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## **The Role of Competition Policy in Promoting Economic Recovery – Note by Canada**

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This document reproduces a written contribution from Canada submitted for Item 2 of the 134th OECD Competition Committee meeting on 1-3 December 2020.

More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/promoting-economic-recovery.htm>

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## *Canada*

### 1. Introduction

1. *Policies that support competition can accelerate Canada's post-pandemic economic recovery by stimulating entry by new businesses, productivity and innovation:*<sup>1</sup> that was the message from the Competition Bureau Canada (the Bureau) to Canadian policy officials and regulatory bodies (collectively, the policy-makers).

2. The Bureau, as an independent organization responsible for enforcing Canada's *Competition Act*<sup>2</sup> (the Act), ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace. Led by the Commissioner of Competition (the Commissioner), the Bureau carries out the legislative mandate<sup>3</sup> to promote and advocate for the benefits of competition in Canada.

3. For the Bureau, the experience of past crises has shown that economic crises provide some businesses with the opportunity to enhance their market power. Instead of adapting, some businesses with market power are incentivized to reduce production, increase prices or erect barriers to entry, which could prolong an economic slowdown and, ultimately, jeopardize the productivity and competitiveness of the economy.<sup>4</sup>

4. In addition, the experience of past crises has shown that economic crises can also spur the adoption of protectionist measures. Governments may be required to intervene not only to suspend or relax the enforcement of competition law, but also to support struggling businesses or economic sectors.<sup>5</sup>

5. During the COVID-19 health crisis, the first challenge faced by the Bureau emerged when the pandemic's impact on the normal functioning of the economy began to make itself felt. The Bureau, like many of its international counterparts,<sup>6</sup> published its guidelines on [collaboration between competitors](#) in the context of COVID-19: these guidelines propose a flexible, yet principles-based approach to collaborations that are necessary to ensure the provision of essential goods and services.

6. These precedent-setting guidelines were a significant step back from the Bureau's traditional prescriptions on the enforcement of the Act with respect to collaboration between competitors. However, the Bureau deemed these guidelines necessary given the circumstances surrounding the market.

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<sup>1</sup> Competition Bureau (2020), [Turning the tide: the role of competitive markets in Canada's economic recovery](#).

<sup>2</sup> *Competition Act* (R.S.C. (1985), c. C-34).

<sup>3</sup> Sections 7, 125 and 126 of the *Competition Act*.

<sup>4</sup> International Competition Network (ICN) (2009), [The case for competition policy in difficult economic times](#); Commissioner of Competition (2020), [Supporting competition on the road to economic recovery](#).

<sup>5</sup> Idem.

<sup>6</sup> Government of the United Kingdom (2020), [Supermarkets to join forces to feed the nation](#); Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission (2020), [Joint Antitrust Statement Regarding Covid-19](#); Australian Competition and Consumer Commission (2020), [Supermarkets to work together to ensure grocery supply](#), [Medicine wholesalers to co-operate on access to pharmaceutical products](#), [Banks authorised to co-operate on loan relief and services](#); European Competition Network (2020), [Antitrust: Joint statement by the European Competition Network \(ECN\) on application of competition law during the Corona crisis](#).

7. More broadly speaking, in the context of the economic slowdown and recovery that have followed in the wake of the COVID-19 health crisis, the Bureau considers its role to be two-fold.

8. First, it is responsible for protecting consumers, businesses and government spending from anticompetitive practices through the enforcement of the Act. The Bureau continued to crack down on anticompetitive activities, such as fraudulent commercial practices, price fixing, and bid-rigging in public procurement, specifically by issuing [warning letters](#) to a variety of business.<sup>7</sup>

9. These law enforcement activities are intended above all to maintain consumer confidence during the pandemic and beyond, in order to contain the effects of the crisis on demand, and to set the groundwork for a strong recovery.

10. Second, the Bureau has adapted its competition promotion activities in order to assist public decision-makers in taking competition into account during and after the pandemic. Adhering to the principle that government policies that support competitive markets can help speed up economic recovery, the Bureau has continued to promote the positive outcomes of pro-competitive policies to policy-makers.<sup>8</sup>

11. This brief presents some of the competition promotion initiatives undertaken by the Bureau to assist policy-makers during the economic slowdown and in preparation for the recovery of the Canadian economy.

12. The first initiative consists of the step-by-step guide designed by the Bureau for Canadian policy-makers to help them with competition assessment. The guide was addressed to more than 150 federal, provincial and municipal policy-makers. The second initiative consists of targeted advice from the Commissioner or the Bureau to policy-makers on issues likely to influence the recovery of the Canadian economy.

## 2. Guide to competition assessment

13. On August 20, 2020, the Bureau published a technical guidance document for policy-makers.<sup>9</sup> The guide addresses concerns relating to the fact that, on the one hand, in making decisions, policy-makers must put various policy goals into perspective—and among these goals, competition is not necessarily considered to be the most important.<sup>10</sup> On the other hand, in the absence of appropriate tools, policy-makers with the best of

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<sup>7</sup> These businesses sought to benefit from the fear and misinformation surrounding COVID-19 by selling products that allegedly prevented, treated or cured the disease.

<sup>8</sup> For a discussion on the role of competition policy in the context of Canada's economic recovery, see the C.D. Howe Institute (2020), [The End of Laissez-faire? Through Crisis and Recovery, Enforce Competition and Safeguard Open Markets](#). More generally, see the International Competition Network Steering Group Statement (2020) [Competition during and after the COVID-19 Pandemic](#), and the Organization for Economic Cooperation and Development (OECD) (2020), [Competition policy in times of crisis](#).

<sup>9</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#).

<sup>10</sup> For example, at the federal level, the [Cabinet Directive on Regulation](#) sets out the Government of Canada's expectations and requirements in the development, management and review of federal regulations. One of the guiding principles of the federal policy on regulations is that *Regulations support a fair and competitive economy*. However, for the purposes of the Regulatory Impact Analysis Statement, there is no specific requirement to assess the impact on competition, but there are such requirements relative to the socioeconomic and environmental impact of regulations.

intentions could be limited in their capacity to assess the impact of their competition decisions and to be proactive in reducing such an impact.

14. Therefore, in its role as competition expert, the Bureau has committed to assisting policy-makers by providing them with a practical tool that identifies harm to competition and helps them take positive steps to mitigate the harm.

15. The guide was designed on the basis of the Bureau's experience and the international best practices shared by the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN).<sup>11</sup> It is a functional document that assists decision-makers in assessing competition by addressing the following questions:

- Why is it so important to maintain competition?
- How can policy goals be achieved while interfering as little as possible with competition?
- When will policies have the most significant impact on competition and what mitigation strategies are available?

## 2.1. Why competition is important

16. The Bureau reiterates that competition is essential to Canada's economic health insofar as it:

### 1. Lowers prices, creates more choice for consumers and increases quality levels

In a competitive market, all businesses seek to maintain a value proposition that is at least as attractive as that of their competitors; failure to do so would result in lost sales, a weakened position in the market and eventually, exit from the market. For consumers this means better products at more affordable prices.<sup>12</sup>

### 2. Empowers consumers

Competitive markets give consumers the power to choose the products and services that best meet their needs, at a price that they are prepared to pay. Competition results in a wider variety of choices and an easier comparison between products and services, which allows consumers to make informed decisions and to hold businesses accountable.<sup>13</sup>

### 3. Stimulates productivity, economic growth and innovation

The competitive process generates continuous improvement by ensuring that businesses that can produce the most output with the fewest inputs will prosper, and by freeing up those that are not as well adapted for other productive uses in the economy. This brings about greater economic productivity, which increases the wealth and economic well-being of Canadians.<sup>14</sup> Businesses also innovate more when faced with greater competitive pressure.<sup>15</sup>

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<sup>11</sup> For more information, see OECD (2019), [Competition Assessment Toolkit](#) and ICN (2014), [Recommended Practices for Competition Assessment](#).

<sup>12</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 7.

<sup>13</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 8.

<sup>14</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 9.

<sup>15</sup> Idem.

## 2.2. How to perform a competition assessment

17. The Bureau states that competition assessments require policy-makers to consider the effect that policies may have on the competitive process in a given industry. As with other governmental assessments, such as gender-based analysis and environmental impact assessments, these assessments help policy-makers to identify and avoid unintended consequences of the policies.<sup>16</sup>

18. A competition assessment includes five steps:

- **Step 1: Identify the policy**

In this step, the *why* and *how* of the policy-maker's preferred approach are identified. This involves specifying the underlying goals and determining the instrument(s) that a policy-maker will use to achieve those goals.<sup>17</sup>

- **Step 2: Assess whether the policy impacts competition**

In the second step, a policy-maker should enumerate any restrictions that the policy will place on business conduct and analyze how its policy approach will affect competition.<sup>18</sup> To help a policy-maker in this exercise, the Bureau sets out the four central indicators of a competitive marketplace.<sup>19</sup>

- **Step 3: Identify alternatives to address policy goals, if necessary**

If Step 2 reveals that the proposed policy affects any of the indicators of a competitive marketplace, then a policy-maker should ask whether other policy approaches would be less intrusive to competition and market forces, and assess whether those alternative approaches will also achieve their policy goals. If so, then those alternative approaches should be preferred. With a view to using these other methods, a policy-maker should focus on the features of the policies identified in Step 2 as having the potential to restrict competition and assess whether those restrictions are: (1) necessary, (2) narrowly defined, and (3) proportionate.<sup>20</sup>

- **Step 4: Implement the best alternative**

Once a policy-maker is satisfied that it has identified a policy that achieves the policy goal in the most competition-friendly manner, based on the best available evidence, then it is ready to move that policy through the normal course of implementation.<sup>21</sup>

- **Step 5: Conduct an ex-post assessment**

It is important that policies keep up with the rapid pace of economic development and technological change; otherwise, there is a risk that time-worn policies can negatively

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<sup>16</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 10.

<sup>17</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 11.

<sup>18</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 12.

<sup>19</sup> Namely, the fact that (1) businesses can easily enter markets and expand, (2) businesses can freely set the price, quality and quantity of their products and services, (3) businesses have a strong incentive to compete and (4) consumers can easily switch between competitive alternatives. Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 13 and thereafter.

<sup>20</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 17 and thereafter.

<sup>21</sup> Competition Bureau (2020), [Strengthening Canada's economy through pro-competitive policies](#), p. 22.

affect new ways of doing business. Policy-makers can limit this risk by committing to review existing policies on a regular basis.<sup>22</sup>

19. With this tool, the Bureau intends to support a culture of competition by providing policy-makers with a practical tool to help them design rules that promote competition. Therefore, the publication of the guide was followed by an invitation, sent to over 4,000 federal regulatory organizations, to test out the tool.

### 3. Strategic advice for policy-makers

20. In a more targeted manner, the Bureau provided strategic advice to policy-makers on issues likely to promote a timely recovery of the Canadian economy.

#### 3.1. Advice regarding the renewal of Canada’s monetary policy

21. On October 1, 2020, as part of the Bank of Canada Consultation with respect to renewing Canada’s monetary policy framework, the Commissioner presented a [brief](#) in which he developed his position, that “to be at its best, Canada needs more competition,” around three central ideas.

##### 1. Competition lowers inflationary pressures

On the basis of studies in the field,<sup>23</sup> the Commissioner reiterates the deflationary effects of the competitive process on the economy.

Competition unlocks economic value by motivating entrepreneurs to re-imagine all aspects of a business: developing products that better address the desires of consumers, more efficiently producing and distributing goods, and retailing those products in innovative and valuable ways. Through the competitive process, consumers receive lower quality-adjusted prices that are both measureable and impactful, having a deflationary effect on the economy.

##### 2. Competition drives productivity

The Commissioner also highlights the relevance of the international studies that link higher levels of competition with greater innovation and productivity.<sup>24</sup>

The competitive process drives continuous improvement. Businesses that can produce the most output with the fewest inputs will thrive, while those with poorer results must take on other productive uses in the economy. This effect ensures higher economic productivity, which increases the wealth and economic well-being of Canadians.

##### 3. A competition culture will reinvigorate the Canadian economy

Lastly, the Commissioner reiterates that the digital economy is disrupting and reshaping markets, and that authorities across the globe must face a new set of challenges. For Canadian consumers and businesses to thrive in a digital economy, policy-makers need

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<sup>22</sup> Idem.

<sup>23</sup> See Pryzbyla, M. and Roma, M. (2005), [Does Product Market Competition Reduce Inflation?](#) European Central Bank – Working Paper No 453.

<sup>24</sup> See OECD (2014), [Competition and macroeconomic outcomes factsheet](#), and World Bank (2019), [The World Bank Productivity Project](#).

to seize opportunities to encourage competition and innovation in areas that matter to Canadians.

### 3.2. Advice concerning the importance of small- and medium-sized enterprises

22. On August 28, 2020, the Deputy Commissioner, Competition Promotion Branch (Deputy Commissioner), sent a [letter](#) to the Standing Committee on Finance and Economic Affairs of the Legislative Assembly of Ontario regarding measures taken by the Government of Ontario to identify and minimize barriers to the entry and expansion of small- and medium-sized enterprises (SMEs). In the context of economic recovery, the Deputy Commissioner applauded such an initiative.

23. Indeed, considering the role of SMEs in the Canadian economy and the impact of the health crisis on their activities,<sup>25</sup> the Deputy Commissioner highlights the importance of removing barriers to entry or expansion that could prevent SMEs from competing.

24. On the one hand, he encourages the adoption of pro-competition policies that support the participation of SMEs in the marketplace and promote dynamism and competitiveness in the Canadian economy.

25. On the other, he states that, following an economic turndown, markets in which businesses can easily enter and expand are likely to recover the fastest. Obstacles that make it more difficult for businesses to enter or expand in a market diminish competitive intensity and slow growth.

### 3.3. Advice given to the Standing Committee on Industry, Science and Technology (INDU)

26. On May 25, 2020, the Bureau presented a [brief](#) to the Standing Committee on Industry, Science and Technology (INDU) of Canada's House of Commons as part of their review of the Canadian response to the COVID-19 pandemic.

27. In the brief, which was one of the Bureau's first interventions relative to the economic recovery, the Bureau shared its perspective on the role of competitive markets in Canada's economic recovery, in terms of both law enforcement and promotion of competition.

28. With respect to promotion of competition, the Bureau clearly espoused the idea that governments can contribute to the swift recovery of the Canadian economy by reinforcing a strong culture of competition, where businesses are driven to grow and innovate, and the Canadian economy can fully embrace its competitive advantage.

## 4. Conclusion

29. Given the advantages of competition at all times, and especially during an economic recovery, the Bureau has emphasized its message to Canadian policy-makers on the importance of building a culture of competition in Canada<sup>26</sup> through the enforcement

<sup>25</sup> Statistics Canada – [Impact of COVID-19 on small businesses in Canada](#), March 2020; Cision (2020), [COVID-19 impact felt by 81 per cent of Canadian small business owners: CIBC Poll](#).

<sup>26</sup> Commissioner of Competition (2019), [Building a Culture of Competition in Canada](#).

of the Act and the promotion of pro-competitive policies, particularly in key industries in Canada's economy.

30. In this vein, the Bureau recently launched a [public consultation](#) as part of a market study of Canada's health care sector; the consultation will allow for timely, evidence-based recommendations concerning the advantages of pro-competitive policies in the sector.

31. The COVID-19 pandemic has truly highlighted the importance of digital solutions in responding to the health-care needs of Canadians.<sup>27</sup> It is essential that the measures taken to provide Canadians with digital health care solutions during the pandemic promote the development and deployment of digital solutions beyond the health crisis.

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<sup>27</sup> On May 3, 2020, the Government of Canada committed to invest [\\$240.5 million](#) to support the expansion of virtual care and mental health tools across the country.