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**Essential Facilities and Canadian Telecommunications Regulation: Using Economics and Competition Policy to Get Back on Track**

The extent of technological and structural changes in the Canadian telecommunications industry over the past ten years has been significant. The widespread conversion to Internet Protocol (IP) technology combined with the convergence of formerly discrete industries, such as telephony, broadcast distribution, consumer electronics and computers, have ushered in an unprecedented level of competition. Traditional telecommunications regulation, rooted in the assumption that telecommunications is a natural monopoly, is increasingly inadequate to cope with the dynamics of markets that are becoming increasingly competitive. Regulation and policy need to be evaluated to ensure that they do not dampen the competitive process and reduce economic efficiency. For example, technological change necessitates changes both to the definition of an essential facility and to the application of this definition to the new competitive realities of the Canadian telecommunications industry. As a result, the Canadian regulatory approach to essential facilities provides an interesting case study regarding how regulatory policies can accommodate technological and industry change.

Over the past decade, Canada's sector specific telecommunications regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), adopted an ever-expansive definition of an essential facility. The CRTC's definition de-emphasised traditional indicia of an essential facility (i.e., monopoly control, the extent it is required as an input by competitors and the extent to which it is economically and technically duplicable) and instead focused on whether competitors required the input in question to compete "effectively". Canada's telecommunications regulatory environment is now in the midst of dramatic change. Both the Telecommunications Policy Review Panel Final Report and the Governor in Council's Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives stress the importance of reducing the extent of regulation and increasing the reliance on market forces to the maximum extent feasible. As a result, in the current CRTC review of the regulatory framework for wholesale services the definition of essential facilities, a number of parties proposed definitions of essential facilities based on a more flexible competition policy based analytical framework which examines the impact of mandated access on the relevant retail market. Examining essential facilities by focusing on what competitors require to compete effectively, Canadian regulatory policy has gone off track. Our paper argues that a more flexible regulatory policy based on sound economics and competition policy is required to put Canada's telecommunication policy back on track, and thus, make it well positioned to accommodate the dynamics of competition in the telecommunications industry.