HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

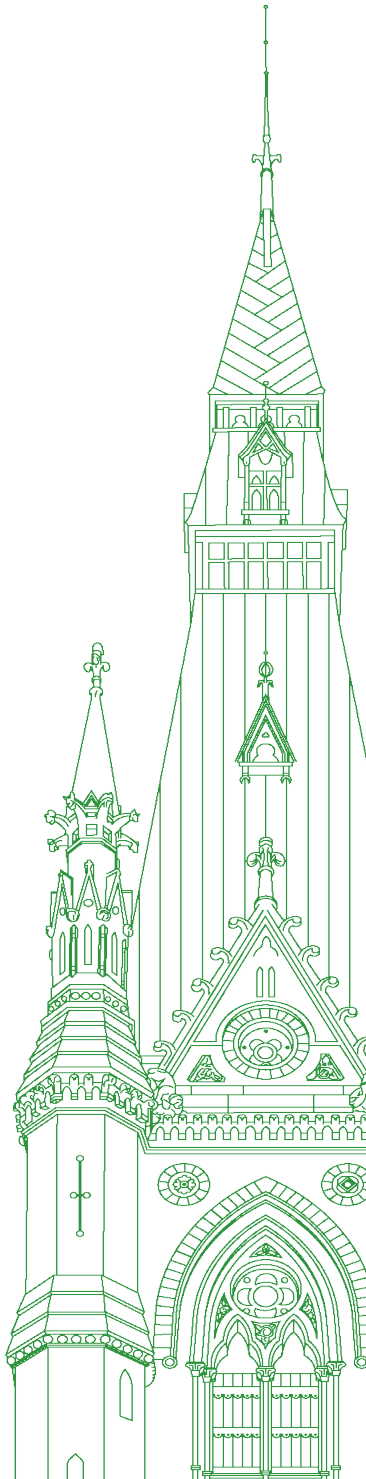
44th PARLIAMENT, 1st SESSION

Standing Committee on Industry and Technology

EVIDENCE

NUMBER 052

Wednesday, January 25, 2023



Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, January 25, 2023

● (1100)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Ladies and gentlemen, colleagues, I call this meeting to order.

Welcome to meeting number 52 of the House of Commons Standing Committee on Industry and Technology.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Wednesday, January 26, 2022, the committee is meeting to study the proposed acquisition of Shaw by Rogers.

Today's meeting is taking place in a hybrid format, pursuant to the House Order of Thursday, June 23, 2022.

Members attending remotely can participate using the “raise hand” function. For those in Ottawa, it's a pleasure to see them again at the beginning of the year.

In this first hour of the meeting, joining us from the Competition Bureau, we have Jeanne Pratt, senior deputy commissioner of the Mergers and Monopolistic Practices Branch, and Anthony Durocher, deputy commissioner of the Competition Promotion Branch. From the Department of Industry, we have Éric Dagenais, assistant deputy minister of Spectrum, Information Technologies and Telecommunications, and Mark Schaan, senior assistant deputy minister of Strategy and Innovation Policy Sector.

I'd like to thank all four of you for being with us in person.

Without further ado, I'll give the floor to Jeanne Pratt of the Competition Bureau for five minutes.

Ms. Jeanne Pratt (Senior Deputy Commissioner, Mergers and Monopolistic Practices Branch, Competition Bureau): Good morning, Mr. Chair and members of the committee.

My name is Jeanne Pratt, and I am the senior deputy commissioner of the Mergers and Monopolistic Practices Branch. With me today is my colleague, Anthony Durocher, who is the deputy commissioner of the Competition Promotion Branch.

The role and mandate of the commissioner of competition are clear. The commissioner administers and monitors the Competition Act for the benefit of all Canadians.

Protecting competition is essential to serving the interests of Canadian businesses and consumers, and to preserving our overall economic performance.

The merger provisions of the Competition Act are the first line of defence against the accumulation of market power.

[*English*]

Regarding Rogers and Shaw, the bureau conducted a comprehensive review of the evidence during our investigation. This included over 100 meetings with stakeholders and the collection and review of over three million records, as well as 7,800 submissions from the public.

On May 9, 2022, the commissioner filed an application with the Competition Tribunal under section 92 of the Competition Act, seeking to block the proposed merger. This action was taken because our position was that the transaction would likely harm millions of Canadians in Alberta and British Columbia through higher prices, lower-quality services and lost innovation.

At the tribunal, we argued that Shaw is a growing competitive force in Canada. When the proposed acquisition was announced, Shaw was poised to continue as an unmatched, disruptive force. The Competition Tribunal agreed with the commissioner that Shaw was about to launch 5G wireless services and expand their wireless services into new areas, reaching more Canadians. These plans were shelved with the announcement of the proposed Rogers-Shaw merger in March 2021.

On August 12, 2022, Rogers, Shaw, Videotron and Quebecor announced that they had entered into an agreement for the sale of Freedom Mobile. We took the position that the sale of Freedom to Videotron did not sufficiently address the anti-competitive effects of the merger. Videotron itself was not our concern. Rather, even with the divestiture, Videotron would not have the assets needed to compete as effectively as Shaw. Due to several long-term agreements, rather than having ownership and control over critical assets, Videotron would be reliant on their competitor, Rogers. This would reduce Videotron's incentive and ability to compete, and create avenues for Rogers to undermine the new Freedom's competitiveness.

On December 29, 2022, the Competition Tribunal dismissed our application. Yesterday, the Federal Court of Appeal dismissed our appeal. We stand by the findings of our investigation and our decision to challenge the merger. We brought a strong, responsible case to the tribunal after conducting an exhaustive investigation. We continue to disagree with the tribunal's findings and are very disappointed. That said, we accept the decision of the Federal Court of Appeal yesterday, and we will not be seeking leave to appeal to the Supreme Court of Canada.

I look forward to your questions.

Thank you.

[*Translation*]

The Chair: Thank you very much.

I'll now give the floor to Mr. Schaan or Mr. Dagenais.

[*English*]

Mr. Éric Dagenais (Senior Assistant Deputy Minister, Spectrum and Telecommunications Sector, Department of Industry): Thank you for inviting me and my colleague here today.

I lead the sector responsible for the spectrum management program, which ISED administers on behalf of the Minister of Innovation, Science and Industry. My colleague is responsible for ISED's strategic policy function, which includes stewarding the minister's role in both telecom and competition policy. You've just heard from our colleagues at the Competition Bureau.

I understand the strong interest at this committee in the transfer of licences between Shaw and Rogers, and then between Shaw and Videotron. While I can speak about the spectrum transfer process, I cannot speak to the ongoing review of the application to transfer Shaw's spectrum licences to Videotron. This matter is currently before the minister.

As I outlined in my appearance in April 2021, access to spectrum is vital to the provision of wireless services, and the power to issue spectrum licences, including reviewing and approving their transfer, is at the centre of the minister's review of and his role in this proposed transaction. The minister regulates spectrum according to the powers granted in the Radiocommunication Act, with due regard to the Telecommunications Act, and in doing so he may take into account all matters he considers relevant to ensure the orderly development and efficient operations of wireless communications.

Given the importance of mobile connectivity and the significant investments associated with it, the minister manages spectrum according to an established set of guidelines and policies.

● (1105)

[*Translation*]

As such, commercial mobile spectrum transfers are guided by the Spectrum Licence Transfer Framework.

This framework supports the government's objective to maximize the economic and social benefits that Canadians derive from the use of spectrum. It also helps ensure the efficiency, and competitiveness of the telecommunications industry and the availability and quality of services.

In reviewing transfer requests, Innovation, Science and Economic Development Canada, or ISED, analyzes, among other factors, the change in spectrum concentration levels that would result from the licence transfer.

ISED also analyzes the ability of the applicants and other existing and future competitors to provide services. We may also take into account other factors, including current licence holdings of the applicants, overall distribution of licence holdings, services to be provided and the technologies available, availability of alternative spectrum, characteristics of the region—including urban/rural status, population levels and density—or other factors that impact spectrum capacity or congestion, and any other factors relevant to the policy objective that may arise from the licence transfer.

As stated in the framework, the application and supporting materials are treated confidentially. That said, I can confirm that the original Shaw-Rogers transfer application was refused by the minister. This information is on our website and is public. One of the reasons for the refusal is that it raised substantial concerns about spectrum concentration.

So the issue currently before the minister is an application to transfer spectrum from Shaw to Videotron. In short, the original application was denied, and now we're talking about a new application.

As Minister François-Philippe Champagne confirmed yesterday, ISED will announce a decision on this transfer in due course.

Thank you. I'm happy to take questions.

The Chair: Thank you very much.

[*English*]

Colleagues, I'll note before we start that we'll go for two rounds of questions, which will take us a little further than 11:40, as scheduled, but I will be stricter on time than I usually am. Please govern yourselves accordingly.

We'll start with the Conservatives for six minutes.

We have MP Perkins.

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for being here.

I want to begin by stating that I believe three issues are causing our economy to be the least productive among western countries: too much government debt; not enough growth, with low production of goods that the world wants; and a cost of living crisis eating up our paycheques. Our many anti-competitive service industries, with only two or three national companies per industry, contribute to this cost of living crisis, forcing Canadians to pay too much for what they need. This is why we are here today.

Today, Canadians pay some of the highest cellphone and Internet prices in the world, primarily because there is much less competition than there was 10 years ago.

Mr. Dagenais, do you believe that Canadians pay too much for cellphone services?

Mr. Éric Dagenais: There is an issue. Reports have shown that cellphone prices tend to be higher in Canada than in other jurisdictions.

Mr. Rick Perkins: Thank you, Mr. Dagenais.

The chart I have here, if you can see it, shows the regular pricing of various packages for cellphone services available on the Internet last week for Videotron and Freedom. Videotron's pricing, shown in grey, is higher than Freedom's prices, which are in gold, in most cases. Since Freedom's pricing is already lower than Videotron's, the minister's condition that Freedom match Videotron's pricing will not reduce any prices—

● (1110)

[*Translation*]

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Excuse me, Mr. Chair. I'd like to get a clarification.

We can't present charts like this in the House, but can we do it in committee?

The Chair: Thank you, Mr. Lemire.

Unlike the House, committees have more flexibility when it comes to this. For example, it would be possible to share something on the screens. Personally, in the spirit of goodwill, I would be more inclined to allow that.

Mr. Sébastien Lemire: Okay. Thank you.

[*English*]

Mr. Rick Perkins: I'll ask the question again.

Since Freedom's pricing is already lower than Videotron's, the minister's condition that Videotron match Freedom's prices really doesn't change anything in the pricing mix, does it?

Mr. Éric Dagenais: This is part of the transaction before the minister, which I can't really comment on. I apologize for that.

Mr. Rick Perkins: When Videotron appeared before the Competition Tribunal, it made commitments about how it would operate the business in the future. When any company appears before the tribunal, it makes commitments about the future.

Mr. Dagenais or perhaps Ms. Pratt, are any of the commitments made before the tribunal binding on that business?

Ms. Jeanne Pratt: Maybe I can speak to the tribunal's decision. The tribunal's decision did not include an order that would enforce any such commitments.

Mr. Rick Perkins: Mr. Dagenais, during the proposed time of the acquisition of Shaw by Rogers, you've been lobbied extensively about the privileged access the Liberal government has granted to Rogers and Quebecor. Will you share with this committee your notes and those of all officials who attended those more than 60 meetings?

Mr. Éric Dagenais: I don't think I have any notes from those meetings. I'd have to take that back to see how I'm supposed to share them. Perhaps it's through an ATIP, or there is a special mechanism to share them with the committee.

Mr. Rick Perkins: Committees can request documents, and witnesses usually—

Mr. Éric Dagenais: Okay. I'll get back to the chair.

Mr. Rick Perkins: —table them if they feel free to do so. I would ask you to get back to us. I'm sure officials took notes in the more than 60 meetings.

Mr. Dagenais, the CRTC is doing an investigation into the preferential pricing Rogers is giving to Videotron in the case launched by TekSavvy. This case deals with undue preference with respect to CRTC regulations. Will the minister wait for this ruling before he announces his public decision?

Mr. Éric Dagenais: The minister said yesterday that he would make a decision in due course. I can't really expand on that or give you any additional precision beyond the minister's statement from last night.

Mr. Rick Perkins: The Minister of Industry, as I understand, has unlimited powers to impose conditions, through the Canadian Radio-television and Telecommunications Commission Act, on the issuance, transfer or approval of any spectrum licence, hence the conditions the minister proposed in October.

If concern regarding the high costs that Canadians pay for cellphones drives overall government policy, can you inform me whether, since 2015, the Minister of Industry has ever imposed any conditions on Bell, Telus and Rogers to specifically reduce prices for any access to their towers or infrastructure as part of issuing or renewing licences?

Mr. Éric Dagenais: Maybe the minister would like unlimited powers, as you suggest, but the powers in the Telecommunications Act aren't unlimited. They're very well defined.

ISED, through the minister, has taken a number of measures to reduce prices. The greatest would be to increase competition and to ensure that there is competition. At the end of the day, when we look at the Competition Bureau's own findings, when you have a regional player that's competing against the three incumbents and they have a decent market share, that brings prices down by 35% to 40%. So competition brings prices down.

We've taken measures. In spectrum auctions, we've had set-asides or caps, and we've imposed competitive measures and deployment conditions. All of these things are designed to ensure that people have the spectrum they need to compete.

Mr. Rick Perkins: I understand that happens, but the question was around conditions. The minister is choosing to impose conditions on this transfer of licence but has not imposed them in previous transfers. That is my understanding. I understand that prices have gone up.

● (1115)

The Chair: Thank you, MP Perkins. I'm very sorry, but that was all the time you had—six minutes.

We'll have to turn now to MP Fillmore for six minutes.

Mr. Andy Fillmore (Halifax, Lib.): Thank you, Chair.

Thanks to the witnesses for joining us today. Hello from Halifax. I apologize for not being able to be with you in person.

Monsieur Dagenais, thank you for being here today. I understand you are the ADM responsible for spectrum policy at ISED. Let's start out with a basic, fundamental question.

What is a licence spectrum?

Mr. Éric Dagenais: Spectrum refers to the radio frequencies that are used to transmit wireless signals. It's the air around us. That sounds a bit magical, but that's what it is. Essentially, whether it's satellites, your smart phone or your Wi-Fi at home, if it's wireless, it uses spectrum. At ISED, we try to manage the traffic. There's a lot of data being transmitted over these wireless airwaves, and sometimes the best way to manage that traffic to avoid interference is to have a licence and to give a licence to someone.

We have a licence that gives exclusive use over a specific spectrum band in a specific market. That person can then use that spectrum band to transmit over a number of years. That's what we call licensed spectrum. The telecommunications industry—the wireless industry—makes use of a lot of that licensed spectrum.

Mr. Andy Fillmore: Thank you.

We're hearing in this discussion about the transfer of licensed spectrum. How does licensed spectrum relate to the discussion before us today with regard to Rogers and Shaw?

Mr. Éric Dagenais: For the Minister of Innovation, Science and Industry, his role is just that. It is to look at the part of the transaction that relates to the transfer of the spectrum licences.

Shaw has a number of spectrum licences that it initially wanted to transfer to Rogers. The minister refused the transfer of those licences. Again, the explanation and the reasons have been published. Now we have a revised transaction that's before the minister, whereby Shaw wants to transfer its licensed spectrum to Videotron.

Those are the four corners of what the minister of ISI is reviewing at the moment.

Mr. Andy Fillmore: His decision is around the licensed spectrum transfer. I want to be clear for folks who are paying attention that his decision is not around the approval of the merger. That's not his bailiwick.

Is that correct?

Mr. Éric Dagenais: That's correct. Competition matters fall to our colleagues at the Competition Bureau and the commissioner of competition.

Mr. Andy Fillmore: Thank you.

If the Competition Bureau wants to add anything there, I welcome it.

Ms. Jeanne Pratt: I would say that we brought this case. We conducted an exhaustive investigation. We found that the proposed merger between Rogers and Shaw was likely to substantially lessen competition in Alberta and British Columbia.

We subsequently looked at the divestiture of the Freedom assets. We evaluated that under our usual procedures and guidelines with respect to evaluating remedies under the Competition Act. Our findings were that the divestiture of assets of Freedom fell short of addressing the breadth and the scope of the substantial lessening of competition that would result from the merger. That's why we brought the case to the tribunal.

We lost at the tribunal and we lost at the Federal Court of Appeal, so our process now is done with respect to this merger.

Mr. Andy Fillmore: Thank you for that.

If I could come back to Mr. Dagenais and the licensed spectrum question, we have to assume there are very specific criteria. In fact, I think you have alluded to them in how you judge your evaluations on spectrum transfers.

What exactly is the basis for the decision? What are the criteria that the minister will be looking at?

Mr. Éric Dagenais: We have a spectrum transfer framework. It's a document that was put out in either 2013 or 2014, pursuant to public consultations. It lists what the objectives of the transfer framework are, and it lists the criteria.

Essentially, you have eight specific factors that may be relevant in ISED's assessment. First is the current licence holdings of the applicant and their affiliates in the licensed area.

Second is the overall distribution of licence holdings and the licence spectrum band and commercial mobile spectrum band in that area.

Third is the current and/or prospective services to be provided and the technologies available.

Fourth is the availability of alternative spectrum that has similar properties, because not all spectra have the same properties.

Fifth is the relative utility and substitute ability of the licensed spectrum.

Sixth is the degree to which applicants and their affiliates have deployed networks and the capacity of those networks. This is whether the people to whom the spectrum is being transferred have the ability to use it and to serve Canadians.

Seventh is the characteristics of the region, including urban and rural status, population levels, etc., because you don't need as much spectrum if you're not serving as many people. The population density matters.

Eighth is any other factors relevant to the policy objective that may arise from the licence transfer or the prospective transfer.

The factors are set out in a regulatory framework that takes its cues from the Radiocommunication Act and the Telecommunications Act.

● (1120)

[*Translation*]

Mr. Andy Fillmore: Thank you very much, Mr. Dagenais.

[*English*]

Mr. Chair, is there any time left?

The Chair: There are 15 seconds left, not enough for another question. Thank you, Mr. Fillmore. We'll leave it at that.

[*Translation*]

I'll now give the floor to Mr. Lemire for six minutes.

Mr. Sébastien Lemire: Mr. Chair, I would like to start by correcting one thing. According to what was reported in the media on January 13 by The Canadian Press, all parties in the Standing Committee on Industry and Technology agreed to convene this meeting to review the transaction. That's not true.

I think you'll agree that I was opposed to this. Indeed, I was deeply uncomfortable with the idea of holding this meeting today, particularly because of elements that were highlighted by the Competition Tribunal, in this case the Fox project. Furthermore, I get the impression that our committee is being used to serve the interests of lobbyists rather than the public, especially when I read this:

[*English*]

“Trial competition board review at the new committee, upcoming, shapes narrative.”

[*Translation*]

We are being used strategically by the Telus lobby, obviously in concert with Bell and other partners, and I feel very uncomfortable with that. I named these things in the subcommittee, and I wanted to put that on the record today.

Having said that, I think we still need to move forward and make a constructive contribution today. This is a transaction that we on the committee had studied in its first form and jointly rejected the first agreement. Furthermore, the Competition Tribunal issued a decision yesterday confirming our position. This suggests that our work is relevant.

In that context, the wireless part was a concern. The buyout by Quebecor made it possible to bring that other player, in this case a fourth player, into the Canadian market. I see that public policy on competition has allowed this acquisition to come to an acceptable outcome for Shaw, Rogers and Quebecor Media. I think that our recommendations have been heard and that the focus has been on accessibility and affordability from the outset. This has set the tone for the thinking and discussions that have taken place between different companies over the past few months.

We looked at the agreement between Shaw and Rogers, and I think the current agreement between Shaw, Rogers and Quebecor is much better for consumers.

For those who have been following this closely and have read yesterday's decision by the Competition Tribunal, paragraph 1 is very telling. There is a well-known saying in the competition law community that when competitors complain about a merger, it is often a good indication that the merger will promote competition. The documents that were produced revealed Telus' strategies through its Fox project.

The following question is for Ms. Pratt, deputy commissioner of the Competition Bureau.

Parliamentarians generally learned about the Fox project through the media on November 14. All the headlines were about an attempt by Telus to undermine the sale of Freedom Mobile to Videotron.

You, from the Competition Bureau, who were present at the hearings, what do you think about the Fox project, the players involved and their strategy? Is this the kind of competition you're willing to support?

Ms. Jeanne Pratt: I'll answer you in English, if I may, because I need to use technical terms.

[*English*]

Whenever competitors come to us in investigations, we are skeptical. We look at the evidence. We look at the underlying documents. We look at the incentives and the ability to compete. We have a degree of skepticism when we are dealing with incumbent competitors in the marketplace. What drives our decision-making is the totality of the evidence that we look at in our investigation.

In this particular case, we thought that led to a substantial lessening of competition emanating from the Rogers-Shaw transaction, as mentioned in my opening statement. Our concern was not with Videotron. Our concern was with the assets that Videotron will have to compete as opposed to what Shaw had to compete previously. Under our remedies bulletin, we just did not think those assets were sufficient to address the substantial lessening of competition caused by Shaw's exit.

● (1125)

[*Translation*]

Mr. Sébastien Lemire: Why do you insist on sticking with the original agreement between Shaw and Rogers rather than embracing the idea of transferring spectrum licences from Shaw to Rogers in connection with Videotron's proposed acquisition of Freedom Mobile?

I think your role is as an arbitrator, and it is essential. However, it gives us the impression that you decided to get the puck on the ice and take it to the other end and pass it to the members of the Fox project collective.

Through this use, I think that you went beyond your framework and that you adopted a strategy that consisted in extending the deadlines.

Why did you ignore Videotron's acquisition of Freedom Mobile in the lawsuits you filed?

[*English*]

Ms. Jeanne Pratt: It's our framework. The way we look at it is in accordance with the framework under the Competition Act.

We evaluated the Rogers-Shaw transaction. Our investigation determined that the transaction itself was going to substantially lessen competition. We brought an application to the tribunal in May 2022. There was no proposed acquisition by Videotron at the time we launched the application. That divestiture and all the agreements came to light in August, three months after we had filed their application. We evaluated it as a remedy. That is how the parties proposed it to us. We evaluated it as a remedy to address the anti-competitive effects of the Rogers-Shaw transaction. That is what we did.

Ultimately, the tribunal disagreed with us. The tribunal thought that we should not be evaluating it as a remedy, that it was a new transaction as of August 2022, so ultimately the tribunal disagreed with us.

[*Translation*]

Mr. Sébastien Lemire: So some time was lost because of tribunals.

My time is up, Mr. Chair.

The Chair: Thank you, Mr. Lemire.

Mr. Masse, you have six minutes.

[*English*]

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you to the witnesses for being here.

First of all, I'd like to apologize to Mr. Lemire. It was my Canadian Press comment, and I forgot to separate the Bloc from that. I apologize to him. We've had conversations on that. I want it to be clear, because he is very capable of speaking for himself, as we've seen.

Going quickly to the matter at hand, Canada since 1993 has basically decided to deregulate our telco sector in many respects. We've had subsequent prime ministers and ministers of industry do a number of different ventures that have led us here today. The cast of characters is long and very bipartisan.

My first comment is for Mr. Dagenais.

I'd like to find out from you how you think this minister is going to get it right, given the fact that we have the situation we have right now. What makes it different at this moment? Going back to Mulroney, Chrétien, Martin, Trudeau, Harper, and then a whole series of industry ministers who I've met with and worked with over the years, ranging from Maxime Bernier to David Emerson, being a Conservative and a Liberal, we still have these policies that we have right now.

How do we fix it? What makes it different now from the path that got us here to this moment?

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Science and Economic Development Canada, Department of Industry): The government's telecommunications policy is guided by three core policy objectives, with competition as the underlying principle. Those are quality, coverage and price. In particular, the belief is that Canadians should benefit from services that are fast enough to support modern emerging applications, that are broadly available where they live and where they work, and that are available at reasonable and affordable prices.

While overall there's definitely more work to do on the pricing side, it is worth noting that in terms of high-quality networks, Canada's performance remains extraordinarily strong, including above that of the OECD. On coverage, 4G coverage is about the same as the European average, and 5G coverage is ahead of the EU. On prices, these are higher than in our peer countries. As we've noted, the government has been clear that there is more work to be done.

Mr. Brian Masse: There's more work to be done, but what's different this time? Let's go to spectrum right now. How much of the spectrum has been resold in our industry for profit from those who bought original spectrum? I think we're up to $30 billion that we've actually charged for spectrum, or close to that. How much of that has been resold?

We could even use Videotron as an example. How much have they resold of their spectrum? What type of profit have they made from reselling spectrum, which is a public asset?

● (1130)

Mr. Éric Dagenais: I don't have those figures. I could get them. It's a relatively low amount compared with the amount of spectrum that has been auctioned.

Mr. Brian Masse: Is it fair to say, though, that we're letting people and companies buy our spectrum at an auction and then resell that spectrum for a profit?

Mr. Éric Dagenais: When spectrum is sold as a set-aside spectrum, it comes with conditions whereby the purchaser is encumbered from reselling that spectrum for a number of years. We do that to avoid arbitrage. We do that for a number of reasons.

In those cases, the sale of spectrum would take place after the provisions had expired.

Mr. Brian Masse: Would you agree, though, that not using spectrum or keeping it on the shelf for a long period of time affects competition?

Mr. Éric Dagenais: Not using spectrum is something we've tackled. The two most recent auctions and the upcoming one this year have the most stringent deployment conditions we've ever set. People who have recently bought spectrum and people who will be buying spectrum are doing so to deploy it, because if it's not deployed, it will be taken away.

Mr. Brian Masse: So it's just taken away. Are they actually fined or penalized, or do they have to lose some of their economic resource from that? If you don't use spectrum, that affects not only the competition but also our Canadian economy and other businesses that need access to high-speed Internet and good service.

What penalties happen there? My understanding is that ISED can extend the period of time for not using the spectrum on its own without returning to Parliament. Is that correct?

Mr. Éric Dagenais: As a regulator, we work with the regulated industry to bring them into compliance. That's the number one approach. You want the regulated industry to come into compliance and that's what you start with. You start with that before taking it away. We have taken it away, but we like to work with regulated industries.

Mr. Brian Masse: But there are no penalties.

Mr. Éric Dagenais: There could be penalties. If you've paid billions of dollars for spectrum and it's taken away from you, I would argue that's a bit of a penalty.

Mr. Brian Masse: How much money has the government kept from the spectrum? Do you refund the money back to the auction?

Mr. Éric Dagenais: We have not taken away spectrum that has been auctioned off recently. People are still within the milestones. When you auction spectrum, you have deployment conditions. The deployment conditions are pretty strict, but they're after the five-, 10- and 20-year milestones. Currently we are not aware of any recent spectrum auctions where the holder of the spectrum is not meeting its deployment conditions.

Mr. Brian Masse: There have been numerous cases of spectrum not being used to its fullest potential. There's no doubt about that. How much money has the government fined those people who have won spectrum and those companies that have won spectrum? How much money was kept from that spectrum that has not been used? We know the spectrum has not been used.

Mr. Éric Dagenais: The question is not whether it's being used to its fullest potential. It's whether or not the deployment conditions are being met. What I'm saying is the deployment conditions—

Mr. Brian Masse: When those have not been met, how much has the government fined?

Mr. Éric Dagenais: I'm saying they are being met.

Mr. Brian Masse: Sir, are you saying that all spectrum conditions we have right now are being met to their fullest capacity?

Mr. Éric Dagenais: For the recent auctions we looked at—the 600 megahertz auction and the 3,500 megahertz auction—the deployment conditions on the people who bought the spectrum are currently being met.

Mr. Brian Masse: What about for the previous ones?

Mr. Éric Dagenais: For previous spectrum holders, we have taken spectrum away. We have taken licences away.

Mr. Brian Masse: When you take them away, how much do you actually fine those organizations and those companies? Those are public assets, so if you actually—

Mr. Éric Dagenais: I understand. I would have to get back to you about fines, but we have taken spectrum away.

The Chair: Thank you very much, Mr. Masse. That is all the time you have.

Mr. Dagenais, feel free to share the information with the committee through the clerk.

[*Translation*]

I'll now give the floor to the Conservatives.

Mr. Williams, you have five minutes.

[*English*]

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you very much, Mr. Chair.

Competition helps Canadians by allowing them to have choice, lower prices and better service. There's an alarming precedent being set, I feel, in the divestiture of Freedom Mobile in that Rogers, which is the number one market share owner of telecommunications in all of Canada, was allowed to freely vet and choose its number four competitor, which was Videotron, without the approval of the Competition Bureau.

Ms. Pratt and Mr. Durocher, you've mentioned the merger remedies that are in place to approve that. I'm going to talk about paragraph 57, which says:

> In addition to approving the remedy package, the Bureau must approve the buyer of the divested asset(s), so as to ensure that such asset(s) will be operated by a vigorous competitor, and that the divestiture itself will not result in a substantial lessening or prevention of competition....

Did this occur?

● (1135)

Ms. Jeanne Pratt: Normally we conduct our investigation, and that informs the scope of the anti-competitive effects we need to address. In this particular case, we went through our exhaustive investigation. We identified the magnitude and scope of those anti-competitive effects, and we communicated them to the parties for the purposes of facilitating a settlement. We tell them what the problem is and how big the problem is with respect to a resolution, and they bring us a solution for an evaluation.

The way we evaluate that solution is in accordance with the remedies bulletin that you referenced. When we're doing that, we're asking what the assets are, what the package is that the new buyer will have to compete with and whether it is adequate to allow them to compete on a footing similar to that of the business being sold. In this particular case, that is where we had concerns with the remedy package.

Mr. Ryan Williams: Based on the language in this document, the bureau must approve the buyer of divested assets. Did you approve the buyer?

Ms. Jeanne Pratt: We did not. We did not approve the remedy package, which would include the buyer.

Mr. Ryan Williams: Do you feel that the tribunal properly addressed the concern you had?

Ms. Jeanne Pratt: Well, I think our position on this is clear: It ought to have been evaluated as a remedy under our framework.

The concerns we had with the remedy proposed included that there weren't sufficient assets being divested with the Freedom business to allow them to compete on a similar footing to what Shaw was competing on. They didn't have the assets and that was key.

There was another concern about the contractual arrangements that were undertaken with Rogers. We generally want to see that a new competitor is going to have the assets and is going to be independent from a competitor with respect to all fundamentals of supply.

Mr. Ryan Williams: To that point, you have not approved this. Has there been another merger of this size in Canada that has ignored the remedy process or has ignored your approval?

Ms. Jeanne Pratt: Well, we are a law enforcement agency, so our job is to investigate. The commissioner, if he sees a problem and cannot resolve it, has to bring a case before the Competition Tribunal. That is our framework. Our job is to investigate and see if we can come to a negotiated resolution, which becomes an order of the tribunal under section 105 of the Competition Act.

The parties tried to negotiate with us. We couldn't come to an agreement based on the concerns we had in accordance with our evaluation under our remedies bulletin, so we filed an application before the Competition Tribunal. Fundamentally, we disagree with the Competition Tribunal's assessment, but we are a law enforcement agency that has to bring our case before the court.

Mr. Ryan Williams: Were you aware that other competitors, other buyers, were trying to buy Freedom Mobile?

Ms. Jeanne Pratt: We were aware. At the time, in the lead-up to our application—and this is set out in both our notice of application and the injunction materials we filed before the tribunal—there were a couple of remedy proposals that we evaluated in accordance with our remedies guidance. In those proposals, again, it was the asset package that we had concerns with.

Mr. Ryan Williams: If you would have had a chance to provide more guidance to the solution, would you have looked at other competitors as an option for remedy, or do you look at just the one competitor?

Ms. Jeanne Pratt: We will evaluate what the parties bring to us in terms of a negotiated resolution, but part of that evaluation.... If the assets are there and we think there's a viable operating business that will address the SLC, we move to looking at the buyer.

If the buyer itself raises competition concerns, that is one of the criteria we apply. We wouldn't approve a competitor's buying if we thought that was also going to lead to anti-competitive effects emanating from the remedy. Those are the things we look at with respect to the buyer.

The Chair: Thank you very much.

We'll now move to Madame Lapointe for five minutes.

[*Translation*]

Ms. Viviane Lapointe (Sudbury, Lib.): Thank you very much, Mr. Chair.

[*English*]

My questions will be for the Competition Bureau.

You've demonstrated in a transparent way, both in action and in words, that you believe this merger will be bad for consumers. You've talked about the extensive investigation you undertook that led you to that conclusion.

What I would be interested in hearing about from you today in terms of that investigation is what you believe the impact will be on rural communities in Canada. Specifically, how will this merger impact rural communities in terms of competition, service, choice and even equitable access to service?

● (1140)

Ms. Jeanne Pratt: We didn't look at that in particular because we saw the impact on all consumers generally. We were concerned about all of those consumers.

What I can say is that before the Competition Tribunal, we did look at the impact on different deciles and income segments. That was part of our assessment of the anti-competitive effects of the transaction. We looked at the impact there would be on the bottom decile of taxpayers as a result of this merger, and that was evidence we put before the tribunal.

Ms. Viviane Lapointe: What did that evidence indicate?

Ms. Jeanne Pratt: I think from our perspective it indicated that there would be a disproportionate impact on lower-income Canadians. We looked at the transfer of wealth emanating from this transaction, so it was about who was going to suffer and who was going to gain. For that, we looked at Statistics Canada information and had experts evaluate that question, and we put that evidence before the tribunal. We saw that not only was there going to be an impact on consumers, but the wealth transfer would disproportionately affect lower-income Canadians.

Ms. Viviane Lapointe: You also mentioned that, as part of your investigation, you heard from over 7,000 witnesses. Can you tell us if there were common themes that came to light around what you heard from those witnesses?

Ms. Jeanne Pratt: We received 7,800 submissions from Canadians. We looked at each and every one of them and evaluated them—not so much for the views but for the facts they contained—to get the views of Canadians on what the impact of this transaction would be. Our focus was not on their opinions. It was on the impact that this transaction would have on them.

We looked at each and every one of those 7,800 submissions for the facts and evidence in them to inform our investigation.

Ms. Viviane Lapointe: Were there any trends or concerns you heard from those 7,800 Canadians?

Ms. Jeanne Pratt: I would have to go back and get the real numbers to see how many were in favour of the merger versus not. However, I'm quite comfortable saying that the vast majority of consumers were concerned about the proposed transaction.

Ms. Viviane Lapointe: With the final decision of this merger now with the Minister of Innovation, Science and Industry, can you tell us what you think is the most important consideration for the consumers you've identified as being the most negatively impacted and vulnerable to this merger?

Ms. Jeanne Pratt: I'll talk about it under our framework.

What we're looking at under the Competition Act is harm to the competitive process. We believe the benefits of the competitive process flow through to consumers in lower prices, greater innovation and greater quality. Our focus isn't necessarily on the consumer. It is about the impact on the competitive process that leads to the benefits for consumers, which are lower prices and innovation.

It's a different question for us. We're looking at whether this particular merger is going to enhance the market power of the acquiring firm in a way that could lead to an ability to exercise market power to cause higher prices, lower quality and lower innovation across a market.

[*Translation*]

The Chair: Thank you very much, Ms. Lapointe. Your time is up.

Mr. Lemire, you have two and a half minutes.

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

Ms. Pratt, you mentioned earlier that other offers could make it possible to acquire Shaw and Rogers. I'll come back to the Fox project again. It says this:

[*English*]

"TELUS-Globalive network and spectrum sharing agreement announced to boost Globalive's bid to purchase Freedom Mobile."

[*Translation*]

Do you consider that an offer from Globalive, backed by the TELUS network, would have had solid enough assets? Actually, that is where you were critical of the sale to Videotron.

● (1145)

Ms. Jeanne Pratt: I don't think we've evaluated such an agreement.

[*English*]

It was an evaluation of the parties bringing an asset package to us. They did a sale process to entertain bidders. They brought us the outcomes of that process, and we evaluated what was negotiated under our remedies bulletin.

[*Translation*]

Mr. Sébastien Lemire: I think that if a player is backed by one of the current big three players, that won't promote competition.

I also agree with what Mr. Schaan said, that the telecom service providers can do better. I think we've already looked at possible solutions in committee and that we could do this again objectively to see how improvements can be made and how things can be changed to accelerate the reduction of prices.

My question is for Mr. Dagenais.

Are you satisfied with the current public policies on competition, particularly with respect to the long-term effects of such an agreement? You've imposed conditions, such as having a long-term operator that is committed to more than 10 years and that will be able to offer wireless services in Ontario and western Canada at prices comparable to those offered in Quebec, which are about 20% lower than the rest of Canada. That's a condition that Vidéotron has declared acceptable.

Are you convinced that a fourth player can finally be established in a reliable, viable and sustainable way thanks to the public policies you have put in place?

Mr. Éric Dagenais: Unfortunately, as I said earlier, the issue is venturing into the Shaw/Videotron transaction, so I can't comment.

I know it may be frustrating, but it's a decision for the Minister.

Mr. Sébastien Lemire: Objectively speaking, do you believe that the public policies you have put in place allow for the presence of a fourth player and that this fourth player can be established in a reliable, viable and sustainable way?

Mr. Éric Dagenais: I think we've put in place a lot of pro-competitive public policies, such as those related to auctions.

Mr. Schaan can round out the answer about policies, such as those encouraging competition, which are more within his purview.

Mr. Mark Schaan: I think it's important to note the improvements and increase in Canada's telecommunications policies.

The government has added many aspects to this program in recent years.

[*English*]

That includes not only the continuation of set-asides and some of the more stringent build-out conditions in any of our licences, but also the obligation to ensure there are significant obligations under the CRTC. We've worked on pricing with the 25% reduction, and it has been successful to date in lowering prices, as per the baseline we sent out. The new policy direction for the CRTC completes that in many cases by ensuring that we look at the overall framework for competition to get at those goals.

We believe more work needs to be done, but we've laid out the foundations and the pillars, whether that's through spectrum policy pricing or otherwise, including through the new policy direction that can aim to get to those outcomes.

The Chair: Thank you very much.

We'll now turn to Mr. Masse for two minutes and 30 seconds.

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

Here we are, after Bell acquired MTS, Telus bought Public Mobile, Rogers bought Fido and Shaw bought Wind Mobile, and now we're going to have Distributel and Bell in a merger as well. I'm not sure if this qualifies for the definition of insanity, which is doing the same thing over and over again, but it certainly isn't a pattern of increasing competition.

Ms. Pratt, one of the reasons I've been concerned with the way we're doing the spectrum auction is.... I'll give you a good example. One is Quebecor, which had a carve-out and bought spectrum for rural areas of Ontario, Alberta and B.C., later sat on it and finally sold it for a profit of $331 million.

My question to you is this. With spectrum policies like this and the way they've evolved, is that good or bad for consumers and competition? I'm failing to see how the way we've been rolling out the spectrum improves competition. I wonder if you have an opinion on that.

Ms. Jeanne Pratt: We look at each particular transaction under our framework and evaluate each particular transaction under that framework. Spectrum is one of the assets used in competition in these markets, but ours is a much more holistic examination of market dynamics and the impact of a particular merger and any anti-competitive effects we think will emanate from that merger.

Spectrum is a fact in our investigation. It's not something that I have an opinion on.

● (1150)

Mr. Brian Masse: Okay, but would it lower or incidentally increase competition? If we do more spectrum and we allow people or companies to sit on it, resell it for higher profits and then pass those costs onto consumers, is that model for competition seen as advantageous? Would it potentially be better for us to have more stringent spectrum policies so that spectrum is rolled out with competition and faster, and also on the basis of what they originally got the spectrum for?

Ms. Jeanne Pratt: I'll defer to my colleague Mr. Durocher. I'm a one-trick pony: I look at particular merger transactions.

Mr. Brian Masse: You're a bit more than that.

Mr. Anthony Durocher (Deputy Commissioner, Competition Promotion Branch, Competition Bureau): Thank you for the question.

For every spectrum acquisition and how it's used, I think the impact on competition would be specific to the facts of a given case.

I think more broadly, outside of merger review, the Competition Bureau also has an advocacy mandate, whereby we work with regulators to try to promote regulations and rules to try to enhance competition in the economy. Certainly, in the telecom sector, that's an area where we've been very present with the CRTC to try to favour pro-competitive recommendations, and our intention is to continue in that vein.

Mr. Brian Masse: Okay.

Very quickly, do the laws of the Competition Bureau currently satisfy your capabilities to deal with the market and what you have to do for competition in Canada, or do they need to be modernized or reflective of those of our trading partners?

Thank you, Mr. Chair.

Mr. Anthony Durocher: I think we've been very vocal and our commissioner has been vocal in saying it is important to review and thoroughly modernize the Competition Act. It is very encouraging that this process has started. Initial amendments took effect in June of last year, and the minister has launched a broad consultation to hear from Canadians about how Canada's competition laws can be improved.

The process that has been started is a very important process. Certainly, the Competition Bureau is very intent on participating in the process and sharing our views on where specific gaps in the legislation can be improved. We are planning to publish our submission in due course with respect to that process, including with respect to our merger review framework.

[*Translation*]

The Chair: Mr. Durocher, Ms. Pratt, Mr. Dagenais and Mr. Schaan, thank you for being with us in the first hour of the meeting on this subject.

Without further ado, I'm going to suspend the meeting briefly to give our next witnesses a chance to get settled.

The meeting is suspended.

● (1150)

_____(Pause)_____

● (1200)

The Chair: Welcome again, colleagues.

We'll now begin the second hour of testimony and questions.

In this second hour, we have appearing as an individual Jennifer Quaid, associate professor and vice-dean of research with the Civil Law Section of the Faculty of Law at the University of Ottawa. She is here, in Ottawa.

We also have with us Vass Bednar, executive director of the master of public policy in digital society program at McMaster University. She is joining us by videoconference.

We also have with us Keldon Bester, co-founder of the Canadian Anti-Monopoly Project, as well as Bryan Keating, executive vice-president of Compass Lexecon.

I'd like to thank all the witnesses for their participation.

Without further ado, Ms. Bednar, you have the floor for five minutes.

[*English*]

Ms. Vass Bednar (Executive Director, Master of Public Policy in Digital Society Program, McMaster University, As an Individual): Good afternoon, esteemed members of the Standing Committee on Industry and Technology, my fellow witnesses and all members of the public who may be tuning in.

As you heard, my name is Vass Bednar. I'm the executive director of McMaster University's MPP in digital society program. I'm a fellow with the Public Policy Forum and a senior fellow at CIGI. I also write the newsletter “regs to riches”. While I'm neither a lawyer nor an economist, and I'm happy to defer to colleagues with richer expertise on more technical or legal questions, I am one of the voices that help broker a bigger picture in the context of competition for Canadians.

I wonder what I can offer you today regarding the now almost soap-operatic Rogers-Shaw merger that you don't already know. For the average person, this process has become more than muddled. We've seen social media chatter conflate the decision of the tribunal with the ambition of the bureau, but that's not insurmountable. That said, this is the largest merger in Canadian telecom history. It affects millions of Canadians and the essential services they receive.

One reflection I have that I think is worth sharing is with regard to the thousands of Canadians—we heard 7,800—who took time to make their voices heard in this process, albeit maybe somewhat misdirected at the tribunal. I wonder if this occurred because there was no formal mode for the public's view to be properly consulted as a complement to policy procedures. You could argue that the minister has a public duty to engage more fulsomely with Canadians regarding this merger and its dynamics, step by step, especially regarding expectations and accountabilities for when it moves forward. This has not quite been done. As a result, the people's appetite to engage on the question has not had an appropriate outlet.

To whom or to what should the people who wrote in, and who care to follow the ups and downs of this soap-operatic but very important and exciting merger, look for accountability? What mechanisms do they or we have to hold Rogers and Shaw and others to account for the claims they have made, or to hold Quebecor to account to deliver what they have promised or what people expect from a wireless carrier? Even the somewhat gratuitous promises that Videotron has notionally made are unenforceable. We heard that earlier as well. Furthermore, Videotron has made no promises, however weak, on protecting jobs, on rural or indigenous connectivity and on R and D investment. What does that mean for western Canada?

We have this opportunity in Canada, with an energized and engaged public that is legitimately interested in improving competition outcomes in Canada and understanding our history of corporate consolidation, and that is fed up—we know that—with what they pay for wireless and Internet services. Competition is a topic that's been the subject of countless CBC Radio segments, a *Marketplace* investigation, various opinion editorials from The Globe and Mail's editorial board, a Canadaland radio series and near endless memes.

Yes, people care deeply about the outcome of this proposed merger. If rates later grow or get jacked up, what is their recourse? Perhaps you've received letters asking you the same question.

At this time, I suppose I would encourage all parties to consider complementary policy interventions that can collide with the current consultation on the future of competition policy in Canada. Keep in mind that this is a very technical and abstract question for most people. Even simple interventions can be powerful here, such as labelling flanker brands, as they do in the U.S., to help people understand that context of competition. We need radical incrementalism for competition in Canada and an all-of-government approach, not one narrow window of opportunity in a politically delicate context as a consolation prize.

Some have called for more public competition in telecommunications moving forward. Perhaps we also need to look ahead to the benefits of a publicly owned cloud, or have a conversation about whether we will have or need a strong Canadian competitor in the low-earth orbit satellite space as Telesat teeters on the verge of bankruptcy. Perhaps matters that intersect with competition and telecommunications should also be considered by the CRTC. Why doesn't it have jurisdiction here except over broadcasting? Also, day-to-day competition law could be made more open.

Finally, of course this merger is a historic hinge for Canada to take competition more seriously and to be a better broker of these processes. I'm super glad we're talking about it today, even though it sort of feels like a post-mortem.

So what's next?

Thank you.

● (1205)

The Chair: Thank you very much.

Professor Quaid, the floor is yours.

[*Translation*]

Dr. Jennifer Quaid (Associate Professor and Vice-Dean Research, Civil Law Section, Faculty of Law, University of Ottawa, As an Individual): Thank you, Mr. Chair.

Honourable members of the committee, I'm pleased to be with you today. My name is Jennifer Quaid, and I am an associate professor and vice-dean of research of the Civil Law Section of the Faculty of Law at the University of Ottawa.

This isn't the first time I've appeared before the committee. I'm pleased to once again address issues related to competition law and our competition policy in the context of what has transpired in the evaluation of the Shaw/Rogers transaction.

I've read the decisions, which I have right here with me—it's a habit I've developed as a lawyer. I don't really intend to discuss the content of the decisions, unless you have specific questions, because the decision has been rendered.

I think one of the current discomforts is that there is the public perception and many people's perception—the Competition Bureau has also given its opinion—and we disagree with the assessment of the tribunal's evidence and the legal issues at the Federal Court of Appeal. However, in law, once the tribunal has ruled, what it has found becomes the truth. We may disagree with the tribunal's decision, but the tribunal explains very clearly and in detail why and how it reached its conclusions. We can disagree, but personally, I am much more interested in the future and how we should respond.

These are the elements I'll address today.

[*English*]

I'm going to make three points, and I will try to make them as briefly as possible. I know I have a reputation for being long-winded. That's the professor in me. I'm happy to talk about other things as well.

The first thing I want to talk about is what the context and what happened with Rogers-Shaw should make us think about in terms of the process of reviewing mergers in Canada. I'd like to explain that a bit.

Second, I think what happened in this case is a bit of a wake-up call in terms of what kind of decision-making body we need for competition. There's been long-standing discussion about whether we have the right model and whether the tribunal.... This is without taking anything away from the devoted and very serious work that the people who have been part of the tribunal have done. I'm taking nothing away from that. I think it's time to reconsider whether we have the right decision-making body.

Third, I think there is a serious question here—particularly in the context of Rogers-Shaw but not exclusively to that—when we have competition interacting with a regulated sphere, and we need to think about some coherence between these different arms of government. In this case, others who know far more about telecommunications than I do.... I am not a telecom expert and I will say that right now, although you're going to hear from one this afternoon: Ben Klass. There is concern that these two parts of the administration are not talking to each other. They're not working well. I think that should concern you.

Coming back to my first point, what does Rogers-Shaw mean for merger review? I'm not going to give you a 101 on merger review, unless you really want it. We have to understand that in Canada, we don't approve mergers, by and large. We have a process by which mergers are notified to the bureau through the pre-notification process if they are of a certain size or if the parties are of a certain size. There are some transactions that fall below that threshold.

Many transactions are notified to the bureau. Most of the time, the bureau will look at them and say, “We don't see any problems. You can proceed.” However, it's not an approval. They're saying, “We won't object.” Sometimes it gets a little sticky and we have to go a little further along in the process. Perhaps the bureau says, “You know what? We need more information.” They might issue what's called a supplementary information request, or an SIR. The idea there is that they need to understand more. That's often a signal that there are deeper concerns.

It's really important to remember this when we start talking about what happened with Rogers-Shaw and the proposal of the remedy later in the game. All the way through this pre-notification process, there's an opportunity to come to a resolution, and that's what happens most of the time. This resolution is obviously agreed to by both sides. Once again, it's the bureau saying, “We're satisfied, and the way things have been changed and the things you're going to do”—whatever that might be, like divestitures or undertakings—“are good enough that we're not going to object.” Ultimately, though, a small number of cases—and it really is a small number—get contested before the tribunal. It's important to reiterate this, because it gets said so many times incorrectly in the press.

● (1210)

The tribunal does not approve mergers. The tribunal hears an application from the commissioner that says they have concerns about this merger and believe these concerns can be addressed by an order from the tribunal. This is a request for an order to resolve serious competition concerns. They have to reach a threshold of being substantial, and that is how this process before the tribunal starts.

Without getting into a lot of detail, what is significant and I think important to keep in mind with respect to why there was such a dust-up over whether we looked at the original transaction or we looked at the transaction as modified is that proposing a remedy in the context of the contested proceeding is not something that's happened before, so it is a new question. The tribunal didn't see a problem with it and said that, at the end of the day, the burden of proof didn't really matter. They thought the evidence was there anyway. But it was an altering of the normal way things are done. I think for the future we need to think about whether that's actually what we want to do.

I will tell you what my concerns are, and I'm happy to discuss them in greater detail.

The first is that we are now creating an incentive to wait to propose remedies until things are further along. That matters from a public-interest perspective because the commissioner doesn't invent a section 92 application overnight. That takes months of preparation. In this case, factually, there was no deal with Videotron on the table until June. They did get documents at that time, and then they got the full documents in August.

I think you need to remember that the level of detail—and if you have looked at the tribunal decision you will know—required to prove anti-competitive effect requires serious econometric analysis and lots of information. If you just have the idea that there's a deal out there, that's not enough for the commissioner to prepare a case. They are going to be required to prove things with detailed evidence. You need to know what the numbers are in that remedy. You need to know the conditions of the transaction to assess its impact. When it comes late in the game, that is difficult.

I will be clear about this. As a factual matter, the tribunal said there was no prejudice in this case. The commissioner didn't suffer any harm. I think we have to be careful about how much we expect public enforcers to just twist on a dime, but I think that's part of the reason they didn't go further with it.

I will say that the Federal Court of Appeal does recognize it's possible that proposed remedies coming after a challenge is filed could be a source of abuse or could be problematic, but they don't want to explore the conditions of that right now because there wasn't really a live case before them. They didn't think it was going to make any difference in this case. That's fair enough, but I think for the future we shouldn't just be passive about this and say we will leave this Rogers decision like this. What are the conditions under which we would be willing to say we're comfortable that deals can be changed and that maybe considering the remedy right into the merger is acceptable?

I have some reservations and I will tell you why. It's a feature of our corporate law and it's a feature of our economic system here that companies don't have to consider the public interest. They are not obliged to do that. They are absolutely entitled and free to consider their profit maximization self-interest. In that context, we need to be a bit careful about saying we're just going to allow unilaterally proposed remedies to be baked in and we will analyze them. I'll put that to you.

My next two points I'm going to say very quickly. They are on the tribunal process. I can't remember if I have said this already, but I think it's a heavy process. It's like a court, yet it's packaged as an expert entity. I urge you to look at the kinds of expertise that are generally used in the tribunal and at whether or not you think that captures the full public interest that might bear on competition matters.

For the most part, the expertise is in business and economics. The question is whether there are other perspectives relevant to the competition questions that come up that we should perhaps ensure are better represented in the tribunal. Honestly, when they talked about accelerating the process and the tribunal had an expedited process.... I'm going to give you a metaphor. Imagine an elephant running. The process of the tribunal is heavy. There are limits to how much you can accelerate a court process, so let's examine some other models that are faster.

Finally—and this is really a very short point on regulatory coherence—I think that as we look at competition reform, we should consider how competition relates to other areas of regulation. In this case—and I am not an expert and I defer to those who are—it is clear that there are some cross-purposes happening here between telecommunication regulation and competition regulation, and I think that should concern you.

● (1215)

I'm going to stop here. I'll be happy to answer your questions.

[*Translation*]

I can respond in French as well, if you prefer.

Thank you.

[*English*]

The Chair: Thank you, Professor Quaid, and welcome back to the committee. Your perspective is always very interesting. In fact, I forgot the time. I'll be much less lenient with my colleagues than I've been with you, Professor, because it was so interesting.

We'll now turn to Mr. Bester for five minutes.

Mr. Keldon Bester (Co-Founder, Canadian Anti-Monopoly Project): Thank you so much to the committee for inviting me to speak on this important topic.

My name is Keldon Bester. I am a co-founder of the Canadian Anti-Monopoly Project and a fellow at the Centre for International Governance Innovation. In the past, I worked as a special adviser at the Competition Bureau and as a fellow at the Open Markets Institute in the United States.

I want to be upfront that Globalive Capital, which has an interest in blocking this transaction and which you will be hearing from later today, is a financial supporter of CAMP. We maintain strict editorial independence in our policy positions.

I would like to start by returning to the conclusions of this committee back in March 2022. They are conclusions that I feel remain relevant today. This committee correctly determined that the Rogers-Shaw transaction should not proceed, but that if it did, the government should use any tools it has to hold the parties accountable for their promises to Canadians. This committee also noted that the law that made this merger possible—the Competition Act—should be reviewed immediately.

As for the situation today and where we might go from here, I would like to stress three points.

First, while it is entirely possible that Videotron replicates its competitive performance in Quebec and eastern Ontario, we should set the bar higher than the competitive outcomes currently present in Quebec. The government should direct the CRTC to monitor whether Videotron makes good on its aspirations to be a disruptive competitor.

Second, if we do not use the ongoing review of the Competition Act to reform Canada's weak merger laws, we should expect to find ourselves in the same situation, if not a more extreme situation, in the near future as corporations continue to use mergers and acquisitions as a way to reduce competition and entrench their dominance. Two changes to this effect could be the presumption of illegality of mergers by dominant or jointly dominant corporations and acquisitions thereof, and an explicit preference for outright blocks, which the commissioner pursued, rather than risky behavioural or structural remedies.

Finally, Canada's telecom policy framework cannot remain stagnant as the market undergoes this kind of structural change. The government should act on the proposed policy direction for the CRTC and direct it to review its framework for supporting wireless competition in light of this transaction, including the consideration of a full mobile virtual network operator—or MVNO—model.

Because of the approach taken by the merging parties and accepted by the Competition Tribunal, Canadians have limited options to hold the merging parties accountable for maintaining competition in Canada's wireless market. All that remains now is the minister's approval of the transfer of spectrum assets and the conditions he attaches to that transfer.

Following the release of the tribunal's decision in late December, CAMP wrote that the minister has the opportunity to strengthen the conditions he laid out in his October statement. These could include more aggressive pricing benchmarks based on international peers, a timeline for reaching those benchmarks and the consequences for not doing so, which could include the introduction of an MVNO model.

Entrepreneurs who build successful companies are entitled to the rewards of their hard work, but those rewards should not come at the cost of competitive markets for Canadians. The end point of a system that puts so much emphasis on getting mergers through is the further monopolization of markets that are critical to Canadians, reducing competition when we should be increasing it.

One role of effective competition policy is to close off exit options that reinforce the monopoly power of incumbent corporations. Concentration only leads to more concentration. An effective competition law, a well-resourced enforcer and the vigilance of elected officials like you are needed to prevent that slide into monopoly.

The committee has done important work studying this issue and raising its profile with the broader public. My hope is that this committee takes what may be its final opportunity to urge the action needed to protect the interests of Canadians.

Thank you for your time. I look forward to your questions.

● (1220)

The Chair: Thank you very much, Mr. Bester.

We'll now turn to Dr. Keating for five minutes.

Dr. Bryan Keating (Executive Vice-President, Compass Lexecon): Thank you.

Good afternoon. I'd like to thank the chair and members for inviting me to appear before you today.

My name is Bryan Keating. I'm an economist at Compass Lexecon, which is a global economics consulting firm.

By way of disclosure, my colleagues and I were retained by Rogers throughout the regulatory process, and comments I'll make today were informed by the analysis we did as part of that process.

I'd like to discuss the transaction from the perspective of economics.

For avoidance of doubt, when I talk about the transaction, I'm really referring to both pieces of the transaction: the transfer of Shaw's wireline assets to Rogers and the transfer of Freedom's wireless assets to Videotron. I'm talking about the transaction that is currently under review, not the original transaction.

My colleagues and I have been involved in assessing this transaction in various forms for close to two years now. In the course of that review, we looked at thousands of pages of documents and many terabytes of data. Our conclusions about the competitive effect of the transaction are informed by that analysis.

To me, it's clear that if you are pro-consumer and pro-competition, you should be in favour of this transaction. I'll talk a bit about why.

From an economist's perspective, the concern about mergers is that you reduce competition: You eliminate the competitor. That's not the case here. There's no situation in which you're going to reduce the number of competitors in any province in either wireline or wireless.

The transaction is going to create large benefits through economies of scale and economies of scope. Really, the only parties that are harmed are potential competitors to Rogers and Videotron, because they're going to have to compete more aggressively. That's good for consumers. That's good for competition.

The conclusion that the merger is good for competition is shared by two independent bodies, as we've already heard today.

In December, the Competition Tribunal, after a month of hearings in which they heard from dozens of witnesses and reviewed thousands of pages of documents, reached the conclusion that the transaction would not substantially lessen competition but would in fact increase competition. Just yesterday, we heard from the Federal Court of Appeal, which affirmed the tribunal's decision and in fact said that from a competition perspective, it was not a close call.

I'd like to talk a bit about why we reached that conclusion.

On the wireline side, even the competition commissioner did not challenge the transaction. Shaw's and Rogers' wireline footprints do not overlap at all. In fact, by combining those footprints, Rogers will benefit from the economies of scale that you realize from having a bigger footprint. We already see the benefits of that competition in the responses from Bell and Telus to the announcement of the transaction and to the process. Both Bell and Telus have announced billions of dollars of investment in their own networks, in part in response to what they anticipate coming out of this merger process.

On the wireless side, the combination of Videotron and Freedom, I think it's fair to say, will help achieve a long-standing policy goal in Canada, which is to create a fourth national—or at least national-scale—competitor. Videotron's footprint will cover close to 90% of the Canadian population after this transaction. As I said, achieving a strong fourth competitor is pro-competition and will achieve a goal that I think has long been sought in Canada.

As with the wireline side of things, there will not be any reduction in the number of competitors in any province. You will continue to have four competitors in every province. What the transaction is going to do is reallocate Shaw's assets, with the wireline piece going to Rogers and the wireless piece going to Videotron. Both are competitors that are well positioned to make use of those assets to enhance competition.

I'd like to say a few words about Videotron, because I think there have been a lot of questions and a lot of talk about various potential divestiture candidates.

From an economic perspective, Videotron is well positioned to compete aggressively. It has a strong incentive to compete aggressively. I think the experience in Quebec is that Videotron has been a vigorous competitor. Prices in Quebec tend to be low relative to the rest of Canada. Videotron also has important assets that it brings to bear. Most importantly, it recently licensed 3.5 gigahertz of spectrum. Combining that spectrum with Freedom's spectrum makes efficient use of a scarce and valuable resource. We've heard questions before about how companies use the spectrum they have licensed.

● (1225)

This transaction is a mechanism for Videotron to quickly deploy its 3.5 gigahertz spectrum into a 5G network, which has the potential to be a really high-quality network. It also creates a lot of capacity in Videotron's network. If you look at the number of subscribers Videotron will have relative to the amount of spectrum and other network assets it will have, it will have a lot of capacity to deliver high-quality services. This creates a huge incentive for Videotron to compete aggressively to grow and attract new subscribers, and that's a benefit to competition.

We've heard questions about Videotron's commitments and whether they're enforceable. From an economic point of view, our analysis doesn't rely on those commitments. It relies on the ability and the incentive of Videotron to compete aggressively.

I have two more comments about Videotron.

We heard questions before about Videotron's dependence on various facilitated agreements with Rogers. One thing that's important to note is that by creating a close-to-nationwide network for Videotron, this transaction will actually reduce dependence by Videotron on other operators in an important respect. Roaming is a critical aspect of wireless network service. Currently, because Videotron is based in Quebec, it has to rely on roaming agreements with other carriers to provide service to its customers outside of Quebec. By creating a national and international network, Videotron actually reduces its dependence on other networks, and that is an important element of competition.

The last thing I'll say about Videotron is that by increasing the scale, it has the potential to realize other benefits in terms of negotiating for handsets, network equipment and international roaming. For all these things, Videotron has a strong possibility to reduce its costs relative to what exists today. One can expect those costs to be passed on to consumers in various forms of benefits.

We've made a written submission for the committee, which involves more detail, but I'm going to stop here. I'm happy to take any questions from the committee.

The Chair: Thank you very much.

We'll now open up the discussion, starting with MP Vis for six minutes.

I'm sorry. It's Mr. Williams.

Mr. Ryan Williams: Thank you very much, Mr. Chair.

Dr. Keating, thank you for your comments.

On the topic of the divestiture as a whole, when we look at the process of what happened, Rogers, the number one market share owner of wireless in all of Canada, was solely responsible, not Shaw, for vetting and picking its number four competitor, which is Videotron. The company itself was looking to buy Shaw and was the only entity that was going out to pick its competitor.

Do you think that's a fair process?

Dr. Bryan Keating: I guess I look at the outcome of the process, which is that Videotron is the divestiture buyer. From my perspective, Videotron is the best situated firm in Canada to acquire Freedom's network assets. It's important to look at the outcome. I understand there are questions about process. I also understand there were at least two other potential divestiture buyers that were proposed at some point. I understand—

Mr. Ryan Williams: I'm going to ask something else.

Mr. Bester, you're representing one of the other organizations.

Globalive's offer, for instance, which was almost $1 billion more for the asset, wasn't included. Do you believe the process was fair, in which Rogers, the number one market share holder, picked its fourth competitor?

Mr. Keldon Bester: I think there's a concern with the process, and again we go back to the outcome. I go to the bureau not being satisfied. The bureau prefers to negotiate consent agreements and they do that much more often than going to litigation.

If I look at the bureau's not accepting Videotron as a remedy buyer, that's a red flag to me. Any competitor that is dependent on another competitor for key elements of its expansion plan or its competitive potential is at risk. That goes for companies beyond Videotron, including what Globalive is proposing. The process—

● (1230)

Mr. Ryan Williams: I'm sorry, but I have only so much time. Thank you very much. That makes sense.

Professor Quaid, you mentioned that this dispute of the remedy from the bureau is new. A new precedent was set when Rogers did not accept the remedy and moved forward with the deal, and of course with what happened to the bureau.

Why is it new? Is it a big deal that a new precedent is perhaps being set in this process?

Dr. Jennifer Quaid: What's new is that it has never come up that a substantial modification to a deal has been challenged under section 92. It happens that there are modifications to deals, but they tend to happen further upstream in the process.

The Rogers-Shaw merger, like many and most mergers, is pre-notifiable, so the bureau gets notice that the transaction is coming, and that's the moment when you say.... Any set of merging parties that know what they're doing has looked at their transaction to see whether there are any anti-competitive problems, and they probably have solutions in their back pocket that are going to come out as soon as the commissioner says they have some concerns. They'll say, “We thought about that, so how about we do this?”, and that's the way it works.

What's unusual here is that it was not until the commissioner finally filed a section 92 application that the prospect of a sale to Videotron, which had been in the background for a long time but Rogers had said they were not interested.... They tried to sell to private equity first. I was not in those back corridors and I was not privy to those conversations. I don't know what was said and how much was known, but it's pretty clear from the commissioner's perspective that preparing to challenge a merger that was suddenly changed radically...is a big difference.

What hadn't been decided by the tribunal before is whether we can change the order of the steps that normally happen and say that first you decide if there's a competitive problem, and then you decide if there's a remedy. As is always true in litigation, he who asserts must prove, so if Rogers says that this is the right solution, they bear the burden of proving that it addresses the entirety of the competitive concerns.

Mr. Ryan Williams: The question I have for you, then, is, what advice would you have for the minister right now? The minister does have authority to transfer the licences from Rogers. What advice would you give to this committee to give to the minister right now?

Dr. Jennifer Quaid: That's a tough one, because the minister's power is discretionary. It's not bound by the competition process and, in some ways, it's a bit of an accident of the fact that telecom is a regulated industry. If this were another merger in another industry, this would be the end; there would be no further step. It's just like this because of the nature of telecommunications regulation in this country.

Independent of what I think of the merger and the merits of the merger, I worry about the use of political discretion as a way of accomplishing an objective that was sought through a proper judicial process. I think the fear of political interference is worrisome, and the minister has to figure out how he can get comfort that these conditions will be met.

Mr. Ryan Williams: To your point, you've mentioned quite a bit about not having public disclosure. The minister is going to get the public's input on this. Would you say that the minister should perhaps be looking back at this process and using it as a lesson to look into the flaws that exist in the Competition Act right now in order to fix it and relook at that process?

Dr. Jennifer Quaid: There is an ongoing consultation on competition reform, and I hope that Canadians who have reactions to what happened in Shaw, whatever those are, are feeding into that consultation, because those are more data points.

Mr. Ryan Williams: Thank you so much.

I have one last question and it's for Ms. Bednar.

Are you comfortable with the future of competition in Canada right now given the precedent being set?

Ms. Vass Bednar: I'm comfortable that we have a precedent for reviewing our laws, casting a wide net, going beyond the usual suspects and making sure that the future of Canada's competition law is not shaped just by lawyers and economists, who can be remunerated for exploiting the weaknesses in the law and continuing to perpetuate Canada's weakness. I have to remain optimistic or I can't be a public policy person.

The Chair: Those are words of wisdom for us all. Thank you.

I'll now turn to MP Dong for six minutes.

Mr. Han Dong (Don Valley North, Lib.): Thank you very much, Chair.

I want to thank all the witnesses for coming.

Professor Quaid, it's always good to see you. I listened very carefully to what you had to say, and I'll have a question for you later.

First, Mr. Bester, you disclosed the relationship between the Canadian Anti-Monopoly Project and Globalive. Are you are aware of any sponsoring relationship between Globalive and any of the major telecom companies?

Mr. Keldon Bester: No, I don't believe so.

Mr. Han Dong: Is there any working relationship at all with Rogers, Shaw, Bell or Telus?

Mr. Keldon Bester: Certainly I believe that Globalive's plans for expansion involve a network-sharing agreement with Telus, and I think that is a real question for me. Again, that seems like the kind of dependency that we are similarly worried about with Videotron.

● (1235)

Mr. Han Dong: Does that affect your perspective or your position, particularly on this merger?

Mr. Keldon Bester: My perspective is that the Globalive solution is really not a silver bullet for this. I think the merger should not proceed, and we live in a sort of second-best world. In either case, and as I led with, I would like the minister to try to use the tools he has in order to encourage whatever outcome he chooses to be the most likely to deliver benefits to Canadians.

Mr. Han Dong: From your perspective, if the minister rejects the transferring to complete the merger, would Telus and Bell, the major competitors, benefit from that decision?

Mr. Keldon Bester: It depends. Shaw is a going concern. I saw them as a serious source of competition out west, so I believe that Telus, Bell and Rogers—the oligopoly structure—have an interest in maintaining that structure in whatever form it may come. I think rejecting the deal would keep Shaw in play, in whatever form it continues to be, which would be a force against any of the big three that it interacts with.

Mr. Han Dong: Speaking of Shaw, my next question is for Ms. Bednar and Dr. Keating.

In your experience, if the government or the minister were to reject the merger, what do you think would happen to Shaw and how would that impact the competition in Canada's telecom sector?

We'll start with Dr. Keating.

Dr. Bryan Keating: Look, there's been a rigorous process that we've just gone through, and it concluded that this merger, this transaction, including the divestiture to Videotron, is a pro-competitive one. If the minister were to not transfer the spectrum licences, you would lose the benefits you get from this transaction. That's a real cost to the Canadian economy and to Canadian consumers.

With respect to the question of what Shaw would do if this transaction were not to occur, it's probably a question better put to the Shaw witnesses this afternoon. I'm not going to speculate on what their alternative plans are, but if it is blocked, I think you risk losing real benefits that are going to arise from this transaction.

Mr. Han Dong: Go ahead, Ms. Bednar.

Ms. Vass Bednar: It's an interesting thought experiment. I would point to what we heard about the rigorous competition we're anticipating in this space and the opportunity for innovation. I wonder how innovative telecommunications firms have been in Canada over time, when really what they've benefited from is advancements in the products and services they provide Canadians on the physical infrastructure they've built. Is it innovation if over time you provide a telephone line, then a television cable, then dial-up Internet, then wireless Internet and then one cellphone to a family home, and then you have everyone with a cellphone? That's a large part of how these companies have been able to grow and reward their shareholders.

What would happen to Shaw? Well, maybe these companies are out of benefits that they can get a free ride on and call innovation.

Mr. Han Dong: I'll go back to you, Dr. Keating. You talked about the benefits to Videotron and how in turn there are benefits to consumers. You talked about the benefits of this deal to Shaw.

Isn't Rogers the biggest beneficiary in this whole merger? I noticed that you haven't talked about how Rogers would benefit from this deal. In my mind, after talking to my constituents, they seem to see Rogers as the biggest winner should this merger go forward.

Dr. Bryan Keating: Rogers wants to do this deal because it expects to benefit from it, of course, and I think what's important to remember and keep in mind is that the wireline aspect of this deal is a huge proportion of it. Wireline is a large portion of Shaw's business. That's the piece of Shaw's business that Rogers is acquiring.

I think Rogers certainly will benefit from acquiring Shaw's wireline assets, but they're going to benefit along with consumers and along with—

Mr. Han Dong: I just wanted to make sure of that, because it sounds like everybody else is benefiting from this deal, but obviously Rogers will benefit largely from this deal as well.

Professor Quaid, if the minister rules to reject the transfer, he will be positioning himself against the ruling of the tribunal. In your experience, has that happened in the past? Is there a precedent?

● (1240)

Dr. Jennifer Quaid: You're asking something that I don't know directly, in the sense that I'm not a telecom expert. I can't tell you how many times the minister has been called upon to exercise discretion in awarding spectrum licences when there was a question about whether he or she would do so.

I would say, from the perspective of a lawyer and someone who looks at the law, that having a minister who makes a decision on an incident is probably something that you would hope to avoid. That's because the spectrum licence is not the entire transaction. You would make a decision on that as a way of indirectly achieving something that the properly constituted decision-making body does not conclude. I worry about that because it's going to look like political interference or a workaround.

As I said, this is a curiosity or, if you will, a particularity of the fact that we're in telecom and not in another industry, where it would have been the end of the matter with the decision of a court of appeal. However, I think the minister is entitled to say he wants to look at the full ramifications and wants to understand exactly what's involved, because when he spoke in October, we didn't have a decision from the tribunal. We didn't know how things were going, and he put out some things that he expected. However, I suppose, within the exercise of his discretion and in consulting with the right people and getting the information he needs, he could maybe add to those conditions or insist on mechanisms that allow for accountability.

The tribunal also recognizes that these conditions are not legally enforceable. I worry, honestly, that these kinds of undertakings have been done in the past. I think every one of you probably remembers times when there were undertakings made in good faith. We said, “We'll keep our head office here” or “We'll keep plants open in Canada”, and then circumstances changed and we reneged.

There is a business reason for the change, but it happens nevertheless. To the extent that the deal rests on that, you have to worry about it.

Mr. Han Dong: We heard from the bureau that—

The Chair: I'm sorry, Mr. Dong. We are well over time.

Dr. Jennifer Quaid: I'm sorry. I took too much of your time.

The Chair: No. That's okay. I blame MP Dong, not you, Professor Quaid.

Mr. Han Dong: It's all right.

[*Translation*]

The Chair: Mr. Lemire now has the floor for six minutes.

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

I'd like to thank all the witnesses for their testimony.

Mr. Keating, after the hearing, which lasted a month, the tribunal ruled in favour of Shaw, Rogers and Videotron. That was December 31. Expert testimony was cited extensively, particularly that of Mark Israel from Compass Lexecon.

The tribunal found Mr. Israel open, candid and knowledgeable, and that he did expose a number of significant flaws in the opposing experts' analysis. Where Mr. Israel and the opposing expert disagreed, the tribunal noted that Compass Lexecon was the expert who provided the strongest and most convincing testimony. The tribunal concluded that Mr. Israel had convincingly demonstrated that the opposing expert's model would not have predicted a significant price increase and agreed with Mr. Israel that the opposing expert's predicted price increase in the wake of the merger was highly questionable.

We just heard from representatives of the Competition Bureau. However, when they testified, they had not studied the new deal between Shaw, Rogers and Quebecor. They insisted on looking only at the agreement between Rogers and Shaw. The tribunal determined that the Commissioner of Competition had not fulfilled his responsibility to determine certain impacts the agreement would have.

Could you give us examples of how the Commissioner of Competition has failed to fulfill his responsibilities in recent months?

[*English*]

Dr. Bryan Keating: I was listening to the translation. I hope I properly understood your question. I think you were asking about the tribunal process and some of the economic analysis that was undertaken.

It was a process with 40-plus witnesses, including my colleague Dr. Israel. The bureau had its own economic expert, Professor Miller from Georgetown. There was a long discussion of the modelling. I think we had a lot of critiques of Professor Miller's model. One of the most important ones was that he was calibrating his model to data that was almost two years old. Because he was using old data, he was not calibrating his model to a proper, forward-looking view of what the industry was going to look like.

There were many problems with the model. We criticized them. I don't have time to get into all the technical details, but I will say that the tribunal largely, as I think you said in your question, agreed with our analysis and agreed with the critiques that Dr. Israel put forward about the bureau's economic expert. It ultimately concluded that his model was not sufficient to show there was any substantial lessening of competition because of the transaction.

● (1245)

[*Translation*]

Mr. Sébastien Lemire: Do you see Videotron as an independent player from the three giants Bell, Telus and Rogers?

[*English*]

Dr. Bryan Keating: Videotron is clearly an independent player. It is its own company and operates effectively today in Quebec and will operate nationwide as this transaction is cleared.

There is no question that they will have various agreements with Rogers as part of their ongoing operations. There has been a lot of discussion about whether that will interfere with their incentive to compete.

I think the tribunal process and our analysis showed pretty clearly that Videotron will be able to compete effectively and independently. They will have strong incentives to lower prices to compete vigorously, just as they have done in Quebec, notwithstanding the fact that they will have certain agreements with Rogers, just like what happens throughout the Canadian telecom industry and, frankly, throughout telecom industries across the world.

[*Translation*]

Mr. Sébastien Lemire: If I'm not mistaken, Videotron also has deals with Bell, including one to expand its network. That's how most businesses in the system operate.

Mr. Bester, right off the bat, you said that Globalive was one of your financiers. Thank you for declaring that conflict of interest. It's to your credit, under the circumstances.

I'd like to come back to Project Fox, an attempt by Telus to boost Globalive's bid to acquire Freedom Mobile.

Do you consider that approach, which was found in a document released by the Competition Tribunal, supports consumer independence from the three telecom giants, and that the Globalive bid funded by Telus is part of a strategy to foster independence and create a credible fourth competitor?

[*English*]

Mr. Keldon Bester: I think the exact same concerns are present in any sort of deal, as you described, and again we have a question there. We are now in a world where the replacement competitor, because of laws that really don't favour mergers being blocked and don't encourage competitors to continue to compete organically.... We live in a second-best world, where we're thinking about different options in different cases and where, to different levels of intensity, competitors are dependent on their own competitors.

On the question of what the incentives are of those big three players, in the case of Rogers and in the case of Telus, that's present in both situations.

[*Translation*]

Mr. Sébastien Lemire: However, by going so far as to finance a smaller company's bid to make that acquisition, wouldn't you say that an arm's length relationship is being created with that company?

[*English*]

Mr. Keldon Bester: Do you mean related to the telecom provider?

[*Translation*]

Mr. Sébastien Lemire: My time is running out.

If Globalive had acquired Freedom Mobile with Telus's money, that would not have introduced a fourth independent competitor to the market.

[*English*]

Mr. Keldon Bester: If that were the case, I would be here saying the exact same thing about Globalive, because, again, the big question is, how does that dependence affect the incentive to compete, and why would Telus and Rogers create a truly disruptive competitor for themselves? I think that's the big question here.

[*Translation*]

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

The Chair: Thank you, Mr. Lemire.

Mr. Masse, you have six minutes.

[*English*]

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

It's normal and is part of our democracy to have the Minister of Innovation intervene not only in this situation but also in general. We've seen the Investment Canada Act, and we'll have more legislation on that coming up.

I look back at the competitive issues. Zellers being taken over by Target didn't help competition. Future Shop being taken over by Best Buy didn't help competition. Rona was taken over by Lowe's, and that didn't increase competition. In fact, the undertakings there were very modest. Also, U.S. Steel is gone.

There have been rejections, and good examples are—thank goodness—potash and MDA regarding satellites. Those have been strong things. We also have the minister, who directs the CRTC to some degree by having a mandate letter, which comes from the Prime Minister. In mere fact, we're dealing with a public asset here. It's the spectrum that we push out in the system.

My first question is for Mr. Bester, and it's with regard to where we are now in our policies. I'm curious about that. Is there any other comparative out there in the United States, Australia or other places? I know the U.S. has antitrust legislation that is different from ours, but what else can we look at to fall back on? Do we need to modernize some of our approaches here?

The U.S. is actually looking at some of the antitrust stuff going on now with Google. Historically, this comes as part of their culture, and we can look at one of the first cases, the one with Standard Oil. It's part of their actual functioning market economy to have this type of protection for consumers. Could you comment, please?

● (1250)

Mr. Keldon Bester: The U.S. and Australia in particular are great examples. Australia in the nineties embarked on a really deep policy dive to increase competition and productivity. Part of that was the creation of a really strong central competition regulator, the ACCC, the Australian Competition and Consumer Commission. That's the kind of model we need to be looking at right now. I think competition has been on the back burner. We've had an approach, particularly related to mergers, that is quite lax. Look at where we are today, where the largest telecom companies can be successful in purchasing a disruptive and upstart competitor.

Models like the work in the U.S. and in particular Australia—which even after that work in the nineties is now looking to say, "Do we have the tools?" and is likely going to reform their laws—are two great models to look toward.

Mr. Brian Masse: I'm going to move to Ms. Bednar. You mentioned innovation in the industry, and I think *Marketplace* did a good review of some of the different countries out there. I'll go back to Australia. I liked your comment that often it's been the case that geography is used as an excuse for high costs and rollout. I'd like your opinion as to whether or not you think that's valid with regard to the issue.

Second to that, there is a condition. The minister is asking for a 10-year commitment from Videotron, but I'm thinking about how this industry is going to change over the next year, let alone 10 years from now. We heard evidence just prior to this panel that there have been no penalties for those who have used spectrum to their advantage by selling it as an asset and a resource versus deploying it.

Could you comment, please?

Ms. Vass Bednar: Sure. Over time, Canada's geography hasn't changed, so I don't disagree with the arguments that help to explain why Canadian telecom infrastructure, the physical infrastructure, has tended towards oligopoly. I don't see that changing in the future, but we have to remember our telecommunication system is one that we built and that continues to evolve. It's not set in stone. We're seeing more experimentation on the services side and more independent ISPs. We're seeing more municipalities looking to link up their fibre optic network cables. We're seeing the low-earth orbit satellites supplement or complement services in areas where people don't have the best connectivity options.

In terms of what things will look like in 10 years and these promises, I suppose that's why I was also challenging us to think a bit about where the accountabilities are and what narrative we're going to have. It's certainly one thing to make a very econometric argument to the tribunal. Those arguments haven't been translating well for people in Canada. People still feel confounded by this merger going forward, and that's okay. Maybe there's a lot that needs to be corrected and brokered, but who or what is best suited to do that? It's not going to be the competition tribunal, and I think that's perhaps a task for this committee to think deeply about going forward.

Mr. Brian Masse: Thank you.

Ms. Quaid, one of the things we are really challenged by with the business operations we're dealing with here today is that many other small, medium and, of course, large businesses and public institutions—we've seen this even during the pandemic—are quite tied to the costs and the servicing. We've had testimony in the past at these hearings that even places like Mississauga, which is in the skilled development of tool and die mould-making, aerospace and so forth, couldn't get high Internet access speeds to their locations just outside the Toronto area, the GTA.

What obligation does the minister have to balance this out? There is a whole series of economic productivity issues at stake here, and we're baking in extra costs, I would argue, as we continue to do these types of mergers.

Do you have an opinion on what balance the minister has for all the other susceptible costs that businesses have from decisions over competition?

● (1255)

The Chair: I would ask for a brief answer, please.

Dr. Jennifer Quaid: I'll take that as a compliment. It's really hard to answer that question, very honestly, in part because, as I've declared, I'm not a telecom-specific expert.

What I would say, though, is that, at a broader policy level, these are questions that have to be looked at holistically. I'm a big advocate of transversal regulation. The different parts of the regulatory state need to talk to each other, and economic productivity and the development and continuing evolution of the Canadian economy have to be done with deliberation and intention—not just by letting things happen.

I'm one of those people who believe there is a place for regulation and direction. That doesn't mean you create sclerosis for business, but you create something to make sure that access is provided. If you rely simply on the wealth-maximizing incentives of private actors—and they are perfectly entitled to organize their affairs in that way—you may not get the outcomes you want from a public policy perspective. You have to look at how you can leverage the motivations of private business to offer the services you want, and that's not an easy task.

I'll stop there.

The Chair: Thank you very much.

With the blessing of colleagues, we'll go for one last short round, which will put us about 10 minutes over.

I will go to Mr. Vis for five minutes.

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses appearing today and thank you to my colleagues. I'm joining you from Mission—Matsqui—Fraser Canyon, where Shaw has a major presence.

My constituents are really struggling with the cost of living right now. As their representative, I am coming forward on their behalf today. They're asking me, “Brad, will this merger result in a more affordable Internet bill and a more affordable cellphone bill?” I'm not necessarily sure it will. However, I'm also highly suspicious of Rogers' claim that it is going to invest $6 billion in western Canada in the rural and indigenous communities that I represent.

During the pandemic, a mother who lives in Hatzic Valley and is still on Shaw's dial-up Internet asked me, “Brad, why won't Shaw simply cross the road and extend the line to my house?” They haven't done so, and they've failed to use the spectrum they received from auction to the benefit of Canadians who rely on this essential service. I'm approaching everything that I say in my remaining four minutes or so with that.

Dr. Keating, Shaw Internet customers right now.... I'll just ask what prices will be available to the two million existing Shaw Internet customers who today get zero-dollar talk and text and a $25, 25-gigabyte plan. Is Rogers planning on going down to those prices, or should those Shaw customers expect—if this merger goes through—something similar to the Rogers prices, which are, I believe, at $35 and $85, respectively?

Dr. Bryan Keating: You'll have Rogers witnesses on a panel this afternoon, I believe. You should put that question to them. They're better placed to answer specific questions about what plans they're going to offer.

What I can say is that from an economic perspective, thinking about the incentives that this merger and transaction will create, our analysis has shown that the transaction will increase competition, which will put downward pressure on prices. The tribunal, affirmed yesterday by the Federal Court of Appeal, reached the same conclusion.

I think these questions you get from your constituents are valid and important questions. Our analysis shows that the answer is yes, they are going to get better deals. That's the incentive the transaction creates.

Mr. Brad Vis: On mobile rates, the Competition Bureau's experts found that even with the sale of Freedom to Videotron, prices for Shaw Mobile, Rogers and Fido would increase in the range of 12% to 14%. The tribunal found in paragraph 246 that even if you adjust these price increases to reflect Rogers' arguments—I'm assuming you're the one who wrote them as their representative—prices will still go up.

What should my constituents and Canadians across this country be expecting from this merger? Should they expect higher Internet prices and higher cellphone prices?

● (1300)

Dr. Bryan Keating: As an example, I think it's undisputed that the incentives for Freedom's prices are to go down. I think the model of the bureau's own expert, Professor Miller, whom I talked about before, showed that Freedom's prices would go down. Our analysis found the same thing, so it is true that different plans will have different movements and prices.

I can't speak to the exact magnitudes, but there is a clear incentive for the transaction to put downward pressure on prices because there is no diminution of competition, and you get clear benefits from reallocating Shaw's assets, as I talked about before.

Mr. Brad Vis: As a representative of Rogers, going back to the $6 billion, what guarantees will be provided to my constituents that those investments will actually be made? This is the difference of running a business and having access to education for my constituents. Why should my constituents trust Rogers and Shaw?

Dr. Bryan Keating: Again, you will have Rogers witnesses here this afternoon. You should talk to them about their specific plans and commitments.

All I can say, from an economic point of view, is competition will increase as a result of this transaction. That creates incentives for Rogers to continue to invest in its network, just like Bell, Telus and Videotron will have to do.

Mr. Brad Vis: Thank you.

Professor Bednar, with my remaining time, I'll note that Shaw has a weak record of developing the spectrum that it has acquired in B.C. and Alberta. Do you feel this merger will improve the development of these essential infrastructure projects that everyone relies upon?

Ms. Vass Bednar: I think that's difficult to speculate on. However, what I appreciate about this moment is that we have more eyes on the street than ever before when it comes to this merger in Canada and more of a watchdog function coming from everyday people, and there's great interest in the data that's shared through Statistics Canada and ISED on costs and how these decisions materially impact people.

I'm sorry I can't be more helpful.

Mr. Brad Vis: Thank you.

Professor Quaid, do you—

The Chair: Mr. Vis, I'm sorry, but that's time. We're over the five minutes. Thank you.

Mr. Brad Vis: Thank you, Mr. Chair.

The Chair: We'll now turn to MP Erskine-Smith for five minutes.

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

Professor Quaid, I want to start with you because you expressed some discomfort with the minister relying upon his discretion under the spectrum licence transfer regime to affect an outcome related to competition. What's your comfort level with allowing the largest merger in Canadian history to proceed under outdated legislation?

Dr. Jennifer Quaid: Listen, that's a big question to answer. It's a bit hard for me to do that because I didn't listen to all the evidence of the tribunal. I didn't see how the witnesses came across and so on. Whether we like it or not, the tribunal made the assessment of the evidence they did and they came to the conclusions they did. I guess I worry about—

Mr. Nathaniel Erskine-Smith: Pause there, because the question they were answering was whether the deal is likely to substantially lessen competition. I am entirely uninterested in that question. The question I'm interested in answering is whether this is good for competition in Canada. We have a heavily concentrated oligopoly. Rather than moving the pieces around within that oligopoly, it strikes me that we should be breaking it up and adding competition at every opportunity we can.

We have an opportunity. You say it's a political decision, but the political decision is this: Can we improve competition in telecommunications and reduce prices for Canadians at the same time? The Competition Tribunal can answer their question related to the Competition Act. The Federal Court of Appeal can uphold that decision. I don't see why we should be bound by anything related to those questions when they're the wrong questions.

Dr. Jennifer Quaid: That's fair enough. I think that's the role of the consultation process. As legislators, you absolutely have the power—and I think this is the right way to look at it—to look at the state of the rules and propose changes, and I forcefully encourage you to do so. I believe there are problems with the merger review provision, but I worry about using this discretionary decision as a workaround while we wait to make real changes to the law.

Mr. Nathaniel Erskine-Smith: Yes—whereas I might see it as a way of actually addressing the fact that the law is so broken to begin with.

Let's talk about the conditions the minister might impose. The minister has laid out two conditions. The minister could impose additional conditions, and the minister probably should impose additional conditions, but let's look at the two conditions the minister has currently proposed. One is related to the duration of time that Videotron would have to maintain the licence. It's a 10-year period of time. Is that enforceable in any way whatsoever?

Dr. Jennifer Quaid: It's enforceable to the extent that a 10-year period of time is something we can watch. We can watch the elapsing of time and can observe whether or not it's being held. Yes, you can, but—

● (1305)

Mr. Nathaniel Erskine-Smith: Then we can say, “Oh, no. They didn't do the thing we said they should do.”

Dr. Jennifer Quaid: Yes, basically. I mean, there isn't a way.... You can't go to court and say, “You didn't follow my conditions.” I don't know who would enforce that, so—

Mr. Nathaniel Erskine-Smith: That strikes me as a problem.

Dr. Jennifer Quaid: —it would be reputational.

Mr. Nathaniel Erskine-Smith: Yes, and that's worked in the past.

Related to that is a question that colleagues of mine have asked. I think it's a question that's well directed to you. In an ordinary situation related to remedy, the Competition Bureau could be heavily involved in the remedy and say that it's going to spin off Freedom Mobile and have comfort in who the recipient of Freedom Mobile ultimately is. Mr. Keating is comfortable. He obviously has a particular client, and he's put a lot of work into suggesting that there's going to be strong competition as a result of this deal in the hands of Videotron.

The Competition Bureau is certainly not comfortable with that. Why should we as Canadians be comfortable if the Competition Bureau is not? Why should we be comfortable with the idea that the first player in an oligopoly is ultimately, in this particular instance, deciding who the fourth player in the oligopoly will be?

Dr. Jennifer Quaid: That's a really hard question to answer, I think, in the sense that you would need to look at what substantiates the belief. The bureau obviously has the evidence that they think supports that question. One of the things you may want to ask about is this: Just because there is the capacity to lower prices, or the belief that you will, that isn't necessarily enough. Will those price decreases actually occur? Creating the capacity for competition to happen may not be enough. The classical belief is that you create the conditions and they should naturally occur, but I think we observe that sometimes that isn't the case.

I think the larger question about concentration in telecommunications will require more than just saying we want to change the competition rules, honestly. I think there are characteristics to the telecommunications industry and to why this industry is concentrated that bear some analysis, but I don't think it's beyond.... Absolutely, this is your job as an MP. It's what legislators should do: “We don't like it, and we're going to come up with a solution.” That's certainly the case. It's just that it's not going to be a legal decision; it's going to be a political decision. However, we've made political decisions about mergers before. We said no bank mergers.

Mr. Nathaniel Erskine-Smith: That's understood, and from a political perspective—as I run out of time—I think it's hard to imagine that Rogers would accept a deal taking much less money if it were going to mean the most competition against Rogers. It just boggles the mind.

Anyway, thanks for the time. I appreciate it.

The Chair: Thank you, Nate.

We'll now turn to Mr. Lemire for two and a half minutes.

[*Translation*]

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

Mr. Keating, can you tell us what kind of company Globalive is? How would you qualify its actions in the context of the current proposal?

How did it behave with Freedom Mobile's predecessor Wind Mobile, founded by Mr. Lacavera?

[*English*]

Dr. Bryan Keating: I'm actually not an expert in Globalive's business. As I understand, it is affiliated with or run by an individual who has been involved in the telecom business in Canada before.

From my perspective, I guess the important thing to think about is that they don't have the assets that Videotron has. They don't have, in particular, licences for spectrum at 3.5 gigahertz.

If you're thinking about what's the best allocation of resources in the Canadian economy and how best to deploy spectrum that's already licensed, going back to the question that was asked before, the divestiture transaction with Videotron is the best possible combination of network assets that I can see in the Canadian economy. You're combining Freedom's network assets and Videotron's network assets. That's something Globalive, as I understand it, does not have.

[*Translation*]

Mr. Sébastien Lemire: Thank you, Mr. Keating.

I'd like to come back to Project Fox, because there are some interesting aspects to it that are worth pointing out. One thing that opponents of this merger are doing is local campaigns with their MPs. They're also campaigning with the Minister of Innovation, Science and Industry to scuttle the deal.

They are also trying to provoke a sense of alienation among activists by using phrases like “scuttle the deal” and “postpone the ruling”.

Oh, and while we're at it, could we review the Competition Act? That's just a coincidence. Might we also encourage third-party acquisitions, as Mr. Lacavera suggests in particular by promoting the NoMerger.ca initiative on his Twitter account to urge the public to oppose the merger? OpenMedia is kind of doing the same thing by urging the public to write to Minister François-Philippe Champagne.

My question to Ms. Bednar and Dr. Quaid is this: What do you think of these strategies, which supposedly involve Canadians but are commissioned by a business for lobbying purposes? Is it truly an independent process?

● (1310)

Dr. Jennifer Quaid: Mr. Lemire, in my opinion, you're raising a thorny issue. When individuals mobilize the people out of self-interest, you have to wonder how that serves the public interest.

That's why I always hammer away at the same idea, that I support public consultations. I constantly encourage all members of the public to speak out during this consultation, no matter what they have to say. In my view, government and parliamentarians have a duty to hear from the people in an unfettered manner, with no labels, no packaging, and so on.

On the other hand, you can't completely ignore mobilization attempts either, because members of the public aren't always in a position to properly structure their opposition. So I'm lenient about that, because I know that, right or wrong, true desire and true frustration must be expressed. It's not my place to say who's right or wrong.

However, it's clear to me that we have a gap between the people's understanding and the legal and economic understanding of this transaction's implications. A balance must be struck between the two if we want to avoid a revolt over the process.

I feel that no one benefits from the public being skeptical of the merger rating and assessment system, among other things. I believe we all have a vested interest in making sure we close that loophole. However, I'm not necessarily the person who can do that. I'm doing what I can, but I think that collectively we need to inform the public. I understand these mobilization efforts, even though they may be clumsy.

The Chair: Thank you very much.

We will now go to Mr. Masse for two and a half minutes.

[*English*]

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

Mr. Keating, there's been a lot of talk about costs for consumers, but what does your analysis say about the jobs and employment for the various companies that are involved?

Dr. Bryan Keating: I think it's fair to say that neither we nor the bureau's economists focused on the labour aspect of the transaction, so it's not something I'm well positioned to comment on. We were focused on the effect on prices, on quality and on consumers.

Mr. Brian Masse: Wouldn't that be important for your estimation of whether Videotron is going to act this time with regard to spectrum? We've seen what Elon Musk has done with Twitter without employees.

The most important thing behind all of this is, of course, that while we have our own pocketbooks and our own costs, these are real people and real jobs. It affects the companies' capabilities to roll out the promises that are projected.

Why wouldn't that information be part of an analysis?

Dr. Bryan Keating: I absolutely agree that thinking about jobs and employment is important, especially to the people most directly affected.

With respect to thinking about Videotron's incentives and their plans going forward, that's not primarily driven by what's going to happen to employment per se. It's driven by competitive incentives.

I think it's clear from the competitive analysis—both from what we did and from what the bureau's experts looked at—that because Videotron is going to have so much capacity, a really good network and strong incentives to go out and compete, it should, in principle, ultimately be good for employment. However, it's not something we analyzed directly.

Mr. Brian Masse: Thank you.

Mr. Chair, I want to conclude by saying that there probably hasn't been enough conversation about that. We talk about the cart and the horse and all of those things. We're missing a component here.

How does any of this stuff roll out and how are promises made if employment isn't analyzed in this whole endeavour? There can be no expectations...that we've received, aside from promises, which I have seen for so many years on this.

Thank you very much to the witnesses for being here.

[*Translation*]

The Chair: Thank you, Mr. Masse.

I'd also like to thank all the witnesses who took part in this exercise this morning.

Thank you for sharing your views with us.

I'd like to advise committee members that we will reconvene in 45 minutes for further hearings.

The meeting is adjourned.