Guidance Note

Assessing competition impacts

The purpose of this guidance note is to help departments identify and assess the potential competition impacts of regulatory proposals.

Background

The Queensland Government Better Regulation Policy (Policy) requires that proposed restrictions on competition must be considered as part of the Regulatory Impact Analysis (RIA) process.

The requirement to assess competition impacts reflects the agreement of all levels of government that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restrictions to the community as a whole, outweigh the costs
- the objectives of the regulation can only be achieved by restricting competition.

This note discusses the specific issues that should be assessed where a legislative proposal includes a restriction on competition.

Why consider restrictions on competition?

Competitive markets are generally considered to be the most efficient way of providing goods and services.

Firms competing against each other have an incentive to keep costs (and prices) as low as possible; to innovate and to provide the quality of the good or service that matches individual customer needs.

Where there is limited or no competition in markets, consumers are likely to be worse-off. They may pay more for a good or service than they should or have limited or no choice about what they purchase, where and when.

Australia's telecommunications industry is a good example of the effects of competition. For many years, Telecom (now Telstra) was the only telecommunications provider in Australia. Today, the combination of competition and major technology improvements means customers have a wide choice of providers, and the quality of their service and the amount they pay for services. While competitive markets are generally efficient at providing goods and services, there will be circumstances where markets lead to sub-optimal outcomes from a community perspective. This is where government intervention (including regulation) may be needed.

Government regulation may be necessary, where there is some form of market failure or broader social, environmental or other community objectives to be considered. In telecommunications, the Australian Government legislates a range of consumer protection mechanisms to make sure customers have the information they need to make informed decisions, and a government agency to contact if there are complaints that cannot be resolved.

Ideally, governments should be developing regulation which achieves the stated policy objectives, but in a way that minimises unnecessary intrusion in the competitive behaviour of firms and markets.

How can regulation restrict competition?

Regulation can restrict competition when it:

1. limits the number or types of businesses
2. limits the ability of businesses to compete
3. reduces the incentives for businesses to compete
4. limits the choices and information available to customers.

These are described in Table 1.

Table 1 Ways regulation can restrict competition

How regulation can restrict businesses from competing			
Limit the number or types of businesses	**Limit the ability of businesses to compete**	**Reduce the incentives for businesses to compete**	**Limit the choices and information available to customers**
Providing exclusive rights for a business in a market (for example, restricting the ability of businesses to supply goods or services in specific geographic locations). Requiring businesses to be licenced or authorised. Limiting the ability of some types of businesses to provide a good or service. Significantly raising the costs of entry or exit. Restricting the geographical flow of goods, services, capital or labour.	Limiting the ability of businesses to independently set their prices for goods or services (price regulation). Limiting the freedom of businesses to advertise or market their goods or services. Setting standards for product quality that provides an advantage to some businesses over others. Significantly raising costs of production for some businesses relative to others (for example, by creating a standard that is inconsistent with imported goods, or treating existing businesses in the market differently from new entrants).	Creating a self-regulation or co-regulation regime that includes rules that reduce incentives for businesses to compete. Exempting the activity of a particular industry or group of suppliers from the operation of competition law.	Limiting consumers' ability to choose who to buy from. Reducing the customers' ability to move between suppliers by imposing high 'switching costs'.

Source: Australian Office of Best Practice Regulation, Competition and Regulation Guidance Note

Assessing the impacts on competition

The RIA process is about identifying and assessing regulation that is likely to have some significant adverse impacts on business, the community or government.

Like other costs and benefits, competition impacts will need to be assessed as part of preparing an Impact Analysis Statement (IAS).

Assessing the benefits and costs of competition restrictions

Assessing the potential benefits and costs of competition restrictions to businesses, the community and the environment may not always be straightforward.

However, an IAS should seek to identify and assess the likely benefits, including the stakeholders likely to benefit. Benefits arise from addressing a market failure or achieving a social objective. Regulations that aim to achieve a social objective are often related to health or public safety.

For example, liquor retailing laws can act to limit the freedom of suppliers to sell liquor to the market.

Reduced community health care costs and additional productivity and community benefit are likely to accrue from a reduction in consumption of liquor.

However, restrictions on competition can impose costs on the community. Liquor suppliers may incur costs where restrictions prevent them from:

- achieving economies of scale
- adopting new technology to lower their costs of production
- introducing a new product or service
- expanding into a new market
- operating at an optimal level of output.

Consumers can also indirectly incur costs where restrictions reduce rivalry between liquor suppliers leading to:

- less pressure for innovation, new products or product differentiation
- less pressure to reduce costs

- higher prices and fewer products or services
- less information to consumers to make optimal purchasing decisions
- less choice of where to buy liquor.

There will also be administration and enforcement costs to government to ensure the liquor restrictions are effective.

Assessing whether the benefits of the restriction on competition outweigh the costs

Where a restriction on competition is proposed, the IAS must also clearly show that the benefits from a legislative restriction outweigh the costs.

What are some of the alternatives to legislation?

Finally, before a legislative approach is preferred, the IAS needs to outline why restricting competition through legislation or regulation is the best way to achieve the desired outcome.

There are often non-legislative tools which might be appropriate to consider:

- government subsidies – e.g. funding concessions for vulnerable members of the community is generally preferable to governments setting a price for a particular good or service
- voluntary codes of conduct can be an effective way of describing good practice without legislation. For example, the Department of Agriculture and Fisheries developed, in consultation with industry and animal welfare organisation, a Queensland Code of Practice for Pet Shops
- strengthening existing arrangements e.g. improved enforcement can be preferable to more legislation if existing legislation is not being complied with
- improving customer information and choice – sometimes a requirement to provide more information (e.g. nutritional labelling) can be more cost effective and have less impact on a market (e.g. legislating to limit certain food groups).

The key issue is to provide information to policy makers to show why other options cannot achieve the policy objective.

10-year reviews of restrictions on competition

Markets can change a lot in ten years due to technology and innovation, changes in customer preferences and other factors.

For this reason, legislative restrictions on competition should be reviewed every 10 years to ensure that these restrictions are still achieving their intended objective, and that benefits of the restriction continue to outweigh the costs.