

Table 2.5. National treatment for foreign-controlled enterprises in telecommunications

<b>Australia</b>	Prior approval is required for foreign involvement in the establishment of new entrants to the telecommunications sector or investment in existing businesses in the telecommunications sector. Proposals above the notification thresholds will be dealt with on a case-by-case basis and will normally be approved unless judged contrary to the national interest. Currently (as at 1 January 2012) relevant monetary thresholds are AUD 244 million for US and non-US investors. Aggregate foreign ownership of Telstra is restricted to 35% of that privatised equity and individual foreign investors are only allowed to acquire a holding of no more than 5% of that privatised equity. Currently, foreign ownership of the current incumbent Telstra is limited by the Telstra Corporation Act 1991. <i>The National Broadband Network Companies Act 2011</i> states that the government must retain full ownership of NBN Co. until the NBN rollout is complete. This will give the government greater flexibility to pursue its objectives in the rollout of the network. There are generic provisions under the Foreign Acquisitions and Takeover Act 1975 that allow the Treasurer to prohibit proposals not considered to be in the national interest. There are no restrictions on the provision of telecommunications services in Australia by resident affiliates of foreign companies (or other business entities) that do not also apply to domestic companies. In addition to the above, there are provisions under the Space Activities Act 1998 and Radiocommunications Act 1992 that allow relevant authorities to reject applications from foreign organisations and affiliates on national security grounds.
<b>Austria</b>	No foreign ownership restrictions
<b>Belgium</b>	No foreign ownership restrictions
<b>Canada</b>	As of 29 June 2012, foreign investment restrictions have been lifted for companies that have less than a 10% share of the telecommunications market by revenue. Companies that grow their market shares in excess of 10% other than by way of merger or acquisitions will continue to be exempt from the restrictions. The <i>Telecommunications Act</i> requires that carriers with more than a 10% market share must be Canadian owned and controlled. Pursuant to section 16 of the Act, Canadian carriers must have at least 80% of their voting shares owned by Canadians, and not less than 80% of the members of their board of directors must be Canadian. In addition, the carrier must not be otherwise controlled by persons that are not Canadians. Further, the Canadian Telecommunications Common Carrier Ownership and Control Regulations establish that investors or holding companies of Canadian carriers will be treated as Canadian if at least 66.66% of their voting shares are held by Canadians. Resellers are not subject to Canadian ownership and control requirements, nor do they apply to satellite earth stations or international submarine cables. Restrictions on foreign investment continue to apply to activities licensed under the Broadcasting Act.
<b>Chile</b>	No foreign ownership restrictions, with one exception: only up to 10% of radio broadcast companies may be owned by foreign companies, and only if the capital originates from a country that allows Chilean investors to own a share of broadcast companies in that country. Boards of directors of broadcast companies in Chile may only have a minority of foreign directors.
<b>Czech Republic</b>	No foreign ownership restrictions
<b>Denmark</b>	No foreign ownership restrictions
<b>Estonia</b>	There are no restrictions on foreign ownership, size of shareholding or other ownership on individuals and corporations investing in the incumbent telecommunication operator in Estonia. Telia Sonera, the dominant telephone company, and mobile network operators in Sweden and Finland own 100% of Elion Ettevõtte Ltd. French telecommunications group TDF Group owns 49% of the Levira shares.
<b>Finland</b>	No foreign ownership restrictions
<b>France</b>	No foreign ownership restrictions
<b>Germany</b>	The government improved the conditions for fair and competitive investment in new, high-performance networks. The Telecommunications Act 2012 sets out investment-friendly regulatory principles for the Bundesnetzagentur to apply. When making decisions (e.g. on the regulation of rates), the NRA must take account of investment risks and the cooperation of businesses in establishing and expanding telecommunications infrastructure. There are no restrictions on the operations of foreign affiliates resident in Germany.
<b>Greece</b>	On 16 May 2008, Deutsche Telekom acquired just under 20% of shares in Hellenic Telecommunications Organisation S.A., Athens, Greece (OTE) from the Marfin Investment Group. In parallel, Deutsche Telekom also entered into a share purchase and shareholders' agreement with the Hellenic Republic, providing for an increase of Deutsche Telekom's stake in OTE to 25% plus one vote – each share is entitled to one vote. According to the shareholders' agreement, Deutsche Telekom was granted the possibility of controlling OTE's financial and operating policies, as defined by IAS 27, following completion of all necessary steps in the transaction. Under the share purchase agreement, Deutsche Telekom additionally granted the Hellenic Republic two put options for an additional 5% (put option I) and 10% (put option II) of the shares. The Hellenic Republic exercised put option I on 31 July 2009 and put option II on 7 July 2011. Consequently, Deutsche Telekom now holds 40% plus one vote of OTE's shares. There are certain provisions that, inter alia: <ul style="list-style-type: none"> <li>• Introduce special rights for the Hellenic Republic such as: the possibility for the Hellenic Republic, even as a</li> </ul>

<b>Greece (cont.)</b>	<p>minority shareholder, to appoint certain members on OTE governing bodies;</p> <ul style="list-style-type: none"> <li>• Include certain veto rights on corporate and business matters such as a company's dissolution or merger, transfer or conversion of a strategic company's assets, changes in a company's nationality or capital, rights of first refusal if Deutsche Telekom intends to transfer OTE shares; and</li> <li>• A change of control clause (which stipulates that, in case the control in Deutsche Telekom changes and the person acquiring the control does not meet the requirements set out in national law, the Hellenic Republic has the right to require Deutsche Telekom to sell back all OTE shares in its holdings).</li> </ul>
<b>Hungary</b>	No foreign ownership restrictions
<b>Iceland</b>	No foreign ownership restrictions
<b>Ireland</b>	No specific provisions apply. General competition (national and European) law applies.
<b>Israel</b>	<p>The control of a fixed domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which Israeli individuals hold at least a 20% interest. Israeli law also imposes nationality and residency requirements on members of boards of directors: 75% of the members of a board of directors of fixed domestic licensed communications companies must be Israeli citizens and residents. In the case of mobile phone and international communications services, the nationality and residency requirements apply to the majority of board members. For the supply of mobile telephone services, a local partner is required and at least 20% of the control in a licensee must be held by nationals who are citizens and residents of Israel. In the case of international communications services, satellite broadcasting, and cable broadcasting, at least 26% of the control in a licensee must be held by nationals who are citizens and residents of Israel. Under the Communications (Telecommunications and Broadcasting) Law (1982), a license for cable broadcasting is not granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorise an indirect holding in the licensee of up to 10% by such a corporation. Under the Second Authority for Television and Radio Law (1990), at least 51% of the control in a concession for commercial television or regional radio must be held by nationals who are citizens and residents of Israel.</p> <p>However, the government may, and in the past has, authorised foreign investment in percentages higher than those set out in the telecommunications regulations described above. Future regulatory changes, leading to a wholesale market in telecommunications services, may lead to relaxations in investment criteria for license holders who do not operate essential infrastructures.</p>
<b>Italy</b>	No foreign ownership restrictions
<b>Japan</b>	<p>There are no restrictions on individuals and corporations investing in the incumbent PTO(s) in Japan. However, foreign capital participation, direct and/or indirect, in NTT Corp., which holds all the shares of NTT East Corp. and NTT West Corp., is restricted to less than one third. There is a screening system under the Foreign Exchange and Foreign Trade Act. When a foreign investor, which is not only a foreign affiliate resident in Japan, but also any foreign investor resident in foreign country, intends to make an inward direct investment specified by Japan's regulations, he or she shall notify in advance the Minister of Finance and the minister having jurisdiction over the business, including the Ministry of Internal Affairs and Communications, of the business purpose, amount, time of making the investment, etc. and other matters specified by Cabinet Order in regard to the inward direct investment.</p>
<b>Korea</b>	<p>A foreign government or foreigner may not in the aggregate, acquire over 49% of the total issued shares of a facilities-based supplier of public telecommunications services.</p> <p>According to Article 9, Clause 1, item 1 of the Capital Market and Financial Investment Services Act, a corporation whose largest shareholder is a foreign government or a foreigner is considered a foreigner when the total issued shares acquired exceeds 15%.</p> <p>As long as the aggregate foreign ownership does not exceed 49%, foreign companies are licensed to provide facilities-based services, with no other restrictions applied.</p>
<b>Luxembourg</b>	Yes. As it is a public institution, the capital is not accessible to third parties.
<b>Mexico</b>	<p>Foreign ownership restriction is set at 49%, except in the case of cellular mobile operators. In this case, a favourable resolution of the National Commission of Foreign Investment is required to allow foreign investment at a higher percentage. This restriction is not only applicable to incumbents. There are no restrictions on the operations of foreign affiliates resident in Mexico, including their sales of telecommunication services. Foreign services providers of satellite facilities can provide telecommunication services by obtaining a concession to exploit the rights of transmission and reception of signals of frequency bands associated with foreign satellite systems that cover and can provide services in the country. These concessions shall be granted only if approved by the Mexican Government. Like other concessions, foreign ownership cannot exceed 49%.</p>
<b>Netherlands</b>	No foreign ownership restrictions
<b>Norway</b>	Government has a majority ownership. No restrictions on the rest of the shares.

<b>New Zealand</b>	There are no company specific restrictions on investment in Telecom New Zealand, the structurally separated mobile and retail arm of the former incumbent. It is subject to generic regulation of overseas investment. Overseas investments in New Zealand assets are screened only if they are defined as sensitive within the Overseas Investment Act 2005 (the Act). Three broad classes of asset are currently defined as sensitive within the Act: acquisition of a 25% or greater ownership interest in business assets valued at over NZD 100 million, all fishing quota investments, and investment in sensitive land as defined in the Act. There are company-specific foreign ownership restrictions on investment in Chorus Limited, the structurally separated fixed access network arm that was formerly part of the incumbent.
<b>Poland</b>	No foreign ownership restrictions
<b>Portugal</b>	No foreign ownership restrictions
<b>Slovak Republic</b>	No foreign ownership restrictions
<b>Slovenia</b>	No foreign ownership restrictions
<b>Spain</b>	Article 6 of the General Telecommunications Law 32/2003, of 3 November, establishes that networks may be exploited and electronic communications services to third parties may be provided only by physical or legal persons who are citizens of a European Union member state, or who hold other nationalities, when, in the latter case, it has so been established under international agreements binding the Kingdom of Spain. For any other physical or legal persons, general or particular exceptions to the former rule can be authorised by the Government.
<b>Sweden</b>	No foreign ownership restrictions
<b>Switzerland</b>	No foreign ownership restrictions, with one exception: Swisscom, the incumbent operator, has to be majority owned by the Swiss Confederation both as regards shares and capital (Article 6 al.1 of the <i>Loi sur l'entreprise des telecommunications</i> (LET). No restrictions apply to the rest of the shares.
<b>Turkey</b>	There are no ownership restrictions for foreigners. There are no restrictions on the operations of foreign affiliates resident in Turkey provided that the company is legally incorporated or is a limited company according to the laws of Republic of Turkey for the purpose of performing activities within the scope of authorisation.
<b>United Kingdom</b>	No foreign ownership restrictions
<b>United States</b>	There are no restrictions on the foreign ownership of wireline facilities, although under certain circumstances the foreign carrier may need to establish a US-organised subsidiary, but it may own 100% of that subsidiary. Section 310 of the Communications Act of 1934, as amended, governs the foreign ownership of spectrum licensees. Section 310(a) states that a foreign government may not directly hold a spectrum license. Section 310(b)(1) and (2) state that foreign individuals and business entities may not directly hold any common carrier, broadcast or aeronautical fixed on en route licenses. Under 310(b)(3), a foreign entity is limited to a 20% ownership interest in any common carrier, broadcast or aeronautical fixed on en route licenses. Pursuant to section 47 USC 310(b)(4), a foreign entity is limited to a 25% ownership interest in a US corporation that controls any common carrier, broadcast or aeronautical fixed on en route license. The Federal Communications Commission (FCC), however, has the discretion to allow foreign ownership in excess of 25% unless such ownership is inconsistent with the public interest. In the case of common carrier and aeronautical fixed and en route licenses, the FCC presumes that foreign investment from WTO member countries does not pose competitive concerns to the US market and is in the public interest. On 9 August 2011, the FCC released a Notice of Proposed Rulemaking (NPRM) that initiated a review of the FCC's policies and procedures that apply to foreign ownership of common carrier spectrum licensees and of aeronautical en route and aeronautical fixed spectrum licensees pursuant to section 310(b)(4). The text of the NPRM is available at: <a href="http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0809/FCC-11-121A1.pdf">http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0809/FCC-11-121A1.pdf</a> .

Source: OECD