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PROPOSED ACQUISITION OF SHAW COMMUNICATIONS BY ROGERS COMMUNICATIONS: BETTER TOGETHER?

**Report of the Standing Committee on Industry and
Technology**

Joël Lightbound, Chair

**MARCH 2022
44th PARLIAMENT, 1st SESSION**

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Chair**

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON INDUSTRY AND TECHNOLOGY

has the honour to present its

FIRST REPORT

Pursuant to its mandate under Standing Order 108(2), the committee has studied the Proposed Acquisition of Shaw by Rogers and has agreed to report the following:

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SUMMARY

The proposed acquisition of Shaw Communications by Rogers Communications in March 2021 provoked strong reactions from many stakeholders. Given this context, the House of Commons Standing Committee on Industry and Technology decided to undertake a study on this issue. During this study, most witnesses said they were opposed to the transaction in its current form. They expressed concerns about its impacts on the diversity of voices in the broadcasting sector and on the affordability and accessibility of telecommunications services. They also underscored the importance of the Freedom Mobile brand to keeping wireless services accessible in Canada.

The organizations responsible for reviewing this transaction, the Department of Industry, Science and Economic Development, the Canadian Radio-television and Telecommunications Commission (CRTC) and the Competition Bureau also testified during this study. Related to their testimony, some stakeholders have argued the need for a review of the *Competition Act* and the importance of the CRTC always considering the interests of Canadians in terms of affordability and accessibility in its decisions. As a result, the Committee recommends that the federal government immediately launch a review of the *Competition Act*, that it provide regulatory bodies with enough resources to carry out their work and follow up on their decisions, and that it take steps to ensure the affordability and accessibility interests of all Canadians take precedence over all other considerations during the review of the proposed merger.

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Government of Canada launch nationwide consultations to examine the implementation of structural separation in the telecommunications sector between businesses that build infrastructure and those that provide services in order to ensure a level playing field that fosters network development in both cities and rural areas. 32

Recommendation 2

That the Government of Canada take measures to better support the Competition Bureau’s work, including the following:

- **launch an immediate review of the *Competition Act*, including a review of the efficiencies defence; and**
- **ensure that the Competition Bureau has the resources it needs to do its work, including monitoring the impacts of its decisions..... 33**

Recommendation 3

That, in reviewing the proposed merger, the Government of Canada take measures to ensure that affordability and accessibility for all Canadians take precedence over all other considerations, for example by placing emphasis on the importance of Freedom Mobile as a fourth wireless provider, and ensuring that, in reviewing the merger, the government bodies involved consider the impacts on the regulatory environment of the CRTC’s recent decisions. 34

Recommendation 4

That, while the Committee believes the merger should not proceed, if it does, the Government of Canada ensure that, in implementing its decision, all conditions attached to the merger approval are fully enforceable and that resources are available to enforce them. 34



PROPOSED ACQUISITION OF SHAW COMMUNICATIONS BY ROGERS COMMUNICATIONS: BETTER TOGETHER?

INTRODUCTION

On 19 March 2021, the Standing Committee on Industry and Technology¹ (the Committee) adopted the following motion:

That pursuant to Standing Order 108(2), the committee undertake a study on the proposed acquisition of Shaw Communications by Rogers Communications; that the study consist of a minimum of 8 hours; that the clerk schedule witnesses for 1 hour panels; that opening remarks for witnesses be limited to 3 minutes; that the meetings take place during the Easter break weeks if possible; and that the committee report to the House as soon as possible after witness testimony has concluded.

Between March and April 2021, the Committee heard 28 witnesses and received four briefs for this study.

The Committee wishes to note that the context of this study changed after it adopted its motion in March 2021. The Committee was unable to “report to the House as soon as possible” because an election was called in the summer of 2021, dissolving Parliament and the Committee. The Committee restarted its study as early as possible in the 44th Parliament, resulting in the presentation of this report. The Committee would also like to point out that the Canadian Radio-television and Telecommunications Commission (CRTC) issued two important decisions in the spring of 2021, after the Committee had finished hearing witnesses for this study. In April 2021, the CRTC announced the creation of a mobile virtual network operator (MVNO) regime.² In May 2021, it announced that it was changing course and reversing its August 2019 decision on wholesale rates.³

1 At the beginning of the 44th Parliament, the House of Commons Standing Committee on Industry, Science and Technology was renamed the House of Commons Standing Committee on Industry and Technology to reflect the creation of the new House of Commons Standing Committee on Science and Research.

2 Canadian Radio-television and Telecommunications Commission [CRTC], [Telecom Regulatory Policy CRTC 2021-130](#).

3 Government of Canada, [CRTC sets final wholesale rates for broadband services](#).



BACKGROUND ON THE PROPOSED MERGER

Proposal of Rogers Communications and Shaw Communications

On 15 March 2021, Rogers Communications (Rogers) announced in a news release that it is proposing to buy Shaw Communications (Shaw) for \$26 billion.⁴ During their appearance before the Committee, Joe Natale, President and Chief Executive Officer of Rogers, and Brad Shaw, Executive Chair and Chief Executive Officer of Shaw, described the benefits of the transaction. They explained that combining the two companies would increase the level and pace of investment across the country to meet the growing needs of Canadians. With more resources, they believe they could more quickly close the digital divide in Canada.⁵ Mr. Natale said that Rogers wants to offer more choice in unserved regions and areas with only one telecommunications service provider (TSP).⁶ In their view, the merger would create a stronger competitor, which would maintain the downward trend in prices.⁷ It would also expand network coverage (cable, wireline, wireless, satellite and Wi-Fi) across the country and lead to the creation of a national fibre-optic network. Mr. Shaw said that all Canadians would benefit from the proposed transaction.⁸

Witnesses from Rogers and Shaw emphasized the need for their companies to work together. Paul McAleese, President of Shaw, asserted that, by itself, Shaw has too little investment capacity to meet Canada's needs:

The best example of that is probably the rural and remote areas in B.C. and Alberta that are currently being served by fixed wireless, an asset that relies on a series of spectrum bands. This is a collection or portfolio of spectrum that we simply don't have today. The 25-year head start that the incumbents have had on this means that, while we have participated in the recent auctions, we simply don't have the depth of spectrum to be able to provide that product to rural and remote B.C. and Alberta. What that means for many of those communities is that they simply have one carrier, a simple monopoly.⁹

4 Rogers, [*Rogers and Shaw to come together in \\$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout.*](#)

5 House of Commons, 2nd Session, 43rd Parliament, Standing Committee on Industry, Science and Technology [INDU], [*Evidence*](#), 29 March 2021, 1115 (Joe Natale, Rogers Communications [Rogers]), INDU, [*Evidence*](#), 29 March 2021, 1125, 1140 (Brad Shaw, Shaw Communications [Shaw]), Rogers, [*Brief*](#), Shaw, [*Brief*](#).

6 INDU, [*Evidence*](#), 29 March 2021, 1245 (Natale).

7 INDU, [*Evidence*](#), 29 March 2021, 1115 (Natale), INDU, [*Evidence*](#), 29 March 2021, 1125 (Shaw), Rogers, [*Brief*](#).

8 INDU, [*Evidence*](#), 29 March 2021, 1125 (Shaw). See also Shaw, [*Brief*](#).

9 INDU, [*Evidence*](#), 29 March 2021, 1135 (Paul McAleese, Shaw).

Shaw pointed out in its brief that it has reached the limit of what can be accomplished in Canada by a competitor of its size.¹⁰ Mr. Natale added, “Together we can go further and faster. [Telecommunications] is a business of scale.”¹¹

The executives argued that the proposed merger would also speed up the deployment of fifth-generation wireless service (5G) in Canada. Mr. Shaw said that Shaw cannot invest enough to deploy 5G unless it merges with Rogers.¹² The combined TSPs would deliver 5G more quickly and widely across Canada.¹³ Mr. Natale believes that Rogers could subsequently provide 5G to rural and remote regions more rapidly.¹⁴ Furthermore, Rogers has committed to investing \$2.5 billion to build 5G networks in Western Canada, which Mr. Natale said would enhance its competitiveness and more swiftly bridge the digital divide between urban and rural communities.¹⁵

Mr. Natale also explained what Rogers has promised to do if the merger is approved. Rogers would not increase the prices of Freedom Mobile services for three years.¹⁶ The merger would create nearly 3,000 jobs in Western Canada, including 500 in Calgary to establish a national centre of technology and engineering excellence.¹⁷ Mr. Natale noted that these would be net new jobs resulting from the expansion required to build out 5G and connect rural areas.¹⁸ He also stated that Rogers would invest \$1 billion to create a rural, remote and Indigenous community connectivity fund. Rogers would also consult with Indigenous groups to create new TSPs based in their communities. Finally, Rogers plans to extend its *Connected for Success* program nationally in order to provide affordable Internet packages.¹⁹

10 Shaw, [Brief](#).

11 INDU, [Evidence](#), 29 March 2021, 1140 (Natale).

12 INDU, [Evidence](#), 29 March 2021, 1125 (Shaw), Shaw, [Brief](#).

13 INDU, [Evidence](#), 29 March 2021, 1115 (Natale), Rogers, [Brief](#).

14 INDU, [Evidence](#), 29 March 2021, 1135 (Natale), Rogers, [Brief](#).

15 INDU, [Evidence](#), 29 March 2021, 1115 (Natale), Rogers, [Brief](#).

16 Rogers, [Brief](#).

17 INDU, [Evidence](#), 29 March 2021, 1115 (Natale).

18 INDU, [Evidence](#), 29 March 2021, 1245 (Natale).

19 INDU, [Evidence](#), 29 March 2021, 1115 (Natale). See also Rogers, [Brief](#).



Overview of Concerns Raised

A number of witnesses expressed serious concerns about the proposed merger to the Committee. Some voiced outright opposition to the deal, arguing that no condition could outweigh the negative impacts of the merger, which include less competition and, consequently, higher prices for services.²⁰ They added that, if the government's priorities are to foster competition and improve affordability, it cannot allow the merger.²¹ Telecommunications service prices are already very high in Canada, and the merger would only make the situation worse.²² The merger would therefore be a step backward relative to the government's recent policies to promote competition and make services more affordable.²³ Moreover, some witnesses asserted that the merger would result in job losses, as Rogers is looking for efficiencies.²⁴ In short, as Matt Stein, President and Chief Executive Officer of the Competitive Network Operators of Canada (CNOOC) argued, this transaction would benefit only Rogers and Shaw, not all Canadians.²⁵

In addition to the competition issues raised by the merger, witnesses highlighted other problems in their briefs, including the following:

- One witness explained that only Freedom Mobile agreed to take part in the Toronto Transit Commission (TTC) subway wireless network. As a result, passengers can use the Freedom Mobile network to make 911 calls, even if they subscribe to a different TSP. The witness questioned whether the 911 service would still be available to TTC users following the merger if Freedom Mobile were to disappear;²⁶ and

20 INDU, [Evidence](#), 31 March 2021, 1535, 1620 (Laura Tribe, OpenMedia), INDU, [Evidence](#), 6 April 2021, 1110, 1200 (Dwayne Winseck, As an individual), INDU, [Evidence](#), 6 April 2021, 1115 (Matt Stein, Competitive Network Operators of Canada [CNOOC]).

21 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck), INDU, [Evidence](#), 31 March 2021, 1535 (Tribe).

22 INDU, [Evidence](#), 31 March 2021, 1435 (Jay Thomson, Canadian Communication Systems Alliance), INDU, [Evidence](#), 6 April 2021, 1300 (Ben Klass, Canadian Media Concentration Research Project), INDU, [Evidence](#), 6 April 2021, 1120 (Jean-Philippe Béïque, EBOX).

23 INDU, [Evidence](#), 31 March 2021, 1430 (Pierre Karl Péladeau, Quebecor), INDU, [Evidence](#), 6 April 2021, 1205 (Klass), Ben Klass and Dwayne Winseck, [Brief](#).

24 INDU, [Evidence](#), 6 April 2021, 1105 (Michael Geist, As an individual), INDU, [Evidence](#), 31 March 2021, 1535 (Tribe).

25 INDU, [Evidence](#), 6 April 2021, 1115 (Stein).

26 Vaxination Informatique, [Brief](#).

- Some witnesses noted that the merger would give Shaw and Rogers access to a significant amount of personal data, raising serious market power, privacy and data protection issues.²⁷

Witnesses also questioned whether Shaw has a genuine financial need to be purchased by Rogers. Dwayne Winseck, Professor at Carleton University, pointed out that, adjusted for its size, Shaw reinvests more of its revenue into upgrading its fibre and wireless networks than Rogers.²⁸ Jean-Philippe Béïque, Chief Executive Officer of EBOX Inc., added the following:

Shaw, a \$5.4-billion company, claims that, without a merger, it will no longer be competitive. However, Videotron, a \$4.3-billion company, is prepared to invest to achieve the same position, without having the benefit of an existing wireline subscriber base in the western markets. What an ironic situation, one that serves the current interests of already powerful business people.²⁹

Furthermore, although Mr. Natale said that “the true economic profit of Rogers over the last five years ... sits at about 8%, on average,”³⁰ Mr. Winseck argued that the major incumbent TSPs, including Rogers, have maintained profit margins of 30% to 40% in recent years, which is four times the average for Canadian industry as a whole.³¹

Some witnesses were not totally opposed to the merger of Shaw and Rogers, but suggested putting conditions on the deal. These conditions included the implementation of an MVNO regime and the divestment of all Freedom Mobile wireless assets to a third party. Andy Kaplan-Myrth, Vice-President of Regulatory and Carrier Affairs at TekSavvy Solutions Inc. (TekSavvy), said that this transaction underscores the importance of regulating and overseeing the telecommunications sector.³²

Witnesses also expressed reservations about Rogers’s promises, noting that no accountability process could be established to ensure it follows through.³³ For example, one witness applauded Rogers’s commitment to invest \$1 billion into a fund for rural communities, but could not be sure whether the company would fulfill this promise,

27 Klass and Winseck, [Brief](#).

28 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck). See also Klass and Winseck, [Brief](#).

29 INDU, [Evidence](#), 6 April 2021, 1120 (Béïque).

30 INDU, [Evidence](#), 29 March 2021, 1150 (Natale).

31 INDU, [Evidence](#), 6 April 2021, 1155 (Winseck).

32 INDU, [Evidence](#), 31 March 2021, 1540 (Andy Kaplan-Myrth, TekSavvy Solutions Inc.).

33 INDU, [Evidence](#), 31 March 2021, 1535 (Tribe), INDU, [Evidence](#), 6 April 2021, 1110, 1200 (Winseck), Klass and Winseck, [Brief](#).



showing the need for greater regulatory oversight.³⁴ Moreover, there is no way of knowing where the money would be spent or how success would be measured.³⁵ Other witnesses added that Rogers would undoubtedly be so heavily in debt after purchasing Shaw (in addition to its spending on the 3,500 megahertz (MHz) spectrum that happened in June 2021)³⁶ that it may not have the financial capacity to make the promised investments.³⁷

Witnesses further questioned Rogers's promise to freeze rates at Freedom Mobile for three years. Laura Tribe, Executive Director, OpenMedia, said that Freedom Mobile has been pushing prices lower, so if these prices were frozen, they would no longer influence the prices of competitors' services.³⁸ Michael Geist, Canada Research Chair in Internet and E-Commerce Law, Faculty of Law, University of Ottawa, made the argument that promising to freeze prices for three years surely means that Rogers will raise them afterward.³⁹ Professor Winseck and Ben Klass, Senior Research Associate at the Canadian Media Concentration Research Project, stated that this promise was meaningless and that the brand would almost certainly be retired soon after the merger.⁴⁰

Finally, witnesses outlined similar situations to show that the proposed merger should not be allowed. Professor Winseck pointed out that positive changes occurred in the industry in the United States (U.S.) after a merger between AT&T and T-Mobile was rejected:

Second, when we looked at the United States, they were faced with a similar merger in 2011 when AT&T, the number two provider, went for T-Mobile at the time. The U.S. Department of Justice said no, and what happened immediately afterwards? T-Mobile doubled down on its maverick strategy by offering more affordable pricing plans and much more generous data allowances, and by doing something completely unheard of but that would be certainly welcome in Canada, offering "roam like home" deals to

34 INDU, [Evidence](#), 31 March 2021, 1435 (Thomson).

35 INDU, [Evidence](#), 31 March 2021, 1450 (Thomson).

36 For example, in [2019](#), Rogers spent \$1.7 billion on the 600 MHz spectrum auction. For more information on the 3,500 MHz spectrum auction to be held in June 2021, see Government of Canada, [Auction of Spectrum Licences in the 3500 MHz Band](#).

37 INDU, [Evidence](#), 6 April 2021, 1225 (Winseck), Klass and Winseck, [Brief](#).

38 INDU, [Evidence](#), 31 March 2021, 1555 (Tribe).

39 INDU, [Evidence](#), 6 April 2021, 1105 (Geist).

40 Klass and Winseck, [Brief](#).

T-Mobile subscribers that allowed them to roam in over 100 countries around the world without any extra bolt-on of \$10 or \$15 a day.⁴¹

In 2018, a merger nonetheless took place between T-Mobile and Sprint. Rogers stated that the Federal Communications Commission had recognized the competitive benefits of this merger, which would expand overall network capacity and strengthen the incentives for TSPs to innovate.⁴² However, in their brief, Professor Winseck and Mr. Klass argued that this merger was a “disaster” and that it reversed the downward trend in mobile wireless prices in the U.S.⁴³

Witnesses also discussed the 2016 merger of Bell and Manitoba Telecom Services (MTS). They pointed out that Bell had made the same promises as Rogers is making now, yet the outcome was higher prices, less competition and job losses.⁴⁴ Professor Winseck noted that, as part of that merger, some of MTS’s assets had been transferred to Xplornet in order to foster competition, but the results have been disappointing.⁴⁵ However, Jean-François Pruneau, President and Chief Executive Officer of Vidéotron Itée, said that this transaction showed that mergers need specific regulatory frameworks. In his view, the mistake was not to impose conditions on the transfer of assets to Xplornet and TELUS, which could have produced viable and lasting competition.⁴⁶

Lastly, some witnesses remarked that the federal government’s decision on this merger will reveal what kind of society it wants Canada to be. Mr. Klass explained:

a lot of it turns on a decision about what sort of economy and society we want to have. Do we want to have large powerful champions that we hand a tremendous amount of power to and then put a lot of trust in, or would we prefer to see a more decentralized competitive environment that is operating according to the sorts of pressures exerted by a marketplace?⁴⁷

Professor Geist said that the federal government’s decision on this merger will set the tone for the telecommunications sector for years to come. If the deal goes forward, it will show that mergers are possible, as two major ones will have taken place within a

41 INDU, [Evidence](#), 6 April 2021, 1200 (Winseck).

42 Rogers, [Brief](#).

43 Klass and Winseck, [Brief](#).

44 INDU, [Evidence](#), 31 March 2021, 1535 (Tribe), INDU, [Evidence](#), 6 April 2021, 1110 (Klass), Klass and Winseck, [Brief](#).

45 INDU, [Evidence](#), 6 April 2021, 1200 (Winseck).

46 INDU, [Evidence](#), 31 March 2021, 1520 (Jean-François Pruneau, Vidéotron Itée).

47 INDU, [Evidence](#), 6 April 2021, 1225 (Klass).



few years. Other competitors, such as SaskTel, will then become takeover targets. But if it does not, the government will send a message that consumers and competition take priority in Canada.⁴⁸

COMPETITION ISSUES IN THE TELECOMMUNICATIONS SECTOR

The Competition Bureau and *Competition Act*

The Commissioner of Competition, Matthew Boswell, appeared before the Committee to explain the Competition Bureau's (CB) role in reviewing the proposed transaction. He explained that the CB will assess whether the merger would substantially reduce or prevent competition. Mr. Boswell said that the review focuses on market power: the CB evaluates a merger's impact on prices and other factors such as quality, service and innovation. As part of its review, the CB collects evidence from a variety of sources. Mr. Boswell explained that, if he determines that the transaction will reduce or prevent competition, he can apply to the Competition Tribunal for an order to dissolve or alter the merger. He can also avoid going to the Tribunal by negotiating an agreement with the parties involved. As of April 2021, he could not say how long it would take to review the proposed merger, as timelines vary from case to case.⁴⁹

Mr. Boswell spoke about the CB role and resources after announcing a decision on a merger. He explained that the CB monitors compliance with consent agreements, but does not have the resources to assess their effectiveness retroactively. He pointed out that the *Competition Act* includes a limitation period that prevents the CB from taking action one year after announcing a decision.⁵⁰ Moreover, Mr. Boswell said that, in any event,

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.⁵¹

48 INDU, *Evidence*, 6 April 2021, 1305 (Geist).

49 INDU, *Evidence*, 7 April 2021, 1440 (Matthew Boswell, Competition Bureau).

50 INDU, *Evidence*, 7 April 2021, 1500, 1510 (Boswell).

51 INDU, *Evidence*, 7 April 2021, 1510 (Boswell).

He also noted that such a limitation period does not exist in the U.S., so regulators there can reopen a case after more than a year, which has occurred in the past.⁵²

In light of these issues, Mr. Boswell underlined the importance of a comprehensive review of the *Competition Act*.⁵³ Because the law as it stands does not require the parties to provide the data and information necessary to adequately review the effectiveness of a prior remedy, he would like to establish a remedies unit, a centre of expertise that follows up on consent agreements.⁵⁴ Mr. Boswell believes that the law should be thoroughly examined to identify potential amendments that would better account for the digital and data-driven economy. Canada's trading partners are already doing this. Mr. Boswell further believes that the standard for a merger review should be reconsidered, including "whether there ought to be presumptions in Canadian law with respect to mergers and parties then have to rebut those presumptions." He added that a large number of issues need to be addressed.⁵⁵

During his appearance, Mr. Boswell discussed the implications of the efficiencies exception in section 96 of the *Competition Act* for the proposed merger. He explained that this section provides the following:

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.⁵⁶

As a result, this provision enables "an otherwise anti-competitive merger to go forward based on efficiencies."⁵⁷ Mr. Boswell stated that, if Rogers and Shaw use this exception, they would have to prove the efficiencies and the CB would need a lot of time to carefully examine the evidence provided.⁵⁸ Finally, Mr. Boswell said this provision has been controversial both here and abroad since it took effect in 1986 and that he believed it would be worthwhile for parliamentarians to debate it.⁵⁹

52 INDU, [Evidence](#), 7 April 2021, 1525 (Boswell).

53 INDU, [Evidence](#), 7 April 2021, 1500 (Boswell).

54 INDU, [Evidence](#), 7 April 2021, 1510 (Boswell).

55 INDU, [Evidence](#), 7 April 2021, 1520 (Boswell).

56 INDU, [Evidence](#), 7 April 2021, 1535 (Boswell).

57 INDU, [Evidence](#), 7 April 2021, 1535 (Boswell).

58 INDU, [Evidence](#), 7 April 2021, 1535 (Boswell).

59 INDU, [Evidence](#), 7 April 2021, 1540 (Boswell).



Witnesses said they were worried that Rogers is quite likely to use this exception to justify the merger. Robin Shaban, Co-founder and Senior Economist, Vivic Research, believes that Rogers will employ the exception to gain approval for the deal because, in its announcement, it emphasized that the merger would generate \$1 billion in synergies and efficiencies annually.⁶⁰ She explained: “If their claim is truthful, then the bureau may be unable to take any action to protect competition in telecommunications markets.”⁶¹ Ms. Tribe added that, if the companies are looking for efficiencies, no jobs will be created. Accordingly, she wondered what types of jobs Rogers promises to create. Moreover, OpenMedia has received many letters from Canadians who are concerned about the merger’s employment impacts.⁶² Ms. Shaban pointed out that only the CB and the members of the Competition Tribunal can determine whether Rogers’s claims are true.⁶³

A number of witnesses criticized the efficiencies exception in the *Competition Act*, arguing that it is contrary to the interests of consumers. Ms. Shaban offered the following explanation:

It’s important to have efficiency as part of the mandate of competition policy. In that sense, it would make sense to retain some of that goal in any revisions to the *Competition Act*.

The problem with the efficiencies defence is that it’s very structured in the way it forces the Competition Bureau and the Competition Tribunal to assess efficiencies. It pits consumer interests against those of businesses and gives preference to businesses.

As our economy evolves and we move towards a more digital age, the philosophy underpinning the efficiencies defence isn’t really that relevant.⁶⁴

In addition, Mr. Kaplan-Myrth said the CB “must be vigilant in protecting the consumer and competition from abuses of market power.” He further noted that “the efficiencies defence only works if the Bureau ensures that parties with market power don’t abuse their dominance and use these efficiencies to squeeze out competitors.”⁶⁵

60 INDU, [Evidence](#), 6 April 2021, 1125 (Robin Shaban, Vivic Research).

61 INDU, [Evidence](#), 6 April 2021, 1125 (Shaban).

62 INDU, [Evidence](#), 31 March 2021, 1610 (Tribe).

63 INDU, [Evidence](#), 6 April 2021, 1125 (Shaban).

64 INDU, [Evidence](#), 6 April 2021, 1215 (Shaban).

65 INDU, [Evidence](#), 31 March 2021, 1540 (Kaplan-Myrth).

In view of the economic situation in Canada, witnesses questioned the merits of using the efficiencies exception for this merger. They pointed out that Canada is the only country in the Organisation for Economic Co-operation and Development (OECD) with such a provision.⁶⁶ Ms. Shaban explained that a few small countries (such as Malta and Barbados) have this kind of exception, probably to help their businesses grow enough to be internationally competitive.⁶⁷ However, Canada is the eighth-largest wireless market in the world, valued at \$29.2 billion.⁶⁸ Accordingly, there is no reason for companies to have access to the efficiencies defence.⁶⁹ Ms. Shaban said that applying this provision to businesses that genuinely plan to engage in international trade would be at least somewhat logical, but this does not seem to be true of Rogers.⁷⁰

In arguing against the exception, Ms. Shaban cited the case of Superior Propane's acquisition by ICG Propane in the 1990s. She explained that this transaction was approved because of the efficiencies exception, even though forecasts indicated that it would increase the retail price of propane by about 8%. The outcome of this merger was a monopoly in 16 communities across Canada.⁷¹

Consequently, witnesses argued that the efficiencies exception, as set out in section 96, should be repealed, as it does not benefit Canadians. Ms. Shaban remarked that there may be "a way to imbue the act with a frame of efficiency, but the way that provision is structured is not conducive to creating equitable economic outcomes."⁷² John Lawford, Executive Director and General Counsel, Public Interest Advocacy Center, pointed out that the exception is a standalone provision in the *Competition Act* and could therefore be deleted without any other impacts.⁷³ Ms. Shaban added that Canadian merger laws are generally not designed to protect consumers, as the Superior Propane merger

66 INDU, [Evidence](#), 31 March 2021, 1535 (John Lawford, Public Interest Advocacy Centre), INDU, [Evidence](#), 6 April 2021, 1125 (Shaban).

67 INDU, [Evidence](#), 6 April 2021, 1150 (Shaban).

68 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck).

69 INDU, [Evidence](#), 6 April 2021, 1155 (Winseck).

70 INDU, [Evidence](#), 6 April 2021, 1230 (Shaban).

71 INDU, [Evidence](#), 6 April 2021, 1125 (Shaban).

72 INDU, [Evidence](#), 6 April 2021, 1215 (Shaban).

73 INDU, [Evidence](#), 31 March 2021, 1535 (Lawford).



shows.⁷⁴ She does not believe the CB has the tools necessary to serve the interests of consumers.⁷⁵

Lastly, Geoff White, Director, Legal and Regulatory Affairs, CNOOC, voiced concerns about this discussion. He asserted that, while the problems with the *Competition Act* are important, they should be considered separately from the merger at hand. For example, while he also considers the exception in section 96 of the *Competition Act* problematic, Mr. White did not agree that it is critical to the Rogers–Shaw merger. He explained that, although he believes the efficiencies defence is “awful,” if the government attempts to change the law to prevent this merger, years of challenges will result.⁷⁶ In his view, the CB has the resources and “all the remedies it has and needs to deliver the right outcome for Canadians.”⁷⁷

Regulation of Competition

A representative of the CRTC explained the organization’s role in reviewing the proposed merger. Ian Scott, Chairperson and Chief Executive Officer of the CRTC, said that one component of Shaw’s operations that will be examined as part of the proposed transaction is its telecommunications businesses (wireless and Internet). However, under the *Telecommunications Act*, transactions involving telecommunications services do not require the CRTC’s approval, except to ensure that the company remains under Canadian control. Mr. Scott added that, while the CRTC has a limited role in the telecommunications aspect of a proposed merger, it nonetheless conducts ongoing oversight of TSPs to ensure the services provided are consistent with the objectives of the legislation.⁷⁸

During the study, the witnesses discussed the CRTC’s role in the merger, particularly in supporting a competitive telecommunications sector. One witness said the CRTC has the tools it needs to manage the merger.⁷⁹ Professor Geist expressed concern that the CRTC is not making consumers the priority as it reviews the merger, which it has not always done, in his view.⁸⁰ Other witnesses asserted that the CRTC should show “regulatory

74 INDU, [Evidence](#), 6 April 2021, 1125 (Shaban).

75 INDU, [Evidence](#), 6 April 2021, 1150 (Shaban).

76 INDU, [Evidence](#), 6 April 2021, 1145, 1200 (Geoff White, CNOOC).

77 INDU, [Evidence](#), 6 April 2021, 1140 (White).

78 INDU, [Evidence](#), 7 April 2021, 1435 (Ian Scott, CRTC).

79 INDU, [Evidence](#), 6 April 2021, 1140 (White).

80 INDU, [Evidence](#), 6 April 2021, 1105 (Geist).

fortitude” and implement policies that support service-based competition, such as wholesale rates, an MVNO regime and regional competitors.⁸¹ Mr. White argued that a number of provisions of the *Telecommunications Act*, including sections 7 and 27, give the CRTC clear strategic direction to regulate the telecommunications sector by putting Canadian consumers first.⁸² Finally, witnesses stated that, despite efforts to support competition, progress remains fragile and slow by international standards.⁸³

Some witnesses took diametrically opposed positions on the way they hope CRTC regulatory policies will change. On the one hand, Shaw argued that, given technological change, Canada needs new policies. It stated that the CRTC has created regulatory uncertainty with its 2019 announcement of new wholesale rates and its consultations on the MVNO regime. Shaw advocated that CRTC policies instead support TSPs that own facilities.⁸⁴ On the other hand, one witness asserted that efforts to introduce new competitors in recent years have failed and that policies to promote competition have only strengthened the position of the incumbents. The witness concluded as follows: “Repeating these attempts will repeat the same outcomes. The box has failed. It is time to think outside of the box.”⁸⁵

Despite these concerns, Rogers and Shaw maintained that competition in Canada’s telecommunications market is adequate. Rogers argued that the Canadian market is highly competitive; prices have fallen a great deal in recent years.⁸⁶ In its brief, Rogers stated that the two companies’ networks have little overlap and that the proposed merger would therefore not reduce competition in Canada.⁸⁷ In response to a question on the transaction’s impact on competition in the telecommunications sector, Rogers stated that government bodies are responsible for assessing these issues.⁸⁸ It added that consumer interests would be protected by the expansive oversight of the CB, the CRTC and Innovation, Science and Economic Development Canada (ISED).⁸⁹

81 INDU, [Evidence](#), 6 April 2021, 1245 (Winseck), INDU, [Evidence](#), 6 April 2021, 1115 (Stein).

82 INDU, [Evidence](#), 6 April 2021, 1235 (White).

83 Klass and Winseck, [Brief](#).

84 Shaw, [Brief](#).

85 Vaxination Informatique, [Brief](#).

86 INDU, [Evidence](#), 29 March 2021, 1255 (Natale), Rogers, [Brief](#).

87 Rogers, [Brief](#).

88 INDU, [Evidence](#), 29 March 2021, 1140 (Natale).

89 Rogers, [Brief](#).



Rogers and Shaw both argued that the proposed merger would increase competition in Canada. They explained that, by creating a TSP large enough to take on Bell and its alliance with TELUS, this merger would spur competition.⁹⁰ In its brief, Rogers stated that the merger announcement had already sparked investments from Bell, TELUS and SaskTel.⁹¹ Mr. Natale remarked that, even after combining with Shaw, Rogers would still be smaller than Bell in terms of wireline services.⁹² Mr. McAleese said that “a dynamic, competitive environment reduces prices.”⁹³ Mr. Shaw added that the merger is “going to drive [competition] in a way that is terribly exciting for Canadians.”⁹⁴

Other witnesses were not as optimistic about competition in Canada’s telecommunications sector. One witness said that, even though the two companies are not competing in every region, what one does still affects the other.⁹⁵ Witnesses expressed concern that the merger would make Rogers too large. Professor Winseck and Mr. Klass explained in their brief that the CB data show that a business with at least 35% market share has the ability to “unilaterally exercise market power.” They reported that the merger would give Rogers a national market share greater than 35%.⁹⁶ A number of witnesses stated that prices would rise if Rogers were to grow that large.⁹⁷

Witnesses also shared their concerns about the state of wireless services in Canada. Mr. Klass noted that Canada has had the lowest rate of adoption of wireless services among OECD countries for over a decade, owing to their prohibitive cost.⁹⁸ Regional TSPs such as Shaw and Freedom Mobile have helped reduce costs and have raised data caps in recent years. Yet the proposed merger would eliminate Freedom Mobile, increasing concentration in the wireless services industry and reversing the improvements of the past few years.⁹⁹ Professor Geist argued that the merger highlights a serious failure of wireless services policy. He gave the following explanation: “Successive governments have pledged to address high wireless costs, but have

90 Rogers, [Brief](#), Shaw, [Brief](#).

91 Rogers, [Brief](#).

92 INDU, [Evidence](#), 29 March 2021, 1205 (Natale), Rogers, [Brief](#).

93 INDU, [Evidence](#), 29 March 2021, 1240 (McAleese).

94 INDU, [Evidence](#), 29 March 2021, 1310 (Shaw).

95 INDU, [Evidence](#), 6 April 2021, 1115 (Winseck).

96 Klass and Winseck, [Brief](#).

97 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck), INDU, [Evidence](#), 31 March 2021, 1515 (Thomson), INDU, [Evidence](#), 31 March 2021, 1535 (Tribe), INDU, [Evidence](#), 6 April 2021, 1115 (Klass).

98 INDU, [Evidence](#), 6 April 2021, 1110 (Klass). See also Klass and Winseck, [Brief](#).

99 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck).

often instead taken half-measures or even backtracked at opposition from the incumbent providers.”¹⁰⁰

Supporting Regional Telecommunications Service Providers

Witnesses discussed the importance of regional TSPs, which are often viewed as the fourth TSP in some regions.¹⁰¹ Pierre Karl Péladeau, President and Chief Executive Officer, Quebecor Media inc., explained that the CB data show that the fourth TSP in Quebec (Videotron) enables Quebecers to enjoy up to 40% lower prices than other Canadians.¹⁰² Mr. Lawford noted that, following a merger in Austria that brought the number of TSPs down from four to three, prices rose 95%.¹⁰³ Moreover, according to the CRTC, wireless services prices are lower in regions with a fourth TSP or an independent TSP with a market share of 5% or more. Freedom Mobile has become a major TSP in Alberta, British Columbia and Ontario, where its revenue share is nearly 6%.¹⁰⁴ Professor Geist said he is convinced that the loss of the fourth player would decrease competition in Canada and lead to higher prices.¹⁰⁵

According to Shaw and Rogers, even if the merger were to eliminate a fourth TSP, this would not harm competition in Canada. They argued that healthy competition is not measured by the number of competitors but by their strength and the way the market performs.¹⁰⁶ Shaw pointed out that the number of mobile telephone competitors is lower today than 10 years ago, yet the competitive intensity of that market has increased.¹⁰⁷ Furthermore, Rogers cited independent academic studies showing there is no optimal number of TSPs.¹⁰⁸ Professor Winseck and Mr. Klass questioned the credibility of these studies, pointing out that only one of them is a published, peer-reviewed study.¹⁰⁹ They added that, while there may be no magic number of TSPs

100 INDU, [Evidence](#), 6 April 2021, 1105 (Geist).

101 Observers often refer to the big three TSPs in Canada: Bell, Rogers and TELUS.

102 INDU, [Evidence](#), 31 March 2021, 1430 (Péladeau).

103 INDU, [Evidence](#), 31 March 2021, 1625 (Lawford).

104 Klass and Winseck, [Brief](#).

105 INDU, [Evidence](#), 6 April 2021, 1105 (Geist).

106 INDU, [Evidence](#), 29 March 2021, 1220 (Natale), INDU, [Evidence](#), 29 March 2021, 1230 (McAleese), INDU, [Evidence](#), 29 March 2021, 1310 (Shaw), Rogers, [Brief](#), Shaw, [Brief](#).

107 Shaw, [Brief](#).

108 Rogers, [Brief](#).

109 Klass and Winseck, [Brief](#).



to have a competitive market, the literature does show that having four TSPs is desirable, if not optimal.¹¹⁰

Stakeholders explained that the proposed merger shows how costly it is to be a regional TSP in Canada. Mr. Lawford made the following comments regarding Shaw:

It's also, unfortunately, showing the difficulty of mounting a full attack and being a fourth player in Canada. I think it's tiring and it takes a lot of capital, and even with all the advantages they have of being a big, strong cable, they're feeling the heat.¹¹¹

He added that, "at the end of the day it's about money, it's a big deal, and they're [the Shaw family] probably just cashing out."¹¹² In addition, Mr. Péladeau reported that, when Videotron wanted to invest to become the fourth player in Quebec, it had to spend \$500 million on spectrum licences in 2008 and over \$2 billion to build its own network.¹¹³

In light of the concerns about the loss of a fourth TSP, some stakeholders suggested that Shaw's wireless assets (Freedom Mobile) be divested as a condition of approving the merger, in order to create another competitor.¹¹⁴ Some witnesses proposed that the CRTC set up an MVNO regime and that Freedom Mobile's assets be transferred to one or more MVNOs.¹¹⁵ Mr. Stein said that, without an MVNO regime, the bare minimum would be divestment of all Freedom Mobile assets to a party committed to service-based competition.¹¹⁶ Mr. Péladeau said the merger could benefit consumers if Shaw were to sell Freedom Mobile.¹¹⁷

However, Professor Winseck did not think this strategy would do enough to offset the negative consequences of the merger. He argued that it makes little sense to destroy one TSP only to create others:

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- 110 Klass and Winseck, *Brief*.
- 111 INDU, *Evidence*, 31 March 2021, 1600 (Lawford).
- 112 INDU, *Evidence*, 31 March 2021, 1600 (Lawford).
- 113 INDU, *Evidence*, 31 March 2021, 1455 (Péladeau).
- 114 INDU, *Evidence*, 31 March 2021, 1435 (Péladeau), INDU, *Evidence*, 6 April 2021, 1105 (Geist), INDU, *Evidence*, 6 April 2021, 1115 (Stein).
- 115 INDU, *Evidence*, 31 March 2021, 1435, 1505 (Thomson), INDU, *Evidence*, 6 April 2021, 1105 (Geist), Vaxination Informatique, *Brief*, INDU, *Evidence*, 6 April 2021, 1115, 1300 (Stein).
- 116 INDU, *Evidence*, 6 April 2021, 1115 (Stein).
- 117 INDU, *Evidence*, 31 March 2021, 1510 (Péladeau).

First, trying to create an imaginary, new fourth competitor to replace one that's already existing is a fool's errand. We've already seen that with the Bell MTS deal. The fourth competitor just hasn't gotten off the ground, and it's been a complete failure. I'm referring to Xplornet here.¹¹⁸

Another witness added the following point:

The fact that Shaw, despite being a very solid incumbent, is throwing in the towel says a lot about its hopes to grow Freedom or any hopes of seeing a true competitor emerge in an environment where only facilities-based competition is allowed.¹¹⁹

Some witnesses do not believe the federal government should focus solely on the fourth player. Mr. Kaplan-Myrth explained that, with only four players, the sector is always one merger away from a collapse of competition. He argued that the fourth player helps lower prices, but does not provide for robust competition. The government therefore needs to encourage multiple forms of competition.¹²⁰ Mr. Kaplan-Myrth also noted that the fourth-TSP strategy leads to overbuilding, as it encourages companies to build rather than share network infrastructure.¹²¹ He advocated an approach that supports service-based competition and enables multiple independent TSPs to enter the market. Mr. White added that "the fourth player model is clearly broken. We need a full, open, wholesale access model. The CRTC currently has the tools for it."¹²²

Supporting Independent Telecommunications Service Providers

Given the important role that independent TSPs can play, some witnesses highlighted the need for an MVNO regime in Canada,¹²³ especially if the merger is approved.¹²⁴ Mr. Béïque said that only an MVNO regime can provide for sufficient competition and affordable prices.¹²⁵ If this model were adopted in a broad and completely open way, it would enable more dynamic competition and reduce consolidation in the

118 INDU, [Evidence](#), 6 April 2021, 1200 (Winseck).

119 Vaxination Informatique, [Brief](#).

120 INDU, [Evidence](#), 31 March 2021, 1620 (Kaplan-Myrth).

121 INDU, [Evidence](#), 31 March 2021, 1630 (Kaplan-Myrth).

122 INDU, [Evidence](#), 6 April 2021, 1235 (White).

123 The CRTC released [Telecom Regulatory Policy CRTC 2021-130](#) on this issue on 15 April 2021.

124 INDU, [Evidence](#), 31 March 2021, 1435, 1505 (Thomson), INDU, [Evidence](#), 6 April 2021, 1105 (Geist), Vaxination Informatique, [Brief](#).

125 INDU, [Evidence](#), 6 April 2021, 1145 (Béïque).



telecommunications sector, as it would allow for more than three or four main TSPs.¹²⁶ Mr. Béïque added that government policy must establish this regime because, in his experience, negotiating with the incumbent TSPs to share their mobile networks is impossible.¹²⁷ According to Mr. Lawford, creating an MVNO regime would dampen the anti-competitive impacts of approving the merger.¹²⁸ One witness expressed reservations about this statement, pointing out that such a regime would take at least several years to set up.¹²⁹

Mr. Béïque also said that regulating MVNOs to create market discipline is the only way of ensuring robust competition. However, he did note that the following is necessary to ensure the regulations function properly:

That means restrictions are needed to prevent the dominant players from using their power, for example, discount brand competitors owned by big companies, which very often price their services close to regulated rates in the hope of choking off the competition. To quote a popular saying, it takes a parasite to know one.¹³⁰

However, Mr. Péladeau disagreed that MVNOs can improve competition in Canada enough to justify implementing a regime as a condition of approving the merger. He argued that an MVNO regime could not overcome the impacts of the deal. In his view, independent TSPs do not have the same impact on the market as TSPs with their own facilities, as they do not have the means to innovate. Mr. Péladeau said that he spoke from experience, as Videotron itself started as an MVNO.¹³¹ Mr. Béïque rejected this argument, stating that independent TSPs invest “tens of millions of dollars in [their] customer experience, transport network and data centres, as well as the in-house development of digital TV software ... proportional to the company’s size.”¹³² Furthermore, Mr. Kaplan-Myrth pointed out that TekSavvy is proof that investments and competition are both possible.¹³³

126 INDU, [Evidence](#), 6 April 2021, 1205 (Geist), INDU, [Evidence](#), 6 April 2021, 1300 (Stein), INDU, [Evidence](#), 6 April 2021, 1120 (Béïque).

127 INDU, [Evidence](#), 6 April 2021, 1120, 1145 (Béïque).

128 INDU, [Evidence](#), 31 March 2021, 1535 (Lawford).

129 Vaxination Informatique, [Brief](#).

130 INDU, [Evidence](#), 6 April 2021, 1120 (Béïque).

131 INDU, [Evidence](#), 31 March 2021, 1430 (Péladeau).

132 INDU, [Evidence](#), 6 April 2021, 1120 (Béïque).

133 INDU, [Evidence](#), 31 March 2021, 1540 (Kaplan-Myrth).

Supporting Foreign Competition

Some witnesses lamented the rigid rules on foreign companies that prevent them from setting up in Canada and boosting competition in the country's telecommunications sector. Professor Winseck and Professor Geist said Canada should be open to American companies entering the Canadian market and eliminate all barriers in this regard.¹³⁴ According to Professor Winseck, Canada has overly strict foreign ownership rules. He remarked that Canada has "some of the most restrictive foreign ownership rules in the world. The last time I checked on this, South Korea was the only country in the OECD that had more restrictive rules than Canada."¹³⁵ Professor Geist explained that Verizon had tried to enter Canada, but "saw enormous opposition from the big three and just decided Canada wasn't worth their while. There were other places where they could make money without having to fight three large incumbents."¹³⁶

Professor Geist also discussed ways of making it easier for foreign companies to set up in Canada. Examples include removing the caps on controlling a Canadian entity and considering whether to maintain the current restrictions on broadcast ownership.¹³⁷ He noted the following:

opening up the market fully so that a company could think about entering—potentially not just with those assets, but with some of the larger assets as well—might provide at least someone with the perspective that this is an attractive enough market. From a consumer perspective, bringing in that kind of pricing power, that sort of roaming ability on a global level, opens the door, I think, to opportunities that Canadians don't experience, but consumers in many other countries do.¹³⁸

Ms. Shaban pointed to a further issue respecting the size of Canadian companies. She explained that, if Canadian businesses become too large because of the efficiencies defence, foreign companies will not be competitive in the Canadian market.¹³⁹

134 INDU, [Evidence](#), 6 April 2021, 1200 (Winseck), INDU, [Evidence](#), 6 April 2021, 1105, 1210 (Geist).

135 INDU, [Evidence](#), 6 April 2021, 1200 (Winseck).

136 INDU, [Evidence](#), 6 April 2021, 1210 (Geist).

137 INDU, [Evidence](#), 6 April 2021, 1210 (Geist).

138 INDU, [Evidence](#), 6 April 2021, 1210 (Geist).

139 INDU, [Evidence](#), 6 April 2021, 1230 (Shaban).



Considering Various Types of Competition

Lastly, in examining policies to support competition in the telecommunications sector, it is important to identify which kind of competition is being sought: service-based competition or facilities-based competition. Mr. Kaplan-Myrth explained that discussions on promoting competition often centre on the end-user experience and therefore on service choice and prices. These issues fall into the category of service-based competition. However, when Rogers and Shaw discuss building networks and making efficiency gains, they are referring to facilities-based competition. Mr. Kaplan-Myrth emphasized the following:

These are definitely important issues of competition, but they're different. As you develop policies and you think about what safeguards need to be put in place to protect competition, it's important to distinguish what kind of competition you're talking about so that the policies achieve the ends you're trying to meet.¹⁴⁰

When the government makes policies and takes measures to foster competition, it needs to determine which type of competition it is pursuing in order to achieve its goals. According to Mr. Kaplan-Myrth, the merger of Rogers and Shaw will not lead to the kind of competition that produces better services and more affordable prices.¹⁴¹

In view of these issues, witnesses proposed structural separation. As noted earlier, TSPs often build networks and deliver services, but these are two distinct kinds of business.¹⁴² Mr. Stein explained that this model would allow for service-based competition:

What you're referring to, when you talk about splitting up the major telcos, is structural separation, separation where the infrastructure... I referred earlier to the infrastructure owners. The underlying infrastructure is owned by one company and the retail operation—the brand, the customers and so forth—is in another. By setting it up that way, as has been done in some other countries around the world, very large economies, the retail body ends up buying on well understood and well disclosed terms from the infrastructure body, but at the same time, other retailer bodies can do so at the same rate, with the same tools, with the same prices, with the same timelines and so forth.¹⁴³

A witness argued that this approach is needed and would enable wholesale services to be sold and give incumbent TSPs the incentive to focus on that business. Under this

140 INDU, [Evidence](#), 31 March 2021, 1550 (Kaplan-Myrth).

141 INDU, [Evidence](#), 31 March 2021, 1550 (Kaplan-Myrth).

142 INDU, [Evidence](#), 31 March 2021, 1540 (Kaplan-Myrth).

143 INDU, [Evidence](#), 6 April 2021, 1250 (Stein).

model, ISED could divide spectrum licences among facility based TSPs, reducing their cost for TSPs and speeding up spectrum distribution.¹⁴⁴

OTHER ISSUES IN THE TELECOMMUNICATIONS SECTOR

Spectrum Management and 5G Deployment

As part of the review of the proposed merger, ISED assesses and approves the transfer of commercial spectrum between the parties. Mr. Scott explained that the CRTC has no role to play in approving transfers of ownership or spectrum, except to ensure they remain under Canadian control (pursuant to foreign ownership rules).¹⁴⁵

Éric Dagenais, Senior Assistant Deputy Minister of the Spectrum and Telecommunications Sector at ISED, explained that the review of spectrum licences is guided by the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*, which supports the government's policy objective "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." He explained that, to assess the potential impacts of a licence transfer on this objective, ISED analyzes factors such as the resulting changes in spectrum concentration. Its determination is based on the following issues, among others:

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.¹⁴⁶

Witnesses raised concerns about the spectrum licences that Shaw has acquired in recent years through set-asides. To foster competition, ISED sometimes sets aside licences for regional competitors during spectrum auctions. ISED explained that Shaw obtained some licences that were set aside during the 2019 spectrum auction and that one of the

144 Vaxination Informatique, *Brief*.

145 INDU, *Evidence*, 7 April 2021, 1435 (Scott).

146 INDU, *Evidence*, 7 April 2021, 1445 (Éric Dagenais, Innovation, Science and Economic Development Canada [ISED]).



conditions on them was that they not be transferred to incumbents for a period of five years.¹⁴⁷ Mr. Péladeau proposed that Shaw’s spectrum be transferred to another regional TSP if the merger goes through.¹⁴⁸

Mr. Dagenais explained that ISED follows up after awarding licences. For example, it checks whether licence holders are complying with the deployment conditions on the licences they acquire every five years for the entire life of the licence, which is generally 20 years. He added that ISED can take away licences if the conditions are not met. Asked whether ISED has ever taken any licences away, Mr. Dagenais replied, “We have already had several discussions with Internet and telecom service providers regarding deployment conditions.... Generally, the problem was resolved afterwards.”¹⁴⁹

Witnesses also shared their concerns about the 5G auction scheduled for June 2021. This auction allocated 200 MHz of the 3,500 MHz band for flexible use licensing in Tier 4 service areas.¹⁵⁰ As of March 2021, the participants in this auction were unknown, and witnesses were worried about Shaw’s involvement if the government did not make a decision on the merger before the auction. Some witnesses proposed delaying the spectrum auction until a decision on the deal has been made.¹⁵¹ In April 2021, ISED published the list of applicants for the auction; Rogers was on the list, but not Shaw.¹⁵²

The witnesses also discussed the deployment of 5G in Canada. Rogers stated that providing 5G service in Canada will be very costly. According to PricewaterhouseCoopers data cited by Rogers, 5G infrastructure is expected to cost telecommunications operators between 39% and 71% more than 4G owing to the need to deploy many small cells.¹⁵³ According to Rogers and Shaw, the merger would speed up this deployment thanks to economies of scale.¹⁵⁴ They also argued that, by itself, Shaw would not have the financial means to invest enough in building out 5G.¹⁵⁵ Quickly rolling out 5G in Canada is vital to

1471 NDU, [Evidence](#), 7 April 2021, 1615 (Dagenais).

148 INDU, [Evidence](#), 31 March 2021, 1445 (Péladeau).

149 INDU, [Evidence](#), 7 April 2021, 1535 (Dagenais).

150 ISED, [3500 MHz band spectrum auction](#).

151 INDU, [Evidence](#), 6 April 2021, 1235 (White).

152 Government of Canada, [Applicants – Auction of Spectrum Licences in the 3500 MHz Band](#).

153 Rogers, [Brief](#).

154 INDU, [Evidence](#), 29 March 2021, 1120 (Natale), Rogers, [Brief](#), Shaw, [Brief](#).

155 Rogers, [Brief](#), Shaw, [Brief](#).

the country's competitiveness.¹⁵⁶ Lastly, Rogers stated that, by bringing down the costs of deploying 5G, the company could pass these savings on to its customers.¹⁵⁷

Witnesses did not agree with this statement. They pointed out that Rogers and Shaw did not say how much each would spend on deploying 5G if they did not merge.¹⁵⁸ Some witnesses also argued that a merger is not the only way to deploy 5G in Canada: Rogers and Shaw could work together and share their networks or their fibre, as Bell and TELUS do already.¹⁵⁹ In addition, while they accept that providing 5G service in Canada is important, many stakeholders said that rural and remote regions would still be a long way from seeing this technology, as it would be rolled out in the major cities first.¹⁶⁰

Rural Connectivity

Considering Rogers's announcements of potential investments in rural and remote regions, the witnesses discussed the high cost of building telecommunications infrastructure in rural areas. Rogers explained that the cost of providing services varies by region:

The challenge is strictly one of economics. To connect a home in urban Canada costs about \$3,500. To connect a home in suburban Canada may cost about \$5,000 to \$10,000. To connect a home in rural Canada can cost \$15,000 to \$100,000.¹⁶¹

Rogers stated that Canada is one of the most challenging countries in the world to cover with network technology.¹⁶² Shaw asserted that, given the high cost of connecting rural and remote regions, joining forces with Rogers and creating economies of scale would free up more resources for these regions and bring "an equality of opportunity to currently underserved Indigenous, remote, and rural communities."¹⁶³

156 Rogers, *Brief*.

157 INDU, *Evidence*, 29 March 2021, 1150 (Natale).

158 INDU, *Evidence*, 31 March 2021, 1630 (Lawford), Klass and Winseck, *Brief*.

159 INDU, *Evidence*, 6 April 2021, 1110 (Winseck), INDU, *Evidence*, 6 April 2021, 1225 (Klass), Klass and Winseck, *Brief*.

160 INDU, *Evidence*, 31 March 2021, 1555 (Tribe), INDU, *Evidence*, 6 April 2021, 1145 (White), INDU, *Evidence*, 6 April 2021, 1240 (Jim Wood, Red Deer County).

161 INDU, *Evidence*, 29 March 2021, 1135 (Natale).

162 INDU, *Evidence*, 29 March 2021, 1145 (Natale).

163 Shaw, *Brief*.



However, witnesses questioned the premise of financing rural connectivity through the proposed merger. They said that, even if the transaction were approved with conditions, it is Canadians who would pay to connect rural areas by accepting a merger that hurts the telecommunications market.¹⁶⁴ Professor Geist described the problem as follows: “We need that connectivity, but funding it through a harmful merger is not the right way to do it.”¹⁶⁵

Some witnesses also expressed reservations about the promises Rogers and Shaw made to rural regions. Jim Wood, Mayor, Red Deer County, said he communicated with Shaw briefly after the merger was announced but does not believe the company would improve rural connectivity.¹⁶⁶ Other witnesses said that regions that were not profitable before the merger would not be any more profitable afterward. TSPs improve their services in a given region only if it makes financial sense to do so.¹⁶⁷ Ms. Tribe pointed out that the size of a company does not change its financial incentive to build infrastructure in these areas.¹⁶⁸ Furthermore, Professor Winseck said that, while Rogers seems to want to improve wireless connectivity in rural regions, many residents of these regions would prefer to have access to fibre.¹⁶⁹

Moreover, in their joint brief, Professor Winseck and Mr. Klass noted the following:

as these communities try to build their own networks, they face endless obstructionist tactics from incumbents rather than willing and reliable partners (as the public record for the CRTC’s (2019) Rural Broadband Barriers inquiry shows). We should cast a wary eye on claims that a merged Rogers and Shaw will solve problems that they have each helped to create and perpetuate over decades.¹⁷⁰

Additionally, Jay Thomson, Chief Executive Officer, Canadian Communication Systems Alliance, was troubled by Rogers’s interest in providing services in small or rural communities where a TSP is already operating. He pointed out that, if these

164 INDU, [Evidence](#), 6 April 2021, 1105 (Geist), INDU, [Evidence](#), 6 April 2021, 1155 (Shaban).

165 INDU, [Evidence](#), 6 April 2021, 1105 (Geist)

166 INDU, [Evidence](#), 6 April 2021, 1125 (Wood).

167 INDU, [Evidence](#), 6 April 2021, 1125, 1250 (Wood), INDU, [Evidence](#), 31 March 2021, 1630 (Tribe).

168 INDU, [Evidence](#), 31 March 2021, 1630 (Tribe).

169 INDU, [Evidence](#), 6 April 2021, 1110 (Winseck)

170 Klass and Winseck, [Brief](#).

communities already have a TSP, it usually means they obtained government assistance for that purpose. He commented as follows:

What Rogers is now seeming to propose is that it's going to overbuild in communities where the government has already been in to support the building of broadband. That doesn't seem to us to be a good use of available resources and good public policy to be overbuilding against what taxpayers have supported building already.¹⁷¹

Finally, some witnesses argued that the lack of rural connectivity is a direct result of the lack of competition in those regions. Mr. White said that telecommunications prices are not a function of population density but of the number of TSPs in each region. He noted that independent TSPs charge 5% to 35% less.¹⁷² Mr. Béïque pointed out that, in Abitibi, retail prices fell up to 50% when Videotron and EBOX entered the market.¹⁷³ Mr. Kaplan-Myrth said that networks in underserved regions would be built faster if Canada's broadband plan included competition by design.¹⁷⁴

To address the problems with rural connectivity, some witnesses proposed that the government provide funding to deploy shared infrastructure in these regions. Mr. Wood said this support is "absolutely necessary." He continued: "Legislation will also be needed to ensure that telecommunications companies share assets better, avoid duplication and reduce costs."¹⁷⁵ Ms. Shaban said the federal government could also create incentives for communities to develop their own networks, as some regions will never be profitable.¹⁷⁶ For example, Red Deer County in Alberta was tired of waiting for services, so it invested in its own open fibre-optic network. It partnered with a TSP that will be profitable despite not having total control over the market. Mr. Wood reported that this approach has resulted in better and more affordable services than those available in Alberta's major cities.¹⁷⁷

Lastly, the provision of targeted funding would prevent overbuilding of networks and infrastructure. Mr. Stein explained that it would never be profitable for multiple competitors to build their own wireless networks and fibre-optic networks, especially in

171 INDU, [Evidence](#), 31 March 2021, 1450 (Thomson).

172 INDU, [Evidence](#), 6 April 2021, 1300 (White).

173 INDU, [Evidence](#), 6 April 2021, 1120 (Béïque).

174 INDU, [Evidence](#), 31 March 2021, 1540 (Kaplan-Myrth).

175 INDU, [Evidence](#), 6 April 2021, 1125 (Wood).

176 INDU, [Evidence](#), 6 April 2021, 1245 (Shaban).

177 INDU, [Evidence](#), 6 April 2021, 1125 (Wood).



rural and remote regions.¹⁷⁸ Mr. Wood pointed out that no one builds multiple roads next to one another; a single road is shared, and the same should be true of telecommunications infrastructure.¹⁷⁹ He said that, if the network were open to all, the arguments for the merger would no longer be valid, as fewer funds would be needed to build the required infrastructure.¹⁸⁰

BROADCASTING ISSUES

Mr. Scott explained the CRTC's role in reviewing Shaw's cable and satellite television and video-on-demand businesses. Under the *Broadcasting Act*, the CRTC must approve the transfer of ownership of broadcasting assets. Mr. Scott said that, as of 7 April 2021, the CRTC was waiting for all the parties to file documents in order to start its review. He added that the CRTC would publish a notice of consultation outlining the various issues arising from the proposed transaction¹⁸¹. He remarked that, at first glance, the diversity of voices appears to be the main broadcasting-related issue stemming from the merger, as Canadians need to have access to local and community television programming.¹⁸² Mr. Scott also stated the following: "We generally are not prepared to allow one person—one company—to control all television service providers in any given geographic market."¹⁸³ Finally, he clarified that, in making its decision, the CRTC can use only the documentation and evidence it receives during the consultations.¹⁸⁴

Some witnesses presented their respective views on this aspect of the merger. Mr. Natale and Mr. McAleese stated that the merger would not eliminate competition in the broadcasting sector because Shaw and Rogers have complementary, rather than competing, networks.¹⁸⁵ Professor Winseck and Mr. Klass said that, while Shaw and Rogers have monopolies in Western and Eastern Canada, respectively, Canada's regulatory bodies have let them "set the terms of the landscape" for the past 25 years, which shows their impact on competition in the sector.¹⁸⁶

178 INDU, [Evidence](#), 6 April 2021, 1115, 1250 (Stein).

179 INDU, [Evidence](#), 6 April 2021, 1130 (Wood).

180 INDU, [Evidence](#), 6 April 2021, 1240 (Wood).

181 The CRTC published the [Broadcasting Notice of Consultation CRTC 2021-281-1](#) on 12 August 2021.

182 INDU, [Evidence](#), 7 April 2021, 1430, 1450 (Scott).

183 INDU, [Evidence](#), 7 April 2021, 1450 (Scott).

184 INDU, [Evidence](#), 7 April 2021, 1515 (Scott).

185 INDU, [Evidence](#), 29 March 2021, 1205 (Natale), INDU, [Evidence](#), 29 March 2021, 1240 (McAleese).

186 Klass and Winseck, [Brief](#).

Witnesses raised concerns about the broadcasting assets of Shaw and Rogers. One witness said the proposed merger would affect Canada’s television, film and cultural sectors.¹⁸⁷ Professor Winseck and Mr. Klass noted that the country’s television services are already heavily vertically integrated. As a result, this merger could have major repercussions on independent producers and providers, as it would reduce the number of distributors, which is already down to four in Canada¹⁸⁸. According to Mr. Thomson, if the deal is approved, Rogers will become even bigger and could use its size to “squeeze smaller cable companies for higher carriage rates for its services, as well as for other concessions”, leading to higher prices and less choice for Canadian living in rural areas. He added that, without the CRTC’s safeguards (already weakened by the influence and size of large TSPs), “Rogers could use its expanded Internet size to favour itself with exclusive access arrangements for its online sports service, Sportsnet Now.”¹⁸⁹

Witnesses also voiced concerns about Corus in particular. Professor Winseck and Mr. Klass noted that Shaw still holds a major portion of Corus, the country’s second-largest television company (Rogers ranks third). Corus is also the third-largest commercial radio ownership group in Canada (Rogers ranks second).¹⁹⁰ In their briefs, multiple witnesses mentioned that the merger would give Shaw a seat on the Rogers board of directors, which could cause problems because Shaw would still control Corus while influencing Rogers’s assets.¹⁹¹ Mr. Thomson argued that the *Broadcasting Act* needs to confirm the CRTC’s authority to protect consumers, or cable prices will increase and choice will diminish.¹⁹²

OBSERVATIONS AND RECOMMENDATIONS

In light of the evidence heard during this study, the Committee is deeply troubled by the current state of competition in Canada’s telecommunications sector. Given its already fragile condition, the Committee is especially worried about competition in this sector being affected by the proposed merger. Most witnesses raised serious concerns about the proposed transaction, particularly its effects on competition in Canada and, in turn, on the affordability and accessibility of telecommunications services. The Committee

187 INDU, [Evidence](#), 6 April 2021, 1115 (Winseck).

188 Klass and Winseck, [Brief](#).

189 INDU, [Evidence](#), 31 March 2021, 1435 (Thomson).

190 Klass and Winseck, [Brief](#).

191 Vaxination Informatique, [Brief](#), Klass and Winseck, [Brief](#).

192 INDU, [Evidence](#), 31 March 2021, 1530 (Thomson).



believes these concerns are valid and hopes they will be carefully considered by the various government bodies involved.

The Committee is puzzled by the arguments of Rogers and Shaw. Rogers has linked a number of commitments to the merger that the government has no way to enforce. The Committee therefore doubts Rogers’s promises to rural regions, as the size of a company does not change the profitability of a region. Furthermore, between December 2020 and March 2021, Shaw has made some rather contradictory statements. In its brief to the Committee of 18 December 2020, Shaw stated that

regional facilities-based competitors – Shaw, Videotron, and Eastlink – are rapidly disrupting the dominance of the Big 3 – Rogers, Bell, and Telus – and driving unprecedented levels of affordability and choice for consumers.¹⁹³

It added that “Freedom’s entry has shifted the market dynamics, causing the Big 3 to drastically reduce overage fees and offer significantly more data for much lower prices.”¹⁹⁴ Yet, only a few months later, in its testimony to the Committee in March 2021, Shaw emphasized the value of the merger for Canadians and attempted to qualify the statements in its brief. In short, the Committee was not convinced by the arguments of Rogers and Shaw regarding the merits of the proposed merger.

During this study, as was the case with the Committee’s study on the affordability and accessibility of telecommunications services in Canada (report presented in June 2021), witnesses raised the option of structural separation in the telecommunications sector as a way of solving many of its problems. Structural separation would limit overbuilding and enable governments to target their investments to build the missing infrastructure in rural and remote communities. This would promote network sharing, as incumbent TSPs would be required to provide capacity to TSPs looking to deliver services to consumers. The Committee believes this idea deserves consideration in order to gain a deeper understanding of its impacts on the telecommunications sector and on services for Canadians. The Committee therefore recommends:

193 Shaw, *Brief*.

194 Shaw, *Brief*.

Recommendation 1

That the Government of Canada launch nationwide consultations to examine the implementation of structural separation in the telecommunications sector between businesses that build infrastructure and those that provide services in order to ensure a level playing field that fosters network development in both cities and rural areas.

The Committee is also concerned about the tools that regulatory bodies will use to assess the merger in the context of protecting the interests of Canadians. First, the *Competition Act* does not seem to give the CB the tools it needs to give priority to the interests of Canadians in its review of the merger. Mr. Boswell himself underscored the need for a comprehensive review of this legislation. Moreover, the Committee, like many witnesses, has doubts about the validity of the efficiencies exception as it is currently formulated in the *Competition Act*, particularly as it applies to transactions such as the merger of Rogers and Shaw. The CB should also develop a mechanism and have sufficient resources to assess the impacts of its past decisions. The Committee understands that this legislation cannot be reformed in time to change the current merger review, but it believes such a reform is vital to future merger reviews. Still, the federal government needs to ensure the CB currently has all the tools it needs to conduct a thorough review of the Rogers–Shaw merger.

Second, ISED and the CRTC have made comments in recent months showing that their regulatory directions do not seem to support service affordability and accessibility. In April 2021, the CRTC announced the implementation of an MVNO regime that is a modest step forward, given the structure of the regime announced. However, a few weeks later, it reversed its August 2019 decision on wholesale rates, which was a major disappointment to the Committee members and most Canadians. A number of witnesses had underscored the importance of these decisions, especially if the merger is approved. The Committee is concerned about the direction in which ISED and the CRTC seem to be heading. As a result, it is also worried about the effects this regulatory approach could have on their review of the proposed merger. The Committee therefore recommends:



Recommendation 2

That the Government of Canada take measures to better support the Competition Bureau's work, including the following:

- **launch an immediate review of the *Competition Act*, including a review of the efficiencies defence; and**
- **ensure that the Competition Bureau has the resources it needs to do its work, including monitoring the impacts of its decisions.**

Recommendation 3

That, in reviewing the proposed merger, the Government of Canada take measures to ensure that affordability and accessibility for all Canadians take precedence over all other considerations, for example by placing emphasis on the importance of Freedom Mobile as a fourth wireless provider, and ensuring that, in reviewing the merger, the government bodies involved consider the impacts on the regulatory environment of the CRTC's recent decisions.

Recommendation 4

That, while the Committee believes the merger should not proceed, if it does, the Government of Canada ensure that, in implementing its decision, all conditions attached to the merger approval are fully enforceable and that resources are available to enforce them.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [webpage for this study](#).

43rd Parliament – 2nd Session

Organizations and Individuals	Date	Meeting
Rogers Communications Inc. Joe Natale, President and Chief Executive Officer Dean Prevost, President Connected Home, Rogers for Business Victoria Smith, Director Community Partnerships, Network Expansion	2021/03/29	26
Shaw Communications Inc. Paul McAleese, President Chima Nkemdirim, Vice-President Government Relations Brad Shaw, Executive Chair and Chief Executive Officer	2021/03/29	26
Canadian Communication Systems Alliance Jay Thomson, Chief Executive Officer	2021/03/31	27
OpenMedia Laura Tribe, Executive Director	2021/03/31	27
Public Interest Advocacy Centre John Lawford, Executive Director and General Counsel	2021/03/31	27
Quebecor Media Inc. Pierre Karl Péladeau, President and Chief Executive Officer	2021/03/31	27
TekSavvy Solutions Inc. Andy Kaplan-Myrth, Vice-President Regulatory and Carrier Affairs	2021/03/31	27

Organizations and Individuals	Date	Meeting
Vidéotron ltée Jean-François Pruneau, President and Chief Executive Officer	2021/03/31	27
As an individual Michael Geist, Canada Research Chair in Internet and E-Commerce Law Faculty of Law, University of Ottawa Dwayne Winseck, Professor School of Journalism and Communication, Carleton University	2021/04/06	28
Canadian Media Concentration Research Project Ben Klass, Senior Research Associate	2021/04/06	28
Competitive Network Operators of Canada Matt Stein, President and Chief Executive Officer Geoff White, Director Legal and Regulatory Affairs	2021/04/06	28
EBOX Inc. Jean-Philippe Béïque, Chief Executive Officer	2021/04/06	28
Red Deer County Jim Wood, Mayor	2021/04/06	28
Vivic Research Robin Shaban, Co-founder and Senior Economist	2021/04/06	28
Canadian Radio-television and Telecommunications Commission Scott Hutton, Chief of Consumer, Research and Communications Ian Scott, Chairperson and Chief Executive Officer Christopher Seidl, Executive Director Telecommunications	2021/04/07	29
Competition Bureau Matthew Boswell, Commissioner of Competition Anthony Durocher, Deputy Commissioner Competition Promotion Branch Leila Wright, Associate Deputy Commissioner Competition Promotion Branch	2021/04/07	29

Organizations and Individuals	Date	Meeting
<p data-bbox="298 432 586 468">Department of Industry</p> <p data-bbox="298 478 812 543">Éric Dagenais, Senior Assistant Deputy Minister Spectrum and Telecommunications Sector</p> <p data-bbox="298 558 659 621">Adam Scott, Director General Spectrum Licensing Policy Branch</p>	2021/04/07	29

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

43rd Parliament – 2nd Session

Klass, Ben

Rogers Communications Inc.

Shaw Communications Inc.

Vaxination Informatique

Winseck, Dwayne

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meeting No. 5](#)) from the 44th Parliament, 1st Session and ([Meetings Nos. 26 to 29](#)) from the 43rd Parliament, 2nd Session is tabled.

Respectfully submitted,

Joël Lightbound
Chair

