

Intelligence MEMOS



From: Lawson Hunter and Daniel Schwanen
To: Canadians Concerned about Big Tech
Date: June 1, 2021
Re: ANTI-BIG TECH BIAS COULD BE COSTLY FOR CANADIANS

Earlier this spring, Vass Bednar and Robin Shaban argued in an [opinion column](#) that the Competition Bureau is unable to protect consumers from the dominance of Big Tech firms.

They advocated turning the Bureau from a law enforcement agency, into an agency that investigates, and even imposes, penalties or remedial action for conduct that has the potential to be anti-competitive. And they proposed giving the Bureau the power to seize data or compel production of business documentation for “market studies” from entities that are not even being formally investigated.

As a 2017 C.D. Howe Institute [report](#) noted, this would be like compelling local citizens to provide information to the police for a study on local crime.

More importantly, it is not clear that the Bureau’s existing ability to conduct market studies is deficient. And it is hard to identify any harm to consumers or the economy writ large stemming from anti-competitive behaviour that Canada’s competition law is not currently equipped to handle.

Competition law and practice certainly bear regular re-examination, if only to ensure they keep pace with trends in business practices that new technologies enable. In that vein, the increase in the Competition Bureau’s resources announced in the 2021 budget is welcome. Nor does anyone dispute that some uses of digital technologies by governments or private actors can pose problems. The very business models enabled by digital technologies often challenge existing tax, trade or regulatory arrangements. In many respects, authorities have begun modernizing these arrangements to address behaviour that poses difficulties. Governments and business alike are also addressing digital-era concerns around privacy, security, and misinformation.

That Big Tech and other companies have engaged in anticompetitive practices – both in Canada and elsewhere – is also not in question. But vague assertions that large tech firms are “too big” or have “too much market power” do not justify bespoke regulation or special restrictions. One of the cornerstones of our competition laws is that size alone is not illegal.

And let us not forget that size also enables pro-competitive network effects – for example, the ability for small businesses to reach a previously unthinkable number of customers through digital marketplaces, or through targeted advertising, or by using new delivery channels. This positive impact of Big Tech is often absent from the discussion.

As the cost falls for data collection and processing, as imitators emerge and traditional industries join the digital game, as compelling new apps challenge the models used by technological first-movers, and as tech giants themselves compete with each other for the same users, competition in many segments of the digital economy is becoming fiercer than ever. In retail sales, for example, online shopping – already a strong trend pre-pandemic – has exploded for new and traditional retailers alike. And emerging Canadian tech giant Shopify offers smaller businesses alternatives to Amazon, e-bay, and other marketplaces.

Large firms that have grown by providing services that users find, on their face, to be useful should not automatically be treated as if their market position is so unassailable they must be assumed guilty of reducing competition – not without evidence based on actual behaviour, such as a merger or acquisition that aims at nipping competition in the bud.

Awarding powers to compel evidence and proactively punishing firms for potential rather than actual behaviour could result in significant costs and uncertainties for Canadian businesses. Canadian firms that themselves increasingly rely on the data willingly shared by users of their services – a commercial practice apparently controversial when the tech giants practice it – would likely be ensnared in the process. Some of these firms loom large in Canada’s ability to compete at home and grow in the global marketplace. Indeed, in the last five years the market value of Canadian tech companies has grown just as fast as that of foreign tech giants.

We hope generalized concerns about Big Tech will soon morph into a focus on any real barriers Big Tech poses to the emergence of new innovators and competitors, or to Canadian businesses’ ability to reach potential customers. Let’s not, in short, jeopardize the considerable benefits of the digital economy merely because of an aversion to Big Tech.

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