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The Verdict

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ESSENTIAL POLICY INTELLIGENCE

Abolish Ownership Restrictions in Telecommunications

Report of the Competition Policy Council

It is time to end foreign ownership restrictions in the Canadian telecommunications sector, to make better use of competitive forces in providing telecommunication services to consumers. This is the majority view of the C.D. Howe Institute's Competition Policy Council, which held its inaugural meeting June 17, 2011.

The Competition Policy Council comprises top-ranked academics and practitioners active in competition policy. The Council, chaired by Finn Poschmann, Vice President, Research at the C.D. Howe Institute, provides analysis of emerging competition policy issues, including those potentially faced by the federal Competition Bureau. The Council, whose members participate in their personal capacities, convenes a neutral forum to test competing visions of competition policy and to share views with policymakers and the public.

At the June 17 meeting, the Council addressed the following question: "Should the federal government end existing foreign ownership restrictions in Canadian telecom because of their impact on competition?"

The Council called for the abolition of ownership restrictions in Canadian telecommunications and network infrastructure used for distribution. At present, the *Telecommunications Act* and its regulations require that a telecommunications company be controlled by a Canadian, and that nonresidents may control shares representing not more than 20 percent of an operating company and 33.3 percent of a holding company. The *Broadcasting Act* requires Canadian ownership and control of the broadcasting system, including broadcast distribution undertakings.

The Council recommended that:

- foreign ownership restrictions be lifted for all market participants, including new entrants and incumbents;
- owing to corporate and technological convergence in telecommunications services and broadcasting, foreign ownership restrictions simultaneously should be lifted for telecommunications carriers and broadcast distribution undertakings (BDUs, including broadcast distributors that are also content providers);
- to permit speedy competition for the market, restrictions on ownership should be removed in full and at once, without gradual raising of ownership thresholds; and
- measures for pursuing discrete public policy objectives, such as Canadian content requirements for broadcasters, should continue to be met through other means, including better targeted policy tools, such as subsidies for content production.

The Future of a Liberalized Canadian Telecom Industry

The Council considered the future shape of the Canadian telecommunications and broadcasting sector, and how consumers would benefit, should ownership be liberalized.

The Council's majority view was that lifting foreign ownership restrictions would enhance competition, which would benefit consumers. Given the small size of the Canadian market, the consensus view saw no major change in the number of national competitors – the gains from liberalization would likely result not from more competitors, but from better performance by telecommunications market participants. Canadian telecom firms would become more integrated in a contiguous North American telecommunications market.

Council members pointed out that cost savings in a network industry, like telecommunications, arise through reaping the benefits of scale and scope economies. An integrated North American market, whether achieved through entrance or acquisition by US or other firms, or Canadian firms acquiring a US network, would benefit Canadian consumers through lower costs from network economies, lower capital costs, and accelerated innovation and technology adoption.

Some Council members speculated that ending foreign ownership restrictions in telecommunications would lead to more reliance on the *Investment Canada Act* to achieve broad policy objectives. Members of the Council felt that while the *Act* could be used to achieve those objectives, such as responding to national security concerns, it should not dampen effective competition.

What the Panel Recommends

Four areas of contention were: how to treat incumbents and new entrants; whether to extend foreign ownership liberalization to broadcast distribution undertakings; how, in the absence of restrictions, to encourage continued provision of Canadian content; and the timing and process of liberalization. Benefits for consumers were at the forefront of discussion.

Incumbents and new entrants: The federal government has contemplated allowing foreign acquisition or entry for firms with less than 10 percent of the relevant market share. Council members generally did not believe this would be an optimal outcome. Asymmetric rules likely would result in smaller, less efficient networks receiving a disproportionate share of capital, when new investment would be better warranted in developing new and more efficient networks. The Council was concerned that asymmetrical treatment would result in more, smaller, inefficient networks, and higher costs for consumers.

Telecommunications and broadcasting asymmetry: Ownership of physical networks of telecommunications and broadcast distribution companies has now become inseparable. The Council majority's view, therefore, was that distinctions between the telecom and broadcasting sectors are difficult to sustain, given the digital economy and evolving consumer usage patterns. Any change in foreign ownership requirements for telecoms therefore should be matched by a similar change for broadcast distribution undertakings.

Meeting Canadian content goals: Canadian content goals in broadcasting are better met through more targeted regulatory and policy tools than foreign ownership restrictions; the Council was skeptical that the existing ownership restrictions in telecom and broadcast distribution are effective in promoting Canadian social policy goals. Some Council members were of the view that more focused policy instruments – such as production subsidies, if desired – in an era of converged technologies in telecommunications and broadcast distribution, were more likely to achieve content goals.

Timing of reforms: The Council considered the timing and potential steps to relaxing foreign ownership restrictions in telecoms. The group made special note of the 2008 recommendation of the federal Competition Policy Review Panel that foreign ownership limits be raised to 49 percent. Council members generally agreed that in today's environment this recommendation was timid, and might forestall the full benefits flowing from the lifting of ownership restrictions. The consensus call was for lifting the allowed foreign ownership share to 100 percent in one step, given that the time to prepare and pass relevant legislation would afford market participants time to adjust to change.[1]

1 Some council members advocated prior negotiation with international trading partners, in pursuit of mutual reforms; others noted that Canadian consumers would benefit from reform irrespective of what other nations might do, and that Canada is in the minority in the OECD in imposing ownership restrictions in telecommunications. The Council recognized that implementation of these recommendations would take time, during which new and more targeted regulatory tools could be developed.

Members of the C.D. Howe Institute Competition Policy Council

Members of the Council participate in their personal capacities, and the views collectively expressed do not represent those of any institution or client.

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