

Feedback on the Competition Bureau's Review of the Merger Enforcement Guidelines



Social
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Who owns the economy matters. Social Capital Partners believes working people deserve a fighting chance to build economic security and wealth. A Canadian nonprofit organization founded in 2001, we undertake public policy research, invest in initiatives and advocate for ideas that broaden access to wealth, ownership and opportunity, and that push back against extreme economic inequality. To learn more, please connect with us on [LinkedIn](#) or [Bluesky](#) or visit www.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 leadership was 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), and in government at senior levels in ministries and central agencies at the provincial and federal levels.

Our approach is to combine our private-sector experience and public policy expertise with our social mandate to develop practical ideas that help working people build wealth and economic security. Over our history we have funded some of Canada's earliest and most successful social enterprises and helped begin Canada's social finance and community finance markets as an early investor, adopter and advocate.

Competition policy was not on SCP's radar when we were founded, but as we've witnessed the increasing consolidation of corporate power in Canada in recent decades, 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 strong competition. The evolution in our thinking informed our 2023 submission to the consultation on the review of the Competition Act, *A Positive Vision for the Future of Canadian Competition Policy*.

We were encouraged to see many of our recommendations embraced and are optimistic about the potential impact of a stronger competition enforcement regime in Canada. However, we remain concerned about the number of potentially harmful mergers that fall below the notification threshold outlined in the Competition Act, allowing them to evade scrutiny by the Competition Bureau. We also believe that labour market considerations must be a critical factor in merger review and are keen to support the Bureau's intent to make this more explicit in the revised guidelines.

It is our view that proactively identifying and contemplating problematic mergers that fall below the notification threshold, combined with a clear acknowledgement that labour market considerations should inform merger analysis, is critical to a robust, resilient and competitive Canadian economy.

Without strategic intervention, the legislative focus on larger mergers creates blind spots that obscure the potentially deleterious impact of serial acquisitions. These blind spots empower and embolden large private equity (PE) firms to dominate markets without oversight and create conditions wherein consumers are unaware of the consolidation and lack of real competition in their local markets. To address this, we are pleased to present several recommendations aimed at enhancing how the Bureau evaluates mergers and enforces the Competition Act.

We believe that democratic capitalism is the best guarantor of the ability for people to build businesses, work for fair wages, seek out the best prices, and build economic security. Effective competition policy, credibly enforced, is a key pillar to that system.

Rationale for action

There is a growing recognition, both globally and within Canada, that competition is essential to fostering a strong, resilient, and productive economy. Yet, despite this consensus, the Canadian economy is becoming increasingly consolidated¹ and entrepreneurship is in steep decline.²

We are particularly concerned with serial acquisition strategies wherein large firms acquire smaller companies in ways that evade regulatory scrutiny.

In this model, firms grow their market share through a series of smaller deals that fall below the reporting threshold, allowing them to fly under the radar. While no single acquisition may substantially lessen competition, the cumulative effect consolidates market power and diminishes competitive dynamics. It is harmful to consumers and other businesses, while facilitating the accumulation of wealth and ownership in a smaller number of hands. Those hands are often large foreign financial firms with little connection to local economies.

While large, publicly traded companies can engage in patterns of serial acquisitions, their public disclosure requirements make it relatively simple to surface these acquisition patterns. In contrast, PE firms and the companies they invest in are not subject to similar disclosure requirements. Coupled with the fact that most PE deals fall below the notification threshold—84% of disclosed PE deals in 2023 were under \$25 million³—this leaves limited avenues for monitoring and addressing this pattern of consolidation. PE firms play such a significant role in serial acquisitions that former Federal Trade Commission (FTC) Chair Rohit Chopra specifically called for increased scrutiny of their activities.⁴



¹ Bawania, R., & Larkin, Y. (2019). Are industries becoming more concentrated? The Canadian perspective. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3357041>

² Nearly half as many people are launching businesses as 20 years ago. (n.d.-b). *BDC.ca*. <https://www.bdc.ca/en/about/mediaroom/news-releases/nearly-half-as-many-people-are-launching-businesses-as-20-years-ago>

³ Canadian Venture Capital & Private Equity Association, Furlong, K., & Rotman, K. (2023b). *Canadian Private Equity Market Overview 2023*. https://cvca.ca/assets/files/reports/year-end-2023-vc-pe-canadian-market-overview/CVCA_PE_Q4_2023_FINAL-2.pdf

⁴ Federal Trade Commission, & Chopra, R. (2020c). STATEMENT OF COMMISSIONER ROHIT CHOPRA regarding private equity roll-ups and the Hart-Scott Rodino Annual Report to Congress. In *Federal Trade Commission*. https://www.ftc.gov/system/files/documents/public_statements/1577783/p110014hsannualreportchoprastatement.pdf

The impact of serial acquisition strategies is already evident in sectors across Canada. For example:



Veterinary practices

In less than a decade, nearly a quarter of veterinary practices have been bought up by corporate owners.⁵ As consolidation has grown, the Canadian Veterinary Medical Association reports annual cost increases to consumers of six to eight percent, “beyond our normal expectation for inflation.”⁶



Funeral services

Between 2013 and 2022, Park Lawn Corporation, the second-largest publicly traded funeral, cremation and cemetery provider in North America, grew from six locations to more than 304 across Canada and the U.S.⁷ Given that evidence suggests that costs of corporate owned facilities were 42 per cent higher than independently owned competitors,⁸ this trend portends increasing burden for consumers.



Care economy

Perhaps most concerning is consolidation across care sectors, including daycares, pharmacies and long-term care homes. Large PE firms are increasingly acquiring these facilities, often at the expense of quality care. Evidence shows that PE ownership is associated with worse health outcomes for vulnerable populations and higher costs for consumers.⁹

⁵ Hannay, C. (2022, June 24). Inside the corporate dash to buy up dentists' offices, veterinary clinics and pharmacies. *The Globe and Mail*. <https://www.theglobeandmail.com/business/article-private-equity-buy-out-pharmacy-dental-office-veterinary-clinic/>

⁶ Ibid

⁷ Hearn, D. (2022, December 6). *The hidden trend reshaping and hurting the economy: serial acquisitions*. Policy Options. <https://policyoptions.irpp.org/magazines/november-2022/the-hidden-trend-reshaping-and-hurting-the-economy-serial-acquisitions/>

⁸ Ibid

⁹ Raza, D and Karen S. Palmer (2024, April 9). Protecting public health care from private investors. *The Toronto Star*. https://www.thestar.com/opinion/contributors/protecting-public-health-care-from-private-investors/article_29d91e0c-f36c-11ee-8e73-b74af042ca7f.html

In addition to the relative invisibility of serial acquisition patterns in merger analysis, we see labour market impacts as an additional gap. Research shows that labour market concentration negatively affects wages and hiring,¹⁰ creating a dual burden when anti-competitive mergers also drive up consumer costs. Ensuring that merger reviews contemplate labour is critical to preserving competition in labour markets which, in turn, drives innovation and productivity.

The Canadian economy is increasingly at risk from growing consolidation, as large firms exploit gaps in merger regulations to acquire smaller companies and entrench market power.

Compounding this issue, labour market concentration stemming from mergers is exacerbating inequities and consolidating economic power at the expense of workers and consumers alike.



¹⁰ Wages, hires, and labor market concentration. (2020). In *NBER Working Paper Series* (No. 28084). https://www.nber.org/system/files/working_papers/w28084/w28084.pdf

Vision for a more competitive merger landscape

We believe that the recent amendments to the *Competition Act* represent an incredible opportunity for the Competition Bureau to be more proactive in combatting anti-competitive behaviour across the Canadian economy.

Canada can protect competition by strengthening its scrutiny of mergers, particularly those flying under the radar, and prioritizing labor market impacts alongside consumer outcomes in merger reviews.

Our concern is that many of the most pernicious threats to healthy competitive economies and the interests of consumers and workers are not receiving the public attention and scrutiny they require. There is little oversight of many kinds of consolidation that are damaging the public interest, the common good, and healthy competitive local markets.

Interjurisdictional evidence provides some positive examples that showcase what is possible. The U.S. Department of Justice (DOJ) and FTC explicitly called out serial acquisitions and labour market considerations in their 2023 Merger Guidelines and in September 2023, the FTC issued its first formal complaint related to serial acquisition, alleging that U.S. Anesthesia Partners Inc. and its PE owner, Welsh Carson engaged in illegal consolidation of the anesthesia market in Texas.¹¹

Nuanced and proactive merger analysis is a critical safeguard of competition. And, as we argued in our 2023 submission *A positive vision for the future of Canadian competition policy*, a robust competition regime is critical in:

- Increasing entrepreneurship and innovation;
- Strengthening small business;
- Improving job quality;
- Bolstering resiliency in supply chains; and,
- Lowering prices for consumers.

In updating the *Competition Act* and pushing for more clarity within the Merger Enforcement Guidelines, we believe that Innovation, Science and Economic Development Canada and the Bureau have an opportunity to more effectively address anti-competitive mergers and strengthen the resilience of the Canadian economy.

¹¹Skadden, Arps, Slate, Meagher & Flom. (2024). *Antitrust enforcement against roll-ups and serial acquisitions*. https://www.skadden.com/-/media/files/publications/2024/04/no_more_safety_under_the_radar_antitrust_enforcement_against_roll_ups_and_serial_acquisition_s.pdf?rev=e4b65092a5d24a42a08bea97227b9eb9

Specific recommendations

In light of the recent updates to the *Competition Act* and increased focus on competition as a critical element of a productive economic landscape, we are delighted to have an opportunity to provide input as to how the Competition Bureau might leverage its new powers to limit anti-competitive mergers.

Our recommendations pertain to:

1. the content of the revised guidelines
2. the internal operational considerations we believe will be critical to maximizing the impact of merger review as a tool
3. increased accessibility of merger review information

Collectively, the recommendations aim to provide a framework for identifying and analyzing concerning below-threshold mergers, ensuring greater transparency and capturing a more fulsome accounting of costs and benefits in merger analysis.

1. Updates to the Merger Enforcement Guidelines

- 1.1. Update the Merger Enforcement Guidelines to include language clearly identifying serial acquisitions as an area of potential concern and stating that when a merger is part of a series of multiple acquisitions, the Bureau may examine the whole series.**

The current guidelines do not contemplate the anti-competitive impact of serial acquisitions, whereby large firms acquire small- to medium-sized businesses in particular markets or regions with the intent of increasing market share or limiting competition. Given the often-overlooked nature of these transactions, it is important to explicitly highlight them as a potential area of concern. Doing so sends a clear signal that the Bureau is dedicated to addressing anti-competitive behavior in all its forms. Per [question 10.k](#), we recommend that the Bureau build off of the FTC/DOJ's [2023 Merger Guidelines](#) and expressly commit to examining patterns or strategies of growth through acquisition by reviewing the firm's history and current/future strategic incentives.

- 1.2. Update the Merger Enforcement Guidelines to eliminate language indicating that the Bureau will not challenge mergers wherein market share of the merging parties falls below "safe harbours."**

SCP is heartened to see that the Bureau has already flagged that mergers involving small firms can raise concerns and highlighted the existing "safe harbour" thresholds as a criterion that requires attention. Per [question 2a](#), we would recommend that any reference to "safe harbour" be eliminated completely.

1.3. Update the Merger Enforcement Guidelines to explicitly outline how labour market impacts will be considered in merger analysis.

SCP is encouraged that the Bureau has flagged the importance of the impact of mergers on labour markets. We support these efforts and, per [question 6a](#), would encourage the Bureau to specify how it plans to enforce the Competition Act when evaluating a merger that impacts a labour market. We would suggest that the Bureau follow the lead of the DOJ/FTC in their [2023 Merger Guidelines](#) and include a new section on labour market considerations. This section should, at minimum, articulate that the Bureau will “examine the merging firms’ power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, or generally degrade benefits and working conditions without prompting workers to quit.”¹² We would also suggest that the Bureau consider asking merging firms to disclose non-wage compensation (e.g. benefits) as part of its merger filing.

2. Operational Considerations

2.1. Identify and more closely track PE firms operating in Canada.

Given the outsized role that PE firms play in leading anti-competitive efforts to consolidate markets through below threshold acquisitions, the Bureau should allocate dedicated resources to identifying and following the activities of the leading PE firms operating in Canada. This may involve engagement with expert stakeholders, monitoring key data sources, partnering with local governments to monitor mergers regionally, continuing to advocate for the development of a Beneficial Ownership Registry to increase transparency around consolidation patterns and/or introducing legislative tools that compel closed-end funds to report on any acquisitions within Canada.

2.2. Issue an open call on the impact of serial acquisitions on consumers and local economic resilience.

Seeking feedback from across the country on the impact of roll-ups is an opportunity to access critical information on patterns of transactions that are often opaque and impact a diffuse cross-section of customers. The open call would ideally be done in partnership with local governments and could be specific to sectors like healthcare or be targeted more broadly. Similar efforts are being undertaken in other jurisdictions, with the White House tasking the DOJ, the FTC and the Department of Health and Human Services with issuing a joint Request for Information seeking input on the increasing power and control of the healthcare sector by PE firms.¹³ Given the interconnectivity of trade and economic power across the United States and Canada, it would be strategic to follow the United States’ lead and conduct parallel research to inform potential joint action.

¹² Department of Justice & Federal Trade Commission. (2023). *Merger Guidelines*. https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf

¹³ Ibid

2.3. Leverage market study powers to obtain information on non-reportable mergers in sectors ripe for serial acquisitions.

In our Rationale for Reform section, we highlight a number of sectors that have been impacted by serial acquisition in Canada. Given the opacity of serial acquisition patterns, the Bureau should take a proactive role in undertaking market studies to understand the state of these sectors and potentially inform retroactive merger reviews. We suggest a particular emphasis on sectors in the care economy (e.g. long-term care homes, daycares, pharmacies etc.) as these markets are showing clear signs of distress and play a critical role in the health and functioning of our society.

3. Increased accessibility

3.1. Update the Report of merger reviews to be more accessible and informative.

SCP welcomes recent changes to the Report of merger reviews, including weekly updates and the inclusion of ongoing reviews. However, examples from jurisdictions like Australia and the European Union, offer valuable models for providing additional information that could improve public transparency regarding merger activity. Specifically, we recommend that the Bureau update the database to include:

- Plain-language summaries of the proposed mergers;
- Plain-language summaries of merger decisions;
- Relevant decision documentation (not including any sensitive information);
- Links to any additional merger reviews that either party has been involved in; and,
- An option to be notified of new merger reviews as they are announced.

3.2. Prioritize plain and accessible language in guidance and public information.

The importance of competition policy on how people experience the economy is being increasingly recognized by Canadians. This growing awareness calls for a commitment from the Bureau to ensure that both its guidelines and public information are as accessible as possible. It's no longer just lawyers and consultants delving into this content, but working Canadians who are concerned with the impact of mergers and acquisitions on their wages, consumer choices, and economic well-being. SCP recommends that the Bureau make a concerted effort to prioritize clear, plain-language communication, including providing concrete examples to help Canadians understand the real impacts of economic activities.

Additional input

While we understand it is beyond the scope of this consultation, we would like to take the opportunity to reassert the need for additional amendments to the *Competition Act* that would allow for more transparency into serial acquisition patterns.

Specifically, we recommend that:

1. The pre-merger notification size threshold be significantly lowered and based on transaction value (including contingent consideration);
2. 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; and,
3. The filing form should have expanded requirements on beneficial ownership to ensure that complex corporate structuring does not prevent full visibility of the ultimate acquirer.

Summary

A competitive economy is foundational to a fair and prosperous Canada.

The Competition Bureau is a key institution in protecting a democratic capitalist system that works for Canadians. The changes to the *Competition Act* in 2024 were important to support competition and the interests of consumers and smaller businesses. But more needs to be done. Updating the enforcement guidelines is an important opportunity to preserve and protect competitive local markets that are crucial to a successful capitalist system, and to ensuring that the economy works for everyone, not just a select few.