May 24, 2022

Joël Lightbound
Chair, House of Commons Standing Committee on Industry and Technology
House of Commons
Ottawa, ON

RE: Canadian Chamber of Commerce recommendations on competition provisions in Bill C-19

Dear Mr. Lightbound:

The Canadian Chamber welcomes the work of the House of Commons Standing Committee on Industry and Technology to study certain provisions of Bill C-19.

Bill C-19 proposes to make a number of changes to the Competition Act. While the Canadian Chamber supports modernizing our competition laws, this must be done in a deliberative manner through a multi-stakeholder consultation process. **The Canadian Chamber is concerned with the uncertainty around the following three proposals in particular and urges that these be removed from Bill C-19 and placed into the work plan of the comprehensive review of the Competition Act so that adequate stakeholder consultations can occur.**

- **Definitions for abuse of dominance.** The proposed amendments would add or expand on the factors that may be considered in the issuance of a remedial order under the abuse of dominance provisions when determining whether an action prevents or lessens competition. Any new definitions and criteria for abuse of dominance violations must be subject to robust consultation with stakeholders, which will help further define these concepts to minimize ambiguity. For example, it is unclear what this means for self-preferencing in retail, which has long been a common practice, and has been carefully considered through consultations in jurisdictions such as the US and EU. Additionally, the language around privacy would also benefit from greater deliberation given how it could interact with the mandate of the Privacy Commissioner. Failure to adequately define key terms will inject variability and uncertainty into the administration of the law, particularly given the context of other changes being made to the legislation.

- **Increased Administrative Monetary Penalties**. The proposed amendments would significantly increase the administrative monetary penalties available for

1700 – 275 Slater Street
Ottawa, ON K1P 5H9
info@chamber.ca
Chamber.ca @CdnChamberofCom

violations of the abuse of dominance and misleading advertising provisions. These penalties represent a quantum leap from the status quo. The prospect of an opaque 3x value of quantifiable harm and, if that is not possible, tying penalties to global revenues - with no cap - could lead to unintended harmful consequences for the Canadian economy, including deterring investment. In circumstances where no case has been made for why penalties over and above the current maximums are required simply for “deterrence,” any proposed amendments must be thoughtfully considered.

- **Criminalization of wage-fixing and no-poach agreements**. The proposed amendments would add a new criminal provision for so-called wage-fixing and no-poach agreements between employers. It should not be presumed that all such agreements are anti-competitive or give rise to inefficiencies that reduce economic welfare. For example, a no-poach agreement in the franchise context between competing franchisees within the same brand provides incentives for employers to invest in training employees, knowing rival franchisees will not poach them. Breaches of this new offense could also be subject to private actions for damages. Given that private plaintiffs are not bound by the Bureau's enforcement guidelines, or how it will enforce these provisions, this could result in a proliferation of frivolous class actions challenging conduct that is not anti-competitive.

Thank you for consideration of our views and we would be pleased to provide further perspectives to assist the committee in its study.

Sincerely,

Mark Agnew
Senior Vice President, Policy and Government Relations