



## Broadcasting Decision CRTC 2020-121

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Reference: Part 1 application posted on 8 November 2019

Ottawa, 9 April 2020

**THEMA Canada Inc.**  
Across Canada

*Public record for this application: 2019-1137-1*

### **Addition of M6 International to the *List of non-Canadian programming services and stations authorized for distribution***

*The Commission **approves** an application by THEMA Canada Inc. to add M6 International to the List of non-Canadian programming services and stations authorized for distribution.*

#### **Application**

1. THEMA Canada Inc. (THEMA Canada), acting as the Canadian sponsor, filed an application to add the non-Canadian service M6 International to the *List of non-Canadian programming services and stations authorized for distribution* (the list). The revised [list](#) can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) and may be obtained in hard copy on request.
2. The applicant described M6 International as a general interest, 24-hour French-language service that provides cultural, entertainment, magazine and information programming. Its target audience is Francophones interested in entertainment, culture, cuisine, reality TV, news and politics. The services originates from France.

#### **Interventions**

3. The Commission received an intervention in support of the application from an individual and an intervention offering comments from TV5 Québec Canada (TV5), to which the applicant did not reply.
4. In its intervention, TV5 indicated that it did not oppose the application but that it was of the view that there is a clear overlap between M6 International's offering and its own, specifically with regard to the programming's geographic origin, general interest nature and target audience. Further, TV5 expressed some concerns regarding the increasing number of non-Canadian services authorized for distribution in Canada, as they may weaken the Canadian services.

5. While THEMA Canada submitted that M6 International offers content to which Francophones did not have access until now, TV5 stated that Canadian Francophones already have access to a number of Canadian and non-Canadian programming services that offer similar content. TV5 emphasized that it currently offers its own national, French-language discretionary service that broadcasts programming primarily focused on reflecting the diversity of the international Francophonie. As such, according to TV5, THEMA Canada should consider that M6 International is, at least partially, competing with TV5, whose international programming, most of which is European, makes up 85% of its programming schedule.
6. However, TV5 acknowledged that the addition of M6 International to the list would not negatively impact the penetration of its service, given that it benefits from mandatory distribution on the digital basic service pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act). The Commission renewed that mandatory distribution order in Broadcasting Order 2018-345. Nevertheless, TV5 expressed the view that approval of THEMA Canada's application could impact the viewing share for its service, which could affect its market share and, therefore, its advertising revenues.
7. Finally, TV5 noted that, unlike M6 International and the other non-Canadian services, it is subject to requirements relating to investment in and acquisition of Canadian programming. According to TV5, any decrease in its investment in Canadian content due to a decrease in its revenues would be contrary to the Commission's objectives of helping Canadian services to maintain their audiences and to fulfil their commitments and obligations.

### **Commission's analysis and decision**

8. The Commission's general approach to the addition of non-Canadian English- and French-language services to the list, set out in Public Notice 2008-100 and reiterated in Broadcasting Regulatory Policy 2015-96, precludes the addition of a non-Canadian service that can be considered totally or partially competitive with Canadian discretionary television services.
9. In assessing the competitiveness of a service, the Commission relies primarily on the comments filed to identify the Canadian discretionary services with which a proposed non-Canadian service might be totally or partially competitive. This competitiveness test is based primarily on the extent and significance of any overlap (for instance, due to nature of service, language of operation, target audience and genres of programming). The Commission also considers the extent to which a proposed non-Canadian service may be a program supplier for an authorized Canadian service.
10. As set out in Broadcasting Public Notice 2005-9, the purpose of the competitiveness test is to ensure that licensed Canadian discretionary services are in a position to fulfill their commitments and obligations with respect to Canadian programming and other objectives set out in the Act, responsibilities that non-Canadian services do not share.

11. In this case, the Commission notes that TV5 neither opposed the application nor disputed THEMA Canada's submission that M6 International offers original programming and content to which the target audience did not have access until now, and that would broaden Canadian television offerings.
12. In regard to TV5's assertion that there is a possible overlap between its service and M6 International, the Commission considers that, given the broad range of programs broadcast by TV5 and its mandate to broadcast international programming originating from different Francophone countries, it is highly likely that the programming of many non-Canadian French-language services will, at least partially, overlap and be competitive with TV5's programming. Thus, a strict application of the competitiveness test would have the unfortunate and unintended effect that services licensed to increase the diversity of programming available to Canadians would then serve as a barrier to a potential increase in the availability of such programming.
13. In addition, the Commission considers that while TV5 submitted that the origin, general interest nature, and target audience of M6 International's programming are comparable to those of TV5, it provided very little evidence of an overlap between the two services. It also did not attempt to draw a detailed comparison between their respective programming.
14. As an example, the information on the public record reveals that the majority of M6 International's programming is made up of reality TV programs, and TV5 did not indicate if this specific type of program made up a significant portion of its programming. Accordingly, the evidence on the record of the proceeding does not allow the Commission to establish a comparison of the types of programs broadcast by the two services and the prominence of those programs on the services' respective programming schedules that demonstrates that the two services are in competition.
15. In regard to the possible financial impact of the addition of M6 International to the list, the Commission notes that TV5 is part of a large international service and the concerns raised about a potential decrease in advertising revenues were set out in a very general manner, with no evidence provided to indicate that the new proposed service would have a negative financial impact on its service.

## **Conclusion**

16. THEMA Canada's application is in line with the Commission's general approach, as set out in Broadcasting Public Notice 2008-100 and reiterated in Broadcasting Regulatory Policy 2015-96, regarding the addition of non-Canadian English- and French-language services to the list. Further, the Commission has not found any evidence on the record of this proceeding that M6 International will be competitive with any Canadian discretionary television services, according to the parameters defined in the aforementioned regulatory policy.

17. In light of the above, the Commission **approves** the application by THEMA Canada Inc. to add M6 International to the *List of non-Canadian programming services and stations authorized for distribution*.

Secretary General

### **Related documents**

- *Distribution of TV5/UNIS TV by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2018-345, 31 August 2018
- *Let's Talk TV – A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Distribution of Spike TV by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2005-9, 27 January 2005