



CFTPA
Representing television, film
and interactive production in Canada

ACPFT
Porte-parole de l'industrie de la production
cinématographique, télévisuelle et interactive au Canada

January 11, 2008

Sent by email and courier

Mr. L.R. Wilson
Chair
Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, Ontario
K1A 0H5

Dear Mr. Wilson:

Re: Submission to the Competition Policy Review Panel

The Canadian Film and Television Production Association (the "CFTPA") welcomes the opportunity to provide the following comments on a number of the issues raised in the Competition Policy Review Panel's (the "Panel") consultation paper titled "Sharpening Canada's Competitive Edge".

The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada.

We understand that the Panel plans to participate in a series of meetings with interested parties across the country in order to hear their views on the Canadian competition and investment regime. The CFTPA would welcome the chance to meet with the panel in person on its own or as part of a broader film/television/broadcasting industry coalition.

Sincerely,

[Original signed by Guy Mayson]

Guy Mayson
President and CEO



CFTPA

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**Submission by the
Canadian Film and Television
Production Association in response to the
Competition Policy Review Panel's
consultation paper titled "Sharpening Canada's
Competitive Edge"**

January 11, 2008

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I. Introduction

1. The Canadian Film and Television Production Association (the “CFTPA”) welcomes this opportunity to provide comments on a number of the issues raised in the Competition Policy Review Panel’s consultation paper.
2. The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada. Our member companies are small- and medium-sized firms that assume the financial and creative risk of developing original content for Canadian and international audiences, and are significant employers of Canadian creative talent.
3. Independent producers make up a key part of the new technology and communications economy; on the whole, Canadian producers contribute significantly to Canada’s economy, responsible for a considerable portion of the \$4.8 billion in production activity and sustaining more than 124,000 direct and indirect full-time jobs annually.
4. In addition to their large contribution to the economy, Canadian independent producers are the creative and business force behind the production of quality Canadian content in the television, film, and interactive media sectors. We develop projects, structure the financing, hire the creative talent and crews to help turn stories into programs, control the exploitation of the rights, and deliver the finished product. Independent producers create high-quality programming in the financially risky genres of drama, comedy, documentary, children’s and youth, and variety and performance.
5. Independently produced Canadian programming receives critical acclaim both at home and abroad, is exported to dozens of countries around the world, and achieves audience success in Canada and internationally.
6. Independent producers provide Canadian television viewers with a Canadian perspective on our country, our world, and our place in it. Through the content we produce, we help foster Canadian cultural choices and reflect the rich diversity of this country. As such, the independent production sector plays a vital role in Canadian society and helps further the government’s broadcasting and communications policy objectives, which is reflected in the relevant provisions in the *Investment Canada Act* and the *Broadcasting Act*.
7. The CFTPA is particularly interested in providing comments on the following three areas addressed in the consultation paper that impact Canada’s cultural industries: (i) the *Investment Canada Act* and the foreign investment guidelines that were established for film distribution in 1988; (ii) the Canadian ownership requirements established under the *Broadcasting Act*; and (iii) the Canadian ownership

requirements established under the *Telecommunications Act*. In addition, we have addressed the specific questions raised in the consultation paper that relate to the sectoral investment regimes that have been established in Canada.

8. At the outset, the CFTPA would emphasize that it strongly supports the current foreign investment limits and Canadian ownership rules that have been established by the federal government in respect of the broadcasting, telecommunications, and cultural sectors of the economy. These sectoral investment regimes are a positive force in the Canadian economy and are necessary mechanisms that are designed to ensure that Canadians have a real presence in these important industries and have the ability to compete effectively with foreign entities that are operating in these sectors. It is our submission that the sectoral investment regimes that have been established for broadcasting, telecommunications, and cultural industries have fostered the development of Canadian business and created the opportunity for Canadian companies operating in these sectors to attract investment and expand into the global marketplace.

II. Foreign Investment Limits and Canadian Ownership Rules are Vital to Canada's Cultural Sovereignty and National Identity

9. Before commenting on the specific issues noted above, the CFTPA believes that it is important for the Panel to recognize that the current limits on foreign investment in the *Investment Canada Act* and the rules relating to Canadian ownership set out in the *Broadcasting Act* and the *Telecommunications Act* have played, and should continue to play, a vital role in maintaining and enhancing Canada's national identity and cultural sovereignty. These rules, which are described in the Panel's consultation paper as "sectoral investment regimes", have succeeded to a considerable degree in ensuring that Canadians are able to access high-quality Canadian television and radio programs, feature films, interactive media services, and other cultural products that reflect Canadian attitudes, ideas, and values.
10. As outlined in the consultation paper, the rationale for having sectoral investment regimes that limit ownership and investment in broadcasting, telecommunications, and cultural industries has been to protect vital aspects of the Canadian economy that are essential to our sovereignty and cultural identity, and to ensure that Canadians are able to continue to play a role in each of these industries. As the Panel notes, these regimes are necessary because market forces alone have demonstrated an inability to adequately support the development and maintenance of Canadian activity in these important aspects of the Canadian economy.
11. Today, Canada's broadcasting and telecommunications industries are flourishing and, while not as healthy financially as these industries, we have a domestic film and television production industry in large part because of the ownership and investment policies and rules that have been implemented over the past four decades. The growth and development of a strong Canadian presence in these sectors has been achieved because successive Canadian governments have

understood that, in the absence of rules and restrictions on foreign ownership and investment, Canadians would be largely excluded from these industries that are vital to Canada's cultural sovereignty and identity as a nation.

12. Unfortunately, the very success that Canadians have achieved over the years as a result of these sectoral investment regimes will likely lead some to suggest that the time has come to remove the Canadian ownership rules and foreign investment restrictions. In the CFTPA's view, the elimination of these regimes in the broadcasting, telecommunications, and cultural industry sectors would be a disastrous mistake.
13. It is our submission that the policy rationale that underlined the establishment of these regimes continues to be valid. Canada still consists of a small fragmented audience that is spread across an enormous land mass. Our country also borders on the world's largest economic and entertainment centre, which has the ability to flood Canada with a plethora of low-cost entertainment products that would threaten the viability of Canadian broadcasters and independent producers. Moreover, as a country with a small population, we continue to experience considerable difficulty funding the production of Canadian feature films, television programming, and interactive media products. This is particularly true in the financially risky genres of drama, comedy, documentary, children's and youth, and performance programming that is essential to the development and maintenance of a distinct Canadian identity and culture.
14. Even with these sectoral investment regimes in place, the majority of the programs, feature films, and new media products that are accessible to Canadians on television, in movie theatres, and on computer and mobile screens are foreign produced, and primarily reflect a U.S. perspective. That is not likely to change in the future. It is a reality that we as Canadians have to live with and accept because of the size of our country and where it is located.
15. The sectoral investment regimes are simply designed to ensure that Canadians have a role in the development and growth of industries that are essential to the social, political, and cultural fabric of Canada.
16. Cultural products, such as feature films and television programming, provide a Canadian perspective that is essential to our country's national identity and political sovereignty. They enable Canadians from every region of the country to better understand each other and to develop a national consciousness. It is our view that Canadians must continue to exercise control over certain culturally significant sectors of the economy. Such control remains central to ensuring that there are Canadian content choices in film and television, and a broadcasting system that reflects Canada and its people.

17. The importance of protecting cultural industries and institutions has been recognized by the international community. Canada was instrumental in establishing the *UNESCO Convention on the Protection and Promotion of Cultural Expressions*, which was adopted in 2005. The Convention recognizes that cultural goods and services, such as books, films, and television programs, have both a social and economic role and reaffirms the right of States to take steps to support the diversity of their cultural expressions.
18. It is important to emphasize that the CFTPA is not suggesting that foreign investment and Canadian ownership rules should be strengthened or amended in such a way that would eliminate or further reduce the level of foreign investment that exists in the Canadian broadcasting and feature film sectors. We recognize that foreign investment is an essential aspect of the growth of these sectors of the Canadian economy and that many Canadian firms rely on this investment to expand their businesses to meet the challenges of their competitive markets.
19. Having said that, however, it is also readily apparent that without restrictions in place that limit foreign investment in some cultural industries and that require Canadian ownership and control of the broadcasting system, Canada would cease to have the ability to produce films and television programs that reflect Canadian values, opinions, ideas and attitudes. The role that Canadians would play in the cultural industry sectors of the Canadian economy would be greatly reduced, which would have a significant negative impact on the ability of Canadian firms to compete with foreign entities. The fact is that if the sectoral investment regimes were eliminated, Canadians would occupy an extremely limited role in the cultural industry sectors of the Canadian economy, if any. There is, therefore, an on-going need to maintain investment rules and ownership restrictions that will ensure that Canadians can participate meaningfully and effectively in these sectors.
20. Each of the sectoral investment regimes relating to broadcasting, telecommunications, and cultural industries is discussed below.

III. Investment Canada Act

21. In 1999, the Minister of Canadian Heritage was granted the sole responsibility for the review and approval of investments that relate to Canadian “cultural business” under the *Investment Canada Act*. The term “cultural business” is defined in the Act to include music, film and video, books, magazines, and newspapers.
22. Every investment in the cultural industries by a foreign entity must be approved by the Minister and is subject to the “net benefit test”, which requires the investor to demonstrate that its investment will result in a net benefit to Canada.

23. All cultural businesses are not treated alike by the Minister, however. Investments in certain cultural businesses, such as the sound recording industry, the distribution and retail sectors of the periodical and newspaper industries, and the film production, exhibition and retail sectors, are required to demonstrate that they are compatible with Canada's cultural policies and that they would be of net benefit to Canada. Other investments, however, which include those made in the book publishing, distribution and retail sectors, the periodical and newspaper publishing sectors, and the film distribution sector, are generally prohibited or are subject to strict limitations.

Net Benefit Test

24. The six factors that the Minister of Canadian Heritage is required to consider in determining whether a proposed investment would result in a net benefit to Canada are outlined in section 20 of the *Investment Canada Act*, and include the following:
- (a) the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;
 - (b) the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part;
 - (c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
 - (d) the effect of the investment on competition within any industry or industries in Canada;
 - (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and
 - (f) the contribution of the investment to Canada's ability to compete in world markets.
25. As noted, the net benefit test applies to proposed investment in the sound recording industry, the distribution and retail sectors of the periodical and newspaper industries, and the film production, exhibition, and retail sectors. For

these sectors, an investor is required to demonstrate that its investment would be compatible with Canada's cultural policies and that it would result in a net benefit to Canada.

26. The net benefit test is a critical component of the long-standing government objective of ensuring that Canada has the ability to develop and grow indigenous industries in a number of sectors that are culturally important to Canadians. The test provides the Minister of Canadian Heritage with the ability to fully assess the impact that a proposed investment will have on a culturally significant industry. The CFTPA recognizes that this assessment is not precisely defined in the *Investment Canada Act* or any of the guidelines established under the Act and that the Minister has considerable discretion in making a determination as to whether a particular investment will produce a net benefit to Canada. Examining the cultural significance of a particular investment and its compatibility with Canada's cultural policies are not, however, issues that can be addressed through a simple formula. The Minister must continue to have the discretion to examine all circumstances relating to a proposed investment and make an appropriate determination as to its net benefit to Canada.
27. By applying the net benefit test, the Minister is also able to ensure that those foreign entities that seek to invest in Canadian cultural businesses are able to make significant contributions to the ongoing development of Canada's culture. The Minister achieves this by accepting from investors a number of specific commitments relating to matters such as the production and distribution of Canadian cultural products, the employment of Canadians, the development of partnerships or alliances with Canadian companies or learning institutions, the sponsorship of events and initiatives that showcase Canadian talent and stories, and the making of contributions or in-kind gifts to Canada's cultural institutions.
28. In the CFTPA's view, the net benefit test that has been applied to the sound recording industry, the distribution and retail sectors of the periodical and newspaper industries, and the film production, exhibition and retail sectors has been an effective means to ensure that businesses operating in these sectors make significant contributions to the ongoing development of Canada's cultural institutions and identity. We believe that it should be maintained in its current form.

Film Distribution Policy

29. As noted above, the Minister of Canadian Heritage has established policies and guidelines for a number of cultural businesses, which includes the film distribution sector (as well as other culturally significant sectors of the economy), that generally prohibits acquisitions of Canadian businesses or subjects foreign investments to strict limitations in cases of acquisitions or new start-ups.

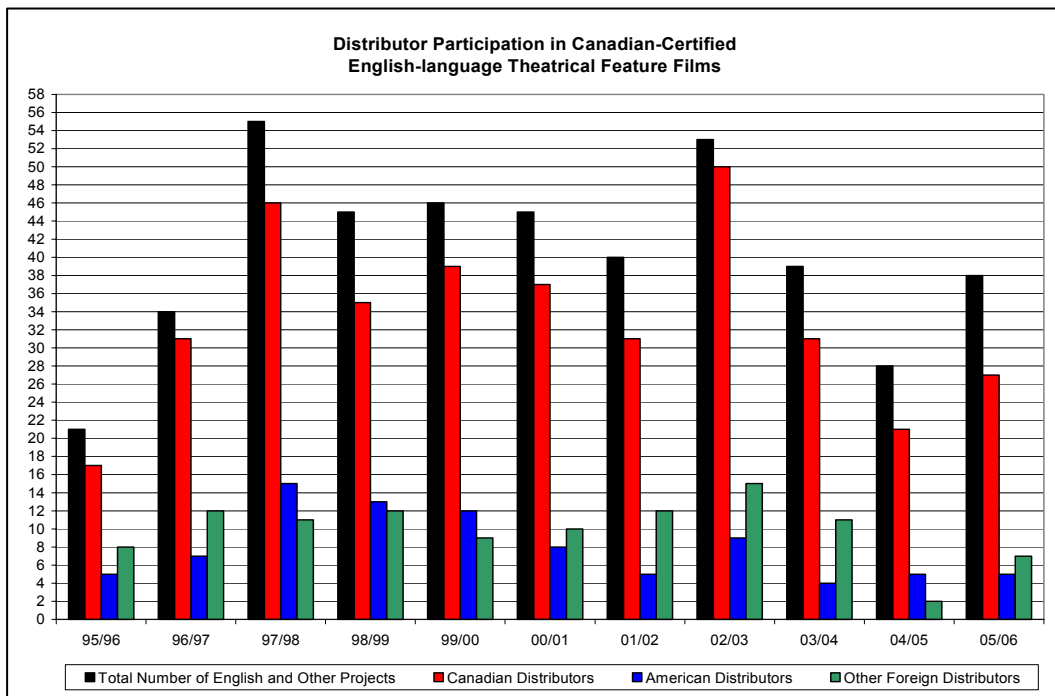
30. One such measure, known as the 1988 policy on foreign investment in the Canadian film distribution sector (the “Film Distribution Policy”), was implemented to support Canada’s indigenous film distribution industry. The 1988 policy provides as follows:
 - takeovers of Canadian-owned and -controlled distribution businesses will not be allowed;
 - investments to establish new distribution businesses in Canada will only be allowed to importation and distribution activities related to proprietary products (the importer owns world rights or is a major investor); and
 - indirect and direct takeovers of foreign distribution businesses operating in Canada will be allowed only if the investor undertakes to reinvest a portion of its Canadian earnings in accordance with national and cultural policies.
31. This policy has become an integral component of the federal government’s overall approach to supporting Canada’s feature film industry and it has contributed enormously to the success of the film distribution sector in this country. The approach adopted under the Film Distribution Policy was a Canadian-controlled alternative to having this sector controlled by the Hollywood studios. The policy has ensured a Canadian presence on our theatre screens.
32. The policy is designed to curb the erosion of Canadian distributors’ market share caused by new start-ups; protect Canada’s investment in Canadian productions from foreign takeovers; and ensure that foreign investors make a significant contribution to Canada’s film and video infrastructure.
33. The “no Canadian company takeovers” provision is designed to protect Canadian content from being acquired by non-Canadian companies. This is in recognition of the fact that a considerable amount of public money has been invested to produce a significant pool of Canadian productions over the last 40 years.
34. The acquisitions component ensures that foreign investors contribute to Canada's film and video infrastructure when they acquire a foreign-owned distribution company that was established in Canada prior to 1987.
35. The benefit of the start-up component, while mitigated by the absence of limits on the distribution activities of those foreign distribution companies that were established in Canada prior to February 1987, has prevented the set up of foreign companies (e.g., Miramax and New Line) that are now sub-distributing in Canada via Canadian distributors.
36. Theatrical feature films have long been recognized as a powerful force in Canadian society. They make important contributions to the cultural lives of Canadians and they are one of the most effective forms of cultural expression. In 2006, the federal

government, in response to the report of the Standing Committee on Canadian Heritage concerning a new feature film policy for the 21st Century, stated that “Film is one of the most effective forms of cultural expression, and Canadians believe that it is important that Canadian films be available in movie theatres and on television in Canada.”

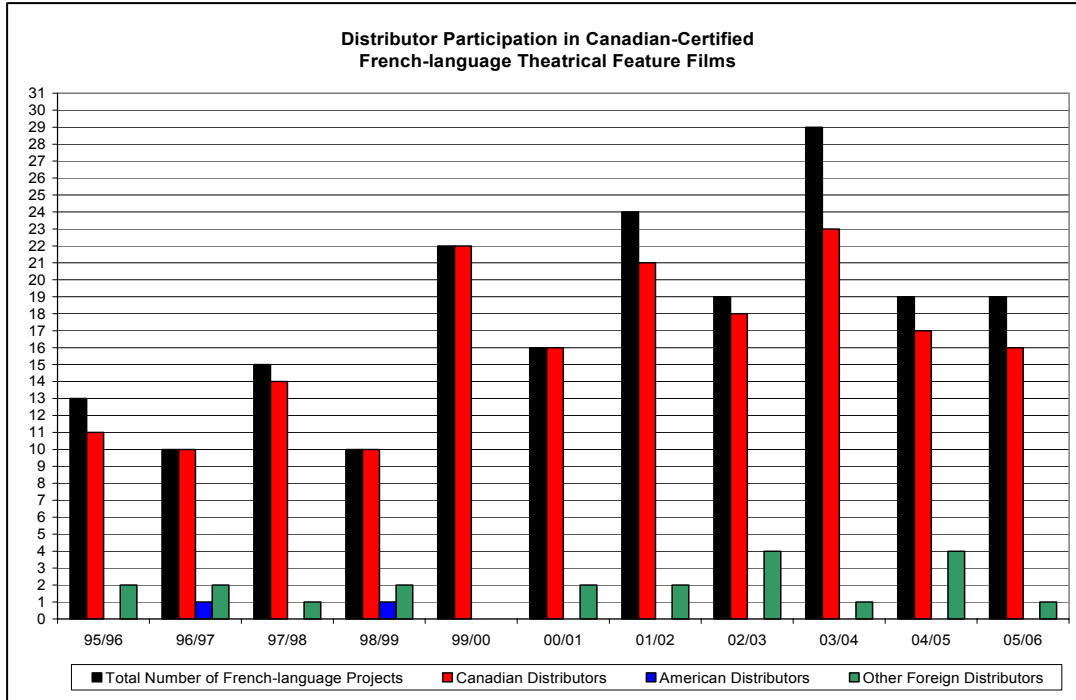
37. Despite the well-recognized importance of feature films, the English-Canadian film industry continues to face huge challenges. The biggest challenge has been securing financing to develop, produce, and promote quality Canadian feature films.
38. The film production and exhibition sector in Canada is an open market and it is dominated by foreign film producers that operate with production and marketing budgets that are significantly higher than those available to Canadian producers. In order for the Canadian feature film industry to compete in this fiercely competitive environment, producers must have access to sufficient funding to support the production of new films and distributors must have the resources to acquire the right to distribute those films and to market them in all media outlets.
39. In the absence of the Film Distribution Policy, the relatively few Canadian films that are produced each year that are commercially viable would likely be acquired by foreign companies. This would mean that Canadian distributors would be limited to acquiring those remaining Canadian films, including all of the French-language films, that have a more limited commercial appeal, which would hamper the ability of Canadian distributors to negotiate screen time for these films in Canada.
40. Relegating Canada’s distribution sector to such a diminished position would, in a short period of time, mean that Canadian distributors would begin to lose the small share of the market they currently control. At the same time, much of the revenue earned by foreign distributors from the few commercial Canadian films they distribute would not be reinvested in Canadian films.
41. The reduction in market share that this would represent for Canadian distributors would directly translate into a loss of Canadian distribution expertise; Canadian distributors create six times as many direct jobs as do their foreign counterparts in Canada. Foreign distributors are established here, not to seek investment opportunities in Canadian films, but rather to distribute the films of their parent companies. Foreign distributors operating in Canada act merely as screen-booking agents – they play no value-added role in the development or implementation of marketing campaigns as these functions are performed exclusively by their parent companies out of Hollywood.
42. The long-term viability of the Canadian film industry as a whole would also be threatened in an environment where Canadian distributors are losing significant market share to their foreign counterparts. By eliminating the distribution requirements and installing a policy approach that would lead to an increased

reliance on foreign distributors, the federal government’s goal of creating long-term, sustainable development for the Canadian film industry would be seriously compromised.

- 43. In a period of limited economic growth, the major Hollywood studios are likely to refocus their efforts on their proprietary products, thus vacating the Canadian industry and eliminating any real possibility of getting Canadian films to market. During such periods, with significantly less minimum guarantees forthcoming from foreign distributors, and the Canadian distribution sector significantly weakened, the federal government’s prime objective of having Canadian films reach greater audiences in Canada would become considerably more difficult to achieve.
- 44. By placing strict limits on the ability of foreign film distributors to operate in Canada, the 1988 Film Distribution Policy has encouraged Canadians to invest in the production of Canadian feature films. This has, in turn, ensured that Canadian films are marketed and distributed in an effective manner in this country and that those foreign films that speak to the interests, ideas, and values of Canadian audiences are made available in all types of media outlets.
- 45. The two graphs set out below demonstrate the critical role Canadian distributors play in the distribution of Canadian-certified feature films, and the relatively small role played by foreign distributors.¹



¹ Source: Canadian Audio-Visual Certification Office (CAVCO)



46. As these two graphs indicate, Canadian owned and controlled distributors play a key role in financing the production of Canadian films and in ensuring that those films are made available to Canadians in the most convenient and accessible venues possible (such as movie theatres and television screens). There should be no doubt that the 1988 policy on foreign investment in the Canadian film distribution sector should be retained.

IV. Broadcasting Act

47. The current Canadian ownership rules that limit foreign investment in Canadian broadcasting undertakings are essential to the development of Canada’s cultural identity and political sovereignty. In the absence of strong, meaningful Canadian ownership requirements, Canadians would have an extremely limited role in the Canadian broadcasting system, and would not have the ability to be significant participants in an industry that is critically important to the health and well-being of this country.

48. By establishing and maintaining Canadian ownership requirements for the broadcasting industry, Canada has defied the odds. We have created a broadcasting system in this country that is effectively owned and controlled by Canadians. This industry has been able to grow and thrive despite the fact that it operates in the shadow of the United States, which is the world’s economic and entertainment giant. The Canadian ownership requirements have played a vital role in fostering the development of the Canadian broadcasting industry and have maximized the opportunity for Canadians to compete globally. These

requirements have also ensured that the money that has been invested by Canadians into the broadcasting industry since its inception will continue to be used to promote and develop Canadian services and to produce Canadian programming for Canadian audiences.

49. Since 1968, the Canadian Government has placed restrictions on the direct and indirect ownership interest that a non-Canadian may hold in a Canadian broadcasting undertaking. The current restrictions, which were issued in April 1997, are set out in the Direction to the *CRTC (Ineligibility of Non-Canadians)* (the "Direction").
50. As the Panel is aware, the Direction prohibits the Canadian Radio-television and Telecommunications Commission (the "CRTC") from issuing a broadcasting licence to any person that is not a "Canadian". In order for a corporation to qualify under the Direction as a "Canadian" and to therefore be eligible to hold a broadcasting licence, it must satisfy the following criteria: (i) it must be incorporated under the laws of Canada or a province, (ii) 80% or more of its voting shares and 80% or more of the votes attached to those shares must be held by Canadians and (iii) the Chief Executive Officer and 80% of the directors of the corporation must be Canadian. A licensee's parent or holding company is also subject to Canadian ownership requirements. Not less than 66 2/3% of the voting shares and 66 2/3% of the votes of the parent company must be owned by Canadians. While there are no restrictions on the number of non-voting shares that may be held by non-Canadians at either the holding company or licensee company level, it should be noted that the CRTC is also prohibited from issuing licences to any entity that is not controlled in fact by a Canadian.
51. As a result of these ownership restrictions, foreign individuals and entities are permitted to invest in the Canadian broadcasting industry, provided that they do not exercise control over a broadcasting licensee and provided that the investments do not result in a non-Canadian holding more than 20% of the voting shares of a licensee company or more than 33 1/3% of the voting shares of the licensee's parent company. It is the CFTPA's understanding that very few Canadian broadcasters have even achieved these levels of foreign ownership, which suggests that there is considerable opportunity for foreign entities to invest in the Canadian broadcasting sector under the current ownership regime.
52. The CFTPA would also emphasize that the rationale that underlies the Canadian ownership requirements is as valid today as it was when the first set of Canadian ownership rules were implemented almost 40 years ago. Canada continues to have a relatively small and diverse population that is scattered across an enormous land. We are also located on the northern border of the world's most prolific source of television and radio entertainment programming. This reality has meant that market forces alone cannot be relied on to ensure that Canadian sources of news and entertainment programming will be available and accessible to Canadian homes.

53. The Canadian ownership requirements for the broadcasting industry have allowed Canadian companies to avail themselves of foreign capital to assist in the growth and development of Canadian broadcasting services, which have enabled Canadians to have a voice and presence in this vital sector of the economy. This has furthered the policy objectives of the *Broadcasting Act* by ensuring that there continue to be strong Canadian broadcasting voices that reflect the attitudes, opinions, ideas and values of all Canadians.
54. Under the current rules, the Canadian broadcasting sector has proven to be highly competitive and has provided Canadians with unprecedented levels of programming choices. The programming choices that exist in Canada today are quite remarkable. Canadians are now able to access a wide variety of programming services from Canadian and non-Canadian sources. The number of Canadian programming services available has experienced an eight to ten-fold increase over the past 15 years. In 1993 a typical cable system in a larger centre would have distributed approximately 50 channels of programming. Today, that same cable system offers video programming on more than 400 different digital and analog channels.
55. Since 1999, the number of Canadian pay television and specialty services available to Canadians has increased from 50 services to more than 160.² At the same time, the Canadian broadcasting system has been regulated in a flexible and consumer-friendly manner that has ensured that Canadians can access the very best programming produced from all over the world, including the United States. Canadian cable and DTH distributors are authorized to distribute close to 150 foreign satellite services³, and Canadian programming services are permitted to devote significant portions of their programming schedules to the airing of non-Canadian programs.
56. The Canadian ownership requirements have not therefore prevented Canadian audiences from accessing the very best programming that is produced in Canada and in other parts of the world.
57. While the CFTPA has significant concerns about the level of media consolidation and concentration in the broadcasting sector and the impact this could have on the diversity of voices that exists in the Canadian broadcasting system, there is no denying the fact that the broadcasting industry in Canada is robust and is in a state of intense growth.
58. That robustness and growth owes a great deal to the Canadian ownership requirements that are set out in the Direction. It is clear that these rules have contributed to the growth and prosperity that has been achieved by the Canadian broadcasting industry to date.

² Individual Pay, PPV, VOD and Specialty Services - Statistical and Financial Summaries 2000-2006 and Individual Pay and Specialty Services – Statistical and Financial Summaries 1999-2003.

³ CRTC Revised Lists of Eligible Satellite Services, November 19, 2007.

59. In our view, these ownership restrictions will become even more important in the future as a means to ensure that Canadian voices continue to be available and heard. As we enter a communications environment where new media technologies and foreign sources of programming are becoming increasingly accessible to Canadian audiences, there is a growing need for the federal government to maintain policies and rules for the broadcasting industry that ensure that Canadians are able to access Canadian sources of news and entertainment programming in both official languages. This was recently recognized in the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression*, which Canada strongly supported.

V. Telecommunications Act

60. For the most part, the Canadian ownership rules that are applicable to telecommunications common carriers are the same as those that apply to broadcasting undertakings. A minimum of 80% of the voting shares and votes of a telecommunications common carrier must be held by Canadians and a minimum of 66.6% of the voting shares and votes of the common carrier's holding company must be held by Canadians. These requirements are found in section 16 of the *Telecommunications Act* and in the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*.
61. The rules governing foreign investment in telecommunications and broadcasting were largely harmonized in 1997 when the federal government issued its *Convergence Policy Statement* and made the necessary amendments to the Direction noted above.
62. Since then, the level of integration that has developed between and among programming undertakings, broadcasting distribution undertakings (cable and satellite companies), and telecommunication carriers has been significant. Major media conglomerates like Rogers Communications Inc., Shaw Communications Inc., and Bell Canada own and operate a range of radio and television programming services, cable and/or satellite TV systems, and telecommunications carriers. As a result, any liberalization of the ownership rules governing telecommunications carriers will have a direct impact on the broadcasting sector and, in particular, on those companies that operate in both the broadcasting and telecommunications sectors. At a minimum, such changes to the telecommunications ownership rules would trigger calls from those who own and operate cable and satellite systems for the harmonization of the rules for telecommunications carriers and cable and satellite distributors.
63. In the CFTPA's view, there continues to be a very strong policy rationale for treating all broadcasting undertakings – which include programming undertakings and cable and satellite distributors – alike and for ensuring that the two types of undertakings are subject to the same Canadian ownership requirements.

64. There are fundamental differences between the activities carried out by a telecommunications common carrier and those carried out by a cable or satellite distributor. While a telecommunications common carrier has no impact on the nature of the content that is transmitted over its network, cable and satellite distributors regularly make numerous choices that affect the kinds of programming that Canadian consumers receive over their networks. In addition to deciding whether to distribute a programming service on their systems, cable and satellite distributors also make choices relating to packaging, marketing and retail pricing that are integrally linked to the consumer's ultimate decision of whether to receive a particular programming services.
65. In making these choices, cable and satellite distributors also have a significant impact on the financial health and well-being of Canadian programming undertakings. This is particularly true in the case of the five or six broadcasting distributors that together serve more than 80% of Canadians subscribers.⁴ A Canadian programming undertaking that seeks to have its service distributed in Canada must enter into carriage arrangements with this small group of cable and satellite distributors that control access to the vast majority of Canadian homes. The inability of a programming undertaking to come to terms with one or more of these cable and satellite distributors could have a devastating impact on its ability to meet its Canadian content obligations or even to operate. In this respect, there is an enormous imbalance of bargaining power that exists between these large distributors, on the one hand, and programming undertakings, on the other. Simply put, these cable and satellite distributors have the ability to determine whether a programming undertaking succeeds or fails in this country.
66. In light of the impact that the decisions made by cable and satellite distributors have on Canadian consumers and programming undertakings, it is impossible to deny that cable and satellite distributors make significant contributions to furthering the objectives of the *Broadcasting Act*. As such, it is the CFTPA's view that the Canadian ownership rules for cable and satellite distributors should remain the same as those that apply to programming undertakings.
67. It should also be noted that cable distributors and telecommunications carriers, in their capacity as Internet service providers (ISPs), and other ISPs have demonstrated that they are able and willing, in a growing number of circumstances, to exercise some degree of control over data transmissions over the Internet through mechanisms like traffic shaping, filtering content, and favouring Web sites and applications of companies and individuals that are willing to pay extra fees. These types of measures have an impact on the nature of the content that Canadians are able to access over the Internet and demonstrate that those companies that own and control access to broadband networks will increasingly influence what Canadians see and hear on the Internet.

⁴ The six include Rogers, Shaw/Star Choice, Videotron, Cogeco, Bell ExpressVu, and Bragg.

68. The CFTPA also notes that the Canadian ownership requirements that apply to the telecommunications sector do not appear to have had a negative impact on Canadian consumers or the market for telecommunications services in this country. Canada has one of the most advanced telecommunications networks in the world, in large part because successive governments have ensured that an indigenous telecommunications industry can operate in this country.
69. Today, over 98% of Canadian households subscribe to landline and/or mobile phone service.⁵ Among the G8 group of countries in 2006, Canada had the highest broadband subscription rate with 60% of households subscribing to high-speed Internet service, and more than 93% of Canadian households located in areas that could access broadband service.⁶
70. These statistics are evidence of a telecommunications industry in Canada that is highly competitive and robust. This evidence does not suggest that the telecommunications industry is in dire need of an influx of foreign investment or any further liberalization of the Canadian ownership rules.
71. Moreover, the fact that Canada's cable companies have not required increased access to foreign capital to enter the high-speed Internet and local telephony markets in recent years is also strong evidence that the current limits on foreign ownership are not having a negative impact on the growth and development of a competitive Canadian telecommunications sector. Canadian firms have been aggressively and successfully expanding into these markets without any need for changes to the ownership rules. Similarly, the recent announcement by the Minister of Industry that auction for Advanced Wireless Services (AWS) spectrum, to be held on May 27, 2008, would include spectrum that would be set aside for new players to participate in the wireless sector has elicited strong interest from a number of companies (including Quebecor and MTS). This indicates that a number of Canadian companies are willing and able to invest in developing new businesses in the telecommunications sector under the current ownership rules.
72. It is the CFTPA's submission that the potential dangers associated with the removal of the Canadian ownership rules for telecommunications common carriers would far exceed any benefit that could be gained from such a policy shift.

⁵ CRTC *Telecommunications Monitoring Report*, July 2007 at p. 16.

⁶ *Ibid.*

VI. Answers to Sectoral Investment Regime Questions

(i) What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness?

As outlined above, it is the CFTPA's submission that the sectoral investment regimes that are currently in place for broadcasting, telecommunications, and cultural industries such as film distribution are effective and should not be changed. These regimes have a positive impact on Canada's competitiveness and are necessary to ensure that Canadians are able to continue to operate in these important industries and compete effectively against foreign entities.

(ii) What have been the impacts of these investment regimes on productivity and competitiveness in the specific sectors?

The impact that the sectoral investment regimes in the broadcasting, telecommunications, and cultural industries sectors have had on productivity and competitiveness has been positive. These regimes have fostered the development of highly competitive and efficient film distribution, broadcasting, and telecommunications sectors in Canada. Moreover, by establishing rules that limit the level of investment and ownership that foreign entities are permitted to hold in the Canadian film distribution, broadcasting, and telecommunications industries, the federal government has enabled Canadian individuals and firms to participate in these vital sectors of the economy. In the absence of strong sectoral investment regimes, the role that Canadians would play in these sectors of the economy would be extremely limited.

(iii) Are there alternative mechanisms that would achieve the non-economic policy objectives of the sector while also ensuring maximum competitiveness of firms operating in the sector?

The CFTPA does not believe that alternative mechanisms could be implemented in place of the current sectoral investment regimes that would enable Canada to achieve its cultural, political, and social policy objectives. As noted, Canada's sectoral investment regimes are absolutely necessary if Canada is to ensure that our citizens and companies are to participate in a meaningful manner in the film distribution, broadcasting, and telecommunications businesses.

VII. Conclusions

73. The CFTPA firmly believes that the sectoral investment regimes that have been established in respect of Canadian cultural, broadcasting, and telecommunications industries are an effective and critically important means to ensure that Canada remains a sovereign country with its own distinct culture and national identity. In our view, these regimes have enabled Canada to achieve its social political and cultural policy objectives by fostering the development of Canadian businesses in these important sectors of the economy and by maximizing the opportunity for Canadians to attract investment and expand into the global marketplace.
74. The CFTPA appreciates this opportunity to file comments on the Competition Policy Review Panel's consultation paper. We would be please to respond to any questions that the Panel may have concerning our submission.

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