



7 November 2022

Filed online

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services, [Broadcasting Notice of Consultation CRTC 2022-272](#) (Ottawa, 6 October 2022)*

Please find attached the Forum's intervention in the above-noted proceeding, opposing TVA's 19 June 2020 application to remove advertising limits for its own and all other Canadian discretionary programming services.

Should the CRTC decide to hold a public hearing about this application, the Forum would appreciate the opportunity to appear before the CRTC hearing panel to set out its views.

Regards,

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Québecor's application to drop time limits on its discretionary services:

Insufficient evidence

Call for comments on an application by TVA to remove the advertising time limit of 12 minutes per clock hour on its discretionary services and on the possibility of removing this limit for other discretionary services

[Broadcasting Notice of Consultation 2022-272](#) (Ottawa, 6 October 2022)

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Executive Summary

- ES 1** The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications.
- ES 2** Québecor is one of Canada's largest communications companies and holds licences for nine discretionary programming services, two of which it acquired in early 2019. In June 2020 it asked the CRTC to amend these licences by dropping their 12-minute limit on national advertising. On 6 October 2022 BNoC 2022-272 invited public comment on Québecor's request and on removing the advertising limit for all discretionary programming services.
- ES 3** As the application provides insufficient evidence of the benefits resulting from a reduction in or dropping of the advertising limit on discretionary services and no substantive evidence about its proposal's benefits for Canada's broadcasting system, the Forum opposes approval of the application.
- ES 4** Before setting out its position on the application's arguments and evidence, FRPC expresses its concerns about the 27 months it took for the CRTC to publish Québecor's application. Such a delay may (due to Québecor's size) merely inconvenience the company. Yet – suppose the proposal had merited approval when it was made in June 2020 and if approved, could have benefitted Canada's broadcasting system: the CRTC's actual delay means that the system and audiences alike would have lost those benefits for the past two years. Such delays do not serve the public interest.
- ES 5** FRPC's intervention provides context for Québecor's application in Part II, describing the discretionary programming sector and the CRTC's general approach to licensees' requests for the amendment of their conditions of licence. There are currently almost twice as many – *i.e.* 170 – discretionary programming services in operation as there are private conventional TV stations. Discretionary services' revenues have accounted for 67% of total broadcast programming services' revenues since 2017. While discretionary revenues dropped in 2020, they began to recover in 2021 and at a more rapid pace than private TV or radio stations. National advertising – 'advertising purchased at a national rate and receiving national distribution by a service' – amounted to nearly half (48.2%) of discretionary services' revenues in the period from 2017 to 2021.
- ES 6** Québecor's nine discretionary services collectively lost money in 2017 and 2018, but became profitable in 2019. These services accounted for 3.5% of all discretionary services' national advertising revenues in 2017 and 5.2% in 2021. Moreover, Québecor's total national advertising revenues from its discretionary services increased 39.7% (from \$45.6 million to \$63.8 million) over this period.
- ES 7** Part III of FRPC's intervention addresses the arguments and evidence in Québecor's application. While Québecor argues that foreign online programming services' advertising revenues are growing and threaten

- ‘traditional Canadian broadcasters’, examination of the data it cites shows that online services amounted to just under 8% of total television advertising revenue in 2021, up from 5.0% in 2017.
- ES 8** Québecor also argued that dropping the national advertising limit would promote healthier competition in the French-language discretionary services’ sector – yet, since Québecor’s share of French-language discretionary services’ total revenues has increased from 24.5% in 2017 to 37.9% in 2021, Québecor is itself already a dominant broadcaster in the province, ensuring that it may well have the most to gain in that sector from dropping the 12-minute advertising limit.
- ES 9** As well, Québecor argued that flexibility regarding the 12-minute advertising limit would enable French-language broadcasters to support French-language programming. Closer analysis of the data provided by Québecor shows that discretionary services’ national advertising revenues amounted to 37.7% of national television advertising volume in 2020 (estimated by thinkTV), while online programming platforms’ national advertising revenues represented just 7.4%. It is unclear whether online platforms represent a greater threat to individual broadcasters than other discretionary services. Even if they did, the question for which the *Broadcasting Act* requires an answer is whether removing the 12-minute limit would increase the quality and/or the amount of Canadian programming, and if so, by how much. As Québecor filed such information in confidence with the Commission it is impossible to comment on it – but FRPC notes that the profits before interest and taxes of Québecor’s discretionary services have been steadily growing since 2017, even taking TVA Sports’ \$10.1 loss in 2021 into account. Respectfully, Québecor has the means at its disposal to strengthen its programming if it wishes to make this investment.
- ES 10** Québecor proposes that if the CRTC does not grant its amendment application, it should exclude promotions of foreign programs and feature films from the definition of national advertising. The abridged version of the application does not estimate the impact of this change on total advertising time, revenues or audiences. Nor does it clearly explain how permitting either Québecor or all discretionary services to advertise non-Canadian programming without limit will strengthen Canada’s broadcasting system or help to implement Parliament’s broadcasting policy that, as is generally known, exists to support the production and broadcast of high-quality Canadian programming. Even if the CRTC were to grant this aspect of Québecor’s application, the Forum would strongly oppose its application to Québecor’s children’s programming service, YOOPA: this service should promote Canadian programming for young Canadians, not foreign programming.

- ES 11** The Forum’s arguments about Québecor’s application begin by analyzing the programming of Zeste, as the CRTC had identified non-compliance of this service with its Canadian content requirements in 2015/16, before it was acquired by Québecor. The CRTC’s general practice has been to deny amendment applications when applicants are non-compliant with its regulatory requirements. Zeste’s program logs for September 2022 showed that it exceeded the CRTC’s Canadian content requirements during the day (48.3% Canadian) and evening (61.4% Canadian) periods.
- ES 12** FRPC also analyzed the program logs of LCN, TVA Sports and YOOPA with respect to advertising time. Between September 2020 and September 2022 the number of ads, the total time devoted to advertising and the average minutes of advertising per hour on LCN and TVA Sports all increased, suggesting either that Québecor has strengthened its sale of advertising or that the economy is recovering from the pandemic. In either case, Québecor’s need for the amendment it is seeking may no longer be pressing. (As for YOOPA, FRPC noted that Québecor has reduced advertising on that service – a change that in our view benefits the service’s younger viewers and for which Québecor should be congratulated.)
- ES 13** The Forum also notes that Québecor has for some time called on the CBC to withdraw from advertising. The Forum agrees with Québecor: the Corporation’s phased withdrawal from advertising could strengthen the revenue base of the private element in Canada’s broadcasting system, while returning CBC to its legislative mandate of public service. The CBC’s role in broadcast advertising is relevant to Québecor’s application and BNoC 2022-272, and the Forum respectfully submits that this application emphasizes the necessity for the Commission to take the matter of advertising by the national public broadcaster into account when it reconsiders and rehears the CBC’s renewal application.
- ES 14** Even if Québecor’s financial position had demonstrated serious need for additional revenues to ensure its survival – a case that the CRTC’s financial information does not support – approving Québecor’s application must materially strengthen the implementation of Parliament’s broadcasting for Canada. From 2017 to 2021, Québecor’s discretionary services allocated \$731 million to Canadian programming – and three of its services reduced such expenditures over this period. Would the amendments proposed by Québecor reverse this trend, and if so – by how much? The CRTC should only grant this application if it strengthens Canadian programming, while not negatively affecting other broadcasters (that also bear Canadian programming requirements).
- ES 15** Finally, the Forum has responded to the questions posed by the CRTC in BNoC 2022-272 in Part IV.

I. Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament’s broadcasting policy for Canada. The Forum’s intervention regarding the application filed by Québecor in June 2020 to remove the CRTC’s current 12-minute/hour limit on national advertising from the company’s discretionary services – an application that the CRTC published in September 2022 – follows in Part II below. The Forum respectfully submits that insufficient evidence exists to show the necessity of this amendment to the applicant’s discretionary-service business, and that the benefits of granting the amendment for the broadcasting system and Canadians are also unclear.
- 2 On a procedural note, the Forum agrees with Québecor’s submission that the CRTC’s 27-month delay in processing its June 2020 application has been excessive.¹ While Québecor submitted its application on or around 19 June 2020 and answered the CRTC’s questions about confidentiality in mid-October 2020,² the CRTC did not even publish the application until 6 October 2022,
- 3 The pandemic that began in early 2020 may account for some of this 27-month delay. The pandemic led the CRTC in April 2020, for example, to postpone the CBC renewal process that had begun eight months previously (see [Broadcasting Notice of Consultation 2019-379-2](#)).
- 4 The CRTC’s notice of consultation about Québecor’s application does not explain the Commission’s delay in seeking the public’s comments about the application – and disingenuously fails to provide the casual reader with the date on which Québecor actually submitted its request.

1991 *Broadcasting Act*, s. 9(1)(a):

9 (1) Subject to this Part, the Commission may, in furtherance of its objects,

(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and

...

(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission’s own motion;

¹ Québecor, *Québecor Média inc., au nom de Groupe TVA inc. - Demande de la Partie 1 visant à modifier les conditions de licence relatives aux limites de temps de publicité pour ses services facultatifs*, DM#4227183 (Montréal, 15 August 2022), at para. 6.

² Québecor, *Réponses de Québecor Média inc. au nom de Groupe TVA inc. - Demande de la Partie 1 visant à modifier les conditions de licence relatives aux limites de temps de publicité pour ses services facultatifs*, Applicant’s reply (19 October 2020), DM#4227190, at para. 1.

- 5 Delays in the processes of administrative tribunal may have important or negligible effects, depending on the parties subjected to the delays.³
- 6 The parties in this proceeding consist of the applicant – but also the broadcasting system and Canadians. As one of the largest vertically integrated communications companies in Canada, Québecor has been able to survive the 2.3 year waiting period imposed by Commission for unknown reasons. It is probable, however, that this unexplained procedural delay has raised ongoing uncertainties for its sales and programming strategies for the 2021/22 and 2022/23 broadcast years.
- 7 Yet the Commission exists to ensure the implementation of Parliament’s broadcasting policy for Canada: if the CRTC grants the application solely for Québecor or for all discretionary services, the Commission’s delay may have ‘cost’ the broadcasting system two years of additional expenditures on Canadian programming, and may have cost audiences at least a year of lost opportunities to watch such programming.
- 8 As these costs cannot be ‘made up’ and cannot be compensated by imposing additional programming requirements at a later date, they are unreasonable.
- 9 Nor is it true that delaying its consideration of Québecor has made the CRTC’s decision in this matter any easier. Perhaps the Commission thought – in fall 2020 – that a brief delay might enable it to consider the Québecor application under the provisions of a new *Broadcasting Act*. However, Parliament did not enact Bill C-10 and Québecor (and other discretionary services) may now be in a ‘worse’ place than they were two years ago. As Québecor notes, both ‘cord-cutting’ and ‘cord-shaving’ have continued since 2020 and, indeed, are likely to strengthen over the next year as Canadians cope with consumer inflation levels that have doubled compared with 2021 (6.9% in September 2022 vs 3.4% average for 2021⁴).
- 10 The Forum respectfully submits that as the decision-making tribunal delegated by Parliament to regulate and supervise Canada’s broadcasting system, the CRTC bears a duty to perform its regulatory and supervisory responsibilities reasonably – even if its timelines must shift to accommodate work undertaken during a global pandemic. Effectively placing Québecor’s application on a two-year hold does not,

³ See e.g. *I.P.P. v. Canada (Citizenship and Immigration)*, [2018 FC 123](#), citing *Rana v Canada (Minister of Citizenship and Immigration)*, [2005 FC 974](#), at para. 288, citing von Finckenstein J. as he then was, who in turn (citing a line of caselaw) to the effect that “It cannot now be doubted that the principles of natural justice and the duty of fairness which are part of any administrative civil proceeding include the right to a fair hearing, and that delay in the performance of a legal duty may amount to an abuse that the law will remedy In our view, a delay in the proceedings of an administrative tribunal which has not been caused by the applicant will only give rise to prohibition where it is such that it prevents the tribunal from adequately fulfilling its legislative mandate in accordance with the requirements of natural justice.”

⁴ Statistics Canada, *Consumer Price Index Portal*, https://www.statcan.gc.ca/en/subjects-start/prices_and_price_indexes/consumer_price_indexes.

in our view, meet the threshold for reasonable performance by the federal regulator, any more than did the 2 ½ year-long process applied to renew CBC's licences. It has instead created costs that, even if difficult to quantify, are nevertheless real.

- 11 Our submission continues below by providing explanatory context for the CRTC's regulatory framework for discretionary programming services. Part III summarizes the arguments and evidence of Québecor and the Forum. Part IV responds to the questions posed by the Commission in BNoC 2022-272. The Forum's recommendations follow, in Part V.

II. Context of Québecor's application

- 12 In this part the Forum briefly describes the genesis, growth and financial status of licensed discretionary programming services in Canada. It then reviews the criteria used by the CRTC in considering amendments to discretionary programming licences and its general policies.

A. *Discretionary programming services in Canada*

- 13 Discretionary programming services delivered by satellite were first considered by the CRTC in 1978.⁵ It authorized pay television services in 1982,⁶ and 'specialty services' – "narrowcast television programming designed to reflect the particular interests and needs of different age, language, cultural, geographic, or other

⁵ CRTC, *Report on Pay Television* (Ottawa, 13 March 1978). The CRTC concluded that because the proposals it had received the previous summer would not ensure that predominantly Canadian resources would be used to develop Canadian programming for pay TV, it could not recommend introducing pay TV.

⁶ In *Pay Television*, Decision CRTC 82-240 the CRTC granted 6 pay television licences (First Choice, Allarcom's Alberta Independent Pay Television, Ontario Independent Pay Television, Star Channel Services Ltd., Lively Arts Market Builders Inc., and World View Television) but decided not to regulate either the wholesale or retail rates charged by the licensees:

... the Commission is cognizant of the complexity, the regulatory workload and the paper burden inherent in the establishment of an effective retail rate regulation system given the difficulties in determining elasticity of demand for these new services and the different cost structures of the hundreds of potential exhibitors. Accordingly, the Commission will not at this time regulate the retail rate for pay television licensees. Licensees and potential exhibitors are encouraged to arrive at negotiated retail rates which compensate exhibitors for their costs and provide them with a fair return on their investments without undermining the Commission's objectives for pay television."; CRTC also proposes pay television network regulations,

groups” – in 1985.⁷ Its first major licensing initiative took place in 1987, when it licensed ten discretionary services.⁸

- 14 While the CRTC initially regulated the rates charged to BDU subscribers to receive specialty programming services, the CRTC has long since stopped regulating the subscriber rates charged by broadcasting distribution undertakings (BDUs) to receive discretionary services, with one exception. It continues to regulate the rates charged for national-interest services that must be carried as part of BDUs’ basic programming service (under subsection 9(1)(h) of the Broadcasting Act).
- 15 As part of its *Let’s Talk TV* policy review, the CRTC set out *Standard requirements for television stations, discretionary services, and on-demand services*.⁹ These apply to the 170 discretionary programming services operating in Fall 2021:

Table 1 Licensed discretionary programming services in 2021

Types of discretionary programming services in 2021	Number	%
Specialty (category A service)	6	3.5%
Specialty (category B service)	4	2.4%
Specialty (category C service)	2	1.2%
Subtotal, Specialty	12	7.1%
Discretionary Service	127	74.7%
Discretionary Service (Mainstream Sports)	5	2.9%
Discretionary Service (Mainstream Sports) & Network – Television	1	0.6%
Discretionary Service (National News)	2	1.2%
Subtotal, Discretionary	135	79.4%
Pay-per-view programming	7	4.1%
Video-on-Demand	3	1.8%
On-demand Service (Video-on-demand)	11	6.5%

⁷ *APPLICATION FOR A NETWORK LICENCE TO DISTRIBUTE AN ENGLISH-LANGUAGE CANADIAN HEALTH AND LIFESTYLE SPECIALTY PROGRAMMING SERVICE*, Decision CRTC 85-141 licensed The Life Channel, an English-language, discretionary specialty television service that went out of business in November 1986 (See PN CRTC 1987-260).

⁸ The CRTC licensed nine specialty television programming services and one pay television programming service: Canal Famille, Meteomedia, MusiquePlus, CBC Newsworld, RDS, TV5, Vision, WTN [Women’s Television Network] and YTV, and the Family Channel (pay). *INTRODUCTORY STATEMENT TO DECISIONS CRTC 87-895 TO 87-906: CANADIAN SPECIALTY AND PAY TELEVISION SERVICES*, [Public Notice CRTC 1987-260](#) (Ottawa, 30 November 1987).

⁹ [Broadcasting Regulatory Policy CRTC 2016-436](#) (Ottawa, 2 November 2016). The legality of imposing not regulations but identical conditions of licence on entire classes of licensee despite Parliament’s admonition in subsection 9(1)(b)(i) that these conditions be “related to the circumstances of the licensee” is of some relevance to this proceeding but has not been raised by the CRTC in this (or indeed any) notice of consultation.

The relevance of the issue is that Parliament gives the CRTC the discretion in subsection 10(2) to make regulations for licensees of one or more classes, and the CRTC presumably believes that this discretion overrides the “related to the circumstances” limitation in subsection 9(1)(b)(i): “10.(2) A regulation made under this section **may** be made applicable to all persons holding licences or to all persons holding licences of one or more classes.”

Types of discretionary programming services in 2021	Number	%
On-demand Service (Pay-per-view direct-to-home)	2	1.2%
Subtotal, PPV and on-demand	23	13.5%
Total, all discretionary services	170	100.0%

Source: CRTC, Individual pay and specialty services, 2017-2021

16 The CRTC generally permits all discretionary programming services¹⁰ to solicit and sell advertising time, provided the advertisements are for ‘national’ advertising. In 2011, the CRTC defined “paid national advertising” to “mean advertising material as defined under the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.”¹¹

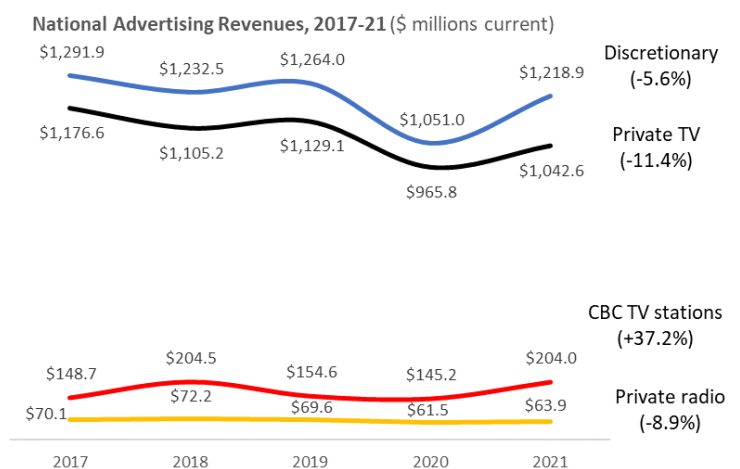
17 Discretionary programming services now account for two-thirds (67%) of the revenues of Canadian programming services, and almost half – 48.2% - of all national advertising revenues: Table 2.

Table 2 National advertising revenues in broadcasting, 2017-2021 (\$ millions current)

National advertising revenues (\$M)	2017	2018	2019	2020	2021	%, 2021
Discretionary	\$ 1,291.93	\$ 1,232.48	\$ 1,263.99	\$ 1,051.03	\$ 1,218.94	48.2%
Private TV	\$ 1,176.59	\$ 1,105.19	\$ 1,129.13	\$965.84	\$ 1,042.59	41.2%
CBC TV (excludes appropriation)	\$148.66	\$204.51	\$154.61	\$145.18	\$204.00	8.1%
Radio	\$ 70.14	\$ 72.19	\$ 69.60	\$ 61.53	\$ 63.87	2.5%
Total national advertising	\$ 2,687.32	\$ 2,614.37	\$ 2,617.33	\$ 2,223.59	\$ 2,529.40	100.0%
Discretionary as % of national adv'g	48.1%	47.1%	48.3%	47.3%	48.2%	
Total revenues, above services	\$ 4,365.20	\$ 4,248.02	\$ 4,234.22	\$ 3,930.10	\$ 3,960.00	
Discretionary as % of total revenues	66.5%	66.0%	66.6%	68.1%	66.5%	
CBC TV as % of total revenues	5.5%	7.8%	5.9%	6.5%	8.1%	

18 With the exception of the CBC, national advertising revenues of Canadian licensed programming services were declining or flat from 2017 to 2019. The global pandemic apparently hit ad revenues hardest in 2020, with recovery beginning in 2021. Only the TV stations of the Canadian Broadcasting Corporation (CBC) show actual revenue growth between 2017 and 2021, however: 37.2% - see **Error! Reference source not found.** Over the past five years CBC TV stations’ share of national

Figure 1 National advertising revenues by medium, 2017-2021



Source: CRTC, *Statistical and Financial Summaries* (2017-2021)

¹⁰ [Broadcasting Regulatory Policy CRTC 2016-436](#) dropped the CRTC’s prohibition on the broadcast of advertising by pay television services (para. 33).

¹¹ [Broadcasting Regulatory Policy CRTC 2011-443](#), Appendix 1.

advertising revenues has grown by over half, from 5.5% to 8.1%.

B. *Amendments to discretionary services' conditions of licence*

19 In considering broadcasters' applications to amend conditions of their licence(s) the CRTC must follow its enabling legislation, should ensure that its [Rules of Practice and Procedure](#)¹² are met unless it has reason not to do so, and may consider how it has previously addressed similar requests.

PART II

Objects and Powers of the Commission in Relation to Broadcasting

Objects

Objects

5 (1) Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

PARTIE II

Mission et pouvoirs du conseil en matière de radiodiffusion

Mission

Mission

5 (1) Sous réserve des autres dispositions de la présente loi, ainsi que de la *Loi sur la radiocommunication* et des instructions qui lui sont données par le gouverneur en conseil sous le régime de la présente loi, le Conseil réglemente et surveille tous les aspects du système canadien de radiodiffusion en vue de mettre en œuvre la politique canadienne de radiodiffusion.

20 Parliament's enabling legislation in broadcasting is currently the [1991 Broadcasting Act](#). (Parliament has yet to enact Bill C-11, which amends the 1991 Act.)

21 The Act empowers the Commission to grant or deny broadcasters' applications to amend conditions of their licences but does not otherwise impose requirements for such decisions – except, importantly, that the decisions it makes about licences must be “in furtherance of its objects” (s. 9(1)). Parliament stipulates that these objects require the CRTC to regulate and supervise broadcasters “with a view to implementing the broadcasting policy” in subsection 3(1) of the Act (s. 5(1)).

22 The *Broadcasting Act* also permits the CRTC to regulate and supervise broadcasters “in a flexible manner” that adapts readily to the different circumstances and conditions of English-language and French-language broadcasters (s. 5(2)(a)). If the Commission must choose between regulatory flexibility and Parliament's broadcast policy objectives, however, Parliament explicitly desires that the Commission give the 3(1) broadcasting policy primary consideration (subsection 5(3)).

Conflict

(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

Conflit

(3) Le Conseil privilégie, dans les affaires dont il connaît, les objectifs de la politique canadienne de radiodiffusion en cas de conflit avec ceux prévus au paragraphe (2).

23 The CRTC's *Rules* require applicants to set out the “statutory or regulatory provisions under which the application” is being made, and to provide “a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought” (subsections 22(2)(d) and (e)).

¹² [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#), SOR/2010-277.

24 Previous decisions by the CRTC about discretionary services' applications to amend their conditions of licence raise additional factors that may be relevant to Québecor's application. For example, in Broadcasting Decisions CRTC [2020-317](#) (TV 5) and [2020-189](#) (Blue Ant), the CRTC assessed the amendment's impact on programming, opposition to the amendment, the necessity for a "holistic" review of amendments with interrelated effects, evidence of impact of over-the-top streaming services and evidence of the applicant's "compelling need" – based on subscribers, subscriber revenues and expenses – that would "ensure the financial viability" of the programming services at issue in terms of profitability.

C. *Québecor's discretionary services*

25 The CRTC renewed the seven discretionary service licences held by Québecor in May 2017 (Broadcasting Decision CRTC [2017-147](#)), and renewed the company's conventional television station licences at the same time. It commented that while its TVA Network must be distributed as part of the basic BDU package outside of Quebec, TVA "has difficulty monetizing audiences outside Quebec through national advertisers."¹³ Québecor did not at that time ask the CRTC to change the conditions of the LCN and TVA Sports licences for national advertising.¹⁴

26 In 2019, Québecor also obtained the CRTC's approval of the company's acquisition of two more discretionary services: *Évasion* and *Zeste*. The company said that these services would "diversify [its] offering of television content for viewers and advertisers" and that its company planned "extensive efforts to increase their reach and grow their audiences on all content delivery platforms".¹⁵ The CRTC's view was that Québecor's acquisition "will foster the viability and growth of *Évasion* and *Zeste*, will generate investments in the Canadian broadcasting system and will allow additional support for the creation of Canadian programs, programs of national interest and original programs."¹⁶

27 Québecor therefore currently holds nine discretionary service licences, 2 of which it has held since 2019. Québecor's discretionary services collectively lost money (negative profits before interest and taxes) in 2017 and 2018, but became profitable in 2019. The main cause of Québecor's losses appears to be TVA Sports; while it remains unprofitable, its losses are decreasing: Figure 2.

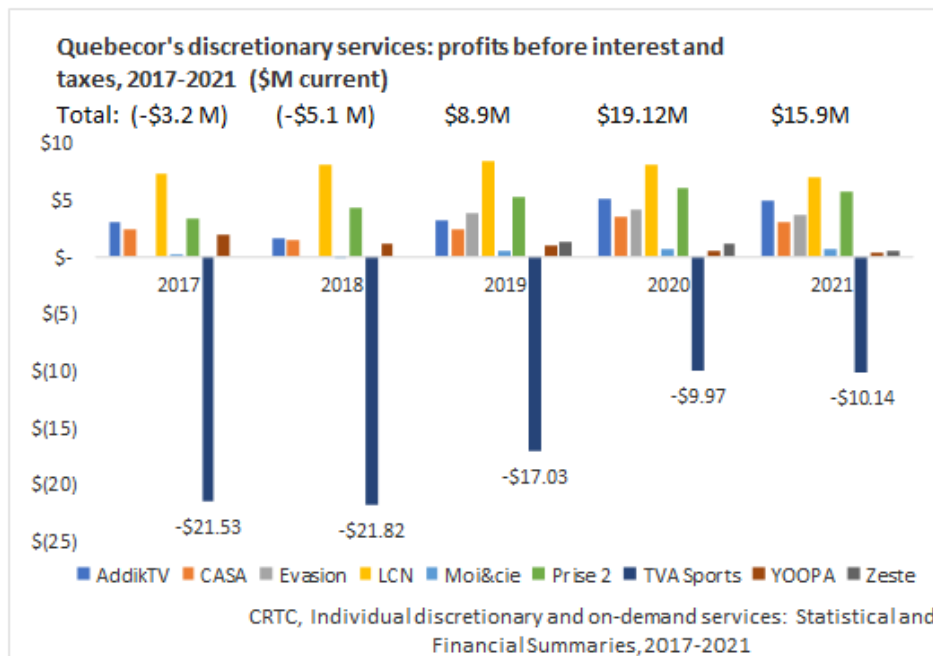
¹³ [Broadcasting Decision CRTC 2017-147](#), para. 72.

¹⁴ Broadcasting Decision CRTC 2017-147, para. 89.

¹⁵ Québecor, "CRTC approves acquisition of *Évasion* and *Zeste* specialty channels by TVA Group" [News release \(14 January 2019\)](#).

¹⁶ *Zeste and Évasion – Change in ownership and effective control*, [Broadcasting Decision CRTC 2019-6](#), (Ottawa, 14 January 2019), at para. 31.

Figure 2 Québec's discretionary services' profits before interest and taxes, 2017-2021



28 As for national advertising revenues, Québec's discretionary services' share of all discretionary services' national advertising revenues has increased from 3.5% in 2017, to 5.2% in 2021, and its total revenues have increased by 39.7% (from \$45.6 million to \$63.8 million)

Figure 3 Québec's discretionary services' national advertising revenues, 2017-2021



III. Discretionary service advertising: arguments and evidence

- 29 This section sets out arguments and evidence related to the current limit on discretionary programming services' national advertising time, beginning with those of Québecor and ending with those of FRPC.
- 30 The Forum notes in this context that Québecor's amended application refers to the CRTC's 22 June 2022 decision renewing CBC's licences and maintaining its exemption of CBC's online programming services.
- 31 As Cabinet returned Decision CRTC 2022-165 to the CRTC for reconsideration and rehearing on [16 September 2022](#) FRPC respectfully submits that the matter of CBC's determined and growing search for advertising revenue is now both material and relevant to this application.

A. Québecor's arguments for its main proposal

- 32 Québecor has presented several arguments in support of its proposal that the CRTC drop or relax the condition of licence limiting its sale of national advertising time on its discretionary services.

1. CRTC's current limit on advertising time unduly favours foreign online platforms

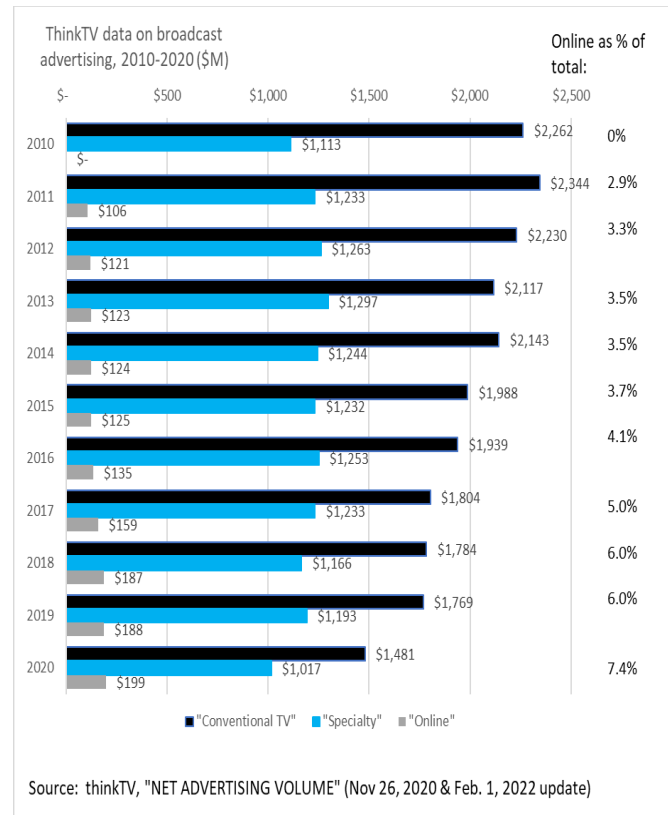
- 33 Québecor argues that the national-advertising limit for discretionary services gives foreign online platforms an advantage over its regulated services: "... Libres de toute réglementation, ces services de vidéo sur demande accroîtront encore davantage l'exode des revenus publicitaires des radiodiffuseurs traditionnels canadiens vers les plateformes étrangères de diffusion en ligne."¹⁷
- 34 Its evidence is that the Canadian advertising market has decreased by 3% on average from 2010-2020 and that over the same period, Canadian discretionary services' share of TV advertising decreased from 10% to 7%,¹⁸ while online platforms' share of advertising increased from 20% in 2010 to 66% in 2020.

¹⁷ Québecor, *Québecor Média inc., au nom de Groupe TVA inc. - Demande de la Partie 1 visant à modifier les conditions de licence relatives aux limites de temps de publicité pour ses services facultatifs*, DM#4227185, (Montréal, 19 June 2020 as am. 15 August 2022), para. 8.

¹⁸ *Ibid.*, at para. 9.

35 The online advertising share data cited by Québecor were published by thinkTV.¹⁹ The Forum respectfully submits that these data require additional context, specifically with respect to online TV services' overall share of television advertising.

Figure 4 thinkTV estimates of online advertising's share of total TV advertising



36 As Figure 4 indicates, online services are, as Québecor argued, growing. At present, however, they do not represent a major threat to Canadian television services because, as of 2020, they accounted for just under 8% of total television advertising revenue: see Figure 4. (It is also somewhat unclear whether the online television revenue data include or exclude Canadian online services.) 'Specialty' TV services, on the other hand, amounted to 33% of thinkTV's estimated total TV advertising in 2010 and 37.7% in 2020.

37 The Forum agrees that Parliament must amend its broadcasting legislation to specifically incorporate online programming services into Canada's broadcasting system. At this time, however, the evidence to support Québecor's contention that online services are effectively 'taking' national advertising revenues from its discretionary services is not clear.

2. Removing limit will restore healthier competition to French-language market

38 Québecor argues as well that the CRTC's removal of the national-advertising limit will restore healthier competition to the French-language market. It notes that the average advertising price on French-language discretionary services is \$285, an amount that is five times lower than the "coût brut" price in the anglophone market (\$1,296).²⁰ CRTC permitted Bell to acquire V Interactions, making Bell a

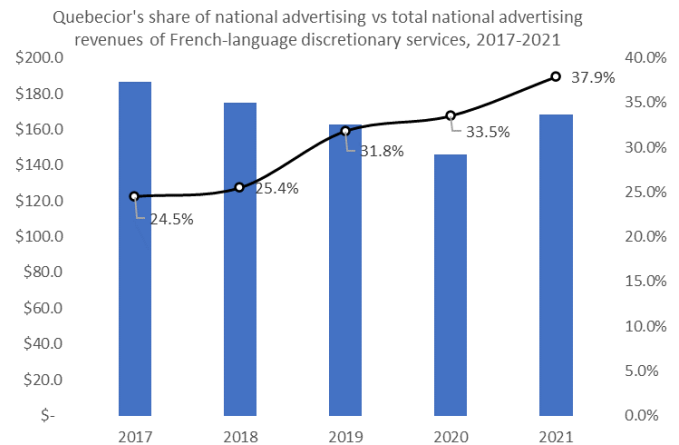
¹⁹ See https://thinktv.ca/wp-content/uploads/2018/05/2020-Net-Ad-Volume-new-IAB-format-Newspaper-Revenue_Jan27_2022-StatsCan-Update.pdf and <https://thinktv.ca/wp-content/uploads/2018/05/thinktv-NAV-Nov-26-2020.pdf>.

²⁰ DM#4227185, para. 22, citing to Québecor's intervention in 2019-358, at p. 24.

dominant participant in both English- and French-Canada.²¹ It expressed its concerns about the growing strength of Bell in Québec’s market, noting that in 2018 its services accounted for 47% of the Francophone market.²² Québecor also said that while Remstar holds the licences for V’s discretionary services, Bell controls their sales.²³

39 The Forum agrees that— absent other concerns such as the necessity for the CRTC to implement Parliament’s broadcasting policy in subsection 3(1) of the Act – it is preferable for the CRTC to promote healthy competition. Since 2013 FRPC has set out its concerns that the CRTC’s determination to strengthen Canada’s broadcasting sector by allowing large media companies to acquire more and more broadcasting licences would not – without clear and enforced requirements – strengthen Canada’s broadcasting sector.

Figure 5 Québecor's share of French-language discretionary services' total national advertising revenues, 2017-2021



40 Indeed, Québecor is already a dominant broadcaster among French-language discretionary services: over the last five years its French-language services’ share of French-language national advertising revenues²⁴ has increased from 24.5% in 2017, to 37.9%.

41 It is quite possible that Québecor’s discretionary services would benefit most from removing the current 12-minute limit on national advertising – whether this is done just for Québecor’s services, or for all French-language discretionary services.

42 Counterintuitively, therefore, the Forum respectfully submits that removing the national-advertising limit may have an anti-competitive, rather than competitive, impact, by benefitting already dominant broadcasters more than their smaller counterparts.

²¹ *Ibid.*, at para. 20.

²² *Ibid.*, at para. 21.

²³ *Ibid.*, at para. 22.

²⁴ Source : CRTC, *Statistical and Financial Summaries: discretionary and on-demand services, 2017-2021*, page 7 (French discretionary services).

3. French-language market needs greater regulatory flexibility to support its programming

- 43 Québecor argues that the migration of advertising revenues to online on-demand services will strengthen the shift of advertising revenues from traditional (“radiodiffuseurs traditionnels canadiens”) to foreign online platforms, to the point that private broadcasters may disappear and deprive Canadians of local information and entertainment.²⁵ Greater regulatory flexibility,²⁶ says Québecor, would help French-language broadcasters support French-language programming.²⁷
- 44 As noted in Figure 4, however, the national advertising revenues of online programming platforms represented 7.4% of total advertising revenues in Canada. This statistic – absent evidence about their share of advertising in the Quebec market – does not provide sufficient support for the argument that the existence of either Québecor or French-language discretionary services is being threatened. To the contrary: as online services’ share of national advertising revenues grew, so did the profits of Québecor’s discretionary services (see Figure 2). To the extent that Québecor was referring to its own services when it spoke of the disappearance of Canadian broadcasters, it is unclear why Québecor would choose to profitable programming services.
- 45 Even if Québecor’s application were granted, it is also somewhat unclear whether Québecor’s programming would change. Québecor says that the additional revenues so generated would allow supplementary investment in ‘local content’ (which may be Quebec-based content, rather than local content as traditionally understood): “... [c]es revenus additionnels permettront des investissements supplémentaires en production de contenu local, ce qui profiterait à l’ensemble de l’écosystème de radiodiffusion francophone, sans pour autant nuire aux autres joueurs de l’industrie” (DM#4227185, para. 23).
- 46 Yet the application elsewhere indicates that Québecor’s programming will not change if the application is granted. It says that viewers’ audiovisual experience will be maintained²⁸ and that approval of its proposed amendment would not lead to changes in its programming:

²⁵ Québecor, *Québecor Média inc., au nom de Groupe TVA inc. - Demande de la Partie 1 visant à modifier les conditions de licence relatives aux limites de temps de publicité pour ses services facultatifs*, DM#4227185, (Montréal, 19 June 2020 as am. 15 August 2022) para 8: “Les radiodiffuseurs privés jouent un rôle fondamental dans la création de contenu local d’information et de divertissement pour les Québécois et Canadiens. Leur disparition entraînerait des conséquences irréversibles sur la souveraineté de notre culture.”

²⁶ *Ibid.*, at para. 10 : “Le Conseil doit tout mettre en œuvre pour soutenir les joueurs canadiens et ce n’est certainement pas en lui imposant des quotas publicitaires qu’il atteindra cet objectif. »

²⁷ *Ibid.*, at para. 14.

²⁸ *Ibid.*, at para. 12 : « Nous notons qu’à la suite de l’Avis de consultation de radiodiffusion CRTC 2007 (ACR 2007-53) qui a déréglé le temps de publicité des chaînes généralistes, l’augmentation du temps

Quebecor Application 1: Answer to question 3(e) in DM#3880786

e. Si cette modification est approuvée, entraînera-t-elle des changements de programmation ?

Non

- 47 The Forum agrees that Parliament must ensure that the broadcasting system explicitly include online broadcasters, so as to strengthen the system – but this application offers no evidence to show that Québecor in particular has been harmed by online services’ share of national advertising, or that Québecor has been specifically disadvantaged to the point that it would have to reduce programming hours or programming quality. Confusion exists as to whether the amendment sought by Québecor would improve the quality or quantity of Canadian programming to the benefit of its audiences or the broadcasting system in general.
- 48 It is equally unclear whether Québecor is still forced to decline advertising from advertisers because its inventory is full, as it has not provided empirical evidence from its program logs showing that all available advertising inventory has consistently been sold.
- 49 Rather, the available evidence is that the profits before interest and taxes (PBIT) of Québecor’s discretionary services have been steadily improving – from a loss of \$3.2 million in 2017 to \$15.9 million in 2021, even after TVA Sports’ \$10.1 million loss in profits is taken into account (see Figure 2). Granting Québecor’s application granting may strengthen the company’s bottom line – but it is less clear if the change will also significantly improve its broadcast programming.

4. Québecor’s alternative proposal

- 50 Québecor has also proposed that, if the CRTC does not remove the national-advertising limit for its discretionary services, the Commission should remove promotions of foreign programs and feature films from the definition of national advertising material, so that it may “optimize and better profit from its use of the 12 minutes per clock hour of advertising time ... to the benefit of Canadian content.”²⁹ It states that foreign programs are very popular and essential to the balance of discretionary services’ schedules³⁰ and it proposes that this change also apply to its French-language discretionary services: LCN, TVA Sp[orts], AddikTV, CASA, Évasion, MOI ET CIE, PRISE2 and YOOPA.³¹

de publicité fut calibrée dans l’optique de tirer parti de la popularité des émissions de TVA en assurant que la qualité de l’expérience audiovisuelle des téléspectateurs soit maintenue. »

²⁹ BNoC 2022-272, paras 5-6.

³⁰ DM#4227185, para. 29.

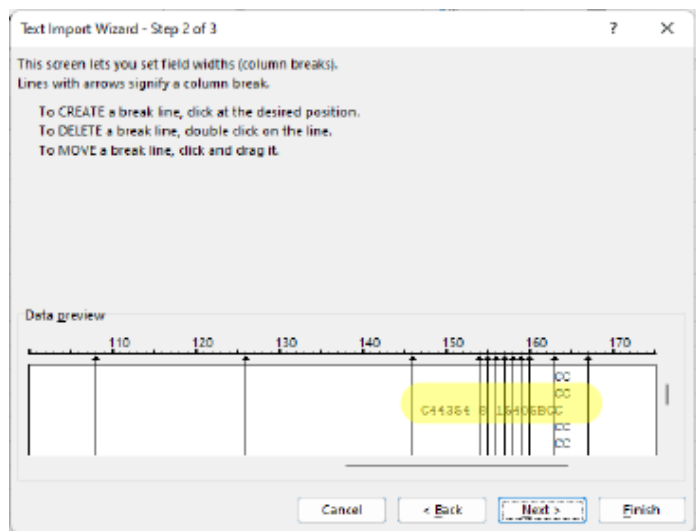
³¹ DM#4227189, page 6, Answer 7.

- 51 The Forum’s main concern about this proposal is that it is unclear how the broadcast of more promotions of foreign programming it would advance implementation of Parliament’s broadcasting policy.
- 52 The Forum is also particularly concerned that Québecor appears to be proposing to increase its promotion of foreign programming on its children’s discretionary service, YOOPA. In our view broadcasting for Canadian children should endeavour to strengthen their awareness of Canadian culture, rather than the culture of other nations.

B. The Forum’s response

- 53 In developing our response to Québecor’s application the Forum analyzed Québecor’s program logs to explore the company’s argument that it turning away advertisers due to the current 12-minute national-advertising limit.³² Canadian television broadcasters’ program logs are available through the Open Data portal, but often contain errors that make it difficult to analyze them. For example, the September 2020 program log for TVA Sports cannot easily be analyzed because lines of data have been entered in the incorrect columns. The highlighted portion of the log in Figure 6 shows that the data beginning with C44364 have been entered into the wrong columns – as the ‘CC’ (showing the program was closed-captioned) is out of alignment with the lines of data that precede and follow it.

Figure 6 Errors in TVA’s program logs



- 54 While the Forum appreciates the CRTC’s interest in receiving detailed evidence from interveners, interveners must often rely on data from the CRTC. Inaccuracies in these published data waste interveners’ time because they must either attempt to correct the errors or abandon their research efforts. The Forum respectfully recommends that the CRTC review the program logs submitted by broadcasters before publishing them, to ensure that such data are error-free.

1. Compliance

³² See DM#4227185, at para. 17.

55 In line with the adage that ‘justice loves clean hands’, the CRTC has in the past given more positive consideration to broadcasters operating in compliance with their licences than broadcasters operating out of compliance. When it approved Québecor’s acquisition of Zeste the Commission pointed out that the service had breached the Commission’s regulations for Canadian content in 2015/16: “the service did not broadcast the required percentage of Canadian content during the day and in the evening.”³³ It noted Québecor’s intention to adhere to the Canadian content regulations going forward.

56 The Forum analyzed Zeste’s September 2022 program log. According to this log Zeste exceeded the Canadian content requirements of 35% during the day and in the evening by half or more: 48.3% of Zeste’s programs broadcast from 6 am to 6 pm and 61.4% of the programs broadcast from 6 pm to midnight were Canadian.

2. Applicant’s mitigation of its position

57 The Forum also analyzed Québecor’s program logs to determine whether its discretionary services’ carriage of national advertising has changed between the time it applied for its licence amendment in mid-2020, and the time the CRTC published its application in September 2022. Time constraints limited our review to the September 2020 and September 2022 program logs of three services: LCN, TVA Sports and YOOPA. Results are set out in Appendix 1, and summarized below

58 According to Québecor’s program logs

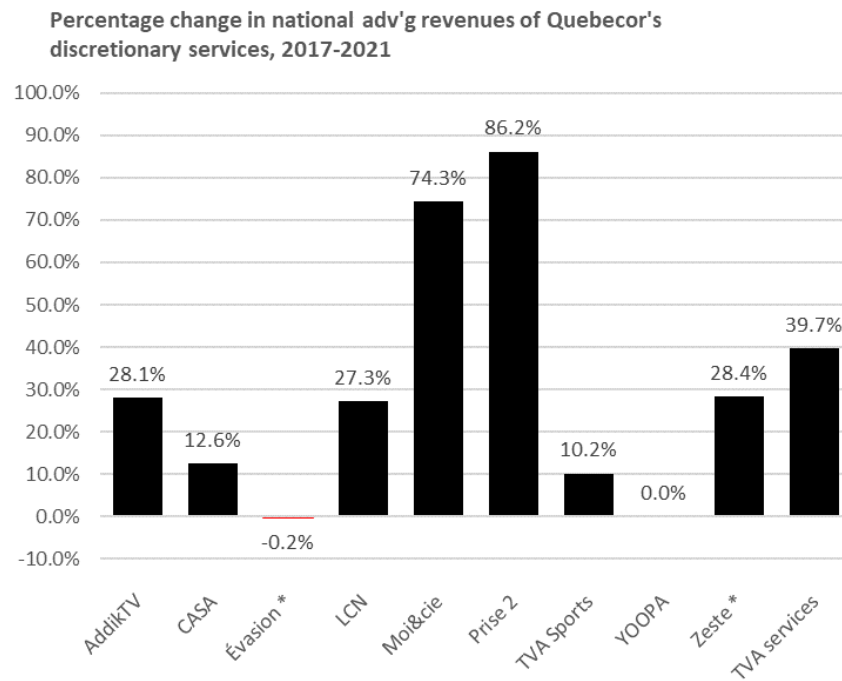
- The total number of ads on LCN and TVA Sports both increased (by 10.6% and 6.7%, respectively: LCN: 19,227 in Sept/20 and 21,268 in Sept/22; TVA Sports: 19,335 in Sept/20 and 20,639 in Sept/22)
- The total time devoted to ads on LCN and TVA Sports also increased (by 4.4% [from 127.2 hours to 132.9 hours], and 1.4% [from 126.7 to 128.5 hours] respectively) and
- The average minutes of advertising per hour on LCN increased 4.4%, from 10.6 to 11.1, while the average minutes of advertising per hour on TVA Sports changed very little (10.6 in September 2020 and 10.7 in September 2022).

59 Advertising decreased on YOOPA in terms of the number of advertisements (from 1,527 to 343) and their duration (from 8.7 hours to 2.1 hours). It is unclear to what degree this change is due to Québecor’s own initiative, or to Quebec’s regulation of advertising directed towards children.

³³ *Ibid.*, at para. 45.

60 It therefore appears that Québecor has strengthened its sale of advertising since September 2020, while reducing advertising on its children’s service (an initiative that the Forum strongly supports). This result is supported by a review of changes in the national advertising revenues of Québecor’s discretionary services from 2017 to 2021: Figure 7.

Figure 7 Percentage change in national advertising revenues of Québecor’s discretionary services: 2017-2021



Source: CRTC, *Statistical and Financial Summaries: individual discretionary and on-demand services, 2017-2021*
 * data from 2019-2021

61 The Forum also notes that Québecor has for some time publicly called on the CRTC to address the CBC’s advertising practices by CBC.³⁴ The Forum agrees that the CBC’s withdrawal from advertising would strengthen its performance as a public broadcaster, and could strengthen the private element’s implementation of Parliament’s broadcasting policy. As the Governor in Council has returned Broadcasting Decision CRTC 2022-165 to the Commission for reconsideration and re-hearing, the Forum anticipates that the public will continue to call on the CRTC to begin the process of phasing out advertising on the national public broadcaster, provided the Corporation’s independence from government is effected by stable, longer-term funding.

³⁴ *ibid.*, at para. 26.

3. Does the proposed amendment help to implement Parliament’s broadcasting policy for Canada?

- 62 The central question posed by Québecor’s application is how – precisely – approval of the proposed amendment will help to further implement Parliament’s broadcasting policy for Canada. Only the CRTC and Québecor have information on this point, as the company filed its answers to several hypothetical scenarios posed by the CRTC in confidence.
- 63 According to other information published by the CRTC, Québecor’s discretionary service licences generated just over \$35 million in profits before interest and taxes from 2017 to 2021, and over the same period spent \$731 million on Canadian programming. If the CRTC grants Québecor’s application, how will this figure change? Will Québecor continue to draw profits from its discretionary licences when it also reduces its expenditures on Canadian programming – as it did in the case of AddikTV, Évasion, Prise 2 and YOOPA?

Service	Total Canadian Programming (\$ millions current)					Total Canadian programming	PBIT (\$M) 2017-21	Change, 2017-21	
	2017	2018	2019	2020	2021			\$ M	%
AddikTV	\$5.28	\$5.54	\$5.08	\$3.81	\$3.48	\$ 23.2	\$17.97	-\$ 1.80	-34.1%
CASA	\$5.91	\$6.12	\$5.91	\$6.14	\$6.22	\$ 30.3	\$12.86	\$ 0.31	5.3%
Évasion *			\$4.30	\$3.72	\$4.28	\$ 12.3	\$11.58	-\$ 0.03	-0.6%
LCN	\$ 19.10	\$ 19.41	\$ 20.01	\$ 21.43	\$ 22.20	\$ 102.2	\$39.12	\$ 3.09	16.2%
Moi&cie	\$4.66	\$4.89	\$4.94	\$5.60	\$5.38	\$ 25.5	\$1.92	\$ 0.72	15.4%
Prise 2	\$3.30	\$3.21	\$2.87	\$2.83	\$3.04	\$ 15.2	\$24.70	-\$ 0.25	-7.7%
TVA Sports	\$ 111.33	\$ 102.72	\$ 100.83	\$ 89.81	\$ 101.96	\$ 506.6	(-\$80.49)	-\$ 9.36	-8.4%
YOOPA	\$1.45	\$1.23	\$1.22	\$1.35	\$1.11	\$ 6.4	\$4.96	-\$ 0.11	-23.6%
Zeste *			\$2.15	\$3.02	\$3.89	\$ 9.1	\$2.93	\$ 3.89	80.6%
Total	\$ 151.03	\$ 143.12	\$ 147.31	\$ 137.69	\$ 151.56	\$ 730.7	\$35.53	\$ 0.53	0.3%

* calculated from 2019-21

- 64 Given the absence of clear evidence that Québecor’s require the condition of licence amendment to survive, in the absence of a clear commitment to strengthen its Canadian programming and in the absence of a commitment to ensure that Canadian programming expenditures do not decrease during a period when the licensee’s profits are increasing, the Forum opposes approval of this application.

IV. CRTC questions

- 65 The Forum’s responses to the CRTC’s questions are set out below.

CRTC Question 1: Is this an appropriate time to address the issue of the current limit on advertising time for discretionary services? Explain your reasoning.

- 66 This is not an appropriate time to change the limit on advertising time for all discretionary services – but is an appropriate time to determine whether it remains

appropriate for Canada's national public broadcaster to continue to solicit advertising across its television and online services, at the expense of private broadcasters.

CRTC Question 1 In general, is the 12-minute per clock hour limit on advertising time currently imposed on discretionary services still relevant? Explain your reasoning

- 67 The CRTC's notice of consultation has not explained either why the 12-minute limit was initially relevant, or how specific factors that were relevant then have now changed.
- 68 It is unclear, moreover, how removal of the limit will strengthen the broadcasting system, whether in terms of serving Canadians' needs and interests regarding the amount or nature of advertising, or in increasing Canadian programming expenditures. Supposing the 12-minute limit were dropped or relaxed – would the theory be that Canadian audiences want more commercial clutter when they watch Canadian programming services? The fact that commercial-free services such as Netflix have prospered in Canada suggests that Canadians have a tipping point when it comes to television programming, and that they prefer less advertising clutter to more advertising clutter.

CRTC Question 2 Is the requirement that discretionary services not broadcast any paid advertising material other than paid national advertising still relevant? Explain your reasoning.

- 69 The CRTC's notice of consultation provided little information about the rationale for limiting nationally distributed discretionary programming services to national advertising.
- 70 For the past several decades, however, the CRTC has emphasized the importance of ensuring that the needs and interests of individual communities are met through the information and entertainment provided by the radio and television stations licensed to serve them. These stations also constitute a cost-effective advertising medium for local and regional businesses.
- 71 Permitting all services to chase local, regional and national advertising revenues will create turmoil for the private and public elements of the broadcasting system – without any clear benefits in terms of implementing Parliament's broadcasting policy.
- 72 The Forum respectfully submits that rather than dropping limits on national advertising, it would be more strategic to consider how to limit advertising by the CBC. If the CRTC were to prohibit advertising by the CBC's conventional programming services and limit its advertising activities in its now-exempted programming services, private broadcasters could solicit business from the CBC's former advertising clients, better enabling these broadcasters to meet their

licensing commitments and responsibility to implement Parliament's broadcasting policy for Canada.

CRTC Question 3 If the advertising time limit were removed, should the few discretionary services authorized to broadcast local advertising still be limited in terms of the amount of local advertising that they can broadcast?

73 Yes – if local (non-discretionary) programming services provide evidence demonstrating significant consequences of removing such limits.

CRTC Question 4 Should the Commission consider removing the limit on advertising time for discretionary services other than those covered by TVA's application (e.g., French-language, English-language, bilingual and third-language discretionary services, whether these services are independent or owned by a licensee of a large ownership group, or exempt discretionary services)?

o If yes, please specify which ones (which types of services) and describe the impacts that your proposal could have on both services that would be affected and those that would not be.

o If no, would the approval of TVA's application have an impact on other discretionary services? Please specify which ones and provide supporting evidence.

74 The Forum may address this question in the reply phase. That said, our initial position is no – the CRTC should not remove the advertising-time limit for any discretionary services.

75 That said, the CRTC may wish to consider removing the limit on advertising time for non-vertically integrated broadcasters (non-VI broadcasters). They hold 68 discretionary service licences, while vertically integrated broadcasters (VI broadcasters) hold 76 discretionary licences.³⁵

76 As Table 3 shows, while non-VI discretionary services take in a quarter or less of total discretionary revenues and discretionary national advertising, these broadcasters allocate more than half of their revenues to Canadian programming – where the VI discretionary broadcasters choose to allocate 40% or less of their revenues to Canadian programming.

³⁵ CRTC, *Individual Discretionary and On-demand Services: Statistical and Financial Summaries, 2017-2021*.

Table 3 Vertically- and non-vertically integrated discretionary services' share of revenues, national advertising and Canadian programming expenditures, 2017-2021

Discretionary services	VI broadcasters			Non-VI broadcasters		
	% of discretionary revenues	% of discr'y Nat Ad Revs	Canadian programming expenditures as % of revenues	% of discretionary revenues	% of discr'y Nat Ad Revs	Canadian programming expenditures as % of revenues
2017	74.1%	79.4%	40.03%	25.9%	20.6%	52.15%
2018	77.4%	81.8%	37.92%	22.6%	18.2%	58.99%
2019	78.0%	82.0%	36.64%	22.0%	18.0%	58.29%
2020	78.5%	82.9%	36.18%	21.5%	17.1%	55.58%
2021	76.3%	78.6%	36.24%	23.7%	21.4%	56.95%

CRTC, *Individual discretionary and on-demand services: Statistical and financial summaries, 2017-2021.*

77 The Forum considers that these data indicate that even if non-VI broadcasters are smaller than their VI competitors, giving non-VI services the opportunity to earn more income is more likely to result in more expenditures on Canadian programming.

78 The Forum therefore recommends that, if the CRTC were to consider removing the limit on national advertising time for any group – which FRPC in any event opposes – it should only remove the limit for non-VI broadcasters, and maintain this exception for the next five or more years.

CRTC Question 5 If the Commission were to remove the limit on advertising time for some or all discretionary services, should this be done in a phased manner, as the Commission did for conventional television stations, in order to assess the impact on other services? Explain your reasoning.

79 Rather than permit complete chaos and the likely bankruptcy of smaller broadcasters in the short to near term, the Forum agrees that the CRTC should phase in such a dramatic change – which FRPC in any event opposes – over several years.

CRTC Question 6 What possible impact would removing the limit on advertising time have on subscribers?

80 The answer to this question is unclear, as nearly all subscription rates are negotiated as a matter of private contract between distributors and discretionary services. As large distributors own a number of profitable discretionary services, it is reasonable to assume that they would serve their business' interests by raising subscriber rates whenever advertising revenues slow or decrease.

- 81 That said, the CRTC has in the past indicated that subscribers' needs are met by what it perceives as a competitive market in the distribution of programming services:

... The Commission's general approach to promoting affordability and subscriber choice in broadcasting services for Canadians has been through its support of a vigorous wholesale market. In Broadcasting Regulatory Policy 2015-96, the Commission noted that **a healthy and dynamic wholesale market is one in which broadcasting distribution undertakings (BDUs) have the flexibility to package and set retail prices for discretionary services in the manner that they consider will best respond to customer demand** and enable them to compete on an equitable basis with other BDUs.³⁶

[bold font added]

CRTC Question 7 How would removing the limit on advertising time serve the public interest?

- 82 Removing the limit would serve the public interest if
- a. the CRTC's changes do not throw the broadcasting system into chaos,
 - b. the CRTC's changes do not reduce hours tuned to Canadian programming services because of excessive commercial clutter, and
 - c. expenditures on Canadian programming increase in real terms.

CRTC Question 8 Please comment on TVA's alternative proposal, which consists of excluding promotions for foreign programs and feature films from the 12-minute limit on advertising time.

- 83 The Forum does not support this proposal, and in particular does not believe it should apply to Québecor's children's programming service, YOOPA.

CRTC Question 9 Please provide any other alternative proposals with respect to the limit on advertising time

³⁶ CRTC, *Reply to a procedural request*, (Ottawa, 21 October 2021)
<https://crtc.gc.ca/eng/archive/2021/lb211021.htm>.



- 84 The Forum’s main alternative proposal is that the CRTC – following its reconsideration and rehearing of Broadcasting Decision CRTC 2022-165 – begin to limit CBC’s ever-growing quest for advertising revenues, by phasing in annual decreases in the time it may devote to advertising on its conventional and discretionary television programming services and by providing the government and Canadians with clear (and public) estimates of the cost of providing the public-broadcasting service now described in subsection 3(1)(m) of the *Broadcasting Act*.

Appendix

Appendix 1 Results from an analysis of the program logs of LCN, TVA Sports and YOOPA

Quebecor program logs	Sept 2020	Sept 2022	% change, 2020-22
Average broadcast day ("PGR" hours / 30 days of September)			
LCN	24	24	0.00%
TVA Sports	24	24	0.00%
Yoopla	18.5	18.5	0.00%
Total number of ads ("COM #")			
LCN	19,227	21,268	10.60%
TVA Sports	19,335	20,639	6.70%
Yoopla	1,527	343	(77.5%)
Total hours of ads			
LCN	127.2	132.9	4.40%
TVA Sports	126.7	128.5	1.40%
Yoopla	8.7	2.1	(77.5%)
Total hours of program time excluding ads and promos ("PGR" less ["COM"] + "PRC")			
LCN	568.1	565.6	-0.40%
TVA Sports	585.4	573.3	-2.10%
Yoopla	555.0	555.0	0.00%
Number of ads ("COM #") per program (PGR) hour			
LCN	26.7	29.5	10.60%
TVA Sports	26.8	28.7	6.7%
Yoopla	2.8	0.6	(77.5%)
Hours of ads ("COM") as percentage of program hours ("PGR")			
LCN	17.70%	18.40%	0.7 points
TVA Sports	17.60%	17.90%	0.3 points
Yoopla	1.60%	0.40%	(1.2 points)
Minutes of ads per hour in broadcast day (["COM" hours / "PGR" hours]*60 minutes)			
LCN	10.6	11.1	4.40%
TVA Sports	10.6	10.7	1.40%
Yoopla	2.8	0.6	-77.50%

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