



International
Competition
Network

Agency Effectiveness Working Group

Ethics Rules in Competition Agencies

ICN Agency Practice Manual

April 2016

I. Introduction

How a competition agency carries out its mission can be as important as its enforcement actions. Competition agencies have a duty to carry out their mission in compliance with the law. Ethics violations and perceived bias can damage the integrity of competition agencies, call in to question the outcomes of specific matters, and ultimately hurt an agency's overall mission. Efforts to prevent and detect non-compliance with ethics rules are a core element of agency governance and as such, are a contributor to agency effectiveness.¹

During 2015-16, the Agency Effectiveness Working Group organized a project on competition agency ethics rules. The Project benefitted from input from 28 member agencies in response to a questionnaire. Those responses form the basis for this report. ICN members from the following jurisdictions submitted responses on their ethics rules: Australia, Barbados, Cyprus, Czech Republic, European Union, Finland, France, Germany, Hong Kong, India, Indonesia, Israel, Italy, Jamaica, Japan, Kenya, Korea, Mexico, Mongolia, Netherlands, Norway, Russia, South Africa, Sweden, Taiwan, United Kingdom, United States, and Zambia.

For the purposes of this report, ethics rules are broadly defined as laws, standards or values which aim at upholding confidence in, and the integrity and credibility of an agency's actions, for example addressing issues of corruption, impropriety, and conflicts of interest. Some of the specific values associated with public service can vary from jurisdiction to jurisdiction. However, there are basic values that are common across jurisdictions as public servants are expected to treat citizens with respect, fairness, and integrity; to be impartial and equitable in their actions; and to ensure accountability and effectiveness in the delivery of service. Interaction with the general public and the private sector, particularly in legal enforcement contexts, creates a need for standards to guide and govern that interaction in line with the core ethical values of good government.

The intent of this report is to identify basic principles and common approaches in order to provide insights on competition agency ethics rules. It aims to do so with the recognition of the importance of jurisdiction-specific contexts: that much of the body of ethics rules that apply to competition agencies come from government-wide rules and laws. This report is envisioned in the spirit of international benchmarking, as a practical resource for competition agencies seeking to ensure integrity in their investigative process and decision-making. At the end of this report, basic considerations for competition agency ethics rules are identified.

¹ Ethics is related to human resources, a topic that the Agency Effectiveness Working Group has covered in the [Agency Practice Manual](#). No corporate function has the opportunity to interact with employees more often than Human Resources. Recruiting, hiring, on-boarding, performance reviews, promotions, investigations, discipline, reorganisations, terminations, and exit interviews are key matters of employment and HR is there at every major milestone. In addition, HR is often the primary channel for reporting ethics concerns. It is a source for advice and employee assistance, a developer and deliverer of training, and the author of key policies. We recommend the Agency Practice Manual's chapter on [Human Resources Management](#) as related reading.

Threshold questions on the importance of ethics rules

As a threshold question, members were asked if their agency includes ethics or integrity as an “objective or goal” in its strategic plans or other agency statements, as an indicator of the importance that agencies place on the issue.

Over 80% of the responding agencies reported that they include ethics or integrity as an objective or goal in agency publications and mission statements.

- These principles were most frequently articulated in agencies’ annual strategic plans or reports but also in speeches given to the public, internal agency procedural manuals, messages from agency leadership to staff, or through the agency’s website. Several respondents cited agency “value statements” or “core” or “organizational” values as a distinct document. Agency “core values” statements articulate high-level principles such as respect,

commitment, clarity and expertise to create a good public ethos and promote high standards for employee conduct. Some responses described these principles and statements as “soft” ethics rules.

- The values most frequently identified in the responses include maintenance of integrity, independence, professionalism, transparency and accountability and were described as follows:
 - Maintaining integrity by managing personal interests that may result in conflicts of interest and refusing to accept gifts or hospitalities.
 - Maintaining independence from lawmakers or businesses, as an autonomous enforcement authority and operating within the confines of the law, while also keeping an open relationship with ministries, regulators and stakeholders.
 - Being professional with high expertise, commitment, and acting impartially in an objective manner.
 - Ensuring transparency by making decisions and procedures accessible (via clear and timely disclosures), being open for dialog with stakeholders, and being accountable for its actions.

As a second threshold question, respondents were asked to identify the most frequent types or categories of ethical issues or violations that arise at competition agencies.

- Respondents identified conflicts of interest, often resulting from personal or business relationships built prior to joining the agency, as the category of ethical issues that arise most frequently within competition agencies.

- After conflicts of interest, post-employment restrictions was the next most mentioned issue, followed by breaches of confidentiality by misusing information that is not publicly available, impartiality, impropriety and acceptance of gifts.

II. Framework for competition agency ethics rules

A. Types, formats and sources of ethics rules

Clear principles and guidelines for ethical behaviour help enable public servants to apply ethic rules to their work. Strengthening public sector ethics requires codes of conduct, training and education, role models, and an attentive public (citizens, NGOs, media).

The ethics rules that apply to competition agencies often draw upon core public service values, national laws, and government-wide standards applicable to all public servants.

The ethics rules that apply to competition agencies often draw upon core public service values, national laws, and government-wide standards applicable to all public servants. Some are adapted to competition agency application through agency-specific guidelines. Codes of ethical conduct can help establish expected standards of behaviour for employees.

Nearly all of the responding agencies have a general code of ethics or broad ethical principles applicable to their work. They also have, barring two exceptions, detailed ethical rules that provide more specific guidance and rules based on the general principles. Almost all agencies said that government-wide statutes, rules, and regulations were the source of the ethics rules applicable at their agency (barring one exception). In addition, more than 3/4 (79%) of the respondents said that they also had in place unique, supplemental ethical rules applicable to their employees. This agency-specific reinforcement of government-wide ethics rules can adapt principles to reflect internal agency culture and extend the guidance to specific competition enforcement situations. Approximately 70% of responding agencies reported that their agency's ethics rules are publicly available.

Different ethics rules may apply to different officials within an agency. Some systems require more stringent rules for certain positions, for example there may be supplementary ethical guidelines for specific groups (e.g., senior officials) or professions (e.g., lawyers) in sensitive areas or at higher risk for conflicts of interest, such as law enforcement, procurement, or policy at the interface between the public and private sectors.

Half of the responding agencies have different ethical rules in place for their decision makers (board members, Commissioners, and/or senior management) whereas only three (11%) responding agencies noted different rules applicable to their lawyers. These rules tend to add supplemental obligations and restrictions to the covered class on top of the rules applicable to everyone.

B. Communication and training

The formal legal rules, codes of ethical conduct that define basic standards, and agency values may be limited in impact if not adequately communicated and explained to agency employees. It is important for agencies to communicate the ethics rules to its employees in order to create a common understanding of what is expected and provide clear guidance and advice to help solve ethical dilemmas.

Many competition agencies strive to provide ethics guidance and training to their officials. Agencies can use training to raise awareness on ethical issues and develop the necessary skills for handling ethical dilemmas. A common approach is to focus training on new hires by providing information on rules and values when employees join the agency and perhaps even including a statement of values in the employment contract. Many agencies also provide periodic (e.g., annual) on-the-job training to all employees.

The Project survey asked about the scope and content of agency ethics training. All responding agencies reported that they provide new staff with training on ethics rules as a part of the induction process. Training may take several forms with different level of involvement or participation from the new employees. New staff are generally given information about or taken through all the routines and policies which apply to them; in some cases new employees are asked to confirm that they have received relevant policies and information, sign an “ethics code” or to give a sworn statement that they will abide by applicable ethics rules, or to pass a test after the training is concluded.

Many of the responding agencies (68%) also reported that they provide continuing training on ethics rules, but the frequency of such training varies greatly. About 30% of respondents do not have an ongoing training plan or schedule in place (beyond training new employees). In a few agencies training is given regularly throughout the year, ranging from a frequency of every month to a couple of times during the year. In some instances ethics training may occur during and be integrated into regular staff or management meetings or briefings. More commonly in the responses, agency staff is reminded of the ethics rules through dedicated training once a year, or less frequently, e.g., every 2 or 3 years. For some agencies, ethics training occurs on an ad-hoc basis or at times of revision of existing ethics rules or introduction of new ones.

The type of ethics training reported in the survey may cover different activities. In general, ethics training includes at least the distribution of written education or guidance materials (or their availability on the intranet page of the agency), and the distribution of copies of standards of conduct/agency rules, newsletters and also messages from agency leadership. Many of the agencies also organise instructor-led or classroom training in groups, workshops, seminars, or computer and web based courses. These sessions may use group discussions on ethical dilemmas as part of their training. In some instances, training courses are organised by other bodies of the public administration outside of the competition agency (e.g., the anti-corruption authority or the academy of civil servants).

Successful ethics training means assessing learning styles for the agency and reviewing the various ways by which it can deliver ethics and compliance education, e.g., by developing training in formats that best meet the learning styles of employees. This may mean adapting video content, delivering information via mobile devices or harnessing the power of social and collaborative learning.

C. Administration of ethics rules in a competition agency

A key issue of any “ethics infrastructure” is how employees can be given support in observing high standards of integrity in a complex and changing public sector enforcement environment, particularly the demands of competition law and its interaction with the marketplace. Agencies should consider the organizational framework and procedures for their ethics rules that best support the needs of the agency.

An ethics program should enable an agency to identify and prevent potential ethics violations and to take necessary steps to enable officials to avoid or resolve conflicts or sanction violations.

Although there is no one single recommendation for an ethics infrastructure, some of the findings from the respondents are as follows.

Designated ethics officers and ethics offices

Most responding agencies (approximately 70%) find ethics to be an issue that warrants a dedicated Ethics Officer. This includes individuals whose full-time responsibility is ethics oversight and administration and those that have dedicated ethics responsibilities among other assignments.

Similarly, a large majority of the responding agencies (over 80%) have ethics oversight as a centralised feature in their organisational structure, making it easy for employees to access advice and guidance from a dedicated resource within the agency. Examples of where agencies house their ethics administration include: general counsel or legal services offices, human resources or personnel units, executive or secretary general offices, and audit, “vigilance,” or anti-corruption offices.

Agencies might choose to have an ethics program managed solely within a main ethics office or distributed among multiple parts of the agency. Agencies should consider having a designated ethics official or officials that are familiar with the issues and available to provide necessary training and guidance.

Monitoring compliance and reporting requirements

Promoting and monitoring compliance with ethics rules is an important component to an effective ethics program. Compliance efforts may include reporting requirements, such as the internal disclosure of certain interests for employees (and in some instances, public disclosures for select senior officials). Internal disclosure helps employees and their supervisors readily

identify and resolve potential conflicts before actual problems arise. Public disclosure of private interests can make decision-making more transparent by minimizing the possibility of conflicts between an official's duties and private interests. Such disclosures may cover financial interests, affiliations, outside positions, liabilities and gifts.

Agencies were asked a series of questions addressing the administration of their ethics rules. These included whether the agency required disclosures from its employees to assist in identifying potential conflicts of interest, as well as a series of related follow-up questions addressing who must make such disclosures, at what intervals, whether the disclosures were

made public, and what information was part of any required disclosure. The findings indicate that:

80% of agencies who responded to this question require disclosures to identify potential conflicts of interests and various other ethical issues; the same number said that these disclosures remain confidential.

- Those responsible for making disclosures varied but close to 70% required all employees with access to sensitive information to make such disclosures.

- The timing of the required disclosures also varied by jurisdiction. Some required disclosures before an offer of employment

was accepted. Others required the disclosures upon date of hire. More than half of the jurisdictions who responded required annual disclosures, as well as new disclosures on an ad hoc or as needed basis. These "as needed" disclosures often are required of case handlers at the start of a new investigation in the form of individual conflict of interest certifications by matter.

- The ethics rules applicable to approximately 20% of agencies who responded required the disclosures to be published. Some of these agencies only require the highest-level agency decision-makers to make their disclosures public.
- The substance of the required disclosures varied greatly depending on the agency. Many required detailed statements regarding current business interests, assets, property holdings, information on gifts received, as well as any interests belonging to a spouse or partner. Other agencies required only as much information as was required to assess the nature of the potential conflict of interest. Ad hoc or matter-specific disclosures can be as simple as a certification that the employee has no conflicts with respect to the matter.

Providing ethics advice and counseling

The ability of agency officials to seek advice from a dedicated ethics official or supervisor within the agency when faced with ethical dilemmas in the workplace is a key aspect of an effective ethics program. Many agencies have designated officials available to help employees fulfill their responsibilities under the ethics rules and make decisions based on public interests. This may also be accomplished via access to advice from specialised bodies elsewhere in the government that provide neutral advice on ethical dilemmas.

Where there are dedicated ethics officers, employees have latitude to seek their advice on possible ethical dilemmas. It is common practice among the responding agencies to keep this advice confidential and approximately 70% of them have the ability to provide advice to the employee in writing. Over 80% of the responding agencies have the ability to seek a “second opinion” from external sources elsewhere in the government (often a central government ethics office) on behalf of their employees.

D. Determining and addressing ethics violations

Effective ethics rules address violations. Many agencies have the ability to take administrative actions against a breach of ethical rules within the agency through a framework for disciplinary procedures that allows for timely and just sanctions. Administrative sanctions may range from a warning or reprimand to suspension or dismissal. In many jurisdictions, employees may be subject to criminal sanctions for certain ethics violations, often brought by public prosecutor offices.

The agency questionnaire addressed the processes (both internal and external) for determining ethics violations and the available sanctions.

- For approximately 85% of the responding agencies, internal investigations of possible ethics violations are conducted within the competition agency. The initial stages of internal investigations typically involve supervisors or employees within the same management chain or otherwise the human resources division. Other examples cited include agency integrity or personnel issues committees.
- Approximately two third of the responding agencies also have an external process for possible ethics violation, including other administrative agencies (e.g, a central government ethics office or civil service commission) or public prosecutors or police.
- Investigations conducted by competition agencies are often based on internal rules or guidelines and employees are given the opportunity to give an explanation or appeal the initial decision within the agency (e.g., to the Board or Commission) or to external authorities.
- If employees are found to have violated the ethics rules, upon conclusion of the internal investigation, they can be subject to internal disciplinary actions. The most commonly cited disciplinary actions for ethical violations were reprimand, suspension and dismissal, depending on the severity of the violation. Several responding agencies also cited the ability to impose fines, pay cuts or salary reductions, and demotions. Further, when violations are considered material or significant, external authorities such as the police or public prosecutors may commence criminal prosecution, which may subject employees to criminal sanctions (54% of respondents).

The most commonly cited disciplinary actions for ethical violations were reprimand, suspension and dismissal, depending on the severity of the violation.

- Approximately half of the agencies responded that ethical violations would or could be publicized internally within the agency or to another part of the government (e.g., a ministry with oversight or central government ethics office) overseeing the competition agency or government-wide ethics administration. A small number of respondents noted that misconducts were also publicized to the public in aggregate or statistical format, without specifics such as the name of the wrongdoers.

III. Overview of common ethics rules applicable to competition agencies

Conflicts of interest that impact involvement in cases

- **outside employment/activities**
- **financial interests and personal relationships and affiliations**

Government work may impact the employee's interests, the interests of the employee's family, or individuals or entities with which the employee has a connection. Even without specific actions motivated by bias, the public may lose confidence in the integrity of the agency's work if it *perceives* that officials use public office for the advancement of their private interests or for the private gain of relatives, friends or others with whom employees are affiliated in a nongovernmental capacity. Conflicts can arise due to the financial interests of officials, but also interests based on personal relationships and affiliations with organizations.

A job at a government agency may offer the opportunity to advance an employee's private interest or affiliated interests. If a government employee pursues her own interests at work over the interests of the public it could result in bias that alters decisions and harms effective enforcement.

A common link among the responding agencies is that their ethics rules focus considerably on conflict of interest violations and contain guidance on financial interests and personal relationships. This is not surprising, since most respondents also highlighted this as the main ethical issue that arises at their agencies. Most have rules that prevent or limit employees from holding financial interests that conflict with their official duties or prohibit participation in matters that would directly affect the employee's financial interests or business relationships. Most responding agencies also prevent or limit employees from engaging in outside employment or activities that conflict with their duties.

In the questionnaire for member input, agencies were asked a series of questions relating to how conflicts of interest may specifically impact involvement in cases. Responses to these questions revealed that:

Approximately 90% of agencies who responded to this question restrict outside employment or activities of their employees in some capacity.

- These restrictions varied, from some agencies prohibiting any outside employment or activity outright, to others permitting such employment or activity with authorization.

Several agencies prohibited some employees from political or lobbying activities. Most had exemptions in place for scientific, research, or teaching activities.

- In addition, over 90% of agencies have ethics rules that cover financial interests and other affiliations. Generally, such interests or affiliations are prohibited where there would be any conflict – perceived or actual – with the work of the agency, or any interest that would cause public suspicion or distrust as a result.
- Where a conflict of interest was identified, approximately 90% of agencies who responded to this inquiry indicated the most common mechanism to remedy the conflict was abstention or recusal. Other remedies included exemptions for insubstantial financial interests and divestiture of a financial conflict interest. Only a small number of agencies indicated that a waiver would be viable mechanism to cure a conflict of interest.

Impact of prior employment

The questionnaire inquired about ethics rules that cover prior employment or positions of agency employees. Findings from the results include:

- Only a little less than half of the responding agencies (46%) have ethics rules that cover prior employment or positions of their employees. Some agencies have ethics rules that cover prior employment in so far as the prior employment is relevant to the case handled by the employee.
- In some agencies, prior employment becomes an ethics issue in instances where an employee uses information from the previous employment that is regarded as confidential information in performance of the current job. This constitutes a breach of confidentiality.
- An employee may be recused from handling a present case if there is the perception that the employee might be biased due to a prior relationship or, more seriously, if there is cause to suspect any form of actual bias, bribery, or corruption arising from prior employment.
- Some agencies conduct pre-employment (or immediately upon hiring) checks for any potential ethical issues and further, security clearance is sought for sensitive roles. This is in an effort to abate any form of compromise in the employee's future role.

It is quite possible that agency staff will have work experience and backgrounds in or representing companies that are subject to competition enforcement – indeed this experience may have been reason for their employment in the agency – and in many cases will return to similar roles. This movement and transfer of skills and experience between agencies and the private sector can have benefits. But competition agencies should pay attention to the appearance of bias when an employee's prior experience and involvement outside of government and her duties at the agency have a direct overlap involving specific matters.

Post-employment restrictions: participation in matters and appearance before the agency

Government ethics rules may include restrictions on working on a matter affecting someone with whom the person is seeking employment or has an agreement about future employment. The concern is that an official might favor a prospective outside employer in his/her duties. When an employee is seeking outside employment, the rules may prohibit working on matters involving or affecting prospective employers.

Upon separation, government ethics rules may prohibit participation or representation in a matter that the official handled or supervised while in government service. Governments may bar senior officials from appearing before or communicating with the former agency for some defined amount of time.

Post-employment restrictions can limit an agency's ability to attract staff, as it may narrow potential future opportunities. However, many agencies are subject to post-employment rules tailored to the specific duties or positions of the former employee and directed at addressing potential bias or using information gained in the context of the confidentiality rules at the agency. General cooling-off periods and restrictions targeted to the specific matters an employee participated in are tools to address post-employment ethical violations, conflicts of interest, and potential misuse of non-public or confidential information. Many agencies have procedures for former employees to report and seek advice from their former agencies about matters before they begin participation or representation.

The questionnaire inquired about ethics rules that cover post-employment restrictions for former agency employees. Findings from the results include:

About two-thirds of the responding agencies have ethics rules that deal with post-employment restrictions in some way.

the agency by former employees. These types of restrictions are more common for top level officials.

- A little more than half of the responding agencies reported rules that ban or restrict representation in matters in which a former employee participated.
- Approximately one third of respondents reported rules or 'cooling-off periods' with respect to appearance before or contacts with
- As a general premise, post-employment restrictions are dealt with on a case-by-case basis as they often involve a factual determination of the former employee's involvement in specific matters.
- The agencies that address post-employment restrictions focus on the determination of whether the information that the employee had access to at the agency may be used for personal gain and/or may not be fit for public consumption.

- Some agencies have regulations and policies that allow employees to be scrutinized before they take up new roles or new matters. Recommendations or requests may be made to the agency prior to taking on a new role before a former employee is put in a compromised ethical position in their new appointment. This “go-ahead” or recusal check process is done prior to taking on a new role or representation in a new matter to determine if the involvement would present a conflict of interest or erode trust in public enforcement.
- The rules in some jurisdictions prescribe set time period restrictions for former government employees. These restrictions can be a blanket prohibition (a general cooling- off period) from appearing before the agency for any matter (more common for top officials) or be specific to the matters that the employee handled while at the agency.
- Those agencies that reported cooling-off periods reported a range of time between six months and three years.
- For involvement in specific matters before the agency, responding agencies reported bans ranging from 1-3 years up to the life of the specific matter that was handled by the former employee.

Restrictions on gifts or benefits from outside sources; bribery/improper influence rules

Having a degree of independence and separation between those who are subject to enforcement or regulation and the government agency is helpful. Gifts and benefits have the potential to reduce this independence. If an official accepts a gift or benefit from an outside source that appears before or seeks action from the agency, the public may be concerned that the donor will receive favored treatment because of the gift. Accepting a gift because of the official’s position may create an appearance of using public office for private gain. Therefore, accepting gifts or benefits from many outside sources are commonly restricted or banned.

Many governments have rules against soliciting or accepting gifts or receiving benefits from certain outside entities, often with limited exceptions.

The types of gifts officials are prohibited from accepting are not limited to tangible gift items or cash but also include bar and restaurant tabs, tickets to events, provision of in-kind events and assistance with providers of public and private service. Gift prohibitions can be subject to certain exemptions, for example, because they are de minimis or based on personal relationships. If the value of the gift is below a certain amount, officials may be allowed to accept the gift either at their own discretion or upon obtaining approval. Additionally, if a gift was from a family member or motivated by a close personal relationship, officials may also be able to accept the gift. In either case, however, individual officials often are responsible for making a fair judgement on whether the gift is permissible under their ethics rules. Government-wide criminal laws often penalize specific forms of corruption or other breaches of core public service rules, prohibiting officials from seeking or accepting anything of value in return for influence over official acts.

The member input questionnaire asked about ethics rules that cover acceptance of gifts by agency employees. The findings from the results include:

- The acceptance of gifts or benefits from outside sources is restricted or prohibited by the rules applicable to all responding agencies, either by the ethics rules applicable specifically to the competition agencies or to all government agencies.
- In terms of the type of gifts that are prohibited or suspect, cash and tickets to events were cited by the most respondents, followed by bar and restaurant tabs, provision of in-kind events, assistance with private service providers, expensive tangible gifts and assistance with public service providers. Each of these types of gifts were cited by a majority of respondents as generally impermissible.
- As an exception to these rules, inexpensive tangible gifts are not regarded as unacceptable gifts or benefits in more than half of the jurisdictions. A number of jurisdictions have set a minimum threshold, within the range of approximately US\$15 to \$200, on the value of gifts or benefits employees were allowed to accept, provided they are not intended to influence any acts or decisions.
- The rules applicable to many responding agencies focus on the sources and prohibit the acceptance of gifts offered by anyone seeking action or non-action by the agency, doing business with the agency, regulated by the agency and whose interest may be substantially affected by the performance or the non-performance of the agency.
- Several responses noted that individual employees often are responsible for making their own judgement in assessing whether gifts or benefits were permissible in the first instance under their ethics rules. Several responses also noted that gifts made to employees from outside sources are regularly evaluated, assessed, or reviewed under the ethics rules (or can be upon request) by the agency's ethics officials.
- Nearly all of the respondents mentioned that their ethics rules address the serious concerns of bribery and improper influence. But it must be said that preventing bribery and improper influence is more complex than simply initiating new rules or establishing new anti-corruption institutions and this project did not seek to delve into the details of effective anti-corruption measures.

Professional conduct and other rules

The rules of many governments call for impartiality and adherence to ethical principles in the performance of their duties. This can mean avoiding actions that create the appearance of bias and taking decisions without undue influence. The agency questionnaire asked a series of high-level questions about some of the basic principles underlying an agency's rules and views of what constitutes professional conduct and agency integrity. The responses were unanimous regarding the following basic principles:

- Every respondent confirmed that its ethics rules require employees to act impartially in the course of their duties.
- All responding agencies said that their ethics rules require compliance with agency standards and the ethical application of agency procedures and substantive rules.
- Every responding agency said that it had rules governing the use and disclosure of non-public, confidential information obtained during the course of its investigations, and in the case of unauthorized disclosure, sanctions are available to address such misuse of confidential information. It is common for competition agency rules to prevent employees from using non-public information to further a private interest. Protecting non-public information is important to ensure the integrity of agency investigations and actions. Many agencies have clear policies regarding the handling of nonpublic information by staff.
- Other agency rules promote transparency and prescribe public access to agency information. These rules may also be considered integral to agency integrity, credibility and the mission of enforcement in the public trust and as such can impact ethics and procedural rules.

Conclusion

Efforts to foster ethical behavior are important for the public sector and many competition agencies who have responded to this project show that they have taken steps to build a sound ethics framework. Good management is key. While ethical behaviour is the responsibility of each individual civil servant, a climate of trust combined with effective communication, training, guidance, and oversight will help provide the necessary enabling environment.

Considerations for Competition Agency Ethics Rules

Based upon the results of the member questionnaire and the accumulated practices and rules described above, this section offers potential considerations for competition agencies evaluating their ethics rules or seeking new or additional ideas. These considerations may not be applicable in the legal frameworks of all agencies, but the results of the questionnaire indicate that these are considerations for the administration of ethics programs for a significant number of competition agencies. Nothing in this report intends to counsel an agency to contradict the ethics rules and framework established by their governments. The ethics rules in place at all agencies are shaped by government-wide standards and must be consistent with those broader rules.

These considerations aim to describe ways in which competition agencies have promoted, implemented, and tailored their overarching rules within their agency's context.

Framework for ethics rules

- ✿ Consider whether agency leadership and top officials should be held to higher transparency standards or additional ethical obligations given their ability to impact agency decision making and higher level of visibility to the public.
- ✿ Consider whether additional guidance or ethics rules specific to your agency are useful to supplement, explain, and reinforce government-wide ethics rules, particularly for situations that arise more frequently in the competition enforcement context.
- ✿ Consider the impact of the *appearance* or *perception* of bias or conflicts of interest in your agency's rules and guidance, not just actual bias or ethics rules violations. The perception of bias can negatively impact the credibility of specific case decisions and an agency's overall mission.
- ✿ Consider establishing clear professional rules of conduct aimed at protecting the integrity of agency investigations and the overall agency mission, and incorporating them into key agency documents, manuals, or statements. Examples include rules on the use of confidential information and practices such as required disclosures of financial interests.

Ethics training

- ✿ Consider requiring ethics training for all new hires, as appropriate to their position in the agency.
- ✿ Consider requiring ethics training for employees on a regular basis, especially when changes to your ethics rules are introduced.
- ✿ Consider using a variety of methods for ethics training. Common methods include: classroom instruction, web-based training, distribution of written materials, video

presentations, discussion of hypothetical ethical dilemmas, and messages from agency leadership.

Administration of ethics rules

- ✦ Consider appointing an agency ethics officer(s) – an individual or individuals with dedicated responsibility for ethics oversight and administration within your agency.
- ✦ Consider a single or centralized administration point for your agency’s ethics rules.
- ✦ Consider encouraging employees to seek confidential advice from your ethics officer(s) when presented with an ethical question and if possible before acting. Consider seeking advice or consultations from outside sources elsewhere in your government (e.g., a government-wide ethics office) when useful.
- ✦ Consider committing the necessary resources to the administration of your ethics rules in order to be able to provide regular training, advice, and guidance to agency employees.
- ✦ Consider an established, known internal process for addressing potential ethics violations, including appropriate criteria for review, identified individuals or committees that will oversee the process, confidentiality rules, and available sanctions. Refer ethics violations to external process (e.g., public prosecutors) as appropriate under your rules.

Conflicts of interest

- ✦ Consider placing particular attention to conflicts of interests (financial and personal relationships) involving case handlers and decision makers and tools, such as through training and disclosures that can prevent conflicts before they arise. Conflicts that raise even the perception of bias on enforcement actions can question a core aspect of a competition agency’s mission and credibility. Consider recusal on specific matters when appropriate.
- ✦ Consider a process of appropriate internal disclosures by employees of their financial interests and outside affiliations in order to identify and resolve potential conflicts before they arise.
- ✦ Consider the potential impact or perception of bias from your employees’ previous employment. Consider recusal on specific matters when appropriate.
- ✦ Consider post-employment restrictions as part of your ethics rules administration including guidance or a process to assist former employees in determining their ethical obligations after leaving the agency.

Acceptance of gifts

- ✿ Consider rules and clear guidance that define and address the acceptance of gifts from outside sources and an established process for employees to seek advice or determinations on the appropriateness of offered gifts.
- ✿ Consider the appropriateness of tangible and intangible benefits beyond just cash, including, for example, tickets, food, and in-kind assistance.

ANNEX 1 – Agency Examples and Resources

Links to member agency materials on ethics rules

Australia

ACCC Code of Conduct for Commission Members and Associate Members:

<https://www.accc.gov.au/system/files/Code%20of%20Conduct%20for%20Commission%20Members%20and%20Associate%20Members%202012.pdf>

Australian Public Service Values & Code of Conduct: <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee>

Australian Public Service Commission Good Practice Guide – Handling Misconduct:

<http://www.apsc.gov.au/publications-and-media/current-publications/handling-misconduct-a-human-resource-managers-guide-2015>

Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015:

<http://www.legislation.nsw.gov.au/sessionalview/sessional/sr/2015-244.pdf>

Czech

Code of Ethics for the employees of the Office for the Protection of Competition:

<http://www.uohs.cz/cs/o-uradu/eticke-normy-a-protikorupcni-opatreni.html>

EU DG Competition

http://ec.europa.eu/civil_service/admin/ethic/index_en.htm

France

The code of ethics applicable to the members and employees of the Autorité:

http://www.autoritedelaconurrence.fr/doc/charte_deontologie_consolidee_3avr12.pdf

Internal guidelines of the Autorité (articles 1 to 7):

http://www.autoritedelaconurrence.fr/doc/reglement_interieur.pdf

Hong Kong

<http://www.compcomm.hk/en/about/comm/governance.html>

India

The CCS (Conduct) Rules, 1964 of Government of India:

http://www.persmin.gov.in/DOPT_ActRules_CCS%28Conduct%29_Index.asp

Indonesia

Code of ethics for Commissioner of KPPU is available on :

https://docs.google.com/viewer?url=http%3A%2F%2Fwww.kppu.go.id%2Fdocs%2FSK%2Fko_de_etik_komisi.pdf

Israel

<http://www.csc.gov.il/About/Pages/Ethics.aspx> (Hebrew)

<http://www.csc.gov.il/Takshir/terms/Pages/default.aspx> (Hebrew)

Italy

AGCM Code of Ethics: http://www.agcm.it/component/joomdoc/bollettini/ES_6-15.pdf/download.html

Government employee code: <http://www.oecd.org/mena/governance/35526972.pdf>

Japan

National Public Service Ethics Act <Tentative translation in English>

<http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=104&re=&vm=02>

National Public Service Officials Ethics Code <In Japanese only>

<http://law.e-gov.go.jp/htmldata/H12/H12SE101.html>

Kenya

<http://www.eacc.go.ke/>

Mexico

https://www.cofece.mx/cofeca/attachments/article/1/Codigo_Etica_Conducta.pdf (Spanish)

Russia

FAS Ethical Code: <http://hmas.fas.gov.ru/document/8081>

Sweden

Core values: <http://www.konkurrensverket.se/en/omossmeny/about-us/core-words-of-the-swedish-competition-authority/>

Government-wide rules:

<http://www.government.se/contentassets/7800b1f18910475d9d58dba870294a63/common-basic-values-for-central-government-employees--a-summary-s2014.021>

Taiwan

<http://www.ftc.gov.tw/internet/main/doc/docList.aspx?uid=18> (anti-corruption and work ethic webpage, only in Chinese version)

UK

Civil Service Code: <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

USA

Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635

<http://www.oge.gov/Laws-and-Regulations/Employee-Standards-of-Conduct/Employee-Standards-of-Conduct>

5 C.F.R. Part 2635.101 Basic obligation of public service (with 14 General Principles)

<https://www.law.cornell.edu/cfr/text/5/2635.101>

Government-wide ethics statutes: <http://www.oge.gov/Forms-Library/OGE-Form-278--Public-Financial-Disclosure-Report/>

Regulations issued by the U.S. Office of Government Ethics: <http://www.oge.gov/Laws-and-Regulations/OGE-Regulations/OGE-Regulations/>

FTC Outside Employment Regulation: <https://www.law.cornell.edu/cfr/text/5/5701.101>

Select OECD work on Government Ethics

- **Guidelines for managing conflict of interest in the public sector (2003)**
<http://www.oecd.org/governance/ethics/2957360.pdf>
- **Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2004)**
http://www.keepeek.com/Digital-Asset-Management/oecd/governance/managing-conflict-of-interest-in-the-public-service_9789264104938-en#page16
- **OECD Guidelines for Managing Conflict of Interest in the Public Service: Report on Implementation (2007)**
<http://www.oecd.org/corruption/ethics/39691164.pdf>
- **Post-Public Employment: Good Practices for Preventing Conflict of Interest (2010)**
http://www.planejamento.gov.br/secretarias/upload/Arquivos/segex/arquivos/ocde2011/oecd_post_public.pdf/view
- **Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service (1998)**
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=129&InstrumentPID=125&Lang=en&Book>
- **Building Public Trust: ethics measures in OECD countries (2000)**
<http://www.oecd.org/mena/governance/35527481.pdf>
- **Ethics codes and codes of conducts in OECD countries**
<http://www.oecd.org/fr/gov/ethique/ethicscodesandcodesofconductinoecdcountries.htm>
- **Ethics codes and codes of conducts as tools for promoting an ethical and professional service: Comparative Successes and Lessons (2005)**
<http://www.oecd.org/mena/governance/35521418.pdf>
- **Ethics training for public officials (2013)**
<http://www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf>
- **Policy forum: Restoring Trust in Government: Addressing Money and Influence in Public Decision Making (2013)**
<http://www.oecd.org/gov/ethics/restoring-trust-in-government.htm>

ANNEX 2 – Agency Questionnaire results

Introduction on government ethics

Does your agency include ethics or integrity as an objective or goal in its strategic plans, annual reports, speeches, or other agency statements? 82% Yes

Framework for competition agency ethics rules

Does your agency have a general “code of ethics,” “standards of conduct,” “ethics principles,” or similar for its employees? 93% Yes

Does your agency have detailed ethics rules applicable to its employees? 89% Yes

Do your agency’s ethical rules derive from or incorporate general government-wide rules? 96% Yes

If so, does your agency have any supplemental ethical rules that are agency-specific (not derived from general government-wide rules)? 79% Yes

Are your agency’s ethics rules publicly available? 71% Yes

Do different ethics rules apply to your agency’s decision makers versus staff? 50% Yes

Do different ethics rules apply to your agency’s lawyers versus non-lawyers? 89% No

Communication of standards and training

Does your agency train new employees on ethics rules? 96% Yes

Does your agency provide continuing ethics training for employees? 68% Yes

What type of ethics training is provided to employees?

Examples: distribution of written education materials; instructor-led or classroom training in groups; video presentation; computer or web based training; individual briefings; copies of standards of conduct/agency rules; summaries of rules; brochures; newsletters; posters; case studies; messages from agency leadership

Top answers: copies of standards of conduct/agency rules, instructor-led or classroom training in groups, messages from agency leadership

Administration of an ethics program

Does your agency have a designated ethics officer (individual with full time or part time ethics responsibilities)? 68% Yes

Is management of ethics rules:

overseen by a centralized main ethics office? 81%

OR

decentralized among multiple parts of the agency? 19%

Does your agency require disclosures from its employees to assist in identifying potential conflicts of interest? 80% Yes

Are the disclosures made public? 83% No

Can employees seek advice from a dedicated ethics official or supervisor within the agency when faced with ethical issues in the workplace? 100% Yes

If so, can employees receive confidential advice on ethical issues? 96% Yes

Can/Does your agency seek advice on ethics questions from a government office outside of your agency? 82% Yes

Does your agency provide written advice or opinions to employees addressing specific ethical questions? 71% Yes

Determining and addressing ethics violations

Is there an internal agency review process for determining ethics violations? 86% Yes

Is there an external review or investigation process for possible ethics violations? 68% Yes

Are employees that violate ethics rules subject to sanctions? 100% Yes

If so what types of sanctions are possible?

e.g., discipline, suspension, dismissal, fines, criminal sanctions. Please indicate whether the possible sanctions are “internal” (imposed by your agency) and/or “external” (imposed by outside entities such as courts).

Top answers: discipline, suspension, dismissal

Does your agency report or make public ethics violations? 54% No

Overview of common ethics rules applicable to competition agencies

Conflicts of interest that impact involvement in cases

Do your ethics rules address conflicts of interests that impact involvement in cases? 96% Yes

Do your ethics rules ban or restrict outside employment or activities of employees? 89% Yes

Do your ethics rules cover prior employment or positions? 54% No

Do your ethics rules cover financial interests and personal relationships and affiliations?
93% Yes

What solutions are available to remedy a conflict of interest?
Examples: an exemption for the employee, a waiver, recusal or disqualification from matters, divestiture of financial interest

Top answer: *recusal or disqualification from matters*

Post-employment restrictions (participation in matters and appearance before agency)

Do your ethics rules include post-employment conflict of interest restrictions? 66% Yes

Is there a ban or restriction on representation in connection with matters in which an employee participated? 54% Yes

Is there a general ‘cooling off’ period with respect to appearance at the agency or restrictions on contacts with the agency on behalf of others? 64% No

Restrictions on gifts or benefits from outside sources; bribery/improper influence rules

Do your ethics rules ban or restrict gifts or benefits from outside sources? 100% Yes

Do your ethics rules address bribery and improper influence? 100% Yes

Professional conduct and other rules

Do your agency’s ethics rules require employees to act impartially? 100% Yes

Do your agency’s rules require compliance with agency standards and the ethical application of agency procedures and substantive rules? 100% Yes

Does your agency have rules for the disclosure and use of or non-public information obtained by the agency in its investigations? 100% Yes

Are there sanctions for misuse of nonpublic information? 100% Yes