

Intelligence MEMOS



From: Daniel Schwanen
To: The Incoming Canadian Parliament
Date: October 7, 2021
Re: **ILL-THOUGHT REGULATION RISKS CANADIAN ACCESS TO THE FULL BENEFITS OF DIGITAL TECHNOLOGY**

Canada's newly elected Parliament will be considering a bevy of proposals for reforms aimed at regulating how Canadians interact with social media platforms and other providers of digital services and content.

Many of these are legacy proposals the government was unable to push through the last Parliament – initiatives concerning Canadian media and other content on the Internet, such as hate speech, and privacy.

Work will also push ahead on potential reforms to the *Competition Act*, to address a presumed negative impact on competition from large tech and data-driven companies in the Canadian marketplace. And central to this agenda, the responsibilities and powers of a new Data Commissioner – introduced in the 2021 federal budget – require definition.

In forging ahead or examining these initiatives, Canada's government and parliamentarians should not forget that one pillar of the government's 2019 Digital Charter, which underpinned many of the reforms just mentioned, was the promotion of digital innovation.

Far from being an abstract concept, digital innovation is vital to Canadians' ability to increase standards of living, and to the economy's ability to create good jobs.

COVID-19 gave many of us a glimpse of the benefits of digital innovation: Remote work, virtual healthcare, ensuring the flow of goods and services via electronic marketplaces, or enabling Canadian artists, authors and cultural institutions to retain connection with their publics. These all helped us through the pandemic. And as much as technology was often a highly imperfect substitute for in-person interaction, Canadians are very unlikely to turn their backs on these innovations.

These developments also had a striking impact on the labour market. The [Bank of Canada reports](#) that Canadian firms' demand for digital-oriented jobs was up 60 percent year-over year in the second quarter of 2021, easily recovering the losses from earlier in the pandemic. Meanwhile, demand for other jobs grew 20 percent and had not yet made up the early pandemic-induced losses.

In many respects, though, the pandemic only accelerated the spread of digital technologies evident over the past 20 years, with the Canadian tech sector and many traditional sectors participating fully.

Amidst all this, new digital-technology-enabled business models involving cross-border networks, provision of services and movements of data, have challenged governments to think afresh about regulatory and tax playing fields, and the interoperability of digital governance models across countries.

And Canadians and their governments are rightly concerned about the potential for new technologies being used for nefarious purposes. Ensuring security or privacy of data, or preventing misinformation or hate speech, or even maintaining social cohesion and addressing addiction, are problems that have a long history, but have taken on a new dimension in the digital age.

Broad-based trust that technology will not be misused is a foundational public good in the digitally driven economy.

In addressing these issues, lawmakers and regulators should ensure they do not unnecessarily inhibit the use of data and digital technologies in Canada for business, public or scholarly purposes. For example, onerous privacy requirements that actually add little to privacy rights, or barriers to sharing business or research data across borders, could considerably hurt the competitiveness of smaller but growth-oriented Canadian firms.

Reforms of competition laws that would target large companies, or institute a separate regime for tech companies, regardless of whether they are infringing any competition rules or of the actual state of competition in markets they may operate in, likewise risk inhibiting business growth in Canada at a time of rapid technological change. Instead, more surgical approaches are called for that would include updated analytical and enforcement tools for the digital age.

A useful step would be properly defining the mandate for the newly proposed Data Commissioner. Budget 2021 said the role would promote "positive uses and outcomes associated with data, while identifying and mitigating harmful and negative consequences (and)... inform government and business approaches to data-driven issues to help protect people's personal data and to encourage innovation in the digital marketplace."

The Data Commissioner should coordinate closely with other federal regulators, such as the Privacy Commissioner, the Commissioner of Competition, the Director of the Canadian Security Intelligence Service, and other departments and sectoral and provincial regulators, in the process emphasizing the innovation part of his or her role.

As they strive to help them prevent or remedy any harmful security or privacy breach, or social and economic downside of the data- and technology-driven economy, these agencies need to actively consider and encourage ways to apply their mandates in ways that will not discourage innovation or business growth in Canada.

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