CMCRP
Canadian Media Concentration Research Project

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Bell's Bid to Buy MTS is Bad News

One week after Bell Canada Enterprises (BCE) May 2, 2016 bid to acquire Manitoba Telecom Services (MTS) for $3.9 billion 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 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 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. This report reviews the very substantial evidence that supports such findings and demonstrates that, as a vigorous and independent competitor, MTS acts as an effective constraint on the exercise of that market power in the Manitoba marketplace. Permitting BCE to acquire MTS at this time would allow these painstakingly accumulated findings to be tossed aside with impunity before the regulatory measures designed to address such realities have even been implemented, let alone had time to achieve their desired effect. This would offer a bad lesson for the telecommunications industry, and a bad lesson for Canada as a whole.

While Bell frames its acquisition of MTS as a bid help bring Manitoba out of the past and into the future with its pledge to invest $1 billion over five years to build state-of-the-art fibre optic networks, expand Bell's Fibe TV service and increase wireless 4G LTE network coverage to insure that Manitoban's will flourish in the digital economy, we reject that story. The close look at the data and existing trends provided in this report 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 disciplining 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 as well. Furthermore, MTS offers unique and innovative options that people value greatly, notably unlimited mobile data and residential broadband internet services and pick-and-pay television bundles that are not available from BCE, and which Bell has resisted putting into effect with all its might despite CRTC rulings requiring that such choices be made available to all Canadians by all 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 by raising prices and reducing service quality or output, too. 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. This is vitally important since Canada ranks poorly (32nd out of 40 OECD and EU countries) when it comes to mobile phone adoption. As the telecoms consultancy Rewheel also observes, wireless markets that go from four to three carriers usually see a steep rise in prices, and more restrictive, costly data caps.

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, most importantly, 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, due to its reliance on a joint network sharing agreement with MTS, whose fate once the pact expires and if this deal goes ahead is unknown -- further weakening competitive discipline in the market.

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 serives, 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.