

Toronto Memorandum

To: Canadian Association of Financial Institutions in Insurance (“**CAFII**”)
From: Michael Kilby / 416.869.5282
Re: Quarterly Benchmarking Reports – Competition Law
Date: May 19, 2020

This memo summarizes our competition law assessment of the proposed quarterly benchmarking reports to be prepared and distributed by RSM Canada to CAFII members.

Background

- For many years, the Canadian Bankers Association (the “**CBA**”) prepared and distributed to its membership periodic reports summarizing certain metrics regarding the uptake of creditor insurance products in Canada (and regions thereof) based on data collected from its membership.
- While the CBA has ceased collecting the relevant data and distributing the relevant reports, CAFII’s membership has shown an interest in re-starting the practice that was in place at the CBA for many years, and the membership has asked CAFII whether it could assume this function.
- In contrast to the CBA, CAFII determined that it would be best to retain an expert actuarial firm, RSM Canada, to gather the data from each individual financial institution (FI) member (of whom there are eight) and then to prepare and distribute the reports in question to the banking members and the insurer members (of whom there are five).
- CAFII has provided Stikeman Elliott LLP (“**Stikeman**”) with templates of the proposed quarterly reports (the “**Reports**”) and has also made available RSM Canada to provide further context and to respond to questions from Stikeman, in order that Stikeman may provide a view to CAFII that the preparation and distribution of the Reports is unlikely to raise competition law concerns.

Assessment

- The sharing of competitively sensitive information between competitors gives rise to risk under the Competition Act. As such, and while benchmarking studies are reasonably common in a variety of industries, it is important that such studies be carried out with appropriate protocols in place so as to address such risks. This is important in substance and also in perception; the sharing of information between competitors cannot in substance violate the Competition Act nor should it give rise to a plausible perception or allegation of same.
- In relation to the Reports:

- RSM Canada is a highly reputable firm with experience in benchmarking studies. It is always preferable to rely upon such firms to implement / manage such studies, with competition law oversight, rather than seek to fulfil this function in-house.
- None of the CAFII FI members provide any of their information directly to each other or even to the CAFII executive. Rather, each CAFII FI member provides its individual information to RSM Canada only.
- The information in question relates only to uptake / penetration rates of creditor insurance in various channels and aggregated regions. No absolute numbers are provided to RSM Canada or in the quarterly reports which it produces and distributes.
- No pricing information is provided.
- No market share information is provided.
- The Reports prepared by RSM Canada anonymize the data received. This is to say that while an FI member is itself identified in the version of the Reports that it individually receives, every other FI member is assigned a random number (1 through 7) in such version of the Reports. In this manner, each FI member receives a different version of the Reports, anonymizing all other members.
- The anonymization performed by RSM Canada, together with the fact that there are eight contributors in total, means that while each individual FI member is able to compare its relative performance in creditor insurance penetration as against its peer group, it does not know the same in respect of any individual competitor (as they are not identified by name) and gains no insight at all into pricing practices. It may be possible to make certain inferences or educated guesses based on overall competitor characteristics but such information is not contained within the Reports.
- The CAFII insurer members will also receive a version of the Reports, with all eight FI members being anonymized in such version of the Reports. Much of the underlying data ultimately originates from such insurer members (in the sense that their products are being distributed by FI members)
- The Reports will be prepared on quarterly basis.

Conclusion

In our view, and based on our experience in relation to such matters, the protocols described above and that have been put in place in relation to the Reports may be characterized as industry-leading best practices. Competition law risks have been appropriately identified and addressed to minimize the prospect of it being alleged that the Reports raise competition law issues, and we consider that they do not. We would be pleased to consider any proposed changes to the Reports going forward.