



# THE COMPETITION BUREAU'S ADVOCACY UNIT FINAL FORMATIVE EVALUATION REPORT

AUDIT AND EVALUATION BRANCH

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# EXECUTIVE SUMMARY

## PROGRAM OVERVIEW

The Competition Bureau (Bureau) is an independent law enforcement agency headed by the Commissioner of Competition (Commissioner). Its legislated mandate is to help cultivate a competitive, innovative marketplace for the benefit of Canadian businesses and consumers, and to administer and enforce Canada's *Competition Act*, *Consumer Packaging and Labelling Act* (except as it relates to food), *Textile Labelling Act*, and *Precious Metals Marking Act*. International consensus suggests that competition authorities need to engage in a combination of deterrence, enforcement and public advocacy in order to be most effective.

Competition advocacy involves regulatory interventions before tribunals, conducting market studies and providing general information and advice in order to foster and support a competition-friendly culture in Canada. The Competition Bureau reintroduced advocacy as one of its functions in January 2013.

## EVALUATION PURPOSE AND METHODOLOGY

In accordance with the Policy on Evaluation and the Directive on the Evaluation Function, the purpose of this evaluation was to assess if the new Advocacy Unit is positioned for success in the years to come. The evaluation findings and conclusions are based on the analysis of multiple lines of evidence. The methodology included a document review, literature review, interviews, two social media analytics studies, and case studies.

## FINDINGS

### *Relevance*

There is a need for competition advocacy in Canada to advance a competition-friendly regulatory environment and bolster awareness of competition issues and their impact on the day-to-day lives of citizens. The assessment found a number of sectors that might profit from advocacy work, including telecommunications.

The Advocacy Unit is well aligned with departmental priorities aiming to foster innovation and improve the competitiveness of the Canadian economy. The unit consciously aligns its work with the wider priorities of the federal government and that work is also aligned with federal roles and responsibilities. Its work is complementary to that which is undertaken by Canadian consumer organizations.

### *Performance*

The Bureau has attracted some noteworthy media attention for its advocacy efforts and there is

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evidence that consumers and businesses are picking up on the Bureau's messages. That said, there is work to be done in increasing the profile of the unit's work should the organization wish to increase the reach and impact of its messaging. Communications work for the unit needs to be tailored to individual issues in order to ensure that intended audiences are fully reached.

In order to raise awareness amongst legislators, policy makers and regulators regarding the competitive implications of their actions on a significant level, the Advocacy Unit requires a new, more strategic approach to engaging these groups. Strategic outreach and collaborative work to improve understanding and consideration of competition issues could strengthen the unit's performance.

While the unit's recommendations are well received and utilized in the targeted areas selected by the unit, there is some evidence that suggests resource limitations may be hindering the unit's impact. An external advisory body may help the unit maximize its impact as well as improve transparency.

The likelihood of the Advocacy Unit making the market significantly more competitive and innovative is limited by the small-scale, targeted nature of its work as well as a lack of longer-term strategic guidance. Existing efforts are hampered by a lack of readily available data and reluctance among businesses to participate in the unit's studies. Some research issues may be alleviated with greater transparency and accountability on the part of the Bureau when undertaking market studies.

The Advocacy Unit is working at full capacity and leveraging resources elsewhere in the organization to maximize efficiency. There are a plethora of different competition advocacy models internationally, and some commonalities. While there is no single best practice, the Bureau may find inspiration for future action on the international landscape. Actions undertaken in other countries included implementing an advisory function and enhancing collaborative efforts on research projects. The Bureau should also take steps to revise its logic model and performance measurement strategy to reflect its key activities and desired outcomes.

## RECOMMENDATIONS

To continue to grow and to increase its impact, the Advocacy Unit requires a more formal role within the Bureau, a deeper level of strategic planning to ensure it has the proper skill sets to undertake advocacy work, deeper engagement with key players in the Canadian economy and the establishment of a corporate culture unique to that of enforcement. With this in mind, the Bureau should:

- 1) Review the Advocacy Unit's mandate and develop a long-term strategic plan with the capacity of the unit and medium-to-longer-term objectives in mind. Consideration should be given to:

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- a. Determining the skills required to complete advocacy work, and assessing whether these skills are currently available within the organization.
  - b. Developing a unique communications strategy for advocacy work and consider including targeted work for engaging a wider audience on projects with long time horizons or a target audience outside of the program's usual stakeholders.
  - c. Developing an engagement strategy for regulators across jurisdictions to further understanding of the competition lens and what the Advocacy Unit has to offer.
  - d. Engaging an external advisory committee to assist the unit in project selection and planning as well as networking and engaging key stakeholders.
  - e. Developing a policy on market studies in consultation with experts and key stakeholders and make it publicly available to clarify such matters as how projects are selected, what participants can expect and provide accountability and transparency on related research and results.
- 2) Revise the program's logic model and performance measurement strategy to better capture the requisites and results of advocacy work.

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# 1.0 INTRODUCTION

## 1.1 PROGRAM PROFILE

The Competition Bureau's (the Bureau) legislated mandate is to help the Canadian marketplace be more competitive and innovative for the benefit of Canadian businesses and consumers. Headed by the Commissioner of Competition, the Bureau administers and enforces the *Competition Act (Act)* including provisions enacted by *Canada's Anti-Spam Legislation*, as well as the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Precious Metals Marking Act* and the *Textile Labelling Act*.

Sound, effective enforcement of competition laws is necessary to ensure markets operate efficiently and Canadians enjoy the economic benefits of competition. International consensus suggests that competition authorities need to engage in a combination of deterrence, enforcement and public advocacy in order to be most effective.

The Bureau uses both competition enforcement and competition promotion strategically and in complementary ways to support a competitive and innovative marketplace. The organization takes appropriate action when it uncovers evidence of contravention of the legislation it administers, and also promotes competition-enhancing policies and practices by advocating before all levels of governments, promoting compliance in the private sector, collaborating with domestic and international partners and conducting outreach with key stakeholders (e.g. consumer groups, the business community, the legal community and the Canadian public). In recent years, the Bureau has renewed its competition advocacy function to make it a key segment supporting its competition promotional efforts.

### *Advocacy as a Component of Competition*

It is widely accepted in the literature and in practice around the world that competition authorities need to augment enforcement and deterrence efforts with competition advocacy in order to be truly effective. Although practices vary between countries, competition advocacy tends to be either formal in nature, such as submissions to regulatory bodies pertaining to specific proceedings, or informal, such as market studies or private consultations with regulators or industry stakeholders.

The Bureau participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace, both in Canada and abroad. It also seeks to encourage regulators and policy makers to regulate only when necessary and to rely on market forces as much as possible to achieve the benefits of competition. Where market forces are insufficient to achieve certain policy objectives, the Bureau provides advice to regulators to assist them in implementing policies that achieve their objectives in a minimally intrusive way.

Changes in the marketplace, such as those brought by disruptive technologies in the digital economy, often challenge the status quo or raise questions. The Bureau is able to maximize its impact by intervening during policy development and regulatory review, before rules are



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created that unnecessarily stifle competition and innovation.<sup>1</sup> In other circumstances, the Bureau is able to provide additional information on existing competition issues by conducting in-depth research and analysis on recent developments in the economy through a market study.<sup>2</sup>

Re-introduced in January 2013, the Bureau's advocacy work is comprised of the following components:

- **Advice:** The Unit provides advice through various means, ranging from discussions to public letters. In some cases, the advice may include confidential consultations with legislators, regulators and government departments undertaking regulatory and policy work. Advice is aimed at removing or avoiding unnecessary regulations to promote a more competitive marketplace. Advice may also be provided, where appropriate, to industry associations, self-regulated bodies, and other stakeholders.
- **Formal interventions, submissions and presentations:** In these cases, the unit will act as a formal participant in a public proceeding or hearing regarding regulations. From time to time, regulators solicit evidence for use in determining the impact potential regulatory changes will have on competition. Sections 125 and 126 of the *Competition Act* provide the Commissioner with the legislative authority to make representations and introduce evidence in federal and provincial regulatory proceedings.
- **Market studies:** Market studies are generally longer-term, more in-depth analyses of how regulations interact with competition in a particular segment of the economy. The studies look at an industry or a sector through a competition lens to highlight competition issues or otherwise address concerns of regulators, industry participants, and the public.
- **Outreach:** The unit's outreach work is intended to encourage a more competitive and

#### AN EXAMPLE OF COMPETITION ADVOCACY

At time of evaluation, the Advocacy Unit had intervened three times on the subject of digital dispatch taxi services (new and disruptive technology that has led to companies like Uber entering the market).

Use of digital dispatch services were on the rise in a number of Canadian cities. Where these services were relatively new, they were not in step with municipal regulatory regimes. The Bureau sought to encourage the use of the new business model amidst a debate about blocking it, suggesting that the new model could be good for competition, and therefore Canadians.

**In February 2014:** A letter from the Bureau was submitted to the City of Toronto Taxicab Industry Review, which was considering whether to enable or block digital dispatch services in the municipality.

**In November 2014:** The Bureau issued an edition of the *Advocate*, its own publically available outreach publication, on the matter. It asserted that "innovative applications benefit consumers in the form of greater convenience and better service."

**In November 2015:** The Bureau issued a white paper, *Modernizing Regulation in the Canadian Taxi Industry*, supporting efforts to regulate ride-sharing applications instead of prohibiting them. This paper was reflected and referred to in numerous regulatory changes across the country.<sup>2</sup>

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<sup>1</sup> ISED. Competition, Innovation and Infrastructure. Remarks by John Pecman, Commissioner of Competition, May, 2016.

<sup>2</sup> ISED. Competition, Innovation and Infrastructure. Remarks by John Pecman, Commissioner of Competition, May, 2016.

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innovative marketplace by improving understanding of how competition can serve to enhance the Canadian economy. This work is aimed at a general audience to ensure key messages have a far reach.

## 1.2 THE BUREAU'S ADVOCACY FUNCTION

The Advocacy Unit, headed by an Associate Deputy Commissioner, is part of the Advocacy and Economic Analysis Directorate within the Bureau's Competition Promotion Branch. The branch's Deputy Commissioner reports to the Commissioner. Fiscal year 2014-15 marked the Advocacy Unit's first full year of operations with a budget of just over \$1 million and four full-time equivalent positions augmented by others contributing to advocacy work on a part-time basis. The unit's budget is shown in the following table.

**Table 1: Advocacy Unit Budget**

	2012-13	2013-14	2014-15
Salary	--	333,000	501,400
Other O&M	~7,000	552,100	576,500
Total	~7,000	885,100	1,077,900

Competition issues that come to the Bureau's attention are first evaluated for potential enforcement action. However, the Bureau recognizes that some matters are best addressed through the use of advocacy, and may proceed directly to an advocacy project when presented with a competition issue.<sup>3</sup> When assessing a potential advocacy project, the Bureau generally considers four strategic factors:

1. Does a forum exist to present the Bureau's findings and is there a high level of public interest?
2. Will the Bureau be contributing in a useful way? For example, will it bring forward unique arguments, unlikely to be presented by others?
3. Will the Bureau be able to gauge the impact of its advocacy efforts?
4. Will the Bureau's efforts have clear, tangible benefits for Canadians? How widely and how deeply will the impact be felt?

In instances where an advocacy project uncovers evidence that an act may have been contravened, that evidence may be used in an enforcement action. Conversely, investigations by the enforcement branches may yield information that motivates the Bureau to undertake an advocacy project. The Bureau endeavors to share information between its advocacy and enforcement functions as appropriate, to maximize its impact in promoting competition. The

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<sup>3</sup> For example, if a complaint is brought to the Bureau's attention in a regulated industry and the regulator has a planned process to review the relevant regulations, then this may be a situation where advocacy is more suitable than enforcement. The Advocacy unit may, for example, opt to provide informal advice or make a formal submission to a public proceeding if one is held.

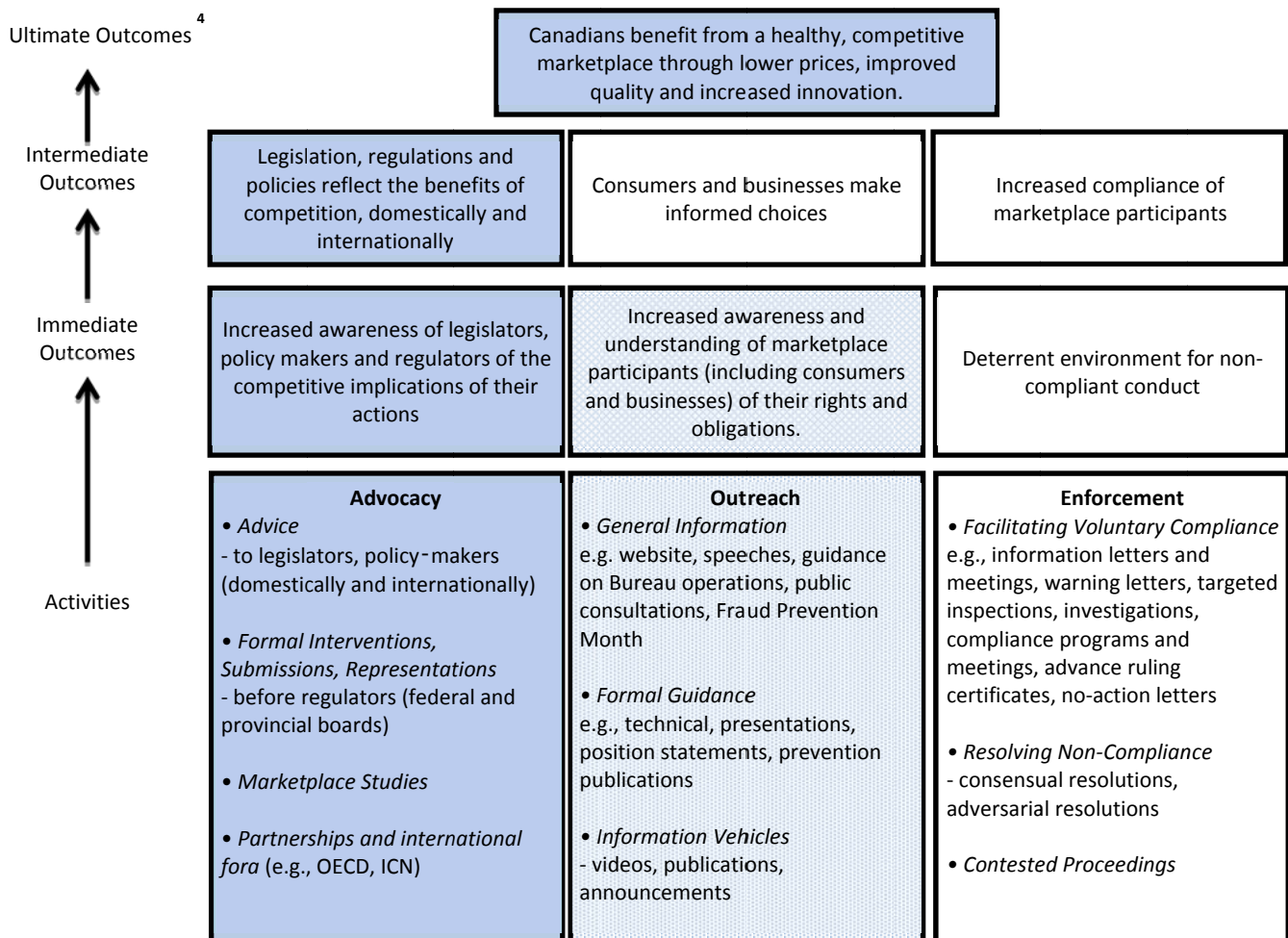
final decision to undertake an advocacy project or to release any findings is based on the particular facts, timing, availability of resources, and context of each issue assessed.

Stakeholders with a direct interest in competition advocacy include federal and provincial policy makers and regulators, individual businesses, associations and consumer groups.

### 1.3 LOGIC MODEL

The logic model in Figure 1 presents the Bureau’s three key functions of advocacy, outreach and enforcement and their associated outcomes. Advocacy efforts and outcomes are highlighted in blue. As advocacy and outreach efforts are closely linked in some instances, outreach activities and immediate outcomes are shown in a lighter shade of blue. This is the logic model the Bureau had in place at the time of the evaluation, although it began work on revising its logic model in the fall of 2015.

**Figure 1: Logic Model of the Competition Bureau**



<sup>4</sup> Supports Innovation, Science and Economic Development Canada’s strategic outcome of “The Canadian marketplace is efficient and competitive”.

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# 2.0 METHODOLOGY

## 2.1 EVALUATION PURPOSE

This report presents the results of a formative evaluation of the Competition Bureau's Advocacy Unit. Formative evaluations are intended to provide insight on potential changes that could improve program design and delivery, especially in the early (i.e., formative) years of a program. Although the Competition Bureau had an advocacy function in the past, it was dormant for a number of years and reintroduced in January 2013.

## 2.2 EVALUATION OBJECTIVES AND SCOPE

The objectives of the assessment were to evaluate the Competition Bureau's Advocacy Unit with respect to opportunities for improvement, as requested by the Bureau. In accordance with the *Policy on Evaluation*, the assessment evaluated the unit's performance and relevance for the period from when the unit was reintroduced in January 2013 through September 2015. Innovation, Science and Economic Development Canada's Audit and Evaluation Branch undertook the evaluation in 2015-16.

## 2.3 EVALUATION APPROACH

With the Advocacy Unit only being fully operational as of 2014-15, the intent was to set benchmarks to facilitate program performance assessment going forward and to determine whether changes could be made to improve the unit's potential for success. The evaluation employed a theory-based approach in some lines of evidence and engaged a contractor to conduct a social media analytics study. Formative evaluations typically rely more on interviews (qualitative data) and less on quantitative data to inform findings, as was the case for this evaluation. Focus was placed on assessing activities undertaken by the Advocacy Unit (i.e., formal submissions, advice to others and market studies) and the spillover these activities may have had in the public domain.

## 2.4 EVALUATION QUESTIONS

The evaluation sought to address the following questions.

### *Relevance*

1. To what extent does the Bureau's Advocacy Unit address a demonstrable need?
2. To what extent does the Bureau's Advocacy Unit respond to the priorities of the federal government and Innovation, Science and Economic Development?
3. Is the Bureau's Advocacy Unit consistent with federal roles and responsibilities? Does the Advocacy Unit overlap or complement work undertaken elsewhere?

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## Performance

4. To what extent does the Advocacy Unit contribute to improved awareness of consumers and businesses with respect to their rights and obligations?
5. To what extent is the Advocacy Unit increasing awareness among legislators, policy makers and regulators of the competitive implications of their actions?
6. To what extent do the activities of the Advocacy Unit promote legislation, regulations and policies that reflect the benefits of competition, domestically and internationally?
7. To what extent is the design of the Bureau's Advocacy Unit likely to contribute to a competitive and innovative marketplace? What are the lessons learned?
8. To what extent does the Bureau's Advocacy Unit demonstrate economy and efficiency? Are there alternative models?

## 2.5 DATA COLLECTION METHODS

Qualitative data for the most part, and some quantitative data, were collected using the six lines of evidence described below. In addition, reviews and analysis of administrative and financial data were intended, but sufficient data was not available as described in section 2.5 below.

### *Document Review*

This line of evidence contributed to a general understanding of the Competition Bureau and the Advocacy Unit. Given the newness of the program, there is not a great deal of program material available. Much of the material was from the Bureau's website, including such documents as the Bureau's 2014-15 Annual Plan, Annual Reports and its operating principles. As well, postings under the website's Advocacy page were reviewed, such as media releases and an issue of *The Competition Advocate*. In addition to program material, legislation (in particular, the 1985 *Competition Act* and the 1995 *Department of Industry Act*), federal budgets, Speeches from the Throne and departmental Reports on Plans and Priorities contributed to informing relevance questions pertaining to departmental and federal priorities and roles and responsibilities. The document review also contributed to informing some of the performance questions.

### *Literature Review*

The review of literature provided insight into the role of competition advocacy and its practice which was useful for assessing relevance and various aspects of performance, as well as international practices in competition advocacy. The organizations, from which the material was obtained, via websites, government libraries and contacts, included the Australian Competition and Consumer Commission, the Danish Competition and Consumer Authority, the International Competition Network Advocacy Working Group, the Organization for Economic Co-operation and Development, the United Nations Conference on Trade and Development, and the United States Federal Trade Commission.

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## Interviews

Input from 38 interviews informed both relevance and performance questions. A high number of staff were interviewed for this evaluation to ensure the interplay between the Advocacy Unit and other areas of both the Bureau and the department was fully understood. Experts interviewed for this evaluation included active members of the Canadian Bar as well as academics. Stakeholders ranged from consumer groups and professional associations to regulators. The distribution of interviews across groups is as follows:

- Staff (16)
- Experts (8)
- Stakeholders (7)
- International groups and other nations (7)

## Case Studies

Advocacy Unit staff identified four case studies for the evaluation. These were used to inform the performance questions having to do with awareness (immediate outcome) and promotion (intermediate outcome). Two case studies involved submissions to the Canadian Radio-television and Telecommunications Commission, one on mobile wireless roaming services and the other for wireline services. A third case study looked at a market study undertaken by the Advocacy Unit on price increases in the propane market, and the fourth case study focused on the Bureau's submission to the City of Toronto regarding digital dispatch services such as Uber. In addition to reviewing the submissions and other related material, the evaluation team interviewed Bureau staff and external stakeholders and/or contacts to obtain input.

## Social Media Analytics

Two social media analytic studies were undertaken by a consultant to inform the assessment of continued need as well as assess the performance of the unit in reaching its intended audiences. The first study focused on the Bureau's position regarding digital dispatch services and whether it had any notable impact on social media discussions. The second study searched for online chatter amongst Canadians on areas of the economy that might profit from competition advocacy. This analysis contributed to identifying potential areas of focus for the Competition Bureau's advocacy work.

## 2.6 LIMITATIONS

The following are the limitations of the evaluation.

### *Assessing the impact of advocacy*

Assessing advocacy is a challenge in that the impact of efforts is not always immediately evident on any given issue. Advocacy can make iterative progress over time with results only emerging following years of undertakings. Further, many factors play into the decisions made by legislators, regulators and policy makers that are beyond the scope of the Bureau's interests.

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Taking into consideration the young age of the program, the evaluation took a theory-based approach to its case studies. This allowed for the exploration of advocacy theory alongside the activities undertaken by the Bureau, and allowed for an analysis of how the new unit is performing.

***International data comparability***

At the outset of the evaluation, it was anticipated the Advocacy Unit's budget would be compared with that of other countries. While a very limited comparison was possible, it should be kept in mind that advocacy work does not entail a consistent set of activities. As such, there can be a wide discrepancy as to the type and extent of work covered by one competition authority's budget compared to another. Data on the work of other nations compared with those in Canada should be read with this caveat in mind.



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# 3.0 FINDINGS

## 3.1 RELEVANCE

### 3.1.1 To what extent does the Bureau's Advocacy Unit address a demonstrable need?

**Key Finding:** There is a need for competition advocacy in Canada to advance a competition-friendly regulatory environment and bolster awareness of competition issues and their impact on the day-to-day lives of citizens. The assessment found a number of sectors that might profit from advocacy work, including telecommunications.

Competition advocacy can fuel the development of healthy, competitive marketplaces and fuel new innovation, spurring gains in productivity and economic growth.

<sup>5</sup> The need for this work is recognized around the world as an integral component of assuring a competitive marketplace. <sup>6 7 8</sup> It is viewed as a complementary activity to enforcement that protects effective competition by pursuing competition-friendly legislation and regulation as well as fostering a competition-friendly culture. <sup>9 10 11 12 13 14</sup> In 2008, the final report of *The Competition Policy Review Panel* stated that the absence of a competition advocacy group constituted a “significant gap in Canadian competition policy”.<sup>15</sup>

Most interviewees agreed that there is a need for competition advocacy in Canada. Competition advocacy is viewed as an effective way of creating change at a relatively low cost and in a more flexible way than an enforcement proceeding, which typically requires more invasive intervention and impacts. It can also correct sectors that have been distorted by regulations that hinder competition via either formal submissions or by simply educating regulators, businesses, and other players. A number of experts suggested that the competition

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<sup>5</sup> Lynch, Kevin. *Canada and the New Global Competitiveness*. Financial Executives Institute, 2011.

<sup>6</sup> John, Ian G. and Joshua B. Gray. *The Future of the ICN*. Antitrust Magazine. Summer 2012. Vol. 26 Issue 3, p 14-18.

<sup>7</sup> UNCTAD Secretariat. *The role of competition policy in promoting economic development: The appropriate design and effectiveness of competition law and policy*. United Nations Conference on Trade and Development, August 2010.

<sup>8</sup> ICN Advocacy Working Group. *Advocacy and Competition Policy*. International Competition Network, ICN's Conference, Italy 2002.

<sup>9</sup> Emberger, Geraldine. *How to strengthen competition advocacy through competition screening*. Opinions and Comments, Spring 2006, no. 1

<sup>10</sup> Coffman, Julia. *What's Different About Evaluating Advocacy and Policy Change?* Harvard Family Research Project, The Evaluation Exchange. 2007.

<sup>11</sup> ICN Advocacy Working Group. *Advocacy and Competition Policy*. International Competition Network, ICN's Conference, Italy 2002.

<sup>12</sup> ICN Advocacy Working Group. *Advocacy Toolkit Part 1: Advocacy Process and Tools*. International Competition Network, ICN's Conference, The Hague, May 2011.

<sup>13</sup> ICN Competition Advocacy Working Group. Report and Summary of the Presentations of the 2009-10 ICN Competition Advocacy Teleseminars. ICN's Conference, Istanbul, 2010.

<sup>14</sup> Competition Advocacy: Challenges for Developing Countries.

<sup>15</sup> Competition Policy Review Panel. *Compete to Win*. Industry Canada. 2008.



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lens provides much needed insight to regulators in an area in which they are not typically well-versed.

According to the review of literature, competition advocacy also serves the general public by bolstering awareness of competition issues and how they impact the day-to-day lives of citizens.<sup>16 17 18</sup> Consumer education is, in fact, a key piece of the competition advocacy portfolio in many countries.<sup>19</sup>

A small number of interviewees inside and outside the Bureau suggested that the Advocacy Unit speaks on behalf of consumers, who are not well organized. This echoes the Bureau's documentation, which commits to focusing "enforcement, education and advocacy activities on addressing real marketplace issues of concern to consumers,"<sup>20</sup> and "focusing on matters that are important to Canadians."<sup>21</sup>

Interviews across groups suggested that there are many sectors of the economy that would profit from advocacy, and specifically noted the Bureau's success in telecommunications interventions, in which regulators were influenced in a pro-competitive direction by the unit's input. Other sectors for potential advocacy work mentioned were the sharing economy, gasoline, transport, supply management (marketing boards for dairy, etc.), alcoholic beverage distribution, and the price gap between Canada and the US. An invitation from the Bureau to the general public to nominate sectors for advocacy work, open from September 2013 to November 2013, yielded suggestions such as the pharmaceutical and telecommunications sectors.<sup>22</sup>

The social media analytics study designed to listen for online chatter regarding competition concerns among Canadians identified a number of key concerns that somewhat reflected the suggestions of interviewees<sup>23</sup>. Most remarkably, concerns about the food and beverage sector (including chatter about both the cost of groceries and alcoholic beverages) ranked highest for both French and English comments, with transportation costs (e.g. air fares) and energy (the cost of electricity, gas, etc.) also featuring strongly as areas that might profit from competition advocacy.

Case studies underscored the value of competition advocacy in sectors where technology is rapidly changing. Even low-key interventions at the municipal level can have significant impact

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<sup>16</sup> ICN Advocacy Working Group. *Advocacy Toolkit Part 1: Advocacy Process and Tools*. International Competition Network, ICN's Conference, The Hague, May 2011.

<sup>17</sup> Competition Advocacy: Challenges for Developing Countries.

<sup>18</sup> ICN Competition Advocacy Working Group. Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy. ICN Conference, Zurich, June 2009.

<sup>19</sup> ICN Competition Advocacy Working Group. Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy. ICN Conference, Zurich, June 2009.

<sup>20</sup> Competition Bureau, *2015-2018 Strategic Vision*.

<sup>21</sup> Competition Bureau, *2015-2016 Annual Plan: Protecting and Promoting Competition for the Benefit of All Canadians*.

<sup>22</sup> Competition Bureau, *Annual Report of the Commissioner of Competition for the Year Ending March 31<sup>st</sup>, 2014*.

<sup>23</sup> Likely in part because stakeholders interviewed for this assessment included consumer interest groups, who would be more in tune with the input of the general public.

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as regulators are grappling with issues that do not have set precedents and are receptive to input from the federal government. Within the federal government, the competition lens can provide a perspective that would not otherwise be available among regulators, legislators and policy makers.

### *3.1.2 To what extent does the Bureau's Advocacy Unit respond to the priorities of the federal government and Innovation, Science and Economic Development?*

**Key finding:** The Advocacy Unit is well aligned with departmental priorities aiming to foster innovation and improve the competitiveness of the Canadian economy. The unit consciously aligns its work with the wider priorities of the federal government.

The 2015 *Speech from the Throne* emphasized growing the economy, creating jobs and strengthening the middle class, all economic objectives that could be reached in part by creating a more competitive marketplace. In fact, the Bureau's 2015-2018 strategic vision states that the organization will work with the department "to promote the continued adoption of strong competition policy as a cornerstone of Canada's economic development approach."

The Bureau has also aligned its work over time with priorities identified in Budgets such as innovation, creating jobs, and fostering trade. Interviews with staff indicated that the unit also works to educate regulators on issues that may be restrictive to innovation and the emergence of new business models, such as the sharing economy.

The advocacy unit's work responds to the *Inclusive Innovation Agenda's* aim to encourage companies to grow and compete in the global economy. This is because open and competitive markets are pre-requisites for innovative companies to attract investment, commercialise their ideas, and scale up. When innovation is stifled by overly restrictive, burdensome, or outdated regulations, new technologies and business models are unable to make headway in the marketplace. The Bureau uses advocacy to level the playing field by helping regulators modernize their regulations to accommodate new forms of competition while still achieving their legitimate regulatory goals.

Further, the interventions made by the unit in legislative and regulatory proceedings by nature respond to the strategic needs of the federal government. In monitoring changes to legislative and regulatory frameworks and working to ensure various government departments and agencies are fully informed with respect to how changes impact Canadian competition, the unit has the capacity to be well aligned with federal priorities across government.

The Bureau's Advocacy Unit aligns with Innovation, Science and Economic Development's priorities under the Program Alignment Architecture. Specifically, it is part of the *competition law enforcement* sub-program which responds to the strategic objective "the Canadian marketplace is efficient and competitive." According to the department's *Report on Plans and Priorities*, among the sub-program's tasks are providing advice to legislators and policy-makers

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and intervening or making representations before federal and provincial boards, commissions and tribunals to encourage competition and to achieve policy or regulatory objectives.<sup>24</sup>

### 3.1.3 To what extent is the Bureau's Advocacy Unit consistent with federal roles and responsibilities? Does the Advocacy Unit overlap or complement work undertaken elsewhere?

**Key finding:** The work undertaken by the Advocacy Unit is consistent with federal roles and responsibilities and is complementary to advocacy work undertaken by consumer organizations. While some of the unit's work involves formal regulatory interventions, a substantial portion of it is informal and responds to the Bureau's traditional work in competition advocacy.

Federal roles and responsibilities with respect to advocacy are in part laid out in legislation and have resided at the Competition Bureau. The Advocacy Unit's key activities are underscored by the importance of its role as the neutral, federal voice of competition.

Relevant legislation includes both the 1995 *Department of Industry Act* and the 1985 *Competition Act*. According to the *Department of Industry Act*, the powers, duties and functions of the Minister extend to competition and restraint of trade, including mergers and monopolies (4.1). The Minister is further responsible for increasing the international competitiveness of Canadian industry, goods and services and assisting in the adjustment to changing domestic and international conditions (5.e).

The *Department of Industry Act* also states that in exercising his powers and performing the duties and functions assigned by the Act that the Minister shall:

- 6.a) initiate, recommend, coordinate, direct, promote and implement national policies, programs, projects and practices with respect to the objectives set out in section 5;
- (b) collect, gather, by survey or otherwise, compile, analyse, coordinate and disseminate information in respect of matters under the Minister's administration, as well as in relation to trends and developments, both within and outside Canada, in respect of those matters.

Additionally, the *Competition Act* houses a clear mandate for a portion of the work undertaken by the Advocacy Unit. Specifically, sections 125 and 126 of the Act mandate the Bureau to make recommendations and call evidence before a board, commission or other tribunal with respect to competition.

Interviewees in all groups pointed out that the Bureau's Advocacy Unit can play a valuable role in speaking as a neutral champion of competition in formal regulatory proceedings. In some circumstances, submissions and/or witnesses may be viewed as presenting a biased angle on competition matters as private sector agents represent the interests and profits of a particular business or group. Through advocacy work, the Bureau has the opportunity to clarify issues

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<sup>24</sup> Innovation, Science and Economic Development. *2015-16 Estimates – Report on Plans and Priorities*.

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related to competition for regulators using more balanced perspective and speaking from a position from which there will not be financial gain or loss for the organization based on the outcomes of any given proceeding. While there are a number of not-for-profit organizations that speak on behalf of consumers on some competition issues, interviews suggest that work is collaborative where possible and otherwise complementary.

The Advocacy Unit also undertakes work that is not specifically mentioned in legislation, but does respond to the Bureau's traditional role in competition advocacy, and the duties of the Minister. Specifically, the unit undertakes work aimed at educating stakeholders of the implications their actions may have for competition outside of formal proceedings such as letters, calls and meetings with regulatory groups and other stakeholders as well as market studies – in-depth, published research on a particular sector of the economy.

## 3.2 PERFORMANCE

### *3.2.1 To what extent does the Advocacy Unit contribute to improved awareness of consumers and businesses with respect to their rights and obligations?*

**Key Finding:** The Bureau has attracted some noteworthy media attention for its advocacy efforts and there is evidence that consumers and businesses are picking up on the Bureau's messages. That said, there is work to be done in increasing the profile of the unit's work should the organization wish to increase the reach and impact of its messaging. Communications work for the unit needs to be tailored to individual issues in order to ensure that intended audiences are fully reached.

Interviews with staff, stakeholders and some experts suggested that the impacts of the Advocacy Unit on public awareness are somewhat limited due to the recent revival of the function, but added that they are still successful in raising awareness to some degree when they contribute. Staff pointed to media coverage of some of their activities, particularly on the issue of taxicabs and digital dispatch services, which allow customers to use their smartphones to locate nearby drivers, order their services and arrange payment.

Media coverage does in fact suggest a base of interest in the activities of the Advocacy Unit. The first taxicab intervention, aimed to inform the City of Toronto, garnered scarce national coverage as it was targeted to a local audience, but the Bureau's second public commentary on the issue via *The Competition Advocate*, a publication posted on the Bureau's website, attracted 22 mentions in written and audio media. The unit's most recent release on the matter, in November 2015, attracted a remarkable 127 reports in media, suggesting that the organization's extended work over time is engaging an increasing audience.

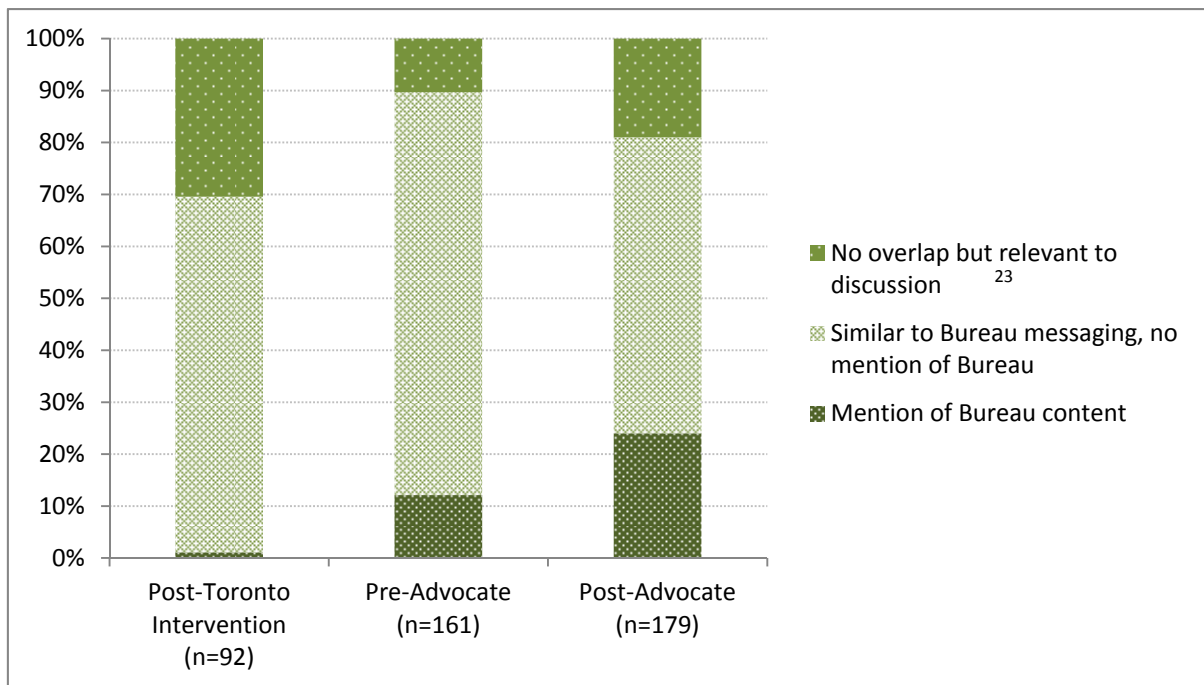
#### **Impact online**

While media attention garnered does offer the Bureau greater reach than simple posts on their website, the Bureau is not greatly expanding awareness of its chosen issues amongst the general population. Social media analytics suggest that the Bureau's statements on its taxicab file, made

in February and November 2014, did not create a significant shift in Canadian online discussions. Rather, the unit's statements were more representative of pre-existing sentiment than new information for consumers. It is of note; however, that those already engaged in the online discussion did make direct reference to the unit's messaging, showing that the organization was viewed as relevant to the discussion.

The Bureau claimed a larger share of the chatter related to the issue over time (see Figure 2: Bureau Messaging Carried Following Taxi Interventions). This is likely linked to the fact that the Bureau was echoing pre-existing sentiment, and so resonated with those already engaged in the discussion. Where the unit did not actively track consumer sentiment at the time of the assessment, evidence suggests that the unit's work resonated with consumers. This demonstrates that the Advocacy Unit reached its target audience and had a small impact on the discussion by posting these publications on its web-site and popularizing them using the Bureau's Twitter account.

**Figure 2: Bureau Messaging Carried Following Taxi Interventions (2014)**



Chatter about digital dispatch services slightly increased between the publication of the first digital dispatch statement and the release of *The Competition Advocate*, showing that more Canadians were taking part in discussions over time. This online chatter did not increase significantly following each release, suggesting that the work did not raise considerable awareness or interest outside of those already interested in the issue.

<sup>23</sup> Note that this refers to content that was related to the taxi intervention, but not at all linked to the Bureau's messaging.

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That said, the study found that content specific to the Advocacy Unit's earlier work was carried—or repeated via social media—to some extent and that it has been used by key stakeholders, such as consumer advocacy groups and the digital dispatch services themselves, demonstrating that businesses were reached by the messaging as well as the perceived weight of the Bureau's statements. In fact one digital dispatch service simply tweeted a link to the first edition of *The Competition Advocate*. Content was also criticized by the traditional taxi industry representatives, indicating the Bureau's intervention is reaching both sides of the issue.

Individual consumers and municipal groups appear to have been reached to a lesser extent. It should also be noted that the logic model and related outcomes in place at the outset of this assessment do not fully capture the value the Bureau's input can bring to key stakeholders who become aware of the Bureau's messaging.

### **Public profile of advocacy efforts**

A number of stakeholders praised the Bureau for resuming advocacy work and suggested that longer time horizons<sup>26</sup> and taking on more work in competition advocacy in general would equip the Bureau with a stronger profile within the sectors in which it is advocating. In light of this, the longer-term outcomes of projects such as the taxicab intervention, which is using a longer time horizon as it reaches out to a number of municipal governments and stakeholders with a wide range of sentiments on the matter could potentially demonstrate the organization's clout and capacity in time.

While some experts interviewed for the evaluation applauded the Bureau's advocacy efforts directed toward enhancing public awareness, among others there was a lack of understanding with respect to why the Bureau was undertaking the work. These interviewees suggested that the average citizen would not understand more complex economic issues that might be involved in some advocacy projects. To mitigate this, the Advocacy Unit would profit from advice on how best to communicate to target audiences. Issues such as digital dispatch impact a wider, more general audience and need to reach smaller-sized businesses that are not necessarily well organized and easy to reach. Other work the unit may undertake might have a smaller reach and require a different communications strategy to have the impact the Bureau is seeking.

Case studies pointed to the value of publicly digestible information being posted on the website and permeating throughout the media as it was serving to inform regulators at the municipal level, who would not otherwise have knowledge of the Bureau's opinions.

Social media analytics revealed that the Competition Bureau has an overall modest online profile. The website, for example, is predominantly accessed via searches that used terms involving the organization's name or the Commissioner of Competition, signaling that those who use the site are already familiar with the organization. By comparison, searches leading into the

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<sup>26</sup> Long time horizons point to an advocacy effort that involves multiple interventions on the same matter in different venues and formats over an extended period of time (e.g. multiple years).

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(former) Industry Canada web site typically connect to a host of related search terms by users looking for specific information. Similarly, the organization's Twitter account has a limited following (approximately 3,000). Having a more limited profile that largely attracts those who already know the organization well limits the reach of advocacy efforts geared toward raising awareness within the general population as well as other organizations who may be interested in the unit's work, such as municipal governments.

This may also have impacted the unit's initial public outreach work to identify potential sectors of the economy that may profit from advocacy efforts. Input received via the original online invitation was not fully representative of the chatter taking place among Canadians online, suggesting that it did not reach a sufficient segment of its full intended audience. It is also of note that not all stakeholders were familiar with the Bureau's advocacy work, and considering that interviewees were selected because of their knowledge of the unit's operating environment, this suggests that there is work to be done in raising the public profile of advocacy efforts.

A communications strategy that allows work to be tailored to the particular intended audiences and timelines of various advocacy efforts, and that includes both traditional and social media components, would enhance the Advocacy Unit's results. This would be especially valuable in cases that do not involve the Bureau's usual stakeholders. Municipal governments and regional sector organizations, for example, could be more easily alerted to pertinent issues should the unit's work gain additional traction both online and in the media.

### *3.2.2 To what extent is the Advocacy Unit increasing awareness among legislators, policy makers and regulators of the competitive implications of their actions?*

**Key Finding:** In order to raise awareness amongst legislators, policy makers and regulators regarding the competitive implications of their actions on a significant level, the Advocacy Unit requires a new, more strategic approach to engaging these groups. Strategic outreach and collaborative work to improve understanding and consideration of competition issues could strengthen the unit's performance.

According to the literature review, it is not just the organization's published statements that will raise awareness of competition issues, especially with respect to legislators, policy makers and regulators.<sup>27 28 29</sup> Successful advocacy in any circumstance cannot evolve from any single initiative or organization, but rather a collective effort to facilitate change.<sup>30</sup> As important as interventions themselves are, the relationships built up by the organization behind the scenes and the knowledge and experience exchanged throughout an organization's broader network

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<sup>27</sup> Emberger, Geraldine. *How to strengthen competition advocacy through competition screening*, Opinions and Comments, Spring 2006, no. 1

<sup>28</sup> Coffman, Julia. *What's Different About Evaluating Advocacy and Policy Change?* Harvard Family Research Project: The Evaluation Exchange, 2007.

<sup>29</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. Sanford Social Innovation Review, May 2011.

<sup>30</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. Sanford Social Innovation Review, May 2011.



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are pivotal in raising awareness.<sup>31</sup> <sup>32</sup> Ideally, competition should be considered very early in the policy and regulatory processes and knowledge and skills relating to the application of the competition lens should be propagated throughout all levels of government by the advocacy team via specialized courses or staff exchanges, for example, making costly interventions required less often.<sup>33</sup>

The Bureau's 2013-14 annual report indicates that the Advocacy Unit made three representations before regulatory bodies that year. This work was complemented by a sundry of other activities including answering telephone and e-mail inquiries, speech writing for the Commissioner of Competition and working on *The Competition Advocate*. Interviews with staff indicated that while the group has been successful in raising awareness with those they work with directly, there is recognition that there is a skill set shortfall on the team with respect to outreach and networking.

In interviews, the program indicated that the Bureau hoped to increase the number of staff working in the Advocacy Unit and to bring outreach and networking expertise on staff. A number of interviewees inside and outside the Bureau suggested that hiring staff from outside the organization who have already developed advanced skills in this area would offer some benefits for the team.

In addition, there appears to be conflicting objectives between the Bureau's need for secrecy in enforcement cases and the Advocacy Unit's need for transparency, collaboration and information sharing. Case studies indicated that the Advocacy Unit does not speak freely of its work when collaborating or indicating that it intends to provide input into a competition issue. In three of the four case studies, regulators reported that they had scarce interaction with Bureau staff prior to receiving input. In the fourth instance, the Bureau was more engaged, but it was reported that it was clear that the details of what the unit might report on could not be divulged until they had been through a rigorous review process internal to the Bureau and information was published to the web site. This finding was echoed in interviews. Most interviewees familiar with the unit's advocacy work indicated that the Bureau itself does not share information readily prior to a formal statement being released for public consumption.

According to the document review and a small number of internal staff, the high level of secrecy is linked to Section 29 of the *Competition Act* and the possibility that any advocacy effort might become an enforcement action if evidence of wrong-doing is detected over the course of the Advocacy Unit's research. Working with regulators on general knowledge relating to competition, however, does not require any measure of secrecy and presents a sound

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<sup>31</sup> Emberger, Geraldine. *How to strengthen competition advocacy through competition screening*, Opinions and Comments, Spring 2006, no. 1

<sup>32</sup> Coffman, Julia. *What's Different About Evaluating Advocacy and Policy Change?* Harvard Family Research Project: The Evaluation Exchange, 2007.

<sup>33</sup> Emberger, Geraldine. *How to strengthen competition advocacy through competition screening*, Opinions and Comments, Spring 2006, no. 1



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opportunity to improve the federal regulatory landscape without encountering organizations that may become involved in an enforcement action.

Interviews across different groups and those interviewed via case studies indicated where the unit has had the opportunity (and resources available) to collaborate, the results had been positive. Most parties involved were satisfied with the exchange and feel as though they have been heard. The lack of collaboration noted by interviewees is likely the result of resource limitations and requisites around security and the Bureau's wider enforcement culture.

Further, interviews indicated that the Advocacy Unit was not actively participating in existing activities that would raise awareness amongst legislators, policy makers and regulators, such as providing presentations or tools to other groups so that they might consider the implications of their work through a competition lens. Interviews with stakeholders and professional associations demonstrated a significant level of interest in knowing more about the work of the Advocacy Unit.

Considering the vast array of regulations in Canada, the unit could profit from a robust engagement strategy for regulators across jurisdictions to further understanding of the competition lens and what the unit has to offer, or as one interviewee called it, "government relations expertise." Better understanding among regulators of how regulation can interact with competition may increase the impact of the unit. Organizations such as the Federal Community of Regulators and the Federation of Canadian Municipalities, as well as other, more sector-specific organizations or events may offer the opportunity to promote the benefits of competition amongst regulators, legislators and policy makers.

The literature review demonstrated that it is possible to reach farther across the regulatory system without formally intervening in proceedings.<sup>34</sup> In the UK, for example, there is a competition filter now applied to the regulatory impact assessment process. This filter was established by providing training to departments on how to identify competition concerns and then providing advice on policies and regulations when requested<sup>35</sup>.

Stakeholders in Canada interviewed for this assessment expressed universal interest in working with the unit in order to further competition advocacy in Canada. Further, internal staff and some external experts indicated that there is clearly a high level of management support for advocacy work, which could contribute to the success of the unit should it be sustained.

In sum, awareness-raising cannot happen in earnest via one-off interventions. It is arrived at through strategic, coordinated efforts to communicate key messages to a wider audience of legislators, policy makers and regulators across jurisdictions. Collaborating more openly on advocacy efforts represents a major culture shift within the Bureau, and will require the Advocacy Unit to break free of the enforcement culture that currently permeates throughout the organization.

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<sup>34</sup> Emberger, Geraldine. *How to strengthen competition advocacy through competition screening*, Opinions and Comments, Spring 2006, no. 1

<sup>35</sup> Mistry, Heena. *UK's Regulatory Impact Assessments and Competition Advocacy*. Office of Fair Trading.

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### 3.2.3 To what extent do the activities of the Advocacy Unit promote legislation, regulations and policies that reflect the benefits of competition, domestically and internationally?

**Key Finding:** In the targeted areas selected for intervention by the unit, recommendations made to legislators, regulators and policy makers were well received and utilized. That said, there is some evidence that suggests resource limitations may be hindering the unit's impact.

According to the review of literature, it is common for competition agencies around the world to engage in advocacy activities with legislators and other key players in the regulatory for a.<sup>36</sup> Generally, they recommend changes to existing and potential regulation that create unnecessary restraints on competition, and then monitor to determine the impacts of their efforts within a number of years following the intervention.<sup>37</sup> Key to the success of these interventions is the credibility and clout of the source.<sup>38</sup>

Case studies indicated that the Bureau's input is highly respected and utilized by regulators when it is received. In all four cases, there was clear evidence that the Bureau's input was considered in arriving at a final decision. One regulator suggested that it would be a positive for their organization should the Bureau provide more in-depth input more often on key issues. In two other cases, the Bureau's submissions were directly quoted in final decision statements.

While some interviewees indicated that it can be difficult to discern whether or not advocacy has had a particular impact on a regulator, most interviewees acknowledged that the unit's regulatory interventions to date have been well received and many cited examples of the unit's work preceding real change or being quoted in a regulator's final decision.

According to interviewees both inside and outside the organization who were familiar with recent advocacy work, the activity of the Advocacy Unit is somewhat limited due to resource constraints. The review of literature suggests that this is a common issue for advocacy work around the globe.<sup>39</sup> The group, however, is successful in raising awareness within the forums in which it contributes.

Interviews with staff and experts acknowledged that success in this area is highly targeted based on the small number of interventions the team has staged to date. It is of note that interventions have been carefully selected to be made in areas where the Bureau's input will be well-received and have a significant impact. Interviews with experts suggested that where only so

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<sup>36</sup> ICN Competition Advocacy Working Group. Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy. ICN Conference, Zurich, June 2009.

<sup>37</sup> ICN Competition Advocacy Working Group. Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy. ICN Conference, Zurich, June 2009.

<sup>38</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. Sanford Social Innovation Review, May 2011.

<sup>39</sup> ICN Competition Advocacy Working Group. Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy. ICN Conference, Zurich, June 2009.

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many projects may be undertaken with the resources at hand, this is wise, but selection of projects should also keep the ultimate objectives of the organization in mind.

A number of experts suggested that the Bureau would profit from external advice on what projects to consider for advocacy work. Although the Bureau currently has an internal committee<sup>40</sup> that reviews and approves major advocacy undertakings to ensure work conducted by the unit is of high relevance and quality, its activities are largely unknown externally. An external group to augment this function, however, could ensure the adoption of projects that would maximize the unit's impact external to government while enhancing transparency around why particular interventions are chosen over others. The sentiment was reflective of the review of literature. Both the 2009 *Compete to Win* report, commissioned by the Government of Canada, as well as a CD Howe report released in late 2015 suggest that the Bureau may profit from some form of external input or guidance.<sup>41 42</sup>

The dynamics around policy development makes it difficult to discern what legislators, regulators and policy makers took into account when arriving at a decision. A multitude of factors are taken into account in any significant action of government. That said, the Advocacy Unit's input has been both sought after and cited in the areas in which the Bureau has publicly intervened. Interviews and case studies also suggested that speeches and public statements made by the Bureau are received with interest by regulators and policy experts. Irrespective of the limited resources, the Advocacy Unit is enjoying success where it has been able to contribute. Broadening the scope of work that the unit undertakes by implementing a more strategic approach, as discussed earlier in the report, could leverage that interest and further the objectives of the Bureau.

### *3.2.4 To what extent is the design of the Bureau's Advocacy Unit likely to contribute to a competitive and innovative marketplace? What are the lessons learned?*

**Key Finding:** The likelihood of the Advocacy Unit making the market significantly more competitive and innovative is limited by the small-scale, targeted nature of its work as well as a lack of longer-term strategic guidance. Existing efforts are hampered by a lack of readily available data and a reluctance among businesses to participate in the unit's studies.

One consideration to make in assessing the Bureau's potential to achieve its stated long-term outcome is the nature of advocacy work: it requires substantial time and resources to build an environment that truly fosters the desired outcome.<sup>43</sup> Advocates must not simply have a voice that is heard, but a presence that is sustained over long periods of time so that their influence is

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<sup>40</sup> The Major Enforcement and Advocacy Committee

<sup>41</sup> Competition Policy Review Panel. *Compete to Win*. Industry Canada. 2008.

<sup>42</sup> CD Howe Institute. *Watching the Watchdog*, 2015.

<sup>43</sup> Coffman, Julia. *What's Different About Evaluating Advocacy and Policy Change?* Harvard Family Research Project, The Evaluation Exchange. 2007.

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felt continuously in the policy process.<sup>44</sup>

Organizations can work for years on an issue prior to making a significant impact, yet all efforts, failed or successful, leading up to that impact may have been critical to its success.<sup>45</sup> Advocacy requires that an organization work consistently with longer-term objectives with a view to become a trusted authority over time. Staff must have in-depth understanding of the context, varying tactics that may sway or influence, stakeholders, and the multiple interacting factors that influence decisions relating to key objectives among its staff.<sup>46 47</sup> Further to that, an organization has to have the flexibility to adapt in an ever-changing environment<sup>48</sup>. Advocacy is, in a sense, a cumulative body of work as opposed to a series of one-off projects<sup>49 50 51</sup> and there is no single set of best practices that will guarantee specific results.<sup>52</sup> Instead, advocacy demands a “long time horizon” that focuses on its long-term objectives as opposed to short-term success, as well as “spread betting,” or working on multiple projects simultaneously, all with the ultimate objective of the organization in view.<sup>53</sup>

The majority of interviewees suggested that while the existing advocacy team is performing at a high level, the likelihood of the unit’s work to date making the economy more competitive and innovative is limited. The types of targeted, stand-alone interventions the team has made have enjoyed some success but interviews suggested that the unit was not appropriately resourced or positioned to undertake the number and types activities that would produce a significant, collective impact at the time of this assessment. To see a higher degree of success, the Advocacy Unit requires a wider variety of projects with longer time horizons that are aimed at collectively improving the economy via a variety of sectors and making use of different strategies.

As noted earlier in the report, interviewees both inside and outside the Bureau commented that the prevalence of advocacy work tends to change over time. This introduces a measure of instability within the unit and reduces its clout internally compared with parts of the organization

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<sup>44</sup> Coffman, Julia. *What’s Different About Evaluating Advocacy and Policy Change?* Harvard Family Research Project, The Evaluation Exchange. 2007.

<sup>45</sup> Tsui, Josephine, Simon Hearn and John Young. *Monitoring and evaluation of policy influence and advocacy*. ODI, Working Paper 395

<sup>46</sup> Tsui, Josephine, Simon Hearn and John Young. *Monitoring and evaluation of policy influence and advocacy*. ODI, Working Paper 395

<sup>47</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. John Hopkins University, Stanford Social Innovation Review, May 2011.

<sup>48</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. John Hopkins University, Stanford Social Innovation Review, May 2011.

<sup>49</sup> Tsui, Josephine, Simon Hearn and John Young. *Monitoring and evaluation of policy influence and advocacy*. ODI, Working Paper 395

<sup>50</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. John Hopkins University, Stanford Social Innovation Review, May 2011.

<sup>51</sup> ICN Advocacy Working Group. *Advocacy and Competition Policy*, International Competition Network’s Conference, Italy 2002.

<sup>52</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. John Hopkins University, Stanford Social Innovation Review, May 2011.

<sup>53</sup> Teles, Steven and Mark Schmitt. *The Elusive Craft of Evaluating Advocacy*. John Hopkins University, Stanford Social Innovation Review, May 2011.

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whose work is less disrupted when leadership is changed. Longer-term planning in collaboration with an advisory board may serve to mitigate some of the risks that have previously come with organizational changes.

All this said, interviewees also pointed to a number of attributes already present for the Advocacy Unit, which may point to greater success in the future should the unit find these other factors addressed. These factors included support from the current senior management cadre, especially the current Commissioner of Competition, regular meetings between select stakeholders and the Commissioner, as well as dedicated staff for the unit.

### ***Factors impacting advocacy research***

The long time horizons, strategic thinking and in-depth knowledge and understanding of the economy required to conduct advocacy work is accompanied by the need for high-quality, recent data to inform decision makers. This data is often needed on a short time frame and is seldom readily available in existing government data holdings. A number of staff suggested that market study research in particular is burdened by the absence of good data to inform their work. Staff commented that government data sets are not always up to date, and that the information required for the study has sometimes never been collected by government. In these instances, the Bureau is reliant on the good will of market participants to collect data in a timely fashion. Where information provided directly to the Bureau may be repurposed for an enforcement action at a later time, this is a delicate matter for the Advocacy Unit.

In interviews, experts identified additional risks to clients, such as the accidental divulgence of corporate intelligence, sharing of data between nations without consent of the business and the potential for abuse of the power to build enforcement cases were cited as currently unmitigated risks for Canadian market participants. Experts also cited costs for businesses providing the Bureau with information of any kind for any circumstance. For example, where enforcement action may be a consequence of volunteering information for a market study, businesses often engage their lawyers. Further, costs are incurred in the dedicated time required to collect and provide the data to the Bureau. Other concerns raised in interviews included a lack of understanding of why the unit undertakes its projects and a lack of recourse should participants in a study disagree with the unit's analysis.

The assessment heard significant debate with respect to the undertaking of market studies in interviews. While internal staff asserted the need for and value of market studies, experts were divided on the Bureau's use of them in Canada. One of the key issues identified is that the power to undertake market studies is not specifically mentioned in the *Competition Act*. Most interviewees agreed that this ambiguity is a hindrance to its advocacy work. In the past, the Bureau has been challenged on whether or not it has the authority to conduct market studies, but the matter has never been assessed by the courts.

These concerns cast a shadow on the Advocacy Unit's work and make it difficult to secure cooperation. Many could be mitigated with greater transparency when collaborating with the private sector, as well as additional consideration for the privacy and security of the businesses

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participating in such studies. The use of an advisory body to assist in determining if a market study would be in the best interest of Canadians and to plan out major projects could quell some concerns, as would making project plans and procedures readily available to participants. Further, repurposing data collected for research in enforcement action can be perceived as threatening by participants. In some nations, there are other restrictions on the repurposing of data so that there is clarity on how the information may be used. In Italy for example, there is particular legislation that precludes the use of any data collected for a market study in an enforcement action.<sup>54</sup>

The document review conducted for this assessment, in fact, revealed that the Bureau actually has draft market study guidelines that could serve to clarify these issues for external stakeholders. It is of note, however, that the draft guidelines were last revised in 2006 as part of the Bureau's previous advocacy work. Should the Bureau choose to update these guidelines for ongoing use, it would benefit both the organization and its stakeholders if the guidelines were established collaboratively with stakeholders to reduce external concerns and to ensure any work undertaken upholds the principles of transparency and accountability.

### *3.2.5 To what extent does the Bureau's Advocacy Unit demonstrate economy and efficiency? Are there alternative models?*

**Key Finding:** The Advocacy Unit is working at full capacity and leveraging resources elsewhere in the organization to maximize efficiency. There is a plethora of different competition advocacy models internationally. While there is no single best practice, the Bureau may find inspiration for future action on the international landscape.

The qualitative assessment of efficiency and economy revealed efforts to maximize resources. Salary data indicates that, in 2014-15 and 2015-16, the team occupied a total of four FTEs (Full-time equivalents) with two additional FTEs from elsewhere in the Bureau working for the unit for short periods of time. The small team has been built using existing internal staff, whose abilities are additionally leveraged for other activities. Likewise, case studies and interviews with staff revealed that other members of staff at the Bureau are periodically called upon to contribute to advocacy work when the subject matter requires their expertise.

Staff and experts indicated the value of having a variety of skill sets available in-house to contribute to advocacy projects. Interviews with staff in particular, both within the Advocacy Unit and external to it, identified the capacity of the Bureau to cross-pollinate between units as a key strength of the organization. The economists and enforcement areas were explicitly mentioned as key resources, especially with respect to subject matter expertise.

Case studies demonstrated that staff from all over the organization and at different levels make substantial, short-term contributions to advocacy work when required. While advocacy initiatives are led by the unit's staff themselves, it is not uncommon for several other staff from different

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<sup>54</sup> OECD Secretariat. *Market Studies: The Results of an OECD Survey*. October 2015.

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areas of the organization to make contributions to the projects. This flexibility makes optimal use of the expertise on hand at the Bureau.

Further, case studies and interviews with program staff and experts pointed to the necessity of a high-degree of subject matter expertise in some instances, especially where subject matter is highly technical in nature. In these cases, the unit seeks additional support externally through the use of highly-skilled, short-term contractors. This practice was praised, without prompting, by external experts and stakeholders who were familiar with the unit's work as being an efficient means to gain access to the expertise it requires considering the short duration of most projects and the remarkable difference in subject matter that can occur from project to project.

According to the Global Competition Review's fifteenth annual review of 36 national competition authorities, *Rating Enforcement 2015*, the Bureau spends approximately 2% of its annual budget on advocacy activities. A number of competition authorities provided no information about advocacy finances, presumably because they have no dedicated budget. However, data is available for a number of authorities, including those whose budgets range from less than 1% to 18%, as shown in the table on the next page.

The variation in budget allocation and estimates within this study may be attributable in part to the degree of variation in program design. While some organizations regard advocacy as including communications and general awareness raising, for example, others do not, and studies have been unable to disentangle the work for analytical purposes. Over time, nations have also indicated that it is not uncommon for various parts of a competition agency to contribute to advocacy efforts, including enforcement, international affairs, economics and public relations staff.<sup>55</sup> This creates a significant caveat in the interpretation of research conducted in this area. It is also of note that it is a common complaint of advocacy units that they are under-resourced, further convoluting comparative analysis.

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<sup>55</sup> Advocacy Working Group. *Advocacy and Competition Policy*. ICN Conference, Italy 2002.



**Table 2: Competition Advocacy Budgets (% of Total Competition Authority Budget)\***

Country	%
Finland	18
New Zealand	10
Greece	5
Hungary	5
Switzerland	5
Chile	4
Austria	3
Australia	2
<b>Canada</b>	<b>2</b>
United States (Federal Trade Commission)	1.5
United Kingdom	0.5

\* Note: The type and extent of advocacy work used by the study can vary considerably between authorities.

Source: Global Competition Review. *Rating Enforcement 2015, Part 3 Analysis*. Table 31.

### **Advocacy Work in other Nations**

Although a best practice model for competition advocacy work did not emerge from the findings regarding other competition authorities, the evidence points to several factors to consider regarding successful advocacy. They are summarized here as follows:

#### ***Oversight***

There is no one governance and oversight model for competition authorities, but it appears that there is often an oversight body or some other guidance mechanism in place. For example, one competition authority has an internal senior management advisory committee which considers and decides on all proposed work, including advocacy projects. Some other forms of competition authority oversight include boards, senior leadership comprised of appointed commissioners and senior executive employees, guidelines and mandate letters. The extent to which proposed advocacy projects are reviewed in advance by oversight bodies, though, is not readily apparent.

In interviews, a small number of experts suggested that an advisory committee for competition advocacy could serve to assist the Bureau in the selection of advocacy projects, as well as with external relationship building.



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## ***Assessing impact***

The evidence indicates that competition authorities find assessing the impact of their advocacy efforts to be challenging. For the most part, information is qualitative rather than quantitative. The incremental and long-term nature of advocacy work, with some efforts potentially taking years to come to fruition, contribute to the complexity of assessing impact. Still, other competition authorities point to the importance of defining advocacy success at the outset and transparently evaluating impact in meaningful ways.

This philosophy is reflected in the Bureau's evaluation strategy, but its performance measurement strategy presents largely quantitative indicators. The organization would profit from developing qualitative indicators to better track progress toward stated objectives. For example, the alignment of the Bureau's advocacy work with the interests of the general public is a measurable performance indicator that is not currently represented in the program's logic model or performance measurement strategy. The organization should update both to include and measure this objective considering its prevalence in corporate documentation and the emphasis placed on it by staff and in available literature.

## ***Efficient and economical operations***

The 2013 paper on market studies and input from a few other competition authorities provide some insight on factors that can contribute to efficiency and economy. For example, efforts should focus on areas where the advocacy team can leverage existing knowledge and work, to shorten the learning curve. The authors of the 2013 paper note, "CAs [competition authorities] may not be well suited to study industries in which highly specialized and on-going knowledge is necessary." Where a regulatory body has the necessary sector expertise, it may be more efficient for the regulatory body to undertake the market study. Only if it cannot do so efficiently or effectively, then the competition authority should take the lead.

Collaborating and coordinating with others, either regulators or consumer advocacy groups, can provide an economical means of undertaking advocacy work. The suggested benefits include saving on information-gathering costs, achieving more accurate analysis as a result of engaging sector regulators (subject experts), and decreasing duplication and inconsistency. In interviews, one competition authority mentioned the benefit of standing "shoulder to shoulder" with a consumer advocacy group regarding a government's slow reaction to implementing recommendations.

Proxies and publicly available or purchased information may also provide economical means of conducting advocacy work. This may involve having another organization (e.g., think tank, university, research institute) undertake an assessment if they have access to the information and can apply the necessary rigour. One competition authority indicated that it encourages academic research in areas of interest to it by providing grants. Another option is to use media (traditional, social) to promote specific action to consumers rather than pursuing more labour-intensive advocacy work. One authority effectively used this approach to reach a large body of consumers who were unaware they could request prescriptions in certain instances, which

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would result in lower costs for them.

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# 4.0 CONCLUSIONS AND RECOMMENDATIONS

## 4.1 RELEVANCE

- There is a need for competition advocacy in Canada and the assessment identified a number of sectors that might profit from some measure of advocacy work.
- The Advocacy Unit is well aligned with departmental priorities aiming to foster innovation and improve the competitiveness of the Canadian economy. The unit consciously aligns its work with the wider priorities of the federal government and that work is also aligned with federal roles and responsibilities. Its work is complementary to that which is undertaken by Canadian consumer organizations.

## 4.2 PERFORMANCE

- The Bureau has attracted noteworthy media attention for its advocacy efforts and there is evidence that businesses are picking up on the Bureau's messaging. That said, there is work to be done in increasing the profile of the unit's work should the organization wish to increase the reach and impact of its messaging. Communications work for the unit needs to be tailored to individual issues in order to ensure that intended audiences are fully reached.
- In order to raise awareness amongst legislators, policy makers and regulators regarding the competitive implications of their actions on a significant level, the Advocacy Unit requires a new, more strategic approach to engaging these groups. Strategic outreach and collaborative work to improve understanding and consideration of competition issues could strengthen the unit's performance.
- While the unit's recommendations are well received and utilized in the targeted areas selected by the unit, there is some evidence that suggests resource limitations may be hindering the unit's impact. An external advisory body may help the unit maximize its impact as well as improve transparency.
- The likelihood of the Advocacy Unit making the market significantly more competitive and innovative is limited by the small-scale, targeted nature of its work as well as a lack of longer-term strategic guidance. Existing efforts are hampered by a lack of readily available data and reluctance among businesses to participate in the unit's studies.
- The Advocacy Unit is working at full capacity and leveraging resources elsewhere in the organization. There may be some inspiration for next steps on the international landscape, such as implementing an advisory function and enhancing collaboration.

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- The program's current logic model and performance measurement strategy do not fully capture the work and objectives of the unit.

### 4.3 RECOMMENDATIONS

To continue to grow and to increase its impact, the Advocacy Unit requires a more formal role within the Bureau, a deeper level of strategic planning to ensure it has the proper skill sets to undertake advocacy work, deeper engagement with key players in the Canadian economy and the establishment of a corporate culture unique to that of enforcement. With this in mind, the program should:

- 1) Review the Advocacy Unit's mandate and develop a long-term strategic plan with the capacity of the unit and medium-to-longer-term objectives in mind. Consideration should be given to:
  - a. Determining the skills required to complete advocacy work, and assessing whether these skills are currently available within the organization.
  - b. Developing a unique communications strategy for advocacy work and consider including targeted work for engaging a wider audience on projects with long time horizons or a target audience outside of the program's usual stakeholders.
  - c. Developing an engagement strategy for regulators across jurisdictions to further understanding of the competition lens and what the Advocacy Unit has to offer.
  - d. Engaging an external advisory committee to assist the unit in project selection and planning as well as networking and engaging key stakeholders.
  - e. Developing a policy on market studies in consultation with experts and key stakeholders and make it publicly available to clarify such matters as how projects are selected, what participants can expect and provide accountability and transparency on related research and results.
- 2) Revise the program's logic model and performance measurement strategy to better capture the requisites and results of advocacy work.

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