

Canwest shareholders move to block sale to Shaw



A group of shareholders of Canwest Global Communications Inc. are asking an Ontario court to reject Shaw Communications Inc.'s \$2-billion acquisition and force an open auction for all of the company's television assets.

Theresa Tedesco Chief Business Correspondent, Financial Post - Tuesday, Jun. 1, 2010

A group of disgruntled shareholders of Canwest Global Communications Inc. are asking an Ontario court to reject Shaw Communications Inc.'s \$2-billion acquisition and force an open auction for all of the company's television assets.

In a letter dated May 25, 2010, the ad hoc group of Canwest shareholders, including the founding Asper family and several U.S. investment funds, served notice to the Winnipeg-based company and its court-appointed monitor that it intends "to oppose any motion to approve" Shaw's takeover.

Criticizing the sale process as "flawed," the group is balking because Shaw's bid does not provide consideration for the company's equity holders.

"There simply has not been a vigorous and lengthy solicitation process, nor a thorough canvass of the market with respect to 100% of the equity of Canwest and it is therefore neither possible nor fair to conclude that there is no remaining value for existing Canwest equity holders," the missive declared.

Lawyers representing the shareholder group, Canwest and the monitor are scheduled to meet Friday with Ontario Justice Sarah Pepall.

The shareholder group has also filed its intention to appear at a hearing, scheduled for June 22 to obtain court approval for Shaw's offer.

It is widely anticipated that the legal challenge by the shareholder group will be supported by some of Canada's largest media companies, including Rogers Communications Inc. and Quebecor Media Inc. The Rogers family and Quebecor's Péladeau family are crying foul over the way Shaw was able to buy the entire company in a private deal.

"The company should be working harder. The board should be working harder to try to get the best deal for the company and all of its stakeholders," said Patrick Blott, founder of New York-based Blott Asset Management LLC, and a member of the ad hoc shareholder group. "There are certain stakeholders that are well taken care of, but there's others who are being egregiously ignored."

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A spokesman for Canwest said Wednesday that the Winnipeg-based company is aware of the shareholders' concerns. "We feel quite good about the process that we followed and the conclusion that we came to in our actions and we'll defend that in court," said John Douglas, vice-president public affairs.

Under the terms of a deal announced on May 3, which was hammered out through mediation by Ontario Chief Justice Warren Winkler, Shaw will pay \$1.18-billion in cash and about \$480-million 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.

However, Canwest's shareholders, including the Aspers who once controlled the country's third-largest broadcaster, will receive nothing under the terms of Shaw's proposal. That has raised the ire of the family, which could walk away empty-handed from the collapse of its media empire.

"You have the group of employees, retirees and shareholders who built the company and that invested decades of work building value into the equity, whose wealth is now being expropriated," Mr. Blott said.

As a result, the Aspers and the U.S. investors formed the ad hoc group to oppose the deal because the term sheets for the recapitalization of Canwest, and its eventual filing for protection under the Companies Creditors Arrangement Act (CCAA) last fall, contemplated consideration for equity holders.

Accordingly, Shaw's original offer to acquire a 20% voting stake in Canwest for \$95-million would have given existing equity holders no less than 2.3% of the equity or the cash equivalent of a restructured Canwest. Justice Pepall blessed that proposal on Feb. 19.

When the \$2-billion deal emerged in early May, existing shareholders were upset because they were never told that "the consideration previously provided to shareholders [the 2.3% equity value] and which was approved by court order could somehow be dealt away in that mediation," their letter says.

"The deal that emerged [on May 3] is simply inconsistent with what was previously marketed and with what was previously disclosed and reasonably relied upon by shareholders."

According to the group, 28.1 million Canwest shares traded between Feb. 19, when the court approved the first Shaw bid to buy 20%, and May 3, when its \$2-billion takeover was announced.

Mr. Blott, whose firm represents more than 3% of Canwest's outstanding shares, argues that as Canada's largest media company, Canwest's television assets should have attracted numerous suitors if an open auction were held without restrictions.

"The bottom line is that the plan shouldn't be approved, or shouldn't be considered away from alternatives, which is happening now," he says.

In a letter to the court in February, Quebecor Media's chief executive Pierre Karl Peladeau said his company declined to participate in the bidding process for Canwest because it was too restrictive, notably that 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.

Sources say the Montreal-based media company is likely to file a second letter with the court, indicating it would consider bidding for all of Canwest's broadcast assets if a new auction were to be held.

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 and specialty channel assets, Rogers considered outbidding its corporate nemesis, but decided against it.

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