



## Broadcasting Decision CRTC 2020-392

PDF version

Reference: 2019-6

Ottawa, 4 December 2020

**Quebecor Media Inc., on behalf of TVA Group Inc.**  
Montréal, Quebec

*Public record for this application: 2020-0401-8*  
*Public hearing in the National Capital Region*  
*13 October 2020*

### **Évasion and Zeste – Acquisition of assets (corporate reorganization)**

*The Commission **approves** an application by Quebecor Media Inc., on behalf of TVA Group Inc., for authority to acquire from Canal Évasion Inc. and from Zeste Diffusion Inc. the assets of the French-language discretionary services Évasion and Zeste, respectively.*

#### **Application**

1. Quebecor Media Inc. (Quebecor), on behalf of TVA Group Inc. (TVA), filed an application for authority to acquire, as part of a corporate reorganization, the assets of the French-language discretionary services Évasion and Zeste. Quebecor also requested new broadcasting licences to continue the operation of Évasion and Zeste under the same terms and conditions as those in effect under the current licences. The Commission did not receive any interventions in regard to this application.
2. Canal Évasion Inc. and Zeste Diffusion Inc. are the licensees of, respectively, Évasion and Zeste. Both licensees are owned by Serdy Média inc. (Serdy), which is owned by 9261-1813 Québec inc. (9261-1813), a wholly-owned subsidiary of TVA.
3. In Broadcasting Decision 2019-6, the Commission approved the acquisition of Canal Évasion Inc. and Zeste Diffusion Inc. by Quebecor, subject to certain conditions of approval, which have been fulfilled. Approval of the present application would allow for the integration of the assets of Évasion and Zeste into TVA.
4. The corporate reorganization would consist of a series of wind ups, specifically, of 9261-1813, Serdy and its licensees (Canal Évasion Inc. and Zeste Diffusion Inc.), resulting in the acquisition by TVA of the licensees' assets. Following the reorganization, TVA would become the licensee of Zeste and Évasion. The reorganization would not change the effective control of both services, which would continue to be exercised by Mr. Pierre Karl Péladeau.

## **Regulatory framework**

5. Pursuant to Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), the Commission requires applicants to pay tangible benefits when a change in ownership leads to a change in the effective control of a broadcasting undertaking. The payment of tangible benefits is not required for corporate reorganizations, since they do not result in a change in effective control.

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

6. After reviewing the record for this application in the light of applicable regulations and policies, the Commission considers that the issues to be addressed are the following:
  - tangible benefits stemming from a previous ownership transaction; and
  - an assessment of the compliance by Zeste and Évasion with their regulatory obligations.

## **Tangible benefits stemming from a previous ownership transaction**

7. When an application is filed to change the ownership of a broadcasting undertaking, as in the case of the present application, the Commission determines whether there is a change in the effective control of the undertaking in order to determine whether tangible benefits are required.
8. In regard to the present application, the two licensees along with TVA are owned by Quebecor, the effective control of which is exercised by Mr. Péladeau. Since the proposed transaction would not result in any change to the effective control of the undertakings, the payment of tangible benefits would not be required.
9. However, in Broadcasting Decision 2019-6, in which the transfer of the effective control of Canal Évasion Inc. and Zeste Diffusion Inc. to Quebecor was approved subject to certain conditions, the Commission ordered Quebecor to pay \$1,793,756 in tangible benefits over several years. TVA made a commitment to pay the tangible benefits amounts that have not yet been paid.

## **Compliance by Zeste and Évasion with their regulatory obligations**

10. When an ownership transaction requires the issuance of new broadcasting licences, the Commission typically reviews compliance by licensees with their regulatory obligations. Following a request for information by Commission staff, TVA agreed to be held responsible, by condition of licence, for any instances of apparent non-compliance by Zeste and Évasion going back to 2 May 2019, the date on which the Commission amended the licences for these services (Broadcasting Decision 2019-126).
11. TVA also confirmed that it had no objection to being held responsible, by condition of licence, for any instances of apparent non-compliance by Zeste in regard to its obligations relating to the broadcast of Canadian content since the last licence renewal for the service in 2014 (Broadcasting Decision 2014-289). In Broadcasting Decision 2019-6, the Commission noted that, according to the reports submitted by Zeste for the 2015-2016

broadcasting year, the service had not broadcast the required percentage of Canadian content during the broadcast day and during the evening broadcast period. The Commission therefore stated that it would assess this case of apparent non-compliance at the next licence renewal for Zeste.

12. As a result of this application, the Commission will assess compliance by Zeste and Évasion with their regulatory obligations at TVA's next licence renewal.

## **Conclusion**

13. In light of the above, the Commission **approves** the application by Quebecor Media Inc. on behalf of TVA Group Inc. for authority to acquire from Canal Évasion Inc. and Zeste Diffusion Inc., as part of a corporate reorganization, the assets of the French-language discretionary services Évasion and Zeste.
14. Upon surrender of the licences currently held by Canal Évasion Inc. and Zeste Diffusion Inc., the Commission will issue new broadcasting licences to TVA for these services. To ensure that all of TVA's services are assessed at the same time, the new licences for Évasion and Zeste will expire on 31 August 2022, the current expiry date for the licences, which coincides with the expiry date of the licences for TVA's other services. The terms and **conditions of licence** for Évasion and for Zeste are set out in the appendix to this decision.
15. The Commission will assess the compliance of Évasion and Zeste at the next licence renewals for the services. TVA will therefore be held responsible for any non-compliance that may have occurred since the licences for these services were amended on 2 May 2019. In addition, TVA will be held responsible for any non-compliance by Zeste in regard to its obligations regarding the broadcast Canadian content since the service's last licence renewal. **Conditions of licence** to this effect are set out in the appendix to this decision.

## **Reminder**

16. TVA will be held responsible for the payment of tangible benefits required pursuant to Broadcasting Decision 2019-6.

## **Employment equity**

17. Because this licensee is subject to the Employment Equity Act and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

## **Related documents**

- *Zeste and Évasion – Change in ownership and effective control – Receipt of documents and licence amendments*, Broadcasting Decision CRTC 2019-126,

2 May 2019

- *Zeste and Évasion – Change in ownership and effective control*, Broadcasting Decision CRTC 2019-6, 14 January 2019
- *Zeste – Licence renewal*, Broadcasting Decision CRTC 2014-289, 2 June 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014

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

## Appendix to Broadcasting Decision CRTC 2020-392

### Terms, conditions of licence, expectations and encouragements for the discretionary services *Évasion* and *Zeste*

#### Terms

The licences will expire 31 August 2022.

#### Conditions of licence

1. The licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services set out in Appendix 2 to *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition 17, which is replaced by the following:

The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.), and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

2. In each broadcast year, the licensee shall devote at least 35% of the broadcast day to the exhibition of Canadian programs.

#### Canadian programming expenditures

3. In accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming at least 45% of the previous year's gross revenues of the undertaking.
4. The licensee may count expenditures made for the acquisition of or investment in Canadian programming by one or more undertakings from TVA Group in the same broadcast year towards fulfilling the requirement set out in condition 3 as long as these expenditures are not used by those undertakings towards fulfilling their own Canadian programming expenditure requirement.
5. Subject to condition 6, the licensee may claim, in addition to its expenditures on Canadian programming:
  - a) a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;

- b) a 25% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an official language minority community producer and claimed as Canadian programming expenditures during that broadcast year. The licensee may claim the credit if:
- i. the programming is produced in the province of Quebec and the original language of production is English; or
  - ii. the programming is produced outside the province of Quebec and the original language of production is French.
6. The licensee may claim the credits calculated in accordance with condition 5 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for TVA Group.

### **Programs of national interest**

7. The licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest at least 15% of the previous year's gross revenues of the undertaking.
8. The licensee may count expenditures made for the acquisition of or investment in programs of national interest by one or more undertaking from TVA Group in the same broadcast year towards fulfilling the requirement set out in condition 7 as long as these expenditures are not used by those undertakings towards fulfilling their own expenditure requirement regarding programs of national interest.
9. At least 75% of the expenditures in condition 7 must be made to an independent production company.
10. The licensee shall, by 30 November of each year, provide for the previous broadcast year a report in a form acceptable to the Commission that contains information on the programs that were broadcast by all undertakings from TVA Group in regard to:
- programs of national interest;
  - the use of Indigenous and official language minority community producers, specifying notably for each: the number of producers they meet with each year; the projects commissioned, including projects in development, in production and completed; the budgets and the total Canadian programming expenditures devoted to such projects; and any other information the Commission requires to this effect; and
  - access that women have to key leadership positions, by providing information regarding the employment of women in key creative leadership positions in the

productions broadcast, as well as any other information the Commission requires to this effect.

### **Over- and under-expenditures**

11. Subject to condition 12, the licensee shall, for each broadcast year, make sufficient expenditures such that the undertakings that form TVA Group collectively devote:
  - a) 45% of the previous year's gross revenues of the undertakings that form TVA Group to the acquisition of or investment in Canadian programming; and
  - b) 15% of the previous year's gross revenues of the undertakings that form TVA Group to the acquisition of or investment in programs of national interest.
12. In each broadcast year of the licence term, excluding the final year,
  - a) the licensee, in concert with the other undertakings that form TVA Group, may expend an amount on Canadian programming and/or on programs of national interest that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 11(a) and 11(b) respectively; in such case, the licensee shall ensure that the undertakings that form TVA Group expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;
  - b) where the licensee, in concert with the other undertakings that form TVA Group, expends an amount for that year on Canadian programming or programs of national interest that is greater than the minimum required expenditure calculated in accordance with conditions 11(a) and 11(b) respectively, the licensee or another undertaking from TVA Group may deduct that amount from the total minimum required expenditure in one or more of the remaining years of the licence term.
  - c) Notwithstanding conditions 12(a) and 12(b), during the licence term, the licensee shall ensure that the undertakings that form TVA Group expend on Canadian programming and programs of national interest, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions 11(a) and 11(b).

### **Original French-language programs**

13. The licensee shall devote to original French-language programs:
  - a) at least 50% of the expenditures in condition 3 in the second year of the licence term (2018-2019 broadcast year); and
  - b) at least 75% of the expenditures in condition 3 in the remaining years of the licence term (2019-2020 through 2021-2022 broadcast years).

## **Contributions to Musicaction**

14. For the 2018-2019 broadcast year and until the end of the licence term, the licensee shall allocate in each broadcast year 0.17% of the previous broadcast year's gross revenues of the undertaking to Musicaction. These expenditures can be counted by the licensee for the purpose of fulfilling its Canadian programming expenditure requirement, which includes expenditures on programs of national interest.

## **Licensee's obligations with respect to TVA Group**

15. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to the reported expenditures on Canadian programming and on programs of national interest by the licensee and by TVA Group for that term.
16. The licensee shall be responsible for any failure to comply with the requirements regarding Canadian programming expenditures and expenditures on programs of national interest that occurred during the previous licence term.
17. In regard to the operation of the undertakings that form TVA Group:
- a) Subject to condition 17(b), the undertaking shall remain part of TVA Group for the duration of the licence term.
  - b) Should the licensee wish to operate the undertaking outside TVA Group, the licensee shall apply to the Commission for the undertaking to be removed from TVA Group no later than 120 days prior to operating the service outside TVA Group.
  - c) The licensee shall ensure that the list of undertakings that form TVA Group is accurate at all times.
18. TVA shall be responsible for any non-compliance by the services *Évasion* and *Zeste* in regard to their regulatory obligations as of 2 May 2019, the date on which the Commission amended the licences for these services in *Zeste and Évasion – Change in ownership and effective control – Receipt of documents and licence amendments*, Broadcasting Decision CRTC 2019-126, 2 May 2019.

## **Additional condition of licence applicable to Zeste**

19. TVA shall be responsible for any non-compliance by *Zeste* in regard to its regulatory obligations relating to the broadcast of Canadian content since the last licence renewal for the service in 2014 (*Zeste – Licence renewal*, Broadcasting Decision CRTC 2014-289, 2 June 2014), if any such non-compliance is found during the next licence renewal.

## **Expectation for reflection of regions and official language minority communities**

The Commission expects the licensee to ensure that the programs broadcast by the services provide an appropriate reflection of all regions of Quebec, including regions outside Montréal, and all regions of Canada. The Commission further expects the licensee to provide producers located in these regions with the opportunity to produce programs for its services.

### **Definitions**

“TVA Group” means the group of undertakings set out in Appendix 1 to *Quebecor Media Inc. – Group-based licence renewals for French-language television stations and services*, Broadcasting Decision CRTC 2017-147, 15 May 2017, as amended in Appendix 1 to *Zeste and Évasion – Receipt of documents and licence amendments*, Broadcasting Decision CRTC 2019-126, 2 May 2019.

“Original French-language program” means a Canadian program produced in French and broadcast for the first time in the French-language market, which excludes dubbed Canadian programs.

“Independent production company” means a Canadian company (i.e., a company carrying on business in Canada, with a Canadian business address, owned and controlled by Canadians) whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

“Indigenous producer” means an individual who self-identifies as Indigenous, which includes First Nations, Métis or Inuit, and is a Canadian citizen or resides in Canada, or an independent production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and are Canadian citizens or reside in Canada. In regard to the definition of “independent production company,” “Canadian” includes a person who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

“Official language minority community producer” means a company that meets the definition of “independent production company” and that:

- a) if operating in the province of Quebec, produces original English-language programming, or
- b) if operating outside of the province of Quebec, produces original French-language programming.