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# MANAGING COMPETITION LAW RISK

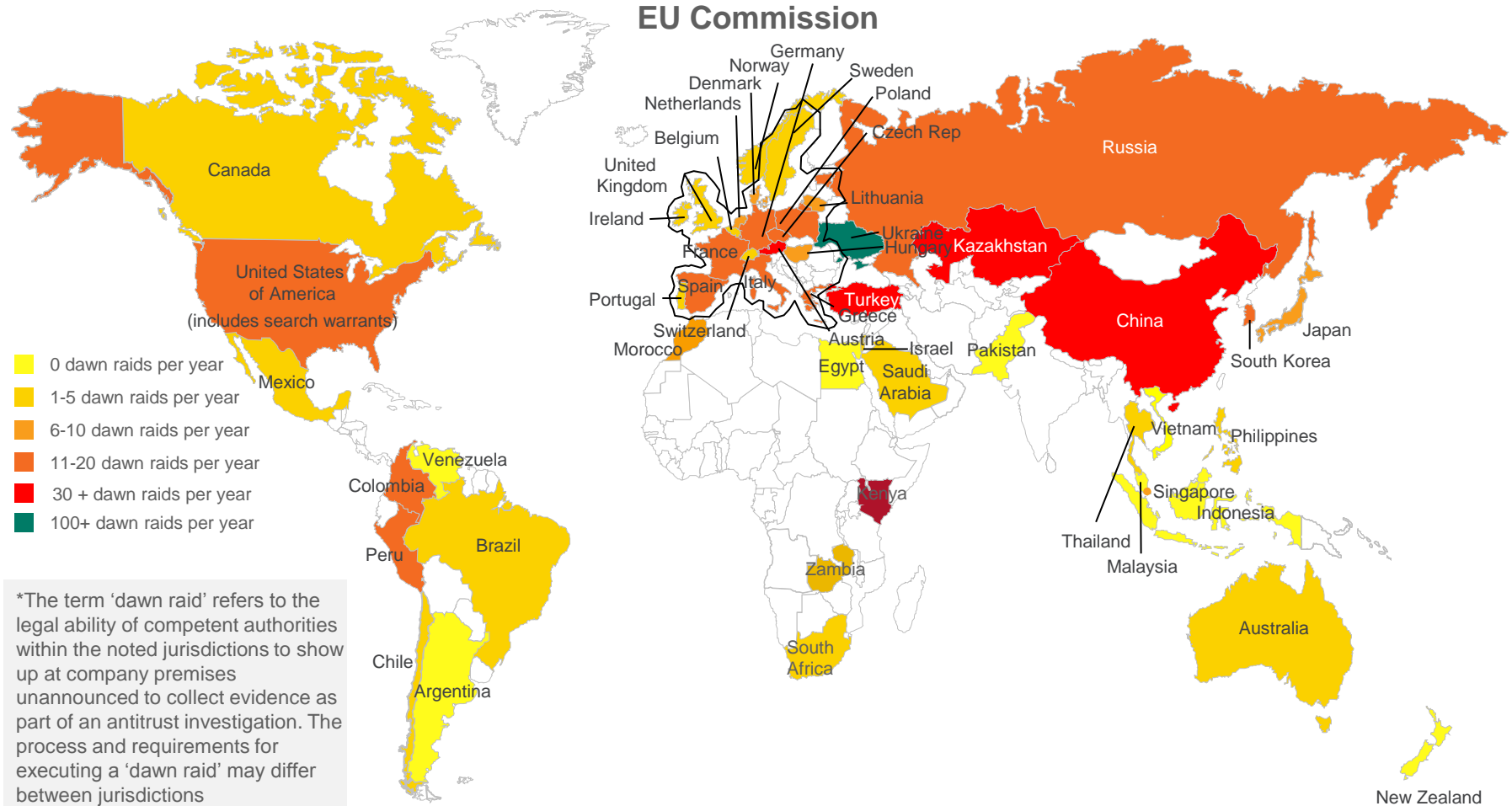
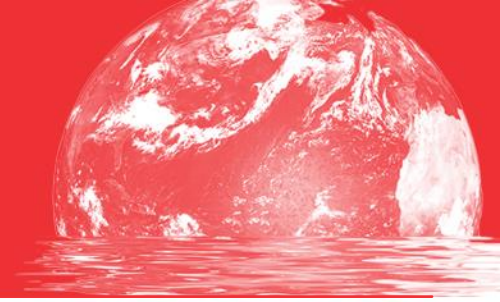
EFFECTIVE COMPLIANCE AND  
REGULATORY ENGAGEMENT



Akira Inoue  
Craig Lee  
Nicola Northway  
Francesca Richmond  
Bob Tarun

## The challenge

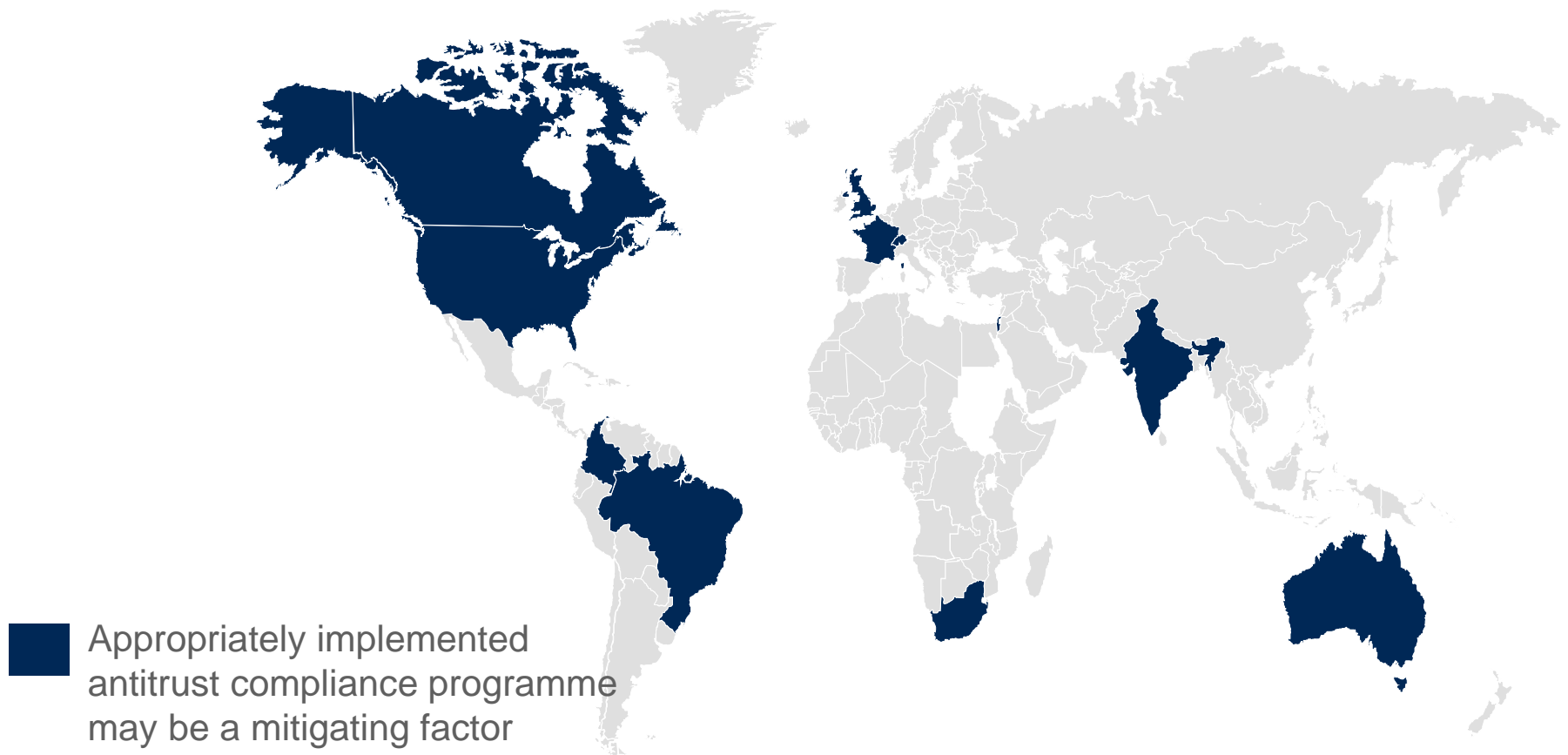
# Managing competition law risk



# Regulatory enforcement and compliance



Where is compliance credit available?



# Compliance: structure and content



## The Five Essential Elements of Corporate Compliance

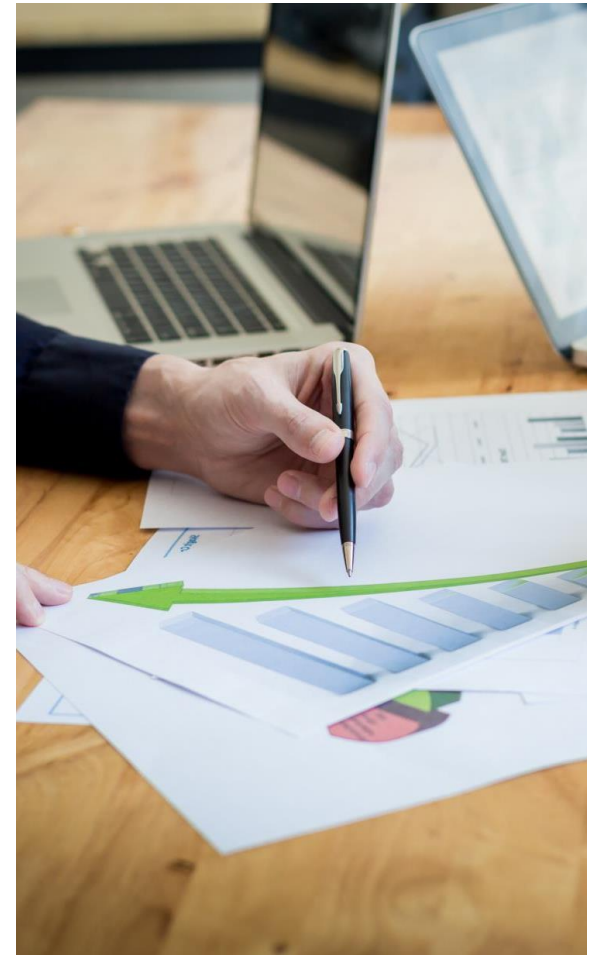


# Implementing an effective policy (1)



Institute or reassess the antitrust/competition compliance program including:

- Auditing and monitoring;
- Training including mandatory training of senior management;
- Compliance messaging;
- Antitrust and/or competition policies;
- Annual Antitrust Risk Assessments;
- Internal controls that could or might have prevented cartel behavior; and
- Discipline those who engaged in misconduct and those who failed to adequately supervise wrongdoers.



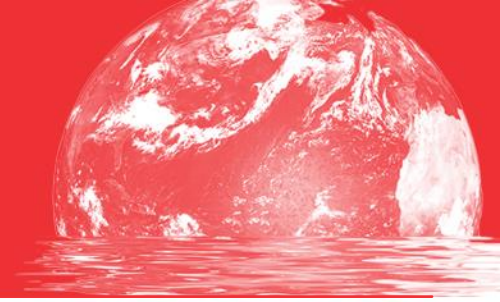


## Implementing an effective policy (2)



- Take an integrated and tailored approach; one size does not fit all
- Have regard to wider compliance and ethics approach of corporation
- SWAT approach to roll on out
  - Train the legal team, risk, audit and (if you have them) other compliance people first so they are issue spotters,
  - Select the “at risk” areas for the first face to face training and then roll out to other
    - Transit of “rotten apples”
    - Areas known to be part of regulatory authority work plans
    - Considering hot spots of infringing conduct, products and jurisdictions as drawn from published decisions

# Addressing a breach



### Sources and triggers:

- How has the issue come to your attention?
- What does this mean for the degree of control that you have?
- Which other considerations does it mean have to be taken into account (e.g., employment procedures, whistle-blower protections etc)

### Reporting incentives:

- What reporting incentives exist in respect of the legal risks and jurisdictions in scope?
- How do these fit with regulatory and financial crime reporting obligations?

### Regulator / prosecutor expectations / powers:

- What expectations do relevant regulators and prosecutors have regarding the manner in which the matter will be investigated?
- What powers do they have and when might they use them?

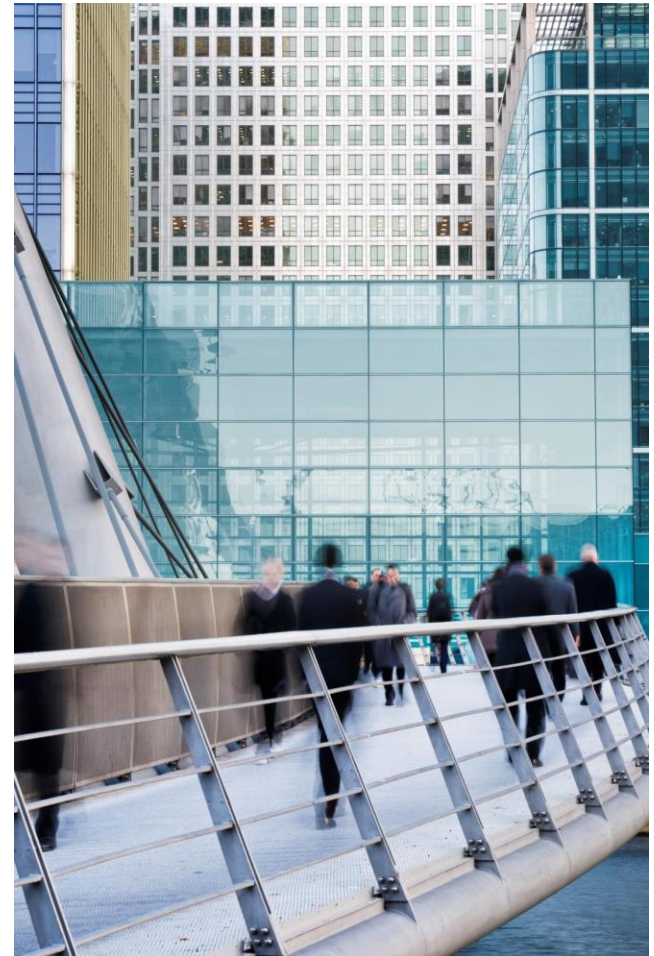
### Coordination of global strategy:

- Consider impact of strategic decisions in one jurisdiction on position in others / other legal risk areas.
- Avoid making decisions in isolation; ensure all strategic decisions are well informed.

# Applying lessons learned (1)



- A robust antitrust-competition compliance program in place at the time of the cartel conduct.
- Absent that:
  - respond to and immediately re-evaluate as a team and under legal privilege the compliance program in the wake of a trigger event (a credible whistleblower allegation, a dawn raid, subpoena, a search warrant, discovery that an industry competitor is under investigation).





# Applying lessons learned (2)



- Compliance and training
- Managing a case
- Engagement with the regulator
  - Set the tone from the outset
  - Consistent and professional behaviour from the business and the external advisers will make your views credible and serve you well in the long run
  - Communicate to manage expectations: do not over promise
- Issues to consider:
  - Privilege
  - Whistleblowing
  - Risks for the in-house teams in some jurisdictions
  - Tracking advice
  - Case management tools

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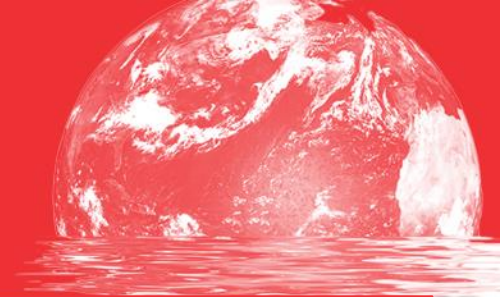
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