



Broadcasting Decision CRTC 2013-738

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Ottawa, 20 December 2013

Corus Entertainment Inc., on its behalf and on behalf of 8504644 Canada Inc. and 8504652 Canada Inc.

Across Canada

Applications 2013-0597-0, 2013-0600-4 and 2013-0611-8, received 17 and 19 April 2013

Public hearing in the National Capital Region

5 November 2013

Historia and Séries+ – Acquisition of assets and change in effective control

*The Commission **approves**, subject to certain modifications and conditions, three applications by Corus Entertainment Inc. (Corus), on its behalf and on behalf of 8504644 Canada Inc. and 8504652 Canada Inc., for authority to acquire from Shaw Media Inc. and 8504610 Canada Inc., partners in a general partnership carrying on business as Historia & Séries+ s.e.n.c., the assets of the French-language specialty Category A services Historia and Séries+ and to change the effective control so that it is exercised by Corus. In Broadcasting Decision 2013-737, also issued today, the Commission has also approved an application for authority to effect a change in the ownership and effective control of the broadcasting undertakings TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network so that control will be exercised by Corus.*

The Commission concludes that the transaction as modified by the Commission is in the public interest and furthers the achievement of the objectives set out in the Broadcasting Act. The Commission considers that the transaction will result in consolidation and economies of scale that will facilitate the production, promotion and distribution of diverse high-quality Canadian programming for Canadian and international audiences. It will also enhance diversity and foster greater competition in the French-language market.

The proposed tangible benefits package will positively impact Canadian content production and original programming by increasing opportunities for Canadian creators, artists and producers. In particular, the Commission notes that the tangible benefits package amounting to \$14.48 million that Corus must allocate over the next seven years will help provide Canadians with more choices in programming and increase the opportunities for Canadian creators to showcase their talent.

*In approving this application, the Commission has imposed specific measures to limit the potential for anti-competitive conduct by Corus. Consequently, in Appendix 1 to this decision, the Commission has set out a list of **conditions of licence** for Historia & Séries+ that will apply to the licences issued to the new licensees 8504644 Canada Inc. and 8504652 Canada Inc.*

The applications

1. Corus Entertainment Inc. (Corus) filed a series of applications for authority to acquire the assets of the specialty television programming undertakings Historia and Séries+ and to change their effective control, pursuant to section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations). The details of the applications and the resulting multi-step transaction are set out below.
2. The applications follow Broadcasting Decision 2013-310, in which the Commission directed BCE Inc. (BCE) to divest itself of a number of assets, including several specialty services including Historia and Séries+.
3. Shaw Media Inc. (Shaw Media) and 8504610 Canada Inc. (8504610 Canada), partners in a general partnership carrying on business as Historia & Séries+ s.e.n.c. (Historia & Séries+ s.e.n.c.), are the licensees of the French-language specialty Category A services Historia and Séries+.
4. Shaw Media is a corporation owned by Shaw Communications Inc. (Shaw), a major communications company with subsidiaries in telecommunications, broadcast programming and distribution, and is ultimately controlled by JR Shaw, pursuant to the terms of a voting trust agreement.
5. 8504610 Canada is a corporation directly owned by Bell Media Inc. (Bell Media), a subsidiary of BCE, which is currently under the control of the trustee Pierre Boivin, pursuant to the Voting Trust Agreement approved by the Commission in a letter of approval dated 27 June 2013.
6. Corus is a major broadcasting company that specialises in content creation, with interests in radio, conventional and discretionary television, production, publication and marketing. It is also a successful producer of content sold internationally. Corus is also ultimately controlled by JR Shaw, pursuant to the terms of another voting trust agreement, and is related to Shaw. However, while related, Shaw and Corus are structurally separated companies with separate management teams and boards of directors.

First step – Application 2013-0611-8

7. An application was filed on behalf of 8504644 Canada Inc. (8504644 Canada) and 8504652 Canada Inc. (8504652 Canada), two corporations created by Historia & Séries+ s.e.n.c., for authority to acquire the assets of the television programming undertakings Historia and Séries+ respectively.

8. This step requires the issuance of new broadcasting licences to 8504644 Canada for Historia and to 8504652 Canada for Séries+. Corus requested to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences, with the exception of conditions of licence relating to Canadian programming expenditures (CPE) and programs of national interest (PNI).

Second step – Application 2013-0597-0

9. An application was filed for authority to effect a change in the ownership and effective control of 8504610 Canada through the transfer of all of its shares to Corus. As a result of this step, Corus would hold, through 8504610 Canada, a 50% indirect voting interest in Historia and Séries+ s.e.n.c. The other 50% voting interest would remain the property of Shaw.

Third step – Application 2013-0600-4

10. An application was filed to grant Corus and its subsidiary 923774 Alberta Ltd. the authority to acquire Shaw's 50% interest in Historia & Séries+ s.e.n.c. (49.999% to Corus and 0.001% to 923774 Alberta Ltd.).

Corporate reorganization

11. As part of this multi-step transaction, Corus would proceed with a corporate reorganization involving the windup of Historia & Séries+ s.e.n.c. As a result of this windup, Corus would directly own all shares of the proposed licensees, namely 8504644 Canada and 8504652 Canada. Corus would then create two subsidiaries that would become parent companies to the proposed licensees. Finally, Corus would amalgamate 8504644 Canada and 8504652 Canada with their respective parent companies to continue as 8504644 Canada and 8504652 Canada. These would be the respective licensees of Historia and Séries+.
12. Following the completion of the transaction, Historia and Séries+ would be controlled by Corus, which is ultimately controlled by JR Shaw.
13. Pursuant to the purchase and sales agreement, Corus would acquire the assets of Historia for \$98 million and of Séries+ for \$179.2 million, amounting to \$138.6 million for each of the Bell and Shaw interests (for a total of \$277.2 million).

Public proceeding

14. The Commission held a public hearing on 5-6 November 2013 in the National Capital Region. The public record for this proceeding, including the transcript of the oral phase of the hearing, can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings." In its analysis, the Commission has considered the entire record for this proceeding.

Regulatory framework

15. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction, and that the application represents the best possible proposal in the circumstances.
16. Pursuant to section 5(1) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in section 3(1). For the present ownership transaction, relevant Canadian broadcasting policy provisions include the following:
 - English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements; [section 3(1)(c)]
 - the Canadian broadcasting system should:
 - serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada [section 3(1)(d)(i)];
 - encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view [section 3(1)(d)(ii)]; and
 - through its programming and the employment opportunities arising out of its operations, serve the needs and interests and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society [section 3(1)(d)(iii)].
 - the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes, (ii) be drawn from local, regional, national and international sources, (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, (v) include a

significant contribution from the Canadian independent production sector [section 3(I)(i)].

17. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, it must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives of the Act and will not impede the ability or willingness of the licensee to meet its obligations under the Act. These obligations include those that arise from conditions of licence, regulations or directives made by the Governor in Council pursuant to the Act.
18. In reviewing the current transaction, the Commission has treated Corus and Shaw in a manner consistent with its past practice. For purposes of determining effective control, Shaw and Corus are considered part of the same ownership group as they are both ultimately controlled by JR Shaw. Similarly, for the purposes of implementing the vertical integration (VI) framework set out in Broadcasting Regulatory Policy 2011-601, they are defined as a single vertically integrated entity. Finally, for the purpose of applying the Commission's group-based approach (see Broadcasting Regulatory Policy 2010-167), Shaw and Corus are considered two distinct designated groups, consistent with Broadcasting Decisions 2011-445 and 2011-446.
19. In the course of implementing the broadcasting policy, the Commission must take into account the regulatory policy set out in section 5(2) of the Act. That regulatory policy provides, among other things, that the Canadian broadcasting system must be regulated and supervised in a flexible manner that facilitates the provision of Canadian programming to Canadians, while being sensitive to the administrative burden that may be imposed on persons carrying on broadcasting undertakings.

Overview of positions of parties

20. Corus stated that the acquisition of Historia and Séries+ would allow for the presence of a financially stable media group exclusively devoted to broadcasting in the Quebec market. It also stated that its close relationships with broadcasting distribution undertakings (BDUs) would enable it to maximize the distribution of the services. Finally, Corus emphasized that its excellent relationship with documentary producers and its solid experience with a wide variety of programming formats would help bring new, attractive content to the French-language market.
21. The Commission received interventions from distributors, independent producers, creative groups and groups defending the interests of consumers.
22. Supporting interveners, including independent producers, film distributors, educational and arts training institutions and festival organizers generally submitted that Corus could leverage its expertise and experience to produce and

promote high-quality programming and offer it both to Canadian and international audiences. Further, some interveners noted that Corus's stronger presence in the French-language market would enhance diversity of voices and competition in that market.

23. Other interveners proposed safeguards and recommended modifications to ensure that the proposed transaction benefits the Canadian broadcasting system in the event that it was approved by the Commission. Some of the concerns raised related to the size of the Corus/Shaw vertically integrated entity, the incrementality and size of tangible benefits, and the services' contribution to the Canadian broadcasting system.

Commission's analysis and decisions

24. After examining the public record for this proceeding, the Commission finds that the proposed transaction as modified in this decision is in the public interest.
25. The Commission considers that the transaction will result in a consolidation and economies of scale that will facilitate the production, promotion and distribution of diverse, high-quality Canadian programming for Canadian and international audiences. It will also enhance diversity and foster greater competition in the French-language market.
26. The proposed tangible benefits package will positively impact Canadian content production and original programming by increasing opportunities for Canadian creators, artists and producers. In particular, the tangible benefits package amounting to \$14.48 million that Corus must expend over the next seven years will help provide Canadians with more choices in programming and increase the opportunities for Canadian creators to showcase their talent.
27. The Commission notes that Corus has significant experience in operating specialty services. Further, on several occasions, Corus has demonstrated its ability to break into new markets. In addition, Corus's entry into the French-language specialty service market will provide a viable alternative to BCE and Quebecor Inc., two vertically integrated undertakings.
28. Corus's proposal to open an office in Montréal to deal with programming, marketing, communication and the selling of advertising will assure that it operates closely with independent producers and consumers of its service even though the Commission considers that the element constitutes a normal cost of doing business.
29. In its analysis, the Commission has focused on the following issues:
 - the potential impact of the transaction on the Canadian broadcasting system;
 - the proposed benefits of the transaction; and
 - the contribution of Historia and Séries+ to the Canadian broadcasting system.

Potential impact on the Canadian broadcasting system

30. The Commission has considered the following issues stemming from concentration of ownership:
- vertical integration and remedies against anti-competitive behaviour;
 - terms of trade; and
 - the impact on independent, regional and official language minority community (OLMC) production.

Vertical integration and remedies against anti-competitive behaviour

31. In 2011, the Commission set out its VI framework.¹ One of the key objectives of the VI framework is to ensure that Canadians continue to benefit from a wide choice of programming and are provided with more flexibility in choosing the services to which they can subscribe. The framework is also designed to limit potential abuses of market power and to ensure fair treatment for independent BDUs and programming services. In the VI framework, the Commission acknowledged the increased potential for preferential treatment but expressed the view that vertical integration can also lead to benefits, such as cost savings and increased efficiencies.
32. In Broadcasting Decision 2013-310, which approved BCE's acquisition of Astral Media inc. (Astral), the Commission imposed conditions of approval requiring BCE to adhere to the VI framework. In the context of the current transaction, the Commission examined whether imposing these safeguards was equally appropriate for Corus.

Position of Corus

33. Corus argued that it would remain a small player in the French-language market if the proposed transaction were approved. With regard to its proposed acquisitions in the English-language market,² Corus noted that since it was proposing to acquire English-language programming services in which it already had an interest, the transaction would not have an impact on those market shares. As such, Corus questioned the necessity of implementing additional safeguards for the proposed transaction and questioned whether additional regulatory requirements were in the public interest.

¹ The Commission set out its VI framework in September 2011 (see Broadcasting Regulatory Policy 2011-601 as amended by Broadcasting Regulatory Policy 2011-601-1) and implemented that framework through amendments to various regulations (Broadcasting Regulatory Policy 2012-407) and the exemption orders for digital media broadcasting undertakings (Broadcasting Order 2012-409) and terrestrial BDUs serving fewer than 20,000 subscribers (Broadcasting Order 2012-408).

² See Broadcasting Decision 2013-737, also issued today.

34. At the hearing, Corus agreed to adhere to all of the conditions of licence applicable to television programming undertakings set out in Appendix 2 to Broadcasting Decision 2013-310 (i.e. conditions 1-9, which structure negotiations and detail Corus's obligations in that regard, and conditions 11-13 relating to concluding terms of trade) apply to all of its television programming services, whether they formed part of the proceeding or not.
35. Corus argued, however, that it was not in a position to accept on Shaw's behalf that the conditions of licence set out in Broadcasting Decision 2013-310 be applied to programming and distribution undertakings owned and operated by Shaw. Corus stated that it could not be held responsible for decisions made by Shaw and could not guarantee its compliance with these conditions of licence.

Interventions

36. Certain interveners, such as ACTRA National and the Writers Guild of Canada, submitted that the market share held by Corus would be significant if the transaction were approved and that the Commission should therefore carefully examine the impact of such an approval.
37. TELUS Communications Company (TELUS) was of the view that it would be inconsistent for the Commission not to subject Shaw and Corus to the same measures applied to BCE in Broadcasting Decision 2013-310, since the Corus/Shaw vertically integrated entity would have the same incentives and opportunities as BCE for anti-competitive behaviour. The Public Interest Advocacy Centre, the Consumers' Association of Canada, the Council of Senior Citizens Organizations of British Columbia, the National Pensioners and Senior Citizens Federation and Option Consommateurs (the consumer groups) also supported the imposition of all the conditions of licence set out in Broadcasting Decision 2013-310.
38. The consumer groups and TELUS argued that the Commission could apply safeguards on all of Corus's and Shaw's services using conditions of approval, as in the case of Broadcasting Decision 2013-310.

Commission's analysis

39. The Commission notes that the acquisition of these services is being made in tandem with the acquisition of TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network, approved in Broadcasting Decision 2013-737. Further, Corus and Shaw are defined as a single vertically integrated entity. Shaw distributes its programming through its satellite and cable facilities, as well as through its video-on-demand service Shaw on Demand for its cable subscribers.
40. The Commission notes that following the acquisition of Historia and Séries+, Corus's market shares in the French-language market would remain limited. Nevertheless, the Commission considers that factors such as convergence, vertical

integration and scale may lead to an entity's becoming so large that it is provided with the opportunity and incentive to give itself or others an undue preference. This could impede the efficient delivery of programming at affordable rates and reasonable terms of carriage and ultimately work against a competitive and dynamic marketplace in the Canadian broadcasting system. This could also have consequences on the availability and diversity of programming for Canadians.

41. Consequently, the Commission is of the view that the significant suite of services operated by Corus, coupled with the fact that it is affiliated with the distribution undertakings held by Shaw, which has a significant presence in the programming and distribution sectors, gives Corus an advantageous position in the market.
42. The Commission is thus of the view that it is necessary to implement safeguards to limit the potential for anti-competitive behaviour by Corus in both linguistic markets. Therefore, the imposition on Corus of conditions of licence 1 to 9 and 11 to 13 set out in Broadcasting Decision 2013-310 are appropriate to ensure that the Canadian broadcasting market remains competitive.
43. However, the Commission considers that it would not be appropriate to put Corus in a position whereby it must rely on Shaw to file certain applications in order for Corus to comply with the Commission's conditions of approval. Despite the fact that Corus and Shaw are related entities with ultimate control of both residing with JR Shaw, Shaw is managed separately by a distinct board of directors. The Commission will assess the appropriateness of imposing additional safeguards on Shaw's programming and distribution undertakings in future proceedings. Further, the Commission notes that vertically integrated entities such as Shaw are subject to the *Code of conduct for commercial arrangements and interactions* and that the undue preference provisions remain available should difficulties arise between parties.
44. Accordingly, in Appendix 1 to this decision, the Commission sets out a list of **conditions of licence** for Historia and Séries+ that will apply to the new broadcasting licences issued to 8504644 Canada and 8504652 Canada. The Commission notes that in Broadcasting Decision 2013-737, it took measures to ensure that all of Corus's licensed programming undertakings would be subject to the same conditions of licence.

Terms of trade

45. Corus agreed to have conditions of licence 11 to 13 relating to terms of trade agreements imposed on BCE in Broadcasting Decision 2013-310 apply to all its English- and French-language television broadcasting services. Corus noted that it had notified the Association québécoise de la production médiatique (AQPM) of its intention to enter into a terms of trade agreement. Corus stated that it would therefore accept the imposition of a condition of licence requiring it to reach such an agreement.

46. Accordingly, the Commission imposes a **condition of licence** requiring Corus to enter into a terms of trade agreement with the AQPM as soon as possible and in any event **by no later than 20 December 2014**. The Commission has modified condition of licence 12 set out in Broadcasting Decision 2013-310. Until such time as this agreement is entered into, the Commission **directs** Corus to file detailed monthly progress reports on the negotiations. Finally, should parties conclude that an agreement will not be reached in time, the Commission encourages them to seek mediation, from either the Commission or a third party.
47. In accordance with the Commission's approach regarding French-language services, these services will be subject to an expectation that any dispute concerning terms of trade agreements with independent producer associations will be handled under the terms of the agreements before the parties ask for the Commission's assistance in resolving matters under its jurisdiction.
48. In light of Corus's stated intention to work with French-language producers throughout Canada, in addition to requiring Corus by condition of licence to enter into negotiations with the Alliance des producteurs francophones du Canada (APFC), the Commission encourages Corus to reach an agreement with the APFC as soon as possible.

Impact on independent production, regional production and OLMC production

49. The Commission places great importance on independent, regional and OLMC production, not only in the context of this particular transaction, but in the overall attainment of the objectives of the Act. It has consequently put in place certain requirements and expectations regarding independent, regional and OLMC production.
50. Any consolidation of ownership of broadcasting undertakings poses the problem of fewer buyers for independent producers. In addition to fewer decision-makers to whom they can submit their proposals, independent producers that do not have a longstanding relationship with the acquiring company may be disadvantaged.
51. The Commission notes that Corus intends to establish an office to oversee programming in Montréal. The consolidation of Corus's position in the French-language market as a result of this transaction could bring about a positive change in that market.
52. Regional independent and OLMC producers were generally in favour of Corus's applications to acquire Historia and Séries+.
53. The Commission notes that Historia and Séries+ are subject to conditions of licence relating to independent production that these services limit spending on the acquisition of rights to original Canadian programs produced by corporations related to the licensee. Corus did not propose any amendments to these conditions of licence. These conditions will therefore remain in effect.

54. The Commission has established a case-by-case approach to the on-screen reflection of the regions and OLMCs and to productions from those communities. None of the services involved in the current transaction are subject to a condition of licence in this regard. Corus committed to working with French- and English-language independent Canadian producers and to continuing to file reports on regional production, but did not submit a detailed plan regarding programming originating from OLMCs or improving the reflection of OLMCs on screen. Further, since Historia and Séries+ are services with national distribution, the Commission considers that they are able to contribute to the on-screen reflection of OLMCs.
55. As set out in Broadcasting Decision 2011-441, Corus, as a designated group, must file, by 30 November of each year, a detailed regional production plan, including information on proposed outreach efforts for the coming broadcast year. This information must include specific details on the number and nature of outreach efforts, including participation in regional production-related festivals, conferences and visits by programming executives to actively engage with regional producers including OLMC producers. This information must also include descriptions of projects in development with regional producers and actual production activity in the regions.
56. Although Historia and Séries+ will be operated independently from the Corus group (the Commission sets out its determination on this matter in paragraph 110 of this decision), they will still be held by Corus. The Commission therefore **directs** Corus to include in its annual report on regional production a French-language component describing the production from the various Canadian regions and OLMCs for both Historia and Séries+, as well as the various efforts made by Corus to communicate with OLMC producers. In addition, the Commission encourages Corus to ensure that Historia and Séries+ contribute to the on-screen reflection of OLMCs.
57. The Commission is convinced that the measures described above will limit the potential negative impact of the transaction on independent production and will promote the development and vitality of OLMCs.

Proposed benefits of the transaction

58. In its analysis, the Commission took into account the following:
- the tangible benefits;
 - the calculation of the value of the transaction.

Tangible benefits package

Value of the tangible benefits package

59. As set out in Public Notice 1999-97, the Commission generally expects applicants to make commitments to provide clear and unequivocal tangible benefits in transfer of ownership or control. In regard to television programming undertakings, including conventional, specialty and pay television undertakings, the Commission generally expects the proposed contributions total 10% of the value of the transaction, as established by the Commission (see Public Notice 1999-97 and Public Broadcasting Notice 2007-53). These contributions must benefit the communities served and the broadcasting system as a whole. Furthermore, in order to be considered a benefit, the proposed contribution must be incremental; that is, it must be directed to projects and initiatives that normally would not be undertaken or realized in the absence of the transaction. The contribution must also flow predominantly to third parties, for example independent producers. As well, the Commission's general approach is that the majority of benefits (approximately 85%) support on-screen programming, with the rest being dedicated to social benefits.

On-screen benefits

60. Corus proposed various tangible benefits initiatives, allocated on the basis of the following factors:
- the revised value of the tangible benefits package represents 10% of the revised value of the transaction;
 - the distribution of benefits between on-screen and social benefits reflects the aforementioned 85/15 ratio;
 - the proposed initiatives benefit the French-language market, in accordance with the language characteristics of the services being acquired; and
 - on-screen benefits proposed for digital media do not exceed 10%.

Interventions

61. AQPM considered that funds from the Program production initiative should benefit viewers of both services and not flow to other Corus services. This is not what was proposed by Corus, which stated that Canadian services could use these funds to create start-up capital and build a schedule.
62. Union des artistes, Association des réalisateurs et réalisatrices du Québec and Société des auteurs de radio, télévision et cinéma (collectively UDA/ARRQ/SARTEC) stated that based on Corus's current proposal, it would be difficult to determine whether the expenditures related to the Script and concept development initiative (the Scripts initiative) would actually be incremental.

63. AQPM submitted that Corus should ensure that funds dedicated to the Scripts initiative, regardless of who manages them, are directed to the development of original French-language programming, because Historia and Séries+ are both French-language services. AQPM and On Screen Manitoba expressed the concern that this may not be the case should this initiative be administered by Telefilm Canada (Telefilm) or the Canada Media Fund (CMF), which generally allocate 2/3 of funding to English-language production and 1/3 to French-language production. APQM also asked that the funds' administrator establish a presence where the majority of French-language producers are concentrated.
64. The ministère de la Culture et des Communications du Québec (MCCQ) recommended that the Commission require Corus to commit to allocate a minimum amount to French-language initiatives, more specifically to independent producers and organizations located in Quebec.
65. AQPM and UDA/ARRQ/SARTEC submitted that the Export support fund should not be considered eligible as an on-screen initiative because it is not related to programming. In addition, AQPM stated that the fund should promote the export of programming produced in French.
66. Finally, On Screen Manitoba asked for clarification on how the tangible benefits would benefit Francophones outside Quebec and asked that 10% of on-screen benefits be reserved for productions outside Quebec. APFC and AQPM agreed that the distribution of tangible benefits should take OLMCs into consideration.

Corus's reply

67. Corus confirmed that programs created as a result of the Program production initiative would be reserved exclusively for Historia and Séries+. In regard to the request that 10% of the funding allocated to the Program production initiative be reserved for productions outside Quebec, Corus stated that it intends to do what is best in terms of production from all regions of Canada.
68. Corus confirmed that the Scripts initiative would be dedicated to developing French-language programming. Corus intends to entrust the governance and management of this initiative and the Export support fund to a third party. The third party, whether it is the CMF or Telefilm, would be responsible for deciding whether it is appropriate to reserve 10% of the funding for producers outside Quebec.

Commission's analysis and decisions

69. The Commission considers that the proposed distribution of the revised tangible benefits package is in accordance with Public Notices 1989-109, 1993-68 and 1999-97, Broadcasting Regulatory Policy 2010-833 and the Commission's general practice. Furthermore, these initiatives would primarily benefit third parties, would be incremental, and would enrich the communities served and the Canadian broadcasting system. Therefore, the Commission is of the view that

these initiatives and the amounts allocated to them, as set out in Appendix 4 to this decision, are appropriate. The Commission **directs** Corus to file an annual report on the tangible benefits on 30 November each year.

70. The Commission is of the view that the proposed Program production initiative will result in the production and development of new programs for television and qualifies as a tangible benefit. Over seven broadcast years, a total of \$500,000 (in equal annual payments) would be allocated to the Telefilm Canadian Talent Fund, to support emerging and established Canadian filmmakers. The Commission notes that the proposal that the fund be self-managing is in accordance with Commission policies, because Corus has committed not to charge administrative fees. Consistent with the benefits policy, which requires that benefits should generally flow to third parties, the Commission **directs** Corus to allocate the entire fund to independent producers and to ensure that the programming produced meets the definition of “original Canadian programming.”³
71. The Commission also notes that Corus did not propose to allocate any funds derived from the Program production initiative to OLMCs. Given the importance of OLMC reflection, the Commission **directs** Corus to allocate 10% of funds from the Program production initiative to OLMC production.
72. In addition, the Commission considers that the benefits should be used to create and acquire the best possible Canadian programming, to be made available on whatever services Canadians choose. Therefore, the Commission considers that the benefits resulting from this transaction should be made available to a variety of producers for broadcast on a variety of services so that they do not benefit Historia and Séries+ exclusively.
73. Further, to monitor these requirements, the Commission **directs** Corus to provide the following information in its annual tangible benefits report:
 - the titles of the programs funded, the producer, and whether the producer is from an OLMC;
 - the funds allocated to each title;
 - the service on which the programs are broadcast; and
 - the allocation mechanisms used to ensure that funds are allocated to a variety of producers and services.

³ An “original Canadian program” is defined as a Canadian program that, at the time of its broadcast by the licensee, has not been previously broadcast by the licensee or by any other licensee, or if the licensee contributed to the program’s pre-production financing, a Canadian program that has only been previously broadcast by another licensee that also contributed to its pre-production financing.

74. The Commission also accepts Corus's proposal to allocate part of the on-screen benefits to the CMF, Telefilm, or both, in the case of the proposed Scripts initiative. Therefore, the Commission **directs** Corus to file, **by no later than 30 January 2014**, an agreement with the CMF or Telefilm relating to the administration of funds, confirming that the CMF or Telefilm, as applicable, will manage the funds, that the funds will be used for scripts and concept development, and that the funds will be directed to French-language parties, including OLMCs.
75. The Commission considers that the Export support fund could result in the production of new Canadian programs and could be considered eligible as an on-screen benefit. Further, to ensure the initiative benefits Canadian viewers, the programs produced should also be broadcast on a Canadian service. The Commission **directs** Corus to file, **by no later than 30 January 2014**, an agreement with the CMF or Telefilm relating to the administration of the funds that meets the following criteria:
- the agreement includes eligibility criteria ensuring that the funds will result in the production of new Canadian programs and that the programs produced will be aired on a Canadian service; and
 - the agreement provides that the funds will be directed to French-language parties.
76. Should Corus be unable to arrive at such an agreement, the Commission **directs** Corus to reallocate the funds to its proposed Programs production and Scripts initiatives.

Off-screen benefits

77. The Commission considers that the contributions to various proposed festivals would benefit the broadcasting system, and that they are eligible as tangible benefits. However, to be truly incremental, the contributions should be in addition to Corus's historical spending on such festivals, including the purchase of tickets and advertising, as well as promotional activities prior to and at the events themselves.
78. Contributions generate greater benefits if the funding is concentrated on activities such as script development, project presentation events and professional development rather than festival administration. Festivals can also provide opportunities to meet with OLMCs.
79. In view of the foregoing, to ensure that these expenditures are incremental, maximize the benefits for the Canadian broadcasting system and the communities served by the services, and further the objectives of the Act, the Commission **directs** Corus to include the following in its annual report on tangible benefits:

- information for each broadcast year and the preceeding year on the purchase of tickets, advertising and promotional expenses for each festival, separate from contributions as tangible benefits;
 - information on the use of this funding, including activities such as script development, project presentation events and occasions to meet with OLMCs.
80. Also, in regard to the proposed contributions for scholarships for institutions working in broadcasting or a related field or offering related programs, the Commission **directs** Corus to include in its annual report on tangible benefits information on the use of the funding, such as the number of scholarships awarded and the amount for each.
81. The Commission further **directs** Corus to include the following in its annual report on tangible benefits:
- information on the use of funding allocated to the Canadian Communications Foundation, such as projects that have received funding;
 - information on the number of public service messages produced, the producers of the messages and the date and time the messages were broadcast, as a result of funding allocated to Concerned Children's Advertisers.

Value of the transaction

82. As stated in Broadcasting Public Notice 2008-57, the Commission determines the value of the transaction for calculating tangible benefits as of the date of the transaction. It determines the value based on the economic interest being acquired and adds elements such as assumed debt and leases to this value in the same proportion.

Corus's position

83. Corus stated that the tangible benefits policy applied only to transfers of control and that therefore the value of the transaction should apply only to the interest that was being acquired from Bell Media (50%) and not to the entire transaction. Corus submitted that the purchase of the interest in Historia & Séries+ s.e.n.c. from Shaw was a corporate reorganization. In support of its position, Corus cited paragraph 22 of Public Notice 1999-97, which states the following:

The Commission hereby amends its benefits policy in respect of all transfers of ownership or control involving television broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. It will generally expect applicants to make commitments to clear and unequivocal tangible benefits representing a

financial contribution of 10% of the value of the transaction, as accepted by the Commission.

84. According to Corus, this paragraph clearly indicates that the Commission's tangible benefits policy hinges on the transfer of control of a broadcasting undertaking.
85. In this regard, Corus stated that it and Shaw are both ultimately controlled by JR Shaw and therefore that Corus's acquisition of Shaw's interest would not result in a transfer of control. For this reason, according to Corus, this acquisition should be treated as a corporate reorganization and should not trigger the payment of tangible benefits.

Interventions

86. Numerous interveners stated that the value of the transaction should not be limited to the acquisition of Bell Media's 50% interest (previously held by Astral) in Historia & Séries+ s.e.n.c., but should also include the acquisition of Shaw's interest. In their view, the value of the transaction should be calculated on the basis of all the interests being acquired.
87. The Canadian Media Production Association (CMPA) noted that Corus and Shaw are two separate publicly traded companies that must be managed independently to comply with the fiduciary duty of their respective boards of directors. The CMPA also noted that Corus was already positioned as an independent entity from Shaw and had underscored their differences during the group renewal process. The CMPA added that the price paid to complete this step of the transaction (\$138.6 million) clearly shows that the transaction between Shaw and Corus is more than a reorganization.
88. The consumer groups stated that the effective control previously exercised by the board of directors of Historia & Séries+ s.e.n.c., whose members are appointed jointly by Pierre Boivin (trustee) and Shaw, was being passed to Corus. In their view, the tangible benefits should therefore be imposed on the entire transaction. For its part, the APFC requested that the transaction value rest on all of the interest acquired because of the high profitability of the services. Finally, some interveners expressed the concern that if the Commission excluded Shaw's interest in its calculation of the value of the transaction, this would set a precedent for any future transactions involving Shaw and Corus.

Commission's analysis

89. The Commission notes that Corus and Shaw are both ultimately controlled by JR Shaw. Thus, the Commission considers that there is no change in ultimate control in the case of the acquisition of Shaw's interest (50%). However, the acquisition of Bell Media's interest (50%) is subject to the tangible benefits policy.

90. In accordance with the contract dated 4 March 2013, the purchase price for Bell Media's interest is \$ 138.6 million. The purchaser will not be taking on any long-term debt or leases.
91. The Commission notes that Corus excluded the cash value of the working capital because the contract provided for it to be payable upon closing. However, the Commission determines the value of the transaction the date of the transaction, not the date of closing. As such, it has included in its calculation of the value of the transaction the cash value on the date of the transaction. Consequently, it has added to the value of the working capital. According to the financial statements, the value of the cash amounted to \$12,424,112. Because only the interest acquired from Bell Media (i.e., 50% of the total interest) is accounted for in the value of the transaction, the value to be included for the cash is \$6,212,056.
92. In light of the foregoing, the Commission establishes that the revised value of the transaction is \$144,812,056, calculated as follows:

Value of the transaction for Historia & Séries+ s.e.n.c

Purchase price	\$138,600,000
Cash (50% of \$12,424,112)	\$6,212,056
Total (Adjusted purchase price)	\$144,812,056

93. Corus proposed a tangible benefits package amounting to \$13.86 million. However, the Commission requires that the tangible benefits amount correspond to the value of the transaction as revised. Accordingly, the Commission has calculated that the tangible benefits package should have a value of **\$14,481,205**. The Commission **directs** Corus to allocate the amount corresponding to the Commission's adjustment (\$621,205) to its French-language programming production initiative, which is part of its on-screen tangible benefits.

Contribution of Historia and Séries+ to the Canadian broadcasting system

94. The issues to be addressed in this section are the following:
- the services' exclusion from the Corus group;
 - the services' CPE obligations;
 - the application to remove the services' PNI obligations.
95. The group-based approach for licensing private television services is set out in Broadcasting Regulatory Policy 2010-167. According to this approach, group-based policies apply to private English-language ownership groups whose conventional television stations generate more than \$100 million in annual revenue and own at least one English-language specialty or pay television service (designated groups). In Broadcasting Decision 2011-441, the Commission

established Corus as a designated group and, in Broadcasting Decision 2011-446, renewed the licences for its broadcasting undertakings.

96. As Category A services that are part of the Astral group, Historia and Séries+ are subject to CPE and PNI obligations, in accordance with Broadcasting Decision 2012-241. Their CPE requirements are 30%, while their PNI requirements are 16%, 75% of which must be allocated to independent producers.
97. Before they became part of the Astral group, the CPE obligations for Historia and Séries+ were 35% (see Broadcasting Decision 2005-443) and 22% (see Broadcasting Decision 2005-444), respectively. At the time, CPE obligations included the amounts paid by the CMF.

Corus's position

98. Although Corus is already identified as a designated group, it favoured operating Historia and Séries+ as standalone services. In support of its proposal to exclude both services from its group, Corus noted that TVA Group Inc. did not consider that the group-based licensing model suited it or served its interests, and that the Commission accepted its proposal.
99. Given that the combined revenue of Télétoon Rétro,⁴ Historia and Séries+ totals less than \$100 million and since they are French-language services, Corus concluded that the Commission's group-based licensing policy did not apply to them. Further, Corus noted that it would be impossible to operate those services as part of its group given that the combined revenue for all English-language services will be much higher than those for all French-language services.
100. Corus considered that its proposal better serves the interests of the Canadian broadcasting system and Canadian content production. It added that it would also be beneficial to Canadian audiences for the following reasons:
 - it prevents the risk of imbalance between the two language markets with regard to purchasing and producing Canadian content, which could occur if Historia and Séries+ were part of the Corus designated group, given the flexibility afforded by the Commission's group-based policy;
 - it ensures that decisions regarding the operation and promotion of the French-language services would be the responsibility of the Montréal office, which is ideal in terms of operating conditions;
 - it ensures that Quebec producers will be better able to present their projects in Montréal.

⁴See Broadcasting Decision 2013-737, also published today.

101. Therefore, Corus requested an amendment to the conditions of licence relating to CPE for both services, proposing CPE requirements of 30% for Historia and 17% for Séries+. It noted that the proposed CPE levels reflect only the exclusion of the CMF's licence-fee top-ups, in accordance with the Commission's new practice and the method used by the independent licensees with which the services will have to compete.
102. Corus suggested using the period before Historia and Séries+ became part of the Astral group as the reference period for calculating the CPE obligations to be imposed, should the transaction be approved.
103. As it intends to operate the services separately from its group, Corus proposed to remove the PNI obligation for Historia and Séries+, as that obligation is normally imposed only on services that are part of a designated group. Corus pointed out that in the case of Séries+, deleting the PNI requirement would not affect the volume of such programs broadcast by that service. In fact, given its nature of service, at least 95% of its programs must be drawn from program category 7 Drama and comedy. This means that most of the programs of Séries+ would continue to be PNI and that CPE expenditures would be directed towards PNI.
104. In the case of Historia, removing the PNI obligation would not affect the volume of PNI broadcast. By virtue of its nature of service, documentaries are a large part of its programming schedule and Historia is authorized to broadcast programming drawn from program category 7. Corus added that the following obligations make clear the expectations of the Commission on how CPE should be allocated:
 - 75% of that service's CPE must be directed to the acquisition of original Canadian programming to be broadcast for the first time by the licensee and have never been broadcast by another broadcasting licensee;
 - The licensee must limit to 5% per year expenditures incurred for the purchase of rights to original Canadian programming produced by its own shareholders or by affiliated companies.

Interventions

105. The interveners were generally in favour of Corus's proposal to exclude Historia and Séries+ from its designated group. For these services' obligations with respect to CPE, UDA/ARRQ/SARTEC were opposed to basing the calculations on the terms of Broadcasting Regulatory Policy 2010-167. They pointed out that the purpose of that policy is to establish a regulatory policy governing services operated within designated groups, and not services operated outside of those large groups. According to UDA/ARRQ/SARTEC, if Historia and Séries+ are excluded from the Corus group, the Commission should rather adopt the approach put forwards in Broadcasting Public Notice 2004-2. According to that approach, licensees whose profit before interest and tax (PBIT) margins have historically exceeded 40%, as is currently the case with Historia and Séries+, must increase

their minimum annual CPE by 7%. Thus, since the current levels for Historia and Séries+ are 30%, they should be 37% at the close of the transaction.

106. The MCCQ expressed concern about the eventual negative impact that reducing CPE could have on the Quebec audiovisual production industry.
107. AQPM agreed with Corus's proposals regarding CPE and PNI, although it was of the opinion that Corus's argument—that removing PNI obligations for Historia would not result in a decrease in volume of PNI because documentaries are a large part of its programming, given its nature of service—is misleading. UDA/ARRQ/SARTEC noted that if, as Corus stated, removing PNI obligations would not change the current situation, then their removal is even less necessary. UDA/ARRQ/SARTEC also noted that in Broadcasting Decision 2013-310, the Commission imposed on BCE, as a condition of approval, the filing of an application to revise PNI to 18%. Therefore, not only did they oppose Corus's application, they also requested that the minimum PNI threshold be raised to 18%.

Corus's reply

108. Corus opposed the CPE calculation proposed by UDA/ARRQ/SARTEC because the regulatory framework to which they refer has expired. Corus considered that the CPE levels proposed for Historia and Séries+ are entirely consistent with the Commission's policies in this respect.

Commission's analysis

109. The Commission demonstrated flexibility in the implementation of the group-based approach by authorizing licensees to benefit from its flexibility even when the composition of their portfolios did not exactly fit the description of a designated group set out in Broadcasting Regulatory Policy 2010-167. This flexibility was granted either by allowing licensees to forego the group-based approach, even if they had all of the attributes of a designated group, or by allowing licensees to operate a group consisting of French- and English-language services.
110. Given that the Corus group is primarily composed of specialty services, adding Historia and Séries+ would expand its specialty services portfolio. However, the flexibility afforded by the group-based approach in terms of allocation of programming expenditures among television services could have a material effect on all Corus group services' programming (both English- and French-language), given the significant differences between their respective revenues. The Commission therefore considers that operating Historia and Séries+ individually outside of the Corus group would ensure stable CPE and would be the best possible contribution by Corus to Canadian programming in the French-language market.

111. Using the three years before the services became part of the Astral group as a reference, as proposed by Corus, i.e., from 2009 to 2011, CPE levels would be 30% for Historia and 17% for Séries+, when excluding the CMF. Given that Corus would operate these services independently and that the proposed methodology is consistent with the Commission's practice since 2010, the Commission considers that the CPE obligations proposed by Corus are reasonable.
112. The Commission imposes on the services a **condition of licence** set out in Appendices 2 and 3 to this decision that replaces conditions of licence 4, 5 and 11 of Appendix 4 (for Historia) and 4, 5 and 10 of Appendix 7 (for Séries+) to Broadcasting Decision 2012-241.
113. The Commission generally imposes PNI obligations on designated groups based on historical expenditures. However, the Commission does not impose any PNI obligations on services operated independently outside of a designated group. Historia and Séries+ greatly exceed their independent production obligations and their expenditures are directed to documentary and drama programming, in accordance with their respective natures of service. Consequently, the Commission considers that the risks arising from removing the PNI obligations are low.
114. The Commission **approves** the proposal by Corus to be relieved of conditions of licence 6, 7, 8 and 12 set out in Appendices 4 and 7 to Broadcasting Decision 2012-241.
115. Interveners requested that the services' CPE requirements be increased and that the PNI requirements remain as they are. They stressed the shortage of French-language original productions on these services. In this respect, the Commission notes that Séries+ devotes only a small portion of its programming schedule to French-language original programs, and that most of its programming consists of dubbed versions of Canadian and non-Canadian programs.
116. The Commission is concerned that increasing the service's CPE requirement, as the interveners proposed, may not result in increased original production. This is because the licensee would be free to spend those amounts on the acquisition of programs, including dubbed programs, rather than on production.
117. Accordingly, the Commission **requires**, as a **condition of approval**, that Corus file, **by no later than 30 January 2014**, an application to amend condition of licence 6(a) of Appendix 3 to this decision in order to increase the French-language original programming expenditures of Séries+. These expenditures must be additional to the service's CPE requirements.

Other issues

118. The Commission **directs** Corus to file, **by no later than 30 January 2014**, executed copies of the the amalgamation documents.

119. The Commission **directs** Corus to file, **by no later than 30 January 2014**, executed copies of all draft versions of the documents filed as part of this proceeding.

Conclusion

120. In light of all of the above, the Commission **approves**, subject to the amendments and conditions set out in this decision, the series of applications filed by Corus Entertainment Inc., on its behalf and on behalf of 8504644 Canada Inc. and 8504652 Canada Inc., seeking authority to acquire from Shaw Media Inc. and 8504610 Canada Inc., partners in a general partnership carrying on business as Historia & Séries+ s.e.n.c., the assets of the French-language specialty Category A services Historia and Séries+, to proceed with a corporate reorganization, and to effect a change in effective control of the companies, which will be transferred to Corus, under the ultimate control of JR Shaw. The Commission concludes that this transaction, as amended by the Commission, is in the public interest and serves the objectives set out in the *Broadcasting Act* with respect to the Canadian broadcasting system.
121. Upon surrender of the current licences issued to Shaw Media Inc. and 8504610 Canada Inc., partners in a general partnership carrying on business as Historia & Séries+ s.e.n.c., new broadcasting licences will be issued to 8504644 Canada Inc. (for Historia) and to 8504652 Canada Inc. (for Séries+). The terms and **conditions of licence** common to these two services are set out in Appendix 1 to this decision. The conditions of licence specific to Historia and to Séries+ are set out in Appendices 2 and 3, respectively. The two broadcasting licences will expire **31 August 2017**.

Secretary General

Related documents

- *TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network – Change of effective control; TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-737, 20 December 2013
- *Notice of Hearing*, Broadcasting Notice of Consultation CRTC 2013-448, 28 August 2013
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012

- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – Implementation of the regulatory framework relating to vertical integration and other amendments*, Broadcasting Order CRTC 2012-408, 26 July 2012
- *Amendments to various regulations – Implementation of the regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2012-407, 26 July 2012
- *Astral Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as amended by Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Decision CRTC 2010-167, 22 March 2010
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Séries+ – Licence renewal*, Broadcasting Decision CRTC 2005-444, 31 August 2005
- *Historia – Licence renewal*, Broadcasting Decision CRTC 2005-443, 31 August 2005
- *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004
- *Building on success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993
- *Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1989-109

* *This decision and appropriate appendices are to be appended to each licence.*

Appendix 1 to Broadcasting Decision CRTC 2013-738

Common conditions of licence for the specialty Category A services Historia and Séries+

1. The licensee shall not:
 - a) require an unreasonable rate (e.g., not based on fair market value);
 - b) require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
 - c) require an excessive activation fee or minimum subscription guarantee;
 - d) impose, on an independent party, a most favoured nation (MFN) clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.
2. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
 - a) historical rates;
 - b) penetration levels and volume discounts;
 - c) the packaging of the service;
 - d) rates paid by unaffiliated broadcasting distributors for a programming service;
 - e) rates paid for programming services of similar value to consumers;
 - f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
 - g) the retail rate charged for the service on a stand-alone basis;
 - h) the retail rate for any packages in which the service is included.
3. The licensee shall file with the Commission all affiliation agreements signed by it with television programming undertakings and broadcasting distribution undertakings within five days after they are signed by the parties.
4. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the

agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

5. The licensee shall not:
 - a) require minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
 - b) refuse to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service);
 - c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.
6. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcast distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.
7. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent, another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
8. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms. For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.
9. The licensee shall provide a minimum of 90 days written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice will be accompanied by an offer which sets out the general terms of carriage of the programming service to be launched.
10. The licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association for English-language services.

11. With respect to French-language services, the licensee shall, as soon as possible, and in any event not later than one year after the date of this decision, enter into a terms of trade agreement with the Association québécoise de la production médiatique. Until such agreement is concluded, the licensee shall file detailed monthly reports with the Commission on its progress in this regard.
12. The licensee shall enter into good faith terms of trade negotiations with the Association des producteurs francophones du Canada and shall report regularly to the Commission on its progress in this regard.

Appendix 2 to Broadcast Decision CRTC 2013-738

Additional conditions of licence and expectations for the specialty Category A service Historia

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. With regard to the nature of the service:
 - a) The licensee shall provide a national French-language specialty Category A service with programming devoted entirely to past and present history.
 - b) Programming may be drawn from all 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 not devote more than 10% of the broadcast month to programs from program category 6(a) Professional sports.
 - d) The licensee shall not devote more than 10% of the broadcast month to programs from program categories 8(b) Music video clips and 8(c) Music video programs combined.
 - e) The licensee shall not devote more than 10% of the broadcast month to programs from program category 7(d) Theatrical feature films aired on TV.
3. In each broadcast year, the licensee shall devote to the distribution of Canadian programs not less than 45% of the broadcast day and the evening broadcast period.
4. In each broadcast year of the licence term, the licensee shall devote to investments in or to the acquisition of Canadian programming 30% of the previous broadcast year's gross revenue of the undertaking.
 - a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to 5% less than the minimum required expenditure for that year calculated in accordance with this condition; 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 where the licensee spends an amount exceeding the minimum amount required on Canadian programming calculated in accordance with this condition of licence, excluding the final year, the licensee may deduct an amount not exceeding

5% of the minimum spending required for that year from the minimum spending required for the next year of the licence term.

- c) Notwithstanding subsections a) and b) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
5. At least 75% of expenditures under condition of licence 4 shall be devoted to the acquisition of original Canadian programming to be broadcast for the first time by a French-language linear programming service that holds a broadcasting licence. For the purposes of this condition, an original French-language Canadian program broadcast for the first time is:
- a) a Canadian program produced in French which is distributed for the first time by the licensee and which has never previously been distributed by the licensee of a broadcasting undertaking;
- or
- b) a Canadian program produced in French which is acquired in preproduction and broadcast previously by a discretionary service (pay television or pay-per-view television).
6. The licensee shall limit to 5% annually its expenditures to acquire the rights to Canadian original programs devoted to programs produced by the licensee's shareholders or affiliates.
7. The service licensed hereby is designated as a Category A service.

Expectations

The Commission expects:

- that any dispute with regard to commercial agreements with associations of independent producers will proceed in accordance with the provisions of the agreements before the parties ask the Commission to help resolve issues within its jurisdiction;
- that the licensee will ensure that the programs broadcast by its service adequately reflect all regions of Quebec, including those outside of Montréal, as well as all regions of Canada. The Commission further expects the licensee to provide producers working in those regions with the opportunity to produce programs intended for its service.

Definitions

For the purposes of these conditions of licence:

- The term “broadcast day” refers to the 24-hour period beginning each day at 4 a.m. or any other period approved by the Commission.
- The terms “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*.
- 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.

Appendix 3 to Broadcasting Decision CRTC 2013-738

Additional conditions of licence and expectations for the specialty Category A service **Séries+**

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. With regard to the nature of the service:
 - a) The licensee shall provide a national French-language specialty Category A service with programming devoted entirely to drama.
 - b) The licensee shall devote at least 95% of the programming of the service to programming drawn from program category 7 Drama and comedy, as set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time.
 - c) Canadian programming from program category 7(d) Theatrical feature films aired on television which is broadcast shall have been copyrighted at least seven years before the date of broadcast, unless **Séries+** participated in the financing thereof during the production stage and that financing did not exceed 50% of the total cumulative amount allocated to comply with condition of licence 6(a).
 - d) Except for programming in program categories 7(a) Ongoing dramatic series, in an original language other than French, 7(c) Specials, mini-series, made-for-TV feature films, and 7d) Theatrical feature films aired on television, the Canadian programs broadcast shall have been copyrighted at least 10 years before the date of broadcast.
 - e) The licensee shall limit the level of programs from U.S. sources to 30% annually.
3. In each broadcast year, the licensee shall devote to the distribution of Canadian programs not less than 30% of the broadcast day and the evening broadcast period.
4. In each broadcast year of the licence term, the licensee shall devote to investments in or to the acquisition of Canadian programming 17% of the previous broadcast year's gross revenue of the undertaking.
 - a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to 5% less than the minimum required expenditure for that year calculated in

accordance with this condition; 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 where the licensee spends an amount exceeding the minimum amount required on Canadian programming calculated in accordance with this condition of licence, excluding the final year, the licensee may deduct an amount not exceeding 5% of the minimum spending required for that year from the minimum spending required for the next year of the licence term.
 - c) Notwithstanding subsections a) and b) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
5. The licensee shall limit to 25% annually its expenditures to acquire the rights to Canadian original programs devoted to programs produced by the licensee's shareholders or affiliates. For the purposes of this condition, an original French-language Canadian program broadcast for the first time is:
- a) a Canadian program produced in French which is distributed for the first time by the licensee and which has never previously been distributed by the licensee of a broadcasting undertaking;
 - or
 - b) a Canadian program produced in French which is acquired in preproduction and broadcast previously by a discretionary service (pay television or pay-per-view television).
6. Of the Canadian program spending under condition of licence 4, the licensee shall devote:
- a) Not less than \$1,500,000 per year to the funding of original French-language drama;
 - b) \$3.5 million during the licence term to pay for dubbing in French in Canada, Canadian and foreign series that are broadcast.
7. The service licensed hereby is designated as a Category A service.

Expectations

The Commission expects:

- that any dispute with regard to commercial agreements with associations of independent producers will proceed in accordance with the provisions of the agreements before the parties ask the Commission to help resolve issues within its jurisdiction;

- that the licensee will ensure that the programs broadcast by its service adequately reflect all regions of Quebec, including those outside of Montréal, as well as all regions of Canada. The Commission further expects the licensee to provide producers working in those regions with the opportunity to produce programs intended for its service.

Definitions

For the purposes of these conditions of licence:

- The term “broadcast day” refers to the 24-hour period beginning each day at 4 a.m. or any other period approved by the Commission.
- The terms “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*.
- 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.

Appendix 4 to Broadcasting Decision CRTC 2013-738

Revised tangible benefits (in million \$)

Initiative	2014	2015	2016	2017	2018	2019	2020	Total
Program production	1.113	1.113	1.113	1.113	1.113	1.113	1.113	7.791
Additional amount	0.0887	0.0887	0.0887	0.0887	0.0887	0.0887	0.0887	0.621
Scripts	0.40	0.40	0.40	0.40	0.40	0.40	0.40	2.800
Export support fund	0.175	0.175	0.175	0.175	0.175	0.175	0.175	1.225
C2MTL	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.140
Institut national de l'image et du son (INIS)	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.700
Centre national d'animation et de design	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.175
Pôle médias - HEC	0.035	0.035	0.035	0.035	0.035	0.00	0.00	0.175
Concerned Children's Advertisers	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.175
YMCA Média	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.175
École Nationale de théâtre	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.175
Cercle Molière	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.140
Canadian Communications Foundation (CCF) – French	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.189
Total	2.0787	2.0787	2.0787	2.0787	2.0787	2.0437	2.0437	14.48