

To: Mr. Matthew Boswell, Commissioner of Competition, Competition Bureau Canada

October 10, 2020

**Re: Consultation regarding how to support innovation and choice in Canada's health care sector**

Dear Mr. Boswell,

We sincerely appreciate the Competition Bureau's ("the Bureau") request for input regarding factors that "may be restricting access to digital care or inhibiting innovation and choice in the delivery of virtual products and services". A thriving, competitive marketplace is essential to addressing current and future health system challenges, and we are happy to participate in a collaborative dialogue between the private sector and government regarding opportunities to enhance this marketplace.

Shoppers Drug Mart – a division of Loblaw Companies Limited -- is the largest drug store network in Canada. The LCL enterprise features 2,400 store locations across the country. We are committed to healthy living for Canadians and to ensuring that we are helping the many communities within which we operate. Our network includes not only retail drug stores, but also:

- Shoppers Home Health Care® stores, which are engaged in the sale and service of assisted-living devices, medical equipment, home-care products, and durable mobility equipment to institutional and retail customers;
- Shoppers Drug Mart Specialty Health Network Inc., a provider of specialty drug distribution, pharmacy, and comprehensive patient support services; and,
- MediSystem Technologies Inc., a provider of pharmaceutical products and services to long-term care facilities.

In short, Shoppers Drug Mart is both a retail network and a provider of many health services that are together intended to promote healthy lifestyles across the country. It is this diversity of roles that provides us with what we feel is a useful and unique perspective for the Bureau.

**EXECUTIVE SUMMARY**

Despite the large number of organizations in Canada offering digital health solutions, and despite the appetite for Canadians to use such solutions, Canada continues to lag behind other jurisdictions in the use of digital health. For example, the most recent *Commonwealth Fund International Health Policy Survey of Primary Care Physicians* (2019) found that primary care practices in Canada are behind comparator nations across virtually every measure of digital health uptake, including communicating with patients via email or secure messaging (11<sup>th</sup> out of the 11

nations surveyed), offering online appointment booking (9<sup>th</sup> out of 11), enabling patients to refill prescriptions online (10<sup>th</sup> out of 11), or electronically exchanging medication lists or clinical summaries with other providers outside of their practice (10<sup>th</sup> out of 11).

The reasons for Canada's relatively low adoption rates are quite complex, but we believe that the current policy landscape represents a key barrier and we believe that there is room to change policy to enhance competition to the benefit of patients, providers, businesses, and health care systems.

In this submission, we will highlight a few key issues that we see in the Canadian context, and we will also identify opportunities to address these challenges. Specifically, we will use this submission to outline the following:

- **Issue 1:** In addition to their role as regulator, government often also acts as a competitor in digital health, which creates various natural conflicts and undermines market integrity.
  - **Recommendation 1:** There must be a clear delineation between those who regulate digital health marketplaces and those who compete in these marketplaces.
- **Issue 2:** Compensation policies for clinicians who deliver virtual care are often inconsistent, advantage certain technologies over others, and limit incentives for innovators.
  - **Recommendation 2:** Compensation for clinicians should create the right incentives for both clinicians who are using these technologies to practice and for private businesses who are developing innovative technologies.
- **Issue 3:** While there is value in developing technology standards or specifications for the digital health sector, most specifications in practice tend to over-reach, increasing costs and limiting innovation for Canadians.
  - **Recommendation 3:** It should be assumed that specifications will increase costs for innovators, as this has been their historical impact, and the burden of proof should be on regulators to demonstrate that any given requirement is “necessary”, “cast narrowly”, and “proportionate” (per the Bureau’s own model for ensuring that policies are pro-competitive).

The remainder of this submission will respond to the specific questions posed by the Bureau and, in doing so, will provide a more detailed articulation of the above issues and recommendations.

*This submission will focus predominately on Ontario government policy. We are focusing in this way because Ontario is the largest of Canada's markets and by focusing on a single market it is simpler for us to outline the challenges that we see. We do not intend to suggest that these challenges are unique to Ontario or that the Ontario government is in some way an outlier, as every jurisdiction in Canada faces similar challenges, albeit with very different specifics.*

**QUESTION 1 – Are there ways that policies can better support innovation, choice and access to digital health care solutions? For example, do specific rules unnecessarily impact the ability to offer virtual products and services to Canadians? Please explain**

We believe that the policy landscape could be improved to better promote competition and improve access to digital health services for Canadians. To achieve this, governments should focus their policy efforts on creating a level playing field for private sector vendors to develop and implement digital health solutions. This differs from the historical role of government in digital health, which prioritized the establishment of provincial agencies and the development or procurement of provincial solutions.

In some instances, there may be value in government intervening more actively in the marketplace (either by developing systems of its own or by undergoing procurements to select solutions), but for the most part the digital health marketplace both in Canada and internationally has matured to the point that the role of government is more appropriately focused on policy and funding rather than development and delivery.

To achieve these ends, we believe that governments across Canada must address three key issues moving forward.

- *Issue 1: In some instances, government is both the regulator of a marketplace and a competitor in this marketplace, which creates a conflict.*

As above, when digital health investments began roughly two decades ago across the country, the marketplace for technologies was relatively limited. Because of this, governments had to purchase or build solutions of their own, filling the roles of project managers, developers, implementers, technical support, and so on. However, as governments have shifted their digital health focus away from development and towards policy-making, some of these legacy activities have continued, which has in turn created issues.

A key example of this conflict is the Ontario Telemedicine Network (OTN). OTN has for many years been a key provider of video visit solutions in Ontario, growing to now facilitate more than a million video visits between patients and providers a year. For vendors in Ontario's virtual care marketplace, OTN is the largest competitor in the province.

In early 2020, the Government of Ontario announced that OTN would cease to operate as an independent organization and would be consolidated with the new provincial agency, Ontario Health. Shortly thereafter, the Government of Ontario proposed regulatory amendments to give Ontario Health the mandate to “establish interoperability specifications that pertain to digital health assets”, and to “establish a certification process [for these specifications]”. The effect of this is that Ontario Health now operates one of the largest virtual care providers in the province and is also charged with developing requirements for this marketplace.

The provincial agency has, in short, become a major competitor in the sector and has begun to act as the regulator of this sector. This creates obvious conflicts – Ontario Health could define specifications that are uniquely advantageous to their own offerings, and is also positioned to ignore compliance issues with its own offerings while being more

stringent with others. Even if Ontario Health acted in a fair and impartial manner, it is hard to avoid the perception of bias.

While this specific example is new (with some of the changes still not finalised), it is the formalization of what we have seen for years. Despite OTN's historical arms-length structure, they have regularly had a privileged position during policy discussions, negotiations, and other activities of relevance to the market, which gives them an unfair advantage over competitors (in addition to the significant amount of direct funding that they receive from government).

We believe that this conflict undermines competition in the virtual care space. While many innovators have for years been developing solutions that would be beneficial to patients and the health system, it is difficult to undertake major long-term strategies or investments when there is an existing competitor with such an advantageous position.

A similar challenge exists at the federal level with Canada Health Infoway (Infoway). The federal organization's role was historically focused on investing in provincial initiatives, but in the mid-2010s there was a shift to delivering PrescriberIT, a pan-Canadian ePrescribing solution. While the focus on PrescriberIT was likely driven by a desire to accelerate ePrescribing deployment across the country, the impact may well have been the reverse – businesses and innovators in the ePrescribing space were now faced with a competitor with a (real or perceived) unfair advantage, and this undermined the competitive factors that had previously been in place.

Market integrity is fundamental to promoting investment and innovation, and government's dual role as both competitor and regulator undermines this integrity. It is of paramount importance that this be addressed across the country to enable competition and innovation.

- *Recommendation 1:* The Bureau should work with federal and provincial governments to ensure that clear lines are drawn between market competitors and regulators. The simplest way to do this would be for governments to not compete in markets where there are existing solutions and providers. Where this isn't possible, it is critical that governments implement robust and transparent measures that separate solution providers from solution regulators. The lines between these two government roles must be drawn clearly enough to reassure businesses and innovators that they will have a fair chance to compete in these marketplaces.
- *Issue 2: Compensation policies for clinicians often unfairly bias certain technologies over others and limit incentives for innovators.*

When considering whether and when to invest in digital health innovations, a key criteria for us and other businesses is whether there is a business model for such an investment.

In the Canadian healthcare context, the key driver is provincial compensation policy, because in most instances compensation costs pay not only for the services provided by

clinicians, but also the administrative costs associated with delivering these services, including technology costs.

For digital health, the challenge is that compensation policy was generally developed when care was delivered entirely in a physical setting, and this has created disincentives for providers to adopt and deliver virtual care solutions. For instance, many billing codes include specific requirements related to physical interaction, even when such physical interactions are not clinically warranted.

COVID has resulted in a radical expansion of virtual care, driven largely by governments across the country finally allowing physicians to be compensated for providing care virtually when such care is clinically appropriate. While this represents progress, a number of issues remain.

First, compensation policy is often not clearly tied to the costs or value of technologies and thus creates perverse incentives. In Ontario, a clinician providing care via telephone is paid the same amount as a clinician providing care via video, even though video care is generally more clinically valuable and has higher costs. Furthermore, clinicians in Ontario who provide video care via OTN's technology are paid at a higher rate than those who use non-OTN solutions, despite the fact that the value of the service is the same for both. Accordingly, innovators who are offering video-based solutions in Ontario are faced with two problems – there is no incentive for providers to use their solution instead of telephones, and there is an added incentive to use OTN's solution instead of theirs. This undermines competition for video-based solutions and limits choice for patients and providers.

Second, while significant progress has been made across the country in enabling phone- and video-based virtual care, progress has been far more inconsistent in enabling secure messaging or email communications. These forms of virtual care have the potential to transform the health care system and would also be of significant value in supporting the management of the COVID crisis, but despite this many governments across the country have done little to incent clinicians to use such solutions or promote them to patients.

Third, the progress that has been made in compensation policy was clearly a result of COVID specifically, and it is thus possible that compensation will revert to its former state when the crisis subsides. For innovators who are considering whether and to what extent to compete in this space, it is critical that they have an understanding of the likely long-term approach to compensation for these services, as this is central to their business models. Likewise, for providers who are considering whether to shift away from telephone-based virtual care to more robust digital solutions, uncertainty around long-term compensation creates a disincentive to invest the money and time required to undertake this transition.

- *Recommendation 2:* Governments across the country should make a long-term commitment to compensating clinicians for the delivery of virtual care via video, phone, and secure messaging, and compensation policies should be reviewed across the country to ensure that payment is reflective of not only the value of

these services, but also of relevant costs and savings.

- *Issue 3: Provincial technology specifications often serve to impede competition and innovation*

We agree with the majority of the assertions made by the Bureau in responding to the Government of Ontario's request for input regarding Digital Health Interoperability specifications (submitted July 23<sup>rd</sup>, 2020). In particular, we agree that interoperability specifications "could bring pro-competitive benefits in the health care sector", but that mechanisms are needed to ensure that standards do not "create barriers to entry when the cost of compliance is disproportionately high". We, like the Bureau, are supportive of regulators defining provincial requirements for technology, so long as those requirements are necessary, cast narrowly, and proportionate to the benefits they seek to address.

In practice, however, we do not think that provincial specifications have historically been developed in this manner. To use the example of Ontario's specifications for Electronic Medical Records (EMRs), developed and administered by OntarioMD, hundreds of pages of requirements were created for vendors, and robust certification processes were put in place, but these requirements did not achieve the goal of making solutions interoperable. We do not believe that all of these requirements were "necessary" or "cast narrowly", and despite their expansive nature they did not achieve the benefit they sought to address. This challenge is most concretely seen in Ontario's Core Data Set specifications, which is the largest part of the EMR certification process for many vendors. Incorporating this Core Data Set resulted in considerable cost for both vendors and government, limited innovation by defining very detailed design elements, and did not achieve the Data Portability/Interoperability goals that formed the rationale for defining a common Core Data Set in the first place.

More recently (March 2020), OTN released guidelines for virtual visit solutions, and many of these do not satisfy the Bureau's definition of pro-competitive policy. For example, OTN's guidelines say that solutions must record "any clinical documentation or notes", but this is redundant with existing law - clinicians are already required to record necessary patient and visit information, and most technology vendors have ensured that their systems enable this. By repeating existing legal requirements in technology specifications, these requirements are not only redundant, but they also serve to limit innovative solutions (perhaps a virtual care vendor could determine an alternative approach to meet legal requirements).

These specification challenges are compounded by sometimes overlapping activities at different levels of government. We have recently heard that Infoway will be developing virtual care standards at the federal level. As with previous efforts by Infoway to develop EMR standards that were separate from provincial EMR standards, this process is likely to result in redundant requirements and/or overlapping compliance processes, all of which create added cost and confusion in the vendor community without creating proportionate value for Canadians.

One could debate these assertions and argue that OTN's, OntarioMD's, and Infoway's

requirements are cast sufficiently narrowly and are necessary, but the issue is that such a debate does not appear to be happening. Specifications are usually defined expansively with limited attention paid to the anti-competitive impacts of this.

- *Recommendation 3:* Given that technical specifications have historically not been cast narrowly, we believe that a greater burden of proof should be on government to demonstrate that any given requirement satisfies the criteria articulated by the Bureau. We agree that it is critical that technology protect patient safety, as well as the privacy and security of personal information, but it is also very important that innovators are not unnecessarily restricted by onerous, redundant, or irrelevant requirements.

**QUESTION 2 – What other barriers are impeding Canadians' access to virtual care and restricting innovation and choice in the health care sector? Can these barriers be reduced—and, if so, how—in order to facilitate the entry and expansion of digital solutions?**

In addition to the definition of policy, we also believe that the day-to-day activities of government can serve as a barrier to innovators, because a competitive marketplace not only depends on fair and effective rules for this marketplace, but also on the administration of this marketplace by regulators. We strongly believe that government and business should be partners in health system transformation and need to have open and collaborative relationships, and we would like to highlight a few challenges that we see in achieving these ends in practice.

- First, as the organizations most commonly responsible for developing, implementing, and supporting digital health solutions, it should be non-contentious to say that business has unique and valuable insights regarding the sector, the challenges that it faces, and the opportunities afforded by digital health solutions.

Despite this, it is not uncommon for digital health policy to be developed with no or only minimal input from business. Furthermore, where business input is requested, there is rarely follow-up to explain why input from business was either incorporated or disregarded. It is of course the government's prerogative to disagree with input from business and to proceed however they feel is appropriate, but without any form of follow-up or response there is a) the appearance that policy-makers are simply ignoring business concerns and b) limited incentive for business to engage in future processes, because it is unclear that business input is being taken seriously. This can undermine effective and open communication between the public and private sectors and can also result in policy that is not sufficiently sensitive to the on-the-ground realities associated with developing and implementing digital health solutions.

- Second, government direction and strategy can have major market impacts, but the communication of these strategies is often unclear or confusing. In particular, there is a tendency for government announcements and strategies to be somewhat vague and non-committal, and this can create significant market issues.

For example, in late 2019 the Government of Ontario announced the *Digital First for Health* strategy. As part of this announcement, the government indicated that "Patients can expect

[...] expanded access to online appointment booking". This seemed to suggest that government would be undertaking some significant activity in this space, be it funding, regulation, or any of the other levers at the disposal of government. However, nearly a year later it remains unclear what, if anything, the government intends to do in relation to online appointment booking.

For innovators considering developing or deploying solutions in this space, this announcement could represent a significant opportunity in which government will support the expansion of this market, or it could represent the end of any potential opportunity if government already has a solution in mind. Given the wide range of possibilities, innovators are understandably unsure regarding whether and how to proceed. Likewise, clinicians considering adopting such solutions are left wondering whether funding will be forthcoming and may accordingly defer purchase decisions. In short, an announcement that was likely intended to generate enthusiasm for online appointment booking had the perverse effect of paralyzing the market for this technology.

Both of the above barriers are not a matter of policy; they instead relate to the culture and norms that shape the relationship between government and the private sector. Because of this, it is difficult to articulate what specific concrete actions the Bureau could undertake to help address these challenges. However, we feel that it is important to highlight these, because while the focus of an exercise such as this is typically to determine whether and how to change public policy, we feel that there is also an important role that the Bureau can play in working with governments across Canada to identify and discuss issues such as these.

We strongly believe that governments want to engage business effectively and want to understand business perspectives, and organizations such as the Bureau can play a consultative role in providing guidance to assist government in doing this more effectively. At a minimum, there is likely value in helping governments to understand how their stakeholder engagement and communication activities can have unintended market impacts and how they can approach these matters through a more pro-competitive lens.

**QUESTION 3 – What measures have other jurisdictions taken to improve access to virtual care? How have barriers to innovation and choice been eliminated, while balancing legal and regulatory requirements in the delivery of digital health care solutions? Can similar measures be adopted in Canada? Why or why not?**

While it is difficult to compare policy between jurisdictions, because health systems have such varied policy frameworks across the world, we would like to highlight two forms of competition-enhancing policy that represent promising mechanisms to bolster innovation and choice without undermining the core structures and principles of Canada's health care system:

- First, health systems have had success in promoting competition and innovation by moving away from fee codes that define services in detail and towards other compensation models, including value-based or bundled payments. Such models enable health systems to define the outcomes that are required while giving providers flexibility in determining how best to achieve these outcomes, which in turn creates an incentive for clinicians to innovate in delivery. By focusing on innovation and flexibility, these models tend to have a



positive impact on not only cost, but also quality of care.

Many Canadian jurisdictions have made some progress in adapting compensation models over the past 20 years, but the specific terms of these newer models often remain too restrictive, relying on in-person rather than virtual care or defining technologies that must be used for compensation purposes. The short-term goal of compensation reform, from a digital health perspective, ought to be increased uptake of video and secure messaging technologies, but specifically codifying such technologies in compensation terms could limit innovation in the long-run. Instead, shifting to more value-based forms of compensation could both address short-term virtual care priorities and create a more flexible system in the long-run.

- Second, a key challenge for innovators in Canada is that while there are often opportunities to pilot new digital health technologies, there is no clear pipeline to transition from an effective pilot to scale, which in turn results in many promising approaches failing to expand beyond a small number of initial test users. This stands in contrast to innovation in the pharmaceutical space, where there are more clearly defined processes and requirements associated with all stages of drug development, such that pharmaceutical companies have a clearer understanding of the pathway that they must follow to bring a product to market.

In the Canadian context, digital health innovation would benefit from the creation of a similar pipeline. One such model that is worthy of further study is Germany's Digital Care Act (2019), which established a set of rules that would enable providers to prescribe digital apps to their patients and to have said apps be reimbursed by the country's public insurers. From a competition perspective, the most relevant aspect of this law is the process that was defined for apps to be added to an app formulary – vendors must demonstrate that their app meets a few basic requirements (associated with privacy, security, and safety), vendors have to be willing to fund an independent clinical evaluation, vendors have to accept a one-year period of preliminary reimbursement in which their app would undergo evaluation, and then data from this process would be used to determine whether the app should be added to the formulary on a permanent basis and with what pricing.

It is too early to tell whether the specifics of this process are effective, given the newness of the law and the disruption created by COVID in 2020, but the key point is that the country has clearly defined a pipeline for innovators to bring digital health technologies to market in a publicly funded system. Canada should likewise work with innovators to define what such a pipeline could entail in the Canadian context, because ultimately this would do more to spur innovation in the long-term than any specific investment in a single technology or company.

**QUESTION 4 – What impact has the COVID-19 pandemic had on innovation and choice in Canada's health care sector, and on Canadians' ability to access health care virtually? Have any barriers hindered the adoption of digital solutions in response to the COVID-19 pandemic? Please explain.**

It is undeniable that COVID-19 has had a major impact on innovation in Canada's health care sector. A large proportion of care has shifted from in-person to virtual, and providers and patients now have far greater choice in the technologies that they use to provide and receive care. While it feels wrong to frame any aspect of COVID-19 as being "positive", because of the immense costs the pandemic has wrought on people and society, the expansion of innovation in the health care system spurred by COVID-19 has been a small silver lining to an otherwise terrible situation.

The rapid expansion of virtual care in response to COVID-19 serves to underscore three key points that we feel are important for the Bureau to understand:

- First, it should not have required a pandemic to create a policy environment conducive to innovation. Technology has been readily available to improve the delivery of health care for many years, but innovation-promoting policies were not implemented until a crisis made the status quo untenable.

We have argued in this submission that the technology exists to transform the health care system, that there is appetite for this technology, and that policy-related barriers are a key impediment, and we feel that the COVID crisis only serves to reinforce this argument. Once government removed many of the barriers that were historically in place (e.g. not compensating clinicians for virtual care; micro-managing specifications or the clinical selection of technologies), the marketplace responded swiftly. Of course, uptake would not have been as extensive absent the crisis, but we believe that significant progress could have been made earlier had governments opted to adapt policy to new technological realities.

- Second, in the case of virtual care, it is not typically patients who choose the technology, it is providers, and because of this payment models matter greatly in driving these choices. In particular, paying for virtual care at a discounted rate will result in less providers choosing to use digital technology, even when it is equally or more appropriate than in-person care. Likewise, paying the same rate for both video and telephone care will result in providers defaulting to the telephone, even in instances where video would provide a number of clinical advantages.

In addition to short-term impacts, paying providers at reduced rates and/or paying them through temporary mechanisms will serve to discourage longer-term investment. There would be significant value in clinicians investing the time required to become proficient in using robust virtual care solutions and in adapting their clinical processes accordingly, but the use of discounted and temporary payment codes creates an incentive for providers to look for free, basic technology solutions, which in turn increases security risks, results in fragmentation, and limits the potential impact of virtual care.

- Third, because the rapid uptake of virtual care only occurred because of a crisis, the progress that has been made could be lost just as rapidly. Shoppers Drug Mart is united with Canadians in hoping that this pandemic will end as soon as possible (and has also been an active part of pandemic-response efforts across the country), but from the digital health and virtual care perspective we do not want government policy reverting to its previous state. While virtual care policies in response to the pandemic have not been perfect, they are better than what was in place previously and we would strongly encourage governments to make these changes permanent and to view these policies as a new starting point to be improved upon moving forward.

## CONCLUDING REMARKS

We would like to again thank you for undertaking this process to seek input from across the country. We believe that collaborative dialogue between the public and private sectors is essential to addressing the challenges faced by our health care system, and initiatives such as this provide a concrete opportunity to collectively identify and address longstanding challenges. We, like the Competition Bureau, believe that competition and innovation are critical to transforming the health system, and we are very interested in seeing what results from this process.

We hope that the above analysis and recommendations are useful to you in your efforts to promote competition and spur innovation across the country, and we would be happy to provide additional information or clarification in future to support your efforts.

Sincerely,



Jeff Leger  
President  
Shoppers Drug Mart