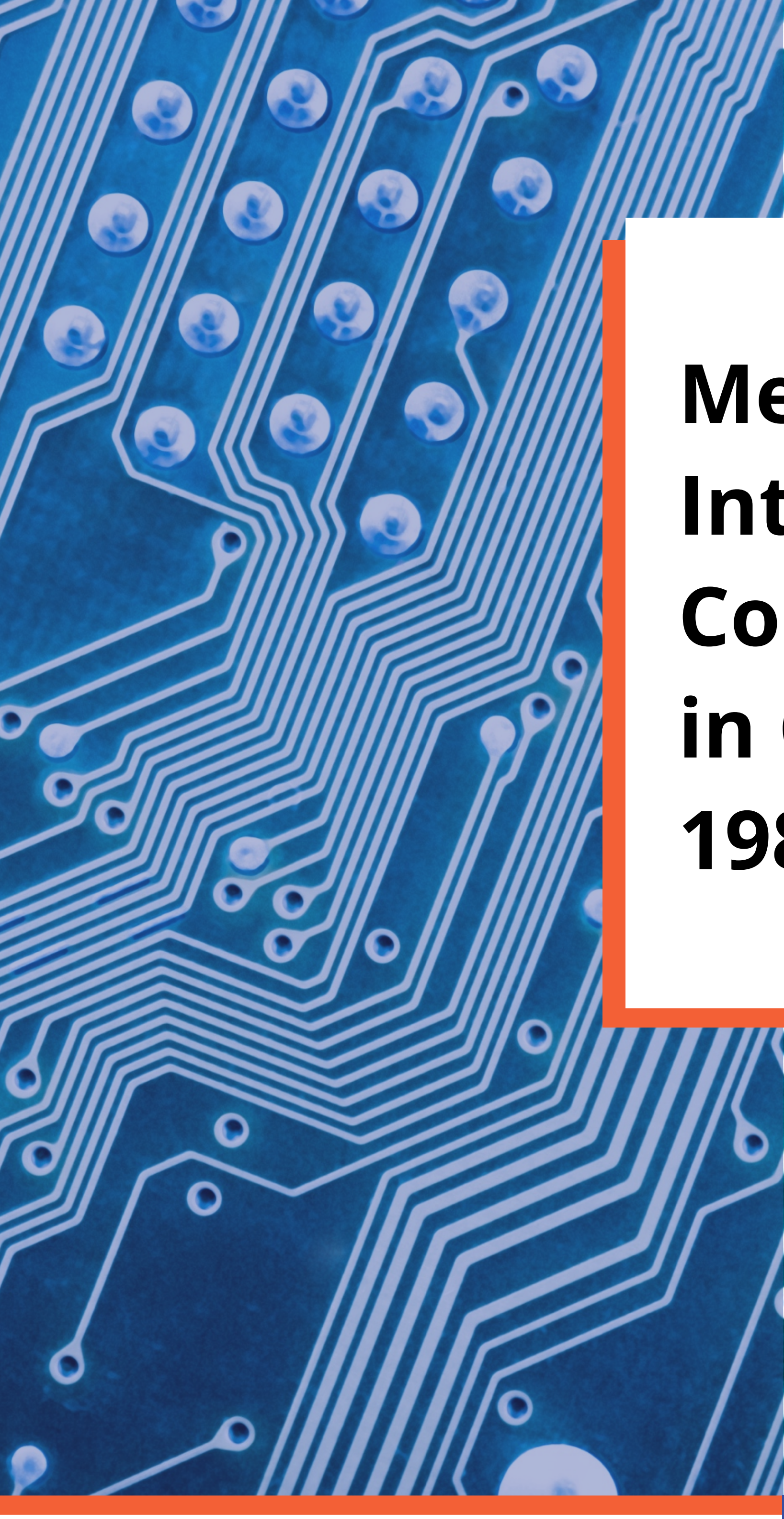


Media and Internet Concentration in Canada, 1984–2022

Global Media & Internet Concentration Project

www.gmicp.org

The Global Media & Internet Concentration Project (GMIC Project) is led by Professor Dwayne Winseck, School of Journalism and Communications, Carleton University. It is funded by the Social Sciences and Humanities Research Council of Canada and aims to provide an independent, long-term analysis of the communications, internet, and media industries in Canada and three-dozen other countries. Its goal is also to better inform research, teaching, and public and policy-related discussions about these issues.

Other country-focused reports will become available from late 2023 onward. Professor Winseck can be reached at dwayne.winseck@carleton.ca or 613 769-7587 (mobile).

 The underlying data sets for the figures in this report are available here, while the full data set is available through Dataverse, a publicly-accessible repository of scholarly works created and maintained by a consortium of Canadian universities.

Questions and Corrections

If you have questions or believe that any of the data that we report is mistaken, please let us know.

Acknowledgements

The report includes contributions from several Ph.D. candidates and postdoctoral fellows: Blue (Miaoran) Dong, Xiaofei Han, Guy Hoskins, Ben Klass, and Agnes Malkinson. Many other colleagues from the GMIC Project and beyond have also offered crucial guidance on key points in this report. Without this help, our reports would never see the light of day.

Recommended citation

Winseck, Dwayne, 2023, "Media and internet concentration in Canada, 1984-2022", https://doi.org/10.22215/gmicp/2023.2. Global Media and Internet Concentration Project, Carleton University.

Contents

Figures

Analyzing the Communications, Internet, and Media Industries
Insights from the Global Media & Internet Concentration Project—Canada

Executive summary

This is the twelfth edition of our annual two-part series on the state of the communications, internet, and media industries in Canada (previous versions can be found here for the CMCR Project versions and here for the GMIC Project versions).

The first report focused on identifying short- and long-term trends with respect to the growth, stagnation or decline in the communications, internet, and media industries that constitute the network media economy. This report builds on that effort but turns its focus to answering the question of whether the communications, internet, and media industries in Canada have become more, or less concentrated over time?

We start with this question because it is of both timely and of enduring significance. It is also an important starting point that opens a vista onto a much larger array of issues concerning markets, communications, the free press, the human condition, and democracy.

This year, one of the headlines was Rogers Communications' $26 billion take-over of Shaw Communications. It was the largest consolidation of communications companies in Canadian history, and one that will see increased concentration in wireless, internet access and broadcast programming distribution. The spin-off of Shaw's Freedom Mobile to Vidéotron was one of the costs the companies paid to get the deal past regulators, who showed more resolve in this instance than they'd often done in the past. Will that deal work and Vidéotron succeed in expanding its reach beyond Quebec to much of the rest of Canada? What does the entire transaction mean for Canadians? Why did some regulators—but not the CRTC—oppose this deal so strongly from the very start? This report strives to provide the tools and evidence we need to work out an answer to these questions and others like them.

Given the current heightened state of public debates and policy developments around the media and internet, rigorous, independent research and good quality evidence are needed to counter those who mobilize knowledge and publicity in the service of their own interests.

To help meet this need, our research examines roughly twenty of the largest sectors of the communications, internet, and media industries and their evolution over the last four decades.[1] The report focuses on the communications infrastructure parts of the network media economy (i.e. mobile wireless, retail internet access, cable television) just as much as it does on the fast-evolving digital media that are aggregated and made accessible over the internet, such as:

- online video services
- video games
- streaming and download music services
- online news sources
- app stores

We also examine "legacy media", essentially the advertising-funded mass media of the 20th century that persist today: broadcast television, radio, newspapers, and magazines. As our first report in this two-part series made clear, individually and collectively, these four media sectors have been facing severe challenges over the past decade-and-a-half.

Our objective is to help create a theoretically and historically informed, consistent, and coherent body of evidence and analysis to help shed light on the fast-evolving communications, internet, and media industries, or what we refer to as the "network media economy". With governments in Canada and around the world ramping up new policy initiatives regarding digital platforms and potential models of internet regulation, independent research and high-quality evidence is needed to help inform the central public policy and regulatory debates of our time.[2]

From a realist point of view, many of the firms—Canadian and international—that we examine in this report are powerful, profit-seeking corporations with billions of dollars in revenue, profit, and market capitalization at stake. Perhaps unsurprisingly, they are strongly motivated to protect and advance those interests and to engage primarily with communications and media markets that contribute most to bolstering their bottom line.

[1] Including: mobile wireless and wireline telecoms, internet service providers (ISPs), broadcasting distribution undertakings (BDU) such as cable, satellite, and IPTV services, broadcast television, specialty and pay television services, online video services, broadcast radio, paid audio services, newspapers, magazines, the music industries (recorded music, streaming and download services, publishing royalties, and concerts), internet advertising, social media and video sharing platforms, console, PC, and mobile games, app stores, operating systems, and browsers.

[2] See Winseck & Puppis (unpublished, nd) for an ongoing tally of these inquiries.

Moreover, we contend that media concentration matters because, for instance, the more concentrated core parts of the network media economy are the easier it is for dominant players to build protective moats around those positions and to disproportionately influence the shape of the communications ecology overall.

Take, for example, the fact that communications carriers' ability to set prices and data allowances for mobile internet services has a significant influence on how people communicate with one another, access entertainment and news, conduct business, work, play, and so forth. Indeed, that power can even dictate whether people have a mobile phone or internet connection at all.

The list goes on: the more concentrated the market and powerful the companies in it, the more policymakers and regulators will be prone to regulatory capture, especially due to the latter's dependence on the firms they regulate for the knowledge and expertise they need to effectively do so.

In addition, market power affords the potential for gatekeeping power to manifest in novel and unexpected ways. The ability of large platforms to regulate which content, apps and messages gain access to a platform's technical interfaces, software development kits, online retailing and billing systems, advertisers, audiences, and so forth, are salient examples.[3] In other words, "big tech" and "big telecoms" function as online content aggregators and distributors that set the terms for the distribution of video, music, news, digital games, and so forth. This is evident, for example, in the operations of Google and Apple's app stores and is a factor in ongoing investigations into market abuse allegations in the United States, Germany, and other countries.[4]

Moreover, many of the world's biggest content aggregation and distribution platforms have forged a "content moderation cartel",[5] which share advancements in the latest in AI and Machine Learning to manage online content. These are the 'hidden levers of power' that shape the visibility and availability of content across platforms and determine, for example, whether pandemic-related mis- or disinformation, or adult content on Tumblr and Only Fans stays up, comes down, or is limited in visibility.

---

[3] Poell, T., Nieborg, D. & Duffy, B. (2022). Platforms and cultural production. Hoboken, NJ: Wiley.

[4] See, for example, Germany, Bundeskartellamt (Oct. 5, 2023). Ongoing proceedings against large digital companies; Germany, Bundeskartellamt (December 20, 2022). Antitrust law examination of "Google News Showcase"; United States, Department of Justice (Jan. 24, 2023). United States, Commonwealth of Virginia, State of California, State of Colorado, State of Connecticut, State of New Jersey, State of New York, State of Rhode Island and State of Tennessee v. Google LLC (Digital advertising case). (main page)(complaint); United States, Judiciary Committee (Oct. 6, 2020). *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*.

[5] Douek, E. (2020). *The rise of content cartels*. Knight First Amendment Institute, Columbia University.

Lastly, but certainly not exhaustively, the more powerful internet, communications and media companies become, the greater their ability to set exploitative privacy and data protection policy norms that differ from what people say they want.[6]

To determine the answer to our question about whether media are becoming more concentrated or diverse we apply two commonly used economic metrics: Concentration Ratios (the CR4) and the Herfindahl-Hirschman Index (HHI). Using these methods, we focus the lens on each of the media industries that we study and compare the results across media, time (history) and space (different countries). We then scaffold upwards to bring all the sectors we cover into a single snapshot of the network media economy. We call this the scaffolding approach.

The following offers a snapshot of our findings with respect to concentration levels in 2022 for each media sector covered in this report based on their HHI scores (a measure defined later).

Figure 1: Concentration rankings on the basis of HHI scores, 2022

Low Concentration (100 ≤ 1,500)	Moderate Concentration (1,500 ≤ 2,500)	High Concentration (2,500 ≤ 10,000)
Magazines 188.6	Cable/DTH/IPTV (national) 1802.4	Broadcast TV 2607.8
Online news 415.1	Total advertising all media 1902.1	Mobile wireless 2707.5
Digital games 786.7	Pay & specialty TV 2067.1	Mobile wireless (provincial weighted avg) 2936.6
Music services 888.5	Online video services 2180.9	Wireline 3068.3
Newspapers 906.8		Internet advertising 3403
Internet access (national) 1079.9		Internet access (local) 3986.6
All TV 1250.83		Mobile web browser 3727.0
Radio 1259.8		Social media platforms 4104.7
Network media economy 1137.4		Desktop web browser 4257.1
		Mobile OS 5070.6
		App stores 5594.1
		Cable/DTH/IPTV (Local) 5137.8
		General search 8351.4
		Mobile search 9364.3

[6] Srinivasan, D. (2021). The antitrust case against Facebook: A monopolist's journey towards pervasive surveillance in spite of consumers' preference for privacy. *Berkeley Business Law Journal, 16(1), 40-99*.

Key arguments, analyses, and public policy proposals for a new generation of internet services regulation

This report fits into a broader environment where discussions about communications, internet, media, and cultural policy are on a high boil. A common theme in these discussions has been the tendency to denounce the global internet giants, especially Google and Facebook, on the grounds that they are killing traditional media by stealing away their advertising, destroying journalism, and imperiling democracy in the process.

While this report accepts that there is an urgent need to bring such entities, as well as large streaming video and media services, under a new generation of internet services regulation, it criticizes many of the arguments advanced in favour of doing so for being too self-interested, lacking in historical or theoretical context, and reliant on cherry-picked evidence. Consequently, the case against "big tech" and for regulating internet services is, in many instances, misleading.

As such, the scale, scope, and influence of "big tech" firms and their operations must be accurately understood before workable solutions can be developed. That it is also something that this report strives to do. To address these issues, the report also repeatedly turns to two new laws adopted in Canada in 2023: the *Online Streaming Act* and the *Online News Act*.[7] It also looks outside Canada to see how other countries are handling these issues, including the European Commission's *Digital Services Act* (DSA) and *Digital Markets Act* (DMA). Both acts came into force over the past year.

The report concludes by sketching an outline of what a new generation of internet services regulation might look like that builds on four cornerstones: structural separation (break-ups), line of business restrictions (firewalls), public obligations, and public alternatives.[8] These principles are drawn from the history of, both, antitrust and communications regulation, where issues of market concentration, principles of fair carriage for all speakers and services, personal data and privacy protection, public service values, and limited regulation of all forms of expression have been the norm for a very long time.

Rather than treating the digital platforms as if they are the 21st century version of last century's broadcasting regulation and media policy, however, as many communications and media scholars and policymakers do, these four principles aim to give regulators the ex-post and ex ante tools they need to deal effectively with both the international internet giants as well as Bell, Rogers, Shaw, TELUS and Quebecor. All these entities, but each in their own way, have a long track-record of fighting tooth-and-nail against any efforts to curb their influence, as the pages ahead will show.

---

[7] Canada (2023). *Online Streaming Act* (information sheet); Canada (2023). *Broadcasting Act* (legislative text). Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text).

[8] This conceptual framework builds on the work of K. Sabeel Rahman (2018). The new utilities: Private power, social infrastructure, and the revival of the public utility concept, Cardozo Law Review, 39, pp. 1621-1689.

An ambitious conception of a “public alternative” fit for the 21st century “digital age” could include a large increase in funding for a reinvigorated CBC. In fact, to bring CBC funding back in line with where it was relative to the broadcasting system in the 1980s would require that the CBC’s annual parliamentary subsidy be tripled from its current level of roughly $30 per Canadian. Taking such a step would restore its funding to historical levels while also bringing it into line with well-funded public service media in the U.K., Germany, Austria, and the Scandinavian countries. It could also be forced to give up competing within commercial media companies for advertising dollars.

Even more ambitiously, this report also contemplates the possibility of creating a new entity, “the Great Canadian Communications Corporation” (GC3)—a new, public service-based digital platform, communications, information, and media enterprise forged out of an amalgamation of Canada Post, the CBC, the National Film Board as well as Library and Archives Canada. The mission of the Great Canadian Communications Corporation would be to, for example, provide:

- Universal and affordable mobile and wireline broadband internet service to un- and under-served communities in cities, towns, rural and remote areas across the country, building upon the tradition of universally available communications, broadcasting and information infrastructures.
- A platform for the aggregation and delivery over the internet of media content, information, and culture made in, and of historical, social and political significance to, Canada—an effort that reflects the core aims of institutions such as the CBC and NFB.
- A national digital archive and library.

Headline facts

- Bell is the biggest communications, internet, and media conglomerate in Canada, with $24.7 billion in revenue last year, an amount equal to just under a one-quarter share of the $104.4 billion network media economy.
- The top six Canadian companies—Bell, TELUS, Rogers, Shaw, Quebecor and the CBC— collectively accounted for $67.8 billion in revenue last year, or 64.9% of the total; meanwhile, in contrast, the combined revenue of the "big ten" US- and foreign-based internet and media giants—i.e. Google, Meta, Amazon, Netflix, Apple, Microsoft, Sony, Disney, Spotify, and TikTok in Canada accounted for 18.4% of the total.
- 2022 was a bad year for competition in the mobile wireless sector. After years of small-but-steady declines, Rogers, TELUS, and Bell's share of the market rose to 89.5% based on revenue and 86.1% of subscribers.
- The Competition Bureau mounted a bold full-court press to block the Rogers Communications' take-over of Shaw Communications, but ultimately failed to do so. It has also adopted a surprisingly strong stance against further consolidation in a series of interventions to the CRTC over the past few years.
- Shaw hit the brakes on its former aggressive "maverick" strategy for Freedom Mobile in the face of Rogers' bid to acquire it, contributing to set-backs on the wireless competition front in BC, Alberta, and Ontario 2022. In contrast, Shaw's investment and support for internet access and BDU services in its larger wireline segment continued apace.
- Whether the outcome of Rogers' takeover of Shaw will be good or bad for wireless competition and Canadians in the final analysis will turn on the prospect that the spin-off of Freedom Mobile to Vidéotron will allow that company to achieve results in Ontario, Alberta and BC similar to those in Quebec.
- In Manitoba, Xplore Mobile—the entity accepted by the Competition Bureau as a remedy to Bell's acquisition of MTS in 2017—folded in August 2022.
- In Atlantic Canada, Eastlink's share of revenue inched upwards from 11.1% to 11.3%, while its market share based on subscribers held steady at 13%.
- Some good news, however: the mobile wireless market is in Quebec is still the most competitive in Canada, where Vidéotron's share of revenue rose to 17.3% (up from 17% a year earlier), while its market share based on subscribers held steady at 22.9% in 2022.

- 2022 was also a bad year for competition in the local retail internet access sector as incumbent telephone and cable companies increased their share of the market to 87.5% based on revenue and 87.8% based on subscribers at the expense of independent ISPs.

- The number of Canadians subscribing to independent ISPs has fallen by 40% in the last few years while several independent ISPs have been scooped up since early 2022.

- The CRTC began to address the high levels of media concentration and sky-high levels of vertical and diagonal integration between 2012 and 2017 but that resolve crumbled under its last chair and the Liberal government reverting to a stance of regulatory hesitance and vacillating policy positions. That may change, however, given the new leadership at the Commission and as hinted at by some of its recent decisions under that new leadership.

- In contrast, the steep rise in TV concentration between 2010 and 2013 has since reversed due to the rise of online video services such as Netflix, Crave, Disney+, etc., and the spin-off of several pay TV services by Bell and Shaw (Corus). The "big 5" TV operators took 67.2% of all TV revenue (including online video services) last year: Bell, Netflix, Rogers, the CBC, and Shaw (Corus)—down from 84.1% from the high point of 2013.

- Netflix had revenue of $1.5 billion and 7.7 million subscribers in Canada and a 39.6% share of the $3.7 billion online video services market in 2022. While still the biggest online video service provider by far, Netflix' market share is down from two-thirds in 2016.

- Bell is still the largest television programming services operating in Canada. It accounts for 25.9% of the $10.4 billion in revenue from all television programming services.

- Google and Facebook, collectively, accounted for 77.3% of the estimated $14.4 billion online advertising revenue in 2022 and over half of total advertising spending across all media, i.e. $20.2 billion. Consequently, they are now the fourth and seventh largest entities in the network media economy in Canada. Add Amazon to the picture, and the three US digital conglomerates accounted for 87.9% of the online advertising market.

- Core sectors of the internet have persistently displayed sky-high scores far above the HHI's threshold of 2,500 to designate a highly concentrated market, as the following examples illustrate: internet advertising (HHI of 3,403), internet access (local) (3,987), social media (4105), app stores (5,494), and mobile search (9,364).

- Video game publishing and platforms, meanwhile, remain diverse with a CR4 of 43% and an HHI of 789 (although limits to our ability to disaggregate game publishing activities from online distribution platforms like the Apple App Store and Google Play, or Valve's Steam gaming platform, mean that some caution is needed when interpreting these results).

- Similar conditions apply to online music services where the CR4 score of 50 is low relative to other sectors and the HHI of 808 denotes a diverse sector despite just four streaming platforms—Spotify, YouTube Music, Apple Music, and Amazon Prime Music—and the 'big three' legacy recorded music groups—Universal, Sony, and Warner—continuing to account for nearly all revenue and profits.

- Canadians are served by a diverse plurality of online news sources, both old (e.g. CBC, Bell Media, Postmedia, *Toronto Star*, and *The Globe and Mail*) and new (e.g. *National Observer*, *Narcity*, Canadaland, Village Media) as well as domestic and foreign (e.g. MSN News, CNN, CBS, NBC, *The New York Times*, BBC, *The Guardian*).

- Meanwhile, Canada's largest newspaper chains such as Postmedia, Torstar and Quebecor continue to react to the ongoing crisis of journalism by spinning-off daily and community papers and consolidating their activities on a regional basis. The top four publishers share of revenue on a national basis was 52.4% in 2022, a significant drop from 83% in 2010.

- While the economic woes facing the press predate the consolidation of digital platforms' dominance, the deteriorating commercial prospects of the news media has magnified their dependence on Google, Facebook, and Apple.

Introduction

This report seeks to answer the following deceptively simple yet profoundly important question:

> **Have telecom, internet and media markets in Canada become more or less concentrated, and why do we care?**

As McMaster University professor Philip Savage observed years ago, debates about media concentration in Canada "largely occur in a vacuum, lacking evidence to ground arguments or potential policy creation either way".[9] The issues are also highly politicized. Moreover, with billions of dollars of profits and wealth on the line, the incentives are strong for those whose interests are at stake to hire experts to offer the most advantageous arguments and analyses for whatever position they want to protect or advance in any given context.

To cut through such obstacles, we must be clear about the methods we can use to empirically assess the issues involved while understanding some of the main contending schools of thought that exist when it comes to these issues.

The initial step in measuring media concentration begins by setting out the communications, internet, and media industries to be studied. This first step involves defining the relevant markets to be assessed based on the characteristics of the communications or media service at hand, and geography. The next step is to collect and analyze revenue data for each sector, and for each firm within them with over a one percent market share. Each sector is analyzed on its own and then grouped into three categories:

- telecoms and internet infrastructure
- online and traditional media services
- core internet applications and sectors

Lastly, all sectors are combined to get a birds-eye view of the network media economy as a whole. The sectors that we cover are depicted in Figure 2, below.

[9] Savage, P. (2008). Gaps in Canadian media research: CMRC findings. *Canadian Journal of Communications*, *33*(2), 291-302.

Figure 2: The network media economy in Canada—what the GMIC Project covers

Telecoms & internet infrastructure	Online & traditional media services	Core internet applications & sectors
Wireline telecoms	Broadcast TV	Online news sources
Mobile wireless service	Pay & Specialty TV	Search engines
Internet service providers	Online video services (SVOD, TVOD, AVOD)	Social media & video sharing platforms
BDU (Cable, Sat & IPTV)	Radio (ad-funded, public service & paid subscription)	Mobile & desktop operating systems
	Internet advertising	Mobile & desktop operating browsers
	Traditional music (physical, publishing, live concerts)	
	Online music (paid subscription & ad-funded streaming services & downloads)	
	Games (console, PC & mobile)	
	App distribution	
	Newspapers	
	Magazines	

The aim of this scaffolding approach is to clearly and precisely define the media that we want to examine at both the micro and macro level and to offer a holistic view of media concentration. It is also done to help ensure that apples-to-apples comparisons are being made with other studies, both within Canada and internationally.

This initial step also often tips a person's hand as to whether they believe that concentration is a non-issue or something we should be worried about. Indeed, a clear initial definition of the media, in contrast, helps to avoid cherry-picking evidence in favour of one view or another.

How researchers approach this initial step also reflects how they see their work in relation to the different schools of thought that are active on this topic. We briefly review four such schools in the next section.

Different schools of thought on the 'media concentration problem'

The Schumpeterian "creative gales of destruction" school

Those who downplay concerns with concentration tend to cast the net so widely that it creates the impression of a vast 'digital ecosystem' where even the biggest digital media goliaths appear as tiny specks and the problem of concentration, more or less, vanishes.[10] In fact, a certain kind of organizational and market centralization is often seen as a prerequisite to dynamic competition and a part of modern economies where large combinations of capital investment, technology, and expertise are the norm rather than something to be concerned about.

Many of those who take this view subscribe to the Schumpeterian "gales of creative destruction view", a view in which new combinations of technology, entrepreneurialism, and business organization periodically arise and sweep away the existing generation of business and market organization. In this constantly churning cycle of upheaval and renewal, there is not much for governments and regulators to do, either, because such 'creative gales of destruction' will eventually take care of whatever problems do exist and set things right, or at least produce a better outcome than the interventions of politicians or regulators.

This is a prevalent view amongst those who have never seen media concentration as a serious concern. This is especially so in the 21st century because, if there was ever a golden media age, we are living in it now, adherents to this view assert.[11] MIT Professor Ben Compaine (2005) exemplified this stance when he offered a terse one-word retort to anyone who thinks otherwise: internet.[12] The Public Policy Forum (PPF), one of Canada's leading think tanks, is similarly emphatic that media concentration is no longer a concern given that the range of information sources have "exploded on the internet".[13] If anything, this school is concerned more with the alleged fragmentation rather than concentration of media industries.

---

[10] Skorup, B. & Thierer, A. (2013). *Uncreative Destruction: The Misguided War on Vertical Integration in the Information Economy*. Federal Communications Law Journal, *65*(2), 158-201; Eisenach, J. (2016). *New regulatory framework for the digital ecosystem*. GMSA.

[11] Skorup, B. & Thierer, A. (2013). *Uncreative destruction: the misguided war on vertical integration in the information economy*. Working Paper, Mercatus Centre, George Mason University.

[12] Compaine, B. (2005). *The media monopoly myth*. New Millenium Research Council.

[13] Public Policy Forum (2017). *The shattered mirror*. Ottawa: Author.

From this perspective, we are witnessing a battle of "the Stacks", wherein vertical integration between telecoms operators and TV service providers, on one side, versus a new breed of digital conglomerates such as Google, Apple and Amazon, on the other. This kind of competition between 'old' and 'new' industrial giants, according to this perspective, should not only be expected but embraced because it reflects a kind of dynamic competition that drives innovation and serves consumers well. Seen from this angle, any attempts to shackle legacy telecoms and media companies with ownership or other restrictions will put them at a disadvantage as they increasingly compete with international internet conglomerates that are integrated across several lines of business in their own right.[14]

Media criticism and the threat to democracy

Opponents of the first school of thought often take the opposite tack by defining 'the media' either so narrowly or, conversely, so imprecisely that it becomes inevitable that the media are becoming forever more concentrated. In this view, it is as if market, technological and political forces combine to form a one-way ratchet that leads inexorably to such outcomes. This was a hallmark of successive editions of Ben Bagdikian's *The Media Monopoly*, for example, in which he alleged that the number of companies that controlled half or more of the media that people in the U.S. watched, listened to, and read had fallen steadily from fifty in the 1980s, twenty-five a decade later and, finally, to just six by the early 2000s.[15] The major problem with Bagdikian's analysis, however, was that it was difficult to determine what he was including in it, but there is no way that his alarming headline findings aligned with any kind of defensible definition of the media.

Such assumptions are typically twinned with the normative view that concentrations of media, internet, wealth, and corporate power are corrosive forces in society and a threat to democracy. Robert McChesney is one of the best-known contemporary voices espousing such arguments. He does not deny that the digital revolution is changing the world; instead, he emphasizes an often-overlooked fact: just like the commercial mass media of the past 150 years, core elements of the internet are also prone to concentration. Besides, capitalism is in the driver's seat, and it is that force that drives such outcomes.[16]

This school also often views the internet as draining money away from the media and entertainment industries—news especially, and argues that governments should reprise the role they have played in the United States, Europe, and Canada to varying degrees throughout history by directly subsidizing the news as the public good that it

---

[14] See, for example, Eisenach, J. & Soria, B., 2016, *A new framework for the digital ecosystem*. London: GSMA.

[15] Bagdikian, B. (2004). *The new media monopoly*. Boston: Beacon Press.

[16] McChesney, R. (2014). *Digital* Disconnect. New York: New Press.

is.[17] It is just this kind of view that has informed the development of the *Online News Act* in Canada and other initiatives like it in other countries.

An outcropping of this school is the broader renaissance of the anti-monopoly tradition. A diverse range of concerns underpins this revival, from the use of predatory corporate strategies to cement dominance, to the extensive harvesting and use of personal information as both a new source of revenue but also to help lock in a dominant market position. Whatever the motivation, contributors to this line of thinking promote the view that wise communications, internet, and media policy is essential to address the issues raised by persistent concentration in key parts of the communications and media industries.

Quantifying media ownership and media bias

A third school of thought tries to chart a course between the first two contending schools by implying that it is taking the middle ground and doing so by relying heavily on quantitative analysis of the impact of changes in media ownership on media content (texts). This approach also emphasizes the issue of media bias, that is, whether a change in ownership produces a more conservative or liberal bias in media texts and news coverage, for example.

This body of research's extensive reliance on quantitative methods also tends to skirt taking explicit positions on the media industries or media policies they analyze. Perhaps unsurprisingly, given this stance, such research tends to find that the evidence regarding the link between media ownership and bias is "mixed and inconclusive"—a result that has stayed remarkably consistent for decades.[18]

This approach is mirrored in competition policy discourse by those like the C.D. Howe Institute who similarly argue that competition authorities should follow an "effects-based" approach to mergers and acquisitions and avoid 'bright line' rules that might constrain industry consolidation and 'market forces'. Besides, industry consolidation, they say can actually enhance "dynamic competition", a position that is fully aligned with the Schumpeterian view outlined a moment ago.[19]

---

[17] See: John, R. & Silberstein-Loeb, J. (eds.) (2015). *Making news: the political economy of journalism in Britain and America from the Glorious Revolution to the internet* (pp. 196-222). London, UK: Oxford University; Picard, R. & Pickard, V. (2017). Essential Principles for Contemporary Media and Communications Policymaking. London, UK: Reuters Institute for the Study of Journalism; Pickard, V. (2019). *Democracy without journalism*. London: Oxford University. Also, see our first report in this year's two-part series where we elaborate on this point.

[18] Soderlund, W., Brin, C., Miljan, L. & Hildebrandt, K. (2012). *Cross-media ownership and democratic practice in Canada: content-sharing and the impact of new media*. Edmonton, AB: University of Alberta.

[19] C.D. Howe Institute Competition Policy Council (Nov. 28, 2023). Structuring Success: Canada's Competition Act Must Remain Effects-based. *Communique.*

A key problem with effects research in either domain, however, is that it tries too hard to causally connect changes in media content or markets prices to changes in media ownership or market concentration. Things are never so easily indexed, however, and this constrained view of how the media or markets work ignores a broader conception of the consequences of changes in ownership or the structure and dynamics of markets, including the impact of concentration. We must also ask, what if the focus on *change* itself obscures an equally pressing concern about how changes in ownership and market structures might, in fact, serve to *preserve the status quo*?

As Todd Gitlin observed in a classic essay on media effects research, perhaps the finding that changes in media ownership have little to "no effect" on media messages is better interpreted as indicating that media owners and market forces tend to conserve said status quo rather than being flexibly responsive to a broad range of interests and changes in society and culture.[20] Effects research is also biased to short-term snapshots in time instead of seriously leaning on history as a guide to what needs to be done in light of present issues and concerns. In sum, effects research—either in media studies or competition policy—is unduly constraining.

Digital dominance and cross-cutting dynamics in media industries

Finally, the "digital dominance" perspective, the school underlying the work of this report, agrees with the creative destruction school that the shift to the digital, internet-centric media of the 21st century entails enormous changes. Rather than seeing this as reason to put away our tools because the problems of yesterday are no longer problems today, however, this fourth school of thought sees the ongoing transformations in the communications landscape as having unleashed a "battle over the institutional ecology of the digital environment",[21] with the broad contours of what is to come still up for grabs.

However, rather than this being a novel development without precedent, we can take some lessons from the reality that the modern media—from the press, newswire services, broadcasting, and film—have developed in close proximity to the much larger telecommunications, electrical equipment manufacturing, and banking sectors since the mid-19th century. That has taken place, moreover, all without these smaller media sectors ever being fully taken over by the vastly larger neighbouring industries just indicated. This is mostly because communications and cultural goods possess many

[20] Gitlin, T. (1978). Media sociology: the dominant paradigm. *Theory and society*, *6*(2), 205-253.

[21] Benkler, Y. (2006). *The Wealth of Networks*, ch. 11. New Haven, CN: Yale University.

distinctive qualities that defy the 'normal' logic of markets and commerce.[22] To put this another way, while "big tech" behemoths such as Google, Amazon, Apple, and Samsung play an undeniably vital role in the media industries in our own time, so, too, did massive entities like General Electric, Westinghouse, and AT&T's manufacturing arm, Western Electric with respect to the broadcasting, press, and film industries in the "industrial media age".[23]

In today's context, and from this perspective, the core elements of the networked digital media economy may be more prone to high levels of concentration than in the past because digitization magnifies economies of scale and scope and network effects in many sectors. Indeed, reflecting on the results of a thirty-country study, Noam (2016) states that concentration levels for mobile wireless and other "network media" are "astonishingly high" and that while the data for content media is mixed, the trend is an upward direction.[24]

At the same time, however, digitization also greatly reduces barriers to entry in some media markets, thereby allowing many small players to flourish and, thus, undercut narratives of relentless corporate consolidation and omnipotence. Consequently, a two-tiered communications and digital media system appears to be emerging, with a few gigantic "integrator firms" at the centre but surrounded by many small niche players that revolve around them.

This school takes today's clashes between digital giants and communications behemoths of longer standing as important examples of how different factions of business battle for access to capital, policy, and cultural clout. The attention paid to dynamic competition implies a keener focus on the complexity, distinctiveness, and contingent nature of markets.

It also sees cross-cutting forces at work that vary by media, time, and place. More attention is also given to empirical evidence and the particularities of media companies and markets in comparison to other schools, all of which is deeply informed by the Cultural Industries School that has been spear-headed by Bernard Miège and colleagues in France for several decades, but which also has influential adherents in Canada, South America, Europe and other parts of the world.[25]

---

[22] Hesmondhalgh, D. 2019. *The cultural industries* (4th ed.). London, UK: Sage Publications; Miège, Bernard. 2011. Principle Ongoing Mutations of Cultural and Informational Industries. In *Political Economies of the Media*, eds. D. Winseck and D. Y. Jin, 51-65. London, UK: Bloomsbury.

[23] Winseck D. (2022) The Broken internet and Platform Regulation: Promises and Perils. In: Flew T, Martin F and Gillett R. (eds) *Digital Platform Regulation: Global Perspectives on internet Governance*. London, UK: Palgrave Macmillan.

[24] Noam, E. (ed.) (2016). *Who Owns the World's Media*. London: Oxford University, pp. 1307-1316; Hindman, M. (2018). *The internet trap: How the digital economy builds monopolies and undermines democracy*. Princeton, NJ: Yale University.

[25] See Bouquillion, P. & Moreau, F. (2018). *Digital Platforms and Cultural Industries*. Paris: Peter Lang; Miège, B. (2011). Principal Ongoing Mutations of Cultural and Informational Industries. In D. Winseck & D. Y. Jin

Why we should care about media concentration: The consequences of digital dominance

By endorsing this school of thought, we start from the premise that media concentration matters. Furthermore, we assume that whether media concentration is high or low is, in strong part, a political and policy choice. That is to say, the character of media markets should not be taken as naturally occurring phenomena. Instead, they are constituted by the policies, rules and laws that have been forged within the context of complex societies and power dynamics.

This approach also emphasizes the role of governments in these choices and their stance towards fulfilling public interests or, conversely, taking steps that have the effect of shielding themselves, technology and/or markets from those interests. This necessarily entails a reversal of the process of the last four- to five-decades whereby governments have delegated steadily more public regulatory functions and services to private actors.[26] It also invites people to participate in the processes that decide the character of the communications systems we get.

Using the specific question of media concentration as our starting point takes the view that the question matters because, for instance, when core elements of the network media economy are concentrated, the easier it is for dominant players to use their control and influence to blunt the sharp edges of competition and to disproportionately shape the communications ecology overall.

While it is often casually observed that competitive markets result in lower prices while concentrated ones tend to lead to higher prices, when it comes to communications services, there is something more vital at stake than just price. For example, communications carriers' ability to set prices and data allowances for their services influences how people communicate with one another, access entertainment and news, conduct business, work, play, and so on—and even if they can afford a mobile phone or

(eds.) (2011). *The Political Economies of Media: The Transformation of the Global Media Industries (*pp. 51-65). London: Bloomsbury; Lacroix, J. G. & Tremblay, G. (1997) The 'Information Society' and Cultural Industries theory. *Current Sociology* 45 (4); Becerra, M. & Mastrini, G. (2011). Communications Economy Paths: A Latin American Approach. In Wasko, J., Murdock, G. & Sousa, H. (eds). *The Handbook of Political Economy of Communications*. London: Blackwell, pp. 109-126; Hesmondhalgh, D. (2019). *The cultural industries* (4th ed). London: Sage.

[26] See, for example, Belli, L. & Zingales, N. (eds.) (2017). *Platform Regulations: How Platforms are Regulated and How the Regulate US* (pp. 25-38). Geneva: United Nations internet Governance Forum; Kaye, D. (2019). *Speech Police: The Global Struggle to Govern the internet*. New York: Columbia Global Reports.

internet connection at all. Thus, high priced services coupled with low monthly data allowances *discourage* mobile wireless adoption and usage in Canada relative to other countries, as we showed in our first report. Conversely, more affordable services and generous data allowances can have exactly the opposite effect.

Given that people increasingly use their mobile phones as a pathway to the news, for instance, the high price of mobile data and restrictive data allowances, can also deter such activities and effect the fortunes of journalism.[27] For instance, a major reason that has compelled the CBC, Postmedia, the Guardian, *New York Times*, *Financial Times*, *Vox*, *Atlantic.com* and many other major media brands to use Google's Accelerated Mobile Pages and Meta's Instant Articles (before it was discontinued in April 2023) is the imperative to strip down their webpages and services so that they load faster on subscribers' smartphones, thereby saving on data charges while also keeping people's attention. Simultaneously, such arrangements allow Google and Meta to capture audience data that they then, in turn, parcel out to media clients in ways that further the latter's dependence on the former.[28] Crucially, it is one of several key factors that allows them to sell advertising around news content provided by the originating sources just introduced.

The upshot is a complex and power-riven, four-way relationship between mobile network operators, digital platforms, media organizations, and audiences that has become central to the networked digital media ecology. The cost to news media organizations, which as our last report showed, are already struggling, to design not just for the internet but also for Google and Meta's AMP and Instant Article services, respectively, have been significant. Consequently, high prices and restrictive data caps have the effect of magnifying news media organizations' dependence on 'digital news intermediaries' such as Google and Facebook, as they are called in the *Online News Act*).[29] In sum, the cost to participate in such ventures are not minor and impose a proprietary technical layer between people, journalism and the internet, all of which brings about greater "platform dependence" of news media organizations at a time when their weak economic prospects render them especially vulnerable.[30]

As the range of online media services continues to become ever more central to the media economy, we must seek to better grasp how gatekeeper power works at the communications network and digital platform levels to shape people's access to news

---

[27] Shearer, E. (Jan 12, 2021). More than eight-in-ten Americans get news from digital devices. *Pew Research Centre*.

[28] See Doctor, K. (April 27, 2015). Google to launch $150 million partnership with publishers. *Politico*; Meta (2022). Instant Articles: A native format for publishers to create fast and interactive articles on Facebook.

[29] Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text).

[30] The concept of platform dependency is taken from Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production*. Hoboken, NJ: Wiley. Also see Nielsen, R. & Ganter, S. (2022). *The power of platforms*. London, UK: Oxford University.

and media content. The devices we use to communicate with one another and to access news, games, and media content —from smart televisions to smartphones—are also implicated in such issues. Indeed, France's communications regulator, ARCEP, emphasized this point in a 2018 report that focused on the need to ensure neutrality and non-preferential treatment of services and expression from internet access service providers (ISPs) at the bottom of the "internet stack", through to digital platforms, app stores, and consumer devices higher up the stack.[31] To its credit, two years after the French report, the Broadcasting Telecommunications and Legislative Review in Canada also highlighted this issue in its report. Its ideas and recommendations on this issue, however, have been upstaged since by the myopic focus of policy debates on concerns with culture and content.[32]

The list of themes that can be examined from the starting point of media concentration goes on: the more powerful internet, communications and media companies become, the greater their ability to set exploitative privacy and data protection policy norms that differ from what people say they want.[33] At the same time, such practices also make communications companies juicy targets for those who would enroll them in efforts to serve the machinery of advertising, law enforcement and national security.

In addition, there is a greater the risk of regulatory capture, made more acute by regulators' reliance on the cooperation of said firms to provide the data necessary for effective scrutiny. Indeed, powerful, profit-seeking corporations with billions of dollars at stake, unsurprisingly, have strong motivations to protect and advance their interests. One way to do so is to shape the knowledge base upon which decisions are made by selectively parceling out information to some while holding it back from others. Despite being surrounded by a glut of information, many of the companies and regulators that we examine in our research have become more reticent than ever to disclose the kinds of information we need to better understand them.

The lines between market power and gatekeeping power are also often blurred, with platforms able to set the terms of access to content through moderation policies and technical interfaces.[34] In fact, many of the world's biggest platforms have, essentially, forged a "content moderation cartel" through which the share the latest advancements

[31] France, ARCEP (2018). *Devices, the Weak Link in Achieving an Open internet*. Paris: ARCEP.

[32] Broadcasting and Telecommunications Legislative Review Panel (BTLR) (2020), *Canada's Communications Future: Time to Act*. Ottawa: Innovation, Science and Economic Development Canada.

[33] Srinivasan, D. (2021). The antitrust case against Facebook: A monopolist's journey towards pervasive surveillance in spite of consumers' preference for privacy. *Berkeley Business Law Journal*, *16(1), 40-99*; Canada, Standing Committee on Access to Information, Privacy and Ethics (2018). *Democracy under threat: Risks and solutions in an age of disinformation and data monopoly*. Ottawa: Author; Bundeskartellamt's link between market power and abusive terms of service; Volmar, M. & Helmdach, K. (2019). Protecting Consumers and Their Data Through Competition Law? Rethinking Abuse of Dominance in Light of the Federal Cartel Office's Facebook Investigation. *European Competition Journal*, 14(2-3), 195-215.

[34] Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production*.

in AI and Machine Learning to manage online content.[35] Originally this was done for the noble purpose of identifying and suppressing child sexual abuse. However, it is increasingly being used to harmonize, at least to a degree, these firms' content moderation practices to, ostensibly, bring them in line with their social responsibilities—and to avoid stricter government regulation.

In other words, market power can be translated into gatekeeping power and moral authority by regulating which content and apps gain access to their operating systems and online spaces.[36] This is a contemporary manifestation of long-standing concerns about media owners using their authority to influence editorial matters to try and set the terms of public debate and public policy agenda, as Bell has done on several occasions with respect to CTV coverage of communications policy issues.[37]

The upshot of these points is the inescapable reality that any discussion of media concentration is ultimately a proxy for much larger conversations about the shape of the mediated technological environments through which we communicate, develop knowledge, and exercise our democratic rights. As the extent to which our economy and society rest upon communications infrastructures and information grows, and our lives become ever more immersed in these digital environments, thinking deeply about these issues is more important than ever.[38]

[35] Douek, E. (2020). *The rise of content cartels*. Knight First Amendment Institute, Columbia University.

[36] See, for example, Apple's rules restricting adult content and Wikileaks fundraising and Tumblr's decision to remove erotic content shortly after it was acquired by Verizon. Feld, H. (2018). Tumblr, Consolidation and The Gentrification of internet. *Wetmachine.*

[37] See, for example, Winseck, D. (March 25, 2015). At Bell, Editorial Meddling by Execs Appears to be a Recurring Problem. *Mediamorphis Blog*.

[38] Baker, C. E. (2007). *Media concentration and democracy*. Cambridge, MA: Cambridge University; Noam, E. (ed.) (2016). *Who Owns the World's Media*; Khan, L. (2020) The end of antitrust history revisited. *Harvard Law Review* 133: 1655-1682.

How to effectively measure and assess the concentration issue

Once we define the media that we are interested in examining, it is necessary to move to the second stage of our method: setting the time frame to be examined. Once again, the answer to this question depends on the theoretical school that one subscribes to. Those who put little stead in concerns with competition, or the lack thereof, tend to prefer short-term snapshots of market conditions, with a premium placed on “before” and “after” depictions of changes in ownership, markets, and technology. This, in turn, is underpinned by the belief that, in the long-run, the creative gales of destruction outlined above will take care of whatever short-run problems might exist in any given moment.

Our approach, in contrast, views conditions and developments in the communications, internet, and media industries over the short-, mid- and long-term. This is signaled in the title of our reports, which highlight the fact that we are examining developments in these industries over the course of four decades. The overall goal is to capture and explain significant changes over time, identify cross-media differences, and make international comparisons.

Once markets have been defined, and a time frame has been established, we use two common tools— Concentration Ratios (CR) and the Herfindhahl-Hirschman Index (HHI)— to illuminate the state of concentration levels and trends in each sector and across the network media ecology.

The CR method adds the shares of each firm in a market and makes judgments based on widely accepted standards, with four firms (CR4) having more than 50 percent market share and 8 firms (CR8) more than 75 percent seen as indicators of high media concentration.[39] The Competition Bureau, however, uses a more relaxed standard, with a CR4 of 65% or more possibly leading to a deal being reviewed to see if it “would likely . . . lessen competition substantially.”[40]

The HHI method is a more fine-tuned approach that captures subtler changes and differences in media markets. It squares the market share of each firm in each market and then totals them up to arrive at a measure of concentration. If there are 100 firms, each with 1% market share, then markets are thought to be highly competitive (shown

[39] See Albarran, A. (2010). *The media economy*. Taylor & Francis, p. 48; Doyle, G. (2013). *Understanding media economics* (2nd ed.). London: Sage; Noam, E. (ed.) (2016). *Who Owns the World’s Media*.

[40] Competition Bureau (2011). *Merger enforcement guidelines*, p. 19.

by an HHI score of 100), whereas a monopoly prevails when one firm has 100% market share (with an HHI score of 10,000).

The U.S. Department of Justice embraced a revised and relaxed set of HHI guidelines in 2010 for categorizing the intensity of concentration.[41] Those thresholds are currently under review, with the Department of Justice proposing to reinstate the previous, stricter standards.[42] For the time being, however, the standards in operation are as follows, and they are the ones we use here:

HHI < 1,500	**Unconcentrated**
HHI > 1,500 but < 2,500	**Moderately Concentrated**
HHI > 2,500	**Highly Concentrated**

These thresholds also change according to time and place, both of which reflect political differences over how best to register the state of competition and concentration in an economy. The European Union and the United Kingdom, for example, use stricter thresholds whereby an HHI of 2000 serves as an indicator of excessively high levels of concentration.[43]

Regardless of any such differences, however, the principles and methods for applying the HHI tool are still the same. Furthermore, it is also essential to bear in mind that these thresholds are guidelines rather than triggers for conclusions or regulatory actions one way or another. They help us to make judgements about the state of a market, both individually and collectively, and trends over time, across different sectors of the communications and media industries, and in comparisons to developments in other countries and regions.

An often-heard criticism of the CR and HHI methods is that they offer only static snapshots of a given market at any given moment. However, far from being static in nature, these measures emphasize the degree of change in market power when ownership changes take place. For instance, according to the current rules in the U.S., "mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power", observes the DOJ.[44] In other words, the greater the change in an HHI score on account of a proposed merger or acquisition, the more likely it is to face tough regulatory scrutiny.

---

[41] U.S. Department of Justice (2010). *Horizontal merger guidelines*.

[42] U.S. Department of Justice (2023). *Draft merger guidelines*.

[43] European Commission (2020). Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03).

[44] *Emphasis added*, U.S., DoJ (2010), p. 19.

It is also imperative to keep in mind that assessing the effects of proposed transactions turn, as the US Department of Justice states emphatically in its 2010 guidelines, on "what will likely happen . . . . [C]ertainty about anticompetitive effect is seldom possible and not required for a merger to be illegal".[45] In practice this means the goal is to nip potential problems in the bud before they happen. It also means that experience, the best available evidence, contemporary and historical analogies as well as reasonable economic theories form the basis of judgment, not deference to impossible (and implacable) demands for infallible proof.

Ultimately, approaching the subject from multiple vantage points allows us to conduct integrated, empirical analysis based on observations about the realities and dynamics that are taking place within and across all levels of the network media economy. The ability to achieve this is simply not possible (and certainly would not be credible) without simultaneously paying close attention to the specific details of different media as well as "the big picture".

Competition policy reform returns to centre stage

Over the past decade, antitrust and competition policy observers and practitioners have become more skeptical of claims that enhanced market power will be good for consumers and citizens because they will benefit from the increased efficiencies that result.[46] The result is a revival of stricter approaches to antitrust regulation and competition policy.

On the front edge of these trends, in 2023 and as mentioned above, the DOJ proposed new guidelines that would roll back today's HHI thresholds to the stricter levels that had existed for decades before the Obama administration relaxed them in 2010. The draft guidelines would also reinstate a presumption against mergers and acquisitions that would "significantly increase concentration in highly concentrated markets" as well as vertical mergers that could foreclose competition in up- or downstream markets. They also push antitrust enforcers to take a tougher line against takeovers that could eliminate potential rivals or new entrants, or that reinforce a trend toward more concentration. The draft guidelines also pay particular attention to multisided markets and platforms in terms of competition that takes place *between* platforms as well as *on* any specific platform.[47]

---

[45] U.S., DoJ (2010), p. 1.

[46] See Stucke, M. E. & Grunes, A. P. (2012). The AT&T/T-Mobile merger: what might have been. *Journal of European Competition Law & Practice*, *3*(2), 196-205; Mazzucato, M. (2014). *The entrepreneurial state: Debunking public vs private sector myths*. New York: Harper Books; Kwoka J Tommaso V (2021) Unscrambling the eggs: breaking up consummated mergers and dominant firms. Industrial and Corporate Change. Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a "no remedies" policy for merger enforcement. Competition Policy International.

[47] U.S. Department of Justice (2023). *Draft merger guidelines*, pp. 3-5.

In Canada, the "efficiencies defence" has been singled out as a major obstacle to effective enforcement of the *Competition Act*. In fact, critics argue that this defence should be reined in or dropped from a revised act altogether.[48] In short, what is good for companies is not necessarily good for the country and its citizen-consumers.

The past year brought a flurry of activity on the competition policy front in Canada, with the federal government engaging in a public consultation on the *Competition Act* that builds on the less formal consultation conducted by now retired Senator Howard Wetston in 2021.[49] With over 120 responses filed by industry, academia and civil society, along with 400 submissions from the general public, the consultation is the most wide-ranging scan of competition policy in Canada in well over a decade.

Of particular note was the submission by the Competition Bureau which provided a detailed view of the shortcomings of Canada's current competition law and potential paths for reform from the perspective of its enforcer.[50] Echoing its commentary in recent years and its position in the context of the Rogers / Shaw transaction, the Bureau's submission describes a body of law that prevents the regulator from acting decisively, particularly in the digital markets that have captured the attention of international antitrust authorities.

The government's Bill C-56 is also currently before Parliament, and may provide an early indication of the future direction of the *Competition Act* with the striking out of the "efficiency exemption" that excused otherwise harmful mergers.[51] What remains to be seen is the scale of change that the Minister of Innovation, Science and Industry François-Philippe Champagne is willing to stand behind on this front, one that continues to grow in prominence and one where opposition parties have become more attuned to the weaknesses of Canada's current approach to the competition issue.

[48] Shaban, R. (March 16, 2021). Canada's efficiencies defence may enable Rogers-Shaw merger. *Globe and Mail*; Shaban, R. (Feb. 22, 2022). Competition policy in Canada is guided by narrow interests. *Policy Options*. Bester, K. (2022). *Merger policy for a dynamic and digital Canadian economy*. Waterloo, ON: Centre for International Governance Innovation.

[49] Innovation Science and Economic Development Canada (2022). Consultation on the future of competition policy in Canada; Senator Howard Wetston (2021). Examining the Canadian Competition Act in the Digital Era. This and the following paragraphs have benefitted greatly from input from Keldon Bester.

[50] Competition Bureau (2023). The Future of Competition Policy in Canada.

[51] House of Commons of Canada, Bill C-56 (2023). *An Act to amend the Excise Tax Act and the Competition Act*.

Communication and media Industries in Canada: the long duree

Understanding the evolution of Canada's communications and media markets is crucial to grasp the present state of media concentration. Historical patterns and regulatory responses recur and inform today's policy debates. While the history may seem a detour, it establishes the context for current issues and is indispensable for our research methodology. Not convinced? Then jump ahead a few pages to get to the contemporary data, analysis, and discussion.

The bare-bones reprisal of communications and media history presented in the following few pages is essential because recognizing historical patterns helps debunk the myth that current economic, technological, political, and social dynamics pose unprecedented contemporary challenges. Moreover, past regulatory measures can guide contemporary communications, internet and media policies without imposing outdated solutions.

To give a sneak peek at what we mean by that last point, whether one loves or loathes the *Online News Act*, one of its key features is the section that *prohibits* digital news intermediaries such as Google and Facebook from "acting in any way" that "unjustly discriminates against" or gives "undue preference" to news sources covered by the *Act*. This measure echoes the longstanding tradition of common carriage that we relay below.[52]

Generalizing for the sake of categorization, Canada's communications and media sectors have undergone three significant historical shifts. Initially, the rise of a regulated monopoly in telephony during the 1910s replaced an earlier phase of competitive independent telephone companies across the country. The late 20th century saw market liberalization, which eventually led to the reconsolidation phase, creating today's unique integrated communications and media landscape.

[52] Canada (2023). *Online News Act*, section 51.

From independent telephony to regulated monopoly, 1900-1980

In the evolution of Canada's communications sector, three main policy approaches have been on the table when it comes to dealing with the realities of the communications and media industries:

1. fostering competitive independent service providers,
2. using regulatory tools like price regulation, interconnection, structural separation, and common carriage to ensure fair access and prevent misuse of monopoly market and gatekeeping power, and
3. creating public entities like SaskTel and the CBC as alternatives to private companies.

Each of these policy approaches is instructive as we grapple with how to best respond to the changes now taking place in the ever more internet-centric communications and digital media system in our time.

For most of the 20th century, telecommunications in Canada developed as separate local, provincial, and regional monopolies. However, monopoly was never inevitable. In fact, the annulment and expiration of Bell patents in 1885 and 1893, respectively, coupled with a series of rulings by Canada's first federal regulatory body, the Board of Railway Commissioners (BRC), between 1908 and 1912, opened the door to a vast expansion in the number of independent and competing telephone companies, both private and public-owned.

While some parts of the country saw the rise of competing telephone systems, in other areas public ownership was adopted. Across the prairies, for instance, the creation of the Edmonton District Telephone Company (1904), the Manitoba Telephone System (MTS) one year later, the Alberta Government Telephones (AGT) in 1906, and the Saskatchewan Telephone Company in 1908 ushered in an era of publicly-owned telephone systems that would hold sway until governments privatized them in the late-1980s and 1990s (except SaskTel). Similar operations were set up in municipalities and small towns, such as Thunder Bay (Tbaytel) and Westport, Ontario (WTC Communications), public alternatives which continue to thrive to this day.[53]

[53] Babe, R. E. (1990). *Telecommunications in Canada*. Toronto: University of Toronto, pp. 121-3; Winseck, D. (1998). *Reconvergence*. Cresskill, NJ: Hampton Press, pp. 137-139. Today, there are about twenty such entities still operating across Canada under the auspices of the Canadian Independent Telephone Association.

This tilt in favour or independent telephone companies and regulated competition was also reinforced by strong controls on the ability of network operators to exercise gatekeeping powers over erstwhile competitors as well as the flow of news and correspondence over their systems. That could be seen, for example, in the Supreme Court's Electric Despatch Co. versus Bell Telephone decision in 1890 that ruled that Bell was a common carrier and that to consider it otherwise would lead to the telephone company having too much power to interfere with a rival service provider and to pry into the personal correspondence of its subscribers. In other words, treating the company as a common carrier was good for competition and good for personal privacy.[54]

Two decades later, in 1910, the Board of Railway Commissioners (BRC)—the distant ancestor of today's CRTC—invoked the principle of common carriage to dismantle an alliance among major telegraph companies and the New York-based Associated Press. This move was rooted in the emerging doctrine that common carriers should not simultaneously be editors who use their control over the wires (or spectrum) to dictate who gets to speak to whom on what terms.[55]

In the face of much corporate bluster, the regulator was emphatic that while allowing the dominant telegraph companies to give away the AP news service ostensibly for free to leading newspapers across the country might be a good way for the companies to attract subscribers to their more lucrative telegraph business, it would effectively "put out of business every news-gathering agency that dared to enter the field of competition with them".[56]

In a conscious effort to use telecoms regulation (operating under the auspices of railway legislation at the time) to foster competing news agencies and newspapers, the BRC mandated that Western Union and CP Telegraphs separate their telegraph services from the AP news wire service and apply separate charges for each. This safeguarded competition by ensuring that no news agency was unfairly ousted from the market by the free distribution of AP news to newspapers. This regulatory stance solidified common carriage in Canadian policy, while emphasizing its importance for cultural diversity and a free press. The BRC's decision reflected a broader societal value:

---

[54] As an aside, Bell coveted this outcome at the time. *Electric Despatch v. Bell Telephone*, 15 (1891) *20 SCR 83*, pp. 91-95; Klass, Winseck, Nanni & McKelvey (2016). *There ain't no such thing as a free lunch: Historical and international perspectives on why common carriage should be the cornerstone of communications policy in the internet age*. Submitted to the Canadian Radio-television and Telecommunications Commission Telecom Notice of Consultation CRTC 2016-192, Examination of differential pricing practices related to internet data plans (June 28, 2016).

[55] Canadian Pacific Telegraph Company and Great Northwestern Telegraph company, the latter a division of the American telegraph giant Western Union.

[56] Board of Railway Commissioners, 1910, p. 275. Text of the decision from the author's archives. Copies available upon request.

communications networks must facilitate diverse voices without exerting control over content, a principle that guided 20th-century communications policy in Canada.[57]

Similar questions arose throughout the 20th century and were dealt with as the situation demanded. One consistent, guiding rule of communications policy, however, was that of the "separations principle"[58], whereby telecoms carriers[59] competed to carry messages from all types of users, and for all types of purposes, but were prevented by law from directly owning or controlling the messages that flowed across the transmission paths they owned and controlled.

The peak of independent telephony was marked in 1917 with 1,700 companies serving the majority of Canadian subscribers. Despite their success, however, pivotal regulatory decisions in the preceding years signalled an impending shift. The BRC's 1915 surcharge on independent users of Bell's long-distance network, followed by the 1916 decision mandating independents to compensate Bell for losses due to competition, heralded the demise of this competitive era. And thus was regulated monopoly telecoms framework created. It lasted seven decades.[60]

While the natural monopoly regime was accepted it was also deliberately confined to prevent cross-industry dominance. This separation ensured that industries like broadcasting, film, and publishing, though dependent on telecoms for infrastructure and equipment manufacturers for technology, remained distinct in ownership and control—a foundational principle in Canada and beyond to this day.

Thus, in 1923, for example, and following in lock-step with decisions taken by their parent companies in the U.S., "Six Great Companies", as *The Toronto Star* reported, "agreed to pool all their patents for the common good".[61] This agreement effectively divided the communications market amongst the big six multinational players to avoid destructive competition. This marked the early shaping of the media and cultural

---

[57] Babe, R. (1990). *Telecommunications in Canada*, pp. 121-3.; Winseck, D. (1998). *Reconvergence*.

[58] Wu, T. (2010). *Master Switch*. New York: Knopf Doubleday.

[59] Usually two of them (e.g. telegraph vs telcos in the early 1880s, the TransCanada Telephone System (TCTS) and CNCP for three-quarters of the 20th century, the telcos vs cablecos ever since, and the telcos' consortium Stentor versus Rogers/Cantel in the early days of mobile wireless from 1985 until the mid-1990s).

[60] BRC (1915, 1916). *Judgements, orders, regulations, and rulings*. Ottawa: J. De Labroquerie Tache; Winseck (1998). *Reconvergence*; Babe, R. (1990). *Telecommunications in Canada*. pp. 121-3.

[61] *The Toronto Star*, August 14, 1923. The six companies included the Canadian General Electric Co., the Marconi Wireless telegraph Co. of Canada, the Canadian Westinghouse Co., the Bell Telephone Company, the Northern Electric Company, and the International Electric Company.

industries in Canada and internationally, setting a precedent for industry development.[62]

The separation between transmission and content creation was maintained through court decisions, regulatory measures, and corporate strategy, influencing sectors like broadcasting and press. The Canadian Radio Broadcasting Commission, established in 1932, was also part of this structural division.

Similar patterns were evident internationally, for example, when the equipment manufacturing consortia behind the British Broadcasting Company in the U.K. and the National Broadcasting Company/Radio Corporation of America in the U.S., respectively, were ousted from the field in the latter half of the 1920s to remake both entities into the stand-alone broadcasters that they have been ever since. Likewise, telephone companies like AT&T, and equipment manufacturing conglomerates such as General Electric, Western Electric or Westinghouse were also shut out by government intervention—or even just the threat of it—from playing an active role in the film industry. This was the case, for example, when, after having wired movie theatres across the U.S. and the Hollywood production studios for sound, circa 1927 and into the 1930s, AT&T and the electrical equipment manufacturing giants began taking on a larger role in the film business by financing and vetting films. By the end of the 1930s, however, they were forced out of the film industry by just the threat of an antitrust case targeting such activities from the Federal Trade Commission.[63]

These dynamics were not the product of one-off events, either, but the results of deliberate policy decisions that continued in the decades ahead. In 1968, for instance, changes to Bell's charter barred it from entering the content and information publishing sphere, including radio, television, and emerging cable TV and electronic publishing sectors. This policy, aimed at preventing a convergence of communications carriers and content services, remained until the 1980s when gradual exceptions began to emerge. By the mid-1990s, the policy pivoted completely, with the Liberal government of Jean Chretien endorsing convergence in the hope that doing so would stimulate substantial investments in internet infrastructure and improve the competitive global position of Canadian companies.[64]

We must keep this history in mind when we think about our own times, as the media and cultural industries today are drawn ever more closely into the orbit of giant international internet and IT firms. In other words, yesterday it was Bell, Marconi, General Electric, Westinghouse, Northern Electric, and the International Electric

---

[62] See Winseck, D. (1998). pp. 169-172; Babe, R. E. (1990). *Telecommunications in Canada*. pp. 202-203; *The Toronto Star*, August 14, 1923.

[63] See Briggs, A. A. (1961). *The history of broadcasting in the United Kingdom* (Vol. 1). Oxford, UK: Oxford University; Barnouw, E. (1975). *Tube of plenty*. New York, NY: Oxford University Press; Danielian, N. R. (1939). *AT&T: The Story of Industrial Conquest*. New York, NY: Vanguard Press.

[64] Canada (1996). Competition and culture set to gain in Convergence Policy Framework. Ottawa: Ministry of Supply and Services; CRTC (1994). *TD 1994: Review of the Regulatory Framework*.

Company that fundamentally shaped the development of the media industries. Fast forward to the 21st century, and now it is Google, Amazon, Facebook, Apple, Microsoft, AT&T, BCE, etc. that stand in much the same position.[65]

Market liberalization and industry reconsolidation, 1980-2010s

In the late 20th century, several Canadian media inquiries laid the groundwork for historical records but did not lead to significant reform. At the same time, however, policy reforms did start to dissolve telecom monopolies, while introducing competition and some new commercial operators in broadcasting and mobile services.

The Department of Communications, for instance, licenced two groups of competing mobile wireless services: the first was a joint venture between cable communications giant, Rogers, and AT&T-backed Cantel Communications; the second consisted of the eleven regional telephone monopolies operating across the country at the time (e.g. Bell, MTS, SaskTel, TELUS, and the Atlantic telcos). Consequently, both groups now had a licence to provide wireless services in addition to their existing communications services in their respective operating territories.[66] Two new national competitors in mobile wireless service were also given the regulatory green light in 1995 (Clearnet and Microcell). In short, the government was using many of the policy levers at its disposal to promote competition in the soon to explode mobile wireless sector.

At the same time, the regulated natural monopoly regime in wireline telecoms was also dismantled through a series of CRTC decisions allowing subscriber-attached devices (1982) and competition in enhanced services (1985), long-distance (1992) and local services (1997). The government encouraged competition between telephone and cable companies, culminating in the CRTC's framework for telephone competition in 1997.[67]

---

[65] Winseck, D. (2022). The Broken internet and Platform Regulation. In T. Flew, F. Martin & R. Gillett (eds.). *Digital Platform Regulation: Global Perspectives on internet Governance*. London, U.K.: Palgrave Macmillan; Hesmondhalgh, D. (2019). *The cultural industries*. Thousand Oaks, CA: California, pp. 16-22, 217-218.

[66] Klass, B. (2015). *Mobile wireless in Canada: Policy, progess and problems (MA Thesis)*. Winnipeg, MB: University of Manitoba, pp. 58-61.

[67] See: CRTC (1982) *In Attachment of Subscriber-Provided Terminal Equipment, Telecom Decision CRTC 82-14*; CRTC. (1985, June 25). *ARCHIVED Telecom Decision CRTC 85-10: Inquiry into telecommunications carriers' costing and accounting procedures: Phase III - Costing of existing services*; CRTC. (1992, June 12). *Telecom Decision CRTC 92-12: Competition in the provision of public long distance voice telephone services and related resale and sharing issues*; CRTC. (1997, May 1). *Telecom Decision CRTC 97-8: Local competition*; Also, Rideout (2001). *Continentalizing Canadian Telecommunications: The politics of regulatory reform.* Montreal, QC: MQUP.

The Chretien Liberals also encouraged the telephone and cable companies to compete not just in the mobile wireless market but also in one another's former, mutually exclusive turf in 1996.[68]

As government policy makers opened the doors ever wider to competition, however, a process of reconsolidation was also taking place. Bell acquired Northwestel in 1988, and by 1999, formed Aliant with other regional providers in the Atlantic provinces. In western Canada, TELUS emerged from the merger of BCTel, AGT, and Edmonton Tel.

Meanwhile, Rogers and Shaw divided their cable operations regionally in 2000, with Rogers giving up 626,000 subscribers in Vancouver and nearby suburbs in exchange for Shaw's 604,000 subscribers in southern Ontario and New Brunswick.[69] The two companies had effectively carved up the country into Cable Monopoly East and Cable Monopoly West. It was a pivotal move whose last act only played out over two decades later when Rogers consummated its take-over of Shaw Communications (in 2023) (see further below on this matter).

Thus, by the early-2000s, the natural monopoly telecoms regime of the previous century had been replaced by a series of duopolies in the central and Atlantic provinces, on the one side of the country, and the western provinces of Alberta and BC, on the other, with SaskTel and MTS in Saskatchewan and Manitoba, respectively, competing with local cable systems. As a result, in one city after another, former monopoly telecoms operators now battled with monopoly cable providers for control over wireline and wireless communications across the country.

The general trend at the time was also to encourage more diversity in television and radio ownership. When bouts of consolidation did occur, it tended to be amongst individual players in single media markets. Conrad Black's take-over of the Southam newspaper chain in 1996 was a case in point, while the amalgamation of several local and regional television ownership groups in the late 1990s to create a handful of national commercial television networks under common ownership further exemplified the point: CTV, Global, TVA, CHUM, TQS.

These instances of ownership consolidation on a national basis, however, did not have a big impact across different kinds of media. In addition, the CBC still remained prominent during this period, but both its public television and radio services were being steadily eclipsed by the expansion of commercial broadcasting services. As evidence of this, the CBC's share of all resources in the television 'system' slid from 52% in 1984 to just 12% last year.

Media conglomerates began to take shape in the 1990s as well, with Rogers acquiring Maclean-Hunter in 1994, followed by Quebecor's acquisitions of the Sun chain of

---

[68] Canada (1996). *Competition and culture set to gain in Convergence Policy Framework*; CRTC (1994). *TD 1994: Review of the Regulatory Framework*.

[69] Shaw (2006), *Annual Report 2005*, p. 60.

newspapers in 1999, Vidéotron, the largest cable company in Quebec, in 2000, and the French-language commercial television network, TVA, in 2001. The rise of the Rogers and Quebecor communications and media conglomerates was also heralded in many quarters as the harbinger of a new era of media convergence. They also marked the moment when the vertically integrated communications and media conglomerate moved to centre stage in Canada. The CRTC helped to clear the path to such ends by adopting a new regulatory framework in 1994, while the Chretien government's 1996 convergence policy statement had a similar effect.

Before the decade was out, BCE also took advantage of these favourable conditions to buy the English-language CTV television network, a large stable of pay television services, and *The Globe and Mail* newspaper. This experiment in convergence, however, was short-lived when Bell sold its stakes in CTV and *The Globe and Mail* in 2006, effectively acknowledging that running a telephone company is very different from operating in the cultural industries field. That experience also demonstrated that convergence was not inevitable, despite government policies to promote it, and industrial interests like BCE that seemed to be forever enthralled by it.

Whereas gradual change defined the 1980s and early-1990s, things shifted abruptly after the mid-1990s and carried on into the 21st century as periodic bouts of consolidation swept across the telecom, internet, and media industries. Figure 3, below, chronicles some of the significant transactions that have reconfigured the communications, internet, and media industry in Canada over the last three decades.

"Whereas gradual change defined the 1980s and early-1990s, things shifted abruptly after the mid-1990s and carried on into the 21st century as periodic bouts of consolidation swept across the telecom, internet, and media industries"

Figure 3: Significant communications & media ownership changes in Canada, 1994-2022

1994
Rogers acquires Maclean-Hunter ($2.5B)

1998
Canwest buys Global TV ($800M) (1998) and Hollinger newspapers ($3.2B) (2000)

1998
Shaw acquires catalogue of televison and radio stations from WIC (1998) and Power Broadcasting (1999), then spins them off into Corus (1999). Shaw maintains ownership control of Corus

1999
Quebecor acquires Sun newspapers ($1B)(1999), Videotron ($4.9B)(2000) and TVA ($500M)(2001) (Total: $6.4B)

2000
QBCE acquires CTV and The Globe and Mail ($2.3B)

2000
Telus, created from the amalgamation of BC Tel, AGT, and Edmonton Tel, acquires Clearnet ($6.6B)

2004
Rogers acquires Microcell ($1.4B)

2006
BCE exists media business

2007
CTVglobemedia acquires CHUM ($1.4B)

2007
Rogers acquires City TV ($375M)

2007
Astral Media buys Standard Broadcasting ($1.1B)

2007
Quebecor Acquires Osprey Media ($517M)

2007
Canwest acquires Alliance Atlantis ($2.4B)

2009-2010
Canwest declares bankruptcy, newspapers acquired by Postmedia ($1.1B) and TV assets acquired by Shaw ($2B)

2011
BCE re-acquires CTV ($3.2B)

2013
BCE's second bid to acquire Astral Media approved after it agrees to divest several TV services ($3.4B)

2013
Telus acquires Public Mobile

2015
Rogers acquires Mobilicity ($465M)

2015
Postmedia acquires Quebecor English language Sun newspapers ($360M)

2016
Shaw acquires Wind Mobile (rebrands as Freedom Mobile) ($1.6B) and spins off Shaw televion assets to Corus to help finance the deal (Corus is under common ownership with Shaw given controlling ownership stake held by Shaw Family Trust)

2017
Bell acquires MTS ($3.1B)

2017
Torstar and Postmedia swap ownership and subsequently close the majority of 41 community newspapers

2020
NordStar Capital acquires Torstar ($52 million)

2022
Bell acquires Distributel ($335 million) and ebox ($139 million)

2022
Quebecor acquires VMedia

2022
Telus acquires Start.ca and Altima (price undisclosed)

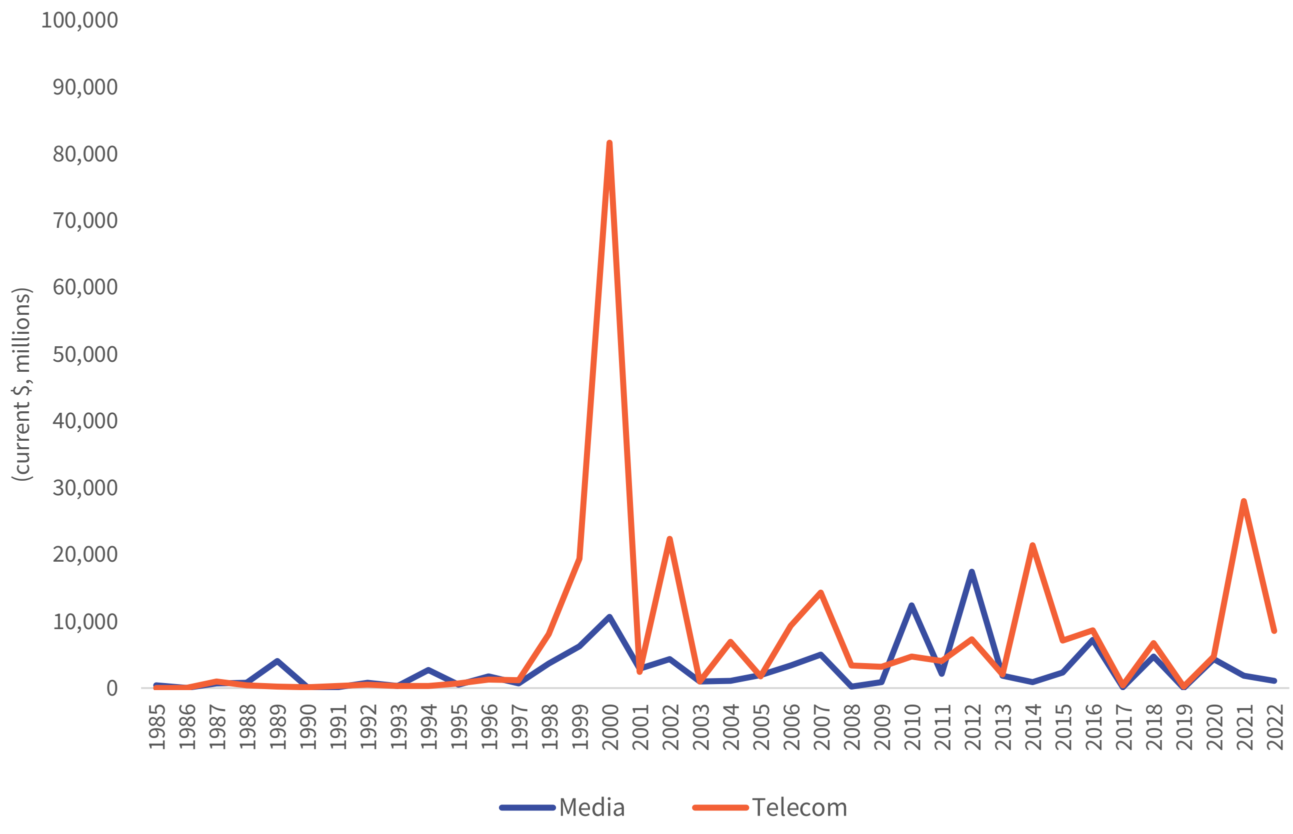
2022
Cogeco acquires Oxios ($100 million)

2023
Rogers acquires Shaw Communications ($26 billion) but spins of Freedom Mobile to Videotron for $2.85 billion

2023
Rogers acquires Comwave

The periodic surges of capital investment that drove consolidation across the telecom, media and internet industries during these different phases is illustrated in Figure 4 below.

Figure 4: Value of mergers and acquisitions in telecoms & media, 1985–2022 (current $, millions)



Source: Redefinitive (formerly Thomson Reuters). Dataset on file with author.[70]

As Figure 4 illustrates, mergers and acquisitions soared to never-since-repeated heights before collapsing as the dot.com bubble burst in 2000. These processes reflected and embodied the business, political, and regulatory climate of the time.

After the euphoria of the dot.com era melted away, however, several companies collapsed outright (e.g. Hollinger Newspapers, Craig Media, 360Networks). A few other well-established players stepped in to pick up the wreckage, as Canwest did, for example, with respect to the Hollinger Newspaper chain and Craig Media (the A-Channel network). Shaw and BCE picked up different assets from the defunct 360Networks. In

[70] Telecoms includes wireless, wireline, and internet access; media includes broadcasting distribution, TV, radio, newspapers and magazines.

addition, the two mobile wireless operators that had been created in the mid-1990s—Clearnet and Microcell—to compete with the national mobile wireless duopoly of the time were acquired by TELUS in 2000 and Rogers in 2004, respectively. The early era of mobile wireless competition was over as a result.[71]

In broadcasting, the then-burgeoning pay television and newspaper publishing industries came in for a round of consolidation in the late 2000s. Four transactions, all of which took place in 2007, stood out:

1. Canwest's acquisition of Alliance Atlantis, one of Canada's largest pay and specialty TV services at the time.[72]

2. Astral Media's acquisition of Standard Broadcasting, the third largest commercial radio ownership group.[73]

3. The complicated make-over of CTV that took place as Bell Canada exited the media industry and the newly formed CTVglobemedia took over Bell's interest in CTV while also joining forces with Rogers to acquire different parts of CHUM—also one of the country's largest and most iconic TV and radio broadcasters at the time.[74]

4. Quebecor acquired Osprey, a significant newspaper publisher operating largely in Ontario and Quebec.

By the time 2007 was done, nearly all the most significant regional television, radio and newspaper publishing groups had been swallowed by a handful of national media conglomerates. As for the CRTC, wherever its mandate was engaged with respect to these transactions, it offered its blessing. In 2008, the Commission adopted its *Diversity of Voices* report in response to these trends, but the criteria for evaluating consolidation in broadcasting were exceedingly weak, and in terms of vertical integration between telecoms and broadcasting it was even weaker. In fact, the CRTC believed that cultivating national champions in the communications and broadcasting industries was good public policy and the *Diversity of Voices* rules embodied that conviction.

---

[71] CRTC (2004). *Report to the Governor-in-Council: Status of competition in Canadian telecommunications markets*. Ottawa: Author, pp. ii, 23-24.

[72] CRTC (2007). BD CRTC 2007-429. Transfer of effective control of Alliance Atlantis Broadcasting Inc's broadcasting companies to MediaWorks Inc.

[73] CRTC (2007). BD CRTC 2007-359. Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership, carrying on business as Astral Media Radio.

[74] CRTC (2007). BD CRTC 2007-165. Transfer of effective control of CHUM Limited to CTVglobemedia Inc; CRTC (2008). BD CRTC 2008-69. Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVglobemedia Inc.

The Commission also oversaw another bout of consolidation, circa 2007 to 2013, when Rogers, Shaw and Bell acquired the three largest English-language television groups, CityTV, Global, and CTV, respectively. As a result, television was grafted onto the vastly larger communications industry between 2007 and 2011 in three steps.

The first step occurred in 2007 when Rogers acquired the City TV network in a handful of the biggest cities across Canada and roster of pay television services after it took over part of the CHUM operations, as we saw a moment ago.

Second, and three years later, Shaw, the Alberta-based cable communications giant, acquired Global TV from the bankrupt Canwest. Shaw already had a modest stake in pay television, television production (Nelvanna), and radio broadcasting through its ownership of Corus Entertainment. With its take-over of Canwest, however, Shaw was transformed into a major vertically integrated communications and media conglomerate with a stable of nine local television stations across the country, fifty-three radio stations, and thirty pay television services.

Third, the next domino to fall revolved around BCE's resurrection of its communications and media convergence vision. Over the next three years, Bell re-acquired CTV in 2011. A year later, Bell acquired a joint-ownership stake (37.5%) with Rogers (37.5%) and Kilmer Sports (25%) in Maple Leaf Sports and Entertainment. The three interests now jointly owned the Toronto Maple Leafs, Toronto Raptors, Toronto Blue Jays, the Air Canada Centre in Toronto (since renamed Scotiabank Arena), and three pay television services: Leafs TV, NBA TV Canada and GolfTV. In 2013, Bell also acquired Astral Media—the largest independent pay and specialty television service and radio broadcaster at the time (together with Astral's rights to premium pay television content, i.e. HBO Canada)—although in the face of fierce opposition from the Harper Conservative government-appointed head of the CRTC, Jean-Pierre Blais.[75]

Consequently, by 2013, Bell was not only the largest communications company in Canada but also the biggest media content company. Once the dust had settled, the network media economy in Canada had been completely transformed and its fate harnessed to four vertically integrated communications and media conglomerates:

- Bell owned the CTV network, forty-plus pay television services, and the country's largest commercial radio network

- Rogers owned City TV, more than a dozen pay television services, and the second largest commercial radio network in Canada

- Shaw owned Global TV, a roster of fifty pay television services, and Canada's third largest commercial radio group

[75] The then head of the CRTC, Konrad von Finckenstein, now concedes that the CRTC's permissive attitude toward consolidation during his leadership from 2007 to 2012 was probably a mistake.

- Quebecor maintained its longer standing ownership of the French-language TVA network, a dozen pay television services, two French-language newspapers (i.e. Le Journal de Montréal and Le Journal de Québec) and the English-language Sun newspaper chain.

Today, Bell Media is still the largest television ownership group in Canada. It has thirty-five local broadcast television stations that make up the English-language CTV network and the second largest French-language V network, respectively, thirty-five pay and specialty television services, the Crave and Noovo online video services, and 109 radio stations in fifty-eight cities nationwide, although it announced plans to close or sell nine of those radio stations in June 2023. Bell has also threatened to close local broadcast television stations unless the CRTC revamps the regulatory framework that Bell and other broadcasters operate under (as discussed in more detail below).[76]

For telecoms markets the same period represented a comparative lull in acquisitive behaviour and even a push in the opposite direction as Industry Canada used the 2008 AWS spectrum auction to support the entry of a handful of new firms into the national mobile wireless market. This diversification was short-lived though, beginning with TELUS' 2013 acquisition of Public Mobile, Shaw's 2016 acquisition of Wind Mobile, and Bell's take-over of MTS in 2017. The latter was blessed by the Competition Bureau with a now-failed consent agreement that tried to create a new competitor out of the rural wireless provider Xplornet. After floundering for a few years, Xplornet was bought by Stonepeak Infrastructure Fund, a NY-based private equity fund, in 2020, and its mobile wireless division spun-off into a stand-alone operating division before being shut down last year.[77] The consummation of Rogers' take-over Shaw Communications for $26 billion early this year is the latest—and most significant—step in this direction, and for that reason we will return to it on several occasions in the pages ahead.

---

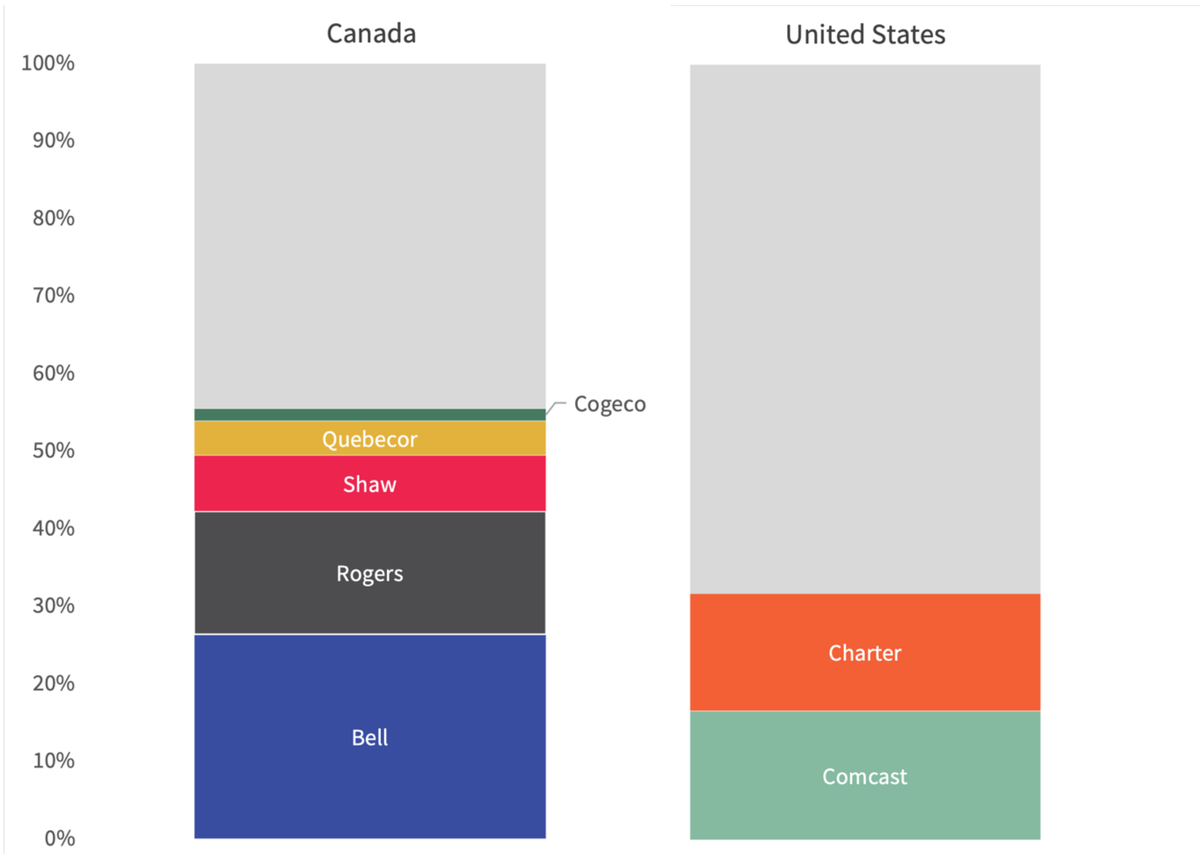
[76] BCE (2022), *Annual Report, 2021*, p. 37; BCE (July 11, 2023). *Comments of BCE Inc.: Broadcasting Notice of Consultation CRTC 2023-138: The path forward—working towards a modernized regulatory framework for contributions to support Canadian and Indigenous content*; Hudes, S. (June 14, 2023). Bell cutting 1,300 positions, closing or selling 9 radio stations. *The Canadian Press / Financial Post*.

[77] Cision (June 11, 2020). Xplornet announces completion of sale to Stonepeak Infrastructure Partners; Karadeglija, A. (July 18, 2022). Xplornet Mobile shut down is a signal for government to 'stop approving telecoms mergers'. *National Post*.

Vertical integrations between telecoms and media in Canada is sky-high

The culmination of the past 40 years has created what now represents the apex of the network media universe in Canada: the vertically integrated communications and media conglomerate. Levels of vertical integration soared between 2008 and 2013 and are now exceptionally high relative to historical conditions and in relation to the United States and internationally. Figure 5 below illustrates this point with respect to Canada and the United States in 2022, respectively.

Figure 5: Vertical integration in communications and media sectors–the United States vs Canada, 2022



Total $ CDN NME (Millions)	**104,363.1**
CR1	23.7 %
CR4	60.6 %
CR10	79.4 %
HHI	1134.9

Total $ US NME (Millions, CDN$)	**1,131,626.3**
CR 1 US	11.3%
CR 4 US	36.1 %
CR 10 US	56.4 %
HHI US	432.3

Sources: see the "Fig 5 VI US vs Canada, 2022" and the "Fig 41 LeadingTelecominternet" sheets in the Excel Workbook accompanying this report and each the sector sheets in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

The extent of vertical integration in Canada is multiple times higher than in the U.S., as Figure 5 depicts. In fact, there are only two significant vertically integrated firms in the U.S., Comcast, which owns NBCUniversal, and Charter, which controls Liberty Media, respectively. Together, they account for 9% of the U.S. network media economy compared to Bell, Rogers, Vidéotron and, before its acquisition this year, Shaw's control of half the revenue of the network media economy in Canada.

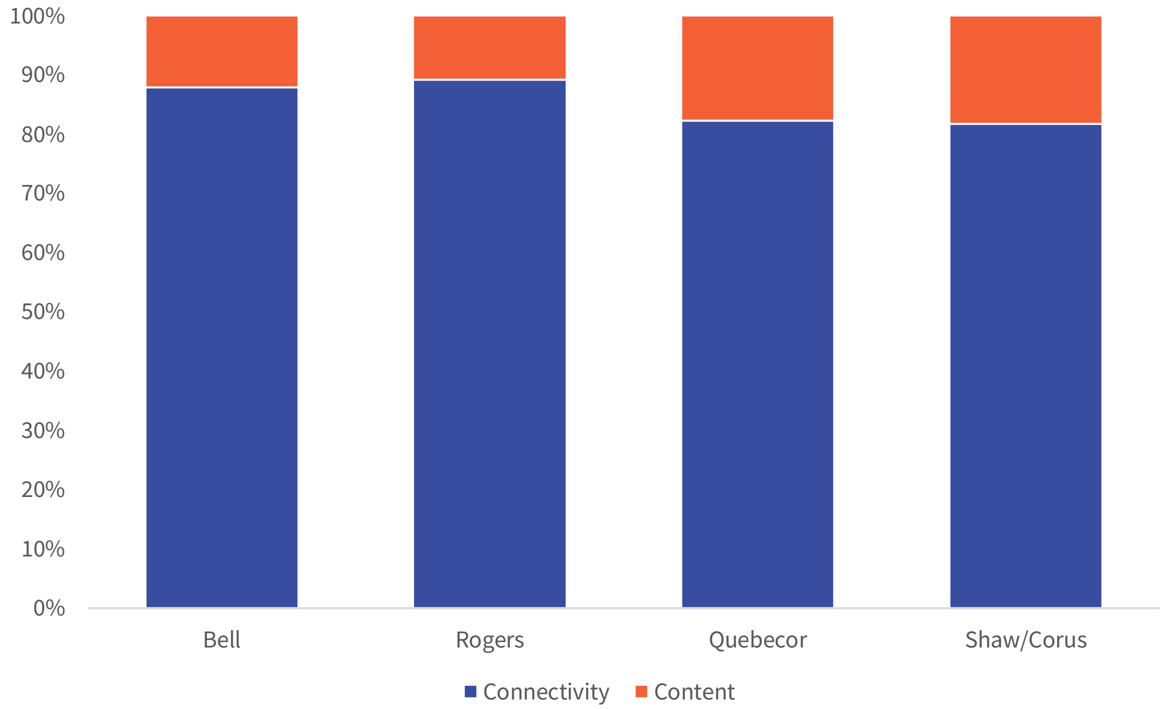
There was an uptick in vertical integration in the U.S. on account of AT&T's acquisition of Time Warner in 2018, but that relationship was short-lived. AT&T spun-off its stake in the rebranded Warner Media into a joint venture with Discovery in 2022. While AT&T retains ownership of slightly more than three-quarters of the equity in the new stand-alone company, Warner Media Discovery, it does not have any powers of control over it. One key index of this lack of control is the fact that AT&T does not even a seat on the board of directors at Warner Media Discovery. This was another instance in which AT&T failed to carry off its ambitions to penetrate deeply into the media industries (the others being its aborted efforts in radio broadcasting and film in the 1920s and 1930s, and its rise and fall as the biggest cable company in the U.S. from 1998 until 2003, when it went bankrupt before being resurrected in its current form in 2005 through a take-over by SBC, and a rebranding of the SBC and the "old" AT&T as the "new AT&T).

As noted in our first report, some telecoms operators in Europe such as Telia, Liberty Global, VodafoneZiggo, Bouygues, and Comcast, for example, own broadcast TV stations and pay TV services in the Netherlands, Belgium, Italy, France, UK, Germany, Finland, Denmark, and few other countries, but the scale of their influence in each case pales compared to Canada. This is in keeping with trends seen in a recent review of media concentration, where Canada had the third highest level of vertical integration out of the twenty-eight countries examined.[78] Contributors to the Global Media and Internet Concentration Project will update these results in the near future.

The basic point about vertical integration is that the media content side of these conglomerate structures is dwarfed by the far larger and much more lucrative communications side of these companies' operations. Indeed, for Quebecor, Shaw, Bell and Rogers, 80-90% percent of their revenue flows from the communications side of their business rather than from media content services. Figure 6 below illustrates the point.

[78] Noam, E (ed.) (2016). *Who Owns the World's Media*.

Figure 6: Connectivity vs content within Canada's vertically integrated companies, 2022 (Ratio by Revenue)



Sources: see the "Fig 41 LeadingTelecominternet" in the Excel Workbook accompanying this report and each of the sector sheets in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

Another way to put this is that media content services have become ornaments on the national carriers' corporate edifice. They are important, but their real purpose seems to be to drive the take-up of the companies' vastly more lucrative wireless, broadband internet, and cable, satellite, and IPTV services. In short, media content services in Canada are structurally subordinate to and dependent on the vertically integrated companies' vastly bigger and more profitable activities in communications services. Unsurprisingly, their priorities reflect such realities.

During a brief period between 2012 and 2017, the CRTC stepped away from its long-running embrace of ownership concentration and vertical integration. Commissioner Jean-Pierre Blais made it clear from the very outset of his tenure that, under his leadership, the CRTC would take a much more critical view of vertical integration and ownership consolidation. To that end, in the Commission's first significant decision under his tenure, Bell's first bid to acquire Astral Media in 2012 was rejected.[79]

Forced back to the drawing board, Bell submitted a modified version of the deal in 2013 that would see it sell-off several of Astral's pay television services to get regulatory

[79] CRTC. (2012). Broadcasting Decision CRTC 2012-574. 18.

approval. Bell also submitted its application to the Competition Bureau first rather than to the CRTC, given the Bureau's well-known tendency then to take a extremely permissive and narrow view of market concentration issues.[80] Pre-empted by the Bureau's approval of the deal, the CRTC reluctantly blessed the revised Bell-Astral deal in 2013.

A series of rulings over the next four years nonetheless reinforced the impression that the Commission was committed to taking a sterner approach to the issues of consolidation and vertical integration. Such measures included, for example, the imposition of wholesale access requirements in wireless and wireline telecommunications, undue preference rulings against Bell's use of its mobile networks to deliver its own programming,[81] and effectively banning Bell from "zero rating" specific content or applications as a means of distinguishing its service from rivals. The upshot of these decisions was a significant win for the concept of net neutrality.[82]

Several key principles underpinned these rulings. The first was the Commission's newfound recognition, that the "incumbent carriers continu[e] to dominate the retail internet access services market".[83] The wholesale mobile wireless ruling arrived at the same conclusion with respect to the wireless market.[84] Second, the CRTC ruled that

---

[80] CRTC. (2013, June 27). *ARCHIVED – Astral broadcasting undertakings – Change of effective control*.

[81] See, for example, the complaint initiated by J. F. Mezei and the Public Interest Advocacy Centre against Vidéotron's Music Unlimited, which was later rolled into the regulator's review of "differential pricing practices" (the zero-rating proceeding). Public Interest Advocacy Centre (PIAC). (2015). *Part I Application under the Telecommunications Act regarding Vidéotron's billing practice for telecommunications service to consume its "Unlimited Music" service* (pp. 1–24); CRTC. (2015, September 28). *Commission letter: Part I Applications regarding Vidéotron's practices related to its mobile wireless Unlimited Music service*; CRTC. (2017). *Telecom Regulatory Policy CRTC 2017-104: Framework for assessing the differential pricing practices of internet service providers* (pp. 1–33). Or the Commission's Hybrid Video-on-Demand decision, or Bell's appeal of the wholesale vertical integration code, to name just a few. CRTC. (2015). *Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356: Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licenced VOD undertakings*; Dobby, C. (2015, October 27). BCE seeks court appeal over CRTC's TV 'wholesale code.' *The Globe and Mail*; CRTC. (2015). *TRP CRTC 2015-326 Review of wholesale wireline services and associated policies*; CRTC. (2015). TRP 2015-117 *Regulatory framework for wholesale mobile wireless services*.

[82] Zero-rating, or "differential pricing practices" as it is more formally known, is when a mobile operator or ISP does not count specific content, applications or services toward subscribers' data allowances while counting everything else towards those caps. While such practices offer the lure of "free stuff" as a way of marketing them to consumers, they have the effect of transforming carriers into publishers/editors who pick and choose what people get for "free" and what they don't, undermining common carriage (or "net neutrality" as it is more popularly known). Instead of such marketing gimmicks, the CRTC concluded that the drawbacks of such an approach outweighed any potential benefits they might have. Instead, ISPs and mobile operators should use price, quality of service standards, speed, customer service and other tools rather than zero-rating to competitively differentiate themselves. CRTC. (2017). *TRP 2017-104: Framework for assessing the differential pricing practices of internet service providers*.

[83] CRTC. (2015). *Review of wholesale wireline services and associated policies*.

[84] CRTC (2017). *TD CRTC 2017-56 Wholesale mobile wireless roaming service tariffs – Final terms and conditions*.

mobile wireless companies and internet access providers should only provide the gateway to the internet rather than play the role of editors who pick and choose which services, content, and applications is put before people's eyes. Seen in this light, the rulings were victories for the net neutrality (common carriage) and the idea that it is people's expressive rights that come first in a democracy rather than the claims of those who own and control the networks.

Yet, the change in leadership at the CRTC from J. P. Blais to Ian Scott between 2017 and 2022—aided by vacillating policy directions from the Liberal government—saw a reversion to course. Recent rulings by the CRTC with respect to affordable mobile wireless services and the Mobile Wireless Framework Review are good evidence of this.[85] In early 2022, the CRTC also reversed the Commission's own decision two years prior with respect to the wholesale rate that independent ISPs pay to access the incumbent telco and cable companies' networks with little explanation or justification.[86]

The Competition Bureau's report, *Delivering Choice: A Study of Broadband Competition in Canada's Broadband Industry* (2019) and stance on mobile virtual network operators (MVNO) over the course of the CRTC's mobile wireless framework review also gave serious cause for concern.[87] The government's policy agenda and inaction on several appeals of the above rulings provided further evidence that the entire institutional framework was beating a hasty retreat from the earlier assertive period under the previous chair's leadership, with policy indifference and regulatory hesitance joining forces to buttress the status quo.

The approval of Rogers' blockbuster bid to take-over Shaw Communications for $26 billion in early 2023 is the latest culmination of this trend. However, on this occasion, and heeding the lessons of its failed consent decree in relation to BCE's acquisition of MTS, the Competition Bureau tried to block the Rogers-Shaw deal outright. It ultimately failed to do so, however, when the Competition Tribunal and Federal Court of Appeals both rejected its case.

In keeping with successive governments' permissive approach to these matters, the Liberal Minister in charge of the Department of Industry, Science and Economic Development, François-Philippe Champagne, largely left the Bureau to fight the deal on its own. Furthermore, Champagne granted the spectrum licences transfers that allowed the three-way Rogers-Shaw-Vidéotron deal to close rather than using his de facto veto

---

[85] CRTC (2021). *TRP 2021-130 Review of mobile wireless services*; CRTC. (2018). *Telecom Decision 2018-475 Lower-cost data-only plans for mobile wireless services*.

[86] CRTC (2021). TD 2021-181 Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services.

[87] Competition Bureau. (2019). *Delivering Choice: A Study of Broadband Competition in Canada's Broadband Industry*; Competition Bureau (2020). *Telecom Notice of Consultation CRTC 2019-57 Review of Mobile Wireless Services. Final Comments of the Competition Bureau*.

power to block it.[88] That said, this outcome was not without important concessions along the way, the most important being the spin-off of Freedom Mobile to Vidéotron, as we will see in greater detail in the pages ahead. That outcome itself would never have seen the light of day if not for the Competition Bureau's forceful efforts to block the deal and is one that arguably keeps with successive governments' policies promoting a fourth mobile wireless competitor in all regions of the country.[89]

Competition and concentration trends within the network media industries

The following sections focus on developments sector-by-sector, and within the three main categories we use to group each of the sectors covered by the GMIC project:

- telecoms and internet infrastructure: wireline telecoms; mobile wireless service; internet service providers; BDU (Cable, Sat & IPTV)

- online and traditional media services—broadcast TV; Pay & specialty TV; Online video services (SVOD, TVOD, AVOD); Radio (ad-funded, public service and paid subscription); internet advertising; Traditional music (physical, publishing, live concerts); Online music (paid subscription and ad-funded streaming services and downloads); Games (console, PC and mobile); App distribution; Newspapers; Magazines

- Core internet applications and sectors: Online news sources; Search engines; Social media and video sharing platforms; Mobile and Desktop operating systems; and Mobile and Desktop browsers

At the end, these categories are combined one last time to complete the analysis and gain a bird's eye view of the network media economy as whole.

[88] Competition Tribunal (2022). Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc. The Rogers-Shaw deal was also reviewed by the Parliamentary Standing Committee on Industry, Science and Technology in April 2021. We provided testimony to the committee and submitted a report to it opposing the transaction (see Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It. Submission to the Standing Committee on Industry, Science and Technology of the House of Commons (Canada) regarding the proposed acquisition of Shaw by Rogers.

[89] Competition Tribunal (Dec. 31, 2021). Rogers-Shaw—Reasons for order and order. *Canada (Commissioner of Competition) v Rogers Communications Inc and Shaw Communications Inc. CT-2022-002; Federal Court of Appeal (*Jan. 24, 2023*). Commissioner of Competition and Rogers Communications Inc., Shaw Communications, Inc. and Videotron Ltd;* François-Philippe Champagne, Minister of Innovation, Science and Industry (March 31, 2023). Statement from Minister Champagne concerning competition in the telecommunication sector.

Telecoms and internet infrastructure—the "Big Picture": high concentration levels persist, diversified communications conglomerates on top

The telecoms and internet infrastructure category consists of wireline telecommunications, mobile wireless services, internet access, and cable, satellite, and IPTV distribution networks (or broadcasting distribution undertakings (BDU) in CRTC parlance). The wireline segment must be treated as a bit of a kitchen sink because the companies that operate in it increasingly include a variety of services. These include, for example, residential internet, BDU services, POTS (plain old telephone service), private lines, data services, and their newest ventures in the health information and content moderation fields (TELUS), data analytics (e.g. Bell's acquisition of Environics), smart home monitoring systems (Rogers), and many other non-voice services that come-and-go as industry fashions dictate. A decade ago, data centres were all the rage; now, not so much.

In short, the wireline division of these companies is increasingly made up of non-voice revenues. This makes it hard to establish the size of the wireline industry, but some of the companies—e.g., Bell, TELUS, Sasktel, Vidéotron, and Cogeco—publish enough data to allow solid estimates to be made for their retail internet access and BDU service subscriber numbers and revenue. None of them, however, provide enough to examine POTS on a stand-alone basis.[90]

Consequently, we adopt a "kitchen sink" conception of the wireline segment in communications, where all services and revenues assigned to this segment by the companies are considered after excluding internet access and BDU services. This broader perspective yields higher revenue estimates than, for example, the CRTC's narrower definition, which focuses solely on local and long distance, private line, and data revenues. As the Commission's data shows, revenues for such services fell from $21.2 billion at their peak in 2000 to $8.4 billion last year, with only a third of Canadian households still having a landline subscription.[91]

We see similar trends, but not to nearly as great an extent, with the wireline

[90] Changes to Rogers' reporting in recent years has made this harder to do, but it is still possible; Eastlink is the most difficult to study because neither it, as a private company, nor the CRTC publish much data about it.

[91] CRTC. (2023). *Communications Market Reports—Open Data*--Highlights of Telecommunications Sector (Nov. 2023). Table 7 Local and long distance retail revenues ($ millions), 2013-2022 and Table 8 Overview of retail data and private line sector, 2017-2022

segment generating $14 billion in revenue in 2022. Despite these differences with the CRTC in the scope of analysis, our results reflect the companies' businesses and how they themselves assign services and their accompanying revenue to this segment. The approach we use also captures the ebb and flow of whatever new lines of development the companies are pursuing at any given moment.

Despite the diminishing role of traditional voice services, a spectrum of new services like smart home systems, health information, and data analytics have become central to communications. This diversification has rejuvenated the sector, with revenues climbing to $14 billion last year, a $2.2 billion increase from five years prior.

To get an impression of the scale of these changes, consider, for example, that there were nearly 71 million subscriber connections last year across these different sectors of the communications industries. These are the gateways through which media content, personal communications, and internet-based content, applications and services must pass. In 2022, Bell, TELUS, Rogers, Shaw and Vidéotron collectively operated 85% of those connections (61.5 million).

Figure 7 below illustrates these firms' share of subscribers—individually and collectively— for the main segments that comprise the communications services industries in 2021.

"Despite the diminishing role of traditional voice services, a spectrum of new services like smart home systems, health information, and data analytics have become central to communications."

Figure 7: Market share by subscriber line and type of service, 2022

	Bell	Rogers	Telus	Shaw	Videotron	Big 5 Total	Big 5 Share of Total (%)	Grand Total
POTS Subs	2,190,771	836,000	1,164,000	539,978	751,200	5,481,949	49	11,168,305
Mobile Subs	9,949,086	10,647,000	9,691,000	2,290,497	1,710,400	34,287,983	97	35,159,254
Internet Subs	4,258,570	2,284,000	2,413,000	2,099,571	1,904,200	12,959,341	90	14,404,685
BDU Subs	2,751,498	1,525,000	1,325,000	1,724,206	1,396,100	8,721,804	89	9,795,040
Total Lines	19,149,925	15,292,000	14,593,000	6,654,252	5,761,900	61,451,077	87	70,527,284
POTS Subs (%)	20	7	10	5	7	49	49	
Mobile Subs Share (%)	28	30	28	7	5	97	98	
Internet Subs Share (%)	30	16	17	15	13	90	90	

Sources: see the “Figs 7 & 8 Network Connection $” sheet in the Excel Workbook accompanying this report and the “Wireline”, “Wireless”, “ISP” and “Multichannel Video Distribution” sheets in the GMIC Project—Canada open data sets.

At the same time that the types of communications services have diversified, communications markets have expanded greatly and to an extent that more than amply compensates for the long-term decline in POTS revenue. This becomes clear as soon as mobile wireless, internet access and BDU services are added to the picture. Once we do that, combined revenue across the four main segments of the communications services has doubled from $32.6 billion to $67.6 billion over the past two decades. The big five’s share of that total is just shy of 90%. Figure 8, below, depicts their share of revenue across the combined wireless, internet access, wireline (POTS) and broadcasting distribution sectors last year.

Figure 8: Market share by revenue and type of service, 2022

	Bell	Rogers	Telus	Shaw	Videotron	Big 5 Total	Big 5 Share of Total (%)	Grand Total
Wireline (Millions$)	6,265.5	322.5	4,572	497.7	338.4	11,996.2	85	14,047.4
Mobile Revenue (Millions$)	9,588	9,197	8,723	1,291	1,102.5	29,901.5	97	30,868
ISP Revenue (Millions$)	3,521	1,884	2,031	1,582.8	1,240	10,259	67	15,248
BDU (Millions$)	2,396.5	1,306.4	804	1,722.3	918.7	7,147.9	96	7,421
Total Revenue (Millions$)	21,771	12,710	16,130	5,093.8	3,599.6	59,304.7	86	67,585
Wireline Revenue Share (%)	23	12	13	10	8		67	
Mobile Revenue Share (%)	31	30	28	4	3		97	
BDU (%)	32	18	11	23	12		96	

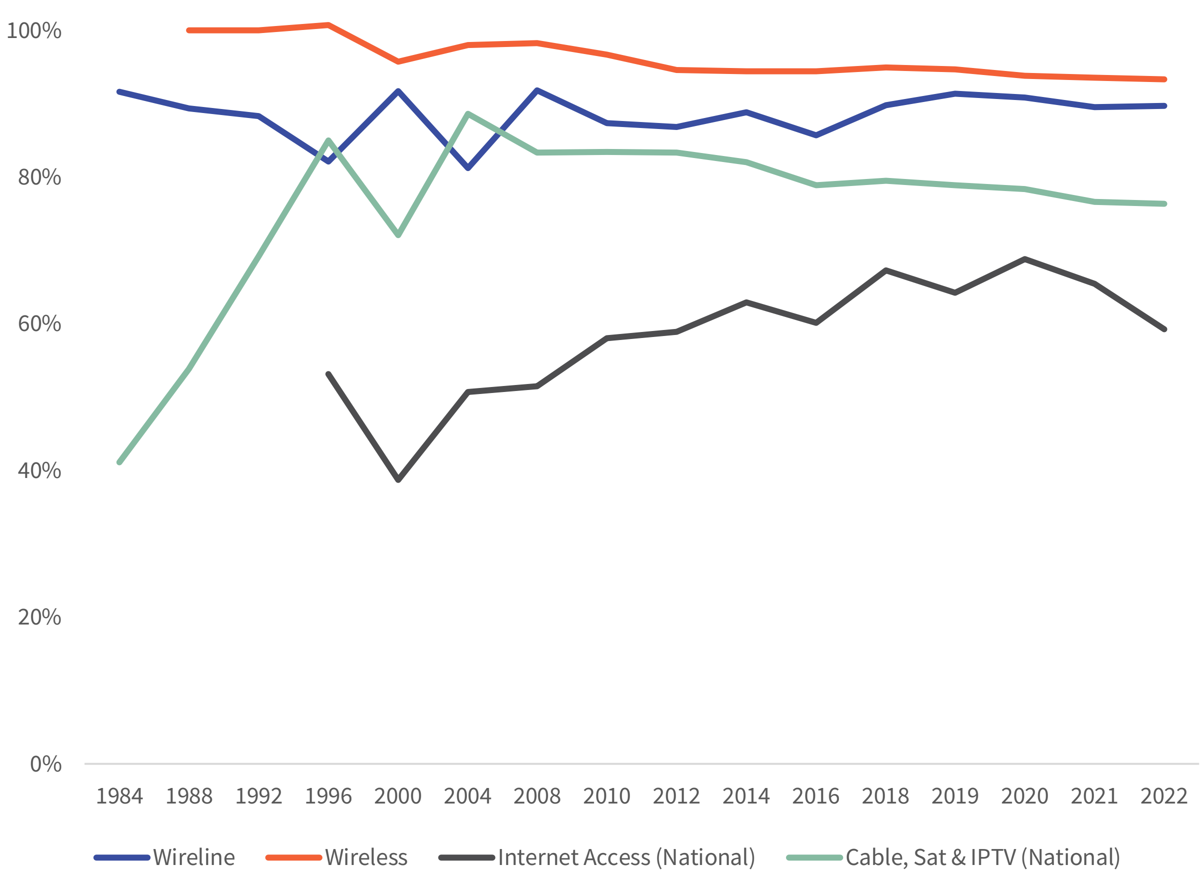
Sources: see the “Figs 7&8 Network Connection $” sheet in the Excel Workbook accompanying this report and the “Wireline”, “Wireless”, “ISP” and “Multichannel Video Distribution” sheets in the GMIC Project—Canada open data sets.

Another thing that stands out in this research exercise is that concentration levels across all four of the sectors—i.e. wireline telecoms (POTS), mobile wireless, retail internet access and BDU services—has not only remained remarkably high, but the fact is that the big 5 companies’ share of this much bigger and more complex landscape is greater today than it was twenty years ago.

Indeed, in 2000, the big five companies being assessed here accounted for three-quarters of the $32.6 billion in combined revenue across these sectors; by last year, the number had swollen to close to 86% of the vastly larger $67.6 billion in combined revenues across these industries. In short, this is a story of large players getting bigger—in both absolute and relative terms—within a much bigger market, one moreover defined by lush profit margins.

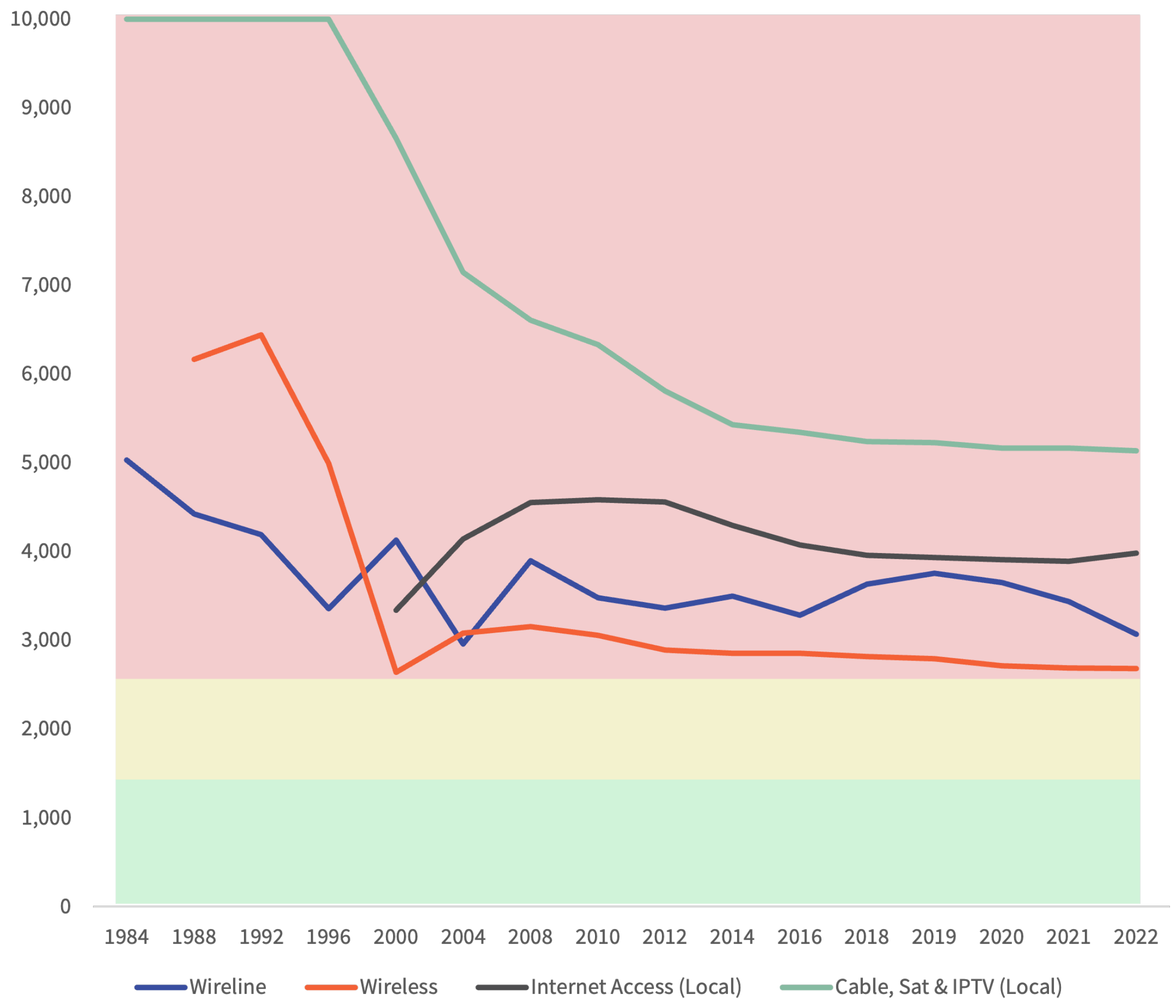
For now, Figures 9 and 10 below illustrate the point using CR4 scores and the HHI, respectively.

Figure 9: CR4 scores for the communications infrastructure industries, 1984-2022



Source: see the "Figs 9 & 10 CR+HHI" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

Figure 10: HHI scores for the communications infrastructure industries, 1984-2022



Source: see the "Figs 9 & 10 CR+HHI" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets for the revenues of each company covered in this figure.

The data depicted in Figures 9 and 10 also follows the discussion outlined earlier regarding the demise of the regulated natural monopoly regime in wireline telecoms and the practice of segmenting telecoms, cable distribution and broadcasting markets from one another that had prevailed for most of the 20th century. As both figures show, these changes initially had their desired effect, with concentration levels for wireline and mobile wireless communications falling significantly during the 1980s and 1990s. The number of independent ISPs also exploded as the internet took off in the late-1990s, thereby adding a new sector and more choice to the network media economy.

As those figures also show, however, the tendency for concentration levels to fall that had been visible in the 1980s and 1990s stalled by the end of the latter decade and, in several cases, drifted upwards again thereafter. Consequently, one thing that stands out from the perspective of this report, is that concentration levels have remained at the high-to-very-high end of the CR4 and HHI scales throughout the period we cover.

The following section takes up these long-term trends and recent developments in the context of each of the sectors that make up the communications infrastructure industries: mobile wireless, internet access, and BDUs, i.e. cable, direct-to-home satellite, and internet protocol television (IPTV) services.

Mobile wireless

Anchor findings

- After years of small-but-steady declines, Rogers, TELUS, and Bell’s share of the market rose to 89.5% in 2022 based on revenue and 86.1% of subscribers.

- The mobile wireless market is in Quebec continues to be the least concentrated in Canada, where Vidéotron increased its share of revenue to 17.3% (up from 17% a year earlier), while its market share based on subscribers held steady at 22.9% in 2022.

- While Rogers’ successful takeover of Shaw turned on pledges that the spin-off of Freedom Mobile to Vidéotron will allow it to achieve results in Ontario, Alberta and BC similar to those in Quebec, it is still too early tell if those promises will materialize.

- Nonetheless, amid the merger talks, competition was set back significantly as Shaw slashed network investment, shelved its 5G plans, cut marketing campaigns, and hit the brakes on its aggressive “maverick” strategy that had intensified competition over the past several years to the benefit of consumers not just in BC, Alberta, and Ontario where it operated but across the country.

- Unlike other international markets, the market in Canada is almost entirely composed of “facilities-based” competitors, i.e. companies that own end-to-end transmission facilities including towers, cables, and spectrum licences. Service-based competition (i.e. mobile virtual network operators, or MVNOs) has not emerged organically as a competitive factor.

- The CRTC concluded a review of its policy for wireless services in early 2021, and put the changes brought about by that review into place last year, but the impact, if any, has yet to be felt.

For decades it has been a common refrain to hear from industry that "there is no competition problem in mobile wireless services in Canada".[92] The problems with mobile wireless market concentration facing other countries "are not present in Canada," CWTA President Robert Ghiz declared to the audience of a trade publication, before going on to tout networks in Canadian rural areas that "perform better than the overall networks in most other countries," and lauding the "intensely competitive" market that has ensured our wireless services are "first in value among the G7 and Australia."[93]

Claims about superlative market performance have never been in short supply, but they provide only a partial picture. Success deserves congratulation, but it should not paper over the fact that Canada's mobile markets have suffered from long-standing and consistent problems regarding price, adoption, usage, and innovation—all features of the persistently concentrated state of this sector.

Thanks to a broad scope of available information covering this market, it is possible to provide a credible assessment of the situation, without relying on hyperbole.

On the plus side, some aspects of Canada's mobile wireless markets offer reason for optimism. Increasing competition from regional wireless providers over the past decade has brought about a greater diversity of service offerings than in previous years, bringing a greater range of mobile services into reach for more of the population. On the other hand, our research has consistently confirmed that market concentration has remained stubbornly persistent over the years. In other words, while new competitors have made inroads, the benefits of competition remain tenuous and uneven. Consequently, mobile markets continue to be dominated by the big three national carriers, which collectively remain in a position to exercise their power in ways that might be beneficial to them but are inimical to the broader social goals of creating an inclusive, efficient, and innovative communications environment.

In recent years, many of the issues facing Canada's mobile marketplace—high prices, low mobile usage, and adoption (especially among lower income groups), poor customer service, and exclusionary practices, have been acknowledged by federal regulators such as the CRTC, the Competition Bureau, and the Department of Innovation, Science and Economic Development (ISED). Each of these authorities have studied the issues and attributed such failings to the lack of competition reflective of an oligopolistic market, and they have made significant efforts over the course of the past decade to address issues in the domain, some of which are ongoing. Those same

92 See, for example, Rogers Communications, (2019). Further comments to CRTC (2019), *Telecom Notice of Consultation CRTC 2019-57: Review of mobile wireless services*.

93 Ghiz, Robert (2020). Facilities-based competition is a good policy and a worthwhile "obsession," CWTA: Ottawa.

issues, moreover, have also been corroborated by a preponderance of independent research and scholarship. This all points to one conclusion: contrary to the views of industry trade groups, there *are* very real competition problems in the Canadian mobile wireless market, ones that will not disappear behind splashy advertising or superlative-laden op-eds.

National trends

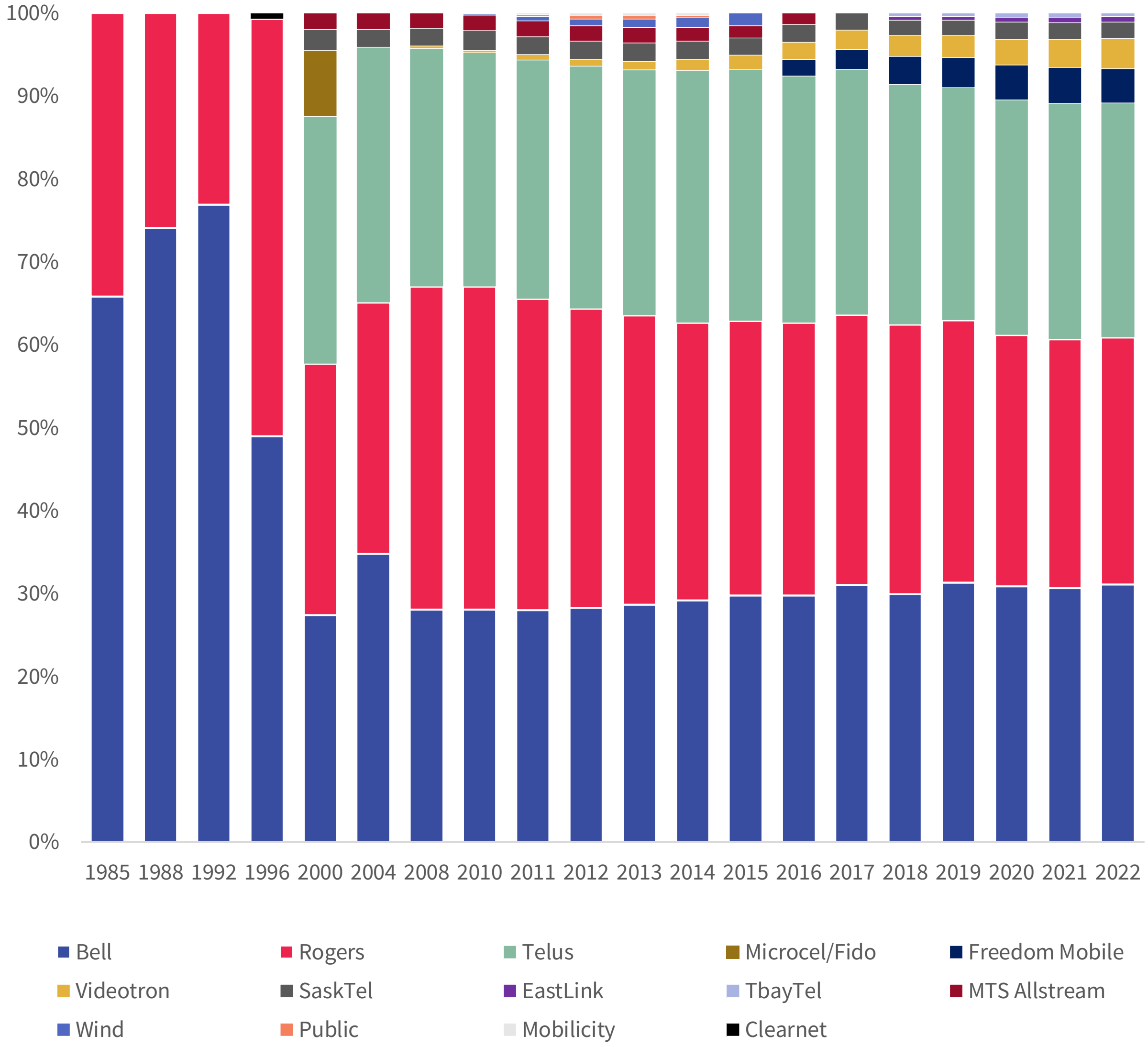
Since the turn of the century, mobile wireless markets in Canada have been dominated by three national carriers: Rogers, Bell, and TELUS. Early efforts by Industry Canada to introduce a degree of competition ultimately ended up with consolidation when Clearnet and Fido—two mobile carriers granted licences in 1995—were bought by TELUS (2001) and Rogers (2004-5), respectively. Industry Canada revived its efforts to increase competition again in 2008, bringing a handful of "new entrants" into the market at the onset of the deployment of mobile broadband networks.

The national carriers' collective market share dropped noticeably in the years following the entrants' debut. However, their dominant position has mostly held steady since 2013, stubbornly remaining around 90%. Last year, the share collectively held by Bell (31.2%), Rogers (29.9%), and TELUS (28.4%) rose slightly to 89.5% of the market by revenue, while their subscriber share dipped to 86.1%. Switch the metric to the HHI score, and a similar picture emerges; in 2022, the HHI for mobile wireless increased to 2708, restoring the levels they had been at two years earlier.

Nominally, however, up until the end of the 2022, several regional wireless companies had each gained a sturdy foothold in their respective regions and in the context of a growing market. The combined national market share of Freedom Mobile, Vidéotron, and Eastlink, consequently, saw a slight uptick from 8.4% to 8.5% (by revenue) in 2022, albeit with nearly all of that increase accounted for by Vidéotron, while Eastlink remained steady, and Freedom Mobile's market share fell by a correspondingly small amount. Similar patterns could be seen in terms of market share based on subscribers, as the new entrants' share of a growing subscriber pool rose from 11.5% to 12.1% year-over-year. Include SaskTel and Tbaytel in the group and, in total, regional competitors accounted for almost 10.9% of national wireless revenues and 12.6% based on subscribers in 2022.

Figure 11 below illustrates the significant decline in concentration levels in the mobile wireless market that took place between 2008 and 2012 but also the remarkably stable market share that Rogers, TELUS and Bell have collectively maintained since then. The overall conclusion to be drawn is that while there has been a considerable decline from the concentration levels of 2008 more work is needed to bring the market to a sufficiently competitive level given that still today, the results remain firmly in the highly concentrated zone by HHI standards.

Figure 11: Mobile wireless operators' national market share based on revenue, 1985-2022



Sources: see the "Fig 11 Mobile Wireless MrktShare" sheet in the Excel Workbook accompanying this report and the "Wireless" sheet in the GMIC Project—Canada open data sets.

The slow-but-steady inroads made by the new entrants over time has been helped along by the fact that all of them are operated as part of vertically- and diagonally integrated regional cable conglomerates.[94] In Quebec, for example, Vidéotron is a division of Quebecor; Freedom Mobile was operated by Shaw in BC, Alberta, and Ontario (Shaw also operates Shaw Mobile in BC and Alberta) until its divestiture to Vidéotron earlier this year; and Eastlink, which operates in the Atlantic provinces and several small towns in northern Ontario, is a part of a diversified conglomerate owned by the Bragg family.

On the one hand, this has given these companies the resources they need to compete against the big three national communications conglomerates (Bell, Rogers, TELUS), such as access to capital, wireline networks, cross-promotional opportunities, experience, and so forth. On the other hand, however, this ownership and organizational structure raises concerns because stand-alone mobile providers tend to offer more generous data allowances than mobile providers that are integrated with wireline network operators since independent operators do not have to worry about cannibalizing customers who may take advantage of larger mobile data buckets to "cut the cord" on their wireline broadband services, as one example.[95] As such, expectations of strong disruptive behaviour from Vidéotron, Eastlink, and Freedom must be tempered by the fact that they all operate as integral parts of regional cable companies, which have often-competing interests across the network media economy.

Even with these caveats in mind, however, there is no denying that the slow-but-steady improvements that have taken place since 2008 have begun to bear fruit, especially in the last five years. This has been most obvious for those living in or near the coverage area of a fourth carrier because just having the additional option usually means better prices, more generous data allowances, and a wider variety of service offerings, not just from the upstart competitor, but from incumbents which have been forced to respond with improved retail offers of their own. Indeed, the fact that the national carriers price their mobile services on a province-by-province basis means that, to the extent that prices drop in response to competitive pressure from the likes of Vidéotron, Eastlink, and Freedom Mobile, residents of provinces with a fourth regional provider do not necessarily have to live within the coverage range of the upstart to realize the benefits of urban competition.

The evidence of the benefits of even the modest improvements in competition are obvious. Prices for wireless plans, for example, have dropped by thirty percent over the

---

[94] Diagonal integration refers to a situation in which firms operate across distinct spheres of related markets (e.g. wireline and wireless broadband). Xplore Mobile was diagonally integrated with Xplornet's fixed wireline operations, but it was not vertically integrated (i.e. it has no content ownership). Xplore Mobile went out of business in the summer of 2022, as discussed below.

[95] Klass, B., Winseck, D., Nanni, M & McKelvey, F, (2016). There ain't no such thing as a free lunch: Telecom Notice of Consultation CRTC 2016-192, Examination of differential pricing practices related to internet data plans.

past five years.[96] Even if subscribers continue to pay the same dollar amount today (or more) than they were back in 2017, they are getting bigger and better service plans for the buck. The benefits can also be seen in terms of increased subscriber penetration rates, which have risen from 85.7% five years ago to 95.3% last year. In terms of mobile internet connections, or smart phones, subscriber rates have also jumped from 71.5% to 84.4% over the same period.

Mobile data allowances have also shot upwards, with the proportion of subscribers to Bell, Rogers and TELUS with data plans having less than 2GB per month falling from 43% in 2017 to 6% in 2022; meanwhile the proportion of big three national operators' subscribers having plans with 10GB per month data allowances or more—an offering pioneered by Shaw's Freedom Mobile in 2017—has also shot upwards from none to two-thirds.[97] Not surprisingly, as we saw in the first report, people's use of the mobile internet has also changed to match these new realities, with the average subscriber's monthly data usage nearly tripling from 2017 to 2022 (although recall our last report that this is still only a little over half the OECD average).[98]

These developments have been especially beneficial to low-income households that had been frozen out of the market because of high prices. That the benefits of a more competitive mobile wireless market have flowed disproportionately to them can be seen from the fact that the growth in subscriber uptake has been greatest for the lowest two income quintiles, but negligible at the opposite end of the income spectrum because for high income households affordability ceased to be an issue long ago and uptake has been near universal.[99]

In short, the "new entrants" have undoubtedly made inroads to the benefit of Canadians in many areas of the country. However, we must bear in mind two crucial points. These improvements were achieved relative to very poor baselines with respect to price, adoption, and usage rates, as we showed in our first report. Second, setbacks are already visible and within the context where the playing field that has never been

[96] Statistics Canada (Jan. 17, 2023). Table 18-10-0005-01 (formerly Table 326-0021) - Consumer Price Index (CPI), annual (2002=100 unless otherwise noted); also see Statistics Canada (Dec. 4, 2023). *Telecommunications: Connecting Canadians*.

[97] CRTC. (2023). *Communications Market Reports—Open Data*--Mobile (Nov. 2023). Tab MB-S6, Supplementary table 6 Mobile subscriber penetration rates, as a percent of total population, by province/territory (%), 2015-2022; Tab MB-F6, Figure 6: Percentage of mobile subscribers with a data plan (%), 2013-2022; Tab MB-F11, Figure 11: Distribution of mobile data subscribers by plan size, Top 3 and other providers (%), 2017-2022.

[98] Source: OECD (Dec. 2022), Broadband Portal, Table 1.13. Mobile data usage per mobile broadband subscription per month.

[99] Estimate for year-over-year subscriber growth from 2021 to 2022 based on CRTC *Communications Market Reports—Open Data*--Mobile (Nov. 2023). Tab MB-S6, Supplementary table 6 Mobile subscriber penetration rates, as a percent of total population, by province/territory (%), 2015-2022 while income quintile data is from Statistics Canada (2022*). Survey of Household Spending, 2021*; Statistics Canada (2018*). Survey of Household Spending, 2017*.

even in terms of the scale and scope of the new entrants' operations vis-à-vis those of the big three national MNOs. Understanding both recent trends as well as short-term setbacks provide the bigger context that we need to properly assess the future impact of the three-way Rogers-Shaw-Vidéotron transaction. While we will have to await future editions of this report before calling in the jury on the impact of the deal in the time to come, three things are already clear:

1. Rogers' early 2021 bid for a full take-over of Shaw flew in the face of long-standing policies of both Conservative and Liberal governments to foster a fourth competitor in all regions of the country. The eventual decision to spin-off of Freedom Mobile to Vidéotron only came about *after* the Competition Bureau's application to block the deal was submitted and in the face of its steadfast efforts to kill the transaction outright.[100]

2. Shaw's decision to put the brakes on its aggressive "maverick strategy" in the face of its pending takeover by Rogers has already set back the clock by the nearly two years that it took for the deal to close (a point we will elaborate on in the next section)

3. Even the modest gains since 2008 are now in jeopardy, and hinge on how the complex web of sweetheart deals between Rogers and Vidéotron play out in the years to come.

In sum, the concentrated state of Canada's mobile markets cannot simply be dismissed on account of the high barriers to entry and economies of scale characteristic of telecommunications markets. It is also reflective of the persistence of the incumbent firms' collective market power—which takes the form not only of high prices dragging on the economy, but in their jealous efforts to foreclose the growth of additional competition and the potential innovation that it represents. It is also a symptom of successive federal governments and regulators failing to sufficiently hold the line when it comes to promoting the broad interests of the public against the special interests of incumbent firms.

We now turn to examining recent and ongoing developments at the provincial and regional level.

[100] Competition Bureau (Sept. 2, 2022). Rogers - Shaw - Fresh as Amended Reply to the Response of Rogers Communications Inc. of the Commissioner of Competition. *Competition Tribunal*; Commissioner of Competition (Jan. 13, 2023). Commissioner of Competition and Rogers Communications, Inc., Shaw Communications Inc. and Videotron Ltd. *Commissioners Book of Documents (Vol. 1)*. Federal Court of Appeals.

> **"Canada's mobile sector is better understood as a patchwork of provincial markets."**

Provincial and regional trends in mobile wireless markets

Data on concentration levels at the national level are informative because they give a sense of the relative scale of the national firms vis-à-vis the regionals and each other. However, looking at the market from this vantage point only tells one part of the story.

Although the national carriers do have a strong presence across the country, Canada's mobile sector is better understood as a patchwork of provincial markets. Province-level statistics show that the mobile market in each province is constituted differently from the others, although there are some similarities. Overall, most provinces feature competition between two dominant firms, varying by province, with rivalry from weaker third and fourth carriers (usually centered around urban areas) filling out the market.

As the Finnish consultancy Rewheel puts it:

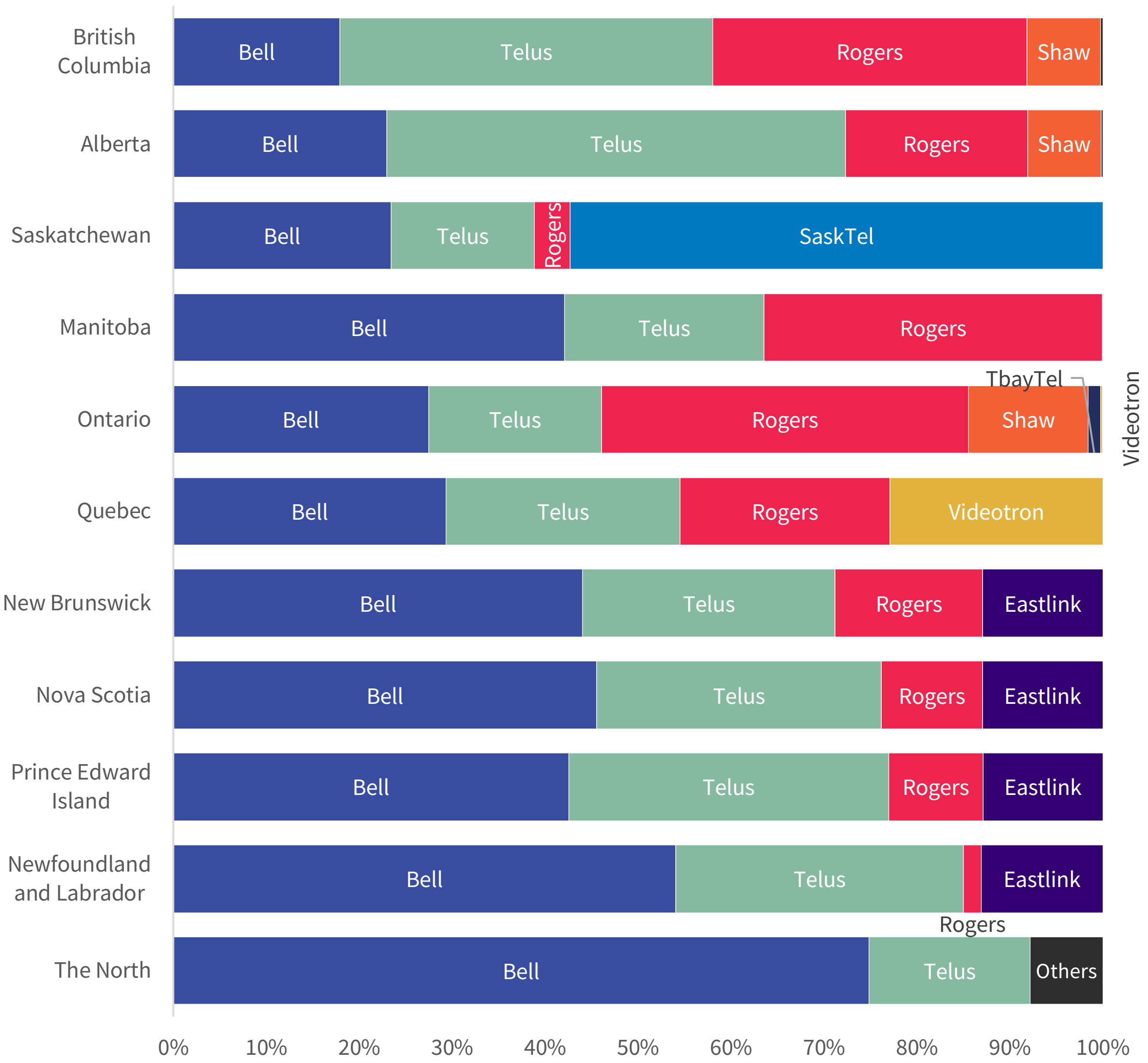
> The Canadian wireless market is not national in scope. Canada is a fragmented wireless market, a stack of provincial mobile network duopolies and monopolies that are stitched together by extensive and possibly coordinated national roaming and network-spectrum sharing agreements that are probably anti-competitive".[101]

In practical terms, this means that the effects of competition are unevenly distributed throughout the country, with an especially stark contrast between urban and rural areas.

Figures 12 and 13, below, illustrates the mobile wireless market province-by-province based on subscribers and revenue, respectively.

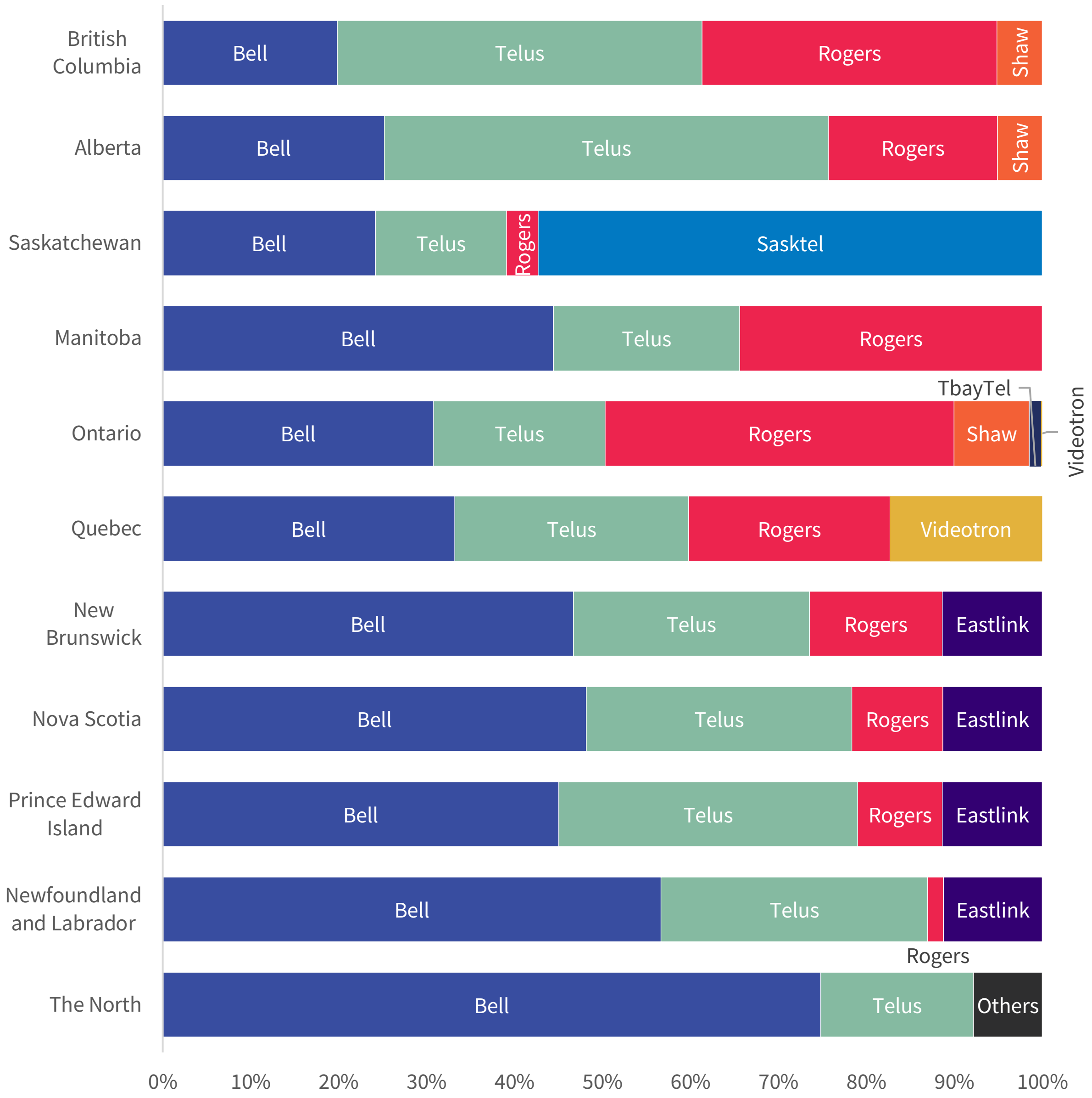
[101] Rewheel (2019). *Root cause of weak competition in the Canadian wireless market*, p. 24

Figure 12: Provincial mobile wireless market share, by subscriber, 2022



Sources: see the "Fig 12+13 Wireless MS by Province" sheet in the Excel Workbook accompanying this report and the "Wireless" sheet in the GMIC Project—Canada open data sets.

Figure 13: Province mobile wireless market shares, by revenue, 2022



Sources: see the "Fig 12+13 Wireless MS by Province" sheet in the [Excel Workbook]() accompanying this report and the "Wireless" sheet in the [GMIC Project—Canada open data sets]().

The data show that Quebec remains the least concentrated provincial market, with Quebecor's Vidéotron continuing to challenge the national carriers. In 2022, the three national mobile carriers had a combined subscriber market share of 77.1% in Quebec, or 82.7% by revenue, with Vidéotron making up the remaining 22.9% of subscribers and 17.3% of revenue. Vidéotron had 1.7 million subscribers at the end of 2022, up from 1.6 million at the end of the previous year.

Vidéotron's continuing rise provides a benchmark for the type of competition that could emerge over time in the other provinces and regions of the country. In fact, although it initially shied away from attempting to expand into other provinces, Vidéotron is now expanding its wireless services to citizens of the rest of Canada through its take-over of Freedom Mobile as part of the divestiture agreement agreed to by Rogers and Shaw to get their merger approved.

Ontario is the second least concentrated provincial market, with the national carriers accounting for 85.5% of the market based on subscribers and 90% based on revenue in 2022. Ontario was also the province where Shaw's Freedom Mobile had made its deepest inroads, accounting for 12.9% of subscribers in the province and 8.5% of revenue. It was also where nearly three-quarters (72%) of its subscribers were, with the remainder split between BC and Alberta. Shaw had attracted some 450,000 subscribers to its Shaw Mobile brand in those two western provinces as well, where it provided deep discounts for customers who bundle mobile and home broadband services.

Yet, as the deal between Rogers and Shaw underwent regulatory scrutiny, Shaw's subscriber base in Ontario stalled in 2022 relative to the previous year, while its share of revenue actually dropped by a small but not insignificant amount (i.e. from 8.8% to 8.5%). This result should also be read against the significant increases it had made on both measures in previous years, leading to our conclusion that already by 2022 the company had slammed on the brakes with respect to its once market leading maverick strategy.

In Ontario, TbayTel and Eastlink also accounted for 1.3% and .1% of the market based on revenue, while Vidéotron's presence in the Ottawa market gave it an estimated .2% share of the provincial market based on revenue. Indeed, this last point is worth dwelling on for a moment because it produced a market where five providers competed with one another, a reality that has been lost by the transfer of ownership of Freedom Mobile to Vidéotron. That, however, will not show up in the provincial, let alone the national data. Nonetheless, by 2022, the presence of Shaw's Freedom Mobile in Ontario had driven down the HHI score to 2529, just above the highly concentrated threshold. On this measure, too, however, the steam had been taken out of that trajectory, given that previous declines in the HHI stalled right alongside Shaw's market growth.

In Alberta and British Columbia similar trends could also be seen in recent years. In Alberta, which was Shaw's home base, for example, the big three MNOs had a combined market share based on subscribers just shy of 92% and 95% based on revenue, with Shaw's Freedom Mobile picking up the rest. Yet, once again, Shaw's subscriber base stalled in 2022 relative to the previous year in both provinces and its share of revenue fell to 5.1% from about 5.5%.

In British Columbia, the national MNOs collectively accounted for an estimated 92% of the market by subscribers. Shaw's Freedom and Shaw Mobile brands made up the vast majority of the remaining subscribers, with an estimated market share of 7.9%. In terms of revenues, the big three national carriers accounted for 95% versus Freedom's 5%. This led to a slight increase in concentration by both the CR3 and HHI measures in 2022.

Lastly, looking closely at Alberta and British Columbia also reveals the provincial nature of the mobile market in Canada insofar that TELUS stands out as the leading player, garnering as it does roughly fifty percent and two-fifths of the market by revenue and subscribers in both provinces, respectively. This is a sharp contrast to its status in Ontario where it's market share is less than half that amount, whereas Rogers and Bell lead the pack with roughly forty- and thirty percent of the market, respectively, on both indicators.

In Saskatchewan, the province-owned incumbent crown corporation Sasktel held steady in market share by subscribers with 57.3% and a revenue share of the same amount, while the national carriers made up the rest (although it is worth noting that Rogers had only a tiny share of the market at less than 4% on both measures). Overall, Sasktel continues to hold its own against the national players. In fact, while its share of the market is high relative to most other regions of the country, as is the HHI score at roughly 4100 based on both indicators, the combination of public ownership, Sasktel continued offering of unlimited mobile plans at competitive rates, and its ability to attract and retain customers with telecommunication and broadcasting bundles unmatched in the province by its competitors also reveals that high scores on concentration metrics do not give us the whole story. This account also reminds us that we must also look beyond concentration metrics to consider institutional factors and historical realities as well.

Next door, in Manitoba, the 2017 purchase of MTS by BCE resulted in a situation that sets the Prairie province apart from all others. As a result of the merger, which catapulted Bell into the lead, the national carriers collectively control the entire mobile wireless market.[102] As part of the merger agreement, regulators hoped to create a new competitor by requiring the divestiture of spectrum, customers, and retail locations to Xplornet, the rural wireless internet provider. That hope died in the summer of 2022, however, when Xplornet's fraught expansion into the mobile wireless market came to end after the company closed its doors with just 7000 subscribers to its credit. At present, the mobile wireless market in Manitoba remains 100% controlled by the national carriers Bell, Rogers, and TELUS (in that order).

[102] This merger, which the CMCRP opposed in a report submitted to the Competition Bureau, was approved by the Bureau notwithstanding its staff's own findings that the merger "would eliminate the spur to competition provided by MTS as a strong regional competitor [and] that MTS' presence is the likely reason for the lower prices in Manitoba".

Finally, in the Maritime Provinces, Eastlink launched its mobile wireless service in 2013, and subsequently in the summer of 2016 it began to offer service in a handful of small cities and towns in Northern Ontario—specifically, Sudbury, Timmins, and parts of the surrounding areas. We estimate Eastlink's total mobile revenues to have reached $220.5 million at the end of 2022, up from $197.8 million the year before, while its subscriber base had swelled by 10,000 to reach 258,000. Despite a lack of information given its private ownership by Bragg, an October 2018 transfer of spectrum from Eastlink to Bell in North Bay, Ontario suggests that Eastlink's plans for expansion in Ontario are limited, and to date there have been no new indications that it plans to expand.[103] A report filed by the Competition Bureau to the CRTC in 2019 also noted that Eastlink's impact in Ontario remains limited— although not insignificant—with a market share in Timmins that remains below 5%.[104] By our estimates, Eastlink had about 9,000 subscribers in Ontario last year, and accounted for about .1% of the market based on revenue.

The top three national wireless operators retain a commanding lead in the provinces where Eastlink has focused its primary efforts (Nova Scotia, New Brunswick, P.E.I, and Newfoundland and Labrador), although Eastlink has steadily gained share over the years. We estimate that, in each of these provinces, Eastlink accounted for roughly 13% of subscribers by the end of 2022, with just over 11% of revenues. Like the other regional cable providers who have added mobile wireless to their service offerings in recent years, Eastlink is carving out a space for itself in the areas where it operates.

In sum, although CR4 scores are broadly similar across provinces, and HHI scores all fall within the "highly concentrated" range, competitive dynamics nevertheless differ from place to place. As such, understanding the facts behind the figures often benefits from this kind of analysis, as the preceding discussion of highlights from provincial markets shows.

Shaw had been able to obtain these gains despite not having some of the benefits enjoyed by Vidéotron, such as voluntary network sharing with national carriers, or the ability to bundle with other telecommunication services in Ontario. Consequently, it's impact in terms of market share taken away from the national carriers in Ontario, Alberta and BC still did not match the levels enjoyed by Vidéotron in Quebec.

Nonetheless, the competitive pressure exerted by Shaw in recent years had been sufficient to draw a response from the national carriers, with targeted promotions, increased competitive activity from flanker brands, the roll-out of 'unlimited' plans by their flagship brands and by increasing monthly data limits to bring their plans more closely in line with Freedom's. These were welcome signs of improvement.[105]

---

[103] ISED (2018). *Transfer of spectrum licence held by Bragg Communications Inc. to Bell Mobility Inc.*

[104] Chipty, T. / Matrix Economics (2019). *Report Studying the State of Competition in the Retail Wireless Marketplace and the Benefits of Additional Competition among Wireless Service Providers* (On behalf of the Competition Bureau of Canada for CRTC 2019-57: Review of Mobile Wireless Services).

[105] Consumer Association of Canada, Manitoba Branch (2021). *What's the right number? A consumer-friendly telecommunications marketplace*, pp. 52-53.

Shaw's take-over by Rogers raises doubts as to whether the steady pace of improvements of the past few years will continue. However, the companies' decision to spin-off of Freedom Mobile to Vidéotron in the face of the Competition Bureau's ongoing and stiff opposition to the deal also means that Vidéotron, now with a near national footprint of its own, has both the means and the incentives to keep up the pressure on the big three national carriers. While it is still too early to tell how this will play out over the next few years, there are some early signs that Vidéotron intends to rise to the occasion.

Policy and regulatory environment

Over time, the national carriers have successfully maintained a position of collective market dominance. Reviews and examinations undertaken during the past decade by the relevant regulatory authorities, including the CRTC, ISED/Industry Canada, and the Competition Bureau have consistently found that Bell, Rogers, and TELUS collectively enjoy retail pricing power, and that they have acted not just to raise prices but that they have moved to thwart efforts by new firms attempting to enter and disrupt their position. Those activities have also had the prolonged effect of suppressing progress inf the mobile wireless markets, as the significant rise in adoption and data usage in the past five years on account of the significant price declines that have been brought about by just modest gains in competition and steady influence from at least some policy and regulator quarters show.

Indeed, efforts have been undertaken by successive administrations, both at the CRTC and Industry Canada/ISED, to encourage entry and expansion by new competitors in the hope of improving the long-term outlook for mobile wireless markets across the country. The desired outcomes of ongoing intervention predominantly relate to price and adoption, measures on which Canada has historically fared poorly are the proof of that, as we outlined above (also see the first report in this series for greater detail).

The means by which these goals have been pursued involve a mix of structural approaches, which seek to change the shape of the market by removing the conditions that enable abuse of dominance, and behavioural remedies, which are intended to constrain the exercise of otherwise intransigent misbehaviour. Structural change has been led by ISED, which has used its control over spectrum licensing to encourage entry by new firms, while the CRTC has pursued a series of mostly behavioural policies. These include implementing the "Wireless Code of Conduct" and regulating the rates and terms on which wholesale services are provided by the national carriers to smaller players. The lengths to which policy makers have been willing to go in pursuit of these objectives have been tempered, however, by concern about the economic wellbeing and financial performance of the industry itself, including the major national players. Overall, these efforts have resulted in significant improvements, although progress has been anything but smooth and straightforward.

Recognizing that ongoing involvement is required from the government to ensure that wireless markets are delivering the goods, ISED has stuck to its policy of setting spectrum aside for the exclusive use of smaller providers for over a decade. New entrants such as Vidéotron, Eastlink, and (until recently) Shaw have consistently snapped up discounted set-aside spectrum at auctions that have enabled the deployment and operation of next-generation mobile broadband networks (e.g. LTE, 5G).

The CRTC has established a mandatory code of conduct governing the provision of retail services to consumers,[106] it has developed a framework to regulate the wholesale roaming services regional carriers require from national carriers to provide competitive service,[107] and it has required that major carriers offer lower-cost data-only plans to meet the needs of previously underserved market niches, among other measures.[108] A preponderance of its decision making it has expressed an abiding concern for the lack of competitive options in many markets, especially outside core urban areas.

In 2015, for instance, after examining the business practices of the national carriers for several years, the CRTC found that the companies' discriminatory and exclusionary practices required it to establish a new Regulatory Framework for Wholesale Mobile Wireless Services.[109] In this framework, the CRTC determined that the national facilities-based wireless carriers collectively have "market power" over wholesale access to their networks, or in other words that that their denial of access to services essential to enabling retail competition would need to be corrected through economic regulation. Without access to roaming, the regulator decided, the newer regional providers would be unable to offer a competitive service to subscribers and thus their impact on the market would be hampered. It therefore mandated roaming access for new entrants at regulated rates.

Although the CRTC's new regulatory framework also took steps to encourage the entry of additional competitors—MVNOs, or companies that do not have spectrum licences, but which provide service by leasing access to some or all of the wireless networks they need to provide services--it declined to mandate access to the national carriers' networks for virtual operators. In the absence of such a mandate, however, the national carriers have continued to refuse MVNOs access to their networks, although network sharing agreements between the big three national carriers continue to provide them with an edge, demonstrating the benefits of network sharing while at the same time serving as a reminder of their continued dominance.

---

[106] CRTC (2019). *Telecom Regulatory Policy CRTC 2017-200: Review of the Wireless Code.*

[107] CRTC (2015). *Telecom Regulatory Policy CRTC 2015-177: Regulatory framework for wholesale mobile wireless services;* CRTC (2021). *Telecom Regulatory Policy CRTC 2021-130: Review of mobile wireless services.*

[108] CRTC (2018). *Telecom Decision CRTC 2018-475: Lower-cost data-only plans for mobile wireless services.*

[109] CRTC (2015). *Telecom Regulatory Policy CRTC 2015-177: Regulatory framework for wholesale mobile wireless services.*

The longstanding wireless network sharing agreements first struck in 2001 between Bell and TELUS and renewed alongside upgrades in technology are the prime (but not only) example of this phenomenon in Canada. While such agreements could be seen on their face as beneficial, at least for the parties involved (who avoid duplicating capital investment by sharing networks instead), there are concerns that arise from such pacts and their impact on competitive dynamics. Finnish consultancy Rewheel, for instance, has conducted a study of the Canadian mobile market in which it found that the agreement between Bell and TELUS is "most likely restrictive and anti-competitive," the terms of which serve not only to restrict competition from other parties[110] but also between Bell and TELUS themselves.

While network sharing remains a feature of the landscape among established operators, MVNO- or service-based competition has proven elusive. Over the course of recent years, a series of challenges have been mounted to the CRTC's refusal to mandate MVNO access, but until 2021 the regulator hesitated to take further action on this issue. Instead, it had focused predominantly instead on regulating the dominant providers' behaviour. This it did for instance by encouraging the national carriers to offer "lower-priced data-only services", an intervention that has had little measurable effect to date.[111]

In adopting this approach, the CRTC has left structural issues (aside from support for new, facilities-based providers) insufficiently addressed. As such this appears to be yet another instance of the Commission backsliding on the resolve it demonstrated, circa 2012-2017, to redress the real causes of Canada's wireless woes— structural barriers to

[110] Rewheel explains this restriction on competition from other parties by reference to the likelihood that network access is being provided to the contracting parties on discriminatory terms: "Freedom Mobile, Vidéotron, SaskTel, Bragg and all other challenger network operators, currently do not hold national spectrum licences, are present with their own independent network only in a handful of provincial urban areas and cover at most 30% of the Canadian population. The excessive national roaming mobile data wholesale rates mandated by CRTC, using a flawed methodology, in essence shield the duopoly from effective competition at the national level. The challenger network operators have no chance of competing at a national level because they are forced to pay rents of ~14 CAD per gigabyte to the network duopoly. The bottom line is that regional network operators in Canada are not − at the moment and will continue not to be in the forceable future unless significant (bold) structural remedies are implemented − important competitive forces at a national level" (Rewheel/DigitalFuel Monitor (2019) *Root cause of weak competition in the Canadian wireless market*, p. 24). In other words, while independent regional carriers are forced to pay exorbitant rates for regulated access to network sharing, Bell and TELUS sell each other what amounts to the same or functionally similar access for what is very likely a fraction of the "cost-based" regulated rate, providing each other a cost advantage that cannot be achieved by their competitors. It is worrying, furthermore, that the CRTC maintains that its regulated rate is "just and reasonable" in the face of these concerns.

[111] CRTC (2018). *Telecom Decision CRTC 2018-475: Lower-cost data-only plans for mobile wireless services.*

competition standing in the way of achieving social and economic policy goals for telecommunication systems.[112]

In early 2021 the CRTC concluded its latest regulatory review of mobile wireless services, this time focused more squarely on the status of MVNOs in Canada than in the previous roaming-centric review.[113] Numerous participants to the proceeding emerged to challenge the status quo, arguing that the time to bring service-based competition to the mobile sector was past due.

The CRTC ultimately adopted a limited approach in its decision, stopping short of mandating access for unlicenced MVNOs, and opting instead for a temporary measure aimed at shoring up the operations of existing regional competitors. The parties able to take up this offer are limited to the likes of Vidéotron, Freedom, and a handful of others, such as those non-incumbents who won licences in the June 2021 auction of 3500Mhz spectrum.[114]

There has been no observable effect of the CRTC's decision more than two years later; at present the door appears to be closed to the type of competition it had been hoped could emerge from MVNOs, which are a regular feature of mobile markets around the globe. Instead, the CRTC under its previous chair, Ian Scott, restricted the scope of its activity in the mobile sphere to supporting facilities-based competition, and to encouraging behavioral solutions to market failure where it is perceived to persist. Indeed, the CRTC's decision to approve the broadcasting aspects of the Rogers-Shaw merger with only minor guardrails added to the deal is in keeping with the Commission's tepid approach to monitoring the markets under its purview.

What is more, the trend toward improvement that has characterized the last decade has been cast into doubt by this year's merger between Rogers and Shaw. Consequently, the future of the pro-competition policy agenda in BC, Alberta, and Ontario's mobile markets, in particular, will turn on whether the spin-off of Freedom Mobile to Vidéotron will continue to bring the same kind of competitive vigor that Shaw had generated in those provinces, and if Vidéotron will be able to achieve the same kinds of success in Ontario and western Canada that it has in its home province of Quebec.

[112] See: August 2015, the Canadian Network Operators' Consortium, a trade group representing wholesale ISPs, asked the CRTC to review and vary its decision, but the CRTC subsequently denied that application; in early 2015, Ice Wireless, a small mobile provider serving Northern areas of Canada, began to use its wholesale roaming agreement with Rogers to operate an MVNO called Sugar Mobile throughout Canada, offering lower prices than those already available using a blend of mobile and Wi-Fi based service access. Similar to the earlier case with CNOC, the CRTC spurned Ice's efforts to enter the national market in March 2017 (also see here).

[113] CRTC (2021). *Telecom Regulatory Policy CRTC 2021-130: Review of mobile wireless services.*

[114] ISED (2021). *3500 MHz Auction—Final results.*

To understand this, it is necessary to review some of the broad outlines of that transaction and its outcomes. When the takeover of Shaw by Rogers was first announced (in March of 2021), the bid initially included both Freedom and Shaw Mobile—meaning that the fourth carrier policy would be officially dead in BC, Alberta, and Ontario *if* the deal had gone ahead as originally conceived. It was an audacious position that was later reconfigured in the face of stiff opposition from several government sources, including two parliamentary committees which issued reports opposing the deal.[115] The Competition Bureau opposed the merger from its original conception to its conclusion on the grounds that it was anti-competitive and fundamentally at odds with the policies of successive governments over the past fifteen years.[116] The CRTC, in stark contrast, capitulated from the start with little inclination of opposition.

Rogers began to back away from its initial bargaining position, however, once it became apparent that the Competition Bureau would not relent in its opposition to the deal, a stance that was bolstered in the spring of 2022 when ISED Minister François-Philippe Champagne announced that he would oppose the "wholesale transfer" of Freedom's spectrum to Rogers. Initially, Rogers and Shaw put up two 'paper tiger' options for a spin-off of Freedom Mobile while spurning early overtures from Vidéotron and Globalive to step into the breach. One such option for a divested Freedom Mobile presented by Rogers was Xplornet, but that option was not seen as credible, a view that was confirmed when Xplore Mobile closed its doors in Manitoba in the summer of 2022.

From very early on in the merger review, Vidéotron presented itself out as a buyer for Freedom Mobile, thus, offering Rogers and Shaw a chance to save the wireline combination which is at the heart of the deal (see below). However, it was only *after* the Bureau filed its application for a full block of the deal that Rogers and Shaw embraced Vidéotron as a suitable candidate for a divested Freedom Mobile and presenting it as the best option for all of Canada going forward.

The Bureau was equally skeptical of the companies' proposed remedy, however, on the grounds that the complex web of sweetheart deals upon which the fate of Vidéotron's prospects for success depend hinge on one of its biggest rivals, Rogers, honoring the terms and conditions of those agreements. In contrast, however, ISED Minister Champagne, who controls the transfer of spectrum licences required for the deal to be

---

[115] INDU (2022). *Proposed acquisition of Shaw Communications by Rogers Communications: Better together?* Also, CHPC (2022). *The Rogers-Shaw merger: Bad news for local news.* We were invited to present before the Standing Committee on Industry, Science, and Technology. See: Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It.

[116] Competition Bureau (May 9, 2022). Notice of application. *Competition Tribunal*; Competition Bureau (Sept. 2, 2022). Rogers - Shaw - Fresh as Amended Reply to the Response of Rogers Communications Inc. of the Commissioner of Competition. *Competition Tribunal*; Commissioner of Competition (Jan. 13, 2023). Commissioner of Competition and Rogers Communications, Inc., Shaw Communications Inc. and Videotron Ltd. *Commissioners Book of Documents (Vol. 1)*. Federal Court of Appeals.

sealed, signaled his informal assent to Vidéotron as a suitor to take over the mantle of fourth carrier in BC, Alberta, and Ontario. By implication, that meant that he had also blessed the broader transaction surrounding the contested wireless portion of the deal.

Ultimately, a realistic appraisal raises questions about whether the modified deal that got the Rogers-Shaw merger over the finish line has put even the modest gains since 2008 in jeopardy or, conversely, will turn out to have been the least bad outcome given Vidéotron's proven track-record. On the positive side of the ledger, Vidéotron's successful track record in Quebec puts it in a good position to export that success to Ontario, Alberta, and British Columbia. In addition, the CRTC's facilities-based MVNO decision referred to a moment ago was specifically tailored to Freedom, regardless of whether owned by Shaw or Vidéotron, and that, too, could bode well for a positive outcome. Indeed, the Competition Tribunal's ruling banks on just such a prospect.

On the opposite side of the ledger, however, the potential for future success hinges on how the complex web of sweetheart deals struck between Rogers and Vidéotron play out in the years to come. These deals, however, will be difficult for authorities to effectively monitor and enforce. They are also shrouded in non-disclosure agreements, meaning that outside regulatory circles and the companies themselves, nobody will know much about them. We must also ask whether it is wise to trade-off an existing competitor with a strong proven track-record (Shaw) for a new one (Vidéotron) whose prospects outside Quebec hang on so many unknowns.[117]

But beyond trying to predict the future, we can also examine the facts on the ground in the two years after the deal was announced in March 2021. When we do that, it is clear that damage has already been done to the pro-competition policy agenda because Shaw slammed on the brakes with respect to its once aggressive "maverick strategy" immediately after agreeing to be acquired by Rogers. Consequently, regardless of whether Vidéotron triumphs or fails in its quest for western expansion, we can never turn back the clock on those two lost years.

A brief discussion of what has been lost helps to bring its impact to life.

First, the steady trend of price decreases and significant increases in data plans that had defined Shaw's behaviour before the merger have slowed. While Vidéotron has held the line on pricing since taking over Freedom Mobile earlier this year, and is offering expanded 'free' international roaming as part of its service offerings for an additional charge, those efforts fall short of Shaw's earlier, more aggressive maverick strategy. There have also been no announcements that come close, for example, to matching Shaw's pioneering introduction of its "Big Gig" plans in 2017 that offered, at the time, an unprecedented 10GB for $50, or other such offers. A year later, Shaw launched its

---

[117] Competition Bureau (Sept. 2, 2022). Rogers - Shaw - Fresh as Amended Reply to the Response of Rogers Communications Inc. of the Commissioner of Competition. *Competition Tribunal*; Commissioner of Competition (Jan. 13, 2023). Commissioner of Competition and Rogers Communications, Inc., Shaw Communications Inc. and Videotron Ltd. *Commissioners Book of Documents (Vol. 1)*. Federal Court of Appeals.

100GB Big Binge plan that gave subscribers to its Big Gig plans who had purchased a phone 100GB in data that would be automatically applied if they went over their monthly data cap.[118]

Crucially, at each step of the way, the gap between Shaw Freedom Mobile's pioneering plans and similar offers from Bell, Rogers or TELUS continued to close.[119] That convergence between the big three national carriers and Shaw around pricing and data allowances now appears to have stalled as well.

Immediately in the wake of Rogers and Shaw's announced deal, Shaw also scaled back its marketing and promotions activities for Freedom Mobile. Thus, "Freedom stores received posters and marketing materials for use [starting] on April 8, 2021", but days after the deal hit the headlines, Shaw "request[ed that they] return the marketing materials" because the launch of the 5G services that these promotional materials were about had been put on hold.[120]

Reflecting this decision, Shaw also sat out the 3500 Mhz auction in 2021 that it needed to participate in to acquire the spectrum required to effectively roll-out 5G service in Ontario, Alberta and BC. In other words, Shaw's plans to roll out 5G across the three provinces had been shelved. As the Competition Bureau observed in its testimony, "the impact of this development alone on Canadian wireless competition cannot be overstated."[121]

Shaw's decision to shelve its 5G plans was part of larger withdrawal from the market as its slashed capital investment in half in 2022 compared to a year earlier, from $282 million to $131 million, and down further yet from what it had been in years before that. In other words, in 2022, only ten percent of Freedom Mobile and Shaw Mobile revenue was being reinvested in network building and upgrades versus three- to-four times that

[118] Freedom Mobile (Oct. 26, 2017). Network upgrades, Big Gig data plans, and iconic devices to make Freedom Mobile more attractive than ever. *Cision*; Shaw (Nov. 19, 2018). Break free from data overages: Freedom Mobeil introduces unprecedented 100 GB Big Binge. *Global Newswire*.

[119] Consumer Association of Canada, Manitoba Branch (2021). *What's the right number? A consumer friendly telecommunications marketplace*, pp. 52-53.

[120] Commissioner of Competition (Dec. 9, 2022). Final written argument of the Commissioner of Competition. CT-2022-002. Doc. #774. Filed with the Competition Tribunal in Commissioner of Competitition and Shaw Communications, Inc. and Shaw Communications, Inc, and Videotron. (paras 1 and 41). Testimony of S Verma, Transcript, Vol 2, Nov 8, 2022, p 420:6 – 17. April 12,

[121] Commissioner of Competition (Dec. 9, 2022). Final written argument of the Commissioner of Competition. CT-2022-002. Doc. #774. Filed with the Competition Tribunal in Commissioner of Competitition and Shaw Communications, Inc. and Shaw Communications, Inc, and Videotron. (paras 1 and 2).

amount before its take-over by Rogers was announced.[122] It also dropped its plans to enter the business services market.[123]

As Shaw downed tools on its once formidable maverick strategy, it is not surprising that its earlier track record of steady growth in revenue, subscriber, and market share in the provinces where it operated stalled, or even fell in some cases, in 2021 and 2022, as we observed earlier.[124] This also meant that the inroads it had been making on the market shares of Bell, TELUS and Rogers in Ontario, Alberta and British Columbia stalled. The Competition Bureau summed up the results as a recourse to a "middle lane strategy . . . that, within months, under the shadow of the Proposed Merger, brought price increases, reduced promotions, plummeting device subsidies and curtailed capital spending."[125] It is also essential to contrast these deteriorating results with the significant year-over-year growth that had characterized Shaw's gains in the years before the proposed merger was announced.

Lastly, Videotron chose not to pick up Shaw Mobile and its 450,000 subscribers, which had been a big part of Shaw's maverick strategy. It, too, wilted during the merger. Consequently, Rogers got those subscribers but then immediately shuttered Shaw Mobile and the bundled and deeply discounted mobile offers that Shaw had been cultivating and grandfathered existing customers. It is likely that those grandfathered plans will become more annoying to keep, especially as Rogers does what it can to move those subscribers onto new plans with a higher ARPU.

Given all this, we remain convinced that new policy approaches must be explored to attain affordable universal service for 21st century communications media. At present, the mobile wireless markets in Canada remain highly concentrated, no matter how one looks at it, by city, region, province, or country, or by revenue, subscribers, or spectrum held and used, and the problems that attend such a situation remain acute. Indeed, the situation with respect to the Rogers-Shaw-Vidéotron deal has cast the trajectory of improved competition we have observed in recent years into doubt going forward. While the prevailing CR and HHI levels in Canada are not especially high by international standards, the more pressing point is that concentration levels in mobile wireless markets around the world are, with few exceptions, "astonishingly high".[126]

---

[122] Shaw *Annual Report 2022*, pp. 8, 35; Shaw *Annual Report* 2020, pp. 51-83. Commissioner of Competition (Dec. 9, 2022). Final written argument of the Commissioner of Competition. CT-2022-002. Doc. #774. Filed with the Competition Tribunal in Commissioner of Competitition and Shaw Communications, Inc. and Shaw Communications, Inc, and Videotron. (paras 1 and 2).

[123] Commissioner of Competition (Dec. 9, 2022). Final written argument of the Commissioner of Competition, p. 8.

[124] Shaw *Annual Report 2022*, p. 8.

[125] Commissioner of Competition (Dec. 9, 2022). Final written argument of the Commissioner of Competition, para. 3.

[126] See Noam, 2016, *Who owns the world's media*, p. 25 and chapter 38, pp. 1307-1316.

Internet access

Anchor findings

- National views of the internet access market obscure the starker “on the ground” concentration at the local level where incumbent telecoms and cable-based ISPs tend to be dominant.

- The incumbents saw their combined share of local markets fall from 94% in 2008 to 85.5% a decade later, while independent ISPs had doubled their market share to 14.5% in 2018 based on revenue (14% based on subscribers).

- Even that slow progress, however, has been thrown into reverse by CRTC rulings over that have hobbled small ISPs’ access to incumbents’ fibre-based internet infrastructure.

- By 2022, BCE, Rogers, TELUS, Shaw and Quebecor accounted for 85.1% of the national retail internet access market based on revenue, and 90% based on subscribers, while at the local level, the telecoms- and cable-based ISP duopoly held a close to 88% market share based on revenue and subscribers alike, with the rest going to independent ISPs.

- Rogers’ take-over of Shaw was never mainly about Freedom Mobile but acquiring its extensive wireline system. By accomplishing this goal, Rogers doubled its share of the internet access market.

- The number of Canadians subscribing to independent ISPs has fallen by 40% in the last few years while several independent ISPs have been scooped up since early 2022.

Canada’s internet access market took shape in the ‘competitive ISP era’ of the 1990s. This heady period peaked in the late-1990s as one new entrant after another—e.g. 360Networks, Axxent, GT Telecom, Fibrelink, AT&T, Call-Net (Sprint) and hundreds of others at the local level across the country—entered and cultivated the field. On the surface, it appeared that the policies put into place to promote competition were having their desired effects.

Those days, however, did not last. In fact, the death-knell for the early heady days of telecoms and internet access competition was rung when the dot.com bubble burst in 2000. At this time, most of the new entrants were hoovered up by the incumbents, filed for bankruptcy, or otherwise went out of business. The collapse of many of those new entrants mostly redounded to the benefit of the larger Canadian companies who picked up their pieces at fire-sale prices and put them into motion in their own efforts to expand into new markets in their traditional operating territories and beyond.[127]

By 2004, the top five ISPs—all of which are former telephone or cable monopolies—had come to account for close to sixty percent of all revenues and subscribers. That figure continued to rise and by 2010 the top five companies accounted for two-thirds of the national market. By 2022, the share of the market held by the top five incumbent telecoms- and cable-based ISPs— Bell Rogers, Shaw, TELUS and Vidéotron—sat at an all-time high, with well-over four-fifths of the revenue from the $15.3 billion market going into their coffers.

The CRTC responded to the early phase of this consolidation with a series of decisions, circa 2006-2011, that had a significant effect.[128] Although consolidation at the top continued until 2014, it was at a slower pace, and as the regulator's access regime took hold, small ISPs such as Teksavvy, VMedia, and Distributel, and five hundred others too numerous to identify, saw their fate improve. Between 2008 and 2019, they more than doubled their market share to 14% based on revenue (15.1% based on subscribers from the 7-8% range a decade earlier).

Small ISPs also expanded their share of revenue and subscribers in a market that had ballooned from $6.2 billion in 2008 to $12.8 billion in 2019. In other words, they were getting a bigger slice of a bigger pie. That the small ISPs' gains came mostly at the expense of the incumbent cable-based ISPs further sharpened the conflict. In addition, the telephone companies' roll out of fibre-to-the-premise (FTTP) posed a stronger competitive alternative to the cable companies' high speed internet service, which has been delivered over an inferior coaxial last mile until the last few years as Rogers, Shaw, and Vidéotron also began to switch over to fibre throughout their systems.

This sharpening three-way competition between the cable-based ISPs on the one side versus the incumbent telecoms-based ISPs and small ISPs, on the other two sides, respectively, has been thrown into reverse, however, by a sequence of CRTC rulings over the past five years that have hobbled small ISPs' access to the incumbent telecoms and cable companies' fibre-based internet infrastructure. The negative effects of foreclosing their access to the new generation of FTTP networks have also begun to kick-in since 2019.

We will return to those decisions below but for here note that, since peaking in 2018, small ISPs saw their market share based on revenue stall at 14% for the next three years before plunging last year to 12%. While these competitive alternatives have tried to

[127] CRTC, 2004, pp. ii, 23-24.

[128] See CRTC (2006). *CRTC TD 2006-77 Cogeco, Rogers, Shaw, and Vidéotron–Third-party internet access service rates*; CRTC (2008). *CRTC TD 2008-17. Revised regulatory framework for wholesale services and definition of essential service*; CRTC (2010). *CRTC TRP 2010-632 Wholesale high-speed access services proceeding*; CRTC (2011). *CRTC TD 2011—44 Usage-based billing for Gateway Access Services and third-party internet access services in 2011*.

> **“By 2022, the share of the market held by the top five incumbent telecoms- and cable-based ISPs—Bell Rogers, Shaw, TELUS and Vidéotron”**

tread water by hiking prices to mask the fact that they have been losing subscribers, this Hail Mary strategy obviously undercuts a key factor that makes them attractive options in the marketplace to start with: affordability.

Rogers’ acquisition of Shaw will not directly change this situation because the two firms did not share the same geographical footprint. However, by acquiring Shaw’s extensive wireline assets, Rogers expanded its cable and internet access business into western Canada and those assets now more closely match and support its mobile wireless operation in terms of geography and size. In fact, while Rogers towered above Shaw on the wireless side, and during the drawn-out drama of the transaction that aspect of the transaction took the spotlight, they were fairly evenly matched in wireline communications. As such, the deal promised a way for Rogers to match its sizeable presence in Central Canada in Western Canada in well fell swoop.

Given that, Rogers’ doubled its national share of the retail internet access market by taking over Shaw. Whereas it accounted for 16.2% of the retail internet access market by revenue before the merger (and 14.2% by subscribers), post-merger Rogers now controls 29% of the national retail internet access market based on revenue and 26.1% by subscribers, catapulting it to the top of ranks based on revenue and just behind Bell based on subscribers. The transaction also drove a spike in the CR4 from 72% to 82% based on revenue, or from two-thirds to four-fifths based on subscribers. There was also a corresponding increase in the HHI as well, which surged from an HHI of 1,600 to just over 2000 based on revenue and from 1,500 to just over 1,800 based on subscribers.

Figure 14 below illustrates the “before” and “after” impact of Rogers-Shaw merger on the national internet access market.

Figure 14: National retail internet access market: "Before" vs "after" Rogers-Shaw deal (based on 2022 revenue)

Before Merger Rogers	16.2%	**After Merger Rogers**	28.8%
Before Rogers-Shaw CR4	72.0%	**After Rogers-Shaw CR4**	81.9%
Before Rogers-Shaw HHI	1599.6	**After Rogers-Shaw HHI**	2006.6

Source: see the "Fig14 RS Before-After" sheet in the Excel Workbook accompanying this report and the "ISP" sheet in the GMIC Project—Canada open data sets.

To those who suggest that none of this matters, because Rogers and Shaw never competed directly, such claims distract from the reality that they competed indirectly on the basis of 'best practices'. For instance, Shaw undertook investments to upgrade its cable-internet systems to fibre in Alberta and British Columbia earlier than Rogers did in Ontario because competitive conditions were different there, i.e. the prairie telcos and TELUS were early investors in fibre relative to Bell's laggardly pace in Central Canada. Therefore, Shaw was compelled by those different conditions to do as it did. In fact, Shaw's capital investment as a percentage of its revenue has also been greater than Rogers' in recent year, thereby, indicating that not only does competition take place in the consumer marketplace but also in terms of the intensity of capital investment—a point that we will return to in the pages ahead.

In addition, Shaw's decision not to enforce monthly data limits on Internet subscribers in Western Canada after the arrival of Netflix in 2010 was a welcome break with companies like Rogers and Bell in Central Canada who took the opposite approach, highlighting in the process not only that data caps are an artificial construct but also the importance of having competition and a diversity of choices from which people can choose for essential services like internet access. Now that Rogers has taken over Shaw, will Western Canadians be forced to count their Youtube, CBC and Netflix viewing against a meter? The Competition Bureau's new investigation into Rogers' "unlimited" Ignite mobile and internet offerings touch precisely on this issue.[129]

From nationally-based assessments of the internet access market to conditions closer to home

Assessing the structure of the internet access market from the vantage point of the national level can only provide at best a partial idea of what's going on. This is because it ignores the reality of how retail internet access markets are composed within cities and other locales.

Viewing the national market as one single market exaggerates the extent of choice available to people because it assumes— wrongly—that TELUS, for example, competes not only against Shaw in British Columbia and Alberta (for the most part and before Shaw's takeover by Rogers) but with Bell, Rogers, Vidéotron, Eastlink, and so on across the country. This is not the case.[130] To address this problem, the following pages take a closer look at conditions at the local level.

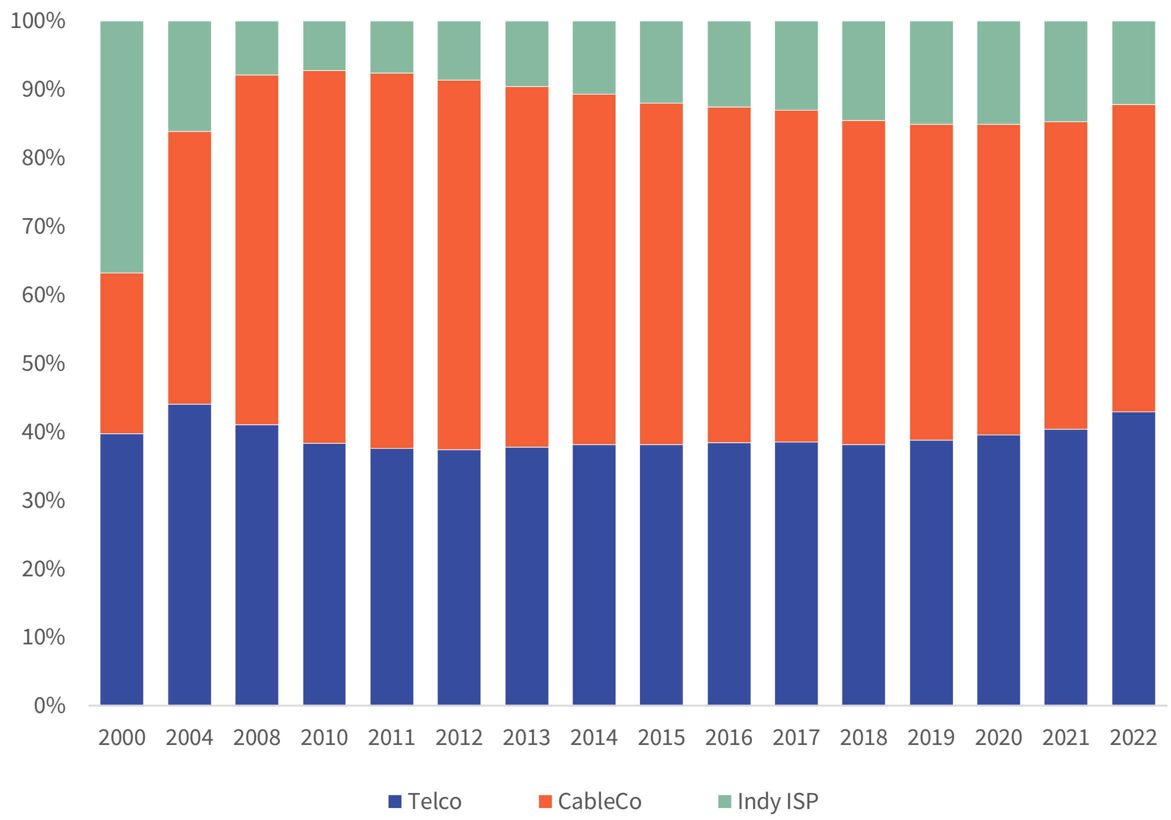
Figure 15 below shows the incumbent cable and telephone operators' as well as independent ISPs' share of the local retail internet access market, respectively. This method of presenting the data provides a more precise proxy for competition at the local level because it more closely resembles the choices available to people where they live: most local markets feature at most one cable company, one telephone company, and a smattering of independent providers.[131]

[129] Posadzki, A. (Dec. 4, 2023). Rogers ordered to produce documents for Competition Bureau probe into 'infinite' data plans. *The Globe and Mail*.

[130] Constructive criticisms from Catherine Middleton and Bram Abramson have helped us to develop a better way to get a more accurate portrait of where things stand at the local rather than the national level. Also note that, TELUS will henceforth compete with Rogers in Alberta and BC on account of its acquisition of Shaw.

[131] This is the case in many urban areas; however, rural, remote, and northern areas tend to feature less options, e.g. only one set of facilities (if any).

Figure 15: Local residential internet access services by type of ISP: Market share based on revenue, 2000—2022



Sources: see the "Figs 15+16 Res internet" sheet in the Excel Workbook accompanying this report and the "ISP" sheet in the GMIC Project—Canada open data sets.

As Figure 15 shows, in 2022, 88% of the local residential retail internet access market was accounted for by the incumbent telecoms and cable companies by revenue (and nearly the same amount by subscribers). After having stayed steady for several years since 2018 on account of the wind being let out of the small ISPs' sails, conditions worsened last year, with concentration levels rising by two percent. Just as importantly, incumbent cable and telephone company operators have dominated local retail internet access markets for two decades, given that their share of those markets never dipped below 85% even in the best of times.

That said, Figure 15 also reveals some notable changes over time. Take, for instance, the heady days of the late-1990s and the early 2000s, when independent ISPs accounted for a third of the market by revenue (and 37% based on subscribers) in 2000, and the HHI score was at its lowest point ever (536). Thereafter, however, the prospects of the independent ISPs waned for most of the first decade of the 21st century, as their market share plummeted to 6% in 2008 (or 8% by subscribers). Meanwhile, the incumbent companies consolidated their gains, albeit with the lion's share of those gains going to the cable operators.

Levels of competition and the viability of independent ISPs, however, did improve modestly after that. Why?

For one, the telephone companies' rolled out fibre-based networks, first in the western provinces in the mid-2000s, and then with added momentum in Ontario, Quebec and the Atlantic provinces after 2012 once BCE joined the effort. The telcos' fibre network posed a stronger competitive alternative to the cable companies' high speed internet service, delivered over an inferior coaxial last mile. This had benefits for retail internet access customers and small ISPs who now choose between two better matched high-speed options, co-axial cable from the cable companies and fibre from the telcos.

Second, as briefly introduced above, a series of CRTC decisions between 2006 and 2010 went a long way towards turning around the bleak conditions that threatened the survival of independent ISPs at the time.

The first two steps in this direction in 2006 and 2008, respectively, mostly involved brow-beating and threats of regulatory intervention if the telecoms and cable companies did not improve the wholesale access conditions that independent ISPs required to compete.[132] Both moves, however, were weak reeds and the incumbents were little moved by the Commission's admonitions to "do better".

It was only with a third ruling—the "speed matching" decision[133]—in 2010, however, that the CRTC finally forced the incumbent telecoms and cable companies to give independent ISPs access to the same level of facilities used by their own retail internet services on equal terms. Thereafter, independent ISPs had mandated wholesale access to the resources they required to be able to match the telecoms and cable companies' basic, express, and ultra-fast internet services instead of being limited to just the most basic—and slowest—tier of services. The result was a sturdier regulated wholesale access regime that allowed small ISPs to better compete with the incumbents across the full range of retail internet access services on the basis of speed, data allowances, quality, service, and price.

This allowed small ISPs to claw out some modest increases in market share, with their market share more than doubling between 2008 and their high point around 2018-2019, before hitting a new wall of obstructionist behaviour on the part of incumbents. Thus, in 2022, the HHI for the local retail internet access market was 4,005—far above

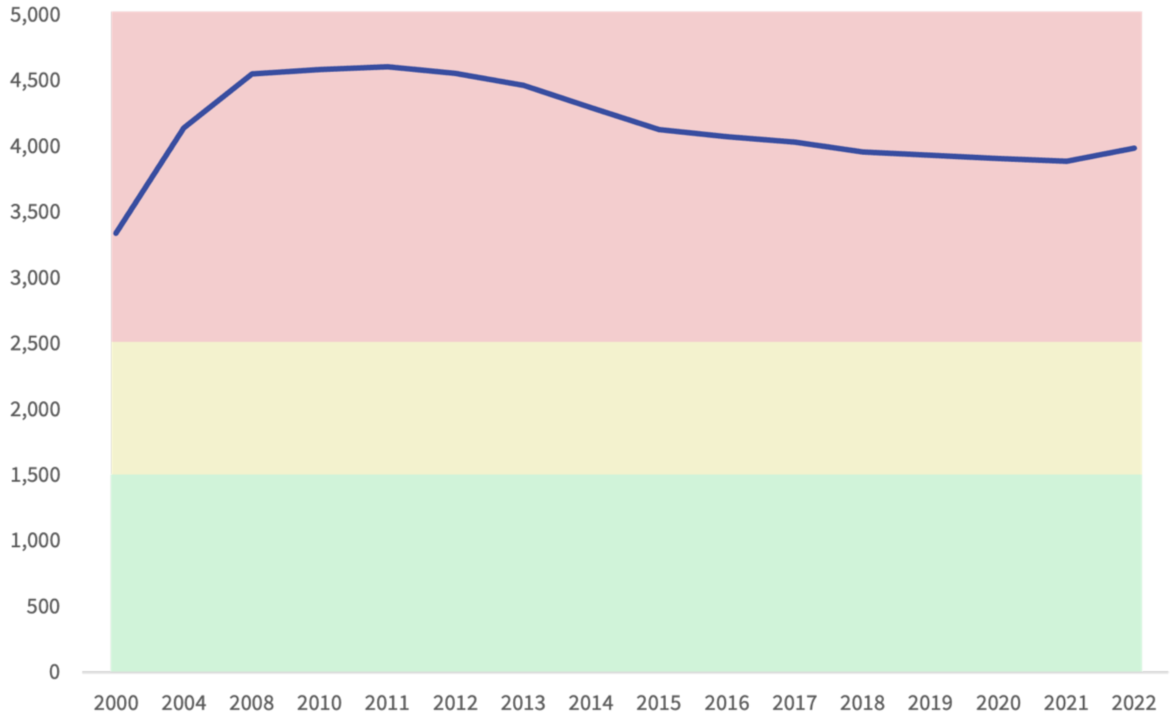
---

[132] See CRTC (2006). *CRTC TD 2006-77 Cogeco, Rogers, Shaw, and Vidéotron – Third-party internet access service rates*; CRTC (2008). *CRTC TD 2008-17. Revised regulatory framework for wholesale services and definition of essential service*.

[133] See CRTC (2010). *CRTC TRP 2010-632 Wholesale high-speed access services proceeding*; CRTC (2011). *CRTC TD 2011—44 Usage-based billing for Gateway Access Services and third-party internet access services in 2011*.

the threshold for highly concentrated markets and far in excess of levels for mobile wireless services, for example. In sum, local retail internet access markets have continued to display stubbornly high levels of concentration over a very long time, as depicted in Figure 16, below, based on HHI scores.

Figure 16: Local residential internet access services HHI scores based on revenue, 2000-2022



Sources: see the "Figs 15+16 Res internet" sheet in the Excel Workbook accompanying this report and the "ISP" sheet in the GMIC Project—Canada open data sets.

The reality that the fate of competition in internet access markets hangs on the quality of the regulatory framework in place has been well understood for some time and with the CRTC acting with that awareness in mind, at least until the last chair took the helm at the Commission. Such understandings underpinned a CRTC decision in early 2015, for instance, which found that independent ISPs will continue to need regulated wholesale access to incumbents' local fibre-to-the-premise networks if they are not to be left to wither on the vine as broadband internet access migrates from copper and coaxial cables to fibre-to-the-neighbourhood and to people's doorsteps.[134] The Commission's decision did not mince words in this respect:

[134] In formal terms, this evolution in communications infrastructure is known as fibre-to-the-node (FTTN) and fibre- to-the-premises (FTTP).

- "incumbent carriers continu[e] to dominate the retail internet access services market" (para 125);

- "there is limited rivalrous behaviour to constrain upstream market power" (para 122);

- wireless internet access is not an acceptable substitute for wireline facilities because of significant disparities in terms of price, speed, capacity and quality (para 126);

- whatever "competition that does exist today is . . . a result of regulatory intervention" (para 126).[135]

Similar reasons underpinned the Commission's wholesale mobile wireless decision earlier that year. In both cases, the regulator found that the concentrated structure of the market had enabled the exercise of anti-competitive market power by dominant firms, and decided to act to help ensure that whatever minimal competition existed at the time would not be washed away as the incumbent carriers migrated their systems to fibre. Bell responded to that CRTC's decision on access to fibre networks with a petition to the Governor-in-Council, but its appeal was rejected by the Liberal government in May 2016.[136]

The CRTC and government had seemingly cleared the way for a mandated wholesale access regime to be applied to the emerging generation of fibre-based networks, a move that would allow independent ISPs to use the 'last mile' portions of next generation fibre networks owned by incumbents like Bell, Rogers and Shaw to deliver their own services to subscribers.

Perhaps not surprisingly, rather than the ruling immediately translating into new conditions supportive of increased competition and consumer choice, it kicked off a highly contentious, three-year transition from the existing 'aggregated' wholesale regime that had been applied to cable systems and the telecom companies' older generation of copper (DSL) networks to a new 'disaggregated' system. In the existing 'aggregated' system, independent ISPs connected to cable and DSL networks at a single point of interconnection (POI). The change to disaggregated meant that, instead of having to get their traffic only to a single point of interconnection per wholesale partner, ISPs would have to connect to a many POIs where neighbourhood networks

---

[135] CRTC (2015). *TRP CRTC 2015-326 Review of wholesale wireline services and associated policies*.

[136] Bell Canada. (2015, October 20). *Petition to the Governor in Council to Vary* Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*; Governor in Council (May 5, 2016). *PC 2016-0332 Order declining to vary the Canadian Radio-television and Telecommunications Commission Telecoms Regulatory Policy CRTC 2015-326*.

terminate—an unexpectedly costly and complex proposition for the ISPs who need access to the incumbents' last mile facilities to reach their customers.

The independent ISPs were lured by the promise of a new disaggregated system but soon found that the new approach was unworkable as a growing record at the Commission demonstrated that the rates charged by incumbents were too high.[137] The CRTC agreed, finding that the wholesale rates the big companies were charging for this access—the single greatest factor in determining overall internet prices in Canada—were greatly inflated. After studying the issues for three years, the incumbents were ordered to correct these rates and repay the hundreds of millions of dollars they had overcharged the independent ISPs.[138]

This was a decisive victory for the independent ISPs, but only if the story ended there. It did not.

The incumbents' multiyear, multi-pronged campaign to kill competition in the cradle

Instead of complying with the Commission's 2019 order to implement the cheaper wholesale access rates and repay independent ISPs, the companies chose instead to wage a multi-pronged campaign aimed at quashing or stalling the advent of a more competitive regime, thus keeping rates high and impeding small ISPs just as they were gaining a toe-hold as effective competitors, as we just saw.

The incumbents' protracted, multiyear campaign against the independent ISPs and the regulated wholesale access regime unfolded across several fronts.

First, Bell and others challenged the 2019 rates in the Federal Court of Appeals, winning a stay. However, the Court ultimately dismissed their appeal as meritless in 2020. The Supreme Court of Canada refused to review the case in 2021, ending a nearly six-year delay since the original 2015 decision.[139]

Simultaneously, the carriers launched a second line of attack in 2019 by petitioning the Governor in Council to overturn the rates, arguing that the CRTC's wholesale access framework would undercut investments, particularly in rural areas. Despite the petition's rejection in 2020, the CRTC was tasked to review the matter again, although

[137] CRTC (2016). *TD 2016-117 Review of costing inputs and the application process for wholesale high-speed access services*.

[138] CRTC (2019). *TO 2019-288 Follow-up to Telecom Orders 2016-396 and 2016-448–Final rates for aggregated wholesale high-speed access services*.

[139] Federal Court of Appeal (2020). *Bell Canada v. British Columbia Broadcasting Association* (2020 FCA 140); Supreme Court of Canada (Feb. 25, 2021). Bell Canada, et. al. v. British Columbia Broadband Association, et. al. Application for leave (dismissed).

that review was compromised from the start by the language in the Order-in-Council and in the government's public messaging around it that embraced the incumbents' rhetoric about balancing competition and their ability to invest, as if the Commission had not kept such factors top-of-mind all along.[140]

The carriers' third avenue of appeal was a request that the CRTC review and vary its original 2019 rate-setting order, arguing that it had relied on bad information and misapplied its own costing methodology. The Commission granted the carriers' wishes and in a complete reversal, in May of 2021, the CRTC reverted to the rates it had set in 2016—the ones it had previously found to be significantly inflated—with only a, charitably interpreted, perfunctory explanation that it had 'substantial doubt' about its earlier decision to cut rates.[141]

The companies also pursued a fourth track: In its 2015 decision setting all of this in motion, the CRTC had adopted a new model for wholesale interconnection under which the industry would move toward a larger number of decentralized access points (i.e. the disaggregated model), in exchange for which the small and independent ISPs would get access to fibre-to-the-premises (FTTP) services. Before the model could be finalized, competitors sought a more intermediate level of aggregation and much lower final rates.

To complicate things further, and meanwhile, a big gap had also opened up between the wholesale services of Bell and TELUS, for instance, who rely more extensively on FTTN and copper wire connections (DSL) for the last stretch to a subscribers' doorstep, and which cap out at a download speed of 50 Mbps, versus the cable operators, who run gigabit-speed links to the neighbourhood and much faster final links to subscribers than what Bell and TELUS typically offer over DSL.[142] This gap has also pushed the telecoms operators to accelerate their investment in the latest FTTP technology, but it has also had the consequence of locking out rival ISPs since the technology was not

[140] A claim that should be met with skepticism given that the Commission had already thoroughly reviewed such claims and built in a premium into its costing methodology to cover such considerations.

[141] After the Federal Court of Appeal rejected the carriers' case, the companies appealed to the CRTC to delay implementing the revised wholesale rates until it had disposed of their request for a review and variance discussed above. The CRTC approved that request in September 2020 but this prong of the action was rendered moot by the decision of the CRTC just referred to (CRTC, 2020, *TD 2020-342 Requests to stay the implementation of Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*; CRTC, 2021, *TD 2021-181 Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*).

[142] That said, TELUS does offer 75 Mbps unbonded VDSL.

covered by the wholesale access regime, as explained earlier.[143] Once again, this disparity became a point of contention as Shaw dug in its heels on the grounds that the wholesale access regime that required it provide higher speeds to the independents but not the telecoms' fibre networks was unfair.

If this maelstrom of activity was not tortuous enough, the Commission decided to open yet another round of consultation concerning the appropriate technical configuration for wholesale access services.[144]

This effectively means that the Commission had to restart from ground zero with respect to the mandated wholesale access regime, and so it did. The result so far from what could easily be a proceeding drawn out for years has been a surprisingly speedy ruling by the CRTC in November 2023 that grants small ISPs interim rates for access to telecoms operators' FTTP networks. The Commission itself acknowledges that this is a temporary lifeline meant to staunch the demise of independent ISPs as it works out a more permanent fix to this long-standing problem. Indeed, as it states at the very top of the ruling, the number of Canadians subscribing to independent ISPs has plunged by 40% across the country, and nearly half in Ontario and Quebec.[145]

The death of independent ISPs has indeed been underway, with several independent ISPs scooped up since early 2022, with Bell, for example, absorbing ebox and Distributel, Vidéotron acquiring VMedia, TELUS buying Start.ca and Altima, Cogeco purchasing Oxios, and Rogers securing Comwave. This reflects a disastrous reversal on the wholesale access regime by the CRTC under its last chair and policy indifference by the Liberal government. Whether the Commission under its new leadership can turn things around, there are some early positive signs, with the transitional access-to-fibre decision just noted serving as exhibit A.

However, it remains unclear if this will help save the day or be an instance of too little, too late. While this has given some independent ISPs reason for hope, like TekSavvy, who took down its "for sale" sign right after the decision, Bell's threat to withhold future investment to protest the ruling and its challenge to the Commission's ruling at the Federal Court of Appeals highlights the extent to which it—and incumbents generally—

[143] Crawford, S. (2019). *Fiber: the coming tech revolution—and why America might miss it*. In late 2021, Vidéotron also filed an application to re-introduce the high-speed access tiers that it had withdrawn and which also supported Shaw's call to limit third party's wholesale access to high end speeds only to situations where the incumbent telcos did not yet offer fibre-based networks. The presumption here being that if two options are available, ie. a high-speed wholesale option from each of the incumbent cable and telecom operators, markets are sufficiently competitive to not require a CRTC-mandated wholesale access regime. See Vidéotron (Dec. 6, 2021) tariff application, TN 59 Third Party internet Access Service (AITP)—General Tariff.

[144] CRTC (2020). *TNC 2020-187 Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*.

[145] CRTC (2023). *TD CRTC 2023-358 Review of the wholesale high-speed access service framework – Temporary access to fibre-to-the-premises facilities over aggregated wholesale high-speed access services*.

will go to the wall to protect their market dominance (and the wealth and profits that go with it).[146] Ultimately, resolving this malignant state of uncertainty will have to await the outcome of Bell's appeal and the character of the final wholesale access regime that the CRTC will adopt sometime down the road.

Clearly, the lessons of the 20th century industrial communications era have not been lost on incumbent carriers in the 21st century: obstruct, delay, litigate and lobby endlessly in the hopes that competition can be killed in the cradle, or at least held at bay for decades. Just as regulatory shifts that favored Bell at the time led to the extinction of telephone competition by the 1920s, similar patterns threaten independent ISPs today. That looming fate is exemplified by the spate of recent acquisitions just recounted, and the fact that remaining ISPs like TekSavvy are in a life-or-death struggle to stay afloat in the face of subscriber losses and revenue challenges. In short, even the little competition gained over the past decade-and-a-half is being lost at breakneck speed. Whether the CRTC's interim measures will turn things around remains to be seen, given Bell's threats to withdraw capital investment in new FTTP builds and its pending challenge to the interim order at the Federal Court of Appeals.

Given these harsh but completely comprehensible realities—past and present—policymakers and regulators must deal with them unflinchingly if the goal really is to foster, as is often touted, a world class communications system and marketplace that serves all Canadians and which is fit for the "internet Age".[147]

"even the little competition gained over the past decade-and-a-half is being lost at breakneck speed"

[146] Federal Court of Appeal (Nov. 16, 2023). *Bell Canada v. Beanfield Technologies Inc (Leave Canadian Radio-television and Telecommunications Commission).*

[147] Karadeglija, A. (Sept. 6, 2022). Bell's acquisition of Distributel a death blow to ISP competition: consumer advocate. *National Post*.

Clash of titans as cable, satellite and IPTV-based broadcasting distribution undertakings (BDUs) increasingly converge and compete with virtual BDUs

Anchor findings

- After rising concentration in the early 2000s, the entrance and growth of telco IPTV services has brought down the national HHI from the 2,300s at its high point in 2004 to 1,800 this year.
- Like retail internet access, national views of cable TV markets overstate the level of competition occurring where it matters, at the local level. Seen from this vantage point, despite the growth of IPTV services over the past decade, the cable, IPTV and direct-to-home satellite market is still a duopoly, with an HHI score of 5,138 last year—a figure that is more than double this measure's threshold for designating a market to be highly concentrated.
- After its takeover of Shaw, the post-merger Rogers doubled its share of the BDU market. Before the merger, its share of the national market was 15.3% based on revenue, after it was 35.8% (while rising from 15.6% to 34.3% based on subscribers).
- As Amazon Prime Video, YouTube Premium and Apple TV+ emerge as significant online aggregators and distributors of audiovisual media services, convergence and competition between them and traditional BDUs is intensifying.
- While "cord cutting" behaviour took longer to take hold in Canada than the U.S. and some other countries, it has picked up pace considerably in the last few years.

Prior to the advent of IPTV services in 2004, consolidation in the BDU market at the national level had been rising for two decades, with a brief interruption after satellite TV services were introduced in the late 1990s. The introduction of satellite TV started to chip away at local cable monopolies across the country and, nationally, the BDU market began to show the impact. At the local level, however, where people subscribe to such services, concentration levels are still sky high. Now, the rise of, for instance, Amazon Prime Video, YouTube Premium and Apple TV+ as online aggregators and distributors of audiovisual media services is contributing to intensifying convergence and competition between these international conglomerates and the traditional, vertically integrated BDUs that have dominated the television distribution market for decades.

In the late-1990s, there was growing competition in this market on account of the introduction of direct-to-home satellite services. As a result, the top four BDUs' share of the market fell to 72% in 2000 from 85% four years earlier and the HHI had fallen to 1,567, down from 2,315 in 1996. Thereafter, however, a new round of consolidation, and Rogers and Shaw's decision in 2000 to divide the market between themselves into Cable Monopoly East and Cable Monopoly West, respectively, caused concentration levels at the national level to soar once again.[148] By 2004, the top four BDUs'—Shaw, Rogers, Bell and Vidéotron—share of the market had reached an all-time high of 89%.

The development of the telephone companies' IPTV services since the mid-2000s put the brakes on the upward drift of concentration. As a result, local cable monopolies had to face competition from the telephone companies' IPTV services. MTS and SaskTel were the first to roll out IPTV services in 2004, followed by TELUS in 2007/2008, but it was not until Bell started to roll out its own IPTV services in Ontario, Quebec, and the Atlantic provinces in a concerted way after 2010 that this force began to really gather steam.

By the end of 2022, close to one-quarter of Canadian households got their television service from the local telephone company's Internet Protocol TV (IPTV) service: Bell, TELUS and Sasktel. The expanding role of these telecoms operators in the traditional television distribution market reflects their more concerted effort to roll out fibre optic broadband infrastructure across their respective service areas during the past decade. They have also been bundling fibre internet services with discount pricing on IPTV services as part of a broader strategy to lure subscribers to higher margin fibre-based retail internet services, a subsidy in everything but name.

By the end of 2022, the telcos' IPTV services garnered a third of the traditional TV distribution market by subscribers and 30% based on revenue. That is a steady increase on both counts, and this is reflected in the battle of the bundles that now characterizes telco versus cable competition in midsize to large cities across Canada. Thus, even though cord-cutting is deepening in Canada, the telecoms' IPTV services continue to gain subscribers and market share in a shrinking market, although revenue growth has stalled in the last three years. The upshot of this is that the effects of cord-cutting are falling most heavily on the cable companies.

The message is clear: the quick pace of IPTV growth over much of the last decade has intensified rivalry between the telephone and cable companies' TV distribution services, and there is no doubt that the cable companies are feeling the pressure. Moreover, that pressure is magnified by the fact that the traditional BDU market is shrinking, with revenue dropping from its peak of $8.8 billion in 2016 to $7.4 billion last year, while

[148] Shaw (2002), *Annual report, 2001*, p. 35.

“the quick pace of IPTV growth over much of the last decade has intensified rivalry between the telephone and cable companies’ TV distribution services”

subscriber rates have also plunged from 86% of households in 2011 to less than two-thirds of all households last year.[149]

As the telephone companies’ IPTV services have gained traction, both the CR4 and the HHI scores for the BDU sector have dropped significantly at the national and local levels. In 2004, and at its high point, the national market share for the top four companies—Rogers, Shaw, Bell and Vidéotron—was 89%; last year it was 76%. Over the same period, the national HHI fell from 2,298 to 1,802—a figure that is now at the lower end of the moderately concentrated part of the HHI scale.

This is a significant decline, to be sure, although it is still too early for a victory dance. There are two reasons for caution. First, Rogers’ acquisition of Shaw sets back the clock with respect to the steady decline in national concentration levels over the past decade. Indeed, after taking over Shaw, the post-merger Rogers doubled its share of the BDU market. Before the merger, its share of the national market was 15.3% based on revenue, after it was 35.8% (while rising from 15.6% to 34.3% based on subscribers). It also abruptly threw the positive momentum in concentration ratios into reverse, with the CR4 rising from 76.2% of the national BDU market based on revenue to 87%, while it rose from three-quarters of the market based on subscribers to ninety percent. The HHI also swiveled in tandem, shifting from the comfortably mid-range of the scale (approximately 1,800 based on revenue and subscribers alike) to bump-up against the threshold into the highly concentrated zone, i.e. the HHI rose to just over 2,400.

[149] Recall from our first report that there is a significant difference between the subscription rate that we present and what the CRTC presents, i.e. 70% because the CRTC is using the 2016 census from Statistics Canada as the base for the number of households in Canada, i.e. 14.1 million, whereas Statistics Canada data for 2021 puts the number of households at just under 15 million. See Statistics Canada (2022). *Census Profile, 2021 Census of Population*.

Figure 17 below illustrates the "before" and "after" impact of the Rogers-Shaw merger on the national BDU market.

Figure 17: National BDU market: "before" vs "after" Rogers-Shaw deal (based on 2022 revenue)

Before Merger Rogers	15.3%	**After Merger Rogers**	35.8%
Before Rogers-Shaw CR4	76.2%	**After Rogers-Shaw CR4**	87.0%
Before Rogers-Shaw HHI	1801.3	**After Rogers-Shaw HHI**	2428.6

Sources: see the "Fig 17 BDU RS BeforeAfter" sheet in the Excel Workbook accompanying this report and the "ISP" sheet in the GMIC Project—Canada open data sets.

Despite these big shifts in both concentration metrics, the Commission took a happy-go-lucky approach to the blockbuster merger, waving through the deal on the spurious grounds that, because the companies did not compete head-to-head given their separate geographical markets, there was nothing to be concerned about. Thus, after exacting the standard tithe from the company, i.e. a contribution to various media production and other funds, the CRTC waived the deal through.[150]

[150] CRTC (2022). Broadcasting Decision CRTC 2022-76. Shaw Communications Inc. – Change of ownership and effective control.

The Commission's pro-incumbent bias under its previous chair also meant that it did not even bother to consider the impact on internet access markets. Nor did it seem to care that Shaw had previously been one more door for television program producers and rights holders to knock on in the English-language television distribution market, thereby adding competition and choice in the programming market. With Shaw's disappearance from the scene, the number of doors drops to three across the country, and from three to two in the English-language regions of Canada. If programs rights holders and producers can't strike a deal with Bell or Rogers, they will be out of luck, or get tied up in protracted regulatory disputes for years in a fast-shifting landscape as new services (including Netflix, Amazon, YouTube Premium and Apple) move steadily deeper into Canada. This will also give them greater incentives to turn to Apple, Amazon, and Google for distribution deals, thereby tightening the cultural industries' dependence on the global internet platforms.[151]

Climbing down from these national level considerations, like retail internet access services, national measures exaggerate the extent of competition because cable TV markets are, in fact, local and regional, not national. When we consider things from this more fine-grained vantage point, concentration levels in the cable TV market are still sky high. In 2004, the HHI for BDU services at the local level was, on average, 7,135—close to three times the threshold used to designate a market as "highly concentrated". By last year, the traditional cable firms' market share had been cut down to 58%, while the telephone companies' share had swelled to 42% (when Bell's satellite TV is included in the picture). The HHI had fallen as a result to 5,138. At this level, Rogers' take-over of Shaw will not move the dial one way or another.

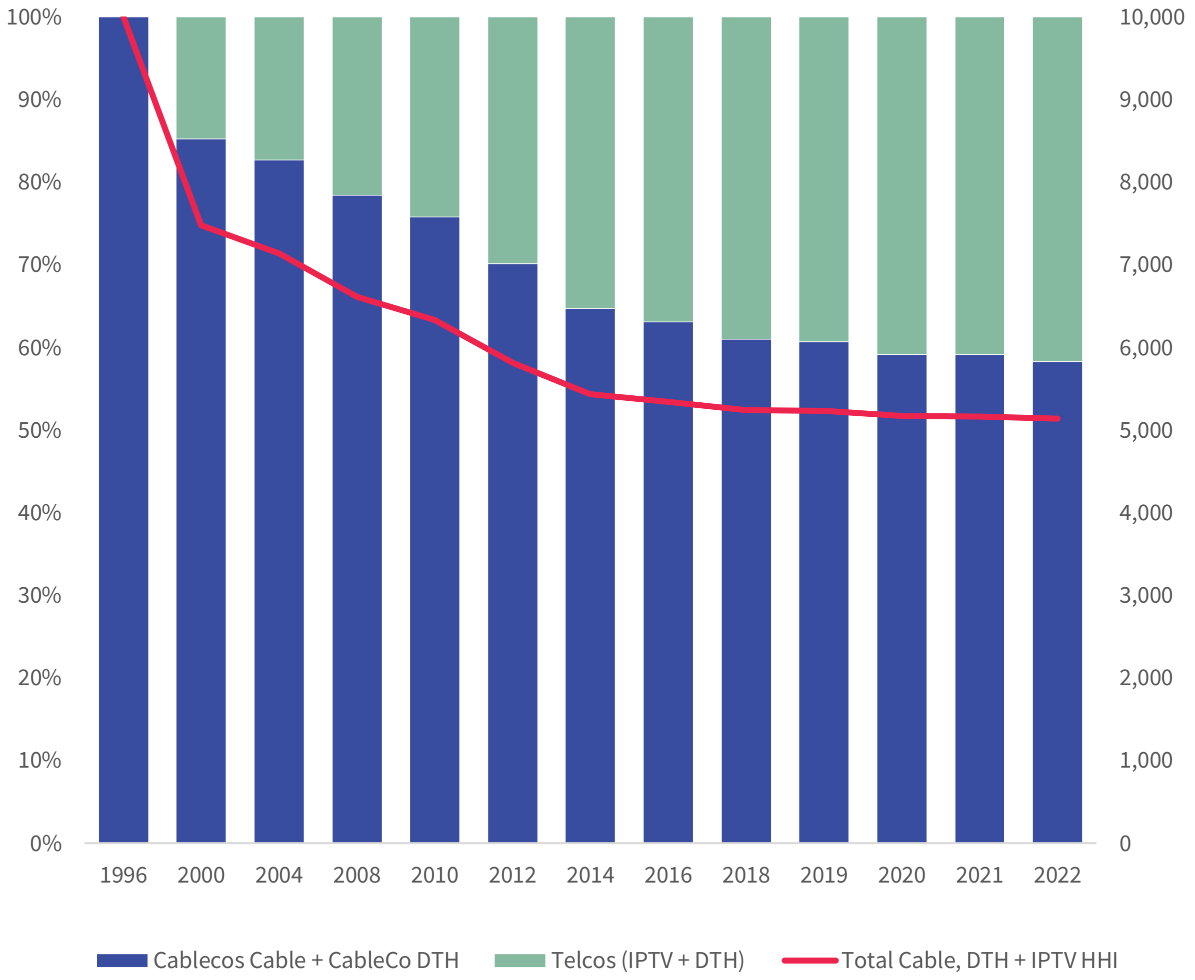
Given these trends, one can understand why cable companies have groused about the intense competition they have had to meet, while Bell, TELUS, and SaskTel have been able to—correctly—trumpet their successes in an ever more contentious market. These divergent perceptions on both sides of the industry, however, come back together around the reality that a duopoly in cable television services does not measure up to the standards expected of a truly competitive market. In short, an HHI score of 5,138 is more than twice the threshold for a highly concentrated industry by this standard.

---

[151] Winseck, D. & Klass, B. (April 2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It. Submission to the Standing Committee on Industry, Science and Technology of the House of Commons (Canada) regarding the proposed acquisition of Shaw by Rogers.

Figure 18, below, illustrates the steady demise of monopoly cable TV and the rise of duopolistic competition between cable companies and telephone companies since 1996.[152]

Figure 18: The decline of monopoly cable: cable vs telephone companies, 1996-2022



Sources: see the "Fig 18 Cable vs Telcos" sheet in the Excel Workbook accompanying this report and the "Multichannel Video Distribution" sheet in the GMIC Project—Canada open data sets.

[152] Crucially, this was the year when the Chrétien Liberal Government's new *Convergence Policy* document lifted the restrictions that had prevented both sets of companies from competing with one another on their "home turf" and that had kept telephone companies like Bell from owning and controlling broadcasting and other types of content. In short, it was the moment when vertical integration between telecommunications and TV was given the green light.

“Early hopes that competition from online video services like Netflix and Crave would lower consumer costs have also been proven wrong”

Lastly, one must note that the cable operators and telephone companies have been working hard to offset whatever losses they have experienced by keeping prices for cable service at the high point reached in 2015. Thus, seen from the angle of average revenue per user (subscriber) (ARPU), this climbed sharply in the first decade-and-a-half of the 21st century until reaching $66.08 in 2015. APRU last year was $2 per month less than it had been seven years earlier. Early hopes that competition from online video services like Netflix and Crave would lower consumer costs have also been proven wrong, given swift price increases for those services over the past several years.[153]

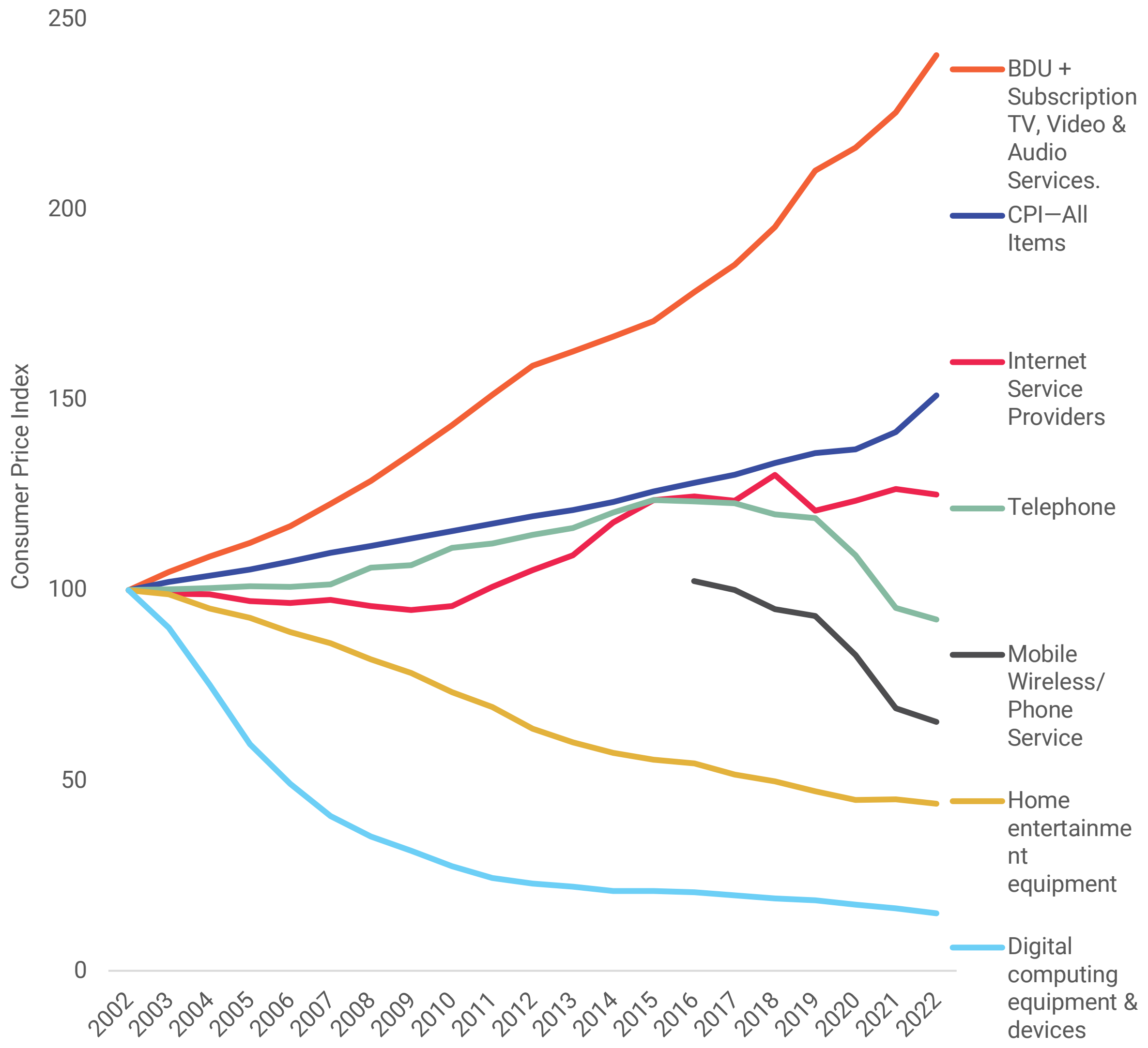
However, legacy BDU providers’ ability to increase ARPU further has been limited by the reality that the traditional cable market is shrinking. Legacy cable companies such as Rogers, Vidéotron, and Shaw’s ability to hike prices for cable television service has also been constrained by the growing competitive pressure they face from Bell, Telus, and SaskTel’s IPTV services. The law of relatively constant media expenditures also sets limits on how much people will spend on media services (see above). Finally, the fact that 16% of subscribers as of 2022 have availed themselves of the $25 per month skinny basic cable package that the CRTC has mandated since 2016 has also put downward pressure on ARPU.[154]

Figure 19 below illustrates this point.

[153] For a more detailed discussion of changes to the CPI index and Statistics Canada’s development of a new Audio and Video Subscription services category that includes traditional BDU services and online streaming audio and video media, see footnote 31 in the first report in this year’s series and surrounding discussion.

[154] CRTC (2022). *Broadcasting Notice of Consultation CRTC 2022-267-2*: *Call for Comments Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service – Disclosure of aggregated information previously filed in confidence.*

Figure 19: Communications services and device prices vs the Consumer Price Index, 2002-2022



Source: Statistics Canada. Table 18-10-0005-01 (formerly Table 326-0021): Consumer Price Index (CPI), annual (2002=100). Also see the "Fig 19 ICTS vs CPI" sheet in the Excel Workbook accompanying this report.

At the end of the day, the following two observations, though seemingly at odds, are in fact both true:

- There is more competition taking place within the cable TV market.
- This market is still a tight duopoly, and at the very high end of the scale in terms of concentration.

National champions versus global behemoths and the emerging hybrid television distribution marketplace

Given that cord cutting is real, and people are increasingly turning to services such as Apple+, Amazon and YouTube Premium to replace the classic cable bundle, we must ask how these services fit into the picture being depicted here? There is no doubt that the rise of international tech conglomerates that aggregate and distribute media services direct to consumers over the internet represent significant developments. Indeed, they are driving greater convergence and competition with traditional broadcasting distributors, and this will accelerate in the years ahead.[155]

Given the entrenched duopoly in traditional cable services, there is also no doubt that consumers can benefit from the greater choices they now have. The advent of competitive alternatives is also benefitting television and film producers and rights holders, including some based in Canada, such as Vancouver-based OUTtv and Shaw-Corus's Stack TV. To them, Amazon and Apple offer a welcome alternative to traditional BDUs because, for one, the revenue splits between them and the digital platforms are better than they have ever received from traditional BDUs.[156] The digital platforms also offer better insight into the terms of distribution, marketing, and billing, while offering access to global audiences rather than just domestic ones. Given the importance of data in the networked digital media universe, these advantages are extremely valuable.

Indeed, for a relatively small television company like OUTtv, the international market has become even more important than the domestic market, and this is only expected to grow. Same, too, for Corus' Stack TV, which reports that after only three years of operation, the service had become a fast-growing new distribution window with 663,000 subscribers and $103.3 million in estimated revenue (just under 10% of its total revenue from television programming services) in 2022. Other services in Canada are pursuing

---

[155] Winseck, D. (Oct. 18, 2022). Opening Remarks to the Standing Senate Committee on Transport and Communications on the *Online Streaming Act* (Bill C-11); McKelvey, F. (Oct. 5, 2022). Standing Senate Committee on Transport and Communications on the *Online Streaming Act* (Bill C-11)—Evidence. The following paragraphs have also been informed by ongoing conversations with Brad Danks, CEO of OUTtv Media Global.

[156] That said, this simplifies things because the BDU carriage deals offer access to audiences of a set size for a longer period of time whereas the digital platforms do not.

such options and, of course, foreign-based services are being distributed in Canada by such means.

Bringing all this into perspective in the context of ongoing and heated debates over the *Online Streaming Act*, Concordia University Professor Fenwick McKelvey told the Senate Committee on Transportation and Communications that reviewed that bill the following:

> The act . . . has one clear objective: ensure that the CRTC has the capacity to regulate large, economically powerful domestic and international firms involved in broadcasting distribution . . . . [T]he mission-critical function of the new act must address the convergence of large online video-on-demand services and the traditional broadcasting distribution undertakings. The maturation of streaming services to a few dominant players indicates that online services have become cable by other means.[157]

Clearly, online aggregators and distributors have emerged as significant players in Canada. Their growing presence has chipped away at the high levels of concentration that have prevailed for decades in the BDU and TV marketplace. As a result, people now have more choice, while programming services providers and rights holders have more doors to knock on. The recent entry into Canada of new free linear, ad-supported online platforms known as "FAST" services such as Samsung Plus, Tubi, PlutoTv (owned by Viacom-CBS), and others may also have a long-term impact as they are having in the US where they have become a popular replacement for traditional cable.[158] That said, the available data on these fast moving developments is still too sketchy to allow reliable estimates of their impact to be made.

At the same time, it is essential to keep these developments in perspective. In this regard, three points stand out. First, the scale of these companies' activities in Canada are opaque—a problem that the *Online Streaming Act* targets through information

---

[157] McKelvey, F. (Oct. 5, 2022). Evidence.

[158] PlutoTv is a division of Paramount Studios which, in turn, is owned by Viacom-CBS. FAST stands for free advertising supported television and is primarily a service focused on making back catalogue programming available once again. In these developments, we can also detect the resurrection of the classic "windows" distribution model that, since the end of World War II, had divided film and television markets based on time, geography and technology, with the release of a film, for example, staggered so that it came out first at the box office in the US, then progressively to other regions of the world thereafter, then to a pay-per view video-on-demand service, then premium cable, standard cable channel, broadcast, etc. For the last two decades, many have thought that the rise of streaming services would lead to the demise of the windows model as Netflix, for example, jumped the queue from the back to closer and closer to the front of the line the bigger it became, until simultaneous release became a significant phenomenon, not just at Netflix, but Warner Media and others, during the first year of the Covid pandemic. Throughout this process, the windows model was being compressed both in terms of time (i.e. simultaneous release and shorter waits between box office and home distribution) and space (i.e. films released simultaneously in the U.S., Europe, China, etc). Now, however, the rise of the FAST model and other developments appear to be restoring the windows model albeit in changed form.

disclosure obligations. Nonetheless, it is still possible to develop some reasonable estimates of their revenue. We estimate that Amazon Prime Video, Apple+ and YouTube Premium had combined revenue in Canada of $400 million in 2022—or just over five percent of a hybrid traditional-virtual BDU market.[159] As such, while the tech platforms must be recognized as significant actors in the digital media environment, it is just as important to avoid hyperbole and the tendency to exaggerate their significance, too.

A second point, however, is that it is unclear if the online aggregators and distributors' revenue should all be allocated to such a hypothetical market or spread across a larger amalgamation that includes both the BDU market and all television programming services. Taking that route would effectively cut their market share in half. Given this ambiguity as to how to best classify their operations, i.e. either as a new breed of BDUs or as part of the evolving online video services market alongside Netflix, Bell's Crave, Disney+, etc., we will return to them later in the context of that sector of online media.

Third, however, and consistent with the point that McKelvey makes, while the inroads being made by digital platforms into the television distribution marketplace has benefitted consumers and programming services alike, this could all turn on a dime as they accumulate a bigger share of the market. Indeed, this is already taking place as novel versions of old disputes between cable distributors and programming services break-out.

Thus, in late 2021, Disney yanked ESPN, ABC, FX and several other of its marque brands from Google's YouTube TV in the U.S. in its ongoing battle to get Google to pay for the rights to distribute these services "as part of Google's YouTube TV's bundle of live channels".[160] The dispute was short-lived, though, and the Disney channels restored within days after the two disputing behemoths came "to a new carriage agreement".[161] In other words, the Google-Disney dispute bears a strong resemblance to a classic retransmission dispute that regulators have dealt with in the context of cable television for half-a-century. More such disputes should be expected, with potentially very harmful consequences for smaller services and rights holders, especially.

Similarly, in Europe, there is also growing concern from traditional media providers about becoming excessively dependent on digital platforms such as Google or Spotify for distribution and access to audiences. In one such case, for example, the BBC withdrew its popular Global News Podcast and Brexitcast from Google Assistant, Google

---

[159] That is, $7.4 billion for the traditional BDU market, as per the CRTC, and an estimated $396 million from these companies' operations in the online video services market.

[160] James, M. (Dec. 17, 2021). YouTube TV loses ESPN, ABC and other Disney channels in fee dispute. *Los Angeles Times*. YouTube TV is currently not available in Canada.

[161] Perez, S. (Dec. 20, 2021). YouTube TV settles its contract dispute with Disney, credits customers $15. *TechCrunch*. As an aside, that Google's YouTube TV has a subscription price tag of $64.99, or CDN$81.50, for a bundle of 85 television channels bears a striking resemblance to the traditional cable package, thereby girding the case being made here about the convergence between these two markets/services.

Podcasts, and other specific Google products after complaining that Google superimposed its own layer of control, branding, and audience analytics around the public service media operators' content. Apart from the loss of commercial and marketing value this entailed, Google's practices also hobbled the BBC's ability to meet its mandatory obligations to collect and disclose specific types of audience information related to its online digital media operations to the U.K. media regulator, Ofcom. Finding the situation untenable, the BBC stopped using these Google services and relocated its efforts back to its own facilities. Similar cases abound, but the upshot is that the lessons they teach are being heeded by legacy media groups who want to steer clear of such pressures and limits on their autonomy.[162]

Indeed, it is also clear that, lacking the clout that Disney or the BBC have, Canadian services in similar situations will face an even more serious imbalance in the terms of trade. This is why a strong regulator, equipped and willing to deal forcefully with the realities of the international audiovisual media marketplace, is needed. This is one of the key justifications for the *Online Streaming Act*, albeit one that has been lost amidst all the teeth gnashing between nationalistic Canadian content and culture supporters of the bill and free speech purists opposed to it.

A second dimension to such concerns is also emerging as Google, Amazon and Apple make deeper forays into the television, film, and video marketplace: self-preferencing and unfair cross-subsidies between monopoly (dominant) services and other services. This issue is more in line with classic telecoms regulatory measures that ban undue preference outright, but in this context, it arises as a possibility that Google could use cross-platform influence between its iconic search engine and YouTube, for example. In a similar hypothetical scenario, Amazon could do the same between its Prime Video distribution platform and AWS cloud service, on the one hand, and third-party programming services, on the other, that rely on that platform and its cloud hosting service for distribution, marketing and billing while simultaneously competing with Amazon's expanding catalogue of television and film programming included in its Prime Video service, especially after its acquisition of MGM studios earlier this year.[163]

---

[162] Cridland, J. (2019, March 25). *The end of open: BBC blocks its podcasts on Google [UPDATED]*. Podnews. For a fuller discussion of European media concerns about excessive platform dependence, see Winseck, D. & Thompson, P. (2023). Share and share alike? News sharing models in the digital media ecology: selected international case studies. Study prepared for the Department of Canadian Heritage. Gatineau, QC: Department of Canadian Heritage, pp. 68-69. Other examples are raised in EBU (Jan. 23, 2023). Is big tech tampering with media content? Brussels: EBU. Another example closer to home was the decision by Elon Musk to slap the government-funded media label on the CBC's Twitter account at the behest of opposition party leader, Pierre Poilievre, earlier this year (a move that it also applied to other public service broadcasters, from NPR in the US, to the BBC in the UK, before reversing that decision a short-time later amidst a firestorm of controversy). See Scherer, S. (April 17, 2023). Canada's public broadcaster's Twitter account labeled 69% Government-funded Media'. *Reuters*.

[163] Maas, J. (March 17, 2022). Amazon closes $8.5 billion acquisition of MGM studios. *Variety*.

The question for here is whether the measures in the *Online Streaming Act* that are ostensibly designed to address such issues are up to the task?[164] While it is probably too early to tell, the fact that the relevant provisions are vague does not inspire confidence. They also rely on the discretionary and permissive language of “may” and “should” in terms of what the CRTC may do versus clear, emphatic statements telling the Commission what it *must* do,[165] as is the case in the *Telecommunications Act* and similar such language that has been included in the *Online News Act*.[166] Furthermore, that the complex cluster of issues that such measures are meant to deal with are all punted to the Commission to sort out, does not inspire confidence, either.

The Liberal government’s framing of the *Online Streaming Act* as being concerned mostly with Canadian content issues rather than the structural issues being raised here—a framing that has been picked up on by the loudest voices in the debate—also does not bode well. Nor does the positioning of domestic communications and media conglomerates such as Bell, Rogers, Shaw, and Quebecor as national champions serving on the front line of defense against international “web giants” inspire confidence.

To sum up this section, market and gatekeeping power is well-established in traditional BDU markets, and nascent when it comes to online aggregators and distributors such as Amazon, Apple and Google. As these two sectors converge, competition between powerful domestic and international firms will intensify. While this will likely be beneficial in several respects, the CRTC and the Competition Bureau will also need expanded powers to deal effectively with both groups of powerful actors. This could include thresholds and asymmetric obligations for players with significant market and gatekeeping power, subject to periodic review, similar to the *Digital Services Act*, *Digital Markets Act* and the *Audiovisual Media Services Directive* in Europe as well as the suite of bills designed to bolster antitrust laws in the United States—points that we will return to

[164] See Canada (2023). *Online Streaming Act* (information sheet); Canada (2023). *Broadcasting Act* (legislative text). Canada (2023). sec. 9.1(h).

[165] Forum for Research and Policy in Communications (Sept. 22, 2022). *Practical and Necessary Changes To ensure that the Online Streaming Act achieves Parliament’s goals—Submission to the Senate Standing Committee on Transportation*. Ottawa: Author, p. 12.

[166] Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text). See sec. 51, which explicitly *prohibits* digital news intermediaries, i.e. Google, Facebook, or other designated entities, “from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage.”

in the final section of this report where proposals for a new phase of communications and internet regulation are taken up.[167]

While these issues will become more acute in the near future, we must also keep our eye on the long-standing reality that concentration in the television distribution marketplace continues to be much higher than in both the retail internet access and mobile wireless markets. This is why existing regulatory measures aimed at reining in prices, unbundling bloated cable packages for consumers, promoting stand-alone online video services, and encouraging wholesale access to broadband internet infrastructure continue to be justified. Those measures, for the most part, were implemented by past Conservative governments and the CRTC under Jean-Pierre Blais' leadership, and carried on during the Liberal's first government, but the Commission under its last leadership and the Liberal government's resolve have dropped the ball on these issues.

What Rogers really wanted . . . and got

When Rogers and Shaw announced their deal on March 15, 2021, the plan was for Rogers to acquire all of the company. That did not happen. Instead, in the face of stiff opposition from the Competition Bureau, and raised eye-brows from Minister Champagne and the INDU committee, it had to spin-off Freedom Mobile to Vidéotron (but not Shaw Mobile) for $2.85 billion—a value equal to just over ten percent of the transaction. In other words, instead of getting one hundred percent of what it was after, Rogers got nine-tenths of what it wanted, or about eighty percent if we use Freedom Mobile's contribution to Shaw's total revenue as our guide.

This reflects the fact that the transaction was never primarily about Freedom Mobile and mobile wireless services. Instead, it was always first and foremost about obtaining the extensive wireline assets that Shaw had in Western Canada and a few other strategically important places across the country. Those connections are becoming increasingly important in the context of emerging 5G networks because those networks depend on many, many small cells each connected to a wired backbone. While there is no doubt that Rogers also wanted to remove Freedom Mobile from the scene given that it was having its greatest impact right in Rogers backyard, the largest and most lucrative wireless market in Canada, i.e. Ontario, the real jewel in the Shaw crown that Rogers was after was the very substantial amount of backhaul internet capacity and wired connections within and between cities throughout Western Canada that Shaw had.

[167] European Commission (2020). Contestable and fair markets in the digital sector (*Digital Services Act Package*--contains both *Digital Service Act* + *Digital Markets Act*); United States, House Committee on the Judiciary (June 23, 2021). *H.R. 3843, the Merger Filing Fee Modernization Act of 2021*; *H.R. 3460, the State Antitrust Enforcement Venue Act of 2021*; *H.R. 3849, the Augmenting Compatibility and Competition by Enabling Service Switching Act of 2021 or the ACCESS Act of 2021*; *H.R. 3826, the Platform Competition and Opportunity Act of 2021*; *H.R. 3816, the American Choice and Innovation Online Act*; *H.R. 3825, the Ending Platform Monopolies Act. Bills, Amendments, Votes*. Thanks to Dr. Ana Bizberge from the National University of Quilmes, Buenos Aires, Argentina, for helping clarify these points, in particular with respect to 'asymmetrical obligations'.

To help get a better grasp of why, it's necessary to introduce some background regarding the extent and value of Shaw's wireline operations. To start, Shaw always had a big stock of wireline facilities given its early status as the monopoly cable provider in Alberta and British Columbia. However, it added greatly to that by buying a lot of new capacity in the early 2000s as the dot.com bubble was coming undone and as it was investing large sums into its Big Pipe project. This project involved building a new national fibre backbone network to support the company's own retail broadband internet services as well as the wholesale operations it was providing to other ISPs and large institutional business and government users across Canada.

Shaw got a big jump on this project when it acquired 6,400 kilometers of dark fibre—or 77,000 kilometers of fibre strand since each cable contained a dozen fibre strands—in Canada and the U.S. from 360networks. The latter was one of the new upstart firms that was seen at the time as the posterchild of a new era of robust telecoms and internet competition, but which was already on the verge of going bankrupt. This early acquisition in support of its "Big Pipe" project gave Shaw a significant amount of transmission capacity on inter-city routes between Vancouver, Calgary, Winnipeg and Toronto, with spurs into the US to Buffalo, Seattle and Sacramento. Shaw was also set to acquire another 5,800 kilometers of dark fibre from 360networks later in 2000, although it is not clear if that came to pass as the latter company had entered into bankruptcy proceedings by that time.[168]

At the same time that Shaw was going full bore on its "Big Pipe" project, Bell was also building out its own broadband fibre infrastructure across Canada and developing a national wholesale business to match. To this end, Bell acquired sgnificant fibre assets of its own from the bankrupt 360Networks in 2004 and grafted them on to this effort. In western Canada, Bell also entered into a network sharing agreement with TELUS in 2001 to support both companies' national wireless operations in regions where each partner had minimal presence, a partnership that has been renewed many times since and remains intact to this day.[169] Bell also buttressed its role as a national wholesale broadband infrastructure operator in 2005 by buying back the 40% stake in Bell West that it had sold earlier to MTS.[170]

Rogers, in contrast, hardly had any such capacity, after having traded away such assets in the 2000 deal it struck with Shaw to divvy up the country into Cable Monopoly East and Cable Monopoly West, as we saw earlier. Rogers appears to have been regretting that move and its bid to acquire Shaw is best seen as an attempt to reset the clock on

---

[168] Shaw (2002), *Annual report, 2001*, p. 15; Shaw (2006), *Annual report, 2005*, p. 5. The first acquisition was for its' "southern strategy" network of dark fibre, presumably because of the spurs into the U.S., while the promise of another 64,000 at the end of the year as part of Shaw's later acquisition from 360networks was the cornerstone of its "northern strategy".

[169] Brethour, P. (Oct. 18, 2001). Bell, TELUS to piggyback on each other's network, *The Globe and Mail*; Rewheel/DigitalFuel Monitor (2019). Root cause of weak competition in the Canadian wireless market.

[170] BCE, AR 2004, pp. 35, 95.

what, in hindsight, looks to have been a bad business decision. By getting this absolutely central feature of the transaction past competition regulators, Rogers, indeed, got what it wanted.

These claims about the absolute centrality of Shaw's wireline segment to the deal is also buttressed by looking a little closer at what it obtained. Shaw's wireline segment was healthy and the cornerstone of all its activities and future growth opportunities. In terms of revenue, the wireline side held steady at just over $4 billion between 2018 and 2022, with losses from cord cutting on the BDU side offset by gains on the internet access side. Although the growth of Freedom Mobile since 2016 and Shaw Mobile in 2020 had assumed a bigger place within the Shaw corporate empire, wirelines revenue from the company's internet access and BDU services were three times that of Freedom Mobile and Shaw Mobile, and profits were higher on that much bigger revenue stream, too.[171]

As we noted earlier, the deal saw Rogers double its share of internet access and BDU markets. If we look at both of those sectors together, we can see that, whereas Rogers accounted for 15-16% of combined revenue before the merger, the post-merger Rogers now controls over a third of the combined wireline internet access and BDU markets in Canada. This catapults it to the top of the ranks in these two domains, with corresponding spikes in both of the concentration metrics we use—concentration ratios and the HHI method—as well.

Of particular importance in terms of assessing the effects of the transaction beyond just market share it is essential to note that while Shaw was slashing investment and marketing programs at Freedom Mobile, as discussed earlier, it was steady on the throttle on the far bigger wireline side of its business. In fact, Shaw continued to plow investment into its wireline plant throughout the merger review period. Thus, whereas capital investment for its wireline segment averaged $836 million per annum between 2018 and 2021, it was $952 million last year. The stark contrast between Shaw's wireless side being starved of capital investment while its wireline segment, in fact, picked up the pace can also be seen in the fact that while capital expenditure rates had averaged just under 20% between 2018 and 2021, in 2022, it was 23%.

One more observation on this point helps to drive home its significance: whereas capital investment in wireline had been, on average, two-and-a-half that of the wireless side between 2018 and 2021, in the face of its pending deal with Rogers, last year Shaw plowed seven-and-a-half dollars of investment into its fibre optic networks and a general upgrade of its cable-internet system for every dollar of investment into Freedom Mobile. Shaw's investment in Freedom Mobile, in contrast, had been slashed in half.

[171] Shaw *Annual Report 2022*, pp. 8-35; Shaw *Annual Report 2020*, pp. 51-83.

The differential treatment of its wireline and wireless segments certainly gives a strong sense of priorities. Moving to a broader view of the potential outcomes of the transaction down the road, we have been careful so far to stress that, insofar as the spin-off of Freedom Mobile to Vidéotron is concerned, we think it is too early for predictions. Vidéotron is certainly a capable competitor in Quebec and Ottawa, and it may just bring that zest to the rest of Ontario, Alberta, and British Columbia.

But, even if it does succeed, this cannot explain away the fact that real action was always on the wireline side, and on that score, Rogers got what it wanted, and competition is the worse off for it. Second, there is also no turning back the clock on the lost two years of wireless competition that has occurred, and all that has meant in term of consumer benefits, lost employment, and potentially even more competition in 5G services. Lastly, we remain skeptical that the remedy forced upon us by the Competition Tribunal will deliver the results anticipated. A key reason for this is that the viability of Vidéotron's Freedom Mobile as a maverick fourth mobile operator is incongruous with Rogers' and Shaw's justifications of their tie-up on the grounds that Rogers needs the fibre inter-city links and urban networks that Shaw had to quickly build out a national 5G wireless network.

The Competition Tribunal, with the approval of the Federal Court of Appeal on appeal by the Competition Bureau, agreed with Rogers and Shaw that, in fact, having one's own facilities was not essential, and that the web of sweetheart deals that they had struck with Vidéotron, as well as the CRTC's wireline wholesale access regime, would ensure that, under new ownership, Freedom Mobile's chances of success were very good. Yet, that flies in the face of Rogers and Shaw's arguments just relayed a moment ago and on almost every other occasion when they have had the opportunity to emphasize the sanctity of facilities-based competition. It also clashes with decades of experience in which they and other incumbents have done everything in their powers to scupper the prospects of erstwhile competitors taking advantage of regulatory measures to make a serious dent in their market dominance and profits.

This is undoubtedly why the Competition Bureau continued to look askance at proposals by the companies to spin-off Freedom Mobile to Vidéotron (or any other suitor without such facilities). Moreover, the idea that the Competition Bureau, CRTC, and ISED should be acting like bankers helping the two companies to create a viable post-merger company that will redress regulators' and public concerns about excessive market power is also unrealistic.[172] That the Competition Tribunal and Federal Court of Appeals ignored all this seems divorced from reality.

---

[172] Competition Bureau (Sept. 2, 2022). Rogers - Shaw - Fresh as Amended Reply to the Response of Rogers Communications Inc. of the Commissioner of Competition. *Competition Tribunal*; Genakos C, Valletti T & Verboven F (2018) Evaluating market consolidation in mobile communications. *Economic Policy*, *33*(93): 45-100; Kwoka J Tommaso V (2021) Unscrambling the eggs: breaking up consummated mergers and dominant firms. Industrial and Corporate Change. Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a "no remedies" policy for merger enforcement. *Competition Policy International*.

Online and traditional media services: New actors & new dynamics are expanding and diversifying the media economy

The next section of this report looks at the following online and traditional media services media service sectors:

- internet advertising
- broadcast TV
- pay and specialty TV
- online video services (SVOD, TVOD, AVOD)
- radio (ad-funded, public service and paid subscription)
- traditional music (physical, publishing, live concerts)
- online music (paid subscription and ad-funded streaming services and downloads)
- games (console, PC and mobile)
- app distribution
- newspapers
- magazines
- online news

Our first report in this series highlighted four key themes that should shape our understanding of the evolution and upheaval that has been taking place in these sectors.

1. All online and traditional media services sectors have grown considerably over the long run, but four such sectors that have historically relied primarily on advertising have run into ever more dire straits in the past decade-and-a-half: broadcast TV, radio, newspapers and magazines.

2. Online video and music services, as well as video games and app stores are rapidly becoming the engines of growth across the AVMS sectors. The combined revenue of these digital media sectors soared more than seven-fold from $1.3 billion to $9.6 billion between 2011 and 2022.

4. These developments not only point to the rise of a fast-growing set of online media services but also that subscriber fees and direct payments are the drivers of the media economy. In fact, in the decade after the financial crisis of 2008, advertising spending either grew very slowly (i.e. in absolute terms), stagnated (i.e. on a per capita basis), or declined (i.e. in inflation-adjusted real dollar terms), although those conditions have abated in the last two years amid exceptionally strong growth.

5. Online advertising has been the exception to the above throughout this period and hit $14.4 billion in 2022.

6. Total revenue for online media services inclusive of online advertising reached $24.2 billion last year. These sectors outstripped revenue for traditional media in 2019 and currently account for just under a quarter of all revenue across the network media economy.

Combined, these trends embody the ongoing transformation of the network media economy from one rooted in advertising-funded traditional media content services to a more complex array of online and legacy media services, where subscriber fees and direct payments account for the lion's share of all revenue. In sum, the digital media industries have added immensely to the size, character and complexity of the network media environment. They have also brought global actors such as Google, Amazon, Meta, Apple, Microsoft, and Netflix deeper into the media landscape in Canada (and other countries around the world) than ever before.

While there is no doubt that domestic communications and media companies in Canada are facing intensifying competition from these planetary-scale internet giants, what remains to be seen is whether these trends will create more consolidation or more competition and pluralistic diversity.

Addressing that question is the task of the following sections in this report.

Internet advertising: The case for why Google and Meta dominate online advertising in Canada

Anchor findings

- Google and Meta have consolidated their grip over Canada's online advertising ecosystem over the past decade, but in recent years they have been joined by a third entity: Amazon.

- Four factors are buttressing the Google-Meta duopoly: dominance of their core markets; the shift to the mobile internet; a steady stream of acquisitions; and vertical integration.

- The level of horizontal and vertical integration by online media content aggregators and distributors is increasingly attracting regulatory scrutiny.

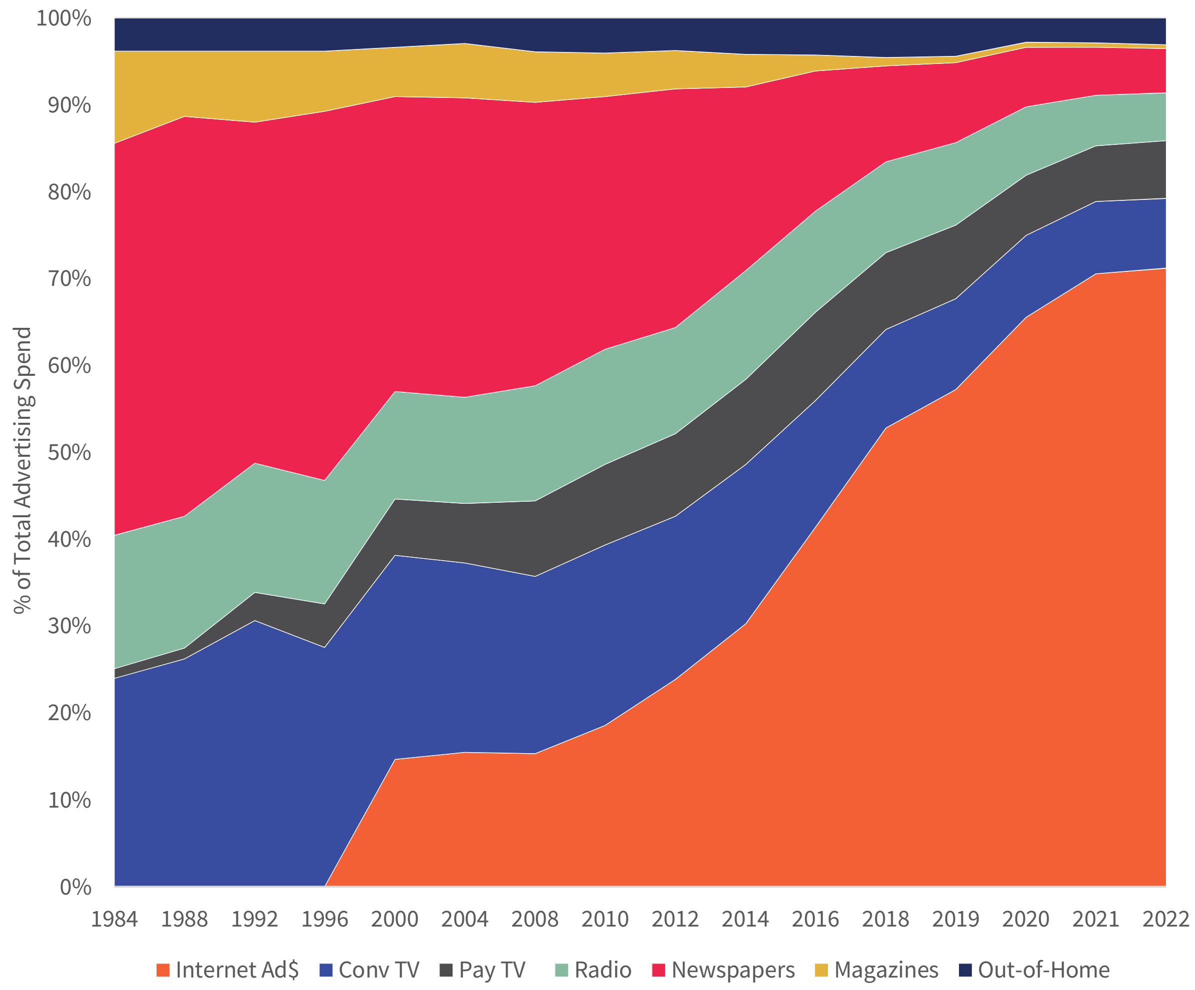
The next several pages focus on the two undisputed goliaths in online advertising—i.e. Google and Meta—to chart and explain the forces that have allowed them to lock-in their stranglehold over online advertising, while also being attentive to Amazon's rise as a significant third player in recent years. We then build on this analysis to ask whether these internet giants also dominate the advertising market across all media?

The internet has long been held up as an antidote to ownership concentration in the "old media", but the reality is that many core segments of the internet are already extremely concentrated and are becoming more so with every passing day.

Take internet advertising, for example. Consistent with its track record over the past two decades, the online advertising market grew swiftly, reaching $14.4 billion last year. As of 2022, it made up for 71% of the $20.2 billion in total advertising spend across all media in Canada. This was up greatly from four years earlier when it comprised just over a half of all advertising spending. In short, advertising is now centralized on the internet. Moreover, the pace at which advertising spending has shifted to the internet has accelerated in recent years.

Figure 20 below illustrates the changing mix of advertising spending across different media over the time frame covered by this report.

Figure 20: Internet advertising spending outstrips advertising on all other media by a widening margin, 1984-2022



Source: see the "Fig 20 internet vs TV ad$" sheet in the Excel Workbook accompanying this report and the "Total Revenue" sheet in the GMIC Project—Canada open data sets.

The two biggest beneficiaries of these trends have been Google and Meta. Google's revenue from its online advertising operations in Canada last year was an estimated $7.3 billion, up from $5.8 billion the year before and more than double what it was five years earlier. By our estimate, $930.5 million of that total was from its advertising-based YouTube video sharing platform. At present, Google single-handedly accounts for just over half of all internet advertising spending in Canada—a figure that has stayed fairly stable over the past half decade, but within the context of a fast-growing pie.

While the company has diversified its operations over time, Google still derives 79.4% of its revenue from advertising spending and its dominance of internet advertising begins with its control of the search engine market and YouTube. That said, subscription-based

“As of 2022, Google had a 91% market share of the desktop search market”

and paid services have become more prominent in recent years, and this reflects and is shaping its participation in a growing range of markets.[173]

The early years of the commercial internet in the 1990s and early 2000s saw an eclectic variety of search engines: AltaVista, Excite, Go, Lycos, Yahoo!, etc. However, most of those entities went bankrupt or were quickly taken over by other companies, especially in the aftermath of the dot.com bubble’s collapse. By the mid-2000s, this early phase of competition in the search market gave way to winner-take-all conditions.[174]

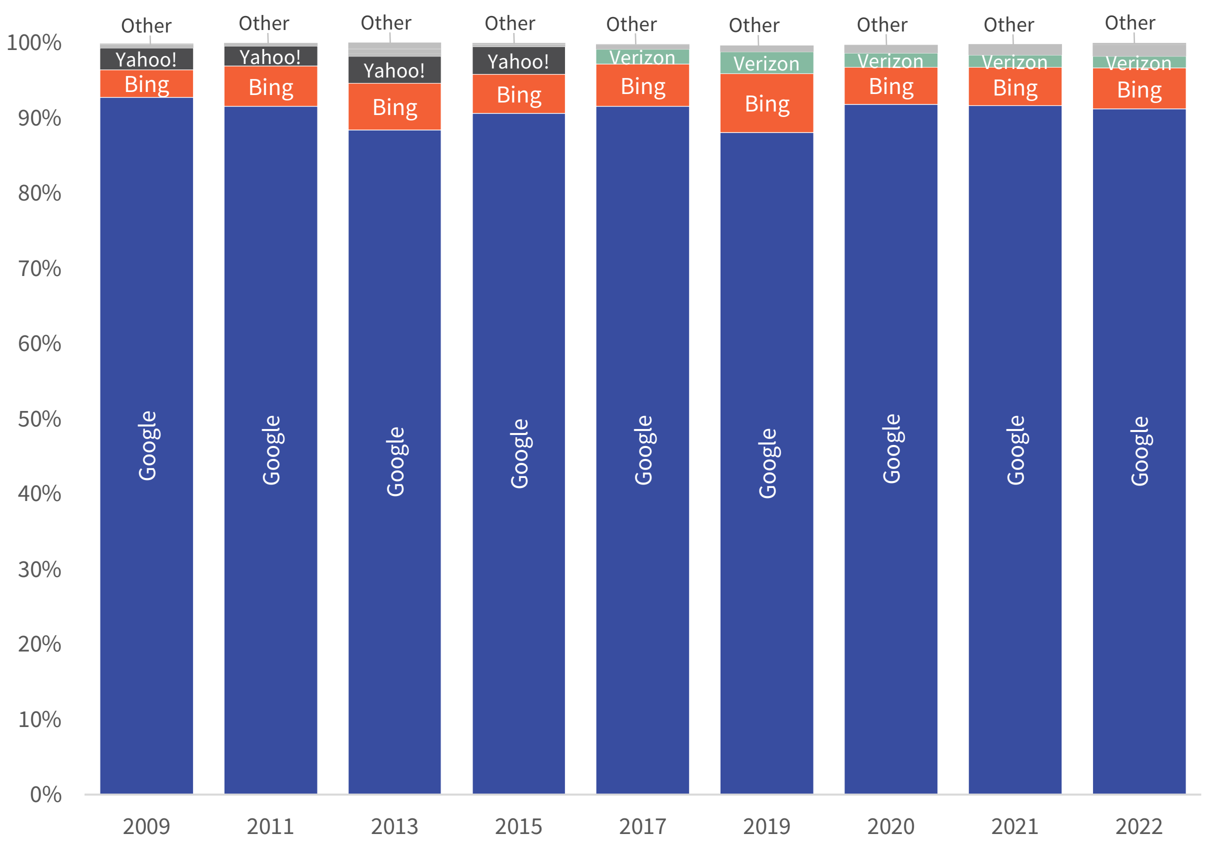
Since that time, concentration levels in the desktop search engine market have remained in the high 90 percent range based on the CR4 method and in the 7,500-8,700 range based on the HHI approach. As of 2022, Google had a 91% market share of the desktop search market; erstwhile alternatives such as Bing, Yahoo! (Verizon Media) and DuckDuckGo trailed far behind with 5.4%, 1.6% and 1.4%, respectively. Figure 21 depicts conditions in Canada since 2009.

---

[173] Alphabet (2023). *Annual Report, 2022*, p. 59.

[174] See van Couvering, E. (2011). Navigational media. In Winseck, D. & Jin, D. Y. (eds.) (2011). *Political economies of media*. London, Bloomsbury; Hindman, M. (2018). Internet *trap*; Noam, E. (2016). *Who owns the world’s media?*

Figure 21: Search engines, market shares, and concentration levels, 2009-2022



CR4	99.9%	99.8%	98.2%	99.7%	99.7%	99.6%	99.6%	99.7%	99.6%
HHI	8617.7	8400.7	7862.5	8239.4	8408.0	7815.5	8455.9	8420.9	8351.4

Sources: see the "Figure 21 Search Engines" sheet in the Excel Workbook accompanying this report and the "Search Engines" sheet in the GMIC Project—Canada open data sets.

Google's grip on the mobile search sector is even higher, hovering between 96.8% last year and 99.5% a decade ago. Consequently, the HHI score for the mobile search market has been nearly off-the-charts for over a decade, bouncing between 8,347 (2014) and 9,900 in 2009 (recalling that an HHI score of 10,000 represents a monopoly). Last year, it was 9,364. Thus, it is not just that these are stratospheric levels of concentration but, crucially, that they have been entrenched for well over a decade.

Like Google, Meta's revenue in Canada has also soared over time, from $181.4 million in 2011 to just over $3.8 billion last year, which represented a slip of three percent from 2021. This was the first time Meta's revenues in Canada declined year-over-year. And within the context of a growing market, this meant that Meta's share of internet advertising revenue slipped from 31% in 2021 to 27% last year. For Meta, this must be a

“Meta’s revenue in Canada has also soared over time, from $181.4 million in 2011 to just under $3.8 billion last year”

cause for significant concern, given that close to 97.4% of the social media giant’s revenue comes from advertising.[175]

Meta’s clout is grounded in its decade-long position as the foremost social media service in Canada and the world. In fact, its share of social media traffic, including Instagram, slipped to just under 60% last year for the first time since 2014. In the interim, however, its share of social media audiences has hovered between that figure and three-quarters in any given year, although there has been a clear downward trajectory since 2017.

In 2022, Meta’s three closest rivals, Twitter, TikTok, and Snapchat accounted for 13.9% 13.5% and 13% of unique monthly visitors to social media sites, respectively. To put that in perspective, each of its main rivals had less than one-quarter of Meta’s audience. Nonetheless, Meta’s rivals have doubled their combined market share to 40.4% in the last five years. Several recent inquiries conclude that this story basically repeats itself for Australia, Germany, the U.K., and the U.S.[176]

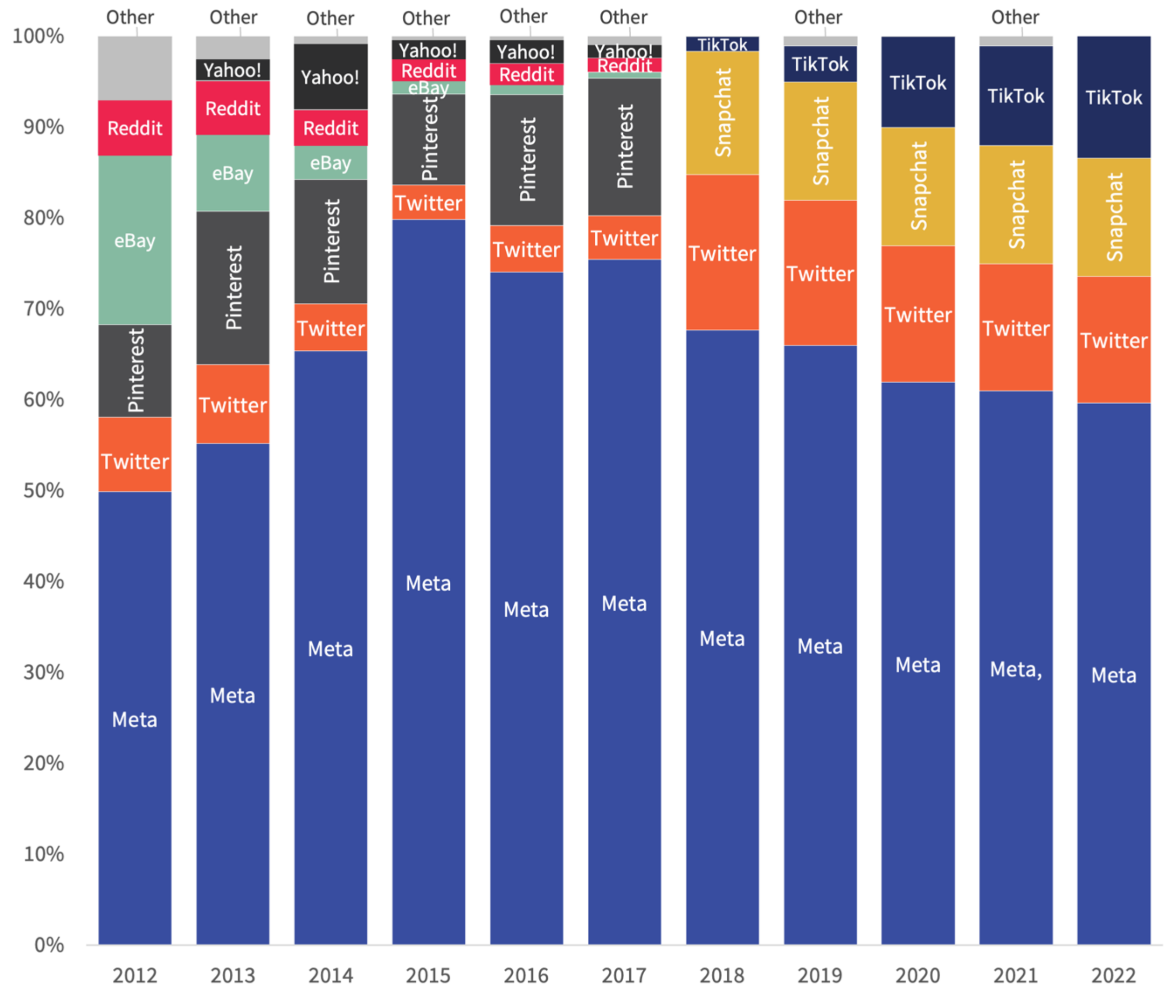
Figure 22 below, illustrates these points.

---

[175] Meta (2023). *Annual Report 2022*, p. 70.

[176] Australian Competition and Consumer Commission (ACCC) (2021) *Digital advertising services inquiry. Final Report*; Bundeskartellamt (2019) *Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing (Case Summary)*; United Kingdom, Competition and Market Authority (2020). *Online platforms and digital advertising*, p. 245; United States Federal Trade Commission (2021). *Federal Trade Commission vs Facebook, First amended complaint for injunctive and other equitable relief*; also see Winseck & Bester (2022). Regulation for a more democratic internet.

Figure 22: Social media sites, 2012–2022



	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
CR4	89.9	89.2	91.5	96.1	96.2	96.9	100	99.0	100	99.0	100
HHI	3049	3523.9	4573.1	6510.4	5743.2	5957.4	5063.2	4797.0	4338.0	4207.0	4105.0

Sources: see the "Fig 22 Social Media" sheet in the Excel Workbook accompanying this report and the "Social Media Platforms" sheet in the GMIC Project—Canada open data sets.

The gap between Meta and its closest rivals is even more stark when considered from the point of view of the value of advertising revenue that accrues to each of these social media services. Meta's revenue of just under $4 billion was five-and-a-half times its three closest rivals' revenue in Canada—TikTok, Snapchat, and Twitter—combined in 2022, although this gap has also been closing in recent years.

While Facebook's user base has stalled in recent years in Canada, the US and Europe, in most other regions of the world it continues to grow swiftly. Why? Four underlying forces continue to drive the social media giant's expansion:

- "blockbuster" and competition-killing acquisitions: Instagram (2012) and WhatsApp (2014).
- expanding ARPU for "developed markets"; in Canada, for instance, Facebook's annual Average Revenue Per User (ARPU) has soared from $12.09 in 2011 to $149.02 last year (or from $1 per month to $12.42 per month, although here again the decline from $13.04 from the year prior is worth noting).[177]
- expansion into "developing markets"—i.e. in Asia-Pacific, Latin America, the Arab World and Africa—where user acquisition potential is enormous, but ARPU is a fraction of what it is in Canada, the U.S. and Europe.
- weak privacy and data protection laws that have begot business models predicated on the unlimited harvesting of people's data.

Google and Meta's embrace of the mobile internet has also girded both companies' efforts to consolidate their grip on the online advertising market. That strategy, in turn, has been an integral part of a constant stream of acquisitions by both companies. To this end, for example, Facebook has acquired messaging services (WhatsApp) and social media sites (Instagram) to eliminate competitive threats to its core business while it has also moved aggressively into political campaign management, marketing campaigns, news delivery, virtual reality, and more.

Together, Google and Meta accounted for just over three quarters of the online advertising market in 2022 (77.3%). This broke a long-running streak in which the two companies' share only seem to go in one direction: up. The current level is still far above what it had been just five years ago, but it is off by an appreciable amount from the year before, when the two digital juggernauts accounted for four-fifths of internet advertising dollars in Canada. As of now, it is still accurate to say that Google and Meta's duopoly has hardened rather than softened over time.

At the same time, Amazon has emerged swiftly since 2018 to take a sizeable share of the online advertising market. As of last year, it had an estimated $1.5 billion in revenue from the online advertising market in Canada, or a 10.6% share of the market. In the years ahead, it will also be interesting to watch if the digital duopoly forged and kept by Google and Meta over the past decade morphs into a tight, three-way oligopoly that includes Amazon. To the degree that it does, this will count as another domain of the

[177] Calculations based on data from Meta/Facebook annual reports. For more details, see the "Figure 17 Facebook Growth" data sheet in the Excel Workbook accompanying our first report and the "internet advertising" sheet in the GMIC Project—Canada open data sets.

77.3%

Google and Meta accounted for just over three quarters of the online advertising market in 2022. This is change since 2021, in which the companies had four-fifths of internet advertising dollars in Canada.

10.6%

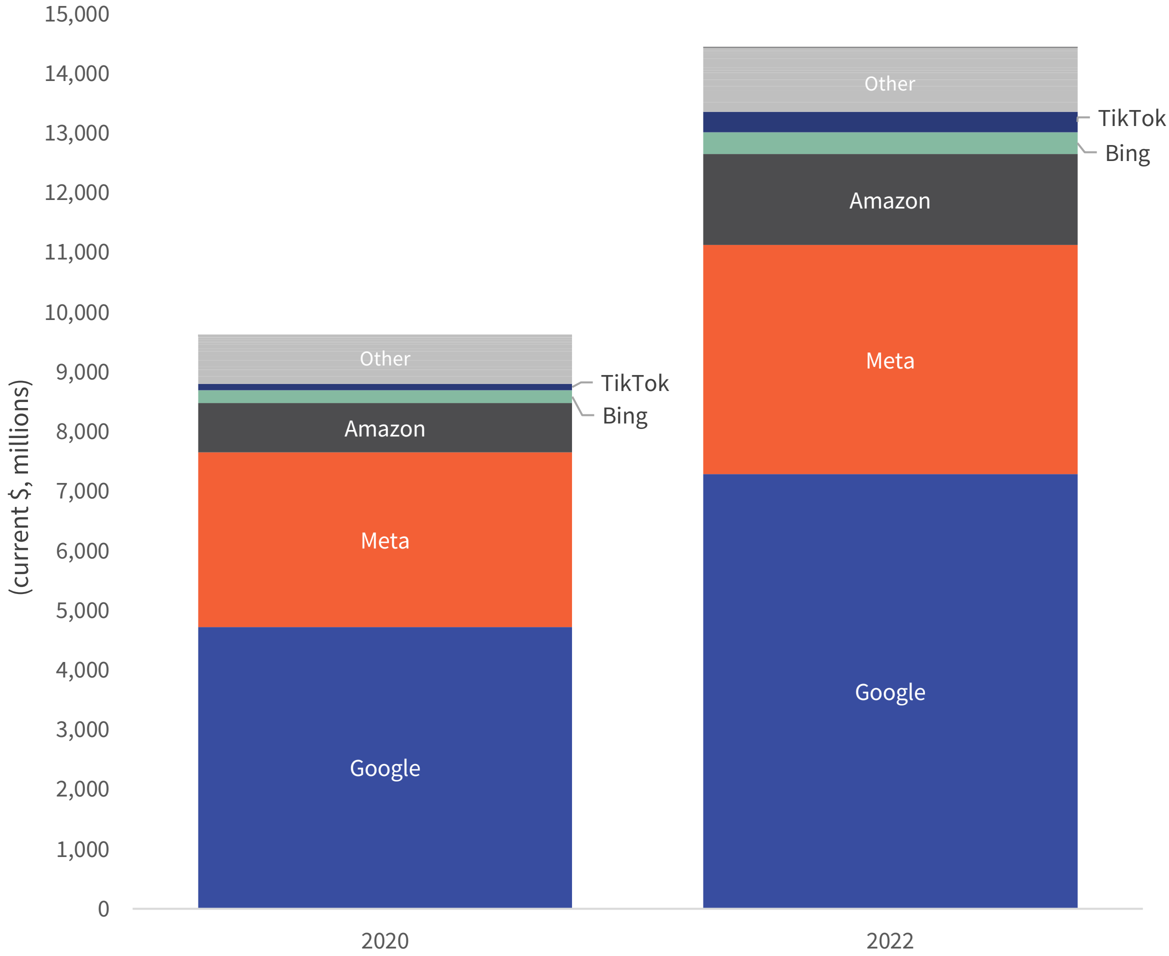
Since 2018, Amazon has taken a sizeable share of the online advertising market. As of 2022, it had an estimated $1.5 billion in revenue from the online advertising market in Canada, or a 10.6% share.

network media economy in which winner-takes-all dynamics consolidate control at the top while leaving everybody else far behind.

Indeed, this is already visible insofar that Google, Meta and, to a lesser extent, Amazon stand in a league of their own. Trailing far behind them is a second tier of firms with revenue from online advertising in the $100-400 million range, and a one- to three-percent share of the market. In rank order, this group consists of: Microsoft (Bing), TikTok, Snapchat, Twitter, Postmedia, and Pelmorex (the Weather Network). Add Canada's largest broadcasters and newspaper publishers (i.e. the CBC, Bell, Rogers, and Quebecor) and the "big 10" recipients of online advertising revenue in 2022 accounted for an estimated 90.5% of the $14.4 billion market.

Figure 23, below, depicts the swift growth and consolidation of Google and Meta's dominance of internet advertising since 2014, along with the significance of Amazon's emergence in the last few years. It also shows the shrinking place occupied by everybody else.

Figure 23: Internet advertising: Revenue, market shares and concentration scores (based on revenue), 2020 and 2022



Google + Facebook Share	79.5%
CR4	90.2%
CR10	90.3%
HHI	3422

Google + Facebook Share	77.3%
CR4	90.4%
CR10	90.5%
HHI	3403

Sources: see the "Fig 23 internet Ad$" sheet in the Excel Workbook accompanying this report and the "Total Revenue" sheet in the GMIC Project—Canada open data sets.

However, we must also temper our understanding of these dynamics given testimony in the recently concluded Google digital advertising case that showed that the company itself sees Amazon as expanding the online advertising market and as a specialized firm deploying online advertising within the confines of its e-commerce platform. As internal Google documents introduced at the trial revealed, Amazon has helped to expand the online search advertising market and its users tend to turn to Google more rather than substitute Amazon's search and advertising tools for its own. From this point of view, Alphabet (Google) and Amazon are not competitors but complementary services tilling their own gardens.[178]

This account also probably underestimates Google and Meta's market dominance if we consider that "search" and "online video" (two of Google's home bases) and "social media" and "display" (Meta's domains) are distinct markets with minimal overlap. While data on this point is thin, using the revenue data for each of those categories as presented by Iab.Canada, it can be estimated that Google currently accounts for 87% of "search" and "online" advertising revenue while Meta accounts for just under three-quarters of "social media" and "display" advertising revenue.[179]

This result tallies well with the Competition Markets Authority in the U.K. where Google was found to control 90% of the search advertising market in that country in 2019; while Facebook held an estimated 50-60% of advertising spending on online display advertising.[180] It also aligns well with testimony in the Google digital advertising case that found that Google, Meta and Amazon try to stay in their own lane and avoid head-to-head competition as much as possible.[181] In other words, general search is a distinct market from display and social media advertising, or Amazon's advertising vertical.

It is precisely this kind of evidence that has spurred on one regulatory inquiry or case against Alphabet and Meta after another in, for example, Australia, Germany, the U.K., and the U.S.[182] This is also one of the driving factors behind why the U.K. created a new Digital Markets Unit two years ago. It is also why that country's Competition and Market Authority (CMA) blocked Meta's acquisition of Giphy last year, a service that controls popular GIFs and emoji. While GIFs and emojis are free for people to use they are a means to obtain user data and increase the stickiness of the sites that use them and, therefore, to buttress Meta's dominance of social media.

Already in its initial examination of the proposed merger, the CMA registered significant concerns and its intention to block the deal. The CMA argued that this was necessary because allowing Meta to take-over Giphy "would result in a substantial lessening of

[178] United States Department of Justice (2023). U.S. and Plaintiff States v. Google LLC, p. 38; Testimony of Prof. Michael. D. Whinston (Oct. 5, 2023). U.S. and Plaintiff States v. Google LLC.
[179] Iab.Canada (June 2023). 2022 Internet Ad Revenue Survey.

[180] United Kingdom, Competition and Market Authority (2020). *Online platforms and digital advertising*, p. 245; United States Federal Trade Commission (2021). *Federal Trade Commission vs Facebook*; also see Winseck & Bester (2023). Regulation for a more democratic internet.

[181] Testimony of Prof. Michael. D. Whinston (Oct. 5, 2023). U.S. and Plaintiff States v. Google LLC, p. 11.

[182] Australian Competition and Consumer Commission (ACCC) (2021) *Digital advertising services inquiry. Final Report*; Bundeskartellamt (2019). *Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing (Case Summary)*; United Kingdom, Competition and Market Authority (2020). *Online platforms and digital advertising*; Germany, Bundeskartellamt (Oct. 5, 2023). *Ongoing proceedings against large digital companies*; Germany, United States, Department of Justice (Jan. 24, 2023). United States Department of Justice (2023). U.S. and Plaintiff States v. Google LLC.

“Google has erected a walled garden around its own services, audience data, and the online advertising system”

competition (SLC) in social media and display advertising, harming social media users and businesses in the U.K.”[183] A year later, in October 2022, the CMA blocked the deal and ordered Facebook to divest itself of Giphy.[184]

It is this tendency to lock-in their dominant position and to leverage that dominance to enter new areas that have caught regulators’ eyes. Googles’ entrenched dominance of online search, for example, has underpinned a widening array of products that now have over a billion users each: Android, Gmail, Google Play, YouTube, Maps, Photos, and Docs. Consequently, it is no longer just a search and online advertising giant but a new kind of diversified digital conglomerate with a dominant and entrenched position across several markets.

A few observations on this point are offered here, while a more complete picture of the extent of Google’s diversification and its dominance across areas it operates in will be taken up in a later section of this report. The most decisive factor buttressing Google’s dominance is that it has vertically integrated its search and online advertising functions with its own proprietary digital advertising exchange. Its take-over of DoubleClick (2007), AdMob (2010) and AdMeld (2011), amongst hundreds of acquisitions, have propelled this effort. In so doing, Google has erected a walled garden around its own services, audience data, and the online advertising system, a stark departure from the company’s original, beneficent-sounding promise to help people navigate the ‘open internet’ and to slay the walled gardens that had emerged in the late-1990s.

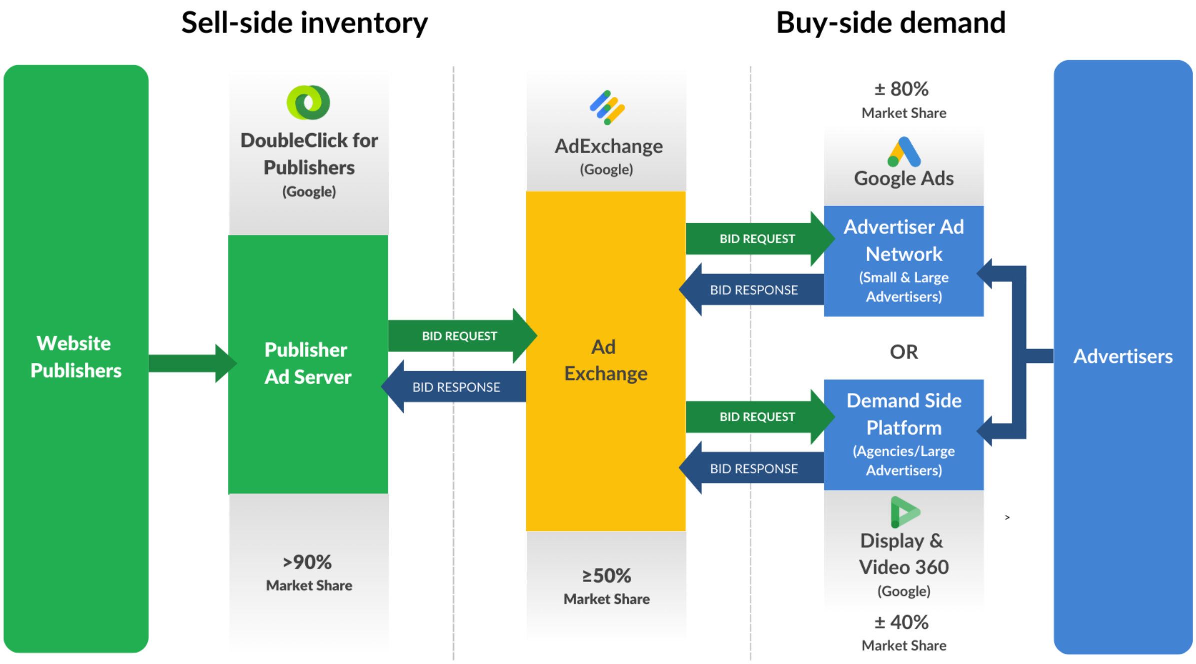
Figure 24, below, depicts the vertically integrated advertising technology stack and exchange that Google has assembled over the last decade.

---

[183] United Kingdom, Competition and Market Authority (2021). *Completed acquisition by Facebook, Inc of Giphy, Inc—Provisional Report*.

[184] United Kingdom, Competition and Market Authority (2022). *Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc Final Report*.

Figure 24: Google's vertically-integrated ad-tech stack



Source: United States Department of Justice. (2023). U.S. and Plaintiff States v. Google LLC, p. 31.

In practice, Google's control over its vertically integrated online advertising system means that media companies place their available advertising inventory with Google services on the "sell" side while advertisers then bid in real time for that inventory on the "buy" side of the exchange. In other words, it controls both sides of the online advertising market and the exchange itself in the middle and does so in ways that are impenetrable to either the actors involved or outside scrutiny.

Like Google, Meta also has its own digital advertising exchange, Meta Networks and, therefore, displays most of the characteristics just described. One consequence of this integrated control over online services, advertising exchanges, and user data is that it makes the services of both companies very sticky. A consequence of that, in turn, is that they can hold third party advertising campaigns hostage because neither the campaigns nor the underlying data used to organize and execute them can be transferred between rival platforms. This effects political advertising and electoral advertising campaigns just as much as it does business advertising campaigns, thereby raising questions of political and commercial concern. This is why both companies have come under scrutiny above and beyond competition concerns.

Google and Meta, of course, are not alone in the pursuit of such strategies. In fact, well-established domestic communications and media companies in Canada and internationally are pursuing a two-track strategy of their own: on the one hand, they are pushing governments to break-up the digital duopoly's stranglehold on the resources that underpin their dominance of online advertising, notably data related to audiences and the online advertising system. This is the direction taken, for example, in Australia's *News Media Bargaining Code* that news media organizations in Canada emulated as they crafted the *Online News Act* here in Canada.[185]

At the same time, Canada's communications and media companies are also seeking to copy the same strategies pioneered by Google and Meta by, among other things, trying to create rival online advertising exchanges of their own. Bell began to pursue such a course of action through its Relevant Ads Program (RAP) in the early 2010s, for example, but that effort was shuttered after the Office of the Privacy Commissioner (OPC) (2015) found it to be offside with respect to Canada's personal information and privacy protection law.

The OPC's description of the RAP program should put to rest any notion that Bell or any other company pursuing such a strategy is more innocent than the IT giants' strategies when it comes to personal data and privacy:

> … BCE's Relevant Advertising Program [RAP] is able to track every website its customers visit, every app they use, every TV show they watch and every call they make using Bell's network. When that information is combined with account and demographic information— such as age range, gender, average revenue per user, preferred language and postal code – which the company has long collected, the end result is a rich multi-dimensional profile that most people are likely to consider highly sensitive.[186]

While Bell shut down its RAP program in 2015, the main thrust of the effort was resurrected shortly thereafter under CRTC auspices in a bid to create a pool of audience data that would be used by the industry as the basis for advertising and other purposes (see further below).[187] The aim of this effort is not in the slightest to minimize the harvesting of personal data but to better redistribute the spoils of doing so amongst its

---

185 Australia (2021). *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021*; Turvill, W. (Dec. 2, 2021). Canada's news industry wants up to $150m annual windfall from Australia-style big tech crackdown. *Press Gazette*. The Canadian adaptation of Australian news media bargaining took the form of Bill C-18, the *Online News Act*, which ws passed earlier this year and comes into effect December 19, 2023. Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text). See Winseck, D. (April 19, 2022). Bad News: Ottawa's Proposed Online News Act Misses the Mark. *CIGI Online*.

186 Office of the Privacy Commissioner (2015), *Results of the Commissioner Initiated Investigation Into Bell's Relevant Ad Program*, Ottawa: Author, para 73.

187 CRTC (2018). *Set-Top-Box Industry Working Group–Update*. Ottawa: Author. The group consists of Shaw (Corus), Bell, Rogers, Sasktel, TELUS, TekSavvy, the CBC, Blue Ant Media, Cogeco, Eastlink, Pelmorex, the Canadian Cable Systems Association and Independent Broadcasters Group. While this gives the appearance that the effort levels the playing field, the obvious exclusion of Netflix, for example, gives the lie to that and, thus, smacks of protectionism—if in fact, the group and its goals were desirable to begin with, which is a questionable proposition to say the least. Quebecor also quit the STB Working Group in 2019. Thiessen, C. (July 5, 2019). Vidéotron to challenge CRTC ruling on set-top box data sharing. *Broadcast Dialogue*.

members under the guise that doing so will help them to better compete with the Googles and Metas of the world.

BCE moved further in this direction in late 2021 by acquiring Canada's largest data and analytics firm, Environics Analytics, to, as it touted, "open up new opportunities for advanced media advertising strategies while further enhancing content apps and other delivery platforms."[188] To keep things in perspective, however, with estimated revenue of $50 million dollars in 2020, Environics Analytics occupies a tiny place in the BCE communications and media empire, i.e. it accounts for less that 0.2 percent of the company's revenue.[189]

Nonetheless, Bell has already built on Environics Analytics by forging a joint venture with the digital ad-tech platform, Xandr.[190] Through this move, BCE has joined forces, first, with AT&T but now with Microsoft after the sale of Xandr to the latter in June 2022, in a bid to build a digital advertising platform intended to rival that of Google. Cable companies in Canada are doing the same thing but building their system around the Comcast Xfinity IPTV platform. Overall, the result is a three-way battle between Google's dominant ad-tech stack versus Bell's Environics/ Xandr system licensed from Microsoft and finally the cable companies Xfinity IPTV system.

The upshot of this three-way "battle of the stacks" is an industry-wide scramble to develop rival proprietary ad tech standards in a bid to lock advertising clients into their mutually exclusive ad systems. Beyond the data and privacy protection and market power issues these ventures raise, it is troubling that the proprietary protocols being deployed by each of these ventures supplants the shared, open protocols that have defined the internet in the past.[191] Consequently, the "essence" of the internet itself is being remade in the image of these corporate communications, internet, and media conglomerates' walled garden strategies, while the early hopes that people once had for a decentralized internet where power and control rested at the ends of the network and in the hands of its users increasingly seems like a dream from the distant past.[192]

---

[188] BCE (2021). *Annual Report, 2020*, p. 39.

[189] This estimate based on BCE's Q1 2021 Shareholder Report which states that 19.4% of the company's revenue in its "Other services" category in the wireline segment was attributable to the EA acquisition (p. 18) That revenue was $74 million in Q1 2020. That is roughly $14 million per quarter, or $60 million for the year.

[190] AT&T acquired AppNexus in 2019 (renamed Xandr).

[191] Helmond, A. (2015). The platformization of the web: making web data platform ready. *Social Media & Society*, *1*(2); Nieborg, D. & Poell, T. (2018). The platformization of cultural production: Theorizing the contingent cultural commodity. *New media & society*, *20*(11).

[192] On AT&T's acquisition of AppNexus, which it rebranded into Xandr, see AT&T (2020). *Annual report, 2019*, p. 17 and AT&T (Aug. 15, 2018). AT&T completes acquisition of AppNexus. On BCE deal with AT&T Xandr, see Connell, M. (2021). Bell Media partners with Xandr for self-serve DSP, *Media in Canada*. Also, BCE (2022). *Annual report, 2021*, p. 53.

Do Google and Meta dominate advertising across all media?

Anchor findings

- Google and Meta's dominance of online advertising already appears to be entrenched, albeit with some mounting pressure from Amazon. What is of even greater significance is the extent to which they are rapidly consolidating their grip over the entirety of the Canadian advertising market.

- The growing role of internet advertising amidst the long-term slump of other advertising sectors puts traditional media companies in the crosshairs of the internet giants, but also vice versa as the former marshal all their political, policy and lobbying muscle to bring the latter to heel.

- Regulatory solutions put forward by industry to date run the risk of being not only ineffectual but likely to leave the problem of media and internet concentration untouched while also spurring a race to the bottom on privacy and personal data protection.

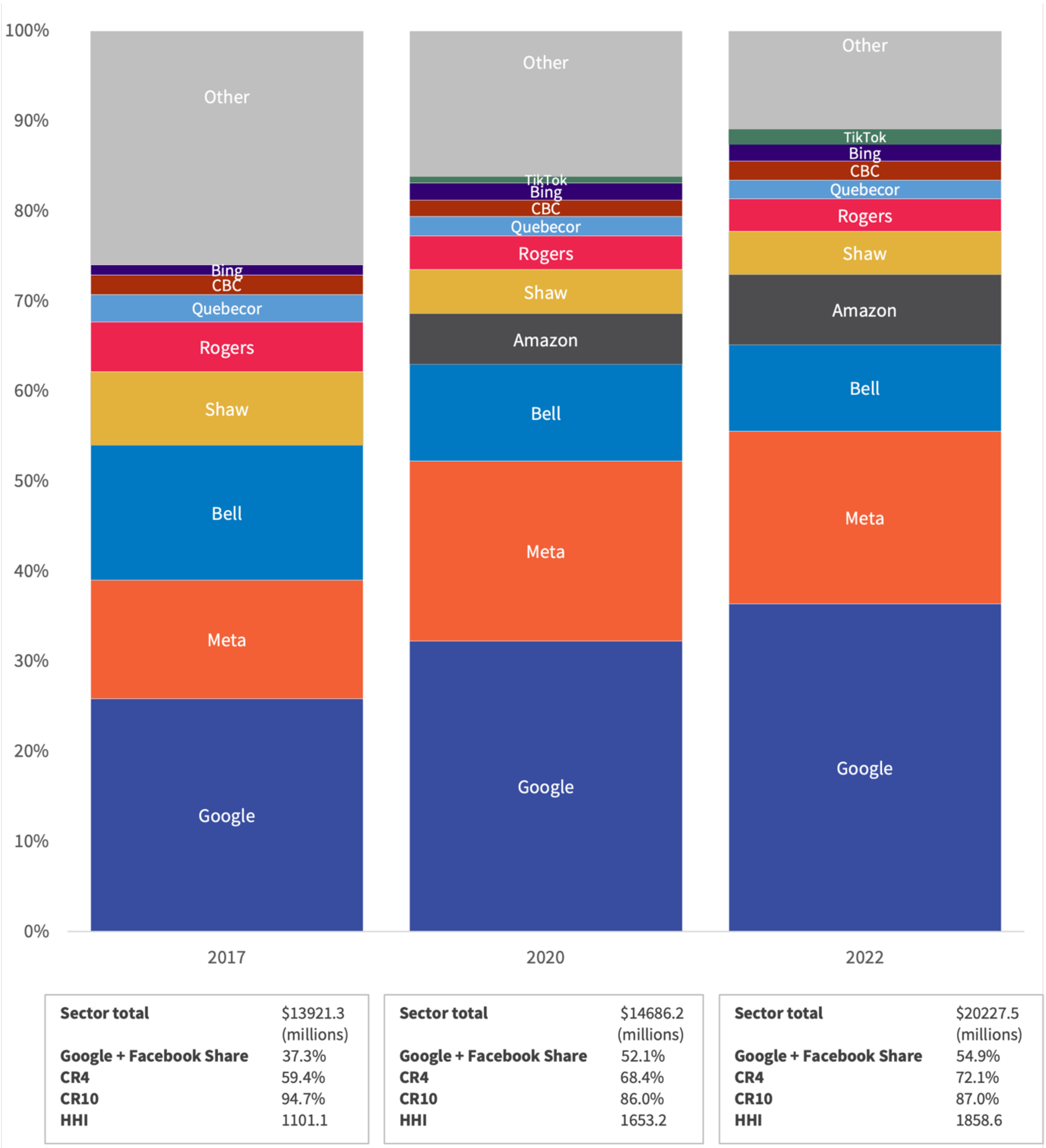
The fact that Google and Meta thoroughly dominate the $14.4 billion online advertising market in Canada is beyond dispute. That their grip on the internet advertising market has also been increasing by leaps and bounds is becoming clearer with each passing day. Their dominance of internet advertising means that they now loom large relative to the $20.2 billion spent last year in Canada on advertising across all media (e.g. TV, newspapers, online advertising, radio, magazines, and billboards).

Until recently, it was hard to make the case that the two online advertising behemoths dominated the entirety of the advertising market. Now, however, it is no longer credible to avoid it. Indeed, within a remarkably short period of time it has become clear that Google already stands in a league of its own, sucking up more than a third of all advertising revenue in Canada in 2022 (i.e. 34%) while Meta now commands a 19% share of all such spending. Combined, they raked in 53% of all advertising spending in Canada in 2022.

That said, however, it must also be pointed out that that their share of the advertising market retreated for the first time in 2022. While only a modest two percent decline, this meant that there was more advertising money flowing into the coffers of Canadian media companies, as we picked up on in our last report. Whether this will be a small and possibly short-term shuffle in favour of media groups in Canada, it is still too early to tell. However, it is important to note that Google and Meta's combined share of advertising today is a lot more than it was just five years ago, when they only accounted for a little over a third of all advertising revenue in Canada.

Figure 25, below, illustrates the scale of Google and Meta's share of advertising revenue and the rapidity with which they have consolidated their grip on the advertising industry in Canada over the few years. Again, such patterns are repeated in one country after another, albeit with modest differences in terms of their precise magnitude.

Figure 25: Total advertising revenue across all media, market shares and concentration scores, 2017 versus 2020 and 2022



Sources: see the "Fig 25 Total Ad$" sheet in the Excel Workbook accompanying this report.

Figure 25 also reveals that Google, on its own, now commands one-in-three advertising dollars in Canada. To get a sense of scale implied by this level of control, consider, for example, that Google's advertising revenue in 2022 was almost four times as much as Bell, eight- and ten-times that of Shaw and Rogers, respectively, and whopping sixteen times that of the two largest newspaper groups in Canada, Postmedia and Torstar, combined. In fact, Google's advertising revenue from its operations in this country is significantly greater than that for all the major Canadian communications and media groups combined, i.e. approximately $5.5 billion.

For its part, Meta's advertising revenue in Canada was nearly four times that of all daily newspaper's advertising revenue put together, and nearly fifty times *The Globe and Mail* 's estimated advertising revenue last year.[193] While domestic media companies in Canada got a respite in the last two years as advertising revenue rebounded, the long-term story is one where advertising revenue is being consolidated in the hands of big tech companies like Google, Meta, and Amazon.

Amongst Canadian companies, such harsh realities can be seen from the fact that even the largest Canadian company, Bell, has seen advertising revenue stagnate at roughly $2 billion per annum over the latter part of the last decade, with the last two years, as just noted, being an exception to that longer-term run of events. The same is true for Rogers, while Shaw and Quebecor have largely held their own in absolute terms albeit with their share of the overall advertising market steadily sliding over time.

For newspaper groups such as Postmedia, *The Globe and Mail* and Torstar in particular, the loss, with some variation between them, of roughly half their advertising revenue in just the last five years has been devastating. In fact, other than Pelmorex and the CBC, all of Canada's media companies, have lost sizeable amounts of advertising revenue over the past half decade or more (although, again, it is essential to pause and take note of the turn-around in the last two years, since it also applies to these entities). This is more evidence that ongoing consolidation in the advertising market benefits only a few tech giants at the pinnacle of the advertising system.

[193] See the "Total Ad$ All Media Mrkt Share" sheet in the GMICP Workbook—Canada.

Platforms and publishers—the imbalance in terms of trade and the origins of the *Online News Act*: Newspapers, magazines and online news sources

At the same time that Google and Meta have consolidated their positions in search and social media services, and the online advertising market, key segments of the news media have been falling apart. While it is common to tie the first development causally to the second, this is much too simplistic, although the two things are indeed related. To grasp how, and why such issues are so important, we need to briefly reprise the recent past of two historical cornerstones of the news media: newspapers and magazines. On a more positive note, we also need to bear in mind that Canadians are getting news from more credible sources than ever. The next few pages examine trends with respect to newspapers and magazine concentration and diversity as well as what the evidence on how people access and share online news has to say on these matters.

In 1984, newspaper revenue was $2.2 billion dollars. Last year, it was $2 billion. Newspaper revenue from all sources, and inclusive of both “daily” and “community” papers, peaked between 2006 and 2008 at just a little over $4.8 billion. It has plunged ever since, except for the last three years—2020-2022—when a bottom of sorts seems to have been reached. In fact, in the last two years there has been a small increase of $100 million and this lifted the bottom line to just over $2 billion, for reasons that will soon become clear.

Like newspapers, magazine advertising and circulation revenue has also collapsed from $2.4 billion at its peak in 2008 to $1.1 billion last year. Collectively, then, these historic engines of journalism and public record have seen a loss of $4.3 billion in the past fifteen years. As the bottom on print circulation and advertising revenue fell out, there was a counter-trend, of course, of rising digital revenue from online subscriptions and advertising to newspapers and magazines, but this was never enough to cover the gap, as we will see.

For newspapers, digital revenue rose from nothing to between $210-250 million at its high point in the years between 2010 and 2015. In 2022, it contributed $230 million to the press’s bottom line. For magazines, it went from nothing to about $150 million last year. Combined, this is a significant amount, close to $400 million. There are two problems with this run-of-events, however.

First, and on the positive side of the ledger, there have been some benefits from this significant growth in digital revenue for both ‘old’ and ‘new’ members of the press, such as Village Media, Narcity, The Line, and too many others to list. That said, long-standing newspaper and magazine publishing groups like Postmedia, the Toronto Star, *The Globe and Mail*, *La Presse,* Quebecor’s *Journal de Montréal,* and *Journal de Québec* are also vying for these sums. While the numbers are far from certain, these groups likely get the lion’s share of the approximately $400 million in "new" digital money, perhaps even as much as 90% of those funds.[194]

While we can quibble over who gets exactly what from these gains, the bigger point is that gaining $400 million in new "digital dollars" while losing $4 billion is not a win. That, combined with the number of journalism and news media workers cut, titles closed, and so on and so forth, cannot be spun into a good news story.

In fact, in the last two years there has been a small increase of $100 million and this has lifted the newspaper industries' bottom line to just over $2 billion. That lift has come from four sources:

1. A rebound in advertising, some of which has been driven by the roughly $100 million hike in federal government spending on advertising since 2015-2017.[195]

2. Government subsidies worth about $170 million per year as of 2022, and which are now set to rise to close to $200 million over the next four years. [196]

3. Content licensing payments from Google, Meta, Apple, Microsoft, and others to use news content in their search and social media services, app stores, AI and LLM systems, smart home systems, and so forth, and of course, in many cases, to sell advertising around it.

4. Meanwhile, changes to the tax code have generated a number of new charitable news media groups while also leading some old press ownership groups, such as *La Presse*, to convert to non-profit status.

While these measures have come together in the last five years to offer some respite, over the longer run, a series of significant ownership changes and bouts of corporate restructuring have led, not to ever more consolidation, but greater fragmentation of ownership and decentralization via the institution of regional newspaper ownership groups in both industries. A quick review of such trends will help to set the scene.

---

194 See the notes to the "newspaper", "internet advertising", "magazine" sheets in the master workbook linked to this report.

195 Advertising Services Canada (2023). *Annual report on Government of Canada advertising activities, 2021-2022*.

196 The Supporting Canadian Journalism program announced in the 2019 budget provides $595 million to be distributed over 5 years while, in 2019, the Local Journalism Initiative (LJI) added $50 million over five years to encourage and support local journalism. The supporting Canadian Journalism program has three components. Government of Canada (November 21, 2023). *Fall economic statement*. It has also upped its advertising spending.

Long before today's economic woes beset the industry began, concentration levels had risen steadily from 1984 until 2000. In 1984, the biggest four groups accounted for nearly two-thirds of the industry's revenues, a number that stayed relatively steady before bouncing up to 70% in 1992 as a significant new player began to acquire a series of regional papers across the country: Conrad Black's Hollinger Newspapers. Concentration levels rose sharply to 80% over the rest of the decade as Black took over the Southam newspaper chain and Quebecor added the Sun stable of broadsheets in a half-dozen cities to the two daily papers that it owned in Quebec (*Journal de Montréal* and *Journal de Québec*).

Yet, no sooner had that bout of consolidation taken place than it began to fall apart. The Hollinger chain of papers was sold to Canwest in 2000 and its chair went to jail. Mired in debt and controversy, the company spun-off several newspapers within a few years, thereby fueling the growth of several new regional press groups (e.g. Glacier Media and Black Press). Some of this served to increase ownership diversity, but often these ownership changes were based on heavily leveraged takeovers that soon took their toll. The short-lived Osprey group of newspapers in Eastern Ontario and Quebec was one example of this. It sold out to Quebecor (2007). By 2010, a new nucleus to the sector had emerged, with the four largest newspaper groups then controlling 83% of the market (based on revenue): Postmedia (24.2%), Quebecor (23.7%), Torstar (23.2%) and Power Corp/Gesca Media (12%).[197] This was the highest ever for the period covered by our research

As the economic crisis gripping the industry deepened due to the triple-knuckled blow of excess consolidation, bloated debt, and floundering circulation and advertising revenue, many of the big press groups, notably Postmedia, Power Corp (Gesca), Quebecor and Transcontinental, once again turned to spinning off some of their local and regional newspapers. Several of the mid-size ownership groups formed over the previous decade took advantage of the situation to create a series of contiguous, regional newspaper monopolies in one area of the country after another. In other words, while newspaper concentration fell at the national level, it was being reassembled at the regional and local level. The best example of this occurred in late 2017 when Postmedia and Torstar announced a major deal to swap forty-one newspapers, most of them community papers, thirty-seven of which were immediately shut down. The transaction also effectively divided the province of Ontario into two zones of mutual exclusivity. The Competition Bureau seemed to swing into action to investigate potential collusion and anti-competitive behaviour, but quickly returned to sleep mode.[198]

---

[197] See the "Newspaper" sheet in the GMICP Workbook—Canada.

[198] Competition Bureau. (2018, March 12). *Statement from the Commissioner of Competition regarding searches in the greater Toronto area* [Statements]; Jackson, E. (2018, March 23). Competition Bureau's concerns over Postmedia-Torstar newspaper swap revealed in court filing. *Financial Post*.

The upshot of this pattern is that several regional press groups have been consolidated across the country, each with a de-facto monopoly in their territory.[199] Others have abandoned the field altogether, such as Transcontinental. In August 2020, the once venerable Torstar was sold to NordStar Capital, and taken private. This has made it even harder to keep tabs on the state of the press in this country.

Still others have become paler versions of their former selves, i.e. Quebecor and Power Corp, although Quebecor continues to own the influential *Journal de Montréal* and *Journal de Québec* while Power Corp converted its flagship paper, *La Presse*, into an independent, non-profit public trust in 2018. That change reflected changes to the *Income Tax Act* at the time, and heralded a wave of new non-profits being brought to life across Canada. In addition to *La Presse*, this new group of non-profits include La Liberté, the Narwhal News Society, New Canadian Media, The Local TO, Journaldesvoisins.com and The Canadian Jewish News. The rising importance of non-profit news organizations is itself a positive contribution to structural diversity in the field.

While consolidation at the regional level proceeded apace, the overall trend over the past decade has been for national concentration levels to fall. The CR4, for example, has fallen from 83.1% in 2010 to 54.3% last year, with concomitant declines in the HHI. Postmedia is still the largest newspaper ownership group in the country and while its grip was slipping in the mid-2010s, its acquisition of the Sun newspaper chain in 2015 put its share of the market right back to where it was before and has stayed since, i.e. in the 20-25% range. Last year, its share of the much-diminished newspaper market had risen to 23.6%, up slightly year-over-year on account of its acquisition of the Brunswick News chain of papers in the same year from the Irving family-controlled diversified conglomerate, J.D. Irving, Ltd. Once again, none of this has drawn much scrutiny from the Competition Bureau.[200]

Similar patterns have also reshaped the magazine sector in the past few years, with the leading magazine publisher since 1994, Rogers, vacating the field after selling off a fleet of its mastheads to Quebec-based Transcontinental in 2016 and the rest of its titles to St. Joseph's Publishing in 2019.[201] In terms of market structure, magazines have been the least concentrated of all media sectors that we cover since the early 1990s. Concentration levels fell by nearly half based on CR scores between the early 1990s and

[199] See: Black Press and Glacier media in British Columbia, Torstar and Postmedia's community papers in southwest and northeast Ontario, respectively, ICI, Groupe Capitales Médias, Group Lexis Media and Raffoul Media in parts of Quebec and eastern Ontario, and Saltwire in the Atlantic Provinces.

[200] Edge, M. (2016). *The News We Deserve: The Transformation of Canada's Media Landscape*. New Star Books; Edge, M. (2018, January 1). Year of reckoning looms for Canada's newspapers. *The Conversation*. See both for the best accounts of these processes and the issues they raise.

[201] In the first transaction, Rogers sold seven business-to-business specialty magazines: *Advisor's Edge and Advisor's Edge Report*, *Conseiller*, *Le journal du Conseiller*, *Benefits Canada Advantages*, *Canadian Insurance Top Broker*, *Canadian Investment Review*, and *Canadian Institutional Investment Network*. In March 2019, it sold the last of its magazines--7 in total, including *Maclean's*, French and English versions of *Chatelaine*, *Today's Parent*, *Hello*, *Flare*, *Canadian Business*.

2022, with the top four publishers' share of the market based on revenue hovering in the 20-40% range for the last two decades. It was 24.5% last year, while the HHI was at the extremely low level of 907—a fraction of what it was at its high point in 1988 (2,315)

Online news sources

As traditional news media have floundered, there has been a bit of flourishing of online news sources. The discussion of online news sources also brings us back to the vital role that Google and Meta have built up over the last decade-and-a-half within the news industry and the social flow of news. Indeed, they have become significant pathways to the news for between a third to half of all Canadians.[202] The *Online News Act* applies to Google and Meta precisely because of the large role that they play in the distribution and sharing of news and, of course, on account of the entrenched nature of their dominance of the advertising market, as was recounted a moment ago. While such conditions at present are only seen as applying to both of those companies, the *Act* can be expanded in the future to cover other DNIs that also serve as significant pathways to the news for Canadians, such as Apple, Microsoft, Samsung, X (previously Twitter), and other large news aggregators.

Google and Meta's role as online news intermediaries also serves as a prelude to similar phenomenon that we will see later in relation to a wide range of online media services, including video services, games, apps, and music. To understand this point, we need to start by sketching the nature of the "imbalanced terms of trade" between platforms and publishers that have caught the eyes of policymakers, scholars, activists, business competitors, and a variety of others here in Canada and around the world.

Part of that imbalance stems from the collapse of revenue and the growing fragmentation of the industry that has taken place through the ownership changes and the regionalization of press groups that we saw a moment ago. While Postmedia and Quebecor still stand at the centre of the English-and French-language press, respectively, and *The Globe and Mail*'s elite audience still girds its outsized role relative to what its economic scale might suggest, all three of these well-established news brands exist in a much smaller and more fragile sector whose prospects remain uncertain, even if there are glimmers of hope do exist.

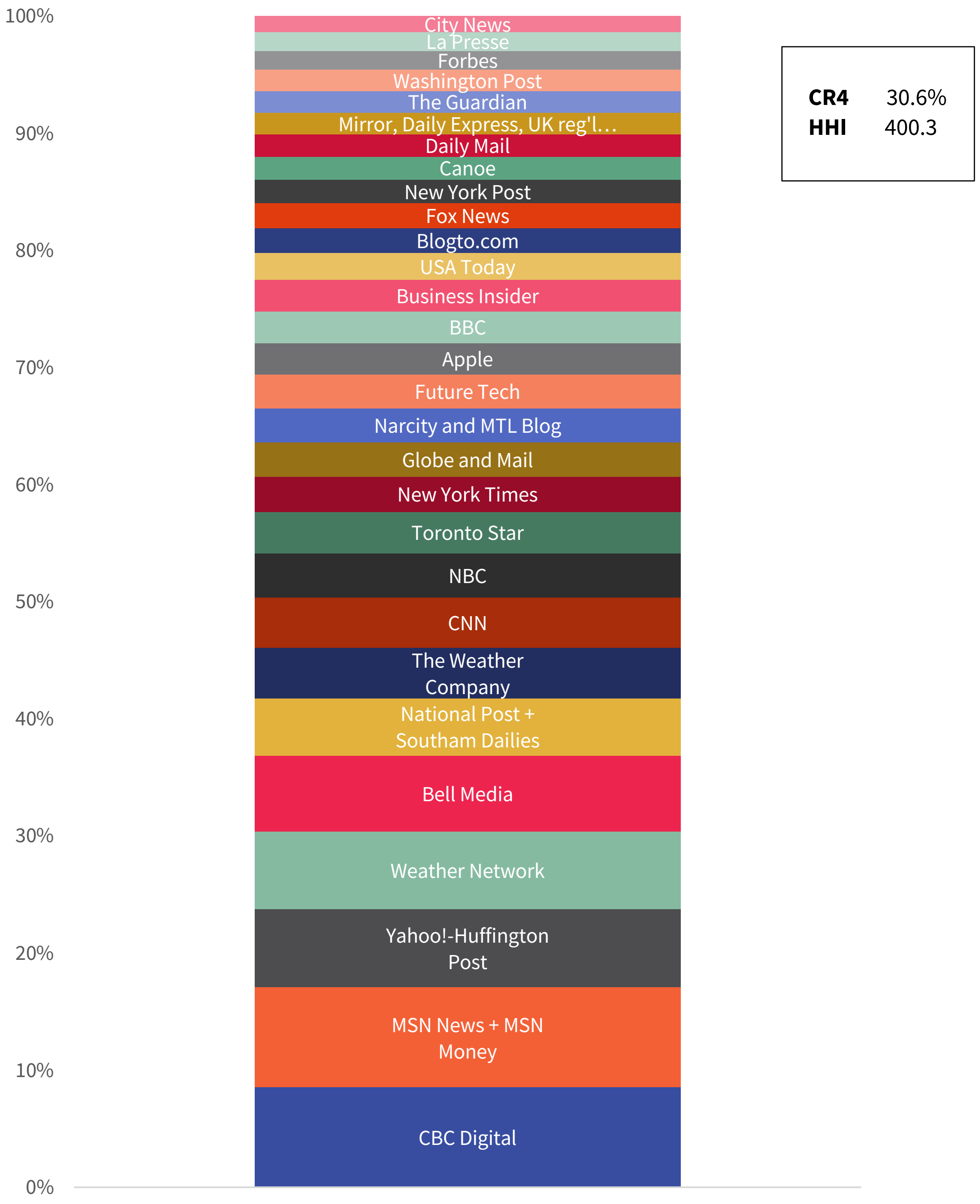
Amongst these glimmers of hope is the fact that people turn to a wide variety of online news sources. Indeed, in contrast to many other media sectors, the range of online news sources is amongst the most diverse of all the sectors reviewed in this report, except magazines.

Figure 26 below illustrates the point for 2022.

---

[202] Brin, C., Charlton, S., Côté, F. & Marois, A. (2023). News consumption habits in Canada, Centre d'études sur les médias p. 7, excerpt published in Newman, N., Fletcher, R., Kalogeropoulos, A., & Nielsen, R. K. (2023). Reuters Institute Digital News Report 2022. *Reuters Institute for the Study of Journalism*,Digital News Report.

Figure 26: Internet news sources—share of average monthly users, 2022



Sources: see the "Fig 26 internet News" sheet in the Excel Workbook accompanying this report (based on Source: Comscore Media Metrix Multi-Platform Canada, News/Information Category, Sept. 2021-May 2022 Monthly Avg)

As Figure 26 shows, Canadians get their news from a diverse range of online news sources, including familiar ones such as the CBC, CTV, Postmedia, Corus, the *Toronto Star* and *The Globe and Mail*, along with weather reporting services, aggregators like MSN News, Yahoo!-Huffingon Post and Apple News+, as well as mainstream U.S. and U.K. outlets like NBC, the BBC, *The Guardian*, *USA Today*, *The New York Times*, and so forth.

To be sure, there are many new news media outlets trying to find their footing. The biggest growth has been with the 113 online news sources launched during this period.[203] Many of these are operated by independent owners and regional media groups such as The Logic, Village Media, Overstory Media Group, The Discourse, and so forth. They have often been set up by people with deep experience as journalists or otherwise in the news media, all of which bodes well for them.[204] They also occasionally publish breaking news that can set the local, regional, national and (rarely) international news media agenda and that others have neglected. Good examples of this contemporary crop of news and public commentary outlets include, for example, Canadaland's breaking of stories regarding unsavoury ties and interactions between key figures in the Liberal Government and the WE charity as well as the Jian Ghomeshi story. The Snowden disclosures a decade earlier reflected a hybrid of online news media groups and legacy media groups from various countries to break the story on secret NSA wiretaps. The list goes on.

The reality, however, is that none of the outlets just listed have yet to crack the top forty or so online news sources that Canadians turn to on a routine basis.[205] This implies that news sources that originate on the internet account for under one percent of online news audience. As such, it is fair to conclude that they speak to tiny, specialized audiences.

While this is disappointing from the standpoints of news diversity and influence, there's a brighter upside to what we do not see on this list of online news sources. Namely, dubious potential sources of information and commentary, such as Rebel Media, *The Epoch Times*, America One, Breitbart, and others on the far right do not appear to have any traction either. These sources can be called dubious because they refuse, and indeed flaunt their refusal, to follow the professional conventions of independent journalism such as fact checking, publicly acknowledging mistakes and correcting them, drawing on a reasonably wide range of credible sources, seeking to promote understanding rather than a particular point of view or political agenda, citing and connecting to other sources, including those with contrasting views and accounts of events, and so forth.[206]

---

[203] Lindgren & Corbett (2023). *Local News Map data reports*, p. 6.

[204] Lindgren & Corbett (2023). *Local News Map data reports*, p. 6.

[205] See: the *National Observer*, *AllNovaScotia*, *The Tyee*, Canadaland, *Blacklock's Reporter*, etc.

[206] On this point, see Benkler, Y., Faris, R. & Roberts, H. (2018). *Network propaganda: Disinformation, manipulation, and radicalization in American politics*. New York: Oxford University.

Overall, this evidence suggests that traditional news organizations are still at the top of the most important sources of journalism. However, those sources also exist in a networked relationship to other sources, online and off, to form a web of connections and relationships rather than standing as discrete entities on their own. They employ more journalists than any of the digital upstarts. They also originate far more stories that the rest of the media pick up and amplify or dialogue with. Indeed, the "crisis of journalism" is important because the traditional news media continues to set the agenda for the rest of the media. Online news sources have not come anywhere close to picking up the slack, and it is doubtful they ever will. This is not to say that they are unimportant but rather to acknowledge their limits and focus attention on the need for measures to shore up the faltering news system that remains indispensable to democracy. If we are keeping a running tally for-and-against the *Online News Act*, this can be marked down as being in favour of the *Act*.

Platforms and publishers: Policy responses—the good, the bad, and the ugly

Given such realities, it should be no surprise that many observers hope that the *Online News* Act will balance the terms-of-trade that now govern the advertising marketplace and the relationship between digital platforms and publishers. The principle thrust of those who support the *Online News Act* is that Google and Meta are *the* primary causes of the severe woes facing media that rely on advertising, especially commercial journalism. Their assumption also seems to be that doing something is better than nothing and that the new law could go a long way to righting a sinking ship.[207] Those same assumptions and forces played out in Australia, where the equivalent of the *Online News Act*, the *News Media Bargaining Code*, became law two years ago.

To be sure, there are some benefits of both the Canadian and Australian approaches to these issues, and others that are following in their tracks. For one, these efforts signal that the era of private, multinational technology companies being left to unilaterally make the rules governing the internet is being replaced by one in which sovereign internet policy and regulation that serve the public interest and democracy will play a more prominent role than they have in the past.[208]

It is also likely that, just as the Australian code has already done, the *Online News Act* will result in the tech giants sending more money into the coffers of commercial media in Canada. Indeed, original estimates were that it could generate $329 million in revenue for Canadian news media organizations

[207] Much the same argument applies to those who pushed for the *News Media Bargaining Code* in Australia and who are advocating for the *Journalism Competition and Preservation Act* now being considered in the U.S.

[208] Winseck & Bester (2022). Regulation for a more democratic internet; Haggart, B. (June 3, 2022). *Submission to the House of Commons Standing Committee on Canadian Heritage, Study on Bill C-11, the Online Streaming Act*.

from increased payments from Google and Facebook.[209] This estimate was in line with outcomes in Australia, where the *News Media Bargaining Code* is said to have resulted in the two internet advertising behemoths paying out AUS$200 million to Australian media groups in its first year of operation.[210]

Estimates were later revised downward by the Department of Canadian Heritage, with the expected payout put at $172 million from Google and $62 million from Meta.[211] But even that has turned out to be overly optimistic given that Meta has walked away from the bargaining table and barred the distribution and sharing of news on its Facebook, Instagram and Threads services in protest of the *Online* News Act, and on the grounds that it cannot be a designated digital news intermediary if it does not allow news on its services. While that move may turn out to be too-clever-by-half, for the time being it is Meta's stance. Meta has simultaneously refused to pay news media groups for use of their content in its social media services or to openly permit news sharing at all on its services, while also declining to renew existing deals that it struck with news groups in recent years.

Google, on the other hand, while threatening to de-index news results from its search results in protest of the bill, has stayed involved in negotiations over the *Act* and the regulations that will implement it. At the time of writing, Google has just agreed to cut a cheque worth $100 million annually to be paid into a collective fund, with the details of that fund to be worked out later.[212] While substantially less than the anticipated sums, the agreement recognizes the value of news in general search services and accepts internet services regulation based on the broad principle that, with great power over the distribution of news, there is a need for some public obligations to match. Thus, despite all the substantial flaws with the *Online News Act*, from conception until now, it is better than what its hostile critics really seem to want: no regulation of internet services at all.

It is also worth noting that just the threat of legislation in both Australia and Canada has pushed the internet giants to strike deals with news publishers in both countries and to be increasingly generous in their patronage of the press.[213] Along with other policy measures, such as the use of tax credits to support the expense of paying up to

[209] Government of Canada (2022). *C-18 Online News Act*; Office of the Parliamentary Budget Officer (Oct. 6, 2022). *Cost estimate for Bill C-18: Online News Act*. Ottawa: Author.

[210] Sims, R. (2022). *Instruments and objectives; explaining the News Media Bargaining Code*. Sydney, Australia: Judith Neilson Institute for Journalism and Ideas, p. 14.

[211] Department of Canadian Heritage (Sept. 2, 2023). Regulations respecting the application of the Online News Act, the duty to notify and the request for exemptions. *Canada Gazette, Part I*, *157*(35).

[212] Department of Canadian Heritage (Nov. 29, 2023). Statement by Minister St-Onge on next steps for the *Online News Act*.

[213] See GMICP-Canada (2022). *Growth and upheaval in the network media*, p. 62.

a third of journalists' salaries,[214] tax incentives for people to subscribe to newspapers, and changes to the tax code to encourage non-profits, as we discussed in our first report, any increase in revenue that is brought about by the *Online News Act* will also help to put journalism on a more solid economic footing. Again, as discussed just a moment ago, and in detail in our first report, the combination of increased advertising spending by business and government in the past few years, subsidies, and policy interventions appear to have put a floor under what had been a decade-and-a-half long run of bad news for journalism.

It is also worth noting that the Canadian *Act* is arguably better than its Australian predecessor for several reasons. For one, the guidance given to the regulator by the *Act* with respect to which platforms will be included is superior to the Australian code, although the details on this point are still to be worked out.[215] Second, the independent and arms-length regulator, the CRTC, will ultimately determine which DNIs will be covered in the future, and whether exemptions in the act apply in specific cases, rather than a government minister, thereby reducing the potential to politicize platform regulation.

Third, the concept of 'digital news intermediary' in the bill—i.e. Google, Facebook, or others designated as being covered by the act—is arguably the 'crown jewel' of the *Online News Act.* This concept draws on the common carrier tradition, as outlined earlier in this report. It puts gatekeeper power and the objective of a 'fair carriage' regime at the heart of the proposed law. In so doing, it prohibits digital news intermediaries from giving undue preference or advantage to their own or other third-party news services, and from unjustly discriminating between any of the news sources they distribute. There is nothing equivalent in the Australian version.[216]

The potential value of these attempts to subject the power of big tech to greater democratic accountability deserves applause. At the same time, however, there are several considerations that should cause serious concern.

First, none of the solutions adopted (or on offer)[217] do anything to address the taproot of the woes facing commercial journalism: namely, a consolidated market structure that has let advertising

[214] As revised upwards from 25% to 35% by the federal government's fall economic statement. Government of Canada (November 21, 2023). Fall economic statement.

[215] Owen, T. (Nov. 8, 2022). The *Online News Act* keeps journalism alive while it adapts to a new world. *The Hub*.

[216] As noted earlier, section 51 explicitly *prohibits* digital news intermediaries "from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage." Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text).

[217] United States (2022). *Journalism Competition and Preservation Act of 2021 S.673—117th Congress (2021-2022)*.

to be funneled almost entirely into the coffers of Google, Meta, and now Amazon. In fact, by taking the structure of the industry as a given, Google and Meta's entrenched market and gatekeeping power is left intact.

Second, neither the Canadian or Australian laws, or other proposals like them, such as the *Journalism and Competition Preservation Act* in the U.S.,[218] address the three decades of debt-addled media consolidation that has put so many media companies on a shaky economic footing to begin with and just when the internet was becoming a central fixture in our lives. Many of those companies collapsed in the late 1990s and the first decade of the 2000s because of such activities, such as Hollinger and Canwest, while others were unwound (e.g. Bell Globemedia), and yet others are still struggling with their legacy of debt until this day (e.g. Postmedia). Most analyses and the solutions on offer miss the key part of the story by primarily blaming Google and Meta rather than focusing on the combination of factors just identified, and all of which were dealt equally harsh blows by the 2008 financial crisis. For the next decade thereafter, advertising spending flatlined on a per capita basis and relative to the size of the GDP and network media economy, and even declined on a per capita basis, relative to GDP and in inflation-adjusted real dollar terms.[219]

Third, while the inclusion of mandatory information disclosure obligations in the Canadian and Australian approaches could be a triumph worth celebrating, both fall short by adopting vague standards as to what is to be expected. In the Canadian case, the details on this front are left to the CRTC to work out. That the Commission had already met behind closed doors with Google and Meta to sort out details of legislation before it had even been passed into law does not bode well for what is to come.[220]

Fourth, none of these approaches do anything to rein in the surveillance capitalism business model that both Google and Meta have thus far mastered and used to build their empires.

Finally, neither the Canadian or Australian approaches, or again, others like them, really engage with the reality that original journalism and news are public goods that will not likely ever be supported by commercial and market forces. As such, they skirt the hard talk that we really need to have about the policy and political implications that follow on from the recognition that news and journalism are public goods; namely, that many governments in the United States, Europe, and Canada throughout history have responded to such realities by directly subsidizing the

[218] United States (2022). *Journalism Competition and Preservation Act*.

[219] See GMICP-Canada (2022). *Growth and upheaval in the network media*, Figures 18-21.

[220] Murphy, M. L. (Nov. 7, 2022). CRTC officials hold closed-door forum with Google and Facebook in Ottawa. *The Hill Times* (paywalled).

news as the public good that it is.[221] There are good and bad ways to do that. At stake is just how to reconcile such realities with the obligation to maintain the robust independence of the free press while simultaneously providing subsidies to it?

While these are challenges and potential pitfalls that must be dealt with, we must not allow such concerns to play into the hands of critics of the *Online News Act* and *Online Streaming Act* (see below) and their counterparts around the world) because their end game seems to be no internet services regulation whatsoever, or only weak codes of conduct, self-regulation, and more personal responsibility. They also seem to cling to a model of the internet drawn from the early-2000s that no longer exists, while equating *any* kind of internet services regulation as an assault on the 'open Internet' and a threat to free speech, and a slippery slope toward Canada becoming like Russia, China, and North Korea.

These charges are preposterous. They also overlook Canada's long-standing position at or near the top of international rankings with respect to freedom expression, freedom of the press, and democracy.[222] That position has been secured not because successive governments have stood by and done nothing to aid institutions and activities implicated by each of these values—freedom of expression, freedom of the press, and democracy—but *because* of Canada's long-standing relatively interventionist approach to communications and media regulation based on the rule of law and Charter protections. Moreover, their invocation of free speech and the open internet tends to be used more to shut down debate than to inform it.[223]

Lastly, critics display a woeful ignorance of communications history, policy, and economics where the unique characteristics of communication and culture routinely involve interventions by way of regulation and public funds. For critics, however, such matters carry little weight in the heated controversies that have attended these debates.

We turn next to two other traditional media—broadcast and pay television services made available over cable, satellite and IPTV networks (BDUs in Canadian regulatory parlance), before swinging back again to focus on online media services.

---

[221] See: John, R. & Silberstein-Loeb, J. (eds.) (2015). *Making news: the political economy of journalism in Britain and America from the Glorious Revolution to the internet* (pp. 196-222). London, UK: Oxford University; Picard, R. & Pickard, V. (2017). Essential Principles for Contemporary Media and Communications Policymaking. London, UK: Reuters Institute for the Study of Journalism; Pickard, V. (2019). *Democracy without journalism*. London: Oxford University. Also, see our first report in this year's two-part series where we elaborate on this point.

[222] Freedom House (2023). *Freedom in the world, 2023*; Reporters without borders (2023). 2023 world press freedom index—journalism threatened by fake content industry; Economist Intelligence Unit (2023). *Democracy index 2022 report*.

[223] Haggart, B. & Tusikov, N. (Sept. 10, 2021). How "free speech" kills internet regulation debates: Part II. *Cigi Online*.

Broadcast television and radio and specialty and pay television services

Anchor findings

- Four major media mergers and acquisitions in 2007, and the dismantling of Bell Globemedia in 2006, followed by the bankruptcy of Canwest in 2009/2010, pushed concentration levels in Canada’s broadcast TV and pay TV markets to all-time highs, where they have stayed ever since.

- Whereas high levels of media concentration are common in many countries, the deep vertical integration between TV and telecom companies (notably Bell, Shaw, Rogers and Quebecor) that was cemented into place, circa 2007-2013, sets Canada apart from almost all of its international peers.

- Four processes have defined the past several years of the specialty and pay television services sector: the maintenance of concentration at their highest levels ever, greater consolidation at the top around fewer channels and genres (e.g. sports), the spin-off and closure of less profitable services, and the automation of services that now run with no or few workers.

- The conventional commercial radio market has suffered significant economic losses but some of those loses have been abated by the stable presence of the CBC and the rise of paid audio services such as Sirius XM. Overall, radio remains one of the most diverse media given the presence of CBC/Radio-Canada as well as several mid-size, regional ownership groups such as Golden West and Maritime Broadcasting alongside the big five national ownership groups: Sirius XM, the CBC, Bell, the Stingray Group, Rogers and Shaw (Corus).

Broadcasting Television and Radio: The Rise and Fall of Legacy Media

From the late 1980s until 1996, the broadcast television industry was much more fragmented and regionally-oriented than what was soon to come. This was because it was split between multiple groups spread across the country that shared ownership of the private broadcast TV networks—CTV, Global, CHUM, and TVA, respectively—on the one side, and Canada’s public service broadcaster, the CBC, on the other. The advent of pay TV services also marked the beginning of a shift from an environment of relative scarcity to one of relative abundance, and from a model of TV subsidized by advertising and public funding for the CBC to one where subscriber fees are the dominant source of revenue. As a result of fragmented ownership of the major broadcasting networks and the rise of pay television services, the level of diversity in TV overall was at all-time highs.[224]

This shifted abruptly and irreversibly in the late 1990s and early 2000s in two steps. The first step occurred as a wave of consolidation led to the unification of the ownership groups behind Canada's three commercial broadcast television networks: i.e. CTV (Baton, circa 1997-1998), Global (Canwest, 1998) and TVA (Quebecor, 2001), respectively. For CTV, the consolidation of the regional groups into a unitary national ownership group served as a stepping-stone to its take-over by BCE, along with *The Globe and Mail*, in 2000.[225]

The second step led to the creation of several new significant broadcasting and pay television groups. The first of the new groups was Shaw, which expanded from its cable base in western Canada by acquiring a large catalogue of television and radio broadcasting assets from Western International Communications in 1998 and Power Broadcasting a year later. These transactions turned Shaw into a major vertically-integrated company with its monopoly cable operations in western Canada, as discussed earlier, and, after these two transactions, ownership of a sizeable catalogue of television and radio services across the country, including the Family Channel (50% equity stake), Teletoon (20%), three pay television services (i.e. Movie Max, the Super Channel, and Viewers Choice), and twenty-nine radio stations.[226] Shaw spun off its radio stations and specialty television services into a new company in 1999, Corus Entertainment—an entity that has been a separate legal entity but been under the ownership control of the Shaw family ever since (even after Shaw Communications' acquisition by Rogers earlier this year).

Two of the biggest players within the pay TV sector also merged in 1997, while Montreal-based Astral continued to grow its position into the largest pay television operator at the time. It did so largely by controlling the rights for the distribution of premium HBO content in Canada, but also by expanding its pay television services and entering the radio market when it acquired Quebec-based Radiomutuel in 2002.[227] Each of the big three commercial broadcast television networks, CTV, Global and TVA, also expanded into the then-new domain of pay television services by acquiring several services of their own (a form of diagonal integration).[228]

---

[224] In Canada, television services made available to subscribers over cable, DTH or IPTV services are formally referred to as specialty and pay television services. Throughout the rest of this report, they will be referred to as 'pay TV' services because that is less cumbersome.

[225] CRTC (2000). Decision CRTC 2000-747 Transfer of effective control of CTV Inc. to BCE Inc; Winseck, D. (Sept. 27, 2000). Take cover, here comes Mediasaurus. *The Globe and Mail*.

[226] Shaw *Annual Report 1999*, p. 6; Shaw *Annual Report 1998*, p. 9.

[227] See: Alliance and Atlantis in 1998; CRTC (2000). Decision 2000-5 Radiomutuel.

[228] See: Quebecor and Vidéotron in 1997, its English-language equivalent in Canwest and Western International Communications in 1998, and CTV's acquisition of Netstar in 2000 before its acquisition by BCE.

To sum up, there were a half-dozen large commercial broadcasting groups operating, more or less, on a national scale at the turn-of-the-21st century. In rank order of size, they were Bell Globemedia (CTV), Canwest (Global), Quebecor (TVA), CHUM (City TV), Astral, and Alliance Atlantis. The CBC was the seventh major actor, but it functioned as a hybrid public service/commercial counterweight to the national commercial broadcasting ownership groups.

These conditions remained stable for much of the rest of the decade, but in 2007 a rapid fire bout of five ownership transactions thoroughly remade the television and radio landscape at the time:

1. Bell Globemedia was dismantled and its' ownership stakes in the CTV network, pay TV services and *The Globe and Mail* sold, thereby marking an end to the telecom giant's first experiment in media convergence (which had been launched at the height of the dot.com bubble in 2000).

2. CTVGlobemedia acquired Bell's media assets as well as the radio stations of CHUM.

3. Rogers acquired CHUM's broadcast television stations—the City TV network— as well as that company's pay TV services.[229]

4. Canwest, with backing from the New York investment bank, Goldman Sachs, acquired Alliance Atlantis, the largest film distributor and fourth largest pay TV services operator in Canada at the time.[230]

5. Astral Media acquired Standard Broadcasting, the third largest commercial radio group in Canada at the time.[231]

By the end of 2007, the "big four" television ownership groups at the time—CTVGlobemedia, CBC, Canwest, and Astral, in that order—had expanded horizontally and diagonally within the TV market and radio and accounted for 70% of revenue across all of the segments of the TV market. However, *none* of these entities were part of the

---

[229] CRTC (2007). *BD CRTC 2007-165. Transfer of effective control of CHUM Limited to CTVGlobemedia Inc*; CRTC (2008). *BD CRTC 2008-69. Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVGlobemedia Inc*.

[230] CRTC (2007). *BD CRTC 2007-429. Transfer of effective control of Alliance Atlantis Broadcasting Inc's broadcasting companies to MediaWorks Inc*.

[231] CRTC (2007). *BD CRTC 2007-359. Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership, carrying on business as Astral Media Radio*.

vertically integrated communications and media behemoths that would become the centrepiece of the network media economy over the next few years.

There has long been some cross-media ownership between broadcast television and radio in Canada, as exemplified best, perhaps, by the CBC and Rogers' long-standing and prominent place in both fields. Shaw also joined that small club after acquiring Western International Communications and Power Broadcasting, and then forming Corus, at the end of the 1990s, as discussed a moment ago. Nonetheless, cross-ownership between television and radio did not become the norm until CTVGlobemedia and Rogers took-over CHUM and split its television and radio assets, respectively, between themselves in 2007. Astral's take-over of the third largest radio broadcasting group in the same year, Standard Broadcasting, solidified the trend.

This bout of consolidation drove concentration levels in radio to new heights, but by the criteria of the CR4, the sector was still only moderately concentrated and diverse based on the HHI score of 1089 at the time. This reflected the ongoing presence across the country of a handful of large, national radio station ownership groups[232] alongside several mid-size regional broadcasters, such as Newcap, Pattison, Rawlco, Maritime Broadcasting and Golden West. In fact, many of those mid-size regional ownership groups are still with us today. Consequently, radio broadcasting has been amongst the most diverse media sectors throughout the last four decades.

This trend of cross-media ownership between television and radio station ownership groups continued when Bell acquired Astral Media—the largest independent pay television service company and radio broadcaster, respectively, in the country at the time—in 2013. While the deal immediately catapulted Bell into being the biggest radio broadcaster in Canada, it did not move the dial in terms of the CR4 or HHI score. This is because it only replaced one big radio station ownership group with another, although it did extend Bell's reach into another media market in which it previously had no place at all.

Bell's share of the radio market has drifted downwards over time, and it ceded its position at the top of the market in 2018 to the paid radio service Siriux XM. With revenue of $226.7 million and a market share of 11.6% last year, Bell is the now the third biggest radio ownership group after Sirius XM (revenue of $481.5 million and 24.6% market share) nd the CBC ($358.4 million in revenue, including its parliamentary subsidy, and 18.3% market share). Beyond the top three radio groups, the list includes Stingray (revenue of $175.6 million and 24.6% market share), Rogers (revenue of $136.5 million and 7% market share), Cogeco (revenue of $82 million and 4.2% market share), and Shaw (Corus) (revenue of $79.1 million and 4% market share). As of 2022, the seven biggest broadcast radio groups accounted for close to four-fifths of the sector's $2 billion in revenue.

[232] Namely, the CBC, Rogers, Corus, Astral and CTVGlobemedia.

That said, conventional commercial radio revenues have been in long-term decline, as we observed in the first report in this year's two-part series, with revenue dropping to $1.1 billion in 2022, up slightly from the previous year. Indeed, the traditional commercial sector has been one of the hardest hit by the Covid pandemic, with revenue falling by $343 million in the last three years and results down by a third from a decade ago. That said, the combination of relatively stable funding for the CBC and the growth of paid radio services such as Sirius XM and Stingray have offset some of these losses. Once those elements are included, total revenue for advertising, public, and paid radio service have slid from $2.3 billion a decade ago to just below $2 billion last year.

The radio sector also has some of the lowest concentration levels across the network media economy, with a CR4 in 2022 of 64 and HHI well into the highly fragmented and diverse zone by the standards of that metric, with an HHI last year of 1,260. The direction has also been downward over time. This reflects the trends described above but also the reality that there are still a sizeable number of radio broadcasters with a reasonably strong local and regional presence, such as Pattison Media, Vista Radio, Golden West, Maritime, and Evanov, to name a few.

Returning to television, similar patterns of horizontal and diagonal integration have also played out within and between the broadcast television and pay television ownership groups. The consolidation of the broadcast television sector around the two commercial, English-language networks, CTV and Global, and the French-language TVA in Quebec, with the CBC-Radio Canada operating in both languages across the country, in the late-1990s and early 2000s, as discussed earlier, created a stable industry that rotated around this group of companies.

As a result, concentration levels reverted back to the high levels of the 1980s before new players had entered the scene. By the turn-of-the-21st century, the four biggest broadcast TV groups—CBC, CTVGlobemedia, Canwest (Global TV), and Quebecor (TVA)—was 92%. Thus, already by this time, the broadcast television sector was highly concentrated by the CR4 standards and at the top of the moderately concentrated designation of the HHI with a score of 2562.

Since then, there have been several changes in ownership, such as Rogers acquisition of the half-dozen City TV stations in CHUM's iconic network of big city stations in 2007, Shaw's takeover of the Global TV network from the bankrupt Canwest, and Bell's re-acquisition of CTV in 2011, but none of these transactions moved the dial in terms concentration levels for the sector.

In 2022, the top four groups remained much the same as they had been a decade earlier: the CBC, Bell, Corus, and Rogers (albeit with the latter swapped in for the French-language broadcast group Quebecor (TVA). The CR4 was 86.3% while the HHI was at 2,607, both squarely in the zone of the high concentration designation. Add Quebecor to the list, and the "big five" had a combined market share of 94% last year.

This stable industry structure embody the results of three things.

First, the CBC has maintained its position as the largest service provider in this sector, aided by the increase in Parliamentary funding in 2016 that restored such funding to previous levels, while also spreading it out over the past five years. In 2022, the public broadcaster's share of the $2.6 billion broadcast television industry, based on revenue, was 42%.

Second, while the CBC has held the line in terms of revenue on account of the increase in its public funding envelope, the big four commercial broadcasting network owners—Bell, Corus, Rogers and Quebecor—have seen their revenues collapse from just under $2 billion in 2010 to $1.3 billion last year. Broadcast television is also unprofitable, with operating margins averaging -12% over the past five years; last year they were -15%.[233] In our first report, we chronicled the slashed jobs at all of the television networks in recent years, including a spate of major lay-offs at CTV, TVA, Global and CityTV in the last two years. As this report was ready to go to press, the CBC announced that it will be cutting six hundred jobs in the near future and paring back its acquisitions budget by forty million dollars per year.[234]

That said, advertising revenue at the commercial broadcast networks has risen across the board by $140 million dollars since 2020. Since then, Bell has increased its advertising revenue by ten percent, Corus media by seven percent, Quebecor by fifteen percent, and at Rogers CityTV stations, advertising revenue has risen by a whopping twenty-five percent.

The effects of plunging advertising revenue over the longer run, however, have been severe across the board. Rogers CityTV group of stations have been the least worse off relative to the other groups. This likely reflects the fact that its CityTV stations are all located in the biggest cities in Canada, whereas all the others include both big and small city stations. This is because broadcast stations in small- and mid-size towns, broadcasting execs, say, are the ones that are the biggest drag on their finances, and the most at risk.

Bell tried to offset those blows in 20202 by acquiring V Interactions, the second commercial French-language television network in Quebec.[235] The deal extended Bell's influence in Quebec by adding five French-language stations in Quebec City, Montreal, Saguenay, Sherbrook and Trois-Rivières (the V Stations) to the thirty English-language broadcast television stations it already owned through CTV. Bell also folded several French-language pay services and Noovo, an advertising-based VOD (AVOD) service, that it gained through this transaction into its deep catalogue of services, all of which were rebranded under the Noovo label. This helped Bell to maintain its one-quarter

---

[233] CRTC (2023). *Financial summaries for broadcasting sector—conventional TV*.

[234] Tasker, P. (Dec. 5, 2023). With layoffs looming, CBC execs want foreign streaming giants to may more to support Cancon. *CBC News*.

[235] CRTC (2020). *BD CRTC 2020-116: V Interactions Inc.—Change in ownership and effective control*.

stake of the broadcast television market, but that did not offset the fact that a steady market share in a shrinking market is still bad news for its bottom-line.

The hardest hit by the deteriorating advertising market has been Corus' Global Television network. Revenue at the second largest English-language commercial network in the country plunged by over forty percent between 2011 and 2020. It, too, has clawed back some of those loses since, but that has hardly put a dent in its bottom-line.

As a result of the collapse of advertising revenue, and the trends just outlined, the CBC now accounts for a bigger slice of a smaller pie. Last year, the CBC accounted for forty-two percent of broadcast television revenue. Even though public funding levels are below what they had been in a previous era, the CBC has escaped some of the harshest blows through a retrenchment of public service funding in the past half decade.

While we can lament the loss of key functions such as local and national news that have been defining features of the broadcasting era, it is also imperative to remember that all of the commercial broadcast television and radio services are integrated into bigger and more lucrative pay TV and online video services offerings that are owned by the same groups. Once we take conditions in both of these adjacent dimensions of the television marketplace into account, things do not look nearly as dire. Remember, too, that all the television services being discussed here are cogs in much bigger and hugely profitable communications conglomerates that were created as a matter of corporate strategy and with the blessing of regulators and government policy, circa 2007-2013.

Those who call for special regulatory and policy considerations to address the very real woes facing the broadcast television sector often fail to put this fundamental reality front-and-centre in their pleadings. Instead, they give the misleading impression that the dire—but unique—situation confronting broadcast television applies to everything communications conglomerates that they are a part of do. This is part of their justification for why such companies need more subsidies, favourable policy concessions, and, in the latest incarnation of this plea since the *Online Streaming Act* became law in 2023, why the big international streaming services should help pay into funds to support the kinds of things they no long feel they must do, especially news.[236] This is also why the lion's share of whatever benefits come from the *Online News Act* will likely go to the broadcast arms of some of the biggest and wildly profitable

[236] See the submissions of Bell, Rogers, Corus, Quebecor, the CBC, Netflix, Disney, etc to the trilogy of proceedings now underway to implement the *Online Streaming Act*. CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-138: The path forward—working towards a modernized regulatory framework for contributions to support Canadian and Indigenous content; CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-139: Call for comments—Proposed regulations for the registration of online streaming services and proposed exemption order regarding those regulations; CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-140: Call for comments—Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings.

communications conglomerates in Canada, i.e. Bell, Corus, Rogers, Quebecor and the CBC. Indeed, that is one of the signature deficiencies of the law.[237]

While it is understandable why the companies make the arguments they do, we and policy makers, especially, should steer clear of such specious lines of reasoning. What is needed now are more creative mechanisms that will breathe new life into the *public service functions* such as original journalism and programming that we want to retain, but independent and unbound from the entities to which those functions have been tied. The unfortunate results of that historical entwinement are now all-too-clear to see, and new ways of solving intractable 'public good' and cultural policy problems are sorely needed.

Specialty and pay television services: Diversification, consolidation and decline

To help fill out this argument, the next few pages shift gears to examine the specialty and pay TV services market. This sector had been remarkably diverse from its inception in the early 1980s and grew swiftly into a $4.4 billion segment of the television marketplace at its highpoint, circa 2016-2017. Revenue for pay TV services has fallen since to a low of $3.9 billion in 2020; by last year, however, revenue had risen to $4.1 billion. Pay TV services have also remained highly profitable, with operating margins averaging 25.4% over the past five years. Last year, operating profits were 22.4%.[238]

This is also a sector of the television market that was utterly transformed by a handful of transactions that took place between 2007 and 2013, the combined effect of which was to drive concentration to an all-time high that has been maintained ever since. Some of those transactions were introduced a moment ago, but are repeated here for ease of reference, while I also place new emphasis on matters unique to pay TV services. Two other ownership changes led by BCE, and that were unique to this period, are also listed:

- Roger's take-over of CHUM's television services in 2007.
- Canwest's acquisition of Alliance Atlantis the same year.
- Shaw's take-over of the television assets of the bankrupt Canwest in 2010.[239]

[237] Office of the Parliamentary Budget Officer (Oct. 6, 2022). *Cost estimate for Bill C-18: Online News Act*. Ottawa: Author. See below with respect to the claim made here about these companies being "wildly profitable", a reference to the fact that they have maintained profit levels in the forty-percent range throughout the uneasy years of the past decade-and-a-half.

[238] CRTC (2023). *Financial summaries for broadcasting sector—discretionary and on-demand (summary)*.

[239] CRTC (2010). *BD 2010-782 Canwest Global Communications Corp, on behalf of its licenced broadcasting subsidiaries*.

- BCE's re-acquisition of CTV in 2011.[240]

- BCE's acquisition of Astral in 2013.[241]

Together, these ownership changes triggered the most significant bout of consolidation within the TV industry in the period covered by this report. They caused the HHI score for the pay TV market to jump two-and-a-half fold, as it shot upwards from 871 in 2004 (a sign of a highly diverse market) to 2,123 in 2013 (an indicator at the high end of the "moderately concentrated" designation). It has stabilized at this level ever since. The CR4 was 79 and the HHI 2,067 last year.

At the end of this bout of industrial restructuring and consolidation, several consequences were apparent:

- Concentration levels in broadcast television, pay TV services and for the total television market were the highest ever, and have stayed there ever since.

- Several iconic and specialized players in Canadian television had vanished: e.g. CHUM, Alliance Atlantis, and Astral Media.

- Others had been broken apart or gone bankrupt after loading up with unsustainable debt, with Shaw swooping in to purchase the assets of two such firms: i.e. Canwest and Craig (owner of the A-Channels and Toronto 1).[242]

- Astral Media's pioneering plan to launch an online video service in 2012 to compete head-to-head with Netflix was shelved after he company's take-over by Bell. This left the nascent online video market exclusively in the hands of Netflix for two more years until Bell launched Crave and Rogers and Shaw co-launched the short-lived Shomi service.

From this time on, the pay TV services market in Canada has largely orbited around three companies: Bell, Shaw and Rogers, with the CBC and TVA falling well-behind them. In 2022, the 'big three' collectively owned sixty-two local broadcast television stations and eighty-one pay TV services, down from 100 five years earlier. They also account for

[240] CRTC (2011) *BD 2011-163 Change in effective control of CTVglobemedia Inc.'s licenced broadcasting subsidiaries*.

[241] CRTC (2013) *BD 2013-310 Astral broadcasting undertakings – Change of effective control*.

[242] This also includes Bell Globemedia, whose first attempt at cross-media ownership by acquiring CTV and *The Globe and Mail* in 2000 ended in failure in 2006, after which the company abandoned the field, only to return in 2011 after re-acquiring CTV, while maintaining a 15% ownership stake in *The Globe and Mail* all along.

three-quarters of the pay TV market, a figure that has stayed the same since 2013. Add Quebecor and the CBC into the mix, and collectively the five largest Canadian TV operators controlled 84% of the pay TV market last year. They also held two thirds of total television revenue (i.e. broadcast, pay and online VOD services revenue), although this was down from eighty percent five years ago.[243]

Even amongst the big players, Bell stands out. To give some sense of scale, it's $1.5 billion in revenue and 36% market share last year is roughly twice that of the Rogers and Shaw, seven times that of Quebecor, and nine times that of the CBC, respectively.[244] In addition, Bell has also used its advantages in scale to lockdown long-term, exclusive rights to premium programming in Canada from several of the most important television and film distributors in the U.S., notably HBO and HBO Max (Warner Media), Showtime (ViacomCBS), and Starz (LionsGate). In 2021, it ventured further afield by acquiring the promoter of the Montreal Formula 1 Canadian Grand Prix.[245]

During the development of the *Online Streaming Act*, and now in the first round of hearings on the *Act* by the CRTC, Bell has criticized the international streaming services for "withholding" such programming rights in recent years as they increasingly go direct to consumers. To counter this "threat" to the Canadian broadcasting "system", argues Bell, it should be given right of first refusal on such programming before it makes it on to the international streaming services that are now a key part of the television marketplace in Canada (as we will see momentarily). Bell is not alone in this demand, but such wishes never made it into the *Act*, although the same ends are now being pursued as the Commission works out how to apply the new law.

Beyond the processes of horizontal and diagonal integration playing out between the different sectors of the television market just recounted, another powerful force has utterly transformed the television market: vertical integration of all the major Canadian commercial television services into telecom companies. The upsurge in vertical integration between the telecoms and broadcasting markets between 2007 and 2013 yielded four vertically integrated telecoms and media conglomerates that have stood at the apex of the network media economy in Canada ever since: Bell, Rogers, Shaw and

---

[243] CRTC (2023). *Financial summaries for broadcasting sector—discretionary and on-demand (summary)*.

[244] See the "Pay TV Programming Services" sheet in the GMICP Workbook—Canada.

[245] See BCE (2022), *Annual Report 2021*, p. 37. While details are not available for these licensing agreements, such agreements are typically last for five years. Recall, as well, that in early 2021 AT&T spun off Warner Media into a joint venture with Discovery Communications.

Quebecor.[246] In 2022, they controlled just under four-fifths of pay and specialty revenue and more than half of all television revenues once we open the lens further to include broadcast television and online video services (more on this below).

While high levels of concentration within individual sectors of the communications, internet, television and other media markets in countries around the world is not unusual, the high levels of cross-media ownership in Canada coupled with sky-high levels of vertical integration between carriers and content media services set this country apart from its international peers. As we saw earlier, and in our first report, such conditions are not unknown in many countries, but they tend to be outliers rather than the norm.

Divestitures, spin-offs, closures, consolidation of attention on a fewer marquee brands and genres, and pay & specialty television services without workers

Although the processes just outlined drove concentration across the total TV market to new heights, and installed four vertically integrated communications and media conglomerates at the apex of the network media universe, several other forces have shaped the pay TV market in the past decade, especially since 2017. Four such factors stand out:

- The divestiture, spin-off, and closure of services by the major players.
- Consolidation amongst marquee brands and a narrower range of genres.
- Automation of services that now run with a skeletal to no workforce.
- The rapid growth of online streaming video services such as Netflix, Crave, YouTube Premium, Disney+, Stack TV, Apple TV and iTunes, Amazon Prime Video, and so forth.

[246] Roger's acquisition of City TV in 2007; Shaw's take-over of Canwest's TV holdings in 2010 (CRTC, 2010, BD 2010-782 Canwest Global Communications Corp, on behalf of its licenced broadcasting subsidiaries); Bell's buy-back of CTV a year later (CRTC, 2011, *BD 2011-163 Change in effective control of CTVglobemedia*); Bell and Rogers each taking a 37.5% stake in Maple Leaf Sports Entertainment (i.e. NBA TV, Leaf TV and GolTV) in 2012 (CRTC, 2012, *BD 2012-43 Toronto Maple Leafs Network Ltd., Toronto Raptors Network Ltd., Gol TV (Canada) Ltd. and 2256247 Ontario Limited*; Bell, 2014, *Annual Report, 2013*, p. 133); and Bell's take-over of Astral Media in 2013 after the CRTC reversed course from its decision the year before to deny that deal (CRTC, 2013, *BD 2013-310 Astral broadcasting undertakings – Change of effective control*). For its part, Quebecor took on the shape of a vertically integrated communications and media conglomerate in a trilogy of acquisitions a decade earlier between 1999 and 2001—Vidéotron, Sun newspapers and TVA—and thus before this moment in time when the vertical-integrated firm was cemented at the centre of the communications and media universe in Canada.

In an attempt to lessen the degree of consolidation while paradoxically permitting it, after denying Bell's first attempt to acquire Astral Media in 2012, the Competition Bureau and CRTC approved a revised bid by Bell for the company a year later.[247] However, both regulators only granted their blessing after Bell agreed to divest eleven of the services that it was acquiring from Astral—the largest independent pay service provider in the country at the time, a position it had buttressed by acquiring long-term exclusive distribution rights for HBO programming in Canada.

The most important of these services were sold to Shaw (Corus),[248] while the rest were acquired by DHX Media (WildBrain, as of 2019), a Halifax-based broadcaster and producer of children's programming (Caillou, Degrassi: Next Class, Inspector Gadget, and Teletubbies),[249] Stingray,[250] and V Media (now Noovo and once again owned by Bell) in Quebec.[251] The hoped for benefits of these conduct remedies have largely failed to materialize, however, for reasons that will soon be apparent.

For one, these divestitures hardly put a dent in Bell's dominant position. However, for a time, it appeared that they might help firm up the ranks of second-tier television ownership groups given that the lion's share of the services spun-off were acquired by Shaw (Corus). This also appeared to head off Shaw and the other smaller firms' opposition to the deal. Thus, while many voices from within the industry and public interest groups loudly opposed the deal, these companies stayed silent once the divestitures were on the table and earmarked for them. In fact, this author was in the room when DHX pulled out of the hearing at the last moment, likely signaling that it had struck a deal with Bell behind the scenes regarding who would benefit from the spin-offs being required by the regulator—an all-too familiar tactic in Canadian regulatory processes.

Second, while the acquisition of the spun-off services by a group of smaller companies helped them to grow for a time, and thus added some important new voices and greater choice to the field, the impact of these transactions has been modest, and their future uncertain all along. In fact, DHX-cum-Wild Brain's revenue has been in a tailspin since it obtained the services spun-off from the Bell-Astral transaction. V Interaction, as we saw a moment ago, is no more as of three years ago, having been absorbed into the BCE fold. Collectively, the new players that remain have seen their overall revenue decline and now account for less than one percent of total TV revenue. This is a fraction

---

[247] CRTC (2013). *BD 2013-310 Astral broadcasting undertakings – Change of effective control*.

[248] CRTC (2013). *BD 2013-737 TELETOON/TÉLÉTOON, TELETOON Retro and TÉLÉTOON Rétro – Licence renewal and amendment*.

[249] The Family Channel, Disney Jr. and Disney XD.

[250] MuchVibe, MuchLoud, MuchRetro and Juicebox.

[251] MusiquePlus and MusiMax. Those services were subsequently excluded from Bell's take-over of V Media in 2020. CRTC (2020). *BD CRTC 2020-116: V Interactions Inc.—Change in ownership and effective control*.

of the market share held by the vibrant Astral Media when it was taken over by BCE in 2013. In short, while we must pay attention to new voices in the media landscape it is also crucial that we be careful to avoid overstating their significance.

As mentioned in the first report in this year's series, several local television stations have also been shuttered since 2009 and there have been substantial cut-backs in news programming at many local television and radio stations across the country as well. In addition, several pay television services have also been closed on the grounds that falling revenue and profits have undermined their commercial viability. For example, Bell and Rogers shut down their jointly-owned Viewers' Choice and GoTV in 2014 and 2015. Rogers and Shaw also shuttered their jointly-owned internet streaming TV service, Shomi, in November 2016, while Quebecor shut down Argent a year before that.

In another example, Corus turned out the lights at the Cartoon Network in 2015 and Movie Central in 2018. As a result of these changes, the number of pay TV services owned by the big five television ownership groups—Bell, Shaw (Corus), Rogers, Quebecor, and the CBC—has fallen from 129 in 2014 to 92 last year (meaning that six more such services had been closed in just the last year, and just under twenty in the last five).[252]

In addition to service shut-dodwns, in 2016, Shaw spun-off the Global TV network and several pay TV services to its sister company, Corus, to help finance its acquisition of Wind Mobile. This complex transfer of ownership was primarily about hiving off the TV group to a separate entity (Corus) to help finance Shaw's take-over of Wind Mobile and focus the Shaw company on communications rather than content. This corporate restructuring was also about setting up Corus for a potential sale, a possibility that executives at the company have publicly mused about for years. That option, however, has been foreclosed by regulators not disposed to allowing Corus Entertainment to be sold to an existing player like Bell or Rogers on account of the extensive consolidation that currently exists, while a potential sale to foreign investors is also ruled out by existing foreign ownership restrictions. Both restrictions have raised the company's ire.[253]

---

[252] See the "TV Services Ownership Groups" sheet in the GMICP Workbook—Canada.

[253] CRTC. (2016). *Broadcasting Decision CRTC 2016-110: Various television services and stations – Corporate reorganization (transfer of shares)*; Willis, A., & Dobby, C. (2018, June 12). Shaw trying to sell its stake in Corus Entertainment to focus on Freedom Mobile expansion. *The Globe and Mail*. More equity stakes in Corus were sold and acquired by a consortium of Canadian banks in 2019; Jackson, E. (2019, May 16). Sale of Shaw stake could mean more deals for Corus: Analyst. *Financial Post*; However, ownership and control still rests with the Shaw family through the Shaw Family Living Trust, which represents "85% of the outstanding Class A Voting Shares, for the benefit of descendants of the late JR Shaw and Carol Shaw". Corus. (2021). *Corus Entertainment Annual Report 2020.* p. 41. Also see the CRTC. (2021). *Corus Corporate Structure* [Ownership chart].

There should be no mistake, however, about the fact that even amidst declining revenue, profits for pay TV services are still well-above average, as noted above.[254]Bell, Rogers, Shaw (Corus) and Quebecor have also remained wildly profitable, with a few exceptions here and there along the way. Thus, in 2022, the media divisions of each of these firms posted operating profits of 34.5% (Bell) and 37.8% (Corus), although Rogers and Quebecor 's profit margins of 11.4% and 9.5%, respectively, are more in line with those for businesses in Canada generally. Indeed, profit levels have hovered in the mid-twenty-to thirty percent range for these companies for years despite the fact that those profits are now being made on a shrinking revenue base.

The problem, from a strictly financial point of view, however, is that even these lush profits don't hold up to the even bigger profits at these communications conglomerates, where their mobile wireless, internet access and wireline divisions have seen revenues climb year-after-year, as we showed in our first report, and with profits typically in the forty percent range. Last year, Bell, Rogers, Quebecor and Shaw all posted profits between 40-43% on revenues of between $4.5 billion (Quebecor) at the low end and $24.2 billion (BCE) at the high end.[255]

While the discrepancy between wildly lucrative operating profits on the communications side of their businesses versus the broadcasting and media content side may be a problem for Shaw and Bell as well as investors and the banks behind both companies, it is not a sign that TV faces dire straits. Indeed, far from it. Thus, when Corus executives and a few financial analysts quoted in the business press fulminate against "old rules" and stodgy regulators holding the line on even more consolidation and against foreign ownership, it must be kept front-and-centre in mind that they are looking at things from the viewpoint of investment bankers rather than communications and cultural policy.

As the companies have shuttered services, they have also increasingly put their resources behind a smaller number of marque services. This can be seen, for example, in the fact that whereas in 2012, it took twenty-six of the top ranked pay and specialty television services to account for half of all revenue in the sector, by that number has fallen to just fifteen. Those services are also becoming more focused on sports (e.g. Rogers Sportsnet, BCE's TSN, TVA Sports), movies (e.g. BCE's Crave/The Movie Network, Corus's Showcase), news (e.g. CBC News Network) and a few thematic channels. In fact, just the top four sports-themed services alone account for a third of the specialty and pay television services in 2022, up from a fifth a decade ago.

---

[254] CRTC (2023). *Financial summaries for broadcasting sector—discretionary and on-demand (summary)*.

[255] Rogers' negative profit for its media division were an outliner relative to its peers in 2021 and in previous years, although it, too, has maintained positive, even if slim profits margins. BCE (2023), *Annual Report, 2022*; Rogers (2023). *Annual report, 2022*; Shaw (2023), *Annual report, 2022*; Shaw (2020), *Annual Report 2019*. Quebecor (2023) *Annual MD&A & financial documents, 2022*9; Corus (2023). *Annual MD&A & financial documents, 2022*, p. 5; Corus (2020), *Annual Report 2019*, pp. 20-21; Statistics Canada. (2016). *Financial and Taxation Statistics for Enterprises: Tables*.

That said, and similar to the broadcast sector, there is also some re-ordering of the ranks. Thus, amongst the shorter list of fifteen top grossing services in 2022 that account for half of the pay TV sector's $4.1 billion in revenue, six are Bell brands, up from four in 2012. At the same time, Corus' share of top-ranking services decreased from nine to four, while its revenue from such services has dropped by close to $400 million since 2015 (a loss of 37%). Rogers, Quebecor, and the CBC have also seen some declines as revenue for the sector as a whole has slipped in the past five years, but at a more modest pace.

A few small pay TV operators such as Pelmorex—the owner of the Weather Network—and OUTtv have actually done better, and for the latter, with its small loss of revenue at home more than offset by revenue from international markets that goes unreported to the CRTC (because it is not required to do so). Others such as DHX-cum-WildBrain, Blue Ant and Stingray, for whom prospects were once high as the intended beneficiaries of the spin-offs from Bell's acquisition of Astral, have seen had their dreams and dollars crushed. The ethnic media service provider, Fairchild, no longer reports to the CRTC, likely because it is no longer viable in this domain.

The last point to be made in this section is the striking phenomenon whereby many pay TV services have become, in essence, "ghost operations" insofar that they do not have any workers at all to keep them operating. Indeed, in testimony on the *Online Streaming Act*, the Forum for Research and Policy in Communications observed that there are sixty-three such services with no workers at all, including, for example, Bell's CTV Comedy ($50 million in revenue in 2022) and DHX's Family Channel ($34.1 million). Ten other such services have just one worker, including, for example, Animal Planet ($7.1 million in revenue), while another forty have between one and ten staff. In other words, many pay TV services have been either cut-to-the-bone or hollowed out completely.

Ultimately, while we have spoken elsewhere in this report about the problem of "regulatory hesitancy" with respect to telecoms, the above discussion of spin-offs, closures, automation and failure stands as a fine example of the same phenomenon in the context of television. The presence of such "regulatory hesitancy" in both areas reveals, in essence, a policy-driven (or at least sanctioned) process of consolidation across the network media economy that has failed to deliver on its promises. It also implies that rather than regulators trying to engineer complex and difficult to monitor & enforce regulatory remedies—as was the case in relation to Bell's second and successful bid to acquire Astral Media—it is better to just say no to deals that drive ever higher concentration level. That was what the CRTC did the first time around when it rejected Bell's bid to take-over Astral. With the benefit of hindsight, it was right to have done so.

Online video services[256]

Anchor findings

- The growth of online video services has expanded the revenue base for total TV services, along with Canadian television and film production investment.
- The rapid growth of online video services and entry of major new international players such as Netflix, Google's paid YouTube services, Disney+, DAZN, Amazon, and Apple have led to a more diverse television landscape and falling levels of concentration.
- Based on revenue and the CR4 measure, the online video market is still concentrated but offering significantly greater choice to subscribers as newer entrants' positions mature while comfortably settling into the moderately concentrated range of the HHI scale.
- Based on subscribers and the HHI, it fits the criteria of a diverse and competitive market.

We now turn to an analysis of online video services. Our focus is primarily on subscriber video-on-demand (SVOD) services such as Netflix and Crave, transactional video-on-demand (TVOD) services such as Apple's legacy iTunes service and Google Play, and advertising-funded video-on-demand services (AVOD) offered by broadcasters such as Corus' Stack TV. For the time being, video sharing platforms based on user created content such as YouTube, Twitch, and so forth are set aside (the "narrow" view), although such services will be brought in from time-to-time to make certain points (the "broad" view).

[256] As we observed in our first report, improved access to information for Netflix, Crave, illico, and Gem/ICI TOU in recent years makes it possible to state actual subscriber numbers for these services and to estimate their revenue with greater confidence than in the past. Of considerable importance in this regard is that the *Online Streaming Act* contains information disclosure obligations for any entity offering online video services in Canada. The first call for basic information—company name, address and contact details—for companies with more than $10 million in annual revenue was released in the last months. This is a welcome development and it could go a long way to improving the quality of the data available and, consequently, to our understanding of these fast-emerging sectors of the media landscape. Of course, just this call for basic information—the sine qua non or regulation—occasioned howls of protest about free speech from the usual suspects. See CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-139: Call for comments—Proposed regulations for the registration of online streaming services and proposed exemption order regarding those regulations.

$3.7B

Total Canadian revenue for online video services in 2022 was $3.7 billion—nearly four times what it had been five years earlier

81%

In 2022, 81% of Canadian households subscribe to at least one online video service.

The rise of online video services has dramatically changed the TV landscape in Canada and around the world. Total Canadian revenue for online video services in 2022 was $3.7 billion—nearly four times what it had been five years earlier (that figure jumps to $4.6 billion if we add the advertising-supported YouTube video sharing platform). We estimate that there were 29.9 million online SVOD subscriptions in Canada last year, with 81% of households subscribing to at least one online video service. This implies that each SVOD subscriber has, on average, 2.4 services.[257]

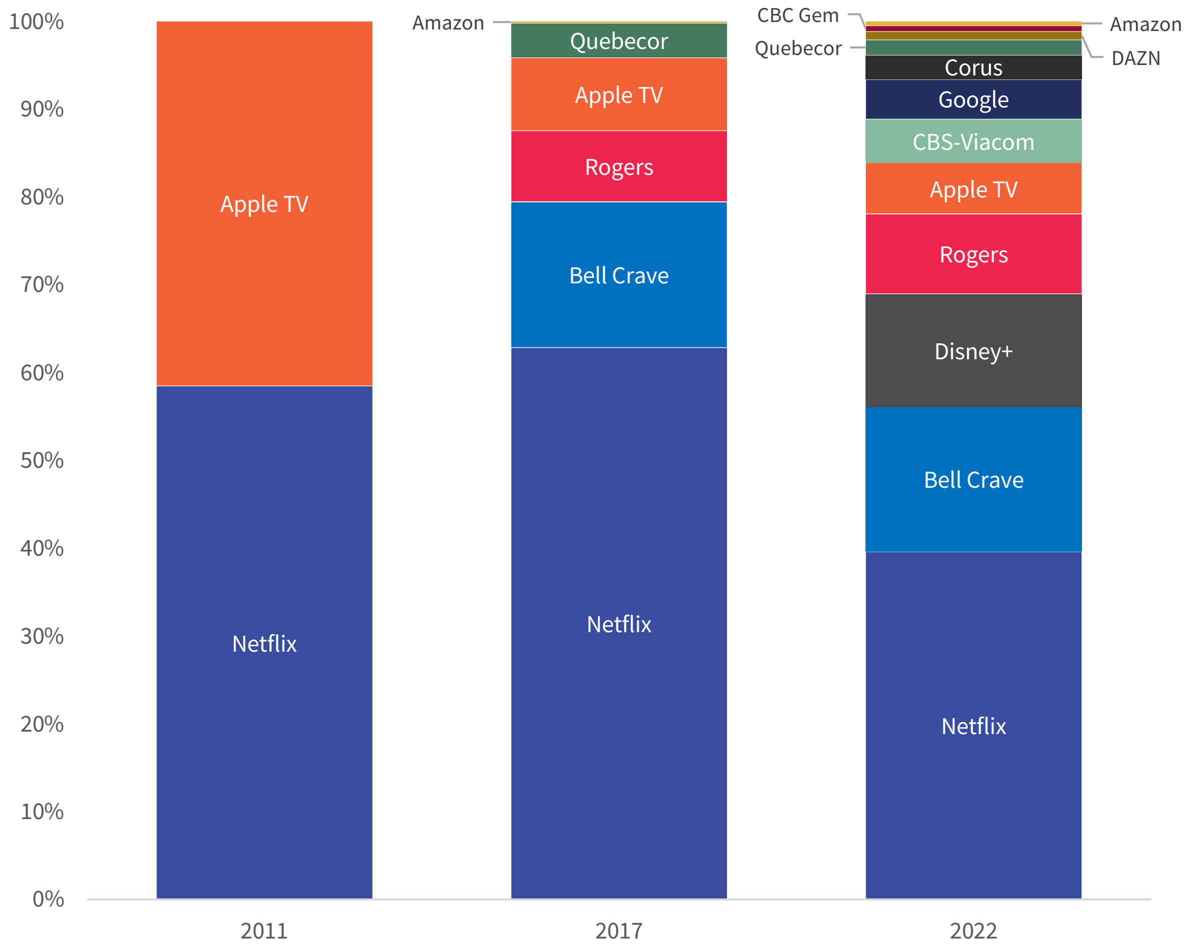
Regardless of whether we adopt the 'narrow' definition of the online video services market, or the 'broad' one, such services have added immensely to the size of the TV marketplace in terms of revenue and choice, while also serving to drive down concentration levels. They have also added major new international actors to the landscape, most notably Netflix, Disney, Apple, CBS-Viacom, DAZN, and Amazon (in that order).

Taking the narrow view that excludes ad-supported video sharing platforms, online video is still highly concentrated by CR4 standards, with the top four providers—Netflix, Crave, Disney+ and Rogers—accounting for 78.1% of revenue last year. This was down considerably, however, from five years earlier when the leading four services accounted for close to 92% of market. The same downward trend can be seen in terms of the HHI measure. Last year, it fell to 2181 and into the middle of the moderately concentrated zone, half what it was just five years earlier (i.e. 4,314 in 2017).

Figure 27, below, illustrates the point.

[257] See the notes in the "Online Video Services" sheet in the GMICP-Canada workbook for how we arrived at our estimates for each service's year-over-year subscriber numbers. All subscriber numbers reported here and below are year-over-year averages.

Figure 27: Online video distributors, 2011 vs 2017 and 2022 (market share based on revenue)



2011	
Sector total	$82.9 (millions)
CR4	58.5%
HHI	5144.5

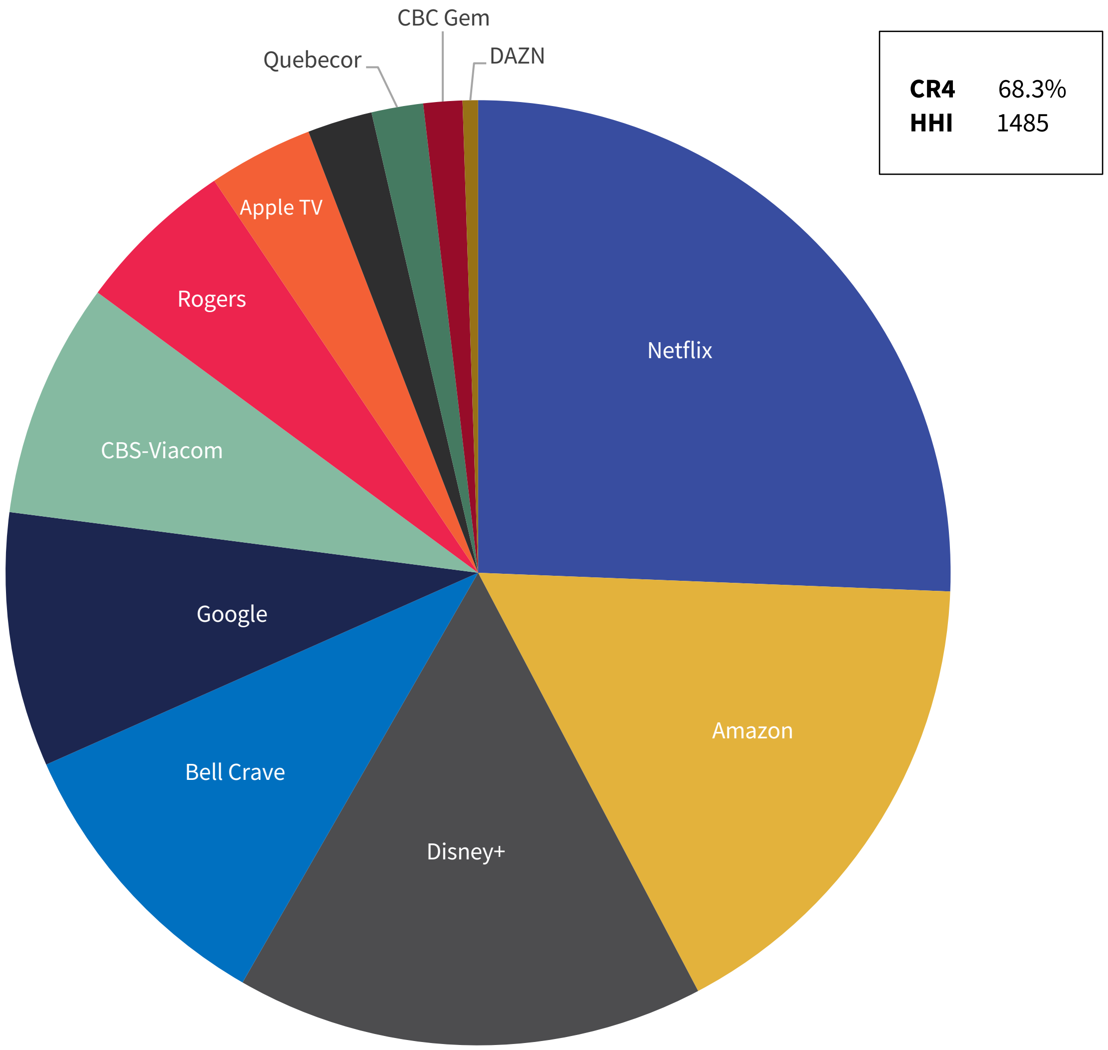
2017	
Sector total	$1000.7 (millions)
CR4	91.6%
HHI	4314.6

2022	
Sector total	$3680.4 (millions)
CR4	78.1%
HHI	2180.9

Sources: see the “Fig 27 OVD Market Share no YT” sheet in the Excel Workbook accompanying this report and the “Online Video Services” sheet in the GMIC Project—Canada open data sets.

Figure 28, below, presents data on the respective market shares of the top dozen services based on subscribers.

Figure 28: Online video distributors, 2022 (market share based on subscribers)



Sources: see the "Fig 28 OVS Subs MS" sheet in the Excel Workbook accompanying this report and the "Online Video Services" sheet in the GMIC Project—Canada open data sets.

As of 2022, Netflix had 7.7 million subscribers and $1.6 billion in revenue. It is the biggest online video service in Canada by far, with a market share last year of 39.6% (or 31.6%, if we use the 'broad' view of the online video market).

Other providers, however, have entered and expanded the online video market as well. Notably, Bell's Crave is the second-ranked player (based on revenue), followed next by Disney+, Rogers SportsNet Now, Apple (i.e. Apple TV+ and iTunes), CBS-Viacom's Paramount+, Google's paid YouTube Premium service, Corus's StackTV, Quebecor's illico, DAZN, CBC Gem, and lastly Amazon Prime Video. These new services are steadily chipping away at Netflix's dominance of the online video market, which has seen its market share fall from nearly two-thirds of the market in 2017 to two-fifths last year (based on revenue) and to just over one-quarter based on subscribers.

The second largest online video service in Canada is Bell's Crave. In 2022, it had 3.1 million subscribers and an estimated revenue of $608.6 million, giving it a market share of 16.5% based on revenue and 10% based on subscribers. This was up from 2.9 million subscribers the previous year and revenues of $513 million.

The next largest domestic operator is Rogers SportsNet Now, with revenue of $335 million and 1.6 million subscribers last year. This gave it a market share of 9.1% based on revenue and 5.5% based on subscribers. Next in line amongst the Canadian online video services, Quebecor's illico had revenue of $63.3 million and more than half-a-million subscribers, yielding a market share of 1.7% and 1.8% by revenue and subscribers, respectively. Meanwhile, CBC Gem/ICI Tou TV garnered $23.8 million in revenue from 397,300 subscribers (equal to .6% market share based on revenue, 1.3% by subscribers).

In sum, Canadian online video services accounted for about thirty percent of the market based on revenue in 2022, a figure that has stayed stable since 2017. Based on subscribers, however, they account for a little over one-fifth of all subscribers.

The major U.S.-based actors such as Netflix, Disney, Apple, CBS-Viacom, Google, and Amazon Video (in that order) account for nearly all the rest and dominate this sector. Take Disney+, for example. After entering Canada near the end of 2021, it rose quickly to become the third-largest online video service in the country. It retained that spot in 2022 with revenue of $473.6 million and 4.8 million subscribers—a remarkable year-over-year growth spurt of 25% based on revenue or 16% by subscriber count. As of 2022, Disney's share of the online video services market in Canada was 12.9% based on revenue and 16% by subscribers.

Revenue for Apple's streaming Apple TV+ service and download iTunes service were an estimated $212.4 million. Apple has been phasing out iTunes after launching Apple TV+, Apple Music and Apple Podcasts in 2019, but iTunes still accounts for the lion's share of the company's online video services ($140.6 million in 2022 versus $71.7 million Apple TV+). We estimate that Apple had a year-over-year average of 1 million subscribers in Canada last year. This gave Apple a market share of 5.8% based on revenue and 5% by subscribers.

CBS-Viacom's Paramount+ was the sixth-largest online video service operating in Canada last year, with an estimated revenue of $182.4 million and 2.4 million subscribers year-over-year. This gave it a market share of 5% based on revenue and 8.1% by subscribers. Google's paid YouTube Premium and Play Store services have also grown in importance, making it the fourth largest online video service provider in Canada, with revenues across its paid services rising from an estimated $28.7 million in 2017 to $165.6 million last year, and 2.4 million subscribers. As a result, Google had a market share of 4.5% based on revenue and 8.7% by subscribers.

If its advertising-funded video-sharing platform is included, it would have $1.1 billion in total revenue across all three of its video services (i.e YouTube Premium, Google Play, the YouTube video sharing platform) and a combined market share across its services of 23.8% in a larger market worth $4.6 billion (versus $3.7 billion for the more narrowly drawn definition that we primarily work with in this section).

DAZN, the U.K.-based live sports streaming service, has also become a significant presence in Canada, with estimated revenue of $37.7 million in revenue and 157,000 subscribers last year, yielding a market share of 1% based on revenue and .5% by subscribers.

Lastly, Amazon Prime Video rounds out the ranks of the top dozen online video services with revenue of $18 million but with a massive subscriber base of just under 5 million. This yields a paradoxical result where Amazon has a tiny market share of .5% based on revenue but a whopping 16.7% market share based on subscribers.

Working through this paradox is not easy, but it is revealing because it draws attention to the revival of a long-standing reality in the cultural industries where big tech companies give away content for 'free' to cultivate and shore-up their core business interests. In the past, for instance, radio equipment makers set up broadcasting services in a bid to sell broadcasting towers to industry and governments and receivers for audiences at home. Today, companies such as Amazon use a similar strategy to help drive people to and keep them on its ecommerce platform. In this case, Amazon is bundling its Prime Video service into its Prime membership, the key drawing card of which is 'free' delivery as well as some other perks, like 'free' video and music options. Again, as we discussed in our last report, pegging a value on the video and music components of such services is more art than science, but it can be done. We walk readers through the steps we took to do so in the notes for Amazon entries in the workbooks that go along with this report.

It is also worth reiterating that the practice is not unique to Amazon. In fact, it is part of a revival of the established business practice described above . Again, as we discussed in our last report, we can see this when Apple gives away 'free', time-limited subscriptions to its Apple TV+, Apple Music, and Apple Podcasts when people buy one of its devices. Bell does the same thing with Crave, as does Quebecor with illico and free music services, while Rogers bundles Netflix subscriptions into promotional deals on its cable and internet packages.

In sum, incumbent telecoms operators and big tech firms are all subsidizing the consumption of media and cultural services. How big is this subsidy? We do not know for certain, but this is one effort to help get us closer to an answer to that question as well as the implications that follow from it.

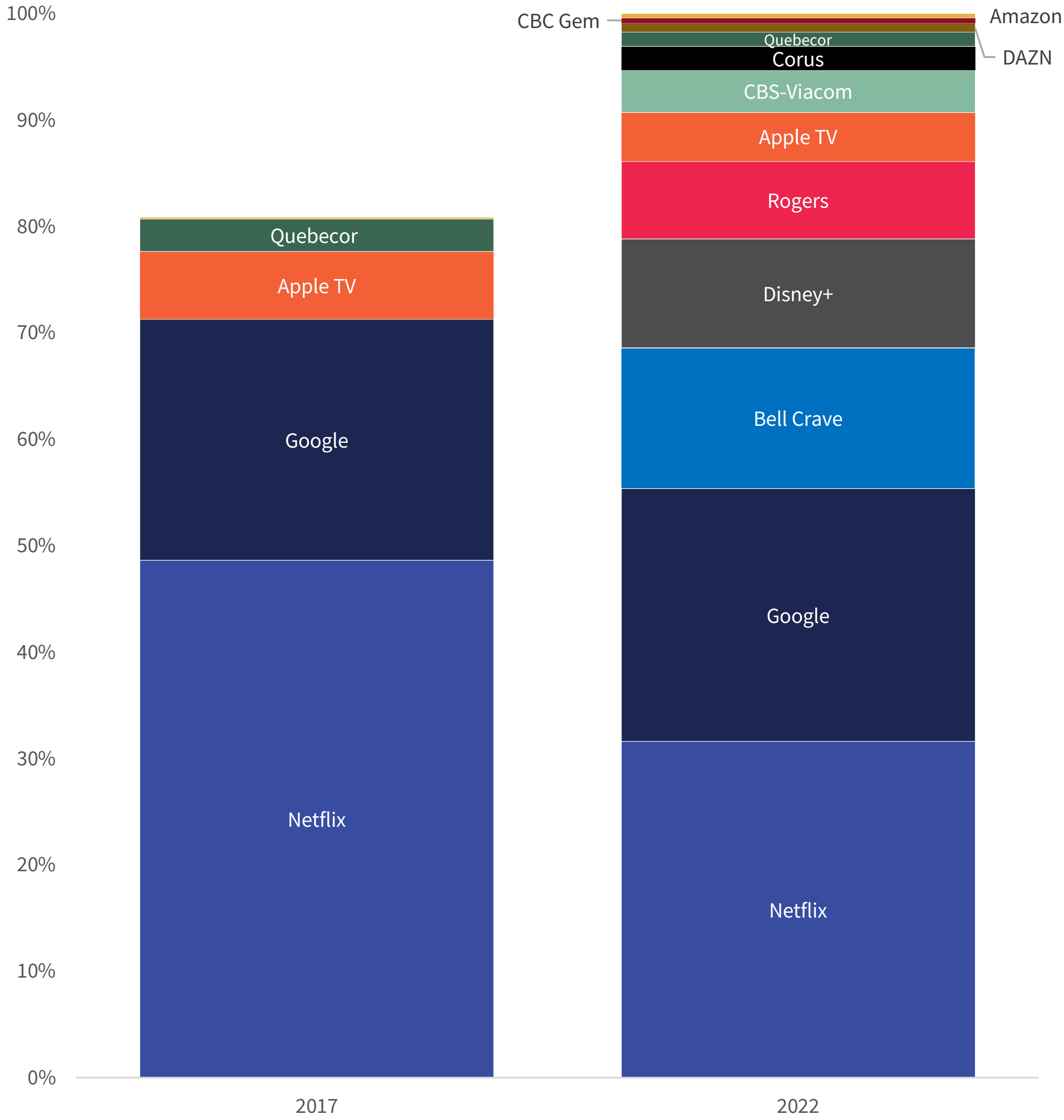
“Incumbent telecoms operators and big tech firms are all subsidizing the consumption of media and cultural services”

But back to the main task at hand, and one thing stands out: the significant and rapid decline of concentration levels in the online video services market no matter how one looks at—that is, by either revenue or subscribers, or by the “narrow” or “broad” view of that market. This trend is also having positive knock-on effects across the television marketplace, as we will see in the next section.

Thus, if we take the broader view, for a moment, that includes video sharing platforms like YouTube, the online video market changes both in terms of the rank ordering of its main players as well as levels of concentration, but either way the key point that stands out is that there are more players and, thus, greater diversity. In 2022, the top four players based on the broad view of the online video market were Netflix, Google, Bell Crave, and Disney+. Combined, they had a CR4 of 79%. Turning to the HHI measure, concentration levels have slipped appreciably into the mid-range of the moderately concentrated zone. The HHI for this broad view of the online video market was 2,927 inn 2017; it was 1941 last year, a figure that fits comfortably into the territory of moderate concentration.

Figure 29, below, illustrates the point using the broader view of the online video services market inclusive of the largest video sharing platform, YouTube.

Figure 29: Online video distributors, 2017 vs 2022—the “broad” view (market share based on revenue)



Sector total	$1298.6 (millions)	**Sector total**	$4610.8 (millions)
CR4	80.7%	**CR4**	78.8%
HHI	2926.9	**HHI**	1940.7

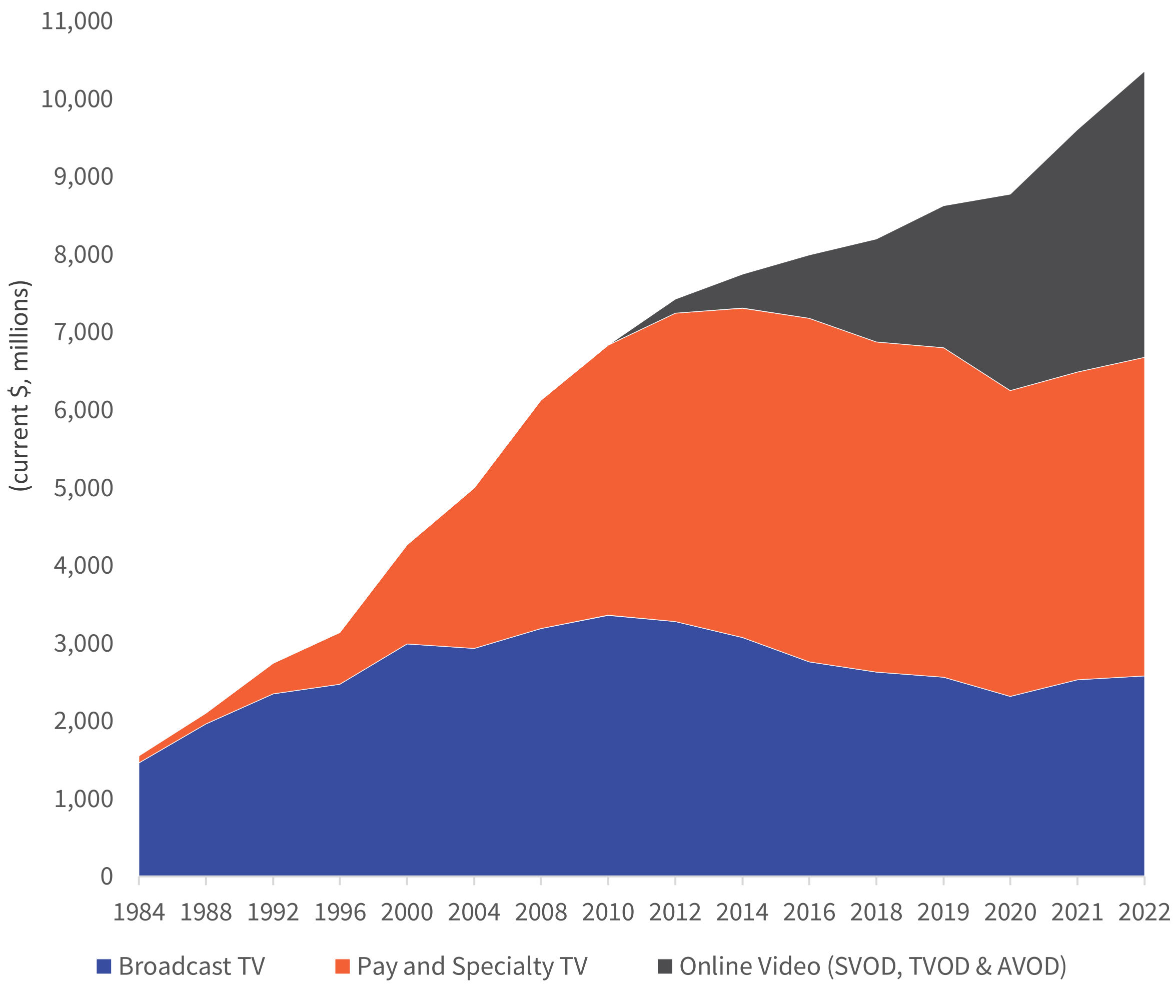
Sources: see the “Fig 29 OVD MrktShare w YT” sheet in the Excel Workbook accompanying this report and the “Online Video Services” sheet in the GMIC Project—Canada open data sets.

The television and video landscape remade, 1984-2022

In this section, and in keeping with the scaffolding approach, the broadcast TV, pay TV, and online video services are brought together into an integrated, composite view of the total TV marketplace. When we do that, we can see that the addition of online video services has caused total television revenue to swell from $7.3 billion a decade ago to $10.4 billion last year, with a concurrent explosion of television and film production in BC, Ontario and Quebec, as we detailed in the first report of this year's series.

Figure 30 below illustrates the transformation of the television landscape over the past forty years, including the rise of pay television services early on in this period and the steady rise of online video services over the past decade or so.

Figure 30: The television and video landscape remade, 1984-2022 (current $, millions)



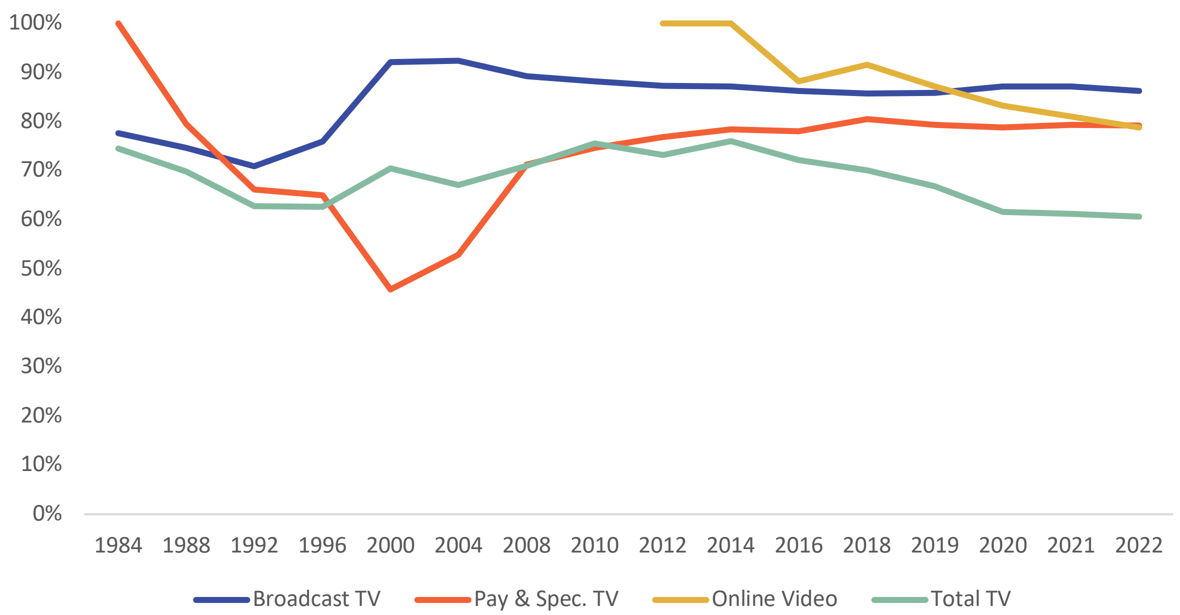
Sources: see the "Fig 30 TV + Video Landscape" sheet in the Excel Workbook accompanying this report and the "Broadcast TV", "Pay TV Programming Services" and "Online Video Services" sheets in the GMIC Project—Canada open data sets.

In terms of concentration and diversity, the upshot of the changes just recounted is two-fold: first, growth of the "total TV universe" continues to be strong throughout this period while the range of actors and choices available to Canadians has expanded tremendously. Concentration levels are declining significantly as a result. In terms of the latter point, as international, mostly U.S. online video services expand their presence in this country, Canada's largest players such as Bell, Rogers, Shaw, and Quebecor are seeing their share of the TV marketplace cut down to size, however, not nearly as significantly as many seem to suggest.

As the grip of the top five players loosens—from 80% in 2017 to 67% last year—diversity is increasing. The HHI has also fallen sharply from moderate levels of concentration for the "total TV universe" from contemporary all-time highs, circa 2013-2014, when the HHI score was in the 1,720-1775 range, to 1376 last year. In addition, for the past three years, the HHI score for the total television market has entered the level required to identify a diverse and pluralistic market. This is a very significant improvement on the past and a seeming reversal of the long-term trend toward ever higher levels of consolidation.

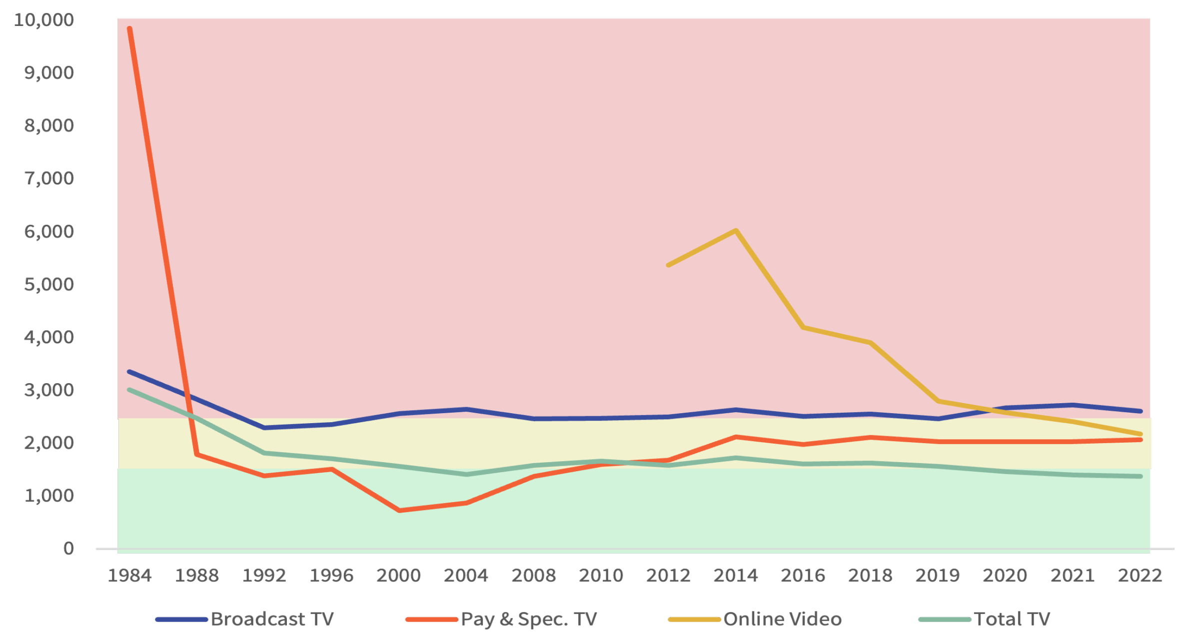
Figure 31, below, summarizes the trend for each of the broadcast, specialty and pay TV, online video services and the "total television market" based on CR scores while Figure 32 after it does the same in terms of the HHI.

Figure 31: CR scores for television, 1984-2022



Sources: see the "Fig 31 CR ScoresTV" sheet in the [Excel Workbook] accompanying this report and the "Concentration Metrics" sheet in the [GMIC Project—Canada open data sets].

Figure 32: HHI scores for television, 1984-2022



Sources: see the "Fig 32 HHI Scores TV" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

In short, after concentration across the total TV market had been pushed to new extremes by the spate of amalgamation detailed earlier, circa 2007-2013, the tide has since turned in the opposite direction on account of the rapid and ongoing growth of online video/television services made available over the internet. The irony, however, is that, rather than this drift of events serving as cause for celebration, the main industry ownership groups and the clientelist interests that hover around them tend to see these changes as calamitous. Consequently, they plead with the CRTC and policy-makers to turn back the tide and gird the status quo.

A different view suggests that a cultural policy and TV industry organized around four giant vertically integrated companies has been a failure even on its own terms. Indeed, Bell, Shaw (Corus) and Rogers have been quick to shutter the doors, cut-back workforces, and dispose of services when challenges to their bottom lines mount, despite making profits that are the envy of almost any other industry. In addition, rather than driving new investment in Canadian TV and film production, in reality broadcasters' spending on in-house production and by the Canadian television production industry has stagnated. It has averaged $4 billion per annum over the past decade. It was $3.9 billion in 2012. In 2020, it was $4 billion, it then plunged in 2021 amidst "the Great Pandemic" to $3.5 billion. Last year, it spiked to $4.6 billion.[258]

[258] Nordicity (various years). *Profile: Economic report on the screen-based media production industry in Canada*. Study prepared for CMPA, Heritage Canada, Telefilm Canada & Association québécoise de la production médiatique). See, in particular, Exhibit 1-2 Total volume of film and TV production in Canada. See Figure 27 below for further details.

As we also stressed in our first report, this strategy is certain to hit a dead-end as the major U.S. companies increasingly bypass early theatrical release and pay television services in favour of going direct to audiences with their own online video services. The Covid-19 pandemic spurred a major upswing in such activity but the longer-term reality is that major studios and distributors have taken advantage of that moment to drive subscriptions for streaming services that they own themselves while also reducing their reliance on theatres and the traditional cable bundle. By taking this route, they no longer need to share revenue with the theatres or guarantee to underwrite the high promotional costs for new releases. Instead, they can use their ownership and control of the film and television catalogue to increase subscribers to their own streaming services.

The upshot is that the major U.S. and international studios are amassing more leverage as they go direct-to-consumer through their own streaming services or sell directly to Amazon or Apple in Canada. This also implies that the days of the studios selling rights to Netflix are also coming to an end, hence the enormous increase in spending by Netflix, Amazon, and so forth on original productions in recent years (starting with Netflix's House of Cards in 2013).

All this likely also means that the days for Bell, Corus, Rogers and Quebecor being able to build a business model around being the exclusive brokers for U.S. television programs and films in Canada are numbered, as they are bypassed by the direct-to-consumer strategy of international streaming services. In addition, as total subscriber levels for cable, DTH and IPTV services in Canada shrink, it lowers the revenue potential for Bell and its counterparts. This means that they will be hard-pressed to pay as much for premium content as they have in the past. This gives even further reason for some studios to go direct to audiences with their own streaming services or rely on other aggregators such as Amazon and Apple. The streaming services could also, however, end up going through the new streaming platforms now being set up by the BDUs,[259] similar to the approach taken by Rogers here in Canada and by Comcast in the US, for example, when placing Netflix on their set-top boxes and services listing.

These mounting pressures are also aggravated by the reality that Bell and its contemporaries have done little to increase their own investments in creating and maintaining a catalogue of original content. Without a catalogue of their own, they have little to offer as an alternative to the U.S. and international distributors with whom they increasingly must compete. This is yet one more reason why it is probably only a matter of time before the dependence of "the Canadian television system" on a few vertically integrated conglomerates collapses.

Unfortunately, in two key policy decisions in the past few years— the cable TV licence renewal ruling and its *Harnessing Change: the Future of Programming Distribution in Canada* report—the CRTC has doubled down on its commitment to keeping a few

[259] For example, Bell's Alt TV, TELUS' Pik TV, Rogers Ignite and Shaw's Blue Sky.

national champions as the centre of the audiovisual landscape, thereby guiding the future direction of TV in this country by the lights in the rearview mirror.[260] The BTLR panel's Canada's *Communications Future* also took a similar tack. It mobilized the ill-defined conceptions of the communications and media sectors that make up the network media economy and cherry-picked evidence (in precisely the ways we criticize) to portray the country's broadcasting system, and consequently, Canada's cultural sovereignty as being in peril if the tendencies just portrayed are not brought to heel.[261]

The revised *Broadcasting Act* (the *Online Streaming Act*, as it is often referred to) does very little to deal with problems of self-preferencing and vertical integration. Instead of taking advantage of the enormous opportunity to remake communications and cultural policy for an internet-centric digital media universe, the *Act* has been primarily framed as a means to superimpose traditional policy tools like Canadian content quotes and investment obligations on to 'online undertakings'. The result has been an entirely unhelpful and polarized debate between those who support such measures versus those who argue that those very same measures are an affront to free speech and people's freedom to watch, listen and curate their own playlists as they please.

Of course, this framing has also been used by the traditional telecoms-television groups, as well as the CBC, to argue that countering the "threat" to the Canadian broadcasting "system" outlined above, requires a refashioning of the "old" policy and regulatory toolkit to serve their interests and protect "the broadcasting system". During debates over both bills preceding passage of the *Online Streaming Act*, for example, Bell, argued that it should be given right of first refusal over foreign programming distributed in Canada before the international streaming services offer it directly to Canadian audiences on their own services. They have asked for their own financial contributions to be lowered or eliminated altogether in favour of making U.S. and other foreign streaming services pay into media development funds as the price of admission for gaining access to the coveted Canadian market, as the CBC recently told the CRTC during its first phase of proceeding meant to develop the tools needed to implement and oversee the new *Act*.[262]

We will return to these issues in the section below on the music industries and again in the conclusion.

---

[260] CRTC. (2018). *Broadcasting Decision CRTC 2018-263: Renewal of licences for various terrestrial broadcasting distribution undertakings that will expire in August 2018 –Introductory decision*; CRTC. (2018, May 31). *Harnessing Change: The Future of Programming Distribution in Canada*.

[261] Innovation, Science and Economic Development Canada. (2018, June 5). *Broadcasting and Telecommunications Legislative Review: Canada's Communications Future: Time to Act.*

[262] See the submissions of Bell, Rogers, Corus, Quebecor, the CBC, Netflix, Disney, etc to the CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-138: The path forward—working towards a modernized regulatory framework for contributions to support Canadian and Indigenous content.

Getting a measure of fast-evolving online media services: bigger but more inscrutable than ever

The following section takes some tentative steps to capture a wider range of online media services delivered over the internet and video games. It includes:

1. App stores: Google Play and Apple's App Store

2. Games: console, PC and mobile

3. Music (paid subscription and ad-funded streaming services and downloads, physical sales, publishing royalties, and concerts)

We cover these sectors because they are now integral parts of the media ecology and people's media use. Analyzing these sectors of the online media and their intertwined relationship with their legacy media counterparts also helps to shed light on debates between those who have long held up the internet as an antidote to ownership concentration in the "old media" versus those who claim that core elements of the internet possess powerful dynamics that are driving consolidation across the internet and around the world.

Before we start, however, a word of caution because, as we have repeatedly stated, obtaining consistent, good information for these services is hard. That said, parsing company financial reports, regulatory documents, consultancy reports, the business press, and projections to pierce the industries' veil of secrecy is essential to understanding concentration trends in fast-evolving and complex online media markets and across the network media economy. Doing so also turns up many surprising and intriguing results, as the following pages show.

App stores and games: emergent forms of concentration in distribution platforms but a diverse and competitive games publishing market

Anchor findings

- The app distribution market began in 2008 when Apple launched its App Store alongside the iPhone and Alphabet debuted the Android Market (later rebranded Google Play Store in 2012), respectively. Together, they facilitated an estimated $4.3 billion in transactions last year, split roughly two-thirds / one-third in favour of Apple.

- The app store marketplace is extremely concentrated, with a CR2 of 100 (app stores associated with, for example, Samsung and online games distribution are not included because their share in the market is too small to measure) and an HHI of 5,340.

- While Apple's App Store and Google's Play Store host and distribute millions of gaming, video, music, social media, dating, travel, and other apps, mobile games are estimated to account for two-thirds of app store revenue.

- An increasing share of revenue is occurring within Google and Apple's app stores but they do not—individually or collectively—dominate the digital games sector. Canada's gaming sector is growing fast and is robustly diverse.

App stores

As observed in our first report, the app store marketplace has exploded since 2008 when Apple launched its App Store alongside the iPhone and Alphabet debuted the Android Market (later rebranded Google Play Store in 2012), respectively.[263] Nearly a decade-and-a-half later, the two iconic app stores are estimated to have facilitated $4.3 billion in transactions last year from the millions of gaming, video, music, social media, dating, travel, and other apps that they host and distribute. We estimate that topline revenue for Apple's App Store and Google Play in 2022 to have been $2.9 billion and $1.4 billion, respectively, in 2022. Given their standard thirty percent fees on transactions, their combined cut from that total was $1.3 billion.

[263] See the discussion in our first report in the section covering the app store marketplace for more details on how we develop our estimates.

With the app store marketplace split roughly two-thirds / one-third between Apple and Google, concentration levels are extremely high in this sector, with a CR2 of 100 and an HHI of 5,340. In response to such realities, the two companies' dominance of the app distribution market has also drawn regulatory scrutiny by American, Australian, Dutch, and German competition authorities in recent years.[264] Pressure has also come from the games industry and other quarters with an eye to making Apple and Google's app store's terms of carriage and distribution more transparent to app developers, consumers, and regulators, and to trim their service fees. Thus far, Apple and Google have implemented modest changes to their fee structure in the last two years in a bid to head-off the possibility that such concerns could drive stiffer regulatory responses.

To be sure, Samsung and some games publishers like Epic and Roblox have opened their own digital store fronts and app distribution platforms, but their market share is too small to measure or too specialized to include them in the discussion here. That said, we will touch upon some of these services in the pages ahead when their role merits attention. We will also highlight the App Store and Google Play's prominent role in the gaming and music industries in the pages ahead, as well.

The games industry is a big, complex, and highly competitive business

The games industry has become big business in its own right with revenue of $4.3 billion in 2022. As we observed in our first report, it is now bigger than the pay TV services ($4.1 billion) and the online video services market ($3.7 billion), respectively, twice the size of the music and newspaper sectors, respectively, based on revenue. As such, it is the largest sector of the media and cultural industries after internet advertising.

Ideally, it would be good to treat each of the different components of the games industry—console, PC, and mobile—on a stand-alone basis. That can be done in the aggregate for each of these sub-sectors, but it is not possible at the level of individual firms, at least given the available data in Canada, and to the best of our knowledge. As such, we treat the games publishing and distribution platforms elements of the industry in an integrated fashion, but hope to be able to obtain better data in the future in order to study them separately before combining them together as we do here.

Be that as it may this integrated treatment also reflects the reality of the criss-crossing ties that bind the many different dimensions of the games industry together. Historically, for example, hardware manufacturers like Nintendo, Microsoft and

[264] See, for example, Australian Competition and Consumer Commission (2021). *Digital Platforms Inquiry--Interim Report #2: App Marketplaces*. Melbourne, Australia: Author; Authority of Consumers and Markets (Netherlands) (2019). *Market study into mobile app stores*. The Hague, NL; Germany, Bundeskartellamt (Oct. 5, 2023). *Ongoing proceedings against large digital companies*; United States, Judiciary Committee (Oct. 6, 2020). *Investigation of Competition in Digital Markets*.

Nintendo tied their own game titles and those from independent developers and publishers exclusively to their own hardware such as Microsoft Xbox Live, Nintendo (Wii, Wii U, and Switch) and Sony PlayStation. These ties are widely thought to have harmed the industry in the 1990s and early-2000s, however. They have been loosened since to reflect the reality that people prefer to play games and socialize with one another across platforms and devices.[265] The upshot is that a kind of vertical-unbundling between hardware and software, and between publishers and platforms, has taken hold over time.

The 'mobile revolution' in the gaming industry over the last decade has driven new lines of development, too. The advent of general-purpose mobile distribution platforms and apps such as Apple's App Store and the Google Play Store reflect this trend, but so, too, does the advent of niche digital store fronts and games-specific app distributors, for example, Epic and Roblox. The 'mobile revolution' also breathed new life into PC-based games and the emergence of some new firms in that segment such as Valve (Steam) while also leading many new game-makers to enter the market. The games developments side of the industry is even more diverse, complex, and hard to track than its publishing and platform distribution dimensions.

The mobile games segment of the industry overtook console- and PC-based gaming platforms in 2015 in Canada. As a result, Apple's App Store and Google Play are at the centre of the games industry alongside console and PC-based games distributors. Today, gaming apps account for close to two-thirds of app store revenue in Canada, or $2.6 billion, with Apple responsible for an estimated $1.8 billion of the total and Google the remaining $776.4 million. Of course, each company only keeps thirty percent of the value of the transactions in line with their standard service fees. Although twice as many games are downloaded from the Google Play Store, the reality is that the premium associated with Apple's App Store led to it garnering two-thirds of consumer spending on gaming apps last year.

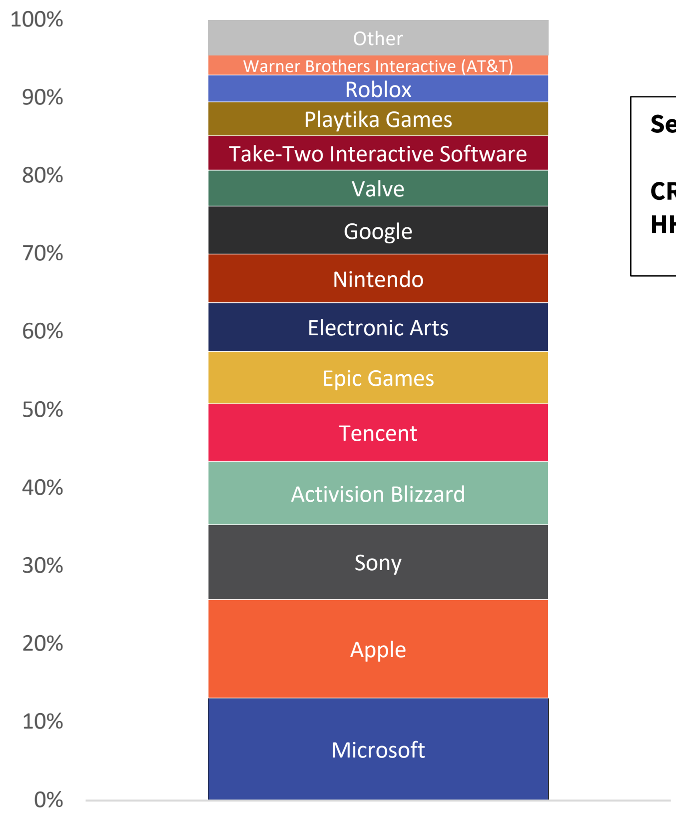
According to our estimate, this netted Apple's App Store $542.8 million in revenue in 2022, while Google Play took in $232.93 million from the mobile gaming segment in Canada. The two app stores accounted for about one-fifth of all revenue across the games publishing and platform distribution market.

This put Apple right at the top of the ranks of the games industry, just after Microsoft. That company had total revenue in Canada from its hardware, games and services, and publishing segments of $564.1 million in 2022. Sony trailed right behind Apple, with revenue of $411.7 million, after which came Activision Blizzard, with revenue of $346.3 million. Together, these four companies accounted for 43.4% of industry revenue, a remarkably low level by the criteria of the concentration ratio metric and indicative of a competitive market.

[265] Van Dreunen, J. (2022). Bigger means different, p. 9.

Adding Tencent, Epic Games, Electronic Arts, Nintendo, Google and Valve (Steam) rounds out the top ten games companies operating in Canada. Together, the top ten games publishers and platforms accounted for four-fifths of the market. Again, recalling our analysis of all the other sectors of the network media economy in Canada thus far, this implies that the games market is remarkably competitive and diverse. Add another eight companies active both in Canada and internationally, and altogether a dozen-and-a-half games companies comprise the core of the games industry in Canada. They are listed in rank order based on revenue below in Figure 32.

Figure 33: Gaming publishers and platforms, 2022 (market share based on revenue)



Sector total	$4294.6 (millions)
CR4	43.4%
HHI	788.7

Sources: see the "Fig 33 Digital Games " sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

The fact that the games industry had an HHI of 788 last year underscores the highly diverse nature of the games industry. In fact, of all the sectors we cover, the games industry is amongst the least concentrated, surpassed only by the online news and magazine sectors, as we will see shortly.

To be sure, this would change if we could separate the publishing and platform dimensions of the games industry, and isolate emergent segments such as cloud-based gaming. This is exactly what the U.S. Federal Trade Commission and the Competition Markets Authority in the U.K. tried to do in their reviews of Microsoft's just completed acquisition of Activision Blizzard. While being able to analyze these different segments on a stand-alone basis would be valuable, in this case, it seems doubtful that would change the analysis so drastically as to merit what those competition regulators sought, unsuccessfully, to do: kill the deal. That deal was ultimately approved earlier this year after the FTC lost its legal case to block it, and the CMA backed down on its own case shortly afterwards.[266]

At the same time, however, there is also a cross-cutting lesson here as well which can be boiled down to the point that concentration metrics, while important, do not tell the whole story, either.

Thus, for example, despite the very low scores on both of the concentration metrics we use (CR and HHI), *and* the contemporary trend to unbundling the ties between hardware and software, platforms and publishers, as we emphasized in our first report, the fact of the matter remains that most of the industry's revenue and audiences are funneled through a handful of big tech companies and app marketplaces. As we also noted there, even the biggest games publishers in the world such as Electronic Arts, Activision Blizzard (before its take-over by Microsoft), and Epic still see themselves beholden to a handful of companies for anywhere between half and four-fifths of their revenue.[267]

Epic also points to how launching its own digital store front in 2018, and the rise of alternative PC-based distribution platforms such as Steam, have helped in this situation by creating competing distribution channels. However, Epic and other game publishers and creators still worry about their excessive dependence on a handful of big tech companies for marketing and promotion, technical interfaces, billing, and access to audiences. Indeed, this was the crux of Epic's case against Apple.[268] While it largely lost that case, its challenge combined with growing regulatory scrutiny from competition authorities, as outlined at the top of this section, helped to drive some modest changes to Apple and Google's fees and terms of service in the past two years. In other words, these challenges have not been in vain, but that cannot obscure the fact that there are real issues to be concerned with.

---

[266] U.S. FTC. (Nov. 27, 2023). In the Matter of Microsoft / Activision Blizzard; Van Dreunen, J. (2022). Bigger means different.

[267] Epic Games (2023). *Annual Report 2022*, pp. 11-12, 20; Activision Blizzard (2023). *Annual Report 2022*, p. 8.

[268] Epic Games, Inc. v. Apple, Inc., No. 21-16506 and 16695 (9th Cir. 2023); Browning, K. (April 24, 2023). Apple largely prevails in Appeal of Epic Games' app store suit. *New York Times*.

It is also important to recall that games publishers raise similar concerns about how big telecoms operators can throttle their businesses with poor quality networks and pay-to-play schemes where common carrier (or net neutrality rules, in today's parlance) are weak or non-existent.[269] One thing that stands out at this point, and that aligned with the analysis thus far in this report, is that none of this is novel or new. Instead, it reflects two seemingly immovable fixtures in the political economy of communication: one, power rests with control over distribution more than content. Second, the media industries have developed in the shadows of much larger communications and technology firms for a very long time. There has always been an uneasy degree of dependency in this relationship, but policymakers and regulators have episodically stepped in to make sure that neither big telecoms nor big tech can exploit either of these conditions to fully commandeer and control the media. Now feels like one of those episodes.

The reconstruction and resurrection of the music industries in Canada: wildly diverse and pluralistic, highly concentrated, or too hard to tell?

As we showed in the first report in this year's series, a decade-long slump between 2004 and 2014 saw combined revenue for all segments of the music industries (i.e. physical sales, online streaming and transactional / download services, publishing royalties, and live concerts) fall significantly. After bottoming out at levels that fluctuated around $1.4 billion over the 2008-2014 period, however, the tide turned. Total revenue for the music industries rebounded to $2.1 billion in 2019, stumbled during the first year of the Covid-19 pandemic, but then surged to hit $2.3 billion in 2022—an all-time high.

As we observed in our first report, the the revival of the music industries was jump-started in 2014 when Spotify entered Canada, followed by Apple's launch of a streaming music service as part of iTunes in 2015 (rebranded as Apple Music in 2021). Three years after that, Google's YouTube Music Premium and Amazon's Music Unlimited entered Canada. As of 2022, the four international streaming services have combined revenue just shy of a billion dollars from their operations in Canada. They have also been joined by the big three recorded music companies: namely, Sony Music, Warner Music, and Universal Music. Their revenues in Canada have tripled from an estimated $231.9 million in 2011 to $693.9 million last year.

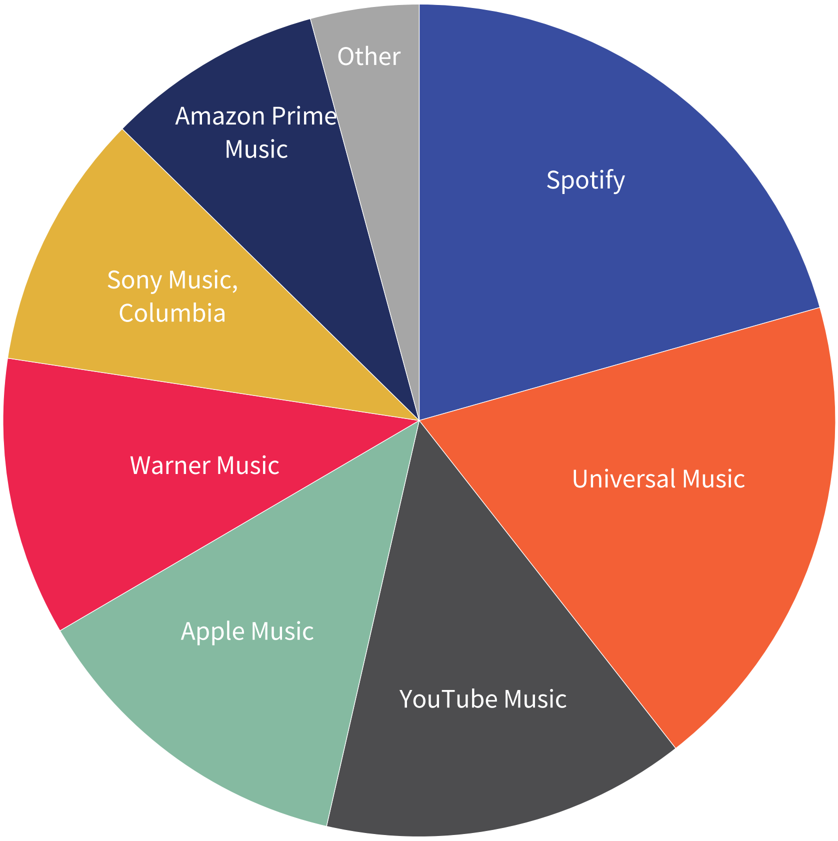
These changes have led to a more diverse and competitive market structure by the standards of the CR and HHI metrics. In 2022, the top four players (Spotify, Universal, Google, and Apple) accounted for half of all revenue, which is comparatively low relative to most other sectors that we cover, except games, newspapers, radio, online news, and

[269] Electronic Arts (2023). *Annual Report 2022*, p. 4.

magazines. With an HHI of 789, the music industries are diverse, pluralistic, and competitive by the standards of that measure.

Figure 34 below illustrates where the music industries stood on these measures as of 2022.

Figure 34: Music platforms and publishing, 2022 (market share based on revenue)



Sector total	$2335.3 (millions)
CR4	50.0%
HHI	808.43

Sources: see the "Fig 34 Streaming Music+Publish" sheet in the Excel Workbook accompanying this report and the "Digital Games" sheet in the GMIC Project—Canada open data sets.

That said, it is hard to look at the above chart and not notice that a small number of familiar big international players dominate the industry in a manner similar to online video services, app distribution, and games markets. They control the flow of revenue, distribution platforms, billing systems, as well as the marketing and promotion of musicians and their music.

Two other considerations must also be borne in mind as we assess the contemporary music industries. For one, it would be a mistake to see the players included in Figure 34 as stand-alone rivals in the music marketplace. They are thoroughly intertwined with one another by way of inter-locking ownership ties between the traditional music publishers (e.g. Sony, Warner, and Universal) and the streaming music platforms (e.g. Spotify). The fact that Sony, Universal, and the Chinese "big tech" conglomerate, Tencent, hold major ownership stakes in Spotify exemplifies the inter-locking ownership relationships that now define the industry and the markets they operate in.[270] Second, the revenue sharing deals between the music streaming platforms and publishers are shrouded in secrecy because of the non-disclosure agreements that mediate their relationships to one another.

While the details of those agreements are not known for certain, from a variety of leaks, insider accounts, and educated assessments, Spotify is thought to turn over around seventy percent of its income to the big three recorded music groups. As Andrew deWaard, a Canadian music industry expert and Assistant Professor at the University of California, observes in his forthcoming book, *Derivative media: How Wall Street devours culture*,

> . . . streaming platforms are thought to pay out roughly 70% of their revenues to copyright-holders, which means the labels are the recipient, not the artist. Spotify claims "nearly 70%" in its detail-lacking attempt at transparency on its website; Apple Music claims 71.5%, and artist-championing Tidal proudly proclaims 75%. However, because the Big Three labels require strict non-disclosure agreements (NDAs) in these licensing deals, there is no way to verify this arrangement, even for the artists whose recordings are subject to these contracts . . . .
>
> Another glimpse into the black box occurred in a 2015 report conducted by the consulting firm Ernst & Young and the French record label trade group SNEP, which traced where the money earned from a streaming subscription fee in France ultimately ended up. . . . [T]hey found that the streaming platform keeps roughly 20% and pays about 17% in taxes. The label keeps about 45%, leaving just 10% for the songwriters/publishers and a meager 6.8% for the artists. As a percentage of the revenue the platform delivers after taxes, labels keep a whopping 75%.[271]

One thing that distinguishes the music industry today from that of the past is the large role now played by Apple and Google through their app stores and their own music streaming services. In fact, the two tech behemoths' share of the music industries have swelled from next to nothing a decade ago to about over forty percent of streaming music revenue last year. Similar to our appraisal of the digital games industry, neither Apple nor Google—either single-handedly or in tandem—can be said to dominate the music industries. Nevertheless, the music industries do increasingly swivel around what

[270] Wall Communications (2022). *Study of the economic impacts of music streaming on the Canadian music industry (Study prepared for Heritage Canada)*.

[271] Waard, A. (2023/forthcoming). *Derivative media: how Wall Street* devours *culture*.

these two big tech companies' do. In other words, they, along with streaming giants like Spotify, and legacy recorded music ownership groups like Sony, Universal and Warner, can probably be thought of as forming an oligopoly that set the terms of trade for the distribution and consumption of music within Canada and internationally. It is for that reason that they, too, have been swept into the debates over the *Online Streaming Act*.

It is also the case that concentration levels in the music industries would likely be a lot higher if we could pry apart its constituent parts—streaming music services, publishing royalties, and live concerts—to examine each of them on a stand-alone basis. Yet, that cannot be done given the poor information reporting standards that prevail amongst all companies involved.

Once again, the inscrutability of "big tech" and others in this sector, including the role of Live Nation in concert ticket sales, cries out for reform. Without such reforms, efforts to create wise cultural policy will be next-to-impossible. If nothing else, the mandatory information disclosure obligations of the *Online Streaming Act* is one thing for which it can be commended.[272]

That said, we have a reasonably clear view of the paid- and advertising-supported streaming and download services of Spotify, YouTube Music, Apple Music, and Amazon Prime Music. Based on this, the Canadian operations of these services had combined estimated revenues of $984.8 million last year, out of a market total of $1.1 billion, yielding a CR4 of 89%. That is at the high-end of the CR4 scale. The HHI results deliver a similar message, clocking in at 2,188, which is considered the upper end of the moderately concentrated zone by the standards of this method.

In sum, more research is needed, but awaits clearer insight into these companies' complex ownership ties and the terms of their revenue sharing agreements. In the meantime, however, we can offer a few observations by way of a conclusion for this section and before moving on to the next.

First, like online video services and the games industries, the online music industry is a complex and fast developing sector of the media economy.

Second, there is also a diversifying range of business models taking hold as different actors from the traditional music industries and big tech companies enter the scene. Those business models include paid streaming and, while in steep decline in recent years, transaction-download services like Google Play and Apple's once iconic-but-now-closeted iTunes. There are also 'freemium' models in which advertising serves to pay the bills, and which companies like Spotify, Google and Amazon employ to try and lure audiences onto their paid subscription-based services.

---

[272] See Wall Communications (2021), *Study of the economic impacts of music streaming on the Canadian music industry (Report for Industry Canada*) for an excellent effort to cut through these obstacles to give us the best possible view of these ongoing developments in the music industries in the Canadian context.

As also stressed in both of this year's reports, music is often given away "free". For example, Amazon bundles a "free" music element into its general Amazon Prime membership, while telecoms operators do the same thing to connect their brands to burnish their images as well as to differentiate themselves from one another, as Videotron, Rogers, and Bell do from time-to-time. Ditto for Apple, which bundles time-limited Apple Music subscriptions in with the purchase of a MacBook, iPhone, or one of its other devices.

Despite the diversity of these business models, however, one thing is clear: paid subscriptions, not advertising or "free" music, are driving the music industry's growth, and will most certainly continue to do so in the future.

A unifying thread behind these diversifying business models and ongoing trends is the reality that this core aspect of the cultural industries is developing in tight proximity to big tech and big telecoms firms. Again, this underscores fundamental historical continuities that are too often ignored or, worse, not known. It also reveals the potential and real power imbalances that have always existed between the media sectors on one side and big tech and telecoms conglomerates on the other. Addressing those realities to ensure that they serve public and democratic interests is, and has long been, the crux of communication *and* culture policy.

Too often, however, instead of paying close attention to these considerations (or even being aware of them), the policy and regulatory discourse is too often commandeered by cultural nationalists whose stale policy toolkit remains overly reliant on content production funds, catalogue quotas, promotion and discovery obligations, and public subsidies. While those elements have a place, they fall flat on their own because they too often rely on protecting big tech and big telecoms in return for getting small concessions towards those goals from them. That stance, consequently, does more to lock-in the status quo than deliver the kind of vibrant popular culture that meets both artists and audiences' wants, needs, and desires.

Online media services: Growth, diversity and consolidation

In keeping with the scaffolding approach that underpins our work, the next section moves from the sector-by-sector analysis up to this point to bring together developments across the online media services. Once this is done, we move to an overarching analysis across the full range of communications, internet, and media markets covered by our research. Those steps, in turn, lead to some final reflections and policy proposals in the concluding pages of this report.

Anchor findings

- Total revenue for the online media sectors soared to $24.2 billion in 2022, widening the gap with the traditional content media sectors after surpassing them four years earlier.
- While it was once fervently believed that internet centralization and concentration was impossible, today, all but four of the core sectors of the internet and online media services have astonishingly high levels of concentration, i..e. online news sources, online video, games, and online music services.
- Collectively, the international internet giants' revenue from Canada rose to $18.5 billion last year—a sum equal to half of all revenue from "legacy" and "online" media markets combined, which is double what it was five years ago and ten times what it was a decade ago.

This section draws together all online media sectors covered in this report—internet advertising, online video, games, music services, and app stores—into a composite view. This is in line with the scaffolding method that we use where individual sector-by-sector analyses are successively folded into larger groups of similar media and, ultimately, into a single, integrated portrait of the network media economy.

It is obvious that the online media sectors are becoming increasingly prominent. Total revenue reached an estimated $24.2 billion last year. Internet advertising accounted for sixty percent of that, meaning that all of the other online media services covered in this report had combined revenue of just under $10 billion last year. This was more than double what it was just five years ago and almost five times what it was a decade ago. Meanwhile, traditional media sectors[273] have languished, with revenues last year being just three-quarters of what they were a decade ago.

Once we open the lens wider to examine traditional and online media sectors together, it is clear the rapid growth and development of the online media sectors is dramatically changing the media landscape. Combined revenue for all media content sectors reached $36.8 billion last year, two-thirds of which was accounted for by online media services and internet advertising.[274]

The vast expansion of the online media market has also allowed major international actors like Google, Amazon, Meta, Apple, Microsoft, and Netflix, to name just the most prominent ones, to make ever deeper incursions into the media landscape in Canada. While the online media sectors are home base to the operations of global internet giants, have they really cornered the online media landscape, like so many critics contend and policymakers assume?

To many observers, the answer is an easy "yes"! Compiling the evidence from the individual sectors presented so far, that answer seems to make sense. In 2022, Google dominated search (91.2% market share) and mobile search (96.8% share); Google's Android and Apple's iOS mobile operating systems split the market between themselves. The two companies also form a duopoly when it comes to online App Store revenue: Apple's App Store accounted for two-thirds of the estimated $4.3 billion in transactions conducted through the Canadian app marketplace, while Google Play took up the rest.[275] And of course, Google and Meta dominate online advertising with a combined market share of 77%, and their dominance of this market has been consolidated over time, despite last year's slip from their combined market share of close to 80% the year before, and Amazon's emergence as a significant third player in recent years. Does this mark the transition from a digital duopoly into a tight, three-way oligopoly, since each of the big three online advertising behemoths' services seem complementary to one another instead of being true competitors?

In the online video services marketplace, Netflix is still the largest service provider in Canada and internationally, although its dominance

---

[273] Traditional media includes broadcast and pay radio and television services, newspapers (exclusive of digital revenue), magazines, and music concerts and publishing royalties. Communications sectors such as internet access, wireline and wireless services are not included in either of "traditional" or "online" media because the latter two concepts only include content-based media.

[274] Tradition media sectors are listed in the footnote above (and elsewhere) while "online media" services include online video, online music (e.g. streaming and download services), digital newspaper revenue, app stores, internet advertising, and games.

[275] A word of caution once again that the available information from Google and Apple upon which this estimate is based is limited. We explain how we arrived at this estimate in the notes to the "App Distribution" sheet in the GMIC Project—Canada open data sets.

has been steadily eroded over time. Yet, consider the next in line after it. Crave is the online video service of Canada's largest communications and media conglomerate, Bell Canada Enterprises. The next most significant online video services are the well-known faces drawn from either the classical Hollywood System—Disney+ and CBS All Access, for example, or from Silicon Valley, i.e. Google's YouTube Premium, Apple's Apple TV+, and Amazon Prime Video. Thus, even here, where the case is fairly weak with respect to claims about digital monopolies, oligopolies, or dominance, only a small number of traditional media, big tech, or domestic communications conglomerates hold sway.

Apple's App Store and Google's Play Store have also become central players around which the online music, games, news, and app store markets swing, albeit in each case with a handful of other major domestic or international players such as Spotify (Music), Universal (music), Sony (music and games) and the Chinese "big tech" conglomerate, Tencent (Music and Games). There is a clear pattern here; that is, a "clash of titans" when it comes to aggregating and distributing television and film content, games, news, and music direct to people over the internet.

The precise shares that any of the international diversified digital conglomerates and other corporate interests such as Tencent, Universal, and so forth, holds in any one of these areas fluctuate over time. Typically, however, the pattern is of duopolistic rivalry between, most notably, Google and one other player, whether that is Apple in operating systems, app stores and browsers, or Meta in online advertising, for instance.[276] To be sure, Google and Apple do sometimes battle amongst themselves for market share, but the latter also pays the former a lot of money every year to use its maps and search software in Apple products and services. Therefore, we see a jockeying for the first and second rank positions in markets they do compete in, e.g. apps and operating systems, but also co-existence and cooperation in others, for example, search. These are further examples of a clash of titans rather than a competitive marketplace.

As such, reality seems to conform well to the second school of thought that we sketched early in this report, i.e., the 'creative destruction' theoretical perspective inspired by Joseph Schumpeter in the mid-20th century. In most of these cases, such patterns of dominance have been deepened and locked in for a decade or more. Meta's dominance of social media services is an excellent case in point, even if it has lost ground in the last five years in terms of social media audience share and, for the first-time last year, market share and revenue. These recent problems at the iconic social media platform raise the prospect that such tendencies and recurring patterns, while strong, are not iron-clad.

[276] See, for instance, data from StatCounter. *Global Stats* (Various Years); Curry, D. (May 2, 2023). Google Play Store Statistics. *Business of Apps*; Curry, D. (July 28, 2023). Amazon Statistics (2023). *Business of Apps*; and our notes accompanying each of these sectors in our master workbook.

These realities have drawn political and regulatory scrutiny in the U.S, Australia, Canada, China, India, the U.K., France, Germany, the Netherlands and the European Commission, and many others.[277] As a result, app stores, for example, may be next up in the regulation of digital markets to address claims that Google's Play Store and Apple's App Store set unfair terms of trade with the third-party music, gaming, video, and news services that rely on them to access consumers.[278] These realities are in keeping with our observations that, far from being immune to high levels of concentration, core sectors of the internet are characterized by astonishingly high and stubborn levels of concentration. In fact, there were only three exceptions to this tendency in 2021: online video services, online news, and digital games.

Returning the focus to the companies active in these sectors, the combined revenue of the biggest multinational digital conglomerates—in rank order, Google, Meta, Amazon, Netflix, Apple, Microsoft—from their media related activities in Canada reached $17.8 billion in revenue last year. This was equal to half of the $36.8 billion in revenue across the online and legacy media markets examined in this report. Second tier of firms, such as Snapchat, TikTok, and Twitter account for another $700 million. Altogether, these companies account for half the revenue of online and traditional media sectors in Canada.

If we look at Google for a moment, it had total estimated revenues of $8.15 billion from online advertising, the Google Play Store, and YouTube Premium video and music services last year, and single-handedly took in more than one-fifth of the revenue from the media content side of the network media economy in 2022.[279] All told, Google was the fourth largest company to operate in Canada's network media economy last year. A little over a decade ago, it had just cracked the ranks of the top ten.

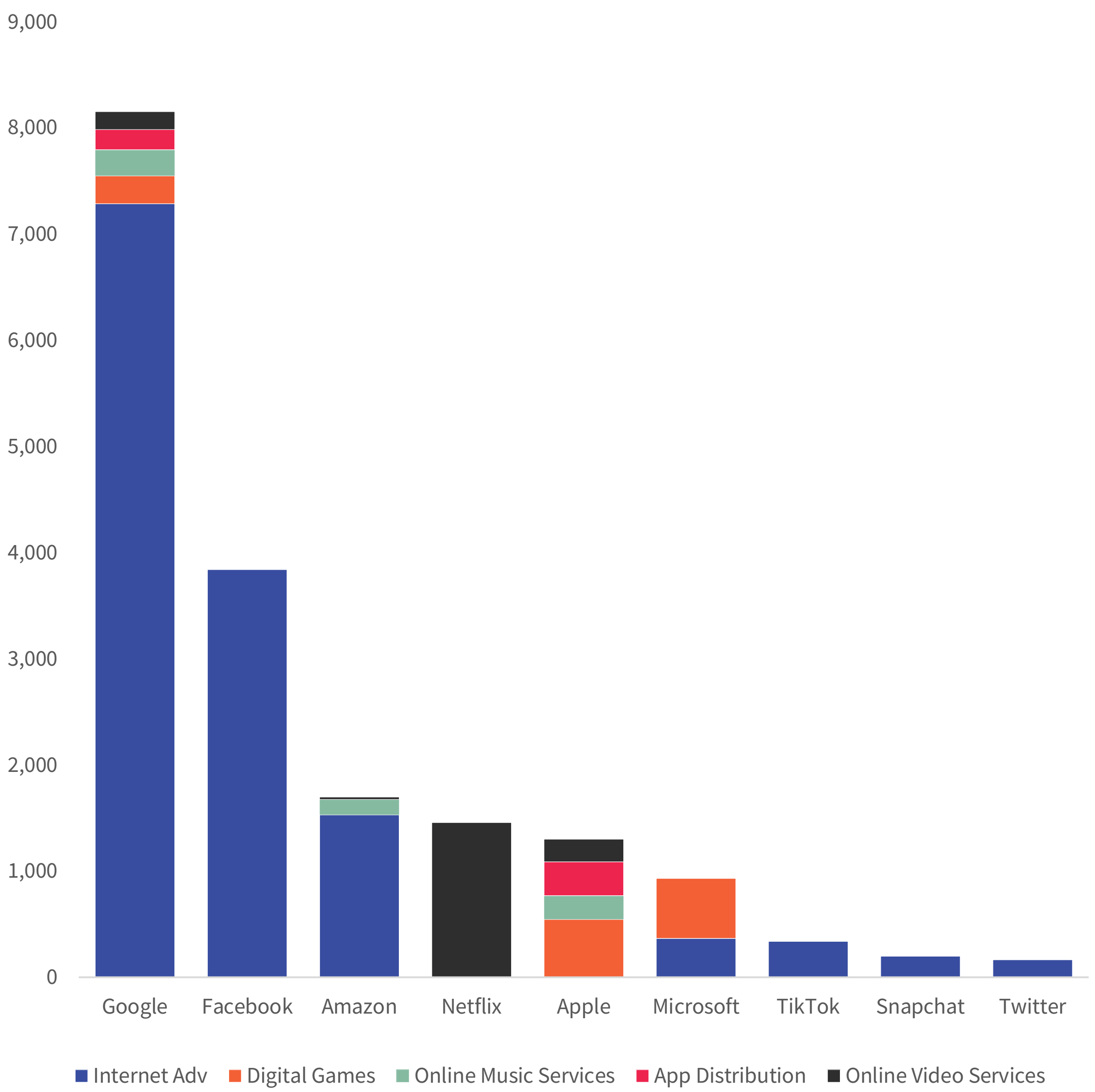
Figure 35 below summarizes the Canadian revenues of the international internet companies last year.

[277] See See Winseck & Puppis (unpublished, nd) for an ongoing tally of these inquiries, regulatory and legal rulings, and legislative proposals.

[278] Poell, T., Nieborg, D. & Duffy, B. (2022). *Platforms and cultural production* offers pathbreaking analysis and discussion of these developments and their implications for the cultural industries.

[279] See the individual sheets for "Online Video Services", "internet Advertising" and "App Distribution" to see how we arrived at these estimates and the compilation of these revenues in the "Top 20 Coms Cos+GAFAM" in GMICP Workbook—Canada**.**

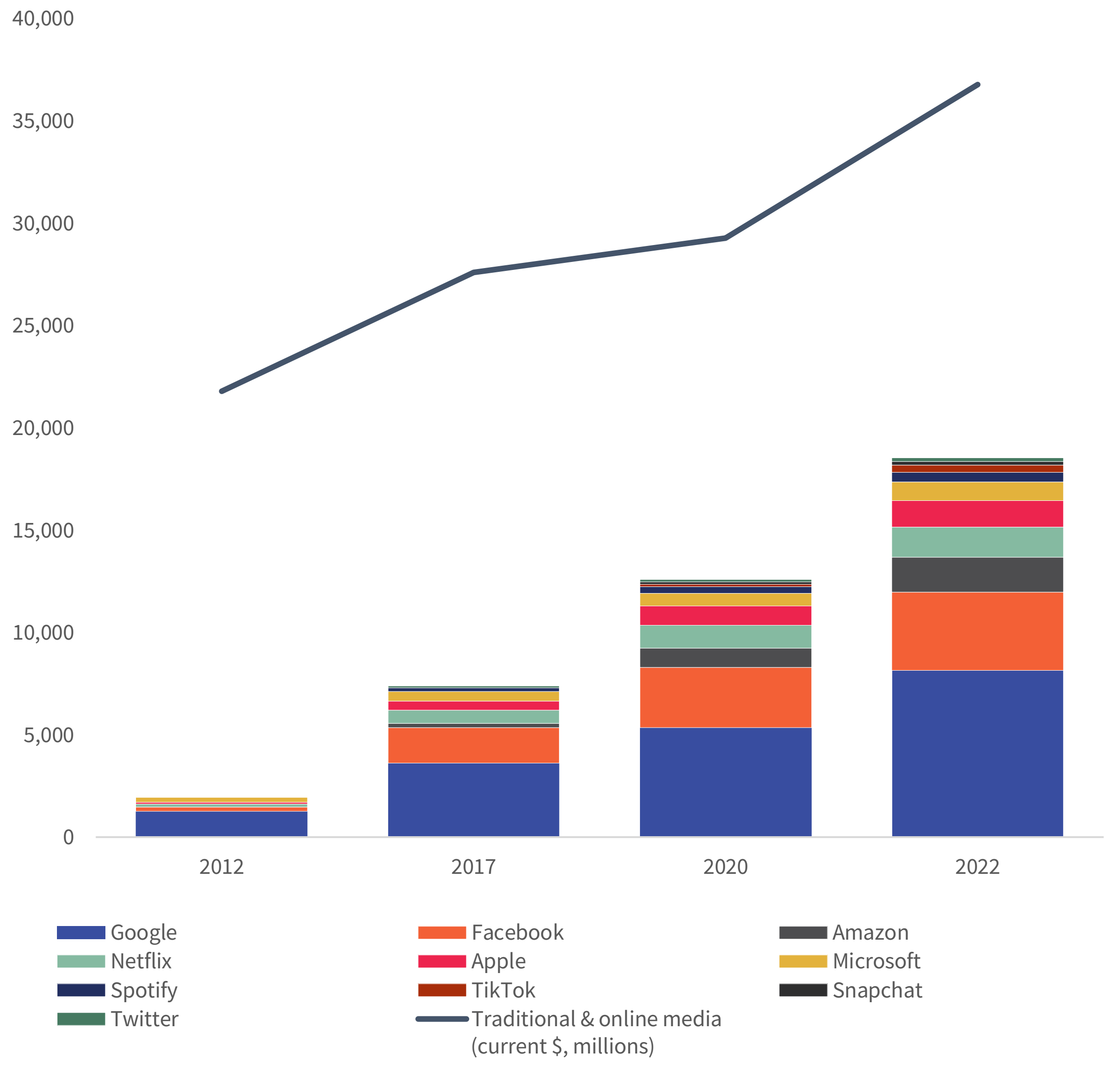
Figure 35: Total revenues of the leading international internet companies in Canada, 2022 (current $, millions)



Sources: see the "Fig 35 Major InternetCos" sheet in the Excel Workbook accompanying this report and the "internet advertising", "online video services", "music services" and "digital games" sheets in the GMIC Project—Canada open data sets.

The next figure illustrates the growth of online media sectors relative to the "traditional" and "online" media industries overall from 2011 to 2022.

Figure 36: Internet content aggregators & distributors share of traditional and online media services revenue in Canada, 2012-2022



Sources: see the "Fig 36 Internet Content Aggs" sheet in the Excel Workbook accompanying this report and the "internet advertising", "online video services", "music services" and "digital games" sheets in the GMIC Project—Canada open data sets.

The information presented in Figure 36 shows that the digital media sectors have grown by leaps and bounds. It also reveals that the international internet firms' share of these media industries has catapulted from next-to-nothing a decade ago to 50% last year. In short, there is no doubt that Canadian media are facing intensifying competition from the world's biggest multinational internet companies on many fronts.

The knife, however, is not all to one side. For example, let's return to the observations we made earlier regarding the growing convergence and competition in the online video market between digital platforms such as Google's YouTube Premium, Apple TV+, and Amazon Prime Video, on one side, versus traditional BDUs, on the other, such as Bell, Rogers, Shaw and Vidéotron.

Seen from this angle, the big four Canadian communications conglomerates had combined revenue of $6.7 billion and a market share in this hypothetical, hybrid BDU market in 2022 of 60%. In contrast, Netflix, Google's YouTube Premium, Apple TV+ and Amazon Prime Video had combined revenue of $1.9 billion last year and a market share of 16.7%. In other words, the domestic vertically integrated communications and media conglomerates' combined revenue and market share is more than three-and-a-half times that of the online video distributors' operations in Canada. Moreover, this yields a CR4 of 66% and an HHI of 1,354, the latter of which sits at the low end of the moderately concentrated zone. Moreover, these figures have been going down as the international, big tech companies expand the scope of their offerings in this country.

Next, let's scaffold up from there to combine this hypothetical hybrid-BDU market with the "total TV market" (i.e. broadcast television, pay TV and online video services), and the result would be a $17.8 billion market. Seen from this angle, the big four Canadian communications and media conglomerates (Bell, Rogers, Shaw and Quebecor) would have combined revenue of $11.4 billion and a 64% share of the market. In contrast, Netflix, Google's YouTube Premium, Apple TV+ and Amazon Prime Video, in contrast, had $1.9 billion in revenue and a market share of 10.4%. Based on this definition of this "BDU + "total TV" definition of the relevant market, the HHI last year would be 1,425, which implies a highly competitive and diverse market.

Looking at the television distribution and the programming services market in this holistic way reveals that the big international players have become much more significant. However, they do not dominate the market. For their part, the Canadian companies have seen their revenue hold the line at about $14 billion over the last decade, with losses in broadcast and pay TV and BDU services offset by increases from their online video services. While their revenues have been stable, however, their share of the television distribution and programming services market has fallen from 85% a decade ago to two-thirds today. Consumers and audiences, in turn, have a more competitive and diverse range of options to choose from.

Similar conclusions follow when we scaffold up yet again to take an integrated and holistic view of all "legacy" and "online" media sectors covered by our research.[280] Doing so reveals a $44.2 billion market in which the top four companies'—Google, Bell, Meta, and Shaw, in that order—had total revenue of just under $20 billion and a combined market share of 45% in 2022. This is a low score by the standards of the CR4 and compared to almost all other media sectors we have covered in this report. The HHI

[280] See Figure 37 below for what this definition of the market includes

score of 707 is at the very low end of that scale. In sum, this media market is highly competitive and diverse—*by this measure, and at this level of analysis*.

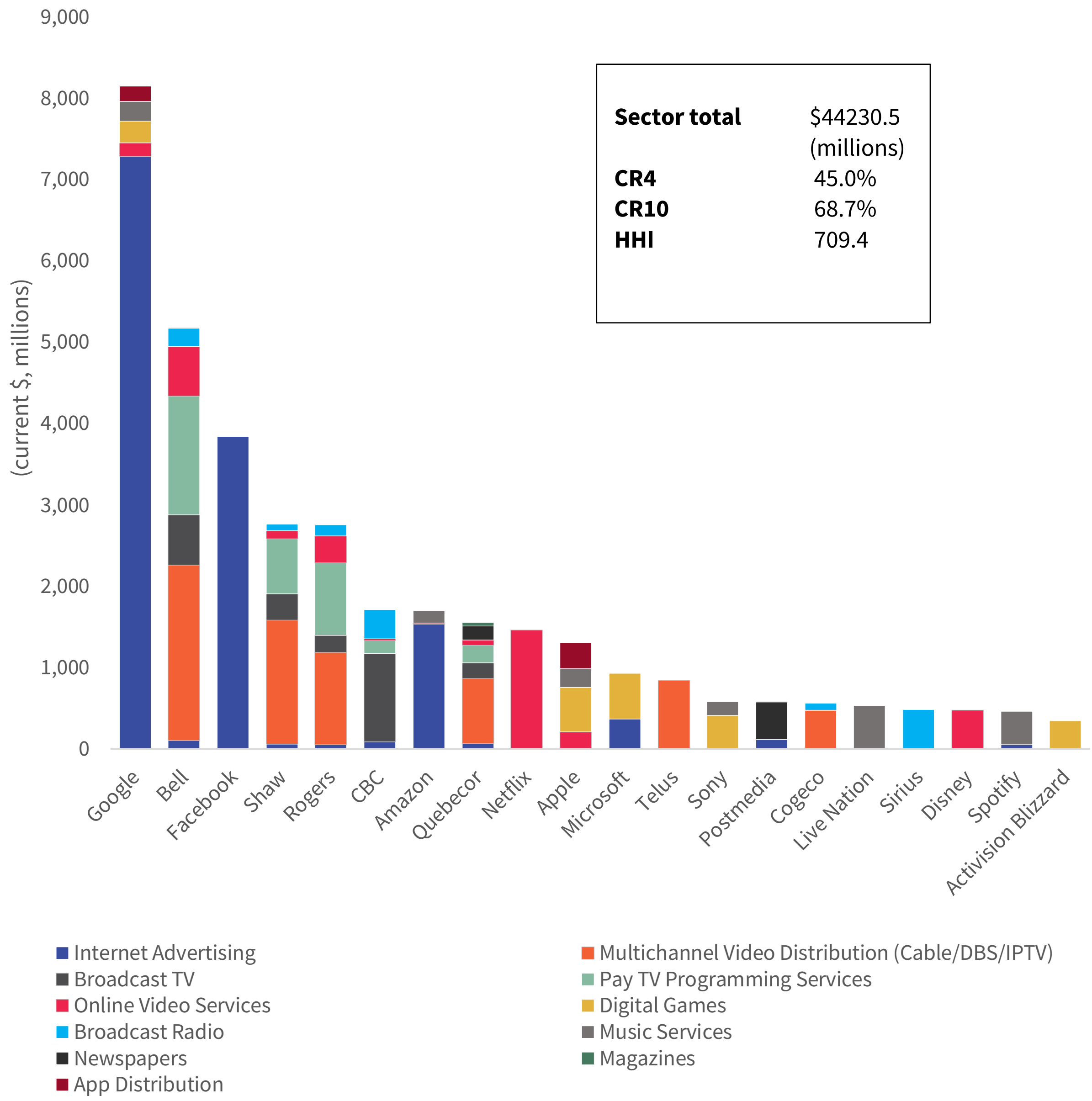
Google is the biggest company operating in the media content sectors in Canada. Last year, it had estimated total revenue of $8.1 billion from its Canadian operations. It is now much larger than Bell ($5.1 billion), Shaw ($2.7 billion), Rogers ($2.7 billion), the CBC ($1.7 billion), and Quebecor ($1.5 billion) based on revenue from just the traditional and online media sectors.

On its own, Google takes in 18.4% for all revenue across these content media dimensions of the network media economy. Combine its revenue and market share with that of Meta (ranked #3), Amazon (#7), Netflix (#9), Apple (#10) and Microsoft (#11), and these big tech companies accounted for about thirty percent of revenue from the traditional and online media sectors in 2022. Adding Disney (#18) and Spotify (#19) into the picture pushes the total share held by the big tech companies and foreign media giants to one-third of the market. Canadian companies' share is twice that of their foreign counterparts.

Figure 37, below, depicts the rank ordering and relative scale of the leading players in the traditional and online media sectors in Canada in 2022.

"On its own, Google takes in 18.4% for all revenue across these content media dimensions of the network media economy."

Figure 37: Leading companies in traditional and online media Sectors in Canada, 2022 (current $, millions)



Sources: see the "Fig 37 Leading Content Cos" sheet in the Excel Workbook accompanying this report and the corresponding sheets for each sector covered in the GMIC Project—Canada open data sets.

All of this said, it must be recognized that the kind of analysis and argument just offered in *no way* implies that the status quo is acceptable or that we do not need a new generation of internet services regulation to deal with the fact that international big tech conglomerates and media giants are now key players in Canada. Indeed, we must demand a level of transparency and accountability commensurate with their size and influence in Canada. This is the driving motivation behind the *Online Streaming Act* and the *Online News Act*.

The network media industries as a whole

Anchor findings

- Last year, the top twelve international big tech companies and streaming services—Google, Meta, Amazon, Netflix, Apple, Microsoft, Sony, Spotify, Bytedance (TikTok), Tencent, and Twitter—had total combined revenue from their media-related operations in Canada of $19.2 billion, adding up to a 18.4% share of the $104.4 billion network media economy.

- Adding the revenue of the streaming video, music and games services offered in Canada by Disney, Activision Blizzard, and Universal Music pushes the above total to $20.4 billion, for a 19.5% stake in the network media economy.

- BCE's revenue of $24.7 billion in 2022 single-handedly exceeded the revenue of all the international big tech and media giants operating in Canada, giving it a 23.7% share of the network media economy, and more than all the international big tech companies and streaming services, *combined*.

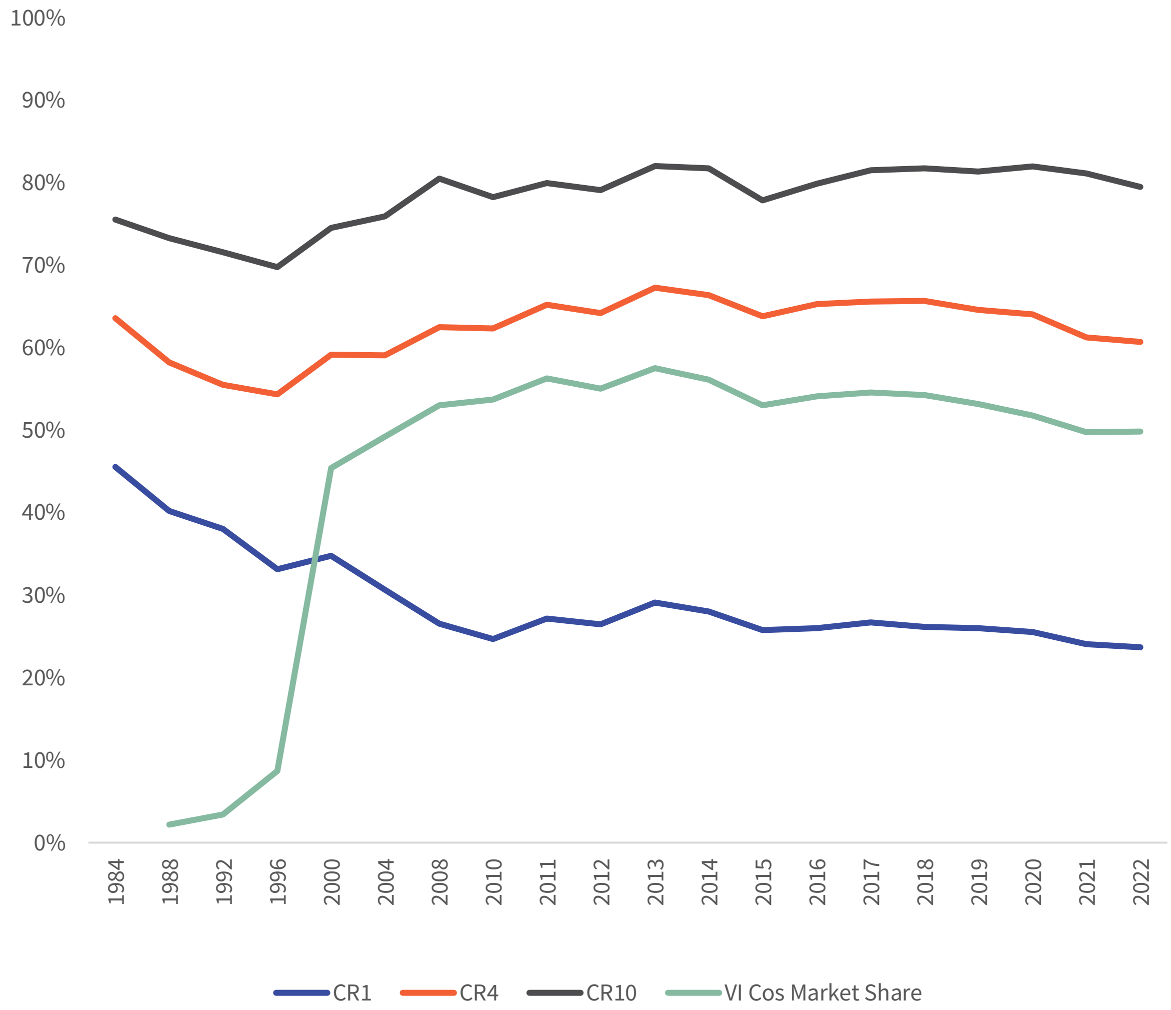
- Bell, Rogers, TELUS Shaw and Quebecor accounted for 67.3% of all revenue across the network media economy in 2022, multiple times that of the international big tech companies and media conglomerates combined.

It is *essential* to get the measure and critique of the internet giants' place within the domestic network media economy in Canada right, and to do so in a way that neither exaggerates their scale, scope and clout *or* that makes a mole-hill out of a mountain.

Once we look at the whole of the network media economy, two key things stand out from our two reports this year. First, the network media economy has grown immensely over time, and has become significantly more complex as both wholly new online media services and international based actors carve out an ever bigger place for themselves. Second, there is no one-size-fits-all answer to our starting question: i.e. have the media become more concentrated over time? The answer to that seemingly simple question is, in fact, mixed and complicated.

Figures 38, below, starts to summarize the results of our findings this year by showing the trends across the network media economy over time on the basis of CR1, CR4, the vertically integrated companies' market share and CR10 scores.

Figure 38: CR1, CR4, vertically integrated companies' market share and CR10 scores for the network media economy, 1984-2022



Sources: see the "Fig 38 CR1, 4 & 10" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

Looking at the structure of the industry as a whole, three developments over the past forty years and, especially, the last decade-and-a-half, stand out.

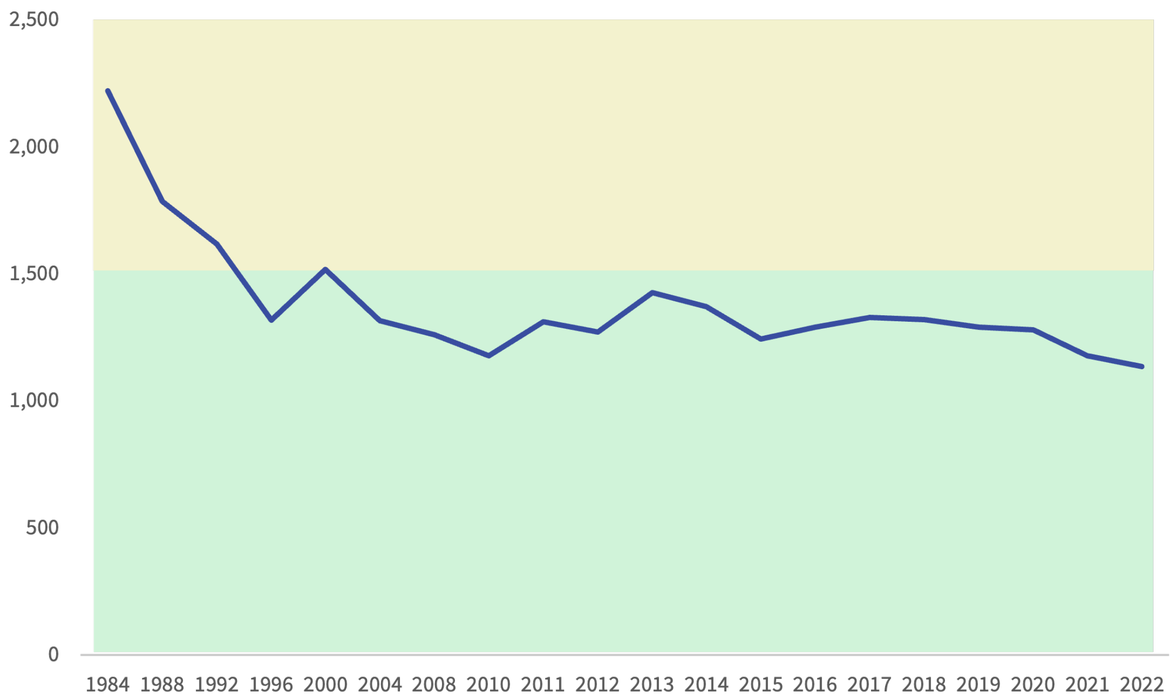
1. The big get bigger but in a much bigger universe, while changes in concentration levels over time are mixed

The first major development is the rise, diversification, and role of the big Canadian companies. As denoted by the CR1 line in Figure 38 above, the biggest company's share of revenue across the media in the 1980s was 47%; by 2022, it had fallen to 24%, although within a vastly larger media universe. In 1984, that company was BCE. Today, Bell is still the largest company in the network media economy, by far. Although Bell has a much smaller stake now than it did then in relative terms, in absolute terms, it is a vastly larger and more diversified company operating in a much bigger media economy than it has ever been. It is also considerably larger than the next four largest firms operating in Canada today: i.e. TELUS, Rogers, Google and Shaw (before its take-over earlier this year). Indeed, it is twice the size of Google and Meta/Facebook, combined.

Bell, Rogers, TELUS and Shaw are the "big four" diversified communications giants in Canada and accounted for 61% of the revenue of the $104.4 billion network media economy in 2022—a figure that has stayed remarkably stable over time, after falling during the early phase of market liberalization, the advent of new technologies, and the emergence of pay television and mobile wireless services in the 1980s.

Overall, however, there has been a steep drop in concentration levels over time based on HHI scores, as is depicted in Figure 39, below.

Figure 39: HHI Scores for the network media economy, 1984-2022



Sources: see the "Fig 39 HHI Scores for NME" sheet in the Excel Workbook accompanying this report and the "Concentration Metrics" sheet in the GMIC Project—Canada open data sets.

For some observers, that steep drop in HHI scores is the start and end of the story. In this view, markets are becoming more competitive all the time, and the HHI scores seem to prove their point. Moreover, it is all a great big "digital media ecosystem" now, and within that context, it's a battle of all against all, with no meaningful lines between any of the various media sectors that make up the "digital ecosystem".

We reject that conclusion, however, for several reasons. First, it ignores the fact that the move toward a more competitive communications and media economy bottomed out in the first decade of the 21st century. Concentration levels rose again circa 2007 and 2013 amidst a wave of ownership consolidation that give rise to a handful of communications and media conglomerates that have stood at the apex of this system ever since: Bell, Rogers, TELUS, Shaw and Quebecor. They have dipped again in the last five years as the international big tech firms and U.S. media giants such as Disney and CBS-Viacom have steadily tightened their dominance of the online advertising market and made their direct-to-consumer streaming services available in Canada. Both trends have challenged the historically protected advertising and media services markets in Canada.

Second, while it is essential to take the "bird's eye" view of the network media economy and track changes over time, in keeping with the cultural industries research tradition that we follow, our research also pays close attention to the fine details of different media industries, their relationships to one another, and to adjacent big tech and big telecoms operators that deeply influence the media in all the ways that we have tried to show in this and our preceding report: namely, terms of carriage, access to audiences, billing, marketing and promotion, technical standards, control over audience information and the distribution of revenue, etc.. We do so because not only do we need to focus on changes over time, but we also need to understand changes in and across different media and how changes in one sector compare to circumstances in others.

This also means that there is no one-size-fits-all answer to the questions we pose. That is why we use the scaffolding approach, where we start by examining individual media markets one-by-one and then group then together to build a comprehensive view of the network media economy. This is also part of why taking careful steps to study concentration trends is as vital now as it ever was.

Thus, while there have undoubtedly been significant changes over time, and a downward drift in concentration at the macro-level, the state-of-affairs within specific media and at different scales of analysis differs significantly. Figure 40, below, offers a snapshot of where things stood in 2022 based on HHI scores for each of the sectors that make up the network media economy and that we have covered in this report.

Figure 40: Concentration rankings on the basis of HHI scores, 2022

Low Concentration (100 ≤ 1,500)	Moderate Concentration (1,500 ≤ 2,500)	High Concentration (2,500 ≤ 10,000)
Magazines 188.6	Cable/DTH/IPTV (national) 1802.4	Broadcast TV 2607.8
Online news 415.1	Total advertising all media 1902.1	Mobile wireless 2707.5
Digital games 786.7	Pay & specialty TV 2067.1	Mobile wireless (provincial weighted avg) 2936.6
Music services 888.5	Online video services 2180.9	Wireline 3068.3
Newspapers 906.8		Internet advertising 3403
Internet access (national) 1079.9		Internet access (local) 3986.6
All TV 1250.83		Mobile web browser 3727.0
Radio 1259.8		Social media platforms 4104.7
Network media economy 1137.4		Desktop web browser 4257.1
		Mobile OS 5070.6
		App stores 5594.1
		Cable/DTH/IPTV (Local) 5137.8
		General search 8351.4
		Mobile search 9364.3

Sources: see the “Fig 40 Conc RankingsHHI” sheet in the Excel Workbook accompanying this report and the “Concentration Metrics” sheet in the GMIC Project—Canada open data sets.

As Figure 40 shows, concentration levels in many sectors of the communications, internet, and media are high. To say this is not mere speculation but is supported by empirical evidence. This is true as our data shows, for the following industries, for example: mobile wireless services, wireline telecoms, retail internet access at the local level, broadcasting distribution at the local level, as well as broadcast television.

The available evidence also shows that most of the core sectors of the internet have had astonishingly high concentration levels for a decade or more: mobile and desktop browsers, social media, operating systems, app stores, and general and mobile search. This is true of the internet advertising market too, where Google and Meta have tightened their grip on the sector over the last decade, albeit with a small retreat last year and Amazon potentially upsetting the Google/Meta duopoly with a tight, three-way oligopoly. The relentless migration of advertising spending to the internet also means that total advertising spending across all media is becoming more concentrated by the standards of the HHI.

That said, and as we always try to emphasize, the ratchet does not go in just one direction. There are four online media services, for example, that are highly competitive and diverse: video, news sources, games, and music. Similar characteristics hold for some ‘legacy media’ sectors as well, including magazines, newspapers, and a broad conception of the TV marketplace that includes broadcast television, and pay TV services.

For some of these latter sectors, for example, magazines and newspapers, this is because things are falling apart, and the long-term viability of these venerable media sectors is in serious doubt. At the same time, however, we have also shown how a combination of changes in government policy and public funds—as well as increased commercial and patronage payments from Google, Apple and Facebook—have thrown a bit of a lifeline to the newspaper industry in the last few years. Policy changes have also opened a window of opportunity by encouraging the advent of not-profit journalism organizations that might yet help to revitalize journalism and, along with it, democracy.

Turning to the online video services market, Netflix’s half-decade period of dominance has been cut down to size as a wide range of other services enter the Canada market, including extensions of international big tech and U.S. based media giants, but also the brands of Canada’s biggest communications and media groups, notably Bell’s Crave. Concentration levels have also fallen in pay television services, albeit for reasons that are mixed and ambivalent. These trends in both pay television and online video services, in turn, have driven down concentration levels across the television marketplace in the last few years, a significant reversal of trends that had been running in the opposite direction for over a decade.

Now, however, rather than being cause for celebration, this drift of events is being taken as cause for serious consternation in Canadian industry and cultural policy circles because such dynamics threaten established industrial interests and conventional approaches to cultural policy. Whereas the Canadian business-friendly, industrial-cultural policy regime that had held sway for decades had been on its last legs, in the past several years incessant lobbying and the manufacturing of a sense of existential crisis for the Canadian broadcasting industry—and the nation—has been fused into the heart of the *Online Streaming Act*, a point to which we will return in the last section of this report on policy and regulatory recommendations.

2. The Canadian media landscape is distinguished by its exceptionally high levels of diagonal and vertical integration

Diagonal integration

Concentration levels in Canada and many countries are often much higher than people tend to think, but where Canada stands out is in terms of its high levels of diagonal integration between different "network media" (e.g. mobile wireless, internet access, BDUs) (essentially, telecoms operators) and television services (e.g. broadcast television and pay television services) as well as vertical integration between telecoms operators and commercial TV services (other media content).[281]

Diagonal integration refers to situations where a company owns operations in adjacent sectors complementary to one that they already operate in. This contrasts to horizontal integration, which refers to consolidation *within* the same market or industry, or vertical integration that refers to integration either up or down the value chain, such as when a common carrier buys a content broadcasting company, e.g. Bell's acquisitions of CTV and Astral, or the data analytics firm Environics that could help it gain more intelligence on the subscribers and audiences that use its products and services.

In terms of diagonal integration, all the country's main communications and distribution networks (mobile wireless, wireline, ISPs and BDUs) are owned by one and the same player, whereas in many countries there are stand-alone mobile network operators (MNOs) and cable and satellite TV distribution services. In these other countries, this has allowed more affordable mobile virtual network operators to emerge organically and to compete within their home base markets, such as mobile wireless, for example, with integrated firms whose operations cut across multiple markets and which, for that reason, find themselves torn between competing all out with the stand alone upstart or simultaneously doing that but with one eye cocked over its shoulder to make sure it is not competing *too aggressively* so as to harm its adjacent lines of business. This has generally improved the affordability and adoption rates for mobile wireless services. That, in turn, has been especially beneficial to low-income, racialized, indigenous, and new immigrant communities. In Canada, in contrast, MVNOs have not organically

[281] Discussions of these points tend to distinguish between "horizontal" and "vertical" integration but in our research, we follow Gillian Doyle (2013) to add a third type: "diagonal" integration. In this conceptualization, horizontal integration refers to ownership transactions within a single market; diagonal integration refers to those that take place across markets at similar levels of the "value chain", for example, between a company operating as a BDU and a competing or complementary distribution network like an ISP or mobile wireless network. Shaw's take-over of Wind Mobile in 2016 is an example of this. Vertical integration occurs when a company takes over another firm that is upstream or downstream in the production chain and is usually of two types: the first is where those who own the distribution network own TV and other content services delivered over them, while a second type involves, for example, integration between those who produce TV and film content and those who finance, distribute and own the intellectual property rights to it. Disney is an example of this, given that it owns one of the main Hollywood film studios, the ABC TV network and pay TV services as well as a deep catalogue of programs and associated rights. Doyle, G. (2013). *Understanding Media Economics*. Sage.

developed and the CRTC's facilities-based MVNO framework will not do much to change that.

Canada is also unique, for example, in the extent to which wireless and wireline infrastructures are fully integrated into single firms, with the last stand-alone MNO—Wind Mobile—acquired by Shaw in 2016, but with that company now spun-off to Videotron as part of the Rogers-Shaw take-over that closed earlier this year. In the US, T-Mobile remains a stand-alone MNO, while Vodafone is a good proxy for this in many countries where it operates (although it also operates wireline networks in a few countries as well, for example, New Zealand).

High levels of diagonal integration matter for several reasons. For one, diagonally integrated companies often manage demand, rivalry, and prices across each of their "platforms" in a way that aims to ensure that whatever one branch of the company does it does not cannibalize the revenue of another. This undercuts the thrust of market-based competition and regulators should deal with that "natural" inclination accordingly.

Diagonal integration also matters because the presence of a stand-alone MNO affects the services on offer in terms of affordability, data allowances, availability, and so forth. As the consultancy Rewheel shows, for example, stand-alone mobile operators (e.g. Free in France, Hutchison 3 in the U.K., or DNA in Finland) offer data allowances that are many times higher than in countries such as Canada without such a competitive mobile wireless operator, and for a fraction of the price.[282]

As Rewheel concludes, Canada has consistently has amongst the most expensive mobile wireless prices in the world.[283] It also dismisses common defenses of this state of affairs, stating emphatically that there is "no link" between population, land area or population density and the prices of 4G and 5G monthly subscriber plans or gigabyte prices. Instead, the key factors behind such outcomes are market concentration as measured by the HHI, the number of mobile network operators in a market and whether a "maverick" mobile operator is available to challenge the status quo.

In short, diagonal integration blunts the sharp edge of competition by restricting data allowances which, in turn, limits the impact of mobile wireless services on fixed, wireline services. A similar logic also checks the impact of the internet on the cable television distribution model, which both the large incumbent network operators and cultural nationalist policy groups seek to leverage as a means of maintaining a BDU- centric model of the media universe. Something similar is also true for broadcasting television and pay television services. In Canada, both types of service are owned by one and the

[282] Rewheel (2020). 4G&5G prices are 2x to 4x lower in markets with four MNOs, p. 5; Rewheel (2022). The state of 4G and 5G pricing, 1H2022 – country rankings; Rewheel (2023). The state of 4G and 5G pricing, 1H2023 – Inflation edition."

[283] Rewheel (April 2021). Is Canada the most expensive wireless market in the world?".

same groups instead of being separate entities in each sector that compete with one another for audiences, advertisers and revenue.

Vertical integration

Contemporary conditions in Canada also stand out with respect to the extent to which four vertically integrated communications-internet and media conglomerates have emerged at the apex of the network media economy in Canada: Bell, Rogers, Shaw, and Quebecor. Before the 1990s, such entities hardly played a role at all, while in the 2000s, the fortunes for vertically integrated companies ebbed, waned, and then rose again before being locked into place, circa 2007-2013.

Consequently, once the dust had settled from this wave of consolidation in 2013, four vertically integrated companies were left standing. They accounted for 58.2% of total revenue across the network media economy at the height of their powers in 2013 but that figure has since slipped to 48.3% last year.

In addition to being extremely high by domestic historical standards, levels of vertical integration in Canada are high in comparison to U.S. and international standards as well. In fact, Canada has stood apart from its international peers for the last decade insofar that all the major domestic commercial TV services in this country are owned by telecoms operators. In contrast, vertical integration levels in the U.S. are a fraction of those in Canada, even after the amalgamation of Time Warner Cable, Brighthouse Cable and Liberty Media in 2016. AT&T's acquisition of Time Warner in 2019 raised levels of vertical integration in the U.S. considerably, but AT&T spun-off the renamed Warner Media into a joint-venture with Discovery in 2022. AT&T has no powers of control in the new company, Warner Media Discovery, just an equity stake.

The basic lesson in this is that telecoms companies are well-known for large-scale engineering projects and wiring up cities and nations, but they know little about producing film and television programming or managing the processes of creativity in the cultural industries. This reality also bedeviled AT&T's recent experience, with seasoned producers and managers at Warner Media and HBO often in open revolt against AT&T top brass.

3. The growing role of international big tech companies and U.S. media giants in Canada

While a handful of diversified and vertically integrated communications and media conglomerates in Canada have consolidated their existing positions and expanded into new markets, they have also been engaged in an intensifying battle with a relatively new set of powerful international actors who have simultaneously been carving out a bigger-and-bigger place of their own in Canada, a dozen of which stand out: Google, Meta, Amazon, Netflix, Apple, Microsoft, Sony, Spotify, Bytedance (TikTok), Tencent, and Twitter. They have also been joined by major U.S. and international companies such as Disney, Activision Blizzard, and Universal Music.

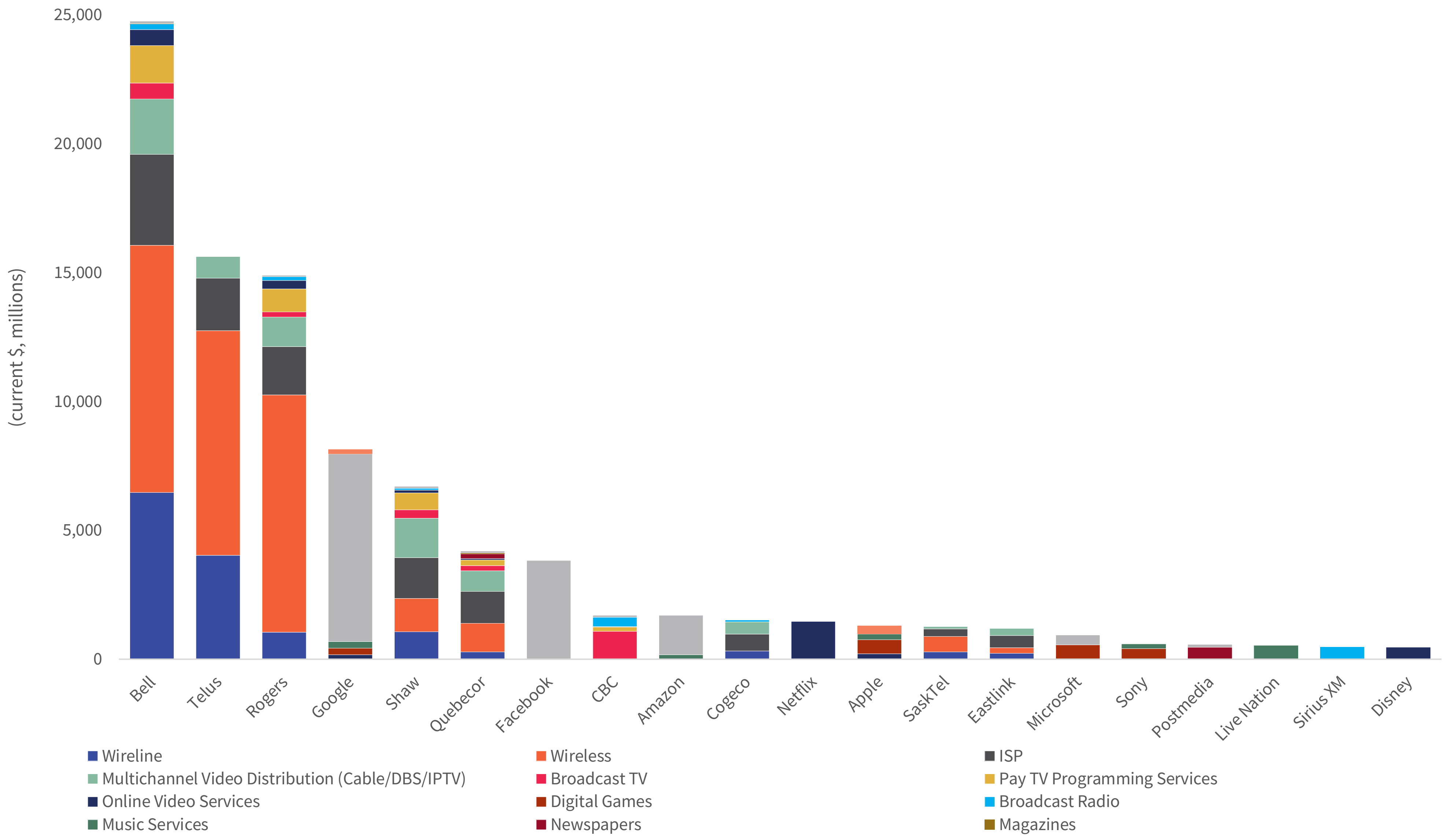
Over the course of the past decade, these companies' combined revenue has soared from an estimated $2 billion in 2012 to $20.4 billion in 2022. As a result, they have come to dominate online advertising, where Google and Meta have a combined share of 77.3% of the $14.4 billion market in 2021. Add Amazon to the picture, and the big three tech companies control 88% of the online advertising market in Canada. The big three tech giants have parlayed their dominance of the online advertising market into a position where they now command close to two-thirds of the $20.2 billion spent on advertising across all media (although, it would be remiss to not note that BCE's ten percent stake of all advertising receipts outstrips that of Amazon, while driving up the CR4 for this sector to 72.9%.

As we have shown in these pages, casting our eyes more broadly across the core elements of the internet, we see a recurring tendency for Google and Apple to dominate operating systems, app stores, and browsers. As we have suggested, these trends and dynamics represent a clash of titans rather than a competitive marketplace, but that reality, in turn, is also seen by some observers as being fully aligned with the 'creative destruction' school of political economy inspired by Joseph Schumpeter in the mid-20th century. What has also become striking with the passage of time is that these patterns of dominance are not transient, as Schumpeter and his acolytes would have it. Instead, they are fairly stable features on the landscape.

Of course, such things are never set in stone, as the sinking revenues and social media audience shares, and tanking market capitalization faced by Meta over the past few years remind us. There are also exceptions where the trend cuts in the opposite direction. For example, this is the case for the online video services market as Netflix faces more rivals from both its "big tech" peers—i.e. Apple, Google's YouTube Premium, and Amazon Prime Video—U.S. based media giants—i.e. Disney+ and CBS All Access—and a couple of domestic national champions, such as Crave (Bell), illico (Quebecor), Stack TV (Corus), and CBC Gem. While the details of the online video market in Canada are unique, this phenomenon whereby international big tech firms compete with U.S. media conglomerates, and large domestic firms is being replicated in countries around the globe.

Drawing this altogether, and to a close, big tech firms and foreign media giants have become formidable forces in Canada and wherever they operate. That said, and as we have tried to do throughout these pages, it is imperative that we assess their scale, scope, and clout relative to the local conditions in which they operate. Figure 41 below attempts to do that by showing the rank and make-up of the top twenty communications, internet, and media companies based on their revenues in Canada in 2022.

Figure 41: Top 20 Communications, internet, and media companies in Canada, 2022



Sources: see the "Fig 41 LeadingTelecominternet" sheet in the [Excel Workbook] accompanying this report and the revenue for each company covered in the appropriate sheets in the [GMIC Project—Canada open data sets].

Focusing on the largest twenty firms operating in Canada reveals a mixture of Canadian, U.S., and international firms. The inclusion of non-Canadian firms on the list is a significant change in itself, to be sure, with Google (Ranked #4), Meta (#7), Amazon (#9), Netflix (#11), Apple (#12), Microsoft (#15), Sony (#16), Siriux XM (#19), Disney (#20), Spotify (#22), Activision Blizzard (#23) and ByteDance (#25). The speed with which these entities have scaled the ranks is especially noteworthy.

That said, the notion that these firms dominate the media economy in Canada is an illusion. The top twenty-five firms on the list account for approximately 88% of the $104.4 billion network media economy in Canada; the top ten for 80%. This is significant, to be sure, but, seen from this bird's eye view, the network media economy overall is only modestly concentrated when seen by the lights of the CR4 (CR4=60.7%) and pluralistically diverse and competitive by the standards of the HHI (HHI=1135). Over the past decade, that figure has bounced around somewhat, rising by two-hundred points, circa 2010-2013, for reasons we explained earlier in this report, but the direction has drifted downward in recent years.

Toward a new generation of internet services regulation

Taking into account the analysis provided in these pages and those of our first report, a new generation of internet services regulation is in order. While many take broadcasting and media policy as their inspiration for what this should look like, this report advances a vision based on four cornerstones drawn from the history of communications regulation and antitrust: structural separation, line of business restrictions, public obligations, and public alternatives.[284]

Guiding this vision is the premise that forceful policy responses are needed to address manifestations of market concentration and dominance across the communications, internet, and media landscape wherever they exist. Rather than squarely addressing such issues, the recent heightened attention in Canada on reforming internet regulation has focused almost entirely on questions of Canadian content and culture. This can be seen, for instance, in the Broadcasting and Telecommunications Legislative Review (BTLR) panel's *Canada's Communications Future* report, although its early chapters have much to offer along the lines we are suggesting here. Thus far, the government' policy agenda has taken the panel's views as the cue for its three- pronged approach to internet services regulation: i.e. the *Online Streaming Act*, the *Online News Act*, and its anticipated online harms legislation. Those are, indeed, important issues and ripe for public and policy debate and effective regulatory measures to address them.

That said, the focus on the issues of content, culture, and harms has eclipsed equally pressing questions about market concentration and power across the communications, internet, and media industries. The BTLR's proposals with respect to reforming the CRTC and proposals with respect to full-stack neutrality provisions to address the potential for abuse of dominant market power through monopoly leveraging and self-preferencing at the network, content aggregation and distribution, and device levels are all largely absent in the government's policy agenda and the surrounding debate.

This last section of our report takes up these issues and offers suggestions as to how to redefine the policy agenda to center issues of power and structure before moving to questions of content and culture. Structural approaches anchored in communications regulation and antitrust have a long history in Canada. One pillar of this deep-rooted tradition is the century-old rules preventing common carriers from owning or controlling sources of content, information and news, as well as people's correspondence that flowed across their systems.

---

[284] This conceptual framework builds on the work of K. Sabeel Rahman (2018). The new utilities: Private power, social infrastructure, and the revival of the public utility concept, Cardozo Law Review, 39, pp. 1621-1689 and draws heavily from Winseck & Bester (2022). Regulation for a more democratic internet: Lessons from 19th & 20th Centuries Antitrust and Communications Regulation for 21st century Digital Platform Regulation. In T. Flew, J. Thomas & J. Holt (eds.). *Sage Handbook of the Digital Media Economy*. Thousand Oaks, CA: Sage.

As part of this tradition, since 1890, the federal courts have balked at measures requiring common carriers to leverage their role as gatekeepers to the benefit of select businesses and at the expense of Canadians who expect fair carriage and privacy of their communications. Such principles were reinforced by the Board of Railway Commissioners 1910 Western Associated Press ruling that facilitated the advent of competing news wires services and the free press, as we saw early in this report. To their credit, successive Canadian lawmakers and regulators have renewed and fortified the common carriage principle in the Telecommunications Act[285] and CRTC decision-making.[286] The *Online News Act* is the latest instance of legislators adapting the principle to today's realities.[287] Great care must be made to ensure that this principle is not traded away for the sake of other goals like promoting Canadian content, cracking down on copyright infringement through website blocking orders, or reining in real and non-speculative varieties of online harms.[288]

Time for a change: The current focus on "market forces" and "conduct- based" regulatory remedies are not working

One of the most powerful tools in policymakers and regulators' toolkit are rules and actions focused on changing or preventing market and legal/policy/regulatory structures that facilitate and incentivize harmful conduct. The most prominent example is the break-up, where parts of a business, either within or across markets are forced to become independent, and often competing, legal entities. Structural approaches are especially useful in markets characterized by persistent high concentration and vertical and diagonal integration, features that describe Canada's internet access, mobile wireless, and broadcasting markets.

---

[285] Sections 27 and 36

[286] Extension of common carriage to wireline and mobile wireless broadband services in 2009 and 2010, respectively, along with the 2015 Mobile TV and 2017 zero-rating decisions.

[287] Canada (2023). *Online News Act*, section 51.

[288] The literature on these topics is enormous but for solid, fair-minded reviews of the relevant literature and what we do and don't know on these points, see, for example: Benkler, Y., Faris, R., & Roberts, H. (2018). *Network propaganda*. Oxford University Press; Vorderer, P., Park, D. & Lutz, S. (2021). A history of media effects research. In M. B. Oliver, A. A. Raney & B. Jennings (eds.). *Media effects: Advances in theory and research*. New York: Routledge; Warren, J. (Jan. 18, 2017). Did fake news help elect Trump? *Poynter*; Kreiss, D. (2021). Review of N. Persily & J. A. Tucker. (eds). *Social media and democracy*. Cambridge, UK: Cambridge University; Deuze, M. (2021). "On the 'grand narrative' of media and mass communications theory and research: a review". Profesional de la información, *30*(1); Dutton, B. (May 5, 2017), *Fake news, echo chambers and filter bubbles: under-researched and overhyped*. *The Conversation*; Khoo, C. (2021). *Deplatforming misogyny*. Toronto: Women's Legal Education and Action Fund.

The CRTC's current approach, a wholesale access regime for internet and mobile wireless services, is a watered-down form of structural response to just these characteristics. Rather than fully separating out wholesale and retail internet provision (structural separation), however, the regime allows independent ISPs to buy access wholesale internet service from incumbents on regulated terms in order to provide competitive offers to consumers.

As we have seen, however, whether such measures work or not swings wildly on the disposition of Commission's leadership, along with those it works with at the Competition Bureau and at ISED. For ten years, for example and as we saw earlier, a series of CRTC decisions opened the door for a greater role for independent ISPs, but even at its best progress was painfully slow, mostly because incumbent cable and telecoms operators have fought these improvements with an endless arsenal of tactics designed to hobble the potential for an effective regulated wholesale access regime succeeding. A ruling by the newly constituted leadership at the Commission earlier this year granted interim rates to independent ISPs for access to telecoms operators' FTTP networks. This could help reverse a devastating run of events that have seen the number of people subscribing to independent ISPs plunge by 40% across the country, and nearly half in Ontario and Quebec, and several small ISPs scooped up by Bell (i.e. ebox and Distributel) and Vidéotron (i.e. VMedia). Whether that will happen or not, it is still much too early to know.

The story for mobile wireless services follows the same plotlines, and a similar solution is needed in this domain for all the same reasons. Embracing the BTLR report's recommendation that passive network infrastructure be incorporated into the regulated wholesale access regime (recommendations 34-36) would also be a good place to start for the government if it is serious about making practical improvements to its thus-far lacklustre approach.

Given these failures and the incumbent cable and telecoms operators' pattern of obstructionist behaviour, policymakers at ISED and the CRTC should double down on regulated wholesale access for both wireline and wireless to ensure that the modest competition in retail internet access services is preserved, and that new strides in mobile wireless competition can be made. The Liberal government should also return to the stance of its first mandate where the emphasis seemed to build on the advances made by the previous Conservative government. Moreover, given such wild swings between decisions that either promote the competitive offerings provided by independent ISPs or sign their death warrant, a more stable framework should be legislatively locked into place in favour of the former option.

The Liberal government should also continue with its early promises to fortify the role of common carriage to ensure that it is attuned to the realities of communications and internet infrastructure providers' ability and incentives to use their gate-keeping power at the expense of competitors and all those who use their essential facilities. Such measures also need to be extended to all layers of the "internet stack" where concentration and gatekeeper-power has become locked-in over time.

These infrastructures and services now serve as the gateways through which all forms of communications must pass. The combination of urban, rural and inter-city fibre and wireless infrastructure that has taken shape over the last quarter-of-a-century or so underpins a wide and diversifying range of the economy, society and our day-to-day lives. As we saw earlier in this report, a handful of large gatekeepers now stand midstream in the flows of such communications, with Bell, TELUS, Rogers, Shaw and Quebecor's Vidéotron operating 87% of those connections and the $67.6 billion in revenue accounted for by the mobile wireless, internet access, POTs and BDU services in Canada last year. Concentration levels by both the CR4 and HHI remain high in each of those sectors individually, while their share of this bigger and more complex landscape is greater today than it was twenty years ago.

The fact that Rogers and Shaw's blockbuster $26 billion made it past regulators will only serve to gird these conditions. To its credit, and in a break with past practice, the Competition Bureau tried to block the transaction, full stop, but was ultimately unsuccessful in its attempts. It should be applauded for the bold actions it took.

While many observers have focused on the potential impact this deal could have on mobile wireless markets, and they believe that any potential negative impacts of it were skirted when Rogers and Shaw finally agreed to spin-off Freedom Mobile to Videotron, this focus is both too myopic and too sanguine. Crucially, it ignores the fact that it was always Shaw's urban and inter-city wireline infrastructure that was the centrepiece of the transaction. That Freedom Mobile was sold to Videotron for $2.85 billion in a $26 billion deal tips us off to the relative value of it in the overall scheme of things.

By accomplishing this goal, Rogers doubled its share of the internet access and BDU markets. While this will not affect concentration levels according to the CR or HHI at the local level, on a national basis, Rogers' takeover of Shaw reverses the steady decline in such measures over the last decade. For television and film program rights holders and distributors, the number of doors for them to knock has been reduced from three to two in English-speaking parts of the country.

In addition, Shaw's willingness to break ranks with other cable and telecoms operators and play the role of aggressive maverick with respect to pricing, data allowances, and bundling have also been lost. Its decision to slam the brakes on its aggressive "maverick strategy" for Freedom Mobile as the takeover bid from Rogers unfolded set back the clock by the nearly two years. During this time, workers that could have been busy building wireless networks had the tap on investment not been closed sat idle while consumers missed out on Shaw's attractive mobile and bundled triple-play packages that had not only been superior to the big three mobile operators—Bell, TELUS, and Rogers—offers, but which also forced them to offer more affordable packages with bigger data allowances of their own to better compete with Freedom Mobile in the lucrative provinces of British Columbia, Alberta, and Ontario. The spike in adoption rates, steady rise in people's mobile internet usage levels, and significant declines in wireless prices in the past five years also all serve as evidence of what could be lost, even if the outcomes still rank poorly by international standards.

Thus, while it is still too early to tell whether Videotron will be able to pick up where Shaw left off, there will be no getting those two lost years back. Moreover, Videotron's prospects now hinge on how the web of sweetheart deals between Rogers and Vidéotron will play out in the days ahead. And this issue takes us right back to a point made a moment ago about how policy and regulatory reform in Canada must start by putting a sturdier wholesale access regime into place on both wireline and wireless side of the telecommunications industry.

This outcome also follows a line of previous regulatory moves in Canada, including the requirement that Bell divest several pay TV services in return for approval of its take-over of Astral, and the Competition Bureau's 2017 decision to approve Bell's acquisition of MTS in exchange for spinning off a nascent fourth competitor via regulatory intervention. As we have seen, those regulatory remedies turned out to be hard to monitor and enforce, and have failed. The divested television services from Bell Astral have not cultivated new players to replace the iconic, innovative and formidable entity lost when Bell took over Astral in 2013. Subsequently, the idea that transferring retail store fronts and subscribers from MTS to TELUS and Xplornet in a bid to make the latter into a new competitor in Manitoba failed. Consequently, Manitobans and Canadians are now worse off for the loss of a more affordable and innovative rival in exchange for the distant hope of a potential replacement.

To be sure, Videotron is no Xplornet, but it faces formidable hurdles to its ambitions to break out of its home base in Quebec and enter provincial mobile wireless markets in Ontario and Western Canada. A key issue at stake here independent of Videotron's own capabilities will be whether regulators will be able to effectively monitor and ensure that the sweetheart deals that it struck with Rogers will work as pledged.

It is not just Canadian regulators that have a hard time overseeing and enforcing conduct-based remedies to ownership consolidation, but regulators around the world. Indeed, the Canadian experience is consistent with the Obama and Trump Administration's DoJ and FCC approvals of Comcast's take-over of NBC Universal in 2011 and T-Mobile's of Sprint in 2019, respectively. While each of these deals had their own distinctive characteristics, they shared a preference for complex, risky, and difficult to enforce remedies over decisive action. Following this model, in the U.S. the idea that Dish, a satellite provider with no experience in mobile wireless markets, could be transformed into a credible and sustainable competitive threat to established national carriers with divested assets from Sprint has not borne fruit.

As we explained in our submission to the Parliamentary INDU Committee that presented reasons why the Rogers-Shaw deal should be blocked,[289] in the US, regulators

[289] Winseck, D. & Klass, B. (2021). The Great Reversal: Why the Rogers-Shaw Merger is a Raw Deal and Regulators Should Deny It. Submission to the House of Commons Standing Committee on Science, Industry and Technology.

currently find themselves trapped administering a dizzying array of conduct remedies imposed on T-Mobile and Dish whose prospects for success appear dim. As others have noted, the conduct remedies requiring T-Mobile to “act against its own interests . . . [and] assist its direct competitor” were always untenable.[290] The T-Mobile and Sprint merger now stands as an abject lesson in the harms that arise when regulators allow an effective competitor to be traded away for an imaginary future one.[291]

The fact is that in the fog of regulatory reviews of blockbuster deals like the Rogers-Shaw deal in Canada, where heavy lobbying and hired mercenary research is the norm, it is easy to lose sight of the obvious fact that these mergers are anti-competitive, primarily benefit the owners of the merging parties as opposed to the general public, and that complex remedies are too often unenforceable and ineffective.

In this regard, the Competition Bureau took the lessons from above to heart. Moreover, the fact that the real “crown jewel” in the Rogers-Shaw transaction was the latter’s fibre facilities in western Canada because those are what is needed to build out ubiquitous 4G and 5G mobile networks, the harsh reality is that, without such facilities of its own, Vidéotron will likely be hobbled in its ambitions. While the companies’ lawyers all argued that the CRTC’s wholesale access regime is up to the task, but as we have seen, and as the Commission’s own recent ruling on third-party access to FTTP acknowledges, that is a rose-tinted view of reality, at least at the time. Whether the “new” CRTC will fare better, we will see.

Already, ongoing disputes and litigation over the breakdown of an existing network sharing agreement between Rogers and Vidéotron reveals how tenuous the situation is. In addition, this idealistic scenario whereby Rogers will provide ongoing access to facilities to allow a strong, sustainable fourth operator to take shape is fundamentally at odds with the company’s interests and, arguably, its legal obligation to maximize shareholder profits. Finally, the idea that the Competition Bureau and ISED should act

[290] Economides, N., Kwoka, J, Philippon, T., Seamans, R., Singer, H., Steinbaum, M. & White. L. (2019) Economists’ Tunney Act Comments on the DOJ’s Proposed Remedy in the Sprint/T-Mobile Merger Proceeding, pp. 7-8.

[291] State of New York, State of California, State of Colorado, State of Connecticut, District of Columbia, State of Maryland, State of Michigan, State of Mississippi, Commonwealth of Virginia, and State of Wisconsin, plaintiffs, v deutsche Telekom ag, T-Mobile US, Inc., Sprint Corporation, and Softbank group corp., defendants. (2019). *In the United States district court for the southern district of New York*. p. 22; Economides, N., et. al. (2019); Singer, H. (2021, February 25). The terrible T-Mobile/Sprint Merger must be undone. *Wired*. Wang, Melody, & Morton, Fiona Scott. (2021, April 23). The T-Mobile/Sprint merger: A disastrous deal from the start. *ProMarket*. Public Interest Spectrum Coalition. (2021). *Group FCC Letter on T-Mobile 3G CDMA Network ShutdownGroup FCC Letter on T-Mobile 3G CDMA Network ShutdownGroup FCC Letter on T-Mobile 3G CDMA Network Shutdown*. Public Interest Spectrum Coalition.

like bankers to help Rogers and Shaw create a viable post-merger replacement to the competitor that already exists seems like sheer fantasy.[292]

To remedy such problems, presumptions against further consolidation, i.e. a ban on competition-killing mergers and acquisitions, should be adopted (also see below). This is the direction that one finds not just in the U.S. DoJ's recent draft merger guidelines, but also in competition policy reforms now before Parliament in Canada. The case for those reforms is stronger than ever based on the evidence covered in this report.

Beyond these frustrations with the ineffectiveness of conduct-based regulation in telecoms, similar defects have also become glaringly obvious in recent years in relation to several high- profile digital platform cases where headline-grabbing fines and conduct-based regulatory remedies have failed to bring about their desired results. The lack of results has raised questions about the efficacy of monetary fines and in policing powerful market participants. It has also spurred a conversation over the merits of reviving structural solutions from earlier eras of enforcement that have been neglected in the last few decades.[293]

A good place to start this review of cases that have led to this newfound appreciation for structural regulatory remedies is with a brief reprisal of the EU cases against the international internet giants. In this regard, the EU's trilogy of market dominance cases against Google is an outstanding case in point: i.e. its online search and shopping services ruling in 2017 (€2.3 billion fine),[294] the Android mobile operating system case in 2018 (€4.34 billion fine),[295] and in relation to Google's dominance of the online advertising market last year.[296] In each of these rulings, the EC concluded not only that Google possesses dominant market power but that it has abused that power at the expense of competition and users in the online advertising market, search and its Android operating system.

Like the opposition of incumbents in Canada's mobile wireless and internet access markets, in these cases we see that Google has been able to draw out the cases against it for over a decade. The Google Shopping case, for instance, began in 2010 but despite

[292] Genakos, C, Valletti, T. and Verboven, F. (2018). Evaluating market consolidation in mobile communications. *Economic Policy* 33(93): 45-100; Kwoka, J. & Valletti, T. (2021). Unscrambling the eggs: breaking up consummated mergers and dominant firms. *Industrial and Corporate Change*. Kwoka, J. Waller, S. W. (2020). Fix it or forget it.

[293] Kwoka & Valletti, 2021: 4-6; Kwoka, J. Waller, S. W. (2020). Fix it or forget it.

[294] European Commission (2017). *Commission Decision—Google Search (Shopping) (AT.39740) (Decision)*. Brussels: Author.

[295] European Commission (2018). *Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine* **(**press release**).** Brussels: Author.

[296] European Commission (2019). *Statement by Commissioner Vestager on Commission decision to fine Google € 1.49 billion for abusive practices in online advertising* (press release). Brussels: Author.

a ruling against the company in 2017 that came with headline grabbing fines and ongoing monitoring of specific behaviours that the Commission had found to be anti-competitive, it was only wound up in October 2021 after Google's appeal to have the results of the case overturned by the courts was rebuffed.[297] Throughout this period the EC continued to report ongoing problems in terms of Google falling into line with what is expected of it in response to these decisions, while the Commission and other regulators have also opened new fronts to scrutinize, namely Apple and Google's app stores.[298]

In another 2019 case, the German Federal Cartel Office found Facebook to have monopoly power and that it was abusing that power at the expense of advertisers, social media rivals, and the quality of privacy and data protection afforded to people who use its services (and internet users broadly because firms with the clout of Facebook set standards that other actors emulate). The Cartel Office responded by imposing significant line of business restrictions that prevent Facebook from sharing people's data across the Facebook, WhatsApp and Instagram services.[299] Rather than comply, however, the social media giant tied the case up with appeals to the court and other authorities. Rebuffed in its appeals, however, the company finally brought its practices into line with regulatory requirements two years after the case began. Of interest, the EC's new *Digital Markets Act* includes similar measures to those pioneered by German regulators in this case.[300]

In other words, a decade after the EC began its trilogy of Google cases and several years into the German Meta / Facebook case, the remedies imposed are increasingly being seen as taking too long to implement, hard to monitor and, at least in the Google cases, as not having delivered on what they promised. For the German Facebook case, on this latter point about the effectiveness of the remedy proposed, it is safe to say that it is too early to tell.

---

[297] European Commission (EC) (2017). *Competition Policy: AT.39740 Google Search (Shopping;* European Commission (EC). (2018). *Competition Policy: AT.40099 Google Android*. CASE AT.40411: Google Search (AdSense), (March 20, 2019); Szucs, A. (2021, November 10). *European General Court upholds $2.8B fine for Google*. Andolu Agency (AA).

[298] Australian Competition and Consumer Commission (ACCC) (2021). Digital Platforms Inquiry—Interim Report #2: App Marketplaces; Authority of Consumers and Markets (Netherlands) (2019). *Market study into mobile app stores*; US. (2020). *Investigation of competition in digital markets: Majority staff report and recommendations*. pp. 377-402; Bundeskartellamt. (2019). Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing, B6-22/16 (Bundeskartellamt [Federal Cartel Office] of Germany February 6, 2019). p. 4.

[299] Bundeskartellamt. (2019). Facebook, Exploitative business terms. p. 6; Germany, Bundeskartellamt. (Feb. 7, 2019). *Bundeskartellamt prohibits Facebook from combining user data from different sources*. Germany, Higher Regional Court (Düsseldorf). I - Kart 1/19 (V): antitrust case . 1. Facebook Inc., 2. Facebook Ireland Ltd and 3. Facebook Germany GmbH. Applicants and complainants vs. Federal Cartel Office, Respondent, et. al.

[300] EC (2020), *Digital Markets Act*, p. 30.

These realities have led to the redoubled efforts that one finds throughout the current round of platform inquiries, regulatory rulings, and legislative initiatives that one can see in countries around the world.[301] Discussions are also turning to two other structural remedies: presumptions against mergers and acquisitions and break-ups.

The structural turn in communications and antitrust regulation: Presumptive bans against mergers, structural separation and line of business restrictions

At present, there has been a de facto presumption against 4-to-3 mobile wireless mergers in Canada, the U.S., and the EU, for example. Of course, there are also important exceptions to it, such as the approval of the T-Mobile / Sprint deal by the Trump Administration's DoJ and FCC and a small number of cases in the EU context. In its original form, Rogers' bid for the whole of Shaw made a mockery of that presumption. Consequently, there was an extraordinary level of time and resources committed by three different regulators—the Competition Bureau, ISED and the CRTC—to reviewing this enormous and complicated transaction. It is to the Competition Bureau and ISED's credit that their steadfast opposition to the deal as originally proposed kept this policy somewhat intact by forcing the divestiture of Freedom Mobile to Videotron.[302]

While there is no absolute ban on 4-to-3 mergers in mobile wireless markets, regulators in the EU, Canada and the U.S. have erected a strong presumption against them based on the working consensus that four or more competing MNOs are desirable, even if not optimal. Such stances reflect a broader return of presumptions against further consolidation that can be seen not just in mobile wireless market but also in situations where monopoly power in core parts of the internet is found by regulators to be entrenched and at risk of becoming even more so if a proposed take-over is allowed to pass. We saw this in the case of the U.K., where, after a year-long review, in October 2022, the CMA blocked Meta's acquisition of Giphy, a service that controls popular GIFs and GIF emoji's, while ordering it to divest itself of the company.[303]

---

[301] ACCC. (2021). Digital advertising services inquiry, pp. 87-143; Bundeskartellamt. (2019a, February 7). *Bundeskartellamt prohibits Facebook from combining user data from different sources*. p. 4; Bundeskartellamt. (2019). Facebook, Exploitative business terms, p. 6; The Competition and Markets Authority (CMA). (2020). *Online platforms and digital advertising Market study final report*. pp. 211- 337; U.K., Furman. Digital Competition Expert Panel. (2019). *Unlocking digital competition*; US, FTC. (2021). Federal trade commission v. Facebook, inc.: Substitute amended complaint for injunctive and other equitable relief; Srinivasan, D. (2020). The Antitrust Case Against Facebook, p. 5; US. Jerrold Nadler, David Cicilline, & Subcommittee on antitrust, commercial and administrative law. (2020). *Investigation of competition in digital markets: Majority staff report and recommendations*. p. 378.

[302] Winseck, D. & Klass, B. (2021). *CMCR Project Comments Rogers Proposed Acquisition of Shaw*.

[303] United Kingdom, Competition and Market Authority (2022). *Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc Final Report*.

Thus, after a quarter-of-a-century in which regulators sat on their hands as hundreds of internet-related acquisitions took place, this marks an about face. This change can be seen in academic and policy circles as well.[304]

As the conversation turns to "breaking-up" big tech, several recent and/or ongoing U.S. cases against Facebook and Google have put the idea of the "divestiture of assets" (e.g. Meta forced to spin-off WhatsApp and Instagram) and other kinds of "structural relief as needed to cure any anticompetitive harm" at the front of the line of proposed regulatory solutions.[305]

When it comes to Google, the most likely path being promoted is to dismantle its digital ad-tech stack and to do so following the fault-lines of its acquisitions of, most notably, Double Click, AdMob and AdMeld that allowed it to assemble this system to begin with, while also requiring it to hive-off its suite of services (e.g. search, Gmail, YouTube, Google docs, etc.) and its mobile operating system (Android). Here, the possibilities extend to forced divestitures at the hard end of the scale to operational separation at the softer end of the pole.

Similarly, in the U.K., for instance, the creation of a new Digital Regulatory Unit within the CMA with the power to implement ownership or functional separation in digital advertising markets also reflects this newfound resolve against further consolidation in digital markets.[306] Along similar lines, the OECD's 2016 review of structural separation in regulated industries concluded that "structural separation remains a relevant remedy".[307] The objective in each case, though is to break-up or rein in the diversified digital conglomerate's ownership and control of online advertising exchanges, data, audiences, and the restrictive terms-of-trade that it imposes on third party advertisers, content and applications providers and other services.[308]

The Digital Markets Investigation in the U.S. in 2020 also recommends that regulators consider forcing companies to "unwind consummated acquisitions or divesting business

---

[304] Kwoka & Valletti. (2021), p. 3; US. (2020). *Investigation of competition in digital markets*, p. 391; Kwoka, J. Waller, S. W. (2020). Fix it or forget it: a "no remedies" policy for merger enforcement. *Competition Policy International*; Khan LM (2021). *Memorandum: Vision and Priorities for the FTC*; Khan LM (2020) The end of antitrust history revisited. *Harvard Law Review* 133.

[305] US, FTC. (2021). Federal trade commission v. Facebook, inc., pp. 78-79; US. (2020). *Investigation of competition in digital markets,* pp. 377-402.

[306] U. K. Competition and Markets Authority (CMA) (2020). *Online platforms and digital advertising Market study final report*. p. 405.

[307] US Judiciary Committee. (2020). *Investigation of competition in digital markets*. p. 381.

[308] Ghosh, D. and Scott, B. (2019). Digital Deceit: The Technologies Behind Precision Propaganda on the internet, Washington, D.C.: New America.

lines" to restore competition and prevent anticompetitive problems in the future.[309] That said, it must be noted that the discussion of structural remedies in the EC's *Digital Markets Act*, for example, is hedged by suggestions that any such remedies will only be pursued after systemic non-compliance with the Act and due consideration of the substantial risks that such approaches entail.[310]

The rationale for these assertive steps should ring familiar given our earlier discussion about the long-drawn on obstructionist tactics deployed by integrated mobile wireless, internet access and BDU operators in Canada that have thwarted the emergence of more robust competition and regulators' efforts to impose and enforce conduct-based regulation with an eye to achieving just that. For the last forty-years, this stance has denigrated the virtues of structural separation and/or break-ups as being beyond the capacity of regulators and just too big of a political challenge. That now, is changing as the weaknesses and unworkable realities of conduct regulation become more obvious.

As that happens, the virtues and ease of application of break ups, spin-offs, bright-line rules and presumptions against future market-consolidating take-overs is getting a fresh look and, at least in some cases, as we have seen, a new lease on life, not least because such structural regulatory tools are simpler to implement and easier to administer than behavioural ones. Canadian policy-makers and regulators have been hesitant to move in this direction but it is time for them to do so.

Line of business restrictions

While break-ups can be seen as the ultimate hammer in the regulator's toolkit, line of business restrictions represent a less intrusive means to similar ends. To prevent firms from leveraging their dominance in one sector into adjacent markets, line of business restrictions either prevent entry by dominant players into select markets or create internal firewalls to keep parts of the same organization separate. As we saw earlier, this is an approach that has a long history in Canada and the U.S. where common carriers have been historically restricted from owning and controlling broadcasters, publishers, and other sources of content creation.

This has separated control over conduit from control over content, with an eye to diminishing the capacity of carriers to take advantage of their gatekeeping power and to free individuals and those who produce and disseminate media messages to do so on their own terms, or at least without the carriers' undue influence. This has been achieved both through the regulatory principle of common carriage for the last 130 years, by corporate decisions to segment the market since the 1920s, and by corporate charters and statute from 1968 until those measures were repealed in the mid-1990s. It is time for a re-assessment and, if that re-assessment proves helpful, to reinstate such

[309] US Judiciary Committee, (2020), pp. 376-381.

[310] EC, (2020), p. 30.

measures and broaden their application so as to bring about something along the lines of a "fair carriage" regime. In fact, the outlines of such an approach can currently be seen taking shape in Germany and in parts of the *Online News Act* adopted in Canada earlier this year, and which are set to come into effect within days of this report going to press.

As we also saw earlier, a prominent, contemporary application of line of business restrictions / operational separation can be seen in the German Federal Cartel Office 2019 ruling to restrict Facebook's ability to share user data between its flagship service and WhatsApp and Instagram. Stopping short of breaking up the company, the ruling effectively erected a firewall between different arms of the Facebook empire.[311]

The European Commission's *Digital Markets Act* includes a similar data separation obligation for the largest digital platforms. Although the details still need to be worked out, the goal is to prevent the so-called very large online platform services (or VLOPS) from combining personal data across services offered by the platform, as well as third-party sources of data on consumers, unless the option to opt-in or out has been provided.[312] The U.K.'s CMA makes similar proposals for the power "to mandate data separation (or data silos)".[313]

Of course, while such conduct-based regulations are vulnerable to the same limitations we outlined above, they provide regulators with a less-interventionist option in the emerging digital communications regulatory toolkit. The similarities between the telecoms and cable operators in Canada, especially as the struggle to build their own digital advertising exchanges to do battle with the likes of Google, and the international internet giants on this point offers an obvious point at which regulations can be harmonized across different dimensions of the network media economy and digital media universe.

[311] Germany, Bundeskartellamt. (Feb. 7, 2019). *Bundeskartellamt prohibits Facebook from combining user data from different sources*.

[312] EC, (2020b), Art. 5(a); Regulating digital platforms as the new network industries. *Competition and Regulation in Network Industries*, *22*(2): 111-126.

[313] United Kingdom, Competition and Market Authority (2020), 406-408.

Public obligations—The rights and responsibilities of digital platforms

Narrowing a potentially wide-ranging conversation, the following discussion focuses on four elements of the potential role of public obligations for a new generation of internet regulation: transparency of complex technological and infrastructural systems, data and privacy protection rules, and audiovisual media, cultural policy and regulation, and public alternatives.

Mandatory information disclosure requirements and transparency

Since shortly after the creation of the first formal regulatory agency in Canada in 1903, the Board of Railway Commissioners, regulated entities have had to meet mandatory minimum levels of information disclosure on a routine and regular basis.[314] This tradition has continued to this date and is an important function of the regulatory process overseen by the CRTC, but has been seriously compromised in recent years from two sides: failures of the regulators to live up to the spirit of such practices and internet services companies, including big name global brands such as Netflix, Google and Meta, that have fought tooth-and-nail against the formalization of such requirements to their operations. That is set to change with regulatory proposals now on the table around the world making such requirements one of their headline features.[315] The *Online Streaming Act* and *Online News Act*, for example, also build on this convention. While the details of these requirements still need to be worked out by the CRTC, they will likely require that all "broadcasters" and "digital news intermediaries" operating in Canada disclose information about corporate ownership, revenue, expenditures, catalogue titles, subscriber numbers, and other data related to their operations, for example.

This data provides Canadian regulators and policy-makers with a picture of international companies within our borders. It will also ensure that we never see another moment where a major streaming service like Netflix can defy a request for basic information from the CRTC, as was the case in 2014 when the then CRTC chair, Jean-Pierre Blais, clashed with Netflix's director of global public policy, Corie Wright, on this very point.[316] Such a requirement would also benefit researchers who find that the

[314] Winseck, D. (1998). *Reconvergence*. p. 131.

[315] See, for example, Australia (2021). *News Media Mandatory Bargaining Code*; EC (2020), *Digital Markets Act*, Articles 5-6; EC (2020). *Digital Services Act*; United Kingdom, Competition and Market Authority (2020). Online platforms and digital advertising.

[316] CBC News (Sept. 20, 2014). Netflix spars with Canadian TV regulators; Winseck, D. (2014, September 19). No Regulatory Cherry-Picking Allowed: The CRTC vs. Netflix Clash @ the TalkTV Hearing. *Mediamorphis: Network Media Industries and the Forces of Change and Conservation*.

current dearth of information with respect to these issues constrains their own ability to understand these aspects of the digital media landscape.[317]

At the same time, however, it must also be realized that before giving the CRTC new tasks and responsibilities it needs to put a stop to the significant backsliding that has taken place in the last few years with respect to the quality and scope of the data it currently collects and publishes, and regarding issues of timeliness. The Commission also seems to give undue deference to regulated companies' claims regarding the commercial sensitivity of the information they disclose and the need for confidentiality, although some recent improvements along both those lines must also be acknowledged.

There is no doubt that some of the reasons for these delays have been beyond the Commission's control. For example, the need to design its annual flagship *Communications Markets Report* to meet the federal government's increasingly demanding data accessibility requirements has upped the amount of work involved and held up its publication. That said, rather than obtaining the resources it needs to do its job by raising the regulatory fees on the entities it regulates, for example, the Commission has chosen to simply accept the delays that are now commonplace. The problem with this laggardly approach is glaring given that while the Competition Bureau's attempt to block the proposed Rogers-Shaw deal was before the Competition Tribunal last year, the CRTC had yet to publish its telecoms data. Consequently, public observers and discussions of these issues were flying blind, by having to rely on official data that was at least two years old at the time.

A modern extension of this focus on both information disclosure and transparency has been the notion of algorithm audits for major tech platforms. Just as financial institutions undergo regular and regulated certified audits, audits of Google and Meta's algorithms could make them more accountable to the publics they serve. In line with such calls, Oren Bracha and Frank Pasquale (2008) suggested a Federal Search Commission over a decade ago to oversee standard, annual audits applying not just to internet companies but telecoms and digital media services as well.[318] The goal of these audits would be to create a unified standard of algorithmic transparency and accountability across all actors in the network media economy.

The Australian Competition and Consumer Commission's (ACCC) *Digital Platform Inquiry* report and ensuing News Media Bargaining Code that was passed into law in 2021 is predicated on such an idea.[319] The new News Media Bargaining Code attempts to address the digital power imbalances between Australian news media and American

[317] See Winseck & Bester (2022/forthcoming). Regulation for a mor democratic internet; Winseck, D. (2021). Bill C-10 and the future of internet regulation in Canada. *CIGIOnline*.

[318] Bracha, O., & Pasquale, F. (2008). Federal Search Commission—Access, Fairness, and Accountability in the Law of Search. Cornell L. Rev, *93*, 63.

[319] The Parliament of the Commonwealth of Australia. (2020). *News Media and Digital Platforms Mandatory Bargaining Code)*.

platform corporations such as Google and Meta by, in essence, forcing them to open up their "black box" to regulators and imposes a kind of limited "must carry" regime for a designated category of services, i.e. news. The ultimate aim, of course, is to have Google and Meta pay news media organizations for the news content they use as part of their online search and social media services.[320] Unfortunately, too many observers have made the Code, and others like it such as Canada's *Online News Act* all about payments while seeming to forget about, or at least ignore, these key elements of the emergent digital platforms regulatory regime.

While these are potentially valuable steps in the right direction, the ACCC's News Media Bargaining Code (and others that have adapted it to their own ends, including the *Online News Act* here in Canada) creates a corporatist-style arrangement between digital platforms and news media companies, with no room for public participation in such processes. Both the Australian and Canadian laws also favour ex post reviews of the platforms' behaviour versus bright line rules. Usually, bright line rules are preferable because they set the rules of the game beforehand and harmonize expectations around those rules, whereas the former approach works on a case-by-case basis, is expensive and time-consuming to monitor and enforce, and puts the onus on those who allege harm to mount the case for why regulators need to act. Given the imbalances of power already at play, such arrangements favour powerful actors against those who are hoping that regulators will help to level the playing field.

In both the Canadian and Australian cases, it is also the case that the intense lobbying efforts of domestic broadcasters and newspaper publishing groups have been wildly successful in getting what they want. In both countries, there was wall-to-wall media coverage as well as advertising campaigns helping to frame the debates over both the Australian news code and the *Online News Act*. Simultaneously, some critical voices had op-eds on the topic spiked.[321] The Liberal Government's re-election platform in 2021, in fact, recited News Media Canada's talking points verbatim, pledging to enact new legislation to "level the playing field with digital giants" within one hundred days, if re-

[320] ACCC, (2019), pp. 205-270; Winseck, D. (2021). Why Canada should take a critical look at Australia's internet regulations. *National Observer*.

[321] News Media Canada (nd) has on ongoing tally of media coverage and op-eds on its home page. This author was commissioned by an editor at *The Toronto Star* to write an op-ed on the issue but which refused to publish the piece after sitting on it for a week. Asked why the op-ed did not run, the editor indicated that the decision was made higher up. The op-ed was ultimately published by one of the new online journalism sources, *The National Observer*. See Winseck, D. (Feb. 17, 2021). Why Canada should take a critical look at Australia's internet regulations. A similar experience took place a year later after *The National Post* did the same after inviting me to write an op-ed on *The Online News Act*. That op-ed was published by CIGIOnline, while a shorter version was published by the provincial public broadcaster, TVO. See Winseck, D. (April 19, 2022). Bad news: Ottawa's proposed *Online News Act* misses the mark. *CIGIOnline*; Winseck, D. (April 18, 2022). Bad news: Liberal's proposed *Online News Act* misses the mark. *TVO Today*. The papers that spiked the op-eds are part of the two largest newspaper publisher groups, Torstar and Postmedia, respectively. University of Ottawa law professor and frequent commentator on internet and digital media policy in Canada, Michael Geist, recounted other similar cases, including his own. See Geist, M. (April 14, 2022). Spiking op-eds: how the government's *Online News Act* is already leading to self-censorship. *Michael Geist Blog*.

elected. It was re-elected and the pledge has been kept in the form of bill that led to the *Online News Act*.[322]

Finally, another critical flaw at the heart of the *Online News Act* in Canada, the *News Media Bargaining Code* in Australia, and the *Journalism Competition Protection Act* in the U.S. is that, rather than trying to disrupt Google and Meta's data surveillance business model with stronger data protection and personal privacy rules for citizens, the goal is to give established domestic companies a bigger slice of their country's 'big data' pie. This is obvious in Canada as well, with neither the *Online Streaming Act* nor the *Online News Act* containing measures to protect privacy and personal data. Calls by Concordia University communications scholar Fenwick McKelvey and communications lawyer and now CRTC Commissioner for Ontario, Bram Abramson, to fix this weakness in the *Online Streaming Act* fell on deaf ears.[323]

Data and privacy protection rules

McKelvey and Abramson's call for privacy and data protection rights to be included in the *Online Streaming Act* is apt, but it is not news. As we saw earlier, the Office of the Privacy Commissioner condemned Bell's earlier Relevant Ads Program (RAP) years ago, and has bemoaned the lack of such protections and rights for years. Nonetheless, nothing has been done to address those concerns. Instead, Bell's acquisition of Environics Analytics, and its folding of that effort into a joint-venture with AT&T to build a proprietary digital advertising system[324]—and moves by the cable operators to do the same in tandem with Comcast's Xfinity system—have not only been given the green light but are being built in the relative obscurity of the set-top box working group convened and administered by the CRTC. All this serves as a clear barometer of where individual Canadians' interests, and the public interest, register within the institutional framework supposedly governing these arrangements: as a low-ranking concern, if it ranks at all.

This tendency of current policy and regulatory initiatives to attempt to level a deeply unbalanced competitive playing field at the expense of a critically important element of the future of public obligations for digital platforms (the protection of privacy and user data) strikes at the heart of the legitimacy of such efforts. Regulators should be taking steps to reverse the inertia that has led to an internet driven largely by surveillance and advertising dollars, but sadly many proposals now on the table instead cement these business models, so long as their returns are shared more equally.

---

[322] Liberal Party (2021). Forward for everyone.

[323] McKelvey, F. & Abramson, B. (June 16, 2022). Canada's Online Streaming Act needs a privacy clause. *CIGIOnline*.

[324] With the partnership recently switching from AT&T to Microsoft on account of the sale of Xandr by the former to the latter last year.

As just mentioned, in Canada this approach is mirrored by the set-top box (STB) working group organized by the telecoms-internet and broadcasting companies under the auspices of the CRTC. Rather than ratcheting up the amount of data traditional communications companies can collect from their audiences and the environment around them, policy-makers should be establishing a new foundation for privacy expectations, rights, and obligations for all companies in the network media economy.[325] The Liberal Government's 2021 *Digital Charter Implementation Act*, as well as its predecessor, might have laid that foundation, but the bill's undue deference to commercial interests, lack of human rights framing of privacy, and failure to include political parties within its ambit appears to still fall far short of what is needed.[326]

Three potential fixes to the current situation are ready-to-hand. First, the *Digital Charter Implementation Act* bill could be revised to address the concerns just raised: i.e. undue deference to business, lack of human rights standards, and failure to cover political parties.[327]

Second, a better approach would be to apply the EU's General Data Protection Regulation (GDPR) tools and principles—e.g. privacy as a human right, depersonalized data, cross-platform data portability, algorithmic transparency, enforcement powers for data protection authorities and privacy by design principles—to all actors in the network media universe. In contrast to either the Canadian *Online News Act* and the *Online Streaming Act*, or the Australian *News Code*, this would raise rather than lower the bar for privacy and data protection. GDPR-style regulations would enhance protection and control of personal information and align Canada with its EU trading partner. Increased audit powers for the Office of the Privacy Commissioner would put it in a position similar to the U.K. Privacy Commissioner who was able to seize the servers and audit the business records of Cambridge Analytica. Such enhanced powers would also include greater enforcement powers and AMPs (Monetary Penalties) for the OPC (already included in the *Digital Charter Implementation Act*).

It would also flesh out and update the under-appreciated privacy dimensions of the common carrier principle to match today's realities by applying similar values and

---

[325] Ghosh, D., & Scott, B. (2018). *Digital deceit*.

[326] House of Commons of Canada (2022). *Bill C-27: An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*; Scassa, T. (Aug. 2, 2022). Bill C-27 and a human rights-based approach to data protection. *Teresa Scassa Blog*; House of Commons of Canada. (2020). *Bill C-11: An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts* (*Short title: Digital Charter Implementation Act*); Scassa, T. (2020). *New privacy bill is a data protection reset for Canada*. Policy Options. Scassa, T. (2020). It's not you, it's me? Why does the federal government have a hard time committing to the human right to privacy? *Teresa Scassa Blog*.

[327] House of Commons of Canada (2022). *Bill C-27*; Scassa, T. (Aug. 2, 2022). Bill C-27 and a human rights-based approach to data protection.

regulatory standards to broadcasting, whereas the revised Broadcasting Act remains silent on this point. Such standards could also be applied in the process to "content aware" internet platforms like Meta, Google, Amazon, and so on, as well as to smart television sets and other "smart" devices. Taking that route would also align well with the ETHI committee's report *Democracy Under Threat: Risks and Solutions in the Era of Disinformation and Data-opolies* and previous Privacy Commissioner, Daniel Therrien's reply to that report as well as McKelvey and Abramson's recent intervention along similar lines in relation to the *Online Streaming Act*.[328]

Audiovisual media and cultural policy and regulation

The third plank in the public obligations dimension of a new generation of internet services regulation is probably the most difficult and contentious: developing media and cultural policy for online media services delivered over the internet. Indeed, this is what the *Online Streaming Act* ostensibly does.

Building on the recommendations of the BTLR report,[329] the new *Online Streaming Act* aims to bring influential television, film and music streaming services such as Netflix, Crave, Disney+ and Spotify under the *Act* and the authority of the CRTC, while exempting user-created content uploaded to and shared via YouTube or Meta, although the elimination of ring fences around such services in the text and other ambiguities continue to cloud that issue. The Act's proponents have also been fixated on a vision that hews closely to existing modes of broadcasting regulation. In that regard, their focus has been on set online streaming services' obligations to contribute a portion of their revenue to Canadian programs, while media aggregators, similar to cable TV providers, would have to contribute through levies on their revenues. Both online streaming services and aggregators would also have to maintain a certain quantum of Canadian content in their catalogues, ensure its "discoverability" through marketing and promotion initiatives, and file information with the CRTC on request.

The exact requirements in terms of what the level of contributions would be in each case, the scope of content catalogue quotas and discoverability measures, and the types of information that online media services would be required to divulge are being

---

[328] Zimmer, B. (2018). *Democracy Under Threat.* p. 100. Government of Canada, & Bains, N. (2018). *Response to the report of the Standing Committee on Access to Information, Privacy and Ethics entitled Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act*; McKelvey, F. & Abramson, B. (June 16, 2022).

[329] BTLR. (2020). pp. 129-131 and recommendation 54.

taken up by the Commission as I write.[330] For the time being, this approach is close to what many actors in the broadcasting and culture industries have wanted for years. It also closely tracks the EU's Audiovisual Media Services Directive (2016), including recent revisions responding to the significant place that Netflix, Amazon, and Apple have carved out for themselves in Europe.[331] From this author's viewpoint, there is no basis in principle or history to object to this move, although in substance, there is much to be improved, especially in terms of the sloppily drafted sections of the *Act* that can easily be interpreted as encompassing not just social media platforms but social media users, too. It is exactly this ambiguity that has resulted in the firestorm of controversy that has engulfed both versions of the bill.

Around the world, and throughout modern history, countries have regulated and set policy for media and cultural goods, whether books, newspapers, radio, film or television.

Properly administered, public subsidies have provided in an open and transparent way by democratic governments to serve expressive and democratic ends. Far from being antithetical to "the free press", they are part and parcel of the history of liberal democracy, and they should continue to be so. Indeed, the history of broadcasting and public culture in liberal capitalist democracies cannot be understood without grasping this role. There are, of course, details to be worked out, for example: where the subsidy will come from, at what level it will be set, to whom will it be directed, has the framework been set up through legitimate, democratic means, and will it meet the goals sought (see the "Reflections on Public Goods and Subsidies" in the first report in this year's series on this point)?

Where public subsidies have not been forthcoming, or are insufficient, or poorly executed, two other types of subsidies have stepped in to fill the void: advertising and wealthy benefactors. As advertising declines, or is uncoupled from this role, it is not surprising that some other form of assistance is being sought and brought about.

[330] See CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-138; CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-139: Call for comments—Proposed regulations for the registration of online streaming services and proposed exemption order regarding those regulations; CRTC (May 12, 2023). Broadcasting Notice of Consultation CRTC 2023-140: Call for comments—Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings.

[331] Donders, Raats, Komorowski, Kostovska, Tintel & Lordache (2018). *Obligations on on-demand audiovisual media services providers to financially contribute to the production of European works*, pp. 14-15. This earlier study is updated in Komorowski, M., Iordache, C., Kostovska, I. S. Tintel & Raats, T. (2021). Investment obligations for VOD providers to contribute to the production of European works, a 2021 update. Brussels: imec-SMIT-VUB. The European Audiovisual Observatory also maintains the *Revised AVMSD tracking table* to keep tabs on developments with respect to members commitments under the directive, amongst other things. European Audiovisual Observatory. (2022, November 4). *Revised AVMSD Tracking Table*. European Audiovisual Observatory.

The extraordinarily rapid manner in which Google and Meta have extended their monopoly over online advertising to the whole field of advertising in Canada, while skirting effective regulation at each step of the way has caused me to change my views over time to now contend that a levy applied against very large online platform services (VLOPS) could be a good idea—if pegged to the development of a broad sense of public information goods and public culture.

That suggestion is made with much trepidation, however, on account of the flaws in the policy agenda and discussion that have been flagged in this and our previous report. In an ideal world, this suggestion should be firmly tethered to the structural regulation agenda advanced above and to a conceptually sound understanding of public goods drawn from republican models of human development and democracy, as sketched at the end of the first report.

There are also other serious issues at stake as well that warrant moves in the direction of regulation for internet actors, three of which stand out. First, the requirement that online media service providers must submit certain types of information to the regulator is a minimal requirement to satisfy media and cultural policy objectives. The problem with the current proposals is that information will continue to be shrouded in claims of "commercial sensitivity" and confidentiality; for information to be of public benefit, it must be made public. Full stop.

Second, opening the black box of complex technical systems so that both the public and increasingly "platform dependent" media service providers can get a peek inside, would go a long way to reducing the market power of dominant players. It would also provide those who rely on such services with the ability to adapt to the platforms' changing technical conditions, while affording greater insight into audience data, promotional efforts, billing details, revenue distribution, and so forth. This is what a new "discovery" mandate should look like rather than the idea that "discovery" means getting more content in front of Canadians' eyeballs.[332] That the *Online Streaming Act*, and comments by the last Heritage Minister and CRTC, seem to render anything to do with regulating distribution platforms' algorithms as 'off-limits' should in itself be a non-starter. Indeed, it is a sign that, far from being too heavy-handed, the *Act* walks too gingerly once nearing the real levers of power in the emerging internet-centric, digital media environment.

Third, as this report has made clear, the twin issues of market concentration and market power apply to the digital platforms and online media services just as much as anywhere else. There is a potential for greater regulatory oversight to address these realities. However, the problem in this regard is not likely to be too much regulation but rather the propensity for Canadian regulators to be too deferential to corporate power and business prerogatives, thereby leaving too much to be treated either as 'off-limits'

[332] McKelvey, F. & Hunt, R. (2019). Discoverability: Toward a definition of content discovery through platforms. *Social media + society* (January); also McKelvey, F. (2020). Online creators left out on *Broadcasting Act reform*. Policy options.

or with kids gloves. The revised *Broadcasting Act* has nothing to say about such concerns; instead, we are expected to take it on faith that the CRTC will "get it right" when it comes to embracing the newly broadened scope of its statutory ambit and create a regulatory framework that encompasses a vastly expanded array of activities and organizations that is up to the job needed. The Commission's past and ongoing failings, amply documented in this report, give us pause.

As we have seen in the pages above, the *Online Streaming Act* and *Online News Act* have included some limited measures to address market and gatekeeping power, with the latter offering much sturdier tools to deal with such realities than the former. To its credit, the *Online News Act* prohibits "digital news intermediaries" from giving undue preference or advantage to one news service over another, or from discriminating unjustly between them.[333] This measure, the 'crown jewel' of the act, adapts and applies the long-standing common carrier tradition to contemporary realities where traditional broadcasting distributors and a new breed of online news aggregators and distributors serve as pathways to the news.

In contrast, the *Online Streaming Act* contains a watered-down version of this principle.[334] As such, it is unlikely to be up to the task when confronted by a situation where, for example, Amazon's Prime Video or Google's YouTube Premium are locked in what looks like the carriage disputes that have been part of the cable television business for decades. As we saw, in the battle between Google and Disney the latter was able to quickly get the former to accept "a new carriage agreement".[335] Canadian services in such a situation would not have comparable clout to Disney, and thus would be more prone to the dictates of Google. Whether the *Online Streaming Act* would be of any help in such a situation is an open question. The more assertive language of the *Online News Act*, however, puts it in a stronger position by forcing the regulator to take a tougher stance in favour of "fair carriage" settlements when charges that conditions are otherwise are presented to it. In both cases, an even more powerful lever would be to give the CRTC powers of investigation so that it can proactively investigate existing terms of carriage and distribution rather than having to wait to aggrieved third parties to bring complaints to it.

There are numerous other considerations that cast doubt on the direction being taken toward the regulation of online media services in Canada, all of which suggest that, despite just passing two new laws on such matters, the truth is that we need a root-and-branch overhaul of the conceptual underpinnings and driving interests that have set and won the policy agenda thus far. This is because, for one, much of the current case

---

[333] As noted earlier, section 51 explicitly *prohibits* digital news intermediaries "from acting in any way that (a) unjustly discriminates against the business; (b) gives undue or unreasonable preference to any individual or entity, including itself; or (c) subjects the business to an undue or unreasonable disadvantage." Canada (2023). *Online News Act* (information sheet); Canada (2023). *Online News Act* (legislative text).

[334] Forum for Research and Policy in Communications (Sept. 22, 2022), p. 12.

[335] Perez, S. (Dec. 20, 2021). YouTube TV settles its contract dispute with Disney.

for why a new phase of internet services regulation is needed is built on faulty premises about media and cultural industries writ large being in turmoil. As we have shown, this is not the case, while investment in the production of original film and television programming has been at record-high levels for several years running now, not just in Canada but the U.S. and the EU as well.

As it stands, too much of the case for internet regulation in Canada rests on lurid accounts of the role that the "vampire squids" have played in killing the media in this country, and journalism and democracy along with it, but such claims are wide of the mark. The BTLR report itself is marred by the tendency to vilify the digital platforms for destroying all that is holy, based on cherry-picked evidence (including data from previous versions of this report about the online advertising digital duopoly) and superficial analysis. It also trades on exaggerated data about the scale of the international big tech conglomerates and Netflix's grip on the online video services markets, including its credulous acceptance of figures provided by the CRTC regarding the scale and scope of influence of these companies. The upshot at each step is to inflate the sense of threat that the new policy and legal regime allegedly needs to contend with.[336]

That the Commission did eventually walk back its own data upon which the whole edifice of *Broadcasting Act* reform was built without saying a word out loud about it, further undermines confidence in the regulator's ability to oversee the vast expansion in its remit contemplated by both the *Online Streaming Act* and the *Online News Act*. But then again, the leadership at the CRTC has changed in the last year and with those changes there is new hope that some of these serious flaws in the nascent internet services regulatory regime can be addressed.

Furthermore, at a technical but also a philosophical level, the changes implemented through the *Online Streaming Act* also rely on an analogy between online video services and broadcasting that is inaccurate, imprecise, and misrepresents how the two are distinguished in Canadian and European regulation. In Canada and the EU, a lighter touch has been taken with regard to video-on-demand (VOD) services for decades. While this continues to be the case in the EU, in Canada, the broadcasting industry is calling to erase that line by harmonizing the regulation of online media services in a manner similar to legacy broadcast television.

These same sources also play fast-and-loose in the comparisons they draw between what they want the obligations of the *Online Streaming Act* in Canada to be and what those expectations are in the twenty-seven countries that comprise the EU. To put this another way, such advocates argue that Canada should adopt similar targets with respect to investment obligations and the amount of domestic titles in streamers' programming catalogues, despite the fact that, in the EU, there are twenty-seven countries contributing to these targets whereas in Canada there is just one. Obviously, it is a lot easier to aspire to have thirty percent local content when contributions from

[336] See, in particular, BTLR. (2020), pp. 122-123.

twenty-seven countries count towards that goal versus Canada, where there is only one country doing the job.

It must also be acknowledged that there is a big gap between the EU countries' rhetorical commitments to the media and cultural policy goals of the AVMS Directive versus the number of countries that have implemented those obligations in enabling national laws or regulations. Indeed, while the AVMS Directive is often celebrated (or denounced, as the case may be) for bringing online VOD services like Netflix, Amazon and Apple under its umbrella, only ten countries have formal obligations that require foreign online VOD services to invest in or pay a set levy to support domestic or European media content: Belgium (both Dutch and French-speaking regions), Croatia, Czech Republic, Denmark, France, Germany, Italy, Poland, Portugal, Slovenia and Spain.[337]

Having wandered this far from the path of credible representations of the real-world policy options on offer, those driving the current internet services policy and regulation agenda are also calling on governments to regulate "harmful" content in the form of online harms legislation.[338] Calls to dispense with—rather than say, fine-tune—the limited liability model that has governed internet intermediaries until now also figure largely in Canadian, Australian and U.K. policy proposals. Such moves often morph into a wholesale bid to enroll the platforms as "chokepoints" despite the fact that the problems this would entail are well-known: inscrutable decisions made by multinational actors rather than governments, overseen by courts and according to standards of due process; the over-blocking of greyzone content, a problem which will hit marginalized groups hardest; and a never-ending stream of calls to enroll these chokepoints in the pursuit of social ills.[339]

Those kinds of public obligations need to be both targeted and bounded. This does not diminish the need for online harms regulation one bit. However, it does reflect strong reservations about the tendency to make content regulation the first tool to reach for, and this is the path that too many media and cultural policy advocates and academics trod as they attempt to justify their preferred policy agenda. The idea that tackling "illegal and harmful speech" in the same breath is fair game also reflects a penchant to turn to broadcasting regulation for guidance. It also reflects a poor understanding of the processes of social communications and media effects, as noted at the outset of this section.

---

[337] Donders, K., Raats, T., Komorowski, M., Kostovska, I., Tintel, S., & Iordache, C. (2018). *Obligations on on-demand audiovisual media services providers to financially contribute to the production of European works*. pp. 14-15. Komorowski, M., Iordache, C., Kostovska, I., Tintel, S. & Raats, T. (2021). Obligations for VOD providers to financially contribute to the production of European works, a 2021 update. Brussel: imecSMIT-VUB; European Audiovisual Observatory. (2022, November 4). *Revised AVMSD Tracking Table*. The Belgian and French-speaking regions of Belgium count as one region.

[338] See BTLR. (2020), pp. 190-194 and recommendations 94 and 95, in particular.

[339] Tusikov, N. (2016). *Chokepoints: Global Private Regulation on the internet*.

While these efforts are often presented as applying rules in a 'platform neutral' way, they are better seen as a Trojan Horse, taking the exceptional standards and limited carve-out set for broadcasting content regulation established in the mid-20th century and applying them, tout court, across traditional and online media spaces in the same manner. If successful, the effect of such efforts would be to ratchet the standards of freedom of expression and free press down to the exceptional and relatively restrictive standards of broadcasting and film set in the early 20th century, based mostly on exaggerated worries about the pervasiveness and powerful socio-psychological effects of film and broadcasting that have long since been rejected by most communications and media scholars. The purported evidence justifying such a radical course of action that invokes filter bubbles, echo chambers, the incapacity of people to discern good information from bad and people's alleged dependence on platforms as "pathways to news" typically downplays or ignores a raft of scholarship indicating that such concerns are more modest and contingent on a range of intervening variables than commonly implied.[340]

We should also be wary of the claims about "fake news" in the BTLR report, the Public Policy Forum's *The Shattered Mirror* report, and elsewhere that are leading the push to enroll Meta, Google and others in efforts to stamp it out.[341] Those calls may seem appealing now given the mounting evidence about the extent and role of "fake news stories" in the 2016 U.S. presidential election and elections in the U.K., France and others, and the Covid-19 pandemic. Yet, caught up in a political maelstrom and a sense of moral panic, we must keep front-and-centre that the effects of "fake news" are probably not as strong as many seem to think.[342]

We must also think long and hard about the half-century long social, political and cultural forces that have produced a widespread and hardening antipathy towards the

---

[340] See, for example, Benkler, Y., Faris, R., & Roberts, H. (2018). *Network propaganda*; Dubois, E., & Blank, G. (2018). The echo chamber is overstated: The moderating effect of political interest and diverse media. *Information, Communications & Society*, *21*(5), 729–745. Dutton, B. (2017, June 1). *Fake news, echo chambers and filter bubbles: Underresearched and overhyped: as appeared in The Conversation*. William H. Dutton. for critical reflections on claims about filter bubbles, echo chambers and the impact of "fake news".

[341] Public Policy Forum. (2017). *The Shattered Mirror*.

[342] To be sure, the reach of disinformation during the 2016 US election was huge, for example, with 87 million people, mostly Americans but also 620,000 Canadians, exposed to "fake news", it is a fundamental mistake to confuse *exposure* to "fake news" with conclusions about negative individual, political or social effects. As a series of studies by Allcott and Gentzkow (2017) finds, even though Americans use social media a lot, only a small portion of people relied on them as their "most important source of news" during the election. TV was the main source of political news, by far. Those who did get their news mainly from social media were exposed to fake news that favoured Trump by a wide margin, but only a few could remember "the specifics of the stories and fewer still believed them", notes a Poynter Institute commentary on their work. It is also likely that the increasingly partisan media, and Fox News in the US especially played a much greater role in 'poisoning' the well of public discourse and, thus democracy, than Russia's disinformation campaigns and efforts to meddle in the American elections. Warren, J. (2017, January 18). Did fake news help elect Trump? Not likely, according to new research. *Poynter*.

values of democracy, and work hard and fast to turn that around.[343] Of course, the retort might be, we must do both, and yes, we must. At the same time, however, there is a certain kind of media centrism—or internet centrism, if you will—that seems to lay the blame for all the world's woes at the doorstep of the internet or, if not that, its most iconic corporate overlords. Greater attention to the long-term forces that have led to our contemporary predicament is in order.

Ultimately, however, and as things currently stand, that so much of the platform regulation debate has played out on the terrain of a broadcasting-style, content-centric approach to internet services regulation is frustrating. Worse, this drift of events threatens to swallow up the whole internet by enrolling the platforms, internet access services, and other "gatekeepers" in efforts to regulate speech, save journalism, and to combat piracy, pornography, and propaganda, etc.

In so doing, we risk losing, for starters, the "crown jewel" of telecoms policy—common carriage—that has served us well for well over a century: e.g. the social control of monopolies and gatekeepers, just and reasonable prices, universal and affordable service, privacy and data protection, carriage of the widest range of lawful (even if awful) human expression as possible, and on fair terms (common carriage). These principles have a history that predates broadcasting and media regulation by three-quarters-of-a-century. They also teach us that claims by those that come at these issues from a broadcasting and media regulation standpoint do not have a monopoly on principles of controlling corporate power, social justice, or the diversity of human expression and experiences. Far from it, and insinuations that others who come at such matters from the standpoint of communications regulation are overly economistic, technicists, and without proper appreciation of culture, are well-wide of their mark.

Pursuing the expansion of broadcasting-style regulation also ignores other regulatory solutions that could be used to dismantle the conditions, business models, and technical capabilities that have enabled disinformation operations and other threats to democracy to flourish in the first place. All these things should be seen as a flashing warning light alerting us to how unmoored some aspects of the platform regulation debates and concrete policy proposals now on the table have become from the legal, political, cultural and philosophical norms of democracy that give life to communications and citizenship rights. These include free speech and privacy rights that are the fundamental essence of a rational society and liberal democracy to begin with.

Public alternatives

[343] Norris, P. & Inglehart, R. (2019). *Cultural backlash: Trump, Brexit, and authoritarian populism*. Cambridge, UK: University of Cambridge.

The fourth plank in the conception of a new generation of internet services regulation being presented here is the idea that strong public alternatives are needed over and above structural solutions, firewalls, and public obligations. In this respect, this report concludes with a modest proposal and a more ambitious one. As inspiration for the proposals that follow, we can recall that the original goal of the U.S. Post Office was to bring "general intelligence to every man's [sic] doorstep", while serving as a heavily-subsidized vehicle explicitly designed to cultivate the free press and to deliver newspapers and magazines to and from publishers and editors across the country free of charge as an integral part of that objective.[344]

First, the modest proposal: eliminate advertising from the CBC. Doing so would focus the CBC on its public service remit and remove it from competing with commercial media for limited advertising dollars. The CBC also needs to be provided with adequate funding, more in line with historical levels that have been allowed by successive governments to atrophy over time and to put it on par with its international peers. Currently, the CBC receives around $36 per person in annual funding from Parliament. The campaign by the advocacy group Friends to raise the annual parliamentary subsidy to a minimum of $50 per Canadian per year seems modest in this context and could be used as a floor for where the annual parliamentary subsidy should be.

A more ambitious view is also needed to restore the more prominent place that public media, communications, and culture had in Canada even at the outset of the 1980s. If we take that as our reference point, as we saw in the first report in this year's series, the level of public funding for the CBC relative to total spending on television and radio services in recent years has been less than a third of what it was in 1984. Restoring levels of funding today to levels then relative to the size of the television and radio universe would mean essentially tripling the annual parliamentary funding from, more or less, $1 billion per year to $3 billion per year, or close to $90 per person. By comparison, Austria, the Scandinavian countries, the U.K. and Germany spend between $100 and $180 per capita.[345]

Perhaps a levy placed on advertising-funded VLOPS similar to that applied historically to BDUs could make an effective contribution to this refunding of public service media in Canada. Based on Google and Meta's combined revenue in 2022 of $12 billion, such a five percent levy would generate roughly $600 million that could be applied to restoring public service media while the rest would have to be made up by other means.

An even more ambitious view could encompass not just the 21st century version of broadcasting but also a contemporary view of communications and culture. Such an

---

[344] John, R. (2010). *Network Nation: Inventing American telecommunications*. Harvard University Press.

[345] Nordicity (2016). Analysis of Government Support for Public Broadcasting. London, U.K. & Ottawa: Nordicity. Pickard, V. & Neff, T. (June 2, 2021). Op-ed: Strengthen our democracy by funding public media. *Columbia Journalism Review*.

enterprise might include such things as operating as the fourth mobile wireless carrier offering services both to the public and at the wholesale level. Given the persistent lack of progress in achieving objectives such as universal and affordable communications services, reliable public media services, an accessible archive of nationally significant documents and artefacts, a clear break from Canada's steady state is in order.

In terms of institutional arrangements, imagine the creation of a Great Canadian Communications Corporation (GC3) by bringing together Canada Post with the CBC, the National Film Board and Library and Archives Canada, for example. To fulfil this ambitious view of public service communications, media, and culture, the GC3 could repurpose some of the CBC's existing spectrum holdings and broadcast towers for mobile wireless service coast-to-coast-to-coast, real estate could be combined and used to locate towers, local post offices used to sign up new mobile phone subscribers and sell devices. It could also be used to blanket cities with public WiFi, to light up the vast stock of under- and unused municipal and utility-owned dark fibre strands and extend broadband access to under- and unserved people in rural, remote and poor urban areas.

Concerning entertainment, culture and public memory, the GC3 could disseminate and make public art and culture as accessible and enjoyable as possible. These activities would be funded from the general treasury, not the opaque intra- and inter-industry funds that now exist, perhaps with revenues raised from the planned-for new digital services tax and HST/GST and applied to digital platforms could be earmarked for such ends. In this sense, the GC3 would function as a national public platform for the aggregation, hosting, and delivery of media, information and culture made in, and of historical, social and political significance to, Canada. Such an effort would reflect the core hallmarks of institutions such as the CBC and NFB, but its remit would also include being the custodian for and access point to a national digital archive and library.

Conclusion

To wrap-up, high levels of concentration in many—but not all—sectors of the telecoms, internet and media are a reality. What is to be done, if anything about this is a question of politics, policy, public debate and, above all, power. Seen in the light, bold steps are needed to bring about the kind of communications environment we want.

Thus far, the Liberal government has been tepid in the moves it has made. It should double-down on efforts to promote more competitive markets across the board, give a bolder sense of mission to the CRTC and their policy counterparts at ISED and Canadian Heritage. It should also take a more ambition and a broader conception of the role of the internet, telecommunications and media in Canadian society, business, politics, culture, and everyday life.

To succeed, it will have to resist the pleading of industry and the reinvigorated cultural policy nationalists who wish to tie the increasingly internet and mobile wireless-centric media ecology to their anachronistic views of broadcasting. The current run-of-events in this regard is both ripe with potential but also frustratingly tied to narrow interests and ideas and a conception of what a new generation of internet regulation should look like that is far too subservient to a broadcasting view of the world. We are already well-down the path in terms of the latter prospects coming to pass. However, it is also the case that the *Online Streaming Act* and *Online News Act*—Canada's signature down payments on the emergent internet services regulation agenda—while cut from such cloth, contain within them some real gems that can be drawn out and polished at this early stage of implementation. They are also a significant advance on what their loudest critics have on offer: namely, nothing at all or some minor tweaks to the status quo.

As such, we must work with the world that we have rather than how we might like it to be (albeit, without giving up on the latter). And in this regard, we can take some comfort in the reality that those who will ultimately be taking the big ideas embedded in the emerging body of communications and internet law and regulation seem up to the task. Indeed, there is a renewed sense of energy in policy quarters as well as at the Competition Bureau. This has been spurred on by its recent challenge to the sixth largest instance of corporate consolidation in Canada which, despite being roundly defeated by conservative inertia at the Competition Tribunal as well as the Federal Court of Appeals, still managed to secure an outcome that is far better than what would have been if, like its predecessors in the very near past, the Bureau had decided to do nothing at all, and simply blessed Rogers and Shaw's ever desire. And so, too, at the CRTC, where new staff with considerable expertise and a big desire to take advantage of the new slate given to them by two major new pieces of legislation and new leadership, there is also much promise. We shall see in due course how it all plays out.

In the end, we are living in what historians call a "constitutive moment". Decisions taken now will influence the course of events and the shape of the communications and media environment we inhabit for years, even decades, to come. Once such decisions are made, the structures of the new medium of human communications we are still struggling to come to grips with today – the internet- and mobile-centric digital media environment—will become part of the woodwork. We hope that this year's reports—as well as those now in the pipeline from other contributors to the Global Media and Internet Concentration Project—will further our grasp of the industries and issues at stake and contribute to better decisions, made on the basis of good evidence, and a broad view of the importance of communications to all members of society.