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CANADA'S FOREIGN OWNERSHIP RULES AND REGULATIONS IN THE TELECOMMUNICATIONS SECTOR

Report of the Standing Committee on Industry, Science and Technology

Hon. Michael D. Chong, MP
Chair

JUNE 2010

40th PARLIAMENT, 3rd SESSION

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has the honour to present its

FIFTH REPORT

Pursuant to Standing Order 108(2), and the motion agreed to by the Committee on Tuesday, March 9, 2010, your Committee has studied Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector and has agreed to report the following:

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FOREIGN OWNERSHIP RESTRICTIONS IN THE AGE OF TECHNOLOGICAL CONVERGENCE

INTRODUCTION

Ever since the imposition of foreign ownership restrictions on all telecommunications common carriers[1] in the 1993 *Telecommunications Act*, the issue has been the subject of much debate in Canadian society.

In December 2009, the issue of foreign ownership in the telecommunications industry was brought back to the forefront when the Government of Canada decided to allow Globalive Wireless to operate as a telecommunications common carrier in Canada. This determination varied a decision taken less than two months earlier by the Canadian Radio-television and Telecommunications Commission (CRTC). The question at stake was whether Globalive Wireless could be considered in law to be Canadian-owned and controlled, which is a necessary condition to operate as a telecommunications common carrier in Canada. In this context, in March 2010 the House of Commons Standing Committee on Industry, Science and Technology (hereinafter the Committee) began a review of Canada's foreign ownership rules and regulations under the *Telecommunications Act*, the *Radiocommunication Act*, and the *Broadcasting Act*. Although this review was triggered in part by a very specific case, the Committee took a broader view of the issue, hearing from a wide range of stakeholders including unions, artists' groups, telecommunications and cable companies, academics, as well as broadcasting companies and industry associations.

In this study, the Committee takes a somewhat different approach than with previous reports on this issue in that implications of foreign ownership restrictions are examined through three lenses: economic considerations, social and equity dimensions, and Canada's cultural sovereignty. Consequently, this report is structured accordingly. The first section provides a background on foreign ownership restrictions and presents a brief overview of the Globalive case. The following three sections examine respectively the

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1 Section 2 of the *Telecommunications Act* states that "telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation". Broadcasting Order CRTC 2009-452, paragraph 7, July 2009, http://www.crtc.gc.ca/eng/archive/2009/2009-452.htm)

economic, social and culture dimensions of foreign ownership restrictions. Finally, the last section discusses the implications of technological convergence for the telecommunications and broadcasting industries, and provides the Committee's overall perspective and recommendations.

CHAPTER 1—BACKGROUND ON FOREIGN OWNERSHIP RESTRICTIONS

A. Legislation and Regulations

i) Foreign Ownership and Legislation in the Canadian Telecommunications Sector

In Canada, foreign ownership restrictions imposed on telecommunications carriers began in 1984, when the then Department of Communications issued the first national cellular operating license to Rogers Cantel Inc.[2] In this instance, a limit of 20% of voting share equity was set for foreign ownership.

While the federal government continued to impose this 20% maximum on other telecommunications companies on an *ad hoc* basis, it was not until the coming into force of the *Telecommunications Act* (1993)[3] that federal legislation placed statutory limits on the percentage of allowable foreign ownership for *all* telecommunications carriers. Section 16 of the *Act* states that eligibility for Canadian operation requires a carrier to be Canadian-owned and controlled. Section 16(3) defines this as follows:

a) not less than eighty per cent of the members of the board of directors of the corporation are individual Canadians;

b) Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than eighty per cent of the corporation's voting shares issued and outstanding; and

c) the corporation is not otherwise controlled by persons that are not Canadians.

Parts a) and b) of the legislation are known as the quantitative test or *de jure* test. As part (c) of Section 16(3) states the requirement that "the corporation is not otherwise controlled by persons that are not Canadians," this condition is known as the "control in fact" condition (or the *de facto* test). Furthermore, the *Act* also enables the Canadian Telecommunications Common Carrier Ownership and Control Regulations (1994), which sets out a framework to determine what entities can be classified as "Canadian," and sets

2 Restrictions on Foreign Ownership in Canada, Transport Canada, http://www.tc.gc.ca/eng/policy/report-research-tp14500e-chapter2-365.htm.

3 *Telecommunications Act*, http://laws.justice.gc.ca/eng/T-3.4/page-2.html#anchorbo-ga:l_II.

the minimum Canadian ownership restriction for a holding company at 66⅔% of voting shares.[4] Consequently, when taking into account all of the provisions above, the maximum permitted foreign ownership of voting shares is 46⅔% (including both direct holdings and indirect holdings through a holding company) of a Canadian telecommunications carrier.[5]

Additionally, Section 10 of the Radiocommunication Regulations (per the *Radiocommunication Act*) refers to the terms of the *Telecommunications Act* to determine the ownership eligibility criteria—significant for wireless telecommunications operators, who require radio spectrum licences in order to provide wireless services (mobile, cell phones, etc.).[6]

Comparatively, the Canadian broadcasting sector is subject to the same foreign ownership restrictions as those for the telecommunications industry. The legal history of this condition can be traced to a Cabinet Directive of 1997, which aimed to harmonize ownership regulations of both industries—in fact, the foreign ownership restrictions for broadcasters are also capped at 20% of the voting shares of a broadcasting company and up to 33.33% of a holding company.[7]

The administration and enforcement of these conditions are the responsibility of the CRTC, an independent organization that reports to Parliament through the Minister of Canadian Heritage.[8]

ii) Control In Fact (the *De Facto* Test)

The control in fact test involves evaluating a company's ownership structure, management, and creditors to determine, regardless of appointment, share ownership, or jurisdiction of registration (in Canada, filing of letters patent), who actually controls the firm, and how responsible they are for its direction and day-to-day operations. If this evaluation reveals that the company in question is not, ultimately, "controlled in fact" by Canadians, it is not eligible to operate in Canada per the terms of the Telecommunications, Radiocommunication or Broadcasting acts.

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4 Restrictions on Foreign Ownership in Canada, Transport Canada, http://www.tc.gc.ca/eng/policy/report-research-tp14500e-chapter2-365.htm

5 Ibid. A foreign entity can directly own 20% of a telecommunications carrier along with 33.33% of a holding company, for a maximum weighted value of 46⅔% (20% + [33.33% X 80%] = 46.66%).

6 *Radiocommunication Act*, http://laws.justice.gc.ca/eng/SOR-96-484/page-2.html#anchorbo-ga:l_I.

7 Restrictions on Foreign Ownership in Canada, Transport Canada, http://www.tc.gc.ca/eng/policy/report-research-tp14500e-chapter2-365.htm.

8 CRTC, http://www.crtc.gc.ca/eng/backgrnd/brochures/b29903.htm.

With regard to determining what is and is not a Canadian company per these statutes, the issue of control in fact is not without controversy, given that it requires interpretation. Industry Canada, who manages radio spectrum, states that an "assessment of control in fact of an applicant is a complex matter."[9] Additionally, federal government decisions in the transportation industry have also contributed to the discussion of control in fact, with a National Transportation Agency decision of 1993 stating:[10]

> There is not one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision making activities of an enterprise.

In contrast, CRTC Chairman Konrad von Finckenstein provided the following opinion on this issue:[11]

> "Control in fact" is a well-known concept in law. There's ample jurisprudence on it. The leading case on this is a case involving Canadian Pacific Airlines.

iii) Bill C-9 and Foreign Ownership Restrictions for Satellite Operators

In the 2010 *Speech from the Throne*, the Government of Canada stated its intention to "open Canada's doors further to venture capital and to foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need."[12] As part of Bill C-9 (*Jobs and Economic Growth Act,* 2010), the federal government proposes to amend the *Telecommunications Act* to remove foreign ownership restrictions for providers of satellite services.[13] If passed, the *Act* would allow a company to provide satellite services in Canada regardless of whether or not the provider can demonstrate Canadian ownership and control.

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9 Industry Canada, http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01773.html.

10 National Transportation Agency Decision No.297-A-1993 http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05412.html#footnote15

11 Konrad von Finckenstein, House of Commons Standing Committee on Industry, Science, and Technology, April 13, 2010. http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4420379&Language=E&Mode=1&Parl=40&Ses=3

12 *Speech from the Throne* 2010, http://www.speech.gc.ca/eng/media.asp?id=1388.

13 Bill C-9, *Jobs and Economic Growth Act*, 2010, Part 23. (version at 1st reading) http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=3&Mode=1&Pub=Bill&Doc=C-9_1&File=812.

B. Previous Studies

Prior to the Committee's study of foreign ownership in the telecommunications sector, several comprehensive studies and reports (from Parliament and federal government-appointed panels) have made various recommendations in regard to the appropriate level of foreign ownership in the telecommunications industry. The following is a selection of noteworthy reports.

i) Recommendations from the Report of the House of Commons Standing Committee on Industry, Science and Technology (2003)

In its 2003 report *Opening Canadian Communications to the World*, the House of Commons Standing Committee on Industry, Science and Technology recommended that the Government of Canada:[14]

- require a five-year Parliamentary review of the *Telecommunications Act*;
- remove the existing minimum Canadian ownership requirements for telecommunications carriers and broadcasting distribution undertakings (BDUs);
- require a Parliamentary review of the governance structure of the Canadian telecommunications and broadcasting sectors in light of technological convergence (regulation, federal department structures, and the mandate of the CRTC).

ii) Recommendations from the report of the House of Commons Standing Committee on Canadian Heritage (2003)

Conversely, in the same year as the Standing Committee on Industry, Science and Technology's report (2003), the Standing Committee on Canadian Heritage proposed the following recommendation:[15]

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14 *Opening Canadian Communications To The World*, Report Of The Standing Committee On Industry, Science And Technology, 2003, List of Recommendations http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1032302&Language=E&Mode=1&Parl=37&Ses=2&File=18 (This report included two dissenting opinions).

15 *Our Cultural Sovereignty: The Second Century Of Canadian Broadcasting*, a report of the House of Commons Standing Committee On Canadian Heritage, Appendix 1: List of Recommendations http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1032284&Language=E&Mode=1&Parl=37&Ses=2&File=357 (This report included one dissenting and one complementary opinion).

> The Committee recommends that the existing foreign ownership limits for broadcasting and telecommunications be maintained at current levels.

Key to this recommendation is the issue of "convergence". The Committee felt that due to increasing technological convergence between the broadcasting and telecommunications sectors, relaxing rules on foreign ownership for either sector could have harmful effects on the Canadian broadcasting framework.[16]

iii) Recommendations from the Telecommunications Policy Review Panel

In 2005, the then Minister of Industry established the Telecommunications Policy Review Panel to undertake a review of the telecommunications framework. In 2006, the panel (whose mandate was "to study and report on three areas that must continue to evolve in order to keep pace with rapid changes in technology, consumer demand and market structure: regulation, access, and information and communications technologies (ICT) adoption") delivered a report summarizing their findings along with a series of recommendations.[17] However, the panel also examined areas outside its original mandate which it felt affected the telecommunications framework. It hence concluded:[18]

> […] that liberalization of the restrictions on foreign investment in Canadian telecommunications common carriers would increase the competitiveness of the telecommunications industry, improve the productivity of Canadian telecommunications markets, and be generally more consistent with Canada's open trade and investment policies.

The Panel believed this liberalization would best be achieved by considering a new, flexible system of ownership regulations which could approve of submissions beneficial to Canadians, and could deny those that were not. This new system would be a "phased-in" approach, with foreign investors initially able to own and operate firms that have less than 10% share of their market; upon further government review of the broadcasting sector, the second phase would see the removal of ownership restrictions applied to all telecommunications carriers, along with changes to broadcasting ownership policies.[19]

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16 Ibid.

17 Telecommunication Policy Review Panel – Mandate http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/h_rx00096.html.

18 Telecommunication Policy Review Panel – Final Report, 2006, Executive Summary http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/rx00065.html

19 Telecommunication Policy Review Panel – Final Report, 2006, Afterword http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/rx00069.html

Additionally, the Panel addressed "convergence," whereby, because of advances in information and communications technologies, telecommunications and broadcasting firms can both provide the same slate of services, and provided the following observation:[20]

> This convergence of telecommunications and broadcasting markets brings into question the continued viability of maintaining two separate policy and regulatory frameworks, one for telecommunications common carriers like the incumbent telephone companies and one for their competitors in most of the same markets, the cable telecommunications companies.

The Panel also considered how convergence could create complications for firms that provide both telecommunications and broadcasting distribution services, depending upon how they were first established and authorized to operate (as telecommunications carriers or broadcasters). For example, if a telecommunications company also provided broadcasting distribution services, and if foreign ownership restrictions were liberalized under the *Telecommunications Act*, the company may not be able to accept additional foreign investment due to restrictions in the *Broadcasting Act*. Thus, according to the Panel, changes to one statue would need to mirror the other, if the policy were to succeed. Moreover, the Panel further concluded that if these restrictions were removed only from the *Telecommunications Act*, it could be damaging to the Canadian broadcasting distribution sector.[21]

iv) Recommendations from the Competition Policy Review Panel

As part of Budget 2007, the Government of Canada established the Competition Policy Review Panel to undertake a comprehensive review of the competition and investment framework in Canada. The Panel was tasked with examining the *Investment Canada Act* in addition to the *Competition Act*, as well as reviewing foreign investment restrictions in certain sectors. The Panel's 2008 report, *Compete to Win,*[22] also recommended a very similar (including reference to the Telecommunications Policy Review Panel's report) two-phased approach to liberalizing foreign ownership restrictions, including a second stage which would seek removal of restrictions for broadcasting distribution undertakings after a review of the broadcasting industry in Canada.

This panel also addressed the issue of convergence, indicating that it was becoming more difficult to distinguish between telecommunications and broadcasting distribution, and how future policy reviews would have to take this into consideration.[23]

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20 Ibid.

21 Ibid.

22 *Compete to Win*, Competition Policy Review Panel, (2008), List of Panel Recommendations http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/00068.html.

23 Ibid.

> The Internet and other information and communications technologies have changed the business landscape for these industries. In essence, with convergence, it is increasingly difficult to define distinct “telecommunications” and “broadcasting” industries or sectors, particularly when it comes to delivery or distribution networks.

In summary, between 2003 and 2008, four prominent reports proposed recommendations regarding foreign ownership restrictions in the Canadian telecommunications sector, as follows:

- two of the four reports recommended a two-step (or phased) approach to removal of the restrictions;
- one report recommended complete removal of restrictions for telecommunications common carriers and broadcasting distribution undertakings; and
- one report recommended no removal of restrictions.

C. The Globalive Case

Currently, a company interested in providing wireless telephony service in Canada must meet two (amongst several) key regulatory requirements:

- successfully bid on radio spectrum via the Industry Canada auction;[24] and
- prove it is Canadian in terms of ownership and control.

Per convention, Industry Canada can issue a license to a successful bidder on the provision the firm meets the Canadian ownership and control requirements.

In 2008, Industry Canada auctioned advanced wireless services (AWS) spectrum licences; Globalive Wireless successfully bid $442 million for 30 of them. Globalive Wireless was part of Globalive Investment Holdings Corp. (GIHC), which in turn, was owned by the three following companies (see Figure 1):[25]

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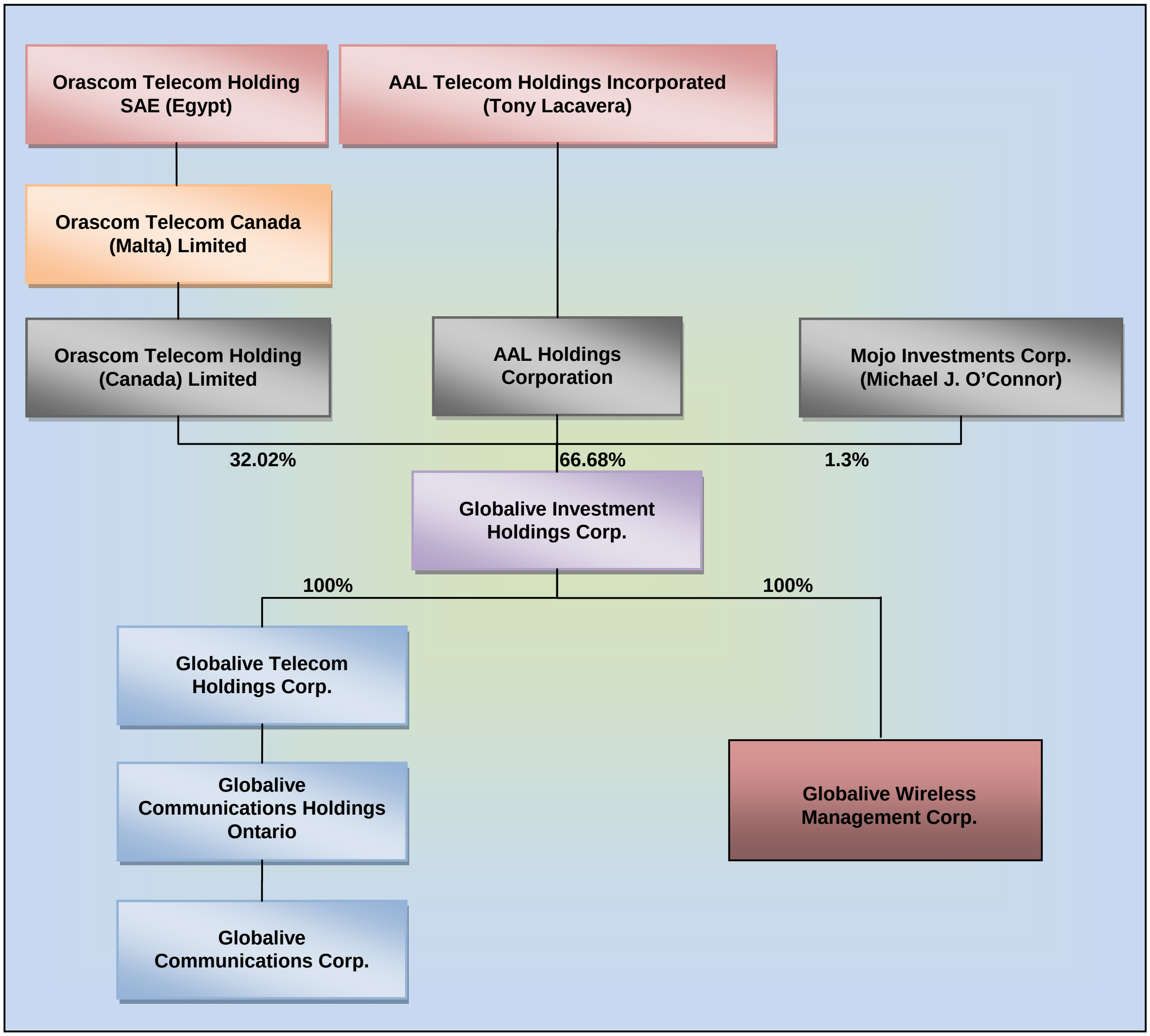
24 Industry Canada is responsible for managing the radio spectrum; this includes auctioning spectrum licenses to those parties interested in providing wireless telephony services.

25 Globealive’s corporate structure has changed between 2008 and 2010. The company data presented here reflects the state of the company during the period of the CRTC assessment of 2009.

- AAL Holdings Corporation (66.68%);
- Orascom Telecom Holding (Canada) Limited (32.02%)
- Mojo (1.30%).

It is important to note that while AAL Holdings owned two-thirds of GIHC (Globalive's Parent Company) voting interest, when the combined value of voting and non-voting shares was included, Orascom (an Egyptian-based company) was evaluated as controlling 65.1% of Globalive's equity. Furthermore, the Orascom loan agreements were worth approximately $500 million, making it the holder of the vast majority of Globalive's debt.

Figure 1—Globalive Ownership Structure[26]



Source: Parliamentary Information and Research Service, with data from CRTC.

Though Industry Canada issued Globalive a provisional license, in its decision of October 29, 2009, the CRTC concluded that Globalive was controlled in fact by Orascom, a non-Canadian entity, and therefore was not eligible to operate as a telecommunications common carrier in Canada.[27] Here are some of the factors the Commission cited in their decision:[28]

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26 References to the company's corporate structure represent the state of ownership at the time of the October 2009 CRTC assessment.

27 Telecom Decision CRTC 2009-678, http://www.crtc.gc.ca/eng/archive/2009/2009-678.htm.

28 Ibid.

- the high level and value of Globalive debt held by Orascom;
- that Orascom is the principle source of Globalive's technical expertise; and
- that Orascom has the ongoing ability to determine Globalive's strategic decision-making activities.

On December 10, 2009, via Order-in-Council PC 2009-2008, the Governor-in-Council varied the CRTC decision, thus allowing Globalive to operate in Canada.[29] (The *Telecommunications Act* allows for this per Section 12).

It should be noted that both the Cabinet and the CRTC determined that Globalive met the quantitative Canadian ownership requirements (in terms of voting shares). Additionally, both agreed the company met the terms of the 80% rule for board composition. Therefore, both bodies agreed that Globalive met the *de jure* requirements for Canadian ownership.

Where the Cabinet did not agree with the CRTC was with regard to the control in fact test as applied to Globalive (the *de facto* test of control). In its 2009 variance to the CRTC decision, the Cabinet concluded that Globalive *did* meet the Canadian control in fact requirements under relevant legislation, and was thus entitled to operate in Canadian markets. Currently, Globalive is offering mobile telephony service in Canada under the brand "Wind Mobile."[30]

Finally, it should be noted that Public Mobile has applied to the Federal Court of Canada for a judicial review of the Governor-in-Council variance of the CRTC decision on Globalive.[31] Public Mobile CEO Alek Krstajic aims to clarify if this variance represents "a change in the law" that would "see all wireless companies receive the same access to foreign capital."[32] The case is still before the Court.

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29 Order-in-Council PC 2009-2008 http://www.ic.gc.ca/eic/site/ic1.nsf/vwapj/PC2009-2008-eng.pdf/$file/PC2009-2008-eng.pdf.

30 Current as of May, 2010.

31 Federal Court of Canada, http://cas-ncr-nter03.cas-satj.gc.ca/IndexingQueries/infp_queries_e.php.

32 Public Mobile, http://blog.publicmobile.ca/blog/tag/federal-court-ruling/

CHAPTER 2—FOREIGN OWNERSHIP RESTRICTIONS—THE ECONOMIC DIMENSION

It would perhaps be unnecessary to examine the economic dimension of removing foreign ownership restrictions if the current Canadian telecommunications industry was considered a world leader in terms of consumer price, level of services, and mobile phone penetration. Commentators on both sides of the foreign ownership issue have, however, described the Canadian telecommunications sector—in particular the wireless segment—as an industry that is "complacent"[33] and one that enjoys higher than "normal" profit margins. This chapter first examines some of the market features of Canada's telecommunications industry that were brought up by witnesses during Committee meetings to justify removal of foreign ownership restrictions. It then examines the arguments put forth by some witnesses as to the how the elimination of foreign ownership restrictions could improve these market characteristics.

A. Some Market Features of Canada's Telecommunications Industry

i) Access and Use

Based on a study published in 2009 by the International Telecommunications Union (ITU),[34] Canada ranked 19th of 154 countries in terms of information and communication technologies (ICT) development (based on 2007 data). To measure this development, the ITU developed an index (the "ICT Development Index") that includes the following indicators:

- ICT access (40% weight)

    1) Fixed telephone lines per 100 inhabitants

    2) Mobile cellular telephone subscriptions per 100 inhabitants

    3) International Internet bandwidth (bit/s) per Internet user

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33 The word "complacent" was used by Richard Paradis (President, Groupe CIC) in his testimony in front of the Committee, Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, March 30, 2010, 0915.

34 *Measuring the Information Society- The ICT Development Index*, 2009, International Telecommunications Union, 96 pages, http://www.itu.int/net/pressoffice/backgrounders/general/pdf/5.pdf.

4) Proportion of households with a computer

5) Proportion of households with Internet access at home

- ICT use (40% weight)

6) Internet users per 100 inhabitants

7) Fixed broadband Internet subscribers per 100 inhabitants

8) Mobile broadband subscribers per 100 inhabitants

- ICT skills (20% weight)

9) Adult literacy rate

10) Secondary gross enrolment ratio

11) Tertiary gross enrolment ratio

As recently as 2002, Canada ranked 9th overall in ICT development, which means that between 2002 and 2007, Canada slipped ten positions in the rankings. Of the top 40 countries in the ICT development index in 2007, Canada experienced the worst decline in status since 2002. Other countries that also experienced a significant drop were China and Belgium, which both fell nine places. It is important to note that Canada's ICT development index did improve from 2002 to 2007; however, its rate of increase was much lower than that of other countries. The United States ranked two positions ahead of Canada, taking the 17th place while Australia, often considered Canada's "sister" country in terms of population density and geography, ranked five positions ahead.

Regarding the "Access" sub-components of the ICT index, Canada ranked in 15th place, ahead of Australia by four positions and ahead of the United States by six positions. Canada was also in 15th place for "Access" in 2002. With respect to the "ICT Use" sub-component of the index, Canada ranked 21st overall, faring worse than Australia by nine positions and worse than the United States by five positions. Canada was in fourth place with respect to "ICT Use" in 2002. This sub-component of the index is therefore largely responsible for the lacklustre progression of Canada between 2002 and 2007 regarding ICT development.

Table 1 summarises the ITU study results for five countries. Although Canada generally fared better in 2002 than the other countries presented in Table 1 (with the exception of Sweden), it generally performed worse than the same countries in 2007.

Table 1—Positions of Selected Countries in the ICT Development Study in 2002 and 2007

	ICT Development Overall Index		"ICT Access" Sub-component of the Index		"ICT Use" Sub-component of the Index	
	2002	**2007**	**2002**	**2007**	**2002**	**2007**
Canada	9th	19th	15th	15th	4th	21st
United States	11th	17th	16th	22nd	10th	16th
Australia	13th	14th	19th	19th	15th	12th
United Kingdom	10th	10th	8th	10th	16th	14th
Sweden	1st	1st	1st	1st	3rd	3rd

Source: *Measuring the Information Society*, The ICT Development Index, International Telecommunication Union, 2009.

Because of the current wireless rates, Canada is one of the countries with the least penetration in that sector. The rate of penetration in the wireless sector is still at around 67% in Canada, compared to 80% or 90% in Europe.
Richard Paradis, President (Groupe CIC), Standing Committee on Industry, Science and Technology, *Evidence,* 3rd Session, 40th Parliament, Tuesday, March 30, 2010, 0930.

The ITU study presents a broad measure of information and communication technologies advancement for various countries. Discussions at the Committee's meeting, however, very much focused on the wireless segment. The Organisation for Economic Cooperation and Development (OECD) publishes *Communications Outlook,* wherein it presents data on cellular mobile penetration. According to *Communications Outlook 2009,*[35] Canada ranked last in 2007 among the 30 countries surveyed in terms of cellular mobile subscribers per 100 inhabitants. Canada had 62.1 subscribers per 100 inhabitants; this was just slightly lower than Mexico, which had 65.1 subscribers per 100 inhabitants, but well below levels of the United States, Australia, the United Kingdome and Sweden as shown in Table 2. It should be noted that Canada was in 27th position in terms of mobile penetration in 2002 according to the OECD study.

35 OECD Communications Outlook 2009, http://www.oecd.org/document/44/0,3343,en_2649_34225_43435308_1_1_1_1,00.html.

Table 2—Cellular Mobile Subscribers per 100 inhabitants, 2002 and 2007

	Cellular Mobile Subscribers per 100 inhabitants		
	2002	**2007**	**Position in 2007**
Canada	38.2	62.1	30th
United States	51.3	87.1	25th
Australia	64.1	102.1	22nd
United Kingdom	83.5	121	6th
Sweden	87.5	112.2	14th

Source: OECD Communications Outlook 2009.

As mentioned during the Committee's hearings, although Canada is considered a laggard in terms of mobile cellular penetration, it is considered a leader in terms of broadband subscribers. Table 3 shows that Canada generally performed better than its peer group on this metric. This being said, Canada's lead has narrowed considerably between 2002 and 2007. Many countries are now within striking distance of Canada's leadership position in broadband penetration, as shown in Table 3.

Table 3—Total Broadband Subscribers per 100 inhabitants, 2002 and 2007

	Total Broadband Subscribers per 100 inhabitants		
	2002	**2007**	**Position in 2007**
Canada	12.13	27.49	9th
United States	6.69	23.29	15th
Australia	1.84	23.20	16th
United Kingdom	2.31	25.68	11th
Sweden	9.76	30.13	8th

Source: OECD Communications Outlook 2009.

Moreover, a February 2010 study from the Berkman Centre for Internet and Society at Harvard University ranked Canada 16th in terms of broadband penetration out of 30 OECD countries and 17th in terms of speed. The Berkman study describes Canada's performance in terms of broadband penetration as follows:[36]

> The CRTC indeed opens its August 2009 Communications Monitoring Report with a self-congratulatory reference to the fact that Canada has the highest level of penetration of all the G7 countries. While factually true, an alternative view of Canada's performance might

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36 *Next Generation Connectivity: A Review of Broadband Internet Transitions and Policy from Around the World*, Final Report, February 2010, Berkman Centre for Internet and Society at Harvard University p.168.,http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Berkman_Center_Broadband_Final_Report_15Feb2010.pdf.

look at several factors. In December of 2003, Canada had the second highest level of broadband penetration per 100, second only to South Korea. By September of 2008, it ranked 10th by the same measure. Its numbers on speed and price are worse.

The Committee notes that latest data both for the ICT index and the OECD study are for 2007, and that much could have changed in the intervening period since three years is almost an eternity in the fast changing telecommunications industry. Nevertheless, Canada's lacklustre progression between 2002 and 2007 and its stubbornly low level of mobile cellular penetration are worrisome.

ii) Consumer Price Comparisons

Although there was a general consensus among witnesses that consumer prices were higher in Canada for certain wireless services such as mobile phone and text messaging, some witnesses argued that price comparisons are inherently difficult to make across the global telecommunications industry. Indeed, comparing prices of telecommunications services is not like comparing the price of a relatively homogenous product such as gasoline across countries; it is a complex endeavour and results are often heavily influenced by the methodology used. In fact, Internet, phone and cable are often "bundled" into a pricing package making it difficult to estimate precisely the price of each service.

> I really think that many of these studies, particularly many of the OECD studies, have a lot of malarkey in them. The OECD wireless study, for example, shows the U.S. as the most expensive wireless country in the world. Most people think the U.S. has a very competitive wireless industry.
> **Mr. Kenneth Engelhart (Senior Vice-President, Regulatory, Rogers Communications Inc.), Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010, 0935 .**

A brief overview of international price comparisons would seem to substantiate this claim. Both the ITU and OECD studies provide price comparisons that arrive at starkly different conclusions for some indicators, particularly with respect to the broadband segment. For example, among 29 countries in 2008[37], Canada was the country with the 2nd lowest broadband prices in the ITU study.[38] However, in the OECD study,[39] Canada ranked in 22nd, 23rd, and 28th place with respect to price for low-speed, medium-speed and high-speed connections, respectively (first place in the rankings indicates the lowest prices).

37 To make comparisons between the two studies, only countries surveyed by both studies were taken into account.

38 In terms of methodology, the ITU study eliminates the "fluctuating exchange rate" issue and the problem associated with level of income by presenting prices as a percentage of gross national income (GNI) per capita.

39 The OECD study compares prices in U.S. dollars using the purchasing power parity exchange rate.

With respect to fixed (wire line) telephony, Canada is the country with the 18th lowest prices in the ITU study. In the OECD study, Canada has the lowest prices for high-use residential fixed lines, the 3rd lowest prices for medium use, and the 6th lowest prices in the low-use segment. In the business fixed line segment, Canada has the 20th lowest prices in the OECD study for small/home office, and the 15th lowest prices for medium-sized enterprises.

There is no questions Canadians are being gouged by cable and telecom.
Alliance of Canadian Cinema, Television and Radio Artists, written submission to the Standing Committee on Industry, Science and Technology, April 26, 2010.

In the mobile phone market segment, Canada has the 13th lowest prices among 29 OECD countries in the ITU study. According to the OECD study, Canada has the 20th lowest price in the mobile low-use market segment; the 26th lowest prices in mobile medium-use; and the 18th lowest prices in the mobile high-use segment. Table 4 summarises results for Canada and other countries for the mobile phone market both for the ITU and OECD studies (using medium use results in the case of the OECD study).

Table 4—Position of Selected Countries in terms of Mobile Cellular Prices (first place indicates the lowest price)

	OECD Study (medium use)	**ITU Study (all use)**
Canada	26th	13th
United States	28th	9th
Australia	16th	18th
United Kingdom	13th	12th
Sweden	3rd	3rd

Source: *Measuring the Information Society*, The ICT Development Index, International Telecommunication Union, 2009 and OECD Communications Outlook 2009.

The 2010 Berkman study (referenced earlier) ranked Canada as the country with the 19th lowest prices out of 30 OECD countries in terms of current generation broadband speed. The Berkman study further ranked Canada 18th out of 19 countries on price for next generation speeds, and provides the following statement on broadband pricing:[40]

> Our company-level pricing study for the highest-speed offers in the countries we observe here locates all of the Canadian companies but one in the cluster with the slowest speeds and highest prices.

40 *Next Generation Connectivity: A Review of Broadband Internet Transitions and Policy from Around the World*, Final Report, February 2010, Berkman Centre for Internet and Society at Harvard University p.168., http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Berkman_Center_Broadband_Final_Report_15Feb2010.pdf.

Given that contradictions would seem to exist in terms of retail price comparisons in some market segments, the results should be interpreted with caution. This message was relayed to the Committee by several witnesses. Nevertheless, there was a general consensus that mobile cellular prices in Canada are generally higher than in other countries. The Committee notes that results from the two studies noted in this section do not contradict this assertion.

iii) Level of Concentration

By all accounts, the level of concentration in the Canadian telecommunications industry is high. This is particularly the case in the mobile network segment where three providers (Rogers, Bell and Telus) had a 95.7% market share in 2007,[41] based on data from the OECD. Canada's situation in this regard is not unique. Table 5 presents the level of concentration of the three largest mobile network operators in various countries. High levels of concentration for mobile networks are the norm, rather than the exception. Drawing a link between Canada's relatively poor performance in terms of cellular mobile subscribers and the level of concentration in the industry should be made cautiously given that many countries that have similar levels of concentration in the mobile network operators have high cellular mobile penetration (e.g., Germany, Finland and New Zealand).

Table 5—Market Share of the Three Largest Mobile Network Operators in Selected Countries, 2007 (percentage market share based on the number of subscribers)

Country	Market Share of Three Largest Operators
Canada	95.7 %
Australia	92.6 %
Finland	97.9%
France	94.7 %
Germany	86.7 %
Korea	100 %
New Zealand	100 %
Norway	89.7 %
United Kingdom	73.2 %
United States	81.1 %

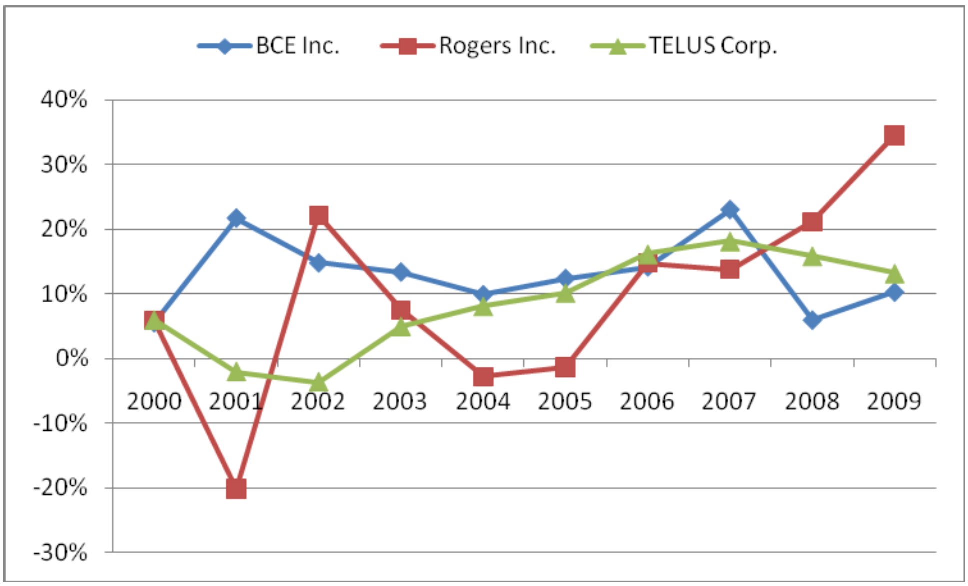
Source: OECD Communications Outlook 2009.

41 Based on the number of subscribers.

iv) Operating Margins in Wireless and Broadcasting Distribution

The return on equity and the profit margins of the three major telecommunications common carriers were metrics that were also mentioned by several witnesses during the Committee's hearings. Witnesses on both sides of the foreign ownership debate made reference to the strong operating margins in the wireless market segment in particular. Figure 2 presents data on the return on equity for Bell, Rogers and Telus (hereinafter referred to as the "large incumbents") over the last ten years.

Figure 2—Return on Equity for Canada's Largest Telecommunications Common Carriers



Source: Data-Thomson Reuters, via MSN Money, http://money.ca.msn.com/, Graphic-Parliamentary Information and Research Service, Library of Parliament.

The large incumbents are holding companies with multiple business segments. The data in Figure 2 are therefore aggregate data representing an average across all business segments. Testimony presented during the Committee's hearings focused heavily on profit margins in the wireless industry, and to some extent, in the broadcasting distribution industry. Specific data for the wireless business segment of the large incumbents are therefore also presented here. Operating margins[42] for the wireless segment are shown in Table 6. Capital expenditure intensity, which is capital expenditures divided by operating revenue, is also presented for each firm.

> *It is obvious that the entry of new players into the system may result in declining profit margins. At the same time, I admit that, in my view, profit margins of 46% show that there may be a lack of competition and that lower profit margins may be entirely fine and viable even for a listed business.*
> **Ms. Solange Drouin (Vice-President and Executive Director, Public Affairs, Association québécoise de l'industrie du disque, du spectacle et de la vidéo), Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, Thursday, April 1, 2010, 1005.**

Table 6—Operating Margins and Capital Expenditure Intensity of Canada's Largest Wireless Operators

	Bell Wireless		**Rogers Wireless**		**TELUS Wireless**	
	2009	**2008**	**2009**	**2008**	**2009**	**2008**
Operating Margin	39.8%	39.5%	45.2%	44.2%	40.8%	43.0%
Capital Expenditure Intensity	14.8%	11.0%	13.0%	14.7%	16.3%	11.8%
Operating margin net of Capital Expenditure Intensity	**25.0%**	**28.5%**	**32.2%**	**29.5%**	**24.5%**	**31.2%**

Source: 2009 Annual Reports (BCE, Rogers, TELUS). Operating margin is earnings before interest, taxes, depreciation and amortization as a percentage of operating revenue. Capital expenditure intensity is capital expenditure as a percentage of operating revenue. Operating margin net of capital expenditure intensity is operating minus capital expenditure intensity. For Rogers, numbers on property, plant and equipment additions were used to estimate capital expenditures.

As shown in Table 5, wireless is a high margin business and this could help explain the interest of new players in entering the wireless market segment in Canada. Even after subtracting capital expenditures, operating margins remain substantial. Importantly, the wireless market in Canada would appear to be a "stable oligopoly" since

42 It is important to note that "operating margin" is not the same as earnings. Operating margin are "Earnings before interest, taxes, depreciation and amortisation" or "EBITDA."

[...] the large incumbents, whose ubiquitous networks were in significant measure funded by the foreign capital now not available to competitors, can leverage their economies of scale and free cashflow to significantly but incrementally invest in their existing networks. This investment is inherently less risky and consequently inherently more attractive to Canadian sources of investment.
Mr. Chris Peirce (Chief Corporate Officer, MTS Allstream Inc.), Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010, 1010.

operating margins for the three major players are similar, and not much disparity exists in their respective market shares.[43] This is in contrast to the U.S. market—which is also a highly concentrated market—where the third player is struggling to maintain market share and is experiencing much lower operating margins than the two larger players. In Canada, the wireless business segment has been an important source of positive cash flow in the last two years for the large incumbents compared to their other business segments. For example, operating margins were smaller, and capital expenditure intensities higher in the last two years in the wire line business segment for Bell and TELUS, which are large incumbents in this market. The cash flow generated by the wireless business, once interest and taxes are paid, could be deployed by the large incumbents to repurchase debt or as a source of capital for expansion and re-investment. This is an important factor to consider when securing capital, and could explain, at least in part, why the large incumbents have expressed that they are not currently "capital-constrained" and are generally nowhere close to their quantitative foreign ownership limit.

Broadcasting distribution was also mentioned during the Committee's hearings as being a high profit margin business. The CRTC publishes aggregate data on operating margins in broadcasting distribution. These data are presented in Table 7.

Table 7—Operating Margins in Broadcasting Distribution (all services) in Canada

	Operating Margin	Operating Margin after Depreciation and Amortization	Operating Margin after Depreciation, Amortization and Interest cost
2005	42.7%	23.2%	15.1%
2006	41.7%	22.3%	12.0%
2007	40.2%	21.2%	13.0%
2008	44.5%	25.3%	9.9%
2009	45.1%	25.1%	17.9%

Source: CRTC, http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/dist2009/bdu1.htm.

43 According to the CRTC, Rogers had a 38% market share of wireless subscribers in 2008, while Bell and Telus each held 27%, CRTC Communications Monitoring Report 2009, p. 235, http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2009/2009MonitoringReportFinalEn.pdf.

Financial data for the wireless and broadcasting distribution industries suggest that large incumbents in these business segments enjoy a stream of cash flow that provides them with an important source of capital to fund new investments. This "free" cash flow in turn lowers their risk profile, which decreases their cost of capital. This element is examined in more detail in the next section in the context of foreign ownership restrictions.

B. Addressing some of the Market Features: Macro-Economic Arguments in Favour of the Removal of Foreign Ownership Restrictions

> Foreign direct investment makes domestic firms compete harder. They make them innovate more. They put pressure on them to reduce inefficiency, reduce their prices to consumers, and increase their offerings.
> **Ms. Marta Morgan, Assistant Deputy Minister, Strategic Policy Sector, Department of Industry, *Evidence*, 3rd Session, 40th Parliament, March 25, 2010.**

The market features described in the previous section have been used by some commentators to argue in favour of removing foreign ownership restrictions. They suggest that such a change in policy would ultimately increase the level of competition in the Canadian wireless market, thereby improving some of the market characteristics. Previous reports on foreign ownership restrictions have put forth several macro-economic arguments in favour of removing them. For example, the 2006 Telecommunications Policy Review Panel Report points out that the entry and growth of foreign firms adds to competitive pressures on all firms in the market. The report also suggests that foreign investment can be a driver of economic efficiency through the "adoption" of foreign technology, the appropriation of investments in human capital and adoption of new strategic management approaches by domestic firms.[44] These arguments were echoed during the Committee's hearings by Industry Canada officials and academics. In particular, Professor Randall Morck from the University of Alberta discussed contributors to productivity—namely competition, specialisation and innovation—and how foreign ownership restrictions interact with each element to slow productivity growth. Professor Walid Hejazi of the University of Toronto emphasised three points. First, Canada's recent performance as a destination for foreign direct investment has been highly disappointing. Second, telecommunications is a key infrastructure industry and enhanced foreign participation would likely yield significant benefits to the overall Canadian economy. Third, keeping the telecommunications sector in Canadian hands comes at a cost: reduced competitiveness and prosperity. Similarly, Professor Steven Globerman of the Western Washington University stressed that foreign inward investment increases productivity in the host economy.

44 Telecommunications Policy Panel, *Afterword*, Final Report 2006.

C. Addressing some of the Market Features: Micro-Economic Arguments in Favour of the Removal of Foreign Ownership Restrictions

A strong consensus existed among all telecommunications common carriers (large incumbents, small incumbents and new entrants) heard by the Committee that the main effect, at the firm level, of removing foreign ownership restrictions would be to lower the cost of capital. This aspect is examined in the following sections.

i) Name of the Game: The Cost of Capital

Since the study by the Committee was triggered by a specific case, namely the Globalive Wireless case (outlined in the introduction), arguments put forth by smaller players and new independent entrants in the wireless segment (hereinafter referred to as "SPNEs") were also micro-economic in nature. Their comments focused on the need to remove restrictions on foreign ownership in order to lower the cost of capital for SPNEs. The importance of the cost of capital results from the very nature of the telecommunications industry: it is, and has always been a highly capital intensive business. Fixed costs are high and financial leverage typically very substantial. The significance of capital requirements was described by Alek Krstajic of Public Mobile as follows:[45]

> When you look at what you need the capital for, you need it to build your network, you need it to create your brand, establish your distribution, and then a cashflow trough. Remember, we are pre-revenue companies; we are starting from scratch. Think of us as an infant that needs to be nurtured. We're not an 18-year-old yet. We're really in a situation where there is no question, we're going to require more capital. It's not just access to capital, but on what terms and what the price of that capital is. [...]
>
> [C]apital is the lifeblood. Capital is what allows you to grow and play the game harder. By allowing foreign capital or a higher degree of foreign capital for Globalive, you're allowing them to have six players on the ice, and you're causing Public Mobile and everybody else in the game to have only five players on the ice. That's just wrong.

It should be noted that minimising the cost of capital is important for everybody, but is critically important for SPNEs in the wireless segment. The reason for this is that the large incumbents can count on the "free" cash flow that their incumbent position provides them. As explained in the previous section, the large incumbents could use this cash flow in a variety of ways including to fund expansion. The cash flow provided by their current asset base constitutes, for the large incumbents, self-generated capital and decreases their risk profile. This lower risk profile in turn lowers the risk premium demanded by capital markets. Therefore, the lower cost of capital for incumbent players in the wireless market could come via two intrinsically linked channels: ***1) Lower levels of outside capital***

45 Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, April 20, 2010.

required because of self-generated capital; and 2) Lower risk premiums demanded by capital markets. New entrants are in no such situation. They typically cannot count on cash flow provided from their current asset base to finance part of their capital needs. Almost all their capital has to be sourced from capital markets. This makes the cost of capital a more critical factor for SPNEs than for large wireless incumbents.

ii) The Link between Cost of Capital and Foreign Ownership Restrictions

Having established the critical importance of having as low a cost of capital as possible, particularly for SPNEs, the question is then: how do Canada's foreign ownership restrictions in the telecommunications industry potentially increase the cost of capital? As explained during the Committee's hearings, the more diverse the potential pools to supply this capital requirement, the better. As a result of Canadian ownership restrictions, SPNEs are limited to the Canadian capital market (traditionally more risk averse than the foreign market) for the majority of their capital requirements. This constitutes a competitive disadvantage since the SPNEs business model is inherently more risky. Access to a greater variety of capital pools could therefore mean a lower cost of capital for SPNEs. The representative of Globalive Communications Corporation offered the following comment to illustrate the link between cost of capital and access to foreign capital:[46]

> Canadian Banks and pension funds may be willing to loan money in exchange for those promising the opportunity to generate a near-monopoly rent. Canadian Banks and pension funds, seem however unwilling to finance new entrants given the risks involved. One certain option for breaking this vicious circle is more foreign investment.
> **Written submission by the Coalition of Internet Service Providers Inc to the Standing Committee on Industry, Science and Technology.**

> We talk a lot about competition in wireless. It's no different from a capital perspective: the bigger the pool and the fewer the restrictions structurally on how it can be invested, the more the cost will go down. And the more you can de-risk—the more successful you become, having revenues, having subscribers—the more attractive it becomes.

For SPNEs, foreign ownership restrictions, because of the limit they impose on the potential sources of capital, result in a higher cost of capital. This could hamper the ability of SPNEs to pose a significant competitive threat to the large incumbents in the wireless market. Some witnesses suggested that in the absence of this competitive threat, the market features presented in previous sections may not improve. Not surprisingly, while SPNEs (MTS Allstream, Public Mobile, Globalive) forcefully argued in favour of removing foreign ownership restrictions when they appeared before the Committee, the positions of the large incumbents were more nuanced. Bell was in favour of lowering Canadian ownership requirements to 51% and maintaining the “control in fact” provision; Rogers had no formal position on the merits of changing Canada's foreign ownership rules; Telus supported liberalisation providing that certain conditions are met.

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46 Ibid.

Spokespersons for broadcasting distributors (Shaw, Rogers) were also of the view that the main implication of current foreign ownership restrictions is to increase the cost of the capital. They pointed out, however, that access to capital does not represent a challenge for them at the present time.

It has been argued that foreign ownership restrictions place quantitative limits on the ownership of voting shares, not on other forms of capital, and that, from this perspective, foreign ownership restrictions in Canada do not impose severe constraints on supplies of foreign capital. However, some proponents (Professor Morck, MTS Allstream) of the removal of foreign capital restrictions indicate that this statement does not take into account important factors:

- If foreign ownership of non-voting shares and debt reaches a point where it represents an important portion of outstanding non-voting shares and debt, then a firm could be deemed to be controlled in fact by foreigners under the *de facto* test. This factor makes foreign capital typically reluctant to push its ownership of debt and non-voting shares above a certain threshold.

- If a company defaults on its debt, a debt restructuring process typically ensues whereby debt is often converted into equity. Given the limit on foreign ownership, it is not clear under this scenario to what extent debt owned by foreigners could be converted into voting equity. This is a further factor which could make foreigners reluctant to invest capital heavily in a Canadian wireless operator through ownership of debt.

CHAPTER 3—FOREIGN OWNERSHIP RESTRICTIONS—SOCIAL AND EQUITY DIMENSIONS

Based on the economic narrative examined in Chapter 2, the arguments in favour of removing foreign ownership restrictions appear compelling. Indeed, to the extent that removing foreign restrictions could help increase competitive pressure in the wireless market, and potentially improve some of the market features, such a change in policy would likely be beneficial to the economic welfare of Canadians. This is the economic case. However, there are also important social and equity dimensions to the foreign ownership question. This section examines the elements related to those aspects.

A. Possible Equity Implications of the Status Quo

Public Mobile, a new entrant in the wireless market that appeared before the Committee, suggested that the extremely low level of cellular mobile penetration is indicative of the fact that the large incumbents are not interested in servicing markets that are considered less lucrative (rural, low-density, or lower-income individuals). Public Mobile has made no secret that it is going after the markets that are underserved by the large incumbents:[47]

> Public Mobile, unlike some of the other new entrants, is actually not competing head to head with some of the incumbents. We aren't going upmarket. We aren't offering BlackBerrys and smart phones. We're actually aimed directly at what we refer to as "the unserved market". We're going after the working-class Canadians who require predictability in their bill. If you did the research and really looked into why working-class Canadians, that one third of Canadians, don't have cell phones, it's because they're value-conscious. They live paycheque to paycheque.

The Committee does not have any evidence to substantiate the claim that the large incumbents are more interested in going after the high-end market segments, but notes that the low level of cellular mobile penetration in Canada relative to other countries does indicate that a large swath of the Canadian population is not using wireless phones at this time. Of course, reasons for this underutilisation could be multi-fold. For example, since wireline and wireless are sometimes considered substitutes, a reasonably priced and well served wire line market would act as a deterrent to an increase in cellular phone penetration. A poor wire line infrastructure has in fact been an important catalyst to increasing cellular phone penetration in some countries. Moreover, cultural differences could play a role in the lower Canadian utilisation levels as well. Nonetheless, the difference is so important in mobile cellular penetration between the Canadian market and other OECD markets that the Committee is of the view that pricing in the Canadian

47 Ibid.

wireless market segment must be playing a role to some extent. In particular, the two studies surveyed in Chapter 2 would suggest that Canada is not a low-price country in terms of mobile phone service.

Consequently, some portion of the Canadian population may decide not to own a wireless phone because of pricing concerns. This creates an “equity” issue whereby “working class” Canadians could be priced out of the market. As relayed to the Committee by Alek Krstajic, CEO of Public Mobile, this constitutes an argument against maintaining the status quo on foreign ownership rules to the extent that the current rules do not favour an increase in competitive pressure in the wireless market, which could lead to a decrease in consumer prices and an increase in market penetration.

B. Possible Problems Resulting from the Elimination (or Partial Elimination) of Foreign Ownership Restrictions

i) Differential Treatment of Telecommunications Carriers and Broadcasting Distributors

Officials from Industry Canada indicated to the Committee that the removal of foreign ownership restrictions is under consideration for telecommunications industries only, not for broadcasting industries. Since broadcasting distribution undertakings (BDU) are regulated under the *Broadcasting Act*, a number of witnesses (e.g., MTS Allstream, Shaw, Rogers, Bell, Telus) that are integrated market players (i.e., that are both telecommunications common carriers and BDUs) informed the Committee that they strongly oppose the potential differential treatment of telecommunications carriers and broadcasting distributors with respect to the liberalisation of foreign ownership rules. They indicated that technological convergence has resulted in corporate convergence, and that creating an artificial difference between the two types of businesses from a regulatory standpoint would put them at a competitive disadvantage.

Before the advent of the Internet age, telecommunications carriage and broadcasting distribution were clearly separate undertakings from a technological and corporate standpoint; one was dealing with phone service, the other with television. Technological convergence has changed this reality. In the broadcasting distribution segment, firms that used to be strictly considered phone companies (e.g., Bell) are now going after the market share of what used to be the sole preserve of established BDUs (e.g., Rogers, Shaw, and Videotron). Conversely, these established BDUs are now trying to take a share of the home phone market away from the traditional phone companies. Both types of businesses are competing head to head in the Internet broadband market segment. In the wireless segment, two of the dominant players (Bell and Telus) have their origins in the traditional wireline phone segment and one (Rogers) has its roots in the traditional broadcasting distribution segment. Given this reality, it could be argued that the integrated players (Bell, Telus, Rogers, Videotron, Shaw, MTS Allstream) are direct competitors in the fixed phone, Internet broadband and cable distribution segments.

Moreover, as a result of the latest spectrum auction, two new entrants in the wireless market are from the traditional broadcasting distribution segment (Videotron and Shaw). Therefore, wireless telephony constitutes an additional market segment where major integrated players will compete against each other.

In this context, it is not surprising to see why these integrated players (Telus, Rogers, Shaw and MTS Allstream) are in favour of removing the ownership restrictions if applied equally to both telecommunications common carriers and BDUs. If foreign ownership restrictions are removed under the *Telecommunications Act* only, it would expose the integrated players (i.e., those that are both telecommunications common carriers and BDUs) to the competitive threat of non-integrated players (pure-play telecommunication common carriers) that would have unlimited access to foreign capital.

This competitive threat would perhaps force the integrated players to spin off their telecommunications carriage businesses (i.e., create separate telecommunications carriage subsidiaries) in order to make them eligible to receive unlimited foreign capital investment. Such changes could, however, affect their "integrated offerings" (whereby television, Internet, phone services are bundled in a single package) since phone and Internet services would now be offered by different subsidiaries. Therefore, removing foreign ownerships restrictions for telecommunications common carriers only could be considered inequitable from the integrated players' perspective.

It should be noted that the Telecommunications Review Panel was acutely aware of this issue in its 2006 report. Although it recommended partial removal of foreign ownership restrictions starting with the telecommunications carriage segment as a first step, it also recommended that the federal government undertake a complete review as to how these changes could apply to BDUs without affecting broadcasting content.

ii) The Phased-in Approach

Both the 2006 Telecommunications Review Panel and the 2008 Competition Policy Review Panel proposed a phased-in approach to the removal of foreign ownership restrictions. In the first phase, the federal cabinet would be granted authority to waive foreign ownership restrictions for telecommunications common carriers when a foreign investment is deemed in the public interest. According to both panels, a presumption would be made that foreign investments in any start-up telecommunications common carrier or one with less than 10 % of the total revenues generated in any telecommunications service are in the public interest. The second phase, which would take place only after a complete review of broadcasting policy, would consist of greater liberalisation of foreign investment rules to players of all sizes and would extend this liberalisation to broadcasting distribution undertakings (but not to broadcasters). Large established market players that appeared before the Committee typically opposed a phased–in approach on the ground that it provides an unfair competitive advantage to smaller players or new entrants.

> Therefore, it would be unfair and discriminatory to allow a foreign company to establish a new business in Canada or to acquire an existing telecommunications company with a market share of up to 10%, as proposed by the Competition Policy Review Panel. It would be ironic to provide advantages to foreign competitors while restricting the ability of Canadian companies to access foreign capital.
> **Mr. Jean Brazeau (Senior Vice-President, Regulatory Affairs, Shaw Communications Inc.)**
> If liberalisation of the foreign ownership rules makes sense, it makes sense for all players. Micromanaging the market to change foreign ownership rules for one part of the market today and another part in five years introduces artificial barriers and distortions. It makes no sense to allow large global players to enter the Canadian market and to buy and sell their assets to anyone on the planet without allowing Canadian companies to do the same thing.
> **Mr. Kenneth Engelhart (Senior Vice-President, Regulatory, Rogers Communications Inc.), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010.**

iii) Impact on Employment

Telecommunications carriage and broadcasting distribution cannot be considered in the same manner as a plant producing goods; moving all equipment into another country to take advantage of lower costs is not an option. From this perspective, foreign ownership could appear to be less of a threat to employment levels than is the case in other industries. However, witnesses on both sides of the foreign ownership debate indicated that a decrease in head office jobs (including research and development) in Canada could result from the removal of foreign ownership restrictions. To use a specific example, if Verizon Corporation, a major U.S. telecommunications company, were to acquire the telecommunications carriage and broadcasting distribution activities of Bell Canada, this would likely result in a decrease in the number of head office jobs in Canada. Professor Globerman of Western Washington University offered a dissenting view on this issue. He suggested that global value chains are making location a very fungible item in the elaboration of corporate strategy and that

> What would happen to jobs in the sector in Canada? Of course, direct customer service would remain here. Technicians and their trucks couldn’t be sent to India or Japan. However, all administrative jobs would be transferred elsewhere.
> **Mr. Michel Ouimet (Executive Vice-President, Québec, Communications, Energy and Paperworkers Union of Canada), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 1, 2010, 0910.**

companies are moving activities to where it's efficient to do those activities. In this light, according to the Professor, it could be the case that by saying no to foreigners, Canada is denying itself the opportunity to do more research and development.

Notwithstanding this last argument, loss of head office employment is a possible undesirable by-product of removing foreign ownership restrictions. This undesirable impact has to be weighed against the possible advantages of this policy change described earlier.

iv) The Rural-Urban Digital Divide

It was made clear to the Committee that the first stop on the road to more competition in the wireless segment lies in urban areas. Given higher population density, urban areas are much more profitable than rural areas for telecommunications common carriers. New independent players in the wireless segment (e.g., Public Mobile and Globalive) made no secret that they intend to target urban areas first. They further pointed out that as urban markets become saturated, competition would naturally move to rural areas. According to them, rural areas will eventually reap the benefits of allowing foreign ownership, but with a time lag relative to urban areas. Incumbent wireless operator Rogers Communications made reference to the approach of their new competitors:[48]

> Globalive isn't going to do anything for the rural areas. They are honest about the fact that they are going to only provide service in the major urban areas. None of the new entrants will go to the rural areas. We're already doing a huge amount. This revolution in wireless broadband is something that I would urge this committee to take note of.

The equity issue embodied by the rural-urban divide would perhaps not be a major problem if removal of foreign ownership restrictions led to increased competition and lower prices in urban areas while also benefiting—or at least not harming—consumers in rural and remote areas. A scenario where prices in rural areas increase as a result of increasing competition in urban centers cannot, however, be completely ruled out. Cross-subsidising between profitable and non-profitable business segments is a well known practice in the telecommunications industry. This raises the spectre of cut-throat competition in urban centres leading to higher prices in rural and remote areas through geographical cross-subsidisation practices from major market players in the wireless segment.

48 Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010, 0945.

Some witnesses who appeared before the Committee pointed out that the best way to deal with urban-rural divide issues is through a government direct subsidy program (funded from general revenues). This last option is the one that is typically favoured by economists since it is considered the least market distorting and the most efficient. This option was also recommended by the 2006 Telecommunications Review Panel to fund broadband expansion in areas that are considered less profitable to commercial operators.[49]

> We need maybe to think about something akin to the rural electrification projects that we had many decades ago to get Internet access to smaller, more remote areas. But I think the way to do that is to use general federal tax revenue to subsidize that, not to tax the communication between different companies, basically tax the circulatory system of our economy. It's better just to tax general income when you have something like that rather than tax something that's so critical to so many industries.
> **Mr. Randall Morck (Professor, Department of Finance and Management Science, School of Business, University of Alberta, As an Individual), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010 May 6, 2010.**

Also mentioned in the urban-rural divide debate is the fact that the goal of a business, whether Canadian or foreign-owned, is ultimately to maximise profit, not to achieve a given societal objective. From this perspective, there is not much difference between a Canadian telecommunications company and a foreign-owned one; neither will invest in a project for the sole purpose of providing services to rural and remote areas if the project is not commercially viable. Only government policy could ensure that such investments are undertaken.

v) Market Concentration and Competition in the Long-term

As shown in Chapter 2, most OECD countries have three wireless operators that hold the vast majority of the domestic market share. From this perspective, Canada's situation is not much different than that in other countries. Witnesses indicated that in the long run, the Canadian market cannot possibly sustain eight or nine players in the wireless segment. Therefore, by removing foreign ownership restrictions, Canada could run the risk of having the worst of both worlds: end up with the same number of operators as is the case currently (or even a lower number) and have those few operators be foreign-owned. In such a scenario, the increase in the level of competition resulting from the removal of foreign ownership restrictions could be a temporary phenomenon tantamount to a "hit-and-run", with operating margins and prices being driven down in the short-term by the increase in the number of operators and

> There's absolutely no way the Canadian market can support that number of competitors.
> **Mr. Michael Hennessy (Senior Vice-President, Regulatory and Government Affairs, TELUS Communications)**
> There is no way Canada can support the eight or nine that we will have. So the market will evolve and things will happen the way they typically do and we'll find some equilibrium.
> **Mr. Mirko Bibic (Senior Vice-President, Regulatory and Government Affairs, Bell Canada), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 15, 2010.**

49 Source: Recommendations 8-4 and accompanying text, http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/rx00062.html.

the removal of foreign ownership restrictions. This would ultimately encourage consolidation through buy-outs or bankruptcies of the weaker elements. The end picture could be an increase in market concentration, a lower level of competition and perhaps even higher prices.

Professor Globerman from Western Washington University indicated that it should be precisely the role of the Competition Bureau to protect and promote competitive markets and prevent this scenario from happening. In contrast, Peter Murdoch (from Media, Communications, Energy and Paperworkers Union of Canada) took issue with relying on the on the Competition Bureau:[50]

> [Y]ou heard that *Canada's Competition Act* will prevent large foreign companies from buying up Canadian telecommunications firms and acquiring market dominance. But even domestically this legislation has not worked well. It certainly has not stopped Canada's cable systems from buying up their competitors so that five companies now set the prices for 90% of all cable subscribers in Canada.

50 Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 1, 2010.

CHAPTER 4—CANADA'S CULTURAL SOVEREIGNTY DIMENSION

In today's world of technological convergence in the communications industry, the cultural dimension takes on an even larger importance in any discussions on foreign ownership rules. Technological and corporate convergence was by far the most frequently mentioned argument against the removal of foreign ownership rules at committee meetings.

A. Foreign Ownership Restrictions for Telecommunications Common Carriers: Origin and Traditional Arguments in Favour of Maintaining Restrictions

> Canadian broadcasting is a public good. It is critical to the health of our democracy and our unique cultural identity. Broadcasting shapes our opinions, our outlook on our community, our nation, our world and ourselves. It is too influential, too precious and too tied to who we are to let it fall into foreign hands.
> **Alliance of Canadian Cinema, Television and Radio Artists, written submission to the House of Commons Standing Committee on Industry, Science and Technology, April 26, 2010.**

As related to the Committee by Industry Canada officials, Canada's foreign ownership restrictions in telecommunications were implemented relatively recently. The policy framework was first announced in 1987 and formally enacted in 1993. Importantly, a catalyst for the implementation of these restrictions was the free trade negotiations with the United States. Canadian legislators at the time wanted to mirror the prevailing restrictions in the United States and make sure that they could be grandfathered under a free trade agreement. Also mentioned at the time to justify restrictions on foreign ownership were national sovereignty and security reasons, as well as economic, social and cultural well-being. These reasons were mentioned to the Committee as still being valid justifications to maintain foreign ownership restrictions. In particular, witnesses opposing the removal of foreign ownership restrictions stressed the geo-strategic nature of telecommunications infrastructure and noted that surrendering control of telecommunications companies to foreign shareholders would pose a national security issue.

An OECD representative pointed out that much has changed since the 1980s as most countries proceeded to liberalise ownership rules in their domestic market while maintaining their regulations on broadcasting content. According to the OECD, Canada now has the most severe restrictions amongst member-nations:[51]

51 Dimitri Ypsilanti (Head, Information, Communications and Consumer Policy Division, Directorate on Science, Technology and Industry (Paris), Organisation for Economic Co-operation and Development), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 13, 2010, 0900.

> There are 30 OECD member countries, and only three countries have investment and ownership restrictions that apply to all public telecommunication operators. These countries are Canada, Mexico, and Korea. Of the three countries, Canada has the most severe restrictions. Some of the other OECD countries have restrictions in the sense that the state has to be a majority owner of the incumbent telecom carrier. For example, in Switzerland, the Swiss confederation must have majority ownership of Swisscom. France is required to have partial ownership of France Télécom, but not necessarily majority ownership. In the case of France, the state shares are down to about 23%. Canada is the most restrictive in terms of foreign investment in the telecom sector.

The Friends of Canadian Broadcasting, the Writers Guild of Canada, and the Alliance of Canadian Cinema, Television and Radio Artists all indicated that any comparison with other OECD countries is flawed since none of these countries shares an official language and is immediately adjacent to the huge cultural and economic influence of the United States of America.

The Canadian Conference of the Arts and the Society of Composers, Authors and Music Publishers of Canada also submitted an argument in favour of maintaining the status quo that is related to free trade agreements. They pointed out that the cultural exemption granted under the North American Free Trade Agreement (NAFTA) is valid only for the industries that existed at the time, which excludes the new media sector, such as web-based online media for example. They further suggested that opening up the telecommunications and broadcasting industries to foreign ownership could potentially expose the Government of Canada to a NAFTA Chapter 11 challenge by a foreign entity, if this entity feels that Canadian regulations put it at competitive disadvantage relative to a Canadian competitor. In their view, only the lack of foreign investment in the broadcasting sector has made the NAFTA question a non-issue up to now.

B. Foreign Ownership Rules in the Era of Technological and Corporate Convergence

Paradoxically, the most often mentioned argument in favour of maintaining the status quo regarding foreign ownership restrictions - technological and corporate convergence- was not an issue when foreign ownership limitations for telecommunications common carriers were first announced in 1987.

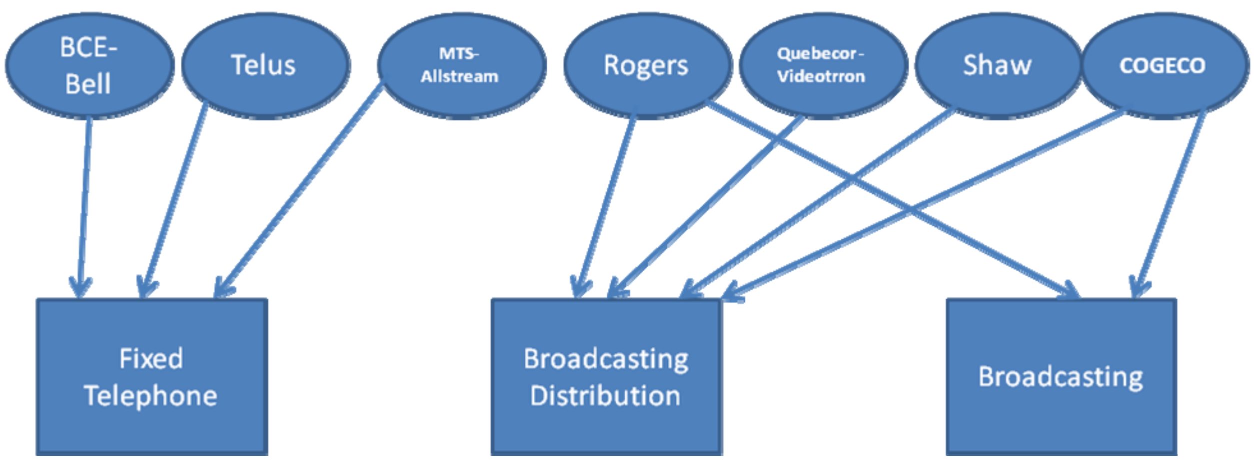
i) Background on Technological and Corporate Convergence

Chapter 3 explained in broad terms the concept of technological and corporate convergence. Technological convergence refers to the fact that a given hardware infrastructure can now be used to provide highly differentiated services. For example, phone companies using traditional wireline connections to provide Internet and television services (e.g., Internet protocol television) and cable companies using cable connection to offer digital phone services. Corporate convergence could refer to two things: “natural” corporate convergence that results directly from technological convergence, or "expansionary" convergence which is akin to more traditional vertical or horizontal integration. Technological and corporate convergence have dramatically changed the competitive landscape in the telecommunications and broadcasting industries. Figure 3 presents some of the current "converged" Canadian players and the typical competitive landscape they were in before the advent of mobile phones and the Internet. Figure 4 presents today's competitive landscape. It would not be an exaggeration, even more so as a result of the latest spectrum auction and latest corporate acquisitions (Shaw acquiring Canwest, Cogeco acquiring Corus' radio stations in Quebec), to say that everyone is now going after everyone else's market.

> Canada clearly needs unified legislation to cover telecom, broadcasting, and radio communications. Other countries have already done this. It is time for us to do the same.
> **Mr. Konrad W. von Finckenstein (Chairman, Canadian Radio-television and Telecommunications Commission), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 13.**

Legislation does not reflect today's converged environment as three separate statutes still govern the communications and information industries: the *Radiocommunication Act*, the *Telecommunications Act* and the *Broadcasting Act*. To take a concrete example, both Bell home phone and Bell Mobility are regulated under the *Telecommunications Act*, while Bell satellite television services (a BDU) are regulated under the *Broadcasting Act.* The CRTC suggested at the Committee hearings that legislators should contemplate merging the three acts. Some market players, such as Rogers and Shaw, showed little interest for such change.

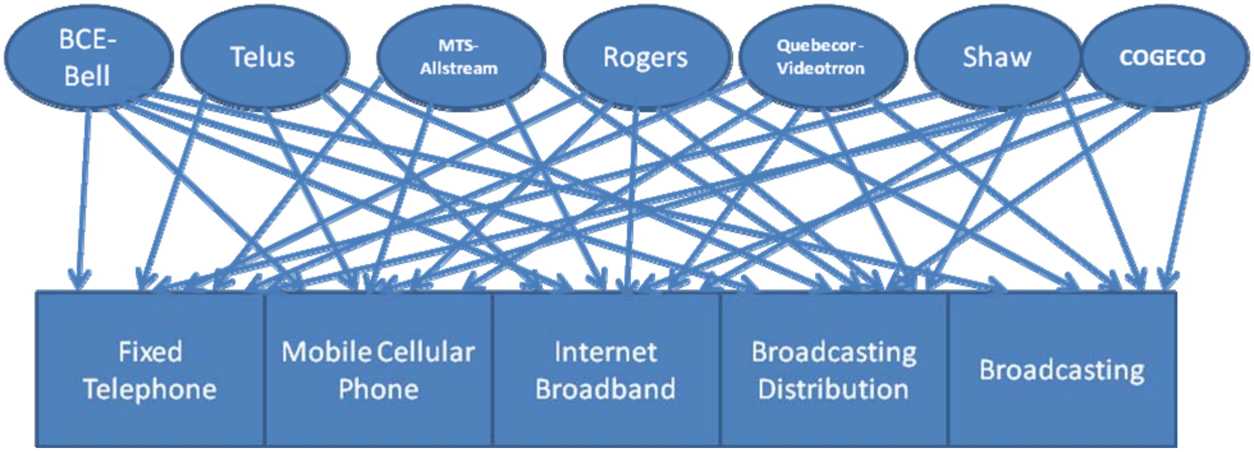
Figure 3—Competitive Landscape before the Advent of Wireless Phones and the Internet for Today's Major Players



Note: The period before the advent of mobile phones and the Internet should be interpreted here as the period ending in approximately the mid-1980s. Some of the companies shown on the diagram did not exist at the time under the name shown, but today's names were used to allow direct comparisons between figures 3 and 4. (For example, Telus is the result of a number of mergers, so Telus on this figure should be interpreted as Telus "ancestor" companies. Similarly, Quebecor did not own Videotron at the time).

Source: Parliamentary Information and Research Service, Library of Parliament.

Figure 4- Competition Landscape in the Era of Convergence for Today's Major Players



Source: Parliamentary Information and Research Service, Library of Parliament.

ii) The Domino Effect of Removing Foreign Ownership Restrictions on Canadian Culture

Since all three acts contain similar -but not completely identical- provisions regarding foreign ownership restrictions, the current situation is not considered by integrated players to be unfair. From the point of view of integrated players, the fairness issue arises, as discussed in Chapter 3, when a change is contemplated in one market segment and not in the other. This could force converged companies to go through costly restructuring in order to be at par with pure-play companies in terms of access to foreign capital, and in the process, impact their capacity to "bundle" services and offer package deals to consumers.

Opponents of the elimination of foreign ownership restrictions have used the above factor to say that, irremediably, removal of restrictions for telecommunications common carriers would eventually impact broadcasting content through a "domino effect." If foreign ownership restrictions were to be removed only for telecommunications common carriers, converged players would considered this as unfair and would start applying tremendous pressure so that the removal of restrictions applies to BDUs as well. If the federal government were to allow any changes to apply to BDUs as well, then converged players involved in programming (i.e., dealing with content) could argue that changes are unfair to them and could apply pressure

> In this integrated communication business, changing the foreign ownership requirement for one sector, telecom, can be expected to impact on the other sectors.
> **Mr. Ian Morrison (Spokesperson, Friends of Canadian Broadcasting), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, March 30, 0900.**
>
> Opening the door to foreign control of satellite and telecoms can only lead to a domino effect and to foreign ownership of cable companies and broadcasters.
> **Mr. Alain Pineau (National Director, Canadian Conference of the Arts)Standing Committee on Industry, Science and Technology, *Evidence*, 3rd Session, 40th Parliament, April 1, 2010.**
>
> Because of the increased convergence of telecommunication and broadcasting companies and the future of wireless Internet and mobile television, DOC considers it unwise to allow foreign entities to have increased control over wireless telecommunications entrants and incumbents.
> **Written submission by the Documentary Association of Canada to the Standing Committee on Industry, Science and Technology, April 30th, 2010.**

for the removal of foreign ownership restrictions for programming undertakings as well. Hence, a domino effect that would open the door to foreign ownership in broadcasting, and, according to some witnesses, would affect Canada's cultural sovereignty.

It should be noted that the claim from the artistic community and communications workers has been partially proven right in the sense that some converged players (e.g., Telus, Rogers, Shaw, MTS Allstream and Bell) have vigorously argued that changes to ownership rules should also apply to BDUs. This being said, no witnesses recommended the removal of foreign ownership restriction for Canadian programming undertakings. The above mentioned integrated players have indicated that it is possible to build a firewall from a legislative and regulatory standpoint between ownership of carriage (sometimes referred to as the "pipes" or "pipeline") and content. This comment was also echoed by Dimitri Ypsilanti from the OECD.

Conversely, Solange Drouin of *l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo*, argued that the act of creation must not be dissociated from distribution. In order to promote creation, control of distribution is key. In her view, the fact that the federal government was able to exercise control over Canadian businesses was paramount in imposing Canadian content regulations. Furthermore, Astral Communications, which is involved in broadcasting only, has indicated that unless some safeguard measures are taken, such as forcing BDUs to completely divest from the broadcasting content sector, any "firewall" scenario between broadcasting distribution and broadcasting content is implausible[52]:

> Proposals for ownership liberalization over carriage, i.e., telecom and BDUs, must absolutely take into account the key role that BDUs have traditionally played in meeting the social and cultural objectives under the *Broadcasting Act*.
>
> Unlike a pure common carrier, a BDU does play an active and key role in influencing the content it offers consumers. BDUs are not just pipes; BDUs make programming decisions every day. They control and decide which programming services consumers will have access to. They make critical decisions about which services to market, promote, and offer, and how much they pay to these programming services and how much they charge consumers. This BDU influence over programming services may increase, given the recent CRTC decision regarding the value for signal of conventional television stations. Therefore, any liberalization of BDU ownership restrictions could easily result in an unacceptable level of influence by non-Canadians over the television broadcasting system. This could occur even if the ownership rules for programming services remain unchanged.

52 Mr. André Bureau (Chairman of the Board, Astral Media Inc.), Standing Committee on Industry, Science and Technology 2010, *Evidence*, 3rd Session, 40th Parliament, April 13, 2010, 0900.

Hence, the domino effect scenario presented by proponents of the status quo is one where the removal of foreign ownership restrictions in telecommunications would ultimately affect broadcasting content, and, in turn, Canada's cultural sovereignty. For example, a foreign-owned BDU might aggressively promote foreign programming at the expense of Canadian programming, but still technically respect CRTC rules with respect to Canadian content.

CHAPTER 5—DISCUSSION AND RECOMMENDATIONS

In summary, Chapter 1 of this report provided some historical background on foreign ownership restrictions on telecommunications common carriers in Canada. Chapter 2 explored some of the economic dimensions of foreign ownership restrictions. In particular, it examined how some features of Canada's telecommunications market might be improved through the removal of foreign ownership restrictions. Chapter 3 examined some social and equity issues linked to both maintaining the status quo and the removal of foreign ownership restrictions for telecommunications common carriers. In Chapter 4, the potential implications of removing foreign ownership restrictions on Canada's cultural sovereignty were discussed. The issue of foreign ownership restrictions for the Canadian telecommunications industry is complex, with stakeholders contributing much to the debate on both sides of the issue. This chapter aims to synthesize the viewpoints, and present the Committee's position and recommendations on the issue.

A. Bringing All the Elements Together

The recent performance of the Canadian telecommunications industry is, on the whole, unsatisfactory. In particular, the Committee considers that the relatively low level of wireless phone penetration and the disappointing progression of broadband penetration in recent years are symptomatic that all is not well in Canada's telecommunications industry (in terms of pricing, services offered, and the competitive environment in general). As explained in Chapter 2, foreign ownership restrictions disproportionally penalise new entrants and smaller players through their effect on the cost of capital; this in turn lowers the ability of new entrants and smaller players to pose a competitive threat to large incumbents. Moreover, foreign direct investment has, from a macro-economic perspective, benefits that could include increased productivity, increased competition and lower prices. Therefore, the economic case in favour of the removal of foreign ownership restrictions is clear.

Some witnesses argued that the removal of foreign ownership restrictions for telecommunications common carriers may result in:

- The loss of head office jobs;
- Residents in rural and remote areas being adversely impacted as a result of cut throat competition in urban areas; and
- An increase in competition that is temporary and that ultimately leads to foreign ownership of Canadian telecommunications companies and an increase in market concentration.

Economists typically argue that if these elements are real concerns, then it is possible to deal with them via other more efficient measures (e.g., through direct subsidy or regulations) than through the imposition of foreign ownership restrictions. Opponents argue that there is no guarantee that these issues would ever be tackled if foreign ownership restrictions for telecommunications common carriers are eliminated.

Furthermore, maintaining foreign ownership restrictions for BDUs but removing them for telecommunications common carriers also poses an equity issue from the integrated companies' perspective since it could force them to spin off their telecommunications carriage subsidiaries so that they can compete on the same terms as "pure-play" firms that have unlimited access to foreign capital. This last element is important in the discussion since it directly ties in with the domino effect and the Canadian cultural sovereignty argument. Indeed, opponents of the removal of foreign ownership restrictions have indicated that in today's era of technological and corporate convergence, removing foreign ownership restrictions in one part of the communications industry would negatively and irremediably affect Canadian broadcasting content (and therefore, Canada's cultural sovereignty) through a domino effect. Pressure would first be applied to liberalise broadcasting distribution so that those industries would be treated on the same footing as telecommunications common carriers, and this would ultimately lead to an impact on broadcasting content. The term "elephant in the room" was used during the Committee's hearings by Maureen Parker, Executive Director, Writers Guild of Canada, when talking about potential implications on broadcasting content. Before making recommendations, the Committee would like to expand on this element.

B. The Ever Thinning Line between Internet and Television

Technological convergence, far from stabilising, is gathering speed like never before. In recent years, technological convergence has resulted in a considerable linkage between Internet and television. It is almost a given now that this movement will continue until almost complete convergence between the two media is achieved. This will occur irrespective of what the outcome of the debate on foreign ownership in the telecommunications industry is. No doubt, this is a huge elephant in the room and corporations are switching into high gear to prepare for this ultimate convergence. This was expressed by the President and Chief Executive Officers of Rogers Communications in Rogers' 2009 annual report[53]:

> The transformation underway in our industry is about the blurring of lines between wireline and wireless; between the TV screen, the computer screen and the smartphone screen; between the excitement of real-time and the convenience of time-shifting. It's about richer content, greater mobility, and faster speeds on our customer's platform of choice. It's about digital content available across multiple IP-based platforms.[...]

53 Rogers Communications Inc. 2009 Annual Report, p.2.

> As our industry transforms, it will be defined by the marriage of broadband and wireless in an all IP world—setting the stage for new ways of interacting, engaging and consuming information, communications and entertainment—facilitating the intersection of content and distribution. The future will increasingly be driven by consumers looking to access media and communicate anywhere, anytime and anyplace.

Corporate preparedness for this marriage between television and Internet is not limited to radio communications signal carriers, or for that matter, to private entities. The Committee notes, for example, the launch of the tou.tv web site from Radio-Canada, in collaboration with nine other French-language broadcasters and eleven producers, which offers French-language programming on demand in high resolution free of charge (including French versions of popular American shows like "Desperate Housewives" and "Lost").

It should be noted that CRTC determined in 1999 that transmissions of programs over the Internet (i.e. "new media broadcasting undertakings") constituted "broadcasting" that falls within the scope of the *Broadcasting Act*[54]. The CRTC however granted exemption orders to new media broadcasting undertakings that exempt them from regulations under the *Act.* Therefore, new media broadcasting undertakings do not need to register with the CRTC, are not subject to Canadian ownership and control requirements or minimum levels of Canadian content. After consultations, this exemption was broadly renewed in 2009[55]. Of particular note, also in 2009, the CRTC referred to the Federal Court of Appeal the determination as to whether Internet service providers that are telecommunications common carriers[56] are, in whole or in part, "broadcasting undertakings" subject to the *Broadcasting Act* (review and hearing of the case by the Federal Court is currently on-going at the time of writing this report). Figure 5 shows the current road to broadcasting content in the context of the 2009 CRTC decisions and technological convergence between Internet and television.

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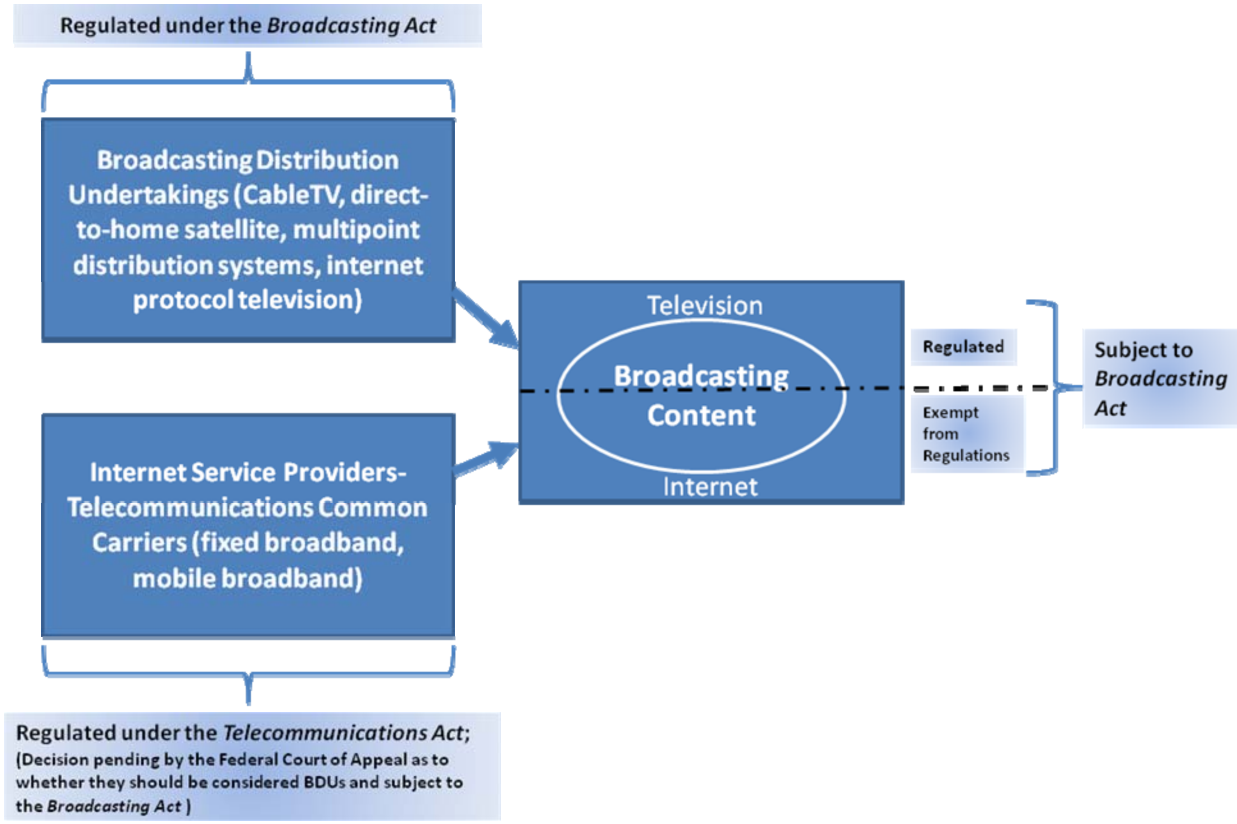
54 Public Notice, CRTC 1999-197, http://www.crtc.gc.ca/eng/archive/1999/pb99-197.htm.

55 Broadcasting Regulatory Policy, CRTC 2009-329, http://www.crtc.gc.ca/eng/archive/2009/2009-329.htm.

56 Section 2 of the *Telecommunications Act* states that "telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation". Broadcasting Order, CRTC 2009-452, paragraph 7, July 2009, http://www.crtc.gc.ca/eng/archive/2009/2009-452.htm..

Figure 5—The Road to Broadcasting Content in a Converged World: The Ever Thinning Line between Internet and Television



The implications of this convergence between Internet and television are so large for Canada's broadcasting sector that they could dwarf any domino effect resulting from the removal of foreign ownership restrictions in the telecommunications industry. In a world where Internet and television is fully converged, nothing could prevent foreign-owned and controlled corporations from aggressively distributing and promoting their broadcasting content via the Internet to a Canadian audience. This poses an enormous challenge to Canadian broadcasting content, and renders the question of how best to protect and promote Canadian cultural sovereignty even more acute. Economists would argue that any technology-driven innovation that is deemed desirable from an economic standpoint, but that negatively affect a societal worthy objective—in this case distribution and promotion of Canadian broadcasting content—should be directly subsidised in order to offset the negative externalities.

As a result, while the removal of foreign ownership restrictions for telecommunications common carriers and broadcasting distributions undertakings may improve competition, services and prices, the following question also needs an urgent response: How can Canada's cultural sovereignty, with respect to broadcasting content, be best protected and promoted in an era of potential complete convergence between television and Internet?

In light of the testimony heard by the Committee and the preceding discussion, the Committee is of the view that the Government of Canada should consider the following recommendations:

Recommendation 1

Clarify the interpretation of the "Control in Fact" test.

Recommendation 2

Remove foreign ownership restrictions in respect of satellite ownership or operation in Canada given that Canadian satellite companies (e.g., Telesat) already face competition from foreign entities in the domestic market.

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Industry	2010/03/25	5
Anne-Marie Lévesque, Senior General Counsel, Legal Services		
Helen McDonald, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications		
Marta Morgan, Assistant Deputy Minister, Strategic Policy Sector		
As an individual	2010/03/30	6
Steven Globerman, Director, Center for International Business, Kaiser Professor, Western Washington University		
Friends of Canadian Broadcasting		
Ian Morrison, Spokesperson		
Groupe CIC (Communication, Information, Culture)		
Richard Paradis, President		
Alliance of Canadian Cinema, Television and Radio Artists	2010/04/01	7
Ferne Downey, National President		
Stephen Waddell, National Executive Director		
Association québécoise de l'industrie du disque, du spectacle et de la vidéo		
Solange Drouin, Vice-President and Executive Director, Public Affairs		
Canadian Conference of the Arts		
Garry Neil, President of Neil Craig Associates		
Alain Pineau, National Director		
Communications, Energy and Paperworkers Union of Canada		
Peter Murdoch, Vice-President, Media		
Michel Ouimet, Executive Vice-President, Québec		
Writers Guild of Canada		
Maureen Parker, Executive Director		
Rebecca Schechter, President		
Canadian Radio-television and Telecommunications Commission	2010/04/13	8
Len Katz, Vice-Chairman, Telecommunications		
John H. Keogh, Senior General Counsel		
Konrad W. von Finckenstein, Chairman		

Organizations and Individuals	Date	Meeting
Organisation for Economic Co-operation and Development		
Dimitri Ypsilanti, Head, Information, Communications and Consumer Policy Division, Directorate on Science, Technology and Industry (Paris)		
Bell Canada	2010/04/15	9
Mirko Bibic, Senior Vice-President, Regulatory and Government Affairs		
MTS Allstream Inc.		
Chris Peirce, Chief Corporate Officer		
Rogers Communications Inc.		
Kenneth Engelhart, Senior Vice-President, Regulatory		
Shaw Communications Inc.		
Jean Brazeau, Senior Vice-President, Regulatory Affairs		
Ken Stein, Senior Vice-President, Corporate and Regulatory Affairs		
TELUS Communications		
Michael Hennessy, Senior Vice-President, Regulatory and Government Affairs		
Globalive Communications Corporation	2010/04/20	10
Edward Antecol, Vice-President, Regulatory and Carrier Relations		
Simon Lockie, Chief Legal Officer and Secretary of Globalive Communications Corporation, Director of the Board of Globalive Wireless Management Corporation		
Andrea Wood, Chief Legal Officer and Secretary, Globalive Wireless Management Corporation		
Public Mobile		
Bruce Kirby, Vice-President, Strategy		
Alek Krstajic, Chief Executive Officer		
Astral Media Inc.	2010/05/04	13
André Bureau, Chairman of the Board		
Sophie Émond, Vice-President, Regulatory and Government Affairs		
Telesat Canada		
Daniel S. Goldberg, President and Chief Executive Officer		
Ian Scott, Executive Director, Government and Regulatory Affairs		
As Individuals	2010/05/06	14
Walid Hejazi, Associate Professor of International Business, Rotman School of Management, University of Toronto		

Organizations and Individuals	Date	Meeting
Randall Morck, Professor, Department of Finance and Management Science, School of Business, University of Alberta		
Department of Industry	2010/05/13	16
Paul Boothe, Senior Associate Deputy Minister		
Tony Clement, Minister of Industry		
Richard Dicerni, Deputy Minister		

APPENDIX B
LIST OF BRIEFS

Organizations and individuals

Alliance of Canadian Cinema, Television and Radio Artists

Coalition of Internet Service Providers Inc.

Directors Guild of Canada

Documentary Organization of Canada

Elliott, Douglas

Galaxy Broadband Communications Inc.

Hejazi, Walid

Independent Broadcasters Group

MTS Allstream Inc.

Office of the Privacy Commissioner of Canada

Organisation for Economic Co-operation and Development

Public Mobile

Society of Composers, Authors and Music Publishers of Canada

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos. 5, 6, 7, 8, 9, 10, 13, 14, 16, 17, 18 and 19) is tabled.

Respectfully submitted,

Hon. Michael D. Chong, MP

Chair

Conservative Party of Canada Opinion on the Recommendations for the Foreign Ownership Report:

The Government of Canada has recognized the need for reforming Canada's telecommunications foreign ownership restrictions.

In the March 3rd, 2010 *Speech from the Throne (SFT*), the Government announced its intention to "… open Canada's doors further to foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need."

This SFT commitment was further reinforced in Budget 2010, which stated that the "Government of Canada is committed to ensuring that Canadians can benefit from increased competition and investment in the telecommunications sector, which will lead to greater innovation and lower prices for consumers. Increasing foreign investment is an important way of strengthening market competition and attracting new capital and innovative ideas from abroad."

In accordance with the *Speech from the Throne* commitment, the Government should implement policies that will attract more capital into the industry, encourage innovation in both technology and business models, and support competition that would benefit consumers through improved service and lower prices.

The Need for Reform:

The record of testimony before the Committee presents a clear case for reform:

- The Committee heard from a large number of witnesses who argued strongly for reform.
- No Canadian telecommunications or cable company opposed the reform of Canada's telecommunications foreign ownership restrictions.
- Several telecommunications companies advocated for the reform of these restrictions, and others advocated for reform conditional on certain criteria being met.

Benefits of Reform:

Many witnesses before the Committee articulated the potential benefits of reform:

- Lower costs of capital;
- Reduced barriers to entry;
- Increased viability of telecommunications new entrants and start up businesses;
- Increased productivity and innovation;
- Increased consumer choice; and

- The encouragement of the continued development of a world class telecommunications industry.

Evidence before the Committee:

Evidence before the Committee highlighted the tendency of the current telecommunications foreign ownership restrictions to adversely affect new entrants and small players by raising their cost of capital and diminishing their ability to vigorously complete against large established players.

The Committee heard from Dimitri Ypsilanti of the Organization for Economic Co-operation and Development (OECD), who stated that of the 30 OECD member countries, only three countries have foreign investment restrictions that apply to all public communications operators: Canada, Mexico and Korea. According to Mr. Ypsilanti, “of the three countries, Canada has the most severe restrictions”.

On the issue of the impact on employment at head offices, Dr. Walid Hejazi testified that there is no rigorous evidence to indicate a hollowing out of the Canadian economy. Furthermore, according to Dr. Hejazi, “head office activity is more robust at foreign, in comparison to domestic, head offices, as shown by research done at Statistics Canada.”

Testimony before the Committee also addressed potential cultural implications of changes to the telecommunications foreign ownership restrictions. For example, witnesses before the Committee expressed concerns that, as a result of technological and corporate convergence, changes to Canada’s telecommunications foreign ownership restrictions would eventually impact broadcasting content, and as a result, would affect Canada’s cultural sovereignty. The Honourable Tony Clement, Minister of Industry, stated emphatically during his appearance before the Committee on May 13th, 2010 that the Government “… will not consider anything that might impair our ability to pursue our Canadian culture and content policy objectives”.

Action:

The Government of Canada recently launched a consultation paper on a digital economy strategy (DES) in order to promote a world class information and communication technologies (ICT) sector. According to the Honourable Minister Clement, foreign direct investment will be an important aspect of furthering the Digital Economy Strategy, particularly with respect to building the digital infrastructure of the 21st century.

Recommendations:

In accordance with the 2010 *Speech from the Throne* commitment, the Government should implement policies that:

- Attract more foreign investment into the telecommunications industry
- Encourage innovation in both technology and business models
- Ensure that those sectors of the telecommunications industry that are most in need of capital would benefit
- Further competition in the telecommunications sector
- Provide consumer benefit through improved service and lower prices
- Enhance the competitiveness and productivity of the Canadian economy.

In addition, no action should be taken that would compromise the government's ability to protect Canadian culture and encourage Canadian content.

INDU – Foreign Ownership

Supplementary Report from the Liberal Party 7 June 2010

On the General Issue of Foreign Ownership for Telecommunications Common Carriers and Broadcasting Distribution Undertakings (BDUs), the Liberal Party proposes the following option:

Liberal Party option

Maintain the status quo (i.e. leave current foreign ownership restrictions in place) until a thorough review of the implications of removing the restrictions and of technological convergence (in particular the convergence between internet and television) on Canada's broadcasting sector is undertaken.

If, following such a thorough review, there is assurance that regulations are in place or can be put in place to ensure that Canada's cultural sovereignty will be preserved, then change the limit for foreign ownership of voting shares to 49% for telecommunications common carriers, BDUs and programming undertakings while keeping the "control in fact" test in place for all three groups.

If not satisfied that Canada's cultural sovereignty will be preserved, do not change the current limits.

Bloc Québécois Supplementary Opinion

Selling Its Sovereignty to the Highest Bidder

Background

The Bloc Québécois would like to begin by thanking the many individuals and groups from Quebec and Canada who testified before the Committee on the important issue of foreign ownership in the communications sector.

"Globalive is a Canadian company, and meets Canadian ownership and control requirements under the *Telecommunications Act*,"[1] said the Conservative Industry Minister in December 2009, overturning the decision by the Canadian Radio-television and Telecommunications Commission (CRTC) that Globalive, a telecommunications company seeking to operate in Canada, did not meet the factual requirements set out in the Act.

The CRTC reached its decision in October 2009, after Globalive spent $442 million on spectrum licences in an auction. In a news release explaining its decision, the CRTC stated that "the Commission found it particularly important that Orascom owns 65.1 per cent of the equity, has entered into a strategic technical arrangement with Globalive, controls and holds the 'Wind' brand under which Globalive will operate, and holds the overwhelming majority of the outstanding debt."[2]

The Bloc Québécois believes the Conservative government has always been aware that Globalive contravenes Part II of the *Telecommunications Act* but, given its determination to eliminate foreign ownership restrictions, the government issued an order breaching the Act and quickly announced its intention to amend it.

The purpose of the Committee's study was to determine whether or not the Act had been breached. Throughout study, the Bloc Québécois reflected on the issue of foreign ownership, focusing on the interests of consumers and citizens in general, and on the cultural sovereignty of Canada and, by the same token, of Quebec.

How do we best serve consumer interests?

On 21 September 2005, David Emerson, who was Industry Minister at the time and subsequently went over to the Conservatives in February 2006, said he

[1] Industry Canada news release, 11 December 2009.
[2] CRTC news release, 29 October 2009.

was open to relaxing foreign ownership regulations in the telecommunications sector if it would make Canada more competitive.

In its report of March 2006, the Telecommunications Policy Review Panel recommended "a phased liberalization of foreign ownership rules for telecommunications carriers that are not involved in broadcasting."[3] Maxime Bernier, who was Industry Minister at the time, was very supportive of the idea and has reiterated his support more recently.

The Speech from the Throne delivered on 3 March 2010 went ever further: "Our Government will open Canada's doors further to venture capital and to foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need."[4]

The Conservatives consistently invoke consumer interest to support their actions. As the Industry Minister stated in December 2009, "Our goal has always been greater competition in the telecommunications industry, which leads to lower prices, better service and more choice for consumers and business."[5]

The evidence received during committee hearings did not convince the Bloc Québécois that foreign ownership serves consumer interest. Moreover, it would be very surprising if foreign telecommunications companies were interested in remote areas—indicating that the presence of new players would in no way guarantee greater regional broadband access.

According to the latest CRTC report on competition in the communications sector, about 94% of Canadian households can access broadband services using landline facilities. Canadians can also access broadband mobile services, and about 91% of them do so using handheld mobile devices.[6]

The Bloc Québécois believes that the entry of foreign companies would by no means guarantee greater access to the telecommunications system. Mirko Bibic, Senior Vice-president of Regulatory and Government Affairs at Bell Canada, stated that "if Verizon, AT&T, and T-Mobile owned Bell, Rogers, and TELUS, Canada today would not have the world's best HSPA plus wireless networks, and certainly not in small and rural communities across the country."[7]

Does the presence of these foreign companies clearly help to lower the cost of telecommunications services? The Bloc Québécois is not at all sure. As Richard Paradis told the Committee, "even if lots of companies were allowed to

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[3] http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/h_rx00100.html
[4] http://www.discours.gc.ca/eng/media.asp?id=1388
[5] Industry Canada news release, December 11, 2009.
[6] CRTC, *Communications Monitoring Report*, August 2009, page i.
[7] Mirko Bibic, House of Commons Standing Committee on Industry, Science and Technology, 15 April 2010.

enter the market, they would not necessarily be able to offer products at a better price."[8]

In its 2009 monitoring report, the CRTC stated that broadcasting revenues increased 7% to $14 billion in 2008, and telecommunications revenues increased 6% to $40 billion.[9] Conventional wisdom dictates that this sector would benefit greatly from an infusion of foreign capital, but we can see that things were not going too badly, even at the peak of the international financial crisis in 2008–2009. A massive influx of capital will likely be good for shareholders, but there are no guarantees when it comes to consumers.

Kenneth Engelhart of Rogers Communication spoke clearly on the issue of telecommunications costs: "I really think that many of these studies, particularly many of the OECD studies, have a lot of malarkey in them […] You have to look at the right metrics […] In wireless, for example, you could ask what the average revenue is per minute. That's the simplest, easiest way to compare countries, and when you do that, Canada is one of the ten cheapest countries in the world. If you look at our broadband services and at the speeds you're actually getting, as opposed to the speeds that people are advertising, again we provide some of the best value in the world. So I think that if the studies are done properly.... There was a World Economic Forum report that came out showing Canada as seventh-best in the world. Professor Waverman […] showed that the OECD studies were wrong and that Canada was one of the cheapest countries. If you look at the right numbers and look at the question properly, I believe we're doing very well in Canada."[10]

Lastly, the economic situation needs to be considered, as Ian Morrison so eloquently explained: "I'd just like to point out that in 2003, when this committee was studying this matter the last time, the Canadian dollar was down in the range of 70 cents and below. Today, the Canadian dollar is at 98 cents and is projected to pass above parity. It's a 50% change in exchange value with the U.S. dollar. The euro was at 1.6-something and is now 1.35. It's a 15% change. These things tend to tilt statistics in a way that makes our infrastructure look more expensive but have nothing to do with the underlying fundamentals."[11]

However, the Industry Minister maintains that opening up to foreign ownership would provide access to funds and expertise that the telecommunications industry needs. With revenues of $40 billion—a 6% increase

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[8] Richard Paradis, House of Commons Standing Committee on Industry, Science and Technology, 30 March 2010.
[9] CRTC, *Communications Monitoring Report*, August 2009, page i.
[10] Kenneth Engelhart, House of Commons Standing Committee on Industry, Science and Technology, 15 April 2010.
[11] Ian Morrison, House of Commons Standing Committee on Industry, Science and Technology, 30 March 2010.

in a period of financial crisis—should we conclude that the sector's main problem lies in the area of technology? That's not what the witnesses told us.

Kenneth Engelhart of Rogers Communications was very clear on this issue: "Canada leads the G-8 in broadband deployment. We have much higher broadband deployment than most OECD countries, and the latest concern of governments has been with ultra-fast broadband. In France, you can really get ultra-fast broadband mostly in Paris. In Canada, Shaw, Rogers, Videotron, Cogeco, EastLink, we all offer ultra-fast broadband. That is 90% of Canada's population right there. In wireless, the latest and greatest thing is ultra-fast wireless broadband, a network called HSPA plus. There are 17 networks like that in the world, and Canada has three of them: Bell, Rogers, and TELUS. So I disagree very strongly with people who say that Canada lags in investment and innovation. Now I understand the OECD's point. They're saying free markets are a good thing and open entry of foreign entities is more free. I understand that. But I disagree with their notion that we lag the world. In fact, we're leading the world."[12]

The Chairman of the CRTC supported this view, saying that "we are one of the only countries that has a coast-to-coast high-speed wireless access network right now. So we're not doing badly. Especially given our land mass, this is quite something."[13]

To sum up, the Bloc Québécois is not convinced that opening up to foreign ownership would be an advantage in terms of accessibility, increased competition, innovation or consumer cost. That is why we believe that the quotas provided for in the Act must be maintained.

Could regulation be the best approach?

In order to stimulate competition, the CRTC, in its April 2006 decision *Forbearance from the regulation of retail local exchange services*, advocated refraining from regulation in a defined geographic area once an incumbent local exchange carrier had suffered a 25% market share loss.

On 13 June 2006, the Minister directed the CRTC to do an about-face and give market forces greater leeway. A news release issued by Industry Canada stated as follows: "'Tabling this document signals the government's intention to direct the CRTC to rely on market forces to the maximum extent feasible under the *Telecommunications Act* and regulate—where there is still a need to do so—in a manner that interferes with market forces to the minimum extent necessary,' said Minister Bernier. 'All Canadian consumers will benefit from a stronger

[12] Kenneth Engelhart, House of Commons Standing Committee on Industry, Science and Technology, 15 April 2010.
[13] Konrad W. von Finckenstein, House of Commons Standing Committee on Industry, Science and Technology, 13 April 2010.

competitive environment that will bring greater choice and even lower prices and better services.'"[14]

Despite the power of incumbent companies, Maxime Bernier was already seeking deregulation in June, perhaps due in part to the influence of the Montreal Economic Institute: "While one could argue that the telephone industry was a natural monopoly before the development of new technologies, such is no longer the case; it therefore appears that the CRTC no longer has a reason to intervene in this field. There are solid economic reasons to justify true and full deregulation of Canadian telecommunications."[15] [TRANSLATION]

The Industry Committee requested a moratorium on the policy direction from 13 June to 31 March 2007. However, on 11 December 2006, Maxime Bernier, the Industry Minister at the time, announced that telephone companies could set their own rates as they liked in any geographic area provided that there were at least three competing telephone companies in that area.

The Bloc Québécois notes that competition has not increased in Quebec since the order was issued in December 2006 and that the deregulation ordered by the Conservatives has not had the anticipated effect. Clearly, the almighty free market has not lived up to expectations, and there are no indications that foreign ownership will succeed where deregulation has failed.

As Richard Paradis told the Committee, "We should maybe find ways to pressure companies to bring the rates down, but it's not a solution to bring in new people."[16]

Prior to the Conservatives' free-market directives and orders, the CRTC had the power to establish floor prices and ceiling prices, the former to encourage competition and the latter to prevent companies with a near-monopoly from abusing their position.

Before the Conservatives came to power, Canada's approach to regulating telecommunications focused more on changing the often monopolistic telephone market through greater competition. Regulation decreased as competition grew.

Only regulation can guarantee compliance with the Canadian Telecommunications Policy. The objectives of this policy are to:

- facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and

[14] Industry Canada news release, 13 June 2006.
[15] Montreal Economic Institute, *A-t-on encore besoin de réglementer la téléphonie?*, May 2004.
[16] Richard Paradis, House of Commons Standing Committee on Industry, Science and Technology, 30 March 2010.

strengthen the social and economic fabric of Canada and its regions; and

- render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.[17]

Regulation does even more. In its report submitted to the Telecommunications Policy Review Panel, the CRTC stated that "on 16 December 1992, prior to coming into force of the *Telecommunications Act*, the Commission initiated a public proceeding to examine whether the existing regulatory framework should be modified in light of developments in the industry. In that proceeding, the Commission noted that, in an information-based economy, a modern and efficient telecommunications infrastructure is a fundamental component of, and vehicle for, the production and consumption of goods and services. The Commission noted further that, in recent years, technological change and increasing competition had significantly altered the nature of the telecommunications industry, so that, in addition to fulfilling the basic communications requirements of all subscribers, telecommunications had evolved into a tool for information management and a productivity enhancer for business. These changes had allowed the telephone companies to develop a wide range of new audio, video and high-speed data services to satisfy the demands of both business and residence consumers in the local and long distance markets."

If telecommunications has become a "tool for information management," then regulation of the industry is essential.

Moreover, we cannot approach telecommunications from a strictly commercial perspective since the very nature of the industry involves the transmission of information throughout Quebec.

Quebec has no way of harnessing the telephone industry or establishing a policy to control it properly or encourage competition. Only a regulatory body can do this.

Unfortunately, it is now refraining from regulation. As Peter Murdoch pointed out, "The real problem has been that Canada's regulated telecommunications service providers have not had to innovate to reduce prices because the *Telecommunications Act* does not require the CRTC to regulate in the public interest."[18]

Is cultural sovereignty up for sale?

[17] *Telecommunications Act*
[18] Peter Murdoch, House of Commons Standing Committee on Industry, Science and Technology, 1 April 2010.

The pace of technological change in telecommunications and broadcasting is particularly fast, and the two fields are getting increasingly harder to separate. As stated by the CRTC Chairman, “The convergence of telecom and broadcasting has now been widely recognized as a fact of life. What is still being debated, however, is its impact on Canada's legislative and regulatory structure.” [19]

More than 50 years ago, the Massey Commission reported that “in the early days of broadcasting, Canada was in real danger of cultural annexation to the United States. Action taken on radio broadcasting by governments representing all parties made it possible for her to maintain her cultural identity.”[20]

This opinion was reiterated in the 1986 Caplan-Sauvageau report: “As Sir John Aird’s commission reported to the government in 1929, when radio alone was at issue, Canada was fast becoming a mere satellite of American broadcasting.”[21]

When it comes to culture, Canadian consumers—as apart from Quebec consumers—have always been heavily influenced by the United States.[22] The federal government developed such mechanisms as the Canadian Broadcasting Policy to safeguard cultural diversity.

Mobile telephones have no content regulations and are becoming de facto broadcasting tools.[23] Consequently, the Bloc Québécois would see any loss of control over these companies by Canadian interests as the first sign that the federal government was relinquishing cultural sovereignty. Broadcasters would be justified in thinking it unfair for Canadian content quotas to apply to them if potential telecommunications companies could broadcast whatever content they liked on mobile phones.

André Bureau of Astral Media highlighted the issue, stating that “the problem of foreign ownership in the telecommunications sector is one to which broadcasters like ourselves can relate, since we now operate in an environment

[19] Konrad W. von Finckenstein, House of Commons Standing Committee on Industry, Science and Technology, 13 April 2010.

[20] Report of the Royal Commission on National Development in the Arts, Letters and Sciences, 1949, page 280.

[21] Report of the Task Force on Broadcasting Policy, September 1986, page 691.

[22] “Except in Quebec where audiences are entertained and invigorated by original, home-grown dramatic productions, American programming dominates the airwaves to an extent that is largely unknown and unimaginable in any other country outside of the United States itself.” *Our Cultural Sovereignty: the Second Century of Canadian Broadcasting*, Standing Committee on Canadian Heritage, June 2003, pages 4-5.

[23] As Konrad Von Finckenstein pointed out, “In view of the convergence of telecom and broadcasting, any liberalized foreign-ownership rules for telecom should give due consideration to the social and cultural objectives of the *Broadcasting Act*.”

marked by the convergence of broadcasting and telecommunications. More and more, cable, telephone and wireless communications companies are offering every day a similar range of telephone, data transmission and video-broadcasting services."[24]

The Bloc Québécois believes that not only should current foreign ownership restrictions be maintained but broadcasting and telecommunications legislation should be merged so that convergence and the new communications environment can be properly regulated.

Quebec's struggle over telecommunications and broadcasting

Quebec has long called for broadcasting to be under provincial jurisdiction. Back in 1929, Quebec Premier Alexandre Taschereau held a vote on a Quebec broadcasting act. The federal government responded by passing the Canadian Radio Broadcasting Act on 26 May 1932. This legislation provided for the establishment of the Canadian Radio and Television Commission, which was instituted that same year and was the forerunner of the CRTC.

On 25 February 1968, Daniel Johnson explained very clearly why Quebec should have a say in communications: "The assignment of broadcasting frequencies cannot and must not be the prerogative of the federal government. Quebec can no longer tolerate being excluded from a field where its vital interest is so obvious."

Quebec governments of all political stripes have defended this critical component of Quebec's development.

When Lawrence Cannon was Minister of Communications from 1990 to 1992, his department prepared a more detailed proposal on the issue: "Quebec must be able to determine the operating rules for radio and television broadcasting systems, and to control the development plans of telecommunications networks, service fee structures and the regulation of new telecommunications services […] Quebec cannot let others control programming for electronic media within its borders […] To that end, Quebec must have full jurisdiction and be able to deal with a single regulatory body."

The determination shown by Quebec governments to have jurisdiction over telecommunications stems from their desire to establish parameters for the relationship between citizens (including corporate citizens) in Quebec.

Since the time of Premier Taschereau, Quebec has claimed the right to control its broadcasting because the message being transmitted was essentially

[24] André Bureau, House of Commons Standing Committee on Industry, Science and Technology, 4 May 2010.

a cultural matter. The Supreme Court quickly ruled that the federal government had jurisdiction since airwaves exceed provincial boundaries.

Conclusion

Given the various challenges Quebec faces in comparison with the rest of Canada, particularly in the areas of language and culture, the Bloc Québécois recommends as follows:

- maintain current foreign ownership quotas;

- undertake a study of new communications legislation that integrates telecommunications and broadcasting;

- pass legislation as soon as possible to establish a Quebec broadcasting and telecommunications board that would regulate pursuant to the *Broadcasting Act* and the *Telecommunications Act*.

NDP SUPPLEMENTARY OPINION

The committee hearings into the foreign ownership rules and regulations in the telecommunications sector have raised many issues and concerns brought forth by many witnesses who testified. The only effective conclusion that appeared to sustain any consensus by committee members was that simplistic proposals will not address the challenges in the sector faced by consumers, commercial participants, cultural industries and future innovation by Canadian technology companies.

Given the recent spectrum auction which created the opportunity for three new entrants that have just begun operations, now is the time to stay with the original plan for the next two years to let the market evolve and competition to take place between the new entrants and the established incumbents. Furthermore, significant capital has been deployed and business planning developed and implemented based upon the expectations set out by the government when the spectrum auction took place that the rules setting aside spectrum available only for new entrants, with no mergers with established operators allowed, would remain in place for the time specified. To change the present regulatory regime during this period is unfair and discriminatory to those who complied with rules expecting them to be in place for the expected time.

Competition issues not addressed by the government's proposed changes:

- The removal of foreign ownership rules in the telecom sector will lead to takeovers and mergers of existing Canadian firms, resulting in the same market structure of only two or three competitors which has been the experience in other markets that have lifted foreign ownership limits.
- As various studies have expounded, Canada has some of the highest prices for wireless telecom services in the world, and consolidation by foreign companies won't address this problem.
- Leading foreign investors and market experts in the wireless telecom sector have stated that during the next few years there will be major consolidation in the sector. All small and medium-sized operators are looking for appropriate M. &A. deals to be able to secure their position in respective markets. Removing foreign ownership limits in

Canada would put the Canadian wireless market in the global consolidation process.

Innovation issues not addressed by the government's proposed changes:

- As has been experienced in the larger technology sector, ownership determines where research and development takes place.
- The bankruptcy and sell off to foreign companies of Nortel's, previously Canada's largest private funder of research and development, divisions has lead to a significant set back in Canada's wireless research and innovation.
- Removing foreign ownership restrictions in the sector will accelerate the process of further research and development being moved offshore to detriment of Canada's longer term innovation and productivity.

Cultural sovereignty issues not addressed by the government's proposed changes:

- With the convergence taking place between media, the internet and the wireless sector significant concerns and issues are being raised on its impact on Canada's cultural industries
- The effectiveness of Canadian content rules and regulations must be examined to ensure the vibrancy and robustness of Canada's cultural industries
- Removing the foreign ownership restrictions in the wireless sector before a comprehensive examination and a new regulatory apparatus has been established will undermine Canada's cultural sovereignty.

Consumer issues not addressed by the government's proposed changes:

- Increasing foreign ownership won't solve the problem of the need for enforceable rules ensuring consumer friendly standards and conduct by providers.
- Foreign ownership will not lead to lower prices for consumers if consolidation, which is the experience in other countries' wireless markets, is the end result rather than competition which must be ensured by effective regulation

- The need is a ‘Wireless Consumer Bill of Rights’, which includes significant consumer protections, anti-gouging measures, and a real complaint system where consumers are listened to seriously and enforcement actions are taken rapidly against non-complaint companies
- Office of the Commissioner for Telecom Complaints that the government created a few years ago, has not been effective and needs to be reformed
- The need for universal access guarantees to wireless telephony, which is institutionalized in others countries, must be established so that affordability and equity is maintained in the marketplace.

In conclusion, the present foreign ownership restrictions and the strategy in place tied to the spectrum auction must be maintained for the next two years. A further study examining the significant convergence of media, the internet and the wireless sector and its impact on Canadian cultural sovereignty needs to be undertaken before fundamental market structures a changed. The onus is on the incumbents and the new entrants to provider greater customer service, world leading innovative products, and more competitive prices for consumers which are the true tests and most relevant measurements of the success of any regulatory regime.