

Intelligence MEMOS



From: Konrad von Finckenstein
To: The CRTC and Competition Bureau
Date: April 16, 2019
Re: **LET THE COMPETITION BUREAU SEE WIRELESS INDUSTRY DATA**

The CRTC is conducting a review of the mobile wireless framework. As the notice states:

In recent years, mobile wireless services have been a key driver of economic growth in Canada, and today they continue to be fundamental to the success of the digital economy....

Given the importance of mobile wireless services, as the market continues to evolve, it is necessary to review the associated regulatory framework to ensure that (i) it remains relevant, (ii) the needs of Canadians are met, and (iii) the policy objectives set out in Section 7 of the Telecommunications Act are being achieved.

The CRTC is to be commended for this. One of the aspects to be examined is the concentration of Canadian industry and the level of competition or lack thereof and the effects on Canadian consumers.

The Commissioner of Competition wants to do an in-depth analysis that would look at issues such as how competition differs across Canada, the effect of “market events” like new competitors, and model potential future outcomes. The commissioner on March 8 asked the CRTC to obtain from wireless providers extensive, detailed and confidential information at a granular level.

After receiving strenuous objections from Bell and Rogers, the CRTC decided to seek input from other wireless providers and a reply from the Commissioner by April 5. It will now decide how to deal with the Commissioner’s request.

I hope that the CRTC, after considering all the submissions, will grant the request. There are several reasons why the response should be favourable:

1. The CRTC does not have the expertise to do an in-depth competitive analysis such as the competition commissioner proposes. On the other hand, the commissioner cannot obtain the information unless he launches an inquiry under *The Competition Act*.
2. Any information given to the commissioner will be treated with care and handled under strict confidentiality guidelines. The bureau has an unblemished record of keeping highly confidential commercial information under tight lock.
3. The data the commissioner requests are not available elsewhere. Understandably, it is jealously guarded by the wireless providers. However, without such data it is impossible to make a meaningful analysis and recommendations. The bureau’s analysis will be industry wide, not focusing on individual providers.
4. The analysis by the commissioner will be purely from a competition aspect and free from any regulatory assumptions, biases or historical experience. The CRTC staff, being in daily contact with the industry cannot help but be influenced by the views of the key industry players.
5. A review focusing on competition and its effect on consumers is perfectly in line with the recent draft direction from minister of innovation to the CRTC.

Having been in charge of both the CRTC and the Competition Bureau, I am fully aware of how hard it is to do such an analysis without extensive proprietary data, and also how helpful such an in-depth industry study will be when making the final decisions on the mobile wireless framework.

I urge the CRTC to ignore the objections of the major wireless providers and grant the commissioner’s request.

The Hon. Konrad W. von Finckenstein, Q.C., is a Senior Fellow at the C.D. Howe Institute, and was formerly the Chair of the Canadian Radio-television and Telecommunications Commission, a Federal Justice, and Commissioner of Competition.

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