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## **Re: Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform**

### **Introduction**

Shaw Communications Inc. (Shaw), on behalf of Shaw Cablesystems GP (Shaw Cable) and Shaw Direct, is pleased to provide this submission in response to *Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform* (the "Consultation Paper"). Shaw is a diversified company whose core business is providing broadband cable television, High-Speed Internet, Digital Phone, telecommunications services (through Shaw Business Solutions) and satellite direct-to-home (DTH) services (through Shaw Direct). The Company serves 3.4 million customers through a reliable and extensive broadband network, which comprises 625,000 kilometres of fibre. Customers are the cornerstone of our business.

As one of Canada's leading communications companies, Shaw shares the Minister of Industry's stated goal "to encourage investment, innovation and competition in the telecommunications sector for the benefit of both businesses and consumers." Shaw also agrees with the Government's stated intention to increase reliance on market forces and decrease regulation in the telecommunications industry. In support of these goals, Shaw submitted a response to the Government's *Consultation Paper on a Digital Economy Strategy for Canada – Improving Canada's Digital Advantage: Strategies for Sustainable Prosperity* in which we recommended:

- reliance on industry initiatives and market-based incentives to support Canada's continued success in the digital economy;
- gradual elimination of impediments (including taxation, subsidization and micro-regulation) to network investment in both the broadcasting and telecommunications sectors;
- evolution from a subsidy-based system to a more market-driven approach to content production; and
- Government support for the ability and efforts of domestic companies to increase competition in the telecommunications sector through the implementation of auction spectrum caps, effective and efficient tower-sharing rules and competitively-neutral foreign ownership rules.

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Shaw strongly encourages the implementation of fair and non-discriminatory foreign ownership rules under the *Telecommunications Act* and the *Broadcasting Act*. Discriminatory rules that distort competition would be inconsistent with the Government's desire to increase growth and productivity by relying on market forces. For this reason, Shaw supports Option 1: Increase direct limit for broadcasting and telecommunications to 49 percent.

As described in greater detail below, Option 1 is the only acceptable proposal because of the significant competitive harm that would result from either Option 2 (lift restrictions on telecommunications common carriers with a 10-percent market share or less, by revenue) or Option 3 (remove telecommunications restrictions completely). We are especially concerned with the impact of unfair or discriminatory treatment on the basis of either:

- differential treatment under the *Telecommunications Act* and the *Broadcasting Act*, or
- rules that benefit foreign competitors while discouraging domestic entry.

### **Telecommunications and Broadcasting**

Shaw respectfully disagrees with the Government's position that it is appropriate to consider changes to the foreign ownership rules under the *Telecommunications Act* without considering equivalent changes to rules under the *Broadcasting Act*. We also respectfully disagree with the assumption that such changes would "impair" achievement of cultural objectives. Specifically, we are concerned with the following statement in the Consultation Paper:

While it is recognized that telecommunications and broadcasting are increasingly converging, the policy objectives and legislative authorities under the *Telecommunications Act* and the *Broadcasting Act* are distinct, and the government is not considering changes to the *Broadcasting Act*. With respect to broadcasting content and culture, the government will not consider any action that could impair its ability to pursue Canadian culture and content policy objectives.

In *Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector*, Report of the Standing Committee on Industry, Science and Technology (June 2010) (the "Report of the Standing Committee"), the problems with differential treatment of telecommunications carriers and broadcasting distribution undertakings (BDUs) were accurately described as follows:

[BDUs] indicated that technological convergence has resulted in corporate convergence, and that creating an artificial difference between the two types of businesses from a regulatory standpoint would put them at a competitive disadvantage.

...

If foreign ownership restrictions are removed under the *Telecommunications Act* only, it would expose the integrated players (i.e., those that are both telecommunications common carriers and BDUs) to the competitive threat of non-integrated players (pure-play telecommunication common carriers) that would have unlimited access to foreign capital.

This competitive threat would perhaps force the integrated players to spin off their telecommunications carriage businesses (i.e., create separate telecommunications carriage

subsidiaries) in order to make them eligible to receive unlimited foreign capital investment. Such changes could, however, affect their “integrated offerings” (whereby television, Internet, phone services are bundled in a single package) since phone and Internet services would now be offered by different subsidiaries. Therefore, removing foreign ownerships restrictions for telecommunications common carriers only could be considered inequitable from the integrated players’ perspective.

In addition to creating significant inequities among pure-play telecommunications providers and BDUs, changes to the foreign ownership rules under only the *Telecommunications Act* would severely undermine investment, distort competition and harm consumers. Lifting ownership restrictions in only the telecommunications sector will unjustifiably create new investment risk. As recognized in the Report of the Standing Committee, foreign ownership restrictions result in a higher cost of capital because of the limit they impose on the potential sources of capital. The Report of the Standing Committee focused on small players and new independent entrants in the wireless segment while suggesting that incumbents can rely on free cash flow to fund new investments. We are concerned with this narrow focus. Discriminatory treatment will distort competition by interfering with capital market decision-making, creating a better risk profile for telecom-only companies, lowering the cost of capital for only one group of competitors and forcing other competitors to decrease free cash flow (harming their shareholders and future investments). It would be unacceptable to force integrated communications companies to choose between confronting these competitive disadvantages or divesting other assets.

A narrow telecom-only focus ignores the modern converged communications environment. Since 2000, Shaw has invested over \$6.5 billion to become more than just a cable company. Shaw is a fully-integrated communications company that competes with other telecommunications, cable and satellite companies in telephony, wireless, internet and television distribution markets. Through our significant investments, Shaw now serves:

- 2.3 million cable customers who benefit from the capacity to support digital and high-definition services and new applications and technologies, including pay-per-view, video-on-demand (VOD), subscription VOD, music channels, and interactive program guides.
- 905,000 DTH customers who are provided with a 100% digital offering across Canada, including Northern Canada and other remote and rural areas.
- 1.8 million Internet customers who are provided with internet speeds up to 100 Mbps utilizing DOCSIS 3.0 technology. Shaw became Canada’s first provider to trial Gigabit Internet technology delivered over Fibre-to-the-Home, which will offer revolutionary speeds of 1000 Mbps. We have closed the broadband gap by providing high-speed internet service to small towns like Wasa, British Columbia, Magrath, Alberta, Elie, Manitoba and Red Lake, Ontario.
- 1 million digital phone customers who are benefitting from increased competition between Shaw and incumbent telephone companies.

Relying on an environment that treats competitors equally, Shaw’s additional investments have included:

- In 2008, Shaw spent \$190 million to acquire wireless spectrum from the government and we will invest hundreds of millions more to build a wireless network in Western Canada.

- In April 2010, Shaw Direct entered into agreements with Telesat to acquire extended Ku-band capacity through the construction and launch of a new satellite worth \$300 million. When the new satellite, Anik G1, is operational in late 2012, it will increase the satellite capacity of Shaw Direct by 30% and enable it to remain a strong competitor in the provision of digital services to DTH customers.
- In May 2010, Shaw entered into agreements to acquire 100% of the broadcasting business of Canwest Global Communications Corp. for approximately \$2 billion. Further to that transaction, Shaw has proposed to invest significantly to ensure that Canwest provides content to television viewers and internet users over multiple digital platforms. The scope of our digital transition plans will be unmatched by other over-the-air broadcasters.

Shaw has contributed to Canada's leadership in the digital economy. We have also created 10,000 jobs. Consumers have benefited from convergence with the enhanced services and lower prices that result from investment, intense competition and product bundling. Discriminatory foreign ownership rules would threaten to undermine these achievements. Any changes that favour certain competitors will not help achieve our policy goals of increased investment and greater productivity.

Furthermore, cultural concerns do not justify disadvantaging Canadian cable and satellite distribution companies. Throughout the world, foreign investment has helped to create strong cable and satellite companies without compromising domestic cultural or other public interest objectives. The United States has no foreign ownership restrictions on cable companies, maintaining them only for over-the-air broadcasters. European Union Member States do not restrict foreign investment in telecommunications and cable companies. To address concerns about the cultural influence of US media content, the EU mandates effective domestic content rules for broadcasters and permits Member States to enact cable carriage rules. However, the EU sees no contradiction between open capital markets and cultural regulation.

In Canada, the policy objectives of the *Broadcasting Act* have helped to ensure a predominance of Canadian content. The rules governing Canadian content can remain in place and apply equally to all BDUs without regard to the level of foreign investment.

Given the Government's stated position that there will be no change to the *Broadcasting Act*, Option 1 is the only proposal that addresses the concerns described above. As described by Bell during its appearance before the Standing Committee:

It's a meaningful increase to direct foreign investment in telecom and broadcast operating entities from 20% to 49%. And it avoids the need to establish complex holding company structures to comply with today's rules.

Also, the change can be applied symmetrically to large and small telcos and broadcasting entities. This would allow all players to benefit from increased foreign capital. And it would give them the flexibility to offer consumers the converged services they crave more and more. All the while, through the continued application of the Canadian control-in-fact test, it would address the concerns of those who wish to ensure that Canada's broadcasting assets remain in Canadian hands.

Option 2 and Option 3, which both favour telecom-only companies, are entirely unacceptable.

## **Foreign and Domestic Competition**

Domestic entry is the most important source of competition in the Canadian telecommunications sector. For this reason, we are strongly opposed to any rule changes that will benefit foreign entrants while harming Canadian companies. Such an approach is not good public policy and it is not in the best interests of Canada or Canadians.

As part of our wireless build, we plan to invest up to \$100 million through to the end of the fiscal year, and similar amounts for the foreseeable future. We will invest approximately \$500 million to build our wireless operations. Shaw's wireless launch will provide tremendous benefits to consumers and the Canadian economy by creating a large number of new well-paying jobs. Foreign investors do not, however, share these same incentives and foreign investments will not provide similar benefits. Removing foreign ownership restrictions on only new entrants will likely encourage non-operating financial investors to enter the spectrum auction process and bid up the value of the spectrum with a view to then flipping the acquired spectrum to a foreign carrier. Foreign telecom companies that acquire the spectrum will be incented to have a minimum presence in Canada for purposes that are primarily related to their activities in other countries. These foreign investments will not ensure the same level of productivity and job growth that will be provided by strategic Canadian companies.

For these reasons, we are opposed to Option 2. It would be unfair and discriminatory to allow foreign companies to establish a new business in Canada or to acquire an existing telecommunications company with a market share of up to 10 percent. As a new entrant in the wireless entry, Shaw would be significantly disadvantaged if other new entrants (without existing revenues from internet and telephony) were provided with the unrestricted ability to access foreign capital. It makes little sense to adopt rules that favour foreign competitors.

## **Conclusion**

Shaw supports changes to the foreign investment restrictions that are competitively neutral for all telecommunications and broadcasting distribution companies. Public policy for the elimination of foreign investment restrictions should provide a level playing field and a new climate for increased investment and productivity to strengthen Canada's economy. For these reasons, Shaw supports Option 1.

We are opposed to any discriminatory changes to the foreign ownership rules that ultimately harm consumers by distorting competition, undermining investment and discouraging domestic entry. For these reasons, we are strongly opposed to Option 2 and Option 3.

Yours truly,



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