



**WE'RE DIFFERENT.  
IN A GOOD WAY.**

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Jeanne Pratt  
Senior Deputy Commissioner, Mergers and Monopolistic Practices Branch  
Competition Bureau Canada  
Place du Portage, 50 rue Victoria  
Gatineau, Quebec K1A 0C9

17 August 2022

**RE: The entirely predictable outcomes of the Bureau's lack of enforcement action in Canada's telecommunications sector**

Dear Ms. Pratt,

1. As you know, predatory pricing is an example of an anti-competitive act that is specifically enumerated under the abuse of dominance section of the *Competition Act*.<sup>1</sup>
2. As detailed in our [complaint](#) to the Competition Bureau, dated February 20, 2020, incumbents have engaged in a sustained strategy of predatory pricing in the retail market for internet services using their flanker brands Virgin (Bell), Fido (Rogers) and Fizz (Videotron). These flanker brands regularly offer *retail* prices for a given level of internet service at a price below the *wholesale* prices they inflated for competitors.
3. In our complaint to the Bureau, TekSavvy warned that,

“If left unchecked, this combination of circumstances is likely to lead to TekSavvy and other [wholesale-based competitors] exiting the retail market for wireline broadband services, which is almost certain to lead to substantially higher prices in retail broadband markets in Ontario and Quebec, as well as the rest of Canada.”

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<sup>1</sup> See section 78(1)(i) of the Competition Act, RSC 1985, c C-34, which includes as an example of an anti-competitive act: “selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor.”

See also two other analogous examples of anti-competitive acts enumerated in section 78(1):

(a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market [...]

(d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor.

4. In the past few months, two large wholesale-based competitors have done exactly that, not only exiting the market but being acquired by already dominant incumbents.<sup>2</sup> At the same time, consumer prices have markedly increased, with the average price of the most popular internet services rising over 13% between 2020 and 2021.<sup>3</sup>
5. We understand that the Bureau is engaged on the pending merger of two incumbent carriers. However, the pattern of abuses of dominance in this market will continue to exist regardless of whether that merger proceeds. The Bureau has taken no action to address the anti-competitive activities detailed in our complaint and has remained silent as incumbents acquire independent competitors and while prices continually rise for consumers. This trend can only be expected to worsen if the Bureau does not take enforcement action.

#### **A. Incumbents' predatory pricing**

6. The incumbents' use of flanker brands to offer retail prices below wholesale costs has been openly acknowledged by the Bureau's own department: Innovation, Science and Economic Development Canada (ISED). A regulatory impact statement submitted by ISED clearly states that "[p]rices for select incumbent affiliated flanker brand plans in the market are below what a competitor ISP could reasonably charge based on the wholesale rates."<sup>4</sup> ISED's annual report on telecommunications pricing, commissioned from Wall Communications Inc. also reports that flanker brand prices tend to be lower than the prices of wholesale-based competitors for equivalent service offerings.<sup>5</sup>
7. As we explained in our complaint, this predatory pricing strategy is designed to specifically target wholesale-based competitors. Incumbents openly acknowledge their flanker strategy undercuts wholesale competitors. In launching Fizz, Videotron called it a "weapon to fight the resellers".<sup>6</sup> In March 2018, Bell's then CEO recognized the obvious link between their roll-out of flankers and wholesale competition: "we had negative wholesale loading, or subscriber additions, which of course we would be very comfortable with...Of course, part of that is our strategy with the roll-out of the Virgin Internet brand."<sup>7</sup>
8. It is clear that the incumbents' predatory pricing strategy is having its desired effect: wholesale-based competitors are unable to compete on price and their businesses are

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<sup>2</sup> Bell Canada, "[Bell acquires Longueuil-based Internet provider EBOX](#)", February 24, 2022; and Christine Dobby, "[If you live in the GTA, Quebecor could soon be your ISP as it snaps up small internet and TV provider VMedia](#)", Toronto Star, July 28, 2022.

<sup>3</sup> Wall Communications Inc. prepared for Innovation, Science and Economic Development Canada, "[Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions](#)", 2021 Edition [Wall Report], p 46.

<sup>4</sup> Regulatory Impact Analysis Statement, *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, Part I, Vol. 156, No. 23, 4 June 2022.

<sup>5</sup> Wall Report, p 57.

<sup>6</sup> Greg O'Brien, "Fizz Internet the 'right weapon' to beat back resellers, says Vidéotron", CARTT.ca, 27 March 2019.

<sup>7</sup> BCE Q3 2018 Results Conference Call Transcript, 1 November 2018, at page 8, <<http://www.bce.ca/investors/financial-reporting/2018-Q3/2018-q3-transcript.pdf>>.

therefore unsustainable, so they are exiting the market. As discussed in more detail below, retail prices continue to rise each year that the Bureau fails to enforce the *Competition Act* in Canada's telecommunications sector.

## **B. Incumbents buy competitors after rendering it impossible for them to compete**

9. Not only have incumbents been allowed to engage in these abuses of dominance for years, but they are now being allowed to benefit from the anti-competitive market they have created: by acquiring the companies they have squeezed out.
10. By acquiring independent companies and continuing to operate them under their established brands, incumbents get to both eliminate their competitors and benefit from the goodwill they have built as independent alternatives. Incumbents, as they do with their flanker brands, perpetuate the illusion of competitive choices by maintaining these other brands, while actually eliminating the last vestiges of real competitive choices for consumers.
11. Selling their companies to incumbents was a rational choice for these competitors, given the wholly unsustainable market conditions for wholesale-based competitors. With no changes in the wholesale rates or enforcement of incumbents' breaches of the *Competition Act*, other competitors are likely to make the same choice.<sup>8</sup> In fact, just last week, the Canadian Communication Systems Alliance, which represents many independent telecommunications companies (including recently acquired EBOX and VMedia), seems to anticipate that more acquisitions are likely: It issued a new policy to address sales of member companies to non-members.

## **C. Increasing prices for Canadian consumers**

12. This substantial lessening of competition is visible in entirely predictable price increases for consumers. Not only are competitive choices for customers decreasing as independent competitors are being driven out of business, but Canada's already high retail prices are continually increasing. The government's own Wall Report states that "fixed broadband prices have increased in Canada in every basket in every year between 2019 and 2021" (excluding the level 2 basket, for internet speeds between 10-15 Mbps).<sup>9</sup>
13. Unlike many pricing trends, these increases cannot be tied to global market forces – the Wall Report specifically found that prices for broadband have been trending down in peer countries, including the U.S.: "[r]elative to last year, all countries (except for Canada and Japan) have lower prices in a majority of baskets."<sup>10</sup> It is clear that telecommunications pricing in Canada is increasing specifically because of the unchecked market power that the incumbents exercise.

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<sup>8</sup> See for example, Christine Dobby, "[Indie internet providers warned for months CRTC decision would kill them — now they're beginning to disappear](#)", Toronto Star, May 24, 2022.

<sup>9</sup> Wall Report, p 44.

<sup>10</sup> Wall Report, p 60.

14. Again, TekSavvy urges the Competition Bureau to take enforcement action to address rampant anti-competitive activity in Canada's telecommunications industry.
15. Canada is suffering through a cost-of-living crisis. Consumers should not continue to pay increasing, artificially inflated prices for an essential service while heavily subsidized, large incumbent carriers reap record profits.
16. How much more harm is the Bureau willing to tolerate before acting on our complaint, or doing anything else about these anti-competitive activities?

Yours truly,

*[transmitted electronically]*

Andy Kaplan-Myrth  
VP, Regulatory and Carrier Affairs

cc: The Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry  
André Arbour, Director General, Telecommunications and Internet Policy, ISED  
Derek Leschinsky, Department of Justice