



January 11, 2008

Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON K1A 0H5
Attention: Lynton Ronald Wilson, O.C.

Dear Mr. Wilson:

1. The Satellite Industry Association (SIA) is pleased to provide to the Panel its written submission in response to the consultation paper issued by the Panel on October 30, 2007 entitled *Sharpening Canada's Competitive Edge* (the "CPRP consultation paper").
2. SIA is a U.S.-based trade association of leading satellite operators, service providers, manufacturers, launch services providers and ground equipment suppliers (collectively, the "satellite industry"). Many of the members of SIA have significant affiliates, investments, suppliers in and service offerings throughout Canada. Indeed, several of SIA's satellite operator members or their affiliates have had satellites approved for use in Canada by Industry Canada. As a leading advocate of the global satellite industry, the SIA promotes the benefits and uses of satellite technology and its role in the global information infrastructure and economy, as well as in military, security and disaster relief and recovery applications.
3. While SIA noted with interest the many important questions identified by the Panel in the CPRP consultation paper, its submissions herein will focus largely on restrictions on foreign direct investment ("FDI") in the telecommunications and

radiocommunication sectors, as they most particularly affect both fixed and mobile satellite operators and service providers.

4. Members of SIA have a wealth of experience in planning, building, launching and operating satellite-based communications infrastructure the world over, including in Canada. Based on this experience and consistent with SIA's position on FDI in all markets, SIA advocates the removal of all legislative or policy measures that restrict access and market-based competition in the satellite industry, including such restrictions in the Canadian market.

Market Access Restrictions in the Canadian Satellite Industry

5. The well-known legislative and regulatory restrictions on foreign ownership and control of entities that operate in Canada as telecommunications common carriers¹ and radiocommunication carriers, as summarized at Appendix 2 of the CPRP consultation paper, apply to satellite operators and service providers.

6. A radiocommunication carrier is understood to mean a carrier that controls a radio system that is an interconnected radio-based transmission facility, meaning that radio apparatus in the facility may be used for the transmission or reception of intelligence to or from anywhere on a public switched network.² Since by definition, any radiocommunication carrier would necessarily also be a telecommunications common carrier, even absent the provisions of the *Radiocommunication Regulations*,³ a radiocommunication carrier would be subject to the eligibility requirements contained at

¹ See subsections 16(1) to 16(4) of the *Telecommunications Act* and sections 9, 10 and 10.1 of the *Radiocommunication Regulations*. The *Radiocommunication Regulations* prescribe the eligibility of persons to whom radio licenses may be issued as radiocommunication service providers and radiocommunication carriers.

² Industry Canada, Client Procedure Circular CPC-2-0-15, Issue 2, *Canadian Ownership and Control*, August 2007, Appendix A, page 5 (hereinafter "CPC-2-0-15").

³ The *Radiocommunication Regulations* incorporate by reference the foreign ownership and investment restrictions found at section 16 of the *Telecommunications Act* and certain definitions found at section 2 of the *Canadian Telecommunications Common Carrier Ownership and Control Regulations* promulgated under the *Telecommunications Act*.

section 16 of the *Telecommunications Act*. Thus, currently and subject to the exceptions discussed below, in order to operate in Canada as a radiocommunication carrier, the person in question must be a Canadian citizen or permanent resident in the case of individual licensees or a Canadian-owned and controlled corporation within the meaning of section 16 of the *Telecommunications Act*.

7. However, with Canada's commitments made under the World Trade Organization ("WTO") Agreement on Basic Telecommunications, reached in 1997, Canada liberalized several key facets of the Canadian satellite carriage market, including certain ownership and control restrictions in that market. As a result, non-Canadian entities may now

- (a) own and operate earth stations in both the fixed-satellite service and the mobile-satellite service;⁴ and
 - (b) subject to the "Canadian satellite-use policy" discussed below, provide satellite-based carriage services to Canadians via earth stations communicating with foreign satellites occupying foreign orbital slots authorized by foreign authorities.
8. The restrictions that remain in place preclude non-Canadian entities from:
- (a) obtaining a spectrum license to build, launch and operate a satellite occupying a Canadian orbital slot; and
 - (b) providing satellite-based carriage services to Canadian Direct-to-Home ("DTH") satellite broadcasting undertakings.⁵

⁴ To wit, the *Telecommunications Act* was amended (S.C. 1998, c. 8, s. 2) to provide at paragraph 16(5)(b) that the eligibility requirements at "subsections 16(1), (2) and (4) do not apply in respect of the ownership or operation of ... earth stations that provide telecommunications services by means of satellites." Similarly, the *Radiocommunication Regulations* were amended (SOR/99-108) to provide that notwithstanding sections 9 and 10 of the *Radiocommunication Regulations*, individuals, corporations and partnerships other than those meeting the definition of a "Canadian-owned and controlled corporation" within the meaning of subsection 16(1) of the *Telecommunications Act* are eligible to be licensed to operate an earth station in a fixed satellite service or a mobile satellite service as a radiocommunication user, service provider or carrier. See also CPC 2-0-15, page 2.

9. SIA notes that in recent years, there have been repeated calls for the removal of the foreign ownership and control restrictions contained in the *Telecommunications Act* and the *Telecommunications Common Carrier Ownership and Control Regulations* from not only the international community⁶ but also from within the domestic Canadian policy community. Most recently, in 2003, the House of Commons' Standing Committee on Industry, Science and Technology ("Standing Committee on IST") recommended that "the Government of Canada prepare all necessary legislative changes to entirely remove the existing minimum Canadian ownership requirements, including the requirement of Canadian control, applicable to telecommunications common carriers."⁷ Similarly and not long thereafter in 2006, the Telecommunications Policy Review Panel ("TPRP") recommended to the Government of Canada that the existing foreign ownership and investment restrictions ought to be replaced "with a more flexible regime that permits

⁵ The "Canadian Satellite-Use Policy to accommodate Broadcasting Services to the Canadian Public" is embodied in a letter from the Departments of Industry Canada and Canadian Heritage to the Canadian Radio-television and Telecommunications Commission, first issued on June 14, 1995 and revised in September 26, 2005. The current, consolidated Canadian Satellite Use policy may be found in Annex C of Industry Canada's Radio Systems Policy, RP-008, *Policy Framework for the Provision of Fixed Satellite Service* (revised September 2005). The policy requires that a Canadian broadcasting undertaking should make use of Canadian satellite facilities to carry (i.e., receive and/or distribute to Canadians) all Canadian programming services but may use either Canadian or non-Canadian satellite facilities to carry foreign originated services that are intended primarily for foreign audiences, and are authorized, in whole or in part for distribution by the CRTC." As an exception to the foregoing policy, Canadian satellite digital radio service distribution undertakings are permitted to negotiate back-up arrangements with foreign satellite operators on an emergency or interim basis, with the authorization of Industry Canada. Also, in 2005, due to the unavailability of a Canadian satellite capable of providing satellite carriage services for vehicular or mobile reception and the prohibitive and uneconomical costs of establishing "a stand-alone Canadian satellite radio broadcasting facility given the size of the potential market", the policy was revised to allow satellite digital radio service providers to use foreign satellite facilities to provide "specialized satellite delivery of a digital subscription radio service" including Canadian programming services, to the Canadian public. Therefore, at present, the Canadian satellite-use policy only applies to the carriage of Canadian television programming services. In practice, however, only Canadian satellite operators operating Canadian satellite facilities are currently providing satellite carriage services to Canadian broadcasting distribution undertakings that provide DTH television services to the Canadian public.

⁶ See for example OECD, *OECD Reviews of Regulatory Reform: Regulatory Reform in Canada from Transition to New Regulation Challenges*, "Regulatory Reforms in the Telecommunications Industry", Paris, OECD, 2002 at page 49. The OECD's Review of Canadian Regulatory Reform is available at <http://www.oecd.org/dataoecd/48/28/1960562.pdf>.

⁷ Standing Committee on Industry, Science and Technology, Third Report to the House of Commons pursuant to Standing Order 108(2), *Opening Canadian Communications to the World*, Communications Canada, April 2003, pages xiii and 37.

such investment where it benefits Canada and restricts investment that would not benefit Canada.”⁸

10. SIA wholeheartedly endorses the findings and recommendations of the Standing Committee on IST in relation to the unfavorable effects that the maintenance of these artificial barriers to entry are having on investment levels and the establishment of vibrant competition in the Canadian telecommunications industry as a whole. The issue has been studied and reported upon many times over. The overwhelming consensus among international observers and Canadian academics, policy-makers, politicians and indeed most players within Canadian industry, supports the lifting of these artificial barriers to competition. Rather than reiterate this body of evidence that the Panel no doubt has before it in any event, SIA explains below the particular importance of lifting the remaining ownership and investment restrictions on the future efficiency and competitiveness of the Canadian satellite industry.

Characteristics of the Satellite Industry

11. Certain characteristics of the Canadian satellite industry explain why Canada would greatly benefit from the free flow of capital across national borders directed at the satellite industry in particular.

12. First, in comparison to wireline or terrestrial wireless telecommunications infrastructure, satellite network deployment is characterized by enormous up-front capital outlays that are required in order to plan, construct and launch a spacecraft or constellation and its necessary ground infrastructure. After initial capital expenditures are made, typically, investors in satellite ventures must wait between five to ten years before any revenues whatsoever from the provision of services will be forthcoming. Access to both significant technological know-how and patient sources of capital is essential to the establishment and maintenance of a domestically based satellite services industry.

⁸ TPRP, *Final Report 2006*, page. 11-24.

13. Second, unlike wireline telecommunications or terrestrial wireless telecommunications technologies, satellite communication infrastructure, by its very nature, transcends political or man-made borders. Consequently, there is no technological reason that a Canadian satellite could not serve the satellite communications needs of American telecommunications and broadcasting undertakings or American consumers, and vice versa. In fact, there are already several Canadian satellites (*i.e.* Telesat Anik satellites) on the U.S. Federal Communication Commission's market access Permitted List. Similarly, many of SIA's members operate or have affiliates that operate satellites that are on Industry Canada's List of Satellites Approved to Provide Fixed-satellite Services in Canada and its List of Authorized Mobile Satellite Service Providers. And yet, Canadian DTH service providers are precluded from obtaining carriage of Canadian programming signals for purposes of reception by DTH television subscribers on foreign-authorized satellites. Apart from the economic and other benefits that increased competition would bring, from a network efficiency and planning perspective, there are gains to be had from the elimination of rules or policies that artificially distort network planning decisions that would otherwise be made in order to optimize the use of available satellite and network facilities.

14. The corollary to the capital and technology-intensive nature of a satellite network build is that there is a strong disincentive to market entry by foreign satellite companies if the market remains small. The Canadian end-user market for satellite services, although important, is not always large enough to justify the enormous up-front investment required. Thus, for example, no Canadian satellite operator had developed the capability of providing digital radio-broadcasting services to vehicles in time for the licensing of such innovative services to meet the consumer demand in the 2004-05 timeframe. As a result, an *ad hoc* policy modification was required⁹ in order to ensure that Canadian consumers were not deprived of digital subscription-based satellite radio due solely to artificial regulatory and policy barriers.

15. In assessing the impact that continuing to maintain restrictions on FDI and market access will have on Canada's productivity, competitiveness and ability to innovate in the

⁹ See *supra* note 5.

global, knowledge-based economy, it is worth noting that in a recent June 2007 report sponsored by SIA, entitled *State of the Satellite Industry*,¹⁰ the global satellite industry shows robust growth trends across all sectors: ground equipment, satellite manufacturing, launch services and service providers. Strong demand for more power, more mobility, more convergence and key technologies, such as mobile broadband services and high-definition television, suggests that there is plenty of opportunity for growth in the satellite industry, in the form of new technologies, convergence opportunities and innovative bundling and service offerings. In turn, the results of this report suggest that the availability and development of satellite services are, as is the case of other forms of telecommunications, key drivers of innovation and competitiveness in other sectors of economic activity. However, the extent to which satellite technology is able to deliver these benefits will necessarily depend on the elimination of barriers to entry and the availability and affordability of capital for investment in the Canadian satellite industry.

Benefits to Canada of Removing Market Access Restrictions

16. The satellite industry is witnessing rapid innovation and change. It offers huge potential to a country with the vast geography and dispersed population of Canada to more efficiently provide basic and broadband telecommunications to both urban and remote locations relative to other communications technologies. Also, because satellite communications infrastructure is largely independent of wireline or terrestrial wireless communications infrastructure, satellite communication infrastructure should form an important part of a nation's overall redundant and reliable communications infrastructure. Finally, like all forms of telecommunications, satellite communications are and will remain a key driver of efficiency, productivity and innovation across other sectors of economic endeavor.

17. If Canada is to remain at the forefront of the satellite industry or to continue to benefit from advances in satellite technology and service offerings and the reverberations

¹⁰ Report dated June 2007 sponsored by the SIA and prepared by Futron Corporation, available at <http://www.sia.org/PDF/2007StateofSatelliteIndustryReport.pdf>.

of those advances in other sectors of economic activity, it must compete with other nations for the capital of sophisticated strategic investors willing to invest in the commercial satellite industry. Policies that preclude foreign investors from investing in Canadian systems beyond the limits currently provided for in the *Telecommunications Act* or the *Radiocommunication Regulations* discourage such investment and thereby have the effect of denying to Canadian users and consumers the economic and other benefits that increased competition and investment can bring.

18. Removing the ownership and control restrictions discussed above will have a salutary effect on the Canadian commercial satellite industry in that it will likely result in:

- (a) increased competition across all segments of the satellite industry;
- (b) maximizing the availability of capital sufficient to foster increased investment in the Canadian satellite industry;
- (c) establishing high-quality jobs and corporate offices in Canada for the provision of engineering, operations, marketing and sales, and research and development into satellite networks and service operations;
- (d) attracting and retaining expertise and know-how in the establishment and operation of satellite communications networks;
- (e) allowing a Canadian licensee to develop a satellite project and bring a Canadian satellite filing into use, thus preserving a Canadian orbital slot, access to which is negotiated under the auspices of the International Telecommunications Union; and
- (f) increasing the efficiency, productivity, innovativeness, and competitiveness of the Canadian economy in general, as a result of the availability of alternative suppliers of satellite services.

Conclusion

19. For the foregoing reasons, SIA endorses the specific recommendation of the Standing Committee on IST that restrictions on foreign ownership and control in the telecommunications sector be removed. SIA respectfully requests that the Panel review the findings of the Standing Committee on IST, the TPRP and the Canadian academic and international community, and join in their collective and repeated calls for the removal of the restrictions on market entry and the free flow of capital into the Canadian telecommunications and radiocommunication industry.

20. In order to remove the remaining market access restrictions in these sectors, policy and legislative changes are required. More particularly, in the context of satellite operators and service providers operating as radiocommunication carriers (and as telecommunications common carriers), SIA respectfully requests that the Panel recommend immediate removal of all remaining citizenship, ownership and control restrictions found at sections 9 and 10 of the *Radiocommunication Regulations* and section 16 of the *Telecommunications Act*. Consequential amendments and/or repeal of section 10.1 of the *Radiocommunication Regulations*, subsection 22(1) of the *Telecommunications Act* and the *Canadian Telecommunications Common Carrier Ownership and Control Regulations* would also be required, since the legislative foundation underpinning these provisions will have been eliminated.

21. Further, SIA respectfully requests that the Panel recommend that the Canadian satellite-use policy be lifted, a change which requires no legislative action. Certainly, if the remaining legislative and regulatory restrictions on citizenship, ownership and control of radiocommunication and telecommunications common carriers are lifted, the Canadian satellite-use policy should also simultaneously be lifted, as the essential policy rationale for the latter will have been abolished in the underlying legislation itself.

22. SIA notes that it is a condition of all satellite authorizations that any changes or transfers of ownership and control must be pre-notified to and approved by the Minister of Industry, exercising his or her authority under the *Radiocommunication Act*. To the extent that changes of ownership and control of satellite licensees will continue to undergo some form of review, given the Department's expertise in the area, SIA favors an approach

whereby such reviews would remain within the purview of the Minister of Industry exercising authority under the *Radiocommunication Act*, rather than under any laws of general application that may be applicable to investment review in other sectors of the Canadian economy.

SIA appreciates the opportunity to comment on these matters, which are of great interest to its members.

Yours sincerely,

A handwritten signature in black ink, reading "Patricia Cooper". The signature is written in a cursive, flowing style.

Patricia Cooper
President