



Monitoring Mechanisms: An Overview of Current Approaches (*Competition Commission, Companies & Trade Associations*)

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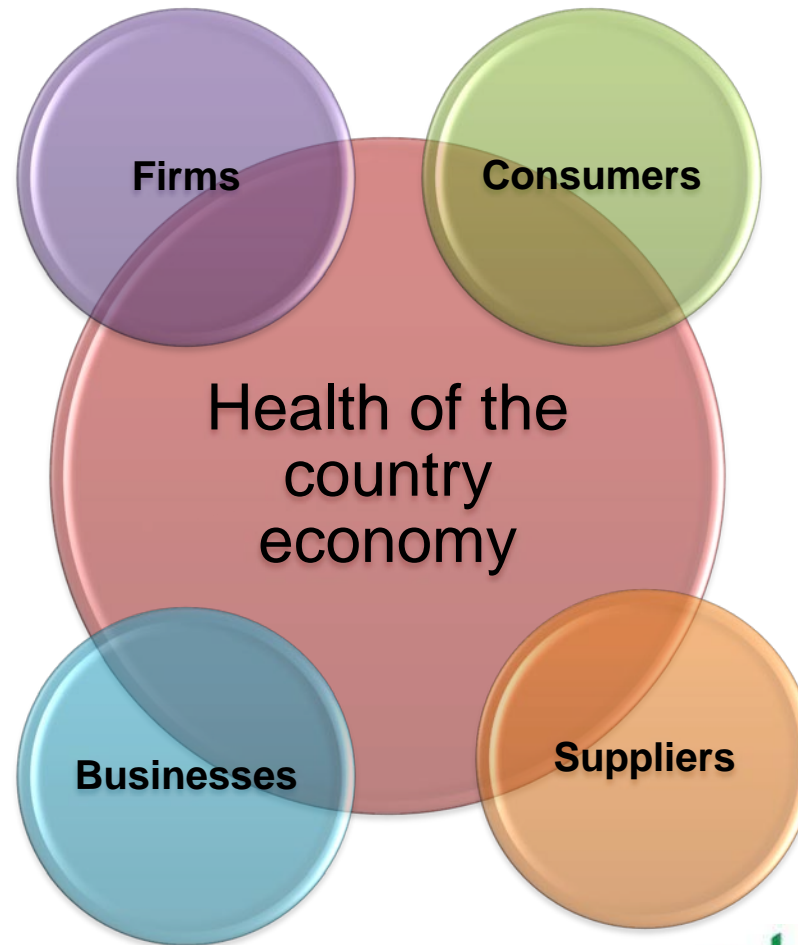
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Monitoring Mechanisms- Competition Act 2010

1. Introduction
2. Practices of Competition Commission
3. Model for MyCC
4. Practices of Companies and Trade Associations – Compliance Programmes
5. Model for Companies and Trade Associations
6. Conclusions



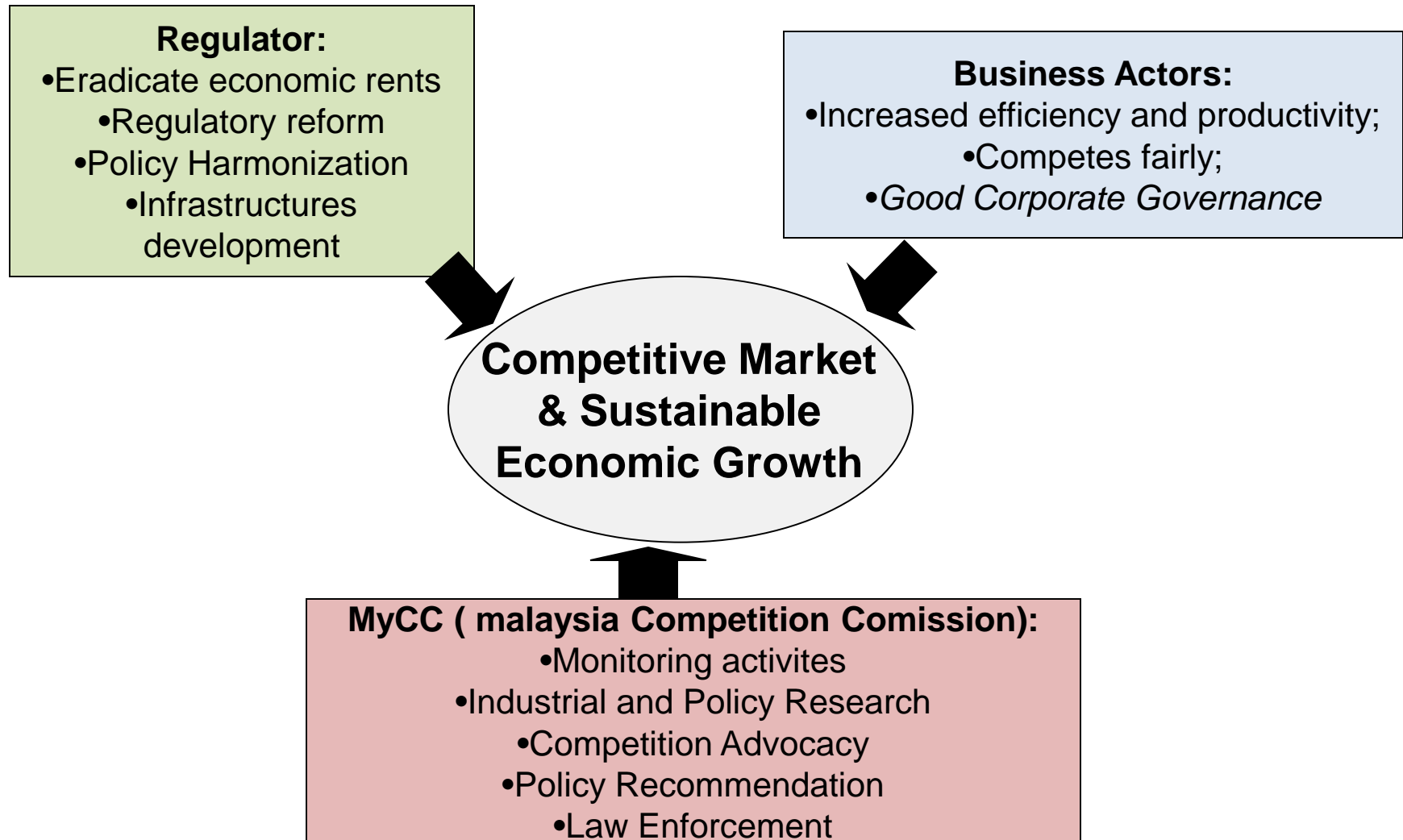
Introduction



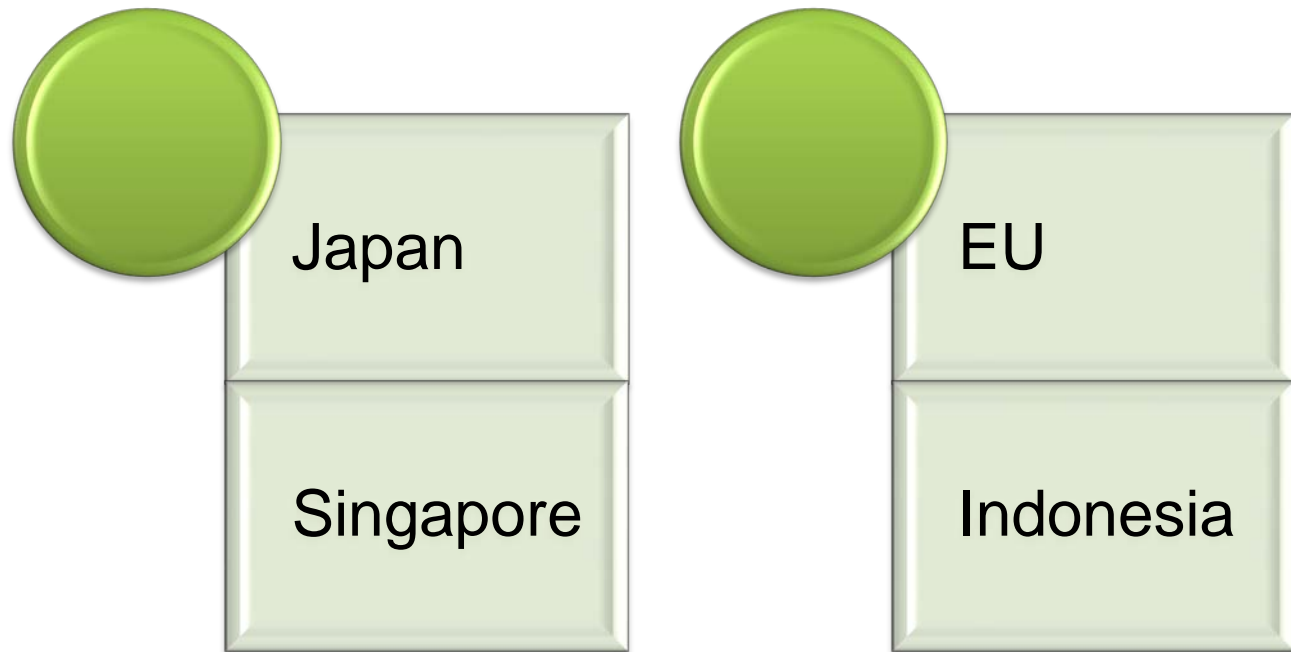
Introduction ...

1. The OECD (2003) concludes that improved competition could boost productivity by between 2 and 6 per cent in the core eurozone countries (France, Germany, Italy).
2. The International Monetary Fund has suggested that reforms leading to an increase in competition could boost overall GDP in the EU by as much as 7 per cent in the longer term (UK Treasury, 2004).

Requires Cooperation of all THREE Parties



Practices of Competition Commission



Practices of Competition Commission- JFTC



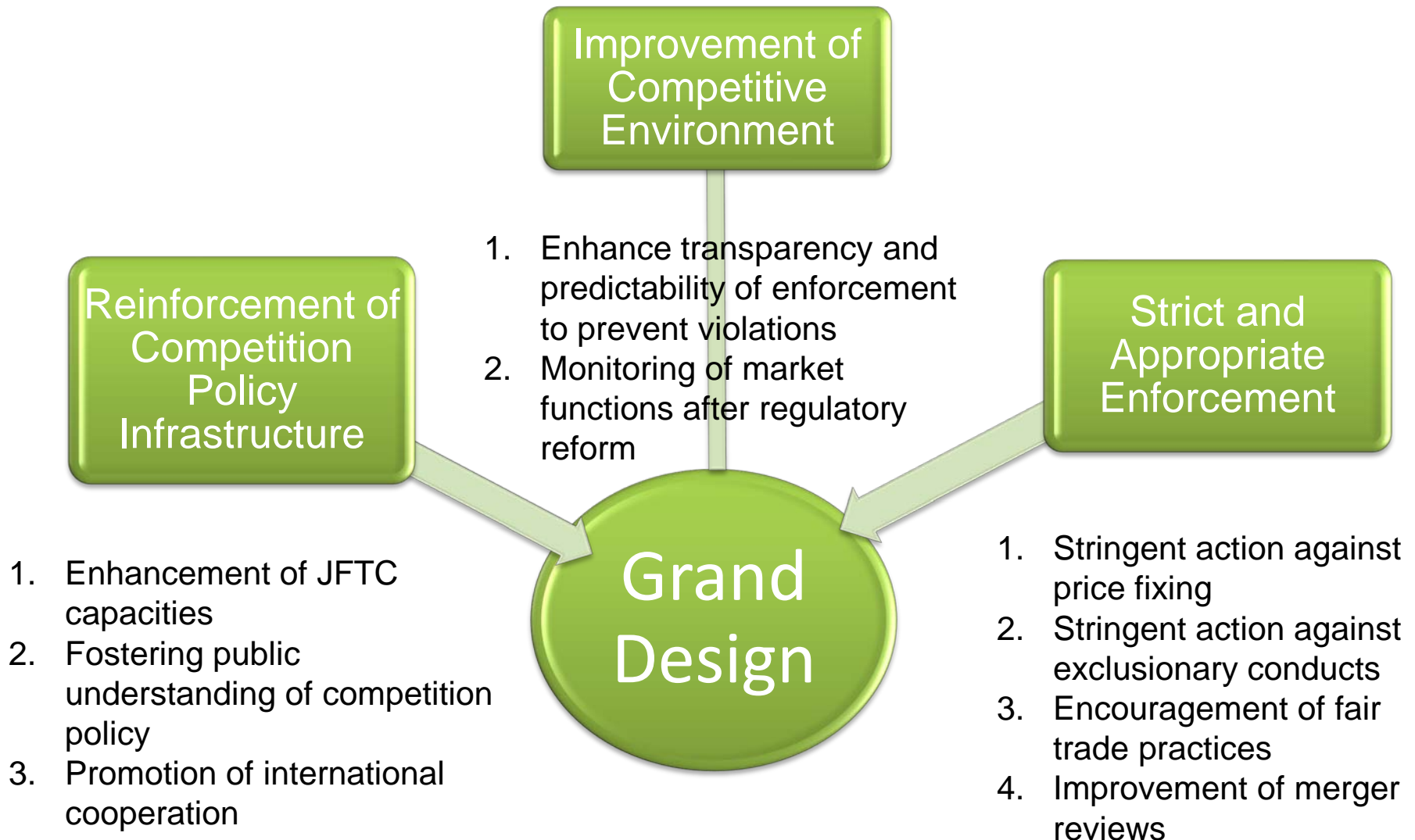
Japan
(formed 1947)



Competition policy in Japan



“Grand Design” of Competition Policy of JFTC



Practices of Competition Commission- CSS



Singapore
(formed 2003)



Competition
Commission
SINGAPORE

4 key strategic thrusts

Operate a
proactive and
business-
friendly
competition
regime

Strategic
Thrust
1

Spread the
message of
competition
and
compliance

Strategic
Thrust
2

Hear the
ground and
know the
concerns

Strategic
Thrust
3

Build
expertise
and develop
supportive
environment

Strategic
Thrust
4

4 Desired outcomes

Enlightened Competition Legislation

The body of law and practices is in line with internationally best practices, relevant and business friendly

Effective Enforcement

The enforcement regime is clear, credible and relevant. The process of detection, investigation, decision and enforcement of decision is fair, thorough, robust and timely

Enhanced Voluntary Compliance

Business voluntarily comply with laws and regulations

Educated stakeholders

Stakeholders are informed about the competition regime and correctly understand CCS's role and responsibilities

The 4E Way to SucCCS



The body of laws and regulations is in line with international best practices, relevant and business-friendly.



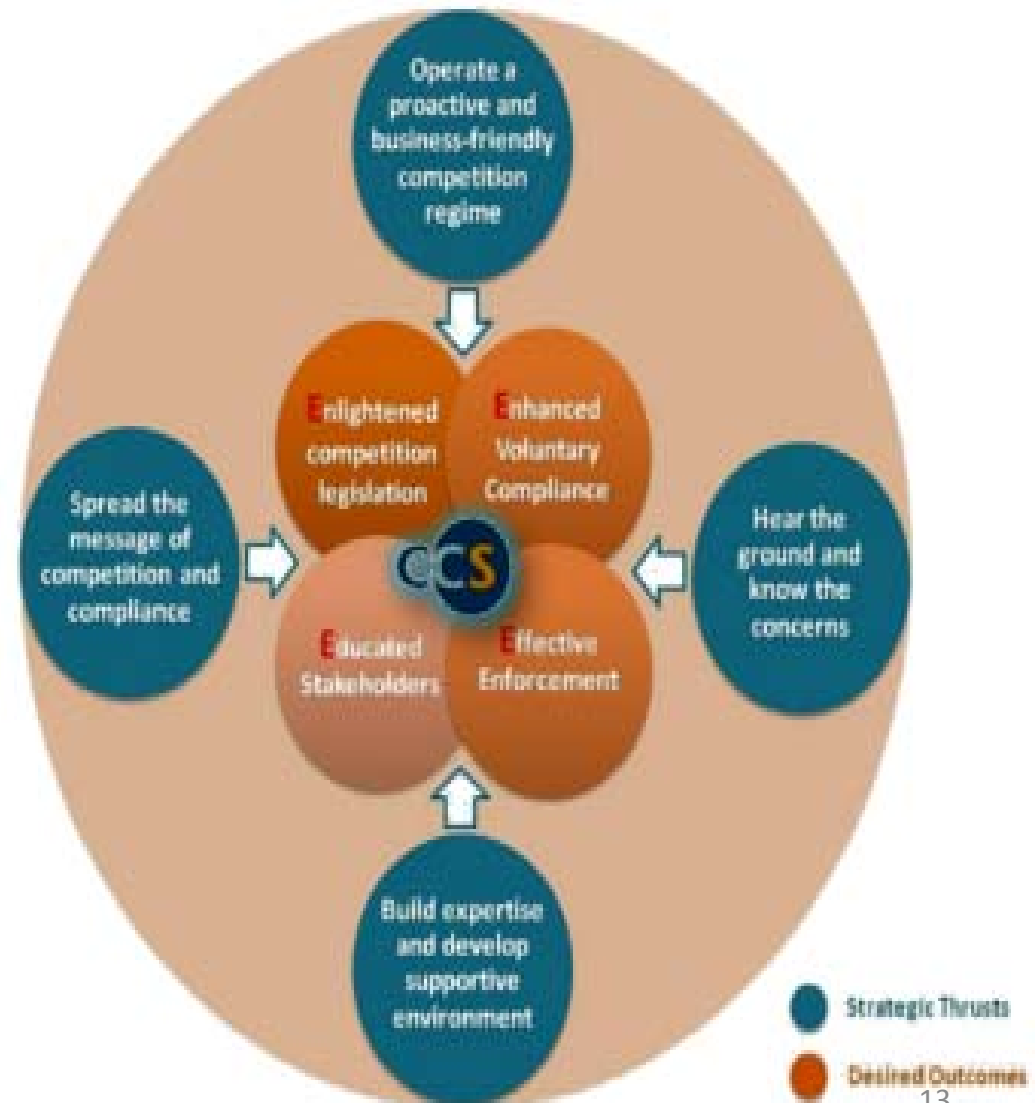
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Businesses voluntarily comply with competition laws and regulations.



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Practices of Competition Commission- EC



EUROPEAN COMMISSION

Formed in 1958

European Commission(EC) Management Plans

- 1. Promoting the knowledge society:** A strong competitive pressure provides powerful incentives for companies to continuously engage in innovation and research and development (R&D).
- 2. Fostering the internal market:** Competition policy can contribute to the better functioning of the internal market by way both of enforcement and competition advocacy.
- 3. Promoting a favorable business climate.** International competition policy helps develop global coherence and the predictability that business needs.
- 4. Policy development and communication:** Communicating Commission's competition policy to others to increase transparency.

European Commission Management Plans...

5. Policy coordination: Involves the coordination of enforcement activities in order to ensure a consistent approach to cases across legal instruments and sectors.

6. Ensure the good functioning of the enforcement system through the European Competition Network (ECN)



European Commission Management Plans



- 7. Helping to shape the regulatory framework**
- 8. Strengthening international cooperation in enforcement activities and promoting convergence of competition policy instruments across different jurisdictions**



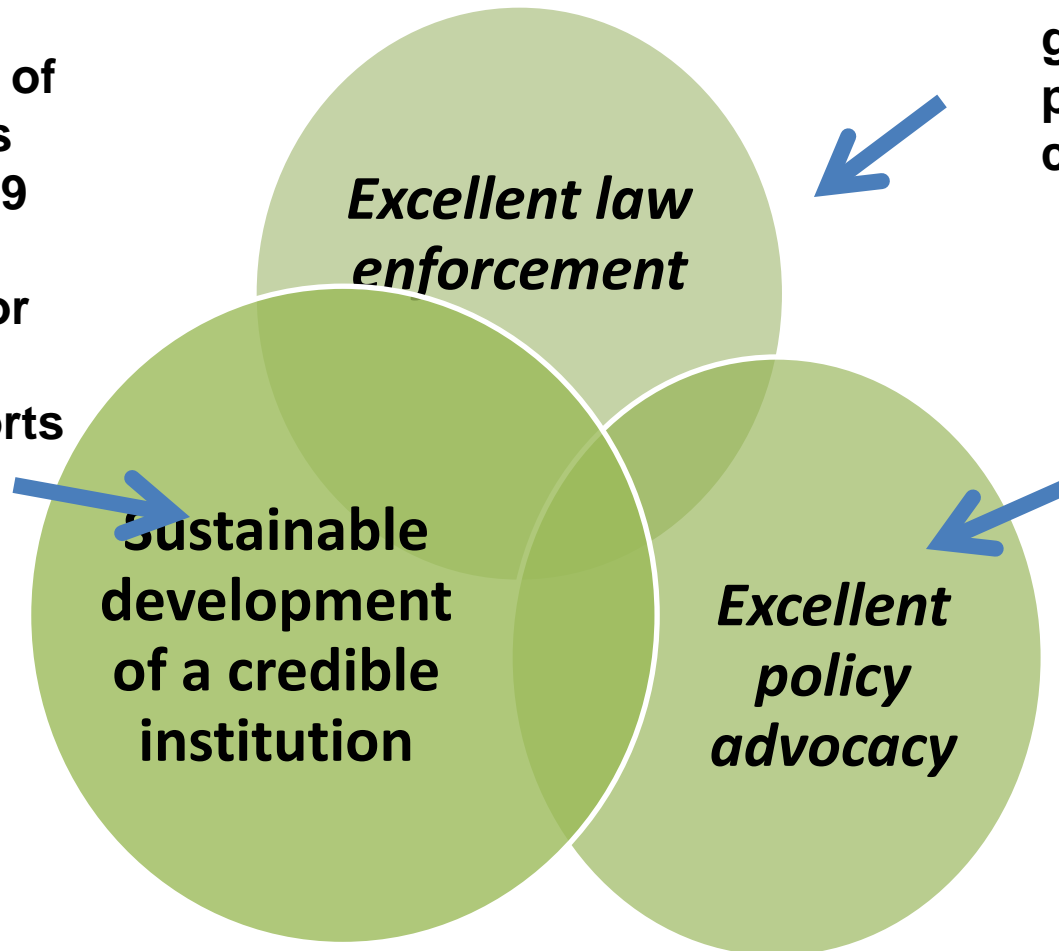
Indonesia



Formed in 2000

Three Strategic Missions

The restructuring of the Commission's organization into 9 bureaus (e.g: the Center for Financial Transaction Reports and Analyses (PPATK), the Indonesian National Police (POLRI), a Social Organization



Reinforces good governance principles in case handling

Active participation in advocacy of fair business competition (domestic & international levels)

Socialization of business competition

Network Development communication strategy in the form of advocacy was addressed into two stakeholder communities

1. Mass Media Network Development
2. Academician Network Development



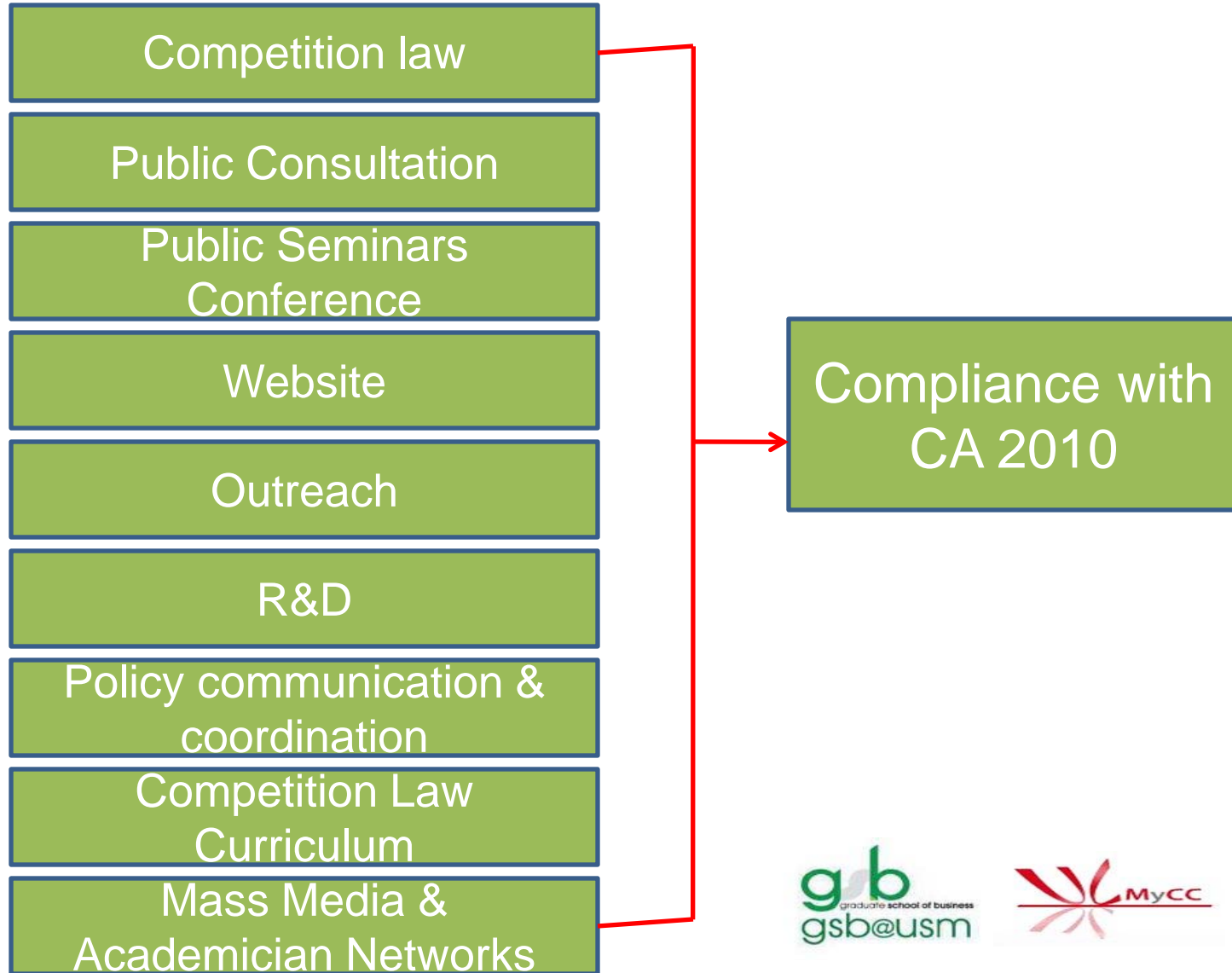
Summary of Competition Commission Activities & Plan

	CCS (Sing)	JFTC (Japan)	EUCC (European Comm)	KPPU (Indon)
Enacting a generic competition law.	√	√	√	√
Public Consultation Seminars	√	√	√	√
The Competition Act was assented	√	√	√	√
Administer and enforce the Competition Act.	√	√	√	√
The Competition Law Conference	√	√	√	√
Website	√	√	√	√
Conference on the Competition Act + Guidelines	√	√	√	√
Outreach to specific industry sectors	√	√	√	√
Contributing an article	√	√	√	√
Brochures	√	√	√	√
Movie	√			
A mix of illustrations & typography	√			
Fostering the internal market	√	√	√	√

Summary of Competition Commission Activities & Plan

	CCS (Sing)	JFTC (Japan)	EUCC (European Comm)	KPPU (Indon)
Research & Development	√	√	√	√
Policy development and communication	√	√	√	√
Policy coordination	√	√	√	√
Shape the regulatory framework	√	√	√	√
international cooperation	√	√	√	√
Mass Media Network Development				√
Academician Network Development				√
Competition Law Curriculum				√
A text book of business competition law				√
Domestic Cooperations	√	√	√	√
Hearings	√			√
Trade Negotiations	√	√	√	√

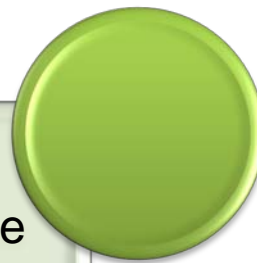
Framework for MyCC



Practices of Companies & Trade Associations (COMPLIANCE PROGRAMMES)



Canada,
Corporate
Compliance
Program,
2010



European
Competition,
Compliance
Matters, 2011

Australian
Competition &
Consumer
Commission
(ACCC) , 2005

Deloitte
Research,
2007

Netherlands,
Industry
Association,
Caution
Statement 2008

Corporate Compliance Programmes, Canada

1. Compliance is important for all businesses, regardless of their size, for both legal and practical reasons.
2. The success of Canadian competition laws is largely attributed to **voluntary compliance by firms and individuals**. An effective compliance program is a valuable tool in preventing and detecting competition law violators.

Benefits of Compliance:

- 1.Reduce high cost of non-compliance
2. Enhance a company's reputation
- 3.Assist a company and its employees in assessing competition risks
4. Increase job satisfaction
- 5.Trigger early warnings of potentially illegal conduct
6. Staff are more alert to wrongdoing by competitors or other commercial partners.
8. Ability to attract and retain customers and suppliers who value companies that operate ethically
9. Assist a business to qualify, in certain circumstances, for a reduced sentence or other lenient treatment where a contravention of any of the Acts has occurred.

Five fundamental elements for a proper compliance program



Source: Competition Bureau of Canada, 2008

1. Culture of Compliance - Senior Management Involvement and Support

1. Clearly promote compliance with the Acts as a fundamental part of the business policy
2. Senior management should expressly commit to compliance
3. Senior management should report to the board of directors on any compliance issues
4. Senior management should conduct risk assessments annually to better assess compliance priorities
5. Senior management should be accountable for promoting and complying with the Acts; and
6. A member of senior management should be appointed as a compliance officer

2. Corporate Compliance Policies and Procedures

1. Establish clear compliance policies and procedures and distribute to all relevant staff;
2. Continuously assess compliance policies and procedures and take reasonable measures to promptly notify all employees of such changes;
3. Design policies and procedures for different business units based on the competition risks that may arise ; and
4. Request employees to sign a certification letter stating that they have read and understand the compliance program in place.

2. Corporate Compliance Policies and Procedures

CERTIFICATION LETTER

A business may consider asking employees who are in a position to potentially engage in, or be exposed to, conduct in breach of the Acts to certify in writing that they have read and understand the company's compliance program and their obligations under it. This Certification Letter is intended to be adapted by each business prior to being signed by employees.

I, _____ of the City of _____, am employed by Company _____ in the capacity of _____. I acknowledge that I am subject to and am required to comply with Company _____'s Corporate Compliance Program, including its Policies and Procedures.

This is to advise that I have read and understand Company _____'s Program, the goal of which is to promote compliance with the **[specify: the *Competition Act*]**.

I understand that compliance with Company _____'s Program is a condition of my continued employment with Company _____ and that failure to comply with the Program may result in disciplinary action, including termination of employment. I also understand that this certification letter is not a guarantee of continued employment with Company _____.

Date: _____

Signature: _____

Witness name: _____

Signature: _____

3. Training and Education

1. Train all employees at an early stage regarding the importance and expectation of compliance
2. Train senior management and staff as required in the particular circumstances to recognize and address compliance issues
3. Regularly assess the employees' knowledge of compliance policies and procedures; and
4. Document all training sessions.

4. Monitoring, Auditing and Reporting Mechanisms

1. Monitor business activities periodically to ensure compliance
2. Review the program when issues arise or are detected
3. Plan formal audits to check for actual contraventions
4. Use surveys, focus groups and exit interviews to assess the effectiveness of the compliance program
5. Conduct audits to confirm whether a business is fully complying with the Acts

4. Monitoring, Auditing and Reporting Mechanisms....

6. Take immediate action to stop any contravention of the Acts
7. Cooperate with the government where a breach has occurred (which involves self-reporting)
8. Put in place a confidential reporting procedure
9. Identify employees who are exposed to a heightened risk (for instance, based on roles and responsibilities, previous issues and misconduct), and
10. Document all compliance efforts (this will also assist a company in advancing a defence of due diligence, where available).

5. Consistent Disciplinary Procedures and Incentives

1. take appropriate and consistent disciplinary action (up to and including dismissal) for failure to comply with the business' program or with the Acts, and
2. create an incentive system for employees at all levels to adhere to the business' program.

Consideration Given to a Corporate Compliance Program

Although the pre-existence of a program is not, in and of itself, a defence to allegations of wrongdoing under any of the Acts, a **credible and effective program** may enable a business to demonstrate that it took reasonable steps to avoid contravening the law. In this regard, such a program may support a claim of due diligence.

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Compliance Measures	Frequency
1. Taking external legal advice	40%
2. Having a policy code	34%
3. Providing seminars on competition law	26%
4. Employing a dedicated competition compliance officer	20%
5. Taking economic advice	16%
6. Requiring employees to take an online training programme	9%

1. support of senior management
2. appropriate policy and procedures
3. training, and
4. regular evaluation.

* Size of business is associated with whether business undertakes compliance activities

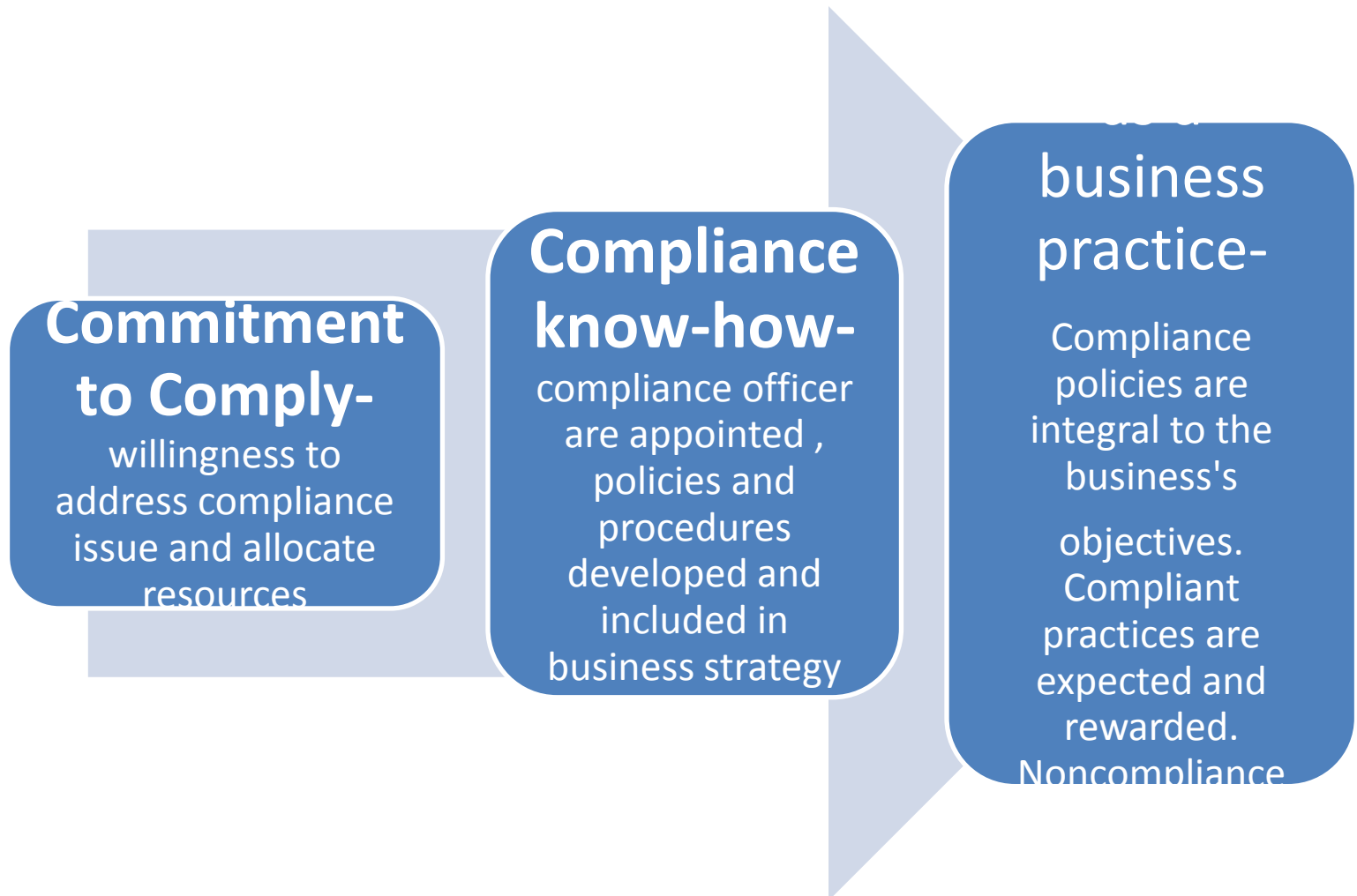
Australian Competition & Consumer Commission (ACCC)

Corporate Trade Practices Compliance Programs, 2005

There is no “one size fits all” compliance program as each organisation’s circumstances are different. Successful compliance programme includes:

- ✓ **Strategic vision** – compliance activities must be linked to the business's strategic goals. Therefore, the method employed by the business to achieve those goals must be communicated, along with the benchmarks for implementation.
- ✓ **Risk assessment** – the business must actively identify its compliance risks and reassess them at regular intervals.
- ✓ **Control points** – each of the identified risks are managed at specified control points, which are themselves reinforced by establishing behavioural and procedural controls. Procedural controls address and mitigate high risk areas in a business's operating environment, while the behavioural mechanisms emphasise the business's policies for those risks.
- ✓ **Adequate documentation** – the business's compliance efforts are adequately documented to ensure that they can be substantiated in the event of a breach.
- ✓ **Identified people** -these people manage each specific element of the compliance system.
- ✓ **Continuous improvement** – the business will evaluate its performance and its approach, to ensure that they are appropriate to its operations.

Three Phases when Institutionalising Compliance Culture , ACCC



Effective Competition Law Compliance Culture: Virtuous Circle, ACCC...

1. Staff appraisals linked to compliance programmes
2. Top management support- sending email reminders, training materials include their commitment to competition law compliance

EC competition rules, 2011

How to ensure compliance?

1. A clear strategy
2. Formal acts of acknowledgement by staff and consideration of compliance efforts in staff evaluation
3. Constant update, contact points for advice and training
4. Monitoring / Auditing



1. A Strategy (DO'S)

Making the strategy explicit

Internal clarity the strategy would preferably be laid down in writing, plainly worded and in it is understood by everyone.

Visible and lasting commitment to the compliance strategy by senior management

Senior management support is an essential element of creating a culture of respect for the law within the company.

Proper internal reporting mechanisms

essential feature of a successful compliance strategy is the inclusion of clear reporting mechanisms.

A Strategy (DON'TS & RED FLAGS), EC

A list of 'DON'Ts' could include clearly illegal conduct such as price-fixing agreements, the exchange of future pricing intentions, allocation of production quotas and the fixing of market shares.

'RED FLAGS' are warning signs which serve to identify situations in which infringements of competition rules can be suspected. They would encourage managers and employees to exercise particular caution in seeking to avoid any infringement on the part of their own company.

2. Acknowledgement and compliance efforts in staff evaluation

Asking staff for written acknowledgement of receipt of relevant information on compliance with EU competition law

Putting in place positive incentives for employees to consider this objective with utmost seriousness.

Penalties for breach of the internal compliance rules



3. Constant update, contact points for advice and training

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Penalties for breach of the internal compliance rules

Unlawful behaviour can be found even without a written agreement or a "handshake". Tacit understandings, including responding to pressure, exerting pressure, or doing "what is expected", can be sufficient.

The Industry Association- Antitrust Compliance Model Guidelines *(Netherlands, 2008)*

GENERAL PRINCIPLES

The antitrust laws apply to trade associations just as they apply to any individual company or group of competitors. The following are most serious infringements of competition law:

- Price Fixing;
- Bid-Rigging;
- Group Boycotts; and Allocation of Customers or Markets.

GENERAL PRINCIPLES

You should also be aware that participating in certain types of association activities that, if undertaken with an improper motive or executed improperly, may give rise to antitrust liability:

- Discussions in meetings;
- Information Exchange / Data Collection;
- Working groups and projects
- Standard-Setting and Self-Regulation; and
- Membership issues.

CONDUCT OF MEETINGS

1. The *Antitrust Caution Statement* shall be the first point of each agenda. At the start of each meeting the chairman of the meeting shall read aloud *the Antitrust Caution Statement* and the minutes shall so record.
2. If a meeting participant is uncertain whether a discussion or conduct raises competition law issues, the discussion on the subject should be stopped or suspended until clearance can be obtained from legal counsel.

ANTITRUST CAUTION STATEMENT

Introduction

Set out below is a proposed caution to be read at the start of each meeting. The aim of this is to serve as a reminder to all participants of the antitrust law requirements. The statement should also be recorded in the minutes as indicated below.

Antitrust caution

"The association shall not enter into any discussion, activity or conduct that may infringe, on its part or on the part of its members, any applicable competition law. By way of example, members shall not discuss, communicate or exchange, any commercially sensitive information, including information relating to prices, marketing and advertising strategy, costs and revenues, trading terms and conditions with third parties, including purchasing strategy, terms of supply, trade programs, or distribution strategy"

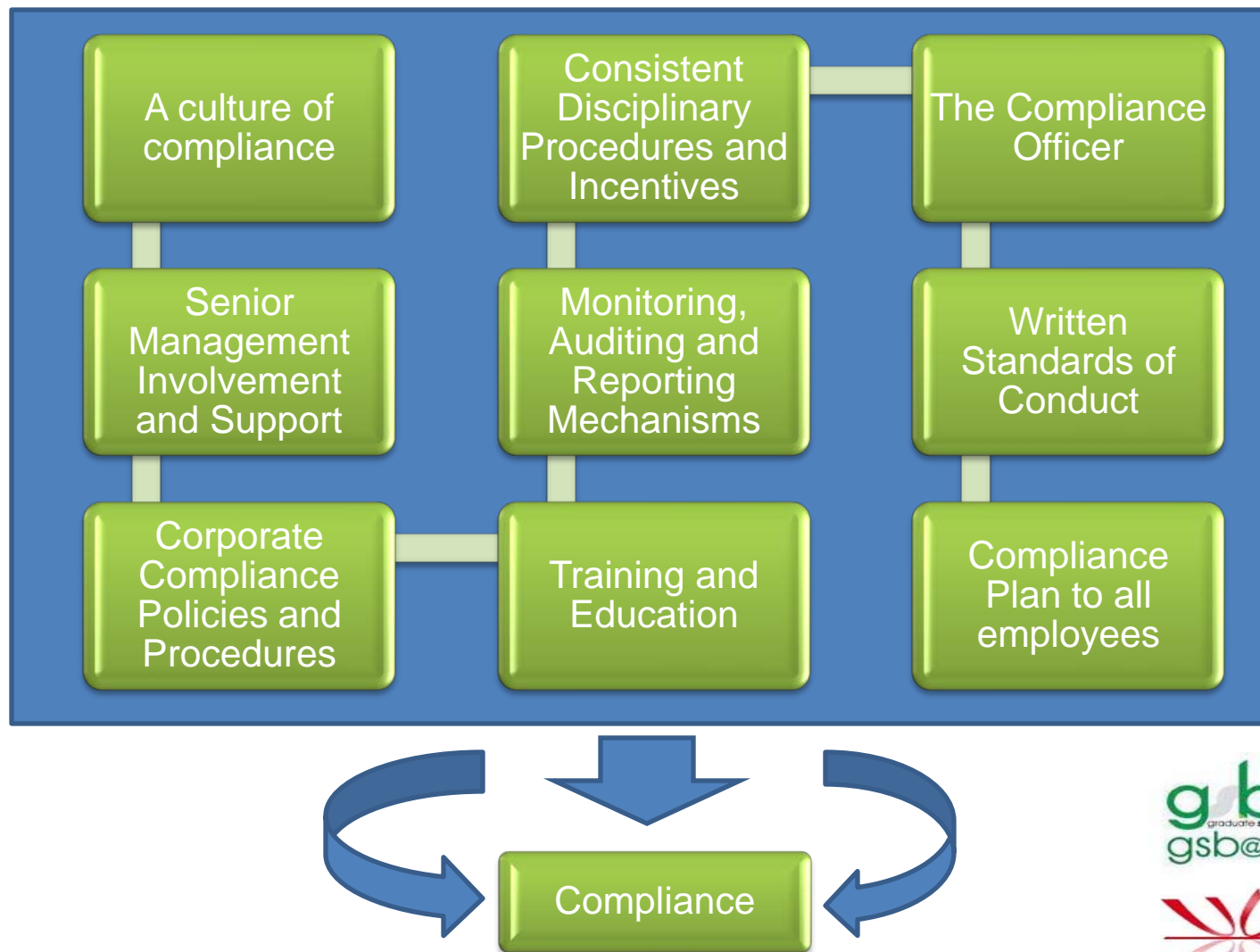
Message to New Members or people taking part for the first time:

"Please take note that taking part in the association is subject to having read and understood the antitrust guidelines of the association. If you have not yet done so, please do so now."

Procedure

1. Every agenda shall contain, as its first item, a statement in the terms set out above. The chairman of the meeting shall read such statement at the start of each meeting, and the minutes shall so record.
2. Full minutes of all meetings shall be taken.
3. Minutes shall be circulated to all members within [one month] after the meeting. Any comment or request for amendment shall be notified to the chairman within [one month] following receipt of the minutes.

Framework for Corporate and Trade Association Compliance



Concluding Remarks

1. The involvement of top management is crucial to ensure compliance
2. There is **no single model** for competition compliance strategies.
3. Competition policy fosters innovation and growth
4. Competition compliance has become central to corporate governance and has become linked to having a good internal control system in companies and associations
5. Compliance to competition act should be reported in the audit report



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