



Competition Bureau
Canada

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Canada

Market Studies Information Bulletin

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Introduction

Competition drives growth and innovation in the Canadian economy. A competitive marketplace empowers consumers and drives businesses to become more productive, improve product quality, and decrease prices.

The Competition Bureau (Bureau) is an independent law enforcement agency that protects and promotes competition in Canada. We are headed by the Commissioner of Competition.

Market studies are an important tool of our competition promotion mandate, and distinct from our law enforcement work. Market studies are not meant to investigate specific allegations of violations of the *Competition Act*, such as price-fixing cartels, abuses of market power, anti-competitive mergers or deceptive marketing practices. Rather, market studies involve in-depth examinations of a market or industry to identify competition issues and propose solutions. They aim to understand and enhance competition in important sectors of the Canadian economy.

The *Competition Act* (Act) establishes a framework for undertaking market studies with information-gathering powers. This allows the Commissioner of Competition or the Minister of Industry to initiate such a study, and sets out the framework through which it must be conducted.

This document explains how the Bureau conducts market studies under the framework set out in section 10.1 of the *Competition Act*. It is based on the Bureau's experience conducting prior market studies, as well as international best practices. Along with market studies, we carry out a number of other activities that advocate for competition, including confidential advice to regulators, public letters, research papers and regulatory interventions.

We have created this document to provide general guidance and information for stakeholders. It does not apply strictly to how we carry out every market study.

What is a market study?

Market studies allow the Bureau to look at the state of competition in a market and identify laws, regulations, policies, behaviour, or other factors that may affect competition. Once launched, they are an independent, evidence-based exercise focused on the collection and analysis of information. Through our market studies, the Bureau makes findings and often provides evidence-based recommendations on how to increase competition in a sector.

How do market studies guide our work?

Market studies are an important tool to understand the state of competition in specific industries.

We may also use market studies to look at new or emerging trends that may affect competition in particular sectors. What we learn from market studies can also be useful for helping us measure the impact of our previous work. And they help support our advocacy and enforcement work.

We carry out a market study with two main goals:

- We want to better understand the state of competition in a specific industry. This improves our own work and public knowledge of how competition works in important sectors of Canada's economy.
- We want to use what we have learned to recommend policy changes.

Market studies can have a range of outcomes:

- first, they motivate governments, regulators or policymakers to act to remove unnecessary barriers to competition
- second, they inform the Bureau's enforcement and advocacy work, as well as broader public policy deliberations through independent, evidence-based findings

Market studies do not give us authority to seek penalties or other remedies through the Competition Tribunal or the courts. Penalties or other court orders are only available for our enforcement work to deal with conduct that harms competition.

Market studies are not used for an investigation when a business is accused of wrongdoing. However, during a market study, we may find evidence that someone may be acting against the law. In this case, we may investigate and take appropriate action.

I. What steps do we take before launching a market study?

How we identify and select relevant sectors for market studies

Identifying relevant sectors

We seek to identify sectors that are important to the Canadian economy, and where our resources and competition expertise can provide the most value. Our decisions are guided by the public interest.

To identify important sectors, we will consider a range of information from internal and external sources, including the following:

- experience from our work in enforcement, compliance or advocacy
- proactive intelligence – we closely monitor public debates and foreign counterparts' activities
- input we receive from stakeholders – these include regulators, the legal and business communities, consumer groups, academia, foreign competition authorities or international organizations and Canadians
- federal, provincial, or municipal policy initiatives, and our internal analyses of how laws, regulations or policies have affected the economy
- requests from governments, legislators, policymakers or regulators, either federal, provincial or territorial -- these include the Minister of Industry

Steps of a market study



We welcome suggestions from the public through our [Advocacy Suggestion Form](#) or [Complaint Form](#). You may also contact our [Information Centre](#) to speak with someone or send us a question or comment by mail.

When we have identified a sector or industry for a potential market study, we may engage with stakeholders for input.

At this stage, we will also do further research to better understand the sector and any potential competition concerns. This research will answer questions about these factors and others:

- How large is the sector, how is it structured, and how important is it to the economy?
- Are there market power concerns in the sector?
- What laws, regulations, and policies apply to it?
- What previous work have we done in the sector, if any?

Selecting a sector

When selecting a sector for a market study, we consider whether carrying it out is in the public interest. We consider several factors before we will go ahead. Here are some of the questions we ask:

Behaviour in the market

- Are there signs that the market may not be working as competitively as it could be?
- Is there behaviour we are concerned about, including something that should be occurring but is not?
- Is the issue well suited to a market study or would it be better addressed under another part of the Act, or another statute?

Benefits we expect

- How important are the competition issues or the sector for Canadians or the whole economy? This helps us determine what benefits we expect to gain from the study.

- How unique are our insights? We aim to select topics where we could add a unique point of view and leverage our competition expertise. We want to make recommendations that could lead to meaningful changes to benefit consumers and the economy.
- Will the study be useful to our enforcement or advocacy work?

Our priorities and resources

- Do we have other priorities that would be more beneficial to pursue?
- Do we have the resources needed to complete it fully and on time?
- Could a market study complicate any prospective enforcement action in the sector? Enforcement investigations are often not public.
- Will our market study support policymakers in delivering benefits to the public?

How we decide on the scope of our market studies

Once we identify a sector, we must determine the scope of our focus. Our goal is to focus on the most important issues that may be affecting competition and consumers. We study only what is within our mandate under the *Competition Act*.

We do this by creating a set of questions about what we will focus on. We also aim to make clear what our study will not focus on. And we consider comments we receive from the public. These factors help us narrow down the scope of our market studies.

Narrowing down the scope and focus is also meant to benefit our stakeholders. It gives them a better idea of how to take part in the market study.

Being focused also helps us carry out market study reports quickly and efficiently.

II. How do we launch market studies and decide how long they will take?

The Commissioner of Competition must consult the Minister of Industry before launching a market study.

The Minister can also direct the Commissioner to conduct a market study if they believe it is in the public interest to do so. In this case, the Minister must first consult the Commissioner to determine if the market study would be feasible. Cost is one factor in this decision.

Beginning a study: Publishing the draft market study notice

Following the initial consultation with the Minister, we publish the proposed terms of reference for the public to comment on as part of a draft market study notice.

The draft market study notice briefly describes the market study being planned. It generally answers these questions:

- Why are we carrying out the market study?
- How does the study serve the public interest?
- What are the terms of reference we propose? The terms of reference are made up of the scope of the market study and its duration.
- What outcomes do we expect?
- What process and timelines will we follow, including the publication of a final report?
- How can those interested get involved?

The public will have at least 15 days to comment on the proposed terms of reference in the draft market study notice. Depending on the circumstances, the Bureau may use its discretion to have a longer public consultation period.

After the comment period closes, we review the comments from the public. We then prepare the final terms of reference for the Minister's approval.

Timeline for market studies

Once the Minister approves the final terms of reference, we publish them on the Bureau's website. At this point, the market study period officially begins. This is an independent, evidence-based exercise focused on the collection and analysis of information.

We must finish our study and publish its findings before the study period expires. We specify the study period in the market study notice. The *Competition Act* allows for an initial period of up to 18 months. Normally, we expect to complete these studies within the initial study period, but we may request extensions if issues arise, such as delays getting the information we need or a material change in market conditions. To extend the initial period, we can ask the Minister to approve up to three more months at a time.

We will communicate any extensions to the study period on our website.

III. How do we obtain and use information, including confidential information?

After the Bureau launches its market study, we begin gathering information. Our goal is to build on what we learned from the early research we did when we selected the study and defined its scope.

To contribute to our market studies, we gather information from the following sources:

- public reports and data
- records we already have
- information stakeholders have provided voluntarily
- information we have gained through court orders
- independent experts

How we collect information from the public and those who provide it voluntarily

We normally begin by collecting information from public sources. This includes information from:

- research papers and reports
- public securities filings like annual reports
- official statistics
- survey data
- court records like decisions

We try to contact a wide variety of interested people and groups to gather diverse viewpoints. We also invite anyone with relevant information to reach out to us. These stakeholders usually include:

- government departments and regulators
- foreign antitrust agencies and regulators
- businesses who are or may be part of the sector we are studying
- industry associations
- academics and researchers
- consumer groups

- think tanks
- individuals who may have useful input into the issues we are studying

Depending on the stakeholder, the Bureau may request specific information or an interview. This can take place either in person or remotely. We may also publish broader calls for papers and welcome anyone with relevant information to contribute. We are mindful of the costs for these activities. We try to balance the costs with the benefits of a stakeholder participating.

During meetings with stakeholders, we will discuss the type of information we are seeking and how easy it is to access. For example, how much information exists? What time periods does our information request cover? And are there other ways we can source relevant information?

The Bureau sets deadlines for responses to information requests by evaluating several factors, including:

- statutory timelines,
- the time and effort required for information gathering and our analysis, and
- the operational capacity of both the respondent and the Bureau.

The Bureau may also hold roundtables or bring together stakeholders, experts and others with an interest to present and discuss relevant issues.

To add to our internal expertise, we may also hire independent experts to assist with certain aspects of a market study. They may have industry, economic or other expertise. We decide whether to use an independent expert based on each individual case. We consider several factors including our need for expertise in an area and the value for money.

How we collect information under section 11 of the *Competition Act*

We may require information for our market study from businesses or others in an industry. Section 11 of the Act allows the Bureau to ask a court for an order to compel information from these stakeholders. We can ask for oral and written responses as well as copies of records that respond to the order. To start this process, we must complete what is called a “section 11 application” seeking a court order.

Before deciding to make a section 11 application, we will review each specific situation individually. One of the ways we decide if we will go forward is by weighing the burden on a stakeholder against our need to get timely access to all required information for our market study.

We already have experience, jurisprudence, and practices applying for section 11 orders through our enforcement investigations. When making section 11 applications for market studies, we would follow the same practices already in place. This involves working with parties, wherever reasonably possible, to narrow issues or the requirements for records, including data, while first and foremost ensuring that the Bureau accesses the information it requires in a timely manner.

How we analyze information

When we study competition in a market, we normally consider whether there are barriers that can be removed or reduced to increase competition. We look for factors that make it difficult for new firms to enter the market or for existing firms to grow their business. We also look for factors that make it difficult for customers to switch between providers, or that impact incentives for businesses to compete aggressively.

Where possible, we look at data to study competition in the relevant market. This may include data on prices, costs, and quantities. This information can help us identify trends and learn how diverse consumers experience competition. These kinds of data can also help us focus on areas that appear to suffer from the most pronounced competition issues. We can also test the impact of regulations or market structures. We want to ensure that they are not unduly harming competition and reducing the benefits that it brings.

The Bureau also seeks analysis and recommendations from stakeholders.

Examples of Bureau analysis:

- In a 2019 [Broadband Market Study](#), we used public opinion research to describe Canadian consumers' perceptions of the broadband industry. We also used behavioural economics to better understand how bundling internet with other services might impact consumer choices.
- During our [Retail Grocery Market Study](#), we ran a consumer survey. The survey's design helped us to better understand how the different circumstances that consumers face can shape their experience of Canada's grocery market. The survey found that supermarkets are still the main option for consumers, but more Canadians are buying groceries online. We also learned that loyalty programs are an important factor in consumer choice.

The Bureau's [Competition Assessment Toolkit](#) for policymakers describes how to identify and minimize the ways in which policies might hinder competition. This toolkit provides the steps policymakers can follow to tailor their policies. The goal is to achieve the greatest benefits of competition while maintaining harmony with their own core mandates.

How we treat confidential information

The Bureau has a policy on how we treat confidential information that we receive. It is set out in the [Information Bulletin on the Communication of Confidential Information Under the Competition Act](#).

The policies described in this Confidentiality Bulletin apply to confidential information we receive during market studies.

Confidential information that is provided to the Bureau during a market study is protected under the confidentiality provisions in section 29 of the Act.

Section 29 provides us with the discretion to share confidential information in four limited circumstances:

- to a Canadian law enforcement agency
- to administer or enforce the Act
- the information has been made public
- the person who provided the information has authorized us to share it.

The Bureau recognizes that it is essential to its work to maintain the confidentiality of information and communicate it only as allowed by law.

It is important for stakeholders to understand that we may use information they provide as part of a market study to administer and enforce the Act. This may extend to other matters beyond the market study, including potential enforcement and advocacy activities.

When the Bureau receives information, we take care to maintain confidentiality, including when we communicate with stakeholders or the public. We apply the same care with final reports or other documents that may be produced as part of a market study.

A market study report may include analysis based on confidential or commercially sensitive information. We encourage stakeholders to identify this type of information so that we can decide whether or not to publish it in our report.

Where an analysis is based on confidential or commercially sensitive information, we take care to protect the interests and identities of individual stakeholders. For example, we may aggregate, or combine, information so that precise details cannot be traced back to specific parties. We may also ask stakeholders for permission to publish their identity along with any written submissions or other information they provided for the market study.

IV. What are the outcomes of a market study?

The main outcome of a market study is a public report with our findings, drafted in plain language wherever possible, and published on our website. We normally publish a market study report along with communications products. These are part of our larger outreach strategy to raise awareness of our work and share what we learned from the market studies.

Before publishing the report, where appropriate, we will discuss it with relevant stakeholders to ensure that we are not sharing confidential or commercially sensitive information in an inappropriate way.

The *Competition Act* requires the Commissioner to send a partial or full draft of the report to every person who was required by a court order to provide information. This allows them to identify any concerns about confidential information that should not be disclosed in the final report. They may also share any concerns about inaccurate facts at that time. These persons may respond within three working days.

A market study report addresses the key questions set out in the market study notice. Contents may include the following:

- an outline of the sector we have studied
- a description of any relevant laws, policies or regulations that govern the sector
- the research methods and data sources used during the market study
- an analysis of competition issues uncovered

The report may also include recommendations to enhance competition. For example, we may recommend the removal of certain government-imposed barriers to entry or recommend the consideration of policy approaches that would be less intrusive to competition and market forces.

Along with making recommendations, the Bureau may also use the market study to provide a basis for enforcement. This enforcement can include paying closer attention to a sector, revising its approach to an issue, and opening a specific investigation.

V. How do we follow up and monitor the impact of our market study?

Our market study report and recommendations may influence actions by regulators, policymakers and other stakeholders. There may also be other market changes in the industry that affect competition over time.

We normally seek to actively engage policymakers and other stakeholders. This lets us explain what we learned and further explore any recommendations we may have made. We are available to work with these stakeholders to answer questions they may have and provide guidance on how to implement our recommendations.

We may also use a market study report to support our future work with stakeholders. This includes representations to federal or provincial boards, commissions or tribunals. The process we follow for those representations is set out in sections 125 and 126 of the *Competition Act*.

After the Bureau publishes a market study report, we strive to continue monitoring the sector we studied. In some cases, we may publish a follow-up report on changes made and identify areas that still appear to present competition problems.

Conclusion

Market studies are an important tool to promote competition in Canada. They help us improve competition in specific markets and help stakeholders implement policies that promote competition. These actions benefit both consumers and businesses.

We will use the general approach outlined in this document, and we may adapt it to specific situations.

We always strive to improve our approach and the guidance we share. We will review our market study guidance and approach as needed. In so doing, we will consider our own experiences, input from stakeholders, and international best practices.

If you would like to learn more about the Bureau's advocacy work, including past market studies, please visit the following pages:

- Our past [Reports and Market studies](#)

- Our past Regulatory advice and Interventions
- Our Competition Assessment Toolkit

How to contact the Competition Bureau

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre:

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