Dynamic Discussions - Event Transcription

Speakers

- Micheal Harvey, Vice-President, Policy and International, Canadian Chamber of Commerce
- Jorge Padilla, Senior Managing Director, Compass Lexicon
- Christopher Martin, Principal for Policy Innovation Practice, Head for North America, Access Partnership *(Moderator)*
- Mark Schaan, Senior Assistant Deputy Minister, Innovation, Science and Economic Development Canada (ISED), Government of Canada
- Alejandra Palacios, Former Chair, Mexican Federal Economic Competition Commission (Cofece)
- John Pecman, Former Competition Commissioner, Competition Bureau Canada
- Renata Hesse, Former Acting Assistant Attorney General, US Antitrust Division

Transcription

Micheal Harvey (MH): Good morning, everybody. At least good morning to those of you who are in Canada, like I am.

My name is Micheal Harvey. I'm Vice-President, Policy and International at the Canadian Chamber of Commerce. I'd like to thank you very much for attending today. I'd like to thank the panelists who are taking time out of their busy schedules and to Access Partnership for co-hosting this event.

These discussions are critical to have as Canadians grapple with the role competition policy should play in our evolving economy. As Canada's largest Business Association, representing businesses of all sizes and in all regions of the country, the Canadian Chamber of Commerce is pleased to co-host this event. This conversation also comes in an exciting time. As most of you will be aware, less than two weeks ago, on November 17th, the Government of Canada launched

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> its official review of the Competition Act … publish the science… paper of future of competition policy in Canada … report explores … reform, including, among others, the role and functioning of the Competition Act … role and powers of competition grow … private redressing mechanisms and addressing alleged challenges of data and markets …
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> It's also marked the beginning of 100-dayay consultation wherein solicitous of … may and on changes to our competition laws and commend the government for this and note that the Canadian Chamber will be an active participant in the consultation.

We hope that the launch of the Competition Act review will give rise to a lively debate as competitive markets are critical to a well-functioning, innovative and prosperous economy. While we agree there are competition laws [that] must keep pace with the changing economy, reforming them is a delicate task,

especially at a time when the ground is working to recover the pandemic and what makes sure that we get it right.

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> Regulation should be proportionate and fair and should not … [place]… companies at a disadvantage to their competitors. In May, the Canadian … expressed some … is one of them to our competition was that were included in the budget … implemented act. We're pleased that the government will also be inviting comments on these earlier reforms during … concepts to competition laws that give rise to uncertainty and risk and risk protecting competitors instead of competition.

Canada must not go down this path. Potential reforms to our competition laws or our great importance to the Canadian business community and therefore the Canadian Chamber through its Future of Business Center, an arms-length think tank for advancing ideas on important public policy issues, will be publishing a report titled 'Toughening Canada's competitiveness', authored by fellow John Peckman, who we are pleased to have participating as a speaker here today. We invite everybody to read John's report, which will be public, publicly available starting tomorrow and can be found on the Future of Business Center website and on the Chamber's social media.

With this said, I would like to introduce the speaker for the events expert presentation, Jorge Padilla. Jorge is a research fellow at the *Centro de Estudios Monetarios y Financieros* in Madrid and teaches competition economics at the Barcelona Graduate School of Economics. He has given expert testimony before the competition authorities and courts of several EU Member States, as well as the European Commission and authored numerous papers on competition policy and industrial organization. Jorge completed his doctorate in philosophy and economics at the University of Oxford.

Jorge muy buenos días y bienvenido. Thank you, everybody.

Jorge Padilla (Jorge P): Many thanks. Today I'm going to try to defend neoclassical competition policy.

So, ladies and gentlemen of the jury, the accused today is neoclassical competition policy. Embodied here by Judge Easterbrook. Neoclassical competition policy, you know, is based on four key principles. The first principle is that market power is not a problem per se. It's most often, most often reflects efficiency, superior skill, and ingenuity. The second principle is that the goal of regulation is to maximize consumer welfare. The third principle is that intervention is only justified when there is a market failure. The markets tend to work well but in some circumstances they don't, possibly because market power is abused. And it's only when intervention when [a] market failure exists, a market failure that we cannot trust will self-correct, that intervention is justified. And the fourth principle is based on the error cost framework, and that's why we have the judge here.

Intervention should be limited only to situations where the expected cost of no intervention we tend to go to call the expected cost of the Type 2 error is greater than the expected cost of intervention. That is the expected cost of Type 1 error. Noting that, yes, there may be market failures, but that doesn't mean that every intervention is going to solve the market failure because there is also government failure and that sometimes the, you know, roto hell is full of good intentions. And far from solving the market failure with intervention, [what it] can do is to make things work worse for consumers. Let me sketch the case of the prosecution.

[The] prosecution case is based on a series of macroeconomic developments that indicate both increases in market power in Western economies. And that these increases in market power allegedly have resulted in less investment, lower economic growth and, more importantly, more inequality. The facts are somewhat contested, but the prosecution makes them, presents them in a 1-sided way. There is, it is said, a very significant increase in concentration. That is, as a result, a decline in the labor share an increasing markets and their investment and increase inequality. And of the many potential alternative explanations that have been offered by the economic literature, technological developments, globalization, labor union decline, the emphasis of the prosecution is on neoclassical competition policy.

The four principles before are allegedly led to too little intervention, and as a result of that have facilitated that these increases in concentration, the exploitation of workers, the exploitation of consumers and the increase in inequality. The prosecution claims that each of the four principles of the neoclassical competition policy paradigm are wrong. Market power is set to be banned, not only for economic reasons but also for political reasons, so perhaps, of political reasons. The consumer welfare standard is considered to be wrong, reductionist. In practice, focus exclusively on price effects, neglecting the many dimensions of the human being that are worth protecting. The market failure narrative is said to be just a rhetorical tool to undermine intervention, to [deter] intervention, to stop helpful intervention. Emphasis on the use of economics and competition cases is also seen as a rhetorical tool to the third innovation to stop innovation, to facilitate the exploitation of market power.

And finally, we are told that the error cost framework is a fraud, an invention by economic consultants. They emphasize the importance, the likelihood and error, and cost of the taguan error, when in fact what there are plenty of time to errors and the Type 1 error is again a rhetorical element, a rhetorical tool to stop intervention.

The prosecution case is very simply very simple. Neoclassical competition law is guilty.

Now let me put forward the defense case. But before I do that, please, members of the jury, you should not be concerned with the arguments made outside this courtroom. Focus on what I'm going to say [and] not what it is told out there in the social media that we're saying, and if you want to focus on the social media, perhaps all that you want to do is to focus on those pink boxes where this humble defendant is highlighted sometimes as smart.

Is market power always bad? With no doubt that entrenched market power can result in inefficiency. It can result in allocative inefficiency, high prices and low output, excluding consumers from the marketplace. It can facilitate productive inefficiency, may allow companies that are cost-inefficient to persist in the market. It may facilitate the X inefficiency. Nothing is more likely than the quiet life of the monopoly, and it may in some instances led to less innovation. But market power is also an incentive device. Companies try to escape competition through innovation. Companies are incentivized to innovate to escape competition and consolidate market power. We need to be worried about market power, of course, but only if that is entrenched either as a result of fundamental factors in the markets that facilitate dominant companies to be entrenched, even if they don't compete and don't compete aggressively and don't improve their products. But we shouldn't be concerned about transient market power. In fact, that sort of market power is an engine of growth.

Is consumer welfare the running standard? I would say no. For economies, consumer welfare encompasses many dimensions and not only price. Consumer welfare is increased when prices are low,

of course, but consumer welfare is increased when there are increases in quality, when privacy is protected, and so on and so forth. Consumer welfare reflects the preferences of consumers, and the preferences of consumers are not only driven by price.

Departing from consumer welfare imposes a lack of discipline on competition policy and could lead to competition policy being ineffective. Not only ineffective, it could be counterproductive. Fairness is sometimes an empty word. Consumer welfare is a meaningful work, a meaningful concept that encompasses fairness in the vast majority of cases.

Should we allow intervention without evidence of market failure? One of the first principles I learned as an economist is that if it's ain't broken, don't fix it. Don't try to solve what is working well and don't pretend that any well-intentioned regulator is going to achieve the desirable outcomes. There are many reasons for government failure, unintended consequences, regulatory capture, asymmetric information. That is not a call for no intervention whatsoever. It simply means that we need to balance the cost and benefits of intervention and that we should only intervene when there is a problem to be solved. And let me conclude by defending the error-cost framework proposed by Judge Easterbrook and others.
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It is based on fundamental decision theory. There is nothing ideological about it. If you select a policy that minimizes the expected cost of error. That policy, by definition, is going to maximize the expected consumer welfare. And we all make errors. We are humans and agencies are fallible as companies are, as judges, as all individuals. And we know that there are two types of errors. We may intervene when we shouldn't, and that's the Type 1 error … We may not intervene when we should, and that's the Type 2 error, and these errors are more or less likely, and they are more or less costly depending on the circumstances.

What we need to do is to engage with the facts and apply this approach. What does it mean? Let me give you a little bit of notation and explain what the error cost framework implies. Let's consider that we have two narratives, the defendants narrative (SD) and the plaintiffs narrative (SP) and we have evidence. We can then calculate what is the probability that one of the story, is correct. We can calculate the probability that the story of the defendant is correct given the evidence, and we can calculate the probability that the plaintiffs story is correct, given the evidence. These are the actual probabilities. But when agencies or judges approach these two narratives, most likely they have priors. A prior the one story that the plaintiff or the defendant is correct. We can calculate the expected cost of errors by multiplying these probabilities by, which is the likelihood of a Type 1 error multiplied by the cost of the Type 1 error, and the likelihood of the type 2 error multiplied by the cost to error. What the error cost minimization principle tells us is that we should only decide in favor of the plaintiff story if the cost of the Type 2 error is greater than the cost of the Type 1 error, or in other words, if this ratio is greater than one. Doing a little bit of algebra, one can show that this is equivalent to this following condition, which tells us that you should decide in favor of the plaintiff if the narrative of the plaintiff fits the evidence better than that of the defendant.

How much better? That depends on what is called the threshold of persuasion. And that depends on the error, the cost of the errors, and the priors. If you think that it's more likely that the defendant is right than the plaintiff is right, if the theory of harm that is being presented by the plaintiff is somewhat novel and heard of and somewhat crazy, then this ratio, this ratio here is going to be very large. And then the narrative of the of the plaintiff really needs to feed the evidence much better than that of the defendant.

If you think that the cost of a Type 1 error is much greater than the cost of the Type 2 error, then this persuasion threshold is going to be high, and then the plaintiff should have a narrative that fits the evidence much better than that of the defendant. The error-cost framework is not ideological. Whether the threshold of persuasion is high or low will depend on the cost of the Type 1 and Type 2 errors and the priors.

Now, in my opinion, market power is indeed no problem, and nobody has shown that it's a problem per se. It can be abused, and then it is a problem, but very often reflects efficiency, superior skill and ingenuity, and we want market power to be there to incentivize investment and to incentivize efforts to escape competition. We need to restrain market power. We need it's abuse leads to harm to consumers. We should intervene only when there is a market failure. In many circumstances, market power will self-correct. Abuses will self-correct. We want to intervene only to the standard protect consumer welfare, but with a notion of consumer welfare that is all-encompassing and is not restricted only to a price. And we want to maintain and continue using the error-cost framework because that disciplines are intervention.

Now you would ask me, what about the microeconomic evidence? Have you ignored all these developments about increased concentration, declines in the labor share and so on? Increasing inequality? You don't care about that? No, of course I do care about this. There are doubts; however, about how robust the evidence is. But let's assume that we go along with many commentators and think that indeed all these developments are there and are of first order magnitude.

My first response would be to say. There are many factors that could explain that evolution. Technological developments. Globalization. Labour union decline. All these factors are macroeconomic factors that I believe explain to a large extent the macroeconomic developments in question. Now it may be that competition policy has been too timid. Possibly. It may be that because of that timidity, you know some concentrations have taken place that shouldn't have taken place, and it may be that because of that timidity markups are way too high. It may be that we have already estimated the cost of the Type 1 error relative to that of the cost of the Type 2 error, especially in digital markets. And it may be that we have adopted priors against intervention that were unjustified, and we should be moopen-mindedded with respect to some theories of harm, especially in sectors of the economy, then, we understood worse than more traditional sectors. But that doesn't call to throw the baby with the tap water. What that calls is to adjust the threshold of persuasion so that we are less demanding with respect to the narratives presented by the plaintiffs and more demanding with respect to the efficiency justifications of the defendants.

It doesn't mean that we kill neoclassical competition policy. It means that we use the tools that it provides with confronted with the facts and the context in which it has to be applied to us to make a better application of competition policy. But understanding that all these factors, even if whether true or not, but if they are true, are going to be driven by many factors, many, many forces and not only by competition policy. And that even if we tighten competition policies significantly, technology technological developments will still be there. Globalization, despite, you know, recent setbacks really still play a major role, and you know, there would be other explanations. And we shouldn't expect that simply competition policy or regulatory policy is going to fundamentally change the macroeconomic evolution of our economies.

Let's do neoclassical competition policy, perhaps better adapted to the times, but let's not go crazy and abandon all the tools and principles that have served us well for many, many decades.

What I conclude, therefore, is the neoclassical competition policy is innocent and I hope that you concur with me. Thank you very much for your attention.

Christopher Martin (CM): Thank you so much, Jorge. Hello everyone. My name is Chris Martin. I am a Principal here at Access Partnership and sit in our Washington office overseeing our North America operations.

It's really a pleasure to be here with everyone today. We'll be moving from extremely useful, I think, scene-setter looking at the neoclassical view of the world and transitioning, I think, to a little bit more of a policy-oriented discussion around how all of this can be considered in the context of Canada's consultation on evolving its own competition policy framework over the coming months and years.

Just as a quick update to those of you who don't know Access Partnership. We're the world's leading tech policy and regulatory consulting firm. One of the things we pride ourselves on is linking some of this technical understanding and bedrock like a little bit of what Jorge did, to the policy world and the policy and regulatory decisions that are made at multiple levels inside a country or region or at the global level.

And it's really a pleasure to be here and opening this part of our discussion we'll move through the Fireside Chat now with a very distinguished panel. I'll introduce each of them very briefly. I thought we'd spend our time just jumping right into the Q&A. We'll probably start with some of those on the Canada side and then, in view of the international nature of competition policy, we've also got some really exquisite speakers to speak about their perspective from outside of Canada.

So without further ado, let me start with the introductions.

First, I'd like to introduce Mark Shan. Mark, maybe just wave your hand. Let everybody know who you are there. Mark is the Senior Assistant Deputy Minister for Innovation, Science and Economic Development in Canada. He has been a career in public service. He previously worked as Director of the Director General of the Marketplace Framework Policy branch. He served previously as Director of Operations and Business Transformation and Renewal in the Secretariat of the Privy Council Office, HIGH Mark. Really pleased and honored to have you as the representative of Government of Canada with us today.

We also have a former representative and regulator in the Canadian government and John Peckman, he was former Commissioner at the Competition Bureau, where he worked for more than 34 years as an investigator, manager and executive. John, maybe just raise your hand. Let everybody know you are. He currently is a Senior Business Advisor for Competition, Marketing and Foreign Investment at Fasken.

The third panelist today is Alejandra Palacios. She is the former chair of Mexico's Federal Economic Competition Commission COFECE and his current Senior Fellow at School of Public Policy at the University of Southern California. You know, Marshall initiative on Digital Competition affiliate. Alejandra celebrity I know you are, you were the first woman to preside over COFECE and during your eight years in this chair from 2013 to September of 2021, I know your agency handled several unprecedented antitrust cases for a number of legacy industries. It's pleasure to have you.

And last, but certainly not least, I'd like to introduce Renata Behesht, Partner at Sullivan Cromwell. Renata joined Sullivan and Cromwell following a quite distinguished career in the US government,

including leading the Antitrust division at the Department of Justice, twice as Acting Assistant Attorney General and serving the division for more than 15 years. She also previously served as Senior Counsel to the Chairman of the Federal Communications Commission.

So, as we can see, a really powerhouse, I think, group of competition experts and specialists, and let's dive right into the Q&A.

I'd like to start with a question regarding the consultation paper. This is, I said, new consultation paper on competition policy and its evolution in Canada that was released earlier this month and I think it has a direct relation to Jorge's paper and the big shift proposed by the Neo Brandeisian school. So, the consultation paper outlines 5 main areas where it believes reforms may be warranted. Now these include mergers, unilateral conduct (essentially the concept of dominance), competitor collaborations, deceptive marketing, and administration and enforcement.

One of the things that the paper itself acknowledges is that it holds off a meaningful discussion around revising the purpose clause of the Act. That the purpose clause ultimately sort of outlines the primary objectives of the Act at the outset, and instead, the paper acknowledges that the law has broad applicability and flexibility, assuming the economic objectives of the Act haven't really changed.
However, throughout the paper there's a persistent focus on the importance of modernizing the Competition Act to address, quote, the rise of digital commerce and new economic giants, or quote digital giants in the digital economy and large digital platforms. So John, in your view, how can we reconcile the general application of law that is sector neutral, with this evolving sentiment that the law needs to be modernized in order to regulate a specific group?

John Peckman (John P): Well, first of all, Christopher, and folks from your group, thank you very much for the invitation. It's a pleasure for me to be here sitting on a panel with my former colleagues, former heads of agencies in North America, as well as Mark, who I worked with when I was with the Competition Bureau.

It's a real pleasure to be here today to talk about the things that are pretty exciting in Canada, this potential reform of competition policy which has been long overdue.

I have been arguing for some time. That Canada has been traditionally very monopoly friendly and has been so by design. It has a fairly weak competition law and limited competition advocacy. And, you know, our policy design has been based on this faulty assumption that we need to have big Canadian businesses to compete internationally. And, you know, Canada is also always searching to increase productivity and it's about time that we realized that competition policy is one of the main policy levers to help with productivity. And so, I very much welcome the reform.

The reform touches on a number of important areas, as you mentioned, Christopher. You know, competition laws are laws of general application, their economic framework laws of general application by neutrally cost all sectors of the economy, that's how they're designed. I think Canada at one point in time did escape from that underlying principle when, due to a market failure in our Canadian airline sector, we introduced a specific predatory pricing provision in our law to deal, to tackle predatory pricing to allow a second national player to emerge. It was very temporary, it lasted until 2009. I think had a 5-year window and was to deal with a market failure.

Currently, there is a lot of discussion about the digital markets and the big platforms, and equating it to a market failure, and, you know, I'm a big believer of the neoclassical economist competition policy principle. I find Jorge's paper very enticing in his presentation. I'd find him not guilty – that should come as no surprise. I'm an economist by training and enforcer for 35 and a half years (or 34 and a half years), you know, enforcing a law based on economic analysis and evidence of harm. I mean, that's how we conducted ourselves.

And with some of the movements and in other jurisdictions towards sector regulation for, you know, large digital platforms targeting them. I think it's a slippery slope. We're moving away from competitive neutrality, from a law of general application into an area in Canada that could also be problematic because it is targeting an industry sector and may have jurisdictional issues for our Federal Competition Law. So, **I think we need to be careful. I think it's best for us to keep an eye on what's happening abroad, but to take bold action on areas where Canada has been weak,** such as our efficiency exemption, such as allowing for market studies to improve our advocacy, allowing for the Competition Bureau to move more quickly through interim relief. These are important areas that allow us to tackle digital markets which are very dynamic. And I think it's really important that we focus on that as opposed to the economic experiment we see in some other jurisdictions dealing with digital markets. I think we should be careful on that front.

CM: Thanks so much, John.

Maybe, just as a quick follow-up to that around the various proposals included in the consultation paper related to merger review and unilateral contact conduct. Which stood out to you as an approach fit for Canada or particularly unfit for Canada? Were any of that really left out given the set of ideas that were put forward? And, I think, this will set the tone for a deeper conversation with the other panel.

John P: Yes, understood. So, fit for conduct, fit for Canada in my view clearly is a review of the efficiency exemption. Again, allowing harmful mergers to proceed and increase in concentration in Canada, I think has been a bad policy approach and, I think, that needs a deep dive.

I also believe that informal leaf, easier interim relief so, the Bureau can move more quickly in dynamic markets is really important. A more effective private actions regime in Canada, which allows for the awarding of damages, which isn't the case currently, would increase, I believe, competitiveness and competition in our country. So, I think those are all positives, are things I take away from the consultation.

Where I start to question, but it's understandable, raising issues about **structural presumptions dealing with large tech platforms conduct. It's being done elsewhere, of course we're going to look at it, I think, it's worth a look, but I just caution we should take be careful before we go down that path**. Let's see what the results are in other jurisdictions. Is the economic pie for that sector going to grow from these regulations? Or is [it] going to shrink? Are we going to see more innovation in those sectors and those markets that have these types of regulations? Or is it going to shrink before we move away from what, I think, is an effective traditional competition law approach dealing with economic evidence to tackle any harm that's in the marketplace. And the lot can work. I just think in Canada it needs to be tweaked.

Also, there's a review of whether or not a comp merger review should be extended to a three-year period after closing from a one year period. And the only caution I put out on that is, you know, there is a pre-

notification process where agencies take a close look at large problematic mergers. They get a good big kick at the can there and then they sign off on the deal or challenge the deal at that point in time. But then to have this, you know, open window of jurisdiction for another three years, it does create uncertainty. It's a huge burden on business to go back after three years to try to unscramble the egg. I just think, you know, giving the agencies 2 kicks at the can may be a little bit over the top in my view.

So, those are some of my thoughts.

CM: Thanks, John. Yeah, I think you raised some really interesting points there.

The efficiency exemption in Canada is really unique among kind of peer G7 countries. So, it does make sense I think to look at that. And, if I'm remembering correctly, I think on that merger review extension, there was some linkage between a voluntary sort of participation in the notification process, and the length of time. And maybe there's some linkages there that could be considered.

But, moving on to hear from our representative from the Government of Canada, Mark, and to hear a little bit about your perspective and ISED's perspective about this consultation. I think, one of the things that might leap out to the reader is that there's this sense of need to revisit some of these principles of competition and really do something given the developments in other jurisdictions that are ongoing at present.

In your view, what are really some of the biggest competitive challenges or the concerns facing Canadian consumers and entrepreneurs? And in light of this shifting world and the growth of digital giants, I know that there has been some question about whether digital giants are real concern. I think that's implied in some of the points that were made by Jorge and by John as well.

And part of that, I guess, the reason for asking this is that you can observe there are other clearly defined industries in Canada that have heavy concentrations like telecom or segments of the food industry, for example, that may be similar to leaving consumers with high prices or limited choice.

So, what's your perspective on the on the real challenges facing consumers and entrepreneurs?

Mark Schaan (MS): Thanks for the question, Christopher. Thanks to you and your organization for the chance to be a part of the panel.

I think it is probably worth noting that there are a number of drivers behind the current review of Canada's competition law. A notion of competitiveness in our markets. I think there is an important distinction between competitiveness and competition law and policy, in that there are many other aspects beyond competition law and policy, the overall sense of competitiveness in a number of our markets that said competition law and policy are important and an integral part of the overall frame.

So, when we look at kind of what drove a lot of the kind of considerations and this review. Affordability, including for key goods and services. Availability of products, in the wake of supply chain disruptions. These are preoccupations for Canadians that have been top of mind, as we enter a post-pandemic economic environment. And as ongoing concerns related to Canada's innovation performance over the last decade or so, and the thoughtfulness to the degree that we have the appropriate structures to allow Canada to succeed.

Core elements of the competition act and institutional framework were designed in the 1980s. And the last comprehensive changes were made in 2009. You know, opportune to in that way to consider broadly to see if the legislation still meets current needs. And even aside from the kind of unique set of new challenges brought about by the rise of digital giants. And in some ways, to the kind of premise of your question, lots of potential in the digital realm need to be understood in the dialogue frame as well. Lots of this isn't actually new but potentially manifesting itself in a slightly different manner, in a slightly different way. But, actually has analogue comparators.

So that said, you know there is no doubt about the fact that concerns about the growing market power of big tech is an important driver or is at least a consideration in the current review, as it is in competition policy reforms around the world. So, it is important for us to take a look. You know, digital markets have seen an unprecedented rise of networks effects and the conversion of data into a tool of great commercial data, not only incurring early mover advantages for incumbents, but also in some cases erecting significant barriers to entry and expansion for competitors.

Moreover, large digital firms' expansion into adjacent markets and vertical integration are allowing those players to participate directly in the markets, in which they also serve as intermediaries or gatekeepers. Sure, there are some analogies towards analogue markets in, for instance, grocery or some of the telecoms spaces, but I do think there are some distinct aspects that are worth taking a look at.

And even the nature of competition itself is changing. As firms increasingly compete for consumers in dynamic ways, in features other than price, challenging some of the traditional methods of analysis. Some prominent examples come from two sided digital platforms, which often compete for consumers with free digital goods or services that they monetize in other ways, such as advertising, and the leveraging of user data to sell products or the sale of the data outright.

Costumer data can become almost a kind of currency, with consumers of a free service paying through rights to personal or behavioural data making privacy for themselves a really interesting dimension of competition.

So currently the competition act generally applies equally, as John noted, to all sectors of the economy, with some exceptions granted to regulated sectors, transfer-related matters, collective bargaining, and intellectual property. **One of the key questions of the recently launched consultation is the ask whether new sectors specific mechanisms should be added or existing ones strengthened to better address anti-competitive behaviours in digital markets**. The consultation also seeks feedback on how the competition act should interact with other digital governance areas such as privacy and data protection, where we also have, in Canada, current modernization proposals before Parliament.

So, I am really looking forward to hearing what advice my fellow panelists have for Canada in that regard, and I think it is probably the first of what I suspect will be many conversations around these important issues in the coming weeks and months as the consultation plays out.

CM: Thanks, Mark. I think this is a very useful perspective to take into the questions at hand.

One of the ones that, I think, John alluded to maybe with dig into just to get a little bit clearer sense of where I said is on this is around transplanting legislative reforms adopted overseas. There's this question about. Should the government pause to understand how those different political, economic and legal contexts evolved there and observe if there are purported benefits in those jurisdictions? How those will

be delivered to Canadian businesses and consumers? I'm curious if you have a view on how the Government of Canada is thinking about observing those overseas reforms and allowing for some type of cost-benefit analysis or thinking about, you know, how transplanting some of those reforms might have effects intended or unintended on innovation and competition in the Canadian marketplace.

MS: I appreciate the question and I understand the sentiment.

At the same time, I think what I would continue to hold up to folks is the highly deliberate and thoughtful manner by which we have approached marketplace framework reform more generally. And this isn't actually the only space in which we have had first-mover efforts from other jurisdictions. For which there has been enormous pressure to try and kind of replicate in some manner and, I think, what we continue to show is actually that will be thoughtful in the way in which we try and make sure they were taking an approach that understands our specific reality and oftentimes needs to understand our specific place adjacent often two largest trading partners in terms of the European Union block and the United States.

You can see that through other manifestations including our approach to privacy reform where, obviously, the GDPR set a particular standard, whereas we are also significantly implicated in trade with the United States that still does not have a national privacy framework. So, our overall approach first in [Pipita??] and now with the Consumer Privacy Protection Act highlights the manner by which we can take a thoughtful way forward.

So, I think pausing to understand the very different political, economic, and legal context for reforms is precisely what the government is doing with the current consultations.

By way of background, it's worth noting the government decided to proceed to the review of the competition act in two steps. You know budget 2022, the implementing legislation set a targeted amendments designed to address very clear shortcomings in the law that had clear solutions that would help align us with international approach and best practices. And then the amendments and the budget increase to the competition Bureau by granted by the 2021 federal budget which allows those funds to be applied in the more effective fashion.

And then this more formal review of the Act you know it is now considering broader and potentially more transformative changes that may be required in light of the evolution of our globalize data-driven economy. And you know the consultation paper is comprehensive and includes a significant review of existing literature and I think it's a document aimed at strengthening competition in Canada based on our specific context, legislation, and institutions.

So, it's not simply borrowing kind of the flavor of the week from a given kind of jurisdiction or another it really has attempted to at least take a look at it and then figure out how it is we'll proceed. So, I think this open-ended consultative process hopefully will actually what we get is not either a specific you know special snowflake Canadian law that is off-side from our International interoperability your peers, but is also not a carbon copy of whatever it is someone else is done with the with the notion that we should now do it too.

CM: Thanks, Mark.

I'd like to shift over to hear a perspective from outside of Canada.

And also, we've been listening to a lot of the men on the panel speak so, let's move it over to some of our female panelists and I'd like to, to put the question to you, Alejandra.

It's been noted within the consultation paper that some jurisdictions have adopted or are considering proposals creating some bright line rules or presumptions for dominant firms or platforms and this is, in contrast, to an approach to prohibitive contact on a case-by-case basis analyzing arms to competitive process.

As an economist, and former head of an antitrust agency yourself, how do you see the implications of this type of shift in this area of unilateral action and considerations around dominance?

Alejandra Palacios (AP): Yes. Thank you very much for the invitation.

The first thing I want to say before answering the question really quick is that I really think the consultation document is great, written from within the government trying to make the Canadian competition system work for the people and asking what works and what needs to be improved. And I should say I quite envy that in Mexico we're not having these discussions. So, I think the process is really great.

Regarding the proposition of the possibility of these preventive rules for dominant firms and platforms, and with respect to both the acquisition and business process practices such as self-preferencing and data use, I say, contrary to what John was saying is, I like the proposition and I have three reasons why I do and so let me just really quickly explain why, I think so

First of all, I think that **we should not see this as moving ourselves from a general framework to a sector-specific regulation.** This is competition agencies regulating digital markets because what I think is that what we're living, and literally we're living, is a fundamental shift in how markets operate. So, the digitalization of the economy is a widespread phenomenon, economic activity is happening in a new way. **The digital economy is integrated to the mainstream economy – I mean it's mainstream. It's different than regulating supermarkets or airlines or something in particular because those markets are specific digital markets**. I wouldn't even talk about digital markets. It's the digitalization of the economy. So, if the economy has a different dynamic, so should competition and department tools. That's my first argument.

I also agree with the document where when it mentions that antitrust agencies usually are subject to very high-bar standards of intervention and specifically with unilateral conducts. I mean, John, Renata, and I as enforcers know that some investigations are really high, high, complex endeavors.

Additionally to that, in Canada and in Mexico, there are specific issues that make it more complicated than in other jurisdictions. One, is that there is a list of potential behaviors that can be investigated as abuse of dominance behaviors. That means that as an antitrust agency, when you start an investigation, you need to fit the behavior you're seeing into one of these behaviors that are written in the law. When you're entering into an investigation, you don't exactly know what you're going to find at the end of the day. So having this corresponding the conduct you're investigating into a list makes it more complicated. And then also, in Mexico and in Canada, the law includes both intent and effect as element of test in every case.

As a document says, one of the relevant differences between the Mexican and Canadian abuse of standard, versus an attempt to monopolization standard you might have in the US and in EU, what the consequence is that you need extremely high evidentiary standards. And so, some investigations basically take too much time and when you come out with them, they're irrelevant, completely irrelevant, or simply antitrust agencies don't go through that endeavor because [of] the specific legal standards that they have to meet.

So, as Jorge said, we need to be open-minded with our theories of harm and we need to push forward in terms of our enforcement efforts. This means not being so timid. I like this way of doing things. It's important. What happens if you go so far in enforcement versus what happens if you don't act? If you go so far enforcement, you might hinder innovation, but if you don't act, it's really complicated to correct markets later. At least in my experience in the Mexican markets, when you go into markets that are very concentrated, highly concentrated, you basically can't undo that and change the structure of those markets. That's also why I like this preventive way of doing things.

And then, finally, **the DMA. and other similar regulations are inspired by many specific cases investigated in EU, in the US, in theUK. In my view, when a conduct and its effect is recurrent in many markets, then one should move from ex-post regulation to ex-ante regulation.**

It is also important to note that these regulations, DMA. type regulations or are basically trying to check into gatekeepers with monopolistic power. They're not changing the structure of a market, they're not structural remedies. Most of it is controlling that market power, they don't eliminate it. It's not like they're going to make these companies disappear or change how the market works. It's just checking on those who have extra power when we know that their contacts and the effects of those conducts are recurrent.

So those are my arguments. Why, I would propose, at least if they ask me, I would propose that Canada, keeps on working on this path going forward.

CM: Thanks, Alejandra.

Maybe just a quick follow-up on both in relation to your suggestion about almost the horizontal nature of digital technology as well as this concept of gatekeepers of big tech.

It's been said that that concept, while I think it drives in many of our minds, a sort of the picture of the big bad firm but they encompass companies that are despite being technology-driven, are active across many markets as I think you rightly indicate, but they also have very different business models and economic incentives.

So, I guess we're sort of pulling down that pathway a little further. Is a one-size-fits-all approach the right solution to some of these perceived issues? And thinking through also, what are the potential consequences around that type of a one-size approach in Canada?

AP: Well, the consultation document eventually needs to be written down exactly on how that idea would look on paper, on the law. But I don't necessarily think it's a one-size-fits-all thing for everybody, because you can have the possibility [of] creating these types of Codes of Conduct for these firms, and you can have, an array of different conducts, but you don't impose all, or you don't impose the same to all these different types of companies.

So, I mean, after the investigation or after you decide that one is a gatekeeper, you decide what type of conducts you apply to which, depending on what they're doing in the market. And if I'm correct, that's sort of the proposition the UK is trying to bring forward. So, I like that model. It's the possibility of checking and controlling market power for certain companies that work in the digital space but are all over the market. So, it should not necessarily be one-size-fits-all for all these companies.

CM: Thanks, Alejandra. I want to get to Renata and hear your views as a former regulator in the United States. Some of the competition-related concerns associated with these digital companies aren't new and, in fact, some of the same practices are used in other traditional or physical businesses. I know that people have spoken about the collection of data, for example, used in the financial services industry or in the retail industry, as well as business practices around self-preferencing are not so unique to big tech, so to speak. And in fact, there are arguments that vertical integration itself involves self-preferencing that provides [an] opportunity for products or services in your own value chain to be kind of put forward as opposed to buying it from outside parties.

I'm curious to get your sense of the opportunities and challenges introducing some of these bright line rules and presumptions around dominant firms or platforms, their behavior, and; therefore, the potential prohibitions on select companies from certain practices while presumably allowing for others which may not be considered dominant to continue those types of practices.

Please, Renata, I welcome your views on these thorny issues.

Renata Hesse (RH): Well, thank you, and it's nice to be here. It's great to be here with John and Alejandra, who are, as John mentioned, old friends and colleagues from our time, our respective times in the agencies. I typically find myself kind of in between two poles, and I think I probably am going to going to sound that way again today.

I mean that there are a variety of different issues that these proposed regulations are trying to deal with. And I am certainly not of the view that we shouldn't think about and even explore ways of addressing market failures where we see them, potentially even through regulation. Although for competition enforcers, particularly in the US, the regulation is kind of an anathema to us. But I think there are issues and problems that sometimes competition law just isn't well suited to address.

Privacy, for example, is something where in the US, we don't have a Federal privacy legislation. And I think that's just something that the legislature should really put into place and find a way to regulate privacy in a more direct way. So, that we're not left with this patchwork of State laws that correspond roughly in some cases to the GDPR and otherwise. I think there are certainly places where laws and regulations really do make the most sense. My fear about Brightline rules tends to be that, I think the point that you're making, that they can capture things that you don't want to capture or not capture things that you do want to capture. So they're not always fit for purpose and I tend to think that a more case by case approach generally works better, but doesn't mean that you shouldn't have different ideas about presumptions or where to invoke the power of the government just to the whole conduct.

In the US we do this principally in the dominance area through enforcement and lawsuits, invoking section two of the Sherman Act. The courts over overtime, largely for reasons of I think, being pushed to the view that the risk of too much over-enforcement in the dominance space, in the Section 2 space would lead to a drag on innovation and on markets. For the reasons that I think John really started with, the courts in the US have really ratcheted back the availability generally of Section 2 to address the kinds

of issues that I think it was originally designed to address. And I think that has been an issue in the US and I think Section 2 has been. Almost, It's rarely invoked by the competition agencies to take actions. There have been a few Section 2 cases since Microsoft, but the biggest US enforcement case involving section two of the Sherman Act was Microsoft, and that's decades ago. So, I think giving some thought on how to develop and describe an analytical framework that permits the antitrust agencies to address monopolization and attempted monopolization effectively and in, particular in digital markets, which are very difficult to describe.

I think that is a job that's worth doing, and we're trying to do and thinking about how to do that in a way that doesn't over-deter innovation is really important. To me, the kind of single biggest question that I think all of us in the US and elsewhere need to be asking is how much, what's the right calibration of enforcement in this area versus innovation. A very hard question to answer, and Jorge, I wish some economists would do some market study of this to figure out why is it, for example, that a country which many people now view to be relatively lax on enforcement and in the area of dominance that I mean the US has had historically a very vibrant innovation economy. Are those two things actually connected? And if they are connected, how do we, how do we calibrate addressing some of the real harms and problems that people see in the US economy? While, not doing so much that you impair the innovation
that has really driven the US economy over the last many, many decades. And I think that's the critical question that we need to really try to address.

CM: Actually, Renata, I think that's a great transition to a sort of a more open platform for question and answers and sort of debate between participants.

But to your last point or question, to Jorge, if you're there, are there studies that you're seeing in the market or those being contemplated that move in this direction around trying to understand that calibration of enforcement versus innovation? Are there any out there right now?

Jorge P: Plenty but not very definitive. When you find lots of papers about a topic that basically means that we don't understand that topic. If there are few it is s because that's already settled. This issue is a very difficult issue. I fully agree with Renata is the question and it's a very hard question and unfortunately, what happens is that some results point in one direction and some others point in the other direction. And this is because I think that the relationship between innovation and market power is nonlinear.

So, we know that if you have an entrenched monopoly, maybe the entrenched monopoly has no incentive whatsoever to innovate.

The Nobel Prize winner John Hicks many years ago said if the worst thing about monopolies is that they're idle, that's the worst thing about a monopoly from society's viewpoint. But at the other extreme, we know in a market that is completely fragmented where, every innovation is imitated quickly or where there is compulsory licensing of innovations, when there is no possibility of an expected return if you innovate and then you're not going to have any innovation. And so it's a little bit like a Goldilocks problem. We know that the solution is in the middle, but how do we get to the middle and how do we make sure that we get exactly to the right point.

Now having said so, more is needed, more evidence is needed. Perhaps a little bit less theory and more empirical evidence and more analysis of what works and what doesn't work. And in one instance, Europe now is providing a natural experiment. I think that this is something that John mentioned before

John. I don't know whether that's a public good or a public bad, but that's what we're doing with the regulation and we will see what is the impact that it has on innovation and on the ability of the European economy to close the gap with innovation leaders like the US.

RH: I think that is the goal of the Digital Markets Act, really. I mean, I do think it's going to be a really interesting experiment to see what t see to see what happens there because I know that part of what is driving that is the perception that Europe hasn't produced the Googles, Facebooks, Amazons, etcetera the world and the US has and the question is why is that?

Jorge P: Absolutely. The focus of the DMA is on CONTESTABILITY is trying to being competitors and frankly speaking and nobody in Europe is going to call it [a] success if the competitors are non-European.

AP: Yeah, I absolutely agree with what Renata and Jorge are saying. In my view, the DMA is a good experiment for that middle ground that Jorge was talking about, because the DMA and likes, they don't break companies, they don't limit the size of the market or what they can do. They're just trying to put a brake on how you use that market power.

In my view. part of the enforcement that we've seen has to do with how difficult it really is to manage these cases. So, I think that the DMA could be that middle ground. We'll see.

CM: John, do you see this as the middle ground? What's your thought on that?

John P: The DMA is middle ground? No, I think it's taking a pretty firm position that there needs to be a heightened enforcement in this area. When it's in my view, it's not clear.

I want to step back a bit [to] when, during my time as Commissioner, when Alejandra and Miranda headed agencies and these digital platforms just started, they emerged, and grew exponentially. And while we were trying to figure out how these data-driven markets worked. And I think it caught a lot of the agencies flat-footed and it took a number of years before there was an economic framework that was developed. For agencies to actually take a close look at, to determine if there has been any competitive harm.

We've had for many years experienced and especially in Europe, where they have used traditional tools to tackle some of the conduct that is alleged to have been anti-competitive and take corrective action such as the Google shopping case, Google Android, agencies are now blocking digital mergers whether or correcting them, such as Google-Fitbit, Meta-Giffy. The agencies have caught up to the dynamic markets and are now, in my view, able to deal with any competitive behavior much better than were initially.

And so, the question is: Do we give more time to traditional approaches? I would prefer to do that then do an unforced error, like they like to call it, go into an unforced error. Especially [in] a country like Canada, smaller population, smaller markets. And these errors are larger, in my view, are exponentially larger because of the size of our economy. I think we should wait for the larger economies to experiment and see what works best in this area. But I'm a traditionalist, I believe our tools work, that in Canada they need to be sharpened and better to allow it to work in data markets. But, Again not a big fan of sector regulations and competition authorities generally aren't. We advocate against them. We want to reduce
barriers to competition and this to me is a barrier to competition.

RH: I agree with John, that I think many of the tools that we have are actually fit for purpose and that if we as I think Alejandra said a little bit ago, if we were less timid, in using them, as enforcement agencies then maybe we could see, we could see greater activity and movement and I generally favor the development of [the] law through courts and cases and as I said case by case analysis, giving the agencies better ways of addressing some of these issues more quickly would be helpful. And I think there are some parts of the consultation paper that deal with that in Canada, and in the US the agencies are able to bring cases directly and in court and seek injunctions and do all of those things and to move cases, and frankly as quickly as they're able to. Sometimes they just take longer, but I think some of these what might be kind of boring procedural aids to make the competition agencies more effective are actually very important and potentially very helpful in terms of addressing some of these issues.

CM: Renata, you touch on a point that I think was raised by Alejandra before and others. But I did want to maybe ask Mark about these procedural questions because I know that the consultation paper raises a number of new procedural avenues for the Competition Bureau to have at its disposal. It strikes me that we're hearing some sense from a very diverse set of perspectives around the utility of that aspect of the consultation paper, maybe you could just tell us a little bit more about what those look like in Canada and how the Competition Bureau might employ that additional agility to leverage the tools it already has.

MS: I think the consultation paper, in particular, highlights a number of zones in which some of the tools that are actually some of the traditional tools. Not even necessarily new tools are circumscribed or potentially caveated in the case of our current regulator. And I think [it] opens the question as to whether or not some of those limitations or some of those circumscriptions are still warranted or potentially relevant.

John has raised concerns with some of those and other, and I think we probably have commentary in both directions you know on things like you know what is the appropriate length of time for a merger closure? What is the appropriate amount of consideration and due deference that the regulator has to be able to continue to examine things? What is their compulsion powers as [it] relates to potential information that they may seek what side of a formal investigation?

Much of this is actually not necessarily extraordinary in the sense that lots of this is the circumscription of what I would at least counter as what most people would put in kind of a traditional toolbox as opposed to kind of brand new tools. Market studies are not you know a novel, completely brand new element. They are something in fact that we had under a previous iteration of our competition laws in Canada. And then we shifted away to a different version of and now we're asking a question about what could or should they look like if they were to come back?

I think, not looking at the procedural aspects and living solely at the relevant at the level of principle, I think would be a failure on the part of our review. I mean it's part of the rationale for why this was paired initially with the very significant funding increase to the bureau at outset. Which in some ways you know the efficacy of a given competition policy and law has to be both its capacity to actually implement and it's actual resources to be able to drive it out and then the procedures and kind of technical aspects. And as John knows better than many, is that we have to be very mindful of the corners that we've been backed into in some of these are actually a function of the evolving jurisprudence, that we now need to kind of think back and say are we still in the same mindset where we think that that's appropriate? In that certainly, you know at [the] outset at least some of the considerations are on the efficiencies

defences you know notwithstanding what we might have contemplated when it was first invoked, certainly what the courts have indicated is its new test is not necessarily you know, is probably worth investigating and examining.

So, without kind of speaking to specific tools and things that we might have in mind I'd say the paper you know is open-ended on both procedure and principal in part because I think the two have to go hand-in-hand.

CM: John, please feel free to add on to Mark's remarks.

John P: I just wanted to follow up on, given my reading of the consultation paper.

Mark, you can clarify if I've misread some of the areas that are going to be explored. One was the whole question of interim relief and lowering the bar. But the one that I found most interesting was the issue of remedies and the Commissioner being able to impose remedies, which would be something novel because it would mean that the Commissioner would be a decision maker in the first instance, which it to recently hasn't been. It has to go to the tribunal, for the courts to impose orders to change conduct. And again I've seen similar language, if you will, in our privacy bill that allows the Privacy Commissioner to take decisions in the first instance.

I'm just wondering if there are parallels between what's being contemplated in the Privacy Act, the new privacy legislation, and what we're thinking about in competition law. I just thought it was an interesting observation.

MS: If I can quickly weigh in to say, we haven't pitched anything specific yet, but I think it is an interesting corollary, I make them all the time between our various kinds of approaches across the different marketplace frameworks. You know what CPPA, the Consumer Privacy Protection Act and under C-27 proposes for the Commissioner is order-making powers that are fairly significant in some regards. Actual capacity to order the end of [a] continued collection of personal information capacity; to order the end of continued usage of personal information in a particular instance.

What is interesting is obviously that we've maintained the tribunal structure for probably what we see is the most important function that should live under the executive branch of government in some ways which is the appointment of a tribunal now that will actually administer monetary penalties. So, if there is active real harm happening in the economy or in the marketplace should we have a brake function that essentially allows ourselves the capacity to end the bad behavior, at least temporarily, while we sort out whether or not there's other things that potentially need to kind of have happened. That's really the corollary in privacy cases.

If it is really egregious, we can say stop. You cannot continue to collect personal information. Now, as we think about your behavior and judge you accordingly and make sure that we've got the right tools in place well that'll be the tribunal that actually kind of administers the amps. It is an interesting consideration in some ways about you know what is the appropriate limitation in some ways of without kind of getting into the judge, jury, and executioner that still allows for potentially the harm to be abated.

CM: I did want to sort of put out a call to our distinguished audience to also contemplate any questions you have for this panel we've got. We want to reserve a few minutes at the end here to ask the panel any of your questions. So please put those questions in the chat. We won't have time for a ton of them, but if you do have any please do put them in the chat and in the meantime, John.

Thanks, Mark.

I'm not seeing a lot of questions coming yet.

AP: I'll make another brief comment and it's regarding other potential reforms of the Competition Act, which I found interesting. I think the merger limitation, as it is written in that paper for the readjustment to the three-year at least, for non-notifiable mergers or tying it to a voluntary notification procedure, is interesting.

I would readjust the three years for non-notifiable mergers, not for those that have been notified. And I think it's to tackle that uncertainty, tying it to a voluntary notification procedure. I find that very interesting. And then I also think it's interesting, in general, condensing the various unilateral conduct provisions into a single one; I was talking about the Mexican experience; I think that this will help enforcement and then I also think that there should be a better definition of joint dominance. We do have that on the Mexican law, and then I also find [it] interesting [in] helping the antitrust agency collect information outside of the enforcement context for market studies. Market studies are relevant for agencies, they're an interesting advocacy tool that eventually can also lead to enforcement actions. These other potential reforms might be less contested. I like those just to put that on the table.

CM: Thanks, Alejandra.

OK. Well, there's one a question to Jorge: How does the divergence of business models, sectors and competitive dynamics among big tech companies impact the analysis of relevant markets and the potential for policy change? And what risks do you see in applying the same set of rules across different business models and product categories?

Jorge P: That's a very good question, very interesting question, a very difficult one. Needless to say, the particularities o the business model of the platform in question matter, and it matters for market definition, they matter for the assessment of conduct. That doesn't mean that I think that there are some types of business models that should be necessarily acquitted and others that should be prosecuted. I don't think that everyone, funds or monetize through advertising is necessarily bad, or everyone that doesn't do so is good.

But I think it's important to understand the context. Let me put it this way. We see different big platforms now within Gaffan. There are many alternatives. Some of these companies are able to retain market leadership with more ease than others. We see much more fluctuation in market shares, for example, in connection with social media, where Facebook was initially challenged by Snapchat, then challenged by Instagram [with] the acquisition being super controversial then more recently challenged by TikTok. If you look at other platforms, you see much less entry and much less competition.

I think that we need to go to the details and it's very difficult in my opinion to have a set of rules that apply across the board and that necessarily are going to work for each and every one of the platforms. That's why, I think, that I also like the idea of the UK regime and I also, I think, like the idea that Alejandra mentioned before. The idea of some more bespoke conditioning, as opposed to general rules that apply across the board.

CM: Thanks, Jorge.

I don't want to lose Alejandra's questions about time limits, android dominance and market studies. Are there reactions among the panel to any of those points or questions around how Canada might approach these as part of this consultation?

RH: I agree wholeheartedly about market studies. In the US, the Federal Trade Commission has the authority to do those market studies within certain constraints on them. The Department of Justice Antitrust Division does not. I think being able to do market studies, to be able to do retrospectives, to look OK, here's what we did in a particular marketplace with a series of transactions, how did that turn out? What does that tell us about how we're thinking about particular types of conduct or otherwise? I think that's a very useful tool to help the agencies actually calibrate their work and figure out whether what they're doing is actually helping. I think that's a that's a big positive.

I don't know about. In the US there's sort of no time limit. You can other than you know statutes of limitations imposed by the law for non-reportable transactions, there, you're always at risk. Even for reportable transactions, you're always at risk of the agencies coming back later and challenging them. I think by and large the agencies exercise that authority sparingly and in inappropriate situations. A bit like the Article 22 mechanism in Europe where everybody's been very, very worried that the European Commission was going to keep invoking it to take jurisdiction over transactions and it really, you know doesn't appear to be doing that. So I think having some flexibility to go back and look at transactions that have either been not reportable or cleared, or something was missed. I think that's also good.

John P: And if I could jump in Christopher, just on the market study point.

CM: Sure. And I think, John, we probably also need to start wrapping up, so if you have any final comments maybe just encapsulate them here as well.

John P: I think the market study point is an important one and I think it was captured this weekend by Canada's largest national newspaper. The Editorial Board wrote an opinion piece asking the question: 'Why is competition so weak in Canada? Blame the Competition Act. It's time for an overhaul'. And it did this in the context of the announced merger, sorry market study, by the Bureau into food prices at grocery stores, suggesting the Bureau doesn't have the right tools or the tools to actually do that study. They won't be able to determine, you know, obtain pricing information or costing information to turn to determine if there was a[n] excessive market power use by any of the players in the supply chain.

Again, it's a vital tool. It allows the Bureau to advocate for government to remove barriers to competition. And the retrospective piece that Renata raised I think is important in the US. They do retrospectives on merger remedies, for example, to see how effective they were to allow the agencies to adjust their conduct and also for policymakers to maybe make changes and rules. I think the market study law and the report and powers for the Bureau, I think are one of my top three, I would say, reforms that are necessary in Canada.

CM: Thanks, John.

We only have a couple [of] minutes left. Maybe I just offer the floor, Mark, to you for any final comments or requests you might have of the participants on today's call. I'll offer just a few concluding remarks.

MS: As I said this is the first since the launch of the consultation paper and I hope that the ongoing conversations that will follow will be as rich and kind of interesting as today's have been. And would just encourage folks because I don't think I heard a shortage of opinions today, and nor would I have anticipated to not hear[ing] that.

I would just encourage folks to engage in the process because we have a consultation paper out and we are looking for people's kind of learned views and we'll take them into account as we sort of chart the course for the next round of potential reforms.

CM: Absolutely, yes. I think that that's a great note to end on because it is, I think, a unique moment as we contemplate Canadas's existing and future competition framework. And we've as, as you mentioned Mark, there's a rich variety of opinions expressed today and across a diverse set of aspects around competition and policy in Canada, and also I think elsewhere around the world.

My sense, moderating the discussion, is *some* agreement across panelists discussing Canada's situation is somewhat unique and will require tailored solutions to your context. I think we're seeing that these solutions should draw on what you've done in the past, and both policy and jurisprudence around competition, while also considering the approaches being fielded and other major countries and jurisdictions to arrive at the right suite of policies for Canada.

I also heard some agreement around providing the Bureau more procedural authority and things like market study capability. They're obviously areas I think where more discussion is likely needed. 90 minutes is certainly not adequate to really dive into all these different areas. But the impacts on any adjustments around competition to the Canadian economy, especially around digital economy and innovation I think are yet to be seen or understood at a deeper level and I think there is still a question of what is that right calibration of enforcement versus innovation, really what is that middle ground and there's going to be a variety of perspectives on that.

Whatever it is I think it's clear that Canada, like many of your G7 peers, is doing a lot of extraordinarily important thinking related to competition policy and with this consultation open and running until the 27th of February the Canadian government is embarking on this comprehensive review, we encourage everyone to keep thinking about this potentially contribute if you have thoughts.

We, [at] Access Partnership, will be eager to watch how this consultation evolves. It's important for any reform to deliver the benefit to businesses and consumers. I think that's what we all see and doing so in a way that outweighs any costs. So, if we contemplate transplanting legislative reform from some other place how is that going to impact consumers in Canada? Is it going to be disproportionate or not? What is the impact on innovation and investment? And, as a piece, if only a small piece of that consultation process, and it's great to hear Mark we're the first out of the gate here to start the rolling on this discussion, but I think it impacts the broader set of conversations around competition policy globally.

I personally found today's discussion highly insightful and enlightening. I hope our audience found it equally so. To our distinguished panelists and our online audience, our sincere thanks for joining us today and we look forward to future debates and discussions around competition policy, as well as other areas of policy in the tech sector.

With that, thank you all, and see you all again at some point in the future. Have a good one.