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

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Methodologies for Conducting Market Studies - Note by Canada

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

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Canada

1. Introduction and context for market studies in Canada

1. Canada's Competition Bureau (the "Bureau") is pleased to provide this submission to the OECD Competition Committee Working Party No. 3 roundtable on "Methodologies for conducting market studies." The Bureau, headed by the Commissioner of Competition (the "Commissioner"), is an independent law enforcement agency of the Federal Government of Canada responsible for the administration and enforcement of the *Competition Act* (the "Act")¹ and certain other statutes. As part of its mandate, the Bureau participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace.

2. Market studies are one of the vehicles through which the Bureau advocates for greater competition.² Whereas with other forms of advocacy, such as participation in regulatory proceedings or consultations, the Bureau may be limited to providing advice on a small number of discrete issues, market studies allow the Bureau to take a more holistic approach to analysing industries through a "competition lens", and to pursue projects on its own initiative. Studies can have a range of outcomes, from motivating direct action from governments/regulators to reduce regulatory barriers to acting as a persuasion tool for industries to voluntarily modify their business practices in ways that enhance competition. Market studies therefore serve as a useful tool for diverse stakeholders, including policymakers, industry participants, and consumers. In addition, market studies can provide the Bureau with insights to make better enforcement decisions.³

3. However, the Bureau's legislative context for market studies is unique. While the Act grants the Commissioner the express authority to appear before federal and provincial boards, commissions and other regulators to advocate for competition,⁴ there is no provision that specifically empowers the Bureau to undertake market studies. Rather, in conducting market studies, the Commissioner acts within his or her general administration and enforcement responsibilities under the Act.⁵ Some private parties have

¹ The Act is available online at: <http://laws-lois.justice.gc.ca/eng/acts/C-34/index.html>.

² Competition Bureau, *Competition and Compliance Framework* (November 20, 2015), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03982.html>. See also "Competition Bureau: Innovating to Succeed" (May 9, 2016), Speech by the Commissioner of Competition to the Canadian Bar Association's Competition Law Spring Forum, available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04090.html>.

³ "Keeping pace in changing times: the importance of competition advocacy" (November 9, 2015), Speech by the Commissioner of Competition to the C.D. Howe Institute, available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04000.html>.

⁴ See sections 125 and 126 of the Act, respectively. The Commissioner can intervene before federal regulators on his or her own initiative, or when directed to do so by the Minister of Innovation, Science and Economic Development. However, an advocacy intervention before a provincial regulator must be at the request of the regulator or with their consent.

⁵ *Competition and Compliance Framework*, *supra* note 2. Section 7 of the Act provides the Commissioner with the authority to undertake competition promotion activities in Canada when such activities are directly

disagreed that the Commissioner’s responsibilities include undertaking market studies. This lack of jurisdictional certainty has cast somewhat of a shadow over the Bureau’s use of market studies at times, and stands in contrast to many other competition authorities around the world that have the express legal authority to conduct them.⁶

4. In addition, the Bureau does not have formal powers to compel information for the purpose of market studies or other competition advocacy projects. Instead, the Bureau relies primarily on publicly available information and information provided by market participants, regulators, and other stakeholders on a voluntary basis.

5. In 2008, a report by the Competition Policy Review Panel (the “Wilson Report”) recognized that the “Bureau’s formal advocacy powers are limited” and concluded that the lack of a formal ongoing process to undertake competition advocacy, including market studies, constituted the “most significant gap in Canadian competition policy”.⁷ In 2015, the OECD reported that Canada’s competition framework could be strengthened by providing the Bureau with enhanced competition advocacy powers, including formal powers to undertake market studies.⁸

6. Despite these ongoing challenges, the Bureau continues to periodically conduct market studies⁹ within its existing framework, when appropriate. The remainder of this submission sets out the methodologies that the Bureau uses to conduct these market studies in light of its particular legal framework.¹⁰ This submission is organized as follows:

related to the administration or enforcement of the Act. This authority is connected with section 1.1 of the Act, which sets out that the purpose of the Act, among other things, is to “maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy” and to “provide consumers with competitive prices and product choices”.

⁶ OECD Market Study Survey (2015).

⁷ Government of Canada, “Compete to Win Final Report” (June 2008), available: <http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/home>. Acknowledging that there was no one “right” institutional model, the Wilson Report ultimately recommended the creation of a specialized national institution, the Canadian Competitiveness Council, vested with expanded formal advocacy powers. This recommendation was never implemented. See also Paul Boothe, “Compete to Win: The Wilson panel report six years later” (March 2015), describing the lack of action on the Wilson Report’s recommendations relating to competition advocacy as a “missed opportunity”.

⁸ OECD (2016), “Promoting Green and Inclusive Growth in Canada”, available: <http://dx.doi.org/10.1787/9789264259379-en>.

⁹ Since 1990, the Bureau has conducted or commissioned approximately 18 market studies, including ten gasoline retailing and refining studies. The other studies addressed cattle and beef pricing (2005), generic drugs (2007 and a follow-up report in 2008), self-regulating professions (2008 and a follow-up report in 2010), propane pricing (2014), beer (discontinued) and advertising restrictions on health care products (2016). A market study on FinTech is currently underway.

¹⁰ The Bureau’s approach to market studies, as well as other advocacy work, was evaluated in 2015-2016 by the Department of Innovation, Science and Economic Development’s Audit and Evaluation Branch (“AEB”). As part of its response to the AEB’s evaluation report, the Bureau is developing a long-term strategic plan to formalize its competition advocacy processes, including its approach to market studies. While this document refers to the Bureau’s current methodologies and processes for market studies, it is important to note that there may be future changes or refinements in light of the Bureau’s implementation of this strategic plan.

- Section 2 describes the Bureau’s general processes and methodologies for market studies;
- Section 3 compares and contrasts the methodologies used in the Bureau’s two most recent market studies, centered on the propane industry and the financial services industry, to illustrate how market study methodologies can vary significantly depending on a range of factors.

2. General methodology for market studies

7. The Bureau generally follows a number of common steps when planning and implementing its market studies. These steps are as follows:

2.1. Project selection and scoping

8. As market studies are generally resource-intensive projects, the Bureau chooses and scopes its market studies carefully. Where there is a clear breach of the Act or related statutes, the Bureau will generally prefer taking enforcement action to address the contravention directly. In addition, where market failures or regulatory restrictions in a sector are narrow and/or well understood, it may be more efficient and effective to contact regulators directly on a formal or informal basis to discuss possible changes that would be beneficial to competition.

9. The Bureau makes use of a range of sources to identify possible subjects for market studies. These include:

- Input received from stakeholder contacts, including the legal and business communities, consumer groups, academics and others.¹¹
- Complaints received by the Bureau or matters examined by the Bureau’s enforcement branches that appear to indicate persistent competition problems in an industry or market, but which are unsuitable for enforcement action.
- Competition issues that are raised in public policy discussions, media reports, or work being done by other competition agencies.
- Requests from governments, policymakers or regulators.
- Competition issues linked to government priorities.

10. Once a possible subject for a market study has been identified, officers in the Bureau’s advocacy unit will typically conduct basic background research into the subject, including: market structure, relevant regulations, major market participants, size and importance of the industry, previous Bureau activity in the sector, and possible competition issues. If it is determined after this initial research that the subject is best addressed as a market study rather than an enforcement action or another type of advocacy project, the information is then consolidated into an internal market study proposal.

¹¹ For example, in 2013 the Bureau ran a two-month long public consultation seeking the assistance of Canadians to identify sectors of the economy in which the Bureau could play a targeted role in advocating for greater competition. See Competition Bureau, “Competition Bureau seeks input from Canadians on potential advocacy initiatives” (September 10, 2013), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03558.html>.

11. As part of drafting a market study proposal, the advocacy unit will scope possible competition issues that could be examined in the study, which could form the basis of possible recommendations. As industries are often broadly defined and can involve many different markets and regulations, focusing on the most relevant areas and features of the industry where there could be possible competition issues is an important part of properly scoping a market study. This helps ensure that the study remains a manageable size while still covering the issues that would benefit most from the Bureau's guidance and expertise.

12. Each market study proposal is placed through a triage process by the advocacy unit to determine whether the Bureau should move forward with a study. Triage criteria for competition advocacy projects, including market studies, are set out in the Bureau's *Competition and Compliance Framework*¹² and include:

- *Does a forum to present the Bureau's findings exist, and is there a high level of public interest?* A project is more likely to be successful where regulators or decision-makers have voiced concerns about a particular sector or issue, and are considering assessing or changing their rules. Absent this interest, there is a risk that the Bureau's advice may not be implemented if regulators are comfortable with the "status quo". The Bureau's findings are also likely to carry more weight with regulators or decision-makers where there is a high level of public interest in the issues being studied.
- *Will the Bureau bring forward unique arguments, unlikely to be presented by others?* Policy and regulatory matters are often debated by those with commercial or other private interests. While the Bureau has significant expertise to assess the effect that regulatory or structural changes may have on competition, in some cases involving sophisticated parties, these matters can be capably raised by existing participants in policy processes. In such cases, it may be a more effective use of resources for the Bureau to prioritize matters where competition analyses and arguments are unlikely to be brought forward by other capable parties.
- *Will the Bureau be able to gauge the impact of its advocacy efforts?* To ensure that the Bureau's advocacy efforts are effective, it is important that benefits flowing from projects be measureable and visible. The Bureau will typically prefer market studies that are likely to result in measurable outcomes that affect competition, rather than those where the outcomes either: (a) focus only on technical rules that have a small effect on competition; or (b) are not directly linked to competition.
- *Will the Bureau's efforts have clear, tangible benefits for Canadians, and how widely and deeply will the impact be felt?* In assessing the depth and breadth of these benefits, the Bureau may consider, among other factors, the volume of commerce affected by the competition issue, as well as the geographic scope, duration, and extent to which an issue is widespread either in an industry or in the Canadian economy.

13. As a practical matter, the Bureau may also consider the availability of information sources when considering whether to move forward with a market study. As the Bureau lacks the legal powers to compel information in the context of its advocacy work, it must rely on information that is already in its possession, publicly available, and/or voluntarily provided by regulators, market participants and other stakeholders. Where there is a lack of public data, or the Bureau has reason to anticipate a lack of cooperation from

¹² *Competition and Compliance Framework*, supra note 2 at section 4.2.

stakeholders, the Bureau may take this into account when deciding whether to move forward with a particular study or in scoping the issues to be included within the study.

14. Once the advocacy unit has finalized the market study proposal and applied an analysis of the triage criteria and other relevant factors, the proposal is submitted for review to the Bureau's Major Enforcement and Advocacy Committee ("MEAC"). MEAC is composed of executives from the Bureau's management team, and is responsible for overseeing the coordination and best use of the Bureau's enforcement and advocacy resources in accordance with the Bureau's established priorities and practices. MEAC may approve the proposal, reject it, or return it to staff with recommendations for changes before it is resubmitted. After receiving approval from MEAC, the proposal will then be submitted to the Commissioner for his or her approval.

15. Once the necessary approvals have been obtained, a market study team is then assembled to research and carry out the study within an approved work plan and timeline. While the team is generally led by members of the advocacy group, additional staff with necessary skills and experience are often drawn from other parts of the Bureau, including enforcement branches, economists, and legal counsel. If necessary, the Bureau may retain external industry or economic experts to provide specialised assistance.

2.2. Information Gathering

16. The launch of a market study is generally accompanied by a period of intensive activity centered on information gathering. In addition to previous background research, the team begins by collecting as much information as possible from publicly available sources. In many cases, this will include qualitative and quantitative information about the industry from research papers and reports put out by regulators, trade associations, academics, think tanks, and others. The Bureau may also look at public filings and financial documents such as annual reports, as well as statistical information or survey data that may be available from public sources.

17. While this research is being conducted, the team compiles a list of stakeholders that may have information and perspectives on the issues being examined in the study. These stakeholders will generally include government departments and regulators, incumbents and new entrants operating within the sector or markets, participants in relevant upstream or downstream markets, trade associations, foreign antitrust or regulatory agencies, and others. As previously mentioned, the Bureau lacks formal powers to compel stakeholders to supply information or documents for the purposes of market studies or other advocacy. As such, stakeholders must be willing to participate on a voluntary basis.

18. As part of encouraging stakeholders to voluntarily assist the Bureau in the course of advocacy projects, the Bureau is careful to differentiate its market studies from its enforcement activities, and is transparent about how information gathered will be treated and used.

19. While the Bureau does not use market studies as a means of generating enforcement leads, where an advocacy project uncovers evidence of a contravention of the Act, that evidence may be used in an enforcement action.¹³ Conversely, enforcement investigations may, in some instances, yield information that motivates the Bureau to

¹³ *Competition and Compliance Framework*, *supra* note 2 at section 4.3.

undertake an advocacy project. The Bureau endeavours to share information between its advocacy and enforcement functions, as appropriate, to maximize its impact in promoting competition.

20. Section 29 of the Act requires the Bureau to treat as confidential both the identity of, and information received from, stakeholders in the course of the administration and enforcement of the Act. Accordingly, when such information is received from stakeholders, care is taken to maintain confidentiality within the Bureau, in discussions with the public or other stakeholders, and in final reports or other documents produced as part of the study. This may include aggregation of responses or data to protect the interests and identities of individual stakeholders. The Bureau will generally post submissions on its website where a waiver has been obtained from the party that provided the submission.

21. In some cases, particularly where sectors or market practices are complex, the Bureau may retain industry and/or economic experts to help it in both the collection and analysis of information. As well as being repositories of information and data themselves, experts may have access to market contacts or publications that could otherwise be overlooked by the team. The Bureau may also contract with private parties to obtain access to specialized industry data or market research that would help inform its study.

22. If the issues being examined in a market study are relatively new and unexplored, or if the Bureau encounters many differing opinions throughout the course of its information gathering, it may choose to hold a public workshop.¹⁴ Workshops bring together stakeholders with differing perspectives on the issues involved in a sector or market, including business leaders, think-tanks and academics, policymakers and regulators, and other interested parties. By bringing these representatives together and allowing discussion and debate of the issues, the Bureau can gain additional insights into the competition opportunities and challenges touched upon by the study, as well as test its hypothesis by bringing them forward to be commented on by workshop participants. Workshops are generally followed by the publication of a summary report on the Bureau's website, allowing stakeholders an opportunity for further comment if necessary.

2.3. Competition analysis

23. As the Bureau collects the necessary information, the market study team will analyze it to identify any competition problems that should be highlighted and discussed in the market study. Competition challenges often take the form of regulatory or structural barriers to entry, information asymmetries or other market failures. Where possible, quantitative information (e.g. price and quantity information for a market) can be examined using econometric analysis and other methods to identify trends in the market, determine which areas appear to suffer from the most competition issues, and test the empirical impact of certain regulatory measures or market structures. Findings from the analysis of quantitative data can then be matched and elaborated upon using qualitative information obtained from interviews, reports and other sources. However, given that the Bureau must obtain information on a voluntary basis, there may be cases where quantitative data is not readily available or where it is incomplete. In such cases,

¹⁴ For example, the Bureau held a workshop as part of its currently ongoing FinTech market study. This study is described in more detail in Sections 3 of this submission.

the Bureau may need to rely primarily on qualitative information coupled with principle-based economic theories and/or evidence from comparable studies in other jurisdictions.

24. Once the Bureau has identified competition challenges and their likely causes in the market, the team will consider possible remedies that could be implemented to address these challenges.¹⁵ Remedies usually take the form of recommendations for regulators, policymakers, trade associations, and other stakeholders. For example, the Bureau may recommend that certain regulatory barriers to entry, subsidies, or other market distortions be removed or relaxed. In other cases, the Bureau may find that modernizing or expanding regulations may be the best way to level the competitive playing field or address a market failure that is having a negative impact on competition in the examined sector or markets. In considering possible remedies, the Bureau may take into account lessons learned from regulatory frameworks and reforms in other jurisdictions.

2.4. Market testing with policymakers and other stakeholders

25. Once the Bureau has defined the likely causes of harm to competition and possible remedies, the team will generally reach out to key stakeholders to validate its findings and analysis. As well as testing the accuracy of its findings, this exercise is useful to ensure that the suggested remedies would both be effective and practical for policymakers and regulators. This consultation may be conducted publicly, with the Bureau publishing an interim draft of the market study for comment, and/or may be conducted informally through one-on-one meetings with designated stakeholders to “market test” proposals.

2.5. Report on findings and recommendations

26. Following market testing, the Bureau finalizes its report for publication on the Bureau’s website. Market study reports generally contain an overview of the sector and/or markets examined, a description of relevant laws and regulations that govern the area, an assessment of the competition problems uncovered by the Bureau, and a list of recommendations with an analysis of why each would help policymakers address the problems identified. Publication of the report is generally accompanied by news releases, social media posts, and mention of the study during outreach activities in order to raise awareness of the Bureau’s work and findings. The Bureau often works with policymakers and regulators following publication of reports to answer any further questions they may have, and provide guidance concerning implementation of its recommendations upon request.

2.6. Monitor/evaluate regulations and markets

27. Following publication of a market study report, the Bureau will monitor actions by policymakers, regulators and market participants to see if any changes are made in line with its recommendations, and what impact such changes appear to be having on the

¹⁵ Alternatively, if a thorough examination by the Bureau does not uncover evidence to substantiate anti-competitive conduct or regulations in a market, then the Bureau may instead note as much in its market study report.

market.¹⁶ In matters where policymakers are actively reviewing regulatory frameworks, changes may be observed within a relatively short framework (e.g. several months to a year), and may even cite the Bureau's study as part of the basis for implemented changes. In other cases, the Bureau may need to observe a sector after several years to ascertain the impact of its efforts, especially where its recommendations are directed at several different decision-makers (e.g. where a sector is subject to provincial regulation). In some cases, the Bureau may publish a follow-up assessment a few years later to report on changes made, and identify areas that appear to still present competition problems. The development and implementation of evaluation and performance measures for advocacy work is part of a broader performance measurement strategy project for the Bureau, and will inform the Bureau's advocacy strategy going forward.

3. Case studies demonstrating factors that influence market study methodology

28. It is illustrative to examine the methodologies used in the Bureau's two most recent market studies: (i) the Propane Market Study; and (ii) the FinTech Market Study. These studies demonstrate that while the Bureau's general framework for studies is an effective way to undertake these advocacy projects, flexibility is needed to adapt these principles and processes to account for particular needs and challenges.

29. As set out below, specific methodologies for market studies can vary based on: (i) the purpose of the study; (ii) how the study was selected by the Bureau; (iii) the scope of the study; (iv) the complexity of the issues involved; (v) timing restrictions on conducting and publishing the study; (vi) the number and diversity of stakeholders that need to be consulted; and (vii) the availability of empirical industry data. A summary table is provided in Annex 1. A description of some additional market studies is provided in Annex 2.

3.1. Propane Market Study

3.1.1. Overview

30. On 4 February 2014, the Ministers of Natural Resources and Industry requested that the National Energy Board ("NEB") and the Bureau work together to review potential issues in the propane market. In the winter of 2013-2014, propane inventories had been lower than average and demand had been unexpectedly high in Canada and the United States, leading to a tightening of supplies and steep price increases. On 28 February 2014, following rapid collection of public and voluntarily provided industry data and interviews with a variety of market participants and stakeholders in upstream, midstream and downstream markets, the NEB and the Bureau published a preliminary report on the state of the Canadian propane market.¹⁷ The preliminary report provided an overview of the propane industry, current propane supplies, and initial perspectives on the factors that may have contributed to price increases and supply challenges over the winter.

¹⁶ For example, in market studies on self-regulated professions and generic drugs, the Bureau conducted formal post-study assessments to track changes in these markets and make further recommendations (see Annex 2).

¹⁷ See "Propane Market Review – Preliminary Report" (28 February 2014), available: <https://www.nrcan.gc.ca/energy/crude-petroleum/15681>.

31. On 25 April 2014, after two more months of interviews and data analysis, the NEB and the Bureau published their final report on the sector,¹⁸ building on the preliminary report and providing a more detailed analysis of the overall propane market in Canada. The agencies determined that factors contributing to supply shortages and price increases included (i) increased demand caused by an unusually cold winter, (ii) an exceptionally large and wet corn harvest that required a high amount of propane to dry the crops prior to storage, (iii) supply chain congestion and disruptions due to weather and maintenance, and (iv) rapidly growing U.S. exports of propane to overseas markets, reallocating volumes that might otherwise have been available to U.S. and Canadian consumers. While the nature of its examination prevented the Bureau from concluding that propane markets are served at a competitive level, the Bureau did not uncover sufficient evidence to conclude that anti-competitive behaviour had exacerbated the impact of high prices on consumers. The report noted that while there did not appear to be any overall supply-demand imbalances that would create future shocks, propane demand and prices are historically volatile and unforeseen events could cause volatility in the future.

3.1.2. Discussion

32. The Propane Market Study was not chosen by the Bureau, but rather came through a request from Government. While the Bureau is not required to accept such requests in the context of market studies, there are good reasons to do so. A request from federal departments generally signals that an issue is of significance to the Government of Canada and the Canadian public, and often reflects serious issues being examined in the sector that could benefit from the Bureau's expertise. In addition, a specific request from policymakers indicates that there is a readily available forum in which the Bureau's views will be heard and carefully considered by relevant authorities. Another consideration was that the request came with very tight deadlines. These factors were considered as part of the triage process, and resulted in the market study proposal being swiftly prioritized for implementation by the Bureau.

33. In comparison to many of the Bureau's other studies, the scope of the Propane Market Study was relatively narrow. The objective of the study was to explain why supply was limited and prices abnormally high for propane in certain markets in Eastern Canada in the winter of 2013-2014. As such, the Bureau was able to rapidly identify the particular upstream, midstream and downstream markets that would need to be examined, the issues that needed to be explored, and the empirical data that would be needed to inform its analysis (e.g. historical price trends, uses for propane and alternative products). As such, the scoping exercise was able to be quickly completed so that the team was able to begin reaching out to stakeholders and data providers within days of receipt of the request.

34. The issues examined in the study could be characterized as being of moderate complexity. The propane industry is a relatively complex one, as propane is a by-product of production processes designed to extract and refine all manner of oil and natural gas products, such that propane production is heavily influenced by trends and events in these other markets. As well, many firms are involved in the production, distribution and sale of propane, from the upstream natural resource companies that extract natural gas from

¹⁸ "Propane Market Review Final Report to the Minister of Natural Resources and the Minister of Industry" (25 April 2014), available: <https://www.neb-one.gc.ca/nrg/sttstc/ntrlgslqds/rprt/2014/2014prpn-eng.html>.

the ground, to the midstream firms that refine energy products and store and deliver them to Eastern markets, to the downstream distributors and retailers through which propane is finally delivered into the hands of customers. On the other hand, the propane industry is also long-established and well-understood, making it easier to understand the overall functioning of these markets, and thus identify any underlying issues. As well, the limited scope of the issues being examined by the Bureau allowed it to significantly narrow its analysis.

35. Due to the relatively narrow scope of the study, the Bureau was able to specifically target a number of key stakeholders to obtain the information that it needed through voluntary information requests and detailed interviews. Due to the tight deadlines imposed by the request, the Bureau was unable to put out a public call for submissions and/or comments from stakeholders, instead holding its stakeholder consultation and outreach through focused, private channels. As many of the companies involved in the production, transportation and distribution of propane in Canada are sophisticated, well-established companies, there was a significant amount of financial and operational data maintained by stakeholders and voluntarily provided to the Bureau to fuel a quantitative analysis of industry trends concerning prices, supply and other key information. In addition, through its partnership with the NEB, the Bureau was able to gain access to a wealth of industry data that was held by that agency, as well as considerable help in analysing and interpreting the information gathered. This knowledge was supported by quantitative analysis and modelling. However, while the Bureau was able to analyse a significant amount of data, some challenges were encountered with regard to obtaining timely, detailed data on all aspects of the propane market. In particular, some key stakeholders declined to provide interviews or empirical data to the Bureau in the absence of formal powers to compel their participation. As a result, as noted above, the Bureau and the NEB were unable to conclusively determine that the price increases and supply shortages experienced in the winter of 2013-2014 were unaffected by anti-competitive conduct in the relevant markets.

3.2. FinTech Market Study (ongoing)

3.2.1. Overview

36. In May 2016, the Bureau launched a market study examining technology-led innovation in the Canadian financial services sector (“FinTech”).¹⁹ FinTech companies are using technology to change the way that Canadians consume financial services, such as making payments or transfers, investing or borrowing funds. These innovations have the potential to disrupt the financial services sector, create new business models, and generate benefits for individuals and companies across Canada; yet, evidence suggests that Canada lags other countries in the adoption of financial technology

37. The FinTech study focuses on how innovation is affecting the way consumers and businesses use financial products and services, including peer-to-peer payments and loans, e-wallets, mobile payments, crowdfunding, and online-based financial advisory services. The study is exploring the competitive impact that FinTech is having on the industry, barriers to entry faced by companies, and whether there is a need for regulatory reform to promote greater competition while maintaining consumer confidence in the

¹⁹ See “Competition Bureau launches FinTech market study” (May 19, 2016), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04086.html>.

sector. After several months of submissions and interviews with stakeholders, data analysis and working closely with experts, the Bureau held a workshop on FinTech in February 2017 to bring together interested parties to discuss emerging competition issues and challenges in this rapidly evolving industry. A summary report from the workshop is expected to be published shortly. The market study is expected to be completed by the end of 2017 with a final report to be published at that time.

3.2.2. Discussion

38. In contrast to the Propane Market Study, the Bureau decided to conduct the FinTech Market Study on its own initiative. In its monitoring activities and in speaking with stakeholders in the financial services sector, the Bureau noted that the competitive landscape for these services was rapidly changing with the advent of new technologies and new entrants into the industry. Furthermore, disruptive innovation and the digital economy had been identified as priority areas for both the Government of Canada and the Bureau. As the Bureau had more control over the scope and timing of this study as compared to the Propane Market Study, the team was able to prepare a market study proposal setting out how the issue passed the Bureau's various triage criteria, and present the proposal before MEAC in accordance with the Bureau's formal processes. The purpose of the market study was defined as identifying emerging competition issues in the FinTech sector in order to assist regulators in promoting greater competition and innovation in financial services for Canadians.

39. As the FinTech sector is broad and subject to rapid change, one of the early challenges for the team was to narrow the scope of the market study to a manageable subset of markets and/or issues. After examining the current state of the financial services sector, the Bureau chose to focus on innovations that affect the way that Canadian consumers and small and medium-sized enterprises commonly encounter financial products and services, ultimately narrowing the scope to three product groups: payments, lending, and advice and investment dealing.

40. Despite narrowing the scope of the study, the size of the industry and rapid entry and change in the market meant that potential issues to be examined by the Bureau remained relatively broad. As such, the Bureau needed a way to reach out to a large number of diverse stakeholders to ensure that all relevant perspectives were heard and reflected in the study. As such, the Bureau chose to announce the launch of its study with a public notice that discussed the purpose of the study, the scope, and key questions that the Bureau intended to explore. Readers were invited to provide the Bureau with submissions over the next few months. The Bureau identified categories of key stakeholders to schedule for interviews and meetings, including FinTech companies, incumbents in the financial sector, international bodies, and financial policymakers and regulators in both the federal and provincial governments. In addition, the Bureau has collaborated with financial regulators throughout its work on the study to ensure that its findings and recommendations will be useful to them when they are considering their frameworks. Lastly, the Bureau has pro-actively used social media throughout the study to maintain stakeholder interest and engagement.

41. The Bureau has also retained industry experts with expertise in the financial services sector to help it understand the complex regulatory framework in which FinTech companies operate, and to better assess the information it has received from market participants and other stakeholders.

42. One of the greatest challenges faced by the Bureau in conducting this market study is that while qualitative evidence is available through interviews and discussions with stakeholders, the FinTech industry is still nascent and thus lacks informative quantitative data as compared to past studies. While the Bureau is working with the empirical data that is available, the study will incorporate more in the way of economic theory and qualitative evidence to identify potential issues and provide recommendations to regulators.

43. As noted above, to help foster discussion and advance the market study, the Bureau held a workshop in February 2017, with representation from the business and legal communities, financial regulators, academics, and foreign competition agencies. The workshop facilitated an exchange of ideas and perspectives, and allowed the Bureau to test some of its hypotheses with participants. In contrast, a workshop would not have been as useful for the Propane Market Study given its relatively narrow scope.

4. Conclusion

44. The Bureau's methodology for market studies is influenced by the Act's framework for competition advocacy. Due to a lack of an express legislated power to conduct market studies, and the unavailability of formal powers to compel information in the course of advocacy projects, the Bureau must select and scope its market studies carefully and must collaborate with stakeholders to obtain the best information possible through voluntary means.

45. While the Bureau has a general methodology for its market studies, as demonstrated by the FinTech Market Study and the Propane Market Study, this approach is flexible and must be dynamically adapted to fit the needs of any particular project. Among other things, methodology can vary depending on the nature and scope of issues to be studied, availability of data, and the willingness of stakeholders to cooperate.

46. The Bureau expects to continue using market studies as an essential tool in promoting competition. Building on its past experiences and international best practices, the Bureau will continue to refine and clarify its methodology as it develops more formal guidelines and processes to help it accomplish its work in this area.

Annex 1 - Summary of Similarities and Differences between Propane and FinTech Market Studies

Factors	Propane	FinTech (ongoing)
1. Objective	Explain why prices for propane were abnormally high in parts of Eastern Canada in Winter 2013-14	Assist regulators in promoting greater competition and innovation in Canada's financial services sector
2. Initiation	Ministerial request	Self-initiated
3. Scope	Narrow	Relatively Broad
4. Complexity	Moderate	High
5. Timing	Short deadline / Externally-imposed	Longer timeframe / Set by Bureau
6. Stakeholders	Fewer and more targeted	Many and diverse
7. Data availability / relevance	Fair*	Limited
	↓	↓
Methodology		
Consultation	Private	Public
Stakeholder Workshop	No	Yes
Background Research	Moderate	Extensive
Interviews	Moderate	Extensive
Voluntary information	Yes	Yes
Compulsory information**	N/A	N/A
Quantitative analyses	Extensive*	Limited
Qualitative analyses	Yes	Yes
Experts retained	Yes	Yes
Collaboration with other regulators	Yes	Yes
Public Report	Yes	Yes (to be completed)

*While the Bureau analyzed a significant amount of data, as described above, some challenges were encountered with regard to the availability of timely, detailed, and high-quality data on the Canadian propane industry, which limited the robustness of the Bureau's findings.

**The Bureau is not able to compel information for market studies.

Annex 2 – Other Market Studies Conducted by the Bureau

Beer Market Study

47. In late 2013, the Bureau initiated a study into the beer industries in Ontario and Quebec. While provinces in Canada have varying beverage-alcohol systems, most other Canadian provinces fit on a spectrum either near to or in between Ontario and Quebec in terms of the degree of regulatory control over retail operations. In addition, at the time of the study, there were a number of conflicting reports as to why the price of beer varied between Ontario and Quebec. The purpose of the study was to examine differences between the industries in Ontario and Quebec and explore the effect that these differences had on competition in each province.

48. The study attracted significant attention from both the media and the public, and the Bureau actively contributed to the debate. During the study, the Ontario government announced plans to establish a new framework for the retail sale of beer in Ontario, including expansion of beer sales into grocery stores. The Bureau viewed the proposed policy changes, aimed at providing increased convenience and choice for consumers, as a positive step toward a more competitive beer market in Ontario. As a result of these developments, the Bureau discontinued its market study.²⁰

Self-regulated Professions Study

49. In 2007, the Bureau published a study on balancing competition and regulation in self-regulated professions.²¹ The study examined five groups of professionals, including accountants, lawyers, optometrists, pharmacists and real estate agents. As self-regulated professions have the power to put in place restrictions that have the force of law, while potentially having conflicting concerns between their own interests and those of the public, the Bureau chose to review their regulatory frameworks to examine any potentially unnecessary and anti-competitive restrictions that might be in place. In conducting the study, the Bureau relied on an internal review of regulations and documents, extensive questionnaires and interviews with regulatory bodies and members of the profession, available statistical information about these professions, and academic and economic literature exploring the impact of certain regulatory restrictions and structures on competition in professional markets.

50. While regulations varied considerably between provinces and the professions examined, the Bureau identified several areas that seemed of general concern, including restrictions on entering the profession, overly narrow scopes of practice, restrictions on

²⁰ Annual Report of the Commissioner of Competition for the Year Ending March 31, 2015, available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04076.html>.

²¹ “Self-regulated professions – Balancing competition and regulation” (2007), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html>.

advertising, use of suggested fee guides, and restrictions on business structures. The study was well-received by regulators, both in the professions examined and other organizations, many of which took into account the Bureau's recommendations when subsequently amending their regulatory frameworks. In 2011, the Bureau released a post-study assessment of progress made in implementing the study's recommendations.²² As part of this evaluation, the Bureau reached out to each of the five professions examined on measures they had taken to implement the study's recommendations, made additional contacts with professionals and other stakeholders, and performed its own monitoring and research to assess changes in the marketplace. The assessment found that the study had been successful in raising awareness, among all the professions, of the need to consider competition when designing regulations. In addition, progress had been made toward the removal of unnecessary restrictions on competition in a number of areas identified in the study, particularly restrictions on inter-provincial mobility. However, more work remained to be done by the professions to strike the right balance between competition and regulation.

Generic Drugs Market Study

51. In 2007, the Bureau published a market study on the generic drug sector examining the state of the market and identifying areas where changes in the market framework could secure greater benefits through competition.²³ Several recent studies had found that prescription generics were relatively more expensive in Canada than in other countries. In conducting the study, the Bureau relied on publicly available information, data purchased from third party providers, and information voluntarily provided by sector participants. A preliminary draft of the study was also circulated to key interest groups for fact-checking and to provide an opportunity to offer the Bureau additional information.

52. The Bureau found that generic drugs were supplied in Canada through a unique and complex framework that allowed pharmacies to substitute generic drug products listed on formularies for brand name drugs. Generic manufacturing had become more competitive over the last 15 years, with strong competition in the supply of many generic drugs in Canada. However, competition by generic manufacturers to offer lower prices through rebates were often to the benefit of pharmacies, rather than decreasing the prices paid by insurance plans or out-of-pocket by consumers. The Bureau found that a regulatory framework where incentives to supply drug plans more closely reflected the underlying market dynamics could provide significant benefits to drug plans, and in turn to insurers, employers and Canadians.

53. In 2008, the Bureau published a follow-up report²⁴ setting out possible options for policymakers and drug plans to obtain the benefits from competition in the generic drugs sectors. The Bureau recommended that private plans could improve their bargaining position by developing preferred pharmacy networks, as well as providing patients with incentives to seek lower prices and use preferred providers. Public plans could take

²² "Self-regulated professions – Post-study assessment" (2011), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03407.html>.

²³ "Generic Drug Sector Study" (October 2007), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02495.html>.

²⁴ "Benefiting from generic drug competition in Canada: the way forward" (November 25, 2008), available: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02753.html>.

measures to obtain true generic drug prices (such as through competitive tendering), compensate pharmacy services directly rather than through generic drug rebates, remove restrictions on competition between pharmacies, and improve inter-provincial cooperation. The Bureau's work was well received by provincial policymakers and other stakeholders, and formed part of the discussion of subsequent work in this area.