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Chair

The Honourable Michael Chong

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• (0900)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Welcome, members, to the eighth meeting of the Standing Committee on Industry, Science and Technology, on April 13, 2010. We are here today pursuant to Standing Order 108(2) for a study of Canada's foreign ownership rules and regulations in the telecommunications sector.

Today our meeting has been divided into two separate sections so that we can hear from two separate witnesses.

The first witness, whom we will hear from for the next hour, is Mr. Dimitri Ypsilanti, who is the head of the information, communications, and consumer policy division of the directorate on science, technology, and industry for the Organisation for Economic Co-operation and Development.

He is available to us today through video conference from Paris. He has asked for translation. I want to highlight for members that there will be a delay, not only in the translation, but also in the video feed.

Without further ado, we'll begin with an opening statement from Mr. Ypsilanti.

Mr. Dimitri Ypsilanti (Head, Information, Communications and Consumer Policy Division, Directorate on Science, Technology and Industry (Paris), Organisation for Economic Co-operation and Development): Good morning, Chairman. I hope you can hear me.

The Chair: You're loud and clear.

Mr. Dimitri Ypsilanti: I will be speaking in English. Is that your understanding?

The Chair: You can address us in either English or French.

Mr. Dimitri Ypsilanti: I have sent a paper. I'm not sure if it was distributed. It was sent in English and could have arrived a bit late for you to have it in both languages.

Let me begin by benchmarking Canada's foreign investment restrictions in the context of the OECD. 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.

For me, the most important questions to address regard the benefits of these restrictions and, if there are benefits, how you can ensure that these benefits do not require a heavy regulatory burden. In fact, if I try to find arguments in favour of maintaining these restrictions, I've only come across two main arguments that are fairly general.

The first states that telecommunications is very sensitive, that the communications sector is sensitive, and to me it's unclear what in fact this refers to.

The second argument is that if Canadian control is not maintained there will eventually be an impact and a threat to Canadian culture and the creation of Canadian content. This is, in practice, an idea that there's a sort of domino effect that goes from the telecom sector to the broadcasting sector and then has a negative impact on culture and content.

With respect to the sensitivity of the telecommunications sector, in all OECD countries the telecom network is considered to be critical information infrastructure, and all countries have regulations in place to protect that infrastructure. However, these regulations do not actually need to prevent foreign entities from investing in those countries. There are more direct regulations to ensure that there is a protection of the infrastructure. Obviously in cases of national emergency, all countries have laws that give governments significant powers to ensure adequate control of networks, so the argument about sensitivity is, to my mind, fairly spurious.

What about the link to cultural issues and values? Telecom networks are carriers of content. The regulations that govern network development and the offer of communications services to the public are quite different from those regulations that govern the provision of broadcast content. In my mind, there is no reason to believe that foreign telecom network operators will necessitate a change in regulations governing the diffusion of online content.

• (0905)

Canada is, in fact, one of many OECD countries that have regulations favouring local content and the diffusion of domestic broadcast content, yet these other countries do not seem to find the need to restrict investment in the telecommunication sector. If they want to protect the content sector, they do so directly with other laws and regulations.

What about the costs of foreign investment restrictions on the telecommunication sector? I believe these costs are quite high. First, there's a higher cost of capital and the potential difficulty for new entrants to get access to equity capital. Canada, relatively speaking, has a fairly small capital market, and in a capital-intensive sector such as telecommunications, it is important for companies, even if they're Canadian-based companies, to go outside to obtain equity capital.

Lower investment performance also has implications for the development of competition in the telecommunications sector. I believe that by limiting investment only to Canadian-owned/controlled companies, you're actually reducing the level of competition in the telecommunication sector in Canada. This has implications in terms of higher prices for businesses and the competitiveness of businesses, both in Canada and overseas, and of course there is a negative impact on consumers and a slower diffusion of new technologies.

The foreign investment restrictions, I believe, also go against government objectives such as improving connectedness, enhancing innovation, or improving productivity.

In conclusion, Chairman, I would in fact argue that there is a greater danger to national welfare in Canada and to Canadian cultural heritage by slowing down the process of investing in high-speed ubiquitous networks, which results from limiting foreign investment in Canada. There is a danger to Canada and Canadian welfare from higher access and usage costs in the telecommunication sector than would occur in a more competitive market. I believe that Canadian culture will thrive much more in a market where access and use of network resources is cheaper and where users have more choice among service providers.

Thank you very much for this opportunity, Chairman.

● (0910)

The Chair: Thank you very much, Mr. Ypsilanti, for your opening remarks.

We're going to have about 50 minutes of questions and comments from members of this committee to you about the subject matter, beginning with Mr. Rota.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Ypsilanti, for joining us this morning. It was most interesting.

My riding is in a rural area of Canada. That often concerns me. You mentioned in your presentation that because of Canada's small population and large geographical size, there's a small capital base and equity is limited. As I mentioned, population is not just limited, but spread across a large part of the country.

The argument I've been hearing most often is that if we open up competition and open up to foreign ownership, we'll have more competitors coming into the market and offering more service. Now, I've dug around a bit, and what I've seen on the OECD website is that most OECD countries, if I'm not mistaken—and maybe you can comment on this—have three or fewer networks by the time all is said and done and the dust has settled.

Maybe you can comment on that and on how it would help Canadians to have better service. It seems to me that if we have two or three now and we open it up, all that will happen is that rather than having new competition coming in, we will end up with buyouts.

Is that something you've looked into?

Mr. Dimitri Ypsilanti: That's an excellent question. Of course, as I said, the construction of networks is expensive. We are moving away, in many countries, from the copper network to a fibre network, and it is even more expensive to put in fibre networks.

Nevertheless, I believe that what competition does is that, first, it forces the incumbent to improve service, and obviously it reduces prices, but then it clearly puts pressure on them to reach out. Because they do have coverage in the urban areas, but they want to extend coverage. They want to get a bigger part of the pie, if you wish, and they do tend to extend coverage.

The same goes for any new entrants that have networks. If they want to compete, they need the capital to compete. Therefore, they need capital from overseas, in many cases, to compete. They may need know-how from other national telecom operators if they're moving, for example, to a fibre network. I think the key point here is how investment creates better competitive conditions in the country.

Let's look at the mobile sector in many European countries. Granted, a country such as France is about 500,000 square metres in size, so there are at least 10 Frances in Canada; for example, I believe two Frances could fit into Ontario. Obviously the size of Canada is a factor, but there is virtually 100% coverage in the mobile sector in France. You have very few of what I would call "white spots" where you get no signal. That comes from having three operators and a number of virtual network operators, so competition is a key factor.

● (0915)

Mr. Anthony Rota: Thank you for those words.

I look at France, and I can tell you that my riding alone is 16,000 square kilometres, with a population of about 100,000 people, so you can understand the challenges of getting service to people. Some would say that the business case—and I would argue the same way—says to just ignore that, to leave it alone and go to larger centres like Toronto and Montreal, the centres where it's lucrative.

You've made the argument that with competition the same level of service would come, regardless of where you are in Canada. I'm not sure if you're saying that competition would take care of this or that we would have to mandate it as a government in non-lucrative areas.

What we've found in the past is understandable, but just not acceptable: that cities would get prime technology and prime service. Yet when we look at rural areas, not only is the response slower, but the quality of what comes out there is lower, and the service offering just isn't there.

So when we look at establishing mobile networks, I don't understand why a company or a corporation... I know you mentioned that they want to reach out, but the real money is in the big centres, and we understand that. I'm not sure that deregulation and opening up to a foreign owner who is trying to maximize his profit could guarantee service to rural areas and coverage in areas that are not densely populated.

Mr. Dimitri Ypsilanti: Let's put the question the other way. You seem to be saying that you have very little service in your particular riding despite having restrictions on foreign investment. Clearly, Bell Canada, or whoever the service provider is, hasn't spent much time there because they themselves are spending time in Toronto and the larger cities. That will always be a problem. You are correct when you say that a new entrant, in order to get revenue and the profits to continue investing, will always go into the larger urban centres to invest.

I guess my point is that over time there's much more of an incentive, when there is vibrant competition, to go out to some of the less populated areas. I think that all OECD countries have areas like yours where, at the end of the day, there is a need to find alternative means to provide service. That's whether it's through government subsidies, municipal networks, or what have you.

There are certain countries that have an auction, for example, and it's a reverse type of auction. The government states that they'll make this area available and they're asking for operators to come and state what kind of subsidy they need to go there. The more players you have in the market, the better chances you will have that someone will decide to go there.

The Chair: Thank you very much, Mr. Rota and Mr. Ypsilanti.
[Translation]

Mr. Cardin, you have the floor.

Mr. Serge Cardin (Sherbrooke, BQ): Thank you. Good morning Mr. Ypsilanti.

First of all, I would like to get back to a question that was asked on population density. There are 3.29 Canadians per square kilometre. So, you can imagine how great a distance 9,984,000 square kilometres will be to cover. I would like to know whether your study takes into consideration the territory and population density.

[English]

Mr. Dimitri Ypsilanti: Obviously you need to look at two parts of Canada, because the U.S. border area—let me call it that—has a population density that is quite high. Certainly in parts of Ontario, and in parts of Quebec, the density will be higher than it is over here in France. I'm talking about the belt along the lakes and along the St. Lawrence. There shouldn't be any problems in terms of telecommunication service there.

If you move further north in Canada, obviously the revenue potential for companies is much lower. It's easier, for example, to provide mobile in certain areas. But my experience with Canada is that even in areas that I wouldn't call sparsely populated, there have been difficulties in the past in getting mobile signals. I take it that there is insufficient competition between operators to try to provide better service for customers.

But you are correct: in areas that are sparsely populated, the cost of providing networks will be difficult. It is important for governments to designate these areas and to try to ensure that networks are built there. As I said in my earlier question, the greater the number of operators you have, the more chances you have of ensuring that you find someone to build the networks there at the lowest cost.

• (0920)

[Translation]

Mr. Serge Cardin: Given that we are referring to companies' profit margins, you mentioned that foreign investments could increase the competitiveness of Canadian corporations. Given the margins, I believe our corporations are able to invest. In fact, Bell Canada invests more in R&D than AT&T per dollar of sale.

If you are to compare innovation or technology, could you tell us what technology Canada does not possess which could be rectified or could benefit from foreign investments?

[English]

Mr. Dimitri Ypsilanti: I mentioned fibre investment. I'm not sure if you got the small paper I sent, but a graphic there shows the development of fibre to the home networks across the OECD.

Canada, if it has any fibre to the home—I'm not talking about fibre backbone networks, but fibre to the home—has an extremely small percentage, whereas if we look at Korea, Japan, and some of the other OECD countries, investment in fibre to the home technology has been diffusing much more quickly.

What is important is how quickly these technologies diffuse to the public. It could be fibre to the home or it could be fourth-generation high-speed mobile technology. I believe Canada has been quite slow. For example, in broadband, if you look at Canadian speeds offered to the public, they are relatively slower than the speeds you get when you access the Internet here in France, for example, or in other countries in Europe.

[Translation]

Mr. Serge Cardin: Overall, witnesses have told us that Canada was not lagging from a technological standpoint. How would you explain the urgency of opening the telecommunications market to foreign investors in Canada when, if we look at corporations, we realize that no major Canadian corporation has reached its allowable foreign capital limit, except for Globalive which has reached it and in fact gone beyond? Currently, that company is already going beyond regulations.

[English]

Mr. Dimitri Ypsilanti: I'm not sure of the question. Could you repeat it, please?

[Translation]

Mr. Serge Cardin: At this point, Canadian companies have not reached the foreign investment limit. Some are quite a bit below it in fact. There does not seem to be any interest in that. How would you explain this situation?

• (0925)

[English]

Mr. Dimitri Ypsilanti: You seem to be implying that a foreign company would want to come into Canada and take 100% control of a domestic telecom company. I don't think that's the case. I think they would like to partner with companies. They would perhaps not be interested in 100% ownership.

If we look across the OECD countries that do not have restrictions on foreign investment in the telecom sector, we see that very few foreign companies have actually tried to get total control over a domestic operator. There are certain cases, but in most cases they are content to be minority stakeholders. This is the case in the mobile sector, where foreign companies have come in and have helped to develop the sector, but through a minority shareholding.

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

[Translation]

Thank you, Mr. Cardin. We will now continue with Mr. Wallace.

[English]

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

Thank you for joining us today, sir. I have just a few questions for background.

Is the OECD report something that's done on a regular basis or is this a one-time event? Will you be revisiting this report in the future in terms of studying the international marketplace for foreign investment in telecommunications?

Mr. Dimitri Ypsilanti: No. My comments are based on the outcomes of a number of different reports.

We monitor policies in terms of foreign investment every couple of years in a report called "OECD Communications Outlook", but we do undertake a number of other reports, whether that's in the mobile sector, or looking at Internet, or in broadband. We do benchmark countries in terms of prices and penetration rates for number of subscribers in the telecom sector. My remarks are a cumulation of different facts.

Mr. Mike Wallace: I appreciate that background.

Here is my first question for you. In Canada we started the foreign investment restrictions in the late 1980s or early 1990s. Those restrictions were put into the legislation. You indicated to us that we're one of only three out of thirty with restrictions. Did the other countries within that study start with restrictions and loosen them or were they in that vein from the beginning?

Mr. Dimitri Ypsilanti: Most of them, in fact, started with a total restriction because they had a state-owned monopoly telecom carrier. They had a single telecom carrier when they opened up their market to competition. That happened basically when, under the WTO at that time, the General Agreement on Trade in Services came into effect.

They opened up their market to competition and new entrants came into their market. The state holding of the incumbent carrier over time was reduced and, in many cases, totally eliminated. In fact, if you look historically at the situation, they started off in a much

more restrictive position than Canada did. As they were liberalizing, Canada actually started to be slightly more restrictive.

Mr. Mike Wallace: Would your opinion be that the loosening of those restrictions on the potential for foreign investment, which has happened in the 30 countries you've studied, including those in Europe, has helped add competition, reduce costs, and improve services for customers?

Mr. Dimitri Ypsilanti: I'd say that most certainly it did. There are markets that still need much more competition, but many markets that once had poor service, high prices, and a monopoly carrier are now considered to be very competitive and have very fast Internet connections at relatively cheap prices. Certainly, I think, competition and the openness of the market helped in that context.

• (0930)

Mr. Mike Wallace: When you're doing your study, or your group of studies, what is the methodology to compare doughnuts to doughnuts, as we say here?

We have different densities. We have different sizes of countries. We have different levels of usage. I think usage in Canada is about 400 minutes a month or something, and I think it's much less in some countries in Europe.

Is there a way, through your methodology, that you're able to equalize those differences, or are they actually highlighted within your study?

Mr. Dimitri Ypsilanti: Your question is quite wide, because there are different sectors or segments of the telecommunications sector. For example, when we look at the mobile sector, we do have a methodology that compares prices across the OECD countries in the mobile sector. To compare prices, we tend to take the dense urban areas in each country—a major city, so usually Toronto rather than Ottawa. We certainly don't compare prices across Canada. We take one or two cities and compare prices, on the assumption that where you'll have the most competition is in those cities.

Mr. Mike Wallace: My final question is on what we're hearing from some of our witnesses regarding the issue of culture and the risk that if we were to have foreign ownership Canadian culture would also be at risk.

Just for my understanding, are the telecommunication companies you've studied in other countries integrated like some of our companies that are in both the telecommunication business and the broadcasting business? Could you let me know, from your work in looking at other countries, whether there has been any impact on cultural broadcasting in those countries?

Mr. Dimitri Ypsilanti: I assume when you say "broadcasting", you mean terrestrial free-to-air broadcasting, such as the CBC.

Let me break down the question. Most telecom operators that are offering broadband Internet access have been offering bundled packages for a number of years, which include Internet TV. They're offering 100 channels on their IP networks, on their Internet network. France Télécom has 100 channels, for example, but these are online.

Obviously some operators in Europe own cable companies, and that has caused problems in terms of competition. The cable companies offer Internet access, cable modem access, and the telecom companies offer broadband access, and they tend not to compete with each other because they have joint ownership. A limited number of countries have that.

To my knowledge, there are no countries where the telecom operator actually owns broadcast facilities in the sense of terrestrial broadcast facilities. But as I said in my earlier remarks, there is no evidence at all that there's been dilution of local content or local content regulations because of entry by telcos in the market for content.

The Chair: Thank you very much, Mr. Wallace and Mr. Ypsilanti.

We'll now go to Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you, Mr. Ypsilanti, for being with us here this morning.

I know that in your document you have some good numbers on evaluating other countries and their pricing, but I'd like to ask you for your comments on reliability. What I mean by reliability is the success of the service in regularly providing the level of service that someone has purchased.

I'll use an example. In Windsor, I've used Cogeco Cable for many years, and it has been very, very good and reliable. I've had relatives who have gone to Bell, which has sent them the wrong equipment. As well, that service has operated at full capability not on a regular basis, but only intermittently.

You were looking at costing and so forth in these countries. Has there been an evaluation of the reliability of the provision of that data management service and the broadband used to deliver it, which users are paying for? Has it been evaluated at all?

• (0935)

Mr. Dimitri Ypsilanti: In short, no, because it's extremely difficult to get data. The data have to come from the companies themselves, which are obviously reluctant to provide that data. There are a lot of so-called war stories about how everybody used to hate their cable company and now they hate their Internet service provider. That, I think, happens across the OECD.

However, there are regulators that are now looking at some quality parameters, mainly at speeds, because, as you know, Internet service providers advertise that you will be getting eight megabytes or twenty megabytes per second, but when you're at home, you may end up getting only one or ten megabytes per second. There are regulators who are trying to impose a truth in advertising requirement that would give you a good idea of what speeds you will actually be getting. But in terms of quality, of how many times the network goes down, etc., I think there are very few regulators, if any, that are actually collecting those data.

Mr. Brian Masse: That's one of my concerns as we try to evaluate some of this. Maybe you can confirm this again, just to make sure. We're relying on the companies' data in terms of what they're actually saying they can provide, but we're not measuring that in any country. Is it correct that no country is actually measuring this?

I know there are advertisements that we can go to and check the package and so forth in terms of what we're supposed to get. For example, I buy a package that has unlimited downloads. Other people buy smaller packages that have containment...the purchasing price. Is what you're saying that no country is actually measuring whether they're able to live up to those expectations? Is that happening anywhere? Or is it just us? Are we the only ones looking at Internet pricing and what they're saying?

Mr. Dimitri Ypsilanti: For speeds, and I'm just referring to the speed you as a customer get, in the U.K., the regulator is Ofcom. When you sign up to a package, once the operators know in which suburb and city you live, they can tell you that normally customers who live in your particular area get a speed of x or y . So some information will be given.

You have to remember that quality for Internet access is of course to a large part dependent on the operator and the service that it provides, but it's also dependent on you, the customer, on your inside wiring, your computer, your modem, etc., so it's quite hard to measure speeds. There are attempts to measure speeds, but they are often measurements of speeds outside the home because that's much more pure, if I can say it that way; it's not tainted by domestic equipment.

If I can add to that, in the early days of telecommunication, regulators did collect a lot of data on different qualities of service parameters, for the offer of telecommunication voice services basically, and because quality did increase significantly as we went to digital networks, many of these measures have disappeared. Because on the voice side, using normal copper networks, normally quality is good. It's only in the ISP area where quality can be shaky.

• (0940)

Mr. Brian Masse: Thank you. That's very helpful, because it's not talked about a lot in terms of how we standardize our measurements with regard to this whole issue.

I do want to quickly add that in Canada we don't have any restrictions on foreign investment; rather, it's controlling shares where there are restrictions. What would be the primary motivation for foreign investment if we reduced our controlling share element versus what it is right now, where it's open if you wanted to actually invest in non-controlling shares?

Mr. Dimitri Ypsilanti: Let me go back a little. You do not have restrictions, as far as I understand, for resellers, so if there is an Internet service provider that uses unbundled lines or wholesale lines from Bell Canada, for example, it can be wholly foreign owned, as far as I know.

But many of these companies would perhaps like to get into networks and to build their own networks, or to build their backbone networks, at least, not necessarily all the way to the home. They would like to control their network much more than they are controlling. I think that is a key aspect in allowing foreign companies to come in: to allow them to have a better control over the network. Because, going back to your earlier question, when they have to rely on an incumbent—Bell Canada or whoever—the quality of that network is not under the control of the wholesale user. It's dependent very much on what is given to them by the other company.

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

Thank you, Mr. Ypsilanti.

Monsieur Coderre.

Hon. Denis Coderre (Bourassa, Lib.): *Kalispera*, Mr. Ypsilanti. How are you?

Mr. Dimitri Ypsilanti: I'm very well.

Hon. Denis Coderre: That's good.

Because you also had the privilege to study in Canada and you know the geography of Canada, I'd like to come back to the kind of one-two punch of culture and telecommunication. Because of course we have a situation here, as you know.... If Italy is buying France Télécom, I'm not sure that we'll have Italian content in France, but when you're in Canada, we're looking to what is going on in the United States and it's a bit tricky because of the geography.

So first, do you believe that we don't have any choice in Canada but to have some regulation because there is a close link between the content and the distribution?

Mr. Dimitri Ypsilanti: I don't think that link is there. If you want to control Canadian content, that's fine. You can do it with regulations on the broadcaster, which you have already in place, or you can do it on a telco that is providing Internet protocol-based television. You can put the same restrictions on them if you wish.

You're certainly not in a position to control content on the Internet, and I think no one does that. But if you want to control programmed television—whether it's provided free to air, on cable networks, or on high-speed Internet networks—you can do that directly with regulations, many of which you have in place already, without necessarily going all the way back to the network and restricting investment in the network. I find that totally unnecessary.

Hon. Denis Coderre: My only concern here is that—as you've said in one of your answers to my colleague Mr. Wallace—Canada is kind of unique. Because the telecommunication companies are also broadcasters and own cable distribution at certain levels, there is co-ownership. So do you believe that, although we need more competition, regulation is also quite necessary because of the unique situation?

• (0945)

Mr. Dimitri Ypsilanti: I think you have to separate regulation that creates network and service competition and regulation that controls the content of the service. Here I am referring to the service in terms of preprogrammed service, such as broadcasting. That's a whole different area of regulation.

As you probably well know, the French are very attached to French culture, and they would certainly not allow Italian culture to...*[Inaudible—Editor]*.

Hon. Denis Coderre: You noticed my accent, “eh”?

My colleague, Mr. Garneau, has another question for you.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Yes.

Thank you, Mr. Ypsilanti.

As you know, the Broadcasting Act in Canada says that the broadcasting system is to be effectively owned and controlled by Canadians, and it's not open for renegotiation at this point.

If the telcos—and there are not very many pure telcos in this country—are allowed to have greater foreign ownership, how do you reconcile that with the Broadcasting Act, since some of these companies in the telecommunication sector will also have broadcasting interests?

Mr. Dimitri Ypsilanti: I think we're tending to use the term “broadcasting” a bit differently, because for me “broadcasting” refers to the use of the airwaves, so that's free-to-air broadcasting, much like CTV or CBC does, rather than using cable networks or high-speed Internet networks to send you content.

But having said that, you can control the amount of ownership—

Mr. Marc Garneau: Just to clarify, regulation here on the broadcasting side does touch the cable side of things. It's not just for over the air.

Mr. Dimitri Ypsilanti: Sure, but you can control the percentage of programming that is Canadian owned or produced or has Canadian content or whatever criteria you want to use, irrespective of the network. All you need is a regulation stating that what we call a “linear” program.... In other words, if you have a schedule of programming for a number of shows on your IP network, then these should have $x\%$ that are Canadian shows, Canadian-produced shows, or whatever. All it requires is that you regulate that.

My point is that to achieve that you do not need heavy-handed regulation to stop investment and to stop competition on the telco side and on the network investment side.

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

Go ahead, Mr. Lake.

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

Thank you to our guest for a very enlightening meeting.

I want to bring this back to the consumer. We're talking a lot about how changes to the rules might affect the big companies and about technical language and things like that. When you think about the Canadian consumer, someone who might be watching this or might read about this later, I want you to speak directly to them about how Canada is doing in terms of price, speed, and other measures.

How might changes and an increase in competition affect them? What would they see in their homes?

Mr. Dimitri Ypsilanti: I can best answer this question through an example. I live here in Paris. For \$40 Canadian, I can get Internet access at 20 megabits a second that is offering 300 TV channels, free calls to local numbers, free calls to national numbers, and free calls to 100 international numbers. In other words, I pay \$40 and get that bundle.

We see much more of that in countries where there is significant competition in the Internet service market and where there's more choice available in networks than perhaps you see in Canada.

• (0950)

Mr. Mike Lake: Okay.

When you're looking at the countries in the OECD that have no foreign investment restrictions, what segments have experienced the greatest number of new entrants or increased investment activity?

Mr. Dimitri Ypsilanti: In what sector?

Mr. Mike Lake: What segments...?

Mr. Dimitri Ypsilanti: Do you mean telecom?

Mr. Mike Lake: I mean wireless versus wireline versus satellite or whatever. Where have you seen the biggest impact when there are no investment restrictions?

Mr. Dimitri Ypsilanti: Well, I think where you see it is mainly in wireline and in new entrants in the mobile sector.

Mr. Mike Lake: Okay.

Mr. Dimitri Ypsilanti: You see very few in wireless, although there are occasions. You see very few, perhaps, in the ISP sector, the Internet service providers.

Mr. Mike Lake: Okay.

You dealt with the question of culture and Canadian content earlier. I know that you addressed some of the questions Mr. Coderre had about the differences in the regulations. Do other countries face similar challenges? If so, how do they deal with those challenges?

Mr. Dimitri Ypsilanti: Protect content, do you mean?

Mr. Mike Lake: Yes.

Mr. Dimitri Ypsilanti: They do face the same challenges. Unlike Canada, of course, they don't have a large English-speaking country on the border, but they do want to nurture local content and ensure that it is developed.

They use policies aimed directly at the development of local content and ensure that broadcasters use local content either in prime time or during $x\%$ of the day. You see that in quite a number of countries.

However, as I said earlier, that doesn't mean they have to step back and put up other restrictions. They can do that directly on the content distributor.

Mr. Mike Lake: One of the things that caught my attention toward the end of your prepared remarks was your discussion about getting Canadian content to Canadians and dealing with that cultural question. You talked about how it might be improved through the increased technology that would come with less restriction on investment.

Could you elaborate a little bit more on that?

Mr. Dimitri Ypsilanti: It's mainly because I see competition, particularly competition that stimulates access and usage of the Internet, as playing a large part in developing national content. I'm not talking about movies or music, necessarily; I'm talking about other content products that are put on Internet and made available to the residents of that country. When you do have a lot of competition in the ISP market, you find that you have development of content.

In a more general sense, when telcos can start providing content—and there are requirements that they do need to provide a certain percentage of their content from national sources—you will find that they stimulate production. One thing we've seen in France, for

example, is that one of the satellite companies that also has access on cable, Canal Satellite, is a large investor in content production.

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

[*Translation*]

Mrs. Lavallée, you have the floor.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chairman.

Mr. Ypsilanti, I want to address an important matter. You said it was an argument which you in fact seem to set aside. I am referring to the threat to culture. This threat is real.

I would imagine you understand French as you live in Paris. Do you need a translator as we go along?

● (0955)

[*English*]

Mr. Dimitri Ypsilanti: It's being interpreted.

[*Translation*]

Mrs. Carole Lavallée: I am sorry.

I would like to get back to the threat to culture. I have a few statements to make and I will be pausing so that you may get consecutive translation.

Canada was the first country in the world to sign the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. That was done for fundamental reasons. You did not seem to comprehend its outcome. Canada and Quebec live next door to a cultural giant, I will even refer to it as an empire, the United States.

The vice-president of CBC/Radio Canada was even quoted as saying that Canadians were the only people in the world to prefer watching their neighbour's television. In Quebec, we have a fully functioning star system, with a significant audience, thanks to our system receiving government support, and because there are regulations and legislation. This support is sustained and lasting.

In the area of telecommunications, if you control access you can control content. Telecommunications companies such as wireless telecommunications companies are now making cultural choices by offering free applications, films and access to a host of cultural activities through their technology. Wireless telecommunications are currently governed by the Telecommunications Act. That amounts to a real problem.

The system has been working well to date. The system needs to be updated and modernized. However, it is clear that foreign ownership complicates matters. From a cultural standpoint, and even from an economic standpoint, we do not see the need to change these rules. To date we have seen no evidence here in Canada that it would work as it has in the European Union. In Europe there are ten people for every foot of fibre optic cable whereas here there is one per every thousand feet. Obviously, that is an exaggeration; those are not exact figures.

Why change this when the cultural threat to Canada and Quebec is real? What is your interest in imposing new foreign ownership rules on Canada and Quebec?

[English]

Mr. Dimitri Ypsilanti: Yes, my remarks covered all of Canada, obviously including Quebec. You seem to be arguing that Bell Canada, for example—I don't want to pick on Bell, and it could be another Canadian-owned carrier—will enhance Canadian content for some reason, more than any other carrier would.

All carriers will behave the same way. They invest, they look at prices, and they want to make a profit. One carrier, because it's Canadian owned, will not necessarily purchase more Canadian content than will a carrier that is not Canadian owned. My point is that for Canadian citizens, for users, it's important to have good quality networks that are cheap and offer a range of services, and you can have that only through competition.

Let's turn now to the cultural choices. The cultural choices that you're talking about.... And yet cultural diversity is important; I don't think people doubt that. But they may within a framework. All I'm saying is that this framework, which you can adapt quite easily to a new Internet environment, a new environment where a telco offers programming online, doesn't have anything to do with restricting investment.

It's a direct regulation on what a telco can—I'll use the term—"broadcast", on what it can offer in its program choice to its customers. That regulation is quite light relative to the restrictions on foreign investment and that type of regulation is easy to put into place and administer.

I don't see any danger in opening investment on the network or in that link, which I think is very tenuous, to eroding cultural diversity in a country. If you want to maintain that diversity, all I'm saying is to put those regulations in place that you already have anyway.

•(1000)

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

Merci, Madam Lavallée.

I want to thank you, Mr. Ypsilanti, for taking the time to appear in front of us today.

We're going to terminate the transmission to Paris. I'll invite the members of the CRTC to come to the table for the second hour of this meeting.

Once again, thank you very much, Mr. Ypsilanti, for appearing in front of us. We appreciate your research and your testimony.

Mr. Dimitri Ypsilanti: Thank you, Chairman.

Goodbye.

The Chair: Now we will have our second hour of testimony from witnesses.

From the Canadian Radio-television and Telecommunications Commission, we have in front of us today Chairman von Finckenstein, Vice-Chairman Katz, and Senior General Counsel Keogh. I want to welcome all three gentlemen to the table.

We'll begin with an opening statement from Mr. von Finckenstein.

[Translation]

Mr. Konrad W. von Finckenstein (Chairman, Canadian Radio-television and Telecommunications Commission): Thank you, Mr. Chairman.

I will make a brief opening statement. We will then be happy to answer your questions.

The committee is examining issues related to foreign ownership in the telecommunications sector. These issues have taken on greater importance with the arrival of convergence. 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.

[English]

In 2006 the Telecommunications Policy Review Panel recognized that:

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.

This scene was repeated by the Competition Policy Review Panel, commonly known as the Wilson panel, which stated the following in its 2008 report:

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.

[Translation]

Despite these observations, both the TPRP and the Wilson panel proceeded to recommend only the liberalization of the foreign ownership restrictions governing telecommunications. In addition, both panels recommended that the liberalization should initially be applied only to new entrants.

Where the commission stands on this issue is quite clear: we want vigorous competition. Canada would benefit from having additional facilities-based carriers. Foreign investment, properly regulated, can play a key role in supporting such carriers. The present rules are too restrictive and complicated. A liberalized and simplified policy to govern foreign investment is essential to improving competitiveness.

[English]

However, some considerations have to be kept in mind in any attempt to liberalize the rules.

First of all, requiring a regulator to apply two sets of rules for broadcasting and telecom introduces artificialities into a converged company's corporate conduct and produces artificial corporate structures. This obviously runs counter to the natural benefits of convergence.

Second, 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.

Third, while market liberalization should be pursued vigorously, it should not discriminate between potential new entrants and incumbent firms.

Finally, we believe that it is widely agreed that, given its economic importance, control of the communications sector should remain in Canadian hands.

In short, the challenge for you as legislators and for us as regulators is to strike the right balance to achieve liberalized foreign investment while maintaining Canadian control.

• (1005)

[*Translation*]

The present rules and regulations make up a complicated web of boundaries, categories and constraints. They are in urgent need of an overhaul. They do not at all address the reality of convergence. Broadcasting distributors now deliver telephone service. Phone companies deliver television service. The Internet delivers everything and mobile devices bring it all into your hand, wherever you are. Technological convergence has led to corporate convergence: mergers and acquisitions bring all of these services together under large ownership groups.

At the CRTC, we have been doing what we can internally to implement regulatory convergence. We have created the policy development and research branch, which brings together activities common to broadcasting and telecom. We also conduct joint telecommunications and broadcasting hearings whenever possible. For instance, we examine the accessibility of both types of services in a single hearing.

But the legislative and regulatory structure we administer still preserves the old distinctions of broadcasting and telecommunications, or in other words the distinctions between content and carriage. For Canada to remain a leader in a converged world, we need to abandon these artificial and outdated concepts.

[*English*]

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.

We also need more institutional simplification so that foreign investors don't face the prospect of being subject not only to different legislative regimes, but also to different regulators that make conflicting decisions. In short, we need a unified approach to clear the way for convergence, competition, and creativity.

But that is really for another day. Today you are considering foreign ownership rules. We need to simplify these rules. We should not be juggling complicated percentage requirements for operating and holding companies or dealing with percentages of board members and other such things.

Here is a simple approach consisting of two rules that we propose. First, no foreign entities should be allowed to own, directly or indirectly, more than 49% of the issued voting shares of a Canadian communications company. Second, no foreign entity should have "control in fact" of a Canadian communications company. This would apply to all communications companies, whether they're

engaged in telecommunications or broadcasting. It would also apply both to incumbents and to new entrants.

I would like to stress the importance of keeping that "control in fact" in Canadian hands. The CRTC is mandated to promote and protect Canadian cultural and social values. This mandate is even more challenging in a world where digital information doesn't recognize any national borders. I'm confident that Canada can simplify and clarify the rules for foreign investment in communications, while still ensuring that culturally or socially sensitive areas remain firmly Canadian in character. I'm equally sure that you cannot instill Canadian values by regulation.

Before giving you my closing remarks, I would like to propose to the committee a change that should be part of any regulatory reform.

[*Translation*]

The CRTC should have the ability to assess administrative monetary penalties, or AMPs, under both the Telecommunications Act and the Broadcasting Act. In telecom, we are now applying smarter and lighter regulation. We are moving away from the old approach that prescribed in advance to the players what they were permitted to do. We now prefer to prohibit certain conduct and only step in if somebody breaks the rules.

But in order for us to make an effective intervention, we need the right tools to ensure compliance. Let's say a radio station violates the terms of its licence, or a telecom carrier is not complying with the ownership rules. Currently, the punitive actions we can take are either too light or too harsh. But with AMPs authority, we could impose a penalty that is appropriate for the violation.

• (1010)

[*English*]

We currently have such a tool in enforcing the national do-not-call list and the regulations made thereunder. The spam bill that was debated during the previous parliamentary session proposed to give us similar powers. But rather than following this piecemeal approach, I hope the committee, while considering liberalization of ownership rules, will also recommend the adoption of comprehensive AMPs with respect to all CRTC responsibilities.

Thank you very much. We will be pleased to answer any questions.

The Chair: Thank you very much, Mr. von Finckenstein.

We'll begin with Mr. Garneau.

Mr. Marc Garneau: Thank you very much, Mr. von Finckenstein. I have several questions for you and very little time.

First, in your words, why did the CRTC rule that Globalive did not meet Canadian ownership requirements? I suspect it revolves around the definition of "control in fact" and I'd like to ask if it's something that needs further definition to clarify and to ensure that we don't have different interpretations in the future.

Mr. Konrad W. von Finckenstein: "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. We used that law and jurisprudence and applied it to the facts of the Globalive carrier case.

We came to the conclusion, which we set out in our decision after a lengthy hearing in open court with submissions from both sides, with tests for these factors, that for Globalive, in effect, Canadians did not have control of that corporation. Now, you should know that we do not have the power to give a conditional approval. We could not have said no, you haven't, but we'll give you two years to bring yourselves onside, or something like that. We had to make a decision, yes or no, according to the legislation.

We made that decision and we issued it and that's the end of the story. As far as we are concerned, we applied existing jurisprudence.

Mr. Marc Garneau: In its throne speech, the government talked about looking at the possibility of greater foreign ownership in the telecommunication sector. At the same time, it has also stated that it's not going to open the Canadian Broadcasting Act. It seems challenging to me, given the convergence of the telecom sector and the fact that they have broadcasting interests.

Is it possible to change foreign ownership rules without making changes to the Broadcasting Act, given that it says that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians"?

Mr. Konrad W. von Finckenstein: As I tried to make clear in our opening statement, we feel that convergence is here. To make a distinction between telecommunications and broadcasting is artificial. It doesn't make sense. As you know, you can watch any television program on the Internet or on cable. When you watch programs, some are interactive, and you can phone in or type and send e-mail messages that appear on the screen. You interact. Is this telecom? Is this broadcasting? Or both?

I mean, it is all one. The technology is one. The industry is one. Legislatively, if you deal with them separately, you're going to force them into artificial distinctions in order to take advantage of the legislation. That's not going to create efficient companies or competitive companies. That's why we say you have to deal with both of them.

But given the very cultural concerns that you've expressed and that we have, etc., we feel that the best way to do it is to simplify the rules, not to have a different rule for holding companies and operating companies. We have special board rules, etc. We don't need all of that.

Make it very simple in regard to any foreign company. As long as the Canadians own 51% of the voting shares and the control in fact is there, that's fine, and they can invest as much as they can in Canada. They can be very successful. I mean, a lot of companies in the past....

Rogers is a perfect example. It had huge financing from abroad, but there was no question that Ted Rogers was in control.

•(1015)

Mr. Marc Garneau: In 2008 there was that auction in which Globalive and other companies participated. After paying \$422 million, Globalive was successful in securing a portion of the spectrum. Now, it took some 15 months before the ruling was made by the CRTC. You've explained the decision that was taken by the CRTC.

There will be future auctions. Does it make sense to proceed the way the government did, to allow that 15 months to go by, and then essentially, after a company had paid its money, to discover 15 months later that they were not complying in terms of foreign ownership rules? It seems to me that this was a mishandling of the situation and that it should be done differently. What are your thoughts on that?

Mr. Konrad W. von Finckenstein: Well, you see, when people apply to be licensees, etc., they don't necessarily know whether they will succeed and what the final structure will be, so to pre-clear them is very difficult. That's why the government adopts the perfectly sensible approach of saying, "Here are the conditions, and if you're successful, you have to be Canadian controlled".

I don't think there was anything wrong with the way they approached it. The problem was that the initial decision.... I don't know when it was made or on what basis it was made. They would have had the same facts before them; I can't tell.... The process, as you know, is not transparent, and as for the materials they filed with Industry Canada to get the initial permission to bid, I have not seen them, so I don't know. I can only speak of what they put in front of us.

They came before us and said, "We are now set up and we want to operate". They said, "This is how we're going to run ourselves and this is where our money comes from, and this is our technology and where it comes from, and this is where our the trademark comes from". It's all the same process, they said, and they said that they thought they were in Canadian control. On the basis of the facts they presented to us, on which there was heavy cross-examination, we came to the conclusion that no, they were not, but several times during the hearing we asked them to make changes.

They did make quite a few changes and considerably restructured the thing. They came before us with two companies, and by the end of it, there was only one company. The two were merged, the voting structure was changed, and so on. They made considerable changes, but they did not make the essential ones that we felt were necessary.

As I mentioned, I wish I had had the power to give them conditional approval. Since we didn't have it, we said no, but we made it quite clear what they would have to do in order to come onside.

Mr. Marc Garneau: Thank you.

In finishing, I'd like to have your views on regulation of the wireless sector, which of course is growing considerably. I think you've made comments about that in the past.

Mr. Konrad W. von Finckenstein: In the wireless sector, when we had our hearings on new media, we pointed out that the existing exemption is complete and there's no way for us to intervene, even if there is discrimination or self-serving, which are the normal reservations we have when we exempt somebody, because of the sector's competitiveness: unless you do something, we will step in. We suggested that there was an oversight and that it should be corrected, and we put it in our hearing for the fall.

The wireless industry came forward en bloc and said that they agreed with us, that it was an oversight, and asked us to please change that. We agree with that. We should have the right to intervene if there's self-serving or if there's discrimination, but the rest of it should be unregulated. It should be exempted. We filed an amendment and are seeking comments on it. Depending on what the input is, we will probably go along with that, because the wireless sector, at the present time, works very well and very competitively. We are of the firm belief that we should not step in unless there is market failure.

As I say, the thing is in process and I have to wait for the inputs to see what they are. But we've issued a notice saying that this is the offer from the wireless industry, that they are prepared to accept that we can step in should there be self-serving and discrimination, and we seek your comments on whether we should accept it or not.

• (1020)

The Chair: Thank you very much, Mr. Garneau and Mr. von Finckenstein.

[Translation]

We will now go to Mr. Cardin.

Mr. Serge Cardin: Thank you, Mr. Chair.

Gentlemen, good afternoon and welcome to the committee.

On March 25, we heard from representatives of Industry Canada, who told us, "Before issuing spectrum licences, Industry Canada must confirm compliance with these ownership and control requirements." The licences were sold in 2008. In October, the CRTC decided that Globalive did not respect Canadian ownership requirements. This decision was then modified by the government, which decided that the company did meet the criteria.

You explained earlier that when a company wants to purchase spectrum licences or submit a bid, it must disclose what the company is and who controls it. I imagine that it was based on this information, at the outset, that Industry Canada allowed Globalive to bid and that the licences were sold.

When were you notified that Industry Canada continued, even after the modifications, to state that the company complied with Canadian ownership requirements?

Mr. Konrad W. von Finckenstein: When Globalive came before us, it stated at the time that it had received Industry Canada approval and wanted to obtain ours. It wanted to be interconnected with the other telephone companies. Of course, if a telecommunications company cannot have interconnection, then it is useless. It is

essential to have the right to interconnect and, to do so, the company must be controlled by Canadians. Globalive appeared before us to state that it wanted to purchase spectrum licences, that it had obtained authorization from Industry Canada, and that it was now seeking ours.

I would like to point out that we wrote to the company in December 2008 to ask it to contact us at the same time as it was contacting Industry Canada. That way, both of our organizations could have worked together to make a decision, have discussions [Inaudible—Editor]. Globalive chose not to do so. It first obtained consent from Industry Canada, and then came to us at the last minute. That was its choice. I believe that a period of eight months elapsed between these two events. It was the company's decision.

Mr. Serge Cardin: In such a case, it is clear that it would have been a good idea to discuss the matter together before making a final decision.

Mr. Konrad W. von Finckenstein: Exactly. We would have liked to avoid what did happen in this case, that is, that two different decisions were made.

Mr. Serge Cardin: The question has already been asked, but could you tell me exactly what information led you to the conclusion that Canadian companies are not actually the ones that control Globalive? In your opinion, how can the foreign company indirectly manage Globalive's affairs? What led you to conclude that the requirements were not being complied with?

Mr. Konrad W. von Finckenstein: As we stated in our decision, there were a number of facts. All the money came from Orascom. This company owned approximately 80% of the equity. All of the technology was [Inaudible—Editor]. It had a trademark. All the funding came from the same source. These factors led us to conclude that it was Orascom that had the control.

• (1025)

Mr. Serge Cardin: I will now turn the floor over to my colleague.

Mrs. Carole Lavallée: We know that wireless technologies are offering an increasing number of broadcasting services. I do not think I need to provide you with examples, but we know, among other things, that this type of technology offers 16 applications, including broadcasting from CBC and Disney. Those are two good examples. Wireless technologies can do that under the Telecommunications Act.

Is that why you cannot impose broadcasting rules on wireless technologies in order to protect Canadian and Quebec content?

Mr. Konrad W. von Finckenstein: Our broadcasting regulation system is based on a world with borders. We determine what can be transmitted or not. The content must be 60% Canadian and 40% foreign, for example. Then, with the advent of convergence, we could no longer control Internet or wireless technologies.

How can you tell someone with a wireless device that he can visit certain Canadian sites but not certain foreign ones?

Mrs. Carole Lavallée: We're not talking about Web sites, but about applications. You can listen to Radio-Canada radio live. This means that an American or any other company could, for example, offer only American content, both as concerns magazines—because magazine articles are available—and for Disney or CBC broadcasts. That could be done.

Mr. Konrad W. von Finckenstein: Technically, it would be very easy to sidestep all the rules that we would like to impose. I don't see how we could do so. We could try to do so, as you suggest. Right now, the content is there. Cell phone owners can use applications as they wish. I don't believe that we will be able to control or prohibit certain uses.

The Chair: Thank you, Mr. Finckenstein.

Mr. Braid, the floor is yours.

[English]

Go ahead, Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you, Mr. von Finckenstein, for joining us this morning.

Sir, in your presentation, you indicate and suggest that we can certainly consider liberalizing foreign investment restrictions for telecom in Canada. At the same time, we could continue to achieve social and cultural objectives and protect Canadian content and culture.

In one of your recommendations, you also suggest that we may even wish to consider unifying the various acts. Could you please outline and articulate the important elements of the Broadcasting Act that we would want to maintain or that we would want to continue to have apply to the telecommunications and broadcasting sectors to protect Canadian content and culture?

Mr. Konrad W. von Finckenstein: The Broadcasting Act has a whole shopping list of objectives, but they basically boil down to two. It should be an overwhelmingly Canadian system offering Canadian content, and Canadians should have access to it both as viewers and as participants, i.e. as producers. Those are the overriding key objectives.

If you bring in a Canadian communications act and you combine the two acts, you want to make sure you maintain that as much as possible. Obviously, in the age of convergence, in the age of digitization where all content can be offered, this becomes more and more difficult.

In the past under the Broadcasting Act, we would control what you could run on a radio station or what you could broadcast, so we would control what the cable companies could offer you. Therefore, it was a defined universe. We could impose rules.

Now that you have an open universe, you have alternatives. Right now, you can watch most programs on the Internet or on your hand-held devices, so this becomes much more difficult. Therefore, rather than dealing with trying to use regulatory arbitrage, really, you're driven very much more to an age of subvention, of finding ways to support and aid in enabling Canadian programmers.

Why do we say 49%, etc.? Why does there need to be control? In a combined company, you want to make sure that the controlling minds, the controlling people, are Canadians, and they understand Canada, and they understand our bicultural, our bilingual situation.

Let's face it, if we don't do this, by and large it will be bought up, and you will have a "transplant" communications industry that will be the training ground for young executives from foreign countries. No matter what regulations you put together, you can't instill in them what Canada is all about so that they can reflect that in the programming. You can do that only if the Canadians are in charge.

That's really what the bottom line is here. If you do take away the ownership, I'm afraid.... If you try to do it by regulating, you may not succeed, and there's no way you can go back.

• (1030)

Mr. Peter Braid: You've just touched on one of your recommendations, which is to increase to 49% the amount of issued voting shares that can be owned by a foreign entity. In the presentation before yours this morning, we heard from a representative of the OECD, who indicated that out of the 30 OECD countries, Canada in fact has the most restrictive regulations with respect to foreign ownership.

Do you have a sense as to what this recommendation would mean, this increase to 49%, within the context of the OECD?

Mr. Konrad W. von Finckenstein: Well, the OECD always makes these wonderful studies. I've spent a lot of time at the OECD in Paris, etc. It's very hard to compare France and Canada or Korea and Canada. For one thing, they're not right next door to the largest communications and broadcasting market in the world. Second, they don't share, to a large part, the same language, etc. Plus, our geography and demography are quite different. So I take those comparisons with a good grain of salt.

I think you have to look at the actual situation. We are aware of where we are located geographically and what our challenges are. I think we're overprotective and we're too complicated right now. Make it clear. Make it simple. So that if somebody wants to put something in Canada, he knows that he can't be in control and that he can own only 49%, and that he can basically bet on a Canadian to make a lot of money for him. That's how it works and that's how it should work.

Let whoever runs the Canadian communications companies go to the States, Europe, Japan, Asia, or China and get some money, etc. and say that the rules are clear: "I'm in charge, but here, you have 49%". Let them say that they are obviously going to listen to those people very carefully, etc., but that they have to make this enterprise work and become profitable within the confines of the laws of Canada, which say that a Canadian has to be in control and the communications system has to reflect Canada.

Mr. Peter Braid: You recommend that we consider unifying the three acts for telecom, broadcasting, and radio communications, and you indicate that other countries have already done this. Which countries have done so? Which countries offer close comparisons to Canada?

Mr. Konrad W. von Finckenstein: The two that come to mind are Australia, where you have ACMA, the Australian Communications and Media Authority, and the States, where the Federal Communications Commission is largely in charge of all CMs and CIOs.

Because, again, the States.... Every country has slightly different statutes that now have authority within the state governments, etc., and then, of course, there's always something left in our ministry or something.... The greater policy lines, of course, are determined by the administration and the Department of Commerce, and the same thing would be in place in Canada, you see, if principles develop.

Mr. Peter Braid: You do agree, though, that we do need increased competition in Canada. Is that correct?

Mr. Konrad W. von Finckenstein: Absolutely. You're talking to a former Commissioner of Competition. I spent seven years in this country trying to foment competition.

The Chair: It's your last question, Mr. Braid.

Mr. Peter Braid: Specifically, why do you believe we need increased competition in Canada in the telecommunications area?

•(1035)

Mr. Konrad W. von Finckenstein: In every industry, competition brings a discipline into the market. You have to make sure that you have innovation and good service, and that the consumer benefits. If you have a lack of competition, those three things disappear over time.

The Chair: Thank you very much, Mr. Braid and Mr. von Finckenstein.

Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you for appearing today.

I think everybody wants increased competition. It's the obvious thing. But just like the oil and gas industry, where you have vertical integration, you don't necessarily have to have collusion. You just have the fact that Petro-Canada, for example, ships in Esso gasoline and sells it to other stations. There just isn't the competitive approach anymore.

One of the things I have a concern about is how, for example, Globalive—which is, some allege, and I think there's some truth to this, really just a front for an Egyptian billionaire—has been very much on the front of the *New York Times* and other papers, saying that the next generation of development is actually acquiring medium and other types of telco sector providers right now, as the next wave. They could actually come into our market, and, right now, when we have an issue of competition—I think that's fair, and very clear out there—we could have another model brought on us where we have one or two operators after a couple of years and no real competition.

I'd like your comments on that, because that's one of the fears being expressed out there. When we look at some of our domestic players, they're not the big fish in the sea. They're the ones who right now provide us services, but they could be very vulnerable, or they could be very interested in being purchased or in selling significant parts of their operations to foreign investors, with not necessarily a new competitive model coming into place.

Mr. Konrad W. von Finckenstein: Let's not make a comparison between gasoline and telecommunications. They're quite different industries.

You're talking about telecommunications, particularly wireless. We now have three national coast-to-coast, very high-speed, state-of-the-art wireless carriers, notwithstanding our "lack of competition". We just had the last auction, and we have three new entrants coming in: Globalive, which we've talked about; Mobilicity; and also Public Mobile.

Plus, in Quebec we will have Quebecor entering. In the west we will have Shaw.

So there are actually five new entrants. In any market, five new entrants will have a huge effect in terms of price—

Mr. Brian Masse: So are you suggesting that none of those entrants will merge?

Mr. Konrad W. von Finckenstein: Of course they will merge. Of course they consolidate. Will they all consolidate together? Will we wind up with three or will we wind up with four or five? I'm sure there is not a place, in a market as small as Canada, with this huge geography that we have and its thinly distributed population, that has six or seven wireless carriers. But we have now three as a result of this—

Mr. Brian Masse: That's the whole point, though. You've hit on it right there. The whole point is that there isn't the space for seven or eight carriers in there for competition, so there will be consolidation.

Allowing the new entrants means, in itself, the way the government has done so, especially with the significant special treatment that Globalive has received with a cabinet decision, that we are not necessarily going to have the seven or eight entrants competing. We actually could be back to, in a couple of years, two or three entrants in the market, and not necessarily having reduced prices or increased service in Canada.

Mr. Konrad W. von Finckenstein: Just a second; you're making a huge number of assumptions here.

First, you're assuming that all of those mergers will pass the review by the Competition Bureau—

Mr. Brian Masse: Well, it could be overridden. I mean, that's what has happened.

Mr. Konrad W. von Finckenstein: I'm talking about the Competition Bureau, I'm not talking about me. The Competition Bureau can't be overridden. That's number one.

Two, notwithstanding our huge land mass and sparse population, our wireless network is equal to anyone's in the world, which is a phenomenal achievement to be considered.

We now have all these entrants. I'm sure all of them will not succeed. Some of them will merge and so on. But as a result of these new entrants, there is more competition, and you will see it in terms of greater variety of products and lower prices, etc.

As I say, we have institutions to make sure that the very thing you suggested—an over-consolidation, resulting in an overly tight market where you in effect have conscious parallelism and no competition—does not result.

• (1040)

Mr. Brian Masse: What I worry about, though, is that just doing this on its own—opening up or allowing foreign ownership—seems like a Hail Mary pass for consumers hoping to get better service and lower pricing. I have a speech from you in which you talked about having to bring the acts together in terms of broadcasting and telecommunications. I think that's probably the better approach to dealing with this issue, because once again, I just don't see.... This seems to be in isolation: if we just open this up, magically we are going to get lower pricing. I don't see that as the case.

Mr. Konrad W. von Finckenstein: Mr. Masse, you have my presentation before you. I suggest that you should deal with both of them when I say to liberalize, but do not open it up globally, to save 49% but make sure that Canadians can control it and it stays in Canadian hands. We are largely in agreement. Because of digitalization, I think dealing with one and not the other makes no sense.

Mr. Brian Masse: I'm not trying to attack you. I'm just trying to make sure it's clear to people out there who are looking at this issue, because I think it has become quite simplified to a large degree, in that if we just reduce these shares.... Because right now, as you noted in your presentation, you can invest; it's just the controlling share aspect that seems to be the thing.

I think it's correct, too, to look at some of the geography issues, because we have some ridings in Ontario that are basically the size of France. There are different factors at play here.

If I have time, Mr. Chair, I will just finish off. I would like to get your opinion in terms of what should be done. You have it noted in your presentation that there are “conflicting decisions”. In your opinion, what should be done outside of this particular committee right now for a policy that would modernize our industry? In the bigger picture, what are the things that should be done immediately?

Mr. Konrad W. von Finckenstein: Could you be more specific? I want to make sure....

Mr. Brian Masse: Yes. Do we need absolutely new legislation or separate legislation for the sector? Can we continue to work within the existing framework of legislation that we have now or do we need something unique or that is different from what we have done before?

Mr. Konrad W. von Finckenstein: If you want to effect a progressive reform rather than a wholesale one, and you want to start with foreign ownership, then I'd say to do the same thing for both acts. Both acts now have essentially the same ownership restrictions. If you want to liberalize them, fine, liberalize them. What I'm suggesting is to go to 49% and Canadian control.

You certainly can do that and I don't think it would do any harm to either act. Then, later on, look at how you merge the two, how you address convergence, and how you come together in it. Also, bring in the whole issue of spectrum, which is becoming more and more important. Mobile devices are becoming a huge part of the industry. We at the CRTC deal with the wireless side, but the spectrum side is being dealt with by Industry Canada. That's one issue that has to be addressed in regard to how to resolve it or how to better coordinate it.

The Chair: Thank you very much.

Mr. Rota.

Mr. Anthony Rota: Thank you, Mr. Chair. I'll be sharing my time with Mr. McTeague.

I have a very brief question.

The OECD report that was referred to earlier—and this will be in the same vein as Mr. Masse's questions—reported that in the countries that have liberalized their rules, there seems to be an initial push, where you have multiple people or corporations competing, but they all end up with three or fewer. That seems to be where we are now.

My concern is that we seem to have more companies coming in, which, as you mentioned, will have better pricing, and that better pricing, I honestly believe, will happen in Toronto, Montreal, and Vancouver. I'm in northern Ontario, Mr. von Finckenstein. Where does that leave me in northern Ontario where the population is sparse and the service is not great right now?

We've seen historically that the service we've had has lagged behind that of major centres and that we have technology that may not be the finest. It's usually second-rate technology and it puts us behind the eight ball. How do you see further competition helping us?

Also, do you see regulation coming from the CRTC? Or should we have, in this new combined regulation, something enticing or regulating the people who are providing service to major centres to provide that service to northern Ontario or to rural Canada?

• (1045)

Mr. Konrad W. von Finckenstein: Are you talking mostly about wireless?

Mr. Anthony Rota: Yes. Right now, wireless.

Mr. Konrad W. von Finckenstein: Part of it is price, of course, as you say. The other thing is technological innovation, which will come. And it has come. Actually, I think 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.

You're quite right when you say that it's spotty in certain areas. In your part of northern Ontario, I believe you have one only provider. But is it different in wireless than in any other industry? Unfortunately, it's part of the economic.... But digitalization has actually meant a lot of advancement on that front, by taking away regional disparities and allowing people even in remote locations to have access to communications, to markets, etc., which they otherwise didn't have.

There will be some innovations to satellite. There's no question about it. As these markets are hauled out, you also have this innovation called fixed wireless. As you know, you bring it to a certain point by satellite and then you distribute it by land line, or vice versa—you can bring it by land line to one point and then go wireless. All of this will happen. The more players you have, the more the market becomes saturated in some area, and people will push out into the hinterland. That's a normal economic evolution.

We do our best in terms of wireline, in terms of cross-subsidization of lines. We have not done that in wireless because there has been no need. As I said before, unless there's real market failure, we're very reluctant to do that. There is a huge price to be paid every time you intervene in a regulatory way into the natural rollout of an industry.

My colleague, Mr. Katz, spent years developing the wireless industry for Rogers. Maybe he can add something.

Mr. Len Katz (Vice-Chairman, Telecommunications, Canadian Radio-television and Telecommunications Commission): There's no doubt that back in 1985, when cellular was first introduced, the thought that this much coverage in this country could be fathomed. Technology has changed dramatically.

It continues to change, as the chairman said, and it's not only satellite-based technology; Wi-Fi technology is pushing it as well and is providing access to broadband services through that wireless technology. Even in the more remote areas, it is getting there. It may not be getting there as fast as some people would like to see, perhaps, but it is moving out. I have no doubt that if you were to look in a crystal ball you would see that five or ten years out it will be virtually ubiquitous.

The Chair: Thank you, Mr. Katz.

I believe Mr. McTeague has a question.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair.

Mr. von Finckenstein, Mr. Katz, and Mr. Keogh, it's good to see you here today.

I understand that you've worn a couple of different hats in the past. I'm glad that one isn't me appearing before the Federal Court in front of you, but I've worked with you in other files in the past.

I'll say this very quickly. You've sawed off the possibility of Canadian ownership at 49%. That assumes that you believe correctly that there is enough finance, that there is a capital pool available within Canada to continue the mission of ensuring that consumers are protected with a variety of competition as well as decent pricing and innovation.

Can you guarantee this committee...? In your understanding of the industry right now, apart from bringing together all the pieces of legislation on telecom—the Radiocommunication Act and of course the Broadcasting Act—are you convinced that the 49% threshold will continue to satisfy the ability to bring services to Canadians at competitive prices?

Mr. Konrad W. von Finckenstein: I wouldn't make the recommendation if I wasn't satisfied of that. I think the international financiers who control finance, etc., appreciate that various countries have rules providing for national control. As long as the rules are clear and justly administered, etc., then it becomes a business decision. Whether you invest or don't invest is a question of the returns you get. Traditionally, we have done very well under that model, and I don't see why it would be any different.

• (1050)

The Chair: Thank you very much.

Mr. Lake.

Mr. Mike Lake: Thank you, Mr. Chair.

Thank you, Mr. von Finckenstein.

In taking a look at page 3 of your opening statement, I was interested in the second paragraph, where you say “the legislative and regulatory structure we administer still preserves the old distinctions of broadcasting and telecommunications, or in other words”—and this is the part that I thought was interesting—“the distinctions between content and carriage”. As you go forward, you refer to those as “artificial and outdated concepts”.

When you're talking about the distinctions between content and carriage, I find it interesting that you would call those “artificial and outdated concepts”. It seems to me that the differentiation between content and carriage is the critical question as we move forward in this world of convergence. It seems to be the whole question of Canadian content and culture versus what we're talking about in terms of carriage, in terms of liberalizing the rules regarding carriage without actually impacting the rules regarding content.

Maybe you could clarify what you meant by that.

Mr. Konrad W. von Finckenstein: Traditionally we have said that telecommunications companies are carriage companies. They don't have anything to do with the content; they just carry it from here to there, etc. They are impartial providers. Broadcasting is something different. You create content and influence content, and we want to make sure it reflects Canada.

Along comes digitization. Everything gets converted to bits, so it's convergence, and the technology bits essentially become one. The companies have formed themselves and have consolidated to do both. Let's take the example of Rogers. Rogers owns a wireless network, a wireline company, and a cable company—all three distributing. It also owns a specialty television channel and a television network—clearly broadcasting. All of that is together.

If you are going to liberalize one side and not another, you will be saying to Rogers that in their empire there, in that part, they can have foreign control, etc., and you don't care because they're just carrying. But you'll be saying that in this other case they have content and you care very much what they do. Then we come to the application that Madam Lavallée is referring to and where do they fall in? Also, where do you fall in when you have programs that have interactivity, which is the craze right now and is something that young people very much want? Do you treat them as content or carriage? Because there are aspects of both.

It just doesn't make sense anymore. It was perfectly level.... You had a different world when you didn't digitize everything. Now, with digitization and convergence, everybody has seen the light. The way to do it is to put it all together and find the most efficient way of producing and distributing it.

Mr. Mike Lake: When we're looking at the words, even as you describe them, it seems to me that we're talking about one mode of carriage versus another. We're not really talking about content. But I certainly see what you're talking about in terms of convergence and some of the challenges.

I talk to other consumers out there. We want the advantage of having the very best technology in the world in terms of the way we consume our content. We want to have the best prices in the world. I think that has been recognized as a significant challenge here in Canada. The previous witness brought that up. It seems to me that we can achieve this through some of the measures we're talking about in terms of competition, yet still apply rules for Canadian content to any telecom company operating in Canada regardless of the ownership structure.

Can you comment on that?

Mr. Konrad W. von Finckenstein: It's the same answer that I gave your colleagues. Of course you can do it, but you create artificial distinctions and artificial structures that don't really reflect the economic or the technological reality. That's exactly why I'm saying this: let's face the fact that we are looking at a converged world and legislate for a converged world. Don't legislate if the convergence doesn't happen and then have people adapt to that legislation and create artificial separations and inefficiencies.

•(1055)

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

Thank you, Mr. von Finckenstein.

Lastly, we will go to Monsieur Cardin.

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chair.

In your presentation, you suggested a maximum of 49% of shares with voting rights, in any form, directly or indirectly. You also recommend keeping an eye on de facto control. You also refer to the merging of the Telecommunication Act with the Broadcasting Act.

Today, according to your recommendations and proposals, the situation would seem to be urgent. With the Globalive case, we can clearly see the government's desire to open this field to financial interests. In addition, in the budget bill—which is currently being

studied in the House—satellites will be opened to foreign ownership as soon as the bill is adopted in Parliament.

Given this convergence and this control, what do you think of the fact that foreign entities can control Canadian satellites?

Mr. Konrad W. von Finckenstein: I don't see a problem in this case, first because other satellites have access to Canada, and also because our satellite company Telesat carries out very few activities in Canada. In fact, most of its activities consist in selling satellites abroad. It competes with other countries. In my opinion, we are really talking about the production of devices. I do not see that it is in our interest, as a nation, to keep that sector in Canadian hands. It's like the motor vehicle sector, except that we have no restrictions. Satellites are very sophisticated and high-tech devices that happen to be in a global market. I do not understand the purpose of imposing restrictions.

Mr. Serge Cardin: In the current context of convergence, a cell phone can easily broadcast a number of things because it can receive just about anything, whether it be broadcasting or telecommunications. In addition, a satellite belonging to foreign interests could potentially control all of the content.

In this situation, don't you think that the control over content that you are trying to obtain by merging the two acts may elude us?

Mr. Konrad W. von Finckenstein: To position a satellite serving Canada in the sky, we have to have a spot, and we obtain it from ITU in Geneva. The Department of Industry determines what percentage of a satellite will be used to serve Canada, the United States, etc. It has nothing to do with the ownership of the satellite. It occupies a space reserved for Canada, and the Department of Industry determines how the satellite will be used.

Mr. Serge Cardin: But when the ownership is—

Mr. Konrad W. von Finckenstein: It has nothing to do with the ownership of the satellites.

Mr. Serge Cardin: But once they are owned by foreign entities, the problems of content, the services offered, to whom and how, will automatically come up.

Mr. Konrad W. von Finckenstein: We now purchase Canadian and foreign satellite broadcasts to serve Canada, and the same thing will apply in future. I don't see how the ownership of satellites can have the least influence on Canadian programming. I don't see the connection.

•(1100)

The Chair: Thank you, Mr. Finckenstein.

Thank you, Mr. Cardin.

[*English*]

I'd like to thank our three witnesses for appearing in front of us today.

If I could make one final point, if the witnesses and the members of the media wish to have further discussions after the meeting is adjourned, I'd ask that they take those discussions to the Hall of Honour, because there is another standing committee that is to commence their meeting at 11 o'clock.

Without further ado, our meeting is adjourned.

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