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Chair

The Honourable Michael Chong

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• (0900)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good morning, members of this committee. Welcome to our fifth meeting of the Standing Committee on Industry, Science and Technology, this March 25, 2010.

We are here pursuant to Standing Order 108(2) to study Canada's foreign ownership rules and regulations in the telecommunications sector. Before us today we have three witnesses from Industry Canada: Madame Morgan, Madame McDonald, and Madame Lévesque. So welcome to all three of you. We'll begin with 10 minutes of opening remarks and then with questions and comments from members of the committee.

Madame Morgan.

Ms. Marta Morgan (Assistant Deputy Minister, Strategic Policy Sector, Department of Industry): Thank you, Mr. Chair, and thank you for having us here with you today. I'm the assistant deputy minister of the strategic policy sector at Industry Canada. I would like to introduce Helen McDonald, who is the assistant deputy minister of spectrum, information technologies and telecommunications, and Ms. Anne-Marie Lévesque, who is our senior general counsel.

Before responding to questions, I would like to provide the committee today with an overview of Canada's telecommunications foreign investment restrictions and to talk a little bit about how they compare to other countries, what previous studies on this issue have been done, and what they've concluded.

[Translation]

Telecommunications is a \$40 billion industry—a critical component of the modern day digital economy, and an integral part of society as a whole—we have all come to rely on broadband Internet access, BlackBerrys, text messaging and satellite delivered television.

Because of the importance of the sector, we need to assure ourselves that, from a regulatory perspective, we are doing all that we can to ensure that Canadians are receiving innovative services at competitive prices. In 2006, the government issued a policy directive to the Canadian Radio-television and Telecommunications Commission to rely on market forces as much as possible and to regulate telecommunications only where necessary.

In 2008, as part of the auction of radio spectrum, a portion of the spectrum was set aside for bidding by new market entrants only in

order to encourage increased competition in the provision of mobile wireless services.

[English]

The government's objective has been to ensure that Canadians can benefit from increased competition and investment in the telecommunications sector, which will lead to greater innovation and more competitive prices and availability of services for consumers.

That brings me to the issue at hand: the telecommunications foreign investment restrictions. There is a concern that these restrictions are indeed impairing the growth and competitiveness of the industry to the detriment of consumers and the industry as a whole.

I would like to clarify up front that when I speak of foreign investment restrictions in the Canadian context, I am referring to the legislated Canadian ownership and control requirements, which I will detail later, but which take the form of restrictions on voting shares and on the control in fact held by foreign entities.

Canada's formal ownership and control restrictions for telecommunications are relatively new. While they were announced in 1987, they were not formally enacted until 1993. The decision to introduce these restrictions was made during the Canada-U.S. Free Trade Agreement negotiations to mirror existing U.S. restrictions and ensure that these could be grandfathered within the FTA.

In announcing the government's intentions in the House of Commons in 1987, the then Minister of Communications, Flora MacDonald, said that they were necessary to “ensure...national sovereignty” over this vital sector of the Canadian economy and for reasons of “national...security” and “economic, social, and cultural well-being”.

The Telecommunications Act containing these restrictions came into force in 1993. Section 16 of that act specifies that telecommunications common carriers need to be Canadian-owned and -controlled, and that to meet this requirement they must satisfy three criteria: that 80% or more of voting shares must be held by Canadians; that 80% of the board of directors must be Canadian; and that the corporation is “not otherwise controlled by persons that are not Canadians”, what many have come to call the control-in-fact test.

These provisions, like most of the Telecommunications Act, are administered by the Canadian Radio-Television and Telecommunications Commission, otherwise known as the CRTC.

The Telecommunications Act is supplemented by a set of regulations, the Canadian telecommunications common carrier ownership and control regulations of 1994. These regulations determine who can be considered to be Canadian for purposes of the act—for example, trusts, pension funds, and partnerships. In the case of corporations, the regulations require that at least 66 and two-thirds per cent of the voting shares must be held by Canadians and that the corporation not be otherwise controlled by non-Canadians.

I should point out that wireless carriers are subject to ownership and control requirements that are virtually identical to those imposed by the Telecommunications Act. This is done pursuant to the radio communication regulations under the Radiocommunication Act. This is the legislation governing the management of radio spectrum, which is administered by Industry Canada. Before issuing spectrum licences, Industry Canada must confirm compliance with these ownership and control requirements.

• (0905)

[*Translation*]

The next major development relative to these investment restrictions was the conclusion, in 1998, of the Agreement on Basic Telecommunications, as part of the World Trade Organization's General Agreement on Trade and Services. Canada was a signatory to that historic agreement. At the time of the negotiations, there was considerable pressure placed on Canada and other countries to allow foreign competition into their markets. In the end, most OECD countries committed to liberalizing their markets including removing barriers to foreign participation, but Canada did not. We did agree to liberalize for international services.

To implement this commitment, the Telecommunications Act was amended in 1998 to remove the investment restrictions from satellite earth stations and international submarine cables.

[*English*]

This initial large-scale liberalization of barriers to foreign participation in telecom markets was followed by further progressive liberalizations by other countries. The OECD maintains a biannual tabulation of this, for which the latest information is from 2008. As of that year, 18 of 30 OECD countries had no restrictions on foreign ownership in telecommunication sectors. Only nine countries had any significant restrictions, six of which were limited to restrictions on former state-owned monopolies.

According to the OECD, Mexico, South Korea, and Canada have the most closed markets with respect to foreign investment. However, since 2008 both Mexico and Korea began to ease restrictions. Mexico now allows complete foreign ownership of wireless, and a bill to liberalize the wireline market is before their Congress. Korea allows 49% foreign equity but may liberalize further in the context of its ongoing trade negotiations with the United States.

Of all OECD countries, Canada now has one of the most restrictive regimes for foreign investment in telecommunications. A number of groups have addressed this issue in recent issues. The first of these was this very committee, which undertook a thorough review in 2003. It found that telecommunications are a critical element of the global network knowledge-based economy. The

committee found that the restrictions stifle Canada's productivity and economic growth performance, play a role in impeding capital investment by new entrants into the telecommunication sector, and inhibit the diffusion of new communication technologies and Canadian access to modern telecommunication services. The committee recommended the complete removal of Canada's foreign ownership restrictions specific to telecommunications common carriers.

The telecommunications policy review panel in 2006 was the next to look at this. Chaired by Dr. Gerri Sinclair, it was asked to review Canada's telecommunication policy framework and to recommend how to modernize it to ensure a strong and internationally competitive industry. It found that, among OECD countries, Canada has maintained one of the most restrictive and inflexible sets of rules limiting foreign investment in the telecommunication sector. This panel paid particular attention to the wireless sector. It found Canada to be one of the few OECD countries without a major international wireless provider and concluded that the quality, pricing, and availability of wireless services would improve significantly if Canada's foreign investment restrictions were liberalized. The panel recommended a phased liberalization, proposing that foreign investment in firms holding less than 10% of the Canadian telecommunications market be liberalized immediately, with full telecommunications liberalization being postponed pending the resolution of how to deal with the cable industry in the context of a review of Canadian broadcasting policies.

More recently, we have the competition policy review panel, which reported in 2008. This group looked at a wide range of issues, not only telecommunications, but it had a number of specific comments on the impact of telecom restrictions on the industry. It found that they affect new and existing firms by reducing competitive pressure to minimize or eliminate inefficiencies in business practices and activities, by limiting sources of financing, distorting financing structures, and preventing technology transfer. The competition panel echoed the recommendations of the telecom panel in recommending phased liberalization.

Before turning the floor over to you, I would like to take a brief moment to speak to the particular challenge these restrictions pose for the satellite sector. As you are aware, Budget 2010 indicated the government's intention to remove existing restrictions on satellites.

Canadian satellite providers face an immediate challenge. I spoke earlier of the changes made in 1998 to liberalize international services. Since that time, a large number of foreign satellites have been approved to offer service in Canada and are in direct competition with Canadian suppliers such as Telesat. This has created an uneven playing field, because Canadian providers must compete against these foreign providers both in Canada and abroad. The problem is that the foreign providers are not subject to investment restrictions either in Canada or at home.

The satellite industry is increasingly global in nature. Removal of the restrictions on foreign ownership will allow Canadian firms to access foreign capital and know-how, invest in new and advanced technologies, and develop strategic global relationships that will enable them to achieve economies of scale and participate fully in foreign markets.

● (0910)

The Speech from the Throne has made a broader commitment. I quote:

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.

This is an issue with significant potential implications for both the competitiveness of the Canadian telecommunications industry and the quality and prices of services made available to consumers. It's important that the government take time to consult and to fully consider the options before moving forward.

Thank you very much, Mr. Chair, for inviting us here today to discuss this important issue.

The Chair: Thank you, Madam Morgan.

We'll begin comments and questions from members with Mr. Garneau.

[Translation]

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

We met here today because of a motion, moved by my party, to address two important issues. The first is the government's decision on Globalive. The CRTC considered that Globalive does not have enough Canadian content, while the government took a different position. So I would certainly like to understand that better, but I will not ask you these questions myself because I hope to be able to bring them before the CRTC and, ideally, to address them to the minister later.

The other reason for our meeting today is to explore the issue of foreign ownership, and you talked about that in your speech.

[English]

There are a number of questions I would like to ask you concerning foreign ownership, because as you can appreciate, there are some very strong opinions being expressed across the spectrum on this particular issue.

The first question I would like to ask you goes to the reason for which foreign ownership restrictions were put in place in the first place. Let me quote the main objectives of the Canadian telecommunications policy: it's the maintenance of Canada's identity and sovereignty. I think it's important to review whether the arguments that were put in place when the act was written still apply today. I think that's a very valid exercise.

I would like to have your opinion, as it applies only to the Telecommunications Act, on whether, if we were to increase allowable foreign ownership in the telecommunications sector, there is the potential to have an impact on our identity and sovereignty.

● (0915)

Ms. Marta Morgan: This is an issue that has been debated in many sectors of the Canadian economy, and there is much evidence, particularly on the economic side, that shows the strong benefits of foreign investment to Canada.

What we have seen when we look across the board at many sectors, including telecommunications, is progressive liberalization over a number of decades of foreign investment regulations, across many countries and in many sectors.

In particular, for example, there is in telecommunications the liberalization post-1998 in most OECD countries. We've seen virtually all European countries lift most of their foreign investment restrictions on telecommunications. While I'm not an expert in European identity, I think I would argue that from an identity perspective, Europeans—the French, the Germans, the English—have all for the most part lifted these restrictions without negative impact from a cultural or identity perspective.

Telecommunications technologies are a means of transmission. They provide the opportunity to Canadians to communicate with each other faster and better and with more people at once. That ability to communicate with one another is being used by Canadians and by people around the globe. It's creating new opportunities for all of us, by having the best possible services and by having them available at the lowest possible price—and to the most people, to enable them to take advantage of them.

Mr. Marc Garneau: Thank you.

Those who have expressed concern, and there are some people who are obviously against increasing foreign ownership, often bring up an expression that I've heard repeatedly, which is that those who own the pipeline will eventually control the content. Is that, in your opinion, a misunderstanding of the situation, or is there a way to clearly separate the issues so that the pipeline is really considered as one aspect and the content is really a separate issue by itself?

Ms. Marta Morgan: I think it's important to be clear that it is the Broadcasting Act that regulates the delivery of content in Canada, content provision, and my minister has been quite clear on this point, that we are not looking at culture here and we are not looking at broadcasting.

Mr. Marc Garneau: So what you're saying is that if a foreign company owned a telecommunications carrier, the fact that they might own this previously Canadian telecommunications company, there would be no threat with respect to issues of cultural identity and sovereignty.

Ms. Marta Morgan: Let me give an example. I think the satellite sector is actually quite a good example of this, where Telesat provides services to Canadian broadcasters. Telesat provides the mechanism, the satellite signal, the satellite space, for broadcasters to diffuse their signal to Canadians, but it's those broadcasting distribution units, the BDUs, who are regulated under the Broadcasting Act. They continue to be regulated, and the content they provide, the Canadian content that they're required to provide, continues to be regulated. One is the means of transmission and the separable issue is the regulation of content.

Mr. Marc Garneau: Thank you.

I'll just go back to why there was this concern way back on identity and sovereignty. Why do you think that was there in the first place, and that it's no longer the issue it used to be?

Ms. Marta Morgan: It's hard for me to speculate on that, not having been part of that debate, but I do think that the nature of these debates has changed over the years. We have had many debates in Canada about what economic ownership means to our culture and our identity, and it has spanned decades. We have nonetheless been on a course of further openness to foreign direct investment across the board, which has served us well economically. I would leave it to others to judge the impact it has had on culture and identity.

● (0920)

The Chair: Thank you, Mr. Garneau.

I note that the OECD and European countries in the OECD have liberalized their sector, but they also fund their broadcasters three or four times per capita than we do. Perhaps that's the reason for their policies.

Monsieur Cardin.

[Translation]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Before going into the order from December and the CRTC decision, I would like to go back to the spectrum auction. You said earlier that: "Before issuing spectrum licences, Industry Canada must confirm compliance with these ownership and control requirements." I will ask you three questions and then you can answer them.

Do you check with the CRTC to see whether all bidders comply with part II of the Telecommunications Act? Next, who gets the money when a bidder wins a share of the bid—say \$442 million? Finally, should we conclude that, if the winning bidder is not defined as being Canadian under part II, and pays the \$442 million to the government, should that bidder get the entire amount of the bid back?

[English]

Ms. Helen McDonald (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): Let me help with that answer.

We don't check with the CRTC beforehand to see whether they are Canadian-owned and -controlled in order to allow them to bid for spectrum. A number of the companies are new entrants. They are putting together business cases and business models and they're putting together financing. In that last auction we had something like 25 bidders, but only 15 were successful. It is at these 15 that we looked for Canadian ownership and control purposes.

As you can imagine, if you are putting together a company and putting together your financing and you make a bid and are successful and you continue to look for financing and partners and so on, that takes a certain amount of time; therefore, there is a certain amount—

[Translation]

Mr. Serge Cardin: What you are telling me is that you do not check with the CRTC to see whether they comply with part II before

accepting bids. The answer is no. So who gets the money? To whom does the \$442 million go, for example? To the government?

[English]

Ms. Helen McDonald: I'm presuming you're talking about the spectrum auction revenues. They go straight to the consolidated revenue fund. So yes, the money goes to the government and is lodged there. Before anyone bids, they are very well aware that they must comply with Canadian ownership and control, if they wish to get a licence. So they may win the bid, but they do not have the licence until the Canadian ownership and control requirements are satisfied.

[Translation]

Mr. Serge Cardin: And if we ever decide that they are not following part II, would the bidder get the \$442 million back?

[English]

Ms. Helen McDonald: We are looking against the radio regulations requirements, not against the Telecommunications Act. We've never actually had a situation, to my belief, in which we've had to refund it, because after having paid that amount of money, of course the company is very interested in bringing into compliance their ownership and control.

I could get you further chapter and verse on this, but it's my belief that if someone were successful and unable to bring their ownership structure into compliance, the government would re-auction the spectrum, and if there were a difference between what was brought in the first time and the second time, it would be the obligation of the company.

● (0925)

[Translation]

Mr. Serge Cardin: As in the case of Globalive, if the CRTC decision had been respected by the government...The CRTC knew that Globalive had already paid the \$442 million to the government when it announced its decision. We can assume that it did not make the decision lightly. Section 116 of the decision reads as follows:

Notwithstanding these additional changes, significant concerns remain with respect to the control in fact of Globalive by Orascom. In the present case, the record shows that Orascom, a non-Canadian

holds two-thirds of Globalive's equity;

is the principal source of technical expertise; and

provides Globalive with access to an established wireless trademark.

First, do you think that Orascom really holds two-thirds of Globalive's equity? Second, in your view, by showing its willingness to amend the Telecommunications Act in the Speech from the Throne, does the government not admit that the order goes against the spirit of the Telecommunications Act?

[English]

Ms. Marta Morgan: Mr. Chair, first of all, I would like to note that under section 12 of the Telecommunications Act, Parliament provided to the Governor in Council the authority to vary decisions by the CRTC. In this particular case, the Governor in Council chose to vary this decision of the CRTC based on a very careful examination of the facts and a rigorous application of the Canadian ownership and control requirements. The test for Canadian ownership and control comprises both legal requirements and a factual requirement.

Perhaps it would be helpful if I turned to my colleague Madame Lévesque to explain what those requirements are and how they are applied.

[Translation]

Mr. Serge Cardin: I did ask a very specific question when I asked whether you thought that Orascom really held two-thirds of Globalive's equity.

Ms. Anne-Marie Lévesque (Senior General Counsel, Legal Services, Department of Industry): You are probably aware that there is presently a legal challenge to the Governor in Council's decision on Canadian control in this company. We must therefore limit our comments to what is public so that we do not prejudice the government before the courts. So our comments today must be limited to what is in the public domain. You understand our situation.

Mr. Serge Cardin: It is as if you are telling me you think that the company does hold two-thirds of the equity, but that the shares are not necessarily all voting shares.

Ms. Anne-Marie Lévesque: In the CRTC order and decision, there is a brief explanation of the situation of Globalive at the time the decision was announced. As to the *de jure* test, that is the legal control and the control of voting shares, the CRTC and the government agree that the company is in fact controlled by Canadians. The next test is a *de facto* test. There is a whole body of case law that led to a *de facto* test. *De facto* control is an investor's ability, for example, to influence the day-to-day operations of an organization, the company in this case. In light of the facts in the Globalive file, the government was of the opinion that, as the order shows, the foreign company, Orascom, does not have the ability to control the day-to-day operations of Globalive, that it perhaps has a certain degree of influence through its financial investment but that is not the same as the *de facto* control required by the case law.

The Chair: Thank you, Mr. Cardin and Ms. Lévesque.

Mr. Lake, you have the floor.

[English]

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

And thank you to the witnesses for coming today.

This is a very technical conversation, and I'm thinking about consumers who might want to look at this a bit more and ask questions like how this is going to impact their life in terms of the things they use every day. We've talked about opening the doors to more foreign investment, but if you're a Canadian consumer trying to

follow this conversation, what areas might this impact? How is it going to make a difference to them?

• (0930)

Ms. Marta Morgan: In looking at the benefits of more competition and allowing more foreign direct investment, we have found, in general, that when we look across sectors and over time, foreign direct investment brings two kinds of benefits.

The first is that foreign investors bring assets. They bring technology and new technology. They bring people. They bring know-how to help increase productivity. These assets are of benefit to the country that is the host of the foreign direct investment.

The second thing that foreign investors bring is more competition. 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.

When we look at the telecommunications industry in particular, there have been a number of studies on this issue, particularly one by the OECD, which showed that consumers in those countries that liberalized benefited from better services and lower prices. One of the things that we certainly see in Canada, for example, is that in the wireless industry the penetration of wireless service is much less than in the United States. It's a very similar market, similar consumers, but 85% of U.S. households have a cellphone or other wireless device, versus around 60% or 65% of Canadian households.

There's evidence, internationally, that there is room in Canada, both on the pricing and the availability of services side, for improvement.

Mr. Mike Lake: I want to talk a bit about the Red Wilson report. It had extensive recommendations for the government.

I'm wondering if you could provide a bit of an outline of some of those recommendations as they relate to the telecommunications sector, more specifically what's already been done. What has been done in response to this report? It's been referenced a lot.

Ms. Marta Morgan: Sure. The Red Wilson panel was set up to look broadly at issues around competition in the Canadian economy. The reason for the Red Wilson panel was, I think, a view that the world is changing quickly, and Canada needs to remain competitive. The Wilson panel was tasked with looking across a range of sectors to see what we could do in terms of our legislative and regulatory framework and our policy framework to ensure that Canadian industry would have the best chance to compete in this global environment.

The Wilson panel, as you noted, looked at a number of sectors, and a number of actions were taken immediately after or shortly thereafter based on the recommendations of the panel, for example, to mend the Investment Canada Act, to modernize the Competition Act, and to reduce foreign ownership in air transportation investment restrictions.

The panel also made a number of recommendations with respect to telecommunications. They essentially picked up the recommendations of the telecommunications policy review panel of 2006, which had recommended a phased approach to liberalization of foreign investment restrictions in the telecommunications sector. Those are recommendations that were made by the Wilson panel, and the government's commitment in the SFT and the budget was related to the recommendations the Wilson panel made specifically on telecommunications.

Mr. Mike Lake: Okay.

I have one other question. There's a lot of technical talk. We talked about this a little bit before. Again, for someone who wants to take a look at this and look at the transcript of our discussion today and who doesn't have that background, that expertise, could you differentiate between the Telecommunications Act and the Radiocommunication Act? I know there's some discussion about the Broadcasting Act, although I don't believe the changes we're talking about touch on that. Maybe for the average person looking in on this conversation you could differentiate between the different acts. I think to the average person they all sound the same.

• (0935)

Ms. Marta Morgan: The Telecommunications Act regulates the provision of telecommunications services, which I guess would be as clear as mud, but basically they are telephone services, broadband Internet services received in your home, and wireless services. These are regulated as telecommunications services. The Telecommunications Act regulates those services that consumers would recognize as what they receive.

The Radiocommunication Act regulates how we use the spectrum. The spectrum is what enables signals to be carried through the air. The spectrum is what is utilized by providers who provide wireless services, for example. That's why, in the case of the wireless auction, any company that wants to provide cellphone services to Canadians must use the spectrum. The Department of Industry regulates the use of the spectrum because it's a public resource, and it's very important that there not be interference among the users of the spectrum. It's the responsibility of the Minister of Industry to allocate that spectrum to users, including to companies that provide cellphone service.

The Chair: Thank you, Madam Morgan.

Thank you, Mr. Lake.

Mr. Thibeault.

Mr. Glenn Thibeault (Sudbury, NDP): Thank you, Chair.

Thanks for being here today and for doing such a great opening on such a complex issue, and for helping us to understand a portion of what's going on out there.

It's been claimed that foreign entrance may make for a more competitive telecom market with more efficient pricing and choice, particularly in markets if there was a duopoly. But if relaxation of foreign ownership rules leads to takeovers and mergers of existing Canadian firms, there's the potential that there may not be any changes. As we all know from various studies, Canada has some of the highest prices for wireless telecom services in the world. Has Industry Canada examined various telecom market models around

the globe, especially in countries that have the lowest prices for wireless service, to see how effective competition is guaranteed? How are we going to guarantee effective competition?

Ms. Marta Morgan: Thank you, Mr. Chair.

This is obviously an issue that is very complex, and it will take some time for the government to look at particular options, particular models, and also to come forward with a process and a timeline for consulting with industry on a path forward on this issue.

I think in general, when we look abroad, we see different regulatory models. Different countries have different net telecommunications networks that have quite different features, so that drives them to different regulatory models. In the case of foreign investment in particular, the vast majority of OECD countries have completely lifted their foreign investment regulations, but a small number maintain them on their incumbent telephone providers. What we do see subsequent to the lifting of that, if we look over time at what happened after those restrictions were lifted and if we look over space—in other words, looking at Canada's situation compared to others—is we do see that most other OECD countries have at least one foreign wireless provider operating in their market. Often in the economic literature, those would sometimes be referred to as disruptive competitors who are in the market and really focus on providing low-price simple services for consumers. That's what we see in other countries.

Clearly that's not just a function of foreign investment restrictions. There is a whole regulatory framework around telecommunications. For example, the government's decision to set aside spectrum for new entrants into the wireless market in the advanced wireless spectrum option was a recognition of the potential benefits to consumers in encouraging new competitors to come into the Canadian market.

• (0940)

Mr. Glenn Thibeault: Thank you.

You talked a little about the foreign competition. Has the department examined some of the consumer protections that are available in the United States, for example, and some things like basic service guarantees and basic price caps that exist in other countries, so that affordability and accessibility are ensured for all Canadians?

Ms. Helen McDonald: Certainly the CRTC has been looking at a number of those issues. I believe they have announced that they're having a hearing into universal service obligations. A number of countries have looked at that as a way of ensuring that on the lower cost, consumers, through their payments, can help subsidize the provision of very high-cost service. It's a system we have in place for telecommunications for plain telephone, but they will be looking at whether there should be an extension of this into broadband.

Some other countries, such as, I believe, some of the European countries, are talking about a universal right. If the Internet is so important, then perhaps there should be an obligation for the state to assure the provision of such services. The U.S., in their broadband plan, put an aspiration out that they wanted all Americans to have access to broadband at affordable prices, and they are proposing to look at their universal service fund as a way of funding this, while capping it at the same amount. So there are different ways in which countries try to look at the price, affordability, and, as Marta was referring to, how to encourage that spread to happen, the rollout to happen, as far as possible through market forces.

Mr. Glenn Thibeault: We've seen that in the larger technology sector ownership determines where research and development take place. The carve-up and sell-off of foreign companies of Nortel's division have led to a significant setback in Canada's wireless research and innovation, some say an irreparable one due to the fact that just a few years ago Nortel was Canada's largest private funder of research and development. Has the department examined what the impact of foreign ownership would do to research and development spending in the wireless sector in Canada or for employment in this sector?

Ms. Helen McDonald: Perhaps we could answer this, but just with respect to Nortel.

We've certainly been looking very closely at what is happening in the west end of Ottawa with the various asset purchases. We want to ensure that the high-paying research and development jobs stay in Canada, that we maintain a critical mass. When we look at the various asset purchases by the various groups, I think about one-third of the employees have not been picked up by the new players.

I'm also starting to hear anecdotally that the employment in the Ottawa area is not changing in a way that you might think. When we had the dot-com bust in 2000-01, a lot of people who were leaving Nortel and other players created their own businesses or moved to others. So we know there are other firms in the west end who are picking up Nortel employees.

It's not simply that Nortel has gone and therefore everything has left Canada. A number of the new purchasers have been quite public about their desire to make the west end of Ottawa a centre of excellence for them to maintain a strong R and D presence here. It is something we look at, and it is something that we try to encourage with the provincial governments—to make sure that we can be as attractive as possible for those jobs to stay there.

The Chair: Thank you very much, Mr. Thibeault.

We'll go now to Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, witnesses, for being here today.

This might sound like a third or fourth generation question, but I've been on the committee off and on since 1995, so some of these things sound familiar. And at times I've missed the odd report; I was on the wrong side.

Fido, Clearnet... I recall that company from my riding, Clearnet, successfully bidding for, in 1995-96, and getting, with relative ease of capital, the purchase of spectrum and the auction that took place then. It continues to be a question of whether or not foreign

investment itself is really necessary. It seems to be a substantial pool of money that is made available. The question comes on foreign ownership, the control or not control of voting shares.

I'm just wondering, because we seem to give the impression that there are substantial restrictions to foreign investment, but that really is qualified, if I'm correct, simply on voting shares. Are those the restrictions that exist? You can have a company whose debt is technically 100% controlled by foreign investment. Is that correct?

● (0945)

Ms. Anne-Marie Lévesque: In the statutes there's no limit to the financial investments that a foreigner can have in a Canadian company. There are control issues that are raised in the statute, though, and they are twofold. The first one is voting shares and the second one is control in fact. So you're right in saying that there is no limit on the amount of money a foreigner can invest in Canada.

Hon. Dan McTeague: I suspect one of the reasons we're here today is because of the definition of how the control in fact is defined and exercised in practice. I suspect we probably wouldn't be here today if it was not for that.

What steps has your department taken to clarify this if there is to be a change in the Telecommunications Act?

Ms. Anne-Marie Lévesque: The position of the government is that there has been no change in the application of the control in fact test. The test has been laid out in jurisprudence, and the leading jurisprudence is the Canadian Airlines case that was decided by the Federal Court of Appeal in 1993.

Maybe I can put it in these terms: the challenge in applying the control in fact test is that it's essentially that. One has to look at all the facts and determine whether those facts taken together amount to control. It's not legal control but factual control. That's not an exact science; it's a subjective assessment of the facts. The law has not changed. The application of the law has not changed. That's what the government has decided in the Globalive decision.

Hon. Dan McTeague: Ms. Morgan, you earlier cited a study of OECD countries that have liberalized. Thank you for this.

I wonder if you could tell us what time period we're looking at. Is it just a general observation or is it specific? Are we talking short-term benefit for consumers with question marks as to the long-term implications for consumers and competition?

Ms. Marta Morgan: I would be happy to get you a copy of that study. My understanding is that it was at a point in time, as they normally are. It would have been looking backwards at the impacts of liberalization. But obviously it would have been done at a certain point in time.

Hon. Dan McTeague: Ms. Morgan, we'll hear hopefully from Red Wilson and those who were part of the commission. I suspect the *raison d'être* for that was to recognize that in Canada, in many respects, industries look highly concentrated and very intense with a lack of competition, notwithstanding the steps that have been taken over the past 20 or 30 years, or even going back to the Macdonald royal commission, to liberalize a number of other markets.

Has the department considered the scenario wherein existing towers and infrastructure built over the years through public funding suddenly are acquired by foreign investment, foreign entities? Perhaps it's a strategy of below-cost selling for a temporary period of time in which you wind up with only one or two dominant players who cherry-pick one or two areas of the country and simply leave the rest without any type of adequate service, and obviously without a modicum of competition. In other words, we arrive at a far worse situation in five to ten years than the one we have now.

Ms. Marta Morgan: I think it would be important to recognize that foreign investment regulations are but one element of the regulatory framework—that, and the policy framework that regulates telecommunications, the provision of telecommunication services in Canada. We have the CRTC, for example. We have spectrum allocation under the Radiocommunication Act. We have the Broadcasting Act. The issue of foreign investment restriction is one aspect of the regulatory framework, but there are other regulatory tools that the government and the CRTC have to ensure provision of services to Canadians, and those clearly would remain in place unless it was the will of Parliament to address them, even if foreign investment restrictions were lifted in some way.

The Chair: Thank you very much, Mr. McTeague.

Mr. Brown.

• (0950)

Mr. Gordon Brown (Leeds—Grenville, CPC): Thank you very much, Mr. Chairman.

It's my understanding that back in 2003 the industry committee studied foreign ownership. What was in that report? And did that report detail benefits for the liberalization of the communications industry?

Ms. Marta Morgan: Yes, it is in fact true that this committee, in 2003, did produce a report on this very subject, and that report made a number of recommendations. It looked at the issue of foreign investment restrictions from a variety of perspectives and it made a number of recommendations regarding minimum ownership requirements, changes to ownership and control requirements, and recommendations regarding a further review of the governance structure of both telecommunications and broadcasting in the area of technical convergence.

Mr. Gordon Brown: Do you see any difference between broadband and telecommunication services?

Ms. Helen McDonald: Telecommunications is often used as a very generic word to cover telephone or cellular... Broadband refers to your ability to get the Internet either on your smart phone or on your laptop or on your computer, with a range of video or multi-tasking, a certain capacity and robustness. So if you've rolled out a cellular network, you can't simply use that for Internet access without some changes by the carriers.

Mr. Gordon Brown: Let me be a bit more specific. For a company like Rogers, which is a wireless company, a broadband company, a broadcasting company, would you see that they might have to divest some of their broadcasting assets to take more advantage of foreign ownership possibilities?

Ms. Marta Morgan: I think Minister Clement has been quite clear that the commitment to look at the issue of foreign investment restrictions will not extend to culture and broadcasting.

Mr. Gordon Brown: All right, thank you.

[*Translation*]

The Chair: Mrs. Lavallée, would you like to take the floor?

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Mr. Cardin really wants to finish his question.

The Chair: All right.

Mrs. Carole Lavallée: But the last three minutes are mine.

The Chair: No problem.

Go ahead, Mr. Cardin.

Mr. Serge Cardin: I think we have the time.

I am talking to the people from the department. At our last meeting, I had asked for a written answer on the impact on competition following the order of the minister at the time, Maxime Bernier. I hope we will have that answer.

Mr. Chair, could you tell me whether it would be possible for the people from the department to come back for the other hour that we are not going to have today?

Assuming that they will accept the invitation, I will leave the other questions to Mrs. Lavallée.

Ms. Marta Morgan: We will follow up.

Mrs. Carole Lavallée: Is it my turn?

• (0955)

The Chair: Yes.

Mrs. Carole Lavallée: All right, thank you.

Ms. Morgan, what I like best in your entire presentation is the last sentence. It is the one where you say that the government will take time to consult and to fully consider options before moving forward. The issue is very important.

The difference between telecommunications and broadcasting, which you talked about earlier, is no longer obvious. Telecommunications is the wiring and broadcasting is what goes on inside. Whoever controls the wiring controls what is inside; whoever controls access controls content. That is increasingly clear with wireless telephones, and so on. I am not going to paint you a picture since that would insult your intelligence. We know that ring tones, for example, are created by musicians. It is they who decide the language to be used and we can even watch a video on our phones. Even the Wilson panel, whose study you cited, says on the first page that it is becoming increasingly difficult to differentiate between telecommunications and broadcasting. A number of people will probably come and say that is impossible. There are those who think it and those who say it.

You are also making a comparison with the European Union, but, unfortunately, the situations are not the same. Canada—and Quebec, which is six times larger than France—is a vast country with other problems, sitting next to an extremely formidable and entertaining cultural empire. We are in a situation where we have to protect our culture. We have to protect it in our telecommunications devices, for example, and in every possible way.

Before asking you my question, let me digress, since it is quite obvious that you have put the cart before the horse. You have decided to enforce the law you want even before passing it. It flies in the face of all evidence that Globalive was in fact controlled by Orascom.

What kind of measures are you currently thinking of incorporating in your future bill to curb foreign ownership in telecommunications, and to protect Quebec and Canadian culture?

Ms. Marta Morgan: These are very complicated questions and the decisions that go with them will have a lot of impact. My minister clearly said that we are going to take our time, that the government really must consider all options and consequences. He has also made it clear that culture and broadcasting are not to be touched; we are dealing only with telecommunications.

Mrs. Carole Lavallée: I have one comment, Ms. Morgan. You say that you are not touching culture, but culture touches you. You cannot say that it is none of your concern. It is everywhere, it is in the telecommunications devices. Even Mr. Wilson, the author of the study you talked about in your presentation, wrote two years ago that we are not able to differentiate between telecommunications and broadcasting, that it is becoming more and more difficult to do so. So what are you going to do to protect culture?

Ms. Marta Morgan: The government must take time to study all these issues, but it is clear that we are not dealing with cultural or broadcasting matters in terms of the commitments made in the Speech from the Throne and in the budget.

Mrs. Carole Lavallée: So, if I understand correctly, you intend to do nothing?

The Chair: Thank you, Mrs. Lavallée, Ms. Morgan.

[*English*]

Thank you to our witnesses, Madam Lévesque, Madam Morgan, and Madam McDonald, for appearing.

This meeting is adjourned.

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