Writers Guild of Canada

Writers Guild of Canada Submission to the
Government of Canada's Consultation on a Reforming Foreign Investment Restrictions in Telecommunications
July 30, 2010

Introduction

The Writers Guild of Canada ("WGC") represents over 2000 screenwriters working in film, television, radio and digital media. WGC members are the creators of Canadian stories including indigenous dramatic series such as *Flashpoint*, acclaimed movies of the week such as *Mayerthorpe*, internationally successful children's programming such as the *Degrassi* series and digital productions such as the *My Pal Satan* web series.

The WGC welcomes the opportunity to be part of the government's public consultation on reforming foreign investment restrictions in telecommunications and its call for comments on its paper entitled "Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform". The WGC is actively involved in ensuring that Canada has and maintains a strong domestic media industry. We are grateful for the opportunity to share with you our thoughts about how foreign ownership restrictions might be loosened without endangering Canada's domestic media.

The Speech from the Throne and the Consultation paper have both focused on loosening foreign ownership restrictions in telecommunications and satellite only. The consultation paper says clearly on page 10 that while telecommunications and broadcasting are increasingly converging, 'the government will not consider any action that could impair its ability to pursue Canadian culture and content policy objectives.' The WGC welcomes the government's commitment to Canadian culture however questions how exactly the government will ensure that loosening foreign ownership restrictions in telecommunications will not affect broadcasting and other content platforms.

Every major telecommunications company in Canada owns broadcasting assets. Shaw owns Canwest Global. Bell owns a piece of CTV. Vidéotron owns TVA. Rogers owns Citytv and

Omni channels. The major telecommunications companies are also broadcasting distribution undertakings. Communications companies are diversifying in order to recognize the efficiencies and increased profits from owning all stages in the value chain from content creation all the way down the pipe to the home audience engaging with content on multiple platforms and all forms of communication whether it involves content, data or voice only. In many cases the same company controls the telephone, wireless service, internet service, cable or satellite service and increasingly, a number of the broadcasting channels being carried into the home. As the CRTC stated in its research report “Navigating Convergence”, this development is the result of a number of factors:

> Increasing horizontal and vertical integration in the communications industry has occurred both organically through the re-purposing of communications networks to deliver a range of services and through mergers and acquisitions activity. It likely occurred as a result of corporate desire to maximize profit by better controlling costs and attempting to share in the rewards if any new product line takes off. However, looking forward, it is likely that further consolidation may occur increasingly in response to fragmentation. A strong domestic base may become critical for both broadcasting and telecommunications companies as they face an increasing array of over-the-top services, applications and content. The largest communications companies will continue to offer bundles of services at reduced prices in return for contractual loyalty. There will continue to be pressure on both cable and telecommunications entities to seek further mergers to take advantage of efficiencies.[1]

The CRTC identified the need for content as an additional pressure to converge. Communications companies are threatened by competition from unregulated entities such as Netflix (which recently announced that it would be offering its streaming service in Canada in the fall) and YouTube. They need to offer their Canadian subscribers easy and inexpensive content offerings that are as flexible as and as ‘anywhere, anytime’ as Netflix and YouTube. As a result Rogers, Vidéotron and Bell have created online video portals. While these portals are relying on licensing content to fulfill their content needs, Vidéotron also relies on broadcast content that it owns through ownership of TVA. The need for content and the interest in controlling the revenue stream generated by content meant that few were surprised when Shaw

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[1] Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications,

Communications announced its acquisition of Canwest Global, thereby ensuring access to a steady supply of content.

This development of online video portals leads to another element of convergence – access to cultural content is no longer limited to broadcast platforms. Telecommunications companies provide Canadians access to the Internet and mobile platforms, where they exchange emails, shop, manage their bank accounts and increasingly, enjoy video entertainment. As then President of the WGC Rebecca Schechter said to the Standing Committee on Industry, Science and Technology in our presentation as part of the Committee's review of foreign ownership restrictions in telecommunications and broadcasting: "As a screenwriter it is now conceivable that I could be engaged by Rogers Wireless to write a digital series that would be available on their wireless platform, as well as delivered to consumers through Rogers Internet or broadcast on Rogers Citytv". Whether it is as a telecommunications company providing access to Canadian cultural content on digital platforms or as a broadcasting distribution company providing the content itself, these communications companies have become an essential tool in support of "Canadian culture and content policy objectives".

All of this is to say that convergence is not going away and it seems impossible that regulations could be put in place that only lift foreign ownership restrictions over telecommunications companies without affecting broadcasting or broadcasting distribution or digital content delivery. If the government has specific proposals for how this might be done we would welcome discussion of those proposals. However, without specific proposals the only option seems to be to require telecommunications companies to divest from their broadcasting and digital content delivery assets and cease to act as a BDU should they wish to take advantage of loosened foreign ownership restrictions. If this is truly the government's intention it seems like an excessively interventionist approach as it requires converged companies to undo the work they did to become diversified businesses in order to access foreign capital. This makes no sense to us. The government's stated goal is to increase innovation in incumbents and competition through new entrants. However, we question how effective any option will be in achieving that goal if it requires a telecommunications company to divest itself of core elements of its company.

The Consultation paper refers to three options for reform which have arisen out of past consultations and reviews and which the government appears to be considering. We will focus our comments on those three options.

Option #1 – Increase Direct Limit for Broadcasting and Telecommunications to 49%

This proposal aims to simplify the foreign ownership restrictions for broadcasting companies and telecommunications companies under the *Broadcasting Act* and *Telecommunications Act* respectively. Rather than the differing requirements between the acts and the calculations for holding companies and operating companies it would set one level of 51% as the minimum percentage of voting shares held by Canadians. By amending the *Telecommunications Act* and the *Cabinet Direction to the CRTC (Ineligibility to Non-Canadians)* there is no need to amend the *Broadcasting Act*, which is silent on minimum requirements for Canadian ownership, to have both acts line up.

As proposed by the Chair of the CRTC in his testimony to the Standing Committee on Industry, Science and Technology, this option would eliminate artificial restructuring of converged companies to take advantage of differences in limits which could occur if the *Telecommunications Act* were the only legislation amended. It raises the limit of foreign ownership while ensuring that Canadians remain in control of the company, in terms of voting share and in fact. We assume that the additional foreign financing raised would allow communications companies to grow and offer Canadians more services.

While it does affect the foreign ownership limits on broadcasting and broadcasting distribution assets this option does not give foreign entities control over those assets, nor over the telecommunications assets. It has not solved the ongoing problem of determining whether a company is controlled in fact by a foreign entity regardless of the share ownership as that issue will still need to be determined each time. This issue of control in fact would remain to be determined by the CRTC.

Option #2 – Telecommunications Policy Review Panel/Competition Policy Review Panel approach

This second option has been recommended by the Telecommunications Policy Review Panel and the Competition Policy Review Panel. Telecommunications carriers with less than 10 percent of market revenues would be relieved from foreign ownership restrictions. The recommendation also included allowing fully foreign owned new entrants into telecommunications on a ‘greenfield’ basis. This option would encourage competition through new entrants and foster innovation by allowing smaller companies to attract foreign investment. As only small telecommunications companies would be exempted from the foreign investment restrictions, the major converged communications companies would not be affected and our concerns regarding protecting broadcasting and cultural content would not be at issue.

We are concerned however with the idea that these foreign owned companies would continue to be relieved of compliance from foreign ownership restrictions even if they grew in excess of 10% of market revenue. In effect, this creates a back door to avoiding foreign ownership restrictions. A foreign company could buy or create a small telecommunications company in Canada and then acquire one of the larger companies, all outside of foreign ownership restrictions and we could find ourselves with Bell Canada owned by AT & T, for example. We understand that this option is aimed at encouraging long term investment which will only happen if there is the potential for growth however limits can be put in place to ensure growth rather than acquisition. We suggest that if this option is contemplated then new entrants or small telecommunications companies with foreign investment would be prohibited from acquiring any telecommunications company with more than 10% of the market revenue. It would also have to be prohibited from acquiring or investing in any company licensed under the *Broadcasting Act* as either a BDU or broadcaster.

Option #3 – Remove telecommunications restrictions completely

We are most concerned with this option. Even should a telecommunications company be required to divest itself of its broadcasting and broadcasting distribution assets and its digital content delivery assets and be a pure play telecommunications company, we would still have grave concerns about allowing a foreign company complete control over a major Canadian telecommunications company. Canadians rely on wireline, wireless and internet communications not just to interact with family and friends and to conduct business. As the *Telecommunications Act* says "telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty".

We agree that the introduction of foreign capital to enhance innovation and competition is a worthy goal that will benefit Canadians if it encourages new products and services at lower prices. But Canada cannot risk losing Canadian control over telecommunications in order to achieve those goals. A foreign owned company would not be motivated to ensure that all of its service area, including underserved rural or distant communities, were equally well-served. Decisions would be made based on cost-effectiveness and the role that the Canadian operations played in a global enterprise.

Conclusion

It is an inescapable fact that Canada's major communications companies are fully integrated and diversified companies attempting to cover all methods and media of communication to Canadians. Government policy must reflect this fact. While the WGC does not support the idea of removing foreign ownership restrictions from telecommunications companies completely, we do think that it may be possible to implement Option #1 without damaging or threatening Canadian culture. We have raised a few concerns. However, as we stated in our presentation to the Standing Committee on Industry, Science and Technology[2], the WGC firmly believes that no steps should be taken to loosen foreign ownership restrictions until an impact study has been conducted to model the economic and cultural impact of the various scenarios. It is not enough to solicit comments from interested parties. Independent economists should be engaged to analyze the likely take-up in the market of any loosening of restrictions, how it might affect innovation and competition based on past behaviour of these companies and how these options would or would not truly affect broadcasting and broadcasting distribution and the policy goals of the *Broadcasting Act* and *Telecommunications Act*. While some of these impacts might not be easily or confidently predicted, we feel that this economic assessment is a necessary pre-condition of any policy decision regarding foreign ownership restrictions.

[2] WGC Presentation to the Standing Committee on Industry, Science and Technology, April 1, 2010