



Broadcasting Notice of Consultation CRTC 2010-41

Ottawa, 27 January 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

*The Commission calls for written comments on the appropriateness of opening up the general interest pay television genre to competition in the French-language market. The Commission also invites written comments on the conditions of licence relating to nature of service, exhibition of Canadian programming and Canadian programming expenditures that it would impose on competing services in the general interest pay services genre in the event that it opens up the genre to competition, consistent with the regulatory framework announced in Broadcasting Public Notice 2008-100. The deadline for filing comments is **19 March 2010**.*

Introduction

1. The Commission received an application by TVA Group Inc. to open up general interest pay television genre to competition in the French-language market.
2. 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 diversity in Canadian programming.
3. Consequently, it was decided that the Commission would not introduce competition in a given genre until it is convinced that a competitive environment would not significantly reduce either the diversity of services available to subscribers or the services' contribution to the creation of Canadian programming. Based on these criteria, the Commission decided that it would be appropriate to introduce competition for Canadian services operating in the genres of mainstream sports and mainstream national news.
4. In Broadcasting Public Notice 2008-100, the Commission announced that it would use the following criteria to determine the ability of a programming genre to withstand 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.

Opening up the general interest pay television genre to competition in the French-language market

5. Super Écran, owned by Astral Broadcasting Group Inc., is the only service operating in the general interest pay television genre in the French-language market.
6. The Commission invites written comments on the appropriateness of opening up the general interest pay television genre to competition in the French-language market. The Commission expects parties to explain how each of the criteria set out above applies to the general interest pay television genre in the French-language market.
7. Further, considering the reduced size of the French-language market and the limited number of players in the market, the Commission calls for written comments on the necessity of imposing additional measures (over and above the current undue preference rules) in order to ensure that the French-language market is not excessively destabilized by opening up the general interest pay television genre.

Proposed conditions of licence

8. The Commission notes that it has not yet made a decision on opening up the general interest pay television genre to competition in the French-language market.
9. The Commission further notes that Broadcasting Public Notice 2008-100 stipulates that all services operating within a genre open to competition, including pre-existing services, will be subject to the following standards:

- a common and standard nature of service definition;
 - common Canadian programming exhibition and spending obligations, as well as original programming obligations, where appropriate; these would be set at levels consistent with conditions that currently apply to the incumbent service(s);
 - no access rights;
 - no regulated wholesale fee;
 - continued genre exclusivity from non-Canadian and Category 2 services.
10. The Commission invites written comments on the standard conditions of licence that should be imposed on a service operating within the general interest pay television genre in the French-language market.
 11. To facilitate discussion, the Commission has attached, as Appendix 1, the conditions of the broadcasting licence for the English-language general interest pay television service owned by Allarco Entertainment Inc. (Allarco) set out in the appendix to Broadcasting Decision 2006-193. However, the Commission has updated certain of the conditions of licence set out in the appendix to this notice to reflect the replacement of the Canadian Association of Broadcasters' *Sex-Role Portrayal Code for Television and Radio Programming* with the *Equitable Portrayal Code* and the decision by the Canadian Broadcast Standards Council to assume responsibility for administering the *Pay television and pay-per-view programming code regarding violence*.
 12. The Commission recognizes that Canada's English- and French-language markets operate under different conditions and may have different needs, but considers that the conditions imposed on Allarco are an appropriate basis for discussion. The Commission also notes that the conditions imposed on Allarco are very similar to those imposed on Super Écran.
 13. The Commission notes that it adopted policies on closed captioning, video description and audio description, among other matters, in Broadcasting Public Notice 2007-54 and in Broadcasting and Telecom Regulatory Policy 2009-430. The Commission announces that, in the event that the general interest pay television genre is opened up to competition in the French-language market, it will apply the provisions set out in those policies to all services operating within that genre.
 14. If the Commission decides to open up the general interest pay television genre to competition in the French-language market following the consultations initiated by this notice, it will set out the final conditions of licence to be imposed on all Canadian services competing in the general interest pay television genre in the French-language market, as it did when it opened the mainstream sports and mainstream national news

genres to competition. At that time, the Commission would examine the application that triggered this proceeding and other new entrants may file applications for licences to operate services in this genre by requesting application of the standard conditions of licence. Similarly, the existing licensee of the general interest pay television service would be invited to file applications for amendment of its conditions of licence to reflect the new conditions of licence.

Call for comments

15. The Commission invites comments that address the issues and questions set out in this notice of consultation. The Commission will accept comments that it receives on or before **19 March 2010**.
16. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedure for filing set out below has been followed.

Procedure for filing comments

17. Interested parties can file their comments to the Secretary General of the Commission in **only one** of the following formats:

by using the

[\[Broadcasting interventions/comments form\]](#)

OR

by mail to

CRTC, Ottawa, Ontario K1A 0N2

OR

by fax at

819-994-0218

18. Submissions longer than five pages should include a summary.
19. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Important notice

20. All information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
21. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
22. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
23. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third party search engine will not provide access to the information that was provided as part of this public process.
24. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of documents

A list of all comments will also be available on the Commission's website. An electronic version of all comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.

The public may examine public comments and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 - 12th Avenue
Room 620
Regina, Saskatchewan S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Accessibility of telecommunications and broadcasting services, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009*
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008*
- *A new policy with respect to closed captioning, Broadcasting Public Notice CRTC 2007-54, 17 May 2007*
- *Applications for new pay television services, Broadcasting Decision CRTC 2006-193, 18 May 2006*

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: www.crtc.gc.ca.

Appendix 1 to Broadcasting Notice of Consultation CRTC 2010-41

Conditions of licence for general interest pay television services for Allarco Entertainment Inc. (Appendix to Broadcasting Decision 2006-193)

1. a) The licensee shall provide a national English-language general interest pay television programming service, with programming intended for all audiences.

b) The licensee may distribute programming from all categories of programming set out in item 6 of Schedule I to the *Pay Television Regulations, 1990*, with the exception of programming from categories 1 News, 4 Religion, 5(a) Formal education and pre-school, 5(b) Informal education/Recreation and leisure and 14 Infomercials, promotional and corporate videos.

c) The licensee shall not devote more than 5% of its programming schedule during each semester to programming from category 6 Sports, with a maximum of 20 hours in any week.

d) The licensee shall devote at least 50% of its programming schedule during each semester to dramatic programs.
2. In each year of the licence term, the licensee shall devote to the distribution of Canadian programs not less than
 - a) 30% of the time from 6:00 p.m. to 11:00 p.m. (Eastern time); and
 - b) 25% of the remainder of the broadcast day.

For the purpose of this condition, a 150% credit will be given for time during which the licensee distributes a new Canadian production that commences between 6:00 p.m. and 11:00 p.m. (Eastern time) or, in the case of a new Canadian production intended for children, at an appropriate viewing hour between 6:00 a.m. and 9:00 p.m., and the licensee will receive such a credit for each subsequent showing in the specified time periods of such a production within a two-year period from the date of first showing by the licensee.

3. In each broadcast year, the licensee shall devote to the distribution of Canadian dramatic programs not less than 50% of the time that it is required to devote to the distribution of Canadian programs.
4. a) During the first broadcast year of operations, the licensee shall expend, on the acquisition of, or investment in, Canadian programming, a minimum of \$4 million. For each subsequent broadcast year, the licensee shall expend, on the acquisition of, or investment in, Canadian programs, 32% of its revenue for the previous broadcast year.

b) In any broadcast year of the licence term excluding the final broadcast year, the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that broadcast year, as set out and calculated in accordance with this condition of licence.

c) Should the licensee avail itself of this flexibility in any broadcast year, it shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that broadcast year, the full amount of the previous broadcast year's underspending.

d) In any broadcast year of the licence term, the licensee may expend an amount on Canadian programming that is greater than the minimum required expenditure for that broadcast year as set out and calculated in accordance with this condition of licence; in such case, the licensee may deduct:

- i) from the minimum required expenditure for the next broadcast year of the licence term, an amount not exceeding the amount of the previous broadcast year's overspending; and
- ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the overspending and any amount deducted under paragraph (i) above.

e) Notwithstanding the above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures as set out and calculated in accordance with this condition of licence.

5. In addition to the expenditures required under condition of licence 4, the licensee shall expend on regional outreach programs not less than \$1 million in each broadcast year.
6. a) In the broadcast year where it no longer has a cumulative deficit, the licensee shall expend on investment in Canadian programs by way of equity investment or bridge financing, an amount equal to its operating profit after tax for that year, less any amount used to reduce the deficit; and

b) In each subsequent broadcast year during the term of its licence, the licensee shall expend on investment in Canadian programs by way of equity investment or bridge financing an amount equal to its operating profit after tax for that year.
7. During the licence term, the licensee shall devote to the acquisition of Canadian programs not less than 60% of its expenditures on the acquisition of, or investment in, Canadian programs. The required expenditure is calculated pursuant to condition of licence 4.

8. In addition to the expenditures required under condition of licence 4.(a), the licensee shall expend on script and concept development, including bursaries for writers, excluding overhead costs, not less than \$2 million in each broadcast year for a minimum of \$14 million over the licence term.
9. In making the calculations required for the purposes of conditions 4 to 8, only actual cash outlays shall be taken into account.
10. a) The licensee shall offer its multiplexed channels only together in a package.

b) With respect to each multiplexed channel, the licensee shall adhere to the Canadian programming requirements set out in conditions of licence 2 and 3.
11. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast year.
12. The licensee shall broadcast two hours per week of described video programming beginning in the second year of operations, three hours per week of described video programming beginning in the fourth year of operations, and four hours per week of described video programming beginning in the sixth year of operations.

Industry codes

13. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
14. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
15. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003, as amended from time to time and approved by the Commission.

Definitions

In these conditions:

“broadcast day” means a 24-hour period beginning at 6:00 a.m. Eastern time.

“broadcast year” means each twelve-month period beginning on 1 September in any year.

“expend” and “expenditure” means actual cash outlay;

“expend on acquisition” means

- a) expend to acquire exhibition rights for the licensed territory, excluding overhead costs;
- b) expend on script and concept development, excluding overhead costs; or
- c) expend on the production of filler programming, as defined in section 2 of the *Pay Television Regulations, 1990*, including direct overhead costs; and

“expenditure on acquisition” has a comparable meaning.

“expend on investment” means expend for the purposes of an equity investment or an advance on account of an equity investment, but not overhead costs or interim financing by way of a loan; and

“new Canadian production” means:

- a) a Canadian dramatic program
 - i) which exceeds 75 minutes in duration and in relation to which all financial expenditures made by the licensee were made prior to the commencement of principal photography or taping and in which principal photography or taping was completed after 1 January 1985; and
 - ii) which is intended for children and exceeds 22:30 minutes and in relation to which all financial expenditures made by the licensee were made prior to the completion of principal photography or taping.
- b) and which is a program that has never been broadcast in English in the licensed territory.

“revenue” means revenue from residential and bulk cable, SMATV and DTH BDU subscribers as well as any return on an investment in programming.

“script and concept development expenditures” means those expenditures, excluding overhead costs, that are incurred prior to the commencement of pre-production and before the financing of the project is in place. Spending on programs that are assured of going to air at the time of the expenditure is not considered as script and development expenditures.

“semester” means each six-month period beginning on 1 September and 1 March.