



ACTRA



Writers Guild of Canada

January 11, 2008

Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, Ontario
K1A 0H5

Dear Sir or Madam,

**Re: WGC – ACTRA response to the Competition Policy Review Panel’s
consultation paper, *Sharpening Canada’s Competitive Edge***

This document constitutes the submission of the Writers Guild of Canada (WGC) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in response to the Competition Policy Review Panel’s consultation paper, *Sharpening Canada’s Competitive Edge*.

The WGC represents more than 1,800 professional screenwriters across Canada who create the distinctly Canadian entertainment we enjoy on television, movie screens, radio and computers, and includes dramatic television series and movies, feature films, documentaries, animation programs, comedy and variety series, children's and educational programming, radio drama, corporate videos and digital media productions. The WGC negotiates and administers collective agreements with independent producers and broadcasters as well as advocating policies which benefit its members and foster the Canadian cultural industries.

ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for more than 60 years. ACTRA bargains collectively on behalf of 21,000 performers. In addition, ACTRA represents the interests of thousands of singers and musicians through the work of the ACTRA Performers’ Rights Society, Sound Recording Division, that collects and distributes royalties from the public performance of musical recordings.

ACTRA and WGC members have a vital stake in Canada’s cultural future. Performers and writers benefit professionally when work opportunities are more abundant. Our members believe that Canada needs a strong Canadian presence wherever entertainment and information services are created and however they are provided to Canadians. We believe in our own creativity and our ability to tell

and perform our own stories. We also believe that a healthy democracy needs diversity in programming choices and editorial opinions. It is these beliefs that motivate ACTRA and the WGC's participation in the current proceeding.

The Government of Canada established the Competition Policy Review Panel to examine the *Competition Act* and the *Investment Canada Act* and review Canada's competition policies and its framework for foreign investment policy. The review is to include an examination of Canada's sectoral restrictions on foreign direct investment as well as the competition and investment regimes of other jurisdictions to assess reciprocity between their rules and Canada's.

The task of the Competition Policy Review Panel is to provide recommendations to the government on how to enhance Canadian productivity and competitiveness, and "reflect a competitive environment that is global in scope and typified by fierce competition between national jurisdictions seeking to attract investment, people and economic opportunities," in the belief these are keys to generating wealth as well as creating jobs and opportunities in a changing global economic environment. This task is in keeping with Industry Canada's mission to foster a growing, competitive, knowledge-based Canadian economy.

Since the Review Panel has chosen to examine Canada's sectoral investment regimes, the present submission focuses on broadcasting and the other cultural industries related to audio-visual production, distribution and exhibition, the industries to which WGC and ACTRA members contribute. The document responds to the questions in the Review Panel's consultation paper, *Sharpening Canada's Competitive Edge*, that are relevant to these concerns. The Review Panel's questions have been consolidated under each section heading.

As a part of its consultation process, the Review Panel has stated its intention to hold a series of regional and thematic consultations in selected cities across Canada with interested parties in January and February 2008. The WGC and ACTRA look forward to the opportunity to meet with the Review Panel concerning the issues outlined in the present submission.

BACKGROUND

Canada was the first country to ratify and join the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions that came into force on March 18, 2007. In December 2007, Canada hosted the inaugural meeting of the Convention's Intergovernmental Committee. Among other things, the UNESCO Convention recognizes that television programs, feature films, music and other cultural goods and services convey identities, values and meanings, and should not be considered solely in regard to their commercial value. The Convention reaffirms the right of governments to take specific measures to foster diverse

cultural expressions and commits parties to work together to promote the Convention's objectives and principles in other international arenas.

Canada has been a leader in developing and promoting the UNESCO Convention because its core provisions form an integral part of Canadian cultural policy. The principles and objectives of the Convention are reflected in Canadian statutes, regulations and policies related to the cultural industries. For example, Section 3 of the *Broadcasting Act* (Broadcasting Policy for Canada) establishes that the Canadian broadcasting system should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." In other words, the objectives of Canadian broadcasting policy are multiple and economic prospects are one consideration among several.

Cultural sovereignty is a goal which may at times be at odds with an open market, foreign investment and international competitiveness. Bigger, more competitive companies funded by foreign investors may benefit the companies' shareholders but such companies are unlikely to take cultural objectives into consideration. If unconstrained by cultural objectives, such companies would broadcast nothing but inexpensive U.S. programming and Canadian radio stations would air nothing but American top 40 music. The WGC and ACTRA believe that policies that support Canadian cultural policy objectives must be not only maintained but strengthened.

This view has been reconfirmed by the current Chairman of the Canadian Radio-Television and Telecommunications Commission (CRTC), a former Commissioner of Competition, head of the Competition Bureau of Canada and Justice of the Federal Court of Canada, who says that the *Broadcasting Act* has two overriding objectives: the predominance of Canadian content and full access to the system. In the view of the Chairman, "obviously, market forces alone cannot be relied upon to advance these objectives, so regulation will always be necessary... it should be clear that we will never compromise the central role of the broadcasting system: delivering Canadian content, expressing the diversity of our country, and allowing access to Canadians both as audiences and as participants."¹

This judgment coincides with the view of a former Canadian Ambassador for trade negotiations who was closely involved in the negotiations leading to the Canada-U.S. Free Trade Agreement (FTA) of 1987 and who writes:

In its starkest terms, the Canadian cultural producer is forced to choose: sell to the American mass market by completely de-Canadianizing the work, or try to speak to a Canadian reality – and go broke in the process. This was not and is not a choice any self-respecting country should impose upon its creative talents. This has nothing to do with "elitism"

¹ Notes for an address by Konrad von Finckenstein to the International Institute of Communications, Canadian Chapter Conference, December 4, 2007.

versus consumer choice, as the chief propagandist for the movie cartel, Jack Valenti, would have you believe. It has everything to do with the intrinsic inability of the market to produce results compatible with fundamental national interests.²

CANADA IN A GLOBAL CONTEXT

Should Canadians be concerned about foreign takeovers of Canadian firms? How important is domestic control and ownership of Canadian business activities to Canada's economic prospects and ability to create jobs and opportunity for Canadians? How important are company headquarters to Canada's economic prospects and ability to create jobs and opportunity for Canadians?

The WGC and ACTRA believe the Canadian government should continue to prevent the foreign takeover of Canadian firms operating in Canada's cultural industries, except as currently permitted. In the past, particularly during wartime, there have been national security concerns that have led Canadian governments to treat certain cultural activities, including broadcasting, as a vital element in Canadian military defence strategy. Today, national cultural sovereignty is an objective of government policy and Canadian ownership of broadcasting and other cultural industries is an important contributing element to the cultural sovereignty of the nation.

Government policy should continue to reflect the wishes of Canadians in regard to the foreign takeover of Canadian firms. Most Canadians think Ottawa should help build a strong Canadian culture. According to a recent Harris/Decima poll, 82% of Canadians consider that it is very or somewhat important for the Canadian government to work to maintain and build a culture and identity distinct from the United States. Most Canadians (66%) believe broadcasting and communications are too important to our national security and cultural sovereignty to allow foreign control of Canadian companies operating in the sector. These results are drawn from a telephone omnibus poll on media ownership that was conducted in November 2007 on behalf of ACTRA, the Communications, Energy and Paperworkers Union of Canada and Friends of Canadian Broadcasting.³

Compared to non-Canadian owners, Canadian owners are more sensitive to Canadian cultural reality and government cultural objectives and are more likely to conduct themselves in accordance with those objectives. Canadian owners generally share the cultural policy goals of maintaining a distinct culture through the creation and distribution of a wide variety of Canadian cultural product. Moreover, should the Canadian government, or one of its agencies, determine

² Gordon Ritchie, *Wrestling with the Elephant: The Inside Story of the Canada-U.S. Trade Wars*. Toronto: Macfarlane Walter & Ross, 1997. p.218.

³ http://www.actra.ca/actra/control/press_news1?id=10634

that private sector firms should be subject to certain policies and regulations so as to give effect to the wishes of Parliament or Canadian society, the potential leverage over a Canadian owner is much greater than the leverage over a non-Canadian owner, particularly a non-resident with headquarters outside of Canada.

The nationality of ownership affects both respect for Canadian law and the exercise of good Canadian corporate citizenship. Respecting Canadian law means conforming to the letter of the law and includes resisting active or passive efforts of foreign governments to seek the extraterritorial exercise of their laws and policies. Exercising good Canadian corporate citizenship refers to the desire to fulfil the objectives and respect the spirit of the law, not merely to comply with its letter. In broadcasting, for example, the WGC and ACTRA are concerned that foreign-owned firms, particularly U.S. firms, might not understand the nuances of Canadian cultural law and policy. There is the potential to misinterpret the role of firms involved in the cultural industries, including broadcasting, in furthering cultural objectives.

In an increasingly globalized economy, the importance of culture has been recognized by provisions in international trade agreements that allow Canada to continue to support its cultural industries. For example, Canada's cultural industries were exempted from the Canada-U.S. Free Trade Agreement (FTA) and this exemption was extended to the North American Free Trade Agreement (NAFTA). However, Chapter 11 of the NAFTA provides U.S. and Mexican investors with the right to sue the Canadian government and seek compensation for our government's actions, including those involving regulatory agencies such as the CRTC, if such investors believe their rights have been violated under the NAFTA. In at least one case filed under Chapter 11, the cultural industries exemption has been challenged. ACTRA and the WGC are concerned that such cultural industries exemptions, if they are accompanied by a right of retaliation, may not provide adequate protection against a foreign-owned firm that wishes to challenge Canadian cultural law or policy and pressure its home government to seek redress from Canada.

There are at least three areas in which a foreign presence in the Canadian film and television sector has undermined the pursuit of Canadian cultural policy objectives or Canada's economic prospects.

(i) Theatrical Film Distribution

U.S. firms intervened in domestic Canadian cultural policy in the late 1980s when U.S. lobbyists convinced the Canadian government to put an end to attempts by the Minister of Communications, Flora MacDonald, to introduce legislation to further Canadian objectives in domestic theatrical film distribution and exhibition, including a Canadian presence in Canadian movie theatres.

The concentration and foreign ownership of theatre ownership together with the control that U.S. distributors exert over exhibitors in Canada has been a longstanding problem for Canadian cultural policy.⁴ The major U.S. film studios insist on acquiring North American rights for films they intend to distribute in the United States, effectively preventing Canadian distributors from distributing these films in Canada. With control over blockbuster films, the U.S. distributors can dictate to Canadian exhibitors what films will be exhibited and for how long, effectively blocking from the screens small independent films, including Canadian films. In 1987, Flora MacDonald announced her intention to introduce legislation to enable Canadian distributors to distribute foreign independent (i.e. non-studio) films domestically. The proposed legislation would have limited foreign distributors in Canada to distributing only those films either that they produced or for which they had acquired worldwide rights and would have reinforced existing regulations that prevent new foreign owners from entering the Canadian theatrical film distribution business. MacDonald's proposed legislation was withdrawn as a result of the lobbying of the Motion Picture Association of America.⁵

(ii) Television Advertising

Commercial advertising is a powerful cultural instrument, a means of transmitting a nation's values, traditions and lifestyle to future generations and new citizens. Since advertising typically concerns common household goods and services, advertising can provide powerful reinforcement to Canada's social and cultural identity.

The globalization of trade and investment, including the takeover of Canadian advertising firms, has had a negative impact on the production of Canadian television advertising spots. "While statistics are hard to come by, the industry estimates that when we entered the 1990s we produced here more than 80% of the commercials broadcast by Canadian television stations. By the end of the decade, that had fallen to 50%."⁶ Now, virtually all television spots for generic consumer products are produced outside of Canada. Campaigns for these non-country specific products, such as household goods and automobiles, are developed, directed and produced by advertising agencies in New York and Chicago. One of the contributing factors to this phenomenon appears to have been the acquisition of Canadian advertising agencies by large multinational corporations.

⁴ See Government of Canada, *Canadian Cinema: a solid base*. Report of the Film Industry Task Force (co-chaired by Marie-Josée Raymond and Stephen Roth), November 1985.

⁵ See Allan Gotlieb, *The Washington Diaries: 1981-1989*. Toronto: McClelland & Stewart, 2006.

⁶ Rupert Brendon, President, Institute of Communications and Advertising, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002, cited in House of Commons, Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*. June 2003, p.321.

(iii) Television Program Production

As members of the Coalition of Canadian Audio-visual Unions (CCAU), the WGC and ACTRA opposed the recent application filed with the CRTC by CanWest MediaWorks Inc. (CanWest), on behalf of Alliance Atlantis Communications Inc. (Alliance Atlantis), seeking authority to transfer the effective control of Alliance Atlantis' broadcasting companies to CanWest.⁷ We opposed this application because its approval (now confirmed) will permit the U.S. investment firm, Goldman, Sachs & Co., to acquire a 64% equity interest in a new consolidated company consisting of the Alliance Atlantis broadcasting companies and CanWest's television assets. Consequently, Canadian-owned CanWest will acquire an equity interest of only 36% in the new company.

In light of Broadcasting Decision CRTC 2007-429, *Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc.*, Canada's existing foreign ownership policies no longer appear to be effective in broadcasting. In this case, non-Canadians will acquire the overwhelming majority (64%) of the future net returns flowing from the new consolidated company. Everything that CanWest will do in managing and running the day-to-day operations of Alliance Atlantis and CanWest over the next few years will be conditioned by the overriding strategic consideration that CanWest will not become the majority owner of Alliance Atlantis and CanWest's existing broadcasting operations unless it succeeds in maximizing cash flow, minimizing debt, and achieving Goldman, Sachs & Co.'s target rate of return. In this sense, Goldman Sachs & Co. will have *de facto* control over the new incarnation of CanWest in violation of existing government policy.

Goldman Sachs will inevitably pressure CanWest to use product with which Goldman Sachs is familiar (i.e. domestic U.S. programming). It is cheaper to license U.S. programs than to bear the cost of creating original Canadian programs targeted to the domestic market. The focus of Goldman Sachs will be on its financial return and the recoupment of its investment by reducing costs via recourse to cheap U.S. programming that will generate revenue around the world. There will not be no interest in creating high quality Canadian product for Canadian audiences on the part of Goldman Sachs.

As Michael MacMillan, the Executive Chairman of Alliance Atlantis at the time, observed before the House of Commons Standing Committee on Canadian Heritage in December 2002, ownership of broadcasting undertakings "has an importance well beyond most commodities. It's not a commodity, it's a cultural influence, and that's why we are here to talk about it and not about cups and saucers and pens and pencils. Ownership has a great deal of influence, I believe, over what is produced and why." [Emphasis added.]

⁷ For the purposes of this intervention, the CCAU represented ACTRA, the Directors Guild of Canada, the National Association of Broadcast Employees and Technicians, Local 700 CEP, the WGC, and the Communications, Energy and Paperworkers Union of Canada.

Foreign owners will inevitably want to use product they are familiar with (ie U.S. programming) and will want even the domestic product to reflect the values and interests of the foreign culture. It is always cheaper to license foreign product than to share the cost of creating domestic product which has been created primarily with the domestic market in mind. A foreign owner's focus will be on their financial return or the recoupment of their investment through reducing costs with cheap programming or creating 'international' programming that will generate revenue around the world. There will not be sufficient focus on creating high quality domestic product of interest to the domestic audience.

The WGC and ACTRA have seen the impact of foreign investment in cultural product in action in what is known as 'industrial' production. These are programs that are nominally Canadian having achieved 6 points under the Canadian-Audio Visual Certification Office. They are in large part financed by U.S. cable investment. Recent examples are "Andromeda", "Sue Thomas FBEye" and "Doc". That foreign investment inevitably has resulted in American lead actors and American writers. The stories have been generic in order to sell well internationally. They are not quality Canadian cultural products but they have been licensed by Canadian broadcasters because they cost less to license with the U.S. cable companies covering so much of the cost and at the same time fulfill Canadian content obligations under the CRTC.

In the broadcasting and cultural industries, company headquarters are a fundamental contributing element to sectoral economic prospects and the ability to create opportunities for Canadian creators. The creative community has repeatedly found that Canadian nationality and proximity are primary factors in determining the quantity and quality of Canadian cultural production. Canadians are much more interested than non-Canadians in furthering the development, production and distribution of Canadian stories. For creators engaged in the cultural industries, proximity to final decision-makers, usually at a firm's headquarters, is a fundamental ingredient in determining who works and on what projects.

SECTORAL INVESTMENT REGIMES

According to the Review Panel's consultation paper, Canada maintains specific regimes to govern, review or restrict investment in six sectors: telecommunications, cultural industries, broadcasting, transportation services, uranium production and financial services. This following discussion concerns the regimes affecting the cultural industries and, in particular, broadcasting.

What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness? Are there alternative mechanisms that would achieve the non-economic

policy objectives of the sector while also ensuring maximum competitiveness of firms operating in the sector?

The *Investment Canada Act* provides the legal framework that generally enables the Government of Canada to review foreign investment in Canada. According to the *Act*, and pursuant regulations and guidelines, proposed new investments that could result in ownership and control of Canadian cultural businesses by foreign investors are the responsibility of the Department of Canadian Heritage. Cultural businesses include those involved in the production, distribution, sale or exhibition of film or video products and audio or video music recordings. The *Investment Canada Act* requires that foreign investments in the production, distribution and exhibition sector of the film and video industries be compatible with national cultural policies. To this end, Canadian Heritage maintains a list of strategic objectives to which, where possible, foreign investments that are compatible with national cultural policies should contribute.

Since assuming the responsibility for the review of cultural investments in 1999, the Competition Policy Review Panel's consultation paper says that Canadian Heritage has approved 98 cultural investments and denied three proposals. (These data do not, of course, reflect the dissuasive effects, if any, that the review process may have engendered.) However, Canadian Heritage decisions in this domain remain shrouded in secrecy because they are not subjected to an open public process such as that conducted by the CRTC in regard to ownership transfer applications in the broadcasting sector. More transparency is required concerning ownership transfer applications related to the cultural sector outside of broadcasting.

With regard to broadcasting, Industry Canada remains responsible for foreign investments because the authority to review broadcasting ownership transfers was not transferred to Canadian Heritage in 1999 along with the authority to review other cultural investments.⁸ In fact, Industry Canada's Investment Review Branch has never reviewed a foreign investment involving a broadcasting undertaking. Instead, the Canadian Government's Direction to the CRTC (Ineligibility of Non-Canadians) SOR/97-192 limits foreign investment in companies holding Canadian broadcasting licences. The Direction says, "no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian." This presumably limits foreign investment in companies holding Canadian broadcasting licences to such an extent that foreign investment in the broadcasting sector has never been reviewable under the *Investment Canada Act*.

In the context of the Review Panel's current review, the WGC and ACTRA are opposed to changes that would weaken the current Canadian foreign investment review framework with regard to the cultural industries and are in favour of more

⁸ In other words, broadcasting is not included in Schedule IV of the Regulations along with other cultural activities.

openness in the review process. Owing to Canada's proximity to the enormous market of the United States, with its common language and idiom, and similar practices and institutions, Canada's cultural industries are already subjected to extensive competitive pressures from U.S. traditional and new media. To our knowledge, there are no alternative mechanisms that would ensure "maximum" competitiveness of firms operating in the sector while also achieving Canadian cultural policy objectives. More specifically, the WGC and ACTRA are opposed to any dilution of the Canadian Government's Direction to the CRTC (Ineligibility of Non-Canadians) and CRTC policy on the foreign ownership issue.

The WGC and ACTRA are also concerned that the increasing convergence of cultural and non-cultural activities is likely to erode Canadians' ability to implement essential cultural policies. For this reason, we believe it is fundamental to maintain existing foreign ownership restrictions related to Broadcasting Distribution Undertakings (including cable companies) and telecommunications companies. For example, the supply of broadcast services by telecommunications companies, the supply of telephone services by cable television companies, the supply of unregulated mobile digital content and digital file downloading services by computer hardware conglomerates, such as Apple (via iTunes), clouds the distinction between cultural and non-cultural activities. We do not believe that it is possible at this time to establish a meaningful structural separation between the creation/production aspect of cultural activities and their distribution by common carriers. Unless and until this separation is accomplished, it will be necessary to "cast the net widely" with respect to the application of the *Investment Canada Act* in regard to cultural businesses.

COMPETITION LAW

How does Canada's competition policy affect Canadian competitiveness in an environment of globalization and free trade? What changes to Canada's competition regime would enhance the competitiveness of Canadian firms in the global economy? What international best practices, if any, would strengthen Canadian competitiveness as a destination for foreign investment if we were to adopt them? Does Canada's approach to mergers strike the right balance between consumers' interest in vigorous competition and the creation of an environment from which Canadian firms can grow to become global competitors?

The Competition Bureau does not generally possess the mandate or expertise to find the appropriate balance between competitiveness issues, including those resulting from globalization and free trade, and the Government of Canada's cultural objectives.

The *Competition Act* and the *Competition Tribunal Act* set out the legal framework for competition law in Canada. The Commissioner of Competition is responsible for investigating anticompetitive conduct and corporate mergers, as

well as misleading advertising and other deceptive advertising practices. The Commissioner is also the chief executive of the Competition Bureau, which carries out investigative and advocacy work.

Although the Competition Tribunal has the authority to review acquisitions, the Competition Bureau has generally failed to seriously address competitiveness issues in the cultural industries sector.⁹ This failure appears to stem, in part, from the mandate of the Competition Bureau. The Competition Bureau is responsible for administration and enforcement of the *Competition Act* whose purpose is set out in section 1.1:

The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

Thus there is no reference to any cultural objectives in the *Competition Act*, such as those found in the *Broadcasting Act*. The Competition Bureau's role is to promote and maintain competition so that Canadians can benefit from competitive prices and product choices.

With regard to broadcasting, the Competition Bureau and the CRTC agreed on an interface document in October 1999 that outlines the authority of the CRTC under the *Broadcasting* and *Telecommunications Acts* and that of the Bureau regarding the broadcasting and telecommunications sectors. Among other things, the interface document says,

Under the *Broadcasting Act*, prior approval of the Commission is required for changes of control or ownership of licensed undertakings. Whereas the Bureau's examination of mergers relates exclusively to competitive effects, the Commission's consideration involves a broader set of objectives under the *Act*. This may encompass consideration of competition issues in order to further the objectives of the *Act*. The Bureau's concern in radio and television broadcast markets relates primarily to the impact on advertising markets and, with respect to broadcast distribution undertakings, to the choices and prices available to

⁹ Exceptionally, on December 21, 2001, the Commissioner of Competition filed an application with the Competition Tribunal, pursuant to the *Competition Act*, opposing the proposed acquisition by Astral Radio of eight French-language radio stations located in Quebec belonging to Télémedia and of Télémedia's 50% ownership interest in Radiomédia. A consent agreement between Astral Media, Télémedia and the Commissioner subsequently terminated the application filed by the Commissioner with the Competition Tribunal.

consumers. The Commission's concerns include those of the Bureau except that its consideration of advertising markets relates to the broadcasters' ability to fulfill the objectives of the *Act*.¹⁰

Not only is the Competition Bureau's mandate limited to the promotion and maintenance of competition in the interests of competitive prices but the Competition Bureau restricts its analysis largely to the consideration of advertising markets and is not concerned with manifestations of market power that are not reflected in consumer prices. Other public policy considerations which may or may not have an impact on consumer prices, such as cultural issues, are not taken into consideration. The objectives of Canadian cultural policy are much more comprehensive than the objectives of the *Competition Act*. Consequently, as it is currently written, the *Competition Act* cannot truly contribute to the search for the appropriate balance between consumers' interests, both cultural and economic, and the creation of an environment in which Canadian firms can expand their activities.

BECOMING A DESTINATION FOR TALENT, CAPITAL AND INNOVATION

How can Canada better promote inward FDI? What policy change could contribute to the achievement of this objective? What impact does a higher-value Canadian dollar have on Canada's competitiveness as a destination for investment?

Foreign direct investment is an instrument for achieving certain public policy objectives, not an end in itself. This said, foreign direct investment is not particularly useful in achieving the objectives of Canadian cultural policy. Canadians are much more interested than non-Canadians in furthering the development, production and distribution of Canadian stories. Canada is currently promoting sufficient foreign direct investment in the Canadian cultural industries to achieve the country's cultural objectives and, if anything, greater restrictions on foreign investment in broadcasting are required.

Canada is already highly integrated into the world economy, including the U.S. economy, and Canadian firms are active partners with their non-Canadian counterparts. Foreign pre-sales and coproductions play an important role in the financing of Canadian audio-visual productions and foreign location shooting in Canada constitutes an important Canadian service export. As mentioned above, 'industrial' production benefits from foreign investment but fails to meet Canadian cultural objectives. The foreign location production sector includes feature films and television programs filmed in Canada by foreign studios and independent producers. In this type of production, the foreign producer retains the copyright but Canada can benefit in the form of employment for performers and technicians. However, the high-end creative work on such productions, including

¹⁰ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=815&lg=e>

screenwriting and lead performances, is almost always assigned to foreign nationals.

Recently, the rise in the value of the Canadian dollar has had a negative impact on Canada's ability to attract foreign direct investment in the form of foreign location production in Canada. ACTRA considers that stability is preferable to wide fluctuations in the Canadian dollar's value. The WGC and ACTRA have both urged the governments to enhance the value of foreign as well as domestic services production tax credits to help to maintain Canada's competitiveness as a location for domestic and foreign film and television productions.

Canada should be a center for Canadian talent, capital and innovation. Public policy that allows foreign investment without regard to cultural considerations will develop the careers of foreign talent rather than Canadian talent. If Canadian talent leaves Canada to become recognized in foreign jurisdictions, Canadian cultural identity will suffer because Canadians will no longer be able to recognize themselves in the cultural goods and services available to them.

CONCLUSION

As the Review Panel's consultation paper points out, "Canada is open to foreign investment across most sectors of the cultural industries. In sectors where there are policy measures in place, the government maintains targeted, industry-specific policies under the ICA [*Investment Canada Act*] rather than a single broad policy." As the consultation paper also points out, foreign investments in the sound recording industry and film production, exhibition and retail sectors are subject to the "net benefit" test under the *Investment Canada Act*.

The Review Panel's consultation paper's discussion tends to treat broadcasting as distinct from the cultural industries. The consultation paper identifies the areas with cultural policy measures as "the book publishing, distribution and retail sectors; the periodical publishing and newspaper publishing sectors; and the film distribution sector."¹¹ However, broadcasting also constitutes an important area with cultural policy measures. Even though broadcasting operates with a separate foreign investment regime, it remains an integral part of Canada's cultural industries.

In an appendix, the Review Panel's consultation paper says that "Canadian ownership rules in broadcasting and broadcasting distribution, established under the *Broadcasting Act*,¹² ensure that Canadian news and entertainment

¹¹ *Sharpening Canada's Competitive Edge*, Appendix 2, p.44.

¹² The Canadian Radio-television and Telecommunication Commission (CRTC) is responsible for ensuring control "in fact" whereby a minimum of 80 percent of the Board of Directors and CEO are Canadians and at least 80 percent of voting shares of the Canadian broadcasting operation company (licensee) are held by Canadians. Where there is a holding company, a minimum of 66.66 percent of voting shares of the Canadian holding company must be owned by Canadians in

programming is made from a Canadian perspective and with Canadian audiences in mind.”¹³ In fact, the existing Canadian ownership rules in broadcasting, set out in a directive by the Government of Canada to the CRTC, require only that a solid majority of the voting shares of a Canadian broadcasting undertaking are held by Canadians. Canadian content requirements are the subject of distinct regulations and conditions of licence pursuant to the *Broadcasting Act* as well as of the current requirements of the Canadian Television Fund and other funding agencies. In and of themselves, the ownership rules do not ensure that Canadian news and entertainment programming is made from a Canadian perspective.

The WGC and ACTRA consider that domestic control and ownership of business activities in the cultural industries are important to Canada's economic prospects, as well as the pursuit of a sovereign cultural policy. In the context of the Review Panel's current review, the WGC and ACTRA are opposed to any dilution of the current Canadian foreign investment review framework with regard to the cultural industries. To our knowledge, there are no alternative mechanisms that would ensure “maximum” competitiveness of firms operating in the sector while also achieving Canadian cultural policy objectives. More specifically, the WGC and ACTRA are opposed to any changes in the Canadian Government's Direction to the CRTC (Ineligibility of Non-Canadians) and current CRTC foreign ownership policy.

Sincerely,



Maureen Parker
Executive Director
Writers Guild of Canada



Stephen Waddell
National Executive Director
ACTRA

order to be considered Canadian. These limits mirror those for telecom companies. [Footnote in the original.]

¹³ *Sharpening Canada's Competitive Edge*, Appendix 2, p.43.