

Data On Tap Inc. answer to the Competition Bureau report and the supporting economic studies

Telecom Notice of Consultation CRTC 2019-57-1

Reference: [1011-NOC2019-0057](#)

1/13/2020

Data On Tap Inc. and its 6500+ members.
<https://dotmobile.app/>

**Dear Mr. Claude Doucet,
Secretary General
Canadian Radio-television and Telecommunications**

Data On Tap Inc. is excited to have an opportunity to provide the following comments to the Competition Bureau's report and economic studies on behalf of its 6500+ members who are looking for more affordable options and improvements to their wireless service. In this submission, we discuss methodologies employed and the appropriateness of the policy recommendations proposed by the Competition Bureau.

Data On Tap Inc. continues to see the need and opportunity to provide a better wireless service to currently underserved Canadians. We urge the commission to meet the needs of all Canadians with a decision from this wireless review that is:

- **Immediate**

Provides immediate access to wholesale rates (as proposed in our May 15, 2019 submission).

- **Nation-wide**

Allows MVNOs to offer services anywhere in Canada, including geography not yet covered by regional providers.

- **Unlocks service innovation and pricing differentiation**

Encourages MVNOs to operate as full MVNOs (operating their own core) and MVNEs, and recognizes the investment into service innovation, rather than further redundant facilities.

- **Ensures that wholesale will drive both network investment and competition**

Generates value back to MNOs through wholesale at a rate that supports investment and allows for competitive pricing in the newly formed MVNO market.

**A. Responses to further Comments of the Competition Bureau (November 22, 2019).
It's methodologies and policy recommendations.**

1. The Competition Bureau referred to regional, facilities-based carriers as “wireless disruptors” in their submission, however, in our submission, we will refer to the same as “regional carriers” to better reflect the diversity and true potential in the category.

Re: The current state of wireless competition in Canada

2. As the CRTC notes, the lack of an organic MVNO market has required them to intervene in commercial negotiations between MNOs and potential MVNOs. Over the course of our own negotiations with Canadian carriers since May 2019, we have noted a large gap between the maturity of their wholesale offerings compared to carriers in the US and the UK, particularly when it comes to price. International carriers we have spoken to have large teams dedicated to wholesale, and ‘off-the-shelf’ roaming prices (pre-negotiation) that are dwarfed by Canada’s currently mandated intra-carrier roaming rates. It’s important to note that we see the price as an effective range of our wireless service - the consumers and use cases we can help with.
3. In paragraph 80, the Competition Bureau mentions the restrictive nature of existing MVNO contracts. In our May 15th intervention, Data On Tap Inc. noted the lack of pricing differentiation in the Canadian market. Further comments from Data On Tap Inc. identified that, in addition to contractual restraints, forced reliance on MNO IT systems would be detrimental to service innovation and pricing differentiation. Variations of the Full MVNO will be required to properly unlock the Canadian market in a meaningful way.
4. The Full MVNO model allows the MVNO, if they choose, to own and manage their own technology implementation (BSS and OSS) beyond the radio access network allowing for differentiation in customer experience, customer service and, in some cases, pricing. With the addition of MVNO-operated core network elements innovation extends into the service space, allowing for new and unique product offerings, as well as full control over the product allowing for further pricing differentiation.
5. Systems architecture and design are a part of service innovation, for example how privacy is implemented. Data On Tap Inc. has chosen to offer a more private wireless service and offer tools to manage privacy differently. An example of dotmobile’s approach to management of private information:
<https://dotmobile.app/posts/designing-more-private-wireless-service>.
6. MVNOs may not want to use legacy systems owned by incumbent carriers, instead opting for solutions to power service differentiation like: real time rating of international roaming, universal access to Wi-Fi Calling, messaging protocols, interoperability of VoLTE (HD voice), number portability, MFA authentication, spam call protection, BYOD device support (and many others).
7. The Competition Bureau extensively describes the conditions and evidence of coordination between the incumbent carriers, and the benefits of regional providers in disrupting this. However, regional providers operating as an MVNO on a national RAN (or via permanent roaming) will incur the risk of home-turf retaliation if they were to

compete for market share outside of their existing network footprint (including wireline) and may not be effectively able to retaliate in the incumbent's core markets. This may reduce how aggressively regional providers can or will expand into new markets.

8. Conversely, MVNOs utilizing national radio access networks will not be tied to existing infrastructure and will be more likely to find their own 'home-turf' across the country in the most underserved markets. They will also have access to the core markets for their own retaliatory activity. Additionally, if the number of attempted negotiations with MNOs (30+) were to become reality, the incumbents would have more difficulty in coordinating their pressure on a single competitor. This route will likely be more effective in bringing improvements to all Canadians, and in a more immediate fashion.
9. In paragraph 140, the Competition Bureau concludes that regional providers "is showing promising signs of delivering lower prices". The carriers most referenced by the Competition Bureau (Shaw, Videotron) have been in the market for a decade. Over the course of the same decade, major digital disruptors (e.g., Netflix, 2010; Spotify, 2014; Uber, 2014) have increased Canada's reliance on mobile connectivity, in some cases in order for them to participate in the digital economy. Immediate, national competition and the freedom to innovate in the wireless space will be a keystone strategy for reducing the growth of the digital divide, and perhaps even reducing it.
10. It is the opinion of Data On Tap Inc. that all Canadians deserve the benefits of competition, rather than merely promising signs in major urban centres.

Re: An assessment of possible remedies to promote competition

11. In paragraph 189, the Competition Bureau states that international "MVNOs tend to target "niche" segments" that "the MNOs choose not to cater to". In our submissions, we identify the user types we believe to be currently underserved by Canadian MNOs, namely those with temporary, emergency, transient, moderate, occasional or highly variable usage.
12. Data On Tap Inc. has identified seniors, youth, young families, new Canadians, visitors to the country, and small business as the segments that most commonly exhibit these types of usage. Throughout 2019 we managed to attract more than 6500 members interested in such service. With more certainty on the conditions and clarity on wholesale we believe we can increase that number by 10 times or more.
13. The Bureau also listed three main categories of MVNOs (discount, retail, ethnic) but failed to address a growing segment, digital MVNOs. Data On Tap Inc. believes that the low operational overhead and emerging digital technologies such as eSIM puts the digital category (low-cost high-tech) in a position to more effectively serve the aforementioned segments, which are typically less profitable for MNOs.
14. Digital MVNOs can also achieve national reach without physical points of distribution (our estimation is that 2/3 of phones activating/switching providers in 2021 will support eSIM - ability to subscribe to wireless service over the air). Combined with the potential for robust self serve tools and cost controls, the digital category can help to affect immediate and positive change for all Canadians.

15. Data On Tap Inc. agrees with The Bureau's position that facilities-based competition has had a "slow and uneven" impact" on the industry, leaving "a substantial population no material alternative to national wireless carriers."

Re: Designing a mandated MVNO policy

16. In regards to paragraph 241, Data On Tap Inc. believes that access criteria for mandated MVNOs should focus on introducing "services-based competition."
17. The existence of regional providers does not appear to encourage network investment from the incumbents, instead only encouraging the regional providers to invest in order to compete. In Toronto, Shaw is the only provider to offer coverage in the TTC subway system despite access to communication during transit is important.
18. MVNOs will need the ability to change their network partner(s) and hold them accountable for Service Level Agreements (SLAs) and network quality measurements. This means having the ability for MVNOs to migrate a customer base to another radio access network, along with the wholesale revenue, will create an incentive to competitive investment in network infrastructure.
19. The Bureau's recommendation for access criteria should, for the most part, be disregarded. It ignores much of the supporting evidence provided throughout their submission, and many of the specific suggestions are overly protectionist of regional providers that they consider to be "wireless disruptors" despite only one of them having a significant and lasting regional impact, and the only innovation and achievement being slightly behind technology deployment curve, that translates into cheaper version of incumbents. Less legacy systems and lower cost.
20. In paragraph 263, The Bureau notes that after 11 years (!) there is an "*encouraging sign* that a competitive market *may be* developing." The international examples they provided, by comparison, have proven the positive impact of MVNOs on niche segments - those typically underserved by MNOs.
21. The proposed middle ground of facilities-based MVNOs fails to consider Canadians who need more specialized services, or are not profitably served by existing business models and forced into suboptimal products and services.
22. In regards to investment incentives for regional providers, the prevalence and success of network sharing agreements between national MNOs indicate that overlapping infrastructure is not necessary on a nation-wide basis. Especially if it is not integrated, aggregated and shared with others.

UK regulator report on mobile investment provides additional support to the argument that good infrastructure deployments will thrive and continue as the market develops:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/76702/competition_and_investment_fixed.pdf

23. Of late, the expansion of regional networks has been driven by the conditions of spectrum licenses. Regional providers have deployed in new areas in the last month they were allowed to by license conditions. It's rather clear why.
24. Newly built networks also suffer from growing pains, with coverage and quality issues that take years to address. Often these are built as new "islands" of connectivity which often have issues at the borders of their coverage (borders can include high-rises and basements within coverage). Combined, this limits their competitive effectiveness for many years, which is why we are only seeing encouraging signs in the market after 11 years in part due to a better national roaming regime.
25. The Bureau correctly identifies the challenge of rate-setting for broader MVNO access, however, this is true of a facilities-based approach. Rates will dictate effective range and network investment appeal. The CRTC should consider the currently mandated national roaming rates as a starting point, but Data On Tap Inc. also wishes to see a structure that addresses the market's speed and ongoing improvements in economics with each network generation deployed and adopted, as well as potential differentiation between full MVNOs (Operating it's own core. See our definition of MVNO in our previous submission) and MVNOs choosing to use more of the MNOs infrastructure.
26. The regional providers are already competing against multiple brands using more established national networks (with varying level of competitive response proportional to the level of competitiveness and areas that might not be deemed as economical according to often mistaken approach - of managing everything by averages, comparing it to the top level margins and not approaching these segments with new digital tools), and they continue to invest. A sensible wholesale rate will protect against a "race to the bottom", which would be detrimental to both regional and national carrier investment.
27. In paragraph 269, The Bureau speculates that a facilities-based approach would accelerate the impact of planned network expansions, and posits that Eastlink may elect to compete in Ontario with access to a national network. It is just as likely that national RAN access would not accelerate network rollout, there is no evidence provided either way. The telecommunications market is growing in revenues, profitability. New policies of spectrum, current policies on government co-funding the fibre backbone through broadband fund and accelerated depreciation (tax benefit) are effective tools. MNOs will continue to invest in the infrastructure and should be compelled to use for everyone's benefit.
28. As for cost-setting, The Bureau recommends a regulatory backstop. As noted in The Bureau's submission, the incumbents are highly tuned in to each other's market signals. Data On Tap Inc. believes that initial negotiations will require some precedent, otherwise, incumbents risk unintentionally undercutting their wholesale business. Incumbents may wait until at least one negotiation goes through arbitration, and possibly all will go through arbitration in order to delay the impacts.
29. Overall, this puts an unnecessary burden on the CRTC that will likely result in some kind of mandated wholesale rate setting by the end, similar to the recent outcome of national roaming negotiations and regulatory intervention.

Re: Additional remedies to explore

30. Data On Tap Inc. is in agreement with suggestions that seamless handoff, tower sharing, site access, and national roaming access and rates are issues that need to be addressed for facilities-based carriers. They are just as important for regional providers as they are for an MVNO who chooses to partner with a regional provider.
31. Any exploration of these additional remedies should not delay this proceeding as they exist and need attention no matter the outcome of this Review of Mobile Wireless Services.

B. Responding to The Matrix Economics (Dr. Tasneem Chipty) ABRIDGED report Studying the State of Competition in the Retail Wireless Marketplace and the Benefits of Additional Competition among Wireless Service Providers

1. A significant amount of argumentation in the Report is based on studying the effects of offers in the wireless market. One of the key arguments presented to support the market competitiveness is the market responses by competitors, timing and geographical areas. We agree with such methodology and approach, but cannot help, but notice that they are based on the public announcements rather than actual facts of when such offers were available to consumers and potentially affect the policy proposal. Because some of the data is confidential (redacted) we cannot fully assess the actual impact of these offers in the market. Our research however points that most of the people active in wireless community forums, experts of wireless in their own accord subscribe to grandfathered plans or offers. Pointing that either the biggest competitive activity happened in the past of
2. Example: Launch of \$60/GB price point BYOD by Shaw Wireless subsidiary (Freedom Mobile):

“The Freedom event study shows that Rogers and Bell offered larger plan limits and charged lower plan limit-adjusted prices in response to greater competition from Freedom. Specifically, Rogers and Bell responded to Freedom’s Big Gig plan by offering their own 10 GB plan in the areas that Freedom serves, and they lowered their plan limit-adjusted prices in response to Freedom. By contrast, there is no measurable response by Rogers and Bell to Eastlink’s recent entry into five different CMAs over the study period.”

Reference: #45 Matrix Economics report.

On its own, the event falsely elevates the level of perceived competition.

1. **Pre-existing price point** - in this particular case, the \$60/10GB price point (with 256kbps progressive throttling after) was already offered in the market by Freedom Mobile (previously WIND Mobile) for 2 years prior to October 2017.
2. **Flash in the pan** - the competitive response was short-lived, and the rush to get the deals made headlines. Canadians missed out if they didn’t take a day out of your schedule to wait in line or on hold to get the plan. Today, similar plans are unavailable.
3. **Price Increases** - In addition to the ‘mix up’ (or misstatement by Freedom Mobile) in the date, the report doesn’t mention the fact that these market responses were temporary. Rates were increased by all three carriers - \$10/month by TELUS, and \$5 by Bell and Rogers. An additional \$5 increase was just announced by Bell, just prior to this submission.

In studying the market responses its important to consider the other factors that could have influenced the market. Was it a one time exception or a sign of competition increasing/decreasing. Following factors could have been as important and change the perception of the market dynamics:

1. **Hardware Subsidy** - Freedom Mobile launched the rate plan along with offering the iPhone officially for the first time (iOS currently has ~50% of the market). The launch included extremely high subsidy on the iPhone with a different (more expensive) plan along with the promotional BYOD rate plan. Given the previous availability of the plan, the competitive response was certainly influenced by new competition around hardware subsidy.
2. **One time offers** - Freedom Mobile at the same time started offering a new aggressive -35% employee/under-the-line promotions in the Western markets, where most employees were located, had a larger impact on the market when reviewing Shaw's quarterly results call.
3. **Other non-price factors** - At the same time Freedom Mobile LTE, VoLTE and Wi-Fi Calling became available widely to customers making this a one time in network generation effect.

It is possible that reactions from incumbents were miscalculated and in fact were temporary. Regional providers provide a positive impact to a certain portion of the market being competitive. But themselves fail at service innovation, serving the niches.

C. Summary of our answers to the Competition Bureau report and economic studies

1. The Bureau's conclusion assumes there is only a "too cold" and "too hot" solution to rate-setting, that there is no "just right".
2. It also fails to recognize that rate-setting will be required for infrastructure-based access.
3. The only benefit to restricting access to existing regional providers is to keep the cost to entry high, despite a high cost of entry being a key indicator of market power.
4. These high costs also necessitate high prices, as evidenced by "regional providers" (or "wireless disruptors") increasing prices with a "more for more" strategy and following some of the deceitful practices of the past like including the subsidy in the rate plan with maximum contract term - departing from truly affordable options in the market.
5. Additionally, despite strong push to address the affordability issue, the infrastructure-club approach will continue to underserve many Canadians for a long time. Seniors, youth, young families, new Canadians, visitors to the country, and small businesses will remain ignored if niche providers are unable to enter the market with services designed to meet their needs.
6. True wireless disruptors: service innovators (any regional MNO, national MNO, and licensed MVNOs that choose to innovate on service level and compete), offer the most promising path forward.
7. Canadians (seniors, youth, families on the budget and others) could benefit substantially through more competition from such true wireless disruptors and not only in the top tier plans.
8. Benefits will include not only the plan price, but more innovative services that fit the needs of Canadians, respect privacy and offer other forms of differentiation.
9. Additional measures can also improve the level of competitive intensity in the Canadian wireless market. They should include mandated access to wireless networks for any regional MNO, national MNO, and licensed MVNOs that choose to innovate on service level and compete. Protecting multibillion dollar market cap 'regional providers' against other forms of competition should not be one of the measures. Everyone should be given a level-playing field.