



ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA (AANZFTA)  
ECONOMIC COOPERATION WORK PROGRAMME (ECWP)



Australian  
Competition &  
Consumer  
Commission

# Regional Workshop on Economic Analysis for Competition Law Enforcement

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# Case Prioritisation, Resource Allocation and In-House Capacity



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# Topics in this presentation

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- Case Prioritisation
  - Case selection
  - Enforcement Priorities
- Resource Allocation
  - Special assessment teams
- Capacity Building
  - Training
  - Recruitment

# Case Prioritisation

“Economics is the science of scarcity”

- *Lionel Robbins 1932*

- While not an exact quote, it demonstrates how economics can not only help us with investigations, but also with investigation management.
- While we like to think of staff as people instead of a resource, staff are in fact a valuable resource that needs to be efficiently allocated



# Case Prioritisation

- Other than staff, an agency has to balance a number of resources. These resources include:

- Staff
- Time
- Money



- Agencies also have a number of needs to meet while balancing these resources. These needs include:

- Cessation of harmful conduct
- Political pressure/expectations

# Case Prioritisation

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- So where do we start?
- Figure out: what cases does the agency want to investigate?
- How can we figure out which cases are most worthy of our time?

# Enforcement Priorities

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- The use of enforcement priorities
- List these priorities. They could include:
  - Specific conduct
  - Specific industries/markets
  - New areas of law in focus
- It should be specific to your agency, economy, legal environment and, to a certain extent, political environment.



# Enforcement Priorities

- The ACCC publishes its enforcement priorities, and a statement explaining the ACCC's enforcement strategy.

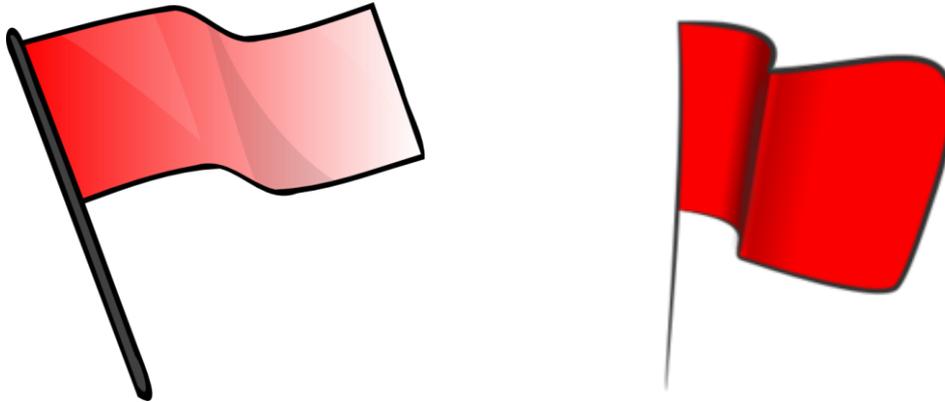
*“The ACCC cannot pursue all the complaints it receives or issues that come to its attention about the conduct of traders or businesses and the ACCC rarely becomes involved in resolving individual consumer or small business disputes. While all complaints are carefully considered, the ACCC’s role is to focus on those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises its discretion to direct resources to matters that provide the greatest overall benefit for competition and consumers.”*



# Conduct that is always a priority

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- The ACCC outlines on its website that there is certain conduct that is always a priority.



- This conduct is listed on the next two slides

# Conduct that is always a priority

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- conduct of significant public interest or concern
- conduct resulting in a substantial consumer (including small business) detriment
- unconscionable conduct, particularly involving large national companies or traders, which impacts on consumers and small businesses
- conduct demonstrating a blatant disregard for the law
- conduct involving issues of national or international significance
- conduct involving essential goods and services

# Conduct that is always a priority

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- conduct detrimentally affecting disadvantaged or vulnerable consumer groups
- conduct in concentrated markets which impacts on small businesses or suppliers
- conduct involving a significant new or emerging market issue
- conduct that is industry-wide or is likely to become widespread if the ACCC does not intervene
- where ACCC action is likely to have a worthwhile educative or deterrent effect, and/or
- where the person, business or industry has a history of previous contraventions of competition, consumer protection or fair trading laws.

# ACCC Enforcement Priorities

- The ACCC has the following priorities for 2016:
  1. competition and consumer issues in the agriculture sector
  2. competition and consumer issues in the health and medical sectors, including consumer protection issues arising from health claims by large businesses and the ACCC's 2015 report to the Senate on the private health insurance industry
  3. cartel conduct impacting on government procurement
  4. ensuring small business receive the protections of:
    - industry codes of conduct, including the Franchising Code, the Food and Grocery Code and the revised Horticulture Code, and
    - new legislative provisions extending unfair contract term protections to small businesses



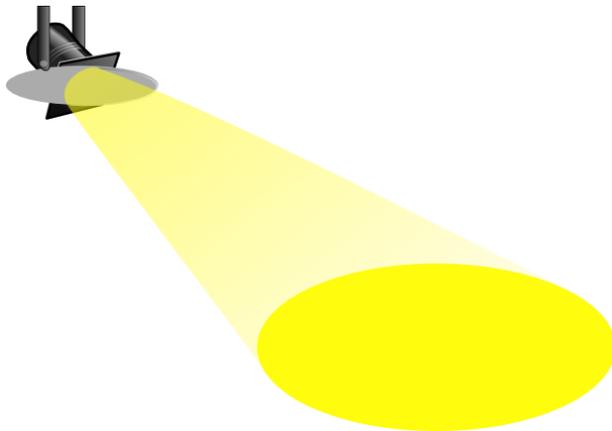
# ACCC Enforcement Priorities

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5. the effectiveness of action taken by suppliers to recall unsafe consumer products
6. consumer guarantees, with a focus on representations made by large retailers about express and extended warranties
7. consumer issues arising in relation to new car retailing, including responses by retailers and manufacturers to consumer guarantee claims
8. in conjunction with other agencies and partners, disruption of scams, particularly those that rely on building deceptive relationships and which cause severe and widespread consumer or small business detriment
9. consumer protection issues impacting on vulnerable and disadvantaged consumers with a particular focus on older consumers and consumers who are newly arrived in Australia.

# Enforcement Priorities

- Priorities can give a good indication to the agencies staff, business and the wider economy conduct that will be scrutinised heavily. This alone may even act as a deterrence in some situations!



# Initial Assessment

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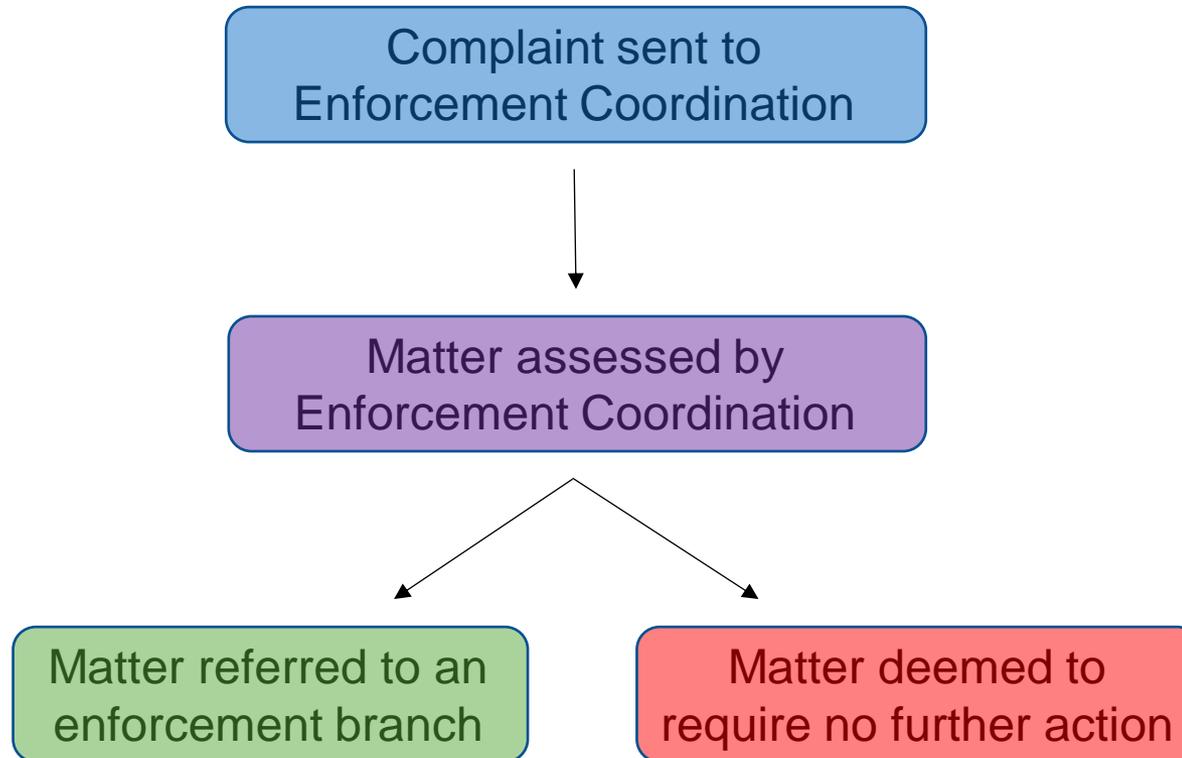
- An important juncture is the initial entry of a complaint or investigation into an agency
- The initial assessment of the a complaint is important to discard irrelevant or inconsequential complaints
- It is also an important advocacy point for the organisation
  - How you treat your complainants, especially when you are not taking their complaint any further, will greatly impact their opinion of your organisation

# ACCC Assessment Process

- The ACCC has a special team that is responsible for the initial assessment of all competition complaints made to the ACCC.
- When a complaint comes in, it is sent to the Enforcement Coordination team for initial assessment



# ACCC Assessment Process



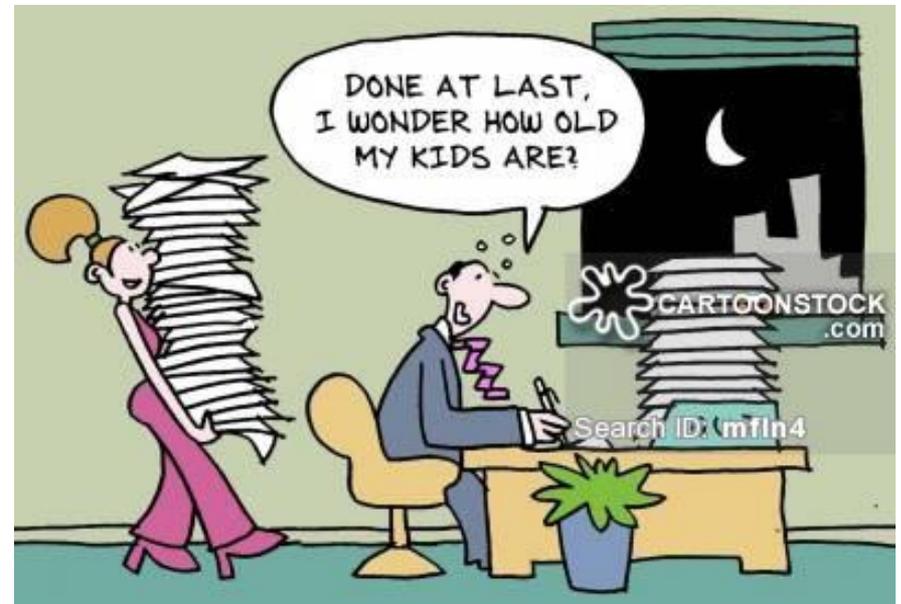
# ACCC Assessment Process

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- Having the one team assess all complaints initially ensures that the ACCC has:
  - A consistent approach to assessing complaints
  - A consistent tone for responding to complainants
  - Someone responsible for ensuring complainants receive a response from the ACCC, regardless of the complaint outcome
- Once a complaint is passed on to an enforcement branch, it's up to the enforcement general manager to determine a team's capacity to take on further matters

# Case Assessment

- Throughout the process, there needs to be honest communication and feedback between investigative staff, managers and decision makers about a number of issues:
  - Workload
  - Progression of the case
  - Strength of the case



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# In-house training



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# In-house training

- The ACCC offers a number of in house training courses in economics, both for new starters and established staff, such as introduction to micro economics
- The ACCC also engages with private law firms to give training on competition law topics, including the use of economic evidence. This serves a dual purpose of leveraging off the knowledge of experienced lawyers, and allowing the law firm to become familiar with ACCC staff



# Recruitment practices

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- You might want to consider alternative paths to increase the amount of economists in the organisation.
- Creation of a specific economists team
- Hire economics students as summer interns
- The ACCC has a summer intern program that gives successful interns an inside track for a graduate position



# Outreach to Universities

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- Most economists will pass through a university at some stage. Keeping an eye on the education of young economists is a good way of creating knowledge of your agency, including interest in applying for jobs there
- The ACCC undertakes a number of advocacy based visits to universities to give lectures on competition law, the role of the ACCC and what it's like to work at the ACCC.



# Final Thoughts

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- Have a set of priorities to target which complaints warrant further investigation
- Some conduct may always be a priority
- Have a system in place to review initial complaints
- Recruitment of economists goes beyond just interviewing economists

# Questions?

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