

Telecommunications Is a Strategic Asset Essential to National Sovereignty and Security

Submission to the Federal Consultation on Options for the Foreign Investment Restrictions in the Telecommunications Sector

Summary:

The area of sovereignty and national security needs to be addressed well before any attempt is made to change those sections of the *Telecommunications Act* which protect Canadian ownership of telecommunications interests. There are many models of telecommunications ownership which should be considered beyond the three offered in the consultation paper.

Communication theory is rich with world-renowned scholars like Harold Innis, Marshall McLuhan, George Grant, Dallas Smythe, and Graham Spry. Their combined works have flowed from and contributed to Canada's unique relationship with communications. Professor of communications Robert F. Babe sums it up in his introduction to *Canadian Communication Thought; Ten Foundational Writers*. "Communication is related intrinsically to culture, to community, and to power."¹ Canadians have always understood this interconnectedness and it is reflected in section 7 of the *Telecommunications Act*, 1993.

It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives:

- a) to facilitate the orderly development throughout Canada of a telecommunications safeguard, enrich and system that serves to strengthen the social and economic fabric of Canada and its regions; . . .
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;²

The current public consultation on foreign investment restrictions in the telecommunications sector seeks to break this relationship down to a simple question about the potential economic value of unrestricted foreign ownership. This in itself is a loaded question. Lawrence Surtees, telecom consultant and historian says "In Canada, telecom history shows that we don't go from monopoly to competition – it's the other way around. We had five wireless providers a few years ago and now we have three. The market has already spoken on this topic."³ More competition as a result of unrestricted foreign ownership is a hope, a desire, not a guarantee.

The consultation paper asks “Are there potential unintended effects of increased foreign direct investment in the Canadian telecommunications sector? What are the potential benefits and risks of having more global players in the market?”⁴ While the consultation paper clearly leans on the side of potential benefits in the economic sphere, the potential risks, which would not be restricted to the economic sphere, are simply absent from the analysis.

This submission briefly looks at foreign ownership of telecommunications industries from the perspective of national sovereignty and security, some of the elements that need to be considered and how other countries are dealing with this problem.

Security moves online

The Economist, not generally considered an alarmist publication, could hardly have been more forceful on the cover of its July 3rd, 2010 issue “Cyberwar; The Threat from the Internet.” The related articles present images of an early logic bomb which blew up a gas pipeline in Siberia, a denial of service attack which crippled government services in Estonia and Georgia at crucial political moments, and the potential hijacking of power installations and banking systems both highly dependant on electronic connections.⁵ According to these articles, national security experts around the world are grappling with faceless, nameless Internet criminals that sometimes work for governments, sometimes for industries, sometimes for terrorists and sometimes for themselves.

Essential infrastructure must be protected from cyberthreats. Currently, large Internet Service Providers have, by virtue of their unique capacity to filter malicious content, become a first line of defense in the event of a cyber attack on essential infrastructure. ISPs themselves are concerned about this unofficial national security gatekeeper role.⁶ Clearly, when private interests, whose concerns are about profitability not national security, play such a critical role, governments need to proceed with extreme caution. Unrestricted foreign ownership would place this security role in the hands of companies owned and controlled in a foreign jurisdiction. Such decisions, once taken, are difficult to undo.

The consultation paper notes that, out of 30 OECD countries, France and Germany have partial ownership stakes in France Télécom and Deutsche Telecom. Australia and Japan maintain restrictions on their traditional incumbent operators. The U.S. *Communications Act* allows the FCC to deny radio licenses to corporations with more than 25% foreign ownership on parent corporations. Canada, Mexico and Korea have investment and ownership restrictions that apply to all telecommunication operators.

However, the international foreign ownership picture is much more complex. China maintains control over foreign investment as do Brazil, South Africa, Vietnam and others. India recently raised its direct investment limit from 49 to 74% but only after imposing strict conditions on board members.⁷ In Switzerland, the federal government maintains a majority share of Swisscom. Australia is reclaiming some of its telecom infrastructure as it retains government ownership where public investment in the new

broadband infrastructure rollout programs is concerned.⁸ The U.S., although it has no foreign ownership restrictions, requires that all foreign acquisitions of U.S. companies be evaluated by the Committee on Foreign Investment for their impact on national security.⁹ On June 30, 2010, Portugal blocked the Spanish takeover of Vivo, a mobile asset it jointly owns with a Brazilian company. “The government is protecting the interests of the country,” said Portugal’s prime minister.¹⁰ In May, 2009, U.S. President Obama moved to secure the national cyberinfrastructure by declaring it a strategic national asset. At the same time, he recognized the role of Internet Service Providers as critical to the national security environment in the information age.¹¹ Clearly, national security and telecommunications have become more interconnected than ever and many jurisdictions are looking for ways to minimize the inherent threats.

There are many options which should be considered beyond the three offered in the consultation paper.¹² With this kind of complexity and interrelationship, the area of sovereignty and national security needs to be addressed well before any attempt is made to change those sections of the Telecommunications Act which protect Canadian ownership of telecommunications interests. “Senior policy makers must think through the long range strategic options available ... in a world that depends on assuring the use of cyberspace” says the U.S. *Comprehensive National Security Initiative*.¹³

The risks to security and sovereignty need to be fully explained and the options need to be expanded before any scenario that would weaken Canadian control over communications is implemented.

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¹ Babe, Robert E. (2000). *Canadian Communication Thought; Ten Foundational Thinkers*. Toronto: University of Toronto Press.

² Canada. Government of Canada. *Telecommunication Act, 1993*.

³ McMurdy, Deirdre. (2007). “Less regulation helps competition – unless it doesn’t.” *Ottawa Citizen* June 27.

⁴ “Opening Canada’s Doors to Foreign Investment in Telecommunications: Options for Reform” <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/05643.html>

⁵ “Cyberwar; It is time for countries to start talking about arms control on the Internet” (p.11-12) and “War in the fifth domain.” (25, 26,28). *The Economist*, July 3, 2010.

⁶ Remarks by Bell Canada executive from notes taken at June 30, 2010 OpenNet Initiative. Global Summit. Ottawa.

⁷ International Telecommunications Union (ITU). (2010) ICT regulation toolkit. 3.4.2 Foreign Ownership. Updated July 10. <http://www.ictregulationtoolkit.org/en/Section.1695.html>

⁸ Australia. Tanner, Hon. Lindsay, MP (Minister of Finance and Deregulation). (2010). “Landmark study confirms NBN vision is achievable and affordable.” Media release, May, 6. http://www.minister.dbcde.gov.au/media/media_releases/2010/040

⁹ Ibid, ITU

¹⁰ “Overruled; Portugal’s government blocks a Spanish bid for a strategic telecoms asset.” (2010). *The Economist*, July3. p.61

¹¹ The White House. Office of the Press Secretary. (2009). “Remarks by the President on securing our Nation’s cyberinfrastructure.” May 29, 2009. http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Securing-Our-Nations-Cyber-Infrastructure/

¹² For further information see: International Telecommunications Union (ICT). ICT Regulation Toolkit. Table 3.6: Foreign telecommunications ownership restrictions in selected countries. Last updated July 10, 2010. <http://www.ictregulationtoolkit.org/en/PracticeNote.2551.html>

¹³ The White House. Executive Office of the President of the United States. (2009). *Comprehensive National Security Initiative*. <http://www.fas.org/irp/eprint/cnci.pdf>