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More Specific Details for Customer Specific Arrangements

Telecom Decision CRTC 2003-63, *Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76*, issued on September 23, 2003 follows up on directives from a ruling first issued by the CRTC in December, 2002. As we noted at that time, the rules imposed on Bell in Decision 2002-76 to disclose details from contracts for customer specific arrangements (CSAs) will significantly hamper the flexibility under which Bell can offer services. The new Decision goes further in its requirements for public disclosure, mandating disclosure to a level that gives competitors virtually complete details about the terms and conditions for bids won by Bell and in some cases, compromising customer specific details about telecom and network evolution strategies.

Background

In Telecom Order CRTC 2000-425, *Bundling framework developed for customer-specific arrangements*, the CRTC established the rules for CSAs, bundling tariffed telecom services with non-tariffed and / or non-telecom services. A year ago, in Telecom Decision CRTC 2002-76, *Regulatory Safeguards With Respect To Incumbent Affiliates, Bundling By Bell Canada And Related Matters*, the CRTC added additional services to the definition of a bundle, by including those sold by Bell Nexxia, acting as an agent. Subsequently, in Decision 2003-63, Bell was ordered to place on the public record "a description of each service and service component that is, or may be, provided under the contract, whether or not the service is a forborne telecommunications service, whether or not the service is a telecommunications service and whether or not the service is identified in the contract as a service with a discrete rate."

State of Competition

The basis for the CRTC's recent string of restrictive orders and decisions stems from concerns about the general state of competition in Canada. While in 1998, in Decision 98-20, the Commission found that many barriers to competitive entry had been solved, five years later, the CRTC cites its Report to the Governor in Council as evidence that competitors have stalled in their acquisition of market share from the incumbents. Unfortunately, the CRTC failed to consider the non-ILEC activities of Bell in the west and TELUS in the east as competitor market share. Further, the real market success of new entrants in major urban markets is masked by the Commission only looking at national averages.

Still, the report acknowledges that certain data services have seen up to half of the market captured by alternate carriers. Canada's largest telecom customers routinely receive responses to Requests for Proposals (RFPs) from three to five credible service providers. With the bulk of their services required in Canada's largest cities, customers and alternate service providers are also being courted by municipal electric companies ready to provide fibre-based access facilities. Contrary to general trends in the industry, the marketplace for major accounts is vibrant and has been characterized by fierce pricing and service competition.

Disclosure of Major Account Contracts

As we advised last December, tariffs are already being filed by Bell, disclosing details of rates and service quality objectives for some of the biggest customers in Canada. Having participated in the RFP process, competitors will be in a position to readily identify precisely which customer is associated with each CSA thanks to the level of disclosure required in Decision 2003-63. This will establish valuable benchmarks for pricing and service quality objectives in the terms of the tariff.

In the past, bids in response to RFPs were submitted on a "blindfolded" basis, with little knowledge about incumbent service or pricing strategies, leading to extremely aggressive competition among all participants in order to capture the client's business. With the public disclosure of large customer benchmarks, one can expect prices and service quality commitments from Bell's competition to begin to cluster around these new published floors.

The increase in public disclosure is bound to raise concerns for more than just Bell. Large customers may find that their competitors (e.g. other banks, etc.) may be able to discern direction for strategic deployment of information technology, thereby losing their own competitive advantage. This problem is magnified by the CRTC's insistence to have details filed for non-telecom services being provided, such as data processing equipment. Besides the loss of competitive advantages, the details may increase the security risk of an attack on the customer's network.

Summary

Over the past year, the CRTC has issued a number of decisions and orders that increasingly impose constraints on the flexibility of the incumbents in offering services to the largest telecom customers in Canada. This market segment is already the most competitive in Canada, with three to five qualified bidders responding to national requests for proposals, let alone additional competitors operating on a regional basis.

As we concluded in our report December 12, 2002, large businesses may be the losers in the end, with less competition and higher prices from the major ILECs. The level of disclosure ordered in Decision 2003-63 is more likely to incent other service providers to be less competitive, raising the spectre of less aggressive bidding for customer rates and service offerings. The ideal market should be characterized by multiple suppliers offering creative arrays of services with fierce price competition. Rather than delivering increased levels of competition to telecom users, the outcome of this Decision could be more suppliers of commoditized services at higher prices.

The CRTC has been seeking to discipline incidents of inappropriate pricing behaviour by the incumbents. Ensuring compliance with bundling rules and imputation tests is laudable. However, capital markets and sophisticated large business customers are looking for regulatory stability in addition to sustainable competition. The CRTC appears to be drifting away from its Price Cap framework and back into a model of micro-management of the incumbents. Public disclosure along the lines required in Decision 2003-63 moves the level of competition for the large business market segment in the wrong direction.