



Asia-Pacific Economic Cooperation

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## **Enforcement of Business Regulation and Commercial Laws in the APEC Region**

Purpose: Information  
Submitted by: Australia



**Seminar on Best Practices in the Enforcement  
of Competition Policy  
Pucón, Chile  
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# ENFORCEMENT OF BUSINESS REGULATION AND COMMERCIAL LAWS IN THE APEC REGION

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Seminar on *Best Practices in the Enforcement of  
Competition Policy*

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# Context

- APEC economies have made considerable progress in law reform
  - But what is the enforcement experience?
- Objectives of the report:
  - To identify the key features of effective enforcement regimes
  - Focus on the areas of commercial law, corporate governance and competition policy

# Link Between Enforcement of Business Laws and Economic Development

- International competition for investment flows
- Strong economic legal infrastructure leads to improved investment levels due to:
  - Increased investor confidence
  - Lower business costs
  - Innovation and efficiency
- Which leads to:
  - Better investment
  - Increased employment
  - Regional development

# Key Issues and Experiences in the Enforcement of Commercial Laws

- Six key areas
  - Formation of companies
  - Foreign investment laws
  - Business licensing and regulation
  - Formation of contracts
  - Bankruptcy
  - Corruption



# Some Common Themes

- What kind of laws are appropriate?
  - Quality of “black letter laws”
- Many different methods of enforcement
  - Cultural, economic, business factors
- Role of regulatory agencies
  - Capacity
- Access to the judicial system
  - Respect

# Key Issues in the Enforcement of Corporate Governance

- Governance is the way in which companies are governed – relationships among the stakeholders
- Stakeholder interests:
  - Shareholders
  - Creditors
  - Management (boards)
  - Employees
  - Government

# Some Governance Issues

- Decision-making and control
- Minority protection
- Distribution of profits
- Information flow – keeping the market informed
- Abuse of cross-shareholdings



# Some Enforcement Techniques for Corporate Governance

- Formal reporting standards
- Transparent information flows/public disclosure
- Independent boards
- Fines and penalties
- De-listing/suspension
- Derivative actions
- Education/advocacy

# Best Practice Models in the Enforcement of Competition Policy

- Competitive markets should produce innovation, lower consumer costs, efficient allocation of resources and international competitiveness
  - Many new competition laws
  - Growth of regulatory agencies
- Issues to be considered:
  - Due process
  - Transparency
  - Continuing development of “black letter” laws

# Some Enforcement Techniques for Competition Policy

- Prosecutions: fines and penalties
- Divestment orders
- Publicity
- Advocacy
- Private Enforcement Rights

# Observations

- What makes an effective enforcement regime?
  - Clear and complete laws
  - Access
- What makes an effective regulatory agency?
  - Competence
  - Independence
  - Transparency
  - Accountability
  - Resources

# Together With....

- Political leadership
- Professional leadership
- Community acceptance
- Advocacy
- Education
- Respect



# Sanctions?

- What sanctions are appropriate?
  - Depends on economic, cultural and business factors
  - Fines or imprisonment
  - Forfeiture of assets and rights
  - Publicity
  - Access to an effective judicial system

# Suggestions for Further Work

- Ongoing review of “black letter” laws
  - For relevance, completeness, currency and policy consistency
- Development of respected institutions
  - Capacity building
- Education
  - For the judiciary, agencies, professions and investors