



## **Governance, Compliance & Fair Trading in the Caribbean<sup>1</sup>**

**Speaking Notes of David Miller, Executive Director, Fair Trading Commission**

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The leadership and membership of the Caribbean Corporate Governance Institute, Dr. Ronald Ramkissoon, Chairman of the Trinidad & Tobago Fair Trading Commission, Fellow Panelists, Dr. Troy Waterman and Mr. Bevan Narinesingh, from the competition authorities of Barbados and Trinidad & Tobago, respectively, ladies and gentlemen, a pleasant Good Morning to you.

Reading from Jamaica's Corporate Governance Framework, "Corporate Governance embodies processes and systems by which corporate entities are directed, controlled, managed, and held to account. Corporate Governance influences how objectives are set and achieved, how risk is monitored and assessed, and how performance is optimized"

I will focus primarily on the governance framework used by competition authorities worldwide and some of the information I will discuss today comes from the Office of Fair Trading's June 2011 Guidance, *"How your business can achieve compliance with competition law."*

Achieving a culture of competition law compliance requires an investment by the business or the competition authority, including a real commitment of management time. The benefits of this investment far exceed the cost.

Having an effective culture of compliance with competition law will help a business avoid the many adverse potential consequences of competition law infringement, including the following:

- financial penalties
- adverse reputational impact (business and personal) associated with having committed a competition law infringement
- director disqualification
- considerable diversion of management time and legal costs to deal with investigations by competition authorities.
- unenforceability of restrictions in agreements that infringe the law, and

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- lawsuits from those who have suffered harm as a result of the infringement.

Effective competition law compliance has greater benefits than just avoiding the aforementioned adverse consequences. Other potential advantages include:

- the early detection and termination of any infringements that may help to reduce or eliminate financial penalties and disruption in business
- employees being able to recognise the potential signs that another business might be infringing competition law. For example, where their business might be the victim
- employees being confident of 'the rules of the game' and able to compete vigorously for business without fear of infringing competition law
- employees being able to recognise when they should seek legal advice on potential competition law issues, and
- an effective culture of competition law compliance is an essential part of an ethical business culture, which can provide reputational advantages.

Competition law compliance can be integrated with other items on a business's governance agenda, such as anti-bribery and corruption, internal anti-fraud controls, appropriate audit and accounting systems, and health, safety, and environmental concerns.

it is necessary that Boards have:

1. Knowledge of the competition legislation and competition.
2. Awareness of the competition authority's investigation processes.
3. Knowledge of the requirements to prove or demonstrate breaches of the Act and the features of each breach.
4. Awareness of challenges faced by the competition authority, such as the availability of data and administering the law.
5. Awareness of the legal and reputational implications for pursuing or for not pursuing an action.

To strengthen the organization's reputation, the Board must subscribe to certain core values that are characteristic of most competition authorities. The core values that are applicable in this circumstance are objectivity, credibility, confidentiality, independence, and of course, commitment.

This commitment must be permeated throughout the organization as this will likely ensure compliance.

Senior management, especially the board, must demonstrate a clear and unambiguous commitment to competition law compliance. Without this commitment, any competition law compliance efforts are unlikely to be successful. A common technique used is assigning a senior

officer to the role of driving compliance within the business, and having a system or process for ensuring that appropriate information is disseminated effectively through all levels of the organization (for example, to departments or subcommittees) to all employees.

Frequently used tools include:

- Having a compliance committee, similar to an audit committee
- Regular email and other direct communication – from the top-down
- Employees participating in competition law training activities – focus on identifying potential breaches
- Active participation by the company’s lawyers in business activities
- Sharing information on the legal implications of breaches
- Including in the company’s code of conduct, the implications to the employees of engaging in activities that may breach competition law
- Having a system through which employees may voice their questions/concerns on competition issues (openly or confidentially)
- Implementing policies and procedures under which employees of all levels must demonstrate their commitment to competition law compliance
- Implementing a review system

Therefore, Boards should include in their roles and responsibilities competition law compliance, similar to how technical areas such as audit, finance and accounting, risk assessments and prevention, and other business management skills, are included.

In closing, if I were to sum up my views in a single sentence, that sentence would be “Embrace the work, guidance and assistance provided by competition authorities”.

Thank you.