

Minister of Innovation,
Science and Industry



Ministre de l'Innovation,
des Sciences et de l'Industrie

Ottawa, Canada K1A 0H5

Mr. Joël Lightbound, M.P.
Chair
Standing Committee on Industry and Technology
House of Commons
Ottawa, Ontario K1A 0A6

Dear Colleague:

Pursuant to House of Commons Standing Order 109, the Government of Canada is pleased to respond to the First Report of the Standing Committee on Industry and Technology, entitled "Proposed Acquisition of Shaw Communications by Rogers Communications: Better Together?", which was tabled in the House of Commons on March 4, 2022.

The Government of Canada would like to express our gratitude to the members of the Committee for their diligent work in developing this report and preparing the thoughtful and constructive recommendations for our consideration. We would also like to extend our appreciation to the many witnesses who appeared before the Committee to express their views and to provide evidence and expert advice on this matter. As some reviews of the proposed acquisition are ongoing, the Government is limited in the extent to which it can comment on the merits of the merger itself. However, we have provided a comprehensive overview of our principles-based approach to telecommunications policy in the context of the current competitive environment.

We acknowledge the concerns expressed by this Committee and by many Canadians about consolidation in the telecommunications sector, specifically with respect to the proposed acquisition. We also share the Committee's concerns with respect to the importance of support for the Competition Bureau and modernization of the *Competition Act*. We understand that affordability concerns are top of mind, particularly in the current inflationary context, and also recognize the critical role that telecommunications networks play in keeping Canadians connected to work, study, or play, and in enabling the innovation and competitiveness of our Canadian businesses. To this end, we remain strongly committed to policies that promote healthy competition in the sector, which is essential to fostering investment and achieving access to affordable, high-quality telecommunications services.

...2

The Government of Canada has carefully considered the report and its recommendations, and is taking actions that support the directions set out within. In the sections below, the Government will address the recommendations put forward by the Committee by grouping them under two themes: 1) The proposed acquisition review process and Canada's telecommunications policy approach; and 2) Improved support for the Competition Bureau.

THE PROPOSED ACQUISITION REVIEW PROCESS AND CANADA'S TELECOMMUNICATIONS POLICY APPROACH (Recommendations 1, 3, 4)

The Government of Canada strongly agrees with the Committee that Canadians should have access to a competitive marketplace that provides access to affordable telecommunications services. The Government also confirms that all three reviewing bodies have the authority to impose and enforce conditions, should they be part of any decision taken on the proposed transaction.

As noted in the Committee's report, the proposed acquisition is subject to three independent reviews by the Canadian Radio-television and Telecommunications Commission (CRTC), the Competition Bureau, and Innovation, Science and Economic Development Canada (ISED). The CRTC's decision was issued on March 24, 2022, and on May 9, 2022, the Competition Bureau filed an application with the Competition Tribunal seeking a court order to block Rogers' proposed acquisition of Shaw. At the time of writing, ISED's spectrum licence transfer review decision remains pending, while litigation has not yet commenced before the Competition Tribunal, but both processes are expected to be resolved in due course. As these decisions are still under consideration, it would be inappropriate to comment on them.

The [CRTC approved](#) Rogers' acquisition of Shaw's broadcasting services, subject to a number of conditions and modifications. The CRTC has also set out several safeguards to ensure that the transaction benefits Canadians and the Canadian broadcasting system. As conditions to its approval, the CRTC is requiring Rogers to contribute \$27.2 million to various initiatives and funds, including those that support the production of content by Indigenous producers and members of equity seeking groups, as well as supporting official languages through requiring distribution of at least 45 independent English and French-language services on each of its cable and satellite services.

The Competition Bureau is an independent law enforcement agency that advocates for and protects Canadian consumers and works to foster a competitive and innovative marketplace in which Canadian businesses can prosper. In accordance with the *Competition Act*, the Bureau examines mergers and proposed mergers at arm's length from ISED and the Government, to evaluate whether they will lessen or prevent competition substantially in any relevant market. Where concerns of competitive harm

arise, and no solution can be negotiated with the merger parties to address them, the Commissioner of Competition can apply for a remedy before the specialist Competition Tribunal, including to prevent the transaction or to require divestitures. Moreover, for mergers that exceed \$93 million in value, the parties must provide advance notification to the Competition Bureau ahead of completing the transaction, which triggers a formal review process, involving statutory waiting periods tied to the provision of information. Rogers and Shaw announced their intention to merge on March 15, 2021, launching the Bureau's examination under this framework.

The Competition Bureau's examination of mergers relates exclusively to the likely competitive effects of the transaction, including the impact on consumers, suppliers or competitors. The Bureau examines all relevant price and non-price effects, including potential reduction in affordability or in service, quality, or choice. In addition to weighing many of the same statutory considerations that may be relevant when a transaction is contested before the Competition Tribunal—including barriers to entry, effective remaining competition, the nature of innovation in the market, or the removal of a vigorous competitor—the Bureau has also set out its general approach in [formal guidelines](#) that go into further detail as to how it conducts its evaluation in various situations. In the case of Rogers and Shaw, the Bureau published a detailed [request for information](#) that spelled out many of the specific competitive impacts that it is examining. After considering the facts, on May 9, 2022, the Commissioner of Competition applied to the Competition Tribunal to prevent the transaction, arguing that such a remedy was necessary to safeguard an effective, growing and disruptive regional competitor for the benefit of consumers.

Conditions may attach to a completed merger in one of two ways, depending on how a merger—such as that announced by Rogers and Shaw—is ultimately finalized. If litigation can be avoided, conditions will be set out in a consent agreement negotiated between the Commissioner of Competition and the merger parties and filed with the Competition Tribunal, which in turn gives it the force of an order from that body. Should a matter instead be litigated before the Tribunal, before ultimately being permitted to proceed with conditions, these will be set out in the remedial order issued by the Tribunal. The breach of any such conditions carries criminal consequences under the *Competition Act*, or may be the subject of a civil contempt application before the Competition Tribunal. The Competition Bureau regularly monitors commitments arising from consent agreements and orders, generally supported by the appointment of an independent monitor to ensure the merging parties comply with the terms, including full access to the relevant records and facilities. Monitors report regularly to the Commissioner in addition to parties' own reporting obligations. In terms of resources, monitors are typically funded by merger parties as part of compliance with their obligations.

As the spectrum regulator, I, as Minister of Innovation, Science and Industry, am responsible for reviewing spectrum licence transfers under the *Radiocommunication Act*. This review is guided by the *Licensing Procedure for Spectrum Licences for Terrestrial Services*, and its overarching 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.” Additionally, I can confirm that ISED has the authority to, and routinely does place conditions of licence on spectrum holdings, and also has enforcement capabilities, including the power to take away licences, if these conditions are not met.

On March 3, 2022, I released a [statement](#) reaffirming our government’s strong commitment to policies promoting competition and wireless affordability, indicating that the wholesale transfer of Shaw’s wireless licences to Rogers is fundamentally incompatible with our government’s policies for spectrum and mobile service competition, and that I will not permit it. Our government’s longstanding approach to telecommunications policy has been to make every effort to ensure that telecommunications services are reliable, innovative, competitive and—most crucially—affordable. Affordability and competition have been central to all our work in the telecommunications sector. We have encouraged greater competition, which has led to small regional players growing and challenging larger ones, and have advanced specific measures that address affordability and access concerns. I will continue to use all the tools at my disposal to fight for more choice for consumers and to make life more affordable for Canadians.

Most recently, to further enhance competition and strengthen our telecommunications framework, on May 26, 2022, the Government of Canada announced a new proposed policy direction to the CRTC to put in place new rules to improve competition, leading to lower prices and better telecommunication services for Canadian consumers. The CRTC is an independent regulator, but is bound to consider policy directions from the Governor in Council in its decision making under the *Telecommunications Act*. The proposed policy direction outlines in clear terms the Government’s priorities for these essential services. This would be the strongest policy direction ever issued. The proposed direction would cancel the existing policy directions but bring forward the key parts of the 2019 direction to ensure that Internet and wireless services better meet the needs of Canadians.

The goals of the proposed policy direction include improving the competitive position of wholesale-based Internet service providers in the Internet market, and regional mobile wireless providers in the mobile wireless market. These companies provide vigorous competition against incumbents, which leads to lower prices and better outcomes for consumers. There is clear evidence that they have had a positive impact on prices but they need continued support to maintain their positive influence on the market.

Decisions in accordance with the proposed policy direction would enhance wholesale Internet access by requiring the CRTC to preserve and strengthen its regulatory framework, including by taking action to make more timely and improved wholesale rates available. Further, some stakeholders have argued that the wholesale framework is not needed, but the proposed direction would clarify that it is essential for competition and must be capitalized on. For example, it would require that the CRTC not phase out the existing wholesale rates model alongside the new model it is seeking to implement, as the Government considers that the existing model continues to be needed to ensure sustainable competition. The proposed direction would also require the CRTC to make orders ensuring that wholesale Internet access to be available more evenly across the market, including on fibre-to-the-home networks, and that the incumbents make the speeds that Canadians are demanding available to competitors.

In the mobile wireless market, the Government supports sustainable competition by fostering the growth of smaller and regional providers to improve affordability and access, while safeguarding broader investment and innovation goals. Therefore, in April 2022, the Government [declined to vary](#) the CRTC's [Review of Mobile Wireless Services decision](#), which requires Bell, Rogers, TELUS, and SaskTel to provide mobile virtual network operator (MVNO) access to regional wireless carriers that own spectrum and facilities. The CRTC's decision also mandated the national wireless carriers to provide regional service providers with seamless roaming to prevent dropped calls, and extended mandated roaming to 5G services. This decision encourages greater competition by allowing smaller carriers to serve more Canadians, offer quality services, and operate in new areas. The proposed policy direction builds on these measures by directing the CRTC to improve its hybrid MVNO model as necessary. It also directs the CRTC to periodically review the broader mobile wireless services regulatory framework, and to consider factors that could harm competition when doing so. The Government is prepared to move to a full MVNO model, if needed, to support competition in the sector.

The proposed policy direction also includes actions to improve consumer rights so Canadians can make better-informed choices. For example, it will introduce new measures to address unacceptable sales practices and improve transparency and clarity of service pricing, making it easier and affordable for consumers to change or cancel services. It will also require service providers to implement a mandatory broadband testing regime so Canadians know the service they are receiving is what they are paying for, and direct the Commission for Complaints for Telecom-television Services to give consumers and non-industry representatives a more prominent voice in its governance. Taken together, this direction will help foster sustainable and meaningful competition that will lead to lower prices and better access to telecommunications services for Canadian consumers.

The Government of Canada will also continue to encourage greater competition by supporting the growth of small regional players through the regulation and allocation of spectrum. This includes creating auction frameworks that leverage pro-competitive measures to provide regional and smaller service providers with the opportunity to acquire the spectrum they need to compete against the larger established national providers. Most recently, in July 2021, the Government concluded its auction of the 3500 MHz band, which reserved up to 50 MHz of spectrum through the use of a set-aside for small and regional carriers in most markets (approximately 25% of the total band; 42% of spectrum at auction). As a result, small and regional providers have increased their total mobile spectrum holdings by more than 50%, strengthening their ability to offer competitive 5G services to Canadians and positioning these smaller providers to innovate, compete and invest alongside more established wireless providers. Similarly, in 2019, the Government set out pro-competition rules for the 600 MHz band spectrum auction that led to regional providers more than doubling their share of low-band spectrum. Furthermore, in December 2021, we proposed new measures to support alternative providers and to encourage competition in the upcoming 3800 MHz 5G spectrum auction.

In addition, the Government has also introduced targeted measures to address specific affordability concerns. In January 2022, the Government [fulfilled its commitment](#) to track retail prices and ensure that the costs of mid-range wireless plans were reduced by 25%, three months before the target date. Moreover, the national wireless carriers began to offer low-cost and occasional-use plans in response to an expectation set out by the CRTC in its Review of Mobile Wireless Services Decision that they do so, in an effort to benefit low-income Canadians, seniors, and those who use their devices sparingly. While recent declines in wireless prices and the low-cost offerings are encouraging, the Government of Canada recognizes that wireless services are still too expensive. There is more work to be done and we will continue build on this progress by pursuing policies that make wireless services more affordable.

The Government of Canada also agrees with the Committee that access to affordable telecommunications, in both urban and rural and remote regions, is essential. Accordingly, the Government has a comprehensive approach to broadband connectivity. In June 2019, the Government of Canada published Canada's first broadband strategy entitled [High-Speed Access for All: Canada's Connectivity Strategy](#). The Strategy is a key part of the Government's ambitious plan to ensure that all Canadians have access to affordable, high-speed connectivity at speeds of at least 50/10 Mbps, regardless of where they live or work. It outlines Canada's action plan to deliver on this commitment through leveraging new and existing investments and technologies, as well as to collaborate with partners, such as the private sector and provinces and territories.

The Government's overall approach to expanding access has been to establish marketplace frameworks to foster competition and investment, effectively manage spectrum to encourage the availability of wireless services, and establish funding programs for broadband expansion for areas that lack a private sector business case. The private sector is the main driver of investment in telecommunications networks, investing \$11.4 billion in broadband and mobile networks in 2020. This market-driven approach has benefited Canada, with high-quality wireline and wireless networks available to the majority of Canadians. However, rural and remote areas continue to have limited access to connectivity services, due to the challenging business case for private sector deployment in these areas. That is why the Government of Canada has put historic funding initiatives in place to help expand connectivity in underserved areas where gaps persist.

In Budget 2021, the Government provided an additional \$1 billion to the Universal Broadband Fund (UBF), for a total of \$2.75 billion under this program, to support connectivity in underserved rural and remote communities. The UBF includes a core intake to expand high-speed Internet access across the country, as well as (1) a Rapid Response Stream, which offered an accelerated application process to approve shovel-ready projects that could be completed quickly, (2) up to \$50 million to support mobile Internet projects that primarily benefit Indigenous peoples, including projects along highways and roads where mobile coverage is lacking, and (3) up to \$750 million to support large high-impact projects, many of which will be in partnership with the Canada Infrastructure Bank. Announcements under the Rapid Response Stream began in December 2020, only one month after the program launched, and included a number of smaller, municipal, and Indigenous projects from across the country. Announced projects and the applicant names can be found on the [UBF website](#).

These efforts are complemented by additional broadband initiatives, such as the CRTC's \$750-million Broadband Fund, general infrastructure programs administered by Infrastructure Canada and Indigenous Services Canada to improve connectivity, increased financing through the Canada Infrastructure Bank, and broadband initiatives from local levels of government including the provinces and territories.

IMPROVED SUPPORT FOR THE COMPETITION BUREAU (Recommendation 2)

The Government recognizes the critical role the Competition Bureau plays in fostering competition, which is key to a fair, growing and innovative economy. This is why it agrees with the Committee's recommendation that the Government of Canada take measures to better support the Competition Bureau's work, and has made significant strides in implementing it.

To begin with, Budget 2021 provided \$96 million over five years, starting in 2021–2022, and \$27.5 million ongoing, to enhance the Competition Bureau’s enforcement capacity and ensure it is equipped with the necessary digital tools for today’s economy.

In February of this year, I [announced](#) that I would not increase the transaction-size threshold for the advance notification of mergers for 2022, to give the Competition Bureau a greater field of view in its efforts to detect potentially harmful transactions, ensure that they are properly reviewed before taking hold in the marketplace, and help protect Canadian consumers and businesses.

And in the most recent *Budget Implementation Act*, the Government proposed legislative amendments to the *Competition Act* as a preliminary phase in modernizing the competition regime. These include fixing loopholes; tackling practices harmful to workers and consumers; modernizing access to justice and penalties; and, adapting the law to today’s digital reality. The amendments will be followed by broader consultations on the role and functioning of the *Competition Act* and its enforcement regime, including a review of the efficiencies defence, as was called for in the Committee’s recommendations. The Government recognizes the importance of the latter, and is looking forward to a robust discussion as to whether it remains fit for purpose in upcoming comprehensive consultations.

Canadians are rightly concerned about the rising cost of living, corporate concentration and a fair chance at participating in the economy. Taken together, these actions will ensure that the Competition Bureau can continue to effectively protect consumers and the integrity of the marketplace.

The Government of Canada would like to reiterate its gratitude to the members of the Standing Committee on Industry and Technology for their hard work and dedication to the study on the proposed Acquisition of Shaw Communications by Rogers Communications. The Government recognizes the concerns expressed and has taken the Committee’s thoughtful and well-articulated recommendations into consideration. We will continue to review the proposed transaction with rigour and due diligence in accordance with the governing frameworks, and will continue to advance policies to encourage greater competition in the telecommunications sector and to promote access to high quality services at affordable prices for all Canadians.

Sincerely,



The Honourable François-Philippe Champagne, P.C., M.P.