Broadcasting Decision CRTC 2008-144

Ottawa, 18 July 2008

TVA Group Inc.
Across Canada

Application 2008-0335-5, received 29 February 2008
Public Hearing in the National Capital Region
7 July 2008

Canal Indigo – Acquisition of assets and corporate reorganization

*The Commission **approves** the application by TVA Group Inc. (TVA) to acquire full ownership of Canal Indigo through the transfer to TVA of the partnership interest held by the other partners in Canal Indigo, a general partnership (Cogeco Radio Television Inc. [20%], TQS inc. [20%] and Viewer's Choice Canada Inc. [40%]), to authorize a corporate reorganization, to obtain a new broadcasting licence to continue the operation of the national, French-language pay-per-view programming undertaking Canal Indigo, and to amend one of the undertaking's condition of licence.*

The application

1. The Commission received an application by TVA Group Inc. (TVA) to acquire full ownership of Canal Indigo through the transfer to TVA of the partnership interest held by the other partners in Canal Indigo, a general partnership (Cogeco Radio Television Inc. [20%] [Cogeco], TQS inc. [20%] [TQS] and Viewer's Choice Canada Inc. [40%] [VCC]), to authorize a corporate reorganization and to obtain a new broadcasting licence to continue the operation of the national, French-language pay-per-view (PPV) programming undertaking known as Canal Indigo under the same terms and conditions as those in effect under the current licence, with one exception.

2. In Broadcasting Decision 2002-382, the Commission set out the following condition of licence:

> 8. The licensee is authorized to distribute Canadian programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 20% of its Canadian programming schedule.

3. The applicant proposed to replace this condition of licence with the following:

> 8. The licensee is authorized to distribute Canadian programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 50% of its Canadian programming schedule.

4. As noted above, the undertaking is currently held by TVA (20%), Cogeco (20%), TQS (20%) and VCC (40%), in a partnership carrying on business as Canal Indigo, a general partnership. The proposed transaction would be effected through the transfer of the partnership interest held by the other partners to TVA, a corporation controlled by Quebecor Média inc., in turn controlled by Pierre Karl Péladeau. Upon completion of the transaction, the contract of partnership would be terminated and TVA would become the sole owner and licensee of the undertaking.

5. The purchase price for the partnership units held by the other partners, based on the purchase agreement, is estimated at $105,000. The applicant did not propose a tangible benefits package on the basis that the undertaking is in financial difficulty.

Intervention

6. The Commission received one comment by Bell Video Group (Bell), which includes Bell ExpressVu LP, a national, direct-to-home (DTH) satellite distribution undertaking and Class 1 broadcasting distribution undertaking (BDU). Bell supports the application by TVA, but would like certain conditions imposed. According to Bell, TVA should propose a tangible benefits package, given that the DTH PPV undertaking Canal Indigo is very profitable. To ensure fair and equitable access to programming, Bell requested that, in line with Decision 2000-747, the "most favoured nation" provision apply to all other BDUs seeking distribution agreements with Canal Indigo. Furthermore, Bell is of the view that to maintain healthy competition among BDUs, Canal Indigo should be prohibited from obtaining any form of programming exclusivity.

Applicant's reply

7. In its reply, TVA noted that even Bell agreed that Canal Indigo's licensee has consistently sustained significant losses for some time now. TVA indicated in its application that there are two reasons it agreed to purchase the other partners' interest. First, although video on demand (VOD) will eventually be replaced by PPV television, Quebec residents continue to use PPV television to order films. Secondly, given that VOD cannot offer live programming and given that TVA has already purchased certain live events, Canal Indigo will complement TVA and offer programming that VOD cannot. According to TVA, the public served by the licensee may see this as a benefit. Consequently, TVA does not believe it should have to pay tangible benefits as well as face its current financial risks.

8. With respect to Canal Indigo's DTH PPV service, TVA reiterated that it is not interested in acquiring this undertaking and that the licence for this service has already been surrendered to the Commission. Consequently, no tangible benefits should be imposed for this undertaking.

9. Finally, regarding Bell's closing argument concerning healthy competition among BDUs, TVA indicated that it currently complies with existing regulations and will continue doing so as long as this requirement is in effect. TVA also submitted that adding any other requirements to the existing regulations would be superfluous, and that Canal Indigo does not need any additional constraints, given that it is already experiencing difficulties.

The Commission's analysis and determinations

10. In Public Notice 1999-97, the Commission stated that, for all transfers of ownership or control involving conventional, pay, PPV and specialty television undertakings, it will generally expect applicants to make commitments to clear and unequivocal tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission.

11. Although the applicant raised the service's precarious financial situation as a reason for exempting it from paying tangible benefits, the Commission considers that the circumstances do not warrant such exemption. Accordingly, the Commission is requiring payment of tangible benefits of $10,500, which equals 10% of the total value of the transaction. The Commission expects to receive information within 30 days of the date of this decision as to how the tangible benefits package will be allocated.

12. The Commission finds that the value of the transaction is reasonable, in view of the circumstances.

13. The Commission is satisfied that the transaction is in the public interest and that the integrity of its licensing process would not be compromised by its approval.

14. The Commission has carefully considered the applicant's request for authority to distribute, each broadcast year, up to 50% of its Canadian programming that is produced by the licensee or by a person related to the licensee, rather than the current authorized level of 20%. The Commission is of the view that although this is a significant increase, it is warranted in the present case, given the current financial situation of the service and to ensure the continued availability of a French-language PPV service. The Commission further notes that no interventions were filed opposing the proposed amendment.

15. Accordingly, the Commission **approves** the application by TVA Group Inc. to acquire full ownership of Canal Indigo through the transfer to TVA of the partnership interest held by the other partners in Canal Indigo, a general partnership (Cogeco Radio-Télévision inc. [20%], TQS inc. [20%] and Viewer's Choice Canada Inc. [40%]), to authorize a corporate reorganization, to issue a new broadcasting licence to continue the operation of the national, French-language PPV programming undertaking known as Canal Indigo, and to amend one of this undertaking's conditions of licence.

16. The Commission will issue a new broadcasting licence to TVA upon surrender of the licence currently held by the general partnership Canal Indigo.

17. The licence issued to TVA will expire 31 August 2009, the current expiry date, and will be subject to the same terms and **conditions** as those set out in the current licence, as well as in Broadcasting Decision 2002-382, with the exception of condition of licence number 8, which will be replaced with the following **condition**:

> 8. The licensee is authorized to distribute Canadian programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 50% of its Canadian programming schedule.

Secretary General

Related documents

- *Licence renewal for Canal Indigo, pay-per-view television service distributed by cable*, Broadcasting Decision CRTC 2002-382, 27 November 2002

- *Transfer of effective control of CTV Inc. to BCE Inc.*, Decision CRTC 2000-747, 7 December 2000

- *Building on success: A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: http://www.crtc.gc.ca.