COMPETITION ASSESSMENT TOOLKIT

PRINCIPLES

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Competition Assessment Toolkit

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FOREWORD

Increased competition improves a country's economic performance, opens business opportunities to its citizens and reduces the cost of goods and services throughout the economy. Numerous laws and regulations, however, restrict competition in the marketplace further than necessary to achieve their policy objectives. Governments can reduce unnecessary restrictions by applying the OECD's "Competition Assessment Toolkit". The Toolkit provides a general methodology for identifying unnecessary restraints and developing alternative, less restrictive policies that still achieve government objectives. One of the main elements of the Toolkit is a Competition Checklist that asks a series of simple questions to screen for laws and regulations that have the potential to unnecessarily restrain competition. This screen focuses limited government resources on the areas where competition assessment is most needed.

These materials can be used by governments in three main ways:

- In the evaluation of draft new laws and regulations (for example, through regulatory impact assessment programs)
- In an evaluation of existing laws and regulation (in the economy as a whole or in specific sectors)
- By government bodies engaged in development and review of policies, such as ministries that develop laws or the competition authority in its evaluation of competitive impacts of regulations

The Toolkit is designed for use in a decentralized fashion across government at both national and sub-national levels. The reason for designing the materials with this flexibility is that restrictions on competition can be implemented at many different levels of government and competition assessment can be helpful at all these levels. In fact, one of the most successful examples of pro-competitive reform occurred in a federal system when Australia implemented broad, pro-competitive reforms at both national and state level in the mid-1990s. Since that time, Australia has experienced strong economic performance, with high and steady growth that has

raised Australia's economy from a mid-level performer to one of the top performing OECD economies.

The Toolkit materials are designed for use by officials with no specialized economics or competition policy training. Institutionally, potential users could include ministries, legislatures, offices of government leaders, state governments and outside evaluators of policy. The Competition Assessment Toolkit is available in many languages in order to encourage broad use and adoption.

Competition Assessment Principles gives examples of the benefits of competition, provides an introduction to the Competition Checklist and shows some ways that governments assess competitive effects of their policies. This volume is supplemented by a companion volume, *Competition Assessment Guidance*, which provides detailed technical guidance on key issues to consider when performing competition assessment. These two volumes jointly constitute the Competition Assessment Toolkit. Further related materials can be found on the OECD's website, currently www.oecd.org/competition/toolkit.

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At the OECD Secretariat, the materials were drafted by Rex Deighton-Smith, Sean F. Ennis, Vivek Ghosal and Marta Troya-Martinez, under the leadership of Sean F. Ennis of the Competition Division. The competition assessment project is currently led by Frank Maier-Rigaud of the Competition Division.

Sophie Blondieau, Jenny Calder, Wendy Houet, Laurence Langanay and Edward Smiley contributed to the preparation of the documentation.

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CHAPTER 1

COMPETITION ASSESSMENT AND THE COMPETITION CHECKLIST[*]

This chapter describes the competition checklist and its role in the competition assessment process. Readers with prior knowledge of this topic may wish to proceed directly to the technical, companion volume *Competition Assessment Guidance*.

1. Introduction

Government action routinely is designed to promote and protect important public policy goals. There usually are multiple ways to achieve these goals. Because consumers typically are better off when there is more, rather than less, competition, it is valuable to assess effects on competition when considering these options.[1]

This Toolkit shows how to make that assessment. It provides a practical method for regulators and legislators to use to identify important competitive restrictions and, if possible, to avoid them. The OECD Council recommends competition assessment (see Appendix A).

The method employs, as a first step, a set of threshold questions, a "Competition Checklist," that show when proposed laws or regulations may have significant potential to harm competition. This Checklist helps policymakers focus on potential competition issues at an early stage in the policy development process.

While the majority of regulations do not present a risk of significant harm to competition, the competition assessment process, of which the checklist is the initial

[*] This chapter has been prepared by Sean F. Ennis in conjunction with more detailed papers prepared by Rex Deighton-Smith and Vivek Ghosal.

[1] Examples of the benefits of competition are provided in Chapter 2.

stage, provides the analytical framework regulators and legislators need to mitigate or avoid potential competition problems. It does so by aiding them in identifying possible alternatives that might reduce or eliminate potential harm to competition while continuing to achieve the desired policy objectives.

The rest of this chapter describes the four categories of questions in the Competition Checklist and first steps policymakers should take if the answer to any of those questions is "yes."

2. Are there limits on the number or range of suppliers? (Checklist A)

Limiting the number of suppliers leads to the risk that market power[2] will be created and competitive rivalry will be reduced. When the number of suppliers declines, the possibility of diminished competition (or collusion) among the remaining suppliers increases, and the ability of individual suppliers to raise prices can be increased. The resulting decline in rivalry can reduce incentives to meet consumer demands effectively and can reduce innovation and long-term economic efficiency. While there are sound policy reasons why policy makers may sometimes limit the number or range of suppliers, as discussed below, the policy benefits of entry limits need to be carefully balanced against the fact that ease of entry by new suppliers can help prevent existing suppliers from exercising market power.

Competition Checklist

Further competition assessment should be conducted if the proposal has any of the following 4 effects:

(A) Limits the number or range of suppliers

This is likely to be the case if the proposal:

1. Grants exclusive rights for a supplier to provide goods or services
2. Establishes a license, permit or authorisation process as a requirement of operation
3. Limits the ability of some types of suppliers to provide a good or service
4. Significantly raises cost of entry or exit by a supplier

[2] Market power of suppliers is the ability to profitably increase price, decrease quality, or decrease innovation relative to the levels that would prevail in a competitive market.

5 Creates a geographical barrier to the ability of companies to supply goods services or labor, or invest capital

(B) Limits the ability of suppliers to compete

This is likely to be the case if the proposal:

1 Limits sellers' ability to set the prices for goods or services

2 Limits freedom of suppliers to advertise or market their goods or services

3 Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose

4 Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

(C) Reduces the incentive of suppliers to compete

This may be the case if the proposal:

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

(D) Limits the choices and information available to customers

This may be the case if the proposal:

1 Limits the ability of consumers to decide from whom they purchase

2 Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers

3 Fundamentally changes information required by buyers to shop effectively

2.1 Grants of exclusive rights (Checklist A1)

A grant of an exclusive right to produce a certain good or provide a certain service represents the establishment of a private monopoly. Historically, the grant of an exclusive right frequently occurred in the context of a "natural monopoly".[3] The grant of exclusive rights, particularly if given long duration, has frequently been

[3] A monopoly exists when a good or service can reasonably be purchased only from one supplier. In a "natural monopoly", one supplier can produce desired output more efficiently and at a lower total cost than two or more suppliers.

considered a means of encouraging substantial investments in infrastructure that may be unlikely to occur without the incentives provided by the guaranteed market the grant of an exclusive right provides. But exclusive rights are sometimes used in situations where the natural monopoly justification for them does not apply.

Exclusive rights are in many respects the ultimate entry barrier. Exclusive rights are likely to yield monopoly pricing and other problems associated with the exercise of market power. Such results may not be fully avoided through regulation because regulators often fail or achieve only a low level of success in preventing the exercise of market power and protecting consumers. Therefore, such rights should be limited and established only after careful consideration of prices to be charged, duration of the rights and alternative ways to achieve the same objectives.

2.2 License or permit requirements (Checklist A2)

Licenses or permits required for operation necessarily restrict entry. Qualifications requirements can take the form of minimum standards for formal education and/or experience and may include good character requirements. For example, so-called "fit-and-proper" tests are commonplace in finance for participation in an official capacity at company and board levels. At times, a "public interest" test may be applied that requires that potential entrants demonstrate the "need" for an additional service to be provided and, in some cases, even that their entry would have no negative impact on the businesses of existing industry participants. In extreme cases, there may be fixed numbers of licensees.

License or permit requirements are often stricter than is necessary for consumer protection and can unnecessarily reduce consumer choice and create artificial scarcity that raises prices. While licensing schemes often have well-founded consumer protection objectives, such barriers frequently have the effect of protecting incumbent producers from competition. Care needs to be taken that license and permit requirements do not become more onerous than is necessary to achieve the sought regulatory objectives.

2.3 Limits the ability of some types of suppliers to provide a good or service (Checklist A3)

At times, governments limit the ability of other types of suppliers to participate in a business activity. For example, some governments require that all real estate brokers provide a government-mandated set of services, and thus limit or prohibit provision of services by low-cost minimum-service brokers, or fee-for-service

brokers.[4] Such restrictions are often excessive because they unduly restrict the number of suppliers, reduce competition between suppliers and result in higher prices or less desirable contract terms for customers.

Where regional or small business policy objectives are sought, alternatives less deleterious to competition may include a range of direct subsidies and/or tax benefits, more favourable regulatory provisions for the small or regional provider, or the use of publicity/educational campaigns.

2.4 Significantly raises the costs of entry or exit (Checklist A4)

Regulations that raise the costs of entry to, or exit from, a market will tend to discourage some potential entrants and so reduce the number of participants in the market over time. Examples of this kind of regulation include rigorous product testing requirements and requirements to meet unnecessarily high educational or technical qualifications. Governments have sometimes acted to minimise the competitive impacts of such provisions by providing targeted exemptions. For example, low-volume car manufacturers are often exempted from aspects of vehicle testing regulations, or subject to less onerous testing protocols.

2.5 Restricts the geographic flow of goods, services, capital and labour (Checklist A5)

Regulations sometimes limit the flow of goods, services, capital and/or labour across jurisdictional boundaries, often as an instrument of regional policy. Such limitations, however, artificially reduce the geographic area of competition for provision of a good or service. This may reduce the number of suppliers and potentially allow suppliers to exercise market power and increase prices.

Potential restrictions should be assessed based on whether there is a clear link between the restrictions and the achievement of specific policy goals, whether the restrictions are the minimum necessary for achievement of the goal, whether a reasoned analysis suggests the policy goal will be achieved by means of the restriction and whether the restrictions are limited to a finite time span via explicit regulatory provisions.

There is a substantial risk that "temporary" protections will develop into quasi-permanent arrangements as a result of substantial lobbying by the suppliers that benefit from the restrictions. There will often be superior alternatives available to

[4] See http://www.usdoj.gov/atr/public/real_estate/feeforservice.htm.

achieve the regulatory objective, including direct subsidies and favourable regulatory treatment.

3. Are there limits on the ability of suppliers to compete? (Checklist B)

Regulation can affect the ability of suppliers to compete in a variety of ways, not all of which are identified here, including through advertising and marketing restrictions, setting of standards for product or service quality, and controls over prices at which goods or services are sold. These limits can reduce the intensity and dimensions of rivalry, yielding higher prices for consumers and less product variety.

3.1 Controls the prices at which goods or services are sold (Checklist B1)

Governments often regulate prices in traditional monopoly sectors, such as utilities. These types of price controls are probably helpful to consumers and serve as a counterweight to lack of consumer alternatives. However, price controls are also sometimes applied in situations where there are many potential suppliers to the same consumer. When minimum prices are set, low-cost suppliers are prevented from winning market share by providing better value to consumers. Similarly, when maximum prices are set, supplier incentives to innovate by providing new and/or high-quality products can be substantially reduced, and suppliers may effectively coordinate their prices around the maximum price.

Minimum price regulation is sometimes a response to extremely vigorous price competition. In these cases, minimum price regulation is generally seen as a means of protecting small suppliers from “unfair” competition. The impacts of such price regulations merit careful evaluation because the result is likely to be higher prices for consumers or unmet demand. Maximum price regulations are frequently introduced as a necessary corollary to restrictions on entry. An alternative is to permit freer entry to the market.

3.2 Restricts advertising and marketing (Checklist B2)

Regulations that restrict suppliers’ ability to advertise or market goods and services often exist to limit false or misleading advertising. Sometimes advertising restrictions are intended to reduce advertising for products or services that are deemed to have a socially negative value or that are subject to excess consumption. At other times, advertising to certain “vulnerable” groups, such as children, may be restricted. Restrictions of this nature, when circumscribed to ensure they are not overly broad, can have significant social benefits.

In many cases, however, advertising and marketing restrictions are too broad and unduly restrict competition. Restrictions on advertising and marketing are likely to be particularly onerous for potential entrants, as they restrict an entrant's ability to inform potential customers of their presence in the market and of the nature and quality of the goods and services that they are able to offer. Regulations that restrict only false and misleading advertising are often a viable alternative.

3.3 Sets standards for product quality that provide an undue advantage to some suppliers over others or that are above the level that some well informed customers would choose (Checklist B3)

Regulations setting standards often provide benefits to consumers and can help to promote new types of products by ensuring that new products from different suppliers are compatible. But standard setting can also provide undue advantages to some suppliers over others. One common example is environmental regulations that limit the allowable emissions of a mildly toxic substance. While limiting emissions is often appropriate to protect public health, regulations can be designed in ways that unfairly advantage a small number of suppliers, for instance by requiring a particular technology or by setting unduly strict standards that are difficult or impossible for less well resourced producers to meet. Another example in which standard-setting can have a significant anti-competitive impact is where minimum quality standards are set for particular product types. There are often sound objectives underlying such standard-setting, such as protection of consumers from risks associated with the use of the product. However, when some consumers prefer lower cost over increased safety, the need for the standard is less clear. Consumer welfare can be reduced by such standards as consumers are prevented from buying cheaper, lower quality goods that they would prefer, even when fully informed of all associated risks.

Alternatives often exist to stricter product standards regulations. For example, when minimum standards are pursued for consumer protection reasons, it may instead be possible to require disclosure of certain product characteristics. Where major changes in emissions standards are contemplated, governments can seek to minimise anti-competitive impact by permitting trading of emission rights or providing temporary assistance to smaller suppliers in order to help them meet the new requirements.

3.4 Raises the costs of some suppliers relative to others (Checklist B4)

At times, regulations have the unintended effect of raising costs for some suppliers relative to others. One source of cost asymmetry is regulations that unnecessarily require the use of one technology of production over another. Another source is "grandfather clauses" that exempt current suppliers from a regulation but

apply the regulation to new entrants. Such arrangements have substantial potential to distort competitive relations within the industry by raising costs to some suppliers to a substantially greater extent than to others. This can impede entry, reduce innovation and lower the intensity of competitive pressure in the market. While creating cost differentials can be harmful, that is not to say that regulations should affirmatively seek uniform supplier costs.

For occupational qualifications, grandfather clauses are often implemented based on the belief that extensive practical experience of long established practitioners is an adequate substitute for a higher level of formal qualification. In relation to productive technologies, grandfather clauses are often implemented to ensure adequate time exists to amortise the sunk costs of previous investments. The anti-competitive impact of grandfather clauses can be minimised by ensuring that they are time-limited, rather than permanent. More generally, a sceptical approach is appropriate for arguments in favour of grandfather clauses, as the clauses often protect vested interests from potential competition.

4. Are there reductions in the incentives for suppliers to compete? (Checklist C)

Regulations can affect supplier behaviour not only by changing the suppliers' ability to compete but also by changing the incentive of suppliers to act as vigorous rivals. Two of the main reasons why suppliers may compete less vigorously are first, that some regulations may have the effect of facilitating co-ordination between suppliers and, second, that some regulations may have the effect of reducing the willingness, ability or incentive of customers to switch between different suppliers. Other reasons suppliers may compete less vigorously exist, such as profit or market share limits that restrict the potential reward from competing. Cartel-like behaviour[5] may be more readily generated under self-regulatory or co-regulatory regimes, by increasing the sharing of supplier output and price information or by excluding an industry or sector from the reach of competition law. Cartels are harmful because they restrict output and raise prices, making consumers worse off. The risks of cartel activity must be balanced against potential benefits of self-regulation, such as quicker certification of new technologies.

[5] A cartel exists when competitors make an agreement to restrict competition, for example by setting a price, limiting supply, sharing profits or rigging bids, thus increasing their collective profits.

4.1 Self-regulation and Co-regulation (Checklist C1)

When an industry or professional association takes full responsibility for regulating the conduct of its members, without government legislative backing (often at the urging of government) the term “self-regulation” is used. However, when government provides legislative backing to rules that are developed at least in part by the industry/professional association, the term “co-regulation” is used. Self-regulatory and co-regulatory structures can yield substantial benefits by ensuring that technical standards are appropriate and that standards advance with technology.

However, these structures can have significant anti-competitive impacts. In particular, industry/professional associations often adopt rules that reduce incentives or opportunities for vigorous competition between suppliers of goods or services, such as advertising restrictions and rules that prevent discounting. In addition, unduly strict qualifications requirements may reduce entry to the market. Government should retain powers to prevent attempts by the industry/professional association to use regulatory powers in an anti-competitive manner. This may include ensuring either that the self-regulation or co-regulation should clearly remain subject to competition law enforcement, or that the relevant governmental authorities have the right to approve, or refuse to approve, association rules and, as required, to substitute their own should the association continue to propose unacceptable rules.

4.2 Requirements to publish information on supplier prices, outputs or sales (Checklist C2)

Regulations that require market participants to publish information on their prices or output levels can significantly assist in the formation of cartels, since a key requirement for cartel operation is that participants in the cartel can effectively monitor their competitors’ (or co-conspirators’) market behaviour. Cartels are more likely to arise where there are fewer participants in the market, where entry barriers are high, where suppliers’ products are relatively homogeneous and where information about price or output changes is available either before or soon after the price or output changes.

Regulations requiring the publication of information such as price and output levels may be adopted to improve consumer information and, at times, can improve the efficiency of markets. However, when cartel formation is likely, such requirements are more likely to have a net negative impact. Alternatives exist to publishing all collected data. When the information is gathered primarily for government policy making, there may be no need to publish it at all. When the

purpose is to aid consumers or provide general statistics, aggregate statistics support cartels less than supplier-specific statistics.

4.3 Exemptions from general competition laws (Checklist C3)

In many countries, particular suppliers or economic sectors benefit from exemptions from the general competition law. In some cases, these sectors are subject to their own, sector-specific competition laws. In other cases, no restrictions exist on anti-competitive conduct in these sectors. Where a substantial derogation from the general application of competition law exists there is a clear risk of cartels, pricing abuses and anti-competitive mergers[6].

Where a specific rationale for the continued existence of exemptions has been identified, consideration should be given to the means by which their scope can be minimised. For example, a legislated monopoly requiring all producers of a particular commodity to sell to a licensed intermediary may be inferior to a system that allows producers to engage in cooperative selling arrangements, but does not compel them to do so.

5. Are there limits on the choices and information available to customers? (Checklist D)

5.1 Limits on ability of consumers to decide from whom they purchase goods or services (Checklist D1)

Regulations sometimes limit the choices available to consumers. For example, a regulation may restrict customers to purchasing medical services locally. Such a regulation could limit quality of care and prevent those consumers who would be interested in travelling (for example, to a clinic with shorter waiting lists or a better reputation) from doing so.

Limits on consumer choice can be harmful, because the suppliers who remain can have less incentive to satisfy consumers by delivering products of desired quality and price.

6 A merger is a combination of two (or more) previously independent suppliers to form one larger supplier.

5.2 Reduces the mobility of customers by increasing the costs of changing suppliers (Checklist D2)

Regulations can make consumers more or less willing to switch suppliers by affecting "switching costs" – the explicit and implicit costs borne by a consumer in changing from one supplier to another. Switching costs may arise for various reasons, including long contract terms or tying of assets to suppliers in a way that makes switching inconvenient, as with tying a phone number to a given service provider. When consumers face high switching costs, suppliers can charge higher prices for their goods or services. Suppliers therefore often seek to create high switching costs, sometimes by promoting policies that will ensure high switching costs.

The pro-competitive impact of reducing or eliminating switching costs can be large, and policymakers should seek to avoid policies that raise switching costs for consumers. Where there is a clear risk of switching costs being imposed, the inclusion of provisions in the regulatory structure that will limit or prohibit their use may be advisable. Due care should be taken to ensure that legitimate costs of consumer switching are considered.

5.3 Fundamentally changes information required by buyers to shop effectively (Checklist D3)

When governments deregulate, and introduce markets that have not previously existed, consumers will be asked to make choices between products for which they have never previously shopped. One example in which this occurs is with consumer purchases of electricity. When consumers are given the right to select their supplier in new markets, it can be more difficult for them to evaluate offers and distinguish good companies from bad ones. A danger that can follow from such situations, absent an information requirement due to the "new" nature of the product, is that the reforms will be rolled back due to consumer complaints about companies that take advantage of consumer inexperience.

In such circumstances, it may be better to accompany the creation of a new market with the creation of an information requirement that helps provide consumers with a reference point for comparing offers.

6. When the answer is "yes"

Identifying regulations that may unduly restrict competition is the important first step for improving the quality of regulation. The questions listed on the Competition Checklist provide a reliable initial basis for identifying regulations that

may give rise to an anti-competitive impact. The sub-points under the questions indicate the main, but not exclusive, ways in which regulations may unduly restrict market rivalry.

With the Checklist, only a minority of regulations will likely be found to have the potential to unduly constrain market activity. When, however, the Checklist suggests that there is a potentially excessive constraint on market activity, performing a more comprehensive competition assessment merits consideration. Chapter 4 describes how to do such an assessment. Chapter 3 discusses how to fit competition assessment into governmental operations.

CHAPTER 2

HOW COMPETITION BENEFITS CONSUMERS[*]

This chapter provides examples of how competition delivers substantial benefits to consumers.

An important reason for market reforms is that governments are clearly recognising the benefits of competition.1 The Competition Assessment Toolkit focuses on providing practical tools for governments to limit excessive restrictions on competition. Prior to using such tools, it is worth considering why increased competition between businesses is a goal worth pursuing.

Competition among businesses can deliver improvements in production efficiency and bring newer and better products to consumers through innovation, leading to gains in economic growth and consumer welfare. Broadly speaking, competition between suppliers generally leads to lower prices and greater choice. One of the best ways to understand these benefits is through examples. Selected examples are presented in Box 1. These examples are meant to illustrate the overall benefits of competition, without necessarily focusing on regulatory restrictions.

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[*] The examples in this chapter were prepared by Vivek Ghosal.

[1] In many of the de-regulated industries such as telecommunications, electricity and airlines, one of the benefits of competition that was touted was that it would eventually reduce excess capacity that had been built under regulation, leading to greater efficiency in production and lower prices for consumers. Muris (2002) points to the fact that since many industries are being privatized or liberalized across the world, governments are clearly recognizing the benefits of competition.

Box 1. Examples of Benefits to Consumers from Competition

1. Shipping Ports.

Argentina started privatizing some seaport services in the 1970s. This phase of privatization did not have much success in terms of productivity. Public investments in infrastructure remained low, the system was over-regulated and port institutions were inadequate. In the 1990s, private firms were allowed to operate public ports and to build new ports or invest in their infrastructure. In the case of the port of Buenos Aires, its six terminals were given in concessions to five different private firms, while the Port Authority retained the ownership of infrastructure (landlord port model). As a result of the reforms, cargo handling increased by 50% between 1990 and 1995, labor productivity surged by 275% and Argentinean ports became the cheapest ports in Latin America. In 1997, Puerto Nuevo's cargo handling surpassed that of Santos (Brazil), the biggest port in South America. Foreign firms participated in the construction of new ports, as in the case of a terminal in Zarate.

Sources:

Lourdes Trujillo and Tomás Serebrisky. "An Assessment of Port Reform in Argentina: Outcomes and Challenges Ahead," World Bank, 2004.
http://www.worldbank.org/wbi/regulation-f/pdfs/portreform_argentina.pdf
"Infrastructure in Trade and Economic Development," World Trade Report, World Trade Organization, 2004
http://www.wto.org/English/res_e/booksp_e/anrep_e/wtr04_2b_e.pdf

2. Retail Stores.

The effects of increased competition in grocery and other retail stores have been noted in several studies. For the U.S. markets, Hausman and Liebtag note that when Wal-Mart originally enters a market, its prices are between 10% and 25% lower for the same products compared with large retail chains such as Kroger, Publix, Target, and others. After Wal-Mart opened a store near a Kroger supermarket in Houston, sales at the Kroger dropped 10% even though its prices declined after the arrival of new competition. This effect indicates that consumers benefited from Wal-Mart's entry. Other benefits of competition that have been associated with the appearance of grocery superstores include: (a) new products and greater variety in the stores; (b) store renovation with wider aisles, better lighting and arrangement of products; (c) increase in the number of check-out counters. Efforts to prevent such stores from opening through regulation would prevent the achievement of the price benefits to consumers.

Sources:

Jerry Hausman and Ephraim Leibtag. "Consumer Benefits from Increased Competition in Shopping Outlets: Measuring the Effect of Wal-Mart."
http://econ-www.mit.edu/files/1765
"Wal-Mart Throws an Undercut at Target." *The Washington Post*, December 16, 2005.
http://www.washingtonpost.com/wp-dyn/content/article/2005/12/15/AR2005121502096.html

3. Railways.

Lalive and Schmutzler (2007) study the effects of introducing competition for local passenger railway markets in the German state of Baden-Württemberg (one of Germany's largest states) over the period 1994 to 2004. They find that while DB Regio was still the dominant operator ten years after the reforms were introduced, its competitors, the NE-operators, expanded their market share from about 3% at the beginning of the reform to 13.2% in 2004. They find that the frequency of service in Baden-Württemberg increased substantially from 1994 to 2004 and that the frequency of service on those lines that were procured competitively developed more favorably than on those that were not. They find: (1) a 29% increase in total transportation; (2) a much stronger increase in the competitive group (45% vs. 22% in the control group); and (3) an increase from 19 to 39 in the number of lines operated at least partly by competitors of DB Regio. Overall, one can conclude that injecting more competition resulted in greater quantity (frequency of service) as well as an increase in convenience for consumers that the higher frequency brings.

Source:

Rafael Lalive and Armin Schmutzler. "Exploring the Effects of Competition for Railway Markets," University of Zürich, February 2007.
http://ideas.repec.org/p/soz/wpaper/0511.html

4. Road Transport.

There is evidence about employment effects in France from changes to road freight transport regulations. In France, former prime minister Balladur's government eliminated a previously existing requirement that a government-issued license was needed to transport merchandise more than 150km. After the reform, prices for road transport fell and margins fell, suggesting that there had been high rents in the sector. In terms of employment in the sector, employment had been growing at a rate of 1-1.5% per year prior to the reform. During the years after the reform, employment grew at 5% and now grows around 4% per year. There were strikes (1992, 1995) because of the reform and how it was implemented. But, according to Cahuc and Kamarz (2005), the net effect was the creation of jobs.

Sources:

OECD. "Draft Summary of the Discussion of the Round Table on Competition and Regulation in the Legal Profession." Working Party No. 2 on Competition and Regulation, October 2007. (See comments of Francis Kramarz, p.16)
Cahuc, Pierre, and Francis Kramarz. "De la Précarité à la Mobilité: vers une Sécurité Sociale Professionnelle," Report to the Minister of Economics and the Minister of Labor, June 2005, La Documentation Française, Paris.
http://www.ladocumentationfrancaise.fr/rapports-publics/054000092/index.shtml

5. Automotive Parts.

Warren-Boulton and Daniel Haar (2007) provide estimates of the amount of economic benefits to consumers from competition in the market for automotive collision parts. They

show that consumers benefit in two ways when Keystone (or another seller of competitive parts) enters the market with a competitive alternative to an Original Equipment Manufacturer (OEM) part. They consider two effects: (a) Keystone's price will typically be lower than the OEM's price; and (b) Keystone's entry and competition typically results in the OEM reducing its price. Their calculations show that on average: (a) Keystone's automotive part prices are about 26% lower than the prices of the OEM parts they compete against; and (b) prices of OEM parts were reduced by about 8% due to this competition. Regulations that require the use of OEM parts can harm consumers.

Source:

Frederick R. Warren-Boulton and Daniel E. Haar. "Estimation of Benefits to Consumers from Competition in the Market for Automotive Parts." Microeconomic Consulting & Research Associates, Inc., 2007. http://www.qualitypartscoalition.com/pdfs/8-2micraanalysisl.pdf

6. Book Publishing.

The Net Book Agreement (NBA) which existed before 1997, prevented booksellers in the UK and Ireland from selling below the publisher's chosen price. After the NBA was abolished, a basket of best-selling books was, on average, discounted by 28 percent. Just after the NBA was abolished, 41 percent of books were discounted. Six years later in 2006, 52 percent of books were discounted. Other benefits included, for example: (a) growth of new book titles published increased from an average of 3 percent per year to over 4 percent; (b) expanded selection in stores and improved customer service.

Source:

"The Benefits from Competition: Some Illustrative UK Cases." http://www.berr.gov.uk/files/file13299.pdf

7. Housing.

Atterhög (2005) uses data to explore the effects on rents and quality of housing services of the privatization of apartments by municipal housing companies located outside metropolitan areas in Sweden. He finds that: (a) in several markets, more competition led to lower rents, with the decreases being in the 2%-5% range; and (b) on average, there was no significant change in the quality of housing services due to privatization. The results on the quality of apartments varied across specific-owners.

Source:

Atterhög, Mikael. "Increased Competition in the Swedish Housing Market and Its Effect on Rents and Quality of Housing Services for Households," *Housing, Theory and Society*, Vol. 22, No. 1, 32–49, 2005. http://www.ingentaconnect.com/content/routledg/shou/2005/00000022/00000001/art00003

8. Stock Exchange.

The monopoly stock market operator the Australian Securities Exchange started offering stockbrokers fee discounts under the threat of competition from two overseas rivals –

Liquidnet and AXE – which planned to set up operations in Australia. Liquidnet is US-listed and AXE ECN is backed by the New Zealand Exchange and major brokerage houses Citigroup, CommSec, Goldman Sachs JBWere, Macquarie and Merrill Lynch. AXE and Liquidnet are promoting alternative trading systems for market crossings, or off-market trades between fund managers, which account for about 30 per cent of all equity trades.

Source:

"Exchange cuts fees as competitors lurk." *The West Australian*, August 25, 2007.
http://www.thewest.com.au/default.aspx?MenuID=33&ContentID=38376

9. Airlines.

Prior to the 1990s, the EU aviation market was heavily regulated in terms of airlines' access to routes and prices. Agreements between member states restricted access to markets and often allowed only one airline to operate a service on a limited number of specified routes. During the 1990s, domestic markets were opened up and eventually became free to competition from all EU-licensed carriers. Low-cost airlines emerged as a result of greater opportunities for competition. Some of the results of the increased competition were: (a) traditional carriers began to offer services such as online booking and pricing simplicity to compete with the low-cost carriers. The simplified fare structure gives lower fares, greater flexibility, and more choice to customers. For example, advance purchase and Saturday night stay restrictions were removed; (b) price decreases were considerable. EU carriers' average lowest non-sale fares had fallen by 75% in nominal terms; (c) European flight frequency increased by 78%. Over the period, domestic flight frequency more than doubled; and (d) there was an increase in service variety. The average number of airlines operating on sample routes increased from 3 to 4 between 1992 and 1997, and further increased in 2003.

Source:

www.berr.gov.uk/files/file13299.pdf

10. Cable Television.

The U.S. Federal Communications Commission recently banned exclusive contracts between cable companies and apartment complexes in favor of allowing competition in such cases. FCC's estimate is that there will be a possible decrease in subscription prices of as much as 30%. Apart from the price effect, apartment dwellers will now have greater choice of providers which, under increased competition, are expected to compete to deliver better variety of packages and service quality.

Sources:

"Rules to Increase Choice and Competition Among Video Providers for Consumers Residing in Multiple Dwelling Units." Federal Communications Commission, 2007.
http://www.fcc.gov/
In the matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, 2007 WL 3353544 (F.C.C.)(Nov. 13, 2007), upheld in National Cable and Telecommunications Ass'n v. F.C.C., 567 F.3d 659 (D.C. Cir. 2009).

"Apartment Complexes May Benefit From FCC Action Against Cable Contracts." Mortgage News Headlines, October 21, 2007.
http://www.mortgagenewsdaily.com/10312007_Apartment_Cable.asp

11. Telecommunications.

(A). Growth in the mobile phone market is posing a significant competitive challenge to the fixed-line providers. And VoIP is transforming the local telecoms market almost as fast. According to a new report published by Balancing Act (a UK-based telecom consultancy firm), the cost of phoning from Africa to Europe and North America has fallen dramatically under pressure from cheaper prices available from small start-ups offering VoIP services in Africa. In a survey of the majority of telecom service providers, Balancing Act found that in 2005, almost all African telecom service providers were charging US$1.00 or more per minute to main international destinations. In 2006 only 19 were still charging that price. In 2007 just over half are charging US$0.25 for these calls, in countries as diverse as Algeria and Kenya.

Source:

"Africa: Tariffs Tumble, VoIP rises." 08 Mar 2007, *Economist Intelligence Unit.*
http://globaltechforum.eiu.com/index.asp?layout=rich_story&doc_id=10265&title=Africa%3A+Tariffs+tumble%2C+VoIP+rises&categoryid=31&channelid=4

(B). In 1995, the Singapore government issued a license for a second mobile phone provider to commence services in 1997. This decision reflected the government's intention to increase competitive pressures on SingTel in preparation for increased international competition and expansion. MobileOne entered the market in April 1997, captured about 30% of the market and prices declined by 50-70% within one year. The range and quality of services improved significantly and the market expanded rapidly with the mobile phone penetration rate rising from 14% at the start of 1997 to 25% at year-end and approached 30% by the end of 1998.

Source:

Singh, Kulwant. "Guided Competition in Singapore's Telecommunications Industry," *Industrial and Corporate Change* Vol. 7, Number 4, 1998, p. 585-599.
http://icc.oxfordjournals.org/cgi/content/abstract/7/4/585

CHAPTER 3

FITTING COMPETITION ASSESSMENT INTO GOVERNMENT OPERATIONS*

This chapter discusses how competition assessment can be effectively incorporated into government activities.

1. Introduction

As we have seen, competition assessment is the process of evaluating government regulations, rules and/or laws to (1) identify those that may unnecessarily impede competition and (2) redesign the identified ones so that competition is not unduly inhibited. Effectively fitting this process into government operations and institutions realistically requires consideration of the following five topics:

- Which policies merit a competition assessment?
- When should a competition assessment be performed in the policy development process?
- Who should be responsible for drafting and reviewing a competition assessment?
- How can policymakers without responsibility for regulatory quality or competition be given incentives to prepare an appropriate assessment?
- What resources are required for competition assessment?

It will become clear from what follows that there is no single or simple recipe for institutional implementation of competition assessment. Feasible solutions are likely to vary substantially across jurisdictions, given differences among

* This chapter was written by Sean F. Ennis.

jurisdictions with regard to such things as the extent to which there is a federal system, staffing strengths, and the political environment. While this Toolkit draws on existing experience to identify potential options, those options should not be considered exhaustive.

2. Which policies merit a competition assessment?

The depth of a competition assessment should be proportional to the extent of the potential negative competitive effects of a policy. The Competition Checklist permits a quick screening of policies so that those with the potential to unduly impact competition can be quickly identified for further assessment. Most individual laws or regulations do not have that potential. Consequently, most do not require a detailed competition assessment.

Laws, regulations and rules. Policies that may be subject to competition assessment include laws, regulations and rules that implement laws or regulations. Not all jurisdictions subject their laws to competition assessment, but those that have had the greatest success with competition assessment are the ones that have done so. (See Box 1.)

New and existing policies. Some governments have approached competition assessment by looking at both new and existing policies. This is the most effective way to broadly improve the competitive atmosphere, but requires substantial political will. Other governments have implemented a form of competition assessment focused exclusively on new policies.

National, regional, local. There is a strong economic case for performing competition assessment at the national, regional, and local levels. Competition assessment is relevant to all government policies that may unduly restrict competition. Policies that create such limits are sometimes imposed at the national level, but they can also originate at the regional or local level. For example, policies hostile to competition in the provision of taxi services are often imposed at the local level while consumer-harmful regulation of professionals often occurs at the regional level.

Box 2. Australian National Competition Policy Reforms

After the completion of the Hilmer Committee's report in 1993 which urged greater microeconomic openness with a focus on pro-competitive reforms, Australian governments agreed in 1995 to a programme of reviewing and revising legislation that limited competition and that was not in the public interest. This reform program resulted in the identification of 1700 laws that needed review. Legislation was reviewed at a national and state or territorial level, with most reviews being completed by 2001. The national government offered funding to aid state and territorial governments with any adjustment costs that might arise from revisions of legislation. The program was notable because it systematically identified existing laws and regulations that merited review and because, since the implementation of the programme, Australia's economy has been among the stronger performers in the OECD

3. When should a competition assessment be performed in the policy development process?

New policies. Competition assessments can positively contribute to the design of new policies and ideally should be performed *early* in the policy development process, before a determination has been made about how to approach a given policy challenge. When a proposed policy has the potential to restrict competition, it is valuable to consult government competition experts early in the policy development process to ascertain whether alternatives can be developed that will achieve the regulatory objectives with less harm to competition.

Existing policies. Most existing policies have not been subject to a competition assessment. The critical issue here is prioritizing which policies should be reviewed first, as it is almost inevitable that some existing policies are more likely to unnecessarily adversely impact competition than others. For example, in Australia at the time of its National Competition Reviews, hundreds of existing government policies were identified that limited competition. Australia prioritized these policies for review. Where problems were found, revision occurred in almost all cases.

4. Who should be involved with drafting and reviewing a competition assessment?

In order to ensure that competitive effects are properly considered, the governmental body developing the policy in question should perform the competition assessment. In that way, the right policymakers ask at the appropriate time the pertinent questions that are necessary to promptly and efficiently develop policies that take due account of competitive effects.

"Frontline" policymakers, however, may not take the competition assessment process seriously unless an external party reviews their work. Regulatory gatekeepers, officials with competition expertise such as those located in competition authorities, or some combination of the two can perform those reviews.

In the United Kingdom, for example, the Office of Fair Trading (OFT), a competition authority, has the responsibility for both developing competition assessment guidelines and reviewing competitive impacts of new policies.[1] The OFT undertakes these responsibilities in conjunction with the regulatory gatekeeper, the Better Regulation Executive (BRE). In order to promote common working methods and understanding, a small number of officials from the OFT split their working time between the OFT and the BRE.

To complete a competition assessment that is more comprehensive than required by the Competition Checklist would typically involve competencies related to market definition and competition analysis. For this reason, some countries require their competition authorities to review any new laws or regulations that are expected to have an economic impact before the provisions in question are enacted.

In Mexico, for example, the competition authority must review any new secondary legislation with potential effects on competition. In Korea, the competition authority has responsibility for reviewing selected new regulations. In Hungary, the competition authority is required to submit its comments on new regulations.

Many other countries hold horizontal consultations prior to the adoption of new regulations. Such consultations work better when competition reviewers can enter the process early and are not required to submit their comments on all policies, but can intervene in situations in which they believe there may be a significant potential problem.

The reviewing body's degree of independence is also important. In Australia, for example, a new body was created in 1995 to oversee the National Competition Policy reviews of national and state or territory laws and regulations. This body, the National Competition Council, is distinct and independent both from the regulatory oversight office for reviewing new regulations and from the competition authority.[2]

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1 The 2006 OFT guidelines closely follow those of the OECD. See: http://www.oft.gov.uk/NR/rdonlyres/BFD72799-03BD-428D-AB43-30408F794ACB/0/oft876.pdf.

2 For more details, see http://www.ncc.gov.au/articleZone.asp?articleZoneID=136.

Australia's success amply demonstrates the value of independent bodies reviewing laws and regulations.

A competition authority's or other government body's involvement in the competition assessment process should not bar any subsequent government legal action under that jurisdiction's competition laws. Competition assessments by definition are based upon predictions, and predictions in real life often turn out to understate competitive harms or overstate competitive benefits.

5. How can policymakers without responsibility for regulatory quality or competition be given incentives to prepare an appropriate assessment?

The policymakers who develop a new regulation may have an incentive to under-report potential competition problems associated with a proposed regulation. They may perceive that identifying a potential competition problem or consulting with an outside agency, such as a regulatory gatekeeper or a competition authority, simply creates more work for them without a substantial benefit. It is therefore important to emphasize to policymakers that competition assessment improves their product, the policy they make.

A number of options exist for enhancing policymaker's incentives to embrace and properly execute competition assessments, and their skills to perform that task. These options include:

- Including competition assessment in Regulatory Impact Analysis (RIA);
- Financial rewards; and
- Best-practice training.

Including competition assessment in RIA. RIA is a formalized process for reviewing regulations to ensure that they achieve their intended policy objectives. In general, the goal of RIA is for the benefits of a regulation to exceed its costs. RIA is more effective when competition assessment is included as one of its elements. That is because the dynamic, market-oriented considerations inherent in competition assessment provide important insights for a policymaker seeking to determine if the benefits of a particular regulation outweigh its costs. Giving the competition

authority some role in this area also reduces the need for regulatory agencies or gatekeepers to retrain their staffs.[3]

Financial rewards. Because Australia is a federal system, implementing the National Competition Policy (NCP) at the state or territory level required the states' agreement. The Australian government made significant payments to states and territories, consisting of per capita payments based on the extent to which reviews and revisions of legislation were completed. "The NCP payments are the means by which gains from reform are distributed throughout the community. The payments recognise that, although the states and territories are responsible for significant elements of NCP, much of the direct financial return accrues to the Australian Government via increases in taxation revenue that flows from greater economic activity."[4]

The payments to states and territories have been significant. Table 1 lists NCP payments since the introduction of the NCP.[5]

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3 For more details on how to include competition assessment in RIA, see Chapter 3, below, and DAF/COMP/(2007)8/REV1 "Integrating competition assessment into regulatory impact analysis"

4 See http://www.ncc.gov.au/articleZone.asp?articleZoneID=40.

5 See http://www.ncc.gov.au/articleZone.asp?articleZoneID=40.

Table 1. **Annual NCP payments received by jurisdictions**
(AUD million)

Jurisdiction	1997-98 (a)	1998-99 (a)	1999-00 (a)	2000-01 (a)	2001-02 (a)	2002-03 (a)	2003-04 (a) (b)	2004-05 (a) (b)	2005-06 (b) (c)
New South Wales	126.5	138.7	148.6	155.9	242.5	251.8	203.5	233.6	292.5
Victoria	92.8	102	109.2	114.7	179.6	182.4	178.7	201.6	197.9
Queensland	74.2	81.6	81.5	73	147.9	138.9	87.9	143.3	178.7
Western Australia	38.4	42.4	43.2	45.5	71.1	72	33.6	53.5	71
South Australia	34.3	38.4	34.5	35.9	55.7	57.1	40.7	50.4	54.3
Tasmania	12.6	13.9	10.8	11.2	17.4	17.7	17.2	19.8	19
ACT	6.2	7	7.2	7.5	11.6	12.4	11	13.6	12.7
Northern Territory	11.2	13	4.5	4.5	7.6	7.5	5.9	8.4	8
Total	**396.2**	**436.9**	**439.5**	**448**	**733.3**	**739.9**	**578.5**	**724.2**	**834.1**

Source: National Competition Council
(a) From Final Budget Outcome documents.
(b) Each jurisdiction's payments reflect the application of permanent deductions and suspensions.
(c) Costello, the Hon. P (Treasurer) 2005, 'National Competition Payments to States and Territories for 2005', Media release, 15 December 2005.
Note 1: Totals may not add due to rounding Note 2: Figures up to and including 1999-2000 include Financial Assistance Grants

While the payments are significant, the Australian government has estimated the annual benefits to the economy to be 2.5% of GDP, or 20 billion AUD, from productivity improvements and price rebalancing in many different sectors where NCP and related reforms have occurred.[6]

6 See Productivity Commission (2005) *Review of National Competition Policy Reforms*, Productivity Commission Enquiry Report No. 33, 28 February. See http://www.pc.gov.au/inquiry/ncp/finalreport/ncp.pdf. The review notes that direct causal links are difficult to establish empirically. Moreover, measuring net impacts in this area is particularly complex.

Best practice. The provision of training on best practices for policymaking officials doing, or reviewing, the work is critical for the success of a competition assessment program. Many policymakers are specialized in a domain that does not relate to competitive effects or economics. Such officials cannot be expected to assess competition issues appropriately without specific training. Competition authorities, regulatory gatekeepers, or the OECD can help with that effort.

6. What resources are required for competition assessment?

The resources necessary for an effective competition assessment program can be relatively small. For example, when the United Kingdom implemented its competition assessment program, two staff members from the OFT played a very active role, and only a small percentage of the roughly 400 regulations reviewed per year received detailed scrutiny. The rest were assessed by means of a competition filter, akin to the Competition Checklist reviewed in Chapter 1, which permitted officials to quickly diagnose whether there was a significant chance that competition problems would materialize from the policy.

Of course, a competition assessment program can also benefit from a high level of resource commitment. The Australian example illustrates a far-reaching and resource intensive approach that has promoted a very strong economic performance.[7]

Regardless of level of commitment, resource requirements will be highest at the initial implementation stage. A detailed program of best practice training, for

[7] See OECD (2006) Economic Survey of Australia, Policy Brief. "Recent macroeconomic performance continues to be impressive: gross domestic product (GDP) growth since the turn of the millennium has averaged above 3% per annum and, including the terms-of-trade gains, growth in real gross domestic income has averaged over 4%, among the handful of OECD countries achieving such rapid growth; the unemployment rate has fallen to around 5%, its lowest level since the 1970s; inflation has remained within the target range; and, following a long stretch of fiscal surpluses, Australia is now one of the few OECD countries where general government net debt has been eliminated. Living standards have steadily improved since the beginning of the 1990s and now surpass all G7 countries except the United States. *Wide-ranging reforms, particularly to promote competition, were instrumental in this respect.* They promoted productivity growth, most notably in the second half of the 1990s. The greater flexibility engendered by these reforms, together with the introduction of robust monetary and fiscal policy frameworks, has also bolstered the economy's resilience to a series of major shocks over the last decade...." (Emphasis added)

example, most often requires a large initial one-time expenditure of resources. Training in later years, however, would not have to be as substantial, as the system will be better functioning and personal relationships between relevant policy officials already will have been established. However, due to staff turnover, ongoing training almost certainly will still be needed after the initial implementation.

7. Conclusion

The incorporation of competition assessment into government regulatory decision making has the potential to yield strong economic benefits by identifying areas where market activity is unduly restricted and suggesting policy alternatives that will continue to meet policy goals while promoting competition to the extent possible. Given that the institutional, legal and federal environments of OECD jurisdictions differ substantially, how competition assessment best fits within government operations will likely vary from one jurisdiction to another. But a few points stand out. First, regulatory gatekeepers are well-suited to perform competition assessments, particularly when they are being done as a part of a RIA. Second, competition authorities are ideally suited for advising on competiton assessments, providing training regarding the process, and performing selective competition assessments. Finally, the benefits from fitting an effective competition assessment program into government regulatory operations are definitely worth the costs.

CHAPTER 4

INTEGRATING COMPETITION ASSESSMENT INTO REGULATORY IMPACT ANALYSIS*

This chapter explains how to incorporate competition assessment into regulatory impact analysis.

1. Introduction

Sometimes assessing a particular proposal using the Competition Checklist of Chapter 1 suggests that a more comprehensive competition assessment needs to be done. Usually, such an assessment can best be done in the process of performing a regulatory impact analysis (RIA) on the particular provision.

A thorough competition assessment includes (1) clearly identifying policy objectives, (2) stating alternative regulations that would achieve the policy objectives, (3) evaluating the competitive effects of each alternative and (4) comparing the alternatives. To the extent that the competition assessment identifies significant potential for a weakening of competitive rivalry within the affected industry or related industries, policymakers should seek the least anti-competitive alternative that would achieve the policy goal. In circumstances where an alternative, less anti-competitive regulatory approach for achieving the identified policy objective cannot be found, the benefits and costs of such a regulatory approach have to be weighed against each other. The analysis should conclude the regulation is justified only if the benefits from the adoption of the anti-competitive regulation exceed the costs, including the costs of the anti-competitive impact.

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* This chapter has been prepared by Rex Deighton-Smith.

The use of RIA has expanded rapidly throughout the OECD membership in the last decade and is now applied to most or all new regulation[1] in the majority of OECD Member countries. Explaining this rapid expansion in the use of RIA as part of the regulatory decision-making process, the OECD has commented:

> *High-quality regulation is increasingly seen as that which produces the desired results as cost effectively as possible. There is a developing understanding that all government policy action involves trade-offs between different uses of resources, while the underlying goal of policy action - including regulation - of maximising social welfare is increasingly being explicitly stated and accepted*[2].

RIA is based on benefit/cost analysis disciplines, applied in a comparative context that weighs the relative performance of all feasible policy interventions identified as being capable of achieving the underlying policy objective.

As RIA has expanded, much of the OECD membership has moved toward broadening the scope of competition policy and general competition law, with increasingly effective enforcement undertaken in this area. This trend arises from an increasing recognition that maximising the degree of effective competition throughout the economy is fundamental to the achievement of the broad objectives of maximising economic growth and, consequently, of social welfare.

Clearly, then, there is a very strong link between competition assessment and RIA. Indeed, the OECD Guiding Principles for Regulatory Quality and Performance state that consideration of impact on competition should be incorporated within the process of reviewing new and existing regulations.

Nevertheless, in practice, responsibility for the conduct of RIA and of competition policy analysis often resides in different parts of the government administration. As a result, there is often insufficient coordination in the conduct of these two, interconnected forms of analysis.

In a few countries, however, attempts are underway to integrate RIA and competition assessment. For example, in the United Kingdom, assessment of

1 In this chapter the term “regulation” is used generically to refer to all kinds of legislative instruments, including both primary and subordinate legislation.

2 *Regulatory Policies in OECD Countries*: *from Interventionism to Regulatory Governance.* OECD (2002), p44.

competition impact has been a mandatory part of RIA since 2002. In the European Commission, competition assessment has been part of the RIA process since 2005. In the United States, RIA guidance documents explicitly require consideration of market impacts.[3] Similarly, the Australian National Competition Policy requires that all RIA documents state whether the proposed regulation complies with the terms of the National Competition Policy agreements, and include analysis to support this conclusion.

This Chapter explains how policy officials can use competition assessment as one component of RIA. In most cases, competition assessment will only be a minor component of RIA. In some cases, however, it will be more significant, and the Chapter reviews indicators that suggest that a thorough competition assessment may be warranted.

The Chapter first contrasts the different features of RIA and competition assessment and then explains the potential benefit for RIA from explicit inclusion of competition assessment as an element of RIA. The Chapter then discusses negative impacts on competition that regulation often imposes. Finally, the Chapter describes the general framework of a comprehensive competition assessment. Those already familiar with the Competition Checklist can skip this last section.

2. RIA and competition policy analysis

The benefit/cost analyses undertaken within RIA generally compare likely outcomes based on the existing economic and regulatory environment and may not make an allowance for changes in the major parameters that affect these environments. In comparison, the focus of competition policy analysis is often more future-oriented. Competition policy analysis is concerned with the impact of particular changes to market conditions on the intensity of competition and, hence, on the likely outcomes for economic efficiency and consumer welfare.

While the above points to general differences in approach, the increasing trend for RIA guidance materials to require assessment of competition impacts to be undertaken as part of RIA is inevitably narrowing these differences in many countries.

It is the focus on dynamic market efficiency[4] that makes competition assessment most useful as an element of overall regulatory assessment. This element

[3] See Office of Management and Budget, Circular A-4, September 17, 2003.

[4] Dynamic efficiency focuses on efficiency over time, with changes in efficiency resulting potentially from innovation, technological

can help avoid regulations that unduly restrict market activity. An additional, incidental benefit of competition assessment is that it helps identify all parties likely to be affected by a regulatory proposal, especially those who will be affected indirectly. This can assist officials in ensuring that RIA-based consultation is sufficiently inclusive and, thus, more effective.

As noted in Chapter 1, the first step in a competition assessment, be it part of a RIA or not, is completion of the Competition Checklist. The Checklist will generally show that most regulations do not need an in-depth competition assessment. There will, however, be some instances where the Checklist will indicate that such an assessment is needed. If, for example, one or more of the four basic types of restriction on competition identified in the Checklist exists, a more comprehensive competition assessment will be warranted. The extent and depth of that assessment should be in proportion to the size of the potential competitive harm and is usually best performed as an element of the regulation's RIA. If, considering the circumstances and past experience, there is, as often is the case, little likelihood of a significant restriction of competition resulting from the regulatory proposal, the full competitive effects assessment can be short and concise.

3. Conducting a competition assessment early, as one element of RIA

As the following section will demonstrate, the design of a regulatory structure sometimes can produce serious adverse competitive effects. This suggests that policy officials should attempt to undertake competition assessment at an early stage in regulatory development. Similarly, long-standing OECD advice is that "*RIA should be integrated with the policy-making process, beginning as early as possible*"[5]. Thus, there is a consistent message that both of these forms of analysis should be done early and seen by policy makers as integral components of the policy development process, rather than being "add-ons" or tasks that can be considered in isolation from the larger issues of policy development.

4. Review of major forms of restrictions on competition

The following section provides further detail on the importance of each of the main types of restriction on competition identified in the Checklist. It gives guidance to policy officials on undertaking a more comprehensive competition

developments, the ability of firms to respond flexibly to new market conditions and growth of successful suppliers.

5 See *Regulatory Impact Analysis*: *Best Practices in OECD Countries.* (OECD, Paris, 1997), p215.

assessment should the Checklist indicate that is necessary. It stresses the importance of identifying the policy objectives the government is seeking to achieve by means of the particular anti-competitive regulation. It also identifies, for the most frequently-found anti-competitive regulations, a range of policy alternatives that are likely to achieve the same objectives as the particular regulation while being less harmful to competition. Cases in which regulations with particular types of anti-competitive effects may be justifiable are also identified and guidance included on how these anti-competitive effects may be minimised.

The checklist organises the range of specific restrictions on competition identified under the four general categories of restriction on competition listed in the Competition Checklist. However, it should be recognised that some of the specific restrictions can relate to more than one of these broad categories. For example, the creation of a self-regulatory or co-regulatory regime may lead to limits on the number or range of suppliers, or limit the ability of suppliers to compete. Thus, the placement of each type of restriction on competition under a particular Checklist category heading has been made according to the most common result of the use of that restriction. Analysts nevertheless need to consider all of the possible anti-competitive impacts associated with each type of restriction.

This Chapter's goal is to introduce generalist policy officers to the framework and concepts underlying RIAs involving more comprehensive competition assessments. Competition *Assessment Guidance* provides more specific guidance for particular types of policy provisions.

4.1 Limits on the number or range of suppliers

As Chapter 1 suggests, regulation that limits the number of producers that can supply a market creates a risk that market power will be created and the strength of competitive forces will be reduced. While grants of exclusive rights, the establishment of licence and permit schemes, and restrictions on participation in public procurement schemes are the three most common forms of regulatory limitations on the number of suppliers, other forms of limitation on supplier numbers also exist. When conducting competition assessment of policy proposals containing such provisions, it is important to remember that, where a restriction reduces competition in one market, it may also have "flow-through" effects in other markets.

4.1.1. Grants of exclusive rights

Expected benefits of these provisions

The grant of an exclusive right frequently occurs in the context of what is claimed to be a "natural monopoly". That is, the situation in which the average cost of producing an additional unit of the good continues to decline right up to the point at which the scale of production is such that an individual supplier can meet the entire demand arising from the relevant market at a lower cost than could two, or more, suppliers if they were trying to supply the entire demand.

In such cases, governments have sometimes provided exclusive rights in order to ensure that consumers are supplied at the lowest possible cost while regulating the behaviour of the supplier granted this exclusive right in order to prevent the exploitation of its market power, so far as possible. Irrespective of whether a natural monopoly was involved , policy makers in the past have also frequently granted exclusive rights over a long period as a means of encouraging substantial and/or strategic investments, especially in infrastructure areas. Governments have frequently reached the view that such investments will be unlikely without the incentives provided by the guaranteed market access that the grant of an exclusive right provides. However, at times the result of these policies has been over-investment.

Nature and extent of anti-competitive impact

The grant of an exclusive right to produce a certain good or provide a certain service obviously constitutes the extreme case of a "barrier to entry". In effect, the grant of an exclusive right represents the establishment of a private monopoly. This form of regulation necessarily has a substantial anti-competitive impact.

Indications for use and potential policy alternatives

There may be circumstances in which the grant of an exclusive right constitutes the only means of ensuring that a particular service will be brought to market. However, regulators should satisfy themselves that other alternatives that are less restrictive of competition are impracticable before considering the grant of such a right.

Even in cases when a grant of an exclusive right is justified because of natural monopoly conditions in a market, a fundamental problem with long-term grants of exclusive rights is that technological change can render the initial rationale for the granting of the right redundant long before the right itself has lapsed. Moreover, a State-sanctioned monopolist is likely to find itself in a strong position vis-à-vis the regulator that seeks to prevent it from exercising its market power. This, plus the need for a highly sophisticated regulatory approach in such contexts, often means

that regulators experience a relatively low level of success in preventing the abuse of market power and in protecting consumers.

If there are no other alternatives, regulators may wish to consider auctioning the exclusive right. Where such a right is granted, particular attention needs to be paid to regulatory design. For example, issues need to be addressed such as the relative appropriateness of "cost-plus" pricing regulation versus "rate-of-return regulation" versus "price-cap" regulation. Moreover, in many cases, the splitting of the exclusive right between two or three parties can conserve competitive dynamics to some degree while still reaping the benefits sought. Also, advice should be sought from government or other economists as to the type of auction that will be most appropriate for the proposed sale of rights.

4.1.2. Establishment of a licence or permit system as a requirement of operation

Expected benefits of these provisions

Licences are generally used as a means of ensuring with a high degree of certainty that only suppliers who meet set standards are able to enter an industry. Licence conditions typically include minimum qualifications requirements, for example minimum standards for formal education and/or practical experience applied to members of certain occupational groups, such as various health professionals. They are often implemented in pursuit of well-founded consumer protection objectives. In particular, where consumers are not easily able to make judgements as to the competence of practitioners, qualifications requirements can help prevent harms due to incompetent practice. Other common requirements include minimum insurance requirements, which may have important consumer protection benefits where there is the possibility of substantial consumer losses in the event of business failures, incompetence or fraud (e.g. property transfers, travel agencies).

Nature and extent of anti-competitive impact

When regulation results in barriers to entry that are more restrictive than necessary to adequately achieve the regulatory objectives, it can have the effect of promoting "producer protection" and will often be sought by existing producers on grounds of the need to promote "market stability". In the context of a requirement for a licence to practice, the extent of the restriction effectively imposed on entry is likely to be high, as qualifications requirements are often supplemented by additional elements, such as character assessments. Other common corporate licensing requirements include the need for certain insurances to be held, or minimum working capital requirements to be met. Sometimes, there are even "soft

limits" on the number of firms or practitioners allowed to participate in an industry. These may be implemented through the application of "public interest" tests, which require that potential entrants demonstrate the "need" for an additional service to be provided and, in some cases, even that their entry will have no negative impact on the businesses of existing industry participants.

Some regulatory requirements may have the effect of increasing pressure on some suppliers to leave the industry on account of their being in a relatively poor position to comply, and may thereby have a negative impact on competition if there are already significant barriers to new entry in place. Some exit restrictions, such as overly onerous requirements to pay separation benefits to former staff or the loss of certain non-refundable performance bonds, can chill a firm's incentive to enter an industry, and, hence, act as de facto entry barriers.

Indications for use and potential policy alternatives

The pursuit of "market stability" generally constitutes a poor reason for imposing regulatory restrictions on entry to an industry, as effective competition is a dynamic concept that necessarily encompasses the possibility of suppliers failing and, equally, requires that there be a steady flow of new entrants to an industry (or at least the possibility of new entry) if high standards of innovation and responsiveness to consumer demand are to be maintained.

As suggested above, qualifications requirements for professionals are likely to be legitimate in cases in which consumers are ill placed to make their own judgments as to practitioner competence and where the consequences (i.e. the potential harms to consumers) of making a poor choice are serious and irreversible. As in numerous areas of regulation, a fundamental principle is to ensure that the restrictions applied are no more restrictive than necessary to achieve the regulatory objectives. Thus, for example, product quality standards should be set no higher than necessary to ensure consumer safety. Likewise, restrictions on supplier size (e.g., no more than one storefront per professional) should not be set at levels that create substantial anti-competitive impacts or inefficiencies.

Similarly, when considering the need for compulsory insurance requirements, performance bonds and the like, consideration should be given to the nature and extent of the consumer harms that can potentially result from either poor practice or from the failure of a service provider. How well consumers will be at informing themselves of potential harms and protecting themselves by making informed choices of providers is an important consideration, as is whether alternative approaches that would enhance consumer knowledge in this area are viable.

4.1.3. Limits on the ability of some types of suppliers to provide a good or service

Policies limiting the ability of some types of suppliers to participate in public procurement often require that a certain degree of preference (which may, or may not, be stated explicitly) be accorded to suppliers established in a certain region, state or country. Alternatively, they may give preference to suppliers that exhibit other characteristics deemed to be desirable, for example establishing a quota on procurement participation for small suppliers, or those that implement particular employment policies.

Expected benefits of these provisions

The objectives sought via limitations on what types of suppliers may participate in government procurement can be several. Perhaps the most common kinds are national and/or State preference schemes, which seek to encourage economic activity in the favoured area, often in respect of particular industries thought to be of “strategic” significance.

Nature and extent of anti-competitive impact

Limiting participation in procurement tends to increase the costs of government purchasing by limiting competition. Given the overall size of government procurement budgets, the importance of such restrictions in relative terms is likely to be high.

Moreover, there is significant potential for conflict between these preference arrangements and other areas of policy. For example, preference given to suppliers from a particular region may conflict with other policies favouring small business.

Indications for use and potential policy alternatives

Preference schemes can have significant adverse impact upon competition due to the powerful position of governments as purchasers. This is especially significant because alternative means of pursuing the underlying objective sought via preference schemes exist in many areas. For example, where regional policy objectives are to be promoted, alternatives include a range of direct subsidies and/or tax expenditures, provision of a more favourable regulatory environment in key areas, or the use of publicity/educational campaigns. Where the promotion of small businesses is an objective, temporary tax/subsidy options and more flexible regulatory approaches may also constitute appropriate alternatives.

4.1.4. Significantly raises the costs of entry or exit

Expected benefits of these provisions

As explained above, regulations that significantly raise the costs of entry or exit frequently are designed to pursue multiple regulatory goals. For example, regulations that set highly stringent cleanup requirements in relation to former industrial sites advance environmental protection goals, but also substantially raise exit (and, de facto, entry) costs. In many cases, there may be few feasible alternative means of pursuing these non-competition policy goals. For this reason, governments have sometimes acted to minimise the competitive impacts of such provisions by providing targeted exemptions or assistance to suppliers to help bring them into compliance. For example, low-volume car manufacturers are often exempted from aspects of vehicle testing regulations, or are subject to less onerous testing protocols.

Nature and extent of anti-competitive impact

Regulations that raise the costs of entry to, or exit from, a market will tend to reduce the number of participants in that market. Higher gross revenues are required, in such circumstances, in order to achieve a given rate of return on entry. Moreover, higher exit costs will increase the risks involved in entry. Consequently, there is an increased risk that less vigorous competition will be observed in the market.

Indications for use and potential policy alternatives

Regulations that set strict product-testing standards are likely to be justified where significant risks of serious consumer harms associated with the use of the product exist. Similarly, other regulations that raise entry costs by requiring certain insurances or the demonstration of financial capacity are likely to be justifiable where substantial financial risks to consumers may result from business failure, incompetence or fraud.

In some circumstances alternatives such as greater information provision or product disclosure requirements can be considered in order to enable more informed consumer choice. In other cases, regulation may be required even though it raises entry costs and the focus should be on minimising anti-competitive potential by ensuring that the requirements set are the minimum necessary to achieve an adequate degree of consumer protection.

4.1.5. Restrictions on the geographic flow of goods, services, capital and labour

Expected benefits of these provisions

Many regulations have historically limited the flow of goods, services, capital and/or labour across jurisdictional boundaries. These limitations can be considered to be a specific subset of the general category of "restrictions on entry" discussed above. Regulatory restrictions on the flow of goods and services, or capital and labour, have often been implemented as a tool of regional or national policy. That is, governments have implemented these restrictions in an attempt to maintain or enhance the viability of regional or national economies. Other related goals that may be pursued via such policies (particularly when considered at the national level) are those of self-sufficiency or the protection of "national champions", whether for prestige or other reasons.

A particular context in which such protective restrictions may be proposed is that of "infant industries"[6]. That is, these restrictions may be promoted as being a temporary necessity in order to ensure the development of local industry in the context of relative under-development. However, the risk is that such "temporary" protections develop into quasi-permanent arrangements due to substantial lobbying by the local suppliers that benefit from the continued existence of the protections.

Nature and extent of anti-competitive impact

Limitations on the geographic flow of goods and services, imposed where trade would otherwise be technically and economically feasible, have the effect of artificially reducing the effective size of the market for the good or service in question. By reducing market size, several potential anti-competitive effects arise. First, the probability that the degree of concentration in the market may rise to a point at which market power can be exercised by producers necessarily rises. Second, a smaller and more isolated market is likely to be associated with lower levels of innovation, product differentiation and the like. Thus, consumers are likely to be less well served. It is also likely that the rate of entry may be slowed, to the extent that potential new entrants face greater difficulties in establishing themselves in what have become, owing to regulatory factors, geographically and economically smaller markets.

Indications for use and potential policy alternatives

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6 Infant industries are industries that may not be strong enough to survive open competition.

In recent years, there has been increasing recognition of the potential harms to competition of restricting flows of goods, services, capital and labour. Indeed, in the European context, the free movement of goods, services, capital and labour have been described as "the four freedoms" which constitute a pillar of the Single Market Program, pursued since 1992.

In general, there are relatively few contexts in which such restrictions are likely to pass a benefit/cost test. Therefore, policymakers should adopt a generally sceptical view of proposed regulation that includes such restrictions. Where restrictions are imposed, they should be assessed in terms of a number of factors, including whether (1) there is a clear link between the restriction in question and the achievement of a specific, identified public policy goal, (2) the restrictions are no more restrictive than necessary for achievement of the goal, (3) a rational analysis supports the probability that the policy goal will be achieved by means of the restriction and (4) the restrictions are restricted to a definite and limited time span via explicit regulatory provisions.

4.2 Limits on the ability of suppliers to compete

The existence of large number of competitors is not a sufficient condition for the development of strongly competitive markets. There must also be strong incentives for competition between suppliers of goods and services. Regulation, in the form of the general competition law, has a significant role to play by outlawing a range of anti-competitive conduct (e.g. price-fixing, market sharing). However, regulation can also substantially reduce the ability of suppliers to compete. Most obviously, such restrictions can take the form of price controls. Alternatively, regulation may restrict the way that products can be sold or advertised or may set product standards that are difficult for some suppliers to meet. A wide range of other regulations restricting the ability to compete has also been observed, including restrictions on profits, or market share, production quotas and the like.

4.2.1. Controls on the prices at which goods or services are sold

Expected benefits of these provisions

As was noted in Chapter 1, maximum price regulations are frequently introduced as a necessary corollary of restrictions on entry to the market. For example, entry to the taxi market is highly restricted in most countries, leading to substantial excess demand for taxi services developing over time. Such demand typically results in substantial price increases. Maximum price regulation is often imposed with the hope of protecting consumers from those increases. Conversely, when minimum price regulation has been used, it has sometimes been a response to

extremely vigorous price competition and concerns that "predatory pricing"[7] has been employed. In these cases, minimum price regulation is generally seen as a means of protecting small producers, or local producers, and/or less efficient producers from "unfair" competition.

Nature and extent of anti-competitive impact

Controls on the prices at which goods are sold directly impede the operation of normal market forces and disciplines. When minimum prices are set, lowest cost suppliers are prevented from winning market share by providing better value offerings to consumers. Similarly, where maximum prices exist, incentives to innovate by providing new and/or high-quality products are substantially reduced. In either case, the dynamic ability of the market to respond to consumer preferences is substantially limited. Minimum price laws also have the additional deficiency of reducing overall economic efficiency by encouraging inefficient producers to remain in the market, thus preventing the redeployment of resources to alternative, more productive uses.

Indications for use and potential policy alternatives

Price regulation rarely constitutes the most effective or efficient means of achieving the intended objectives. For example, in the case of the taxi market, a better means of protecting consumers is to address the restrictions on supply in the market. In the case of "predatory pricing" concerns, the use of the general competition law is likely to be a superior alternative. Thus, regulation proposing to control prices should be subject to especially rigorous scrutiny.

4.2.2. Restrictions on advertising and marketing

Expected benefits of these provisions

Regulations restricting the ability to advertise or market goods and services often exist to prevent false or misleading advertising, while at the same time recognizing the positive role that advertising and marketing play in conveying information to consumers. Such prohibitions maintain consumer confidence in the market by ensuring that the choices that a competitive market creates will not be undermined by deception. Certain ancillary restrictions, such as requirements that sellers possess

[7] Predatory pricing occurs when a supplier temporarily sets prices that are substantially below its costs with an expectation that other suppliers will then exit or change their behaviour. The supplier would then later recoup its lost profits by raising its prices to previous or even higher levels.

competent and reliable substantiation for claims that they make, usually are also beneficial, in that they frequently are necessary to effectively prevent deception, especially in cases where evidence of falsity may be difficult to obtain.

In a few cases, where products or services may be harmful under certain circumstances, general disclosure requirements are helpful in order to educate consumers about the potential harm. Common examples include the disclosure of the linkage between cigarette smoking and cancer in tobacco advertisements, and detailed disclosures that accompany pharmaceutical advertising in most countries that permit such advertising.

While some have advocated advertising restrictions as an indirect means of seeking to limit consumption of goods or services that are deemed to have a socially negative value or that are subject to excess consumption, these restrictions have generally been ineffective in reducing the use of these products. In such cases, advertising restrictions simply reduce information available to consumers, and, in the process, reduce competition, and increase prices.

On occasion, regulations will restrict advertising targeted at certain groups (e.g. children), in recognition of the fact that members of those groups may be more susceptible to advertising than the general public. A common approach with such advertising is to judge the likelihood of deception through the eyes of members of the group to whom advertising is directed.

In some cases, such as advertising of tobacco and alcohol directed towards children in jurisdictions where the sale of such products to minors is prohibited, the harm to public health may completely outweigh any consumer benefit to advertising. In those situations, such advertising may be prohibited altogether. Restrictions of this nature, when circumscribed to ensure they are not overly broad, can have significant social benefits.

Nature and extent of anti-competitive impact

In many cases, advertising and marketing restrictions are too broad and have the impact of unduly restricting competition. Restrictions on advertising and marketing are likely to be particularly onerous in their impact on potential entrants to markets, as they restrict substantially an entrant's ability to inform potential customers of their presence in the market and of the nature and quality of the goods and services that they are able to offer.

An area of particular concern is that of restrictions on comparative advertising, especially with regard to the making of price comparisons. As price is a substantial

element in the consumer choice equation, restrictions on the ability of consumers to learn about relative pricing at minimal cost have the clear potential to reduce market efficiency.

Many sectors have successfully shielded themselves from competition by advertising and marketing restrictions. This has particularly been the case with the liberal professions. With regulation of the professions traditionally resting with members of the profession themselves, members of these sectors have claimed that advertising can be seen as "unethical," and that members of the professions are motivated by altruism in large part, with financial gain a secondary consideration. These claims have not withstood scrutiny. As recounted in more detail in the companion volume *Competition Assessment Guidance*, studies have shown that restrictions on marketing and advertising by professionals do little or nothing to protect consumers, but act to significantly increase prices and reduce consumer access and choice.

Indications for use and potential policy alternatives

General consumer protection laws almost invariably contain prohibitions on misleading and deceptive advertising practices. These promote efficient markets and are effectively pro-competitive and usually obviate the need for any further, product- or service-specific advertising restrictions. While there may be, on rare occasions, limited circumstances in which additional advertising restrictions are justified in relation to specific goods or services, each of those instances needs to be carefully considered on benefit/cost grounds. Such restrictions almost always will reduce economic efficiency and harm consumers by exacerbating information asymmetry problems that consumers face.

Where there is a need to discourage over-consumption, alternative approaches to advertising restrictions include information campaigns and consumption taxes. These constitute more direct, effective, means of addressing the identified policy issue.

4.2.3. Setting product standards that provide an advantage to some suppliers over others or that are above the level that some fully informed customers would choose

Expected benefits of these provisions

Minimum product standards are usually set to achieve consumer protection objectives in the presence of real, or perceived, market failures, notably information asymmetry. Such standards can reduce consumer welfare, however, if set at an

excessively high level. Then they will prevent those consumers who prefer cheaper (but lower quality) market offerings from satisfying their wants. Thus, product quality standards should not be set at a level above that which is required to ensure a necessary minimum level of consumer safety.

Likewise, industrial emission standards clearly aim to pursue broad, commendable, social objectives. They also, however, have the potential for anti-competitive impact noted above. They consequently also require a careful balancing of their costs and benefits.

Nature and extent of anti-competitive impact

Regulations setting standards that are significantly different from current practices can substantially restrict the ability of suppliers in the market to compete. A common example is environmental regulations that set limits on the allowable levels of emissions of various kinds of toxic substances. While such regulations are often entirely appropriate and necessary as a means of providing highly valued protection to public health and amenity, they can be set at levels that advantage small numbers of incumbent suppliers that have proprietary access to certain kinds of technologies.

Another area in which standard setting can have significant anti-competitive impact is setting minimum quality standards for particular product types. Again, there can be sound regulatory objectives underlying such standard setting, commonly protection of consumers from risks associated with the use of the product. However, where the standard is set at a level that is very much higher than current market practice, some market players may find it difficult or impossible to meet the standard. This may occur, for example, where only certain productive technologies (which may be subject to patent protection) are capable of meeting the new minimum quality standards.

Where other suppliers are unable, technologically, to meet the new standard, significant exit from the industry may result, frequently leading to substantial harm to the competitive process. Where the only feasible means of reaching the standards are patent protected, patent holders may have incentives to refuse licences to potential competitors, in order to obtain competitive advantages in the market. Alternatively, even where patent protection is not an issue, smaller suppliers, or those that are less well resourced, may not be able to afford the major capital investment that may be required in order to install new technology to enable them to meet new product standards. In either event, the reduction in the number of suppliers could lead to a situation where the remaining suppliers could raise prices or exercise market power.

Indications for use and potential policy alternatives

Movements in regulatory standards relating to products, or productive processes, tend to occur in incremental steps over time, reflecting progressive changes in social preferences and in the wealth of the society. Very substantial "on-off" changes in the standards are far more likely to have anti-competitive impacts than are more moderate changes.

It may often be the case that alternative instruments can achieve the benefits sought through the implementation of minimum standards. For example, when minimum standards are pursued for consumer protection reasons, it may be possible to act instead by providing information directly to consumers regarding product risks, or by requiring disclosure of certain product characteristics. In a somewhat similar vein, where major changes in emissions standards have been contemplated, governments have sometimes sought to minimise possible anti-competitive impact by providing financial, technical or other assistance to smaller suppliers so that they are better able to meet the proposed new requirements.

4.2.4. Raising the costs of some suppliers relative to others

Expected benefits of these provisions

Perhaps the most common form of regulation that raises the costs of some suppliers relative to others is that which includes "grandfather clauses". These are arrangements that require new entrants to the industry to comply with the new, higher standards, while incumbents continue to be subjected to the lower, pre-existing standards.

Several arguments have been made in favour of imposing grandfather clauses in particular circumstances. In relation to occupational qualifications, it is often argued that the extensive practical experience of long established practitioners is an adequate substitute for a higher level of formal qualification. In relation to productive technologies, it is sometimes argued that adequate time must be granted to allow incumbents to be able to amortise the sunk costs of investments they made in their plant so as to comply with the relevant environmental and other standards in effect at the time that the plant was commissioned.

Nature and extent of anti-competitive impact

"Grandfather clauses" have substantial potential to distort competitive relations within the industry by raising costs to some suppliers (i.e. new entrants to the market, or those implementing new processes) to a substantially greater extent than

to others. This is likely to impede entry and thereby reduce both innovation and the intensity of competitive pressure in the market.

Indications for use and potential policy alternatives

The anti-competitive impact of grandfather clauses can be minimised by ensuring that they are time-limited, rather than permanent, and that the duration of the exemption given is strictly proportionate to the underlying rationale for its being granted in the first place. More generally, however, a sceptical approach needs to be taken to arguments in favour of the need for grandfather clauses, as they are frequently a reflection of attempts to defend vested interests from potential competition.

4.3 Reductions in the incentives for suppliers to compete

The previous section has highlighted the ability of regulation to reduce the *opportunities* for suppliers to compete. Regulation can also act to reduce the *incentives* for competition.

In general, suppliers of a product or service who can coordinate amongst themselves to share a given market are able collectively to maximise potential monopoly profits. Thus, regulation that facilitates or encourages cooperation between producers will reduce incentives for vigorous competition.

This is most likely to occur when regulation facilitates or requires the sharing of information on market sensitive variables such as prices, costs and outputs. Moreover, regulation that reduces the effective ability of customers to switch between competing suppliers also reduces competitive pressures. The risk of such effects is greatest when producer groups have a significant role in the development and implementation of regulation.

4.3.1. Self-regulation and Co-regulation

Expected benefits of these provisions

Governments may choose to take full responsibility for designing and implementing a regulatory structure or, alternatively, they may choose to involve an industry or professional association in aspects of the design or implementation of the regulatory structure. Where an industry association takes full responsibility for regulating the conduct of its members, without government legislative backing (often at the urging of government) the term “self-regulation” is used. However, where government provides legislative backing to rules that are either developed by

the industry/professional association, or else jointly developed with government, the term used is "co-regulation".

Co-regulatory structures can have substantial benefits for governments, particularly in the context of an industry or profession that has not previously been subject to regulation. The involvement of the industry or professional association often lends credibility to the regulatory structure in the eyes of those who will be regulated. This credibility derives in part from the fact that the government is seen as utilising the high level of specific expertise and understanding of the industry in question that the practitioners undoubtedly possess.

The involvement of the industry or professional association also means that the government can frequently avoid the necessity of developing internally a high level of specific expertise in issues relating to the market involved and the qualifications and duties of the relevant practitioners. Governments consequently can frequently develop co-regulatory structures at substantially lower cost than would be required to develop a fully government-based solution. This is especially the case if members of the profession can be persuaded to constitute regulatory and disciplinary bodies that undertake important aspects of the regulatory function but receive limited, if any, funding from government.

Nature and extent of anti-competitive impact

Regulation established by those being regulated can yield substantial benefits by ensuring that technical standards are appropriate and advance with technology. However, there is a strong risk that rules developed by industry or professional associations will have anti-competitive effects. For example, a professional association may promulgate strict qualifications requirements purportedly for consumer protection reasons but set those qualifications at such a high standard (especially if incumbent practitioners are exempted) that market supply is sufficiently constrained to raise prices. Similarly, some "ethics based" rules, such as restrictions on advertising prices, appear more to reduce the ability of producers to compete than to increase the prospect of consumers protecting themselves from deception. Thus, with co-regulation there frequently may be at least the potential of an intention to benefit the members of the profession or industry, with public interest arguments being used to cloak the underlying purpose of the regulation.

The fundamental requirement when conducting competition assessment in these circumstances is to assess the regulation according to its expected effects, rather than focusing solely on its stated purpose or on judgments about the motives of its proponents. Thus, when evaluating barriers to competition such as those often found in co-regulation schemes, asking the following three questions frequently can

assist in the process: (1) What specific harm to consumers is the barrier designed to address?, (2) Is the proposed restriction appropriately tailored to address that harm?, and (3) Does the consumer harm that the restriction seeks to prevent exceed the consumer loss from the restriction on competition?

Concerns regarding the development of anti-competitive regulations are likely to be particularly significant where the industry/professional association in question has a dominant role in developing the rules of conduct that must be followed. For example, rules governing the operation of the legal profession have often banned "price cutting", "touting for business", or incorporation by lawyers, as well as most forms of advertising. In many cases, such restrictions have been removed in reforms that have led to the government taking a greater role in the regulation of the profession.

Indications for use and potential policy alternatives

A successful co-regulatory structure requires the existence of an industry/professional association with wide membership among the regulated group. The association must be seen by its members as having a relatively high level of prestige if it is to be able to impose effective sanctions (including exclusion from the association) on those who do not comply with regulatory requirements. The existence of effective sanctions is, in turn, necessary to convince consumers of the credibility of the regulatory structure.

Government should act to prevent attempts by the industry/professional association to use co-regulatory powers in an anti-competitive manner. This may include ensuring that the relevant Minister has the right to approve, or refuse to approve, codes of conduct and, as required, to substitute government regulations should the industry body continue to propose unacceptable versions.

4.3.2. Requirements to publish information on company prices, outputs or sales

Expected benefits of these provisions

Regulation requiring the publication of information such as price and output levels is usually adopted as a means of reducing consumer search costs by making this information more readily available. In some circumstances, reducing transactions costs in this way can improve the efficiency of markets by increasing consumers' understanding of offerings in the marketplace.

Nature and extent of anti-competitive impact

Regulations that require market participants to publish information on their prices or output levels can significantly assist in the formation of cartels, since a key requirement for cartel operation is for participants in the cartel to monitor effectively their competitors' (or co-conspirators') market behaviour. These possible anti-competitive impacts are more likely to arise where there are fewer participants in the market, where entry barriers are high and where products are relatively undifferentiated.

Publication of price information is also more likely to have an anti-competitive effect in industries in which it is common practice to offer or negotiate private discounts on advertised, or "recommended" prices. This is so because competitors would otherwise have substantial difficulty in obtaining information on the actual prices paid to other competing suppliers. In a context in which actual price information is required to be published, cartel members are able to identify circumstances in which other members are not maintaining the "agreed" price or quantity.

Indications for use and potential policy alternatives

As suggested above, concerns about possible cartel behaviour are unlikely to be relevant in situations in which there are large numbers of competitors and/or relatively low barriers to entry. In these circumstances, the positive effects of such publication requirements in reducing search costs may well justify their use. However, in more concentrated markets, such requirements are more likely to have a net negative impact. In markets with few suppliers and a standardized product, the effort consumers must expend in searching among different suppliers may be smaller than when many suppliers are present, while the risks of cartel agreements are higher. Thus, the potential benefits of such publication requirements are commensurately lower.

If publishing price or output information is viewed as supportive of cartel formation, alternatives exist that are less risky. When the information is gathered primarily for government policy making, there may be no need to publish it at all. When the purpose is to aid consumers or provide general statistics, aggregate statistics are less supportive of cartels than company-specific statistics, and historical statistics are less supportive than contemporaneous information. Statistics aggregated across companies will not help cartel members to identify a supplier that is violating the cartel agreement, while company-specific statistics could clearly identify a company that deviated from a cartel agreement over pricing or quantity. Historical statistics provide less useful information for cartels because cartels often need to share current information to decide how to allocate output and set price targets, and historical information would not help them substantially in this task.

4.3.3. Exemptions from general competition laws

Expected benefits of these provisions

In many countries, particular economic sectors benefit from exemptions from the general competition law. In some cases, these sectors are subject to their own, sector-specific competition laws. In other cases, there may be no restrictions on anti-competitive conduct undertaken in these sectors.

Numerous rationales for such exemptions have been advanced. In some cases, suppliers are permitted to cooperate in order to improve their ability to establish themselves and compete in export markets. In other cases, a market characterised by atomistic producers may be permitted to cooperate due to the existence of monopsonistic power on the part of the purchasers of its products and the consequent desire by government to create a degree of countervailing power (examples include a number of agricultural commodities). Many relatively highly regulated companies have also been exempted from general competition law. In these cases, the view appears to be that the sector-specific regulatory structure constitutes an appropriate substitute for the general competition law.

Nature and extent of anti-competitive impact

Where a substantial derogation from the general application of competition law exists there is a clear risk of cartels, pricing abuses and anticompetitive mergers resulting. Moreover, there is obviously a significant potential for economic distortions to arise, as different sectors are subject to what may be substantially different regulatory environments. Such distortions can have a major negative impact on economic welfare by distorting consumer decisions as to which products and services they purchase.

Indications for use and potential policy alternatives

The OECD has generally argued that exemptions from the general competition law should be minimised or eliminated:

> *As a general reform strategy, governments should* ***expand the scope and effectiveness of competition policy.*** *The scope and effectiveness of competition law and competition authorities should be reviewed, and strengthened where necessary. Exemptions to competition law should be eliminated, absent evidence of compelling public interests that cannot be served in better ways.(OECD Report on Regulatory Reform, 1997, p. 271)*

Where a specific rationale for the continued existence of exemptions has been identified, consideration should be given to the means by which its scope can be minimised. For example, a legislated monopoly requiring all producers of a particular commodity to sell to a particular, licensed export marketer may be an inferior substitute to a system that allows producers to engage in cooperative export selling arrangements, but does not compel them to do so.

4.4 Limits the choices and information available to customers

The previous sections have focused on ensuring that the supply-side of markets operates without undue restrictions. This section, in contrast, focuses on the importance of demand-side markets working well in order for the outcomes of market competition to improve consumer welfare.

4.4.1. Limits on ability of consumers to decide from whom they purchase goods or services

Expected benefits of these provisions

While markets usually work better when consumers have no restrictions on the choices facing them, this is not universally true. Particularly when policymakers believe that consumers are likely to make poor decisions, with potential long-term harm, they may restrict the choices available to consumers. For example, governments may limit the availability of certain pain-killing pharmaceutical products so that, more strong and potentially dangerous painkillers require a doctor's prescription while less strong painkillers are available over the counter. More generally, governments may restrict choices available to consumers in order to improve outcomes when consumers are presented with options that are incomplete, confusing, misleading or difficult to decipher.

Private restrictions on choice are common. For example, restaurant menus exist to restrict and funnel consumer choices. Car designs allow only select options to be chosen by customers. In private transactions, these restrictions are often beneficial because they allow specialisation and cost reductions while maintaining a clear connection with consumers' preferences. Consumers can also find decision-making difficult when faced with many choices.

Nature and extent of anti-competitive impact

Government restrictions on consumer choice risk unduly limiting the options available to consumers. Governmental requirements for contact lens prescriptions can be abused by eye care specialists who prescribe contact lens that are branded

under the name of the prescribing doctor, thus limiting consumer's ability to purchase contact lenses from the lowest cost suppliers.

By limiting the choices that consumers can make, such restrictions can also lead to less intense competition on price and quality than is desirable.

Indication for use and potential policy alternatives

When governments restrict choices, a number of alternatives should be considered. Perhaps the most natural alternative is better information. But often the existence of a restriction means information is simply not enough. In the case of contact lens prescriptions, the prescription rules were modified so that prescribers who issued a prescription with a private label contact lens had to provide sufficient information so that close alternatives on the market could be identified and legally substituted by contact lens sellers. (For more details, see Section 4.4.1 of the Competition Assessment Guidance, volume II of the Competition Assessment Toolkit.)

4.4.2. Reducing the mobility of customers by increasing the costs of changing suppliers

Expected benefits of these provisions

"Switching costs" can be defined as the costs borne by a consumer in changing suppliers of a product or service.

Examples of switching costs include:

- The use of long-term contracts that "lock in" consumers for lengthy periods and impose significant financial penalties in the event that they choose to change suppliers prior to the end of the period; and

- The absence of telephone number portability, which can make switching service providers relatively unattractive by imposing convenience/administrative costs on the consumer.

Legislative provisions allowing for switching costs to be charged may help reduce transaction costs by recognizing the real and substantial costs a supplier often must bear in the event a consumer switches suppliers. To this extent, provisions allowing some switching costs to be charged can improve consumer welfare and be consistent with the application of equitable contract principles. For example, penalties associated with early termination of a fixed-term contract may reflect

nothing more than product "bundling" and the need for the supplier to recover the costs of capital items (e.g. mobile phone handsets) for which only partial payment has been received.

Nature and extent of anti-competitive impact

By raising the costs of changing suppliers, switching costs can substantially reduce the ability of suppliers to compete. Switching costs are likely to be of considerable importance in the context of newly competitive industries, where they can frequently constitute an important barrier to the reduction, over time, of the incumbent supplier's strong position in the marketplace.

The Nordic electricity markets provide a good example. There, different countries had substantially different levels of consumer switching activity. Review of the regulatory arrangements in place indicated that the level of switching activity is highly correlated with the nature and extent of switching costs charged in each country.

Where significant real costs to suppliers are associated with switching, allowing suppliers to pass these costs on to consumers may be unavoidable. However, in the case of switching costs imposed in an attempt to reduce transactions costs, consideration should be given to whether the reduction in transactions costs that may result from introducing the switching cost justifies its likely anti-competitive impact in reducing the actual incidence of switching.

While the examples above involve cases when regulations explicitly dealt with the issue of charging for switching costs, other regulations are silent upon the subject. The objective of achieving enhanced competition may be substantially compromised if regulation is silent on this topic and allows suppliers to have unbridled discretion to impose new or increased switching costs over time.

Indications for use and potential policy alternatives

Particularly in the case of newly restructured industries, characterised by a dominant incumbent facing competition for the first time from new entrants, ensuring that switching costs remain low is a necessary condition for the development of effective competition. While other conditions must also be in place (e.g. access on realistic terms to a monopoly network) the switching costs issue remains fundamental to the competitive outcome.

It follows that, in reviewing a proposed regulation that seeks to implement pro-competitive reform within an industry, any provisions explicitly allowing for the

imposition of switching costs should receive careful scrutiny and should be regarded as acceptable only where there are strong arguments for their use. These might exist if it can be shown that there are significant costs associated with the particular activities that suppliers are required to undertake as part of the switching process.

It should not be presumed that such a situation is usually the case. Moreover, even where the supplier is required to incur substantial costs as a consequence of the switching process, it still may be that the pro-competitive impact of reducing or eliminating the switching costs is sufficiently large that the regulator will wish to prevent suppliers from explicitly recovering those costs from consumers. Competition between businesses prior to a customer purchase decision may help to lower negative impacts from switching costs.

In that regard, a particularly troubling possibility is that of an incumbent imposing new or increased switching costs in response to new competitive pressures. Where there is a clear risk of switching costs being imposed, the inclusion of provisions in the regulatory structure that will limit or prohibit the use of such devices may be required.

4.4.3. Fundamentally changes information required by buyers to shop effectively

When governments deregulate, at times the deregulation is accompanied by the introduction of consumer choices that have not previously existed. Consumers may be asked to make choices between products for which they have never previously shopped. This occurs regularly in the private sector, with innovative new high technology products, for example. Consumer choice without prior experience is not unusual.

At times, though, all consumers are required to make choices, as can occur with products that are considered necessities. In many countries, electricity is widely consumed. Electricity deregulation can at times give not only industrial customers a choice of supplier but also can give ordinary consumers a choice of supplier. While the industrial customers will usually quickly gain all appropriate knowledge to make good purchasing decisions, not all retail customers will do so. When households are given the right to select their supplier in new markets, companies can seek to make it more difficult for them to evaluate offers, for example by offering complex products with introductory offers sold via door-to-door sales tactics that discourage comparisons.

A risk from such sales practices, absent an information requirement due to the "new" nature of the product, is that the reforms will be rolled back due to consumer complaints. This risk is increased when deregulation is generally expected to result

in lower prices, but many consumers end up paying higher prices when they move away from the traditional provider to a new one.

To ensure the deregulation survives and is considered a success, it may be better to accompany the creation of new choices with an information requirement that provides consumers with a reference point for comparing offers.

Alternatives to such information requirements include government run information and educational programs. These may distribute leaflets or public service television commercials to help educate consumers about the choices they will have to make after deregulation.

5. Proportionality in undertaking competition impact assessments

The Competition Checklist of Chapter 1 provides a reliable basis for identifying regulations that will give rise to an anti-competitive impact. However, the relative importance of different anti-competitive impacts varies substantially. The extent of the competition assessment to be undertaken should be commensurate with an initial estimate of the likely extent of the provision's anti-competitive impact. A detailed, comprehensive competition assessment should only be undertaken when the initial estimate suggests that the potential costs of the anti-competitive aspects of a regulatory proposal are large enough to justify the necessary expenditure of resources that the in-depth competition assessment will require.

A key contextual factor in making this determination is the nature of the current competitive environment in the industry that is being regulated. Competition concerns will generally be less pressing where the industry is vigorously competitive, characterised by large numbers of competing suppliers, significant rates of entry and exit, and high levels of product and service innovation. Conversely, in a relatively static market, characterised by a significant level of concentration and limited entry, the potential for anti-competitive regulatory impact is much more likely.

In a more comprehensive competition assessment, the focus most likely will be on the likely extent of the regulatory proposal's impact on the main determinants of competitive pressures for the market in question. In particular:

- Is it likely that the proposal's impact on the number of suppliers in the market will be large enough to reduce the number of market participants to a level at which coordination, or more extensive cartel-like behaviour, becomes feasible?

- Is the proposal likely to have a significant impact on the dynamic aspects of competitive behaviour in the market by, for example, significantly reducing entry or incentives for innovation?

- Is the proposal likely to limit the ability of, or incentives for, suppliers to compete vigorously?

In order to produce an accurate competition assessment, the reviewer must acquire a clear understanding of the nature and extent of the market under consideration. This is known as "market definition." A primary issue is what products constitute the market? To what extent is there substitutability between the product or service that would be regulated and other products and services? Is the market a relatively static market, or is it characterised by high rates of technological change and the frequent introduction of new product types? What are the geographical dimensions of the market? Is it local, regional, national, or international?

6. A Simplified Procedure for Completing a RIA with a Full Competition Assessment

The first step in conducting a full competition assessment within a RIA is to identify from the broader RIA process the underlying objective of the new regulation. Second, existing restrictions on competition should be identified and analysed. Then, an analysis should be made of what, and how substantial, are the proposal's adverse competitive effects. In some instances it may be helpful to consider the current extent of competitive pressure, such as by defining a relevant market although this need not be a formal or elaborate process. Market definition is a tool to be used when it can be helpful, not a requirement. The main point is to be sure that the evaluator considers realistically what competition exists, and what competition is possible. Finally, the competitive effects of alternative policy options will be assessed and compared.

More complete guidance on how to perform a full competition assessment can be found in sections 5 and 6 of *Competition Assessment Guidance*.

7. Integrating the outcome into the RIA

Most proposals will not harm competition significantly. Where, however, a competition assessment identifies significant potential for a weakening of competition in the affected industry or related industries, the key elements of the proposal's design should be reconsidered in a comparative context in which

alternative means of achieving the regulatory objective that are less restrictive of competition are identified and assessed.

Where such alternatives cannot be identified, a rigorous, disciplined comparison of the proposal's benefits must be made. The proposal should be adopted only if that comparison shows that, after taking into account the costs of the anti-competitive impact the assessment identified, the proposal's enactment will yield a net benefit[8].

8 This approach is already explicitly in use in Australia. The "Guiding Legislative Principle", adopted under the National Competition Policy agreements states that legislation that restricts competition should not be adopted unless it can be shown both that the benefits of the restriction to the community as a whole outweigh the costs **and** that the objectives of the regulation cannot be achieved by any other means that is less restrictive of competition. See Competition Principles Agreement, clause 5 (1).

APPENDIX

On October 22, 2009, the Council of the OECD adopted a recommendation on competition assessment. The text of the recommendation follows.

RECOMMENDATION OF THE COUNCIL ON COMPETITION ASSESSMENT

THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the agreement reached at the 1997 Meeting of the Council at Ministerial level that restrictions on competition are often costly and ineffective in promoting public interests and should be avoided [C/MIN(97)10)];

Having regard to the OECD Guiding Principles on Regulatory Quality and Performance [C(2005)52], which call for governments to review proposals for new regulations, as well as existing regulations, with reference to competition;

Recognising that competition promotes efficiency, helping to ensure that goods and services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, improved quality, increased innovation and higher productivity;

Recognising that higher productivity is essential to economic growth and increased employment;

Recognising that public policies serve a variety of commercial, social, health, safety, security environmental and other objectives;

Recognising that, at times, public policies unduly restrict competition;

Recognising that such undue restrictions can occur unintentionally even when the public policies in question are not focused on economic regulation and not intended to affect competition in any way;

Recognising that public policies that unduly restrict competition often may be reformed in a way that promotes market competition while achieving the public policy objectives;

Recognising that regulation and reform of regulated industries usually require detailed competition assessment of likely effects;

Recognising that, other things being equal, public policies with lesser harm to competition should be preferred over those with greater harm to competition, provided they achieve the identified public policy objectives;

Noting that a number of countries already perform competition assessment; and

Noting that the OECD and a number of OECD Member countries have developed competition assessment toolkits;

I. RECOMMENDS as follows to governments of Member countries:

A. Identification of existing or proposed public policies that unduly restrict competition

1. Governments should introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment, including the preparation of screening devices.

2. In performing competition assessment, governments should give particular attention to policies that limit:

   i) The number or range of market participants;

   ii) The actions that market participants can take;

iii) The incentives of market participants to behave in a competitive manner;

iv) The choices and information available to consumers.

3. Public policies should be subject to competition assessment even when they pursue the objective of promoting competitive outcomes and especially when they:

   i) Set up or revise a regulatory body or regime (e.g., the assessment could make sure that, among other things, the regulator is appropriately separated from the regulated industry);

   ii) Introduce a price or entry regulation scheme (e.g., the assessment could make sure that there are no reasonable, less anticompetitive ways to intervene);

   iii) Restructure incumbent monopolies (e.g., the assessment could make sure that the restructuring measures actually achieve their pro-competitive objectives);

   iv) Introduce competition-for-the-market processes (e.g., the assessment could make sure that the bidding process provides incentives to operate efficiently to the benefit of consumers).

B. Revision of public policies that unduly restrict competition

1. Governments should introduce an appropriate process for revision of existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for evaluating suitable alternatives.

2. Governments should adopt the more pro-competitive alternative consistent with the public interest objectives pursued and taking into account the benefits and costs of implementation.

C. Institutional Setting

1. Competition assessment should be incorporated in the review of public policies in the most efficient and effective manner consistent with institutional and resource constraints.

2. Competition bodies or officials with expertise in competition should be associated with the process of competition assessment.

3. Competition assessment of proposed public policies should be integrated in the policy making process at an early stage.

D. Definitions

For the purposes of this Recommendation:

“public policies” means regulations, rules or legislation.

“unduly restricts competition” means that restrictions on competition needed for achieving public interest objectives are greater than is necessary, when taking into account feasible alternatives and their cost.

“market participants” means businesses, individuals or government enterprises engaged in supplying or purchasing goods or services.

“competition bodies” means public institutions, including a national competition authority, charged with advocating, promoting and enhancing market competition and not limited in these roles to a specific sector.

“competition-for-the-market processes” refers to the bidding processes organised by government for allocating the right to supply a given market or for using a scarce government resource for a distinct period of time.

“competition assessment” means a review of the competitive effects of public policies including consideration of alternative and less anti-competitive policies. The principles of competition assessment are relevant to all levels of government.

II. INVITES non-Member economies to associate themselves with this Recommendation and to implement it.

III. INSTRUCTS the Competition Committee:

To serve as a forum for sharing experience under this Recommendation for Member countries and non-Member economies that have associated themselves with this Recommendation;

To promote this Recommendation with other relevant Committees and Bodies of the OECD;

To report to Council in three years on experience with this Recommendation.

Copies of the Competition Assessment Toolkit are available for download in the following languages:

www.oecd.org/competition/toolkit

Chinese / 中文

English

French / Français

Hungarian / Magyar

Indonesian / Bahasa

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Korean / 한국어

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