



June 2, 2022

**VIA EMAIL**

Janice Charette  
Clerk of the Privy Council and Secretary to the Cabinet  
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Dear Ms. Charette,

**Re: NPF-PIAC Petition to Governor in Council concerning Broadcasting Decision  
CRTC 2022-76**

1. The Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) writes with respect to a petition filed by the National Pensioners Federation and the Public Interest Advocacy Centre (collectively, NPF-PIAC) filed further to section 28 of the *Broadcasting Act* with respect to Broadcasting Decision CRTC 2022-76. CIPPIC supports NPF-PIAC's petition and specifically its call to set aside the CRTC's decision to approve a change in control and ownership of Shaw Communications to Rogers Communications.

2. Simply put, by substantially increasing Rogers' market power in a communications landscape already far too heavily concentrated, the decision under review will harm customers. Nor will the mix of band-aid restrictions and unenforceable expectations adopted by the decision stem this harm. We are particularly concerned that the decision fails to take into account the vertical concentration impacts that will result from this merger and the resulting immense market power a post-merger Rogers will wield.

3. In the broadcasting context, many of the decision's unenforceable expectations and minimal safeguards will provide minimal check on the immense market power of a converged Rogers/Shaw. For example, we are concerned by the impending price hikes that Shaw TV-only customers can expect. As documented in NPF-PIAC's petition, the CRTC's expectation that Rogers will continue to offer television-only packages is insufficient to address this concern in that it is

unenforceable, appears limited to low-income households, and fails to guarantee similarly priced packages post merger.<sup>1</sup> We also echo the House of Commons' Standing Committee on Canadian Heritage (CHPC)'s concerns regarding the detrimental impact that this merger will have on Canada's already strained local news ecosystem and reiterate its recommendation that the merger be refused.<sup>2</sup>

4. Additionally, we are concerned with the decision's treatment of Corus—currently the second most viewed source of private English television and tied with Rogers for third most listened to private source of English radio content in Canada.<sup>3</sup> The decision treats Corus and all of its programming content as wholly distinct from the envisioned post-merger Rogers. Yet Corus will remain controlled by the Shaw family. Although Corus has always been its own distinct legal entity, the CRTC has historically considered that it should be effectively considered part of Shaw Communications, as both entities were controlled by the Shaw family.<sup>4</sup>

5. However, since Rogers as a company will not control Corus post merger, the CRTC intends to treat it as an independent media company.<sup>5</sup> But post merger, the Shaw family will be heavily invested in Rogers and will control two seats on the Rogers board. The Shaw family therefore continues to have substantial incentive to operate Corus in ways that are advantageous to Rogers and, with the information they obtain through their Board seats, will have ample opportunity to do so in ways that will be difficult to detect.

6. The CRTC's solution—a license condition prohibiting Rogers and Corus from providing undue advantages in their dealings with each other and from acting as a single entity to their

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<sup>1</sup> NPF-PIAC Petition, paras 22-25, 27 and 34. See also: Canadian Press, "'Skinny Basic' TV Packages Under Fire at CRTC Hearings", September 7, 2016, *The Toronto Star*, <https://www.thestar.com/business/2016/09/07/skinny-basic-tv-packages-under-fire-at-crtc-hearings.html>.

<sup>2</sup> House of Commons, Standing Committee on Canadian Heritage, "The Rogers-Shaw Merger: Bad News for Local News", May 2022, 44<sup>th</sup> Parl 1<sup>st</sup> Sess, <https://www.ourcommons.ca/Content/Committee/441/CHPC/Reports/RP11775633/chpcrp01/chpcrp01-e.pdf>, Recommendation 1: "That the Government of Canada reject the Rogers-Shaw proposed merger."

<sup>3</sup> CRTC, Communications Market Report, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/cmrd.htm>, "Data - TV", TV-T3: Private Conventional Television Stations of Large Ownership Groups, 2018-2020; and "Data - Radio", RD-S6: Tuning and Tuning Share by the Largest English-Language Private Commercial Radio Operators in Canada in an Average Week, 2015-2021.

<sup>4</sup> Broadcasting Decision CRTC 2016-110, paras 16-19.

<sup>5</sup> Broadcasting Decision CRTC 2022-76, para 90.

advantage—is insufficient.<sup>6</sup> The Shaw family, through its control of Corus, will be able to act in Rogers’ advantage in many ways that will be difficult to document, particularly where these actions are premised on non-public information obtained through Shaw’s seats on the Rogers board. There are therefore strong incentives and minimum obstacles in place for tacit coordination between Corus and Rogers.<sup>7</sup>

7. The decision also does not account for the vertically integrated market power that a post-merger Rogers will wield. Communications in Canada is a highly vertically integrated market, where concentration in home and mobile Internet can significantly impact a converged entity’s ability to leverage market power in broadcasting programming and distribution. Converged companies can leverage lucrative media holdings, bundling options, programming decisions, access to infrastructure, retail storefront control, control over modes of content delivery, advertising, and a host of other advantages in ways that do not fall neatly within any single telecommunication or broadcasting market.

8. A post-merger Rogers will control about 47% of cable distribution outside of Quebec, allowing it to wield substantial market power at the national level. Rogers will also gain significant market share in home Internet and mobile if the merger proceeds. And while we note that telecommunications-related elements of this merger are being contested by the Competition Bureau, Canada’s outdated competition laws pose steep obstacles that make it difficult for the Bureau to block mergers even where these are deeply harmful to customers.<sup>8</sup> And if Shaw’s mobile services are ultimately divested, a post merger communications market will still be far less capable of restraining the immense market power of a conglomerated Rogers.<sup>9</sup> This petition therefore cannot ignore the vertical market power that a post-merger Rogers will yield. Broadcasting customers will face higher prices as a result.

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<sup>6</sup> BD CRTC 2022-76, para 98.

<sup>7</sup> For examples, see: CIPPIC/OpenMedia, Intervention, Broadcasting Notice of Consultation CRTC 2013-106, [https://cippic.ca/uploads/BNC\\_2013-106\\_INTERVENTION.pdf](https://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf), para 43.

<sup>8</sup> Robin Shaban, “Canada’s Efficiencies Defence May Enable Rogers-Shaw Merger”, March 16, 2021, *The Globe and Mail*, <https://www.theglobeandmail.com/business/commentary/article-canadas-efficiencies-defence-may-enable-rogers-shaw-merger/>.

<sup>9</sup> See: *Commissioner of Competition v Rogers Communications*, CT-2022-002, Notice of Application, <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/520922/1/document.do>, paras 103-104.

9. The merger will also undermine competition in home Internet and mobile at a time when both of these services are reaching crisis points.

10. Competition in the home Internet context is deeply strained in light of recent regulatory decisions that have undermined the ability of wholesale competitors to provide effective price discipline.<sup>10</sup> Affordability remains a central barrier to achieving adoption of true broadband (defined by the CRTC as 50/10 Mbps with unlimited data usage) as many households simply cannot afford these plans.

11. In terms of mobile connectivity, Canada is now rightly acknowledged as one of the most expensive countries in the developed world.<sup>11</sup> While technological developments continue to drive down mobile providers' costs for delivering a GB of data in Canada, prices are dropping faster in our peer countries around the world and Canada is falling further and further behind. Already, fewer Canadians can afford to subscribe to mobile plans than in most OECD countries and those that do subscribe can't afford to use their data plans to the same degree.<sup>12</sup> Too frequently, lower income households are forced to choose between making the monthly payments on their essential service plans and skipping a meal.<sup>13</sup>

12. In short, this merger will harm customers in Canada and should not move forward in any configuration. We therefore strongly support NPF/PIAC's petition to set aside the CRTC's approval of this merger.

**Fin.**

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<sup>10</sup> Erin Knight, "Your Voice, Delivered: OpenMedia Community Speaks Out 50,000+ Times Demanding Cabinet Reverse the CRTC's Internet Price Hikes!", May 24, 2022, <https://openmedia.org/article/item/openmedia-community-speaks-out-50000-times-demanding-cabinet-reverse-the-crtc-internet-wholesale-rates-price-hikes>; Michael Geist, "Why the Government's New Telecom Policy Directive Means More of the Same for Canada's Communications Competition Woes", May 27, 2022, <https://www.michaelgeist.ca/2022/05/telecomdirective/>; Shira Ovide, "Internet Drama in Canada. (Really.)", May 26, 2022, *New York Times*, <https://www.nytimes.com/2022/05/26/technology/canada-internet-service.html>.

<sup>11</sup> CIPPIC/OpenMedia, DotMobile Petition to Governor in Council Concerning Telecom Regulatory Policy CRTC 2021-130, Notice No TIPB-001-2021, Reply Submission, September 22, 2021, [https://cippic.ca/uploads/20210922-GIC\\_Petition-Reply-FINAL.pdf](https://cippic.ca/uploads/20210922-GIC_Petition-Reply-FINAL.pdf).

<sup>12</sup> Keldon Bester & Tamir Israel, "Fact-Check: Why Our Sky-High Wireless Bills Don't Make Sense", February 2, 2022, <https://openmedia.org/article/item/why-our-sky-high-wireless-bills-dont-make-sense>.

<sup>13</sup> Daily Bread Food Bank & North York Harvest Food Bank, "Who's Hungry: Profile of Hunger in the Toronto Region", November 5, 2019, <https://www.dailybread.ca/blog/whos-hungry-2019-a-profile-of-hunger-in-the-toronto-region/>.