Fintechs Canada

Innovation, Science and Economic Development Canada (ISED)
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On behalf of Fintechs Canada and its members, I would like to thank you for the opportunity to share our perspectives on the future of competition policy in Canada.

Fintechs Canada is a not-for-profit association that serves as the unified voice for fintechs in Canada. Our membership collectively serves millions of Canadians on a daily basis, and includes Canadian fintech market leaders, global fintech companies, payment networks, financial institutions, and start-ups and scale-ups that are defining the future of financial services in Canada and around the world.

Our mission is to improve the economic well-being of Canadians by making Canada's financial sector more competitive and innovative, as well as more stable and secure. Revisiting and modernizing Canada's approach to competition policy is one of the most important pieces of this puzzle.

We believe there is ample opportunity to make Canada's financial services sector more competitive, without compromising its stability and security. In the accomplishment of that, we see a strong and active role for the Competition Act and Competition Bureau. In particular, we believe that:

1. Canada needs to do more to prevent abuses of dominance
2. Canada needs to empower the Competition Bureau to better fulfill its mandate

We elaborate on our views below.

Canada’s banking sector needs a fit-for-purpose competition policy and enforcement regime

As the government’s own discussion paper pointed out, competition policy can intersect with many others. When we’re thinking about the financial system, competition is important. It helps to reduce prices and improve the quality of a range of products and services. But so is stability and security important. For consumers to trust the financial system, the system can’t fail them. History has shown that policymakers need to guard against things that compromise the financial system’s integrity, such as crashes and data breaches. Both competition, as well as stability and security, are foundational to a financial system that serves Canadians well.

Conventional wisdom says we can’t have both—that we need to pick either competition or stability and security. And for a long time, it appears as if we’ve chosen the latter over the former.

According to research we commissioned from McMaster University’s Master of Public Policy in Digital Society program, although the econometric evidence paints a mixed picture of the level of competition in banking, there is “opportunity to meaningfully increase the level of competition…and deliver innovative and affordable financial services to Canadians.” Some of research findings include:

- Canada’s banking sector is more concentrated than the banking sectors of its international peers, with the market share of the “big six” banks in major product categories having remained stable over the past decade
- Canadian banks outperform peers around the world on return on equity, fueled by highly profitable personal and commercial banking business lines
- The share of Canadian banks’ income from non-interest sources, such as transaction and investment management fees, has increased over the past decade, and so have the absolute level of those fees

Despite the consistent profitability and rise in fee-based income, it’s not clear we’ve seen an increase in quality in Canadian banking for several years, if not decades. In fact, customer surveys suggest there’s ample room for improvement:

- A majority of Canadians feel stressed when interacting with the financial system, according to a survey we commissioned alongside FDATA North America. Nearly two-thirds of respondents reported that switching between banks can be confusing, banks charge too much in fees, and more competition would be beneficial. New Canadians, young Canadians, and women reported feeling more stressed by the financial system than other segments of the population.
- About 1-in-10 people have expressed issues with the most basic suite of banking products and services,[1] according to a survey commissioned by the Financial Consumer Agency of Canada (FCAC), with younger Canadians (i.e., those under 55 years of age) being more likely to express that there are issues with their banking products and services. For example, one of Canada's largest banks was recently penalized by the FCAC for not properly communicating fees with seniors.
- Canada's small and medium-sized business community satisfaction with our major banks has declined over the past decade, according to research from the Canadian Federation of Independent Businesses. When ranked by the small- and medium-sized business community, larger financial institutions tend to score more poorly when it comes to fees, account management, and access to capital relative to smaller financial institutions. A recent example of this is some of Canada's largest banks' effectively raising the price for businesses to pay their taxes online and through their bank account.

There are reasons to think that Canada's financial system isn't sufficiently competitive. When markets are sufficiently competitive, prices go down and quality goes up, while (economic) profits tend towards zero. There's scarce evidence Canada's financial system exhibits those qualities. In fact, there is evidence that (accounting) profits are consistently high, and prices are rising, while quality isn't. The econometric evidence isn't exculpatory, with some measures suggesting a lack of competition relative to the level in other jurisdictions, and others saying the opposite. What's more, as the Competition Bureau's own market study uncovered, we know there are regulatory barriers to entry in financial services, which make certain financial services markets, such as payments, less contestable.

[1] The FCAC's survey appears to ask Canadians aged 55 and up about their chequing and banking accounts, credit cards, registered accounts, personal lines of credit, mortgages,

To make Canada's financial services sector more competitive, without compromising the stability and security of the sector, a modernized Competition Act and better equipped Competition Bureau are needed. The level of concentration in Canada's financial services sector, driven in part by the barriers to entry in the sector, is the result of a policy choice made by the government. The "theory of the second best" tells us that when market distortions, such as barriers to entry, cannot be taken down and generate unintended negative consequences, other policy interventions can be introduced to mitigate the effects of those unintended negative consequences.

In other words, the government can mitigate the effects of the concentrated and less competitive banking sector it has created by ensuring Canada's competition policy and enforcement regime are more fit-for-purpose to tackle the challenges we face in the modern era.

Our Proposals

The federal government can do two things to ensure Canada's competition policy and enforcement regime is able to generate better outcomes for Canadian consumers and businesses: prevent abuses of dominance and empower the Competition Bureau.

1. Prevent abuses of dominance

The federal government should prevent abuses of dominance by:

- **Simplifying the test for abuses of dominance so that the Competition Bureau must establish a firm or groups of firms is dominant and the firm or group thereof engaged in a practice with either anti-competitive intent or anti-competitive effects .** Right now, the Competition Bureau must demonstrate anti-competitive intent and significant effects when intervening in respect of potential abuses of dominance. The former is a difficult standard when firms do not document the intent that animates their conduct, while the latter results in a battle of complex economic reasoning and econometric analysis that makes it hard to say *anything* for certain. In any event, simplifying the test for abuses of dominance would align Canada more closely with the United States, European Union, and Australia.

- **Weaken the exculpatory power of the "business justifications" defense by requiring that such justifications be objectively valid and that such justifications don't mitigate anti-competitive intent, even when such justifications are objectively valid.** Right now, firms or groups of firms engaged in anti-competitive conduct can claim their intent was not to be anti-competitive, but to be pro-competitive. In other words, they can claim that they were trying to make their operations more efficient, even if their business justifications would fail to hold up to scrutiny by certain observers. In cases where firms engage in anti-competitive conduct in a more clandestine way—by documenting decisions in ways that aren't accurate or comprehensive—the "business justifications" defence is little more than a cover for anti-competitive intent.

These measures could go a long way to ensuring that dominance is not abused in Canada's financial services sector, where there are a few collaborations between Canada's largest financial institutions that result in ownership of critical infrastructure. Given its history, the Competition Bureau is aware of them. To date, the competitive frictions they create have yet to be solved. And more are likely to emerge. For example, a few of Canada's major financial institutions are working to operationalize open banking through a collectively-owned utility.

In such cases, dominance can be easily abused through the determination of who has access to such infrastructure, as well as the way in which access to that infrastructure is priced. It's not uncommon for such collaborations to be priced in a tiered way, such that the largest participants pay the least on a per-unit basis and the smallest participants pay the most. This is particularly problematic in payments, where the transaction economics make or break the business model for challengers looking to compete with incumbents.

2. Empower the Competition Bureau

The federal government should empower the Competition Bureau by:

- **Giving the Competition Bureau the power to compel relevant information from market participants when it's doing market studies.** Right now, the Competition Bureau is limited in its ability to understand the markets in which it's supposed to serve as watchdog. The Competition Act should adopt a model similar to the United Kingdom's Competition and Markets Authority, where market studies are subject to bounded timelines and scope.

- **Giving the Commissioner of Competition the power to require public responses from government entities subject to market study recommendations.** This would also align Canada with international best practices, such as those observed in the United Kingdom.
- **Giving the Competition Bureau the power to impose structural or behavioural remedies, or accept undertakings by market participants, to address competition-related concerns identified by market studies.** When the Competition Bureau makes recommendations to policymakers, which also align with what policymakers have done in other jurisdictions, the domestic policy-makers implicated in the recommendation aren't always empowered to make change. Sometimes they don't have the resources to take on the work. Other times their mandate frustrates their ability to get the job done. And sometimes there just isn't room on the legislative agenda to heed the advice of the Competition Bureau. As a result, the Competition Bureau should play a more active role in ensuring competition issues are effectively solved when policymakers are unable to deliver on the recommendations in a market study in a timely manner. This approach is aligned with what we've observed in other markets, such as the United Kingdom.

Years ago, the Competition Bureau released a market study about technology-led innovation in Canada's financial services sector. Though a very comprehensive and thoughtful study, more information would have helped the Competition Bureau come to more authoritative conclusions about relevant markets and the contestability of said markets. What's more, the market study went on to make a series of recommendations that have been pursued in a manner that is questionable from the perspectives of a range of stakeholders, such as those involved in payments modernization. If the Competition Bureau could have more strongly and proactively played a role in tackling potentially problematic collaboration by industry incumbents, Canadians could rest more assured that market conduct by incumbents is, in fact, pro-competitive.

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Once again, I would like to thank you for the opportunity to share our thoughts on the future of competition policy in Canada.

Fintechs Canada would be more than happy to meet in order to discuss the current proposals, share our membership's experiences and insights, or answer any questions that you may have.

We look forward to continuing the dialogue and creating a more competitive Canada.

Sincerely,

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