



The Final Report of the Competition Policy Review Panel -- a potential shocker post AWS auction?

LYA COMMENT – June 26, 2008

On Thursday June 26th, the Competition Policy Review Panel submitted its Final Report to the Honorable Minister J. Prentice on the status of Canada's competitiveness providing a number of recommendations as to how it can be improved for the benefit of Canadians at large and of Canadian businesses. The Panel recommends doing away with foreign investment restrictions in telecommunications and initially lifting the restrictions when a new telecom venture or existing firm being acquired represents up to 10% market share.

Recommendation #11 from the Report (p.49) is reproduced below (with emphasis added).

<The Panel recommends that:

*11. Consistent with the Telecommunications Policy Review Panel Final Report 2006, the federal government should adopt a two-phased approach to foreign participation in the telecommunications and broadcast industry. In the first phase, the Minister of Industry should seek an amendment to the Telecommunications Act **to allow foreign companies to establish a new telecommunications business in Canada or to acquire an existing telecommunications company with a market share of up to 10 percent of the telecommunications market in Canada.** In the second phase, following a review of broadcasting and cultural policies including foreign investment, telecommunications and broadcasting foreign investment restrictions should be liberalized **in a manner that is competitively neutral for telecommunications and broadcasting companies.**>*

At p. 47, the Competition Policy Review Panel report refers to the on going AWS auction and the implementation of a spectrum set aside to nurture new entrants by stating that it *"In this context, it appears incongruous to retain existing foreign investment restrictions that prevent Canadians from capturing the full benefits of these and other regulatory changes for telecommunications and broadcasting industries"*.

Although calls for speedy removal of foreign investment restrictions have been made before without much result, notably by the House of Commons Industry Committee (INDU) in 2003, the Report of the Competition Policy Review Panel endorses the view put forward in the Afterword of the Final Report of the Telecommunications Policy Review Panel of 2006.

If the Canadian government does more forward on this recommendation in a speedy manner, this could mean that some firms currently bidding in the auction such as Globalive, DAVE, M/C Partners and others would never have to comply with the current restrictions, considering that Industry Canada only validates the ownership structure of



designated licensees after the auction is completed and payment for licenses has been made.

On the other hand, many Canadian telcos and cablecos (who could meet the 10% rule) are integrated with both telecommunications and broadcasting assets and thus would not necessarily be able to benefit from the lifting of the investment restrictions without significant changes to their corporate structure or an interpretation of the Panel's recommendation to ensure that the 10% rule would also apply to broadcasting assets and operations.

Therefore, could it mean that this Recommendation, if followed through quickly, could yield two classes of wireless new entrants post AWS auction; those that could get access to additional foreign investment and those that could not? This could potentially fundamentally alter the structure of the industry, even more so than what can be envisaged now as we are in the (hopefully) last few days of the auction.

The pro increased competition message of the Competition Policy Review Panel is a positive one for anyone who does not believe that the increasingly duopolistic nature of Canada's telecommunications market is a welcome evolution. For the incumbent telcos and cablecos, it may mean increased pressure overall on different segments of their operations over the coming years. For the potentially soon to be wireless new entrants, it could become a major determinant of their future, possibly positive or detrimental, depending on who you are and how you foresee the evolution of your new wireless venture.

The views expressed herein are solely those of Lema-Yates Associates Inc.

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Please visit our web site at www.LYA.com or contact us at 514-288-6555.

Lema-Yates Associates Inc., 1200 de Maisonneuve Blvd. West, Suite 7F, Montreal H3A 0A1 CANADA