



Broadcasting Notice of Consultation CRTC 2025-2

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Notice of hearing

12 May 2025

Gatineau, Quebec

The Path Forward – Working towards a sustainable Canadian broadcasting system

Deadline for submission of interventions: 24 February 2025

Deadline for the submission of replies: 11 March 2025

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The Commission will hold a hearing starting on **12 May 2025 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.**

[Attend the hearing or listen to it online.](#)

Summary

As part of its broader regulatory plan to implement the modernized *Broadcasting Act* (the Act), the Commission is launching a consultation to examine the market dynamics between small, medium, and large programming, distribution, and online services, and the tools available to ensure the sustainability and growth of Canada's broadcasting system.

The Commission considers that a sustainable Canadian broadcasting system is one that is resilient, adapts effectively to change, supports Canadian and Indigenous content and facilitates its discoverability, and promotes fair competition, diversity, and innovation. The Commission will examine how the current market dynamics are impacting the industry's ability to meet the policy objectives set out in the Act, while helping ensure that Canadians can choose the content they want to watch or listen to. The Commission has set out two key goals to guide this consultation:

- a sustainable model for the delivery and discoverability of diverse Canadian and Indigenous content; and
- a fair and competitive marketplace.

This consultation will address both traditional and online audio-visual and audio services. It builds on previous consultations and is intended to align with other policy consultations announced by the Commission in its regulatory plan to modernize Canada's broadcasting framework, including the consultation on Canadian content for television and online streaming services and the upcoming consultation on audio policy. It is also intended to set the policy framework for the consultations that will help guide the final individual contributions and requirements for traditional and online services in Canada.

The Commission will accept comments that it receives on or before **24 February 2025**. Only parties who file comments may file a reply to matters raised during the comment period. Replies must address only the issues raised during the comment period. The deadline for the filing of replies is **11 March 2025**.

The Commission will also hold a public hearing in Gatineau, Quebec, to begin **12 May 2025**. Following the public hearing, parties will have an opportunity to file brief final submissions, in which they will be able to respond to interventions received or comments raised during the proceeding, and, if applicable, to responses to undertakings.

Introduction

1. Canada's broadcasting industry is at a crossroads, facing profound changes driven by technological innovation, shifting consumer habits, and global competition. Balancing commercial interests with the need to promote the diversity of Canadian cultural expression and social values is an ongoing challenge, one that will require flexibility and participation on the part of all industry players, public and private. The viability and sustainability of Canada's broadcasting industry will depend on how well the sector adapts to the digital age and remains responsive to the needs of a diverse and evolving audience.
2. The role of the Commission, defined in the *Broadcasting Act* (the Act), is to regulate and supervise all aspects of the Canadian broadcasting system. It must do so in a flexible manner, apply principles of regulatory fairness, and develop a regulatory framework that benefits the system as a whole.
3. Further, the broadcasting system should, among other things:
 - be responsive to the preferences and interests of various audiences;
 - encourage the development of Canadian expression by providing a wide range of programming and, through its programming and the employment opportunities arising from its operations, serve the needs and interests of all Canadians;
 - ensure that Canadian independent broadcasting undertakings continue to be able to play a vital role within the system; and
 - ensure that Canadian programming services and original Canadian content, including French-language programs, are equitably discoverable.

4. A sustainable broadcasting system is one that effectively fulfills the policy objectives set out in the Act. It is also one that helps to achieve the cultural, social, and economic aspirations of Canadians. It responds to changes in technology and consumer demand by adapting to how Canadians discover, access, and consume content, especially Canadian and Indigenous content. It is financially stable and able to grow and evolve. It supports the production and distribution of diverse Canadian content in both official languages and Indigenous content through the contributions of the various private and public players that participate in and benefit from the system.
5. The Commission has various tools at its disposal for ensuring the public policy objectives are met. For example, it has created rules related to how certain programming undertakings must be made available and distributed by broadcasting distribution undertakings (BDUs) and how certain data collected by such undertakings should be gathered and shared. It has also established a dispute resolution framework to assist with commercial negotiations and to help resolve disputes, where necessary.
6. In this proceeding,¹ the Commission will consider whether its current tools are still effective for and appropriate to meeting the public policy objectives set out in the Act, and, if not, whether they should be amended or replaced with new, innovative tools that can better adapt to the needs of the industry in today's environment.
7. This proceeding will cover both traditional and online audio-visual and audio undertakings. However, given that many of the current tools related to access have been developed to govern the distribution of audio-visual undertakings, not all questions may be relevant to the audio sector.
8. The following two key goals will help guide this consultation:
 - a. **a sustainable model for the delivery and discoverability of diverse Canadian and Indigenous content:** A broadcasting system in which Canadians have access to and can discover a diversity of audio-visual and audio content; and
 - b. **a fair and competitive marketplace:** A broadcasting system in which fair, transparent, and competitive rules of engagement² support interactions between programming services³ and distributors,⁴ and which provides timely and effective mechanisms for resolving commercial disputes.

¹ This proceeding builds on previous proceedings, including Broadcasting Regulatory Policies 2023-329, 2023-331, and 2024-121, finalized through Broadcasting Regulatory Policy 2024-121-1 and Broadcasting Order 2024-194.

² In this context, the term “rules of engagement” refers to requirements, practices, and principles.

³ “Programming services” here refers both to programming undertakings and online undertakings that act like programming services.

⁴ “Distributors” here refers to both BDUs and online undertakings that act like BDUs.

Background

9. The Canadian broadcasting system is comprised of diverse Canadian and international traditional and online undertakings, public and private, each bringing distinct perspectives and making unique contributions to the system. It consists of distinct English- and French-language markets, each with its own challenges and opportunities. The Canadian broadcasting landscape has changed dramatically over the years, particularly in the way content is created, acquired, and delivered. The rise of online streaming services and the growth of digital technologies have transformed almost every facet of the system.
10. The sector has seen new players enter the market, offering a wide range of both domestic and international content options to Canadians. The entry of these new players has increased to an unprecedented degree the volume and diversity of programming accessible to Canadians.
11. While new delivery methods offer broadcasting undertakings increased opportunities to reach audiences – including international audiences – they also result in a need for some broadcasting undertakings to significantly transform themselves in order to compete. For example, traditional broadcasters have experienced a significant migration of their audiences⁵ and revenues⁶ to digital media and streaming services. This migration has put increased pressure on traditional broadcasters, both public and private, to reinvent themselves in order to secure and develop their audiences as they adapt to an environment of increased competition and technological change.
12. The influx of new players to the Canadian broadcasting system, combined with consolidation and vertical integration within the sector, has impacted the competitive landscape and the market dynamics of the system. Many services have grappled with these changes and have had to manage the impact they have had on advertising revenues and other aspects of their businesses.
13. The changes in the competitive environment have also disrupted long established commercial relationships. Where previously only a few parties negotiated for the rights to programming content and services, increasingly, Canadian broadcasters must compete directly with domestic and international services with varying degrees of market power to acquire these rights.
14. Competitive pressures have led, in turn, to an increase in both formal and informal commercial disputes between programming services and BDUs. These disputes often

⁵ Between 2015 and 2023, the time Canadians spent listening to online audio content increased from 4.6 hours per week to 9.4 hours per week, while the time they spent viewing online audio-visual content increased from 2.4 hours per week to 12.6 hours per week. (CRTC data collection, Communications Market Reports - Open Data)

⁶ In 2023, online streaming services reported a 14% revenue increase over the previous year. During the same period, commercial radio stations, television services, and BDUs reported a revenue decrease. In addition to revenue declines, BDUs continue to report declining subscription rates. (CRTC data collection, Communications Market Reports - Open Data)

involve the removal, or threat of removal, of programming services by BDUs. They also often involve independent services that provide diversity of ownership, programming, and perspectives – all of which are essential to reflecting the interests of all Canadians.

15. This broadcasting environment has presented challenges related to the creation and availability of Canadian and Indigenous audio and audio-visual content. These challenges may be more pronounced for artists, creators, producers, programming services, and BDUs from diverse communities, including Indigenous communities, official language minority communities (OLMCs), French-language speaking communities, and equity-deserving groups.
16. Given the trends outlined above, the Commission is examining the market dynamics among small, medium, and large programming, distribution, and online undertakings. This analysis will allow the Commission to determine what actions may be needed to achieve the policy objectives of the Act and ensure the sustainability and growth of Canada's broadcasting system.

A. A sustainable model for the delivery and discoverability of diverse Canadian and Indigenous content

17. The market dynamics within Canada's broadcasting industry have become increasingly complex due to a combination of regulatory, market, and technological factors that shape the interactions between broadcasters, creators, advertisers, and Canadians.
18. One of the most complex aspects of commercial relationships in Canada's broadcasting industry is the coexistence of traditional broadcasters and online streaming services. This complexity has been further accentuated by the significant differences in the way the commercial relationships and market dynamics play out in Canada's English- and French-language markets, including the way relationships between public and private broadcasters have evolved. The rise of international online streaming services has drastically altered the market dynamics, creating tension between traditional broadcasters and these new players. This shift has created both competition and collaboration. For example, increasingly, Canadian broadcasters have entered into partnerships with online streaming services for content distribution or joint productions, while also attempting to adapt their own services to capture a slice of the streaming market.
19. Canadian broadcasters have increased their investment in online content, and some have launched their own online streaming services to compete in the marketplace. However, the success of these initiatives has been mixed, as Canadian online streaming services face significant challenges, including stiff competition from established international players with vast content libraries and international reach.

20. The sustainability of Canada's broadcasting system depends both on the ability of new and existing services to access the system and on Canadians' ability to discover the diverse content it offers. Changes to the broadcasting system have impacted the existing distribution chain for content, at times making it more difficult for independent Canadian creators and services, among others, to reach their intended audiences. The broadcasting system must reflect Canada's rich and diverse cultural fabric and ensure that Canadians have access to the content of their choice, including content of national and cultural significance, regardless of how they access that content.
21. At the same time, ensuring that Canadians have access to content, and that it is discoverable, does not mean that content is guaranteed to succeed with audiences. A policy principle of this proceeding and of the resulting regulatory framework is to ensure choice in content and the ability to consume that chosen content, not to direct Canadians in which content they must consume, or how they must consume it.

Understanding the current market dynamics and the challenges and opportunities that they present

Access to the broadcasting system

22. As business models and distribution platforms are continually evolving, the Commission recognizes that for some broadcasting undertakings, the shift in market dynamics presents barriers and challenges to their viability. However, the shift can also be an opportunity to remain relevant and grow by finding innovative ways to link content with those who consume it.
23. There are measures in place to support broadcasting undertakings' access to the system.⁷ However, these measures are currently almost exclusively focused on the traditional broadcasting system.
24. In light of the above, the Commission invites interested persons to respond to the following questions:
 - Q1. What are the main challenges to ensuring that existing broadcasting undertakings and new entrants to the broadcasting system do not face undue structural, financial, technological, or regulatory barriers? What barriers should be considered undue? What barriers demonstrate market failure?⁸ Do these challenges vary depending on the size of traditional and online undertakings?
 - Q2. Are there challenges specific to the English-language and French-language markets? If so, please explain these challenges.

⁷ Some of these access measures are listed in paragraph 38 of this notice.

⁸ Such barriers are here distinguished from ordinary market strategies that should not attract regulatory attention.

Q3. Are there specific challenges to ensuring that broadcasting undertakings owned or controlled by, or featuring programs from, creators and producers who belong to Indigenous communities, OLMCs, equity-deserving groups, and other groups of Canadians of diverse backgrounds, including those from diverse ethnic and cultural communities, have access to the broadcasting system? If so, what specific measures or incentives could the Commission implement to address these challenges?

Q4. What opportunities related to access have emerged from new technologies and the evolving market dynamics? For example, have these changes led to an increase in partnerships or new approaches to reach audiences? How can these opportunities be used to grow and promote innovation in the broadcasting system? Are there opportunities that are specific to the English-language market or the French-language market?

Q5. This proceeding aims to examine the evolving market dynamics between programming, distribution, and online undertakings. These dynamics have the potential to affect other players within the industry, including producers, creators, artists, and advertisers. Please comment on the impact of these evolving market dynamics on the relationships between broadcasting undertakings and these other players operating in the Canadian broadcasting system.

Q6. How can a modernized access-related framework support ownership within Indigenous communities, OLMCs, equity-deserving groups, and other groups of Canadians of diverse backgrounds, including those from diverse ethnic and cultural communities?

Q7. Should the Commission consider collecting and publishing data relating to the ownership and control of undertakings by Indigenous peoples, members of OLMCs, members of equity-deserving groups, and other Canadians of diverse backgrounds, including those from diverse ethnic and cultural communities? If so, what specific data points would be useful and why? What are the challenges associated with the collection of this type of data and how could the Commission address those challenges?

Q8. In what ways do current access tools either encourage or hinder innovation?

Discoverability of content

25. Consumer choice can drive demand for a diverse range of content. However, as consumer choice evolves and the volume of content available multiplies, independent services in particular, whether traditional or online, may find it harder to compete for visibility and to effectively reach their audiences.

26. The Commission recognizes that the discoverability and prominence⁹ of public and private Canadian broadcasting undertakings and the Canadian content they carry are necessary for achieving sustainability for the Canadian broadcasting system. In Broadcasting Regulatory Policy 2015-86, the Commission identified discoverability of English- and French-language Canadian content as a particular challenge both domestically¹⁰ and internationally, and an even greater challenge for independent broadcasters who do not have the reach or profile of large vertically integrated entities. More recently, in Broadcasting Decision 2022-76, the Commission stated that independent services required support to ensure that they were discoverable.
27. Discoverability is a central concern for the Commission as it works to modernize the Canadian broadcasting framework. In addition to the questions raised in this notice, issues related to the discoverability and prominence of Canadian and Indigenous content are also being considered in Broadcasting Notice of Consultation 2024-288, where the Commission is seeking to modernize the definition of Canadian content. Specifically, one of the issues that proceeding aims to consider is how the definition of Canadian content and other related regulatory measures can facilitate the discoverability and exportability of Canadian content, both within Canada and internationally. Additionally, the upcoming consultation on audio policy will assess discoverability of audio content as it gathers views on, among other issues, how audio players can contribute to the diversity of the Canadian broadcasting system.
28. In light of the above, the Commission invites interested persons to respond to the following questions:
- Q9. What specific challenges do broadcasting undertakings, as distinct from individual creators and producers, face in having their services and content promoted and discovered? Does the Commission's current regulatory framework help or hinder the discoverability and prominence of broadcasting undertakings? Should the Commission support the efforts of particular classes of broadcasting undertakings to effectively sustain or grow audiences—and, if so, how? How do these challenges differ for traditional services and online services?
- Q10. How are traditional and online broadcasting undertakings currently supporting the discoverability and prominence of diverse and inclusive audio-visual and audio content? What are some of the more successful initiatives in this area?
- Q11. How can the Commission encourage the discoverability and prominence of Canadian and Indigenous programming services across both traditional BDUs

⁹ Prominence is an aspect of discoverability and a term often used in reference to visibility on online streaming services.

¹⁰ The Commission acknowledged in Broadcasting Regulatory Policy 2015-86 that discoverability was more of a challenge domestically for English-language Canadian programming than for French-language Canadian programming.

and online undertakings, in both the English- and the French-language markets, and both domestically and internationally?

Events of national and cultural significance

29. Historically, over-the-air broadcasters, both public and private, have broadcast events of national and cultural significance to national audiences. These events are often sports-related but also include national celebrations such as Canada Day and National Indigenous Peoples Day. However, as the broadcasting system has become more fragmented and fewer people consume over-the-air broadcasts, there is a growing risk that Canadians will lose access to these important events.
30. Internationally, some jurisdictions have designated certain sporting competitions, such as the Olympic Games, as being events of national and cultural interest and have implemented “anti-siphoning” laws to ensure these events remain free to watch.¹¹
31. Another potential barrier to accessing broadcasts of events of national and cultural significance is the broadcasting of live events by online streaming services. Canadian and international online streaming services, including those dedicated solely to sports, have significantly altered the landscape of content delivery. While these services initially provided library content on-demand, they have also been increasingly broadcasting live sporting events.
32. As the cost of program rights acquisition continues to increase, traditional Canadian broadcasting undertakings, including the Canadian Broadcasting Corporation (CBC), may face greater difficulty securing the rights to broadcast certain live events of national and cultural significance.¹² This difficulty could impact the ability of programming services to attract audiences and ensure consistent advertising revenue. It could also impact the ability for Canadians to access events of significance to them.
33. Given these factors, the Commission is considering whether regulatory action is warranted to help ensure Canadians continue to have access to events that are considered of national and cultural significance.
34. In light of the above, the Commission invites interested persons to respond to the following questions:

Q12. Should the broadcasting system ensure continued access to events of national and cultural significance and, if so, how could this be achieved? Please explain your response. What types of programs and events should be considered

¹¹ For example, in Australia, Section 115 and paragraph 10(1)(e) of Schedule 2 of the *Broadcasting Services Act 1992*, and, in the United Kingdom, the “Code on Sports and Other Listed and Designated Events” (Ofcom).

¹² This category could include, for example, the Olympic Games, heritage events, or cultural festivals.

programs of national and cultural significance? What criteria should the Commission consider when determining whether programs qualify under these designations?

Q13. Is there a need for measures or incentives to ensure that programs of national and cultural significance are accessible by the public? Should the Commission consider adopting regulatory measures similar to those in other jurisdictions, for example, measures related to anti-siphoning? If so, please explain why and what measures could be implemented. Are there differences between how these measures could be implemented across the English- and French-language markets or for Indigenous communities, OLMCs, and other equity-deserving groups?

Connected devices

35. More Canadians than ever before own connected devices.¹³ Connected devices with onboard software and interfaces for navigating services, such as connected TVs,¹⁴ have significantly impacted traditional business models for content distribution and changed how Canadians can access content. BDUs are now facing competition from a wide array of content delivery access points, including online streaming services and free advertising-supported streaming television (FAST) channels¹⁵ available directly on television sets and other connected devices. These connected devices have also helped make audio services available through different delivery methods.

36. Given the increasing use of connected devices such as smart TVs, mobile handsets, and streaming players to access Canadian programming undertakings, the impact of connected devices on the discoverability of Canadian and Indigenous content and on the sustainability of the Canadian broadcasting system will likely grow.

37. In light of the above, the Commission invites interested persons to respond to the following questions:

Q14. How have connected devices impacted access to the Canadian broadcasting system? Do these impacts differ according to language market or for Indigenous communities, OLMCs, equity-deserving groups, and Canadians of other diverse backgrounds?

Q15. Are broadcasting undertakings operating in Canada facing challenges in obtaining access to (including equitable preferred placement or prioritization on)

¹³ 76% of Canadians adults report owning a connected TV, according to Media Technology Monitor, Spring 2024.

¹⁴ Use of connected TVs has doubled over the past ten years, according to Media Technology Monitor, Fall 2023.

¹⁵ FAST services generally offer traditional linear television programming online without a paid subscription, funded mainly or entirely by advertising.

the interfaces and platforms on connected devices? Please provide specific examples.

Q16. Is there a need for requirements and/or incentives regarding access on connected devices for particular programming services or distributors?

Q17. Are there new and emerging forms of technology that the Commission should monitor as potential disruptors of the status quo for audience engagement and the distribution of content?

Examining the effectiveness of existing regulatory tools in light of the evolving market dynamics

38. The Commission currently has several regulatory tools in place to ensure that Canadians have access to the content they wish to consume, including news. However, these measures apply only to the traditional system. In light of the evolving market dynamics, and in particular the increasing prevalence of online streaming services, the effectiveness of regulatory tools needs to be reassessed. These tools include, but are not limited to, the following:

- Over-the-air broadcasting
 - Over-the-air television and radio broadcasting, both private and public, provide Canadians with free access to a wide range of programming, including news, entertainment, and coverage of important events. BDUs are required to include local over-the-air stations in each service area as part of their basic service, ensuring broader access to this essential content.
 - In order to ensure access to programming in both official languages, BDUs are also required to include as part of their basic service at least one English-language and one French-language over-the-air television station operated by, or affiliated with, the CBC.
- Mandatory distribution pursuant to paragraph 9.1(1)(h)¹⁶ of the Act
 - To ensure Canadians have access to a wide variety of programming, including essential news services,¹⁷ the Commission can require BDUs to carry specific programming on terms and conditions it deems appropriate. When considering mandatory distribution, the Commission assesses criteria in Broadcasting Regulatory Policy 2010-629 and issues distribution orders accordingly. Traditionally,

¹⁶ Pursuant to paragraph 9.1(1)(h), the Commission may require BDUs to carry, on the terms and conditions that the Commission considers appropriate, programming services, specified by the Commission, that are provided by a broadcasting undertaking.

¹⁷ BDUs must distribute the services that qualify as national news discretionary services (CBC News Network, ICI RDI, CTV News Channel, Le Canal Nouvelles, and The News Forum).

mandatory distribution has been used to ensure access to and support for programming of exceptional importance, including news services.

- The 1:1 Rule
 - A BDU must distribute at least one discretionary service of an independent programming undertaking for each discretionary service of a related¹⁸ programming undertaking that it distributes.¹⁹
- Packaging Requirements²⁰
 - To ensure affordable access to essential Canadian programming, licensed BDUs must offer a basic service for no more than \$25 per month.
 - To enhance the accessibility and affordability of discretionary services for Canadians, licensed BDUs must offer all such services, including ethnic, Indigenous, and third-language programming, on a pick-and-pay basis and in small, affordable packages.
- Preponderance²¹
 - To cultivate greater choice and flexibility while encouraging the development of Canadian expression, BDUs must offer a preponderance of Canadian services to their subscribers.

39. It is important for the Commission to assess whether existing regulatory tools such as those listed above are still appropriate and effective in today's broadcasting environment, taking into account both the English- and French-language markets, and whether any of these tools should be applied to online undertakings.

40. In light of the above, the Commission invites interested persons to respond to the following questions:

Q18. Are the current regulatory tools appropriate to and effective for ensuring that programming undertakings have access to the broadcasting system, particularly when considering the difference between the English- and French-language markets? If not, please explain why not.

¹⁸ A related programming undertaking means a programming undertaking that is controlled by a BDU.

¹⁹ Paragraph 19(3)(a) of the *Broadcasting Distribution Regulations* relates to the distribution of English-language independent discretionary services, while paragraph 19(3)(b) relates to the distribution of French-language independent discretionary services.

²⁰ See section 23 of the *Broadcasting Distribution Regulations*.

²¹ See subsection 6(1) of the *Broadcasting Distribution Regulations*.

Q19. Could these tools be amended to allow the broadcasting system to better achieve the policy objectives of the Act? If so, how could they be amended? Should the Commission consider new tools? If so, which ones?

Q20. Would it be appropriate to adapt these access tools to online undertakings, considering the Commission's authority under the Act? If so, how could they be adapted in order to maximize their effectiveness?

Q21. Should support for services of exceptional importance, such as mandatory distribution pursuant to paragraph 9.1(1)(h) of the Act, be similar in the traditional system and in the online environment, or should the Commission adopt a different approach in each case? What principles or guidelines should be applied to the Commission's use of its power set out in paragraph 9.1(1)(i) of the Act?²² Please explain your reasoning.

Q22. Are new regulatory tools or incentives needed to increase access to the broadcasting system for Canadian independent programming services? If so, what type of regulatory measures should be considered?

Q23. What additional or revised tools could be implemented to support access for Canadian traditional independent undertakings that are shifting their services online?

B. A fair and competitive marketplace

41. Commercial relationships between programming services and distributors are an important component of the broadcasting system. Given the diverse set of traditional and online services participating within the industry and the multiplicity of platforms and business models that exist, there are power imbalances in the broadcasting system that can be leveraged by certain entities. These imbalances have strained commercial relationships and hindered the ability of various services to participate in the system in a fair and meaningful way.
42. In considering fairness and competition, the Commission's objective is to ensure that broadcasting undertakings can compete and engage with one another in the Canadian broadcasting system in a fair manner. In this proceeding, the Commission therefore aims to:
- establish fair, transparent, and competitive rules of engagement for interactions between programming services and distributors;

²² Paragraph 9.1(1)(i) of the Act provides that the Commission may impose conditions of service that it considers appropriate for the implementation of policy objectives of the Act respecting a requirement, without terms and conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking.

- determine when it is in the public interest that the Commission involve itself in the negotiation process; and
 - ensure that timely and effective mechanisms are in place for resolving commercial disputes.
43. Part of fostering fair and transparent relationships within a broadcasting sector that now includes both traditional and online undertakings involves having in place a clear set of effective and transparent rules or guidelines to steer negotiations.
44. The Commission recognizes the need to review its dispute resolution framework to help ensure effective and timely resolution of commercial disputes and to ensure the framework has the flexibility required to address the rapidly changing needs of the broadcasting industry. As the sector grows more dynamic and complex, the framework must be updated to more effectively manage disputes and promote a fair, balanced, and sustainable broadcasting system. In addition, the Commission seeks input on developing an undue preference framework to include online undertakings and to address anti-competitive practices.
45. The Commission is of the view that aligning the rules of engagement and the Commission's Alternative Dispute Resolution (ADR) mechanisms will be important for fostering fair and transparent commercial relationships.

Understanding the current market dynamics and the challenges and opportunities that they present

46. The Commission currently relies on the Wholesale Code²³ to ensure fair and transparent negotiations between BDUs, programming undertakings, and online undertakings, and tools such as a cross-media ownership policy²⁴ to promote a diversity of editorial voices in programming content, including news.
47. In light of the diverse set of broadcasting undertakings participating in the Canadian broadcasting system and the power imbalances that exist in that system, the Commission invites interested persons to respond to the following questions:

Q24. What are the key challenges faced by broadcasting undertakings in commercial negotiations related to broadcasting activities? Please explain how and why the Commission ought to help address these challenges.

Q25. At what point in the process for entering or renewing a distribution or affiliation agreement is it in the public interest for the Commission to intervene?

²³ References to the Wholesale Code include any reference to Broadcasting Regulatory Policy 2015-438 (the Wholesale Code) or its accompanying Broadcasting Information Bulletin 2015-440 (Interpretation of the Wholesale Code).

²⁴ Broadcasting Public Notice 2008-4 states that, as a general rule, the Commission will not approve applications for a change in the effective control of broadcasting undertakings that would result in the ownership or control by one person of a local radio station, a local television station, and a local newspaper serving the same market.

Does this public interest arise from market failures and, if so, what are those failures? Provide an example of a situation in which it would be in the public interest that the Commission intervene.

Q26. What are the advantages and disadvantages of having the Commission intervene in such negotiations?

Q27. Are there any notable differences between the English- and French-language markets or specific challenges for Indigenous communities, OLMCs, and other diverse groups, including equity-deserving groups, regarding negotiations for the carriage and distribution of programming or of broadcasting undertakings that ought to benefit from Commission intervention? Please explain your reasoning.

Examining the effectiveness of existing regulatory tools

48. Currently, the Wholesale Code sets out the general provisions that govern the commercial arrangements between programming undertakings and BDUs. Applicable to most licensed BDUs by way of a condition of service, and to all other parties as a guideline, the Wholesale Code sets the rules and parameters on matters that must be considered by parties as part of the negotiation process.
49. While the Wholesale Code has primarily been a tool for the audio-visual broadcasting sector, some of the principles may be applicable to the audio broadcasting sector given the evolving technologies and business models. Regulatory frameworks for traditional radio have largely evolved around supporting services constrained to a fixed geographic location, while some online audio services may operate more similarly to traditional BDUs, to which the Wholesale Code applies.
50. In light of the evolution of commercial relationships resulting from the diverse set of traditional and online players participating in the broadcasting industry, the Commission invites interested persons to respond to the following questions:
- Q28. Are there any specific elements of the Wholesale Code that should be revised or replaced? If so, in what ways should they be revised or replaced? Are there new tools that could be employed to supplement the Wholesale Code?
- Q29. To what extent should the Wholesale Code or an updated code be made applicable to online undertakings, both audio-visual and audio?
51. To promote the diversity of available programming for Canadians, the Commission gathers and publishes data on ownership of Canadian broadcasting licensees (i.e., Diversity of Voices tables),²⁵ and regulates, via the cross-media ownership policy, the number of media types (television, radio, newspaper) that can be owned or controlled by a single person or entity (excluding online). Although the exact measures vary between the audio-visual and audio sectors, the Commission generally

²⁵ See [Local Broadcast Markets – Diversity of Voices](#).

will not approve changes in control that would create a dominant position in a given market.²⁶

52. In light of the above, the Commission invites interested persons to respond to the following questions:

Q30. Should tools to promote the diversity of available programming and editorial voices for Canadians such as the cross-media ownership policy be revised or replaced? If so, how should they be revised or replaced? Are there new tools that should be employed?

Q31. Is the data published by the Commission for certain licensed broadcasting undertakings, including the Diversity of Voices tables, useful? If so, please specify what type of data points would be useful and explain why they would be useful.

Exploring new and emerging areas that may require regulatory support

53. As it reviews its regulatory approach to establishing fair and transparent rules of engagement, the Commission will consider new and emerging areas where broadcasting undertakings could benefit from regulatory support.

Defining the concept of “good faith”

54. The concept of “good faith” negotiation was introduced in subsection 9.1(9) of the amended Act. It requires that both online undertakings (when mandated to carry certain programming services of a broadcasting undertaking pursuant to an order under subparagraph 9.1(1)(i) of the Act) and the broadcasting undertaking in question negotiate the terms for carriage in “good faith.”

55. Given the absence of a definition for “good faith” negotiations in the Act, the Commission is considering whether guidance is needed to clarify this term and how it should be applied.²⁷

56. In light of the above, the Commission invites interested persons to respond to the following questions:

Q32. When defining or examining the applicability of “good faith” negotiation under subsection 9.1(9) of the Act, which relates to distribution orders for online undertakings, are there existing concepts that the Commission should consider, such as those developed under the Quebec Civil Code or in labour relations? Should behaviours, actions, and/or metrics be considered? These could include, for example, transparency, timeliness of responses, or fairness. If so, please

²⁶ See Broadcasting Public Notice 2008-4.

²⁷ Good faith negotiation standards and approaches were also considered as part of the [Online News Notice of Consultation 2024-236](#).

propose a definition or approach, specifying which of these aspects should be considered and why.

Q33. What behaviours or practices would indicate non-compliance with the obligation set out in subsection 9.1(9) of the Act to negotiate the terms for carriage in good faith? At what point should the Commission consider acting on non-compliance, and what tools should the Commission consider using?

Data gathering and sharing

57. In Broadcasting Notice of Consultation 2024-288, the Commission expressed the preliminary view that the collection of data relating to the revenues and the programming expenditures of broadcasting undertakings should be made public. The rationale for this view was that applying this practice for Canadian and foreign broadcasting undertakings that operate on traditional and online platforms would work towards treating all broadcasting undertakings operating in Canada equally. It also indicated that the data provided to the Commission by those broadcasting undertakings should be published on the Commission's website.
58. In the current proceeding, the Commission is examining whether there are barriers to accessing relevant data related to audio-visual and audio services, including return-path data²⁸ and program guide data.²⁹ A lack of data may make it difficult to assess performance, may create a disadvantage during commercial negotiations between broadcasting undertakings, and may limit the development and availability of tools and information to assist Canadians, such as program guides or other services.
59. The Commission wishes to make meaningful progress in adopting a data-sharing framework that will be suitable for all audio-visual and audio broadcasting undertakings and that will not encroach on an organization's competitiveness. The Commission will consider whether this framework needs to include safeguards to protect the rights and privacy of Canadians.
60. In light of the above, the Commission invites interested persons to respond to the following questions:

Q34. Identify any differences between the data generally available to traditional programming undertakings, BDUs, and producers, and to online undertakings. How do these differences impact the commercial relationships and negotiations between broadcasting undertakings, and what influence do they have on their business models? How can these differences be reconciled?

²⁸ Return-path data refers to program viewership and listenership data, whether from traditional or online undertakings.

²⁹ Program guide data refers to data on which programs are made available to audiences. In the case of traditional undertakings, this includes the scheduling of current and upcoming programs. In the case of online undertakings, program guide data assists Canadians in determining which online streaming services have the relevant programming they want to subscribe to.

Q35. With respect to return-path data and program guide data, respectively, should the Commission establish rules or guidelines for how this data should be shared or made available to the public? Should rules, guidelines, or incentives be established for other relevant information to be shared among broadcasting undertakings, whether individually or aggregated? If so, which measures should be established and what should the data gathering activities aim to achieve? Should these rules and activities differ in the English-language market and the French-language market or for Indigenous communities, OLMCs, and other diverse groups of Canadians, including those from equity-deserving groups?

Q36. Are there key data points (e.g., financial, audience, or other) being gathered by audio-visual or audio online undertakings that may be relevant during negotiations that should be shared between parties or that would serve the public interest by being made publicly available, whether individually or aggregated? If so, how frequently should they be made available (i.e., at regular intervals or on an ad hoc basis) and at what level of aggregation? Audio examples for key data points could include lists of most-listened tracks, programs and services, or source of streams (i.e., how listeners are engaging).

Q37. Which potential safeguards and industry standards, if any, should be introduced across both the English- and French-language markets to ensure that the rights and privacy of Canadians will be protected, even in the context of data sharing? For example, would it be appropriate to require permission be obtained from the end-user for particular forms of collection, use, and retention? What data governance and transparency obligations, or guidelines supplementing existing general legal obligations, ought to be introduced with respect to the collection, storage, and use of audience information?

Modernizing dispute resolution

61. Amid rising competition, especially from large online undertakings and vertically integrated players, there appears to be a growing need for the Commission to resolve commercial disputes between programmers and distributors. The volume of these disputes has increased with the establishment of the Wholesale Code and with the implementation of Broadcasting Regulatory Policy 2015-96, which enhances choice and flexibility for subscribers. Together, these measures emphasize the Commission's commitment to fostering a resilient, adaptable, and sustainable broadcasting system that meets the needs of Canadian audiences and industry stakeholders alike.

Understanding the current market dynamics and the challenges and opportunities that they present

62. The Commission has observed a marked increase in formal and informal disputes resulting from the challenges facing the broadcasting system, as outlined above. The number of formal disputes has significantly increased in 2024, showing a two-to-three-fold rise over levels seen in 2023 and 2022. This trend points to increasing

uncertainty and conflict within the broadcasting landscape, highlighting the need for a more effective and adaptable ADR framework. The Commission is concerned that the current [ADR](#) mechanisms, undue preference provisions, and the standstill rule may be used as tactics to delay negotiations or to secure de facto carriage rights.

63. The present consultation will assess the effectiveness of existing dispute resolution tools and processes in light of evolving market dynamics, consider the role of good faith negotiations in advance of utilizing the Commission's ADR mechanisms, and review the undue preference framework.
64. The Commission will also consider whether there is a need to better support broadcasting undertakings owned by Indigenous and underrepresented peoples, and to ensure that the available ADR tools and mechanisms are relevant to their needs.
65. Adaptable, flexible, and timely dispute resolution mechanisms are essential for handling the variety of commercial disputes in support of the public policy objectives of the Act and for both traditional and online players. Effective dispute resolution mechanisms are also essential for addressing current broadcasting challenges, promoting diversity, and fostering a sustainable broadcasting environment.
66. In light of the above, the Commission invites interested persons to respond to the following question:

Q38. Are the Commission's existing ADR mechanisms, procedures, and methods still appropriate in today's broadcasting environment? Please explain your reasoning and provide specific examples.

Examining the effectiveness of existing alternative dispute resolution mechanisms in light of the evolving market dynamics

67. The Commission wishes to consider how existing ADR mechanisms can be reviewed and modernized to effectively handle disputes in the new broadcasting environment. Further, the Commission wishes to consider how such modernized mechanisms can meet the needs of all players, including online undertakings, independent broadcasting undertakings, and broadcasting undertakings serving Indigenous peoples, members of OLMCs, and members of equity-deserving and ethnocultural communities.
68. In Broadcasting and Telecom Information Bulletin 2019-184, the Commission set out various ADR practices and procedural steps, applicable to both broadcasting and telecommunications, and the time limitations that apply to each dispute resolution mechanism.
69. Broadcasting Regulatory Policy 2023-331 introduced a temporary undue preference condition of service for online undertakings, to be in place while formal regulations are developed. It reviewed the anti-competitive head start rule, leading to the removal of provision 7 of the Digital Media Exemption Order (DMEO) for online streaming

services and repealed the Exemption order for digital media broadcasting undertakings.³⁰ It also gathered feedback on existing dispute resolution mechanisms.

70. The Commission offers various ADR mechanisms for broadcasting disputes and is considering whether there is a need to update these mechanisms to make them clearer, timelier, and more effective. In previous proceedings, some parties supported the retention in some form of the Commission's dispute resolution framework,³¹ while others observed that the current mechanisms are ill suited for resolving issues involving independent broadcasters or diverse communities.
71. The Commission's graduated ADR approach prioritizes informal dispute resolution through early staff assistance. If informal discussions fail, staff assisted mediation (SAM) is the next step. This confidential, voluntary process allows Commission staff to assist parties in reaching a non-binding, mutually agreeable resolution. While the informal agreement arrived at by way of SAM is non-binding, any resulting affiliation agreements signed by both parties are legally binding. If SAM fails, parties may submit formal requests for final offer arbitration (FOA). Under the current framework, both parties must agree to FOA.
72. The Commission's current dispute resolution provisions do not apply to online undertakings. The Commission's authority to extend these provisions to online undertakings may be limited, as the Act did not broaden the Commission's authority to establish more comprehensive mechanisms for resolving disputes in this area. While the Commission has the authority to make regulations for ADR between traditional programming undertakings and BDUs,³² its authority related to dispute resolution for online undertakings is limited to making regulations respecting undue preference, facilitating negotiations upon request and pursuant to subsection 9.1(10), and enforcing the obligation to negotiate in good faith.
73. In light of the above, the Commission invites interested persons to respond to the following questions:

Q39. Given the limits on the Commission's ability to engage in ADR involving online undertakings, and given the lack of symmetry between the applicability of ADR mechanisms for traditional and online undertakings, is there value in the Commission continuing to be involved in ADR for traditional broadcasting undertakings? If so, how should the Commission remain involved? Please explain your reasoning.

³⁰ Paragraph 133 of Broadcasting Regulatory Policy 2023-331 states that, "[i]n the Commission's view, the business model for online services requires the broadest distribution possible over the Internet in order to achieve those services' business objectives. Any concerns that might arise regarding anti-competitive head starts will be addressed through the undue preference/disadvantage provision as discussed above. Accordingly, the Commission finds that it is not necessary or appropriate to maintain provision 7 of the DMEQ as a condition of service for online undertakings."

³¹ See Broadcasting Regulatory Policy 2023-331.

³² See paragraph 10(1)(h) of the Act.

Q40. Given the Commission's limited authority under the Act to assist in disputes involving online undertakings, are there ADR mechanisms that the Commission could offer to parties in such disputes that could be used on a voluntary basis?

Q41. What role should the Commission play if it is asked to facilitate negotiations, pursuant to subsection 9.1(10) of the Act? Is there a process that should be put in place for such negotiations, or are they best facilitated on a case-by-case basis?

74. Currently, in disputes involving traditional programming undertakings and BDUs, the Commission employs mechanisms such as SAM, the standstill rule, and FOA.
75. The Act aims to regulate the broadcasting system in a manner that is flexible and adaptable. The [Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)](#) similarly directs the Commission to take measures to support a flexible and adaptable regulatory framework, including minimizing the regulatory burden on the Canadian broadcasting system. These objectives should be achieved through the various tools and mechanisms the Commission offers.
76. In light of the above, the Commission invites interested persons to respond to the following question:

Q42. Are there any ADR tools, procedures, or methods the Commission does not currently use that could benefit Canadian broadcasting undertakings by promoting competition, diversity, and innovation without increasing the regulatory burden? If so, please comment on how the Commission could adopt or implement those tools, procedures, or methods and discuss their advantages and disadvantages.

77. Applications seeking Commission determinations on dispute resolution issues and on Part 1 applications alleging undue preference can result in the Commission using its authority under the Act to impose remedies. The Commission has the authority to craft remedies and to enforce its decisions, including the authority to impose administrative monetary penalties in certain circumstances.
78. In light of the above, the Commission invites interested persons to respond to the following questions:

Q43. Have the remedies imposed by the Commission in cases of dispute resolution or undue preference generally been sufficient to address the concerns of the party seeking relief? If not, please provide specific examples where the remedy was inadequate and explain why the remedy did not address the issue.

Q44. What other remedial options should the Commission consider, using its authority under the Act, which might provide better relief than the Commission's current approach? Please provide specific examples.

Staff assisted mediation

79. SAM is a voluntary process by which Commission staff assist parties to reach a mutually agreeable solution to their dispute. Parties can request mediation in writing or verbally, and mediation may involve phone calls, conference calls, or in-person meetings. Commission staff facilitate communication to help parties come to a consensual resolution.
80. The Commission enforces an ethical wall between the staff who conduct parties' mediation and the staff who analyze undue preference applications or formal requests for FOA. Although this ethical wall is applied with the intention of reducing bias and to ensure that frank and open discussions can take place without prejudice, it is not the industry standard. Many international regulators³³ and Canadian ADR agencies and organizations³⁴ use med-arb, a process by which an arbitrator follows parties from start to finish, officiating both mediation and arbitration procedures.
81. In light of the above, the Commission invites interested persons to respond to the following questions:

Q45. In their current form, are the Commission's SAM services effective in the informal resolution of broadcasting disputes? If not, what changes to these services would you propose? How could the Commission improve its SAM services to better support good faith negotiations?

Q46. Should SAM services be offered exclusively for disputes involving broadcasting undertakings with limited resources, since larger players generally have the capacity to engage external mediation, arbitration, or other dispute resolution mechanisms?

Standstill rule

82. The standstill rule³⁵ is a tool designed to uphold fairness in negotiations in the ADR process.³⁶ The standstill rule is intended, among other things, to ensure that Canadians do not lose access to their favourite programming services while BDUs and programming undertakings dispute the terms and conditions of carriage. The rule

³³ For example, the United Kingdom's Office of Communications ([Ofcom](#)) and the Australian Communications Media Authority ([ACMA](#)).

³⁴ For example, ADR Chambers and the ADR Institute of Canada (ADRIC).

³⁵ Section 15.01 of the [Broadcasting Distribution Regulations](#) and section 15 of the [Discretionary Services Regulations](#) require that, during a dispute between a BDU and a programmer concerning the carriage or terms of carriage of a programming service, the BDU shall continue to distribute the service and the programmer shall continue to offer the service at the same rates and according to the same terms and conditions as it did before the dispute. This will continue until the parties reach an agreement settling the dispute or, if no such agreement is reached, until the Commission renders a decision concerning any unresolved matter.

³⁶ Subsection 15.01(2) of the [Broadcasting Distribution Regulations](#) states that a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute.

is not intended to protect or defend the interests of either party. The Commission will intervene if it suspects that parties are invoking the standstill rule to prevent good faith negotiations or to insulate a given service from the impacts of consumer choice.

83. The Commission recognizes the importance of ensuring fair competition, which is a precondition for a sustainable broadcasting system. However, there are concerns that the standstill rule and possibly other ADR mechanisms are being used as means of maintaining the status quo in carriage agreements and as strategies for securing de facto access rights, particularly in cases where services may be at risk of being dropped by BDUs.
84. To support the objective of fair competition, the Commission will consider whether certain ADR mechanisms should be adapted to address the specific needs of independent broadcasting undertakings. An adapted approach would aim to provide independent broadcasting undertakings with a fair opportunity to compete and engage effectively within the market.
85. In light of the above, the Commission invites interested persons to respond to the following questions:

Q47. Please comment on the effectiveness of the standstill rule offered for traditional broadcasting undertakings. Should the existing standstill rule and the test³⁷ traditionally used by the Commission to lift a standstill be updated? If so, please explain why and how. If not, please explain why not.

Q48. Should the standstill expire after a defined period (e.g., 90 days), requiring the submission of a new request?

Final offer arbitration

86. This option is reserved for bilateral disputes strictly related to monetary issues. Each party submits a final offer, and the Commission selects one offer in its entirety. That selection becomes a binding determination. In rare cases, the Commission may reject both offers if neither serves the public interest. If that happens, the Commission may suggest the parties return to the mediation stage.
87. Paragraph 6 of the Wholesale Code³⁸ sets out the factors that are applied for determining “fair market value” in FOA.
88. In light of the above, the Commission invites interested persons to respond to the following questions:

³⁷ In analyzing any dispute concerning the standstill rule, the Commission takes into consideration whether the party has demonstrated a valid commercial reason for ceasing distribution of the services, whether the parties have had a fair chance at negotiations, and whether the other party has demonstrated that continued Commission intervention to uphold the standstill rule is warranted.

³⁸ See Broadcasting Regulatory Policy 2015-438.

Q49. Please comment on the effectiveness of FOA as a dispute resolution mechanism. Should the Commission's FOA approach or process be updated? If so, please explain why.

Q50. Are the current factors used to determine fair market value still appropriate?

Q51. Should access to FOA be restricted to broadcasting undertakings with limited resources, or should access to FOA continue to be available to all entities, regardless of size?

Q52. Should the Commission consider making FOA mandatory when programming undertakings and BDUs are unable to reach an agreement within a fixed period of time?

Considering new and emerging areas that may require alternative dispute resolution support in light of the evolving market dynamics

89. Increasingly, advertisers have shifted to digital platforms as those platforms have come to occupy a greater share of the market. This shift requires modernized and adapted ADR tools to handle disputes in the new broadcasting landscape while also respecting the Commission's ADR authority as set out in the Act. Addressing the power imbalance in the broadcasting system with improved ADR tools can help protect Canadians' interests, promote balance, promote diversity, and support a sustainable broadcasting system.
90. The Commission seeks to enhance ADR mechanisms to better support broadcasting undertakings owned by Indigenous peoples, members of OLMCs, and members of equity-deserving and ethnocultural communities by addressing systemic inequities and tailoring ADR mechanisms to their unique needs.

Broadcasting undertakings owned or controlled by Indigenous peoples, members of OLMCs, and equity-deserving and ethnocultural communities

91. The Commission recognizes the importance of supporting the dispute resolution processes for all broadcasting undertakings, including those owned or controlled by Indigenous peoples, members of OLMCs, and members of equity-deserving and ethnocultural communities.
92. The Commission is committed to empowering Indigenous broadcasters to engage more fully with the broadcasting system, helping ensure their voices are not only heard but also integrated into the broader system. The Commission is considering whether there are new ADR mechanisms that could provide more culturally appropriate ways for Indigenous broadcasters to resolve commercial disputes.
93. In light of the above, the Commission invites interested persons to respond to the following question:

Q53. Do broadcasting undertakings owned or controlled by Indigenous peoples have dispute resolution needs that are not being met by the Commission's existing ADR framework? If so, how could the existing ADR tools and mechanisms be adapted to effectively meet the needs of these broadcasting undertakings?

94. The Commission is considering whether there is a need to adapt the ADR framework for broadcasting undertakings owned or controlled by members of OLMCs and persons from equity-deserving and ethnocultural communities, including Black and other racialized persons.

95. In light of the above, the Commission invites interested persons to respond to the following question:

Q54. Do broadcasting undertakings owned or controlled by persons from OLMCs or equity-deserving and ethnocultural communities, including Black and other racialized communities, have dispute resolution needs that are not being met by the current system? If so, how could the existing ADR tools and mechanisms be adapted to effectively meet the needs of these broadcasting undertakings?

Audio services

96. Traditional radio sector dispute resolution mechanisms involving hertzian radio stations do not currently fall under the ADR framework. Disputes are triggered on a complaint basis. If the complaint is not resolvable through negotiations, it would be treated as a Part 1 application or dealt with at a public hearing.

97. The Commission is examining whether its current audio dispute resolution mechanisms, developed in the context of dispute resolution for traditional hertzian radio undertakings, is still relevant, or if a new framework is required in anticipation of any forthcoming disputes involving online audio broadcasting undertakings.

98. In light of the above, the Commission invites interested persons to respond to the following questions:

Q55. Are the current mechanisms for dealing with disputes relating to audio services still appropriate, or are updates required? If updates are required, please explain how.

Q56. Should the Commission develop ADR mechanisms tailored specifically to the unique needs of audio services, and, in particular, to facilitating the resolution of disputes involving online audio broadcasting undertakings?

Comprehensive undue preference framework

99. The Commission recognizes the need for a comprehensive framework that effectively addresses undue preference and disadvantage, especially given the pressures faced by independent players in the market. The Commission aims to review its undue

preference framework for traditional broadcasters and consider its relevance for online undertakings, both audio-visual and audio. Given amendments to the Act, the Commission is now expressly authorized, pursuant to paragraph 10(1)(h.1), to make regulations relating to undue preference and undue disadvantage, for all broadcasting undertakings, including online undertakings. Regulations already exist for BDUs and discretionary services. The Commission considers that a comprehensive framework relating to this authority would be beneficial.

100. To safeguard competition, in Broadcasting Regulatory Policy 2023-331, the Commission imposed a temporary condition of service on online undertakings. This condition applies to those with \$10 million or more in annual broadcasting revenues in Canada, either individually or as part of a broadcasting ownership group. It prohibits such undertakings from granting undue preference to any person, including themselves, or imposing undue disadvantage on any person. This condition ensures that market fairness is maintained while the Commission completes its review of the regulatory framework applicable to online undertakings.³⁹
101. Prohibition of undue preference promotes fairness and competition, and ultimately benefits Canadians and the industry. It addresses unequal treatment of entities that are otherwise comparable.⁴⁰ To determine whether the preference or disadvantage was undue, the Commission generally considers whether the preference or disadvantage has had, or is likely to have, a material adverse impact on the complainant or on any other person, and the impact the preference or disadvantage has had, or is likely to have, on the achievement of the objectives set out in the Act.
102. In considering the undue preference framework, the Commission will also review anti-competitive behaviours such as the head start rule⁴¹ and exclusivity,⁴² including their potential application to online undertakings. The findings of this review will inform the development of comprehensive undue preference regulations for both traditional and online undertakings.

³⁹ In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the party that gives the preference or subjects the person to the disadvantage. Undue preference complaints are resolved through Part 1 applications and not through ADR processes.

⁴⁰ For undue preference to be established, the broadcasting undertakings involved must be similar. See Broadcasting Decision 2021-341, paragraph 58. However, in Broadcasting Regulatory Policy 2015-438, the Commission noted that terms like “comparable,” “similar,” and “related” cannot be strictly defined, as their interpretation varies according to context.

⁴¹ The term “head start” refers to situations where a programming service is launched on a given BDU’s distribution platform prior to the service having been made available for distribution to other BDUs on commercially reasonable terms.

⁴² The Commission has traditionally required that programming services be available to all BDUs and not be exclusive to any particular one. In this way, most Canadians have access to programs that have been acquired on an exclusive basis.

103. For example, in the context of Broadcasting Decision 2022-76, the Commission stated that the following behaviours could constitute undue preference:

- setting any terms that prevent an independent programming service from launching online;
- forcing a service to go online rather than carrying linear services; and
- unduly favouring one's own services or non-Canadian services on one's digital platform(s).

104. In light of the above, the Commission invites interested persons to respond to the following questions:

Q57. Should the undue preference framework be updated to reflect current broadcasting undue preference situations, including those related to online undertakings, both audio-visual and audio? If so, what updates to the framework are needed? Is there a need to redefine the term "undue preference"?

Q58. Should the Commission provide guidelines around the types of anti-competitive behaviours, and behaviours that ought otherwise to attract the Commission's attention for policy reasons, that could be considered an undue preference or disadvantage (e.g., the no head start rule or the prohibition on exclusivity)? What types of behaviours should be included in the guidelines? What form should that guidance take?

Q59. Should complaints of undue preference involving online undertakings be handled using the same procedures as those used to address complaints involving traditional undertakings? For both traditional and online undertakings, are Part 1 applications the most effective way to process such complaints?

105. The Commission's current regulations stipulate that whenever an undue preference complaint is filed, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage. Therefore, the undertaking on which the complaint is served must prove that its actions were not undue. The Commission has adopted this approach because the undertaking on which the complaint is served is often the only party in possession of the necessary information to establish whether a preference or disadvantage is undue.

106. In light of the above, the Commission invites interested persons to respond to the following question:

Q60. Should the burden to establish that any preference given or disadvantage caused is not undue remain with the undertaking on which the complaint is served? If so, please explain why. If not, please explain why not. Should this vary between traditional and online undertakings? Please provide specific examples.

Procedure

107. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
108. The Commission will hold a public hearing commencing on **12 May 2025** in **Gatineau, Quebec**, to address the matters set out in this notice.
109. The Commission invites comments that address the issues and questions set out above. The Commission will accept comments that it receives on or before **24 February 2025**. Only parties who file comments may file a reply to matters raised during the comment period. The deadline for the filing of replies is **11 March 2025**.
110. Interested persons who require assistance submitting comments can contact the Commission's Hearings and Public Proceedings group at hearing@crtc.gc.ca.
111. Following the public hearing, parties will have an opportunity to file brief final submissions and, if applicable, responses to undertakings. Details regarding the filing of final submissions will be provided at a later date.
112. Further, the Commission is not disposed to grant any requests for extensions of time to provide comments except in truly exceptional circumstances where requests are supported by sufficient evidence.
113. The Commission will also indicate before the hearing which of the questions included in this notice will be addressed at the hearing. Some elements may be addressed only through written interventions and final submissions.
114. The Commission requests that, whenever possible, parties provide evidence in support of their comments or proposals. The questions in this notice are numbered, and the Commission asks that parties identify the number for each of the questions to which they are responding.
115. The Commission may ask parties to respond to additional questions. These questions and the responses will be placed on the public record. Public interest and consumer groups that need help with the cost of participating in this proceeding can apply to the Broadcasting Participation Fund (BPF). Information on this fund can be found on the [BPF website](#).

116. The intervention must include one of the following statements in either the first or the last paragraph:
1. I request to appear at the public hearing.
 2. I do not want to appear at the public hearing.
117. Interested persons who request to appear at the public hearing must indicate whether they prefer to participate
- o virtually from their home or office; or
 - o at the main location for the public hearing in Gatineau.
118. Parties who wish to appear at the public hearing must provide reasons why their written intervention is not sufficient and why an appearance is necessary. In addition, parties requiring communications support must state their request for such support on the first page of their intervention.
119. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the hearing.
120. Interested persons are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position but do not wish to appear at the hearing. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1.
121. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
122. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
123. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
124. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa-Gatineau, Ontario K1A 0N2

or

by fax at
819-994-0218

125. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
126. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
127. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.
128. Persons requiring communications support such as assistive listening devices and sign language interpretation are requested to inform the Commission at least 45 days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

129. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.

130. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
131. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
132. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

133. Links to interventions filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.
134. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Broadcasting Notice of Consultation CRTC 2024-288, 15 November 2024
- *Call for comments – Proposed regulations – Code of Conduct Respecting Bargaining in Relation to Online News Content*, Online News Notice of Consultation CRTC 2024-236, 8 October 2024
- *The Path Forward – Supporting Canadian and Indigenous content through base contributions*, Broadcasting Regulatory Policy CRTC 2024-121, 4 June 2024, as finalized by *The Path Forward – Supporting Canadian and Indigenous content*

through base contributions – Finalization of conditions of service, Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194, 29 August 2024

- *Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Regulatory Policy CRTC 2023-331 and Broadcasting Order CRTC 2023-332, 29 September 2023
- *Online Undertakings Registration Regulations, and exemption order regarding those regulations*, Broadcasting Regulatory Policy CRTC 2023-329 and Broadcasting Order CRTC 2023-330, 29 September 2023
- *Shaw Communications Inc. – Change of ownership and effective control*, Broadcasting Decision CRTC 2022-76, 24 March 2022
- *Complaint by the CCSA against Bell Media alleging undue preference and disadvantage*, Broadcasting Decision CRTC 2021-341, 15 October 2021
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Interpretation of the Wholesale Code*, Broadcasting Information Bulletin CRTC 2015-440, 24 September 2015
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Let's Talk TV – A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
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