



Broadcasting Decision CRTC 2017-145

PDF version

References: 2016-225, 2016-225-1, 2016-225-2, 2016-225-3 and 2016-225-4

Ottawa, 15 May 2017

Corus Entertainment Inc.

Across Canada

Application 2016-0022-1

Public hearing in Laval, Quebec

22 to 24 November 2016

Corus Entertainment Inc. – Licence renewals for French-language television services

*The Commission **renews** the broadcasting licences for the television services that will form Corus’s French-language Group for the next licence term from 1 September 2017 to 31 August 2022.*

*Further, the Commission **renews** the broadcasting licence for the service *La Chaîne Disney*, which will not be included in the Group, from 1 September 2017 to 31 August 2022.*

Application

1. Corus Entertainment Inc. (Corus), on behalf of the licensees listed in Appendix 1 to this decision, filed an application to renew the broadcasting licences for the discretionary services set out in that appendix, as well as the broadcasting licence for the discretionary service *La Chaîne Disney*. Corus requested that the licences for its French-language discretionary services *Historia* and *Séries+* be renewed under the group-based approach and that the licence for the service *La Chaîne Disney* not be included in Corus’s French-language Group. Further, it requested that the licence for the bilingual discretionary service *TELETOON/TÉLÉTOON* be renewed as part of its English-language group of services.¹
2. The Commission received numerous interventions regarding to this application. The public record for this proceeding can be found on the Commission’s website at www.crtc.gc.ca or by using the application number provided above.

¹ The Commission’s determinations relating to the renewal of the broadcasting licence for *TELETOON/TÉLÉTOON* are set out in Broadcasting Decision 2017-150.

Commission's analysis and decisions

3. The Commission's determinations relating to the appropriateness of applying the group-based licensing approach to Corus's services, as well as issues common to all of the French-language ownership groups, are set out in Broadcasting Decision 2017-143 (the Introductory Decision), also issued today, which should be read in conjunction with this decision.
4. In the Introductory Decision, the Commission set out its determinations on various issues, including setting minimum requirements for Canadian programming expenditures (CPE) and expenditures on programs of national interest (PNI). These determinations are reflected below and in the conditions of licence for Corus's services.
5. After examining the record for this application in light of the Introductory Decision and applicable regulations and policies, the Commission considers that the issues it must address in this decision are the following:
 - the composition of Corus's French-language Group;
 - CPE;
 - PNI expenditures;
 - expenditures on independent production;
 - regional and official language minority community (OLMC) reflection;
 - the full disclosure of financial information in accordance with the Commission's regulatory policy relating to vertically integrated entities; and
 - the deletion of and amendments to various requirements.

Composition of Corus's French-language Group

6. In its application, Corus proposed to form a group consisting of its services Historia and Séries+. Corus did not wish to include La Chaîne Disney in this group. According to Corus, group synergy between this service and the Historia and Séries+ discretionary services is not possible. The programs produced and acquired through CPE cannot be shared among the three services since La Chaîne Disney is an animation service targeting children and Historia and Séries+ offer programming targeting adults. Further, the programming strategy for La Chaîne Disney is different from that for the other two services. As such, Corus considered that it would be preferable to operate that service on an individual basis.
7. The Fédération nationale des communications supported the group composition proposed by Corus, whereas the Association québécoise de la production médiatique questioned the relevance of creating a group composed of only two services.
8. In Broadcasting Regulatory Policy 2015-86, the Commission indicated that it would encourage commonly owned services in the French-language market to apply as a

group when renewing their licences. As such, Corus's application responds to the Commission's invitation and is consistent with established policy, in particular the policy regarding the group-based licensing approach, which states that the Commission will include as part of a designated group the television stations and discretionary services that serve more than one million subscribers, with the exception of national news services and general interest sports services.

9. The Commission considers that forming a group in the French-language market, even though this group consists of only two services, will provide Corus with more flexibility in allocating its resources, which will allow it to better respond to audience needs and demands and better compete with the other groups in that market. Corus will also be able to invest in costlier productions and enhance its programming strategy.
10. In light of the above and in accordance with the determinations set out in the Introductory Decision, the Commission determines that Corus's French-language Group will consist of the services Historia and Séries+.
11. As regards the exclusion of La Chaîne Disney from Corus's French-language Group, the Commission considers that the reasons provided by the licensee are sufficient to justify not including La Chaîne Disney in that group.

Canadian programming expenditures

12. Corus proposed that each of the services that will form Corus's French-language Group maintain the CPE requirement to which it is currently subject. Pursuant to Broadcasting Decision 2013-738, Historia is subject to a 30% CPE requirement, whereas Séries+ is subject to a 17% CPE requirement. Based on the financial projections submitted by Corus, this would result in an average CPE level of 22.4% during the next licence term.
13. Corus also proposed a CPE requirement of 10% for La Chaîne Disney. Corus argued that La Chaîne Disney is not currently subject to a CPE requirement and that the CPE amounts paid would be new investments in the system. Further, Corus submitted that setting a CPE level that was too high might keep La Chaîne Disney from carving out a place in the market and innovating. Given that the service was recently acquired and is not yet very profitable, Corus submitted that a higher CPE level would have a negative impact on La Chaîne Disney as it has invested a significant amount in exclusive broadcast rights for Disney programming in Canada. Consequently, imposing a CPE requirement that is too high would limit its ability to invest in the type of programming it wishes to broadcast.

Commission's analysis and decisions

14. In Broadcasting Regulatory Policy 2015-86, the Commission confirmed that it would impose minimum CPE levels on new designated groups based on historical expenditure levels. In the case of Corus, historical expenditures cannot be used to assess the proposed requirements. Changes in the ownership of the services in

question² have resulted in expenditures lower than expected during the first years of the current licence term. For this reason, Corus will have to increase its CPE in the last two years of the licence term in order to fulfill its requirements. The CPE requirements will therefore be based on the current requirements for the services forming the proposed group rather than on historical expenditures.

15. In addition to their current CPE requirements, which amount to an average CPE level of 22.4%, Historia and Série+ are also subject to individual spending requirements relating to original programs. Corus submitted that imposing a CPE requirement is appropriate for its proposed group, but requested the deletion of the individual conditions of licence relating to original programs for the two services.
16. As stated by several interveners, the fact that Corus operates services of a similar nature in both linguistic markets could result in its being able to use the CPE of its French-language services to invest in the dubbing of Canadian programs broadcast on its English-language services rather than investing in original French-language content.
17. To ensure that Corus devotes an appropriate amount to CPE and continues to invest in original French-language content, the Commission considers that it is appropriate to impose on Corus's French-language Group a CPE requirement that is higher than the average of the current requirements imposed on both services. Given the importance of the services that compose the group, the Commission finds that imposing a CPE requirement of 26% on the services of Corus's French-language Group would ensure that the group maximizes its use of Canadian resources – creative or otherwise – for the creation and presentation of its programming without, however, harming the services' profitability.
18. For these reasons, the Commission has set the minimum CPE level for the services in Corus's French-language Group at 26% of gross revenues from the previous broadcast year. A **condition of licence** to this effect is set out in Appendix 2 to this decision.
19. The Commission also **approves** Corus's request to delete the individual conditions of licence for Historia and Séries+ relating to original programs.
20. Further, in Broadcasting Regulatory Policy 2015-86, the Commission indicated that CPE requirements for individual services would be based historical expenditure or, for services making little or no CPE, set at a minimum of 10%. With respect to La Chaîne Disney, given that it has only been in operation since the beginning of the 2015-2016 broadcast year, the Commission does not have sufficient historical data to establish a CPE requirement that is higher than the minimum level set out in that regulatory policy for the next licence term. Therefore, the Commission has imposed on La Chaîne Disney a **condition of licence** requiring it to devote at least 10% of its gross revenues from the previous broadcast year to CPE.

² See Broadcasting Decisions 2013-737 and 2013-738.

21. In accordance with the terms set out in the Introductory Decision, the services included in the group will be able to share CPE requirements among themselves and will be able to benefit from credits if Corus directs spending to Indigenous or OLMC producers.

Expenditures on programs of national interest

22. Corus is not currently subject to a PNI expenditure requirement and stated that it did not wish to be subject to such a requirement. However, in the event that the Commission were to impose a requirement on all groups, Corus proposed a standard 5% PNI expenditure requirement.

23. Several interveners argued that all French-language groups should be subject to PNI expenditure requirements that are based on their historical expenditures. The approach proposed by the interveners would make it possible to maintain an expenditure level similar to the current level and would provide some support for types of programs designated as PNIs in the context of the elimination of genre protection.

24. In the Commission's view, an expenditure requirement is needed to ensure that services in the French-language market continue to offer a broad range of programs, particularly in categories for programs that are costlier to produce and more difficult to make profitable. In fact, the Commission considers that dramas, long-form documentaries and music and dance programs are prime vehicles for showcasing Canadian attitudes, opinions, ideas, values and artistic creativity in the French-language market.

25. However, given the composition and financial situation of the groups, the Commission considers that a common PNI expenditure requirement for all groups would not address the reality of the French-language market. Rather, an expenditure requirement consistent with historical spending by the groups in regard to PNI better meets the needs of this market.

26. In light of Corus's historical PNI expenditures in the French-language market and in accordance with the determinations set out in the Introductory Decision, the Commission sets the minimum PNI expenditure requirement for all services in Corus's French-language Group at 15% of the previous broadcast year's gross revenues. A **condition of licence** to that effect is set out in Appendix 2 to this decision. However, given that it will not be included in the group, La Chaîne Disney will not be subject to such a requirement and will not enjoy the same spending flexibility as the services that form the group.

Expenditures on independent production

27. In its application, Corus indicated that it did not wish to be subject to a requirement relating to independent production. It further requested that the Commission not maintain individual conditions of licence for Historia and Séries+ relating to independent production.

28. Consistent with the determinations set out in the Introductory Decision, the Commission imposes on Corus's services a **condition of licence** requiring Corus to devote at least 75% of its PNI expenditures to programs produced by independent producers.

Regional and official language minority community reflection

29. When the licences for French-language services were last renewed, the Commission set out an expectation for all discretionary services regarding regional and OLMC reflection. Consistent with its determinations in the Introductory Decision, the Commission sets out the following expectation for all of Corus's discretionary services, including La Chaîne Disney:

The Commission expects the licensee to ensure that the programs broadcast by its services provide an appropriate reflection of all 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 their services.

Full disclosure of financial information in accordance with the Commission's regulatory policy relating to vertically integrated entities

30. In Broadcasting Regulatory Policy 2011-601, the Commission set out its decisions regarding its regulatory framework for vertical integration, which refers to the ownership or control by one entity of both programming services (such as television stations or discretionary services) and distribution services (such as cable systems or direct-to-home satellite services). At that time, the Commission identified only Rogers Communications Inc. (Rogers), Quebecor Media Inc. (Quebecor), Bell Canada (Bell) and Shaw Communications Inc. (Shaw Communications) as vertically integrated entities.
31. In that regulatory policy, the Commission stated that it would publish complete financial information for discretionary services owned and controlled by the vertically integrated entities. This practice of publication allowed for greater transparency to the benefit of the creative sector and the general public. In regard to Corus, financial data relating to its former Category B services is only partially published.
32. However, interventions from various sectors of the broadcasting industry have raised concerns regarding the lack of publicly available financial data for Corus's services. Given the interventions received and the acquisition of programming services by Corus in 2016, the Commission asked Corus whether it should be subject to the same disclosure level as vertically integrated entities and be required to publish complete service-level financial information for its English- and French-language services, pursuant to Broadcasting Regulatory Policy 2011-601.
33. While it indicated that it would be prepared to comply with financial data disclosure rules for its English-language services, Corus considered that the French-language services in its French-language Group should not be subject to the same level of

disclosure as those owned and controlled by vertically integrated entities. In Corus's view, since French-language services would not all be subject to the same level of disclosure, its competitiveness in the French-language market would suffer should it be subject to the same level of disclosure of financial information as vertically integrated entities.

34. Corus further submitted that in an environment where all services can compete for access to the system, it is even more important for competitively sensitive information to be kept confidential. As such, it submitted that all of its services, whether they are vertically integrated or not, should be able to keep this information confidential, given that streaming services will increase their penetration within the Canadian market over the next licence term.

Commission's analysis and decision

35. In Broadcasting Decision 2016-110, the Commission reiterated that while it continues to recognize the structural separation that exists between the licensed subsidiaries of Shaw Communications and Corus, it has nonetheless treated these entities as being under the common effective control of Mr. JR Shaw when applying regulations, policies and safeguards in the area of concentration of ownership.
36. In the Commission's view, in light of Corus's significant portfolio of services, there is no rationale to justify its provision of levels of information different from other vertically integrated entities. Requiring Corus to disclose complete financial information would also be in the public interest. Accordingly, Corus will also be subject to the Commission's vertical integration policy in regard to the disclosure of financial information. In addition, with respect to French-language services, the Commission notes that the level of disclosure regarding discretionary services is tied not to linguistic markets, but instead to ownership.
37. Consistent with the application of the vertical integration policy on the services of Rogers, Bell, Shaw Communications and Quebecor, the application of that policy will apply to all of Corus's services, regardless of language of operation. Further, given that there is no longer any difference in the regulatory treatment of former Category A and Category B services (now discretionary services), such services should disclose the same level of information to the public when they are part of a vertically integrated group. Accordingly, all of Corus's English- and French-language services, including those that do not operate as part of its group, will be required to disclose complete financial information, pursuant to Broadcasting Regulatory Policy 2011-601.

Deletion of and amendments to various requirements

38. Corus requested the deletion of and amendments to several conditions of licence for certain services. Given that the proposed changes are consistent with Commission policies, the Commission **approves** the following requests:

- to delete the requirements relating to original French-language Canadian programming for Historia and Séries+;
- to delete the condition of licence relating to the nature of the service for Historia and Séries+;
- to replace the condition of licence relating to the broadcast of Canadian programs for Historia and Séries+; and
- to change the designation of the service to discretionary service for La Chaîne Disney.

Conclusion

39. In light of all of the above, the Commission **renews** the broadcasting licences for the French-language discretionary services that will form Corus's French-language Group and that are listed in Appendix 1 to this decision. The licensees shall adhere to the applicable **conditions of licence** set out in Appendix 2 to this decision. The licences will take effect 1 September 2017 and will expire 31 August 2022.

40. The Commission **renews** the broadcasting licence for the discretionary service La Chaîne Disney. The licensee shall adhere to the applicable **conditions of licence** set out in Appendix 3 to this decision. The licence will take effect 1 September 2017 and expire 31 August 2022.

Reminders

41. The Commission reminds the licensees that they must pay any remaining tangible and intangible benefits required by the Commission in prior decisions.

42. The Commission further reminds the licensees that they must submit any annual reports required by the Commission in prior decisions by no later than 30 November following the end of the previous broadcast year.

Secretary General

Related documents

- *Renewals of licences for the television services of large French-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-143, 15 May 2017
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Various television services and stations – Corporate reorganization (transfer of shares)*, Broadcasting Decision CRTC 2016-110, 23 March 2016

- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Historia and Séries+ – Acquisition of assets and change in effective control*, Broadcasting Decision CRTC 2013-738, 20 December 2013
- *TELETOON/TÉLÉTOON, TELETOON Retro, TÉLÉTOON Rétro and Cartoon Network – Change of effective control; TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-737, 20 December 2013
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011

This decision and the appropriate appendices are to be attached to each licence.

Appendix 1 to Broadcasting Decision CRTC 2017-145

Discretionary services that are included in Corus's French-language Group and for which the licences have been renewed in this decision

Name of service	Licensee
Historia	8504644 Canada Inc.
Séries+	8504652 Canada Inc.

Appendix 2 to Broadcasting Decision CRTC 2017-145

Terms, conditions of licence, expectations and encouragements applicable to the discretionary services that form part of the Corus's French-language Group

Terms

The licences will take effect 1 September 2017 and expire 31 August 2022.

Conditions of licence, expectations and encouragements applicable to all discretionary services that form part of the Corus's French-language Group

1. The licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services set out in Appendix 1 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 no less than 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 a minimum of 26% 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 Corus's French-language 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) 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 Corus's French-language 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 undertakings from Corus's French-language 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 programs of national interest expenditure requirement.
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 Corus's French-language 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 Corus's French-language Group collectively devote:
 - (a) 26% of the previous year's gross revenues of the undertakings from Corus's French-language Group to the acquisition of or investment in Canadian programming; and
 - (b) 15% of the previous year's gross revenues of the undertakings from Corus's French-language 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 Corus's French-language 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 Corus's French-language 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 Corus's French-language 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 Corus's French-language 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 Corus's French-language 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).

Licensee's obligations with respect to Corus's French-language Group

13. 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 expenditures on Canadian programming, including programs of national interest, made the licensee and by the Corus's French-language Group for that term.
14. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming, including programs of national interest, that occurred during the previous licence term.
15. In regard to the operation of the undertakings that form Corus's French-language Group:
 - (a) Subject to condition 15(b), the undertaking shall remain part of Corus's French-language Group for the duration of the licence term.
 - (b) Should the licensee wish to operate the undertaking outside Corus's French-language Group, the licensee shall apply to the Commission for the service to be removed from Corus's French-language Group no later than 120 days prior to operating the service outside the Corus's French-language Group.
 - (c) The licensee shall ensure that the list of undertakings that form Corus's French-language Group is accurate at all times.

Competitive safeguards

16. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
17. The licensee shall provide a minimum of 90 days' written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice shall be accompanied by an offer that sets out the general terms of carriage of the programming service to be launched.
18. The licensee shall not:
 - (a) require an unreasonable rate (e.g., not based on fair market value);
 - (b) require a party with which it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
 - (c) require an excessive activation fee or minimum subscription guarantee;

- (d) impose, 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.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

19. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall 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 broadcasting distributors for a 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;
- (h) the retail rate for any packages in which the service is included.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

20. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

21. The licensee shall not:

- (a) require 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;

- (b) refuse 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);
- (c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

22. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcasting distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

23. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms.

For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

24. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

Expectations

The Commission expects the licensee to ensure that the programs broadcast by the services provide an appropriate reflection of all of Quebec, including regions outside of 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 these services.

Definitions

As an exception to the definition of “broadcast day” 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, the term “broadcast day” refers to the 24-hour period beginning each day at 4 a.m. or any other period approved by the Commission.

“Corus group of French-language services” means the group of undertakings set out in Appendix 1 to *Corus Entertainment Inc. – Licence renewals for French-language television stations*, Broadcasting Decision CRTC 2017-145, 15 May 2017.

“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.

“Programs of national interest” means Canadian programs drawn from categories 2(b) Long-form documentary, 7 Drama and Comedy and all related subcategories, 8(a) Music and dance other than music video programs or clips, 8(b) Music video clips, 8(c) Music video programs and 9 Variety.

Appendix 3 to Broadcasting Decision CRTC 2017-145

Conditions of licence applicable to the discretionary service La Chaîne Disney

Conditions of licence, expectation and encouragements

1. The licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services as set out in Appendix 2 to the *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 of licence 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 no less than 35% of the broadcast day to the exhibition of Canadian programs.

Canadian programming expenditures

3. The licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming a minimum of 10% of the previous year's gross revenues.
4. Subject to condition 3, 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.

5. The licensee may claim the credits calculated in accordance with condition 4 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 Corus's French-language Group.

Over- and under-expenditures

6. In each broadcast year of the licence term, excluding the final year,
 - (a) the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that year calculated in accordance with condition 3. In such case, the licensee shall ensure that the undertaking expends 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 expends an amount for that year on Canadian programming that is greater than the minimum required expenditure calculated in accordance with condition 3, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.
 - (c) Notwithstanding conditions 6(a) and 6(b) during the licence term, the licensee shall ensure that the undertaking expends on Canadian programming, at a minimum, the total of the minimum required expenditures calculated in accordance with condition 3.
7. 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 expenditures on Canadian programming, including programs of national interest, made the licensee for that term.
8. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming, including programs of national interest, that occurred during the previous licence term.

Competitive safeguards

9. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
10. The licensee shall provide a minimum of 90 days' written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice shall be accompanied by an offer that sets out the general terms of carriage of the programming service to be launched.

11. The licensee shall not:

- (a) require an unreasonable rate (e.g., not based on fair market value);
- (b) require a party with which it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
- (c) require an excessive activation fee or minimum subscription guarantee;
- (d) impose, 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.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

12. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall 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 broadcasting distributors for a 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;
- (h) the retail rate for any packages in which the service is included.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

13. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

14. The licensee shall not:

- (a) require 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;
- (b) refuse 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);
- (c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

15. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcasting distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

16. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms.

For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

17. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

The application of the foregoing condition of licence is suspended so long as the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

Expectations

The Commission expects the licensee to ensure that the programs broadcast by the service adequately reflect all regions of Quebec, including those outside Montréal, as well as all regions of Canada. The Commission also expects the licensee to provide producers working in these regions with an opportunity to produce programs intended for the service.

Definitions

“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.