

Intelligence MEMOS



From: Konrad von Finckenstein
To: The Honourable Navdeep Bains, Minister of Innovation
Date: May 29, 2019
Re: **EQUIPPING REGULATORS FOR THE INTERNET AGE**

The CRTC is conducting a review of its Mobile Wireless Framework to ensure it remains relevant, is serving the needs of Canadians and is meeting the policy objectives of the *Telecommunications Act*.

As part of the process, the commission asked the Competition Bureau for a detailed competition analysis, but balked when the bureau asked it to require wireless companies to provide extensive, detailed and confidential information.

The CRTC at first refused, but following a reduced request from the bureau, changed its mind and asked wireless providers to provide the requested data.

The CRTC is to be commended for its decision. This will result in a detailed and well-researched submission by the bureau in its area of primary expertise.

This episode highlights a new reality for regulatory agencies.

Traditionally competition, privacy and telecom regulation have been separate matters entrusted to separate agencies. Each agency must abide by statutorily imposed confidentiality provisions and data exchange restrictions.

However, the Internet disrupts jurisdictional boundaries. Key issues such as security, competition and privacy are interrelated. They cannot successfully be considered from one aspect alone. They concern the CRTC, the Competition Bureau and the Privacy Commissioner.

Canada's system of separate regulators with defined jurisdiction offers no ability to work together and to exchange or compare data. It invites gamesmanship by entities being regulated, produces inefficiencies and detracts from regulatory effectiveness. The CRTC/CB interaction on granular telecom data and the fierce reluctance by telecom firms to furnish the same illustrates this observation only too well.

The federal government has set up a legislative review panel and recently announced Canada's new Digital Charter. The interaction between agencies should be addressed in these initiatives. We need mechanisms to allow agencies to freely cooperate, exchange and compare data as well as engage in joint projects or entrust each other specific tasks without being hampered by jurisdictional boundaries or overly restrictive confidentiality provisions.

While confidentiality is essential to most regulatory activity, there is a balance to be struck between dealing with the challenges of the Internet across jurisdictions and the need to protect the confidential data shared by regulated entities against misuse.

At the moment, there are only isolated provisions regarding data sharing in many statutes. These could be valuable building blocks, but there is no overall scheme that can be emulated.

What is needed is a piece of legislation that should:

- Authorize and encourage agencies to cooperate to deal with Internet challenges.
- Stipulate under what circumstances and for what purpose data and information may be exchanged.
- Spell out minimally necessary restrictions and safeguards to protect confidentiality.
- Encourage joint projects and investigations.
- Allow agencies to assign tasks to one another and outlines the framework for such assignments.

Without these sorts of changes in the overall response to the challenge of the Internet currently being formulated by Ottawa, we run the risk of undermining the implementation or effectiveness of any new initiatives.

The Hon. Konrad W. von Finckenstein, Q.C., was Chair of the Canadian Radio and Telecommunications Commission, a Federal Justice and Commissioner of Competition.

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