



September 9, 2016

The CBA Competition Law Section (the CBA Section) commented on an Innovation, Science and Economic Development Canada (ISED) online consultation about the federal government's Innovation Agenda. The consultation asked questions on six topics: Entrepreneurial and creative society; Global science excellence; Clusters and partnerships; Growth; Digital world and Ease of doing business.

Under Ease of doing business, the CBA Section commented on "How can regulations be designed to promote innovation across key sectors?" The CBA Section filed these comments on September 9, 2016 through the online consultation page on the ISED website.

6. Ease of Doing Business—Canada is the location of choice for investment and growth

"How can regulations be designed to promote innovation across key sectors?"

Competition and Foreign Investment Foster Innovation

The Competition Law Section of the Canadian Bar Association (the CBA Section) commends the government on its Innovation Agenda and appreciates the opportunity to offer preliminary comments.

"The ability of nations to commercialize ideas, attract investment, and serve as a test bed for new unproven technologies is underpinned by a regulatory framework that is credible, reliable and forward-looking." (Canada: A Nation of Innovators, June 2016)

Insofar as regulations may be necessary, the CBA Section agrees with this statement.

Typically regulations are not designed to promote innovation and competition. In contrast, laws of general application in Canada, like those embodied in the *Competition Act*, can be relied on to promote competitive intensity and efficiency, while protecting consumers and the public.

Competitive intensity fosters innovation. It follows that making it easier to do business in Canada, as well as encouraging domestic and foreign investment, will also support innovation.

In promoting the ability of the Canadian economy to foster innovation, sector-specific regulation may result in allocative inefficiencies by driving investment in certain sectors while potentially, incorrectly, discouraging investment in others. In addition, given the very nature of the regulatory process, any regulation imposed could potentially be dated by the time it is implemented. To remain forward-looking, the CBA Section recommends that regulations be reviewed periodically with a view to understanding their impact on innovation, and that unnecessary or outdated regulations be amended or removed. Even with regular review, however, a regulatory approach does not always have the flexibility to quickly adapt to changing market conditions or

opportunities. Regulation has a bias to slow or stifle innovation, not allowing innovators to speedily take advantage of new opportunities as they present themselves.

Policy should favour open markets, which promote increased competition (and consequently increased innovation). As noted, the *Competition Act* can be depended on to protect the public while promoting competition and efficiency, and consequently innovation. Canada is fortunate that its competition laws are modern and reflect current economic theory, and are harmonious with our major trading partners.

Where choices are made to regulate or restrict markets in whole or part from some aspects of competition, the policy reasons for doing so must be clear and pressing. There would need to be an explicit acknowledgement that regulation will likely result in less competitive markets, and therefore a less vigorous and innovative Canadian economy. To the extent new regulatory measures are contemplated, if possible they should be designed in a manner that does not impede the ability of market participants to capitalize on innovation-enhancing opportunities. It is essential that any regulatory framework be administered in a way that is both transparent and predictable for all market participants.