



ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
Economic Cooperation Support Program (AECSP)



Toolkit for senior competition investigators

**Tools for use in building and managing
investigation teams**

*Developed as part of the AANZFTA
Competition Law Implementation Program*

August 2019

Australian Competition and Consumer Commission
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Contents

Introduction	1
1. Building effective teams and developing staff	3
Identifying the skills required and recruiting accordingly	3
Diversity—people and skills—for effective investigations	6
Building resilience and managing change	10
Fostering positive organisational culture, and motivating and retaining high quality staff	11
Addressing underperformance	13
2. Investigation management	14
Investigation planning	14
Providing strategic direction in line with authority's objectives and priorities	20
3. Managing stakeholders during an investigation	25
Management and handling of evidence	25
Communications with stakeholders	26
International cooperation	32



Introduction

This Toolkit has been prepared under the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Competition Law Implementation Program (CLIP) for use by investigation team leaders within competition authorities in ASEAN Member States.¹

Well-trained, motivated and dedicated investigative teams, working towards clear goals are one of the key driving forces within effective competition authorities. Competition authorities need effective investigation teams to achieve positive enforcement outcomes, in turn enhancing the reputation of the competition authority and unlocking the benefits of competition in markets.

The creation, development and management of high performing investigation teams cannot be the product of a single strategy. The diversity of factors impacting on regulatory authorities requires a flexible approach and regard to be given to each authority's circumstances when developing and managing investigation teams.

Each competition authority operates within a unique authorising environment, enforces or administers unique competition laws and has regulations, processes and procedures that are specific to its own jurisdiction. Each authority will experience its own challenges, have different resource capabilities, capacities and restraints, and will respond to its context by developing a distinct organisational culture. Adding to these contextual differences, many of these factors will themselves change over time. Further still, each investigation undertaken by an authority will require its own strategic response informed by its context.

¹ This Toolkit is one source of advice and should be considered among a range of other relevant materials. The authors are mindful of cultural variations which can influence the selection of particular tools or techniques and impact their effectiveness. The advice contained herein should not be regarded as prescriptive and is not intended to be applied without due consideration of the relevant context.

This toolkit discusses some concepts and provides tools which can be applied to common issues facing competition authorities.

The investigative needs of a project can only be predicted following careful consideration of the likely issues to be dealt with and the size and complexity of the evidence required. No plan or strategy can ever anticipate all possible variables; every plan must be flexible and adaptable to a range of factors that may change over time.

Agencies may seek to develop planning systems to be applied to all investigations, or may wish to develop individual plans for projects in accordance with their size, sensitivity and resource requirements. The development of such systems should have regard to the diversity of projects that will emerge over time. Similarly, the process of building investigation teams capable of dealing effectively with individual projects requires careful and flexible management.

This toolkit provides guidance on some of the issues relevant to building and managing investigation teams; it does not purport to cover all issues, angles or possibilities. Agencies should develop their own systems and teams; however, the consideration of ideas and tools used by others, such as those provided herein, may assist.



1. Building effective teams and developing staff

Investigation managers need to:

- identify the skills required and recruit accordingly
- value and encourage diversity in the workplace and within teams
- assist staff to develop the right skills through training, learning and development
- mentor staff, and give and receive feedback
- lead by example and cultivate leaders at all levels
- build resilience and manage change
- foster a positive organisational culture in which staff are motivated
- employ strategies to retain high quality staff and address any issues of underperformance.

Identifying the skills required and recruiting accordingly

Every competition authority needs staff who are appropriately skilled, motivated to be productive and properly supported. The ability of an authority to recruit the right mix of skills is influenced by a range of factors including available resources, the current employment market, and the authority's reputation and standing in the community. Some agencies will have more flexibility than others in the pool of candidates from which they can recruit, as well as the number of staff they can employ.

Whether an authority is recruiting a number of staff at once, or for a single position, it is useful to take time to properly assess the overall skillset the authority will need to operate effectively.

The collection of skills required within an investigation team is not finite and can change over time. When it then comes to identifying the skills needed for a particular investigation, some skills may be required for the length of the entire investigation and some only for particular parts.

Qualified and experienced investigators will be capable of undertaking and supervising many aspects of an investigation but may need to engage specialists at various points. Such skills might be found internally, but sometimes an authority may look beyond its own staff to assemble a team with sufficient diversity of skills and experience.

Where an authority has the flexibility to engage external specialists, it is helpful to identify this during investigation planning so that efforts can be made to locate and budget for the required resources.

International Competition Network: *Human Resources Management in Competition Agencies* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-hr-management/>.

International Competition Network: *An Assessment of Institutional Machinery: Methods Used in Competition* <https://www.internationalcompetitionnetwork.org/portfolio/institutional-machinery-methods-used-in-competition/>.

International Competition Network: *Report on Agency Effectiveness* <https://www.internationalcompetitionnetwork.org/portfolio/report-on-agency-effectiveness/>.

Case study example

An investigation being conducted by a national competition authority requires the use of a search warrant (or dawn raid) to acquire evidence.

An experienced investigator knows how to draft documents required to gain a warrant, confidently handle the process of entering someone's premises and identify relevant evidence. However, the investigation team does not know how to access the computer equipment at those premises without damaging the data or the system or triggering encryption defences that automatically destroy the electronic records.

The investigation team will need a highly qualified computer technician with forensic experience to successfully execute the search warrant process.

The officer responsible for executing the search warrant works with relevant staff to engage an IT forensic firm with the necessary expertise to assist with the process. In the process of preparing to execute the warrant, the investigation team liaises with the IT forensic personnel about the type and extent of electronic equipment likely to be involved, as well as preparation of criteria to be used when searching the premises.

The execution of a search warrant requires specialist skills and experience and it is important the investigation team is complemented, in this case, by the skills of the IT forensic firm to ensure the process is undertaken successfully.

Competition authorities may recruit staff with the appropriate skillset in various ways including:

- advertising new positions (permanent or temporary)
- seconding people from other agencies for particular projects or periods of time
- hiring people from labour hire firms on either short or long-term contracts
- through a graduate recruitment program
- through an internship program, whereby people gain work experience in agencies to broaden their experience, sometimes in accordance with requirements of a study program (this may allow agencies to identify talented people for longer term recruitment)
- through arrangements with other regulators to facilitate exchanges of personnel (at a national or international level).

Example recruitment advertisement

Staff wanted:

Investigations Team Leader—Enforcement Branch

The National Competition Authority of the Kingdom of Alvonía (NCAA) is an independent, quasi-judicial body mandated to promote fair and healthy market competition across Alvonía.

The Enforcement Branch undertakes the core investigations work within the NCAA. The Branch comprises several teams which conduct investigations into potential breaches of the national competition law.

Role and duties

The successful applicant will be required to lead an investigation team within the Enforcement Branch. Duties are to be performed under limited guidance and include:

1. lead and manage investigations or projects in accordance with developed plans, including by identifying work tasks and allocating tasks to team members to ensure the efficient and effective allocation of resources and progress of investigations or projects
2. oversee the gathering of evidence and intelligence, and research and analytical tasks
3. work closely with managers to ensure that the overall management and strategic focus of investigations or projects is in line with the broader organisational plan and priorities
4. identify and oversee the formulation of next steps for investigations or projects including the review and refinement of investigation or project plans. Identify suitable resolutions and persuasively communicate the reasons for decisions and recommendations
5. supervise and develop staff including by providing regular and appropriate feedback and direction, and identifying development needs and opportunities.

Skills and behaviours

The successful applicant will demonstrate:

1. a strong understanding of, and an ability to apply, all provisions of the national competition law
2. a strong understanding of, and an ability to apply, the economic and legal principles relevant to assessing, investigating and resolving alleged contraventions of the national competition law
3. an ability to cultivate productive working relationships with internal and external stakeholders together with personal drive and integrity
4. an ability to effectively lead a team.

Economic Analyst—Economic Division

The National Competition Authority of the Kingdom of Alvonía (NCAA) is an independent, quasi-judicial body mandated to promote fair and healthy market competition across Alvonía.

The Economic Division is the NCAA's in-house provider of strategic economic advice and support. It also assists in the engagement of external economic service providers. The Division facilitates the consistent use of economic principles in decision making under Alvonian's national competition law as applied to specific investigations and cases; and increases the quality of economic analysis in projects handled by the NCAA.

Role and duties

The Economic Analyst provides specific technical economic expertise which in turn enables the NCAA to incorporate best practice economic theory and analysis into its investigation work in competition law enforcement:

The successful applicant will be required to:

1. provide technical economic support (advice, analysis, guidance and research) to all branches within the NCAA to enable the NCAA to incorporate best practice economic theory and analysis into its competition investigations and assessments
2. prepare written papers, reports, presentations, speeches and submissions on economic issues
3. liaise with staff, Commissioners and external advisers on economic issues and projects as required.

Skills and behaviours

The position requires:

1. sound conceptual and analytical skills and practical experience with an ability to draw conclusions based on analysis of facts and data
2. an ability to communicate complex issues simply, clearly and effectively in different forums
3. an ability to engage collaboratively with investigation teams and to develop and maintain effective internal and external networks.

Diversity—people and skills—for effective investigations

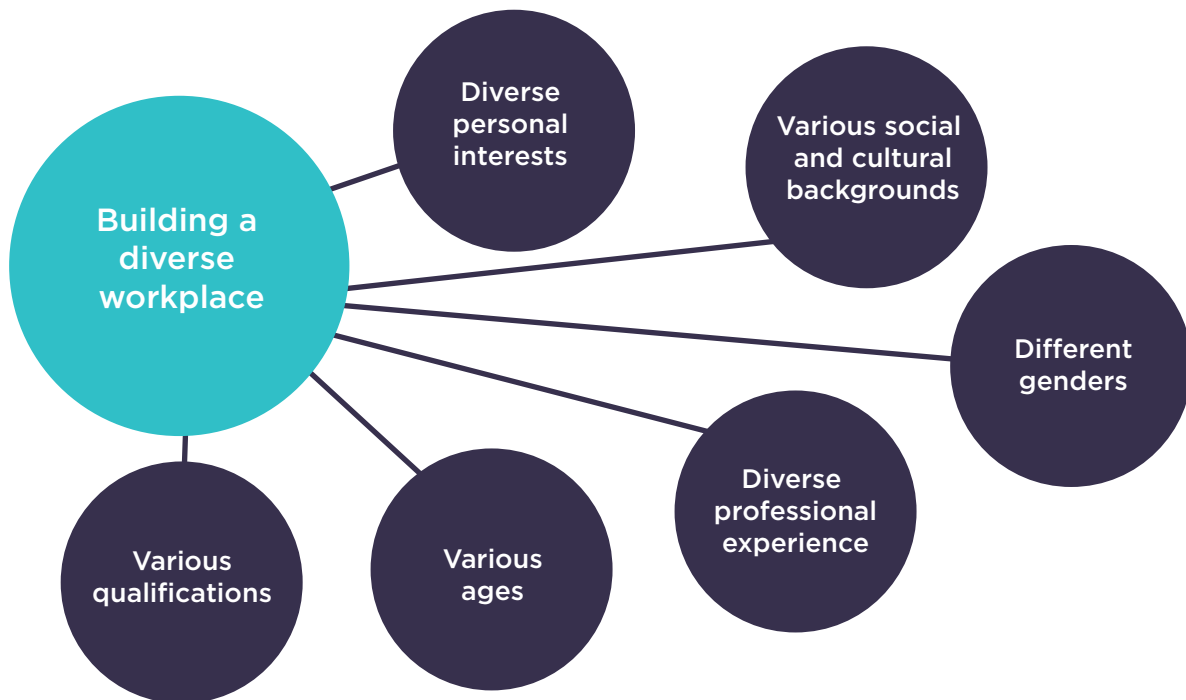
Every investigation requires a diversity of skills and can be better informed by harnessing a range of views and ideas. To the extent that the workforces of competition authorities can reflect a diversity of backgrounds, knowledge, customs, attitudes, skills and outlooks, the greater the potential for better informed and more innovative outcomes.

Diversity in workplaces brings creativity, enhances the ability of people to learn from others, broadens perspectives and ultimately makes workplaces more attractive to prospective employees, not to mention the benefits which flow in terms of productivity and innovation.

How does an authority create a pool of staff who are capable of bringing diverse skills and views to an investigation? Planning to achieve a diverse workplace is often difficult and takes time to implement. This process can involve a change in policies, processes and attitudes and some of these changes may occur gradually over time.

An authority can start by stipulating a broad range of skills and experience it wants to recruit (perhaps lawyers, economists, accountants, scientists, communications specialists, human resource experts, IT specialists, foreign language specialists, policy officers, and so on). Having recognised the desired skills, authorities need to remove barriers to the promotion of diversity and encourage the recruitment of a broad range of people. Restrictions on internal progression, or 'glass ceilings', should be actively dismantled and all staff encouraged to develop the skills necessary to progress professionally.

Building a diverse workplace



OECD: *Toolkit for Mainstreaming and Implementing Gender Equity* <http://www.oecd.org/gender/governance/toolkit/>.

International Competition Network: *Effective Project Delivery* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-project-delivery/>.

ACCC/AER Diversity and Inclusion Strategy: The Australian Competition and Consumer Commission and the Australian Energy Regulator released its first [Diversity and Inclusion Strategy](#) in 2019. This strategy outlines a commitment to creating a diverse and inclusive culture that drives performance, innovation and productivity.

Developing the right skills

Competition authorities can assist staff to develop their skills in a variety of ways. These include:

1. On the job learning, including opportunities to undertake higher duties or rotating staff through various positions.
2. Creating a staff development unit to provide and/or coordinate training to staff (for example, an induction program for new staff, training on managing change, and sessions by internal experts on specific investigative, economic or legal topics).
3. Many authorities encourage existing staff to undertake further study concurrently with their employment. Strategies to encourage this may include providing time off work to attend lectures or complete assessments and financial contributions to the cost of study. Agencies may choose to provide greater assistance for those areas of study which are directly relevant to its work, and to strengthen the skillset of its staff in particular identified areas of need.
4. Using external experts to provide specific training on more specialised issues. If an authority has built good relations with academic institutions, these can be useful here. Some academics may be willing to make a pro bono contribution in aid of strengthening the authority's effectiveness.
5. Creating virtual training within the authority or utilising externally available online resources (e.g. CLIP Academy – see below), which staff can access independently. E-learning can be used to cover a wide variety of subjects, but may be more suitable for some training needs than others.

6. Staff might be invited to attend training programs offered by other agencies, or undertake short-term secondments or exchanges between such agencies (e.g. police departments, corporate regulators or sector regulators). Some authorities require that staff returning from such opportunities actively disseminate knowledge gained within the authority after they return (e.g. delivering lunchtime information sessions).

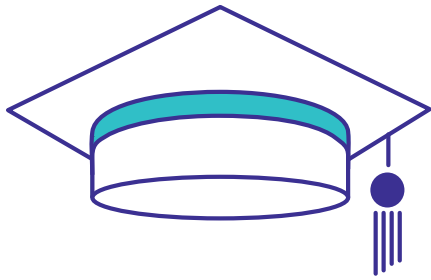
International Competition Network: *Report on Competition Agency Staff Training Programs*

<https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-training/>.

International Competition Network: *Human Resources Management in Competition Agencies*

<https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-hr-management/>.





Accelerate your career with CLIP Academy

The ASEAN-Australia New Zealand Free Trade Area Competition Law Implementation Program (CLIP) has launched its eLearning hub, CLIP Academy at <https://clip.learnflex.com.au>.

So far CLIP Academy includes five online modules. Just like CLIP workshops, CLIP eLearning has a focus on developing practical skills and knowledge that supports effective enforcement of competition law. The modules are highly visual and interactive – making them a very engaging way to learn.

Hone your expertise in competition law, economics and enforcement practices by registering for a CLIP Academy account today.

Explore different areas of competition law and economic markets

Units currently available:

- Introduction to Competition Law
- Economics for Competition Law
- Introduction to Enforcement
- Investigation Planning, and
- Evidence Gathering.

And there are more on the way!

How to register

Enrolment is free for current competition officials in the ASEAN region, and you can always save your work during a module and return later. Head to the website at <https://clip.learnflex.com.au> and create your own account before signing in.

The eLearning modules are responsive to all devices, including smartphones, and support accessibility standards.



ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
Economic Cooperation Support Program (AECSPP)

The importance of mentoring and giving/receiving feedback

One recognised way to accelerate learning and enhance performance is the process of mentoring, in which a more experienced person helps to guide a less experienced person over a period of time, through the provision of advice and expertise.

Mentoring can occur through the natural development of friendships and working relationships within the workplace, or by way of structured programs. Both systems can work well provided a trusting relationship is developed, and provided the mentor has the requisite knowledge and experience to draw upon.

An opportunity to discuss issues and learn from others' experiences is valuable in developing staff. Equally important is the process of giving and receiving feedback. Employees then have a sense of what is expected and know whether they are doing things well. Regular, constructive feedback helps to enhance the performance of staff, which in turn, supports improvements in the overall performance of an authority.

360 degree feedback

Agencies can create feedback systems in which constructive feedback is provided to all staff by their managers at regular scheduled intervals, for instance twice each year. The feedback can operate both ways with managers providing feedback to employees and vice versa. Such sessions can be structured to ensure:

- everyone discusses their performance over the past six months
- everyone discusses what is expected of them over the next six months and sets appropriate performance goals
- everyone identifies areas of improvement to strive for over the next six months
- employees identify their training or development needs
- constructive discussion can take place about what the authority as a whole can do to enhance performance
- employees can discuss long-term ambitions with their supervisors, and develop plans for achieving these.

Victorian Public Service Commission (Australia): Manage People, <https://vpsc.vic.gov.au/resources/welcome-to-management/>.

Victorian Public Service Commission (Australia): Talking Performance, <https://vpsc.vic.gov.au/resources/talking-performance/>.

Building resilience and managing change

Competition investigators can expect to meet roadblocks, be challenged and suffer some failures along the way. It is the nature of the work that those being investigated will often have access to considerable resources and engage specialised defence lawyers.

Investigators need to be resilient. Resilient individuals tend to be flexible and adaptive, cope (even in difficult times), learn from experience and be optimistic. This takes courage, commitment and organisational support. Building resilience is an important part of creating a healthy, productive work environment, and supporting the development of effective teams.

Building resilient teams is also important in times of change. All organisations, including competition agencies will be required to manage change at some stage in their development—from changes in personnel to legislative changes, or changes in government. Change is often unpredictable and potentially unsettling. The process of change needs careful management.

Australian Public Service Commission: *Building Resilience* <https://www.apsc.gov.au/15-building-resilience>.

Australian Public Service Commission: *Working Together: Promoting mental health and wellbeing at work* <https://www.apsc.gov.au/working-together-promoting-mental-health-and-wellbeing-work>.

PricewaterhouseCoopers: *Ten guiding principles of change management* <https://www.strategyand.pwc.com/media/uploads/TenGuidingPrinciplesofChangeManagement.pdf>.

Overcoming Resistance to Organizational Change: Strong Ties and Affective Cooptation (Julie Battilana and Tiziana Casciaro), *Management Science* Vol. 59, No. 4 (April 2013) https://www.researchgate.net/publication/260160498_Overcoming_Resistance_to_Organizational_Change_Strong_Ties_and_Affective_Cooptation/link/555b39a708ae980ca6130b82/download.

Motivated to Adapt? The Role of Public Service Motivation as Employees Face Organizational Change (Bradley E. Wright, Robert K. Christensen and Kim Isett) *Public Administration Review* Vol. 73, Issue 5 (September/October 2013) p. 738-747.

Fostering positive organisational culture, and motivating and retaining high quality staff

Another important element in building effective investigation teams is fostering an effective organisational culture, where probity and adherence to due process is valued. Developing a positive organisational culture takes time. Organisational culture is the cumulative result of decisions, actions and policies over time. Sadly, good cultures take considerable time to develop and can be damaged quickly. Poor leadership choices, unreasonable operational decisions and flawed public relations can erode years of effort quite rapidly. Agencies should not take a good organisational culture for granted; it should be developed, nurtured, valued and supported.

National competition authorities, like many other public sector organisations, face the ongoing challenge of retaining high quality staff who may be enticed by private sector opportunities and the lucrative benefits these can offer. However, the intrinsic value of working in the national public interest to achieve outcomes for the greater good of the country cannot be underestimated.

As the reputation of an authority is enhanced by its successes and accomplishments, employment by the authority gains a status that can drive talented people to want to work there. Regardless, high performing individuals are difficult to retain and agencies should endeavour to keep these staff motivated by offering learning and development opportunities, along with the chance to work on high profile and intellectually stimulating projects. Some agencies may be able to offer further encouragement through salary supplementation or enhancements to working conditions. In general terms, agencies should be looking to create workplaces where staff are motivated to work productively and to stay.

Processes designed to motivate staff must do more than drive staff to work harder. Motivation needs to be part of a sustainable culture in which the health and wellbeing of staff is valued and prioritised. Agencies should endeavour to identify and understand the factors influencing staff motivation within their own context and work to support these so that staff can be effective and efficient, while maintaining a life balance that protects their wellbeing.

Some ideas to encourage staff motivation:

- pay your people what they are worth
- provide a supportive work environment that does not punish failure
- offer opportunities for self-development
- recognise and celebrate achievements, both after and during investigations
- foster collaboration within the team
- set clear team goals
- delegate appropriately
- facilitate effective meetings.

Case Study

Australian Competition and Consumer Commission (ACCC) Chair, Mr Rod Sims, was active in encouraging risk-taking by the ACCC following his appointment in 2011, urging staff not to steer away from risk. 'The ACCC's success rate in first instance litigation stands at almost 100 per cent. This is frankly too high. It may sound strange to say so, but benchmarking against our international counterparts we are sitting at a much higher level of success. Of course I'm happy with the implication that ACCC staff handle cases well, but the flip side is that we have been too risk averse. We need to take on more cases where we see the wrong but court success is less assured.'²

International Competition Network: *Human Resources Management in Competition Agencies* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-hr-management/>.

International Competition Network: *Report on Agency Effectiveness* <https://www.internationalcompetitionnetwork.org/portfolio/report-on-agency-effectiveness/>.

Establishing an organisation's culture

The following table sets out some examples of attitudes that can influence an organisation's culture.

Discouraging attitudes	Encouraging attitudes
Do not take risks	Embrace risk: calculate risks and build them into your plan
Punish mistakes	Learn from mistakes
When things go wrong find a scapegoat	When things go wrong take collective responsibility
Our reputation is beyond our control so we should concentrate on our day to day work	Our reputation is the result of all the things we do, so we need to actively sell what we do and nurture our reputation
This matter looks simple, we can cut corners here	This matter looks simple, but let's do it right; we are rigorous in our procedures
This conduct is damaging but technically lawful; we must walk away	This conduct is damaging but technically lawful; how can we influence a positive outcome?

² <https://www.accc.gov.au/system/files/ACCC%20-%20Future%20Directions%20-%20Law%20Council%20Workshop%202011.pdf>.

Addressing underperformance

Sometimes issues of underperformance arise within teams. Underperformance can occur for a wide range of reasons including uncertainty about workplace standards and expectations, a mismatch between an employee's capabilities and the job they are required to undertake, lack of motivation, low morale or a poor work environment, personal issues relating to physical or mental health, or workplace bullying. Managing underperformance is a sensitive and difficult task, but should be dealt with promptly and appropriately as such issues can affect team productivity.

Australian Government Fair Work Ombudsman: *Best Practice Guide for Managing Underperformance* <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance>

The guide recommends a five stage process for dealing with underperformance:

Step 1—Identify the problem

Step 2—Assess and analyse the problem

Step 3—Meet with the employee to discuss the problem

Step 4—Jointly devise a solution

Step 5—Monitor performance.



2. Investigation management

Investigation managers need to:

- plan investigations including the likely impact on resources, and manage activities to be undertaken in the course of the investigation
- provide strategic direction consistent with the authority's objectives and priorities
- manage risk and conflicts of interest
- debrief and reflect on lessons learned.

Investigation planning

Investigations should be planned, resourced and strategically executed. There are numerous planning and coordinating tools investigators can use. An investigation plan should identify the issues to be investigated and how that investigation will be conducted. It may contain an evidence matrix, identify resource needs, and a likely timeframe for completion. The plan may also include a case theory that explains, clearly and concisely, how the law may have been breached because of the conduct, which will be informed by a theory of harm.

Some agencies are subject to strict statutory timeframes for the completion of investigations and the various stages within. Other agencies have less restricted timeframes within an investigation, but are subject to an overall limitation on the time available to take legal action, which may impact on the time available to complete an investigation depending on when it is commenced.

Investigation plans should include a timetable that allows the investigation to be completed within the allowable timeframe. The timetable may need to be adjusted as the investigation proceeds, even if the end date is fixed. This may require an increase in resources at critical points, or strategic alterations in the investigation plan to make the deadline achievable. For example, early offences may need to be dropped from the investigation so investigators can concentrate on later offences that have sufficient time to be properly investigated.

International Competition Network: *Annotated Guidance on Investigative Process* <https://www.internationalcompetitionnetwork.org/portfolio/annotated-icn-guidance-on-investigative-process/>

International Competition Network: *Effective Project Delivery* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-project-delivery/>

CLIP Academy: *Investigation Planning Module*

CLIP Academy is an eLearning product, developed by the ASEAN-Australia New Zealand Free Trade Area Competition Law Implementation Program.

CLIP Academy eLearning module 4 focuses on investigation planning (including case theory) and is available here: <https://clip.learnflex.com.au/>.

Sample Investigation Plan template

Identification

Matter	^Trader name or other relevant title^	Reference Number: ^number^
Team	^Names of team member and any internal advisors^	
Office	^Location, branch name^	
Date plan updated	^DD MONTH YYYY^	
Current status	^Evidence gathering; Final assessment; Preparing for resolution/litigation^	

Alleged conduct

Basic allegation	^Concise statement of alleged conduct^
Section/s	^Section number and title of alleged contravention^
Case theory	^Insert^
Objectives	^Objectives are more than possible remedies: What difference do we seek to make in intervening in a particular matter?^

Strategic alignment

Priority	^State reasons why intervention is required. Is it a priority area for the authority?^
Other factors	^Are there other factors why intervention is required?^

Authority oversight

First appearance before decision makers: ^within 6 months from commenced^	Last appearance: ^Date^	Next appearance: ^Date^
Last decision: ^Insert^		

Key dates

Date initial investigation commenced: ^As initial investigation^	Relevant KPIs for initial investigation finalisation: ^insert^
Date in-depth investigation commenced: ^As in-depth matter^	Relevant KPIs for in-depth investigation finalisation: ^insert^
Estimated completion date: ^Review periodically^	

Action plan

Next two months

Step	^Major steps to be completed within the next two months. Once completed steps should remain on the plan with the corresponding completion date listed.^	Person responsible: ^name^
Step		Person responsible:

Broad investigation plan

Start date	^Date^	
Month 1	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'
Month 2	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'
Month 3	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'
Month 4	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'
Month 5	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'
Month 6	^List major steps for the investigation: Refer to guidance. You may also wish to list the phase of an investigation below the month.^	^insert date completed'

Risk Management

Risk Description	Risk Level	Status	Impact	Management
^Insert: internal risk and/or external risk. Provide a brief description of the risk^	^ Consider the likelihood of the risk occurring. See Risk Assessment Criteria^	^Insert with guidance from the risk assessment criteria^	^Describe the risk's impacts^	^List major control/s proposed to manage the outlined risk/s^
<ul style="list-style-type: none"> ■ Destruction of evidence ■ Key witnesses become unavailable ■ Misconduct allegations made against staff ■ Respondent is a flight risk ■ Test case 	Significant risk	Active management	<ul style="list-style-type: none"> ■ Investigation is delayed ■ Level of quality is impacted ■ Investigation is discontinued 	<ul style="list-style-type: none"> ■ Senior management attention required to communicate the priority of this investigation ■ Senior management attention required to ensure adequate resourcing

Evidence matrix

Section	Elements	Evidence to obtained to prove	Further evidence required	Evidence gathering logistics—how obtained, by whom, and when.
	A corporation must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.			

The extent of planning depends, in part, on the size of the project. Small investigations generally require less detailed planning, while large or sensitive investigations require more. Small investigations might be pursued with a minimum of involvement by senior managers, while complex investigations might require more regular managerial oversight. Agencies should have a method of assessing the level of planning and reporting required for any particular investigation.

A simple way to assess the level of planning and reporting required for any particular investigation is to divide projects into small, medium and large, and to then consider what planning is necessary and how detailed it needs to be. Factors which may be used to anticipate a project's size include: expected timeframe to complete; complexity of issues; strategic importance; reputational importance; total likely cost; level of impact on authority operations; dependencies and interrelated projects.

Once the anticipated size of a project is determined, an authority might decide to ensure that detailed investigation plans for large projects are approved by senior managers, and less detailed plans for medium projects by less senior staff. By categorising projects as small, medium and large, agencies can begin to develop processes for appropriate planning and risk management. Below is an example of guidance which may be developed within an authority on the level of planning required. Agencies can develop this concept to suit their own circumstances.

1.5 Project scaling—Sample approach to investigation planning for different sized projects³

Key element	Small	Medium	Large
Investigation Plan	Optional/Brief	Mandatory/Detailed	Mandatory/Detailed
Case theory	Mandatory/Brief	Mandatory/Brief	Mandatory/Detailed
Theory of Harm	Mandatory/Brief	Mandatory/Brief	Mandatory/Detailed
Progress reports	Optional/Brief	Mandatory/Brief	Mandatory/Detailed
Media strategy	Optional/Brief	Optional/Brief	Mandatory/Detailed
Communication strategy	Optional/Brief	Optional/Brief	Mandatory/Detailed
Risk management report	Optional/Brief	Optional/Brief	Mandatory/Detailed
Budget reports	Optional/Brief	Optional/Brief	Mandatory/Detailed
Project evaluations reports upon completion.	Optional/Brief	Optional/Brief	Mandatory/Detailed

³ This table was informed by the Project Sizing Guidelines published by Edith Cowan University's IT Service Centre.

Competition agencies operate with finite budgets, so estimation of expenditure and control over it is vital. This important task is made difficult by the unpredictable nature of major investigations; estimating costs for investigations is never an exact science. It is, however, possible to try and predict the likely scales of costs, and to update estimated expenditure as projects develop.

Agencies can equip staff with tools to help them estimate costs, to maintain records of costs incurred and to identify increases in costs as quickly as possible. Tools which separately estimate fixed and variable costs are sometimes useful.

Sample fixed and variable cost components in an investigation

Item	Fixed costs	Variable costs
Staffing costs	<p>How many staff will work on the project and for how long? What will this cost?</p> <p>This may require a breakdown of staff working on the project and an estimate of the time each will spend on the project</p>	<p>Will any temporary staff need to be employed to work on the matter? What will this cost?</p> <p>This might include data entry, administrative assistance, etc.</p>
Legal costs	Internal salaried lawyers	<p>External lawyers</p> <p>Legal Counsel</p> <p>Legal charges beyond individual lawyer's time—e.g. filing charges and administrative costs. It might be wise to seek a quote from external lawyers as this is likely to be a substantial part of the overall costs</p>
Consultants		<p>Economists</p> <p>Experts</p> <p>IT specialists (e.g. someone to assist with search warrant)</p> <p>People to record and produce transcripts of oral examinations of witnesses and suspects</p>
Operational costs	<p>Electricity</p> <p>Photocopying machine lease</p> <p>Office rental</p> <p>Cleaning</p>	<p>Stationery</p> <p>Incidentals required during examination of witnesses etc.</p>
Machinery and equipment	<p>Existing telephone lease</p> <p>Existing IT equipment lease</p> <p>Existing office motor vehicles leases</p>	<p>Procurement and use of mobile telephones, computers, laptops, tablets</p> <p>IT software purchase and license payments</p> <p>Motor vehicle hire or rental and motor vehicle running costs</p> <p>Equipment e.g. white boards</p>
Travel costs		<p>Flights</p> <p>Accommodation</p> <p>Extras</p> <p>These costs might apply to authority staff, consultants, lawyers or any witnesses or suspects the authority has to fund to attend meetings, examinations etc.</p>

Providing strategic direction in line with authority's objectives and priorities

Most competition authorities develop priorities and objectives to guide their work, such as the industry sectors or enforcement and compliance issues it intends to concentrate on. Some authorities publish this guidance—indeed there are benefits associated with being transparent about these; others may use it as an internal guide only.

Employing a strategic direction and providing associated guidance to teams in selecting matters for investigation is important in ensuring that resources are used efficiently. Competition authorities should be mindful, though, that important issues, unanticipated at the time its strategic priorities were set, may arise at any time. Authorities should be flexible and recognise such issues may occur and pursue them as necessary.

Examples of documents showing strategic priorities or direction

New Zealand Commerce Commission: *Enforcement Response Guidelines* https://comcom.govt.nz/___data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

New Zealand Commerce Commission: *Investigation Guidelines* https://comcom.govt.nz/___data/assets/pdf_file/0019/61642/Competition-and-Consumer-investigation-guidelines-December-2015.pdf.

Australian Competition and Consumer Commission: *Corporate Plan* <https://www.accc.gov.au/publications/corporate-plan-priorities/corporate-plan-2018-19>.

Australian Competition and Consumer Commission: *Compliance and Enforcement Policy and Priorities* <https://www.accc.gov.au/system/files/2019%20Compliance%20and%20Enforcement%20Policy%2019%20February.pdf>, and <https://www.accc.gov.au/system/files/2019%20Enforcement-and-Compliance-Priorities.pdf>.

International Competition Network: *Human Resources Management in Competition Agencies* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-hr-management/>.

International Competition Network: *Report on Agency Effectiveness* <https://www.internationalcompetitionnetwork.org/portfolio/report-on-agency-effectiveness/>.

International Competition Network: *Report on the Agency Effectiveness Project Second Phase: Effectiveness of Decisions* <https://www.internationalcompetitionnetwork.org/portfolio/report-on-agency-effectiveness-of-decisions/>.

Managing risk

Every investigation carries risks—to the authority’s reputation, to a market and market participants, to government and to the broader economy. Managing these risks is essential to the success of an investigation and an authority’s effectiveness over time.

The degree to which an authority is prepared to embrace risk will become an important part of the authority’s culture, and will influence the decisions it makes and enforcement action it takes. Some risks are specific to a particular investigation. Others are broader operational risks, such as conflicts of interest held by staff.

One starting point for considering the risks associated with an investigation is a SWOT analysis (an analysis of the **S**trengths, **W**eaknesses, **O**pportunities and **T**hreats). A simple SWOT analysis, perhaps undertaken in a brain-storming session with staff, will help identify the risks faced. Once a team has identified these risks, it can develop plans to appropriately manage them.

SWOT Analysis

To undertake a SWOT analysis, divide a sheet into four:

Strengths	Weaknesses
Opportunities	Threats

Think about your investigation or project by recording the strengths of your case. What factors operate to give you strength? You might have incriminating documentation that gives you strength. Or the media may be calling for someone to rectify the situation which puts public opinion behind you.

Next ask yourself what weaknesses you face. It might be that the matter is technically difficult to fault under your country’s legal framework, or your major witness has memory problems.

Then ask what opportunities are presented to you by this matter. The investigation may give you an opportunity to rectify widespread industry misbehaviour, or it might allow you to promote the authority as having strong regard for consumers.

Lastly, ask yourself what threats exist. For example, could the loss of this case heighten existing concerns about your authority’s effectiveness?

International Competition Network: *Effective Project Delivery* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-project-delivery/>

OECD: *Guidelines on Managing Conflict of Interest in the Public Service and associated Toolkit* <http://www.oecd.org/governance/ethics/oecdguidelinesformanagingconflictinterestinthepublicservice.htm>

International Competition Network: *Ethics Rules in Competition Agencies* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-ethics/>

The Regulatory Craft: *Controlling Risks, Solving Problems & Managing Compliance* (Malcolm Sparrow) <https://sites.hks.harvard.edu/fs/msparrow/Publications--Books--Regulatory%20Craft.html>

Debriefing and reflecting on lessons learned

At the conclusion of an investigation, or litigation process, the team should reflect on the investigation to identify lessons that can be learned. This is particularly important for large and complex investigations, or investigations that manifested unique or difficult issues. Successes as well as failures should be reviewed.

Some aspects of debriefs to consider:

- the scope of the debrief will be dependent on the size and complexity of the investigation
- the project team leader will generally lead the debrief, however in some circumstances it may be appropriate to have an independent person lead the discussion
- the debrief should involve the whole team and, if possible, management and others that have performed a role in the investigation
- the team should consider whether the investigation achieved the desired results, why the investigation succeeded or failed and what aspects of the process should be used or avoided in the future
- a report detailing the issues and any recommendations from the debrief should be produced and circulated, for management to consider how those lessons can be communicated to the broader staff within the authority.

International Competition Network: *Effective Project Delivery* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-project-delivery/>

Sample Debrief template

A debrief does not need to cover every aspect of your investigation.

Focus on key themes or learning elements and keep your debrief concise and to a maximum of 6 pages.

Identification

Matter	
Reference number	
Team	
Office	
Debriefing officer	
Staff participating	
Debrief complete	

Investigation management

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Progress of investigation against Investigation Plan

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Resource usage

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Information and evidence gathering

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Legal and expert resources

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Authority oversight

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Litigation (including pre/post litigation phases if relevant)

What worked well and why?	
What didn't work well and why?	
Lessons learnt	

Novel/new issues

Lessons learnt	
Other comments	

Recommendations

List any recommendations the team might make for changes to systems or processes or access to further information or guidance in the future



3. Managing stakeholders during an investigation

Investigation managers need to:

- appropriately manage the collection and handling of evidence, and protect confidential information
- facilitate effective knowledge management
- communicate regularly and effectively with internal stakeholders to inform decision making and manage expectations
- communicate appropriately with external stakeholders to facilitate productive relationships and manage expectations
- facilitate accurate and timely record keeping.

Management and handling of evidence

Proper evidence management is another important element of investigations management. This includes ensuring evidence is:

1. collected and stored in a manner which does not compromise its nature
2. handled in a manner which provides certainty that the evidence could not have been accidentally or deliberately altered or substituted
3. presented as the same evidence as collected.

The key principles for effective evidence handling are:

1. maintaining a register of evidence items and associated information
2. recording chain of custody
3. securely storing original evidence
4. using working copies of evidence.

A competition authority may choose to adopt an evidence management policy and procedures or guidelines that set out the way in which evidence is to be handled within the authority to ensure its integrity, continuity and security.

In addition, the storage, management and preservation of evidence is often governed by other legislation, codes and procedures, including: privacy legislation, evidence laws and public service codes of conduct.

International Competition Network: *Competition Agency Confidentiality Practices Report* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-confidentiality-practices-report/>.

International Competition Network: *Annotated Guidance on Investigative Process* <https://www.internationalcompetitionnetwork.org/portfolio/annotated-icn-guidance-on-investigative-process/>.

International Competition Network: *Effective Knowledge Management* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-knowledge/>.

Managing witnesses

Investigators should ensure that at all times communication with witnesses is appropriate and that there is no coaching of the witness in relation to evidence to be provided by them.

After a statement has been obtained from a witness, a witness management plan should be used to manage communication with witnesses and to schedule any appearances in court. Witnesses should be updated on the status of the matter, especially where a witness has been put on notice that they may be called on to give evidence in court. If an investigator learns that a witness will not be required to give evidence, the investigator should update the witness of this fact as soon as appropriate.

Investigators should liaise with a witness once a date for litigation has been scheduled and assist the witness with any arrangements necessary to attend court.

At the conclusion of a matter, investigators should notify all witnesses that have provided evidence of the outcome of the investigation.

CLIP Competition Primers for ASEAN Judges: *Expert evidence in the context of competition law cases* <https://aanzfta.asean.org/wp-content/uploads/2019/02/3.-CLIP-III-Judicial-Primers-Expert-Evidence.pdf>.

Communications with stakeholders

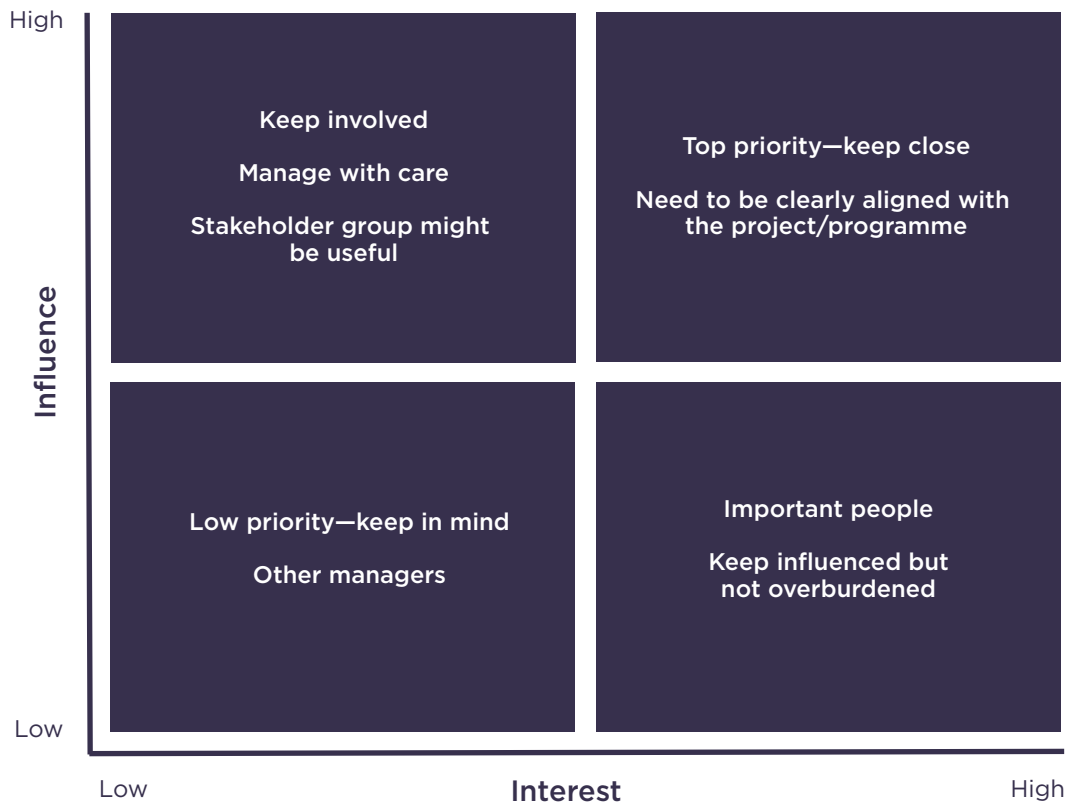
There will be many stakeholders with an interest in an investigation and its outcome, some of whom will seek to influence what is investigated, how it is investigated and what conclusions are drawn. To manage engagement with stakeholders, it is useful to develop a communications plan about why, to whom, what, how and when to communicate.

A project manager should facilitate the provision of timely and accurate information to stakeholders. Communication is also important between members of a project team, as project team members are frequently in receipt of feedback from and between stakeholders.

A good starting point in communication planning is to identify the stakeholders with whom to engage. Critical communication periods for your project will be at the start and at the end of your project, but there are also likely to be points along the way requiring communication.

A useful tool for identifying stakeholders and to assess the level of communication required is the stakeholder grid, shown below.

Stakeholder grid



Stakeholders who have a high interest in your investigation and are highly influential will be the main stakeholders with whom to maintain communication. You might look to develop a strategy for each category of stakeholder.

External stakeholders

Communications with external stakeholders are undertaken for a variety of reasons:

- to develop a trusting relationship (even if a good relationship is not essential to the outcome of this matter, it may help in another)
- to disarm any unfair criticism
- to obtain information, evidence or assistance from the stakeholder
- the stakeholder's view may help you understand aspects of the investigation that are not readily apparent
- to develop your reputation as a fair and open regulator
- to manage expectations.

As a general rule, officers should take care to keep notes of verbal communications and copies of written communications with stakeholders. Stakeholders may want to provide information anonymously or confidentially. Each authority needs to consider whether their laws enable them to receive information on that basis and develop appropriate policy for dealing with this issue.

Sample Investigation Contact Log (all communications matters of substance are addressed)

Teams may choose to maintain a central log of all contacts and key communications relevant to the investigation, with key correspondence linked to it. In addition to all key external communications with parties, this log may list voluntary requests for information or statutory notices (along with due dates and hyperlinks to the relevant requests and responses), all interviews conducted (with links to the transcripts and recordings) and contact details for each party and their legal counsel.

Date	Time	Event Type	Internal/ External	Internal Person/s	External Co/s and Persons	Relating To	Event or Fact Text	Where stored	Related Docs.

If an investigation is attracting media or political interest, or likely to do so, it is wise to develop a media strategy for the investigation. That strategy may involve regularly updating the authority's media spokesperson to enable information to be made public, or it might involve the preparation of media releases or explanatory documents to enable media to follow progress. The strategy may simply identify who is to talk to the media about the matter, or perhaps who is not to talk to the media about it.

Investigations that attract widespread and diverse interest may also require a communication strategy. The purpose of a communication strategy is to identify the various stakeholders involved in the investigation and to develop strategies for positive engagement with them. This may involve the communication of information, but it may also involve engagement aimed at encouraging their cooperation and assistance.

In addition to publishing media releases at key stages of an investigation, a competition authority may choose to engage with the media to publicise changes or reinforce its approach to competition law enforcement more generally, or to communicate its enforcement priorities at a particular point in time. Two examples from the ACCC are below.

ACCC to further increase enforcement work

3 August 2018

Over the next year the ACCC will further increase its enforcement action, expand its work on data, algorithms and digital platforms, and increase the use of its powers to gather evidence in complex merger investigations, ACCC Chair Rod Sims told the members at the Law Council of Australia's Business Law Section annual general meeting held in Sydney tonight.

Recently, the ACCC has won three significant consumer protection penalties: \$10m for Telstra; \$10m for Ford; and \$9m for Apple.

Competition penalties have also been increasing, with a maximum penalty of \$46 million for Yazaki, although this is currently under appeal.

'The ACCC is increasing its enforcement activities, and taking a firmer stance on sanctions and penalties with a view to making an even greater impact on compliance,' Mr Sims said.

'We have been vocal in our advocacy for imposition of meaningful penalties that look not only at the conduct in question but also, crucially, the relative size of the company.'

'We must alter incentives; it must matter a lot more to companies and their senior executives that they avoid breaching the Competition and Consumer Act.'

'In consumer protection, we hope Federal Parliament will this month pass legislation that will see penalties increased nine-fold from \$1.1 million to \$10 million, with the further framework of options for three times the gain or ten per cent of turnover, to get this key deterrence,' Mr Sims said.

'We have already made a small start at looking at the impact of algorithms on the consumer experience. For example, our past action against Google, and we are looking at comparator sites to see whether results are based on price and consumer benefit, or on commissions.'

The ACCC was also aware of the entry of dominant platforms into various 'vertical' businesses and the EU case against Google for abusing its dominant position to require mobile manufacturers to install its search app and app store, he said.

'The ACCC is turning its mind to such issues. The changes implemented since the Harper reforms give us the tools to do this, which we did not have before,' Mr Sims said.

Mr Sims also outlined the change in the ACCC's approach to the merger review process for the growing number of complex and contentious transactions that require a public review.

'The most obvious change is our increasing use of our powers to obtain information, documents and evidence to improve our evidence gathering. In the last financial year we issued 89 notices, significantly more than the 44 in the previous financial year. These were concentrated in the relatively small number of mergers where our concerns warranted increased evidence gathering to be used for possible litigation.'

'With the PN/Aurizon review now moving to litigation, our decision and our approach to evidence will again be tested in the Federal Court,' Mr Sims said.

'Merger parties should be aware that we do not just take a narrow merger assessment during our reviews and will consider any other related agreements to determine whether they would, combined with the acquisition, be likely to substantially lessen competition or whether separately they potentially breach other provisions in the Competition and Consumer Act.'

The ACCC is currently reviewing a number of significant mergers, including Transurban/WestConnex, CKI/APA, and the Nine/Fairfax merger.

'Despite the noise and commentary, I think that those of you who deal with us on a regular basis know well that our processes are consistently applied and our end game is getting the right decision,' Mr Sims said.

ACCC 2019 focus on consumer guarantees and anti-competitive practices

26 February 2019

Large retailers supplying high value electrical appliances and whitegoods, such as refrigerators, computers and washing machines, will be a key enforcement priority for the ACCC in 2019.

'We're concerned that many manufacturers and large retailers are not complying with consumer guarantee laws and this will be an area of renewed focus for us this year,' ACCC Chair Rod Sims said in a [speech](#) to the annual Committee for Economic Development Australia (CEDA) today.

'Electrical and whitegoods products are the second most complained about industry after motor vehicles.'

'Last year we received nearly 9000 contacts about electrical appliances and whitegoods, with three quarters of those relating to break downs or other quality issues.'

Customer loyalty schemes will be another new priority, with the ACCC closely examining the use of any personal data collected, whether consumers receive the benefits promised, and the impact on competing firms and new entrants. These schemes include those in the airline, retail and hospitality sectors.

The ACCC will also continue to advocate for changes which benefit consumers. Keeping laws in step with the dynamic market economy has been a vital part of recent ACCC advocacy, including much higher maximum penalties for corporations which breach the consumer law. Maximum penalties for each breach are now the greater of \$10 million, or three times the benefit from the breach or, if the benefit cannot be calculated, 10 per cent of the annual Australian sales turnover.

'We believe that Parliament, in changing the law, intended that in certain cases in future we will see penalties of over \$100 million for breaches of consumer law,' Mr Sims said.

'A new advocacy priority for us is to introduce a prohibition of unfair contract terms. At present, when a contract term is declared to be unfair by a court, it is void but no penalty applies. We believe it is time to prohibit unfair terms and apply a penalty for their inclusion in standard form contracts,' Mr Sims said.

Other ACCC advocacy consumer priorities include:

- making the case for the introduction of a general safety provision that would prohibit the sale of unsafe goods, requiring companies to take all reasonable steps to ensure products that they are selling are safe
- engaging in the debate about the adequacy of the laws against companies which engage in harmful or unfair conduct toward consumers.

The ACCC's cartel investigation team expects decisions this year from the Commonwealth Director of Public Prosecutions on three criminal cartel investigations that have been referred to them. Further cartel investigations are at an advanced stage.

'As these criminal cartel cases are progressed, we are confident they will work as a strong deterrent to egregious and damaging collusive conduct across the Australian business community,' Mr Sims said.

'Turning to competition advocacy, we need as a community to debate how much we want to reduce anti-competitive behaviour and the current trend to company consolidation in many sectors,' Mr Sims said.

The full list of the ACCC's 2019 enforcement priorities is available at: [Compliance & enforcement policy & priorities](#).

A summary is also available at: [2019 Compliance and Enforcement Priorities](#).

'2019 will be an important and exciting year for the agency, with the ACCC focusing on its purpose of ensuring markets work for the long term interests of consumers.'

Mr Sims' full speech is available at: [2019 Compliance and Enforcement Policy](#).

International Competition Network: *Report on the 2009 Seminar on Competition Agency Effectiveness* <https://www.internationalcompetitionnetwork.org/portfolio/2009-seminar-on-competition-agency-effectiveness/>.

International Competition Network: *Effective Project Delivery* <https://www.internationalcompetitionnetwork.org/portfolio/competition-agency-practice-manual-effective-project-delivery/>.

International Competition Network: *Guidance on Investigative Process* <https://www.internationalcompetitionnetwork.org/portfolio/guidance-on-investigative-process/>.

International Competition Network: *Investigative Tools Report* <https://www.internationalcompetitionnetwork.org/portfolio/investigative-tools-report/>.

UK Department of Finance: *Programme and project management tools and techniques* <https://www.finance-ni.gov.uk/articles/programme-and-project-management-tools-and-techniques>.

Internal stakeholders

A communication plan should include internal and external stakeholders. Some competition authorities have well developed communication and reporting systems that provide regular opportunities for staff to easily report progress, issues, and developments to internal stakeholders. For others, such communications will be more ad hoc and will need to be initiated by the project lead.

This can occur at a variety of levels: communications with your team, middle and senior managers, and where appropriate senior executive, are all important stakeholders to communicate with. An important aspect of communication with managers is to manage expectations.

Progress reports

Progress reports allow senior management to keep abreast of developments, understand emerging problems and to understand whether desired timetables are likely to be met. They also help management to know when they need to step in to reassess commitment to the investigation, to alter the investigation in some way (such as adding or subtracting resources) or whether it should be discontinued.

An investigator can also use a progress report to identify sensitivities (such as political, media or funding) that are arising and to alert senior management to these issues. Progress reports might be scheduled periodically and/or can be used on an ad hoc basis as urgent and important issues arise.

'Stop/go' decision points

All New Zealand Commerce Commission investigation plans include a 'stop/go' decision point every three months during an investigation. Building in review points in an investigation plan allows the team to seek regular advice from managers about scope and timing of an investigation. It keeps internal stakeholders up to date on key issues and can provide focus to the investigation project team which improves timeliness.

International cooperation

As the globalisation of markets increases and a growing number of jurisdictions implement national competition laws, the benefits of international cooperation in competition enforcement become stronger and stronger.

International cooperation can assist with cross-border investigations, enhance the skill set of staff by building partnerships with international counterpart agencies to share and develop knowledge, and assist other countries to build effective competition regulation frameworks. Within particular investigations, international cooperation can reduce the risk of divergent decisions, facilitate access to information and evidence in other countries, and assist with multi-jurisdictional merger cases and lodging of applications for leniency in cross-border cartel matters.

OECD: *International co-operation in competition* <https://www.oecd.org/competition/internationalco-operationandcompetition.htm>.

International Competition Network—The International Competition Network is the international body dedicated exclusively to competition law enforcement. Its members represent national and multinational competition authorities. There are a range of useful resources on its website: <https://www.internationalcompetitionnetwork.org>.

The ASEAN Competition Enforcers' Network (ACEN)—ACEN was formed by the ASEAN Experts Group on Competition to facilitate cooperation on competition cases in the region and to serve as a platform to handle cross-border cases. The aims of the ACEN are to enable mutual understanding of each other's enforcement goals and objectives and to encourage information sharing between ASEAN competition authorities. The ACEN will also look into facilitating cooperation on mergers and acquisitions with a cross-border dimension.

ASEAN Regional Cooperation Framework—A Regional Cooperation Framework ('RCF') serves as a set of guidelines for ASEAN Member States to cooperate on competition cases. The RCF, which has been endorsed by ASEAN Economic Ministers, sets out the general objectives, principles, and possible areas of cooperation among ASEAN Member States that may be undertaken on a bilateral, multilateral, sub-regional or regional approach, and on a voluntary basis, in relation to the development, application and enforcement of competition laws. Cooperation under the RCF will be founded on mutual respect, transparency, goodwill, flexibility, and the availability of resources.



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

