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the Australia and New Zealand

School of Government

IDRC Pre-ICN Forum on Competition and Development Alliance Building for A Culture of Compliance

Session 1: The general case for alliance building

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Tuesday, 17 May 2011

The Hague, The Netherlands

Key Issues

- What should be done? Value to the public?
- What may be done? Authorising environment requirements?
- What can be done? Operational and legal capabilities?
- What cooperation required?

These are separate but interrelated core challenges

Distinction Between Competition Law and Competition Policy

- **Traditional antitrust law:**
 - Cartels
 - Mergers
 - Abuse of dominance
 - (Possibly deceptive and misleading advertising)
- **Comprehensive competition policy - all laws and government actions that directly or indirectly restrict competition**

Alliance Building

- **Requires adequate political analysis prior to recommending action**
- **Support of other parties is one element in seeking change**
- **Their support may be offset by opposition from others i.e. opponents build alliances**

Political Issues

- **Widespread antimonopoly laws and practices are harmful**
- **Deep seated political support for such practices and strong opposition to reform**
- **Some forces for reform**
- **Need for in depth analysis of political forces**

Some Drivers of Reform

- **Public concerns about prices and monopoly**
- **Scandals**
- **Media concerns**
- **Interest group concerns**
- **Crises**
- **Electoral mandates**
- **Sequencing**

Sources of Support for Change

- **Political leadership**
- **Good institutions**
 - Independent
 - Competition culture
 - Competent
 - Able to carry public arguments
- **Prior reforms**

Complex Government Processes

- Many discussions fail to recognise complex government processes. Need to understand:
 - Policy processes
 - Policy cycle
 - Network interest intermediation
 - Other aspects of process

Engaging with Alliances

- **Consumers**
 - Weak
 - Diffused interests
 - Not necessarily supportive of competition
- **The divided interests of businesses**
- **Big business: cost benefit equation may be negative**
- **Small business and farmers**
 - Need education
 - Can be made to understand where their interests lie
 - May have concerns about the regulator attacking them
 - Can become somewhat dangerous supporters



Engaging with Alliances (2)

- **Trade unions:**
 - often have a proconsumer view
 - product market competition can have negative effects on union wages
 - can be driven by antimarket ideology
- **Other parts of government can be helpful: central agencies especially important**
- **Some parts of government unhelpful**

Constitutional Issues

- **Competition law applies in over 100 countries**
- **It has the status of a basic law**
- **It is nearly always applied by an independent regulator and has judicial features**
- **Note the important role of prohibitions on restrictions on interregional competition in constitutions (e.g. US, Australia) and treaties (e.g. TFEU)**
- **The Chinese approach**

Independence

- **Symbolism**
- **From symbolism to substance?**
- **Thurman Arnold view of antitrust**
- **Credible commitment (and agency design)**
- **Independent of (a) political, (b) business interference**
- **Expertise in assessment and process**
- **The “conscious pilot” perspective**
- **Constitutional aspects of independence**
- **International policy transfer**