

Breaking the shackles on Canada's telecommunication industry

by **Mark McGinley**

The antiquated methods of the Canadian Radio-television Telecommunications Commission (CRTC) and the *Telecommunications Act* are constraining competition in Canada's telecommunications industry. Through the CRTC's increasingly archaic and inappropriate responses to the rapidly changing technological environment, and the *Telecommunication Act's* severe restrictions on foreign control in domestic telecommunication providers, Canada's telecommunication industry is losing its competitive edge (Sinclair et al., 2006). This is especially true in the two most important and fastest growing sectors of the telecommunications industry: wireless and broadband services. In order to reverse this trend and reaffirm Canada's position



as a world leader in telecommunications, it is crucial that Canada significantly curtails the scope and authority of the CRTC. Further, the *Telecommunications Act* needs to be amended through substantial liberalization of the restrictions on foreign control of telecommunication providers. The time has come for Canada to demand an end to the excessive and unnecessary regulations and legislative restrictions that have been crippling competition in one of Canada's most important industries.

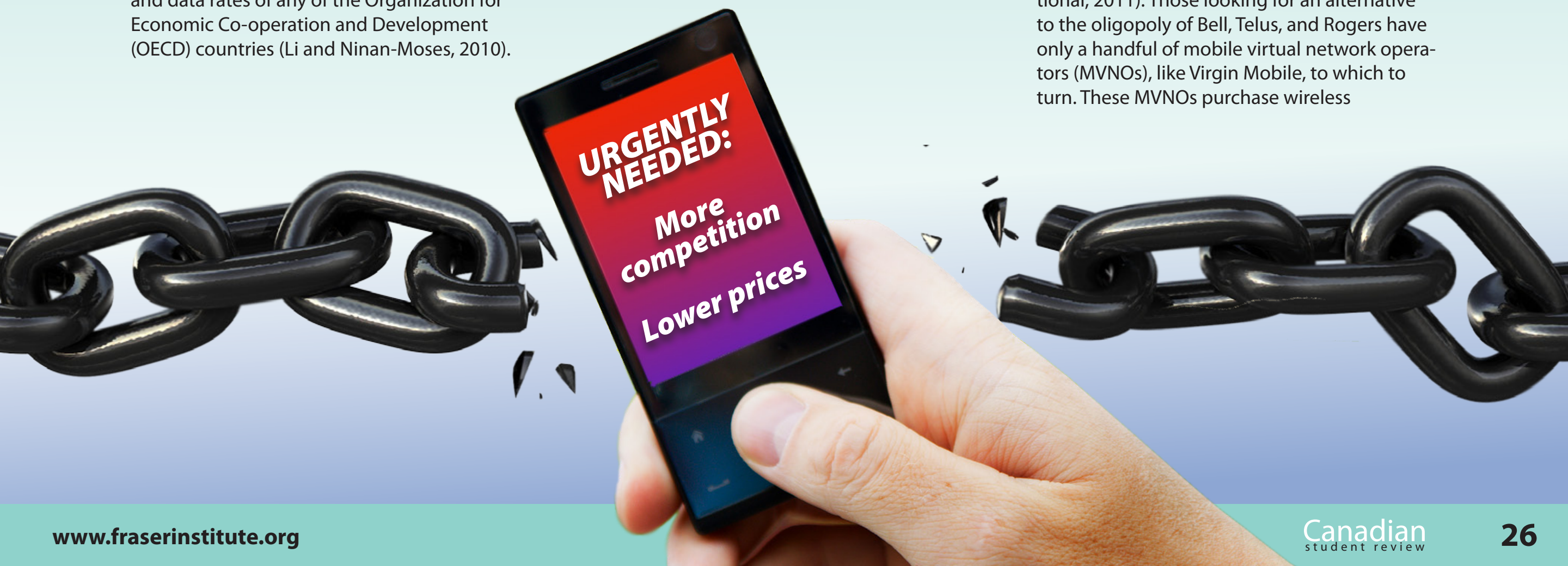
The need for change

Canada has the most expensive wireless voice and data rates of any of the Organization for Economic Co-operation and Development (OECD) countries (Li and Ninan-Moses, 2010).

At the obscene cost of \$67.50, Canada boasts the highest minimum monthly cost of a complete cell phone package, including voice, data, and text, of any of the OECD countries (Li and Ninan-Moses, 2010). Further, Canada ranks second only to Mexico in OECD countries with the lowest number of wireless subscribers per 100 inhabitants (Sinclair et al., 2006). Unfortunately, this trend is not confined to the wireless sector. In 2003, Canada ranked second among OECD countries in the number of broadband subscribers per 100 inhabitants; two years later Canada dropped four spots to sixth position (Sinclair et al., 2006). We are lagging behind

Japan, South Korea, and the United States in rolling out fiber optic cable and in the development of next-generation networks (Sinclair et al., 2006).

High prices for wireless services and the lagging development of our broadband and next-generation wireless networks are but a symptom of a larger and more systemic issue—a lack of healthy competition in the telecommunications industry. In the early 1990s, there were fifteen wireless competitors in Canada, but now there are only three major network providers who control over 90% of the wireless market by revenue (Business Monitor International, 2011). Those looking for an alternative to the oligopoly of Bell, Telus, and Rogers have only a handful of mobile virtual network operators (MVNOs), like Virgin Mobile, to which to turn. These MVNOs purchase wireless



Turn regulation over to the Competition Bureau



spectrum at wholesale prices, plus a CRTC approved markup, from the major three network operators (Pach, 2006), effectively ensuring the propagation of the oligopoly. Presumably, the network operators would never sell enough of their excess spectrum for these MVNOs to ever pose a serious threat.

Clearly, something is very wrong with the Canadian telecommunications industry, and substantive reform of the telecommunications policy framework is urgently needed if we are to reverse these trends.

Reform of the CRTC

The CRTC, a regulatory body that, without a hint of irony, advertises itself as a public interest-oriented agency, began regulating telecommunications in 1976 when it assumed authority from the Canadian Transport Commission (Doern, 1997). At this time, the telecommunications industry was radically different from the industry of today; natural monopolies were commonplace, derived from former crown corporations now privatized as a result of recent deregulation. In this market the CRTC's price regulation and market interference made sense and appropriately prevented the abuse of market power. However, the market has changed and the same policies that once protected consumers are now punishing them. The CRTC needs to be reformed and its role reduced to ensure that competition issues

are heard by an administrative body with the institutional expertise to properly adjudicate them: the Competition Bureau.

The telecommunication industry does not require regulation that is *sui generis*, that is, regulation unique to the sector (Lacobucci and Trebilcock, 2007). Accordingly, regulation of the telecommunication industry should be transitioned to Canada's general competition regulator, the Competition Bureau. This would solve a number of problems inherent in the overlapping authorities conferred by legislation on the CRTC and the Competition Bureau, bringing Canada in-line with the best practice models identified by the Telecommunications Policy Review Panel (TPRP) (Sinclair et al., 2006).

Unlike the CRTC, the Competition Bureau has the authority under the *Competition Act* to make *ex-post* regulations, regulations that respond to a problem as opposed to *ex-ante* regulations designed to prevent a problem (Department of Justice Canada, 1985). This power would allow the Competition Bureau to step in and apply *sui generis* regulations only in the event of a market failure, thereby increasing market freedom.

Shifting regulatory responsibility for telecommunications from the CRTC to the Competition Bureau better aligns these government agencies with their core competencies, promoting more informed decision-making. Such a shift

could relieve the government from having to correct ill-conceived decisions in the realm of telecommunications; the Conservative government has overruled CRTC decisions four times in the last five years, evidencing the CRTC's inability to properly regulate on competition issues (Cowan, 2011).

The shift of authority from the CRTC to the Competition Bureau would ensure that the telecommunications industry would be regulated to the minimum extent necessary as ordered by the Governor-in-Council in 2006 (Government of Canada, 2006). Under s. 34 of the *Telecommunications Act*, the CRTC has the power to hold back from regulating a service where competition is sufficient to protect users from abuse of market power (Department of Justice Canada, 1993). However, it is rarely the case that a bureaucracy voluntarily refrains from exercising its power (Lacobucci and Trebilcock, 2007), and indeed the CRTC has demonstrated an intention to consolidate rather than relinquish its regulatory authority. In 2008, a document released by the CRTC entitled *A Competitive Balance For The Communications Industry* recommended that Canada's broadcasting, telecommunications, and radio-communication industries be governed by a single enactment over which it would preside as the ultimate authority (CRTC, 2008). This recommendation is in direct opposition to the recommendations advanced in the TPRP final report, heralded as the most comprehensive overview



There are numerous benefits to foreign, direct investment

of Canada's telecommunication sector in over 30 years (Business Monitor International, 2010). Since the CRTC appears unwilling to voluntarily cede its authority to preside over competition issues, external action is required to vest the authority with the agency that is the most competent to wield it.

Liberalization of foreign direct control restrictions

Canada is one of a small number of OECD countries that explicitly restrict foreign control

of telecommunication providers, boasting one of most restrictive and inflexible set of rules regarding foreign investment in the telecommunications sector (Sinclair et al., 2006). Foreign control of domestic telecommunication providers is restricted though the combination of two separate pieces of legislation—the *Telecommunications Act*, which prevents foreign ownership of more than 20% of a telecommunication provider's voting shares, and the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*, which prevent foreign control of more than one-third of a holding

company with a stake in a telecommunications provider. To foster a healthy, competitive environment, these restrictions need to be significantly reduced, if not removed entirely.

There are numerous benefits to foreign direct investment (FDI), including increased access to capital, the transfer of knowledge and expertise, and the development of new, value-added offerings (Business Monitor International, 2011). Moreover, FDI generally reduces the cost of capital in an industry, and the Canadian telecommunications industry is no exception. A 2003 study by Network Research Inc. estimated that foreign ownership restrictions increase the cost of capital by \$1.06/month per subscriber for established telephone companies, and \$2.61/month per subscriber for Canadian cable companies (Network Research, 2003). Liberalizing these restrictions would infuse liquidity into the market, and allow new entrants access to cheaper capital.

In addition to the financial benefits, there are several other benefits accompanying liberalization of foreign control restrictions:

[the] liberalization of the restrictions on foreign investment in Canadian telecommunication carriers would increase the competitiveness of the telecommunication industry, improve the productivity of Canadian tele-



**Liberalization
will spur
competition**

communication markets, and generally be more consistent with Canada's open trade and investment priorities (Sinclair et al., 2006: 14).

The TPRP is not the only advisory board to come out against foreign control restrictions; the Standing Committee on Industry, Science, and Technology (INDU) advocated not just for the liberalization, but the outright removal, of all Canadian ownership restrictions in the telecommunications industry (INDU, 2003). Liberalization of these restrictions is a more realistic goal than outright removal given the political opposition likely to rise against such a proposal. Such liberalization will spur competition in telecommunications industry, and allow Canada to excel in the global economy alongside the vast majority of the OECD countries.

Conclusion

Increasingly out-dated and inappropriate regulations have shielded the Canadian telecommunication industry from vigorous competition for too long. The CRTC, in its desire to protect competition, has failed to discern the fairly straightforward distinction between protecting competition and protecting competitors. By inexplicably favouring the latter at the expense of the former, the CRTC has failed, and it is the Canadian consumer who must bear the weight of that failure—a failure kept fresh through a monthly reminder found in the mailboxes of

those lucky enough to afford cell phones.

Despite the laudable efforts of the Conservative government in overturning some of the more egregious offenses of the CRTC, the legislature is not without blame in the creation of Canada's telecommunication oligopoly. The *Telecommunications Act* has insulated the telecommunication industry from competition, allowing the three major providers to grow fat from the proceeds of a decade long gouging of the Canadian consumer. The telecommunications industry is extremely capital-intensive, and liberalization of foreign control restrictions would inject the financing needed to build the network infrastructure and acquire the wireless spectrum rights that would allow legitimate competition with Canada's telecommunication oligopoly. Let us cast off the legislative and regulatory restrictions shackling competition in the telecommunications industry and allow Canada's telecommunication industry to grow stronger and more vibrant in the face of vigorous competition.

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