

Response of

Bell Canada

Competition Policy Review Panel's

Sharpening Canada's Competitive Edge

January 11, 2008

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I. INTRODUCTION

1. Bell Canada is pleased to respond to the Competition Policy Review Panel's (the Panel) call for written submissions on the issues raised in *Sharpening Canada's Competitive Edge: A Consultation Paper Issued by the Competition Policy Review Panel*, October 30, 2007 (the Consultation Paper).

2. The Consultation Paper comes at a very important time. As acknowledged within the Consultation Paper, Canada has been experiencing a growing productivity gap with its largest trading partner, and a continual lack of improvement in its own productivity growth. Bell Canada strongly believes that investment in information and communications technology (ICT) is the key to changing this trend. Bell Canada notes that it is in a unique position to contribute to this debate due to its expertise in the ICT sector, its uniquely Canadian perspective and the amount of time and research it has expended on this subject. The focus of Bell Canada's submission is directed at addressing Canada's lack of productivity growth and proposing policies to lever ICT's productivity-enhancing role.

3. In brief, Bell recommends that the Government: (i) encourage increased business investment in ICT to spur productivity growth; (ii) make Canada more competitive with respect to tax policy; (iii) improve incentives such as the Scientific Research and Experimental Development tax credit; and (iv) increase the talent pool of IT-skilled workers.

4. The Panel has asked some detailed questions regarding changes that could be made to Canada's investment and competition policies. Bell Canada does not intend to address any specific recommendations in these areas. Instead, Bell Canada will offer some general comments that it believes should guide the Panel in its deliberations on these specific issues. In short, regardless of the policy recommendations that are made by the Panel to the Government, those policies should be implemented through an objectified standard approach to regulation supported by clear legislation, and guidelines from the decision makers as to how they will treat various kinds of transactions.

II. BELL CANADA

5. Bell Canada is the country's largest communications company. Bell Canada competes in the ICT-producing sector which is one of the most productive sectors in the Canadian economy. Between 1997 and 2001, the ICT sector alone was responsible for 41% of the productivity growth in Canada.¹ In addition, it is a well-known fact that ICT-using sectors collectively stand to offer the greatest contribution to Canada's productivity growth by embracing the transformative power of ICT. Many economic studies link the use of ICT with improvements to productivity growth in the U.S., Canada and Europe.² One study estimates that 70% of the productivity gains in Canada between 1995 and 2000 can be attributed to ICT.³

6. As the economy relies more and more on data transmission, it should be no surprise that ICT will play a disproportionate role in increasing productivity. As noted by economists Melvyn Fuss and Leonard Waverman:

ICT also increases productivity; as it becomes more widespread across society there are spillovers from ICT investment. Modern production techniques rely on the ability to transport vast amounts of data between computers in multiple locations at factories, stores, homes, government, and in academia. Well-known business cases – Zara in clothing, Cemex in cement, and Dell in the production of computers – demonstrate the importance of linking computers and telecommunications networks for instant high-speed communication. It should come as no surprise, then, that the gaps in ICT between the U.S. and Canada figure prominently in the productivity gap.⁴

7. Since Bell Canada's services are at the core of the overall ICT spending by businesses in Canada, Bell Canada has a long-standing interest in ICT diffusion in the

¹ Statistics Canada study cited by Richard Simpson, Industry Canada, in "From Electronic Commerce to e-Economy: Strategies for a Digital World." Presentation made in Mexico City, September 2004, p.5

² "For further reference see: (i) Jorgenson, D.W., and K. J. Stiroh (2000) "Raising the Speed Limit: U.S. Economic Growth in the Information Age," *Brookings Papers on Economic Activity*, pp. 125-211; (ii) Oliner, S. and D. Sichel (2000) "The Resurgence of Growth in the Late 1990s: Is Information Technology the Story?" *Journal of Economic Perspectives*, 14(4), pp. 3-22; (iii) Pilat, D. and F.C. Lee (2001) "Productivity Growth in ICT-Producing Industries - A Source of Growth Differentials in the OECD?" DSTI/EAS/IND/SWP(2000)3/REV1, OECD STI Working Paper; (iv) Rao, Someshwar, et al (2001) "The Importance Innovation for Productivity," *International Productivity Monitor* No. 2, Spring, pp. 11-18 (Ottawa: Centre for the Study of Living Standards); and (v) Sharpe, A. and L. Gharani (2000) "The New Economy and Trend Productivity Growth in Canada," *International Productivity Monitor*, No.1, Fall, (Ottawa: Centre for the Study of Living Standards).

³ Bart van Ark and Robert Inklaar and Robert H. McGuckin, "The Contribution of ICT-Producing and ICT-Using Industries to Productivity Growth: A Comparison of Canada, Europe and the United States," *The International Productivity Monitor*, Spring 2003, p. 59.

⁴ Melvyn Fuss and Leonard Waverman, "Canada's Productivity Dilemma: The Role of Computers and Telecom," Bell Canada's submission to the Telecommunications Policy Review Panel, August 2005, p.5.

economy. Whether one looks at the experience in financial services, forestry, mining, manufacturing or other sectors, ICT-enabled tools can revolutionize supply chain management and generate productivity gains.

8. Bell Canada continues to advocate that public policy in Canada must address the consistently poor productivity growth performance and foster increased ICT diffusion in Canada's economy. In Bell Canada's detailed submission in 2005 to the Telecommunications Policy Review (TPR) Panel – whose mandate included exploring how to advance the adoption of ICT – Bell Canada included two specially commissioned Canadian studies. In one study, economists Fuss and Waverman modelled and analyzed the role of ICT in the productivity gap between Canada and the U.S. They estimated that 56% of the gap is attributable to the lack of ICT diffusion in Canada.⁵ In another study, SECOR Consulting examined the ICT sector and proposed a range of policies aimed at strengthening the competitiveness of the ICT sector.⁶

III. THE IMPORTANCE OF ICT

9. The following section provides concrete proposals to the Panel's questions number 4 under section 1, "Canada in a Global Context," and number 5 under section 6, "Becoming a Destination for Talent, Capital and Innovation."

CANADA IN A GLOBAL CONTEXT

4. DO CANADA'S ECONOMIC POLICIES APPROPRIATELY REFLECT OUR INCREASED INTEGRATION WITH THE NORTH AMERICAN AND GLOBAL ECONOMY? HOW MIGHT THESE POLICIES BE CHANGED TO BETTER REFLECT THIS NEW COMPETITIVE ENVIRONMENT?

"Canada is stuck in neutral when it comes to creating a competitive economy that will thrive, not just survive, as globalization increases in importance."

- Roger Martin, Chairman of the Institute for Competitiveness & Prosperity⁷

⁵ Ibid., p.5

⁶ SECOR Consulting, "Productivity: Second Best is Not an Option – Why ICT should become a national priority," Bell Canada's submission to the Telecommunications Policy Review Panel, August 2005.

⁷ Roger Martin was commenting on Canada's rankings in the "Global Competitiveness Report 2007-2008" released by the World Economic Forum on November 8, 2007

10. In Bell Canada's view, there are a number of policy changes which will be beneficial to Canada for increasing inward Foreign Direct Investment (FDI) and improving Canada's competitive standing in the world economy. Our proposed changes are related to the significant role of information and communications technology (ICT) in spurring productivity growth across all sectors of the economy, and the importance of having a strong ICT sector for Canada's competitiveness overall.

11. As the Panel notes in the Consultation Paper, "Canada's productivity growth has been declining, particularly relative to that of the U.S., and continues to lag that of our main competitors."⁸ The fact is that Canada's productivity growth performance is continuously disappointing. Andrew Sharpe, Executive Director of the Centre for the Study of Living Standards, noted: "Canada's lagging labour productivity growth has resulted in the widening of the business sector labour productivity gap from 17 percentage points in 2000 (83% of the U.S. level) to 26 points in 2006 (74% the U.S. level)."⁹ The most recent annual data on labour productivity in Canada shows another modest increase of 1.0% in 2006, compared with an increase of 2.2% the year before.¹⁰ Sharpe notes: "Business sector output per hour advanced at a 1.1 per cent average annual rate in Canada between 2000 and 2006, only about one third the annual rate of advance of 2.9 per cent recorded in Canada between 1996 and 2000."¹¹ The data suggests that more aggressive policy measures are required in order for Canada to improve its record.

12. Concern regarding these trends is also noted in the final report of the Telecommunications Policy Review Panel in March 2006: "If these trends continue, Canada risks being squeezed into an increasingly uncomfortable economic niche between a large, highly productivity U.S. economy and a number of large, emerging, low-cost economies."¹²

⁸ Competition Policy Review Panel, *Sharpening Canada's Competitive Edge*, October 30, 2007, p. 7 [Consultation Paper]

⁹ Sharpe, Andrew. "Lessons for Canada from International Productivity Experience," *International Productivity Monitor*, Centre for the Study of Living Standards, Number 14, Spring 2007, p. 2.

¹⁰ Statistics Canada, *The Daily*, "Hours worked and labour productivity in the provinces and territories – 2006," November 27, 2007

¹¹ Sharpe, p. 2.

¹² Telecommunications Policy Review Panel, *Final Report*, March 2006, p. 7-4

13. In Bell Canada's view, the need to address productivity growth – and ICT's role in it – should be at the centre of the Government's agenda. Countries such as Ireland, Australia, the U.K. and South Korea have dedicated Ministers and/or agencies to develop and execute strategies on productivity, ICT adoption and/or competitiveness. The fact is that, with political leadership, resources have been brought together to ensure these countries are focused and comprehensive in their productivity and growth strategies. While in Canada the Ministers of Industry and Finance each contribute to competitive and economic policies, it is not clear yet that productivity and competitiveness are viewed as a national priority by the Government.

14. Furthermore, in order to strengthen Canada's position relative to other destinations, especially the U.S., for foreign direct investment, Bell Canada submits that there is a need for action in support of:

- A. Encouraging increased business investment in ICT to spur productivity growth;
- B. Making Canada more competitive with respect to tax policy;
- C. Improving incentives such as the Scientific Research and Experimental Development (SR&ED) tax credit; and
- D. Increasing the talent pool of IT-skilled workers.

15. The following section offers some detail on each of the policy measures which Bell Canada believes require attention by the Government, the private sector and other stakeholders, as appropriate, to improve Canada's competitive and productivity growth performance.

A. ENCOURAGING INCREASED BUSINESS INVESTMENT IN ICT

16. The Competition Review Panel notes that various factors have contributed to Canada's poor productivity growth:

One contributing factor is an apparent underinvestment in machinery, equipment and technology, which are all important drivers in boosting productivity, because new technologies enhance efficiency while also spurring innovation and enabling the creation of new products and technologies.¹³

¹³ Consultation Paper., p. 7

17. As noted earlier, approximately 56% of Canada's productivity gap with the U.S. is due to lower diffusion of IT in Canada.¹⁴ The Government also acknowledges that Canadian firms are lagging in their investment, as noted in its 2007 innovation strategy, *Mobilizing Science and Technology to Canada's Advantage*:

Low levels of investment by Canadian firms in information and communications technologies (ICT) compared with the United States are of particular concern, given that two thirds of Canadian productivity gains from 1990 to 2000 were from industries that use ICTs intensively. As reported by the Telecommunications Policy Review Panel, the ratio of ICT investment to GDP for Canada's business sector was only 66 per cent of U.S. levels in 2004, down from 75 per cent in 1987. Canada's shortfall relative to the U.S. in total machinery and equipment investment as a share of GDP is largely explained by the ICT investment shortfall.¹⁵

18. A 2005 study by the Centre for the Study of Living Standards pointed to two key factors to explain the ICT investment gap between Canada and the U.S.: (i) Canada has a smaller share of ICT-intensive industries; and (ii) we have a larger share of employment in small and medium sized enterprises (SMEs) which spend proportionately less on ICTs.¹⁶ Despite the productivity-enhancing benefits of adopting new technologies, SMEs are reluctant to do so in many cases due to cost and training considerations. There needs to be a policy that addresses those challenges and helps SMEs to overcome them.¹⁷

19. If the goal is for Canadian businesses to be truly competitive and to improve productivity, Bell Canada recommends an investment tax credit as an effective mechanism to stimulate new ICT investment at the firm level and foster related training and business process changes. There are some advantages to tax credits as compared to adjusting capital cost allowance (CCA) rates including the fact that tax credits can apply to other expenditures such as related training, in addition to the investments in assets, whereas CCA only applies to assets. In addition, tax credits can be fully refundable when no tax is payable. For an SME, a refundable tax credit for ICT investments would be more beneficial than an accelerated CCA for ICT assets, since the

¹⁴ Fuss and Waverman, p. 5.

¹⁵ Government of Canada, *Mobilizing Science and Technology to Canada's Advantage*, 2007, p. 27

¹⁶ Sharpe, Andrew. "What Explains the Canada-U.S. ICT Investment Gap?" Centre for the Study of Living Standards, 2005.

¹⁷ Andrew Sharpe answers the question, "why would firms need additional incentives from government to do what is already in their interest?" He discusses the barriers to technology adoption by SMEs in "Three Policies to Improve Productivity Growth in Canada," Centre for the Study of Living Standards, 2007, p. 29.

after-tax benefit to a SME in lower tax brackets resulting from accelerated depreciation would be less than that achieved from a tax credit. As a result, a SME would not earn a refund via the CCA benefit, whereas a tax credit would yield a refund in a year when an SME does not pay tax.

20. While broadly based tax measures are generally preferred, the fact is that certain targeted measures, such as a tax credit for business investment in ICT, may create externalities (that is, positive spill-over effects beyond the targeted group) that are of benefit to the Canadian economy and warrant this approach to tax policy.

21. The Panel should recommend that the Government introduce a tax credit program for ICT investments for a five-year period.

B. MAKING CANADA MORE COMPETITIVE THROUGH TAX POLICY

22. The federal Government recognizes the need to address Canada's overall tax rate on new business investment. It recently announced plans to lower the federal corporate income tax rate from 22% to 15% by 2012. It also proposed to provide a financial incentive to encourage provinces to eliminate their capital taxes by 2011 – and Ontario and Quebec have legislated changes to do so.

23. When delivering the Economic Statement on October 30, 2007, the Finance Minister noted:

These reductions will also enable Canada to achieve its goal of having the lowest overall tax rate on new business investment among the major industrialized countries by 2011. This will give businesses in Canada a substantial tax advantage over competitors in the United States—to be precise, a statutory tax rate advantage of 12.3 percentage points and an overall tax advantage on new business investment of 9.1 percentage points in 2012.¹⁸ [Emphasis added]

24. Ensuring Canada has a tax advantage – especially over the U.S. – in the area of new business investment is valuable for Canada's productivity and competitiveness for two reasons:

¹⁸ The Hon. James Flaherty, Minister of Finance, Economic Statement speech delivered in the House of Commons, October 30, 2007

- i) it encourages increased investment in machinery and equipment (M&E). To the degree that ICT assets make up some portion of M&E investment, tax reductions will lead to increased business investment in ICTs. According to a study by Department of Finance economists, a 10% reduction in the cost of capital can yield an increase in investment in machinery and equipment by 10% in Canada.¹⁹
- ii) it affects foreign direct investment even more significantly, according to a study for the European Commission, which concluded that typically a 1 percentage point reduction in the corporate tax rate raises foreign investment by 2.1%.²⁰

25. One critical action which will significantly improve Canada's overall business tax competitiveness is sales tax harmonization. Sales tax harmonization is a broadly based measure that creates benefits across an economy. Provincial retail sales taxes are remarkably high on business inputs, including purchases of capital goods, according to a study by the C.D. Howe Institute. But harmonizing provincial taxes with the GST would eliminate most of this distortion. By lessening the tax burden on business investment, harmonization would spur increased investment and productivity growth.²¹

26. Similarly, Finance Canada noted in the Economic Statement that:

Provincial action to eliminate the remaining RSTs in favour of adopting provincial value-added taxes harmonized with the federal GST would generate a reduction in Canada's METR [marginal effective tax rate] of about 7 percentage points.²²

27. Bell Canada commends the Government on its commitment to harmonize the sales tax systems. It is time that the Government find ways to help Ontario, British Columbia (and other provinces) move toward a Harmonized Sales Tax (HST) system. In Budget 2007, the Government states its commitment "to work with the provinces that would like to eliminate their retail sales taxes and move to a harmonized VAT system." In the Economic Statement in October 2007, the Government restated its commitment to work with the five provinces that still have retail sales taxes.

¹⁹ Aled ab Iowerth and Jeff Danforth, "Is Investment Not Sensitive to User Costs? The Macro Evidence Revisited." Department of Finance, Working Paper 2004-05, Ottawa, as cited in *Path to the 2020 Prosperity Agenda*, Task Force on Competitiveness, Productivity and Economic Progress, November 2007, p. 45

²⁰ The European Commission Economic Papers, No. 261, December 2006 is cited in *Path to the 2020 Prosperity Agenda*, Task Force on Competitiveness, Productivity and Economic Progress, November 2007, p. 46

²¹ Smart, Michael. "Lessons in Harmony: What Experience in the Atlantic Provinces Shows About the Benefits of a Harmonized Sales Tax," C.D. Howe Institute, 2007.

²² Finance Canada, 2007 *Economic Statement*, October 30, 2007, p. 79

28. Bell Canada notes that in the last budget, the Government proposed a financial incentive for provinces to eliminate their capital taxes. A similar incentive should be made with respect to provinces that are willing to harmonize their sales tax regimes. Such an incentive would be designed to address the compensation concerns that may face some provinces, as was the case in 1997 when three Atlantic provinces agreed to harmonize with a federal subsidy agreement in place.

29. A C.D. Howe Institute study presents the kind of research that is valuable on this subject. Professor Michael Smart examined the effects of the 1997 HST reform on business investment and consumer prices in the Atlantic provinces:

He finds that the reform led to significant short-run increases in machinery and equipment investment, which would raise the capital stock and labour productivity in the long run...On the basis of the evidence, Smart concludes that a similar reform in the provinces that still have a retail sales tax would result in increases, possibly substantial, in capital stock and business investment, while there would be very little change in consumer prices.²³

30. In addition, harmonization will have an additional benefit by stimulating investment in ICTs. As Andrew Sharpe notes:

The PST in certain provinces (Ontario, British Columbia, Manitoba, Saskatchewan, and Prince Edward Island) is applied to ICT spending, increasing its cost compared to other more long lived asset types, and discouraging ICT investment. Harmonization with the GST (under which ICT investment is not taxed) would reduce this current bias of the tax system against ICT investment.²⁴

C. IMPROVING INCENTIVES SUCH AS THE SR&ED TAX CREDIT

31. In an increasingly global economy, Canada faces immense competition for research and development (R&D) investment dollars. The federal Scientific Research and Experimental Development (SR&ED) tax incentives give the Canadian Government a powerful tool with which to retain and attract R&D investment and jobs to Canada. The program aims to reduce the overall costs to companies performing R&D in Canada and make our country cost-competitive on an after-tax basis against emerging lower-cost countries. The SR&ED tax incentives consists of an income tax deduction which

²³ C.D. Howe Institute communiqué, "Atlantic Experience Shows Benefits of Harmonized Sales Tax – for Business and Consumers," July 24, 2007

²⁴ Sharpe, "Lessons....", p. 21.

allows immediate expensing of all allowable expenditures, and an investment tax credit which is applied to income taxes otherwise payable. A business can generally claim both the income tax deduction and the investment tax credit on the same SR&ED expenditures.²⁵

32. To move forward in terms of stimulating more Canadian R&D, the program should be enhanced. The SR&ED Process Review program has made great strides in this direction through well informed progressive policy and rules application, as well as driving the automation of corporate SR&ED processes. In Bell Canada's view, more benefits could be realized, based on the recommendations we provided to response to Finance Canada and Canada Revenue Agency in November 2007 during their joint consultation process. In that submission, Bell Canada recommended that the Government instil a progressive attitude to interpretation in the field offices of the Canada Revenue Agency (CRA), which administers the SR&ED program. We also believe that investment in education and systems to track R&D and to submit SR&ED claims would be beneficial to other companies, including SMEs. Bell Canada developed proprietary technology to capture the data required to make the claims. In Bell Canada's view, there are untapped possibilities with the existing SR&ED tax incentives for other companies to pursue by means of increased application of technology.

D. INCREASING THE TALENT POOL OF IT-SKILLED WORKERS

33. Canada is facing a critical shortage in IT-skilled workers. A new Conference Board of Canada study commissioned by Bell Canada predicts that the demand for IT workers will be at least 89,000 in the next three to five years. Unfortunately, enrolments are declining in technology-based subjects in secondary school. Fewer people are choosing IT in post-secondary studies as well. In 2007, an independent survey of computer science deans in Canadian universities indicates an alarming undergraduate enrolment decline – from 22,625 in 2002 to 12,127 in 2006 – a 46% drop. Undergraduate degrees awarded in computer science have dropped by 33% over the same period.²⁶

²⁵ This description appears in: Finance Canada and Canada Revenue Agency, "Tax Incentives for Scientific Research and Experimental Development -- Consultation Paper," October 2007.

²⁶ Dalhousie University, "Outlook on Enrolments in Computer Science in Canadian Universities," to be published in 2008. Survey conducted with support from the Information and Communications Technology

34. In response, Bell Canada recently launched a coalition of large companies who are committed to addressing this shortage. The Canadian Coalition for IT Succession will work with subject-matter experts including the Information & Communications Technology Council, the Information Technology Association of Canada and Techno Compétences and other organizations to develop a plan for private-sector leadership and action in this area.

35. It is worth noting that the Government's science and technology strategy commits to:

Modernizing labour market programming, working with the provinces to remove barriers to labour mobility, and improving foreign credential recognition and the Temporary Foreign Worker systems to make it easier for employers to get the skills they need to remain competitive. Budget 2007 takes decisive action, with a new labour market training architecture and initiatives to better align the immigration program with the needs of the labour market.²⁷

36. In addition, the science and technology strategy states that:

The government will develop an action plan that will include increasing the number of people pursuing education and careers in S&T [science and technology], in consultation with other levels of government, universities, colleges, the private sector, and not-for-profit stakeholders.²⁸

37. These are the kinds of initiatives that the Government and other stakeholders must undertake in the short and medium term if Canada is to grow its IT talent pool to compete for the high-value activities in the global economy.

Council. Results were presented on Oct. 24, 2007 at the Centre for Advanced Studies Conference in Toronto.

²⁷ Government of Canada, *Mobilizing...*, Chapter 5

²⁸ Government of Canada, *Mobilizing...*, Chapter 5

BECOMING A DESTINATION FOR TALENT, CAPITAL AND INNOVATION**5. WHAT FURTHER COULD BE DONE IN CANADA TO PROMOTE AN ONGOING REVIEW OF CANADIAN COMPETITION, INVESTMENT AND PRODUCTIVITY PERFORMANCE AIMED AT CANADA'S SUSTAINED COMPETITIVENESS?**

38. The Canadian Government has a specific role to play in improving Canada's competitiveness, but it must first decide that Canada's competitiveness warrants making it a national priority and then organizing government to ensure that priority is fully addressed across the relevant portfolios and agencies. Bell Canada believes that the Government needs to elevate competitiveness and productivity growth to a national priority. To that end, it should find an approach to coordinate all policies and programs under a competitiveness and productivity strategy. The strategy itself should be under the leadership of the Prime Minister, to ensure its prominence in the Government's agenda. In addition to the four areas of policy discussed earlier in this section, the Government's role in intra-mural R&D should form part of the strategy. The Government should start with an audit of all federal R&D spending to ascertain how much of the funds actually go to ICT-related work and how effective these investments have been. It should also consolidate existing federal R&D efforts and institutions under one program or agency.

39. It appears that the issue of Canadian competitiveness is gaining in importance in the Government's agenda. With creation of the Competition Policy Review Panel, the release of the Government's science and technology strategy by the Prime Minister and the long-term economic plan, *Advantage Canada*, the Government is giving increasing prominence to the issues of competitiveness and productivity growth. The next step will be to raise their profile to a national priority with the concomitant political leadership and organizational changes in Government.

40. The Panel's consultation paper refers to Ireland and Australia as national best practices for promoting inward investment. For the adoption of ICT as a productivity driver, examples include South Korea and Ireland. Based on their experiences, the Government should create a Cabinet Committee on Competitiveness, chaired by the Industry Minister, with the mandate to develop and lead a strategy, and coordinate all

policies and programs related to the strategy across all government departments and agencies. Accountability and transparency should be hallmarks of the committee's work. To that end, the Government should report annually in Parliament on its progress toward the achievement of goals and target dates as set out in a competitiveness strategy.

41. The Australian Government's Productivity Commission is cited by the Panel as an example of an ongoing commitment "to make a significant contribution to the cause of Australian competitiveness, in terms of both process and advice to the government."²⁹ It operates under its own legislation, at arm's length from other government agencies, with independence, and reporting through the Treasurer to the Australian Parliament. Among its key legislative "instructions" are:

- improve the productivity and economic performance of the economy
- reduce unnecessary regulation
- encourage the development of efficient and internationally competitive Australian industries.³⁰

The wisdom of such an approach is worth considering for Canada but ultimately the responsibility for creating productivity and competitiveness proposals should lie with the Government.

IV. INVESTMENT AND COMPETITION POLICIES

42. This section addresses Bell Canada's recommendations regarding the nature of the competition and investment policy changes contemplated in the Consultation Paper. Bell Canada is not providing any specific recommendations but rather is offering some general guidance as to how investment and competition policies should be implemented. To that end, Bell Canada has framed its responses under the general questions raised by the Panel with regard to how to specifically reform investment and competition law policies.

²⁹ Consultation Paper, p.31

³⁰ Australian Government Productivity Commission, *Quick Guide*, p. 3. Available at: <http://www.pc.gov.au/commission>.

INVESTMENT POLICIES – QUESTIONS:

2. *WHAT CHANGES TO THE ICA AND CANADA’S INVESTMENT REVIEW REGIME WOULD HELP CANADA ADDRESS THE CHALLENGES AND COMPLEXITIES OF THE MODERN GLOBAL ECONOMY, WITHIN THE CONSTRAINTS OF CANADA’S INTERNATIONAL OBLIGATIONS.*

- *WHAT, IF ANY, CHANGES TO THE INVESTMENT REVIEW PROCESS WOULD ENHANCE CANADA’S COMPETITIVENESS AND IMPROVE CANADIANS’ UNDERSTANDING OF THE BENEFITS OF FDI?*
- *SHOULD THE NET BENEFIT TEST BE ADAPTED TO REFLECT THE NEW COMPETITIVE ENVIRONMENT, IF SO, HOW?*

COMPETITION LAW – QUESTIONS:

2. *WHAT CHANGES TO CANADA’S COMPETITION REGIME WOULD ENHANCE THE COMPETITIVENESS OF CANADIAN FIRMS IN THE GLOBAL ECONOMY? WHAT INTERNATIONAL BEST PRACTICES, IF ANY, WOULD STRENGTHEN CANADIAN COMPETITIVENESS AS A DESTINATION FOR FOREIGN INVESTMENT IF WE WERE TO ADOPT THEM?*

A. THE IMPORTANCE OF AN OBJECTIVE STANDARD

43. To ensure that we successfully “sharpen Canada’s competitive edge,” investment policy decisions (i.e. decisions made under the *Investment Canada Act* either by Industry Canada or Canadian Heritage) and competition policy decisions (i.e. decisions made under the *Competition Act* either by the Competition Commissioner or the Competition Tribunal) should be made as free from political considerations as possible. A key question, which in Bell Canada’s view underlies most of the specific policy questions raised by the Panel, is the basis of decision making. Generally, there are two approaches available to the Government in deciding how it will implement decision making: Discretionary Judgment and Objectified Standards. In Bell Canada’s view, at least with regard to economic policy decisions, the latter is far superior to the former.

44. Discretionary Judgment is a mechanism whereby decision making is left to the expertise and judgment of the decision maker. It can be highly arbitrary and does not provide the private sector with the certainty that provides the confidence investors require to make significant and risky investments. Such an approach risks creating high regulatory costs that undermine investment, innovation and productivity. As Bell Canada

has seen in the telecommunications industry (and as confirmed by the Telecommunications Policy Review Panel in its final report), the lack of a doctrinal approach to telecom regulation in Canada that existed prior to 2007 resulted in an overly intrusive regulatory regime which, in turn, resulted in undermining innovation, investment and productivity in the telecommunications sector. Further, the discretionary judgment model is also often accompanied by a non-transparent form of decision-making. This again only adds to the investor uncertainty and further increases the disincentive to undertake risky investments.

45. In contrast, Objectified Standards establish clear rules and guidelines for the decision maker. They are transparent and reduce regulatory costs by establishing predictability and consistency. The transparency, predictability and adherence to proper economic principles, ensures that they create a climate of innovation, investment and ultimately increased productivity.

46. The *Competition Act*, for the most part, is an objectified standard model. For example, the merger provisions established in that Act are a clear break from the historic hodgepodge of conflicting objectives that existed prior to 1986. The merger provisions are designed to embody the principles of the economic theory of industrial organization into legislation. In short, they are doctrinal. Doctrinal approaches to regulation, especially economic regulation, are a necessity.

47. The best means to ensure doctrinal approaches to economic regulation are followed is to enshrine into legislation reliance on an economic-based analytical framework (e.g. one based on the theories of industrial organization) and then to establish competent authorities to implement that legislation. Implementation should be supported by comprehensive and transparent guidelines that establish how a decision maker will approach a particular topic. Such an approach leads to certainty and consistency, which will reduce regulatory costs, thereby increasing investment and innovation (and ultimately productivity).

48. The following two examples of how an objectified standard has been or could be implemented to support a host of different economic, social and cultural objectives:

- *Canadian ownership and control:* In the broadcasting industry, ensuring Canadian ownership and control is a general cultural objective that can be achieved by means of either a discretionary judgment or an objectified standard approach. An objectified standard approach would require clear rules regarding ownership structures, shares, and controls. These can be established in legislation, regulations and through clear guidelines set by the decision maker.
- *Net benefits test:* The Panel has asked about potential changes to the *Investment Canada Act* and specifically the net benefits test. Clearly the Panel must first decide whether foreign ownership is an issue of which warrants any Government intervention in the first place. With regard to the Canadian economy as a whole, Bell Canada does not offer a position on such an issue. An argument can be made that a net benefit test, which presumably means that in the face of any foreign takeover a \$1 of net benefit means the transaction should be approved, clearly benefits Canadians. But what such an argument ignores is the extensive costs of regulation. Does the existence of the *Investment Canada Act* in and of itself, undermine potential foreign investments within Canada that would be a net benefit to Canada? Bell Canada leaves it to others to offer a view on this issue. But what is clearly important is how, if a net benefit test is to exist, it is implemented and applied. An objectified standard approach would outline through legislation and regulation the clear parameters for evaluating all of the key criteria – whatever they may be. Guidelines, similar to the Competition Bureau’s, would be established to allow industry to quickly and correctly make its own evaluation of the outcome of any particular application.

B. USING THE OAKES TEST TO OPERATIONALIZE AN OBJECTIFIED STANDARD

49. Bell Canada does not have specific proposals to the Panel regarding what should be the objectified standards to adopt for investment and competition policy-making. But there is one precedent that Bell Canada believes can be a useful tool for evaluating any model, and that is the adoption of the Oakes Test. The Oakes Test is a legal standard, set by the Supreme Court, which must be met if governmental rules and policies infringe the rights and freedoms Canadians have under the Charter of Rights.

50. In assessing any potential regulatory intervention, and therefore the establishment of objectified standards based approach to bring accountability to policy and regulation, the adoption of the Oakes Test is an excellent starting point to operationalize these principles. The test comprises four main boxes that must be checked in order for a governmental rule or policy that has already been found to infringe a charter right:

1. The intrusion or limit must have a pressing and substantial objective
2. The limit must be proportionate to the objective, as defined by:
 - a. It must be rationally connected to the objective – i.e. the Government must demonstrate how the objective will be advanced
 - b. Be minimally impairing – i.e. interfere to the minimum extent with the normal activity
 - c. And the positive outcomes must outweigh the negative effects

51. The last item is really a cost-benefit analysis. Such a process ensures that the direct cost of regulation (e.g. the fees spent on regulation both paid to the regulator and to each company's internal and external experts and advocates) as well the indirect costs (e.g. the costs that regulation cause to the marketplace in terms of impacting investment that is not made but would otherwise have been made had regulation not existed) are weighed against the expected benefits from regulation.

52. The purpose of adopting the Oakes Test is not to suggest that any proposed investment or competition policy must be equated the same importance as a charter right or freedom, but to recognize that a rule which requires, for example, the benefits of regulation to exceed the costs, applied broadly to all policy, and certainly to all regulation in every sector, would bring unprecedented discipline, rigour and accountability to the regulatory process. In Bell Canada's view, whatever policy recommendations the Panel makes, it should strive to create an objectified standard that is then operationalized by a modified version of the Oakes Test.

53. By adopting objectified standards like those set in the Oakes Test, the Government would provide the certainty and predictability necessary to enable and support proper investment decision-making. Without objectified standards, the business community is forced to inefficiently account for government and regulatory risk on a

case-by-case basis, with no certainty that policy will be consistently applied over the longer term.

V. CONCLUSION:

54. Bell Canada strongly believes that investment in ICT is the key to improving Canada's productivity growth and competitiveness relative to the U.S. To that end, we recommend the Government (i) encourage increased business investment in ICT to spur productivity growth; (ii) make Canada more competitive with respect to tax policy; (iii) improve incentives such as the Scientific Research and Experimental Development tax credit; and (iv) increase the talent pool of IT-skilled workers.

55. With respect to Canada's investment and competition policies, Bell has provided general comments that should guide the Panel in its deliberations on issues. In brief, regardless of the policy recommendations that are made by the Panel to the Government, those policies should be implemented through an objectified standard approach to regulation supported by clear legislation, and guidelines from the decision makers as to how they will treat various kinds of transactions.

56. Bell Canada will be pleased to participate in further discussions of the issues we have addressed in response to the Panel's Consultation Paper. Bell Canada looks forward to the Panel's report and subsequent actions by the Government to more aggressively foster improvements in Canada's competitive and productivity growth performance.