U.S. Chamber of Commerce

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via Electronic Submission

The Honourable François-Philippe Champagne
Minister of Innovation, Science and Industry
Government of Canada

Re: Consultation on the future of competition policy in Canada

Dear Minister Champagne:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing the interests of more than three million enterprises of all sizes and sectors. The Chamber is a longtime advocate for strong commercial ties between the United States and Canada. For instance, to advocate for Congress to approve the U.S.-Mexico-Canada agreement, the Chamber established the "USMCA Coalition" and held more than 1,000 meetings on Capitol Hill. As we all appreciate, U.S.-Canadian trade supports tens of millions of jobs and hundreds of billions of dollars of commerce between our countries.

The Chamber is also a leading business voice on international competition policy. We support the International Competition Network and its principles of non-discrimination and procedural due process for all competitors in all jurisdictions. We regularly engage with competition agencies and policymakers around the globe on best practices and sound policy frameworks to promote trade, support economic growth, and foster innovation.

The Chamber welcomes the opportunity to provide the Government with comments in response to the consultation on the future of competition policy. We would welcome further opportunities to discuss this input with the Ministry of Innovation, Science and Industry, as well as other agencies and policymakers, as these proposals develop in the coming months.

At the outset, we offer our views on the Consultation's "fundamental question": what is competition law for? On this question, we encourage the Government to examine and ultimately embrace the answer given by courts in the United States, which for four decades have determined that competition law exists to benefit the consumer. With the touchstone of the consumer welfare standard, the modern American economy is defined by vigorous competition, innovation, and dynamism,

particularly as compared to other parts of the world where governments use competition policy to tilt the playing field in favor of preferred companies.

Moreover, given the Consultation's rightful concern with affordability, the consumer welfare standard focuses competition law squarely on the consumer's interests in terms of price, quality, and other competitive factors. A similar standard, such as one that uses as its touchstone "no net consumer harm," would offer similar benefits. Any standard that incorporates other goals, however, is very likely to lead to higher prices and a less dynamic and innovative economy because less efficient competitors will lobby a government to help them, to the detriment of the diffuse interests of consumers.

Merger Review

The Chamber welcomes the opportunity to discuss merger law and policy. As an initial matter, we stress that, for most of the past forty years, the U.S. has enjoyed a bipartisan consensus that most mergers promote competition. As courts, scholars, and the enforcement agencies themselves have recognized, mergers drive capital formation, reduce costs, and lead to innovative new products and services. They provide acquired companies with critical financing and allow acquiring companies to bring new products to consumers faster and cheaper.

For example, consumers benefit when companies become more efficient by consolidating the distribution chain "vertically." By so doing, companies can eliminate "double marginalization" – the need for each stage of the distribution chain to obtain its profit margin by raising prices – and generally improve the stability and security of their supply chains. Almost every economic study finds that vertical integration benefits consumers through lower prices.

The Chamber encourages the Government to study and to identify its genuine competitive concerns prior to implementing any changes to competition law or policy. By way of comparison, in the U.S., recent studies have debunked the notion that America's economy is overconcentrated. One study, relying on the latest available data, found that U.S. economic concentration has declined since 2007. Moreover, in some sectors of the economy with higher concentration levels, scholars and economists found that rising concentration often correlates with higher levels of output, jobs, and wages.

The Government is considering the following possible reforms and would welcome input on:

- *The revision of pre-merger notification rules to better capture mergers of interest.*

The Chamber advises caution in revising the pre-merger notification rules to capture more transactions. Such a move would, of course, raise the costs to the private sector and likely delay many smaller transactions that raise no competitive concerns. Of perhaps greater concern, such a move likely would lead the Canadian Competition Bureau (CCB) to use its resources inefficiently. By having to spend time and money reviewing smaller deals that are very unlikely to raise competitive concerns, the CCB will have fewer resources to study the larger transactions that are more likely to raise legitimate concerns. In the U.S., for instance, the Federal Trade Commission (FTC) has ended the practice of granting "early termination" review to transactions that are very unlikely to raise competitive concerns, but the end result has been that the FTC is bringing fewer enforcement actions and staff morale has plummeted.

Moreover, even without a filing requirement, the CCB can still challenge a merger that raises competitive concerns. If there are legitimate issues worthy of investigation, industry stakeholders, particularly customers and competitors, are likely to alert the CCB, whether or not there has been a filing.

- *The extension of the limitation period for non-notifiable mergers (e.g., three years), or tying it to a voluntary notification.*

Businesses need certainty and predictability to invest and to plan for the future. Although a three-year period is not overly long by international standards, it is still true that this proposal would triple the amount of time in which a business would have to look over its shoulder to see if an agency might seek to unwind its consummated transaction. In addition, the CCB should consider the reality that, the more time that passes, the more difficult it becomes to unwind a transaction.

Mergers should be evaluated *at the time* the merger is consummated. Merging parties should not be held accountable to changing market dynamics long after they have merged, especially when those shifts in market dynamics are unforeseeable and beyond the parties' control.

- *The easing of the conditions for interim relief when the Bureau is challenging a merger and seeking an injunction.*

The Chamber strongly endorses the current substantive requirement that the CCB show, on balance of probabilities, that harm to competition is "likely" to happen within a "discernible" time frame, and that this harm would likely be "substantial."

These requirements offer numerous benefits. They offer objective standards that create transparency and predictability through cases that have developed over time. A shift would introduce arbitrary and vague terms into the current consistent and known standard of competition review. Similarly, these standards require the government to show actual, meaningful competitive harm prior to interfering with private transactions; in a free market economy, this is how it should be because overenforcement can chill the very competition antitrust laws are intended to protect, thus hurting consumers. A lower standard would encourage competitors and interest groups to petition the government for intervention every time a merger disfavors their interests, without regard to effects on consumers. By way of comparison, the U.S. has declined to adopt the numerous proposals that would have given the competition agencies more enforcement discretion.

Finally, concerns about "the complexity, dynamism and pace of change in many markets, especially digital ones" are all reasons to *maintain* the current high standards for governmental intervention. Quite simply, dynamic markets are very likely to adjust on their own, without any involvement from the government, whereas government intervention and regulation actually may cement the status of quo instead of allowing for these dynamic markets to evolve. The last two years alone have seen substantial changes in digital markets, with some companies rising to challenge global leaders, global leaders seeing significant downgrades in their market shares and market capitalizations, and legacy companies investing heavily in digital tools to compete more effectively. Excessive governmental involvement is more likely to harm, rather than help, competition.

For these reasons, the Chamber strongly opposes any lowering of standards that would allow the government to forbid private market activity based on speculative harms. Economic freedoms that allow two companies to merge should not be blocked based on bias, but instead held to a legal standard that shows harm outweighing any benefits to consumers. A lowered standard would prohibit and deter beneficial mergers that result in significant efficiencies that benefit consumers. In fact, the U.S. Federal Trade Commission has done multiple merger retrospective studies and concluded that most transactions benefit consumers.

Competition law, particularly the consumer welfare standard, protects the free market and disciplines governmental agencies. Agencies should not interfere with private competitive practices, whether on behalf of favored political groups or domestic industries, absent an empirical showing that those private practices are more likely than not to harm consumers. To lower those standards would invite politicization, protectionism, and untethered prophesizing.

- *Changes to the efficiencies defence, e.g. restricting its application to circumstances where consumers or suppliers would not be harmed by the merger.*

Whether considered as an affirmative defence or, as in the U.S., part of the overall evaluation of a merger, quantitative efficiency arguments should continue to play an important role in Canadian merger analysis. As the Chamber relayed in its opening comments, most mergers are pro-competitive because they drive capital formation, reduce costs, and lead to innovative new products and services.

The Government would damage Canada's economy by excluding the efficiency factor from merger reviews. For decades, Canada (and its courts) have wisely chosen to acknowledge the competitive value of mergers that are of net benefit to Canada as a whole. A reversal almost certainly would ossify Canada's economy, leading to less investment and less innovation. In particular, any limitation grounded in "no supplier harm" would, for practical purposes, negate the value of efficiencies because pro-competitive mergers frequently can result in lower market share for less efficient market players, including suppliers. As a result, such a change likely would lead to higher prices for Canadian consumers.

- *Revisiting the standard for a merger remedy, e.g. to better protect against prospective competitive harm, or to better account for effects on labour markets.*

As an initial matter, the Chamber questions the value of using competition policy to protect labour markets, other than in the rare case of a labour monopsony. Many pro-competitive mergers may have an unfortunate but ultimately salutary consequence of eliminating the need for some workers, as duplicative functions are consolidated in the merged company. In a dynamic economy, displaced workers then move to other, more productive roles in the economy.

Of course, any government can and should help its workforce, but through means other than competition policy. Canada has established separate legal frameworks and authorities to address concerns within and among labour markets, such as Provincial Ministries of Labour. These institutions often have greater authority and more surgical tools to address labour market concerns. Similarly, federal and provincial laws already address employee pay, including minimum wage and severance.

Setting aside the question of whether merger analysis should evaluate labour markets at all, in point of fact, there is no need for change because Canadian merger analysis already recognizes the effects of mergers on labour markets. Accordingly,

there is simply no need to add a specific "labour factor" since the CCB can consider any and all effects of a merger. To change this analytical framework would elevate some factors over others, a dramatic departure from modern competition policy, and could lead to conflicts and inconsistencies as the CCB tries to juggle multiple and often conflicting goals.

Unilateral Conduct

Canada's competition policy should focus on practices most likely to harm competition and consumers, not on the practices of specific companies. Consistent with international treaties and sound policy, the Government must treat all market participants fairly and equally, regardless of their national origin. In contrast, if the CCB is charged with policing select companies instead of monitoring potentially harmful conduct, it is much more likely to lead to overenforcement against those companies. If such enforcement actions particularly target foreign investors, for example, this could lead to significant trade disputes, reduce investment, and ultimately harm Canadian consumers.

In response to the digital transformation of the economy, governmental efforts should target well-identified concerns that harm consumers arising from conduct in the market. A narrow scope, focused on conduct that is identified as concerning and that does not single out any firm based on size or nationality, is consistent with established best practices for sound regulation. Further, this approach ensures that any attempt to regulate for a particular identified concern addresses the specific issue without imposing broader burdens. It is critical that regulatory responses do not overreach and chill pro-competitive behavior.

Given some of the ideas under review, the Chamber queries whether the focus on unilateral conduct is simply designed to allow the CCB to exercise significant discretionary authority targeted at American competitors, to their everlasting detriment? Unfortunately, such ideas echo the unilateral digital services taxes imposed by several member states of the European Union, which are cleverly crafted to apply almost exclusively to American companies in a manner that clearly violates international commitments. The European Commission's Digital Markets Act (DMA) is another such discriminatory measure that departs fundamentally from sound competition policy by creating rules without any linkage to actual effects or harm. We urge Canada not to follow a similar approach.

Instead, as the consultation document itself recognizes, markets are dynamic. To the extent that the Government is concerned about concentration in any particular digital market, it is very likely that market forces will bring robust competition to that market far sooner than any government could. Some recent startups have become

global household names in just a few years, or even less time, in response to consumer demand. As has happened so often throughout history, if any of the currently large tech companies lose their edge or rest on their laurels, new entrants will soon pass them by.

The Government should, of course, continue to enforce its existing competition laws in an even-handed manner across the economy, but should hesitate before affording itself extraordinary new powers to disturb the most dynamic segment of the world's economy. The Competition Act is a law of general application for virtually all businesses in Canada. It should remain so.

The Government is considering the following possible reforms and would welcome input on:

- *Better defining dominance or joint dominance to address situations of de facto dominant behaviour, such as through the actions of firms that may not be unmistakably dominant on their own, but which together exert substantial anti-competitive influence on the market.*

As an initial matter, amidst all the talk of market dominance, the Chamber urges the Government to require formal market definitions as part of any inquiry. Market definition is an indispensable step in evaluating whether there is a genuine competitive problem at all. The goal is to define a relevant market so that metrics like concentration levels, market power, and market shares can be determined. Market definition aims to describe a market of all companies that constrain each other's ability to raise prices or lower quality or innovation. A formal market definition also ensures that any enforcement actions will address genuine competitive problems, based on objective evidence of harm.

Accordingly, the Chamber agrees that it could be helpful to lay out a non-exclusive list of criteria that the CCB should examine as part of the review process, a solution that would provide notice to the private sector and flexibility to the agency. As part of this process, however, the Chamber must emphasize the paramount importance of identifying an objective measure to evaluate a firm's conduct in terms of anticompetitive harm. In the U.S., that measure is the consumer welfare standard; such an objective measure provides the private sector with predictability and specificity while still affording the CCB sufficient flexibility to identify competitive threats. In contrast, international regimes have avoided imposing bright line rules as to what constitutes a dominant position as every market is defined by different dynamics that can constrain or enhance firms' abilities to compete.

Finally, in terms of "joint dominance," the Chamber believes that collusion among competitors should receive scrutiny from competition agencies. The idea that a collection of companies combined can be dominant in the absence of collusion -- what is often termed "collective dominance" -- should be rejected.

- *Crafting a simpler test for a remedial order, including revisiting the relevance of intent and/or competitive effects.*

The Chamber urges the Government to maintain a robust competitive effects standard. In practice, businesses have become accustomed to complying with existing law. They govern their conduct by ensuring that it is not predatory, exclusionary, or disciplinary, as has been required by law and judicial interpretation for over thirty-five years. Removing this fundamental element would make compliance assessments enormously difficult and would likely have the effect of deterring competition and innovation.

Other potential criteria lack objectivity or a nexus to actual competitive problems. Factors such as network effects, economies of scale, and the level of fixed costs are all relevant to understanding a market, but all susceptible to subjective evaluations -- and ultimately should be irrelevant without a showing of harm to consumers.

In particular, the Chamber fears that the CCB would be tempted to subjectively determine that every digital market contains network effects, economies of scale, and high fixed costs, and use that belief to impose significant sanctions targeted at American companies, without any showing that those companies are harming consumers. Many observers express concern about network effects and high fixed costs in digital markets, but the past two years have seen explosive growth of new entrants, belying the notion that these supposed barriers preclude entry or that any company has entrenched and durable market power at all, particularly in the digital economy. Ultimately, the only question that should matter is whether competitive practices harm consumers.

This is particularly true given the recent amendments, which introduced exposure to significant financial penalties, up to 3% of annual global revenues. Quite frankly, a company's aggregate revenue has no probative value as to whether the company is harming consumers – to the contrary, high revenue may simply indicate that the company is providing consumers with goods and services that they want at prices they are willing to pay. Moreover, such severe penalties appear untethered to any consumer harm, much less to any harm suffered by consumers in Canada. Instead, this proposal appears specifically designed to punish and intimidate foreign competitors.

- *Creating bright line rules or presumptions for dominant firms or platforms, with respect to behaviour or acquisitions, as potentially a more effective or necessary approach, particularly if aligned with international counterparts and tailored to avoid over-correction.*

The Chamber strongly opposes any effort to treat so-called "dominant" firms or platforms differently than other companies. As discussed previously, the Competition Act is a law of general application for virtually all businesses in Canada. Discriminatory rules are inconsistent with the rule of law and likely would lead to overenforcement against targeted companies. Moreover, such rules would increase those firms' costs, reducing their willingness and incentive to innovate.

Similarly, although the Chamber agrees that there can be value in laying out a non-exclusive list of relevant factors, experience confirms that bright-line rules are inappropriate. Outside violations such as naked price-fixing, few practices inherently harm competition or consumers. As a result, bright line rules ignore the need for extensive fact-specific analyses that help ensure decisions and restrictions actually help competition. Finally, because bright line rules are static, they are especially ill-suited to ever-evolving online competition.

- *Condensing the various unilateral conduct provisions into a single, principles-based abuse of dominance or market power provision. Alternatively, the unilateral conduct provisions outside of abuse of dominance could be repositioned for different objectives of the* Competition Act*, such as a fairness in the marketplace.*

The Chamber urges the Government to focus its competition policy on the welfare of consumers as measured by transparent and, where possible, objective criteria such as price and quality. Other criteria can often be highly subjective and not amenable to easy administration. "Fairness," for example, is an excellent virtue, but vague and subjective as an administrable standard. Trying to assign weights to vaguely defined notions of fairness would create confusion and could lead to arbitrary decisions that are not consistent with the rule of law. The manufacturer, the distributor, and the customer all will have very different notions of what constitutes a "fair" price. A firm and its rival will have their own notions as to whether a particular competitive practice is "fair" or not.

Likewise, other policy issues, such as concerns over corporate political power, the status of smaller businesses, and other social interests, are political conversations, not matters for sound competition policy. Competition policy protects competitive markets, but it is not designed to address other concerns. Moreover, any new and amorphous standards would necessarily introduce uncertainty and invite

litigation, as in Europe. For example, the U.K. and German submissions to the Organization for Economic Co-operation and Development highlighted how the DMA's use of broad new concepts such as "fairness" gives rise to uncertainty. In particular, the German government expressed concerns about the inflexibility of the DMA approach and cast doubt on whether this is an appropriate long-term solution in evolving digital markets.

Finally, in terms of condensing the provisions, the Chamber agrees that the law should be transparent and accessible to regulated parties, even as we disagree with the thrust of the unilateral conduct provisions.

Competitor Collaborations

The Government is considering the following possible reforms and would welcome input on:

- *Deeming or inferring agreements more easily for certain forms of civilly reviewable conduct, such as through algorithmic activity, especially given the difficulty of applying concepts like "agreement" and "intent" in the age of AI.*

In general, the Chamber agrees that certain horizontal agreements between competitors can raise significant competitive concerns. Nevertheless, the Chamber opposes any move to deem or infer agreements more easily. Most importantly, such a change could seriously chill pro-competitive conduct, such as price-monitoring and price-matching, thereby leading to higher prices for consumers. For instance, if a gas station lowers prices and a neighboring outlet matches the price cut, would the CCB infer an "agreement"? Such a change would represent a significant shift in competition law enforcement in Canada and create vast uncertainty across the economy.

In terms of AI, it is simply too soon to adopt new competition rules. Setting aside the theoretical possibility of AI agreements, there is not yet evidence that companies are using AI to fix prices or that new rules are needed to address any such efforts. On the other hand, new rules could deter the further development and use of AI, to the possible detriment of consumers. A wait-and-see approach makes sense for now.

- *Broadening and/or strengthening the* Competition Act*'s civil competitor collaboration provisions to discourage more intentional forms of anti-competitive conduct, including through examining past conduct and introducing monetary penalties.*

In general, the Chamber agrees that civil penalties can be an effective tool to combat intentional forms of collaborative anticompetitive conduct. Still, additional analysis is needed to assess whether broader tools are appropriate. Monetary penalties could have a chilling effect on business creativity and willingness to take pro-competitive risks. For instance, substantial fines in jurisdictions such as the European Union have not always led to the desired outcome. To the extent that the Government goes down this path, it should articulate clear criteria so that businesses can assess in advance whether proposed conduct complies with the Competition Act.

Of course, the Chamber appreciates the fact that the civil competitor collaborations provision applies only to ongoing and future conduct. This limited usage is consistent with the Act's governing philosophy, namely, that the civil provisions are designed to protect competitive markets rather than to discipline market participants.

- *Making collaborations that harm competition civilly reviewable even if not made between direct competitors.*

The Chamber questions the need for this proposal. In general, most vertical agreements promote competition and few agreements not between direct competitors raise any genuine competitive concerns. To the extent that a particular contract may raise competitive concerns, such as one involving a competitor with significant market power, the CCB already has tools to examine such agreements.

- *Introducing mandatory notification or a voluntary clearance process for certain potentially problematic types of agreement.*

The Chamber strongly opposes such a process. As noted, few agreements not between competitors raise any genuine competitive concerns. Such a process would dramatically raise transaction costs and potentially overwhelm the CCB with information untethered from meaningful competitive concerns.

- *Reintroducing buy-side collusion – beyond only labour coordination – into the* Competition Act*'s criminal conspiracy provision, or considering a civil per se approach to it.*

The Chamber recommends that Canada maintain its existing posture toward buy-side agreements. In 2009, the last time the Competition Act was meaningfully amended, Parliament intentionally excluded buy-side agreements from the criminal conspiracy provisions. The 2009 amendments followed nearly a decade of consultation aimed at narrowing the categories of conduct that attract criminal liability to those which are *per se* anticompetitive (i.e., that can have no

procompetitive effect). At the time, Parliament considered and deliberately rejected including buy-side agreements as part of the criminal conspiracy provisions, in favor of treating them as a reviewable practice where competitive effects are necessarily taken into account.

This rule continues to make sense. In its Competitor Collaboration Guidelines, the CCB effectively acknowledges that buy-side agreements are often pro-competitive:

> *The Bureau recognizes that small- and medium-sized firms often enter into joint purchasing agreements to achieve discounts similar to those obtained by larger competitors. Such agreements can be pro-competitive and are not deserving of condemnation without a detailed inquiry into their actual competitive effects.*
> *****
> *A joint purchasing arrangement is an agreement between firms to purchase all or some of their requirements for a product from one or more suppliers. Such arrangements are often procompetitive, as they permit firms to combine their purchases to achieve greater discounts from suppliers, and share delivery and distribution costs.*

Given that buy-side agreements can have negative, neutral, or positive effects on competition, the current approach remains appropriate.

Deceptive Marketing

The Government is considering reforms in the following area and would welcome input on:

- *Adopting additional enforcement tools suited for modern forms of commerce, given the nature and ubiquity of digital advertising. For example, further amendments to better define false or misleading conduct, such as the 2022 drip pricing amendments, could be considered.*

The Chamber has no specific comments on the utility of additional enforcement tools, but would oppose certain proposals, introduced in other jurisdictions, to limit the ability of large companies to reach consumers through advertising. Such proposals would restrict the ability of certain companies to provide consumers with information about lower-cost alternatives, thereby entrenching the market power (and profit margins) of incumbents. Certain proposals also limit the ability of companies to introduce new products to consumers, even though

advertising is the primary way in which a company can inform consumers of the benefits of innovative new designs.

Administration and Enforcement

The Government is considering reforms in the following areas and would welcome input on:

- *Making the administration of the law, and enforcement before the Competition Tribunal or courts, more efficient and responsive whether public or private, without unreasonably compromising procedural fairness. For example:*
    - *Giving the Bureau more leeway to act as a decision-maker, e.g. through simplified information-collection, or a first-instance ability to authorize or prevent forms of conduct.*

The Chamber has serious concerns about proposals that would allow an agency to authorize or prevent forms of conduct. An independent prevention power would set a dangerous precedent insofar as the CCB would gain the powers of investigator, judge, and jury—anathema to our Anglo-American and Canadian legal and political traditions.

In terms of information-collection processes, the CCB already has at its disposal a broad range of investigative tools in the context of an investigation or formal Inquiry, from the target, its competitors, suppliers and customers in the industry. By way of example, the CCB routinely obtains section 11 court orders against targets during non-criminal Inquiries under the Competition Act. This process is already straightforward for the CCB as the application itself is *ex parte*, meaning the affected company receives no formal service of the filed materials, and no formal notice of the hearing. Counsel for the Commissioner files the evidence and supporting written representations with the court and appears at a brief oral hearing. The company is almost never provided with notice or represented at the hearing.

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    - *Introducing new forms of civil enforcement as alternatives to criminal prosecution for certain actions.*

The Chamber questions the need for this proposal because the Competition Act is already organized in this fashion. The Act provides dual-track criminal and civil regimes in relation to competitor collaborations and deceptive marketing practices. If further forms of civil enforcement are introduced as alternatives to criminal prosecutions, it would only make sense to do so in conjunction with a complete overhaul of the criminal provisions. As a governing principle, criminal provisions

should be reserved for the most egregious conduct that has no possibility of pro-competitive effects.

- *Allowing private parties to seek compensation for damage suffered from civilly reviewable (non-merger) conduct under the* Competition Act*.*

The amendments that came into force on June 23, 2022, extended private access to abuse of dominance cases. Given that it has been just a few months since this change was introduced, it would be prudent to monitor the effect of this change before exposing companies to potentially extensive civil liability to private plaintiffs.

Indeed, further expansion of private enforcement rights could encourage and even incentivize frivolous litigation. This risk would be significantly aggravated if the standard of abuse of dominance is altered to, for example, allow for bright-line rules or presumptions for dominant firms or platforms.

- *Pursuing a reasonable path with respect to the collection of information outside of the enforcement context, such as for the purpose of market studies, taking both public value and private burden into account.*

The CCB should not receive increased powers to study markets where there is no suggestion that the Competition Act has been violated. Market studies impose significant burdens on parties where there is no evidence of a violation. The CCB is a "law enforcement" agency, with no policymaking role; to provide it with extensive market study powers is inconsistent with that mandate. In fact, market studies may draw away CCB's resources from enforcement activity, which would almost certainly happen if the CCB could be "directed" to study particular markets.

In the past, Parliament has wisely decided not to give the CCB these powers. The market study powers in the predecessor to the Competition Act (the Combines Investigation Act) was deliberately not carried over in 1986. More specifically, there were doubts widely expressed about the utility and expense of inquiries by the Restrictive Trade Practices Commission, including the five-year inquiry into the petroleum industry, which famously involved 200 days of hearings.

Comments and Suggestions

Are there any other considerations or elements we should explore further when addressing the top priorities for the future of competition policy in Canada?

To reiterate, a nation's competition policy should protect consumers and the competitive process, not individual competitors. Such a policy relies on competitive

forces to police the market, avoids picking winners and losers, and acts only to ensure that the competitive process is benefitting consumers via such objective metrics as low prices, high output, quality products, and innovation of new products. A contrary approach, such as one that protects individual competitors based on arbitrary criteria like market capitalization, would likely stifle competition, reduce incentives to invest and innovate, raise prices, and lead to more calls for government intervention – an endless slippery slope

In the United States, consumer-driven competition policy has created a stable and predictable regulatory environment that has spurred growth and innovation. In other parts of the world, the lack of such stability and predictability has dragged down investment and growth. For these reasons, the Chamber urges Canada to focus its competition policy on consumers.

Sincerely,

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U.S. Chamber of Commerce

Neil Herrington
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Americas
U.S. Chamber of Commerce