



# **Competition Assessment**

And Waste Diversion Policy

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# The Qualifier

- The views I am about to share with you are my own and not those of the Competition Bureau (the Bureau)
- They are based on a 27 year career with the Bureau
- The Bureau is part of Industry Canada. It supports the Commissioner of Competition who is responsible for the administration and the enforcement of the Competition Act (a federal framework law that promotes competition by regulating business behaviour)
- The best competition law advice can only be given on specific set of facts and circumstances
- For case specific advice, call the Bureau and/or seek legal advice from a Competition Lawyer

# Presentation Overview

- The notion of an “Ideal Program” in Waste Diversion
- The challenge facing policy makers
- How to promote competitive markets in Waste Diversion: The OECD Competition Assessment Toolkit

# The Current Approach to Waste Diversion

- Waste material is a market failure- a negative “externality”
- Because no one “owns” the responsibility for this waste, law makers have had to step into the market and assign this ownership to someone.
- More recently throughout Canada, the preferred option is to assign it to the producers of the products that create the waste (extended producer responsibility)

# From a policy perspective, assigning the responsibility does not seem to be enough

- In addition to assigning the responsibility to producers, law makers have also enacted legislation that prescribes policies on how producers should act in assuming this responsibility for the waste material they create.
- This industry design has proven both challenging and problematic

# Devil in the Detail

- How these policies are implemented can have a profound impact on the markets they affect.
- The challenge is to balance the objectives of waste programs with the likelihood that the schemes they endorse will be sustainable, efficient and will treat all participants in an equitable manner

# The Ideal Program

- Meets the key policy objectives (diverting waste)
- Delivers on these objectives in the most efficient and innovative way possible
- Is self-sustainable with little need for outside assistance
- Can adapt to change

# My Perspective:

- Waste Diversion is an economic activity and as such providing a means by which competition can be introduced into these activities will greatly promote efficient and sustainable programs.
- Let the market arbitrate with regulatory oversight rather than relying on policy makers to pick the best waste diversion scheme

# Is this Feasible

- If policymakers focus only on waste diversion, it is easy to ignore competition and to simply create a program that “manages” waste diversion.
- If policymakers consider the promotion of competitive markets as part of their overall objectives the situation can be quite different.

# Consider the Current Models : “Managing” Waste Diversion

- Approve a stewardship program that administers the management of waste diversion
- With the best of intentions policy makers now find themselves tied to the stewardship program.
- This can lead to significant problems if the program is insulated from the discipline of competition

# Pitfalls of a “Managed” Program

- Once the policymaker approves a stewardship program their focus shifts from deciding on the best mechanism for dealing with waste diversion to ensuring the current scheme succeeds
- Sustainability of the program depends on the viability of the players rather than the program itself.(risk of regulatory capture)

# Managed Programs can stymie competition

- Protecting incumbents rather than promoting competition can lead to :
  - Barriers to entry
  - Market Power
  - Uncertainty
  - Information asymmetries
  - A disconnect of market pricing from actual demand and supply

# Barriers to Entry

- Consider a waste diversion policy that:
  - Allows a first mover into the market and then blocks or precludes additional competitors from entering.
  - Happens with stewardship agencies, processors
- The incentive of market players to compete is replaced by efforts to convince the regulator to block competition
- The pressure to offer low cost options, innovation and choice are greatly reduced as there is no competitive threat to challenge their viability in the market

# Market Power

- Restricting the number of players in a market not only creates barriers to entry but also provides the incumbent players with market power.
- Think of a situation where one stewardship agency controls a particular program and has the power to determine the fate of collectors and processors, establish eco fees and the compensation to market participants.
- The incumbent becomes the de facto force driving the economic activity –not the market. There is no discipline from a potential entrant and therefore no need to compete

# Market Power (cont'd)

- Think of a small number of processors controlling the market for waste material as an input into their processing activities
- They become monopoly purchasers (monopsonies). This purchasing power precludes collectors and depots from obtaining a market based reasonable return on their products. Longer term this can lead to the need to exit or subsidize depots

# Uncertainty and information asymmetries

- Without the proper pricing and incentives, the market cannot properly signal the information necessary to prompt business to act in a rational manner
- Firms cannot make the appropriate decisions with respect to market entry, expansion or exit.

# Consequences

These market distortions shift the power away from consumers and would-be competitors to the hands of one or a small group of competitors acting together.

The end result is less product choice, higher prices and lower quality.

# Consider an Alternative

- Assign the responsibility of waste diversion to producers but encourage them to promote competition when fulfilling this responsibility
- Allow for stewardship as an option and also allow for competition between and with stewardship entities.
- Let the fate of all participants depend on their ability to compete rather than on some guarantees by the regulator.
- Provide and “equitable” opportunity to compete rather than trying to be “fair” to those already in the market

# Key Change: the Perspective of Policy makers Shifts

- The policy makers/regulator focus shifts to ensuring the environmental targets are being met rather than worrying about the viability of individual market participants.
- The market becomes the arbitrator of who succeeds and who fails.
- Prices and costs are kept to a minimum by the necessity to compete for business.
- Firms can enter and exit depending on their success

# Lets Consider the Benefits of Competition

- In free markets competition between providers promotes efficiency through
  - lower prices to consumers
  - improved information and choice
  - the promotion of innovation (products, services processes)
  - industry best practices (quality)

# Efficient markets:

- Low barriers to entry and exit. Firms are free to enter the market or exit the market with very little sunk or non-recoverable costs.
- No market power: firms compete as price takers on a level playing field, relying on their ability to keep costs down, provide superior services and choices to customers
- Innovation and competitive vigour are rewarded while inefficiency results in business failure (exit).

## Efficient Markets (cont'd)

- Customers have choice in terms of providers, products and services
- Customers are well informed about what is available and what it costs
- Customers ultimately determine which products and services succeed and which fail.

# What About Anti-competitive Activity

- Policymakers can ensure that the regulated waste diversion markets are still subject to the Competition Act.
- Criminal sanctions against naked cartels that fix prices and quantities
- Civil remedial relief from the Competition Tribunal for Abuse of Dominance and other restrictive trade practices.

# How Can We Help to Make This Happen?

- In 2007 The Organization for Economic Cooperation and Development (OECD) came up with a Competition Assessment Toolkit to aid policymakers in designing regulation. Canada (Competition Bureau) as a member nation had a lot of input into this process
- Those interested can find this material at :  
[www.oecd.org/competition/assessment-toolkit.htm](http://www.oecd.org/competition/assessment-toolkit.htm)

# The Competition Assessment Toolkit

- Designed to assist policymakers by providing a method for identifying unnecessary restraints on market activities and developing alternative, less restrictive measures that still achieve the core policy objectives.
- Does not require an extensive background in competition policy.
- Can be used at all levels of government.

# When is this Tool To be used

- In the evaluation of draft new laws and regulations
- In an evaluation of existing laws and regulation
- By government bodies engaged in development and review of policies taking into consideration the impact of these policies on competition in the markets they affect

# How Does it Work

- Starts with an initial assessment of the policy with the use of a Checklist to assess the policy in terms of any anti-competitive attributes:
  - Limits the number or range of suppliers
  - Limits the ability of suppliers to compete
  - Reduces the incentives of suppliers to compete
  - Limits the choice and information available to customers

## Second Stage

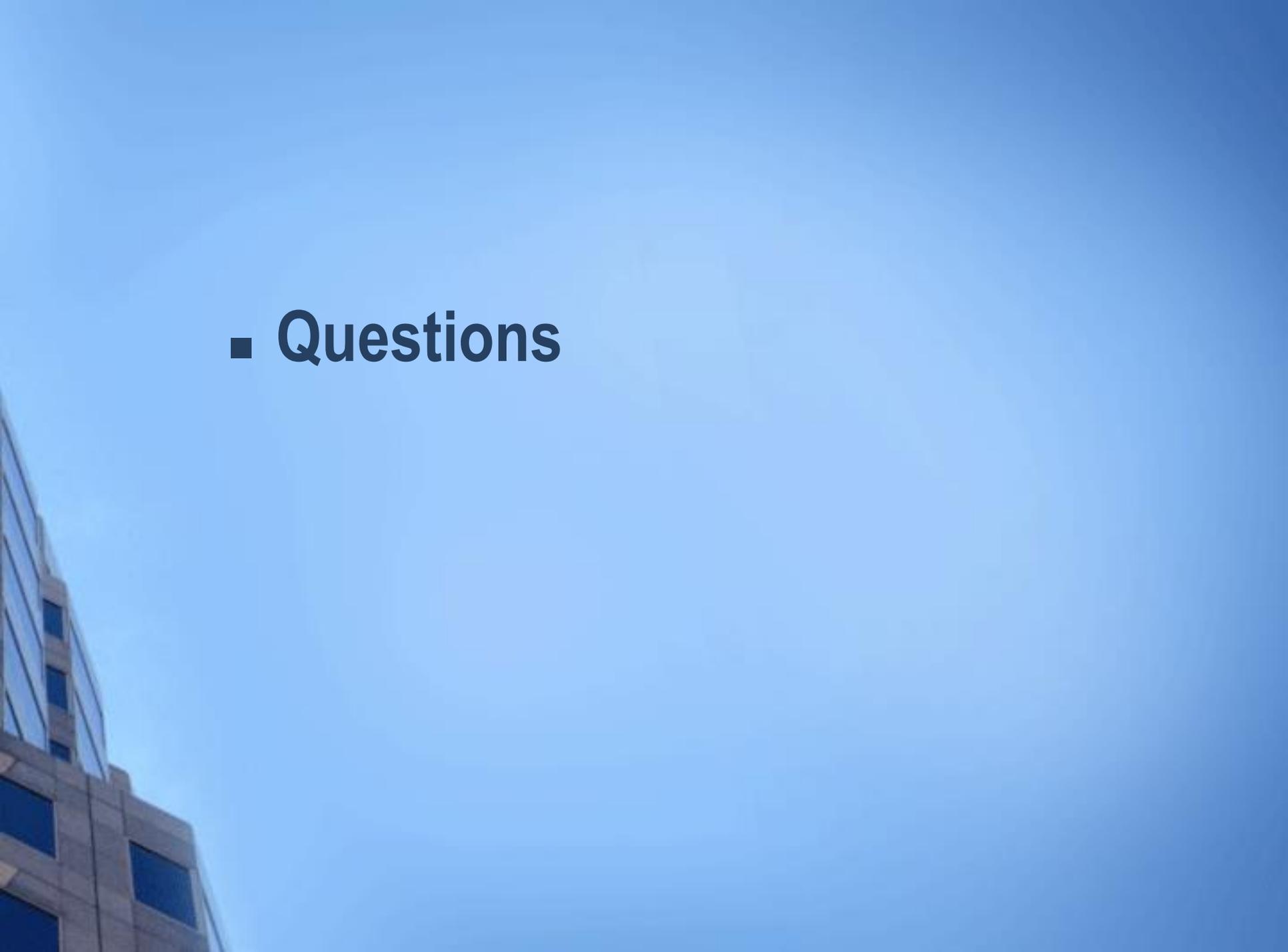
- If competition concerns emerge during the initial assessment a more detailed “full assessment” of the policy is conducted
- the framework provided for competition assessment is intended to help policymakers sharpen their knowledge of competition law enforcement concepts and tools and to then use those to evaluate the impact of their regulations

# Final Stage

- At the end of the Competition Assessment process, policymakers should have a much clearer understanding of the competition issues associated with their policy
- It will still require their leadership and insight to look for solutions

# A Plan of Action

- A Competition Assessment should be part of a broader stakeholder engaged process
- The policymaker has the tools to assess the competition challenges but needs to build a well informed market-based solution to resolve these problems
- Participation by all affected parties is critical to the success of this process



- **Questions**