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CRTC 2013-551
PRÉSENTATION, PHASE II

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8665-C12-201212448

Review of wholesale services and associated policies

Examen des services de gros et des politiques connexes

3 & 4 Déc 2014

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FACILITIES VS SERVICE

- The overall goal is to **increase** competition to make the market healthier and require the **least** amount of regulation ; this is a long term endeavour. Matching speeds only came in effect February 2012 and has shown great progress. Give it time to work instead of constant attempts to scuttle this progress.

- The "facilities based" doctrine dates from the last century where a physical cable supported one high priced regulated monopoly service: telephone or television. Convergence of multiple services delivered on a single pipe has made this doctrine obsolete. This pipe is a utility built commodity equipment, with the innovation occurring further out on the Internet.

- Since It is not rational for an incumbent to commercially negotiate wholesale rates that help drive retail prices down, regulation remains necessary to discipline incumbents' market power.

- The evolution to a service based economy should move the focus to service based competition and treat the last mile as an essential non-duplicatable utility.

INVESTMENT

- A shared fibre has lower risk because a greater percentage of homes passed connect to it. Duplication results in fewer homes served from each fibre, reducing the justification for investment.

- A refusal to share indicates the incumbent expects to recover its investment by serving fewer homes at higher price, a practice consistent with market power. It is also likely to reduce the number of areas where the investment in FTTP can be justified.

- In this day and age, artificially inducing facilities based competition for the last mile encourages inefficient entry.

- In a "service based" policy, a shared wire will be funded by the combined revenues of many providers. serving more homes and decreasing the risk of non-productive investment.

- Shared last mile results in lower but more efficient investment, services more people at lower costs and allows more competition than "facilities based" could ever dream of. As Drs Rajabuin and Middleton pointed out, there is no strict correlation between investment levels and network quality. Investment in shared networks is simply more efficient.

- If service providers invest in the ONT/UPS, the infrastructure builder is relieved of 1/3 of the investment burden, making it easier for incumbent to justify deployment.

- Shared infrastructure means more homes will be served at less cost, ultimately making services more affordable for consumers.

FTTP

- The regulatory process that will follow an immediate decision to mandate wholesale access to FTTP as well as the time required to implement wholesale provisioning software already delays FTTP availability.   Further delays of 3 to 7 years are not acceptable.

- No evidence has been provided that shows any independent FTTP deployment that **duplicates** an existing incumbent FTTP system.

- In most cases today FTTP is being deployed where there is no FTTN.   ISPs do not have a choice of 25mbps on FTTN or FTTP, they are limited to barely 5mbps service on legacy DSL (if at all) while Bell's ISP business benefits from undue preference with access to current speeds on more reliable infrastructure.

- FTTP is superior to FTTN not only because of higher download speeds, but also significantly higher upload speeds and the ability to deliver advertised speeds throughout the footprint, something neither DSL nor FTTN can do.

- A regulatory policy meant to last many years must rely on <u>principles</u> such as "speed matching" instead of setting specific speed limits. Limiting access to speeds based on today's evaluation is tantamount to an implicit forbearance tomorrow when those speeds no longer allow ISPs to compete.

CNOC'S BAD[1] IDEA

- CNOC likely proposed its "BAS" to whet the Commission's appetite for "facilities based". Unfortunately, it did not provide a detailed or realistic plan.
- At best, the Commission should spawn a follow-up process to look into the feasibility of this proposal:
  - Commission should ask CNOC how many customers an individual ISP must have at 1 CO to justify a direct connection to it.
  - The Commission can obtain from Bell the number of COs where 1 ISP has more customers than stated above by CNOC.
  - Connection at a CO must provide for extraction of a single ISP's traffic from all technologies (DSL, FTTN, FTTP).
  - It is technically not realistic to avoid a significant portion of CBB on cable. Unless CNOC pulls a rabbit out of its hat, the idea should be dismissed.
  - Dis-aggregation must not be mandated on a network-wide basis. This is an opportunity to test the incumbents to commercially negotiate with the ISPs.

1-Bad: Broadband Access Disaggregation

COSTING

- Retail-minus turns the ISP into a reseller tied to incumbent's retail offer. Wholesale regulation based on retail rates ends up indirectly regulating retail[1].
  Only cost-based wholesale service enables true retail competition.

- Phase 2 complexity can be reduced by:

  1. Incumbents stop gaming their costing numbers
  2. Incumbents stop submitting everything in confidence, forcing constant stream of request for disclosure.
  3. The new AMPS should be used when an incumbent submits in confidence information that TRP 2012-592 says should be public. The gratuitous use of "#" introduces a huge regulatory burden on participants.

- CRTC could hold seminars to explain the Phase II voodoo magic to consumer groups and wholesale customers to enable more intelligent participation in tariffs/costing proceedings. Such consultations may generate suggestions to improve Phase II.

1- Think of UBB

ULL

- Forbearance of the copper should happen only in areas where FTTP has been deployed and available to wholesale. The quicker the services are moved off copper, the faster the telco can decommission the old copper, which greatly helps justify the investment.

- Once a telco shifts customers to FTTP, the shrinking number of copper users eventually makes copper maintenance uneconomical and it makes sense to shut it down. Canadian incumbents have downplayed this because they fear that the spectre of decommissioning copper would push the Commission to mandate FTTP.

- Once FTTP has been activated in an area, the incumbent should be allowed to stop adding new wholesale users on copper.

- As far as the "stranded investment" argument, one needs to look at whether existing legacy equipment at the CO has already been amortized.

- Instead of being based on CO or Wire Centre, forbearance should consider technology. A CO such as Hudson QC serves a mostly copper area as well as FTTP being deployed in St-Lazare, so it cannot be treated as a single unit.

CONCLUSION

- ISPs are in the business of connecting their customers to the Internet. They do not resell anything. To do this, they construct their service from various building blocks, including the existing last mile which is not realistically duplicatable and is essential for provision a number of services to homes.

- The Competition Bureau had ruled that the loss of Fido would not significantly alter the incumbent's market power. Perhaps the same logic is being applied with regards to the current competitive impact of the ISPs 8% market share at the national level.

- It is exactly because we are still dangerously close to a duopoly that the efforts to allow ISPs to grow must not be stop. These efforts are working in Québec and Ontario. Growing the ISP market to sufficiently weaken incumbents is a long term endeavour and the Commission must resist the incumbents' call for duopoly.

- The Commission must accept that the last mile is structurally not duplicable and will need to be shared until a major new technology emerges decades from now. Instead of seeking forbearance, the Commission should instead seek to streamline the regulatory process to reduce its burden.

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