



April 8, 2019

Director General
Telecommunications and Internet Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, Ontario K1A 0H5

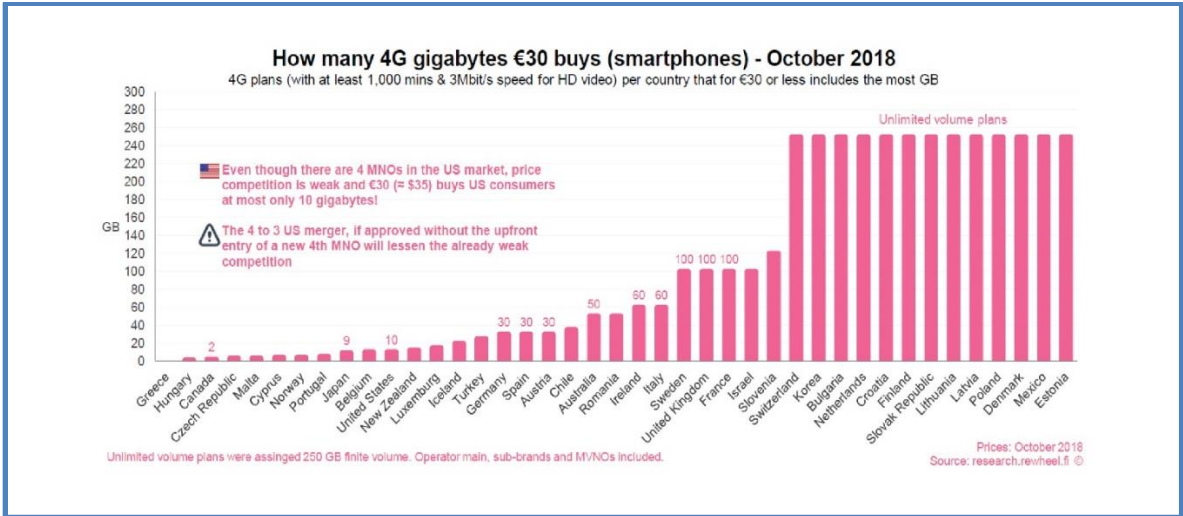
Dear Director-General:

Re: Canada Gazette, Part 1, Volume 153, Number 10: Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation

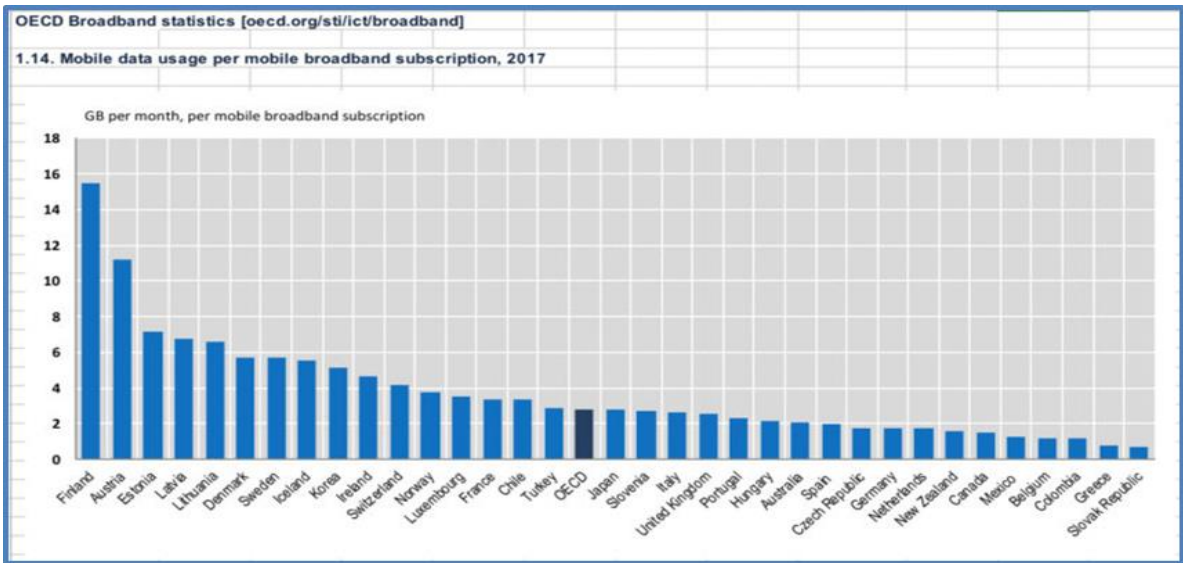
1. VMedia Inc. (“VMedia”) is grateful for the opportunity to submit comments on the proposed policy direction (the “New Direction”) issued by Innovation, Science and Economic Development (“ISED”) Canada, and gazetted on March 9, 2019.
2. The publication, and hoped for adoption, of the New Direction, would be welcome at any time, but it is particularly urgent in view of the progress of the panel appointed by ISED to review the relevant legislation (the “Yale Panel”)
3. VMedia expressed its concerns about the terms of reference provided to the Yale Panel, and the themes that the Yale Panel itself set out after its formation. Given the broad scope of the Yale Panel’s mandate, it was particularly discouraging to see that precious few of those terms of reference and themes touched on the interests of consumers as economic actors, and competition in the provision of internet and mobile services.
4. It was even more concerning that the Yale Panel arbitrarily changed its process after it received the submissions it invited from stakeholders and the public (arguably the most important stakeholders of all), and decided to keep the

submissions confidential, essentially squashing the opportunity for further consideration and discussion of the matter in the public arena.

5. This lack of focus on competition, and the entitlement of consumers to affordable and world-leading, rather than costly and world-lagging, telecommunications services, is particularly relevant because telecommunications (and broadcasting) services comprise the fourth largest household expenditure after shelter, food and transportation.
6. Yet, unlike those needs, which are met by a myriad of competing suppliers ensuring fair pricing disciplined by market forces, telecom in each of the markets across Canada has always been and still is today largely a duopoly, operating in pairs in the markets across the country.
7. Just three of these major players account for 92% of mobile revenues. Furthermore, one of the three focuses primarily on the Quebec market, leaving much of the rest of the country to the other two major providers.
8. Five incumbents account for 87% of fixed internet revenues, but that does not suggest that the five compete against each other. In fact, there are only two providers in any given market, a cable and a telecom provider, and that duopoly more typically owns 87% of the market it serves.
9. In 2016, a year in which wage growth was 0.4%, and the Consumer Price Index barely budged, average household mobile and internet expenditures, paid to those few providers, rose 5.5% and 6.5% respectively. In that same year, the lowest quintile of Canadian households, those with less than \$32,090 of household income, spent 8.6% of their annual income on communications services.
10. This is no surprise, as even a recent study commissioned by ISED itself, the Wall Report, shows that Canadian wireless rates are among the highest in the world, and by some accounts that gap is widening. The chart below is an illustration of our dismal record.



11. In addition to being near to most expensive in terms of cost per GB as shown above, Canada has achieved the dubious distinction of ranking 30th among 35 OECD nations in mobile data usage, and sixth to last in the same group in mobile data subscriptions.



12. It is especially important that there be a greater focus on the economic experience of consumers in view of the impending introduction of 5G. A particular examination should be undertaken, as part of the Panel's process going forward, to consider how the introduction of 5G should be managed.

13. The introduction of a new policy direction is central to determining the path forward in Canada in the provision of telecommunications services. These services are fundamental to our quality of life, yet the policies that regulate those services are

formed within a regulatory framework that does not make clear that those services are first and foremost to serve Canadians and promote economic growth and innovation, not to enhance the profitability of the telco and cable duopolies that dominate the market for those services throughout Canada.

14. Its introduction is particularly important at this time, so that it will hopefully reset the course that the Yale Panel is on, to one more clearly mindful of the needs and desires of everyday Canadian families who spend an increasing amount of their income on these already exceedingly costly services.
15. Indeed, in VMedia's submission to the Yale Panel, its first recommendation (after asking the Yale Panel to redirect its focus in favour of Canadian consumers) was that the existing policy direction (the "Bernier Direction") be replaced with one like the New Direction.
16. This is because the Bernier Direction has served to greatly restrain the ability of regulators to shape a framework that ensures and enshrines robust competition in the service of the best interests of Canadians. The Bernier Direction at its outset instructs the Commission to "rely on market forces to the maximum extent feasible" and when introducing regulation, ensure that "those regulations interfere with the operation of competitive market forces to the minimum extent necessary".
17. In addition, while acknowledging the possible need for mandated access, that too is limited by the requirement, in S. 1(c) (ii), that the Commission conduct itself "with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities".
18. If the Bernier Direction were in place when the times called for the introduction of competition in the long distance phone market, Canadians would still be paying multiple dollars per minute for calls between Toronto and Montreal, instead of the virtual pennies they pay today.
19. Thankfully, it was not. Competition was introduced without duplicative facilities, and the incumbents continued to prosper. In the meantime, the direct economic benefits and enhancements in productivity through cheaper long distance communications is incalculable.
20. In the case of internet services, the outcome has so far been less transformative. It is to the Commission's credit that it has over the years been able to introduce competitive players, independent internet service providers ("ISPs"), to provide internet services, given the restraints of the Bernier Policy, but the constraints of that direction have led to a landscape marked by:
 - a) a tariff pricing framework that is not reflective of actual incumbent costs, nor transparent,

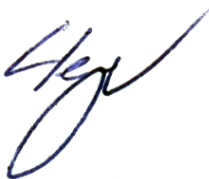
- b) ongoing efforts by incumbents to destabilize, undermine and ultimately eliminate the ISP sector, to allow continued economic exploitation of Canadian consumers, and
 - c) the resultant stifling of innovation which has made Canada an outlier among developed nations in broadband services and enabling the digital economy.
21. Even now, ISPs face yet another existential crisis as a direct result of the influence of the Bernier Direction, in the form of a new regulatory policy (the “Fibre Access Policy”) which mandates the granting to ISPs of access to new fibre to the premises (“FTTP”) networks being rolled out by the incumbents.
 22. At the core of the Fibre Access Policy lies a fatal flaw: the requirement that ISPs invest in facilities that will enable them to interconnect with incumbents to offer consumers competitive FTTP services.
 23. The ability of ISPs to be able to fund their access to FTTP facilities, under the new disaggregated framework contained in the FTTP Access Policy, is questionable at best. In addition, the time frame for the implementation of the disaggregated framework, largely dependent on the incumbents’ timing, has provided and will continue to provide a head start for the incumbents in grabbing market share that will be difficult for ISPs to meaningfully penetrate. In the result, consumers will be able to look only to the market dominant duopolies for FTTP services.
 24. The argument that underpins the facilities requirement in S.1(c)(ii), that competition generated solely by granting access to incumbent facilities will inhibit investment by incumbents, has never been proven to be valid in the Canadian or US context. The need to compete with the duopoly competitor in terms of facilities far outstrips the possible minimal market loss that may go to non-facilities based competitors.
 25. However, that requirement has inhibited the ability of regulators to fully focus on the encouragement of competitive services to provide more choice and better prices and service levels to Canadian consumers. VMedia believes that the FTTP Access Policy, and its requirement that ISPs invest heavily, and beyond their means, in facilities, was the result of the Commission’s adherence to the requirement.
 26. The Bernier Direction is notable insofar as it contemplates the promotion of competition. However, the requirement that consideration must be given to the creation of additional facilities is flawed. Firstly, the prime objective of the Bernier Direction, for good reason given the intent to encourage competition as referenced above, is to do exactly that. Competition is a valid end in itself, and if it can be achieved without building out additional facilities, then that requirement should not be a consideration.

27. Second, there is no greater good served in building redundant facilities. The legacy benefits that enriched the incumbents can never be matched by new market entrants, and if existing facilities can be used to generate multiple choices for consumers, while fairly treating the owner of those existing facilities, that should be the way forward.
28. The New Direction's mandate is clear, in that it instructs the Commission to "consider how the measures used can promote competition, affordability, consumer interests and innovation, namely the extent to which they (i) encourage all forms of competition".
29. In this regard, it would seem to put consumers first, and encourage a renewed focus on competition unfettered by the limitations of S.1(c)(ii), and possibly even the limitations imposed by the adherence to market forces, which in this industry inevitably would enshrine a duopoly.
30. What is not clear however is the interplay between the Bernier Direction and the New Direction going forward. The regulatory analysis which accompanies the gazetted draft of the New Direction states that it will "exist in complementary fashion to the previous policy direction, which among other things, directs the CRTC to use streamlined and efficient practices in order to reduce regulatory burden and costs for the Government, the CRTC and the telecommunications industry."
31. It leaves open the possibility of a clash between the two directions, and uncertainty in which element of which direction should prevail. For example, in the New Direction, the Commission is instructed to consider "how the measures used can promote competition, affordability, consumer interests and innovation" But in the Bernier Direction, the Commission is told that "it should (emphasis ours) adopt" the enumerated practices, including the incentives to build facilities.
32. VMedia believes that the New Direction provides a complete code for the approaches to be taken by the Commission in carrying out its mandate. There is no need for the perpetuation of the Bernier Direction, and it should be scrapped.
33. Elements of the Bernier Direction which the Governor in Council seeks to incorporate into the New Direction (which it seems is the intention to do in connection, for example, with using streamline and efficient practices, as set out in Para. 30), should be so incorporated. The parts which it does not, being hopefully the apparently overarching obeisance to market forces and the obligation to invest in facilities, should not.
34. VMedia is concerned that failing to do so will introduce a new but equally counterproductive uncertainty to carrying out the important intentions of the New Direction.

35. Again, we cannot overstate the timeliness and importance of this measure. The future of ISPs, which have introduced major innovations in internet services such as unlimited bandwidth, which is now ubiquitous, and pricing discipline, is uncertain under the current framework.
36. The introduction of mobile virtual network operators, crucial to introducing the same innovations and pricing discipline to the mobile market, is well overdue, but may finally be on its way. It should not be susceptible to the same hesitant progress that has afflicted ISPs.
37. Moreover, looming over all of this is the introduction of the potentially transformative 5G platform.
38. Absent a clear and unequivocal empowerment of the Commission to focus on the seven considerations set out in S. 1(a) of the New Direction, without the distraction of the contradictory elements of the Bernier Direction, the dominant players will continue to do what they have been doing, and Canadians will continue to rank among the last, instead of the best.
39. VMedia wishes to again thank ISED for the opportunity to express its views, and hopes that its comments will assist the Department and the Governor in Council in defining a clear path forward that will benefit all Canadians.

Yours very truly,

VMedia Inc.

A handwritten signature in blue ink, appearing to read 'Alexei', with a stylized flourish extending from the end.

Alexei Tchernobrivets
President & Chief Executive Officer