



Session 2 Competition Checklist

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Limits Incentives to Compete

- Protecting incentives to compete concerns ensuring that businesses generally achieve success through competitive rather than collusive or other anti-competitive business behaviour.
- Competition law does this by defining and preventing anti-competitive business behaviour.
- Exemptions or exceptions should be permitted only where absolutely essential.



Incentives to Compete

- Exemptions / exceptions to competition law may be explicit or implicit.
- Explicit exemptions:
 - Canadian Competition Act: Collective bargaining / Security underwriting / amateur sport / financial sector mergers approved by the Minister of Finance and transport sector mergers approved by Minister of Transport.
 - Other legislation: limited exemption for copyright collectives / Shipping Conferences Exemption Act.



Incentives to Compete

- Indirect exemptions / exceptions.
 - Activity authorized by legislation or determined by authorized regulatory scheme.
 - Particularly important issue in design of self or co-regulation frameworks.



Incentives to Compete

- Where exemptions essential, unnecessary restriction of competition may be limited by expressly requiring that competition effects be taken into account.
 - Canadian Transportation Act includes the promotion of competition among its objectives.
 - Role of the Competition Bureau in examining and developing remedies for any anti-competitive effects of transportation mergers approved by the Minister of Transport explicitly recognized.



Incentives to Compete

- Competition Bureau role in conducting competition analysis of finance sector mergers also explicitly recognized.
- Canadian telecommunications legislation makes promotion of competition an objective of regulation.
 - CRTC required to forbear from regulation when competition sufficient to protect the public interest.



Incentives to Compete

- Unnecessary indirect exemptions can be avoided by clearly specifying competitive behaviour to, and circumstances under which legislation or regulation applies and/or indicating that competition law applies.
 - Province of Ontario moving from centralized electronic waste management system to individual suppliers responsibility system.
 - Cooperation among suppliers in some areas may still be required for efficient waste management.
 - To prevent need cooperation to be used as a screen for anti-competitive activity, legislation might indicate conduct not exempt from competition law.



Incentives to Compete

- Competition issues and concerns pertaining self-regulatory and co-regulatory regimes examined in the 2007 Competition Bureau Professions Study and 2011 Post Study Assessment.
 - Study examined regulatory regimes across Canada for 4 professions to identify unnecessary barriers to competition.
 - Professions looked at included accountants, lawyers, optometrists, and pharmacists.



Incentives to Compete

- Regulation of professions important for ensuring that practitioners are adequately qualified and that standards for the performance of professional activity are maintained.
- However, with any self-regulatory scheme, concern that it will be used to promote the interests of those being regulated rather than the public.



Incentives to Compete

- Study uncovered evidence of a variety of ways in which self-regulation may be designed to protect members of a profession rather than the public.
- Examples include:
 - Restrictions against advertising of price, quality, and qualifications not clearly justified by legitimate consumer concerns;
 - Restrictions against attempts to attract clients of other members of the profession;
 - The development of recommended or mandatory fee structures;
 - Restriction of entry by maintaining excessive entry standards or limiting the number of training positions available; and
 - Dividing fields of practice to avoid overlap.
 - Restrictions on business structure.



Incentives to Compete

- Factors to consider in examining self-regulatory schemes include whether:
 - Participation is voluntary or mandatory.
 - A significant oversight role played by outside persons (subject to concern that they not become captured).
 - There is a clear and compelling justification for regulating any activity.
 - They use vague or unclear restrictions, such as ones against “unprofessional conduct”, that can be interpreted to promote the interests of the parties regulated rather than the public.
 - They allow the restriction of price, quality, reputational or other information that may be valuable to consumers.
 - They allow the development of mandatory or recommended fee or price lists.



Incentives to Compete

- Release or publication of confidential information has been an important issue in a number of areas of the Canadian economy.
 - Ontario beer regulation requiring breweries to announce price changes to the authorized provincial beer distributor 30 days in advance supported high beer prices.
 - Timing and nature of price and bidding information an important consideration in electricity markets to prevent cooperative or coordinated bidding behaviour.



Incentives to Compete

- Factors for consideration in assessing the potential competition effects of confidential information.
 - Amount of information released should be the minimum required.
 - Timing and detail of information released should be carefully designed to mitigate potential to limit competition.
 - In Alberta electricity market, information on effect of bids on market clearing prices delayed until after market closed.
 - Publicly available Statistics Canada data is sufficiently aggregated to ensure that it does not reveal confidential information.



LIMITING THE INCENTIVE OF SUPPLIERS TO COMPETE

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Competition Assessment Checklist

Initial Screening: Checklist Question #3

- Does the rule or regulation **reduce the incentive of suppliers to compete?**
- This could arise, for example, if a regulation
 1. Creates a self-regulatory or co-regulatory regime
 2. Requires or encourages information on supplier outputs, prices, sales or costs to be published
 3. Exempts the activity of a particular industry or group of suppliers from the operation of general competition law

2



Competition Assessment Checklist

Initial Screening: Checklist Question #3 – 1

- **Creates a self-regulatory or co-regulatory regime**
- For example
 - Setting standards in telecommunications
 - Environmental standards and reduction in emissions

3



Competition Assessment Checklist

Initial Screening: Checklist Question #3 – 2

- **Requires or encourages information on supplier outputs, prices, sales or costs to be published**
- For example
 - Danish cement prices

4



Competition Assessment Checklist

Initial Screening: Checklist Question #3 – 3

- **Exempts the activity of a particular industry or group of suppliers from the operation of general competition law**
- For example
 - Agricultural co-operatives and export-oriented firms have been (partially) exempted from national competition laws
 - Postal services
 - Professional sports teams