



January 11, 2008

Submission to the Competition Policy Review Panel

Friends of Canadian Broadcasting is a watchdog for Canadian content in the audio-visual system, supported by 100,000 Canadians. Friends is non-partisan and is not affiliated with any broadcaster.

We recognize that your Panel's primary mandate is to ensure that government policies and initiatives are conducive to ensuring that Canadian companies remain competitive within the global economy, and that Canada itself remains competitive in attracting foreign investment and consequent employment opportunities. A productive economy is the basis for the quality of life of Canadians, including Canada's distinct identity and cultural sovereignty.

Sharpening Canada's Competitive Edge notes that "given Canada's relatively small, diverse market and given that its cultural businesses are small in comparison with their global competitors, successive Canadian governments have based public policy in this area on the premise that market forces alone are insufficient to ensure the availability of a suitable range of Canadian cultural products".

The purpose of this submission is to provide the Panel with some evidence in support of the current policy rationale for the above statement.

It is fundamentally important that Canadian public policy ensure that Canadian cultural sovereignty is not adversely affected by trade and investment decisions by design or inadvertence. The present foreign ownership rules in the *Broadcasting Act* provide generous opportunities for Canadian broadcasters and broadcast distributors to develop equity relationships with foreign partners. In the specialty television sector, for example, many of these now exist.

Non-Canadians may own up to 20% of a broadcaster directly and up to 33.3% of a holding company that owns a broadcaster, thus allowing combined direct and indirect ownership by non-Canadians at a level up to 46.7%.

It is important to take note that the policies of successive Canadian governments have enabled an audio-visual system where market forces, combined with appropriate regulation, now permit Canadian viewers and listeners to enjoy greater choice than is currently available to Americans. As well, Canadians have access to time-shifting of both Canadian and US channels, which is not available in the American market. Many Canadian cable and satellite subscribers have access to multiple same time zone options which also do not exist in the United States. All of these are positive achievements of public policy and are important to preserve. They result from regulation which facilitates the functioning of Canadian markets.

In the Canadian broadcasting environment, the term “market forces” is analogous to the Darwinian notion of letting the strongest survive – in this case the survivors being those programming groups that have the services that cable and satellite distributors want or the leverage to ensure carriage of their full line-up of channels. Public policy is there to ensure that there is room for smaller players with more modest market power, and who make a substantial contribution to diversity in the broadcasting system.

It is also important to note that the vast majority of programming offered by American satellite channels which are not legally available in Canada is in fact available to Canadian audiences through Canadian channels which have bought the Canadian rights. This explains the historic reluctance of the CRTC to allow certain foreign channels to enter the Canadian market when their entry would result in no increase in diversity of programming while at the same time reducing the pool of revenue-producing programming available to Canadian broadcasters.

The net result of the CRTC’s policies has been a significant and well-documented increase in the amount of domestic competition based on licensing, as well as a significant increase in non-regulated competition. This latter is likely to increase as a result of projected technological change.

We note as well that certain US services are included as part of the current cable and satellite offering in Canada without an obligation to make any contribution whatsoever to the Canadian broadcasting system through the Canadian Television Fund or other mechanisms.¹ Friends has pointed out on numerous occasions that many US services were originally permitted in Canada because the cable monopolies petitioned the CRTC to be allowed to carry these services as necessary ‘drivers’ to help launch specialty television in Canada. It is for this historic reason that many US services were simply added to the list of satellite

¹ A&E might be an exception, but only as a result of what they have done voluntarily, not as a result of regulatory requirements.

services eligible for carriage in Canada with nothing required nor expected of them in return. As specialty television has grown in Canada, this 'grandfathered' status has evolved to the continuing advantage of all of these US services.

The CRTC had the opportunity to re-visit the issue of contribution from US services with the migration from analog to digital technology, but chose not to do so. However, the US channels have not hesitated to play the 'trade' card when it suited their interests.²

It is fundamentally important that Canadian broadcasters and specialty channels not be put into a position where they can no longer compete because foreign services are provided preferential treatment in whatever form.

With regard to cable and satellite broadcasting distribution, it is important to note that real competition is limited in Canada. While in many Canadian households there is a choice among cable, DTH and MMDS-type services, this choice is effectively available only to consumers with relatively deep pockets, those not living in most multiple unit dwellings, or those whose abode faces southward. For Canadians of modest means, including the majority of senior citizens, cable is the only economic option, and there is no choice of provider.³

Real competition in cable delivery might arise if Time Warner Comcast were allowed into Canada, but the protection from foreign competition which Canadian distributors enjoy appears to us a worthwhile trade-off for regulations which have the effect of ensuring shelf space for Canadian programming in the English-language audio-visual system.

Outside of must-carry services, cable and satellite distributors control access, packaging, marketing, and rates. Even with existing access rules, the CRTC has heard many allegations of abusive 'negotiation' tactics used by cable and satellite distributors, especially with respect to smaller companies that have absolutely no negotiating leverage.

The current access rules ensure that those services which have met the test of the CRTC's licensing process receive access in accordance with their business plan. Friends strongly supports maintaining these access rules for all services. However, if such access rules were to be changed in future, we have

² An example is Country Music Television (CMT).

³ As outlined in the CRTC's 2007 Broadcasting Policy Monitoring Report, in 2006 cable reached almost 74% of Canadian homes served by a BDU. Of this number, the top four cable companies: Rogers, Shaw, Vidéotron and Cogeco, with a combined 6,895,000 homes, represented almost 94% of total cable homes, and 69% of all homes. Total DTH reaches only 26% of BDU homes and 19% of all homes.

recommended creating a separate set of rules for independently-owned specialty services so that they too can participate in the system.⁴

We also wish to provide the Panel with commentary on political and public opinion dimensions of the cultural sovereignty debate, as follows:

In 2003, when the House of Commons Standing Committee on Canadian Heritage issued its famous “Our Cultural Sovereignty” report under the leadership of Clifford Lincoln, it recommended that “the existing foreign ownership limits for broadcasting and telecommunications be maintained at current levels”.⁵

The then Canadian Alliance Party, whose leader is now the Prime Minister, issued the following dissenting opinion: “The Canadian Alliance disagrees with (this recommendation). The Canadian Alliance supports relaxing foreign ownership rules on Canadian industry, including telecommunications and broadcast distribution. We suggest conducting an immediate review to determine whether to reduce or completely remove these rules”. Those same words found their way into a briefing note circulated by the new Conservative Party of Canada to their 308 candidates during the 2004 election campaign.

Since its election in 2006, the Conservative government has been largely silent on this topic, although former Industry Minister Maxime Bernier spoke publicly about relaxing the rules. In late November, the current Heritage Minister, Josée Verner told the House of Commons Standing Committee on Canadian Heritage: “Our government has no intention of changing anything with respect to foreign ownership. I can assure you of that.”

However, government spokespersons have recently indicated publicly that the issue of foreign ownership lies within your Panel’s mandate.

We believe that the push for allowing foreign ownership of broadcasting comes mainly from four family-controlled cable monopolies: Vidéotron, Cogeco, Rogers and Shaw. Why are they pushing so hard? Within Canada, there are not many potential buyers for their controlling positions. Opening up broadcasting to foreign control would vastly increase the number of potential bidders for their controlling shares. This would drive up the value of their shares. So, if the Canadian government were to raise foreign ownership levels, it ultimately would mean a major payday for those families.

Here is what Gordon Pitts, a Globe and Mail reporter and author of *Kings of Convergence* has written about the Shaws:

“Industry speculation is that if the rules are changed to allow higher foreign ownership of cable companies, an opportunistic US player, perhaps John

⁴ Friends suggests that an independent service could be defined as one that is not controlled by a BDU or a national broadcast group.

⁵ Page 631.

Malone, would take a much bigger stake in Shaw Communications, and possibly buy out the Shaws entirely. That suspicion is reinforced by the sense that JR, Jim and Heather Shaw are above all pragmatists. They love the business, but they aren't married to it. In the long run, the Shaws will likely be sellers, and they will do very well for themselves." (End of quote.)

The point is that one effect of the relaxation of foreign ownership rules in this regulated industry would be to put billions of dollars into the pockets of the members of four families – at the stroke of Her Excellency's pen.

As a contribution to your Panel, and in collaboration with ACTRA and the Communication, Energy & Paperworkers Union (CEP), Friends commissioned a public opinion poll from Harris/Decima in order to bring to the table the views of Canadians on the issue of foreign ownership and control of media and communications in Canada. The message from this poll is straightforward:

- 82% of Canadians think it is important for the Canadian government to work to maintain and build a culture and identity distinct from the United States.
- 61% of Canadians are opposed to foreign control of telephone, cable and media companies.

Details of this Harris/Decima poll are appended to this submission.

We wish the Panel great success in its important work and we urge the Panel to recommend that foreign ownership laws for Canadian media and communication companies be retained.

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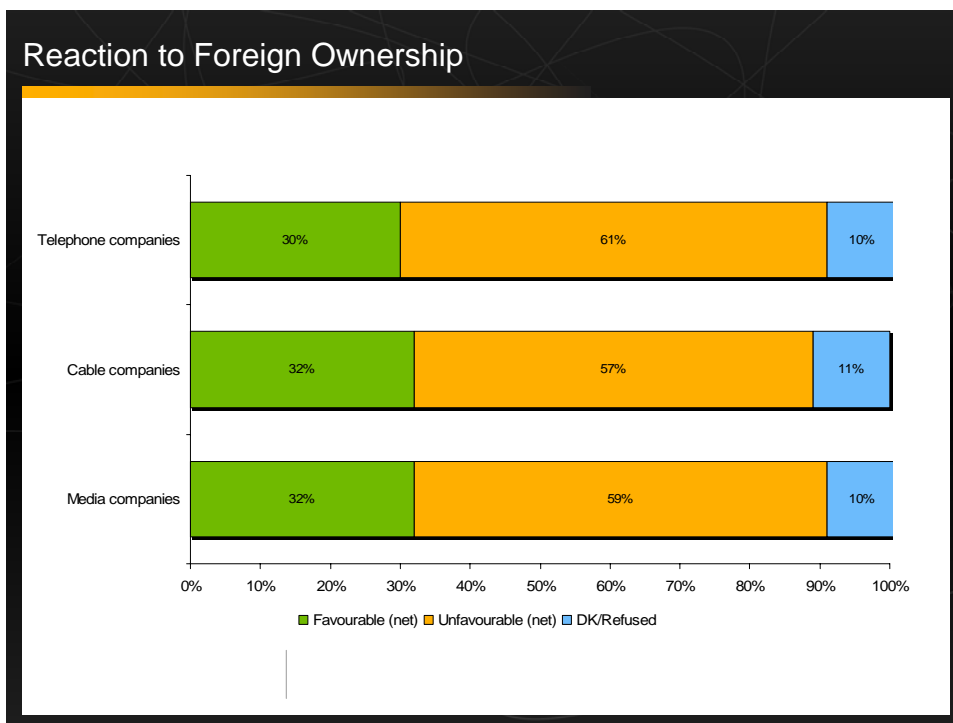
December 3, 2007

Friends of Canadian Broadcasting, ACTRA, Communications, Energy and Paperworks Union of Canada

Foreign Ownership of Canadian Broadcasting and Telephone Companies

Many Canadians (82%) feel it is important the Canadian government work to maintain and build a culture and identity distinct from the United States. Women (84%) are significantly more likely than men (80%) to agree with this statement. Interestingly, Conservative voters do not feel as strongly as other party voters towards Canada maintaining a distinct identity from the U.S. (46% vs. 63%).

When examining foreign ownership among telephone, cable and media companies, many Canadians hold an unfavourable reaction to foreign ownership. Specifically, a majority (61%) of Canadians have an unfavourable reaction towards foreign ownership of telephone companies. Regionally, the reaction is most unfavourable in Manitoba/Saskatchewan (69%), Ontario (65%) and British Columbia (63%). Over two-thirds (69%) of Canadians over the age of 50, retired Canadians (71%) and English speaking Canadians (63%), as well as those who are widowed or divorced (68%) hold an unfavourable reaction.



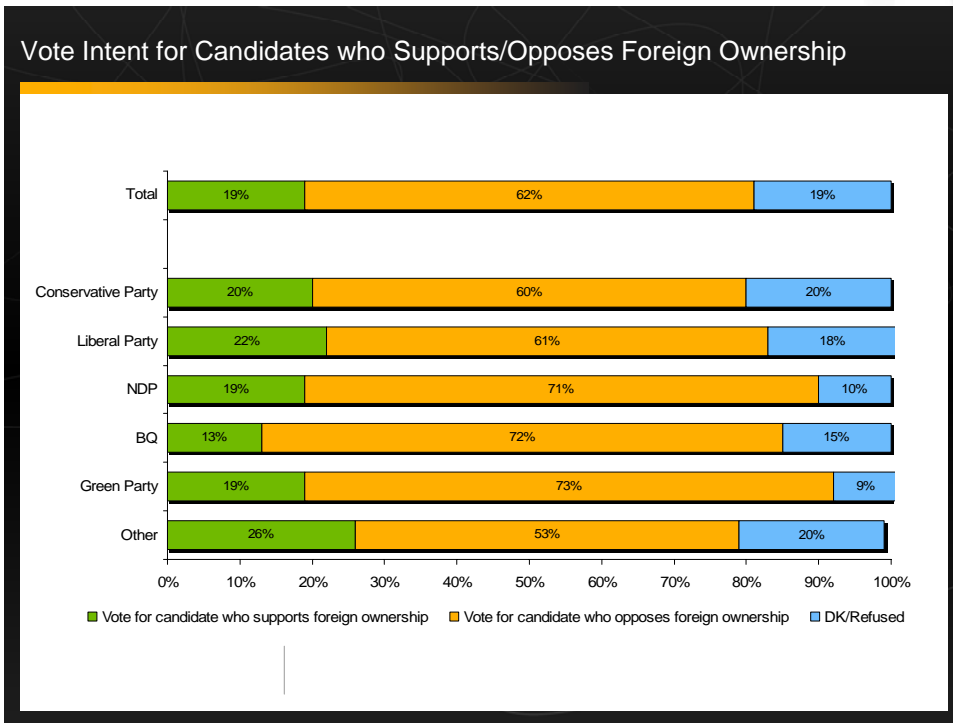
Similar to reactions of foreign ownership of telephone companies, a majority of Canadians (57%) hold an unfavourable reaction to the foreign ownership of cable companies. This viewpoint is held by nearly two-thirds (64%) of retired Canadians.

Those living in the Prairies (67%), Ontario (61%), Alberta (58%), British Columbia (58%), and Atlantic Canada (57%) have a more unfavourable reaction than Quebecers (48%). Among voters, those who plan to vote for the NDP (66%) are significantly more likely to have an unfavourable reaction than those who plan to vote for the Conservatives (54%).

Overall, nearly three-in-five Canadians (59%) have an unfavourable reaction to the foreign ownership of media companies; this is particularly true among English speaking Canadians (60%). Regionally, those in the Prairies (65%), Ontarians (61%), and British Columbians (61%) are more likely to react negatively to the foreign ownership of media companies. Education is another factor when it comes to those who would have an unfavourable reaction. Canadians with a college (59%), university (67%) or post grad (69%) education are most likely to react unfavourably. Interestingly, younger Canadians are significantly more likely to be in favour of foreign ownership of media companies (48%); however as age increases, support for foreign ownership drops dramatically.

Nearly half (46%) of all Canadians expect that Canadian content on radio and television would decrease with the control of Canadian broadcasting and cable companies by foreign owners. This viewpoint is held strongly among English speaking Canadians (48%) and those with post-graduate degrees (63%). Regionally, more Canadians in the Prairies (54%), British Columbians (51%), and Ontarians (47%) think Canadian content would decrease if foreign companies gained control of Canadian broadcasting and cable companies. Younger Canadians (20%) are more optimistic than older Canadians that Canadian content would increase with foreign ownership.

Almost two-thirds (62%) of Canadians are more likely to vote for a federal candidate who opposes foreign corporations owning more of Canada's broadcasting and telephone companies. A majority of women (64%), French speaking Canadians (68%), those who are divorced or widowed (71%) and two-thirds (66%) of those living in rural areas are significantly more likely to vote for a candidate who opposes foreign ownership of the broadcasting and telephone companies in the next federal election. Regionally, opposition of foreign ownership is significantly higher in the Prairies (69%), British Columbia (67%), Quebec (66%), Ontario, 61%), and Atlantic Canada (59%), than it is in Alberta (49%). Green party voters (73%), BQ voters (72%), and NDP voters (71%) are more likely to vote for a candidate who opposes foreign ownership.



Two-thirds of Canadians (66%) stated that Canada’s broadcasting and communications companies are too important to allow foreign ownership for cultural and national security reasons, while the remaining 22% say Canada’s broadcasting and communications companies should be able sell a majority interest to foreign companies in order to be competitive, and 12% did not comment. Canadians aged 35+ (71%), those who are retired (74%), and Canadians with a college (67%), university (72%) or post grad (72%) education are more likely to think Canadian broadcasting and communications companies are too important to allow foreign ownership. BQ voters (81%) and NDP voters (79%) are significantly more likely to indicate Canada’s broadcasting and communication companies are too important to allow a majority foreign ownership.

The data was gathered between November 15th to November 25th 2007, through Harris/Decima’s weekly teleVox, the company’s national omnibus survey. Results are based on a sample of 2,052 Canadians, and the corresponding margin of error is $\pm 2.2\%$, 19 times out of 20.