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Structural change needed, experts say

Sammy Hudes The Canadian Press

Industry Minister François-Philippe Champagne says Canadians from coast to coast are united in one message to telecom providers.

"We pay way too much for telecom services and we want more options, full stop," the minister declared on March 31 as he waved through the final approval for Rogers Communications Ltd.'s takeover of Shaw Communications Inc.

Ottawa's rubber-stamp was punctuated by his decree that the merger - through a side-deal selling Shaw's Freedom Mobile to Quebecor Inc.'s Videotron - would establish a viable fourth player to spur competition in the market and offer Canadians a cheaper alternative to the major companies.

Other recent developments have prompted renewed attention toward competition in telecommunications. In February, Champagne ordered the CRTC to implement new rules to enhance consumer rights, affordability and competition. The regulator has since launched a review aimed at bolstering competition and lowering consumer costs, though it applies only to wholesale internet sales. A review of the fed-

eral Competition Act is also underway.

But industry experts say significant structural reforms are needed to promote competition in Canada's heavily concentrated telecommunications sector, including regulatory changes and the removal of long-standing barriers to entry for new carriers.

Ben Klass, who researches the industry in Canada, noted the landscape is dominated by the Big Three - Rogers, Bell Canada and Telus Communications Inc. - who can afford to build costly network infrastructure. That lets them sell both directly to customers and to smaller companies that pay for network access. Because the big companies are the ones paying for the networks, they have an outsized effect on the sector as a whole.

"Much of the public policy in this area over the last 30 years has been focused on improving competition in service provision as opposed to just simply competition in the building of networks," he said. "(The government) has never really gone far enough toward enabling those companies that rent the infrastructure to actually compete in the marketplace."

That's created an impasse, he said.

"We've been in this sort of halfway house for the past 25 years, where they've said, 'We know we need these companies in the marketplace to provide price discipline and innovative services, but we don't want to harm the (same) companies that build the infrastructure.'"

Telecommunications consultant Mark Goldberg takes an opposing tack, saying the industry is far more competitive than conventional wisdom suggests. Goldberg said competition in telecommunications should be compared to other countries rather than other sectors.

"You're talking about an industry that's extremely capital-intensive to build networks," he said. "Canadian wireless carriers spend 50 per cent more per customer in capital compared to the rest of the G7 plus Australia. The nature of our climate and terrain and all of that adds costs."

In a statement, Rogers spokesman Cam Gordon said the Shaw merger will make the industry more competitive.

"We compete vigorously in a competitive market where prices are decreasing

every year while Canadians pay more for most other goods and services," he said.

Bell and Telus did not respond to requests for comment.

Wireless prices are better than they were five years ago. While the consumer price index for consumer goods and services has risen by more than 15 per cent since 2019, the cellular service costs in Canada have decreased by more than 30 per cent in the same period.

This is evidence of "vigorous competition among both national and regional providers," says the Canadian Wireless Telecommunications Association, which represents companies that provide services and products across the wireless sector ranging from service providers to tower builders.

CWTA spokesman Nick Kyonka said providers have made record investments to upgrade their networks, which are considered among the best performing globally.

"Those who suggest that the Canadian wireless market is more concentrated than other countries are misrepresenting the facts," he said in an email, citing a recent report by Bank of America Global Research that ranked Canada's wireless market the second-least concentrated of 44 surveyed countries.

But a report released in February by Wall Communications Inc., which conducts an annual comparison of Canadian phone and internet prices to other jurisdictions, found Canada still had among the highest prices internationally for cellphone and broadband service in 2022.

Carleton University communications professor Dwayne Winseck, the director of a research project about Canadian media concentration, blamed "regulatory hesitance and fragmentation" on the part of the CRTC, Competition Bureau and Innovation, Science and Economic Development Canada.

"Regulators need to steel their spine, take the political hits and serve the constituents that elected them and the broader view of the public interest," said Winseck.

Researcher Klass pointed to models that have been used in other countries, such as "structural separation," wherein companies that build such infrastructure cannot sell directly to the customer.

"It's something that's been considered a number of times in the context of the Canadian regulatory environment. They've never gone so far as to do it."

The CRTC's announcement in March to lower some wholesale internet rates by 10 per cent is encouraging, said Keldon Bester, co-founder of the Canadian Anti-Monopoly Project. The regulator in 2021 reversed its own earlier decision to drop wholesale internet rates amid protests from major operators, which had argued the lower rate would have them selling at a loss.

In a statement, the CRTC said it is committed to "ensuring that Canadians have access to reliable, affordable and high-quality telecommunications services and enhancing the competitiveness of telecommunications."

Bester said he's also optimistic about Ottawa's ongoing review of the Competition Act, launched last fall, which covers everything from the broad scope of

the act to enforcement methods and corrective measures set out.

The approved merger of Rogers and Shaw should raise questions for the federal government as it pursues its modernization of the act, said University of Ottawa professor Jennifer Quaid, whose expertise is in competition law.

In January, the Federal Court of Appeal rejected the Competition Bureau's bid to quash the deal as it appealed a previous ruling from the Competition Tribunal in favour of the pact. (The court sided with the tribunal's view that "there was no substantial lessening of competition" at risk.)

"Rogers-Shaw is kind of a confirmation that we need to rethink the decision-making body that is used for competition matters, which is currently the Competition Tribunal," said Quaid.

Beyond the long, "cumbersome" process of going through the tribunal, she pointed to the difference "in the kinds of things the commissioner has to prove versus what the merging parties have to prove."

That complaint was highlighted by the Competition Bureau in its submission last month to Ottawa on the ongoing review. The bureau said the Competition Act should be amended to allow for "structural presumptions" like those in place in the U.S.

That would shift the burden to the merging companies to prove why their deals are unlikely to substantially reduce market competition, replacing the current system that requires the regulator to demonstrate the reverse.

"Maybe there's some other parts of

merger law that needs to be looked at or changed because... it seems like the commissioner never manages to successfully make its case to the tribunal," Quaid said.

Bester said he hoped the review would yield "stronger provisions to block and deter harmful mergers" and revitalize Canada's "abuse of dominance" laws that help protect consumers from the power of dominant corporations.

"What we get for that competition, I think, is not worth what the telecoms are selling. So it's quite dire."

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