

**Submission
to the Competition Bureau
by the Canadian Marketing Association
on Artificial Intelligence and Competition**

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Introduction

The Canadian Marketing Association (CMA) is the voice of the marketing profession, representing corporate, not-for-profit, public, and post-secondary organizations across Canada. We help marketers and their organizations maintain high standards of conduct and transparency through our Canadian Marketing Code of Ethics and Standards, our extensive resources on privacy law and best practice, and our training and professional development programs, including the Chartered Marketer (CM) professional designation. Our Consumer Centre helps Canadians understand their privacy rights and obligations, and we respond to marketing-related inquiries from consumers and organization.

We appreciate the opportunity presented by the Competition Bureau of Canada to provide comments on how artificial intelligence (AI) might affect competition.

As the Competition Bureau acknowledges in its discussion paper, AI technologies offer significant benefits. AI can foster a competitive environment by democratizing innovation, allowing businesses of all sizes to tap into advanced analytics and predictive modeling, thus enhancing decision-making and operational efficiency.

There is a growing need for innovation, globally and domestically, and Canadian organizations, including SMEs, need to be able to compete effectively in this environment. By leveraging AI, organizations of all sizes can optimize supply chains, personalize consumers' experiences, and create innovative products and services, elevating their ability to compete. Furthermore, AI can drive market intelligence, ensuring businesses remain agile and responsive to rapidly changing market dynamics, thereby contributing to a robust and dynamic Canadian economy.

We support the Bureau's commitment to a pro-competitive Canadian marketplace, and its reliance on market forces to achieve the benefits of competition. We agree with the Bureau's conclusion that for a strong and competitive marketplace, any framework must encourage innovation and competition. Avoiding unnecessary regulation is also critical to fostering healthy competition domestically and globally. New technologies also present challenges that require a measured approach that includes elements of regulation, self-regulation and guidance.

Consumer preferences

Modern economies are predicated on the exchange of personal information. Consumers are demanding much greater speed and quality of information so that they can identify, and access services provided by companies and make informed purchase decisions. According to research by McKinsey, a substantial 71% of consumers anticipate personalized interactions from companies. Three-quarters of them express frustration when they don't receive this level of personalized attention.

The responsible use of data to personalize experiences is key to providing value and cost-savings to consumers and to delivering on their increasingly sophisticated expectations in a fast-paced world. AI can assist organizations in addressing the concerns of more than 80% of Canadians about rising everyday costs by providing them with discounts and offers on products and services that are relevant to them, saving them time and money. Surveys show that 90% of consumers who share their data with companies do so in order to receive discounts on products. Indeed, more than half of Canadians believe that with all the technology available today, it is unacceptable for a business/organization to send them ads that are not relevant to them. More than 80% of consumers are bothered when an organization sends them irrelevant information.

With the help of AI, organizations can provide more relevant and personalized information that caters to consumers' needs and interests. AI will improve the ability of organizations of all types (private, public and not-for-profit) to meet these consumer expectations. It is in the interest of organizations to use AI in a responsible manner that builds consumer trust by following ethical practices in the use of AI.

Principles-based framework

We agree that AI policies should be technology-neutral device-agnostic and principles-based. Three key principles at the core of a meaningful AI framework would be:

- **Transparency:** Organizations should inform consumers when AI has been used in ways that are not obvious. In a marketing context, this could apply to content generation, recommendations, and other consumer-facing applications. Labelling is one way to achieve this.
- **Consent where a reasonable person would not expect AI to be used, and where there is a reasonable risk of harm:** Organizations can use AI technologies to enhance business operations, in a multitude of ways, such as optimizing local store inventory and generating recommendations to customers based on previous purchases. These activities serve consumers and contribute to a robust competitive environment. In circumstances where there is no significant risk to the consumer, and the use of previous decisions are evident (e.g., when an app recommends movies based on what the consumer previously watched), it would not be necessary or helpful to consumers to seek their consent. However, when the use of AI would not be reasonably expected or could potentially cause real harm, the consumer's consent should be obtained. This would maintain a high standard of consumer protection while supporting a thriving, competitive marketplace that leverages AI responsibly.
- **Fairness and non-discrimination:** It is in the interests of both consumers and organizations to minimize and mitigate discriminatory outcomes, while not hampering the ability of businesses to direct their products and services to relevant audiences. For example, it is reasonable to use algorithms to ensure that messages about products or government programs designed to assist people with special needs reach members of those communities. It would similarly be reasonable to extend preferred offers on vacation packages to individuals who are likely to travel. However, it would not be reasonable to systemically exclude people from a particular ethnic group to offers.

Guardrails for sharing proprietary data in AI systems

It will be important for organizations to have strong data governance and privacy frameworks to manage the collection, use, and sharing of proprietary data within AI systems. These frameworks should embody the principles of transparency, consent, and minimal data use, ensuring data serves its intended purpose without violating privacy norms or competitive boundaries.

Impact of AI on deceptive marketing practices

The advent of AI has greatly improved the capacity of organizations to serve consumers by meeting their needs and expectations for relevant information and offers in a manner that is efficient and responsible.

The rise of AI has advanced the capabilities of legitimate marketing practices, but it has also enhanced the ability of bad actors to engage in fraudulent activities. Unfortunately, the relatively small number of companies that do not adhere to ethical practices can misuse AI to engage in deceptive or misleading activities, such as deep fake videos and audio content, and tailored phishing campaigns that mimic brand voices or impersonate trusted figures. The Competition Act already prohibits these unethical practices, whether AI is involved or not. It is important for the Bureau to investigate and enforce the provisions that already exist.

Transparency around the use of AI, described above, will also help mitigate deceptive marketing practices. Transparency guidelines should indicate when AI-generated content must be clearly disclosed, focusing on finding the balance between not unnecessarily inundating consumers with disclaimers while providing them with meaningful information so that they can understand what they are seeing or hearing. Maintaining consumer trust is paramount for organizations. These initiatives, coupled with appropriate enforcement, would effectively protect consumers.

Algorithmic pricing

Algorithmic pricing has been widely used for several years in many industries to enable price updates, and to address supply and demand issues. These traditional systems, which are generally rule-based systems, are not AI. Economists generally agree that algorithms that adjust prices based on demand conditions and costs can increase market efficiency. Responsive pricing often leads to better and more relevant offers for consumers, especially when demand is low and when there is a high level of competition in an open market. In markets where there is a lack of competition, there is potential for algorithms to drive inefficiencies and opportunistic behaviour.

Machine learning and generative AI models that rely on unstructured datasets can also offer these benefits, but they are more likely than traditional algorithms to create some disadvantages for consumers if data governance and responsible AI considerations in application are not managed actively. The goal for businesses and regulators is to harness the efficiency gains of algorithmic pricing while mitigating the risks of reduced competition and higher prices.

Application of the Bureau's competition policy assessment toolkit to AI markets

We are generally aligned with the Bureau's application of the indicators in its Competition Policy Assessment Toolkit to assessing the impact of AI. We urge care in determining how to ensure start-ups and SMEs can benefit from AI, while recognizing the investments made by established organizations in the development of extensive datasets. A balanced perspective is crucial to ensure that organizations remain competitive not only domestically but also globally.

Conclusion

The CMA would welcome the opportunity to work with the Competition Bureau to further define and articulate the basis for regulation and self-regulation in the application of AI to competition policy. We would also welcome the opportunity to collaborate on educational tools for consumers and marketers, including the development of case studies where AI applications have augmented consumer experiences and business performance without compromising ethical considerations or overstepping competitive fairness. The CMA is a longstanding leader in educating marketers through its courses, resources, training and our flagship, Chartered Marketer program, all designed to ensure that marketers at all levels are equipped to operate effectively while adhering to laws, regulations and best practices.

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