



# "Data-opolies" and More: House Committee Makes New Policy Recommendations

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"Big data" has been a "big deal" in competition and antitrust policy in recent years. Canada's Competition Bureau has held [consultations](#) and released a number of [publications](#) on the topic in the past two years, while the UK's Competition and Markets Authority created a new ["DaTA" unit](#) in 2018, and the European Commission recently hosted a conference on ["Shaping competition policy in the era of digitization"](#) on January 17, 2019. In Canada's most recent look at the issue, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the "Committee") released a report with several recommendations for legislators aimed at addressing emerging issues related to big data and social media platforms.

Among other things, the Committee's December 2018 report recommends that the government study the potential economic harms posed by data monopolies, and that it provide either an existing or new regulatory body with the mandate of studying and auditing algorithms. The Committee's report also includes recommendations related to privacy concerns, elections, political financing and advertising.

## The Report

The Committee launched its study in March 2018 in response to the Cambridge Analytica/Facebook data breach. In the course of its study, the Committee found the breach raised much broader concerns related to privacy, competition and cybersecurity policy. As a result, the Committee considered a range of topics related to social media platforms, including algorithms, political advertising, "data-opolies", and cybersecurity.

The Committee's final report, titled ["Democracy under Threat: Risks and Solutions in the Era of Disinformation and Data Monopoly"](#), was presented to the House of Commons on December 13, 2018, concluding its study and following its interim report released in June 2018.

## "Data-opolies"

### Stakeholders' views

The Committee heard from several stakeholders and experts on the ability of competition law to address the potential harms posed by "data-opolies", the expression used by the Committee to describe the concentration of a significant volume and variety of data among a few technology giants.

The Committee considered a speech by Carolyn A. Wilkins, Senior Deputy Governor of the Bank of Canada, on the issue of “superstar” tech firms, in which she argued that data-opolies’ access to and control of user data could make some firms virtually unassailable. She contended that data-opolies are able to drive out competition by combining their scale with innovative use of data, at a lower price (and sometimes, for free), which Ms. Wilkins argued results in less competitive environments with reduced innovation, and allows the firms to return to monopoly pricing in the long term. Ms. Wilkins recommended prioritizing “the modernization of anti-trust and competition policy, as well as the relevant legal frameworks.” A Bank of Canada representative before the Committee, echoing Ms. Wilkins’ call to modernize competition policy, also highlighted the “formidable barrier to entry” that access to a large network of data can pose in some cases.

## The Bureau’s views

Canada’s Competition Bureau (“Bureau”) has maintained a more measured approach to competition and large tech firms. In a February [2018 Report](#), it underscored that while the emergence of large firms with vast amounts of data can raise new challenges in competition law enforcement, enforcers should not condemn firms merely because they are big. The Bureau has emphasized that becoming big is the reward a company gets as a result of its innovation, its investment, and its competitive performance. Companies should not be punished for this success – the Bureau should only intervene where there is evidence a big firm is engaging or has engaged in harmful anti-competitive conduct.

In the Bureau’s view, it has the tools to deal with privacy effects under its non-price effects analysis. In a presentation to the Committee, Anthony Durocher, Deputy Commissioner, Monopolistic Practices Directorate, noted that if companies compete to attract users by offering privacy protection, then this quality could be a relevant factor in assessing anti-competitive activity. Mr. Durocher argued that any discussion of modernizing the *Competition Act* should be with a view to addressing the non-price effects analysis, noting that companies in this space largely compete for users based on innovations in their product offerings, and not on price.

Mr. Durocher also touted privacy regulations addressing data portability, such as those seen in the GDPR, noting that such regulations can in theory be pro-competitive by allowing consumers to take their data from one platform to another.

## Key recommendations

Ultimately, the Committee’s report recommends that the Government of Canada study the potential economic harms caused by these “data-opolies” in Canada, and determine if modernization of the *Competition Act* is required.

The report also recommends that the *Personal Information Protection and Electronic Documents Act* (PIPEDA) be amended to incorporate principles of data portability and system interoperability, in the hopes of facilitating customers’ switching abilities.

Highlighting the potential for further cooperation between the Privacy Commission and the Bureau, the Committee also recommended that both PIPEDA and the *Competition Act* be amended to establish a framework allowing collaboration between the Competition Bureau and the Office of the Privacy Commissioner, where appropriate.

## Algorithms

The Committee heard concerns from many stakeholders regarding the filtering mechanisms used to deliver content on social media platforms, and the level of control these mechanisms have in determining what content and information people see. The report details concerns in moving from a newsstand model,

where a variety of publications and subject areas are visible, to a digital environment with all sources compressed into a single stream (e.g., a newsfeed), where many signals traditionally used to assess source credibility are now absent. Further, algorithms are used to tailor content to what the individual will find most engaging, limiting their perceived choices.

To address these concerns, the Committee recommended providing an existing or new regulatory body with the mandate and authority to study and audit algorithms. Among other recommendations specific to social media platforms, it recommended enacting legislation requiring such platforms to clearly label content produced automatically or algorithmically (e.g., by “bots”.)

While noting that it currently views pricing algorithms as a form of conscious parallelism not giving rise to price-fixing or other collusion concerns, the Bureau has expressed an interest in continuing to consider pricing algorithms. The Bureau has also noted that big data may require the use of specialized tools and methods that may be less familiar to competition law enforcement.

It is worth noting that the UK Competition and Markets Authority’s newly-created (and cleverly-named) Data, Technology and Analytics (DaTA) unit will include the study of firms’ machine-learning and AI algorithms in its mandate. While the Committee’s recommendations on algorithms are not particular to the concerns often discussed in competition/antitrust circles, such as tacit collusion, a body with similar specialized expertise in these technologies would no doubt be of assistance to the Bureau’s work as well.

## **Implications**

While the Committee’s views are only non-binding recommendations, they offer some insight into how Canadian policy-makers may look to address issues at the interface of privacy and competition in the future. As the UK and European competition authorities have been very active in big data enforcement and policy changes in recent years, it seems inevitable that Canadian competition policy in this area will continue to be under scrutiny as well.

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