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

Broadcasting Decision CRTC 2019-6

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Ottawa, 14 January 2019

Quebecor Media Inc., on behalf of 9261-1813 Québec inc.
Montréal, Quebec

Public record for this application: 2018-0339-6

Zeste and Évasion – Change in ownership and effective control

The Commission ***approves****, subject to certain conditions, an application by Quebecor Media Inc. (Quebecor), on behalf of 9261-1813 Québec inc., for authority to effect a change in the ownership and effective control of Canal Évasion inc. and Zeste Diffusion inc., which operate the French-language discretionary television services Évasion and Zeste.*

The Commission finds that the transaction, as amended by this decision, serves the public interest and furthers the objectives regarding the Canadian broadcasting system, set out in the Broadcasting Act.

The tangible benefits package will have a positive impact on the French-language television market. Specifically, Quebecor will direct $1,793,756 over the next seven years to the Canadian broadcasting system.

As a ***condition of approval****, the Commission* ***directs*** *Quebecor to file, by no later than* ***13 February 2019****, applications to include Zeste and Évasion on TVA Group's list of discretionary services, to amend Zeste's and Évasion's conditions of licence to reflect those in effect for TVA Group's other discretionary services and finally, to amend Évasion's licence term so that it ends on 31 August 2022.*

The Commission also ***directs*** *Quebecor to file, as a* ***condition of approval****, by no later than* ***13 February 2019****, an agreement with the Canada Media Fund, Telefilm Canada and the Quebecor Fund confirming that the funds will be used for the scripting and development of French-language concepts.*

Application

1. Quebecor Media Inc. (Quebecor), on behalf of 9261-1813 Québec inc. (9261-1813), filed an application for authority to effect a change in the ownership and effective control of Canal Évasion inc. (Évasion inc.) and Zeste Diffusion inc. (Zeste inc.), the respective licensees of the French-language discretionary television services Évasion and Zeste. The applicant proposed to operate the services under the same terms and conditions as those in effect under the current licences.

2. 9261-1813 owns 84.27% of the shares of Serdy Média inc. (Serdy), which in turn owns 91.69% of the shares of Évasion inc. and all of the shares of Zeste inc. Sébastien Arsenault currently exercises effective control over Serdy. TVA Group Inc. (TVA) owns 8.31% of the voting shares of Canal Évasion inc.

3. Prior to the transaction, 9261-1813 will become the sole shareholder of Serdy. Subsequently, all of the shares of 9261-1813 will be transferred to TVA.

4. Pierre Karl Péladeau controls TVA, a subsidiary of Quebecor. Following the transaction, he will also control Serdy.

5. The Commission received 46 interventions supporting the application, one intervention with comments from the Association québécoise de la production médiatique (AQPM) and one intervention in opposition from Groupe V Média inc. (V Média), to which the applicant replied.

Regulatory framework

6. The review of ownership transactions is an essential element of the Commission’s regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.

7. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

Commission’s analysis and decisions

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

   - the public interest of the proposed transaction and its potential impact on the broadcasting system;
   - the value of the transaction and tangible benefits; and
   - the current licensee’s non-compliance regarding Canadian content.

Public interest and impact on the broadcasting system

9. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved, as well as regional, social,

cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.

Positions of parties

10. Quebecor submitted that the transaction would serve to foster the viability of Évasion and Zeste. It added that Quebecor and Serdy's combined resources and experience would facilitate the production of quality, original French-language programs and put a spotlight on Quebec culture and local talent. Further, Quebecor submitted that the diversity of genres would be maintained, as themes covered by Zeste and Évasion are not covered by TVA.

11. Quebecor also stated that the addition of Zeste and Évasion to its content offering would allow it to increase audience loyalty and to keep the audiences within the Canadian broadcasting system.

12. Regarding media concentration, Quebecor stated that the addition of Zeste's and Évasion's audience shares to its current services would only result in an increase of 1% of its audience shares.

13. Finally, Quebecor pointed out that discretionary services are operating within a regulatory context based on free competition and consumer choice. It added that the Commission implemented mechanisms to ensure that programming services have fair access to broadcasting distribution undertakings (BDU).

14. In its intervention, V Média stated that the transaction would harm the French-language television market and reinforce Quebecor's dominance in that market. It indicated that TVA is already earning 45% of advertising revenues. In its view, approval of this transaction would reinforce this dominance, which would threaten independent entities' ability to stand out and succeed. V Média submitted that the Commission should prioritize a significant number of strong independent entities, which would contribute to the diversity of programming and voices.

15. Quebecor replied to V Média's intervention by indicating, among other things, that V Média's opposition to the transaction aims to serve its own business interests rather than to defend the public interest.

Commission's analysis and decision

Impact on the viability of the services

16. The Commission considers that approval of the transaction would allow Zeste and Évasion to benefit from the multiplatform exposure and reach that Quebecor and TVA can provide due to their knowledge of the French-language television market. The combination of Quebecor and Serdy's resources and experience could foster the production of quality French-language programs and the promotion of Canadian talent. In this regard, the Commission notes that there were many interventions in support of the

application from independent producers, the majority of which are already doing business with Quebecor or the services subject to the transaction.

Impact on the diversity of voices

17. The Commission examined the application and the interventions based on the elements of the analytical framework for transactions set out in the Broadcasting Public Notice 2008-4 (the Diversity of Voices Policy).

18. In the Diversity of Voices Policy, the Commission indicated that, as a general rule, it will not approve applications for a change in effective control that would result in the control, by one person, of a dominant position in the delivery of television services to Canadians that would impact on the diversity of programming available to television audiences. Specifically,

    - as a general rule, the Commission will not approve transactions that would result in the control by one person of more than 45% of the total television audience share—including audiences to both discretionary and over-the-air (OTA) services;

    - the Commission will carefully examine transactions that would result in the control by one person of between 35% and 45% of the total television audience share—including audiences to both discretionary and OTA services; and

    - barring other policy concerns, the Commission will process expeditiously transactions that would result in the control by one person of less than 35% of the total television audience share—including audiences to both discretionary and OTA services.

19. The Commission acknowledges the importance of Quebecor’s role in the French-language market. However, Zeste and Évasion have modest audience shares and revenues compared to the TVA portfolio and the French-language market as a whole. Accordingly, the Commission considers that the increase of TVA’s shares ensuing from the approval of the transaction would be negligible and would not significantly change Quebecor’s position in the market relative to other players.

20. Further, TVA’s audience shares following the transaction would remain below the 45% threshold at which the Commission would generally not approve a transaction pursuant to the Diversity of Voices Policy.

Impact on the offer of news and public affairs programming

21. In the Diversity of Voices Policy, the Commission indicated that the concept of “voices” generally refers to the editorial voice. As such, it refers to the sources of news and information programming that are essential to a functioning democracy. The presence of many sources of information in the broadcasting system is taken to mean that a diversity of voices or viewpoints will be represented.

22. Zeste and Évasion do not offer any news or public affairs programming. The Commission considers that it is unlikely that Zeste or Évasion would propose this type of programming following the transaction. Accordingly, the Commission is of the view that the transaction would not have an impact on the diversity of editorial voices in the market.

Vertical integration

23. In Broadcasting Regulatory Policy 2015-86, the Commission announced the elimination of genre protection and guaranteed access rights for distribution. Accordingly, services are now evolving in a regulatory context largely centered on consumer choice. However, the Commission stated that independent services are an important source of diversity and that independent service access protection would help preserve the diversity of voices. As such, in Broadcasting Regulatory Policy 2015-96, the Commission announced that vertically integrated BDUs will be required to distribute one independent English- and French-language service for each English- and French-language service that they distribute (1:1 ratio).

24. TVA operates the following six discretionary services: addikTV, Prise 2, Casa, Yoopa, Moi & Cie and TVA Sports, as well as the national news service LCN. With the acquisition of two additional discretionary services, Quebecor would operate eight French-language discretionary services. As such, pursuant to section 19(3)(b) of the *Broadcasting Distribution Regulations*, Videotron Ltd., the BDU operated by Quebecor, would be required to distribute at least eight French-language discretionary services that are not related to vertically integrated BDUs, i.e. two additional independent discretionary services, if such services are available.

Competition Bureau

25. In its intervention, V Média stated that if the Competition Bureau decided that the competitive dynamic did not justify the acquisition of Séries+ and Historia by Bell Media (Bell-Corus transaction), the Commission would be fully justified in making similar conclusions regarding the acquisition of Zeste and Évasion by TVA.

26. In reply to the intervention, TVA indicated that the two transactions are not comparable given the notable differences between them. TVA added that the Competition Bureau's approval was not required for this transaction, because its value was less than the requisite threshold for a review by the Competition Bureau.

27. The proposed transaction has not been subject to a notice or decision from the Competition Bureau. The Competition Bureau's and the Commission's responsibilities are distinct and their examinations are conducted independently. The Commission considers that there are significant differences between the present transaction and the Bell-Corus transaction, in part because of a consent agreement between Bell and the Commissioner of Competition in 2013 following the Bell-Astral transaction.

Addition of Zeste and Évasion to TVA Group

28. In its application, Quebecor proposed to operate Évasion and Zeste on an individual basis rather than including them in its designated group pursuant to the group-based approach to avoid weighing down the transfer process. However, Quebecor indicated that if the Commission deemed the group-based approach more appropriate, it would agree to it.

29. In its intervention, the AQPM asked the Commission to integrate Évasion and Zeste into TVA Group's designated group because the expenditure requirements of both services are inferior to those of the group. For example, Zeste is currently not subject to Canadian programming expenditure (CPE) requirements and Évasion is subject to a 40% CPE requirement. TVA Group's services are subject to a 45% CPE requirement. Moreover, Zeste and Évasion do not have an expenditure requirement regarding programs of national interest, while TVA Group's services are subject to a 15% requirement.

30. In Broadcasting Regulatory Policy 2010-167, the Commission determined that the group-based approach was the most effective for the broadcasting system. In 2017, the licences for Quebecor's services were renewed under the group-based approach.

31. Due to the difference in requirements between the current conditions of licence for Évasion and Zeste and those applicable to TVA Group's other discretionary services, the Commission considers that the addition of these two services to TVA Group would be more beneficial to the broadcasting system and would better serve the public interest. This addition will foster the viability and growth of Évasion and Zeste, will generate investments in the Canadian broadcasting system and will allow additional support for the creation of Canadian programs, programs of national interest and original programs.

32. To facilitate the renewal process, the Commission intends to renew the broadcasting licences for Évasion and Zeste at the same time as those for TVA Group.

33. In light of the above, the Commissions finds that the transaction, as modified by this decision, will serve the public interest. Accordingly, as a **condition of approval**, the Commission **directs** Quebecor to file, by no later than **13 February 2019**:

- an application to amend Appendix 1 to Broadcasting Decision 2017-147 to add Zeste and Évasion to the list of services that are included in TVA Group;
- an application to amend Zeste's conditions of licence to reflect those applicable to TVA Group's other discretionary services; and
- an application to amend Évasion's conditions of licence to reflect those applicable to TVA Group's other discretionary services and to amend its licence term so that it ends on 31 August 2022.

Value of the transaction and allocation of tangible benefits

34. The Commission's policy regarding tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). The Commission indicated

that tangible benefits serve the public interest, among other things, by increasing the quantity and quality of Canadian programming, and providing increased support for the creation, distribution and promotion of such programming. The Commission finds it appropriate to require that tangible benefits generally be provided as part of changes in the effective control of all radio and television programming services.

35. For the purpose of calculating the value of tangible benefits, the Commission takes into account the value of the transaction as a whole, including the value of gross debt, working capital to be transferred at closing, ancillary agreements, and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over five years. These elements are then added to the purchase price, where applicable.

36. Pursuant to the terms of the Share Purchase Agreement, the purchase price for this transaction is $21,000,000.

37. In its application, Quebecor limited the duration of one of its leases to less than 60 months and there are no plans for these premises after the lease expiry. Consistent with its practice, the Commission included the 60-month rent value, for a total of $1,338,180. Accordingly, the value of the transaction amounts to $22,338,180.

38. Pursuant to the Tangible Benefits Policy, the tangible benefits stemming from a change of ownership or effective control of commercial television services should represent at least 10% of the value of the transaction as determined by the Commission. These tangible benefits should be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction and generally flow to third parties, such as independent producers.

39. A transaction can involve assets subject to tangible benefits and other assets that are not. To apply the correct rates to the various categories of assets, the value of the transaction must be allocated between them. The Tangible Benefits Policy provides for the allocation based on the revenues of each type compared with total revenues. In this transaction, 80.3% of generated revenues stem from broadcasting activities. Accordingly, the value of the transaction amounts to $17,937,559.

40. Quebecor proposed a tangible benefits package of $1,792,784, representing 10% of the value of the transaction related to the television assets. However, according to the Commission's revised calculations, the tangible benefits amount to $1,793,756, which includes the addition of $972 to include one of the leases that had a length of less than five years. The Commission considers that this amount can be added to that allocated to the Canada Media Fund (CMF).

41. In its intervention, the AQPM submitted that the tangible benefits should be allocated exclusively to French-language productions, as Zeste and Évasion are French-language services.

42. The Commission's regulatory framework does not set out the allocation of tangible benefits funds based on projects in specific languages. However, Quebecor agreed to devote all of these amounts to French-language productions.

43. In light of the above, the Commission amends Quebecor's proposal relating to the allocation of tangible benefits, as follows:

- $861,508 to the CMF, in equal payments over seven years;

- $573,691 to a certified independent production fund (Quebecor Fund), in equal payments over seven years;

- $358,557 to a discretionary project (Telefilm Canada's Talent Fund), for the first three years, as proposed by Quebecor.

44. The Commission also **directs** Quebecor to file, as a **condition of approval**, by no later than **13 February 2019**, an agreement with the CMF, Telefilm Canada and the Quebecor Fund confirming that the tangible benefit funds will be used for the scripting and development of French-language concepts.

Current licensee's non-compliance with respect to Canadian content

45. Zeste is required, by condition of licence, to devote at least 35% of its programming over the broadcast week and over the evening broadcast period to Canadian programming. The reports provided by Zeste showed that, for the 2015-2016 broadcast year, the service did not broadcast the required percentage of Canadian content during the day and in the evening.

46. The applicant indicated that the errors in Zeste's reports occurred because of a problem with Serdy's routing software and the departure of employees. New reports filed indicate one instance of apparent non-compliance, less significant than in the initial reports, and in the evening only.

47. Quebecor also indicated that it intends to maintain the efforts of the current licensee to adhere to its requirements regarding Canadian content.

48. The Commission will evaluate this instance of apparent non-compliance at Zeste's next licence renewal.

Conclusion

49. In light of all of the above, the Commission **approves**, subject to the **conditions of approval** set out above, the application by Quebecor Media Inc., on behalf 9261-1813 Québec inc., for authority to effect a change in the ownership and effective control of the French-language discretionary television services Évasion and Zeste.

Employment equity

50. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Évasion – Licence renewal*, Broadcasting Decision CRTC 2018-302, 22 August 2018
- *Quebecor Media Inc. – Group-based licence renewals for French-language television stations and services*, Broadcasting Decision CRTC 2017-147, 15 May 2017
- *Let's Talk TV – A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming,* Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Simplified approach to tangible benefits and determining the value of the transaction,* Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Diversity of voices* – Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

This decision is to be appended to each licence.