



Broadcasting Decision CRTC 2017-458

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Ottawa, 20 December 2017

Ethnic Channels Group Limited

Across Canada

Public record for this application: 2017-0434-6

Addition of 360tunebox to the *List of non-Canadian programming services and stations authorized for distribution*

*The Commission **denies** an application to add 360tunebox to the List of non-Canadian programming services and stations authorized for distribution.*

Introduction

1. The Commission received an application from Ethnic Channels Group Limited (ECGL), acting as the Canadian sponsor, to add 360tunebox, a non-Canadian English-language programming service, to the *List of non-Canadian programming services and stations authorized for distribution* (the list).
2. ECGL described 360tunebox as a 24-hour niche service (90% English-language, 5% French-language, 5% third-language) showcasing music from rising new artists from around the world, with a focus on music videos and interviews of independent artists. The service also features approximately 10 hours per week of musical concerts by independent artists. The service originates from Poland and targets individuals in the 15-18, 18-34 and 35-54 age groups as well as those that are passionate about new music from around the world.

Interventions

3. The Commission received interventions from Blue Ant Media Inc. (Blue Ant) and Stingray Digital Group Inc. (Stingray) in opposition to this application.

Blue Ant

4. Blue Ant submitted that 360tunebox is directly competitive with A.Side, a Category B discretionary service. It stated that there is significant programming overlap and that both programming services are largely identical with respect to the nature and description of service, language of operation, programming genres and target audience.

5. Regarding the nature and description of service, Blue Ant submitted that 360tunebox's focus on music videos and performances by independent artists parallels A.Side, whose programming "celebrates everything there is to love in music and pop culture" and features "emerging artists to established icons, nostalgic moments to today's chart toppers".
6. With respect to programming, Blue Ant considered that there is direct programming overlap between A.Side and 360tunebox. To support this claim, it identified programs from the programming grid submitted by ECGL whose descriptions are very similar to programs broadcast on A.Side. In addition, Blue Ant stated that the two services both target the same audience of individuals aged 18-54 who have an interest in music and pop culture.
7. Lastly, Blue Ant considered that adding 360tunebox to the list would hinder the ability of A.Side to contribute to the Canadian broadcasting system as its contributions to the exhibition of Canadian programming, expenditures on the creation and acquisition of Canadian content and use of Canadian talent could be heavily diminished.

Stingray

8. Stingray submitted that 360tunebox would be directly competitive with its exempt discretionary service Stingray Vibe and stated that ECGL provided no mention of a musical genre for 360tunebox to mask the fact that it is also an urban music service. To support its claim, it took random samples from multiple programs on 360tunebox whose descriptions did not clearly identify a focus on urban music. The samples cover approximately six hours of the 360tunebox playlist, totalling 87 music videos in three different dayparts (morning, evening and late night) over a period of two days. Stingray found that 47 (54%) of these videos were in musical genres that are core genres for Stingray Vibe.
9. Stingray noted that both Stingray Vibe and 360tunebox are English-language services that target individuals in the 18-34 age group, as well as young middle class adults.
10. Stingray also expressed concern about the sustainability of music video services in the Canadian market. It noted that Stingray Vibe, prior to its acquisition and rebranding, fell below 200,000 subscribers which lead its former owner, Bell Media, to request that it become an exempt service. After acquiring it in August 2016, Stingray rebranded and refocused the service on urban¹ music videos.
11. Given the history of Stingray Vibe, the current context in which Stingray is trying to re-establish the brand and the requirements² that it is subject to compared to non-Canadian services such as 360tunebox, Stingray submitted that the approval of

¹ Defined as a variety of genres, including rap, hip hop, soul, rhythm & blues (R&B), dance and reggae.

² Stingray noted that it is required to close caption music videos for the hearing impaired and air 35% of Canadian content.

ECGL's application would have serious negative financial implications while potentially stealing its target audience.

ECGL's reply

Reply to Blue Ant's intervention

12. ECGL submitted that 360tunebox's nature and description of service differs from that of A.Side, the programming overlap between both services is minimal and while both services target similar audiences, those would subscribe to these channels for very different reasons.
13. ECGL stated that the music-related content broadcast on A.Side differs significantly from 360tunebox. While both services broadcast emerging artists, it submitted that A.Side also featured established icons, nostalgic moments and chart toppers, whereas 360tunebox focused on independent and emerging musical artists in a range of musical genres. In addition, ECGL also determined that at least 50% of A.Side's schedule features non-music related content, as well as music videos from the past and present. In ECGL's view, much of the non-music content featured on A.Side falls into the "pop culture" element of the service's nature of service definition.
14. ECGL added that A.Side's programming features interviews and concerts from established, non-emerging artists that are not featured on 360tunebox and that out of the 59 music videos that aired on A.Side from 30 June 2017 to 3 July 2017, only 4 (7%) overlapped with 360tunebox's playlists.
15. Regarding target audience, ECGL agreed that 360tunebox and A.Side both target younger and older audiences. However, it is of the view that A.Side's focus on popular culture and lifestyle programming and 360tunebox's focus on the world's emerging artists are not likely to attract the same individuals within these age groups.

Reply to Stingray's intervention

16. ECGL submitted that Stingray Vibe is a highly distinguishable and distinctive service from 360tunebox as it features both artists from today and yesterday, has a clear primary focus on urban music and strictly airs music videos, whereas 360tunebox includes artist spotlights, interviews and concert performances, in addition to music videos, with a clear focus on emerging talent.
17. To address Stingray's claim of programming overlap between the two services, ECGL conducted an audit of the music videos aired on both services using a total of 10.5 hours of Stingray Vibe's schedule. Out of 157 music videos aired during that period, ECGL noted that only 3 (2%) were broadcast on both services.
18. Lastly, ECGL agreed that there is some overlap in target audience for the two services. However, it added that Stingray's intervention only refers to the 15-34 demographic while 360tunebox also targets older audiences. It maintained that the

two services would appeal to respective audiences looking to access different content and musical perspectives.

Commission's analysis and decisions

Competition with Canadian discretionary services

19. The Commission's general approach to the addition of non-Canadian English- and French-language services to the list is set out in Public Notice 2008-100. Under this approach, the Commission assesses such requests in the context of its general policy, which among other things precludes the addition of a non-Canadian service that can be considered totally or partially competitive with Canadian discretionary television services.
20. 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.
21. 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 *Broadcasting Act*, responsibilities that non-Canadian services do not share.

Whether 360tunebox is directly competitive with A.Side and Stingray Vibe

22. Although a large portion of the programming on A.Side does not consist of music videos, out of the 12 programs featured on the programming schedule provided by ECGL as part of this application, 7 have descriptions almost identical to programs featured on A.Side. While these are not the same programs and may not feature many of the same music videos, their focus is on the same musical genres.
23. When addressing music video programming overlap between 360tunebox and Blue Ant and Stingray's discretionary services, ECGL relied on percentages obtained by playlist comparisons, focusing on individual music videos rather than musical genres.
24. While recognizing that specific program overlap among the three services appears to be minimal, the Commission agrees that it is also important to consider the musical genres since they are likely the determining factor for target audiences in choosing to subscribe to one of these television services.
25. The Commission notes that "urban music" includes a large number of popular musical genres and considers that despite ECGL's claims that 360tunebox focuses on emerging artists and therefore a different target audience, it concentrates on those

same genres that are core to Stingray Vibe and features styles of programming that are very similar to those broadcast on A.Side. Moreover, the Commission recognizes that ECGL acknowledged that a portion of the music-related programming on A.Side is dedicated to emerging artists.

26. In terms of target audience, all three services target the same age groups and are in the English language.

Conclusion

27. In light of all of the above, the Commission **denies** the application by Ethnic Channels Group Limited to add 360tunebox to the *List of non-Canadian programming services and stations authorized for distribution*.

Secretary General

Related documents

- *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