



## Broadcasting Decision CRTC 2014-418

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Route reference: Part 1 application posted on 17 February 2014

Ottawa, 7 August 2014

**Quebecor Media Inc., on behalf of TVA Group Inc.**  
Across Canada

*Application 2014-0128-1*

### **Complaint by Quebecor Media Inc., on behalf of TVA Group Inc., against the Bell Broadcast and New Media Fund**

*The Commission dismisses the complaint by Quebecor Media Inc., on behalf of TVA Group Inc., regarding the Bell Broadcast and New Media Fund application evaluation process.*

#### **The complaint**

1. In a letter dated 5 February 2014, Quebecor Media Inc. (Quebecor), on behalf of TVA Group Inc. (TVA), filed a complaint with the Commission against the Bell Broadcast and New Media Fund (the Fund). The Fund is a not-for-profit organization certified by the Commission as an independent production fund. Its mission is to fund new media projects associated with television productions.
2. In its complaint, Quebecor indicated that the Fund had refused to finance three projects filed in 2013 (*Prise 2 se souvient*, *La Voix II* and *Toute la vérité*), intended for broadcast on TVA's services. Quebecor alleged that the Fund's decisions had not been made objectively and that they are discriminatory against TVA as the three projects were in line with the Fund's guidelines and took into account all of the recommendations provided by the Fund's representatives. According to the complainant, independent producers who work with TVA are penalized since they are deprived of necessary funding, which is clearly contrary to the objectives of the *Broadcasting Act*.
3. The complainant alleged that the Fund refuses to finance the three projects in order to impede competition between TVA and Bell, given the existing connection between the Fund and BCE Inc. (BCE), parent company of Bell Media, which owns several services in the French-language market.
4. Quebecor requested that the Commission:

- state that the Fund's behaviour and decisions regarding the three projects reflect a discriminatory and arbitrary attitude towards TVA and bad faith by the Fund;
- state that the Fund's board of directors' behaviour is in non-compliance with the principles established by the Commission in *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010 (Broadcasting Regulatory Policy 2010-833), requiring independent production funds' boards of directors to adopt an effective and efficient process to ensure that applications for funding of productions are appraised objectively.
- require that the Fund compensate TVA by paying it \$100,000, the amount equivalent to the funding denied by the Fund for the project *La Voix II*, which TVA had to absorb;
- require that the Fund comply with its obligations to be objective and transparent when appraising future applications for initiatives for programming projects to be broadcast on TVA's services.

#### **Fund's reply**

5. In its reply dated 19 March 2014, the Fund alleged that it had respected the requirements of Broadcasting Regulatory Policy 2010-833, specifying that:
  - the Fund is governed by a board of directors of nine members representing various sectors of the industry, of whom a maximum of one third are from Bell;
  - all decisions regarding applications for funding for the digital components associated with television programs are made on the basis of the quality of the content presented by the independent producers;
  - eligible applications are subject to a rigorous and transparent analysis process, the steps of which and the evaluation grid used are available on the Fund's website;
  - appraisal is done by independent external analysts who vary from one application to another and who cannot receive or analyze more than one project from the same source. It is therefore an objective process that does not allow an analyst to systematically deny applications from a particular producer, or members of the board of directors to make a recommendation that might be biased;
  - all analyses are forwarded to the board of directors, who makes its decisions on the basis of the analysts' recommendations and according to the financial resources available.

6. With regard to the three production projects intended for broadcast on TVA's services, the Fund maintained that its analysis process was followed in accordance with the programs and directives established, which are posted on its website. It specified that the three projects did not obtain the passing grade (80 points or higher) and that the denials were documented and justified to the independent producers and rights owners. In that regard, the Fund challenged the legitimacy of Quebecor filing a complaint on behalf of the independent producers given that TVA and TVA Interactif were not the producers of those projects.
7. The Fund added that projects are accepted on the basis of merit and that, unlike the Canada Media Fund, it does not divide its contributions into envelopes reserved for television broadcasters, nor does it have quotas per broadcaster. The Fund refuted Quebecor's argument that TVA is a victim of discrimination and injustice by indicating that since 2009, the Fund has agreed to finance 53% of the applications filed by TVA Productions or intended for a TVA Group broadcaster. In a confidential letter dated 27 March 2014, the Fund submitted to the Commission the evaluation grids for the denied applications.
8. In light of the above, the Fund considered that Quebecor's allegations are unfounded and that its complaint should be dismissed.

#### **Quebecor's reply**

9. In its reply dated 31 March 2014, Quebecor contested the Fund's argument that 53% of the projects submitted by TVA or destined for broadcast on TVA Group's services were financed by the Fund. The complainant claimed that the projects submitted after Bell's acquisition of Astral Media in 2013 were rejected one after the other, while a larger proportion of the projects submitted prior to that had been accepted.<sup>1</sup>
10. As regards the Fund's argument that it only deals with the producers holding the rights to the projects submitted, Quebecor stated that it is convinced that TVA may legitimately question the Fund's practices, as the broadcaster of the projects submitted.

#### **Commission's analysis and decisions**

11. After examining the public record for this complaint and in light of the applicable regulation and policies, the Commission considers that it must determine whether the Fund's application evaluation process complies with the requirements of Broadcasting Regulatory Policy 2010-833.

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<sup>1</sup>According to the data provided by TVA, 8 of the 12 projects submitted between 2009 and 2012 (prior to the acquisition) received funding from the Fund. The Fund did not provide any funding to the three TVA projects submitted after the 2013 acquisition.

12. The Commission notes that the Fund's eligibility criteria are posted on its website and include specific criteria regarding applicants (e.g., they must be Canadian), the projects (e.g., the project must include a digital component as well as a broadcasting component) and the application (e.g., the funding requested must not exceed 75% of costs). The criteria established by the Fund are detailed (several criteria factor into the final grade), transparent (the criteria are posted online and available to all applicants) and objective (none of the criteria applies to one player to the disadvantage or profit of others). After reviewing the evaluation grids submitted confidentially by TVA, the Commission finds that the Fund did indeed evaluate the three projects according to these criteria.
13. In addition to these general criteria, the Fund evaluates the applications it receives using a standardized analysis grid, which is also available on the Fund's website, and is based on clear and pre-established criteria. This grid includes ten criteria<sup>2</sup> worth ten points each, for a total of 100 points. The Commission therefore considers that the Fund's decision to deny funding of TVA's projects seems founded, in view of the analysis grid's criteria, since the three projects received a grade below the passing grade of 80.
14. In light of the information provided by the Fund, the Commission is of the view that the Fund has an effective and efficient process for appraising applications, as required in Broadcasting Regulatory Policy 2010-833.
15. However, the Commission notes that the analysis grid does not include a grading scale. Therefore, nothing indicates why a project is graded 4/10 for content, rather than 7/10. The Commission notes that the analysts supported their evaluations with general comments underlining the strengths and weaknesses of each project, but considers that the analysis would be more objective and transparent if a grading scale detailing the grade given for each criterion were established and made public. Accordingly, the Commission recommends that the Fund establish a clear and transparent grading scale for each of the criteria in the analysis grid to reinforce the objectivity and transparency of its rendered decisions.
16. As regards Quebecor's allegations with respect to the Fund's objectivity and transparency, the Commission considers that the number of projects denied in 2013 relative to the number of projects submitted is not significant enough to conclude a change unfavourable to TVA following the Bell/Astral transaction. Furthermore, although Quebecor contested the Fund's refusal to provide it with the results of the analysts' evaluations for the three projects in question, the Commission considers that this does not seem unfair, given that the Fund clearly indicates in its policies that it reveals analysis results only to independent producers, and not to broadcasters.

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<sup>2</sup>The ten criteria are the following: content, design, technology, feasibility, funding assessment, analysis of business aspects, marketing and promotion, level of commitment of the broadcaster, project history and other.

### **Composition of the Fund's board of directors**

17. The Commission notes that contrary to what the Fund claimed in its letter dated 19 March 2014 and to what was in its 2012 annual report, the Fund's board of directors does not presently consist of eight members, but of nine. Thus, three of its eight members are linked to BCE or one of its subsidiaries, which represents 37.5% (more than one third) of its members, while Broadcasting Regulatory Policy 2010-833 stipulates that no more than one third of the board of directors of an independent fund may consist of representatives of broadcasting distribution undertakings.
18. It is possible that the Fund is currently seeking a ninth member to fill the vacant position. In any event, this situation suggests that one of the positions on the board of directors was not filled in 2014, which brings the number of members down to eight.
19. To rectify this situation, the Commission expects the Fund to appoint an additional member to its board of directors so that the nine positions are filled and so that the proportion of members affiliated with BCE meets the maximum one-third threshold, as is set out in Broadcasting Regulatory Policy 2010-833.

### **Conclusion**

20. In light of all of the above, the Commission considers that the Fund's application evaluation process complies with the requirements of Broadcasting Regulatory Policy 2010-833. The Commission therefore **dismisses** Quebecor's complaint.

### **Other matters**

21. Given that the Commission has dismissed the present complaint, Quebecor's request that the Fund pay TVA \$100,000 in damages to cover the expenses relating to the project *La Voix II* is also dismissed.
22. The Commission also notes that it does not have the power to impose financial penalties or require the payment of compensation in broadcasting.

Secretary General