



Broadcasting Decision CRTC 2023-94

PDF version

Reference: Part 1 application posted on 5 August 2022

Ottawa, 23 March 2023

Timeless Inc.
Across Canada

Public record: 2022-0445-2

Complaint by Timeless Inc. against Rogers Communications Canada Inc. alleging undue preference regarding the carriage of the Canadian English-language exempt discretionary service OneSoccer

Summary

The Commission finds that Rogers Communications Canada Inc. (RCCI), by refusing to carry on its broadcasting distribution undertakings the Canadian, English-language exempt discretionary service OneSoccer, has given an undue preference to itself and to other services comparable to OneSoccer, and has subjected OneSoccer to a disadvantage. Further, the Commission finds that the preference and disadvantage are undue since they have had a material adverse impact on Timeless Inc. (Timeless), the operator of OneSoccer, on Canadians, and on the achievement of certain objectives of the *Broadcasting Act*.

The Commission **directs** both RCCI and Timeless to submit, by no later than **11 April 2023**, proposed remedies for resolving the finding of undue preference and disadvantage. Both parties will then be permitted to submit final replies by no later than **21 April 2023**.

Parties

1. Timeless Inc. (Timeless) is a Canadian independent programming undertaking that owns and operates OneSoccer, a Canadian, English-language discretionary service that operates as an exempt service pursuant to Broadcasting Order 2015-88.
2. Rogers Communications Canada Inc. (RCCI) is currently the third largest broadcasting distribution undertaking (BDU) in Canada, based on broadcasting revenues. It provides high-speed Internet, television, voice communication, and smart home monitoring services to consumers, businesses, governments, and wholesale resellers. It currently serves approximately 4.7 million homes in Ontario, New Brunswick, and Newfoundland and Labrador. RCCI is part of a vertically integrated entity, and its affiliated programming undertaking Rogers Media Inc.

(RMI) owns the Sportsnet suite of services, which includes Sportsnet, Sportsnet One, Sportsnet 360 and Sportsnet World (the Sportsnet services).

Background

3. According to Timeless, over 90% of OneSoccer's content is Canadian content. Through OneSoccer, Timeless holds exclusive rights to broadcast the National Teams games, including the World Cup qualifying games, as well as the Women's National Team games, the Canadian Premier League games, the Canadian Championship, and several other tournaments.
4. Timeless launched OneSoccer as an online streaming programming service in 2019. In 2021, distribution of OneSoccer began on the linear television platform after Timeless reached a deal with TELUS Communications Inc. (TELUS) for carriage on TELUS's BDUs. Although only TELUS's BDUs currently distribute OneSoccer, the service is available online on the OneSoccer website and app directly to consumers for \$9.99 per month and can be streamed on Fubo TV Canada, a streaming television platform on which viewers can watch live and on-demand content. Timeless has been trying, unsuccessfully, to obtain carriage on RCCI's BDUs since spring 2021.
5. In October 2021, RCCI offered to carry OneSoccer's broadcasts of Canada Soccer's Men National Team 2022 FIFA World Cup Qualifying matches on Sportsnet. It offered to split advertising revenue and required that there be no OneSoccer branding on the programming, to which Timeless agreed.

Complaint

6. Timeless submitted that RCCI, by carrying its own sports programming services Sportsnet and Sportsnet One and by refusing to carry OneSoccer, a competing sports programming service, is giving itself an undue preference. It further submitted that RCCI, by distributing other sports services, including sports services owned/operated by Bell Media Inc. (Bell Media), is subjecting OneSoccer to an undue disadvantage.
7. Timeless has requested the Commission's involvement to determine that RCCI has breached section 9 of the *Broadcasting Distribution Regulations* (the Regulations), which relates to undue preference/disadvantage, by refusing to carry OneSoccer on its BDUs.
8. Timeless noted the relevance of soccer on television in Canada as evidenced by growing audience interest in and viewership of Canadian soccer over the past few years. As an example, Timeless noted that OneSoccer's broadcast of Canada Soccer's Men National Team 2022 FIFA World Cup Qualifying matches on Sportsnet enjoyed viewership in excess of one million average minute audience ("AMA 2+"). Furthermore, almost five million Canadians watched the National Women's team win Gold at the Tokyo Olympics in 2021.
9. According to Timeless, RCCI, as part of a vertically integrated entity, sees OneSoccer's emergence as direct competition for Sportsnet and Sportsnet One in

terms of audiences and advertising dollars, and does not want a competing sports service to achieve financial stability, which carriage on RCCI's BDUs would provide. In the complainant's view, RCCI's refusal to carry OneSoccer therefore prevents Timeless from generating important revenues.

10. Timeless added that RCCI's openness to carry OneSoccer as an app on its "Ignite box" also constitutes undue preference, because OneSoccer would not be treated the same way as RMI's and Bell Media's sports services. Specifically, Timeless stated that it would take months for the app to be integrated into the box by Comcast, and that it would then be available *a la carte* and not be placed in appropriate packages, contrary to Sportsnet and TSN, for example.
11. Timeless submitted that if OneSoccer received carriage from RCCI, the diversity of voices in the Canadian broadcasting system would be significantly enhanced. It noted that sports broadcasting, the largest revenue generator among Canadian discretionary services, is dominated by two players in Canada, RMI (via Sportsnet) and Bell Media (via TSN).
12. Timeless added that in the event Rogers Communications Inc. (Rogers) acquires Shaw Communications Inc.¹ (Shaw), which it noted would leave RCCI with 47% of all English-language cable subscribers in Canada, a refusal by RCCI to carry a competing sports service would make it difficult for that service to become financially viable.
13. According to Timeless, it is unfair for Canadians (with the exception of TELUS customers) to be able to watch on their cable television service the professional soccer games of many other countries and not domestic Canadian soccer games.

RCCI's answer

14. RCCI submitted that Timeless's application has no merit and should be dismissed. It argued that Timeless has been unable to provide any credible evidence to support its undue preference claims and considered that OneSoccer would have limited appeal to Canadian consumers. According to RCCI, the fact that OneSoccer holds limited broadcasting rights and that only TELUS has agreed to distribute the service on its BDUs proves that there are valid commercial reasons for refusing to distribute the service.
15. According to RCCI, given that OneSoccer is not a mainstream sports service, it is not comparable to Sportsnet. It added that OneSoccer does not have the same regulatory obligations as Sportsnet (specifically, RCCI's services operate in accordance with conditions of licence while OneSoccer is an exempt discretionary service) and that the service broadcasts only soccer-related programming (only 1.2% of the schedules of Sportsnet and Sportsnet One are devoted to soccer content).

¹ See Broadcasting Decision 2022-76.

16. RCCI referred to several third-party mainstream and niche sports services that are distributed by its BDUs as proof that it is willing to distribute sports services of all kinds when it believes they will appeal to its customers.
17. RCCI provided numbers to demonstrate that the rights OneSoccer holds do not reach a large audience, except for the games that Canada's two National Teams played (only 19 matches every four years). It proposed to offer some of OneSoccer's programming on Rogers On Demand, its on-demand platform, and on the OneSoccer app on Ignite TV and on the Ignite Streaming platforms, but not as a linear service on its BDUs. RCCI noted that the rights to broadcast the games of almost all the major soccer leagues and tournaments in the world are now held by streaming services that make the games available online.
18. RCCI stated that its decision not to carry OneSoccer does not change the service's current revenues, and will not put the service in a position worse than before, since it does not currently distribute the service.
19. According to RCCI, the fact it has refused to distribute OneSoccer on its BDUs while distributing its own sports services is insufficient to prove that there has been a preference or a disadvantage. It listed four examples where the Commission has found that a BDU's refusal to distribute a discretionary service does not constitute a preference or a disadvantage.² In RCCI's view, Timeless is attempting to create an access right for OneSoccer on RCCI's BDUs.
20. RCCI argued that the regulatory framework for BDUs regarding the carriage of discretionary services does not guarantee an access right and does not require BDUs to distribute those services, except for those that have been granted mandatory carriage under paragraph 9(1)(h) of the *Broadcasting Act* (the Act). It stated that it has the right to choose which discretionary services it distributes, even if the BDU is distributing other services that operate in the same or a similar genre to the service making the undue preference claim.
21. RCCI submitted that mandating the distribution of OneSoccer on its BDUs would set an inappropriate precedent as it would encourage discretionary services to make similar claims against vertically integrated entities. In its view, this would open the floodgates to such claims and thereby undermine the regulatory framework for the carriage of discretionary services that was established by the Commission in 2015, which removed access rights and mandatory carriage. RCCI added that mandatory carriage of OneSoccer would also result in an undue disadvantage to itself in the BDU marketplace given that only its BDUs would be required to distribute this service.

² See Broadcasting Decision 2013-508 (complaint by NB Spring and Manufacturing Ltd. against Rogers Cable Communications Inc.), Broadcasting Decision 2016-82 (complaint against Videotron G.P. concerning the distribution of Avis de Recherche), and Broadcasting Decision 2016-38 (complaint against Bell Canada concerning the distribution of Avis de Recherche), and a 2017 case between Rogers Cable and BBC Kids that resulted in a Commission [staff letter](#) decision dated 7 November 2017.

Timeless's reply

22. Timeless submitted that since most of the Canadian, English-language BDU market is controlled by BDUs that own sports services, the Commission needs to exercise its power to prevent undue discrimination.
23. In Timeless's view, the cases brought forward by RCCI are not relevant to the present situation given that, in most of those cases, the Commission found that the services in question were not comparable to any of RCCI's services. According to Timeless, the fact that OneSoccer and Sportsnet are comparable makes this case different.
24. In support of its claim that OneSoccer and Sportsnet are competitive services, Timeless noted that the two services compete for the same audience.³ It added that when Sportsnet carried OneSoccer content, RCCI insisted that there could be no OneSoccer branding on the programming it licensed from OneSoccer, which in Timeless's view proves that OneSoccer is a competitor. Timeless also noted that RCCI has declined to broadcast on Sportsnet news coverage reports, scores or show highlights for the Canadian Premier League, for which Timeless holds exclusive rights. It stated that Sportsnet will not report on OneSoccer content because it does not want to lose its audience to a competing service.
25. Timeless cited Broadcasting Decision 2022-76, in which the Commission approved, subject to a number of modifications and the fulfilment of specific conditions of approval, an application by Rogers, on behalf of Shaw, for authority to transfer to Rogers or its subsidiaries the effective control of the broadcasting undertakings licensed to Shaw or its subsidiaries. It specifically cited paragraph 152 of that decision, where the Commission indicated that if Rogers is forcing a service to go online rather than carrying a linear service, this could constitute undue preference. Timeless submitted that this is what RCCI is trying to do by being willing to carry the OneSoccer app on the Ignite TV and Ignite Streaming platforms, but not as a service on its cable systems.
26. In Timeless's view, the loss of revenue that OneSoccer could earn from a reasonable carriage deal with RCCI is extremely harmful, and would be even more harmful should Rogers acquire Shaw. Timeless noted that, normally, securing a deal with TELUS should have put pressure for carriage on Shaw's BDUs, its main competitor, but argued that this has not happened given that Shaw is about to be purchased by Rogers.
27. In regard to the list of third-party sports services distributed by RCCI, Timeless noted that some of the services are owned by Bell Media and by Videotron Ltd., which are vertically integrated entities that can carry RCCI's sports services in exchange. The remaining services on the list are foreign-owned services, which Timeless argued proves that RCCI is reluctant to offer carriage to independent Canadian services. In

³ Timeless mentioned Sportsnet World, which offers extensive coverage of German and English soccer.

Timeless's view, it is odd that RCCI agrees to carry non-Canadian niche services but refuses to carry a niche and popular Canadian service.

28. According to Timeless, low viewership numbers provided by RCCI in regard to the Canadian Premier League soccer matches that were aired by the Canadian Broadcasting Corporation (CBC) in 2020 are irrelevant because it was an unusual year for sports broadcasting. In its view, the numbers cited by RCCI are not indicative of the popularity of soccer in Canada. Further, Timeless noted that RCCI did not compare those numbers to viewership numbers for the German Bundesliga games, which form a large part of the schedule of Sportsnet World. It provided more statistics to illustrate how soccer has gained in popularity since 2021. Specifically, Timeless noted that attendance at Canadian Premier League games increased 31% from 2021 to 2022, and that the social media total audience increased by 44% from 2021 to the time when it submitted its reply in September 2022.⁴ It added that some Canadian soccer athletes shared their disappointment on social media over the fact that Canadian soccer games were not broadcast on television.

Intervention by TELUS

29. TELUS expressed support for the Commission's careful examination of Timeless's application, given that RCCI, as part of a vertically integrated entity, has conflicting interests when it comes to carrying certain independent programming services. In TELUS's view, the most reasonable explanation for RCCI's disinterest in carrying OneSoccer is that the service would compete with RCCI's affiliated programming service Sportsnet.
30. TELUS indicated that it is not advocating a return to mandatory carriage requirements. It stated, however, that closer scrutiny is warranted when vertically integrated entities refuse carriage of an independent programming service on their related distribution platforms, especially when the service directly competes with the vertically integrated entity's own service.
31. TELUS submitted that since the Commission has approved Rogers's application to acquire Shaw's broadcasting licences, it is important to look at RCCI's carriage decisions relating to independent competitors carefully since they might have an impact on the viability of an independent programming service. It noted that the Rogers/Shaw transaction has not even closed, and that RCCI is already depriving an independent service of carriage on its BDUs.
32. In TELUS's view, RCCI's actions as described in Timeless's application do not stem from valid commercial reasons, but rather anti-competitive reasons.

⁴ Timeless did not provide absolute numbers.

Undue preference test

33. Pursuant to subsection 9(1) of the Regulations, “[n]o licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.”
34. In analyzing a complaint of undue preference/disadvantage under the Regulations, the Commission must first determine whether there is a preference or a disadvantage. “Preference” has generally been defined as dissimilar treatment of comparable entities. In this regard, in Broadcasting Decision 2019-427, the Commission stated the following:
- [...] the term “comparable” should not be strictly defined, as its meaning depends on the context of a negotiation or dispute and is best left to an assessment on a case-by-case basis. Accordingly, the factors considered to determine whether the entities are comparable can vary from one case to another.
35. Where it determines that there is a preference or disadvantage, the Commission must then determine whether, under the circumstances, it is undue.
36. In order to determine if a preference or disadvantage is undue, the test applied by the Commission is to examine whether the preference or disadvantage has had, or is likely to have, a material adverse impact on the complainant or any other person. It also examines the impact the preference or disadvantage has had, or is likely to have, on the achievement of the objectives of the broadcasting policy for Canada set out in the Act.
37. Subsection 9(2) of the Regulations provides that the burden of establishing that a preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage. As noted in Broadcasting Regulatory Policy 2012-407, under this reverse onus provision, if the respondent is not in possession of the information required for the Commission to determine the facts of the case, or if the applicant has not adduced evidence to demonstrate the existence or the likelihood of harm, the respondent would plead that reality and the Commission would assess the matter accordingly in determining whether the respondent had met its burden. However, this reverse onus provision does not relieve the applicant of the obligation to demonstrate that a preference exists.

Commission’s decisions

38. The Commission considers that the issues it must address are the following:
- What are the comparable entities?
 - Is there a preference/disadvantage?
 - If so, is the preference/disadvantage undue?

What are the comparable entities?

39. The term “comparable” is broad and not clearly defined, and therefore can be interpreted in different ways, depending on the context. In the present case, the Commission considers the comparable entities are programming services, given that Timeless’s complaint relates to a comparison between such services.
40. Given that OneSoccer is the only programming service that broadcasts solely Canadian soccer-related content, it is not possible to specify another service that compares perfectly to it. Further, OneSoccer holds exclusive rights to broadcast matches and championships of Canadian soccer leagues, which makes the service rather unique compared to the other sports services carried on RCCI’s BDUs that broadcast soccer-related content.
41. Timeless’s submissions mainly focused on RCCI’s affiliated Sportsnet services. It supported its claim by noting that RCCI distributes other sports services owned by vertically integrated entities, as well as third-party independent sports services, but not OneSoccer. The Commission interprets this to mean that Timeless is alleging that RCCI is giving a preference to sports services of vertically integrated entities, including its own, and is subjecting OneSoccer to a disadvantage in relation to the other independent sports services it distributes.
42. For its part, RCCI did not note any entities or services that it considered to be comparable to OneSoccer. It expressed the view, however, that OneSoccer is not comparable to the Sportsnet services, given that OneSoccer is a niche service and broadcasts only soccer-related programming, unlike the Sportsnet services.
43. It is the Commission’s view that several independent sports services could be compared to OneSoccer. Given that OneSoccer’s viewership data is not available, the Commission cannot compare the services in terms of viewership numbers. However, the Commission can compare services in regard to their content and the types of audience they attract.
44. In terms of soccer programming, EuroWorld Sport, owned by TLN Media Group, is a service that broadcasts solely soccer-related content, but only European soccer, not Canadian soccer. Unlike OneSoccer, however, EuroWorld Sport does not seem to feature many matches, but more soccer-related programming such as documentaries. Another independent sports service that dedicates the majority of its programming to foreign soccer-related content is beIN Sports Canada, owned by the Ethnic Channels Group in Canada. beIN Sports Canada has also entered into a partnership with the sports-oriented online streaming service DAZN to acquire a multi-sport package of rights from beIN Sports Canada, including soccer, as well as with another sports-oriented online streaming service, Fubo TV Canada, which, as noted above, also offers OneSoccer.
45. Further, the Commission considers that, in terms of sports services affiliated with vertically integrated entities, the only service that could be somewhat comparable to

OneSoccer is Sportsnet World, given that its programming focuses on international soccer and rugby and because it regularly broadcasts soccer games. The more generalist English-language sports services affiliated with vertically integrated entities, such as Sportsnet and TSN, are much less comparable with OneSoccer since only a very small portion of their programming is dedicated to soccer-related content (unless they hold broadcast rights, usually for major events).

46. In light of the above, the Commission finds that the three services beIN Sports Canada, EuroWorld Sport and Sportsnet World, all of which are currently distributed by RCCI, can therefore serve as comparable programming services for the purposes of this undue preference complaint regarding OneSoccer.

Is there a preference/disadvantage?

47. As noted above, a preference is defined as a dissimilar treatment of comparable entities. The question is therefore whether RCCI treated the above-noted services that the Commission considers to be comparable to OneSoccer differently than OneSoccer.
48. Timeless's rationale regarding its claim that RCCI is giving a preference to its own services is that RCCI is not treating OneSoccer the same way it treats the Sportsnet services (including Sportsnet World), since the Sportsnet services are distributed on linear television by RCCI. For this reason, Timeless considered that RCCI is giving a preference to its affiliated sports services. To prove that its content is worth being distributed on linear television, Timeless provided evidence that its content is in fact appealing to a portion of Canadians and that soccer is gaining in popularity in the country.
49. RCCI did not dispute that it distributes Sportsnet World on a linear basis, and noted that it also distributes beIN Sports Canada and EuroWorld Sport on a linear basis.
50. In the Commission's view, OneSoccer was not given the same opportunity for linear distribution on RCCI's BDUs as were the comparable services beIN Sports Canada, EuroWorld Sport and Sportsnet World, which also distribute a great portion of soccer content. The fact that RCCI distributes similar services of which the primary content is soccer-related, but refuses to distribute OneSoccer on the grounds that the content will not be attractive to viewers, equates to treating OneSoccer in a dissimilar manner. RCCI has chosen to distribute soccer services that have similar content and attract the same type of audience as OneSoccer, but has made the choice not to distribute OneSoccer.
51. Further, RCCI has offered to carry some of OneSoccer's programming on its on-demand platform Rogers On Demand, and the OneSoccer app on its Ignite TV and Ignite Streaming platforms, rather than on linear television. In this regard, the Commission notes Timeless's reference to Broadcasting Decision 2022-76, in which the Commission indicated that forcing a service to go online rather than carrying a

linear service could constitute undue preference. The Commission further notes, however, that such behaviour must still be evaluated on a case-by-case basis.

52. In the Commission's view, the value that comes from adding a programming service as an app to an online BDU platform is not equal to the value that comes from the programming service being carried on a linear platform. Whereas linear distribution guarantees monthly subscription revenues, being distributed as an app requires further investments from the programmer. Conversely, BDUs have an incentive to include a maximum number of apps on their online platforms as there are no (or little) marginal costs involved, while the value proposition of their platforms to Canadian consumers increases. Also, distributing an additional linear service would be more costly for BDUs and, in the case of vertically integrated BDUs, create more competition over programming rights. In the Commission's view, this is the case in the current dispute given that it would be more beneficial for RCCI to carry OneSoccer as an app rather than as a linear service, while Timeless would benefit more if OneSoccer were carried as a linear service.
53. By refusing to grant OneSoccer linear distribution on its BDUs, RCCI is not treating OneSoccer the same way as the three other comparable services that have such distribution. As such, by choosing not to distribute the service on linear television, even if it is proposing to carry the service as an app, RCCI is treating OneSoccer differently from the identified similar services.
54. In light of the above, the Commission finds that RCCI, by not distributing OneSoccer on a linear basis, has subjected Timeless to a disadvantage and has given a preference to other, comparable services.

Is the preference/disadvantage undue?

55. Having concluded that RCCI has subjected Timeless to a disadvantage and has given a preference to other, comparable services, the Commission must now determine whether the preference and disadvantage are undue. Specifically, the Commission must examine whether the preference and disadvantage have had, or are likely to have, a material adverse impact on the complainant or on any other person. It must also examine the impact that the preference and disadvantage have had, or are likely to have, on the achievement of the objectives set out in the Act.

Material adverse impact on Timeless

56. RCCI noted that since it has never distributed OneSoccer on its BDUs and that since Timeless is therefore not currently receiving any revenues from such distribution, Timeless will not lose any revenues by OneSoccer continuing not to be distributed.
57. As noted above, OneSoccer entered the market in 2019 as an online streaming service, and is still in operation on that platform. Further, linear distribution of OneSoccer started in August 2021, when Timeless reached a deal with TELUS.

58. It is not possible to quantify the revenues that RCCI's distribution of OneSoccer would provide to Timeless, as there is nothing on the record to indicate what such revenues might amount to, including information regarding the rates that TELUS is paying for the service. The Commission notes, however, that RCCI is currently the third largest BDU in the country and is part of a vertically integrated entity that has significant bargaining power from both programming and distributing perspectives. Further, RCCI's refusal to distribute OneSoccer on its linear television platform will, in the longer term, make it much more difficult for Timeless to survive in the traditional linear television market and possibly secure deals with other BDUs that compete with RCCI.
59. Although the broadcasting system is going through an important transformation with the emergence of online platforms and the decline in popularity of linear television, and although linear broadcasting is no longer being seen as a growth area in the sector, BDUs continue to play a vital role in the broadcasting environment and remain the guarantors of access to programming, particularly for Canadians who do not have access to high-speed Internet. Furthermore, as an independent programming undertaking, Timeless also relies on securing carriage deals with as many BDUs as possible to ensure its viability. As such, it is the Commission's view that RCCI's distribution of OneSoccer would create additional revenues for Timeless and make the service more viable in the long term, and that a refusal to distribute OneSoccer would likely have a material adverse impact on Timeless.
60. As noted above, RCCI referenced prior decisions in which the Commission stated that the mere fact that a BDU does not want to distribute a programming service is not enough to conclude that there is an undue preference or disadvantage. Although few services benefit from a *de facto* access right, the Commission considers that BDUs such as RCCI necessarily exercise a gatekeeping role in their decisions regarding the carriage of programming services and must therefore do so in a fair manner, particularly in the context where the parties compete for programming rights.
61. In light of the above, the Commission finds that RCCI's refusal to carry OneSoccer has had or is likely to have a material adverse impact on OneSoccer and on Timeless, and is significant enough to be undue.

Impact on Canadians

62. In its application, Timeless also submitted that RCCI's refusal to distribute OneSoccer has had an adverse impact on Canadians. In this regard, Timeless noted that some soccer athletes complained about the important soccer games not being broadcast on television, as OneSoccer is the main programming service that distributes Canadian soccer content domestically and holds rights to broadcast Canadian soccer leagues and championships.
63. Although OneSoccer can be accessed online by subscribers to the service's website and app, as well as through Fubo TV Canada, not all Canadians currently have access to a reliable Internet network. In the Commission's view, it is unfortunate that soccer

fans in Canada have very limited ways of watching Canadian soccer and soccer-related content on television. Consequently, the Commission finds that RCCI's refusal to distribute OneSoccer has also had an impact on Canadians.

Impact on the achievement of the objectives of the *Broadcasting Act* and policy issues

64. As set out in the Act:

- each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming (paragraph 3(1)(e));
- the programming provided by the Canadian broadcasting system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern (subparagraph 3(1)(i)(iv)) and include a significant contribution from the Canadian independent production sector (subparagraph 3(1)(i)(v)); and
- distribution undertakings should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations (subparagraph 3(1)(t)(i)).

65. In paragraph 11 of Broadcasting Public Notice 2008-4 (the Diversity of Voices Policy), the Commission stated that “the concept of ‘diversity’ in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements, plurality of editorial voices within the private element, and diversity of programming.”

66. Further, in paragraphs 15 and 17 of the Diversity of Voices Policy, the Commission set out the following in regard to plurality of ownership within an element:

Plurality within [a public, private or community] element refers to the number of separately owned voices. Separately owned undertakings will make use of their own editorial and programming resources. In this way, a diversity of voices is preserved because no one person – no one voice – within an element has sole responsibility for choosing the programming to which Canadians can have access. [...] Given the trend toward greater consolidation and the consequent impact on diversity of voices, a plurality of ownership in the private element is necessary in order to maximize the diversity of voices in the Canadian broadcasting system.

67. RCCI distributes a wide variety of sports services, some mainstream, others niche and specialized. As such, it can be commended on providing good diversity and balance through its distribution of sports services that are owned by vertically integrated entities, by foreign entities and by independent Canadian undertakings.

68. By agreeing to distribute OneSoccer on its BDUs, RCCI would enhance the diversity of voices and the plurality of ownership in sports programming services, which is largely dominated by the two largest vertically integrated entities in the country, RMI

(via Sportsnet) and Bell Media (via TSN). As noted above, Timeless stated that 90% of OneSoccer's programming is Canadian. Further, it is likely that OneSoccer is the only service that broadcasts only Canadian soccer and soccer-related content. Therefore, RCCI's distribution of OneSoccer on linear television would benefit the Canadian broadcasting system by enhancing the availability of Canadian content on television, an objective defined in the Act. It would also encourage a greater diversity of voices and plurality of ownership in sports programming by adding a new player to the sports broadcasting landscape.

69. With the additional revenue that would be generated through a distribution agreement with RCCI, Timeless would be able to contribute to the diversity of voices, not just in terms of numbers, but also in regard to the quality of programming in the Canadian broadcasting system. OneSoccer might become a source of alternative programming to that provided by vertically integrated entities that own sports services (i.e., RMI and Bell Media).

70. Finally, the Commission is responsible for regulating and supervising the broadcasting system. This responsibility includes overseeing the relationship between undertakings and vertically integrated entities, such as RCCI. Since the issuance of Broadcasting Regulatory Policy 2015-96 as part of Let's Talk TV, undue preference complaints have been one of the only mechanisms in place to ensure protection for independent programmers as they negotiate with vertically integrated entities. This mechanism is useful in helping the Commission to ensure the Canadian broadcasting system remains healthy and dynamic.

71. In light of the above, the Commission finds that RCCI's refusal to distribute OneSoccer on its BDUs has had an impact on the achievement of certain objectives of the Act.

Conclusion

72. In light of all of the above, the Commission finds that Rogers Communications Canada Inc., by refusing to carry on its BDUs the Canadian, English-language exempt discretionary service known as OneSoccer, has given an undue preference to itself and to other services comparable to OneSoccer, and has subjected the service OneSoccer to a disadvantage. Further, the Commission finds that the preference and disadvantage are undue since they have had a material adverse impact on Timeless Inc., the operator of OneSoccer, on Canadians, and on the achievement of the objectives of the Act.

Next Steps

73. The Commission **directs** both RCCI and Timeless to submit, by no later than **11 April 2023**, proposed remedies for resolving the finding of undue preference and disadvantage. Both parties will then be permitted to submit final replies by no later than **21 April 2023**.

74. The Commission reminds the parties that staff-assisted mediation is also available upon request.

Secretary General

Related documents

- *Shaw Communications Inc. – Change of ownership and effective control*, Broadcasting Decision CRTC 2022-76, 24 March 2022
- *Complaint by Quebecor, on behalf of TVA, against Bell, represented by BCE, alleging undue preference regarding the packaging of TVA Sports*, Broadcasting Decision CRTC 2019-427, 19 December 2019
- *Complaint against Videotron G.P. concerning the distribution of the Category B service Avis de Recherche*, Broadcasting Decision CRTC 2016-82, 3 March 2016
- *Complaint against Bell Canada concerning the distribution of the Category B service Avis de Recherche*, Broadcasting Decision CRTC 2016-38, 4 February 2016
- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Complaint by NB Spring and Manufacturing Ltd. against Rogers Cable Communications Inc. alleging undue preference and disadvantage*, Broadcasting Decision CRTC 2013-508, 23 September 2013
- *Amendments to various regulations – Implementation of the regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2012-407, 26 July 2012
- *Diversity of Voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008