

# Intelligence MEMOS



From: Ben Dachis and Adam Fanaki  
To: The Honourable Navdeep Singh Bains, Minister of Innovation, Science and Economic Development  
Date: Two Big Jobs for the next Commissioner of Competition  
Re: **MAY 24, 2018**

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There's a major job vacancy in Ottawa: The Commissioner of Competition. The term of the current commissioner, John Pecman, comes to an end soon. This is a unique opportunity for the federal government to reflect on the performance of the Competition Bureau and articulate a set of priorities. There should be two long-term priorities for the new commissioner.

The first is to improve the timeliness and efficiency of the bureau's operations. The new commissioner should conduct a review of the existing management structure and enforcement policies within the bureau to improve the timeliness, efficiency, predictability and transparency of processes, specifically with respect to merger review and criminal enforcement. The second is to ensure that the new commissioner vigorously pursues his or her mandate to act as an independent, strong and relevant public advocate for competition. This is the majority view of the C.D. Howe Institute's Competition Policy Council, which comprises top-ranked academics and practitioners active in the field of competition policy.

Two themes emerged at the council's most recent meeting: one focused on internal reform, and one focused on external issues. The most critical priority for internal reform is to improve the efficiency and timeliness with which the Competition Bureau handles cases, particularly for mergers and criminal matters. As for externally focused reform, the council recommends that the new commissioner be an independent, strong and relevant public advocate for competition in Canada.

On the first issue, the council reiterated its concerns about delays in the bureau's investigatory and enforcement processes and that the process through which it reviews transactions and ultimately determines whether to seek remedies can be completed more quickly, transparently and predictably. While the bureau does approve the vast majority of mergers during the 30-day period set as its service standard, it often takes significantly longer to complete its reviews of more complex mergers. Similar issues arise with respect to other civil matters, such as investigations in abuse of dominance cases, as well as criminal matters. It is common for civil and criminal investigations by the bureau to take several years before any conclusions are reached.

The harder question is how to fix this issue. It is not enough for a new commissioner to simply seek to do more with the same, or even fewer, resources. Indeed, competition law enforcement, like other areas of the law, is facing increasing complexity and delays in the adjudication process. The new commissioner must find ways to improve processes at the bureau. In this regard, the majority of the council members believed that the new commissioner should begin with an overall assessment of the bureau's organizational structure, including the role of management and the review processes utilized by the bureau.

The council also recommends that the new commissioner be a more active advocate within government circles and externally for the role of competition in fostering a stronger economy in Canada. The government has recognized that "[t]here is a need for competition advocacy in Canada to advance a competition-friendly regulatory environment and bolster awareness of competition issues and their impact on the day-to-day lives of citizens." The *Competition Act* empowers the commissioner to advocate for greater competition in Canada, and the members of the council believe that the commissioner must be a strong and public advocate for competition across the full range of potentially anticompetitive conduct in Canada, including government policies and legislation that may distort competition. For the full communique, click [here](#).

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*The [Competition Policy Council](#) of the C.D. Howe Institute meets semi-annually to review and analyze competition issues in Canada.*

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