

Effective Competition Law Enforcement and Advocacy

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Round table on: *Ways and Means to Strengthen Competition Law Enforcement and Advocacy*

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

Note by the UNCTAD secretariat

‘Ways and means to strengthen Competition Law Enforcement and Advocacy’

- Substantive law.
- Procedural law.
- Agency design.
- Independence and impartiality.
- Intra-, and inter-national communications.



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JAE Agency Effectiveness Study

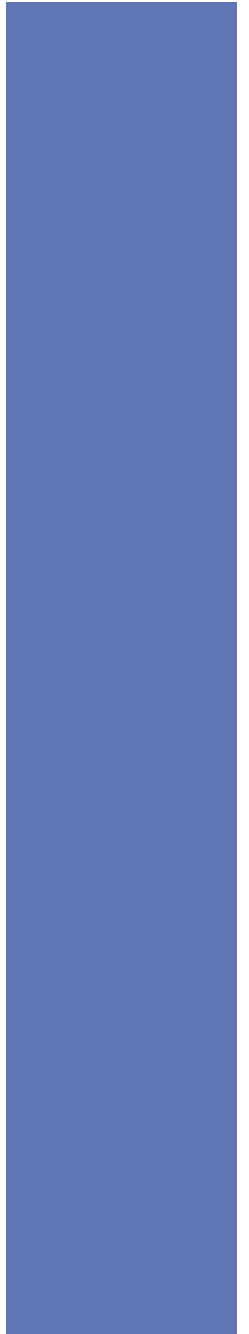
- Capture Agency officials' know-how
- Practical experience of developed and developing jurisdictions.
- Wide range of challenges:
 - *Goals*
 - *Agency appraisal*
 - *Capacity building*
 - *Staff*
 - *Board*
 - *Media*
 - *Stakeholders*
 - *Independence*



1. Goals

2. Communications

3. Impact assessment



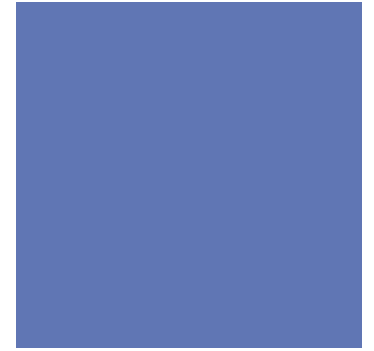
1. The Goals of Competition Law



- **Core Goals –**
 - Ensure consumer choice, innovation and lower prices.
 - Protect the process of competition and rivalry.
 - Control the exercise of economic power by preventing monopoly and punishing cartels.
 - Remedying market failure.
 - Consumer protection.

- *Long and Short Term Goals*
- *Hierarchy between goals*
- *Relationship with wider political goals...*

Domestic Perspective



‘Competition policy cannot be pursued in isolation, without reference to the legal, economic, political and social context’ (Commission Report 1992)

What are internal and what are external goals?

- Environment, employment, public health, safety, national resilience.
- *Public interest,...*
- Non-economic interests.

‘Sponge’

Successful Implementation

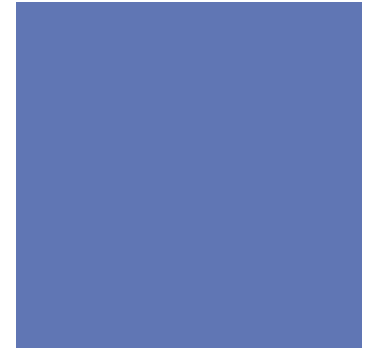
- Get the views of stakeholders.
- Joint formulation – agency staff buy-in & public.
- Specific and simple goals.
- Promote the legitimacy of the goals and values, both internally and externally.
- Dedicated unit for strategy development.
- Integrate the policy-making function into the day-to-day work.
- Debriefing meeting at departmental and unit levels.
- Enforcement and advocacy.



Align capacity with goals

Does internal capacity matches aspirations?

- Procedure –
 - Adequate staffing, management, knowledge, leadership, enforcement powers.
- Substance –
 - Law economics and policy.
- Human capital
- Opportunity cost and limitation of resources
- Possible impact credibility and brand.
- Political tension and conflicts.



Capacity - Tool box

- 'Traditional' Enforcement –
 - *Detection* – Intelligence, leniency, hot-line, complaints, market screening.
 - *Deterrence* – Sanctions (civil/criminal).
- Positive' enforcement – comfort letters and opinions
- Commitments
- Settlements
- Warnings/Dialogue
- Self-regulation & compliance.
- **Advocacy** – consumer groups, government, international dimension.
- Education – competition culture, consumer education, consumer and business advice, policy study.
- Guidelines – policy makers (government), undertakings, consumers.



2. Internal & External Communications



Internal

Transparency.

Agency teams involved in the design of strategy

Clear statement as to evaluation tools and goals to be used by staff and other stakeholders.

Empower teams (encourage ownership)

Feedback loop to enhance creativity and motivation.

Guidelines, work plans, review.

External

Clear objectives.

Clear enforcement record.

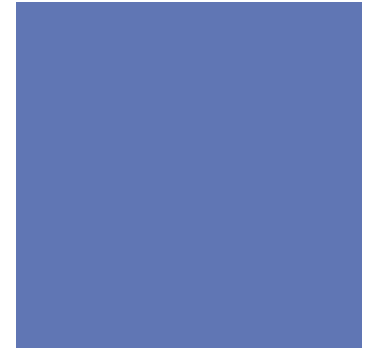
Transparent communication at all levels of investigation

Guidelines, studies, press releases, interviews.

Advocacy & Outreach

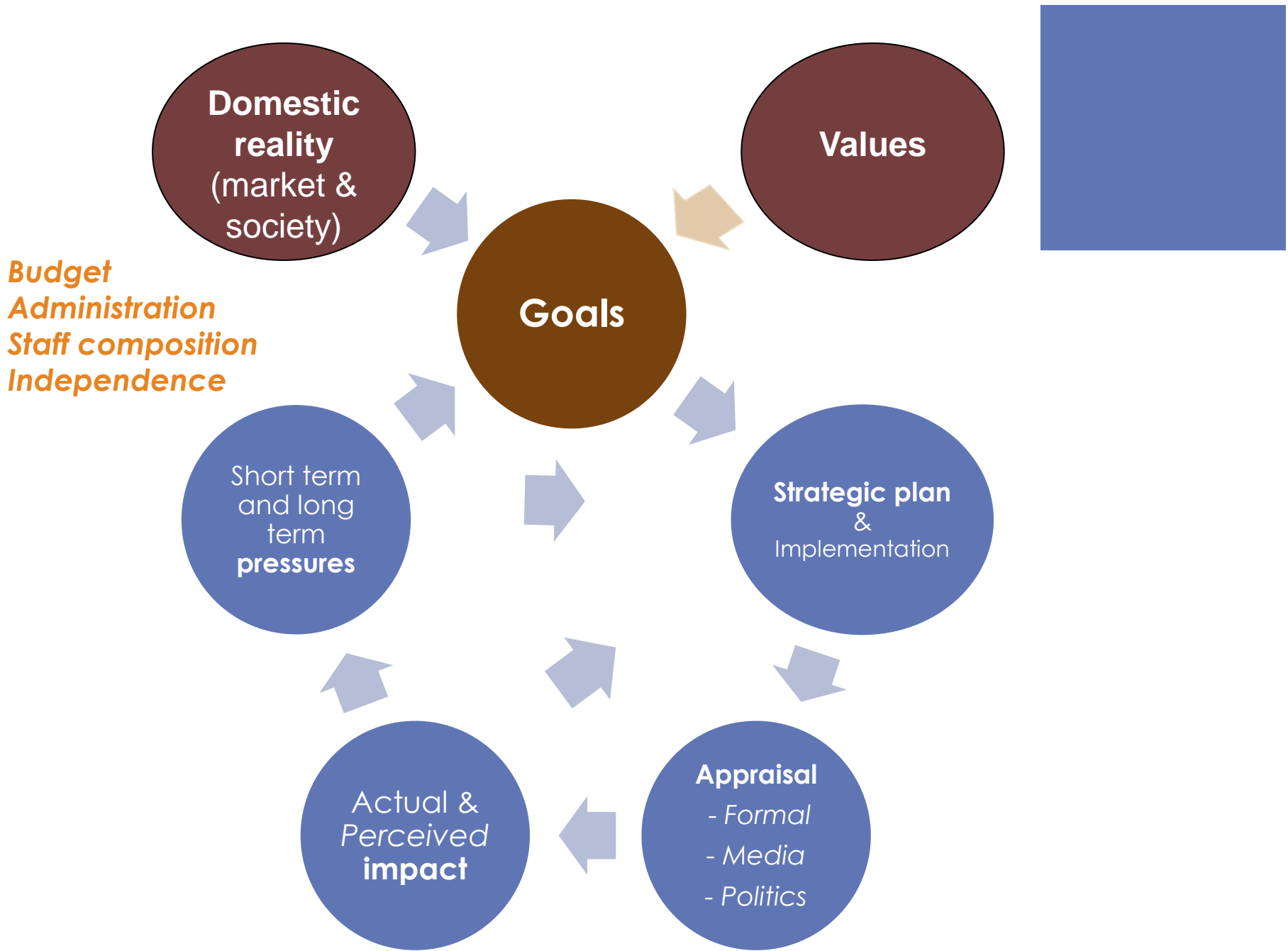
Support competition culture.

Communications with stakeholders - Consumers, associations, political level, the judiciary....



3. Impact Assessment

- How to assess impact on economy and added value?
- Cost of internal and external assessment.
- Use of both quantitative and qualitative measures.
- Assessment → enforcement → assessment →
- Shift focus from 'lower hanging fruits' to 'impact'.
- Enforcement priorities & case prioritization.
- Public perception.
- Reduce conflicts within agency (credit taking...).



External and internal factors

*Budget
Administration
Staff composition &
retention
Independence
Appointments*

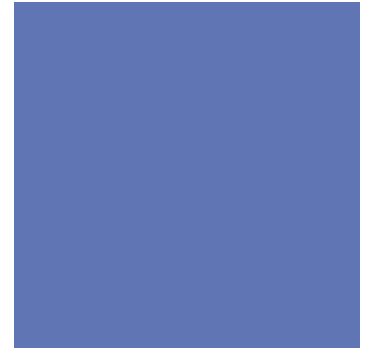
*Agency appraisal
Benchmarks for
assessment
Judicial review*

*Agency performance
Case selection
Detection rate
Swift, credible and consistent
appraisal
Proportionate sanctions*

*Multitude of interests
and 'controls'*

*Media
Politicians
Competition culture*

Concluding Remarks



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