

Guidance for Consultation on Reforming Canada's Competition Act: *The Future of Competition Policy in Canada*

Purpose

To provide talking points and recommendations for individuals and organizations supporting progressive reform of Canada's *Competition Act*.

Motivation

The power of monopolies in Canada has fueled a cost-of-living crisis, enriched few at the expense of millions, and stifled innovation and creativity in our economy. The law intended to police monopoly in Canada, the *Competition Act*, and the agency responsible for enforcing the law, the Competition Bureau, are not up to the task of protecting Canadians.

What is needed is a *Competition Act* that supports a fair economy

Canadians can make this a reality with three key actions:

1) Stopping monopolies from growing even larger

Problem

Despite already high levels of market concentration across the country, Canada's competition law is unable to block mergers that allow monopolies to kill competition and grow even larger. The approval of the Rogers-Shaw merger is just the latest step in a process that will continue to allow competitors to be swallowed up by dominant corporations. By allowing mergers to literal monopoly, without reform Canada's competition law cannot protect Canadians from an end state where they depend on a single corporation for their daily needs.

Solutions

Canada's competition law needs the power to stop dominant corporations from further consolidating the markets we depend on everyday. By taking the harms of mergers seriously, we can preserve independent competition and choice where it matters most for Canadians. Stronger merger laws will promote organic growth and investment instead of job-killing mergers that result in an increasingly fragile economy.

Government can accomplish this by:

- Removing the efficiencies defence entirely from Canada's competition law, focusing our law on protecting and promoting fair competition rather than trading off harms to Canadians for cost-savings that include lay-offs
- Enacting brightline rules making mergers above 30% market share presumptively illegal and banning mergers above 60% market share
- Creating a preference for simple and effective remedies to harmful mergers, favouring blocking mergers as opposed to complex remedies that prop up new competitors

2) Reining in the power of existing monopolies

Problem

Though we can stop existing monopolies from becoming larger, Canadians should not be at the mercy of the monopolies that have already grown under our weak laws and lax enforcement. Canada's laws preventing corporations from abusing their dominance are too narrow and restrictive, meaning harmful conduct is allowed to persist, especially in dynamic and evolving markets. The result of this narrow approach is an absence of enforcement: despite multi-year investigations into corporations such as Google and Amazon, no abuse of dominance cases have been brought in nearly 7 years.

Solutions

Canada's competition law needs an effective and flexible tool to tackle abuses of corporate power in ever-evolving markets. By protecting fair competition, strong abuse of dominance laws can deter unfair methods of competition based on corporate power rather than competition through pricing, quality, and innovation, creating opportunities for independent competitors to flourish. Government can accomplish this by:

- Incorporating the protection and promotion of fair competition as a goal within the purpose clause of the *Competition Act*
- Expanding the scope of abuse of dominance by removing the effects test and instead focusing on preventing unfair methods of competition
- Creating a provision to protect Canadians from exploitative conduct where dominant firms have entrenched and durable market power

3) Creating a strong and transparent monopoly cop

Problem

Canada's monopoly watchdog, the Competition Bureau, is unequipped to tackle the domestic and even globe-spanning monopolies that make up our economy. Unlike global peers, the Competition Bureau cannot proactively study markets to better police monopolies, and after ten years of stagnation only recently received a modest funding increase. At the same time, the Competition Bureau is a black box to Canadians, with no way for Canadians to know what markets and corporations are being investigated, and only infrequent updates at the whim of a given Commissioner of Competition.

Solutions

Canada's Competition Bureau needs both the powers to understand the harms caused by monopolies in Canada and the resources to go toe-to-toe with the largest corporations not just in Canada, but on earth. In return for these powers and resources, Canadians deserve a transparent and public enforcer, not just a black box. Government can accomplish this by:

- Giving the Competition Bureau the ability to study markets proactively and assess the effectiveness of previous action and inaction
- Enacting consistent budget increases to the Competition Bureau that reflect the cost of investigating and bringing cases against multinational corporations
- Requiring the Competition Bureau to publicly announce and track the progress of investigations and litigation, with routine updates to the public and Parliamentarians

CANADIAN
ANTI-MONOPOLY PROJECT