

CANADIAN **ANTI-MONOPOLY PROJECT**

Competition Law and Competition in Canada: The Way Forward

Presentation for the CSLS Seminar Series
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Overview of Competition Law

- Core legislation is the *Competition Act*, enacted in 1986.
- Law enforced by the Competition Bureau, an independent agency within ISED.
- Competition cases heard by the Competition Tribunal, a quasi-judicial body.
- **Areas of regulation:**
 - mergers & acquisitions,
 - “abuse of dominance” and other restrictive trade practices,
 - criminal conspiracies, and
 - deceptive marketing practices.

Relevance of Competition Law

Productivity: [Buccirosi et al. \(2013\)](#) find positive and significant effect of competition law “quality” and enforcement on TFP growth for 22 industries in 12 OECD countries.

Innovation: [Levine et al. \(2020\)](#) find more stringent competition law is associated with more firm self-generated patents and the citation-impact and explorative nature of those patents. Stiffer laws also increase patent merger acquisitions but lowers the ratio of acquired to self-generated patents.

Enforcement Retrospectives: [Kwoka's \(2015\)](#) meta study of 47 mergers found:

- of mergers that lead to price increases, enforcement only acted on **38%**.
- of the mergers assessed by enforcement agencies (36%), all but **one** was determined correctly.

Review of the *Competition Act*

Comprehensive review of the *Act*:

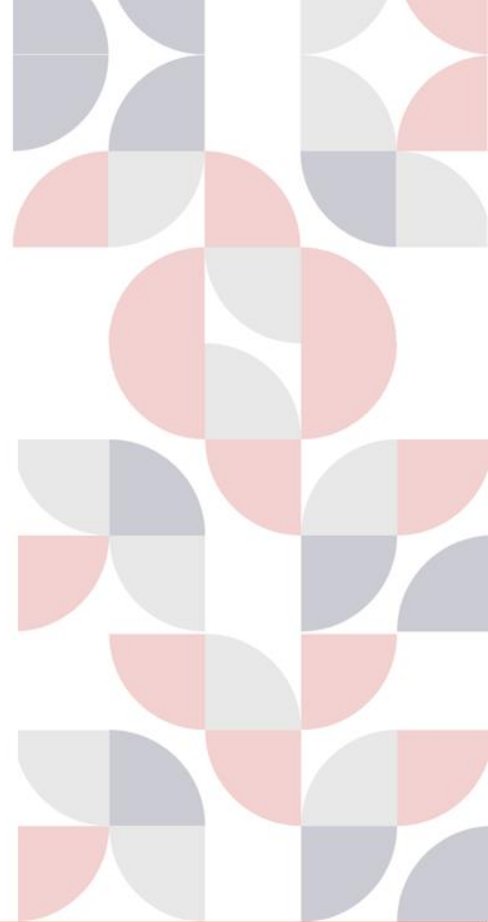
- [mergers](#),
- unilateral conduct (e.g., abuse of dominance),
- competitor collaborations,
- deceptive marketing, and
- administration and enforcement.

An interest in exploring labour impacts.

- In Canada, [14.2%](#) of workers are in highly concentration labour markets, second only to Estonia (15.7%).
- [Posner \(2021\)](#). *How Antitrust Failed Workers*.

Current Debates

1. The *Act's* objectives.
2. Stringency of the law.
3. Market studies.



1. Current Debates - The *Act's* objectives

Current purposes of the *Act*:

1. promote the **efficiency** and **adaptability** of the Canadian economy,
2. expand opportunities for Canadian participation in **world markets** while at the same time recognizing the role of foreign competition in Canada,
3. ensure that **small and medium-sized enterprises** have an equitable opportunity to participate in the Canadian economy, and
4. provide **consumers** with **competitive prices and product choices**.

1. Current Debates - The *Act's* objectives cont. (2)

“**Efficiency only**” perspective – the purpose should be narrowed to only efficiency (verses inequality and equity).

1. Multiple objectives can conflict, leading to “indeterminacy” in the law.
2. Other policy areas have a comparative advantage in promoting “normative” policy goals.

Implication – made way for a more permissive law, particularly with respect to mergers (efficiencies defense).

1. Current Debates - The Act's objectives cont. (3)

[Shaban & Kaiser \(2023\)](#) explore the design of competition law towards inclusive growth, and critique the “efficiency only” perspective.

1. Curbing inequality can enhance or protect productivity growth.
2. Potential large [cost savings](#) in shifting inequality measures from transfer programs to competition law.

Competition law can address inequality through downward [pricing pressure](#) and productivity diffusion (where differences in [firm-level productivity](#) is a driver of wage inequality).

2. Current Debates - Stringency

Currently, anticompetitive conduct is not getting caught.

E.g.:

- Kwoka (2015),
- big tech cases in Canada vs internationally, and
- Rogers-Shaw merger.

Solution: simply rules for evaluating conduct.

- More [“deontological” approach](#), less “effects-based”.
- Bright-line rules for mergers.

3. Current Debates - Market studies

The Competition Bureau cannot compel information from businesses when undertaking market studies.

Out of step with comparator countries and OECD best practices.

The legal Bar has historically been antagonistic to market study powers.

