



OECD

Competition Assessment  
Toolkit Project

Competition Screening  
of Normas

Craig Conrath

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# Outline of Presentation

- i. Purpose & objectives
- ii. Competition concerns
- iii. Screening for competition concerns
- iv. Preliminary screening results
- v. Conclusions and recommendations

# I. PURPOSE & OBJECTIVES

# Purpose & Objectives

- Deliverable from the CFC-OECD Competition Assessment Toolkit project. Begun July 2009.
- Screening of random sample of normas (NOMs & NMXs)
  - Applies OECD Competition Assessment Toolkit Checklist
  - Also applies Toolkit analysis to possible justifications for the normas

## II. COMPETITION CONCERNS

# Competition Concerns

- Normas: Essential tools for public policy objectives.
- BUT: Normas also can be over-restrictive and harmful to competition and competitiveness.
- A self-interested minority can obtain normas that harm consumers as a whole, especially if each consumer is harmed only a little.
- Broad set of product quality standards may have made sense in an economy with state ownership and limited competition. But they may be outmoded and restrict competition, especially when there is potential for innovation, new production methods, or product variation -- impeded by existing standards.

# Competition concerns

- Risks normas can present to competition:
  - Incumbent competitors may seek normas that:
    - Prevent new competition/raise costs of new entry
    - Limit how they compete with each other, preventing innovation and reducing consumer choice
    - Reduce the incentive for vigorous competition
  - Unnecessary standards may be imposed by normas to address issues that could easily be solved by the market.

# Productivity and Growth

- "Increasing productivity is by far the most important ingredient in economic development. It solves almost all the other economic problems. From the vast amount of economic experience in countries all over the world for the past 50 years, we have learned without doubt that the most important condition necessary for rapid productivity growth is fair and intense competition in all sectors of the economy."

-William W. Lewis, Founding Director, McKinsey Global Institute, Author of *The Power of Productivity*



# Competition Concerns: Scope

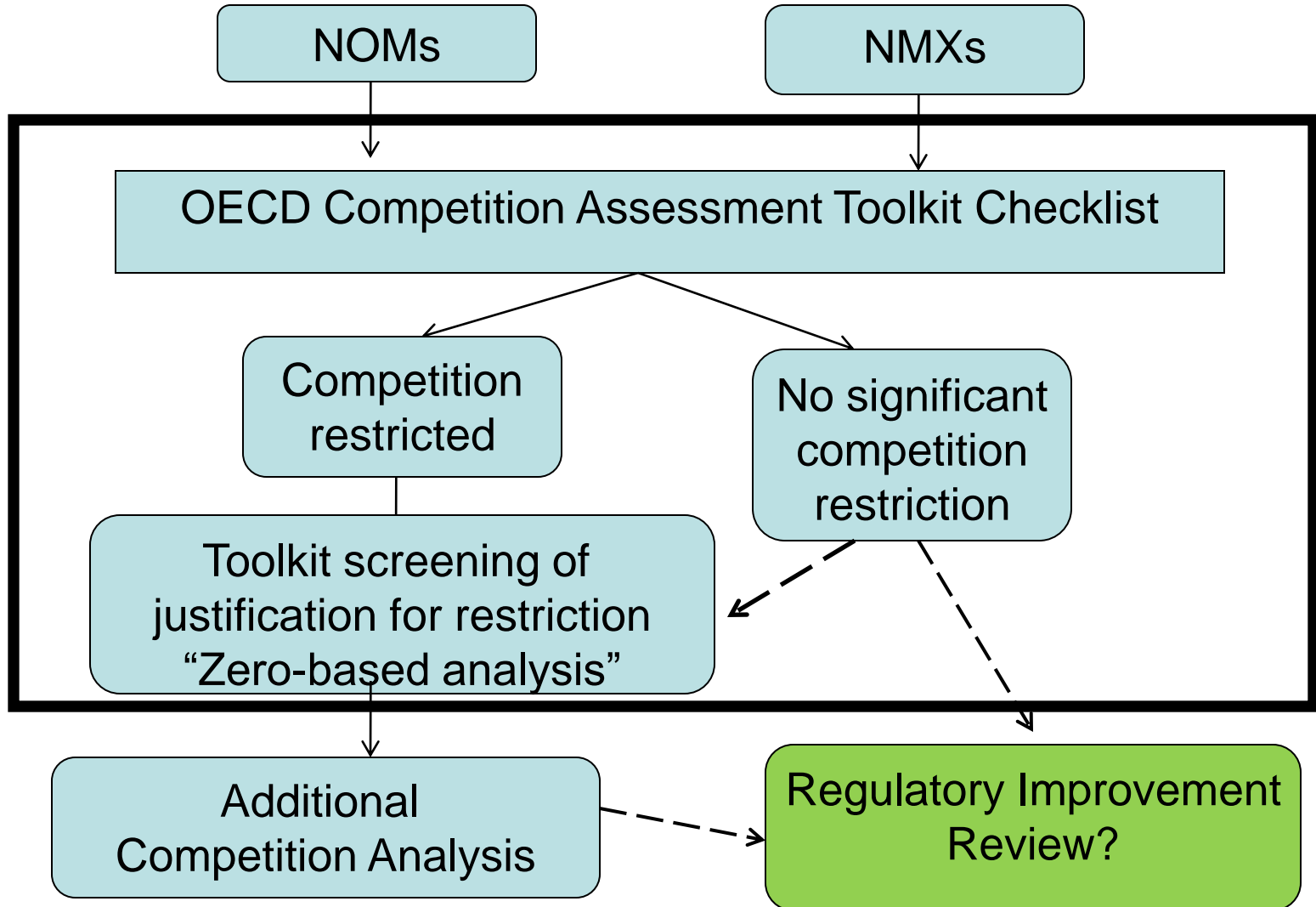
- NOMs: Officially enforceable, clear potential to restrict competition
- NMXs: Even non-enforceable norms can restrict market behavior & competition if:
  - There is private enforcement.
  - They are used as a reference for other decisions, e.g., permits, imports, access to trade ass'n, etc.
  - They become so widely adopted or accepted that non-complying firms are impeded.
  - They are used in government purchasing specifications.
  - They become enforceable by reference in a NOM.

# III. SCREENING FOR COMPETITION CONCERNS

# Screening for Competition Concerns

- Why screening?
- Approximately 5400 normas
  - 800 NOMs
  - 4600 NMXs
    - PEMEX, CFE normas not screened
- Random sample of 120 normas
  - 8% sample of NOMs
  - 1% sample of NMXs
- Screening is a tool to focus future work.

# Approach



# Principles Applied in Screening I

- Preference for competition
- Preference for market or private solutions
- Government intervention needed only for significant market failures
- When regulation is needed, a less restrictive alternative is preferable

# Principles Applied in Screening II

Presumption for competition: Burden of proof on advocates of government restrictions of competition

## 2009 Informe de Presidente Calderón:

- “**Octavo.** Emprenderemos en el Gobierno una reforma regulatoria de fondo; un proceso que nos permita derogar todos aquellos acuerdos, oficios, decretos o reglamentos cuya necesidad no quede clara y plenamente justificada.  
De lo que se trata, es de facilitar la vida de los ciudadanos, de simplificar todos los trámites que realizan las empresas, de acercar el Gobierno a las necesidades de la gente.”

# Australia applied the same principle in its extensive review of competition restrictions



## NATIONAL COMPETITION POLICY REVIEW

Chairman: Prof Frederick G Hilmer  
Members: Mr Mark Rayner  
Mr Geoffrey Tapereil

Secretary: Mr Warrick Smith

25 August 1993

The Committee thus approaches its task with a strong presumption favouring universal and uniform coverage of the market conduct rules proposed in this Part. Moreover, consistent with the principles agreed to by the Heads of Governments,<sup>3</sup> it will be seeking to ensure:

- that any exceptions from such universal coverage are only permitted on public interest grounds;
- that claims of public interest are assessed by an appropriate transparent assessment process, with provision for review; and
- that reforms in this area are consistent with the development of an open, integrated domestic market for goods and services and, in recognition of the increasingly national operation of markets, reduce complexity and eliminate administrative duplication.

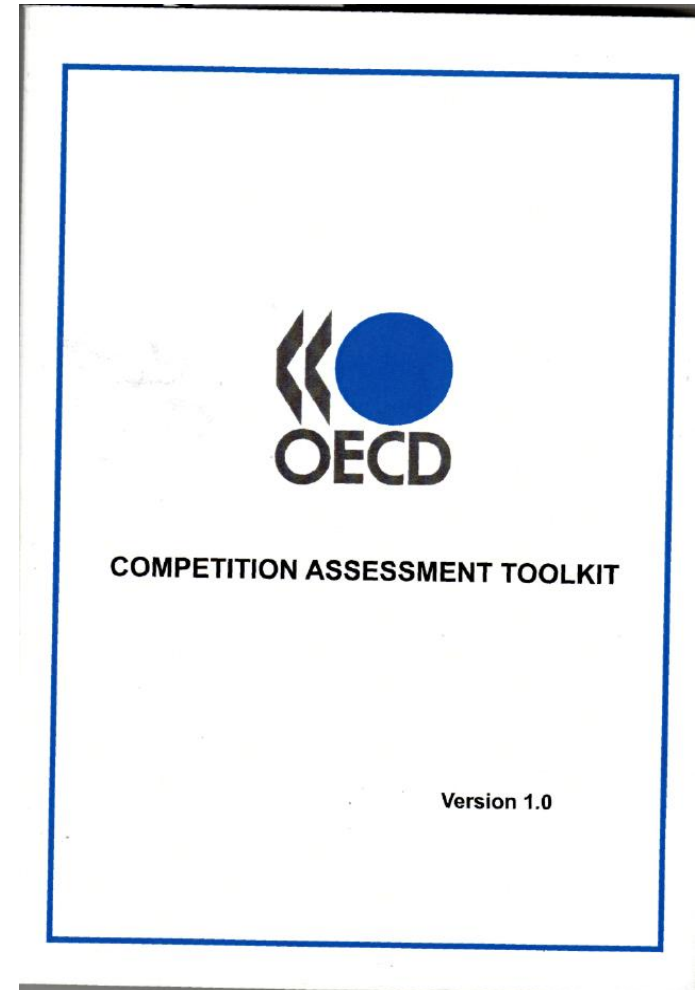
**Presunción de aplicación universal de principios de competencia**

**Excepciones deben justificarse por razones de interés público**

**Mínima carga regulatoria**

# Tools Used in Screening

- **OECD Competition Assessment Toolkit**
  - Tool to identify and evaluate competition-restricting regulations
  - Issued 2007 after multi-country consultation
  - In 13 languages
  - Has been used in 20 countries





# Competition Screening

- OECD-created normas database:


## Toolkit Screening of NOMs, NMXs

- Applies Toolkit principles to normas
- Series of objective or simple questions to apply to each norma
- Screening
  - Based only on text of the norma and general knowledge
  - Not a full analysis


# Methodology

- I. Identifying information
  - Name, number, date, industry, agency, etc.
- II. Does the norma restrict competition?
  - Competition Assessment Toolkit Checklist
- III. Potential justifications?
  - Applies Toolkit principles and analysis: considers possible market failures, etc.
- IV. Initial evaluation
  - Evaluates justifications, possible reforms

# Database



ORGANIZACIÓN PARA  
LA COOPERACIÓN  
Y EL DESARROLLO  
ECONÓMICOS



**Evaluación de Normas Mexicanas**  
En Base a la Guía para la Evaluación de la Competencia de la OCDE

### Introducción: Datos generales de la norma

Clave de la norma	<input type="text" value="NOM-004-SCFI-2006"/>	Tipo de norma	<input type="text" value="NOM - DEF"/>	Fecha de publicación	<input type="text" value="21-Jun-2006"/>	Título de la norma	<input type="text" value="Información Etiquetado textiles, pi"/>
Rama de actividad económica	<input type="text" value="Comercio al por mayor de productos textiles y calzado"/>			Dependencia	<input type="text" value="6. Secretaría de Economía"/>		
CCNN (NOMs)	<input type="text" value="CCNN de seguridad al usuario, información comercial y prácticas de comercio"/>			CTNN (NMX)	<input type="text"/>		
Descripción corta	<input type="text" value="La norma establece la información comercial, que los fabricantes y confeccionistas nacionales, así como los importadores,"/>	Nombre del producto	<input type="text" value="Informacion comercial"/>	MIR	<input type="text" value="No"/>	¿Existe concordancia internacional?	<input type="text" value="2"/>
				Modificaciones	<input type="text"/>		

#### Sección 1: ¿Limita la norma el número o variedad de proveedores?

1.1 ¿Otorga derechos exclusivos a un proveedor para prestar servicios u ofrecer bienes?	<input type="text" value="2. No"/>	1.2 ¿Establece un proceso de obtención de licencias, permisos o autorizaciones como requisito para operar?	<input type="text" value="2. No"/>
1.4 ¿Eleva de forma significativa el costo de entrada o de salida para un proveedor?	<input type="text" value="2. No"/>	1.5 ¿Crea una barrera geográfica a la capacidad de las empresas de ofrecer bienes o servicios, invertir capital u ofrecer mano de obra?	<input type="text" value="2. No"/>

#### Sección 2: ¿Limita la norma la capacidad competitiva de los proveedores?

2.1 ¿Controla o influye substancialmente los precios de bienes o de servicios?	<input type="text" value="2. No"/>
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Comentarios de la Sección 1

# Database

5.2 ¿Qué falla de mercado podría presentarse?	5.2.1. Concerniente a la calidad de los productos o servicios los consumidores	4. Aun si se detectan la calidad, podrían erróneamente escoger un producto inseguro	¿podrían los consumidores detectar la calidad sin una norma?	2. No	Comentarios a fallas de mercado	La norma trata de asimetría de infor proveedores y cor obligar a los prime materiales con los
	Si 5.2.1. aplica, por favor conteste la siguiente evaluación		¿podrían los intermediarios detectar la calidad sin una norma?	2. No		
	5.2.2. Externalidades: decisiones de mercado individuales probablemente dañarían un bien público importante	No			5.2.3. Estandarización para permitir la compatibilidad o interoperabilidad	No
5.2.4. Otras fallas de mercado	5. Ninguna					
5.3 Evaluación de la justificación	1. Probablemente se justifica el estándar existente.					
5.4 ¿Qué interés público pretende proteger la norma?	2. Calidad del Producto				Comentarios a evaluación de la justificación	
5.5 Posibles alternativas más restrictivas					Explicación acerca de alternativas menos restrictivas	
<b>6. Conclusión</b>						
6.1 En base a la revisión preliminar	4.1) No se recomienda cambio: no restricción significativa a competencia es aparente.					
6.2 Posible trabajo futuro y comentarios adicionales	La norma no parece levantar preocupaciones significativas a la competencia. El requerimiento de provisión de información en textiles ayuda a balancear la asimetría de información entre consumidor - proveedor para este bien semi-duradero. El contenido de la norma parece estar formulado de manera no discriminatoria y sin el objeto de restringir innecesariamente la competencia.				6.3 Iniciales del Evaluador	du

# IV. PRELIMINARY SCREENING RESULTS

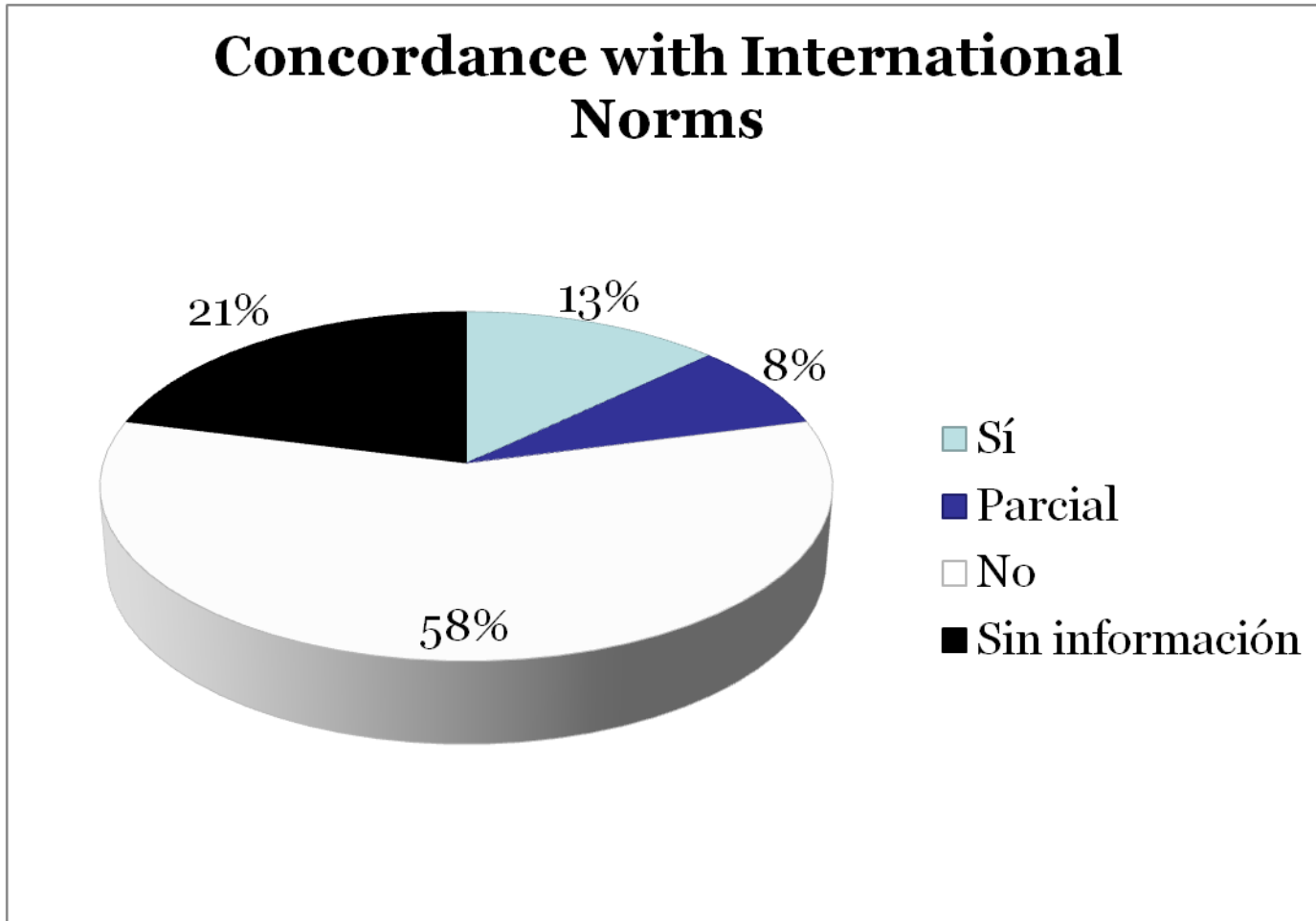
# Preliminary Screening Results

- Screening: descriptive data (part I)
- Review of 120 normas:
- Size of affected market
  - 39 Large
  - 32 Medium
  - 30 Small (+ 19 unclassifiable)
    - 32 Multiple markets
- 19 Markets with prior antitrust history

# Preliminary Screening Results

- Screening: Competition Checklist (part II)
- Review of 120 normas
- (Includes Double Counting)
  - 11 Restrict number or range of suppliers
  - 9 Restrict ability to compete
    - 19 more may restrict ability to compete
  - 0 Restrict incentive to compete vigorously

# Preliminary Screening Results





# Preliminary Screening Results

- Potential Justification (part III)
- Market failure or no?
- When potential justification is consumer protection or consumer confusion (48 normas), in
  - 52% it seems probable that consumers themselves could detect quality
  - 10% more it seems probable that intermediaries could detect quality

# Preliminary Screening Results

- Initial Evaluation of 120 normas
  - 53% No significant competition restriction
  - 8% Significant competition restriction appears justified
  - 3% Appear likely justified with a change
  - 13% Candidates for elimination
    - (fewer than 100%; some are in other categories)
- 17% of NOMs appear to have less restrictive alternatives available
  - (including voluntary standards)

# Preliminary Screening Results

- Case Study 1: Galletas de Animalitos (NMX-F-379-S-1980)
  - Potential to restrict competition from any non-compliant animal cookie?
  - Any legitimate regulatory interests (health and safety) covered by broader regulations of, e.g., food products, or bread products (NMX-F-521-1992) , or cookies (NMX-F-006-1983).
  - Candidate for elimination.
    - Cf.: Galletas Marias NMX-F-376-S-1980

# Preliminary Screening Results

- Case Study 2: Dog raisers/trainers (NOM-148-SCFI-2001, -2008)
  - Example of potential regulatory improvement
- 2001 norma highly restrictive
  - Mandatory standard contracts
  - Extensive paperwork requirements
  - 10 pages, 111 subparagraphs
- 2008 revision: less anticompetitive alternative
  - Competition Assessment Screening 5.5:
    - » “Posibles Alternativas Menos Restrictivas”
  - Freedom to individualize contracts
  - Fewer paperwork requirements
  - 4 pages, 44 subparagraphs
- Possible future additional improvement
  - Eliminate norm; replace with private voluntary certification

# Preliminary Screening Results

- Case Study 3: Steel for leaf springs in motor vehicles. (NMX-B-053-1961)
- Establishes quality standards.
- Probably customers such as Ford, Nissan, and General Motors can protect themselves.
  - Competition Assessment Screening 5.2.1.1:
  - ¿Pudieran los consumidores detectar la calidad sin una norma?

# Preliminary Screening Results

- Case Study 4: Table Salt. (NOM-040-SSA1-1993, PROY-NOM-040-SSA1-2000)
- Example: Competition restriction by norma; Pro-competitive reform.
- 1993: excluded rock salt, allowed only sea salt.
  - Competition Assessment Checklist:
    - 1.3: “¿Limita la capacidad de ciertos tipos de proveedores para prestar un servicio u ofrecer un bien?”
    - 2.3 “¿Establece normas de calidad de los productos (a) que sean más ventajosas para algunos proveedores que para otros o (b) que superen el nivel que elegiría un gran número de consumidores bien informados?”
- 2000 (effective 2004) reform permitted rock salt (subject to same quality standards).
  - 2004 reform opposed by incumbent producers.
  - Incumbent producers also suggested numerous cost-increasing rules for imports, also rejected.

# V. CONCLUSIONS AND RECOMMENDATIONS

# Conclusions

- Sample of reviewed normas shows that normas can significantly impact competition and competitiveness.
- Many normas raise little competition concern.
- Some normas raise serious concerns.



# Recommendations

- Complete screening of NOMs and NMXs with Competition Assessment Toolkit.
  - Possibly in conjunction with Regulatory Improvement screening.
- Simultaneously prioritize review and potential revision of normas flagged by screening to ensure quick results
  - Initial substantive review to determine if competition concerns appear warranted.
  - Invite industry and public input.
  - Burden of proof on those seeking to maintain restrictions on competition.