

Intelligence MEMOS



From: James Mancini
To: Navdeep Singh Bains, Minister of Innovation, Science and Economic Development
Date: December 20, 2018
Re: **MARKET STUDIES: TIME FOR CANADA'S COMPETITION POLICY FRAMEWORK TO CATCH UP**

Canada's competition policy framework lacks a key component. The Competition Bureau lacks explicit powers to conduct market studies, including information gathering abilities that are standard in many other jurisdictions. As a result, Canada is not fully realizing the benefits of comprehensive competition policy.

A market study allows competition authorities to analyse markets in which competition does not appear to be functioning well, but no anticompetitive conduct is suspected. They are a flexible tool, and can be used to identify issues ranging from anticompetitive regulations to limitations faced by consumers in getting the information they need.

While no single model exists for a market studies framework, one thing is clear: the vast majority of OECD jurisdictions, including all other G7 countries, grant their competition authorities explicit market study powers.

In Canada, the bureau has made the best of its limited powers to shed light on issues ranging from big data to retail propane markets. Formal powers, including information gathering authority, would help the bureau assess a wider range of markets and issues without being confined to publicly available data.

Some Canadian commentators have suggested that the bureau has all the powers it needs, and that it should stick to enforcement work in any event. Both of these criticisms are out of step with international experience.

Several success stories highlight the importance of explicit market study powers. The US Federal Trade Commission used its unique information collection powers to shed light on patent assertion entity activity, the booming business of purchasing patents to collect royalties or sue for patent infringement, thus generating important insights for policy and enforcement work. In the UK, the Competition and Markets Authority has developed remedies to stimulate competition by empowering consumers with information and meaningful opportunities to make choices in sectors such as retail banking.

These examples, and many more identified by the OECD, make clear why market studies are an effective complement to enforcement work, since some competition problems are not directly associated with cartels, abuses of dominance, or mergers.

Many of these problems are most serious in the digital economy. Businesses concerned about the misapplication of competition enforcement measures or anticompetitive regulation should recognise that it is valuable for the bureau to play an active role in addressing these challenges.

Stakeholders have also expressed concerns about the burden that market studies place on market participants and the legal risks that they may involve. However, these concerns have been effectively managed elsewhere, through legislated time limits for studies and pre-consultations on information requests, among other measures. A competition authority that discovers anticompetitive conduct while conducting a market study would be expected to address it. But market studies are not intended as a "pre-investigation" tool, nor would that be an effective use of these instruments.

Canadian economic policymakers are facing unprecedented challenges in encouraging digital innovation, boosting lagging productivity, and addressing internal trade barriers. Pro-competitive reform is an essential part of the solution. The potential benefits are vast: economy-wide reforms in Australia boosted GDP by an estimated 2.5 percent, and the OECD has collected many sector-specific examples with similar benefits.

Canada's competition policy framework should be equipped with the right tools to play its proper role in identifying procompetitive solutions to pressing economic challenges. It's time for Canada to catch up on market studies.

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