

# Trends in Competition Law Implementation

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# The Remarkable Transformation

- Competition Law Systems
  - 1950: <10
  - 1987: <30
  - Today: >130

# The Rediscovery

- Importance of Policy Implementation
- Focus on Institutional Design
- Attention to Agency Operations
- Extraordinary Possibilities for
  - Comparative study
  - Accelerated learning

# Agenda

- General Observations
- Promising Trends
- Personal Views only
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# Resources

- Kovacic & Lopez-Galdos, Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes, 79 *Law & Contemporary Problems* 85 (2016)
- Kovacic & Hyman, *Consume or Invest: What Do/Should Agency Leaders Maximize?*, 91 *Washington Law Review* 295 (2016)
- Kovacic, *Project Selection* (2016) (ICN On Demand Training Video), available at [www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org)

# Greater Awareness of Nature of Competition Law and Policy

- Experimental Quality
- Importance of Learning
- Risk (and Failure) as Essential to Progress
- The Virtuous Cycle: Incremental Improvement
  - Experimentation
  - Assessment
  - Adjustment

# Realism in Expectations

- The 20-30 Year Start-Up Phase
  - Determining durability of political support across regime changes
  - Assessing agency resilience
    - Leadership transitions
  - Setting necessary agency foundations
  - Establishing collateral institutions

# Realism in Comprehending Difficulty of Program Implementations

- Examples:
  - Routine Investigation Tasks
  - Merger Control
  - Conversation with the Courts
  - Leniency
  - Criminal Enforcement



# Insights into Leadership Traits

- Economic Awareness
- Political Awareness
- Management Experience
- Resilience
- Technical Proficiency

# Better Understanding of Impact of Design Choices

- Multiple Goal Structures
  - Public interest and political intervention
- Multiple-Function Agencies
- Governance Choices: Boards vs. Colleges

# Promising Trends

- Prioritisation and Project Selection
- Governance
- Process

# Realistic Aims

- Thoughtful Weighing of Risks and Rewards
  - By project
  - Across the portfolio
  - Calculated risks vs. reckless gambles
- Matching Commitments to Capacity
- Good Management Processes
  - Close attention to “criticality one” matters
- Learning from Experience

# Setting Priorities: General Considerations

- Inevitable and Necessary
- Most Important Leadership Task
  - “Happy to have the job” vs. “Here to do something with the job |
- Fire Department Model
  - Reactive, activity-based measurement
- Sailing Ship Navigation Model
  - Destination-oriented, adaptive

# Why Prioritization Is Difficult

- Identifying Best Return on Investment
- Multiple (Inconsistent) Legislative Goals
- Mismatch: Legislative Aims/Resources
- Leadership Incentives: Consume or Invest?
- Multi-Function Mandates: “Competition-Plus”

# Agency's Role

- Emergency Room Triage
  - Hidden tradeoffs?
- Policy Shock Absorber
- Adaptation Mechanism

# Prioritization and Legitimacy

- External Consultation
- Meaningful Disclosure
  - Exemplar: NZ Commerce Commission
    - Statement of Intent, Strategic Plan
- Evaluation
- Legislative Adjustment



# Priority Setting: Desired Features

- Knowledgeable Leadership Team
  - Experience, expertise, judgment
- Meaningful Disclosure
- Historical Awareness
- Balance: Consumption and Investment
- Evaluation

# Suggested Project Selection Criteria

- Consistent with Our Priorities?
- Anticipated Gains?
- Potential Risks?
- Who Will Do It?
- How Much Will It Cost?
- How Long Will It Take
- How Does It Fit in the Existing Portfolio?
- How Will We Know If It Worked?

# Good Process: Overlooked Elements

- Quality of Human Capital
- Meaningful Disclosure
- Evaluation