

Comments on Artificial Intelligence and Competition Discussion Paper

COMMENTS

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Comments of NetChoice on Competition Bureau Discussion Paper on Artificial Intelligence (AI) and Competition For Public Consultation

Introduction

NetChoice, a trade association of leading e-commerce and online companies, appreciates the opportunity to comment on the Competition Bureau's discussion paper on artificial intelligence (AI) and competition. We commend the Bureau for its proactive engagement with stakeholders on this critical issue and for its commitment to fostering a competitive and innovative AI ecosystem in Canada.

The key priorities for AI competition policy in Canada should be:

- Encouraging a vibrant and diverse AI market with multiple loci of innovation and competition;
- Ensuring the effective enforcement of existing legal frameworks in AI markets and supply chains;
- Promoting convergence and interoperability in international AI governance to maintain a level playing field;
- Supporting SMEs and startups in accessing key AI inputs and participating in training and R&D initiatives; and
- Investing in foundational AI research, infrastructure, and digital skills training to drive responsible innovation.

To achieve these objectives, the Bureau should:

- Pursue an enforcement-centric approach to AI competition issues grounded in existing laws and regulations;
- Collaborate closely with other key regulators to develop a coherent, cross-cutting AI governance strategy;
- Engage in multilateral dialogues and harmonization efforts to mitigate regulatory fragmentation and arbitrage;
- Provide guidance and support to help SMEs navigate and comply with relevant legal frameworks; and
- Partner with industry, academia, and civil society to promote voluntary best practices and standards.

Robust and Ever-Increasing AI Competition

The AI market is characterized by robust and ever-increasing competition, with new AI services and innovations constantly emerging and the rankings for the best in any particular area constantly shifting due to fierce rivalry.

As the Bureau's discussion paper notes, AI is being developed and deployed across a wide range of industries, from healthcare and finance to education and manufacturing.¹ This cross-sectoral dynamism is a testament to the vibrancy and potential of AI to drive economic growth and consumer welfare.

The AI industry is a shining example of the power of competition in driving innovation and economic growth. The notion that the AI sector is controlled by a handful of dominant players is a misconception. In reality, the AI landscape is teeming with new entrants and fierce competition, constantly reshaping the market and challenging the status quo.²

Thousands of companies worldwide are actively developing AI technologies in various forms.

History has shown us that in technology-driven industries, today's leaders can quickly become tomorrow's learners. Look at the journey of companies like IBM and Microsoft in the AI space. While they were pioneers in the early days, they now compete in a vast pool of innovators, including newcomers like OpenAI and DeepMind. These newer companies have often surpassed the incumbents

¹ Competition Bureau of Canada. *Artificial intelligence and competition: Discussion paper*, Government of Canada, March 20, 2024, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/artificial-intelligence-and-competition>.

² See AI companies face growing competition, slower technology gains, Joe Castaldo, The Globe and Mail (Jan. 28, 2024), <https://www.theglobeandmail.com/business/article-ai-companies-face-growing-competition-slower-technology-gains/>.

with their cutting-edge algorithms, proving that being the best is a fleeting position in the fast-paced world of AI.

The AI industry continues to attract a growing number of startups thanks to lower entry barriers such as open-source technologies, public cloud infrastructures, and the ever-expanding digital data landscape.³ The rise of AI startups across various sectors, from healthcare to finance, is a testament to the thriving ecosystem that fosters innovation at its core.

The sheer number of companies developing AI technology today is a strong indicator of healthy competition. According to Stanford University's AI Index Report, thousands of companies worldwide are actively developing AI technologies in various forms.⁴ This proliferation not only drives competition but also leads to a significant increase in investment, with venture capital funding in AI startups consistently breaking records year after year.⁵

We must also recognize the contributions of academic and open-source communities in fostering innovation in the AI sector. Initiatives like Google backed TensorFlow⁶ and Facebook's PyTorch⁷ have accelerated AI development in both academic and industrial settings while democratizing access to cutting-edge tools, allowing smaller players to compete on a more equal footing.

The dynamic ecosystem of AI clearly demonstrates that innovation thrives in a competitive environment. This competition not only drives technological advancements but also generates significant economic benefits by improving productivity and creating new market opportunities.

The AI sector is a prime example of a highly competitive and dynamic market where no single player dominates for long. The continuous influx of new companies and investments, along with a supportive regulatory framework and the contributions of the academic and open-source communities, ensures a fertile ground for ongoing innovation and technological progress. This environment is essential for the long-term health of the AI industry and its ability to contribute to economic growth and societal advancement.

The AI sector is a prime example of a highly competitive and dynamic market where no single player dominates for long.

³ See, e.g., AI Business, *Meet Alpaca: The Open Source ChatGPT Made for Less Than \$600*, Ben Wodecki (Mar. 20, 2023), <https://aibusiness.com/nlp/meet-alpaca-the-open-source-chatgpt-made-for-less-than-600>; Fast Company, AI2's new open-source LLM may reset the definition of 'open AI', Mark Sullivan (Feb. 1 2024), <https://www.fastcompany.com/91021305/ai2-new-open-source-llm>.

⁴ Stanford, *The AI Index Report, Measuring trends in AI*, 2024, <https://aiindex.stanford.edu/report/>.

⁵ *Id.*

⁶ TensorFlow, <https://www.tensorflow.org/learn>.

⁷ PyTorch, <https://ai.meta.com/tools/pytorch/>.

Existing Laws Already Apply to AI

The Bureau must not engage in premature imposition of AI-specific regulations, which could stifle this competitive dynamism and put Canadian firms at a disadvantage relative to their global counterparts. As the discussion paper recognizes, AI is already subject to a host of existing laws and regulations, from privacy and consumer protection frameworks to anti-discrimination statutes.⁸ These cross-cutting legal regimes are fully capable of addressing potential harms and market failures associated with AI, without the need for burdensome new rules that could chill innovation.

For example, the Personal Information Protection and Electronic Documents Act (PIPEDA) establishes robust safeguards around the collection, use, and disclosure of personal data, which is a key input for many AI systems.⁹

The Competition Act prohibits false or misleading representations and other deceptive marketing practices, including in the context of AI-enabled products and services.¹⁰ And federal and provincial human rights laws prohibit algorithmic discrimination on the basis of protected characteristics.¹¹

An Enforcement-First Approach to AI Competition Policy

Rather than pursuing an “AI-specific” regulatory approach, the priority should be ensuring the effective enforcement of these existing legal frameworks in AI markets and supply chains. The competition impacts of AI are best addressed by applying foundational legal principles, with a technology-neutral focus on conduct and outcomes rather than the attributes of a particular system.

This enforcement-centric approach should involve close collaboration among the Bureau and other key regulators, such as the Office of the Privacy Commissioner and the Canadian Human Rights Commission. By sharing information, technical expertise, and best practices, these agencies can develop a coherent, forward-looking approach to AI governance that leverages their respective enforcement tools and institutional competencies.¹²

The Need for International Coordination

The Bureau should work with its international counterparts to promote convergence and interoperability in AI governance. Given the inherently cross-border nature of many AI products and services, a

⁸ *Id.*

⁹ Office of the Privacy Commissioner of Canada. *PIPEDA in Brief*, Government of Canada, May 2019, https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/.

¹⁰ Competition Bureau of Canada. *False or misleading representations*, Government of Canada, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/deceptive-marketing-practices/types-deceptive-marketing-practices/false-or-misleading-representations-and-deceptive-marketing-practices>

¹¹ Canadian Human Rights Commission. *Algorithmic bias and discrimination in Canada: What can we do about it?*, Government of Canada, July 2020, https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/discrimination_2020_eng.pdf.

¹² OECD. *Competition, Digital and Regulation: 2023 OECD Best Practice Roundtable on Competition Policy*, 2023. <https://www.oecd.org/competition/roundtables.htm>.

patchwork of conflicting national regulations could create significant barriers to entry and expansion for Canadian firms.¹³

By engaging in multilateral dialogues and harmonization efforts, the Bureau can help ensure a level playing field for responsible AI innovation while mitigating the risk of regulatory arbitrage.

Safeguarding Competition with Existing Enforcement Tools

To be clear, the calls for regulatory restraint does not mean turning a blind eye to anticompetitive conduct by AI market participants. On the contrary, the Bureau must remain vigilant in monitoring these markets for potential abuses of dominance, collusion, and other prohibited practices. But it should do so using its existing enforcement powers under the Competition Act, applied in a technologically neutral manner.

For example, the merger review process already provides a robust framework for assessing and remedying any anticompetitive effects of acquisitions involving AI firms.¹⁴ Similarly, the abuse of dominance provisions are fully applicable to exclusionary conduct by AI incumbents, such as refusals to supply essential training data or compute inputs to rivals.¹⁵ And the conspiracy and bid-rigging provisions prohibit AI-enabled cartelization and coordination, just as they do in any other context.¹⁶

Competition law is well-equipped to address potential anticompetitive conduct in AI markets, without the need for new sectoral regulations that could deter entry and investment. By judiciously applying these existing tools to AI-related conduct and transactions, the Bureau can safeguard competition and protect consumers while preserving the space for procompetitive innovation.¹⁷

The Risks of Overregulation in a Global AI Race

Indeed, overly prescriptive and burdensome AI regulations in Canada could unwittingly cede the development of this transformative technology to less democratic nations that place no regard on market competition principles.

¹³ OECD. *Artificial Intelligence and Competition Law: Background Note by the Secretariat*, OECD Competition Committee Discussion Paper, 30 May 2023, <https://www.oecd.org/daf/competition/algorithmic-competition-2023.pdf>.

¹⁴ Competition Bureau of Canada. *Merger Review Process*, Government of Canada, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/merger-review-process-guidelines>.

¹⁵ Competition Bureau of Canada. *Abuse of Dominance Enforcement Guidelines*, Government of Canada, 2023, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/abuse-of-dominance-enforcement-guidelines>.

¹⁶ Competition Bureau of Canada. *Bid-rigging, price-fixing and other agreements between competitors — Common types of illegal agreements that hinder competition*, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/bid-rigging-price-fixing-and-other-agreements-between-competitors/bid-rigging-price-fixing-and-other-agreements-between-competitors-common-types-illegal-agreements>.

¹⁷ OECD. *Artificial Intelligence and Competition Law: Background Note by the Secretariat*, OECD Competition Committee Discussion Paper, 30 May 2023, [https://one.oecd.org/document/DAF/COMP\(2023\)3/en/pdf](https://one.oecd.org/document/DAF/COMP(2023)3/en/pdf)

The western world is currently engaged in an intense global competition with China in the AI domain.

Canada and the rest of the Western World are currently engaged in an intense global competition with China in the AI domain.¹⁸ Against this backdrop, it would be counterproductive and shortsighted for Canada to unduly constrain our own domestic AI sector in a misguided attempt to “tame” the technology.

Far from protecting consumers and competition, such a heavy-handed regulatory approach would only serve to cement the dominance of foreign AI superpowers that reject liberal democratic values and norms. It is therefore imperative that Canada pursue a balanced, innovation-friendly AI strategy that avoids preventable compliance costs while sustaining public trust and consumer welfare.

Targeted Legal Updates to Address Novel AI Issues

This is not to say that there is no room for thoughtful, targeted updates to Canada's legal frameworks in light of AI's unique impacts and affordances. For example, amendments to privacy laws may be appropriate to address novel issues around algorithmic transparency and explainability.¹⁹ Careful adjustments to product liability rules could help clarify the allocation of responsibility for AI-related harms between developers, deployers, and end-users.²⁰

But any such legal modernizations should be pursued through collaborative, multistakeholder processes that include the AI community as an essential partner. By working together to address concrete problems while mitigating unintended consequences, we can harness the transformative potential of AI to drive competition and innovation in service of citizen values.²¹

Supporting SMEs and Building Domestic AI Capacity

The Bureau's discussion paper rightly emphasizes the importance of supporting SMEs and startups in accessing key AI inputs and participating in training and R&D initiatives.²² NetChoice agrees that encouraging a vibrant and diverse AI ecosystem, with multiple loci of innovation and competition, should

¹⁸ National Security Commission on Artificial Intelligence. *Final Report*, March 2021, <https://cybercemetery.unt.edu/nscai/20211005220330/https://www.nscai.gov/>.

¹⁹ Office of the Privacy Commissioner of Canada. *Consultation on the OPC's Proposals for ensuring appropriate regulation of artificial intelligence*, Government of Canada, April 2021, https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-ai/pos_ai_202001/.

²⁰ OECD. *How can we ensure that AI benefits society as a whole?*, <https://www.oecd.org/digital/artificial-intelligence/>

²¹ Carl Szabo. *Testimony of Carl Szabo Vice President & General Counsel NetChoice on Addressing Real Harm Caused by Deepfakes*, March 12, 2024.

²² Competition Bureau of Canada. *Artificial intelligence and competition: Discussion paper*, Government of Canada, March 20, 2024, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/artificial-intelligence-and-competition>.

be a core priority. Efforts like the Innovation Superclusters Initiative and SCALE AI are valuable steps in this direction.²³

By promoting an innovation-friendly, enforcement-centric approach grounded in existing legal frameworks, the Bureau can position Canada for success in the algorithmic age while safeguarding consumer welfare.

Additional measures could include public investment in foundational AI research and infrastructure, as well as the development of market-driven standards and best practices around interoperability and data sharing.²⁴ Support for digital skills training and upskilling programs will also be critical to meet the labor demands of Canada's burgeoning AI sector.²⁵

Conclusion

NetChoice commends the Competition Bureau for its leadership in examining the implications of AI for competition policy and market dynamics.

By promoting an innovation-friendly, enforcement-centric approach grounded in existing legal frameworks, the Bureau can position Canada for success in the algorithmic age while safeguarding consumer welfare. We look forward to continued engagement with the Bureau and other stakeholders in pursuit of these vital objectives.

Respectfully submitted,

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*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*²⁶

²³ Innovation, Science and Economic Development Canada. *Innovation Superclusters Initiative*, Government of Canada, <https://ised-isde.canada.ca/site/innovation-superclusters-initiative/en>.

²⁴ Colin Cunliff, Ashley Johnson and Hodan Omaar, IFIF. *How Congress and the Biden Administration Could Jumpstart Smart Cities With AI*, March 1, 2021, <https://itif.org/publications/2021/03/01/how-congress-and-biden-administration-could-jumpstart-smart-cities-ai/>.

²⁵ Future Skill Center, *The Skills Algorithm: Digital Skills Demand Across Canada's Labour Market* <https://fsc-ccf.ca/projects/skills-algorithm-digital-demand-across-canadas-labour-market/>

²⁶ *The views of NetChoice do not necessarily represent the views of its members.*