At Cogeco there are no coattails

The coattail was killed in the first 24 hours of the takeover offer

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We take you back to early September and a brief review of the 24-hour Quebec Inc. torpedo of a proposed takeover of the Montreal-based Cogeco telecom companies — 24 hours that highlight investor, governance and competition issues.

In the early evening of Tuesday, Sept. 1, Dexter Goei, CEO of the New York-based broadband company Altice USA Inc., called Louis Audet, the executive chairman of Cogeco Communications, to inform Audet that Altice in association with Rogers Communications of Toronto would be offering to acquire 100 per cent of the Cogeco companies in a deal worth $10.3 billion.

At 9:15 a.m. the next day, Altice issued a release from New York publicly announcing the proposed takeover and its terms, including the payment of $800 million to the Audet family for the multiple-voting shares through which the Audets control the Cogeco enterprises.

At 9:20 a.m., Rogers issued a release confirming its agreement with Altice and outlining that it would in turn purchase all of Cogeco's Canadian assets for $4.9 billion, noting that "significant value" was being released and that Rogers was "excited" about the opportunity to expand through its acquisition of 1.8 million Cogeco customers.

At 9:43 a.m., the time on a Reuters news report, a statement issued by Louis Audet said that members of his family, which through multiple-voting shares control Cogeco, "unanimously reiterated that they are not interested in selling their shares." The statement said the family holds 69 per cent of all voting rights of Cogeco Inc., which in turn controls 82.9 per cent of all voting rights of Cogeco Communications Inc. The release did

not say that the family's economic interest in the two companies is estimated at 10 per cent and three per cent respectively.

At 11:24 a.m., Cogeco issued a statement saying it had received the Altice/Rogers takeover proposals and would submit them to the boards of the two Cogeco companies for review later in the day. It noted that the Audet family had already rejected the deal.

At 6:38 p.m., Cogeco announced that the independent members of the two corporate boards, after meetings and discussion with the Audet family, voted to reject the takeover offer.

That sequence of events may or may not have been the swiftest corporate takeover shoot-down in history, but it certainly marked 24 hours in which several important public policy issues were at play.

On board governance, Rogers and Cogeco engaged in a vicious — by corporate standards — war of words over the Cogeco boards' decision-making. Rogers and Altice USA wrote to Audet alleging their offer was rejected without the directors "undertaking any appropriate process." The two Cogeco boards "did not establish independent committees that were properly advised." The boards, they added, failed to fulfill their most basic duties in representing the shareholders. "We do not understand how you … could have behaved in this unacceptable manner."

Cogeco responded by accusing Rogers et al of making "untrue statements" and engaging in "bad faith tactics."

A key element in this corporate battle is Quebec Inc., the decades-old political crusade to preserve the province's corporate interests.

On the day the takeover was announced, Quebec Premier François Legault said,"There's no way [we will let] this Quebec company move its headquarters to Ontario." Later, Quebec's pension giant, the Caisse de dépôt et placement du Québec, said it was ready to back Cogeco. Pierre Karl Péladeau — whose family controls the Quebec media giant Vidéotron

and who once described Bell Canada as a “public danger” — tweeted out his concern about Cogeco’s head office falling into the hands of Rogers.

Péladeau is right to be concerned. A Rogers takeover of Cogeco would promise a new wave of competition in the Quebec market that would directly impact Vidéotron. It would also put Rogers deep into Bell territory. But thanks to the governance miracle of multiple-voting shares, the Audet family appears to be making the decisions that will kill the competitive opportunity.

Competition regulators tend to move in when takeovers are alleged to lead to reduced competition. In the Cogeco case, the argument can certainly be made that allowing Rogers into the Quebec market increases competition. But there is no competition policy precedent for a regulator intervening because a competition-enhancing takeover failed due to dual-class shareholder obstruction.

At the root of the Cogeco problem is the multiple-voting shares — or dual-class shares — that are favoured by Canadian nationalists, family control advocates, and assorted theorists who argue that the benefits are many. In a report last year, the **Institute for Governance in Private and Public Organization** outlined the benefits, including a tentative but far from conclusive claim that corporations with dual-class share structures may produce superior investment returns. “We find much merit to dual-class companies and family firms, providing holders of shares with inferior voting rights are well protected” with mandatory “coattail” provisions.

But what good are coattail provisions in the Cogeco case? Under coattail rules imposed by securities regulators, in any takeover the financial value paid to the multiple-voting shares held by a controlling family or group must also be paid to the voting shareholders. But what if the multiple-voting family shareholders make the decision that kills the takeover? In the Cogeco case, the coattail provision is meaningless. There is no coattail. It was killed in the first 24 hours of the takeover offer.