A positive vision for the future of Canadian competition policy

Submission of Social Capital Partners to the consultation on the future of competition policy in Canada

Social Capital Partners

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Social Capital Partners is a Canadian non-profit founded by philanthropist Bill Young in 2001 to focus on designing and implementing new financial tools that broaden economic opportunity. Projects have ranged from investing in social enterprises to using social finance to provide good jobs for people facing barriers to employment. Today, we're focused on addressing inequality by increasing access to business ownership and quality employment.

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366 Adelaide St West, Suite 606
Toronto, Ontario, Canada M5V 1R9
socialcapitalpartners.ca
info@socialcapitalpartners.ca

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Who we are and why we are submitting

Social Capital Partners ("SCP") is a nonprofit with over 20 years of experience designing and supporting market-based solutions to systemic social issues. Prior to their work at SCP, our Partners were active in the private sector, founding or leading several companies including Hamilton Computers (acquired by GE Capital), Optel Communications (IPO), VetStrategy (acquired by private equity) and VetPartners Australia (acquired by National Veterinary Associates). Our approach is to combine our private sector experience with our social mandate to develop practical ideas. Over our history we have funded some of Canada's earliest and most successful social enterprises and helped originate Canada's social finance market among other innovative investment strategies.

Competition policy was not on SCP's radar when it was founded, but over 20 years, as we've witnessed the growth of consolidation and corporate power in Canada, we've come to realize that it is impossible to achieve our aims of a fairer, more broadly held and more equally distributed economy without a strong and active competition regime. If consolidation is to continue under the current permissive approach to competition policy, no creative idea we can come up with could counteract the resulting growth of inequality. As a result, we see this review as an essential opportunity to create the conditions for a resilient, growing and inclusive economy. It is for that reason we have prepared this submission for your consideration.

Our submission is informed both by our private sector and social sector experience. We understand the incentives that drive consolidation, and we've witnessed its impact on small businesses, workers and communities. We lay out the case for ambitious reform, discuss key areas where a more active approach to competition policy could make our economy better and more fair, and make 13 specific recommendations for change. While we've researched the topic extensively, we've also tried to bring our private sector experience to ensure our recommendations are practical and reflect actual incentives in the market.

It is our view that the Canadian economy would be healthier with a competition policy framework that supports growth through innovation, rather than acquisition. We believe competition policy can be a force for good, leveling the playing field for small business, protecting workers against harm and making our supply chains more resilient. As a result, alongside the technical and detailed policy analysis that will be part of your review, we would also recommend a change in tone. Competition policy is often seen as stopping companies from doing things, and thus can be painted as negative, or getting in the way of progress. It should be the exact opposite. Competition policy stands up for innovation, growth and a fair marketplace free from gatekeepers. A strong and well funded Bureau acting on behalf of Canadian workers, consumers and small businesses should be a source of pride for politicians and policy makers.

For these reasons, we are supportive of Innovation, Science and Economic Development ("ISED") and the Competition Bureau (the "Bureau") taking bold steps to reform the Competition Act (the "Act"), and we hope this submission is helpful in the review committee's efforts.

Rationale for reform

Canada's economic policy consensus appears to be at a crossroads. As has been well documented, broad agreement on the merits of ever freer trade, economic efficiency and limited government engagement in the economy has dominated economic policy making over the past few decades. In the years since the global financial crisis that broad agreement has begun to break down in the face of entrenched inequality, slow growth and, as was made irrefutably clear in the COVID-19 era, a frighteningly fragile economy.

A laissez-faire approach to competition policy was part of this old economic consensus, preferencing efficiency and the creation of globally-relevant "national champions" over competitive domestic markets. The Competition Act was passed in 1986 when this consensus was coming together and as Canada entered an era of increasing free trade and international competition. A focus on efficiency and the development of these national champions would have made sense to policy makers concerned about Canada's ability to compete on a world scale. An activist Competition Bureau, preventing the scaling of these champions, might have been seen as counter to the national interest, and thus a passive approach to consolidation could be seen to reflect the priorities of the time.

A lot has changed since then. Integrated global supply chains and the pursuit of economic and financial efficiency has resulted in diminished resiliency in Canada and across the globe, especially the supply of critical products, and exposed Canadians to sudden supply-driven price increases. Faith in the benefits of free trade have been shaken both by conflicts among the world's largest trading nations and negative impacts on the middle class in developed economies, including Canada's. Policies that were intended to create export-focused national champions have led to increasingly concentrated domestic markets. While firms in these domestic markets have seen their profit margins rise, evidence of positive outcomes for workers, communities and the economy are hard to come by.[1] While some die-hards remain, the repeated failure of trickle-down economics to create broadly shared benefits has led to very few who continue to believe that following the policies of the 1980s and 1990s is the right path forward. It was encouraging to see the Bureau's discussion document supporting this review acknowledge these issues:

1 A recent 2023 report by Kevin Milligan and David Arnold found that the result of M&A activity in Canada is that, on average, targets shrink while acquirers expand, and workers at target firms suffer losses in earnings. MnA_Canada_draft.pdf (squarespace.com)

> "As concerns about inequality and inclusive growth continue to surface, and concentration of economic power raises issues not only with respect to the marketplace, but also the health of Canada's social landscape and democracy, the importance of a fair and trustworthy marketplace, where all Canadians are able to share in the benefits of the traditional and non-traditional economy, remains paramount."

Concerns over the impact of the old economic consensus are leading to the rise of new economic thinking and a resurgence of ideas that have long been out of fashion. A stronger role for government industrial policy, an increase in domestic production and establishing fair markets free of dominance are gaining traction in economic policy discussions. The antitrust movement in particular has experienced a resurgence in Europe and the United States, across the political spectrum, leading to renewed action by politicians and enforcement agencies against concentrated corporate power.

Here in Canada, concerted efforts to define a new Canadian economic consensus have begun, including *The Urgent Case for a Supply Rebuild*, a recent report by the Public Policy Forum that would have seemed very out of place when the Act was passed. It is highly unlikely that the new consensus will return to the playbook of deregulation and free trade in the perceived service of economic efficiency, or ignoring the plight of independent small business and the middle-class in the name of creative destruction. Competition policy should align with the new consensus, as it did with the old, and can be a powerful force in supporting a fair, resilient, growing and inclusive Canadian economy.

A positive vision for the future of Canadian competition policy

It seems clear that the current leadership of the Bureau recognizes the problems caused by existing competition policy, and that there is a growing global consensus that significant change is required.

We are also encouraged that, despite their constraints, the Bureau and ISED have recently shown a willingness to act boldly. From challenging the Rogers and Shaw merger, to the amendments introduced in Budget 2022, it is clear that current leadership recognizes the importance of a renewed Competition Framework. Our submission is supportive of the progressive changes they are evaluating, and aims to support even broader measures as a part of this review of the Act.

We believe that five key economic outcomes can be achieved with the support of robust and active competition policy. This is not a complete list, but offers some of the best examples of how the Act is failing today, and why it is important for this review to be ambitious in its recommendations for a renewed Canadian competition regime. These outcomes are:

- Increased Entrepreneurship and Innovation
- Stronger Small Businesses
- Improved Job Quality
- Resilient Supply Chains
- Lower Prices

> "Current provisions enable high levels of economic concentration – even monopolies – in the Canadian economy. This is out-of-step with what other comparable countries are doing,"
>
> MATTHEW BOSWELL, COMMISSIONER OF COMPETITION IN A SPEECH TO THE CANADIAN BAR ASSOCIATION IN OTTAWA

For competition policy in Canada to support these objectives would require no small change. As we've discussed, competition policy in Canada has in many ways been calibrated in the opposite direction for the last 40 years. It is with this mind that we urge the Government to adopt an openness to fundamental change throughout this review process. We will lay out how, in each of these areas, existing policy is failing us, and how ambitious reform could unlock significant opportunity for Canadians.

Increased Entrepreneurship and Innovation

Starting a business is hard, and that's become especially true in today's economy. According to Statcan, Canada's business entry rate declined from 24.5% in 1984 to 14.1% in 2019. While there are many reasons for this, it's more than just a coincidence the decline coincided with the last substantive changes to the Competition Act.

Over the last few decades in particular private gatekeepers have emerged who are stifling growth and innovation. By controlling access to markets through app stores or online marketplaces, American technology companies have become digital toll operators. These gatekeepers are not exclusive to the digital economy, however. In the brick and mortar world, Canadian oligopolies have had longstanding and growing control over our markets. Our retail sector, for example, has become increasingly concentrated. As a result, innovative manufacturers across food, home improvement, and almost any other consumer product have struggled to thrive when subjected to the market power of Canada's few major retailers.

Gatekeepers throughout distribution channels are also stifling innovation. Across rail, ground and air, the shipping industry has consolidated, which has become increasingly problematic in a time where more and more companies are dependent on e-commerce. These types of problems are apparent throughout supply chains, on an industry by industry basis. For example, in the relatively obscure market of grain elevators, increased concentration has made it more difficult for farmers to make a living.

There is also the issue of killer acquisitions. Large technology companies have been some of the most aggressive acquirers over the last decade. While not true of all of their acquisitions, the intent of some is clearly to prevent a nascent competitor from reaching scale. These types of acquisitions, while attractive to some entrepreneurs, act as a roadblock to growth and innovation, particularly for Canada as the majority of buyers are foreign owned firms.[2] This has follow-on impacts on future Canadian innovation as it reduces Canadian control over our intellectual property.

While Canada's Competition Act may struggle to undo the decades of mergers that have created a more challenging environment for entrepreneurs, it can think progressively about how to deal with the abuse of dominance for value added producers in Canada. The Competition Act cannot eliminate the difficulty and risk involved in starting businesses, but it can prevent gatekeepers from creating disincentives for entrepreneurs and making an inherently hard path that much more difficult.

2 Data compiled using PitchBook databases (available upon request)

Stronger Small Businesses

Few experience the results of our competition policies as significantly as traditional small businesses. Whether they're competing directly with large oligopolies, or supplying or purchasing from one, small businesses experience daily the real world consequences of outsized market power. While small businesses are included in the purpose statement of the Competition Act, the Act currently fails to put them on a level playing field.

Self preferencing, as an example, is a major issue for many small businesses that has grown substantially since the Act was first passed. While retailers like Loblaw have been competing directly with suppliers for many decades, on-line marketplaces like Amazon are adding to the challenges. This issue has become progressively worse over time as consumers gain acceptance of retailers' private brands, emboldening marketplaces to provide themselves ever-more prominent positioning. Unfair contract terms are another common issue, as dominant market positions allow retailers to demand price reductions, require impractical volumes or impose punitive penalties almost at will. These terms are disincentives to create innovative new products, and can prevent promising products from reaching sustainability. Volume discounts, a common practice, have systematically remade markets in favour of large businesses. Large pharmacy groups, as an example, receive significantly higher rebates from distributors and generic pharmaceutical manufacturers (under the guise of "ordinary commercial terms") than independent pharmacies, which has played a meaningful role in the flood of acquisitions that have consolidated the industry.

Those consolidations themselves, often referred to as serial acquisitions or "roll-ups", also make life more difficult for independent small businesses. While there's very little evidence that this approach to consolidation leads to efficiencies that benefit consumers, their scale enables more aggressive spending on marketing and staff recruiting, and can lead to a greater degree of influence on sector-based associations and regulations. The result of these "roll-ups" are an uneven playing field for independent operators and confusion for customers, with no identifiable positive outcome for consumers, workers or industry resilience.

The Competition Act can live up to its purpose statement by leveling the playing field for small businesses. Through revisions to the Merger Review and Abuse of Dominance guidelines, the Act can be renewed to reflect the current business environment. Canada can look south of the border, where dedicated laws such as the Robinson-Patman Act are being litigated to the benefit of small businesses. In doing so, Canada can create a less concentrated and more resilient economy that benefits local communities and independent owners throughout the country.

Improved Job Quality

Often left out of the conversation on competition are workers. This is despite the fact that uncompetitive, concentrated industries have clear negative impacts on workers. For example, many concentrated industries are the result of decades of unchallenged mergers. Research shows that during mergers of two companies in the same industry, 30% of employees are laid off, on average. The issues for workers do not stop there. Increased concentration in non-financial industries is also correlated to lower wages. In extreme cases, lower wages are a result of a monopsony effect, where workers have only one potential employer with unchecked negotiating power.

Currently, the impact of mergers and the resulting industry concentration on the workforce is not a consideration of Canadian merger reviews. The research outlined above, and the experience of workers, points to a clear need to make workers a more central consideration in the Act, and to weigh the impact on workers against other impacts of mergers in Canada. While the Bureau's discussion document notes that "competition policy is but one tool at the government's disposal" to protect workers, this is not an excuse for the Bureau to abdicate responsibility here, as all tools in the toolbox should be used to protect workers against monopsony power. Merger reviews are a key event in the consolidation of markets, and the Bureau needs to be part of an "all-of-government" approach to protect Canadian workers.

Resilient Supply Chains

COVID-19 laid bare the fragility in our supply chains. Canada struggled to build its own vaccine production capacity, after Canada sold off domestic manufacturing capacity to foreign oligopolies. A single ship blocking the Suez Canal managed to delay Canadian food imports and reduce domestic shipping capacity. Increased e-commerce demand stretched fulfillment centers to the brink.

Canada's Competition Act is one of the many tools that reflect how Canada has come to overvalue economic efficiency. It has singularly prioritized the allure of low prices through efficiency at the expense of resiliency. In doing so, Canada's economy has come to lack the excess capacity needed to respond to crises like COVID-19 or pursue supply side solutions to inflation. In his book *When More Is Not Better*, Roger Martin characterizes this pursuit of efficiency as a damaging obsession that has not only decreased economic resiliency but also contributed to rising inequality.

The review of the Act provides an overdue opportunity to reverse the centrality of efficiency in Canada's competition policy. This can be done not just by limiting the ability of merging companies to rely on an efficiencies defense, but by broadening the implications the Tribunal must consider when ruling on cases. For example, the Tribunal should be tasked with considering how mergers impact overall capacity to produce critical goods or services. It must also begin to place greater importance on how mergers could concentrate geographically production given that it increases the risk of isolated transportation shocks. These are just a few examples of new and important considerations that must be incorporated into the Act, as a part of rebalancing the focus of the Act in favour of resiliency.

Consumer Prices

In recent decades competition policy has had a narrow focus on consumer price. This has been particularly evident in merger reviews, where merging parties often argue that increased scale allows them to offer, among other benefits, better value prices. However, there is little data to support this claim. In fact research shows the opposite.

The false promise of lower prices is especially topical in today's inflationary environment. While debate has raged about the role of corporate greed in inflation, research from the Federal Reserve Bank of Boston Fed shows clear evidence that cost pass throughs are greater in concentrated industries. This should seem like an entirely unsurprising observation. When costs rise for firms in competitive markets, they have to weigh the risk that a competitor may be willing to sell products or services at a lower margin in order to grow market share. In concentrated markets, especially those where it is hard to substitute products, checks on price increases are far more limited.

Canada's Competition Act must stop taking at face value the claim that scale leads to lower prices. Instead, it can foster an environment where firms compete on every axis, price included. Not only will this empower consumers in stable economic times, but it can also ensure corporations are less capable of raising prices in inflationary environments.

We support significant changes to the Act and an active Bureau

Our hope with this submission is to promote and support bold actions by ISED and the Bureau to revise the Act. The pendulum has swung too far for too long towards bigness and market concentration. This is not an issue that has only recently emerged in the digital economy, but one that has a long history throughout Canada's economy. Canada's competition policy framework had been designed to advantage large domestic oligopolies, at the expense of small businesses, workers and consumers. Minor adjustments will not offer change. Instead, Canada needs an Act that promotes growth through innovation, rather than acquisition. An Act that ensures a fair playing field for small businesses and workers.

In Appendix I, we have outlined 13 recommendations we believe should be considered in revising the Act. This is not an exhaustive list, but instead recommendations that most closely relate to our experience in both the social and private sector. At a high level, there are three principles that we believe need to underpin revisions.

1. The standard for approval of market consolidating acquisitions needs to be raised. Up front, and retroactively, merging parties must be accountable to deliver real benefits to Canadian stakeholders.

2. The Bureau must also be empowered to not just have access to the information needed to be effective regulators, but to take reasonable action against the concentration and exercise of corporate power.
3. Other stakeholders, such as small businesses and workers, need not just a framework to challenge abuses of dominance, but a mechanism to have their challenges resolved.

The government is embarking on an admittedly difficult journey with this review. There will be no shortage of technical submissions outlining the issues in the current Act. There will also be challenges to even the most minor of reforms from those who have benefited most from the current regime, such as consolidators, or, more likely, the legal and financial advisors whose businesses depend on further consolidation. On the other hand, everyday Canadian workers and business owners who increasingly feel the consequences of growing inequality and the concentration of corporate power, may struggle to have their voices heard in this debate. We'd encourage the commission to keep this imbalance of power, time and resources top of mind in its deliberations.

You will no doubt hear claims that broadening the purpose of the Act and expanding the powers of the Bureau will result in overregulation, and will prevent Canadian companies from competing on the world stage. This is mere rhetoric, as the existing system has not enhanced Canada's global competitiveness, nor is there any evidence, based on both the increase in domestic concentration or comparing our regime to similar countries, that the current level of regulation is appropriate. Baseless rhetoric on the virtues of an unfettered "free" market that "lifts all boats" is what created our current set of unfair marketplaces.

There might also be a pull in this process to get caught up in detail, such as deciding what percentage market share is too much and what size of transaction is large enough for review. While providing some direction to the market is important, it's also critical to ensure there are degrees of freedom available to the Bureau. The Bureau must be afforded a greater ability to act than has historically been the case, where multidimensional arguments against a merger or abuse of dominance can be viewed holistically by the tribunal. We'd recommend keeping the objective in mind of an effective regime that can act on behalf of a fair marketplace for Canadians over time and in different economic contexts.

Our hope for this review is that it sets Canadian competition policy at the centre of a new economic agenda focused on inclusive growth and innovation. To do this, bold action is required, combined with a positive vision for how the Act and the Bureau can stand up for Canadian workers and small businesses by protecting fair marketplaces. We wish you the very best in your deliberations.

Appendix I: Specific Recommendations

We have reviewed many of the recommendations made in the past for competition policy reform in Canada, and some of the primary recommendations from other countries. We've also looked at how current competition policy in other countries differs from our current regime in Canada. In addition, based on our experience, we have come up with some of our own recommendations to curb the incentives that drive consolidation and market concentration to begin with. These recommendations are those we think are the most critical to establishing an approach to competition policy that achieves the aims outlined above.

1. **Upgrade Existing Pre-Merger Notification System:**
   The current pre-merger notification system is convoluted and is failing to provide the Bureau with sufficient information on merger activity. We recommend that the pre-merger notification size threshold be significantly lowered and be based on transaction value (including contingent consideration) rather than revenue or assets in Canada. In addition, we recommend that any acquirer making more than 4 acquisitions in a 12-month period be required to file for each subsequent transaction until such time as they do not make 4 acquisitions in a 12-month period. Finally, we recommend that the filing form have expanded requirements on beneficial ownership to ensure that complex corporate structuring does not prevent full visibility of the ultimate acquirer.
2. **Create Additional, Publicly Available Merger Filing System:**
   In addition to upgrading the existing pre-merger notification system, we recommend creating a less intensive filing requirement for all mergers above $10M and creating a publicly available database for these filings. The form should, at the very least, include the names of the merging parties and their beneficial owners, as well as the transaction value. This form will not only allow the Bureau to increase their visibility on merger activity, but provide academics, researchers, and the general public with greater transparency.
3. **Lengthen Time Period for Merger Reviews:**
   The anticompetitive effects of mergers are not always visible immediately at the time of a transaction, especially in the technology industry, and the Bureau's ability to review transactions is limited by their resources. As a result, the 1-year period to review mergers is problematic and needs to be lengthened. We recommend creating an open-ended period for merger reviews that allows the Bureau to review any merger at any point in the future.
4. **Expand the Bureau's Information Gathering Powers:**
   The Bureau doesn't currently have access to relevant marketplace data in a timely manner due to a cumbersome court order process. The government should look to other jurisdictions, like the U.S. or E.U., which have more streamlined

processes. In order for the Bureau to be able to effectively conduct its role, it also needs the ability to complete market studies involving confidential information from companies. We recommend that this new power be introduced as a part of changes to the Competition Act.

5. **Broaden Considerations in the Competition Act:**
   Currently, important considerations such as production capacity and workers are largely ignored by the Act. We recommend that through amendments to either the purpose statement or other areas of the Act, the Tribunal be required to weigh these considerations in future mergers. As outlined in our submission, Canada currently lacks the domestic and excess production capacity to properly manage crises, whether they occur within Canada or affect the supply chain of Canadian goods elsewhere in the world. While the Act cannot create this capacity, by incorporating this new factor into the Act it can prevent the continued loss of production capacity Canada has experienced over the last 40 years. In addition, the Act needs to enhance the consideration of anti-competitive conduct on workers, particularly as it relates to wage fixing, monopsony, and overall employment. While recent amendments are helping to address these issues, we support the recommendation in the Bureau's discussion document of further exploring ways to make labour more central in competition analyses, such as amending the Act's purpose clause.
6. **Remove the Efficiencies Defense:**
   As outlined by Peter Glossop of Osler Hoskin & Harcourt LLP, the efficiencies defense is an outdated component of the Competition Act which is undermining the Act's broader intent. We recommend that it be removed altogether, and instead ensure efficiency is only one of many considerations the Tribunal must weigh in cases.
7. **Establish New Standards and Remedies for Serial Acquisitions:**
   Market consolidation does not occur only as a result of large mergers, but also through serial, small acquisitions that often fall under the notification thresholds. In the private equity industry these are referred to as "roll-ups", which has become popular among public and private investors of all sizes. In addition to the notification requirement for serial acquisitions referenced above, we recommend that new standards for monopolistic intent through serial acquisitions be incorporated into the Act. For example, there should be a significantly lower threshold for market share for serial acquirers when evaluating anti competitive behaviour. Related to this, the Bureau should be granted more flexibility in defining geographic markets, in order to capture local monopolies that fly even further under the radar. In addition, the Bureau should have an expanded toolkit of remedies to address serial acquirers. Examples could include requiring pre-approvals for mergers, imposing acquisition moratoriums, and requiring serial acquirers to disclose corporate ownership for greater transparency for customers and industry regulators.

8. **Establish a Complete Beneficial Ownership Registry:**
   While this may not be in the purview of the Act or the Bureau, it would make sense for this review to strongly recommend government action, across jurisdictions, to set up and enforce a beneficial ownership registry. Much consolidation and foreign ownership occurs without the knowledge of regulators, industry associations, customers or employees. There is no good reason to allow this situation to continue. Actors in the economy should know who is ultimately benefiting from their engagement with Canadian companies to ensure fair and responsible dealings, and regulators should have the information required to ensure fair and trustworthy marketplaces.
9. **Introduce Legislation to Protect Small Business:**
   Despite the inclusion of small business in the purpose statement of the Act, the Bureau appears to lack the tools to adequately protect small business from anti-competitive conduct. The US has longstanding and proposed legislation that should be replicated in a Canadian context to better support small businesses. Specifically, the Robinson Patman Act includes provisions such as restrictions on preferential pricing (or volume discounts). Similarly, Senator Amy Klobuchar's proposed legislation on self-preferencing would limit the ability of digital marketplaces or retail oligopolies to preference their own white label products over third-party suppliers. We recommend that the Bureau evaluate how to apply these two pieces of legislation in a Canadian context. In the case of self preferencing, we also recommend the Government evaluate more aggressive approaches. We believe that if major retailers and technology platforms were required to spin out their white label product businesses with separate management and governance, as well as ensure all agreements between these related parties meet standards for an arms-length transaction, it would spur significant innovation and provide a boost to small Canadian manufacturers. The outcome would also likely lower prices and increase choice for Canadian consumers.
10. **Create New Mechanisms to Challenge Abuse of Dominance:**
    Budget 2022 amendments to the Competition Act allowing a private right to access to the Tribunal was a welcome change, but the cost and complexity of a case makes it unlikely to be utilized. In addition, most businesses or workers are reluctant to challenge an abuse of dominance, given that there is a significant risk of retribution. We recommend that elements of the New York state legislation on Abuse of Dominance, namely the right to bring class action lawsuits, be introduced here in Canada. In addition, we recommend that ISED and the Bureau explore mechanisms that would allow for whistleblower complaints that protect the privacy of affected stakeholders while facilitating an investigation. Once these mechanisms are in place, we recommend a significant and well-funded marketing and awareness campaign with partners like the CFIB and Chamber of Commerce to alert business owners to their rights and protections in the face of unfair competition.

11. **Expand Civil and Criminal Penalties for Anticompetitive Conduct, especially to individuals:**
    While Budget 2022 proposed certain offenses be subject to civil and criminal penalties, the legal framework of the Act still provides inadequate disincentives for anticompetitive conduct. There remain limited or immaterial penalties for executives and their advisors in pursuing anticompetitive mergers or abuses of dominance, and as a result they continue to operate without fear of consequence. As a result, we recommend that personal liability for boards of directors, executives, investment bankers and lawyers be expanded. These very strong recommendations come from our significant experience working in the private sector, and our understanding of the incentives for individual actors. Without significant and personal downside risk, individual agents in the M&A sector, and others who benefit from this activity, will continue to push anticompetitive practices costing the Bureau time and taxpayers money even if their behaviour is eventually reversed through due process. Expanding liability for the individual parties involved in anticompetitive conduct, such as mergers, will force them to consider the consequences more fully. While the Tribunal should be permitted to fine or otherwise penalize executives, directors, investment bankers and lawyers personally, there should also be broader civil and criminal liability for these individuals. For example, if class action lawsuits are permitted as suggested in Recommendation , class actions should be able to include individual executives, directors, investment bankers and lawyers as defendants.
12. **Tell success stories:**
    Every time a merger is stopped, or anti-competitive behaviour is addressed, there are small businesses and workers who benefit. Resources should be allocated to ensuring these stories are communicated to journalists and to the public. There are real benefits to the Canadian economy of fair marketplaces, and the more this is understood, the easier it will be to protect Canadians from anti-competitive behaviour over the long term.
13. **Provide appropriate resources:**
    As a result of the tens of millions of fees available to bankers, lawyers and management consultants, and the similarly rich payouts to executives, proponents of more consolidations are incredibly well-funded. Fighting these actors on behalf of Canadians is an expensive endeavour. It is clear that if significant changes are made to make it easier to protect fair markets in Canada, the Bureau will require more resources. The benefits are such that Government should invest whatever is required to ensure a robust approach to competition policy can succeed in practice.


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