



## Broadcasting Regulatory Policy CRTC 2011-601-1

PDF Version

Additional reference: 2011-601

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### Regulatory framework relating to vertical integration – Correction

The Commission hereby corrects Appendix 1 to Broadcasting Regulatory Policy 2011-601, which was published on 21 September 2011. Appendix 1 sets out general objectives and guidelines that the Commission considers should be taken into account, for guidance purposes, by broadcasting undertakings engaged in negotiations for wholesale commercial arrangements. Notwithstanding the clearly expressed nature and intent of the contents set out in Appendix 1, that appendix made use, in a number of instances, of the term “shall,” which could be interpreted as being prescriptive. Accordingly, the Commission replaces Appendix 1 to Broadcasting Regulatory Policy 2011-601 with a corrected appendix, in which the word “shall” has been replaced by “should.” The corrected appendix, with changes in **bold**, is attached to this document.

Secretary General

# Appendix to Broadcasting Regulatory Policy CRTC 2011-601-1

## Corrected Appendix 1 to Broadcasting Regulatory Policy 2011-601

### Code of conduct for commercial arrangements and interactions

This code sets out general objectives and guidelines that the Commission considers should govern the commercial arrangements between broadcasting distribution undertakings (BDUs), programming undertakings and new media exempt undertakings. While it remains of the view that such matters are generally best determined by negotiations between the parties without its intervention, there may be circumstances where the Commission determines that it must intervene in the public interest. The Commission expects that this would primarily occur in cases where, for example, the attainment of the objectives set out in the *Broadcasting Act* could be compromised or when the provisions set out in the present code have not been respected by the parties engaged in commercial arrangements. Accordingly, this code should be seen as providing guidance not only on matters that should be considered by parties as part of the negotiation process between BDUs, programming undertakings and new media exempt undertakings, but also as being illustrative of the kinds of information that the Commission will consider in any subsequent Commission process whether these be concerning allegations of undue preference/disadvantage or requests for a dispute resolution determination.

1. A programming undertaking, BDU or new media exempt undertaking **should not** require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable, such as:
  - a. requiring an unreasonable rate (e.g., not based on fair market value);
  - b. requiring minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
  - c. refusing to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service);
  - d. requiring an excessive activation fee or minimum subscription guarantee;
  - e. imposing, on an independent party, a most favoured nation (MFN) clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.

2. Where applicable, negotiating a wholesale rate for a programming service based on fair market value should take into consideration the following factors:
  - a. historical rates;
  - b. penetration levels and volume discounts;
  - c. the packaging of the service;
  - d. rates paid by unaffiliated BDUs for the programming service;
  - e. rates paid for programming services of similar value to consumers;
  - f. the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
  - g. the retail rate charged for the service on a stand-alone basis; and
  - h. the retail rate for any packages in which the service is included.
3. Where a BDU includes related programming services in themed packages, it **should** include all relevant non-related programming services in those packages.
4. An independent Category A programming service **should**, unless the parties agree otherwise, be included in the best available package consistent with its genre and programming.
5. Where a BDU provides its related programming services with access to multiple distribution platforms, it **should** offer reasonable terms of access that are based on fair market value to non-related programming services.
6. A programming service **should** be given comparable marketing support by the BDU as is given to similar or related services.