

Seventh United Nations Conference to review the UN Set  
on Competition Policy

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Creating an enabling environment for the private sector



The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

# Competition law compliance is a 2-way street

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- Companies – responsible for a compliance culture with respect to all laws and regulations
  - Competition/antitrust is one of many obligations
  - Companies want to comply – awareness is key
  - Non-compliance is bad business/expensive
- Agencies – an active and dynamic approach to outreach can help enable compliance
  - Raising awareness is key
  - An effective investment: prevention of non-compliance reaps more dividends (and now) than curing non-compliance
- Both share the same incentives

## But business awareness is low...

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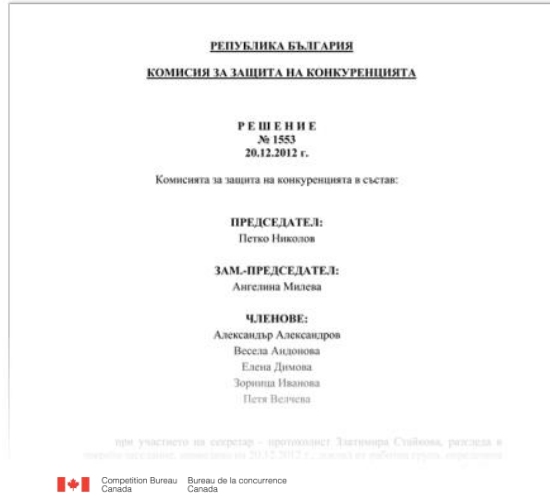
- UK Businesses' Understanding of Competition Law study - 2015
  - 77% of businesses had no or low awareness
  - 3% had high awareness
- ICN Compliance Culture Project report - 2015
  - SMEs worldwide - low awareness of competition law
  - "Gap in competition awareness" for all companies

# Agencies can help companies – and are!

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- Many examples by agencies of excellent outreach tools and dynamic approaches on compliance
  - Websites, written guidelines, compliance presentations/trainings, videos, templates & review of compliance programs, effective program credit
  - Multi-faceted approaches and multiple contact points
  - UNCTAD here to support you too
- ICN Benefits of Competition report - 2012
  - Businesses reported website/written AND presentations as most effective communication tools
  - But agencies reported that they valued presentations the least!
- Partnering with the legal sector/private bar can help too

# Lots of resources/inspiration from your fellow competition agencies around the world



# An example – UK CMA multi-faceted approach to compliance and awareness

## Four-step competition law compliance process



### STEP 1: Risk Identification

Identify the key competition law compliance risks faced by your business. These will depend upon the nature and size of your business.

### STEP 4: Review

Review steps 1 to 3 and your commitment to compliance regularly, to ensure that your business has an effective compliance culture. Some businesses review their compliance efforts on an annual basis, others review less frequently. There may be occasions when you should consider a review outside the regular cycle, such as when taking over another business or if you are subject to a competition law investigation.

### Core: Commitment to compliance (from the top down)

Senior management, especially the board, must demonstrate an unequivocal commitment to competition law compliance. Without this commitment, any competition law compliance efforts are unlikely to be successful.



### STEP 2: Risk assessment

Work out how serious the identified risks are. Often it is simplest to rate them as low, medium or high. Businesses in particular should consider assessing which employees are in high risk areas. These may include employees who are likely to have contact with competitors and employees in sales and marketing roles.

### STEP 3: Risk mitigation

Set up policies, procedures and training to ensure that the risks you have identified do not occur, and how to detect and deal with them if they do. What is most appropriate to do will depend on the risks identified and the likelihood of the risk occurring.

# Resources handout: Reaching out to the private sector

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## **Private sector outreach: select agency materials**

### **Australia**

1. Brochure *Cartels: What you need to know - a guide for business*, 6 August 2012 (<http://www.accc.gov.au/publications/cartels-what-you-need-to-know-a-guide-for-business>)
2. Compliance templates (<https://www.accc.gov.au/business/business-rights-protections/implementing-a-compliance-program>)

### **Brazil**

1. Comic Book: *Cartel da Limonada* – Brazilian Ministry of Justice ([http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/cartel\\_da\\_limonada.pdf](http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/cartel_da_limonada.pdf))
2. Poster: *Jogando Limpo* (in Portuguese) – Brazilian competition authorities (CADE, SDE) (<http://www.cade.gov.br/Default.aspx?b4879761b066ba7882cf68c693>)
3. Postcard: *Cartel é Crime* (in Portuguese) – Brazilian Ministry of Justice (SDE) ([http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/brazilpostal\\_mesa.pdf](http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/brazilpostal_mesa.pdf))  
([http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/brazilpostal\\_gas.pdf](http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/awareness/brazilpostal_gas.pdf))

# Dynamic messaging

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- Businesses see agencies highlighting enforcement but less on the benefits of competition (ICN Benefits Report - 2012)
- Competition Benefits/Positive messaging is key
  - Seek to convey messages that resonate with the business person and company bottom-line
  - Key benefits themes - competitive markets result in: lower supplier prices; better market access/entry; keeping competitors honest; inward investment confidence; more innovation; less exclusion; increased sales with healthy customers)
  - Competition helps you win on the merits – culture building
- Enforcement record is a key message, but not all of it



# A final word...

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Use contact/communications/advocacy on compliance as a Bridge between your agency and the private sector





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Thanks!

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