

# COMPETITION, COMPETITIVENESS AND CONVERGENCE

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Trade and Competition Policy in an  
Integrated Global Economy

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# Competition, Competitiveness and Convergence

## TRADE AND COMPETITION POLICY IN AN INTEGRATED GLOBAL ECONOMY

### INTRODUCTION

I'm honoured to be here today to discuss trade and competition policy. The topic is of interest not just because I spent most of my career in trade law and am now working at the Competition Bureau. Rather, I will try to show that in the context of what we now routinely and almost unthinkingly refer to as “global markets”, the two disciplines are inseparable.

### A BETTER MOUSETRAP

Some years ago, I stumbled across a product that nicely illustrates many of the points I wish to make here today. In fact, I talked about this product in an earlier speech at the International Bar Association – it really captured my imagination. I encourage you to check its website and the company's entire product line. Well, its only product.

The manufacturer, based in Liechtenstein, is called Mousetraps International Inc.

The company has come up with a brand new, and highly technologically advanced – that is, *better* – mousetrap. Made of Titanium alloy and employing stealth technology, it features a Wi-Fi-and-Bluetooth enabled computer chip with advanced features: it can, for example, tell the difference between a mouse, a pet hamster, and a curious child's finger; it searches the web for the best deals on mousetrap-cheese when it needs to be restocked; it sends a text to the humane society when it finds its mark, and so on.

Of course, designing such a technologically advanced mousetrap – as an aside, the hamster face recognition algorithm required two million lines of programming code – requires a considerable amount of money for research and development, building a factory, marketing, experts, regulatory compliance, and so on.

Now Lichtenstein might well have a lot of tax-savvy rats, but it simply doesn't have enough mice – and so not enough mousetrap *consumers* – to make all this investment worth the while. And if that were the whole story, the better mousetrap would never be built.

But.

As it happens, Mousetrap International knows that it can go across the border and sell its product throughout Europe. Markets, investments, profits, offshoring, and tax havens for the owners are just a simple cross-border market away. All well and good so long as Mousetrap International has free access to European markets.

However, there may be many trade barriers to block access. Some of them will be readily visible, including:

- import restrictions;
- high tariffs; or
- direct subsidies for domestic mousetrap companies.

Other barriers may be more subtle, such as:

- excessively strict standards concerning mousetrap construction;
- government procurement contracts that favour the use of local pest control products; and
- domestic tax policies that favour local firms.

There is, of course, a web of trade agreements to protect Liechtenstein and Mousetraps International from the competitive impact of these sorts of measures. And the more access to Europe and other international markets that Mousetrap International enjoys, the more incentives it has to keep developing and marketing its better mousetrap.

Here is a fun fact.

All this is not just about Mousetraps International.

After all, a better mousetrap is not just about catching more mice; it puts competitive pressure on *other* mousetrap manufacturers. Either they have to come up with a better product or lower their prices. The drive for a better product drives innovation; lowering prices opens the market to new consumers; now every potential mouse host will have a mousetrap.

Either way, the consumer wins. *Cavete muribus*. (That's "mice beware" in legalese.)

The same holds true for other products, from software to pharmaceuticals to household goods. As barriers to trade fall and firms gain more access to export markets on more “rational” terms, the entire global market becomes one market – with all the associated benefits of competition on a global scale.

## TRADE LIBERALIZATION AND COMPETITION POLICY MUTUALLY REINFORCE EACH OTHER

International trade, then, is an indispensable part of promoting and fostering healthy competitive markets. When trade barriers are lifted, firms can compete in previously inaccessible markets and, as a result, consumers have a wider choice of products and services to choose from. This in turn forces businesses to develop ever more attractive product offerings and prices, for fear of losing their customers to a more efficient overseas competitor.

This increase in competition offers many benefits for consumers, including better products, greater choice and convenience, and lower prices. But it also works to the advantage of *businesses*.

Hear me out on this one, because it’s not evident. This is truly a case of “it tastes awful, but it’s good for you.”

Yes, businesses facing competition may well suffer market loss and pressures on profits. But this can also motivate them to lower costs, to innovate, to look for other markets. And better and cheaper products are not just competitive in the domestic market; they set the business up for improved performance on sales in the other markets that they are forced to explore. Being *domestically* competitive helps producers remain competitive in *global markets*.

Now, I told you about Mousetraps International and plucky entry into the European market. Let me tell you about the other end of the market: the Duke of Newcastle Small Rodent Entrapment Devices Limited. Purveyors of mousetraps to royal households in a dozen European countries, it has a distinguished history in Europe. The Duke’s mousetraps have been doing honorable work since the Magna Carta; its distribution network dominates the European market; in fact, all across Europe, you don’t trap a mouse, you “duke” it.

So here’s innovative and enterprising little Mousetrap International, trying to introduce its titanium alloy stealth mousetrap into the European market. What are the likely responses

from established businesses? Is the Duke going to say, “that’s that then, let’s change our way after exactly a thousand years?” Will it innovate? Will it reduce prices?

Or is it more likely to raise concerns about health and safety standards, exploitation of workers in Liechtenstein, copyright and patent violations, “tradition”, animal cruelty, tax evasion, offshoring, Liechtenstein’s environmental protection regime, proper labelling requirements, process and production methods, and a dozen other complaints to keep Mousetraps International out of the European market?

**We’ve seen this movie before.**

**It ends in a WTO dispute.**

**And here’s a hint about the outcome: the lawyers make a killing.**

I talked about the Duke’s dominant position in Europe, but did not press it further, because after all there is a robust competition regime – at both the European and national levels – that takes care of many of the potential trade-related abuses that could arise out of this scenario.

Let’s take another market, one *without* a fully functioning competition regime.

Then let’s look at alternative endings, one that would not necessarily land in the WTO or a trade dispute:

- the Duke controls all or almost all mousetrap distribution channels;
- the Duke controls all or almost all mousetrap retail outlets;
- the Duke controls all or almost all advertising;
- the Duke belongs to OMEC, the Organization of Mousetrap Exporting Companies, that limits production and sets prices for mousetraps;
- any retail outlet dealing with Mousetraps International is cut off from the Duke and its partners;
- the Duke offers mousetraps for free to any family suspected of having an affinity for titanium; and
- So on ...

Right.

Access to a new market is not enough. You need to make sure you get a fair crack at it once you get there. And right there you can see the deep interconnection between trade and competition policy. You can remove trade barriers all you want; without an effective competition regime, anti-competitive practices can and do keep Mousetraps International out of key markets and eventually drive it out of business.

So it is for Canadian firms that aim to compete in foreign markets or for Canadian consumers to benefit from liberalized trade. Practices such as cartels, exclusive contracts to tie up suppliers or customers, or a host of other anti-competitive conduct present real obstacles to realizing the benefits of free trade for Canada and Canadian businesses and investors.

For the impressive web of trade liberalising instruments to which Canada is party to function well and to deliver promised results for Canadians, you need a robust and effective competition regime in our partner countries.

Let me be clear.

It is not just a good thing to have; not just a desirable outcome.

**A functioning competition regime is essential to ensuring and maintaining the integrity of our trading relations.**

How do we get there? This is where things get a bit complicated and, for a nerd like me, more interesting. There is no simple, single answer; there are, however, effective, tried and true answers, and this is what I will turn to in the rest of my presentation today.

## MEANINGFUL TRADE LIBERALISATION THROUGH EFFECTIVE COMPETITION POLICY

There are essentially three:

- Agreement
- Cooperation
- Convergence

## **Agreement**

Here is another fun fact.

Canada has had a competition regime in place since 1889. In fact, we were among the first jurisdictions in the world to put such a regime in place. But it took a hundred years for us to link competition and trade in a meaningful way. It's a modest effort – but it's a beginning. And it's essentially an anticircumvention measure: After all this negotiating, we want to preserve the gains and so we ask that you put in place a competition regime.

## **Cooperation**

As it happens, our oldest and strongest trading partners already have robust competition regimes in place. In the context of these mature trade and economic relations, cooperation between competition agencies serves a critical protective role. It is one of the key ways we maintain the integrity of the Canadian marketplace against foreign cartels and practices. To help us better work with our international colleagues, the Bureau develops and signs cooperation agreements and memoranda of understanding (or “MOUs”) with partner agencies. These instruments serve two functions:

1. they recognise the importance of cooperation when dealing with cross-border matters of shared interest; and
2. they act as mechanisms for greater communication on topics of mutual interest, including each agency's best practices and experiences in competition law and policy. Some also provide for mutual training and staff exchanges.

## **Convergence**

Now, what I have talked about so far – trade agreements and cooperative relations with enforcement agencies – describes just a little over a handful of markets.

It's a big world out there. Canadian businesses are busy selling their goods and services. Key multilateral trade instruments such as the WTO Agreement help maintain a base line of predictability and market security for these firms. But we know that that is not enough. This is where our strong network of fellow competition practitioners and enforcement agencies comes into the picture.

And I am not just talking about specialised networks such as the International Competition Network. There is also the OECD; the UNCTAD; the World Bank; and other trade, economic and development organizations. Cut through the jargon and the alphabet soup, and when it comes to competition issues, you see a single objective: preserving the

integrity of the global marketplace. And when it comes to the Competition Bureau, that objective is more distilled and concrete still: protecting the gains of liberalised trade and the interests of Canadian businesses and exporters through effective competition enforcement.

We do this not by hectoring or cajoling or sanctioning or sending in the Fifth Fleet. Rather, in the most classically Canadian way possible, by example, through training and suasion. We call this *convergence*.

Soft convergence.

Instead of asking countries to adopt our laws – a hard sell at the best of times – under soft convergence, we set out what we believe are the underlying principles of good competition law. We then ask our trade partners to consider these best practices as models in structuring their own regimes. We participate in workshops, in training sessions, in bilateral and multilateral meetings and in exchange programs. We share information about matter of mutual interest; we exchange working documents; we participate in developing recommended practices in international competition organizations.

Soft convergence allows us to promote tried and true underlying principles and our best practices to our partners, so that they can build better competition frameworks. This, in turn will assist Canadian businesses as they compete in the global markets.

### **Trade and competition can be strengthened by convergence**

It's clear that we do not pursue convergence for the sake of convergence.

Mousetraps International has a great product. But as we discussed, its distribution in other countries can be severely hampered by anti-competitive practices in foreign countries. By helping these countries build an effective competition regime, the Bureau plays a big role in helping the Canadian equivalents of Mousetraps International gain access to the international markets they need. The Bureau's international activities are aimed at advancing Canadian interests abroad. While competition is a good thing, and we are glad to see more of it, it is not our role to be the world's competition police. Rather, our goal is to promote a more open, pro-competitive global marketplace for Canadians, from businesses looking to export, to consumers looking for alternatives abroad.

Effective competition law can be enabled by convergence towards harmonized competition laws and policies.

- If similar principles underpin each country's competition policy, then countries can plan their business structures and practices in a way that conforms to both jurisdictions.
  - For instance, harmonized approaches and timelines for merger review allow firms to smoothly plan and file their required information with every relevant jurisdiction in a timely manner.
  - Likewise, a common approach to cartels and competitor collaborations helps firms build effective alliances and joint ventures that are effective across international borders, to the potential benefit of consumers and business alike.
- Convergence of competition approaches and principles also helps domestic agencies like the Competition Bureau collaborate with our international counterparts on cases that touch multiple nations' markets. As competition agencies gain common understandings of anti-competitive conduct such as cartels, predatory pricing, bundling and other practices, it becomes more useful to share information, analysis, and enforcement approaches.
- The Bureau puts considerable effort into reaching out to our international partners to build relationships and harmonize our approaches. Most recently, the Bureau signed an MOU with China's State Administration for Industry and Commerce and the Ministry of Commerce of the People's Republic of China. We have similar cooperation instruments with 12 other countries, including the European Union, India, Japan, and the United States.
- We are also active participants in international fora, such as the OECD Competition Committee and the International Competition Network. This in turn allows us to develop more effective approaches to competition policy and enforcement, facilitating the competitive level playing field that is required to truly give effect to Canada's myriad trade agreements. To do this, we use training, cooperation with other agencies including information exchange, staff exchanges, and soft convergence.
  - We frequently meet bilaterally with our counterparts from other jurisdictions, and maintain lines of communication. This allows the Bureau to expand its reach and ensure smooth enforcement of competition principles in international cases.
  - Guidance documents and best practices developed by international organizations such as the OECD and the International Competition Network can be valuable resources for trading partners. The Bureau works with these

groups to ensure that the Canadian perspective is accurately reflected, and to help developing nations build the competition frameworks that will ultimately benefit international trade, including trade with Canada.

## CONCLUSION

I hope this discussion has shed some light on how we see trade and competition policy working together, and how convergence across nations can help them further reinforce each other.

1. Without access to global markets, the innovations and investments that lead to better products, more choices, and lower costs wither on the vine. All these benefits ripen under the sun of international trade.
2. At the same time, a robust competition regime is essential to making sure that trade agreements work as intended, and are not foiled by anti-competitive acts designed to keep out rival imports.
3. Convergence plays a strong role in ensuring both that effective trade agreements can be successfully negotiated, and that competition policy across nations is solid, consistent, and enforceable.

As we continue to pursue trade and competition policies that work for Canadians, we will rely on the wisdom and insight of business leaders and foreign policy experts like yourselves. We invite you to bring your suggestions and concerns to the Bureau's attention, and look forward to working collaboratively in order to build a better, more open Canadian economy.

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<sup>i</sup> This paper incorporates elements of speech Mr. Behboodi delivered in his capacity as Deputy Commissioner - Competition Promotion, Competition Bureau of Canada. Mr. Behboodi thanks the Bureau for input into the draft and for permission to reproduce parts of the speeches in this paper.

**Rambod Behboodi** has over twenty-five years of experience as a trade diplomat, negotiator, and litigator under both the WTO and NAFTA. In postings to Brussels and Geneva as a Canadian diplomat he gained particular insight into multilateral and bilateral trade diplomacy as well as key issues shaping global trading relations (IP, non-tariff barriers, institutional reform, trade and environment, and regulatory cooperation). As General Counsel at Canada's Finance Ministry, he participated in and advised on CETA negotiations. At the Competition Bureau, he established the Competition Promotion Branch and led the Branch's efforts in international cooperation agreements and economic advocacy. He served as Counsellor at the WTO and as international trade Partner at the global firm of King & Spalding before launching GenevaTradeLaw.com. He has taught international trade law in universities in Canada and Europe, and in the past five years has been deeply involved in training and capacity-building, and writing on trade, competition law, and climate change.