

Compliance in Cartel Cases - II

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Moderator: Janie Huang (Hong Kong - HKCC)

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2) Vincent Wong (Hong Kong - HKCC)

3) Hideyuki Shimozu (Japan - JFTC)

4) Peggy Leung (NGA of HKCC - HSBC)

5) Edurado Frade (NGA of CAED of Brazil - VMCA Advogados)

6) Michael Osborne (NGA of Canadian Competition Bureau -
Cassels Brock & Blackwell LLP)

7) Lisa Huett (NGA of ACCC - King & Wood Mallesons)

8) Pablo Trevisán (NGA of NCCD of Argentina - Estudio Trevisan)



Recent CMA initiatives to encourage compliance



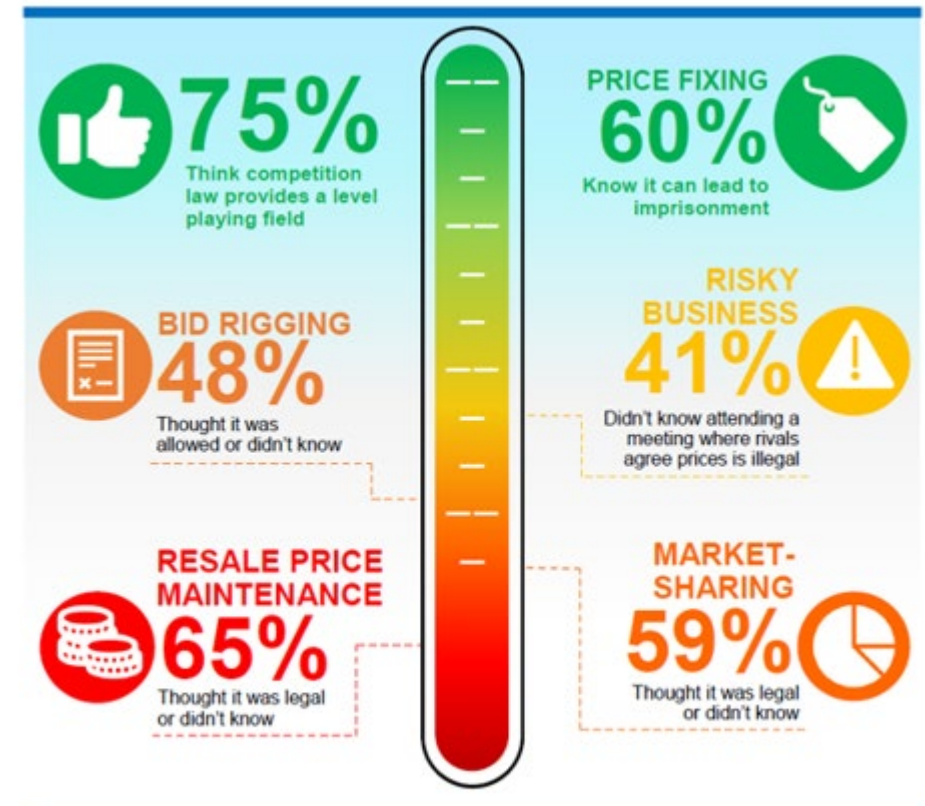
Georgina Laverack
Assistant Director, Cartels
Competition and Markets
Authority (CMA)

ICN CWG Asia Pacific Webinar on
Compliance in Cartel Cases-II

27 May 2021

Research - business understanding of the law

- Research shows businesses lack understanding of competition law
- The consequences of getting caught breaking the law are serious – businesses ought to take competition law seriously
- We believe the majority want to do the right thing BUT...
- Need to increase understanding and educate decision makers



Education campaign to encourage compliance

Useful resources to help businesses

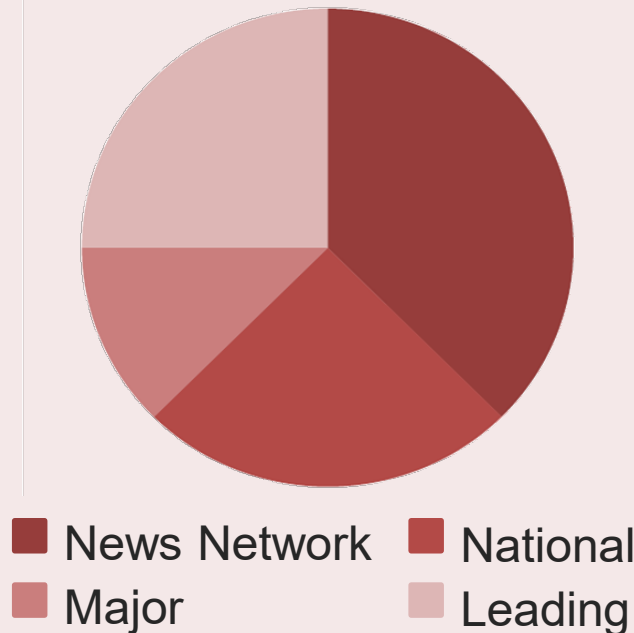


Find out more: [gov.uk/cheating-or-competing](https://www.gov.uk/cheating-or-competing)

Media campaign: radio day

- Audience reach of **29.4 million** (based on weekly reach of stations)
- **42 minutes** of coverage
- **8 pieces** of coverage including **2 items** of BBC coverage

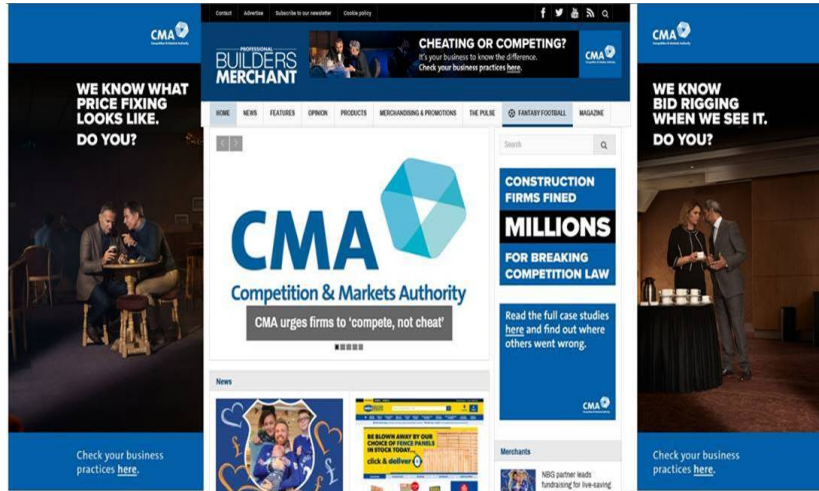
COVERAGE BY STATION CATEGORY



	Stations	% of Coverage
News Network	3	37.5%
National	2	25.0%
Major	1	12.5%
Leading	2	25.0%



Trade media homepage takeovers



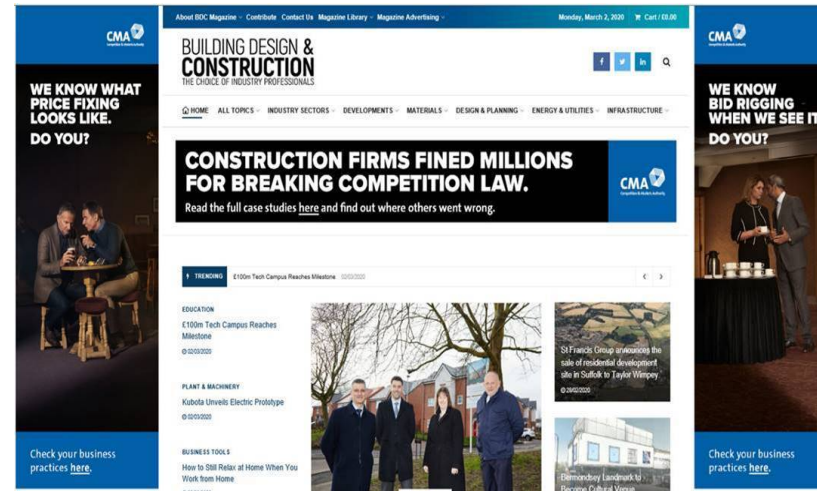
WE KNOW WHAT PRICE FIXING LOOKS LIKE. DO YOU?

WE KNOW BID RIGGING WHEN WE SEE IT. DO YOU?

CMA
Competition & Markets Authority

CMA urges firms to 'compete, not cheat'

Check your business practices [here](#).



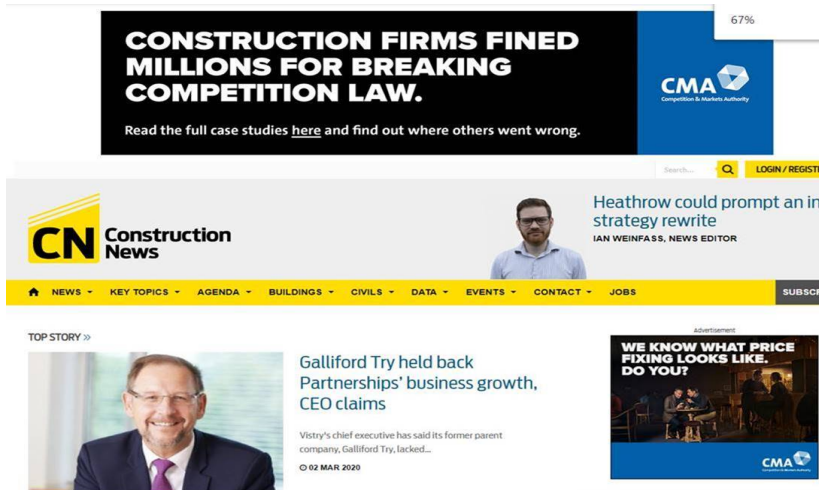
WE KNOW WHAT PRICE FIXING LOOKS LIKE. DO YOU?

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CONSTRUCTION FIRMS FINED MILLIONS FOR BREAKING COMPETITION LAW.

Read the full case studies [here](#) and find out where others went wrong.

Check your business practices [here](#).



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Read the full case studies [here](#) and find out where others went wrong.

CN Construction News

Heathrow could prompt an inf strategy rewrite
IAN WEINFASS, NEWS EDITOR

TOP STORY

Galliford Try held back Partnerships' business growth, CEO claims

Vistry's chief executive has said its former parent company, Galliford Try, lacked...

02 MAR 2020

WE KNOW WHAT PRICE FIXING LOOKS LIKE. DO YOU?

Check your business practices [here](#).



WE KNOW WHAT PRICE FIXING LOOKS LIKE. DO YOU?

WE KNOW BID RIGGING WHEN WE SEE IT. DO YOU?

CONSTRUCTION UK MAGAZINE

Software to revolutionise the way you manage Health & Safety

Super sewer hits the halfway mark

A 4.6m-dia sewer Thames is in sight for London after tunnelling on the [...]

CONSTRUCTION FIRMS FINED MILLIONS FOR BREAKING COMPETITION LAW.

Read the full case studies [here](#) and find out where others went wrong.

Check your business practices [here](#).

Education campaign to encourage compliance

Useful resources to help businesses

**WHAT IS A
BUSINESS
CARTEL?**

[What is a business cartel?](#)

**WHY THEY'RE
BAD FOR
BUSINESS**

[Why anti-competitive behaviour is bad for business](#)

**CARTEL
QUIZ**

[Could you spot a business cartel?](#)

**CONSTRUCTION
& OTHER CASE
STUDIES**

[Construction case studies](#)

**PUBLIC
PROCURERS**

[Advice for public procurers](#)

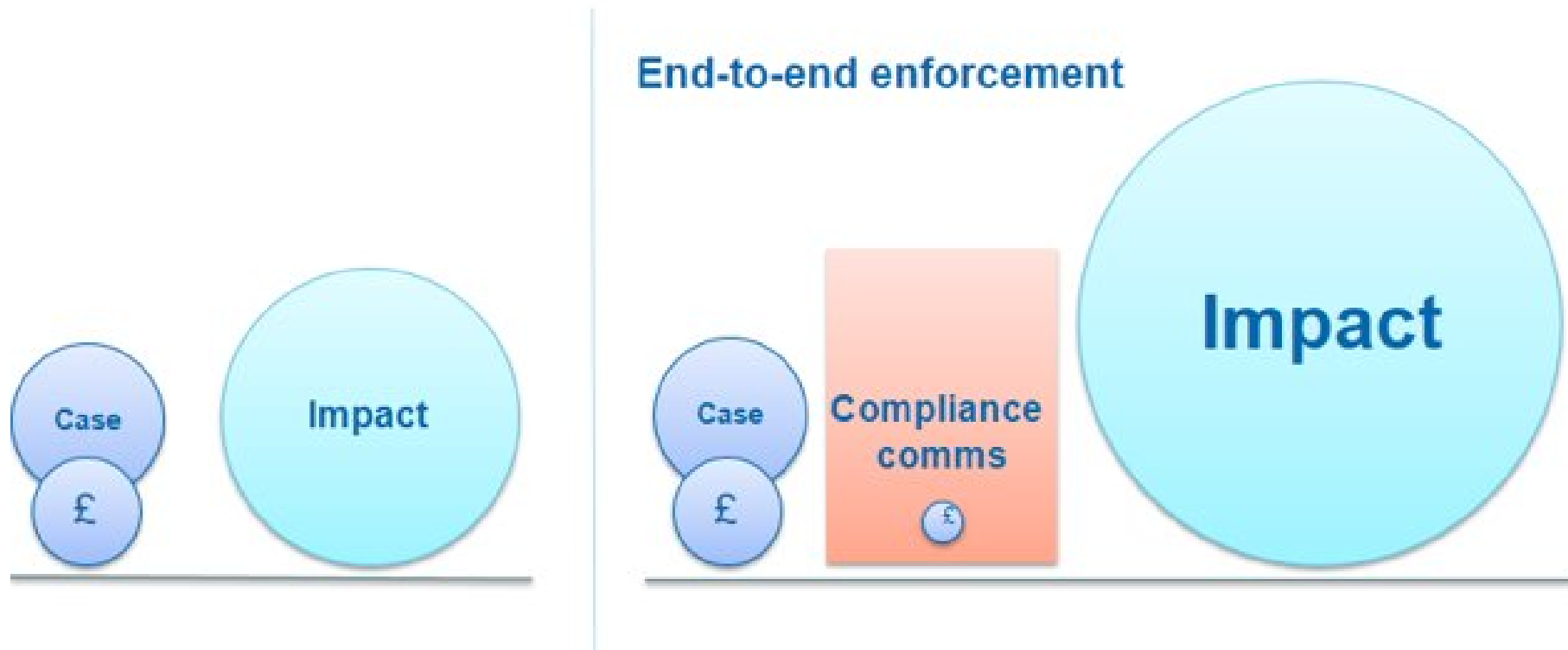
**REPORT
NOW**

[Report a business cartel](#)

Find out more: gov.uk/cheating-or-competing

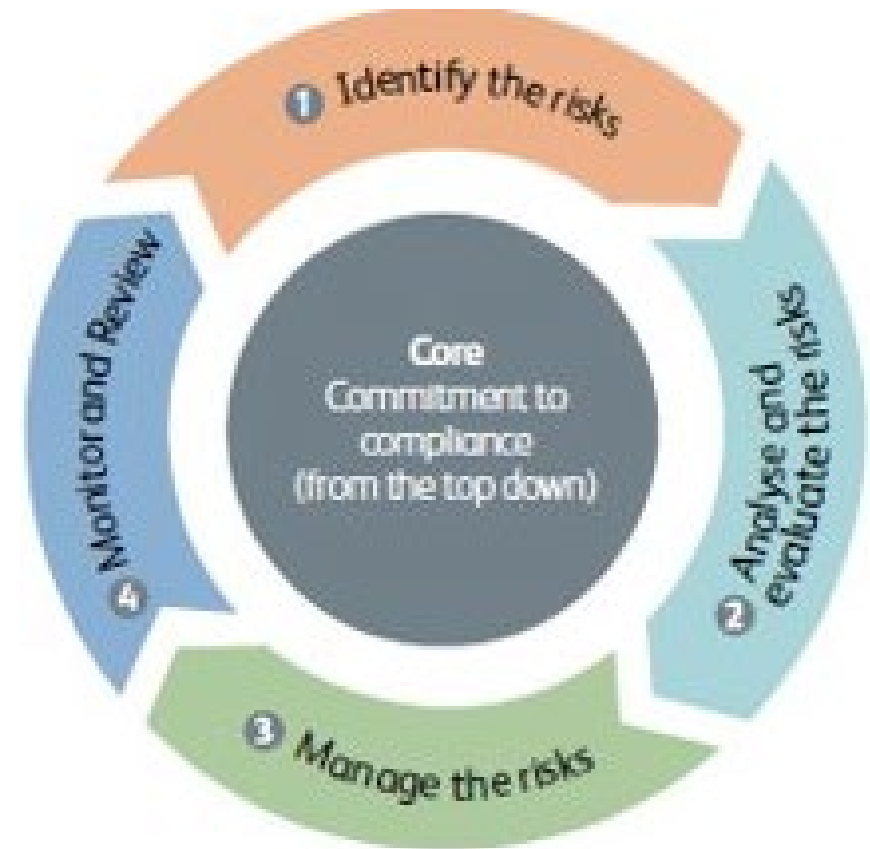
End-to-end compliance

Multiplying the deterrence effect



Implications for senior leaders

- CMA updated Risk Guide published ([here](#))
- Understand the risks from not complying with competition law: anti-competitive behaviours and sanctions
- Raise these with your Board Committees
- Understand leniency and how to report
- Have a culture of compliance led from the top down



Conclusions

- Compliance advocacy work is a continuous journey (a marathon not a sprint).
- Critical to define and understand your audience.
- Compliance engagement must be simple, accessible and regular.
- Sharing learning is valuable.





Perspectives from Hong Kong on Competition Compliance

Vincent Wong

Manager (Investigations I), Hong Kong Competition Commission

ICN Asia-Pacific Webinar on 27 May 2021

The information in this presentation represents the views and opinions of the speaker only and is only for participants' reference.

HKCC's efforts and measures to promote competition compliance

A. Enforcement Actions

B. Enforcement Policy Requirements and Incentives

C. Advocacy



A. Enforcement Actions

I. IT industry case (2020)

- Infringement Notice and Commitments
- Tribunal orders on Compliance

II. Hospitality industry case (2021, ongoing)

- Infringement Notices and Commitments

Trending Section News Features Event & Promotion Coffee Break
Top News Editorial Local Business China World Sports Central Station Columns

Six hotel groups slapped with notice for aiding cartel

Money glitz | Michael Shum 18 Feb 2021

[f](#) [t](#) [g+](#) [v](#)



A. Enforcement Actions

I. IT industry case (2020)

- 2 IT companies engaged in an anti-competitive exchange of competitively sensitive price information → amounted to price fixing
- Single incident / tender of small amount / IT companies concerned were small-sized.
- Compliance measures required include:
 - i. Circulation of the Infringement Notice and the HKCC's training materials to its staff and authorised resellers,
 - ii. Adoption of a competition compliance policy, in the form of a written statement signed by its directors, indicating their personal commitment to compliance with competition law and that competition law compliance is the responsibility of all staff and a key requirement of its resellers,
 - iii. Attendance of the HKCC's training sessions by its staff and authorised resellers.



A. Enforcement Actions

I. IT industry case (2020) (con'td)

- One IT company accepted the IN and Commitment, the other did not.
- HKCC filed a case against to the HK Competition Tribunal, **seeking remedies which included an order that the subject company adopt certain compliance measures**
- Tribunal Ordered: **staying of proceedings on condition that the subject company adopted particular compliance measures**
 - 1st instance in HK where the Tribunal has granted an order relating to the adoption of competition compliance measures



A. Enforcement Actions

II. Hospitality industry case (2021, ongoing)

- 6 hotel groups and 1 tour counter operator
- Facilitators of price-fixing cartel in relation to sale of tourist attraction tickets sold at premises of the hotels
- Cooperation
- Infringement Notices + Commitments, requiring:
 - Admission of liability
 - **Take steps to strengthen their competition compliance programmes at its own cost**



A. Enforcement Actions

II. Hospitality industry case (2021, ongoing)

- For 5 larger hotel groups: Requirement to appoint an **“Independent Compliance Advisor” (ICA)**:
 - **Conduct a Compliance Review** to identify the internal inadequacies of the operations which gave rise to the relevant contravention, and to provide advice and propose rectifying measures to minimise their risk of engaging in similar anti-competitive conduct in future.
 - **Produce a Compliance Review Report** setting out findings and recommendations
 - **Produce Annual Reports x2** setting out status of implementation
- For the remaining 2 parties, compliance requirements similar to those for the previous IT case.

Effective competition compliance program should be tailored to the specific business, and be appropriate to its size and functions.



B. Enforcement Requirements and Incentives

I. Leniency Policies (revised in April 2020)

- Express requirement for the leniency applicant to “[...] *continue with, or adopt and implement, at its own cost, a corporate compliance programme to the reasonable satisfaction of the [HKCC]*”.

II. Cooperation & Settlement Policy (April 2019)

- A similar requirement on undertakings cooperating and settling with the HKCC

III. Policy on Recommended Pecuniary Penalties (Jun 2020) (“RPP Policy”)



B. Enforcement Requirements and Incentives

III. RPP Policy (Jun 2020)

- 4-step approach in calculating recommended fines:
 - Step 1 – Determining the base amount
 - **Step 2 – Making adjustments for aggravating, mitigating and other factors**
 - Step 3 – Applying the statutory cap
 - Step 4 – Applying any cooperation reduction
- The HKCC takes into account an undertaking's compliance programs as a mitigating factor under Step 2.
- Compliance could be considered as mitigating if an undertaking demonstrates *“a clear and unambiguous commitment to competition law compliance throughout the organisation and taking steps, appropriate to the size of the business, to achieve this.”*



C. Advocacy

- Competition law in Hong Kong very young
 - Competition Ordinance only became effective in **Dec 2015**
- Unlawful conduct was previously lawful
- HKCC engaged in multipronged advocacy programme
 - a) Outreach to trade associations
 - b) TV, Radio, Digital, Outdoor advertising
 - c) Hour long seminars to business and trade associations
 - d) Publish materials e.g. *“How to comply with the Competition Ordinance”*



C. Advocacy

Lawyers Training (Oct 2020)

- 12-hour training programme for lawyers in firms that advised on commercial, regulatory and/or white collar crime but lacked competition expertise
- 4 x 0.5 days (3-hour session each), delivered remotely
 - 6 hours underlying principles of competition law
 - 6 hours implementation of **compliance programmes** and responding to investigations
- Session taught by:
 - Staff in the investigation and legal teams
 - Executives
 - NGAs (on compliance)



Thank you!



競爭事務委員會
COMPETITION
COMMISSION

Website: <https://www.compcomm.hk/>

Email: international@compcomm.hk



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Online resource portal:

<https://www.compex.org/en/index.php#>



Effective Compliance Program in Enterprises and the Role of JFTC

- Law enforcement and advocacy for initiatives taken by enterprises related to competition law compliance are “*a pair of wheels*” in competition policy.
- One of agencies’ roles regarding enterprises’ compliance program is *to create an environment* where compliance program is promoted within individual enterprises.
- Compliance program in enterprises should be designed based on the assumption that measures for preventing violations cannot completely eliminate the risk of violations.
- Compliance program in enterprises should not be a mere “tool for complying with laws and regulations.” It should be utilized actively and strategically as a “*tool for controlling and avoiding risks.*”

Effective Compliance Program in Enterprises and the Role of JFTC

- The inclusion of *3Ds* is indispensable for ensuring the effectiveness of competition law compliance.
 - I. *Deterrence*: Prevention acts in violation of competition law through compliance manual, in-house training, legal consultation system, internal disciplinary rules, rules concerning contacts with other competing enterprises
 - II. *Detection*: Verification and an early discovery of acts in violation of competition law through audits, internal reporting system, in-house leniency policy
 - III. *Damage Control*: Appropriate response to an act in violation of competition law through decision making at the initiative of top management, active use of leniency programs, contingency manual, internal probe

How to make compliance effective

Peggy Leung
NGA of HKCC

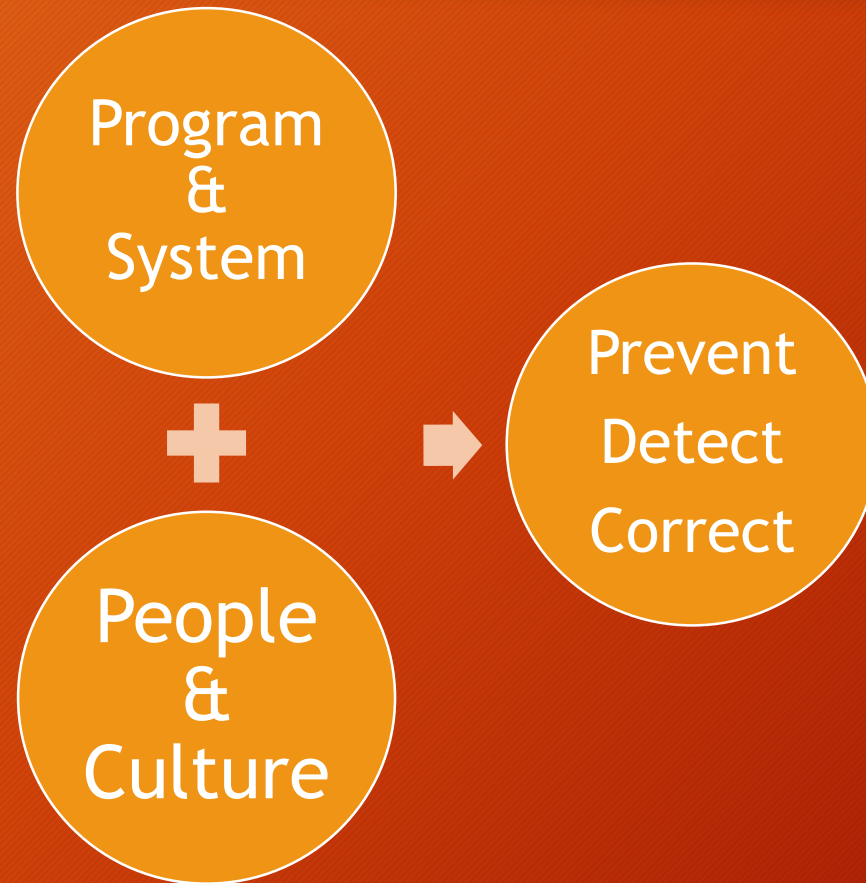
Regional Head of Competition Law, Asia Pacific,
Associate General Counsel, HSBC

Views expressed here should not be attributed to HSBC

What do I take away from this?

- I. Things to look out for when evaluating compliance programmes
- II. Potential challenges and how to solve them
- III. How can regulators help to encourage effective compliance

I. Effective compliance



1. Programme and System - Prevent

- Policies
- Guidance
- Training
- Continuous risk assessment cycle
- Trade association register
- Document retention policy



Risk assessment cycle

Tips:

- Tailored guidance
- Issue-spotting one-pager
- Short, frequent reminders eg. external & internal events
- Active learning principles eg. Immersive videos, case studies, role plays, Competition Law week, quizzes



Programme and System - Detect & Verify



- Detect problems
 - Reporting hotline
 - Surveillance
 - Understanding leniency policy
- Verify knowledge
 - Management information e.g. # of enquiries
 - Assurance of business' awareness
- Certify system
 - Audit - critically challenges if system fit-for-purpose
 - Check if controls are operating as intended

Tips:

- Confidential and anonymous internal whistle-blowing
- Train your surveillance / audit staff
- Awareness checking exercises



Programme and System - Correct & Grow



- Robust reporting system
- Independent internal investigation team
- Incentive to promote compliance
- Disciplinary policies
- A growth mindset to compliance

Tips:

- Traffic light reporting
- Periodic structured review of events
- Consider legal design and technology

2. People & Culture

- Tone from the top
- “Do the right thing” spirit - not just letter of the law
- Integrate into other compliance programmes
- Appropriate personnel to be responsible and to implement
- Safe environment for speaking up
- Visibly celebrating success when right thing is done



II. Challenges

Challenge	Tips
Keep up the engagement	<p>Creative ways e.g. games, immersive videos, films, case studies</p> <p>Short frequent relevant updates</p>
Competing compliance focus	<p>Integrate it with other compliance programme / regulatory framework e.g. conduct, Senior Manager Regime, market abuse</p> <p>Build into existing process</p>



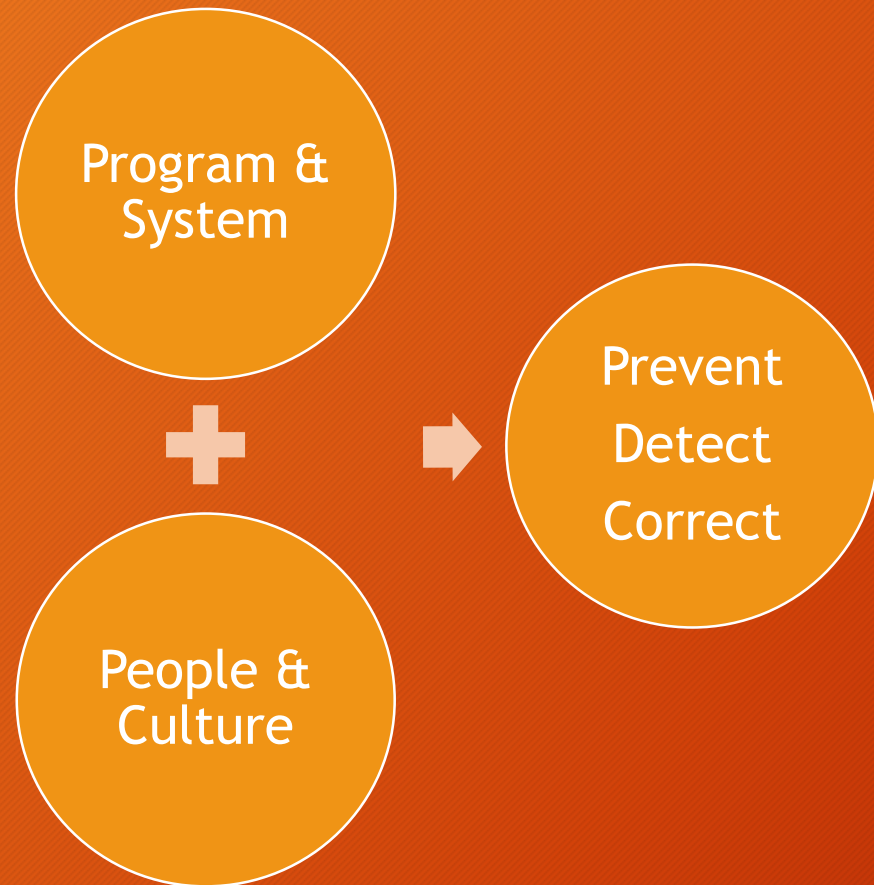


Challenge	Tip
Insufficient resources esp for SMEs	Regulators' pack on: <ul style="list-style-type: none">• Short guides & gap analysis checklist• Interactive training materials Stick to essentials and integrate
Uncertainties about novel issues	Regulator engagement

III. How regulators can help

- Authorities' explicit recognition of compliance efforts
- Channel for engagement with regulators
- Interact with trade associations & sectoral regulators
- Business outreach - tools and guides on compliance system
- Advocacy from business' points of views

Summary



Competing priorities, insufficient resources and uncertain novel issues can all be challenges.

Regulators play a big role in encouraging compliance.

If done right, it will help regulators reduce breaches and the harm they bring

Reference

- US DoJ Antitrust Division, “Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations”, July 2019
<https://www.justice.gov/atr/page/file/1182001/download>
- OECD, “Competition Compliance Programmes”
<https://www.oecd.org/daf/competition/competition-compliance-programmes.htm>

ICN CWG

Compliance in cartel cases

New approaches for promoting a culture of compliance in combating cartels: a view from a compliance lawyer

EDUARDO FRADE, VMCA Advogados, São Paulo

May, 2021



Effectiveness of anti-cartel compliance over the past years

- **Impressions from experience:** companies seem to have intensified anti-cartel compliance efforts over the past years. But...

- **OECD:**

“The constant numbers of prosecuted cartel cases and continuously high fines (...) could suggest that cartel activity is unchanged. Competition authorities (...) manage to detect, prosecute and fine a ‘standard’ amount of cartel activity. (...) The obvious limitations of the available data and studies do not allow clear conclusions on the effectiveness of agency and business compliance efforts. At the same time, no data sources are available that would allow to draw the conclusion that business competition compliance has improved significantly (...).” (Competition Compliance Programs, 2021)

- **Legal 500:**

“research recently published on behalf of the (...) (CMA) suggests that, at least in the UK, there is still a real lack of awareness within the business community regarding key tenets of antitrust law. The research (...) found that 77% of those surveyed did not understand competition law well and that only 18% ran any training relating to competition law. In a finding that may surprise many antitrust lawyers, 41% of those surveyed stated that they did not know that attending meetings in which competitors agreed prices – perhaps the quintessential example of cartel behaviour – was illegal. (...) (...) [A] similar assessment conducted a few years ago (...) in the USA revealed that almost two thirds of companies surveyed were not conducting antitrust audits that would meet the standards of the US Department of Justice.” (Slaugther&May, 2019)

Ordinary anti-cartel compliance measures

- Commitment (top-down)
- Risk assessment
- Risk mitigation: policies, procedures, training and communication
- Monitoring and reviewing

* Targeted at ordinary cartels

Anti-cartel compliance beyond the surface

- “Focus on **form rather than actual cartel risks**” (OECD, 2021).
- “**Empowered compliance officer** reporting to the board, **auditing and monitoring** designed to **detect misconduct**” (Murphy and Kolasky, 2012).
- “The most effective programmes tend to be **tailored** closely to the **specific risks** that a company faces” (Slaughter & May, 2019).
- “Little if anything is ever said about **incentives**, the strongest driver of corporate conduct” (Murphy and Kolasky, 2012).
- New cartel developments and **new types of cartel** investigations (Frade and Carvalho, 2019). Ex:
 - Soft core cartels
 - Algorithms
 - Exchange of sensitive information
 - Hub-and-spoke
 - Labor market

References

- Anne Riley and Margaret Bloom. *Antitrust compliance programmes: can companies and antitrust agencies do more?* Competition Law Journal, Volume 10, Issue 1, 2011.
- CADE. *Guidelines: Competition Compliance Programs*, 2016.
- Eduardo Frade and Vinicius Marques de Carvalho. *New approaches to cartel enforcement and spillover effects in Brazil: Exchange of information, hub and spoke agreements, algorithms, and anti-poaching agreements*, Competition Policy International, November 26 2019.
- Joseph Murphy and William Kolasky. *The Role of Anti-Cartel Compliance Programs In Preventing Cartel Behavior*, Antitrust, Vol. 26, No. 2, Spring 2012.
- OECD. *Competition Compliance Programs*, 2021.
- Slaughter&May. *Legal 500 Cartels Guide: Corporate Compliance and Cartels*, 2019.



Thank you!

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27 MAY 2021

W. Michael G. Osborne

Compliance in Cartel Cases

CANADIAN PERSPECTIVES

Compliance programs offer benefits to all

COMPETITION AUTHORITIES

- Leverage enforcement resources
- Counsel and business leaders become part of enforcement
- Potential reduction in cartel behaviour
- Increased competition

FIRMS

- Reduces risk of breaching competition law
- Increases chance of spotting unlawful behaviour
- Reduced penalties in the event of a breach
- Reduces risks of other regulatory breaches
- Improved firm culture, reputation



Key barriers to adoption of compliance programs

- **Lack of knowledge of competition laws**
- **Low risk perception**
- **Many other competing compliance or regulatory requirements**
- **Sometimes – unwillingness to stop unlawful practices**
- **Cost**



How to incent adoption of compliance programs

ENFORCEMENT

- Enforcement must be credible
- Aggressive & timely investigations
- Serious penalties
- Particularly important for smaller countries

CREDIT

- Offer credit on sentencing for compliance programs
- In evaluating compliance programs, consider position of SMEs
- Don't insist on "gold standard"

GUIDANCE

- Offer guidance to bar and businesses
- Offer model compliance programs
- Offer educational programs
- Support a wholistic approach to compliance



Canada's approach to compliance programs

ENFORCEMENT

- **Serious penalties for cartels in Competition Act**
- **Current focus seems to be on domestic cartels**

CREDIT

- **Credit only offered for existing programs**
- **Program must be “credible and effective”**
- **Must meet 7 basic requirements**

GUIDANCE

- **Corporate Compliance Programs Bulletin**
- **Substantive guidance**
- **Some model compliance program materials**
- **Outreach through Competition Promotion Branch**



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Compliance in Cartel Cases – Canadian Perspectives

ICN – ASIA PACIFIC WEBINAR

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The relevance of Compliance Programs in Cartel prevention and enforcement

An Australian Approach

Lisa Huett
King & Wood Mallesons



Relevance of compliance programs in deciding penalties in Australia

- The Federal Court determines the appropriate penalty for cartel conduct (not the ACCC)
- The penalty is at the Court's discretion after undertaking a process of *instinctive synthesis*
- A relevant consideration is whether the organisation has a culture conducive to compliance with the Act, as evidenced by educational programs and disciplinary or other corrective measures in response to contraventions.



“...the purpose of a civil penalty is primarily if not wholly protective in promoting the public interest in compliance”

Relevance of compliance programs in deciding penalties in Australia

ACCC v ANZ [2016] FCA 1516

In determining penalties, the court will look at:

1. The objective nature and seriousness of the offending conduct
 - Did the company have compliance systems in place?
 - Was there a culture of compliance at the corporation?
2. The particular circumstances of the contravenor
 - Has the company improved or modified its compliance systems since the contravention?



Compliance programs as an aggravating factor



CDPP v Wallenius Wilhelmsen Ocean AS

[2021] FCA 52

The Court **did not give weight** to the existence of a compliance program at the time of the contravening conduct, as it was considered ineffective/deficient

The defendant was convicted of cartel conduct, and fined AU\$24m

ACCC v ANZ; ACCC v Macquarie

[2016] FCA 1516

The Court considered the lack of a compliance program to be a **serious and significant failing** of both corporations

“The **public is entitled to expect** that corporations of ANZ's size and reputation will have adequate training, compliance and surveillance systems in place”

Compliance programs as a mitigating factor



ACCC v Colgate-Palmolive Pty Ltd (No 2)

[2016] FCA 528 (Colgate)

In determining the appropriate penalty for Colgate-Palmolive the Court took into account the existence of an **extensive competition law compliance program** at the time of the contravening conduct, as well as recognising that **if senior management knew of the conduct they would have taken appropriate action**

CDPP v Nippon Yusen Kabushiki Kaisha

[2017] FCA 876

The implementation of a compliance program following the contravention was evidence of **contrition / rehabilitation**

‘...remodelled its corporate thinking and behaviour so that it may re-establish itself as a good corporate citizen’

ACCC v Colgate-Palmolive Pty Ltd (No 3)

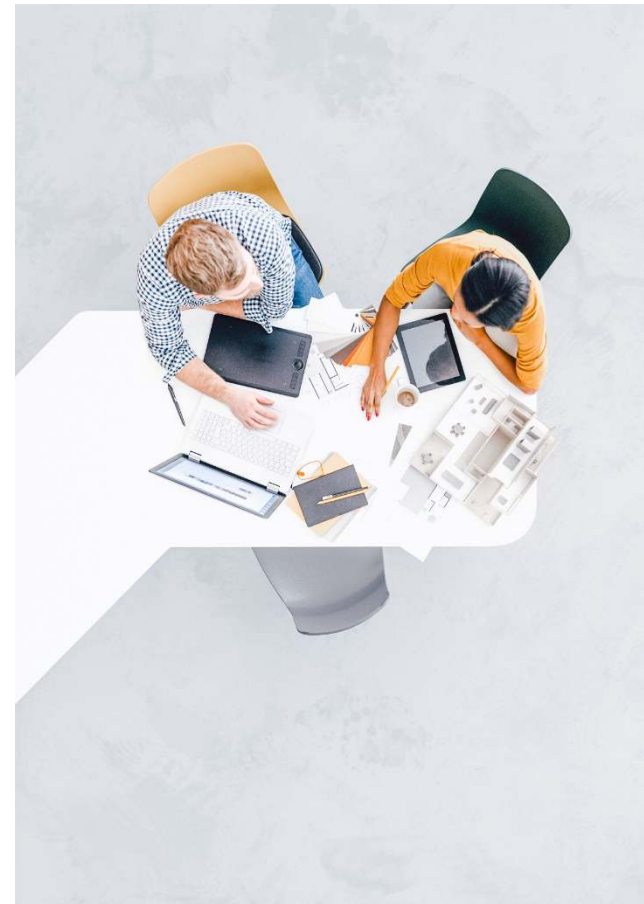
[2016] FCA 676 (Woolworths)

The Court recognised that Woolworths had an existing **compliance program** at the time of the contravening conduct (including education through induction and ongoing staff training) and that the rogue employee acknowledged that he understood and accepted his obligations regarding competition law’ prior to the contraventions

Compliance programs as an ACCC enforcement tool

- Court enforceable undertakings are less commonly accepted by the ACCC in cartel cases
- In 2019 the ACCC accepted undertakings from several small roofing companies - that their directors would undertake compliance training in competition and consumer law

“In this situation, the ACCC has decided to exercise its discretion not to take court action due to a range of factors including the small size of the traders and their co-operation with the ACCC’s investigation.”



How do organisations ensure their compliance programs reduce risk?

Disconnect between senior management and the personnel interacting with competitors

How to embed compliance into the organisation's systems and practices



Lisa Huett
Partner, Competition and Regulatory
King & Wood Mallesons

Lisa practices in competition law and consumer protection, with a particular focus on Australia's cartel laws.

Lisa's deep understanding of the ACCC, its enforcement priorities and investigation techniques enables her to provide strategic direction and assist with crisis management in the face of regulatory investigation. In the cartel space, she provides advice on compliance and mitigation strategies, self-reporting and immunity issues, as well as assisting clients defend ACCC proceedings.



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Estudio Trevisán

A B O G A D O S

Compliance in Cartel Cases

ICN CWG Asia Pacific Webinar

Pablo Trevisán, 26th May, 2021

Estudio Trevisán

ABOGADOS

WHY COMPLIANCE?

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ABOGADOS



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ABOGADOS

A fly image at the bottom of a urinal has been proven to improve men's aim, leading to lowered cleaning costs.



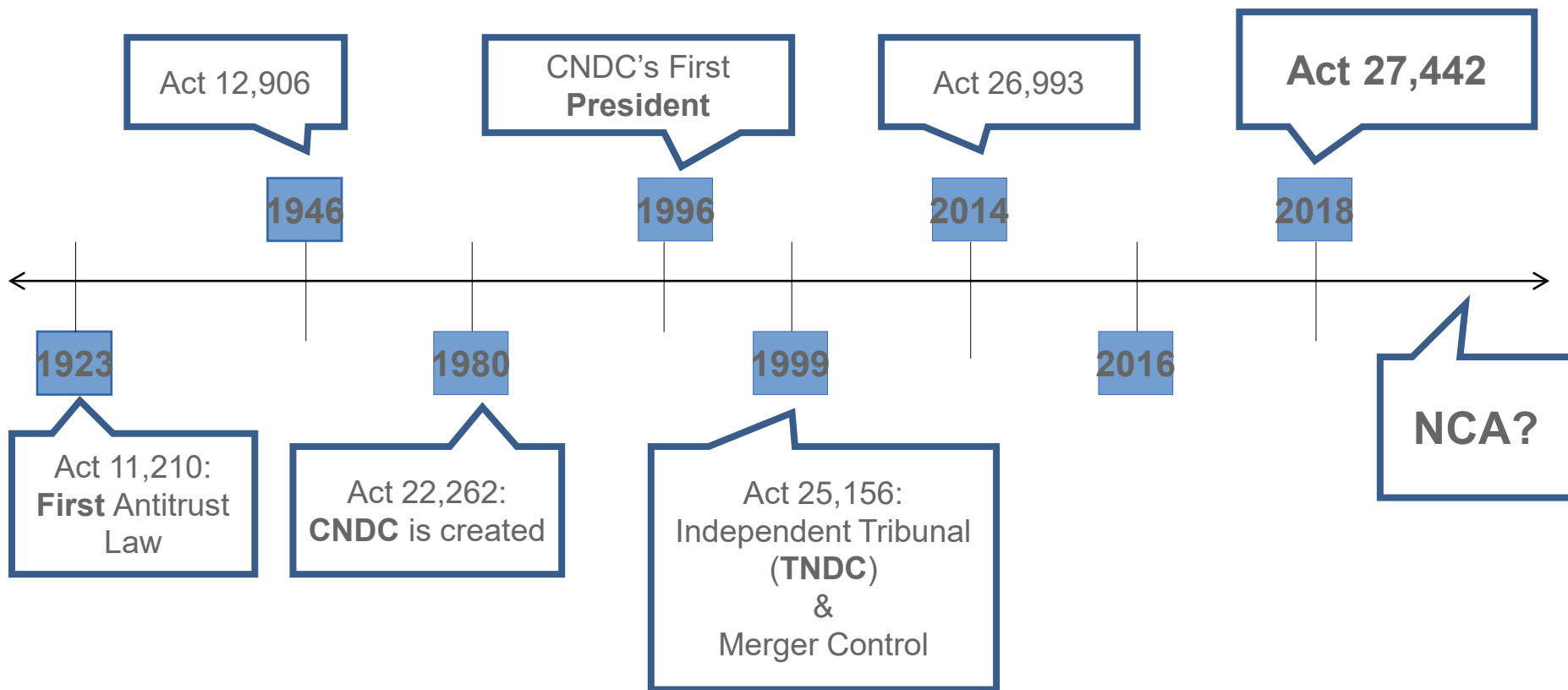
NUDGE

Thaler & Sunstein

Revisiting History

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ABOGADOS



Competition Act 27,442

OBJETIVES

1 | DETERRENCE

2 | UPDATE

3 | INDEPENDENCE

4 | BEST PRACTICES

MAIN CHANGES

- **Autoridad Nacional de la Competencia.**
- **Leniency Program.**
- **Increase Administrative Sanctions.**
- **Merger Control Thresholds' Update.**
- **Fast Track Merger Control Proceedings.**
- **Damages Actions – Private Enforcement.**
- **Judicial Review: Specialized Court.**

- **Act 27,401** – Corporate Criminal Responsibility (sanctioned, November 2017; regulated, March 2018): definitively incorporates compliance issues in the agendas and programs for the prevention of legal corporate risks in Argentina.
- **“Causa de los Cuadernos”** – 2018: Increased awareness on compliance issues and anti-corruption standards by companies (particularly those with relations with the State).

- **2016:** CNDC & OCDE, **Compliance & Competition Law**, CEDEF;
- **2017:** CNDC, OA & British Embassy, **Corruption & Competition**;
- **2017:** CNDC, Milk Market Investigation: “Best Practices on Competition Law for Activities at Trade Associations”;
- **2018:** Competition Act 27,442;
- **2018:** CNDC, “**Guidelines for Trade and Professional Associations**”: “*The risks of being involved in this situation can be greatly reduced if the association or chamber has a compliance program that contemplates competition law. In the same way, the association can disseminate among its members the convenience of this type of program.*”

Benefits

Estudio Trevisán

ABOGADOS



Types of Programs

- No “One Size Fits All”
- Periodic Trainings
- Dos and Donts

- Superproductions
- Creative Games
- Wallet Cards with FAQs

- Mobile Content
- Periodic Audits

- Introduced **Leniency Programs** in Argentina.
- For best results under the leniency program, it is important to be the first to **report the conduct** to the NCA.
- Ergo, it is essential to have an **effective antitrust compliance program**, which allows the company to **detect** non-compliance in time and **report** it immediately.
- Antitrust compliance program: **Prevents commission** of conduct and **allows detection** to report the NCA.

- Section 56: Graduation of Fines, last. para. "**Collaboration** with the NCA and/or with the Anticompetitive Conduct Secretary in the knowledge of the investigated conduct may be considered a **mitigating factor** in the graduation of the sanction (...)"
- Proving the existence of an **effective (real) antitrust compliance program** could contribute to obtaining a reduction in the penalty.
- Some authorities (eg, FNE, Chile) published **guidelines** on what an antitrust compliance program should contain.

“Argentina should raise awareness in the private sector about the risks of collusion, for example, requiring the inclusion of good antitrust compliance programs or developing initiatives to train companies in sectors that are strategic for public works. This could be done with support and/or guidance from the ONC, the OA, and the competition authority.”

Combate a la Colusión en
Contrataciones de Obras Públicas en Argentina,
2019

OCDE

Estudio Trevisán

A B O G A D O S

Compliance in Cartel Cases

ICN CWG Asia Pacific Webinar

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