



## Broadcasting Decision CRTC 2014-458

PDF version

Route reference: Part 1 applications posted on 14 January 2014

Ottawa, 4 September 2014

*Applications 2014-0008-5 and 2014-0009-3*

### **Complaints by Festival Portuguese Television against the operation of TVI and RBTI by Ethnic Channels Group Limited**

*The Commission finds that Ethnic Channels Group Limited (ECGL) failed to operate TVI and RBTI in accordance with the requirements of the Exemption order respecting certain third-language television undertakings (the Exemption Order) and was therefore operating a broadcasting undertaking without a licence during the weeks for which the Commission requested program grids.*

*Accordingly, the Commission directs ECGL, under Section 11 of the Exemption Order, to file, on a quarterly basis, a report containing the program grids for all of ECGL's exempt specialty services for the 2014-2015 broadcast year. A list of these services can be found in the appendix to this decision.*

#### **The parties**

1. Ethnic Channels Group Limited (ECGL) owns and operates various licensed and exempt ethnic specialty Category B services. ECGL is controlled by Mr. Slava Levin.
2. 1395047 Ontario Inc., known as Festival Portuguese Television (FPTV) is the licensee of a national, ethnic, third-language, specialty Category B service also known as FPTV. It is controlled by Mr. Francisco Alvarez.

#### **Background**

3. ECGL operates TVI and RBTI, services that are both registered as exempt, third-language Category B specialty services and purport to operate pursuant to the *Exemption order respecting certain third-language television undertakings* (the Exemption Order), set out in Appendix 2 of Broadcasting Order 2012-689.
4. In order to operate pursuant to the Exemption Order, these services must comply with the requirements of the Exemption Order at all times. In regard to the broadcast of Canadian content by third-language specialty services, the Exemption Order specifies that undertakings must comply with the following requirement:
  4. Of the programming broadcast by the undertaking in each calendar week:

- d) Not less than 15% of all programs broadcast qualify as Canadian programs in accordance with the criteria established by the Commission in *Certification for Canadian programs – A revised approach*, Public Notice CRTC 2000-42, 17 March 2000, as amended from time to time
5. The Commission notes that, unlike licensed services, exempt services do not have a licence renewal process through which non-compliance issues may be addressed on a regular basis. Instead, the Commission relies on a complaints-based process in order to investigate alleged non-compliance issues related to exempt services.
6. In addition, unlike licensed undertakings, services operating pursuant to the Exemption Order are not required to submit monthly programming logs to the Commission. The Exemption Order instead requires these services to “retain a clear and intelligible audio-visual recording of all of its programming for a period of four weeks following the date of broadcast, and provide this to the Commission on such terms as the Commission may request.”

## **Complaints**

7. On 31 December 2013, FPTV filed two separate complaints with the Commission, one for each of TVI and RBTI. In both complaints, FPTV alleged that these services did not comply with the Exemption Order’s requirement that not less than 15% of all programs must qualify as Canadian programs. FPTV stated that during the periods it reviewed, dating from October to December 2013, it was unable to find a single Canadian program broadcast by either service and that all of the programming appeared to be foreign programming.
8. It further submitted that, given the lack of Canadian programming, ECGL should no longer be able to operate these services pursuant to the Exemption Order, and that the Commission should require ECGL to obtain broadcasting licences for these services. Additionally, it argued that these services should be required to suspend their operations and no longer be on air until ECGL has obtained broadcasting licences and is able to operate in full compliance with the Commission’s policies, rules and regulations.

## **Letter dated 17 January 2014**

9. On 17 January 2014, the Commission sent a letter to ECGL requesting additional information regarding the programming grids of TVI and RBTI. Specifically, the Commission requested:
  - for each service, program grids for the calendar weeks of 1 to 7 December 2013, of 15 to 21 December 2013 and of 5 to 11 January 2014. The program grids would list the country of origin and, where a program is Canadian, the certification or Canadian Audio-Visual Certification Office (CAVCO) number for each program;

- the audio-visual recording of all programming broadcast by the two services for the calendar week of 5 to 11 January 2014.

10. ECGL provided the Commission with the requested information.

### **Commission's analysis of the information submitted**

11. Based on the information on file, the Commission informed ECGL that it appeared that TVI and RBTI did not meet the required weekly minimum of 15% Canadian content set out in the Exemption Order, and informed ECGL of that situation. Specifically, the material submitted indicated that the weekly levels of Canadian content, for TVI and RBTI respectively, were 0% (1 to 7 December 2013), 0% (15 to 21 December 2013), and 5.36% and 5.65% (5 to 11 January 2014).
12. In addition, for the week of 5 January to 11 January 2014, it appeared that the program identified as "Ethnic Channels Group Presents" was broadcast without obtaining certification. While this program is described in its programming grids as an in-house production, it is not a news or public affairs program, and consequently requires certification.
13. The Commission requested that ECGL respond to the apparent non-compliance, and demonstrate that the program "Ethnic Channels Group Presents" meets the criteria to be considered a Canadian program, as detailed in Public Notice 2000-42.

### **ECGL's answer**

14. In its response, ECGL stated that it accepted the Commission's conclusions regarding the percentage of Canadian content broadcast on TVI and RBTI, thereby acknowledging that the services did not meet the minimum required Canadian content levels. It explained that in managing its various activities, it failed to ensure that Canadian content was properly scheduled and input for broadcast on the two services.
15. ECGL stated that as soon as it was made aware of the non-compliance, it worked to immediately bring both services into compliance by scheduling Canadian content. It added that, as of 18 February 2014, the programming broadcast on the services was in full compliance with the Exemption Order's Canadian content requirement, and that it is committed to ensuring it will continue to do so going forward, without exception or excuse.
16. To ensure compliance, ECGL indicated that it has adopted the following procedures:
  - the programming schedule for the services will be prepared weekly in advance, including appropriate Canadian content, by the licensee's scheduling personnel, and then will be reviewed by ECGL's Director of Broadcasting to confirm compliance with applicable regulatory requirements, prior to being inputted into ECGL's traffic system;

- each week, a broadcast report will be generated for review by ECGL's Director of Broadcasting and management to confirm weekly compliance.
17. In regard to its program “Ethnic Channels Group Presents”, ECGL stated that in all instances, it conceived, produced, prepared and edited every production itself. However, certain programs contain footage obtained from non-ECGL employees. Therefore, for the purposes of the nature and origin of this particular program, ECGL accepts that the program may not qualify as Canadian content for Canadian purposes at this time. It added that, at a later date, it may work towards getting the program recognized as Canadian, in keeping with the Commission policy, and after a more detailed examination is complete. ECGL explained that, until that time, it will withdraw this program from its schedules.
18. ECGL argued that the regulatory measures proposed by FPTV are not necessary, given that the ECGL services are currently operating in compliance. However, if the Commission were to request it, ECGL committed to apply for broadcasting licences for the two services and comply with the regulatory obligations that apply to licensed services.
19. Finally, it added that it does not believe it would be in the best interest of TVI's and RBTI's subscribers that these services be discontinued in the interim period. ECGL further noted that a disruption in the availability of these services could lead subscribers to seek them out through “grey” or “black” market sources.

## **Intervention**

### **Rogers**

20. Rogers Communications Partnership (Rogers) indicated that should TVI and RBTI be found in non-compliance with the Exemption Order, the Commission should not order ECGL to suspend the two programming services. It added that this would be highly disruptive to the customers of broadcasting distribution undertakings (BDUs) who subscribe to these services.
21. Rogers added that it believes that a programming service should be given the opportunity to confer with the Commission to address any compliance issue that may arise. This would allow ECGL to explain why there was a compliance issue, and to resolve the issues to the Commission's satisfaction so that the programming services are then in full compliance.

### **FPTV's reply**

22. In its reply to ECGL, FPTV submitted that even after receiving notice of these complaints, ECGL continued to fail to comply with the Exemption Order's Canadian content requirements. FPTV stated that it's difficult to believe that ECGL could have neglected to program any Canadian programming at all when the two services were launched. It took the position that the fact that ECGL required time to “ramp up” the Canadian programming level for both services, coupled with the fact that until early

2014 no Canadian programming was broadcast, clearly demonstrates that ECGL made a decision to ignore the Exemption Order requirements, therefore operating TVI and RBTI as non-compliant services from their launch date.

23. FPTV added that it is unacceptable for ECGL to be unable to determine whether the program “Ethnic Channels Group Presents” is Canadian or not. It also stated that this is further evidence that it was never part of ECGL’s original plan to broadcast Canadian programming on TVI and RBTI.
24. As for ECGL’s comment concerning applying for broadcasting licences for these services, FPTV agrees and stated that this would be the only way for the Commission to effectively monitor the operation of the two services in order to ensure full compliance. However, FPTV does not agree that the services should continue to operate under the Exemption Order, and submitted that both services should be suspended immediately pending the issuance of broadcasting licences for both services by the Commission.

#### **Letter dated 29 April 2014**

25. The Commission sent ECGL a further letter, on 29 April 2014, in order to verify ECGL’s statements regarding the compliance of the two services. The Commission requested program grids for each service for the calendar weeks of 30 March to 5 April 2014 and 13 to 19 April 2014.
26. In its response, ECGL indicated that TVI meets the Canadian content level for both weeks while RBTI experienced a 7 minute shortfall for the week of 30 March to 5 April 2014, and a 4 hour and 52 minute shortfall for the week of 13 April to 19 April 2014. It explained that the shortfall was due to a miscalculation for those weeks, and that in order to ensure that this error is not repeated, it has added an additional half hour of Canadian content per day on both services, which would bring the total Canadian content broadcast to approximately 28.7 hours per calendar week (roughly 17% of the broadcast week).
27. The Commission’s analysis of the program grids for each service yielded slightly different results than those presented by ECGL. The Commission found that, for the week of 30 March to 5 April 2014, TVI broadcast 11.87% Canadian content, while RBTI broadcast 14.35%. As for the week of 13 to 19 April 2014, TVI and RBTI’s Canadian content levels were respectively 14.98% and 14.55%.

#### **Commission’s analysis and decision**

28. As mentioned earlier, TVI and RBTI, two services registered as exempt, third-language Category B specialty services, must operate pursuant to the requirements set out in the Exemption Order, which includes specific conditions related to the broadcast of Canadian content, in order to remain registered as exempt. More precisely, the Exemption Order stipulates that during each calendar week, not less than 15% of all programs broadcast by an undertaking qualify as Canadian programs.

29. The Commission's review of the material provided by ECGL during this proceeding demonstrates that TVI and RBTI had Canadian content levels below the minimal threshold during the weeks examined by the Commission. Moreover, ECGL itself admitted to being in non-compliance on three occasions.
30. In light of all of the above, the Commission finds that ECGL failed to operate TVI and RBTI in accordance with the requirements of the Exemption Order, during the weeks for which the Commission requested program grids. Therefore, ECGL was operating without a licence, contrary to the *Broadcasting Act* (the Act).
31. The Commission considers that non-compliance issues, whether they are committed by licensed or exempt services, are serious in nature. It is alarming that TVI and RBTI were not broadcasting any Canadian content whatsoever during the periods examined. It was only after complaints were filed with the Commission and an investigation was launched that ECGL took any steps to try to address these issues by adding Canadian content on both services. While the Commission acknowledges ECGL's efforts to bring TVI and RBTI into compliance by increasing its Canadian content on both services in a relatively short period of time, it is of the view that ECGL has not demonstrated how it will ensure that the services will remain in compliance in the future.
32. Moreover, ECGL's failure to ensure that Canadian content was properly scheduled on TVI and RBTI also calls into question the programming schedules of ECGL's other exempt services. As such, the Commission considers it necessary to seek assurance that ECGL has also properly scheduled Canadian content on its other exempt services.
33. However, the Commission notes that directing BDUs to suspend carriage of these services, as proposed by FPTV, would be disruptive to the subscribers of these services. The Commission also notes that, when dealing with non-compliance by licensed undertakings, revocation or suspension of the service is usually considered only after other, less harsh actions, including reporting requirements, have been unsuccessful in bringing the licensee into compliance. Accordingly, on the facts of this case, the Commission considers that it would not be appropriate at this time to suspend carriage of these services.

## **Conclusion**

34. In light of all of the above, the Commission finds that ECGL failed to operate TVI and RBTI in accordance with the requirements of the Exemption Order, during the weeks for which the Commission requested program grids. Accordingly, the Commission **directs** Ethnic Channels Group Limited, under Section 11 of the Exemption Order, to file, on a quarterly basis, a report containing the program grids for all of ECGL's exempt specialty services for the 2014-2015 broadcast year. A list of these services can be found in the appendix to this decision. The program grids must provide the country of origin and, where a program is Canadian, the certification or CAVCO number for each program.

35. These reports will allow the Commission to continue monitoring the programming of TVI and RBTI and to ensure that the other exempt services operated by ECGL are in compliance with the Exemption Order. The reports must be submitted by the following deadlines and include the following information:

- by 15 December 2014 – a report setting out the program grids for the months of September, October and November 2014;
- by 16 March 2015 – a report setting out the program grids for the months of December 2014, January and February 2015;
- by 15 June 2015 – a report setting out the program grids for the months of March, April and May 2015; and
- by 15 September 2015 – a report setting out the program grids for the months of June, July and August 2015.

36. Furthermore, ECGL must demonstrate within the first report, on 15 December 2014, that all of its exempt specialty services are being operated in accordance to the conditions of their respective exemption orders. Failure to do so may result in further enforcement action, which could include ordering ECGL to suspend operations of any non-compliant service and requiring BDUs to cease its distribution.

37. The Commission reminds ECGL and other operators of exempt services that, in order to operate pursuant to an exemption order, all conditions must be met at all times. Failure to do so means that the company is operating a broadcasting undertaking without a licence, contrary to the Act. Operators are also reminded that BDUs are only authorized to carry broadcasting undertakings that are licensed, exempt or otherwise authorized by the Commission.

Secretary General

### **Related documents**

- *New exemption order respecting certain programming undertakings that would otherwise be eligible to be operated as Category B services, and amendments to the Exemption order respecting certain third-language television undertakings, Broadcasting Order CRTC 2012-689, 10 December 2012*
- *Certification for Canadian Programs – A revised approach, Public Notice CRTC 2000-42, 17 March 2000*

## **Appendix to Broadcasting Decision CRTC 2014-458**

### **List of Ethnic Channels Group Limited's exempt, Specialty Category B services**

<b>Exempt Service</b>	<b>Language(s)</b>
Abu Dhabi TV	Arabic
Amedia	Russian
BBC Arabic	Arabic
Bein Sport Canada	English
Comedy TV	Russian
CTC	Russian
Dream 1	Arabic
Dream 2	Arabic
Hum TV	Urdu
HRT Sat	Croatian
Jaam-e-Jam	Farsi
KHL-TV	Russian
MBC Maser	Arabic
Melody Arabia	Arabic
Melody Drama	Arabic
Melody Film (Aflam)	Arabic
Melody Hits	Arabic
Melody Sports	Arabic
Orbit Alyawm	Arabic
Orbit Series	Arabic
PFC Internacional	Portuguese
RBTI	Portuguese
RTL Televizija	Croatian
RTS Sat	Serbian
SBTN	Vietnamese
TV 1000 Russian Kino	Russian
TVI	Portuguese
TVCI	Russian
TV Rain	Russian

Zee Canada	Punjabi, Hindi, English
Zee Salaam	Urdu
Zee Tamizh	Tamil
Zing	Punjabi, Bhojpuri, Hindi, Arabic, English