



# Broadcasting Regulatory Policy CRTC 2010-861

PDF version

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Other references: 2010-41-1, 2010-41-2

Ottawa, 19 November 2010

## **Refusal to open up the French-language general interest pay television services genre to competition**

*In this regulatory policy, the Commission sets out its determinations in regard to opening up the French-language general interest pay television services genre to competition.*

*Further, given the profitability and popularity of existing French-language general interest pay television services, the Commission is today issuing Broadcasting Notice of Consultation 2010-860, in which it calls for applications for a broadcasting licence to operate a French-language general interest pay service, under certain conditions.*

### **Introduction**

1. In Broadcasting Notice of Consultation 2010-41, the Commission issued a call for comments on opening up the general interest pay television services genre to competition in the French-language market and on standard conditions of licence relating to nature of service, the exhibition of Canadian programming and Canadian programming expenditures, which it would impose on competing services in the general interest pay television services genre in the event that it opened up that genre to competition.
2. The Commission received a number of responses to that notice of consultation. The parties' comments were carefully examined, and the public record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Background**

3. TVA Group Inc. (TVA Group) requested that the French-language general interest pay television services genre be opened up to competition so as to allow it to operate a new service to be known as Ciné-TVA. A minimum of 50% of the service's programming would be devoted to dramas, and it would specialize in the broadcast of theatrical feature films. TVA Group also requested that exclusive content distribution arrangements between genre-related services and content distributors be prohibited for a three-year transitional period. In addition, to ensure that each service has access to enough quality Canadian content, TVA Group suggested the imposition of a

condition of licence requiring all genre-related services to broadcast all Canadian feature films suitable for broadcast on a pay television service.

### **The French-language market**

4. The Commission notes that, while many French- and English-language broadcasters share certain common features, they operate under different conditions and have different requirements. The French-language television market is dominated by three large ownership groups – Quebecor (owner of TVA Group), RADIO-CANADA and Astral.
5. Super Écran is currently the only licensed French-language general interest pay television service. The service, which has been in operation since the mid-1980s, is owned by Astral. While its nature of service authorizes it to broadcast a broad spectrum of program categories, Super Écran devotes approximately 90% of its programming schedule to the broadcast of recent feature films.

### **Regulatory framework**

6. In Broadcasting Public Notice 2008-100, the Commission announced that it would maintain the policy of programming genre exclusivity for the majority of pay and specialty television services, since this promotes broad diversity in Canadian programming.
7. The Commission also indicated that it would only introduce competition in a given genre once it is convinced that a competitive environment would not significantly reduce either the diversity of services available to subscribers or their contribution to the creation of Canadian programming. On this basis, the Commission permitted competition between Canadian specialty services licensed for the genres of general interest sports and national news.
8. In addition, the Commission indicated that it was prepared to examine competitive applications in genres other than sports and news, and that it would consider the following criteria in determining the ability of a programming genre to sustain competition:
  - economic health of the services in a genre – includes profitability and revenue over a period of time, which will serve in determining the financial capacity of the service(s) within that genre to withstand competition and continue meeting programming commitments;
  - popularity – includes audience and subscriber information and degree of brand recognition, which will serve in identifying genres that are most popular with viewers and that would arguably attract more viewers, rather than fragment existing viewing;
  - programming availability – relates to the availability of programming within a genre – to the extent that there are large libraries of programming in that genre

(Canadian and non-Canadian); it is possible that more services could be supported by that programming, without undue program duplication or competition for program rights;

- diversity that exists within a genre – includes the extent to which the genre is already open to a degree of competition and the risk that, without some genre exclusivity, services might “rush to the middle,” seeking programming with the highest margins, rather than maintaining a specific nature of service and/or serving a specific audience; and
- other consequences that might result from relaxing genre exclusivity – for example, whether exclusivity enjoyed in one language cross subsidizes programming in the other.

9. Lastly, the Commission noted that the onus was on the applicant to demonstrate that the genre in question meets the above criteria.

### **Ability of the genre to sustain competition**

10. The Commission’s analysis of the extent to which the applicant demonstrated the ability of the French-language general interest pay television services genre to withstand competition on the basis of the above criteria revealed the following:

### **Economic health and popularity of the genre**

11. Super Écran’s financial and audience data show that the service is profitable and popular. The Commission notes a sustained increase in Super Écran’s revenues and profits over the last five years. Consequently, despite the concerns raised by Astral regarding the fragility of pay service revenues, the Commission considers that Super Écran has the financial ability to sustain some competition while continuing to fulfill its programming obligations.
12. Similarly, the Commission noted that Super Écran’s audience has grown steadily over that same period. The Commission recognizes that, because Super Écran is a pay service, the number of its subscribers is significantly lower than the average for specialty services. However, the Commission is convinced that Super Écran enjoys outstanding recognition in the French-language market.

### **Programming availability and diversity within a genre**

13. The Commission analyzed TVA Group’s proposal to operate a service devoted predominantly to the broadcast of recent feature films. The Commission considers that TVA Group has not demonstrated that the library of this type of Canadian program is large enough to supply two competing services.
14. The Commission notes that TVA Group requested that the Commission impose on competing services a condition of licence requiring that they broadcast all Canadian films suitable for broadcast on a pay television service. Imposing such a condition of

licence would compel them to broadcast the same films concurrently, which would unnecessarily duplicate the programming offered to consumers. The Commission considers that such a request demonstrates that the library of Canadian feature films is not large enough to support more than one service focused on providing programming devoted to recent box-office hits.

15. Further, the Commission is concerned that the services could compete needlessly for the purchase of exhibition rights for foreign feature films dubbed in French, in particular U.S. feature films. Such competition would increase the amounts paid abroad to broadcast those feature films, without benefit to Canadian consumers or producers.
16. The Commission is also concerned that should the genre be opened to competition, services within that genre would be very similar and would not offer consumers enough programming diversity. Nor would these services offer new opportunities for the creation of new content for the broadcasting system.

#### **Other consequences**

17. The Commission evaluated other potential consequences of opening up the French-language general interest pay services genre. The Commission notes that TVA Group did not propose additional measures beyond the current undue preference rules to ensure that the French-language market is not excessively destabilized by opening up the general interest pay television genre, as requested in Broadcasting Notice of Consultation 2010-41. The Commission is particularly concerned that TVA Group belongs to the same ownership group as Videotron, the dominant broadcasting distribution undertaking in the French-language market.

#### **Commission's determination**

18. In light of all of the above, the Commission concludes that TVA Group has not demonstrated that the criteria have been met, and has not demonstrated that opening up the French-language general interest pay services genre to competition would serve the objective of providing consumers with greater diversity. Accordingly, the Commission will not consider the application by TVA Group for a broadcasting licence to operate Ciné-TVA.
19. As well, given the genre's popularity and Super Écran's advantageous financial situation, it is the Commission's preliminary view that a second French-language general interest pay television service could be viable as long as that service is complementary to Super Écran, rather than in direct competition with it. The Commission considers that there is a large repertoire of quality content not currently broadcast by Super Écran that could supply a second French-language general interest pay television service while ensuring diversity for consumers and for the broadcasting system.

20. Accordingly, the Commission is issuing Broadcasting Notice of Consultation 2010-860, in which it calls for applications for a broadcasting licence to operate a new French-language general interest pay service, under certain conditions.

Secretary General

**Related documents**

- *Call for applications for licences to operate a French-language general interest pay television service*, Broadcasting Notice of Consultation CRTC 2010-860, 19 November 2010
- *Call for comments on opening up the general interest pay services genre to competition in the French-language market and on proposed conditions of licence for competing Canadian general interest pay services in the French-language market*, Broadcasting Notice of Consultation CRTC 2010-41, 27 January 2010
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008