



## Broadcasting Decision CRTC 2025-79

PDF version

Reference: Part 1 application posted on 9 August 2023

Gatineau, 14 March 2025

**DHX Television Ltd.**

Across Canada

*Public record: 2023-0437-7*

### **Complaint by DHX Television Ltd., carrying on business as WildBrain Television, against Bell Canada and any of its owned or affiliated broadcasting distribution undertakings, alleging undue preference regarding the distribution of Family Channel, Family Jr., WildBrain TV and Télémagino**

*Certain information regarding this dispute was designated confidential by WildBrain and Bell. The Commission is publishing this non-confidential version and has provided a confidential version that contains the entirety of the Commission's reasons to the parties to the dispute.*

#### **Summary**

DHX Television Ltd., carrying on business as WildBrain Television (WildBrain), operates the children's service Family Channel and its multiplex children's services Family Jr., WildBrain TV and Télémagino (the WildBrain services).

In July 2023, WildBrain filed an application with the Commission in which it alleged undue preference and disadvantage pursuant to section 9 of the *Broadcasting Distribution Regulations* (the BDU Regulations) by Bell Canada (Bell) and any of its owned or affiliated broadcasting distribution undertakings (BDUs) regarding the distribution of the WildBrain services. Specifically, WildBrain submitted that Bell is putting WildBrain at an undue disadvantage and is giving undue preference to the children's services provided by Corus Entertainment Inc. (Corus).

WildBrain also claimed that Bell would be giving an undue advantage to its own subscription-based video-on-demand service, Crave.

After examining the positions of the parties and the record for the application in light of the BDU Regulations, the Commission determines that Bell has not subjected WildBrain to a disadvantage and has not given a preference to the comparable children's services provided by Corus. The Commission considers that Bell's actions do not contravene the confidential affiliation agreement with WildBrain and do not contravene its regulatory obligations as a licensed BDU.

Accordingly, the Commission dismisses WildBrain's complaint against Bell.

The Commission notes that this decision was made under the existing regulatory framework. As part of its broader [regulatory plan](#) to implement the modernized *Broadcasting Act*, the Commission issued Broadcasting Notice of Consultation 2025-2 to examine the market dynamics within Canada's broadcasting system. A review of the Commission's existing dispute resolution mechanisms forms part of that public consultation.

## Background

1. DHX Television Ltd., carrying on business as WildBrain Television (WildBrain), operates the children's service Family Channel and its multiplex children's services Family Jr., WildBrain TV and Télémagino (collectively, the WildBrain services).
2. Bell Canada (Bell) and Bell Media Inc. are owned by BCE Inc. Bell operates licensed and exempt terrestrial broadcasting distribution undertakings (BDUs) serving various locations in Canada. Bell also operates affiliated BDUs, including Câblevision du Nord de Québec inc., Groupe Maskatel GP Inc. (and its general partner), and Télé-Int-Tel Inc.
3. Bell ExpressVu Limited Partnership (owned in partnership by Bell as a limited partner and Bell ExpressVu Inc. as the general partner) is the licensee of the national direct-to-home (DTH) distribution undertaking operating as Bell TV. Bell Media Inc. owns multiple programming services as well as Crave, a subscription-based video-on-demand service that distributes a variety of programming.
4. On 5 July 2023, WildBrain filed an application against Bell and its owned and affiliated BDUs alleging undue preference pursuant to section 9 of the *Broadcasting Distribution Regulations* (the BDU Regulations). WildBrain contended that Bell is giving undue preference to the children's services provided by Corus Entertainment Inc. (Corus) and to its own subscription-based video-on-demand service, Crave, and is putting WildBrain at an undue disadvantage.
5. On 8 September 2023, Bell filed a response to WildBrain's complaint. It argued that there is no unjust discrimination or undue preference and that the services cited by WildBrain are not comparable to the WildBrain services. The same day, Corus filed an intervention disputing WildBrain's characterization of its services. Corus submitted that it strongly denied that its discretionary services receive any favourable treatment from Bell and urged the Commission not to establish any unique terms favouring WildBrain's services on that basis. On 18 September 2023, WildBrain submitted a reply reiterating the arguments it made in its application.
6. On 16 and 26 October 2023, Bell filed additional letters with the Commission after the public record closed, arguing that they would clarify the record. On 30 October 2023, WildBrain objected to the filing of Bell's letters on the grounds of procedural fairness.
7. This dispute raises important matters relating to the changing environment for the distribution of linear programming services, particularly with respect to the children and

youth genres. With the increasing availability of content on online platforms, Canadians face a corresponding increase in choice with respect to their viewing habits.

### **Regulatory framework**

8. Paragraph 10(1)(h) of the *Broadcasting Act* (the Act) authorizes the Commission, in furtherance of its objects, to make regulations for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings.
9. BDUs and programming undertakings can make use of the dispute resolution regime by virtue of the provisions set out in applicable conditions of service and in sections 12 to 15.02 of the BDU Regulations and sections 14 and 15 of the *Discretionary Services Regulations*, which were enacted pursuant to paragraph 10(1)(h) of the Act.
10. The standstill rule, set out in section 15.01 of the BDU Regulations, states that during a dispute concerning carriage or terms of carriage, the licensee shall continue to distribute the programming services at the same rates and on the same terms and conditions as it did before the dispute, until an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter. The standstill rule applies automatically upon the filing of a notice of dispute.
11. Furthermore, section 9 of the BDU Regulations provides that a licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. It further states that 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.
12. The appendix to Broadcasting Regulatory Policy 2015-438 sets out the Commission's Wholesale Code, adherence to which is imposed by conditions of service. The Wholesale Code guides certain aspects of commercial arrangements between BDUs and programming services.

### **WildBrain's position**

13. According to WildBrain, Bell has breached its obligations under section 9 of the BDU Regulations. Specifically, WildBrain argued that Bell has subjected the WildBrain services to negative treatment in comparison to other children's services. In WildBrain's view, its services have performed well over time in relation to other services and will continue to do so.

### **Bell's position**

14. According to Bell, its treatment of WildBrain's services is in no way contravening its regulatory obligations or mistreating WildBrain. Bell submitted that the Corus services and Crave are dissimilar to the WildBrain services.

## **Corus's intervention and WildBrain's reply**

15. In its intervention, Corus strongly denied that its discretionary services receive any favourable treatment from Bell. It urged the Commission not to establish any unique carriage terms favouring WildBrain's services.
16. In its reply, WildBrain submitted that any advantageous treatment of Corus is a result of disadvantageous treatment of the WildBrain services by Bell and not a result of any actions by Corus.
17. WildBrain further submitted that its children's programming services play a large role in the Canadian broadcasting system and contribute to Canadian programming and broadcasting policy objectives in a way that is distinct from the Corus services.

## **The Commission's approach to dealing with undue preference complaints**

18. When the Commission examines a complaint alleging an undue preference or an undue disadvantage, it must first determine whether there is a preference or disadvantage, generally defined as dissimilar treatment of comparable entities.<sup>1</sup> The threshold to establish a preference or disadvantage is relatively low; however, once met, the Commission must determine whether that preference or disadvantage is undue.<sup>2</sup>
19. This involves the Commission considering whether the preference or disadvantage has had, or is likely to have, a material adverse impact on the complainant or on any other person, as well as any impact the preference or disadvantage has had, or is likely to have, on the achievement of the objectives set out in the Act.

## **Issues to consider**

20. After examining the record for this application, the Commission considers that it must address the following issues:
  - Should the Commission add the additional letters that Bell filed after the close of record for this dispute to the record of the proceeding?
  - What are the comparable entities for the purpose of the current complaint?
  - Has Bell given a preference to the Corus services or subjected the WildBrain services to a disadvantage?
  - If so, is the preference or disadvantage undue?

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<sup>1</sup> In Broadcasting Decision 2019-427, the Commission stated that the term "comparable" should not be strictly defined, as its meaning depends on the context of a dispute and is best assessed on a case-by-case basis.

<sup>2</sup> The burden of establishing whether that preference or disadvantage is not undue rests with the person giving the preference or disadvantage.

**Should the Commission add the additional letters that Bell filed after the close of the record for this dispute to the record of the proceeding?**

21. After examining the record of this application, the Commission considers that Bell did not sufficiently justify the need to include the additional letters on the record, given they were submitted after the close of the record. Accordingly, the Commission will not include the additional submissions by Bell on the public record of the proceeding and those submissions will not form part of the Commission's consideration of the current undue preference complaint.

**What are the comparable entities for the purpose of the current complaint?**

22. After examining the record of this application, the Commission is of the view that the WildBrain services should be considered as comparable to those of Corus based on their genre of programming and target audience. Specifically, the WildBrain services and the Corus services air children's programming that is aimed at a similar audience.

23. With respect to Crave, given the nature of the service and the wide variety of programming that it provides, it is the Commission's view that Crave is not a comparable service for the purposes of the current complaint.

**Has Bell given a preference to the Corus services or subjected the WildBrain services to a disadvantage?**

24. The affiliation agreement between Bell and WildBrain was filed with the Commission in confidence. Affiliation agreements negotiated between BDUs and programming services generally include the duration of the agreement, the financial compensation to be paid by the BDU to the programming service for carriage rights, as well as commitments by BDUs with respect to the packaging and marketing of services. The Commission's conclusions in this case are based on its analysis of the terms and conditions of this confidential agreement and of the Commission's applicable regulatory framework.

25. In the Commission's view, Bell's actions do not contravene the confidential affiliation agreement or its regulatory obligations as a licensed BDU.

26. In light of the above, the Commission finds that Bell has not given a preference to the Corus services and has not subjected the WildBrain services to a disadvantage.

**Is any preference or disadvantage undue?**

27. Given the Commission's finding set out in paragraph 26, it is unnecessary for the Commission to reach a decision regarding whether any preference or disadvantage is undue.

**Conclusion**

28. The Commission considers that Bell's actions do not contravene the Commission's regulatory framework, including the BDU Regulations, as well as Bell's conditions of service.

29. The Commission determines that Bell, in regard to the distribution of Family Channel and its multiplex children's services, Family Jr., WildBrain TV and Télémagino, has not given a preference to the comparable programming services offered by Corus and has not subjected WildBrain to a disadvantage.
30. Accordingly, the Commission dismisses the complaint by DHX Television Ltd., carrying on business as WildBrain. The Commission encourages the parties to continue pursuing a negotiated solution, if possible.
31. The Commission reminds broadcasting undertakings that the undue preference mechanism in the BDU Regulations and in the *Discretionary Services Regulations* should not be relied upon to insulate a given service from the impacts of greater consumer choice such as through the provision of an effective access right or to create leverage in negotiations.
32. The Commission notes that this decision was made under the existing regulatory framework. As part of its broader [regulatory plan](#) to implement the modernized Act, the Commission has launched a public consultation<sup>3</sup> to examine the market dynamics between small, medium and large programming, distribution and online services, as well as the tools available to ensure the sustainability and growth of Canada's broadcasting system. A review of the Commission's existing dispute resolution mechanisms forms part of that consultation.

Secretary General

### **Related documents**

- *Notice of hearing – The Path Forward – Working towards a sustainable Canadian broadcasting system*, Broadcasting Notice of Consultation CRTC 2025-2, 9 January 2025
- *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
- *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 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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<sup>3</sup> See Broadcasting Notice of Consultation 2025-2.