Goodmans LLP Update

Communications Law

March 5, 2010

Satellites, for now

Introduction

In its 2010 Budget delivered Thursday, March 4, Stephen Harper's Conservative government announced that it will remove the restrictions on foreign ownership of Canadian satellites. The Speech from the Throne, delivered the previous day, had held out the possibility of loosening the restrictions on foreign investment in telecommunications companies more generally, and it remains likely that this government will try to take broader steps in this regard. For the time being, however, the Government is likely playing it safe by addressing a relatively small and uncontroversial segment of the market.

The Speech from the Throne

> "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 statement, delivered Wednesday in the Speech from the Throne, engendered anticipation and speculation about the potential for liberalizing Canada's telecommunications ownership regime, which places limits on foreign investment in facilities-based "telecommunications common carriers", including traditional telephone companies, wireless providers, satellite owners and cable companies.

The Speech from the Throne was vague, with the details of any proposed liberalization left for another day. There was speculation in the press, however, that the Government would follow the recommendations of the June 2008 Competition Policy Review Panel and the earlier Telecommunications Policy Review Panel's proposal for the staged removal of the ownership restrictions. In the first phase, for a period of five years, foreign investment would be permitted on a greenfield basis or by acquiring an incumbent Canadian telecom company with a market share of 10 percent or less. In a second phase, beginning at the end of the five-year period, there would be a broader liberalization of the foreign investment rules for both telecommunications and broadcasting. The Speech from the Throne was completely silent on the subject of foreign ownership restrictions over broadcasting, however.

The Budget

In the budget document released Thursday, the Government referenced these recommendations, but only addressed the restrictions as they relate to owners of Canadian satellites – principally, Telesat Canada and Ciel Satellite. These entities compete internationally and the Canadian satellite regime has long permitted the use of foreign satellites for many applications. Neither Telesat nor Ciel own broadcasting assets, moreover. This likely made this niche segment an ideal candidate for liberalization without raising political questions over content or culture.

Conclusion

It remains to be seen how the Government will pursue its now explicit policy to open Canada's doors to increased venture capital and foreign investment in the telecommunications industry. We will continue to inform you of developments in this critical sector.

If you would like to know more about this matter or have any questions with respect to the foregoing, please do not hesitate to contact any member of our Communications Law Group:

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