Intelligence MEMOS

From: Grant Bishop

To: The Honourable Navdeep Bains, Minister of Innovation, Science and Industry

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Re: **Boon or Bane? The Mandated Broadband and Wireless Access Debate**

Two sets of present proceedings raise questions about whether Canada's telecommunications regulator will enhance or impair market efficiency by mandating access to telecommunications facilities – specifically, to broadband and wireless facilities.

For both, regulators have long faced the tension between enabling new competitors by compelling access to incumbents' facilities and the potential disincentive to build innovative infrastructure if new entrants get a free ride on it.

The first proceeding resulted in the CRTC's broadband decision last summer establishing final rates for access to incumbent providers' high-speed access broadband facilities, and applied them retroactively.

Incumbents disagree strongly, and are seeking to overturn the decision through petitions to cabinet and judicial challenges. In its petition, Bell Canada argues that a reversal of the broadband decision is necessary to preserve incentives for network investment – particularly as higher speed fibre and 5G wireless networks roll out. Telus similarly argues that the new rates are so low as to threaten future investment in communications infrastructure.

Total investments in wireline/cable infrastructure could decline by roughly $1.68 billion annually after 2021, according to an analysis by TD Securities, which predicted the decision was unlikely to stand.

The Competition Bureau had also provided the original CRTC proceedings with a study of the wholesale broadband market that warned of the "the potential negative effects" of a wholesale access regime on facilities-based competitors' investment and stressed the need to strike the right balance in rate-setting.

On the wireless side, the CRTC's ongoing sectoral review is grappling with access by mobile virtual network operators (MVNOs). The Competition Bureau's final submission to this set of proceedings argued that Bell, Telus and Rogers possess market power at both the retail and wholesale level in most regions in Canada, but facilities-based regional competitors (i.e., who operate their own wireless networks) are increasingly disrupting the Canadian wireless landscape.

The Competition Bureau cautioned that, while MVNOs can have positive effects on pricing in the marketplace, they are unlikely to deliver the benefits of sustained and vigorous competition that facilities-based wireless disruptors are capable of providing. Nonetheless, the bureau recommended that the CRTC should allow wireless disruptors to act as MVNOs as a transitional step in expanding to full-fledged facilities-based providers.

The CRTC will take up the bureau's submission and the responses of various market participants concerning mandated access for MVNOs this spring. Various interveners have submitted comments concerning mandated access for MVNOs. In general, incumbent facilities-based wireless providers argue that mandated access will discourage next generation wireless investment and would undermine competition from new entrants – particularly facilities-based "disruptors" in certain regions.

Meanwhile, the federal government is also weighing in. The new mandate letter to the Minister of Innovation, Science and Industry has directed him to "reduce the average cost of cellular phone bills in Canada by 25 percent" and "expand mobile virtual network operators (MVNO) in the market."

As our Graphic Intelligence this week illustrates, data from Statistics Canada indicate that wireless prices for Canadian consumers have already declined significantly nationwide – falling by almost 17 percent since mid-2017 to the end of 2019.

Both the broadband and wireless proceedings raise questions around the deference to market forces, competitive consequences and impacts on investment incentives.

A 2016 C.D. Howe Institute report on communications regulation delved into the tradeoff between static and dynamic efficiency in the sector. A new communications technology may provide some market power until surpassed by a subsequent technology generation.

However, if the regulator mandates access for later entrants to an incumbent's network, it dilutes the incumbent's expected return that first motivated the company to invest to gain that market power. If the regulator systematically allows access and underestimates the risks to deploying previously unproven technology, a facilities-based provider considering deploying next-generation infrastructure will reduce future investments accordingly.

Regulators play an essential role where market failures inhibit efficient economic outcomes – but regulators must also be highly attuned to the risks of policy error. As digital services play increasing role in global trade, efficient access to high quality communications services will be a driver of Canada's competitiveness internationally.

Particularly in a setting with rapid technological change, decisions taken to serve short-term objectives for lower prices may impair incentives for investment and innovation in the long term.

Grant Bishop is Associate Director, Research at the C.D. Howe Institute.

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