



Broadcasting Decision CRTC 2022-74

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Reference: 2021-337

Ottawa, 24 March 2022

Arsenal Média inc.

Val-d'Or, Rouyn-Noranda and La Sarre, Quebec

Public record for this application: 2021-0297-9

Public hearing in the National Capital Region

6 December 2021

CHGO-FM Val-d'Or, CHOA-FM Rouyn-Noranda and its transmitters and CJGO-FM La Sarre and its transmitter – Acquisition of assets

The Commission **approves** an application filed by Arsenal Média inc. for authority to acquire from Cogeco Media Inc. the assets of the French-language commercial radio stations CHGO-FM Val-d'Or, CHOA-FM Rouyn-Noranda and its transmitters, and CJGO-FM La Sarre and its transmitter.

Application

1. Arsenal Média inc.¹ (Arsenal) filed an application for authorization to acquire from Cogeco Media Inc. (Cogeco) the assets of the French-language commercial radio stations CHGO-FM Val-d'Or, Quebec, CHOA-FM Rouyn-Noranda, Quebec, and its transmitters CHOA-FM-1 Val-d'Or and CHOA-FM-2 La Sarre, Quebec, and CJGO-FM La Sarre, Quebec, and its transmitter CJGO-FM-1 Rouyn-Noranda, Quebec. Arsenal also requested new broadcasting licences to continue the operation of the stations under the same conditions as those in effect under the current licence.
2. Arsenal is owned by Sylvain Chamberland through holding companies (50.75%) with a minority interest from Fondation CSN (49.25%). Sylvain Chamberland is a Canadian who resides in Canada and, therefore, Arsenal is eligible to hold a broadcasting licence in accordance with the *Direction to the CRTC (Ineligibility of non-Canadians)*.
3. Cogeco is a wholly owned subsidiary of Cogeco Media Acquisitions Inc., which in turn, is a wholly owned subsidiary of Cogeco Inc., which is controlled by Gestion Audem Inc. The effective control of Gestion Audem Inc. is exercised by its board of directors.
4. The purchase price for the assets of the three stations is \$1,500,000. Arsenal proposed a value of the transaction of \$2,195,489 and proposed a tangible benefits package of \$131,729, which is 6% of the proposed value of the transaction.

¹ At the time of the filing, Arsenal Média inc. was carrying on business as 10679313 Canada Inc.

5. The Commission received a joint intervention in support of this application, as well as an intervention in comment from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ).

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, according to the circumstances specific to the application. In addition, pursuant to subsection 5(1) and paragraph 5(2)(b) of the Act, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest. The public interest is reflected in the many objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) of the Act.

Issues

8. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - whether the proposed transaction is in the public interest;
 - the value of the transaction;
 - the tangible benefits package;
 - the payment of tangible benefits stemming from a previous transaction;
 - French-language vocal music and emerging artists;
 - previous non-compliance – CHOA-FM Rouyn-Noranda; and
 - the terms and conditions of licence.

Public interest of the proposed transaction

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 provided 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.

Arsenal's position

10. Arsenal stated that this transaction would ensure the implementation of synergies while offering local programming and added that its decentralized decision-making power would allow the stations to be very involved in their community. Arsenal also stated that this transaction would strengthen its presence and position in the Canadian broadcasting system, thereby promoting an independent private broadcaster. According to Arsenal, the consolidation of independent radio stations would create new opportunities for the staff of its stations because of its business model, which is based on a decentralized operation drawing on the resources of all the stations in the group. It added that this transaction would enable the use of the full potential of regional talent and ensure varied, high quality programming that draws on local and regional resources. Arsenal specified that the synergies of the three radio stations in Abitibi would first be realized in terms of operations, sales and management.
11. Arsenal noted that, should the transaction be approved, RNC MEDIA INC. would continue to provide local news on the stations under the service agreement. The non-local news, currently provided by the Cogeco Nouvelles agency, would be replaced by Arsenal's news from Montréal.

Interventions and reply

12. The Commission received a joint intervention in support of the application. According to the interveners, the arrival of Arsenal is beneficial to local businesses and organizations. Intervenors in the arts community emphasized the contribution of Arsenal to the discoverability of artists and diversity.
13. The Commission also received an intervention in comment in regard to the present application from ADISQ. ADISQ stated that independent and intermediate broadcasters have a positive impact on the diversity of voices, because they present regional programming that includes a strong focus on French-language and local music. It added that Arsenal would bring a different voice and distinctive music programming, thus giving certain music content new exposure.
14. In its reply to ADISQ's intervention, Arsenal emphasized the contribution of independent players to the broadcasting system and noted that ADISQ sees the eventual arrival of Arsenal in Abitibi in a positive light.

Commission's analysis and decision

15. The Commission is of the view that the transaction should have a positive impact on the diversity of voices, since it would allow for the development of an independent broadcaster that would expand its presence in another region of Quebec.
16. Moreover, the programming broadcasted by Arsenal, which differs from that of the major groups whose programming comes in part from Montréal, should give certain musical content new exposure.

17. The Commission noted that listeners in the markets served should benefit from the transaction through an expanded news offering. While stations would carry the same number of local news minutes as before, regional, national and international news coverage would be increased. This would have a positive impact on the diversity of voices in the markets served.
18. The Commission is of the view that, even though they are slightly different, the music formats that Arsenal is proposing would provide listeners with access to fairly similar music programming. With respect to the sharing of the music library and the preparation of music lists, the anticipated synergies between the stations would allow for a different offering from that of Cogeco.
19. In light of the above, the Commission finds that the proposed transaction would bring benefits to the Canadian broadcasting system. Accordingly, the Commission finds that the transaction would be in the public interest.

Value of the transaction

20. As set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), to calculate 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 of the transaction, ancillary agreements and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of leases is calculated over a period of five years. If applicable, these elements are added to the purchase price.
21. Arsenal proposed a transaction value of \$2,195,489. This amount includes the purchase price of the assets (\$1,500,000) as well as the value of the service agreement with RNC MEDIA INC. and various leases to be assumed by Arsenal calculated over five years (\$695,489).
22. The Commission notes that the value of the transaction as proposed by Arsenal is consistent with the Tangible Benefits Policy. Accordingly, the Commission determines that the value of the transaction is \$2,195,489.

Tangible benefits package

23. Pursuant to the Tangible Benefits Policy, the Commission considers it appropriate to require that tangible benefits be paid pursuant to changes in the effective control of all licensed radio and television programming undertakings. Tangible benefits resulting from a change in ownership or control of commercial radio stations must generally represent at least 6% of the value of the transaction and be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or Musicaction (1.5%), eligible Canadian content development (CCD) initiatives at the discretion of the purchaser (1%) and the Community Radio Fund of Canada (CRFC) (0.5%).

24. In regard to discretionary initiatives, Arsenal specified in the joint supplementary submission that it intends to allocate these funds to initiatives that have an impact on the local communities served by its stations and that meet the Commission's eligibility criteria.
25. Arsenal proposed a tangible benefits package of \$131,729, which is equal to 6% of the proposed value of the transaction.
26. In light of the above, the Commission requires Arsenal to pay tangible benefits amounting to \$131,729, which represents 6% of the value of the transaction, in equal annual payments over seven consecutive broadcast years and allocated as follows:
- 3% (\$65,865) to Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% (\$32,932) to FACTOR or Musicaction;
 - 1% (\$21,955) to any eligible CCD initiative at the discretion of the purchaser; and
 - 0.5% (\$10,977) to the CRFC.

Payment of tangible benefits stemming from a previous transaction

27. In Broadcasting Decision 2018-396, the Commission approved an application by Cogeco to acquire the assets of 10 French-language commercial radio stations across Quebec and Ontario from RNC MEDIA INC., including the three stations in Abitibi covered by the current application.
28. Should the Commission approve the transaction in the current application, Cogeco intends to continue to pay all the tangible benefits resulting from Broadcasting Decision 2018-396, including the portion attributable to the stations it is divesting itself of.
29. Consequently, the Commission reminds Cogeco that it remains responsible for paying all the tangible benefits resulting from Broadcasting Decision 2018-396, in particular those related to the three stations involved in the current transaction, according to the payment schedule provided for.

French-language vocal music and emerging artists

30. Pursuant to subsections 2.2(5) and 2.2(10) of the *Radio Regulations, 1986*, a commercial radio licensee must devote at least 65% of its category 2 vocal musical selections to French-language musical selections broadcast in their entirety during any broadcast week. Of this percentage, 55% must be broadcast during prime time, Monday to Friday, from 6:00 a.m. to 6:00 p.m.
31. With respect to broadcasting musical works by emerging artists, the Commission does not currently impose a requirement on broadcasters, except in exceptional cases. As stated in Broadcasting Regulatory Policy 2011-316, the Commission found that Canadian radio stations already broadcast a reasonable number of these types of musical works and that imposing a minimum regulatory threshold was not necessary.

32. In its intervention, ADISQ indicated that, in response to Broadcasting Notice of Consultation 2020-374 (the review of the regulatory framework for commercial radio), it has extensively documented that the development of French-language vocal music (FVM) is a significant challenge and that its place on commercial radio is fragile. However, ADISQ also noted that intermediate and independent players, such as Arsenal, present regional programming that provides an interesting place for French-language and local music. ADISQ asked the Commission to require Arsenal to provide details of how it intends to include FVM in its programming and how this would bring a different voice to the radio landscape. In addition, ADISQ asked the Commission to impose a condition of licence requiring Arsenal to devote 50% of the FVM it would broadcast on its three new stations in Abitibi to emerging music or artists.
33. In its reply, the applicant noted that the Commission is currently reviewing the regulatory framework for commercial radio as well as the FVM broadcast rules applicable to all French-language commercial radio stations. Consequently, Arsenal maintains that it is neither necessary nor appropriate to commit to airing works by emerging music or artists as suggested by ADISQ.
34. Given that the place and support for FVM and emerging artists provided by commercial radio stations are an integral part of the ongoing review of the regulatory framework for commercial radio, the Commission considers it preferable that ADISQ's proposal be analyzed as part of that review. The Commission also deems that the record of this transaction does not demonstrate that it would be necessary to impose a requirement on Arsenal to continue to support emerging artists as it already does for all the radio stations it operates.
35. Therefore, the Commission finds that it is not necessary to impose a condition of licence requiring that Arsenal dedicate 50% of the French-language vocal music it would broadcast on its three new stations in Abitibi to emerging music or artists.

Previous non-compliance – CHOA-FM Rouyn-Noranda

36. In its intervention, ADISQ indicated that the Commission noted an incidence of apparent non-compliance during a performance evaluation of CHOA-FM Rouyn-Noranda in 2019.
37. ADISQ noted that during the week of Sunday 21 April to Saturday 27 April 2019, CHOA-FM broadcast 54.3% of FVM instead of a 55% minimum during prime time (Monday to Friday, 6:00 a.m. to 6:00 p.m.). ADISQ submitted that this incident of apparent non-compliance illustrates a practice by Cogeco of broadcasting as little FVM as possible. In its opinion, by aiming for just 55% FVM in prime time, without taking into account a possible margin of error, Cogeco did not meet its obligations.
38. In its reply, Cogeco specified that this apparent non-compliance was caused by a power failure on 23 April 2019 and that the generator, which was defective at the time, had not started. To remedy the situation, Cogeco has ensured that the number of French-language vocal musical selections broadcast by the station from 6:00 a.m. to

6:00 p.m., Monday to Friday, is increased until CHOA-FM Rouyn-Noranda's broadcasting has stabilized. In addition, an internal reporting process has been put in place to clarify the responsibilities of the various stakeholders when events like the one of 23 April 2019 occur. Finally, the generator at CHOA-FM Rouyn-Noranda's transmitter has been connected to Cogeco's telemetry system, which now allows for regular function checks.

39. The Commission did identify an incidence of apparent non-compliance with respect to CHOA-FM, which had a FVM broadcast result of 54.3% instead of 55% for the broadcast week of 21 to 27 April 2019. In response to the performance evaluation, Cogeco provided the above explanation. The Commission found that the explanations provided and the actions taken by Cogeco were sufficient to justify and rectify the apparent non-compliance caused by this isolated event.
40. Accordingly, the Commission found that the licensee was not in non-compliance. Therefore, the Commission found it appropriate to renew the licence for the station CHOA-FM Rouyn-Noranda for a period of seven year in Broadcasting Decision 2020-276.

Terms and conditions of licence

41. When a new licence is issued, the Commission reviews the licensee's compliance with its regulatory obligations, in particular those relating to the filing of annual reports and CCD contributions. In the case of an asset acquisition, the compliance audit is conducted at the time of application review rather than at the time of licence renewal.
42. In this case, the Commission notes that in Broadcasting Decision 2020-276, it renewed the licences of the stations involved in this application for a period of seven years, from 1 September 2020 to 31 August 2027. Since the annual reports for the first broadcast year of this new licence period were due to be filed with the Commission no later than 30 November 2021, the Commission has not yet been able to conduct a compliance analysis of the stations. The Commission will therefore conduct a full compliance analysis of the licensee at the time of the next licence renewal.
43. In light of the above, the Commission will issue new licences to Arsenal under the same terms and conditions as those in effect under the current licences.

Conclusion

44. In light of all of the above, the Commission **approves** the application by Arsenal Média inc. for authority to acquire from Cogeco Media Inc. the assets of the French-language commercial radio undertakings CHGO-FM Val-d'Or, Quebec, CHOA-FM Rouyn-Noranda, Quebec, and its transmitters and CJGO-FM La Sarre, Quebec, and its transmitter, as well as for new broadcasting licences to continue the operation of the undertakings.

45. Further, the Commission requires Arsenal to pay tangible benefits in the amount of \$131,729, over seven consecutive broadcast years and to submit acceptable proofs of payment.
46. Arsenal shall notify the Commission of the close of the transaction, and upon surrender of the licences currently held by Cogeco, the Commission will issue new broadcasting licences to Arsenal, which will expire on 31 August 2027.

Reminders

47. Pursuant to section 22 of the Act, the broadcasting licences will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.
48. The Commission reminds Cogeco that it remains responsible for paying the tangible benefits stemming from the transaction approved in Broadcasting Decision 2018-396 by the end of the scheduled payment period.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2021-337, 5 October 2021
- *Call for comments –Commercial radio policy framework review*, Broadcasting Notice of Consultation CRTC 2020-374, 12 November 2020
- *Various commercial radio stations – Licence renewals*, Broadcasting Decision CRTC 2020-276, 14 August 2020
- *Various radio programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2018-396, 11 October 2018
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011

This decision is to be appended to each licence.

Appendix to Broadcasting Decision CRTC 2022-74

Terms, conditions of licence, expectation and encouragement for the French-language commercial radio undertakings CHGO-FM Val-d'Or, Quebec, CHOA-FM Rouyn-Noranda, Quebec and its transmitters CHOA-FM-1 Val-d'Or et CHOA FM-2 La Sarre et CJGO-FM La Sarre, Quebec and its transmitter CJGO FM-1 Rouyn-Noranda

Terms

The licence will expire 31 August 2027.

Conditions of licence applicable to all stations

1. The licensee shall adhere to the conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as well as to the conditions set out in the broadcasting licence for the undertaking.

Expectation applicable to all stations

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragement application to all stations

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.