

**Appendix D to the CMPA's intervention  
to Broadcasting Notice of Consultation  
CRTC 2010-498, Item #2**

**INTERPRETATION OF THE  
CRTC'S POLICY RELATING TO  
THE "VALUE OF THE TRANSACTION"  
AND THE APPLICATION OF THE CRTC'S  
TANGIBLE BENEFITS POLICY  
TO FINANCIALLY "AT RISK" LICENSEES  
IN THE CONTEXT OF THE  
SHAW/CANWEST TRANSACTION**

**A joint report prepared by the ALLIANCE OF CANADIAN CINEMA,  
TELEVISION AND RADIO ARTISTS (ACTRA), CANADIAN MEDIA  
PRODUCTION ASSOCIATION (CMPA), DIRECTORS GUILD OF  
CANADA (DGC), and WRITERS GUILD OF CANADA (WGC)**

**August 23, 2010**

## TABLE OF CONTENTS

	<u>Page</u>
<b>EXECUTIVE SUMMARY .....</b>	<b>I</b>
<b>PART ONE INTRODUCTION.....</b>	<b>1</b>
<b>PART TWO THE VALUE OF THE TRANSACTION.....</b>	<b>1</b>
A) Commission Policy Relating to the “Value of the Transaction” .....	1
B) The Transaction .....	3
C) Shaw’s Comments Regarding the May 3, 2010 Completion of the Transaction.....	7
D) Shaw’s Flawed Rationales for a “Value Of The Transaction” of \$506 Million....	12
<b>PART THREE THE “FAILING UNDERTAKING” EXEMPTION IS NOT AVAILABLE IN THIS CASE.....</b>	<b>16</b>
A) Introduction.....	16
B) “Precedents” Cited by Shaw .....	17
C) Canwest is not in Financial Distress .....	21
D) Shaw is not in Financial Distress .....	26
<b>SCHEDULE 1</b>	<b>Goldman Sachs Correspondence Dated February 11 and 13, 2010</b>
<b>SCHEDULE 2</b>	<b>Press Release of Shaw Communications Inc. Dated May 3, 2010</b>
<b>SCHEDULE 3</b>	<b>Key Excerpts from Canwest Management Discussion and Analysis Dated July 14, 2010 for the 9 Months Ending May 31, 2010</b>
<b>SCHEDULE 4</b>	<b>Media Stories Following Shaw’s May 3, 2010 Announcement</b>

## EXECUTIVE SUMMARY

1. This joint report prepared by the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA); Canadian Media Production Association (CMPA); Directors Guild of Canada (DGC); and Writers Guild of Canada (WGC) (hereinafter referred to as the “Joint Report”) demonstrates that the arrangements of February 11-12, 2010 and May 3, 2010 were inextricably tied together and should be treated by the Commission as a single “transaction” for purposes of its “value of the transaction” analysis. This is true whether viewed from the perspective of a review of the actual documentation, or from the comments of senior Shaw executives at the time of the completion of the transaction on May 3, 2010. This Joint Report also considers and rejects Shaw’s arguments that the Commission’s benefits policy should be interpreted in a manner that takes into account the financial situation of Canwest and avoids the payment of tangible benefits or seeks to reduce the quantum of such benefits.

### **THE “VALUE OF THE TRANSACTION” SHOULD BE NO LESS THAN \$2 BILLION**

2. The Shaw Support Agreement and the Shaw Subscription Agreement were made expressly subject to the resolution of the issues between Canwest and Goldman Sachs. The February arrangements were therefore effectively meaningless, with or without Commission approval, in the absence of finalizing the overall transaction, which meant finalizing an agreement with Goldman Sachs or pursuing the matter through the courts, a process with an uncertain outcome and a lengthy timeline. Furthermore, at the time of the completion of the transaction on May 3, 2010, Goldman Sachs was attempting to have the February arrangements set aside.
3. When the transaction was completed on May 3, 2010, Shaw’s senior management participated in a conference call with financial analysts. They indicated that this was an “optimal” time to conclude the transaction because, among other reasons, Shaw:
  - (a) could eliminate the financial players (including Goldman Sachs) who could make their lives difficult if they tried to run Canwest without owning 100% of it;
  - (b) wanted to crystallize the price as valuations are, they believe, at the bottom of the economic cycle right now and there is tremendous leverage and upside for Shaw;
  - (c) eliminated the “litigation risk” which, at a minimum, would have dragged on the process and kept Canwest in the CCAA process and at worst, might have resulted in the Canwest properties going to auction;
  - (d) would have had to pay more had they waited for a subsequent opportunity;
  - (e) said that there were “tremendous benefits” to having 100% control of the content since “they can do what they want with it”;
  - (f) is paying only 6 times EBITDA for the Canadian television subsidiary, which includes Global and TVtropolis, and 9.7 times EBITDA for the former Alliance Atlantis properties, which two years ago traded hands for 17 times EBITDA; and

- (g) noted that there have been significant costs that have been taken out of the business during the restructuring process.
4. Shaw's rationales for a "value of the transaction" of only \$506 million are flawed. The suggestion that the February part of the transaction was conclusive is incorrect, as it was expressly made subject to the resolution of the Goldman Sachs issues. The latter occurred on May 3, 2010 and resulted in the completion of the transaction that is before the Commission.
  5. It would make a mockery of the Commission's "value of the transaction" rules if the Alliance Atlantis assets were valued by the Commission at \$1.5 billion in 2007 and effectively zero in 2010. Even though Shaw acknowledges that in arriving at the purchase price of \$2.005 billion it attributed 9.5 times EBITDA (or \$1.7 billion) to those properties, Shaw is requesting that the Commission place a value of \$506 million on the transaction.
  6. These two components of the same transaction occurred within 80 days of one another and the second component was a requirement of the first, which was preconditioned on a settlement of the Goldman Sachs issue.
  7. The fact that Goldman Sachs is a non-Canadian is irrelevant. The Commission has never discounted that part of the value of a transaction that was represented by a non-Canadian. It is the transaction that is important, not the nationality of the vendor of a portion of the shares.
  8. Shaw could not have continued on "indefinitely" to run the Canwest stations/services with Goldman Sachs as a minority shareholder. First, the February arrangements would not have permitted Shaw to acquire those assets (even with CRTC approval) in the absence of a settlement with Goldman Sachs. Second, if Canwest had been permitted to resile from the contract (i.e., a court victory for Shaw/Canwest), Shaw would still have had a very disgruntled minority shareholder with numerous minority rights. This would not have been an acceptable outcome. Shaw acknowledged that it was greatly preferable to have 100% ownership and be rid of the financial partners. Third, by delaying, Shaw noted in the conference call that it would have had to pay more for the asset. Fourth, there was no guarantee that Shaw would have been successful in the litigation.

#### **THE FAILING UNDERTAKING ARGUMENT IS NOT AVAILABLE IN THIS CASE**

9. Shaw is seeking an interpretation of the benefits policy that would allow it to rely on its "intangible" benefits to the exclusion of the payment of tangible benefits. Shaw highlights a number of small transactions in which the service in question and/or the purchaser were in difficult financial situations and where the Commission had said that tangible benefits were not required.
10. A close review of each of those cases demonstrates that the circumstances that led the Commission to refrain from requiring benefits do not apply in this case. In some cases, the amounts were trivial; in others the values of the transactions were actually negative. In the case of TQS, the service had been in a precarious financial situation throughout its 18 years in broadcasting and had almost always had a negative PBIT.

11. Shaw also pointed to the Commission's radio and television policies for support as to why it should not have to pay tangible benefits. Both exceptions found in those policies are inapplicable to Shaw. In radio, three years of negative PBIT is required while in television, a station must be earning less than \$10 million a year in revenue and must also qualify for the Small Market Programming Fund, which Canwest's stations do not.
12. This is very different from the Canwest situation. As the CRTC noted in one of its deficiency questions in its letter to Shaw of 14 May 2010, overall Canwest stations have a positive pre-tax margin and even when disaggregated into CTLP Conventional, CTLP Specialty and CW Media, each of these groups of services shows a positive pre-tax profit.
13. In fact, Shaw's Senior VP and CFO on the May 3, 2010 conference call indicated that the CW Media properties accounted for more than 85% of the value of this transaction and that they enjoyed margins in excess of 40%. Even Canwest's television stations have started their anticipated rebound.
14. The financial results for the 9 months ended May 31, 2010 show that CTLP earned operating profit of \$99 million while CW Media earned \$169 million for a total for the nine months of \$268 million. This is already significantly higher than the full year projections of \$188 million submitted by Shaw in its deficiency response of 21 July 2010. If the three quarter number of \$268 million is annualized by grossing it up by 4/3rds, the projected profits would be \$357 million. This is not the type of circumstance that should result in an exemption from the payment of tangible benefits totalling 10% of the value of the transaction.
15. Finally, to the extent that the Commission has, in the past, considered as well the financial circumstances of the purchaser, Shaw itself is also a strong entity financially. Indeed, it has indicated that its financial muscle should be considered an intangible benefit of this transaction.
16. Accordingly, none of the circumstances are in place that would justify the application of the benefits policy in a manner that would allow for an exception to be made for the requirements that tangible benefits in an amount of 10% of the value of the transaction be paid.

**PART ONE  
INTRODUCTION**

17. This Joint Report considers certain issues relating to the Commission's assessment of the "value of the transaction" in connection with the transfer of control of licensed broadcasting assets. More specifically, this Joint Report disputes the assertion of Shaw Communications Inc. ("Shaw") that the value of the transaction with respect to its acquisition of 100% of the shares of a Restructured Canwest for approximately \$2 billion should be assessed at \$506 million. Rather, the value of the transaction should be assessed at no less than \$2.005 billion for the reasons set out in this Joint Report.
18. This Joint Report also considers and rejects Shaw's suggestion that Canwest's "financial distress" should result in no (or a reduced amount of) tangible benefits being paid with respect to this transaction.

**PART TWO  
THE VALUE OF THE TRANSACTION**

**A) Commission Policy Relating to the "Value of the Transaction"**

19. As the Commission does not solicit transfers of control, and in the absence of a competitive bidding process for the licences being transferred, the Commission must ensure that the transaction is the best possible one in the circumstances, is commensurate with the size and scope of the transaction, and assists in the achievement of the objectives of the *Broadcasting Act* (the "Act"). In 1999, the Commission announced that henceforth, parties acquiring control of conventional television and/or specialty television assets would be required to contribute 10% of the "value of the transaction" toward Commission approved public benefits that would assist in the satisfaction of the Act's objectives. In Broadcasting Public Notice CRTC 1999-97, 11 June 1999, the Commission stated,
  22. The Commission hereby amends its benefits policy in respect of all transfers of ownership or control involving television broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. It will generally expect applicants to make commitments to clear and unequivocal tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission. This policy will apply to any application filed on this date or after.
20. What constitutes the "value of the transaction" was not defined in the 1999 document but has evolved over time through Commission pronouncements and cases relating to transfers of control.
21. One issue that has become clear is that the Commission is concerned with the notion that acquiring companies might separate transactions into portions and attempt to pay benefits only on the portion that takes them into a control position.

22. An example would be where an acquiring company divides its purchase of a target's voting shares into 3 steps. The first tranche results in the acquisition of a 48% interest, the second a 3% interest while the third is for the remaining 49%. The acquirer could argue that it only has to pay benefits on the 3% purchase price of the transaction that took it to a control interest of over 50%. That would clearly be an abuse of the benefits process and a violation of the principles involved in the Commission's "value of the transaction" approach.
23. This issue of a segmented or creeping acquisition of control was discussed by the Commission in the 2006 Bell Globemedia (BGM) case. In Broadcasting Decision CRTC 2006-309, 20 July 2006, the Commission noted the following concerns of interveners;

Intervenors also expressed concern about the effect that a decision by the Commission not to require benefits in this instance would have on future transactions. The Unions were concerned that this would open the possibility for corporations to execute changes of ownership in multiple steps (multi-step transactions), and thereby avoid paying tangible benefits until the purchase of a percentage that would provide a shareholder with effective control. The result would be a benefits package that would reflect the value of only the last step, as opposed to a benefits package on the entire transaction. The CFPTA [sic] recommended that, in the event that benefits were not required in this case, the Commission should reassess the Benefits Policy to ensure that this loophole was closed.

24. The Commission referred to its call for comments in Broadcasting Notice of Public Hearing CRTC 2006-5 in which it had specifically asked for public comments on what changes should be made to the benefits policy. In the resulting public notice, Broadcasting Public Notice CRTC 2007-53, the Commission again picked up the issue of multi-step transactions, saying,

113. Several industry associations, including the Directors Guild of Canada, the Alliance of Canadian Cinema, Television and Radio Artists, the CFTPA, and the Coalition of Canadian Audio-Visual Unions, urged the Commission to revise the benefits policy to prevent the recurrence of a situation similar to an ownership transaction approved in Decision 2006-309, involving Bell GlobeMedia Inc. (now known as CTVglobemedia Inc.). In that case, no benefits were required because the transaction constituted a "change" rather than a "transfer" of control.

114. The Commission is of the view that the circumstances of the Bell Globemedia Inc. transaction were very unique, and that the possibility of such a situation recurring is very unlikely. The Commission does not consider that decision to be a precedent. Therefore, it does not consider that a change to the benefits policy is warranted. **The Commission also notes that, in Decision 2006-309, it acknowledged the concerns expressed by parties concerning**

**multi-step transactions and reserved the right, in the case of such transactions, to review the entire sequence of previous transactions to determine the appropriateness of any proposed benefits package.** [emphasis added]

25. Therefore, all parties were put on notice that the Commission has “reserved the right... to review the entire sequence of previous transactions”. In the present case, such a review leads inexorably to the conclusion that the acquisition of the interests previously held by Goldman Sachs entities (the longer names of the Funds managed by Goldman Sachs are omitted and the name Goldman Sachs is used instead throughout this Joint Report and the assumption of the debt in Canwest Media Inc. (CMI) by Shaw constitute part of the value of the transaction.
26. The inclusion of debt in the calculation of the value of the transaction is well-settled. In Decision CRTC 2001-394, 5 July 2001, the Commission approved the acquisition of TVA by Videotron but took the opportunity to make clear that, among other items, debt was to be included in the calculation of the value of the transaction. It noted the following:
27. In previous decisions, the Commission has generally calculated the value of a transaction, for the purpose of establishing tangible benefits, on the basis of the percentage of equity held. **In most of the previous transactions, the value of the transaction was equivalent to the purchase price or to the amount actually paid by the buyer, and this amount usually included existing debt and any acquisition premiums.** The Commission made an exception in Decision CRTC 2000-86 dated 24 March 2000 and permitted a purchase price that excluded the long-term debt of NetStar Communications Inc., an undertaking acquired by CTV Inc. In accepting the applicant's arguments to this effect, the Commission stated, among other things: "The Commission will expect applicants, in future transactions, to demonstrate that the measure they have used to determine the value of the transaction is the most appropriate under the circumstances." [emphasis added]
27. The balance of this Joint Report will consider the factors that lead to the conclusion that the correct “value of the transaction” in this case is at least \$2 billion.

**B) The Transaction**

28. The transaction that is under consideration began on October 5, 2009 when Canwest Global Communications Corp. (“Canwest”) and a number of its 8% Noteholders represented by an Ad Hoc Committee entered into a Support Agreement. In that agreement, the Noteholders agreed to convert their outstanding debt obligations into equity of the Company. As part of the restructuring, Canwest and certain of its subsidiaries filed for creditor protection under the *Companies’ Creditors Arrangement Act* (the “CCAA”) via a pre-packaged arrangement on October 6, 2009 and Canwest, through its financial advisor, solicited Canadian interest regarding a possible equity investment in a Restructured Canwest.

29. At some point during the period between October, 2009 and February 11, 2010, certain interested parties were invited to bid on the Canwest properties. Goldman Sachs, the majority equity owner of CW Investments Inc. (parent company to the profitable former Alliance Atlantis properties) was excluded from those discussions as is made clear from the Goldman Sachs correspondence of February 11, 2010 and the letter of February 13, 2010 attached as Schedule 1<sup>1</sup> (the “Goldman Sachs correspondence”).
30. On February 12, 2010, Shaw announced that it had had entered into agreements with Canwest and the Noteholders, represented by the Ad Hoc Committee, regarding the acquisition of a minimum 20% equity interest and 80% voting interest, which included effective control, of a Restructured Canwest. Shaw’s press release at the time noted that Shaw’s initial equity interest would exceed 20% depending on the number of Canwest creditors that elected cash rather than shares in Restructured Canwest.
31. It is on the basis of this February, 2010 agreement that Shaw takes the position that this conditional deal was all that was needed in order for Shaw to acquire control and that any other activities should be excluded from the Commission’s calculation of the “value of the transaction.” Since the amount that Shaw agreed to pay for its 20% interest was \$85 million, and since its interest was 20% of the company, therefore Shaw’s view was that the value of the transaction should be established at \$475 million. In its Supplementary Brief filed 30 March 2010, Shaw stated the following,
- This process created a clear transaction value of \$475 million, determined by the market after a thorough bidding process. That transaction value represents restructured Canwest’s implied equity value based on Shaw’s \$95 million investment for 20% of restructured Canwest’s implied equity value based on Shaw’s implied value of the equity which major creditors of Canwest will accept in return for the forgiveness of debt owing to them....No debt is being assumed as part of this transaction. Therefore, the full “implied equity value” in the restructured Canwest is \$475 million.
32. In its letter of 20 May 2010 to the Commission Shaw changed this figure to \$506 million, comprised of \$442 million payable to bondholders, \$38 million payable to other unsecured creditors, \$2 million payable to Houlihan Lokey plus Shaw transaction costs of \$24 million.
33. There was a significant problem with the February, 2010 deal, however. Goldman Sachs strongly objected to it and the acquisition threatened to become bogged down in litigation for a long time and with an uncertain result. This was openly acknowledged by Shaw not only in its Supplementary Brief of March 30, 2010 but in section 7 of the Shaw Support Agreement (attached as part of Shaw’s application of March 30, 2010) that “**the satisfactory resolution of the issues with Goldman Sachs (either through renegotiation or Court-approved resiliation of the CW Investments Shareholders Agreement) is a precondition of the closing of the Acquisition**”. [emphasis added].

---

<sup>1</sup> These documents were schedules to the Tenth Report of FTI Consulting Canada Inc. in its capacity as monitor for the applicants dated February 14, 2010. Available online at <http://cfcanada.fticonsulting.com/cmi/reports.htm>.

34. This makes clear that the February “transaction” was effectively nothing more than an opportunity for Shaw to attempt to negotiate changes to the CW Investments Agreement with Goldman Sachs or to attempt to persuade the Court to allow for that agreement to be disclaimed or resiled from. The Shaw Support Agreement and the Shaw Subscription Agreement also make evident that the ensuing May 3, 2010 resolution with Goldman Sachs (discussed below) should not only be considered as part and parcel of the February “value of the transaction”, but also that the February “deal” was meaningless if a settlement such as that which was reached on May 3, 2010 with Goldman Sachs had not been entered into.
35. Shaw admitted in its Supplementary Brief of March 30, 2010 that,
35. Shaw acknowledges that satisfactory resolution of the issues with Goldman Sachs (either through renegotiation or Court-approved resiliation of the CW Investments Shareholders Agreement) is a precondition to the closing of the Acquisition. Shaw is committed to resolving those issues and therefore urges the Commission to move forward expeditiously to consider the Application under its own process...
44. Goldman Sachs is now challenging the Court’s order by seeking leave to appeal it to the Ontario Court of Appeal...
45. Shaw is committed to resolving the Goldman Sachs issues...
36. Thus it is clear that the payment to Goldman Sachs should be considered as part of the “value of the transaction”. The acquisition of even the 20% of Restructured Canwest by Shaw could not and would not have ever been consummated without the resolution of the Goldman Sachs issue, regardless of whether the CRTC approved Shaw’s March 30, 2010 application.
37. Not only that, and this is critical to an understanding of the linkage of the February tentative deal with the May 3, 2010 transaction, but the entire auction process and the resulting sale to Shaw of the 20% interest in Restructured Canwest by Shaw was being challenged in court by Goldman Sachs. In other words, there was much more at stake for Shaw than merely the contract with Goldman Sachs’ return in it. The Goldman Sachs correspondence provides the Goldman Sachs perspective.
38. As the acquisition is part of the CCAA restructuring of Canwest, the approval of the CCAA Court was required. As part of its litigation response and because the disclaimer or resiliation of the Goldman Sachs agreement was a condition of Shaw's agreement to acquire Restructured Canwest, Goldman Sachs opposed the February motion in the CCAA Court to approve the sale to Shaw. (The court documents filed by all parties are available on the website of the Court appointed Monitor, a company named FTI Consulting Inc., at [www.cfcanada.fticonsulting.com/cmi/motions.htm](http://www.cfcanada.fticonsulting.com/cmi/motions.htm)). Although Shaw won the “first round” in that battle,<sup>2</sup> Goldman Sachs filed a motion, which was pending at the time of the May 3,

---

<sup>2</sup> Order dated February 19, 2010 granted for reasons dated March 1, 2010, filed at [www.cfcanada.fticonsulting.com/cmi/courtorders.htm](http://www.cfcanada.fticonsulting.com/cmi/courtorders.htm)).

2010 settlement, seeking to appeal the approval order to the Ontario Court of Appeal. Even if the appeal had not been successful, Goldman Sachs had frequently stated that it would oppose in court any attempt by Canwest to disclaim or resile from the Goldman Sachs agreement.

39. Shaw was not taking any of this lightly. Indeed, as later became public, negotiations were being conducted under the guidance of the Chief Justice of Ontario, His Honour Chief Justice Warren Winkler. Shaw appreciated that if a resolution of the dispute with Goldman Sachs was not forthcoming, the matter could have dragged on in the courts for a long time. Not only that, the results could have been quite negative as far as Shaw's desired purchase of Canwest was concerned.
40. The mediation process led by Winkler, C.J.O. proved to be successful. It led in early May to the completion of the transaction that is now before the Commission. That transaction involves the acquisition of 100% of the shares of Restructured Canwest. The Shaw News Release dated May 3, 2010 is attached as Schedule 2. It reads in part,

Shaw Communications Inc. ("Shaw") announced today that it has entered into **agreements to acquire for approximately \$2.0 billion**, 100% of the over-the-air and specialty television businesses of Canwest Global Communications Corp. ("Canwest"), including all of the equity interests in CW Investments Co., the Canwest subsidiary that owns the specialty television channels acquired from Alliance Atlantis Communications Inc. in 2007 (the "CW Media Group") (the "**Transaction**"). The total consideration **includes approximately \$815 million of net debt** at CW Media Group. [emphasis added]

41. One need go no further. What Shaw self-defines as the "Transaction" is a \$2 billion transaction including \$815 million of net debt at CW Media Group. The fact that there may be more than one "agreement" involved in what the Commission considers to be a single "transaction" is irrelevant. Virtually every transaction involves the negotiation and execution of more than one agreement, sometimes many more.
42. The documentation that was submitted to the CRTC by Shaw following its May, 2010 "amendments" to the March 30 application is also very clear. In the Full and Final Mutual Release, Goldman Sachs agreed to withdraw its litigation and surrendered its rights (including a variety of puts and calls) under the CW Investment agreement. Under the Option Agreement, Shaw agreed to pay Goldman Sachs \$709 million for its interest in CWI. The Shaw Subscription Agreement and Shaw Support Agreement from February 2010 were duly amended and the entire group of amended transaction documents was put to the Commission as part of the package for which the Commission's approval is sought.
43. All of these component parts are indivisibly tied together. The February 11, 2010 "acquisition" by Shaw was not an acquisition. It was an agreement to subscribe to a certain percentage of shares in a restructured Canwest **provided** that a number of events occurred. The February deal would never be consummated in the absence of the occurrence of those events, which were preconditions. The necessary events occurred on May 3, 2010 and

resulted in the satisfaction of the necessary preconditions that allowed the February paperwork to be amended and for the transaction to proceed.

44. This was all admitted by Shaw in its News Release of May 3, 2010, attached as Schedule 2. It announced that it had entered into agreements to acquire for approximately \$2.0 billion, 100% of the over-the-air and specialty television businesses of Canwest Global Communications Corp. “including all of the equity interests in CW Investments Co., the Canwest subsidiary that owns the specialty television channels acquired from Alliance Atlantis Communications Inc. in 2007”. The News Release noted,

Previously Shaw had announced an agreement with Canwest and certain holders of Canwest’s 8.0% senior subordinated notes (the “Noteholders”), represented by the Ad Hoc Committee, regarding an minimum 20% equity investment in a restructured Canwest. **This agreement was approved by the Canwest Board and the Ontario Superior Court of Justice, but was subject to certain conditions, including the resolution of matters under the shareholders agreement with certain entities affiliated with Goldman Sachs Capital Partners (the “GS Entities”) regarding Canwest’s interest in CW Media Group. To resolve those issues, Shaw has entered into agreements pursuant to which Shaw will acquire the GS Entities’ equity interest in CW Media Group for \$700 million.** [emphasis added]

45. In summary, the resolution of these issues was a precondition to the closing of the February arrangements and must be considered as part of the value of the transaction.

**C) Shaw’s Comments Regarding the May 3, 2010 Completion of the Transaction**

46. What had started out as a \$95 million potential investment opportunity by Shaw had, by May 3, 2010, morphed into a \$2 billion transaction. This, understandably, had stock analysts, and especially those who follow the Shaw stock, wondering what impact this purchase would have on Shaw and what Shaw senior management’s intentions were. Shaw held a Conference Call at 5 p.m. on May 3, 2010, attended by approximately 235 people, and for which the complete transcript is available for purchase through Thomson Reuters.<sup>3</sup>
47. The call featured many interesting discussions, some of which bear directly on the issue of the “value of the transaction”. In the introductory remarks, Shaw’s Senior VP and CFO Steve Wilson addressed the issue of why Shaw felt it was so advantageous to abandon the idea of continuing with the February proposals (which would have involved at a minimum working with financial partners over a period of time) and instead switching gears and bidding for 100% of Canwest. Mr. Wilson noted the following:

---

<sup>3</sup> <http://www.alacrastore.com/cgi-bin/alacraswitchISAPI.dll?app=locker2&msg=ExecContent&topic=download&sk=csyoiuaatvadjvofoldpjxcnwpisro p&lockerfileid=8F92D660-07D4-4735-8DCF-0A198B8C74A0>

Let me maybe just talk before valuation on the question of why now and why have we decided not to go with the option route and proceed with financial partners over a period of time.

Our view is that this gives us an opportunity to crystallize the value today which we think is an optimal time to do that. This has given us the ability to remove the financial players. Goldman Sachs certainly was a key to be able to solve the entire problem here, and we were pleased that we were able to come to an agreement with them that was satisfactory for both of us.

So we have eliminated litigation risk which could have held Canwest up for some time in the CCAA process had allowed it, its employees to direct their energy with us to building a much stronger organization today right off the bat as that gives us the ability to take 100% control now without interim governance mechanisms with third parties.

We believe when we look at the outlook for the business that had we waited for at least a year or perhaps more under the previous agreements we had that we would have paid more for this asset as we believe that we are still in the bottom of the economic cycle here. We may have just rounded the corner but there is tremendous leverage and upside.

So it is a great benefit for us today to be able to do this deal at this price, take it out and own it, and really move forward with something that is very positive for all of us.

In terms of the valuation, we are paying in aggregate approximately CAD2 billion for 100% of Canwest's broadcasting assets. In terms of the split, we are evaluating the Canadian television subsidiary which includes the conventional business and TVtropolis along with several other smaller specialty stations and approximately CAD250 million to CAD300 million. So I think it's important for people to understand that that portion of the business represents less than 15% of the purchase price here. The majority of the value is for the highly profitable and sought after portfolio of specialty channels and CW Media Group subsidiary which generate margins in excess of 40%...

So the approach we have taken here is that we have normalized and reduced the CW Media Group margin to be more conservative in our valuation analysis of this. I will also add that a consolidated normalized EBITDA of within the Canadian Television subsidiary, which includes Global and TVtropolis, is somewhere between CAD45 million and CAD50 million with room to grow. That means that when we say we are valuing the Canadian Television at

CAD300 million it implies a transaction multiple of only six times EBITDA for that particular portion of the business.

We believe we are paying a reasonable take-out valuation multiple. I will say that currently on average the Canadian specialty channels, comparable Canadian specialty channels, are trading at approximately 8.5 times. On a blended basis then we are paying 9.5 times EBITDA for an implied 9.7 times for the specialty businesses alone. This represents a take-out premium of approximately 15% compared to the current trading multiples of other specialties.

Based on our review and our financial advisors we believe that this is much lower than the premium paid for comparable historical specialty transactions. The average over the last 10 years, for example, has been just over 15 times multiple for specialty channel transactions. So we are buying this at a time when both the multiples are low and the EBITDA has room for rebounds.

I will also note that the original Alliance Atlantis transaction in 2007 was done at a valuation we are told of 17 times trailing EBITDA. So that will give you a sense of how far things have moved.

...There have been significant costs which have been taken out of the business during the restructuring process and the Canwest team has done a great job of doing that. Their broadcasting business is well-positioned to perform as the economy and advertising market improves and so we are entering at a point of low multiples.

Going forward we believe there is significant leverage in the Company's bottom line as the majority of revenue growth should flow through the EBITDA performance improving in the future.

48. This excerpt is illuminating. It discloses why Shaw rejected the notion of working with its financial partners and sought to purchase 100% of the company up front. There were two main reasons indicated in this excerpt by Mr. Wilson.
  - (a) The most important reason for Shaw was to crystallize the value of the company at a time when multiples are at a low ebb. This means that Shaw can benefit from the coming rebound in values. Had Shaw waited, as Mr. Wilson indicated, Shaw believed it would have had to pay more as values rose.
  - (b) The second reason was to eliminate the "litigation risk", which would have held up Canwest for some time in CCAA proceedings.
49. More detailed reasons were provided later in the call when Mr. Wilson elaborated as follows:

...when you look at it, if we are in for just a little bit and we have to negotiate with Goldman Sachs and everybody else we get no control over the content...

...the initial deal, the 20% for CAD95 million and control, that was a somewhat imperfect deal but that was the only deal that was on the table at the time. We entered at that time and we were able to negotiate with the bondholders to be able to bring this out of the private company, which we thought was very positive but it was the only game in town until we got into mediation with the Chief Justice.

And so it would have seen us in a situation where we would have been governing the business with financial players going forward. That would have lasted for at least 12 months or more. The motive there obviously would be that we would pay more in the end and we believe that is the case with the EBITDA ramp and the potential for the multiples increase as well.

So by crystallizing the value today and taking away all those complications and giving us the ability to do what we do well, which is operate businesses and take control of it now, give Canwest employees certainty. As Jim said, once we have 100% control we have got the content we can do what we want with it. There are tremendous benefits to that.

And I don't think you should underplay either the litigation factor here. I mean, CW Media was not in the CCAA process. Goldman had a contract and there were many different views about what the potential outcome could have been in that. One of the potential outcomes could have been that these channels could have gone to auction and we wouldn't have had this opportunity with the loss that we have today.

And that would have been a very unfortunate situation for us. So for all those reasons and buying it at today's value we think that this is absolutely the right thing to do.

50. This exchange elaborates on Mr. Wilson's previous comments. It demonstrates that, despite what might be said elsewhere, Shaw really would **not** have been happy having to work with financial partners. However, since that was the only possibility at the time, they took it. But they welcomed the chance to remove the concerns of having these parties with potentially disparate interests preventing Shaw from having the ability to do what it wanted to do with the Canwest assets. It also displays that Shaw was seriously concerned that, as a result of the litigation with Goldman Sachs, the former Alliance Atlantis properties might have been put up for auction and Shaw might have lost the opportunity to acquire them.

51. It is also noteworthy that Mr. Wilson specifically mentioned that Shaw might have had to pay more had they waited. This is not only as a result of increasing multiples but also as a result of the contractual obligations with Goldman Sachs.
52. It is critical to recall that the Goldman Sachs investment in CWI had two distinct components. There was a shareholding of approximately 65% of the economic interests (spread between voting and non-voting shares) and there was a contractual right to a guaranteed return. There is no suggestion in any of the court documents that Goldman Sachs' shareholding was going to disappear even if Goldman Sachs were to have lost the lawsuit insofar as it related to the contractual obligations of Canwest. As noted, the courtroom battles related to the contractual right of Goldman Sachs to a guaranteed rate of return. Shaw and Canwest were attempting to persuade the court that Canwest should be allowed to resile from, or disclaim that contract. In other words, Goldman Sachs would not receive the guaranteed return that it had contracted for with Canwest.
53. Financially, the best case that Shaw could have hoped for would have been to prevail in that court case and eliminate both the obligation to pay Goldman Sachs its guaranteed return and to eliminate Goldman Sachs' various put and call rights. But even if Shaw had won that battle, which was far from a certainty, Shaw would still have had to deal with a powerful, disaffected minority shareholder with a battery of minority shareholder protections guaranteed under corporate law. The arrangement would have been dysfunctional as Shaw would have had to take precautions not to give Goldman Sachs (as the minority shareholder with the majority economic interest) any cause to seek an oppression remedy for any Shaw actions taken as the majority shareholder. Shaw would have needed to take Goldman's concerns into account in all of its decision-making. This would have been an unsatisfactory state of affairs for Shaw. And that is the situation if Shaw had been successful in its litigation. There is no guarantee that it would have been.
54. It is also important to keep in mind that Goldman Sachs was effectively acting as a bank. The contract was what guaranteed to Goldman Sachs its rate of return. The CRTC and the parties involved know what the prescribed formula for the rate of return was. The public, including interveners, does not. But it seems obvious that whatever that formula may contain, the rate of return that Shaw would have been required to pay Goldman Sachs would greatly exceed the rate that Shaw can borrow at in the market. Therefore, while Shaw may argue that it could have just waited and bought Goldman Sachs out later, there would have been a significant financial penalty for doing so, namely the difference between what Shaw can borrow at and Goldman Sachs' contractually guaranteed rate of return. This is yet another reason why Shaw decided to bid for 100% of Canwest's broadcasting assets in one transaction.
55. Finally, Shaw very much wanted to control 100% of the assets. Toward the end of the conference call, one of the analysts again returned to the need to own 100% of the company in order for Shaw to get the full benefit. Shaw President Peter Bissonnette responded as follows:

Yes, 100%. We have never been really one to have sort of minority control and having 100% control really is we see an advantage. I

think we set out for the driving force of this strategic rationale for this having the opportunity to have 100% to us is absolutely a blessing. When we are meeting with the Ad Hoc committee they were really torn about forgoing the value that they see is going to be created over the next year or so, but recognizing that there is a real benefit to the broadcasting system and to Shaw and to shareholders, as you appropriately said Jim, by having 100% ownership.

We have the total flexibility... We have a total flexibility in how we apply content over the various platforms and that is a huge, huge advantage for us when we look to the demands that we are seeing from our customers for every type of content.

56. Shaw's Senior VP Planning, Mr. D'Avella, added the following comment:

...if you own 100% of the enterprise or whatever the specific content play is, you are going to be in a much stronger position to determine how the economics are shared. It's essential when you are going to the table to actually buy these rights that you have got a clear view of what you want to do with them. And owning the entire enterprise gives us really that ability to actually do that.

57. In summary, Shaw has brought forward to the Commission a completely new proposal featuring new economics, the elimination of potentially problematic financial partners, the ability to move assets and programming around within the Shaw Group with impunity, and a basket of other upsides for Shaw and its shareholders. However, Shaw maintains that none of this should bear on the Commission's determination of the "value of the transaction". In the next section, some of the arguments that Shaw and its representatives have raised in that regard will be explored.

**D) Shaw's Flawed Rationales for a "Value Of The Transaction" of \$506 Million**

58. When Canwest first acquired the assets of Alliance Atlantis in 2007, the Commission attributed a value of just over \$1.5 billion to the specialty television assets. The Commission clearly considered the amount of debt and equity, including the GS investment, to be part of the value of the transaction and benefits were paid on that amount. To suggest that it just vaporized would make a mockery of the Commission's "value of the transaction" analysis.

59. As noted previously, in a section of the Supplementary Brief entitled, "Value of the Transaction", Shaw took the position that since it acquired a 20% interest in the restructured Canwest for \$95 million, all one has to do is multiply by 5 to determine that 100% of the value of what it is acquiring is \$475 million. [This was raised to \$506 million on May 20, 2010] Notably absent are the whole Goldman Sachs component and the significant debt in the profitable company holding the former Alliance Atlantis assets.

60. As was seen in the transcript excerpts above, Shaw's Senior VP and CFO indicated that, of the \$2 billion, approximately \$250-300 million is attributable to Canwest's conventional and

specialty services while the balance is attributable to the former Alliance Atlantis assets of which Goldman Sachs entities held an economic interest of approximately 65% as well as a guaranteed rate of return going forward. This means that, by Shaw's own admission, in the two years since Canwest purchased Alliance Atlantis, the value imputed to those assets has increased in value from \$1.5 billion to a figure in the \$1.7-1.75 billion range. And they have an EBITDA in the 40% range, according to Mr. Wilson.

61. Notwithstanding that the entire transaction began in February, 2010 with the first Shaw announcement and finished on May 3, 2010 with the second Shaw announcement, Shaw would have the Commission believe that the two events did not constitute part of the same transaction. Shaw began with zero percent of Canwest and emerged 80 days later with 100% of the company tied up yet Shaw maintains that the constituent elements do not constitute part of the same transaction.
62. Further, on page 21 of its 19 May 2010 deficiency response to the Commission, Shaw made the rather surprising suggestion that,

“There can be no benefits attached to agreements with the non-Canadian entity Goldman Sachs because the interests acquired from Goldman Sachs do not confer upon Shaw any transfer of control. The Commission has previously determined that Goldman Sachs’ equity and voting interests do not raise any foreign control issues.”
63. This simply is not how the benefits policy works. For example, when Rogers acquired the interests of Shaw in Biography Channel Inc. in 2006<sup>4</sup>, Rogers paid benefits on the amounts paid both for Shaw's shares and for the non-Canadian A&E's shares. The issue is not who owns the shares but rather whether the value attributable to them should be considered as part of the value of the transaction by the Commission. There is no question that Goldman Sachs is a non-Canadian but the amount paid to it still should be considered as part of the value of the transaction in this case. Shaw is acquiring a 100% interest of which a significant portion happens to be held by Goldman Sachs.
64. Shaw also argues, at the same page, that,

“Shaw entered into new agreements on May 3, 2010 with Goldman Sachs and the bondholders after Shaw had previously entered into agreements to acquire ownership and control of the undertakings set out in Schedule 1 to the Application through the acquisition of Restructured Canwest. The fact that Shaw has agreed to now address the remaining interests of the bondholders and Goldman Sachs is not determinative of the issue of change of effective control.”
65. Shaw omits some critical details. The previous agreements were made expressly subject to the resolution of the Goldman Sachs interests. They were NOT unconditional agreements.

---

<sup>4</sup> Broadcasting Public Notice CRTC 2006-319, 28 July 2006.

They were tied inextricably to Goldman Sachs and the resolution of their interests or the previous part of the transaction would not be able to close.

66. At page 22 of its deficiency letter of 19 May 2010 to the Commission, Shaw raised a new argument. It says that,

“Shaw was content to proceed with its Application as filed on March 31, 2010 which clearly contemplated the acquisition of effective control of Restructured Canwest. It was possible that the current ownership arrangements with Goldman Sachs, other than the Shareholders Agreement, could have continued indefinitely. Under such a scenario, the subsequent decision by Shaw to acquire the equity and voting interest held by Goldman Sachs in CWI would not have constituted a change of control requiring Commission approval.”

67. It therefore appears to be misleading to say that Shaw was content to proceed as it was. While it may have been “content” to do so, it was contractually unable to do so. Shaw has already acknowledged that it was not able to proceed without first dealing with the Goldman Sachs issue. More to the point, Shaw says that if it had allowed Goldman Sachs to stay in its investment, it could have bought them out later and then no benefits would have been payable. That may or may not be true but that certainly is not the transaction that the Commission is faced with adjudicating at the present time. Both parties chose to abandon the scheme set out in the CW Investments Shareholders Agreement and cut a new deal that involved an immediate payout. Shaw was able to acquire the benefits of 100% ownership immediately and eliminate a minority partner that could have caused it problems.
68. Moreover, as Shaw acknowledges, it would undoubtedly have had to pay more had it waited until 2011 or 2013 to have purchased Goldman Sachs’ interest. As the Canwest experience has shown, a lot can happen in a couple of years. It was an elegant resolution of a roadblock that was otherwise a complete bar to the consummation of Shaw’s February deal.
69. And, as noted, whether or not in a different deal in a different situation Shaw might have been able to wait for years before taking out Goldman Sachs’ interest is completely irrelevant to the consideration as to whether the May 3, 2010 buyout of Goldman Sachs’ interest is part of the value of this transaction in this case. The other possibility is NOT the transaction that the Commission is being asked to consider.
70. Shaw again acknowledged the nexus of the Goldman Sachs arrangement to the rest of the transaction when it admitted, at page 23 of its 19 May 2010 letter to the Commission that,

The final restructuring of Canwest required the renegotiation or termination of the CWI Shareholders Agreement, pursuant to which Shaw acquired the shares of Goldman Sachs thereby removing the uncertainty created by the CWI Shareholders Agreement with respect to both the over-the-air and specialty services of Canwest.

71. How can Shaw argue that “it was content to proceed with the application of March 31, 2010 to acquire ownership and control of Restructured Canwest” while at the same time acknowledging that the final restructuring could NOT have occurred without the renegotiation or termination of the CWI Shareholders Agreement pursuant to which Shaw acquired the shares of Goldman Sachs? It appears disingenuous to conclude that the Goldman Sachs arrangements and the overall Canwest transaction are two disparate deals and not part of the same transaction.
72. What Shaw was getting in February for \$95 million was the ability to control the Canwest properties and an option to fight over the former Alliance Atlantis properties with Goldman Sachs. In other words, not only did Shaw acquire up to a 20% voting interest in Restructured Canwest, but it also bought the right to pay out Goldman Sachs for whatever value was stipulated in its agreement with Canwest. It is to be recalled from the earlier discussion that the only way that Shaw would ever succeed in controlling 100% of the former Alliance Atlantis properties was to either buy out Goldman Sachs pursuant to Goldman Sachs’ contractual entitlement or to find a way to disclaim or resile from that obligation.
73. Shaw clearly chose to avoid the vagaries and cost of litigation and simply buy Goldman Sachs out of its position. Accordingly, the purchase of the GS piece and the assumption of the underlying debt relating to the GS purchase must be seen as part of the “value of the transaction.”
74. Moreover, Shaw has now applied to acquire the balance of the Goldman Sachs shares as part of the current CRTC process. It could have rolled the entire Goldman Sachs purchase into this proceeding but chose not to and paid Goldman Sachs out in early May. The timing of that payment is irrelevant to a determination of the value of the transaction.
75. Shaw makes an impassioned argument in the Supplementary Brief filed on March 30, 2010 to keep the company together. “The acquisition of Canwest’s assets on a unified basis is essential” wrote Shaw. After listing a variety of reasons why this is so, Shaw concluded by noting that “the combined operation of the conventional and specialty services has enabled the continued realization of the benefits of operating efficiencies with the acquisition of Alliance Atlantis.” Having acknowledged how critical the joint operation of the services would be, it is wholly inconsistent for Shaw to take the position that the value paid to Goldman Sachs and the assumption of the CMI debt should not constitute part of the value of the transaction.
76. It is not to be forgotten that, in addition to being asked to bless the acquisition of Restructured Canwest, the Commission is being asked, at the same time, as part of the same process, to approve the acquisition of the balance of the shares of CWI currently held by Goldman Sachs. This approval, coupled with the other requests being made by Shaw, will allow Shaw to emerge with 100% of the shares of the Restructured Canwest. The Goldman Sachs interest is part of the same option agreement pursuant to which Shaw agreed to pay \$709 million on May 3, 2010.

77. As seen in the quotes from Shaw representatives above, there is significant value to owning 100% of a company's shares. Yet Shaw maintains that the Goldman Sachs piece should not be considered to be part of the same transaction.
78. And in Shaw's letter to the Commission dated 19 May, 2010, Shaw states that,
- [Step 2d)] Step 1C (the exercise of the Option to acquire remaining shares held by GSCP1 and GSCP2 in the capital of CW Investments Co.) will be completed concurrently with Shaw's acquisition of 100% of Restructured Canwest and CMI's shares in CW Investments Co.
79. This all leads one to question, how can the Goldman Sachs portion of the transaction NOT be considered part of the same overall transaction that is before the Commission for approval?

### **PART THREE**

#### **THE "FAILING UNDERTAKING" EXEMPTION IS NOT AVAILABLE IN THIS CASE**

##### **A) Introduction**

80. In its Supplementary Brief of March 30, 2010, Shaw sought an "exemption" from the application of the Commission's benefits policy. It said, in paragraph 92, that, for reasons to be discussed below, "an exemption of the Acquisition from the application of the benefits policy would be warranted." Strangely, in its letter to the Commission of 19 May, 2010, [and at various times since] Shaw states, "Shaw is not requesting an 'exemption' but rather a flexible and reasonable application of the benefits policy."
81. On a practical level, the foregoing is a distinction without a difference. Shaw appeared to advance three reasons why it should not have to pay tangible benefits or at least pay lower benefits. The first was that the Commission has, in the past, exempted failing undertakings from the requirement to pay tangible benefits. The second was that the intangible benefits being offered by Shaw should be sufficient in this case to overcome the need for tangible benefits. The third was that this was such an unusual process, and the search by RBC Securities was so thorough that it was as if Shaw had responded to a call for applications and, as such, no benefits should be payable. This Joint Report will only address the first of those arguments, namely that of the "financial distress" argument.
82. It will be seen that the "financial distress" argument must fail. Canwest is not failing. The "precedents" turn out to have no applicability. The Commission policies cited by Shaw are inapplicable to this situation. And Shaw itself is not failing.
83. The reasons that Shaw advanced in support of its "financial distress" argument were as follows;
- (a) Canwest was highly leveraged and its capitalization had fallen;
  - (b) Canwest's entering into CCAA raises the spectre of station closures or at least diminished contributions to the Canadian broadcasting system;

- (c) Canwest has already taken steps to sell several stations at fire sale prices;
- (d) “Without a strong, long-term Canadian strategic investor such as Shaw to acquire control, there is no feasible prospect for Canwest to continue under its current ownership arrangements or maintain clear Canadian ownership. Re-establishing Canwest’s long-term viability as a strong Western voice will require significant financial and strategic resources.”; and
- (e) “Long-term viability requires new strategic direction for Canwest and significant investments in new business models. The extinguishing of debt pursuant to the CCAA proceedings will not, in itself, return Canwest to financial or operational health.”

84. Shaw added that, in view of the foregoing, the Commission’s general policy with respect to requiring “clear and unequivocal television tangible benefits” should not apply. Shaw added that the circumstances take this outside the realm of an ordinary course transaction.

**B) “Precedents” Cited by Shaw**

85. Although Shaw’s reasons seem to contain certain matters that do not appear directly relevant to the financial distress argument, Shaw did cite what it considered to be “precedents” to support its position. Shaw pointed in particular to the decisions relating to changes of control of TQS, CHEK-TV, CJNT-TV and CHCH-TV. Shaw also pointed to the Commission’s approach of forgoing benefits for unprofitable TV stations.<sup>5</sup>

86. While it is clear that the Commission’s benefits policy is flexible, it is not so flexible that it should not apply to this transaction. Each of the cases cited by Shaw can be easily distinguished on its circumstances.

87. In TQS, the Commission noted that TQS had been unprofitable for a long time, saying that,

Since 1990, TQS has been in a precarious financial situation. This undertaking has experienced operating losses and almost always negative profit before interest and taxes (PBIT) over more than half of its 18 years of broadcasting. The only three broadcast years during which TQS was profitable were the three years from 2002 to 2004. Despite very satisfactory ratings, TQS has never been able to generate revenues comparable to the revenues of its competitors, which has lead to constant financial difficulties.

88. This is very different from the Canwest situation where, as will be seen below, each of the component parts is profitable, according to the Commission. Moreover, the Commission, in exempting the purchasers of TQS from the payment of benefits, noted the following,

...In this case, since TQS has incurred deficits during the past three years and filed for protection under the Companies’ Creditors

---

<sup>5</sup> Broadcasting Public Notice CRTC 2007-53, 17 May 2007.

Arrangement Act, Remstar sought an exemption from this requirement from the Commission.

17. The Commission notes the commitment by the applicant to contribute an amount of \$1 million as tangible benefits and encourages it to do so. However, given the licensee's technical bankruptcy situation and the continuation of its operations under the protection of the Companies' Creditors Arrangement Act, the Commission is of the opinion that it is justified in making an exception to its policy. Accordingly, the Commission will not require the contribution of tangible benefits for this transaction.

89. Shaw is apparently not asking for an exception to the Commission's policy, as noted earlier, and its circumstances are very different as will be discussed in more detail below. Canwest is profitable and has excellent prospects as Shaw has admitted. However, in TQS, the Commission considered an 18 year time-line and the structural problem of trying to generate revenues comparable to those of its competitors in the Quebec market. Furthermore, the purchasers in that case did not have the financial resources of Shaw and apparently refused to supply financial statements.
90. Shaw also cited, as part of its plea for relief from the payment of intangible benefits, the sale by Canwest of CHEK-TV in 2009 (Broadcasting Decision CRTC 2009-699, 9 November 2009) to a company that was to be owned by a consortium of local investors, 39 employees of CHEK-TV and Communications Energy and Paperworkers Union locals. In that case, the purchase price was \$2. The case is noteworthy for two reasons. First, the Commission did not hesitate to ascribe a "value of the transaction" that was significantly higher than the purchase price. Second, the Commission determined that the purchaser of CHEK-TV would not have to pay tangible benefits.
91. The purchasers provided a negative "value of the transaction" of \$131,960. The Commission, on the other hand, made upward adjustments for lease commitments and for uncertain payments in respect of news production equipment and "re-set" the "value of the transaction" at \$1,051,485.
92. The Commission noted that Canwest had planned to close the station and that this purchase would obviate that necessity. The intangible benefits offered by the applicant included the continuation of the television service, the preservation of employment opportunities, the enhancement of the diversity of voices and diversity of ownership in the Vancouver Island region, as well as the transition to digital broadcasting.
93. More germane to the present comparison, in exempting the purchaser from the payment of tangible benefits, the Commission highlighted the fact that the operation is currently losing approximately \$12 million per year and has not shown any marked improvement in profitability over the past three years.

94. Thus, this case is very different from the current situation where, as will be seen, the combined Canwest operations may be expected to earn profits of \$350 million this year and enjoy a PBIT in the 33% range.

95. The decisions surrounding the sale by Canwest of CHCH-TV Hamilton and CJNT-TV Montreal to the same numbered company Broadcasting Decisions CRTC 2009-536 and 537, 28 August 2009) are equally inapplicable to the present situation. In both the case of CJNT-TV and the case of CHCH-TV, the Commission agreed with the applicant that the “value of the transaction” was a negative number. After citing the intangible benefits being offered by the purchaser, the Commission highlighted the primary reason why it would not require the applicant to pay tangible benefits. In both decisions, the Commission said,

14. The Commission notes that the value of the transaction is negative and therefore no tangible benefits are payable in the circumstances.

96. The Canwest properties do not have negative “values of the transaction” and, therefore, the CHCH-TV, CJNT-TV, and CHEK-TV cases do not serve as precedents with respect to the payment of tangible benefits in this case.

97. Shaw also cited, at paragraph 89 of its Supplementary Brief, the Commission’s decisions with respect to two tiny Category 2 (now Category B) specialty channels and two small over the air services when it noted that the Commission “has excluded unprofitable undertakings from the value of the transaction against which benefits are assessed.” In the case of World Impact Ministries cited by Shaw, the purchaser was a small charity that was acquiring the Category 2 digital service, The Christian Channel. In its decision<sup>6</sup>, the Commission noted that, the purchase price was only \$4 million and said,

The Christian Channel is a Category 2 service that has been losing money at a rate of approximately \$1.2 million a year since its launch and that the service may go off air if profitability cannot be achieved.

98. It is farfetched to compare this standalone single-faith religious Category 2 service being purchased by a small charity with the \$2 billion purchase under consideration in this case.

99. In the case of CIIT-TV and CHNU-TV, the owner of the purchasing company was also a charity, VisionTV, Canada’s Faith Network/Réseau religieux canadien. The assets being acquired were two small religious television stations and the Commission-determined “value of the transaction” was just over \$6 million. Based on that valuation, the new tangible benefits package would have had a value of \$624,791. However, citing its 2007 television policy determinations, the Commission noted the following:

11. In the present case, the Commission recognizes that CCI is a small religious broadcaster and notes the poor financial performance of the two television programming undertakings subject to the present transaction. Further, CCI indicated that it would assume all of the

---

<sup>6</sup> Broadcasting Decision CRTC 2009-247, 4 May 2009.

remaining outstanding tangible benefits owing by Rogers, including the \$1.5 million tangible benefits package related to the purchase of CHNU-TV Fraser Valley and CIIT-TV Winnipeg in 2005, and the \$350,000 of benefits related to the addition of a transmitter in Victoria, approved in Broadcasting Decision 2005-207. These payments would be directed to the same recipients as proposed by Rogers and on the timelines previously deemed appropriate by the Commission.

12. In addition, the Commission considers that relieving CCI from its obligation to provide a tangible benefits package equal to 10% of the value of the transaction is consistent with its exemption from the benefits policy for small market stations, as set out in Broadcasting Public Notice 2007-53.

13. Accordingly, the Commission considers it appropriate to not require CCI to provide a tangible benefits package in regard to the present transaction.

100. The final case cited by Shaw was that of Serdy Direct's acquisition of effective control of Canal Évasion from Bell Globemedia.<sup>7</sup> In this case, although this small French-language service was technically a "must-carry" in Quebec, the BDUs had chosen to market it on a positive option basis. In the Commission's words,

This means that, unlike most other analog services, Canal Évasion must sign up its own subscribers directly. As a result, the service is not distributed as widely as other such services.

101. More importantly, the Commission noted that,

The Commission notes that Canal Évasion has been operating at a loss since it began operating three years ago. The applicant indicated that the events of September 11 2001 and ongoing terrorist activities the world over are having such an impact on the travel industry in general that it does not expect to become profitable for several years.

102. Thus, the service had low penetration, a series of operating losses that were projected to continue into the future, a potential market that was much smaller than for Anglophone services, and a small independent purchaser. The purchase price of \$1,236,000 would have resulted in tangible benefits, had they been required, of \$123,600. The Commission exempted Serdy Direct from the payment of those benefits, noting that,

In view of Canal Évasion's financial problems, the unique nature of the service it provides, and the public interest that would be served by the proposed intangible benefits, the Commission considers that an

---

<sup>7</sup> Broadcasting Decision CRTC 2003-22, 23 January 2003.

exception to the Television Policy with respect to tangible benefits is justified in this case.

103. Shaw also highlighted the Commission's policy of exempting unprofitable radio stations. That policy does not apply to the assets under consideration in this case either. Even if it did, Shaw's argument in this area would fail. The Commission's policy in this regard was established in 1993.<sup>8</sup> In it, the Commission noted,

**Accordingly, the Commission will forgo benefits requirements for unprofitable radio undertakings. The Commission will measure profitability according to the average profit before interest and taxes (PBIT) of the undertaking over the three years preceding the filing date of the application. The Commission will not systematically apply this exemption to stations in the first five years of operation. In cases where an applicant is applying to acquire a group of stations, all or some of which fall below this threshold, the Commission will consider profitability on an aggregate basis.** [emphasis in original]

104. Accordingly, it can be seen that Canwest's stations would first be assessed as a group and second would be assessed as to their profitability over the last three years. They would fail that test and the benefits test would apply.
105. In summary, a detailed review of the foregoing situations highlighted by Shaw leads to the conclusion opposite to that which Shaw is inviting the Commission to make. Rather, the review makes clear that Shaw has highlighted a series of disparate hardship cases, not one of which can be considered in any way parallel to the current situation, and has added to the mix two Commission policies (one for radio and one for television, which will be discussed in the next section), neither of which has any applicability to the present circumstances. Shaw has then suggested that, on the basis of these precedents and policies, the Commission should apply its benefits policy in a "flexible" manner that would allow Shaw to avoid paying an appropriate amount of benefits in the current case. That suggestion should be firmly rejected by the Commission. The precedents are not comparable and the policies are not applicable.

### C) Canwest is not in Financial Distress

106. The premise behind Shaw's request for relief from paying tangible benefits is that Canwest is in financial distress and the mere continuation of Canwest's services and the other intangible benefits should be sufficient to permit the Commission to approve this transaction without the requirement for tangible benefits. However, Canwest is not in financial distress.
107. Shaw noted in its Supplementary Brief that in 2007, the Commission amended its benefits policy to exclude its application to certain unprofitable television stations, saying the following,

---

<sup>8</sup> Public Notice CRTC 1993-68, 26 May 1993.

The Commission remains of the view that, in the absence of a competitive process for ownership transactions, the contribution of benefits in the amount of 10% of the value of an ownership transaction is still an appropriate mechanism for ensuring that the public interest is served. However, the Commission is conscious of the economic challenges faced by independent small market broadcasters. Accordingly, the Commission hereby revises its policy to exempt those television stations earning less than \$10 million in annual revenues and who are, or could be, eligible to receive support from the Small Market Programming Fund from the application of the benefits test.

108. In its Supplementary Brief, Shaw stated that six Canwest conventional stations are also in “substantially similar circumstances to the unprofitable small market stations that have been exempted from the benefits policy” and cited Canwest’s stations in Halifax, Winnipeg, Saskatoon, Regina, Lethbridge and Kelowna. With respect, while Shaw may consider those stations to be in substantially similar circumstances to the exempt stations, the Commission was very clear in making the test for exemption a two-pronged one. First, the station had to be earning less than \$10 million in revenues and second, it had to be eligible to receive support from the Small Market Programming Fund. In order to receive such support a station had to be independently-owned and located in a market with fewer than 300,000. Not one of the stations cited by Shaw would qualify and CKND-TV would be excluded on both counts from the Small Market Programming Fund.
109. The fact that not one of the stations cited by Shaw would qualify under the Commission’s policy enunciated in the Commission’s most recent TV policy<sup>9</sup> undoubtedly accounts for Shaw’s use of the phrase “substantially similar circumstances” to those that have been exempted. This is incorrect. The small market stations are independently-owned. This is a critical distinction and one that cannot be ignored. If the Canwest stations were to qualify just because they are in small markets, then why not Rogers’ or CTV’s small stations? What happens to the independently-owned small market television stations if Canada’s largest media corporations are allowed to tap into the Small Market Programming Fund? One cannot simply amend a policy on the fly like this without considering the ramifications. The Commission was careful to use the cross-referencing technique in its TV policy as it knew that the stations it was exempting would NOT be owned by Canada’s largest media corporations.
110. It is worth recalling the words of Shaw’s Senior VP and CFO, Mr. Wilson, who noted the following on May 3, 2010 during the conference call with financial analysts cited above:

We believe when we look at the outlook for the business that had we waited for at least a year or perhaps more under the previous agreements we had that we would have paid more for this asset as we believe that we are still in the bottom of the economic cycle here. We

---

<sup>9</sup> Ibid.

may have just rounded the corner but there is tremendous leverage and upside...

Going forward we believe there is significant leverage in the Company's bottom line as the majority of revenue growth should flow through the EBITDA performance improving in the future.

111. Mr. Wilson also noted what a small percentage of Canwest's assets are represented by the conventional television stations and the specialty services owned by Canwest prior to the Alliance Atlantis acquisition. He said,

In terms the valuation, we are paying in aggregate approximately CAD2 billion for 100% of Canwest's broadcasting assets. In terms of the split, we are evaluating the Canadian television subsidiary which includes the conventional business and TVtropolis along with several other smaller specialty stations and approximately CAD250 million to CAD300 million. So **I think it's important for people to understand that that portion of the business represents less than 15% of the purchase price here. The majority of the value is for the highly profitable and sought after portfolio of specialty channels and CW Media Group subsidiary which generate margins in excess of 40%...** [emphasis ours]

112. Shaw's own press release on February 12, 2010 made the following comments:

**Significant Restructuring Completed** and the sale/closure of E! stations and the operating efficiencies achieved leave the Company well positioned to benefit from an improving economy and advertising market

**2nd Largest Private Conventional Television Network in Canada** with Global reaching 98% of Canadian households

**Attractive Programming Line-up** including 24, House, Heroes, Glee, Survivor, NCIS, Family Guy, The Office, The Simpsons among others and premiere sporting events

**Strong Presence in Western Canada** with the #1 News broadcast in Western Canada

**Leading Portfolio of Profitable Specialty Television Assets** which dominate rankings and include History, HGTV, Action, National Geographic, Mystery, Showcase Diva and MovieTime

**Strong Synergies Captured** between Specialty Television Assets and Conventional Network

113. Given the foregoing, it would be an unacceptable development indeed if Shaw were able to secure an exception or “flexibility” regarding tangible benefits in these circumstances. Moreover, a good portion of the “less than 15%” that was not the “highly profitable and sought after portfolio of specialty channels” would be represented by profitable television stations and TVtropolis among other things. This is not a group of assets that is deserving of an exception or flexibility.
114. Indeed, Canwest’s profitability was identified by the Commission in its deficiency letter of 14 May 2010. It noted that,
- The Commission’s data indicates that overall Canwest stations have a positive pre-tax margin and even when disaggregated into CTLP Conventional, CTLP Specialty and CW Media, each of these groups of services show a positive pre-tax profit. In light of this, please explain why the tangible benefits policy should not apply to this case.
115. Shaw’s answer to the Commission in its deficiency response bears little resemblance to the reports of the future presented by the Shaw management team in its May 3, 2010 call with analysts described above. In the letter to the Commission, Shaw indicates that,
- “Canwest will also continue to face financial difficulties following implementation of the Plan of Arrangement and the emergence of the restructured company, in view of the significant economic challenges governing the conventional television sector.”
116. If one were trying to select as between what Shaw told the analysts on May 3, 2010 and the response to the CRTC, one should closely review Canwest’s “Management Discussion and Analysis” for the 9 months ended May 31, 2010 and 2009. It was published on July 14, 2010 and key excerpts are attached as Schedule 3<sup>10</sup>. While the Commission asked Shaw about the past profitability of Canwest (in the context of Shaw’s request not to pay tangible benefits), the latest figures show an even more promising picture. Just as Shaw’s senior management predicted, Canwest is doing fine. For the nine months ended May 31, 2010, (ignoring the sale/shut-down of the E! Network) conventional airtime revenue was up 3% “as a result of strong demand”. Subscriber revenues for Canwest’s specialty services increased 7% for the 9 months ended May 31, 2010 compared to a year earlier. Profit jumped even more, by 107% to \$99 million compared to \$48 million for the same period in 2009. The increase resulted primarily from the elimination of losses from the E! Network.
117. The results from CW Media’s television operations, which hold the former Alliance Atlantis properties, were also quite positive. Revenues were up 12% to \$331 million, including advertising revenue growth of 16% due to strong demand as a result of larger audiences. Subscriber revenue grew by 5% due to growth in subscriber base. Operating profit was \$39 million or 31% higher than in the same period in fiscal 2009.

---

<sup>10</sup> The entire report is available on SEDAR at [www.sedar.ca](http://www.sedar.ca).

118. In other words, whether one measures financial capacity by looking at the target or the acquirer, in this case it does not matter. Both are financially healthy with excellent prospects. This is not a “financial distress” case. Canwest’s broadcast business has been and continues to be viable and profitable.
119. In fact, it is interesting to compare the results as disclosed by management for the nine months ended May 31, 2010 with the much bleaker financial projections offered to the Commission a week later in Shaw’s letter of July 21, 2010. The chart below tells the story.

	<b>CTLP including both specialty and conventional stations</b>	<b>CW Media (the former Alliance Atlantis specialty services)</b>	<b>Total</b>
<b>Canwest Management results for the 9 months ending May 31, 2010 and published 14 July 2010</b>	Revenues: \$467 million  Operating Profit: \$99 million	Revenues: \$331 million  Operating Profit: \$169 million	Revenues: \$798 million  Operating Profit: \$268 million
<b>Annual results projected by Shaw in its letter to CRTC dated 21 July 2010</b>	Revenues: \$548 million  Operating Profit: \$48 million	Revenues: \$341 million  Operating Profit: \$140 million	Revenues: \$889 million  Operating Profit: \$188 million

120. The projections provided to the Commission by Shaw were annual results for the broadcast year ended August 31, 2010. If the nine month actual numbers disclosed by Canwest management are scaled up to a full 12 months, the results are as shown in the chart below and compared to the projections provided to the Commission.
121. As shown in the charts above and below, Shaw projects annual operating profits for the combined enterprise of only \$188 million for the 2010 broadcast year. But Canwest management’s numbers show that this figure has already been exceeded in the first nine months of the broadcast year, when there were operating profits of \$268 million. By the end of the year operating profits could easily be in the \$350 million range.
122. The operating profit of the combined entity is almost double what Shaw indicated to the Commission. Clearly, an entity with more than a billion dollars in revenue, \$350 million in profit, and an operating margin of 33.55% ought not to qualify for any “exceptions” or “exemptions” from the payment of tangible benefits.

	<b>CTLP including both specialty and conventional stations</b>	<b>CW Media (the former Alliance Atlantis specialty services)</b>	<b>Total</b>
<b>Annualized results based on 4/3rds of Canwest Management results for the 9 months ending May 31, 2010 and published 14 July 2010</b>	Revenues: \$623 million  Operating Profit: \$132 million	Revenues: \$441 million  Operating Profit: \$225 million	Revenues: \$1,064 million Operating Profit: \$357 million
<b>Annual results projected by Shaw in its letter to CRTC dated 21 July 2010</b>	Revenues: \$548 million  Operating Profit: \$48 million	Revenues: \$341 million  Operating Profit: \$140 million	Revenues: \$889 million  Operating Profit: \$188 million

**D) Shaw is not in Financial Distress**

123. In describing why it had made its TV policy exemption decision in 2007, the Commission stated that it was “in order to address the issue of adapting the benefits policy to take into account the financial capabilities of **applicants.**” If one were to consider the financial situation of Shaw as the acquiring company, it would stand in stark contrast to the purchasers in each of the situations that was being advanced as a precedent by Shaw.
124. Indeed, it would be ironic if Shaw were able to use its enormous financial muscle to argue that its ability to save the stations in question from going dark was an intangible benefit while at the same time attempting to shelter under a TV policy designed to take into account the financial capabilities of much smaller applicants by exempting them from the payment of tangible benefits on transfers.
125. In conclusion, far from qualifying for an exception to the benefits policy resulting in the payment of reduced or even no tangible benefits, the Application falls squarely within the four corners of the Commission’s policy, which requires the contribution of such benefits in the amount of 10% of the value of the transaction as determined by the Commission.

**SCHEDULE 1**  
**Goldman Sachs Correspondence Dated February 11 and 13, 2010**

Barristers & Solicitors  
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6  
Canada  
Telephone: 416 362-1812  
Facsimile: 416 868-0673  
mccarthy.ca

Kevin McElcheran  
Direct Line: 416 601-7730

February 13, 2010

Stikeman Elliott LLP  
199 Bay Street  
5300 Commerce Court West  
Toronto ON M5L 1B9

Attention: David R. Byers

Dear Sirs:

**Re: Motion to approve Subscription Agreement**

Dear David,

We and our client GSCP are gravely concerned about the news report yesterday that CanWest has entered into a deal with Shaw and intends imminently to apply to the Court for approval of this deal. This is nothing short of a surprise attack that is in flagrant violation of the terms governing the discussions between GSCP and the noteholder committee that you have initiated and been an important part of, and in GSCP has participated in good faith. The noteholder committee should comply with their agreement – and the court proceeding should be deferred until they do – and the flawed process that has led to this very unfortunate breach must be remedied.

As you know, GSCP and the ad hoc committee of noteholders agreed that while discussions were being undertaken, “neither the Ad Hoc Committee nor Goldman Sachs shall initiate, or encourage any other person (including CanWest) to initiate, or accept, approve, or provide any consent to the initiation of, any proceeding (including the filing of any motion or affidavit or the taking of any step in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party) in any court with respect to the insolvency proceeding of CanWest.” The agreement provides that this standstill will expire seven days after written notice by either party that it has decided to terminate discussions.

While we and our client have been kept in the dark by CanWest and the noteholder committee about the events that led to yesterday’s announcement, it is regrettably obvious that the noteholder committee has utterly ignored these basic understandings – indeed, the noteholder committee’s support agreement with CanWest prohibits CanWest from filing any

February 13, 2010

- 2 -

David R. Byers

proceedings that have not been accepted by the noteholder committee. We have not received any notice from the noteholder committee that it is terminating discussions – to the contrary, we attended a meeting this past Monday at your request with the noteholder committee. As you know, we also agreed at your request to another in-person meeting among the principals, which we proposed for this coming week.

The integrity of the process requires that no application for approval of the Shaw arrangement should be heard by the court until the noteholder committee provides written notice that it is terminating discussions and the seven-day period has run – to be perfectly clear, the proceedings should not even have been filed. However, GSCP is prepared during this period to speak directly with Shaw and the company about their proposal, first to understand it and then to see whether a consensual agreement can be reached.

Sadly, it is difficult to see this filing as anything other than perpetuation of the noteholder committee's and the company's continued efforts from the start to exclude GSCP from the process and force a fait accompli on GSCP. As these secret dealings underscore, the CanWest restructuring process is very poorly served by ceding control of the process to the noteholder committee. We think now is the time to correct this problem. Specifically (1) GSCP should not be restricted in any way from discussing the restructuring with Shaw or any other potential investor in CanWest, (2) CanWest should provide GSCP with full and complete information on any alternatives to Shaw that were considered and rejected by CanWest, and (3) on a go-forward basis CanWest should consult with and keep GSCP informed of all of its efforts to restructure the company. We have made these points to Canwest's board in the attached letter.

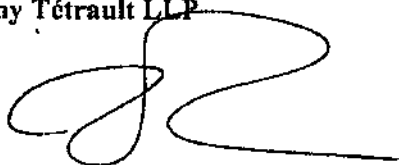
We want to emphasize that GSCP has not taken a position on the Shaw proposal, most obviously for the reason that neither Shaw nor CanWest have told us anything about it. GSCP is open to meeting with Shaw at any time and as soon as can be arranged.

This matter is of the utmost importance and we would like to understand as soon as possible your position on these critical issues.

Yours very truly,

McCarthy Tétrault LLP

Per:

A handwritten signature in black ink, appearing to be 'G. Cardinale', written over a horizontal line.

c: G. Cardinale

---

Goldman, Sachs & Co. | 85 Broad Street | New York, New York 10004  
Tel: 212-902-6182 | Fax: 212-357-5505 | e-mail: gerry.cardinale@gs.com

Gerry Cardinale  
Managing Director  
Principal Investment Area

**Goldman  
Sachs**

---

February 11, 2010

VIA EMAIL

Members of the Special Committee of  
the CanWest Board of Directors

Re: CanWest Media restructuring

As you know, Goldman Sachs Capital Partners (GSCP), through its ownership interest in CW Investments, Inc. (CWI) and its Specialty TV business, is a key constituency for any restructuring of CanWest. This is reflected, among other things, in the express condition included in the noteholder's restructuring term sheet that GSCP agree to amendments of the CWI Shareholders Agreement.

Nonetheless, GSCP has been systematically excluded from participation in the marketing process that has been undertaken by the company due to the restrictive provisions of the company's agreement with the noteholders.

Continued exclusion of GSCP is an unnecessary capitulation to the narrow interests of the noteholders that is not in the best interests of the company and its constituents as a whole and does nothing but make needless litigation more likely. We do not know, for example, what the assumptions are regarding the proposed amendments to the CWI Shareholders Agreement that are being used to market the restructuring proposal. We are concerned that conducting negotiations with potential investors with only the noteholders' interests represented and considered will lead to nothing but a false conclusion that Canwest has no choice but to

February 11, 2010

Page 2

pursue risky legal theories to repudiate GSCP's rights for the benefit of shifting value to the noteholders.

We would like Canwest to address our concern by promptly including GSCP in discussions with potential investors, and by providing to us the details of the basis on which the potential investments have been solicited. We believe there are viable restructuring plans that do not rely on unnecessary litigation. Before the board reaches any conclusions with respect to its current process, it is essential that we have the opportunity to present our alternatives, as well as have input into the potential investments already solicited.

Further, we are requesting that GSCP be given adequate notice of, and an opportunity to discuss with the board, any consideration of repudiating the CWI Shareholders Agreement prior to any decision being made.

Including GSCP directly in the discussions, and opening the process to allow Canwest and its board to consider the interests of GSCP as well as the noteholders, is the only way to ensure that the interests of all stakeholders are properly considered and the full range of restructuring alternatives are evaluated, consistent with the responsibility of any board presiding over a CCAA process.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Cardinale". The signature is fluid and cursive, with the first name "G." and the last name "Cardinale" clearly distinguishable.

Gerald J. Cardinale

APPENDIX "C"

**SCHEDULE 2**  
**Press Release of Shaw Communications Inc. Dated May 3, 2010**



**NEWS RELEASE**

**SHAW ANNOUNCES ACQUISITION OF A RESTRUCTURED CANWEST FOR  
\$2.0 BILLION**

**Calgary, Alberta (May 3, 2010)** – Shaw Communications Inc. (“Shaw”) announced today that it has entered into agreements to acquire for approximately \$2.0 billion, 100% of the over-the-air and specialty television businesses of Canwest Global Communications Corp. (“Canwest”), including all of the equity interests in CW Investments Co., the Canwest subsidiary that owns the specialty television channels acquired from Alliance Atlantis Communications Inc. in 2007 (the “CW Media Group”) (the “Transaction”). The total consideration includes approximately \$815 million of net debt at CW Media Group. The remainder of the purchase price will be funded with cash on hand, which is currently in excess of \$700 million, and through Shaw’s existing credit facility.

Previously Shaw had announced an agreement with Canwest and certain holders of Canwest’s 8.0% senior subordinated notes (the “Noteholders”), represented by the Ad Hoc Committee, regarding a minimum 20% equity investment in a restructured Canwest. This agreement was approved by the Canwest Board and the Ontario Superior Court of Justice, but was subject to certain conditions, including the resolution of matters under the shareholders agreement with certain entities affiliated with Goldman Sachs Capital Partners (the “GS Entities”) regarding Canwest’s interest in CW Media Group. To resolve these issues, Shaw has entered into agreements pursuant to which Shaw will acquire the GS Entities’ equity interest in CW Media Group for \$700 million.

“We are pleased to announce that we have come to an agreement with all constituent parties involved in a restructured Canwest, including Goldman Sachs, and are excited about the opportunity to acquire the entire company now. Over the last number of months we have conducted extensive negotiations with all parties and have met with management of Canwest several times. The recent restructuring initiatives undertaken by Canwest have positioned it as a pure play Canadian broadcaster and we are excited about this transformative transaction for Shaw as we believe the combination of content with our cable and satellite distribution network, and soon to be wireless service, will position us to be one of the leading entertainment and communications companies in Canada,” said Jim Shaw, Chief Executive Officer and Vice Chair, Shaw Communications Inc.

“Canwest’s broadcasting business is performing well and the purchase price represents a multiple of approximately 9.5x based on consolidated EBITDA”, said Steve Wilson, Senior Vice President and Chief Financial Officer. “We have had positive discussions with the rating agencies and each will be issuing a separate release regarding the Transaction”, said Mr. Wilson.

Under amended agreements entered into with Canwest and certain Noteholders, Canwest creditors will receive a total of \$478 million in cash in compromise of their debt and other claims against certain Canwest entities pursuant to a plan to be effected under the Companies' Creditors Arrangement Act (the "CCAA"). The CCAA plan remains subject to certain conditions, including Canwest creditor and Court approvals. The Transaction is also subject to regulatory approvals from the Canadian Radio-television and Telecommunications Commission ("CRTC") and the Competition Bureau.

Shaw will be holding a conference call to discuss the Transaction. Discussion materials will be posted on Shaw's website at [www.shaw.ca](http://www.shaw.ca) and further details regarding the call will be issued in a separate release.

TD Securities Inc. acted as the financial advisor in connection with the Transaction and Davies Ward Phillips & Vineberg LLP provided legal advice.

Shaw Communications Inc. is a diversified communications company whose core business is providing broadband cable television, High-Speed Internet, Digital Phone, telecommunications services (through Shaw Business Solutions) and satellite direct-to-home services (through Shaw Direct). Shaw serves 3.4 million customers, including over 1.7 million Internet and 950,000 Digital Phone customers, through a reliable and extensive network, which comprises 625,000 kilometres of fibre. Shaw is traded on the Toronto and New York stock exchanges and is included in the S&P/TSX 60 Index (Symbol: TSX – SJR.B, NYSE – SJR).

Certain statements included in this news release concerning Canwest, the acquisition of Canwest and the benefits thereof for Shaw are forward-looking statements. Such forward-looking statements involve risks, uncertainties and other factors which may cause actual results, performance or achievements of Canwest or Shaw to be materially different from performance or achievements expressed or implied by such forward-looking statements. In making such statements we have assumed that required approvals of Canwest's creditors, the applicable courts, the CRTC and the Competition Bureau are received, and that other customary conditions to closing are met. The statements concerning the future performance of Canwest are based on its ability to maintain its recent cost reductions, its ability to execute on its business plans and broader economic conditions, including the demand for television advertising. Statements concerning the benefits to Shaw from acquiring Canwest are based on assumptions concerning Canwest's future performance and our ability to capitalize on opportunities that we have identified.

Certain measures included in this news release concerning Canwest, the acquisition of Canwest and the benefits thereof for Shaw are non-GAAP financial measures. EBITDA is not an earnings measure recognized by GAAP and does not have a standardized meanings prescribed by GAAP. Therefore, EBITDA may not be comparable to similar measures presented by other issuers. Investors are cautioned that EBITDA should not be construed as an alternative to net income as determined in accordance with GAAP. EBITDA equals net income (loss) before income taxes, other gains (losses), interest expense (net) and depreciation and amortization. We present EBITDA because we believe it is frequently used by securities analysts, investors and other interested parties in the evaluation of companies.

-30-

For further information, please contact:

Shaw Investor Relations  
[investor.relations@sjr.ca](mailto:investor.relations@sjr.ca)

**SCHEDULE 3**

**Excerpts from Canwest Management Discussion and Analysis Dated July 14, 2010 for the 9  
Months Ending May 31, 2010**

**CANWEST GLOBAL COMMUNICATIONS CORP.  
INTERIM MANAGEMENT'S DISCUSSION AND ANALYSIS  
FOR THE THREE AND NINE MONTHS ENDED MAY 31, 2010 AND 2009**

**JULY 14, 2010**

**MANAGEMENT'S DISCUSSION AND ANALYSIS  
FOR THE THREE AND NINE MONTHS ENDED MAY 31, 2010 AND 2009**

This Management Discussion and Analysis ("MD&A") contains certain comments or forward-looking statements about our objectives, strategies, financial conditions, results of operations and businesses. Statements that are not historical facts are forward-looking and are subject to important risks, uncertainties and assumptions. These statements are based on our current expectations about our business and the markets we operate in, and on various estimates and assumptions. The results or events predicted in these forward-looking statements may differ materially from actual results or events if known or unknown risks, trends or uncertainties affect our business, or if our estimates or assumptions turn out to be inaccurate. As a result, there is no assurance that the circumstances described in any forward-looking statement will materialize. Significant and reasonably foreseeable factors that could cause our results to differ materially from our current expectations are discussed in the section entitled "Risk Factors" contained in our Annual Information Form for the year ended August 31, 2009 filed by Canwest Global Communications Corp. with the Canadian Securities Commissions (available on SEDAR at [www.sedar.com](http://www.sedar.com)). Subject to applicable securities laws, we disclaim any intention or obligation to update any forward-looking statement even if new information becomes available, as a result of future events or for any other reason.

**TABLE OF CONTENTS**

OVERVIEW .....	4
Change in basis of presentation .....	4
Creditor Protection and Recapitalization.....	4
KEY FACTORS AFFECTING SEGMENT REVENUE AND OPERATING INCOME .....	17
Television Broadcast.....	17
Publishing .....	18
Seasonality .....	18
CRITICAL ACCOUNTING ESTIMATES.....	18
Claims during the CCAA proceedings .....	18
Interest expense.....	19
Reorganization items.....	19
CHANGES IN ACCOUNTING POLICIES.....	19
Liquidation Basis of presentation.....	19
Goodwill and Intangible Assets .....	19
FORTHCOMING CHANGES IN ACCOUNTING POLICIES .....	20
Business Combinations.....	20
Multiple Deliverable Revenue Arrangements.....	20
International Financial Reporting Standards.....	20
CONTROLS AND PROCEDURES.....	21
OPERATING RESULTS .....	22
Introductory Note.....	22
For the Three Months Ended May 31, 2010 .....	23
Consolidated Results .....	23
Segment Results.....	25
For the Nine Months Ended May 31, 2010 .....	27
Consolidated Results .....	27
Segment Results.....	30
CONSOLIDATED QUARTERLY FINANCIAL RESULTS.....	32
LIQUIDITY AND CAPITAL RESOURCES.....	32
Sources of Funds.....	33

Uses of Funds.....	33
INDUSTRY RISKS AND UNCERTAINTIES.....	33
OFF BALANCE SHEET ARRANGEMENTS AND GUARANTEES.....	34
RELATED PARTY TRANSACTIONS.....	34
OCTOBER 6, 2009 NEWS RELEASE: PROJECTED CAPITAL EXPENDITURES AND OTHER FINANCIAL INFORMATION .....	34
RECONCILIATION OF NON-GAAP FINANCIAL MEASURES.....	36
OTHER.....	36

On July 6, 2010, the Court granted an order (the "Administrative Reserve Order") authorizing the establishment of an administrative reserve of \$9 million (the "Administrative Reserve") on the date of implementation of the Amended Ad Hoc Committee Plan. The Administrative Reserve of \$9 million was established out of the Canwest LP Entities' cash and cash equivalents to enable the LP Monitor to satisfy specified categories of administrative costs and claims outstanding on or after the acquisition date. Any cash from the administrative reserve remaining after all costs and claims have been paid out will be transferred to the Purchaser.

On July 13, 2010, the Amended Ad Hoc Committee Plan was implemented and the transaction contemplated by the APA was executed resulting in the transfer of substantially all of the assets and certain of the liabilities of the Canwest LP Entities, including the shares of National Post Inc., to Postmedia Network Inc. in exchange for cash consideration and shares of Postmedia Network Holdings Inc.. The cash was used to settle the debt not subject to compromise and the shares will be used to settle the liabilities subject to compromise.

Further information pertaining to the Canwest LP CCAA Proceedings may be obtained through our website at [www.canwest.com](http://www.canwest.com). Certain information regarding the Canwest LP CCAA Proceedings, including the reports of the Canwest LP Monitor, is available at the Canwest LP Monitor's website at <http://cfcanada.fticonsulting.com/clp>.

#### ***Listing and trading of our common stock***

On November 13, 2009, the Toronto Stock Exchange ("TSX") delisted our subordinate voting and non voting shares. On November 16, 2009, our shares were listed for trading on the TSX Venture Exchange.

#### ***Other significant subsidiaries***

Our subsidiary, CW Media Holdings Inc., has significant debt obligations. These obligations are subject to financial covenants that are based on operating results, financing expenses and outstanding debt obligations. CW Media Holdings Inc. was in compliance with its financial covenants as of May 31, 2010. The ability of this subsidiary to maintain compliance with its financial covenants in the future is dependent upon various factors, including the advertising markets on which it relies.

### **KEY FACTORS AFFECTING SEGMENT REVENUE AND OPERATING INCOME**

#### **Television Broadcast**

We have two television segments. Our Canadian television segment includes our television networks in Canada as well as TVtropolis and five other Canadian specialty television channels. The CW Media television segment includes the operations of Canadian specialty television channels held by CW Media. As at August 31, 2009, our stations which comprised the E! Networks were sold or shut down. For the nine months ended May 31, 2009, revenues and operating expenses and operating loss of that network were \$66 million, \$90 million and \$24 million, respectively.

We generate the majority of our television revenue from the sale of advertising, with the remainder generated from subscriber revenue earned by our specialty channels. Subscriber revenue is recorded monthly based on subscriber levels. Demand for television advertising is driven primarily by advertisers in the packaged goods, automotive, retail and entertainment industries and is strongly influenced by general economic conditions. The attractiveness of our programs to advertisers and the rates we charge are primarily a function of the size and demographics of our

viewing audience. The dependence of our advertising revenue on the ratings performance of our television programs makes our television revenue less predictable than our publishing revenue.

For the remainder of fiscal 2010, given current economic conditions we expect stable to modest year over year growth in advertising revenue for our Canadian television and CW Media television operations. In general, we expect to sustain or improve the performance of our television channels as it relates to our audience and that the performance of our specialty television channels will continue to outpace that of our conventional television channels. We expect that subscriber revenue which makes up approximately 5% of our Canadian television revenue and 38% of our CW Media television revenue, will show modest growth.

### **Publishing**

Our publishing segment includes the publication of a number of newspapers and magazines, including metropolitan daily newspapers as well as the operation of *canada.com* and other internet operations. During the year, we transferred the *National Post* to a subsidiary of Canwest LP. Accordingly, at May 31, 2010, all of our publishing operations are held by Canwest LP. Our publishing revenue is primarily earned from newspaper advertising, circulation revenue from our newspapers and digital advertising revenue from our internet operations. Our newspaper and interactive advertising revenues are a function of the volume or lineage of advertising sold and the rates we charge. Circulation revenue is produced from home-delivery subscriptions for our newspapers and single-copy sales at retail outlets and vending machines. Circulation revenue is a function of the number of newspapers we sell and the average per copy prices we charge.

For the remainder of fiscal 2010, we expect to continue to experience some recovery in revenues as a result of continued modest improvements in economic conditions. We expect our expenses to decrease moderately compared to fiscal 2009.

### **Seasonality**

Our advertising revenue is seasonal. Revenue is typically highest in the first and third quarters, while expenses are relatively constant throughout the year.

## **CRITICAL ACCOUNTING ESTIMATES**

Except as noted below and in the changes in accounting policies section of this MD&A, there are no significant changes in our critical accounting policies or estimates since August 31, 2009 as described in the Management's Discussion and Analysis in our 2009 Annual Report.

### **Claims during the CCAA proceedings**

All claims that become known during the CCAA proceedings are recognized in accordance with our accounting policies based on the best estimate of the expected amounts of the allowed claims. If a reasonable estimate of the amount of the claim cannot be made, the amounts claimed by the creditors or potential creditors are disclosed.

We account for our financial liabilities using the amortized cost method. In light of the CCAA filing, pre-filing liabilities that may be impacted by the reorganization process are classified on the consolidated balance sheets as Liabilities subject to compromise. For all financial liabilities that are subject to compromise, we adjust the carrying amount to the amount allowed under the claim. Any adjustments arising from differences between the carrying amount of the financial liabilities and the allowed claims are presented as operating expenses if the amount relates to a change in estimate for the cost of goods and services received by the companies under the CCAA; otherwise the changes have been presented as Reorganization items.

### For the Three Months Ended May 31, 2010

Following is a table summarizing segment results for the three months ended May 31, 2010 and 2009. See note 23, Segment Information, to our interim unaudited financial statements:

	Revenue <sup>(1)(2)</sup>		Segment Operating Profit	
	2010 \$000	2009 <sup>(3)</sup> \$000	2010 \$000	2009 <sup>(3)</sup> \$000
<b>Operating Segments</b>				
Publishing	270,345	268,643	51,441	45,789
Television				
Canada <sup>(4)</sup>	169,644	173,508	46,874	19,691
CW Media	117,650	101,144	54,410	53,043
Total television	287,294	274,652	101,284	72,734
Intersegment revenue	(484)	(224)	-	-
Corporate and other	-	-	(2,026)	(5,857)
	557,155	543,071	150,699	112,666
Restructuring (expenses) reversals	-	-	(1,149)	(2,010)
Broadcast rights write-downs	-	-	-	(5,026)
Retirement plan curtailment expense	-	-	-	(31,300)
Total revenue	557,155	543,071		
Operating income before amortization			149,550	74,330

- (1) Represents revenue from third parties. In addition, the following segments recorded intersegment revenue: Publishing - \$0.2 million (2009 - \$0.1 million), Canadian television - \$0.1 million (2009 - nil), and CW Media television - \$0.1 million (2009 - \$0.1 million).
- (2) Revenue consists of advertising revenue of \$438 million (2009 - \$426 million) and subscriber revenue of \$119 million (2009 - \$117 million).
- (3) Revised to reflect the classification of our Australian television and Out-of-home segments as discontinued operations.
- (4) Revenue for fiscal 2009 has been restated to reverse accruals related to retransmission fees as the amounts were not determinable. The effect of this restatement was to increase segment revenue and segment operating profit by \$1.3 million resulting in a \$0.8 million decrease in net loss. The adjustment decreased the loss per share by less than \$0.01.

### Consolidated Results

**Revenue.** Consolidated revenue increased by \$14 million or 3% to \$557 million for the three months ended May 31, 2010 as compared to \$543 million for the same period in fiscal 2009. The increase reflects a 1% increase in Publishing and a 16% increase in CW Media partly offset by a 2% decrease in Canadian television. The decrease in Canadian television reflects the impact of the sale/shut-down of the E! network which contributed \$22 million in revenues in the quarter ended May 31, 2009.

**Operating expenses.** Consolidated operating expenses before amortization decreased by \$24 million or 6% to \$406 million for the three months ended May 31, 2010 as compared to \$430 million for the same period in fiscal 2009. Continued focus on operating expense control and reduction resulted in operating expense decreases in Canadian television of 20% and Publishing of 2% partly offset by a 31% increase in CW Media. For the quarter ended May 31, 2009 we recorded \$27 million in operating expenses related to the E! network which was sold/ shut-down effective August 31, 2009.

**Restructuring expenses.** In fiscal 2009, we announced initiatives to reduce staffing levels in our Canadian television, CW Media television and Publishing operations by 600 positions. During the three months ended May 31, 2010 we accrued \$1 million related to these initiatives as compared to \$2 million for the same period in fiscal 2009. See note 13 of our interim unaudited consolidated financial statements for additional information.

**Broadcast rights write-downs.** During the three months ended May 31, 2009, we evaluated the valuation of broadcast rights of our E! Network stations and wrote down broadcast rights by \$5 million.

**Retirement plan curtailment expense.** During the three months ended May 31, 2009, one of the retirement plans was curtailed and as a result we recorded a charge of \$31 million. The obligation under this pension was secured by a letter of credit that was called by the plan's trustee in June 2009.

**Operating income before amortization.** Consolidated operating income before amortization increased by \$75 million to \$150 million for the three months ended May 31, 2010 as compared to \$74 million for the same period in fiscal 2009. The increase in operating income before amortization reflects an increase in revenue in our CW Media television segment, reduced operating expenses in the Canadian television and Publishing segments and the elimination of losses from the E! Network which recorded an operating loss of \$5 million in the quarter ended May 31, 2009.

**Amortization.** Amortization of intangible assets decreased by less than \$1 million to \$1 million for the three months ended May 31, 2010 as compared to \$2 million for the same period in fiscal 2009. Amortization of property and equipment was \$14 million for the three months ended May 31, 2010 compared to \$19 million for the same period in fiscal 2009. The amounts decreased as we ceased recording amortization on the effective dates of the asset sales of the Canadian television, CW Media and Publishing segments.

**Interest expense.** Interest expense was \$35 million for the three months ended May 31, 2010 compared to \$79 million in the same period in fiscal 2009. Upon filing for CCAA protection, we stopped accruing interest on the 8% Notes and the Canwest LP Senior Subordinated Notes. The interest expense for the three months ended May 31, 2009 included charges of \$56 million related to the termination of derivative instruments that were previously accounted for as cash flow hedges, partly offset by a recovery of \$52 million related to a change in the expected cash flows of the 8% senior subordinated notes. The remaining decrease is due to decreases in outstanding debt and lower effective interest rates.

**Accretion of long-term liabilities.** For the three months ended May 31, 2010, we have recorded an accretion expense of \$33 million compared to \$28 million in the same period in fiscal 2009 related to the discounting of certain long-term liabilities which are accreted to their estimated value over the term of these liabilities. The charge is primarily related to the Goldman Sachs puttable interest in CW Media which is classified as a financial liability with an estimated accretion rate of 19%. We estimate the fair value of the puttable interest liability based on management's forecasts.

**Derivative instruments gains (losses).** For the three months ended May 31, 2010, we recorded a gain of \$2 million to adjust the book value of certain swap instruments to fair value related to the CW Media segment which was previously designated as a cash flow hedge. For the three months ended May 31, 2009, we recorded a loss of \$182 million to adjust the book value of certain swap instruments to fair value at the balance sheet date. This related to fair value hedge adjustments

and swaps that did not qualify for hedge accounting, primarily because the related debt had been settled or where hedge accounting had been discontinued.

**Foreign currency exchange gains.** We recorded net foreign exchange gains of \$11 million for the three months ended May 31, 2010 primarily related to U.S. dollar denominated debt that is not hedged. For the three months ended May 31, 2009, we recorded foreign exchange gains of \$368 million primarily related to U.S. dollar denominated debt that is not hedged.

**Impairment loss on intangible assets.** We recorded impairment losses on intangible assets of \$39 million for the three months ended May 31, 2010 due to an impairment of the Mastheads of the Publishing reporting unit.

**Impairment loss on goodwill.** For the three months ended May 31, 2009, we recorded impairment losses on goodwill of \$247 million due to an impairment of the Publishing reporting unit due to lower future profit expectations as a result of the outlook for the advertising market at the time.

**Reorganization items.** For the three months ended May 31, 2010, we recorded \$38 million of incremental costs directly related to our CCAA proceedings compared to \$13 million in the same period in fiscal 2009.

**Income taxes.** For the three months ended May 31, 2010, we recorded an income tax recovery of \$19 million. The effective tax rate was different than our statutory rate of 30% as a result of adjustments in the income tax expense including a \$29 million decrease related to changes in valuation allowance partly offset by a \$9 million increase related to non-deductible accretion expense. See note 14 to the interim unaudited consolidated financial statements for additional information.

**Minority interest.** For the three months ended May 31, 2010, we recorded minority interest charges of \$6 million related to certain specialty television stations not wholly owned by Canadian and CW Media television segments, consistent with the same period in fiscal 2009.

**Net earnings (loss) from continuing operations.** Our net earnings from continuing operations for the three months ended May 31, 2010 was \$16 million or \$0.09 per share, compared to a net loss of \$98 million or \$0.55 per share for the same period in fiscal 2009.

**Discontinued operations.** For the three months ended May 31, 2009 the net loss from discontinued operations was \$13 million reflecting earnings from our Australian television and Out-of-home segments which were sold in October 2009, our Turkish radio stations which were sold in May, 2009 and *The New Republic* which was sold in February 2009.

**Net earnings (loss).** Our net earnings for the three months ended May 31, 2010 was \$16 million or \$0.09 per share, compared to a net loss of \$111 million or \$0.62 per share for the same period in fiscal 2009.

## **Segment Results**

### **Publishing**

**Revenue.** Revenue increased by \$2 million or 1% to \$270 million for the three months ended May 31, 2010 as compared to \$269 million for the same period in fiscal 2009. Advertising revenue increased by 2% for the three months ended May 31, 2010 compared to the same period in fiscal 2009 as a result of an increase in online advertising revenue. Circulation revenue for the three months ended May 31, 2010 decreased by 2% as compared to the same period in fiscal 2009 as a

6% decrease in circulation volume was partly offset by higher average per copy prices. Circulation revenue as a percentage of total revenue for the Publishing segment remained consistent at 23% for the three months ended May 31, 2010 and 2009.

**Operating expenses.** Operating expenses decreased by \$4 million or 2% to \$219 million for the three months ended May 31, 2010 as compared to \$223 million for the same period in fiscal 2009. The decreases primarily result from cost containment activities that include reductions in printing and distribution costs. Expense reductions included a 19% decrease in newsprint expense, reflecting a 4% decrease in newsprint consumption and a 24% decrease in newsprint prices.

**Segment operating profit.** Segment operating profit for the three months ended May 31, 2010 increased by \$6 million or 12% to \$51 million as compared to \$46 million for the same period in fiscal 2009. The increase resulted primarily from decreased operating expenses as discussed above.

#### **Canadian television**

**Revenue.** Revenue from our Canadian television operating segment decreased by \$4 million or 2% to \$170 million for the three months ended May 31, 2010 as compared to \$174 million for the same period in fiscal 2009. This decrease reflects the sale/shut-down of the E! network which contributed \$22 million in revenues in the quarter ended May 31, 2009 partly offset by a 12% increase in conventional airtime advertising revenue as a result of strong demand. Subscriber revenue from our specialty channels increased 18% for the three months ended May 31, 2010 as compared to the same period in fiscal 2009 due to increased subscribers.

**Operating expenses.** For the three months ended May 31, 2010, operating expenses of our Canadian television operations of \$123 million were \$31 million or 20% lower than the same period in fiscal 2009. For the quarter ended May 31, 2009 we recorded \$27 million in operating expenses related to the E! network which was sold/ shut-down effective August 31, 2009.

**Segment operating profit.** Segment operating profit for the three months May 31, 2010 increased by \$27 million or 138%, to \$47 million as compared to \$20 million for the same period in fiscal 2009. The increase resulted from increase in conventional airtime advertising revenue and the elimination of losses from the E! Network which recorded an operating loss of \$5 million, before restructuring expenses and broadcast rights write-downs, in the quarter ended May 31, 2009.

#### **CW Media television**

**Revenue.** Revenue from our CW Media television operating segment increased by \$17 million or 16% to \$118 million for the three months ended May 31, 2010 as compared to \$101 million for the same period in fiscal 2009. This reflected an increase in advertising revenue of 24% due to strong demand as a result of larger audiences and an increase in subscriber revenue of 5% due to growth in subscriber base.

**Operating expenses.** For the three months ended May 31, 2010, operating expenses of our CW Media operations of \$63 million were 31% higher compared to the same period in fiscal 2009, primarily as a result of increased program amortization and advertising and promotion.

**Segment operating profit.** The CW Media television segment operating income of \$54 million for the three months ended May 31, 2010 was \$1 million or 3% higher than the same period in fiscal 2009 primarily reflecting the increase in revenue described above.

**Corporate and other.** Corporate expenses decreased by \$4 million or 65% to \$2 million for the three months ended May 31, 2010 as compared to \$6 million for the same period in fiscal 2009.

The reduction is primarily a result of lower payroll and benefit costs and a reduction in discretionary spending.

### For the Nine Months Ended May 31, 2010

Following is a table summarizing segment results for the nine months ended May 31, 2010 and 2009. See note 23, Segment Information, to our interim unaudited consolidated financial statements:

	Revenue <sup>(1)(2)</sup>		Segment Operating Profit	
	2010 \$000	2009 <sup>(3)</sup> \$000	2010 \$000	2009 <sup>(3)</sup> \$000
<b>Operating Segments</b>				
Publishing	811,180	861,347	162,595	152,073
Television				
Canada <sup>(4)</sup>	466,586	516,202	98,627	47,637
CW Media	330,676	294,702	168,591	129,156
Total television	797,262	810,904	267,218	176,793
Intersegment revenue	(1,942)	(1,402)	-	-
Corporate and other	-	-	(9,351)	(20,720)
	1,606,500	1,670,849	420,462	308,146
Restructuring expenses	-	-	(2,871)	(34,705)
Broadcast rights write-downs	-	-	(1,737)	(34,646)
Retirement plan curtailment expense	-	-	-	(31,300)
Settlement of regulatory fees	-	-	29,416	-
Total revenue	1,606,500	1,670,849		
Operating income before amortization			445,270	207,495

- (1) Represents revenue from third parties. In addition, the following segments recorded intersegment revenue: Publishing - \$1.1 million (2009 - \$0.9 million), Canadian television - \$0.4 million (2009 - nil), and CW Media television - \$0.4 million (2009 - \$0.5 million).
- (2) Revenue consists of advertising revenue of \$1,254 million (2009 - \$1,321 million) and subscriber revenue of \$353 million (2009 - \$350 million).
- (3) Revised to reflect the classification of our Australian television and Out-of-home segments as discontinued operations.
- (4) Revenue for fiscal 2009 has been restated to reverse accruals related to retransmission fees as the amounts were not determinable. The effect of this restatement was to decrease segment revenue and segment operating profit by \$4.8 million resulting in a \$4.8 million increase in net loss. The adjustment increased the loss per share by \$0.03.

### Consolidated Results

**Revenue.** Consolidated revenue decreased by \$64 million or 4% to \$1,607 million for the nine months ended May 31, 2010 as compared to \$1,671 million for the same period in fiscal 2009. The decrease reflects a 6% decrease in Publishing and a 10% decrease in Canadian television partly offset by a 12% increase in CW Media. The decrease in Canadian television reflects the impact of the sale/shut-down of the E! network which contributed \$66 million in revenues in the nine months ended May 31, 2009.

**Operating expenses.** Consolidated operating expenses before amortization decreased by \$175 million or 13% to \$1,188 million for the nine months ended May 31, 2010 as compared to \$1,363 million for the same period in fiscal 2009. Included in operating expenses are operating expense decreases in Canadian television of 21%, Publishing of 9% and CW Media of 2%. For the nine

months ended May 31, 2009 we recorded \$90 million in operating expenses related to the E! network which was sold/ shut-down effective August 31, 2009.

**Restructuring expenses.** In fiscal 2009, we announced initiatives to reduce staffing levels in our Canadian television, CW Media television and Publishing operations by 600 positions. During the nine months ended May 31, 2010 we accrued \$3 million related to these initiatives as compared to \$35 million for the same period in fiscal 2009. See note 13 of our interim unaudited consolidated financial statements for additional information.

**Broadcast rights write-downs.** During the nine months ended May 31, 2009, we evaluated the valuation of broadcast rights of our E! Network stations and wrote down broadcast rights by \$35 million.

**Settlement of regulatory fees.** On October 7, 2009, the Government of Canada and the Canadian Association of Broadcasters reached a settlement regarding the legal dispute over the validity of the Part II Licence fees payable annually to the CRTC by television and radio broadcasters. As a result of this settlement, during the nine months ended May 31, 2010 we reversed into earnings unpaid Part II Licence fees of \$23 million and \$6 million related to the Canadian television and CW Media television segment, respectively, which were accrued as at August 31, 2009.

**Operating income before amortization.** Consolidated operating income before amortization increased by \$238 million or 115% to \$445 million for the nine months ended May 31, 2010 as compared to \$207 million for the same period in fiscal 2009. The increase in operating income before amortization reflects the increase in revenue in our CW Media television segment, reduced operating expenses in all segments and the elimination of losses from the E! Network which recorded an operating loss of \$25 million in the nine months ended May 31, 2009.

**Amortization.** Amortization of intangible assets increased to \$6 million for the nine months ended May 31, 2010 as compared to \$5 million for the same period in fiscal 2009 due to the amortization of a broadcast licence of CW Media television which was previously determined to have an indefinite life. Amortization of property and equipment was \$52 million for the nine months ended May 31, 2010 compared to \$59 million the same period in fiscal 2009. The amortization of property and equipment decreased as we ceased recording amortization on the effective dates of the asset sales of the Canadian television, CW Media and Publishing segments.

**Interest expense.** Interest expense was \$141 million for the nine months ended May 31, 2010 compared to \$216 million in the same period in fiscal 2009. Upon the filing for CCAA protection we stopped accruing interest on the 8% Notes and the Canwest LP Senior Subordinated Notes. The interest expense for the nine months ended May 31, 2009 included charges of \$56 million related to the termination of derivative instruments that were previously accounted for as cash flow hedges, partly offset by a recovery of \$52 million related to a change in the expected cash flows of the 8% senior subordinated notes. The remaining decrease is due to decreases in outstanding debt and lower effective interest rates.

**Accretion of long-term liabilities.** For the nine months ended May 31, 2010, we have recorded an accretion expense of \$99 million compared to \$66 million in the same period in fiscal 2009 related to the discounting of certain long-term liabilities which are accreted to their estimated value over the term of these liabilities. The charge is primarily related to the Goldman Sachs puttable interest in CW Media which is classified as a financial liability with an estimated accretion rate of 19%. We estimate the fair value of the puttable interest liability based on management's forecasts.

**Derivative instruments gains (losses).** For the nine months ended May 31, 2010 we have recorded a gain of \$7 million on our foreign currency interest rate swap related to the CW Media segment which was previously designated as a cash flow hedge. For the nine months ended May 31, 2009, we recorded a loss of \$141 million to adjust the book value of certain swap instruments to fair value at the balance sheet date. This related to fair value hedge adjustments and swaps that did not qualify for hedge accounting, primarily because the related debt had been settled or where hedge accounting had been discontinued.

**Foreign currency exchange gains.** We recorded net foreign exchange gains of \$89 million for the nine months ended May 31, 2010 compared to foreign exchange gains of \$285 million for the same period in fiscal 2009 primarily related to U.S. dollar denominated debt that is not hedged.

**Investment gains, losses and write-downs.** We recorded investment gains of \$1 million for the nine months ended May 31, 2010, compared to a loss of \$3 million for the same period in fiscal 2009 primarily due to losses recorded on certain investments.

**Impairment loss on property and equipment.** We recorded impairment losses on property and equipment of \$10 million for the nine months ended May 31, 2009 due to an impairment of property and equipment in our E! Network stations.

**Impairment loss on intangible assets.** We recorded impairment losses on intangible assets of \$42 million for the nine months ended May 31, 2010. The loss is due to a rebranding of certain specialty television channels of the CW Media segment and mastheads in the Publishing segment due to lower future profit expectations. For the nine months ended May 31, 2009, we recorded impairment losses on intangible assets of \$185 million due to an impairment of broadcast licences of Canadian television and mastheads in Publishing due to lower future profit expectations as result of the outlook for the advertising market for these operations at the time.

**Impairment loss on goodwill.** We recorded impairment losses on goodwill of \$1,142 million for the nine months ended May 31, 2009 due to an impairment of the Publishing reporting unit due to lower future profit expectations as a result of the outlook for the advertising market at the time.

**Reorganization items.** For the nine months ended May 31, 2010, we recorded \$158 million of incremental costs directly related to our CCAA proceedings compared to \$15 million in the same period in fiscal 2009.

**Income taxes.** For the nine months ended May 31, 2010, we recorded income tax recovery of \$16 million. The effective tax rate was different than our statutory rate of 30% as a result of adjustments in the income tax expense including: a \$45 million decrease in valuation allowance on future tax assets and a \$19 million decrease related to uncertain tax positions partly offset by a \$28 million increase related to non-deductible accretion expense. See note 14 to the interim unaudited consolidated financial statements for additional information.

**Minority interest.** For the nine months ended May 31, 2010, we recorded minority interest charges of \$17 million related to certain specialty television stations not wholly owned by Canadian and CW Media television segments compared to \$15 million for the same period in fiscal 2009.

**Net earnings (loss) from continuing operations.** Our net earnings from continuing operations for the nine months ended May 31, 2010 was \$45 million or \$0.25 per share, compared to a net loss of \$1,505 million or a loss of \$8.47 per share for the same period in fiscal 2009.

**Discontinued operations.** For the nine months ended May 31, 2010, the sale transaction for the Australian television and Out-of-home segments and deconsolidation of a non-operating subsidiary resulted in a gain on sale of \$578 million. For the nine months ended May 31, 2009 net loss from discontinued operations was \$78 million reflecting earnings from our Australian television and Out-of-home segments which were sold in October 2009, our Turkish radio stations which were sold in May, 2009 and *The New Republic* which was sold in February 2009.

**Net earnings (loss).** Our net earnings for the nine months ended May 31, 2010 was \$623 million or \$3.50 per share, compared to a net loss of \$1,583 million or a loss of \$8.91 per share, for the same period in fiscal 2009.

## **Segment Results**

### **Publishing**

**Revenue.** Revenue decreased by \$51 million or 6% to \$811 million for the nine months ended May 31, 2010 as compared to \$861 million for the same period in fiscal 2009. Advertising revenue decreased by 7% for the nine months ended May 31, 2010 compared to the same period in fiscal 2009 as a result of declines in all advertising categories except online. Circulation revenue for the nine months ended May 31, 2010 decreased by 2% as compared to the same period in fiscal 2009 as a 7% decrease in circulation volume was partly offset by higher average per copy prices. Circulation revenue as a percentage of total revenue for the Publishing segment was 23% for the nine months ended May 31, 2010 compared to 22% for the same period in fiscal 2009.

**Operating expenses.** Operating expenses decreased by \$61 million or 9% to \$649 million for the nine months ended May 31, 2010 as compared to \$709 million for the same period in fiscal 2009. The decreases primarily result from cost containment activities that include lower wage costs as a result of employee severance, reductions in payroll, printing costs, distribution costs and marketing and promotions expenses. Expense reductions included a 26% decrease in newsprint expense, reflecting a 13% decrease in newsprint consumption and a 23% decrease in newsprint prices.

**Segment operating profit.** Segment operating profit for the nine months ended May 31, 2010 increased by \$11 million or 7% to \$163 million as compared to \$152 million for the same period in fiscal 2009. The increase resulted primarily from decreased operating expenses as discussed above.

### **Canadian television**

**Revenue.** Revenue from our Canadian television operating segment decreased by \$50 million or 10% to \$467 million for the nine months ended May 31, 2010 as compared to \$516 million for the same period in fiscal 2009. This decrease reflects the sale/shut-down of the E! network which contributed \$66 million in revenues for the nine months ended May 31, 2009 partly offset by a 3% increase in conventional airtime advertising revenue as a result of strong demand. Subscriber revenue from our specialty channels increased 7% for the nine months ended May 31, 2010 as compared to the same period in fiscal 2009.

**Operating expenses.** For the nine months ended May 31, 2010, operating expenses of our Canadian television operations of \$368 million were \$101 million or 21% lower than the same period in fiscal 2009. For the nine months ended May 31, 2009 we recorded \$90 million in operating expenses related to the E! network which was sold/ shut-down effective August 31, 2009.

**Segment operating profit (loss).** Segment operating profit for the nine months ended May 31, 2010 increased by \$51 million or 107% to \$99 million as compared to \$48 million for the same period in fiscal 2009. The increase resulted primarily from the elimination of losses from the E!

Network which recorded an operating loss of \$24 million, before restructuring expenses and broadcast rights write-downs, in the nine months ended May 31, 2009 partially offset by decreased revenue as discussed above.

**CW Media television**

**Revenue.** Revenue from our CW Media television operating segment increased by \$36 million or 12% to \$331 million for the nine months ended May 31, 2010 as compared to \$295 million for the same period in fiscal 2009. This reflected an increase in advertising revenue of 16% due to strong demand as a result of larger audiences and subscriber revenue of 5% due to growth in subscriber base.

**Operating expenses.** For the nine months ended May 31, 2010, operating expenses of our CW Media operations of \$162 million were 2% lower compared to the same period in fiscal 2009, primarily as a result of decreased program amortization, payroll costs, and an overall decrease in discretionary spending.

**Segment operating profit.** The CW Media television segment operating income of \$169 million for the nine months ended May 31, 2010 was \$39 million or 31% higher than the same period in fiscal 2009 primarily reflecting the increase in revenue and expense decreases described above.

**Corporate and other.** Corporate expenses decreased by \$11 million or 55% to \$9 million for the nine months ended May 31, 2010 as compared to \$21 million for the same period in fiscal 2009. The reduction is primarily a result of lower payroll and benefit costs and a reduction in discretionary spending.

**SCHEDULE 4**  
**Media Stories Following Shaw's May 3, 2010 Announcement**

# Media giants meet privately in bid to kill \$2B buy TV assets

In this story:

OS US\$148.08



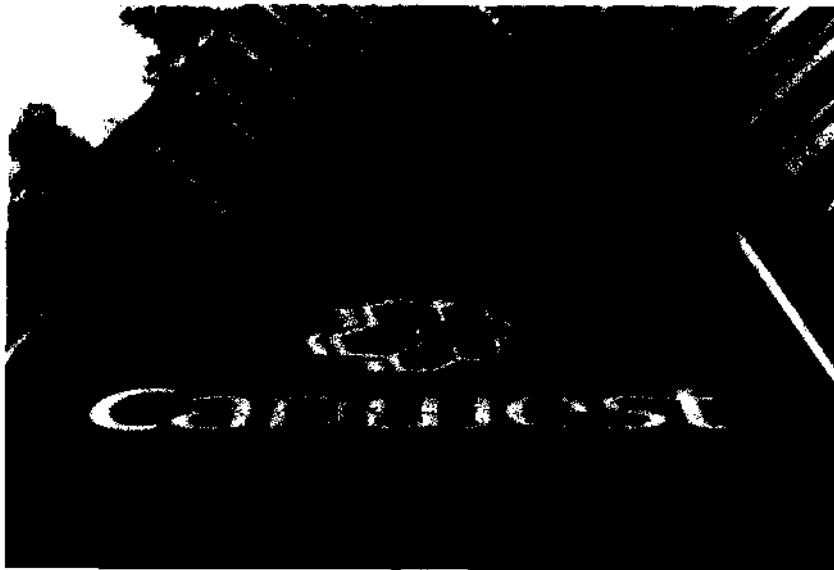
RCL \$36.57



SML \$20.73



Data delayed at least 15 min



Shaw Communications Inc. plans to acquire all the television assets of Canwest Global Communications Corp. in a \$2-billion blockbuster deal.

National Post

By Theresa Tedesco, Chief Business Correspondent, Financial Post · Friday, May 7, 2010

Two of Canada's largest media companies may be joining forces in a legal challenge to derail Shaw Communications Inc.'s \$2-billion acquisition of Canwest Global Communications Inc.

Sources confirmed that Rogers Communications Inc. and Quebecor Media Inc. are considering supporting a group of disgruntled shareholders, including the founding Asper family, who are preparing to ask a court to reject Shaw's takeover deal and force an open auction for all of Canwest's television assets.

It is a bold move that involves the country's media dynasties who have held private meetings to hash out a possible bid to halt Shaw's takeover. Just hours before the Shaw deal was finalized, representatives from Rogers, the country's largest telecommunications company, were meeting with Leonard Asper, former Canwest CEO, and Bay Street executives, plotting a last-minute strategy. "Ted Rogers must be pounding on his coffin trying to climb his way out of the grave from six feet under," said a source familiar with events.

Meanwhile, a "livid" Quebecor is said to be considering writing to the court in support of the legal gambit by Canwest shareholders in the hope it will attract other bidders stifled by the auction process that led to Shaw's buyout.

Rogers and Quebecor's Peladeau families are crying foul over the way Shaw was able to snare every television station and 21 specialty channels owned by Canwest.

Still, some observers caution it's not a sure bet that a legal challenge will succeed.

"It is not going to be easy to persuade the court to reject the Shaw deal because it has to be concerned about the risk of losing a good deal for the chance that there may, or may not be, interests from other groups," said a lawyer who asked not to be named.

Under the terms of Shaw's deal announced on May 3, which was hammered out through mediation by Ontario Chief Justice Warren Winkler, the Calgary-based cable giant will pay \$1.18-billion in cash and about \$480-million will be used to buy out Canwest's

debtholders. An additional \$700-million is earmarked for Goldman Sachs Group Inc., a joint shareholder of CW Investments Co., which controls 13 of the specialty channels acquired by Canwest when it bought Alliance Atlantis Communications Inc. in 2007.

Canwest's shareholders, including the Asper family which once controlled the Winnipeg-based media giant, will receive nothing under terms of Shaw's bid. That has raised the ire of the family, which could walk away empty-handed from the collapse of its media empire.

As a result, the Aspers and a group of shareholders, including U.S. hedge funds, have formed a group to oppose the deal because the original Shaw offer, blessed by Ontario Superior Court Justice Joanne Pepall in February, would have given equity holders a percentage of the \$95-million Shaw had tabled to acquire a 20% voting stake of Canwest.

Sources say shareholders, as well as Rogers and Quebecor, are also balking because they say Shaw was able to buy the entire company in a private deal.

They point to the auction process, outlined in a support agreement signed last October and approved last year by the court and court-appointed monitor, which did not contemplate putting the whole company on the sale block.

Rather, it outlined a limited sale of Canwest's broadcast assets with clearly defined parameters and confinements for potential suitors. Most notably, no bidder could negotiate with Goldman Sachs prior to tabling an offer.

After Shaw emerged the winner in February, the company began negotiating with the Wall Street investment bank. After weeks of fruitless discussions, Chief Justice Winkler was brought in and the deal that emerged on May 3 allowed Shaw to buy all of Canwest's television assets for \$2-billion.

"The prior auction in no way resembles the present deal," says a source close to the discussions. "There never was an auction for the entire company."

As a result, sources say, a legal challenge to scuttle the deal is imminent based on the argument that Canwest can attract suitors willing to pay more than \$2-billion for the whole company if an open auction is held without restrictions.

Quebecor Media's chief executive Pierre Karl Péladeau said as much in a court filing in February. In a letter, Mr. Péladeau told the court it declined to participate in the bidding process because it would have precluded his company from having discussions with Goldman Sachs, a major stakeholder in Canwest.

"Should the court re-order the current solicitation process and allow third-party bidding in a transparent court supervised process," he wrote, Quebecor was prepared to consider tabling an offer for Canwest.

Now, sources say the Montreal-based media company is seriously considering filing another letter with the court, indicating it would consider bidding for all of Canwest's broadcast assets if a new auction were to be held.

Sources say former prime minister Brian Mulroney, vice-chairman of Quebecor Inc., visited Goldman Sachs in New York to discuss possibilities.

At the same time, Rogers had also expressed interest in Canwest but was said to be discouraged by the limited auction process. Like Quebecor, the Toronto-based media giant didn't enter a bid.

However, hours before it became clear that Shaw was about to snare all of Canwest's television assets, Rogers considered outbidding its corporate nemesis, sources confirmed for the Post.

Senior officials from the media giant, including CEO Nadir Mohamed and Edward Rogers, son of the company's late founder and head of the family trust that holds the company's controlling shares, gathered last Friday and Saturday with Mr. Asper and a group of others, urging Rogers to make a bid.

Also present at the meeting were Charles Winograd, president of Winograd Capital Inc. and a highly respected Bay Street financial player who is advising Mr. Asper, and David Miller, Rogers' in-house lawyer. It is believed that Newton Glassman, managing partner of Catalyst Capital Group Inc., also participated in the discussions. Catalyst, a Toronto-based hedge fund, had led a failed bid for Canwest, which included the Asper family and Goldman Sachs.

According to sources close to events, Rogers was apparently willing to pay Goldman more than the \$700-million Shaw offered as part of its deal, and table a higher bid for Canwest, which would have provided some compensation for shareholders.

However, the telecom giant's executives asked for seven days to perform expedited due diligence. In any event, the Rogers executives, who had previously been canvassed by Goldman, were caught off guard because they thought it would take Shaw another six months to come to terms with the New York investment firm.

For its part, Goldman would have entertained a higher offer from Rogers, but demanded it in writing because the firm didn't want to jeopardize its deal with Shaw. But the best Rogers could do at the time was provide a verbal assurance.

"They [Rogers] took it pretty seriously, but they couldn't move fast enough," said a source familiar with the meeting. "They just could not make a bold decision, even though they had made a decision internally to buy more specialty channels."

Said another: "Rogers has probably made the biggest strategic or tactical mistake of its corporate history by not bidding. They will never get an opportunity for a group of specialty assets like this ever again."

For Rogers, it was not that simple. The company would face regulatory impediments to a deal stemming from its ownership of Toronto-based Citytv. That much was known to the company's senior executives. Sources say Ted Rogers found out as much when he enquired about buying Canwest's broadcast assets before his death in December 2008.

"On his death bed, Ted was trying to work out a deal for the [Canwest] assets," said a source close to events. "If Ted was around, he'd go to war."

If the court can be persuaded that there's greater merit in an open auction, the company, and others like it lying in the weeds, are hoping they may yet get that chance.

Get the National Post newspaper delivered to your home

**WHAT DO YOU THINK?**

<b>New to the site?</b>	<b>Already a member?</b>	
To leave a comment, you need to <a href="#">Sign Up</a> .	To comment, please login. E-mail <input type="text"/>	Forgot Password? <input type="text"/>
	Password <input type="text"/>	<input type="button" value="Login"/>

3 comments Sort: Oldest to Newest ↕

**OBAMINATION** Score: 1 [Report Abuse](#)  
 10:10 AM on May 8, 2010  
 Just the fact that two "competitors" are joining forces to dissuade further competition reeks to me of monopoly or oligopoly and, if not illegal, damn well should be.

**OBAMINATION** Score: -1 [Report Abuse](#)  
 10:14 AM on May 8, 2010  
 These buffoons lost their precious company through years of arrogant mismanagement and now want someone to give it back to them? Another corporation lost out on the bidding process but wants a "do over"? What is this schoolyard business?

**PEEKABOO** Score: 0 [Report Abuse](#)  
 5:56 PM on May 10, 2010  
 To the competitors, you Snooze you Lose. Nuf said.

© 2010 National Post Inc. All rights reserved. Unauthorized distribution, transmission or republication strictly prohibited.

# Bloomberg

---

## Rogers, Quebecor May Try to Block Shaw-Canwest Deal, National Post Says

By Hugo Miller - May 8, 2010

Rogers Communications Inc. and Quebecor Media Inc. may try to block Shaw Communications Inc.'s purchase of Canwest Global Communications Corp.'s broadcast operations, the National Post reported.

The two Canadian media companies have held meetings and are considering teaming up with Canwest shareholders and the Asper family who founded Canwest to ask an Ontario court to overturn the Shaw deal and hold an auction, the newspaper said, citing sources it didn't name. Canwest Global filed for bankruptcy protection in October.

Shaw said on May 3 it will pay C\$2 billion (\$1.92 billion) for the Canwest TV assets after reaching a deal to buy Goldman Sachs Group Inc.'s stake in Canwest's specialty TV unit for C\$700 million, ending a dispute over control of the Canadian broadcaster.

Rogers executives held meetings with the Asper family last weekend to discuss a possible bid, according to the newspaper. Rogers was prepared to pay more than C\$700 million for the stake but wanted more time to do due diligence, the Post said.

Terrie Tweddle, a spokeswoman for Rogers, and Quebecor spokeswoman Isabelle Dessureault didn't immediately return messages from Bloomberg News seeking comment.

To contact the reporter on this story: Hugo Miller in Toronto at [hugomiller@bloomberg.net](mailto:hugomiller@bloomberg.net)

©2010 BLOOMBERG L.P. ALL RIGHTS RESERVED.

- [Home](#)
- [About](#)
- [Contact](#)
- [Digitcom's Book](#)
- [In the News](#)
- [Write for Us](#)
- [Article Submission](#)
- [Advertise](#)
- [FORUM](#)



- [Canadian Content](#)
- [American Content](#)
- [Products](#)
- [General News](#)
- [Editorial](#)

## Rogers, Quebecor Team Up to Block Shaw's CanWest Deal

by Jordan Richardson on May 11, 2010 6 retweet



It may not have taken place in a dark, smoky room at a secretive fortress at the top of a distant peak like it did in my imagination, but Rogers Communications Inc. and Quebecor Media Inc. have apparently consulted privately to consider blocking Shaw's acquisition of CanWest Global Communications Inc.

The two companies have been holding meetings and are considering teaming up with disgruntled CanWest shareholders and the Aspers, the founding family of CanWest, to get an Ontario court to overturn the deal. The plan is to get the court to throw an auction instead.

According to sources, Rogers representatives were meeting with former CanWest CEO Leonard Asper just hours before Shaw Communications Inc. finalized the deal. Representatives from Quebecor were said to be "livid" over the notion that Shaw was able to snap up all of the channels.

The Shaw deal was announced on May 3 and used the mediation of Ontario Chief Justice Warren Winkler to hammer out the finer points. Shaw will pay \$1.18 billion in cash. About \$480 million of that portion will head to CanWest's debt, while another \$700 million will pay Goldman Sachs, which controls some of the specialty channels acquired in the deal.

The shareholders for CanWest receive nothing out of the deal, creating more than a few bad feelings for

having to walk away with nothing after the collapse of their once-reputable media empire. The shareholders are apparently pretty peeved that Shaw was able to purchase the assets in a “private deal.”

The shareholders are pointing to an October 2009 support agreement that was approved by the courts. The agreement states that there was no clue of putting the whole shebang up for sale, so when Shaw was able to come in and buy all of CanWest full stop, it crossed the lines. Perhaps most conspicuously, the support agreement outlines the notion that bidders cannot negotiate with Goldman Sachs prior to making an offer.

This support agreement was apparently the reason that Quebecor didn't step into the fray, says the company's chief executive Pierre Karl Peladeau. He said that his company declined participation because participating in the bidding process would have meant his company couldn't negotiate with Goldman Sachs regarding the specialty channels. And the specialty channels are the real money-makers here.

So there's a sense that this was done through a sort of backroom deal between Shaw and Goldman Sachs, with the support agreement from October essentially discarded in favour of suitcases full of money. And Rogers is now saying that they would have considered cracking their own suitcase open a little wider had they know the rules had changed.

Whether this will have any legs or not remains to be seen, but it does open up some interesting avenues regarding the future of CanWest and Shaw's purchase of the whole shooting match. If Rogers, Quebecor and the shareholders are able to have their way here, we may be looking at a long, arduous, bitter court battle over what's left of the Asper empire.

Did you like this post ? TheTelecomBlog.com publishes daily news, editorial, thoughts, and controversial opinion – you can subscribe by: RSS ([click here](#)), or email ([click here](#)).

Written by: Jordan Richardson. [www.digitcom.ca](http://www.digitcom.ca) >. Follow [TheTelecomBlog.com](http://TheTelecomBlog.com) > by: [RSS](#) >, [Twitter](#) >, [Identi.ca](#) >, or [Friendfeed](#) >



**Share and Enjoy:**

Tagged as: [CanWest Global Communications Inc.](#), [Quebecor](#), [rogers communications inc.](#), [Shaw Communications Inc.](#)

Leave a Comment

Name \*

E-mail \*

Website