

Comments
by
Vaxination Informatique
to
Standing Committee on
Industry, Science and Technology
regarding

Proposed Acquisition of Shaw by Rogers

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Introduction

1. Jean-François Mezei, dba Vaxination Informatique has participated in CRTC telecom processes between 2008 and end of 2017, and was the author of the 2011 Petition to Governor in Council seeking the overturn of the CRTC's UBB decisions. This submission, made as an individual, focuses on some of the arguments not yet raised which, while not very significant, can add to the record.

Executive Summary

2. Issues not yet raised:
 - While the proposed transaction does not involve media assets, granting the Shaw family a seat on the Rogers board could be an issue as the Shaw family also control Corus and would now have a say in Rogers's BDU as well as Rogers media.
 - As the incumbents have refused to participate in TTC Subway wireless system, the transaction could see the withdrawal of Freedom once owned by Rogers, which would leave passengers without wireless and 911 service.
3. In a "big picture", all previous attempts at launching new entrants have failed, only incumbents have survived and the level of market forces they have provided have not dislodged Canada's ranking as one of the world's most expensive wireless services.
4. Repeating the same policies will yield the same failures.
5. The outcome of this proposed merger depends largely on whether the CRTC will decide to mandate MVNOs with regulated wholesale rates. A pro-MVNO CRTC decision could facilitate a decision to allow the merger to be consumed as proposed. The expected refusal to mandate MVNOs would leave the government in a bind, and it would likely try to find a face saving way to approve the deal as it did for Bell-MTS with a token player pretending to provide sufficient market forces.
6. Blessing the Rogers-Shaw wedding prior to the CRTC decision will send a message that the government is satisfied with the level of competition in wireless market and give the CRTC more confidence with its expected no-to-MVNO decision.
7. Unless a rich white knight offers to buy Freedom, the later will either become a flanker brand within Rogers with no market forces or be spun off as independent once again with the timer for its failure already running.
8. Should the MVNO route be selected, I propose at the end other changes that are needed to make the regulatory process to implement it work properly.

Little Mentioned Issues

Control of media entities

9. A number of years ago, Shaw's media properties were spun off to create Corus. Corus is not part of the proposed transaction which affects only telecom assets.
10. However, the Shaw family retains roughly 80% voting control of Corus, and as they get a seat on the Rogers board if the sale is approved, they will have a say on Rogers' broadcasting operations (BDU + television). For instance, when Rogers' BDU negotiates for carriage of Corus content, the Shaw family will be on both sides of the negotiating table. Similar when both Rogers Media and Corus make competing bids for rights to air US cop shows.

Toronto Subway

11. In December 2012, the TTC gave BAI Communications the contract to provide communications within the Toronto Subway. BAI won over a consortium of incumbent carriers. These carriers, unhappy with losing to BAI, retaliated by refusing to deal with BAI, likely hoping it would fail so they could then pick up the contract. However, Wind was more than happy to participate and is still the only wireless carrier usable within the TTC stations/tunnels.
12. As currently proposed, Freedom would become a flanker brand on the Rogers network and the fate of availability on the Toronto subway remains cloudy since Rogers has refused to play ball with BAI. It should be noted that while an incumbent's customer cannot use his/her phone in normal times, anyone can use Freedom's network to dial 911. Pulling Freedom out of the BAI deal would have material impact on the ability to dial 911 in the Toronto Subway.

When history repeats itself

Competition take 1 (PCS)

13. At the time of the original "gifting" of the 850mhz to telcos and Cantel (Rogers), the analogue phones were still a nascent service and the economy didn't depend on them. The AMPS analogue protocol allowed only A and B carriers, so even *if* the government had wanted to add competition it couldn't have.
14. By the early 1990s, Europe and the rest of the world were deploying digital GSM services so the potential of these services was well known ahead of Canada going digital at end of 1990s.
15. "PCS" promised lots of new features which had been deployed in rest of the world for many years already. Seeing the need for competition, the government fostered the creation of 2 new carriers with huge advantages such as national spectrum and head start rules so they could deploy with digital features before incumbents.
16. Fido chose GSM with all the functionality such as SMS and even circuit switched data¹ already available. Clearnet was delayed, waiting for the CDMA (IS-95) system from Qualcomm to be ready. It provided better voice quality compared to analogue, but initially no features such as SMS.
17. When incumbents went digital, telcos chose CDMA, so Clearnet had no technological advantage over them, and Rogers deployed TDMA (IS-136) which was an easy addition to AMPS but inferior in functionality and voice quality to GSM and CDMA.
18. Another huge advantage Fido had was that it was partly owned by Vidéotron and Shaw which gave it good access to their wireline fibre. Vidéotron even built some towers on its properties and leased them to Microcell². Access to incumbent fibre was a reason why Fido deployed in Québec as well as Vancouver before Toronto and other cities.
19. Clearnet failed, got bought by Telus. This brought about a huge shift because Telus became a competitor to Bell Canada in QC/ON, while Bell Canada got spectrum in Western Canada to compete against Telus and if not mistaken both obtained spectrum in Manitoba to become the new entrants against incumbent MTS which had become the black sheep of the telco family by buying what used to be CNCP (Allstream) to compete against other telcos outside its province.

1 Fido limited use of circuit switched data instead of leveraging its advantage. It worked by making a phone call to a modem which then dialed out to reach services. The GSM service acted as a long digital cable between phone and modem on carrier premises.

2 In a big irony, after Rogers cancelled the Microcell leases for those towers, and Vidéotron took them down just a few years before it would the decide to build its own network. (It is during those years which Vidéotron became a mere reseller of Rogers service (not a full MVNO).

When History Repeats itself (cont)

20. Not long after Clearnet's demise, Fido faltered. Vidéotron and Shaw sold out, T-Mobile USA bought in. Microcell went CCAA, re-capitalized and became profitable under bank ownership, but banks preferred loaning money to Rogers to buy Fido rather than holding on to it.
21. In the end, even with huge advantages such as large amount of national spectrum, head start, and in case of Fido, a technological advantage with functions such as SMS years before the others, the new entrants failed and the only outcome from this was Bell and Telus expanding beyond their original provincial boundaries.

Competition take 2 (AWS)

22. With the failure of Fido and Clearnet, the government in 2007 set out to create a batch of new entrants. Ironically, incumbent MTS was labelled "new entrant" despite having dominant market share in MB and Bell/Telus being the new entrants.
23. Public Mobile failed, went to Telus.
Mobilicity failed, went to Rogers (with some clever spectrum swaps with Wind)
Wind failed, went to Shaw.
Vidéotron has not failed, owned by incumbent.
Eastlink has not failed, owned by incumbent.
Sasktel and MTS were already incumbents and saw Bell and Telus enter its market after Clearnet's failure. In Saskatchewan, Bell and Telus network share on Sasktel's network, but Sasktel not allowed to network share on theirs.
24. Notable in this new attempt at competition is that new entrants had to pay large amounts of money for regional spectrum at auctions. Outside of their control was the limited availability of 3G handsets that worked at 1700MHz³. So compared to Fido and Clearnet, the 2007 batch had an much bigger hill to climb.
25. As an incumbent, Eastlink had the financial staying power to wait for LTE to be available before deploying on 1700 which large carriers had told manufacturers to reserve for LTE.
26. By this time, GSM had been established as the standard in Canada (HSPA/UMTS for 3G and LTE for 4G). The more significant event was that Bell and Telus agreed to stop duplicating their facilities-based networks and work and network share each other's regional networks with ability to sell in each other's territories. It is far more efficient, requires far less capital. But in effect, Telus and Bell both MVNO onto each other's regional networks.
27. Policy Direction seeks to increase investment. Sometimes, reducing it is more efficient.

3 In the USA, the iPhone launched exclusive to AT&T, and after that period, Apple was "convinced" to not support 3G (HSPA/UMTS) on AWS/1700 which put T-Mobile at a serious disadvantage

Will History Repeat itself?

28. The result of this second attempt at competition: all non-incumbents failed (again). With Bell and Telus having joined forces, Canada is down to 2 national facilities based networks with a couple of regional networks.
29. The token placeholder Xplornet presence in Manitoba exists only so politicians can feel good about pretending there is another player apart from incumbents. But how much of a market force does Xplornet provide in MB? Have prices gone down?
30. Has Eastlink driven prices down in Atlantic Canada? (lowest published plans as of Apr 2)
Bell Canada: Nova Scotia: \$80 for 30GB.
Bell Canada: Ontario: \$80 for 30GB.
31. Has Freedom driven prices down in Toronto? Wireless bills are still going up, and Incumbents are proud of their top world ranking for most expensive wireless service. If even incumbent Shaw is throwing in the towel, what does it say about the chances of any facilities-based competitor not only emerging, not only surviving, but also providing sufficient market forces to drive prices down?
32. While Vidéotron appears aggressive/competitive at committee, the fact that it created a flanker brand means it no longer intends its main brand to be competitive. Like other incumbents, it has its wireline customer base that is captive to the "bundle" and not likely to move to lower priced brand.
33. 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 except for Bell and Telus who got their Monopoly "get out of jail" card so they could MVNO on each other to avoid duplicating networks and without having to provide regulators a copy of their contract.
34. Incumbents and even small ISPs have argued that the ability to offer the "bundle" is critical to profitability. While some incumbents may claim they have negative cash flow on their wireless operations, it is important to ask whether with the "bundle" offers the incumbent more profit overall and reduces churn.
35. It's time to ask whether the attempts at creating facilities-based competition have a chance to succeed because they have now shown over the last 25 years that they fail.
36. On the 25% price reductions: As an example: moving from 20GB for \$70 to 30GB for \$80 represents a 25% drop in the price per GB but 14% increase in the bill (aka ARPU). My package with Fido is at \$35.44. In Québec, the current lowest advertised package has risen to \$40 for Fido.

What are the options?

Conscious Parallelism

37. Conscious parallelism is the undiscussed imitation of another business' actions. One incumbent can raise its prices knowing the others will follow. More importantly, because prices are so high compared to costs, an incumbent knows that if it were to lower prices, others would have no problem matching the price, resulting in no increase in market share, but decrease in profit margin.
38. In a competitive environment, prices are driven down towards cost. The more efficient provider can lower its prices knowing the less efficient ones can't price match because their cost structure is too high. This gives hope to increase market share. In Canada because we are nowhere near incumbents setting prices based on costs this market forces mechanism does not work as the incumbents have market power and set prices based on what the market will bear.

Could Shaw be T-Mobile?

39. In the Early 2001, Deutsche Telekom (DT) purchased Voicestream (which had purchased other 1900 GSM providers such as Omnipoint) to create T-Mobile US. By 2007, with the iPhone and other popular phones unavailable, it started to lose customers. Messages were sent that DT was seeking to dispose of the investment in USA. T-Mobile knew that a merger would entail shutting down most of the T-Mobile network, so investment in building towers slowed. On March 20th 2011, the AT&T offer was made public. It was abandoned on December 19th after rejection by US Dept. of Justice. T-Mobile's plans to throw in the towel were upended. It was given extra spectrum, and magically, the next iPhone started to support 3G on 1700 (iPhone 5 in September 2012).
40. After a few years of neglecting its network, T-Mobile woke up with survival instinct, requiring network build, aggressive pricing and marketing to rebuild itself. It got to a point where AT&T and Verizon started to see T-Mobile as a competitor (aka: market forces working).
41. One should consider the possibility that Shaw, upon spinning off media assets and buying Freedom (without integrating the brand) was in a long term plan to be acquired by Rogers, waiting for the right moment. As such, only the spectrum and wireline fibre are of value to Rogers, so no point having aggressive network expansion (hence Shaw not getting into MB when Bell bought MTS).
42. Would blocking the merger result in Shaw doing as happened with T-Mobile and all of a sudden deciding to be aggressive with wireless and wanting to grow it? Or is the environment such that it really isn't possible in Canada to build a new facilities-based network? Bell and Telus had to join forces because neither could do it on their own.

What are the options (cont)

43. The MVNO proceeding⁴ was started in 2019, so at current pace, a decision might be expected in 2024. (prior to roughly 2015, the CRTC had a goal of issuing decision within 90 days of close of record, however the length of the "arms" in the arm-length relationship with government and incumbents has apparently shortened significantly in recent years.
44. A decision now to go ahead with mandated MVNOs would permit this proposed merger to go ahead. A decision to reject MVNOs now should prevent the merger to go ahead as proposed due to loss of any competition. One needs to consider the low odds of survival of an independent Freedom Mobile. Note that ICE Wireless has survived, but its efforts to compete in the south have all been thwarted.
45. A decision on the merger prior to the CRTC issuing its MVNO decision is very risky. It sends a message to the CRTC that the Government is satisfied with competition levels despite disappearance of Freedom, increasing the risk of a devastating CRTC "no to MVNO" decision.

Structural Separation is necessary

46. In January 2011 a Petition to Governor in Council was filed to seek the overturn of the CRTC's UBB decisions (wireline wholesale). The then Minister of Industry didn't waste time and within days informally asked CRTC to reconsider and CRTC began a consultation. CRTC issued decision on totally new rate structure by November 15, implemented in early February 2012. These rates have been in review ever since with prices seeing massive drops since the original 2011 prices. The last decision, the now infamous 2019-288 didn't have such massive drops, but due to the 3 year delay in issuing it, represented a need for incumbents to refund significant amounts that were overbilled since 2016 when that review started. The incumbents have used all means at their disposal to delay implementing this decision, including going all the way to the Supreme Court. The Minister obliged the incumbents by delaying its decision on their Petition to Governor in Council till the last day allowed by law.
47. While activists are demanding MVNOs, the fact remains that setting up a proper mandated and tariffed MVNO process is a daunting challenge that would be measured in years (or decades with current CRTC). When incumbents do not wish to play ball, they obfuscate the process every way they can, and when a decision comes out, can challenge it to delay it by years.
48. As long as incumbents find a welcome mat at the government, they know they can hinder the CRTC's work with the Minister(s) keeping a blind eye or even helping delay, as was the case with the Petition to Governor in Council for CRTC 2019-288.

4 Telecom Notice of Consultation CRTC 2019-57-3
<https://crtc.gc.ca/eng/archive/2019/2019-57-3.htm>

What are the options (cont)

49. The CRTC is dysfunctional in large part because the incumbents do not want wholesale since a proper wholesale will drive prices down. Shocking: in their Federal Court of Appeal filing, they even admitted that the new CRTC wireline wholesale rates might force them to compete on price !
50. There is one, and only one way to fix this long term problem that affects wireline, and would affect any attempt at MVNO:
make the facilities-based companies want to do wholesale.
51. Structural separation is the only means to achieve this. Condition of holding wireless spectrum would be that you are not allowed to sell retail and must wholesale. Once a company can only wholesale, it has every incentive to increase its wholesale business from any/all wholesale customers it can get.
52. Due to the small number of players, they would still need to be tariffed/regulated by the CRTC, but when a wholesale-only company depends on its wholesale business, it doesn't seek to block the CRTC's every attempt at growing wholesale.
53. The Policy Directions (2006-2019) would need to be combined to remove ambiguities with regards to facilities based, investment and all forms of competition.
54. Structural Separation would allow the spun off Bell and Telus networks who have been canoodling together since 2010 to finally formally merge, allowing wholesale customers to deal with a single wholesale provider instead of having to sign separate contracts with Bell-Wholesale and Telus-Wholesale.
55. More importantly, spectrum would no longer need to be auctioned, and that would significantly lower costs by billions for the network operators with spectrum gifted in equal parts to each facilities-based operator in a region. It would also allow much faster distribution of spectrum.
56. The attempts since mid 1990s to introduce competition have only resulted in incumbents becoming stronger. Repeating these attempts will repeat the same outcomes.

The box has failed. It is time to think outside of the box.

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