



Competition In the BC Waste industry: Some Challenges and Opportunities

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The Qualifier

- I would like to share with you today some general observations from my experience with the BC waste industry
- My views are based on a 27 year career with the Competition Bureau that ended in 2014 and the past ten years advising various groups on waste diversion
- They do not represent those of the Competition Bureau
- If you have competition law concerns, call the Bureau and/or seek legal advice from a Competition Lawyer

Presentation Overview

- Why do we care about competition
- What are some of the key challenges/opportunities facing market participants
- What can the industry participants focus on to promote a healthy and vibrant market

The Importance 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); and
 - a stable and economically viable industry

Competition Rewards Success

- Assuming everyone has an equitable opportunity to compete, competition allows the most efficient and innovative service providers to succeed and pushes the less efficient out
- Ideally success or failure is determined by the vigour of the competition and the choices that competitors make and not by anti-competitive behaviour or poorly crafted rules and policies.

In the Context of Waste Diversion

- A competitive Industry would translate into:
 - Maximizing diversion rates
 - Optimizing the mix of solid and recyclable waste
 - Doing so at the minimum cost possible
 - Sustaining a diverse group of service providers with reasonable economic rates of return
 - Ongoing dynamic innovation and efficiencies

Perfect Competition Rarely Exists

- Markets are often subject to regulation, laws and policies
- These are important governmental tools to ensure the public interests are preserved in a free market system.
- The BC Waste Market is no exception
- It is subject to Federal, Provincial and Municipal oversight.

Federal

- CCME: Canada-wide Action Plan for Extended Producer Responsibility
- The Canadian Council of Ministers of the Environment (CCME) have adopted the Canada-wide Action Plan for Extended Producer Responsibility
- BC is part of this initiative

Provincial Recycling Regulation

- BC Environmental Management Act:
 - legal framework that establishes many of the rules and authorities that affect the treatment of waste
 - Also the basis for extended producer responsibility (EPR) programs which allows the Minister of the Environment to designate types of solid waste as recyclable

Provincial Regulation

- Other Acts and regulations promoting
 - Air quality
 - Climate issues
 - Clean energy
 - Bio energy strategy
 - Landfill gas management
- All of which have an indirect impact on the waste sector

Municipal Policies

- Metro Vancouver: Integrated Solid Waste And Resource Management Strategy
- Other municipalities with their own strategies and physical dump and waste collection infrastructure

Regulation is important

- Sets the public policy goals for the industry
- Establishes the legal framework for operating within the market
- From a competition policy perspective it is important that regulation is designed in a way to achieve the public policy objectives with the least amount of distortion on the affected markets.

What are Some of the Key Regulatory Impacts on Competition

■ EPR:

- Implementing EPR programs is an evolving process
- The Minister of the Environment designates some type (s) of solid waste as recyclable and a bunch of things start to happen:
 - responsibility for the waste shifts to the industry producing it
 - The waste becomes “monetize” (given additional value) as something that needs to receive special treatment
 - Some form of management or stewardship program is established to oversee the market activity directed at this waste diversion

Opportunities with EPR

- Materials which were previously part of the solid waste now have a new economic value
- New business opportunities exist for the hauling, sorting and processing of this material

Challenges with EPR

- Most of the challenges associated with EPR revolve around how these newly designated materials are managed through stewardship programs.
- In addition, the designation of particular items for recycling requires additional sorting and processing that also changes the economics of diverting waste

EPR Challenges : Stewardship

- Stewardship agencies are given unprecedented power to establish and operate province-wide programs
- Because of the “ province-wide” requirement for coverage, there is very little room for competition at the stewardship level.
- Without competition between stewardship agencies the approved Steward becomes the market gatekeeper: determining who competes in the market and what are the terms of this competition
- This means that there can be a lot of competitive pressure between service providers but virtually no choice in terms of which stewardship program to choose.

EPR cont'd

- Stewardship primary metric for success is one of diversion rates and not the traditional cost-minimizing / profit maximizing objectives of a firm in a competitive market.
- As such their first priority is to make sure their program is working to meet these goals, but not necessarily with the market interests in mind.
 - Why would this be the case?
 - There is no pressure on the steward to compete to maintain their program
 - They will tend to go with what works rather than open the doors to new ideas/ new competition
 - They will have the ability to yield significant market power (licensing, buying and suasion with the regulator)

Who Keeps the Stewardship Competitive?

- Individual producers cannot switch to a better steward.
- The Provincial authority needs the steward to succeed unless it is willing to license other competitors
- The province-wide service requirement limits the economic viability of having more than one steward

Is there an alternative to the province-wide requirement

- Why not have the province differentiate similar recyclable material on the basis of the geographic area where it is collected.
- Producer diversion rates could be set on a percentage of generation and on geographic area
- A packaging waste producer, for example could be have a set target for recycling that includes a mix of urban, rural and remote rural waste
- The producer could create their own recycling program based on their urban retail operations (collection waste at outlets) and purchase the required rural and remote rural waste from third parties (other stewards, or rural and remote rural based collectors)
- Removing the province –wide requirement at the steward level would open it to competition

Impact of Competition at the Stewardship level

- Competing Stewards would force one another to be as efficient as possible.
- This would translate into more options for service providers
- Overall diversion rates would be met with a more efficient and healthier sector.

EPR : Other Challenges and Opportunities

- Province-wide programs tend to promote larger scale and network efficiencies.
- service providers that can adapt to stewardship scale requirements will succeed while smaller less efficient providers we find themselves exiting the market
- could lead to significant consolidation at every level of the recycling process. That means fewer players with larger influence in the market.
- Incumbents may find it harder to remain in the market unless they adapt and potential entrants into the market may find the room for entry shrinking as the remaining incumbents expand their operations and influence

EPR: to summarize

- Both the challenges and opportunities from EPR will be significant
- Your business will change rapidly as new programs come on line or existing ones are modified.
- Solid waste may continue to grow in nominal terms but as more and more materials are designated as recyclable, the ratio of solid to recycled waste will shrink.
- The requirement of province wide service by stewards should be re-examined- there may be hybrid opportunities that promote competition at the stewardship level
- As an industry you must be proactive in terms of the influence you have over the design and the direction of EPR programs. This means taking steps to ensure that you are part of the design process and not a victim of it.

Municipal Policies: Solid Waste Diversion Programs

- Fair to say that solid waste diversion programs have a profound impact on the state of competition in this industry
- The largest program in the province is the Metro Vancouver Integrated Solid Waste and Resource Management Plan (SWMP)

What are some of the main observations about with the SWMP

- Implemented by an authority (Metro Van) that also competes with private dump sites and other infrastructure: raises questions about market neutrality- particularly given its authority license these competing operations
- Metro Van Policies have a direct impact on haulers and independent site operators
- Metro Van has the ability to set fees to haulers that dump solid waste at all sites in the metro area

Market Neutrality: what do we mean?

- Can the regulator separate its public policy objectives from its economic self interest?
- Does this potential conflict negatively impact competition in the market?
- If there is alternative?

SWMP: Solid Waste Diversion Goals

- Minimize Waste Generation
- Maximize Reuse, Recycling and Material Recovery
- Recover Energy from the Waste Stream after Material Recycling
- Dispose of all Waste in Landfill After Material Recycling and Energy Recovery

Also Have Metro Van Goals

- Sustain the operation of physical assets
- Avoid incurring additional costs associate with enforcing their policies and rules

Challenges

- The challenges that arise from the SWMP have more to do with the implementation strategy of the authority than the actual plan

What are these Challenges

- Haulers are charged “fined” by metro Van for dumping loads of solid waste that contain recyclables (source of problem is with customers who fail to properly sort their garbage)
- Metro Van wants haulers to act as enforcers of garbage separation bylaws (recyclable from solid waste) by passing these fines onto their customers
- question of whether haulers have the legal authority to do this, let alone the practical ability to charge customers for adding recyclables to solid waste bins- customers will switch to another hauler

Challenges cont'd

- Haulers are not allowed to take their material to private sites to pre-sort loads before they dump them at metro approved sites –hence there is no way to avoid fines.
- At the end of the day the solid waste that includes recyclables is simply dumped with the solid waste despite fines being levied. (this seems contrary to the goal of the SWMP).

Challenges : market neutrality

- Question of whether Metro Van uses an anticompetitive strategy to limit private dump sites with whom it competes
- Haulers are charged both a tipping fee and generator levy regardless of whether they dump at a metro site or a private site.
- However all the generator fees go to Metro Van so it is argued that this two-tiered fee structure is anti-competitive for the private dump site because the metro site cross subsidizes its operations with the generator levy

Challenges cont'd

- Despite the apparent frictions, Haulers and other market participants argue they have little recourse because the formal dispute resolution mechanism is biased in favour of Metro Van

There Needs To Be a Broader Discussion Pertaining to SWMP

- Questions On The Role and Function of Metro Van
- Questions On the Policy Development Process

Questions On The Role Of Metro Van

- Why does Metro Van have to own facilities to implement its SWMP?
- Should it focus its resources on educating the public and enforcing its bylaws rather than imposing this burden on market participants?
- Why, if there are cheaper alternatives (scale and network economies) must diverted solid waste generated in the greater Vancouver area only be diverted to designated sites within metro Van. Can diversion not be monitored without this requirement?
- Can the dispute resolution mechanism be structured to be neutral (eg. 5 reps: 2 metro Van, 2 Industry, 1 impartial?)

Questions On the Policy Development Process

- Why are the Industry and other Key Stakeholders only consulted after the policy proposals are developed by Metro Van and it seeks public consultation?
- Could there not be a steering group with industry and other key stakeholder representation that has a role in policy development before there is public consultation?

Challenge/Opportunity for the industry

- The biggest Challenge for market participants, outside of competing for business, is to have a more effective voice in the development and implementation of the policies that affect your economic viability
- I would suggest that working with your association you seek to partner with both the province and the metro authorities to develop a more proactive role that could work with policymakers at the early stages of policy development
- There are also great tools like the Competition Assessment Toolkit and the Competition Bureau that can help

■ Questions