



IPPSA COMPETITION LAW SEMINAR

Session 4: Alberta Competition Issues

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GOAL

Active engagement:

- Not about right or wrong but coming to reasonable understanding of topic
- Satisfy that have considered some aspects or implications of issues discussed
- Recognizing different 'socially constructed realities'



MSA'S PREMISE (SCR)

- Competition is lynchpin of Alberta market
- Effective competition 'regulates' behaviour & drives economic efficiency
- Effective competition is product of market structure & behaviour (& performance)
- Oligopoly market structure is a dominant feature of Alberta market
- Collective behaviour even without agreement offends FEOC



MSA'S COMPETITION FRAMEWORK

- Unilateral effects
 - Akin to abuse of dominate position or misuse of market power
- Coordinated effects
 - The topic today
 - Continuum of anticompetitive / uncompetitive conduct & different remedies depending where on continuum



LEGISLATIVE BASIS

Participant & ISO Streams:

- Participant
 - EUA s. 6 – “expected to conduct themselves...”
 - FEOC Reg. ss. 2(h)(i) – “directly or indirectly colluding...”
 - FEOC Reg. s. 3 – sharing non-public PQ offer data before 60 days
 - Competition Act



LEGISLATION CONT'D

- ISO stream
 - EUA s. 16 – “ISO must promote a FEOC market”
 - AUCA ss. 39(3)(c) – “MSA shall assess whether or not ISO rules sufficient to discourage anti-competitive practices”
 - EUA ss. 20.4(1.1) – MSA may object to ISO rule that may have adverse effect on structure & performance of market or does not support FEOC



MSA FOCUS

- Oligopoly: mutual interdependence becomes focus of competition analysis
- In the Alberta market oligopolistic competition takes place in an arena of:
 - Repeated 'game', marginal offer, hourly settled 'single' price
 - Variable demand & supply = var. market power
 - Close to real time visibility of competitors' offers, not just 'final' pool prices



THIN ICE

- Trader access to competitor's offers before they are public
- Tagging of offers so they can be identified by competitors, e.g. numerical pattern or established range (focal points) when market tightens
- Patterns of price leadership followed by discipline to those who don't follow



MSA CONTINUUM

- Coordinated behaviour by agreement clearly offends FEOC (& Comp. Act)
- Coordinated behaviour without agreement also offends FEOC
 - Compare to range of potential competitive outcomes – ‘but for’ analysis
 - Danger is solidifies uncompetitive behaviour
 - Danger is undermines confidence in market



CONTINUUM: CONDUCT & REMEDY

