Therefore, as you embark on your term as Minister of Innovation, Science and Economic Development (ISED), your priorities should be to:

- Empower and adequately resource the Competition Bureau to undertake rigorous enforcement against anti-competitive exercise of market power, deceptive marketing and criminal conspiracies to restrain market competition. You should be particularly attuned to the role of market competition in propelling innovation and productivity growth – and the critical role played by competition enforcement. The C.D. Howe Institute’s Competition Policy Council has stressed concerns that the Bureau lacks a sufficient budget to fulfill its mandate and encouraged better performance tracking and independent oversight for the Bureau.

- Develop legislative amendments to update the Competition Act by working with the Competition Commissioner and consulting with industry stakeholders, practitioners and scholars. In particular, you should consider allowing private rights of action against anti-competitive conduct, ensure a robust “toolkit” for addressing anti-competitive conduct by digital platforms, and streamline the legislative framework for analyzing anti-competitive conduct.

- Evaluate whether market studies might be an appropriate tool with which to equip the Competition Bureau. Internationally, many competition authorities are empowered to initiate studies to investigate the state of competition in specific product markets, and the international experience provides good lessons for how to appropriately limit such powers. However, the Institute’s Competition Policy Council has strongly cautioned against market studies as “fishing expedition” and argued that present scope for Bureau interventions in regulatory proceedings are sufficient.

- Consider a formalized notification system for settlement agreements between patented medicine and generic producers. Specifically, you should evaluate concerns about anticompetitive “pay-to-delay” settlements – agreements by holders of drug patents to pay generic competitors to cease litigation that might invalidate a patent.

- Clarify directions for the Canadian Radio and Telecommunications Commission (CRTC) regarding the promotion of competition. Recent direction reflected an attempt to balance incentives for investment and innovation, however, you should seek to refine this directive in order to provide great certainty for market participants.

- Modernize communications legislation to address redundancy and overlapping responsibilities. In particular, you should address the increasingly untenable separation of statutory authority and oversight between the Telecommunications Act, Radio communications Act and Broadcasting Act. As emphasized in a comprehensive Institute report on Canadian communications regulation, the overhaul should include replacing ineffective Canadian content regulations with direct subsidies, introducing more legal and economic rigour in regulatory hearings, and eliminating ownership restrictions on communications companies and wireless spectrum.

- Consider appropriate updates to privacy legislation to ensure meaningful consent for sharing of user data and to enhance competition in the digital setting. In particular, you should consider measures to ensure that users understand how data will be used and increase users’ confidence when “clicking through” boilerplate consent.

- Work with the Minister of Transport to ease foreign ownership restrictions for airlines and revisit certain amendments to the Transportation Act (passed in 2018 under Bill C-49) that empowered the Minister of Transport to override the Competition Bureau and allow airline joint ventures, like code-sharing, even when Bureau finds these are anti-competitive.

- Develop amendments to copyright in Canada to update legislation for an increasingly digital context for content delivery. In particular, in today’s technological setting with near-zero marginal cost for reproducing content, you should examine different approaches to funding and compensation for creators to ensure an efficient balance between incentives for new content, wide access to creative works as non-rivalrous public goods, and deadweight loss from levies on particular media.

- Reconsider recent amendments to the Canada Business Corporations Act (CBCA) that have created confusion about the application of established case law. Specifically, amendments to duties for the directors of corporations that encourage a board to consider the interests of certain prescribed stakeholders, the environment and the long-term interests of the corporation. You should revisit the amendment and, after consulting with legal practitioners and corporate governance experts, consider alternative legislative wording.

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