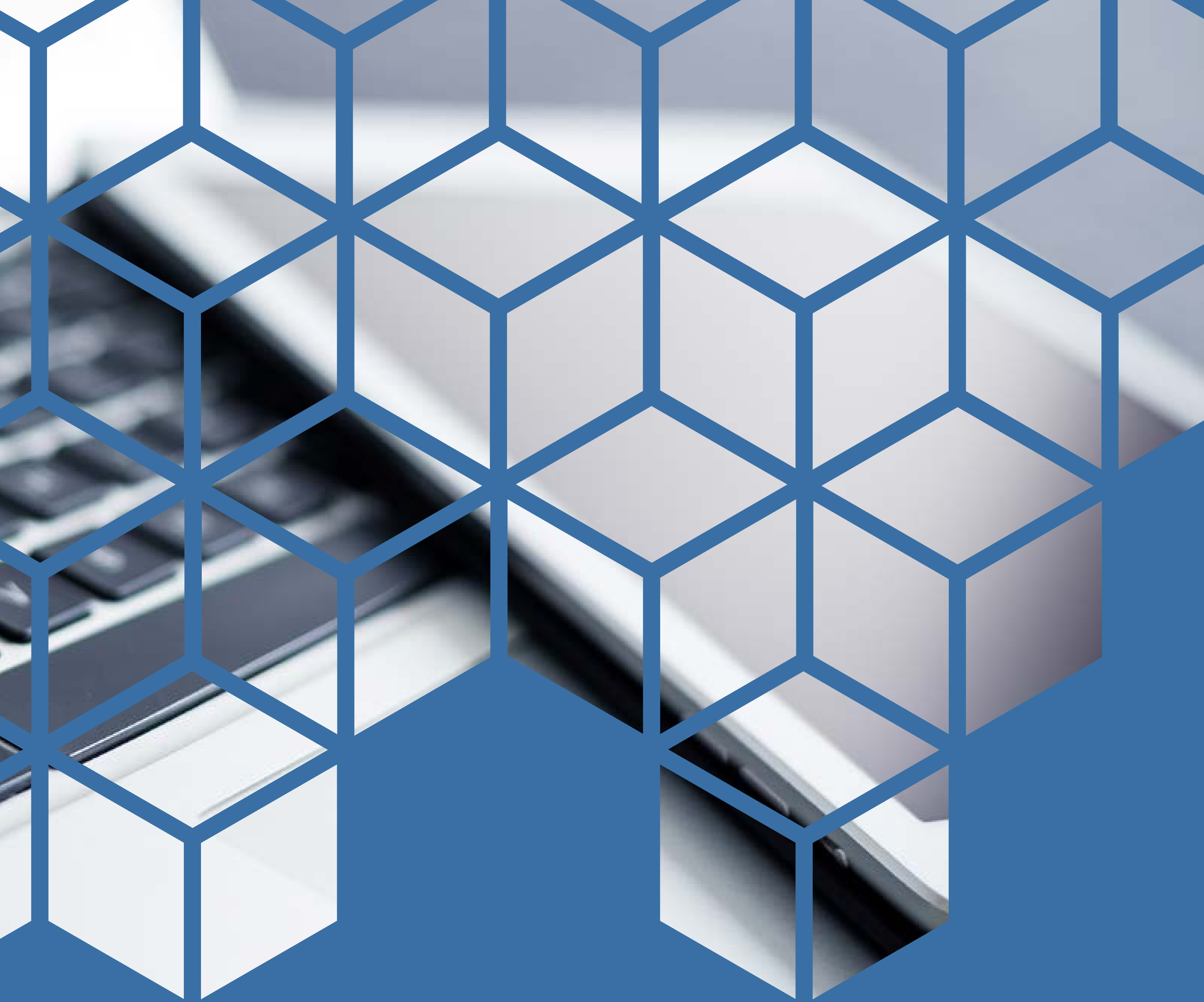

Revised 11th Edition

Media and Internet Concentration in Canada, 1984–2021

Global Media & Internet Concentration Project

The Global Media and Internet Concentration (GMIC) Project is directed by Professor Dwayne Winseck, School of Journalism and Communication, Carleton University. An earlier iteration of this effort, the Canadian Media Concentration Research Project (2012-2020), was folded into the GMIC Project in 2021. This new project includes fifty scholars and covers forty countries. Both projects have been generously funded and supported by the Social and Sciences Research Council of Canada. The GMIC Project is also supported by a dozen external partners from civil society, Canadian and international policy departments and regulatory agencies, and industry. The aim of both projects has been to develop a holistic and long-term analysis of the communications, Internet and media industries in Canada and internationally to better inform public and policy-related discussions about these issues. We expect other country-focused reports to become available in 2023.

Professor Winseck can be reached at dwayne.winseck@carleton.ca or 613 769-7587 (mobile).

Open Access to GMIC Project Data

The underlying data sets for the figures in this report are available for download as an Excel Workbook here. The full data set for the Canadian segment of the GMIC Project are available through Dataverse, a publicly-accessible repository of scholarly works created and maintained by a consortium of Canadian universities. All works and datasets deposited in Dataverse are given a permanent DOI, so as to not be lost when a website becomes no longer available.

Questions and Corrections: If you have questions or believe that any of the data that we report is mistaken, please let us know. If we make a mistake, we will gladly correct it and acknowledge doing so publicly, in keeping with the standards of good scholarship. Corrected versions of both the data sets and the reports are also explicitly acknowledged in Dataverse.

Acknowledgements

Special thanks to several doctoral students and candidates in the Ph.D. program at the School of Journalism and Communication, Carleton University. Ben Klass and Xiaofei Han helped with the data collection for this report. Ben also wrote key parts of the wireless section and with the online games, gaming downloads, apps and in-game purchases sections of the report. Agnes Malkinson produces the reports and keeps the project's website and database in good order. Miaoran (Blue) Dong helped to redesign the new data management system for this project. Much thanks is also due to Keldon Bester, an independent researcher and consultant working on issues of competition and monopoly power in Canada, has also helped to bring the prose to life while offering insights on the issues covered in the following pages. Guy Hoskins, the project manager for the GMIC Project and a postdoctoral fellow at Carleton, has also helped immensely on the editorial front and making sure that this project is kept in good order. Several other colleagues in Canada and internationally have also offered crucial guidance on key points in this report, as cited in the pages ahead. Without all this help, our reports would never see the light of day.

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Errata

As we have often done in years past, we are reissuing the November edition of this report in order to: 1. account for newly published data that was unavailable when the original versions of our reports were published; 2. correct a few minor errors; and 3. clean up a few data entry, editorial and stylistic points. The revisions, changes and corrections are listed below.

Revisions to data for retail internet revenue (revised upwards from $14.3 billion to $14.5 billion) and online advertising revenue (revised downward from $12.6 billion to $12.3 billion) to account for newly released data in the CRTC Communications Market Reports and iab.canada's Internet Ad Revenue Survey had to be carried over into this report.

Both of those changes were small and inconsequential but did spill across several figures and at various points in our analysis and discussion. Changes to the value of online advertising revenue also required corresponding changes to our estimates for the online advertising revenue of specific firms that do not publish such data.

Those changes have small knock-on effects with respect to CR & HHI scores for the affected sectors and those figures were adjusted accordingly.

The "BDUs & Pay and Specialty TV" label in Figure 14 Communication Services and Device Prices vs the Consumer Price Index, 2002-2021 (page 19) has been changed to "BDU + Subscription TV, Video & Audio Services" for reasons and with implications discussed in the errata to our first report.

The analysis and discussion surrounding Figure 14 has been revised to reflect these changes. A discussion of householding spending on BDU and ISP services (average revenue per user, or ARPU) was also added to this discussion.

Contents

Figures

Executive Summary

This is the eleventh edition of our annual two-part series on the state of the communications, Internet, and media industries in Canada (previous versions can be found here for the CMCR Project versions and here for the GMIC Project versions).

The first report focused on identifying short- and long-term trends with respect to the growth, stagnation or decline of the various sectors of the communication, Internet and media industries that constitute the network media economy. This report builds on that effort but turns its focus to answering the question of whether the communications, Internet and media industries in Canada have become more, or less concentrated over time?

We start with this question because it is of both timely and of enduring significance. It also opens a vista onto a much larger array of issues concerning markets, communication, the free press, the human condition, and democracy.

Given the current heightened state of public debates and policy developments around the media and Internet, rigorous, independent research and good quality evidence are needed to counter those who mobilize knowledge and publicity in the service of their own interests.

To help meet this need, our research examines roughly twenty of the largest sectors of the communications, Internet, and media industries and their evolution over the last four decades.[1] The report focuses on the communications infrastructure parts of the network media economy (i.e. mobile wireless, retail Internet access, cable television) just as much as it does on the fast-evolving digital media that are aggregated and made accessible over the Internet, such as:

- Online video services
- Digital games
- Music download and streaming services
- Online news sources
- App stores

We also examine “legacy media”, essentially the advertising-funded mass media of the 20th century that persist today: broadcast television, radio, newspapers, and magazines. As our first report in this two-part series made clear, however, individually and collectively, these four media sectors have been facing severe challenges over the past decade-and-a-half.

Our objective is not to “prove” one point or another but to help create a theoretically and historically informed, consistent, and coherent body of evidence and analysis to help shed light on the fast-evolving communications, Internet and media industries, or what we refer to as the “network media economy”.

1 Including: mobile wireless services; wireline telecoms; Internet access; cable, satellite & IPTV services; broadcast television, pay television services and online video services; radio; streaming and download music services, digital games, apps and app stores, newspapers; magazines; online news services, Internet advertising; advertising across all media; social media; operating systems and browsers.

With governments in Canada and around the world conducting well over one hundred public inquiries into the digital platforms and potential models of Internet regulation since just the mid-2010s, such concerns have garnered considerable attention amongst academics, the public, policy makers and politicians. In such a context, independent research and high-quality evidence is needed to help inform the central public policy and regulatory debates of our time.[2]

From a realist point of view, many of the firms that we examine in the following pages are powerful, profit-seeking corporations with billions of dollars in revenue, profit, and market capitalization at stake. Perhaps unsurprisingly, they have strong motivations to protect and advance their interests. As for-profit entities, they are not committed to any specific types of communications, markets, or segments of society beyond those that serve their bottom-line imperative to maximize profits. Moreover, using the specific question of media concentration as our starting point takes the view that the question matters because, for instance, when core elements of the network media economy are concentrated, the easier it is for dominant players to use their control and influence to blunt the sharp edges of competition while having a disproportionate impact on the shape of the communications ecology overall.

Take, for example, the fact that communications carriers' ability to set prices and data allowances for mobile wireless and Internet access services has a significant influence on how people communicate with one another, access entertainment and news, conduct business, work, play, and so on—indeed, that power can even dictate whether people have a mobile phone or Internet connection at all. To our mind, the ability to influence how much—or how little—people can communicate with one another is a concern of the highest order.

The list goes on: the more powerful Internet, communications and media companies become, the greater their ability to set exploitative privacy and data protection policy norms that differ from what people say they actually want.[3] In addition, the more concentrated the market and powerful the companies in it, the more policy-makers and regulators will be prone to regulatory capture, especially due to the latters' dependence on the firms they regulate for the knowledge and expertise they need to effectively do so.

Market power also affords the potential for gatekeeping power to manifest in novel and unexpected ways. The ability to regulate which content, apps and messages gain access to a platform's technical interfaces, software development kits, online retailing and billing systems, advertisers, audiences, and so forth, are examples.[4] Moreover, many of the world's biggest platforms have, essentially, forged a "content moderation cartel",[5] to share the latest in AI and Machine Learning. These are the 'hidden levers of power' that determine whether Alex Jones, Donald Trump or adult content on Tumblr stay up, come down, or are limited in their visibility.

To determine the answer to our question about whether media are becoming more concentrated or diverse we apply two commonly used economic metrics: Concentration Ratios (the CR4) and the Herfindahl-Hirschman Index (HHI). Using these methods, we focus the lens on each of the media industries that we study and compare the results across media, time (history) and space (different countries). We then scaffold upwards to bring all the sectors we cover into a single snapshot of the network media economy.

2 See Winseck & Puppis (unpublished, nd) for an ongoing tally of these inquiries.

3 Srinivasan, D. (2019). The antitrust case against Facebook: A monopolist's journey towards pervasive surveillance in spite of consumers' preference for privacy. *Berkeley Business Law Journal*, *16(1), 40-99*.

4 Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production*. Hoboken, NJ: Wiley.

5 Douek, E. (2020). *The rise of content cartels*. Knight First Amendment Institute, Columbia University.

The following offers a view of our findings with respect to concentration levels in 2021 for each media sector covered in this report based on their HHI scores (a measure defined later).

Figure 1: Concentration Rankings on the basis of HHI Scores, 2021

LOW CONCENTRATION	MODERATE CONCENTRATION	HIGH CONCENTRATION
✓ Magazines 154	✓ Cable/DTH/IPTV (National) 1,700	✓ Broadcast TV 2,670
✓ Internet News 399	✓ Online Video (SVOD + TVOD) 1,945	✓ Mobile Wireless 2,688
✓ Newspapers 984	✓ Pay & Specialty TV 1,986	✓ Wireline 3,252
✓ Radio 1,135		✓ Internet Advertising 3,353
✓ Internet Access (National) 1,250		✓ Internet Access (Local) 3,889
✓ All TV 1,285		✓ Mobile Web Browser 4075
✓ Network Media Economy 1,252		✓ Social Media Platforms 4,207
✓ Digital Games 1,547		✓ Desktop Web Browser 4,327
✓ Total Advertising All Media 1,792		✓ Mobile OS 4,968
		✓ App Stores 5,050
		✓ Cable/DTH/IPTV (Local) 5,167
		✓ Desktop OS 5,401
		✓ Desktop Search 7,321
		✓ Search 8,421
		✓ Mobile Search 9,443

Key Arguments, Analyses and Public Policy Proposals for a New Generation of Internet Regulation

The observations and analysis in this report fit into a broader environment where discussions about communication, Internet, media, and cultural policy are on a high boil. A common theme in these discussions over the past decade has been the tendency to denounce the global Internet giants, especially Google and Facebook, on the grounds that they are killing the traditional media industries by stealing away their advertising, and killing journalism and imperiling democracy in the process.

While this report accepts that there is an urgent need to bring such entities, as well as large video services that are made accessible over the Internet, under a new generation of Internet services regulation, it criticizes many of the arguments advanced in favour of doing so for often being too simplistic, self-interested, lacking in historical or theoretical context, and reliant on a narrow base of cherry-picked evidence. Consequently, the case against "big tech" and for regulating Internet services is, in many instances, misleading. The type of evidence brought to bear in these reports is a crucial component of remedying this situation.

This report agrees that there are pressing problems that need to be forcefully addressed. However, it holds firm on the conviction that the scale, scope and influence of "big tech" firms and their operations, both around the world and in Canada specifically, must be accurately understood before workable solutions can be developed. To address these issues, the report repeatedly turns to legislative proposals now being taken up in Canada, in particular the *Online Streaming Act* (Bill C-11) and the *Online News Act* (Bill C-18).[6]

The report concludes by sketching an outline of what the emerging, new generation of Internet regulation might look like. To do so, it builds on four cornerstones: structural separation (break-ups), line of business restrictions (firewalls), public obligations, and public alternatives.[7] These principles are drawn from the history of antitrust and communications regulation, where issues of market concentration, principles of fair carriage for all speakers and services, personal data and privacy protection, public service values, and limited speech regulation have been the norm for a very long time.

Rather than treating the digital platforms as if they are the 21st century version of last century's broadcasters and media companies, and taking broadcasting regulation and media policy as our north star, these four principles aim to give regulators the tools they need to deal effectively with both the international Internet giants as well as Bell, Rogers, Shaw, TELUS and Quebecor, all of whom, as the pages ahead will show, have a long track-record of fighting tooth-and-nail against any efforts to curb their influence.

An ambitious conception of a "public alternative" fit for the 21st century "digital age" could include a very large increase in funding for a reinvigorated public service provider such as the CBC. In fact, to bring CBC funding back in line with where it was relative to the broadcasting system in the 1980s would require that the CBC's annual parliamentary subsidy be tripled from its current level of less than $30 per Canadian.

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6 Government of Canada (2022). *Bill C-11 Online Streaming Act, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*; Government of Canada (2022). C-18 Online News Act, An Act respecting online communications platforms that make news content available to persons in Canada.

7 This conceptual framework builds on the work of K. Sabeel Rahman (2018). The new utilities: Private power, social infrastructure, and the revival of the public utility concept, Cardozo Law Review, 39, pp. 1621-1689.

Taking such a step would not only restore its funding to historical levels but also bring it into line with well-funded public service media in the U.K., Germany, Austria and the Scandinavian countries.

Even more ambitiously, this report also contemplates the possibility of creating a new entity, “the Great Canadian Communication Corporation” (GC3)—a new, public service-based digital platform, communications, information, and media enterprise forged out of an amalgamation of Canada Post, the CBC, the National Film Board as well as Library and Archives Canada. The mission of the Great Canadian Communication Corporation would be to, for example, provide:

- Universal and affordable mobile and wireline broadband Internet service to un- and under-served communities in cities, towns, rural and remote areas across the country, building upon the tradition of universally available communication, broadcasting and information infrastructures.
- A platform for the aggregation and delivery over the Internet of media content, information, and culture made in, and of historical, social and political significance to, Canada—an effort that reflects the core aims of institutions such as the CBC and NFB.
- A national digital archive and library.

Headline Facts

- Bell is the biggest communications, Internet and media conglomerate in Canada by far, with $23.6 billion in revenue last year, an amount equal to a one-quarter share of the $94.6 billion network media economy and far in excess of the revenue that Google, Facebook, Amazon, Apple, Netflix and Microsoft obtain collectively from their media-related operations in Canada.

- The top six Canadian companies—Bell, TELUS, Rogers, Shaw, Quebecor and the CBC—accounted for 69% of network media economy revenue last year; in contrast, the "big six" US-based Internet giants' combined revenue in Canada of $14.5 billion gave them a 15.3% market share.

- The mobile wireless sector is the largest market of all those we survey. It remains very highly concentrated, with Rogers, TELUS, and Bell accounting for 89.2% of the sector's revenue last year and 86.2% of subscribers—figures that have drifted down ever so slowly over time despite policy and regulatory measures ostensibly designed to address such conditions.

- New mobile wireless entrants Shaw (Freedom), Vidéotron and Eastlink's share of the wireless market continued to inch upwards in 2021 to 8.4% (based on revenue) and 11.5% based on subscribers. The least concentrated mobile wireless market is in Quebec, where Vidéotron had 17.2% market share by revenue and 22.5% based on subscribers at the end of 2021.

- Incumbent telephone and cable companies' dominance of the residential Internet access market had been slipping since 2008, but that trend has been thrown in reverse in the last three- to four years by several CRTC rulings and the policy indifference of the Liberal government. In 2021, incumbent telephone and cable companies' market share stayed steady at roughly 86% of the $14.5 billion sector by revenue (85% based on subscribers), while independent ISPs previous marginal gains in terms of subscribers, revenue and market share have started to backslide in the last two years.

- The big 5 Canadian communications conglomerates—Bell, TELUS, Rogers, Shaw and Quebecor—combined accounted for just under 90% of the $64.4 billion in revenue across the four main communication services markets (i.e. mobile wireless, Internet access, BDU and plain old telephone service) and 87% of the 71 million subscriber connections in operation last year. Both market share figures are up over time, meaning that the "big five" have been consolidating their control over a much larger set of markets.

- The steep rise in TV concentration seen between 2010 and 2014 has since reversed on account of the rise of online video services such as Netflix, Amazon Prime Video and Disney+, as well as the spin-off of several pay TV services by Bell and Shaw (Corus) to the benefit of smaller TV service operators such as WildBrain (formerly DHX), Stingray, Blue Ant, Channel Zero and CHEK. The "big 5" TV operators took 74.3% of all TV revenue (including online video services) last year: Bell, Netflix, the CBC, Rogers and Shaw (Corus)—down significantly from 83% from the high point of 2014.

- Netflix had estimated revenue of $1.3 billion and 7.5 million subscribers in Canada and a 37.5% share of the $3.5 billion online video services market in 2021. While still the biggest online video service provider by far, Netflix' market share is down from two-thirds in 2016 and firmly in the ninety percent range throughout the first half of the 2010s.

- The online video services market is still concentrated by the standards of the CR4, with the top four providers— i.e. Netflix, Bell, Disney+ and Google's YouTube Premium—accounting for just over four-fifths of the market, but only moderately concentrated by the criteria of the HHI (HHI=1946 in 2021).

- Bell is still the largest television programming services operator in Canada, by far, with $2.5 billion in revenue from its CTV broadcasting network, a suite of thirty-plus pay and specialty television services and its online video service, Crave. Bell accounts for just over a quarter of the $9.9 billion in revenue from all television programming services, while Netflix's 13.1% stake of such revenue makes it the second largest operator in the country, followed by the CBC (12.5% market share), Rogers (11.9%) and Shaw (Corus) (11.4%).

- Google and Facebook, collectively, accounted for 79% of the estimated $12.3 billion online advertising revenue in 2021 and over half of total advertising spending across all media, i.e. $17.5 billion. Consequently, they are the top two recipients of advertising spending in Canada and, on the basis, the fourth and seventh largest entities in the network media economy. Add Amazon to the picture, and the three US digital conglomerates accounted for close to 90% of the online advertising market.

- As the crisis of journalism continues to deepen, large newspaper chains such as Postmedia, Torstar and Quebecor have spun off daily and community papers while consolidating their activities on a regional basis. As a result, the top four firms' share of revenue on a national basis has fallen from 83% in 2010 to 54% last year. This fall in concentration levels is a mixed blessing. On the one hand, it reflects the fact that even leading newspaper groups are struggling to survive, but, on the other, hundreds of new journalist ventures, including several non-profits, are scrambling to secure a toe-hold.

- Online, Canadians get their news from a wide plurality of news sources, both old (e.g. CBC, Postmedia, CTV, *Toronto Star*) and new (e.g. *National Observer*, *Village Media*, Canadaland) as well as domestic and foreign (CNN, CBS, BBC, NBC, *The Guardian*, *The New York Times*).

- While the economic woes facing the press predate the consolidation of digital platforms' dominance, the deteriorating commercial prospects of the news media has magnified their dependence on Google, Facebook and Apple. Growing 'platform dependence' takes the form of direct payments from the platforms to news media companies, patronage during Covid (e.g. Google's Journalism Emergency Relief Fund), reliance on the platforms for distribution and as the primary pathways that people use to access the news, technology, and billing systems.

- The CRTC took relatively strong steps to address the realities of persistently high levels of media concentration and sky-high levels of vertical and diagonal integration between 2012 and 2017 but that resolve has crumbled under its current chair and as the Liberal government reverts to a stance of regulatory hesitance and vacillating policy positions.

- In contrast, the Competition Bureau has taken a surprisingly strong stance against further consolidation in the communication industries in a series of interventions to the CRTC in the past few years and, most notably, in its current bid to block Rogers Communications' proposed take-over of Shaw Communications.

Introduction

This report seeks to answer the following deceptively simple yet profoundly important question:

> **Have telecom, Internet and media markets in Canada become more or less concentrated, and why do we care?**

As McMaster University professor Philip Savage observed years ago, debates about media concentration in Canada "largely occur in a vacuum, lacking evidence to ground arguments or potential policy creation either way".[1]

Without clearly defining 'the media', some researchers see them as forever becoming more concentrated.[2] Others cast the net widely, creating a vast 'digital ecosystem' where even the biggest digital media goliaths appear as tiny specks.[3]

Given these challenges, it is essential to clearly delineate the scope of the terrain from the outset. This report does so by analyzing developments and trends across twenty of the largest sectors of the communications, Internet and media industries over a thirty-seven year period, as depicted in Figure 2 below. We refer to the totality of these sectors as the network media economy (NME).

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1 Savage, P. (2008). Gaps in Canadian media research: CMRC findings. *Canadian Journal of Communication*, *33*(2), 291-302.

2 Bagdikian, B. (2004). *The new media monopoly*. Boston: Beacon Press.

3 Skorup, B. & Thierer, A. (2012). Uncreative Destruction: The Misguided War on Vertical Integration in the Information Economy. Working Paper, Mercatus Centre, George Mason University; Eisenach, J. (2016). New regulatory framework for the digital ecosystem. GMSA.

Figure 2: The Network Media Economy in Canada—What the CMCR Project Covers

TELECOMS & INTERNET INFRASTRUCTURE

- ✓ Wireline Telecoms
- ✓ Mobile Wireless Service
- ✓ Internet Service Providers
- ✓ BDU (Cable, Satellite, & IPTV)

DIGITAL & TRADITIONAL AUDIOVISUAL MEDIA & PUBLISHING

- ✓ Broadcast TV
- ✓ Pay & Specialty TV
- ✓ Online Video Services (SVOD & TVOD)
- ✓ Radio
- ✓ Music
- ✓ Traditional Music (Recorded, Publishing, Concerts/Live)
- ✓ Digital Music (Subscriptions & Downloads)
- ✓ Newspapers
- ✓ Magazines

CORE INTERNET APPLICATIONS & SECTORS

- ✓ Internet Advertising
- ✓ App Distribution
- ✓ Online News Sources
- ✓ Search Engines
- ✓ Social Media & Video Sharing Platforms
- ✓ Mobile & Desktop Operating Systems
- ✓ Mobile & Desktop Browsers

Each sector is examined in isolation and then grouped with comparable sectors into three more general categories: telecoms and internet infrastructure media, digital and traditional audio-visual media and publishing, and core Internet applications and sectors. All sectors are then combined to view the network media economy as a whole. Two common tools are then used to assess the direction of trends in concentration: concentration ratios (CR) and the Herfindahl-Hirschman Index (HHI).

The aim of this scaffolding approach is to clearly and precisely define the media that we want to examine at both the micro and macro level, and to offer a holistic and integrated view of media concentration in Canada. This, in turn, is done to help ensure that apples-to-apples comparisons are being made with other studies, both within Canada and internationally.

As to how we should frame these issues and why we should care about media concentration, there are four main schools of thought, as briefly reviewed in the next section of this report.

Gales of Creative Destruction

One predominant and enduring approach argues that media concentration has never been a serious issue, especially in the 21st Century because, if there was ever a golden media age, we are living in it now.[4] MIT Professor Ben Compaine (2005) exemplified this stance when he offered a terse one-word retort to anyone who thinks otherwise: Internet.[5] The Public Policy Forum (PPF), one of Canada's leading think tanks, is similarly emphatic that media ownership concentration is no longer a concern given that the range of information sources and how people communicate with one another have "exploded on the Internet".[6] If anything, this school is concerned more with the alleged fragmentation rather than concentration of media industries.

4 Skorup, B. & Thierer, A. (2012). *Uncreative destruction: the misguided war on vertical integration in the information economy*. Working Paper, Mercatus Centre, George Mason University.

5 Compaine, B. (2005). *The media monopoly myth*. New Millenium Research Council.

6 Public Policy Forum (2017). *The shattered mirror*. Ottawa: Author.

From this perspective, we are witnessing a battle of “the Stacks”, wherein vertical integration between telecoms operators and TV service providers, on one side, versus a new breed of diversified digital conglomerates such as Google, Apple and Amazon, on the other, is an integral part of dynamic competition. This kind of competition between ‘old’ and ‘new’ industrial giants, according to this perspective, should not only be expected but embraced because it drives innovation and serve consumers well. Seen from this angle, any attempt to shackle telecoms and media companies with ownership restrictions created in the 20th Century will put them at a disadvantage as they increasingly confront and compete with international Internet and digital media conglomerates that are integrated across several lines of business in their own right.[7]

Quantifying Media Ownership and Media Bias

A second school of thought quantitatively analyzes media to see how changes in media ownership affects content, particularly in relation to the issue of media bias. This body of research focuses on quantitative methods and often shies away from making explicit any underlying theoretical assumptions related to the industries it analyzes. Accordingly, research of this kind tends to find that the evidence regarding the link between media ownership and bias is “mixed and inconclusive”—a result that has stayed remarkably consistent for decades.[8]

That said, a key problem with research done from this perspective is that it tends to place undue concern on change in the nature of media content to the detriment of investigation of a broader conception of the impact and consequences of concentration. As Todd Gitlin put it in a classic essay on media effects research, perhaps the consistent finding of “no effect” might be better seen as preserving the status quo. If so, that there is no change in media content attributable to changes in media ownership might be a problem insofar that it signals how market forces tend to conserve said status quo rather than flexibly reflect a broad range of interests or adapt to changes in society and culture.[9]

Media Criticism and the Threat to Democracy

A third school of thought emerges out of the work of critics who see media, Internet, wealth, and corporate concentration as being corrosive forces in society and a threat to democracy. Robert McChesney is one of the best-known voices espousing such arguments. He does not deny that the digital revolution is changing the world; instead, he emphasizes an often over-looked fact: just like the commercial mass media of the past 150 years, the core elements of the Internet are also prone to concentration.[10]

This school also often views the Internet as draining money away from the media and entertainment industries—news especially, arguing that governments should reprise the role played in the United States, Europe, and Canada to varying degrees throughout history by directly subsidizing the news as the public good that it is.[11]

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7 In this view, competition is now occurring across the entire digital media and services ecosystem and this is not the time to constrain ownership consolidation or structural integration across industry lines (Eisenach, J. & Soria, B., 2016, *A new framework for the digital ecosystem*. London: GSMA.

8 Soderlund, W., Brin, C., Miljan, L. & Hildebrandt, K. (2012). *Cross-media ownership and democratic practice in Canada: content-sharing and the impact of new media*. Edmonton, AB: University of Alberta.

9 Gitlin, T. (1978). Media sociology: the dominant paradigm. *Theory and society*, *6*(2), 205-253.

10 McChesney, R. (2014). *Digital Disconnect*. New York: New Press.

11 See: John, R. & Silberstein-Loeb, J. (eds.) (2015). *Making news: the political economy of journalism in Britain and America from the Glorious Revolution to the Internet* (pp. 196-222). London, UK: Oxford University; Picard, R. & Pickard, V. (2017). *Essential Principles for Contemporary Media and Communications Policymaking*. London, UK: Reuters Institute for the Study of Journalism; Pickard, V. (2019). *Democracy without journalism*. London: Oxford University. Also, see our first report in this year’s two-part series where we elaborate on this point.

An outcropping of this school is the broader renaissance of the anti-monopoly tradition. A diverse range of concerns underpins this revival, from the use of predatory corporate strategies to cement dominance, to the extensive harvesting and use of personal information as both a new source of revenue but also to help lock in a dominant market position. Whatever the motivation, contributors to this line of thinking promote the view that wise communications, Internet and media policy is essential to address the issues raised by persistent concentration.

Digital Dominance and Cross Cutting Dynamics in Media Industries

Finally, the "digital dominance" perspective, the school underlying the work of this report, agrees with the creative destruction school that the shift to the digital, Internet-centric media of the 21st Century entails enormous changes. Rather than seeing this as reason to put away our tools because the problems of yesterday are no longer problems today, this fourth school of thought sees the ongoing transformations in the communications landscape now taking place as having unleashed a "battle over the institutional ecology of the digital environment",[12] with the broad contours of what is to come still up for grabs.

However, rather than this being a novel development without precedent, we can take some lessons from the reality that the modern media—from the press, news wire services, broadcasting and film—have developed in close proximity to the much larger telecommunications, electrical equipment manufacturing and banking sectors since the mid-19th Century. That has taken place, moreover, all without these smaller and structurally weaker media sectors ever being fully taken over or dominated by the vastly larger neighbouring industries just indicated. This, in turn, is because communication and cultural goods possess many unique and distinctive qualities that defy the 'normal' logic of markets and commerce.[13] To put this another way, while "big tech" behemoths such as Google, Amazon, Apple, and Samsung play an undeniably vital role in the creation, circulation and consumption of media goods in our own time, so, too, did massive entities like General Electric, Westinghouse, Siemens and AT&T's manufacturing arm, Western Electric. Such entities stood in a similar position with respect to the broadcasting, press and film industries in the "industrial media age".[14]

In today's context, and from this perspective, the core elements of the networked digital media economy may be more prone to concentration than in the past because digitization magnifies economies of scale and network effects in many sectors. Indeed, reflecting on the results of a thirty-country study, Noam (2016) states that concentration levels for mobile wireless and other "network media" are "astonishingly high" and that while the data for content media is mixed, the trend is an upward direction.[15]At the same time, however, digitization greatly reduces barriers to entry in some media markets, allowing many small players to flourish, thus, undercutting narratives of relentless corporate consolidation and omnipotence. Consequently, a two-tiered communications and digital media system appears to be emerging, with a few gigantic "integrator firms" at the centre and surrounded by many small niche players that revolve around them.

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12 Benkler, Y. (2006). *The Wealth of Networks*, ch. 11. New Haven, CN: Yale University.

13 Hesmondhalgh, D. 2019. *The cultural industries* (4th ed.). London, UK: Sage Publications; Miege, Bernard. 2011. Principle Ongoing Mutations of Cultural and Informational Industries. In *Political Economies of the Media*, eds. D. Winseck and D. Y. Jin, 51-65. London, UK: Bloomsbury.

14 Winseck D. (2022) The Broken Internet and Platform Regulation: Promises and Perils. In: Flew T, Martin F and Gillett R. (eds) *Digital Platform Regulation: Global Perspectives on Internet Governance*. London, UK: Palgrave Macmillan.

15 Noam, E. (ed.) (2016). *Who Owns the World's Media*. London: Oxford University, pp. 1307-1316; Hindman, M. (2018). *The Internet trap: How the digital economy builds monopolies and undermines democracy*. Princeton, NJ: Yale University.

This school takes clashes between today's digital giants and communications behemoths that have been around for a long time as important examples of how different factions of business battle for access to capital, policy, and cultural clout. The attention paid to dynamic competition implies a keener focus on the complexity, distinctiveness, and contingent nature of markets.

It also sees cross-cutting forces at work that vary by media, time, and place. More attention is also given to empirical evidence and the particularities of media companies and markets in comparison to other schools, all of which is deeply informed by the Cultural Industries School that has been spear-headed by Bernard Miege and colleagues in France for several decades, but which also has important adherents in Canada, South America, Europe and other parts of the world.[16]

16 See Bouquillion, P. & Moreau, F. (2018). *Digital Platforms and Cultural Industries*. Paris: Peter Lang; Miege, B. (2011). Principal Ongoing Mutations of Cultural and Informational Industries. In D. Winseck & D. Y. Jin (eds.) (2011). *The Political Economies of Media: The Transformation of the Global Media Industries (*pp. 51-65). London: Bloomsbury; Lacroix, J. G. & Tremblay, G. (1997) The 'Information Society' and Cultural Industries theory. *Current Sociology* 45 (4); Becerra, M. & Mastrini, G. (2011). Communication Economy Paths: A Latin American Approach. In Wasko, J., Murdock, G. & Sousa, H. (eds). *The Handbook of Political Economy of Communications*. London: Blackwell, pp. 109-126; Hesmondhalgh, D. (2019). *The cultural industries* (4th ed). London: Sage.

Why We Should Care About Media Concentration: the Consequences of Digital Dominance

By endorsing this school of thought, we start from the premise that media concentration matters. Furthermore, we assume that whether media concentration is high or low is, in strong part, a political and policy choice. That is to say, the character of markets in general and media markets in particular, are not to be taken as naturally occurring phenomena. Instead, they are thoroughly constituted by the policies, rules and laws that have been forged within the context of complex societies and power dynamics.

This approach also emphasizes the role of governments in these choices and their stance towards fulfilling public interests or, conversely, taking steps that have the effect of shielding themselves, technology and/or markets from those interests. This necessarily entails a reversal of the process of the last four- to five-decades whereby governments have delegated a growing range of public regulatory functions and services to private actors.[17] It also invites people to participate in the processes that decide the character of the communications systems we get.

Using the specific question of media concentration as our starting point takes the view that the question matters because, for instance, when core elements of the network media economy are concentrated, the easier it is for dominant players to use their control and influence to blunt the sharp edges of competition and, more broadly, to disproportionately shape the communications ecology overall.

While it is often casually observed that competitive markets typically result in lower prices while concentrated ones tend to lead to higher prices, when it comes to communication services, there is something more vital at stake than just price. For example, communications carriers' ability to set prices and data allowances for wireless

17 See, for example, Belli, L. & Zingales, N. (eds.) (2017). *Platform Regulations: How Platforms are Regulated and How the Regulate US* (pp. 25-38). Geneva: United Nations Internet Governance Forum; Kaye, D. (2019). *Speech Police: The Global Struggle to Govern the Internet*. New York: Columbia Global Reports.

and Internet services can and do influence how people communicate with one another, access entertainment and news, conduct business, work, play, and so on—and even if people can afford a mobile phone or Internet connection at all. Thus, high priced services coupled with low monthly data allowances *discourage* mobile wireless adoption and the use of the mobile Internet in Canada relative to other countries, as we showed in our first report while more affordable services and generous data allowances have the opposite effect. To our mind, the ability to influence how much—or how little—people can communicate with one another is and should be a concern of the highest order.

Given that people increasingly use their mobile phones as a pathway to the news, for instance, the high price of mobile data and restrictive data allowances, can also deter such activities and effect the fortunes of journalism.[18] Such realities increase the platform dependence of news media organizations. For instance, a major reason that has compelled the CBC, Postmedia, the Guardian, *New York Times*, *Financial Times*, *Vox*, *Atlantic.com* and many other major media brands in Canada and around the world to use Google's Accelerated Mobile Pages and Meta's Instant Articles is the imperative to strip down their webpages and services so that they load faster on subscribers' smartphones, thereby saving on data charges while also having the benefit of keeping people's attention. Simultaneously, such arrangements also allow Google and Meta to capture audience data that they then, in turn, parcel out to media clients in ways that further the latter's dependence on the former.[19]

The upshot is a complex and power-riven, four-way relationship between mobile network operators, digital platforms, media organizations, and audiences that has become central to the networked digital media ecology. The cost to news media organizations, which as our last report showed, are already struggling, to design not just for the Internet but also for Google and Meta's AMP and Instant Article services, respectively, are significant. Consequently, high prices and restrictive data allowances have the effect of magnifying news media organizations' dependence on 'digital news intermediaries' such as Google and Facebook, as they are called in legislation currently being considered by the Canadian Parliament as a I write (i.e. Bill C-18, the *Online News Act*).[20] In sum, the cost to participate in such ventures are not minor and impose a proprietary technical layer between people, journalism and the Internet, all of which brings about greater "platform dependence" of news media organizations at a time when their weak economic prospects render them especially vulnerable.[21]

As an ever-widening array of media are aggregated and delivered over the Internet, we must seek to better understand how gatekeeper power works at the communications network and digital platform levels to shape people's access to news and media content. The devices we use to do all these things—from smart televisions to smartphones—are also implicated in such issues. Indeed, France's communications regulator, ARCEP, emphasized this point in a 2018 report that focused on the need to ensure neutrality and non-preferential treatment of services and expression from Internet access service providers (ISPs) at the bottom of the "Internet Stack", through to digital platforms, app stores and consumer devices higher up the stack.[22] To its credit, the Broadcasting Telecommunications and Legislative Review in Canada also highlighted this issue in its report, although its ideas and recommendations on this issue have been upstaged since by the myopic focus of policy debates and legislative proposals on concerns with culture and content.[23]

18 Shearer, E. (Jan 12, 2021). More than eight-in-ten Americans get news from digital devices. *Pew Research Centre*.

19 See Doctor, K. (April 27, 2015). Google to launch $150 million partnership with publishers. *Politico*; Meta (2022). Instant Articles: A native format for publishers to create fast and interactive articles on Facebook.

20 Government of Canada (2022). *Bill C-18 Online News Act*.

21 The concept of platform dependency is taken from Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production*. Hoboken, NJ: Wiley. Also see Nielsen, R. & Ganter, S. (2022). *The power of platforms*. London, UK: Oxford University.

22 France, ARCEP (2018). *Devices, the Weak Link in Achieving an Open Internet*. Paris: ARCEP.

23 Broadcasting and Telecommunications Legislative Review Panel (BTLR) (2020), *Canada's*

The list of themes that can be examined from the starting point of media concentration goes on: the more powerful Internet, communication and media companies become, the greater their ability to set exploitative privacy and data protection policy norms that differ from what people say they want.[24] At the same time, such practices also make communications companies juicy targets for those who would enroll them in efforts to promote cultural policy objectives, and serve the machinery of law enforcement and national security.

In addition, the greater the risk of regulatory capture, which is made more acute by their reliance on the cooperation of said firms to provide the data necessary for effective regulatory scrutiny. Indeed, powerful, profit-seeking corporations with billions of dollars at stake, unsurprisingly, have strong motivations to protect and advance their interests. One way to do so is to shape the knowledge base upon decisions are made by selectively parceling out information to some while holding it back from other when that suits the purpose. And so, despite being surrounded by media and a glut of information, many of the companies and regulators that we examine in our research have become more opaque and more reticent to disclose the kinds of information that researchers, journalists, policy makers and the general public need to better understand them.

The lines between market power and gatekeeping power are also often blurred, with platforms able to set the terms of access to content through moderation policies and technical interfaces. Indeed, a ‘content moderation cartel’ was formed between many of the major platforms.[25]

In fact, many of the world’s biggest platforms have, essentially, forged a “content moderation cartel”,[26] to share the latest in AI and Machine Learning. Originally this was done for the noble purpose of suppressing child sexual abuse. However, it is increasingly being used to harmonize, at least to a degree, these firms’ content moderation practices in order to, ostensibly, bring them in line with their social responsibilities—and to avoid stricter government regulation. In other words, market power can be translated into gatekeeping power and moral authority by regulating which content and apps gain access to their operating systems and online retail spaces.[27] This is a contemporary manifestation of long-standing concerns about media owners using their authority to influence editorial matters to try and set the terms of public debate and public policy agenda, as Bell has done on several occasions with respect to CTV coverage of communications policy issues.[28]

In sum, these points highlight that any discussion of media concentration is ultimately a proxy for larger conversations about the shape of the mediated technological environments through which we communicate, develop knowledge, and exercise our democratic rights. As the extent to which our economy and society rest upon information and communication infrastructures grows, and our lives become more immersed in these digital environments, thinking deeply about these issues is more important than ever.[29]

Communication Future: Time to Act. Ottawa: Innovation, Science and Economic Development Canada.

24 Srinivasan, D. (2019). The antitrust case against Facebook: A monopolist’s journey towards pervasive surveillance in spite of consumers’ preference for privacy. *Berkeley Business Law Journal*, *16(1), 40-99*; Canada, Standing Committee on Access to Information, Privacy and Ethics (2018). *Democracy under threat: Risks and solutions in an age of disinformation and data monopoly*. Ottawa: Author; Bundeskartellamt’s link between market power and abusive terms of service; Volmar, M. & Helmdach, K. (2019). Protecting Consumers and Their Data Through Competition Law? Rethinking Abuse of Dominance in Light of the Federal Cartel Office’s Facebook Investigation. *European Competition Journal*, 14(2-3), 195-215.

25 Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production*.

26 Douek, E. (2020). *The rise of content cartels*. Knight First Amendment Institute, Columbia University.

27 See: Apple’s rules restricting adult content and Wikileaks fundraising and Tumblr’s decision to remove erotic content shortly after it was acquired by Verizon. Feld, H. (2018). Tumblr, Consolidation and The Gentrification of Internet.*Wetmachine.*

28 See: Winseck, D. (March 25, 2015). At Bell, Editorial Meddling by Execs Appears to be a Recurring Problem. *Mediamorphis Blog*.

29 Baker, C. E. (2007). *Media concentration and democracy*. Cambridge, MA: Cambridge University; Noam, E. (ed.) (2016). *Who Owns the World’s Media*; Khan, L. (2020) The end of antitrust history revisited. *Harvard Law Review* 133: 1655-1682.

Methods of Measurement

Measuring media concentration begins by setting out the communication, Internet and media industries to be studied. Revenue data for each of the sectors we cover, and for each of the firms within them with over a one percent market share, is collected and analyzed. Each media sector is analyzed on its own and then grouped into three categories, before scaffolding upwards to get a holistic and birds-eye view of the whole network media ecology:

- the "communications infrastructure media"
- the digital and traditional AVMS
- "core Internet applications and sectors".

Results are analyzed from 1984 to 2021, with an eye to capturing changes over time, cross- media differences and making international comparisons. Lastly, we use two common tools— Concentration Ratios (CR) and the Herfindhahl-Hirschman Index (HHI)— to illuminate the current state of concentration levels and trends within each sector and across the network media ecology as a whole.

The CR method adds the shares of each firm in a market and makes judgments based on widely accepted standards, with four firms (CR4) having more than 50 percent market share and 8 firms (CR8) more than 75 percent seen as indicators of high media concentration.[30] The Competition Bureau, however, uses a more relaxed standard, with a CR4 of 65% or more possibly leading to a deal being reviewed to see if it "would likely . . . lessen competition substantially."[31]

The HHI method is a more fine-tuned method that captures subtler changes and differences in media markets. It squares the market share of each firm in each market and then totals them up to arrive at a measure of concentration. If there

30 See Albarran, A. (2010). *The media economy*. Taylor & Francis, p. 48; Doyle, G. (2013). *Understanding media economics* (2nd ed.). London: Sage; Noam, E. (ed.) (2016). *Who Owns the World's Media*

31 Competition Bureau (2011). *Merger enforcement guidelines*, p. 19.

are 100 firms, each with 1% market share, then markets are thought to be highly competitive (shown by an HHI score of 100), whereas a monopoly prevails when one firm has 100% market share (with an HHI score of 10,000). The U.S. Department of Justice embraced a revised set of HHI guidelines in 2010 for categorizing the intensity of concentration.[32] The new thresholds are:

HHI < 1,500	**Unconcentrated**
HHI > 1,500 but < 2,500	**Moderately Concentrated**
HHI > 2,500	**Highly Concentrated**

These thresholds must be seen more as guidelines than triggers for conclusions or regulatory actions one way or another. They help us to make judgements about the state of a market, both individually and collectively, and trends over time, across different sectors of the communication and media industries, and in comparisons to developments in other countries and regions.

Moreover, far from being static in nature, these measures emphasize the degree of change in market power when ownership changes take place. For instance, "mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power", observes the DOJ.[33] In other words, the greater the change in an HHI score on account of a proposed merger or acquisition, the more likely it is to face tough regulatory scrutiny.

The use of concentration ratios and HHI measures also turn on how markets are defined. How that is done is based on the details of the good or service at hand, and geography. This is important because it distinguishes those who would define the communications and media universe so broadly as to put photocopiers and chip makers alongside ISPs, newspapers, books, film and TV and call the whole thing "the media"—as is the tendency of those working in the Schumpeterian "gales of creative destruction view"—from the "digital dominance" school that we follow, and the scaffolding method that we use, where each sector of the communication, Internet and media industries is analyzed on a stand-alone basis before moving to successively higher levels of generality until reaching a birds-eye perspective on the network media as a whole.[34]

Over the past decade, antitrust and competition policy observers and practitioners have also become much more skeptical of claims that enhanced market power will be good for consumers and citizens because they will benefit from the increased efficiencies that result.[35] Indeed, the "efficiencies defence" has been singled out as a major obstacle to effective enforcement of the *Competition Act* in Canada. In fact, critics argue that the efficiencies defence should either be reined in or dropped from a revised act altogether.[36] In short, what is good for companies is not necessarily good for the country and its citizen-consumers.

32 U.S. Department of Justice (2010). *Horizontal merger guidelines*.

33 *Emphasis added*, U.S., DoJ (2010), p. 19.

34 Skorup, B. & Thierer, A. (2012). *Uncreative destruction*; Compaine (2005). *The media monopoly myth*.

35 See Stucke, M. E. & Grunes, A. P. (2012). The AT&T/T-Mobile merger: what might have been. *Journal of European Competition Law & Practice*, *3*(2), 196-205; Mazzucato, M. (2014). *The entrepreneurial state: Debunking public vs private sector myths*. New York: Harper Books; Kwoka J Tommaso V (2021) Unscrambling the eggs: breaking up consummated mergers and dominant firms. Industrial and Corporate Change. Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a "no remedies" policy for merger enforcement. Competition Policy International.

36 Shaban, R. (March 16, 2021). Canada's efficiencies defence may enable Rogers-Shaw merger. *Globe and Mail*; Shaban, R. (Feb. 22, 2022). Competition policy in Canada is guided by narrow interests. *Policy Options*. Bester, K. (2022). *Merger policy for a dynamic and digital Canadian economy*. Waterloo, ON: Centre for International Governance Innovation.

It is also imperative to keep in mind that assessing the effects of proposed transactions turn, as the US Department of Justice states emphatically, on “what will likely happen . . . . [C]ertainty about anticompetitive effect is seldom possible and not required for a merger to be illegal”.[37] In practice this means the goal is to nip potential problems in the bud before they happen. It also means that experience, the best available evidence, contemporary and historical analogies as well as reasonable economic theories form the basis of judgment, not deference to impossible (and implacable) demands for infallible proof.

Ultimately, approaching the subject from multiple vantage points allows us to conduct integrated, empirical analysis based on observations about the realities and dynamics that are taking place within and across all levels of the network media economy. The ability to achieve this is simply not possible (and certainly would not be credible) without simultaneously paying close attention to the specific details of different media as well as “the big picture”.

37 U.S., DoJ (2010), p. 1.

Historicizing the Current State of Communication and Media Markets and Regulation in Canada

Before exploring the current state of media concentration in Canada, it is useful to provide a brief overview of the technological, commercial, and regulatory evolution of key markets. For some readers, this may amount to an unwelcome detour from contemporary issues, although we strongly believe that this brief reprise of communications history in Canada identifies recurring patterns, tendencies and policy options that are often revived and reapplied in today's context. Still not convinced? Then please jump ahead a few pages to get to the contemporary data, analysis and discussion.

The bare-bones reprisal of communications and media history presented in the following pages is essential, in our view, for several reasons. For one, it deeply informs the approach taken in our research which seeks to understand how economic, technological, political and social forces have interacted in the past to produce the outcomes still present in our own times. The goal is also to counter all-too-common tendency to think that the issues we confront today are entirely novel when in fact there are recurring patterns and tendencies all around us. The objective is also to help construct the historical record so that people in the future who look back on contemporary developments will have a sense of the backstory that got us to where we are now. Lastly, it is also our conviction that regulatory responses and policy options from the past can be valuable guides for addressing emergent issues in digital communication and media markets in our own time, albeit without trying to force-fit today's realities into past fixes.

Indeed, to give a sneak peek at what we mean by that last point, whether one loves or loathes the *Online News Act* (Bill C-18) introduced by the Liberal Government in early 2022, one of its key features—i.e. the section that *prohibits* digital news intermediaries such as Google and Facebook from "acting in any way" that either "unjustly discriminates against" or gives "undue preference" to news sources covered by the bill comes straight out of the centuries-long history of common carriage that we relay below.[38]

Generalizing for the sake of categorization, Canada's communication and media markets have experienced three major historical transformations. First, the ascent of the regulated monopoly telephony regime in the 1910s followed an earlier phase of competitive independent telephone companies across the country. This was then followed by the gradual shift away from regulated monopoly towards market liberalization, circa the 1980s and early 1990s. Thereafter, a third, phase of reconsolidation took root, setting the stage for the growth of today's globally-unique integrated Canadian communications and media markets.

From Independent Telephony to Regulated Monopoly, 1900-1980

Historically, three policy options have often been on the table when it comes to dealing with the realities of the communications and media industries, each of which is instructive as we grapple with the massive transformations taking place in the ever more Internet-centric communications and digital media system in our time, namely:

1. encourage the creation of competitive, independent communication service providers.
2. the use of regulatory tools such as common carriage that prevent companies that stand at the crossroads of commerce, communication and culture from using their gatekeeping power from unjustly discriminating against all those who use their services, including rivals, or from giving themselves an undue advantage.
3. the creation of publicly-owned alternatives to private, commercial operators, for example, SaskTel and the CBC.

For most of the 20th Century, telecommunications in Canada developed as separate local, provincial, and regional monopolies. However, monopoly was never inevitable. In fact, the annulment and expiration of Bell patents in 1885 and 1893, respectively, coupled with a series of rulings by Canada's first federal regulatory body, the Board of Railway Commissioners (BRC), between 1908 and 1912, opened the door to a vast expansion in the number of independent and competing telephone companies, both private and public-owned.

While some parts of the country saw the rise of competing telephone systems, in other areas public ownership of telecommunications was adopted. Across the prairies, for instance, the creation of the Edmonton District Telephone Company (1904), the Manitoba Telephone System (MTS) a year later, Alberta Government Telephones (AGT) in 1906 and the Saskatchewan Telephone Company in 1908 ushered in an era in which publicly-owned telephone systems would hold sway for much of the rest of the 20th Century, that is until they were privatized in the late-1980s and 1990s (except SaskTel, which remains publicly-owned to this day). Similar operations were set up in municipalities and small villages around the country, such as Thunder Bay (Tbaytel) and Westport, Ontario (WTC Communications), public alternatives which continue to thrive to this day.[39]

38 Government of Canada (2022). *Bill C-18 Online News Act*, see sec. 51.

39 Babe, R. E. (1990). *Telecommunications in Canada*. Toronto: University of Toronto, pp. 121-3; Winseck,

This tilt in favour or independent telephone companies and regulated competition was also reinforced by strong controls on the ability of network operators to exercise gatekeeping powers over the flow of news, correspondence, and messages over their systems. That could be seen, for example, in the Supreme Court's Electric Despatch Co. versus Bell Telephone decision in 1890 that ruled that Bell was a common carrier and that to consider it otherwise, as the Electric Despatch messaging company was seeking to have done, would lead to the telephone company having too much power to interfere with and pry into the personal correspondence of its subscribers. In other words, treating the company as a common carrier was good for controlling a telephone company's ability and potential incentives to act as a gatekeeper over the flow of social communication and to protect privacy.[40]

Two decades later, in 1910, the BRC—the distant ancestor of today's CRTC—turned to the common carrier principle to, for all-intents-and-purposes, break-up a three-way alliance between the two biggest telegraph companies[41] in Canada and the U.S.-based Associated Press news wire service. It did this based on considerations central to the principle of common carriage that was just being fleshed out at this time in relation to telegraphs and telephones, and which have played an enduring role in Canadian communications history ever since: namely, that common carriers should not be editors who use their control over the wires (or spectrum) to decide who gets to speak to whom on what terms.

In the face of much corporate bluster, the regulator was emphatic that while allowing the dominant telegraph companies to give away the AP news service ostensibly for free to leading newspapers in major cities across the country might be a good way for the companies to attract subscribers to their more lucrative telegraph business, it would effectively "put out of business every news-gathering agency that dared to enter the field of competition with them".[42]

In a conscious effort to use telecoms regulation (operating under the auspices of railway legislation at the time) to foster competing news agencies and newspapers, the BRC forced Western Union and CP Telegraphs to unbundle the AP news wire service from their telegraph service and charge a separate price for each of its two parts: one for transmission over the wires, the other to reflect the price of the AP news service. It was a huge victory for the Winnipeg-based Western Associated Press—the appellant in that case—and other 'new entrants' into the newspaper business as well. It was also the decisive moment when the principle of common carriage was firmly entrenched in Canadian communications policy and regulation and used as an important contribution to cultural policy, namely to promote the development of a diverse and independent free press.[43]

In short, the BRC acted to constrain corporate behavior out of the conviction that concentration within the telegraph industry as well as a kind of virtual vertical integration between telegraphs and news wire services would run counter to society's broader interest in competitive access to communications and a

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D. (1998). *Reconvergence*. Cresskill, NJ: Hampton Press, pp. 137-139. Today, there are about twenty such entities still operating across Canada under the auspices of the Canadian Independent Telephone Association.

40 As an aside, Bell coveted this outcome at the time. *Electric Despatch v. Bell Telephone*, 15 (1891) *20 SCR 83*, pp. 91-95; Klass, Winseck, Nanni & McKelvey (2016). *There ain't no such thing as a free lunch: Historical and international perspectives on why common carriage should be the cornerstone of communications policy in the Internet age*. Submitted before the Canadian Radio-television and Telecommunications Commission Telecom Notice of Consultation CRTC 2016-192, Examination of differential pricing practices related to Internet data plans (June 28, 2016).

41 Canadian Pacific Telegraph Company and Great Northwestern Telegraph company, the latter a division of the American telegraph giant Western Union.

42 Board of Railway Commissioners, 1910, p. 275. Text of the decision from the author's archives. Copies available upon request.

43 Babe, R. (1990). *Telecommunications in Canada*, pp. 121-3.; Winseck, D. (1998). *Reconvergence*.

plurality of voices in the press. Similar questions arose throughout the 20th Century and were dealt with as the situation demanded. One consistent, guiding rule of communications policy, however, was that of the "separations principle"[44], whereby telecoms carriers[45] competed to carry messages from all types of users, and for all types of purposes, but were prevented by law from directly owning or controlling the messages that flowed across the transmission paths they owned and controlled.

This early era of independent and competitive telephony reached its apex in 1917, when there were 1,700 such companies serving more than half of all telephone subscribers in the country. Notwithstanding their earlier successes, however, the writing was already on the wall that their days were numbered on account of two major regulatory decisions from the previous two years. First, in 1915 the BRC imposed a surcharge over-and-above the price of long- distance service on subscribers of independent telephone companies who accessed Bell's long-distance network. The real death-knell was sounded in 1916 when the BRC adopted a decision that, in line with Bell's advice to the Commission, required independent competitors to compensate Bell for lost business that resulted from their interconnection and competition with its local systems.[46] Thus was the early era of independent competitive telephony put to an end and the regulated natural monopoly regime created and subsequently locked into place for the next seventy years.

While the regulated natural monopoly regime accepted that telephony would be a monopoly— and basically helped bend real world facts to match those assumptions—there was also broad consensus that this monopoly had to be limited in scope. That is, those who owned the wires could not leverage that dominance to enter into adjacent or other lines of business lest they be able to use resources and power accumulated in their protected monopoly markets to influence the terms of development and crush the competition in other markets that were not part of their wheelhouse.

In practice, this meant that the broadcasting, film and publishing industries, while developing in close proximity to one another and to the vastly larger telecoms and electrical equipment manufacturing firms upon whom they depended for carriage and equipment, would also be kept separate from those entities in terms of ownership and control. Indeed, right from the beginning, these conditions fundamentally structured the development of broadcasting in Canada, as it did in the U.S. and in many other countries around the world.

Thus, in 1923, for example, and following in lock-step with decisions taken by their parent companies in the U.S., "Six Great Companies", as *The Toronto Star* reported, "agreed to pool all their patents for the common good".[47] These corporate giants also agreed to carve up the field of communications, broadcasting and equipment manufacturing amongst themselves. In other words, this group of a half-dozen, "big tech" multinationals agreed to segment the markets between telecoms, broadcasting and equipment manufacturing into areas of mutual exclusivity to avoid what they derided as "ruinous competition". In so doing, they effectively set the parameters for the early development of the media and cultural industries, both in Canada and internationally.[48]

44 Wu, T. (2010). *Master Switch*. New York: Knopf Doubleday.

45 Usually two of them (e.g. telegraph vs telcos in the early 1880s, the TransCanada Telephone System (TCTS) and CNCP for three-quarters of the 20th century, the telcos vs cablecos ever since, and the telcos' consortium Stentor versus Rogers/Cantel in the early days of mobile wireless from 1985 until the mid-1990s).

46 BRC (1915, 1916). *Judgements, orders, regulations, and rulings*. Ottawa: J. De Labroquerie Tache; Winseck (1998). *Reconvergence*; Babe, R. (1990). *Telecommunications in Canada*. pp. 121-3.

47 *The Toronto Star*, August 14, 1923. The six companies included the Canadian General Electric Co., the Marconi Wireless telegraph Co. of Canada, the Canadian Westinghouse Co., the Bell Telephone Company, the Northern Electric Company, and the International Electric Company.

48 See Winseck, D. (1998). pp. 169-172; Babe, R. E. (1990). *Telecommunications in Canada*. pp. 202-203; *The Toronto Star*, August 14, 1923.

The separation of transmission and carriage from message creation and control that had been realized through, both, court and regulatory rulings, as well as corporate decisions was reinforced and extended through time in other ways as well. Such actions, for instance, set the framework within the Canadian Radio Broadcasting Commission, the predecessor to the CBC, was created in 1932. These historical dynamics also influenced the advent and operation of news wire services, the film industry and the press, i.e. the major media and cultural industries of the 20th Century, each of which also developed in close proximity to the much larger telecoms and electrical equipment manufacturing industries but without ever being fully subsumed by them, again, for reasons of both corporate interests and government policy.

Beyond Canada, similar concerns and dynamics could be seen, for example, when the original equipment manufacturing consortia behind the British Broadcasting Company in the U.K. and the National Broadcasting Company/Radio Corporation of America in the U.S., respectively, were ousted from the field in the latter half of the 1920s during the remaking of these entities into the stand-alone broadcasters that they eventually became. Nor should telephone companies such as AT&T, or equipment manufacturing conglomerates such as General Electric, Western Electric or Westinghouse play an active role in the film industry, as was the case when, after having wired movie theatres across the U.S. and the Hollywood production studios for sound, circa 1927 and into the 1930s, AT&T and the electrical equipment manufacturing giants took on a larger role by financing and vetting films during this time. By the end of the 1930s, however, these companies were forced out of film business by the threat of an antitrust case targeting just these activities from the Federal Trade Commission.[49]

We must keep this history in mind when we think about our own times, as the media and cultural industries today are drawn ever more closely into the orbit of giant international Internet and IT firms. In other words, yesterday it was Bell, Marconi, General Electric, Westinghouse, Northern Electric, and the International Electric Company that fundamentally shaped the development of the media and cultural industries, whereas fast forward to the 21st Century, and it is Google, Amazon, Facebook, Apple, Microsoft, AT&T, BCE, etc. that stand in much the same position.[50]

These dynamics were not the product of one-off events, either. Amendments to Bell's federal charter in 1968, for instance, prohibited it from 'content and information publishing services', thereby reflecting a political and policy choice to bar it from radio and television broadcasting as well as the emerging fields of cable TV and electronic publishing. This set of political and policy choices to *prevent* convergence between communications carriers and content media services held steady until the early 1980s, after which more and more exceptions to the general rule were adopted. These restrictions were finally done away with altogether in the mid-1990s when the federal government shifted from *preventing* the convergence of telecoms, broadcasting and information services, to *promoting* convergence on the grounds that doing so would bring about the massive investments needed to build the Internet and "information superhighways" and to so in a way that better equipped Canadian companies to compete globally. In response, the CRTC put a new regulatory framework in place that was supposed to govern the companies who could then offer a full suite of communication, broadcasting and information services.[51]

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49 See Briggs, A. A. (1961). *The history of broadcasting in the United Kingdom* (Vol. 1). Oxford, UK: Oxford University; Barnouw, E. (1975). *Tube of plenty*. New York, NY: Oxford University Press; Danielian, N. R. (1939). *AT&T: The Story of Industrial Conquest*. New York, NY: Vanguard Press.

50 Winseck, D. (2022). The Broken Internet and Platform Regulation. In T. Flew, F. Martin & R. Gillett (eds.). *Digital Platform Regulation: Global Perspectives on Internet Governance*. London, U.K.: Palgrave Macmillan; Hesmondhalgh, D. (2019). *The cultural industries*. Thousand Oaks, CA: California, pp. 16-22, 217-218.

51 Canada (1996). Competition and culture set to gain in Convergence Policy Framework. Ottawa: Ministry of Supply and Services; CRTC (1994). *TD 1994: Review of the Regulatory Framework*.

Market Liberalization and Industry Reconsolidation, 1980—2010s

Media concentration issues came to a head again in the 1970s and early 1980s when three major inquiries were held: (1) the Special Senate Committee on Mass Media and its two volume report, *The Uncertain Mirror*; (2) the Royal Commission on Corporate Concentration (1978); and (3) the Royal Commission on Newspapers (1981). While these proceedings did not amount to much in the way of concrete reform, they left a valuable historical and public record.

During the 1980s and early-1990s, the government introduced a series of gradual policy reforms that began to chip away at the previous era of telecoms monopolies and open the broadcasting system to a range of new commercial operators and pay television services. For example, to foster the development of, and at least some limited rivalry in, new mobile wireless telecoms services, the Department of Communication licensed two competing sets of mobile wireless operators in 1983-1984: the first was a joint venture between cable television, broadcasting and publishing giant, Rogers, and AT&T-backed Cantel Communications; the second consisted of the eleven regional telephone monopolies operating across the country at the time (e.g. Bell Canada, MTS, Sastel, TELUS, the Atlantic telcos), each of which now had a license to provide wireless services in addition to their plain old telephone services and to do so in competition with Rogers/Cantel in their respective operating territories.[52] Two new national competitors in mobile wireless service were also launched in 1995 (Clearnet and Microcell).

At the same time, the regulated natural monopoly regime in wireline telecoms was also dismantled through a series of CRTC decisions that allowed people devices that subscribers could attach to the monopoly carriers' networks (1982), for enhanced services (1985), in long- distance (1992), and then for local telephone services (1997).[53] The Chretien Liberals also encouraged the telephone and cable companies to compete in one another's former, mutually exclusive turf in 1996, while a year later the CRTC laid out its blueprint for local telephone competition.[54]

As government policy makers opened the doors ever wider to competition, however, a process of reconsolidation was also taking place. Beginning with Bell's 1988 acquisition of Northwestel, and cresting with Bell's 1999 creation of Aliant, a holding company comprised of amalgamated New Brunswick, Nova Scotia, PEI and Newfoundland telecommunications providers, folded in as Bell Aliant in 2006. On the opposite side of the country, TELUS was formed in 1999 from the fusion of BCTel with AGT (which had been privatized a decade earlier) and Edmonton Tel, as well as BCTel-owned Quebec Tel. Simultaneously, Rogers and Shaw divvied up their cable systems into Cable Monopoly East and Cable Monopoly West in 2000, with Rogers giving up 626,000 subscribers in Vancouver and nearby suburbs in exchange for Shaw's 604,000 subscribers in Southern Ontario and New Brunswick.[55]

52 Klass, B. (2015). *Mobile wireless in Canada: Policy, progess and problems (MA Thesis)*. Winnipeg, MB: University of Manitoba, pp. 58-61

53 See: CRTC (1982) *In Attachment of Subscriber-Provided Terminal Equipment, Telecom Decision CRTC 82-14*; CRTC. (1985, June 25). *ARCHIVED Telecom Decision CRTC 85-10: Inquiry into telecommunications carriers' costing and accounting procedures: Phase III - Costing of existing services*; CRTC. (1992, June 12). *Telecom Decision CRTC 92-12: Competition in the provision of public long distance voice telephone services and related resale and sharing issues*; CRTC. (1997, May 1). *Telecom Decision CRTC 97-8: Local competition*; Also, Rideout (2001). *Continentalizing Canadian Telecommunications: The politics of regulatory reform.* Montreal, QC: MQUP.

54 Canada (1996). *Competition and culture set to gain in Convergence Policy Framework*; CRTC (1994). *TD 1994: Review of the Regulatory Framework*.

55 Shaw (2006), *Annual Report 2005*, p. 60.

Thus, by the early-2000s, the natural monopoly telecoms regime of the previous century had been replaced by a series of duopolies in the central and Atlantic provinces, on the one side of the country, and the western provinces of Alberta and BC, on the other, with SaskTel and MTS in Saskatchewan and Manitoba, respectively, competing with local cable systems. As a result, in one city after another, former monopoly telecoms operators battled monopoly cable providers for control over wireline and wireless communications across the country.

The general trend at the time was also to encourage more players and more diversity in television and radio ownership. When bouts of consolidation did occur, it tended to be amongst individual players in single media markets. When bouts of consolidation did occur, it tended to be amongst individual players in single media markets, i.e. through horizontal integration. Conrad Black's take-over of the Southam newspaper chain in 1996 was a case in point, while the amalgamation of several local and regional television ownership groups in the late 1990s to create a handful of national commercial television networks under common ownership further exemplified the point: CTV, Global, TVA, CHUM, TQS.

While weighty in their own right, these amalgamations did not have a big impact across the media. The CBC still remained prominent during this period as well, but public television and radio were also being steadily eclipsed by the expansion of commercial broadcasting services. As evidence of this, the CBC's share of all resources in the television 'system' slid from 45 percent in 1984 to a little over a quarter of that amount today (12%).

While rare, media conglomerates and vertical integration were not unknown at this time. To the contrary, their formation was seen by many as embodying the rising and inevitable force of media convergence. Rogers' blockbuster take-over of publisher-turned radio and television broadcaster Maclean-Hunter in 1994 was held up as the harbinger of a new era of convergence and marked the ascent of the vertically integrated communications and media conglomerate in Canada.

A half decade later, the second such firm in Canada emerged after Quebecor went on a fin-de- siècle buying spree to acquire the Sun chain of newspapers in 1999, the largest cable company in Quebec, Vidéotron, in 2000, and the French-language commercial television network, TVA the next year. Overnight, the former regional newspaper publishing and printing company had been remade into a communications and media conglomerate that towered over the television, cable television, newspaper, magazine, book and music markets in Quebec.

Before the decade was out, BCE took advantage of the Chretien Government's relaxed cross-media ownership rules to acquire the national English-language CTV television network, a stable of pay television services, and the Globe and Mail newspaper. This experiment in convergence, however, was short-lived, as Bell sold-off its stakes in CTV and *The Globe and Mail* in 2006, demonstrating in the process that convergence was by no means inevitable, despite government policies to promote it, and industrial interests like BCE that seemed to be forever enthralled by it.

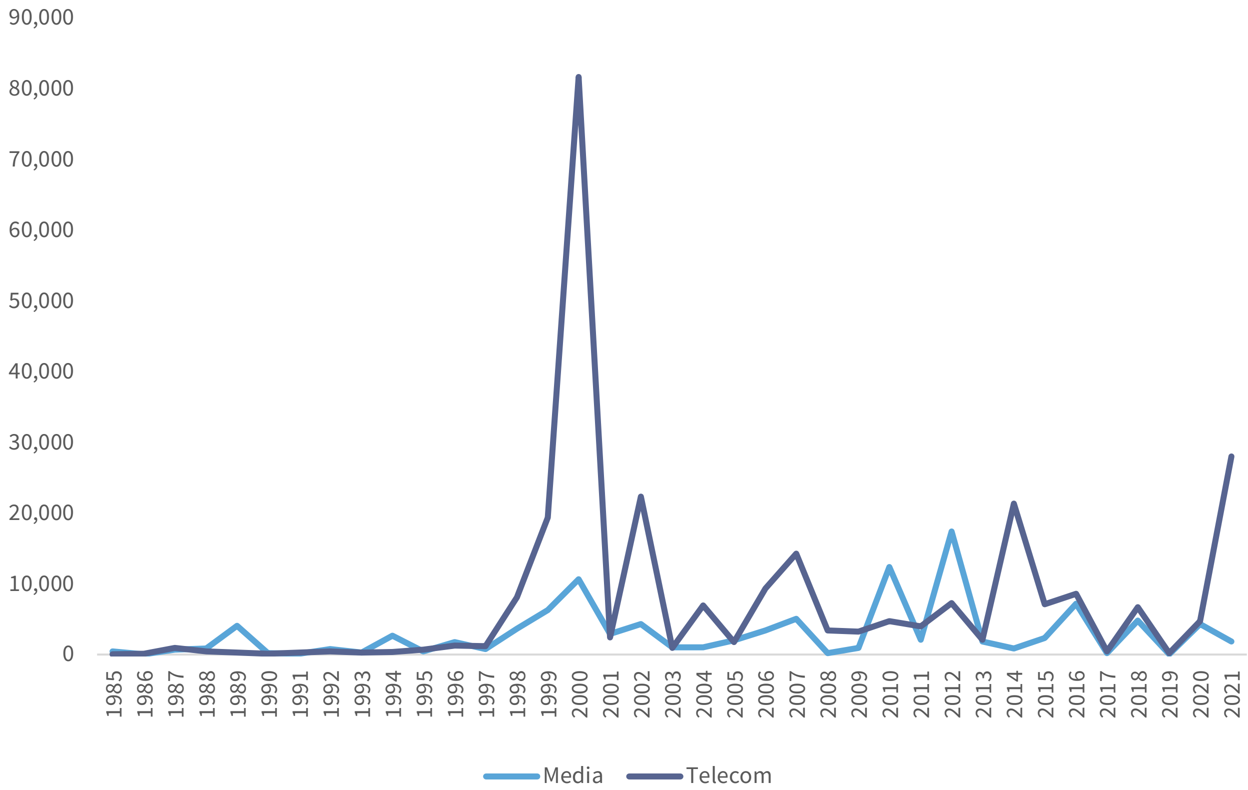
Whereas gradual change defined the 1980s and early-1990s, things shifted abruptly after the mid-1990s and carried on into the 21st century when three waves of consolidation swept across the telecom, Internet and media industries. Figure 3, below, reviews some of the major mergers and acquisitions that have reconfigured the communications, Internet and media landscape in Canada over the last quarter-of-a-century.

Figure 3: Major Communications & Media Ownership Changes in Canada, 1994-2021

Wave 1 (1994-2000)	• Rogers acquires Maclean-Hunter ($2.5B) (1994) • BCE acquires CTV and The Globe and Mail ($2.3B) (2000) • Quebecor acquires Sun newspapers ($1B)(1999), Videotron ($4.9B)(2000) and TVA ($500M)(2001) (Total: $6.4B) • Canwest buys Global TV ($800M) (1998) and Hollinger newspapers ($3.2B) (2000) • Telus, created from the amalgamation of BC Tel, AGT, and Edmonton Tel, acquires Clearnet ($6.6B) (2000)
Wave 2 (2004-2007)	• Rogers acquires Microcell ($1.4B) (2004) • BCE exits media business (2006) • CTVglobemedia acquires CHUM ($1.4B) (2007). • Rogers acquires City TV ($375M) (2007). • Astral Media buys Standard Broadcasting ($1.1B) (2007) • Quebecor Acquires Osprey Media ($517M) (2007) • Canwest acquires Alliance Atlantis ($2.4B) (2007)
Wave 3 (2010ff)	• Canwest declares bankruptcy, newspapers acquired by Postmedia ($1.1B) and TV assets acquired by Shaw ($2B) (2009-2010). • BCE re-acquires CTV ($3.2B) (2011). • BCE's second bid to acquire Astral Media approved after it agrees to divest several TV services ($3.4B) (2013). • Telus acquires Public Mobile (2013) • Rogers acquires Mobilicity ($465M) (2015) • Postmedia acquires Quebecor English language Sun newspapers ($360M) (2015) • Shaw acquires Wind Mobile (rebrands as Freedom Mobile) ($1.6B) (2016) and spins off Shaw televion assets to Corus to help finance the deal (Corus is under common ownership with Shaw given controlling ownership stake held by Shaw Family Trust). • Bell acquires MTS ($3.1B) (2017). • Torstar and Postmedia swap ownership and subsequently close the majority of 41 community newspapers (2017) • NordStar Capital acquires Torstar ($52 million)(2020). • Rogers Communications proposes to acquire Shaw Communications ($26 billion) (2021).

The waves of capital investment that drove consolidation across the telecom, media and Internet industries during these different phases is illustrated in Figure 4 below.

Figure 4: Mergers and Acquisitions in Telecoms & Media, 1985–2021 (Millions$)



Source: Redefinitive (formerly Thomson Reuters). Dataset on file with author.[56]

As Figure 4 illustrates, mergers and acquisitions rose between 1994-1996 but then soared to never-since-repeated heights before collapsing as the dot.com bubble burst in 2000. These processes reflected and embodied the business, political and regulatory climate of the time and the greatly expanded role of finance capital investment in the economy generally and in the telecoms, Internet and media sectors specifically.

After the euphoria of the dot.com era melted away, several companies collapsed outright (e.g. Hollinger Newspapers, Craig Media, 360Networks) or jettisoned their ill-conceived attempts at communications and media convergence (e.g. BCE). At the same time, a few other well-established players stepped in to pick up the wreckage, as Canwest did, for example, with respect to the Hollinger Newspaper chain and Craig Media (the A-Channel network), and as Shaw and BCE did with respect to 360Networks. In addition, two mobile wireless operators that had been created in the mid-1990s to compete with the national mobile wireless duopoly of the time—Clearnet and Microcell—were acquired by TELUS in 2000 and Rogers in 2004, respectively. Those latter transactions put an end to this early era of mobile wireless competition.[57]

56 Telecoms includes wireless, wireline and Internet access; media includes broadcasting distribution, TV, radio, newspapers and magazines.

57 CRTC (2004). *Report to the Governor-in-Council: Status of competition in Canadian telecommunications markets*. Ottawa: Author, pp. ii, 23-24.

> “At present, all eyes are fixed on Rogers’ blockbuster bid to take-over Shaw Communications for $26 billion announced in early 2021. If the proposed deal does go through, it will be the sixth largest ownership transaction in Canadian history.

In broadcasting, the then-burgeoning pay television and newspaper publishing industries in Canada came in for a round of consolidation in the second half of the first decade of the 2000s. Four transactions, all of which took place in 2007, stood out:

1. Canwest’s acquisition of Alliance Atlantis, one of Canada’s largest pay and specialty TV services at the time.[58]
2. Astral Media’s acquisition of Standard Broadcasting, the third largest commercial radio ownership group.[59]
3. The complicated make-over of CTV that took place as Bell Canada exited the media industry and the newly formed CTVglobemedia took over Bell’s interest in CTV while also joining forces with Rogers to acquire CHUM—also one of the country’s largest and most iconic TV and radio broadcasters at the time.[60]
4. Quebecor acquired Osprey, a significant newspaper publisher operating largely in Ontario and Quebec.

By the time 2007 drew to a close, nearly all of the significant regional television, radio and newspaper publishing groups in Canada had been swallowed by a handful of national media conglomerates, with little countervailing effort on the part of the CRTC. It was a significant milestone marking the point at which the audiovisual and publishing media landscape across the country had been completely overhauled through a sweeping process of cross-media ownership consolidation within the span of just a year.

58 CRTC (2007). BD CRTC 2007-429. Transfer of effective control of Alliance Atlantis Broadcasting Inc’s broadcasting companies to MediaWorks Inc.

59 CRTC (2007). BD CRTC 2007-359. Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership, carrying on business as Astral Media Radio.

60 CRTC (2007). BD CRTC 2007-165. Transfer of effective control of CHUM Limited to CTVglobemedia Inc; CRTC (2008). BD CRTC 2008-69. Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVglobemedia Inc.

As for the CRTC, wherever its mandate was engaged with respect to these transactions, it offered its blessing and little to no sense that it would serve as a countervailing force to the processes of market consolidation. In 2008, the Commission adopted its *Diversity of Voices* report in response to these trends, but the criteria for evaluating consolidation in broadcasting were exceedingly weak and may have even sent the signal that the Commission believed that cultivating national champions in the communications and broadcasting industries was good public policy.

That stance certainly fits well with what followed next when, circa 2007 to 2013, English-language commercial television was taken over by three vertically integrated, national communications and media conglomerates: Rogers, Shaw and Bell. They were matched in Quebec by the regional communications and media conglomerate, Quebecor, a company that had, as we saw earlier, been assembled at the turn-of-the-21st Century.

This process of grafting television onto the immensely larger communications industry took place in, more or less, three steps between 2007 and 2011. The first step occurred in 2007 when Rogers—already a vertically integrated company on account of its history in radio broadcasting and its acquisition of Maclean Hunter in the early-1990s—acquired the City TV network in a handful of the biggest cities across Canada and roster of pay television services after it took over part of the CHUM operations, as we saw a moment ago.

Three years later, Shaw, the Alberta-based cable communications giant that had been mainly operating in Western Canada up until this point, acquired Global TV from the bankrupt Canwest. Like Rogers, Shaw already had a modest stake in pay television services, television production (Nelvanna) and radio broadcasting through its ownership of Corus Entertainment (which Shaw had spun off as a separate company in 1999). With its take-over of Canwest, however, Shaw was transformed into a major vertically integrated communications and media conglomerate with a stable of nine local television stations in major cities across the country, fifty-three radio stations and thirty pay television services.

The next phase in this process revolved around BCE's resurrection of its communications and media convergence vision. Over the next three years, Bell re-acquired CTV in 2011. A year later, Bell acquired a joint-ownership stake (37.5%) with Rogers (37.5%) and Kilmer Sports (25%) in Maple Leaf Sports and Entertainment, giving it part ownership of the Toronto Maple Leafs, the Toronto Raptors, the Toronto Blue Jays, the Air Canada Centre in Toronto (since renamed Scotiabank Arena), and three digital pay television services: Leafs TV, NBA TV Canada and GolfTV. Lastly, in 2013, Bell acquired Astral Media—the largest independent pay and specialty television service and radio broadcaster at the time (together with Astral's rights to premium pay television content, i.e. HBO Canada).

By 2013, Bell was not only the largest communications company in Canada but also the biggest media content company. Once the dust had settled, the network media economy in Canada had been completely transformed and its fate harnessed to four vertically integrated communications and media conglomerates:

- Bell owned the CTV network, forty-plus pay television services, and the country's largest commercial radio network;
- Rogers owned City TV, more than a dozen pay television services, and the second largest commercial radio network in Canada;
- Shaw owned Global TV, a roster of fifty pay television services, and Canada's third largest commercial radio group;
- Quebecor maintained its longer standing ownership of the French-language TVA network, a dozen pay television services, two French-language newspapers (i.e. Le Journal de Montréal and Le Journal de Québec) and the English-language Sun newspaper chain.

Today, Bell Media is still the largest television ownership group in Canada, by far. It has thirty- five local broadcast television stations that make up the English-language CTV network and the second largest French-language V network, respectively, thirty-one pay and specialty television services, the Crave and Noovo online video services, and 109 radio stations in fifty-eight cities nationwide.[61]

For telecommunications markets the same period represented a comparative lull in acquisitive behaviour and even a push for diversification when Industry Canada used the 2008 AWS spectrum auction to support the entry of a handful of new firms into the national mobile wireless market. This diversification was short-lived though, beginning with TELUS' 2013 acquisition of Public Mobile, and capped off with Shaw's 2016 acquisition of Wind Mobile and Bell's take-over of MTS in 2017, the latter blessed by the Competition Bureau with a now-failed consent agreement at attempted to create a new competitor out of rural wireless provider Xplornet. After floundering for a few years, Xplornet was acquired by Stonepeak Infrastructure Fund, a NY-based private equity fund, in 2020, and its mobile wireless division spun-off into a stand-alone operating division before being shut down this year.[62]

At present, all eyes are fixed on Rogers' blockbuster bid to take-over Shaw Communications for $26 billion announced in early 2021. The deal remains stalled at present because the Competition Bureau has is seeking to block the deal outright, while a review by the Department of Industry, Science and Economic Development awaits the outcome of that effort.[63] If the proposed deal does go through, it will be the sixth largest ownership transaction in Canadian history.

The Era of the Vertically-integrated Communications and Media Conglomerate, post-2010

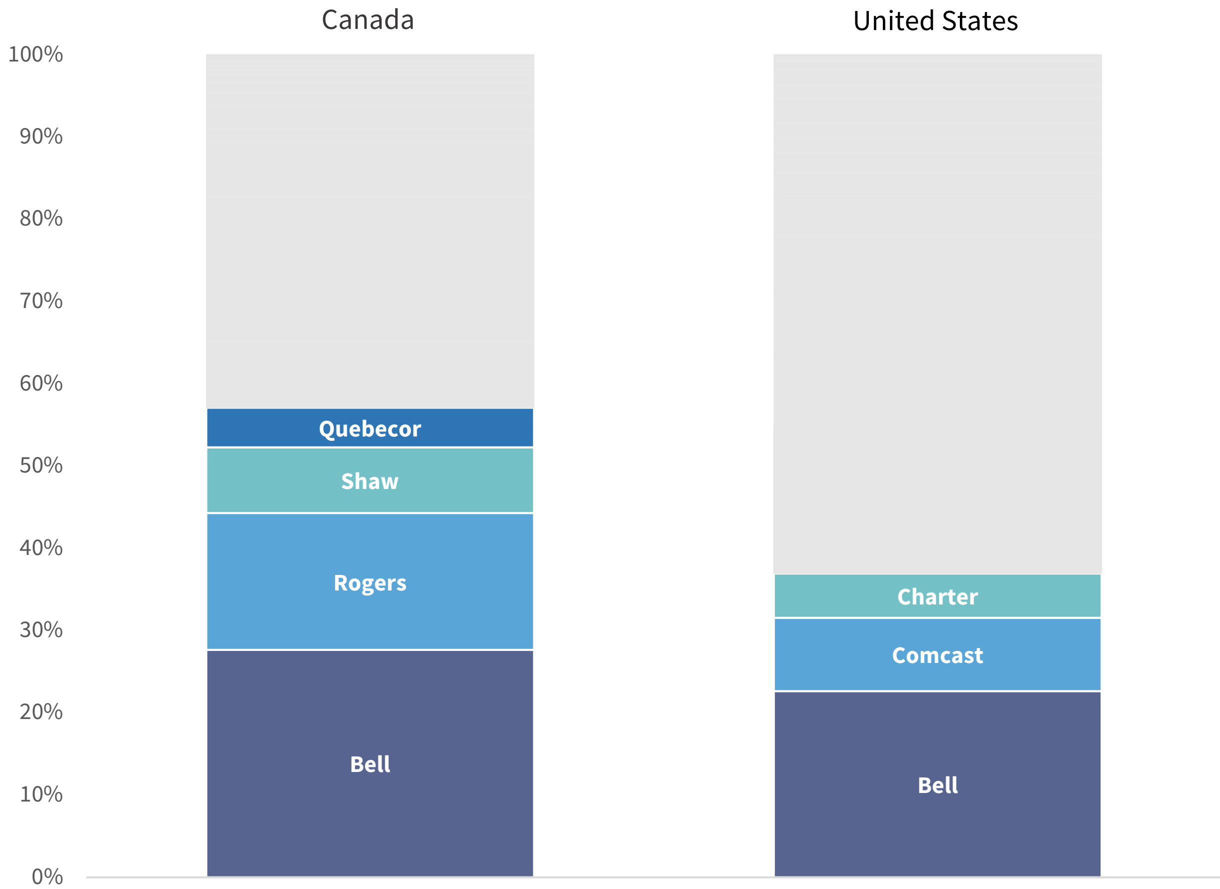
The culmination of the past 40 years have created what now represents the apex of the network media universe in Canada: the vertically integrated communications and media conglomerate. Levels of vertical integration soared between 2008 and 2013 and are now exceptionally high relative to historical conditions and in relation to the United States and internationally. Figure 5 below illustrates this point with respect to Canada and the United States in 2021, respectively.

61 BCE (2022), *Annual Report, 2021*, p. 37; also see the TV Services Ownership Groups sheet in the GMICP Workbook—Canada.

62 Cision (June 11, 2020). Xplornet announces completion of sale to Stonepeak Infrastructure Partners; Karadeglija, A. (July 18, 2022). Xplornet Mobile shut down is a signal for government to 'stop approving telecoms mergers'. *National Post*.

63 Competition Tribunal (2022). Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc. The Rogers-Shaw deal was also reviewed by the Parliamentary Standing Committee on Industry, Science and Technology in April 2021. We provided testimony to the committee and submitted a report to it opposing the transaction (see Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It. Submission to the Standing Committee on Industry, Science and Technology of the House of Commons (Canada) regarding the proposed acquisition of Shaw by Rogers.

Figure 5: Vertical Integration in Communication and Media Sectors—the United States vs Canada, 2021



Total $ CDN NME (Millions)	$94,598.4	**Total $ US NME (Millions, CDN$)**	$1,158,947.6
CR 1 CDN	24.9	**CR 1 US**	17.6
CR 4 CDN	63.1	**CR 4 US**	45.4
CR 10 CDN	83.5	**CR 10 US**	68.6
VI Cos CDN	51.5	**VI Cos US**	28.8
HHI CDN	1251.6	**HHI US**	714.6

Sources: see the "Fig 5 VI US vs Canada, 2021" and the "Fig 33 LeadingTelecomInternet" sheets in the Excel Workbook accompanying this report and each the sector sheets in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

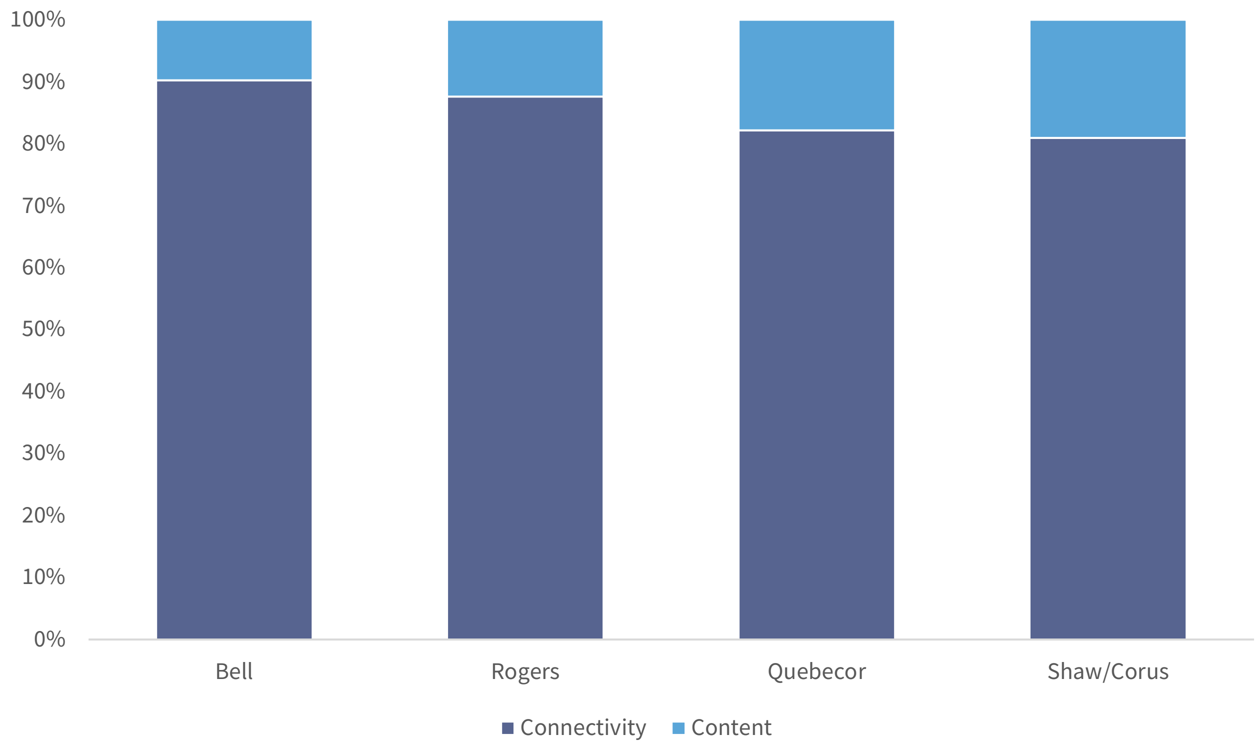
Canada also has exceptionally high levels of vertical integration between its communication and media industries by international standards. Thus, in the most comprehensive and recent review of media ownership and concentration, Canada had the third highest level of vertical integration out of the 28 countries examined.[64]

But the role of connectivity and content are not equal in these conglomerate structures. Although the vertically-integrated companies' stakes in audiovisual media services are extensive, they are dwarfed in comparison to their communications services. For Quebecor, Shaw, Bell and Rogers, 80-90% percent

64 Noam, E (ed.) (2016). *Who Owns the World's Media*.

of their revenue flows from the communications services side of their business rather than from media content services. Figure 6 below illustrates the point.

Figure 6: Connectivity vs Content within Canada's Vertically Integrated Companies, 2021 (Ratio by Revenue)



Sources: see the "Top 20 Coms & Media Cos+GAFAM" in the Excel Workbook accompanying this report and each of the sector sheets in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

Another way to put this is that audiovisual media in Canada have largely become ornaments on the national carriers' corporate edifice. They are important, but their real purpose seems to be to drive the take-up of the companies' vastly more lucrative wireless, broadband Internet, and cable, satellite and IPTV services. At the end of the day, a key point is that media content services are structurally subordinate to the vertically-integrated companies' core business activities in communications services, where the lions' share of their revenue and profits are.

During a brief period between 2012 and 2017, the CRTC stepped away from its long-running, permissive stance toward ownership concentration and vertical integration. Commissioner Jean-Pierre Blais made it clear from the outset of his tenure that the Commission would take a more critical view of ownership consolidation and the vertical integration issue. To that end, in the Commission's first major decision under Blais' tenure, Bell's initial bid to acquire Astral Media in 2012 was rejected.[65] Forced back to the drawing board, Bell submitted a modified version of the deal that would see it sell off several of Astral's specialty and pay television services in return for regulatory approval. This reworked version of the Bell-Astral deal was approved by the CRTC in 2013 after the Commission was pre-empted by the Competition Bureau's earlier approval on narrower competition concerns.[66]

65 CRTC. (2012). Broadcasting Decision CRTC 2012-574. 18.

66 CRTC. (2013, June 27). *ARCHIVED – Astral broadcasting undertakings – Change of effective control.*

> “The government’s policy agenda and inaction on several appeals of the above rulings provide further evidence that the entire institutional framework has reverted to course, with policy indifference and regulatory hesitance joining forces to buttress the status quo.

While the CRTC ultimately yielded to the Competition Bureau and Bell in the second Bell- Astral deal, a series of rulings over the next four years reinforced the impression that it was committed to taking a sterner approach to the issues of consolidation and vertical integration. Such measures included, for example, the imposition of wholesale access requirements in wireless and wireline telecommunications, undue preference rulings against Bell’s use of its mobile networks to deliver its own programming,[67] and effectively banning “zero rating” specific content or application in a bid to distinguish service from rivals, a significant win for the concept of net neutrality.[68]

67 See, for example, the complaint initiated by J. F. Mezei and the Public Interest Advocacy Centre against Vidéotron’s Music Unlimited, which was later rolled into the regulator’s review of “differential pricing practices” (the zero-rating proceeding). Public Interest Advocacy Centre (PIAC). (2015). *Part I Application under the Telecommunications Act regarding Vidéotron’s billing practice for telecommunications service to consume its “Unlimited Music” service* (pp. 1–24); CRTC. (2015, September 28). *Commission letter: Part I Applications regarding Vidéotron’s practices related to its mobile wireless Unlimited Music service*; CRTC. (2017). *Telecom Regulatory Policy CRTC 2017-104: Framework for assessing the differential pricing practices of Internet service providers* (pp. 1–33). Or the Commission’s Hybrid Video-on-Demand decision, or Bell’s appeal of the wholesale vertical integration code, to name just a few. CRTC. (2015). *Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356: Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings*; Dobby, C. (2015, October 27). BCE seeks court appeal over CRTC’s TV ‘wholesale code.’ *The Globe and Mail*; CRTC. (2015). *TRP CRTC 2015-326 Review of wholesale wireline services and associated policies*; CRTC. (2015). TRP 2015-117 *Regulatory framework for wholesale mobile wireless services*.

68 Zero-rating, or “differential pricing practices” as it is more formally known, is when a mobile operator or ISP does not count specific content, applications or services toward subscribers’ data allowances while counting everything else towards those caps. While such practices offer the lure of “free stuff” as a way of marketing them to consumers, they have the effect of transforming carriers into publishers/editors who pick and choose what people get for “free” and what they don’t, undermining common carriage (or “net neutrality” as it is more popularly known). Instead of such marketing gimmicks, the CRTC concluded that the drawbacks of such an approach outweighed any potential benefits they might have. Instead, ISPs and mobile operators should use price, quality of service standards, speed, customer service and other tools rather than zero-rating to competitively differentiate themselves. CRTC. (2017). *TRP 2017-104: Framework for assessing the differential pricing practices of Internet service providers*.

Several key principles underpinned these rulings. The first was the Commission's newfound recognition, that the "incumbent carriers continu[e] to dominate the retail Internet access services market".[69] The wholesale mobile wireless ruling arrived at the same conclusion with respect to the wireless market.[70] Second, the CRTC determined that mobile wireless companies and Internet access providers should only provide the gateway to the Internet rather than playing the role of editors who pick and choose which services, content and applications is put before people's eyes. Seen in this light, the rulings are victories for the open Internet and the idea that it is people's expressive rights that come first in a democracy rather than the economic agenda of those who own and control the networks.

But in the last five years, the CRTC—aided by vacillating policy directions from the Liberal government—has reverted to course after changes in leadership. As illustrative of this, we can point to recent rulings by the CRTC with respect to affordable mobile wireless services and the Mobile Wireless Framework Review.[71] Earlier this year, the Scott-led CRTC also reversed the Commission's own decision two years prior with respect to the wholesale rate that independent ISPs pay to access the incumbent telco andcable companies' networks with little explanation or justification.[72] The Competition Bureau's report, *Delivering Choice: A Study of Broadband Competition in Canada's Broadband Industry* (2019) and stance on mobile virtual network operators (MVNO) over the course of the CRTC's mobile wireless framework review also give serious cause for concern.[73] The government's policy agenda and inaction on several appeals of the above rulings provide further evidence that the entire institutional framework has reverted to course, with policy indifference and regulatory hesitance joining forces to buttress the status quo.

Today that status quo is on the cusp of a potentially unprecedented step towards the combination of two of these vertically integrated conglomerates, with Rogers' blockbuster bid to take-over Shaw Communications for $26 billion. Announced in early 2021 and approved by the CRTC, the deal is now under review by ISED and the Competition Bureau, the latter of which has deviated from its 2017 approach to Bell-MTS by formally blocking the merger in its entirety in front of the Competition Tribunal. If the deal is to go through it will be the sixth largest ownership transaction in Canadian history, and likely forecast future consolidation amongst Canada's telecommunication and media giants.[74]

69 CRTC. (2015). *Review of wholesale wireline services and associated policies*.

70 CRTC (2017). *TD CRTC 2017-56 Wholesale mobile wireless roaming service tariffs – Final terms and conditions*.

71 CRTC (2021). *TRP 2021-130 Review of mobile wireless services*; CRTC. (2018). *Telecom Decision 2018-475 Lower-cost data-only plans for mobile wireless services*.

72 CRTC (2021). TD 2021-181 Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services.

73 Competition Bureau. (2019). *Delivering Choice: A Study of Broadband Competition in Canada's Broadband Industry*; Competition Bureau (2020). *Telecom Notice of Consultation CRTC 2019-57 Review of Mobile Wireless Services. Final Comments of the Competition Bureau*.

74 Competition Tribunal (2022). Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.

Burrowing Down: A Closer Look at Competition and Concentration Trends within Specific Communication and Media Industries

The following sections focus on developments sector-by-sector, and within the three main categories we use to group each of the sectors covered by the GMIC project:

- the communications infrastructure media (wireline telecoms, mobile wireless and Internet access as well as cable, satellite & IPTV);
- the digital and traditional Audiovisual Media Services (AVMS) sectors (broadcast television, specialty and pay television services, online video, music and gaming subscription and download services, app stores, radio, newspapers, magazines, Internet advertising);
- "core Internet applications and sectors" (search, social media, online news sources, desktop and mobile browsers as well as desktop and smart phone operating systems).

At the end, these categories are combined again one last time to complete the analysis and gain a bird's eye view of the network media economy as whole.

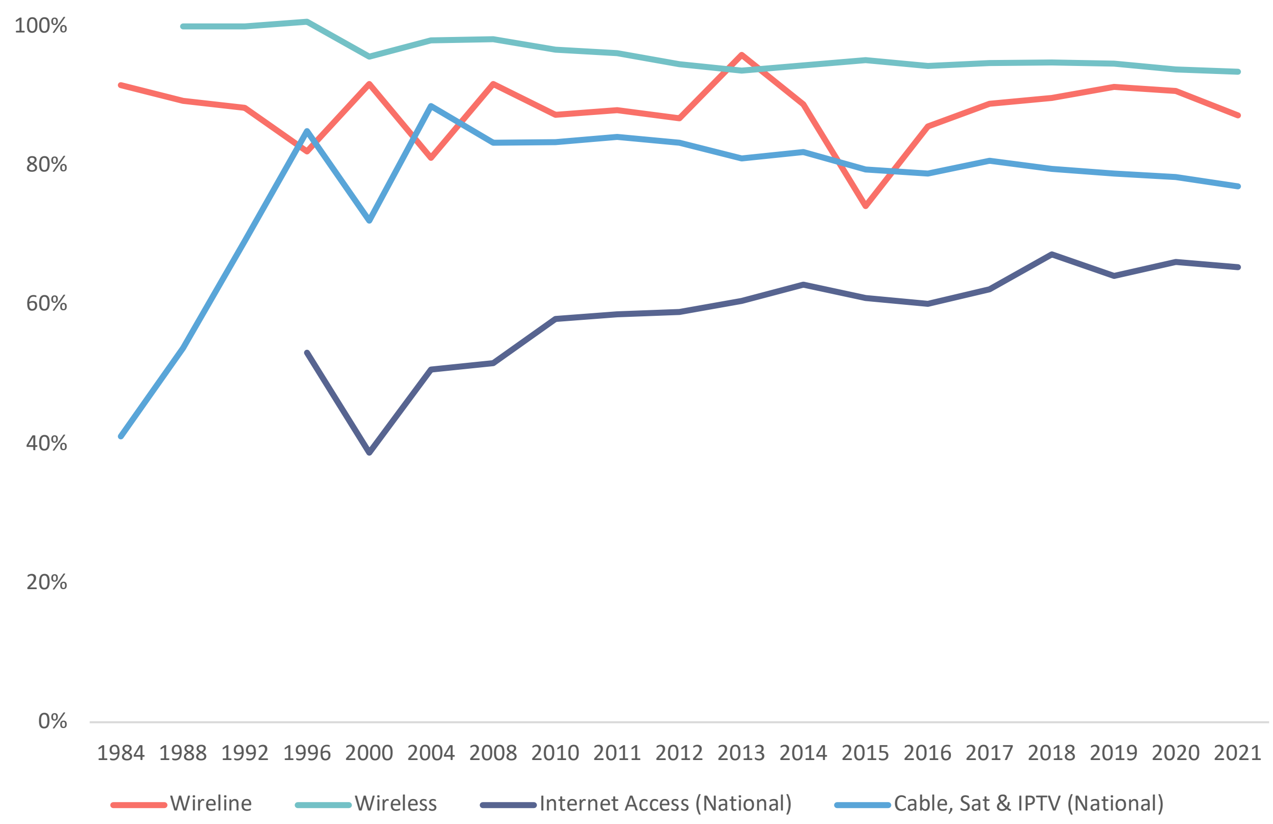
Communications Infrastructure Media

The communications infrastructure media category consists of wireline telecommunications, mobile wireless services, Internet access and cable, satellite and IPTV distribution networks (or broadcasting distribution undertakings (BDU) in CRTC parlance).

As outlined earlier, the regulated natural monopoly regime in wireline telecoms and the practice of segmenting telecoms, cable distribution and broadcasting markets from one another that had prevailed for most of the 20th century were dismantled through a series of CRTC decisions and federal policy changes in the 1980s and 1990s. These changes initially had their desired effect, with concentration levels for wireline and mobile wireless communications falling during the 1980s and 1990s. The number of independent ISPs also exploded as the Internet took off in the late-1990s, thereby adding a new sector and more choice to the network media economy.

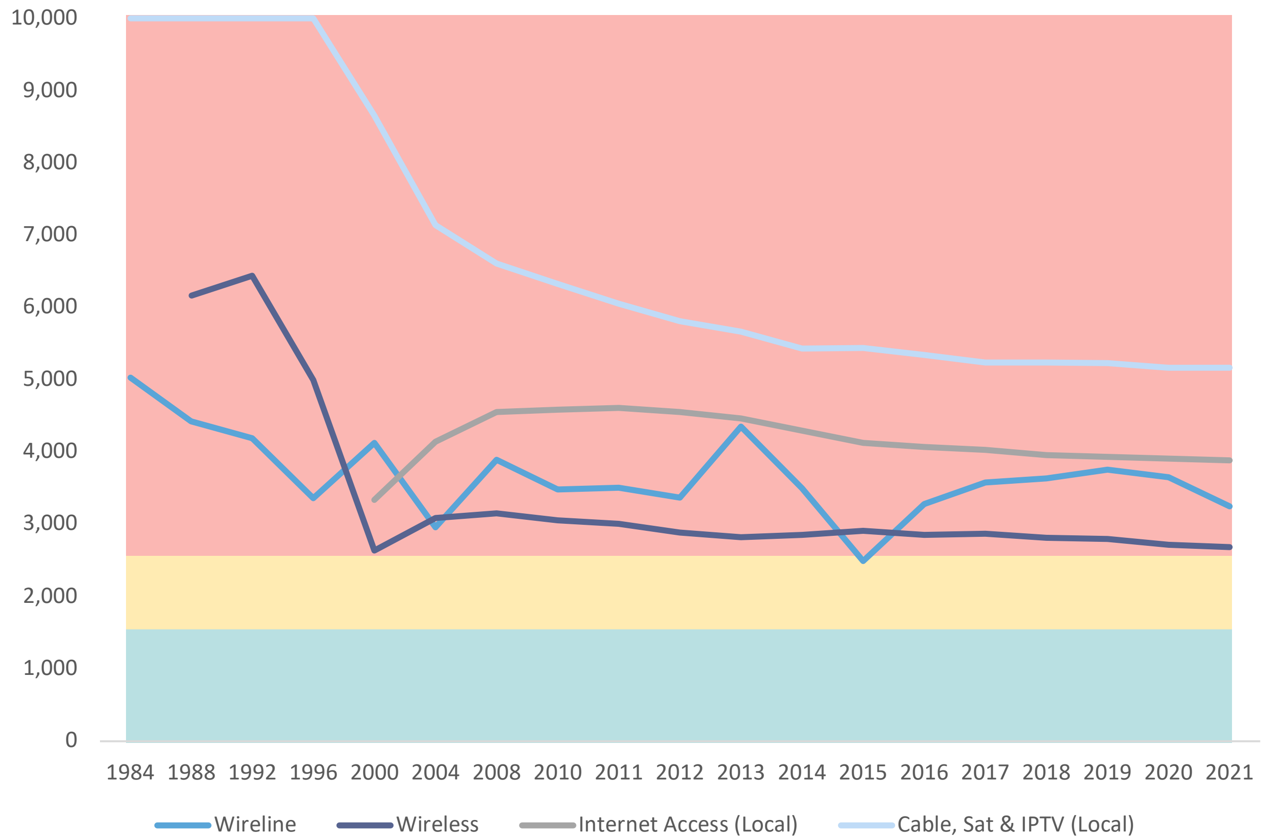
For now, Figures 7 and 8 below illustrate the point using CR4 scores and the HHI, respectively.

Figure 7: CR4 Scores for the Communication Infrastructure Industries, 1984-2021



Source: see the "Figs 7 & 8 CR+HHI" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

Figure 8: HHI Scores for the Communication Infrastructure Industries, 1984-2021



Source: see the "Figs 7 & 8 CR+HHI" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

As Figures 7 and 8 also show, however, the tendency for concentration levels to fall that had been visible in the 1980s and 1990s stalled by the end of the latter decade and, in several cases, drifted upwards again thereafter. Consequently, one thing that stands out from the perspective of this report, is that concentration levels have remained at the high-to-very-high end of the CR4 and HHI scales throughout the period we cover. While they did fall for a period of time, since the turn-of-the-21st-century that tendency has ground to a halt, with concentration levels continuing to bounce around at high levels ever since.

The following section takes up these long-term trends and recent developments in the context of each of the sectors that make up the communications infrastructure industries: mobile wireless, Internet access and BDUs, i.e. cable, direct-to-home satellite and Internet protocol television (IPTV) services.

Mobile Wireless

Anchor Findings

- Canada's mobile wireless markets feature persistently high levels of concentration. Although there has been improvement in recent years, the distribution of benefits flowing from increases in competition is uneven from province to province.
- Since 2008, ISED/Industry Canada has undertaken efforts to support the growth of new entrants such as Freedom Mobile (previously Wind Mobile), Vidéotron, and Eastlink. These efforts, coupled with ongoing regulatory intervention, have contributed to reducing the national market share of the national carriers (i.e. Bell, Rogers, and Telus) from 96.0% in 2008 to 88.3% in 2021 (by revenue).
- Unlike other international markets, the market in Canada is almost entirely composed of "facilities-based" competitors, i.e. companies that own end-to-end transmission facilities including towers, cables, and spectrum licenses. Service-based competition (i.e. mobile virtual network operators, or MVNOs) has not emerged organically as a competitive factor.
- The CRTC concluded a review of its policy for wireless services in early 2021, but the impact, if any, has yet to be felt; the details of implementation were still being worked out more than a year later.
- Market dynamics at present are in flux; the outcome of the looming Rogers-Shaw merger is expected to have significant implications for the future of the sector.

For decades it has been a common refrain from industry that "there is no competition problem in mobile wireless services in Canada".[75] The problems with wireless market concentration facing other countries "are not present in Canada," CWTA President Robert Ghiz declared to the audience of a trade publication, before going on to tout networks in Canadian rural areas that "perform better than the overall networks in most other countries," and lauding the "intensely competitive" market that has ensured our wireless services are "first in value among the G7 and Australia."[76]

Claims about superlative market performance have never been in short supply, but they provide only a partial picture. Success deserves congratulation, but it should not paper over the fact that Canada's mobile markets have suffered from consistent problems regarding price, adoption, usage, and innovation—all features of the persistently concentrated state of this sector.

Thanks to a broad scope of available information covering this market, it is possible to provide a credible assessment of the situation, without relying on hyperbole.

On the plus side, there is good reason to be optimistic about some aspects of Canada's mobile wireless markets. Increasing competition from regional wireless providers has brought about a greater diversity of service offerings than in previous years, bringing a greater range of mobile services into reach for more of the population. On the other hand, our research has consistently confirmed that market concentration, and many of the problems that often attend it, has remained

75 E.g. Rogers Communications, (2019). Further comments to CRTC (2019), *Telecom Notice of Consultation CRTC 2019-57: Review of mobile wireless services*.

76 Ghiz, Robert (2020). Facilities-based competition is a good policy and a worthwhile "obsession," CWTA: Ottawa.

stubbornly persistent in Canada over the years, and that further concentration is looming. In other words, while new competitors have made inroads, and the benefits of competition remain tenable and uneven. Mobile markets continue to be dominated by the three national carriers, which collectively remain in a position to exercise their power in ways that may be beneficial to them but are inimical to the broader social goals of creating an inclusive, efficient, and innovative communication environment.

In recent years, many of the the issues facing Canada's mobile marketplace—high prices, low mobile usage and adoption (especially among lower income groups), poor customer service, and exclusionary practices, have been acknowledged by federal regulators such as the CRTC, the Competition Bureau, and the Department of Innovation, Science and Economic Development (ISED). Each of these authorities have studied the issues, and attributed such failings to the lack of competition reflective of an oligopolistic market, and they have made significant efforts over the course of the past decade to address issues in the domain, some of which are ongoing.

Ongoing issues related to insufficient competition, such as poor adoption, unaffordability, and low mobile data usage have also been corroborated by a preponderance of independent research and scholarship. This all points to one conclusion: contrary to the views of industry trade groups, there *are* very real competition problems in the Canadian mobile wireless market, ones that will not disappear behind splashy advertising or superlative-laden op-eds.

What's more, the trend toward improvement that has characterized the last decade has been cast into doubt by the announcement of a merger between Rogers and Shaw. The future of competition in BC, Alberta, and Ontario's mobile markets will in large part be determined by the outcome of the deal, which has been challenged by the Competition Bureau as anti-competitive and fundamentally at odds with existing policies.

National trends

Since the turn of the century, mobile wireless markets in Canada have been dominated by three national carriers: Rogers, Bell, and Telus. Early efforts by Industry Canada to introduce a degree of competition ultimately ended up with consolidation when Clearnet and Fido—two mobile carriers granted licenses in 1995—were bought by Telus (2001) and Rogers (2004-5), respectively. Industry Canada revived its efforts to increase competition again in 2008, bringing a handful of "new entrants" into the market at the onset of the deployment of mobile broadband networks.

The national carriers' collective market share dropped noticeably in the years following the entrants' debut. However, their dominant position has mostly held steady since 2013, stubbornly remaining around 90%. Last year, the share collectively held by Rogers (31.1%), Bell (29.2%) and Telus (28.1%) dipped slightly to 88.3% of the market by revenue, while their subscriber share dipped to 85.9%. Switch the metric to the HHI score, and a similar picture emerges; in 2021, the HHI for mobile wireless declined to 2688 from 2715 the previous year. These are signs that things are improving; mobile HHI is down from 3155 in 2008 when the government's policy to improve competition began in earnest. That said, however, year- after-year, the results remain firmly in the highly concentrated zone by HHI standards, indicating that there is more work to be done to bring the market to a sufficiently competitive level.[77]

Today, those competitors that remain (several have been absorbed by the national carriers over the years) have each gained a steady foothold in their respective regions— helped along, no doubt, by the fact that they are now all operated as part of regional cable conglomerates. In Quebec, Vidéotron is a part of vertically-integrated Quebecor; Freedom Mobile is operated by Shaw in BC, Alberta, and Ontario (Shaw also operates Shaw Mobile in BC and Alberta); and Eastlink, which operates across the Maritime provinces, is a part of a diversified conglomerate owned by the Bragg family.

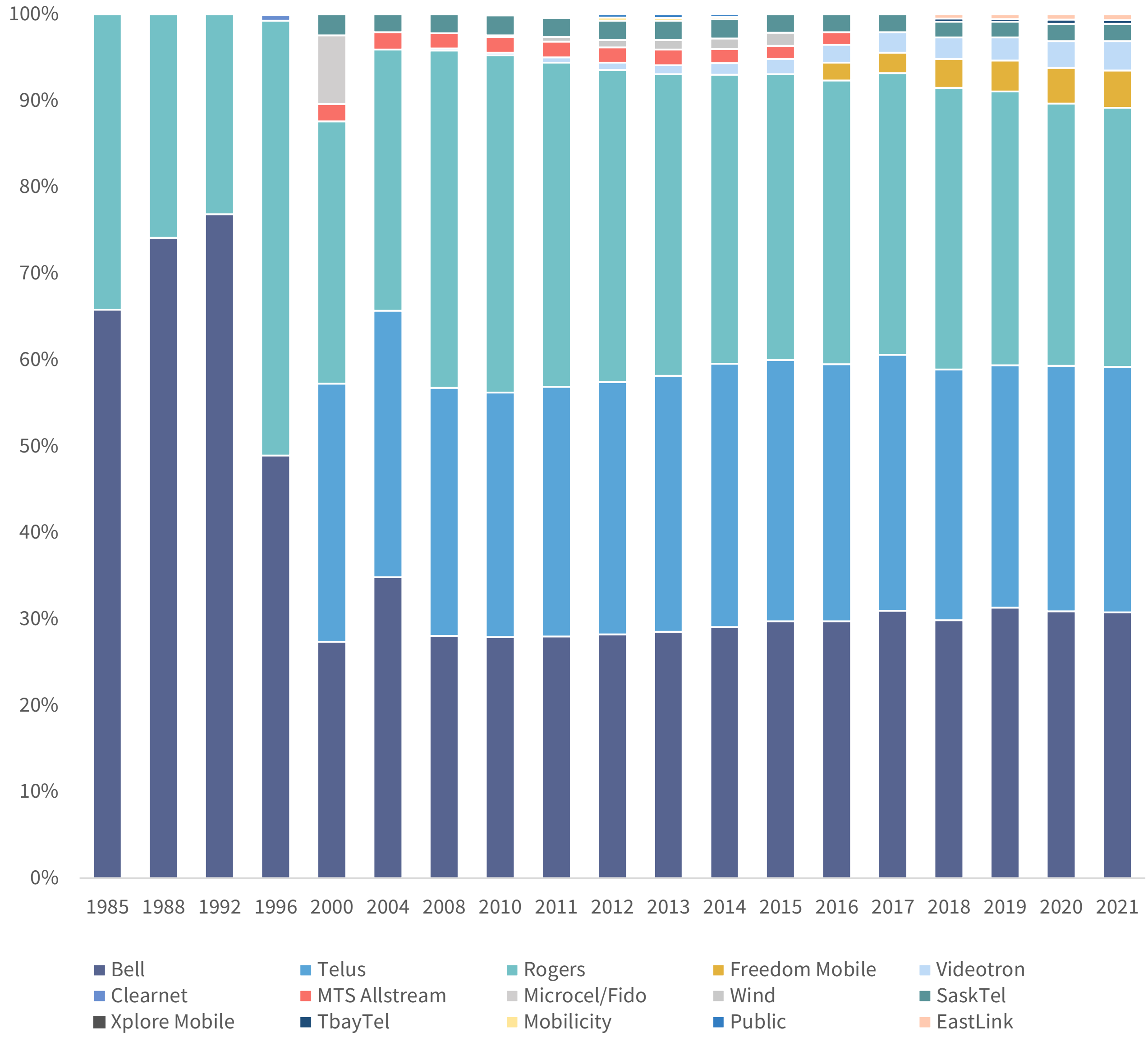
77 See the "Wireless" and "Network Connections" sheets in the sheet in the GMICP Workbook—Canada and CWTA (2022). Number of subscribers, with estimates for Eastlink and Tbaytel revenue and subscriber numbers included.

At the end of 2021 the combined national market share of Freedom Mobile, Vidéotron, and Eastlink increased from 7.9% to 8.4% (by revenue). Include SaskTel and Tbaytel in the group and, in total, regional competitors accounted for 11.7% of national wireless revenues. The "new entrants" are undoubtedly making inroads, but the playing field remains far from even in terms of the scale and scope of their operations.

Further, despite their successes to date, the continuing trajectory of the regional cable companies has been thrown into doubt following the announcement in early 2021 that Rogers and Shaw intend to merge. The outcome of this tie-up, which has been approved by the CRTC but is being contested by the Competition Bureau, remains uncertain. Whatever the ultimate outcome, it is certain to have significant implications for competitive dynamics in BC, Alberta, and Ontario's mobile markets.

Figure 9 below illustrates the significant decline in concentration levels in the mobile wireless market that took place between 2008 and 2012, but also note the remarkably stable market share that Rogers, Telus and Bell have collectively maintained since then.

Figure 9: Mobile Wireless Operators' National Market Share Based on Revenue, 1985-2021



Sources: see the "Fig 9 Mobile Wireless MrktShare" sheet in the Excel Workbook accompanying this report and the "Wireless" sheet in the GMIC Project—Canada open data sets.

While Freedom, Vidéotron, and Eastlink continue to grow (notwithstanding Freedom's potential takeover), it should be emphasized that all of the wireless carriers operating in Canada, including the new entrants, are now part of vertically and/or diagonally integrated communications conglomerates.[78] As we have documented elsewhere, stand-alone mobile providers tend to offer far more generous data buckets than mobile providers that are connected to wireline network operators, since independent providers do not have to worry about cannibalizing customers who may take advantage of larger mobile data buckets to "cut the cord" on their wireline broadband services, as one example.[79]

Expectations of extensive disruptive behaviour from Freedom, Eastlink, and Vidéotron should therefore be tempered by the fact that they all operate as an integrated part of regional cable companies, which have often-competing interests across the network media economy.

To be certain, the current situation represents a definite improvement for those living in or near the coverage area of a fourth carrier: having the additional option usually means better prices and a wider variety of service offerings, not just from the upstart competitor, but from incumbents which have been forced to respond with improved retail offers of their own. Indeed, the fact that the national carriers price their mobile services on a province-wide basis means that, to the extent that prices drop in response to competitive pressure from the likes of Vidéotron, Eastlink, and Freedom Mobile, residents of provinces with a fourth regional provider do not necessarily have to live within the coverage range of the upstart to realize the benefits of urban competition.

The continued existence and strength of regional competitors is tenuous, however, as the pending Rogers-Shaw merger attempt reminds us. We must also keep in mind that concentration levels remain far above the threshold that marks a highly concentrated market. Progress in these markets has been painfully slow, and not only do we remain a considerable distance away from truly competitive "market forces" in the economic sense of the term, but recent events threaten to send mobile competition into a backslide for a large part of the country. Indeed, the CRTC has already capitulated to Rogers' and Shaw's request to merge, approving the broadcasting aspects of the deal in early 2022 with only minor guardrails in place.[80] The Competition Bureau is at present challenging the merger before the Competition Tribunal, an unexpected but welcome turn of events which provides some hope for the future of mobile competition and anti-trust enforcement in Canada more generally. ISED, which controls the spectrum licenses required to provide wireless services, has taken a permissive stance. In late October 2022, Minister Champagne announced he would look favourably on Videotron as a suitor for a divested Freedom Mobile, with ISED approval of license transfers conditional on a short list of loose expectations regarding price and a moratorium on future sale of the operation.

Overall, the concentrated state of Canada's mobile markets cannot simply be dismissed on account of the high barriers to entry and economies of scale characteristic of telecommunications markets. It is also reflective of the persistence of the incumbent firms' collective market power—which takes the form not only of high prices dragging on the economy, but in the jealous efforts to foreclose the growth of additional, much-needed competition and the potential innovation that it represents. It is also a symptom of successive federal governments and regulators failing to sufficiently hold the line when it comes to promoting the broad interests of the public against the special interests of incumbent firms.

78 Diagonal integration refers to a situation in which firms operate across distinct spheres of related markets (e.g. wireline and wireless broadband). Xplore Mobile was diagonally integrated with Xplornet's fixed wireline operations, but it was not vertically integrated (i.e. it has no content ownership). Xplore Mobile went out of business in the summer of 2022, as discussed at greater length below.

79 Klass, B., Winseck, D., Nanni, M & Mckelvey, F, (2016). There ain't no such thing as a free lunch: Telecom Notice of Consultation CRTC 2016-192, Examination of differential pricing practices related to Internet data plans.

80 CRTC (2022). Broadcasting Decision CRTC 2022-76: Shaw Communications Inc. – Change of effective control.

Provincial trends

Data on concentration levels at the national level are informative, because they give a sense of the relative scale of the national firms vis-à-vis the regionals and each other. However, looking at the market from this vantage point only tells one part of the story.

Although the national carriers do have a strong presence across the country, Canada's mobile sector is better understood as a patchwork of provincial markets. Province-level statistics show that the mobile market in each province is constituted differently from the others, although there are some similarities. Overall, most provinces feature competition between two dominant firms, varying by province, with rivalry from weaker third and fourth carriers (usually centered around urban areas) filling out the market.

As the Finnish consultancy Rewheel puts it:

> "The Canadian wireless market is not national in scope. Canada is a fragmented wireless market, a stack of provincial mobile network duopolies and monopolies that are stitched together by extensive and possibly coordinated national roaming and network-spectrum sharing agreements that are probably anti-competitive".[81]

In practical terms, this means that the effects of competition are unevenly distributed throughout the country, with an especially stark contrast between urban and rural areas.

In 2021, Quebec's top three mobile carriers had a combined subscriber market share of 77.5%, or 82.8% by revenue, with Vidéotron making up the remaining 22.5% of subscribers and 17.2% of revenue. The data show that Quebec remains the least concentrated provincial market, with Quebecor's Vidéotron, which offers service in Quebec and the National Capital Region, continuing to challenge the national carriers. Vidéotron had 1.6 million subscribers at the end of 2021, up from 1.48 million at the end of the previous year. Vidéotron's continuing rise provides a benchmark for the type of competition that could emerge over time in the other provinces. In fact, although it initially shied away from an attempt to expand into other provinces, Vidéotron is undertaking a push to expand its wireless services to citizens of the rest of Canada; that is, if it is deemed a viable suitor to take over Freedom by the Competition Tribunal in its ongoing deliberation over the Rogers-Shaw merger.

In Alberta and British Columbia, the national carriers collectively accounted for an estimated 89% of the market by subscribers at the end of 2021. Shaw's Freedom and Shaw Mobile brands made up the vast majority of the remaining subscribers, with an estimated market share of 11%. In terms of revenues, the big three national carriers accounted for 90% versus Shaw Mobile and Freedom's combined share of 8.9%.[82]

Although Shaw has been slower than Vidéotron to take market share from the national carriers in its respective operating territories, it has nevertheless had an impact on the competitive scene. Moreover, it has done so without some of the benefits enjoyed by Vidéotron, such as voluntary network sharing with national carriers, or the ability to bundle with other telecommunication services in Ontario. In BC and Alberta, Shaw has attracted some 450,000 subscribers to its Shaw Mobile brand, which provides deep discounts for customers who bundle mobile and home broadband services together.

In recent years, competitive pressure exerted by Shaw has been sufficient to draw a response from the national carriers, with targeted promotions, increased competitive activity from flanker brands, the roll-out of 'unlimited' plans by their flagship brands and by increasing monthly data limits to bring their plans more closely in line with Freedom's. Although these are welcome signs of improvement, the looming possibility of Shaw being bought out by Rogers threatens to set back the clock on all this hard-won progress.

In Saskatchewan, the province-owned incumbent crown corporation Sasktel held steady in market share by subscribers with 58.4%, with a revenue

81 Rewheel (2019). *Root cause of weak competition in the Canadian wireless market*, p. 24.

82 Tbaytel is estimated to account for a half of a percent of revenue in Ontario.

> “The effects of competition are unevenly distributed throughout the country, with an especially stark contrast between urban and rural areas.

share of 52.4%, while the national carriers made up the rest. Sasktel continues to hold its own against the national players, helped by its continued offering of unlimited mobile plans at competitive rates, and its ability to attract and retain customers with telecommunication and broadcasting bundles, unmatched in the province by its competitors.

In the Maritime Provinces, Eastlink launched its mobile wireless service in 2013, and subsequently in the summer of 2016 it began to offer service in a handful of cities and towns in Northern Ontario—specifically, Sudbury, Timmins, and parts of the surrounding areas.

We estimate Eastlink’s total mobile revenues to have reached $193.8 million at the end of 2021, up from $171.6 million the year before. Despite a lack of information given its private ownership by Bragg, an October 2018 transfer of spectrum from Eastlink to Bell in North Bay, Ontario suggests Eastlink’s plans for expansion in Ontario are limited, and to date there have been no new indications that it plans to expand.[83] A report filed by the Competition Bureau to the CRTC in 2019 also noted that Eastlink’s impact in Ontario remains limited— although not insignificant—with a market share in Timmins that remains below 5%.[84]

According to our estimates, the top three national wireless operators retain a commanding lead in the provinces where Eastlink has focused its primary efforts (Nova Scotia, New Brunswick, P.E.I, and Newfoundland and Labrador), although Eastlink has steadily gained share over the years. We estimate that, across these provinces, Eastlink accounted for 11% of subscribers by the end of 2021, with 9% of revenues. Like the other regional cable providers who have added mobile wireless to their service offerings in recent years, Eastlink is carving out a space for itself in the areas where it operates.

In Manitoba, the 2017 purchase of MTS by BCE resulted in a situation that sets the Prairie province apart from all others. As a result of the merger, which catapulted Bell into the lead, the national carriers collectively control the entire mobile wireless market.[85] As part of the merger agreement, regulators hoped to create a new competitor by requiring the divestiture of spectrum, customers, and retail locations to Xplornet, the rural wireless internet provider. However, Xplornet’s expansion into the mobile wireless market was fraught with delays and setbacks from the beginning, and by summer 2022 the company announced that its new mobile venture had failed and would close its doors. At present, the mobile wireless market in Manitoba remains 100% controlled by the national carriers Bell, Rogers, and Telus (in that order), with the result that mobile wireless prices in Manitoba have come in line with the historically more expensive provinces like BC, Alberta, and Ontario.

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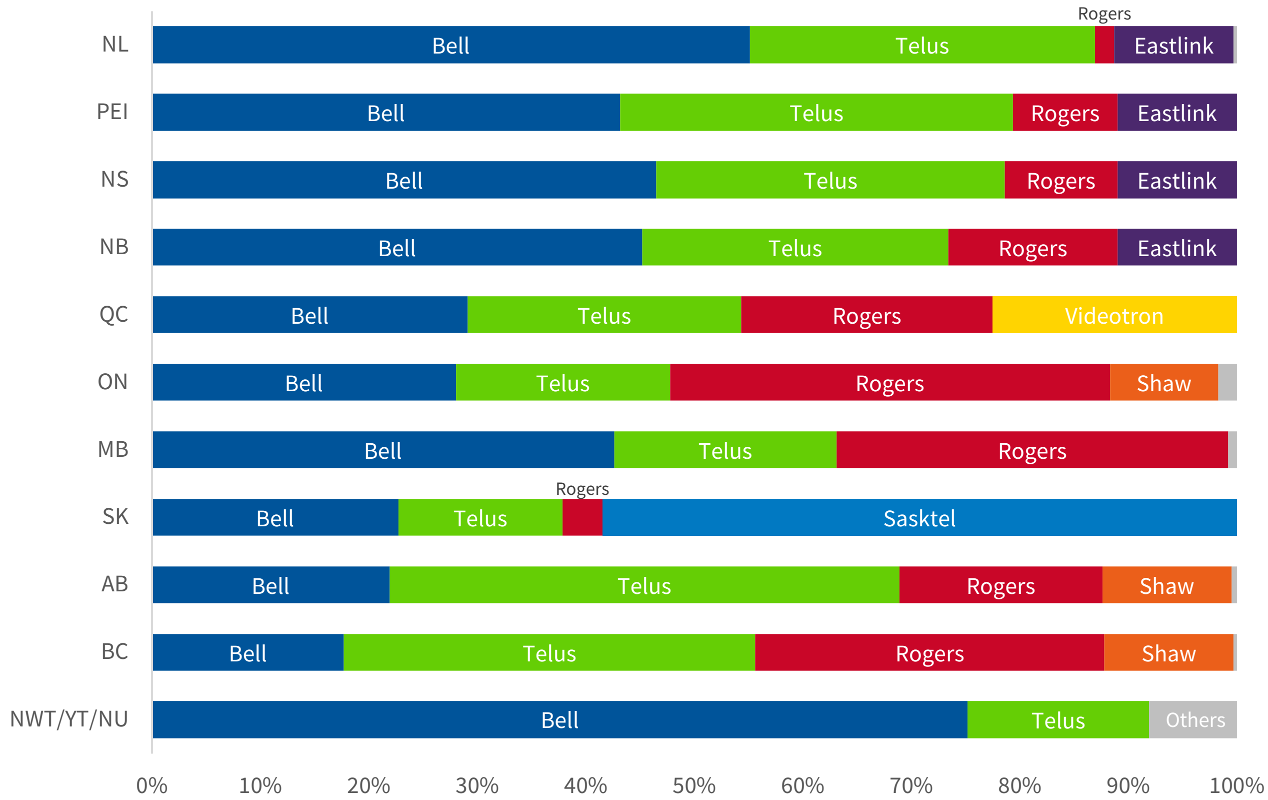
83 ISED (2018). *Transfer of spectrum licence held by Bragg Communications Inc. to Bell Mobility Inc.*

84 Chipty (2019). *Report studying the state of competition in the retail wireless marketplace and the benefits of additional competition among wireless service providers*. Submitted on behalf of the Competition Bureau of Canada for CRTC 2019-57: Review of mobile services.

85 This merger, which the CMCRP opposed in a report submitted to the Competition Bureau, was approved by the Bureau notwithstanding its staff’s own findings that the merger “would eliminate the spur to competition provided by MTS as a strong regional competitor [and] that MTS’ presence is the likely reason for the lower prices in Manitoba”.

Figure 10: Provincial Mobile Wireless Market Share, by Subscriber, 2021



Sources: see the "Fig 10 Wireless MS by Province" sheet in the Excel Workbook accompanying this report and the "Wireless" sheet in the GMIC Project—Canada open data sets. Our reporting on provincial market share by provider relies upon CRTC data. It has been updated using estimates for providers omitted by the CRTC's reporting.

Although CR4 scores are broadly similar across provinces, and HHI scores all fall within the "highly concentrated" range, competitive dynamics nevertheless differ from place to place, and understanding the facts behind the figures often benefits from this kind of analysis, as the preceding discussion of highlights from provincial markets shows.

Policy and regulatory environment

Over time, the national carriers have successfully maintained a position of collective market dominance. Reviews and examinations undertaken during the past decade by the relevant regulatory authorities, including the CRTC, ISED/Industry Canada, and the Competition Bureau have consistently found that Bell, Rogers, and Telus collectively enjoy retail pricing power, and that they have acted not just to raise prices but that they have moved to thwart efforts by new firms attempting to enter and disrupt their position.

Efforts have been undertaken by successive administrations, both at the CRTC and Industry Canada/ISED, to encourage entry and expansion by new competitors in the hope of improving the long term outlook for mobile wireless markets across the country. The desired outcomes of ongoing intervention predominantly relate to price and adoption, measures on which Canada has historically fared poorly (see the first report in this series for greater detail).

The means by which these goals have been pursued involve a mix of structural approaches, which seek to change the shape of the market by removing the conditions that enable abuse of dominance, and behavioural remedies, which are intended to constrain the exercise of otherwise intransigent misbehaviour. Structural change has been led by ISED, which has used its control over spectrum licensing to encourage entry by new firms, while the CRTC has pursued a series of mostly behavioural policies. These include implementing the "Wireless Code of Conduct" and regulating the rates and terms on which wholesale services are provided by the national carriers to smaller players. The lengths to which policy makers have been willing to go in pursuit of these objectives have been tempered, however, by concern about the economic wellbeing and financial performance of the industry itself, including the major players. Overall, these efforts have resulted in significant improvements, although progress has been anything but smooth and straightforward.

Recognizing that ongoing involvement is required from the government to ensure that wireless markets are delivering the goods, ISED has stuck to its policy of setting spectrum aside for the exclusive use of smaller providers for over a decade. New entrants such as Videotron, Eastlink, and (until recently) Shaw have consistently snapped up discounted set-aside spectrum at auctions that have enabled the deployment and operation of next-generation mobile broadband networks (e.g. LTE, 5G).

The CRTC has established a mandatory code of conduct governing the provision of retail services to consumers,[86] it has developed a framework to regulate the wholesale roaming services regional carriers require from national carriers to provide competitive service,[87] and it has required that major carriers offer lower-cost data-only plans to meet the needs of previously underserved market niches, among other measures.[88] A preponderance of its decision making it has expressed an abiding concern for the lack of competitive options in many markets, especially outside core urban areas.

In 2015, after examining the business practices of the national carriers for several years, the CRTC found that discriminatory and exclusionary practices by the national carriers required it to establish a Regulatory Framework for Wholesale Mobile Wireless Services.[89] In this framework, the CRTC determined that the national facilities-based wireless carriers collectively have "market power" over wholesale access to their networks, or in other words that that their denial of access to services essential to enabling retail competition would need to be corrected through economic regulation. Without access to roaming, the regulator decided, the newer regional providers are unable to offer a competitive service to subscribers and thus their impact on the market would be hampered. It therefore mandated roaming access for new providers at regulated rates.

Although the CRTC's new regulatory framework also took steps to encourage the entry of additional competitors—MVNOs, or companies that do not have spectrum licences but which provide service by leasing access to some or all of the wireless networks—it declined to mandate access to the national carriers' networks for virtual operators. In the absence of such a mandate, however, the national carriers have continued to refuse MVNOs access to their networks, although network sharing agreements between the major players continue to provide them with an edge, demonstrating the benefits of network sharing while at the same time serving as a reminder of their continued dominance.

The longstanding wireless network sharing agreements first struck in 2001 between Bell and Telus and renewed alongside upgrades in technology are the prime (but not only) example of this phenomenon in Canada. While such agreements could be seen on their face as beneficial, at least for the parties involved (who avoid duplicating capital investment by instead sharing networks), there are concerns that arise from such pacts and their impact on competitive dynamics. Finnish consultancy Rewheel, for instance, has conducted a study of the Canadian mobile market in which it found that the agreement between Bell and Telus is "most likely restrictive and anti-competitive," the terms of which serve not only to restrict competition from

86 CRTC (2019). *Telecom Regulatory Policy CRTC 2017-200: Review of the Wireless Code.*

87 CRTC (2015). *Telecom Regulatory Policy CRTC 2015-177: Regulatory framework for wholesale mobile wireless services;* CRTC (2021). *Telecom Regulatory Policy CRTC 2021-130: Review of mobile wireless services.*

88 CRTC (2018). *Telecom Decision CRTC 2018-475: Lower-cost data-only plans for mobile wireless services.*

89 CRTC (2015). *Telecom Regulatory Policy CRTC 2015-177: Regulatory framework for wholesale mobile wireless services.*

other parties[90] but also between Bell and Telus themselves.

While network sharing remains a feature of he landscape among established operators, MVNO- or service-based competition has proven elusive. Over the course of recent years, a series of challenges have been mounted to the CRTC's refusal to mandate MVNO access, but until 2021 the regulator hesitated to take further action on this issue. Instead, it has focused predominantly instead on regulating the dominant providers' behaviour. This it did for instance by encouraging the national carriers to offer "lower-priced data-only services", an intervention that has had little measurable effect to date.[91]

In adopting this approach, the CRTC has left structural issues (aside from support for new, facilities-based providers) insufficiently addressed. As such this appears to be yet another instance of the Commission backsliding on the resolve it demonstrated, circa 2012-2017, to redress the real causes of Canada's wireless woes— structural barriers to competition standing in the way of achieving social and economic policy goals for Canada's telecommunication systems.[92]

In early 2021 the CRTC concluded its latest regulatory review of mobile wireless services, this time focused more squarely on the status of MVNOs in Canada than in the previous roaming- centric review.[93] Numerous participants to the proceeding emerged to challenge the status quo, arguing that the time to bring service-based competition to the mobile sector was past due.

The CRTC ultimately adopted a limited approach in its decision, stopping short of mandating access for unlicensed MVNOs, and opting instead for a temporary measure aimed at shoring up the operations of existing regional competitors. The parties able to take up this offer are limited to the likes of Vidéotron, Freedom, and a handful of others, such as those non-incumbents who won licences in the June 2021 auction of 3500Mhz spectrum.[94]

There has been no observable effect of the CRTC's decision more than a year later; at present the door appears to be closed to the type of competition it had been hoped could emerge from MVNOs, which are a regular feature of mobile markets around the globe. Instead, the CRTC under Ian Scott has restricted the scope of its activity in the mobile sphere to supporting facilities-based competition,

90 Rewheel explains this restriction on competition from other parties by reference to the likelihood that network access is being provided to the contracting parties on discriminatory terms: "Freedom Mobile, Vidéotron, SaskTel, Bragg and all other challenger network operators, currently do not hold national spectrum licences, are present with their own independent network only in a handful of provincial urban areas and cover at most 30% of the Canadian population. The excessive national roaming mobile data wholesale rates mandated by CRTC, using a flawed methodology, in essence shield the duopoly from effective competition at the national level. The challenger network operators have no chance of competing at a national level because they are forced to pay rents of ~14 CAD per gigabyte to the network duopoly. The bottom line is that regional network operators in Canada are not – at the moment and will continue not to be in the forceable future unless significant (bold) structural remedies are implemented – important competitive forces at a national level". (Rewheel/DigitalFuel Monitor (2019) *Root cause of weak competition in the Canadian wireless market*, p. 24). In other words, while independent regional carriers are forced to pay exorbitant rates for regulated access to network sharing, Bell and Telus sell each other what amounts to the same or functionally similar access for what is very likely a fraction of the "cost-based" regulated rate, providing each other a cost advantage that cannot be achieved by their competitors. It is worrying, furthermore, that the CRTC maintains that its regulated rate is "just and reasonable" in the face of these concerns.

91 CRTC (2018). *Telecom Decision CRTC 2018-475: Lower-cost data-only plans for mobile wireless services.*

92 See: August 2015, the Canadian Network Operators' Consortium, a trade group representing wholesale ISPs, asked the CRTC to review and vary its decision, but the CRTC subsequently denied that application; in early 2015, Ice Wireless, a small mobile provider serving Northern areas of Canada, began to use its wholesale roaming agreement with Rogers to operate an MVNO called Sugar Mobile throughout Canada, offering lower prices than those already available using a blend of mobile and Wi-Fi based service access. Similar to the earlier case with CNOC, the CRTC spurned Ice's efforts to enter the national market in March 2017 (also see here).

93 CRTC (2021). *Telecom Regulatory Policy CRTC 2021-130: Review of mobile wireless services.*

94 ISED (2021). *3500 MHz Auction—Final results.*

and to encouraging behavioral solutions to market failure where it is perceived to persist. Indeed, it appears the CRTC eventually approved the broadcasting aspects of the Rogers-Shaw merger, adding only minor guardrails to the deal, a decision not inconsistent with its tepid approach to monitoring the markets under its purview. Freedom, toward which it seemed the CRTC's decision in its mobile review was specifically tailored, now faces an uncertain future, and with it, the government's hard-fought-for quest for lasting competition in mobile markets across the country. When the takeover of Shaw by Rogers was first announced (in March of 2021), the bid initially included Freedom and Shaw Mobile—meaning that, if approved, the fourth carrier policy would be officially dead in BC, Alberta, and Ontario, where Shaw's mobile operations are centered and where roughly two-thirds of Canadians reside. It was an audacious position which was reversed following opposition from a number of government sources, including several parliamentary committees which issued reports opposing the deal.[95]

Rogers began to back away from its initial bargaining position once it became apparent that the Competition Bureau would oppose the deal, a stance that was bolstered in the spring of 2022 when ISED Minister Francois Phillipe Champagne announced that he would oppose the "wholesale transfer" of Freedom's spectrum to Rogers. Rogers offered up Xplornet as a suitor to receive a divested Freedom Mobile, but that option was not seen as credible, a view that was confirmed when Xplore Mobile closed its doors in Manitoba in the summer of 2022.

Videotron is at present holding itself out as the buyer of Freedom Mobile, offering Rogers and Shaw a chance to save the wireline combination which is at the heart of the deal. Rogers and Shaw have taken up this option, signing a deal with Videotron in the summer of 2022 and presenting it as the best option for all of Canada going forward. To the contrary, as we have made clear in submissions to Parliament and the Competition Bureau, this merger represents an unequivocal step backwards in Canada's network media economy, and should be rejected outright. The Commissioner of Competition apparently agrees, and is continuing to pursue an outright block of the deal at the time of writing.

Where the case will end up is at present not clear, but the looming concentration it represents does not bode well for the network media economy in Canada. Although the Bureau remains firmly against to the deal, and continues to fight it before the Tribunal, the CRTC capitulated with little inclination of opposition. In addition, ISED Minister Champagne, who controls the transfer of spectrum licences required for the deal to be sealed, has signaled his informal assent to Videotron as a suitor to take over the mantle of fourth carrier in BC, Alberta, and Ontario. By implication, he has blessed the broader transaction surrounding the contested wireless portion of the deal.

We remain convinced that new policy approaches must be explored in order to attain affordable universal service for 21st century communications media. At present, the mobile wireless markets in Canada remain highly concentrated, no matter how one looks at it, by city, region, province, or country, or by revenue, subscribers, or spectrum held and used, and the problems that attend such a situation remain acute. Indeed, the situation with respect to the Rogers-Shaw-Videotron deal has cast the trajectory of improved competition we have observed in recent years into doubt going forward. While the prevailing CR and HHI levels in Canada are not especially high by international standards, the more pressing point is that concentration levels in mobile wireless markets around the world are, with few exceptions, "astonishingly high".[96]

Given this, the real question is what, if anything, will be done about this state of affairs? The CRTC's actions earlier in the decade before the change of leadership from J.P. Blais to Ian Scott had begun to address that question. Even though that approach had been decidedly incremental in nature, it was still far more in line with what is needed to address the woes that have long beset the mobile wireless market (and others) in Canada than the lacklustre approach that has taken shape in the last four

95 INDU (2022). *Proposed acquisition of Shaw Communications by Rogers Communications: Better together?;* CHPC (2022). *The Rogers-Shaw merger: Bad news for local news.* The CMCRP was invited to present before the Standing Committee on Industry, Science, and Technology. See: Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It.

96 See Noam, 2016, *Who owns the world's media*, p. 25 and chapter 38, pp. 1307-1316.

years. Scott's reappointment to the leadership position at the CRTC, albeit a temporary one, nevertheless provides a signal that the government's priorities are out of wack. Until there is a realignment around and firm commitment to pursuing the goal of universal, high quality communication services for all, we are unlikely to see much improvement in this space.

Internet Access

Anchor Findings

- National views of the Internet access market, however, obscure the starker "on the ground" concentration at the local level where incumbent telecoms and cable-based ISPs tend to be dominant.
- The incumbents saw their combined share of local markets fall from 94% in 2008 to 86% a decade later—where it has stayed, more or less, ever since. That decline came mostly at the expense of the incumbent cable-based ISPs, with the lion's share of those losses accruing to the benefit of small ISPs such as Teksavvy, eBox and Distributel. By 2018, independent ISPs had doubled their market share to 13.8% based on revenue (14.5% based on subscribers) compared to what it had been a decade earlier.
- Even that slow progress, however, has been thrown into reverse by CRTC rulings over the past five years that have hobbled small ISPs' access to the incumbents' fibre-based Internet infrastructure. As a result, small ISPs have had to raise prices as they struggle to maintain revenue, while their subscriber base has begun to slip.
- By 2021, BCE, Rogers, TELUS, Shaw and Quebecor accounted for three-quarters of the national market based on revenue, while at the local level, the telecoms- and cable-based ISP duopoly controlled 86% of the market, split 41:45, respectively, with the rest going to small and independent ISPs.

Canada's Internet access market took shape in the 'competitive ISP era' of the 1990s. This heady period peaked in the late-1990s as one new entrant after another—e.g. 360Networks, Axxent, GT Telecom, Fibrelink, AT&T, Call-Net (Sprint) and hundreds of others at the local level across the country—entered and cultivated the field. On the surface, it appeared that the policies put into place to promote competition were having their desired effects.

Those days, however, did not last. In fact, the death-knell for the early heady days of telecoms and Internet access competition was rung when the dot.com bubble burst in 2000. At this time, most of the new entrants were hoovered up by the incumbents, filed for bankruptcy or otherwise went out of business. The collapse of many of those new entrants redounded to the benefit of the larger Canadian companies who picked up their pieces at fire-sale prices and put them into motion as centrepieces of their own efforts to expand into new markets both within the traditional operating territories and beyond.[97]

By 2004, the top five ISPs—all of which are former telephone or cable monopolies—had come to account for close to sixty percent of all revenues and subscribers. That figure continued to rise and by 2010 the top five companies accounted for two-thirds of the national market. This trend continued but at a slower

97 CRTC, 2004, pp. ii, 23-24.

pace, until it peaked in 2014, when the top five players—BCE, Rogers, Shaw, TELUS and Vidéotron—accounting for 73% of the market by 2014.

The pace of consolidation just described was slowed and eventually turned around by a series of decisions by the CRTC, circa 2006-2011,[98] that had the cumulative effect of creating a more liberal wholesale access regime, giving smaller ISPs more room to grow. Although consolidation at the top continued until 2014, it was at a slower pace, and as the regulator's access regime took hold, small ISPs such as Teksavvy, eBox and Distributel, and five hundred others too numerous to identify, saw their fate improve. Between 2008 and 2019, they more than doubled their market share to 14% based on revenue (15% based on subscribers from the 7-8% range a decade earlier).

The small ISPs also expanded their share of revenue and subscribers in a market that had more than doubled in size over the same period from $6.2 billion to $12.8 billion in revenue. In other words, they were getting a bigger slice of a bigger pie, a gain worth $140 million and obviously worth fighting for. That the small ISPs' gains came mostly at the expense of the incumbent cable-based ISPs further sharpened the conflict. The telephone companies' roll out of fibre-to-the-doorstep also posed a stronger competitive alternative to the cable companies' high speed Internet service, which has been delivered over an inferior coaxial last mile until recently when Rogers, Shaw and Vidéotron have also begun to switch over to fibre throughout their systems.

This sharpening three-way competition between the cable-based ISPs on the one side versus the incumbent telecoms-based ISPs and small ISPs, on the other two sides, respectively, has been thrown into reverse by a series of CRTC rulings over the past five years that have hobbled small ISPs' access to the incumbent telecoms and cable companies' fibre-based Internet infrastructure and whose negative effects have begun to kick-in since 2019. We will return to those decisions in a moment but for here just note that, since peaking in 2018, small ISPs have seen their share of the market based on revenue stall at 14%, and only because they have raised prices to mask the reality that their share of subscribers has also been slipping.

The consequences of the CRTC's u-turn on its wholesale access regime becomes more obvious once we highlight the reality that the modest gains of the previous decade-and-a-half have begun to falter. As a result, in 2021, the share of the market held by the top five incumbent telecoms- and cable-based ISPs—Bell Rogers, Shaw, TELUS and Vidéotron—sat at an all-time high, with three quarters of the revenue from the $14.5 billion market going into their coffers. The national HHI score has also climbed two hundred points from five years earlier when the modest gains from the more open wholesale access regime put into place when Konrad von Finckenstein and Jean-Pierre Blais led the Commission, respectively, were most visible.

From nationally-based assessments of the Internet access market to conditions closer to home

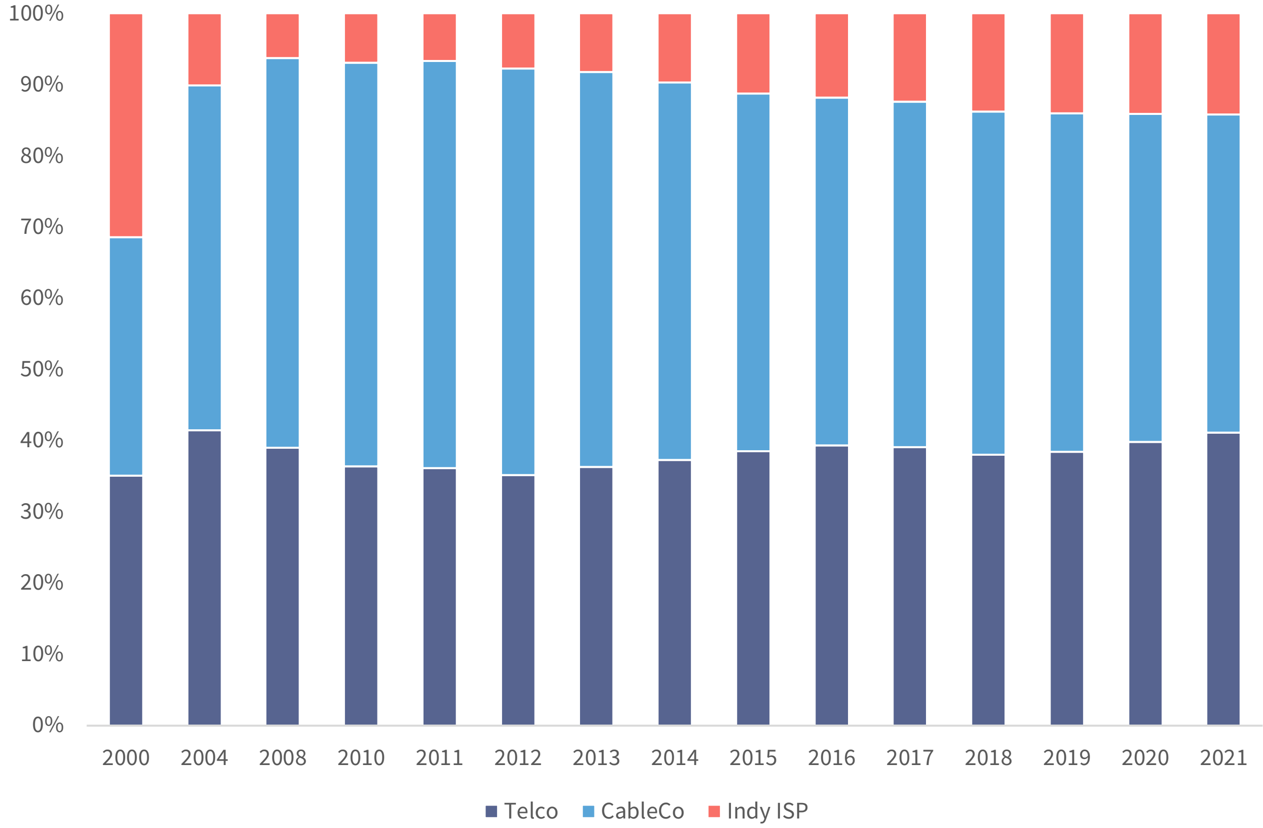
Assessing the structure of the Internet access market from the vantage point of the national level can only provide at best a partial idea of what's going on, because it ignores the reality of how retail Internet access markets are composed within cities and other locales.

98 See CRTC (2006). *CRTC TD 2006-77 Cogeco, Rogers, Shaw, and Vidéotron–Third-party Internet access service rates*; CRTC (2008). *CRTC TD 2008-17. Revised regulatory framework for wholesale services and definition of essential service*; CRTC (2010). *CRTC TRP 2010-632 Wholesale high-speed access services proceeding*; CRTC (2011). *CRTC TD 2011—44 Usage-based billing for Gateway Access Services and third-party Internet access services in 2011*.

Viewing the national market as one single market exaggerates the extent of choice available to people because it assumes— wrongly—that TELUS, for example, competes not only against Shaw in British Columbia and Alberta (for the most part) but with Bell, Rogers, Vidéotron, Eastlink, and so on across the country. In reality, however, this is not the case.[99] To address this problem, the following pages take a closer look at conditions at the local level.

Figure 11 below shows the incumbent cable and telephone operators' as well as independent ISPs' share of the local retail Internet access market, respectively. This method of presenting the data provides a more precise proxy for competition at the local level because it more closely resembles the choices available to people where they actually live: most local markets feature at most one cable company, one telephone company, and a smattering of independent providers.[100]

Figure 11: Residential Internet Access Services by Type of ISP: Market Share based on Revenue, 2000—2021



Sources: see the "Figs 11+12 Res Internet" sheet in the Excel Workbook accompanying this report and the "ISP" sheet in the GMIC Project—Canada open data sets.

As Figure 11 shows, in 2021, 85.8% of the local residential retail Internet access market was accounted for by the incumbent telecoms and cable companies by revenue (85.3% based on subscribers). These figures

99 Constructive criticisms from Catherine Middleton and Bram Abramson have helped us to develop a better way to get a more accurate portrait of where things stand at the local rather than the national level.

100 This is the case in many urban areas; however, rural, remote, and northern areas tend to feature less options, e.g. only one set of facilities (if any).

have stayed steady since 2018 for revenue and with a small uptick in terms of subscribers, consistent with the points made above about the wind being let out of the small ISPs' sails. Yet, it is also important to stress that, with or without the very modest gains, circa 2008-2018 that now appear to be a thing of the past, the retail Internet access market at the local level has been dominated by incumbent cable and telephone company operators for years.

That said, Figure 11 also reveals some notable changes over time. Take, for instance, the heady days of the late-1990s and the early 2000s, when independent ISPs accounted for a third of the market by revenue (and 37% based on subscribers) in 2000, and the HHI score was at its lowest point ever (536). Thereafter, however, the prospects of the independent ISPs waned for most of the first decade of the 21st Century, as their market share plummeted to just above 6% in 2008 (or 8% by subscribers). At the same time, the incumbent companies consolidated their gains, albeit with the lion's share of those gains going to the cable operators.

Levels of competition and the viability of independent ISPs, however, did improve over much of the past decade but that track-record is now being rolled back. At this point, it is helpful to dig a bit deeper into what accounted for those earlier improvements and the more recent turn-around in this state-of-affairs.

For one, the telephone companies' roll out of fibre-to-the-doorstep over the past decade-and-a-half, first in the western provinces, with added momentum in Ontario, Quebec and the Atlantic provinces since 2012 once BCE joined the effort, has posed a stronger competitive alternative to the cable companies' high speed Internet service, delivered over an inferior coaxial last mile. This had benefits for both retail Internet access customers and small ISPs who could now had two better matched high-speed options—co-axial cable from the cable companies and fibre from the telcos—from which to choose.

Second, as briefly introduced above, a series of CRTC decisions between 2006 and 2010 went a long way towards turning around the bleak conditions that threatened the survival of independent ISPs at the time.

The first two steps in this direction in 2006 and 2008, respectively, mostly involved brow-beating and threats of intervention by the Commission if the telecoms and cable companies did not improve the wholesale access conditions that independent ISPs required to compete.[101] Both moves, however, were weak reeds upon which to foster a more competitive retail Internet access services market, and the incumbents were little moved by the Commission's admonitions to "do better".

It was only with a third ruling—the "speed matching" decision[102]—in 2010, however, that the CRTC finally forced the incumbent telecoms and cable companies to give independent ISPs access to the same level of facilities used by their own retail Internet services on equal terms. This meant that the independent ISPs now had mandated wholesale access to the resources they required to be able to match the telecoms and cable companies' basic, express, and ultra-fast Internet access services instead of being limited to just the most basic—and slowest—tier of services. The result was a much sturdier regulated wholesale access regime that allowed small ISPs to better compete with the incumbents across the full range of retail Internet access services on the basis of speed, data allowances, quality and price.

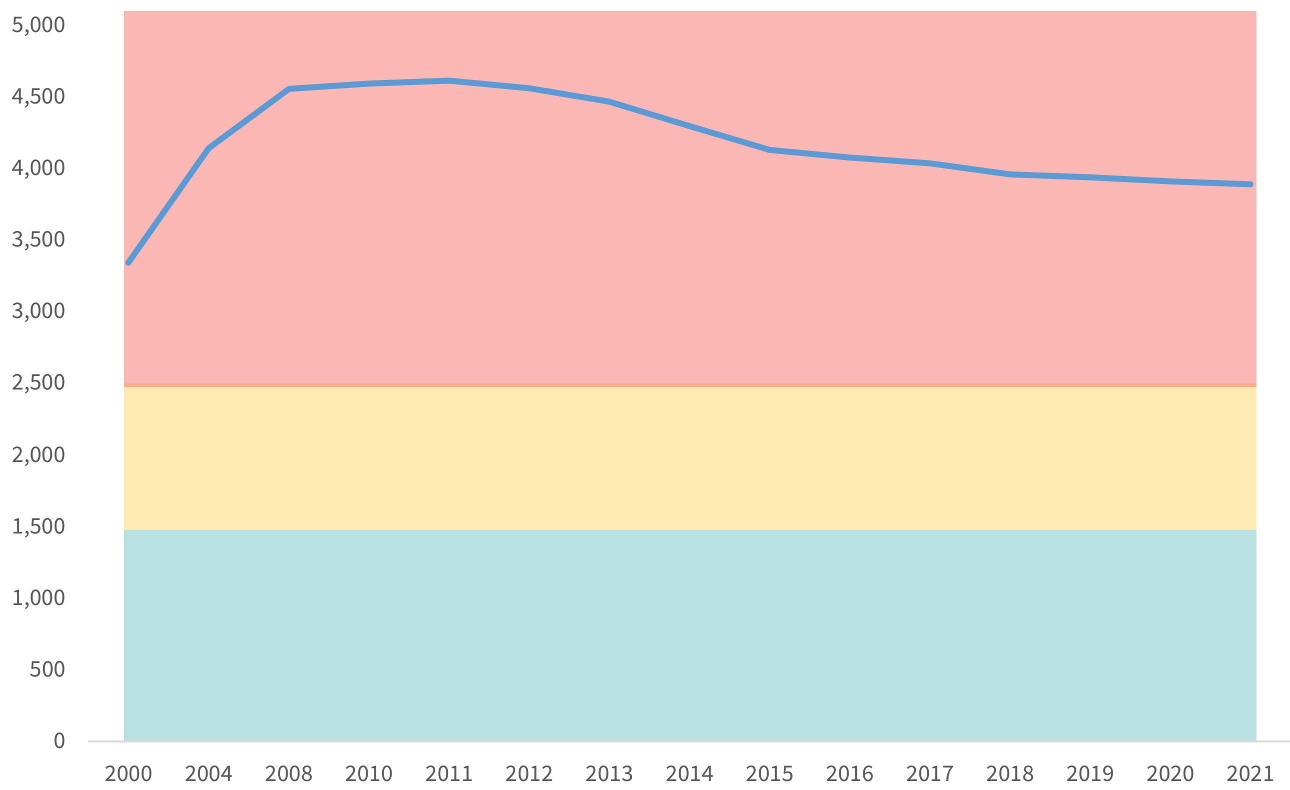
101 See CRTC (2006). *CRTC TD 2006-77 Cogeco, Rogers, Shaw, and Vidéotron – Third-party Internet access service rates*; CRTC (2008). *CRTC TD 2008-17. Revised regulatory framework for wholesale services and definition of essential service*.

102 See CRTC (2010). *CRTC TRP 2010-632 Wholesale high-speed access services proceeding*; CRTC (2011). *CRTC TD 2011—44 Usage-based billing for Gateway Access Services and third-party Internet access services in 2011*.

As we also noted above, for much of the last decade, this allowed small ISPs to steadily carved out a modest increase in market share for themselves, with their market share more than doubling between 2008 and their high point around 2018-2019, after which it has either halted (based on revenue) or begun to slide (based on subscriptions). Indeed, it is essential not to overstate the successes that were had even during this moment of relative opening in the regulated wholesale access regime. This is because the local Internet access market is still extremely concentrated.

Thus, in 2021, the HHI for the local retail Internet access market was 3,921—far over the threshold for highly concentrated markets and significantly above the levels found for mobile wireless services, for example. The incumbent companies also continue to dominate this market, with a combined market share between them of 86%. In sum, the retail Internet access market at the local level has continued to display stubbornly high levels of concentration over a very long time, as depicted in Figure 12, below, based on HHI scores.

Figure 12: Residential Internet Access Services HHI Scores based on Revenue, 2000-2021



Sources: see the "Figs 11+12 Res Internet" sheet in the [Excel Workbook](#) accompanying this report and the "ISP" sheet in the [GMIC Project—Canada open data sets](#).

Figure 12 also shows that the greater in-roads made by the independent ISPs in the wake of the above-mentioned changes to the regulatory framework have stalled in the past several years.

The reality that the fate of competition in Internet access markets hangs on the quality of the regulatory framework in place has been well understood for some time and with the CRTC, at least until recently, acting with that awareness in mind. Such understandings underpinned a CRTC decision in early 2015, for instance, which found that independent ISPs will continue to need regulated wholesale access to the incumbents' local fibre-to-the-premise networks if they are not to be left to wither on the vine as broadband Internet access migrates from copper and coaxial cables to fibre-to-the-neighbourhood and to people's doorsteps.[103] The Commission's decision did not mince words in this respect:

- "incumbent carriers continu[e] to dominate the retail Internet access services market" (para 125);
- "there is limited rivalrous behaviour to constrain upstream market power" (para 122);
- wireless Internet access is not an acceptable substitute for wireline facilities because of significant disparities in terms of price, speed, capacity and quality (para 126);
- whatever "competition that does exist today is . . . a result of regulatory intervention" (para 126).[104]

Similar reasons underpinned the Commission's wholesale mobile wireless decision earlier that year. In both cases, the regulator found that the concentrated structure of the market had enabled the exercise of self-serving and anti-competitive market power by dominant firms, and decided to act to help ensure that whatever minimal competition that existed at the time would not be washed away tomorrow by the that type of behaviour. Bell responded to the CRTC's decision regarding access to fibre networks with a petition to the Governor-in-Council, but its appeal was rejected by the Liberal government in May 2016.[105]

The CRTC and government had seemingly cleared the way for a mandated wholesale access regime to be applied to the emerging generation of fibre-based networks, a move that would allow independent ISPs such as TekSavvy, Distributel, EBOX and Fibernetics—to name just a few of the hundreds of such ISPs that exist across Canada—to use the 'last mile' portions of next generation fibre networks owned by incumbents like Bell, Rogers and Shaw to deliver their own services to subscribers.

Perhaps not surprisingly, rather than the ruling immediately translating into new conditions supportive of increased competition and consumer choice, it kicked off a highly contentious, three-year transition from the existing 'aggregated' wholesale regime that had been applied to cable systems and the telecom companies' older generation of copper (DSL) networks to a new 'disaggregated' system. In the existing 'aggregated' system, independent ISPs connected to cable and DSL networks at a single point of interconnection (POI). The change to disaggregated meant that, instead of having to get their traffic only to a single point of interconnection per wholesale partner, ISPs would have to connect to a much larger number of POIs where neighbourhood networks terminate—an unexpectedly costly and complex proposition for the ISPs who need access to the incumbents' last mile facilities to reach their customers.

The independent ISPs were lured by the promise of a new disaggregated system but soon found that the new approach was unworkable as a growing record at the Commission demonstrated that the rates charged by incumbents were too high.[106] The CRTC agreed, finding that the wholesale rates the big companies were charging for this access—the single greatest factor in determining overall internet

103 In formal terms, this evolution in communications infrastructure is known as fibre-to-the-node (FTTN) and fibre- to-the-premises (FTTP).

104 CRTC (2015). *TRP CRTC 2015-326 Review of wholesale wireline services and associated policies*.

105 Bell Canada. (2015, October 20). *Petition to the Governor in Council to Vary* Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*; Governor in Council (May 5, 2016). *PC 2016-0332 Order declining to vary the Canadian Radio-television and Telecommunications Commission Telecoms Regulatory Policy CRTC 2015-326*.

106 CRTC (2016). *TD 2016-117 Review of costing inputs and the application process for wholesale high-speed access services*.

prices in Canada—were greatly inflated. After studying the issues for three years, the incumbents were ordered to correct these rates and repay the hundreds of millions of dollars they had overcharged the independent ISPs.[107] This was a decisive victory for the independent ISPs, but only if the story ended there. It did not.

The incumbents' multiyear, multi-pronged campaign to kill competition in the cradle scores a decisive victory

Instead of complying with the Commission's 2019 order to implement the cheaper wholesale access rates and repay the independent ISPs, the companies opted instead to wage a multi-pronged campaign—through the courts, lobbying government, and by pressuring the leadership at the CRTC. The campaign was ultimately designed to either kill the regulated wholesale access regime, or at least to frustrate its implementation for as long as possible, with each delay serving to keep wholesale rates—and thus retail Internet prices—artificially high and to undercut the independent ISPs just as they were getting a toehold as effective competitors, as we discussed just a moment ago.

The incumbents' protracted, multiyear campaign against the independent ISPs and the regulated wholesale access regime proceeded down several different tracks, as laid out below.

First, Bell and the cable companies (although not TELUS or Sasktel) took their case to the Federal Court of Appeals, where they achieved a temporary victory when the court ordered the implementation of the new wholesale rates to be put on hold until it issued its decision. In a victory for the independent ISPs, the CRTC and consumers, however, in September 2020, the Federal Court of Appeal rejected the incumbent companies' appeal in a unanimous ruling calling their arguments "of dubious merit".[108]

The companies tried to appeal that ruling to the Supreme Court of Canada, but this effort was short-lived as the Court denied leave to appeal on February 25, 2021.[109] Regardless of the outcome, the net effect was to delay the implementation of economic wholesale rates for nearly six years from the initial decision in 2015 until the Supreme Court finally closed the door on the incumbents' efforts.

Simultaneously, the carriers (this time including TELUS and Sasktel) launched a second line of attack in 2019 on the CRTC's regulated wholesale access regime. This took the form of a petition asking the Governor in Council to overturn the wholesale rates, arguing that the rates were so low that they would undermine the carriers' ability to invest in new networks, especially in rural and remote areas—an outcome that would be anathema to the government's policy agenda of ensuring universal broadband service, they asserted.[110] In August 2020, Cabinet denied the petition; at the same time, however, the government kicked the can back to the CRTC, which had already begun considering a carrier application to review and vary the rates. This was a positive turn-of-events, but badly compromised by the language in the Order-in-Council and in the public messaging around it that embraced the incumbents' rhetoric about balancing competition and their ability to invest, as if the Commission had not duly considered such factors all along.

107 CRTC (2019). *TO 2019-288 Follow-up to Telecom Orders 2016-396 and 2016-448–Final rates for aggregated wholesale high-speed access services*.

108 Federal Court of Appeal (2020). *Bell Canada v. British Columbia Broadcasting Association* (2020 FCA 140).

109 Supreme Court of Canada (Feb. 25, 2021). Bell Canada, et. al. v. British Columbia Broadband Association, et. al. Application for leave (dismissed).

110 A claim should be met with skepticism given that the Commission had already thoroughly reviewed such claims and built in a premium into its costing methodology to cover such considerations.

The carriers' third avenue of appeal was a request that the CRTC review and vary its original 2019 rate-setting order, arguing that it had relied on bad information and misapplied its own costing methodology. The Commission ruled on this order in May of 2021, essentially granting the carriers' wishes. In a complete reversal, the CRTC reverted to the rates it had set in 2016—the ones it had previously found to be significantly inflated—with only a, charitably interpreted, perfunctory explanation that it had 'substantial doubt' about its earlier decision to cut rates.[111]

The companies also pursued a fourth track: In its 2015 decision setting all of this in motion, the CRTC had adopted a new model for wholesale interconnection under which the industry would move toward a larger number of decentralized access points (i.e. the disaggregated model), in exchange for which the small and independent ISPs would get access to fibre-to-the-premises (FTTP) services. Before the model could be finalized, competitors sought a more intermediate level of aggregation and much lower final rates.

To complicate things further, in the meantime, differences emerged in terms of how the telecoms and cable companies, respectively, roll out their fibre networks—contributing to further delays. This particular aspect of the issues at play reflects the fact that a big gap has opened up between the wholesale services of Bell and TELUS, for instance, who rely more extensively on FTTN and copper wire connections (DSL) for the last stretch to a subscribers' doorstep, and which cap out at a download speed of 50 Mbps, versus the cable operators, who are running gigabit-speed links to the neighbourhood and much faster final links to subscribers than what Bell and TELUS typically offer over DSL.[112]

This discrepancy, of course has pushed the telecoms operators to speed up their investment to new fibre networks, but it has also had the consequence of locking out the rival, independent ISPs from being able to access the latest FTTP technology, that is, the infrastructure of the 21st Century, and as explained earlier.[113] One other negative consequence of all these convoluted twists and turns, however, is that one of Canada's largest cable companies, Shaw, is now using that gap to argue that it should not have to offer higher speeds on its wholesale access service to independent ISPs like TekSavvy since its telecoms counterparts such as Bell and TELUS do not/cannot offer such speeds.

If this maelstrom of activity was not tortuous enough, the Commission decided to open yet another round of consultation concerning the appropriate technical configuration for wholesale access services.[114]

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111 After the Federal Court of Appeal rejected the carriers' case, the companies appealed to the CRTC to delay implementing the revised wholesale rates until it had disposed of their request for a review and variance discussed above. The CRTC approved that request in September 2020 but this prong of the action was rendered moot by the decision of the CRTC just referred to (CRTC, 2020, *TD 2020-342 Requests to stay the implementation of Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*; CRTC, 2021, *TD 2021-181 Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*).

112 That said, TELUS does offer 75 Mbps unbonded VDSL.

113 Crawford, S. (2019). *Fiber: the coming tech revolution—and why America might miss it*. The latest development in this ongoing tragedy took shape as this report was being prepared. The gist of it is that Vidéotron has submitted documentation to re-introduce the high-speed access tiers that it had withdrawn but its application to do so also includes support for the cable-based operator, Shaw's call to limit third party's wholesale access to high end speeds only to situations where equivalent services, i.e. fibre, from the incumbent telcos does not exist. The presumption here being, of course, and to cut to the chase, that if two options are available, ie. a high-speed wholesale option from each of the incumbent cable and telecom operators, respectively, the markets are sufficiently competitive to not require a CRTC-mandated wholesale access regime to fibre-based services. See Vidéotron's tariff application, TN 59 and on the Commission's website (CRTC, Dec. 6, 2021, Third Party Internet Access Service (AITP)—General Tariff—Competitor, Vidéotron, *Closed tariff applications*).

114 CRTC (2020). *TNC 2020-187 Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*.

This effectively means that the Commission is restarting from ground zero with respect to the mandated wholesale access regime, a process that could possibly lead to another half-decade or more long series of proceedings with no result at the end.

Clearly, the lessons of the 20th century industrial communications era have not been lost on incumbent carriers in the 21st century: obstruct, delay, litigate and lobby endlessly in the hopes that competition can be killed in the cradle, or at least held at bay for decades. This is a story that has run alongside the history of independent internet access providers for three decades now. The companies' campaign also draws on time-worn tactics that go back to the early-20th century when Bell used every measure at its disposal to thwart rivals that had set-up in Kingston, Montreal, Winnipeg, and in other cities wherever it operated east of the prairies.

This early campaign was fought in many corners, not least in front of Canada's first independent regulator, the Board of Railway Commissioners (BRC), over technical standards, the terms of interconnection, and in the courts over patents and the privileges conferred by Bell's federal charter.[115] As we saw earlier, early victories in the courts and at the BRC buoyed the prospects of the independent telephone movement. At the highpoint of this early competitive era, there were 1,700 such companies serving half of all telephone subscribers in 1917.

Ultimately a series of regulatory reversals that toughened the terms of interconnection while also requiring competitors to compensate Bell for lost business as a condition of such network access sounded the death-knell for the early competitive era of telephony. By 1920, the last of the independent competitive telephone companies vanished, although hundreds of non-competing companies continued to service municipalities, communities, and rural areas that Bell and the other regional and provincial monopolies believed were not profitable enough to serve for many years thereafter. There are about fifty such companies left today.

Fast forward to our own time a century later, and it is obvious that the incumbent carriers have not lost their zeal to fight tooth-and-nail to defend their interests, as we should probably expect. The question for now is, are we seeing something of a replay of historical processes today, but now with the fate of independent ISPs hanging in the balance?

As a matter of fact, that even the slight improvements that had helped to keep the ranks of small ISPs relatively flush during the decade prior to 2018 begot such a ferocious response strongly implies the answer to that question. In fact, the cull has already begun with Vidéotron acquiring VMedia while BCE swallowed up Distributel and ebox over the course of a couple of months in 2022.[116] Other well-known independent ISPs such as Teksavvy are also said to be hemorrhaging subscribers, while only treading water with respect to revenue by implementing unpopular price hikes that will only undermine their long-term viability even further.

Given these harsh but completely comprehensible realities—past and present—policy-makers and regulators must deal with them unflinchingly if the goal really is to foster a world class communications infrastructure and marketplace that serves all Canadians and which is fit for the "Internet Age".

115 Babe, R. E. (1990); Winseck, D. (1998). *Reconvergence*; MacDougall, R. (2014). *The people's network: the political economy of the telephone in the gilded age*. Philadelphia, PA: University of Pennsylvania Press.

116 Karadeglija, A. (Sept. 6, 2022). Bell's acquisition of Distributel a death blow to ISP competition: consumer advocate. *National Post*.

The Clash of Titans as Cable, Satellite and IPTV-based Broadcasting Distribution Undertakings (BDUs) Increasingly Converge and Compete with Virtual BDUs

Anchor Findings

- After rising concentration in the early 2000s, the entrance and growth of telco IPTV services has brought down national HHI from the 2,300s at its high point in 2004 to 1,700 this year.
- Like retail Internet access, national views of cable TV markets overstate the level of competition occurring where it matters, at the local level. Seen from this vantage point, despite the growth of IPTV services over the past decade, the cable, IPTV and direct-to-home satellite market is still a duopoly, with an HHI score of 5,165 last year—a figure that is more than double this measure's threshold for designating a market to be highly concentrated.
- As Amazon Prime Video, YouTube Premium and Apple TV+ emerge as significant online aggregators and distributors of audiovisual media services, convergence and competition between them and traditional BDUs is intensifying.
- "Cord cutting" behaviour is present, but at a slower pace than often implied.

Prior to the advent of IPTV services in 2004, consolidation in the BDU market at the national level had been rising for two decades, with a brief interruption after satellite TV services were introduced in the late 1990s. The introduction of satellite TV started to chip away at local cable monopolies across the country and, nationally, the BDU market began to show the impact. At the local level, however, where people actually subscribe to such services, concentration levels are still sky high. Now, the rise of, for instance, Amazon Prime Video, YouTube Premium and Apple TV+ as online aggregators and distributors of audiovisual media services is contributing to intensifying convergence and competition between these international conglomerates and the traditional, vertically-integrated BDUs that have dominated the television distribution in markets for decades.

In the late-1990s, there was growing competition in this market on account of the introduction of direct-to-home satellite services. As a result, the top four BDUs' share of the market fell to 72% in 2000 from 85% four years earlier and the HHI had fallen to 1,566, down from 2,315 in 1996. Thereafter, however, a new round of consolidation, and Rogers and Shaw's decision in 2000 to divide the market between themselves into Cable Monopoly East and Cable Monopoly West, respectively, caused concentration levels at the national level to soar once again.[117] By 2004, the top four BDUs'—Shaw, Rogers, Bell and Vidéotron—share of the market had reached an all-time high of 89%.

The development of the telephone companies' IPTV services since the mid-2000s put the brakes on the upward drift of concentration. As a result, local cable monopolies had to face competition from the telephone companies' IPTV services. MTS and SaskTel were the first to roll out IPTV services in 2004, followed by TELUS in 2007/2008, but it was not until Bell started to roll out its own IPTV services in Ontario, Quebec, and the Atlantic provinces in a concerted way after 2010 that this force began to really gather steam.

117 Shaw (2002), *Annual report, 2001*, p. 35.

As noted in the last report, by the end of 2021, a little over one-in-five Canadian households got their television service from the local telephone company's Internet Protocol TV (IPTV) service: Bell, TELUS and Sasktel. These companies' IPTV services grew swiftly over much of the last decade. They had 3.2 million subscribers and revenues of $2.2 billion—figures that were much the same as a year earlier. By the end of 2021, the telcos' IPTV services had garnered 29% of the traditional TV distribution market by revenue and 32% based on subscribers.

The message is clear: the quick pace of IPTV growth over much of the last decade has intensified rivalry between the telephone and cable companies' TV distribution services, and there is no doubt that the cable companies are feeling the pressure. Moreover, that pressure is magnified by the fact that the traditional BDU market is shrinking, with revenue dropping from its peak of $8.8 billion in 2016 to $7.8 billion last year, while subscriber rates have also plunged over the decade, from 86% of households in 2011 to just two-thirds of all households last year.[118]

As the telephone companies' IPTV services have gained traction, both the CR4 and the HHI scores for the BDU sector have dropped significantly at the national and local levels. In 2004, and at its high point, the national market share for the top four companies—Rogers, Shaw, Bell and Vidéotron—was 88.6%; last year it was 77%. Over the same period, the national HHI fell from 2,206 to 1,700—a figure that is now at the lower end of the moderately concentrated part of the HHI scale.

This is a significant decline, to be sure, although it is still too early for a victory dance. Like retail Internet access services, national measures exaggerate the extent of competition because cable TV markets are local and regional, not national. When we consider things from this more fine-grained vantage point, concentration levels in the cable TV market are still sky high. In 2004, the HHI for BDU services at the local level was, on average, 7,151—close to three times the threshold used to designate a market as "highly concentrated". By last year, the traditional cable firms' market share had been cut down to just under 60%, while the telephone companies' share had swelled to a touch over 40% (when Bell's satellite TV is included in the picture). The HHI had fallen as a result to 5,166.

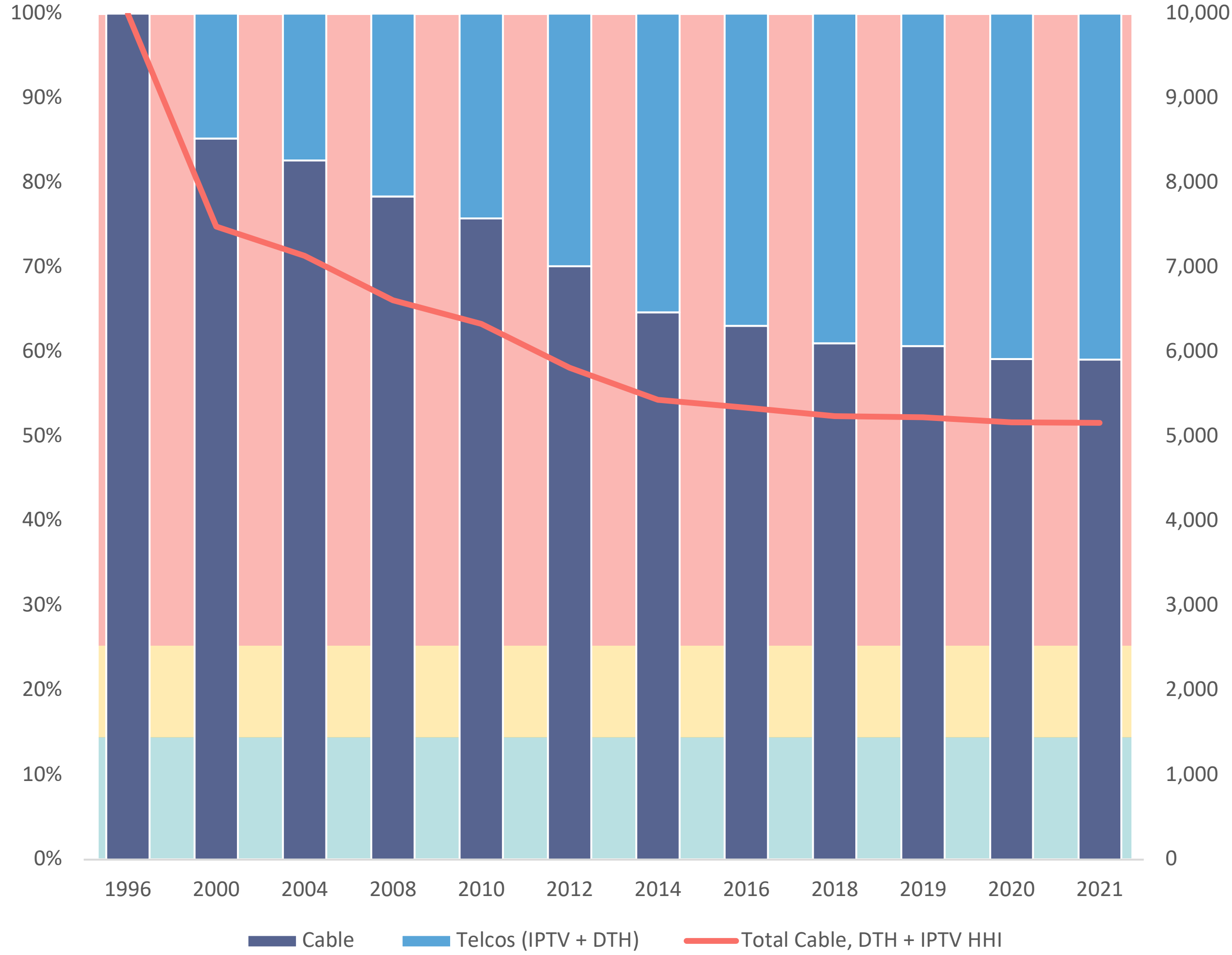
Of course, this is a significant change, and one can understand why cable companies have groused about the increasingly intense competition they have had to meet, while Bell, TELUS, and SaskTel have been able to—correctly—trumpet their successes in an ever more contentious market. These divergent perceptions on both sides of the industry, however, come back together around the reality that a duopoly in cable television services does not measure up to the standards expected of a truly competitive market. In short, an HHI score of 5,166 is more than twice the threshold for a highly concentrated industry by this standard. Moreover, the biggest players continue to reveal their dominant market power by pushing price increases that are well-above the CPI (as shown in a moment), with little competitive discipline on such moves seemingly coming from "the market".

Figure 13, below, illustrates the steady demise of monopoly cable TV and the rise of duopolistic competition between cable companies and telephone companies since 1996.[119]

118 Recall from our first report that there is a significant difference between the subscription rate that we present and what the CRTC present, i.e. 70% because the CRTC is using the 2016 census from Statistics Canada as the base for the number of households in Canada, i.e. 14.1 million, whereas Statistics Canada data for 2021 puts the number of households at just under 15 million. See Statistics Canada (2022). *Census Profile, 2021 Census of Population*.

119 Crucially, this was the year when the Chrétien Liberal Government's new *Convergence Policy* document lifted the restrictions that had prevented both sets of companies from competing with one another on their "home turf" and that had kept telephone companies like Bell from owning and controlling broadcasting and other types of content. In short, it was the moment when vertical integration between telecommunications and TV was given the green light.

Figure 13: The Decline of Monopoly Cable: Cable vs Telephone Companies, 1996—2021



Sources: see the "Fig 13 Cable vs Telcos" sheet in the Excel Workbook accompanying this report and the "Multichannel Video Distribution" sheet in the GMIC Project—Canada open data sets.

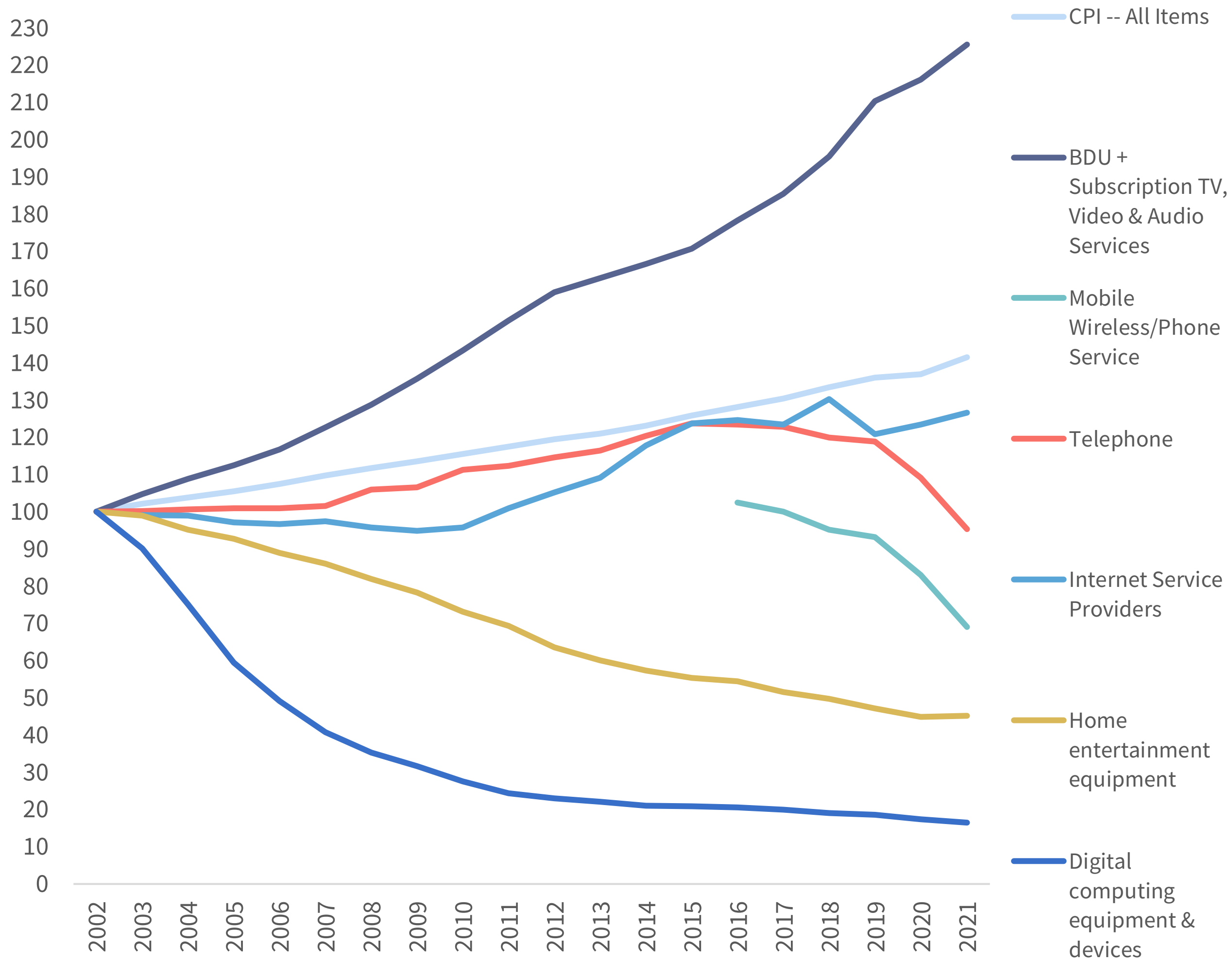
Of course, the threat of "cord cutting" also hangs around this discussion as well, with the number of households that subscribe to a BDU service sliding, to repeat a point made a moment ago, from its high point of 85.6% in 2011 to 66% last year. The idea of "cord cutting" is, to be sure, real, but its pace has been slower than many seem to believe. It is also essential to bear in mind that revenue for the sector grew by leaps and bounds until 2016 before falling in each of the past five years, as our previous report addresses in some detail.

Lastly, one must note that the cable operators and telephone companies have been working hard to offset whatever losses they have experienced with rate hikes on both BDU and broadband Internet services. We showed this in the last report, but it is worth repeating here that prices for BDU services have risen faster than the consumer price index for two decades and without interruption on account of cord cutting. The same is true if we examine this issue from the point of view of average revenue per user (subscriber) (ARPU). As we showed in our first report, household spending on BDU services climbed sharply from $470 in 2000 to a peak of $793 in 2015, where they have stayed ever since, for reasons discussed in our first report.

Moreover, broadband Internet prices also began to rise sharply in 2011 at exactly the point in time when cable subscriber levels began to fall. In other words, companies have worked hard to offset the effects of cord-cutting by hiking prices faster than the rise in CPI for BDU and broadband Internet services since

2011. In addition, the fact that the companies have been able to hold household spending for BDU services at peak levels since the mid-2010s has had a similar effect, despite the fact that consumers are accessing more and more video and audio services directly over the Internet. Figure 14 below illustrates this point.

Figure 14: Communication Services and Device Prices vs the Consumer Price Index, 2002-2021[120]



Source: Statistics Canada. Table 18-10-0005-01 (formerly Table 326-0021): Consumer Price Index (CPI), annual (2002=100). Also see the "Fig 14 ICTS vs CPI" sheet in the Excel Workbook accompanying this report.

120 The "BDU + Subscription TV, Video & Audio Services" category has traditionally covered BDU and Pay and Specialty TV services. Statistics Canada, however, expanded this category to include most streaming and transaction-based video services made available over the Internet such as Netflix, Crave and Amazon Prime in 2015. It did so again in 2019 to include paid audio services such as Spotify. It calls these services "Audio and Video Subscription Services" (Personal correspondence with Statistics Canada, Nov. 23, 2022; also see Mitchell, T., Feb. 27, 2019, An analysis of the 2019 Consumer Price Index basket update, Based on 2017 expenditures, Statistics Canada). We use a slightly different label to be consistent with the language that has been used over time to describe these services, including by Statistics Canada, the CRTC and in these pages.

The analysis and discussion surrounding Figure 14 has been revised to reflect these changes. A discussion of householding spending on BDU and ISP services (average revenue per user, or ARPU) was also added to this discussion.

At the end of the day, the following two observations, though seemingly at odds, are in fact both true:

- There is more competition taking place within the cable TV market but,
- this market is still a tight duopoly, and at the very high end of the scale in terms of concentration.

National champions versus global behemoths and the emerging hybrid television distribution marketplace

Given that cord cutting is real, and people are increasingly turning to services such as Apple+, Amazon and YouTube Premium to replace the classic cable bundle, we must ask how these services fit into the picture being depicted here? There is no doubt that the rise of international digital conglomerates that aggregate and distribute audiovisual media services direct to consumers over the Internet represent significant developments. Indeed, they are driving greater convergence and competition with traditional broadcasting distributors, and this could accelerate in the years ahead.[121]

Given the entrenched duopoly in traditional cable services, and soaring prices year-after-year, there is also no doubt that consumers can benefit from the greater choices they now have. The advent of competitive alternatives is also benefitting television and film producers and rights holders, including some based in Canada, such as Vancouver-based OUTtv and Shaw-Corus's Stack TV. To them, Amazon and Apple offer a welcome alternative to traditional BDUs because, for one, the revenue splits between them and the digital platforms are better than they have ever received from traditional BDUs.[122] The digital platforms also offer better insight into the terms of distribution, marketing, and billing, while offering access to global audiences rather than just domestic ones. Given the importance of data in the networked digital media universe, these advantages are extremely valuable.

Indeed, for a relatively small television company like OUTtv, the international market has become even more important than the domestic market, and this is only expected to grow. Same, too, for Corus' Stack TV, which reports that after only two years of operation, the service had become a fast-growing new distribution window with 675,000 subscribers and $64 million in estimated revenue (about 6% of its total revenue from television programming services) in 2021. Other services in Canada are pursuing such options and, of course, foreign-based services are being distributed in Canada by such means.

Bringing all this into perspective in the context of the current debates over the proposed *Online Streaming Act*, Concordia University Professor Fenwick Mckelvey told the Senate Committee on Transportation and Communication that is reviewing that bill the following:

> The act . . . has one clear objective: ensure that the CRTC has the capacity to regulate large, economically powerful domestic and international firms involved in broadcasting distribution . . . . [T]he mission-critical function of the new act must address the convergence of large online video-

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121 Winseck, D. (Oct. 18, 2022). Opening Remarks to the Standing Senate Committee on Transport and Communications on the *Online Streaming Act* (Bill C-11); Mckelvey, F. (Oct. 5, 2022). Standing Senate Committee on Transport and Communications on the *Online Streaming Act* (Bill C-11)—Evidence. The following paragraphs have also been informed by ongoing conversations with Brad Danks, CEO of OUTtv Media Global.

122 That said, this simplifies things because the BDU carriage deals offer access to audiences of a set size for a longer period of time whereas the digital platforms do not.

> on-demand services and the traditional broadcasting distribution undertakings. The maturation of streaming services to a few dominant players indicates that online services have become cable by other means.[123]

Clearly, online aggregators and distributors have emerged as significant players in Canada. Their growing presence has chipped away at the high levels of concentration that have prevailed for decades in the BDU and TV marketplace. As a result, people now have more choice, while programming services providers and rights holders have more doors to knock on. The recent entry into Canada of the new free linear, ad-supported online platforms known as "FAST" services such as Samsung Plus, Tubi, PlutoTv (owned by Viacom-CBS), and others may also have a long-term impact as they are now having in the US where they have become a popular replacement for traditional cable.[124]

At the same time, it is essential to keep these developments in perspective. In this regard, three points stand out. First, the scale of these companies' activities in Canada are opaque—a problem that the *Online Streaming Act* targets through information disclosure obligations. Nonetheless, it is still possible to develop some reasonable estimates of their revenue. We estimate that Amazon Prime Video, Apple+ and YouTube Premium had combined revenue in Canada of $468 million in 2021—or just under six percent of a hybrid traditional-virtual BDU market.[125] As such, while the tech platforms must be recognized as significant actors in the digital media environment, it is just as important to avoid hyperbole and the tendency to exaggerate their significance, too.

A second point, however, is that it is unclear if the online aggregators and distributors' revenue should all be allocated to such a hypothetical market or spread across a larger amalgamation that includes both the BDU market and all television programming services. Taking that route would effectively cut their market share in half. Given this ambiguity as to how to best classify their operations, i.e. either as a new breed of BDUs or as part of the evolving online video services market alongside Netflix, Bell's Crave, Disney+, etc., we will return to them later in the context of that sector of the digital media.

Third, however, and consistent with the point that Mckelvey makes, while the inroads being made by digital platforms into the television distribution marketplace has benefitted consumers and programming services alike, this could all turn on a dime as they accumulate a bigger share of the market. Indeed, this is already taking place as novel versions of old disputes between cable distributors and programming services break-out.

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123 Mckelvey, F. (Oct. 5, 2022). Evidence.

124 PlutoTv is a division of Paramount Studios which, in turn, is owned by Viacom-CBS. FAST stands for free advertising supported television and is primarily a service focused on making back catalogue programming available once again. In these developments, we can also detect the resurrection of the classic "windows" distribution model that, since the end of World War II, had divided film and television markets based on time, geography and technology, with the release of a film, for example, staggered so that it came out first at the box office in the US, then progressively to other regions of the world thereafter, than to a pay-per view video-on-demand service, then premium cable, standard cable channel, broadcast, etc. For the last two decades, many have thought that the rise of streaming services would lead to the demise of the windows model as Netflix, for example, jumped the queue from the back of the line to closer and closer to the front of the line the bigger it became, until simultaneous release became a significant phenomenon, not just at Netflix, but Warner Media and others, during the first year of the Covid pandemic. Throughout this process, the windows model was being compressed both in terms of time (i.e. simultaneous release and shorter waits between box office and home distribution) and space (i.e. films released simultaneously in the U.S., Europe, China, etc). Now, however, the rise of the FAST model and other developments appear to be restoring the windows model albeit in changed form.

125 That is, $7.8 billion for the traditional BDU market, as per the CRTC, and an estimated $468 million from these companies' operations in the online video services market.

Thus, in late 2021, Disney yanked ESPN, ABC, FX and several other of its marque brands from Google's YouTube TV in the U.S. in its ongoing battle to get Google to pay for the rights to distribute these services "as part of Google's YouTube TV's bundle of live channels".[126] The dispute was short-lived, though, and the Disney channels restored within days after the two disputing behemoths came "to a new carriage agreement".[127] In other words, the Google-Disney dispute bears a strong resemblance to a classic retransmission dispute that regulators have dealt with in the context of cable television for half-a-century. More such disputes should be expected, with potentially very harmful consequences for smaller services and rights holders, especially.

Indeed, it is also clear that, lacking the clout that Disney has, Canadian services in a similar situation will face a serious imbalance in the terms of trade. This is why a strong regulator, equipped and willing to deal forcefully with the realities of the international audiovisual media marketplace, is needed. This is one of the key justifications for the *Online Streaming Act*, albeit one that has been lost amidst all the teeth gnashing between nationalistic Canadian content and culture supporters of the bill and free speech purists opposed to it.

A second dimension to such concerns is also emerging as Google, Amazon and Apple make deeper forays into the television, film, and video marketplace: self-preferencing and unfair cross-subsidies between monopoly (dominant) services and other services. This issue is more in line with classic telecoms regulatory measures that ban undue preference outright, but in this context, it arises as a possibility that Google could use cross-platform influence between its iconic search engine and YouTube, for example. In a similar hypothetical scenario, Amazon could do the same between its Prime Video distribution platform and AWS cloud service, on the one hand, and third-party programming services, on the other, that rely on that platform and its cloud hosting service for distribution, marketing and billing while simultaneously competing with Amazon's expanding catalogue of television and film programming included in its Prime Video service, especially after its acquisition of MGM studios earlier this year.[128]

The question for here is whether the measures in the *Online Streaming Act* that are ostensibly designed to address such issues are up-to-the-task?[129] While it is probably too early to tell, the fact that the relevant provisions are vague does not inspire confidence. They also rely on the discretionary and permissive language of "may" and "should" in terms of what the CRTC may do versus clear, emphatic statements telling the Commission what it *must* do,[130] as is the case in the *Telecommunications Act* and similar such language that has been included in the proposed *Online News Act*.[131] Furthermore, that the complex

126 James, M. (Dec. 17, 2021). YouTube TV loses ESPN, ABC and other Disney channels in fee dispute. *Los Angeles Times*. YouTube TV is currently not available in Canada.

127 Perez, S. (Dec. 20, 2021). YouTube TV settles its contract dispute with Disney, credits customers $15. *TechCrunch*. As an aside, that Google's YouTube TV has a subscription price tag of $64.99, or CDN$81.50, for a bundle of 85 television channels bears a striking resemblance to the traditional cable package, thereby girding the case being made here about the convergence between these two markets/services.

128 Maas, J. (March 17, 2022). Amazon closes $8.5 billion acquisition of MGM studios. *Variety*.

129 See Government of Canada (2022). *Bill C-11 Online Streaming Act*, sec. 9.1(h).

130 Forum for Research and Policy in Communications (Sept. 22, 2022). *Practical and Necessary Changes To ensure that the Online Streaming Act achieves Parliament's goals—Submission to the Senate Standing Committee on Transportation*. Ottawa: Author, p. 12.

131 Government of Canada (2022). *Bill C-18 Online News Act*, see sec. 51, which explicitly *prohibits* digital news intermediaries, i.e. Google, Facebook, or other designated entities, "from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage."

cluster of issues that such measures are meant to deal with are all punted to the Commission to sort out, does not inspire confidence, either.

The Liberal government's framing of the *Online Streaming Act* as being concerned mostly with Canadian content issues rather than the structural issues being raised here—a framing that has been picked up on by the loudest voices in the debate—also does not bode well. Nor does the positioning of domestic communications and media conglomerates such as Bell, Rogers, Shaw, and Quebecor as national champions serving on the front line of defense against international "web giants" inspire confidence.

To sum up this section, market and gatekeeping power is well-established in traditional BDU markets, and nascent when it comes to online aggregators and distributors such as Amazon, Apple and Google. As these two sectors converge, competition between powerful domestic and international firms will intensify. While this will likely be beneficial in several respects, the CRTC and the Competition Bureau will also need expanded powers to deal effectively with both groups of powerful actors. This could include thresholds and asymmetric obligations for players with significant market and gatekeeping power, subject to periodic review, similar to the *Digital Services Act*, *Digital Market Act* and the *Audiovisual Media Services Directive* in Europe as well as the suite of bills designed to bolster antitrust laws in the United States—points that we will return to in the final section of this report where proposals for a new phase of communications and Internet regulation are taken up.[132]

While these issues will become more acute in the near future, we must also keep our eye on the long-standing reality that concentration in the television distribution marketplace continues to be much higher than in either the retail Internet access and mobile wireless markets. This is why existing regulatory measures aimed at reining in prices, unbundling bloated cable packages for consumers, promoting stand-alone online video services, and encouraging wholesale access to broadband Internet infrastructure continue to be justified. Those measures, for the most part, were implemented by past Conservative governments and the CRTC under Jean-Pierre Blais' leadership, and carried on during the Liberal's first government, but the Commission under its current leadership and the Liberal government's resolve seem to have collapsed in recent years.

The "Big Picture": High Concentration Levels Persist, Diversified Communications, Media and Information Services Conglomerates on Top

Over the past four decades, the once relatively simple infrastructure for plain old telephone service (POTS) has been remade into a communications infrastructure that now supports a diverse range of mobile wireless, internet access and television distribution services. To be sure, the first element in this reworked communications landscape, POTS, has been in long-term decline, with revenues falling from

132 European Commission (2020). Contestable and fair markets in the digital sector (*Digital Services Act Package*—contains both *Digital Service Act + Digital Markets Act*); United States, House Committee on the Judiciary (June 23, 2021). *H.R. 3843, the Merger Filing Fee Modernization Act of 2021*; *H.R. 3460, the State Antitrust Enforcement Venue Act of 2021*; *H.R. 3849, the Augmenting Compatibility and Competition by Enabling Service Switching Act of 2021 or the ACCESS Act of 2021*; *H.R. 3826, the Platform Competition and Opportunity Act of 2021*; *H.R. 3816, the American Choice and Innovation Online Act*; *H.R. 3825, the Ending Platform Monopolies Act. Bills, Amendments, Votes*. Thanks to Dr. Ana Bizberge from University of Quilmes, Buenos Aires, Argentina, for helping clarify these points, in particular with respect to 'asymmetrical obligations'.

$21.2 billion at their peak in 2000 to an estimated $12.8 billion last year. That said, while the traditional "voice landline" or "plain old telephone service" offered by telephone companies and, more recently, by cable, and online providers of such services has become ever more marginal, several new lines of service, notably mobile wireless, ISP/Internet access and BDU services, have become increasingly central to the communications industries. These recent developments, in turn, have driven something of a turn-around in this sector, with revenues rising by $1 billion since 2017.

To get an impression of the sweep of these changes, consider, for example, that there were nearly 71.2 million subscriber connections last year across these different sectors of the communications industries. These are the access points—the gateways, if you will—through which all else must pass, i.e. media content, personal communication, and Internet-based content, applications and services. They also consist of the urban, rural and inter-city fibre and wireless infrastructure that underpin Internet access and wireless networks across Canada and into the United States, as was outlined a few pages ago. In 2021, Bell, TELUS, Rogers, Shaw and Vidéotron collectively operated 87% of those connections (61.7 million).

Figure 15 below illustrates these firms' share of subscribers—individually and collectively— for the main segments that comprise the communications services industries in 2021.

Figure 15: Market share by Subscriber Line and Type of Service, 2021

	Mobile Subs	Internet Subs	BDU Subs	POTS Subs	Total Lines	Mobile Subs Share (%)	Internet Subs Share (%)	BDU Subs (%)	POTS Subs (%)	Total Lines Share (%)
Bell	9,459,185	3,862,000	2,788,050	2,483,932	18,593,167	27	26	28	21	26
Telus	11,297,000	2,665,000	1,557,600	1,012,330	16,531,930	32	18	16	9	23
Rogers	9,290,000	2,271,000	1,187,500	1,164,000	13,912,500	27	16	12	10	20
Shaw	2,171,953	2,071,880	2,186,900	390,082	6,820,815	6.2	14	22	3	10
Videotron	1,601,900	1,840,000	1,475,600	924,700	5,842,200	4.6	13	15	8	8
Big 5 Total	33,820,038	12,709,880	9,195,650	5,975,044	61,700,612	97	87	93	51	87
Big 5 Share of Total (%)	97	87	93	51	87					
Grand Total	34,873,654	14,576,400	9,909,000	11,800,000	71,159,054					

Sources: see the "Figs 15&16 Network Connection $" sheet in the Excel Workbook accompanying this report and the "Wireline", "Wireless", "ISP" and "Multichannel Video Distribution" sheets in the GMIC Project—Canada open data **sets** as well as CWTA (2022). Number of subscribers.

At the same time that the type of communication services have diversified, communication markets have expanded greatly and to an extent that more than amply compensates for the long-term decline in POTS revenue. This becomes clear as soon as mobile wireless, Internet access and BDU services are added to the picture. Once we do that, combined revenue across the four main segments of the communications services has doubled from $32.6 billion to $64.4 billion over the past two decades. The big five's share of that total is just shy of 90%. Figure 16, below, depicts their share of revenue across the combined wireless, internet access, wireline (POTS) and broadcasting distribution sectors last year.

Figure 16: Market share by Revenue and Type of Service, 2021

	Mobile Revenue (Millions$)	ISP Revenue (Millions$)	BDU (Millions$)	POTS (Millions$)	Total Revenue (Millions$)	Mobile Revenue Share (%)	Wireline Revenue Share (%)	BDU (%)	POTS (%)	Total Revenue Share (%)
Bell	8,999.00	3,119.20	2,396.50	6,265.50	20,780.20	31	21	31	49	32
Rogers	8,332.00	2,317.41	1,306.40	322.59	12,278.40	28	16	17	3	19
Telus	8,768.00	1,759.88	804.00	4,572.00	15,903.88	30	12	10	36	25
Shaw	1,272.00	1,630.25	1,722.30	497.75	5,122.30	4.3	11	22	4	8
Videotron	988.90	1,130.00	918.70	338.40	3,376.00	3.4	8	12	3	5
Big 5 Total	28,359.90	9,956.74	7,147.90	11,996.24	57,460.78	97	69	92	94	89
Big 5 Share ot Total (%)	97	69	92	94	89					
Grand Total	29,268.34	14,531.00	7,800.00	12,780.00	64,379.34					

Sources: see the "Figs 15&16 Network Connection $" sheet in the Excel Workbook accompanying this report and the "Wireline", "Wireless", "ISP" and "Multichannel Video Distribution" sheets in the GMIC Project—Canada open data sets as well as CWTA (2022). Number of subscribers.

Another thing that stands out in this research exercise is that concentration levels across all four of the sectors—i.e. mobile wireless, wireline telecoms (POTS), retail Internet access and BDU services—has not only remained remarkably high, but the fact that the big 5 companies' share of this much bigger and more complex landscape is greater today than it was twenty years ago.

Indeed, in 2000, the big five companies being assessed here accounted for three-quarters of the $32.6 billion in combined revenue across these sectors; by last year, the number had swollen to close to 90% of the far larger $64.4 billion in combined revenues across the communications industries. In short, this is a story of large players getting bigger—in both absolute and relative terms—within a much bigger market and a market defined by lush profit margins.

What Rogers really wants

These connections are becoming even more important in the context of emerging 5G networks because those networks depend on many small cells each connected to a wired backbone. This is especially important in the context of the current bid by Rogers—the largest mobile network operator in Canada—to take-over Shaw Communications, the fourth largest mobile provider with operations in BC, Alberta and Ontario. While there is no doubt that Rogers would like to remove the fourth mobile network operator from the scene, the real jewel in the Shaw crown that Rogers wants is just as likely to be the very substantial amount of backhaul Internet capacity and wired connections within and between cities throughout Western Canada that Shaw possesses.

Shaw acquired such capacity in the early 2000s just as the dot.com bubble was coming undone and as it was investing large sums into its Big Pipe project. This project involved building a new national fibre backbone network to support the company's own retail broadband Internet services as well as the wholesale operations it was providing to other ISPs and large institutional business and government users across Canada.

Shaw got a big jump on this project when it acquired 6,400 kilometers of dark fiber—or 77,000 kilometers of fibre strand since each cable contained a dozen fibre strands—in Canada and the U.S. from 360networks. The latter was one of the new upstart firms that was seen at the time as the posterchild of a new era of robust telecoms and Internet competition, but which was already on the verge of going bankrupt. This early acquisition in support of its "Big Pipe" project gave Shaw a significant amount of transmission capacity on inter-city routes between Vancouver, Calgary, Winnipeg, Toronto, with spurs into the US to Buffalo, Seattle and Sacramento. Shaw was also set to acquire another 5,800 kilometers of dark fiber from 360networks later in 2000, although it is not clear if that came to pass as the latter company had entered into bankruptcy proceedings by that time.[133]

This also allowed Shaw to compete with Telus and Bell in both the wholesale backhaul and transit market as well as for large institutional users in need of national coverage. Indeed, at the same time that Shaw was going full bore on its "Big Pipe" project, Bell was also building out its own broadband fibre infrastructure across Canada, and developing a national wholesale business to match. To this end, Bell acquired fibre assets of its own from the bankrupt 360Networks in 2004 and grafted them on to this effort, It also sold off the retail customers in eastern Canada it had acquired in that transaction to Call-Net (Sprint), while providing access to its network facilities and operational and support services to Call-Net in return for a share of the latter's revenue.[134] In other words, yes, there was competition, but already it was clear that the extent and intensity of such rivalry would be constrained by the fact that even well-capitalized rivals like Sprint still depended on network access and sharing agreements with incumbents like Bell.

In western Canada, Bell entered into a network sharing agreement with TELUS in 2001 to support both companies' national wireless operations in regions where each partner had minimal presence. While this was the first such network sharing agreement between Bell and TELUS, it has been renewed many times since and remains intact to this day.[135] Bell also buttressed its role as a national wholesale broadband infrastructure operator in 2005 by buying back the 40% stake in Bell West that it had sold earlier to MTS.[136]

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133 Shaw (2002), *Annual report, 2001*, p. 15; Shaw (2006), *Annual report, 2005*, p. 5. The first acquisition was for its' "southern strategy" network of dark fibre, presumably because of the spurs into the U.S., while the promise of another 64,000 at the end of the year as part of Shaw's later acquisition from 360networks was the cornerstone of its "northern strategy".

134 BCE (2005), AR 2004, pp. 35, 95.

135 Brethour, P. (Oct. 18, 2001). Bell, TELUS to piggyback on each other's network, *The Globe and Mail*; Rewheel/DigitalFuel Monitor (2019). Root cause of weak competition in the Canadian wireless market.

136 BCE, AR 2004, pp. 35, 95.

> “This is a story of large players getting bigger—in both absolute and relative terms—within a much bigger market and a market defined by lush profit margins.

Rogers, in contrast, hardly has any such capacity, after having traded away such assets in the 2000 deal it struck with Shaw to divvy up the country into Cable Monopoly East and Cable Monopoly West, as we saw earlier. Today, Rogers appears to be regretting that move and its present bid to acquire Shaw is an attempt to reset the clock on what, in hindsight, looks to have been a bad business decision. That may be good for Rogers and perhaps Shaw's controlling owners (the Shaw family) and the company's shareholders.

However, any notion that a viable fourth mobile company can be cobbled together by regulators and these two companies by spinning off Freedom Mobile (and the Shaw-branded wireless service), and operational obligations that regulators would oversee into the future is incongruous with the companies' own attempts to justify their proposed tie-up on the grounds that Rogers needs the fibre inter-city links and urban networks that Shaw has in order to quickly build out a national 5G wireless network. If that is true, how could a viable new fourth wireless operator in Ontario and western Canada be brought into being on a sustainable basis without such facilities? This is especially unlikely given that a post-merger Rogers-Shaw would have few incentives to provide access to such facilities and its interests, in fact, would be opposed to doing so. This is likely why the Competition Bureau continues to look askance at proposals by the companies to spin-off Freedom Mobile to Vidéotron (or any other suitor with out such facilities) in order to have the proposed tie-up approved by the competition authority. Moreover, on the point, the idea that the Competition Bureau and ISED should be acting like bankers helping the two companies to create a viable post- merger company that will redress regulators' and public concerns about excessive market power is also unrealistic.[137]

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137 Competition Bureau (Sept. 2, 2022). Rogers - Shaw - Fresh as Amended Reply to the Response of Rogers Communications Inc. of the Commissioner of Competition. *Competition Tribunal*; Genakos C, Valletti T & Verboven F (2018) Evaluating market consolidation in mobile communications. *Economic Policy*, *33*(93): 45-100; Kwoka J Tommaso V (2021) Unscrambling the eggs: breaking up consummated mergers and dominant firms. Industrial and Corporate Change. Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a “no remedies” policy

The Digital and Traditional Audiovisual Media Services Industries: New Actors & New Dynamics Chip Away at Industry Consolidation

The next section of this report looks at the following digital and traditional audiovisual media services (AVMS) sectors:

- Internet advertising
- advertising across all media
- broadcast TV
- radio
- pay and specialty TV
- online video services
- total television landscape
- digital games: online gaming, gaming applications, game downloads or in-game purchases
- app stores
- online music services
- newspapers
- magazines
- online news

for merger enforcement. *Competition Policy International*.

Our first report in this series highlighted four key themes that should shape our understanding of the evolution and upheaval that has been taking place in these sectors.

1. All AVMS sectors have grown considerably over the long run, but four such sectors that have historically relied primarily on advertising have been in increasingly dire straits over the past decade: broadcast TV, radio, newspapers and magazines.
2. Online video and music services, as well as digital games and app stores are rapidly becoming the engines of growth across the AVMS sectors. The combined revenue of the digital media sectors soared five-fold from $467 million to $5.9 billion between 2011 and 2021.
3. These developments not only point to the rise of a fast-growing set of digital media accessible over the Internet but also that subscriber fees and direct payments have become the drivers of the media economy. In fact, in the decade after the financial crisis of 2008, advertising spending either grew very slowly (i.e. in absolute terms), stagnated (i.e. on a per capita basis), or declined (i.e. in inflation-adjusted real dollar terms, or in relation to the size of the media economy and the economy as a whole). The exception is of course online advertising, which hit an estimated $12.3 billion last year.
4. Total revenue for the digital media industries inclusive of online advertising last year hit $18.2 billion. These sectors outstripped revenue for traditional audiovisual media and publishing sectors two years ago for the first time and now account for one-fifth of all revenue across the network media economy.

Combined, these trends embody the ongoing transformation of the network media economy from one rooted in advertising-funded traditional media content services to a more complex array of both legacy and digital media services, where subscriber fees and direct payments account for the lion’s share of all revenue. In sum, the digital media industries have added immensely to the size, character and complexity of the network media environment. They have also brought global actors such as Google, Amazon, Facebook, Apple, Microsoft and Netflix deeper into the media landscape in Canada (and other countries around the world) than ever before.

While there is no doubt that communications and media companies in Canada are facing intensifying competition with these planetary-scale Internet giants, what remains to be seen is whether these trends will lead to even more consolidation or to more competition and pluralistic diversity.

Addressing that question is the task of the following sections in this report.

Internet Advertising: The case for why Google and Facebook dominate online advertising in Canada

Anchor Findings

- Google and Facebook appear to have consolidated their grip over Canada's online advertising ecosystem over the past decade, but in recent years they have been joined by a third entity: Amazon.
- Four factors are buttressing the Google-Facebook duopoly: dominance of their core markets; the shift to the mobile Internet; a steady stream of acquisitions; and vertical integration.
- The level of horizontal and vertical integration by digital content aggregators and distributors is increasingly attracting regulatory scrutiny.

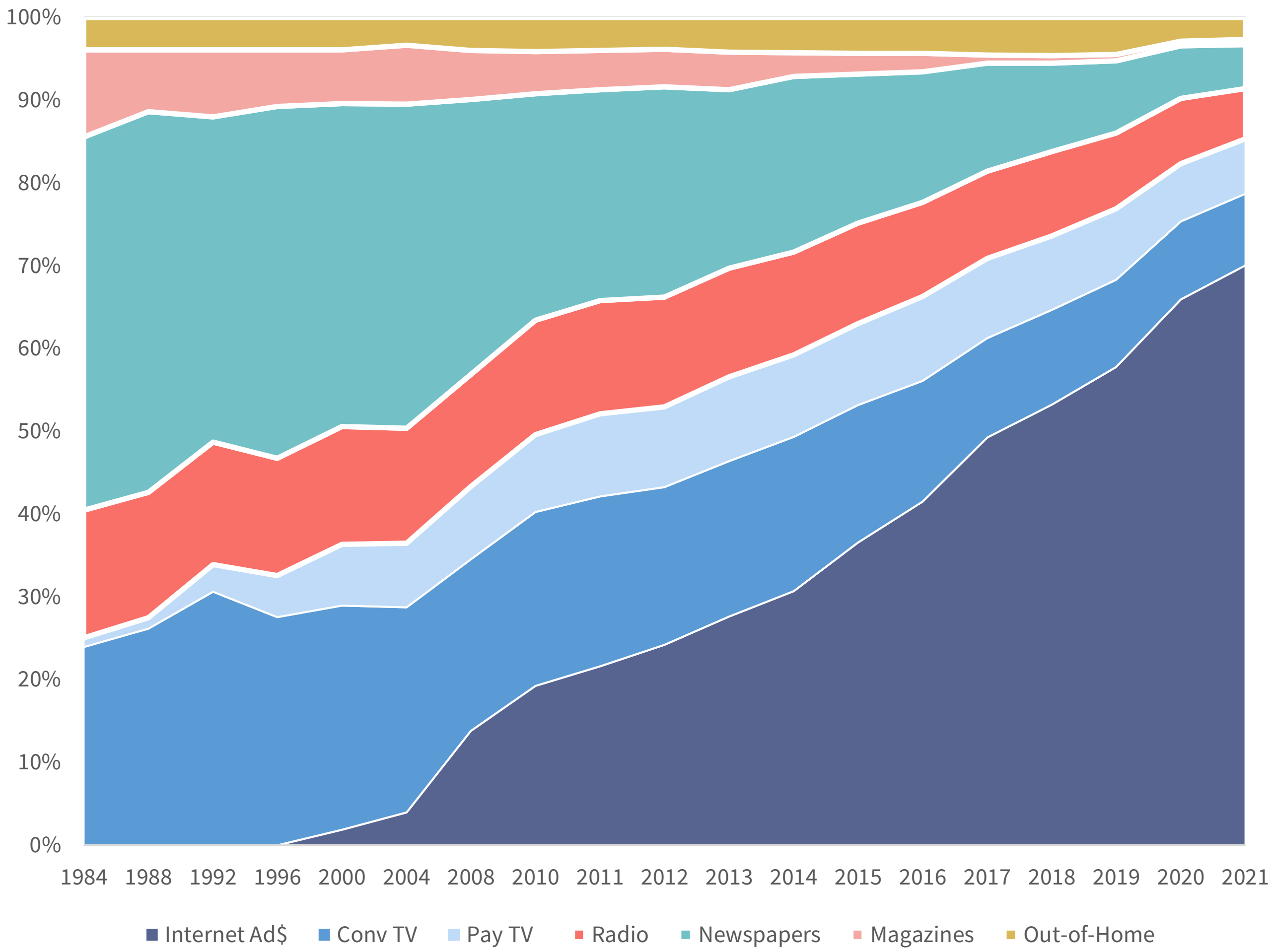
The next several pages focus on the two undisputed goliaths in online advertising—i.e. Google and Facebook—to chart and understand the forces that have allowed them to lock-in their grip over online advertising over time, while also being attentive to Amazon's rise as a significant third player in recent years. We then build on this analysis to ask whether these Internet giants also dominate the advertising market as a whole across all media?

The Internet has long been held up as an antidote to ownership concentration in the "old media", but the reality is that many core segments of the Internet are already extremely concentrated and becoming more so with every passing day.

Take Internet advertising for example. Consistent with its track record over the past two decades, the online advertising market grew swiftly last year, reaching $12.3 billion. As of 2021, the online advertising market accounted for seventy percent of the $17.6 billion in total advertising spend across all media. This was up enormously from just three years earlier when it made up a little over one-half of all advertising spending. In short, advertising is now centralized on the Internet. Moreover, the pace at which advertising spending has shifted to the Internet has accelerated in recent years.

Figure 17 below illustrates the changing mix of advertising spending across different media over the time frame covered by this report.

Figure 17: Internet Advertising Spending vs Other Media Advertising Spend: the Gap Becomes a Chasm, 1984-2021



Source: see the “Fig 17 Internet vs TV ad$” sheet in the Excel Workbook accompanying this report and the “Total Revenue” sheet in the GMIC Project—Canada open data sets.

The two biggest beneficiaries of the soaring growth in online advertising have been Google and Facebook. Google’s revenue from its online advertising operations in Canada last year was an estimated $5.8 billion—more than five times what it had been a decade ago and more than double what it was just five years earlier. By our estimate, $799.9 million out of that total was attributable to its advertising-based YouTube service. Overall, Google now single-handedly accounts for half of all Internet advertising spending in Canada—a figure that has stayed fairly stable over the past half decade.

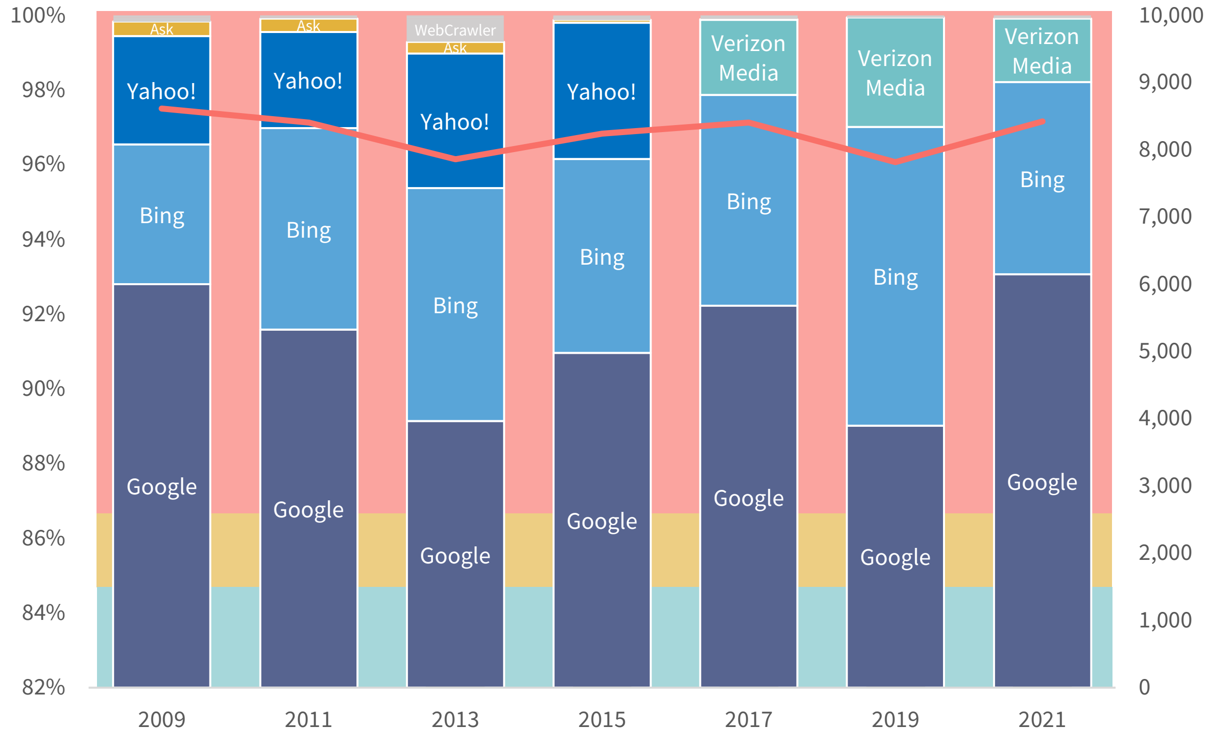
While the company has diversified its operations over time, Google still derives 81.3% of its revenue from advertising spending and its dominance of Internet advertising begins with its control of the search engine market and YouTube.[138]

138 Alphabet (2022). *Annual Report, 2021*, p. 60.

The early years of the commercial Internet in the 1990s and early 2000s saw an eclectic variety of search engines: AlltheWeb, AltaVista, Excite, Go, Infoseek, Lycos, WebCrawler, OpenText, Yahoo!, etc. However, most of those entities went bankrupt or were quickly taken over by other companies, especially in the aftermath of the dot.com bubble. By the mid-2000s, this early phase of competition in the search market gave way to winner-take-all conditions.[139]

Since that time, concentration levels in the desktop search engine market have remained in the high 90 percent range based on the CR4 method and in the 7,500-8,700 range based on the HHI approach. As of 2021, Google had a 92% market share of the desktop search market; erstwhile alternatives such as Bing and Yahoo! trailed far behind with 5% and 2%, respectively. Figure 18 depicts conditions in Canada over the last decade.

Figure 18: Search Engines, Market Shares, and Concentration Levels, 2009-2021



CR 4	99.7.	99.8	98.8.	99.7	99.7	99.6	99.7
HHI	8617.7.	8400.7	7862.5.	8239.4	8408	7515.5	8420.9

Sources: see the "Figure 18 Search Engines" sheet in the Excel Workbook accompanying this report and the "Search Engines" sheet in the GMIC Project—Canada open data sets.

139 See van Couvering, E. (2011). Navigational media. In Winseck, D. & Jin, D. Y. (eds.). *Political economies of media*. London, Bloomsbury; Hindman, M. (2018). *Internet trap*; Noam, E. (2016). *Who owns the world's media?*

> “While Facebook’s user base has stalled in recent years in Canada, the US and Europe, it continues to grow by leaps and bounds.

Google’s grip on the mobile search sector is even higher, hovering between 97% last year and 99.5% a decade ago. Consequently, the HHI score for the mobile search market has been nearly off-the-charts for over a decade, bouncing between 8,300 (2014) and 9,900 in 2009 (recalling that an HHI score of 10,000 represents a monopoly). Last year, it was 9,443. Thus, it is not just that these are sky high levels of concentration but, crucially, that such extremely high levels of dominance have been entrenched for over a decade.

Like Google, Facebook’s revenue in Canada has also soared over time, from $181.4 million in 2011 to just under $4 billion last year, a year-over-year spike of a billion dollars at a time when, for the first time in over a decade, advertising spending grew significantly. Consequently, the social media giant’s share of the online advertising market is rapidly nearing the one-third mark. It is even more dependent on advertising revenue than Google, with close to 98% of the social media giant’s revenue coming from advertising.[140]

Facebook’s clout is grounded in its decade-long position as the foremost social media service in Canada and the world. In fact, its share of social media traffic, including Instagram, has not fallen below 60% since 2014, and tends to hover between that figure and three-quarters of such traffic in any given year, although there has been a clear downward trajectory since 2017.

In 2021, its three closest social media rivals, Twitter, Snapchat and Tiktok, accounted for 14% 13% and 11% of unique monthly visitors, respectively, or just a one-quarter to one-fifth of the unique monthly visitors that Facebook had. Several recent inquiries conclude that this story, more or less, repeats itself for Australia, Germany; the U.K. and the U.S.[141] Figure 19 below, illustrates these points.

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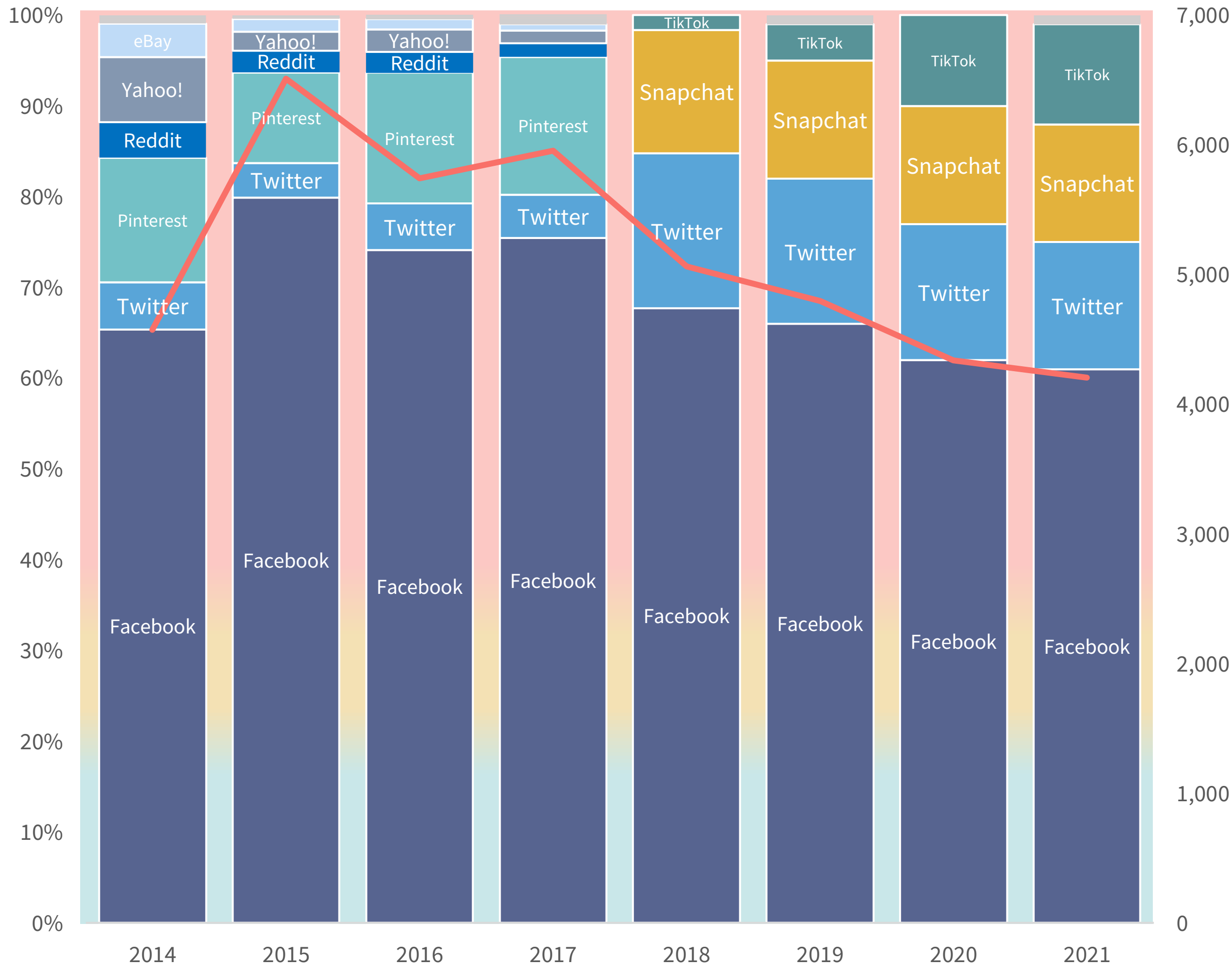
140 Meta (2022). *Annual Report 2021*, p. 65.

141 Australian Competition and Consumer Commission (ACCC) (2021) *Digital advertising services inquiry. Final Report*; Bundeskartellamt (2019) *Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing (Case Summary)*; United Kingdom, Competition and Market Authority (2020). *Online platforms and digital advertising*, p. 245; United States Federal Trade Commission (2021). *Federal Trade Commission vs Facebook, First amended complaint for injunctive and other equitable relief*; also see Winseck & Bester (2022/forthcoming). Regulation for a more democratic Internet.

Figure 19: Social Media Sites, 2014–2021



	2014	2015	2016	2017	2018	2019	2020	2021
CR 4	91.5	96.1	96.1	96.6	100	99	100	99
HHI	4572.9	6510.3	5743.2	5957.4	5063.2	4797	4338	4207

Sources: see the "Fig 19 Social Media" sheet in the Excel Workbook accompanying this report and the "Social Media Platforms" sheet in the GMIC Project—Canada open data sets.

The gap is even more stark when considered from the point of view of the value of advertising revenue that accrues to each of these social media services. Indeed, Facebook's revenue of just under $4 billion in 2021 was between twenty-two and thirty times the estimated revenue of Twitter, Snapchat and Tiktok, respectively—or more than eight times its three closest rivals' estimated revenue in Canada combined,

While Facebook's user base has stalled in recent years in Canada, the US and Europe, it continues to grow by leaps and bounds. Why? In short, four underlying forces continue to drive the social media giant's expansion:

- “blockbuster” and competition-killing acquisitions: Instagram (2012) and WhatsApp (2014).
- expanding ARPU for “developed markets”; in Canada, for instance, Facebook’s annual Average Revenue Per User (ARPU) has soared from $12.09 in 2011 to $156.48 last year (or from $1 per month to $13.04 per month).[142]
- expansion into “developing markets”—i.e. in Asia-Pacific, Latin America, the Arab World and Africa—where user acquisition potential is enormous but ARPU is a fraction of what it is in Canada, the U.S. and Europe.
- weak privacy and data protection laws that have begot business models predicated on the unlimited harvesting of people’s data.

Google and Facebook’s embrace of the mobile Internet has also girded both companies’ efforts to consolidate their grip on the online advertising market. That strategy, in turn, has been an integral part of a constant stream of acquisitions by both companies. To this end, for example, Facebook has acquired messaging services (WhatsApp) and social media sites (Instagram) to eliminate competitive threats to its core business while it has also moved aggressively into political campaign management, marketing campaigns, news delivery, virtual reality, and more.

Together, Google and Facebook accounted for just under four-fifths of the online advertising market in 2021—a figure that continues to grow year-over-year but at a slower pace than in the past. Regardless, current levels are well above the two- thirds market share amassed by the digital duopoly in 2014. This, too, has been a consistent pattern over the last decade and it is an indicator that the companies not only possess market power in the present but that their market power, individually and collectively, has become firmly entrenched over time. In short, Google and Facebook’s duopoly has hardened rather than softened over time.

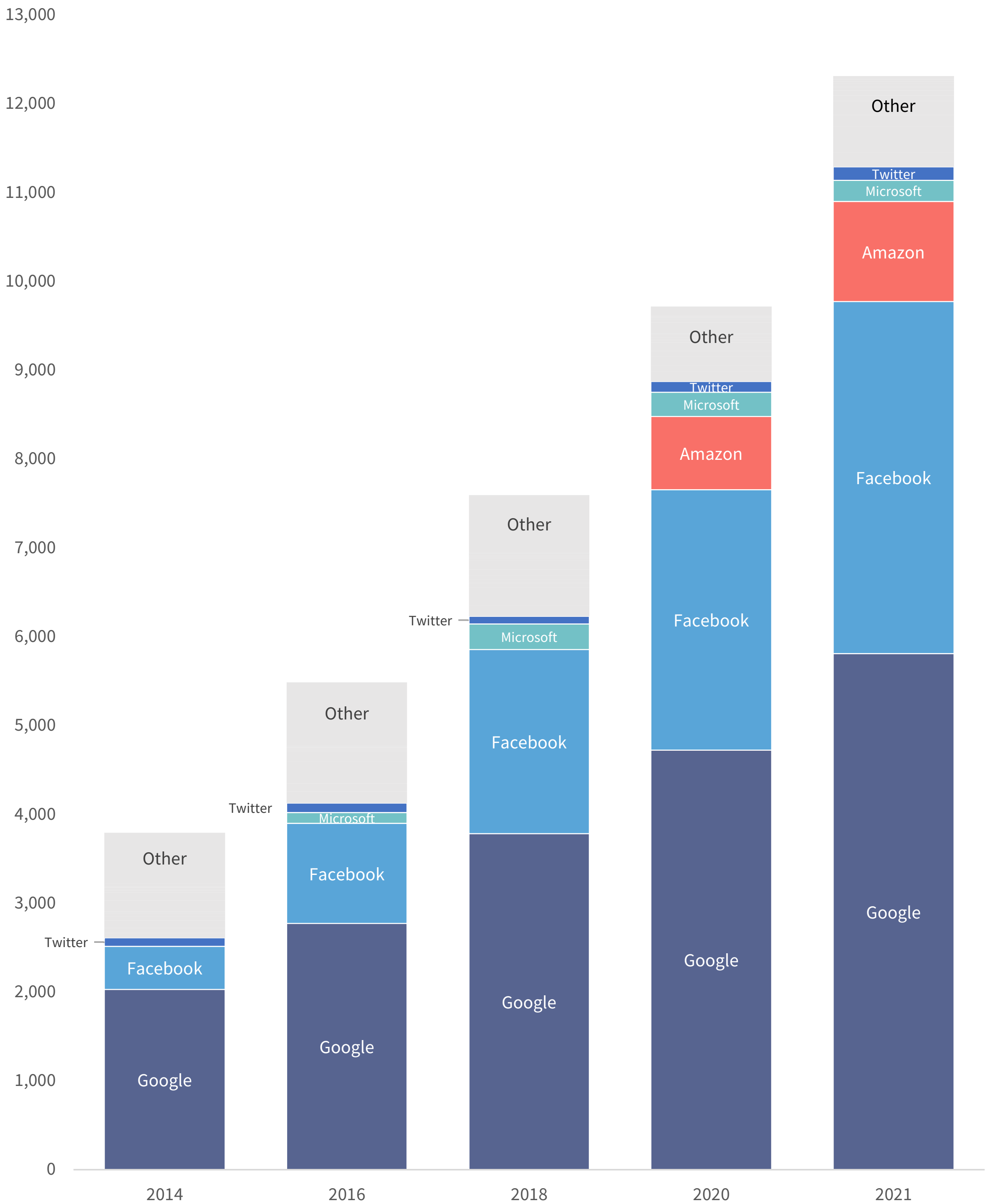
That said, it must also be noted that Amazon has emerged swiftly since 2018 to take a sizeable of the online advertising market. As of last year, it had an estimated $1.1 billion in revenue from the online advertising market in Canada, an amount that gave it a 9% share of the market. In the years ahead, it will be interesting to watch if the digital duopoly forged by Google and Facebook over the past decade morphs into a tight, three-way oligopoly that includes Amazon. To the degree that it does, this is yet another domain of the network media economy in which winner-takes-all dynamics consolidate control at the top while leaving everybody else far behind.

Indeed, this is already visible insofar that Google, Facebook and, to a lesser extent, Amazon stand in a league of their own. Trailing far behind them is a third tier of firms with revenue from online advertising in the $100-300 million range, and a one- to two-percent share of the market. In rank order, this group consists of: Microsoft (Bing), Snapchat, Bell, Twitter, the Weather Network and Tiktok. Add Canada’s largest newspaper publisher to the list, Postmedia, and the “big 10” recipients of online advertising revenue in 2021 accounted for an estimated 97% of the $12.3 billion market.

Figure 20, below, depicts the swift growth and consolidation of Google and Facebook’s dominance of Internet advertising since 2014, along with Amazon’s significant place in the Internet advertising market in the last few years. It also shows the shrinking place occupied by everybody else.

142 Calculations based on data from Meta/Facebook annual reports. For more details, see the “Figure 17 Facebook Growth” data sheet in the Excel Workbook accompanying our first report and the “Internet Advertising” sheet in the GMIC Project—Canada open data sets.

Figure 20: Internet Advertising: Revenue, Market Shares and Concentration Scores (based on $), 2014-2021



Sources: see the "Fig 20 Internet Ad$" sheet in the Excel Workbook accompanying this report and the "Total Revenue" sheet in the GMIC Project—Canada open data sets.

This account also probably under-estimates their market dominance if we consider that "search" (Google's home base) and "display" (Facebook's domain) are distinct markets with minimal overlap. While current data on this point is not available in Canada, in the U.K., for example, Google controlled 90% of the search advertising market in the U.K. in 2019; while Facebook held an estimated 50-60% of advertising spending on online display advertising.[143] Moreover, more than three-quarters of the new growth in Internet advertising revenue over the previous year ended up in Google and Facebook's coffers.

It is precisely this kind of evidence that has spurred on one regulatory inquiry or case against Facebook after another in, for example, Australia, Germany, the U.K. and the U.S.[144] This is also one of the driving factors behind why the U.K. plans to create a new Digital Markets Unit. It is also why that country's existing Competition and Market Authority (CMA) just decided, at the time of this report's writing, to block Facebook's acquisition of Giphy, a service that controls popular GIFs and GIF emoji's. While GIFs and GIF emojis are free for people to use they are a means to obtain user data and increase the stickiness of the sites that use them or, in other words, additional means for buttressing Facebook's dominance of social media.

Already in its initial examination of the proposed merger, the CMA registered significant concerns and it intention to block the deal. The CMA argued that this was necessary because allowing Facebook to take-over Giphy "would result in a substantial lessening of competition (SLC) in social media and display advertising, harming social media users and businesses in the U.K."[145] A year later, in October 2022, the CMA blocked the deal and ordered Facebook to divest itself of Giphy.[146]

It is this tendency to lock-in their dominant position and to leverage that dominance to enter into new areas that seems to have caught regulators' eyes as of late. Google's entrenched dominance of online search, for example, has underpinned an ever-widening array of products that now have over a billion users each: Android, Gmail, YouTube, Maps, Photos, and Docs. It is no longer just a search and online advertising behemoth but the embodiment of a new kind of diversified digital conglomerate with a dominant position across several markets. A few observation on this point are offered here, while a more complete picture of the extend of Google's diversification and its dominance across areas it operates in will be taken up in a later section of this report.

The most decisive factor buttressing Google's dominance is probably the fact that it has vertically integrated its search and online advertising functions with its own proprietary digital advertising exchange. Its take-over of DoubleClick (2007), AdMob (2010) and AdMeld (2011), in particular, amongst hundreds of acquisitions, have propelled this effort. In so doing, Google has erected a walled garden around its own services, audience data, and the online advertising system, a stark departure from the company's original, beneficent-sounding promise to help people navigate the 'open Internet' and to slay the walled gardens that had emerged in the late-1990s.

Figure 21, below, depicts the vertically-integrated advertising technology stack and exchange that Google has assembled over the last decade.

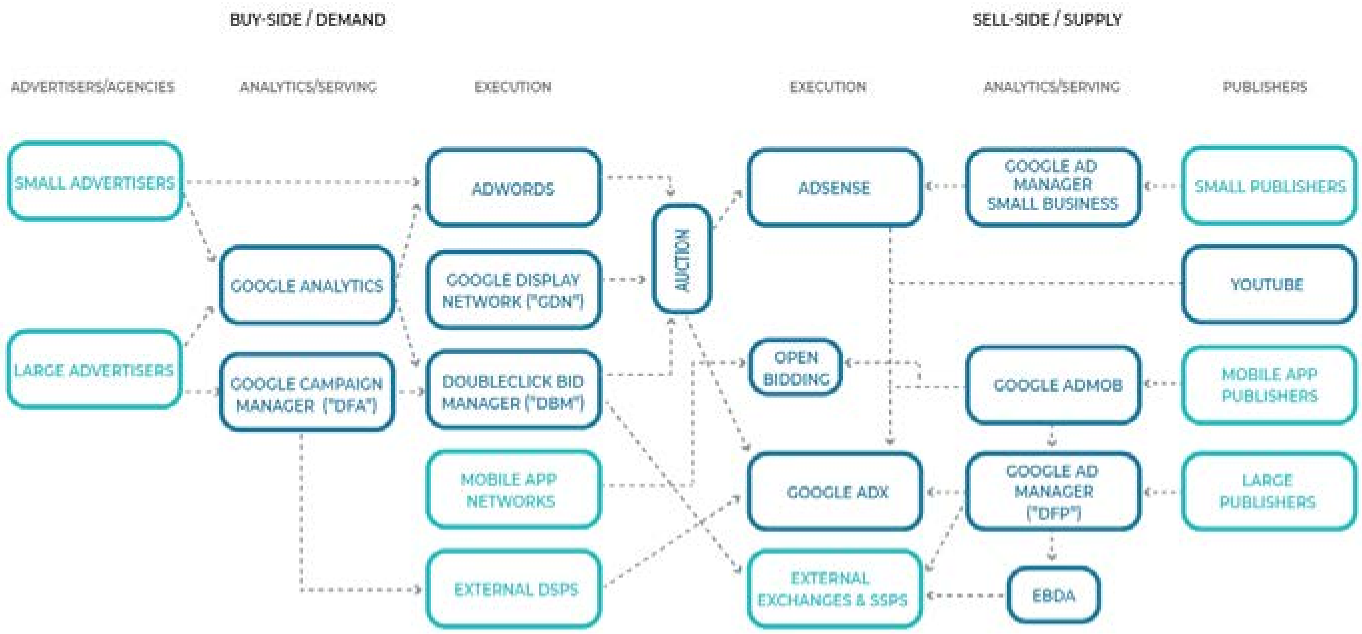
143 United Kingdom, Competition and Market Authority (2020). *Online platforms and digital advertising*, p. 245; United States Federal Trade Commission (2021). *Federal Trade Commission vs Facebook*; also see Winseck & Bester (2022/forthcoming). Regulation for a more democratic Internet.

144 Australian Competition and Consumer Commission (ACCC) (2021) *Digital advertising services inquiry. Final Report*; Bundeskartellamt (2019). *Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing (Case Summary)*; United Kingdom, Competition and Market Authority (2020).

145 United Kingdom, Competition and Market Authority (2021). *Completed acquisition by Facebook, Inc of Giphy, Inc—Provisional Report*.

146 United Kingdom, Competition and Market Authority (2022). *Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc Final Report*.

Figure 21: Google's Vertically-integrated Ad-Tech Stack



Source: Adapted from Ari Paparo (2018) and used with permission.

In practice, Google's control over its vertically-integrated online advertising system means that media companies place their available advertising inventory with Google services on the "sell" side while advertisers then bid in real time for that inventory on the "buy" side of the exchange.

In other words, Google controls online advertising market on both sides of the market and the exchange itself in the middle and to does so in ways that are opaque and impenetrable to either the actors involved or outside scrutiny.

Google's control over its own proprietary, online advertising exchange is a key feature that distinguishes it from Facebook. While Facebook does not control its own digital advertising exchange, like Google, it has its own audience measurement and rating systems, and controls the data upon which the buying and selling of advertising takes place. In so doing, like Google, it too is able to hold third party advertising campaigns hostage because neither the campaigns nor the underlying data used to organize them can be transferred between rival platforms.

Google and Facebook, of course, are not alone in the pursuit of such strategies. In fact, well-established domestic communications and media companies in Canada and internationally are pursuing a two-track strategy of their own: on the one hand, they are pushing governments to break-up the digital duopoly's stranglehold on the resources that underpin their dominance of online advertising, notably data related to audiences and the online advertising system. This is the direction taken, for example, in Australia's *News Media Bargaining Code* that news media organizations in Canada want to emulate.[147]

At the same time, Canada's communication and media companies are also seeking to copy the same strategies pioneered by Google and Facebook. One way they are doing so is by trying

147 Australia (2021). *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021*; Turvill, W. (Dec. 2, 2021). Canada's news industry wants up to $150m annual windfall from Australia-style big tech crackdown. *Press Gazette*. The Canadian adaptation of Australian news media

to create rival online advertising exchanges of their own. Bell began to pursue such a course of action through its Relevant Ads Program (RAP) in the early 2010s, for example, but that effort was shuttered after the Office of the Privacy Commissioner (OPC) (2015) found it to be offside with respect to Canada's personal information and privacy protection law.

The OPC's description of the RAP program should put to rest any notion that what Bell or any other company pursuing such a strategy is doing is more innocent than the IT giants' strategies when it comes to personal data and privacy:

> … BCE's Relevant Advertising Program [RAP] is able to track every website its customers visit, every app they use, every TV show they watch and every call they make using Bell's network. When that information is combined with account and demographic information—such as age range, gender, average revenue per user, preferred language and postal code – which the company has long collected, the end result is a rich multi-dimensional profile that most people are likely to consider highly sensitive.[148]

While Bell shut down its RAP program in 2015, the main thrust of the effort was resurrected shortly thereafter under CRTC auspices in a bid to create a pool of audience data that would be used by the industry as the basis for advertising and other purposes (see further below).[149] The aim of this effort is not in the slightest to minimize the harvesting of personal data but to better redistribute the spoils of doing so amongst its members under the guise that doing so will help them to better compete with the Googles and Facebooks of the world.

BCE moved further in this direction at the end of last year when it took over Canada's largest data and analytics firms, Environics Analytics, to, as it said, "open up new opportunities for advanced media advertising strategies while further enhancing content apps and other delivery platforms."[150] To keep things in perspective, however, with estimated revenue of $50 million dollars in 2020, Environics Analytics occupies a tiny place in the BCE communications and media empire, i.e. it accounts for less that 0.2 percent of the company's revenue.[151]

Nonetheless, Bell has already built on Environics Analytics by forging a joint venture with AT&T's digital ad-tech platform, Xandr.[152] Through this move, BCE has joined forces with AT&T in a bid to build a digital advertising platform intended to rival that of Google. Cable companies in Canada are doing the same thing but building their system around the Comcast Xfinity IPTV platform. Overall, the result is a three-way battle between Google's dominant ad-tech stack versus Bell's Environics/Xanadu system licensed from AT&T and finally the cable companies, who are relying on Comcast's Xfinity IPTV system.

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bargaining code has taken the form of Bill C-18, the *Online News Act*, which is currently being taken up in the House of commons. Government of Canada (2022). *C-18 Online News Act, An Act respecting online communications platforms that make news content available to persons in Canada*; Winseck, D. (April 19, 2022). Bad News: Ottawa's Proposed Online News Act Misses the Mark. *CIGI Online*.

148 Office of the Privacy Commissioner (2015), *Results of the Commissioner Initiated Investigation Into Bell's Relevant Ad Program*, Ottawa: Author, para 73.

149 CRTC (2018). *Set-Top-Box Industry Working Group–Update*. Ottawa: Author. The group consists of Shaw (Corus), Bell, Rogers, Sasktel, TELUS, TekSavvy, the CBC, Blue Ant Media, Cogeco, Eastlink, Pelmorex, the Canadian Cable Systems Association and Independent Broadcasters Group. While this gives the appearance that the effort levels the playing field, the obvious exclusion of Netflix, for example, gives the lie to that and, thus, smacks of protectionism—if in fact, the group and its goals were desirable to begin with it, which is a questionable proposition to say the least. Quebecor also quit the STB Working Group in 2019. Thiessen, C. (July 5, 2019). Vidéotron to challenge CRTC ruling on set-top box data sharing. *Broadcast Dialogue*.

150 BCE (2021). *Annual Report, 2020*, p. 39.

151 This estimate based on BCE's Q1 2021 Shareholder Report which states that 19.4% of the company's revenue in its "Other services" category in the wireline segment was attributable to the EA acquisition (p. 18) That revenue was $74 million in Q1 2020. That is roughly $14 million per quarter, or $50 million for the year.

152 AT&T acquired AppNexus in 2019 (renamed Xandr).

The upshot of this three-way "battle of the stacks" is an industry-wide scramble to develop rival proprietary ad tech standards in a bid to lock advertising clients into their mutually exclusive ad systems. Beyond the data and privacy protection and market power issues these ventures raise, it is troubling that the proprietary protocols being deployed by each of these ventures supplants the shared, open protocols that have defined the Internet in the past.[153] Consequently, the "essence" of the Internet itself is being remade in the image of these corporate communications, Internet and media conglomerates' walled garden strategies, while the early hopes that people once had for a decentralized Internet where power and control rested at the ends of the network and in the hands of its users increasingly seems like a dream from the distant past.[154]

Do Google and Facebook Dominate Advertising Across All Media?

Anchor Findings

- Google and Facebook' dominance of online advertising already appears to be entrenched, albeit with some mounting pressure from Amazon threatening to turn their duopoly into a three-way oligopoly, but what is of even greater significance is the extent to which they are rapidly consolidating their grip over the entirety of the Canadian advertising market.
- The growing role of Internet advertising while other advertising markets stagnate, or decline, puts traditional media companies in the crosshairs of the Internet giants, but also vice versa as the former marshal all their political, policy and lobbying muscle to bring the latter to heel.
- Regulatory solutions put forward by industry to date run the risk of being not only ineffectual but likely to leave the problem of media and Internet concentration untouched while also spurring a race to the bottom on privacy and personal data protection.

The fact that Google and Facebook thoroughly dominate the $12.3 billion online advertising market in Canada is beyond dispute. That their grip on the Internet advertising market has also been increasing by leaps and bounds is also becoming clearer with each passing day. Their dominance of Internet advertising also means that they now also loom large relative to the $17.6 billion spent last year in Canada on advertising across all media (e.g. TV, newspapers, online advertising, radio, magazines and billboards). Until recently, it was hard to make the case that the two online advertising behemoths dominated the entirety of the advertising market.

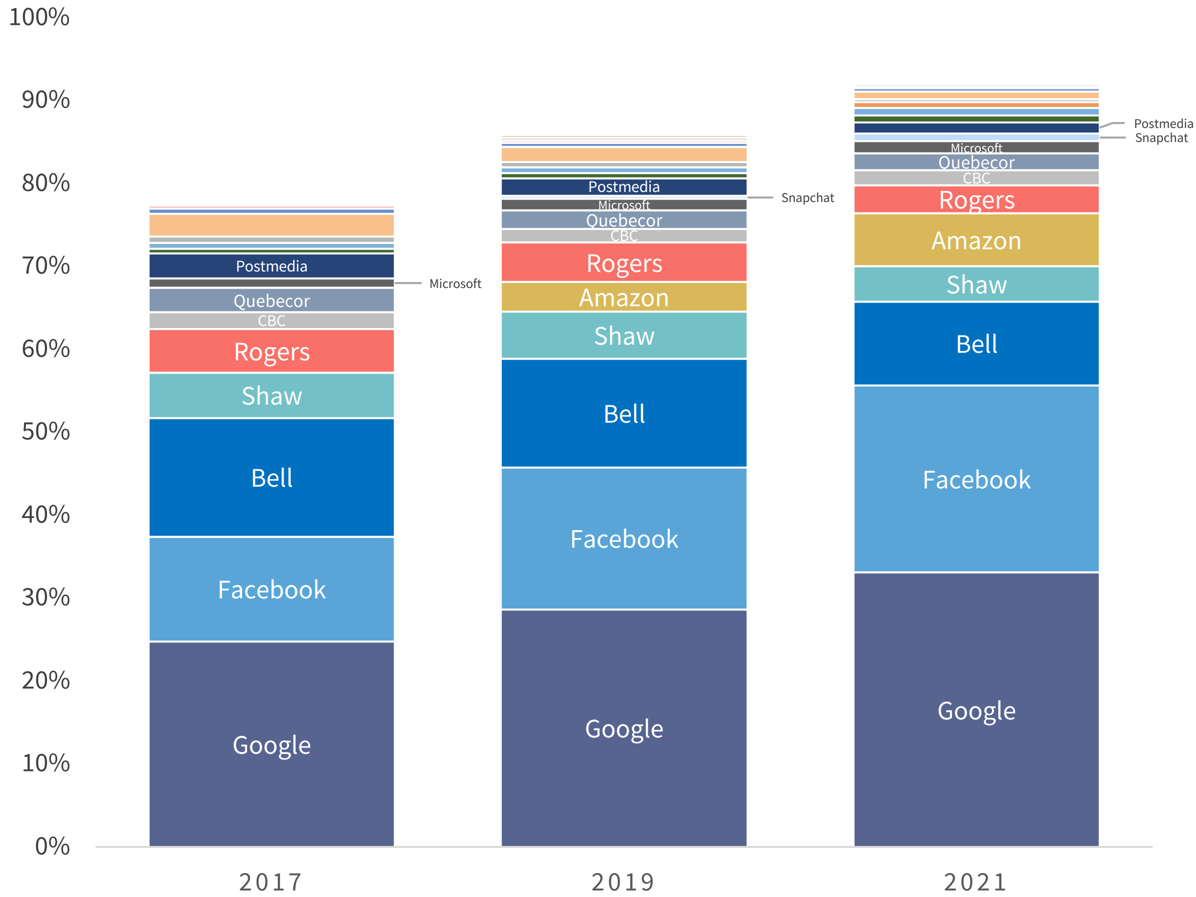
153 Helmond, A. (2015). The platformization of the web: making web data platform ready. *Social Media & Society*, *1*(2); Nieborg, D. & Poell, T. (2018). The platformization of cultural production: Theorizing the contingent cultural commodity. *New media & society*, *20*(11)

154 on AT&T's acquisition of AppNexus, which it rebranded into Xandr, see AT&T (2020). *Annual report, 2019*, p. 17 and AT&T (Aug. 15, 2018). AT&T completes acquisition of AppNexus. On BCE deal with AT&T Xandr, see Connell, M. (2021). Bell Media partners with Xandr for self-serve DSP, *Media in Canada*. Also, BCE (2022). *Annual report, 2021*, p. 53.

Now, however, it is no longer credible to avoid it. Indeed, within a remarkably short period of time it has become crystal clear that Google already stands in a league of its own, sucking up a third of all advertising revenue in Canada in 2021 while Facebook now commands a 23% share of all such spending. Combined, Google and Facebook raked in 56% of all advertising spending in Canada in 2021, a figure that was up greatly year-over-year. Just four years ago, they only accounted for a little over a third of all advertising revenue in Canada, an already heady amount but an amount that pales in comparison to where things stood last year.

Figure 22, below, illustrates the scale of Google and Facebook's share of advertising revenue and the rapidity with which they have consolidated their grip on the advertising industry in Canada over the few years. Again, such patterns are repeated in one country after another, albeit with modest differences in terms of their precise magnitude.

Figure 22: Total Advertising Revenue Across All Media, Market Shares and Concentration Scores, 2017 versus 2019 and 2021



Total $ (Millions)	$13,876.3	$15,239.8	$17,563.7
Google + Facebbok Share	37.4	45.8	55.6
CR 4	57.2	64.5	72.2
CR 10	90.3	81.0	86.4
HHI	1,076.0	1,374.1	1,792.1

Sources: see the "Fig 22 Total Ad$" sheet in the Excel Workbook accompanying this report.

Figure 22 also reveals that Google, on its own, now commands one-in-three advertising dollars in Canada. Google's advertising revenue in 2021 was nearly three-and-a-half times as much as Bell, eight- and ten-times that of Shaw and Rogers, respectively, and close to fifteen times as much as the two largest newspaper groups in this country, Postmedia and Torstar, combined. In fact, Google's advertising revenue from its operations in Canada is significantly greater than that for all the major Canadian communication and media groups combined: i.e. Bell, Shaw, Rogers, Quebecor, the CBC, Postmedia, Torstar, The Weather Network, La Presse, Cogeco, the *Globe and Mail*, Coopérative nationale de l'information indépendante, FP Canadian Newspapers (i.e. recall that Google's advertising revenue from its Canadian operations were an estimated $5.8 billion last year while the Canadian media groups just listed had total combined advertising revenue of $4.6 billion). For its part, Facebook's advertising revenue in Canada was five-and-a-half times that of all daily newspaper advertising revenue put together, and over *sixty* times the *Globe and Mail*'s estimated advertising revenue last year.[155]

The consolidation of advertising revenue can also be seen from the fact that even the largest Canadian company, Bell, has seen advertising revenue stagnate at roughly $2 billion per annum in the latter part of the last decade, only to slide since to an estimated $1.8 billion last year. The same is true for Rogers, while Shaw and Quebecor have largely held their own in absolute terms albeit with their share of the overall advertising market steadily sliding over time. For newspaper groups such as Postmedia, *The Globe and Mail* and Torstar in particular, the loss, with some variation between them, of roughly half their advertising revenue in just the last four years has been devastating. In fact, other than Pelmorex and the CBC, all of Canada's media companies, have lost sizeable amounts of advertising revenue over the past half decade or more. This is more evidence that ongoing consolidation in the advertising market benefits only a few tech giants at the pinnacle of the advertising system.

All of this gives good reason to be concerned about the growing influence of Google and Facebook—and more recently, Amazon—with respect to the advertising market. Given such realities, it should be no surprise that many observers are hopeful that the proposed *Online News* Act, for example, will balance the terms-of-trade that now govern the advertising marketplace. The principle thrust of those who argue in support of the *Online News Act* is that Google and Facebook are *the* primary causes of the severe woes facing media that rely mainly on advertising, especially commercial journalism. The assumption also seems to be that doing something is at least better than nothing. Ultimately, there is a strong belief that, if adopted, the new law will go a long way to right a sinking ship.[156]

To be sure, there are some benefits of both the Canadian and Australian approaches to these issues, and others that are following in their tracks. For one, these efforts signal that the era of private, multinational technology companies being left to unilaterally make the rules governing the Internet is being replaced by one in which sovereign internet policy and regulation that serve the public interest and democracy will play a more prominent role than they have in the past.[157]

It is also likely that, just as the Australian code as already done, the *Online News Act* will result in the tech giants sending more money into the coffers of commercial media in Canada, at least in the short-term. Indeed, hopes are that it will generate $329 million in revenue for Canadian news media organizations from increased payments from Google and Facebook.[158] This is in line with outcomes in Australia, where the *News Media Bargaining Code* is said to have resulted in the two

155 See the "Total Ad$ All Media Mrkt Share" sheet in the GMICP Workbook—Canada.

156 Much the same argument applies to those who pushed for the *News Media Bargaining Code* in Australia and who are advocating for the *Journalism Competition and Preservation Act* now being considered in the U.S.

157 Winseck & Bester (2022/forthcoming). Regulation for a more democratic Internet; Haggart, B. (June 3, 2022). *Submission to the House of Commons Standing Committee on Canadian Heritage, Study on Bill C-11, the Online Streaming Act*.

158 Government of Canada (2022). *C-18 Online News Act*; Office of the Parliamentary Budget Officer (Oct. 6, 2022). *Cost estimate for Bill C-18: Online News Act*. Ottawa: Author.

Internet advertising behemoths paying out $200 million to Australian media groups in its first year of operation.[159]

The lack of transparency around the deals struck between Google and Facebook, on the one side, and the Australian news media outlets, on the other, however, makes it impossible to know who is getting how much and under what conditions. Nonetheless, just the threat of legislation in both Australia and Canada has pushed the Internet giants to strike deals with news publishers in both countries and to be increasingly generous in their patronage to the press.[160] Along with other policy measures, such as the use of tax credits to support the expense of paying up to a quarter of journalists' salaries, tax incentives for people to subscribe to newspapers, and changes to the tax code to encourage non-profits, as we discussed in our first report, any increase in revenue that is brought about by the *Online News Act* could put journalism on a more solid economic footing.

It is also worth noting that the Canadian bill is arguably better than its Australian predecessor for several reasons. For one, the arms-length regulator, the CRTC, will determine which digital news intermediaries will be covered rather than a government minister, thereby reducing the potential to politicize platform regulation. Second, the guidance given to the regulator by the bill with respect to which platforms will be included is superior to the Australian code, even though the details on this point are still to be worked out.[161]

Third, and most importantly in this writer's view, the concept of 'digital news intermediary' in the bill—i.e. Google, Facebook, or others designated as being covered by the act—is arguably the 'crown jewel' of the *Online News Act.* This concept draws on the long-standing common carrier tradition, as outlined early in this report. It puts gatekeeper power and the objective of a 'fair carriage' regime at the centre of the proposed law and prohibits digital news intermediaries from giving undue preference or advantage to their own or other third-party news services, and from unjustly discriminating between any of the news sources they distribute. There is nothing equivalent in the Australian version.[162]

The potential value of these attempts to subject the power of big tech to greater democratic accountability deserves recognition. At the same time, however, there are several considerations that should raise cause for serious concern.

First, none of these proposals or the solutions adopted (or on offer) do anything to address the taproot of the woes facing commercial media and journalism: namely, the consolidated industry structure that has allowed advertising to be funneled into the coffers of Google, Facebook and now Amazon. In fact, by taking the structure of the industry as a given, the Canadian, Australian and, most recently, American approaches[163] leave Google and Facebook's dominant market and gatekeeping power intact while setting up corporatist style bargaining arrangements to govern negotiations between them and domestic commercial media interests, with little room in either for public participation or public interest in such matters.

Second, none of these approaches do anything to rein in the surveillance capitalism business model that both Google and Facebook have thus far mastered and used to build their empires.

159 Sims, R. (2022). *Instruments and objectives; explaining the News Media Bargaining Code*. Sydney, Australia: Judith Neilson Institute for Journalism and Ideas, p. 14.

160 See GMICP-Canada (2022). *Growth and upheaval in the network media*, p. 62.

161 Owen, T. (Nov. 8, 2022). The *Online News Act* keeps journalism alive while it adapts to a new world. *The Hub*.

162 As noted earlier, section 51 explicitly *prohibits* digital news intermediaries "from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage." Government of Canada (2022). *Bill C-18 Online News Act*.

163 United State (2022). *Journalism Competition and Preservation Act of 2021 S.673—117th Congress (2021-2022)*.

Third, while the inclusion of mandatory information disclosure obligations in the Canadian and Australian approaches could be a triumph worth celebrating, both fall short by adopting vague standards as to what is to be expected. In the Canadian case, the details on this front are left to the CRTC to work out. That the CRTC is already meeting behind closed doors with Google and Facebook to sort out some of the details of legislation that has not even been passed into law yet does not bode well for what is to come.[164]

Fourth, neither of these bills, or others like them such as the *Journalism and Competition Preservation Act* in the U.S.,[165] address the three decades of debt-addled media consolidation described in these pages that has put so many media companies on a shaky economic footing at exactly the time when the Internet was becoming a central fixture in our lives and the media economy. Indeed, many of those companies collapsed in the late 1990s and the first decade of the 2000s as a consequence of such activities, for example, Hollinger and Canwest, while others were unwound (e.g. Bell Globemedia), and yet others continue to this day to struggle with their debt (e.g. Postmedia).

Finally, and as we have also repeatedly stressed, most analyses and the solutions on offer miss the key part of the story about why legacy media operations have lost advertising revenue. That reason is that, just as Google and Facebook were emerging as serious entities, the 2008 financial crisis hit the Canadian and many other economies hard and with enduring effects that hung over much of the next decade. As a result, and crucially, advertising spending flatlined (i.e. on a per capita basis and relative to the size of the GDP and network media economy) and even declined on a per capita basis and relative to GDP and the size of the network media economy in inflation-adjusted real dollar terms.[166]

We will have more to say about this in the final section of this report. For now, the amount of ink spilt on this framing of the issues in a way that pins the blame on Google and Facebook as *the* primary causes of the existential woes facing media that rely mainly on advertising, especially commercial journalism, ignores the baseline reality that advertising revenue is only a small part of the media economy. The upshot of this observation is huge, but usually under-appreciated (if recognized at all) for at least three reasons.

First, the problems are more multifaceted and began far earlier than such assertions claim. Second, attempts to generalize from the subset of advertising-funded media to the whole of the network media economy, with the implication that the problems facing advertising-funded media apply across the media landscape, is *factually incorrect*. As we showed in our first report, media that rely primarily on advertising are in dire straits, but most sectors of the media economy are doing well, even flourishing. Worse, pinning the blame on Google and Facebook for the woes of advertising-funded media misses key parts of the story related to the structural realities of advertising spending. Third, measures that myopically target these two online behemoths along the lines suggested above are like aiming for the tail of the dragon if the real aim is to bring the entirety of the Internet-centric, digital media system under more effective democratic control.

As such, having misdiagnosed the problem, the regulatory solutions that have been put forward by industry, think tanks, lobby groups, more than a few academics, and others to date that ignore these structural realities may make for great sound bites. However, they also run the risk of being ineffectual while tainting the well of public policy precisely at a moment in time when we need to be thinking about how to best craft a new generation of public interest-oriented Internet fit for a democracy and that will stand the test of time.

164 Murphy, M. L. (Nov. 7, 2022). CRTC officials hold closed-door forum with Google and Facebook in Ottawa. *The Hill Times* (paywalled).

165 United State (2022). *Journalism Competition and Preservation Act*.

166 See GMICP-Canada (2022). *Growth and upheaval in the network media*, Figures 18-21.

Broadcast Television and Radio and Specialty and Pay Television Services

Anchor Findings

- Four major media mergers and acquisitions in 2007, and the dismantling of Bell Globemedia in 2006, followed by the bankruptcy of Canwest in 2009/2010, pushed concentration levels in Canada's broadcast TV and pay TV markets to all-time highs, where they have stayed ever since
- Four processes have defined the past five years of the specialty and pay television services sector: the maintenance of concentration at their highest levels ever, greater consolidation at the top around fewer channels and genres (e.g. sports), the spin-off and closure of less profitable services, and the automation of services that now run with no or few workers.
- The radio market has suffered significant economic losses but it still remains one of the most diverse media given the presence of CBC/Radio-Canada as well as several mid-size, regional ownership groups such as Golden West and Maritime Broadcasting alongside the big five national ownership groups: Bell, CBC, Rogers, Shaw (Corus) and Stingray.
- Whereas high levels of media concentration are common in many countries, the deep vertical integration between TV and telecom companies (notably Bell, Shaw, Rogers and Quebecor) that was cemented into place, circa 2007-2013, sets Canada apart from almost all of its international peers.

Broadcasting television and radio: The rise and fall of legacy media

From the late 1980s until 1996, the broadcast television industry was much more fragmented than what was soon to come. This was because it was split between multiple groups spread across the country that shared ownership of the private broadcast TV networks—CTV, Global, CHUM, and TVA, respectively—on the one side, and Canada's public service broadcaster, the CBC, on the other. The advent of pay TV services also marked the beginning of a fundamental shift from an environment of relative scarcity to one of relative abundance, and from a model of TV subsidized by advertising and the public purse to one where subscriber fees are the dominant source of revenue. As a result of fragmented ownership of the major broadcasting networks and the rise of pay television services, the level of diversity in TV overall was at all-time highs.[167]

This shifted abruptly in the late 1990s and early 2000s in two steps. The first step occurred when a wave of consolidation led to the unification of the ownership groups behind Canada's three commercial broadcast television networks: i.e. CTV (Baton, circa 1997-1998), Global (Canwest, 1998) and TVA (Quebecor, 2001), respectively. For CTV, the consolidation of the regional groups into a unitary national

167 In Canada, television services made available to subscribers over cable, DTH or IPTV services are formally referred to as specialty and pay television services. Throughout the rest of this report, they will be referred to as 'pay TV' services because that is less cumbersome.

ownership group in the late-1990s served as a stepping-stone to its take-over by BCE, along with *The Globe and Mail*, in 2000.[168]

The second step led to the creation of several new significant broadcasting and pay television groups. The first of the new groups was Shaw, which expanded from its cable base in western Canada by acquiring a large catalogue of television and radio broadcasting assets from Western International Communications in 1998 and Power Broadcasting a year later. These transactions turned Shaw into a major vertically-integrated company with its monopoly cable operations in western Canada, as discussed earlier, and, after these two transactions, ownership of a sizeable catalogue of television and radio services across the country, including the Family Channel (50% equity stake), Teletoon (20%), three pay television services (i.e. Movie Max, the Super Channel, and Viewers Choice) and twenty-nine radio stations.[169] Shaw spun off its many of the radio and specialty television services in its stable of broadcasting operations into a new company in 1999, Corus Entertainment—an entity that has had a separate legal entity but been under the ownership control of the Shaw family ever since.

Two of the biggest players within the pay TV sector also merged in 1997, while Montreal-based Astral continued to grow its position into the largest pay television operator at the time. It did so largely by controlling the rights for the distribution of premium HBO content in Canada, but also by expanding its pay television services and entering the radio market when it acquired Quebec-based Radiomutuel in 2002.[170] Each of the big three commercial broadcast television networks, CTV, Global and TVA, also expanded into the then-new domain of pay television services by acquiring several services of their own (a form of diagonal integration).[171]

To sum up, there were a half-dozen large commercial broadcasting groups operating, more or less, on a national scale at the turn-of-the-21st Century. In rank order of size, they were Bell Globemedia (CTV), Shaw/Corus (Global), Quebecor (TVA), CHUM (City TV), Astral, and Alliance Atlantis. The CBC was the seventh major actor, but it functioned as a hybrid public service/commercial counterweight to the national commercial broadcasting ownership groups.

These conditions remained fairly stable for much of the rest of the following decade, but another watershed moment took place in 2007 on account of five ownership transactions that thoroughly remade the television and radio landscape at the time:

1. Bell Globemedia was dismantled and its' ownership stakes in the CTV network, pay TV services and the Globe and Mail sold, thereby marking an end to the telecom giant's first experiment in media convergence (which had been launched at the height of the dot.com bubble in 2000).
2. CTVGlobemedia acquired Bell's media assets as well as the radio stations of CHUM.
3. Rogers acquired CHUM's broadcast television stations—the City TV network— as well as that company's pay TV services.[172]

168 CRTC (2000). Decision CRTC 2000-747 Transfer of effective control of CTV Inc. to BCE Inc; Winseck, D. (Sept. 27, 2000). Take cover, here comes Mediasaurus. *The Globe and Mail*.

169 Shaw *Annual Report 1999*, p. 6; Shaw *Annual Report 1998*, p. 9.

170 See: Alliance and Atlantis in 1998; CRTC (2000). Decision 2000-5 Radiomutuel.

171 See: Quebecor and Vidéotron in 1997, its English-language equivalent in Canwest and Western International Communication in 1998, and CTV's acquisition of Netstar in 2000 before its acquisition by BCE.

172 CRTC (2007). *BD CRTC 2007-165. Transfer of effective control of CHUM Limited to CTVGlobemedia Inc*; CRTC (2008). *BD CRTC 2008-69. Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVGlobemedia Inc*.

4. Canwest, with backing from the New York investment bank, Goldman Sachs, acquired Alliance Atlantis, the largest film distributor and fourth largest pay TV services operator in Canada at the time.[173]
5. Astral Media acquired Standard Broadcasting, the third largest commercial radio group in Canada at the time.[174]

These transactions constituted a major bout of horizontal and diagonal integration across the audiovisual media sector. By the end of the year (2007), the "big four" television ownership groups at the time—CTVGlobemedia, CBC, Canwest, and Astral, in that order—had expanded horizontally and diagonally within the TV market and radio and accounted for 70% of revenue across all of the segments of the TV market. At the time, however, *none* of these entities were yet part of the vertically-integrated communications and media behemoths that would become the centrepiece of the network media economy in Canada over the course of the next few years.

There has long been some cross-media ownership between broadcast television and radio in Canada as well, as exemplified best, perhaps, by the CBC and Rogers' long-standing and prominent place in both fields. Shaw also joined that small club after acquiring Western International Communications and Power Broadcasting, and then forming Corus, at the end of the 1990s, as discussed a moment ago. Nonetheless, cross-ownership between television and radio did not become the norm until CTVGlobemedia and Rogers took-over CHUM and split its television and radio assets, respectively, between themselves in 2007. Astral's take-over of the third largest radio broadcasting group in the same year, Standard Broadcasting, solidified the trend.

This bout of consolidation drove concentration levels in radio to new heights, but by the criteria of the CR4, the sector was still only moderately concentrated and exceptionally diverse based on the HHI score of 1089 at the time. This reflected the continued presence across the country of a handful of large, national radio station ownership groups[175] alongside several mid-size regional broadcasters, such as Newcap, Pattison, Rawlco, Maritime Broadcasting and Golden West. In fact, radio broadcasting has been amongst the most diverse media sectors throughout the last four decades.

This trend of cross-media ownership between television and radio station ownership groups continued when Bell acquired Astral Media—the largest independent pay television service company and radio broadcaster, respectively, in the country at the time—in 2013. While the deal immediately catapulted Bell into being the biggest radio broadcaster in Canada, it did not move the dial in terms of the CR4 or HHI score. This is because it only replaced one big radio station ownership group with another, although it did extend Bell's reach into another media market in which it previously had no place at all.

Bell's share of the radio market has drifted downwards since that time, but with revenue of $225.4 million and a market share of 15.7% last year, it is still the biggest commercial radio ownership group and significantly bigger than its three closest peers: Rogers (10.3%), Stingray (7.9%) and Shaw (Corus) (6.8%). The largest radio service, however, is the public service CBC, with a market share of 25.5% in 2021 and revenue of $366.9 million, including its parliamentary subsidy. As of 2021, the big five broadcast radio groups—CBC, Bell, Rogers, Stingray and Shaw (Corus)—accounted for close to two-thirds of the sector's $1.5 billion in revenue.

173 CRTC (2007). *BD CRTC 2007-429. Transfer of effective control of Alliance Atlantis Broadcasting Inc's broadcasting companies to MediaWorks Inc*.

174 CRTC (2007). *BD CRTC 2007-359. Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership, carrying on business as Astral Media Radio*.

175 Namely, the CBC, Rogers, Corus, Astral and CTVGlobemedia.

That said, radio revenues have been in long-term decline, as we observed in the first report in this year's two-part series, with revenue dropping to $1.4 billion in 2021, down $253.6 million from the previous year. Indeed, the sector has been one of the hardest hit by the Covid pandemic, with revenue falling nearly $350 million in the last two years and results last year down close to thirty percent from $2 billion a decade ago (including the CBC parliamentary funding). The radio sector also has some of the lowest concentration levels across the network media economy, with a CR4 in 2021 of 58 and HHI well into the highly fragmented and diverse zone by the standards of that metric, with an HHI last year of 1,135. The direction has also been downward over time.

Returning to television, similar patterns of horizontal and diagonal integration have also played out within and between the broadcast television and pay television ownership groups. The consolidation of the broadcast television sector around the two commercial, English-language networks, CTV and Global, and the French-language TVA in Quebec, with the CBC-Radio Canada operating in both languages across Canada, in the late-1990s and early 2000s created a stable industry that rotated around this group of companies. As a result, concentration levels reverted back to the high levels of the 1980s before new players had entered the scene. Things pretty much stayed that way throughout the 2000s, with a modest uptick in concentration levels when Rogers acquired the half-dozen City TV stations that made up CHUM's iconic network of big urban television stations in 2007.

By 2008, the top four players'—CBC, CTVGlobemedia, Canwest (Global TV) and Quebecor (TVA)—share of broadcast television revenues had risen to 86%, and the sector was highly concentrated by the standards of the CR4 and at the upper-end of the moderately concentrated designation of the HHI with a score of 2343. Add Rogers, and the "big five" had a combined market share of 92%. This is where things stayed until the end of the next decade.

In 2020, however, the CR4 jumped to just over 93% while the HHI did the same, landing once again squarely in the zone of high concentration based on this indicator, with an HHI score of 3,158. That figure, however, fell back last year such that the top four firms—CBC, Bell, Corus and Rogers—accounted for 88% of broadcast television revenue while the HHI similarly fell to 2,670, for reasons that are not exactly clear. That said, these recent trends and dynamics appear to embody the results of three things.

First, the CBC has maintained its position as the largest service provider in this sector, aided by the increase in Parliamentary funding in 2016 that restored such funding to previous levels, while also spreading it out over the past five years. In 2021, the public broadcaster's share of the $2.5 billion broadcast television industry, based on revenue, was 42%.

Second, while the CBC has held the line in terms of revenue on account of the increase in its public funding envelope, the big four commercial broadcasting network owners—Bell, Corus, Rogers and Quebecor—have seen their revenues collapse from $2 billion to $1.3 billion over the past decade.

The effects have been severe across the board, but it has been worse for some relative to others. On the 'less severe' end of the spectrum, Quebecor, for instance, saw its revenue fall roughly 30% over the decade. This more modest impact relative to Rogers and Corus (but not Bell) was likely a consequence of Quebecor's more sheltered position within the Quebec market and the reality that French-speaking audiences have only the CBC and V Interactions to choose from.

Bell's broadcast television operations have also suffered significant blows over the past decade, but like Quebecor, it has been spared the more punishing blows dealt to Rogers and Corus. In 2020, Bell also tried to offset those blows by acquiring the just-mentioned V Interactions, the second commercial French-language television network in Quebec at the time.[176] The deal extended Bell's influence by adding five

176 CRTC (2020). *BD CRTC 2020-116: V Interactions Inc.—Change in ownership and effective control.*

French-language local broadcast television stations in Quebec City, Montreal, Saguenay, Sherbrook and Trois-Rivières (the V Stations) to the thirty English-language broadcast television stations it already owned through CTV. Bell also folded several French-language pay and specialty services and Noovo, an advertising-based VOD (AVOD) service, that it acquired through this deal into its deep catalogue of services, all of which were rebranded under the Noovo label. We will return to these other services further below, but for now observe that Bell has maintained a one-quarter stake of the broadcast television market over the past few years.

For their part, Rogers' saw advertising revenue at its City TV stations in a handful of big cities—i.e Vancouver, Calgary, Edmonton, Winnipeg and Toronto—drop by over a third. The hardest hit, however, has been Corus, as advertising revenue at the Global Television network—the second largest English-language commercial network in the country—plunged by forty-four percent between 2011 and 2021.

The upshot of the trends and dynamics just sketched is that the public service CBC accounted for a bigger slice of a shrinking pie. Even though public funding levels are well-below what they had been in a previous era, the CBC has been able to escape some of the harshest blows from the meltdown of advertising revenue that has broad-sided its commercial counterparts through a retrenchment of public service funding in the past half decade. Greater consolidation has also placed the struggling broadcast television sector in fewer hands, namely those of the CBC, Bell and TVA, while the bottom appears to be falling out for Rogers and Shaw.

At the same time, while we can lament the loss of key functions such as local and national news that have been defining features of the broadcasting era on account of the relative decline of public funding to the CBC and the collapse of advertising revenue, it is imperative to keep in mind that commercial broadcast television and radio services have been grafted on to the much larger—and more profitable—media arms of even bigger and more lucrative communications conglomerates, circa 2007-2013, as a matter of corporate strategy and with the blessing, even the encouragement of regulators and government policy.

It is, therefore, unwise to generalize from the state of the relatively small, broadcast-specific aspects of these communications giants to conclusions about the state of the media as a whole. That, however, is common practice in both public and policy debates. That the lion's share of whatever benefits come from the *Online News Act* are expected to go to the broadcast divisions of some of the biggest and wildly profitable communications conglomerates in Canada, i.e. Bell, Corus, Rogers, Quebecor and the CBC, is one of the signature deficiencies of the bill.[177]

What is needed now are creative mechanisms that will breathe new life into the *public service functions* like original journalism and programming that we want to retain, independent but in a way unbound from of the entities to which those functions have been tied, with results that as the unfortunate results of that entwinement are now all-to-clear to see

Specialty and pay television services: Diversification, consolidation and decline

The next few pages shift gears to examine what has been, until the mid-2010s, the fastest growing segment of the television marketplace: specialty and pay TV services. This sector had been remarkably diverse from its inception in the early 1980s until it was utterly transformed by a handful of transactions that took place between 2007 and 2013, the combined effect of which was to drive concentration to an

177 Office of the Parliamentary Budget Officer (Oct. 6, 2022). *Cost estimate for Bill C-18: Online News Act*. Ottawa: Author. See below with respect to the claim made here about these companies being "wildly profitable", a reference to the fact that they have maintained profit levels in the forty-percent range throughout the uneasy years of the past decade-and-a-half.

all-time high that has been maintained ever since. Some of those transactions were introduced a moment ago, but are repeated here for ease of reference, while two others led by BCE and that were unique to this period are also listed:

- Roger's take-over of CHUM's television services in 2007.
- Canwest's acquisition of Alliance Atlantis the same year.
- Shaw's take-over of the television assets of the bankrupt Canwest in 2010.[178]
- BCE's re-acquisition of CTV in 2011.[179]
- BCE's acquisition of Astral in 2013.[180]

Together, these transactions triggered the most significant bout of consolidation within the TV industry in the near four decade-long period covered by this report and caused the HHI score for the pay TV market to increase two-and-a-half fold, as it shot upwards from 871 in 2004 (a sign of a highly diverse market) to 2,119 in 2013 (an indicator at the high end of the "moderately concentrated" designation). From this time on, the pay television services market has largely orbited around three companies: Bell, Shaw and Rogers, with the CBC and TVA falling well-behind the big three groups.

At the end of the process of industrial restructuring and consolidation that took place circa 2007-2013, several consequences were apparent:

- Concentration levels in broadcast television, pay TV services and for the total television market were the highest ever, and have stayed there ever since.
- Several iconic, independent and specialized players in Canadian television had vanished: e.g. CHUM, Alliance Atlantis and Astral Media.
- Some had been broken apart or gone bankrupt after loading up with unsustainable debt in a bid to play the media consolidation game, with Shaw swooping in to purchase the assets of the two firms that went bankrupt at the outset of this phase: i.e. Canwest and Craig (owner of the A-Channels and Toronto 1).[181]
- Astral Media's pioneering plan to launch an over-the-Internet video-on-demand service in 2012 to compete with Netflix was scuppered after its take-over by Bell, the result of which was to leave the nascent online video market exclusively in the hands of Netflix for two more years until Bell launched Crave and Rogers and Shaw joined forces behind their short-lived Shomi service.

Today, the 'big three' collectively own sixty-two local broadcast television stations and eighty-eight pay TV services, the latter of which is down significantly over its high point a half-decade ago and for reasons and with implications explored in the paragraphs ahead. They also account for close to three-quarters of

178 CRTC (2010). *BD 2010-782 Canwest Global Communications Corp, on behalf of its licensed broadcasting subsidiaries*.

179 CRTC (2011) *BD 2011-163 Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*.

180 CRTC (2013) *BD 2013-310 Astral broadcasting undertakings – Change of effective control*.

181 This also includes Bell Globemedia, whose first attempt at cross-media ownership by acquiring CTV and *The Globe and Mail* in 2000 ended in failure in 2006, after which the company abandoned the field, only to return in 2011 after re-acquiring CTV, while maintaining a 15% ownership stake in *The Globe and Mail* all along.

the pay TV market and just under half of all television revenues (48.7%). Add Quebecor and the CBC into the mix, and collectively the five largest Canadian TV operators controlled more than four-fifths of the pay TV market last year and two thirds of total television revenue (i.e. broadcast, pay and online VOD services revenue). While revenue for pay TV services has fallen from $4.4 billion at their high point in 2016 to $4 billion last year, profits have remained well-above average for business in Canada at between 15-20% over this period.[182]

Even amongst the big players, Bell stands out. To give some sense of scale, it's $1.4 billion in revenue and 35% market share last year is roughly twice that of the Rogers and Shaw, six times that of Quebecor, and ten times that of the CBC, respectively.[183] In addition, Bell has also used its advantages in scale to lockdown long-term, exclusive rights to premium content in Canada from several of the most important television and film distributors in the U.S., notably HBO and HBO Max (Warner Media), Showtime (ViacomCBS) and Starz (LionsGate). Last year it ventured further afield by acquiring the promoter of the Montreal Formula 1 Canadian Grand Prix.[184]

Beyond the processes of horizontal and diagonal integration playing out between the different sectors of the television market just recounted, a powerful new force has utterly transformed the television market in Canada: vertical integration with telecom companies. The upsurge in vertical integration levels between the telecoms and television (broadcasting) markets between 2007 and 2013 gave rise to the "big four" vertically integrated telecommunications and media conglomerates that have stood at the apex of the network media economy in Canada ever since: Bell, Rogers, Shaw and Quebecor.[185]

As a result of these trends, all the large, commercial television services in Canada have been owned by four telecoms firms for the last decade. In 2021, they controlled four-fifths of pay and specialty revenue and more than half of all television revenues once we open the lens further to include broadcast television and online video services (more on this below).

This consolidation between telecoms and TV services has governed how TV in Canada would evolve during what has been, perhaps, the most significant era of transformation to sweep this pivotal form of media and culture since the multi-channel universe started to take shape four decades ago. While high levels of concentration within individual sectors of the communication, Internet, television and other media markets in countries around the world is not unusual, it is the high levels of cross-ownership between media sectors in tandem with the sky-high levels of vertical integration between communications carriers and content media that set Canada apart from its international peers, where such conditions are outliers rather than the norm.

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182 CRTC (2022). *Financial summaries for broadcasting sector—discretionary and on-demand (summary)*.

183 See the "Pay TV Programming Services" sheet in the GMICP Workbook—Canada.

184 See BCE (2022), *Annual Report 2021*, p. 37. While details are not available for these licensing agreements, such agreements are typically last for five years. Recall, as well, that in early 2021 AT&T spun off Warner Media into a joint venture with Discovery Communications.

185 Roger's acquisition of City TV in 2007; Shaw's take-over of Canwest's TV holdings in 2010 (CRTC, 2010, BD 2010-782 Canwest Global Communications Corp, on behalf of its licensed broadcasting subsidiaries); Bell's buy-back of CTV a year later (CRTC, 2011, *BD 2011-163 Change in effective control of CTVglobemedia*); Bell and Rogers each taking a 37.5% stake in Maple Leaf Sports Entertainment (i.e. NBA TV, Leaf TV and GolTV) in 2012 (CRTC, 2012, *BD 2012-43 Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited*; Bell, 2014, *Annual Report, 2013*, p. 133); and Bell's take-over of Astral Media in 2013 after the CRTC reversed course from its decision the year before to deny that deal (CRTC, 2013, *BD 2013-310 Astral broadcasting undertakings – Change of effective control*). For its part, Quebecor took on the shape of a vertically integrated communications and media conglomerate in a trilogy of acquisitions a decade earlier between 1999 and 2001—Vidéotron, Sun newspapers and TVA—and thus before this moment in time when the vertical-integrated firm was cemented at the centre of the communications and media universe in Canada.

Divestitures, spin-offs, closures, consolidation of attention on a fewer marquee brands and genres, and pay & specialty television services without workers

Although the processes just outlined drove concentration across the total TV market to new heights, and installed four vertically-integrated communications and media conglomerates at the apex of the network media universe, several other forces have shaped the pay TV market. Four such factors stand out:

- The divestiture, spin-off and closure of several services by the major players.
- Consolidation amongst marquee brands and a narrower range of genres.
- Automation of services that now run with a skeletal to no workforce.
- The rapid growth of online streaming video services such as Netflix, YouTube Premium, Disney+, Apple TV and iTunes, Amazon Prime Video, and so forth.

In an attempt to lessen the degree of consolidation while paradoxically permitting it, after denying Bell's first attempt to acquire Astral Media in 2012, the Competition Bureau and CRTC approved a revised bid by Bell for the company a year later.[186] However, both regulators only granted their blessing after Bell agreed to divest eleven of the services that it was acquiring from Astral—the largest independent pay service provider in the country at the time, a position it had buttressed by acquiring long-term exclusive distribution rights for HBO programming in Canada.

The most important of these services were sold to Shaw (Corus),[187] while the rest were acquired by DHX Media (now WildBrain, as of 2019), a Halifax-based broadcaster and producer of children's programming (Caillou, Degrassi: Next Class, Inspector Gadget, and Teletubbies),[188] Stingray,[189] and V Media in Quebec.[190] The hoped for beneficial impacts of these behavioural remedies have, for the most part, failed to materialize, for reasons that will soon be apparent.

For one, these divestitures hardly put a dent in Bell's dominant position. However, for a time, it appeared that they might help firm up the ranks of second-tier television ownership groups given that the lion's share of the services spun-off were acquired by Shaw (Corus). This also appeared to have the effect of, in essence, heading off Shaw and the other smaller firms' opposition to the deal. This is because while many other voices from within the industry and public interest groups loudly opposed the deal, these companies stayed silent once the divestitures were on the table and earmarked for them. In fact, this author was in the room when DHX pulled out of the hearing at the last moment, likely signaling that it had struck a deal with Bell behind the scenes regarding who would benefit from the spin-offs being required by the regulator—an all-too familiar tactic in Canadian regulatory processes.

Second, while the acquisition of the spun-off services by a group of smaller companies helped them to grow for a time, and thus added some important new voices, diversity and greater choice to the field, the impact of these transactions has been modest, and their future uncertain all along. In fact, DHX-

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186 CRTC (2013). *BD 2013-310 Astral broadcasting undertakings – Change of effective control.*

187 CRTC (2013). *BD 2013-737 TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment.*

188 The Family Channel, Disney Jr. and Disney XD.

189 MuchVibe, MuchLoud, MuchRetro and Juicebox.

190 MusiquePlus and MusiMax. Those services were subsequently excluded from Bell's take-over of V Media in 2020. CRTC (2020). *BD CRTC 2020-116: V Interactions Inc.—Change in ownership and effective control.*

cum-Wild Brain's revenue has been in a tailspin since it obtained the services spun-off from the Bell-Astral transaction. V Interaction, as we saw a moment ago, is no more as of two years ago, having been absorbed into the BCE fold. Collectively, the new players that remain have seen their overall revenue decline and now account for less than one percent of total TV revenue. This is a fraction of the market share held by the vibrant Astral Media when it was taken-over by BCE in 2013. In short, while we must pay attention to new voices in the media landscape it is also crucial that we be careful to avoid overstating their significance.

As mentioned in the first report in this year's series, several local television stations have also been shuttered since 2009 and there have been substantial cut-backs in news programming at many local television and radio stations across the country as well. In addition, several pay television services have also been closed on the grounds that falling revenue and profits have undermined their commercial viability. For example, Bell and Rogers shut down their jointly-owned Viewers' Choice and GoTV in 2014 and 2015, respectively. Rogers and Shaw also shuttered their jointly-owned internet streaming TV service, Shomi, in November 2016, while Quebecor shut down Argent a year before that.

In another example, Corus turned out the lights at the Cartoon Network in 2015 and Movie Central in 2018. As a result of these changes, the number of pay TV services owned by the big five television ownership groups—Bell, Shaw (Corus), Rogers, Quebecor and the CBC—has fallen from 129 in 2014 to 103 last year.[191]

In addition to divestitures and shut-downs, in 2016, Shaw spun-off the Global TV network and several pay TV services to its sister company, Corus, to help finance its acquisition of Wind Mobile. This complex transfer of ownership was primarily about hiving off the TV group to a separate entity (Corus) to help finance Shaw's take-over of Wind Mobile and focus the Shaw company on communications rather than content. This corporate restructuring was also about setting up Corus for a potential sale, a possibility that executives at the company have publicly mused about for several years. That option, however, has been hemmed in by regulators who are not disposed to allowing Corus Entertainment to be sold to an existing player like Bell or Rogers on account of the extensive consolidation that currently exists, while the potential for it being sold to foreign investors is also ruled out by existing foreign ownership restrictions that prevent that option. Both restrictions have raised the company's ire.[192]

There should be no mistake, however, about the fact that even amidst declining revenue, profits for pay TV services are still well-above average, as noted above.[193]Bell, Rogers, Shaw (Corus) and Quebecor have also remained wildly profitable, with a few exceptions here and there along the way. Thus, in 2021, the media divisions of each of these firms posted EBITDA of 10.7% (Quebecor), 23.9% (Bell), and 34% (Corus). Rogers was an outlier, with a negative return of -6.4, but that, too, was a one-off event. Indeed, EBITDA profit have generally been in the mid-twenty-to thirty percent range for the last half-dozen years for these companies, although, for Rogers, profit margins have been about half that amount.

The problem, from a strictly financial point of view, however, is that even these lush profits don't hold up to the even more lucrative profits at these communications conglomerates, where their mobile wireless,

191 See the "TV Services Ownership Groups" sheet in the GMICP Workbook—Canada.

192 CRTC. (2016). *Broadcasting Decision CRTC 2016-110: Various television services and stations – Corporate reorganization (transfer of shares)*; Willis, A., & Dobby, C. (2018, June 12). Shaw trying to sell its stake in Corus Entertainment to focus on Freedom Mobile expansion. *The Globe and Mail*. More equity stakes in Corus were sold and acquired by a consortium of Canadian banks in 2019; Jackson, E. (2019, May 16). Sale of Shaw stake could mean more deals for Corus: Analyst. *Financial Post*; However, ownership and control still rests with the Shaw family through the Shaw Family Living Trust, which represents "85% of the outstanding Class A Voting Shares, for the benefit of descendants of the late JR Shaw and Carol Shaw". Corus. (2021). *Corus Entertainment Annual Report 2020.* p. 41. Also see the CRTC. (2021). *Corus Corporate Structure* [Ownership chart].

193 CRTC (2022). *Financial summaries for broadcasting sector—discretionary and on-demand (summary).*

internet access and wireline divisions have seen revenues climb year-after-year, as we showed in our first report, and with profits typically in the forty percent range. Last year, Bell, Rogers, Quebecor and Shaw all posted profits between 40-43% on revenues of between $4.6 billion (Quebecor) at the low end and $23.4 billion (BCE) at the high end.[194]

While the discrepancy between wildly lucrative operating profits on the communications side of their businesses versus the media content side may be a problem for Shaw and Bell as well as investors and the banks behind both companies, it is not a sign that TV faces dire straits. Indeed, far from it. Thus, when Corus executives and a few financial analysts quoted in the business press fulminate against "old rules" and stodgy regulators holding the line on even more consolidation and against foreign ownership, it must be kept front-and-centre in mind that they are looking at things strictly from the point of view of investment bankers rather than communications and cultural policy.

As the companies have shuttered services, they have also increasingly put their resources behind a smaller number of marque services. This can be seen, for example, in the fact that whereas in 2012, it took twenty-six of the top ranked pay and specialty television services to account for half of all revenue in the sector, by last year that number had fallen to just fifteen. And as we noted in our first report, those services are also becoming more tightly focused on sports (e.g. Rogers Sportsnet, BCE's TSN, TVA Sports), movies (e.g. BCE's Crave/The Movie Network, Corus's Showcase), news (e.g. CBC News Network) and a few thematic channels than in the past. In fact, the top five sports-themed services alone account for a third of the specialty and pay television services in 2021, up from a fifth a decade ago.

That said, and similar to the broadcast sector, there is also some re-ordering of the ranks. Thus, amongst the shorter list of fifteen top grossing services in 2021 that account for half of the pay TV sector's $4 billion in revenue, six are Bell brands, up from four in 2012. At the same time, Corus' share of top-ranking services decreased from nine to six over, while its revenue from such services has dropped by $125 million since 2016. Rogers, Quebecor and the CBC have also seen some declines as revenue for the sector as a whole has slipped in the past five years, but at a more modest pace.

A few small pay TV operators such as Pelmorex—the owner of the Weather Network—and OUTtv have actually done better, and for the latter, with its small loss of revenue at home more than offset by revenue from international markets that goes unreported to the CRTC (because it is not required to do so). Others such as DHX-cum-WildBrain, Blue Ant and Stingray, for whom prospects were once high as the intended beneficiaries of the spin-offs from Bell's acquisition of Astral, have seen had their dreams and dollars crushed. The ethnic media service provider, Fairchild, no longer reports to the CRTC, likely because it is no longer viable in this domain.

The last point to be made in this section is the striking phenomenon whereby many pay TV services have become, in essence, "ghost operations" insofar that they do not have any workers at all keeping them operating. Indeed, in recent testimony on the proposed *Online Streaming Act*, the Forum for Research and Policy in Communication observed that there are sixty-three such services with no workers at all, including, for example, Bell's CTV Comedy ($69.3 million in revenue in 2021) and DHX's Family Channel ($40.6 million). Ten other such services have just one employee, including, for example, Animal Planet ($7.7 million in revenue), while another forty have between one and ten staff. In other words, many of the pay TV service available in Canada have been either cut-to-the-bone or hollowed out completely.

194 Rogers' negative profit for its media division were an outliner relative to its peers in 2021 and in previous years, although it, too, has maintained positive, even if slim profits margins. BCE (2022), *Annual Report, 2021*, p. 37; Rogers (2022). *Annual report, 2021*, p. 13; Shaw (2022), *Annual report, 2021*, p. 9; Shaw (2020), *Annual Report 2019*, p. 42. Quebecor (2022) *Annual MD&A & financial documents, 2021*, p. 9; Corus (2022). *Annual MD&A & financial documents, 2021*, p. 5; Corus (2020), *Annual Report 2019*, pp. 20-21; Statistics Canada. (2016). *Financial and Taxation Statistics for Enterprises: Tables*.

Ultimately, while we have spoken elsewhere in this report about the problem of "regulatory hesitancy" with respect to telecommunications, the above discussion of spin-offs, closures, automation and failure stands as a fine example of the same phenomenon in the context of audiovisual services media. The presence of such "regulatory hesitancy" in both areas reveals, in essence, a policy-driven (or at least sanctioned) process of consolidation across the network media economy in Canada as a whole. It also demonstrates that rather than regulators trying to engineer complex and difficult to monitor and enforce regulatory remedies—as was the case in relation to Bell's second and successful bid to acquire Astral Media—it is far better to just say no to deals that drive ever higher levels of concentration. That was what the CRTC did the first time around when it reject Bell's bid to take-over Astral, and in this regard, and with the benefit of hindsight, it was right to have done so.

Online Video Services[195]

Anchor Findings

- Although still highly concentrated by the CR4 measure, the online video market is showing significant signs of greater diversity and choice as newer entrants' positions mature by that measure while already fitting firmly within the moderately concentrated range of the HHI scale.
- The growth of online video services has expanded the revenue base for total TV services, along with Canadian television and film production investment.
- The rapid growth of online video services and entry of major new international players such as Netflix, Google's paid YouTube services, Disney+, Amazon and Apple have led to a more diverse television landscape and falling levels of concentration.

In order to complete the picture of the "Total TV Universe" (broadcast TV, pay TV, and online video services), we now turn to an analysis of online video services.

The rise of online video services over the past decade has dramatically changed the TV landscape in Canada and around the world. Total Canadian revenue for online video services in 2021 was $3.5 billion—well over triple what it had been four years earlier. Such services have added significantly to the size of the TV marketplace in terms of revenue and choice, while also serving to drive down concentration levels. They have also added major new international actors to the audiovisual media landscape, most notably Netflix, Google, Disney, Apple and Amazon (in that order).

In less than a decade, Netflix has garnered 7.5 million subscribers, $1.3 billion in revenue and an 13% share of the $9.9 billion TV services industry. It is the biggest online video service in Canada by far, where its market share last year was 37.2%. Consequently, Netflix is now the second largest TV service in

195 As we observed in our first report, improved access to information for Netflix, Crave, illico, and Gem/ICI TOU in recent years makes it possible to state actual subscriber numbers for these services and to estimate their revenue with greater confidence than in the past. Of considerable importance in this regard is that Bill C-11, the proposed *Broadcasting Act* reform bill, contained provisions setting out information disclosure obligations for any entity offering online video services in Canada. This is a welcome part of the bill and it could go a long way to improving the quality of the data available and, consequently, to our understanding of these fast-emerging sectors of the audiovisual media landscape.

Canada. It revenue and market share last year was slightly less than half that of Bell, and slightly greater than the CBC, Rogers and Shaw/Corus. It is now close to three times the size of Quebecor's television operations.

Other providers, however, have entered and expanded the online video market over the past several years as well, notably Bell Crave, the second-ranked player, followed by Disney+, Google's paid YouTube Premium service, CBS All Access, Rogers SportsNet Now, DAZN, Apple (i.e. Apple TV and iTunes), Quebecor's illico, Corus's StackTV, Amazon Prime Video, and CBC Gem. These new services are chipping away at Netflix's dominance of the online video market, which has seen its market share fall significantly from just over half the market in 2018 to an estimated 37.5% last year.

The second largest online video service in Canada is Bell's Crave. In 2021, it had 2.9 million subscribers at year end and estimated revenue of $513 million. This was up slightly from 2.8 million subscribers the previous year and revenues of $486 million. The next largest domestic operator is Rogers SportsNet Now, with an estimated 1.4 million subscribers and revenue of $275.3 million last year. In 2021, Quebecor's illico had close to half-a-million subscribers and revenue of $58.3 million, while for its part, the CBC's Gem/ICI Tou TV garnered an estimated 335,000 subscribers and $20.1 million in revenue, respectively.

While the Canadian online video services accounted for about a quarter of the market based on revenue, the major U.S.-based actors such as Netflix, Google, Disney, Apple and Amazon Video (in that order) account for nearly all of the rest and, therefore, clearly dominate this sector. Take Disney+, for example. After entering Canada near the end of 2021, it rose quickly to become the third largest online video service in Canada in 2021 with an estimated 4 million subscribers and revenue of $366.4 million. The rapid growth of Disney+ was probably sped on by the Covid-19 pandemic lockdowns as people hunkered down to watch more television.

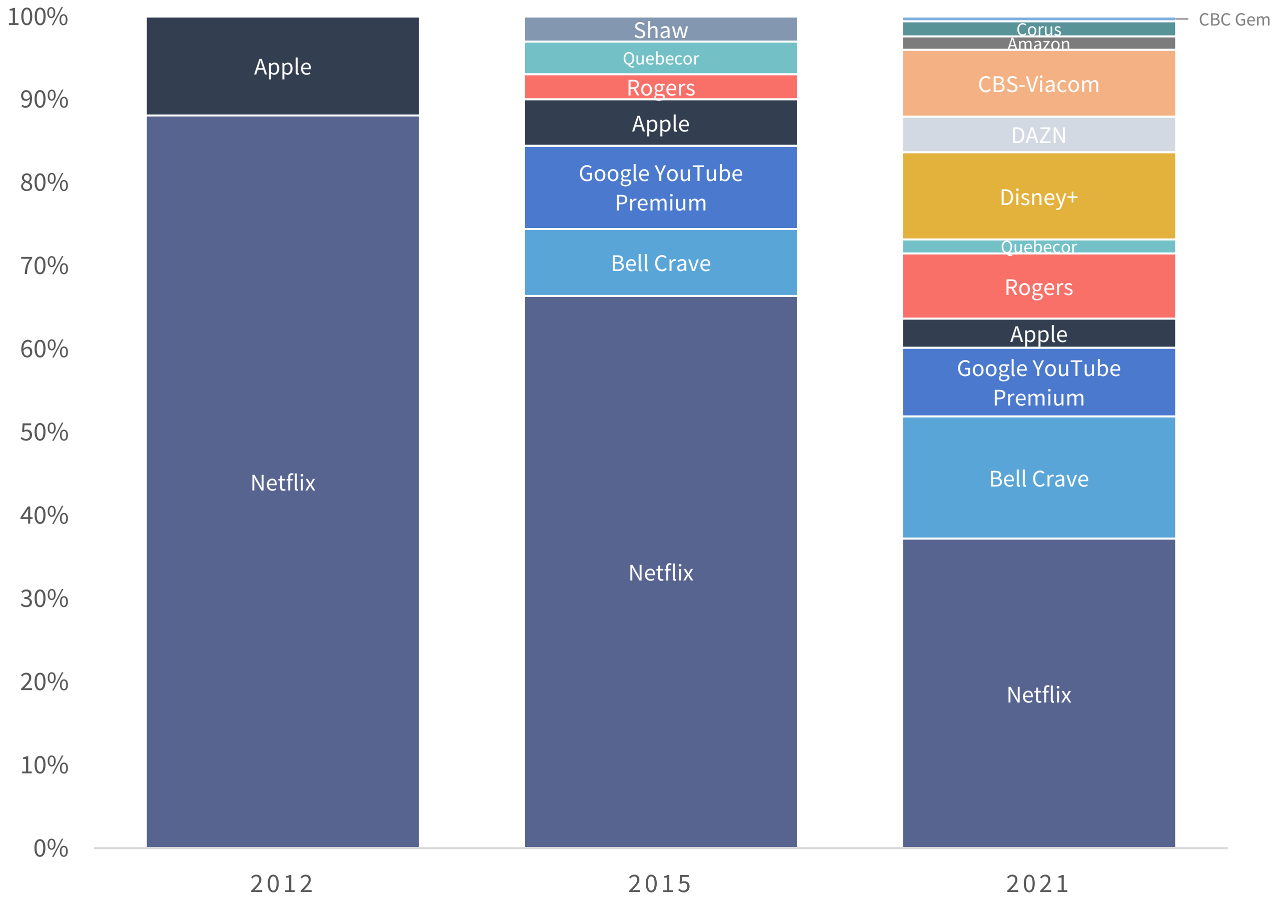
Google's YouTube Premium has also grown in importance and is now the fourth largest online video service in Canada, with revenues rising from an estimated $87.7 million in 2016 to $290.9 million last year. Estimated revenues for Apple's streaming Apple TV+ service and download iTunes service were an estimated $120.8 million last year, while estimated revenue for Amazon Prime Video rose to $56.5 million, respectively. DAZN, the live sports streaming service based in the U.K, has also become a significant presence in Canada, with estimated revenue of $150.4 million in revenue and a million subscribers in 2021.

From the perspective of this report, one thing stands out: the rapid decline of concentration levels in the online video services market, and its knock-on effects in this regard across the television marketplace. In fact, online video as a single market slipped into the lower end of the moderately concentrated zone last year based on an HHI score of 1946—a steep year-over-year drop. This continued an ongoing trend over the past half-dozen years, with the HHI score being cut in half over what it had been in 2016 (i.e. 4012)—a number that we have characterized as an indicator of sky-high levels of concentration in past reports—to the figure just cited. Current concentration levels by this measure are also a far cry from the first half of the last decade, when they hovered around the 8,000 range before new choices emerged with the introduction of Crave, YouTube Premium and the now defunct Shomi.

Trends with respect to the CR4 match that of the HHI, with four players—i.e. Netflix, Bell, Google and Disney—last year accounting for 71% of the $3.5 billion sector. This figure was down significantly from ninety-percent range that had prevailed from the middle of the last decade until 2018.

Figure 23, below, illustrates the point.

Figure 23: Online Video Distributors, 2012 vs 2015 and 2021 (Market Share based on $)

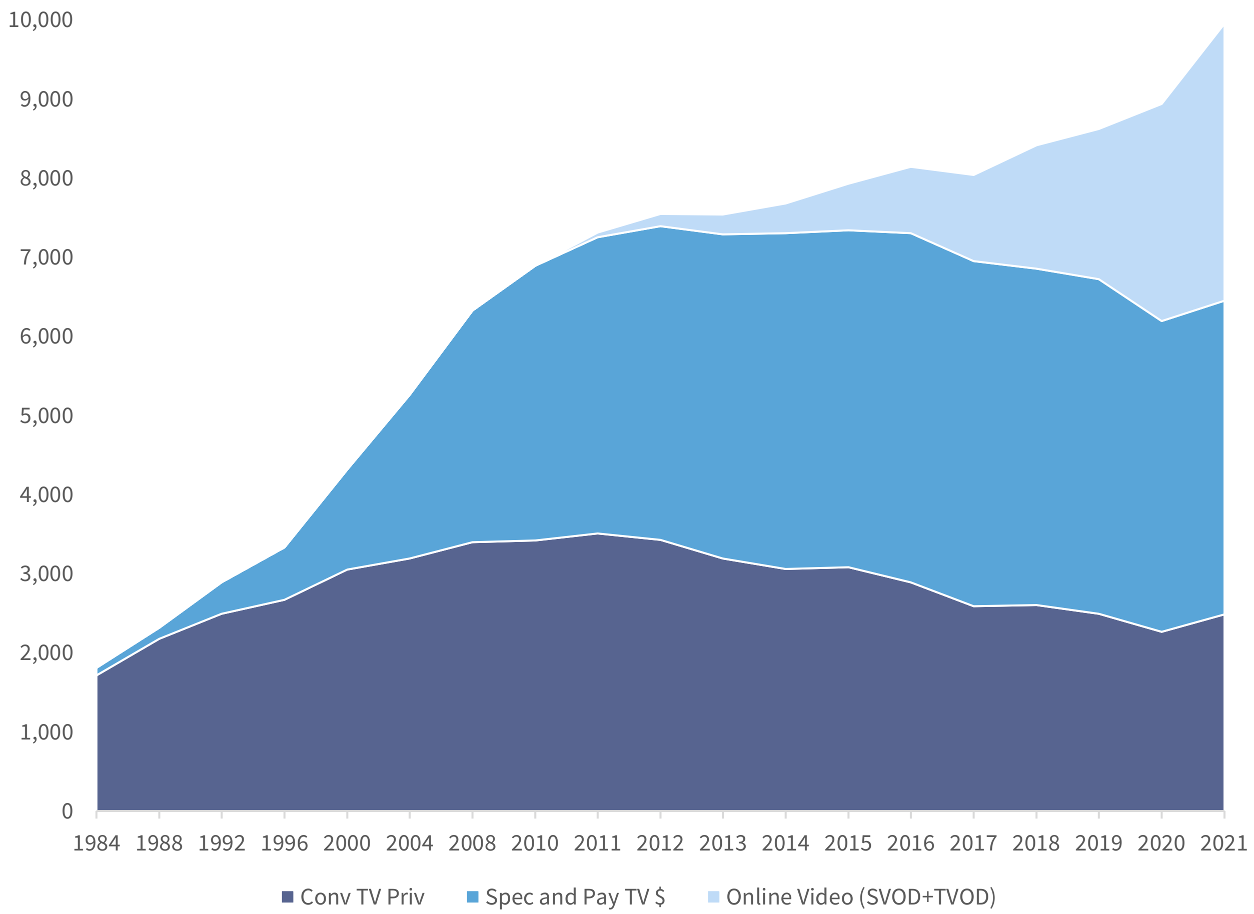


	2012	2015	2021
CR 4	100	90	70.7
HHI	7904.5	4641.5	1945.9

Sources: see the "Fig 23 OVD Market Share" sheet in the [Excel Workbook](#) accompanying this report and the "Online Video Services" sheet in the [GMIC Project—Canada open data sets](#).

The enormous growth in online video services has also caused total television revenue to swell from $7.3 billion a decade ago to $9.9 billion last year, with a concurrent explosion of television and film production in BC, Ontario and Quebec, as we detailed in the first report of this year's series.

Figure 24: The Television and Video Landscape Remade, 1984-2021 (Millions$)



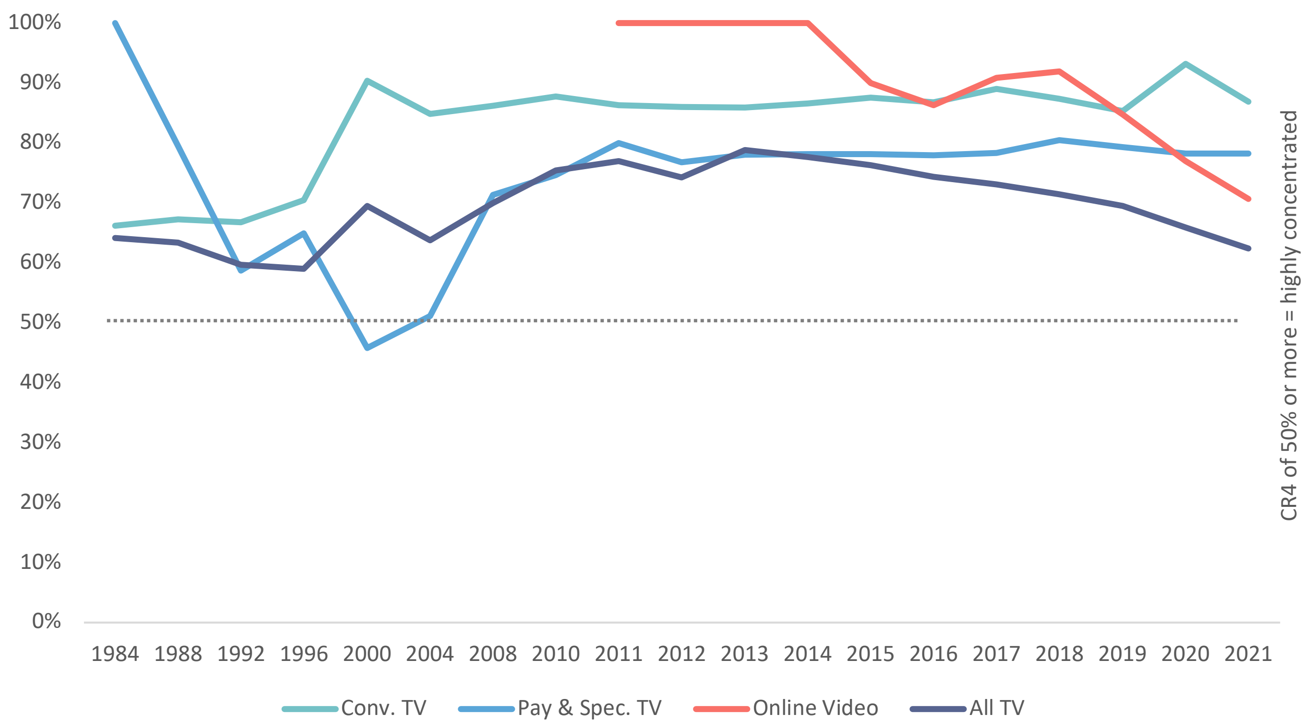
Sources: see the "Fig 24 TV + Video Landscape" sheet in the Excel Workbook accompanying this report and the "Broadcast TV", "Pay TV Programming Services" and "Online Video Services" sheets in the GMIC Project—Canada open data sets.

In terms of concentration and diversity, the upshot of the changes just recounted is two-fold: first, growth of the "total TV universe" continues, albeit at a slower pace, while the range of actors and choices available to Canadians has expanded tremendously. Concentration levels are declining significantly as a result. In terms of the latter point, as international, mostly U.S. online video services expand their presence in Canada, Canada's largest players such as Bell, Rogers and Shaw are seeing their share of the TV marketplace cut down to size, however, not nearly as significantly as many seem to suggest.

As the grip of the top five players loosens—from 84% in 2014 to 65% last year—diversity is increasing. The HHI has also fallen sharply from moderate levels of concentration for the "total TV universe" from all-time highs in mid-2010s, when the HHI score was in the 1,750 range, to 1285 last year. In addition, for the past five years, the HHI score for the total television market has fallen below that measure's threshold for identifying a diverse and pluralistic market. This is a very significant improvement on the past and a seeming reversal of the long-term trend toward ever higher levels of consolidation.

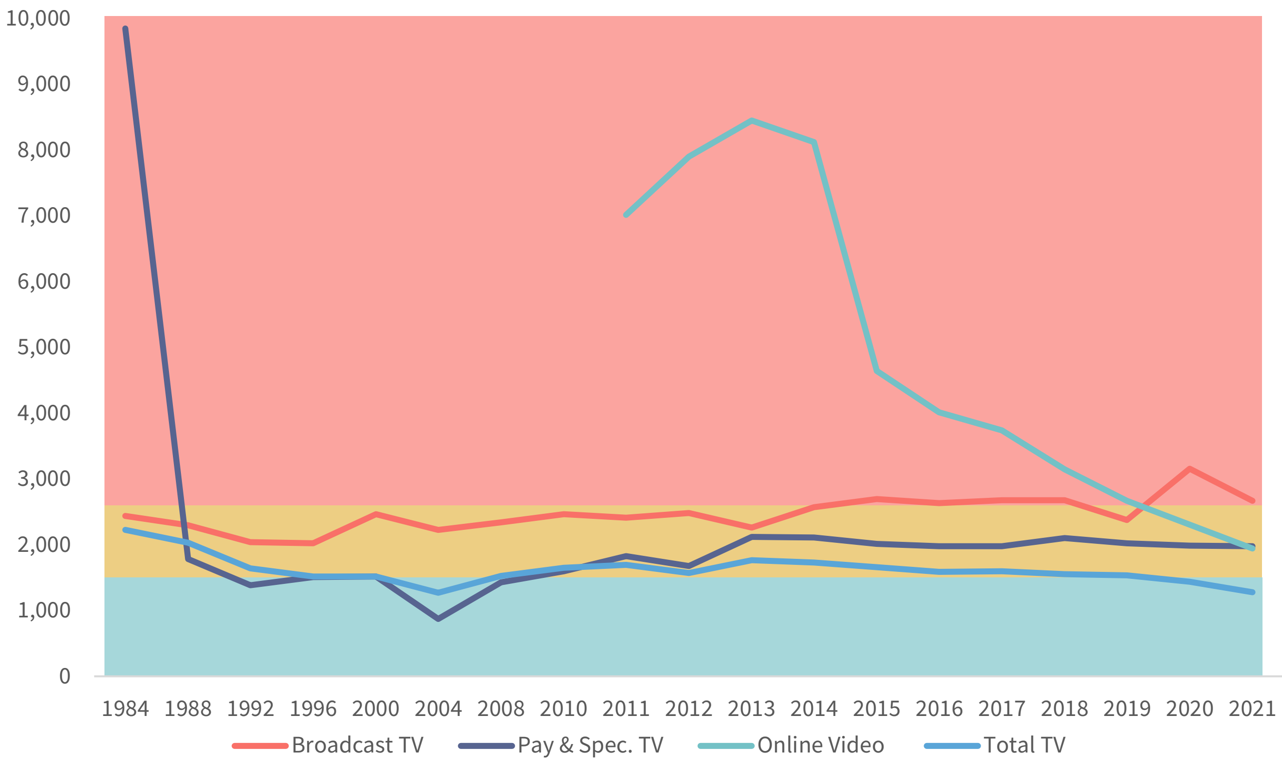
Figure 25, below, summarizes the trend for each of the broadcast, specialty and pay TV, online video services and the "total television market" on the basis of CR scores while Figure 26 after it does the same in terms of the HHI.

Figure 25: CR Scores for Television, 1984-2021



Sources: see the "Fig 25 CR ScoresTV" sheet in the [Excel Workbook] accompanying this report and the "Concentration Metrics" sheet in the [GMIC Project—Canada open data sets].

Figure 26: HHI Scores for Television, 1984—2021



Sources: see the "Fig 26 HHI Scores TV" sheet in the [Excel Workbook] accompanying this report and the "Concentration Metrics" sheet in the [GMIC Project—Canada open data sets].

In short, after concentration across the total TV market had been pushed to new extremes by the spate of amalgamation detailed earlier, circa 2007-2013, the tide has since turned in the opposite direction on account of the rapid and ongoing growth of online video/television services made available over the Internet. The irony, however, is that, rather than this drift of events serving as cause for celebration, the main industry ownership groups and the clientelist interests that hover around them tend to see these developments as calamitous and, consequently, plead with the CRTC and policy-makers to turn back the tide and gird the status quo.

A different view might argue that the above analysis suggests that a cultural policy and TV industry organized around four giant vertically-integrated companies has been a failure even on its own terms. Indeed, Bell, Shaw (Corus) and Rogers have been quick to shutter the doors, cut-back workforces, and dispose of services when challenges to their bottom lines mount, despite making profits that are the envy of almost any other industry.

In addition, rather than increasing investments in original Canadian TV and film production, in-house investment by Canadian broadcasters has fallen while overall investment in Canadian television content has only increased modestly since the vertically-integrated communications and media conglomerates were installed as the centrepieces of the network media economy earlier this decade.[196] Instead of investing in the creation of original content, the vertically- integrated companies appear to be more intent on securing long-term exclusive distribution rights to U.S. television and film productions, as we saw earlier, instead of investing in their Canadian productions.

This strategy, however, is certain to hit a dead-end as the major U.S. companies increasingly bypass early theatrical release and pay television services in favour of going direct to audiences with their own online video services. In fact, the speed of this trend has been accelerated by the Covid-19 pandemic. As theatres were shuttered or operated with reduced seating capacity, the big U.S. television and film distributors doubled down on their efforts to go direct to audiences through their own online video services.

However, while the Covid-19 pandemic was probably the immediate cause behind this accelerating trend, the longer-term reality is that major studios and distributors have taken advantage of the moment to drive subscriptions streaming services that they own while also reducing their reliance on theatres and the traditional cable bundle. By taking this route, they no longer need to share revenue with the theatres or guarantee to underwrite the high promotional costs for new releases. Instead, they are able to use their ownership and control of the film and television catalogue to increase subscribers to their own streaming services.

The upshot is that the major U.S. and international studios are amassing more leverage as they go direct to consumer through their own streaming services or sell directly to Amazon or Apple in Canada. This also implies that the days of the studios selling rights to Netflix are also coming to an end, hence the enormous increase in spending by Netflix, Amazon, and so forth on original productions in recent years (starting with Netflix's House of Cards in 2013).

196 See the Film and TV Production sheet in the GMICP-Canada Workbook and Figure 27: Film and TV Production in Canada, 2000-2021 in the first report in this year's two-part series, *Growth and Upheaval in the Network Media Economy in Canada, 1984-2021*.

All this likely also means that the days for Bell, Shaw (Corus), Rogers and Quebecor being able to build a business model around being the exclusive brokers for U.S. television programs and films in Canada are numbered, as they are bypassed in favour of the direct-to-consumer strategy. In addition, as overall subscribers for cable, DTH and IPTV services in Canada shrink, it lowers the revenue potential for Bell and its counterparts which means that they will not be able to afford to pay as much for premium content. This gives even further reason for some studios to go direct to audiences with their own streaming services or rely on other aggregators such as Amazon, Apple and Roku.

The streaming services could also, however, end up going through the new streaming platforms now being set up by the BDUs,[197] similar to the approach taken by Rogers here in Canada and by Comcast in the US, for example, when placing Netflix on their set-top boxes and services listing. At the same time, the traditional cable operators are also raising prices, as we saw earlier in this report and in the first one in this year's series, for Internet access and cable television services as sources of revenue to counter the losses on the cable distribution and media content side of their operations.

These mounting pressures are also aggravated by the reality that Bell and its contemporaries have done little to increase their own investments in creating and maintaining a catalogue of original content. Without a catalogue of their own, they have little to offer as an alternative to the U.S. and international distributors with whom they increasingly must compete. This is yet one more reason why it is probably only a matter of time before the dependence of "the Canadian television system" on a few vertically-integrated conglomerates collapses.

Unfortunately, in two key policy decisions in the past few years— the cable TV license renewal ruling and its *Harnessing Change: the Future of Programming Distribution in Canada* report—the CRTC has been doubling down on its commitment to keeping a few national champions as the centre of the audiovisual landscape, thereby guiding the future direction of TV in this country by the lights in the rearview mirror.[198] The BTLR panel's Canada's Communication Future in 2020 also takes a similar tack, mobilizing the ill-defined conceptions of the communications and media sectors that make up the network media economy and cherry-picked evidence in precisely the ways we criticize to portray the country's broadcasting system, and consequently, Canada's cultural sovereignty as being in peril, if the tendencies just portrayed are not brought to heel.[199]

The proposed revisions to the *Broadcasting Act* (Bill C-11), and its predecessor (Bill C-10), do very little to deal with problems of self-preferencing and vertical integration. Instead of taking advantage of the enormous opportunity to remake communication and cultural policy for the "digital age" and an ever more Internet- and mobile wireless-centric digital media universe, both versions of the *Online Streaming Act* have been framed and debated as a means to superimpose traditional policy tools like quotas for Canadian content and investment obligations on to 'online undertakings'. The result has been an entirely unhelpful and polarized debate between those who support such measures versus those who argue that those very same measures are an affront to free speech and people's freedom to watch, listen and curate their own playlists as they please.

197 For example, Bell's Alt TV, TELUS' Pik TV, Rogers Ignite and Shaw's Blue Sky.

198 CRTC. (2018). *Broadcasting Decision CRTC 2018-263: Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 –Introductory decision*; CRTC. (2018, May 31). *Harnessing Change: The Future of Programming Distribution in Canada*.

199 Innovation, Science and Economic Development Canada. (2018, June 5). *Broadcasting and Telecommunications Legislative Review: Canada's Communications Future: Time to Act.*

Getting a Measure of the Fast-Evolving Digital Media Services Landscape: Bigger But More Inscrutable Than Ever

The following pages take some tentative steps to capture a wider range of digital audiovisual media services (AVMS) delivered over the Internet beyond online video services by including:

1. Digital games (i.e. online gaming, gaming applications, game downloads or in-game purchases).
2. Online music service (i.e. music downloads and streaming music subscriptions).
3. App stores, in particular Google Play and Apple's App Store.[200]

200 To arrive at our estimates, we draw on our own calculations for the online video subscription and download service, as discussed above, as well as custom tabulations from Statistics Canada's Canadian Internet Use Survey and Digital Economy Survey for the online music, video games, apps and in-store purchases, Apple and Google's annual reports as well as the Interactive Advertising Bureau's annual reports on online advertising. Statistics Canada. (2019, October 29). *The Daily—Canadian Internet Use Survey*; Statistics Canada. (2018, August 29). *Digital economy, July 2017 to June 2018*. IAB Canada. (n.d.). Internet Advertising Revenue Reports. The lack of good quality data and information for these services is notorious. That said, we are hopeful that our attempts to make sense of these digital services will further our understanding

We cover these sectors because they are closely allied with what are often referred to as the "screen media" industries. Our aim is also to get a better grasp of just where the global digital platforms fit within both these sectors and the overall network media economy as they become increasingly involved in the aggregation and distribution of media and cultural content. Thus, bringing them together is consistent with our scaffolding approach. Analyzing these emergent sectors of the digital media will also help to shed light on debates between those who have long held up the Internet as an antidote to ownership concentration in the "old media" versus those who claim that core elements of the Internet possess very powerful dynamics that are driving consolidation across the Internet and around the world.

Digital Games

Anchor Findings

- Canada's digital gaming sector is growing fast and is robustly diverse.
- An increasing share of revenue is occurring within Google and Apple's respective app stores but they do not—individually or collectively—dominate the digital games sector.

Although this is the fourth year that we have extended our analysis into this domain, we are still mindful of how difficult it is to obtain consistent, high-quality data for this sector. Nonetheless, we feel that we have sufficient data to tentatively examine developments and the structure of the digital games industries while remaining hopeful that we will be able to improve the analysis as better data becomes available.

The digital games sector has grown rapidly in recent years as part of the burgeoning growth of the digital media sectors. According to a recent Nordicity study prepared for the Entertainment Software Association of Canada (ESA), there were 596 video game companies in Canada in 2017, growing to 692 in 2019.[201]

These revenues derive from a broad array of companies that pursue a diverse mix of business models. While far too numerous to list exhaustively, examples include revenues from:

- subscriptions to gaming platforms (such as, Microsoft's Xbox Live, Sony's Playstation Plus, and Nintendo Switch Online);
- subscriptions to particular games or libraries of games (such as Activision Blizzard's World of Warcraft, Microsoft's Xbox Game Pass service, and Electronic Arts' EA Access service);
- direct-purchase game downloads provided by software publishers (such as Microsoft Halo; Activision Blizzard's Call of Duty, Destiny, Diablo, and Overwatch franchises;

and encourage others to also try to improve the tools available to assess these areas. As we also note above in our discussion of the *Online News Act* and the *Online Streaming Act*, as well as in the penultimate section of this report prior to the conclusion, one common measure in the raft of new Internet services regulation being contemplated by governments around the world is the inclusion of mandatory minimum levels of information disclosure rules for digital media services of the type covered in this section.

201 Nordicity & Entertainment Software Association of Canada. (2021). *The Canadian Video Game Industry 2021*.

Electronic Arts; NFL, NBA, NHL, FIFA, and Star Wars franchises; and Valve's Steam library);

- in-game purchases from both direct-purchase as well as "freemium games" (such as Valve's DOTA, Riot's League of Legends, Epic Games/Tencent's Fortnite; Activision Blizzard's Hearthstone).

In total, we estimate that the digital games sector had revenue of $1.7 billion, over six times its revenue of $280 million a decade ago. Subscription and direct purchase-based games make up a little less than half of that revenue. The other half is captured by app stores, specifically Apple's App Store and Google's Play Store, with the balance tipping further and further in their favour over time.

Thanks to data collected and shared with us by App Studies Initiative researchers at the University of Toronto's App Imperialism research project, we can also look at a more detailed breakdown of individual firms' Canadian gaming revenues derived from within the Apple iOS app store.[202] These data, collected for the years 2015-2017, reveal that the fifty largest firms by app store revenue reflect an international mix of large and small firms, as is the case in the broader sector discussed here.

These data show a significant variance in individual firms' revenues (and their corresponding rankings) from year to year. This likely reflects the "hit-driven" character of cultural products such as video games as well as movies, music and books. In other words, firms operating in these sectors appear to be heavily dependent on the popularity of their products, which can often be ephemeral, and change dramatically from one year to the next.

In 2017, however, the top three firms (Tencent, $31.6 million; Machine Zone Inc, $21 million; and Activision Blizzard, $20.6 million) held a clear leading position in terms of Canadian revenues derived from Apple's iOS app store, a spot they each occupied the year prior as well. The Chinese internet giant and game maker Tencent had the biggest share of the Apple iOS App Store market at 19%, while Machine Zone and Activision Blizzard's market shares were 12.7% and 12.5%, respectively. The nearest firms, including familiar names such as Niantic (producer of Pokemon Go, $9.3 million), Electronic Arts ($6.4 million), and Nintendo ($4.3 million), earned substantial (but significantly smaller) revenues, with 20 of the top 50 earning less than $1 million per year. All told, if we were to treat Apple's iOS app store at that time as a market in itself, it would have a CR3 of 44%, a CR4 of 50%, and low-concentration HHI score of 817.1.

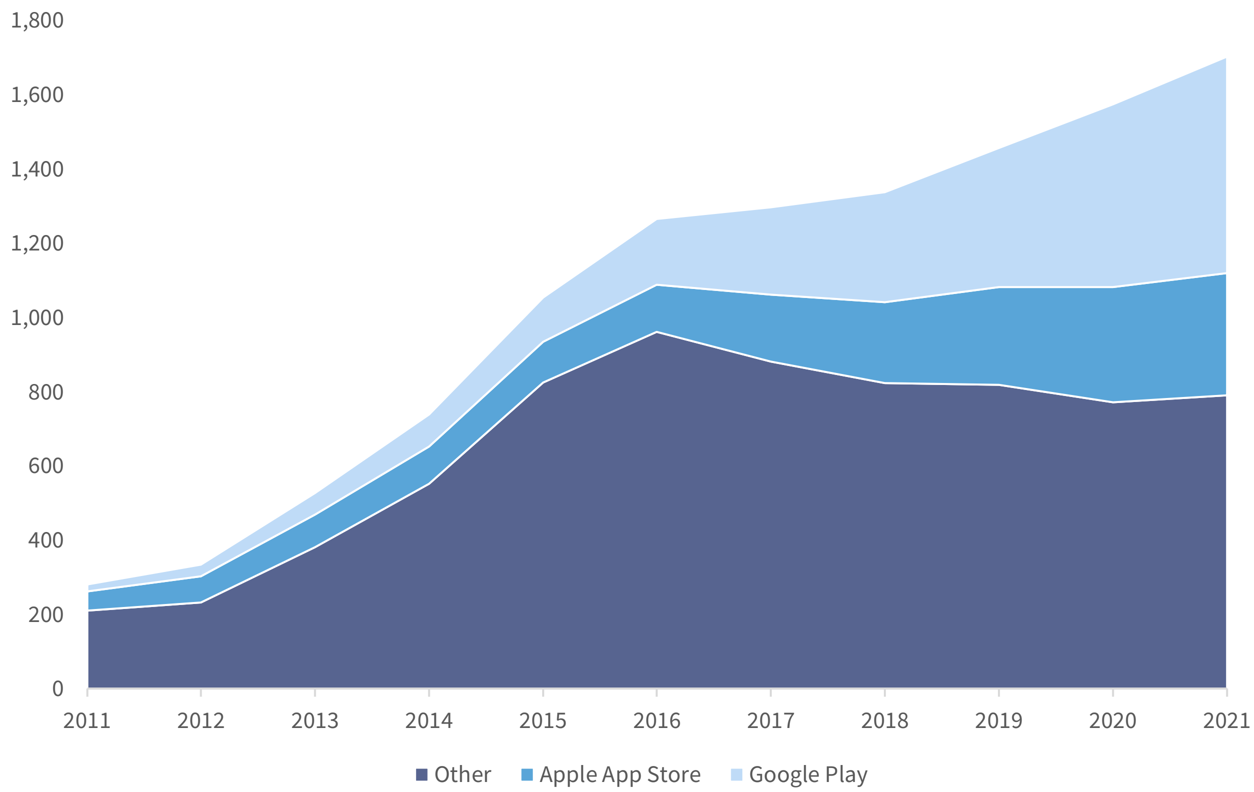
While these figures cannot reliably be generalized beyond Apple's iOS app store due to the complex and diverse characteristics of the digital gaming industry, they serve as the first step, or jumping-off point for more expansive and detailed analysis to be presented in future reports.

Nonetheless, we can say a few things of interest with an eye to helping cut that path for future inquiry of this type. One thing that can be said, is that while the Apple's App Store and Google Play do not—either individually or together—dominate the online gaming sector, they have increasingly become the fulcrum around which the rest of industry has come to revolve. Last year, again, based on our estimates, $330 million and $582 million in revenue from digital games was generated through the Apple App Store and Google Play Store, respectively, in Canada. The App Store and Play Store's share of digital gaming revenue has also grown steadily from one-fifth of this sector's revenue to an estimated 54% of all revenue last year. In the process, the two firm's respective place in the digital games' ecosystem has flipped, with Apple's earlier lead in this domain having been surpassed by Google's Play Store in the mid-2010s. The gap between them widening ever since.

202 Young, C. J., Nieborg, D. B., & Joseph, D. J. (2020). *App Imperialism* [Data set]. Borealis.

Figure 27 below illustrates these points.

Figure 27: The Growth of the Digital Gaming Sector in Canada, 2011-2021 (Millions$)



" **Sources:** see the "Fig 27 Digital Games" sheet in the Excel Workbook accompanying this report and the "Digital Games" sheet in the GMIC Project—Canada open data sets.

Digital Music

As we showed in the first report in this year's series, a decade-long slump between 2004 and 2014 saw combined revenue for all segments of the music industries (i.e. recorded music, online streaming and download services, publishing and concerts) fall significantly. After bottoming out at levels that fluctuated around about $1.6 billion over the 2010-2015 period, however, the tide has turned. Total revenue for the music industries rebounded to $2 billion in 2019, but thereafter was dealt serious blows by the onset of the Covid-19 pandemic, which saw live entertainment and concert revenue tumble as venues for live music shut their doors.

Continued quick growth in subscriber fees to music services and the direct purchase of music downloads through services such as Apple iTunes, Google Play and Spotify as well as a steady and sizeable rise in publishing royalties helped to offset the punishing blows of the pandemic. In fact, digital music subscriptions and downloads services more than tripled in revenue from $226 million in 2015 to $703 million in 2021. Revenue from streaming and download music services now account for close to two-fifths of all music revenue. Add publishing royalties to the mix, and both segments combined now form the centre of the music industries in Canada, with six-out-of-every ten dollars coming from these two areas alone.

The available data does not allow us to estimate revenue share for all of the players within the music industry, but we do have enough to cautiously offer an estimate of revenue for two of the most significant online services: Apple's iTunes and Google Play. They had estimated revenue in Canada last year of $402 million and $218 million, respectively. This translates into a market share of digital music of 57% and 31%, respectively, or about a third of that figure if the music industries are looked at as a whole (i.e. if the live concerts, publishing and royalties, as well as physical sales elements were included).

Overall, the two tech behemoths' share of the music industries have swelled from next to nothing a decade ago to about one-third of all revenue last year. While similar to what our appraisal of the digital games industry looks like insofar that neither Apple nor Google—either single-handedly or combined—can be said to dominate the music industries, it is clear that the music industries increasingly swivel around what these two companies' do. In other words, they, along with streaming giants like Spotify, can probably be considered to form an oligopoly with the potential to set the terms of trade for the distribution of music within Canada and internationally. It is for that reason that they, too, have been swept into the debates over the *Online Streaming Act*.[203]

App Stores

Moving another step up the scaffold to consider app store revenues also reveals explosive growth over time, with estimated app store revenues rising to $2.5 billion last year—up significantly from $2.1 billion a year earlier and double what they had been in 2017. We estimate revenue for Apple's App Store and Google Play to have been $1.1 billion and $1.4 billion, respectively, in 2021.

With 45% and 55% of the app store market split between Apple and Google, respectively, the app store market is a duopoly with sky-high levels of concentration based on an HHI of 5050. This has been the case since such digital intermediaries emerged in the early era of connected mobile and desktop devices. The main notable development over time, and similar to what we observed above in relation to the digital games and digital music sectors, is that Google and Apple's respective positions have flipped in favour of the former.

Before turning to an analysis of the digital media sectors as a whole, and their fast-growing place within the network media economy, the next section reviews conditions in three areas whose fate increasingly turns on broader trends in the digital media economy: newspapers, magazines and online news sources.

203 As noted in our first report, the significant ownership stakes that Sony, Universal and the Chinese "big tech" conglomerate, Tencent, have in Spotify add further to the sense the digital music industries have become highly concentrated over time. Together, they have, more or less, resurrected, in reconstructed form, pattens of industry consolidation that had long prevailed before the digitization of music and the rise of the Internet. Once again, the inscrutability of "big tech" and others in this sector, including the role of Live Nation in concert ticket sales, cries out for reform. Without such reforms, efforts to create wise cultural policy will be next-to-impossible. If nothing else, the mandatory information disclosure obligations of the Online Streaming Act is one thing for which it can be commended (see Wall Communications, 2021, *Study of the economic impacts of music streaming on the Canadian music industry (Report for Industry Canada*) for a good effort to make sense of these developments and dynamics in the Canadian context).

Newspapers, Magazines and Online News Sources

Anchor Findings

- Prior to the collapse of the newspaper advertising model after 2008, Canada's newspaper market had endured a decade-and-a-half of consolidation and three decades of falling circulation.
- Over the last decade-and-a-half, local and regional newspapers have been swapped, spun-off and shuttered, initially amongst the big national players and, more recently, between regional press groups, but both with the goal of creating regional monopolies across the country.
- The Federal Government has stepped in to provide financial relief and encourage the development of non-profit journalism organizations, and these are beginning to have some positive effects, but it remains unclear if these recent developments will have a significant impact on the structure or sustainability of Canada's newspaper market in the years ahead.
- Two cross-cutting realities are true at the same time: Canadians increasingly obtain their news from a wide diversity of online news sources, both traditional and new, domestic and international, but the news media is becoming increasingly "platform dependent" in terms of access to audiences, the distribution of revenue, marketing and knowledge about the people and audiences they serve.

This section focuses on two media that have depended primarily on advertising revenue for the last century: newspapers and magazines. As the first report in this year's two-part series showed, as with broadcast television, these two media sectors are in crisis, with their revenues falling fast and a myriad of other tell-tale signs of crisis.

Attention in this section will be focused on the state of the newspaper industry but before turning to that, we present a few brief observations on the magazine sector. Like newspapers, magazine advertising and circulation revenue has collapsed, falling from $2.4 billion at its peak in 2008 to $1.1 billion last year. In the past few years, this trend has also triggered a major bout of industrial restructuring, with the leading magazine publisher since 1994, Rogers, vacating the field after selling off a fleet of its mastheads to Quebec-based Transcontinental in 2016 and the rest of its titles to St. Joseph's Publishing in 2019.[204]

In terms of market structure, magazines have been the least concentrated of all media sectors that we cover since the early 1990s. Concentration levels fell by nearly half on the basis of CR scores between the early 1990s and 2021, with the share of the top four magazine publishers hovering in the 20-40% range for the last two decades. The CR4 last year was 22, and the HHI at the extremely low level of 115—a fraction of what it was at its high point in 1988 (2,315)—driven down in the recent years by Rogers exiting the field and two publishers—Transcontinental and St. Josephs—taking its place. That said, however, even the best available data for this sector is unreliable and needs to be treated with caution.[205]

Returning to the newspaper sector, prior to the economic woes that began to beset the industry a decade-and-a-half ago, concentration levels had risen steadily from 1984 until 2000, with a few breaks along the way. In 1984, the biggest four groups accounted for nearly two-thirds of the industry's revenues, a number that stayed relatively steady before bouncing up to 70% in 1992 as a significant new player began to acquire a series of regional papers across the country: Conrad Black's Hollinger Newspapers. Concentration levels rose sharply to 80% over the rest of the decade as Black took over the Southam newspaper chain and Quebecor added the Sun stable of broadsheets in a half-dozen cities to the two daily papers that it owned in Quebec (*Journal de Montréal* and *Journal de Québec*).

The Hollinger chain of papers was sold to Canwest in 2000, but that company's struggles were already visible as it spun-off several newspapers within a few years. That process gave rise to several new regional press groups and served to increase ownership diversity, but it was already a tell-tale sign that the excesses of highly leveraged buy-outs were taking a toll on the most important newspaper publishers in Canada. Some of those new groups, notably the Osprey group of newspapers in Eastern Ontario and Quebec, were short-lived and brought back into the fold when acquired by Quebecor (2007). Other regional groups were also amalgamated under single owners (e.g. Glacier Media and Black Press). By 2010, the four largest newspaper ownership groups controlled 83% of the market—the highest ever for the period covered by our research: Postmedia (24.2%), Quebecor (23.7%), Torstar (23.2%) and Power Corp/Gesca Media (12%).[206]

As the economic crisis gripping the industry deepened due to the triple-knuckled blow of excess consolidation, bloated debt, and floundering circulation and advertising revenue, some of the press groups that were in trouble, notably Postmedia, Power Corp (Gesca), Quebecor and Transcontinental, once again spun-off some of their local and regional newspapers. As daily and weekly community newspapers were swapped at a brisk pace, and with scarcely any regard for the importance of public interest-oriented journalism, several of the mid-size ownership groups formed over the previous decade took advantage of the situation to create a series of contiguous, regional newspaper monopolies in one area of the country after another. In other words, while newspaper concentration fell at the national level, it was being reassembled at the regional and local level.

This pattern of newspapers swaps, spin-offs and sales was punctuated in November 2017 when the two biggest newspaper chains—Torstar and Postmedia—announced a major deal to swap forty-one

204 In the first transaction, Rogers sold seven business-to-business specialty magazines: *Advisor's Edge and Advisor's Edge Report*, *Conseiller*, *Le journal du Conseiller*, *Benefits Canada Advantages*, *Canadian Insurance Top Broker*, *Canadian Investment Review*, and *Canadian Institutional Investment Network*. In March 2019, it sold the last of its magazines—7 in total, including *Maclean's*, French and English versions of *Chatelaine*, *Today's Parent*, *Hello*, *Flare*, *Canadian Business*.

205 See the "Magazine" sheet in the GMICP Workbook—Canada.

206 See the "Newspaper" sheet in the GMICP Workbook—Canada.

newspapers, most of them community papers, thirty-seven of which were immediately shut down.[207] The companies' newspaper swap also effectively divided the province of Ontario into two zones of mutual exclusivity, or regional monopolies. While the Competition Bureau had sat idly by on each of the previous occasions, this time it seemed to swing into action to investigate potential collusion and anti-competitive behaviour.[208]

The passage of time, however, reveals that interest to have been fleeting, given that there has been no forthcoming action from Canada's competition regulator since then. The upshot of this pattern is that several regional press groups have been consolidated across the country, each with a de-facto monopoly in their territory.[209] Others, such as Transcontinental, have abandoned the field altogether. In August 2020, Torstar was sold to NordStar Capital, and was taken private, a phenomenon that has already made it harder to track and compromised the quality of data needed to keep tabs on the state of the press in this country. Still others have become paler versions of their former selves, i.e. Quebecor and Power Corp, although Quebecor continues to own the influential *Journal de Montréal* and *Journal de Québec* while Power Corp has transformed its earlier ownership of *La Presse* into an independent, non-profit public trust, with the prospect that it will help to lead the way for a new era in which non-profit journalism plays a bigger role than it has in the past. Both of these newspaper groups continue to be highly influential with respect to politics in Quebec and other French-speaking parts of Canada, and by extension, the national political scene.

While there has been consolidation at the regional level, the overall trend over the past decade has been for national concentration levels to fall. The CR4, for example, has fallen from 83.1% in 2010 to 54.3% last year, with concomitant declines in the HHI.

The Postmedia group of daily and community newspapers is the largest newspaper ownership group in Canada and has been so since acquiring the newspaper division from Canwest when that company went bankrupt in 2009/2010. Postmedia's grip had slipped from nearly a quarter of the national market share in 2010 to less than a fifth by mid-decade, but it restored that lost market share by acquiring the Sun newspaper chain in 2015 and via the newspaper swap with Torstar just described. By 2021, its share of the much-diminished newspaper market had risen to 23.2%, a figure that will likely rise a small amount in the years ahead on account of Postmedia's acquisition of the Brunswick News chain of papers this year from the Irving family-controlled diversified conglomerate, J.D. Irving, Ltd.

The fundamental reorganization of the newspaper industry just outlined has proceeded over the years with hardly any notable intervention from the Competition Bureau.[210] As signs after the Postmedia/Torstar newspaper swap in 2017 that it might swing into action drift into the past, the Bureau's long and uninspired track-record of inaction stands as a monument to remind us of Canadian regulators' hesitance to interrupt media owners' prerogatives and so-called market forces. In the meantime, yet another media industry fundamental to democracy remains in distress, with no clear relief on the horizon.

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207 Watson, H. G. (2017, November 27). *Here are some of the 290 staff laid off today by Torstar and Postmedia*. J-Source.

208 Competition Bureau. (2018, March 12). *Statement from the Commissioner of Competition regarding searches in the greater Toronto area* [Statements]; Jackson, E. (2018, March 23). Competition Bureau's concerns over Postmedia-Torstar newspaper swap revealed in court filing. *Financial Post*.

209 See: Black Press and Glacier media in British Columbia, Torstar and Postmedia's community papers in southwest and northeast Ontario, respectively, ICI, Groupe Capitales Médias, Group Lexis Media and Raffoul Media in parts of Quebec and eastern Ontario, and Saltwire in the Atlantic Provinces.

210 Edge, M. (2016). *The News We Deserve: The Transformation of Canada's Media Landscape*. New Star Books; Edge, M. (2018, January 1). Year of reckoning looms for Canada's newspapers. *The Conversation*. See both for the best accounts of these processes and the issues they raise.

That said, the Federal Government injected $595 million in subsidies running from the 2019-20 fiscal year to 2023-24. These funds are over and above the $70 million provided by the Federal Government through the Local Journalism Initiative over the same period.[211] Part of the funding from the federal government's Supporting Canadian Journalism program, as discussed in more detail in our first report, is in the form of tax rebates to readers on the cost of subscriptions. Another part is to offset the cost of news production by paying for up to a quarter of full-time journalists' salary.

The measures also brought about a later round of changes to laws that govern charitable giving so as to entice philanthropists to support non-profit journalism. This met the call of Professor Robert Picard and colleagues at Oxford University's Reuters Institute for such measures.[212] So far, this change has had a modicum of success by fostering both the creation of new outlets and the conversion of for-profit newspapers to non-profit status, as was the case with, most notably, *La Presse*. Altogether, there are now eight non-profit journalism organization that have emerged in the wake of these changes, again as discussed in our first report.

Over and above recent public funding in support of both commercial and non-profit journalism, Google, Facebook and Apple News+ have also increased commercial and patronage payments to news organizations as they seek to cultivate goodwill and stave off the threat of new legislation, as represented most notably by the *Online News Act* discussed above. Altogether, this mixed set of policy tools, commercial payments and patronage from the multinational technology giants, combined with greater media advertising spending by all levels of government during the Covid-19 pandemic onn public health messaging have staunched the hemorrhaging of revenue that has roiled the press for the past decade-and-a-half.

Whether this raft of measures will continue to be on offer, or achieve their goal beyond the short-term, it is still early to tell. However, it is already clear that they are contributing to a structural transformation of the press from an exclusively commercial focus to one in which non-profit journalism plays a more significant role. The increased diversity of journalism models that have emerged is also being matched by a decline in press concentration The idea that such measures violate the tenets of the liberal free press, however, is flat out wrong, for reasons discussed in our first report and as communication and media historians have noted for a very long time.[213]

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211 Government of Canada (2018), Equality and growth, a strong middle class (Federal Budget), pp. 181-183.

212 Picard, R., Belaire-Gagnon, V. & Ranchordás, S. (2017). *The impact of charity and tax law/regulation on not-for-profit news organizations*. Oxford, UK: Reuters Institute.

213 See, for example, John, R. & Silberstein-Loeb, J. (Eds.) (2015). *Making news: the political economy of journalism in Britain and America from the Glorious Revolution to the Internet* (pp. 196-222). London, UK: Oxford University; McChesney, R. W., & Nichols, J. (2010). *The Death and Life of American Journalism: The Media Revolution That Will Begin the World Again*. PublicAffairs. Pickard, V. (2019). *Democracy without journalism*. London: Oxford University. Also, see our first report in this year's two-part series where we elaborate on this point.

Internet News

Anchor Findings

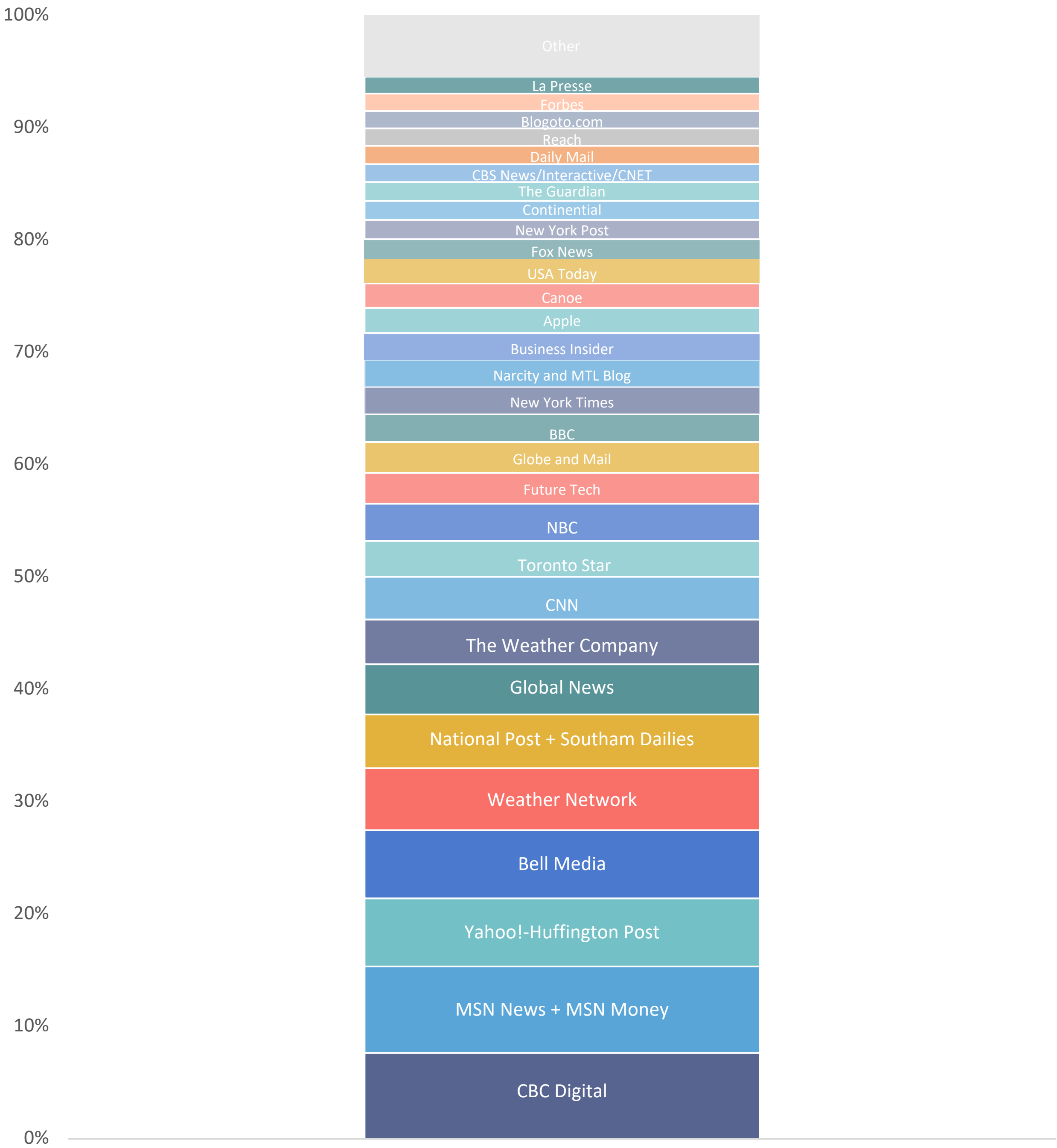
- While the crisis of journalism is far from abating, there is some glimmer of hope visible in the extent to which people are accessing a diverse set of online news sources, but with some truly new players still struggling to unseat the agenda-setting power of established Canadian and international media.
- That no new start-up journalistic ventures register amongst online sources with one percent or more of unique monthly visits to news sources, however, suggests caution when celebrating the small victories that these ventures represent.
- Conversely, that unreliable and propagandistic news sources such as Rebel.com, *The Epoche Times*, Breitbart, etc. do not register amongst online sources with one percent or more of monthly visits to news sources indicates that their reach is less than often asserted or implied.
- The decline of online newspaper advertising revenue since 2018, however, suggests worrisome prospects for the newfound diversity in online news sources.

As previous versions of this report have indicated, online news services have always been an exception to the moderate- to high-levels of concentration found elsewhere across the media landscape in Canada, and especially in terms of online audiovisual media. They still are. During the first decade of the 21st century, the diversity of online news services initially fell as the amount of time people spent on the top 10 online news sites jumped from 20 to 38 percent of the total time people spent at online news sources. Moreover, most of the increase in time that people spent visiting online news sources went to sources that were extensions of well- known news media outlets.[214] While there was a "pooling of attention" on the top dozen or so news sites, concentration levels nonetheless remained low.

The downward drift in concentration levels with respect to online news sources that people turn to has continued since that time. In fact, Internet news sources continue to be amongst the most diverse of all the sectors reviewed in this report, except magazines. Figure 28 below illustrates the point for 2021.

214 At the time, the main online news sources that people in Canada turned to included: CBC/Radio Canada, Quebecor, CTV, the *Globe & Mail*, *Toronto Star*, Post Media and Power Corp from Canada or foreign sources such as CNN, the BBC, Reuters, MSN, Google and Yahoo!

Figure 28: Internet News Sources—Share of Average Monthly Users, 2021



CR 4	27.5
HHI	400.3

Sources: see the “Fig 28 Internet News” sheet in the Excel Workbook accompanying this report (based on Source: Comscore Media Metrix Multi-Platform Canada, News/Information Category, Sept. 2021-May 2022 Monthly Avg).

> “ The “crisis of journalism” is important because the traditional news media continues to set the agenda for the rest of the media.

As Figure 28 shows, Canadians get their news from a wide range of sources on the Internet, including familiar news media organizations such as the CBC, CTV, Postmedia, Corus, the *Toronto Star* and *The Globe and Mail*, along with weather reporting services, aggregators like MSN News, Yahoo!-Huffington Post and Apple News+, as well as mainstream U.S. and U.K. outlets like NBC, the BBC, *The Guardian*, *USA Today*, *The New York Times*, and so forth.

While there are many new news media outlets trying to find their footing, the reality is that none of these new ventures has yet to register significantly in the public mind.[215] The exception to this is the occasional path breaking intervention others have neglected (e.g. the Jian Ghomeshi story, the Snowden disclosures, and Canadaland’s breaking of stories regarding unsavoury interactions between key figures in the Liberal Government and the WE charity, among others). This implies that news sources that originate on the Internet account for under one percent of Internet news audience. As such, it is fair to conclude that they speak to tiny, specialized audiences.

While that is disappointing from the standpoints of news diversity and influence, another upshot of what we do not see on this list of news sources people turn to online is that dubious potential sources of information and commentary, such as Rebel Media, *The Epoche Times*, America One, Breitbart, and others on the far right do not appear to have any traction either. These sources can be called dubious because they refuse, and indeed, flaunt their refusal, to follow the professional conventions of independent journalism such as fact checking, publicly acknowledging mistakes and correcting them, drawing on a reasonably wide range of credible sources, seeking to promote understanding rather than a particular point of view or political agenda, citing and connecting to other sources, including those with contrasting views and accounts of events, and so forth.[216]

In fact, this evidence suggests that traditional news organizations are still the most important sources of journalism in the network media economy and have remained so for a very long time. However, those sources also exist in a networked relationship to other sources, online and off, to form a web of connections rather than standing as discrete entities on their own. These sources also continue to originate more stories that the rest of the media pick up, and for these reasons, the problems besetting the press pose significant problems for the media, citizens and audiences generally.

Indeed, the “crisis of journalism” is important because the traditional news media continues to set the agenda for the rest of the media. Online news sources have not come anywhere close to picking up the slack, and it is increasingly doubtful they ever will. This is not to say that they are unimportant but rather to acknowledge their limits and focus attention on the need for measures to shore up the faltering news system that remains indispensable to democracy. If we are keeping a running tally for-and-against the *Online News Act*, this can be marked down as being in favour of the bill.

215 See: the *National Observer*, *AllNovaScotia*, *The Tyee*, Canadaland, *Blacklock’s Reporter*, *The Logic*, etc.

216 On this point, see Benkler, Y., Faris, R. & Roberts, H. (2018). *Network propaganda: Disinformation, manipulation, and radicalization in American politics*. New York: Oxford University.

Digital Media Services (Media Content): Growth, Diversity and Consolidation

Anchor Findings

- Total revenue for the digital media sectors soared to $18.2 billion last year, widening the gap with the traditional content media sectors after surpassing them two years ago.
- While it was once fervently believed that the Internet would be immune to high levels of concentration, all but three of the core sectors of the Internet and digital media services—online video services, online news sources and digital games—have astonishingly high levels of concentration.
- Collectively, the global Internet giants' revenue from Canada rose to $14.9 billion last year—a sum equal to half of the combined revenue across the "legacy" and "digital" media markets.[217]

This section draws together all of the digital media sectors covered in this report—Internet advertising, online video, digital games, digital music services and app stores—into a composite view of the digital media sectors as a whole. Again, this is in line with the scaffolding method that we use where individual sector-by-sector analysis are successively folded into larger groups of similar media and, ultimately, into a single, integrated portrait of the network media economy as a whole.

It is obvious that the digital media sectors are becoming increasingly prominent. Total revenue reached an estimated $5.9 billion last year, without Internet advertising, and $18.2 billion once it is included. This was double what it had been just four years earlier and close to thirteen times what it had been a decade ago.

Once we open the lens even wider in order to examine all of the audiovisual media services—that is, both traditional and digital content media sectors—it is clear that the rapid growth of the digital media sectors is changing the media content landscape dramatically. Combined revenue across all media content sectors— including both digital and traditional—reached $30.2 billion last year—up greatly from $20.1 billion a decade earlier.[218]

The vast expansion of the digital media sectors has also allowed major global actors like Google, Amazon, Facebook, Apple and Netflix to make ever deeper incursions into the media landscape in Canada. Of course, these sectors are the home base of the global Internet giants' operations. But have they cornered the digital media landscape, as so many critics contend?

To many observers, the answer is an easy "yes"! Compiling the evidence from the individual sectors that we have presented so far, that answer seems to make sense: Google dominates desktop search (92% market share) and mobile search (97.2% share); Google's Android and Apple's iOS mobile operating

217 Includes estimated revenue for GAFAM, Netflix, Snapchat, Twitter and Tiktok.

218 This includes cable TV, broadcast TV, pay TV, online video, music and digital, app stores, Internet advertising, newspapers, online news and magazines. The "recorded music" and "live performance" aspects of the music sector are excluded because there is insufficient data on these two sectors.

> Google and Facebook dominate online advertising with a combined market share just shy of 80%, and their dominance of this market has only been consolidated over time.

systems split the market between themselves. The two companies also form a duopoly when it comes to online App Store revenue: Apple's App Store and iTunes account for close to half of the estimated $2.5 billion for app stores (45%), while Google Play takes up the rest.[219] And of course, Google and Facebook dominate online advertising with a combined market share just shy of 80%, and their dominance of this market has only been consolidated over time, although Amazon's rise in the last three years as a significant third player suggests that the digital duopoly may be morphing into a tight, three-way oligopoly.

In the online video services sector, Netflix is still the largest service provider in Canada and internationally, although its dominance has steadily eroded over time. Yet, consider the next in line after it. Crave is the online video service of Canada's largest communications and media conglomerate. The next most significant online video services are the well-known faces drawn from either the classical Hollywood System—Disney+ and CBS All Access, for example, or from Silicon Valley, i.e. Google's YouTube Premium, Amazon Prime Video or Apple's Apple TV+ and iTunes offering. Thus, even here, where the case is the weakest with respect to claims about digital monopolies, oligopolies, or dominance, only a small number of traditional media, big tech, or domestic communications conglomerates that hold sway.

Apple's App Store and Google's Play Store have also become central players around which the digital music, digital games, and app store markets swing, albeit in each case with a handful of other major domestic or international players such as Spotify (Music), Universal (music), Sony (music and games) and the Chinese "big tech" conglomerate, Tencent (Music and Games). There is a clear pattern here, and that pattern is on of a "clash of titans" when it comes to aggregating and distributing television and film content, digital games, and digital music direct to people over the Internet.

The precise shares that any of the international diversified digital conglomerates or this other collection of corporate interests holds in any one of these areas continues to fluctuate over time.

219 A word of caution once again that the available information from Google and Apple upon which this estimate is based is limited. We explain how we arrived at this estimate in the notes to the "App Distribution" sheet in the GMIC Project—Canada open data sets. The lack of information and insight into these companies' operations is a strong reason why digital market regulation is needed and why any efforts to do so must include robust, mandatory data disclosure obligations. The inscrutable character of both "big tech" companies and Canadian communications and media companies is a significant problem in terms of public knowledge and public policy.

Typically, however, the pattern is of duopolistic rivalry between, most notably, Google and one other player, whether that is Apple in operating systems, app stores and browsers, or Facebook in online advertising, for instance.[220] To be sure, Google and Apple do battle amongst themselves for market share, and in that battle, their positions have typically flipped over the past decade, with Google's Playstore gaining the upper hand over Apple's App Store. However, these are further examples of a clash of titans rather than a competitive marketplace.

In light of these patterns and tendencies, reality conforms well to the second school of thought that we sketched early in this report—namely, the 'creative destruction' theoretical perspective inspired by Joseph Schumpeter in the mid-20th Century. In the vast majority of these cases as well such patterns of dominance have also been deepened and locked in for a decade or more. Facebook's dominance of social media services has been an excellent example of this, given that its share of visitors to such services has hovered between half- and three-quarters of social media traffic for a decade. Recent problems at the iconic social media platform do, however, raise the prospect that such tendencies and recurring patterns, while strong, are not iron-clad.

It is just such realities that have drawn regulators' scrutiny, although mostly in the United States, Australia, the United Kingdom, France, Germany, the Netherlands as well as from the European Commission.[221] As a result, the option is now on the table that app stores, for example, are next up in the regulation of digital markets to address claims that Google's Play Store and Apple's App Store set unfair terms of trade with the third-party music, gaming, video, and news services that rely on them for access to consumers.[222] These realities are in keeping with our observations so far that, far from being immune to high levels of concentration, core sectors of the Internet are characterized by astonishingly high and stubborn levels of concentration. In fact, there were only three exceptions to this tendency in 2021: online video services, online news and digital games.

Returning to the focus on the companies active in these sectors, the combined revenue of the "big six" multinational digital conglomerates—Google, Apple, Amazon, Facebook, Microsoft and Netflix—from the media related activities in Canada has soared over time. Last year, they had a combined total of $14.5 billion in revenue in Canada—a sum equal to 48% of the $30.2 billion in revenue across the digital and legacy media markets examined in this report. Including second tier of firms such as Snapchat, Twitter, and Tiktok into the mix adds close to another half billion dollars in revenue to the total and pushes their combined share of revenue for digital and legacy media in Canada to fifty percent.

If we look just at Google for a moment, it had total estimated revenues of $6.9 billion from online advertising, the Google Play Store, and YouTube Premium last year, and single-handedly accounted for close to one quarter of the revenue from the media content side of the network media economy.[223] All told, by 2021, Google had become the fourth largest company to operate in Canada's network media economy. A decade ago, it had just cracked the ranks of the top ten.

Figure 29 below summarizes the Canadian revenues of the international Internet companies last year.

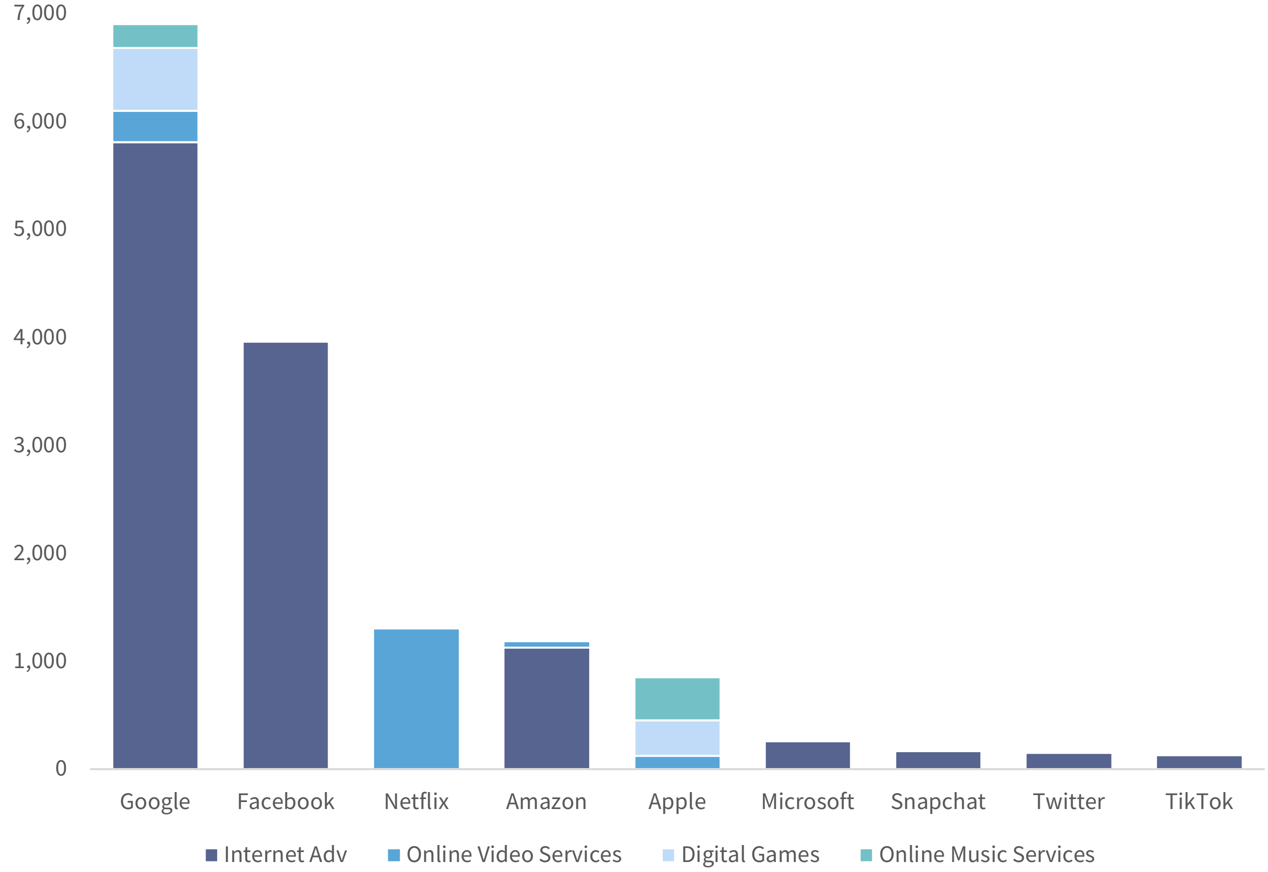
220 Data from StatCounter. *Global Stats* (Various Years).

221 See See Winseck & Puppis (unpublished, nd) for an ongoing tally of these inquiries, regulatory and legal rulings, and legislative proposals.

222 Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production* offers some pathbreaking analysis and discussion of these developments and their implications for the cultural industries.

223 See the individual sheets for "Online Video Services", "Internet Advertising" and "App Distribution" to see how we arrived at these estimates and the compilation of these revenues in the "Top 20 Coms Cos+GAFAM" in GMICP Workbook—Canada.

Figure 29: Total Revenues of the Global Internet Giants in Canada, 2021 (Millions$)

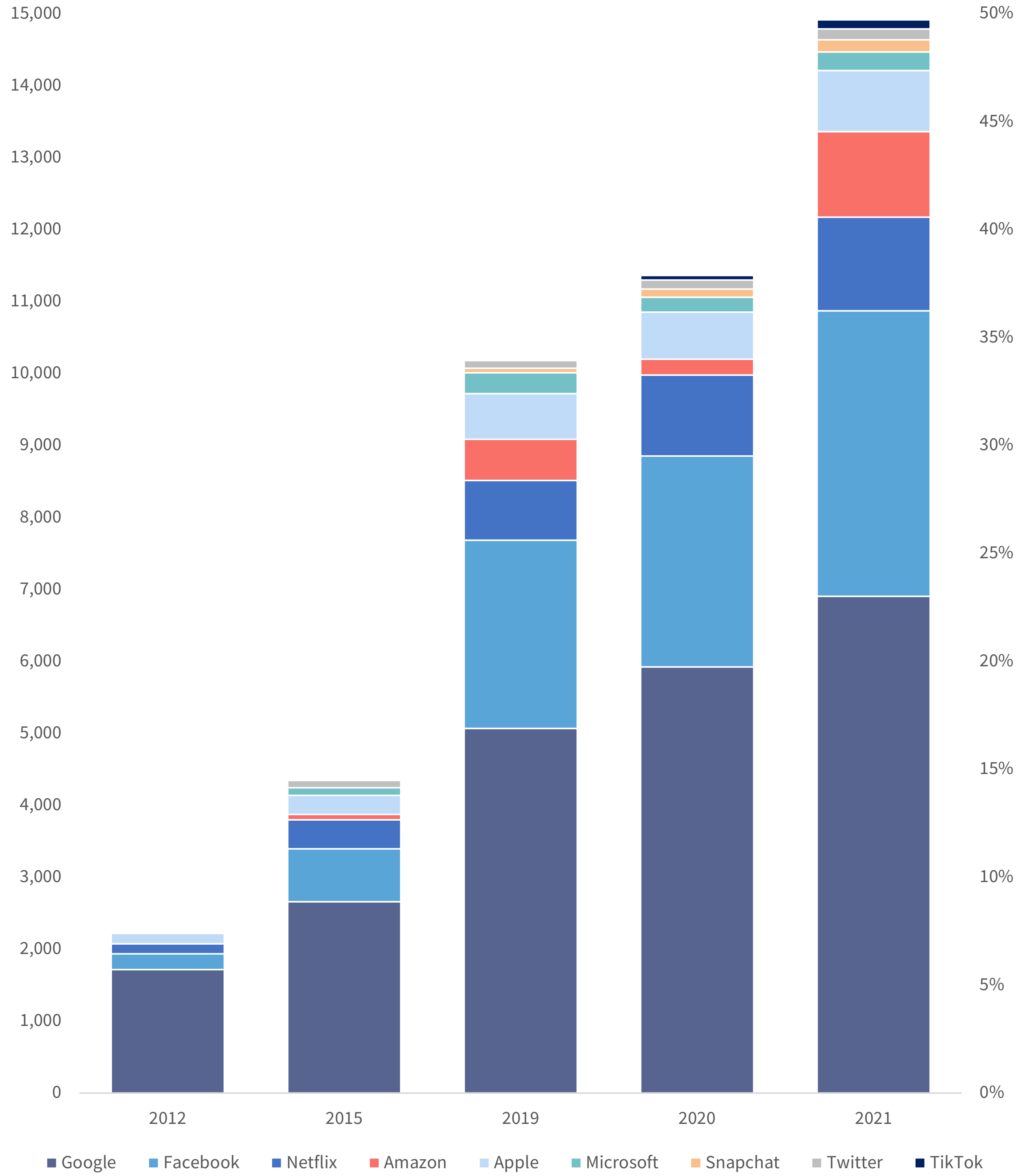


Sources: see the "Fig 29 GAFAM$" sheet in the Excel Workbook accompanying this report and the "Internet Advertising", "Online Video Services", "Music Services" and "Digital Games" sheet in the GMIC Project—Canada open data sets.

> "Far from being immune to high levels of concentration, core sectors of the Internet are characterized by astonishingly high and stubborn levels of concentration.

The next figure illustrates the growth of the digital media sectors as well as the respective revenue and market share in Canada of these firms from 2011 to 2021.

Figure 30: Global Internet Giants' Share of the AVMS Sectors of in Canada, 2012-2021



Sources: see the "Fig 30 GAFAM Share of NME" sheet in the [Excel Workbook]() accompanying this report and the "Internet Advertising", "Online Video Services", "Music Services" and "Digital Games" sheet in the [GMIC Project—Canada open data sets]().

The information presented in Figure 30 shows that the digital media sectors have grown by leaps and bounds. It also reveals that the international Internet firms' share of these media sectors has catapulted from next-to-nothing a decade ago to 49% last year. As such, there is no doubt that Canadian companies are facing intensifying competition on many fronts.

The knife, however, is not all to one side. For example, let's return to the observations we made earlier with respect to the growing convergence and competition between digital platforms such as Google YouTube, Apple TV+ and Amazon Prime Video that aggregate and distribute video services direct to consumers over the Internet, on the one side, and traditional BDUs, on the other, such as Bell, Rogers, Shaw and Vidéotron.

Seen from this angle, the big four Canadian communications conglomerates—Bell, Rogers, Shaw and Vidéotron—had combined revenue of just over $6 billion and a market share in this hypothetical, hybrid BDU market in 2021 of 72.6%. In contrast, Google's YouTube Premium, Apple TV+ and Amazon Prime Video had combined revenue of less than half-a-billion dollars last year and a market share of 5.7%. In other words, the Canadian vertically-integrated communications and media conglomerate's had combined revenue and market share nearly thirteen times that of the online video aggregators and distributors based on the operations in Canada. Moreover, this yields a CR4 of 72.6% and an HHI of 1,635, the latter of which sits at the low end of the moderately concentrated zone based on this measure. Moreover, these figures have been going down as the international, big tech companies' expand the scope of their offerings in this country.

Next, let's scaffold up from there to combine this hypothetical hybrid-BDU market with the "total TV market" (i.e. broadcast television, pay TV and online video services), and the result would be a $18.2 billion market. Seen from this angle, the big four Canadian communications and media conglomerates would have combined revenue of $12 billion and a two-thirds share of the market. The international digital conglomerates' stake would be much more modest market share of 2.6%. Based on this definition of the television marketplace, the HHI last year would be 1,250, which implies a highly competitive and diverse market.

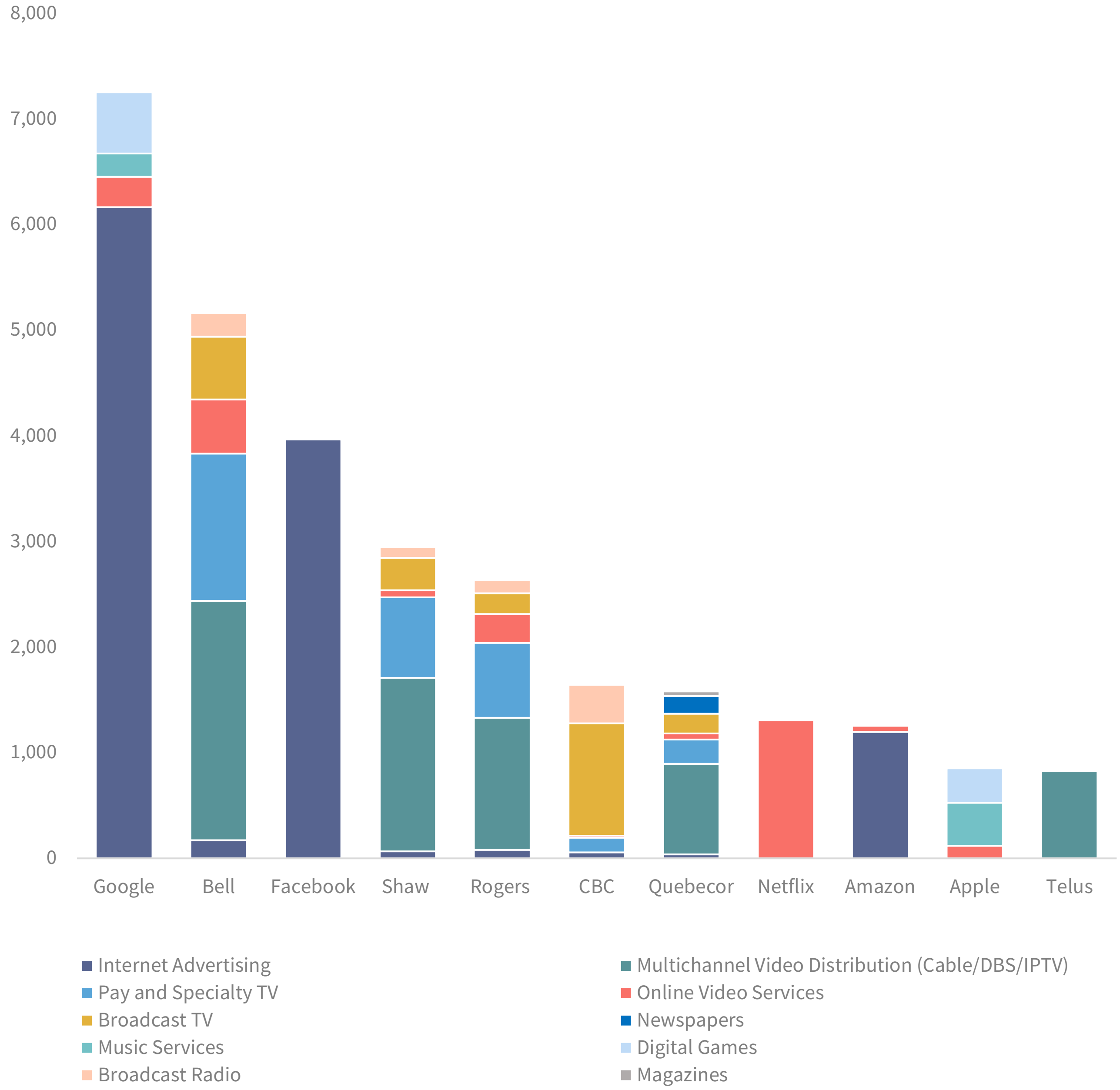
To put this another way, looking at both the television distribution and the programming services aspects of the market in a holistic way reveals that while the international players have become more significant, they still account for a small proportion of the total market. By no stretch of the imagination can they be seen to be dominating the market. Instead, they have given audiences as well as programming services more competitive and diverse options to choose from.

Similar conclusions follow when we scaffold up yet again to take an integrated and holistic view of all "legacy" and "digital" media content sectors covered by our research. Doing so reveals that, based on their revenue from these sectors alone, the top four companies—i.e. Google, Bell, Facebook, and Shaw, in that order—combined accounted for one-half of all revenue in the media content markets in 2021. That result, in turn, is just over this measure's threshold for a concentrated market but still low compared to almost all of the other media sectors covered in this report. The HHI score of 804 is at the very low end of the scale. This points to a market that remains highly competitive and diverse.

In addition, while Google alone accounts for 18% of all revenue across the media content side of the network media economy and is the biggest company operating in these sectors, the reality is that, combined with Facebook (ranked #3 across the content media sectors), Netflix (ranked #8), Amazon (#9), Apple (#10) and Microsoft (#17), the GAFAM + Netflix group still accounted for just less than two-fifths of the market based on revenue. Include Disney (#14) and CBS-Viacom (#16) in the picture does not change the story. Domestic communications and media companies account for rest. This is particularly significant given that these sectors are often held to be the most significant in relation to issues of culture.

Figure 31, below, depicts the rank ordering and relative scale of the leading players in the AVMS sectors in Canada in 2021.

Figure 31: Leading Companies in the Audiovisual Media Sectors in Canada, 2021 (Millions$)



Sources: see the "Fig 31 GAFAM$" sheet in the Excel Workbook accompanying this report and the corresponding sheets for each sector covered in the GMIC Project—Canada open data sets.

All of this said, it must be recognized that the kind of analysis and argument just offered in *no way* implies that the status quo is just fine or that we do not need a new generation of Internet regulation to deal with the fact that international digital and legacy media companies are now key players in Canada, yet we have little insight into them and they have little accountability to Canada. This is the underpinning motivation behind legislative proposals like the *Online News Act* and the *Online Streaming Act*. While the specifics of those acts, and the typical justifications made for them based on hyperbolic claims about the existential crisis of journalism, the broader cultural industries and democracy are, in this writer's view, badly flawed, the idea that with great power comes corresponding obligations and responsibilities to serve the public interest is one I fully agree with.

The Network Media Industries as a Whole

Anchor Findings

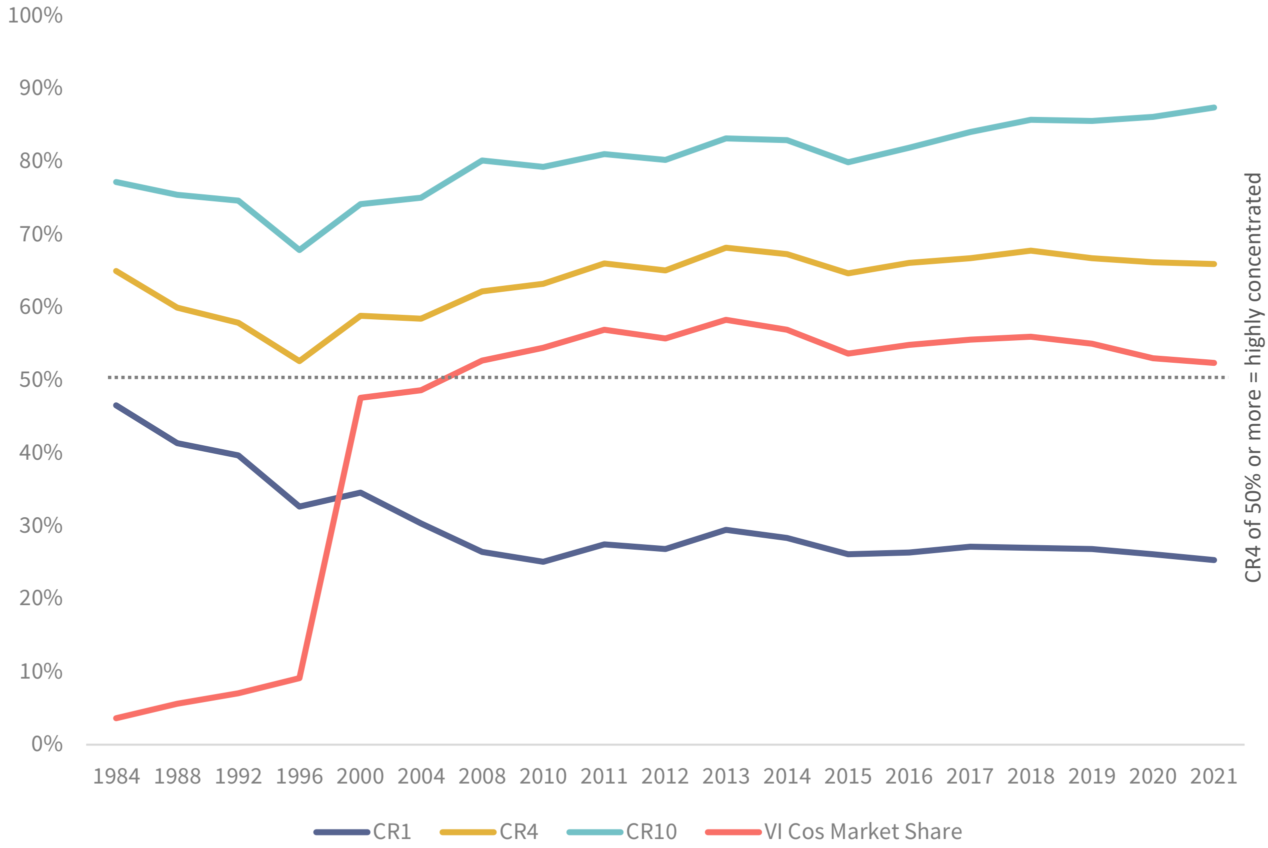
- Last year, the "big six" US-based Internet giants—Google, Facebook, Netflix, Apple, Amazon and Microsoft—had total combined revenue from their media-related operations in Canada of $14.5 billion, adding up to a 15.3% share of all revenue across the network media economy.
- BCE's revenue of $23.6 billion in 2021 means that it single-handedly accounts for one-quarter of all revenue for the network media economy.
- Bell, Rogers, TELUS Shaw and Quebecor accounted for 67.3% of all revenue across the network media economy in 2021, more than four times the revenue of Google, Facebook, Netflix, Apple, Amazon and Microsoft, combined.

It is *essential* to get the measure and critique of the Internet giants' place within the domestic network media economy in Canada right, and to do so in a way that neither exaggerates their scale, scope and clout *or* makes a mole-hill out of a mountain.

Once we look at the whole of the network media economy, two key things stand out from our two reports this year. First, the network media economy has grown immensely over time, and become significantly more complex as both wholly new sectors of the digital media and new, international based actors carve out an ever bigger place for themselves. Second, there is no one-size-fits-all answer to our starting question: i.e. have the media—individually and collectively—become more or less concentrated over time. The answer to that seemingly simple question is, in fact, complicated and mixed.

Figures 32, below, starts summarize the results of our findings this year by showing the trends across the network media economy over time on the basis of CR1, CR4, the vertically-integrated companies' market share and CR10 scores.

Figure 32: CR1, CR4, Vertically-integrated Companies' Market Share and CR10 Scores for the Network Media Economy, 1984-2021



Sources: see the "Fig 32 CR1, 4 & 10" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

Looking at the structure of the industry as a whole, three developments over the past forty years and, especially, the last decade-and-a-half, stand out.

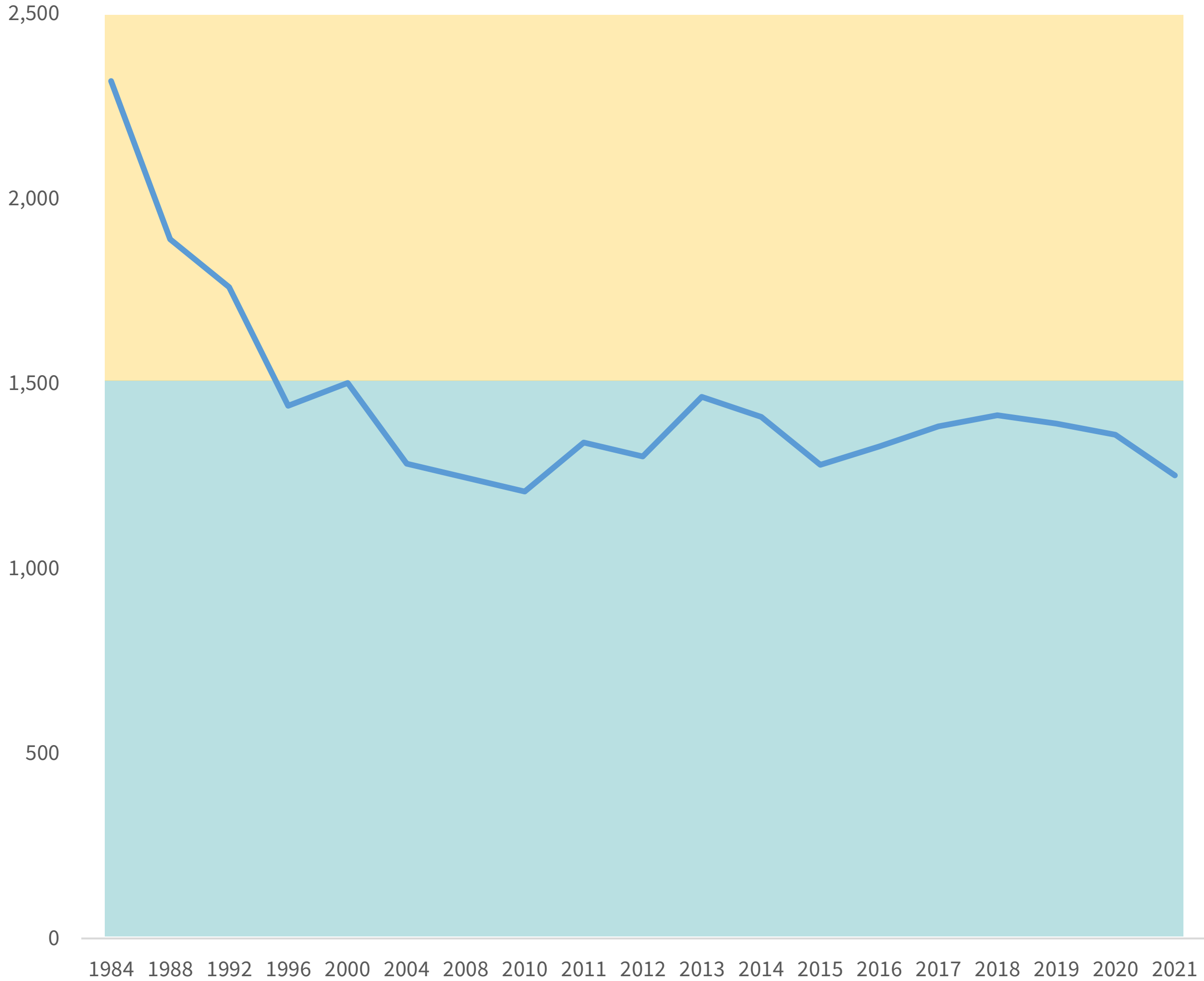
1. The big get bigger but in a much bigger universe while changes in concentration levels over time are mixed

The first major development is the rise, diversification and role of the big Canadian companies. As denoted by the CR 1 line in Figure 32 above, the biggest company's share of revenue across the media in the 1980s was 47%; by 2021, it had fallen to 25%, although within a vastly larger media universe. In 1984, that company was BCE. Today, Bell is still the largest company in the network media economy, by far. Although it has a much smaller stake now than it did then in relative terms, in absolute terms, it is a vastly larger and more diversified company operating in a much bigger media economy than it has ever been. It is also considerably larger than the next four largest firms operating in Canada today: i.e. TELUS, Rogers, Google and Shaw. Indeed, it is more than twice the size of Google and Meta/Facebook, combined.

Bell, Rogers, TELUS and Shaw are the "big four" diversified communication giants in Canada. Collectively, they accounted for close to two-thirds of the revenue across the network media economy in 2021—a figure that has stayed remarkably stable over time, after falling during the early phase of market liberalization, the advent of new technologies, and the emergence of pay television and mobile wireless services in the 1980s.

Overall, however, there has been a steep drop in concentration levels over time on the basis of HHI scores, as is depicted in Figure 33, below.

Figure 33: HHI Scores for the Network Media Economy, 1984-2021



Sources: see the "Fig 33 HHI Scores for NME" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

For some observers, that steep drop in HHI scores is the starting and end point of the story. In this view, markets have become more competitive all the time, and the HHI scores seem to prove this out. Moreover, it is all a great big "digital media ecosystem" now, and within that context, it's a battle of all against all, with no meaningful lines between any of the various media sectors that make up the "digital ecosystem".

That conclusion, however, is problematic for several reasons. First, it ignores the fact that those early trends toward a more competitive communications and media economy bottomed out a long time ago in the first decade of the 21st Century. There have been significant reversals along the way, thereafter, including a sizeable uptick, circa 2007 and 2013 that we have emphasized constituted a fundamental moment of structural transformation that begot a handful of communication and media conglomerates that have stood at the apex of this system ever since: Bell, Rogers, TELUS, Shaw and Quebecor.

Second, while it is essential to take the "bird's eye" view of the network media economy, we must also simultaneously drill down deeper into the myriad of distinctive details that distinguish different communication, Internet and media sectors from one another, while also paying close attention to other emerging dynamics and trends. The scaffolding approach that we use is rooted in the cultural industries tradition of the political economy of communication theory and argues that the fine details of different sectors and relations between them over time are immensely important and can only be ignored at the expense of the quality of the analysis.

It also stresses the fact that the media and cultural industries have developed in the shadows of larger telecoms and big tech firms since the mid-19th Century and this continues until our time. Originally, this could be seen the ties between telegraphs, the press and news wire services, followed by the development of broadcasting and the film industries in close relationship to telecoms companies like AT&T and Bell Canada (the latter, only with respect to broadcasting), as well as enormous international electrical equipment manufacturing concerns such as General Electric and Westinghouse in the 1920s and 1930s, until, fast forward, today, when the cultural industries are becoming more platform dependent on big tech conglomerates like Google, Apple, Amazon, and Microsoft.

Only once we pay close attention to this history, these recurring tendencies and patterns, small details, and then group different media into meaningful categories along the lines that we have done—e.g. communications infrastructure, digital and traditional audiovisual media and core sectors of the Internet—and, finally, draw them all together, as we are doing here, it is possible to grasp and comprehend the dynamics within each media sector and across the network media economy as a whole. Taking such steps to carefully study concentration trends remains as vital today as it ever has. This, in part, reflects the reality that concentration levels in many sectors of the communications, Internet and media are high. To say this, is not mere speculation but is supported by empirical and legal facts.

As our evidence shows, this is true, for example, for: mobile wireless services, wireline telecoms, retail Internet access, broadcasting distribution at the local level, as well as broadcast television. The evidence also shows that the Internet advertising market has sky high levels of concentration. In fact, the trend has been towards more consolidation as Google and Facebook have tightened their grip on the sector over the last decade, albeit with Amazon arising in recent years to threaten to upset the Google/Facebook duopoly with a tight, three-oligopoly. Moreover, the relentless migration of advertising spending to the Internet also means that the consolidation increasingly characterizes the advertising market across the board. Prior to 2020, the advertising market as a whole could be classified as unconcentrated by the lights of the HHI; in the last two years, however, it has moved deeper into the moderately concentrated zone by this measure. The direction continues to be firmly in an upward direction.

We have also shown that all but three core sectors of the Internet have maintained astonishingly high concentration levels for a decade or more (the three exceptions are online video services, online news sources and digital games). This basic fact, of course, clashes with the fervent belief held by many that the Internet was and would be forever wildly competitive, free and wide open.

Figure 34, below, offers a snapshot of where things stood in 2021 based on HHI scores for each of the sectors that make up the network media economy and that we have covered in this report.

Figure 34: Concentration Rankings on the basis of HHI Scores, 2021

LOW CONCENTRATION

- ✓ Magazines 154
- ✓ Internet News 399
- ✓ Newspapers 984
- ✓ Radio 1,135
- ✓ Internet Access (National) 1,250
- ✓ All TV 1,285
- ✓ Network Media Economy 1,252
- ✓ Digital Games 1,547
- ✓ Total Advertising All Media 1,792

MODERATE CONCENTRATION

- ✓ Cable/DTH/IPTV (National) 1,700
- ✓ Online Video (SVOD + TVOD) 1,945
- ✓ Pay & Specialty TV 1,986

HIGH CONCENTRATION

- ✓ Broadcast TV 2,670
- ✓ Mobile Wireless 2,688
- ✓ Wireline 3,252
- ✓ Internet Advertising 3,353
- ✓ Internet Access (Local) 3,889
- ✓ Mobile Web Browser 4075
- ✓ Social Media Platforms 4,207
- ✓ Desktop Web Browser 4,327
- ✓ Mobile OS 4,968
- ✓ App Stores 5,050
- ✓ Cable/DTH/IPTV (Local) 5,167
- ✓ Desktop OS 5,401
- ✓ Desktop Search 7,321
- ✓ Search 8,421
- ✓ Mobile Search 9,443

Sources: see the “Fig 34 Conc RankingsHHI” sheet in the Excel Workbook accompanying this report and the “Concentration Metrics” sheet in the GMIC Project—Canada open data sets.

That said, and as we always try to emphasize, the knife does not cut all to one side and borderline cases exist. Take, for example, online video services where the run-of-events has pushed in the opposite direction towards more choice, competition and diversity. Netflix’s half-decade period of dominance has also been cut down to size as a result. Furthermore, it is likely that recent trends toward greater diversity in online video services will continue in the years ahead.

Given the growing importance of online video services, this trend has also had the effect of pushing down concentration levels across the television marketplace as a whole and for the first time in decades. Concentration levels have also fallen in pay television services, albeit for reasons that are mixed and ambivalent. These trends in both pay television and online video services, in turn, have caused concentration levels for the television marketplace as a whole (i.e. an amalgamation of broadcast television, pay television and online video services) to fall steeply.

Thus, in 2013, for instance, the top five Canadian television ownership groups—Bell, Shaw, the CBC, Rogers and Quebecor—had a combined share of revenues of 84%. Fast forward to 2021, and Netflix was now the second largest television/film/video service provider in Canada, and the “big five” Canadian ownership groups share of the television programming market had dropped to two-thirds. The HHI score has also declined from 1767 in the “moderately concentrated” zone by this measure’s standards to 1252 last year, a figure that is firmly within the competitive and diverse zone.

Now, however, rather than being cause for celebration, this drift of events is being taken as cause for serious consternation in Canadian industry and cultural policy circles because such dynamics threaten established industrial interests and conventional approaches to cultural policy. Whereas the Canadian business friendly, industrial-cultural policy regime that had held sway for decades had been on its last legs, in the past several years incessant lobbying and the manufacturing of a sense of existential crisis for the Canadian broadcasting industry—and the nation—has been fused into the heart of the proposed *Online Streaming Act*, a point to which we will return in the last section of this report on policy and regulatory recommendations.

Several other sectors are competitive and diverse, or have become less concentrated, including, for example, magazines, online news, radio and newspapers (at the national level). For some of these sectors, for example, magazines and newspapers, this is because things are falling apart and the long-term viability of these venerable media sectors is in serious doubt. At the same time, however, we have also documented how a combination of changes in government policy and public funds—as well as increased commercial and patronage payments from Google, Apple and Facebook—have put the brakes on the carnage that has swept the newspaper industry for most of the last two decades. They have also opened a window of opportunity by encouraging the advent of not-profit journalism organizations that might yet help to revitalize journalism and, along with it, democracy.

2. The Canadian media landscape is distinguished by its exceptionally high levels of diagonal and vertical integration

Diagonal integration

Concentration levels in Canada and many countries are often much higher than people tend to think, but where Canada stands out, historically and internationally, is in terms of its extremely high levels of diagonal integration between different "network media" (e.g. mobile wireless, internet access, BDUs) (essentially, telecoms operators) and television services (e.g. broadcast television and pay television services) as well as vertical integration between telecoms operators and commercial TV services (other media content).[224]

We have dealt with this point at length in several other reports over the years, so will only highlight a ew of the key ideas here. In terms of diagonal integration, all the country's main communication and

224 Discussions of these points tend to distinguish between "horizontal" and "vertical" integration but in our research, we follow Gillian Doyle (2013) to add a third type: "diagonal" integration. In this conceptualization, horizontal integration refers to ownership transactions within a single market; diagonal integration refers to those that take place across markets at similar levels of the "value chain", for example, between a company operating as a BDU and a competing or complementary distribution network like an ISP or mobile wireless network. Shaw's take-over of Wind Mobile in 2016 is an example of this. Vertical integration occurs when a company takes over another firm that is upstream or downstream in the production chain and is usually of two types: the first is where those who own the distribution network own TV and other content services delivered over them, while a second type involves, for example, integration between those who produce TV and film content and those who finance, distribute and own the intellectual property rights to it. Disney is an example of this, given that it owns one of the main Hollywood film studios, the ABC TV network and pay TV services as well as a deep catalogue of programs and associated rights. Doyle, G. (2013). *Understanding Media Economics*. Sage.

distribution networks (mobile wireless, wireline, ISPs and BDUs) are owned by one and the same player, whereas in many countries there are stand-alone mobile network operators (MNOs) and cable and satellite TV distribution services. In these other countries, this has allowed more affordable mobile virtual network operators to emerge organically, and this has generally improved the affordability and adoption rates for mobile wireless services. That, in turn, has been especially beneficial to low-income, racialized, indigenous, and new immigrant communities. In Canada, in contrast, MVNOs have not organically developed and the CRTC's endorsement of facilities-based MVNOs in 2021 will not do much to change that.

Canada is unique, for example, in the extent to which wireless and wireline infrastructures are fully integrated into single companies, with the last stand-alone MNO—Wind Mobile—acquired by Shaw in 2016, and that company now on the verge of being integrated into Rogers. In the US, T-Mobile remains a stand-alone MNO. Stand-alone mobile providers are common elsewhere as well: Vodafone is a good proxy for this in many countries where it operates, although it operates wireline networks in a few countries as well (e.g. New Zealand).

High levels of diagonal integration matter for several reasons. For one, diagonally integrated companies often manage demand, rivalry and prices across each of their "platforms" in a way that aims to ensure that whatever one branch of the company does it does not cannibalize the revenue of another. This undercuts the thrust of market-based competition and regulators should deal with that "natural" inclination accordingly.

Diagonal integration also matters because the presence of a stand-alone MNO affects the services on offer in terms of affordability, data allowances, availability, and so forth. As the consultancy Rewheel shows, for example, stand-alone mobile operators (e.g. Free in France, Hutchison 3 in the U.K., or DNA in Finland) offer data allowances that are many times higher than in countries such as Canada without such a competitive mobile wireless operator, and for a fraction of the price.[225] This also constrains how people use the mobile Internet, with data usage in Canada in recent years far less than in countries with more affordable mobile wireless pricing, competition and more generous data allowances.

As Rewheel concludes, Canada overall had "the least competitive monthly prices among 48 European, American, Asian Pacific and African countries".[226] It also dismisses common defenses of this state of affairs, stating emphatically that there is "no link" between population, land area or population density and the prices of 4G and 5G monthly subscriber plans or gigabyte prices. Instead, the key factors behind such outcomes are market concentration as measured by the HHI, the number of mobile network operators in a market and whether a "maverick" mobile operator is available to challenge the status quo.

In short, diagonal integration blunts the sharp edge of competition by restricting data allowances which, in turn, limits the impact of mobile wireless services on fixed, wireline services. A similar logic also checks the impact of the internet on the cable television distribution model, which both the large incumbent network operators and cultural nationalist policy groups seek to leverage as a means of maintaining a BDU- centric model of the media universe. Something similar is also true with respect to broadcasting television and pay television services. They are owned by one and the same groups instead of being separate entities in each sector that compete with one another for audiences, advertisers and revenue.

225 Rewheel (2020). *4G&5G prices are 2x to 4x lower in markets with four MNOs*, p. 5; Rewheel (2016). *4G&5G prices, competitiveness rankings, competition & mobile merger analysis, network economics and 4th MNO BC research studies, 2010–2022*.

226 Rewheel (2016), p. 5.

Vertical integration

Contemporary conditions in Canada also stand out with respect to the extent to which four vertically integrated communications-Internet and media conglomerates have emerged at the apex of the network media economy in Canada: Bell, Rogers, Shaw and Quebecor. Before the 1990s, such entities hardly played a role at all, while in the 2000s, the fortunes for vertically-integrated companies ebbed, waned and then rose again before being locked into place, circa 2007- 2013.
Consequently, once the dust had settled from this wave of consolidation in 2013, four vertically-integrated companies were left standing. They accounted for 58.2% of total revenue across the network media economy at the height of their powers in 2013 but that figure has since slipped to 52.3% last year.

In addition to being extremely high by historical standards, levels of vertical integration in Canada are high in comparison to U.S. and international standards as well. In fact, Canada has stood apart from the vast majority of its international peers for the last decade insofar that all the major domestic commercial TV services are owned by telecoms operators. In contrast, levels of vertical integration in the U.S. have been, and still are, much lower, even after the consolidation of Time Warner Cable, Brighthouse Cable and Liberty Media in 2016, and AT&T's take-over of Time Warner in 2019 pushed things in a similar direction (although within two years, the latter deal was unwound and conditions reverting to course).

The basic lesson in this is that telecoms companies are well-known for large-scale engineering projects and wiring up cities and nations, but they know little about producing film and television programming or managing the processes of creativity in the cultural industries. This reality also bedevilled AT&T's recent experience, with seasoned producers and managers at Warner Media and HBO often in open revolt against AT&T brass.

3. The rise of the GAFAM (Google, Amazon, Facebook, Apple and Microsoft) + Netflix, Inc?

At the same time that a handful of diversified and vertically-integrated communications and media conglomerates in Canada have consolidated their existing positions and expanded into new markets, they have also been engaged in an intensifying battle with a relatively new set of powerful international actors who have simultaneously been carving out a bigger-and-bigger place of their own in Canada: Google, Amazon, Facebook, Apple, Microsoft and Netflix.

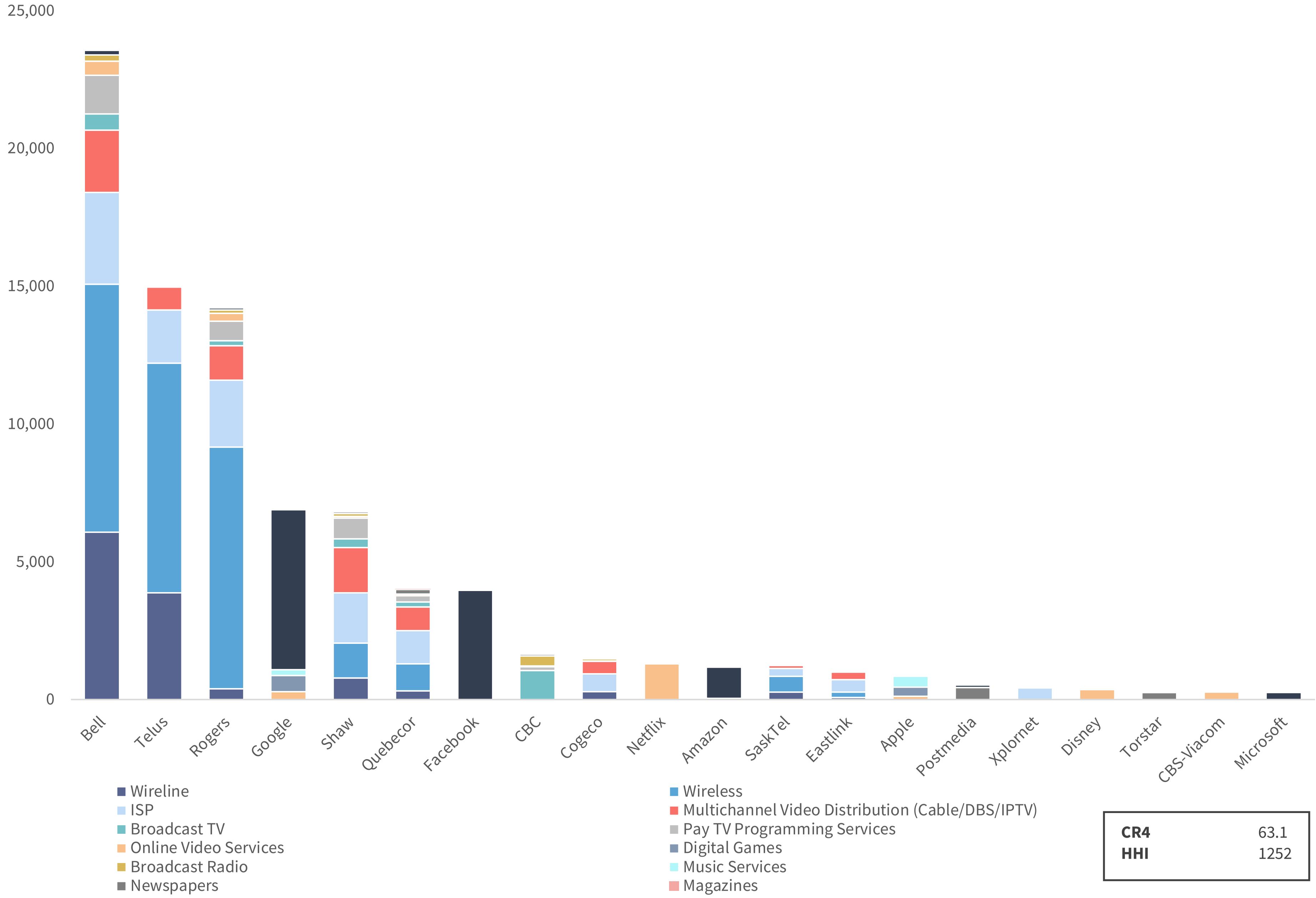
Over the course of the past decade, these companies' combined revenue has soared from an estimated $1.6 billion in 2011 to $6.2 billion in 2016 and $14.5 billion in 2021. As a result, they have come to dominate online advertising, where Google and Facebook have locked in their monopoly power with a combined share of four-fifths of the $12.3 billion market in 2021. Add Amazon to the picture, and the big three tech companies control 90% of the online advertising market in Canada. The big three tech giants have also parlayed their dominance of the online advertising market into a commanding three-fifths stake of the $17.6 billion advertising market as a whole (although, it would be remiss to not note that BCE's ten percent stake of all advertising receipts outstrips that of Amazon, while driving up the CR4 for this sector to 72.2%.

As we have shown in these pages, casting our eyes more broadly across the core elements of the Internet we see a recurring tendency for Google and Apple to dominate operating systems, app stores and browsers, but with their respective positions having often flipped over the past decade so that whereas Apple once stood alone, Google has come to hold sway. As we have suggested, these represent a clash of titans rather than a competitive marketplace, but that reality, in turn, is also fully in line with the ‘creative destruction’ school of political economy inspired by Joseph Schumpeter in the mid-20th Century. What has also become striking with the passage of time, and the flood of public inquiries as well as legislative, regulatory and judicial developments on this front, is that these patterns of dominance are not transient—as Schumpeter and his acolytes would have it—but fairly stable fixtures on the landscape.

Of course, things are never all stitched up, as the woes and tanking market capitalization now faced by Meta/Facebook remind us. There are also exceptions where the trend is in the opposite direction, i.e. towards falling levels of concentration, as we have shown for the online video services market as Netflix faces more and more rivals from both its “big tech” peers—i.e Google’s YouTube Premium, Amazon Prime Video—stalwarts of the Hollywood television and film distributors—i.e. Disney+ and CBS All Access—and a couple of domestic national champions, such as Crave (Bell), illico (Quebecor) and CBC Gem. While the specific domestic online video services are unique to Canada, this phenomenon appears to be replicated on the international stage, with some minor variations here and there reflecting local cultural, political and economic conditions.

Drawing this altogether, and to a close, the “big six” US-based Internet giants have become formidable forces in Canada and wherever they operate. That said, and as we have tried to do throughout these pages, it is imperative that assess their scale, scope and clout relative to the local conditions in which they operate. Figure 35 below attempts to do that by showing the rank and make-up of the top twenty communications, Internet and media companies based on their revenues in Canada in 2021.

Figure 35: Top 20 Communications, Internet and Media Companies in Canada, 2021



Sources: see the "Fig 35 LeadingTelecomInternet" sheet in the Excel Workbook accompanying this report and the revenue for each company covered in the appropriate sheets in the GMIC Project—Canada open data sets.

Focusing on the largest twenty firms operating in Canada reveals a mixture of Canadian and US-basedfirms. The inclusion of non-Canadian firms on the list is a significant change in itself, to be sure, with Google (Ranked #4), Facebook (#7), Netflix (#10), Amazon (#11), Apple (#14), Disney (#17), Viacom-CBS (#19) and Microsoft (#20). The speed with which this group of U.S. based tech giants and global media companies (i.e. Netflix, Disney and Viacom-CBS) have scaled the ranks is especially noteworthy.

That said, the notion that these firms dominate the media economy in this country is an illusion. The top twenty firms on the list account for approximately 90% of the $94.6 billion network media economy in Canada; the top ten for 84%. This is significant, to be sure, but, seen from this bird's eye view, the network media economy overall is only modestly concentrated when seen by the lights of the CR4 (CR4=63%) and pluralistically diverse and competitive by the standards of the HHI (HHI=1252). Over the past decade, that figure has bounced around somewhat, rising by two-hundred points, circa 2010-2013, for reasons we explained at the relevant parts of this report. However, that increase has since been reversed, and the direction has drifted downward in recent years.

Toward a New Generation of Internet Services Regulation

A new generation of Internet regulation is in order. While many take broadcasting and media policy as their inspiration for what this new generation should look like, this report advances a vision based on four cornerstones drawn from the history of communications regulation: structural separation, line of business restrictions, public obligations and public alternatives.[227]

Guiding this vision is the premise that forceful policy responses are needed to address manifestations of market concentration and dominance across the communications, Internet and media landscape wherever they exist. Rather than squarely addressing such issues, the recent heightened attention in Canada on reforming Internet regulation has focused almost entirely on questions of Canadian content and culture. This can be seen, for instance, in the Broadcasting and Telecommunications Legislative Review (BTLR) panel's *Canada's Communication Future* report, although its early chapters have much to offer along the lines we are suggesting here.

Thus far, the government' policy agenda has taken the panel's views as the cue for its three- pronged approach to Internet regulation: i.e. the *Broadcasting Act reform bill* (C-11), online harms and the *Online News Act* the seeks compensation for news media companies whose content is used by Google and Facebook in their search and social media services. Those are, indeed, important issues and ripe for public and policy debate and effective regulatory measures to address them.

227 This conceptual framework builds on the work of K. Sabeel Rahman (2018). The new utilities: Private power, social infrastructure, and the revival of the public utility concept, Cardozo Law Review, 39, pp. 1621-1689 and draws heavily from Winseck & Bester (2022). Regulation for a more democratic Internet: Lessons from 19th & 20th Centuries Antitrust and Communications Regulation for 21st Century Digital Platform Regulation. In T. Flew, J. Thomas & J. Holt (eds.). *Sage Handbook of the Digital Media Economy*. Thousand Oaks, CA: Sage.

That said, the focus on the issues of content, culture, and harms has eclipsed perhaps even more pressing questions about market concentration and power across the communication, Internet and media industries. Proposals such as the BTLR's proposals with respect to reforming the CRTC and proposals with respect to full-stack neutrality provisions to address the potential for abuse of dominant market power through monopoly leveraging and self-preferencing are largely absent in the government's policy agenda and the surrounding debate.

This last section of our report takes up these issues and offers suggestions as to how to redefine the policy agenda to center issues of power and structure at the top before moving to questions of content and culture in the "digital media age". Structural approaches rooted in antitrust and communications regulation have a long history in Canada. A pillar of this tradition is the century-old rules preventing common carriers from owning or controlling sources of content, news and information, as well as people's correspondence, that flowed across their systems. Since 1890, the federal courts have also looked askance at measures requiring common carriers to leverage their role as gatekeepers to the benefit of select businesses and at the expense of Canadians who expect fair carriage and privacy of their communications.

This bedrock principle of common carriage, and the corresponding vertical separation between common carriers and content, was reinforced by the Board of Railway Commissioners, the distant predecessor to today's CRTC, in its 1910 Western Associated Press ruling that facilitated the advent of competing news wires services and the free press. This tradition remains relevant today, and to their credit, successive Canadian lawmakers and regulators have fortified the common carriage principle over the past three decades with clear articulations in the *Telecommunications Act*[228] and CRTC decision-making.[229]

Whether the current government and its CRTC Chair will build on this long-standing set of practices that have given Canada the gold standard of common carriage rules by international criteria, is an open question. There is reason for concern, however, given the repeated inclination to trade away common carrier benefits for the sake of other goals such as promoting Canadian content, cracking down on copyright infringement through website blocking orders, or to rein in the real and non-speculative varieties[230] of online harms.[231]

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228 Sections 27 and 36.

229 Extension of common carriage to wireline and mobile wireless broadband services in 2009 and 2010, respectively, along with the 2015 Mobile TV and 2017 zero-rating decisions.

230 The literature on this/these topics is enormous but for good, even-handed reviews of the relevant academic literature and what we do and don't know on these points, see, for example: Benkler, Y., Faris, R., & Roberts, H. (2018). *Network propaganda: Manipulation, disinformation, and radicalization in American politics*. Oxford University Press; Vorderer, P., Park, D. & Lutz, S. (2021). A history of media effects research. In M. B. Oliver, A. A. Raney & B. Jennings (eds.). *Media effects: Advances in theory and research*. New York: Routledge; Warren, J. (Jan. 18, 2017). Did fake news help elect Trump? Not likely, according to new research. *Poynter*; Kreiss, D. (2021). Review of N. Persily & J. A. Tucker. (eds). *Social media and democracy: The state of the field, prospects for reform*. Cambridge, UK: Cambridge University; Deuze, M. (2021). "On the 'grand narrative' of media and mass communication theory and research: a review". Profesional de la información, *30*(1); Dutton, B. (May 5, 2017), *Fake news, echo chambers and filter bubbles: under-researched and overhyped*. *The Conversation*.

231 Khoo, C. (2021). Deplatforming misogyny. Toronto: Women's Legal Education and Action Fund.

Time for a Change: The Current Focus on "Market Forces" and "Conduct-based" Regulatory Remedies is Not Working

One of the most powerful tools in policymakers and regulators' toolkit are rules and actions focused on changing or preventing market and legal/policy/regulatory structures that facilitate and incentivize harmful conduct. The most prominent example is the break-up, where parts of a corporation, either within or across markets are forced to become independent, and often competing, legal entities. But structural approaches include a wide array of policy responses aimed at restricting monopoly control of critical market components. Structural approaches are especially useful in markets with persistent high concentration and vertical and diagonal integration, characteristics that describe Canada's Internet access and broadcasting markets.

The CRTC's current approach, a wholesale access regime for Internet and mobile wireless services, is a watered-down form of structural response to just these characteristics. Rather than fully separating out wholesale and retail Internet provision (structural separation), the regime allows independent ISPs to access wholesale Internet service from incumbents and provide competitive offers to consumers. Key decisions such as the 2010 "speed matching" ruling by the CRTC, followed by another in 2015 that extended the regulated wholesale access regime to fibre-to-the-doorstep networks, have opened the door for independent ISPs to better compete with the incumbent carriers.

That said, progress has been painfully slow and incumbent cable and telecoms operators have fought these improvements with an endless arsenal of tactics to obstruct the effective implementation of the regulated wholesale fibre access rules. Thus far, they have held back progress for five years and the CRTC's decision earlier this year to go back to the drawing board on the whole fibre access wholesale regime could take another five years to finish. In the meantime, the small gains that were made in the past decade are being reversed, several small ISPs have been acquired by Bell (i.e. ebox and Distributel) and Videotron (i.e. VMedia) while those that remain such as Teksavvy are masking subscriber losses by hiking prices to preserve revenue and profits. That, however, is a recipe that will only undercut small ISPs' attractiveness as an alternative to the incumbents in short order.

The story for mobile wireless services follows the same plotlines. Since 2008, similar structural measures have been adopted by ISED/Industry Canada to support new entrants such as Freedom Mobile (previously Wind Mobile), Vidéotron, and Eastlink, coupled with ongoing regulatory intervention. These measures have helped the new entrants make some significant progress toward spreading the benefits of competition to numerous markets across the country.

Yet, as with retail Internet access services, recurring patterns of incumbent obstruction and regulatory hesitancy and reversals have held back further progress. The CRTC's decision to include only "facilities-based MVNOs" in its 2021 *Review of Mobile Wireless Services* ruling capped off a string of missed opportunities under the current chair to broaden the base of competition and choice available to Canadians. This decision is unlikely to improve the affordability of wireless services and overcome the problems of low mobile adoption and usage rates that have bedeviled Canada for over a decade. The Commission's decision is also likely to fall short in terms of extending service to the sizeable base of potential subscribers who have thus far been under- or unserved.

Given these failures and the incumbent cable and telecoms operators' pattern of obstructionist behaviour, policymakers at ISED and the CRTC should double down on regulated wholesale access for both wireline and wireless to ensure that the modest competition in retail Internet access services is preserved, and that new strides in mobile wireless competition can be made. The Liberal government should also return to the stance of its first mandate where the emphasis seemed to build on the advances made by the previous Conservative government. It should also continue with its early promises to fortify the role of common carriage to ensure that this venerable principle is attuned to the realities of communication and Internet infrastructure providers' ability and incentives to use their gate-keeping power. Such measures also need to be extended to all layers of the "internet stack" where concentration and gatekeeper-power has become locked-in over time. Embracing the BTLR report's recommendation that passive network infrastructure be incorporated into the regulated wholesale access regime (recommendations 34-36) would be a good place to start for the government if it is serious about making practical improvements to its thus-far lacklustre approach.

These infrastructures and services now serve as the gateways through which all forms of communication must pass. The combination of urban, rural and inter-city fibre and wireless infrastructure that has taken shape over the last quarter-of-a-century or so underpins a wide and diversifying range of the economy, society and our day-to-day lives. Today, a small number of large gatekeepers stand midstream in the flows of such communication, with Bell, TELUS, Rogers, Shaw and Quebecor's Vidéotron operating 87% of those connections and 90% of the $64.4 billion in revenue accounted for by the mobile wireless, Internet access, POTs and BDU services in Canada in in 2021. Concentration levels by both the CR4 and HHI remain high in each of those sectors individually, but scaffold upwards to draw these sectors together into an integrated, composite view and the view of the scale and scope of the "big five" diversified communications conglomerates is clear. Their share of this much bigger and more complex landscape is greater today than it was twenty years ago.

Regulatory approval of the current blockbuster $26 billion bid on the table by Rogers—the third largest communications, Internet and media conglomerate—to acquire Shaw, the fourth largest such entity in the country, will only serve to entrench these conditions. To its credit, and in a significant break with past practice, the Competition Bureau is currently trying to block the transaction, full stop.

While many observers have focused on the potential impact this deal could have on mobile wireless markets because it portends the demise of Shaw's Freedom Mobile and Shaw Mobile, this focus is myopic. This ignores the significant role that Shaw's urban and inter-city fibre infrastructure plays in this transaction. Ignoring this point, advocates and critics can suggest that Rogers could spin-off Freedom Mobile as a condition for approving the deal to keep a fourth regional wireless operator in place.

The company's proposal follows a line of previous regulatory moves in Canada, including the requirement that Bell divest several pay television services in return for approval of its take-over of Astral, and the Competition Bureau's 2017 decision to approve Bell's acquisition of MTS in exchange for spinning off a nascent fourth competitor via regulatory intervention. As we have seen, those regulatory remedies have turned out to be complex, hard to monitor and enforce, and they have failed. The divested television services from Bell Astral have not cultivated new players to replace the iconic, innovative and formidable entity that was lost when Bell took over Astral in 2013. Subsequently, the idea that transferring retail store fronts and subscribers from MTS to TELUS and Xplornet in a bid to make the latter into a regional rival has not delivered on its promise. Consequently, Manitobans and Canadians are worse off for the loss of a more affordable and innovative competitor in exchange for the distant hope of a potential replacement.

The Canadian experience, in turn, is consistent with the Obama and Trump Administration's DoJ and FCC approvals of Comcast's take-over of NBC Universal in 2011 and T-Mobile's of Sprint in 2019, respectively. While each of these deals had their own distinctive characteristics, they shared a preference for complex, risky, and difficult to enforce remedies over decisive action. Following this model, in the U.S. the idea that Dish, a satellite provider with no experience in mobile wireless markets, would be able to transform into a credible competitive threat to established national carriers with divested assets from Sprint has not borne fruit.

As we explained in our submission to the Parliamentary INDU Committee that presents reasons why the Rogers-Shaw deal should be blocked,[232] in the US, regulators currently find themselves trapped administering a dizzying array of conduct remedies imposed on T-Mobile and Dish whose prospects for success appear dim. As others have noted, while it may seem obvious in retrospect that conduct remedies requiring T-Mobile to "act against its own interests . . . [and] assist its direct competitor" were always untenable.[233] The fact is that in the fog of regulatory reviews of blockbuster deals like this, and the Rogers-Shaw deal in Canada, where heavy lobbying and hired mercenary research is the norm, it is easy to lose sight of the obvious fact that these mergers are anti-competitive, primarily benefit the owners of the merging parties as opposed to the general public, and that complex remedies are too often unenforceable and ineffective.

To sum up this point, the T-Mobile and Sprint merger now stands as an abject lesson in the harms that arise when regulators allow a real, effective competitor to be traded away for an imaginary future one.[234]

To swing back to the proposed Rogers-Shaw deal, it is commonly proposed that allowing the deal to be approved while forcing the post-merger Rogers to spin-off Freedom Mobile as well as the Shaw-branded wireless offering would constitute an ideal "compromise solution" that would preserve a fourth regional competitor and the policy of successive Liberal and Conservative governments to foster just such results in all areas of the country, this is an illusion. Rogers and Shaw have made late-in-the-game proposal to spin of Freedom Mobile (but not Shaw Mobile) to Vidéotron but the Competition Bureau has not been distracted from its stance of seeking to block the deal, full stop.

In this regard, the Competition Bureau appears to be taking the lessons from above to heart. Moreover, if in fact the real "crown jewel" in the

232 Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It. Submission to the House of Commons Standing Committee on Science, Industry and Technology.

233 Economides, N., Kwoka, J, Philippon, T., Seamans, R., Singer, H., Steinbaum, M. & White. L. (2019) Economists' Tunney Act Comments on the DOJ's Proposed Remedy in the Sprint/T-Mobile Merger Proceeding, pp. 7-8.

234 State of New York, State of California, State of Colorado, State of Connecticut, District of Columbia, State of Maryland, State of Michigan, State of Mississippi, Commonwealth of Virginia, and State of Wisconsin, plaintiffs, v deutsche Telekom ag, T-Mobile US, Inc., Sprint Corporation, and Softbank group corp., defendants. (2019). *In the United States district court for the southern district of New York*. p. 22; Economides, N., et. al. (2019); Singer, H. (2021, February 25). The terrible T-Mobile/Sprint Merger must be undone. *Wired*. Wang, Melody, & Morton, Fiona Scott. (2021, April 23). The T-Mobile/Sprint merger: A disastrous deal from the start. *ProMarket*. Public Interest Spectrum Coalition. (2021). *Group FCC Letter on T-Mobile 3G CDMA Network ShutdownGroup FCC Letter on T-Mobile 3G CDMA Network ShutdownGroup FCC Letter on T-Mobile 3G CDMA Network Shutdown*. Public Interest Spectrum Coalition.

Rogers-Shaw transaction are the latter's fibre facilities in cities and along inter-urban routes in western Canada because those are what is needed to build out ubiquitous 4G and 5G mobile networks, the harsh reality is that, without such facilities of its own, Vidéotron will likely be hobbled in its ambitions. The success of this risky proposed "remedy" is especially unlikely given that a post-merger Rogers-Shaw would have few incentives to provide such facilities and satisfactory network interconnection and access rights to any erstwhile rival.

Indeed, the current regulatory disputes and litigation over the breakdown of an existing network sharing agreement between Rogers and Vidéotron reveals as much. In addition, this idealistic scenario whereby a post-merger Rogers would provide ongoing access to facilities so as to allow a strong, sustainable fourth operator to take shape is fundamentally at odds with the company's interests and, arguably, its legal obligation to maximize shareholder profits. Finally, the idea that the Competition Bureau and ISED should act like bankers to help Rogers and Shaw create a viable post-merger replacement to the competitor that already exists seems like sheer fantasy.[235] To remedy such problems, presumptions against further consolidation, i.e. a ban on competition-killing mergers and acquisitions, should be adopted (also see below).

Beyond these frustrations with the ineffectiveness of conduct-based regulation in telecoms, similar defects have also become glaringly obvious in recent years in relation to several high- profile digital platform cases where headline-grabbing fines and conduct-based regulatory remedies have failed to bring about their desired results. The lack of results has raised questions about the efficacy of monetary fines and in policing powerful market participants. It has also spurred a conversation over the merits of reviving structural solutions from earlier eras of enforcement that have been neglected in the last few decades.[236]

A good place to start this review of cases that have led to this newfound appreciation for structural regulatory remedies is with a brief reprisal of the EU cases against the global internet giants. In this regard, the EU's trilogy of market dominance cases against Google is an outstanding case in point: i.e. its online search and shopping services ruling in 2017 (€2.3 billion fine),[237] the Android mobile operating system case in 2018 (€4.34 billion fine),[238] and in relation to Google's dominance of the online advertising market last year.[239] In each of these rulings, the EC concluded not only that Google possesses dominant market power but that it has abused that power at the expense of competition and users in the online advertising market, search and its Android operating system.

Like the opposition of incumbents in Canada's mobile wireless and internet access markets, in these cases we see that Google has been able to draw out the cases against it for over a decade. The Google Shopping case, for instance, began in 2010 but despite a ruling against the company in 2017 that came with headline grabbing fines and ongoing monitoring of specific behaviours that the Commission had found to be anti-competitive, it was only wound up in October 2021 after Google's appeal to have the results of the case overturned by the courts was rebuffed.[240] Throughout this period the EC continued to report

235 Genakos, C, Valletti, T. and Verboven, F. (2018). Evaluating market consolidation in mobile communications. *Economic Policy* 33(93): 45-100; Kwoka, J. & Valletti, T. (2021). Unscrambling the eggs: breaking up consummated mergers and dominant firms. *Industrial and Corporate Change*. Kwoka, J. Waller, S. W. (2020). Fix it or forget it.

236 Kwoka & Valletti, 2021: 4-6; Kwoka, J. Waller, S. W. (2020). Fix it or forget it.

237 European Commission (2017). *Commission Decision—Google Search (Shopping) (AT.39740) (Decision)*. Brussels: Author.

238 European Commission (2018). *Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine* **(**press release**).** Brussels: Author.

239 European Commission (2019). *Statement by Commissioner Vestager on Commission decision to fine Google € 1.49 billion for abusive practices in online advertising* (press release). Brussels: Author.

240 European Commission (EC) (2017). *Competition Policy: AT.39740 Google Search (Shopping;* European Commission (EC). (2018). *Competition Policy: AT.40099 Google Android*. CASE AT.40411: Google Search

ongoing problems in terms of Google falling into line with what is expected of it in response to these decisions, while the Commission and other regulators have also opened new fronts to scrutinize, namely Apple and Google's app stores.[241]

In another 2019 case, the German Federal Cartel Office found Facebook to have monopoly power and that it was abusing that power at the expense of advertisers, social media rivals and the quality of privacy and data protection afforded to people who use its services (and Internet users broadly because firms with the clout of Facebook set standards that other actors emulate). The Cartel Office responded by imposing significant line of business restrictions that prevent Facebook from sharing people's data across the Facebook, WhatsApp and Instagram services.[242] Rather than comply, however, the social media giant tied the case up with appeals to the court and other authorities. Rebuffed in its appeals, however, the company finally brought its practices into line with regulatory requirements two years after the case began. Of interest, the EC's proposed new *Digital Markets Act* includes similar regulatory measures to those pioneered by German regulators in this case, although it will still be some time before we know whether that legislative proposal, either on this specific point or in its entirety, will even see the light of day.[243]

In other words, a decade after the EC began its trilogy of Google cases and several years into the German Facebook case, the remedies imposed are increasingly being seen as taking too long to implement, hard to monitor and, at least in the Google cases, as not having delivered on what they promised. For the German Facebook case, on this latter point about the effectiveness of the remedy proposed, it is safe to say that it is too early to tell.

These realities have led to the redoubled efforts that one finds throughout the current round of platform inquiries, regulatory rulings, and legislative initiatives that one can see in countries around the world. There is a mounting sense of the policy makers and regulators now recognize that ongoing conduct monitoring and regulatory remedies to market dominance are insufficient while more stringent structural regulations such as presumptions against competition-killing mergers, forced divestitures, and spin-offs and operational separation are being contemplated and enacted with increasing frequency and seriousness.[244] Discussions are also turning to two other structural remedies: presumptions against mergers and acquisitions and break-ups.

(AdSense), (March 20, 2019); Szucs, A. (2021, November 10). *European General Court upholds $2.8B fine for Google*. Andolu Agency (AA).

241 Australian Competition and Consumer Commission (ACCC) (2021). Digital Platforms Inquiry—Interim Report #2: App Marketplaces; Authority of Consumers and Markets (Netherlands) (2019). *Market study into mobile app stores*; US. (2020). *Investigation of competition in digital markets: Majority staff report and recommendations*. pp. 377-402; Bundeskartellamt. (2019). Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing, B6-22/16 (Bundeskartellamt [Federal Cartel Office] of Germany February 6, 2019). p. 4.

242 Bundeskartellamt. (2019). Facebook, Exploitative business terms. p. 6; Germany, Bundeskartellamt. (Feb. 7, 2019). *Bundeskartellamt prohibits Facebook from combining user data from different sources*. Germany, Higher Regional Court (Düsseldorf). I - Kart 1/19 (V): antitrust case . 1. Facebook Inc., 2. Facebook Ireland Ltd and 3. Facebook Germany GmbH. Applicants and complainants vs. Federal Cartel Office, Respondent, et. al.

243 EC (2020), *Digital Markets Act*, p. 30.

244 ACCC. (2021). Digital advertising services inquiry, pp. 87-143; Bundeskartellamt. (2019a, February 7). *Bundeskartellamt prohibits Facebook from combining user data from different sources*. p. 4; Bundeskartellamt. (2019). Facebook, Exploitative business terms, p. 6; The Competition and Markets Authority (CMA). (2020). *Online platforms and digital advertising Market study final report*. pp. 211- 337; U.K., Furman. Digital Competition Expert Panel. (2019). *Unlocking digital competition*; US, FTC. (2021). Federal trade commission v. Facebook, inc.: Substitute amended complaint for injunctive and other equitable relief; Srinivasan, D. (2019). The Antitrust Case Against Facebook, p. 5; US. Jerrold Nadler, David Cicilline, & Subcommittee on antitrust, commercial and administrative law. (2020). *Investigation of competition in digital markets: Majority staff report and recommendations*. p. 378.

The Structural Turn in Communications and Antitrust Regulation: Presumptive Bans Against Mergers, Structural Separation and Line of Business Restrictions

At present, there has been a de facto presumption against 4-to-3 mobile wireless mergers in Canada, the U.S. and the EU, for example, although, of course, are important exceptions to it, such as the approval of the T-Mobile / Sprint deal by the Trump Administration's DoJ and FCC and a small number of cases in the EU context. That presumption is also being sorely tested at present in the Canadian context, with an extraordinary level of time and resources committed by three different regulators—the Competition Bureau, ISED and the CRTC—to reviewing this enormous and complicated proposed transaction between Rogers and Shaw. In fact, to get a sense of this deal's scale, it is worth noting that it is the sixth largest in Canadian history.[245]

In this context, Rogers tries to make the case that these exceptions are, in fact, becoming the norm and that jury is still out on 4-to-3 mobile wireless mergers. However, its claims misleadingly conflate independent, peer-reviewed academic articles with ideologically-driven pieces by industry-backed and supporting think tanks to reach this conclusion. Rogers also cites specific research to suggest there are interpretative differences over whether the effects of consolidation in mobile wireless markets are "good" or "bad", whereas the source it cites is clear: "consolidation leads to higher prices while competition lowers them".[246] Lastly, while there is no absolute ban on 4-to-3 mergers in mobile wireless markets, regulators in the EU, Canada and the U.S. have erected a strong presumption against them based on the working consensus that four or more competing MNOs are desirable, even if not optimal. In a few cases, where attempts to impose remedies as a condition of regulatory approval to overcome the presumption against 4-to-3 consolidation, the deals under consideration have collapsed or been withdrawn.[247]

As noted earlier in this report, the return of presumptions against further consolidation can be seen not just in mobile wireless market but also in situations where monopoly power in core parts of the Internet is found by regulators to be entrenched and at risk of becoming even more so if a proposed take-over is allowed to pass. We saw this in the case of the U.K., where, after a year-long review, in October 2022, the CMA blocked Meta / Facebook's acquisition of Giphy, a service that controls popular GIFs and GIF emoji's, while ordering it divest itself of company.[248]

Thus, after a quarter-of-a-century in which regulators in the U.S., U.K., E.U. Canada and elsewhere sat on their hands as hundreds of Internet-related acquisitions took place, this marks an about face. This change in disposition can be seen in academic and policy circles as well.[249]

As the conversation turns to "breaking-up" big tech, several recent and/or ongoing U.S. cases against Facebook and Google have put the idea of the "divestiture of assets" (e.g. Facebook forced to spin-off WhatsApp and Instagram) and other kinds of "structural relief as needed to cure any anticompetitive harm" at the front of the line of proposed regulatory solutions.[250]

245 Winseck, D. & Klass, B. (2021). *CMCR Project Comments Rogers Proposed Acquisition of Shaw*.

246 Genakos, Valletti & Verboven. (2018), pp. 67-68.

247 Genakos, Valletti & Verboven, (2018); Winseck, D. & Klass, B., (2021).

248 United Kingdom, Competition and Market Authority (2022). *Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc Final Report*.

249 Kwoka & Valletti. (2021), p. 3; US. (2020). *Investigation of competition in digital markets*, p. 391; Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a "no remedies" policy for merger enforcement. *Competition Policy International*; Khan LM (2021). *Memorandum: Vision and Priorities for the FTC;* Khan LM (2020) The end of antitrust history revisited. *Harvard Law Review* 133.

250 US, FTC. (2021). Federal trade commission v. Facebook, inc., pp. 78-79; US. (2020). *Investigation of*

When it comes to Google, the most likely path being promoted is to dismantle its vertically-integrated digital ad-tech stack and to do so following the fault-lines of its acquisitions of, most notably, Double Click, AdMob and AdMeld that allowed it to assemble this system to begin with, while also requiring it to hive-off its suite of services (e.g. search, Gmail, YouTube, Google docs, etc.) and its mobile operating system (Android). Here, the possibilities extend to forced divestitures at the hard end of the scale to operational separation at the softer end of the pole.

Similarly, the CMA in the U.K., for instance, has suggested the creation of a new Digital Regulatory Commission that could implement ownership or functional separation in digital advertising markets.[251] Along similar lines, the OECD's 2016 review of structural separation in regulated industries concluded that "structural separation remains a relevant remedy".[252] The objective in each case, though is to break-up or rein in the diversified digital conglomerate's ownership and control of online advertising exchanges, data, audiences, and the restrictive terms-of-trade that it imposes on third party advertisers, content and applications providers and other services.[253]

The recently concluded Digital Markets Investigation in the U.S. also recommends that regulators consider forcing companies to "unwind consummated acquisitions or divesting business lines" to restore competition and prevent anticompetitive problems in the future.[254] That said, it must be noted that amidst such otherwise far-reaching regulatory proposals, discussion of structural remedies in the EC's *Digital Markets Act*, for example, is hedged by suggestions that any such remedies will only be pursued after systemic non-compliance with the Act and due consideration of the substantial risks that such approaches entail.[255]

The rationale for these assertive steps should ring familiar in light of our earlier discussion about the long-drawn on obstructionist tactics deployed by integrated mobile wireless, internet access and BDU operators in Canada that have thwarted the emergence of more robust competition as and regulators' efforts to impose and enforce conduct-based regulation with an eye to achieving just that. For the last thirty- to forty-years, this stance has denigrated the virtues of structural separation and/or break-ups as being beyond the capacity of regulators and just too big of a political challenge. That now, is changing as the weaknesses and, essentially, unworkable realities of conduct regulation become more and more obvious. As that happens, the virtues and ease of application of break ups, spin-offs, bright-line rules and presumptions against future market-consolidating take-overs is getting a fresh look and, at least in some cases, as we have seen, a new lease on life, not least because such structural regulatory tools are simpler to implement and easier to administer than behavioural ones. Canadian policy-makers and regulators have been hesitant to move in this direction but it is time for them to earnestly re-evaluate their own track-record and tendency toward regulatory hesitancy to bring about better results.

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competition in digital markets, pp. 377-402.

251 U. K. Competition and Markets Authority (CMA) (2020). *Online platforms and digital advertising Market study final report*. p. 405.

252 US Judiciary Committee. (2020). *Investigation of competition in digital markets*. p. 381

253 Ghosh, D. and Scott, B. (2019). Digital Deceit: The Technologies Behind Precision Propaganda on the Internet, Washington, D.C.: New America.

254 US Judiciary Committee, (2020), pp. 376-381.

255 EC, (2020), p. 30.

Line of Business Restrictions

While break-ups can be seen as the ultimate hammer in the regulator's toolkit, line of business restrictions represent a less intrusive means to similar ends. In order to prevent firms from leveraging their dominance in one sector into adjacent markets, line of business restrictions either prevent entry by dominant players into select markets or create internal firewalls to keep parts of the same organization separate. As we saw earlier, this is an approach that has a very long history in Canada and the U.S. where common carriers have been historically restricted from owning and controlling broadcasters, publishers, and other sources of content creation.

This has separated control over conduit from control over content, with an eye to diminishing the capacity of carriers to take advantage of their gatekeeping power and to free individuals and those who produce and disseminate media messages to do so on their own terms, or at least without the carriers' undue influence. This has been achieved both through the regulatory principle of common carriage for the last 130 years, by corporate decisions to segment the market since the 1920s and by corporate charters and statute from 1968 until those measures were repealed in the mid-1990s. It is time for a re-assessment and, if that re-assessment proves helpful, to reinstate such measures and broaden their application so as to bring about something along the lines of a "fair carriage" regime, the outlines of which can currently be seen taking shape in Germany.

As we also saw earlier, a prominent, contemporary application of line of business restrictions/ operational separation can be seen in the German Federal Cartel Office 2019 ruling to restrict Facebook's ability to share user data between its flagship service and WhatsApp and Instagram. Stopping short of breaking up the company, the ruling effectively erected a firewall between different arms of the Facebook empire.[256]

The European Commission's *Digital Markets Act* recently adopted in Europe includes a similar data separation obligation for the largest digital platforms. Although the details still need to be worked out, the goal in this regard is to prevent the so-called very large online platform services (or VLOPS) from combining personal data across services offered by the platform, as well as third-party sources of data on consumers, unless the option to opt-in or out has been provided.[257] The U.K.'s CMA makes similar proposals for the power "to mandate data separation (or data silos)".[258]

Of course, while such conduct-based regulations are vulnerable to the same limitations we outlined above, they at least provide regulators with a less-interventionist option in the emerging digital communications regulatory toolkit aimed at preserving competition, controlling cross-service power and protecting people's privacy and data. The similarities between the telecoms and cable operators in Canada, especially as the struggle to build their own digital advertising exchanges to do battle with the likes of Google, and the global Internet giants on this point offers an obvious point at which regulations can be harmonized across different dimensions of the network media economy and digital media universe.

256 Germany, Bundeskartellamt. (Feb. 7, 2019). *Bundeskartellamt prohibits Facebook from combining user data from different sources*.

257 EC, (2020b), Art. 5(a); Regulating digital platforms as the new network industries. *Competition and Regulation in Network Industries*, *22*(2): 111-126.

258 United Kingdom, Competition and Market Authority (2020), 406-408.

Public Obligations—The Rights and Responsibilities of Digital Platforms

Narrowing a potentially wide-ranging conversation, the following discussion focuses on three elements of the potential role of public obligations for a new generation of Internet regulation: transparency of complex technological and infrastructural systems, data and privacy protection rules, and audiovisual media and cultural policy and regulation.

Mandatory information disclosure requirements and transparency

Since shortly after the creation of the first formal regulatory agency in Canada in 1903, the Board of Railway Commissioners, regulated entities have had to meet mandatory minimum levels of information disclosure on a routine and regular basis.[259] This tradition has continued to this date and is an important function of the regulatory process overseen by the CRTC, but has been seriously compromised in recent years from two sides: failures of the regulators to live up to the spirit of such practices and Internet services companies, including big name global brands such as Netflix, Google and Facebook, that have fought tooth-and-nail against the formalization of such requirements to their operations. That is set to change with regulatory proposals now on the table around the world making such requirements one of their headline features.[260] Bill C-11, *The Online Streaming Act*, for example, proposes to build on this convention by requiring all "broadcasters" operating in Canada to disclose information about corporate ownership, revenue, expenditures, catalogue titles, subscriber numbers, and other data related to their operations.

This data provides Canadian regulators and policy-makers with a picture of global companies within our borders. It will also ensure that we never see another moment where a global player like Netflix can defy a request for basic information from the CRTC. This was the case, for example, in 2014 when the then CRTC chair, Jean-Pierre Blais, clashed with Netflix's director of global public policy, Corie Wright, on this very point.[261] Such a requirement would also be a benefit to researchers who find that the current dearth of information with respect to these issues constrains their own ability to understand these aspects of the digital media landscape.[262]

At the same time, however, it must also be realized that before giving the CRTC new tasks and responsibilities along these lines it needs to put a stop to the significant backsliding that has taken place in the last few years with respect to the quality and scope of the data it currently collects and publishes, and regarding issues of timeliness. The Commission also seems to give undue deference to regulated companies' claims regarding commercial sensitivity of the information they disclose and the need for confidentiality. In terms of timeliness, the release of the CRTC's annual flagship *Communications Monitoring Report* has been occurring later and later.

There is no doubt that some of the reasons for these delays have been beyond the Commission's control. For example, the need to design the report to meet the federal government's increasingly demanding data accessibility requirements has increased the amount of work involved and held up publication. That said, rather than obtaining

259 Winseck, D. (1998). *Reconvergence*. p. 131.

260 See, for example, Australia (2021). *News Media Mandatory Bargaining Code*; EC (2020), *Digital Markets Act*, Articles 5-6; EC (2020). *Digital Services Act*; United Kingdom, Competition and Market Authority (2020). Online platforms and digital advertising.

261 CBC News (Sept. 20, 2014). Netflix spars with Canadian TV regulators; Winseck, D. (2014, September 19). No Regulatory Cherry-Picking Allowed: The CRTC vs. Netflix Clash @ the TalkTV Hearing. *Mediamorphis: Network Media Industries and the Forces of Change and Conservation*.

262 See Winseck & Bester (2022/forthcoming). Regulation for a mor democratic Internet; Winseck, D. (2021). Bill C-10 and the future of Internet regulation in Canada. *CIGIOnline*.

the resources it needs to do its job by raising the regulatory fees on the entities it regulates, the Commission has chosen to simply accept the delays that are now commonplace. The problem with this laggardly approach is glaring given that while the Competition Bureau's attempt to block the proposed Rogers-Shaw deal was before the Competition Tribunal at the time of this report's writing (mid-November), the CRTC has yet to publish its telecoms data. Consequently, public observers and discussions of these issues are flying blind, by having to rely on official data that is now at least two years old.

At bottom, minimum disclosure requirements and transparency are the bedrock of the long history of telecoms regulation and antitrust enforcement in the U.S. and Canada, and numerous other countries. Current deficiencies that apply to domestic business interests need to be rectified and then extended to a new roster of players located beyond Canada's borders but within our internet-connected, digital media space. Such obligations are essential for conducting effective regulatory oversight over mergers and acquisitions, network interconnection, interoperability, and common technical standards right across the communications and digital platforms operations. These measures have long served to open the "black box" of telecoms operators to promote network security, competition, privacy, and speech protections.

A modern extension of this focus on both information disclosure and transparency has been the notion of algorithm audits for major tech platforms. Just as financial institutions undergo regular and regulated certified audits, audits of Google and Facebook's algorithms could make them more accountable to the publics they serve. Building on obligations for publicly traded companies, over a decade ago, Oren Bracha and Frank Pasquale (2008) suggested a Federal Search Commission to oversee standard, annual audits applying not just to Internet companies but telecoms and digital media services as well.[263] The goal of these audits would be to create a unified standard of algorithmic transparency and accountability across all actors in the network media economy.

The Australian Competition and Consumer Commission's (ACCC) *Digital Platform Inquiry* report and the ensuing new News Media Bargaining Code that aims to govern the terms of trade between Google, Facebook, and news media organizations, is predicated on such an idea.[264] The ACCC report's analysis shows how Google and Facebook use their control over technical standards to insert themselves into the centre of the online news delivery system, increasing the news media's dependence on them. For its part, the new News Media Bargaining Code attempts to address the digital power imbalances between Australian news media and American platform corporations such as Google and Facebook by, in essence, forcing them to open up their "black box" to regulators and impose a kind of limited "must carry" regime for a designated category of services, i.e. news. The ultimate aim is to have Google and Facebook pay news media organizations for the news content they use as part of their online search and social media services.[265]

While this is a potentially valuable step in the right direction, the ACCC's News Media Bargaining Code (and others that have adapted it to their own ends, such as the *Online News Act* here in Canada) has at least four shortcomings that should be avoided. First, rather than trying to undo the power wielded by Google and Facebook in Australia, the Code creates a corporatist-style arrangement between them and Australian media companies, with no room for public participation in such processes.

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263 Bracha, O., & Pasquale, F. (2008). Federal Search Commission—Access, Fairness, and Accountability in the Law of Search. Cornell L. Rev, *93*, 63.

264 The Parliament of the Commonwealth of Australia. (2020). *News Media and Digital Platforms Mandatory Bargaining Code)*.

265 ACCC, (2019), pp. 205-270; Winseck, D. (2021). Why Canada should take a critical look at Australia's Internet regulations. *National Observer*.

Second, it is based on ex post regulatory reviews and ongoing regulation of the platforms' behaviour versus bright line rules. As a rule, bright line rules are preferable because they establish the rules of the game beforehand and harmonize expectations around those rules, whereas the former approach works on a case-by-case basis, is expensive and time-consuming to monitor and enforce, and puts the onus on those who are alleging harm to mount the case for why regulators need to act. Given the imbalances of power already at play, such arrangements tend to favour powerful actors against those who are hoping that regulators will help to level the playing field.

The third problem can be called the "tainted origins" problem, whereby the terms of engagement and the policy agenda are set using inflated or otherwise distorted information. This problem has been clear in Canada where think tanks such as the Public Policy Forum as well as lobby groups such as News Media Canada have been pushing the federal government to intervene on behalf of publishers and broadcasters to create new laws and regulations that would put its thumbs on the scale in their favour for at least half-a-decade.[266] The evidence and analysis presented by the BTLR report also helped to till the soil in this manner as well, in particular in chapter three, where it reprises the main lines of discussion found in these and other industry-commissioned research efforts, while deploying data from the CRTC that, with the benefit of hindsight, we now know greatly inflated the scale of the online video services market, and of foreign-based streaming and download services such as Netflix, Google, Amazon and Apple to buttress the case for not just why such services need to be regulated but how.

We have criticized the Commission's estimates for being greatly exaggerated for several years, but we now know for certain that this was the case because the Commission itself has scaled back those estimates in the two latest versions of its annual flagship publication, the *Communications Monitoring Report*. That it has done so, however, it does not say.[267] These problems taint the entire enterprise of imagining and creating a new generation of Internet services regulation at the moment of creation.

Through such efforts, domestic broadcasters and newspaper publishing groups have been wildly successful in getting what they want. There has been wall-to-wall media coverage and full-page advertisements helping to frame and set the agenda for the debate over both the Australian news code and the Liberal Government's *Online News Act* bill. Simultaneously, critical voices have had op-eds on the topic spiked on several occasions.[268] The Liberal Government's re-election platform in 2021, in fact, recited News Media

266 PPF (2017). *Shattered mirror*; News Media Canada (2020). *Level the digital playing field*. Toronto: Author.

267 See the fuller discussion of this point in our first report this year (Winseck, 2022, pp. 46-47). Also, compare, for instance, the CRTC's (2018). Communications Monitoring Report 2017. p. 249, upon which the BTLR panel based its discussion, and CRTC. (2019). Communications Monitoring Report 2019. p. 166-168, on the one hand, with its restated estimates in the CRTC (2022), *Communications Market Reports - Open Data. Broadcasting Sector—Table 4. Overview of Internet-based audio and television services (estimated revenues), 2018-2021*. The restated results indicate that the earlier data from which the BTLR Report and, subsequently, *The Online Streaming Act* took their cues was *double* the figures now published by the CRTC. To compound the problem, the Commission had not said publicly that it has cut its earlier estimates in half.

268 News Media Canada (nd) has on ongoing tally of media coverage and op-eds on its home page. This author was commissioned by an editor at *The Toronto Star* to write an op-ed on the issue but which refused to publish the piece after sitting on it for a week. Asked why the op-ed did not run, the editor indicated that the decision was made higher up. The op-ed was ultimately published by one of the new online journalism sources, *The National Observer*. See Winseck, D. (Feb. 17, 2021). Why Canada should take a critical look at Australia's internet regulations. A similar experience took place a year later after *The National Post* did the same after inviting me to write an op-ed on *The Online News Act*. That op-ed was published by CIGIOnline, while a shorter version was published by the provincial public broadcaster, TVO. See Winseck, D. (April 19, 2022). Bad news: Ottawa's proposed *Online News Act* misses the mark. *CIGIOnline*; Winseck, D. (April 18, 2022). Bad news: Liberal's proposed *Online News Act* misses the mark. *TVO Today*. The papers that spiked the op-eds are part of the two largest newspaper publisher groups, Torstar and Postmedia, respectively. University of

Canada's talking points verbatim, pledging to enact new legislation to "level the playing field with digital giants" within one hundred days, if re-elected. It was re-elected and the pledge has been kept in the form of the *Online News Act*.[269]

As some Australian scholars have observed, similar phenomena have characterized the platform regulation agenda in that country as well. The Digital Platforms Inquiry itself, most notably, was born out of a dubious deal in 2016 between the right wing Liberal National government and Rupert Murdoch, the Australian media mogul behind News Corp Australia, Sky News and the largest chain of newspapers in the country (and Fox News in the US, amongst other media outlets), wherein the domestic media groups basically blessed the government's bill to loosen media ownership rules in return for a pledge from the government to examine the impact of the global Internet giants on the Australian advertising market.[270]Consequently, it is probably not a surprise that much of the analysis informing the Digital Platform Inquiry, and the News Media Bargaining Code, is riddled with blind-spots and cherry-picked evidence seemingly selected and presented to inflate the perception that the digital duopoly are the primary causes of the local media industries' woes while neglecting alternative (and probably better) explanations of why some advertising-funded media are in crisis.

That said, a post-mortem assessment of the effects of the bill after one year in operation by its key architect, Rod Sims, the former chair of the Digital Platforms Inquiry that paved the way to the News Media Bargaining Code, showing that the bill has "delivered over $200 million per annum to news media businesses" seems to imply that it has all been worth it, even if, as we observed in our first report, nobody knows who got what because of the inscrutability of the deals struck under the code.[271] Yet, it seems that the ends-justify-the-means, and so the News Code's champions celebrate this accomplishment, including those in Canada who point to it as justification for adopting a modified version of it in this country.[272]

Fourth, another critical flaw at the heart of the *Online News Act* in Canada, the *News Media Bargaining Code* in Australia and the *Journalism Competition Protection Act* in the U.S. is that, rather than trying to disrupt Google and Facebook's data surveillance business model with stronger data protection and personal privacy rules for citizens, the goal is to give established domestic companies a bigger slice of their country's 'big data' pie, respectively. This is obvious in Canada as well, with either version of the *Online Streaming Act* (Bills C-10 and C-11), or the *Online News Act*. Thus far, for example, calls by communications scholar Fenwick McKelvey and communications lawyer Bram Abramson to revise the *Online Streaming Act* in order to include a privacy and personal data protection clause to match the realities of the "return path data" between audiences, on the one hand, and "TV set-top boxes, smart televisions and apps", on the other, seem to have fallen on deaf ears.[273]

Data and privacy protection rules

McKelvey and Abramson's recent call for privacy and data protection rights to be included into the broadcasting system through the *Online Streaming*

Ottawa law professor and frequent commentator on Internet and digital media policy in Canada, Michael Geist, recounted other similar cases, including his own. See Geist, M. (April 14, 2022). Spiking op-eds: how the government's *Online News Act* is already leading to self-censorship. *Michael Geist Blog*.

269 Liberal Party (2021). Forward for everyone.

270 Dwyer, T. (2017). Media reform deals will reduce diversity and amount to little more than window dressing. The Conversation; Flew, T. & Wilding, D. (2020). The turn to regulation in digital communication: the ACCC's digital platforms inquiry and Australian media policy. *Media, culture & society*, *43*(1), pp. 48-65.

271 Sims, R. (2022). *Instruments and objectives; explaining the News Media Bargaining Code*. Judith Neilson Institute, p. 14.

272 Owen, T. (Nov. 8, 2022). The *Online News Act* keeps journalism alive while it adapts to a new world. *The Hub*.

273 McKelvey, F. & Abramson, B. (June 16, 2022). Canada's Online Streaming Act needs a privacy clause. *CIGIOnline*.

Act is apt, but it is not news. As we saw earlier, the Office of the Privacy Commissioner condemned Bell's earlier Relevant Ads Program (RAP) years ago, and has bemoaned the lack of such protections and rights for years, but nothing has been done to address those concerns. Instead, Bell's acquisition of Environics Analytics, and its folding of that effort into a joint-venture with AT&T to build a proprietary digital advertising system—and moves by the cable operators to do the same in tandem with Comcast's Xfinity system—have not only been given the green light but are being built in the relative obscurity of the set-top box working group convened under and administered by the CRTC. All of this serves as a clear barometer of where individual Canadians' interests, and the public interest, register within the institutional framework supposedly governing these arrangements: as a low-ranking concern, if it ranks at all.

Consequently, these efforts reinforce the surveillance capitalism model at the heart of the global online advertising market with the aim of spreading its ill-gotten fruits to a few more Canadian, American, Australian, British, European and other countries' national champions. The upshot is that, instead of countering the platforms' or carriers' exploitative business models and blackbox technical systems designed to maximize the harvesting of data, regulators and corporations have joined forces to generalize the weak data and privacy standards pioneered by Google and Facebook to the rest of the network media landscape.

This tendency of current policy and regulatory initiatives to attempt to level a deeply unbalanced competitive playing field at the expense of a critically important element of the future of public obligations for digital platforms, the protection of privacy and user data, is a significant problem; such that it strikes at the heart of the legitimacy of such efforts. Regulators should be reversing the inertia that has led to an Internet driven largely by surveillance and advertising dollars, but sadly many of the policy proposals now on the table instead cement these business models, so long as their returns are shared more equally.

As just mentioned, in Canada this approach is mirrored by the set-top box (STB) working group organized by the telecoms-Internet and audiovisual media services companies under the auspices of the CRTC. Rather than ratcheting up the amount of data more traditional communications companies can collect from their audiences and the environment around them, policy-makers should be establishing a new foundation for privacy expectations, rights and obligations for all companies in the network media economy.[274] While the Liberal Government's 2021 *Digital Charter Implementation Act*, as well as its predecessor, might have laid that foundation, the bill's seeming undue deference to commercial interests, lack of human rights framing of privacy, and failure to include political parties within its ambit appears to still fall far short of what is needed.[275]

The fact of the matter is that these issues have been around for a very long time. Whereas Canada could have been a leader on this front had it have acted earlier, it is now a laggard, at least relative to developments in Europe and south of the border in California. Take, for example, the prescient complaint that the Canadian Internet Policy and Public Interest Clinic (CIPPIC) filed with the Office of the Privacy Commission (OPC) in 2008 that alleged Facebook's practice of giving third-party software, game, and advertising campaign developers' unrestricted access to its application protocol interface (API) was ripe for exploitation by "bad actors", and at odds with Canadian privacy and data protection law. After a year-long investigation—the first of its kind in the world—the

274 Ghosh, D., & Scott, B. (2018). *Digital deceit*.

275 House of Commons of Canada (2022). *Bill C-27: An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*; Scassa, T. (Aug. 2, 2022). Bill C-27 and a human rights-based approach to data protection. *Teresa Scassa Blog*; House of Commons of Canada. (2020). *Bill C-11: An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts* (*Short title: Digital Charter Implementation Act*); Scassa, T. (2020). *New privacy bill is a data protection reset for Canada*. Policy Options. Scassa, T. (2020). It's not you, it's me? Why does the federal government have a hard time committing to the human right to privacy? *Teresa Scassa Blog*.

OPC's deputy commissioner, Elizabeth Denham,[276] issued a report warning Facebook that this practice was a ticking time bomb and should be shut down (Canada 2009). However, with no enforcement powers under the existing law—then or now—Facebook ignored the regulator. It was precisely this feature that Cambridge Analytica exploited nearly a decade later. Changing the technical features of Facebook's business model could have disabled the capabilities that "fake news" and disinformation operations exploited and, in so doing, possibly pre-empted the rush to Internet content regulation in the first place.

Three potential fixes to the current situation are ready-to-hand. First, the *Digital Charter Implementation Act* bill could be revised to address the concerns just raised: i.e. undue deference to business, lack of human rights standards, and failure to cover political parties.[277]

Second, a better approach would be to apply the EU's General Data Protection Regulation (GDPR) tools and principles—e.g. privacy as a human right, depersonalized data, cross-platform data portability, algorithmic transparency, enforcement powers for data protection authorities and privacy by design principles—to all actors in the network media universe.

In contrast to either the Canadian *Online News Act* and the *Online Streaming Act*, or the Australian *News Code*, this would raise rather than lower the bar for privacy and data protection. GDPR-style regulations would enhance protection and control of personal information and align Canada with its EU trading partner. Increased audit powers for the Office of the Privacy Commissioner would put it in a position similar to that of the U.K. Privacy Commissioner who was able to seize the servers and audit the business records of Cambridge Analytica. Such enhanced powers would also include greater enforcement powers and AMPs (Monetary Penalties) for the OPC (already included in the *Digital Charter Implementation Act*).

A national data and personal privacy protection strategy aligned across the layers of the internet-centric media ecology would enhance the use of data by Canadians for Canadians, too, rather than allow such data to be controlled by a few vertically-integrated providers and internet platforms to buttress their existing positions of dominance. It would also flesh out and update the under-appreciated privacy dimensions of the common carrier principle to match today's realities; apply similar values and regulatory standards to broadcasting, whereas the current Broadcasting Act remains silent on this point; and apply such standards to "content aware" Internet platforms like Facebook, Google, Amazon, and so forth, as well as smart television sets and other 'smart devices, as the ETHI committee's report *Democracy Under Threat: Risks and Solutions in the Era of Disinformation and Data-opolies* and the last Privacy Commissioner, Danieal Therrien's reply to that report, as well as McKelvey and Abramson's recent intervention in relation to the *Online Streaming Act*, all call for?[278]

Audiovisual media and cultural policy and regulation

The third plank in the public obligations dimension for a new generation of Internet regulation is probably the most difficult and contentious: developing audiovisual media and cultural policy for services delivered over the Internet. Indeed, this is already contemplated in the revisions to the Broadcasting Act proposed by Bill C-11 (and its predecessor).

276 Denham, of course, is now the head of the Information Commissioners Office in the UK and leading the investigation of the Facebook/Cambridge Analytica data breach there, hence the irony.

277 House of Commons of Canada (2022). *Bill C-27*; Scassa, T. (Aug. 2, 2022). Bill C-27 and a human rights-based approach to data protection.

278 Zimmer, B. (2018). *Democracy Under Threat.* p. 100. Government of Canada, & Bains, N. (2018). *Response to the report of the Standing Committee on Access to Information, Privacy and Ethics entitled Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act*; McKelvey, F. & Abramson, B. (June 16, 2022).

Building on the recommendations of the BTLR report,[279] the proposed revisions aim to address curators (e.g. Netflix, Crave) and aggregators (e.g. StackTV, VMedia's RiverTV). Advocates of C-11 argue that it exempts providers whose services feature user-generated content, such as YouTube or Facebook, but the elimination of ring fences around such services in the text, other ambiguities in the bill, and the fact that the BTLR report itself advocated for the inclusion of such services and the application of a levy in support of Canadian content has raised enough concerns that the bill has yet to be passed. Until those ambiguities are cleared up without any hint of a doubt, attitudes toward what, in this author's view should be an otherwise legitimate and worthwhile effort should be kept on hold.

The approach overall in Bill C-11, and seemingly in its proponents' imagination of what it is and can do, is modeled on existing modes of broadcasting regulation, with online streaming services required to contribute a portion of their revenue to Canadian programs, while media aggregators, similar to cable TV providers, would have to contribute through levies on their revenues. These services would also be required to file information with the CRTC on request.

The exact requirements in terms of what the level of contributions would be in each case, and the types of information that such digital AVMS services would be required to divulge, will be left to the CRTC to determine if Bill C-11 moves forward, as it appears almost certain to do in the very near future. For the time being, however, this approach is close to what many actors in the broadcasting and culture industries have wanted for years. The approach also closely tracks the EU's Audiovisual Media Services Directive (2016), including recent revisions responding to the significant place that Netflix, Amazon and Apple have carved out for themselves in Europe.[280] From this author's viewpoint, there is no basis in principle or history to object to this move, although in substance, there is much to be desired, especially in terms of the sloppily drafted section four of the bill that can easily be interpreted as encompassing not just social media platforms but social media users, too. It is exactly this ambiguity that has resulted in the firestorm of controversy that has engulfed both versions of the bill.

Around the world, and throughout modern history, countries have regulated and set policy for media and cultural goods, whether books, newspapers, radio, film or television.

Public subsidies provided in an open and transparent way by democratic governments to serve expressive and democratic ends are part and parcel of the history of liberal democracy, and they should continue to be so. Indeed, the history of broadcasting and public culture in liberal capitalist democracies cannot be understood without grasping this role. There are, of course, details to be worked out, taking into account the relevant circumstances: where the subsidy will come from, at what level it will be set, to whom it will be directed, if it is determined through legitimate, democratic means, and whether it meets the objectives sought (see the "Reflections on Public Goods and Subsidies" in the first report in this year's series on this point).

Where public subsidies have not been forthcoming, or are insufficient, or poorly executed, two other types of subsidies have stepped in to fill the void: advertising and wealthy benefactors. With advertising declining, or being uncoupled from this role, it is not surprising that some other form of assistance is being sought and brought about.

279 BTLR. (2020). pp. 129-131 and recommendation 54.

280 Donders, Raats, Komorowski, Kostovska, Tintel & Lordache (2018). *Obligations on on-demand audiovisual media services providers to financially contribute to the production of European works*, pp. 14-15. This earlier study is updated in Komorowski, M., Iordache, C., Kostovska, I. S. Tintel & Raats, T. (2021). Investment obligations for VOD providers to contribute to the production of European works, a 2021 update. Brussels: imec-SMIT-VUB. The European Audiovisual Observatory also maintains the *Revised AVMSD tracking table* to keep tabs on developments with respect to members commitments under the directive, amongst other things. European Audiovisual Observatory. (2022, November 4). *Revised AVMSD Tracking Table*. European Audiovisual Observatory.

The extraordinarily rapid manner in which Google and Facebook have extended their monopoly over online advertising to the whole field of advertising in Canada, as this report has illustrated at length, while skirting effective regulation at each step of the way has caused me to now contend that a levy applied against very large online platform services (VLOPS) could be a good idea, if firmly pegged to the development of a broad sense of public information goods and public culture.

That suggestion is made with much trepidation, however, on account of all of the flaws in the policy agenda and discussion that have been flagged in this and our previous report, not just this year, but for several years running now. In an ideal world, this suggestion should be firmly tethered to the structural regulation agenda advanced above and to a conceptually sound understanding of public goods drawn from the republican models of human development and democracy that were sketched at the end of the first report.

There are also other serious issues at stake as well that warrant moves in the direction of regulation for Internet actors, three of which stand out. First, the requirement that digital AVMS services provide information to the regulator seems to be a minimal requirement to satisfy public and cultural policy objectives. The problem with the current proposals is that information will continue to be shrouded in claims of "commercial sensitivity" and confidentiality; for information to be of public benefit, it must be made public. Full stop.

Second, and in a similar vein, opening the black box of complex technical systems so that both the public and increasingly "platform dependent" media service providers can get a peek inside, would go a long way to reducing the market power of dominant players. Doing so would also provide those who rely on such services with the ability to adapt to the platforms' changing technical conditions, and would afford greater insight into audience data, promotional efforts, billing details, revenue distribution, and so forth. This is what a new "discovery" mandate should look like rather than the idea that "discovery" means getting more content in front of Canadians' eyeballs.[281] That the *Online Streaming Act*, and comments by the Heritage Minister and CRTC, seem to render anything to do with regulating distribution platforms' algorithms as 'off-limits' should in itself be a non-starter. Indeed, it is a sign that, far from being too heavy-handed, the bill walks too gingerly once nearing the real levers of power in the emerging Internet-centric, digital media environment.

Third, as this report has made clear, the twin issues of market concentration and market power apply to the digital platforms and online digital media services as well. There is a potential for greater regulatory oversight to address these realities. However, the problem in this regard is not likely to be too much regulation but rather the propensity for Canadian regulators to be much too deferential to corporate power and business prerogatives, thereby leaving far too much to be treated either as 'off-limits' or with kids' gloves. The proposed revisions to the *Broadcasting Act* have nothing to say about such concerns; instead, we are expected to take it on faith that the CRTC will "get it right" when it comes to embracing the newly broadened scope of its statutory ambit and developing a regulatory framework that encompasses a vastly expanded array of activities and organizations. Its past and ongoing failings, amply documented in this report, give us pause.

As we have seen in the pages above, the proposed *Online Streaming Act* and *Online News Act* have included some measures to address market and gatekeeping power, with the latter offering much sturdier tools to deal with such realities than the former. To its credit, the *Online News Act* prohibits "digital news intermediaries" from giving undue preference or advantage to one news service over another, or from discriminating unjustly between them.[282] This measure, the 'crown jewel' of the act,

281 McKelvey, F. & Hunt, R. (2019). Discoverability: Toward a definition of content discovery through platforms. *Social media + society* (January); also McKelvey, F. (2020). Online creators left out on *Broadcasting Act reform*. Policy options.

282 As noted earlier, section 51 explicitly *prohibits* digital news intermediaries "from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage." Government

adapts and applies the long-standing common carrier tradition to contemporary realities where traditional broadcasting distributors and a new breed of online news aggregators and distributors serve as pathways to the news.

In contrast, the *Online Streaming Act* contains a watered-down version of this principle.[283] As such, it is unlikely to be up to the task when confronted by a situation where, for example, Amazon's Prime Video or Google's YouTube Premium are locked in what looks remarkably similar to the carriage disputes that have been part of the cable television business for decades. As we saw, in the battle between Google and Disney the latter was able to quickly get the former to accept "a new carriage agreement".[284] Canadian services in such a situation would not have comparable clout to Disney, and thus would be more prone to the dictates of Google. As it is currently written, whether the *Online Streaming Act* would be of any help in such a situation is an open question. The more assertive language of the *Online News Act*, however, would put it in a stronger position by forcing the regulator to take a tougher stance in favour of "fair carriage" settlement. An easy solution in this context would be to adapt the language and intent of the *Online News Act* and put it in the *Online Streaming Act*.

There are numerous other considerations that cast doubt on the direction being taken toward the regulation of digital audiovisual media services delivered over the Internet that are now on the table in Canada, all of which suggest that we need a root-and-branch overhaul of the conceptual underpinnings and driving interests that have set the policy agenda thus far.

For one, and as we have seen throughout this and our first report in this year's series, much of the current case for why a new phase of Internet services regulation is needed is built on faulty premises about media and cultural industries en masse being in turmoil. As we have shown, this is not the case, while investment in the production of original film and television production has been at record-high levels for several years running now, not just in Canada but the U.S. and the EU as well.

As it stands, too much of the case for Internet regulation in Canada rests on lurid accounts of the role that the "vampire squids" have played in killing the media in this country, and journalism and democracy along with it, but such claims are wide of the mark. The BTLR report itself is marred by the tendency to vilify the digital platforms for destroying all that is holy, based on cherry-picked evidence (including data from previous versions of this report about the online advertising digital duopoly) and superficial analysis. The report also trades on exaggerated data about the scale of GAFAM + Netflix group's grip on the online video services markets. In so doing, its credulous acceptance of figures provided by the CRTC regarding the scale and influence of GAFA and Netflix inflates the sense of threat that public policy allegedly needs to contend with.[285] This tendency is not standard for those who seem to be willing to accept *any* attempt to regulate 'big tech', while their nemeses seem to be just as predisposed to rejecting *any* such attempts on free speech and free market grounds.

The Commission's data in this respect is not just exaggerated but misleading. Building the case for a new phase of digital AVMS policy and regulation on such faulty foundations is not confidence inspiring, especially in terms of the heavy lifting expected of the CRTC in working out the details of how the proposed changes will be carried out in practice. It also further calls into question the legitimacy of the very institution being held out as the one to implement and administer the new legislation. That the Commission has already walked back its own data upon which the whole edifice of *Broadcasting Act* reform is being built without saying a word about it, further undermines confidence in the regulator's ability to oversee the vast expansion in its remit contemplated by both the *Online Streaming Act* and the *Online News Act*.

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of Canada (2022). *Bill C-18 Online News Act*.

283 Forum for Research and Policy in Communications (Sept. 22, 2022), p. 12.

284 Perez, S. (Dec. 20, 2021). YouTube TV settles its contract dispute with Disney.

285 See, in particular, BTLR. (2020), pp. 122-123.

Furthermore, the proposed changes also rely on an analogy between online video services and broadcasting that is inaccurate, imprecise, and also misrepresents how the two are currently distinguished in Canadian and European regulation. In Canada and the EU at present a lighter touch is taken with regard to VOD, however this important distinction is set to be discarded if the proposed changes go through.

Advocates of the present course for reform usually also fail to mention that the expectations and obligations that are to be met in the context of the twenty-seven countries that comprise the EU cannot be simply transposed into the context of just one country, i.e. Canada. It must also be acknowledged as well that there is a big gap between the EU countries' rhetorical commitments to the media and cultural policy goals of the AVMS Directive versus the number of countries that have actually implemented those obligations in enabling national laws or regulations. Indeed, while the AVMS Directive is often celebrated (or denounced, as the case may be) for bringing online VOD services like Netflix, Amazon and Apple under its umbrella, only eight countries have formal obligations that require foreign online VOD services like Netflix, Amazon Video and Apple to invest in or pay a set levy to support domestic or European media content: Belgium (both Dutch and French-speaking regions), Croatia, Denmark, France, Germany, Italy and Portugal.[286]

Having wandered this far from the path of credible representations of the real-world policy options on offer, those driving the current Internet services policy and regulation agenda are also calling on governments to regulate "illegal and harmful" content.[287] Calls to dispense with—rather than say, fine-tune—the limited liability model that has governed internet intermediaries so far also figure largely in the Canadian, Australian and U.K. policy papers being discussed here. Such moves are a wholesale bid to enroll the platforms as "chokepoints" despite the fact that the problems this would entail are well-known: inscrutable decisions made by multinational actors rather than governments, overseen by courts and according to standards of due process; the over-blocking of borderline content which, in turn, will fall hardest on marginalized groups; and a never-ending stream of calls to enroll these chokepoints in the pursuit of social ills.[288]

Public obligations need to be both targeted and bounded. This does not in any way diminish the need for a new phase of internet regulation. However, it does reflect very strong reservations about the tendency to make content regulation the first tool to reach for, and this is the path that too many media and cultural policy advocates trod as they try to justify their preferred policy agenda. The idea that tackling "illegal and harmful speech" in the same breath is fair game reflects the penchant to turn to broadcasting regulation for guidance. It also reflects a poor understanding of the processes of social communication and media effects, as noted at the outset of this section.

While these efforts are often presented as applying rules in a 'platform neutral' way, they are better seen as a Trojan Horse, taking the exceptional standards and limited carve-out set for broadcasting content regulation established in the mid-20th century and applying them, tout court, across the internet and media landscape as a whole. If successful, the effect would be to ratchet the standards of freedom of expression

286 Donders, K., Raats, T., Komorowski, M., Kostovska, I., Tintel, S., & Iordache, C. (2018). *Obligations on on-demand audiovisual media services providers to financially contribute to the production of European works*. pp. 14-15. Komorowski, M., Iordache, C., Kostovska, I., Tintel, S. & Raats, T. (2021). Obligations for VOD providers to financially contribute to the production of European works, a 2021 update. Brussel: imecSMIT-VUB; European Audiovisual Observatory. (2022, November 4). *Revised AVMSD Tracking Table*. Eleven of the 27 EU members impose financial obligations to promote European work on the providers of VOD services: Belgium French-speaking Community and Belgium Flemish Community, Croatia, Czech Republic, France, Germany, Italy, Poland, Portugal, Slovenia and Spain. The Belgian and French-speaking regions of Belgium count as one region each, hence why there are seven countries listed by the number of members with such obligations is identified as being eight. Four more are expected to pass financial obligations on foreign OVOD providers in the near future: Czech Republic, Slovenia, Ireland and Spain.

287 See BTLR. (2020), pp. 190-194 and recommendations 94 and 95, in particular.

288 Tusikov, N. (2016). *Chokepoints: Global Private Regulation on the Internet*.

and free press down to the exceptional and relatively restrictive standards of broadcasting and film set in the early 20th century, based mostly on worries about the pervasiveness and powerful socio-psychological effects of film and broadcasting that have long since been rejected by most communication and media scholars. The purported evidence justifying such a radical course of action that invokes filter bubbles, echo chambers, the incapacity of people to discern good information from bad and people's alleged dependence on platforms as "pathways to news" typically downplays or ignores a raft of scholarship indicating that such concerns are more modest and contingent on a range of intervening variables than commonly implied.[289]

We should also be wary of the claims about "fake news" in the BTLR report, the Public Policy Forum's The Shattered Mirror report and elsewhere that are leading the push to enroll Facebook, Google and others in efforts to stamp it out.[290] Those calls may seem appealing now given the mounting evidence about the extent and role of "fake news stories" in the 2016 U.S. presidential election and elections in the U.K., France and others, and amidst the Covid-19 pandemic. Yet, caught up in a political maelstrom and a sense of moral panic, we must keep front-and-centre in mind that the effects of "fake news" are probably not as strong as many seem to think.[291]

We must also think long and hard about the half-century long social, political and cultural forces that have produced a widespread and hardening antipathy towards the values of democracy, and work hard and fast to turn that around.[292] Of course, the retort might be, we must do both, and yes, we must. At the same time, however, there is a certain kind of media centrism—or Internet centrism, if you will—that seems to lay the blame for all the world's woes at the doorstep of the Internet or, if not that, its most iconic corporate overlords. Greater attention to the long-term forces that have led to our contemporary predicament is in order.

Ultimately, however, and as things currently stand, that so much of the platform regulation debate has played out on the terrain of a broadcasting-style, content-centric approach to internet regulation is frustrating. Worse, this drift of events threatens to swallow up the whole internet by enrolling the platforms, internet access services, and other "gatekeepers" in efforts to regulate speech, save journalism and to combat piracy, pornography and propaganda, etc.

In so doing, we risk losing, for starters, the "crown jewel" of telecoms policy—common carriage—that has served us well for well over a century: e.g. the social control of monopolies and gatekeepers, just and reasonable prices, universal and affordable service, privacy and data protection, carriage of

289 See, for example, Benkler, Y., Faris, R., & Roberts, H. (2018). *Network propaganda*; Dubois, E., & Blank, G. (2018). The echo chamber is overstated: The moderating effect of political interest and diverse media. *Information, Communication & Society*, *21*(5), 729–745. Dutton, B. (2017, June 1). *Fake news, echo chambers and filter bubbles: Underresearched and overhyped: as appeared in The Conversation*. William H. Dutton. for critical reflections on claims about filter bubbles, echo chambers and the impact of "fake news".

290 Public Policy Forum. (2017). *The Shattered Mirror*.

291 To be sure, the reach of disinformation during the 2016 US election was huge, for example, with 87 million people, mostly Americans but also 620,000 Canadians, exposed to "fake news", it is a fundamental mistake to confuse *exposure* to "fake news" with conclusions about negative individual, political or social effects. As a series of studies by Allcott and Gentzkow (2017) finds, even though Americans use social media a lot, only a small portion of people relied on them as their "most important source of news" during the election. TV was the main source of political news, by far. Those who did get their news mainly from social media were exposed to fake news that favoured Trump by a wide margin, but only a few could remember "the specifics of the stories and fewer still believed them", notes a Poynter Institute commentary on their work. It is also likely that the increasingly partisan media, and Fox News in the US especially played a much greater role in 'poisoning' the well of public discourse and, thus democracy, than Russia's disinformation campaigns and efforts to meddle in the American elections. Warren, J. (2017, January 18). Did fake news help elect Trump? Not likely, according to new research. *Poynter*.

292 Norris, P. & Inglehart, R. (2019). *Cultural backlash: Trump, Brexit, and authoritarian populism*. Cambridge, UK: University of Cambridge.

the widest range of lawful (even if awful) human expression as possible, and on fair terms (common carriage). These principles have a history that predates broadcasting and media regulation by three-quarters-of-a-century and they also teach us that claims by those that come at these issues from a broadcasting and media regulation do not have a monopoly on principles of controlling corporate power, social justice or the diversity of human expression and experiences. Far from it, and insinuations otherwise that others who come at such matters from the standpoint of communications regulation are economistic, technicists and, more or less, philistines without a proper appreciation of culture, are well-wide of their mark.

Pursuing the expansion of broadcasting-style regulation also ignores other regulatory solutions that could be used to dismantle the conditions, business models and technical capabilities that have enabled disinformation operations and other threats to democracy to flourish in the first place. All of these things should be seen as a flashing warning light alerting us to just how unmoored platform regulation debates and concrete policy proposals now on the table have become from the legal, political and cultural norms of democracy that give life to communication and citizenship rights, including free speech and privacy rights that are the fundamental essence of a rational society and liberal democracy to begin with.

Public alternatives: Proposal for the Great Canadian Communication Corporation

The fourth plank in the conception of a new generation of Internet regulation being presented here is the idea that, over and above structural solutions, firewall and public obligations, strong public alternatives are needed. In this respect, this report concludes with a modest proposal and a more ambitious one. As inspiration for the proposals that follow, we can consider the original goal of the U.S. Post Office, namely to bring "general intelligence to every man's [sic] doorstep", while serving as a heavily-subsidized vehicle explicitly designed to cultivate the free press and to deliver newspapers and magazines to publishers and editors across the country free of charge as an integral part of that objective.[293]

First, the modest proposal: eliminate advertising from the CBC, in line with the BTLR's recommendation. Doing so would focus the CBC on its public service remit and remove it from competing with commercial media for limited advertising dollars. The CBC also needs to be provided with adequate funding, more in line with historical levels that have been allowed by successive governments to atrophy over time and to put it on par with its international peers. Currently, the CBC receives around $36 per person in annual funding from Parliament. The campaign by the Friends of Canadian Broadcasting to raise the annual parliamentary subsidy to a minimum of $50 per Canadian per year seems modest in this context and could be used as a floor for where the annual parliamentary subsidy should be.

A more ambitious view is also needed to restore the more prominent place that public media, communications and culture had in Canada even at the outset of the 1980s. If we take that as our reference point, as we saw in the first report in this year's series, the level of public funding for the CBC relative to total spending on television and radio services in recent years has been less than a third of what it was in 1984. Restoring levels of funding today to levels then relative to the size of the television and radio universe would mean essentially tripling the annual parliamentary funding from, more or less, $1 billion per year to $3 billion per year, or close to $90 per person. By comparison, Austria, the Scandinavian countries, the U.K. and Germany spend somewhere between $100 and $180 per capita.[294] Perhaps a levy placed on advertising-based VLOPS of a scale similar to that applied historically to BDUs could make an effective contribution to this refunding of public service media in Canada. Based on Google and Facebook's combined revenue in 2021 of $7.8

293 John, R. (2010). *Network Nation: Inventing American telecommunications*. Harvard University Press.

294 Nordicity (2016). Analysis of Government Support for Public Broadcasting. London, U.K. & Ottawa: Nordicity. Pickard, V. & Neff, T. (June 2, 2021). Op-ed: Strengthen our democracy by funding public media. *Columbia Journalism Review*.

billion, such a levy would generate just under $400 million to the restoration of public service media while the rest would have to be made up by other means.

An even more ambitious view could encompass not just the 21st century version of broadcasting but also a contemporary view of communication and culture, as well. Such an enterprise might include such things as operating as the fourth national mobile wireless carrier offering services both to the public and at the wholesale level. Given the persistent woes and lack of progress in achieving goals such as universal and affordable communication services, reliable public media services, an accessible archive of nationally significant documents and artefacts, a divergence from Canada's steady state is in order.

In terms of institutional arrangements, imagine the creation of a Great Canadian Communication Corporation (GC3) by bringing together Canada Post with the CBC, the National Film Board and Library and Archives Canada, for example. To fulfil this ambitious view of public service communications, media and culture, the GC3 could repurpose some of the CBC's existing spectrum holdings and broadcast towers for mobile wireless service coast-to-coast-to-coast, real estate could be combined and used to locate towers, local post offices used to sign up new mobile phone subscribers and sell devices. It could also be used to blanket cities across Canada with public WiFi, to light up the vast stock of under- and unused municipal and utility-owned dark fibre strands and extend broadband access to under- and unserved people in rural, remote and poor urban areas.

Concerning entertainment, culture and public memory, the GC3 could disseminate and make public art and culture as accessible and enjoyable as possible. These activities would be funded from the general treasury, not the opaque intra- and inter-industry funds that now exist, perhaps with revenues raised from the planned-for new digital services tax and HST/GST applied to the digital AVMS services earmarked for such ends. In this sense, it would function as a national public, digital platform for the aggregation and delivery over the Internet of media content, information and culture made in, and of historical, social and political significance to, Canada—and effort that reflects the core hallmarks of institutions such as the CBC and NFB. Its remit would also include being the custodian for and access point to a national digital archive and library.

Conclusion

High levels of telecoms, Internet and media concentration are a reality. What is to be done, if anything, about this state of affairs is a question of politics, policy and public debate. Bold steps are needed to help bring about the kind of communications environment we want.

Thus far, the Liberal government has been tepid in the moves it has made. It should double- down on efforts to promote more competitive markets across the board, give a bolder sense of mission to the CRTC and their policy counterparts at ISED and Canadian Heritage. It should also do so in ways that reflects more ambition and a broader conception of the role of the Internet, telecommunications and media in Canadian society, business, politics, culture and everyday life.

To succeed, it will have to resist the pleading of industry and the reinvigorated cultural policy nationalists who wish to tie the increasingly Internet and mobile wireless-centric media ecology to their anachronistic views of broadcasting. The current run-of-events in this regard is both ripe with potential but also frustratingly tied to narrow interests and ideas and a conception of what a new generation of Internet regulation should look like that is far too subservient to a broadcasting model of regulation. If that latter model should come to pass, this will not only be a missed opportunity of the first order, but an outcome in which the "tail really does wag the dog".

We are living in what historians call a "constitutive moment" when decisions taken now will influence the course of events and the shape of the communications and media environment we inhabit for years, even decades, to come. Once such decisions are made, the structures of the new medium of human communication we are still struggling to come to grips with today – the increasingly Internet- and mobile-centric media ecology—will become part of the woodwork. We hope that this report and the others in this series will contribute to better decisions, made on the basis of evidence, and a broad view of the importance of communications to all members of society. ■

Global Media & Internet Concentration Project

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