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Competition Bureau

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*Attention: Greg Lang, Major Case Director and Strategic Policy Advisor
Competition Promotion Branch*

By Email: ic.cbmarketstudies-etudesdemarchebc.ic@canada.ca

August 31, 2018

Re: Competition Bureau Market Study Notice: Competition in Broadband Services - Cogeco Comments

In accordance with the procedures set out in the above-noted Notice, please find attached the comments of Cogeco Communications Inc. ("Cogeco").

Cogeco submits a confidential version and a redacted version of its comments. Cogeco request that the confidential information voluntarily submitted in the course of the above mentioned market study be protected under section 29 of the *Competition Act*.

Cogeco thanks the Competition Bureau for the opportunity to submit comments for this market study and remains available to answer any questions you may have regarding this submission.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Nathalie Dorval', is positioned above the printed name.

Nathalie Dorval
Vice-President Regulatory Affairs and Copyright
Cogeco Inc.

ENC: 1

c.c.: Luc Noiseux, Senior Vice President and Chief Technology and Strategy Officer, Cogeco Inc.
Christian Jolivet, Senior Vice-President Corporate Affairs, Cogeco Inc.

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Competition Bureau

**Market Study Notice: Competition in
Broadband Services**

**Comments of
Cogeco Communications Inc.**

31 August 2018



Introduction

1. Cogeco Communications Inc. ("Cogeco") is pleased to submit these comments in response to the issuance of the Competition Bureau's Market Study Notice on Competition in Broadband Services.
2. Cogeco is a diversified communications company headquartered in Montreal, Quebec, that provides video, Internet and telephony services through its affiliate Cogeco Connexion Inc. to residential and business customers in Ontario and Quebec as well as offering third party Internet access and transport services to Internet service providers on a wholesale basis.
3. Cogeco also provides an entire suite of information technology services to its business customers through Cogeco Peer 1 (Canada) Inc. Included among the services provided by this entity are collocation, network connectivity, hosting and cloud services, all of which are supported by 16 data centres, an extensive fibre network in Montreal and Toronto, as well as points-of-presence in North America and Europe.
4. As a competitive communications service provider that has invested heavily in infrastructure in Canada for over 60 years and one that is making significant investments in mobile spectrum, Cogeco has strongly supported and continues to support the development of a regulatory framework that encourages investment in facilities and promotes competition among facilities-based carriers. This regulatory framework ensures that Canadian consumers benefit from greater choice, lower prices, and high-quality communications services.

Broadband Wireline Market Context

5. At the outset, Cogeco submits that the current regulatory framework that governs the provision of wireline wholesale broadband services in Canada has led to the creation of many retail broadband competitors, primarily in Ontario and Québec.
6. Competition in the wireline broadband market is robust. Cogeco competes with two facilities-based incumbent carriers in its operating territory – Bell Canada and Telus Communications – as well as a number of reseller competitors such as TekSavvy Solutions Inc. and Distributel Communications Ltd.



7. These reseller competitors have been able to price aggressively in the market and, in turn, have successfully captured a significant proportion of the overall growth in the Canadian broadband market over the past five years.

8. Further, reseller market share is significant – and growing – especially in Ontario and Québec, the two principal regions in Canada where the resellers have been particularly active. Cogeco estimates that resellers have captured 19% of the market in our Ontario and Québec operating territories, proving that customers have considerable choice for their broadband needs.

9. Resellers have been successful in creating awareness of their brand, products and pricing through innovative marketing strategies. Further, resellers have been successful in adding other products to their portfolio of services, such as telephony, television and business services, which has enabled them to employ bundling strategies to acquire customers.

10. ###.

11. Since 2013, ###.

12. Cogeco believes that the regulatory framework that has been in place for the past 20 years has contributed significantly to the emergence and growth of alternative providers of retail broadband services in Canada and that the current regulatory measures are more than sufficient. In fact, Cogeco believes that it is time for the regulators to recognize the market reality described in paragraphs 10 and 11 above and to adopt regulatory measures that would permit better investment recovery for wholesale broadband providers, drive resellers to invest more in their own facilities and become less reliant on incumbent facilities to offer their services to their customers. These proposed measures are consistent with Cogeco's support of the current facilities-based approach to telecommunications competition in Canada. Consistent with this recommendation, Cogeco also believes that the current interim wholesale rates should be readjusted upward once they are made final to better reflect the costing and network realities that were reflected in our tariff proposals as initially filed.

Fixed/Wireless Convergence: The Real Problem Area



13. In Cogeco's experience, the real competition challenge does not reside within the wireline broadband industry where there is very low barrier to entry and robust competition. Rather, it lies in the wireless industry where barriers to entry are high due to spectrum scarcity and which continues to be characterized by limited competition and high concentration. The three incumbent wireless carriers have market power in the provision of retail mobile wireless services and many of the newer, regional wireless service providers, particularly those providing mobile-only wireless services, struggled unsuccessfully to gain market share of any significance. Indeed the three incumbents account for 92% of mobile revenues nationally¹.

14. Indeed, the CRTC, in Telecom Regulatory Policy 2015-177, made several findings about the wireless services market in Canada that demonstrate a concentration of market power in the hands of a few firms:

- a. that Bell Mobility, RCP (Rogers Communications Partnership), and TCC (Telus Communications Corp.) collectively possess market power in the national market for GSM-based wholesale MVNO (Mobile Virtual Network Operator) access.
- b. that wholesale network access to the GSM-based networks of the national wireless carriers is a required input for competitors in the downstream retail market.
- c. that denying competitors access to GSM-based wholesale network access services at a national level would likely result in a substantial lessening or prevention of competition in the downstream retail market.
- d. that the GSM-based mobile wireless networks of Bell Mobility, RCP, and TCC cannot be practically and feasibly duplicated by competitors in the short to medium term.²

15. This market concentration in the provision of wireless services has become a key concern given the investment mix into both wireline and wireless broadband networks and the changing usage patterns of broadband consumers. What was traditionally considered to be "wireline" traffic is increasingly originating over Wi-Fi

¹ CRTC Communications monitoring report 2017, Figure 5.5.6.

² Telecom Regulatory Policy CRTC 2015-177, paragraphs 74, 88, 106 and 108

(i.e. wireless) connections. Similarly, “mobile” networks are using increasing amounts of fibre (i.e. fixed technology) in their backbone networks as they augment the data carrying capacity of their LTE wireless networks. The coming transition to next-generation 5G access technologies will continue, and even accelerate, this convergence towards hybrid fixed+wireless networks by necessitating an even tighter integration with high-performing fixed networks, making it clear that the line between different types of broadband access networks has considerably blurred.

16. Given this clear convergence of access networks towards a hybrid fixed+wireless configuration using fibre in the backbone and wireless to the end-user device, Cogeco submits that there is, ultimately, only one comprehensive type of broadband “access network” using different and varying proportions of wireless technologies.

17. Considering this convergence in broadband access network and upcoming 5G deployment, increased competition can be achieved by new entry into the wireless market. However, there are significant barriers to entry to the mobile wireless market, starting with the limited availability of cellular mobile spectrum. This scarce resource is essential to the provisioning of wireless services but there are few options available to a prospective new alternative wireless facilities-based carrier seeking its own spectrum in order to operate as a mobile network operator (MNO) and there is no wholesale market to which a new alternative wireless service provider can turn for radio access network services for the purpose of operating as a full MVNO.

18. Cogeco submits it is therefore necessary to develop a regulatory framework that accommodates this reality and seeks to remedy the imbalance. This would advance the objective of promoting facilities-based competition by encouraging investment in broadband access facilities to enable all forms of hybrid “fixed+wireless” access connectivity.

19. This can be achieved through the adoption of a truly technology-neutral and progressive approach towards access networks in this country. This would also assist in raising the mobile wireless penetration rate up from Canada’s current

standing at the bottom of fourteen comparable countries³. Clearly, regulatory intervention is warranted.

20. Different tools are needed to enable the emergence of new alternative wireless facilities-based carriers and, as a result, increased competition in broadband access. The following elements constitute key components to be put in place to this effect:

- a. The ability for new entrant to access spectrum on a smaller tier basis at a reasonable price.
- b. The creation of a wholesale wireless market for radio access network in order to be a mobile virtual network operator where it is uneconomical to be a facilities-based provider.
- c. Reasonable wholesale roaming tariffs from the national incumbent MNOs.
- d. Ready access to tower sharing at reasonable conditions.

21. This approach would lead to a regulatory policy that is technology-neutral and would take into account the clear and increasing convergence of wireline and wireless networks. Moreover, this approach would promote investment in access facilities and competition among facilities-based carriers, leading to benefits for Canadian consumers such as innovative services and lower prices.

22. For the remainder of this submission, Cogeco addresses the selected questions posed by the Competition Bureau in its Market Notice. Where Cogeco does not address a specific question, this should not be construed as agreeing or disagreeing with the proposal, as lack of interest in the subject matter, or as taking a position on the specific issue.

23. There is no doubt, in Cogeco's view, that the mandated wireline wholesale regime has fueled robust competition in both Ontario and Québec where the Company operates ###. Therefore, Cogeco urges regulators to avoid adopting any additional measures to stimulate passive resellers' competition and to the contrary,

³See: <https://www.statista.com/chart/9096/smartphones-arent-as-ubiquitous-as-you-think/>, 25 April 2017

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start implementing measures that will stimulate resellers' investment in their own facilities. To this end setting the final TPIA wholesale tariffs that are currently interim, at a just and reasonable level and ensuring swift rate deregulation of the aggregated Third Party Internet Access (TPIA) service would be considered regulatory measures pointing in the right direction. In addition action is urgently needed in the broadband wireless access market where the adoption of policy and regulatory measures are key to encourage increased competition.

Question 1: Have resellers been able to deploy competitively effective service offers?

- i. What competitive influence have resellers had, to date, on traditional phone and cable network owners? How could this competitive influence change in the future?
- ii. Are there differences between the services offered by traditional phone and cable network owners and those provided by resellers that could explain the observed consumption patterns? What are the value points that matter the most to consumers?

24. Cogeco is a facilities-based broadband service provider and competes with a variety of service providers in its operating territories in Ontario and Québec. This includes facilities-based competitors such as Bell Canada, Telus Communications, and AllStream (now known as Zayo Canada) as well as a number of smaller, reseller competitors, such as TekSavvy, Distributel and Start Communications.

25. All of these competitors have an influence on Cogeco's sales activities. Cogeco monitors the competitive offers in the market from all service providers on a regular basis, and adjusts its pricing and offers to remain competitive and relevant to its customers, as well as constructing new offers to attract new customers.

26. Specifically, Cogeco utilizes a number of tactics to stay abreast of competitive developments:

- a. ###.
- b. ###.
- c. ###.

27. Cogeco would also note that, likely as a response to greater competition from resellers, both Bell Canada and Rogers Communications have used their wireless flanker brands to provide a wireline broadband Internet service that is aimed at a younger, more cost conscious market segment.

28. Fido Home Internet, the 'flanker' wireless brand of Rogers Communications Inc., offers five wireline Internet packages, three of them with unlimited data



downloads, at low price points, at download speeds of up to 75 Mbps. In addition, one of the packages is aimed directly at students, a market that is widely known as being price sensitive.⁴ Similarly, Virgin Mobile Home Internet – the ‘flanker’ brand for Bell – is also offering a selection of wireline Internet packages with download speeds of up to 100 Mbps, also at low price points for cost conscious consumers.⁵

29. In addition to the competitive effects felt by Cogeco of reseller competition, and the actions the company takes as a regular part of its business, Cogeco would note that, in providing wholesale Internet services to resellers for more than ten years, it has observed that resellers, in general, tend to differentiate themselves in the market through a variety of measures, including:

- a. Price – being lower than some competitor pricing for comparable services;
- b. Value for Service Offered – offering unlimited bit caps for a lower price than some competitors, but at lower Internet download speeds;
- c. Customer Service – by working to ensure that their customer service is more personable, and responsive, than other competitors;
- d. Bundling – by bundling their Internet services with phone, and, increasingly, television services, resellers are able to offer multiple services for an overall lower price point than some competitors.

30. A cursory examination of resellers’ pricing for like broadband products reveals that, in general, resellers are effectively competing for broadband market share through aggressively pricing their services in the Canadian broadband market.

31. In support of this conclusion, Cogeco would note that, in October, 2016, the CRTC rendered a decision that, on an interim basis, significantly reduced the usage rates that wholesale network providers like Cogeco could charge resellers.⁶ This

⁴ <https://www.fido.ca/pages/#/internet>

⁵ https://www.virginmobile.ca/en/internet/index.html?ETCID=SEM_Internet_Google_EN_General-Branded_Internet_Q3-2018-Promo&gclid=EAlalQobChMIq5_T1vqP3QIVnlcNCh0JcAniEAAYASAAEgJc2_D_BwE

⁶ See Telecom Order CRTC 2016-396

action on the part of the CRTC had the effect – in Cogeco’s case – of reducing its wholesale usage rates by 72%.

32. As a result of this rate decrease, a number of resellers reacted by lowering their broadband Internet rates, or increasing the value of their existing broadband packages by permitting greater amounts of data to be downloaded for the same price as previous packages. For example, TekSavvy Solutions Inc. (TekSavvy) notified its customers by email in early December, 2016 that, as of the next billing cycle, their available download capacity would increase and their monthly rate would decrease. The President of TekSavvy noted that this action on their part was ‘one of the largest price drops we’ve ever seen’ and that it was being applied to their ‘entire customer base’.⁷ Indeed, some resellers indicated that the cost drop was as great as 89%.⁸

33. Other resellers acted in a similar manner. B2B2C, a resale broadband provider in Montréal, stated at the beginning of January, 2017 that they were increasing the usage available on each of their packages for the same price as they charged previously.

34. As a result of their pricing strategies, service bundling and other differentiators, resellers have been able to deploy effective service offers and grow their share of the broadband market in Ontario and Québec. ###.

###

35. The figures above demonstrate that resellers ###.

36. ###. The CRTC’s 2017 Communications Monitoring Report (CMR) shows that revenues in the category of ‘Other Service Providers’ – which includes broadband resellers – has grown at a cumulative annual growth rate (CAGR) of 23.5% during the period 2012-2016. This is significantly higher than the revenue CAGR of 6.6% registered by all cable carriers combined over the same period.

⁷ Ibid.

⁸ https://www.huffingtonpost.ca/2016/12/20/internet-bills-teksavvy-crtc_n_13747464.html

Table 5.3.2 Residential Internet access service revenues by type of service provider (\$ millions)

Type	2012	2013	2014	2015	2016	Growth (%) 2015-2016	CAGR (%) 2012-2016
Incumbent TSPs	1,891	2,156	2,442	2,760	3,132	13.5	13.5
Cable-based carriers	3,065	3,293	3,477	3,651	3,953	8.3	6.6
Other service providers	412	489	636	814	959	17.8	23.5
Total	5,369	5,938	6,554	7,224	8,045	11.4	10.6
Dial-up (as a percentage of revenues)	0.8	0.5	0.3	0.2	0.1		

Source: CRTC data collection

37. In addition, the CMR shows similar significant growth in the number of total broadband end-customers that have been acquired by resellers over the same period. The table below, again from the CRTC's 2017 CMR, shows that other service providers have grown the total number of their end-customers by a CAGR of 13.1% between 2012 and 2016, versus the cable companies who have only managed to grow their total end-customer base by 0.4% over the same period.

Table 5.3.4 Residential Internet service subscribers, by type of service provider (thousands)

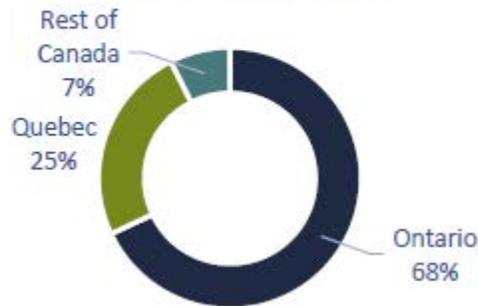
Type of service provider	2012	2013	2014	2015	2016	Growth (%) 2015-2016	CAGR (%) 2012-2016
Incumbent TSPs	4,114	4,244	4,429	4,586	4,723	3.0	3.5
Cable-based carriers	5,930	5,933	5,954	5,986	6,030	0.7	0.4
Other service providers	947	1,074	1,247	1,447	1,548	7.0	13.1
Total	10,991	11,251	11,630	12,019	12,301	2.4	2.9
Dial-up (as a percentage of subscribers)	1.7	1.1	0.8	0.7	0.6	n/a	n/a

Source: CRTC data collection

38. Last, but not least, Cogeco submits that the market share noted in the CRTC's 2017 CMR is understated when considered on a regional basis. The CMR states on page 258 that the resellers have a 13% market share of broadband subscribers in Canada. However, the CMR also demonstrates that 93% of the wholesale high speed Internet subscriptions are in Ontario and Québec, as indicated in figure 5.6.3 below:⁹

⁹ CRTC CMR 2017, section 5.6, page 343.

Wholesale HSA-based subscriptions
across Canada, 2016



39. As the vast majority of reseller broadband customers are located in Ontario and Québec, it is more realistic to calculate the market share of resellers in those two provinces, to arrive at a better indication of reseller market success.

40. Cogeco has taken the liberty to provide a calculation of this market share, in the absence of provincial data in the CRTC's CMR reports. Cogeco has taken the 93% figure, and applied it to the total number of reseller broadband subscriptions noted in Figure 5.3.4 above. This reveals a new total of reseller broadband subscriptions in Ontario and Québec at 1.439M.

41. Next, given the absence of residential broadband subscriptions by province in the CRTC CMR report, Cogeco has estimated that number by applying a population weighting to the total number of Canadian broadband subscriptions.

42. Using Statistics Canada population statistics from 2016, both Ontario and Quebec represent 61% of Canada's total population. In applying this figure to the total number of Canadian broadband subscribers provided by the CRTC, it is possible to arrive at a relatively accurate estimation of the total number of residential broadband subscriptions for Ontario and Quebec (approximately 7.563M).

43. In applying the 1.439M figure to the total reseller residential broadband subscriptions for Ontario and Quebec only, the adjusted market share for the resellers in Ontario and Quebec is not 13% as reported nationally in the CRTC's CMR, but rather, 19%.



44. In sum, ###, the aggregated growth statistics for the whole industry shown in the CRTC's CMR and the high market share obtained by resellers of the residential broadband market in both Ontario and Quebec, clearly demonstrate that the current wholesale market is robustly competitive. It is delivering high growth for resellers, in both revenue and subscribers. It has provided the regulatory incentives for smaller providers of broadband Internet services to enter the market. Finally, it has delivered broadband services at lower price points to Canadian consumers, who have responded to these service providers by migrating to their services in significant numbers. All of this can only be qualified as a robust resale market, which is encouraging entry and providing retail competition in the wireline broadband market in Canada.

45. While there is no doubt in Cogeco's view that the mandated wireline wholesale regime has fueled robust competition in both Ontario and Québec, Cogeco considers that the current interim rates are set too low as they were established prior to the CRTC conducting a thorough review of the rate proposals that were filed in accordance with the costing model methodology employed by the CRTC to set rates for wholesale services. Cogeco viewed, and still views, this rate reduction as unsupported by the evidence and information filed. In addition, the rates have been in effect since 2016, a length of time that is inexplicable for rates that are characterized as interim, and further, injects considerable uncertainty into the retail broadband market.

Question 2: How have consumers reacted to new competitive alternatives?

- i. How aware are Canadian consumers of their options for broadband services? Are there factors that may drive consumer inertia in this industry and, if so, are there ways to overcome these factors?
- ii. How does the fact that resellers do not typically provide other telecommunications services (e.g., television or phone service) affect the competitive attractiveness of resellers?
- iii. How do industry contractual practices affect consumer behaviour? How are contract lengths and bundling discounts structured? How aware are consumers of their contractual obligations and rights?

46. Cogeco has, over the past year, conducted some independent surveys of customers on the issue of awareness of competitors in its operating territory. These recent surveys have indicated that there is a high awareness on the part of end-customers about smaller internet service providers, their pricing and their offers. This awareness is greater than 75% of those surveyed, indicating that the resellers are highly effective in promoting their service offerings. In addition, Cogeco would note that this awareness is particularly significant in specific regions in Cogeco's operating territory, where certain resellers are headquartered, and have therefore over the years built up brand awareness in those regions which they can then use to focus their marketing and sales efforts.

47. Cogeco would also note that, in general, Canadian consumers are aware of the competitive offers by resellers through traditional and new means of marketing:

- a. Web-based – all resellers that Cogeco has dealt with over the years have a significant web presence which helps to drive awareness of their offers, as well as being a tool used for customer acquisition;
- b. Social media – resellers have embraced social media as their primary marketing vehicle to conduct their own campaigns on both awareness and pricing;



- c. Billboard, print and signage campaigns – while more traditional, and rarely used given the expense, certain resellers are turning to these methods of publicity to promote their offers and pricing; and
- d. Word of mouth – given the highly localized nature of some of the resellers, many are relying on word of mouth from their existing customer base to promote their offers, service and pricing in their markets.

48. With regard to the question posed by the Competition Bureau regarding the services offered by resellers, Cogeco disputes the premise that resellers are somehow not as attractive as other competitors due to their inability to bundle or offer more than just a broadband service.

49. Cogeco reviewed the services being offered by a number of ISPs operating in its territory and found that, contrary to what the Competition Bureau seems to infer as a premise, most resellers offer three services. The table below summarizes these findings.

Table 1 – Summary of Reseller Services

ISP Name	Internet	Phone	TV
WTC	DSL - up to 120 mbps Fibre - up to 935 mbps	VoIP	Basic TV channels Variety of choice channels
Vaxxine	DSL - up to 15 mbps Cable - up to 120 mbps	VoIP	-
Start Communications	DSL – up to 50 mbps Cable – up to 60 mbps	VoIP	(Launch imminent)
CIK	Cable – up to 250 mbps Fibre – up to 1 GB	VoIP	Basic TV channels Variety of choice channels
Teksavvy	DSL - up to 50 mbps Cable – up to 250 mbps	VoIP	-
Distributel	DSL – up to 50 mbps Cable – up to 940 mbps	VoIP	Basic TV channels Variety of choice channels
Vianet	DSL – up to 25 mbps Cable – up to 60 mbps Fibre – up to 1 GB	VoIP	Basic TV channels Variety of choice channels
9ieme Bit Connexion (Connexio)	Cable – up to 120 mbps	VoIP	-
Nexicom	DSL – up to 50 mbps Cable – up to 120 mbps Fibre – up to 1000 mbps	VoIP	Basic TV channels Variety of choice channels
Altima Solutions	Cable – up to 500 mbps Fibre – up to 50 mbps	VoIP	Basic TV channels Variety of choice channels
Tekcorner	Cable – up to 120 mbps Fiber - up to 50 mbps	VoIP	Basic TV channels Variety of choice channels
Vmedia	Cable – up to 250 mbps Fiber- up to 50 mbps	VoIP	Basic TV channels Variety of choice channels
Colbanet	DSL – up to 50 mbps Cable - up to 60 mbps	VoIP	Basic TV channels Variety of choice channels
Ebox	Cable - up to 60 mbps Fibre - up to 50 mbps	VoIP	Basic TV channels Variety of choice channels
Velcom	DSL - up to 50 mbps Cable - up to 250 mbps	VoIP	-

50. The table demonstrates that, of the 15 resellers surveyed, all offer broadband and telephony services. In addition, 10 of the 15 – two thirds – also offered a television service offering, with an additional reseller about to launch their own television product.

51. In addition to the services noted above, resellers noted here have continued to improve their service offerings. For example, TekSavvy and Start Communications offer a range of services aimed at the business market. These services include

broadband Internet for business customers, web hosting, server hosting, dedicated Internet and Local Area Networking products.¹⁰

52. While this overview is not exhaustive, this information demonstrates that, on a *prima facie* basis, resellers cannot be considered as less attractive than other competitors based solely on their service offerings. Resellers are not impeded in their marketing and customer acquisition efforts as they have available to them three core services that consumers want – broadband, wireline telephony and video – even offering bundled discounts to them.

53. In addition to the issue of access to, and awareness of wireline broadband alternatives, Cogeco submits that consumers increasingly have available to them another means of broadband access, namely, wireless services. As Cogeco submitted in a recent CRTC proceeding, it is important to note that the actual networks in which carriers are currently investing and the way they are being used by consumers makes it clear that the line between different types of access networks has blurred to the point of being meaningless. What was traditionally considered to be “wireline” traffic is increasingly originating over Wi-Fi (i.e. wireless) connections. Similarly, “mobile” networks are using increasing amounts of fibre (i.e. fixed technology) in the backbone networks as they transition to LTE. The coming transition to next-generation 5G access technologies will accelerate this convergence towards hybrid fixed+wireless networks by necessitating even tighter integration with high-performing fixed networks.

54. Given this clear convergence of access networks leading towards a hybrid fixed+wireless configuration using fibre in the backbone and wireless to the end-user device, Cogeco submits that there is, ultimately, only one comprehensive type of “access network” using different and varying proportions of wireless technologies.¹¹

55. Mobile wireless access networks are traditionally placed in the “mobile” and “wireless” categories, but they are in fact built using a significant proportion of fixed wireline backhaul. Two factors in particular drive the need for fixed wireline backhaul in “mobile wireless” networks: increasing demand for data and deployment of wireless technologies with smaller coverage areas. As consumers demand more and more bandwidth and data throughput, mobile carriers increasingly need the

¹⁰ See, for example, <https://www.start.ca/business> & <https://teksavvy.com/en/business>

¹¹ Cogeco Communications, Final Comments, TNC CRTC 2017-259, page 3.

capacity provided by fibre-based fixed technologies. As carriers deploy services in higher frequency bands necessitating greater numbers of antenna locations to cover the same area, the need for fixed technologies in the network will increase.

56. When 5G technology is deployed in the millimeter wave bands, almost all of the access between the core network and the consumer will in fact be “fixed” with only a much shorter span being “mobile” or “wireless”. Further, there is no indication that either of these two factors (increasing demand for data and deployment of wireless technologies with smaller coverage areas) will abate any time soon. Quite the opposite.

57. Given this new reality, Cogeco would recommend that the Competition Bureau broaden its definition of the broadband market such that, with the inclusion of wireless alternatives as noted above, consideration must be taken of the expanding array of access alternatives in providing broadband services to consumers in Canada.

58. To conclude, Cogeco believes that Canadian consumers are very aware of their options for broadband services and certainly sees no inertia in the territory that we serve. In addition, our update on reseller’s market offers clearly shows that they are currently bundling 2 and 3 services.

59. In terms of contractual practices for television distribution, resellers just like facilities-based providers must negotiate the programming rights at the source, directly with programming services. All television distributors, including Cogeco, are not allowed to sublicense programming rights to resellers. Obtaining programming rights is a complex and challenging exercise and often requires that the parties submit to the CRTC’s dispute resolution process before coming to agreement on terms of distribution. This may very well be one obstacle that needs to be overcome by resellers in order to be able to see increased bundling of television products with phone and internet. But it is a dynamic that is unrelated to the wireline wholesale regime and that should be considered when assessing its effectiveness.

60. Lastly, although we are unable to attest as to how industry contractual practices affect consumer behavior, we can provide the Competition Bureau with some information as to how Cogeco structures its bundling discounts and contract

lengths, as well as how Cogeco's customers are made aware of their contractual rights and obligations.

61. Existing bundling discounts structures at Cogeco vary between ###\$ to ###\$ and are frequently reviewed in order to be adapted to various circumstances, including market evolution, direct competition on specific territories, addition of new products, etc. Although specific promotions may have a set duration (6 months, 1 year, etc.), Cogeco does not impose fixed-term contracts on its customers who pay for the services received on a monthly basis and they remain free to switch providers or disconnect their services at any time.

62. As for customer awareness of his/her rights and responsibilities, any new Cogeco customer receives a copy of the High Speed Internet Service Acceptable Usage Policy as well as of the General Terms and Conditions. These two documents can also be found on our website at any time (<https://www.cogeco.ca/corpo/ccc/en/legal/terms-and-conditions/>). Furthermore, on specific webpages that present Internet offers and packages, the customer may conveniently locate various details regarding such, including price specifications, offer limitations and restrictions.

Question 3: How does regulation in this industry affect the economic behaviour of broadband suppliers?

- i. How does the Canadian reseller regime affect the incentives that network owners have to expand or upgrade their networks? Have network investment levels changed following the establishment of resellers?
- ii. What investments must resellers make in order to provide services to consumers? Are there features of the marketplace that impede the expansion of resellers?
- iii. Have network owners used the reseller regime to expand their reach outside of their incumbency area? Why or why not?

63. Cogeco will respond to questions (i) and (iii). Cogeco believes that it is better left to the resellers to respond directly to question (ii).

64. With regard to (i), Cogeco would note that ###.



65. As noted above, Cogeco was forced to absorb a rate reduction in the order of 72%. As a way of demonstrating our point regarding ###.

66. In addition, the investments that Cogeco is required to make indirectly benefits all of its end-customers, as the nature of how the company's network is designed – or, for that matter, how any contemporary cable network is designed – is based on the sharing of facilities from the residential home back along the distribution network to the central network core. For example, if a particular region becomes congested as a result of the increasing bandwidth consumption patterns of both retail and wholesale end-customers, Cogeco has no choice but to invest in additional network equipment to alleviate that congestion to ensure that all customers continue to receive the best broadband experience the company can offer.

67. As a result of adding on resold customers to its network, Cogeco submits that, if anything, it has accelerated certain investments in certain geographic areas, due to the consumption demand on the part of those resold customers. That said, as stated before, ###.

68. With regard to (iii), Cogeco has not contemplated using the existing resale regime to expand beyond its current operating territory to sell services at this time. Cogeco's focus to date has been on serving our customers with better services, introducing new products and making acquisitions of other facilities-based communications enterprises (such as in the United States) as a way of expanding the company's reach out of our traditional operating territory.

Question 4: How do other countries manage and regulate broadband competition?

- i. Do Canadian regulations diverge in any meaningful way from those employed by other countries? Are there significant differences between Canada and other jurisdictions that explain any divergence?
- ii. Are there lessons to be learned from how other jurisdictions regulate broadband?

69. Cogeco has, along with three other cable carriers, commissioned a comparative study of Canada's regulatory regime as applied to the wholesale wireline broadband market versus those of 12 other countries.¹² This study has revealed that, unlike other countries' approaches to regulating wholesale broadband services, Canada, in the form of the CRTC, has been focussing its regulatory measures almost exclusively on the lowest rung of the ladder of investment, i.e., regulation of bit-stream services and, further, has done so for more than 20 years¹³.

70. The outcome of this public policy orientation creates resellers' competition that is incented to rely heavily on the facilities of the incumbent wholesale network provider and minimizes its incentives to invest in its own facilities to move up the ladder of investment. It is therefore stimulating entry in a market that is already characterized by low barrier to entry. It is only with the CRTC decision to change the wholesale broadband interconnection regime from aggregated to disaggregated point of interconnection¹⁴ that the CRTC has begun to attempt to move the resellers up the ladder of investment, encouraging them to build mid-haul transport facilities.

71. This focus on the part of the CRTC to regulate bit-stream services, or, the lowest rung of the ladder - although contrary to stated Canadian telecom policy and regulation that favours facilities-based competition - has nevertheless produced a vigorous retail broadband market, with the market growth and shares that Cogeco

¹² See Report on Regulation of Fixed Wireline Wholesale Access to High-Speed Networks, in Canada and Other Countries by Suzanne Blackwell, Giganomics Consulting Inc., August 30, 2018, attached to this submission.

¹³ Ibid, pages 3-4.

¹⁴ Telecom Regulatory Policy 2015-326.

has presented in other parts of this submission to the Competition Bureau. ###. This conclusion is supported by the Giganomics study, which states:

*The wholesale rates for facilities at different rungs of the ladder can influence the investment decisions of the incumbent network operator obligated to provide wholesale access to its facilities. Several studies have found that setting wholesale rates too low discourages investment by incumbents and entrants. Low wholesale rates reduce the return on investment for the network operator both in wholesale and retail markets. This could similarly discourage other existing or potential facilities-based network operators from investing.*¹⁵

72. After 20 years of the same approach to resale regulation in Canada, Cogeco submits that the regulator would be right to be informed by the Giganomics study as a way to return to the objectives of facilities-based competition and begin the process to incent resellers to move up the ladder of investment and become more facilities-based players in the broadband market. As the CRTC itself stated, facilities-based competition is regarded as the ideal and most sustainable form of competition, and further, that the objective is to incent competitors to enter the market and invest in other parts of the network.¹⁶

73. Cogeco would note a few investment initiatives undertaken by two resellers. On July 23rd, 2018, TekSavvy announced that it had entered into a joint effort to develop a fibre optic network in the Chatham-Kent area that would serve potentially 38,000 residents.¹⁷ We are also aware that Start Communications has embarked on a fibre facilities rollout in its home market of London, Ontario.¹⁸ These examples remain exceptional across the industry when one looks at the number of resellers currently in operation.

74. Cogeco submits that requiring the resellers to move away from total reliance on incumbent wholesale network provider and invest in their own facilities could be achieved by increasing the wholesale rates for TPIA services provided at disaggregated points of interconnection (POI) when made final and by rapidly

¹⁵ Ibid, paragraph 16.

¹⁶ Ibid, page 11, paraphrased from the CRTC, Telecom Regulatory Policy 2015-326, paragraphs 5 & 7.

¹⁷ <https://teksavvy.com/en/why-teksavvy/in-the-news/press-releases/2018-press-releases/teksavvy-and-chatham-kent-plan-joint-effort-for-high-speed>

¹⁸ <https://www.start.ca/getfibre/benefits-of-fibre-internet>

deregulating rates for TPIA services provided at aggregated POI. These measures would have the ancillary effect of allowing better recovery of incumbents' network investment costs, while at the same time, still providing a basis for a robust competitive retail broadband market. As demonstrated by the Giganomics study, there are multiple regulatory remedies available to achieve these goals, including publication of a reference offer, from which negotiated rates, terms and conditions can then be determined between the wholesale network provider and the new entrant.¹⁹

Conclusions & Recommendations

75. Based on foregoing discussion, Cogeco has the following conclusions to offer the Competition Bureau.

76. Competition in retail Broadband in Canada is robust. This is shown by the high growth rates of resellers in both revenue and subscriber acquisition, as well as the relatively high market share in Ontario & Quebec.

77. The CRTC wholesale framework is working. The framework, in place for almost 20 years, has contributed significantly to the growth of alternative providers of retail broadband in Canada. The evidence for this can be seen in the consumer behaviour of purchasing services from reseller competitors, the achievement of a 19% market share in Ontario and Quebec, the lack of inertia in the market, the ability of the reseller competitors to attract most of the industry growth in recent years, the ability of resellers to add additional services and bundle their services to create compelling offers, and the fact that consumers have choice in providers of broadband services in Canada.

78. In addition, Cogeco would submit that consumers, in general, are highly aware of the choice of service provider they have in the marketplace and are subscribing to those alternatives at higher growth rates than for incumbent telco or cableco services. Cogeco's own surveys show a high level of awareness overall, and more so on a regional basis, as some resellers are very localized in certain regions on Cogeco's footprint, and have built a solid brand over the course of years, which helps with their customer acquisition tactics.

¹⁹ Ibid, see the discussion on such methods in Section 1.1.1.



79. ###

80. Cogeco submits that the current wholesale regulatory regime as largely fulfilled the objectives of regulators, but that the time is right to make certain adjustments to right the balance in favour of facilities-based investment.

81. ###.

82. Cogeco supports the Competition Bureau recommendations in its recent submission to CRTC consultation 2018-246 on the retail sales practices of Canada's Large Telecommunications Carriers and believes that they can easily be transposed to the analysis of the current Bureau's market study. Measures adopted should ensure that competition is not stifled and to this end, any intervention should be:

- a. no broader than necessary;
- b. based on the best available evidence;
- c. proportionate to the associated harm; and
- d. reviewed regularly.

83. As such, Cogeco welcomes the upcoming review of the wholesale wireline framework²⁰ that is set to take place in 2020. Meanwhile, the regulatory measures proposed by Cogeco herein can swiftly be adopted without the need to wait for this upcoming review.

84. Cogeco thanks the Competition Bureau for the opportunity to submit comments for this market study and remains available to answer any questions you may have regarding this submission.

***** End of document *****

²⁰ Telecom Regulatory Policy CRTC 2015-326.