



25 November 2020

Claude Doucet  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Via GC Key

Dear Secretary General,

**Re: Broadcasting Notices of Consultation CRTC [2019-379](#) (Ottawa, 25 November 2020), [2019-379-1](#) (Ottawa, 28 January 2020), [2019-379-2](#) (Ottawa, 8 April 2020) and [2019-379-3](#) (Ottawa, 22 June 2020) – Procedural request – addition of CBC's Tandem initiative to the proceeding – answer to CBC's 24 November 2020 letter**

- 1 On 28 October 2020 the Forum submitted a procedural request to the CRTC asking that it add the “Tandem” branded-content initiative of the Canadian Broadcasting Corporation (CBC) to the public record of the above-noted proceeding. On 30 October 2020 the Forum submitted a procedural request to amend its 28 October 2020 request by adding new facts about Tandem published by the Globe and Mail on 29 October 2020. In the remainder of this letter our references to the Forum’s 28 October 2020 procedural request incorporate our related procedural request of 30 October 2020).
- 2 On 24 November 2020 the Forum received a letter from the CBC concerning Tandem (CBC Letter).<sup>1</sup> The Forum respectfully asks that the CRTC accept this letter of 25 November 2020 as the Forum’s answer to the CBC Letter.

### **I CBC Letter includes responses to a third party**

- 3 As noted above, yesterday the Forum received a letter from the CBC concerning Tandem (CBC Letter). Included in the CBC Letter was “an appendix” consisting of questions “from a group of former employees expressing concerns about Tandem”, along with “CBC/Radio-Canada’s responses”. The CBC did not explain why it answered questions about Tandem which it received from a third party in a letter to the CRTC about the Forum’s procedural request, except to say that it did so “[f]or the Commission’s convenience” (¶12). The CBC Letter does not list a third party in its list of those to whom the letter was copied: see Figure 1.

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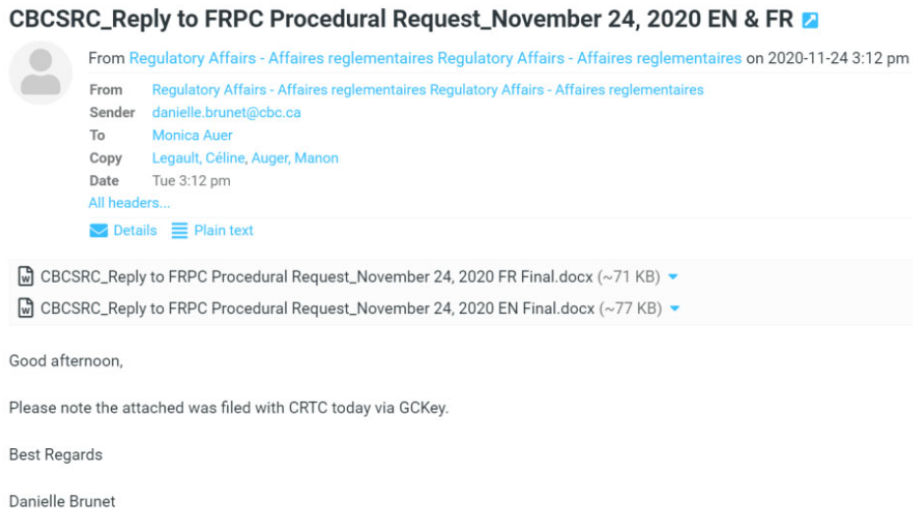
<sup>1</sup> At the time of writing none of these materials, including any correspondence between the CRTC and CBC about the Forum’s 28 October 2020 procedural request, has been made public on the CRTC’s web page for the 2019-379 proceeding: see Appendix 1.

**Figure 1 CBC Letter – signature page**



- 4 CBC's e-mail to the Forum with the CBC Letter was also not copied to this third party – see Figure 2 – making it unclear whether the third party is even aware of the CBC's responses to its questions and concerns.

**Figure 2 CBC's 24 November 2020 e-mail to FRPC**



- 5 In light of the CBC's failure to copy the third party it mentions, the Forum respectfully submits that CRTC should direct the CBC Letter to that party's attention.

## II CBC Letter is not a reply to the Forum's procedural request

- 6 Despite the statement by the subject line of the CBC Letter that it is the "Reply of CBC/Radio-Canada to the 28 October 2020 Procedural Request by the Forum", the CBC Letter does not reply to the Forum's procedural request.
- 7 In fact, CBC's letter begins and ends by stating that it is providing additional information about Tandem: "CBC/Radio-Canada is pleased to provide the Commission with additional information about Tandem ...." and "CBC/Radio-Canada appreciates the opportunity to provide the Commission with this additional information regarding Tandem" (paragraphs 3 and 13, respectively). CBC also states that the letter will

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- “describe the nature of Tandem’s activities”
  - “demonstrate that these activities are completely distinct from the programming commitments that form the basis of the Corporation’s licence renewal application”
  - demonstrate that CBC/Radio-Canada has measures in place to clearly identify branded content on its digital platforms” and
  - state that CBC is “conducting a review and consultation process to ensure that the integrity of CBC/Radio-Canada’s programming is maintained”.
- 8 Rather than replying to the Forum’s procedural request, CBC intended to and did describe Tandem, Tandem’s use on CBC’s digital services, CBC’s identification of branded content in its online services and CBC’s forthcoming review of Tandem.
- 9 What the CBC Letter did not do, is reply to the Forum’s procedural request. CBC’s decision not to reply to the Forum’s procedural request means that CBC does not oppose the Forum’s request that information about Tandem be added to the 2019-379 proceeding.
- 10 The Forum respectfully submits that even if the CRTC wished to interpret the CBC Letter as opposing the addition of Tandem to the 2019-379 proceeding, it would be difficult to do so in light of the CBC’s failure to provide facts to support its claims and the CBC’s attempt to evade examination of CBC’s past performance and future plans with respect to branded content and the larger Tandem initiative using misleading statements.
- A. No facts to support CBC’s claims**
- 11 The Forum quoted CBC’s announcement that Tandem would operate “across all platforms” and that the platforms included “CBC, ICI TÉLÉ, specialty channels (ARTV, EXPLORA, CBC News Network), ...”.<sup>2</sup> The CBC Letter denies that CBC/Radio Canada broadcasts this content on its “traditional platforms” (¶16), but apart from this bare rebuttal offers no evidence – such as an affidavit, a contract or even an actual recording – to support its statement. In the normal course of events actual evidence would always be needed but in this case, as the evidence is essential to rebut CBC’s own prior statement as quoted in the *Globe and Mail* article, it is of special importance.
- 12 In the absence of any contrary evidence from the Corporation, the CRTC should add the branded-content initiative to the 2019-379 proceeding, while accepting the CBC’s prior public statements about its uses of branded content on its licensed broadcasting services and admit the statements to the 2019-379 proceeding and its record.
- B. Misleading statements by CBC**
- 13 The Forum also notes that CBC has not denied that it *has* sold branded content in the past or that it *plans* to sell branded content in the future with respect to its licensed services. This is evident from the CBC’s careful use of the present tense in the context of its traditional platforms:

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<sup>2</sup> CBC Media Solutions, “Introducing CBC/Radio-Canada Tandem: A dedicated service for branded content” (17 September 2020), <https://solutionsmedia.cbrc.ca/en/news/introducing-cbc-radio-canada-tandem-a-dedicated-service-for-branded-content/>.

... CBC/Radio-Canada **does** not broadcast this type of branded content on its traditional platforms; this content **is** not part of our licence renewal proposal and therefore, **is** not relevant to the licence renewal process for our traditional platforms.

(paragraph 6, bold font added)

- 14 CBC's statement – again presented without any supporting facts – is also misleading as it distinguishes between the applications CBC filed to renew its licensed services and for the CRTC to continue to exempt its online services from licensing. Yet the Forum's 28 October 2020 procedural request did not argue that it was perfectly acceptable for CBC to be untrustworthy, as long as this only happened or happens now or happens in the future in its exempted online services: in fact, the Forum argued that CBC's branded-content initiative is relevant to all of CBC's claims about the importance of its trustworthiness.
- 15 CBC's misrepresentation of the Forum's arguments, and the absence of a clear denial from CBC that it has in the past produced or sold branded content or that it plans to or may produce or sell such content in the future provides the CRTC with grounds for examining the Corporation's conduct in this area in the 2019-379 proceeding.

### III CBC's "review" does not take the CRTC's place

- 16 Page 4 of the CBC Letter describes an internal review the CBC is now undertaking to address other parties' concerns about Tandem. This review, of course, does not respond to the Forum's request that information about Tandem be added to the CRTC's 2019-379 proceeding.
- 17 Nor is such a review directly relevant to the CRTC's responsibilities. After all, the Forum could also have asked the CBC or its Board of Directors to review the Corporation's use of and policies for branded content. The Forum instead directed its procedural request concerning Tandem to the CRTC because section 3(2) of the *Broadcasting Act* states that Canada's broadcasting system, which includes CBC/Radio-Canada, is regulated and supervised "by a single independent public authority",<sup>3</sup> and because Parliament specifically requires the CRTC – not the CBC/Radio-Canada – to "regulate and supervise all aspects of the Canadian broadcasting system...."<sup>4</sup>
- 18 However commendable the CBC's review of its own business practices may be, the recommendations that may come from such a review do not bind either the CBC itself or the CRTC. Nor would interested parties have any remedy for challenging such a review, its findings or its recommendations – whereas, of course, the *Broadcasting Act* provides precisely such remedies.<sup>5</sup>

### IV CBC's 25 November 2020 Letter attempts to submit new evidence to the 2019-379 proceeding

- 19 On its face the CBC Letter does not reply to the Forum's procedural request, but does attempt to submit new evidence regarding CBC's licensing and exemption-order applications. The *CRTC Rules*, however, expressly prevent applicants from amending their applications and from filing supplementary documents related to applications after the CRTC has posted the application its website:

<sup>3</sup> 1991 *Broadcasting Act*, s. 3(2).

<sup>4</sup> S. 5(1).

<sup>5</sup> Ss. 28(1) and 31(2).

24 An applicant must not amend an application or file any supplementary documents related to the application with the Commission after the application has been posted on the Commission's website.

20 The *CRTC Rules* do, however, permit the CRTC to admit documents as evidence if it so chooses:

10 The Commission may

...

(c) decide whether to admit a document as evidence;

21 The new evidence that CBC's letter purports to add to the record of the 2019-379 proceeding by way of what it claims is a reply but which is in fact a letter with new evidence, relates to Tandem, the CRTC's advertising regulations, Canadian program exhibition and expenditure requirements, conditions of CBC's radio licences, CBC's advertising standards, a CBC process about Tandem and CBC's response to questions about Tandem raised by a group of former employees (paras. 5, 6, 7, 8, 9, 10, 11 and 12).

22 The Forum agrees that the CBC Letter should be added to the record of the 2019-379 proceeding as new evidence concerning Tandem and the keen interest of many people, including former CBC employees, in this issue.

23 As well, however, and in the absence of any reasons from the CBC for the CRTC to deny Forum's 28 October 2020 and 30 October 2020 procedural requests, the Forum respectfully requests that those requests be granted and posted on the CRTC's website.

24 Should the CRTC or its staff have any questions, we would be pleased to respond. We look forward to the Commission's response.

Sincerely yours,



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**Appendix 1 Extract of procedural requests from the CRTC's Closed Proceedings page for BNoC 2019-379**

