



Telecom Decision CRTC 2008-104 Broadcasting Decision CRTC 2008-298

Ottawa, 3 November 2008

Maskatel inc. and Téléphone Drummond Inc. regarding Cogeco Cable Inc.'s rates

Reference: 8661-M22-200808991

In this Decision, the Commission denies Maskatel and Téléphone Drummond's application in regard to Cogeco's rates for telephone, Internet, and cable television services in Saint-Hyacinthe and Drummondville, Quebec.

Introduction

1. The Commission received an application by Maskatel inc. (Maskatel) and Téléphone Drummond Inc. (Téléphone Drummond), dated 27 June 2008, in which they sought an order from the Commission directing Cogeco Cable inc. (Cogeco) to (1) immediately cease offering exclusive rates to customers in Saint-Hyacinthe and Drummondville for telephone, Internet, and cable television services, and (2) allow Cogeco's customers in Saint-Hyacinthe and Drummondville who have subscribed to Cogeco's services at the exclusive rates to immediately terminate their subscription.
2. Maskatel and Téléphone Drummond argued that, by offering exclusive rates to customers in Saint-Hyacinthe and Drummondville for telephone, Internet, and cable television services that are below its rates for comparable service packages elsewhere in Quebec, Cogeco is discriminating between customers in Saint-Hyacinthe and Drummondville and elsewhere in Quebec in the provision of telecommunications and broadcasting distribution services. They also submitted that Cogeco's targeted pricing initiatives were unjust and contrary to subsection 27(2) of the *Telecommunications Act* (the Act) and section 9 of the *Broadcasting Distribution Regulations* (the Regulations).
3. Maskatel and Téléphone Drummond submitted that to allow Cogeco to engage in targeted below-cost pricing strategies would result in competitors not being able to enter and remain in the small markets of Saint-Hyacinthe and Drummondville, therefore depriving consumers of the long term benefits of facilities-based competition. In their view, reliance on market forces would not be sufficient to protect the interests of consumers and regulatory intervention was required.
4. With respect to Cogeco's rate for its cable television service, Cogeco submitted that it was a promotional price offered elsewhere in Quebec, but is now the regular price available throughout Quebec. With respect to its Internet and telephone services, Cogeco submitted that its rates for these services are not below cost and are an appropriate response to the competitive context and pressures existing in the markets of Saint-Hyacinthe and Drummondville. Cogeco also submitted that it has no market power in these markets and that

like Bell Canada, the incumbent local exchange carrier, it is allowed to adjust its pricing. It further submitted that pricing flexibility is also used by Maskatel and Téléphone Drummond for competitive purposes. Finally, Cogeco submitted that competition on prices was to be expected in a competitive market and that market forces were sufficient to protect the interests of consumers.

5. The public record of this proceeding, which closed with Cogeco's reply comments dated 6 August 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

6. The Commission has identified the following two issues to be addressed in its determinations:

1. Do Cogeco's rates for telephone and Internet service in Saint-Hyacinthe and Drummondville amount to unjust discrimination in violation of subsection 27(2) of the Act?
2. Do Cogeco's rates for cable television service in Saint-Hyacinthe and Drummondville confer an undue preference to Cogeco and its subscribers or subject Maskatel and Téléphone Drummond, or Cogeco's subscribers outside Saint-Hyacinthe and Drummondville to an undue disadvantage in violation of section 9 of the Regulations?

1. Do Cogeco's rates for telephone and Internet service in Saint-Hyacinthe and Drummondville amount to unjust discrimination in violation of subsection 27(2) of the Act?

7. Subsection 27(2) of the Act states that *no Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.*
8. The Commission notes that, in Telecom Decision 97-8, it recognized that competitive local exchange carriers, such as Cogeco, will not have any market power and that market forces will best ensure that new entrants price their services in a just and reasonable manner. Accordingly, the Commission refrained from exercising many of its powers with respect to the provision of retail local telephone services, while retaining its powers under subsection 27(2) of the Act.
9. The Commission further notes that in Telecom Decision 98-9, it found that broadcast carriers offering Internet services, such as Cogeco, do not have substantial power in the retail Internet services market, and since retail Internet services are subject to competition sufficient to protect the interests of users, it would be appropriate for the Commission to forbear from exercising many of its powers while retaining its powers under subsection 27(2) of the Act.
10. The Commission notes that Cogeco is offering rates to its customers in Saint-Hyacinthe and Drummondville for telephone and Internet services that are below its rates for comparable service packages in the rest of Quebec. Accordingly, the Commission finds that Cogeco has the burden, pursuant to subsection 27(4) of the Act, of establishing that these pricing initiatives are not contrary to subsection 27(2) of the Act.

11. With regards to a similar application, the Commission found, in Telecom Decision 2003-26, that by making promotional offers that only targeted Microcell Telecommunications Inc.'s (Microcell) post-paid subscribers, Bell Mobility Inc. and Rogers Wireless Inc. were discriminating against Microcell in relation to the provision of a telecommunications service. The Commission found, however, that the discrimination was not unjust as the targeted market was one that was robustly competitive and that the wireless market is characterized by rivalrous behaviour, including vigorous and aggressive marketing campaigns.
12. The Commission notes that, in Telecom Decision 2004-66, it found that TELUS Communications Inc., now known as TELUS Communications Company (TCC), had not conferred an undue preference on itself by offering Internet services at below-cost rates. The Commission found that the extent of competition in the provision of higher-speed Internet access services was such that any targeting of promotions by TCC to new customers would not result in unjust discrimination or provide TCC with an undue preference. The Commission also found that promotions offered below cost may not necessarily be anti-competitive but instead might be a response to the competitive pressures and pricing initiatives of competitors.
13. The Commission also notes that, in Telecom Decision 2007-65, it found that the exchanges of Saint-Hyacinthe and Drummondville were subject to a level of competition sufficient to protect the interests of consumers. Accordingly, it forbore from the regulation of residential local exchange services provided by Bell Canada in those two exchanges. In the Commission's view, the presence of at least three fixed-line telecommunications service providers offering telephone and Internet services in Saint-Hyacinthe (i.e. Maskatel, Cogeco, and Bell Canada) and in Drummondville (i.e. Téléphone Drummond, Cogeco, and Bell Canada) indicates robustly competitive markets.
14. The Commission finds that Cogeco's pricing initiatives are an appropriate response to the robustly competitive markets and the competitive pressures existing in Saint-Hyacinthe and Drummondville. The Commission is of the view that the facilities-based competition in Saint-Hyacinthe and Drummondville is a durable form of competition. Furthermore, the Commission considers that, given Cogeco's lack of market power and the competitive state of these markets, Cogeco's pricing initiatives are unlikely to result in competitors being unable to enter and remain in those markets or to impair unduly the continuance of a competitive market in those two cities.
15. In light of the above, the Commission finds that Cogeco's rates for Internet and telephone services in Saint-Hyacinthe and Drummondville do not constitute behaviour that amounts to unjust discrimination within the meaning of subsection 27(2) of the Act.

2. Do Cogeco's rates for cable television service in Saint-Hyacinthe and Drummondville confer an undue preference to Cogeco and its subscribers or subject Maskatel and Téléphone Drummond, or Cogeco's subscribers outside Saint-Hyacinthe and Drummondville to an undue disadvantage in violation of section 9 of the Regulations?

16. Section 9 of the Regulations states that no licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

17. In analyzing a complaint of undue preference under the Regulations, the Commission must first determine whether there is a preference or a disadvantage. Where it determines that there is a preference or disadvantage, the Commission must then determine whether it is undue.
18. In order to determine if a preference or a disadvantage is undue, the Commission examines whether the preference or disadvantage has had, or is likely to have, a material adverse impact on any other person. It also examines the impact the preference or disadvantage has had, or is likely to have, on the achievement of the policy objectives set out in the *Broadcasting Act*.
19. The Commission notes that the onus to show that there is an undue preference or disadvantage with respect to section 9 of the Regulations rests on the applicants, in this case, Maskatel and Téléphone Drummond.
20. In 2002, the Commission deregulated Cogeco's cable services rates for various markets, including those of Saint-Hyacinthe and Drummondville.
21. With respect to Cogeco's cable television services, the Commission notes Cogeco's submission that its promotional cable television price was offered elsewhere in Quebec and that it is now the regular price offered throughout Quebec. In the Commission's view, Maskatel and Téléphone Drummond have not offered evidence to contradict this submission. Therefore, the Commission is unable to conclude that Cogeco is conferring a preference on itself or on Saint-Hyacinthe and Drummondville customers or that it is subjecting other Cogeco subscribers, Maskatel, or Téléphone Drummond to a disadvantage with respect to its cable television services pricing.
22. In light of this conclusion, it is unnecessary for the Commission to determine whether the preference or disadvantage is undue. Notwithstanding this conclusion, the Commission would note that, in any case, Maskatel and Téléphone Drummond have also failed to provide any evidence of actual material adverse impact on themselves or their subscribers that would permit the Commission to make a finding of material adverse impact.
23. The Commission notes Maskatel and Téléphone Drummond's argument that Cogeco's pricing was not a response to competing price offers, as there currently is no other competing cable television company in the regions of Saint-Hyacinthe and Drummondville. The Commission notes that, as Cogeco submitted in its answer, the relevant broadcasting distribution market is not limited to cable companies, but also includes direct-to-home service providers, such as Star Choice Television Network Incorporated and Bell ExpressVu LP, both of which are present in Saint-Hyacinthe and Drummondville.
24. The Commission remains of the view that, as noted in several previous decisions, competition among distributors, along with end-user choice for consumers, can contribute to the achievement of a number of the objectives of the *Broadcasting Act*. Among other things, competition can contribute to the affordability of service by encouraging distributors to reduce subscription rates for end-users in their attempts to obtain subscribers. Further, it can spur distributors to offer greater choice in programming services and service packages in order to enhance the appeal of their services to consumers. In the process, competition also provides incentives for distributors to pursue more efficient delivery methods and other technological innovations.

Conclusion

25. In light of the foregoing, the Commission **denies** Maskatel and Téléphone Drummond's request for the order as set out in paragraph 1 of this Decision.

Secretary General

Related documents

- *Bell Canada – Applications for forbearance from the regulation of residential local exchange services*, Telecom Decision CRTC 2007-65, 3 August 2007
- *Application by Shaw Cablesystems G.P. against TELUS Communications Inc. concerning high speed Internet promotions*, Telecom Decision CRTC 2004-66, 8 October 2004
- *Application by Microcell regarding alleged contraventions of section 27(2) of the Telecommunications Act by Rogers Wireless and Bell Mobility*, Telecom Decision CRTC 2003-26, 28 April 2003
- *Regulation under the Telecommunications Act of certain telecommunications services offered by "Broadcast Carriers"*, Telecom Decision CRTC 98-9, 9 July 1998
- *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997

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