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January 10, 2019

The Broadcasting and Telecommunications Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street, 1st Floor
Ottawa, Ontario K1A 0H5

To the Broadcasting and Telecommunications Legislative Review Panel,

Please accept my submission to the legislative review, which I have written from my own personal vantage point as a scholar of Canadian telecommunications policy. Specifically, I wish to make the point that there are several instructive precursors to this current review of the legislation, particularly in consultations that have been held by the CRTC and Industry Canada since the passage of the new Acts in the early 1990s. In this submission, I focus on a little-known report that was commissioned at the beginning of the Information Highway Advisory Council process in early 1993. I have chosen to highlight this particular report because of its prescient argument that any federal legislation pertaining to the new, networked communications environment must take into account how a technology like the internet is shaped both by its uses as well as the policy environment in which it is deployed. To that end, my submission primarily concerns question 2.1: “Are legislative changes warranted to better promote competition, innovation, and affordability?”

Introduction

An instructive precursor to the government’s attempts at considering how to modernize telecommunications legislation for the internet age can be found in a report commissioned in the same year as the new *Telecommunications Act* was passed. In April 1993, senior federal civil servant Bernard Ostry was tasked with determining how Canada could develop its own national information highway.¹ While this report (referred to here as “the Ostry report”) would go on to spur the Information Highway Advisory

¹ Ostry, B. (1993). *The electronic connection: An essential key to Canadians’ survival*. Ottawa: Industry Canada. Available at: <http://www.deepsky.com/~madmagic/ostry.html>

Council struck by Industry Canada, it also contains some blunt assessments of the legislative conflicts that might prevent the government from effectively regulating new networked technologies.

The essential point made by the Ostry report is that, looking at the history of proposals to create an information highway in Canada since the 1960s, a pattern of indecision has resulted in nebulous goals and an inefficient policy environment. As such, one of the report's key recommendations is stronger federal leadership that will provide guidance on the central goals of the policy.

In question 2.1 as phrased in the Terms of Reference, there are three goals suggested: competition, innovation, and affordability. Yet these three concerns don't always necessarily support one another; for example, competition may mean more affordability in certain profitable markets, but not in more peripheral markets. Likewise, innovation cannot support either competition or affordability unless there is a context in which it can link up to existing infrastructure (cf. Ostry's quip about AT&T inventing the cellular telephone in the mid-1940s and dismissing it as a niche product, p. 12). As such, it is important to treat each of these three goals separately.

Competition

One important focal point of the Ostry report concerns how bureaucratic indecision in the 1980s resulted in Canada falling further behind on the world stage in terms of how information technology could support the national economy. As he notes, no matter how much a number of innovative technologies have become integrated into a new information infrastructure, "all this has been offset by concentration of wealth and power in the hands of a few, very large, international communications corporations beyond reach of most law or regulation, by increasingly high levels of unemployment and the growth of functional illiteracy especially in math, science and technology" (p. 14). In this passage, Ostry highlights the importance of a well-designed social infrastructure but also, crucially, a business environment that is well regulated to prevent concentrations of power.

In this regard, the regulation of telecommunication industries must consider competition beyond the superficial question of a dynamic marketplace to examine the makeup of larger consolidated firms. This includes both firms inside Canada and also major international players that dominate within a converged media and communications environment.

Alongside effective regulation of larger firms – such as through antitrust law – the Ostry report suggests that telecommunications regulation also foreground the importance of public education for Canadians’ digital literacy. As Ostry notes about research conducted in the late 1980s, “Studies showed a gaping discrepancy between industry’s heavy investment in technology, equipment and machinery and their failure to make the essential human investment in education, training and skills” (p. 27). As such, reliance on private companies to provide the skills needed for a true digital economy is perhaps misplaced. There is an important role for telecommunications legislation here in promoting or at least acknowledging the human side of the industry as part of fostering a competitive business environment.

Innovation

Similar to competition, innovation is another stated goal that should not be taken at face value. The Ostry report points to a 1987 Department of Communication (DoC) study that profiled the then-burgeoning centrality of software and suggested that “Canada cannot afford not to have a lively and vigorous software industry.”² Yet, as Ostry notes, the Canadian software industry was not as robust as it could be in 1993 due to a “less than welcoming environment” (p. 25). This environment was one in which several different federal and provincial agencies worked at cross purposes.

Today, 25 years later, the software industry is finally taking its place as a key area for the country’s economic growth.³ It has taken nearly three decades since the DoC study for the software industry in Canada to have come into its own, due to the lagging pace of policy changes designed to encourage start-ups to compete with larger consolidated players. As the Ostry report suggests, there was no real need for the policy changes to have been so delayed; they were mainly sluggish as a consequence of the government’s tendency to focus on “addressing weaknesses” rather than correcting them, a tendency that Ostry describes as “look[ing] at them sternly, maybe wringing our hands a little” (p. 25). His point is that the word “address” absolves the government of taking any actual action and instead enables an environment of continual monitoring rather than policy change. Such delays in implementing a focused vision for new technologies at the federal level point toward the fact that innovation is only useful insofar as it can be adequately supported by the policy environment.

² Department of Communications (1987). *Communications for the twenty-first century: Media and messages in the information age*. Ottawa: Communications Canada.

³ According to statistics compiled by the government in 2016:
https://www.ic.gc.ca/eic/site/ict-tic.nsf/eng/h_it07229.html

Affordability

The Ostry report has little to say on the subject of affordability, since the notion of universal access to telecommunications networks itself implies that all Canadians would be able to afford such access. As Ostry notes, the core premise of the internet as an electronic highway conjures public roads, “accessible to all” (p. 7). This sort of access, Ostry contends, is reliant on “central body responsible for over-all planning, establishment of standards, research, and also subsidies” (p. 11). The current policy environment, with two separate Acts pertaining to digital networks and where distinct agencies are responsible for various aspects of that legislation, prevents the sort of coordination required to achieve universal access to affordable internet service.

Even though 25 years have passed since the Ostry report, the issue of affordability continues to undermine the ideal of universal access. Such a point has been raised time and again in recent CRTC consultations. For instance, in the 2015-2016 *Review of basic telecommunications services* proceeding (CRTC 2015-134), affordability was the core issue raised by diverse groups of interveners representing Canadian internet users – this despite the consultation’s deliberate positioning of affordability as outside the scope of the proceeding. The result of the CRTC’s framing of affordability as out of scope in determining basic service has been the corresponding need for policy instruments such as the Wireless Code and potentially an Internet Code, designed primarily to redress the imbalance between consolidated telecommunications companies and their consumers. This is especially pertinent when considering Canada’s communication marketplace in a global context, where Canadians continue to pay some of the highest rates in the world for mobile data in particular.⁴

Conclusion

The review panel has asked whether legislative changes are warranted to better promote competition, innovation, and affordability. When looking back at another key moment in the federal policy context around networked communications in the early 1990s, contemporary observers might take a cue from the Ostry report in its central argument that better integration is required through legislation and across government agencies. As Ostry contends, “turf wars” in the federal government have been costly and wasteful, and have “weaken[ed] the possibility of achieving goals that all claim to support” (p. 50). To that end, it would be pertinent for the panel to consider legislative changes that better

⁴ E.g., see the 2017 price comparison report prepared for the government by Nordicity: [https://www.ic.gc.ca/eic/site/693.nsf/vwapj/Nordicity2017EN.pdf/\\$file/Nordicity2017EN.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapj/Nordicity2017EN.pdf/$file/Nordicity2017EN.pdf)

integrate the two Acts in order to reflect the internet as a converged telecommunications and broadcasting medium.

I have tried in this brief submission to capture the argument and spirit of the Ostry report, which is a fascinating read in its own right. If today we consider the early 1990s as a particular historical precedent for current policymaking around the internet, then the Ostry report provides an even more detailed and deep account of the history of the idea of a national information highway since the 1960s. As Ostry explains, “The reason for detailing the history to this point is to disclose not just the normal motive forces of federal policymaking in telecommunications, so often daunted by fears of failure to cope with the need to survive, but also to understand that within the federal government past weakness and failure due to wasteful political tensions and confusion has got to give way to narrowly focussed goals strengthened through jurisdictional partnerships and public/private sector cooperation” (p. 46). To that end, the panel should consider legislative changes that bring about increased coordination and coherence across sectors of the government involved in regulating networked communications in this country.

Thank you for accepting my submission. I look forward to the next stages of the legislative review process.

Sincerely,

A handwritten signature in black ink, appearing to read 'T Shepherd'.

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