February 11, 2026

Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec
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RE: Comments of ACT | The App Association on the Competition Bureau's Proposed Merger Enforcement Guidelines

I. Introduction and Statement of Interest

ACT | The App Association (ACT) appreciates the opportunity to provide comments on the Competition Bureau's proposed merger enforcement guidelines.[1]

ACT is a trade association representing small business software application developers and connected device companies, located both within Canada and around the globe. Our members drive a global app economy worth more than CAD $8 trillion.[2] Innovators' and entrepreneurs' ability to raise capital, scale, and compete depends on predictable, evidence-based merger enforcement.

ACT supports effective competition enforcement grounded in rigorous economic analysis and aimed at protecting consumers. At the same time, we are concerned that several aspects of the proposed guidelines risk moving merger review away from an effects-based framework toward one that relies too heavily on structural presumptions, bright-line thresholds, and speculative theories of harm. This shift would introduce uncertainty into merger review and disproportionately harm startups and small businesses, for whom acquisitions are a primary pathway to success.

II. Acquisitions Are a Core Success Pathway for Startups and Small Businesses

Success for a startup or small business can take a variety of forms, including organic growth, partnerships, public offerings, or acquisition by a larger firm. For many technology startups, acquisition is not only a legitimate outcome, but often the most realistic and pro-consumer one. Initial public offerings are costly, risky, and inaccessible to most small firms, while acquisition allows innovative products and services to reach

[1] Proposed Merger Enforcement Guidelines, available at https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/proposed-merger-enforcement-guidelines.
[2] See About-the-App-Economy-2023_162023.pdf

scale more quickly by combining them with complementary resources, technical expertise, and distribution networks.[3]

Many entrepreneurs start companies with the understanding that once they have brought an idea to fruition, their business may be acquired, allowing them to redeploy capital, talent, and experience into new ventures. The broader economy benefits from this cycle of entry, innovation, acquisition, and reinvestment. Merger policy that undermines this pathway risks reducing startup formation, deterring early-stage investment, and weakening long-run competition.

Merger enforcement guidance should therefore be especially careful not to discourage pro-competitive transactions that enable small firms to succeed, particularly where those transactions do not plausibly threaten competitive harm.

III. Economic Analysis Must Remain Central to Merger Review

ACT has consistently emphasized that rigorous economic analysis must remain central to merger review. As the proposed guidelines correctly acknowledge, market definition and concentration measures are tools to assess competitive effects,[4] not ends in themselves.

Market structure alone cannot substitute for analysis of actual competitive constraints, including entry conditions, customer switching, multi-homing, innovation, and the durability of any claimed market power. Structural indicators may serve as initial screens, but they are not reliable predictors of competitive harm across industries or market conditions.

Several provisions of the proposed guidelines, however, risk elevating structural indicators from screening tools into *de facto* conclusions. Without clearer limiting principles, this approach risks replacing effects-based analysis with presumptions, reducing predictability for businesses and increasing the likelihood of false positives.

IV. Structural Presumptions and Bright-Line Thresholds Risk Overreach

ACT is particularly concerned by the proposed guidelines' reliance on relatively low structural thresholds and presumptions of competitive harm.[5]

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[3] See Will Rinehart, "Welcome to the Kill Zone? A closer look at merger and start-up data suggests it's a cultivation zone," THE BENCHMARK (Feb. 27, 2020), available at https://medium.com/cgobenchmark/welcome-to-the-kill-zone-852339601fbb ("For startups, going public isn't a sure path to success. Companies typically sign away 4 to 7 percent of their gross proceeds to an investment bank to sell shares of the stock. They also tend to incur an additional $4.2 million in costs to go through the process of getting listed. On top of this, a company will have to fork over another $1 to $2 million for federal compliance every year. Most IPOs perform worse than the overall market.").

[4] Proposed Guidelines, §4.1.

[5] Proposed Guidelines, §4.2.2.1.

Market share does not equal market power. Concentration often reflects competitive success, such as lower costs, superior products, or faster innovation, rather than anticompetitive conduct. Treating mergers as inherently suspect based on market share or concentration alone is analytically unsound and inconsistent with modern economic understanding.

The proposed guidelines' emphasis on a 30 percent combined market share threshold and relatively low concentration triggers risks sweeping in a wide range of transactions that pose no realistic threat to competition. The proposed guidelines also do not clearly specify what types of evidence are sufficient to rebut a structural presumption, or how rebuttal operates on a balance-of-probabilities standard.

Absent such clarity, structural presumptions risk becoming outcome-determinative rather than investigatory, undermining predictability and chilling pro-competitive transactions.

Structural presumptions should function as preliminary screens that prompt closer inquiry, not as near-determinative findings of harm. Below key thresholds, enforcement should be exceptional and grounded in concrete evidence of likely competitive harm, rather than inferred from structure alone.

V. Vertical Mergers Should Not Be Treated as Inherently Harmful

ACT is concerned that the proposed guidelines risk treating vertical mergers with undue suspicion.[6] Vertical transactions do not eliminate a direct competitor and frequently generate efficiencies that benefit consumers, including improved coordination, lower costs, and faster innovation.

Applying horizontal-style structural presumptions to vertical mergers is particularly problematic. A firm's share at one level of a supply chain does not imply the same competitive risks as a comparable share among direct competitors. Foreclosure theories require careful analysis of ability, incentive, and likely competitive harm, not assumptions based on structure alone.

The proposed guidelines also appear to discount predictable economic benefits of vertical integration. The elimination of double marginalization, for example, is a well-understood consequence of vertical integration where firms at successive levels exercise pricing power. Treating this effect as speculative or subject to unusually demanding proof risks overstating harm and understating benefits.[7]

Vertical integration should be assessed based on evidence of likely consumer harm, not presumed anti-competitiveness.

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[6] Proposed Guidelines, §4.4.2.

[7] *See, e.g.* Proposed Guidelines, nn.106, 128.

VI. Efficiencies Remain Relevant After the Repeal of Defense

While Parliament repealed the formal efficiencies defense,[8] it did not eliminate the economic relevance of efficiencies to competitive outcomes. Cost reductions, innovation gains, and improved speed to market directly affect pricing, output, and consumer welfare and remain relevant factors under the Competition Act.[9]

The proposed guidelines state that efficiencies are unlikely to affect conclusions where a merger raises significant concerns.[10] This framing risks marginalizing efficiencies in practice and increasing false positives. Efficiencies should be integrated into the competitive-effects analysis, not treated as peripheral or exceptional.

In technology markets in particular, dynamic efficiencies, including innovation, quality improvements, and faster commercialization, are often the primary sources of consumer benefit. A merger that accelerates innovation or enables complementary assets to be combined may intensify competition over time, even if it increases concentration in the short run.

Where efficiencies are merger-specific and substantiated, they should be capable of rebutting structural concerns.

VII. Disproportionate Harms to Small and Medium-Sized Enterprises

Small and medium-sized enterprises (SME) are uniquely vulnerable to uncertainty in merger enforcement. Unlike large firms, SMEs lack the resources to navigate prolonged or unpredictable review processes. For startups, delayed or discouraged acquisitions can mean foregone investment, stalled growth, or failure.

Reduced acquisition prospects also have broader systemic effects. When exits become less viable, early-stage investment declines, startup formation slows, and innovation suffers. Over time, this dynamic can reduce competition rather than enhance it.

Merger guidelines should explicitly account for these SME-specific dynamics and avoid approaches that unintentionally undermine the competitive ecosystem they seek to protect.

VIII. Conclusion

ACT supports merger enforcement that protects competition and consumers through rigorous, evidence-based analysis. To achieve that goal, the final Merger Enforcement Guidelines should:

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[8] Norton Rose Fulbright, *Three years and three sets of amendments later: The state of Canada's Competition Act* (2024), https://www.nortonrosefulbright.com/en/knowledge/publications/6ab48b44/three-years-and-three-sets-of-amendments-later-the-state-of-canadas-competition-act.
[9] *See* Competition Act, R.S.C. 1985, c. C-34, s. 93(g), (g.3), (h).
[10] *See* Proposed Guidelines, n.288.

- reaffirm the central role of economic analysis;
- treat structural presumptions as preliminary screens, not conclusions;
- avoid treating mergers, especially vertical mergers, as inherently harmful;
- integrate efficiencies meaningfully into competitive-effects analysis; and
- account for the real-world impacts of uncertainty on startups and small businesses.

Clear, predictable, and industry-agnostic guidance will better serve competition, innovation, and consumers alike. ACT appreciates the opportunity to provide these comments and looks forward to continued engagement with the Competition Bureau.

Sincerely,

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