Intelligence MEMOS

From: Daniel Schwanen

To: Canadian Competition Watchers

Date: December 5, 2022

Re: **Competition Policy Consultation Critical for All Canadian Businesses**

In the more than a decade since the last wide-ranging reforms to Canada's *Competition Act*, our economy has undergone massive technological changes and related economic transformation. And late last month, Ottawa launched its much-anticipated consultation on reforms to modernize the Act and ensure the ability of Canada's Competition Bureau to enforce it, in light of these changes.

In its 57-page accompanying consultation paper, the government gave a comprehensive overview of the issues it wants addressed. It also follows some already important changes to the Act sprung on Canadians in June as part of the 2022 budget bill.

By and large, the reforms and consultations aim to address worries that large corporations may be misusing their market power. Market power is, of itself, not a bad thing, depending on how it is acquired and wielded. Often, it benefits consumers. Innovators often acquire market power by virtue of the popularity of their new products – seeking that popularity is often a driver of useful innovation.

But market power can also be used to stifle competition, or to mislead, or act against the interests of consumers or users of a product. This can be done in many ways – for example by acquiring a would-be competitor, or by colluding with another to set prices or wages. A well-functioning economy needs consumer trust about all players, including those who act as intermediaries with third parties.

The ubiquitous digitalization of society has also specifically raised the question of the role of data as a tool of competition. One of the benefits of digitalization – exploited by firms, politicians and scientific researchers alike – has been the ability to "mass customize" offerings, giving users the benefit of large network or scale economies in data gathering and processing, in ways they could not realize on their own.

This ability to deliver value to users accounts for much of the popularity and growth of many relatively new and data-intensive firms so far this century. These include platforms operating in "two-sided" markets that offer free services to users, such as Facebook or Google, in order to monetize the data garnered from these interactions, or electronic marketplaces such as Amazon. These firms, often lumped together with Apple and Microsoft as "big tech," were a lifeline for Canadians – individuals, governments, and small businesses – during the pandemic, precisely by virtue of their reach and size.

But each also operate under different business models and varying competitive conditions. And they are far from being the only large, technology and data-intensive firms in the economy.

A pertinent question for digital-age authorities is whether the data accumulated by businesses leads to ever-greater concentration of market power in the hands of a few. Can the network economies generated by giant firms be replicated or countered by others, or are they a barrier to entry that prevents benefits being passed on to users?

The answer is that in practice, it depends. Amazon, for example, faces stiff competition in retail, including from traditional retailers adopting some of its business practices, and from new business models.

TikTok has, in a short time, acquired a gold mine of users by challenging Facebook's pre-eminence in the market for online attention. New privacy settings introduced by phone makers also challenge business models at Facebook and others. Netflix, once seen as an overwhelming digital force on par with Apple, Facebook and Google, and a major threat to traditional media, has just been overtaken by a 100-year-old firm named Disney.

One lesson is that data and technology are far from being the only sources of comparative advantage. And that before bemoaning the power of large gatekeepers, one should check how easy it is to go around the gate.

Many large firms, including Big Tech have sometimes abused their market power, and have been punished or investigated for this behaviour. It is important to dissuade anti-competitive impulses. Robust competition policy should give no free passes for colluding to restrain competition, mislead consumers, or acquire potential rivals in a way that harms competition. That includes colluding on prices. And when firms try – whether that's on bread, gasoline, bidding for construction or advertising services, and much more – vigorous competition policy enforcement benefits consumers and the Canadian economy as a whole.

Competition authorities need new tools to assess the state of competition and counter deceptive practices as they relate to the ability of firms to collect massive amounts of data online. But policies and regulations need to be based on principles applied across the economy and based on the evidence around the presence or absence of competitors, misuse of market power, or attempts to deceive market participants. They should not apply selectively to certain firms, or only to online transactions.

The consultation period ends on Feb. 27, and there is much at stake. Canadians should hope that the outcome will be principled and evidence-based policy improvements that will allow them to enjoy the benefits of both strengthened competition and continued innovation.

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