



18 February 2016

Danielle May-Cuconato  
 Secretary General  
 CRTC  
 Ottawa, ON K1A 0N2

Filed online

Dear Secretary-General,

**Re: *Notice of Application, Broadcasting Notices of Consultation CRTC 2016-22 and 2016-22-1 (Ottawa; 21 January 2016 and 11 February 2016)***

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system that serves the public interest. In the event that a public hearing is held with respect to the above-noted application, the Forum asks to appear to respond to other parties and to questions from the CRTC hearing panel.
- 2 On 13 January 2016 Shaw Communications Inc. (Shaw) agreed to transfer ownership of Shaw Media Inc. (Shaw Media) to Corus Entertainment Inc. (Corus) for \$2.65 billion.<sup>1</sup> On 15 January 2016 Shaw applied to the CRTC for permission to effect this transfer.<sup>2</sup> The CRTC announced its receipt of Shaw Inc.'s application on 21 January 2016.<sup>3</sup>
- 3 Shaw Media holds 12 over-the-air television programming licences, 3 national specialty service licences and one regional specialty service:

Over-the-air television programming		National discretionary	Regional discretionary
CHAN-DT Vancouver (M)	CFSK-DT Saskatoon (O)	Deja View (Cat. B)	BC News 1 (Cat. B)
CHBC-DT Kelowna (M)	CKND-DT Winnipeg (M)	MovieTime (Cat. B)	
CICT-DT Calgary (M)	CIII-DT-41Toronto (M)	Crime+Investigation (Cat. A)	
CISA-DT Lethbridge (M)	CKMI-DT-1 Montréal (M)	H2 (Cat. A)	
CITV-DT Edmonton (M)	CHNB-DT Saint John (M)	DTOUR (Cat. A)	
CFRE-DT Regina (M)	CIHF-DT Halifax (M)		
Source: CRTC ownership chart #32h			

- 4 Shaw acquired these majority of these licences), including all of the over-the-air television programming undertakings, in 2010 for \$2 billion (including \$815 million in net debt) after Canwest entered

<sup>1</sup> Corus Entertainment Inc. and Shaw Communications Inc., *SHARE PURCHASE AGREEMENT* (13 January 2016), Execution Copy, Art. 3.1 (“Purchase Price”); *Supplementary Brief*, ¶14; Application Appendix 2D.

<sup>2</sup> Dean Shaikh, Vice-President, Regulatory, Shaw Communications Inc., *Re: Application for authority to transfer the shares of Shaw Media Inc. from Shaw Communications Inc. to Corus Entertainment Inc. – request for administrative review of an intra-corporate reorganization pursuant to Broadcasting Information Bulletin CRTC 2008-8-2*, (Ottawa, 15 January 2016) at 1.

<sup>3</sup> *Notice of application received*, Broadcasting Notice of Consultation CRTC 2016-22 (Ottawa, 21 January 2016).

5 receivership. The CRTC imposed requirements for approximately \$180 million in tangible benefits, to be spent over the next seven years.

6 Our comments on Shaw's application are set out below. In brief, the Forum believes that the concerns raised by this application require the CRTC to hold a public hearing, to determine whether its approval is in the public interest.

## I Procedural matters

### A *Insufficient time for fully informed comment*

7 The CRTC announced its receipt of Shaw Inc.'s application on 21 January 2016,<sup>4</sup> and gave interveners 25 calendar days to review the application, consult about the issues it raises, and to draft and file comments by 15 February 2016 (a statutory holiday in Ontario).

8 During this period many parties including the Forum were involved in the important CRTC proceeding to consider the future of local and community television, which included a public hearing that began 25 January 2016 and ended 3 February 2016, and that included phases for the submission of undertakings and final replies, ending finally on 15 February 2016.<sup>5</sup> The CRTC subsequently extended this deadline to 16 February 2016, due to the statutory holiday in Ontario on 15 February.<sup>6</sup>

9 Given the abbreviated intervention period that the CRTC announced for the Shaw-Corus transaction and in some cases their involvement with the local-community TV proceeding, ten parties asked the CRTC to amend its procedures in this matter, by extending the intervention period to 30 days, and by holding a public hearing to hear parties' views on the transaction: AMPIA, CMPA, ACTRA, SCFP, DGC, FRPC, On Screen Manitoba, PIAC, Unifor, and WGC.

10 The CRTC denied parties' request for a public hearing, but partially granted the request for an extension of the intervention period in part, by extending the deadline from 15 February to 18 February. The CRTC stated that this "the 28-day comment period ... is appropriate as it provides sufficient time for intervening parties to file their interventions while respecting both the public interest and fairness considerations outlined in the Rules, including the applicant's request for an expedited treatment of the application."<sup>7</sup>

11 The CRTC offered no reasons to explain how it determined that a 28-day intervention period would provide "sufficient time" for parties to intervene, or to explain why "fairness considerations" precluded use of the 30-day intervention period that the CRTC's own procedural rules set for the type of consultation issued by the CRTC in this matter.<sup>8</sup>

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<sup>4</sup> *Ibid.*

<sup>5</sup> *A review of the policy framework for local and community television programming – Working document for discussion*, Broadcasting Notice of Consultation CRTC 2015-421-3 (Ottawa, 12 January 2016) at ¶30.

<sup>6</sup> *New deadline for the submission of final observations and responses to undertakings regarding exhibits 1, 2 and 3: 16 February 2016*, Broadcasting Notice of Consultation CRTC 2015-421-4 (Ottawa, 3 February 2016), at ¶30.

<sup>7</sup> CRTC, *Broadcasting Procedural Letter addressed to Jay Thomson (Canadian Media Production Association)*, (Ottawa, 11 February 2016),

[http://www.crtc.gc.ca/eng/archive/2016/lb160211.htm?\\_ga=1.180562727.1465715386.1431534773](http://www.crtc.gc.ca/eng/archive/2016/lb160211.htm?_ga=1.180562727.1465715386.1431534773).

<sup>8</sup> *Rules of Practice and Procedure*, s. 26.

12 The Forum's participation in that proceeding, which included monitoring of the eight days of oral evidence; testimony at the hearing; review of its 8 volumes of transcript; and the drafting, circulation and submission of a 15-page reply, left little time for the Forum to review the 184 pages of materials that comprised Shaw Inc.'s application. Contrary to the CRTC's assertion the Forum, for one, did not have the time needed to review this \$2.6 billion transaction in the detail it requires.

***B Unreasonable to shift onus for proving need for public hearing to parties, especially with a shortened intervention period***

13 The CRTC also denied the parties' request for a public hearing, basing its decision on an eight-year old information bulletin. It said that, "consistent with the [Information Bulletin CRTC 2008-8-2], the Commission will make its determination on the need for further discussion at a public hearing based on the interventions received." Information Bulletin CRTC 2008-8-2 states that the CRTC may decide to hold a public hearing if interveners responding to a public notice "raise substantive concerns as determined by the Commission and which warrant further discussion at a public hearing."

14 In other words, having denied parties' request for an intervention period at least as long as set out in the CRTC's procedural rules, the CRTC then required parties to make the case and bring forward evidence that the application raises substantive concerns.

15 The Forum respectfully submits that it is unreasonable for the CRTC to give parties a shorter-than-normal time frame to review the details of this important transaction, while then also requiring them to make the case as to why a public hearing is needed.

**II Concerns raised by the application: does approval serve the public interest?**

16 With the limited time available the Forum's review of this application has raised four concerns, related to: the question of whether broadcast ownership transactions should serve the public interest; whether the evidence supports the claim that Shaw and Corus are a single entity; whether approval would serve the public interest if Shaw and Corus are indeed a single entity; and the degree to which Corus may be delegating control of 15 over-the-air television programming undertakings (12 now licensed to Shaw Media, and 3 licensed to Corus).

***A Should broadcast ownership transactions serve the public interest?***

17 The *Broadcasting Act* is somewhat vague about matters involving the transfer of ownership and/or control. It does not expressly address changes in ownership of broadcasting undertakings, for example, but permits the CRTC to issue licences, or to amend conditions of those licences either at the request of licensees or on its own motion when five years have passed after licences have been issued.<sup>9</sup>

18 In the absence of explicit guidance from Parliament, the CRTC has developed its own approach to ownership transfers. For instance, in 1978 the CRTC decided<sup>10</sup> not to accept applications for competitive transfers – in which parties other than a seller and the seller's chosen buyer might apply for the licences being transferred. The CRTC instead required applicants to demonstrate

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<sup>9</sup> S. 9(1)(b) and (c).

<sup>10</sup> Under the terms of the 1968 *Broadcasting Act*, as amended.

That the existing level of service provided by the licensee will at least be maintained

That the financial arrangements involved in the sale are not such that there will result to the licensee undertaking ... a financial burden which might impair the ability or willingness of the licensee to provide a quality service or to meet its obligations under the *Broadcasting Act*

That the proposed transaction is in the public interest.<sup>11</sup>

- 19 While the CRTC has gone on to clarify aspects of its approach to ownership transactions, it still reviews transactions when the effective control of a broadcast undertaking changes:

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.

The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives of the Act.<sup>12</sup>

- 20 The questions for this transaction, then, are whether effective control of the programming undertakings involved in the transaction is changing – and, if effective control is not changing, whether the circumstances of this transaction nevertheless require the CRTC to ensure that approval of this transaction furthers the public interest.

**B *Are Shaw and Corus are a "single entity", so that effective control remains the same?***

- 21 Shaw argues that "Shaw and Corus are considered part of the same ownership group as they are both ultimately controlled by JR Shaw"<sup>13</sup> and that "the Commission has consistently treated Shaw, Shaw Media and Corus as a single entity from the standpoint of ownership and control..."<sup>14</sup>
- 22 The transaction's documents appear to treat Corus and Shaw as if they were not a single entity, directed by one mind. Corus does not know if the information it has received from either its parent, Shaw Inc., or its affiliate, Shaw Media, is accurate: it expressly warns its shareholders "neither Corus nor any of its directors or officers assumes any responsibility for the accuracy or completeness of [information ... furnished by Shaw and Shaw Media] or for the failure by Shaw and Shaw Media to disclose events or information regarding Shaw Media that may affect the completeness or accuracy of such information."<sup>15</sup> And if Shaw terminates the agreement, or if Corus shareholders do not approve the transaction and accept a different purchase offer, Corus must pay Shaw \$55 million in liquidated damages.

<sup>11</sup> *Proposed CRTC procedures and practices relating to broadcasting matters*, CRTC Public Announcement (Ottawa, 25 July 1978) at 44-46.

<sup>12</sup> *Various radio stations in Thetford Mines and Victoriaville - Change in effective control*, Broadcasting Decision CRTC 2015-200 (Ottawa, 19 May 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-200.htm>.

<sup>13</sup> Corus Cover letter to CRTC, at ¶3, citing the CRTC.

<sup>14</sup> *Supplementary Brief*, at ¶¶10-11.

<sup>15</sup> *Corus Management Circular*, at 12.

23 A public hearing would permit the CRTC and other parties to understand more clearly why Corus cannot trust the information it has received from Shaw and Shaw Media about the undertakings being proposed for transfer, and to understand why Shaw would require to be paid \$55 million by Corus if Shaw changes its mind about the deal.

**C Even if Shaw and Corus are a ‘single entity’ – does approval serve the public interest?**

24 The facts that Corus does not know if it can trust the information it has received from Shaw or Shaw Media, and that it must pay Shaw \$55 million if Shaw cancels the deal may not be determinative of whether Shaw and Corus are a “single entity”.

25 The Forum respectfully submits, however, that even if Shaw and Corus are a single entity – and Corus’ own documents raise questions on this point – the CRTC must nevertheless review the transaction to determine whether it serves the public interest. In our view, the transaction should not be approved if it is transferring an unsustainable financial burden to Corus, or if this transaction is simply the precursor to another, larger transaction down the road.

**1 Does Corus have the capacity to support Shaw’s programming undertakings?**

26 Section 3(1)(s)(i) of the *Act* says that “private networks and undertakings should, to an extent consistent with the financial and other resources available to them ... contribute significantly to the creation and presentation of Canadian programming ....”

27 Shaw Media has reported operating losses for its over-the-air television programming undertakings for each of the past three years. In the most recent broadcast year (2014/15) it reported that the stations had \$24.4 million in operating losses, and a loss before interest and taxes of \$28.6 million; the salaries for the station’s 1,101 full-time or equivalent employees represented \$95.2 million of its expenditures.<sup>16</sup>

28 Even though Corus is buying 12 TV stations operating at a loss, at a time when Shaw believes that ““local news fundamentally has an advertising problem ....” (Vol VII, ¶11035, 2 February 2016), Shaw says that approval of this transaction “protects local television and radio from further advertiser erosion.<sup>17</sup> While the Shaw Media TV stations have been operating at a loss for three years, and Corus would be taking on more than three times the debt that it has carried in any year in the past decade, Corus’ Board has told its shareholders that the acquisition of Shaw Media “is expected to be immediately accretive to shareholders on an earnings per share and free cash flow per share basis”.<sup>18</sup> It has even told them that it “intends to maintain the existing annualized dividend rate of \$1.14 per Class B Share following the Acquisition.”<sup>19</sup>

29 While Shaw has told the CRTC that “financial strength and scale” are needed for “significant programming rights deals”<sup>20</sup> and that approval of the transaction “will result in *less* risk and *less* uncertainty for the

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<sup>16</sup> CRTC aggregated annual financial summaries for Shaw Media’s conventional television stations.

<sup>17</sup> *Supplementary Brief*, at ¶14.

<sup>18</sup> Corus Entertainment, *Corus Management Information Circular*, (9 February 2016),

[http://www.corusent.com/wp-content/uploads/2016/02/corus\\_management\\_inf\\_circular.pdf](http://www.corusent.com/wp-content/uploads/2016/02/corus_management_inf_circular.pdf), at 3 of 367 (*Corus Management Circular*).

<sup>19</sup> *Ibid.*, at 40 of 367.

<sup>20</sup> *Supplementary Brief*, at ¶16.

collective future of Corus' and Shaw Media's programming services" [italics in original text],<sup>21</sup> Corus has given its shareholders some additional information:

The Company's leverage will increase as a result of the Acquisition. Based on the 12 month period ended November 30, 2015, the Company would have a pro forma total debt / LTM Adjusted EBITDA ratio of approximately 3.9 times. ... Management is targeting to reduce this ratio to below 3.0 times by the end of fiscal 2018, but the Company will, initially following the Acquisition, have higher leverage than its stated leverage target of 3.0 to 3.5 times. **The Company's indebtedness could adversely affect its financial condition and results of operations, which may prevent the Company from fulfilling its obligations under its indebtedness.** After the completion of the Acquisition and the other transactions described in this Circular, **the Company will have a substantially greater amount of debt than it has maintained in the past. As of November 30, 2015, on an as adjusted basis after giving effect to the transactions described under the heading "Consolidated Capitalization", the Company would have had outstanding indebtedness of approximately \$2,333 million. The Company's maintenance of increased levels of debt could adversely affect its financial condition and results of operations and could adversely affect its flexibility to take advantage of corporate opportunities.**<sup>22</sup>

- 30 Where Shaw has told the CRTC that approval of this transaction will enable Corus "to further leverage and maximize growth opportunities",<sup>23</sup> and that it "will provide significant support to the viability of Corus' small market stations and continued support for the Global Television Network",<sup>24</sup> Corus has warned its shareholders that trebling its debt to above \$2 billion may limit its ability to finance "working capital, capital expenditures,... general corporate or other purposes ....", restrict its "flexibility and discretion to operate its business", reduce "cash flows available for working capital", and increase Corus' "vulnerability to general adverse economic and industry conditions".<sup>25</sup> Leaving aside the difference between statements to the CRTC and Corus' shareholders, just how will Corus' new debt affect the operation of the programming undertakings it is acquiring from Shaw Media, let alone the undertakings it already operates?
- 31 Indeed, Corus has already advised its shareholders that it must find "an estimated \$40 to \$50 million in annual cost synergies"<sup>26</sup> within the next 2 years,<sup>27</sup> and that it expects to find these from "operational efficiencies, the consolidation of facilities and real estate, systems, programming expenditures and other savings."<sup>28</sup> How should this statement be understood, given Shaw's commitment that the transaction "will strengthen the important role of Corus' and Shaw Media's programming services in the commission and creation of new Canadian content"<sup>29</sup> will this affect the operation of the programming undertakings it is acquiring from Shaw Media, given that its over-the-air television stations were already operating at a \$26 million loss last year?
- 32 Shaw has acknowledged to the CRTC that "the previous 12 months have been a precipitous decline in the market capitalization of Corus" of more than 50%,<sup>30</sup> while Corus has warned its shareholders that its

<sup>21</sup> *Ibid.*, at ¶32.

<sup>22</sup> *Corus Management Circular*, *supra* note 18, at 83 of 367.

<sup>23</sup> *Supplementary Brief*, at ¶17.

<sup>24</sup> *Ibid.* at ¶35.

<sup>25</sup> *Corus Management Circular*, *supra* note 18, at 83 of 367.

<sup>26</sup> *Ibid.*, at 18 of 367.

<sup>27</sup> *Ibid.*, at 25 of 367.

<sup>28</sup> *Ibid.*, at 25 of 367.

<sup>29</sup> *Supplementary Brief*, at ¶14.

<sup>30</sup> *Ibid.*, at ¶26.

management is now aiming to reduce the anticipated pro forma total debt / LTM Adjusted EBITDA ratio from approximately 3.9 times to below 3.0 times by the end of fiscal 2018.<sup>31</sup> How will this affect the operation of the programming undertakings it is acquiring from Shaw Media?

33 And, while Corus will not be liable for “approximately \$15 million in corporate overhead charges ... allocated from Shaw to Shaw Media”<sup>32</sup> it is unclear whether Shaw Media’s over-the-air television programming undertakings’ reliance on central hubs for their master-control and program assembling operations will create new costs for Corus (such as centralcasting management fees).

34 The CRTC is also entitled to know what Corus will do if – even though it says it is well-positioned from the new “pick and pay” environment set to launch this March<sup>33</sup> – that new environment proves unfriendly to Corus. If Corus’ Canadian programming exhibition (CPE) requirements are maintained or increased during the next round of renewals, how will it meet those obligations on top of its new debt obligations – would it be able to call on the resources of Shaw, by whom it is purportedly controlled? Or will it seek \$40 to \$50 million in ‘synergies’ from the \$95 million now being paid to employees at the Shaw Media TV stations?

35 The Forum respectfully submits that the issue raised by these questions is evidentiary: does all the evidence establish that Corus has and will continue to have the resources required to ensure that each of its programming undertakings – including 12 more over-the-air programming television undertakings – is able to “contribute significantly to the creation and presentation of Canadian programming” as the Act requires, including original local news and other local programming?<sup>34</sup>

36 In our view, the materials submitted by Shaw do not provide the CRTC with the evidence it needs to determine that this transaction is in the public interest. A public hearing would permit the CRTC and other parties to set out their concerns on this point, and to evaluate the evidence offered by Shaw, Shaw Media and Corus in reply.

## 2 Is Corus already planning to sell its assets?

37 In fact, it appears from the materials filed with the CRTC and its shareholders, that Corus has already given some thought to scenarios in which Corus is unable to support an increase in its net debt from \$651 million at the end of its fiscal year in 2015, to \$2.3 billion as of November 2015.<sup>35</sup>

38 Corus has advised its shareholders that its “high degree of leverage could have adverse consequences ... including: ... requiring the Company to make non-strategic divestitures ....”<sup>36</sup> It has warned that it will have to pay Shaw \$55 million if its shareholders do not agree to the deal and a proposal to acquire Corus is then announced within the next 365 days.<sup>37</sup>

<sup>31</sup> *Corus Management Circular*, supra note 18, at 40 of 367.

<sup>32</sup> *Ibid.*, at 25 of 367.

<sup>33</sup> *Ibid.*, at 18 of 367.

<sup>34</sup> S. 3(1)(s)(i).

<sup>35</sup> Corus, *Annual Report 2015*.

<sup>36</sup> *Corus Management Circular*, supra note 18, at 83 of 367.

<sup>37</sup> *Ibid.*, at 67 of 367; briefly mentioned as well by the RBC Fairness Opinion (see e.g. 103 at 367).



- 39 Meanwhile Shaw has told the CRTC that approval of this transaction “provides greater certainty for Corus and Shaw Media services that will ensure continued innovation and investment in Canadian programming for domestic and international markets”.<sup>38</sup>
- 40 In our view, the differences between the statements to its shareholders and to the CRTC raise questions related to the longer-term stability and certainty that Shaw Media’s over-the-air and discretionary television programming undertakings require. A public hearing would permit the CRTC and other parties to set out their concerns on this point, and to evaluate the evidence offered by Shaw, Shaw Media and Corus in reply.
- D Will Corus be delegating authority to unlicensed television undertakings?**
- 41 A final question that is not answered by Shaw’s application involves the issue of centralcasting
- 42 Section 3(1)(h) of the *Act* stipulates that licensees are responsible for the programs broadcast by the undertakings for which they have licences. The *Act* applies “in respect of broadcasting undertakings whether or not they are carried on ... as part of, or in connection with, any other undertaking or activity.”<sup>39</sup> Section 2(1) defines a network as “any operation where control over ... any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person”.
- 43 In 2007 Canwest – from whom Shaw acquired the over-the-air television programming undertakings that Corus is now buying– announced it would replace master-control rooms in its local TV stations, with “state of the art broadcast centres” in Vancouver, Edmonton, Calgary and Toronto. Canwest said at the time that that the centres would package local content received from the stations into a program, deliver those programs to the stations, and that each station’s local anchors would deliver the news from their local stations.<sup>40</sup>
- 44 Analysis of the ‘local’ news broadcast by some of Canwest’s stations in 2008 found that at least one of Canwest’s commitments was not kept: the same staff were presenting news for different stations. Canwest’s Ottawa-based Parliament Hill correspondent anchored the local news for Global Quebec, while news about the weather was delivered for two stations on the same day by the same person.<sup>41</sup>
- 45 When the CRTC considered concerns that Canwest was delegating control over some of its stations’ programming to unlicensed undertakings in 2009, the CRTC said that it did not know: it could not determine whether the stations or the hubs had control over local stations’ newscast content, until the centralcasting model was fully implemented.<sup>42</sup>

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<sup>38</sup> *Supplementary Brief*, at ¶14.

<sup>39</sup> S. 4(3).

<sup>40</sup> <http://www.newswire.ca/news-releases/canwest-to-launch-state-of-the-art-broadcast-centres-534416031.html>.

<sup>41</sup> Steve Faguy, “Global Quebec’s Fake Local News”, [blog.fagstein.com](http://blog.fagstein.com), (7 August 2008), <http://blog.fagstein.com/2008/08/07/global-quebec-fake-local-news/>.

<sup>42</sup> *Complaint by the Canadian Communications, Energy and Paperworkers Union of Canada against Canwest Media Inc.*, Broadcasting Decision CRTC 2009-115 (Ottawa, 4 March 2009), <http://www.crtc.gc.ca/eng/archive/2009/2009-115.htm>, at ¶11.



- 46 To date, in other words, a fundamental question about the delegation of control over programming at TV stations has not been answered in the decade since it was raised. Nor have centralcasting's implications for the CRTC's oft-cited *Diversity of Voices* policy ever been considered: in that policy, the CRTC emphasized the importance of different professional editorial voices, so that "no one person – no one voice – ... has sole responsibility for choosing the programming to which Canadians can have access".<sup>43</sup> Interestingly, when that policy was issued in 2008, the CRTC considered diversity by location<sup>44</sup> – apparently ignoring the fact that many locations might be receiving almost entirely the same newscasts assembled at and by an unidentified centralcasting hub.
- 47 The question of delegated control remains live for Shaw Media's over-the-air television programming undertakings, and not just because the Shaw Media TV stations apparently continue to rely on centralcasting: in April 2015 Shaw Media announced "that it will consolidate much of its production across Canada and change how the late-night and weekend newscasts are produced."<sup>45</sup> It said "production of the late-night and weekend newscasts east of Alberta, as well as Kelowna, would be moved to Toronto, where a single-anchor team will produce a local newscasts for each market."<sup>46</sup>
- 48 Shaw has also told the CRTC that "all the Shaw Media and Corus Services" will be integrated "into Corus Quay in Toronto".<sup>47</sup> Does this mean that control over more programming from Corus' existing radio, over-the-air television and discretionary television programming undertakings will also be delegated to existing central hubs, or to a single central hub, to achieve millions in 'synergies'? Assuming that Corus' programming services obtain their programming from several unlicensed central hubs – or a single one at Corus Quay, who bears and will bear legal responsibility for the content of that programming in the event of complaints or lawsuits? Would the licensed programming undertakings bear this responsibility even though they did not produce it? Would the CRTC have any authority over an unlicensed central hub of a centralcasting system? What financial or other arrangements would a centralcasting system impose on Corus – and at what cost going forward?
- 49 These unanswered questions are central to a clear understanding of the operation by Corus of the stations now licensed to Shaw Media. A public hearing would permit the CRTC and other parties to set out their concerns on this point, and to evaluate the evidence offered by Shaw, Shaw Media and Corus in reply.

### III Conclusion and recommendations

- 50 The Forum's brief review of the materials filed by Shaw, and available to Corus' shareholders has been focussed on whether approval of the transaction is reasonable. It leads us to ask, when Shaw tells the CRTC that "the best way to maximize the value of Shaw Media's assets is through a Reorganization with Corus",<sup>48</sup> maximized for whom? And – given the recent hearing that raised many serious questions about the future

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<sup>43</sup> Broadcasting Regulatory Policy CRTC 2008-4, (Ottawa, ), <http://www.crtc.gc.ca/eng/archive/2008/pb2008-4.htm>, at ¶¶8-9, ¶15,

<sup>44</sup> *Ibid.*, at ¶¶26-27.

<sup>45</sup> Shaw Media, "Global News announces significant changes to how news is produced," Media release (Toronto, 9 April 2015 at 4:07 PM), <http://globalnews.ca/news/1930342/global-news-announces-significant-changes-to-how-news-is-produced/>.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Supplementary Brief*, at ¶24.

<sup>48</sup> *Ibid.*, at ¶27.

of local television news in Canada – will this transaction “actually increase in reporting assets at the front-line ... in many locations and ... increase the number of hours of news that we produce every week ....”?<sup>49</sup>

- 51 In our view, the evidence available about this transaction does not clearly establish why the public interest would be served by its approval – but does establish that at a minimum, Canadians are entitled to a public hearing that brings out the answers to the questions we have raised above, and to questions raised by other parties.
- 52 Without a public hearing, the only parties that will be able to ask Corus’ management questions about this \$2.2 billion transaction and the benefits it may or may not bring to Canada are its shareholders, at the shareholders’ special meeting that Corus will hold on 9 March 2016 in Toronto.<sup>50</sup> Strikingly, the 367-page *Management Circular* that Corus distributed to its shareholders because they “are required to make important decisions” provides more details about the implications of this “game-changing”<sup>51</sup> transaction than the 14-page application form and the 21-page Supplementary Brief submitted to the CRTC, the agency required to review the transaction to ensure that it serves the public interest.

We look forward to the CRTC’s determinations about these important matters.

Sincerely yours,



Monica L. Auer, M.A., J.D., LL.M.  
Executive Director

Cc.: Dean Shaikh, Shaw  
Sylvie Courtemanche, Corus  
Jay Thomson, CMPA

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<sup>49</sup> *Supra* note 45.

<sup>50</sup> Broadcasting Decision CRTC 2009-115, at 7.

<sup>51</sup> *Corus Management Circular*, *supra* note 18, at 6, 18, 23 and 47.