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COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Optimal Design, Organisation and Powers of Competition Authorities – Note by Canada

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This document reproduces a written contribution from Canada submitted for Item 2 of the 138th meeting of Working Party 3 on 4 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm>.

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1. Introduction

1. Canada's Competition Bureau (the "Bureau") is pleased to provide this submission to OECD Working Party No. 3 on "The Optimal Design, Organisation and Powers of Competition Authorities".
2. The Bureau is deeply engaged in optimizing its design and modernizing the organization. Much of this work was sparked by the need to respond to the digital economy, and prioritized for action. In our [Strategic Vision for 2020-2024](#), the Bureau set many priorities that had a major impact in reshaping the organization. Some of these include:
 1. Advancing proactive intelligence-gathering efforts. This increases our ability to detect problematic conduct, especially in digital markets,
 2. Being a world leader in using new tools and technologies like data analytics to help enforcement and advocacy work,
 3. Recruiting from diverse educational and professional backgrounds to ensure that our teams benefit from wide-reaching expertise and varying perspectives, and
 4. Supporting continuous learning and development of our people while encouraging a culture of well-being.
3. This submission sets out some of the changes the Bureau has made since 2020 to achieve these priorities, and the rationale behind them.
4. Enabling changes include:
 - Securing enough resources to enforce and promote competition in the digital economy,
 - Building the digital infrastructure to manage the complexity of cases and volume of evidence in the digital era,
 - Making sure staff have the right mix of skillsets needed to understand digital markets and develop intelligence, and
 - Prioritizing diversity and inclusion to enhance innovation, employee engagement, and effectiveness.
5. Structural changes include:
 - Establishing a Budget Implementation Team to help manage the hiring and other changes resulting from the new funding,
 - Launching the Digital Enforcement and Intelligence Branch (DEIB),
 - Launching Units in enforcement teams that are squarely focused on building leads and intelligence, and
 - Establishing the Reconciliation, Equity, Accessibility, Diversity and Inclusion (READI) Unit.
6. The Submission concludes with a discussion of challenges and next steps.

2. Enabling changes

2.1. Securing resources for enforcing and promoting competition in the digital economy.

7. Enforcing and promoting competition in the digital economy requires new tools, skills, and resources. By 2021, the Bureau faced growing challenges to exercise its mandate because of a lack of funding. Since 2010, the Bureau pursued more investigations, and more complex investigations. However, the resource base remained flat. This resulted in pausing or de-prioritizing investigations, among other impacts.

8. The Bureau received new funding in the 2021 federal budget: \$96 million spread over five years and then \$27.5 million additional per year ongoing. The funds were meant to increase enforcement capacity and ensure that the Bureau had the necessary digital tools for today's economy, a need that was intensified by increased digitization during and following the COVID-19 pandemic. The budget increase aimed to address gaps in the Bureau's operations. These included:

- enforcement in digital markets including acquiring needed expertise,
- market intelligence across all enforcement lines,
- enforcement capacity and support, including increasing workloads and expert costs, and
- capacity to advocate for pro-competitive policy changes.

9. The budget gave the Bureau the resources to begin making enabling and structural changes discussed further in this submission. These investments enhance the Bureau's ability to detect, investigate and take action against anti-competitive activity in the Canadian economy.

2.1.1. Building the digital infrastructure for complex cases and large volumes of evidence

10. To better manage investigations in the digital economy, the Bureau needed to upgrade its digital infrastructure to manage complex cases and associated high volumes of evidence. The Bureau is working to meet this challenge through investing in better information-technology infrastructure. This includes two main projects:

- Setting up a "cloud environment", and
- Building a "data lake".

11. A cloud environment is a set of pre-approved, pre-certified tools that allow investigators to choose what they need to manage the circumstances of their file. The Bureau constructed this "cloud environment" and procured software for use by investigators depending on their needs. This will allow case teams much more adaptability, flexibility, and scalability in case handling.

12. Data lakes support collaboration by providing a centralized repository where data scientists and investigators can access and share data. This collaborative space will provide an environment for teamwork and knowledge sharing. Also, data scientists can apply advanced analytics techniques, such as machine learning and artificial intelligence, to gain deeper insights from the data. The flexibility and scalability of data lakes make them well-suited for handling the complexity of advanced analytical models.

13. Once fully deployed, these projects will provide investigators with many tools they need to tackle investigations, market studies and other functions that involve significant amounts of data. The environment provided by the cloud and data lake will allow the Bureau to be agile on an ongoing basis, and better able to respond to the needs of specific cases.

2.1.2. The right mix of staff skillsets

14. Since 2021, the Bureau has hired 122 employees. Along with staff with legal and economics backgrounds, the Bureau is also recruiting people with new skills. The Bureau is hiring staff with data science, computer science, intelligence, and behavioural psychology backgrounds. Staff with these backgrounds help the Bureau understand and address anti-competitive conduct in the digital marketplace. They also help the Bureau innovate with their expertise in technology and digital tools and processes.

15. Hiring and integrating staff with new skills sets within government has challenges. Along with competing in a labour market where these skills are in high demand, staffing rules outside of routine hiring can present barriers.

16. A large cohort of new staff with different backgrounds may still need to learn certain aspects of the legal, economic or investigative frameworks. The challenge of integration is heightened in a hybrid working environment, when staff may have less in-person contact in the early stages of their new roles at the Bureau.

17. During the early days, our new Digital Enforcement and Intelligence Branch (DEIB) mostly recruited individuals with both a technical background and a background in either law or economics. To help with integration, along with new experts from outside the organization, the DEIB also hires employees and experts who are already working at the Bureau. Importantly, these internal staff have deep knowledge about their area of expertise along with a strong network. Staff who gain expertise in different competition areas broaden their knowledge and skills, strengthen their network, and improve communication between teams. This helps DEIB determine what expertise is needed to be brought in from outside. The blend of external and internal hires also helps to integrate those from outside the organization.

18. The Bureau also emphasizes a culture of continuous learning and upgrading the digital skills of all employees. For example, since April 2022, the Competition Bureau sent 33 employees on 22 digital training courses touching upon a range of topics. These include tech crimes, artificial intelligence, data analysis, forensics investigations, mapping and more. The DEIB also offered a series of courses for staff on artificial intelligence.

2.1.3. A focus on diversity and inclusion

19. The diverse backgrounds, talents and perspectives of employees can drive adaptability and innovation in a competition authority. This is essential to building a better, more productive and more innovative work environment.

20. A [report from a Joint Management/Union Task Force on Diversity and Inclusion](#) for the Treasury Board of Canada notes,

For years, experts have recognized the importance of diversity and inclusion in the workplace. Extensive research demonstrates the positive impact that diversity and inclusion have on:

- *creativity,*
- *problem solving,*

- *innovation,*
- *the ability to attract and retain talented employees,*
- *understanding customers' needs,*
- *engaging employees, and*
- *building high-performing teams.*

The ability to invite and learn from different perspectives is fundamental to driving innovation, building strong relationships, and taking the best approaches to meet the needs of the populations we serve.

21. The Bureau has had a strong focus on Reconciliation, Equity, Accessibility, Diversity and Inclusion, with a number of notable internal and external projects. These included:

- Developing the Bureau's first Equity, Diversity and Inclusion (EDI) plan, which promotes a healthy, inclusive, diverse and accessible work environment and supports culture change.
- Hosting a strong Diversity and Inclusiveness Working Group that drives change from the grassroots.
- Gathering a group of [Gender-based Analysis Plus \(GBA Plus\)](#) representatives from across the Bureau to gather feedback from staff on what's needed to apply GBA Plus to their work.
- Working with the OECD to develop the [Gender-Inclusive Competition Toolkit](#).
- Increasing representation across our organization to better reflect and benefit from the diversity of Canada's population, including reviewing every step in the hiring process to identify and address barriers.
- Changing how we communicate and using plain language, including publishing new plain language style guides in both of Canada's official languages in November 2023.

3. Structural changes

3.1. Establishing the Budget Implementation Team

22. The Bureau's first step after receiving additional resources was establishing the Budget Implementation Team (BIT) to play a project management role. The BIT assists the Bureau's teams to develop strategies and processes, and to cooperate as they use funds from the budget to modernize.

23. The BIT pays a great deal of attention to making sure the Bureau is consistent in how it hires new staff. It does this through its role leading major hiring processes. In particular, the BIT focuses on ensuring standards for diversity and inclusion and Official Languages are met, and that the Bureau takes steps to have practices that make it an "employer of choice".

24. To date, examples of the BIT's achievements include:

- Helping create DEIB,

- Launching the first Bureau-wide hiring processes and taking the lead on all collective hiring processes as of 2023,
- Developing the first draft Bureau-wide outreach strategy for hiring staff,
- Ensuring the Bureau achieved more diversity when hiring new staff, and
- Developing a cross-Bureau recruitment strategy for enforcement and promotion teams, with an emphasis on identifying and attracting digital markets and intelligence skillsets.

25. Future projects include raising awareness of the BIT and its role, refining our university recruitment strategy, and improving systems so candidates have a better experience in hiring processes.

3.1.1. Launching the Digital Enforcement and Intelligence Branch

26. DEIB strengthens our ability to protect and promote competition across Canada for all the work we do, but especially to ensure that the Bureau can better deliver on our work in the digital era. It is our center of expertise on digital business practices and technologies. It also provides specialized functions such as centralized intelligence. DEIB aims to serve as an early warning system for potential competition issues at all stages, from providing early intelligence to monitoring remedies after investigations.

27. DEIB provides strategic advice to our teams working on civil and criminal files. It provides information on how businesses use data and technology, proactive intelligence, and the effectiveness of remedies. DEIB's work helps the Bureau better understand how businesses may exploit consumers. The team is increasing staff numbers and becoming more and more involved in the Bureau's enforcement and advocacy work.

28. DEIB comprises six areas of expertise:

1. Data and Analytics: uses advanced analytics and data science to build tools to make the Bureau more efficient and add new capabilities to investigations and promotion work.
2. Technology and Tool Insights: focuses on understanding evolving business practices, tools, and technologies. Helps the Bureau identify emerging technologies and their impact on competition.
3. Innovation Solutions: helps enhance collaboration between employees from across the Bureau to creatively solve problems.
4. Intelligence: uses established principles and techniques to support complex investigations. Finds emerging threats to competition and identifies trends and patterns.
5. Remedies: provides advice on designing, implementing, and monitoring remedies, as well as evaluating remedy performance.
6. Behavioural Insights: focuses on matters where consumer behaviour plays a key role. Understanding how people think, behave, and make decisions in everyday life assists both enforcement and promotion work.

29. Already, DEIB has early successes in modernizing the Bureau's tools and resources:

- The Bureau launched a Collusion Risk Assessment Tool to help procurement officials who are designing a call for bids or tenders. The tool assesses the element

of the bid design and provides a score of high, medium, or low risk for bid-rigging. Then it provides possible methods to lower the risk.

- We are using screening algorithms to detect and analyze cartel-like behaviour, including bid-rigging, in public procurement data.
- We are automating enforcement processes that were previously done manually. For instance, automated web captures can help us collect online sale pricing from retailer websites.
- We are also increasing our capacity to use geospatial data analysis to enhance how we define geographic markets.

30. The new Branch will develop over five years. Managers at DEIB have been working hard to bring in the right people with the skills we need. The Branch will grow to about 25-35 staff with diverse backgrounds and skills.

3.1.2. Units in enforcement teams that are focused on building leads and intelligence

31. Since 2020, the Bureau has been expanding and deepening its capacity to gather and analyze market intelligence. Previously, the Bureau mainly relied on Canadian businesses and consumers to bring complaints forward. As business becomes more digitized, complex and opaque, there was concern that the Bureau may miss detecting harmful conduct or find out about it too late. The longer anti-competitive conduct is allowed to persist, the greater the potential for damage to Canadian consumers, businesses and the economy.

32. Owing to longstanding resource constraints, the Bureau had limited intelligence capability in all of its enforcement branches. To address this gap, alongside DEIB, the Bureau created Intelligence Units in its enforcement branches. These units have moved to a much more proactive and data-informed approach. As part of reforming this function, the units collect and analyze new sources of industrial and economic data. They also make better use of the data that the Bureau already holds.

33. One example is the Monopolistic Practices Intelligence and Complaints Unit (MICU). Previously, one officer supported by management triaged incoming complaints on a reactive basis. They did not develop cases proactively because they were fully engaged in managing complaints. The Monopolistic Practices Directorate created a team and shifted over time to a much more proactive case development approach. They take concrete steps to reach out to the market, gather data, and test whether the file merits further investigation.

34. This proactive approach, supported by new staff and resources, has paid dividends. The Directorate has a number of new, in-depth, internally generated investigations from the MICU's efforts. Although the MICU is still relatively new, data suggest that the proactive approach is more likely to result in an in-depth investigation compared to reactively responding to complaints. The MICU is also a training ground for new officers, supervisors, and paralegals. The majority of new people hired in the directorate spend time in the MICU, learning to proactively identify competition issues and triage complaints. The MICU has grown substantially since shifting to the proactive approach, and now engages the efforts of approximately 7 team members at any given time.

3.2. Launching the Reconciliation, Equity, Accessibility, Diversity and Inclusion Unit

35. The Bureau used some of the 2021 funding to establish the READI Unit with full-time, dedicated resources. Launched in 2022, the unit provides complements grassroots efforts of the Diversity and Inclusiveness Working Group. It also coordinates diversity and inclusion programming put in place by the government department where the Bureau is located. The READI Unit helps to ensure that EDI initiatives are evidence-based with measurable outcomes and increased accountability.

36. The READI Unit has offered learning opportunities, raised awareness, and built tools to help staff be more inclusive in their everyday work. For example, the Unit shares its in-depth knowledge about a wide variety of EDI subjects, including inclusive and accessible language, reconciliation principles, accessibility standards, and cultural protocols. The Unit provides this information and access to helpful tools proactively, through a communications strategy, and responsively. This helps sustain culture change and continuous learning. It also increases employees' and managers' confidence levels on both a personal and professional level.

37. Early successes include:

- Organizing anti-racism training that saw 230 employees attend, well over half of the Bureau's staff,
- Developing guidance on Land Acknowledgments, which respect and recognize the traditional First Nations, Métis and/or Inuit territories on whose traditional territories we live and work, and
- Designing and delivering events are inclusive by design, including the Bureau's first ever events that included American Sign Language, Quebec Sign Language and Communication Access Real-Time Translation services.

38. The Unit is building its own competencies in GBA Plus analysis. The Unit will offer additional EDI-related services Bureau-wide, including building tools to help incorporate EDI considerations into every stage of our investigative process, from case selection to review. The OECD Gender-Inclusive Competition Toolkit is informing these efforts.

4. Next steps and Conclusion

39. In 2020, the Bureau launched a four-year Strategic Vision with the ambitious goal of being “a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada”. To achieve this vision, the Bureau embarked on a series of wide-ranging enabling and structural changes. Many were linked to the need for a different approach to enforce and promote competition in a digital economy – including the need for new skills and new tools.

40. As the Bureau continues the modernization plan set out in its Strategic Vision to adapt to the digital age, the enabling and structural changes continue to be built and solidified. Some of the next challenges to tackle include better integrating new units and ways of working.

41. Many of the new teams at the Bureau report challenges with integration. Historically, the Bureau’s teams from each enforcement area operated relatively independently. Seizing opportunities for innovation, using data to inform strategies and

decision-making, and using resources most efficiently requires working across teams. The teams that have been established mainly serve a “horizontal” role, providing services and support. These teams say future efforts include:

- Providing clarity on their role, including what they do and don’t do.
- Improving communication about what they are working on and how they can help.
- Becoming more integrated in operations across the Bureau.

42. As the Bureau takes these next steps and addresses challenges, it will continue to be led by the goals in the Strategic Vision. It will also continue to benefit from domestic and international collaboration - sharing steps taken and lessons learned by enforcement agencies in Canada and around the world.