

January 11, 2008

Competition Policy Review Panel  
280 Albert Street, 10th Floor  
Ottawa, ON  
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Electronic Mail: [Competitionreview@ic.gc.ca](mailto:Competitionreview@ic.gc.ca)

Via: Electronic Mail

**Re: Submission re: *Sharpening Canada's Competitive Edge***

Dear Sirs:

We are pleased to file the submission of Vonage Canada Corp. pursuant to the above-referenced consultation paper.

We would be pleased to provide any additional assistance the Panel may request, including by participating in any follow-up consultation.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'S. Kitchen', with a long horizontal line extending to the right.

Scott W. Kitchen  
Director, Finance

**SHARPENING CANADA'S COMPETITIVE EDGE**

**COMMENTS OF VONAGE CANADA CORP. IN RESPONSE TO A  
CONSULTATION PAPER ISSUED BY THE COMPETITION POLICY  
REVIEW PANEL**

January 11, 2008

## Introduction

1. Vonage Canada Corp. (“Vonage Canada”) is pleased to provide these comments in response to “*Sharpening Canada’s Competitive Edge*” (the “Consultation Paper”), a consultation paper issued by the Competition Policy Review Panel (the “Panel”) on October 30, 2007.
2. Vonage Canada is a leading independent provider of broadband telephone services, also known as Voice over Internet Protocol (“VoIP”). Vonage Canada and its sister company in the U.S., Vonage Holdings Corp. (“Vonage Holdings”), pioneered the commercialization of VoIP technology and were the first to bring VoIP to consumers in North America. Vonage Canada’s VoIP service enables anyone to make and receive phone calls using standard touch tone telephones almost anywhere a broadband Internet connection is available, and offers innovative features that add value to local voice services. We provide feature-rich and cost effective communication services that offer users an experience similar to traditional telephone services.
3. Vonage Canada supports the government’s general goal of creating the conditions for Canadians to succeed in the new global economy. In just over three years, Vonage Canada has added over 200 well-paid technology jobs to the Canadian economy, and as such is an excellent example of the tangible positive economic effects of foreign direct investment (“FDI”) in Canada. These jobs have not been limited to serving the Canadian market, but rather extend the advantages of Canada’s highly skilled work force beyond Canada’s borders, to serve customers of Vonage Holdings in the U.S. and the United Kingdom. Of perhaps greater economic significance, however, has been the additional innovation, competition and choice that Vonage Canada’s services have brought to Canadians and to Canada’s telecommunications industry, a key enabler of today’s global information-based economy. Vonage Canada’s aggressive introduction and expansion of its low cost, feature-rich innovative VoIP services into the Canadian market has acted as a catalyst for increased technological and service innovation and greater competition throughout the industry, resulting in clear benefits for individual Canadians and business users alike.

4. Growth in the competitive market for local services has only recently begun to thrive in selected areas across the country. Canadians reap the benefits of this competition in the form of greater innovation in products and services, more rapid adoption of information and communications technologies, more job creation, lower prices, and more choice. A more competitive telecommunications sector engenders discipline and efficiency, and encourages investment in, and greater availability of, information and communications technologies that are critical to the global success of Canadians and Canadian businesses. This in turn creates jobs at the same time as it increases Canada's productivity. Vonage Canada itself grew from fewer than 10 employees late in 2004, to 203 employees by the end of 2006.
5. Competition in the telecommunications industry is particularly relevant to the adoption of technology by small-to-medium sized enterprises ("SMEs"). These enterprises represent a critically important driver of productivity growth in Canada.<sup>1</sup> Advanced telecommunications infrastructure and ICT solutions developed by innovative telecommunications competitors (many of which are SMEs themselves) allows other SMEs to develop core competencies through digital technology and become more competitive in markets at home and abroad, with commensurate benefits to the Canadian economy. Thus, a competitive telecommunications industry is a catalyst for a profitable chain reaction of innovation, investment and productivity.
6. In this context, Vonage Canada's comments are focused on the Consultation Paper's questions regarding the investment regime specifically applicable to telecommunications (the "Telecom Restrictions"). Vonage Canada believes that apart from limiting the ability of Canadian and other firms to invest in the sector, the Telecom Restrictions impede Canadians' success in the new global economy by promoting distortions in the regulatory regime. These distortions are inimical to the development of innovative cost

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<sup>1</sup> See, for example, Canadian Federation of Independent Business, Canadian Manufacturers & Exporters and RBC Financial Group, *The path to prosperity: Canada's small and medium-sized enterprises*, October 2002, [hereinafter *The Path to Prosperity*] at 7, available online at [http://fpei.ca/research/reports/default\\_e.asp](http://fpei.ca/research/reports/default_e.asp); 2004 CIBC World Markets Inc., *CIBC Small Business – Secrets to Small Business Success* at 3; G. Gellatly, V. Peters, *Understanding the Innovation Process: Innovation in Dynamic Service Industries* (Statistics Canada: Ottawa, 1999) at 5, available online at [www.statscan.ca](http://www.statscan.ca).

competitive services for the benefit of Canadian users, and contradict this government's own policy favouring technological and competitive neutrality in the sector. Accordingly, Vonage Canada supports the review of these limitations.

7. As the Panel will be aware, the Telecom Restrictions place limits on the beneficial ownership and control of voting shares, as well as representation on boards of directors, by non-Canadians in certain telecommunications companies. The Telecom Restrictions also ensure that these companies are not otherwise controlled by non-Canadians.<sup>2</sup>
8. Significantly, the Telecom Restrictions apply only to those companies wishing to operate as a "Canadian carrier" – i.e., those which own or operate "transmission facilities". "Transmission facilities" expressly do not include equipment whose functions are limited to one or more of the switching of telecommunications, the processing of intelligence or the control of routing or similar aspects of the transmission of intelligence. Accordingly, the Telecom Restrictions do not necessarily apply to an entity like Vonage Canada, which owns significant network facilities, but nonetheless does not fall within this definition. Under the telecommunications regime, entities like Vonage Canada, that offer telecommunications to the public but are not classified as Canadian carriers, are classified as "resellers" instead.
9. Both in theory and practice, this division of the telecommunications industry into Canadian carriers, on the one hand, and resellers, on the other hand, has significant implications for the regulatory regime applicable to telecommunications. The prohibition on companies that do not meet the eligibility requirements under the Telecom Restrictions from owning certain types of facilities, and therefore from qualifying as a Canadian carrier, has in practice limited the role that any such companies can play in the industry and has limited the flexibility of all members of the industry to innovate freely to the benefit of Canadian users of telecommunications.
10. An example of this division that affects Vonage Canada and its customers directly, is the rules respecting the "porting" of telephone numbers, in other words, the ability of a

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<sup>2</sup> *Telecommunications Act* (the "Telecommunications Act"), section 16.

customer to keep his or her phone number in the event that he or she wishes to switch local telephone providers. The porting of numbers is only one element of the regime for local competition that has been extended to local VoIP services; however, it is a critical one. The ability of a customer to keep his or her phone number is central to maintaining a vigorous competitive market for local service – without it, a customer, in particular, a business customer – faces a significant cost of switching providers, i.e., the requirement to communicate its new telephone number to past and potential customers. The government has recognized that number portability is thus a crucially important element of telecommunications competition and has recently required even mobile providers to facilitate portability.

11. Yet under the current regulatory regime that separates Canadian carriers from resellers, only Canadian carriers have direct access to numbers and the ability to directly port numbers.
12. When it established the regime applicable to local VoIP services in 2005, the Canadian Radio-television and Telecommunications Commission (the “CRTC”) upheld and extended to local VoIP services the distinction between Canadian carriers providing local service (i.e., Local Exchange Carriers) and resellers it had created in its framework for local competition. Under that framework, it ruled that only LECs would have certain obligations and privileges, including access to numbers and the ability to directly port these numbers.<sup>3</sup>
13. While the CRTC has taken the position that VoIP resellers are not “unduly constrained” by reason of their lack of direct access to numbers or to the ability to port directly, the reality is that this type of distinction creates unnecessary and inefficient distortions in the market, by preventing entities who may be bringing innovative new services to the Canadian market from becoming full players in the industry, or requiring them to obtain critical elements for providing service from third parties rather than directly. This inevitably has an adverse impact on their flexibility to serve their own customers,

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<sup>3</sup> CRTC Telecom Decision 97-8, *Local Competition*.

increases their costs, and generally prevents Canadian customers from realizing the full potential benefit of competition from new and innovative services.

14. The distortionary effect of the Telecom Restrictions on the regulatory rules applicable to the telecommunications industry is an unintended consequence of the investment regime, and is inimical to the government's general goal of creating the conditions for Canadians to succeed in the new global economy that informs the current consultation. Moreover, these distortions contradict the goals enunciated by the government for the telecommunications industry specifically. These goals were set out in the recent Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives (the "Policy Direction").<sup>4</sup>
15. In the Policy Direction, the Minister of Industry directed the CRTC to, among other things, rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.
16. Of specific relevance is the Minister's direction to the CRTC to ensure the technological and competitive neutrality of regulatory measures to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers, and to increase incentives for innovation and investment in and construction of competing telecommunications network facilities, taking into account these same principles of technological and competitive neutrality.<sup>5</sup>
17. In its impact analysis statement, the government indicated the view that the Canadian telecommunications regulatory regime was falling behind, and was affecting Canada's productivity:

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<sup>4</sup> P.C. 2006-1534 December 14, 2006.

<sup>5</sup> Policy Direction, Section 1(b).

Canada has a history of leadership in innovation and deployment of telecommunications networks and services; however, as of late, Canada has not remained at the leading edge of technological development and deployment in important emerging technologies, such as wireless and broadband. At present, Canada is facing three key challenges: the telecommunications policy and regulatory frameworks, last modernized in 1993, have not kept up with the rapid pace of technological change; not all Canadians have access to advanced telecommunications networks; and Canadian firms have weak investment in information and communications technologies (ICTs), relative to our global counterparts. The current regulatory framework needs to be modernized if the Government wants to improve the productivity and competitiveness of the Canadian economy and ensure a strong, internationally competitive telecommunications industry.

The government further noted that the greater reliance on market forces mandated by the Policy Direction:

... will allow for greater realization of the benefits of free markets - increased competition and productivity, which in turn has the ability to produce benefits for consumers and businesses alike through greater innovation and investment.

18. As well, in April 2005, the government had appointed the Telecommunications Policy Review Panel to examine the policy and regulatory frameworks surrounding telecommunications, and to make recommendations that would help ensure that Canada has a strong, internationally competitive telecommunications industry, with world-class services for the economic and social benefit of all Canadians. On March 22, 2006, the Panel proposed 127 legislative, institutional and social recommendations to improve the effectiveness of the current framework. Significantly, the Panel also recommended the government pursue the lifting of the Telecom Restrictions.<sup>6</sup>
19. Ultimately, Vonage Canada believes the lifting of the Telecom Restrictions will foster greater reliance on market forces and help to remove any remaining economic distortions that prevent Canadian customers from realizing the full potential benefits of competition from new and innovative service providers in the telecommunications market place, and passing on these benefits in the form of productivity gains.

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<sup>6</sup> Final Report of the Telecommunications Policy Review Panel, March 2006, at pages 1-25 to 11-26.

## Conclusion

20. Vonage Canada supports the government's goal of enhancing the international competitiveness of Canadian business. In our submission, lifting the Telecom Restrictions, which limit foreign investment in telecommunications carriers and serve to distort the regulatory regime applicable to the sector, will enhance innovation and competition in the Canadian telecommunications industry, and with it, Canada's productivity.