

Telecommunications Update

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Canada moves ahead with caution on liberalization process of foreign ownership restrictions in telecommunications

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THE GOVERNMENT OF CANADA has taken a cautious step forward in the process of possible liberalization of foreign ownership restrictions in the telecommunications sector. The Government's position was communicated in a September 25, 2003 letter from Allan Rock, Minister of Industry Canada to the Chair of the House of Commons Standing Committee on Industry, Science and Technology. For reasons more fully explained below, substantive action will not take place until the Fall of 2004 at the earliest.

Background

In November 2002, Industry Minister Rock requested the Industry Committee to undertake a review of the foreign ownership investment restrictions in the context of the Government's innovation agenda. The Industry Committee released a report in April 2003. Two of the Committee's recommendations addressed the issue of foreign ownership. The first was that the Government should make all necessary legislative changes to remove entirely the existing minimum Canadian ownership requirements, including the requirement of Canadian control, currently applicable to telecommunications common carriers. The Committee went further in its second recommendation stating that the

Government should ensure that any changes in the telecommunications sector should be applied equally to broadcasting distribution undertakings, which would include cable, Direct-to-Home (DTH) and wireless distributors.

At the same time that the Industry Committee was conducting its study, the House of Commons Standing Committee on Canadian Heritage was reviewing the state of the Canadian broadcasting system. The Heritage Committee released its report in June, 2003. Among other things, the Committee recommended that the existing foreign ownership limits for broadcasting and telecommunications be maintained at current levels.

Parliamentary rules require the Government to respond to recommendations made by Committees in their reports. The Government's response to the Industry Committee report was tabled in the House of Commons on September 25, 2003. The response to the Canadian Heritage report will be made by November, 2003.

Cautious Response

The conflicting recommendations of the Industry and Canadian Heritage Committees respectively reflect, in turn, the political positions of the Ministers of the Government

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departments with the same names. This created a tricky situation for the Government since the response to the Industry Committee had to be acceptable to the Federal Cabinet. This led to a carefully nuanced response by Industry Minister Rock to the recommendations of the Industry Committee.

It will be recalled that among its recommendations the Committee recommended abolition of the Canadian ownership requirements and that ownership and control requirements applicable to telecommunications common carriers be applied equally to broadcasting distribution undertakings. It is interesting to note that the Government did not respond to these recommendations separately but rather addressed the two of them together.

The Government referenced the Industry Committee's finding that over the last decade restrictions on foreign investment have played a role in impeding capital investment by new entrants in the telecommunications sector and are likely stifling Canada's productivity and growth. The Government said the implication is that Canada pays a price for being out of step with the other member nations of the OECD which have liberalized their investment rules and reaped the benefits of increased competition and innovation. This led to the statement that, "The Government acknowledges the appropriateness of your conclusion that removing foreign investment restrictions would benefit the telecommunications industry, as well as users of these services".

Further Study

The Government accepted the Industry Committee's reasoning and conclusion that symmetrical removal of restrictions for telecommunications common carriers and broadcasting distribution undertakings is the best way of achieving the objectives of both the *Telecommunications Act* and the *Broadcasting Act*. The Government then noted that the Standing Committee on Canadian Heritage expressed concerns that changes in ownership restrictions for either telecommunications common carriers or broadcasting distribution undertakings could have an adverse impact on the broadcasting system. In order to reconcile the conflicting recommendations of the two Standing Committees, the Government has undertaken an analysis of the question with the review to be completed by the Spring of 2004. A careful reading of the Government response would lead to the conclusion that the study will focus on whether changes in ownership restrictions for broadcasting distribution undertakings could have an adverse impact on the broadcasting system and will not be a review of the restrictions generally.

The Government's response is silent on the process that will be adopted for the study. It is expected that the study will be conducted by officials in the Department of Industry Canada in consultation with officials in Canadian Heritage. While no public component of the study has been announced, it would always be possible to provide unsolicited input to those conducting the study.

The timing of the study being concluded by the Spring of 2004 has a practical and political rationale. Prime Minister Jean Chrétien has announced he will retire in February, 2004. The governing Liberal party has all but selected Paul Martin as the successor. Mr. Martin's succession will be confirmed in a November, 2003 convention. Since Mr. Martin will become Prime Minister without having faced a general election, it is widely expected that one will be held in May or June, 2004. All of this will mean that legislative initiatives will not be introduced in Parliament until the Fall of 2004 at the earliest.

Mandatory Five-Year Review

The Government did promise quick action on the Committee's recommendation for amendment to the *Telecommunications Act* to require a mandatory five-year review by a Parliamentary Committee. The Government welcomed the recommendation and noted that the years since the current legislation came into force in 1993 have been marked by an accelerating pace of technological change in the creation of new market opportunities. In order to keep the framework legislation up to date, the Government will introduce, "at the earliest opportunity", an amendment to the *Telecommunications Act* requiring its review every five years. As explained, this opportunity may not present itself until sometime in 2004.

Looking Forward

Given the history of Canada's foreign ownership restrictions, this Government response to the Industry Committee recommendations represents a cautious step forward. The next significant date will be sometime in the Spring of 2004 when we learn whether the Government has been able to reconcile the conflicting recommendations of the Industry Canada and Canadian Heritage Committees respectively. If positive solutions are forthcoming, then the prospect of liberalization in the Fall of 2004 becomes more realistic.

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