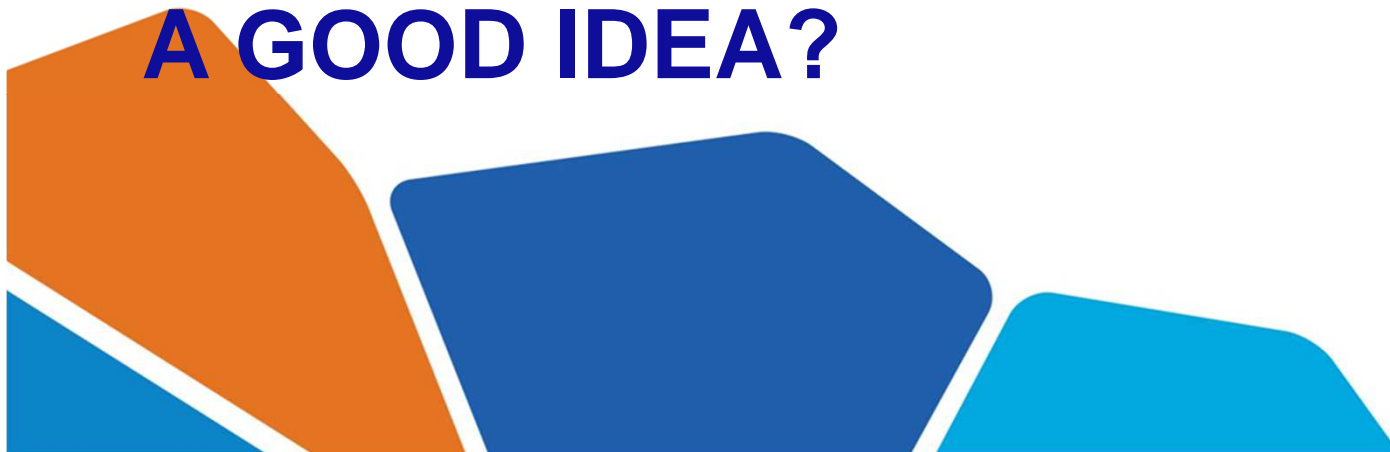


LEGAL



ANNY TUBBS, GENERAL COUNSEL – COMPETITION

**COMPLIANCE PROGRAMMES,
CODES OF CONDUCT AND
SOCIAL RESPONSIBILITY
CHARTERS:
A GOOD IDEA?**



RELEVANT CONSIDERATIONS

- Definitions?
- Goals and role of in-house counsel
- The wider compliance community
- What regulators want?
- Code of Conduct: Pros and Cons?
- Getting it (about) right



DEFINITIONS?



COMPLIANCE PROGRAMME

- Holistic approach to managing risk in a given area
- Effective roll-out of controls e.g. substantive guidance

CODE OF CONDUCT

- Internal high level statement on corporate standards
- May set stricter standards than prevailing laws

SOCIAL RESPONSIBILITY CHARTER

- Differences with Code of Conduct?
- Extent to which imposed on third parties



GOALS AND ROLE OF IN-HOUSE COUNSEL



Corporate Commitment

- Compliance is mandated at the highest levels

Culture of Compliance

- Playing by the rules becomes business as usual

Compliance know-how and networks

- Employees have access to clear guidance and Legal advice

Controls

- There is clarity over what controls are in place to mitigate risks

Critical review

- Regular opportunities to take stock and initiate improvements



THE WIDER COMPLIANCE COMMUNITY



- Few companies with dedicated competition lawyer(s)
- Overall drive to enhance reputation of integrity (asset)
- Need to manage numerous considerations e.g.:
 - ✓ Gifts, hospitality and entertainment
 - ✓ Bribery
 - ✓ Money laundering
 - ✓ Health and safety
 - ✓ Human rights
 - ✓ Competition rules
 - ✓ External engagement requirements
 - ✓ Consumer data management
 - ✓ Insider trading
- Internal “contest” for resource and visibility
- General challenge: training as an effective control
- Cannot guarantee 100% success - work with others to encourage businesses to constantly strive to improve



WHAT REGULATORS WANT?



A credible programme must be built on firm foundation of management commitment and unambiguously supported by a **'top down' compliance culture**

DG COMP'S COMPLIANCE MATTERS

- Disseminate compliance strategy throughout **entire organisational structure**
- Strategy preferably in writing, plainly worded and in all working languages, so understood by everyone (e.g. Manual)

OFT'S DRIVERS OF COMPLIANCE

- Supports risk-based approach - focus on areas where most needed
- Supports principles-based rather than a rules-based approach
- Central, simple message e.g. **Board mission statement** ("Let's compete fairly")

THE SKEPTICS' CONCERNS

- Window-dressing or deliberately devious?
- Lawyers are their own worst enemies?
- Expectations unrealistically high?
- How to measure success...



CODE OF CONDUCT: PROS AND CONS?



PROS

- Clear “tone from the top” to enshrine ethical corporate commitments
- Succinct obligations that extend to all employees and get their attention
- Can go further than prevailing laws
- Allows for internal checks, complaints, investigations, sanctions
- Consistent framework and process for all relevant considerations

CONS

- Necessarily high level so may feel remote from the “day job” for many
- Scope for ethical dilemma if struggle to reconcile targets and Code?
- Wide span of topics “drowns” competition compliance?
- Viewed as led from the centre – inferences of parental control?
- Viewed as led from the centre – tick-box approach at local level?

Unilever’s Code of Business Principles requires that Unilever and all its employees comply with applicable competition laws. There is a global prohibition on participation in cartels.



GETTING IT (ABOUT) RIGHT



WHY TAKE THE JOB?

- To help an overwhelming majority of dedicated colleagues confidently get on with innovating, producing and winning on the merits
- To convert any “cowboys” (and girls)
- To avoid rendering agreements invalid
- To avoid fines
- To avoid potential private actions
- To avoid other risks associated with infringements
- To engage constructively with regulators and enlist support
- To make sure others are equally compliance proficient

