13 September 2026

Cartel Enforcement Guidelines Consultation
Competition Bureau Canada
50 Victoria Street
Gatineau, Quebec K1A 0C9
Canada

Submitted by email to cb.CEGSconsultation-bc.consultationLDC@cb-bc.gc.ca

Re: Comments of ACT on the Proposed Cartel Enforcement Guidelines (Public Consultation)

The Association for Competitive Technology (ACT) appreciates the opportunity to comment on the Cartel Enforcement Guidelines (the proposed Guidelines) released for public consultation by the Competition Bureau on 15 July 2026.[1]

I. Introduction and Statement of Interest

ACT is a not-for-profit trade association representing the global small business technology developer community, both in and outside of Canada. Our members are entrepreneurs, independent developers, and small firms that build software, connected devices, and data-driven services across nearly every sector of the economy, and they sell into Canada through app marketplaces, cloud platforms, resellers, and direct enterprise and government contracts, the typical member being a small technology firm with no antitrust counsel on retainer.

That profile shapes how our members experience the cartel provisions, because a large firm carries the cost of compliance through in-house counsel, training programmes, and advice taken before it acts, while our members have no compliance budget of that kind and rely instead on whatever the enforcement agency has published, which is why the wording of these Guidelines does more practical work for them than the case law does. Where the draft describes a category of conduct broadly, small firms will avoid the whole category rather than risk the part of it that is unlawful, and much of what they would avoid is procompetitive.

We incorporate several recent comments we have provided to the Bureau, including our submission on Canada's Intellectual Property Enforcement Guidelines,[2] a submission earlier this

[1] Competition Bureau Canada, Cartel Enforcement Guidelines (draft for public consultation, released 15 July 2026) (the proposed Guidelines), https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/cartel-enforcement-guidelines. Paragraph references in these comments are to that draft.
[2] Response from ACT to the consultation on the Intellectual Property Enforcement Guidelines (31 Dec. 2018), https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/response-act-app-association-consultation-intellectual-property-enforcement-guidelines.

year on algorithmic pricing,[3] and our submission on the proposed Anti-Competitive Conduct and Agreements Enforcement Guidelines.[4] Because the same collaboration may be assessed criminally under section 45 or civilly under section 90.1, we ask that the two sets of guidelines draw the line between horizontal and vertical conduct in the same terms, since a small firm reading both will otherwise be left to reconcile them.

We have organised our comments around the parts of the draft that bear most directly on small technology firms, and each recommendation is set out in summary first and then developed in the section that follows.

II. Summary of Recommendations

1. Confirm that competitors' common use of a widely available third-party pricing, repricing, or revenue-management tool is not, without more, a facilitating practice or evidence of an agreement, and revise paragraph 21 and paragraph 63 so that they reach an agreed algorithm rather than a shared vendor.
2. Add an illustrative example distinguishing competitors who independently license the same commercially available pricing software from competitors who agree among themselves to adopt a tool, to contribute their confidential inputs to it, or to abide by its outputs.
3. State in paragraph 59 that a vertically positioned participant, including a platform, is exposed under subsection 45(1) only where it knowingly participates in bringing about, monitoring, or enforcing an agreement among its customers, and confirm that the same threshold governs liability as a party under sections 21 and 22 of the Criminal Code, so that supplying a service which competing customers use independently is examined under the civil provisions.
4. Remove most favoured nation clauses from the illustrative list of facilitating practices in footnote 13 to paragraph 21, or qualify the reference to make clear that a vertical most favoured nation clause is reviewable conduct and becomes relevant to subsection 45(1) only where there is independent evidence of horizontal coordination.
5. Expand paragraph 65 so that it covers participation in standards development, agreement on technical specifications, interoperability and conformance work, and open-source collaboration, and add an example confirming that an effect on cost or price does not convert such collaboration into price fixing.
6. Confirm that a voluntary commitment within a standards development organisation to license standard-essential patents on fair, reasonable, and non-discriminatory terms (FRAND), including ex ante disclosure of maximum royalty rates and voluntary royalty-free FRAND licensing policies, is a procompetitive constraint on the exercise of standardisation-related market power rather than buyer-side price fixing.

---

[3] ACT, Response to the Competition Bureau consultation on algorithmic pricing and competition (19 Jan. 2026), https://competition-bureau.canada.ca/sites/default/files/documents/Algo-Pricing-The-App-Association-2026-01-19.pdf.

[4] ACT, Comments on the proposed Anti-Competitive Conduct and Agreements Enforcement Guidelines (29 Jan. 2026), published at https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/written-responses-consultation-proposed-anti-competitive-conduct-and-agreements-enforcement-guidelines.

7. Add guidance on the collective licensing of patents subject to FRAND commitments. A pool licensing such patents on behalf of patent owners should itself be bound by those commitments. The Guidelines should also distinguish procompetitive pools from arrangements that include substitute or non-essential patents, lack transparent essentiality review, provide no meaningful bilateral licensing alternative, or coordinate litigation enforcement among members. On the other side of the negotiation, confirm that a licensing negotiation group (LNG) that is open to all implementers, limits information sharing to what is reasonably necessary to negotiate the licence, and leaves each member free to negotiate bilaterally and to accept or reject the resulting terms is examined under the civil provisions or under subsection 45(4).
8. Give paragraph 22 practical content by describing a safe harbour for benchmarking studies and for surveys of compensation and other employment terms that are aggregated by an independent third party, sufficiently aggregated that no participant can be identified, historical rather than forward-looking, and available to participants and non-participants on the same terms.
9. Add ancillary restraints examples covering standards development, joint research and development, joint bidding and teaming by small firms, interoperability and data-sharing arrangements, and non-solicitation terms ancillary to a genuine collaboration or to the sale of a business, and expand Example 5 accordingly.
10. State that, although subsection 46(1) applies whether or not a director or officer of the corporation in Canada knew of the foreign conspiracy, the Bureau will consider that knowledge, and the extent to which the foreign person was in a position to direct or influence the corporation's policies, before pursuing a Canadian corporation, and describe the enforcement discretion it will apply where neither is present.
11. Carry the result of Example 12 into the operative text by confirming that disclosure of a joint bid in the bid documents themselves, or to the contracting authority at or before submission, satisfies the requirement in subsection 47(1) that the arrangement be made known, so that small firms can continue to team on public tenders they cannot perform alone.
12. Publish a plain-language compliance companion for small business alongside the final Guidelines, and establish a small-business rate for written opinions under section 124.1, the present fee of $15,000 before tax for an opinion on the cartel provisions being beyond the reach of the firms most likely to need one.

III. ACT's Specific Comments on the Proposed Guidelines

<u>1. Algorithms and shared pricing tools</u>

Paragraph 21 lists the use of shared algorithms among the facilitating practices that can turn parallel conduct into evidence of a meeting of the minds, and paragraph 63 describes competitors who use a common pricing algorithm or price list as an example of prohibited price fixing.[5] We agree with the premise that an algorithm is simply a means of implementing a decision and that competitors who agree on price cannot escape section

[5] Proposed Guidelines, para. 21 and n.12, and para. 63 and n.33.

45 by routing the agreement through software. Our concern is with the words common and shared, which as drafted do not distinguish between competitors who have agreed on something and competitors who have bought the same thing.

Software of this kind is sold as a service by a small number of vendors, and in most segments a handful of products hold nearly all of the market. A small developer that prices its subscriptions, a small merchant that sells through an online marketplace, and a small operator that manages inventory across seasons will each buy a commercially available tool rather than build one, because building one is beyond what they can afford. The result is that competitors in the same segment very often use the same product, configured to their own inputs and objectives, without any contact with each other. Common use of that kind reflects how software is distributed, not a decision taken in common, and paragraph 20 already supplies the correct answer to it, since each firm is acting alone and making its own decisions.[6]

We ask the Bureau to say so expressly, and to name the features that actually bear on whether an agreement exists, which are whether competitors agreed among themselves to adopt or keep using the tool, whether they gave confidential information to a pool the tool draws its outputs from, whether those outputs are suggestions each user may accept or ignore rather than terms the user has promised to apply, and whether the vendor lets competing users see one another's data. A test built on those questions would reach the conduct the provision is meant to reach and leave the ordinary purchase of software alone, keeping the inquiry on the conduct and its effects rather than on the tool, which is the approach we urged in the algorithmic pricing consultation and the approach we take to artificial intelligence generally.[7][8]

An illustrative example would do more here than additional text, and we suggest one in which several competing firms independently license the same commercially available repricing product and reach similar prices, which is not an offence, contrasted with one in which the same firms agree at a trade meeting to adopt the product, to feed it their forward pricing plans, and to apply its recommendations without deviation, which is an offence.

2. Hub-and-spoke arrangements and the position of platforms

Paragraph 59 explains that a cartel may be organised through a vertically positioned entity, and it names a supplier, distributor, franchisor, or platform as possible facilitators.[9] We do not question the principle, which is well established, and a firm that knowingly organises price fixing among its customers should not be shielded by the fact that it sits at a different level of the supply chain. We also welcome the closing qualification that the vertical relationship does not shield a facilitator that plays an active role in enabling horizontal collusion, which states the right test. The difficulty is one of emphasis, because the active

---

[6] Proposed Guidelines, para. 20.
[7] ACT, Response to the Competition Bureau consultation on algorithmic pricing and competition (19 Jan. 2026), supra.
[8] ACT, Policy Principles for Artificial Intelligence (16 Nov. 2023), https://actonline.org/wp-content/uploads/2023-11-16-ACT-AI-Policy-Principles-FINAL.pdf.
[9] Proposed Guidelines, para. 59 and n.32.

role appears at the end of the paragraph while the sentence before it speaks of assisting competitors in reaching, monitoring, or enforcing an agreement, and a reader without counsel will take the wider description for the rule and ask whether a marketplace that publishes recommended prices or offers its sellers a repricing feature has assisted in monitoring.

Our members sit on both sides of this, many of them being the vertically positioned firms in question, because a small developer that sells pricing, scheduling, or inventory software to competing businesses is exactly the kind of participant paragraph 59 describes, and criminal exposure premised on what its customers independently do with the product would be fatal to a business of that size. Many others sell through marketplaces and depend on the pricing and merchandising tools those marketplaces provide.

The Guidelines already state that the Bureau generally examines vertical agreements under the civil provisions, and we ask that paragraph 59 carry that qualification through by confirming that a vertical participant comes within subsection 45(1) only where it knowingly participates in bringing about, monitoring, or enforcing a horizontal agreement, and that the supply of a service used independently by many competing customers, without such participation, is assessed under sections 79 and 90.1 if it is assessed at all.[10]

The discussion of parties to the offence needs the same limit, because it explains that a non-competitor may be prosecuted under subsection 45(1) through the aiding and abetting provisions in section 21 or the counselling provisions in section 22 of the Criminal Code, and gives the example of a wholesaler that facilitates price fixing among its retail clients.[11] That route is the more realistic exposure for a small software vendor, since it does not depend on the vendor competing with anyone. We ask the final Guidelines to confirm that party liability requires the same knowing participation, and that supplying a tool which customers configure and use on their own, without the vendor knowing of or assisting any agreement among them, is neither aiding nor counselling an offence.

Drawing that line clearly matters more than it once did, because a firm accused of facilitating coordination now faces private applications under section 90.1, for which leave has been available since June 2025, as well as the Bureau.[12] A vendor that cannot tell from the Guidelines which side of the line it sits on will price the uncertainty into products sold to small businesses, or withdraw the feature altogether.

[10] Competition Act, R.S.C. 1985, c. C-34, ss. 79 and 90.1.
[11] Proposed Guidelines, discussion of parties to the offence, referring to the aiding and abetting provisions in section 21 and the counselling provisions in section 22 of the Criminal Code, R.S.C. 1985, c. C-46.
[12] Competition Act, s. 103.1. Expanded private access to section 90.1 came into force in June 2025.

3. Most favoured nation clauses

Footnote 13 to paragraph 21 gives most favoured nation clauses in supply contracts as an example of a contractual term that can facilitate coordination.[13] Clauses of that kind are a standard feature of distribution, reseller, and content-supply agreements, and they are commonly agreed between a supplier and a single counterparty for reasons that have nothing to do with any competitor of either, including protecting a distributor that has invested in promoting a product against being undercut through a channel it has helped to build. Canadian law has not treated them as naked restraints, and the Bureau has to date examined them under the civil provisions.

Including them in a criminal guideline without qualification will be read by small firms as advice to strike them from contracts they are otherwise content with, and the firms least able to absorb that advice are the ones least able to obtain a second opinion on it. We ask the Bureau either to remove the reference or to state that a most favoured nation clause agreed vertically is reviewable conduct, that it does not by itself support an inference of horizontal agreement, and that it becomes relevant under subsection 45(1) only in the presence of independent evidence that competitors coordinated on its adoption or its terms.

4. Standards development, interoperability, and jointly developed technology

We welcome paragraph 65, which confirms that an agreement among competitors to implement a new industry standard is not itself a violation of paragraph 45(1)(a), and which notes that such an arrangement could in any event attract the ancillary restraints defence.[14] Small technology firms will benefit from being able to depend on this guidance because standards are what allow them to build a connected product at all via buying standardised modules off the shelf instead of developing every layer of the stack.[15]

Paragraph 65 would provide more useful guidance if it extended beyond the implementation of a standard to the activities surrounding standards development. Participation in a standards development organisation, agreement on technical specifications, commitments to interoperate, joint conformance and certification testing, and collaboration on open-source components all involve competitors agreeing on aspects of their products. But where the parties do not agree on the prices charged for products built using those standards or components, those activities are not price fixing agreements within the meaning of subsection 45(1). We ask that the final Guidelines say this and add an example confirming that an effect on cost or price does not, without more, convert such collaboration into price fixing.

Standards development organisations routinely ask participants that hold patents essential to a standard to commit to license them on fair, reasonable, and non-discriminatory

[13] Proposed Guidelines, para. 21 and n.13.
[14] Proposed Guidelines, para. 65.
[15] ACT, Feedback on the review of the Technology Transfer Block Exemption Regulation and accompanying guidelines (25 Apr. 2025), https://actonline.org/wp-content/uploads/04.25.25_TTBER-Guideline-Submission-ACT-_-The-App-Association.pdf.

(FRAND) terms, and some permit or encourage participants to disclose the maximum royalty rate they will seek before the standard is adopted. These practices can restrain the exercise of market power conferred by standardisation after implementers are locked in and are, in fact, procompetitive. We ask the Bureau to confirm that neither practice is treated as buyer-side price fixing. That clarification would align the Guidelines with the settled approach of other major competition authorities and would remove a real reason small firms hesitate to participate in standards work.[16]

FRAND licensing can include royalty-free terms (RF-FRAND), under which participants voluntarily commit to license patents essential to a standard without charging royalties. RF-FRAND policies can lower implementation costs, reduce the risk of standard-essential hold-up, and encourage broad adoption of interoperable standards, while expanding downstream opportunities for innovation and competition. Participation remains voluntary, since patent holders that prefer royalty-bearing licensing may support a standard with a different licensing model, opt out where the applicable policy permits, or keep their technology outside the standard. The Guidelines should therefore confirm that competitors' voluntary adoption of an RF-FRAND policy within a standards development organisation is not an anticompetitive agreement to fix prices under subsection 45(1).

5. Coordinated licensing and patent pools

The Guidelines should also address coordination risks in standards licensing. Patent holders that might otherwise compete in licensing sometimes set rates collectively for patents subject to voluntary FRAND commitments, decline to offer bilateral licences, reimburse litigation costs only when a licensee takes a pool licence, or coordinate enforcement against implementers. Those practices can undermine the procompetitive benefits ordinarily associated with patent pools and warrant scrutiny under the cartel provisions.[17] The effects fall hardest on small firms, which may accept excessive terms because they cannot realistically litigate against a collective licensor. The Bureau may find useful background in the core principles agreed at CEN and CENELEC in CWA 95000, which describe what a FRAND commitment requires of the patent holder that voluntarily gave it,[18] and in our own guide to how these licences are negotiated in practice.[19]

The Guidelines do not explain where that conduct sits. A licence fee is a price, and collective rate setting by patent holders that compete to license substitute technologies, or that have each committed to license the same standard on FRAND terms, may fall within paragraph 45(1)(a). At the same time, pooling genuinely complementary standard-essential patents lowers transaction costs and makes licences easier to obtain, particularly for small

[16] ACT, Comments to the New Zealand Commerce Commission on the draft Competition and Intellectual Property Guidelines (10 Feb. 2023), https://actonline.org/wp-content/uploads/ACT-Comments-re-NZ-Commerce-Commission-Competition-IP-Guidelines-10-Feb-2023-w-appendices-1.pdf.
[17] ACT, Feedback on the review of the Technology Transfer Block Exemption Regulation and accompanying guidelines (25 Apr. 2025), supra.
[18] CEN and CENELEC, CWA 95000:2019, Core Principles and Approaches for Licensing of Standard Essential Patents (June 2019), https://www.cencenelec.eu/media/CEN-CENELEC/CWAs/ICT/cwa95000.pdf.
[19] ACT, Decoding SEP Licensing: A Comprehensive Guide for the IoT and AI Revolutions (9 May 2024), https://actonline.org/2024/05/09/decoding-sep-licensing-a-comprehensive-guide-for-the-iot-and-ai-revolutions/.

implementers who do not have the resources to bilaterally negotiate with every patent owner. The Bureau should explain what separates those cases rather than require businesses to piece the answer together from the Intellectual Property Enforcement Guidelines.[20] Nothing we say here bears on ordinary commercial licensing outside standards setting, where no FRAND commitment has been given.

We suggest that the Guidelines identify the features that in practice distinguish a pool of standard-essential patents that lowers transaction costs from one that suppresses competition, the relevant considerations being whether the pool:

1. expressly assumes the FRAND commitments its members voluntarily made to standards bodies
2. remains willing to accept and be bound by an independent court's or agreed arbitrator's determination of a FRAND pool rate
3. includes complementary rather than substitute technologies
4. uses transparent essentiality review
5. publishes enough information to explain the basis for its rate
6. leaves members free to license bilaterally and gives licensees a meaningful practical alternative to a pool licence
7. avoids coordinating or funding litigation that members would otherwise pursue independently

A pool that collectively fixes rates for substitute technologies, or that coordinates enforcement to coerce a pool-wide licence, raises a materially different concern from a pool that simply makes complementary licences easier to obtain. The same is true of a pool that licenses patents already carrying FRAND commitments while declining to be bound by those commitments itself, or that offers its own rate in place of the bilateral licence each member promised to give, because the members are then using the pool to obtain together what each of them had given up the right to demand alone.

On the buying side of the same negotiation, small implementers facing a licensing demand may benefit from collective negotiation because a group can share the cost of technical and economic analysis that no one member could afford. A procompetitive negotiating group should be open to all implementers, limit information sharing to what is reasonably necessary to evaluate and negotiate the licence, prevent members from exchanging competitively sensitive information about their products or downstream pricing, and leave each member free to negotiate bilaterally and to accept or reject any terms the group obtains. Such a group can reduce information asymmetries and transaction costs without fixing the price any member must pay. We ask the Bureau to confirm that a group of that kind is examined under the civil provisions or, where a defence is needed, under subsection 45(4), and to add an illustrative example.

[20] Competition Bureau Canada, Intellectual Property Enforcement Guidelines, https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/intellectual-property-enforcement-guidelines.

6. Information sharing among competitors

Paragraph 22 advises competitors and employers to take care when sharing commercially sensitive information, including employment terms, in the course of collaborative activities, which is sound advice that the paragraph gives no way to act on.[21] A large firm can generate its own benchmarks from its own operations across regions and business lines, but a small technology firm cannot, and it learns what the market pays, what customers are charged, and how its costs compare from trade association surveys, published compensation data, and industry benchmarking studies. Told only to take care, it will either stop participating, which leaves it negotiating and hiring in the dark against better-informed counterparties, or continue without knowing whether it is at risk.

We ask the Bureau to describe a safe harbour with conditions of the kind other authorities have long used, covering exchanges in which the data is collected and aggregated by an independent third party, is aggregated to a degree that no individual participant's data can be identified or reverse-engineered, is historical rather than current or forward-looking, is made available to participants and non-participants on the same terms, and is not accompanied by any discussion of future prices, wages, or bidding intentions. Conditions of that sort are well settled, so stating them costs the Bureau no enforcement flexibility and gives small firms something they can apply. We ask that the safe harbour extend to surveys of compensation and other employment terms on the same conditions, and that the Guidelines say in the same place that nothing in it touches an agreement between employers to fix wages or not to solicit one another's employees, which subsection 45(1.1) prohibits and which our members neither practise nor defend, so that a small employer sees the permitted case and the prohibited one in a single passage.

7. The ancillary restraints defence

We support the treatment of the ancillary restraints defence in paragraphs 84 to 95, and in particular the confirmation that the challenged restraint need not be the least restrictive alternative available.[22] That confirmation matters, because the contrary rule would ask firms to litigate the design of their own collaborations after the fact.

The practical difficulty lies in paragraph 94, which requires parties who had significantly less restrictive alternatives available to show that those alternatives were inadequate or impractical.[23] A firm cannot plan against a standard whose content it will first see set out in a statement of claim, and the defence therefore does most of its work for parties who can afford to build a record at the time. Examples would close much of that gap, and we ask that the final Guidelines add them for standards development, joint research and development beyond the single case in Example 5, joint bidding and teaming by firms that cannot perform a contract alone, interoperability and data-sharing arrangements, and non-solicitation terms ancillary to a genuine collaboration or to the sale of a business, in each case showing what the Bureau would expect the parties to have considered and documented at the time.

[21] Proposed Guidelines, para. 22.
[22] Proposed Guidelines, paras. 84 to 95, and Competition Act, s. 45(4).
[23] Proposed Guidelines, paras. 92 to 94.

8. Foreign-directed conspiracies under section 46

Subsection 46(1) reaches a corporation carrying on business in Canada that implements a communication from a foreign person who is in a position to direct or influence the corporation's policies, and it applies whether or not any director or officer of the corporation in Canada had knowledge of the conspiracy.[24] The proposed Guidelines read the capacity to direct or influence broadly, well beyond formal control, and together these capture a Canadian subsidiary of a foreign developer that implements terms set abroad in complete ignorance of any agreement behind them. Cross-border structures of exactly that kind are ordinary for small technology firms, which commonly incorporate a small Canadian entity to hold a reseller relationship or to employ a handful of local staff.

We ask for a statement that the Bureau will consider both whether the individuals responsible knew of, or were wilfully blind to, the foreign agreement and how far the foreign person was in fact in a position to direct or influence the corporation's policies, and that it does not intend to pursue a corporation that implemented a direction without knowledge of the agreement giving rise to it.

9. Bid-rigging and the requirement that an arrangement be made known

The proposed Guidelines take a broad view of what constitutes a call for bids and describe a demanding standard for the defence that an arrangement was made known, requiring clear notice directly to the individual identified in the tender documents together with clarity about the agreement between the parties submitting jointly.[25] Joint bidding is how small firms reach public procurement, since a small technology firm cannot deliver an integration contract on its own but three of them together can, and the resulting bid adds a competitor to a field that would otherwise be limited to large incumbents.

Example 12 works through this situation, and we ask that its result be stated in the operative text rather than left to an illustration, because a notice standard that turns on which official received the disclosure converts an administrative slip into criminal exposure and sits uneasily with case law suggesting that less formal notice can be enough. We ask the Bureau to confirm that disclosure of the joint arrangement in the bid documents themselves, or to the contracting authority at or before the time of submission, satisfies the requirement, and that a good-faith disclosure directed to the tendering authority will not be treated as inadequate because it reached a different official within that authority.

10. Practical compliance support for small firms

The Immunity and Leniency Programs described in the proposed Guidelines assume a firm that has detected its own exposure and has counsel able to approach the Bureau. Neither assumption holds for most of our members, and a small firm is much more likely to need help seeing that a proposed collaboration raises a question at all. We therefore ask the Bureau to publish, alongside the final Guidelines, a short plain-language companion for

[24] Competition Act, s. 46(1).
[25] Competition Act, s. 47(1).

small business built around the situations these firms actually encounter, including joint bidding, trade association participation, benchmarking, standards work, hiring from competitors, and the use of shared software.

A binding advisory route already exists in the written opinion under section 124.1, and it is the right mechanism, but the fee of $15,000 before tax for an opinion on sections 45 to 49 places it out of reach of the firms most likely to need one, while the $50 rate the Bureau applies to charitable organisations shows that a different rate for a different applicant is workable.[26] We ask the Bureau to establish a small-business rate for written opinions on the cartel provisions, keeping the existing service standards of six weeks for a non-complex request and ten weeks for a complex one. Guidance obtained before a collaboration begins prevents far more harm than enforcement after it, and for firms of this size the availability of that guidance often decides whether the collaboration happens at all.

[26] Competition Bureau Canada, Fee and Service Standards Handbook for Written Opinions, https://competition-bureau.canada.ca/en/competition-bureau-fee-and-service-standards-handbook-written-opinions (a fee of $15,000 before tax for a written opinion on sections 45 to 49, 79 or 90.1, service standards of six weeks for a non-complex request and ten weeks for a complex one, and a rate of $50 for charitable organisations).

IV. Conclusion

ACT supports the Bureau's decision to bring its cartel enforcement approach into a single document. The changes we have asked for go to precision rather than scope, and they share one object, which is to ensure that the Guidelines describe agreements rather than the ordinary circumstances in which competitors happen to buy the same software, sell through the same marketplace, agree on the same technical standard, or read the same industry survey. Small technology firms will comply with whatever the final document says, and the cost of a sentence that reaches too far falls on them first.

We would welcome the opportunity to discuss these comments with the Bureau, and we would be glad to make members available to describe how collaboration, standards participation, and joint bidding work in practice for firms of this size.

Sincerely,

Brian Scarpelli
Senior Global Policy Counsel

Chapin Gregor
Senior Policy Counsel

Amanda Guilardi
IP Policy Counsel

Association for Competitive Technology
1401 K St NW, Suite 501
Washington, DC 20005