



***Review of Bill C-10  
An Act to amend the Broadcasting Act and to make related and consequential  
amendments to other Acts***

**Brief submitted by Quebecor Media Inc. on behalf of  
Videotron Ltd. and TVA Group Inc.**

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## I. INTRODUCTION

In accordance with the procedure established by the Standing Committee on Canadian Heritage in its invitation, Quebecor Media Inc. ("**Quebecor Media**") is submitting this brief to the hearings on Bill C-10: *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* ("**the Bill**") in its own name and on behalf of Videotron Ltd. ("**Videotron**") and TVA Group Inc. ("**TVA**").<sup>1</sup>

The last significant amendments to the *Broadcasting Act* ("**the Act**") were made in 1991. It is clear that many aspects of the Act have been overtaken by the technological tsunami that has disrupted communications and transformed the media environment in recent years.

The advent of online video services in Canada, particularly the services provided by Web giants such as Google, Amazon, Facebook, Apple and Netflix, has contributed to the upheaval of the Canadian broadcasting system and created an inequitable imbalance between conventional and online broadcasting undertakings, which have until now been completely unregulated. In light of this, it is not surprising that Canada's main private over-the-air television broadcasters have suffered a dramatic decline in earnings before interest and taxes – a total decrease of \$336 million between 2010 and 2020.<sup>2</sup>

For years, Quebecor has been calling for an easing of the regulatory and administrative burden on conventional broadcasting undertakings to enable them to better compete with Web giants. However, in this Bill, the legislator is proposing instead to subject online undertakings to the Act. In practice, we have serious reservations about the ability of the Canadian Radio-television and Telecommunications Commission ("**the Commission**") to enforce and apply these new regulations to foreign online undertakings.

Given the approach taken by the legislator, it is imperative that the Bill be amended to make Canada's broadcasting ecosystem more flexible and equitable for all stakeholders.

In this brief, we will discuss Quebecor's main concerns, taking a pragmatic approach and providing concrete suggestions that would, in our view, mitigate the negative impacts of the changes proposed in the Bill. Our recommendations focus on three core areas that we believe should be the leitmotif of this Bill:

1. Restore equity among all players in Canada's broadcasting ecosystem;
2. Give the necessary regulatory flexibility to conventional broadcasting undertakings; and
3. Lighten their administrative and financial burden by eliminating obligations that are not absolutely necessary to achieve the objectives of the Broadcasting Policy for Canada.

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<sup>1</sup> Bill C-10: *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, first reading, November 3, 2020, second session, forty-third Parliament, 69 Elizabeth II, 2020

<sup>2</sup> See the table showing the decreases in revenue and in earnings before interest and taxes of Canada's private broadcasters in Section VI below.

## **II. EXECUTIVE SUMMARY**

The main issues Quebecor wants to raise concerning this Bill can be grouped under the following themes:

### **1. Equity with major foreign online broadcasting undertakings**

The Bill contains disparities in the treatment of conventional and online broadcasting undertakings that are likely to exacerbate the inequity that already exists. Quebecor believes that, among other things, the licence fees collected from all broadcasting undertakings should be limited to the amounts needed to cover the Commission's operating costs under the Act.

### **2. Mandate of the Canadian Broadcasting Corporation and Société Radio-Canada (collectively "CBC-SRC")**

In light of the Commission's public hearings, which began on January 11, 2021, it is more important than ever that Parliament take advantage of the reform of the Act to thoroughly revise CBC-SRC's mandate.<sup>3</sup> It should be refocused so that the public broadcaster complements the offerings of private broadcasting undertakings by, among other things, airing distinctive programming and taking greater creative risks. Parliament should also add an obligation for the public broadcaster to take into account the impact of its actions on the other members of Canada's broadcasting ecosystem. As well, Quebecor believes that the public broadcaster must be more transparent and the Commission should have legislative tools to ensure sufficient accountability. In addition, clear directives should be issued to stop broadcasting ads on all of the CBC-SRC's platforms. Lastly, the legislator should make it clear that the public broadcaster's digital platforms must be free services that complement its conventional platforms, not a substitute that enables the public broadcaster to circumvent its regulatory obligations.

### **3. Lack of regulatory flexibility**

Quebecor is critical of the fact that the Bill deprives broadcasting undertakings of some flexibility they have been given under the Act, while at the same time removing moderations that have allowed broadcasters to fulfil their obligations as resources become available. In addition, the changes introduced by the Bill could empower the Commission to amend a conventional broadcasting undertaking's conditions of licence at any time, thereby undermining its ability to make longer-term projections based on expectations of regulatory stability.

### **4. Administrative and financial burden**

Quebecor is concerned about the addition of several new provisions that will further increase the regulatory burden on Canada's conventional broadcasting undertakings, which are already under significant financial pressure, and even more so with the current public health crisis. Quebecor is opposed to the introduction of administrative monetary penalties and mandatory contributions to public interest groups, modelled on the *Telecommunications Act*. The financial situation of Canada's conventional broadcasting undertakings differs drastically from that of telecommunications

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<sup>3</sup> Broadcasting Notice of Consultation CRTC 2019-379 – Licence renewal of CBC/Radio-Canada French- and English-language services.

companies and there is no justification for implementing equivalent measures. Quebecor is also opposed to extending the time limit for the Governor in Council to review a Commission decision from 90 to 180 days, since this procedure is used by a party to deal with urgent matters. Finally, Quebecor proposes that the standstill rule, which creates an imbalance in bargaining power between programming undertakings and distribution undertakings, be eliminated, and that the Commission be allowed to render *ex parte* decisions when warranted by the circumstances of the case.

## **5. Reflecting racialized communities and diversity**

The legislator has introduced new guiding principles in the Bill to ensure that the programming and employment opportunities offered by broadcasting undertakings reflect the interests of all Canadians, including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages. Cultural diversity has been part and parcel of Quebecor's reality for years and this is reflected concretely in its daily activities. The regulatory requirements that result from the new guiding principles should be applied with an incentive-based rather than a punitive approach, and should pertain primarily to CBC-SRC, which as a Crown corporation funded largely from the public purse is better equipped to fulfill them.

### III. DETAILED BRIEF

#### SECTION 1: EQUITY WITH MAJOR FOREIGN PLAYERS

1. Quebecor believes that equity among all broadcasting undertakings, regardless of the nature of their services or the technology used to deliver their content, must be the cornerstone of Canada's entire broadcasting ecosystem.
2. Quebecor would certainly have advocated an approach that deregulates conventional broadcasting undertakings as far as possible and lightens their regulatory burden in order to allow them to devote more resources to programming and free their hands to compete with Web giants.
3. By way of illustration, here is a partial list of the concrete obligations to which conventional broadcasting undertakings such as TVA and Videotron are subject, and examples of the practical application of these obligations:
  - broadcast quotas;
  - obligation to spend on Canadian programming;
  - obligations to spend on programs of national interest (dramas and documentaries);
  - independent production obligations;
  - local production obligations;
  - obligation to spend on local news;
  - obligations to allot time to locally reflective news;
  - closed captioning and described video obligations;
  - obligation to contribute to independent funds and the Canada Media Fund;
  - regulated \$25 basic service;
  - obligation to carry certain programming services;
  - requirement to produce a plethora of reports:
    - two annual audit reports on locally reflective news;
    - annual financial reports;
    - production report;
    - report on women in production;
    - report on ownership;
    - logs and records; and
    - report on cultural diversity.

Regulatory obligations	Concrete examples pertaining to TVA
Obligation to spend on Canadian programming;	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.
Obligations to spend on programs of national interest (dramas and documentaries)	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.  At least 75% of these expenditures must be made to an independent production company..
Local programming and locally reflective news obligations	<b>TVA Montreal</b>  the licensee shall broadcast at least 25 hours of local programming in each broadcast week;

	<p>the licensee shall broadcast at least 6 hours of locally reflective news in each broadcast week.</p> <p><b>TVA Québec:</b></p> <p>The licensee shall broadcast at least 18 hours of local programming in each broadcast week, of which</p> <ol style="list-style-type: none"> <li>1. at least 5 hours and 30 minutes shall be local news produced in Québec, including two local newscasts on the weekends;</li> <li>2. at least 3 hours and 30 minutes shall be other programs that focus specifically on the Québec region that may be broadcast on the TVA network;</li> <li>3. at least 3 hours and 30 minutes shall be locally reflective news in each broadcasting week.</li> </ol> <p><b>TVA Trois-Rivières, Sherbrooke, Rimouski and Saguenay:</b></p> <ol style="list-style-type: none"> <li>1. the licensee shall broadcast at least 5 hours of local programming in each broadcast week;</li> <li>2. The licensee shall broadcast at least 2 hours and 30 minutes of locally reflective news in each broadcast week.</li> </ol>
Described video	<p>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).</p>

4. While we understand that the general legislative intent behind the Bill is to subject online undertakings to the Act, it seems to us highly unlikely that the same level of regulatory constraints will be imposed on them.
5. In view of the above, Quebecor has serious concerns about some of the proposals contained in the Bill, which far from restoring equity between conventional and online undertakings seem, on the contrary, to exacerbate the inequalities in the Canadian regulatory system. Quebecor is also concerned about the potential impact of several provisions that leave the Commission wide discretionary power to establish the applicable rules.
6. In our view, changes should be made to the Bill to ensure that regulatory fairness is preserved in the setting and enforcement of conditions of licence and conditions of service.

**(b) Conditions of licence and conditions of service**

7. The Bill contains few details or clear guidelines as to the nature of the conditions of service that could be imposed on online players and how the legislator intends to preserve equity between broadcasting undertakings in practice. Quebecor has however reviewed the *Preliminary Draft Policy Direction to the Commission* (“**the Direction**”) which has been circulated by the Government and which contains some indications as to the direction the Board should take if the Bill is passed into law. Among other things, it refers to preserving equity and maintaining flexibility and regulatory latitude. It is our view that this flexible, fair and equitable approach should be enshrined directly in the Act by Parliament, rather than in a draft Direction issued by the Government, which can be changed or withdrawn at any time. These fundamental principles are entirely absent from the Bill, when they should be its cornerstone.

8. We also note that, as it stands, the Direction expressly stipulates, in clause 6(g), that foreign online broadcasting undertakings cannot be treated less favourably than comparable Canadian broadcasting undertakings. We are surprised by this choice by the Government, particularly since there is a fundamental duty to protect the interests of domestic businesses, first and foremost. Quebecor recommends that the Direction be amended to ensure, rather, that Canadian broadcasting undertakings are not treated less favourably than foreign online undertakings. For example, the Direction contains obligations to fund and promote under-represented groups, which should also apply to foreign online undertakings.
9. Similarly, Quebecor submits that there is also unequal treatment under the regimes imposed on conventional broadcasting undertakings and online undertakings by the Bill, which should, in our view, be corrected by the legislator:

#### **i. License fees**

10. From the outset, the Bill establishes an inequitable difference in the treatment of conventional and online broadcasting undertakings with respect to the payment of fees set by the Commission under Part II of the Act.
11. The Bill stipulates that the only fees that may be imposed on an online broadcasting undertaking are those related to recovery of the Commission's operating costs (Part I fees). Online undertakings would therefore be exempt from all other fees, including those stipulated in Part II of the Act.
12. Year after year, Quebecor pays enormous sums in Part II licence fees through its Videotron and TVA Group subsidiaries. Quebecor and other conventional Canadian broadcasting undertakings would therefore find themselves at a distinct disadvantage against major foreign players such as Netflix and Disney, which despite their far greater financial capacity would not be required to pay equivalent amounts. Given that Canada's conventional broadcasting undertakings have been further weakened in recent years, this difference in treatment is unjustifiable and would further exacerbate the inequity between broadcasting undertakings, without any justification.
13. Therefore, to ensure a fair regulatory landscape, Quebecor believes all fees that are not related to recovery of the Commission's operating costs should be abolished. In our view, conventional broadcasting undertakings should not have to bear the burden of paying Part II fees alone. There are already a number of other mechanisms in the Act for compelling broadcasting undertakings to contribute to Canada's broadcasting system.
14. Furthermore, the loss of revenue resulting from the elimination of Part II licence fees, which amounted to \$117 million in 2019, would be offset, and indeed outweighed, by the introduction of requirements for foreign online undertakings to contribute to Canadian content. The Government of Canada has itself estimated that the Canadian broadcasting ecosystem could receive an additional \$830 million per year between now and 2023 if the Commission requires online undertakings to contribute to Canadian content at levels similar to those required of conventional broadcasting undertakings.<sup>4</sup>

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<sup>4</sup> Government of Canada, Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age, retrieved January 20, 2021, <https://www.canada.ca/en/canadian-heritage/services/modernization-broadcasting-act/faq.html#a6>.



## RECOMMENDATIONS

15. Quebecor proposes that all broadcasting undertakings, regardless of the nature of their services, be required to pay only the Commission's operating costs. Specifically, here are the changes Quebecor proposes:

### ***Regulations: Fees***

*11(1) The Commission may make regulations*

*(a) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class that relate to the recovery of the costs of the Commission's activities under this Act;*

*Exception — non-licensees*

*11(3.1) The only fees that may be established with respect to a broadcasting undertaking ~~that may be carried on without a licence~~ shall be fees that relate to the recovery of the costs of the Commission's activities under this Act.*

## **ii. Equitable application of regulatory obligations**

16. It is well known that most of the Web giants have highly complex international corporate structures and sophisticated tax avoidance schemes that allow them to move revenue streams to jurisdictions with more advantageous taxation.
17. Quebecor therefore has very serious concerns that the Web giants could use tax schemes to avoid or at least considerably reduce the scope of their regulatory obligations by not fully report all broadcasting revenues generated in Canada, as conventional broadcasting undertakings do.
18. It is vitally important that the calculation of the Web giants' eligible revenues be based on the same accounting standards as those used for conventional broadcasting undertakings.

## RECOMMENDATIONS

19. The legislator should ensure that the Commission has access to all tax documents, including form RC4649 for country-by-country reporting, for Web giants with broadcasting revenues above the minimum thresholds, so that it can capture the total revenues generated by foreign Web giants and base its regulatory requirements on actual eligible revenues. The accounting standards used to assess the revenues of online broadcasting undertakings should be the same as those used for conventional broadcasting undertakings.
20. Furthermore, although the legislator has mentioned that this issue will be the subject of a separate legislative amendment, Quebecor believes that tax linkage must be established as quickly as possible so that federal sales tax and income tax can be levied on all Canadian subscriptions to online video services, regardless of whether the companies offering these services are domestic or foreign, physical or virtual.

## SECTION 2 - CBC-SRC'S MANDATE

21. First of all, Quebecor finds it difficult to understand why the legislator did not take advantage of the current review of the Act to thoroughly revise the mandate of CBC-SRC, since it is a cornerstone of the Act and a key player in Canada's broadcasting system. We further submit that the Yale Report made several recommendations to the effect that CBC-SRC's mandate should be clarified and updated in a timely manner. Again, it is disappointing that none of these recommendations concerning CBC-SRC's mandate has been considered in this process.

22. At the public hearings on the renewal of CBC-SRC's licences,<sup>5</sup> Catherine Tait, President and CEO of CBC-SRC, stated:

*"Some stakeholders wanted to use these Hearings to challenge the public broadcaster's mandate and funding model. As I pointed out in our Opening Remarks, these are matters for Parliament and related to the Broadcasting Act, which is currently under review."*

23. Thus, CBC-SRC itself maintains it is up to the legislator to intervene and take advantage of the review of the Act to tighten the public broadcaster's mandate. We therefore believe it is important to note again the components of CBC-SRC's mandate that should be reviewed and updated, so that CBC-SRC complements the offerings of private broadcasting undertakings instead of competing with them, and is required to take into account the impact that the introduction of a new service or new activity may have on competition, and in particular on private broadcasters, as the BBC is required to do in Britain. Our recommendations are listed in the following section.

24. It should be noted that the vast majority of intervenors who appeared at the public hearings on the renewal of CBC-SRC's licences concurred with the observations made by Quebecor in this brief. For example:

Quebecor's position	Interest groups that supported this position at the public hearings
CBC-SRC's mandate should be refocused on distinctive programming that complements that of private broadcasting undertakings.	Canadian Association of Broadcasters (CAB) and FRIENDS of Canadian Broadcasting
Given its status as a public broadcaster, CBC-SRC should be subject to regulatory requirements at least equivalent to or greater than those that apply to private conventional broadcasting undertakings.	Association québécoise de la production médiatique (AQPM), ADISQ, Société Nationale de l'Acadie, Fédération acadienne de Nouvelle-Écosse, Fédération nationale des communications, Syndicat des communications de Radio-Canada, Table de Concertation de l'industrie du Cinéma et de la Télévision de la Capitale-Nationale
Major concerns about the Tandem branded-content service (a number of groups argued that CBC-SRC should discontinue this service).	Alliance québécoise des techniciens et techniciennes de l'image et du son (AQTIS), Association des réalisateurs et réalisatrices du Québec (ARRQ), Société des auteurs de radio, télévision et cinéma (SARTEC), Union des artistes (UDA), Fédération nationale des communications, Syndicat des communications de Radio-Canada, Canadian Media Guild, Public Interest Advocacy Centre (PIAC), National Pensioners Federation (NPF)

<sup>5</sup> Broadcasting Notice of Consultation CRTC 2019-379 – Licence renewal of CBC/Radio-Canada French- and English-language services.

## RECOMMENDATIONS

25. Quebecor recommends that the following provisions with regard to CBC-SRC's mandate be enshrined in the Act:

- (a) Require that CBC-SRC complement private broadcasting undertakings, including by offering programming that is distinctive in the following respects:
  - **Preference to certain types of programming**, such as culture, education, youth, public affairs, science, etc.;
  - **Scope and diversity of audiences served**, specifically from geographic, linguistic, ethnic, socio-economic, demographic and other points of view;
  - **Level of innovation and experimentation in programming**, taking advantage of the fact that the public broadcaster receives parliamentary appropriations that should enable it to reduce its dependence on ratings;
  - **Explicit requirement to broadcast national, regional and local news**, and to reflect Canadian perspectives on international news;
  - **Obligation to reflect local, regional and national communities** to local, regional and national audiences, to reflect **Indigenous peoples** and to promote **Indigenous cultures and languages**;
- (b) Include an obligation for the public broadcaster to take into account the impact of its actions on the other members of Canada's broadcasting ecosystem, particularly private broadcasting undertakings. In this regard, we believe that the legislator should draw inspiration from the British model. There is a strict obligation enshrined in the BBC's Charter to analyze any change in its service offerings through the lens of the potential impacts on the competition. Ofcom, the British broadcasting regulator, has also adopted a comprehensive analytic grid to ensure, at an early stage in the process, that any change or addition to the BBC's service offerings is not detrimental to private broadcasting undertakings. Canada's Parliament would do well to draw inspiration from the British model so that the privileges enjoyed by CBC-SRC, including the fact that a significant portion of its budget comes from public funding, are not used to create competitive distortions on Canada's broadcasting landscape;
- (c) Parliament should provide the Commission with tools to support accountability and give it increased power to more closely monitor the public broadcaster's compliance with its regulatory obligations;
- (d) Prohibit all advertising on all CBC-SRC platforms; and
- (e) Lastly, we believe CBC-SRC's digital platforms should be limited to providing Canadians with complementary ways to watch the public broadcaster's content. In no event should they be a substitute for its traditional platforms and access to them should be free at all times, given that CBC-SRC already receives significant public funding. Furthermore, we consider it imperative that Parliament ensure the public broadcaster cannot evade its regulatory obligations by transferring its programming to its digital platforms.

*\*\*\*As per the direction of the Chair, this brief has been shortened to adhere to the committee guidelines for length of submissions found on the committees' website.*