired Category 2 services.

Conclusion

21. In light of all of the above, the Commission **approves** the applications by 7202377 Canada Inc. and 7202342 Canada Inc. for authority to acquire from CTV Limited the assets of the English-language Category 2 specialty television programming undertakings known as SexTV: The Channel and Drive-In Classics Channel, respectively, and for new broadcasting licences to continue the operation of the undertakings. Upon surrender of the current licence issued to CTV for SexTV: The Channel, the Commission will issue a new licence to 7202377 Canada Inc.; upon surrender of the current licence issued to CTV for Drive-In Classics Channel, the Commission will issue a new licence to 7202342 Canada Inc. The licences will expire on 31 August 2010, the current expiry date, and will be subject to the same terms and **conditions** as those in effect under the current licences for these services.

¹ Program categories for Category 2 specialty services are set out in Item 6 of Schedule I to the *Specialty Services Regulations*, 1990.

Other matters

22. In Broadcasting and Telecom Regulatory Policy 2009-430, the Commission stated its intention to impose on television broadcasters and broadcasting distribution undertakings, at the time of their licence renewals, conditions of licence relating to accessibility provisions. Accordingly, the Commission will consider imposing such conditions of licence on SexTV and Drive-In at the time of the licence renewal for these services. In the meantime, the Commission expects SexTV and Drive-In to adhere, as soon as possible, to the applicable accessibility requirements specified in Broadcasting and Telecom Regulatory Policy 2009-430.

Secretary General

Related documents

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007
- *Building on success – A policy framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999

This decision is to be appended to each 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>.

Appendix to Broadcasting Decision CRTC 2009-706

Allocation of tangible benefits associated with the acquisition by 7202377 Canada Inc. and 7202342 Canada Inc. of the assets of the English-language Category 2 specialty television programming undertakings known as SexTV: The Channel and Drive-In Classics Channel, respectively

Benefit	Amount	Description
Programming / On Screen		
Canadian programming	\$2,735,000	The benefit funds will be used to support Corus's commitment to exhibition rights for Canadian programming. Corus anticipates that 75% of the funds for exhibition of Canadian programming will be spent with independent Canadian producers on content from program categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school, 5(b) Informal education/Recreation and leisure, 7 Drama and comedy, and 9 Variety, as set out in Item 6 of Schedule I to the <i>Specialty Services Regulations, 1990</i> .
Research and Development	\$500,000	The benefit funds will support research and development projects concerning digital rights management technology and related elements such as rights taxonomy and training.
Social Benefits		
Stratford Institute	\$50,000	The research and development initiatives relate to the traditional media, and its activities seek to find opportunities and develop content delivered on multiple platforms. The lessons learned from this project will be shared with the industry at large, including other broadcasters, independent producers and the regulatory community.
Banff World Television Festival (Banff TV)	\$85,000	The benefit funds will help fund one to two panel sessions each year at the Banff World Television Festival, with a particular focus on children's and women's programming. The session will take the form of panel discussions, master class sessions or workshop sessions.
Canadian Film Center (CFC)	\$125,000	The contribution will support key CFC fundraising events, which will help fund CFC's training programs in film, television and new media.
Concerned Children's Advertisers	\$150,000	The contribution will support initiatives such as "TV & Me" and "Long Live Kids." These programs focus on helping parents and children develop

healthy media habits and media literacy.

YMCA	\$125,000	The contribution will help fund the YMCA's Youth Leader Corps "Toronto's Mosaic" project. The "Toronto's Mosaic" project brings together a group of students from across the city of Toronto to learn how to gather information, take pictures, film, and locally broadcast stories based on their views on their lives, their communities and their world. The benefit funds will allow youth in three Toronto communities to broaden their knowledge, understanding and competence in broadcast media.
Foundation for Women in Film and Television (WIFT Foundation)	\$75,000	The contribution will fund bursaries for approximately five women each year (for five years) from an under-represented group to attend either the WIFT-T Business Management for Media Professionals Program presented in partnership with Humber School of Media Studies and Information Technology or the WIFT-T Convergent Media Program.
Canadian Women in Communications (CWC)	\$155,000	The benefit funds will be directed towards the New Media Career Accelerator and Radio Career Accelerator programs. The New Media Career Accelerator program teaches the fundamentals of how technology is affecting media content development and distribution. The Radio Career Accelerator program is focused on programming, administration and sales.
Total	\$4,000,000	