

Why Bell's Bid to Buy MTS is Bad News

Report Submitted to the Competition Bureau assessing Bell
Canada Enterprises' proposed bid to acquire Manitoba
Telecommunications Services



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Executive Summary

Following Bell Canada Enterprises (BCE)'s May 2, 2016 bid to acquire Manitoba Telecom Services (MTS), the Competition Bureau initiated a review of the proposed acquisition, and invited Canadians to share their views on the merits of the deal. This report is our response to that invitation.

The proposed deal would add MTS, Manitoba's largest provider of telecommunications, Internet, and next-generation TV services to the largest company of its kind in Canada: BCE, which is already nearly twice the size of its nearest rivals (Rogers and TELUS) and which has been fighting tooth-and-nail against recent efforts by the CRTC and federal government to inject more competition and choice into this field. If the merger is approved, the communication industry in Manitoba will be radically transformed, and competition lessened substantially, with far-reaching implications for all Canadians as well.

Over the past two years, both the Competition Bureau and the CRTC have each determined that the national mobile wireless operators (i.e. Bell, Rogers, and Telus) collectively possess market power in the national retail and wholesale markets for mobile wireless services. Upon a review of the evidence, this report demonstrates that MTS is a vigorous competitor that acts as an effective constraint on the exercise of the national carriers' market power in the Manitoba marketplace. Permitting BCE to acquire MTS at this time would disregard these findings, and would essentially condone the exercise of market power to the detriment of competition, and ultimately consumers. This would offer a bad lesson for the telecommunications industry, and a bad lesson for Canada as a whole.

BCE has framed its acquisition of MTS as an improvement for Manitoba's communications systems. However, a close look at the data and existing trends tells a different story. In fact, MTS is more profitable and invests relatively more capital in its networks than Bell, and has done so for years. MTS's significant and timely investments in 4G LTE wireless networks, high-speed broadband, and next-generation IPTV services all show that its operations compare either favourably with or are performing better than anything Bell offers throughout its own territories.

Our review of pricing comparisons between Manitoba, on the one hand, and Ontario, B.C., and Alberta, on the other, also demonstrate that mobile wireless prices are significantly lower in Manitoba. Price increases by the national carriers have been less in Manitoba than elsewhere as well, due to the disciplinary effect that MTS has on their

behaviour, while MTS's rates have largely remained the same or even decreased since 2014.

At the same time that it has maintained more affordable prices, MTS' average operating income and EBITDA between 2010 and 2015 have been higher than at BCE. Furthermore, MTS offers unique and innovative options that people value greatly, notably unlimited mobile data and residential broadband internet services as well as pick-and-pay television bundles that are generally not available from other providers.

Allowing the merger to proceed would diminish the number of mobile wireless competitors in Manitoba from four to three. It would remove constraints on the national carriers' ability to exercise market power, enabling them to raise prices without above competitive levels. It would also fly in the face of the Competition Bureau's own findings of fact regarding the need for more competition in the Canadian mobile wireless services market, as submitted to the CRTC in 2014.

Mergers and acquisitions that reduce the number of wireless carriers from four to three have been strongly opposed by regulators in many countries around the world. When AT&T sought to take over T-Mobile in 2011, for example, the US Department of Justice scuppered the deal. Since then, T-Mobile has flourished by offering innovative services like unlimited data plans and free international roaming. And just two weeks ago, European regulators blocked a four-to-three merger between mobile operators Hutchison and O2 in Britain, citing concerns over the potential for sharp increases in bills and anti-competitive behaviour.

The federal government here in Canada has spent the better part of the last decade bending over backwards to increase competition in the wireless space. These efforts have begun to bear fruit in Quebec, where Videotron has rapidly expanded, and the Maritimes, where Eastlink is now offering an affordable alternative to the national carriers. While supporters of Bell's bid for MTS downplay the benefits that independent competitors have brought to Canadians, experience in Canada and around the world shows that having four or more rivals results in more competitive pricing, and a greater diversity of service offerings—a virtuous circle which helps reduce barriers to adoption and innovation.

Furthermore, it is unlikely that any new competitors will enter the market in Manitoba following the transaction. Even if the most likely candidate, Shaw, was to try, it is unlikely that it would be able to offer competitive service in a timely fashion because it lacks the spectrum in the province needed to do so. In addition, Rogers could be left in a position where it is no longer able to exert competitive pressure on BCE in Manitoba

since it relies on a joint network sharing agreement with MTS to provide service in the province, which is not guaranteed to last if the merger goes forward.

For these reasons, we conclude that BCE's proposed acquisition of MTS would result in a substantial lessening of competition in the Manitoba communications marketplace. If the merger goes forward, there will no longer be an independent competitor in Manitoba capable of constraining the exercise of that market power by the remaining firms, Bell, Rogers, and Telus. Allowing this to happen would be tantamount to condoning the rent-seeking behaviour that the Competition Bureau itself has strongly condemned as recently as in 2014, and would set a dangerous precedent for other provincial markets where competition has just begun to gain a toehold.

Based on our assessment, we offer the Competition Bureau three potential options as it reviews this transaction. In priority order, they are:

Recommendation 1: Block the merger.

The merger would result in the loss of MTS as a vigorous and effective competitor to the national carriers, consequently removing constraints on their ability to collectively exercise market power. This would result in increased prices above the competitive levels that currently prevail, and reduced service quality with respect to monthly data limits and network investment. None of these outcomes would not be in the public interest, with the costs borne by Manitoban consumers, businesses, and the economy as a whole. MTS remains profitable, and continues to invest significant capital into its networks and services, providing broad coverage and affordable, high quality services. For all these reasons, we recommend that the Commissioner deny BCE's proposal to acquire MTS.

Recommendation 2: Require divestiture of spectrum licences, towers, retail locations, and subscribers to an independent competitor.

If the Commissioner decides to approve the transaction regardless of these consequences, we believe that substantial safeguards will be required in order to preserve competition in the marketplace. In this scenario, we recommend that the Commissioner pursue a solution similar to the one taken by Ofcom in 2011 when it was faced by a reduction of five mobile wireless competitors to four in the UK market. In that case, when the 3rd and 4th biggest players -- Orange (France Telecom) and T-Mobile (Deutsch Telecom), respectively -- sought to merge, the UK telecoms and media regulator blessed their merger on the condition that the new entity -- Everything

Everywhere (EE) — hand over a quarter of its LTE/4G spectrum to the number four player, Hutchison 3.

The Commissioner could approve Bell's takeover of MTS following a similar course of action. This would involve discussions with potential new entrants, most likely Shaw/Wind, however, the prospects of Shaw entering the Manitoba market in the near- to mid-term are not great because it lacks the spectrum and other resources that are an absolute necessity to do so. If the Commissioner decides to pursue this course, it must also keep a keen eye on the possibility that Rogers could be left stranded in a few years should it lose the network sharing agreement that it currently has with MTS following the merger.

Recommendation 3: Require open-access provisions for the new entity

One last possible solution to the problems posed by this merger would be for the Commissioner to impose open access obligations on the merged entity. This would likely require coordination with the CRTC, but would substantially reduce barriers to entry in the retail mobile wireless market, create conditions for service innovation, and constrain the exercise of market power by the national carriers.

Introduction

On May 2, 2016, Bell Canada Enterprises (BCE) announced a proposal to take over Manitoba Telecom Services (MTS).¹ The proposed transaction is large in scale and highly complex. Its implications are not only important with respect to the communications market in Manitoba, but have significant bearing on other provincial markets and the national communications industry as a whole.

On May 10, 2016, the Competition Bureau announced that it would conduct a review of the proposed acquisition, and invited Canadians to share their views on the proposal, as well as on the proposed sale of wireless subscribers and dealer locations to TELUS.² In accordance with the Bureau's invitation, and in consideration of its Merger Review Process Guidelines,³ we present this report for consideration.

We submit that the proposed transaction will likely result in a substantial lessening competition in Manitoba. Because MTS is a vigorous, effective competitor, mobile wireless prices in Manitoba are significantly lower than they are elsewhere in Canada. MTS also offers Manitobans access to unlimited wireless and wireline broadband services which are not available from competitors like Bell, Rogers, or TELUS. The merger would remove MTS as an independent constraint on the national carriers' market power, despite its successful track record of profitability, network investment, and affordable prices. This result would be harmful for Manitoba consumers and the economy as a whole.

The balance of this report is structured as follows. In the first section, we provide background on the main firms involved in the proposed transaction. In the second, we

¹ BCE (2016). BCE Acquisition of MTS. Available at: <http://www.bce.ca/investors/investorevents/all/show/BCE-Acquisition-of-MTS>

² Competition Bureau (2016). BCE's Proposed Acquisition of Manitoba Telecom and Sale of Dealer Locations and Wireless Subscribers to TELUS. Available at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04077.html>

³ Competition Bureau (2012). Merger Review Process Guidelines. Available at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger-review-process-2015-e.pdf/\\$FILE/merger-review-process-2015-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger-review-process-2015-e.pdf/$FILE/merger-review-process-2015-e.pdf)

assess the threshold issues with respect to the Commissioner’s merger review: the product and geographic dimensions of the relevant markets, as well as market concentration. We then analyze the potential for anticompetitive effects resulting from the merger, followed by an analysis of issues with respect to the possibility of new entry and reductions in countervailing power. Evidence supporting our positions, which in the first sections are primarily directed toward implications in the retail mobile wireless services market, is based on publicly available information, and applied according to the framework laid out in the Bureau’s 2011 Merger Enforcement Guidelines.⁴ Following this analysis, the fourth section of this report outlines several concerns regarding the merger’s effects in the wireline markets. Finally, we conclude by presenting a brief set of recommendations.

Background

Bell Canada Enterprises

BCE is Canada’s largest communications company. At present, its market capitalization stands at approximately \$52.1 billion.⁵ In 2015, its total revenues were \$21.5 billion, with operating income (defined as EBIT) of \$4.6 billion, representing a 21.5% operating profit margin, a figure that is consistent with its average rate of operating profit since 2010.⁶ By comparison, Bell is already close to twice the size of its closest competitors—Rogers and Telus—on the basis of revenue and its share of the total media economy within which these companies operate. It is also leaps and bounds larger than its next closest rivals, Shaw and Quebecor. Approving BCE’s takeover of MTS would further solidify its place in a league of its own in the telecommunications and other markets in which it operates.

⁴ Competition Bureau (2011). Merger Enforcement Guidelines Available at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/\\$FILE/cb-meg-2011-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/$FILE/cb-meg-2011-e.pdf)

⁵ Yahoo! Finance (2016). BCE Inc. (BCE.TO). Available at: http://finance.yahoo.com/q?uhb=uh3_finance_vert&fr=&type=2button&s=bce.to

⁶ BCE (2011-2015). Annual Reports. Available at: <http://www.bce.ca/investors/financialperformance/annual>

BCE operates across a number of relevant product and geographic markets: through its Bell Canada and Bell Mobility divisions, it offers residential and business telecommunications services such as traditional telephone service, broadband Internet access service, and mobile wireless service. As of Q1 2016, BCE had 6.6 million local telephone subscribers, 3.4 million high speed Internet subscribers, and 8.2 million mobile wireless subscribers.⁷ In addition to telecommunications services, BCE offers broadcasting services such as Internet protocol television (IPTV) and direct-to-home satellite (DTH) through its Bell Canada and Bell Media divisions. At the end of Q1 2016, BCE had 2.7 million total television subscribers. 1.2 million of these were IPTV subscribers, while the rest subscribed to its DTH satellite service. BCE's wireline divisions operate in provincial markets from Québec eastward and northward throughout the territories. Its wireless division offers service on a national scale, as does its DTH broadcasting division. BCE also offers DTH television on a national basis, but under a long-standing resale agreement with TELUS in Alberta and BC.⁸

In addition to its tremendous scale, BCE's telecommunications and broadcasting operations are vertically integrated. With respect to its telecommunications operations in both the wireline and mobile broadband markets, BCE offers retail services direct to the public, as well as wholesale access to network components required for competitors to serve downstream (i.e. retail) markets.⁹ On the broadcasting side, BCE is involved in both the production and distribution of audiovisual programming. Its content holdings include the country's largest commercial radio network with 106 radio stations in 54 markets across Canada stations, as well as a stable of more than seventy conventional, specialty, and pay television services (including its jointly-owned MLSE TV services). BCE's content holdings include popular television programming

⁷ BCE (2016). Supplementary Financial Information, First Quarter 2016. Available at: <http://www.bce.ca/investors/financial-reporting/2016-Q1/2016-q1-supplementary-information.pdf>

⁸ Telus (2015). Annual Report 2014. Available at: <http://about.telus.com/servlet/JiveServlet/downloadBody/5696-102-2-6257/TELUS%202014%20Annual%20Report.pdf> page 55.

⁹ See for instance: CRTC (2008). Telecom Decision CRTC 2008-17, Revised regulatory framework for wholesale services and definition of essential service; CRTC (2010). Telecom Regulatory Policy CRTC 2010-632, Wholesale high-speed access services proceeding; CRTC (2015). Telecom Regulatory Policy CRTC 2015-177, Regulatory framework for wholesale mobile wireless services; CRTC (2015). Telecom Regulatory Policy CRTC 2015-326, Review of wholesale wireline services and associated policies. Available at: www.crtc.gc.ca

services such as CTV, TSN, RDS, the Discovery Channel, CTV News HBO. BCE offers its programming directly to consumers via its IPTV distribution service and online, while it offers wholesale access to both competing and territorially distinct broadcasting distribution undertakings. As of the end of 2014, the last year for which a full set of data is available, Bell's share of revenue across all television markets (including the CBC's annual Parliamentary appropriation as a source of revenue) stood at 34 percent, compared to Shaw's 21 percent share, and followed far behind by the CBC and Rogers, with 20 and 10 percent market share, respectively.¹⁰

Manitoba Telecom Services

MTS is the incumbent telecommunications service provider in Manitoba. Its market capitalization is presently \$2.75 billion.¹¹ MTS operating profit levels since 2010 have averaged 22.2 percent, a rate that is actually higher than that of BCE. In 2015, its total revenues were \$995.2 million, with operating profit of \$142.7 million that year. Although its margin for 2015 was 14.1%, the company explains in its Annual Report that this result reflects one time restructuring and other costs.¹²

MTS operates exclusively in the province of Manitoba. Like BCE, MTS sells residential and business telecommunications services such as traditional telephone service, broadband Internet access service, and mobile wireless service. As of Q1 2016, MTS had 440,160 combined business and residential telephone subscribers, 227,356 high speed Internet subscribers, and 482,278 million mobile wireless subscribers.¹³ In addition to telecommunications services, MTS has also offered IPTV service since

¹⁰ Canadian Media Concentration Research Project (2015). Media and Internet Concentration in Canada, 1984-2014. Available at: http://www.cmcrp.org/wp-content/uploads/2015/11/Media_InternetConcentration1984-2014_for_web.pdf, page 28. See raw data for all sectors covered by the CMCR Project and with citation to original data sources here: http://www.cmcrp.org/wp-content/uploads/2015/10/CMCRP_Workbook_2014_for_web.xlsx

¹¹ Google Finance (2016). Manitoba Telecom Services Inc. Available at: <https://www.google.ca/finance?cid=665918>

¹² MTS (2010-2015). Annual Reports. Available at: <https://about.mts.ca/investors/financial-reports/#1462909061023-e8a5d0e8-44f7>

¹³ MTS (2016). Supplemental information for the three-month period ended March 31, 2016. Available at: <http://about.mts.ca/wp-content/uploads/2016/05/Q1-2016-Supplemental-FINAL.pdf>

2004, more than half a decade before BCE began to offer similar services in its own operating territories, first through Bell Aliant in the Atlantic region in 2009 and later in Quebec and Ontario the next year. As of Q1 2016, MTS had 106,119 television subscribers, representing a rate of take-up that, again, is actually higher than BCE's—a point to which we return further below.¹⁴

Like BCE, MTS's wireline operations are vertically integrated as between retail services and wholesale network components required by competitors to offer service in downstream markets. To the extent that MTS may offer wholesale roaming access on its mobile wireless networks, it is also vertically integrated in wireless; however, the Canadian Radio-television and Telecommunications Commission (CRTC) has not mandated MTS to provide such access at regulated rates (as it has for BCE and the other national wireless carriers, TELUS and Rogers). Furthermore, unlike BCE, MTS is not vertically integrated with respect to its broadcasting distribution undertaking; it solely provides distribution services and does not produce or own the rights to audiovisual programming content.

Threshold Assessment: Relevant markets

The threshold issue when reviewing a merger such as the present one is whether it “prevents or lessens, or is likely to prevent or lessen, competition substantially.”¹⁵ A substantial lessening or prevention of competition, in turn “results only from mergers that are likely to create, maintain, or enhance the ability of the merged entity, unilaterally or in coordination with other firms, to exercise market power.”¹⁶

The first step in assessing whether a merger has the potential to result in the prevention or lessening of competition is to define the relevant product and geographic markets. This proposed merger would see BCE assume control of all of MTS's

¹⁴ *ibid.*

¹⁵ Competition Bureau (2011). Merger Enforcement Guidelines Available at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/\\$FILE/cb-meg-2011-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/$FILE/cb-meg-2011-e.pdf), para 2.1.

¹⁶ *ibid.*

operations, which (as discussed above) offer services in wireline telephone, wireline broadband Internet access, broadcast distribution, and mobile wireless markets. For the purpose of this analysis, we separate these into two general categories: wireline services and mobile wireless services.

We believe that the merger, if approved, will have significant implications for the mobile wireless services market in Manitoba, and therefore the bulk of our attention in this report is directed primarily to this issue. While the potential effects of the merger on the wireline services market are not as clear, our research suggests that it may nevertheless result in several developments that are worthy of attention with respect to the Bureau's review. In what follows, we present our analysis first with respect to the mobile wireless market, followed by our observations on the wireline market.

Relevant wireless market definitions

Product Dimension

Our analysis of the relevant market begins by defining the product dimension, which we consider to be retail mobile wireless services (referred to henceforth as “mobile wireless services” unless otherwise noted). People subscribe to mobile wireless services in order to have access to voice, text, and Internet access services wherever they might be. Indeed, ubiquitous network coverage is a defining feature of mobile wireless services. The evidence suggest that they are not substitutes with either wireline telephone or Internet access services: according to the CRTC, “the data attests to a slow and steady shift away from [landline telephone] technology in favour of wireless services. Indeed, more Canadian households have mobile phones (84.9%) than landlines (78.9%)—a big change from only ten years ago, when just over half of Canadian households subscribed to mobile phones (53.9%) and almost all owned landlines (96.3%).¹⁷ Significantly, the CRTC notes that 2014 marked the first year in which more Canadians subscribed exclusively to mobile wireless services (20.4%) than

¹⁷ CRTC (2015). Communications Monitoring Report. Available at: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr2.htm>

to wireline telephone services (14.4%).¹⁸ With respect to the relationship between mobile wireless services and wireline Internet access services, the CRTC has found on a number of recent occasions that the two are not substitutes, due in part to the more restrictive data allowances associated with the former, and because of their characteristics with respect to ubiquity of coverage.¹⁹

The available data also show that low income households are less likely than higher-earning ones to subscribe to both mobile wireless *and* wireline services. This suggests that mobile wireless and wireline services may be potential substitutes under certain circumstances.²⁰ Indeed, evidence suggests that demand for communications services in general, and mobile wireless services in particular, is subject to high levels of price inelasticity; specifically, households in the lowest income quintile spent 8.3% of their income on communications services in 2013 (the most recent year for which data are available) compared to 4.9% in the next lowest quintile and 1.7% for the highest.²¹ Of these expenses, mobile wireless services are the single largest item. However, to the extent that low income households choose between the two services, the trends indicate that households are increasingly opting to replace traditional wireline services with mobile wireless ones (and not the reverse). Research has shown this to be the case amongst low income households and disadvantaged demographics in the United States,²² and although we are unaware of parallel studies pointing to specific demographic trends in Canada, we believe that the case here is likely to be similar.

Third, there has been an increase in recent years of the availability of free public and subscription-based Wi-Fi “hotspots” across Canada. Again, this might suggest some

¹⁸ *ibid.*

¹⁹ CRTC (2015). Telecom Regulatory Policy CRTC 2015-177, Regulatory framework for wholesale mobile wireless services; CRTC (2013). Telecom Notice of Consultation 2013-551, Review of wholesale services and associated policies. Available at: www.crtc.gc.ca

²⁰ CRTC (2015). Communications Monitoring Report. Available at: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr2.htm>, Tables 2.0.3, 2.0.4, 2.0.5, 2.0.8, & 2.0.5.

²¹ CRTC (2015). Communications Monitoring Report. Available at: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr2.htm>, Table 2.0.3.

²² Horrigan, J. & Duggan, M. (2015). Home Broadband 2015. *Pew Research Center*. Available at: <http://www.pewinternet.org/2015/12/21/home-broadband-2015/>

degree of substitutability, but we do not believe the situation is such that Wi-Fi hotspots can stand as an adequate substitute for full mobile wireless services. Wi-Fi access tends to be highly localized, sporadic, and not subject to quality or access guarantees. It does not provide the type of ubiquitous network coverage that consumers have come to associate with mobile wireless services, and unless this were to change dramatically (perhaps due to the introduction of an as-yet-unforeseen improvement in the technology), Wi-Fi hotspots will be unlikely to serve as a substitute for mobile wireless services in the foreseeable future.

Finally, mobile wireless markets are characterized by high switching costs for consumers. Buyers typically purchase mobile wireless services on the basis of a contract, which are most commonly two years long. When customers purchase a mobile device alongside their subscription (which is the situation in the vast majority of cases), these contracts contain terms that include substantial early termination fees. Not only do these fees pose a substantial barrier to substituting other services for mobile wireless services, but they do so between competing mobile service providers as well.

For the above reasons, we submit that it is appropriate to define the product dimension of the relevant market as retail mobile wireless services for the purpose of the Bureau's merger review.

Geographic dimension

With respect to the the geographic dimension, MTS's operations, including its mobile wireless network, are completely within the province of Manitoba. As such, it is our view that the relevant market for mobile wireless services is provincial. That being said, there are several important qualifications that must be considered with respect to this rather general characterization, in order to enable the Commissioner to fully consider the implications of the proposed merger.

First, the fact that the relevant geographic market is likely provincial should not prevent the Commissioner from considering the potential impact of the proposed

transaction on relevant markets at the national level. Indeed, we submit such consideration is crucial to the present review. Although the competitive dynamics in Manitoba would remain unique to a certain degree post-merger, the merged entity would become part of BCE, which operates on a national scale. Making an informed assessment of the potential effects of the merger therefore requires not only consideration for the overall dynamics of the national market, but would benefit greatly from comparison with other provinces where the present market composition resembles that which would take shape in Manitoba following the merger. This is particularly true with respect to determining whether the merger would result in the exercise of market power, as discussed below.

Second, the relevant geographic market should not necessarily be viewed as homogenous within the province itself. Mobile network coverage from each provider is not geographically universal, and service areas do not necessarily overlap in all parts of the province. In other words, the number of firms offering mobile service within the province will not always correspond to the number of providers available in every area of the province. While urban areas tend to be better served, residents of rural and/or remote areas typically face fewer choices in terms of the availability of competing telecommunications service providers. The heterogeneous availability of mobile wireless services should be kept in mind when assessing the changes to the competitive landscape in Manitoba that would result from this merger.

Market Concentration

The next step in determining whether a merger has the potential to substantially lessen or prevent competition is to conduct a market share and concentration analysis. Determining that a market is highly concentrated is a necessary but not a sufficient threshold for whether firms could exercise market power to the detriment of the competitiveness of the market.

At present, there are four main firms offering mobile wireless service in Manitoba. In order of market share, they are: MTS, Rogers, Telus, and Bell. The national carriers (i.e. Bell, Rogers, and Telus) each also offer service through their flanker brands, Virgin

Mobile, Fido, and Koodo, respectively. There are also several resellers offering service in the province, such as 7-11’s Speakout brand and Petro Canada Mobile. For the purpose of calculating concentration ratios, the flanker brands are not treated as separate entities, nor are the resellers, since public information is not available with respect to their operations. We expect their market share to be small to insignificant, as most if not all are simply sell rebranded white-label services.

Given these conditions, in what follows we show that the market for mobile wireless services in Manitoba is already highly concentrated. While concentration will decrease slightly on the basis of the Herfindahl-Hirschman Index (HHI), it will nevertheless remain in the very high range if the merger is approved. Furthermore, the drop from four to three firms would represent a move that has been vigorously opposed by federal regulators and policymakers in Canada in recent years, and by other comparable countries when faced with similar circumstances. The present and post-merger market shares are illustrated in Table 1.

Table 1: Mobile Wireless Carriers’ Market Shares in Manitoba Pre- and Post-Merger, by Subscriber share 2016

| | Pre-Merger | Post-Merger |
|------------|-------------|-------------|
| MTS | 50 | |
| Rogers | 34 | 34 |
| Bell | 7 | 40.3 |
| Telus | 9 | 25.7 |
| CR4 | 100 | 100 |
| HHI | 3786 | 3441 |

Sources: Company Annual Reports.

As Table 1 indicates, we measure market concentration on the basis of two standard tools: Concentration Ratios (CR) and the Herfindahl–Hirschman Index (HHI). In terms of the CR measure, the proposed merger would see Manitoba’s mobile wireless services market go from a situation where the top four firms control 100% of the

market to one where three firms will do the same. On the surface, the distribution of market shares between Bell (40%), Rogers (34%) and Telus (26%) would be more equal should the deal be approved. Reflecting this, the HHI score—which is specifically designed to assess competitive intensity—would decline from 3786 to 3441 as a result, but the more urgent point is that this still indicates very high concentration levels. Indeed, any result over 2,500 indicates extremely high levels of market concentration, and this deal will do nothing to change that.

These concentration levels ought to trigger significant concern from the Bureau. They pass both thresholds set out in the Enforcement Guidelines: the merged entity will have greater than 35% marketshare, and the resulting CR4 (and indeed the CR3, at 100%) will be greater than 65%.²³ In addition, the Bureau should also consider the extent to which capacity in the form of radio spectrum licenses will become concentrated on account of the merger. At present, two pairs of firms—Bell and Telus, on the one hand, and MTS and Rogers, on the other—are making use of network sharing arrangements in order to supply mobile wireless services in the Manitoba market. Bell appears to be completely reliant on Telus' facilities at the moment, while MTS and Rogers first joined forces in 2009 to build a shared HSPA+ mobile wireless network in Manitoba. Similar arrangements were struck again in 2013 to build a shared LTE network; in fact, before the takeover was announced, MTS already had plans in place to cover more than 90 per-cent of Manitoba's population with 4G LTE wireless service by 2018.²⁴

The way in which existing spectrum licenses are redistributed as a result of the proposed merger will certainly have pronounced effects, not only on the potential for independent firms to enter the market, but for existing firms like Rogers which require network sharing agreements in order to compete in the Manitoba marketplace. In other words, Bell's takeover of MTS could leave Rogers in a weaker position than the post-merger marketshare figures would suggest. In order to determine where Rogers will

²³ Competition Bureau (2011). Merger Enforcement Guidelines Available at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/\\$FILE/cb-meg-2011-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-meg-2011-e.pdf/$FILE/cb-meg-2011-e.pdf), para. 5.9.

²⁴ MTS (2015). Annual Report 2014. Available at: <http://about.mts.ca/wp-content/uploads/2015/04/MTS-Allstream-2014-annual-report-ENGLISH-April-2015.pdf>

stand once that agreement comes to an end, more information is required than is publicly available; however the Bureau should seek information to that effect in order to assess the potential effects of this merger. If Rogers is left with insufficient capacity to continue providing service at present levels, then the circumstances could worsen, with not even a full duopoly left, given Bell and Telus' shared interests in the province. However, even if Rogers is taken care of, so to speak, the merger will still be likely to result in a lessening of competition, as the cozy oligopoly that now straddles much of the land will simply be reinforced.

That already very high levels of concentration exist and could get worse is not a mystery. As Columbia University Professor of Economics and Finance Eli Noam (2013) observes, concentration levels around the world for these markets tend to be “astonishingly high”. Three years after first making this preliminary observation, Noam (2016) continues to maintain that concentration levels for mobile wireless and other “platform media” are “astonishingly high.”²⁵

The implications of these observations are discussed in greater detail in the following sections on anti-competitive effects.

MTS is a vigorous and effective competitor

As discussed above, the proposed merger will cause the mobile wireless services market in Manitoba to exceed the concentration thresholds the Bureau itself has set as the basis for triggering concern over the potential for the exercise of market power and a corresponding lessening of competition. The first reason why we believe that the acquisition of MTS by BCE would result in the a substantial lessening or prevention of competition is that the merger would eliminate MTS as a vigorous and effective competitor to the national carriers.

MTS, as a regional player, must compete vigorously against the national carriers in order to maintain marketshare, and in so doing, it has so far effectively constrained

²⁵ Noam, E. (2016). Who owns the world's media. New York: Oxford University, see chapter 38 and pp. 1307-1316.

their collective ability to exercise market power in the Manitoba market. This can be demonstrated by a number of factors, including: MTS has a history of not following price increases that have regularly been successfully instituted by the national carriers elsewhere in Canada; it provides unique services in the form of unlimited mobile data plans not available from any of the national carriers, in Manitoba or elsewhere in Canada; it has recently expanded capacity by upgrading its networks to support the 4G LTE standard, with plans to expand coverage to 90% of the population by 2018; and it has recently acquired significant inputs in the form of new spectrum licences which will allow it to continue to compete effectively. Furthermore, MTS is more profitable in terms of both operating margins and EBITDA and invests relatively more capital in its networks than Bell. The case with respect to operating profit and EBITDA margins are outlined in Tables 2 and 3 below, respectively. As these tables also show, this has been the case for some time (we turn to capital investment levels further below). MTS's significant and timely investments in 4G LTE wireless networks, high-speed broadband and next-generation IPTV services all show that its operations compare either favourably to or better than anything Bell offers throughout its own territories.

Table 2: Revenue and Operating Income at MTS vs BCE, 2010-2015

| MTS | | | | | | | |
|-------------------|--------|--------|-------|-------|--------|--------|---------|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Average |
| Revenues (mill\$) | 940.3 | 976 | 980.4 | 995 | 1001.8 | 1009.6 | |
| Operating Income | 220.4 | 274.4 | 240.2 | 206.8 | 223.2 | 142.7 | |
| Operating Income | 23.4% | 28.1% | 24.5% | 20.8% | 22.3% | 14.1% | 22.2% |
| Bell | | | | | | | |
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| Revenues (mill\$) | 18069 | 19497 | 19978 | 20400 | 21042 | 21,514 | |
| Operating Income | 3902.9 | 4172.4 | 4363 | 4248 | 4501 | 4618 | |
| Operating Income | 21.6 | 21.4 | 21.8 | 20.8 | 21.4 | 21.5 | 21.4 |

Sources: Company Annual Reports.

Table 3: Revenue and EBITDA at MTS vs BCE, 2010-2015

| MTS | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Avg |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| Revenues (mill\$) | 940.3 | 976 | 980.4 | 995 | 1001.8 | 1009.6 | |
| EBITDA (mill\$) | 488.3 | 494 | 478 | 474.5 | 467.9 | 459.4 | |
| EBITDA Margin | 51.9% | 50.6% | 48.8% | 47.7% | 46.7% | 45.5% | 48.5% |
| BCE | | | | | | | |
| Revenues (mill\$) | 18069 | 19497 | 19978 | 20400 | 21042 | 21514 | |
| EBITDA (mill\$) | 7185 | 7629 | 7888 | 8089 | 8303 | 8551 | |
| EBITDA Margin | 39.8 | 39.1 | 39.5 | 39.7 | 39.5 | 39.7 | 39.5 |

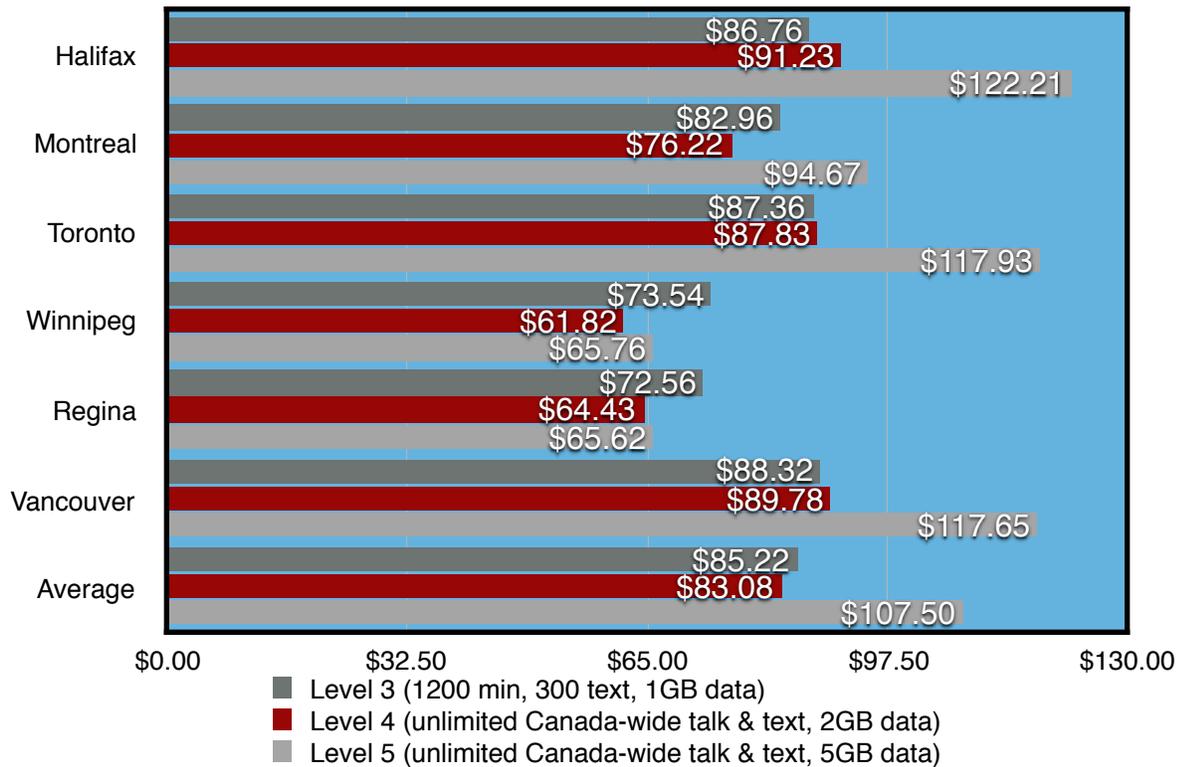
Sources: Company Annual Reports.

For these reasons, it is our position that the Commissioner should challenge the proposed merger. In what follows, we elaborate on each of these factors, beginning with price.

Low prices, resistance to increases

The fact that prices for mobile wireless services in Manitoba are substantially less than they are elsewhere in Canada (where Bell, Rogers, and Telus are dominant) has been well documented. The CRTC's most recent yearly pricing comparison report (The Wall Report, 2015) clearly shows that prices in Winnipeg and Regina are lower than they are elsewhere in Canada. In cases where mobile wireless service plans include data access, prices are substantially lower, as illustrated below in Figure 1.

Figure 1. Pricing for mobile wireless services that include data, by province, 2015



Source for underlying data: Wall Report, 2015.

According to the Wall Report, “It is worth noting that average mobile wireless prices were consistently found to be lowest among the group of six surveyed cities in Winnipeg and Regina for all five specified mobile wireless service baskets”.²⁶ Similar information was presented to the CRTC by MTS, Sasktel, and TbayTel as part of the Commission’s review of wholesale mobile wireless roaming services.²⁷ These data, which include carrier-specific pricing, are presented in Figure 2 below.

²⁶ Wall (2015). Price comparisons of wireline, wireless, and Internet services in Canada and with foreign jurisdictions. Available at: <http://www.crtc.gc.ca/eng/publications/reports/wall2015/rp1506wall.pdf>, page 19.

²⁷ CRTC (2014). Telecom Notice of Consultation CRTC 2014-76, Review of wholesale mobile wireless services. Available at: <http://www.crtc.gc.ca/eng/archive/2014/2014-76.htm>.

Figure 2. Retail Wireless Plan Prices by Carrier and Province (September 2014).



Source: MTS, SaskTel & tbaytel (2015).

We believe that the difference in pricing between markets can be directly attributed to the presence of a vigorous and effective independent competitor. In Manitoba, that competitor is MTS; in Saskatchewan, Sasktel; and in Thunder Bay, it is TbayTel. Prominent financial analysts have made similar observations. DeJardins Securities Inc. analyst Maher Yaghi, for example, recently told the *Globe & Mail* that one reason the average cost of wireless service in a four-player market is less is because “the oligopoly is weaker”.²⁸ The OECD reaches similar conclusions, and observes that, all things considered, mobile wireless markets with four or more operators fare better across a range of measures -- availability, quality, price and adoption -- than those with fewer carriers.²⁹ The proposed merger would therefore remove MTS as a substantial constraint upon the national carriers’ potential to exercise market power.

²⁸ Blackwell, R. (2016). Manitoba’s reign of lower wireless prices may be over following Bell, MTS deal. In *The Globe and Mail*. Available at: <http://www.theglobeandmail.com/report-on-business/manitobas-reign-of-lower-wireless-prices-may-be-over-following-bell-mts-deal/article29827933/>

²⁹ OECD (2015). Wireless Market Structures and Network Sharing. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP\(2014\)2/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2014)2/FINAL&docLanguage=En)

Unlimited Data

Another significant area where MTS has distinguished itself from Bell is in the use of data caps. As MTS comments:

“. . . We are the only provider in Manitoba to provide unlimited data plans. With MTS, our customers can surf, download and stream all they want on our Internet and wireless services without worrying about paying overage charges within Manitoba. Our wireless networks, coverage and experience are all built to make it easy to stay powered and connected.”³⁰

At Bell, in contrast, data caps are prevalent and so-called overage charges steep. Whereas MTS has refrained from using data caps to limit how people use the mobile wireless and internet access they pay for, Bell uses restrictive data caps routinely as a lucrative new stream of revenue and to protect its highly leveraged investments in broadcasting from the onslaught of over-the-top streaming service such as Netflix, Spotify and so forth.

As the telecoms consultancy Rewheel (2015) has shown, in markets that go from 4 to 3 wireless carriers, not only do prices tend to rise steeply but data caps become smaller and the cost of data on a per GB basis far higher.³¹ BCE’s take-over of MTS threatens to take a situation that is already exceptional by international standards (i.e. the prevalence of data caps is comparable in only three other OECD countries: Australia, Iceland and New Zealand) from bad to worse.³²

In sum, with data caps much less common and the cost per GB much lower in Manitoba than in most of Bell’s operating territory, the potential for similar results to

³⁰ MTS (2015). Annual Report 2014. Available at: <https://about.mts.ca/wp-content/uploads/2015/04/MTS-Allstream-2014-annual-report-ENGLISH-April-2015.pdf> p. 7.

³¹ Rewheel (2015). Regulating a Borderless Internet: EU vs US Perspectives on Net Neutrality. Available at: http://dfmonitor.eu/downloads/Rewheel_Open_Forum_round_table_04032015.pdf

³² OECD (2013). Prevalence of explicit bit/data caps among surveyed offers, by country, September 2012. Available at: <http://www.oecd.org/sti/broadband/BB-Portal-5g.xls>.

take hold should the merger be approved are great, especially with the CEOs and financial officers of both firms openly talking about the desire to drive up ARPU at MTS.

Investment in networks

Some have argued that MTS is starving for investment capital because cheap prices have led to low profits. According to this perspective, MTS is at risk of falling behind when it comes to upgrading the information infrastructures that Manitobans will need to flourish in the 21st Century.

However, as was shown in Tables 2 and 3 above, the high levels of profit at MTS in comparison to BCE (but also relative to the communications sector and across Canadian industry as a whole) paints a very different picture. The evidence with respect to capital investment also belies the claims being touted in support of the deal. As a matter of fact, capital investment at MTS has also been *higher* than at BCE in relative terms. Table 4 illustrates the point. Calculations using capital expenditure on a per-subscriber basis yield similar results.

Table 4: Capital Investment @ MTS vs BCE, 2010-2015

| MTS | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Avg (2010-2015) |
|-----------------|------|-------|-------|-------|-------|-------|-----------------|
| Cap Ex (mill) | 234 | 200.5 | 222.3 | 199.5 | 212.5 | 180.4 | |
| CapEx % | 24.8 | 20.8 | 22.7 | 20.1 | 21.1 | 17.9 | 21.2 |
| BCE | | | | | | | |
| Cap Ex (mill\$) | 2998 | 3256 | 3515 | 3571 | 3717 | 3626 | |
| Cap Ex % | 16.6 | 16.7 | 17.6 | 17.5 | 17.7 | 16.9 | 17.2 |

Sources: Company Annual Reports.

MTS has been investing in the range of \$200 million since at least 2010. At best, BCE’s commitment to spend \$1 billion over the next five years will hold the line on what MTS has been investing. And more to the point, MTS’s significant and timely investments in 4G LTE wireless networks, high-speed broadband and next-generation

IPTV services all show that its operations compare either favourably to or better than anything Bell offers throughout its own territories with respect to network investment.

Without taking an overly rosy view of things, MTS has made substantial capital investments in fibre-to-the-node (FTTN) and fibre-to-the-home (FTTH) networks, and to expand its 4G HSPA+ and LTE networks in cities and communities across the province. Its 4G HSPA+ and 'true 4G' LTE wireless networks now cover 98% and 78% of Manitoba's population, respectively.³³

The latter is less than the 86% coverage that Bell has achieved in its service areas in Ontario, Quebec and the Atlantic region,³⁴ but this reflects two things: first the more rural and dispersed nature of Manitoba's population and, second, the fact that the deployment of new networks takes place in "step changes", with early leads typically being transitory. In any case, the gap that currently exists will likely narrow during the next 18-24 months as MTS reaches its goal of 90% population coverage by 2018.³⁵ To the extent that this falls short of BCE's aim for 98% coverage, BCE has not included any targets beyond those MTS has already made in its takeover bid.

If there's any question about the quality of MTS's LTE network, such concerns can also be allayed by its first place ranking on this score by PCMag.com in 2013. Moreover, its network sharing deal with Rogers also allows it to obtain access to wireless devices that might otherwise be hard to get for smaller scale carriers like itself.³⁶

³³ MTS (2015). Review of Basic Telecommunication Services – TNC 2015-134- Request to Appear at Public Hearing and Intervention. Available at: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2395360> para. 20.

³⁴ BCE (2015). 2014 Annual Report. Available at: <http://www.bce.ca/investors/annual-report/2014-annual-report.pdf>, p. 10.

³⁵ MTS (2014). 2013 Annual Report. Available at: <http://about.mts.ca/wp-content/uploads/2015/04/MTS-Allstream-2014-annual-report-ENGLISH-April-2015.pdf>, p. 12

³⁶ MTS (2015). Annual Report 2014. Available at: <http://about.mts.ca/wp-content/uploads/2015/04/MTS-Allstream-2014-annual-report-ENGLISH-April-2015.pdf>, page 6.

Spectrum Auctions

Finally, since 2007 MTS has participated vigorously in several major spectrum auctions, in order to acquire the inputs required to continue expanding its network capacity. Specifically, MTS won licenses in the 2008 AWS-1 auction,³⁷ and the 2014 700MHz auction.³⁸ It also participated in a 2009 auction for a national Air-Ground licence, although that licence was awarded to another bidder. Additionally, five AWS-1 licences covering the Manitoba territory were transferred from WIND to MTS in 2015 as part of a larger transaction between WIND, Rogers, MTS, Sasktel, and Mobilicity.³⁹ Together, these licences are inputs that have allowed MTS to expand supply capacity, implement new technological standards (i.e. 4G LTE), and prepare for future demand.

It should also be noted that MTS initially acquired its AWS-1 licences under a spectrum set-aside designed to reserve licences for new entrant providers (defined as carriers who control less than 10% of national market share by revenue) with the express purpose of cultivating increased competition in mobile wireless markets in as many areas of Canada as possible. In addition, although no set-aside was employed in the 700MHz auction, aggregation limits are in place for that band, consistent with ISED's spectrum licence transfer framework.⁴⁰ As per that framework, ISED recognizes that "undue concentration of spectrum among a small number of wireless service providers can be detrimental to competition."⁴¹ In analyzing the proposed transaction, the

³⁷ Canada (2008). Auction of spectrum licenses for advanced wireless services and other spectrum in the 2 GHz range — Licence winners. Available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09002.html>

³⁸ Canada (2014). Final results — 700 MHz auction. Available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11086.html>

³⁹ Dobby, C. (2015). Rogers-Mobilicity deal shakes up spectrum landscape, rewards Wind. In *The Globe and Mail*. Available at: <http://www.theglobeandmail.com/report-on-business/wind-mobile-will-also-benefit-from-rogers-mobilicity-deal/article25094485/>

⁴⁰ Canada (2013). Framework relating to transfers, divisions, and subordinate licensing of spectrum licences for commercial mobile spectrum. Available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10653.html>

⁴¹ Canada (2013). Framework relating to transfers, divisions, and subordinate licensing of spectrum licences for commercial mobile spectrum. Available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10653.html>, para 9.

Commissioner should consider whether the transfer of spectrum to BCE from MTS would result in such a situation, consistent with ISED's policy framework.

In sum, over time MTS has maintained affordable pricing while consistently making significant investments in state of the art facilities. It continues to offer unique and innovative options to Manitoba consumers, most notably by providing subscribers with unlimited mobile wireless data options, and by offering unlimited wireline Internet access as a standard feature on all of its plans, unlike any of the national carriers in any of their operating territories. For these reasons, we submit that the proposed transaction would result in the removal of a vigorous and effective competitor from the mobile wireless services market in Manitoba, to the detriment of competition and consumer welfare in Manitoba.

Anticompetitive effects

In 2014, the CRTC held a proceeding to determine whether it would be in the public interest to regulate wholesale mobile wireless rates in Canada. As a result of that proceeding, the regulator determined that the national carriers (i.e. Bell, Rogers, and Telus) collectively possess market power in the wholesale mobile wireless markets (both for roaming and for MVNO services), and consequently it decided to mandate wholesale mobile wireless roaming rate regulation in order to curb the national carriers' market power and to foster a competitive retail environment in the interest of Canadian consumers and the national economy more generally.⁴²

The Commissioner of Competition intervened in that proceeding, as well as the proceeding that instigated it.⁴³ As part of its participation in the CRTC's mobile wireless proceeding, the Commissioner submitted an expert report, entitled "the Brattle Report." Among other things, the Brattle Report found that:

⁴² CRTC (2015). Telecom Regulatory Policy CRTC 2015-177, Regulatory framework for wholesale mobile wireless services. Available at: www.crtc.gc.ca

⁴³ CRTC (2013). Telecom Notice of Consultation 2013-685, Wholesale mobile wireless roaming in Canada—unjust discrimination/undue preference. Available at: www.crtc.gc.ca

- Additional competition would benefit Canadian consumers;
- Canadian mobile wireless carriers are highly concentrated, especially at the provincial level;
- International comparisons suggest that the mobile wireless market is underperforming at a national level;
- The two firms it examined, Telus and Rogers, are earning above-normal profits from their wireless operations;
- Entry by an additional nation-wide carrier, bringing the total from three to four, would contribute to improvements in consumer surplus by expanding uptake and reducing prices.⁴⁴

Based on the Brattle Report’s expert findings, the Commissioner concluded that “the incumbents have market power in retail mobile wireless services markets in Canada” and that those markets are “characterized by above-normal profits and comparatively low service penetration levels, both direct indicators of market power.”⁴⁵ While the Commissioner acknowledged that the bare fact of market power does not on its own raise concern under the Competition Act,⁴⁶ it nevertheless asked the CRTC to consider that possession of market power at the retail level provides a strong incentive for the incumbents to vertically foreclose competition at the retail level, and urged the CRTC to take action that would prevent such an undesirable outcome.⁴⁷

Furthermore, although the CRTC’s proceeding on the Canadian mobile wireless market was primarily focused on remedying problems with respect to the wholesale aspects of that market, the ultimate goal was to enhance the competitiveness of the mobile wireless market at the retail level. Indeed, during that proceeding numerous interveners held Manitoba and Saskatchewan up as examples that the rest of Canada should be striving toward. As the regional carriers put it: “While the public debate on

⁴⁴ Competition Bureau (2014). First Intervention to TNC CRTC 2014-76. Available at: <https://services.crtc.gc.ca/Pub/ListeInterventionList/Documents.aspx?ID=215463&en=2014-76&dt=i&lang=e&S=C&PA=T&PT=NC&PST=A>, para. 18.

⁴⁵ *ibid*, para. 20 & 25.

⁴⁶ *ibid*, para. 29.

⁴⁷ *ibid*, para 29.

wireless competition seems to focus on the battle between the national carriers and the new entrants in the bigger population centres of Southern Ontario, B.C. and Alberta, we note that in Manitoba, Saskatchewan and Northwestern Ontario we [i.e. MTS, Sasktel, and TbayTel, respectively] are the successful alternative competitive carriers that the federal government and consumers seek.”⁴⁸

The regional carriers went on to state the fact that “our respective territories are the most competitive wireless markets in the country. Consumers in our regions, regardless of carrier, can find packages at prices 30-40% lower than elsewhere in the country, saving consumers \$350 to \$400 per year.”⁴⁹ Indeed, we have previously documented that an Ontario resident who flew to Manitoba in order to subscribe to a mobile wireless plan (rather than signing up at home) would save more than \$1000 over their two-year contract term *after the price of airfare*.⁵⁰

The regional carriers also pointed to the high quality of their networks, highlighting the availability of unlimited data plans, wide geographical coverage using HSPA and LTE technologies, significant investment in rural areas, and attention to the particular needs of local communities that might not otherwise be obtained from companies headquartered far away.⁵¹

The regional carriers were clear as to the reasons why their respective wireless markets serve subscribers better than those in the other provinces: “consumers in our territories are better off than consumers elsewhere because of our competitive presence. In our territories, all consumers have access to more choice, lower prices and better service. We regional carriers have made a strong, sustained investment in new

⁴⁸ CRTC (2014). Transcript, Hearing 2 October 2014. Available at: <http://www.crtc.gc.ca/eng/transcripts/2014/tt1002.htm>, para 5011

⁴⁹ CRTC (2014). Transcript, Hearing 2 October 2014. Available at: <http://www.crtc.gc.ca/eng/transcripts/2014/tt1002.htm>, para 5012

⁵⁰ Klass, B. (2014). Wireless carriers’ high flying prices. Available at: <https://benklass.wordpress.com/2014/03/17/wireless-carriers-high-flying-prices/>

⁵¹ CRTC (2014). Transcript, Hearing 2 October 2014. Available at: <http://www.crtc.gc.ca/eng/transcripts/2014/tt1002.htm>, paras. 5013-5016.

technology and broad network coverage within our territories.”⁵² These statements are consistent with our observation that MTS acts as a vigorous and effective competitor, to the national carriers, providing competitive discipline by offering high quality service at affordable prices.

While the CRTC has laid out a regulatory framework for wholesale mobile wireless roaming services that is intended to remove the opportunity for the national carriers to act on vertical foreclosure incentives as against their competitors,⁵³ the proposed transaction currently in front of us would nullify those measures in the province of Manitoba. MTS is presently the only carrier operating in Manitoba which is able to avail itself of the competitive safeguards established by the CRTC; as Manitoba’s “fourth carrier,” it provides the competitive discipline necessary to constrain the market power of the national carriers with which it competes. In a market that is already characterized by very high levels of concentration, elimination of MTS through the proposed merger would thus remove the constraints on coordinated price increases by the national carriers that presently exist. By reducing the number of rivals in such a way, the likely effect of the merger would be to make such coordinated behaviour even more profitable and achievable. In short, if BCE acquires MTS, there will be no need for it to act upon incentives to vertically foreclose competitors by exercising market power in the wholesale market, since removing MTS as a vigorous, effective, and independent competitor will leave BCE and the other national carriers effectively free to do so at the retail level without consequence.

That MTS acts as an effective check against the exercise of market power by the national carriers is supported by evidence beyond the obvious fact that mobile wireless prices in that province are much lower than they are in provinces which do not have a strong independent carrier. There are a number of instances over the past several years in which Bell, Rogers, and Telus have concurrently raised mobile wireless prices in Ontario, B.C., and Alberta, and have successfully maintained those higher prices in

⁵² CRTC (2014). Transcript, Hearing 2 October 2014. Available at: <http://www.crtc.gc.ca/eng/transcripts/2014/tt1002.htm>, para. 5019, emphasis added.

⁵³ CRTC (2015). Telecom Regulatory Policy CRTC 2015-177, Regulatory framework for wholesale mobile wireless services. Available at: www.crtc.gc.ca

spite of the presence of independent carriers (i.e. Wind Mobile and/or Mobilicity) in those markets. In early 2014, for example, the national carriers raised their base prices for new plans by \$5 per month without providing a corresponding justification.⁵⁴ In early 2016, the three national carriers again raised wireless prices in tandem by \$5 per month, citing the low Loonie as a reason, although that explanation was credibly contested by Geoff White of the Public Interest Advocacy Centre.⁵⁵ It is crucial to note that in neither case did the national carriers' concurrent price increases take effect in Manitoba or Saskatchewan, where MTS and Sasktel provide strong competitive discipline.

In addition, to the extent that mobile wireless rates have risen in Manitoba since 2014, the increases have been less pronounced than elsewhere, and in some cases MTS's prices have even come down. Based on comparisons between promotional literature from October 2014 and the carriers' websites, the national carriers have increased their Manitoba pricing by \$5 per month since 2014, or half the increase faced by consumers in other provinces.⁵⁶ While MTS has changed the structure of its rate plans, making comparison across time difficult, it appears that price increases at MTS since 2014 have also been less than elsewhere in Canada. For instance, a MTS plan featuring unlimited local calling and 5GB of data priced at \$65 in 2014 is now \$72.50, an increase of \$7.50. However, other plans' pricing has stayed the same, such as a plan featuring unlimited local calling and unlimited data for \$75, while others have decreased substantially, such as a plan featuring unlimited national calling and unlimited data which sells today for \$86.50, down from \$95 in 2014—a decrease of \$8.50 per month.⁵⁷ Overall, prices for comparable mobile wireless services in Manitoba remain significantly lower across the board than in markets where Bell, Rogers, and Telus do not face stiff competition from a vigorous and effective competitor.

⁵⁴ CBC (2014). Wireless carriers hike prices across Canada. Available at: <http://www.cbc.ca/news/business/wireless-carriers-hike-prices-across-canada-1.2575886>

⁵⁵ Sturgeon, J. (2016). Rogers, Bell, Telus wireless customers face 'substantial' price hike. In *Global News*. Available at: <http://globalnews.ca/news/2480259/rogers-wireless-customers-face-substantial-price-hike-next-month/>

⁵⁶ Rate plan brochures from author's archive, dated October 2014; carrier websites.

⁵⁷ Rate plan brochures from author's archive, dated October 2014; carrier websites.

The fact that relatively lower pricing in Manitoba has persisted over time while the national carriers have successfully and periodically raised prices across mobile wireless services markets in other provinces increases is consistent with our claim that MTS effectively constraints the market power of its nationally-oriented competitors. Indeed, recognizing that such constraints do not exist everywhere in Canada, in 2014 the Commissioner urged the CRTC to implement a system of wholesale mobile wireless regulation on the national carriers. If approved, BCE's acquisition of MTS would in effect constitute an end run around these efforts, which in fact are only now being finalized by the regulator. With no independent carrier remaining in Manitoba, the national carriers would face no barriers to the exercise of collective market power in the retail mobile wireless services market, an unfortunate outcome that would run counter to federal policy, to the detriment of Manitoba consumers and businesses who would no longer have an independent competitor to turn to when the national carriers inevitably raise prices above competitive levels, as they have done elsewhere.

In addition to the likelihood of the increase in the national carriers' ability to raise prices as a result of the proposed merger, we believe that the Commissioner should be wary of BCE's preemptive concession to divest a third of MTS's current subscribers and retail locations to TELUS. Assertions by BCE executives to the effect that "the market will continue to be as competitive as it has and if not maybe even more as a result of all this,"⁵⁸ deserve scepticism. This is especially so once seen in light of the fact that BCE and TELUS have entered into a longstanding network sharing agreement for the provision of mobile wireless services (in addition to other similar arrangements, such as the long-term agreement between BCE and TELUS that allows the latter to resell Bell's DTH satellite television distribution service under the TELUS brand, as referred to earlier).⁵⁹ While the specific terms of this agreement are strictly confidential, we believe that this agreement likely increases the risk of coordinated behaviour between BCE and TELUS; since the two firms share a single source of supply pursuant to their agreement, it stands to reason that they have substantial information regarding each

⁵⁸ BCE (2016). BCE/MTS joint analyst call to discuss BCE's acquisition of MTS. Available at: <http://www.bce.ca/investors/bce-mts/2016-acquisition-mts-transcript.pdf>

⁵⁹ Telus (2015). Annual Report 2014. Available at: <http://about.telus.com/servlet/JiveServlet/downloadBody/5696-102-2-6257/TELUS%202014%20Annual%20Report.pdf> p. 55.

others' operations, and that they share similar if not identical cost structures with relation to the provision of network infrastructure and other capital costs.

In a market that is already highly concentrated, the idea that competition will be fierce following a merger that leaves the majority of market share in the hands of firms which cooperate on several fronts and share a source of supply pursuant to a contractual agreement that is not available to the public warrants a healthy dose of scrutiny. We strongly urge the Commissioner to consider the impact of this agreement on BCE's proposed concessions, and the effects of the proposed merger more generally. On its face, we believe that the high levels of concentration together with the existence of such an agreement make the possibility of effective coordination more likely.

Entry & Countervailing Power

In addition to the removal of a vigorous and effective competitor, the proposed merger gives cause for concern with respect to the prospects for continued competition in the Manitoba mobile wireless services market for several other reasons, first in terms of the unlikely possibility of entry by an additional firm, and second with regard to the likely weakening of Rogers' position as a viable alternative for Manitoba consumers.

In 2014, the Commissioner submitted to the CRTC that "Canadian retail mobile wireless markets are characterized by high concentration and very high barriers to entry and expansion." The Commissioner went on to state that "High barriers to entry [...] are due not only to the considerable costs of building out networks and acquiring necessary spectrum, but also to the incumbents' use of product bundles and long-term contracts to raise additional barriers for new entrants looking to attract new customers."⁶⁰ This assessment remains true today, and is consistent with the situation in Manitoba.

First, while there may be some expectation that Shaw could be a potential candidate for entry into the Manitoba mobile wireless services market due to its existing presence as

⁶⁰ Competition Bureau (2014). First Intervention to TNC CRTC 2014-76. Available at: <https://services.crtc.gc.ca/Pub/ListeInterventionList/Documents.aspx?ID=215463&en=2014-76&dt=i&lang=e&S=C&PA=T&PT=NC&PST=A>, paras. 26 & 27.

a provider of wireline broadband, voice, television, and Wi-Fi services in urban areas of the province, a closer examination strongly suggests that this outcome is highly unlikely in the short- to medium-term. The main reason for this is its lack of spectrum licences, and the fact that opportunities to acquire spectrum in Manitoba are limited at present and for the foreseeable future.

Prior to its acquisition by Shaw in 2016, Wind Mobile held several spectrum licences in the AWS-1 band covering the province of Manitoba. However, as part of a complex transaction involving Wind, Rogers, Sasktel, Mobilicity, and MTS, Wind's Manitoba spectrum licences were acquired by MTS in 2015.⁶¹ The upshot of that deal for Shaw's prospects of entering the Manitoba mobile wireless market is that it is without any spectrum in the province, and without spectrum, it simply cannot offer mobile wireless service. Additionally, there will be few new opportunities for Shaw to acquire spectrum at auction in the short- to medium-term, as no new auctions for mobile wireless spectrum have been announced at this time, nor are any expected. At present, Innovation, Science, and Economic Development (ISED) has held consultations on repurposing the 600MHz band of frequencies for mobile use, although this process is only in the early-to-mid stages, and is highly complex, since it involves transitioning present users (i.e. television broadcasters) away from use of the spectrum, as well as international concerns related to adoption of standards that are harmonious with those of the United States.⁶²

Simply put, without any spectrum in Manitoba, it is impossible for Shaw/Wind to enter the mobile wireless services market there in a credible or timely fashion, and the significant sunk/capital costs required to do so, while likely not prohibitive for a company such as Shaw, would impose a substantial delay on its entry. Even if Shaw were able to enter, it is likely that the damage would have already been done with respect to price increases. Should the merger be approved, therefore, the competitive dynamic in Manitoba would be such that consumers will be left with only three options

⁶¹ Dobby, C. (2015). Rogers-Mobilicity deal shakes up spectrum landscape, rewards Wind. In *The Globe and Mail*. Available at: <http://www.theglobeandmail.com/report-on-business/wind-mobile-will-also-benefit-from-rogers-mobilicity-deal/article25094485/>

⁶² Canada (2015). Decision on repurposing the 600 MHz band. Available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11049.html>

from which to choose (with no “fourth carrier” as in other provinces). Moreover, the fact that the chances of another firm entering the market in the short- to medium-term are slim to none suggests that there would be little hope for improvement in the future.

That being said, it may be worthwhile to investigate the possibility of requiring BCE to divest spectrum, towers, and subscribers to Shaw instead of TELUS as a condition if the merger is to be approved. This would be very similar to actions taken by Ofcom in the UK in 2011 when faced by a reduction of five mobile wireless competitors to four in the UK market. In that case, when Orange (France Telecom) and T-Mobile (Deutsch Telecom), the 3rd and 4th biggest players in the market, respectively, proposed to merge in 2011, the UK telecoms and media regulator blessed their merger on the condition that the new entity—Everything Everywhere (EE)—hand over a quarter of its LTE/4G spectrum to the number four player, Hutchison 3. With access to spectrum, towers and other resources needed to be viable, 3 stepped up to the plate to become a significant 4th player in the UK market.⁶³

Transposed onto the situation in Canada with due consideration given to local circumstances, pursuing a similar course of action could have the potential to mitigate the substantial lessening of competition that would result from the four-to-three merger that BCE is seeking. Shaw could potentially leverage divested spectrum to strike an agreement with Rogers to hasten its ability to offer service. However, these are speculative observations, and beyond that, we do not have sufficient information to provide an informed comment on this prospect at this time. In order to assess the viability of this or similar options, it would be beneficial for the Commissioner to consult with relevant parties to assess their views with respect to entering the Manitoba mobile wireless services market.

Second, in addition to the unlikelihood of additional entry, it is likely that Rogers’ position as a viable competitive alternative and constraint on the market power of BCE and TELUS would be significantly weakened following the merger. The reason for this

⁶³ Ofcom (2011). Assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz. Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/statement.pdf>.

is that Rogers currently relies on a network sharing agreement with MTS in order to provide service in the province. In 2009, Rogers entered into a joint network sharing agreement with MTS so that it could offer 3G HSPA services in the Manitoba. That agreement was extended to the carriers' 4G LTE networks in 2013. These agreements have enabled Rogers to keep up with technological development as well as consumer demand, growing from a 28% marketshare on the basis of subscribers in 2008 to 34% at present.⁶⁴ We question whether Rogers will be able to maintain such a strong position following the merger given the uncertainty the transaction raises in relation to its current agreement with MTS being renewed or the potential for new ones to be struck in its place. Given this, the Commissioner could, as a condition of approving the merger, require that the new entity maintain the agreements with Rogers that are already in place for a set period, although it would be difficult to arrange such a condition in a way that would adequately address the need to adapt to future technological or demand-based developments. And as mentioned earlier, such a condition also raises the unseemly prospect of regulators taking actions that do little more than shore up the tight oligopoly that already exists amongst the national wireless carriers.

Finally, it should be noted that, although the CRTC has established a regime which mandates access to the national carriers' mobile wireless networks at regulated rates, that regime does not give Rogers mandated access other national carriers' networks, whether operating in the province of Manitoba or elsewhere. Following the merger, BCE will have the ability to act on incentives to vertical foreclosure by withholding wholesale access to its network on commercially reasonable terms from its competitors (i.e. Rogers in Manitoba), similar to the situation which was detailed by the Commissioner in his intervention to the CRTC's wholesale mobile wireless roaming proceeding.⁶⁵ We believe that such an outcome would be likely to occur; that is, BCE would be in a position and have the incentives to use its control over MTS's networks

⁶⁴ CRTC (2009). Communications Monitoring Report 2009, table 5.5.4; unpublished CRTC data.

⁶⁵ Competition Bureau (2014). First Intervention to TNC CRTC 2014-76. Available at: <https://services.crtc.gc.ca/Pub/ListeInterventionList/Documents.aspx?ID=215463&en=2014-76&dt=i&lang=e&S=C&PA=T&PT=NC&PST=A>.

to reduce Rogers' ability to effectively respond to market developments, further lessening competition and harming consumers in Manitoba.

Wireline Markets

With respect to the wireline markets (and leaving aside for the time being how the geographic dimension of those markets is to be defined), the merger's potential to lessen or prevent competition is not as clear, but still may be considerable. To our knowledge, Bell's takeover of MTS will not reduce the number of firms offering local telephone or broadband Internet access services in the latter's existing operating territory. However, there may be a potential exception to this state of affairs in the broadcasting distribution segment. Currently, Manitobans who wish to subscribe to television distribution services in Manitoba can choose from amongst four types of service on offer from three separate firms: Shaw offers both wireline and DTH television services; MTS offers wireline IPTV service, and BCE offers DTH television service. The proposed merger would therefore see the number of firms offering television distribution services decrease from three to two, although the number of distinct services on offer would presumably remain at four. The Commissioner may wish to consider the implications that this shift could have for the competitiveness of the television distribution market in Manitoba.

The Commissioner may also wish to consider that MTS's investment in high speed broadband networks has been greater than BCE's for years. Indeed, the irony of the deal now being pitched is that the laggard (BCE) seeks to take over the leader (MTS) when seen from the vantage point of broadband internet development in general, and fibre-optic based networks in particular. In terms of residential broadband internet availability, for example, 95% of Manitobans have access to basic broadband from MTS at 5 mbps – the current broadband target set by the CRTC in 2011 — a figure that compares favourably with BCE in Quebec and Ontario (94% and 97%, respectively) but which is higher than Bell's in the Atlantic provinces, where access to 5 Mbps broadband ranges from 77% in PEI to 90% in NB.⁶⁶

⁶⁶ CRTC (2014). Communications Monitoring Report 2014, Figure 2.0.5.

In terms of advanced fibre-based networks to the neighbourhood and to the premise, and services that run overtop of these networks, notably IPTV, and the advantage tilts significantly in MTS's favour. MTS began to roll out such services in late 2003 and early 2004; within a year the number of IPTV subscribers began to take off. Now, 70% of households in Manitoba have access to its IPTV service – Ultimate TV — and with internet speeds up to 50 Mbps, while FTTH is available in sixteen communities.⁶⁷ In contrast, BCE only began to deploy such services first in the Atlantic Provinces in 2009, followed a year later in Ontario and Quebec. BCE boasts that 7.5 million businesses and homes currently have access to its FTTN or FTTH network,⁶⁸ and that its Fibe TV is available to 6.2 million households.⁶⁹

These numbers may appear impressive at first blush but reconcile them with Statistics Canada data on the number of businesses and residential households in BCE's service areas⁷⁰ and a different picture takes shape: only about 60% of all households have access to Fibe TV, while less than two thirds of residential households and businesses have access to the company's FTTN and FTTH network. In short, BCE was slower off the mark than MTS and continues to lag behind in terms of the availability and uptake of these services. Table 5 below illustrates this point.

⁶⁷ MTS (2015). Annual Report 2014. Available at: <https://about.mts.ca/wp-content/uploads/2015/04/MTS-Allstream-2014-annual-report-ENGLISH-April-2015.pdf>, p. 12).

⁶⁸ BCE (2015) Intervention to Telecom Notice of Consultation CRTC 2015-134, Review of basic telecommunications services. Available at: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2395130>, para 39.

⁶⁹ BCE (2016). Annual Report 2015. Available at: <http://www.bce.ca/investors/AR-2015/2015-bce-annual-report.pdf>, p. 32)

⁷⁰ Canada (2015). Business performance and ownership. Available at: <http://www.statcan.gc.ca/pub/11-402-x/2012000/chap/business-entreprise/business-entreprise-eng.htm>

Table 5: IPTV Subscribers, 2004-2014

| IPTV Subscribers | 2004 | 2006 | 2008 | 2010 | 2012 | 2014 |
|-------------------------|-----------------|----------------|----------------|----------------|------------------|------------------|
| Bell Fibe TV | | | | 59,575 | 371,318 | 919,070 |
| Telus | | | 78,000 | 314,000 | 678000 | 916000 |
| MTS Allstream | 32,578 | 59,442 | 82,278 | 89,967 | 97,232 | 108,096 |
| SaskTel | 25,000 | 51,277 | 70,463 | 85,537 | 97262 | 103,716 |
| Total IPTV Subs | 57,578.0 | 110,719 | 230,741 | 549,079 | 1,243,812 | 2,046,882 |

Sources: Company Annual Reports.

The uptake of the MTS’s Ultimate TV IPTV services has also been swifter than the take-up of BCE’s Fibe TV in its territory. Indeed, as Table 6 below illustrates, the take-up of MTS’s Ultimate TV is nearly twice that of BCE.

Table 6: IPTV Subscribers/Total Network Access Connections, MTS vs Bell, 2012-2014

| IPTV Subscribers as % of All Network Access Lines | | | |
|--|-------------|-------------|-------------|
| | 2012 | 2013 | 2014 |
| Bell Fibe TV | 4.6 | 8.7 | 12.9 |
| MTS Ulitmate TV | 19.2 | 21.5 | 23.1 |

Sources: Company Annual Reports.

Small Cable Packages, Pick & Pay TV and Consumer Choice

The fact that IPTV take up in Manitoba is high compared to the standards that prevail in BCE’s operating areas reflects the broader fight that has been taking shape over “cable TV” during the past decade. Indeed, the conservative versus more progressive views of BCE and MTS, respectively, also comes into focus when we look more closely at their respective approaches to TV.

In this regard, BCE, the largest vertically integrated telecoms-internet and media conglomerate in the country, and the biggest force in TV by far (with more than 70 TV channels, including the MLSE TV channels it jointly owns with Rogers and Kilmer

Sports, and just over one-third of all TV revenue),⁷¹ has fought the CRTC tooth and nail over the regulator’s push to give people more choice over their cable TV subscriptions by mandating the offering of a “skinny basic” television service, pared down channel bundles and, by the end of 2016, true à la carte channel offerings. Indeed, having banked on the vertically-integrated model through its take-over of CTV and Astral in 2011 and 2013, respectively, Bell has been loath to yield control over its TV operations—up to the point of former Bell Media President Kevin Crull instructing journalists and news editors across its TV and radio holdings, including Canada’s leading commercial television news source, CTV and CTV News, to no longer give airtime to CRTC Chair Jean Pierre Blais in the wake of last year’s initial Talk TV ruling.

MTS, in contrast, is not vertically integrated with respect to its broadcasting distribution undertaking, and having taken the plunge into the TV delivery business early with the launch of its IPTV services in 2003-2004, it has been eager to pick up subscribers as swiftly as it can. To this end it has been successful, with twice the number of subscribers on a per capita basis as Bell (see Figure 6 above). And as part of this effort, MTS has been offering smaller TV packages for several years and even some of the most popular sports channels on a pick-and-pay basis.

Thus, as the company states in its most recent Annual Report about the CRTC’s Talk TV rulings last year:

. . . Because we offer a number of services on a standalone basis today, the changes to our systems to introduce pick-and-pay by December 2016 should also be relatively simple to implement.⁷²

Yet, while MTS has been ahead of the curve, it also complains year-after-year that access to programming, especially high-end entertainment and sports programs, has been extremely difficult. Why? Because:

⁷¹ Canadian Media Concentration Research Project (2015). Data available at: www.cmcrp.org/wp-content/uploads/2015/10/CMCRP_Workbook_2014_for_web.xlsx

⁷² MTS (2016). Annual Report 2015. Available at: <https://about.mts.ca/investors/financial-reports/>, p. 25.

“Much of this content is created and/or owned by our competitors (Bell, Rogers and Shaw), who could have conflicting interests when we negotiate for their content. To date, the CRTC has offered broadcasting distributors such as MTS *limited protection against attempts by our competitors who own this content (for use in both traditional television and mobile applications) to charge us unfair rates or deny us access to this content altogether.*”⁷³

In other words, the CRTC’s attempts to introduce more competition and flexibility have been met by fierce opposition from Bell, which has turned to Cabinet and the courts in a series of bids to overturn these moves. Smaller, non vertically-integrated entities such as MTS, however, have seen the regulator as offering too little, too late.

In light of these observations, approving the merger could have the effect of delivering the wireline operations of MTS into the hands of a firm which has been slow to invest in new broadband and IPTV technologies, and which has done everything in its power to resist and obstruct efforts by the regulator and federal government to pursue public interest measures that aim to improve consumers’ options, market competitiveness, and thus overall welfare. While the merger is unlikely to have a substantial effect on concentration levels in the wireline market, to the extent that BCE’s operations compare unfavourably to those of MTS, the takeover may result in a situation where consumers are worse off following the merger than they are now. And again, even in this regard, the loss of MTS would be of national significance because when it comes to providing popular television services, it has led by example, with the rest of the country coming around much later in the game and only after much prodding by the CRTC.

⁷³ *ibid*, emphasis added.

Summary Remarks and Recommendations

Based on our assessment, the proposed transaction between BCE and MTS would result in a substantial lessening of competition in the Manitoba market for mobile wireless services, which is already highly concentrated, and which offers no readily available substitutes. The proposed transaction will also likely have negative impacts on the quality of service available to wireline television subscribers.

The Commissioner has recently determined that the national carriers (i.e. Bell, Rogers, and Telus) collectively possess market power in the national retail and wholesale markets for mobile wireless services. MTS, as a vigorous and independent competitor, acts as an effective constraint on the exercise of that market power in the Manitoba marketplace.

There is substantial evidence supporting this observation. Pricing comparisons between Manitoba, on the one hand, and Ontario, B.C., and Alberta, on the other, demonstrate that mobile wireless prices are significantly lower in Manitoba, that the national carriers' price increases in the other provinces have not been matched in Manitoba, and, to the extent that prices have changed, they have increased less in Manitoba than elsewhere, and some of MTS's rates have remained the same or even decreased since 2014. On the measure of service quality, MTS continues to offer unique and innovative options to consumers, such as unlimited mobile and residential broadband data services and pick-and-pay bundles not available from BCE.

Additionally, MTS continues to make sustained, timely, and significant capital investments in its networks, and at a relatively higher rate than BCE. It has consistently upgraded its networks using the newest technologies, and its network coverage compares favourably with BCE's. Average EBITDA and operating income at

MTS was also higher than at BCE between 2010 and 2015. MTS has actively participated in spectrum auctions, ensuring that it has the capacity to meet demand for service today and in the future.

Allowing the merger to proceed would diminish the number of mobile wireless competitors in Manitoba from four to three. To do so would remove constraints on the national carriers' ability to exercise market power by raising prices and reducing service quality or output. This would not only run counter to the longstanding efforts of federal regulators and policymakers, such as ISED and the CRTC, but would fly in the face of the Commissioner's own determinations regarding the need for more competition in the Canadian mobile wireless services market that it submitted to the CRTC in 2014.

Furthermore, it is unlikely that any new competitors will enter the market in Manitoba following the transaction, given the lack of available spectrum and the high sunk costs required to enter and credibly offer service. Even if Shaw were to enter the market, it is unlikely that it would be able to offer competitive service in a timely fashion. Furthermore, Rogers may be left in a position where it is unable to exert competitive pressure on BCE in Manitoba, due to its reliance on a joint network sharing agreement with MTS, further weakening competitive discipline in the market.

Finally, although market concentration in the wireline markets would be left largely unchanged by the transaction, we believe that this area raises concerns as well. MTS made IPTV services available earlier and to more of its customers than BCE, and has also demonstrated a tendency to offer innovative services, such as pick-and-pay bundles which have been fiercely resisted by BCE.

We conclude that BCE's proposed acquisition of MTS would result in a substantial lessening of competition in the Manitoba communications marketplace. If the merger goes forward, there will no longer be an independent competitor in Manitoba capable of constraining the exercise of that market power by the remaining firms, Bell, Rogers, and Telus. Allowing this to happen would be tantamount to condoning the rent-seeking behaviour which the Commissioner himself has strongly condemned as

recently as in 2014, and would set a dangerous precedent for other provincial markets in which competition has just begun to emerge.

Based on our assessment, we provide the following recommendations for the Commissioner to consider as he reviews this merger, in priority order.

Recommendation 1: Block the merger.

The merger would result in a substantial lessening of competition in the mobile wireless services market in Manitoba. The loss of MTS as a vigorous and effective competitor to the national carriers would remove constraints on their ability to collectively exercise market power, which would result in increased prices above the competitive levels that currently prevail, and reduced service quality with respect to monthly data limits.

This outcome would not be in the public interest. To the extent that the merger may have benefits, they would redound principally to MTS shareholders in the form of a one-off payment. These benefits would be far outweighed by the losses suffered by Manitoban consumers, businesses, and the economy as a whole, since money that could have been spent in the general economy would be redirected toward paying prices for mobile services that are above competitive levels.

MTS remains profitable, and continues to invest significant capital into its networks, providing broad coverage and affordable, high quality services.

We therefore recommend that the Commissioner deny BCE's proposal to acquire MTS.

Recommendation 2: Require divestiture of spectrum licences, towers, retail locations, and subscribers to an independent competitor.

As discussed above, we believe that BCE's proposal to divest subscribers and retail locations to TELUS will not be sufficient to preserve sufficient levels of competition in the Manitoba mobile wireless services market.

Instead, if the Commissioner decides to approve the transaction, we believe that substantial safeguards will be required in order to preserve competition in the marketplace.

In this scenario, we recommend that the Commissioner pursue a solution similar to the one taken by Ofcom in 2011 when it was faced by a reduction of five mobile wireless competitors to four in the UK market.¹ In that case, when Orange (France Telecom) and T-Mobile (Deutsch Telecom), the 3rd and 4th biggest players in the market, respectively, proposed to merge in 2011, the UK telecoms and media regulator blessed their merger on the condition that the new entity – Everything Everywhere (EE) — hand over a quarter of its LTE/4G spectrum to the number four player, Hutchison 3.

Approving the present merger would require the Commissioner to enact similar solutions. This would involve discussions with potential entrants, most likely Shaw/Wind, to ascertain their position with respect to potential entry. Similarly, the Commissioner should be cognizant of the possibility that Rogers may be left unable to adequately provide service should it lose its network sharing agreement following the merger. If that is the case, the Commissioner should consider instituting measures to either (a) guarantee Rogers can continue its agreement post-merger, or to (b) gain access to sufficient spectrum and towers to remain a viable competitor in Manitoba following the merger.

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/statement.pdf>

Recommendation 3: Require open-access provisions for the new entity

One possible solution to the problems posed by this merger would be for the Commissioner to impose open access obligations on the merged entity. This would likely require coordination with the CRTC, but would substantially reduce barriers to entry in the retail mobile wireless market, create conditions for service innovation, and constrain the exercise of market power by the national carriers.