Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

A Competitive Balance for the Communications Industry

Submission of the Canadian Radio-Television and Telecommunications Commission to the Competition Policy Review Panel

Canada

CRTC

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Executive Summary

The Canadian Radio-Television and Telecommunications Commission (CRTC) welcomes the opportunity to make its submission to the Competition Policy Review Panel ("the Panel").

The Commission considers this national review of competitiveness an important part of the reconsideration of the role of regulation in both the telecommunications and broadcasting industries, including the wireless sphere.

As the communications landscape evolves with the rapid introduction of new technologies, it is clear that the regulatory and legislative regimes that govern the communications industries must be re-evaluated. The objectives remain the same: ensuring that regulation incorporates the critical values of fairness, transparency and flexibility while recognizing the unique role that these industries play in our democracy.

The new media environment offers new opportunities to Canadian companies. The proposals and considerations outlined in this document suggest ways to capitalize on the potential of dramatically emerging communications technology to provide economic benefit, strengthen the national identity, and project Canada's cultural voice onto the international stage.

To reach the goal of a lighter and smarter approach to regulating this sector, it is recommended that:

- **There should be a single Act governing broadcasting, telecommunications and radiocommunication.**

- **To provide the Commission with administrative monetary penalty powers (AMPs) as a prerequisite to moving from an ex ante to ex post regulatory regime.**

- **Spectrum licensing for telecommunications and broadcasting are one element in a coherent system and should therefore be the responsibility of the Commission.**

- **A merger review process for communications entities should be implemented in which the roles of the Competition Bureau and the Commission are clearly defined, in which decisions are made openly and transparently, and in which the Commission, in the public interest, will have the ultimate responsibility for approval.**

- **No foreign entity should be allowed to own, directly or indirectly, more than 49% of the issued voting shares of a Canadian communications company, and in no case have "control in fact" of the company.**

Innovation is occurring at the edge of the system, and there is great potential to spur new contributions to achieving Parliament's cultural goals if regulation can evolve to become a system of incentives rather than restrictive protection. The promotion, not protection, of Canadian culture should be high on the Commission's agenda as champion of the communications industry in an on-demand world.

The Commission submits that the opportunity exists now to capitalize on new opportunities to promote converged enterprises to resonate with global audiences. To achieve this goal a more appropriate legislative and regulatory framework is required.

Introduction

The Canadian Radio-Television and Telecommunications Commission (CRTC) welcomes the opportunity to make its submission to the Competition Policy Review Panel.

The Commission considers this national review of competitiveness an important part of the reconsideration of the role of regulation in both the telecommunications and broadcasting industries, including the wireless sphere. As the communications landscape evolves with the rapid introduction of new technologies, it is increasingly apparent that the regulatory and legislative regimes that govern the communications industries must be re-evaluated to ensure that regulation incorporates the critical values of fairness, transparency and flexibility while recognizing the unique role that these industries play in our democracy. The Commission, of course, understands that considerations such as national security must be taken into account in policy making for the communications sector, and that these are beyond its jurisdiction.

Several points are critical to the Commission's submission:

- Canada's communications industry is now vibrant and healthy.
- The socio-cultural considerations of both the Telecommunications Act and Broadcasting Act stipulated by Parliament remain relevant in the digital age.
- Regulation that has recognized the unique challenges of Canadian cultural content production has resulted in export success, and fostered the pre-conditions domestically which could lead to a globally competitive sector.
- Technological convergence over the Internet is blurring the lines between content and carriage, and is providing innovative ways to engage audiences.
- Canada's communications industries are engaged in a rapid process of consolidation.

Canada's communications industries are healthy

Regulatory treatment of Canadian broadcasting and telecommunications must be sensitive to the significant contribution those sectors make to the national economy. Over the course of decades these sectors have both contributed to the achievement of national social and democratic objectives and witnessed the building of strong companies that employ tens of thousands and generate billions of dollars in economic activity every year. These companies continue to deploy

the most advanced communications technology and offer highly regarded entertainment to Canadians.

In its Telecommunications Monitoring Report, the Commission reported in July 2007 that telecommunications revenue was $36.1 billion in 2006, an increase of 4.5% over the previous year. Much of that growth was the result of large revenue increases for mobile phone and high-speed Internet services, 15% and 18% respectively. The growth in competitive local telephone service was also impressive. In the residential market, competitor lines increased by 89%. The growth in advanced services such as broadband, mobile and cable telephony helped propel the telecommunications industry's earnings before interest, taxes, depreciation and amortization (EBITDA) from $12.4 billion to $13.1 billion – a 5% increase. Increasing capital expenditure by telecommunications companies to stay abreast of consumer demand for advanced communications services increased in 2006 to $6.9 billion from $5.6 billion the year before – a 24% rise. Competition continued in 2006 to play a key role in driving economic activity. Competitor share of telecommunications revenues rose to 38% in 2006.[1]

At the same time as Canadian telecommunications companies reported strong performance results, broadcasters in radio and television reported healthy results in 2006. Private radio broadcasters' revenues increased to $1.43 billion during the period from $1.34 billion. Since 2000 private radio revenues have risen by an average of 5.5% per year[2]. PBIT for private commercial radio stations rose from $277 million in 2005 to $285 million in 2006. PBIT margins for the last four years remain in the 20% range. The television sector reported revenues of just over $6.06 billion in 2006, up 8.2% from 2005 – the third largest year-over-year revenue gain for the last 10 years.[3]

In 2006, the broadcasting distribution sector reported a rise in revenues to $7.7 billion from $6.4 billion in 2005. In the same year, only 2/3 of revenues stemmed from regulated broadcasting programming services, a large decrease from 83% in 2002 – evidence of the extent to which broadcasting distribution undertakings including satellite television companies have effectively competed with new, non-programming services in response to consumer demand.[4]

The strong economic performances by Canadian communications companies evidence the presence of a financially strong sector which has achieved internationally outstanding levels of penetration of advanced digital voice and broadcasting services in the current Canadian policy and regulatory climate.

The policy objectives of the Broadcasting Act and Telecommunications Acts in the digital age

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[1] CRTC *Telecommunications Monitoring Report*, July 2007. pp. i-ii.

[2] CRTC *Broadcasting Policy Monitoring Report*, July 2007. p. 15

[3] Statistics Canada. *Television Broadcasting Industries.* (56-207-XWE), p.13.

[4] *Broadcasting Policy Monitoring Report*, op. cit., p.101.

Each of the *Broadcasting Act*, the *Telecommunications Act*, and the *Radiocommunication Act* (by reference to the *Telecommunications Act*[5]*)* define prescribed objectives for pursuing Canadian communications policy. Both Acts recognize the role of communications technologies to "safeguard, enrich and strengthen the social and economic fabric of Canada." Both Acts stress Canadian ownership and control of Canadian communications infrastructure and content. Both Acts make clear that all Canadians should be able to access new technologies and services, and that the companies engaged in providing those should strive to develop new technologies to the benefit of all Canadians. These are clearly articulated Parliamentary objectives, in light of which the Commission is required to assess current developments.

As communications become global, and the geographic constraints on communications become increasingly irrelevant, the objectives of the *Telecommunications, Broadcasting and Radiocommunication* Acts remain.

The continued relevance of the Acts' objectives in the digital age was confirmed recently by the Hon. Josée Verner, Minister of Canadian Heritage, in a speech to the Canadian Association of Broadcasters. Minister Verner's affirmation that "[o]ur policy objectives are not solely economic, but also cultural and social – anchored in the commitment that Canadians have access to content that speaks to their realities and aspirations"[6] reflects the continued importance of cultural goals in broadcasting and telecommunications policy.

The Commission takes this opportunity to underline that an assessment of Canadian policies and regulations with respect to nationally sensitive sectors such as communications must consider the goals Parliament has enunciated. The Competition Policy Review Panel considers detailed comment on "the trade-off between economic competitiveness and other policy objectives of each sectoral investment regime" outside the scope of its mandate. The Commission, however, has the obligation to ensure that Parliament's objectives for the communications sectors be taken into account given industry and technological convergence.

The cultural and telecommunications industries are converging

The rapid development of the Internet, a converged pipeline for content ranging from text, audio-visual material, and voice, has in the past decade spurred greater change in the communications landscape than has been seen at any time in its history. Technology and geography have hitherto conspired to create an orderly landscape: monopoly telecommunications companies have traditionally provided voice services; broadcasters have been licensed to serve Canadians with over-the-air television and cable distributors have provided cable services. In a new digital environment, this structure is dissolving.

Internet pipes are content-agnostic, and telephone companies are now among the largest providers of television services, while cable companies are rapidly gaining telephone customers. As the Internet renders it possible for consumers to choose from a myriad of providers of voice, entertainment and other content, incumbent communications companies have aggressively

[5] *Radiocommunication Act*, s. 5 (1.1): "In exercising the powers conferred by subsection (1), the Minister may have regard to the objectives of the Canadian telecommunications policy set out in section 7 of the *Telecommunications Act."*

[6] Speech by Josée Verner, Minister of Canadian Heritage, to Canadian Association of Broadcasters. 6 November 2007, Ottawa.

expanded their operations to capture the greatest possible number of communications entry points into the digital home. The Commission has responded to new economic imperatives with a lighter regulatory hand, allowing the market to determine where communications companies make critical network investments.

Increasingly, these separate networks – wireless, Internet, cable and phone – are converging into unified platforms for content delivery. The access networks under development today will provide a new layer of capability in the near future with greater intelligence with respect to a customer's context. The differences between a fixed or mobile service or different devices will be eliminated. Strong communications companies are capitalizing on these trends by consolidating multiple networks under single ownership.

Technology-driven change has resulted in wholesale changes to the corporate landscape in Canada. From the perspective of the Commission, it is increasingly difficult to differentiate between large communications companies on the basis of the underlying technology used to deliver services to Canadians. As competition takes hold, this trend can only solidify.

The convergence of platforms will create new economic value for communications companies through the provision of advanced services to consumers. More than the sum of several networks now made interoperable, intelligent networks with presence-awareness and seamless delivery of news and entertainment content will be, in effect, a new form of content. Faced with the commoditization of Internet access (which will increasingly mean broadcasting and voice access) and the prospect of foreign competition, Canada's communications companies will rely on the convergence of their networks for competitive advantage.

The new media environment offers both a challenge and an opportunity to the Canadian companies now emerging. The proposals in this document are intended to suggest ways to use the potential of communications technology to provide economic benefit, strengthen the national identify, and project Canada's voice internationally in ways not previously possible.

These developments require that the regulator shift from a gate-keeping role with respect to which players are allowed to participate in the new cultural economy. Innovation is occurring at the edge of the system, and there is great potential for Canadians to benefit if regulation can evolve to become a system of incentives rather than restrictive protection.

This thrust is true globally, and various regulators in the G8, European Union and OECD nations are experimenting with the evolution of cultural regulation in a digital world. The Commission submits that its recommendations will enable Canadian communications companies to capitalize on the new opportunities to allow new providers and strong new converged enterprises to create a strong Canadian presence that can compete internationally.

A strong domestic industry is critical to export success for the cultural sector

The sector-specific regulations that govern broadcasting in Canada are responsible for a thriving domestic marketplace for Canadian television and music production. Subsidies, tax credits, and regulation that favour the exhibition of Canadian programming on television and radio support a domestic capacity for production that has had an ancillary effect of attracting foreign producers to this country.

Sector-specific regulation and foreign ownership restrictions have created a market for domestic content in the face of the unique challenges of living adjacent to the world's largest culture-creation engine.

The economics of television production in Canada, particularly, are well-documented. Very high quality, compelling American programming is sold into the Canadian market by producers at prices bearing little relationship to the costs associated with those productions. Canadian broadcasters can purchase the rights to these programs for a fraction of the cost of buying similarly high-quality programming from Canadian producers since U.S. producers have already recouped the cost of their productions domestically before turning to international distribution.

Further, the promotion of those productions has already been accomplished in Canadian markets by US border broadcasters. Canadian broadcasters pay little toward the marketing and promotion of that content, while they must bear the full cost of promoting Canadian productions. Most Canadian-certified production typically requires a broadcaster licence fee commitment to trigger the flow-through of tax credits and subsidies that would put it on a solid financial footing. That commitment from the broadcaster would be unlikely without regulator support for minimum Canadian content expenditure and exhibition levels. Without a competitive edge in the form of protection for a domestic market, it is unlikely that export success for Canadian producers can continue.

While the Panel has stated that it will, with respect to sector-specific regulation "focus on the impact of such restrictions and limitations on Canada's competitiveness …", the Commission submits that regulatory mechanisms that protect a domestic market for cultural products play a key role in the sector's international competitiveness. Support for a strong domestic market for cultural products enhances Canadian communications companies' ability to compete globally as the provision of access becomes inextricably linked with cultural content. Well-supported Canadian music and video content provides access to providers with different value propositions that are the base for continued competitiveness of those access providers in a global cultural marketplace.

Multiple regulatory regimes for the communications industries is increasingly untenable

As the business and technological lines between broadcasting, wireless services and telecommunications become increasingly difficult to discern, the justification for separate regulatory and legislative regimes disappears. The ultimate goal of Parliament, as expressed in the objectives of the *Broadcasting, Telecommunications, and Radiocommunication* Acts are complementary. Regulatory and policy fragmentation in the administration of those statutes is a burden on both the regulated and the regulator.

Because communications regulation is housed among multiple bodies it is challenging to create coherent universal measures that combine the cultural and economic goals of the various Acts. Yet technological forces are creating a fully converged content and access environment that demands coherence from Government.

Consumers and providers of communications services face a regulatory regime for the sector that falls under the purview of two departments, three Acts, three sets of regulations, and two licensing bodies. Broadcasting licensing is performed separately from spectrum licensing. There are inconsistencies in undue preference mechanisms, regulatory proceeding rules,

reporting requirements, and enforcement powers under the *Telecommunications* and *Broadcasting* Acts.

More fundamentally, the tools available to achieve the disparate objectives of the various acts cannot be used holistically or flexibly.

The migration of broadcasting content onto converged Internet pipes will in future create challenges. The provision of Internet access is governed under the *Telecommunications Act*, which does not have the broader goals of the Broadcasting Act.

Efficiency requires that the Commission be given the flexibility to respond to a changing broadcasting environment to minimize disruption for enterprises in the space. Treatment of communications companies as single entities avoids treating individual components of their businesses – wireless, telecommunications, broadcasting, television distribution and Internet access – as discrete elements with overlapping and potentially conflicting regulatory treatment.

Breaking down the regulatory silos between the *Acts* must be a priority for the Government as the separate objectives of multiple legislative frameworks result in conflicts between various bodies. These administrative conflicts, for example with respect to the issue of spectrum licensing for broadcasting, have been considered by some to hinder the innovation and experimentation that are the cornerstone of Canadian communications companies' future competitiveness.

The Panel might also recognize the need to consolidate the objectives of the Acts to allow public policy decisions to be made as flexibly and non-intrusively as possible. The objectives of the *Telecommunications Act* are rooted in the concerns of access and competitiveness. They contain the objective that has been clearly enunciated by Government to "foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required is efficient and effective."

The objectives of the *Broadcasting Act*, by contrast, stress cultural goals and the predominance of Canadian content within the system. The *Radiocommunication Act*, which governs wireless communication and provides the authority to the Minister of Industry to set policies for wireless in the public interest, makes no reference to the cultural goals of the *Broadcasting Act*. Yet, increasingly, wireless is serving as a conduit for content similar to a cable or direct-to-home satellite. Conversely, broadcasters make significant use of radio frequency spectrum for over-the-air television and radio operations.

Good public policy that recognizes the reality of convergence is complex and difficult in such an environment. A comprehensive approach to policy-making and regulation is required.

Recommendation 1

- **There should be a single Act governing broadcasting, telecommunications and radiocommunication.**

Streamlining the regulatory framework for converged companies is a critical priority

The Commission shares the Panel's belief that "our relatively small, diverse population and the availability of U.S. broadcasts limit the degree to which market forces can ensure the provision of a range of Canadian news and entertainment programming in both official languages."[7] At the same time, the Commission agrees that it should continue to seek ways to regulate that rely to the greatest extent possible on market forces. Further, the Commission agrees that foreign direct investment (FDI) can spur innovation and economic activity. The challenge for Government will be to preserve both the protection for the communications industry while also encouraging a competitive dynamic.

The Commission further recognizes that traditional regulatory tools will become less relevant in the virtually borderless world of the Internet. The Commission's legacy of monopoly regulation, and particularly licensing, are becoming tenuous in the Internet era. Traditional checks on the reach of communications companies such as the reach of physical infrastructure and the footprint of over-the-air broadcasting signals will, in future, remove natural leverage points for policymakers to exercise public interest regulation.

While Canadian communications companies are converging around a mix of access and content, firms globally are doing the same. Multi-national enterprises are increasingly able to offer their services in Canada. Over-the-top aggregators, for instance, can provide Canadians with services that will increasingly resemble traditional cable services with respect to the breadth and quality of the offering. These companies are currently attracting billions in venture capital financing globally. Not all of these services will originate from multi-nationals. Some will be created by Canadian entrepreneurs who see the opportunities to respond to consumer demand.

Innovative services that take advantage of the low barriers to entry – including regulatory barriers to entry – cannot and should not be discouraged. Restrictive regulation that attempts to corral experimentation into traditional models is no longer possible. Short of exercising draconian control over ISPs, it will become increasingly challenging for the regulator to dictate the terms of content providers' entry into Canadians' homes. As a result, incumbent broadcasters and aggregators in Canada will be faced with an accelerating pace of competition from over-the-top providers that face no regulatory hurdles between themselves and Canadian citizens.

The Commission considers it critical that incumbent communications companies be in a position to innovate and to react quickly to new forms of content and distribution models. *Ex ante* rules and regulations that restrict our broadcasters' and distributors' freedom of action prevents those from taking full advantage of new opportunities. Silos that divide providers into neat "carrier" "distribution" "broadcaster" "distribution undertaking" "specialty channel" or "VOD provider" categories can be obstacles to the achievement of the overall objectives of Canada's communications policies as the distinctions between them fade. The technology-neutrality sought by policy makers is threatened as the same content is regulated separately, according to whether it travels over wireless, Internet, television distribution, or over-the-air broadcasting pipes.

[7] Competition Policy Review Panel, *Sharpening Canada's Edge.* October 30, 2007. p. 43.

Sometimes conflicting objectives between multiple acts gives content creators no comfort that they will be able to reach their audiences. In turn, network owners in a position to bring scale, scope and investment to new forms of content have no defined place in the complicated broadcasting ecosphere. As content becomes increasingly mobile, consumers have no assurance that spectrum policy is statutorily guided by cultural objectives.

Resolving these future conflicts and uncertainties, and creating an environment conducive to competition cannot, the Commission asserts, be efficiently done under the current legislative framework. The legacy regime that attempts to define cultural players within categories of creator, broadcaster, distributor and voice telecommunication provider provides the Commission with increasingly meagre guidance in an age when the lines between each are becoming impossible to discern. It is time, the Commission believes, to consider a new legislative framework that stresses flexibility and fairness in a manner that allows Canadian communications to innovate and respond to change in the most competitive manner possible.

In the move to that new framework, the ability to impose meaningful administrative monetary penalties (AMPs) is a necessary enforcement tool for a regulator such as the Commission. In the absence of AMPs, the Commission is left with the choice of either ineffective or inappropriately drastic measures. In the CHOI case, for instance, the Commission had only two alternatives to resolve an ongoing problem: the exercise of moral suasion or licence revocation. Meaningful, balanced sanctions are a precondition to an *ex post* regulatory regime, as recognized by the Telecommunications Policy Review Panel[8], and as proposed in Bill C-23[9].

Recommendation 2

- **To provide the Commission with administrative monetary penalty powers as a prerequisite to moving from an ex ante to ex post regulatory regime.**

Spectrum licensing a particular and pressing concern

As described at length in the Telecommunications Policy Review Panel's March 2006 report, the structural separations between the spectrum licensing functions of Industry Canada and the Commission, is inefficient. Further, the separation excludes the Commission from critical international decision-making on spectrum issues.[10]

The *Radiocommunication Act*, which governs wireless communication and provides the authority to the Minister of Industry to set policies for wireless in the public interest, makes no reference to the cultural goals of the *Broadcasting Act*. For example wireless is increasingly serving as a conduit for content. A converged set of objectives for all communications technology will ensure that wireless services are licensed according to Parliamentary objectives – in keeping with the critical importance of wireless to the whole of the Canadian landscape, both economic and cultural.

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[8] Telecommunications Policy Review Panel Final Report, March 2006. pp. 9-36.

[9] Government of Canada. Bill C-23: *An Act to Amend the Competition Act and the Competition Tribunal Act.* 2001.

[10] Telecommunications Policy Review Panel Final Report, March 2006. pp. 5-25 – 5-26

Communications companies are often required to apply for authorizations to use radio frequency from both the Commission and Industry Canada. This is clearly inefficient, and runs counter to the models employed by most industrial countries to harmonize spectrum licensing under a single regulatory body. In the near term, spectrum freed by the migration of broadcasting to digital technology will be available through auction. The effects of a dual regime for radio frequency will be amplified in this environment.

Recommendation 3

- **Spectrum licensing for telecommunications and broadcasting are one element in a coherent system and should therefore be the responsibility of the Commission.**

Industry-specific regulation is the most appropriate model for communications

As the Panel seeks to reduce regulatory burdens on communications companies, it must, the Commission cautions, be mindful of the unique role those companies play in the lives of Canadian citizens. The new breed of communications company that is in the ascendant can exercise considerable power to influence not just consumer behaviour, but also Canadians' access to critical health, social, political, and financial information. These companies can determine which content finds a route between creator and Canadians. They will be uniquely placed to serve the public interest through the provision of programming – in whatever form that eventually takes in a multi-platform world – that might not in normal circumstances be available by virtue of the challenges of economics; but that is vital to the country's inclusiveness and cultural values.

As communications companies gain greater access into the digital home through the provision of unified voice, television, Internet and other content forms, the impact of inappropriate behaviour on the part of these enterprises as they seek the greatest return for these investments will not be limited to anti-competitive harm. There is a further risk that Canadians could be deprived of the information and cultural programming. The Panel's mandate initially precludes it from consideration of the balance between economic competitiveness and cultural objectives. From the Commission's perspective, however, cultural and social objectives remain important in assessing communications regulation.

For the reason that they have a unique role in Canadian society, communications companies should be regulated by a single body that has a broad mandate to consider a public interest test in supervising the industry. The Competition Bureau, expert as it is in its domain, has no such public interest test within its economic framework. The Commission must be guided in its decisions by transparently provided input from the Competition Bureau, but a broader view of the public interest should hold sway. In the case of mergers, a review process for communications entities should be implemented in which the roles of the Commission and the Competition Bureau are clearly defined. The Competition Bureau and the Commission should co-operate in the review of proposed mergers. The Competition Bureau should present its conclusion, in an open and transparent manner, to the Commission. In the event that the Commission disagrees, the views of the Commission should prevail and the Commission would be required to publish its reasons for its position.

The Commission submits that, for the foreseeable future, its role will continue to be a critical one as we enter the digital environment. A regulator for the industry that has the mandate both to

ensure the attainment of objectives set by Parliament in a healthy system that contributes to citizenship, while recognizing the imperative that the companies involved be globally competitive to achieve domestic strength, is required.

Recommendation 4

- **A merger review process for communications entities should be implemented in which the roles of the Competition Bureau and the Commission are clearly defined, in which decisions are made openly and transparently, and in which the Commission, in the public interest, will have the ultimate responsibility for approval.**

A Canadian communications sector must be controlled by Canadians

The Commission submits that no foreign entity should be allowed to own, directly or indirectly, more than 49% of the issued voting shares of a Canadian communications company, and in no case have "control in fact" of the company. An erosion of Canadian control in the communications sector would be especially harmful in this sensitive industry. Concerns noted by the Panel in its consultation paper are amplified in culturally-sensitive sectors. A Canadian capacity to reflect Canadian cultural values must be protected in the digital age.

Foreign direct investment has played a critical role in capacity-building with respect to the broadcasting industries. Foreign capital has been attracted to the benefits of Canada's advantageous tax credit system for cultural production, including the treaty co-production system, and low dollar. Recently, the capital required to execute high profile mega-mergers that strengthen the communications industry with greater scope and scale has been found to a large extent offshore. It is important to note that this influx of capital has been executed under strong Canadian ownership rules found in the *Broadcasting Act, Telecommunications Act* and *Radiocommunication Act.* These foreign ownership regulations have, in recent times, served to protect Canadian control of the communications industry without barring participation by entities wishing to participate in the strong investment opportunities found here. The existing regime has ensured the presence of strong head offices with skilled, effective employees.

The economics of Internet production do not favour local content. As localism is eroded, the maintenance of Canadian capacity in the form of Canadian-owned and –controlled companies will become more critical. A branch plant economy for cultural production and distribution is difficult to envisage. Multi-national enterprises would have little incentive to create uniquely national content.

For these reasons, a foreign investment regime for the Canadian communications industries should maintain control in fact in Canadian hands. These rules should be transparent, fair, and provide certainty to industry players seeking foreign capital. The current approach with its rules governing holding companies is complex. A simple control rule will alleviate this difficulty.

Recommendation 5

- **No foreign entity should be allowed to own, directly or indirectly, more than 49% of the issued voting shares of a Canadian communications company, and in no case have "control in fact" of the company.**

The Commission appreciates this opportunity to make its submission to the Competition Policy Review Panel's consultation, and remains available to explore its position more fully at the Panel's request.