

From: Calvin Goldman, Larry Schwartz, Richard Taylor

To: The Hon. Francois-Phillippe Champagne, Minister of Innovation, Science and Industry

Date: March 10, 2023

Re: **HOW OUTDATED FOREIGN OWNERSHIP RULES HURT COMPETITION IN TELECOM AND OTHER SECTORS**

The ongoing consultation and discussion paper on the [Future of Competition Policy in Canada](#) you initiated is focused primarily on a number of possible changes to the *Competition Act*. That is directed toward trying to bring about the benefits of greater competition, which generally include lower prices, more product choices, enhanced innovation as well as economic efficiencies allowing producers to compete effectively both in and outside of Canada. Those laudable benefits are broadly reflected in the purpose clause of the *Act*.

Productivity and growth in Canada lag behind many of our OECD counterparts and most economists agree that greater competition in major sectors would enhance our performance. In parallel with these concerns, questions are being asked why Canadian consumers pay among the highest prices in the world for wireless cellphone service, airlines and for certain agricultural products.

It's important to appreciate that fundamental framework laws such as competition law apply to all markets, except to the extent they are specifically regulated. Such regulation exists in Canadian markets such as telecom and airlines where legislation constrains entry from foreign-based competitors. Those markets will be unable to function in a truly competitive manner until those restrictions on effective competition from foreign-based entities are materially reduced.

If you want the consultation to effectively consider the lack of competition in certain markets such as telecom, then it should consider the anticompetitive effects of sectoral regulation.

The recent contested proceedings in the Rogers-Shaw case brought real attention to the significantly higher prices paid by consumers in Canada for wireless telecom services than consumers in many other countries in the Western world. The decisions of the Competition Tribunal and the Federal Court of Appeal concluded that the proposed merger, coupled with the divestiture of Freedom Mobile to Quebecor/Videotron would not lessen competition substantially and may actually bring about some aspects of positive competition. That result, in our view, will not in and of itself likely lead to a major lowering of prices for wireless telecom services across Canada.

That's because telecom in Canada continues to be unnecessarily protected from the entry of real and effective foreign-based competitors. In our view, the historical restrictions on such foreign based ownership, have become outdated in the current environment where Canadian consumers are demanding lower prices akin to that paid by consumers in many other countries. International [studies](#), albeit imperfect comparisons, show Canadians pay much higher prices per gigabyte. While cellular prices have been [falling](#), the international comparison is buttressed by an ISED-commissioned [paper](#) in 2019 and a CRTC [policy statement](#) in 2021.

These ownership restrictions in the telecom sector in Canada are regulated under the [Telecommunications Act](#) which you oversee as well as the Canadian Radio and Telecommunications Commission (CRTC).

Under those [restrictions](#), a Canadian telecom entity that represents more than 10 percent of the total Canadian telecom sector (as measured annually by the CRTC) must be Canadian owned. Canadian owned is defined as having at least 80 percent of the board and 80 percent of the voting shares being Canadian or Canadian owned. A foreign entity that buys a Canadian telecom firm representing 10 percent or less of the total telecom market, is permitted to grow that firm organically to beyond 10 percent but is not allowed to undertake acquisitions to achieve the same result.

These significant restrictions have very likely reduced the incentive of foreign based telecom competitors (such as AT&T and Verizon) from entering Canada on any real scale. From our experience in many other cross-border transactions, acquirors investing substantial funds generally need to know they will have the opportunity to grow the investment over time. That may not necessitate majority ownership, but there needs to be a real voice in the direction of the operating entity in Canada beyond being a minority passive investor.

There are other sectors in Canada which also continue to be overly regulated. These include the [significant limitations](#) that currently apply to airline cabotage under the provisions of the *Canada Transportation Act*. An airline that does not meet the Canadian-ownership [requirements](#) for a domestic licence may carry passengers or cargo from abroad to a Canadian airport and pick up new passengers or cargo there for a foreign destination, but it may not pick up passengers or cargo for a flight within Canada.

To obtain a domestic licence, an applicant must be Canadian-owned and controlled. To be Canadian, a corporation (or partnership, etc.) must be incorporated (or formed) in Canada and at least 51 percent of its voting interests need to be owned and controlled by Canadians. However, no non-Canadian (individually or together with another person) can own or control, directly or indirectly, more than a 25-percent voting interest in the corporation.

This means, for example, that a US based airline may carry passengers from Chicago to Vancouver, but then cannot carry passengers from Vancouver to Calgary before returning to Chicago from Calgary. As a result, these cabotage restrictions lead to a lack of substantial competitive choice and competitive pricing for consumers.

There are similar outdated regulatory restrictions applicable to supply management of milk, chicken and eggs, which thwart real competition and lower prices for consumers. From a competition-policy perspective, supply management in the agricultural sector is a prime candidate, in parallel with the telecom sector and airline cabotage, for serious restructuring in favour of greater reliance on more open and competitive markets.

The current consultation's goals should be to see effective competition brought to markets in Canada in a manner that offers much greater prospect of lower prices for consumers and business users, together with greater potential for more product choices and real incentives for innovation and efficiencies. In order to achieve that, we suggest that your consultative process should look to significantly reducing the regulatory barriers that currently preclude foreign based competitors from effectively entering Canadian markets such as telecom. Focusing the ongoing consultative process only on the provisions of the *Competition Act* is far too narrow given the realities of overregulation in Canada.

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