

**FILED / PRODUIT**

Date: September 12, 2022  
CT- 2022-002

Sara Pelletier for / pour  
REGISTRAR / REGISTRAIRE

**CT-2002-002**

OTTAWA, ONT.

Doc. # 211

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34;

**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.**

Respondents

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**MOTION RECORD  
(Respondents' Refusals Motion)**

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September 7, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Suite 2750  
145 King Street West  
Toronto, ON M5H 1J8

**Jonathan C. Lisus** (LSO# 32952H)

Tel: 416.598.7873

Email: jlisus@lolg.ca

**Crawford G. Smith** (LSO# 42131S)

Tel: 416.598.8648

Email: csmith@lolg.ca

**Matthew R. Law** (LSO# 59856A)

Tel: 416.849.9050

Email: mlaw@lolg.ca

**Bradley Vermeersch** (LSO# 69004K)

Tel: 416.646.7997

Email: bvermeersch@lolg.ca

**Zain Naqi** (LSO#: 67870U)

Tel: 416.645.3789

Email: znaqi@lolg.ca

Counsel for the Respondent/Moving Party, Rogers Communications Inc.

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**DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West  
Toronto, ON M5V 3J7

**Kent E. Thomson** (LSO# 24264J)

Tel: 416.863.5566

Email: kentthomson@dwpv.com

**Derek D. Ricci** (LSO# 52366N)

Tel: 416.367.7471

Email: dricci@dwpv.com

**Steven Frankel** (LSO# 58892E)

Tel: 416.367.7441

Email: sfrankel@dwpv.com

**Chanakya A. Sethi** (LSO# 63492T)

Tel: 416.863.5516

Email: csethi@dwpv.com

Counsel for the Respondent/Moving Party,  
Shaw Communications Inc.

**TO: THE COMMISSIONER OF COMPETITION**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

**John S. Tyhurst**

**Derek Leschinsky**

**Katherine Rydel**

**Ryan Caron**

**Suzanie Chua**

**Marie-Hélène Gay**

**Kevin Hong**

Tel: (819) 956-2842 / (613) 897-7682

Fax: (819) 953-9267

Counsel for the Applicant/Responding Party,  
The Commissioner of Competition

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CT-2022-002

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**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.**

Respondents

**NOTICE OF MOTION**

**TAKE NOTICE THAT** Rogers Communications Inc. ("**Rogers**") and Shaw Communications Inc. ("**Shaw**", and together, the "**Moving Parties**") will make a motion to the Competition Tribunal ("**Tribunal**") on Tuesday, September 13, 2022, or on another date to be fixed by the Tribunal.

**THE MOTION IS FOR**

- (a) An order compelling the Commissioner of Competition (the "**Commissioner**") to answer the questions improperly refused and/or deficiently answered at the examination for discovery of Ms. Kristen

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McLean held August 24 and 25, 2022, as set out in the chart of refusals attached hereto as Schedule “A”;

- (b) The costs of this Motion; and,
- (c) Such further and other Relief as the Respondents may request, and the Tribunal may permit.

**THE GROUNDS FOR THE MOTION ARE**

- (a) Ms. McLean was examined for discovery as the representative of the Commissioner on August 24 and 25, 2022;
- (b) The Commissioner served his answers to undertakings and refusals arising from Ms. McLean’s examination on September 6, 2022;
- (c) Proper questions posed on Ms. McLean’s examination were refused and/or have been deficiently answered;
- (d) The questions improperly refused and/or deficiently answered call for information that is relevant to the matters at issue in the action and over which the Commissioner has no sustainable claim of litigation privilege;

█ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-4-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(m) Such further and other grounds as the Moving Parties may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the

Motion:

(n) The chart of refusals attached hereto as Schedule "A";

(o) The Affidavit of Ashley McKnight affirmed September 7, 2022;

(p) Such further and other evidence as the Moving Parties may advise and the Tribunal may permit.











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**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34;

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Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.**

Respondents

---

**AFFIDAVIT OF ASHLEY MCKNIGHT**  
**(affirmed September 7, 2022)**

---

I, **Ashley McKnight**, of the City of Oshawa, in the Regional Municipality of Durham, AFFIRM:

1. I am a law clerk with the law firm of Lax O'Sullivan Lisus Gottlieb LLP, lawyers for the Respondent, Rogers Communications Inc. ("**Rogers**"), and as such, have knowledge of the matters contained in this Affidavit.
2. Attached hereto and marked as **Exhibit "A"** is a copy of the Notice of Application of the Commissioner of Competition (the "**Commissioner**"), dated May 8, 2022.
3. Attached hereto and marked as **Exhibit "B"** is a copy of the Fresh as Amended Response of Rogers, dated August 18, 2022.
4. Attached hereto and marked as **Exhibit "C"** is a copy of the Fresh as Amended Response of Shaw Communications Inc. ("**Shaw**"), dated August 18, 2022.
5. Attached hereto and marked as **Exhibit "D"** is a copy of the Fresh as Amended Reply of the Commissioner to Rogers, dated September 2, 2022.
6. Attached hereto and marked as **Exhibit "E"** is a copy of the Fresh as Amended Reply of the Commissioner to Shaw, dated September 2, 2022.
7. On August 24 and 25, 2022, Kristen McLean, on behalf of the Commissioner, was examined for discovery. Attached hereto and marked as **Exhibits "F"** and "**G"**, are copies of the transcripts from the first and second day of her examinations, respectively.
8. On September 6, 2022, Raha Mohammad, a paralegal at the Competition Bureau, delivered the Commissioner's answers to undertakings and refusals given at

the examination for discovery of Ms. McLean. Attached hereto and marked as **Exhibit “H”** is a copy of the covering email of September 6, 2022, along with a copy of the attached chart of undertakings and refusals.

9. Attached hereto and marked as **Exhibit “I”** is a copy of the transcript of proceedings from the Standing Committee on Industry, Science and Technology, dated April 7, 2021.

10. Attached hereto and marked as **Exhibit “J”** is a copy of a letter from Rogers’ counsel at Goodmans to the Commissioner, dated April 13, 2022, bearing production number RBCH00002\_000000455, containing a request from Rogers for an Advance Ruling Certificate.

11. On May 5, 2022, Ms. Laura Sonley of the Competition Bureau affirmed an affidavit in support of an interim order under s. 104 of the *Competition Act*, R.S.C. 1985, c. C-34. Attached hereto and marked as **Exhibit “K”** is a copy of Ms. Sonley’s affidavit (without exhibits).

[REDACTED]

13. On July 26, 2022, Ms. Sorina Sam of the Competition Bureau affirmed an affidavit in connection with this proceeding. Attached hereto and marked as **Exhibit “M”** is a copy of Ms. Sam’s affidavit (along with Exhibit “A” thereto).

14. On July 27, 2022, Mr. Eric Widdowson of the Competition Bureau affirmed an affidavit in connection with this proceeding. Attached hereto and marked as **Exhibit “N”** is a copy of Mr. Widdowson’s affidavit (without exhibits).

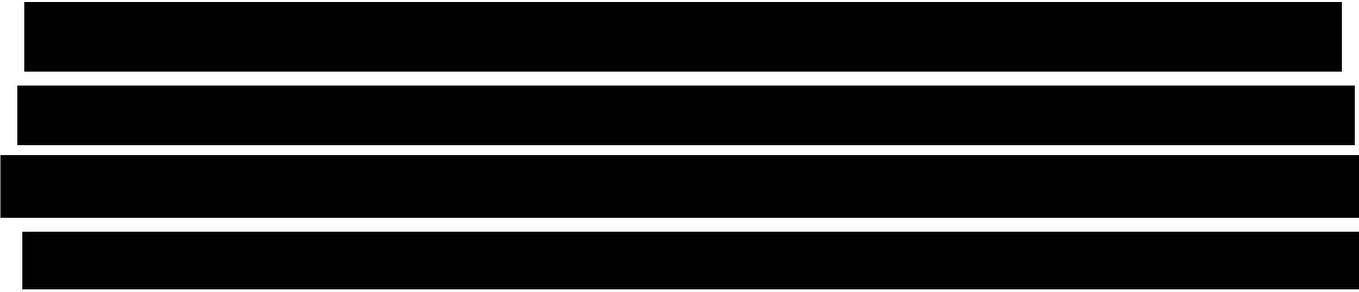
15. On July 28, 2022, Mr. Jean-Francois Lescadres of Videotron affirmed an affidavit in connection with this proceeding. Attached hereto and marked as **Exhibit “O”** is a copy of Mr. Lescadres’ affidavit (without exhibits).

[REDACTED]

17. On August 8, 2022, the Commissioner responded to a Request to Admit from Rogers and Shaw. Attached hereto and marked as **Exhibit “Q”** is a copy of the Commissioner’s response.

18. On August 24, 2022, Ms. Ronke Akinyemi, counsel for Rogers, delivered a chart by email to the Commissioner’s counsel listing certain meetings that the Bureau held with market participants. Attached hereto and marked as **Exhibit “R”** is a copy of the covering email along with a copy of the attached chart.

19. On August 31, 2022, I delivered a chart of undertakings and refusals from the examination of Ms. McLean to the Commissioner’s counsel. Attached hereto and marked as **Exhibit “S”** is a copy of my covering email along with a copy of the chart of undertakings and refusals.



21. On August 4, 2022, the Parties attended a Case Management Conference held via Teleconference before The Honourable Chief Justice Paul Crampton. Attached hereto and marked as **Exhibit "U"** is a copy of the transcript of the Case Management Conference.

**AFFIRMED** by Ashley McKnight of the City of Oshawa, in the Regional Municipality of Durham, before me at the City of Toronto, in the Province of Ontario, on August 29, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits  
(or as may be)

**RONKE AKINYEMI**

**ASHLEY MCKNIGHT**

This is Exhibit "A" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



































































This is Exhibit "B" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



















































This is Exhibit "C" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**





























































This is Exhibit "D" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**

CT-2022-002

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34;

**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**ROGERS COMMUNICATIONS INC. AND  
SHAW COMMUNICATIONS INC.**

**Respondents**

- and -

**ATTORNEY GENERAL OF ALBERTA AND  
VIDEOTRON LTD.**

**Intervenors**

---

**FRESH AS AMENDED REPLY to the Response of Rogers Communications Inc.  
of the Commissioner of Competition**

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**I. OVERVIEW**

1. The within application seeks to block Canada's largest wireless company from acquiring its closest competitor because the Proposed Transaction is anti-

competitive. It will harm millions of Canadian consumers in Ontario, Alberta and British Columbia through higher prices, lower quality services, and lost innovation. The Fresh as Amended Response of Rogers Communications Inc. (the “Response”) ignores and seeks to obfuscate the substantial harm their Proposed Transaction and the Divestiture will visit upon the Canadian economy. Rogers’ assertion that the Proposed Transaction and the Divestiture are competitively neutral (or that they will increase competition) is incorrect.

2. The proposed divestiture of Freedom Mobile to Videotron (the “Divestiture”) is not an effective remedy. It fails to eliminate the substantial lessening and prevention of competition the Proposed Transaction will cause. Such a divestiture will not replace the significant and growing competition Shaw Mobile was delivering and would continue to deliver in Alberta and British Columbia, and it would make Freedom Mobile a substantially weaker competitor than it would have been but for the Proposed Transaction. The substantial growth in Freedom’s competitive significance under Shaw’s ownership amply demonstrate the significant benefits Freedom received from Shaw. In any case, the completion of the proposed divestiture to Videotron is subject to the ISED Minister’s approval. The respondents bear the onus of proving that such divestiture is likely to be completed.
3. While Rogers claims there will be many benefits related to the Proposed Transaction and the Divestiture, the cognizable efficiencies Rogers can demonstrate are insufficient to outweigh and offset the anti-competitive effects.
4. While Rogers’ Response asks the Tribunal to permit “the Transaction coupled with the Divestiture”, Rogers fails to discharge its burden to demonstrate that the proposed remedy will be effective.
5. The Tribunal should prohibit this anti-competitive merger.

## **II. POINTS IN REPLY**

6. The Applicant repeats and relies upon the facts in his Notice of Application, Statement of Grounds and Material Facts and Concise Statement of Economic

Theory (collectively, the “Application”), and except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in this Fresh as Amended Reply have the meaning ascribed to them in the Application.

7. The Applicant admits the facts contained in the following: paragraphs 14, 16, 17, 18, the first sentence of paragraph 20; paragraph 22; the second sentence of paragraph 27; and paragraph 29 of the Response.

#### **A. Market Definition**

8. Rogers does not deny the market definition put forward by the Applicant, but suggests that Business Services is not a separate market.<sup>1</sup> To the contrary, Business Services involve unique demand, marketing, pricing and other characteristics which justify its consideration as a market separate from Wireless Services.

#### **B. Shaw Mobile’s Competitive Impact was Significant and Growing**

9. Contrary to the Respondent’s claims,<sup>2</sup> Shaw Mobile’s impact on competition was significant and growing before the announcement of the Proposed Transaction.
10. Shaw Mobile gained a significant number of customers in a short period – much of which was at Rogers’ expense, accounting for half of Rogers’ losses in Alberta and British Columbia post-launch. This prompted competitive responses from Rogers, Bell and Telus to offset subscriber losses to Shaw Mobile. The competitive responses of the National Carriers included aggressive retention and win-back offers targeted at Shaw Mobile and Freedom Mobile customers in Alberta, British Columbia and Ontario.

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<sup>1</sup> Paragraph 31 a. of the Response.

<sup>2</sup> Subparagraphs 33(c) and (d) of the Response.

**C. The Respondent's Position on the Importance of Wireline Assets are Contradictory and Self-Serving**

11. The Respondent erroneously downplays the competitive significance of wireline assets and scale to competition for Wireless Services in Alberta and British Columbia<sup>3</sup> despite its awareness of the material facts set out in the Commissioner's Application.
12. The Respondent's position on the significance of wireline assets to wireless competition is not only wrong as it pertains to Alberta and British Columbia, but it is also at odds with Rogers' assertion that Shaw's wireline assets would enhance Rogers' ability to compete, including against the other National Carriers. Rogers' position that with the Proposed Transaction Rogers "will be better placed to compete in wireless services against Bell and Telus"<sup>4</sup> contradicts Rogers' claim that Freedom Mobile can be severed from Shaw's wireline business without suffering a substantial competitive disadvantage. This is simply not the case. Severing Freedom Mobile from Shaw's wireline business will substantially compromise its ability to compete and provide much-needed competitive discipline to the National Carriers. Shaw is a disruptive entrant that is still growing its wireless business while Rogers is an incumbent that is already the largest wireless carrier in Canada with significant spectrum holdings, established brands, and a nationwide wireless network, retail distribution footprint and already claims to have Canada's largest and most reliable 5G network. The Proposed Transaction plus a Freedom Mobile divestiture would eliminate Shaw Mobile and significantly weaken Freedom Mobile such that the net effect would be a substantial lessening and prevention of competition.
13. As a national carrier with substantial existing market share, and in light of other market characteristics described in the Application,<sup>5</sup> Rogers' incentives to compete in Wireless Services are significantly different from those of Shaw. The Proposed Transaction would give rise to a greater likelihood of coordinated behaviour among

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<sup>3</sup> Paragraphs 10-13, 34-37 of the Response.

<sup>4</sup> Paragraph 38 of the Response.

<sup>5</sup> Notice of Application herein, at paragraphs 74-90.

the incumbent facilities-based carriers, not increased competition as Rogers has suggested

**D. Shaw Planned to Continue to Grow its Business Before the Announcement of the Proposed Transaction**

14. Counter to the Respondent's claims,<sup>6</sup> Shaw planned to make 5G investments, enter new areas and expand into wireless Business Services. Shaw has a proven track record of investing in and expanding its business and Shaw would have continued but for the Proposed Merger. Shaw's decisions to cease these investments and to compete less vigorously are a result of the Proposed Transaction.

**E. MVNO Entry is Unlikely to be Timely or Sufficient to Replace Competition from Shaw**

15. The CRTC's MVNO Policy will not cure the substantial lessening and prevention of Competition the Proposed Transaction creates.<sup>7</sup> Rogers does not deny that MVNO entry is not likely in a period or on a scale that would constrain the likely increase in market power attributable to the Proposed Transaction.
16. Rather, the CRTC's MVNO Policy sought to protect and enhance the pre-merger competition brought about by regional carriers like Shaw who would have been the main beneficiary of the CRTC's policy. The diminishment of Shaw's Wireless business due to the Proposed Transaction and Divestiture will thus substantially reduce the effectiveness of the CRTC MVNO policy and further compound the anti-competitive effects of the Proposed Transaction.

**F. There Would be No Increase in Competition**

17. While Rogers pleads that the Proposed Transaction and the Divestiture would increase competition,<sup>8</sup> as noted above, that is not the case, given factors which include Rogers' different market position and incentives from Shaw and the difficulties and reduced competitiveness which Vidoetron will face without wireline

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<sup>6</sup> Subparagraphs (d) and (e) of the Response.

<sup>7</sup> See paragraphs 28-30 of the Response.

<sup>8</sup> Paragraphs 38-40 of the Response.

assets and other benefits derived by Shaw from its wireline business. These factors make it likely that there will be increased post-merger coordination and reduced competition in Wireless Services. Contrary to Rogers' assertions, prior to the proposed transaction being announced, Shaw was poised to expand, by steps including extending its network in Ontario and the west, participating in the acquisition of new spectrum and offering 5G services.

### **G. Claimed Efficiencies Do Not Save this Anticompetitive Merger**

18. Rogers attempts to justify its anticompetitive merger with Shaw by asserting that it, and the divestiture of Freedom to Videotron, will achieve productive and dynamic efficiencies. The Respondents bear the burden of establishing the likelihood and the extent of each efficiency gain that they claim, and that such gains, if realized, would provide cognizable benefits to the Canadian economy and that they are likely to be greater than, and offset, the anticompetitive effects of the Proposed Transaction.
19. The efficiencies claims made cannot save this anti-competitive merger, as they:
  - a. are speculative, unproven and unlikely to be achieved in whole or in part or are grossly exaggerated;
  - b. are based on unrealistic assumptions and flawed methodologies;
  - c. are not brought about by the Proposed Transaction or Divestiture or would likely have been achieved irrespective of the Proposed Transaction; and
  - d. fail to account or to properly account for the cost to achieve the claimed efficiencies.
20. Additionally, the efficiencies Rogers claims<sup>9</sup> are not cognizable under the Act as:

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<sup>9</sup> Paragraphs 43-44 of the Response.

- a. Rogers, in seeking to achieve these efficiencies in the manner it proposes, will reduce product choice, lower output, and degrade the quality of Wireless Services in Ontario, Alberta and British Columbia;
  - b. they are not all true resource savings for the Canadian economy; and
  - c. they will not all accrue to the Canadian economy but outside of Canada.
21. Further, the Respondents require the approval of the ISED Minister under the *Radiocommunication Act*, R.S.C., 1985, c. R-2 to complete the Proposed Transaction and the proposed divestiture to Videotron. To the extent that the Respondents may be required to modify or agree to modify aspects of the Proposed Transaction and to divest wireless spectrum given the requirements of the *Radiocommunication Act*, any claimed efficiencies that the Respondents cannot realize as a result thereof are not cognizable under the *Competition Act*. Those claimed efficiencies are lost on account of the operation of the *Radiocommunication Act*, not any order under the *Competition Act*.
22. Any cognizable efficiencies that may be obtained through the Proposed Transaction and/or Divestiture that would be lost if the order sought by the Commissioner were made will not be greater than or offset the anticompetitive effects of the Proposed Transaction.
23. Neither the Proposed Transaction nor the Divestiture will contribute to the efficiency and adaptability of the Canadian economy but would require consumers of Wireless Services in Ontario, Alberta and British Columbia to pay materially higher prices, have fewer choices and experience a deterioration in the quality of Wireless Services. These effects will result in a corresponding loss of allocative efficiency, or deadweight loss, to the Canadian economy that outweighs any cognizable efficiencies that may arise from the Proposed Transaction and/or Divestiture.
24. Furthermore, the increase in prices or qualitative effects will result in a transfer of wealth from low- and moderate-income groups in society to the Respondents, whose shareholders include ultra-rich members of the family ownership groups of

these companies. Increased profits will also be paid to non-Canadian investors. These effects are socially adverse and otherwise must be given weight against any efficiencies that may arise. As a result, the cognizable efficiencies of the Proposed Transaction and/or Divestiture, if any, are not greater than or would offset its anti-competitive effects.

Dated: June 16, 2022

Amended August 15, 2022

Fresh as Amended September 2, 2022

**Department of Justice Canada**  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

Attention: John S. Tyhurst  
Derek Leschinsky  
Katherine Rydel  
Ryan Caron  
Kevin Hong

Counsel to the Commissioner of Competition

**TO: Lax O'Sullivan Lisus Gottlieb**  
Suite 2750, 145 King St W.  
Toronto ON M5H 1J8

Attention: Jonathon Lisus  
Crawford Smith  
Matthew Law  
Bradley Vermeersch

Counsel to Rogers Communications Inc.

**AND TO: Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON, M5V 3J7

Attention: Kent E. Thomson  
Derek D. Ricci  
Steven G. Frankel  
Chanakya Sethi

Counsel to Shaw Communications Inc.

**AND TO: Bennett Jones LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4

Attention: John F. Rook Q.C.  
Emrys Davis  
Alysha Pannu

Counsel to Videotron Ltd.

**AND TO: Attorney General of Alberta**  
Justice and Solicitor General  
Legal Services Division  
4th Floor, Bowker Building 9833 – 109 Street  
Edmonton, AB T5K 2E8

Attention: Kyle Dickson-Smith  
Opeyemi Bello  
Andrea Berrios

Counsel to Government of Alberta

This is Exhibit "E" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

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**Respondents**

- and -

**ATTORNEY GENERAL OF ALBERTA AND  
VIDEOTRON LTD.**

**Intervenors**

---

**FRESH AS AMENDED REPLY to the Response of Shaw Communications Inc.  
of the Commissioner of Competition**

---

**I. OVERVIEW**

1. The Applicant repeats and relies upon the Fresh as Amended Reply to the Response of Rogers Communications herein in respect of the Fresh as Amended

Response of Shaw Communications Inc. (“Response”), including the Overview in paragraphs 1-5 thereof.

## **II. POINTS IN REPLY**

2. The Applicant repeats and relies upon the facts in his Notice of Application, Statement of Grounds and Material Facts and Concise Statement of Economic Theory (collectively, the “Application”), and except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in this Reply have the meaning ascribed to them in the Application.
3. The Applicant admits the facts contained in the following paragraphs of the Response: paragraphs 17 to 23, 27 to 30, 35, 46, 48 to 50, 56 to 58, 60, and paragraph 59 except the first sentence.

### **A. Shaw’s Reasons for Selling are Immaterial**

4. Shaw makes certain assertions about why it chose to sell to Rogers,<sup>1</sup> Canada’s largest wireless company. That decision was based on private interests, not the public interests reflected in the Act, and the reasons are not determinative or material to the issues raised in this application.

### **B. Market Definition**

5. Shaw adopts Rogers’ Response in respect of market definition. The Applicant repeats paragraph 7 of its Reply to the Response of Rogers Communications Inc. in this respect.

### **C. Shaw Mobile’s Competitive Impact was Significant and Growing**

6. Shaw downplays the competitive significance of its past impact on the Wireless Services market generally,<sup>2</sup> and of Shaw Mobile’s impact in particular.<sup>3</sup> To the contrary, the launch of Shaw Mobile exceeded Shaw’s expectations and positioned

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<sup>1</sup> Paragraphs 39-45 of the Response.

<sup>2</sup> Paragraphs 69-72 of the Response.

<sup>3</sup> Paragraphs 36-37 and 93-96 of the Response.

it for sustainable growth. Shaw Mobile outperformed Freedom Mobile in its first year and led Shaw's postpaid wireless subscriber growth, despite only being offered in Alberta and British Columbia, less populous markets than Ontario. The launch of Shaw Mobile was profitable, having the intended effect of increasing overall profitability and reducing wireline customer churn.

7. Contrary to the Respondent's claims, while Ontario has historically represented the largest share of Shaw's wireless subscribers due to the relative size of the province and Shaw's acquisition of WIND subscribers (which were primarily in Ontario), Shaw Mobile was changing Shaw's growth trajectory. Shaw Mobile was projected to be the leading driver of growth in wireless on a going-forward basis. Shaw expected Shaw Mobile to continue growing rapidly, but-for its acquisition by Rogers.
8. Shaw's claim that Shaw Mobile had no downward pricing pressure on Wireless Services prices is therefore false and is contrary to the Respondents' own internal assessment of competition before the announcement of their Proposed Transaction.
9. Shaw planned to make 5G investments, enter new markets and expand into wireless Business Services. Shaw has a proven track record of investing in and expanding its business and Shaw would have continued but for the Proposed Merger. Shaw assessed these projects and determined that they were profitable strategies. Shaw's decisions to cease these investments and to compete less vigorously are due to the Proposed Transaction.
10. Shaw asserts that "Shaw's wireless business has yet to become free cash flow positive".<sup>4</sup> The Applicant puts Shaw to the strict proof thereof, but in any case, it is not unusual in this industry for a relatively recent and expanding entrant like Shaw to take a lengthy period to recover the large capital investments needed to be competitive. Furthermore, wireless and wireline aspects of these businesses cannot be considered in isolation, given that these operations are significantly interconnected.

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<sup>4</sup> Paragraph 32 of the Response.

**D. Wireline Assets are Important to the Competitiveness of Shaw Wireless Services**

11. Shaw characterizes Freedom Mobile as an easily severable entity from Shaw's wireline assets and downplays the importance of those assets in its Wireless Services business.<sup>5</sup>
12. Shaw Mobile in particular, but also Freedom Mobile, were serving increasing broader segments of the markets and bringing competition not just to the National Carriers flanker brands but other market segments.
13. The Application is not premised on any misconception about the business of Shaw. Contrary to Shaw's allegation, the Application is firmly grounded in Shaw's own internal competitive assessment before its business judgment was affected by the private financial incentives a merger provides to Shaw's shareholders.
14. Contrary to the parties' claims, Freedom if divested to Videotron would be a less effective competitor due to factors which include:
  - a. additional capital requirements of a standalone wireless entity in B.C. and Alberta;
  - b. incremental costs to develop 5G network;
  - c. incremental capital or operating costs to build out or purchase from third parties backhaul previously provided by Shaw wireline business;
  - d. inability to bundle or cross-sell competitively and the challenge of competing against incumbents who can cross-sell multiple telecommunication products;

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<sup>5</sup> Paragraphs 12, 33, 74-80 and 87-91 of the Response.

- e. dependence on Rogers and competitive vulnerability as a result of the numerous contractual arrangements included in the proposed divestiture to Videotron; and
  - f. loss of access, in whole or part, to “Go Wi-Fi” hotspots, resulting in increased costs and inferior coverage.
15. The remedy issue before the Tribunal is not merely whether the Freedom Mobile assets can be separated from Shaw, but whether a divestiture eliminates the substantial lessening and prevention of competition. A Freedom Mobile-only divestiture, as proposed by the Respondents, fails to satisfy the requirements of the *Competition Act*.
16. In fact, there is significant integration of Freedom Mobile within Shaw’s organizational structure and, importantly, Freedom Mobile benefits from its parent’s related businesses and operations, including Shaw’s network infrastructure, Wi-Fi Hotspots and backhaul. Shaw planned to further integrate its wireless and wireline businesses going forward to leverage the synergies between the businesses.

#### **E. Wi-Fi Hotspots are an Important Aspect of Shaw Wireless Competitiveness**

17. Contrary to Shaw’s assertions,<sup>6</sup> its Wi-Fi hotspots improve network coverage, avoid network costs and reduce network traffic. Wireless customers use and assign significant value to these hotspots and they have been a central feature of Shaw’s marketing materials and strategy. Shaw planned to expand its Wi-Fi hotspot network and viewed Wi-Fi and small cell deployment as complementary.

#### **F. Shaw Business Services**

18. Shaw’s denial of its intentions to enter the Business Services market<sup>7</sup> is inconsistent with the facts; in any case, it does not address the fact that Shaw is a capable and well-positioned poised entrant for that market. In contrast, Videotron is an unproven

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<sup>6</sup> Paragraphs 81-85 of the Response.

<sup>7</sup> Paragraphs 98-100 of the Response.

entrant, lacking the competitive advantages available to an existing wireline operator such as Shaw and the other incumbents which already offer these services.

### **G. Freedom Mobile's Competitive Decline Since the Merger Was Announced**

19. Shaw's suggestion that Freedom's decline since the merger announcement is a product of the circumstances surrounding the pandemic and that its marketing efforts have continued unabated<sup>8</sup> are belied by porting data which show that customers have moved to other carriers from Freedom in that period, not simply dropped or reduced service. The Proposed Transaction resulted in Shaw's putting on hold competitive initiatives including its planned 5G launch. Shaw was unable to bid on critical 3500 MHz spectrum and the company's capital spending was made subject to limitations under the Arrangement Agreement. These and other factors attributable to the Proposed Transaction to date have already resulted in prevention or lessening of competition.

Dated: June 16, 2022

Amended August 15, 2022

Fresh as Amended September 2, 2022

**Department of Justice Canada**  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

Attention: John S. Tyhurst  
Derek Leschinsky  
Katherine Rydel  
Ryan Caron  
Kevin Hong

Counsel to the Commissioner of Competition

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<sup>8</sup> Paragraphs 102-109 of the Response.

**TO: Lax O'Sullivan Lissus Gottlieb**  
Suite 2750, 145 King St W.  
Toronto ON M5H 1J8

Attention: Jonathon Lissus  
Crawford Smith  
Matthew Law  
Bradley Vermeersch

Counsel to Rogers Communications Inc.

**AND TO: Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON, M5V 3J7

Attention: Kent E. Thomson  
Derek D. Ricci  
Steven G. Frankel  
Chanakya Sethi

Counsel to Shaw Communications Inc.

**AND TO: Bennett Jones LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4

Attention: John F. Rook Q.C.  
Emrys Davis  
Alysha Pannu

Counsel to Videotron Ltd.

**AND TO: Attorney General of Alberta**  
Justice and Solicitor General  
Legal Services Division  
4th Floor, Bowker Building 9833 – 109 Street  
Edmonton, AB T5K 2E8

Attention: Kyle Dickson-Smith  
Opeyemi Bello  
Andrea Berrios

Counsel to Government of Alberta

This is Exhibit "F" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**































































































































































































































































































































































































































































































































































































































This is Exhibit "G" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**











































































































































































































































































































































































































































































































































































































































































































































































This is Exhibit "H" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



























































This is Exhibit "1" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

43rd PARLIAMENT, 2nd SESSION

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# Standing Committee on Industry, Science and Technology

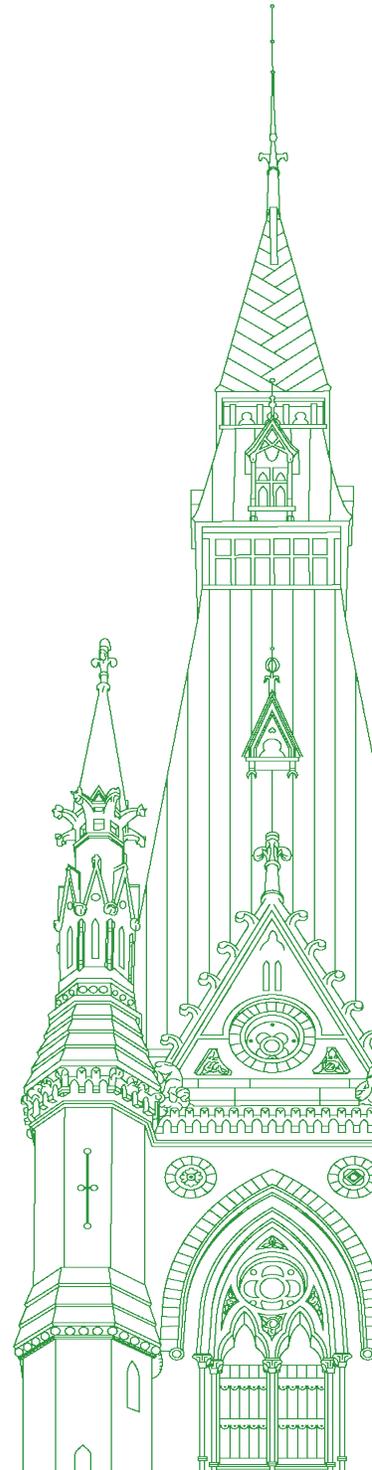
EVIDENCE

**NUMBER 029**

Wednesday, April 7, 2021

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Chair: Mrs. Sherry Romanado





## Standing Committee on Industry, Science and Technology

Wednesday, April 7, 2021

• (1435)

[English]

**The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoine, Lib.)):** Good afternoon, everyone. I call this meeting to order.

Welcome to meeting number 29 of the House of Commons Standing Committee on Industry, Science and Technology. Today's meeting is taking place in a hybrid format pursuant to the House order of January 25. The proceedings will be made available via the House of Commons website. Just so that you are aware, the web-cast will always show the person speaking rather than the entirety of the committee.

To ensure an orderly meeting, I'd like to outline a few rules to follow. Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice at the bottom of your screen of either the floor, French or English. Please select your preference. I remind everyone that all comments by members and witnesses should be addressed through the chair and that when you are not speaking your microphone should be on mute. As is my normal practice, I will hold up a yellow card for when you have 30 seconds remaining in your intervention and a red card when your time for questions has expired. Please make sure that you are on gallery view so that you can see me waving the card.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Friday, March 19, the committee is meeting today to continue its study on the proposed acquisition of Shaw by Rogers.

I'd now like to welcome our witnesses. From the CRTC, we have Mr. Ian Scott, Mr. Scott Hutton and Mr. Christopher Seidl. From the Competition Bureau, we have Matthew Boswell, the commissioner; Anthony Durocher, deputy commissioner and Leila Wright, associate deputy commissioner. From the Department of Industry, we have Éric Dagenais and Adam Scott.

Each witness group will present for up to seven minutes, followed by rounds of questions.

With that, we will begin with the CRTC.

You have the floor for seven minutes.

**Mr. Ian Scott (Chairperson and Chief Executive Officer, Canadian Radio-television and Telecommunications Commission):** Thank you, Madam Chair.

I should note at the outset that I'm joining you from the CRTC's offices, which are located on traditional, unceded Algonquin terri-

tory. I'd like to thank the Anishinabe people and pay respect to their elders.

As you mentioned, I'm joined today by two of my colleagues: Chris Seidl, the executive director of telecommunications at the commission, and Scott Hutton, chief, consumer, research and communications.

We welcome the opportunity to appear before your committee as it studies the proposed acquisition of Shaw Communications by Rogers Communications. My remarks today will be short and they will focus on explaining how the CRTC reviews transactions in the communications industry. I hope to avoid the red card during this appearance, Madam Chair.

At this stage, I must say that we know little more about the potential transaction than does the public. We're waiting for the parties to file the required regulatory documents, so at this point we know only what has been reported in the media and the industry press. I can, however, explain the CRTC's jurisdiction and the process we typically follow for these types of transactions.

Specifically, there are two components to the proposed transaction. First, there's Shaw's telecom businesses, including its wireless and Internet access business, and second, there are its cable and satellite television and video-on-demand businesses. Under the Telecommunications Act, transactions involving telecom services do not require the CRTC's prior approval. We have no role in approving transfers of ownership or transfers of spectrum, except to ensure that the company remains Canadian owned and controlled pursuant to the foreign ownership rules.

[Translation]

In this case, subject to regulatory document verification, Rogers is a Canadian company.

I mentioned that the CRTC is not generally involved in reviewing ownership transactions of companies offering telecommunications services. We provide ongoing regulatory oversight to ensure that the services provided by carriers meet the objectives set out in the Telecommunications Act, including the availability of reliable and affordable telecommunications services in all regions of Canada.

I am sure the members of the committee are aware that we have undertaken a thorough review of the wireless market to ensure that our regulations allow for competition that delivers better prices for Canadians. Similarly, we are currently conducting a review of the wholesale rates that competitors pay to access the networks of major cable and telephone companies that they use to provide Internet services to Canadians.

I am sure you have questions about the results of these two reviews. I hope you will understand that we cannot comment on these matters, except to say that decisions are forthcoming.

[English]

Regarding the broadcasting assets in this specific case, the Broadcasting Act and its associated regulations provide that the CRTC approve a transfer of ownership of these assets. Once a completed application is received, we will publish a notice of consultation and seek comments from the public. We'll examine the proposed transaction, taking into consideration our relevant policies for the sector.

To be clear, this includes policies designed to ensure a diversity of voices in the broadcasting system and ensure that Canadians have access to local and community television programming. In this instance, we'll also consider the impact the transaction may have on CPAC, well known to many of you, which provides independent and non-partisan coverage of Canada's democratic processes. As with all our proceedings, we will render decisions in the public interest based on the evidence on the record of that proceeding.

The transaction, as you well know, is also subject to regulatory approvals from the Competition Bureau under the Competition Act and from the Minister of Innovation, Science and Industry under the Radiocommunication Act.

My colleagues from those respective authorities are here with us today. Although I cannot speak about the matters currently before the commission, as I've already mentioned, we will be pleased to answer any questions that you have.

Thank you, Madam Chair.

• (1440)

**The Chair:** Thank you very much.

Our next presentation will be by the Competition Bureau.

You have seven minutes.

[Translation]

**Mr. Matthew Boswell (Commissioner of Competition, Competition Bureau):** Madam Chair and members of the committee, we are pleased to appear today.

Joining me are two colleagues from the Competition Bureau; Anthony Durocher, deputy commissioner, and Leila Wright, associate deputy commissioner in the competition promotion branch.

From the outset, it is important for me to clarify that the bureau is required by law to conduct its enforcement work confidentially. In particular, this means we are unable to comment on either specific cases or hypotheticals, and we are therefore limited in what we

can say about our review of this transaction. As this matter is under review, it would not be appropriate for me to comment on what—

[English]

**Mr. Earl Dreeshen (Red Deer—Mountain View, CPC):** On a point of order, Madam Chair, the audio feed is coming through with the same volume in both French and English.

**The Chair:** Thank you. I'll stop the clock.

Mr. Boswell, could you verify which language you have selected at the bottom of your screen?

**Mr. Matthew Boswell:** Madam Chair, I had it on English. I've just turned it off, if that will help.

**The Chair:** If you're going to be toggling back and forth between English and French, I think it would help if you would change it to “floor”.

**Mr. Matthew Boswell:** The only options are “off”, and English or French for the interpretation.

**The Chair:** Could you put it on “off”?

**Mr. Matthew Boswell:** Okay.

**The Chair:** We'll see if that works. Thank you.

Please continue.

**Mr. Matthew Boswell:** Okay. I'll back up a tiny bit.

[Translation]

As this matter is under review, it would not be appropriate for me to comment on what other witnesses in this proceeding may have said about the transaction.

My remarks today will provide an overview of the bureau's merger review process. The bureau is an independent law enforcement agency mandated to protect and promote competition in Canada through the enforcement and administration of the Competition Act. The review of mergers is an important pillar of this work.

[English]

Generally speaking, mergers of all sizes and in all sectors of the economy are subject to our review. Our merger reviews are conducted through careful consideration of evidence to determine whether a merger is likely to substantially lessen or prevent competition. This test is focused on market power. It evaluates a merger's impact on price as well as non-price dimensions, such as quality, service and innovation. In its review, the bureau collects and analyzes evidence, including interviews, documents and data from the merging parties and a wide range of industry participants. Court orders can also be used to compel information. It is, of course, difficult to predetermine how long a particular merger review will take, as the bureau evaluates the steps that need to be taken on a case-by-case basis.

The enforcement decisions and resolution of issues will depend on the particular circumstances of the matter in question. Approval regarding enforcement decisions resides with me as the commissioner of competition, but should a matter proceed to litigation, the ultimate decision resides with the Competition Tribunal and appellate courts. If I determine that a merger is likely to result in a substantial lessening or prevention of competition, I may apply to the Competition Tribunal for an order to prevent, dissolve or alter the merger. Alternatively, I can negotiate an agreement, that is enforceable by law, with the merging parties without proceeding to litigation. I take this role very seriously.

I want to assure this committee that the bureau's review of the proposed transaction will be very thorough. I will make a principled and evidence-based assessment of its competitive impact and take appropriate action.

We look forward to your questions today.

Thank you.

• (1445)

**The Chair:** Thank you very much.

We'll go now to the Department of Industry.

You have the floor for seven minutes.

[*Translation*]

**Mr. Éric Dagenais (Senior Assistant Deputy Minister, Spectrum and Telecommunications Sector, Department of Industry):** Thank you, Madam Chair.

My name is Eric Dagenais and I am the senior assistant deputy minister of the spectrum and telecommunications sector of the Department of Innovation, Science and Economic Development, or ISED.

[*English*]

I'm joined by my colleague Adam Scott, who is the director general for the spectrum licensing policy branch. Thank you for inviting us.

The Minister of Innovation, Science and Industry is empowered by the Radiocommunication Act, with due regard to the Telecommunications Act, to govern the use of spectrum. As such, he may take into account all matters that he considers relevant for ensuring the orderly development and efficient operation of wireless communications in Canada. That's why we were invited today.

[*Translation*]

On the matter before us today, I would argue that the minister's most relevant power is the power to issue spectrum licences. That power includes reviewing and approving the transfer of commercial mobile spectrum between parties.

Access to sufficient spectrum is a precondition to provision of wireless services. This access is crucial to the digital economy and the expansion of next-generation connectivity.

[*English*]

In carrying out this work, we are guided by the spectrum licence transfer framework—I'll just call it the “framework” from here on

in—that supports the government's policy objective, which is to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource, including the efficiency and competitiveness of the Canadian telecommunications industry and the availability and quality of services to consumers. The intent of the framework is to provide guidance to licensees as to how transfers of spectrum licences will be reviewed, as well as introduce additional conditions of licence regarding the transfer of control of spectrum licences.

[*Translation*]

In making a determination as to the impact of a licence transfer on the policy objective, ISED analyzes, among other factors, the change in spectrum concentration levels that would result from the licence transfer. Also, ISED examines the ability of the applicant and other existing and future competitors to provide services, given the post-transfer concentration of commercial mobile spectrum.

[*English*]

As part of our determination, we would normally take into account the current licence holdings of the applicants in the licensed areas; the overall distribution of licence holdings of all commercial mobile spectrum bands; the services to be provided and the technologies available in the spectrum bands; the availability of alternative spectrum; the characteristics of the region, including urban and rural status, population levels and density or other factors that impact spectrum capacity or congestion; and, any other factor relevant to the policy objectives that may arise from the licence transfer.

• (1450)

[*Translation*]

As stated in the framework, all parts of the application and all supporting materials are treated confidentially. Once a decision has been made, we will publish it on ISED's website.

I'm happy to take your questions.

[*English*]

**The Chair:** Thank you very much.

We'll begin our rounds of questions.

Again, make sure that your interpretation is set on the language you prefer to use, to make sure that you have the proper interpretation service.

We will start with MP Poilievre for six minutes.

**Hon. Pierre Poilievre (Carleton, CPC):** Thank you.

I'm going to start with Mr. Scott.

For those listening who may not be familiar with the overlapping and also the divergent jurisdictions here, I'd like to do a "who does what" exercise, because we have three approval bodies, and I want to make sure that we understand who is doing what. You did describe it, and you described it well, but I wonder if you might do it in point form, in simply a Coles Notes point-form summary of all the decisions that your body, the CRTC, will have to approve or reject in this decision.

**Mr. Ian Scott:** Thank you for the question, Madam Chair.

Mr. Poilievre, in point form, on the telecommunications side, we're responsible to ensure that Canadian carriers are indeed Canadian and qualified to act as such. In this case, I think that is a moot point subject to verification of documents, but the acquiring firm is Rogers, which we understand to be a wholly owned Canadian company or Canadian-controlled company. That is the extent of our jurisdiction with respect to the transfer of ownership on the telecom side.

On the broadcasting side, Rogers and Shaw have a number of activities that require our approval. Their broadcast distribution undertaking businesses, their cable business, their video-on-demand licences and Shaw's satellite-delivered video programming—BDU is a satellite operator—must be approved. Transfer of ownership for all of those require approval by the commission. That is a summary of the requirements with us.

**Hon. Pierre Poilievre:** Again, if you can do a Coles Notes version, by what criteria do you make decisions with respect to the broadcasting side? I think it's very clear—black and white—on the Canadian ownership side, but on the broadcasting side, what would be the test you would apply to make those decisions?

**Mr. Ian Scott:** As I mentioned in my opening remarks, fundamentally, with respect to competition—and more—we will want to look, generally speaking, at the diversity of voices. That's an important element of the broadcasting system. We generally are not prepared to allow one person—one company—to control all television service providers in any given geographic market.

It can include an assessment of the size of the affected market and the market share of other television providers and, overall, the competitiveness of the market, but as we mentioned, with respect to a substantial lessening or not of competition in the telecom space, that is the responsibility of the Competition Bureau.

**Hon. Pierre Poilievre:** What I took from mainly was that the major decision you have to make has to do with the diversity of voices and whether or not this merger would limit the number of voices heard in the broadcasting space. Did I miss something?

**Mr. Ian Scott:** No. I don't like to make forward-looking statements. Once we receive all of the documents from the firms, we will issue a notice, and it will identify any issues, but I wouldn't disagree with you that perhaps the fundamental issue to be considered on the broadcasting side is diversity of voices.

**Hon. Pierre Poilievre:** It sounds to me as though the foreign ownership side could easily be done by ISED. ISED has to make decisions about foreign takeovers in other industries all the time. Why do we need the CRTC doing this, given that ISED does it already?

• (1455)

**Mr. Ian Scott:** We have different responsibilities under two different acts. My colleague, Mr. Dagenais, might want to add to this if needed.

We're responsible for it under the Telecommunications Act. ISED is responsible for transactions with respect to the Radiocommunication Act. Not to be cute, but that was a determination made by parliamentarians. That's what is set out in the telecom and radiocom acts.

**Hon. Pierre Poilievre:** Right. And parliamentarians of course are always perfect, so that could not have been a mistake.

**Mr. Ian Scott:** Exactly.

**Hon. Pierre Poilievre:** If by chance in some theoretical world it were a mistake, is there any reason, if ISED does radio diffusion, that it couldn't consider foreign ownership of telecommunication as well?

**Mr. Ian Scott:** If I may, I'll try to answer the question in a slightly different way.

If you think back, there was a regulatory proceeding some years back, in the late 2008-09 period, involving Globalive, and it had quite an elaborate process. One of the things easily available to the commission is the ability to hold public proceedings and public hearings as required. So, perhaps in an area where there might be more controversy, the commission has the necessary tools to hold a public hearing, which ISED lacks in that it is not a regulatory body that holds public hearings.

**Hon. Pierre Poilievre:** Do I have any time at all?

Thanks very much.

**Mr. Ian Scott:** Thank you.

**The Chair:** Thank you very much.

We'll now to go MP Erskine-Smith.

You have the floor for six minutes.

**Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.):** Thanks very much.

I want to start with our competition commissioner.

Commissioner Boswell, in a submission to the CRTC, the Competition Bureau wrote that "mobile wireless prices in Canada are higher in regions where Bell, TELUS and Rogers do not face competition from a strong regional competitor."

Shaw would be a strong regional competitor. Am I right?

**Mr. Matthew Boswell:** Yes. We discussed that in our submission to the CRTC's wireless proceeding.

**Mr. Nathaniel Erskine-Smith:** Do you mind if I walk through a few more quotes? This one is of great interest to me because we had promised to reduce prices by 25% in the platform, and obviously the pandemic has made that challenging in some respects in terms of priorities, but you noted in the same submission, “Prices are in the range of 35-40% lower in the parts of Canada where wireless disruptors have achieved a market share above 5.5%.”

Shaw and its business Freedom Mobile would be a wireless disrupter, right?

**Mr. Matthew Boswell:** From the submission we made to the CRTC and the extensive reports that we filed, that is correct, sir.

**Mr. Nathaniel Erskine-Smith:** You went on, “Wireless disruptors offer the most promising path forward. They drive lower prices, greater choice and increased levels of innovation in Canada over the long term.”

If we see the loss of a wireless disrupter, would that be a challenge to lower prices, greater choice and increased levels of innovation over the long term?

**Mr. Matthew Boswell:** What I can say, Madam Chair, to the honourable member, is that now that this transaction is before us, we will be required to conduct a thorough review and make determinations with respect to whether it's going to result in a substantial lessening or prevention of competition.

**Mr. Nathaniel Erskine-Smith:** I appreciate that, and you don't want to get ahead of yourself. So, maybe we can look behind us. In the same submission you wrote, “in late 2017, the national wireless carriers engaged in a highly-publicized series of price decreases to respond to Freedom's 10GB for \$50 offer.”

Do you think the national carriers would have engaged in that publicized series of price decreases if Freedom hadn't existed?

**Mr. Matthew Boswell:** It wouldn't be appropriate for me to speculate as to what motives were behind a particular course of action of other parties. I can't speak to that.

**Mr. Nathaniel Erskine-Smith:** No, it's clear that competition lowers prices. That was an element of competition.

This is the last quote I want to put to you:

...it is clear that facilities-based competition is unlikely to improve outcomes for Canadians if barriers to entry and expansion prevent or lessen the ability of facilities-based entrants, such as Freedom or Eastlink, to disrupt the coordination between the national wireless carriers.

It strikes me that it might be problematic—based on your quotes, not mine—if we were to lose a wireless disrupter such as Freedom Mobile.

• (1500)

**Mr. Matthew Boswell:** As I say, we did an extensive amount of work in the CRTC wireless proceedings. I should flag, as my colleague Mr. Scott has already flagged, that these matters are still before the CRTC, so I don't want to go too far. We made these submissions. They were backed by evidence, by deep economic analysis, where we retained an outside expert, so we stand by what we submitted to the CRTC in terms of competition advice.

**Mr. Nathaniel Erskine-Smith:** In terms of process, one question I have is about the power you have to block a merger. No com-

ment on your part, but here's my comment: based on everything you've said in the past, it is unclear how this merger would proceed as is, apart from maybe—maybe—Freedom being spun off to another entity.

What powers do you have to block a merger that can't be overridden by the government? Is it possible that you make a submission and say that you don't think it should go forward? Do you have the final say, or is it up to the Governor in Council?

**Mr. Matthew Boswell:** Ultimately, I have the final say with respect to taking action to block or alter the merger if our review gets us to that point. That's true for all the mergers that are reviewed by the bureau. I can bring an application as the commissioner of competition to the Competition Tribunal to prevent or alter the merger as proposed, or any merger as proposed.

**Mr. Nathaniel Erskine-Smith:** If it goes forward and you find over a year from now that it has substantially lessened competition and you made a mistake, can you undo the merger after a year?

**Mr. Matthew Boswell:** There's a statute of limitations in the Competition Act that prevents us from taking action after one year.

**Mr. Nathaniel Erskine-Smith:** Do you think that should be changed?

**Mr. Matthew Boswell:** I'm a strong supporter of a comprehensive review of the Competition Act in Canada. I've said that previously and publicly, multiple times. Competition is truly the best protection the public has. Competition drives lower prices and increased choice. Competition drives productivity and innovation, which are needed in Canada.

This is an aspect of a comprehensive review by Parliament that could be considered.

**Mr. Nathaniel Erskine-Smith:** Have you learned anything from the Bell takeover of MTS that you might bring to bear in this analysis?

**Mr. Matthew Boswell:** In the Bell-MTS matter, obviously the consent agreement is still in place. Provisions with respect to transitional services are still in place. We are monitoring the compliance with that consent agreement that was entered into in 2017, sir.

**Mr. Nathaniel Erskine-Smith:** Thanks very much. Stay true to your past statements. I appreciate it.

**The Chair:** Thank you very much.

[Translation]

Mr. Lemire, you have the floor for six minutes.

**Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ):** Thank you, Madam Chair.

I will address Mr. Boswell from the Competition Bureau first.

During his appearance before our committee on March 29, Mr. Joe Natale of Rogers said this about the merger of Shaw and Rogers: “[...] the ability to bring two teams together with two balance sheets and two capabilities will allow Canada to lead in the future of a digital economy.”

Will this be the case, in your view, or will this merger instead cause a decline in competition, negatively impacting Canada's current digital economy?

[English]

**Mr. Matthew Boswell:** First of all, at this time it's not appropriate for me to comment on what others have said. We will be conducting a thorough, deep review of this transaction to determine whether or not it would result in a substantial lessening or prevention of competition in Canada. That's the work we're going to do. It may take time, but we're going to do it.

[Translation]

**Mr. Sébastien Lemire:** I see. I assume that your thoughts will take into account what has been mentioned in the four sessions of our committee devoted to this study.

Do you intend to make an early decision on the acquisition of Shaw by Rogers? If another option ever comes up, will you adapt to move the decisions forward or propose other options to expedite this?

• (1505)

[English]

**Mr. Matthew Boswell:** Generally speaking, we conduct our investigations, our reviews, in confidence, in private, so that we are not commenting as the investigation of any merger evolves. Once we've reached the end of our investigation and have arrived at conclusions, whatever they may be, at that point we will pursue the next steps and, potentially, there will be public commentary.

[Translation]

**Mr. Sébastien Lemire:** I'm going to venture to ask another question.

We need to find effective ways to maintain competition. In particular, we need to ensure that we have the conditions for a fourth player, or even a fifth or sixth player. To that end, what do you see as the key conditions that must be met for Rogers to acquire Shaw?

[English]

**Mr. Matthew Boswell:** As I said, it's not appropriate for me to comment on the components of the Rogers-Shaw deal. What I can say is that in the past we have provided competition advice in terms of competition generally in Canada and in different sectors of our economy. Of course, we have also made, as I have already referred to, extensive submissions to the CRTC on their wireless review.

[Translation]

**Mr. Sébastien Lemire:** Thank you.

My next question is for Mr. Dagenais.

According to the most recent Consumer Price Index released by Statistics Canada, wireless prices have fallen 15% over the past 12 months.

What do you think is driving this decline? Could it be threatened by Rogers' acquisition of Shaw?

**Mr. Éric Dagenais:** Thank you for the question.

Last month or two months ago, in a publication, it was reported that wireless prices were down 10% to 18%, depending on the package. I think the department has had discussions with the wireless providers over the last 12 months to say that if prices don't go down 25%, there may be regulatory implications.

With respect to the transaction under consideration, I hope you will understand that I cannot comment. However, I can happily explain the regulatory framework that we will use to analyze this transaction.

**Mr. Sébastien Lemire:** I was just getting to that question.

The Minister of Innovation, Science and Industry, Mr. François-Philippe Champagne, released a statement in which he mentioned, among other things, the government's objectives for greater accessibility, more competition and more innovation in the Canadian telecommunications sector.

What benchmarks will be used to analyze these elements of competition?

**Mr. Éric Dagenais:** We have a framework that guides the transfer of spectrum licences. According to article 40 of that framework, such an analysis typically takes into account the following factors, among others: spectrum licence holdings; the general distribution of allocated spectrum; current and potential services; the availability of other spectrum bands; the relative usefulness of that spectrum; the degree of network deployment; the characteristics of the region; and any other relevant factors, taking into account the policy objectives.

**Mr. Sébastien Lemire:** Thank you.

How could the federal government foster the growth of competition in these different markets?

**Mr. Éric Dagenais:** The government has taken several steps to—

**The Chair:** I am sorry, but Mr. Lemire's time has expired. Perhaps you can continue your response in a future round.

**Mr. Éric Dagenais:** Very well.

**Mr. Sébastien Lemire:** Thank you.

[English]

**The Chair:** We will now go to MP Masse for six minutes.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Madam Chair, and to our witnesses.

The Competition Act is barely worth the paper it's printed on for protecting Canadian consumers right now. I do have a great deal of empathy for the women and men at the Competition Bureau who have to serve under such an archaic statute in a modern society right now, especially when we compare it with the situation in the United States and some of its issues. They're going through a full review for consumers there.

With that, Mr. Boswell, I do want to ask about some previous decisions of the Competition Bureau and find out really what the reflections are now, or whether there has been further review of the actions that took place. The first would be the previous Rogers takeover of Mobilicity. How did that help consumers and push competition? Can you provide some insight on that, please?

• (1510)

**Mr. Matthew Boswell:** Yes. Thank you, Madam Chair.

Perhaps my colleague Mr. Durocher can comment on that particular transaction.

**Mr. Anthony Durocher (Deputy Commissioner, Competition Promotion Branch, Competition Bureau):** As with all merger reviews, the legal standard for the review is whether the evidence suggests that there will be a likely substantial lessening or prevention of competition. In that past merger review, the decision was made that it did not meet that standard. That was the conclusion.

**Mr. Brian Masse:** Are those decisions, then, reflective of current analysis? Does that move us forward? You're mentioning your Bell decision with MTS. Again, is there an evaluation of that in relation to the decision? That's the second one of the three that I wanted to discuss.

**Mr. Matthew Boswell:** Madam Chair, an after-the-fact assessment of the Bell MTS transaction hasn't taken place. I can indicate that quite clearly. We are monitoring the compliance with the consent agreement.

I should say, sir, that we simply don't have the resources to conduct after-the-fact assessments of our merger remedies. The resources we have are going full out on current mergers, which we are tasked with reviewing under the law.

Second, we don't have powers in the Competition Act to compel the necessary information and data from parties in the marketplace in order to properly assess the effectiveness of a prior remedy. I can tell you, sir, that internally we would like to set up what we call a "remedies unit", where we would have a centre of expertise inside the organization that monitors consent agreements, goes back and looks at them for their effectiveness and advises us on future agreements, but we simply don't have the human or financial resources to set up that remedies unit at this time.

**Mr. Brian Masse:** To be clear, Madam Chair, this testimony from Mr. Boswell is like testimony from previous Competition Bureau representatives at this committee, who which have mentioned this on numerous occasions. This is no different from any of the years that I've been here. This is something that has continued to exist.

I want to briefly touch on the next one, which is the Telus takeover of Public Mobile. Again, is it in the same context of evaluation parameters, resource constraints and so forth? It just seems to me that there's a pattern here, and it would be inappropriate, I guess, for the Competition Bureau to be expected to give a thorough evaluation of these things later on. I'll leave it to you to talk about that, because I think there are some consequences here that leave us flying blind after these decisions are made.

**Mr. Matthew Boswell:** What I can say is exactly what my colleague Mr. Durocher said. We apply the tests set out in the law and

in the jurisprudence to our reviews, to the facts in any particular matter. We're an independent prosecutorial, law enforcement agency. We have to take cases to court and put up the evidence that aligns with the tests set out in the Competition Act and with the jurisprudence if we're looking to challenge a matter. Those are, if I can say, sir, the confines within which we work, but I can assure you that the team at the bureau is dedicated to a thorough review of this particular transaction.

**Mr. Brian Masse:** Yes, and I have no doubt about that, but I would like a quick confirmation, though. You have fewer tools legally available to you than they do in the United States to compel information for review for competition matters. Is that correct, yes or no?

**Mr. Matthew Boswell:** That's correct. The Federal Trade Commission, one of our counterparts in the United States, has those powers.

• (1515)

**Mr. Brian Masse:** Thank you.

I'll move to you, Mr. Scott. In a general sense, the CRTC has a lot of capabilities. Really quickly, why have prices been rising and competition been stifled when the CRTC has had some powers? Is there something we're missing in exercising some type of long-term vision?

**Mr. Ian Scott:** I think I have to take issue with the premise of the question, Mr. Masse. The prices are going down. I will grant you that they should go down further, as it's always in the public interest to see the most affordable rates for Canadian consumers. For example, in 2019, if you look at an offering with five gigabytes of data, rates decreased about 14% to \$49 a month, so prices are not going up. They are going down, but I will absolutely agree with you that they can and should go down further.

**The Chair:** Thank you very much, Mr. Scott.

We'll start our second round of questions.

The first round of five minutes goes to MP Dreeshen.

**Mr. Earl Dreeshen:** Thank you very much.

It's good to hear the testimony here this morning. This is sort of the end of our discussion of this acquisition, but of course this is where the other three groups will be starting the work that is required. I think with the discussions we've had here, there should be some alarm bells sounding as far as Canadians are concerned. We've heard that the proposed merger agreement will be of no benefit to Canadians: It will reduce competition, raise prices, lessen innovation and lower services to rural communities. We also heard from a rural mayor yesterday that the merger will do nothing to reduce the gap between urban and rural broadband services and that we need more competition, not less. We need legislation to ensure that there's a backbone network so that the smaller players can hook up to it. Of course, I heard the testimony this morning saying, well, it's inappropriate to comment on things that have been said because...until it comes to your table.

To the CRTC, you said there's a notice of consultation that you will be dealing with. Will your organization be reaching out to those voices that we have heard at this committee so that you can hear what they have to say? If not, will the commentary that we have heard at the industry committee be something that you will base any of your discussions on?

**Mr. Ian Scott:** In response to your question, there are two parts to it. In terms of our taking decisions and what evidence we rely on, we can only make decisions on information filed with us in the context of a particular proceeding.

To be clear, though, in the context of the current wireless proceeding where there's an important decision pending, a number of the parties that appeared before you yesterday and in previous sessions were participants in that proceeding and have led evidence. Some have not. All of them are entitled to their opinions, but we rely on the facts in front of us. Then we'll render a decision that we believe to be in the public interest.

**Mr. Earl Dreeshen:** I have a similar question for the Competition Bureau, Mr. Boswell. What can those people who have presented information to our committee expect from you when you're looking at what is taking place?

**Mr. Matthew Boswell:** I can tell you, sir, that in the course of our merger reviews we talk to a very wide array of people—businesses, industry associations, customers, consumer groups and citizen groups—to obtain their views with respect to the transaction. We also have an online feedback form related to merger reviews. I can tell you that the online feedback form has received something in the neighbourhood of 7,500 submissions since March 15, if I have the date correct. We will examine those submissions and take them into consideration.

Our reviews are broad, sir, and we examine all aspects of a matter.

• (1520)

**Mr. Earl Dreeshen:** That's great, because as you mentioned earlier, the Competition Bureau approved the acquisition of MTS by Bell in 2017. You said that you're monitoring the agreement. What specifically are you monitoring for? If people were to know that, then maybe they could tailor some of the comments to you in such a way that it would be more useful.

**Mr. Matthew Boswell:** With respect to the Bell-MTS consent agreement, we monitor compliance with the provisions in the agreement—which is available to all Canadians on the Competition Tribunal's website to look at—namely, certain transitional services that Bell agreed to provide to Xplornet when it took over MTS subscribers as a result of the transaction. Those are the types of things we monitor in making sure that everything is done according to the consent agreement.

**Mr. Earl Dreeshen:** Are those specifics public?

**Mr. Matthew Boswell:** Yes, the consent agreement, sir, or almost all of it, is public. There may be a section that's commercially sensitive and confidential, but the consent agreement is public.

**Mr. Earl Dreeshen:** Thank you very much.

**The Chair:** Thank you very much.

We now go to MP Badawey.

You have the floor for five minutes.

**Mr. Vance Badawey (Niagara Centre, Lib.):** Thank you, Madam Chair. I appreciate the opportunity and time at this committee today.

I really want to concentrate on Mr. Boswell's comments with respect to a comprehensive review of the Competition Act, which somewhat concerns me because of this very important decision that we're looking at now. Under the Competition Act, we do see that it's federal law governing most business conduct in Canada to expand opportunities for Canadian participation in world markets, ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy, and provide consumers with competitive prices and product choices.

I'd like to dig a bit deeper into those comments, Mr. Boswell, with respect to a comprehensive review, some of which may be changed and/or needed to make a more proper decision in this case. Moving forward, what are you looking at? Please be very specific. What are you looking at in terms of a very comprehensive review tomorrow as compared with what the Competition Act outlines today?

**Mr. Matthew Boswell:** I was suggesting, sir, that a comprehensive review and debate ought to take place in Canada with respect to our competition laws generally. I don't think perhaps going through different sections of the act today would be useful to you, sir, but I can tell you that around the world with our key trading partners, there are extensive and ongoing public policy debates about their competition laws and the ways in which they could be changed to better reflect the digital and data-driven economy that we all live in now, to consider those issues and to consider issues with respect to the standard for a merger review—for example, whether there ought to be presumptions in Canadian law with respect to mergers and parties then have to rebut those presumptions. There are many issues.

My point simply is that it would be of benefit to the Canadian people to take a comprehensive look at this and consider these issues in the modern economy. Now, I have to caveat that and say that the policy function is not something the bureau has. The legislative policy function is with our friends and colleagues at ISED, and obviously with the minister at ISED, but the minister, in a letter to me in May of 2019, invited me to consider these issues to make sure that the act and the framework and the investigative and prosecutorial processes were fit for purpose. We've been engaged in that work with the department since that time.

**Mr. Vance Badawey:** With that said, much of the discourse around the proposed merger suggests a binary outcome. Either it will be approved or it won't be. Based on past precedent in both telecommunications and other sectors, that's not the case. Can you discuss the range of outcomes that the Competition Bureau might consider for a case like this?

• (1525)

**Mr. Matthew Boswell:** Thanks for that question. It's a good one.

After conducting a thorough review, and if we make a determination that the merger will likely result in a substantial lessening or prevention of competition, that determination in any merger review could apply to the whole transaction or could apply to part of the transaction. At that point, depending on the outcome of the analysis, we can engage in examining what potential remedies would address that issue, which is the substantial lessening of competition, taking that substantial lessening of competition out of the transaction. Sometimes it's divestiture of one part of the transaction. Sometimes it's blocking the whole transaction or seeking to block the whole transaction. It really depends on how the investigation unfolds, sir.

**Mr. Vance Badawey:** But once again, it's based on the current Competition Act and the rules that are part of that act, which, as you said earlier, needs a comprehensive review.

**Mr. Matthew Boswell:** The provision with respect to mergers is something that certainly the bureau works with and we have the tools to review.

**Mr. Vance Badawey:** Thank you, Mr. Boswell.

Thank you, Madam Chair.

**The Chair:** Thank you very much.

[*Translation*]

Mr. Lemire now has the floor for two and a half minutes.

**Mr. Sébastien Lemire:** Thank you, Madam Chair.

My question is for Mr. Boswell.

You said that your decisions were binding and that the minister could not override them. I have a little difficulty understanding the process, because your report on Air Transat said that the Air Canada buyout would have been bad for competition, yet that did not stop the minister from approving the transaction.

Why would it be different in the case of Rogers?

[*English*]

**Mr. Matthew Boswell:** The Air Canada-Air Transat transaction was a different type of transaction from a normal merger review. Under the Canada Transportation Act, the Minister of Transport can determine if a merger involving a transportation undertaking is worthy of a public interest review. If the minister makes that determination, then the bureau's role is different. Our role at that point in time is to provide advice to the minister on whether there are potential competition concerns with respect to the transaction. The minister takes our advice into the mix of public interest issues that he or she is considering and makes a recommendation to cabinet. Cabinet makes the decision. That is one of the rare instances where the bureau doesn't have independent decision-making with respect to a merger.

In that particular case, you're correct: I provided a letter to the Minister of Transport at the time indicating that the bureau's review suggested there would be a substantial lessening of competition as a result of that transaction with respect to 83 different routes—that is, origin-destination pair routes between Canada and Europe and

Canada and southern vacation destinations. Subsequent to that, the minister then seeks advice from the bureau, from me, with respect to any remedies. We provided that advice.

So it's a different situation, Mr. Lemire.

[*Translation*]

**Mr. Sébastien Lemire:** Thank you very much. You have answered my question well, as well as the sub-questions I wanted to ask.

Thank you.

**The Chair:** Thank you very much, Mr. Lemire.

[*English*]

Our next round of questions goes to MP Masse for two and a half minutes.

**Mr. Brian Masse:** Thank you, Madam Chair.

Mr. Boswell, with regard the year-long review that you're able to have, how does that compare with the United States and Europe? I'm just curious about that. You have a year to do that. How does it compare with your peers?

**Mr. Matthew Boswell:** That statute of limitations doesn't exist in the United States with respect to merger transactions. They can go back after a period of time and re-examine them or reopen them, and that has taken place in the United States. It's not something they do lightly, obviously, for the business community, but there is no one-year....

I cannot say with certainty, sir, what the situation is with respect to the European Commission directorate general on competition. Perhaps Mr. Durocher or Ms. Wright can chime in on that, if they know the exact answer.

• (1530)

**Mr. Anthony Durocher:** I'm afraid I'm of no assistance with respect to that question.

**Mr. Brian Masse:** That's okay. I mean, our best comparator is here with the United States anyway, given our integrated economies and so forth. I think members here see a trend developing with regard to consumer protection and competition in Canada versus a country that we have quite a bit of connection with economically, socially and culturally.

Perhaps I will move quickly back to the CRTC. Mr. Scott, do you feel that you have appropriate resources to compel decisions in a quick and timely manner? The odd timing of this takeover merger towards a spectrum auction puts a squeeze that's untenable for everyone. Past that, though, I'm just curious to know whether you have the capability to do quick and orderly reviews for yours.

**Mr. Ian Scott:** Madam Chair, I'd be lying, and Mr. Seidl who runs the telecommunications branch would probably come and threaten me thereafter if I said, "No, we're all good, we have tons of resources." We are fully deployed. We are very busy, but we have adequate resources. These are large, complicated proceedings and they do take a long time. The COVID situation has prolonged it, as we made sure that carriers that were part of our proceeding had the requisite focus on ensuring that services to Canadians continued and they weren't preoccupied with meeting our deadlines.

Generally speaking, we do have the resources and we do render timely decisions, recognizing that this has been a long process.

**The Chair:** Thank you very much, Mr. Scott.

Our next round of questions will go to MP Généreux.

[*Translation*]

You have the floor for five minutes.

**Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC):** Thank you, Madam Chair.

Thank you to all the witnesses for being here today.

Mr. Scott, we have heard a number of comments related to the CRTC, some good, some not so good.

Mr. Natale from Rogers expressed the idea that the arrival of 5G in Canada was a turning point in the development of technology in Canada. He compared it to the arrival of cable, or even the advent of television, and then cable Internet. For people of our generations, these are all things that have been important in the development of Canadian society.

In your opinion, is the arrival of 5G truly a cornerstone in the development of technology in Canada?

**Mr. Ian Scott:** The short answer is yes. I think 5G technology is really... I'm looking for the right word in French to say it.

[*English*]

It is a step function change. It is not only the speed, but the nature of applications and the proximity of devices to their antennae that will permit a wide range of applications that don't exist today.

[*Translation*]

**Mr. Bernard Généreux:** In my riding, Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, there are people who ask me for 1G. So we are far from 5G.

**Mr. Ian Scott:** Oh! I see.

**Mr. Bernard Généreux:** The fact that there are not many players in the field makes access difficult. If I have time, I'm going to speak later to the people who issue spectrum licences. Accessibility is a fundamental issue in the provision of services in Canadian regions. We know that the territory is very large and that the population density is low in some places.

Do you think the rates we pay in Canada are reasonable, too high or completely unreasonable? You're in a good position to tell us, because the CRTC certainly gets complaints. In fact, I would like to know if you receive many complaints about the rates in Canada. We hear that we pay way too much in Canada, but is that the truth?

• (1535)

**Mr. Ian Scott:** Thank you for the question.

On the spectrum, I will leave it to my colleague from ISED to answer.

[*English*]

But for our perspective, let me answer the last part first, which is are prices too high? I think the question is, should they be lower? The answer is yes. I'll always answer that way. It is to the benefit of Canadians to have the lowest possible prices.

As to the deployment of services, that's one of the reasons that we have a discrete broadband fund, and the CRTC's broadband fund can also be used and is also used to deploy or support the deployment of wireless services to cover highways and secondary highways, so we are endeavouring to do so.

The question of spectrum I would defer to my colleague, Monsieur Dagenais.

[*Translation*]

**Mr. Bernard Généreux:** Mr. Dagenais, not only in the course of our study, but elsewhere as well, I have heard that portions of the spectrum had been purchased by companies that ultimately did not use them. However, it did add significant value to their business. If I'm not mistaken, I think that's the case with Shaw Communications, which is the subject of the transaction we are examining today.

Is it normal for companies to have access to portions of the spectrum that they will not use?

**Mr. Éric Dagenais:** Thank you for the question.

No, this is not normal. When we do spectrum auctions, we impose deployment conditions. For example, in the auction that's coming up in two months, there will be deployment conditions attached to the award of the licences. We check after five, 10, 15, 20 years to make sure that companies that buy a portion of spectrum are not just reserving it without using it.

Ultimately, the main objective is to get the spectrum into the hands of companies that will use it and provide services to Canadians. If they don't meet the conditions of deployment, we have the ability to take away their licences.

**Mr. Bernard Généreux:** Have you ever withdrawn any?

**Mr. Éric Dagenais:** We have already had several discussions with Internet and telecom service providers regarding deployment conditions.

**Mr. Bernard Généreux:** So you are telling me that the conditions have always been met.

**Mr. Éric Dagenais:** I said we had had several discussions. Generally, the problem was resolved afterwards.

**Mr. Bernard Généreux:** You will understand that I, in a...

Madam Chair, you're showing me your red card, but I would prefer it to be green.

**The Chair:** Thank you very much, Mr. Généreux. We may get a chance to do a fourth round and you may still have time.

[*English*]

We'll now go to MP Jowhari for five minutes.

**Mr. Majid Jowhari (Richmond Hill, Lib.):** Thank you, Madam Chair, and to the witnesses for your testimony today.

Mr. Boswell, maybe I can start with you. Yesterday, as I'm sure you heard, a representative from the CNOC, Madam Shaban, raised some concern regarding the efficiency defence. She indicated that use of the efficiency defence might render this whole process of review fruitless.

Can you share with us your thoughts on that and the applicability of the efficiency defence in this case?

Thank you.

**Mr. Matthew Boswell:** Madam Chair, the efficiencies exception is set out in section 96 of the Competition Act. It's available for use on any merger in Canada, and effectively it says that where efficiency gains are likely to be brought about by the merger and are greater than and offset the anti-competitive effects, that will carry the day, and even if there is a finding of substantial lessening and prevention of competition, the merger will be allowed to proceed.

That is in the Competition Act today. My job, which I took an oath to do, is to administer and enforce the act to the best of my ability, so when it comes to the efficiency exception, it's something that does come into play.

The onus, I should say, is on the parties to prove the efficiencies. There are five layers they have to go through to establish what we call "cognizable efficiencies". They either have to prove there are those, at the Competition Tribunal on a balance of probabilities, or they can advance the efficiencies exception with the bureau—and I'm talking generally here—in connection with our merger review.

We have been very clear lately—and I have been very clear—that this is a very serious exercise of enforcement discretion to approve an otherwise anti-competitive merger based on the efficiencies exception, so we have made it very clear in a model timing agreement to parties that if they are going to rely on the efficiencies exception, they are going to have to commit to providing the bureau with ample time, reasonable time, to thoroughly scrutinize the efficiencies they are advancing and to cross-examine under oath representatives of the merging parties to really dig down on those efficiencies. However, it is a reality in Canada's Competition Act, and Canada is really the only country that has this particular specific provision that allows an otherwise anti-competitive merger to go forward based on efficiencies.

• (1540)

**Mr. Majid Jowhari:** Is this an area that you are going to consider re-evaluating when the Competition Act is up for review?

**Mr. Matthew Boswell:** Madam Chair, what I can tell the honourable member is that this particular provision of the Competition

Act has been the subject of significant debate since it came into place in 1986. It's controversial both inside and outside Canada. Certainly from the perspective of the person who administers and enforces the act, I think it would be worthwhile in this country to discuss this particular section of it. That's for parliamentarians.

**Mr. Majid Jowhari:** I have about 45 seconds left. I'd like to quickly go to Mr. Scott.

Mr. Scott, yesterday we heard from Mr. White that two sections—specifically section 7 and section 24—of the Telecommunications Act are the solution for a quick evaluation of this merger. What are your thoughts on that?

**Mr. Ian Scott:** I'm a bit at a loss to answer the question, because the commission does not have the authority under the Telecommunications Act to review transactions and changes in ownership. I apologize. I did review the blues from yesterday. I don't recall that, but it's a mistake to suggest that the CRTC has the authority to review or block a change in ownership, but for being disqualified for reasons of foreign ownership.

**Mr. Majid Jowhari:** Thank you.

**The Chair:** We'll now start our next round of questions. The first round goes to MP Baldinelli.

You have five minutes.

**Mr. Tony Baldinelli (Niagara Falls, CPC):** Thank you, Madam Chair, and thank you to the witnesses for being with us this afternoon.

My colleague Mr. Jowhari essentially stole all of my first questions for Commissioner Boswell on the notion of section 96 and the efficiency defence. I was going to pursue that line of questioning to find out what other nations have that type of section within their legislation, so thank you, Commissioner, for answering that and addressing the notion of a comprehensive review. I understand that you're open to doing it and are looking forward to seeing it happen. If I can, I'd like to follow up with you on that.

I believe you came to this committee in December and testified that the bureau is facing some challenging resource constraints. You stated, notably, that the bureau's budget fell by almost 10% in the last 10 years, in real dollars.

Do these constraints extend to the merger review process? If so, how have they hindered the bureau's ability to undertake significant reviews such as this?

**Mr. Matthew Boswell:** As I've said before this committee and publicly multiple times, it's clear that our agency's resources are stretched. The demands on our limited resources have significantly increased in just the last few years with the digital economy growing by leaps and bounds, the data-driven economy. This has put a tremendous stress on the organization's investigations.

Just to illustrate the point, I note that in between the 2017-18 fiscal year and the next fiscal year, we obtained an additional 4,459 gigabytes of data in our investigations. One gigabyte of data equals enough to fill a small truck, or 678,000 pages approximately. In one year, with the increase in the data we were reviewing as part of our many investigations—we have other enforcement areas other than mergers—the amount of data brought into the bureau related to those reviews grew by three billion additional pages. Now, that's in the context of our budget, which has been flat for 10 years and has, if you take into account inflation, declined by 10% over that time.

In terms of this review, we will allocate, and prioritize internally to allocate, the resources necessary to conduct a thorough review of this particular transaction. I can assure this committee of that. We do that all the time at the bureau. We have to prioritize. We have to move resources around to do the best possible job we can to protect the public interest and protect Canadians' interests.

• (1545)

**Mr. Tony Baldinelli:** Thank you for that, but quickly to your point, if this ends up being prioritized, do other reviews get delayed or held back so that work is not performed at all on certain issues that many others would say are a priority to them?

**Mr. Matthew Boswell:** It is always a tricky exercise to prioritize and reallocate internally. Sometimes we have to leave certain important aspects of our work and they will not be as advanced. Specifically, sometimes we have to pull back on some of the important competition advice we provide to regulators and governments at all levels in order to put resources towards enforcement work and to reallocate in other ways. However, I should be clear: It's not always that another case gets hurt specifically because of one case.

**Mr. Tony Baldinelli:** I'd now like to ask Mr. Scott about the CRTC and his comments earlier about public hearings.

Are public hearings for a merger such as this automatic or are they held at the discretion of the CRTC? Does it decide what hearings should be held?

**Mr. Ian Scott:** There's a requirement for a process. Whether that process is more administrative in nature or requires a full public proceeding is at my discretion, effectively. There's no question in this case that a transaction of this magnitude requires a public proceeding, and there will be one.

**Mr. Tony Baldinelli:** Thank you.

**The Chair:** Our next round of questions goes to MP Lambropoulos.

You have five minutes.

**Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.):** Thank you, Madam Chair.

I want to thank the witnesses for being with us today on this call to answer questions.

My first question will go to Mr. Boswell.

In general, I think all witnesses who have come and testified for this study so far have said that this merger would definitely not be good for competition, except of course those for Shaw and Rogers themselves. Everyone else has said that this merger wouldn't necessarily be good for competition.

You have stated today that while you're not really able to specifically speak to the case at hand, many of the factors contributing to whether or not this merger would decrease competition are being looked into and considered. I'm hoping that this is a good thing for Canadians.

Let's just say that a merger—not this one—was not approved by you. What would companies be able to do to bypass this? Are you the one who makes the final decision?

You also said that if it were accepted.... I think I misunderstood a bit of your testimony earlier, but you said that if someone were to receive the approval, you could take it to the Competition Tribunal and they would be able to counter this.

Can you explain further and in more detail how that works?

• (1550)

**Mr. Matthew Boswell:** I'm happy to provide that explanation.

We're tasked with, as I've said repeatedly, assessing the merger to determine whether it's going to result in a substantial lessening or prevention of competition. Generally speaking, that involves looking at a whole bunch of issues in some cases; talking to all sorts of industry participants, customers and consumers; and retaining experts. All of that is driving towards analyzing the merger, whether it's all aspects of the merger or specific aspects where we have serious competition concerns.

At the end of that process, we'll come to a conclusion about whether the merger will result in a substantial lessening or prevention of competition. At that point we can communicate that to the parties, indicate that it is our finding and engage with them in discussions about potential remedies, that is, what they could do—and I'm speaking generally here—to address those concerns and what could take away the substantial lessening or prevention of competition. If those negotiations don't work, it would be up to me to decide if we file an application at the Competition Tribunal to challenge the merger.

Those are the binary decision points as you go through the matter. If we conclude that a merger is going to substantially lessen or prevent competition, we can negotiate with the parties and come up with a resolution that we believe fixes the problem. If we can't negotiate, we go to court—effectively the Competition Tribunal. There, we put our case forward and the parties put their case forward and it's up to the Competition Tribunal to decide.

We're independent. I need to stress that these decisions are made independently. The government and ministers are not involved in my enforcement decisions.

**Ms. Emmanuella Lambropoulos:** To the Department of Industry, what could be done to support the Competition Bureau in this task? What can the government do to ensure that a merger that would decrease competition and basically go ahead.... I know we just concluded that this is a Competition Tribunal decision in the end, but what extra support can ISSED, the government or the Department of Industry offer?

**Mr. Éric Dagenais:** I think it's important to understand that the Competition Bureau is independent and its decisions are arrived at independently. I think Mr. Boswell has laid that out.

The Minister of Innovation is looking at the spectrum concentration and the transfer of spectrum licences. When the minister looks at that, he's really looking at the wireless assets. In the case of a merger, one applicant that has many spectrum licences wants to transfer them to a company that wants to buy them. That's what the Minister of Innovation is looking at, and it's guided by the spectrum transfer framework.

**The Chair:** Thank you very much.

[Translation]

Mr. Lemire now has the floor for two and a half minutes.

**Mr. Sébastien Lemire:** Thank you, Madam Chair.

My question is for Mr. Scott from the CRTC.

Mr. Pierre Karl Péladeau of Videotron has stated that in order to ensure the technological development of our telecommunications networks, it is necessary for the service providers who share the networks to maintain or even increase their investments in infrastructure.

This proposal seems contrary to what the CRTC is proposing in its regulations. What are your thoughts on this?

**Mr. Ian Scott:** Thank you for the question, Mr. Lemire.

[English]

I'm not sure how to answer that question. Again, I think I'll take issue with the premise, but I need to be careful here. Quebecor and Videotron are a part of the wireless proceeding and they have put evidence in front of us. We have that under consideration, and we'll be rendering our decision on what we believe is in the public interest in terms of the future regulatory framework for wireless. I understand that Mr. Péladeau has his views, and he has made them very clear to the commission in evidence and presentations at our hearings.

I hope that answered your question.

● (1555)

[Translation]

**Mr. Sébastien Lemire:** Thank you.

On another note, can we know when the CRTC will issue its decision on mobile virtual network operators? We know that this decision could strongly shape the future of telecommunications in Canada.

**Mr. Ian Scott:** I really don't have an exact date, but it's coming soon.

**Mr. Sébastien Lemire:** All right.

What do you generally think of the concept of mobile virtual network operators? In your opinion, are they part of the solution to drive prices down even further?

[English]

**Mr. Ian Scott:** That is one of the principal issues being considered in that decision. Unfortunately, I cannot answer that question.

[Translation]

**Mr. Sébastien Lemire:** How do you encourage the presence of a fourth, fifth or even sixth competitor on a network without giving regulatory advantages to those companies?

**Mr. Ian Scott:** I'm sorry, but I have to give you the same answer again: this question is part of the review process before us.

**Mr. Sébastien Lemire:** Thank you.

**The Chair:** Thank you very much.

[English]

Our next round of questions goes to MP Masse.

**Mr. Brian Masse:** Thank you, Madam Chair.

I won't put us through another probing of the efficiency defence. I will say this, though, Mr. Boswell. You probably have the most eloquent way I've ever heard of saying, "This is the part of my job that really sucks." It is really clear how badly we're being outplayed by our own laws.

I want to move to the spectrum auction and ask Mr. Dagenais or Mr. Scott from Industry Canada about it.

We've heard witnesses say that the spectrum auction should be held off. I think one of the problems we're facing here is that Shaw has dropped out of the spectrum auction and it's one of the major players we'd normally have. Others are also now saying it should be held off. This is kind of suspicious timing because it was already delayed by six months.

Is the department preparing any options? What are you doing about the fact that a major player, our fourth-strongest competitor, is dropping out altogether?

**Mr. Éric Dagenais:** The application deadline for participants was yesterday at noon. We published yesterday, in late afternoon, the names of those that have applied to participate in the upcoming auction. We actually have 24 participants. This is 50% more participants than in our previous spectrum auction, which tells me that demand for spectrum and interest in getting spectrum are alive and well.

The spectrum auction is currently planned to proceed on June 15, as previously announced. The only reason it was delayed, as you mentioned, was COVID. The industry really wanted to concentrate on making sure that networks were up and running, rather than on the spectrum auction.

**Mr. Brian Masse:** I didn't get a chance to see the list. Is Shaw on that list or did they bow out? I know that it's been published.

**Mr. Éric Dagenais:** Shaw did not apply.

**Mr. Brian Masse:** How many times in the previous spectrum auctions did Shaw apply? I know you may not have a specific number, but aren't they assumed to be a usual player in the spectrum auctions? Is that fair to say?

**Mr. Éric Dagenais:** I think that's fair to say.

**Mr. Brian Masse:** I only have 30 seconds. I went over my time last time, so I'll cede it to the rest of the group.

Thank you, Madam Chair.

**The Chair:** Thank you very much.

Our next round of questions goes to MP Poilievre.

You have five minutes.

**Hon. Pierre Poilievre:** Thank you.

My question is for anyone at the Competition Bureau who cares to comment.

This a broader issue, and we've been talking about the need to reconsider, and perhaps review, the Competition Act. The act is designed to have government intervene to ensure there is competition, but what about all the industries in which government intervention is blocking competition in the first place?

The Fraser Institute just published a report showing that something like 35% of our economy is protected against open competition. They list postal services, telcos, maple service, aviation, broadcasting, taxis and liquor, just to name a few. There are countless others that I don't have time to list.

What does the Competition Bureau say about the countless interventions by all three levels of government to block competition and prevent workers and consumers from benefiting as businesses compete for them through higher wages and lower prices?

• (1600)

**Mr. Matthew Boswell:** I'll field that question from Mr. Poilievre.

We've actually done a tremendous amount of work in this area advocating for regulatory reform in Canada to allow for more competition. We put out a competition assessment tool kit that we encourage all levels of government, as you said, sir, to use to examine their regulations with a view to reducing or eliminating regulations that impede competition, because this can open up our economy, drive productivity and drive growth.

We've done a ton of work. I've spoken to this publicly in speeches, and I've pointed to an OECD indicator—the product market regulation indicator. Sadly, the last version of it, from 2018, put Canada second last in the OECD in terms of regulatory barriers to competition. We've also advocated publicly that Canada ought to consider following the model of a productivity commission that Australia had in the 1990s, which really focused on these competition issues.

**Hon. Pierre Poilievre:** Right.

**Mr. Matthew Boswell:** It made significant changes and drove significant increases in their GDP.

**Hon. Pierre Poilievre:** That's understandable. That's what trade does. Trade forces businesses to compete for workers through better conditions and higher wages, and to compete for customers through lower prices and better products. Absent competition, the fat-cat CEOs and shareholders can sit back and milk the system with governmental protection, as they are doing now. It is a huge cause of wealth inequality. This is everything from skilled and qualified immigrants being banned from working in their sector because professional bodies won't let them work and get a permit—even when they're qualified—to arresting people for simply taking liquor across interprovincial borders. That's from a really disappointing ruling by the Supreme Court. It decided not to enforce section 121 of the BNA Act, which allows us, as a constitutional right, to take produce across interprovincial borders.

According to one study by economist Trevor Tombe, this is costing \$6,000 per year per household in Canada. These are recurring losses of income and consumer product benefits every single year.

Can you speak further about how we can take urgent action to practically break down these government obstacles to competition in our economy?

**Mr. Matthew Boswell:** What I can say is that we have put out a competition assessment tool kit. We encourage governments at all levels to embrace it and review their regulations with a view to taking away regulations that unnecessarily... There are other public policy concerns at play, but if a regulation is not necessary and it impedes competition, then amend it or take it out and allow competition to flourish in Canada.

**Hon. Pierre Poilievre:** When it comes to these government obstacles, if it's not necessary to do it, it's necessary not to do it, so I will take a careful look at this tool kit.

Thank you, sir, for speaking out about this, because right now the biggest obstacle to competition in general is interventionist politicians and bureaucrats egged on by self-interested lobbyists who want to keep competition out to keep their profits up.

**The Chair:** Thank you very much, Mr. Poilievre.

Our next round goes to MP Ehsassi. You have five minutes.

**Mr. Ali Ehsassi (Willowdale, Lib.):** Thank you very much, Madam Chair, and thank you ever so much to all the witnesses. It's been very helpful listening to all of you.

I will start off with Mr. Boswell.

Not only today but in a previous appearance before this committee, you talked about resource management challenges. Given that this proposed acquisition is what would be referred to as a “blockbuster” one, I was wondering if you could provide us an approximate time frame for how long you think this particular review will take insofar as the Competition Bureau is concerned.

• (1605)

**Mr. Matthew Boswell:** First and foremost we're going to conduct a thorough review. We're going to look at all aspects of the transaction, particularly all areas where the parties overlap horizontally or vertically, and dedicate the necessary resources to analyze them. If necessary, we'll bring in outside experts to conduct economic modelling and that sort of thing. We'll also reach out to a variety of participants, as I've already said several times.

How long that's going to take, sir, I cannot predict. It depends on where the evidence takes us. As an evidence-based organization that has to prosecute cases, we have to follow the evidence.

**Mr. Ali Ehsassi:** Okay, so there is no approximate time frame, something really approximate?

**Mr. Matthew Boswell:** It will be done as expeditiously as possible, if that's an approximation.

**Mr. Ali Ehsassi:** Okay, fair enough.

Now, you spoke about thoroughness, and you also talked about how your mandate and the mandate of the Competition Bureau is to look at market power. In terms of market segmentation, given that we know that Rogers is highly concentrated in places such as Ontario, Alberta, and B.C., for a province such as Ontario, how many market segmentations are we talking about? You don't take the entire province as one market. You slice it and dice it. Can you provide us some guidance on that aspect of the work that the Competition Bureau will be undertaking?

**Mr. Matthew Boswell:** Yes. What I can say is that it's not appropriate for us to comment on how this particular investigation might unfold. I think it might be useful for you, sir, if we shed a bit of light on how we went about our submission to the CRTC in that wireless proceeding. Once again, we can say only a limited amount on that because it is still before our colleagues at the CRTC, but my colleague Ms. Wright had the lead on that matter and perhaps she can just give a brief description of how we looked at markets and areas there.

**Ms. Leila Wright (Associate Deputy Commissioner, Competition Promotion Branch, Competition Bureau):** Thank you, Commissioner Boswell.

When we're looking at segments of the market, we look both at the product market and at the geographic market. On a geographic basis, what we looked at in the wireless market was either local or city. City is a little bit broader than local. Those were the two geographic markets that we were looking at in the wireless sector.

When we took a look at the product market, what we found was that you don't actually have to differentiate between products, because regardless of what product you're looking at in the wireless sector, regardless of what size of plan you're looking at, consumers generally have exactly the same choice, so it doesn't really matter

on the product market side. On the geographic side, we're looking at either local or city.

**Mr. Ali Ehsassi:** Thank you.

My last question is for you, Mr. Boswell. You've confirmed all my suspicions. I knew that if you appeared it would be difficult for us to get a lot of information out of you, given your interest in remaining neutral.

Could you perhaps talk about what you were mentioning at the end? You talked about negotiations, after you've done your analysis, and the possibility of divestitures. Can you elaborate on the divestiture process and give us all a better sense of what that will entail?

**Mr. Matthew Boswell:** In 15 seconds, given the chair's yellow card, I can say that essentially in all merger reviews, if we come to a conclusion that there is a substantial lessening or prevention of competition, we engage with the parties to see if we can negotiate an acceptable settlement to address the competition concerns to protect Canadians.

**Mr. Ali Ehsassi:** What would be the one case in which you ordered the highest number of divestitures?

**Mr. Matthew Boswell:** Oh boy—there's the red card. I don't know offhand.

• (1610)

**Mr. Ali Ehsassi:** Thank you.

**The Chair:** Saved by the red card.

With that, we have a little bit of time remaining, so I'm going to give one slot to each of the parties so they can ask some final questions.

[*Translation*]

Mr. G n reux, you have the floor for five minutes.

**Mr. Bernard G n reux:** Thank you, Madam Chair.

Mr. Scott, do we agree that, in general, the more competition there is, the more varied the offerings, and more importantly, the lower the prices?

**Mr. Ian Scott:** Yes, that is generally the case.

**Mr. Bernard G n reux:** You forced companies like Telus, Videotron and Bell to provide wholesale services at 83% off to resellers, which Mr. P ladeau amiably referred to as parasites, so that they could enter markets where the big players were not present.

Has this resulted in lower prices in some segments?

Maybe Ms. Wright or the other witnesses could answer that question as well.

**Mr. Ian Scott:** I'm sorry.

[English]

As I said before, once we start talking about specific situations, that is an issue. The issue of MVNOs and resale in the wireless segment is one of the core issues in the proceeding that's before us.

I will take a moment to acknowledge the Competition Bureau's extensive work in providing a major submission and analysis in that work, but as I said, the decision is forthcoming, and it wouldn't be appropriate for me to comment on such a significant element, such a central element.

[Translation]

**Mr. Bernard Généreux:** Ms. Wright, do you have anything to add or are you in the same situation as Mr. Scott?

[English]

**Ms. Leila Wright:** What I can add is essentially what we have put forward in our submission. One of the largest findings in our submission is that when you have a market with a strong regional competitor present, you will find that there are price drops in the range of 35% to 40%. The remedy we suggested to the CRTC was a remedy that was intended to make that price competition happen in more markets across Canada so that more Canadians can benefit from that type of competition and that type of price lowering.

[Translation]

**Mr. Bernard Généreux:** So why is it so difficult for secondary players to enter the market? I gather that many want to do so, and it would be beneficial to Canadian consumers. Why isn't this allowed more?

I'm asking Ms. Wright the question, unless Mr. Durocher or other witnesses want to comment.

[English]

**Ms. Leila Wright:** I'm happy to answer that question.

Our analysis in the wireless sector for the submission that we made to the CRTC was really focused on how you get more regional players into more markets across Canada. What we found is that facilities-based competition is the best type of competition. This means that we put forward a remedy that focused on creating an MVNO framework that would allow for facilities-based competition, which is the most sustainable type of competition in the long term in Canada and will result in lower prices for Canadians.

[Translation]

**Mr. Bernard Généreux:** Ms. Wright, I don't know whether you've reviewed the evidence that we heard at our previous meetings. However, the evidence makes it clear that a number of people don't feel the same way as you do, particularly the major players.

Are you aware of this?

[English]

**Ms. Leila Wright:** Yes, we are aware of that.

Essentially, MVNOs are competitors who have to rely on their competitors for a necessary input into their business. They're relying on their competitors to access spectrum.

If we can create a way for there to be independent competitors in the marketplace so that they're not relying on anyone else in the marketplace—they're able to control their prices and they're able to control their network quality entirely—then we can potentially see the same type of price decrease that we saw in our analysis, which was up to 35% or 40% if you can get a strong regional player into the market.

• (1615)

[Translation]

**Mr. Bernard Généreux:** In that case, Madam Chair, I think that I'll propose a new study or a review of how this entire market operates to ensure more competition in Canada.

Thank you, everyone.

**The Chair:** Thank you.

[English]

Our next round of questions goes to MP Badawey.

You have five minutes.

**Mr. Vance Badawey:** Thank you, Madam Chair.

I do want to get back to the two previous speakers, but I think it has to be prefaced by a question. I'm going to give this question to someone I haven't heard much from today. I'm going to give it to the Department of Industry.

The government has enacted pro-competition policies by setting aside spectrum for smaller regional carriers, but there's a fear that if Rogers were to acquire Shaw, they would then get that set-aside spectrum at a cheaper rate than had they been on spectrum themselves, of course. Could you please explain further spectrum transfers, the work involved and the types that would be allowed, denied or forced to sell?

**Mr. Éric Dagenais:** Yes. Thank you. It's not a simple question, but I'll try to provide a simple answer, Madam Chair.

Essentially, what the minister would look at in the context of a merger would be spectrum that is being transferred from one party to the other and spectrum concentration in the different licence areas. We would be looking at areas licence by licence to look at the availability of spectrum to other parties.

In the specific case of Shaw and Rogers, while I've said I won't comment on the transaction, some of this is on the public record. If we look at our previous 600-megahertz auction, which took place in early 2019, we had some set-aside spectrum. Shaw bid on it and won some licences. The minister issued those licences with conditions attached.

Those conditions included a prohibition on the transfer of those set-aside licences to incumbents for a period of five years. That's one way in which.... When we have set-aside or competitive measures to encourage competition in the wireless market, it's one of the measures that we typically put in place to ensure that the kind of scenario you describe doesn't take place, or at least doesn't take place in the immediate years that follow, and that it's not an opportunity for arbitrage.

**Mr. Vance Badawey:** Thank you, Mr. Dagenais.

I'll go back to Mr. Généreux's comments to Ms. Wright with respect to getting into areas that sometimes might not be as advantageous for the bigger players and therefore allowing all players to have an equitable stage, I guess, to stand on.

Ms. Wright, you mentioned the fact of having the ability to get into areas. Although, as Mr. Généreux said, the big players don't like it with respect to the market share, in the direction you spoke about, do you find it advantageous for rural communities to actually have these capacities offered to them where they aren't now and, as well, at affordable pricing?

**Ms. Leila Wright:** Thank you for the question.

Madam Chair, our analysis was really about trying to get competition out to every community in Canada. We found that if you can get strong regional players into every community in Canada, Canadians can benefit from the competition that we're seeing in particular areas of Canada.

When it comes to rural and remote areas of Canada, oftentimes it's difficult to build a network when you don't have a customer base. Our proposed remedy to the CRTC focused on allowing regional players to access spectrum from incumbents for a period of time while they are building out their network. That would allow them to develop a customer base while at the same time building out a network, and then transitioning to their own network so that they would be an independent competitor in that marketplace.

**Mr. Vance Badawey:** Thank you, Ms. Wright.

Again, I guess to the same comments or questions that I had for Mr. Boswell earlier, do you find that the current act allows you and others who are on this panel the ability to actually bring forward these recommendations in a manner in which they will be done or they will be not done or there will be the possibility that there might be a challenge? Do you find that those opportunities are present now or that there should be some adjustments made to the act in the future?

• (1620)

**Ms. Leila Wright:** I can speak specifically to the proceeding in front of the CRTC. What was extremely helpful for us in making the recommendations that we made to the CRTC was the ability for us to get data from market participants so we could do our analyses and base our recommendations on those analyses.

**Mr. Vance Badawey:** Thank you, Ms. Wright.

We see the red card. I feel like I'm in a soccer game. I'm getting tossed out of the game now.

Thank you, Madam Chair.

Thank you, Ms. Wright, and thank you to all the participants.

**The Chair:** Rest assured, MP Badawey, there's no challenge on the field. Thank you so much.

Our next round of questions goes to MP Lemire.

[*Translation*]

You have the floor for two and a half minutes.

**Mr. Sébastien Lemire:** Fortunately, this isn't the case. Otherwise, we wouldn't see Mr. Badawey again.

I'll continue to address my questions to Mr. Scott from the CRTC.

As a result of the proposed acquisition of Shaw by Rogers, do you believe that the auction of spectrum licences in the 3,500 megahertz band should be delayed?

**Mr. Ian Scott:** This decision is really not up to us, but to the minister.

**Mr. Sébastien Lemire:** That's fine, but your opinion is valuable.

In your opinion, should Shaw be withdrawn from the auction of the 3,500 megahertz band? Given its possible acquisition by Rogers, is Shaw eligible?

**Mr. Ian Scott:** Is this a question for me? Perhaps it's more suitable for Mr. Dagenais.

**Mr. Sébastien Lemire:** We can ask him the question, but I'm also interested in your opinion.

**Mr. Ian Scott:** I don't have an answer for you, since we aren't responsible for this issue. Spectrum policy issues fall under the purview of ISED.

**Mr. Sébastien Lemire:** That's fine.

Mr. Dagenais, do you have an answer?

**Mr. Éric Dagenais:** Thank you for the question.

As I told Mr. Masse earlier, the deadline for registering for the auction was yesterday. Yesterday afternoon, we published the names of the companies that applied to participate in the June auction. Shaw isn't one of them.

So, the issue is resolved. I know that this issue was pending.

**Mr. Sébastien Lemire:** However, I gather that Shaw would have been eligible.

**Mr. Éric Dagenais:** The company didn't ask to participate.

**Mr. Sébastien Lemire:** Yes, but can you tell me whether it would have been eligible, should a similar situation arise later on and we want to review the precedents?

**Mr. Éric Dagenais:** I can tell you that rules define which parties, in merger cases, are eligible and which parties are considered independent. The affiliated parties can't participate independently.

**Mr. Sébastien Lemire:** In terms of affiliated parties, Mr. Scott, do you have an opinion on subsidiaries such as Virgin or Fido that can access their parent company's lower rates and compete with the small players? Do you have an opinion on how they affect competition in the market?

**Mr. Ian Scott:** No, again, I'm sorry.

[English]

I'm forced to respond in the same way. The issue of the brands and the MVNOs is central to our proceeding, and the decision will be out shortly.

[Translation]

**The Chair:** Thank you.

[English]

Our last round of questions will go to MP Masse.

You have the floor for two and a half minutes.

**Mr. Brian Masse:** Thank you, Madam Chair.

I'll go over to Mr. Dagenais with regard to the spectrum auction.

Was anything unique or different done with it that you can comment on, or was it basically a continuation of policy?

**Mr. Éric Dagenais:** There are a few things we've done differently.

We've gone to smaller tier sizes. Rather than auction off 17 licences, we're auctioning off 172 licences. Smaller players will have, we think, better access to smaller geographic areas when they're buying spectrum. I think this will probably end up in a diversity of players. We see it from the number of players that have applied to participate in the auction. We have a lot more than usual.

We have also put aside competitive measures. There's a set-aside for new entrants, which is a continuation of policy. It's an important policy, and I think it's something the Competition Bureau has pointed out. When there's a strong regional player, you see lower prices.

The other thing I would point to is that we have pretty aggressive deployment conditions to ensure that those who end up buying the spectrum really abide by a "use it or lose it" policy.

These are improvements that we've made over the years, and they're culminating in the auction that's coming forward in two months.

• (1625)

**Mr. Brian Masse:** What type of revenue do we expect to get with regard to this auction?

**Mr. Éric Dagenais:** I can't really say. We don't make forecasts for revenues in spectrum auctions. I mean—

**Mr. Brian Masse:** Do you have a previous one that you can refer to? What did it get?

**Mr. Éric Dagenais:** Is there an auction in particular that you're looking for?

**Mr. Brian Masse:** I have the rundown of the previous ones, but I guess the point is that we're looking at billions of dollars here. Is this correct?

**Mr. Éric Dagenais:** Yes, I think that's a fair forecast. The 600-megahertz auction that I referred to earlier was in early 2019, and the government collected \$3.4 billion in revenue from that auction.

**Mr. Brian Masse:** Is there a time frame on the "use it or lose it" policy? How do you incorporate that?

**Mr. Éric Dagenais:** Yes. We do interval checks at five years, 10 years, 15 years and 20 years. All along, we will do checks when the licences are up for renewal, and before that at five, 10 and 15 years.

**Mr. Brian Masse:** Okay, so five years is the base—

**Mr. Éric Dagenais:** Yes, it's the first milestone. We call them milestones. The first milestone is at five years.

**Mr. Brian Masse:** Thank you, Madam Chair.

**The Chair:** Thank you very much.

That wraps up our time today and actually wraps up our study for the proposed acquisition.

I would like to thank our witnesses for being here today. It was very helpful to get the insight in terms of the process and what we can expect. Thank you again.

With respect to our new study starting, if you haven't already sent your witness lists to the clerk, I suggest that you do so as soon as possible so that we can line folks up.

[Translation]

Once again, I want to thank the interpreters, the computer technicians, the analysts and the clerk. It's always good to see them, even during the constituency work weeks. I want to thank them for their work today.

[English]

With that, I call the meeting adjourned.







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This is Exhibit "J" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**











































































































































This is Exhibit "K" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**

























































































































































































































































































































































This is Exhibit "L" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**















































This is Exhibit "M" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**

















This is Exhibit "N" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**





















This is Exhibit "O" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**











This is Exhibit "P" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



















This is Exhibit "Q" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**









































This is Exhibit "R" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**











This is Exhibit "S" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



















































This is Exhibit "T" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**

































This is Exhibit "U" referred to in the affidavit of  
Ashley McKnight of the City of Oshawa,  
in the Regional Municipality of Durham, before me at the  
City of Toronto, in the Province of Ontario, on  
September 7, 2022, in accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**RONKE AKINYEMI**



































































































































