

Introduction

The Coalition for Competitive Telecommunications was established in 2003. Through its member associations¹, the Coalition represents more than 12,000 businesses and all school boards in the Province of Québec. Telecommunications services are a key input to the day-to-day activities of these organizations. Expenditures on telecommunications services comprise a significant portion of their operational budgets.

The Coalition's mandate is to advocate fundamental reform of the Canadian telecommunications regulatory regime as a means of strengthening the vitality and productivity of the Canadian economy. One of the primary reasons for its formation was a major concern that the CRTC was seriously underestimating the level of competition in the provision of telecommunications services to business and institutional customers. That concern continues to this day and has been significantly heightened by CRTC Decision 2006-15.

Business and institutional customers do not need the CRTC to have any involvement in defining or overseeing the terms of the contracts that they enter into for the provision of telecommunications services. Such involvement in fact hurts customers by introducing delay and uncertainty, limiting price competition and marketing, and stifling innovation. Yet the Commission steadfastly ignores the views of business customers.

One of the major findings of the Telecommunications Policy Review Panel (TPRP) was that the current telecommunications regulatory regime requires a drastic overhaul in light of technological and marketplace developments. The Coalition wholeheartedly agrees. CRTC Decision 2006-15 is further evidence of the need to begin fundamental regulatory reform immediately. If unchanged, the Decision would see unnecessary and unwanted CRTC regulation continue for the foreseeable future, with customers suffering as a result.

The reasons for directing the Commission to reconsider CRTC Decision 2006-15 are numerous. In what follows, the Coalition presents what it believes are the most significant ones.

The Decision directly contradicts the conclusions of the Telecommunications Policy Review Panel

After an extensive public consultation process, the TPRP submitted its findings and recommendations to the Minister of Industry on March 22, 2006. The Coalition filed comments with the Panel, as did many other business organizations. These groups represented all sectors of the economy and stressed that the current regulatory regime is antiquated, costly and excessively interventionist. While regulation was originally established to protect customers, the current regulatory regime has for some time actually been detrimental to the interests of business and institutional customers.

¹ Association of Canadian Acquirers; Association of Canadian Travel Agencies; Canadian Bankers Association; Canadian Manufacturers & Exporters; Canadian Newspaper Association; Insurance Bureau of Canada; Investment Dealers Association of Canada; Investment Funds Institute of Canada; Megatrade Communications Services Corporation; Société GRICS (Société de gestion du réseau informatique des commissions scolaires); The Canadian Depository for Securities Limited.

The Coalition and other business groups were very pleased to see that the Panel concluded that the telecommunications regulatory regime was in need of major reform to reflect the fact that Canada has one of the most competitive telecommunications markets in the world. The Coalition, among others, has urged the Government to move expeditiously to implement the recommendations of the Panel.

CRTC Decision 2006-15 sets out a new and additional layer of comprehensive, time-consuming micro-management of the traditional telephone companies by the CRTC. It is a further step down the path of unnecessary and costly regulation, which was condemned by the TPRP. The Coalition appreciates that the Government has yet to announce its response to the Report of the TPRP. However, given the widespread support for the Panel's recommendations in the business community and the recent comments of the Minister of Industry discussed in the following section, the Coalition submits that CRTC Decision 2006-15 should not be allowed to stand.

The Decision conflicts with the spirit of the Cabinet's Order-in-Council regarding the CRTC's VoIP Decision

On May 5, 2006, the Governor in Council referred back to the CRTC for reconsideration Telecom Decision 2005-28, *Regulatory Framework for Voice Communications Using Internet Protocol*. Among other determinations, that Decision required only the traditional telephone carriers' local exchange voice services using VoIP technology to be subject to extensive economic regulation by the CRTC. All other providers of VoIP services were given complete freedom and flexibility to price and promote their services. In referring the decision back to the CRTC, Minister Bernier stated: "...the CRTC will be able to reconsider the Decision in light of the detailed work recently completed by the Telecommunications Policy Review Panel".

CRTC Decision 2006-15, like the Commission's VoIP decision, is entirely inconsistent with the recommendations of the TPRP. It ignores the evidence of intense competition for local services and builds a framework for forbearance based on flawed economic analysis that will result in little, if any, forbearance occurring in the foreseeable future. Even if forbearance were to occur, the CRTC has established a post-forbearance regime that will see significant regulation of the local wireline services of traditional telephone companies continue indefinitely

As noted, Minister Bernier instructed the Commission to reconsider its VoIP decision in light of the TPRP's Report. One of the most telling findings in the Report is that "in spite of the fact that Canada has one of the most competitive telecommunications markets in the world, we continue to have one of the most detailed, prescriptive and costly

regulatory frameworks".² Since the VoIP decision is to be reconsidered in light of this finding, CRTC Decision 2006-15 should also be sent back to the Commission for reconsideration for the same reason. As currently written, the Decision will lead to a further and unwarranted extension of Canada's "detailed, prescriptive and costly regulatory framework.

² Telecommunications Policy Review Panel Report, page 1-22.

Minister Bernier also noted in referring the VoIP decision back to the CRTC that: “in order to encourage innovation and productivity, it is imperative that regulatory measures interfere as little as possible with competitive market forces”. Since its formation, the Coalition has emphasized that the current telecommunications regulatory regime is hurting Canadian businesses and institutions. More than ever before, they are dependent upon telecommunications services. Despite widespread and intensive competition, however, the traditional telephone companies are severely restricted in how they can market and price their services, and bring new services to market. With suppliers of such critical inputs as telecommunications services subject to major constraints, customers suffer. New productivity-enhancing services and better pricing are slower to reach customers thereby negatively impacting their competitiveness. If CRTC Decision 2006-15 is not sent back to the Commission for reconsideration, innovation and productivity will continue to suffer needlessly since competitive markets for local business telecommunications services already exist, or very shortly will, in most areas where businesses operate.

The Decision incorrectly excludes wireless-only customers

An important initial step in analyzing the effectiveness of competition is to define the products that are in the market to be examined. The CRTC made the right decision in concluding that residential local services are not in the same product market as business local services. However, it made a critical error in finding that customers that use wireless only services are not part of either the residential or business markets.

For years there have been numerous reports that have extensively documented the rising trend of residential customers abandoning the use of telephone lines and using wireless service only. When customers reveal through their behaviour that they are substituting one product for another, it is clear that these products are in the same product market. Most recently, Statistics Canada published data showing that, as of December 2005, 4.8% of all Canadian households used wireless service only. In major urban areas, the percentage of wireless-only households is much higher, with Vancouver the highest at 9.6%.

No credible economic analysis of the market for residential local telephone service would exclude those households that have chosen to use wireless service only. In the proceeding that resulted in CRTC Decision 2006-15 even the cable companies, who are major competitors to the telephone companies in the residential market, stated that wireless only households should be part of the product market.

Although there is much less data available on the extent that businesses have substituted wireless service for wireline service, there is no doubt that this has happened. In the case of small businesses, this development is readily apparent when one deals with suppliers that provide services to homeowners. It is increasingly common to find that these businesses use wireless only. For instance, for a small supplier of landscape services who is most often at a job site, it makes sense to subscribe to wireless since wireless provides service at the job site. Adding a wireline service to the business adds extra cost and may not be necessary. The result of this simple cost-benefit analysis by the landscaper could result in a wireless only business customer.

For medium and large businesses, it is not a case of a company completely substituting wireless service for wireline. Rather, it involves replacing some lines with wireless only. In many cases, businesses are reducing costs by cutting back on the building space that they occupy. If a business wants its sales people to spend the majority of their time with customers at the customers' locations, they can reduce the floor space needed for sales people and in doing so reduce the number of telephone lines that previously were used for the sales force, and assign them wireless phones instead.

By erroneously excluding wireless only households from the calculation of market share, the CRTC has made it more difficult for a telephone company to meet the 25% share loss benchmark set out in CRTC Decision 2006-15. The Vancouver situation referenced earlier provides a good illustration of this. In Vancouver, 9.6% of the households have decided to use wireless service only rather than TELUS's residential wireline local service. In the most recent data on shares of lines, TELUS's competitors have approximately 5% of the residential lines in Vancouver. In the real world, therefore, wireless is a more attractive competitive alternative to the TELUS wireline service than competing wireline services, but in the CRTC's world, this actual behaviour of consumers is ignored. Before it can obtain forbearance in Vancouver, TELUS has to see wireline competitors serving at least 25% of the residential lines. But if wireless only households continue to grow rapidly, the wireline segment of the market will shrink and TELUS may not be eligible for forbearance for years to come, if ever.

The Decision sets the market share loss requirement too high

In addition to making a critical error in excluding wireless only customers from the product market, the Commission ignored the overwhelming weight of economic evidence and its own precedents, and imposed a requirement that competitors must serve at least 25% of the lines in a geographic market before the telephone company serving that area is eligible for forbearance.

Two relevant Commission precedents were ignored in its decision even though they received considerable attention in the course of the proceeding and have proved successful in the markets where they have been applied. The CRTC did not even refer to these precedents the Decision and hence provided no insight into why they were used in other market segments, but were not used in this instance. Avoiding any reference to these precedents lends credence to the concern that the Commission's selection of the 25% share loss was arbitrary and unsupported by economic analysis or practical experience.

The first Commission precedent that is relevant came into effect in 1998 for the major cable companies. The Commission concluded that it would deregulate the rate for basic cable service in a market in which 5 per cent of customer locations no longer received cable service. Virtually all of the cable systems to which this test has applied have now been deregulated for several years. By all accounts, competition has prospered under this regime. Certainly the Commission itself has never suggested that this approach was a mistake and it has never considered re-regulating the cable companies. Yet the Decision is silent on why this successful precedent was rejected.

The second Commission precedent that has been effective, but was ignored in the Decision, was the framework for forbearance that the Commission established for inter-city private lines. For this market segment, the Commission requires that a competitor to the incumbent telephone company must build facilities on the route and offer to customers a minimum level of service before forbearance is granted. No calculation of market share is required. This framework has been in place since 1999 and has been successful. Competitors have not applied to change this framework. Indeed, they have continued to expand into new routes knowing that, in doing so, deregulation will result. Here again, however, the Decision provides no explanation as to why this framework is not applicable to local telephone service.

The Commission also ignored much of the economic testimony filed in the proceeding on this issue, including that of the Competition Bureau. The Bureau and other economists emphasized that market share measured in terms of customer purchases is an incorrect measure of market power in an industry

characterized by major capital investments, such as telecommunications. In such situations, these parties pointed out that the correct economic analysis involves examining shares of capacity that competitors own and operate and that can be used to serve customers in the market. The Commission ignored all of these experts.

Similarly, the Competition Bureau and other economic experts stressed that market share by itself is not a sufficient indicator to determine whether a company has market power.

In particular, they noted that in the case of local telephone service competition, it is important to recognize that a high market share is first of all a legacy of what was once a monopoly created by government regulation. Moreover, the Bureau highlighted that if competitors have deployed extensive capital investments to serve customers in a market, they are committed to the market and the incumbent cannot exercise market power despite a very high market share because the competitor has a network in place that can serve any customer that wants to switch from the incumbent. This is exactly the situation in local telecommunications where cable companies and other service providers have invested billions of dollars in telecommunications networks and are ready to serve customers that for whatever reason want to stop receiving service from the telephone company. As in many areas of CRTC Decision 2006-15, the Commission is completely silent on why it chose to ignore this widely accepted economic analysis.

Conclusion

Since 2003, the Coalition has been actively working to modernize Canada's telecommunications regulatory regime to reflect the competitive realities of today's telecommunications marketplace. Business and institutional customers know first-hand the intensity of competition that exists in the market for business local telecommunications services. The CRTC, however, continues to regulate this market intensely. Regulation was originally put in place to protect customers from the monopoly power of the telephone companies. They no longer have that power over business customers. CRTC regulation has not been required for some time and is in fact hurting business customers by denying them access to better pricing and more innovative and responsive suppliers.

Telecommunications services are critical inputs to businesses. If telecommunications providers are severely constrained in how they can respond to customer needs, businesses are missing out on important opportunities to improve their productivity, offer new or enhanced services and improve their competitive position. CRTC Decision 2006-15 is the latest example of a pervasive framework of intrusive, costly and unnecessary regulation that was so justifiably criticized by the Telecommunications Policy Review Panel. As the Panel concluded, Canada is one of the most competitive telecommunications markets in the world, but our regulatory framework is built on the erroneous assumption that competition is virtually non-existent. For all of the reasons provided above, CRTC Decision 2006-15 should be sent back to the Commission for reconsideration. The Coalition further requests that it be referred back to the Commission as expeditiously as possible.