

DATE: October 30, 2009

**RE: Summary of CRTC Telecom Decision 2009-678
(GLOBALIVE)**

After successfully securing spectrum licenses from Industry Canada, on April 3, 2009, Globalive submitted its corporate documents to the CRTC for the initiation of a review to determine whether it was eligible to operate as a telecommunications common carrier in accordance with Canadian ownership and control requirements of subsection 16(1) of the Telecommunications Act. A request from Telus that the proceeding be made open and transparent led to the CRTC's establishment of a four-type review framework for considering Canadian ownership and control issues.

The Globalive application for telecommunications authority was subject to the Type 4 (most intense) level of ownership and control review and involved significant public participation by competing carriers.

In sum, the CRTC found that Globalive satisfied the Canadian ownership requirements of "legal control," but failed with respect to "control-in-fact."

The following table summarizes the factors considered by the CRTC in arriving at the conclusion that a non-Canadian shareholder (Orascom) exercised control-in-fact over Globalive.

Factor	Facts	CRTC Determination Is it an indicia of control?
Corporate Governance – <i>Composition of Board of Directors</i>	The GIHC board is composed of eleven directors: four directors nominated by AAL, four by Orascom, and three Independent Directors. The first Independent Director is selected by AAL with subsequent Independent Directors chosen by a selection committee composed of three members: the longest-serving Independent Director, one director nominated by AAL, and one director nominated by Orascom. The Globalive board is in essence identical to that of GIHC, with the additional requirement that two of Orascom's nominees be Resident Canadians, as defined in the Shareholders' Agreement and corporate documents	Unacceptable Control (<i>In order to address this point, Globalive would have to amend its Shareholders' Agreement and corporate documents such that on each of the two boards, AAL nominates five directors, Orascom nominates four directors, and AAL and Orascom each nominate one Independent Director. There would be no further need for a selection committee</i>)
Corporate Governance – <i>Quorum Provisions</i>	Quorum requires the attendance of nine directors, including at least two nominees each of AAL and Orascom. A majority of the directors present must be Independent	OK (<i>so long as board composition is changed to reflect above</i>)

	Canadians. In the event that quorum is not reached, the directors present at a reconvened meeting shall constitute a quorum, provided that a majority of the directors present are Independent Canadians.	
Corporate Governance – <i>Appointment of Officers</i>	Mr. Lacavera shall be the initial chair of GIHC and Globalive, and the subsequent chairmen shall be selected by the respective boards and shall be either an Independent Director or Mr. Lacavera. Additionally, the CEOs of Globalive and GIHC shall be Independent Canadians and shall be appointed by and report to their respective boards.	OK
Shareholder Rights – Liquidity Rights	Shareholder agreement provides for a mutual liquidity right, which allows either AAL or Orascom to elect to sell its holdings in the venture, subject to a right of first refusal by the other party. In AAL's case, the Shareholders' Agreement provides a guaranteed floor price for its shares should it elect to sell within a certain period. This provision also provides that, in those same circumstances, should AAL sell its holdings for greater than fair market value, as defined therein, it will pay that difference to Orascom.	Unacceptable Control <i>(The specification of a floor price and the imposition of a cap on the proceeds generated in the event that AAL sells its shares are inconsistent with the relative voting interests of the shareholders)</i>
Shareholder Rights – <i>Eligible Purchasers</i>	Shareholder Agreement provides that shareholders may only sell their shares pursuant to a written offer from an Eligible Purchaser, as defined therein. To meet this definition, the purchaser cannot be a Strategic Competitor, defined as a person which operates or provides telecommunications business services, whether fixed line or wireless.	OK, with clarification <i>(Globalive should amend the definition of Strategic Competitor to include only entities which, taken together with their affiliates, hold more than a 10 percent share of the Canadian wireless market on a per-subscriber basis.)</i>
Shareholder Rights – <i>Veto Rights</i>	Schedule A to the pre-hearing Shareholders' Agreements outlined special matters requiring shareholder consent. Orascom has an effective veto over all items contained in Parts I and II of Schedule A. The GIHC Shareholders' Agreement was amended to include an "ordinary course of business" exception to some of the vetoes. Globalive increased the veto thresholds to \$22.1 million, or five percent of the value of the spectrum granted pursuant to the AWS auction. Globalive contended that, as it is not	OK, with modification <i>(the monetary threshold for vetoes should be set at five percent of Globalive's enterprise value as determined by its board every two years, based on a third-party valuation.)</i>

	yet in operation and its enterprise value is difficult to determine, five percent of the value of the spectrum is a logical benchmark for these veto thresholds.	
Commercial Arrangements – <i>Technical Services Agreement</i>	TSA covers network design, implementation, purchasing agreements, regulatory compliance, new products and services. The Commission notes that under the revised TSA, Globalive must pay a fixed fee to Orascom irrespective of whether services are rendered, and if it terminates the agreement, it must pay Orascom either an amount to be negotiated or \$100 million less fees already paid, depending on the circumstance.	Unacceptable Control <i>(the Commission considers that Orascom will continue to have influence over operating and strategic decisions related to Globalive's network.)</i>
Commercial Arrangements – <i>Trademark Usage</i>	Under the Trademark Agreement, Globalive is provided with a licence to use the trademark WIND in association with its services in Canada. The WIND trademark is used by Orascom affiliates in Greece and Italy.	OK <i>(the Commission finds that Globalive's adoption and use of a trademark belonging to an Orascom affiliate do provide Orascom (or its controlling shareholder) with influence over Globalive because Orascom has the power to limit how the brand can be used.)</i>
Economic Participation– <i>Equity Participation</i>	Orascom's equity participation is 65.1 percent, which is consistent with levels of non-Canadian investment previously approved by the Commission. (This matter becomes of major importance as the economic interest reaches and exceeds 50 per cent.)	OK <i>(The Commission is of the view that, while in the circumstances of this case the level of equity participation provides an avenue for influence, it is not sufficient on its own to convert that influence into control.)</i>
Economic Participation – <i>Financing Arrangements</i>	Orascom, the significant non-Canadian equity holder, has provided approximately 99 percent of Globalive's current debt, excluding some third-party vendor financing, which represents the vast majority of Globalive's total financing.	Unacceptable Control <i>(such a significant concentration of debt in the hands of Orascom, representing the vast majority of Globalive's enterprise value, serves to provide Orascom with leverage over Globalive. Given Orascom's equity interest in Globalive, such a high level of debt in the hands of a non-Canadian is unacceptable.)</i>