CHAMBER OF PROGRESS

December 22, 2024

Competition Bureau of Canada
50 Victoria Street
Room C-114,
Gatineau Quebec, K1A 0C9

Dear Competition Bureau of Canada

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advancements – I welcome this opportunity to respond to your consultation on the new version of your Market Studies Information Bulletin.

1. Market Studies as Tools for Addressing Stagnant Industries

Market studies are an important tool for competition authorities. They are particularly valuable in slow-moving, low-output industries where market structures are static, innovation is sluggish, and consumer outcomes are getting worse. In such markets, traditional competition enforcement tools often prove insufficient to address persistent problems, such as tacit collusion, price coordination, and entrenched market power. Market studies enable authorities to uncover root causes of structural inefficiencies and recommend targeted interventions.

However, digital markets stand in stark contrast to these static industries. Digital markets are characterized by rapid technological innovation, dynamic competition, and significant ongoing investment. Unlike legacy sectors, where market stagnation impedes change, digital markets evolve continuously, driven by breakthroughs in technology and the relentless pursuit of competitive advantage.

There is abundant evidence confirming the continued dynamism of digital industries:

- **Relatively New Markets**: Many digital markets are still in their infancy, having only emerged in the past two decades. They are marked by ongoing experimentation, product iteration, and the continuous entry of new players.
- **Rising Output and Innovation**: Digital markets have experienced tremendous growth in both output and innovation, with recent examples including the rise of Generative AI technologies such as OpenAI's ChatGPT. These advancements have rapidly shifted market dynamics and created entirely new sectors, forcing market leaders to react competitively.

- **New Entrants Challenging Incumbents**: Companies like Nvidia, TikTok, and OpenAI have quickly risen to prominence in new fields, demonstrating the permeability of market boundaries and the potential for new players to challenge incumbents.
- **Paradigm-Shifting Investments**: Digital companies are investing heavily in Augmented/Virtual Reality (AR/VR), wearables, and AI-driven platforms, as well as blockchain technologies, signaling a drive not only to improve existing products but also to define entirely new market categories.
- **Enormous Consumer Value Creation**: Digital markets deliver exceptional consumer surplus, often providing products and services at no direct monetary cost to users. This surplus is rarely captured by traditional economic indicators such as GDP, and yet it is a sign that these markets are functioning well.

Digital platforms and technology companies are investing billions in research and development (R&D) to enhance their products and stay competitive. This is not the behavior of complacent monopolists; it reflects a highly competitive and innovative ecosystem where market leadership is contingent on continuous investment, responsiveness to user demand, and technological advancement.

While some of today's leading technology companies have maintained their prominence over time, their continued leadership is not a result of static dominance or entrenched market power. Rather, their success is a testament to their ability to reinvent themselves, navigate paradigm shifts, and remain intensely competitive in rapidly changing environments.

For example, the transition from desktop computing to mobile platforms represented a seismic shift in technology and consumer behavior. While some previously dominant companies failed to survive this shift (e.g. Nokia, Myspace), companies that thrived through this transition did so by adapting their business models, reimagining their products, and investing heavily in innovation.

Today, we see similar efforts underway as new companies lead the charge into emerging technologies like Augmented and Virtual Reality (AR/VR), generative AI, and advanced wearables. These are not the behaviors of stagnant incumbents seeking to maintain a static advantage but of dynamic competitors actively redefining their markets through bold investments and risk-taking. In other words, this is a well-functioning market.

The constant reinvention and market redefinition we observe in digital industries stand in stark contrast to the entrenched dominance seen in static markets, where incumbents typically resist change and avoid disrupting their own established revenue streams. Digital markets, therefore, require a nuanced and evidence-based understanding of competition dynamics, rather than assumptions drawn from traditional, slower-moving sectors.

In short, digital markets are not characterized by stagnation, rigidity, or complacency. They are vibrant, evolving, and intensely competitive ecosystems that require regulators to adopt a cautious, evidence-based approach when considering intervention.

2. Risks of Over-Enforcement in Digital Markets

While market studies are powerful tools, their application to digital markets comes with significant risks of unintended consequences. Digital markets are inherently dynamic, multi-faceted, and interdependent, making the effects of regulatory intervention highly unpredictable. Over-enforcement or misdirected intervention can chill innovation, stifle investment, and harm consumers.

Enforcement in digital markets carries unique risks, due to a number of factors:

- **Property Rights and Innovation Incentives**: Digital markets rely heavily on intellectual property, data, and proprietary technologies. Overly intrusive interventions can undermine property rights and discourage companies from making risky, long-term investments in innovation.
- **Long-Term vs Short-Term Effects**: Enforcement decisions must weigh short-term impacts on price and consumer welfare against long-term impacts on innovation, market resilience, and economic growth.
- **Dynamic Competition Over Static Structures**: Traditional structural measures, such as market share or concentration ratios, often fail to capture the fluid and dynamic nature of digital competition. Companies with high market shares today may face disruption from new entrants tomorrow.
- **Theoretical vs Real-World Harm**: Regulatory interventions must focus on observable, real-world consumer outcomes rather than theoretical models of idealized market structures. Hypothetical harms, speculative concerns, and counterfactual scenarios should not drive enforcement decisions.

Examples from other jurisdictions, like the EU, demonstrate that over-enforcement often produces unintended consequences. Premature or poorly targeted interventions have, in some cases, resulted in reduced investment in digital infrastructure, slower innovation cycles, and higher compliance costs for businesses without delivering clear benefits to consumers. Misguided regulatory actions can also create legal uncertainty, deterring firms—both incumbents and startups—from launching products in the midst of this uncertainty.

In digital markets, the risks of regulatory error are amplified by the complexity and rapid evolution of these ecosystems. A balanced, thoughtful, and empirically grounded approach is essential to avoid undermining the very competition regulators seek to protect.

3. Focusing on Consumer Impact

Market studies are most effective when applied to industries where structural barriers, oligopoly dynamics, or stagnant market structures harm consumers directly. This includes sectors where: prices are rising unjustifiably, supply constraints are persistent, and innovation has stalled or slowed significantly.

Digital markets, by contrast, do not display these characteristics. Instead, competition authorities should focus their efforts on:

- Static Industries with Clear Consumer Harm: Traditional sectors experiencing price hikes, reduced quality, or supply shortages.
- Cost-of-Living Impact: Enforcement actions should prioritize addressing costs and constraints affecting everyday consumers, particularly in essential sectors.

Chamber of Progress supports strategic enforcement in markets where consumers face observable harm, stagnant output, or unresponsive market structures. However digital markets generally do not meet these criteria and should not be treated as if they are static or fundamentally anti-competitive based on comparisons to static market competition models or inferences from industrial market structure assumptions.

4. Conclusion

Market studies are valuable tools in addressing structural inefficiencies in static, legacy industries where consumers face persistent harm. However, digital markets are inherently dynamic, innovative, and competitive. Regulatory interventions must be measured, evidence-based, and focused on clear, observable harm to consumers rather than speculative scenarios.

Europe's recent experience with heavy-handed antitrust enforcement in digital markets offers important lessons for Canada as it considers how to apply its new market investigation powers. While well-intentioned, several regulatory interventions in Europe have led to unintended negative consequences for consumers, including degraded services, fragmented and less secure digital ecosystems, and delays or outright absence of innovations that were safely deployed in other regions. Measures intended to address theoretical harms have, in practice, reduced consumer choice, increased compliance burdens on smaller players, slowed the dissemination of new technologies, and slowed down the pace of innovation across digital sectors.

Canada has an opportunity to learn from these outcomes and pursue a more balanced, evidence-based approach, ensuring that enforcement prioritizes observable consumer harm and remains flexible enough to accommodate the dynamic nature of digital markets.

Sincerely,

Kayvan Hazemi Jebelli

Kayvan Hazemi-Jebelli
Senior Director