

Blakes Bulletin

Communications

Liberalization of Foreign Ownership Restrictions for Canadian Satellites

On March 4, 2010, The Honourable James Flaherty, Minister of Finance, delivered the federal Conservative government's 2010 Budget. Of particular interest to the telecommunications industry is that the budget provides for the removal of the existing restrictions on the foreign ownership of Canadian satellites. However, in light of the March 3, 2010 Speech from the Throne, companies are now speculating about the Conservative government's strategy with respect to foreign ownership.

The Speech from the Throne created a heightened expectation in the telecommunications industry with the statement that: "our Government will open Canada's doors further to venture capital and to foreign investment in key sectors, including the satellite and telecommunications industries, giving Canadian firms access to the funds and expertise they need." This revelation hinted at the potential for a broad elimination of foreign ownership restrictions on telecommunications firms, including wireless providers, which would increase the access of Canadian firms to foreign capital and to allow them to participate more fully in foreign markets.

This was also fueled by the CRTC's Globalive decision in late 2009, which held that Globalive, a new entrant in the Canadian wireless market, was controlled in fact by non-Canadians and therefore not eligible to operate as a wireless carrier in Canada. This decision was overruled by the Federal Cabinet, which many in the industry believed was a sign of that the federal government was prepared to make changes to foreign ownership policy in this sector. (See our December 2009 [Blakes Bulletin on Communications: Canadian Cabinet Reinterprets Foreign Ownership Rules.](#))

The current regulatory framework in Canada places limits on the amount of foreign ownership permitted for all telecommunications common carriers. These limits include a requirement that at least 80% of a carrier's

board of directors must be individual Canadians and that Canadians must own at least 80% of its voting shares. Where the telecommunications carrier is held by a holding company, non-Canadians are permitted to hold up to 33-1/3% of the voting shares of that holding company. As well, in both cases, the carrier must not be otherwise controlled in fact by non-Canadians.

Despite the expectations created by the Speech from the Throne, Thursday's budget only made reference to the removal of restrictions as they relate to satellite operators but did not address the foreign ownership of other types of Canadian telecommunications carriers. This has caused a great deal of speculation as to why the government backed down from its initial, broader position.

It is possible that the government views changes to satellite ownership as a less controversial start to the liberalization process as there are relatively few players and they already compete on the international stage. However, starting the liberalization with satellite operators may have more to do with the fact that they do not hold broadcasting licenses. Liberalization of this narrow portion of the telecom sector therefore avoids the thorny issues regarding content and culture under the *Broadcasting Act*. These issues have frequently been raised as impediments to proceeding with foreign ownership changes, due to the convergence of telecom and broadcasting in the business models of many industry participants.

It is still not clear how or when the government will expand its policy to other sectors of the telecommunications industry but it is likely that the liberalization of foreign ownership restrictions for other sectors of the telecommunications industry will be introduced at some point, along the lines suggested in the Competition Policy Review Panel Report in 2008.

For any questions on the above, or on other areas in the Canadian communications market, please contact a member of our [Communications Group](#).

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