

Comments

by

Vaxination Informatique

regarding

**Proposed Order Issuing a Direction to the CRTC on
Implementing the Canadian Telecommunications
Policy Objectives to Promote
Competition, Affordability, Consumer Interests and
Innovation**

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Introduction

1. Pursuant to Canada Gazette, Part I, Volume 153, Number 10, (March 9th 2019), Vaxination Informatique submits its comments in the proposed Policy Direction for the Telecommunications Act.
2. Jean-François Mezei, dba Vaxination Informatique has participated in CRTC processes between 2008 and end of 2016, and was the author of the 2011 Petition to Governor in Council seeking the overturn of the CRTC's UBB decisions.
3. Vaxination participated in a large number of Telecom Proceedings including 2009-261 which sought to implement the forbearance attempts as dictated by the 2006 Policy Direction (the 2010-632 decision concluded that it could not be done without causing a duopoly) as well as the process which lead to the 2015-326 decision which reversed the 2010-632 decision to set wholesale on path to forbearance while depriving consumers to competitive access to FTTH service. Vaxination has also participated in a number of tariff processes.

Executive Summary

4. The proposed policy direction is a step in the right direction. However, it must not be a piece which coexists with the old one. The old one must be cancelled and whatever portions are worth preserving be incorporated into the new one to create a single, complete Policy Direction which does not conflict with another version still in force.
5. To this end, Vaxination is proposing a combined version of the Policy Direction with changed wording to ensure it encompasses all aspects of telecommunications and not just retail services sold to consumers.

The need for a single Policy Direction

6. The text of the new proposed Policy Direction does not mention the revocation of the old one, or how it is to co-exist with the old one. There have been rumours that the Minister intends for both to co-exist, with the new one taking precedence where there is conflict.
7. This MUST NOT be allowed.
8. The Policy Direction must be considered not only by the Commission when rendering decisions, but must be argued by all parties who participate in any proceeding. Leaving both Policy Directions in place means that in every CRTC proceeding, there will be considerable time spent debating which of the two versions apply in this case.
9. The Policy Direction is often a major part of arguments in public proceedings and tariff applications. As such, leaving 2 conflicting versions in place will worsen the regulatory process with uncertainty on which of the 2 documents will prevail in each specific decision.
10. In essence, there will be perpetual debate on which of the 2 versions apply in individual processes.
11. The Minister must decide once and for all, which portion of which document are in force in order to reduce uncertainty, debate and a wasted time in each and every CRTC proceeding, and prevent "zig zagging" policies that radically change course a few years apart depending on interpretation of which version of the Policy Direction applies.
12. Conflicts between the two must be resolved once, by the Minister who sets the policy instead of forcing eternal debate in every CRTC process.
13. To this end, *Vaxination urges the Minister to merge the 2 Policy Directions into a single document*, removing the clauses of the old that are in conflict and then void the old Policy Direction.

Proposed text

14. In exercising its powers and performing its duties under the Telecommunications Act, the Canadian Radio-television and Telecommunications Commission (the "Commission") shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:
- (a) the Commission should
 - (i) seek to increase market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
 - (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose.

 - (b) the Commission, when making decisions, should demonstrate its compliance with this Order and place emphasis on the following:
 - (i) evaluating whether market forces are strong enough to create downward pricing pressure.
 - (ii) where market forces are insufficient, promoting the efficient competitive entry into the market.
 - (iii) fostering all forms of competition.
 - (iv) ensuring all Canadians can obtain affordable services that meet their needs, including those with special needs.
 - (v) ensuring business practices are fair and do not hinder a customer's ability to access or leave a service.
 - (vi) fostering rapid deployment and adoption of new telecommunication technologies that help Canadians lead, innovate and compete in a global society.
 - (vii) fostering service differentiation to give Canadians access to a greater variety of services.

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Proposed text (cont)

- (c) To keep up with the rapid pace of telecommunications advances, the Commission should adopt the following practices, namely,
- (i) streamline cost-based wholesale tariff process to ensure decisions are rendered in a timely fashion.
 - (ii) where an incumbent is persistently uncooperative in tariff processes in order to protect its own retail service, consider functional or structural separation as a means to create a wholesale provider that is eager for business and thus reduces the regulatory burden for tariff approval process.
 - (iii) to publish and maintain performance standards for its various processes, and
 - (iv) to continue to explore and implement new approaches for streamlining its processes.

Consumers

15. While the text of the proposed order brings well meaning consumer perspective, it is important that the Policy Direction, which guides all CRTC Telecom decisions cover all types of telecommunications since all of Canada depends on those services which weave together Canada's social and economic fabric.
16. To this end, the proposed text does not mention "consumer" specifically while still directing the Commission to achieve those goals. This widens the benefits to business and wholesale services as well.
17. Similarly, "protect the rights of consumers" clause uses "fair business practices" instead which cover greater scope of a customer's relationship with telecommunications service providers. Not using "consumer rights" also removes potential conflict in jurisdiction with provinces.

Investment

18. The clause on investment was not included on purpose. Over the years, it has repeatedly been used by incumbents as a threat to steer directions their way overriding all other Policy Direction clauses and the Act's objectives.
19. In an era where incumbents were highly regulated monopolies, ensuring the Commission's decisions fostered investment was correct. However, as the Commission no longer micro-manages incumbents, it should not be concerned with their investment strategies. Competition brings a natural need for investment. Increased business brings a natural need for investment.
20. The regulator must not be held hostage by a clause which forces it to consider incumbent's empty threats to stop investing.

Discussion (cont)

seek to increase market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and

21. The subtle change from the original text instructs the Commission to try to increase market forces as the tool to solve problems instead of passively relying on existing market forces, expecting them to solve problems the market hasn't solved.

the Commission, when making decisions, should demonstrate its compliance with this Order and place emphasis on the following:

22. Instead of "when relying on regulation", the text instructs the Commission to consider the Policy Direction even when its decision is to NOT regulate (such as not mandating MVNO, or not putting protections against wireless carriers stealing unused cash balances in prepaid accounts).

evaluating whether market forces are strong enough to create downward pricing pressure.

23. This causes instructs the Commission to not declare a market is sufficiently competitive until it sees downward pricing pressure. This impacts how the Commission evaluates market forces when deciding whether intervention is required. In the past, the Commission declared markets to be sufficiently competitive without considering downward pricing pressure.

ensuring all Canadians can obtain affordable services that meet their needs, including those with special needs.

24. This implements the affordability requirement in a way to ensure affordable services are meaningful. (for instance, incumbents may offer a \$15 wireless service that is considered affordable, but only allows enough data to check current weather forecast once). It also includes people with special needs such as deaf and blind Canadians.

ensuring business practices are fair and do not hinder a customer's ability to access or leave a service.

25. This implements a broader "consumer protection" that also applies to business and wholesale customers. In also avoids terminology which may conflict with provincial jurisdiction on consumer protection.

fostering rapid deployment and adoption of new telecommunication technologies that help Canadians lead, innovate and compete in a global society.

26. This is the clause which replaces the innovation, R&D and investment clauses. It emphasises that a modern and affordable telecommunications system is an essential input to allow all of Canada to succeed domestically and internationally and spur growth of new industries.

Discussion (cont)

fostering service differentiation to give Canadians access to a greater variety of services.

27. This clause has significance when considering wholesale services. The goal instructs the Commission to ensure wholesale services are structured to allow competitive service providers to differentiate themselves from incumbent's retail offerings. (for instance, not being imposed same per retail customer usage limits as the incumbent's own retail service).

To keep up with the rapid pace of telecommunications advances, the Commission should adopt the following practices, namely,

28. Part (c) of the Direction mimics the 2006 goals of having an efficient Commission, but underlines that because telecommunications advances rapidly, the need to have timely decisions is greater than ever as the economy depends on this. This is very different from the POTS days where the Commission could take 2 years to decide on a Touch Tone fee without hurting the economy.

streamline cost-based wholesale tariff process to ensure decisions are rendered in a timely fashion.

29. Cost-based wholesale tariffs are necessary to ensure service providers can truly compete with lower prices and differentiated services (such as different usage limits). However, cost-based tariffs can present a heavy regulatory burden, and to this end, the Commission needs to be encouraged to find ways to streamline the process to reach quicker decisions.

where an incumbent is persistently uncooperative in tariff processes in order to protect its own retail service, consider functional or structural separation as a means to create a wholesale provider that is eager for business and thus reduces the regulatory burden for tariff approval process.

30. This clause is a necessary warning shot across the bow to signal to the incumbents that the Commission has the support to use heavy artillery if the incumbents continue to abuse wholesale tariff processes.
31. A goal of increasing market forces cannot be achieved when the incumbents stall the process, or provide grossly exaggerated costs that result in wholesale tariffs that are higher than what incumbents charge in retail. When incumbents complain of a heavy regulatory burden, it is an issue of their own making to serve their own purposes.
32. Separation of wholesale from retail transforms the wholesale company into one eager to get wholesale business from as many retail competitors as possible and as such will become very cooperative in tariff process, greatly streamlining them.

Conclusion

33. The changing of the Policy Direction represents a great opportunity to remove the portions of the old Policy Direction which were damaging to competition, as it was written to essentially deregulate the monopoly incumbents while pretending to be pro-competition.
34. Acceptance of all forms of competition is a HUGE positive change. But this must be confirmed by the removal of the old Policy Direction otherwise, it may be debated ad-nauseam by incumbents who may still succeed in pushing for the old policy direction clauses.
35. This is why it is important to cancel the old one and incorporate in the new one only the desirable portions of the old one.
36. Vaxination has proposed a combined Policy Direction which incorporates the concepts of the new one with the good portions of the old one with wording that is more in accordance with the types of arguments Vaxination has witnessed during participation in a wide variety of CRTC processes.

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