



## Broadcasting Decision CRTC 2019-109 and Broadcasting Order CRTC 2019-110

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Reference: 2019-106

Ottawa, 18 April 2019

### **TVA Group Inc.**

Various locations

*Public record for this proceeding: 1011-NOC2019-0106*

*Public hearing in the National Capital Region*

*17 April 2019*

### **TVA Group Inc. – Non-compliance**

*The Commission finds that TVA Group Inc. (TVA Group) has contravened section 15(1) of the Discretionary Services Regulations (the Regulations) by withholding TVA Sports' signal from distribution by Bell Canada (Bell) in a way that prevented Bell from providing TVA Sports to Canadians during a dispute.*

*Pursuant to section 12(2) of the Broadcasting Act (the Act), the Commission **issues** a mandatory order requiring TVA Group to continue to provide its programming service TVA Sports to Bell until the present dispute is resolved and to comply with section 15(1) of the Regulations at all times.*

*Further, pursuant to sections 9 and 24 of the Act, the Commission **suspends** the broadcasting licence for TVA Sports. However, the suspension will go into effect **only if** TVA Sports' signal is withheld from Bell's distribution undertakings by TVA Group prior to the resolution of the dispute.*

### **Introduction**

1. On 7 April 2019, the Commission received a letter from Bell Canada (Bell), which stated that during the final regular season hockey game for the Montréal Canadiens, TVA Sports' feed contained screen crawls communicating that its signal would be suspended in the next few days. Bell further stated that withdrawing the signal would contravene the standstill rule set out in section 15(1) of the *Discretionary Services Regulations* (the Regulations) and requested that the Commission notify TVA Group Inc. (TVA Group), licensee of TVA Sports, that the standstill rule applies since Bell and TVA Group are in a dispute relative to all of TVA Group's discretionary services, including the packaging of TVA Sports in Quebec.
2. On 8 April 2019, Commission staff issued a letter stating its view that the parties are engaged in a dispute and that the standstill rule applies.

3. On 8 April 2019, the Commission received another letter from Bell requesting that the Commission issue a mandatory order forbidding TVA Group from withdrawing its licensed services from any of Bell's distribution undertakings in light of an indication by Quebecor Media Inc. (Quebecor), the majority shareholder of TVA Group, that it did not intend to comply with the standstill rule. On 9 April 2019, Bell submitted evidence of these intentions.
4. On 10 April 2019, the Commission sent a decision letter to the parties. In the decision letter, the Commission determined that Bell and Quebecor are engaged in a dispute regarding carriage or terms of carriage and that the standstill rule applies. As such, Bell and Quebecor are required to provide their respective programming services to one another and are required to distribute those services, at the same rates and on the same terms and conditions as they did before the dispute, until the parties resolve their dispute or the Commission issues a decision concerning this unresolved matter. The Commission stated that withholding or otherwise interfering with signals by either party such that Canadians are prevented from enjoying the programming would amount to changing the terms of carriage.
5. Despite this determination and the Commission's indication that it was prepared to use the means at its disposal to enforce its regulations, TVA Group appeared to have withheld or interfered with TVA Sports signal in a way that prevented Bell subscribers from viewing the service from 10 to 12 April 2019.
6. Given the seriousness of this matter, in Broadcasting Notice of Consultation 2019-106, the Commission called TVA Group to appear at the 17 April 2019 public hearing in the National Capital Region to consider whether TVA Group was in violation or had violated section 15(1) of the Regulations by withdrawing TVA Sports' signal from distribution by Bell or otherwise interfering with the signal in a way that prevented Canadian consumers from viewing the service.

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

### **Jurisdiction**

7. At the hearing, TVA Group submitted that sections 14(2) and 15 of the Regulations and certain provisions of Broadcasting and Telecom Information Bulletin 2013-637 (the Information Bulletin) are outside the Commission's jurisdiction. According to TVA Group, by forcing parties to maintain a contractual relationship throughout the dispute resolution process the Commission is determining the terms and conditions of affiliation agreements, which it submitted is not permitted under section 9 or 10 of the *Broadcasting Act* (the Act). TVA Group provided a legal argument with supporting documentation, which has been added to the public record of the proceeding.
8. Bell indicated that it did not wish to provide a submission on jurisdiction as it was of the view that the Commission's authority was clear. Bell submitted that a proper challenge to the Commission's jurisdiction relating to the standstill as confirmed by

staff and decision letters issued on 8 and 10 April 2019 is to appeal these directives to the Federal Court of Appeal.

9. Pursuant to section 5(1) of the Act, the Commission is responsible for the regulation and supervision of the Canadian broadcasting system. This role includes, among other things, the licensing of programming and distribution undertakings and the making of regulations governing their behaviour.
10. Section 10(1)(h) of the Act permits the Commission to make regulations “for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings.”
11. To this end, the Commission has enacted a number of regulations related to dispute resolution, including the standstill rule set out in section 15(1) of the Regulations. This section requires that during a dispute between a broadcasting distribution undertaking (BDU) and a programming undertaking, the programming undertaking must continue to provide its programming services to the BDU at the same rates and on the same terms and conditions as it did before the dispute.
12. This rule not only serves to level the playing field during the negotiation process by eliminating the threat of loss of service during a dispute, but above all ensures that consumers are protected from loss of service, consistent with the Commission’s objective in section 5(2)(d) of the Act to facilitate the provision of broadcasting to Canadians. In this particular dispute, the provision also serves to preserve the source of French-language programming for subscribers, consistent with the objectives in section 3(1)(k) of the Act. Although the standstill rule may have a corollary impact on the commercial relationship of the undertakings, this is not its primary purpose.
13. Further, TVA’s position that the Commission does not have the jurisdiction to set terms and conditions of affiliation agreements is inconsistent with the broad power given to the Commission by Parliament to make regulations to resolve **any** dispute by way of mediation or **otherwise**. Given that terms and conditions, including rates, are fundamental to the resolution of carriage disputes, the interpretation urged on the Commission by TVA Group would render the regulation-making power set out in section 10(1)(h) empty of meaning, an absurd result that cannot have been Parliament’s intention.
14. Accordingly, the Commission is of the view that section 15 of the Regulations is within the Commission’s jurisdiction and that it is therefore applicable to TVA Sports as a discretionary service.
15. Given that the focus of the proceeding is non-compliance with section 15(1) of the Regulations, the Commission notes that TVA Group’s arguments concerning section 14(2) of the Regulations and the provisions of the Information Bulletin are outside the scope of this proceeding. However, the Commission considers that its conclusions regarding jurisdiction apply equally to these elements of the regulatory framework.

## Has TVA contravened the standstill rule?

16. In the present instance, the Commission must determine whether TVA Group has contravened section 15(1) of the Regulations by withholding TVA Sports' signal from distribution by Bell or otherwise interfering with the signal in a way that has prevented Bell from providing the service to Canadians during a dispute between the two undertakings.
17. Pursuant to section 15(2) of the Regulations, a dispute begins when written notice of the dispute is provided to the Commission and is served on the other undertaking that is party to the dispute. As set out in Broadcasting Regulatory Policy 2011-601, this notice may take the form of the filing of an undue preference application, a request for staff-assisted mediation, a request for arbitration or a simple notification to the Commission of the existence of the dispute.
18. In this case, TVA Group itself filed an undue preference application against Bell related to the packaging of TVA Sports in Quebec on 27 February 2019. In addition, the parties attended staff-assisted mediation on 5 April 2019. Finally, the letters from Bell dated 7, 8 and 9 April 2019 clearly indicate that there is a dispute between Bell and TVA Group/Quebecor.
19. Accordingly, as stated in the decision letter of 10 April 2019 and confirmed at the hearing, the parties are clearly in a dispute and the standstill rule applies.
20. On 9 April 2019, Quebecor informed the public through an advertisement in *Le Journal de Montréal* that it would withdraw the signal of TVA Sports from Bell at 7 p.m. on the next day. On 10 April 2019, Quebecor issued a press release stating that "it had no other choice but to proceed with the withdrawal of TVA Sports' signal from Bell subscribers at 7 p.m. tonight" (translation).
21. At the hearing, TVA Group acknowledged that it did in fact withdraw the signal of TVA Sports from Bell subscribers at 7 p.m. on 10 April 2019.
22. Bell also confirmed at the hearing that TVA Group cut the TVA Sports signal to over 425,000 Bell subscribers and several smaller BDUs that depend on Bell for signal transport at 7 p.m. on 10 April 2019, affecting approximately 1 million viewers in the province of Quebec.
23. In light of these facts, the Commission finds that while the parties were engaged in a dispute concerning the carriage and terms of carriage of programming undertakings, TVA Group failed to provide its programming service to Bell from 10 to 12 April 2019 at the same rates and on the same terms and conditions as it did before the dispute. Accordingly, the Commission finds that TVA Group has contravened section 15(1) of the Regulations.

## Issuance of a mandatory order and suspension of the licence

24. Bell requested that the Commission revoke the licence for TVA Sports or, at a minimum, suspend the licence until 30 June 2019, to coincide with the last day of the NHL playoffs. Bell further requested that the Commission issue a mandatory order to maintain the signal and register it with the Federal Court before 23 April 2019, when the injunction issued by the Quebec Superior Court<sup>1</sup> requiring Quebecor to restore service expires. Bell expressed concern that Quebecor would again pull its signal in the absence of an enforceable Commission order.
25. Section 12(2) of the Act states:
- The Commission may, by order, require any person to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do under this Part or any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part, to any such regulation, licence, decision or order or to section 34.1.
26. The Commission takes the intentional contravention of its regulations very seriously. Not only did TVA Group premeditate its non-compliance with section 15(1) of the Regulations by announcing to Bell's subscribers that it would withhold the service, but once directed by the Commission to continue to provide the service to Bell, TVA Group carried through on its threat to withhold the service.
27. TVA Group brought itself back into compliance following the order of the Quebec Superior Court; however, given the above, the Commission is not convinced that TVA Group would have done so in the absence of the Court's order.
28. The Commission reminds TVA Group and Quebecor that holding a licence is a privilege, not a right. Moreover, the Commission is prepared to pursue further recourse in the courts in the case of non-compliance.
29. In light of these factors, the Commission considers it appropriate to issue a mandatory order pursuant to section 12(2) of the Act.
30. Accordingly, pursuant to section 12(2) of the Act, the Commission hereby **orders** TVA Group Inc. to continue to provide its programming service TVA Sports to Bell until the present dispute is resolved and to comply at all times with section 15(1) of the Regulations for this service. A mandatory order to this effect is set out in the appendix to this decision. Pursuant to section 13 of the Act, the order will be filed with the Federal Court today and will become an order of the Court.
31. Finally, the Commission is gravely concerned with TVA Group's disregard for the Commission's authority. Given the inflexible behaviour displayed by the licensee in

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<sup>1</sup> Bell Canada c. Québecor inc., 2019 QCCS 1366.

respect of its regulatory obligations and the lack of a firm commitment to correct the situation, the Commission cannot be assured that TVA Group will respect its regulatory obligations going forward.

32. In light of the above, the Commission hereby **suspends** TVA Group Inc.'s broadcasting licence for TVA Sports. However, this determination is suspended and will only take effect if TVA Group does not comply with section 15(1) of the Regulations. Should TVA Group again withhold or interfere with the TVA Sports signal provided to Bell's distribution undertakings before an agreement settling the dispute is reached or the Commission renders a decision concerning any unresolved matter, the suspension of the licence will automatically take effect for the duration of the time for which the programming service is not provided to Bell until an agreement concerning the carriage and terms of carriage of TVA Sports is reached or the Commission renders a decision concerning any unresolved matter.
33. The Commission reminds TVA Group that a suspension of the licence means it will not be able to broadcast TVA Sports on any distribution undertaking, including the related service of Videotron. Should TVA Group continue to broadcast the programming service while its licence is suspended, it will be broadcasting without a licence, contrary to section 32(1) of the Act, and may be subject to prosecution for this contravention.

Secretary General

*This decision is to be appended to the licence.*

#### **Related documents**

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2019-106, 11 April 2019
- *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2013-637, 28 November 2013
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011

## **Appendix to Broadcasting Decision CRTC 2019-109**

### **Broadcasting Mandatory Order CRTC 2019-110**

Pursuant to subsection 12(2) of the *Broadcasting Act*, TVA Group Inc. is hereby ordered to continue providing its programming service, TVA Sports, to Bell Canada at the same rates and on the same terms and conditions as it did prior to withholding the service on 10 April 2019, until an agreement concerning the carriage and terms of carriage of TVA Sports is reached or the Commission renders a decision concerning any unresolved matter.

Pursuant to subsection 12(2) of the *Broadcasting Act*, TVA Group Inc. is hereby ordered, in respect of its programming service TVA Sports, to comply at all times with the requirements set out in subsection 15(1) of the *Discretionary Services Regulations*, which reads as follows:

During a dispute between a licensee and a person that is licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee or concerning any right or obligation under the Act, the licensee must continue to provide its programming services to the distribution undertaking at the same rates and on the same terms and conditions as it did before the dispute.