



Broadcasting Decision CRTC 2008-126

Ottawa, 20 June 2008

ARTV Inc.
Montreal, Quebec

Application 2007-1640-0, received 20 November 2007
Broadcasting Public Notice CRTC 2008-27
8 April 2008

Change in effective control

*The Commission **approves**, subject to the fulfilment of a condition of approval, the application filed by ARTV Inc. to authorize a change in its effective control as a result of the transfer of part of its voting shares to the Canadian Broadcasting Corporation.*

The application

1. The Commission received an application by ARTV Inc. (ARTV) to change the effective control of ARTV as a result of the transfer of the class A voting shares held by CTVglobemedia Inc. to the Canadian Broadcasting Corporation (the CBC), pursuant to section 10(4)(a) of the *Specialty Services Regulations, 1990* (the Regulations).
2. Following the completion of this transaction, the CBC's voting interest in ARTV will increase from 45.09 to 60.66%. The other shareholders in ARTV are Télé-Québec (24.34%) and ARTE France (15%).
3. The Commission received a joint intervention commenting on the application by the Canadian Film and Television Production Association (CFTPA) and the Association des producteurs de films et de télévision du Québec (APFTQ) (collectively, the interveners).

Commission's analysis and determinations

4. The interveners filed comments on three specific elements of the proposed transaction: the change in effective control of ARTV, the appropriate value of the transaction and the tangible benefits.

Change in effective control

5. At the time of the application, effective control of ARTV was exercised by its Board of Directors. According to the Commission's records, none of the shareholders was in a position to exercise control over the appointment of directors. In addition, it is noted that under the unanimous shareholders agreement in place since 19 June 2001 (the Agreement), the fundamental decisions of ARTV are made by those shareholders representing at least 66.67% of the votes.

6. The intervener noted that as a result of the proposed transaction, the CBC would hold the majority of ARTV voting shares and that this alone would provide it with effective control of the service. Thus, according to the intervener, the tangible benefits policy must apply.
7. ARTV maintained its position that the CBC would not hold effective control since the Agreement transfers the power to approve any significant ARTV decision, measure or transaction from the directors to those shareholders collectively holding at least 66.67% of the votes.
8. The Commission is still of the opinion that the acquisition of the majority of the voting interests represents a change in effective control within the meaning of section 10(3)(a) of the Regulations, which stipulates that effective control of a licensee or its undertaking includes situations in which a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee.
9. This was also supported by the fact that the CBC would still have its deciding vote in the event of a tie for certain decisions of the Board of Directors and keep its right to appoint the majority of directors of the Board.

Value of the transaction

10. The intervener sought to ensure that the Commission would assess the value of the present transaction as it does for all transactions.
11. The applicant set the value of the transaction at \$1,760,000, which is the amount that must be paid for the shares in order to acquire 15% of the voting interests. In addition, the purchaser would assume an operating lease included in the CBC-ARTV *Entente cadre de gestion et d'exploitation* [Management and operation framework agreement]. In the absence of a note to the financial statements indicating the value of the commitment under this lease, the applicant estimated the value at \$163,500.
12. Since the CBC is acquiring a 15% voting interest, the Commission has applied this value to the total value of the commitment (\$817,500) and, consequently, has added \$122,625 to the value of the transaction. The revised value of the transaction is therefore \$1,882,625.

Tangible benefits

13. In response to a request from the Commission, the CBC proposed a tangible benefits package with a total value of \$176,000 (10% of the value of the transaction before revision) in the event that the Commission determined that the transaction represented a change in effective control. The CBC suggested benefits to be allocated as follows:
 - scholarships for the development of cultural documentaries – FIFA (\$10,000 annually for seven years for a total of \$70,000);

- closed captioning for the international exposure of a cultural documentary – FIFA (\$5,000 annually for five years, for a total of \$25,000); and
 - the creation of an “Espace ARTV” studio (this project would require approximately \$81,000 in outlay over five years).
14. The intervener stated that the following two initiatives are not eligible: a) FIFA scholarships for closed captioning of cultural documentaries in English and b) Espace studio in Montréal’s Quartier des spectacles (\$81,000 over five years).
 15. In addition, the intervener suggested that a larger percentage of the amount reserved for the benefits package be dedicated to Canadian production or “on-screen” projects.
 16. With respect to the ineligibility of the FIFA scholarships for the closed captioning of cultural documentaries in English, ARTV stated that this initiative, which aims to promote and develop Canadian talent for a type of programming that is in great need of support, is closely tied to the FIFA scholarships for the development of cultural documentaries. ARTV also stated that the FIFA closed captioning initiative is in keeping with the principles set out in the Commission’s tangible benefits policies.
 17. With respect to the ineligibility of the Espace studio in Montréal’s Quartier des spectacles, which aims to stimulate the production of original French-language Canadian programming and broadcast of cultural products, ARTV stated that without this contribution it could be very difficult to carry out the project in a timely fashion, that is, during the creation of the Quartier des spectacles (by fall 2009). The studio would foster the promotion and creation of French-language cultural programming.
 18. The Commission is of the view that the first and second initiatives proposed by the applicant are eligible and, therefore, approves them as proposed.
 19. However, with respect to the third proposed initiative (creation of an “Espace ARTV” studio), the Commission shares the intervener’s view and finds this initiative ineligible. Thus, the applicant shall be required to otherwise allocate the amount it intended to dedicate to this initiative.

Conclusion

20. In light of the above, the Commission **approves**, subject to the fulfilment of the condition of approval set out below, the application by ARTV Inc. to change its effective control as a result of the transfer of the class A voting shares in ARTV held by CTVglobemedia Inc. to the Canadian Broadcasting Corporation, pursuant to section 10(4)(a) of the Regulations.

21. The applicant must, as a **condition of approval**, submit to the Commission within 30 days of this decision a tangible benefits package of \$188,262 (corresponding to 10% of the revised value of the transaction, \$1,882,625). This new tangible benefits package must also indicate how the licensee intends to distribute the unallocated amount (i.e., \$81,000 for the initiative deemed ineligible and an additional \$12,262 flowing from the readjustment of the value of the transaction, for a total of an additional \$93,262).
22. The operation of ARTV will continue in accordance with the current terms and **conditions of licence**. The licence will expire on 31 August 2009, the current expiry date.

Secretary General

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