

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

The intersection between competition and data privacy – Note by Canada

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This document reproduces a written contribution from Canada submitted for Item 8 of the 143rd OECD Competition Committee meeting on 12-14 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/intersection-between-competition-and-data-privacy.htm

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Canada

1. Introduction

1. Canada's Competition Bureau¹ is pleased to provide this submission to the OECD's "Roundtable on The Intersection between Competition and Data Privacy Policy".
2. The Bureau, headed by the Commissioner of Competition, is an independent law enforcement agency of the Government of Canada. Among other things, it administers and enforces Canada's competition law – the *Competition Act*.² Its mandate is to protect and promote competition for the benefit of Canadian consumers and businesses.³
3. The Office of the Privacy Commissioner of Canada ("OPC")⁴ is headed by the Privacy Commissioner of Canada ("Privacy Commissioner") and is an agent of Parliament.⁵ The OPC oversees compliance with the federal *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* ("PIPEDA").^{6,7} Its mission is to protect and promote privacy rights.
4. The Bureau welcomes this opportunity to comment on the intersection of competition and data privacy in digital markets. In this submission, the Bureau highlights:
 1. Amendments to our laws, proposed and past, that concern:
 - the organizations' authorities to share information; and
 - the Competition Tribunal's regard for privacy in certain competition enforcement matters.
 2. A newly-formed partnership with the aim of promoting informal collaboration.

¹ The word "Bureau" is used in this document to refer interchangeably to the Competition Bureau and the Commissioner of Competition.

² [Competition Act](#), R.S.C., 1985, c. C-34.

³ For further information about the Bureau, visit (2024) [Competition Bureau Canada](#).

⁴ The word "OPC" is used in this document to refer interchangeably to the Office of the Privacy Commissioner and the Privacy Commissioner of Canada.

⁵ For further information about the OPC, visit (2024) [About the OPC](#).

⁶ [Privacy Act](#), R.S.C., 1985, c. P-21, and [Personal Information Protection and Electronic Documents Act](#), S.C., 2000, c. 5.

⁷ The *Privacy Act* governs the federal government's use of personal information. PIPEDA applies to private-sector organizations across Canada and governs their collection, use and disclosure of personal information. Of the two acts, PIPEDA is most relevant to this submission. For further information, visit the OPC's [PIPEDA in brief](#).

2. Enforcement

5. A business’s collection and use of personal information may be relevant to the Bureau’s enforcement matters. As the Bureau noted in a prior submission to the OECD,⁸ this may arise in four main ways:

1. Businesses may compete through their use of data. Their rivalry can be relevant to the assessment of mergers, agreements amongst firms and abuse of dominance;
2. The need for large amounts of data to compete in a marketplace may result in one or more barriers to entry;
3. The misleading of persons regarding whether and how data will be used may raise deceptive marketing concerns; and
4. Data collection and use may enable price fixing or other forms of collusion.

6. The mandates of the Bureau and the OPC intersect more frequently because of the rapid pace of change in digital economies and platforms. As a result, the organizations need to formally collaborate on investigations more often.

2.1. Bill C-27 and information sharing

7. Although the Bureau and OPC may desire to communicate, the organizations are currently bound by confidentiality provisions in their laws. These obligations restrict the nature of the information that the organizations can share with one another on enforcement matters.^{9,10,11} However, a portion of Bill C-27, the Digital Charter Implementation Act, 2022 (“DCIA”),¹² addresses some information sharing-limitations.

⁸ OECD. (2020) Consumer data rights and competition – Note by Canada.

⁹ See section 29 of the *Competition Act*, *supra* note 2, and section 20 of the *Personal Information Protection and Electronic Documents Act*, *supra* note 6.

¹⁰ For examples of previous enforcement matters – namely Facebook (now Meta) and Ashley Madison – see the “I – Introduction” section of OPC (2023) [Submission of the Office of the Privacy Commissioner of Canada on the Competition Act reform](#).

¹¹ Despite these limitations, it should be noted that the organizations *are* currently allowed to collaborate in certain limited circumstances. Canada’s anti-spam legislation (commonly referred to as “CASL”) is a federal law that aims to protect persons from the misuse of certain technologies, including spam and other electronic threats. The Bureau, the OPC and the Canadian Radio-television and Telecommunications Commission (“CRTC”) share responsibility for enforcing CASL, and CASL authorizes the organizations to share certain information with one another. See sections 57 through 59 of the, [An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act](#), S.C., 2010, c. 23.

¹² Bill C-27, [An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts](#), 1st Sess, 44th Parl, 2022.

8. Introduced by the government in June 2022, a purpose of the DCIA is to, “... strengthen Canada’s private sector privacy law”.¹³ At the time of writing this submission, debate on Bill C-27 in Canada's Parliament was ongoing.

9. At a high level, the DCIA is composed of three proposed acts, namely:

- the Consumer Privacy Protection Act (“CPPA”);
- the Artificial Intelligence and Data Act; and
- the Personal Information and Data Protection Tribunal Act.

10. For the purpose of this submission, the CPPA – which would significantly revamp Canada’s federal legislation on privacy in the private sector – is the most relevant. It, together with consequential and related amendments, seeks to extend the Bureau and the OPC’s abilities to collaborate formally.

11. Specifically, section 118 of the CPPA would expand the OPC’s ability to disclose information to the Bureau where “the information is relevant to their powers, duties or functions”.¹⁴ It would also require the OPC to “develop procedures for disclosing [such] information”.¹⁵ For the Bureau, the consequential and related amendments to the CPPA would add a new section to the *Competition Act*, allowing the Bureau to share confidential information with the OPC (see proposed section 29.3).^{16,17}

2.2. Bill C-19 and privacy

12. In April 2022, the government introduced Bill C-19, the Budget Implementation Act, 2022, No. 1 (“BIA”), and it received Royal Assent in June, 2022.¹⁸ One of the purposes of the BIA was to “introduce legislative amendments to the *Competition Act* as a

¹³ Innovation, Science and Economic Development Canada. (2022) [Bill C-27 summary: Digital Charter Implementation Act](#)

¹⁴ See subsection 118(2) of Bill C-27, *supra* note 12.

¹⁵ See subsection 118(1), *ibid.*

¹⁶ While the CPPA and its consequential and related amendments aim to strengthen the abilities of the OPC and the CRTC to share information with one another, they do not authorize the Bureau and the CRTC to share information directly.

¹⁷ The OPC has publicly noted that the current text of Bill C-27’s section 118 (and the associated amendment to the *Competition Act*) diverges in activities that the Privacy Commissioner may collaborate on with domestic versus international partners. For example, in the OPC’s April 2023 “[Submission of the Office of the Privacy Commissioner of Canada on Bill C-27, the Digital Charter Implementation Act, 2022](#)”, the OPC writes, “... the CPPA does not specify, as it does with respect to collaboration with [information and privacy commissioners] and international authorities, that the OPC can work with the CRTC and the Competition Bureau to address compliance-related matters and conduct joint investigations. As a result, joint investigations with the CRTC or the Competition Bureau could be subject to challenge, limiting the effectiveness of cooperation. The OPC seeks to avoid situations like that faced while investigating the adult dating website, Ashley Madison, where the Office was able to share information with the Federal Trade Commission (FTC) in the US, but not with Canada’s own Competition Bureau”. Along with this commentary, the OPC also proposes amended section 118 language.

¹⁸ [Budget Implementation Act, 2022, No. 1](#), S.C., 2022, c. 10.

preliminary phase in modernizing the competition regime”, including “adapting the law to today’s digital reality”.¹⁹

13. Prior to the BIA, the *Competition Act* contained non-exhaustive lists of factors that the Competition Tribunal may consider when assessing the competitive impacts of mergers and civil competitor collaborations.²⁰ The BIA expanded these lists in several ways. It also introduced a list for abuse of dominance matters. In each list, one of the new factors concerned a merger, collaboration or conduct’s effect “on price or non-price competition, including quality, choice or consumer privacy”.²¹

14. Prior to the BIA, there was no mention of “privacy” in the *Competition Act*.

3. Policy

15. Informal collaboration on subjects that concern both the Bureau and OPC may prove beneficial. The organizations’ current laws do not prohibit such cooperation.

16. In June 2023, the Bureau, the OPC and the CRTC (“Members”) established the Canadian Digital Regulators Forum. The Forum is a venue where the Members can exchange best practices, conduct research and collaborate on matters of common interest that relate to digital markets or platforms like artificial intelligence (“AI”) and data portability.²² The Forum’s Terms of Reference state that, “[t]he Forum [was] formed in recognition that its Members can expand their regulatory capacities and [would be] better able to fulfill their individual mandates through increased partnership and cooperation”.²³

17. For the Bureau and the OPC, the Forum may help further their understanding of the complements and tensions between competition and privacy.

18. The Members took inspiration from international counterparts who formed similar groups. Examples include:

- United Kingdom: Established in 2020, the Digital Regulation Cooperation Forum (“DRCF”) is composed of the Competition and Markets Authority; the Financial Conduct Authority; the Information Commissioner’s Office; and Ofcom.²⁴ The DRCF’s Terms of Reference state that its purpose is to, “... collectively drive greater regulatory cooperation and deliver coherent approaches to digital regulation”.²⁵
- Australia: Established in 2022, the Digital Platform Regulators Forum (“DP-REG”) is composed of the Australian Competition and Consumer Commission; the Australian Communications and Media Authority; the eSafety

¹⁹ See page 72, Chapter 2 of [Budget 2022, A Plan to Grow Our Economy and Make Life More Affordable](#).

²⁰ See subsection 90.1(2), and section 93 of the *Competition Act*, *supra* note 2.

²¹ See clauses 262(3), 263 and 264 of the *Budget Implementation Act, 2022, No. 1*, *supra* note 18.

²² Competition Bureau. (2023) [Canadian Digital Regulators Forum established to better serve Canadians in the digital era](#).

²³ Competition Bureau. (2023) [Terms of Reference](#).

²⁴ DRCF. (n.d.) [About the DRCF](#).

²⁵ DRCF. (n.d.) [DRCF Terms of Reference](#).

Commissioner; and the Office of the Australian Information Commissioner.²⁶ The DP-REG's Terms of Reference state that its purpose is to, "... share information about, and collaborate on, cross-cutting issues and activities relating to the regulation of digital platforms".²⁷

19. At the outset, the Canadian Digital Regulators Forum recognized that the speed and scope of digitization and associated technologies pose significant and widespread opportunities and regulatory challenges. Since many of these issues are not agency specific and cross mandates, the Members decided to take a proactive and collaborative approach to learning and problem solving.

20. The Forum selected AI as the partnership's priority for its first year. This decision is largely due to its rapid advancement, potential for benefits and harm, and relevance to the Members.

21. The Members recognize that they need to understand various aspects of AI (such as its fundamentals, regulatory challenges and effects) to be able to react efficiently and effectively. As such, they placed a priority on developing this knowledge. To help achieve this goal, the Forum hosted an internal, eight-part AI Speaker Series. Organizers invited third-party experts to present on various AI topics, including the international regulatory landscape, ethics and risks.

22. In the Forum's second year, the Members will continue to seek opportunities to enhance collaboration on issues of shared interest and fulfil the Forum's mandate.

4. Conclusion

23. The Bureau welcomes the opportunity to participate in this Roundtable.

24. Changes within a digital marketplace occur rapidly. For the Bureau and the OPC, this will continue to result in an increasing need for both formal and informal collaboration.

²⁶ DP-REG. (2023) [Digital Platform Regulators' Forum - Australian Government regulators are working together to help protect Australians online.](#)

²⁷ DP-REG. (2023) [DP-REG Terms of Reference.](#)