



Broadcasting Decision CRTC 2024-103

PDF version

References: Part 1 applications posted on 17 November 2022 and on 11 October 2023

Ottawa, 13 May 2024

Corus Entertainment Inc.
Toronto, Ontario

Public record: 2022-0946-0

Various English-language television stations and discretionary services – Amendments to conditions of service

Summary

On 11 October 2023, Corus Entertainment Inc. (Corus) filed an application asking the Commission to urgently consider two amendments to its conditions of service. Specifically, Corus has requested that the Commission amend certain conditions of service relating to expenditures on programs of national interest (PNI) and Canadian programming expenditure (CPE) under-expenditures for its English-language television stations and discretionary services.

Corus stated that the two requested amendments are crucial in the short-term, and that they will help Corus to continue to make contributions to the broadcasting system. This is an important issue for the Commission to consider, as losing the contributions made by Corus to the system would greatly reduce the options Canadian viewers have for content. Corus is a vital source of local news and local expression through the Global Television Network, and is also the largest provider of independent programming in Canada. The loss of Corus' contributions would significantly impact the Canadian broadcasting system, which would affect audiences and creators.

In light of the above, the Commission decided to examine on an exceptional basis Corus' application filed on 11 October 2023.

The Commission considers that this emergency request is reasonable from a regulatory perspective because it is tailored to Corus' specific circumstances. The requested amendments would benefit the broadcasting system as a whole while the Commission considers the wider context of regulation after the passing of the *Online Streaming Act*.

Corus is fundamentally different from other large ownership groups, as it is not part of a vertically integrated company that also has distribution assets. Also, Corus' level of spending on PNI is among the highest of all private English-language ownership groups. Finally, as a result of the 2022 acquisition of Shaw Communications Inc. by Rogers Communications Inc., Corus is no longer associated with a broadcasting distribution

undertaking (BDU). This means that Corus no longer benefits from the flexibility afforded to BDUs to devote part of their local expression contribution to the production of local news on local television stations.

The Commission finds that approval of the requested targeted amendments will have no impact on Corus' overall expenditures on Canadian programming. Any reduction in Corus' PNI expenditures (which are a subset of CPE) will need to be matched by a corresponding increase in expenditures on other types of Canadian programming.

Consequently, the Commission approves the requests by Corus to amend the conditions of service relating to expenditures on PNI and CPE under-expenditures for its English-language television stations and discretionary services, in order to

- reduce its requirement relating to expenditures on PNI from 8.5% to 5% of the previous broadcast year's gross revenues; and
- extend the CPE under-expenditure repayment deadline beyond the end of the licence term.

The Commission notes that applications seeking other forms of relief have been filed by other large Canadian broadcasting groups. As explained in this decision as well as in a [letter](#) published today, the Commission's intention is to examine these other requests in the context of Phase 2 of the process to modernize Canada's broadcasting framework. This includes other aspects of regulatory relief sought by Corus, in addition to the elements addressed in its emergency application.

Background

1. Independent broadcasters are important in the broadcasting system as they foster a diversity of voices and support a diversity of programming choices for Canadians, thereby contributing to the achievement of the objectives of the *Broadcasting Act*. Corus Entertainment Inc. (Corus) is one such broadcaster.
2. Corus' English-language group operates 29 discretionary services, 15 conventional television stations, and a range of other media and content services. Corus was considered a "related programming undertaking" as it was affiliated with Shaw Communications Inc. (Shaw) until 2022.
3. On the issuance of Broadcasting Decision 2022-76, with the acquisition of Shaw's broadcasting assets by Rogers Communications Inc. (RCI), the Commission acknowledged Corus as an independent programming undertaking. The Commission further stated in the same decision that this change in Corus' status could have a significant impact on the Canadian broadcasting industry since Corus became the largest provider of independent programming services in Canada.
4. The Commission has the authority, pursuant to subsections 9(1), 9.1(1) and 11.1(2) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers

appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, and to make orders respecting expenditures. Such authority empowers the Commission to impose or vary spending requirements relating to Canadian programming, including programs of national interest (PNI),¹ and the terms that apply to such requirements.

Procedural history

5. On 17 November 2022, Corus filed an application to amend the broadcasting licences for its English- and French-language television stations and discretionary services. Specifically, for its English-language group of services, Corus requested amendments that would reduce its requirement relating to expenditures on PNI from 8.5% to 5% of the previous broadcast year's gross revenues and would reduce its Canadian programming expenditure (CPE) requirements from 30% to 25% of the previous broadcast year's gross revenues. Further, Corus requested that its temporary obligations relating to contributions to FACTOR (for its English-language group of television services) and Musicaction (for its French-language group of television services) be discontinued.
6. On 11 October 2023, Corus submitted an application to the Commission in regard to the 17 November 2022 application. It indicated that it did not wish to withdraw its earlier application, but reiterated its request to reduce, for the English-language services of Corus, its requirement relating to expenditures on PNI from 8.5% to 5% of the previous broadcast year's gross revenues. Further, for those same services, Corus requested that the Commission amend condition of service 12.a. set out in Appendix 2 to Broadcasting Decision 2017-150 in order to extend the CPE under-expenditure repayment deadline beyond the end of the licence term.
7. Corus requested that the Commission urgently consider the amendments specified in its 11 October 2023 application. In support of expediting its requested amendments, Corus explained that its operating environment had changed since its original application was submitted in November 2022. In this regard, it stated that factors including strike actions in the film and television industry in the U.S., the ongoing elevated consumer price index inflation, declining profitability, and the loss of annual local expression funds directed to Corus-owned Global television stations by Shaw following the closing of RCI's acquisition of Shaw² had meaningfully and negatively impacted its financial situation.
8. Corus submitted that the amendments requested in its 11 October 2023 application are crucial in the short term for it to continue making its contributions to the broadcasting system, until such time that the Commission renews its broadcasting

¹ As set out in Broadcasting Regulatory Policy 2010-808, PNI include Long-form documentary, Drama and Comedy, as well as award shows of national or regional scope that celebrate Canadian creative talent and/or cultural diversity and achievements in Canadian arts and culture.

² See Broadcasting Decision 2022-76.

licences alongside making broader regulatory policy changes relating to its implementation of a new regulatory framework.

9. In a letter issued to Corus on 19 October 2023, the Commission expressed the preliminary view that it would be appropriate and in the best interest of the Canadian broadcasting system to amend the conditions of service that apply to Corus' English-language television stations and discretionary services, as requested in the 11 October 2023 application. In accordance with subsections 9.1(4) and 11.1(7) of the *Broadcasting Act*, the Commission published the order that it proposed to make regarding the above-noted conditions of service, by appending the proposed order to the 19 October 2023 application. Further, the Commission incorporated that application into the record of the present proceeding and invited interested persons to submit interventions in regard to the proposed order.

Application

10. In the present decision, the Commission addresses requests made as part of Corus' November 2022 application and Corus' application filed in October 2023, specifically, its requests relating to a reduction in its PNI expenditure requirement and to an extension of the CPE under-expenditure repayment deadline beyond the end of the licence term.
11. The Commission is not presently addressing Corus' requests, set out in the original November 2022 application, relating to reducing its CPE requirements and to its contributions to FACTOR and Musicaction. The Commission intends to consider these remaining requests in the course of a future proceeding during Phase 2 of the process to modernize Canada's broadcasting framework. It is considering the current application specifically because of Corus' unique regulatory status and its importance to the broadcasting system. It is the Commission's view that more regulatory work is required for implementing the *Online Streaming Act* before it can address other requirements.
12. More specifically, the two requests for regulatory relief submitted by Corus for its English-language services that are being considered in the present decision are that the Commission
 - reduce Corus' requirements relating to expenditures on PNI from 8.5% to 5% of the previous broadcast year's gross revenues; and
 - extend Corus' CPE under-expenditure repayment deadline beyond the end of the licence term.

Interventions and replies

13. The Commission received interventions regarding the regulatory relief requested by Corus in both its November 2022 application and its October 2023 application (including in response to the 19 October 2023 Commission letter, which incorporated the record related to the second application into the record related to the first). These

interventions came from the creative sector, broadcasters, unions, public interest associations and several individuals.

14. Corus responded to the interventions received in its replies dated 26 June 2023 and 8 November 2023.

Issues

15. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:

- whether Corus' unique regulatory status and its pressing financial situation provide an adequate basis for the Commission to authorize the requested relief;
- allegations that the requested amendments run counter to an Order in Council relating to various 2017 licence renewal decisions for large English-language private ownership groups;
- an allegation that the proposed order set out in the 19 October 2023 Commission letter was incorrectly drafted;
- allegations of non-compliance relating to Corus' PNI expenditure requirements; and
- interveners' requests for additional commitments by Corus relating to the production of local news.

Corus' unique regulatory status and its financial situation

Positions of parties

16. In addition to the above-noted application by Corus, the Commission received a second Part 1 application from Corus,³ as well as Part 1 applications from Bell Media Inc. (Bell),⁴ Quebecor Media Inc. (Quebecor)⁵ and Rogers Media Inc. (Rogers),⁶ all of which are seeking relief from obligations relating to, among other things, expenditures on and/or the exhibition of locally reflective news, local programming, and Canadian programming, or are proposing changes that would have an impact on a number of stakeholders (such as a modification to the definition of PNI). All of these applications have been published for comment on the Commission's website.

³ Application 2023-0300-9, which relates to a request by Corus to be eligible to receive funding from the Independent Local News Fund.

⁴ Applications 2023-0379-1 and 2023-0380-9.

⁵ Application 2022-0986-6.

⁶ Application 2023-0373-3.

17. In their interventions, Bell, Rogers, and Quebecor, on behalf of TVA Group Inc. (TVA Group), noted that the Commission had not yet processed their respective applications for relief regarding requirements relating to PNI expenditures, CPE, expenditures on and exhibition of locally reflective news, or the exhibition of local programming. Quebecor, in particular, expressed its unhappiness that the Commission had not acted quickly in dealing with requests made by the TVA Group. While they supported Corus' request for relief, they also asserted that their respective applications must also be considered.
18. These interveners stated that the broadcasting industry is in crisis; Bell argued that this is a dire situation that is being ignored by the Commission. Along with the Canadian Association of Broadcasters, they submitted that the delay is aggravating their respective economic challenges while adversely impacting their financial health. Rogers considered that the proposed flexibilities recognize what it considers to be the unsustainable financial burden placed on Canadian broadcasters by the current regulatory regime.
19. The Writers Guild of Canada (WGC) and the Directors Guild of Canada (DGC) contended that Corus had not provided any evidence to substantiate the approval of its requests on the basis of financial viability. In the WGC's view, PNI expenditure reductions will not address Corus' debt ratio in the short term. While the Canadian Media Producers Association (CMPA) acknowledged that Corus' profits may be down, it indicated, in concert with the DGC and the Association québécoise de la production médiatique (AQPM), that Corus is still profitable. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the AQPM, the Documentary Organization of Canada (DOC), the DGC and the WGC noted that CPE and PNI expenditure policies already incorporate built-in flexibility.
20. The Alliance des producteurs francophones du Canada (APFC), the DOC and FRIENDS submitted that the Commission should not grant amendments until it establishes its new regulatory framework regarding contributions to support the Canadian broadcasting system, including Canadian and Indigenous content, that will apply to traditional and online broadcasting services. According to the APFC, the AQPM and the DOC, by entertaining these types of amendments, the Commission would be establishing a dangerous precedent that would result in a flood of similar requests from other Canadian private ownership groups.
21. In regard to Corus' request to extend the CPE under-expenditure repayment deadline beyond the end of the licence term, the DGC indicated that there was no information on the public record regarding Corus' under-expenditures relating to PNI or CPE, and that it therefore could not assess the impact of Corus' request. Further, the DGC considered that since the deadline for Corus is set to expire 31 August 2026, the end of its licence term, there is sufficient time for the licensee to pay any CPE shortfalls it may have incurred during the current licence term.
22. In its reply, Corus reiterated that the Commission should have regard to its competitive and financial circumstances. It indicated that PNI expenditure

requirements predominantly drive negative returns, which reduces cash flow and profitability. Corus added that the PNI expenditure reduction and the under-expenditure flexibility contemplated in the draft order set out in the 19 October 2023 application would enable it to invest in genres that have shorter timeframes for recoupment and provide more cash flexibility to accommodate fluctuating revenues.

23. Corus stated that it is no longer in a position to shoulder the same regulatory obligations as it once did, and it cannot wait another two or three years for change. Corus reinforced the challenges that it is facing through revenue, profit and cash flow declines that are reflected in its most recent financial results for the 2022-2023 fiscal year.⁷
24. Finally, Corus submitted that private Canadian broadcasters broadly require regulatory relief due to unfair competition and regulatory imbalances with massive international media and technology companies.

Commission's decisions

25. The Commission regulates and supervises the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*. Various Commission policies and regulations, along with the conditions of service it imposes on broadcasters, serve to ensure that these policy objectives are furthered. The Commission also has broad discretionary power allowing it to impose regulatory obligations that reflect a situation within the broadcasting system broadly or respond to the circumstances of an individual broadcasting undertaking. This discretion includes the ability to reduce or modify existing regulatory obligations, which allows the Commission to look at Corus' specific circumstances in this case.
26. The Commission recognizes that Corus' regulatory status is unique. Corus is fundamentally different from Rogers, Bell and Quebecor, as well as from Blue Ant Media Inc. (Blue Ant) and WildBrain Ltd. (WildBrain), a fact that places additional regulatory pressures on Corus. Compared to English-language vertically integrated groups, Corus has the highest PNI expenditure requirement, and yet, compared to the large private independent groups, it is the only broadcaster subject to requirements relating to expenditures on and to the exhibition of locally reflective news and local programming.
27. Importantly, Corus is also no longer associated with a broadcasting distribution undertaking (BDU). Consequently, it no longer benefits from the flexibility afforded to BDUs to devote part of their local expression contribution to the production of local news on local television stations. As a result, Corus' conventional television

⁷ Consolidated revenues declined by 5%, while consolidated segment profit declined by 25%. Consolidated segment profit margin declined by six points while free cash flow was down by 55%. Advertising revenues, on the other hand, decreased by 16%. Corus also reported a non-cash goodwill impairment charge of \$350 million in the television segment, and year-over-year declines in television advertising revenues (-14%) and profitability (-46%).

stations are the only private broadcast news providers without access to allowable local expression funding or to the Independent Local News Fund (ILNF). This places them at a significant disadvantage when compared to vertically integrated and independent local news providers.

28. The Commission acknowledged Corus' independence from Shaw for regulatory purposes in Broadcasting Decision 2022-76. In that decision, the Commission noted its intention to address Corus' unique situation as soon as feasible. Since then, the Commission has been implementing its approach to modernizing broadcasting regulation in the wake of significant amendments to the *Broadcasting Act*. The Commission intends to address supports for independent programmers, including Corus, in due course through these upcoming proceedings.
29. Until then, Corus remains independent but without access to key supports for independent programming undertakings, and with elevated requirements relating to PNI expenditures and to spending on and exhibition of news. At the same time, the evidence on the record of this proceeding demonstrates that Corus is under considerable financial strain. Its over-the-air stations experienced a slightly sharper decline in revenues over the last five years than did the rest of the industry. Further, the financial performance of Corus' stations did not rebound in 2021 from the impacts of the COVID-19 pandemic as strongly as did services operated by other licensees and groups. In addition, Corus' over-the-air stations were significantly more unprofitable than the rest of the industry, with profit before interest and taxes (PBIT) margins ranging from between 9.5 and 21.0 percentage points lower between 2018 and 2022.
30. Corus' financial difficulties are even more apparent in regard to its discretionary services' operations. After a small increase in revenues in 2019, the 29 discretionary services that form part of the Corus English-language group failed to benefit from the rest of the industry's modest post-pandemic recovery in the 2020-2021 and 2021-2022 broadcast years, and instead reported declines in revenues for each of those broadcast years. The Commission notes that Corus' situation becomes even more difficult when considering pre-tax profit and accounting for interest expenses and other adjustments.
31. The Commission also examined the audited financial statements for Corus and English-language groups in the English-language television market in order to assess Corus' financial health. This examination focused on operational cash flows, and intangible asset/goodwill impairments since the beginning of the current licence term (i.e., since the 2017-2018 broadcast year).⁸ The Commission examined cash flows from operating activities, as they best represent the ordinary day-to-day activities of each entity. Corus was the only entity of those examined to show decreases in its cash

⁸ The Commission notes that the audited financial statements do not always represent the same fiscal period, and sometimes include non-broadcasting information. Where possible, the Commission did not include such information in its examination of the audited financial statements, or used other sources, such as quarterly financial statements, to ensure that it had as timely and relevant information as possible.

flows from operating activities during the five years since the 2017-2018 broadcast year, with decreases ranging from approximately \$371 million in 2018 to \$217 million in 2022. These decreases were further exacerbated in 2023, with Corus' cash flows from operating activities falling to approximately \$123 million (a 43% decrease compared to 2022, and a 67% decrease compared to 2018).

32. Finally, the Commission examined impairments in intangible assets and goodwill related to the English-language television sector, such as film and program rights, broadcast licences, and brands. In the five years since the beginning of its current licence term, Corus has recorded over \$2 billion in impairment charges related to its television business, which is 2.5 times more than the approximate amount of \$800 million written off by the four other comparable companies (Bell, Rogers, Blue Ant and WildBrain) combined. Corus' cumulative impairment charges since 2018 have increased by \$690 million, to approximately \$2.7 billion in 2023. Of the compared entities, only WildBrain recorded additional impairment charges in 2023, totalling \$42 million.⁹
33. In light of the above, the Commission finds that Corus has demonstrated the need for the requested changes to its regulatory requirements. In the Commission's view, in light of Corus' unique regulatory status and its particular financial situation, a reduction in its required PNI expenditures would provide it with the flexibility necessary to invest in other types of Canadian programming.
34. The Commission also notes that decreasing Corus' required PNI expenditures would not decrease its overall spending on CPE (PNI expenditures being a subset of CPE). As such, the overall impact on the broadcasting system would be minimal, while allowing Corus to focus on other types of Canadian programming.
35. Finally, the Commission finds that allowing Corus to move its CPE under-expenditure repayment deadline to beyond the end of the licence term would provide it with additional time to repay in the next licence term any under-expenditures accumulated in the current licence term. Such additional flexibility would allow Corus to address its current difficult financial circumstances over a longer time period. Given the situation, the Commission finds that such relief is appropriate.

Conclusion

36. In light of the above, the Commission finds that it would be appropriate and justified to approve Corus' requests for regulatory relief in relation to its PNI expenditure requirements and to its CPE under-expenditure repayment deadlines, given Corus' unique regulatory status and its particular financial situation. The broadcasting system as a whole currently benefits from having Corus as a source of local news and local expression, and as a broadcaster that commissions programming content.

⁹ Public audited financial statements for Blue Ant's fiscal year 2023 were not available, nor were quarterly results. Third quarter financial statements were used for both Bell and Rogers.

Allegations that the requested amendments run counter to an Order in Council relating to various 2017 licence renewal decisions for large English-language private ownership groups

37. In 2017, the Commission issued various decisions in which it renewed the broadcasting licences for the television services of the large English-language private ownership groups, including Corus. In the licence renewal decision for Corus (Broadcasting Decision 2017-150), the Commission imposed a condition of licence requiring that 5% of the previous year's gross revenues of the undertakings that form that group be devoted to the acquisition of or investment in PNI.
38. However, by an Order in Council (OIC) dated 14 August 2017,¹⁰ the Governor in Council referred the above-noted 2017 licence renewal decisions back to the Commission for reconsideration. In this regard, as noted in Broadcasting Decision 2018-335, the Governor in Council specifically asked the Commission to reconsider aspects of its decisions relating to the renewal of the licences for various television services of English- and French-language ownership groups, including decisions relating to expenditures on PNI. As a result of this reconsideration, the Commission, in that decision, imposed an 8.5% PNI expenditure requirement on Corus.

Positions of parties

39. Certain interveners submitted that the proposed order set out in the above-noted 19 October 2023 Commission letter contradicts the determinations made as part of the Commission's 2018 reconsideration of the above-noted licence renewal decisions. In its reply, Corus acknowledged that the OIC was relevant to PNI, but considered that the Commission should not view that OIC as binding, as the Commission maintains discretion in certain areas.

Commission's decision

40. When the Commission issued Broadcasting Decision 2018-335, it fulfilled the requirements of the OIC to reconsider the matter. The Commission notes, however, that the OIC is not relevant for the current proceeding and, in any event, cannot direct the Commission toward a specific outcome or bind the Commission from further consideration of matters at a later date. In addition, the broadcasting landscape has changed considerably since the issuance of Broadcasting Decision 2018-335, and the Commission must process each application it receives on its own merits.
41. In light of the above, the Commission finds that Corus' requested amendments do not run counter to the OIC.

¹⁰ Order in Council P.C. 2017-1060.

Allegation that the proposed order set out in the 19 October 2023 Commission letter was incorrectly drafted

Positions of parties

42. The CMPA submitted that the proposed order set out in the 19 October 2023 Commission letter was incorrectly drafted. It argued that the extension of the deadline to beyond the end of the licence term that Corus is seeking only applied to CPE under-expenditures, but that the manner in which the proposed order was drafted would make it applicable to both CPE and PNI under-expenditures. In its reply, Corus stated that the requested amendments were to conditions of service that refer to both CPE and PNI expenditures, as PNI expenditures are a subset of CPE.

Commission's decision

43. The under-expenditure flexibility in question, originally set out in condition of service 12 in both Appendix 2 (Corus' television services) and Appendix 3 (Corus' discretionary services) to Broadcasting Decision 2017-150, cross-referenced both conditions of service 11.a (relating to CPE) and 11.b (relating to PNI expenditures, a subset of CPE). As the condition of service proposed in the 19 October 2023 Commission letter also cross-referenced conditions of service 11.a and 11.b, the Commission confirms that the proposed order as set out in that letter is correct as drafted and applies to both CPE and PNI expenditures.

Allegations of non-compliance relating to Corus' PNI expenditure requirements

Positions of parties

44. The WGC, the DOC and the CMPA submitted that Corus is in non-compliance with requirements relating to PNI expenditures. The WGC and the CMPA added that the proposed order set out in the 19 October 2023 Commission letter would "forgive" that non-compliance.
45. In its reply, Corus strongly denied being in non-compliance with its obligations relating to expenditures on Canadian programming. It argued that shortfalls in this regard, which are observable in its previous annual returns, are predominantly attributable to production shutdowns related to the COVID-19 pandemic. Corus added that the Commission permitted Canadian broadcasters to make up amounts equivalent to shortfalls over an extended period, with a deadline of 31 August 2023. Finally, it confirmed that the amounts it was required to make up were spent on schedule in accordance with regulations, which included a standard 10% CPE/PNI expenditure under-expenditure allowance for its English-language group.

Commission's decision

46. Based on its examination of Corus' annual returns for the current licence term, the Commission confirms that the licensee's group of English-language services incurred a PNI expenditure shortfall of \$7.3 million, or 8.6%, which is within the 10% flexibility permitted by condition of service. Further, Corus posted a surplus of

\$30.8 million for the 2022-2023 broadcast year in regard to the portion of its PNI expenditures (i.e., 75%) that it must, by condition of service, direct to independent productions.¹¹

47. While Corus had incurred a CPE shortfall of approximately \$65 million (19.3%) by the 2019-2020 broadcast year, a significant proportion of that shortfall (\$51.4 million) was incurred during that broadcast year, during which there was a production shutdown between March and June 2020 as a result of the COVID-19 pandemic. In Broadcasting Decision 2021-274, the Commission acknowledged the challenges faced by broadcasters in the context of the pandemic and allowed large broadcasters (including Corus) to repay shortfalls incurred during the 2019-2020 broadcast year by 31 August 2023. According to its annual returns, Corus fully repaid this shortfall, and while it reported a CPE shortfall of approximately \$24.2 million for the 2022-2023 broadcast year, this amount lies within the parameters of the flexibility afforded to broadcasters with respect to allowable CPE under-expenditures.
48. In light of the above, the Commission is satisfied that Corus is operating within the parameters of its condition of service relating to PNI expenditures, as the shortfall falls within the 10% under-expenditure flexibility set out by condition of service.

Additional commitments relating to the production of local news

Positions of parties

49. According to the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP), approval of Corus' requested decrease to its PNI expenditure requirement would allow it to compensate for the loss of funding following the above-noted acquisition of Shaw by RCI as approved in Broadcasting Decision 2022-76. The intervener added that this would also allow Corus to maintain its investments in news production by Global news teams in 15 Canadian communities until it becomes eligible to receive ILNF funding. Further, the CPSC-SCFP requested that the Commission require Corus to maintain all of its conventional Global television stations currently in operation, its expenditures tied to the production of news from Global News, and the employment positions in Global's news rooms.
50. Moreover, the CPSC-SCFP expressed the view that an additional change should be made to the condition of service in question so that there is no ambiguity in regard to Corus having to reimburse CPE or PNI under-expenditure amounts beyond its licence term. The following wording was proposed (changes in bold):

¹¹ In Broadcasting Decision 2020-220, the Commission approved an application by Corus to increase its maximum allowable yearly under-expenditure from 5% to 10% of the minimum required expenditure, while maintaining the requirement that any under-expenditures for one year are made up in the subsequent year. Corus is therefore operating in the parameters of its condition of service as the shortfall amount is within the 10% flexible underspend (8.6%).

In each broadcast year of the licence term, ~~excluding the final year~~, the licensee, in concert with the other undertakings that form the Corus Group, may expend an amount on Canadian programming and/or on programs of national interest that is up to 10% less than the minimum required expenditure for that year calculated in accordance with conditions 11(a) and 11(b), respectively; in such case, the licensee shall ensure that the undertakings that form the Corus Group 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.

51. The FRPC expressed support for the proposed order set out in the 19 October 2023 Commission letter, but on certain conditions, for example, that Corus make additional commitments relating to the production of local news and to local television station employment levels regarding newscasts. Unifor also supported the proposed order, under the condition that there are no reductions to Corus' production of locally relevant programming (specifically local news). The CMPA noted that Corus may be eligible to receive funding from the ILNF.
52. In its reply, Corus considered these additional commitments to be redundant and unnecessary given that regularly audited requirements relating to expenditures on locally reflective news and to the exhibition of locally relevant news already apply to Corus' conventional television stations. While it did not disagree with the CMPA, Corus noted that it is currently the only broadcaster that broadcasts news without access to regulated local expression funding.

Commission's decisions

53. In Broadcasting Regulatory Policy 2016-224 (the Local and Community Television Policy), the Commission established the ILNF to support the production of locally reflective news and information by private independent television stations. The ILNF is funded by mandatory contributions from licensed BDUs. BDUs may also direct a portion of their contributions to local expression (a subset of their required contributions to Canadian programming) to support local news services.¹² In practice, BDUs have chosen to use that flexibility to support affiliated local television stations. All private conventional television stations that provide locally reflective news and information and that do not belong to a vertically integrated entity are eligible to receive ILNF funding.
54. As noted in Broadcasting Decision 2022-76, although Corus was a separate entity from Shaw, given the connections between the two undertakings,¹³ the Commission had consistently held that Shaw and Corus constituted a single vertically integrated entity.

¹² See Section 34 of *Broadcasting Distribution Regulations* and Broadcasting Regulatory Policy 2016-224.

¹³ Corus is controlled by the board of directors of SFLTCO LTD, acting as trustee of the Shaw Family Living Trust.

55. Consequently, Corus was not eligible to receive ILNF funding. Instead, it began to receive funding from Shaw during the 2017-2018 broadcast year. From the 2017-2018 to 2022-2023 broadcast year, \$73 million was transferred to Corus' Global over-the-air television stations to support the production of local news programming, for an average of \$12 million per broadcast year. Corus' situation changed following the closing of the transaction approved in Broadcasting Decision 2022-76. Indeed, RCI started to redirect Shaw's local expression funding previously received by Corus to its own Citytv stations. In addition, following the transaction, Corus became considered to be independent from any BDU.
56. Given its unique situation, and until such time as a broader proceeding can consider the ILNF more holistically, Corus' stations are currently the only private conventional television undertakings that do not receive funding from either the ILNF or through BDU contributions to local expression. As noted in the Local and Community Television Policy, and reiterated in Broadcasting Decision 2022-76, all private conventional television stations that provide locally reflective news and information and that do not belong to a vertically integrated group are eligible to receive funding from the ILNF, subject to Commission approval. The Commission has not yet granted such eligibility to Corus for its conventional television stations.¹⁴
57. The Commission acknowledges that its regulatory framework relating to independent programming services was designed to support smaller independent programming undertakings and was not intended to apply to an independent programming undertaking of Corus' scale. In Broadcasting Decision 2022-76, the Commission noted concerns expressed by interveners that granting Corus eligibility to the ILNF would result in an overall decrease in their respective share of funding from the ILNF. As such, the Commission set out its intention in that decision to launch a public proceeding as soon as feasible to review the impact of Corus' new status and the appropriateness of existing mechanisms with respect to independent programming services.¹⁵
58. Accordingly, the Commission finds that it would not be appropriate to impose additional or more stringent news-related obligations on Corus. The Commission is of the view that the amendments granted as a result of the present application will nonetheless help ensure that Corus continues to meet its regulatory obligations with respect to news programming.
59. Further, the Commission notes that support for news and local programming will be examined as part of the upcoming Phase 2 proceedings to modernize Canada's broadcasting framework.
60. Finally, the CPSC-SCFP's proposal to remove the phrase "of the licence term" from Corus' proposed condition of service is consistent with the Commission's intention to

¹⁴ The Commission has received an application by Corus in this regard (2023-0300-9).

¹⁵ The Commission intends to carry out this review in the context of Phase 2 of the process to modernize Canada's broadcasting regulatory system (see Broadcasting Notice of Consultation 2023-138).

allow Corus to make up the CPE and PNI under-expenditure amounts beyond its licence term. Accordingly, the Commission has amended that condition of service in the final order to reflect that change.

Conclusion

61. In light of all of the above, the Commission approves the requests by Corus to amend the conditions of service relating to PNI expenditures and CPE under-expenditures for its English-language television stations and discretionary services, in order to

- reduce its requirement relating to expenditures on PNI from 8.5% to 5% of the previous broadcast year's gross revenues; and
- extend the CPE under-expenditure repayment deadline beyond the end of the licence term.

62. Accordingly, pursuant to subsections 9.1(1) and 11.1(2) of the *Broadcasting Act*, the Commission hereby makes an **order** imposing the following **condition of service** on Corus Entertainment Inc., to replace condition of service 7 as set out in both Appendices 2 and 3 to Broadcasting Decision 2017-150, and as amended by Broadcasting Decision 2018-335:

In accordance with A group-based approach to the licensing of private television services, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, as defined in paragraphs 71 to 73 of that regulatory policy, a minimum of 5% of the previous year's gross revenues of the undertaking.

63. Further, and pursuant to subsections 9.1(1) and 11.1(2) of the *Broadcasting Act*, the Commission hereby makes an **order** imposing the following **condition of service** on Corus Entertainment Inc., to replace condition of service 12.a as set out in both Appendices 2 and 3 to Broadcasting Decision 2017-150:

In each year of the licence term,

- (a) the licensee, in concert with the other undertakings that form the Corus Group, may expend an amount on Canadian programming and/or programs of national interest that is up to 10% less than the minimum required expenditure for that year calculated in accordance with conditions 11(a) and 11(b) respectively; in such case, the licensee shall ensure that the undertakings that form the Corus Group expend in the next broadcast year, in addition to the minimum requirement expenditure for that year, the full amount of the previous year's under-expenditure; [...]

64. As explained in a Commission letter also issued today, it is the Commission's intention to examine Corus' requests to reduce its CPE requirement and to examine the above-noted applications by other large broadcasting ownership groups in the context of Phase 2 of the process to modernize Canada's broadcasting framework.

Secretary General

Related documents

- *Notice of hearing – The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, Broadcasting Notice of Consultation CRTC 2023-138, 12 May 2023, as amended by Broadcasting Notice of Consultation CRTC 2023-138-1, 9 June 2023 (extension to the deadlines for the submission of interventions and of replies), and Broadcasting Notice of Consultation CRTC 2023-138-2, 1 February 2024 (deadline for the filing of final written submissions)
- *Shaw Communications Inc. – Change of ownership and effective control*, Broadcasting Decision CRTC 2022-76, 24 March 2022
- *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, Broadcasting Decision CRTC 2021-274, 12 August 2021
- *Television services that form part of the Corus group of services – Licence amendments*, Broadcasting Decision CRTC 2020-220, 10 July 2020
- *Reconsideration of licence renewal decisions for the television services of large English-language private ownership groups*, Broadcasting Decision CRTC 2018-335, 30 August 2018
- *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-150, 15 May 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010

This decision is to be appended to each licence.