

# Blakes Bulletin

## Communications

### Canadian Cabinet Reinterprets Foreign Ownership Rules

The federal cabinet today has overruled the Canadian Radio-television and Telecommunications Commission (CRTC) in the application of the control in fact test to Globalive Communications.

Globalive is a new entrant in the Canadian wireless market which successfully bid for various blocks of spectrum in Industry Canada's 2008 Advanced Wireless Spectrum Auction. Following the auction, Globalive's ownership structure was initially approved by Industry Canada but later rejected by the CRTC, primarily due to the fact that virtually all of Globalive's debt and most of Globalive's equity financing was held by Orascom Telecom, a strategic investor with wireless operations throughout the world. Globalive also has a strategic consulting agreement with Orascom that covers virtually all aspects of Globalive's operations.

In today's decision, the cabinet noted that the *Telecommunications Act* does not place limits on foreign investment in Canadian carriers and that the Act should be interpreted in a manner that encourages access to foreign capital, technology and experience. While the cabinet took great pains to stress that this ruling is based on the particular facts of this case, the cabinet's decision will undoubtedly become the blueprint for future investment by foreign operators and investors in the Canadian telecom market.

In order to operate as a Canadian carrier in the wireless market, a carrier must obtain Canadian ownership clearance from two separate regulators. In particular, a wireless carrier must satisfy both Industry Canada before being granted a spectrum licence under the *Radiocommunication Act* and the CRTC, before being allowed to operate as a Canadian carrier under the *Telecommunications Act*.

See our October 2009 [Blakes Bulletin on Communications: CRTC Denies Globalive's Entry into Wireless Market](#).

For further information on this and other communication-related matters, please contact a member of our [Communications Group](#).

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