Centre for International
Governance Innovation

Policy Brief No. 220 — January 2026

Trade Conflicts and Competition Policy in Canada's Digital Economy

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Key Points

- US President Donald Trump's stance on trade and competition policy is contradictory. Tariffs, not technology regulations, are truly anti-competitive policy tools.
- Canada must strategically re-evaluate its digital policies to determine which are negotiable in trade talks with the United States and which must be safeguarded.
- Protecting Canada's regulatory infrastructure around digital competition should be a top priority to help reduce digital dependencies and strengthen sovereignty.

Introduction

Policies and legislation to curb potentially anti-competitive behaviour by firms — chiefly large American firms — in the technology sector are under threat. Part of President Trump's trade war aims to weaken or eliminate non-tariff barriers to American tech firms' operations abroad, including competition law and other forms of digital regulation. As pressure to make "deals" with the United States mounts, other nations are trying to preserve their sovereignty to regulate the digital economy.

A plea to Canada's prime minister signed by concerned organizations and individuals exemplifies worries about topics such as artificial intelligence (AI), privacy, online harms, data localization, taxation of digital services, cybersecurity, online news, streaming and more.[1] Myriad concerns exist about America's "algorithmic empire" (Appleton 2025) but underlying them all seems

1 See www.documentcloud.org/documents/26080445-open-letter-to-prime-minister-mark-carney/.

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to be a loss of Canadian control over digital infrastructure and associated governance structures. At the same time, commentators including Jamie Duncan and Wendy H. Wong (2025) identify the government's uncertainty about the goals that "digital sovereignty" should lead to.

Digital sovereignty is indeed a kind of catch-all of concerns over related, but not always identical, policy concerns. Amid the milieu of issues garnering attention, the authors suggest digital competition law and policy is an underappreciated policy priority. Safeguarding competition in Canada's digital economy is key to digital sovereignty.

This policy brief begins by explaining how Trump's tariffs are not a response to unfair restraints on American firms' competitiveness but, rather, are themselves the truly anti-competitive instruments of coercion. In that context, the authors elaborate on specific details of Canada's and other countries' regulation of tech firms and then explain why competition law and policy is a top regulatory priority, presenting ways of preserving Canada's sovereignty in this space. The authors suggest that the most realistic approach is to identify areas where compromises can be made based on core principles of competition policy, allowing Canada to prioritize and preserve the most sound and essential regulatory tools to maintain its digital sovereignty.

Tariffs, Not Technology Regulation, Are Anti-Competitive Policy Tools

The move to regulate technology firms is perhaps most apparent in the European Union, exemplified by legislation such as the General Data Protection Regulation,[2] the Digital Markets Act[3] and the

2 EC, *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*, OJ L 119/1.

3 EC, *Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)*, OJ L 265/1.

Digital Services Act (DSA)[4], as well as the EU Artificial Intelligence Act.[5] Canada has yet to achieve a similar level of regulatory advancement and remains in the early stages of implementing substantial legislative measures to regulate the disproportionate economic power held by large technology firms. For example, the final portion of Canada's digital-related amendments to competition legislation only took effect in June 2025.

Competition laws and digital regulations intended to check the conduct of dominant technology firms have become a notable irritant to the current American administration. This concern is articulated clearly in one of the US vice president's earliest speeches, which criticized EU regulations, including the DSA, at the World AI Action Summit held in Paris in February 2025 (Vance 2025). A memo issued that same month by President Trump directs relevant government agencies to respond to all regulations imposed on US companies by foreign governments with tariffs and other responsive actions (The White House 2025). In President Trump's memo, as a Brookings commentary puts it, "Big Tech has found its counterattack to the [EU's] digital competition and content moderation policies" (Wheeler 2025).

Like EU laws, Canada's digital policies — including the controversial and now rescinded digital services tax (DST),[6] as well as payment mandates related to online streaming and news links — have drawn the ire of America's president as some had predicted (Geist 2021). Calling the DST an "attack on America" (Tasker 2025), Trump withdrew on June 27, 2025, from trade and tariff talks with Canada until promises were made to repeal the DST.

According to Trump's broader narrative, these legislative initiatives from Canada, Europe and other countries that have taken similar steps to regulate powerful US tech firms are themselves "anti-competitive policies" that "limit American companies' global competitiveness" (The White House 2025). The American response to such policies, as directed by Trump's memo, is "imposing tariffs and taking such other responsive actions necessary to mitigate the harm to the United States and to repair any resulting imbalance" (ibid.).

Do not be disinformed: viewed through the lens of competition law and policy, President Trump's tariff-based counterattack is a stark contradiction. Tariffs are by their nature a restraint on free trade, which lies at the heart of competition as enshrined in the US Sherman Act[7] and other antitrust and competition legal regimes worldwide. Trump's "tariff-ic" response is where the real anti-competitive conduct resides. Indeed, American antitrust law was conceived to tackle trusts, hence the name "anti-trust." And tariffs, historically, have been referred to as "the mother of trusts" (Richman 2006).

In remarks titled "The Tariff is still the Mother of the Trusts," Mary L. Azcuenaga, a former Federal Trade Commission commissioner appointed by President Ronald Reagan and reappointed by President George H. W. Bush, explains that as a result of tariffs' protectionist effects, "artificially fewer firms can charge high prices and pay lower wages than would have been the case in a fully competitive market" (Azcuenaga 1989). Tariffs suppress competition in several ways: they shield American companies from foreign competition; lead to price increases for goods and services; and, ultimately, limit the choices available to consumers. In addition to these anti-competitive impacts, tariffs restrain trade both globally and locally. Azcuenaga even argues that when government actions such as tariffs have anti-competitive effects by excluding foreign competition, antitrust law should be enforced against such government measures.

4 EC, *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act)*, OJ L 277/1.

5 EC, *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139, (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/796 and (EU) 2020/1828 (Artificial Intelligence Act)*, OJ L 2024/1689.

6 *Digital Services Act*, SC 2024, c 15, s 96, online: <https://laws-lois.justice.gc.ca/eng/acts/D-1.65/>.

7 *Sherman Antitrust Act*, 15 USC §§ 1–38, online: <www.law.cornell.edu/wex/sherman_antitrust_act>.

Revaluating Other Digital Regulations to Preserve Competition Policies

As the United States implements anti-competitive and trade-restraining measures to address its concerns regarding foreign digital competition laws, Canada faces a complex decision. It can further complicate an already strained relationship by pushing forward with a full suite of laws, regulations and policies to regulate the digital economy, thus strongly asserting digital sovereignty. At the other end of the spectrum of possible responses, Canada could capitulate by giving America what it demands regardless of domestic digital policy implications, as a trade-off against other goals such as supply management or the auto sector.

The authors suggest a middle ground, involving a two-pronged strategy. First, Canada might appear to be making concessions by delaying the implementation of its digital laws or putatively softening its stance to appease its southern neighbour. This is basically a play-for-time strategy, which could involve political statements but no irreversible legislative action. The second prong of this strategy is to reassess the suite of digital regulatory policies developed or implemented over the last decade, determining which are in fact in Canada's own strategic interest and which are not. This reassessment may lead to compromises during forthcoming negotiations with the United States. We must, however, avoid conflating compromise with cop-out. Determining which digital regulatory policies are negotiable, and which are not, is an exercise, not a sacrifice of digital sovereignty.

For example, promising in June 2025 to rescind the DST seemed necessary to preserve Canada's seat at the trade table with the Americans. While some may be impatient for a "deal" like Britain, the European Union or Japan ostensibly negotiated, the reality is that Canada already has the best deal in the Canada-United States-Mexico Agreement (CUSMA) (Alschner 2025) and is rightly focused on preserving that. Meanwhile, though legislation to undo the DST was part of Canada's 2025 budget bill, C-15, there remain some (admittedly slim) prospects for a similar policy outcome negotiated with other like-minded nations, such as those that are members of the Organisation for Economic Co-operation and Development. That had been the plan before Canada announced its independent intentions. Ultimately, however, the biggest indictment of the DST is its thinly veiled claim to be non-discriminatory. The intent and operation were always clearly targeted at the largest US technology firms, which makes it hard to argue with a straight face that American retaliatory measures would be unjustified.

Another example on the list of Canadian digital irritants for the Trump administration is the Online News Act.[8] This act, also known as the link tax, has sparked controversy even in Canada, long before Trump's resurgence. For example, scholars such as Michael Geist (2023) criticized it as a complete policy disaster, while others noted it specifically harms competition, the internet and journalism (Internet Society 2024). As Canada continues negotiations with the United States, it is time to separate performance from substance by rethinking this act.

America's demands aside, from a Canadian competition policy perspective, this legislation was always suspect. While competition was a minor justification for the Online News Act, it has been conceived and implemented as a content valuation legislation (Smith 2023). Such a conception has raised some suspicion on competition law grounds. By imposing, effectively, a tax on links, the legislation paradoxically disadvantages the small media and journalistic outlets that it aims to protect. For example, one of the immediate impacts of the legislation was a drop in traffic to the sites of some small media players (Kahn 2023). The policy sustains a market where larger media players disproportionately benefit. An equally fundamental problem is that raising the price of linking to legitimate news sources creates an incentive for platforms to stop linking to legitimate news (as Meta did, for example). Perversely, that promotes linking to unofficial or unreliable sources, diluting Canada's media ecosystem with disinformation. Rather than relying on the jingoism of making tech giants pay, a far better approach would be to tackle the core competition policy problems of power concentration in online advertising. If trade tensions and CUSMA renegotiations force

8 *Online News Act*, SC 2023, c 23, online: <https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2023_23/>.

such a rethink of digital policy measures such as the Online News Act, that is not a bad thing.

While the authors believe that the ongoing trade tensions with the United States offer an opportunity for Canada to strategically re-evaluate digital law and policy tools, the argument here is not for Canada to relinquish digital sovereignty to the United States. In fact, in the following paragraphs, this policy brief contends that Canada must assert its digital sovereignty intentionally and bolster its vital institutions that are crucial for maintaining that sovereignty, particularly in an area that the authors consider to be non-negotiable: digital competition law and policy.

Why Digital Competition Policy Must Be a Top Priority

From cloud computing to AI and other essential digital infrastructure, Canada and Canadians have long depended heavily on systems and platforms owned and controlled by American tech firms. For example, 93 percent of the office software market in Canada is controlled by Microsoft (65 percent) and Google (28 percent), while the five largest technology companies account for 60 percent of Canadian cloud services as of September 2024.[9]

The dominant presence of these American firms and the lack of Canadian equivalents capable of matching their influence leave Canada vulnerable. As commentators such as Heidi Tworek and Alicia Wanless (2025) point out, the absence of domestic Canadian tech firms highlights a situation where dependence on the United States is more digital than physical and, as Guillaume Beaumier (2025) states, Canada's reliance on American "big tech" is the main threat to its digital sovereignty.

Even before Trump's second term, American technology firms had already challenged or resisted Canada's autonomy as a sovereign nation to shape laws regulating its digital space. For instance, Meta, in response to Bill C-18, shut down Canadian access to news on Facebook (Mundie 2023). During the heated debate in 2022 about the review of Canada's Competition Act and its adaptation to digital realities, an Amazon senior executive threatened to shut down its e-commerce marketplace if the federal government proceeded with the review (Patriquin 2022).

From tariffs to annexation threats, Trump's second term has been even more adversarial. Since his inauguration in January 2025, Trump has revealed close ties between America's biggest technology firms and his administration. An example of apparently new ideological alignment is Mark Zuckerberg's removal of content moderation features from Meta (Milmo 2025). It seems likely that technology firms will continue to align with the preferences of the current administration, including modifying their platforms in ways that could harm Canadians' economic, political and cultural engagement in today's digital economy.

Other alleged instances of techno-power display elsewhere include the shutdown of SpaceX's Starlink services for internet connectivity in Ukraine (Shalal and Roulette 2025), and the technological disruptions in Microsoft email services used by the chief prosecutor of the International Criminal Court, whose actions displease Trump (*NL Times* 2025). As noted by Michael Karanicolas (2025), Canada cannot be complacent about the threat that the United States poses in its power to shut down our digital infrastructure.

These examples offer a lesson for Canada: to preserve its digital sovereignty while continuing to build its own critical digital infrastructure, it cannot afford to compromise on regulations related to digital competition law and policy. If anything, now is Canada's Competition Bureau needs to be strengthened.

Historically, during periods of economic and political uncertainty (like the world is currently experiencing), companies tend to collude more and engage in various anti-competitive practices to cushion the shocks associated with that uncertainty. For instance, in his book titled *Global Competition: Law, Markets, and Globalization* (2010), David Gerber explains how the severe economic crisis following the end of the First World War and instability in the global trading system led to extreme cartelization. More recently,

9 See www.statista.com/outlook/tmo/public-cloud/canada?srsltid=AfmBOopzt2Io3K8QAdzWJw8POZZun5jlsWDal9bFcTA5paMSVSSzwmoY.

heightened risks of anti-competitive behaviours were recorded during the 2008 financial crisis (Martyniszyn 2025) and the COVID-19 outbreak in 2020 (Adediji 2020), warranting close monitoring and enforcement by competition regulators.

There are already reports of record "mega-deal" making in the United States early in Trump's second term, with mergers, acquisitions and complex cross-investments especially notable in the AI sector (*The Economist* 2025). Meanwhile, news that Oracle will control TikTok's algorithm from US-based servers — and acquire key assets in the venture with other US investors, including Fox Corporation (Bobrowsky, Ramkumar and Leary 2025) — raises concerns about the potentially anti-competitive impacts of such power concentration, not to mention deeper issues. The fact that the US government itself is taking stakes in leading American tech firms, such as Intel (Abbott 2025), exacerbates risks for Canada and others.

Lessons and Recommendations

Now is the moment for Canada to safeguard competition in the digital economy by reinforcing competition law and policy and supporting the country's competition authority, the Competition Bureau Canada. As this organization transitions to new leadership following a period of successful modernization and bold action, gains must not be undone.

In terms of regulatory authority, the recent review of the Competition Act has empowered the bureau to enforce competition law within the digital economy. Canada, building on the suite of competition law reforms commenced in 2022, can dedicate additional resources to the bureau and expand its powers to enforce the law. The country should enhance coordination efforts that have just begun to yield fruit. For instance, under the auspices of the Canadian Digital Regulators Forum,[10] the bureau has collaborated with other key Canadian agencies essential to regulating the digital economy, including the Copyright Board of Canada, the Canadian Radio-television and Telecommunications Commission and the Office of the Privacy Commissioner of Canada. Through improved and necessary information sharing and cooperation, these agencies have invested in capacity building and expertise exchange in areas vital to the Canadian digital economy.

Regarding law and policy, the authors identify four illustrative areas where Canada's sovereignty is deeply intertwined with principles to safeguard competition in the digital economy. Canada should work to preserve recent amendments to the Competition Act, protect consumers from anti-competitive behaviour online, prioritize competition over concentration in the AI sector and strategically address pressure for cross-border data sharing with US authorities.

Preserving Recent Amendments to the Competition Act

A suite of amendments enacted in 2022 through Bill C-19 are now part of the Canadian Competition Act.[11] Among these are provisions making it easier to deal with abuses of certain firms' dominance in the digital economy. Section 79(4) of the act details the factors to consider when determining if a business practice by a dominant firm in a specific market significantly reduces competition, including network effects, non-price competition, consumer privacy and the impact on innovation. These considerations are important for maintaining competition in Canada's digital market and for strengthening privacy protections in the data-driven economy.

Turning back to the earlier example in this brief of the Online News Act, provisions of competition law like this could more directly address the underlying problem of power concentration in online advertising, avoiding the need for what is essentially a cross-subsidy scheme and facilitating more market-based solutions. Notably, however, there are no provisions similar to section 79(4) in the US Sherman Act, which suggests that Canada's new legislation could be targeted by American trade negotiators. Resisting US pressure will be difficult but important.

10 See https://competition-bureau.canada.ca/en/how-we-foster-competition/collaboration-and-partnerships/canadian-digital-regulators-forum.

11 *Competition Act*, RSC 1985, c C-34, online: <https://laws.justice.gc.ca/eng/acts/C-34/index.html>.

Protecting Consumers from Anti-Competitive Behaviour Online

When the North American Free Trade Agreement was renegotiated to create CUSMA in 2020, the parties agreed on the importance of transparent and effective measures to protect consumers from fraud and deception online. This principle, plus a requirement to adopt or maintain online consumer protection laws, and promotion of cross-border cooperation are stated in article 19.7 of the digital trade chapter of CUSMA.[12] The broad trend toward digital deregulation in the United States under the Trump administration suggests that America's stance toward consumer protection provisions in international trade agreements may not be as stable as it was once assumed. Concerns could be heightened if large US tech firms cite specific examples to their trade negotiators, such as the Competition Bureau's legal action against the American online food ordering company DoorDash Inc. over "drip pricing," or advertising lower prices that exclude mandatory fees (Competition Bureau Canada 2025).

As CUSMA is renegotiated, Canada should aim to build on, not undermine, article 19.7. Keeping the CUSMA provision intact is important because it aligns not only with the spirit of section 74 of the Competition Act on deceptive market practices, but also with the competition policy chapter of CUSMA, in particular article 21.4. This framework is valuable for federal competition law and policy as well as for closely related areas of provincial jurisdiction (Fritsch and Thomas 2024). Relatedly, as the Registered Consent Agreement[13] between the Competition Bureau and Facebook already indicates, consumers will become more vulnerable and require increased protection as AI continues to evolve (Quaid 2021). Reports from public consultations conducted by Global Affairs (Global Affairs Canada 2024) indicate that Canadian stakeholders want the digital trade chapter to be updated to reflect the swift development and adoption of AI.

Prioritizing Competition over Concentration in the AI Sector

Including competition law priorities in Canada's updated efforts to regulate AI is essential. AI systems rely heavily on large data sets and significantly influence algorithm-driven pricing, quality and market share (Akman 2022). While algorithms can promote competition, they also present risks of anti-competitive behaviour. Therefore, while consultations by the Government of Canada seek to build an AI regulatory framework to ensure safety and build public trust, Canada must implement measures to protect consumers from potential anti-competitive practices such as collusion, price discrimination and reduced interoperability (Akman 2022; Quaid 2021).[14]

Access to data sets for training large language models offers a timely example. We are quickly approaching a time, if we are not there already, when these training data might be considered "essential facilities" that all competitors as well as regulators should have access to. As Canada aims to scale up its AI sector, we ought not reproduce the same regulatory models that allowed concentration in other areas. While historically, we may have needed Canadian oligarchs in industries such as railways and telecommunications, this likely not the best way to ensure Canada's digital sovereignty in the data-driven economy of the future. Concentrating industrial power over data is categorically different from allowing the same with transportation, infrastructure or finance.

Addressing Pressure for Cross-Border Data Sharing

In 2022, Canada and the United States began formal discussions on a data-sharing bilateral agreement under US legislation called the Clarifying Lawful Overseas Use of Data (CLOUD) Act.[15] If finalized, an agreement could enable American law enforcement to directly request Canadians' data from electronic communication service providers, rather than making the usual government request for mutual legal assistance. Canada continues to experience domestic controversy over "lawful access" (in other words, warrantless access by law

12 *Canada-United States-Mexico Agreement*, 30 November 2018, c 19, art 19.16 (entered into force 1 July 2020), online: <www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/19.aspx?lang=eng>.

13 *Commissioner of Competition and Facebook Inc.*, [2020] (Competition Tribunal, Application No. CT-2020-004, 19 May 2020) [Consent Agreement].

14 See https://ised-isde.canada.ca/site/ised/en/public-consultations/help-define-next-chapter-canadas-ai-leadership.

15 *Clarifying Lawful Overseas Use of Data Act*, HR 4943 115 Cong (2018).

enforcement) to Canadians' personal data, with the latest attempt to introduce such provisions being pulled out of a rushed bill on border security due to civil and political pressure (Geist 2025). To avoid misconceptions, a CLOUD Act cooperation framework would be different than warrantless access, given US judicial oversight of the process (Fekete and Salloum 2025).

Yet it is reasonable to question how much faith Canadians should put in foreign law enforcement agencies given recent circumstances surrounding criminal prosecutions, customs and immigration enforcement and economic statecraft. Given the growing economic and potentially ideological ties between US tech and the political administration, there is little assurance against data misuse. Critics have raised privacy, human rights and constitutional concerns about the CLOUD Act (Khoo and Robertson 2025). Data sovereignty risks are especially acute in sectors such as health (Geist, Teitelbaum and Wilson 2025). From a digital competition law and policy perspective — the focus of this brief — an agreement could further concentrate data control within a digital market already dominated by large US technology firms. It is easy to see how the United States would pressure Canada to make a "CLOUD Act deal," among other things, in exchange for concessions on sector tariffs or in lieu of other comprises. Such pressure must be addressed by, for example, buying time by pausing negotiations on a cross-border CLOUD Act agreement while simultaneously boosting Canada's independent technological and commercial capacity to support data sovereignty.

Conclusion

Despite US frustration toward the regulation of large American technology firms, and its response centred on tariffs, this brief argues that Canada must persist in strategically regulating digital competition by strengthening its relevant regulatory authority, laws and policies. This requires discerning which digital regulations could be relaxed to serve as leverage in ongoing trade negotiations and which regulations are genuinely non-negotiable.

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