

Sharpening Canada's Competitive Edge

Submission to the Competition Policy Review Panel

Submission of:

Verizon Communications Inc.

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I. Introduction

1. This submission is made on behalf of MCI Canada, a wholly-owned subsidiary of Verizon Communications Inc. (“Verizon”), to the Competition Policy Review Panel (“CPRP”) in response to its invitation for submissions regarding the consultation paper issued on October 30, 2007, *Sharpening Canada’s Competitive Edge* (the “Consultation Document”).
2. Verizon has had a long-standing presence in the Canadian telecommunications market. A predecessor, General Telephone and Electronics (GTE) operated in Canada through substantial interests in certain subsidiaries such as B.C. Tel and Québec-Téléphone, prior to the introduction of restrictions on foreign direct investment (FDI). Verizon’s MCI Canada subsidiary first entered the Canadian Internet service provider market in 1991. Verizon has grown and expanded these latter operations, and now provides a wide range of voice and data services to Canadian businesses and enterprise customers. Verizon employs almost 200 people across Canada in offices located in Toronto, Montreal, Calgary and Vancouver. We are proud to bring the global reach of Verizon’s services to Canadian customers.
3. While this submission is focused primarily on Canada’s restrictions on FDI in the telecommunications sector, it will also refer to other aspects of the CPRP’s Consultation Document which deal more generally with the issue of FDI and Canada’s international competitiveness.
4. In Verizon’s view, Canada’s FDI restrictions are a poor reflection of Canada’s general commitment to opening its markets to increased international trade. The current restrictions on FDI are anti-competitive and negatively impact Canada’s domestic telecommunications industry and the interests of Canadians.
5. The many positive impacts of FDI on economies in general, and in the telecommunications industry in particular, are undisputed. Recent studies show that, in fact, foreign-controlled companies are more likely to create higher-paying white-collar jobs than their Canadian-controlled competitors. Many other studies and reports of

government-mandated bodies, industry stakeholders, and academics have advocated lifting the restrictions on FDI in the telecommunications sector precisely in order to take advantage of these, and other, benefits.

6. Canada's restrictions on FDI are also inconsistent with the government's stated policy objective of placing increased reliance on market forces in Canada's telecommunications sector.¹
7. For the reasons set out in this submission, Verizon supports the complete removal of foreign investment restrictions in Canada's telecommunications sector and asks that the CPRP recommend:
 - complete removal of the foreign ownership restrictions contained in the *Telecommunications Act* and the *Radiocommunication Regulations*
 - rescission of the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*; and
 - that the CRTC eliminate all existing regulatory measures which artificially and unnecessarily restrict market access by foreign investors, such as those which currently apply to resellers of local voice services.

II. Canada's FDI policies are a poor reflection of its international commitments to open its markets to increased international trade and competition

8. The current FDI restrictions are inconsistent with Canada's increased integration into the global economy and competitiveness in the international market.² Canada's current FDI restrictions stipulate, among other things, that: (i) at least 80 per cent of the voting equity of a telecommunications common carrier be held by Canadians; (ii) at least 80 per cent of the board of directors of the carrier be resident Canadians; (iii) at least 66.67 per cent of

¹ SOR/2006-355 (<http://canadagazette.gc.ca/partII/2006/20061227/html/sor355-e.html>).

² 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) (<http://www.oecd.org/dataoecd/48/28/1960562.pdf>) ["OECD Review"].

the voting equity of any parent corporation of the carrier be held by Canadians; and (iv) that the carrier not otherwise be controlled in fact by non-Canadians.

9. Canada thus limits the aggregate direct and indirect foreign ownership in facilities-based telecommunications carriers to a maximum of 46.6 per cent in all Canadian carriers, except those that own exclusively satellite earth stations and/or submarine cable facilities. According to the OECD, these are some of the most restrictive and inflexible sets of rules limiting FDI in the telecommunications sector.

Table I: FDI Restrictions by Country³

Country	FDI Restrictions
Australia	No restrictions on industry as a whole; some restrictions on Telstra (government-owned incumbent).
Austria	No foreign ownership restrictions.
Belgium	No foreign ownership restrictions.
Canada	At least 80% of the voting shares of a carrier must be owned by Canadians; at least 80% of board of directors of the carrier must be Canadian. Also, holding companies must be Canadian-controlled (66 2/3% of voting shares must be owned by Canadian).
Czech Republic	No foreign ownership restrictions except as regards land ownership.
Denmark	No foreign ownership restrictions.
Finland	No foreign ownership restrictions.
France	No foreign ownership restrictions.
Germany	No foreign ownership restrictions.
Greece	No foreign ownership restrictions.
Hungary	No foreign ownership restrictions.
Iceland	No foreign ownership restrictions.
Ireland	No foreign ownership restrictions.
Italy	No foreign ownership restrictions.
Japan	No general ownership restrictions; foreign capital participation in NTT Corp. must be less than 1/3; board members of NTT Corp. must have Japanese nationality.

³ Adapted from OECD, *OECD Communications Outlook 2007* (<http://213.253.134.43/oecd/pdfs/browseit/9307021E.pdf>).

Country	FDI Restrictions
Korea	Previously, facilities-based operators could not be more than 49% foreign-owned. Korea has now committed to permit 100% indirect foreign ownership.
Luxembourg	No foreign ownership restrictions.
Mexico	No foreign ownership restrictions on wireless services. Foreign investors may own up to 49% of a telecom enterprise and telecom concessions may only be granted to Mexican nationals or companies.
Netherlands	No foreign ownership restrictions.
New Zealand	No foreign ownership restrictions except for Telecom New Zealand (government-owned incumbent).
Norway	No foreign ownership restrictions except that government must hold 34% of shares in Telenor ASA.
Poland	Majority members of a supervisory board of at a telecommunications company must be Polish citizens.
Portugal	No foreign ownership restrictions.
Slovak Republic	No foreign ownership restrictions.
Spain	No restrictions on ownership except a preliminary administrative authorization is required when any individual or corporation, whether national or foreign, is about to obtain control over 10% or more of Telefonica equity.
Sweden	No foreign ownership restrictions.
Switzerland	No foreign ownership restrictions except that government must maintain majority shareholding in Swisscom.
Turkey	No foreign ownership restrictions.
United Kingdom	No foreign ownership restrictions.
United States ⁴	For wireline common carriers and wireless non-common carriers, 100% foreign ownership is permitted without government approval. For wireless common carriers, 25% indirect and 20% direct foreign ownership is permitted without government approval. Additional indirect foreign ownership up to 100% is permitted with the approval of the FCC based on a finding that the investment is in the public interest.

⁴ These rules were recently articulated by the FCC in a ruling, wherein the FCC affirmed that the public interest is served by permitting greater investment by individuals or entities from WTO Member Countries. The FCC's test presumes that investments from individuals or entities from these countries raise no competitive concerns. It is therefore very permissive of foreign ownership. See *In the Matter of Stratos Global Corporation*, Memorandum Opinion and Order and Declaratory Ruling (FCC 07-213), paras. 72-75 and 95-100, where 100% indirect equity and voting ownership by foreign investors from WTO Member countries was allowed (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-213A1.pdf).

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10. The OECD has singled out Canada's rules as particularly discriminatory in comparison to other countries,⁵ and has recommended that Canada "reduce barriers by eliminating ownership restrictions in telecommunications ... and by allowing a majority of board members to be non-residents in sectors where this is currently not allowed."⁶ Canada's FDI restrictions are also inconsistent with its support of a collective request submitted as a part of the Hong Kong WTO Ministerial in 2006. The collective request reads in part: "we request that your government make commitments on telecommunications services in accordance with the following...No national treatment limitations and no substantial market access limitations, specifically ... (v) Majority foreign capital participation and effective control to be allowed."⁷
 11. Canada's foreign ownership restrictions were also the subject of discussions at the 2007 WTO Trade Policy Review, where several representatives questioned Canada's foreign ownership rules. The representative of the European Community, a growing union currently comprised of 27 member states, stated specific concern over Canada's foreign ownership cap for telecommunications services.⁸ Europe's concerns were also voiced in a recently drafted European Parliament report (adoption pending) that lists unjustified foreign ownership caps as one of the "ten trade barriers in the modern global economy."⁹
 12. The International Chamber of Commerce has also stated that governments should reduce or eliminate foreign ownership restrictions in the telecommunications sector not only to promote investment and take advantage of the benefits of such investment, but also to promote "full implementation of existing commitments made under the WTO framework."¹⁰

⁵ OECD Review, *supra* note 2.

⁶ OECD, *Economic Policy Reforms: "Going for Growth 2007"*, Canada Country Note at 8 (<http://www.oecd.org/dataoecd/48/22/38088884.pdf>).

⁷ <http://www.uscsi.org/publications/papers/collective/telecom.pdf>.

⁸ WTO (Trade Policy Review Body), *Trade Policy Review (Canada)*, Minutes of the Meeting (Revision), (29 June 2007) WT/TPR/M/179/Rev.1, (07-2754). (http://www.wto.int/english/tratop_e/tp_r_e/tp280_e.htm).

⁹ <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=INI/2007/2185>.

¹⁰ International Chamber of Commerce, *Telecoms Liberalization: An international business guide for policymakers*, 2nd edition. ICC Tools for e-Business (Paris: International Chamber of Commerce, 2007) ([http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/TELECOMS%20LIBER-
edition%20Final.pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/TELECOMS%20LIBER-
edition%20Final.pdf)).

13. Canada's FDI restrictions result in differential and discriminatory regulatory rules that prevent full participation by foreign-owned telecommunications companies in the market.¹¹ Such restrictions have little place in the increasingly globalized economy, especially if Canada intends to participate fully in that economy and to apply the principles of fair competition and non-discrimination.¹²

III. The Negative Effect of Current FDI Restrictions in the Telecommunications Sector

14. A recent Statistics Canada Report found that, in the last forty years, changes in foreign multinational involvement in the Canadian telecommunications sector have coincided with changes in the regulatory regime governing FDI.¹³ The impact of regulation on FDI is apparent even after accounting for other factors such as labour and capital costs, industry conditions, and relative returns on investment.¹⁴ Indeed, according to the Department of Foreign Affairs and International Trade, FDI in the information and communications sector has been steadily declining over the last eight years, from comprising 11.68 per cent of money invested in all Canadian industry sectors in 2000 to nearly halving in 2001 and since then *declining steadily* to 4.95 per cent of FDI in 2006.¹⁵
15. This corroborates the finding of the Report of the Standing Committee on Industry, Science and Technology, *Opening Canadian Communications to the World*,¹⁶ that more restrictive foreign ownership rules are correlated with decreased investment in the

¹¹ Telecommunications Policy Review Panel, *Final Report 2006* at 11-17 ["TPRP Report"] ([http://www.telecomreview.ca/epic/site/tprp-gecert.nsf/vwapj/report_e.pdf/\\$FILE/report_e.pdf](http://www.telecomreview.ca/epic/site/tprp-gecert.nsf/vwapj/report_e.pdf/$FILE/report_e.pdf)). See in particular, the Afterward of the TPRP Report and the discussion at 3-43 regarding resellers.

¹² OECD Review, *supra* note 2.

¹³ John R. Baldwin and Guy Gellatly, *Global Links: Multinationals in Canada: An Overview of Research at Statistics Canada*. The Canadian Economy in Transition Series, 11-622-MIE – No. 014 (Ottawa: Minister of Industry, 2007) (<http://www.statcan.ca/english/research/11-622-MIE/11-622-MIE2007014.pdf>) at 16 ["StatsCan Report"].

¹⁴ John R. Baldwin and Guy Gellatly, *Global Links: Long-Term Trends in Foreign Investment and Foreign Control in Canada, 1960 to 2000*, The Canadian Economy in Transition Series, 11-622-MIE – No. 008. (Ottawa: Statistics Canada, 2005) (<http://www.statcan.ca/english/research/11-622-MIE/11-622-MIE2005008.pdf>).

¹⁵ Foreign Affairs and International Trade Canada, "Foreign Direct Investment Stocks in Canada", CANSIM Table 376-0052 (<http://www.international.gc.ca/eet/pdf/FDI-Inward-Stocks-by-NAICS-Industry-2006-en.pdf>).

¹⁶ Report of the Standing Committee on Industry, Science and Technology, *Opening Canadian Communications to the World* (April 2003) ["Standing Committee Report"] (<http://cmte.parl.gc.ca/Content/HOC/committee/372/inst/reports/rp1032302/instrp03/instrp03-e.pdf>).

Canadian telecommunications sector.¹⁷ Indeed, evidence filed with the Standing Committee indicates that FDI restrictions raise the cost of capital and create a disincentive to investment.¹⁸

16. These findings are supported by the arguments presented to the Telecom Policy Review Panel, where “[a] number of telecommunications companies, *particularly those in emerging market segments in the wireless telecommunications field*, have argued that the existing foreign investment rules are a disincentive for foreign investors ... Restrictions on the purchase and sale of voting shares certainly discourages investment by strategic investors.”¹⁹ More specifically, foreign ownership restrictions increase the cost of capital by at least \$1.06 per month per subscriber for an incumbent telephone company.²⁰
17. In the view of Verizon, there can no longer be any doubt that restrictions on FDI have the effect of limiting investment in telecommunications, overall.²¹ This effect is unsurprising given our very global economy, and it is quite opposite to the goal of promoting Canada as a destination for foreign investors. Indeed, one need only look to India’s growing telecommunications sector as an example. Investment in India’s telecom sector has shown a marked change that is the direct result of trade liberalization. With the second-highest growth rate in the world, much of India’s success in its telecommunications sector has been attributed to regulatory reforms opening telecom to domestic and foreign competition.²² When India recently lifted FDI restrictions from 49 per cent to 74 per cent for certain types of services, Verizon applied for and received licenses for those services and consequently is increasing its investment and business in India – as are many other global telecommunications companies – with attendant benefits for the Indian economy.²³ Telecommunications liberalization in India has met with remarkable success, leading to

¹⁷ Standing Committee Report, *ibid*.

¹⁸ Standing Committee Report, *ibid* at 15 and 19.

¹⁹ TPRP Report, *supra* note 11 at 11-17.

²⁰ TPRP Report, *ibid*.

²¹ OECD Review, *supra* note 2.

²² Canadian Services Coalition, (2007) “Canada and India: Trade and Investment Opportunities in the Services Sector” (www.canadianservicescoalition.com).

²³ Department of Industrial Policy & Promotion, “Opportunities in Infrastructure in India: Background Paper”, OECD India Investment Roundtable, 19 October 2004, New Delhi (http://dipp.nic.in/oecd_backpaper/infra_index.htm).

lower rates, higher “teledensity”, and more reliable service.²⁴ India’s success can, in part, be attributed to the investment in India’s newly opened market.

18. New entrants play a major role in introducing innovative telecommunications services to the Canadian telecommunications market and their presence in the market has led to more choice for customers, higher quality of services, and a range of new services.²⁵ Yet existing FDI restrictions jeopardize new entrants’ positions in the telecommunications sector. New entrants require access to capital at a reasonable cost for large capital investments to build and upgrade networks, to ensure attractive product and service offerings, and to off-set the usual start-up losses. However, “[i]n limiting a company’s ability to raise equity outside Canada, the foreign investment rules provide an incentive for greater reliance on debt than equity capital and for raising a larger share of equity capital in Canada than firms otherwise might do.”²⁶ In effect, this means that competitors end up with “very high debt levels typically 70% or more of financing which is far higher than the ILECs.”²⁷ Because of the capital intensive nature of the telecom industry it is essential for new entrants to continue to seek sources of financing but as capital is more difficult and costly to obtain for new entrants there is a distinct competitive disadvantage such that it is difficult to fund on-going growth. In one example, it was calculated that GT Group Telecom, a new wireline entrant that was unable to remain solvent, would pay \$140,000,000 more *per year* than BCE to secure \$1 billion of financing.²⁸ (It is of note that GT Group Telecom filed for bankruptcy in 2002). Current FDI restrictions are both barriers to entry for potential new entrants and obstacles to those diminishing numbers of new entrants that manage to enter the Canadian market.

²⁴ Coalition of Service Industries, *Making the Most of the Doha Opportunity: Benefits from Service Liberalization* (Coalition of Service Industries Research and Education Foundation, 2006) (http://www.uscsi.org/services_study/full_study.pdf).

²⁵ OECD Review *supra* note 2 at 41-2.

²⁶ TPRP Report, *supra* note 11 at 11-17.

²⁷ Submission of Robert Yates of Lemay-Yates Associates Inc. to the Standing Committee on Industry, Science and Technology, cited in the Standing Committee Report, *supra* note 16 at 21

²⁸ See generally Dean Proctor and Simon-Pierre Olivier, (2002) “Capital Flows and the Cost of Capital: The Importance of Liberalized Investment Rules for a Competitive Telecommunications Sector”. Prepared for the conference, Switching to High Growth: Issues in Policy and Regulation in the India Telecom Sector, New Delhi, 18-19 October 2002 (<http://www.darvoza.uz/downloads/ICT/ICT2287.pdf>).

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19. The practical effect of FDI restrictions on Verizon's operations in Canada is that our affiliate is prevented from owning and operating its own transmission facilities. Instead, it must lease facilities from other carriers, making it more difficult for Verizon to control its underlying costs. Verizon is also unnecessarily dependent on other service providers for critical network components and services and it is effectively precluded from making direct network investments. These restrictions also limit the ability of Verizon to provide innovative new products and services to its customers, including some of the more integrated or "seamless" international services that are offered by Verizon to customers in several locations around the world.
20. FDI restrictions limit investment and increase the cost of capital thereby slowing Canada's competitive development²⁹ at a cost estimated at \$675 million per year.³⁰ By placing the telecommunications industry in a straightjacket, FDI restrictions have thus failed to serve the goal of the Canadian government of fostering a competitive marketplace³¹ and placing increased reliance on market forces in the telecommunications sector.

IV. Dispelling Myths About FDI

21. The Consultation Document raises the argument that foreign-owned or -controlled companies are systematically biased in favour of their "home" country and against "host" countries, leading to a "hollowing-out" of the industry in the "host" country. This argument is without foundation and flatly contradicted by the facts. In this era of globalization and multinational enterprises, what is becoming increasingly clear is that many multinationals have no obvious "home" country.³² Rather, multinational enterprises act to take advantage of opportunities that present themselves in "host" countries, according to the means and qualities of particular "host" countries.

²⁹ OECD Review, *supra* note 2.

³⁰ Standing Committee Report, *supra* note 16.

³¹ See generally Donald G. McFetridge, "Evaluation of Current Policy Towards Inbound FDI" (revised December 2004), CTPL Trade and Investment Conference (Ottawa, November 19, 2004) (<http://www.carleton.ca/ctpl/conferences/documents/EvaluationofCurrentPolicyTowardsInwardFDI-McFetridge.pdf>).

³² McFetridge, *ibid.* at 5.

22. For example, a recent Statistics Canada report based on several studies³³ showed that FDI has a positive effect on domestic competitiveness and productivity.³⁴ Foreign-owned firms, particularly multinational firms, create more and higher quality job opportunities for Canadians. Typically, foreign-controlled plants have higher productivity,³⁵ are more capital intensive, pay higher wages, *and* hire more white-collar workers than those that are Canadian-controlled.³⁶ Foreign-controlled firms also create just as many – if not more – head office-level jobs as Canadian-controlled companies: the national head offices of foreign-controlled firms accounted for six out of ten new head-office-level jobs created from 1999-2005. In fact, foreign-controlled firms are *more likely* to have a full Canadian head office-level function than a Canadian-controlled company.

V. The Positive Impact of FDI

23. The positive impact of FDI has been affirmed world-over. Countries with fully liberalized telecom sectors have faster growth than countries with restrictive sectors.³⁷ Furthermore, foreign investment liberalization in the telecommunications sector is linked with better economic performance in non-telecommunications sectors of the economy;³⁸ this may be because foreign firms are more likely to diversify across industries than Canadian-controlled firms such that the benefits brought by increased FDI in the

³³ See generally StatsCan Report, *supra* note 13.

³⁴ McFetridge, *supra* note 21 at 4.

³⁵ Wolfgang Keller and Stephen R. Yeaple, “Multinational Enterprises, International Trade, and Productivity Growth: Firm-Level Evidence from the United States” IMF Working Paper, WP/03/248 (International Monetary Fund, 2003) (<http://www.imf.org/external/pubs/ft/wp/2003/wp03248.pdf>).

³⁶ See also John R. Baldwin and Wulong Gu, *Global Links: Multinationals, Foreign Ownership and Productivity Growth in Canadian Manufacturing*, The Canadian Economy in Transition Series. 11-622-MIE – No. 009. (Ottawa: Statistics Canada, 2005) (<http://www.statcan.ca/english/research/11-622-MIE/11-622-MIE2005009.pdf>)

³⁷ Coalition of Service Industries, *Making the Most of the Doha Opportunity: Benefits from Service Liberalization* (Coalition of Service Industries Research and Education Foundation, 2006) (http://www.uscsi.org/services_study/full_study.pdf).

³⁸ Scott J. Savage, Alan Schlottman and Bradley S. Wimmer, *Telecommunications Investment, Liberalization and Economic Growth*, AEI-Brookings Joint Center for Regulatory Studies, Publication 03-30 (Washington, DC: 2003), (<http://aei-brookings.org/admin/authorpdfs/redirect-safely.php?fname=../pdffiles/phpZd.pdf>)

telecommunications sector spill over to other parts of the Canadian market³⁹ and because domestic firms benefit from vertical linkages with foreign firms.⁴⁰

24. Indeed, the fact that FDI positively effects domestic economies is no longer disputed, the only question is “by how much”?⁴¹ The answer is: by a lot. Below are some of the specific ways in which FDI has been shown to improve Canadian markets.

(a) More stability

25. Foreign-controlled companies and multinationals are less susceptible to domestic changes in GDP than purely domestically controlled companies: the international nature of these companies means that the capital costs of the company are derived from the international rather than the domestic market. This broader, global, perspective also means that foreign-controlled companies and multinationals have more stable production levels in the face of fluctuating local demand. As might be expected, these companies also eliminate fewer jobs in response to local downturns when compared to domestic counterparts; labour markets are thus also less volatile. Finally, foreign-controlled companies and multinationals have the ability to react more flexibly to change because of their international “footprint”. These factors contribute to the overall stability of foreign-controlled and multinational companies when compared to Canadian-controlled non-multinationals.⁴²

(b) Innovation, R&D and Managerial know-how

26. Foreign investment is an important channel for the diffusion of ideas and innovations.⁴³ Foreign-controlled companies innovate *in all sectors and in almost all size categories* more frequently than Canadian-owned companies, and the innovation rates of foreign-

³⁹ StatsCan Report, *supra* note 13 at 23.

⁴⁰ Alla Lileeva, *Global Links: The Benefits to Domestically-Controlled Plants from Inward Direct Investment—the Role of Vertical Linkages*. The Canadian Economy in Transition Series, 11-622-MIE – no. 010. (Ottawa: Statistics Canada, 2006) (<http://www.statcan.ca/english/research/11-622-MIE/11-622-MIE2006010.pdf>)

⁴¹ TPRP Report, *supra* note 11 at 11-16; McFetridge, *supra* note 31 at 4.

⁴² StatsCan Report, *supra* note 13 at 25.

⁴³ See, e.g. Surendra Gera, Wulong Gu and Frank C. Lee, *Foreign Direct Investment and Productivity Growth: The Canadian host-country experience*. Industry Canada Working Paper No. 30 (Ottawa: Industry Canada, 1999) ([http://www.ic.gc.ca/epic/site/eas-aes.nsf/vwapj/wp30e.pdf/\\$FILE/wp30e.pdf](http://www.ic.gc.ca/epic/site/eas-aes.nsf/vwapj/wp30e.pdf/$FILE/wp30e.pdf)).

- controlled firms are about 10 percentage points higher than domestic counterparts.⁴⁴ They are also more likely to produce world-first innovations (as opposed to “improvements” to prior technologies), to apply advanced technologies, and to have R&D divisions.⁴⁵
27. One reason for the high level of innovation from foreign-controlled companies is their access to technology. Foreign-controlled companies are in a position to acquire ideas and inventions through technology transfer via intra-firm networks with parent, sister, and subsidiary companies and can more easily purchase new technology from multinational affiliates. The innovative capacities of foreign-controlled companies are transferred to domestic competitors via adoption of new technologies and the transfer of ideas and expertise through employee movement from foreign-controlled to domestic-controlled companies. Finally, foreign-controlled firms, as customers of domestic suppliers, serve as a source for ideas for innovation.⁴⁶
28. In addition to passive ways in which FDI encourages Canadian innovation, foreign-controlled business are often highly engaged in and make large contributions to innovation in Canada.⁴⁷ In fact, a recent study indicates that foreign-controlled firms can be more active in local R&D than their Canadian counterparts.⁴⁸ They are also just as likely to rely on unrelated local firms and university partnerships as domestic firms.⁴⁹ In other words, the R&D activities of foreign-controlled firms do not occur in isolation from host economies; rather, foreign-controlled firms are an important source of vitality for innovation in Canada.

⁴⁴ John R. Baldwin and Wulong Gu, *Innovation, Survival and Performance of Canadian Manufacturing Plants*, Economic analysis (EA) research paper series. 11F0027MIE – No. 022. (Ottawa: Statistics Canada, 2004) (<http://www.statcan.ca/english/research/11F0027MIE/11F0027MIE2004022.pdf>).

⁴⁵ StatsCan Report *supra* note 13 at 8 and 28.

⁴⁶ TPRP Report, *supra* note 11; McFetridge, *supra* note 31 at 3, citing Baldwin and Gu, “Multinational, Foreign Ownership and Productivity Growth”, Industry Canada Conference on Industrial Economics and Performance in Canada (Ottawa, September 30-31 2004).

⁴⁷ Baldwin and Hanel (2000) (<http://www.statcan.ca/english/research/11F0019MIE/11F0019MIE2000151.pdf>)

⁴⁸ StatsCan Report, *supra* note 13 at 27.

⁴⁹ StatsCan Report, *supra* note 13 at 27-8.

29. FDI also brings financial ideas and influence, strategic marketing techniques, human resource ideas, and other management know-how to Canada; it is “not just about cash”.⁵⁰
30. FDI is clearly beneficial for technological innovation, R&D, and transfer of managerial functions and knowledge. Given the restrictions on FDI in the telecommunications sector, it is not surprising that Canada is “behind” in the newest markets where multinationals are in the global forefront, namely broadband deployment and mobile wireless services.⁵¹

(c) Increased competition

31. A recent report by Forrester Research found that competition in the Canadian telecommunications sector is “worrisome”, and urged business telecom customers to support competition by making service arrangements with non-ILEC companies because of the high concentration of ownership in this industry sector.⁵² Clearly, there is a need for more competition in the Canadian telecommunications market – competition that should not only be supported by customers but also by the government. However, current restrictions on foreign investment shut out major potential sources of financing for telecom competitors in Canada. By allowing competitors and new entrants access to funds from foreign investors, competition in telecom will increase.⁵³ Increasing market competition in the telecommunications sector leads to higher levels of productivity, telecommunications service quality, and lower prices.⁵⁴ In fact, even the threat of increased market entry has a strong positive impact on these factors.⁵⁵

⁵⁰ TPRP Report, *supra* note 11 at 11-20; Steven Globberman, “Implications of Foreign Ownership Restrictions for the Canadian Economy – A Sectoral Analysis”, Discussion Paper Number 7 (April 1999), Industry Canada Research Publications Program at 4 ([http://www.ic.gc.ca/epic/site/eas-aes.nsf/vwapj/dp07e.pdf/\\$FILE/dp07e.pdf](http://www.ic.gc.ca/epic/site/eas-aes.nsf/vwapj/dp07e.pdf/$FILE/dp07e.pdf)); testimony of Konrad von Finckenstein, QC, Commissioner of Competition, Competition Bureau, to the House of Commons Committee on Industry, Science and Technology, February 24, 2003 (<http://cmte.parl.gc.ca/Content/HOC/committee/372/inst/evidence/ev732323/instev23-e.htm#Int-437224>).

⁵¹ TPRP Report, *supra* note 11 at 11-21.

⁵² Brownlee Thomas, “The Worrisome State of Canadian Business Telecoms Competition” (Forrester Research Inc., 2007) (excerpt at: <http://www.forrester.com/Research/Document/Excerpt/0.7211.43609.00.html>).

⁵³ Lemay-Yates Associates Inc., “Access to capital – Impact of foreign investment restrictions on telecom competitors”, Report to the Standing Committee on Industry, Science and Technology (February 2003) at 3.

⁵⁴ Olivier Boylaud and Giuseppe Nicoletti (2000) “Regulation, Market Structure and Performance in Telecommunications”, OECD Economics Departments Working Papers No. 237 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=238203).

⁵⁵ Boylaud and Nicoletti at 7.

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32. In summary, encouraging FDI brings an infusion of capital to the Canadian market, thereby generating growth and income⁵⁶ and encouraging strategic investment in high-risk situations where Canadian investors may not wish to participate.⁵⁷

VI. Canada Should Liberalize its Restrictions on FDI in the Telecom Sector

33. The data overwhelmingly supports the lifting of Canada's telecommunications foreign ownership rules in the telecom sector. As indicated above, the cost of capital is a chief concern for new entrants to the telecommunications market, and FDI restrictions severely affect the availability of capital from otherwise interested investment partners. The current telecommunications foreign ownership rules restrict the amount of voting equity that can be held by a foreign company, forcing them to hold debt or to not invest at all. In other words, the restrictions limit the ability of investors to truly participate in the growth of a firm, thereby creating a "chilling effect" for foreign investors who might otherwise have an interest in investing in the Canadian telecom sector. In particular, the restrictions limit both the number and type of investors who can or would participate in the market if given a open opportunity to do so.
34. In the view of Verizon, it is unrealistic and incongruous for Canada to both encourage foreign investment and globalization while maintaining restrictions on FDI domestically. From a policy point of view, this conclusion has been repeatedly supported by various government bodies, by Canadian academics, and by the international community.
35. In 2003 the Standing Committee on Industry, Science and Technology, in its report *Opening Canadian Communications to the World*⁵⁸ recommended that Canadian ownership requirements applicable to telecommunications common carriers be *entirely removed*, including the prohibition against foreign control. This policy decision was made after careful consideration of the two objectives of stimulating competition and

⁵⁶ William Dymond and Michael Hart, "Canadian Cultural Policy, Ownership Restrictions, and Evolving International Trade Rules", cited in McFetridge, *supra* note 21 at 2. [Note: this article is no longer available online].

⁵⁷ McFetridge, *supra* note 31 at 12 cited in TPRP Report, *supra* note 11 at 11-17.

⁵⁸ Standing Committee Report, *supra* note 16.

innovation in the telecommunications sector while maintaining Canadian sovereignty and security.

36. The then Deputy Minister of Industry, Peter Harder, in his oral remarks to the Standing Committee on Industry, Science and Technology on the issue of the telecommunications sector asked:⁵⁹ “[W]e have a competitive sector that is weakening and for which investment has fallen dramatically. It is said this sector is much more reliant on external sources of capital than incumbent providers are, which have significant internal revenue sources. Can the restrictions be said to favour the incumbent providers such that they are impairing competition?” In his submission in the same proceedings, the then Commissioner of Competition, Konrad von Finckenstein, on behalf of the Competition Bureau, testified categorically that: “We do not believe that foreign ownership restrictions are necessary to achieve a healthy and vigorous telecommunications industry.”⁶⁰
37. Even the incumbent telecommunications common carriers (Bell Canada and TELUS) were in favour of removing the foreign ownership restrictions, affirming that removal of those restrictions would not adversely affect them.⁶¹
38. In 2006 the Telecommunications Policy Review Panel stated its belief that “Canada should rely primarily on market forces to achieve its telecommunications policy objectives.”⁶² It suggested replacing the current restrictions with a more “flexible” regime.⁶³ Several submissions to the Telecommunications Policy Review Panel also advocated elimination of the foreign ownership restrictions, most notably TELUS,⁶⁴ the

⁵⁹ Testimony of Peter Harder, Deputy Minister of Industry, to the House of Commons Committee on Industry, Science and Technology, January 28, 2003 (<http://cmte.parl.gc.ca/Content/HOC/committee/372/inst/evidence/ev657402/instev12-e.htm#Int-388320>).

⁶⁰ Testimony of Konrad von Finckenstein, QC, Commissioner of Competition, Competition Bureau, to the House of Commons Committee on Industry, Science and Technology, February 24, 2003. (<http://cmte.parl.gc.ca/Content/HOC/committee/372/inst/evidence/ev732323/instev23-e.htm#Int-437224>).

⁶¹ Standing Committee Report, *supra* note 16 at 17.

⁶² TPRP Report, *supra* note 11 at 11-13. See also TPRP Report, Recommendation 3-1.

⁶³ TPRP Report *ibid.* at 11-24 (“replace them with a more flexible regime that permits such investment where it benefits Canada and restricts investments that would not benefit Canada”).

⁶⁴ Submission of TELUS Communications Inc. (15 August 2005) ([http://www.telecomreview.ca/epic/site/tprrp-gecert.nsf/vwapj/TELUS-Submission.doc/\\$FILE/TELUS-Submission.doc](http://www.telecomreview.ca/epic/site/tprrp-gecert.nsf/vwapj/TELUS-Submission.doc/$FILE/TELUS-Submission.doc)).

Montreal Economics Institute,⁶⁵ the Information Technology Association of Canada,⁶⁶ the Canadian Cable Television Association,⁶⁷ and the Commissioner of Competition.⁶⁸

39. The OECD has also recommended that “Canada should change the foreign ownership and control restrictions as soon as possible in order to rapidly increase productivity, investment, and jobs”. The OECD found that the FDI restrictions slow the development of the Canadian telecommunications market.⁶⁹
40. Some of the foremost Canadian authorities on law and economics argue that foreign ownership restrictions in the telecommunications sector should be eliminated, stating that the restrictions are “fundamentally at odds” with efficiency and low prices.⁷⁰ Canadian economic research institutes, think tanks, and former political leaders have also consistently concluded that restriction of foreign business activities impeded Canada’s economic development.⁷¹

⁶⁵ English submission of Montreal Economic Institute (August 2005) ([http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/Institut_économique_de_Montréal_e.pdf/\\$FILE/Institut_économique_de_Montréal_e.pdf](http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/Institut_économique_de_Montréal_e.pdf/$FILE/Institut_économique_de_Montréal_e.pdf)).

⁶⁶ Submission of Information Technology Association of Canada (ITAC) (August 2005) ([http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/ITAC.pdf/\\$FILE/ITAC.pdf](http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/ITAC.pdf/$FILE/ITAC.pdf)), referencing “The Impact of Foreign Investment Restrictions” (February 2003) for the ITAC position on foreign investment rules (<http://itac.ca/Archive/InformationInfrastructure/ITAC-ImpactofForeignInvestmentRestrictions.htm>).

⁶⁷ Submission of the Canadian Cable Telecommunications Association (CCTA) (15 August 2005) ([http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/CCTA.doc/\\$FILE/CCTA.doc](http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/CCTA.doc/$FILE/CCTA.doc)).

⁶⁸ Submission of the Commissioner of Competition (Sheridan Scott) (15 August 2005) ([http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/Competition_Bureau_-_Submission.pdf/\\$FILE/Competition_Bureau_-_Submission.pdf](http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/vwapj/Competition_Bureau_-_Submission.pdf/$FILE/Competition_Bureau_-_Submission.pdf)).

⁶⁹ OECD Review, *supra* note 2.

⁷⁰ E. Iacobucci, M. Trebilcock and R. Winter, “Economic Deregulation of Network Industries: Managing the Transition to Sustainable Competition” (2004) (<https://ospace.scholarsportal.info/bitstream/1873/3497/1/244187.pdf>).

⁷¹ See, e.g. Fraser Institute (November 2007), *FraserAlert*, “The Benefits of Foreign Business Activity in Canada” (http://www.fraserinstitute.org/commerce.web/product_files/benefitsforeignbus.pdf); Mike Harris and Preston Manning, “International Leadership by a Canada Strong and Free” (The Fraser Institute and the Institute économique de Montréal, 2007) (http://www.iedm.org/uploaded/pdf/070507_en.pdf); Jack M. Mintz and Andrey Tarasov, “Canada Is Missing Out On Global Capital Market Integration”, C.D. Howe Institute E-Brief (21 August 2007) (http://www.cdhowe.org/pdf/ebrief_48.pdf); Neil Quigley and Margaret Sanderson, “Going Mobile — Slowly: How Wireline Telephone Regulation Slows Cellular Network Development” (2005) *C.D. Howe Institute: Commentary 222* (http://www.cdhowe.org/pdf/commentary_222.pdf); .D. Howe Institute, *Communiqué*, “Pace of technological change in telecommunications a challenge for regulators, says C.D. Howe Institute study” (9 February 1999) (<http://www.cdhowe.org/pdf/orr.pdf>); the Conference Board of Canada, “4th Annual Innovation Report: Canada needs to attract foreign investment to spur innovation” (Winter 2002-2003) 7(1) *Inside Edge* 6 (online: http://www.conferenceboard.ca/insidedge/pdf/ie_q1_03.pdf).

41. Since 1995 the Office of the Competition Commissioner has actively supported the lifting of foreign ownership restrictions.⁷² Most recently, during Industry Canada's consultation on a proposed *Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*, the Competition Commissioner submitted on behalf of the Competition Bureau that "foreign investment restrictions do limit competition ... the Bureau submits that the appropriate way to compensate for any lack of competition attributable to the foreign investment restrictions is to remove them."⁷³
42. Finally, the government has stated that it wishes to place increased reliance on market forces in Canada's telecommunications sector, and in fact has stated very recently that the foreign ownership rules set out in the *Telecommunications Act* "act as restrictions on foreign investment which constitutes a barrier to market entry."⁷⁴

VII. Conclusions: Increasing Competition in Canada's Telecom Sector

43. The *Telecommunications Act* embodies several policy goals for Canada. The current FDI restrictions do not support and often directly conflict with many of these policy goals..

⁷² See, e.g. Speaking Notes for Sheridan Scott Commissioner of Competition, "Myths and Realities: Competition in the Telecom and Generic Drug Industries" (29 October 2007), C.D. Howe Institute Toronto, Ontario (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02511e.html>); Speaking Notes for Sheridan Scott Commissioner of Competition, "The 2007 Canadian Telecom Summit, Toronto, Ontario" (13 June 2007) (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02361e.html>); Speaking Notes for Sheridan Scott Commissioner of Competition, "55th Antitrust Law Spring Meeting Telecommunications: What's Next? Where Will We Be in Five Years?" (18 April 2007) (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02163e.html>); *Annual Report of the Commissioner of Competition For the Year Ending March 31, 2006*, Chapter 6: Advocating for Competition and for International Co-ordination, Section 6.1.4 Telecommunications (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02340e.html>); Working Group on the Interaction between Trade and Competition Policy, World Trade Organization, WT/WGTCP/W/146, 12 September 2000 (00-3518), Communication from Canada (14 June 2000) (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/01266e.html>); Speaking Notes for George N. Addy, Director of Investigation and Research, The 4th Annual Industry Canadian Resale Congress (27 February 1996) Toronto, Ontario (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00944e.html>); Speaking Notes for George N. Addy, Director of Investigation and Research, An appearance before the Standing Senate Committee on Transport and Communications (1 November 1995) (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/01034e.html>); *Annual Report 1994/95* (<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/01378e.html>);

⁷³ Comments of the Commissioner of Competition (25 May 2007), on the *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services* (DGTP-002-07) (online at: [http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/dgtp-002-07-Competition-Bureau-comments.pdf/\\$FILE/dgtp-002-07-Competition-Bureau-comments.pdf](http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/dgtp-002-07-Competition-Bureau-comments.pdf/$FILE/dgtp-002-07-Competition-Bureau-comments.pdf)) at para. 4-43.

⁷⁴ Industry Canada (November 2007), "Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range" ([http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/awspolicy-e.pdf/\\$FILE/awspolicy-e.pdf](http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/awspolicy-e.pdf/$FILE/awspolicy-e.pdf)) at 3.

Other regulatory regimes exist that can be used to meet Canadian telecommunications policy goals.

44. Certain issues, such as national security and protection of citizen privacy, are not fully addressed⁷⁵ and arguably not properly addressed by foreign investment restrictions. Since the tragic events of September 11, 2001, security concerns have been of increased importance for many countries, including the U.S. and U.K. However, these countries have telecommunications FDI rules that are far more liberal than Canada's.
45. Canadian sovereignty is also better regulated by other means than restricting FDI. Other OECD countries have explicit and implicit safeguards in place to ensure that FDI does not prejudice the national public interest⁷⁶ and, in Canada, foreign takeovers are subject to review by the Minister of Industry pursuant to the *Investment Canada Act*.
46. Accessibility of services in remote and under-served regions is, understandably, a concern. However, even in the absence of foreign investment restrictions, the CRTC would maintain the regulatory jurisdiction to ensure accessible service in those regions. In addition, various levels of government have had and can continue to have special initiatives or programs such as Industry Canada's "Broadband for Rural and Northern Development Pilot Program", to promote service accessibility and availability in remote and under-served areas.
47. Other goals of Canada's telecommunications policy are: the enhancement, at the national and international levels, of the efficiency and competitiveness of Canadian telecommunications; and the stimulation and encouragement of innovation and R&D in Canada. Compelling evidence indicates that these policy goals can be furthered by removing the foreign ownership restrictions in the telecommunications sector. Furthermore, the available research and the experience of other OECD countries demonstrates that liberalizing FDI leads to a higher quality of services, more consumer

⁷⁵ TPRP Report, *supra* note 11 at 11-23

⁷⁶ TPRP Report, *ibid.* at 11-24.

- choice, better availability, and lower costs to the consumers.⁷⁷ Removing the foreign ownership restrictions in the telecommunications sector will also make Canada a more attractive destination for foreign investors.⁷⁸
48. Finally, the *Telecommunications Act* explicitly encourages a reliance on market forces as a means of achieving other policy objectives. The importance of reliance on market forces has been re-emphasized in a Policy Direction to the CRTC issued by the Governor in Council on the recommendation of the Minister of Industry in December 2006.⁷⁹ The CRTC is thus mandated to rely as much as possible on market forces to regulate telecommunications in Canada. Current FDI restrictions force the CRTC to regulate heavily in order to produce artificial competition in the market. Removal of FDI restrictions would bring an influx of capital and create the conditions necessary to bring true competition to the market. The CRTC would then be able to place greater reliance on market forces as a means of regulating the telecommunications sector.
49. Removing FDI restrictions will increase the competitiveness and productivity of the Canadian telecommunications sector. It will encourage capital investment, boost innovation and R&D in Canada, increase the availability and quality of services for consumers, and all without causing a loss of “head office” functions in Canada or infringing on Canadian sovereignty and security. We therefore ask that the Panel recommend removal of the foreign ownership restrictions contained in the *Telecommunications Act* and *Radiocommunication Regulations* as well as rescission of the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*. We also request that the Panel recommend that the CRTC eliminate all existing regulatory measures which artificially restrict market access by foreign investors, such as those which currently apply to local voice service resellers.
50. In the interim, we would welcome the opportunity to meet with or appear before the Panel and to participate in any public meetings or fora organized by the Panel.

⁷⁷ TPRP Report, *ibid.*

⁷⁸ Standing Committee Report, *supra* note 16 at 34.

⁷⁹ SOR/2006-355 (<http://canadagazette.gc.ca/partII/2006/20061227/html/sor355-e.html>).