Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Regulatory Policy CRTC 2014-473

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Amendments to various regulations – Non-disclosure and subscriber information auditing obligations

The Commission announces amendments to certain regulations requiring licensed broadcasting undertakings engaged in a distribution arrangement or entering into carriage negotiations to sign agreements that reproduce the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy 2013-578 and contain their consent to abide with these provisions. These amendments will serve to foster the environment needed for the positive negotiation of reasonable terms for the distribution, packaging and retailing of programming services.

The Commission also announces an amendment to section 15.1 of the Broadcasting Distribution Regulations *in order to incorporate by way of reference revised provisions governing the conduct of audits of subscriber information held by broadcasting distribution undertakings (BDUs). The revised audit provisions clarify the manner in which audits are conducted by programming undertakings, thus ensuring a proper verification of the subscriber information held by BDUs. In this regulatory policy, the Commission has made a further modification to the revised audit provisions as set out in the appendix to Broadcasting Regulatory Policy 2013-585 with a view to providing programming services with added flexibility in their choice of auditor. The modified audit provisions are set out in Appendix 2 to this regulatory policy.*

The regulatory amendments will come into effect on the date of their registration. A copy of these amendments is provided in Appendix 1 to this regulatory policy and will be published in the Canada Gazette*, Part II.*

Introduction

1. In Broadcasting Notice of Consultation 2014-79, the Commission called for comments on proposed amendments to the *Broadcasting Distribution Regulations*, the *Pay Television Regulations, 1990*, the *Specialty Services Regulations, 1990* and the *Television Broadcasting Regulations, 1987* to put into effect its determinations set out in Broadcasting Regulatory Policies 2013-578 and 2013-585.

2. The Commission proposed amendments to the regulations that would require licensed broadcasting undertakings engaged in a distribution arrangement or entering into carriage negotiations to sign agreements that reproduce the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy 2013-578 and contain their consent to abide with these provisions. The Commission also proposed to amend

section 15.1 of the *Broadcasting Distribution Regulations* in order to introduce changes to the current audit requirements to clarify how audits of subscriber information held by broadcasting distribution undertakings (BDUs) are conducted by programming undertakings.

3. In the notice, the Commission also sought comments on:

   - whether viewership or subscriber data obtained from set-top boxes or by similar means (set-top box data) should be included within the definition of confidential information to be included in the baseline non-disclosure provisions; and

   - whether the obligation to enter into agreements binding an undertaking to the adopted baseline non-disclosure provisions should be imposed where both parties involved are vertically integrated.

4. The Commission further announced its intention to reflect its determinations on these issues in the regulations adopted at the conclusion of this proceeding.

5. The Commission received a number of interventions in response to Broadcasting Notice of Consultation 2014-79. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Participate."

Commission's analysis and decision

6. After examining the public record for this proceeding, the Commission considers that the issues it must address relate to the following:

   - whether set-top box data should be included in the definition of confidential information and be subject to the non-disclosure provisions;

   - whether a framework for the collection and provision of set-top box data should be established;

   - whether non-disclosure obligations should be imposed in instances where both parties involved are vertically integrated; and

   - whether the audit provisions should be amended to remove the stipulation that the auditor be recognized as engaged in the practice of public accounting.

Inclusion of set-top box data in the definition of confidential information

7. In Broadcasting Notice of Consultation 2014-79, the Commission called for comments on whether set-top box data should remain in the definition of confidential information and be subject to the non-disclosure provisions as set out in the appendix to Broadcasting Regulatory Policy 2013-578.

Positions of parties

8. A number of parties supported the inclusion of set-top box data in the definition of confidential information. They argued that failure to include such data would result in BDUs being in a position to share commercially sensitive information relating to a programming undertaking (such as data regarding programming habits of individual programming services, identification of popular programs and advertising reach) with other programming undertakings, including affiliated programming undertakings.

9. A few interveners argued that excluding set-top box data from the definition of confidential information would place programming undertakings, and especially independent programming undertakings, at a disadvantage in their dealings with BDUs and weaken their competitive position compared to vertically integrated programming undertakings.

10. Some interveners opposed the inclusion and argued that the collection and use of set-top box data is in its infancy and that the imposition of blanket prohibitions on its use could inhibit a BDU's ability to use the data to develop better packages or offerings and to develop new business models—such as the delivery of targeted advertising—that would benefit the industry as a whole.

11. Some argued that inclusion of such data within the definition of confidential information will further disadvantage traditional broadcasting licensees relative to foreign and on-line competitors, many of which have access to comprehensive tools to measure and use viewership data.

12. Rogers Communications Inc. (Rogers) further added that the inclusion of set-top box data within the definition of confidential information could limit a BDU's ability to develop or contribute to the development of an enhanced audience measurement system that would benefit the Canadian broadcasting system.

13. For its part, Cogeco Cable Inc. (Cogeco) was concerned that the current wording of clause 2.1 could be interpreted as creating a mandatory obligation whereby a party to a distribution agreement or carriage negotiations would be required to disclose to the other party all of the information and data identified within the definition of confidential information. Cogeco submitted that unless the wording of clause 2.1 was clarified to ensure that no such obligation arose, set-top box data should not be included within the definition of confidential information set out in the Commission adopted non-disclosure provisions.

Commission's analysis and decision

14. In Broadcasting Regulatory Policy 2013-578, the Commission expressed its concern that the use of set-top box data to the advantage of a BDU's own programming services may negatively impact the process by which reasonable terms are negotiated for the carriage, packaging and retailing of programming services by BDUs. The Commission considered that this could undermine the achievement of the objectives of the *Broadcasting Act* by lessening the programming diversity provided by smaller

or independent programming entities. However, the Commission also expressed concern that including set-top box data within the definition of confidential information could have unintended consequences on the broadcasting system.

15. The Commission has reviewed the record for this proceeding and considers that keeping set-top box data within the definition of confidential information is not likely to pose a significant impediment on a BDU's use of such data to develop new packages. Specifically, provided that such data is kept confidential by the BDU and not disclosed to other parties, the use of this data by a BDU for purposes related to the distribution of the relevant programming services would be permitted under the terms of the baseline non-disclosure provisions set out in Broadcasting Regulatory Policy 2013-578.

16. With respect to the concerns raised by some BDUs that including set-top box data in the definition of confidential information could inhibit the development of innovative technologies such as targeted advertising, the Commission is of the view that sub-clause 2.2.5 b) provides a mechanism by which such data can be used for purposes such as targeted advertising, provided that the BDU has obtained the express written consent from the concerned programming undertaking to use the information for such purposes.

17. With respect to the concern raised by Rogers that including set-top box data in the definition could inhibit the development of an enhanced audience measurement system, the Commission notes that, in the television review proceeding announced in Broadcasting Notice of Consultation 2014-190, it invited responses to a number of broad questions regarding the implementation of a set-top box-based audience measurement system in Canada. These questions touched upon matters such as privacy protections, technical aspects and what governance model should oversee such a system.

18. The Commission considers that the outcome of that proceeding may impact the matter of whether and how the non-disclosure provisions affect the development of an enhanced audience measurement system making use of set-top box data. As a result, the Commission considers that any issues pertaining to the impact of the non-disclosure provisions on the development of such a system would best be addressed after the conclusion of that proceeding.

19. Accordingly, the Commission will retain set-top box data in the definition of confidential information and this data will therefore be subject to the non-disclosure provisions.

20. With respect to Cogeco's concerns with regards to the wording of clause 2.1, the Commission notes that the wording in question is meant to contextualize and explain why a party in possession of qualifying information or data would be subject to an obligation to use such information or data for specified and limited purposes. It is not intended and should not be read as imposing a positive obligation on any party to provide or develop any such information or data.

Framework for the collection and provision of set-top box data

21. A number of interveners suggested that the Commission should establish principles relating to the collection, use and disclosure of set-top box data and provide for the implementation of these principles by way of amendments to the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy 2013-578. The Commission notes that adoption of this proposal would, amongst other matters, establish obligations on BDUs to disclose to a programming undertaking set-top box data relating to that undertaking's programming services where such data is collected by the BDU. It would also require that BDUs collect—and provide to the concerned programming undertaking—information about non-related programming services consistent with the information collected with respect to programming services of related undertakings.

22. The Commission notes that the current proceeding did not contemplate the establishment of obligations with respect to the collection and sharing of set-top box data and considers that the establishment of a framework surrounding such obligations would require consideration and resolution of many complex issues that the record associated with the current proceeding does not allow the Commission to resolve. The Commission is of the view that the television review proceeding announced in Broadcasting Notice of Consultation 2014-190 is a more appropriate forum for this discussion.

Non-disclosure obligations where both parties involved are vertically integrated

23. In Broadcasting Notice of Consultation 2014-79, the Commission asked whether the obligation to enter into agreements binding an undertaking to the adopted baseline non-disclosure provisions should be imposed where both parties involved are vertically integrated. A number of parties were in favour of applying the obligation to all entities, including in instances involving two vertically integrated entities. Some parties suggested, however, that vertically integrated entities should have the ability to waive the application of the Commission's baseline non-disclosure provisions by mutual agreement.

24. In Broadcasting Regulatory Policy 2011-601, the Commission stated that the basis for implementing a non-disclosure agreement policy was to "prevent the growing potential for inappropriate use of competitively sensitive information generally, and particularly in the case of VI entities."

25. In Broadcasting Regulatory Policy 2013-578, the Commission stated that imposing the standard non-disclosure provisions would serve to foster the environment needed for the positive negotiation of reasonable terms for the distribution, packaging and retailing of programming services. The Commission considered that these provisions were therefore of the utmost importance to ensuring that the programming provided by the Canadian broadcasting system continues to be varied and comprehensive and that BDUs are able to provide efficient delivery of programming at affordable rates.

26. The Commission remains of the view, as it first expressed in Broadcasting Regulatory Policy 2013-578, that "should one party possess more information about the offerings and rates of competitive services, the process by which reasonable terms are negotiated for the distribution, packaging and retailing of programming services by BDUs could be severely distorted, putting at risk the viability and programming contributions made by these programming services and their programming suppliers."

27. The Commission considers that if it were to create an exception for the imposition of the non-disclosure provisions where the two entities are each vertically integrated, these two entities could share information freely between each other, including across affiliates, to the potential detriment of other parties, and in particular, non-vertically integrated competitors.

28. Furthermore, the Commission recognizes that in a quickly changing environment of industry concentration, not all vertically integrated entities are necessarily—will remain—equal footing with each other.

29. In light of the foregoing, the Commission considers that, in order to offer a baseline level of protection to all parties, the non-disclosure provisions should be applied to all licensed undertakings, regardless of their current status and size. The Commission therefore determines that it will impose the non-disclosure obligations where both parties involved are vertically integrated, as contemplated by the proposed regulatory amendments.

Auditor qualifications

30. In Broadcasting Regulatory Policy 2013-585, the Commission published revised provisions governing the conduct of audits of subscriber information held by BDUs and stated that it would amend the *Broadcasting Distribution Regulations* at a later date in order to incorporate the provisions by way of reference.

31. While none of the interveners opposed the regulatory amendments as proposed in Broadcasting Notice of Consultation 2014-79, a number of them did submit comments relating to the qualification requirements of auditors for the purposes of the Commission's regulated audit regime. Most of the interveners that commented on this matter argued in favour of removing the stipulation that the auditor be recognized by his or her respective professional body "as engaged in the practice of public accounting."

32. These interveners pointed out that programming undertakings will incur significant additional costs as a result of the auditor qualification requirements and that the services are being denied the flexibility to choose to have the audit undertaken by professional accountants that are members in good standing with their respective provincial professional body but that are not licensed to conduct public accounting functions.

33. In this respect, the Commission notes that the licensing of public accountants is a matter of provincial jurisdiction and that there are differences among the provinces. Provincial law may not in all cases require that the verification of subscriber numbers and associated revenues on behalf of a programming undertaking for the purposes of ensuring the accuracy of payments made by BDUs be conducted by an accountant licensed to practice public accountancy.

34. The Commission considers that it would be reasonable to provide programming undertakings with a measure of added flexibility in the choice of an auditor while maintaining their ability to retain a public accountant, subject to any limitations that may be imposed by applicable provincial legislation. As such, the Commission considers it appropriate to:

    - remove the stipulation to the effect that the accountant to be retained be recognized as engaged in the practice of public accounting;

    - add wording providing that the retained accountant be a member in good standing of his or her respective professional organization.

35. Accordingly, the Commission modifies the provisions governing the conduct of audits of subscriber information held by BDUs such that the second paragraph in Section B entitled “Selection of the auditor” will read as follows:

    > The auditor shall be a professional accountant in good standing, such as a Chartered Accountant, Certified General Accountant, Certified Management Accountant or Chartered Professional Accountant.

Conclusion

36. In light of the foregoing, the Commission announces amendments to the *Broadcasting Distribution Regulations*, the *Pay Television Regulations, 1990*, the *Specialty Services Regulations, 1990* and the *Television Broadcasting Regulations, 1987*. The amendments are as set out in the appendix to Broadcasting Notice of Consultation 2014-79 subject to the change discussed below.

37. In Appendix 2 to this regulatory policy, the Commission sets out revised provisions governing the conduct of audits of subscriber information that reflect the determinations set out in paragraph 35 above. Accordingly, the Commission amends the wording of the proposed section 15.1 of the *Broadcasting Distribution Regulations* in order to reference the revised provisions.

38. The regulatory amendments will come into effect on the date of their registration. A copy of these amendments is provided in Appendix 1 to this regulatory policy and will be published in the *Canada Gazette*, Part II.

Related documents

- *Let's Talk TV*, Broadcasting Notice of Consultation 2014-190, 24 April 2014

- *Call for comments on amendments to Commission regulations – Standard non-disclosure clauses and auditing of subscriber information*, Broadcasting Notice of Consultation 2014-79, 25 February 2014

- *Provisions governing the timeframes and modalities for the conduct of audits of subscriber information held by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2013-585, 31 October 2013

- *Standard clauses for non-disclosure agreements*, Broadcasting Regulatory Policy CRTC 2013-578, 31 October 2013

- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011

Appendix 1 to Broadcasting Regulatory Policy CRTC 2014-473

REGULATIONS AMENDING CERTAIN REGULATIONS MADE UNDER THE BROADCASTING ACT

TELEVISION BROADCASTING REGULATIONS, 1987

1. The *Television Broadcasting Regulations, 1987*[1] are amended by adding the following after section 9:

NON-DISCLOSURE

9.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

PAY TELEVISION REGULATIONS, 1990

2. The *Pay Television Regulations, 1990*[2] are amended by adding the following after section 3:

NON-DISCLOSURE

3.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

SPECIALTY SERVICES REGULATIONS, 1990

3. The *Specialty Services Regulations, 1990*[3] are amended by adding the following after section 6:

NON-DISCLOSURE

6.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

BROADCASTING DISTRIBUTION REGULATIONS

4. The *Broadcasting Distribution Regulations*[4] are amended by adding the following after section 9:

NON-DISCLOSURE

9.1 (1) A licensee that is distributing programming services of a licensed programming undertaking or that is negotiating terms of carriage with such an undertaking, or with an undertaking otherwise authorized to operate by reason of a Commission decision approving the issuance of a licence under paragraph 9(1)(*b*) of the Act, for its programming services, including new programming services, shall sign and provide to the other licensee or to the operator of the undertaking otherwise authorized an agreement that

(*a*) reproduces the non-disclosure provisions; and

(*b*) contains its consent to comply with the non-disclosure provisions for the benefit of the other licensee or the operator of the undertaking.

(2) A licensee that is distributing an exempt Category B service or an exempt third-language service of an exempt programming undertaking or that is negotiating terms of carriage with an exempt programming undertaking for an exempt Category B service or an exempt third-language service, including any new programming service that is an exempt Category B service or an exempt third-language service, shall sign and provide to the operator of the exempt programming undertaking an agreement that

(*a*) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the operator of the exempt programming undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

5. Section 15.1 of the Regulations is replaced by the following:

15.1 A licensee shall give access to its records to any Canadian programming undertaking that receives a wholesale rate for its programming services to enable the programming undertaking to verify subscriber information for its programming services in accordance with the terms prescribed in Appendix 2 to Broadcasting Regulatory Policy

CRTC 2014-473, dated September 12, 2014 and entitled *Provisions governing the timeframes and modalities for the conduct of audits of subscriber information held by broadcasting distribution undertakings*.

COMING INTO FORCE

6. These Regulations come into force on the day on which they are registered.

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[1] SOR/87-49

[2] SOR/90-105

[3] SOR/90-106

[4] SOR/97-555

Appendix 2 to Broadcasting Regulatory Policy CRTC 2014-473

Provisions governing the timeframes and modalities for the conduct of audits of subscriber information held by broadcasting distribution undertakings

A. Purpose and application

These audit provisions govern the verification of broadcasting distribution undertaking (BDU) subscriber numbers and associated revenues by an auditor, on behalf of a programming undertaking. Such verification could include the verification of monthly reports, subscriber counts and payments from the BDU, as well as other information reasonably required by the auditor as detailed under section C below.

These audit provisions shall apply to all audits of a BDU by a programming undertaking, whether the programming undertaking and BDU are bound by a formal affiliation agreement or not, and whether the BDU is vertically integrated or non vertically integrated, as per the definition of "vertically integration" set out in *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011.

B. Selection of the auditor

The programming undertaking shall select the auditor.

The auditor shall be a professional accountant in good standing, such as a Chartered Accountant, Certified General Accountant, Certified Management Accountant or Chartered Professional Accountant.

Should the BDU object to the selection of the auditor, the BDU shall provide in writing to the programming undertaking, copying the proposed auditor, within 15 days of receipt of the written audit request, the grounds for its objection. The programming undertaking shall have 15 days from the receipt of the notice of the BDU's objection to the selected auditor to reply to the BDU in writing, either selecting another auditor or, if keeping the original selection, setting out its response to the objection. If the matter is not resolved, the issue may then be submitted to the Commission for dispute resolution (with the Commission reserving the right to suspend the application of audit timeframes as described in section D below).

C. Access to information

The BDU shall make available all such books, records, accounts and other information as is reasonably required so as to permit a programming undertaking's auditor to verify and confirm that the BDU's payments for distribution of the programming undertaking's service(s) comply with the terms of any existing agreements. More specifically, the auditor may require any or all of the following information:

- channel listing of each system applicable to period audited;
- retail rates of all packages and/or services offered to customers during audit period;
- monthly system subscriber reports;
- monthly remittance calculations;
- list of all bulk accounts by system:
    - number of units/rooms for each account;
    - number of basic subscribers for each account;
    - number of extended tier subscribers for each account;
    - activation date of each account;
    - rate per unit/room for each account; and
    - name of each account;
- list of all complimentary subscriptions by system;
- details of all promotions offered by BDU; and
- any other information reasonably required by the auditor.

Audit information shall be made available in electronic format where possible or otherwise be made available in a format that facilitates the most efficient and effective audit.

D. Timeframes, period covered by the audit and audit report

A written audit request shall be delivered by the programming undertaking to the BDU. The audit shall commence on a date to be mutually agreed upon by the auditor and the BDU, such date to be no later than 90 days from the date of delivery of the written request to the BDU.

Unless otherwise agreed to, a request for an audit may be made at any time after the period being proposed to be audited has ended but no later than 12 months after the end of the period proposed to be audited.

The period covered by the audit shall be for 12 months or a longer period if agreed to by parties. A given time period shall be subject to only one audit.

The auditors shall conduct their audits and present or validate their findings within the general standards adopted by their governing body.

E. Conduct of the audit

The audit shall take place during normal business hours and on the premises where the BDU maintains the records applicable to the audit.

The parties shall make commercially reasonable efforts to ensure the audit is completed and the audit report is submitted to both parties within 210 days from the notice of intention to audit.

The programming undertaking shall deliver the auditor's report to the BDU within 15 days of receipt from the auditor.

If either party disputes any of the findings of the audit report, it shall, within 30 days of that party's reception of the auditor's report, notify the other party, setting out the reasons for its dispute. The party disputing a claim shall, within 30 days of the dispute notification, make available such evidence to the auditor as is necessary to substantiate the disputed portion of the claim. The parties shall make commercially reasonable efforts to resolve any disputes within 75 days of the notice of dispute.

Repayment of any over-payment or payment of an under-payment shall be made within 30 days of the resolution of a dispute or, where there is no dispute, within 30 days of the deadline for disputing the auditor's report.

F. Retention of records

The auditor may retain sufficient information to validate its findings. The auditor and the BDU can agree on which information can be retained and photocopied and which information should be discarded once the audit is complete. Confidentiality agreements and non-disclosure agreements are to be signed to protect both the BDU and the programming undertaking against the disclosure of confidential information.

G. Group audits

The conduct of audits as set out above shall apply equally to audits conducted by individual programming undertakings, as well as audits conducted at the same time by the same auditor for more than one related or unrelated programming undertaking.

The timelines set out above shall apply in the case of group audits, unless otherwise agreed to by the parties participating in the group audit.