Backgrounder

Rogers' Acquisition of Shaw

May 17, 2022

Contents

The Proposed Deal

On March 13, 2021, Rogers Communications Inc. (Rogers) agreed to purchase Shaw Communications Inc. (Shaw) in a deal valued at approximately $26 billion (including Shaw's approximately $6 billion of debt). The proposed transaction would involve Rogers acquiring all of Shaw's assets, debts, and all of its issued and outstanding Class A and Class B shares at $40.50 per share and would see the Shaw family becoming one of Rogers' largest shareholders. The companies had initially planned to complete the acquisition on June 13, 2022, but pushed this date back to July 31, 2022 following the Competition Bureau's May 9, 2022 application to oppose the transaction (discussed in more detail below).

Both Rogers and Shaw are family-owned, publicly traded businesses and major players in the Canadian communications sectors, offering wireless services (cell service), wireline service (Internet and telephone service), and broadcasting distribution services (radio, cable or satellite TV services). The deal is a 'friendly' takeover because both the buyers and the sellers want the deal to close; both the Rogers and the Shaw boards of directors have approved the deal.

Rogers is the largest wireless service provider in Canada, serving 11.3 million subscribers under its many brand names: Rogers, Fido, Chatr, and Cityfone. Shaw is the 4th largest wireless services provider in Canada, operating in Ontario, Alberta, and British Columbia and serving 2.1 million subscribers through its brands, Freedom Mobile and Shaw Mobile.[1]

Rogers offers telecommunications wireline services (residential and business Internet access services; residential and business telephone service and home monitoring services, amongst others) to households and businesses in Ontario, New Brunswick, and Newfoundland and Shaw serves western Canada and northern Ontario.

Rogers is the third largest national BDU and the second largest broadcasting and telecommunications company in Canada with 57 radio stations; 12 over-the-air television stations; television programing that includes significant sports coverage, OMNI networks, and CityTV news; and, in 2019-2020, it served 1.509 million cable TV and IPTV (TV delivered over internet) subscribers in Ontario, Quebec, New Brunswick and Newfoundland and Labrador and made a reported $1.306 billion in revenues.[2]

Shaw is the second largest national broadcasting distribution undertaking offering cable and satellite services. In 2019-2020, Shaw Cablesystems Limited served 1.428 million subscribers in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario and reported $1.051 billion in revenues and Shaw Direct (satellite TV), operating nationally, served 687,000 subscribers and earned $670 million in revenues.[3]

[1] Competition Bureau Canada, "Backgrounder: Competition Bureau seeks full block of Rogers' proposed acquisition of Shaw" (May 2022), online: < https://www.canada.ca/en/competition-bureau/news/2022/05/backgrounder-competition-bureau-seeks-full-block-of-rogers-proposed-acquisition-of-shaw.html>.

[2] CRTC, *Broadcasting Notice of Consultation CRTC 2021-281*, online: < https://crtc.gc.ca/eng/archive/2021/2021-281.htm>.

[3] *Ibid.*

The Regulatory Framework

There are three federal government regulatory bodies that can review proposed mergers of communications companies, depending on the size and scope of the merger: the Canadian Radio-television and Telecommunications Commission (CRTC); the Competition Bureau; and the Department of Innovation, Science and Economic Development Canada (ISED).

CRTC

The Competition Bureau and the CRTC have overlapping jurisdictions to review communications mergers and transactions must comply with the legislation administered by both organizations.[4] The CRTC deals primarily[5] with the change of control or ownership of licenced broadcast undertakings, including broadcasting distribution undertakings, taking into consideration whether the merger would advance the objectives of the Canadian broadcasting system set out in the *Broadcasting Act.*

Competition Bureau

The Competition Bureau broadly assesses the potential anti-competitive effects, if any, of the transaction, under the *Competition Act*. The Competition Bureau may review any merger of any size in any industry and determine whether the proposed merger is likely to result in a substantial prevention or lessening of competition in a given market.[6] For certain transactions, the *Competition Act* requires parties to the proposed merger to notify the Bureau prior to the closing of the transaction so that it can be reviewed by the Bureau, this is called a notifiable transaction.[7] Whether a transaction is notifiable would depend on aspects such as financial thresholds related to the size of the parties and the transaction.[8] The Competition Bureau determines whether the transaction could lead to the 'substantial prevention or lessening of competition' by considering if the merger is likely to create, maintain, or enhance the ability of the merged companies to exercise 'market power' either alone or in coordination with other firms. The question then, in part, is whether consumers would, post-merger, have the ability or willingness to switch from one product (offered by the now merged companies) to another similar product offered by a competitor, in the event that the merged companies raised the price of their product by a small, but significant amount (and for a lasting or 'non-transitory' time) above the price that would likely exist in the market in the absence of the merger. [9]

---

[4] Competition Bureau, "CRTC/Competition Bureau Interface" (2001), online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01598.html>.

[5] The CRTC also needs to ensure compliance with foreign ownership and control rules under the *Telecommunications Act.* Rogers and Shaw are Canadian companies, meaning concerns about foreign ownership have yet to be raised.

[6] Competition Bureau, "Overview of the merger review process," online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_04448.html>.

[7] *Ibid.*

[8] In 2021, notification was required where the to be acquired companies' Canadian assets or revenues exceeded $93 million and the combined Canadian assets or revenues of both companies exceeded $400 million. Competition Bureau, "Pre-merger notification transaction-size threshold to remain at $93M in 2022" (2021), online: <https://www.canada.ca/en/competition-bureau/news/2022/02/pre-merger-notification-transaction-size-threshold-to-remain-at-93m-in-2022.html>.

[9] "In most cases, the Bureau considers a five percent price increase to be significant and a one year period to be non-transitory. Market characteristics may support using a different price increase or time period."
See: Competition Bureau, "Merger Enforcement Guidelines" (2011), online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html#s4_0>.

Where the Competition Bureau finds that a merger has or is likely to result in a substantial prevention or lessening of competition, it may negotiate a remedy with the merging parties to resolve concerns (by, for example, requiring the merging parties to sell assets to competitors) or by applying to the Competition Tribunal, which is a separate 'quasi-judicial' regulatory board, to obtain a legal order to prevent the merger from proceeding (or even to dissolve or to change a completed merger, if the merging parties proceeded to close the deal during this Competition Bureau's investigation or the Competition Tribunal's deliberations).

As mentioned above, companies proposing mergers that exceed prescribed thresholds must give advance notice of the merger to the Competition Bureau, and, if requested provide information to the Competition Bureau. The purpose of this advanced notice is to give the Competition Bureau time to assess the potential impact of the proposed merger or acquisition on competition in the market and to possibly avoid some of the challenges associated with denying or undoing a completed merger that is later found to be anti-competitive. After notice is given, the parties cannot complete the transaction for 30 days. If the Competition Bureau request supplementary information, a second 30-day waiting period is triggered and begins once the parties have provided complete responses to the Competition Bureau's requests.[10] Once these time periods lapse the parties are free to complete the transaction unless they have entered into a timing agreement with the Competition Bureau; or the Competition Tribunal has issued an interim order preventing the transaction from being completed, at the request of the Competition Bureau.

ISED

ISED is tasked with reviewing and approving spectrum licence transfers under the *Radiocommunications Act*. This review is separate from the reviews conducted by the Competition Bureau and the CRTC.[11] ISED's review is conducted pursuant to its mandate to plan the allocation and use of spectrum. Spectrum is a finite resource that is <u>necessary for wireless communications</u> including cellphones, Wi-Fi, radio and some TV services. When determining whether to approve a spectrum licence transfer, ISED will consider, among other things, the concentration of spectrum ownership by one or related parties within a given region.[12] ISED may choose to approve all, some, or none of the licence transfers included in an application. ISED encourages applicants wishing to transfer spectrum licence to seek informal, non-binding, confidential advice prior to requesting a transfer. Given the confidential nature of these discussions, information about specific transactions is often not public. That said, the Minister of Innovation, Science and Industry, François-Philippe Champagne did state, in relation to the propose Rogers-Shaw merger, that: "The wholesale transfer of Shaw's wireless licences to Rogers is fundamentally incompatible with our government's policies for spectrum and mobile service competition, and I will simply not permit it."[13]

---

[10] In September, the Competition Bureau issued a request for information seeking information about the Rogers-Shaw proposed merger from a range of industry participants, including suppliers, competitors, industry associations and experts, as well as customers. Responses were due October 29, 2021. <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04603.html>.

[11] Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum (June 2019), online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10653.html>.

[12] *Ibid.*

[13] Innovation, Science and Economic Development Canada, "Minister of Innovation, Science and Industry reaffirms that competitiveness is central to a vibrant telecommunications sector," (March 3, 2022), online:

INDU Committee Report

On March 19, 2021, the Standing Committee on Industry and Technology undertook a study on the proposed acquisition of Shaw Communications by Rogers Communications. Due to the 2021 election, the Report was released in March 2022.

The Report made four recommendations:

> **Recommendation 1 -** That the Government of Canada launch nationwide consultations to examine the implementation of structural separation in the telecommunications sector between businesses that build infrastructure and those that provide services in order to ensure a level playing field that fosters network development in both cities and rural areas.
>
> **Recommendation 2** - That the Government of Canada take measures to better support the Competition Bureau's work, including the following:
>
> - launch an immediate review of the Competition Act, including a review of the efficiencies defence; and
> - ensure that the Competition Bureau has the resources it needs to do its work, including monitoring the impacts of its decisions
>
> **Recommendation 3** -That, <u>in reviewing the proposed merger, the Government of Canada take measures to ensure that affordability and accessibility for all Canadians take precedence over all other considerations, for example by placing emphasis on the importance of Freedom Mobile as a fourth wireless provider</u>, and ensuring that, in reviewing the merger, the government bodies involved consider the impacts on the regulatory environment of the CRTC's recent decisions.
>
> **Recommendation 4** - That, while <u>the Committee believes the merger should not proceed</u>, if it does, <u>the Government of Canada ensure that, in implementing its decision, all conditions attached to the merger approval are fully enforceable and that resources are available to enforce them</u>. [Emphasis added.]

These recommendations represent a dramatic involvement by Parliamentarians in the Rogers-Shaw merger and the level and type of review under the Competition Act and in particular, its emphasis on consumer affordability and accessibility concerns and '<u>the importance of Freedom Mobile as a fourth wireless provider'.</u>

<https://www.canada.ca/en/innovation-science-economic-development/news/2022/03/minister-of-innovation-science-and-industry-reaffirms-that-competitiveness-is-central-to-a-vibrant-telecommunications-sector.html>.

The CRTC Broadcasting Decision and Petitions to Cabinet

On August 12, 2021, Rogers applied to the CRTC, on behalf of Shaw, for approval to change ownership and effective control of various broadcasting and BDU licences from Shaw and its subsidiaries to Rogers and its subsidiaries. Stakeholders were encouraged to submit written interventions within 30 days.

The CRTC held a five-day hearing that began on November 22, 2021. Thirty intervenors appeared at the hearing, many of which raised concerns that Rogers' application, if granted, would negatively impact the broadcasting system and not introduce sufficient benefits to the system adequate to offset these impacts.

Submission to the CRTC

Likewise, PIAC-NPF opposed the proposed transaction and raised serious concerns about the impact of this transaction on competition, consumer choice and affordability of BDU and programming services.[14] In light of Rogers' plan to transition Shaw's existing BDU customers to Rogers' IPTV service, PIAC-NPF expressed concerns that this BDU transaction may be feeding Rogers' wireline and wireless broadband segments. PIAC-NPF argued that Rogers' purported "intangible benefit" of transitioning Shaw's legacy and hybrid customers to Rogers' IPTV service is not really a consumer benefit if Rogers' plan is to force these customers to migrate to a more expensive TV and Internet service bundle.[15]

PIAC-NPF also commissioned a telephone survey, which showed that Canadians, particularly those in British Columbia, Alberta, Saskatchewan, and Manitoba, where Shaw operates as a terrestrial BDU, are concerned about the impact of the proposed transaction on their BDU service subscriptions and the cost of broadcasting services in general. A majority of consumers viewed the Rogers-Shaw merger as being bad overall for the broadcasting system, competition and prices.[16]

PIAC-NPF opposed this proposed transaction, but submitted that, in case it is approved, certain conditions should be applied to mitigate harm to consumers, for example, requiring Rogers to, for three years, freeze all Shaw TV subscription rates as of August 31, 2021 for Shaw TV customers and provide a 90-day cooling-off period within which former Shaw TV-only customers who are switched to IPTV could cancel and return to TV-only service at their previous rate and with their previous channel selection.[17] We also submitted that Rogers' proposed tangible benefits package[18] was inadequate and should be revised by the Commission to include the value of Shaw's "surrendered" terrestrial VOD and PPV undertakings in the transaction value. We asked for 10% of the total benefits package with revised

[14] Broadcasting Notice of Consultation CRTC 2021-281, Intervention of the Public Interest Advocacy Centre (PIAC) and the National Pensioners Federation (NPF), collectively "PIAC-NPF" (13 September 2021)
[15] *Ibid*
[16] *Ibid* For more details, see Appendix A, B and C to the cited Intervention.
[17] *Ibid.*
[18] The burden is on the merging party to demonstrate to the CRTC that their application "is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the Broadcasting Act. As one way of ensuring that the public interest is served, the Commission expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole. These overall requirements are referred to as the "benefits test."" See: CRTC, *Broadcasting Regulatory Policy CRTC 2014-459 - Simplified approach to tangible benefits and determining the value of the transaction*, (Sept 2014), online: <https://crtc.gc.ca/eng/archive/2014/2014-459.htm>.

valuation to be directed to the Broadcasting Participation Fund (BPF) and the Broadcasting Accessibility Fund (BAF) with each receiving about $1.17 million.[19]

Petition to Cabinet

On March 24, 2022, despite the concerns expressed by intervenors at the hearing, the CRTC approved Rogers' application subject to several conditions of approval and several non-binding expectations, encouragements and reminders. The approval raised Rogers' share of cable TV revenues from 16.1% to 37.4% and their share of cable TV subscribers from 14.8% to 35.5%.[20]

PIAC and NPF filed a Petition to the Governor in Council (the federal Cabinet) seeking to have the CRTC's decision set aside, stating that the decision 'derogates from the attainment of the broadcasting policy objectives' set out in the *Broadcasting Act* notably the objective that "[s. 3(1)] (t) distribution undertakings (ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost". We argued in our petition that the CRTC's Rogers-Shaw decision exposes approximately one million Shaw customers to significant price increases for delivery of essentially the same paid TV service because the CRTC has not placed sufficient importance on affordability of broadcasting distribution services as a policy goal, which is enumerated in subs. 3(1)(t)(ii) of the *Broadcasting Act.* Notably, we argued that this decision allows Rogers to move customers who wish to have a comparable selection of programming (channels) from "cable TV", "satellite TV" or "TV-only" services to "IPTV"-delivered services with no real financial safeguards for consumers. The consequence of this would be that customers will be billed for the underlying Internet service just to obtain the same or similar TV services that the customer previously accessed without taking Internet access service. It is, in essence, a 'forced march' to IPTV. Notably, this was allowed to happen even though the Commission had evidence from NPF-PIAC, provided during the proceeding, as to the likely increase in the cost of TV service to all Shaw customers.[21]

The TV-only option was left vaguely undescribed by Rogers during the proceeding. NPF-PIAC posited in the hearing that it would be the $25 a month "small basic" mandated TV package required by the Commission in Broadcasting Regulatory Policy CRTC 2015-96 at para. 26, or a very similar low channel-count offering based on those offered in Rogers' charitable "Connected for Success" TV-add-on offerings.[22] We argued that the TV-only commitment is inadequate, constitutes a detriment and not a benefit as the new limited channel offering would not be a substitute for current TV packaging that most Shaw "cable-TV" and "satellite TV" subscribers enjoy and that any benefits claim is refuted by the price increase for over a million former Shaw customers. [23]

While we requested the Governor in Council set aside the decision, we also asked, should the Governor in Council send this matter to the Commission for reconsideration, that it consider the conditions NPF-

---

[19] *Ibid.*
[20] See B*roadcasting Notice of Consultation 2021-281, Notice of Hearing: Shaw Communications Inc., Various locations across Canada,* Application 2021-0228-4 (12 August 2021), online: <https://crtc.gc.ca/eng/archive/2021/2021-281.htm>.
[21] Petition of the National Pensioners Federation and the Public Interest Advocacy Centre ("NPF-PIAC"), Petition to the Governor in Council concerning Broadcasting Decision CRTC 2022- 76, Shaw Communications Inc. – Change of ownership and effective control (27 April 2022), online: <https://www.piac.ca/wp-content/uploads/2022/04/NPF-PIAC-Petition-re-BD-CRTC-2022-76-Rogers-Shaw-27-April-2022-FINAL.pdf>.
[22] *Ibid.* See paras 19-22.
[23] *Ibid.* See paras 26-32.

PIAC proposed in the proceeding (three year price-freeze on former Shaw customers' TV packages and right of rescission within 90-days for all former Shaw customers who move or are moved to Rogers' IPTV) as material to a CRTC reconsideration.[24]

Other parties, including Telus Communications Inc, Independent Broadcast Group/Le groupe de diffuseurs indépendants (IBG/GDI), and Canadian Communication Systems Alliance Inc. (CCSA), filed comments with the federal Cabinet (which decides petitions to review CRTC decisions) in support of NPF-PIAC's petition. Telus argued that the CRTC failed to consider the broader policy implications by allowing further consolidation in the broadcasting sector, and warned of more mergers in order to compete with Rogers.[25] Telus argued that the CRTC decision will worsen the state of competition in the Canadian broadcasting system, harm consumers and impair their ability to access programming.[26] IBG/GDI emphasized the important role played by independent broadcasters and the benefits provided to the consumers, and submitted that the CRTC decision derogates from several objectives of the broadcasting policy and called for specific safeguards for independent programming and that such safeguards should not be expectations.[27] Likewise, the CCSA agreed with the concerns shared by NPF-PIAC and other commentators that the Commission failed to impose effective, legally enforceable conditions on its approval of the proposed Rogers-Shaw transaction. The CCSA argued that the CRTC failed to address concerns for BDU customers residing in the rural and remote regions as it stated that some 10,000 Canadians in more than 30 rural and remote communities are now at risk of losing their television service.[28]
PIAC and NPF await the Governor in Council's response, which should be available within 90 days of the CRTC's initial decision.

The Competition Bureau's Application to the Competition Tribunal

The Competition Bureau announced, on May 9, 2022, that it had applied to the Competition Tribunal for an injunction to prevent the parties from closing the proposed transaction and requesting the Competition Tribunal fully block Rogers' proposed acquisition of Shaw.[29]

The Competition Bureau's application to the Competition Tribunal,[30] filed pursuant to s. 92 of the *Competition Act,* seeks to block the transaction. The Bureau also applied for an interim order under section 104 of the Act, requesting a short-interim order to preserve the status quo and prohibit the respondents from closing the proposed transaction, making any divestiture, or taking any other steps

---

[24] *Ibid.* See paras 33-37.
[25] Petition of National Pensioners Federation and Public Interest Advocacy Clinic to the Governor in Council, concerning Shaw Communications Inc. – Change of ownership and effective control, Broadcasting Decision CRTC 2022-76, Comments of TELUS Communications Inc. (May 6, 2022)
[26] *Ibid.*
[27] Independent Broadcast Group/Le groupe de diffuseurs indépendants, Petition to the Governor in Council of the National Pensioners Federation and the Public Interest Advocacy Centre ("NPF-PIAC") concerning Broadcasting Decision CRTC 2022-76, Shaw Communications Inc. – Change of ownership and effective control (May 6, 2022)
[28] CCSA, "Petition to the Governor in Council of the National Pensioners Federation and the Public Interest Advocacy Centre ("NPF-PIAC") concerning Broadcasting Decision CRTC 2022-76, Shaw Communications Inc. – Change of ownership and effective control," (10 May 2022).
[29] Competition Bureau, "Competition Bureau seeks full block of Rogers' proposed acquisition of Shaw" (May 2022), online: <https://www.canada.ca/en/competition-bureau/news/2022/05/competition-bureau-seeks-full-block-of-rogers-proposed-acquisition-of-shaw.html>.
[30] Competition Tribunal, Rogers Communications Inc. and Shaw Communications Inc. - CT-2022-002, online: <https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/520930/index.do>.

related to it pending the hearing and determination of the application for an interim order.[31] The interim order sought would direct the respondents, Rogers and Shaw, <u>not to proceed with the closi</u>ng until the Commissioner's application is finally disposed of and all remedies the Tribunal requires are implemented. It would also prohibit Rogers from enforcing any agreement or taking any steps that directly or indirectly limits the operation, maintenance, enhancement or expansion of the Shaw wireless business.[32]

The Competition Bureau's application raises the following issues:

- the closing of this transaction is likely to prevent or lessen competition substantially in wireless services in Ontario, Alberta and British Columbia and in business services in those areas;

- divestitures proposed by the merging parties are not likely to alleviate the substantial prevention or lessening of competition from the proposed transaction;[33]

  There is clear and non-speculative evidence that irreparable harm will ensue if the interim relief is not granted. The evidence demonstrates both harm to consumers and to the Tribunal's ability to remedy the anti-competitive effects of the Proposed Transaction.[34]
- specific interim harms to consumers include
  - loss of rivalry,
  - integration of Shaw's wireline assets (integration planned by Rogers during the interim period is likely to irreparably harm Shaw's position in the market as an independent competitive force),
  - barriers to entry in the relevant markets are very high, and
  - the remaining competition is not likely to protect consumers from these effects with wireless consumers in Ontario, Alberta and British Columbia likely to pay higher prices, have less choice and receive lower-quality service during the interim period if the interim Order is not granted.[35]

The Competition Bureau's investigation found that Freedom Mobile has been placing significant competitive pressure on the Big 3 (Bell Mobility, Rogers, and TELUS) through innovative offerings since it was acquired by Shaw in 2016. The result was data prices decreasing where they were previously increasing, year-over-year, thus directly benefiting Canadians.

The Competition Bureau alleges that the "proposed transaction has and will continue to harm competition" by:

- "eliminating an established, independent and low-priced competitor;
- preventing future competition for wireless services, including 5G, within and outside Shaw's existing service area;

---

[31] Competition Tribunal, Rogers Communications Inc. and Shaw Communications Inc. - CT-2022-002 (May 9, 2022), Notice of Application for Interim Order Volume 1.
[32] *Ibid.*
[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*

- preventing competition for wireless services to business customers in Ontario, Alberta and British Columbia; and
- increasing the likelihood and ease of coordination between the Big 3 which will likely result in increased prices."

Rogers and Shaw have 45 days to file a response and the Competition Bureau will have 14 days to reply after the responses are filed.

PIAC suspects Rogers and Shaw will raise the 'efficiencies defence' in the Competition Tribunal's proceeding. The efficiencies defence as it relates to mergers is found in section 96 of the *Competition Act.* The defence prevents the Competition Tribunal from stopping, dissolving, or changing a merger if it finds that: 1) the merger or proposed merger would bring about efficiency gains that are greater than and that will offset the effects of any prevention or lessening of competition resulting from the transaction and 2) the efficiency gains would not likely be attained if the merger were stopped, dissolved, or changed. The Tribunal must also consider whether efficiency gains will result in (a) a significant increase in the real value of exports or (b) a significant substitution of domestic products for imported products[36] (i.e., will efficiency gains allow Canadian firms to achieve the economies of scale needed to efficiently serve Canadians and compete abroad). Section 96(3) bars the Tribunal from finding that a (proposed) merger is likely to bring about efficiency gains by reason only of a redistribution of income between two or more persons.

In essence, merger transactions whose efficiency gains (usually to the merging parties or their shareholders) are greater than the negative effects on competition must be approved even if they would otherwise hurt competition or negatively affect consumers, if the merging parties can demonstrate those efficiency gains. The Supreme Court of Canada's interpretation of the efficiencies defence provision[37] in a case known as *Tervita*, further restricts the Competition Tribunal's discretion by specifying that it prioritize quantitative evidence over qualitative evidence, in effect requiring the Commissioner of Competition to quantify all quantifiable anti-competitive effects or risk having evidence of competitive harm largely invalidated even if it establishes that there was a known anti-competitive effect of undetermined quantity. This determination places an onerous burden on the Competition Bureau. The SCC set a low bar for the defence to apply stating that efficiency gains do not need to be "more than marginal" to be greater than and offset anti-competitive effects.

PIAC has long called for the elimination of this problematic efficiencies defence that prioritizes economic efficiencies over consumer protection and other objectives.[38] There have been many examples over the years where this defence has been successfully applied and allowed the merger or transaction to go through even if there would have been a substantial lessening or prevention of competition because the efficiency gains were found to be greater than then anti-competitive effects of the pertinent

---

[36] S.96(2), *Competition Act,* R.S.C., 1985, c. C-34.

[37] *Tervita Corp.* v. *Canada (Commissioner of Competition)* [2015] 1 S.C.R. 161, 2015 SCC 3.

[38] For example see PIAC, "PIAC comments on the Competition Bureau's Consultation Paper" (Dec 2004), online: <https://www.piac.ca/research-reports/treatment-of-efficiencies-in-the-competition-act/>.

transaction.[39] Recently in a consultation concerning the review of the competition law, PIAC reiterated its concerns and called for removal of this obsolete defence.[40]

As for Rogers-Shaw proposed transaction, in our view however, the likely claimed efficiencies and synergies do not meet the requirements of s. 96 efficiencies defence. The first concern is the looming absence of Freedom as an effective 4th competitor, which will allow all incumbent wireless providers to raise prices[41] and create significant inefficiencies in the market ("deadweight loss") that will be difficult for consumers to overcome. Second are the 'redistributive effects' of the deal – basically, a wealth transfer from Rogers (paying the purchase price) to high net-worth shareholders of Shaw rather than widely benefitting consumers or the public. Quite apart from deadweight loss, the redistributive effects easily erase the claimed efficiencies (at least those stated publicly). The redistributive loss to average consumers is, by our calculation, over $1.6 billion. Rogers in an investor call transcript on the day the deal was announced stated: Anthony Staffieri, Chief Financial Officer, Rogers Communications, Inc. – A. "Jeff, thanks for your comments and questions. In terms of your first question on synergies, as we indicated in the comments, **we see synergies in the realm of about CAD 1 billion**. And, as I said, we see those as being very tangible. Most of that CAD 1 billion relates to cost synergies, but we also see revenue synergies as well."[42]

As the $1.6 billion redistributive loss is greater than the claimed $1 billion 'synergies', not even counting deadweight loss or other items on the public's side of the efficiencies defence, the efficiencies defence may not even be satisfied if tried.

The Proposed Deal Takes from Consumers and Gives Nothing in Return

Rogers claims this deal will be good for Canadians and lead to: a $2.5 billion investment over 5 years to build a 5G network in western Canada; $3 billion to support additional network, services, and technology investments; and a new $1 billion fund connecting rural, remote, and Indigenous communities to high-speed internet in western Canada.[43] Rogers also states it will keep Shaw's western

[39] Competition Bureau Canada, "Competition Bureau statement regarding Canadian National Railway Company's proposed acquisition of H&R Transport Limited," (April 22, 2020), online: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04527.html; and see Competition Bureau Canada, "Competition Bureau statement regarding Superior Plus LP's proposed acquisition of Canwest Propane from Gibson Energy ULC," (September 28, 2017), online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04307.html>.

[40] PIAC, " Examining the Canadian Competition Act in the Digital Era, A Submission of the Public Interest Advocacy Centre," (Senator Howard Wetston's inquiry regarding the reform of the Competition Act in this digital age), dated December 15, 2021.

[41] The Competition Bureau found, in 2019, that prices are 35-40% lower in the parts of Canada where wireless disruptors have achieved a market share above 5.5%.
Competition Bureau, "Executive summary of the Bureau's submission to the CRTC on mobile wireless services" online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04505.html>.

[42] Rogers Communications, Inc. (RCI.B.CA), Acquisition of Shaw Communications, Inc by Rogers Communications, Inc., Call - Corrected Transcript, 15-Mar-2021, at p. 9. Online: https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2021/03/CORRECTED-TRANSCRIPT-Rogers-Communications-Inc.RCI_.B-CA-Acquisition-of-Shaw-Communications-Inc-by-Rogers-Communications-Inc-Call-15-March-2021-80.pdf

[43] Shaw, "Rogers and Shaw to come together in $26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout" (March 2021), online: <https://newsroom.shaw.ca/corporate/newsroom/article/materialDetail.aspx?MaterialID=6442452489>.

head office, maintain and grow western Canada jobs, and "not increase wireless prices for Freedom Mobile customers for at least three years following the close of the transaction."[44]

Infrastructure Investments

PIAC takes issue with Rogers' position and believes many of these touted "benefits" would have been achieved without the merger through regular expansion. Firstly, before the transaction was announced, neither merging party was failing financially, which is often a factor in permitting a merger that otherwise might be anti-competitive. Secondly, there is no clear confirmation that Rogers and Shaw will actually invest more in 5G than they originally planned to do separately.

While specific spending plans often are hidden by companies for competitive reasons, we can glean some insights from publicly available numbers. Rogers' 2019 Annual Report indicated that $2.5 billion was invested in digital infrastructure and network technology in 2019 alone.[45] At the beginning of 2020, Rogers stated the company expected to spend up to $2.9 billion to expand communications infrastructure, including 5G infrastructure.[46] In Q4 2019, Joe Natale, then CEO, stated that "2020 will see the early stages of our multi-year, multi-billion dollar 5G rollout plan."[47] Rogers' 2020 Annual Report indicated that only $2.3 billion (not the previously anticipated $2.9 billion) was invested in capital expenditures with at least a significant proportion focusing on the wireless network to build and maintain the 5G network.[48] In the Q4 2020 financial result investor call transcript, Anthony Staffieri, then CFO, now CEO, stated that the company expects to increase capital expenditure in 2021 from the $2.3 billion spent in 2020 as investments in 5G and broadband accelerate.[49]

Shaw has similarly made investments improving their network and planning 5G services. In 2019, Shaw invested $385 million in wireless (up $42 million from 2018), focusing on the deployment of 700 MHz spectrum.[50] Shaw also completed extensive 5G trials, transitioned Freedom Mobile's core network to CloudBand Infrastructure Software "a key building block of 5G" and acquired 600 MHz spectrum licences that "will not only enable us to vastly improve our current LTE service but will also serve as a foundational element of our 5G strategy".[51] According to Shaw's 2020 Annual Report, they expected to

---

[44] *Ibid.*

[45] Rogers Communications Inc., *2019 Annual Report*, at 11, online: https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/Rogers-2019-Annual-Report.pdf

[46] "Canada's Rogers expects to spend up to C$2.9 billion in 2020", *Reuters* (22 January 2020), online: <https://www.reuters.com/article/us-rci-5g-idUSKBN1ZL2JY>.

[47] Rogers Communications Inc., "Rogers Communications Reports Fourth Quarter and Full-Year 2019 Results; Announces 2020 Financial Guidance" (22 January 2020), online: <https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/Rogers-Q4-2019-Press-Release.pdf>.

[48] Rogers Communications Inc., *2020 Annual Report*, at 68, online: <https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2021/03/Rogers-2020-Annual-Report.pdf>.

[49] Rogers Communications Inc., "Fourth Quarter and Full Year 2020 Results Conference Call Transcript" (28 January 2021), online: <https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2021/01/Rogers-Q420-Results-Call-Transcript.pdf>.

[50] Shaw Communications Inc., *Annual Report 2019*, at page 72, online: <https://assets.ctfassets.net/tzb4ihmthaev/47cqmFZ0bxcELPQAQf0LRS/8b5a900d014f3b29b86914a50a47273a/2019-annual-report.pdf>.

[51] *Ibid.*

invest $1 billion in capital investments in 2021.[52] From their Q1 2021 report, Shaw stated that fiscal 2021 will continue to focus on wireless investments, including increased investment in 5G.[53]

The promise made by the merging parties, therefore, of $2.5 billion in investment for the merged entity, over 5 years, does not necessarily represent an increased amount considering both companies were together already committed to investing "billions" in their wireless divisions each year. Nor is there a clear indication that the promised 5G investment is actually more than what Rogers and Shaw have invested on average in network CapEx in past years. While Shaw's CEO has since stated that Shaw is not big enough to make the necessary investments in 5G,[54] he did so in the context of promoting this merger. Actions taken before the merger was announced suggest Shaw was improving, even amidst the pandemic.[55]

Rural, Remote, and Indigenous Connectivity Funding

In the phone survey conducted by Environics for PIAC's submission to the CRTC, PIAC asked Shaw customers whether they believed Rogers' acquisition of Shaw would speed up the availability of high-speed Internet in rural areas as promised. 49% did not believe availability in rural areas will accelerate as a result of the transaction, compared to only 34% who did.

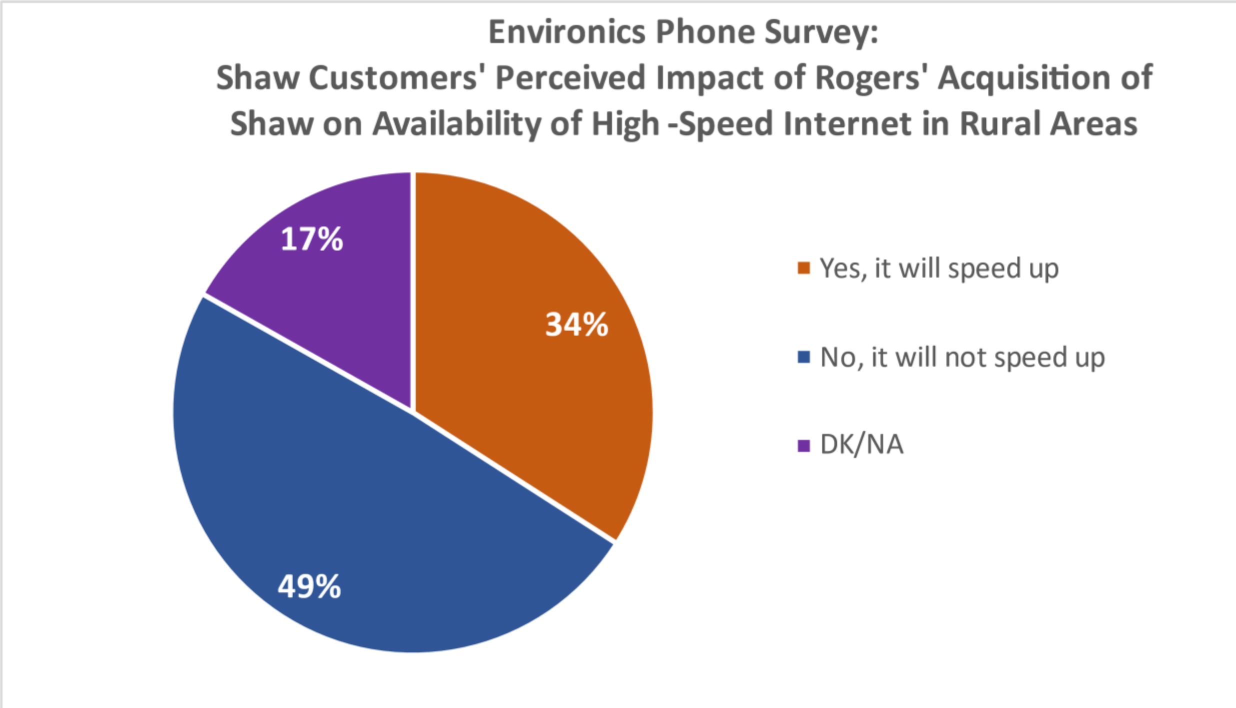
---

[52] Shaw Communications Inc., *2020 Annual Report*, at page 12, online: <https://images.ctfassets.net/tzb4ihmthaev/7MpVmb2gWeJQQ5Bjy7TG2F/9f4d9d9c78c15a72979e9d3b4cda6454/2020_Annual_Report__Filing_Version_.PDF>.

[53] Shaw Communications Inc., "News Release: Shaw Announces First Quarter Fiscal 2021 Results" (13 January 2021) at page 23, online: <https://assets.ctfassets.net/tzb4ihmthaev/1AGi8OWMVUK3pymOGjL9Sy/d2fad5fba241ca9c73aea49020e60552/1st_Qtr_2021_full_press_release_FS_approved_for_release_1.12.2021.pdf>.

[54] CBC News, "Rogers takeover of Shaw will make it bigger but also better for all, CEO tells lawmakers" (29 March 2021), online: <https://www.cbc.ca/news/business/rogers-shaw-1.5968419>.

[55] Global News, "Shaw Communications says year off to great start despite pandemic" (Jan 2021), online: <https://globalnews.ca/news/7573150/shaw-communications-q1-profit-jan-2021/>.



Job Creation

This deal is being proposed at a massive 70% premium[56] and Rogers has taken on billions in loans to finance it.[57] In order to maintain its investment grade credit ratings, Rogers plans to cut debt significantly within the first 36 months and has set an expectation to achieve 'synergies' exceeding $1 billion annually within two years of closing.

These synergies very likely will come through raised prices (more below) and reduced jobs.[58] Indeed, Rogers will need to argue before the Competition Tribunal that efficiencies are greater than and outweigh any possible anti-competitive effects and while these efficiencies tend to be about removing duplicative systems, reducing duplicative jobs are often a major source of quantifiable efficiency.

Past transactions demonstrate a general pattern: mergers mean job reductions. Following Bell's acquisition of MTS in 2016 hundreds of International Brotherhood of Electrical Worker members, Unifor

---

[56] Rogers, "Rogers and Shaw to come together in $26 billion transaction" (15 March 2021). Online: https://about.rogers.com/news-ideas/rogers-and-shaw-to-come-together…nd-investment-in-western-canada-and-accelerating-canadas-5g-rollout/

[57] Andrew Willis and Alexandra Posadzk, "Rogers arranges $19-billion financing to fund Shaw takeover ahead of expected rise in interest rates" Globe and Mail (March 2022), online: <https://www.theglobeandmail.com/business/article-rogers-arranges-19-billion-financing-to-fund-shaw-takeover-ahead-of/>.

[58] Dvai Ghose,"Take it from an analyst: Rogers' acquisition of Shaw could mean job losses, deteriorating customer service and less competition" (April 2022), online: <https://www.thestar.com/business/opinion/2022/04/23/take-it-from-an-analyst-rogers-acquisition-of-shaw-could-mean-job-losses-deteriorating-customer-service-and-less-competition.html>.
Nehal Malik, "Rogers-Shaw Merger Cost Savings May Lead to Job Cuts, Say Critics" (Nov 2021), online: <https://www.iphoneincanada.ca/carriers/rogers/rogers-shaw-merger-cost-savings-may-lead-to-job-cuts-say-critics/>.

union members, and Telecommunications Employees Association of Manitoba members lost their jobs.[59] The 2020 merger of Cenovus Energy and Husky Energy resulted in approximately 8,600 losing their jobs (representing a 20-25% cut to their combined workforce).[60]

Rogers' promise to maintain and grow jobs is not legally enforceable (unless made in a future consent agreement with the Competition Bureau) and is difficult to achieve in parallel with Rogers' stated desire to seek synergies or efficiencies and its overall obligation to maximize profits for its shareholders.

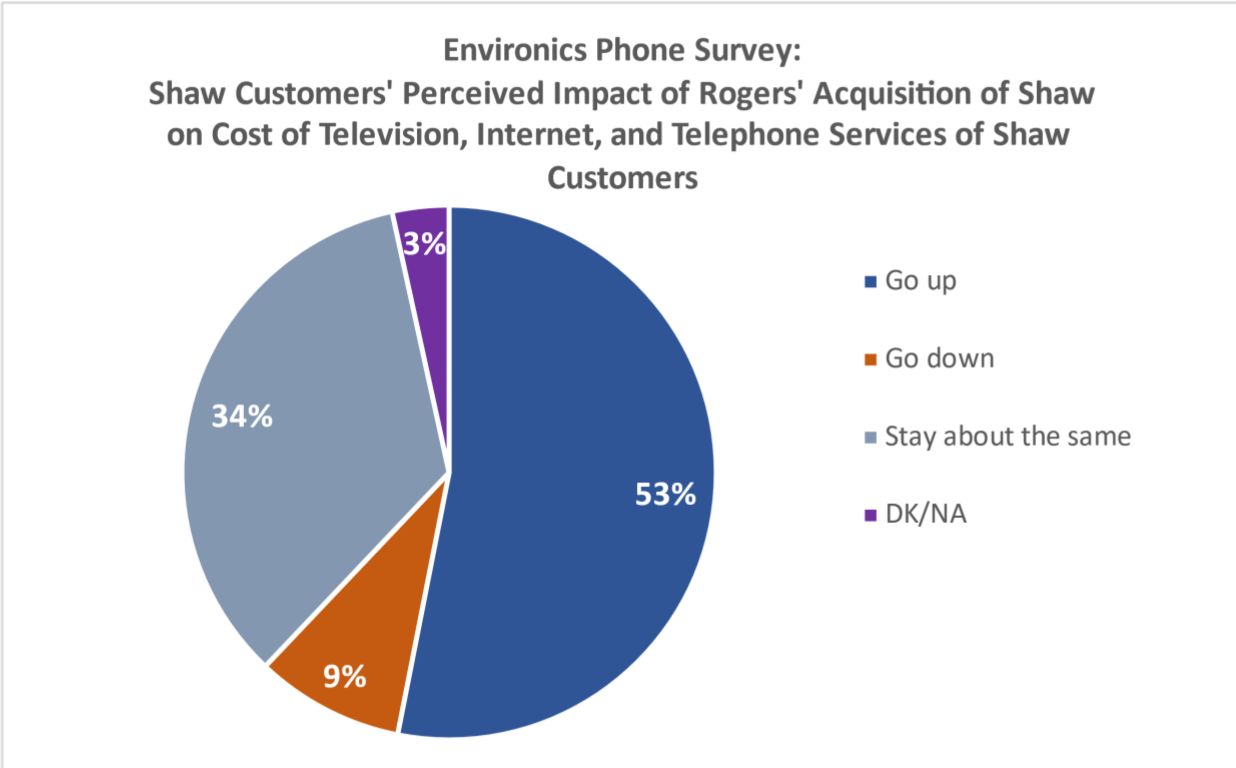
Price Freeze

Lastly, Rogers promises not to raise Freedom Mobile customers' wireless prices for 3 years. It is not clear which of these customers will benefit from the price freeze (that is, when and whether one must be a Freedom/Shaw 'customer of record' on the date the deal was announced, approved, closed, or some other date). , This promise does not affect Rogers' own "Rogers Wireless" brand (Rogers, Fido, Chatr, and Cityfone) prices nor is it clear that the 3 year price freeze includes 'Shaw' brand mobile subscribers. Subscribers of those services will almost certainly see prices rise shortly after the deal as they are not covered by Rogers' commitment. A price freeze on one service type is also less effective when Rogers can compensate with price increases in the other service offerings such as TV and home Internet service for those Shaw customers that also have those services as well as Freedom wireless. As noted above, Rogers will have a lot of debt to recoup and consumers, already burdened with inflation and some of the highest prices for communications services in the world, will bear the cost.

When we asked Shaw customers about their perceived impact of the proposed merger on the cost of TV, Internet, and telephone service, 53% of them said costs would go up and an additional 34% said they would stay the same.

[59] Jill Coubrough, "Bell MTS to shed up to 85 jobs in Manitoba" CBC News (May 2017), online: <https://www.cbc.ca/news/canada/manitoba/bell-mts-jobs-manitoba-1.4105520#:~:text=PRESS%2FRyan%20Remiorz)-,CBC%20News%20has%20learned%20Bell%20MTS%20is%20looking%20to%20eliminate,Association%20of%20Manitoba%20(TEAM)>.
Doug Smith, "The price of privatization at MTS: higher prices, fewer jobs" Policy FX (Jan 2021), online: <https://policyfix.ca/2020/12/29/the-price-of-privatization-at-mts-higher-prices-fewer-jobs/>.

[60] John Gibson, "Cenovus to cut up to 25% of combined workforce with Husky Energy after merger" CBC News (Oct 2020), online: <https://www.cbc.ca/news/canada/calgary/husky-cenovus-jobs-cuts-layoffs-workforce-merger-calgary-oil-energy-1.5778474>.



We note again that the CRTC's non-binding "expectation" that Rogers inform current Shaw TV subscribers that "their contracts will be honoured and of what will happen once the contracts end, as well as to provide them with a range of options, including equivalent levels of service, 90 days before the end of their current contracts" is inadequate to protect customers from cross-subsidization and is inconsistent with the provision of affordable services.

Why Spinning off Freedom Isn't Enough

PIAC has said and continues to believe that this deal is bad for consumer because it eliminates a meaningful competitor in the broadcasting and wireless markets, which are tied to the wireline market. The Competition Bureau appears to share this view.

As the Competition Bureau notes, Freedom Mobile has been placing significant competitive pressure on the Big 3 (Bell, Rogers, and Telus) through innovative offerings since it was acquired by Shaw in 2016. The result was data prices decreasing where they were previously increasing year-over-year, thereby directly benefiting Canadians.

Some, including Rogers and Shaw,[61] have suggested that simply spinning off Freedom Mobile to another company would be sufficient to solve the problem of substantially reduced competition. We disagree,

[61] "[t]he companies have offered to address concerns regarding the possible impact of the Transaction on Canada's competitive wireless market by proposing the full divesture of Shaw's wireless business, Freedom Mobile. Rogers and Shaw are engaged in a process to sell Freedom Mobile, with a view to addressing concerns raised by the Commissioner of Competition and ISED." Rogers, "Rogers and Shaw Remain Committed to Merger Following Notification by the Commissioner of Competition" (7 May 2022), online: <https://about.rogers.com/news-ideas/rogers-and-shaw-remain-committed-to-merger-following-notification-by-the-commissioner-of-competition/>.

Xplornet, Vidéotron, Globalive, and Aquilini Investment Group have all been rumored buyers. Regardless of their individual merits, any buyer of Freedom Mobile will face significant challenges competing in the wireless market without physical infrastructure.

Integration of Wireless and Wireline Networks

Wireline networks are increasingly important to wireless providers, particularly in the context of 5G deployment. Shaw has on multiple occasions explained the strategic necessity of interconnecting wireline and wireless networks. For example, in their 2019 Annual Report, Shaw stated, "[w]e continue to further integrate our wireline and wireless networks in order to realize additional capital expenditure synergies and customer benefits" and in their 2020 Annual Report: "[a]s part of its converged network strategy, the Company continues to leverage the coaxial cable (which transports both power and multi-gigabit data speeds) in its Fibre+ network for the rapid and flexible deployment of small cells, which will support densification efforts in preparation for 5G."[62] As IPTV (TV provided over Internet) becomes more prevalent, broadcasting distribution undertakings also become more reliant on their wireline networks.

In its application to the Competition Tribunal, the Competition Bureau uses the fact that "Shaw's wireline infrastructure is of critical importance to the competitiveness of its wireless business in Alberta and British Columbia"[63] to justify its request that the Tribunal prevent Rogers and Shaw from integrating assets claiming doing so "will substantially impede the Tribunal's ability to remedy the substantial lessening or prevention of the competition in Wireless Services".[64] The Competition Bureau goes onto state:

> "Divesture of Shaw's assets to a third party will not alleviate the likely substantial prevention or lessening of competition and will further impair the Tribunal's ability to order an effective remedy. For example, a divestiture of Shaw's Freedom Mobile business will substantially impede the Tribunal's ability to remedy the substantial lessening or prevention of the competition in Wireless Services by severing from the divested business the wireline assets that the Shaw Mobile brand utilizes to provide bundles of wireline and wireless services to consumers in Alberta and British Columbia, and by weakening the competitiveness of the Freedom Mobile business and its ability to compete, innovate and grow."[65]

Freedom Mobile Cannot be Adequately Replaced

Barriers to entry in the wireless industry are staggeringly high. Spectrum licences and network infrastructure are incredibly expensive and new entrance often have to pay wholesale rates to access national wireless providers network in order to provide retail services. Given this reality, PIAC expected the CRTC, as part of Telecom Regulatory Policy CRTC 2021-130 *Review of mobile wireless*, to mandate access to wireless networks for mobile virtual network operators (MVNOs) that is wireless service

---

[62] Shaw Communications Inc., *2020 Annual Report*, at page 12, online: <https://images.ctfassets.net/tzb4ihmthaev/7MpVmb2gWeJQQ5Bjy7TG2F/9f4d9d9c78c15a72979e9d3b4cda6454/2020_Annual_Report__Filing_Version_.PDF>.

[63] Competition Tribunal, Rogers Communications Inc. and Shaw Communications Inc. - CT-2022-002, online: <https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/520930/index.do>.

[64] *Ibid.*

[65] *Ibid.*

providers that buy access to other companies' network infrastructure and offer services over other carriers' spectrum via software, instead of building physical networks or purchasing spectrum themselves. However, the CRTC narrowly mandated access only to carriers with their own spectrum licence (for example, Shaw).[66] In other words, the policy outright bars 'true MVNO' carriers (which by most definitions do not own spectrum and may not have other network facilities) from entering the market through mandated access to the national carriers' network. Without mandated access, true MVNOs seeking to enter the market face the same barriers to entry as before the MVNO decision.

This regulatory policy was issued one month after Rogers' proposed acquisition of Shaw was announced, but the CRTC did not modify its findings in light of the shift in competitive circumstances caused by Freedom's anticipated removal from the market.

In the MVNO Decision, the Commission itself explicitly acknowledged that spectrum is a major component of the high barrier to entry, explaining that "[s]pectrum is a scarce resource and, while set-asides may have improved access for competitors, it can still prove to be relatively expensive to acquire," and "[s]pectrum auctions may also take place well before wireless carriers are ready to use spectrum."[67]

The recent spectrum auction results do not provide much hope that other regional carriers will fill the competitive gap left by Shaw, which did not itself participate.[68] Xplornet won a significant number of spectrum licenses in the 3500 MHz auction that concluded on July 23, 2021 – but emphasizes serving rural and remote areas,[69] which, while needed, does not align with Freedom's densely populated service areas. Videotron also purchased a large amount of spectrum outside its traditional serving territory of Quebec, though it remains to be seen whether and how soon Videotron will use its new licenses to expand its facilities footprint. We note that, although unsuccessful so far, both TELUS and Bell have challenged the auction's award of any spectrum outside of Quebec to Videotron, on the premise that Videotron did not own facilities in the Tier 4 areas in which it bid on set-aside spectrum, a requirement of the auction rules.[70]

In general, whether the remaining spectrum-owning regional carriers will now leverage the new mandated access policy is unknown. To be eligible for mandated access, most other regional carriers will have to wait until the next spectrum auction or until they chance upon a spectrum divesture or transfer, which may occur well into the 7-year period, leaving little remaining time to expand under the policy's protection.

Accordingly, there are likely significant challenges to CRTC-defined 'MVNOs' providing additional competition (at least in the short- to medium-term) in the Canadian market. In any event, whatever the possibility of market entry and <u>price discipline from MVNOs</u> in markets where Shaw has networks—namely, British Columbia, Alberta, and Ontario—it <u>is greatly inferior to competition from a dedicated and well-resourced "fourth MNO player" (facilities-based carrier) such as Freedom Mobile</u>.

[66] Telecom Regulatory Policy CRTC 2021-130 *Review of mobile wireless* at para. 316.
[67] *Ibid.* at paras. 96-97
[68] Alexandra Posadzki, "Shaw opts out of key spectrum auction amid Rogers takeover" Globe and Mail (7 April 2021), online: <https://www.theglobeandmail.com/business/article-shaw-opts-out-of-key-spectrum-auction-amid-rogers-takeover/>.
[69] Xplornet, "Xplornet Acquires Spectrum in 3500 MHz Auction" (29 July 2021), online: <https://www.newswire.ca/news-releases/xplornet-acquires-spectrum-in-3500-mhz-auction-838724636.html>. See also: ISED, "3500 MHz Auction — Final Results" (29 July 2021, updated 20 December 2021), online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11722.html>.
[70] Amanda Oye, "Videotron caught up in "delay game" with incumbents, CEO says", CARTT (27 October 2021), online: <https://cartt.ca/videotron-caught-up-in-delay-game-with-incumbents-ceo-says/>.

In its submission to the CRTC in the review of wireless proceeding, the Competition Bureau put forward that regional wireless disruptors (such as Shaw), in contrast to MVNOs, "have the required independence and infrastructure to act aggressively to fight for their share of the pie."[71] The Competition Bureau also warned that the success of MVNOs may disproportionately affect wireless disruptors and long-term disincentives investment in high-quality networks.[72] The loss of Freedom Mobile would be detrimental, especially in light of the CRTC's prioritization of wireless disruptors at the expense of MVNOs.

It took Freedom Mobile, formerly Wind Mobile, well over 12 years to become an effective fourth player MNO in several of the most populous provinces of the Canadian wireless market. Since its acquisition by Shaw in 2016, consumers have only recently begun to see the competitive benefits of Freedom Mobile. The Rogers and Shaw merger, in our view, and it seems the view of the Competition Bureau, would eliminate the most meaningful competitor in Canada's wireless industry.

Conclusion

Rogers and Shaw are highly profitable companies with diverse broadcasting and telecommunications assets that make them billions of dollars in revenues each year. While these companies claim their coming together will benefit Canadians, consumers, the INDU committee, and now the Competition Bureau all have expressed doubts.

PIAC views the Competition Bureau's recent application to the Competition Tribunal to block the deal as a signal that telecommunications mergers that offer no real benefit to consumers and which are likely instead to lessen or prevent competition will not be approved (with or without conditions). The Competition Bureau has taken concrete legal steps to protect competition this time and is doing so in a way that centres consumers' concerns (pricing, choice, quality of service), rather than discussing competition only from the perspective of the corporate market participants who focus on vague notions of "innovation" which are ultimately incapable of definition or measurement. This is a welcome change towards product pricing is, PIAC believes, in keeping with the economic precarity of consumers at this time and is in line with the future direction of competition law in the U.S. and elsewhere.[73]

The Competition Bureau nonetheless will have an uphill battle at the Competition Tribunal and the transaction may yet be closed and ultimately approved. We are also waiting to hear whether Cabinet will set aside or refer back the CRTC's decision to approve the transfer of Shaw's broadcasting assets to Rogers. PIAC will continue to monitor the progress of the acquisition's regulatory reviews and advocate for lower prices, more choice, and better service for consumers.

---

[71] Competition Bureau, "Executive summary of the Bureau's submission to the CRTC on mobile wireless services" (2019), online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04505.html>.
[72] *Ibid.*
[73] Federal Trade Commission, "Remarks of Chair Lina M. Khan at the ICN Conference in Berlin, Germany" (6 May 2022), online: http://www.ftc.gov/system/files/ftc_gov/pdf/Remarks%20of%20Chair%20Lina%20M.%20Khan%20at%20the%20ICN%20Conference%20on%20May%206%2C%202022_final.pdf