Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2014-388

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Route reference: 2014-162

Ottawa, 24 July 2014

DHX Media Ltd., on behalf of 8504601 Canada Inc.
Across Canada

Applications 2013-1804-8 and 2013-1818-9, received 24 December 2013

Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments

The Commission ***approves*** *an application by DHX Media Ltd. (DHX), on behalf of 8504601 Canada Inc. (8504601 Canada), for authority to effect a change to 8504601 Canada's ownership and effective control through the transfer of all of its shares to DHX. As a result of this transaction, 8504601 Canada will be wholly owned and controlled by DHX.*

8504601 Canada is the licensee of:

- *Disney Junior, a national, French-language specialty Category B service;*
- *Disney XD, a national, English-language specialty Category B service; and*
- *Family Channel and its multiplex service Disney Junior (English), a national, English-language pay television Category A service.*

The Commission further ***approves*** *an application to amend the conditions of licence for Family Channel as described in this decision.*

Introduction

1. DHX Media Ltd. (DHX), on behalf of 8504601 Canada Inc. (8504601 Canada), filed an application (2013-1804-8) for authority to effect a change to 8504601 Canada's ownership and effective control through the transfer of all of its shares to DHX.

2. Following the transaction, 8504601 Canada will be wholly owned and controlled by DHX. 8504601 Canada is the licensee of:

- Disney Junior, a national, French-language specialty Category B service;
- Disney XD, a national, English-language specialty Category B service; and

- Family Channel and its multiplex service Disney Junior (English), a national, English-language pay television Category A service.

3. The transaction will be effected through the transfer of all of the shares in the share capital of 8504601 Canada, a corporation wholly owned by Bell Media Inc., to DHX.

4. The transaction follows Broadcasting Decision 2013-310 in which the Commission approved an application by Astral Media inc. (Astral) to change the effective control of its broadcasting undertakings to BCE Inc. (BCE) and directed BCE to divest itself of the above-noted services.

5. Pursuant to the share purchase agreement, the purchase price to acquire all of the issued and outstanding shares in the share capital of 8504601 Canada is $170 million.

6. The applicant proposed a tangible benefits package representing 10% of the value of the transaction to be paid equally over a seven-year period.

7. The applicant also filed a separate non-severable application (2013-1818-9) to amend the broadcasting licence for Family Channel by amending certain conditions of licence. These amendments are discussed later in this decision.

Interventions

8. The Commission received interventions in support of the applications, including one from the Canadian Media Production Association (CMPA). It also received interventions commenting on the application from the Public Interest Advocacy Centre (PIAC) and Corus Entertainment Inc. (Corus). The interventions are discussed in the relevant sections of this decision.

9. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.

Application to change effective control (2013-1804-8)

Value of the transaction

10. As set out in Broadcasting Public Notice 2008-57, the Commission determines the value of a transaction for the purposes of calculating tangible benefits by using the purchase price and taking into account adjustments such as the debts and leases assumed.

11. DHX will not be assuming any debt, but will assume leases in the amount of $3,134,220, including rental space leases for the services before and after the transaction.

12. In light of the foregoing, the Commission determines that the revised value of the transaction is $173,134,220, calculated as follows:

Value of the transaction

Purchase price	$170,000,000
Addition:	
Assumed leases	$ 3,134,220
Value of the transaction	$173,134,220

Tangible benefits

13. As set out in Public Notice 1999-97 and reiterated in Broadcasting Public Notice 2007-53, for changes of ownership or control involving television programming undertakings, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits for the broadcasting system. For television programming undertakings, including conventional, pay and specialty undertakings, the Commission generally expects the contributions proposed to represent 10% of the value of the transaction as determined by the Commission. In addition, the Commission's general approach provides that the majority (at least 85%) of the benefits should result in on-screen programming, while the remaining amounts may be allocated to social benefits. Tangible benefits expenditures for all television assets should be incremental, directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction, and generally flow to third parties, such as independent producers.

14. Consistent with the tangible benefits policy, the applicant proposed a tangible benefits package valued at $17.1 million, which amounts to 10% of the proposed purchase price for the transaction. The benefits package would be paid in equal amounts over seven years. Under DHX's proposal, approximately 90% of the benefits package ($15.5 million) would be for on-screen initiatives. DHX indicated that no administration fees would be charged relating to the on-screen benefits and that the tangible benefits initiatives would be incremental to expenditures that DHX would otherwise make or be expected to make on Canadian programming. Further, DHX confirmed that all tangible benefits would be paid to unrelated independent producers.

15. The proposed tangible benefits package can be summarized as follows:

On-screen benefits initiatives

- Licensing and production of original English-language programming of national interest (PNI) from Category 7 Drama and Comedy (at least $8 million).

- Partnerships with public broadcasters and Aboriginal Peoples Television Network (APTN) to co-fund programming, subject to the demand and interest of the public broadcasters and APTN. Broadcasting licence fees and the first-broadcast window for these productions would be shared between the above-noted DHX services and the participating public broadcaster (up to $5 million).

- Digital media initiatives associated with productions created under the initiatives set out above ($1 million).

- Creation of a Family and Children's Development Fund ($1.5 million). This fund would benefit new entrants to the production community, creators in the regions and in official language minority communities, as well as French-language producers.

Social benefits

- Regional opportunities and training in script writing for children's programming ($1.6 million). Of this amount, $600,000 would be dedicated to the Canadian Film Centre (CFC) for a new DHX-Family Drama Program and $1 million in total to East and West Coast training initiatives.

16. The Commission considers that the tangible benefits that the applicant has proposed, including the allocation between on-screen and social benefits, are appropriate. Given the adjusted value of the transaction, the value of the tangible benefits package amounts to $17,313,422 (10% of $173,134,220).

17. It also considers that the tangible benefits package is in the public interest and that it will have a positive impact on the promotion of Canadian talent by creating more opportunities for Canadian creators and artists.

Amendments to Family Channel's conditions of licence

18. The applicant proposed to amend certain conditions of licence relating to Family Channel set out in Broadcasting Regulatory Policy 2010-167. Prior to Broadcasting Decision 2013-310, the service was owned by Astral, therefore falling under the group-based approach. The applicant explained that if the Commission were to approve the proposed ownership transaction, the service would be owned by a stand-alone independent operator, and as such, the approach would not apply. These amendments relate to Canadian programming expenditures (CPE) and would see the proportion of expenditures to be made to independent producers for the production of programs of national interest (PNI) reduced from a minimum of 75% to 60%.

19. The licensee also requested to add the following condition of licence:

> The licensee may exhibit programming that has been produced by the licensee or by a person related to it, provided that in each year, the amount of such programming, exclusive of filler programming, does not exceed 40% of its overall Canadian programming schedule.

Canadian programming expenditures

20. Currently, Family Channel must devote 30% of the previous year's gross revenues to CPE. However, it has the flexibility to allocate such expenditures to other services in the same ownership group (previously the Astral Group). In its application, DHX proposed to allocate 21% of Family Channel's previous year's gross revenues to CPE. DHX submitted that the 21% level reflects the spending that was used to calculate Family Channel's CPE as part of the Astral group during the last licence renewal proceeding.

21. The Commission notes that DHX did not apply the same approach as that used by the Commission to determine the appropriate CPE level for the service. DHX calculated the CPE level by averaging the spending on Canadian content (minus the Canada Media Fund credit) of the last three broadcast years (2010, 2011 and 2012), whereas the Commission's recent approach was to use the three years before the service became subject to the group-based licensing approach (2009, 2010 and 2011). By applying the Commission's approach, the CPE level for Family Channel would actually be set at 22%.

22. In light of the Commission's recent approach, the Commission considers that it would be appropriate to impose a CPE level of 22% by condition of licence, as set out in the appendix to this decision.

23. The Commission notes that Family Channel's current licence term expires in approximately three years. Therefore, the Commission will have the opportunity to re-evaluate the service's CPE level during its next licence renewal process.

Support for independent producers

24. DHX proposed to change Family Channel's current conditions of licence to reduce the portion of PNI expenditures that must be made to independent production companies from at least 75% to at least 60%. It further proposed to add a condition of licence requiring that the licensee may exhibit programming that has been produced by the licensee or a person related to it, provided that in each year, the amount of such programming, exclusive of filler programming, not exceed 40% of its overall Canadian programming schedule.

25. DHX submitted that its proposed approach would provide greater flexibility and enable it to thrive as an independent broadcaster. The applicant is of the view that its proposal would provide a robust level of access for independent producers while allowing it to take advantage of the synergies available to it as a program producer and distributor of family-oriented and children's programming.

Positions of interveners

26. PIAC asked the Commission to seek justification from DHX for the proposed cap of 40% on the level of programming produced by the licensee or a related person. PIAC also requested that the Commission impose other obligations that would ensure

diversity of programming, such as an independent panel to commission programming or a commitment to acquire programming or allocate expenditures to Canadian regions outside Ontario and British Columbia.

27. Corus was of the view that the application is premature given that the Commission has recently launched the Let's Talk TV proceeding (Broadcasting Notice of Consultation 2014-190). However, Corus stated that if the Commission decided to proceed and approve the reduction of expenditures that must be made to independent production companies for the production of PNI from 75% to 60%, it should be ready to expeditiously approve applications for similar amendments to that effect from other licensees.

28. The CMPA indicated that it supported DHX's proposal to reduce the amount of spending on PNI produced by independent production companies from 75% to 60%. However, the CMPA indicated that its support was contingent on DHX fulfilling a commitment it had made to direct the entire 60% to the production of independently produced *original, first-run* programs, including original, first-run programs of renewed series. Accordingly, the CMPA proposed that the Commission impose the following condition of licence on Family Channel:

> At least 60% of the expenditures for PNI must be made to an independent production company for the acquisition or commission of original, first-run Canadian programming.

Applicant's reply

29. DHX agreed with PIAC's submission regarding the importance of diversity in programming. DHX noted that it produces programming in Atlantic Canada and on the West Coast, and stated that it is committed to ensuring that independent producers from other regional centres have ample opportunity to produce new original content.

30. DHX disagreed with Corus' position that applications relating to reductions in independent production should be placed on hold in light of the Let's Talk TV proceeding. It was of the view that such an approach would impede the Commission's ability to establish appropriate conditions of licence for independent services.

31. In response to the CMPA's proposal that DHX should be required, by condition of licence, to ensure that all of the spending on PNI from the non-related independent production sector be on original productions, DHX stated that the fulfillment of this commitment should be an expectation rather than a condition of licence. Nevertheless, DHX confirmed that if the Commission considered it appropriate, it would accept a condition of licence that 60% of PNI spending would be spent on original productions, including relicensing of existing original series.

Commission’s analysis and decisions

32. The Commission notes that under the applicant’s proposal, the majority of the programming broadcast by Family Channel would continue to be provided and produced by the independent production sector and that the independent production sector would continue to receive substantial support. Moreover, the Commission does not consider that the reduced requirement regarding programming provided by independent producers would decrease the diversity of Family Channel’s programming given that DHX had provided a significant amount of the Canadian programming aired on the channel under Astral’s ownership.

33. The Commission further notes that DHX has specified that all of its tangible benefits initiatives would be directed toward independent producers. The Commission therefore considers that under the proposed requirements, Family Channel would continue to support and broadcast the programming of independent producers while providing DHX an opportunity to succeed as a new entrant to the Canadian broadcasting system.

34. Regarding the CMPA’s proposal, the Commission is of the view that imposing a condition of licence requiring that DHX’s PNI spending be dedicated to original programming would ensure that a substantial amount of new, original programming produced by independent production companies is added to the Canadian broadcasting system. Furthermore, the Commission notes that DHX has stated that it would be willing to accept a condition of licence that at least 60% of PNI spending directed toward the independent production sector be spent on original, first-run productions, including relicensing of existing original series.

35. Accordingly, the Commission considers that it is appropriate to **approve** the proposed reduction in PNI expenditures made to independent producers (from at least 75% to 60%) and to include a provision requiring that these expenditures be directed towards original, first-run programs.

36. The Commission also **approves** the addition of a condition of licence, as proposed by DHX, stipulating that the licensee may exhibit programming that has been produced by the licensee or a person related to it, provided that in each year, the amount of such programming, exclusive of filler programming, not exceed 40% of its overall Canadian programming schedule. **Conditions of licence** to that effect are set out in the appendix to this decision.

Other matters

Terms of trade

37. The CMPA submitted that DHX should be required to adhere to a Terms of Trade Agreement as a condition of licence. The Commission notes that Family Channel is not currently subject to a condition of licence to that effect. In the Commission’s view, it would be inconsistent to impose such a condition of licence on DHX as a new, independent licensee given that the Commission did not consider it necessary to

impose such a condition on the service when it was operated by a large ownership group.

38. Accordingly, and in light of DHX's commitment to adhere to a Terms of Trade Agreement, the Commission will not impose a condition of licence to this effect, as suggested by the CMPA.

Use of the accrual method for calculating CPE and PNI expenditures

39. In Broadcasting Decision 2012-241, the Commission granted Family Channel three years to align its expenditures with the accrual method. Consequently, the Commission reminds the licensee that it must transition to the accrual method by 1 September 2015.

Conclusion

40. In light of all of the above, the Commission **approves** the application by DHX Media Ltd., on behalf of 8504601 Canada Inc. to effect a change to its ownership and effective control through the transfer of all of its shares to DHX. As a result of this transaction, 8504601 Canada will be wholly owned and controlled by DHX.

41. The Commission further **approves** the application for amendments to Family Channel's conditions of licence, as amended by this decision.

42. Disney Junior and Disney XD will be subject to the terms and conditions set out in their current licences. Family Channel will be subject to the terms and **conditions of licence** set out in the appendix to this decision.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-190, 24 April 2014

- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013

- *Astral Media inc. Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012

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

- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings* – Information bulletin, Broadcasting Public Notice CRTC 2008-57, 30 June 2008

- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 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.*

Appendix to Broadcasting Decision CRTC 2014-388

Terms, conditions of licence and expectations for the national English-language pay television Category A service Family Channel

Terms

The licence will expire 31 August 2017.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for pay television 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 service:

(a) The licensee shall provide a national, English-language pay television Category A service with programming devoted exclusively to target audiences composed of children and youth up to age 17 and families in conjunction with such children and youth.

(b) The licensee may draw programming from all categories set out in item 6 of Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of programs from the following categories:

> 1 News
>
> 4 Religion
>
> 5(*b*) Informal education/Recreation and leisure
>
> 6(*a*) Professional sports
>
> (*b*) Amateur sports

(c) The licensee shall not broadcast any programming with an “Adult,” “Restricted” or equivalent rating from the Ontario Film Review Board.

(d) The licensee shall not devote more than 60% of each semester to programs originating from The Disney Channel.

3. During each semester of the licence term, the licensee shall devote not less than 25% of the programming broadcast and 30% of the total time between 6 p.m. and 10 p.m. (prime viewing hours) to the broadcast of Canadian programs.

In the calculation of the time devoted to the broadcast of Canadian programs under this condition, a 150% credit shall be awarded for any new Canadian production broadcast that:

(a) is scheduled to commence and be completed within prime viewing hours, as defined above: and

(b) in the case of a new Canadian production intended for children, is scheduled to be completed prior to 10 p.m., the licensee will receive a new Canadian production programming credit for each subsequent showing during the time periods specified above of such a production within a two-year period from the date for first showing by the licensee.

4. With regard to Canadian programming expenditures, the licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming not less than 22% of the previous broadcast year's revenues, and such amount shall be pro-rated in respect to the broadcast year in which the licensee is first controlled by DHX Media Ltd. as of the first day of the month after control is so acquired.

5. The licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, namely programs drawn from categories 2(*b*) Long-form documentary, 7 Drama and comedy, and eligible Canadian award shows, 16% of the previous year's gross revenues, and such amount shall be pro-rated in respect to the broadcast year in which the licensee is first controlled by DHX Media Ltd. as of the first day of the month after control is so acquired.

6. At least 60% of the expenditures in condition of licence 5 must be made to an independent production company for the acquisition or commission of original, first-run programming.

7. In regard to expenditures on Canadian programming and/or programs of national interest:

(a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming and/or on programs of national interest that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 4 and 5 respectively; 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, excluding the final year, where the licensee expends an amount for that year on Canadian programming or programs of national interest that is greater than the minimum required expenditure, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.

(c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 4 and 5.

8. In making the calculations required for the purposes of conditions of licence 4 to 7, the licensee shall use only the accrual method of accounting, with the exception of equity investments in Canadian feature films, for which cash outlays may be taken into account and for which the licensee shall provide proof of payment on a yearly basis. In order to fulfill conditions 4 to 7, the licensee may have the first year of the licence term to align its spending with its expenditure requirements as calculated using the accrual method. The accrual method must be fully implemented and in effect by 1 September 2015. A reconciliation must be included with the annual return for the first year of the licence term detailing the amount of expenditures on Canadian programming and programs of national interest incurred under the accrual method and reconciling this amount with that incurred under the cash outlay method.

9. The licensee may exhibit programming that has been produced by the licensee or by a person related to it, provided that in each year, the amount of such programming, exclusive of filler programming, does not exceed 40% of the overall Canadian programming schedule.

Definitions

For purposes of these conditions:

The terms "broadcast year," "broadcast month," "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987.*

"Semester" means each six-month period beginning 1 September and 1 March.

A "new Canadian production" means:

(a) a Canadian dramatic program

  (i) which exceeds 75 minutes in duration and in relation to which all financial expenditures made by the licensee were made prior to the commencement of principal photography or taping and in which principal photography or taping was completed after 1 January 1985; and

  (ii) which is intended for children and exceeds 22.5 minutes in duration and in relation to which all financial expenditures by the licensee were made prior to the completion of principal photography or taping

(b) and which is a program that has never been broadcast in English in the licensed territory.

An “independent production company” is defined as a Canadian company that is 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 or any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

Expectations

The Commission expects that:

- the report on programs of national interest expenditures allocated to independent production be filed with the Commission at the same time as the licensee’s other annual reports;

- any dispute regarding terms of trade agreements with independent producer organizations run its course and be handled in accordance with the terms of the agreements before parties request the Commission’s assistance in resolving matters under its jurisdiction; and

- the licensee continue to support script development at its historical levels.