



## Broadcasting Decision CRTC 2011-602

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Route reference: Part 1 application posted on 12 April 2011

Ottawa, 21 September 2011

**Star Choice Television Network Incorporated**  
Across Canada

*Application 2011-0627-9*

### **Shaw Direct – Licence amendments**

*The Commission **approves** the application by Shaw Communications Inc., on behalf of Star Choice Television Network Incorporated, to delete the conditions of licence relating to structural separation for the national direct-to-home satellite distribution undertaking Shaw Direct.*

#### **The application**

1. The Commission received an application by Shaw Communications Inc. (Shaw), on behalf of Star Choice Television Network Incorporated, to delete the conditions of licence relating to structural separation for the national direct-to-home (DTH) satellite distribution undertaking Shaw Direct. These conditions of licence are set out in the appendix to Broadcasting Decision 2004-130, and read as follows:
  10. The licensee shall maintain sales, marketing, customer service and affiliate relations functions and personnel that are separate and independent from those of Shaw Communications Inc. and Canadian Satellite Communications Inc.
  11. The licensee shall require all sales, marketing and customer service staff, as well as all staff involved with the negotiation and/or administration of affiliation agreements with programming services, to comply with the written procedures set out in Appendix II to this decision, as amended from time to time. These procedures are designed to ensure that any confidential information obtained from a customer or potential customer of the licensee's DTH undertaking, or pertaining either to product or service offerings of the DTH undertaking or to its affiliation agreements with programmers, will remain confidential.
2. Shaw argued that these conditions of licence are no longer necessary because:
  - There is now a very competitive and sustainable broadcasting distribution undertaking (BDU)/DTH market.

- Section 9 of the *Broadcasting Distribution Regulations* addresses undue preferences or disadvantages.
  - They discriminate against Shaw Direct, since there are no similar structural separation conditions of licence that apply to any of its competitors.
  - They prevent Shaw Direct from taking advantage of available efficiencies, such as bundling opportunities, and innovating to respond to customer demands in response to the increased threat of regulated and unregulated competitors.
3. The Commission received interventions in opposition to the application from Canadian Independent Communications, Free HD Canada, Saskatchewan Telecommunications and TELUS Communications Company (TELUS). The Commission also received an intervention in support from Allarco Entertainment (Allarco). The interventions and the licensee's collective reply to the interventions can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
  4. Certain interveners opposing the application were of the view that no determination should be made before the Commission issues its decision in regard to the proceeding initiated by Broadcasting Notice of Consultation 2010-783 (the vertical integration proceeding). They submitted that it would be premature to delete these conditions of licence since one of the possible outcomes of the vertical integration proceeding is the application of similar conditions of licence on all vertically integrated Canadian broadcasting entities in order to circumvent abuses of market power.
  5. Allarco was of the view that removal of the conditions of licence would translate into better services for customers and improved carriage conditions for Canadian programming services. While TELUS stated that it had no issues with Shaw's arguments pertaining to the removal of these conditions of licence, it was of the view that, given its complaint to the Commission pertaining to anti-competitive behaviour by Shaw, the present application should be denied. Furthermore, TELUS opposed the removal of these conditions of licence as they relate to Shaw's satellite relay distribution undertaking (SRDU).

### **Commission analysis and decisions**

6. The Commission notes that the conditions of licence in question were imposed at a time when DTH BDUs were new players in the distribution market and Shaw was the only owner of terrestrial BDU, DTH and SRDU holdings. The Commission notes that the distribution market has since become significantly more competitive. Various telephone companies currently hold terrestrial BDU licences, and the DTH BDUs are well established players that compete aggressively with terrestrial BDUs for subscribers.

7. Further, the Commission notes that these conditions of licence only apply to Shaw and not to its competitors. The Commission considers that, in today's competitive distribution market, maintaining these conditions of licence for Shaw when they do not apply to other BDUs, including the other DTH undertakings, may place Shaw at a disadvantage. The conditions of licence prevent Shaw, for example, from bundling DTH services with telephone, Internet and wireless services, a benefit enjoyed by some of its competitors.
8. Moreover, the Commission considers that the existing provisions included in regulatory frameworks, such as the reverse onus provision on all undue preference complaints under the *Broadcasting Distribution Regulations*, and the additional measures relating to vertical integration proposed in Broadcasting Regulatory Policy 2011-601, also issued today, such as the code of conduct for commercial interactions, the standstill rule, and the requirement for a non-disclosure agreement, adequately balance the interests of consumers, broadcasters and BDUs.
9. In light of the above, the Commission considers that the conditions of licence identified in paragraph 1 above are no longer warranted. Accordingly, the Commission **approves** the application by Shaw Communications Inc., on behalf of Star Choice Television Network Incorporated, to delete the conditions of licence relating to structural separation for the national DTH satellite distribution undertaking Shaw Direct.
10. The Commission notes that the present decision pertains to Shaw's DTH operations only, as it considers that the issue of structural separation as it relates to Shaw's SRDU operations lies outside the scope of this proceeding. The Commission further notes that TELUS's comment regarding Shaw's alleged anti-competitive behaviour is the subject of a separate complaint and, therefore, also lies outside the scope of the present proceeding.

Secretary General

#### **Related documents**

- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011
- *Review of the regulatory framework relating to vertical integration*, Broadcasting Notice of Consultation CRTC 2010-783, 22 October 2010, as amended by Broadcasting Notices of Consultation CRTC 2010-783-1, 16 December 2010; 2010-783-2, 8 February 2011; 2010-783-3, 1 March 2011; and 2010-783-4, 28 June 2011
- *Star Choice – Licence renewal*, Broadcasting Decision CRTC 2004-130, 31 March 2004