

ICN Working Group SG1 Webinar 27 January 2016

Increasing Cartel Deterrence Through Compliance Programmes



1. Motivating Businesses to Comply with Competition Law.

A marketing perspective on competition law compliance and reporting

Agenda

1. CMA compliance commitment
2. Compliance context and challenge
3. A marketing approach
 - Targeting, positioning, messaging, channels, outputs, evaluation
4. Looking ahead

1. Compliance – commitment

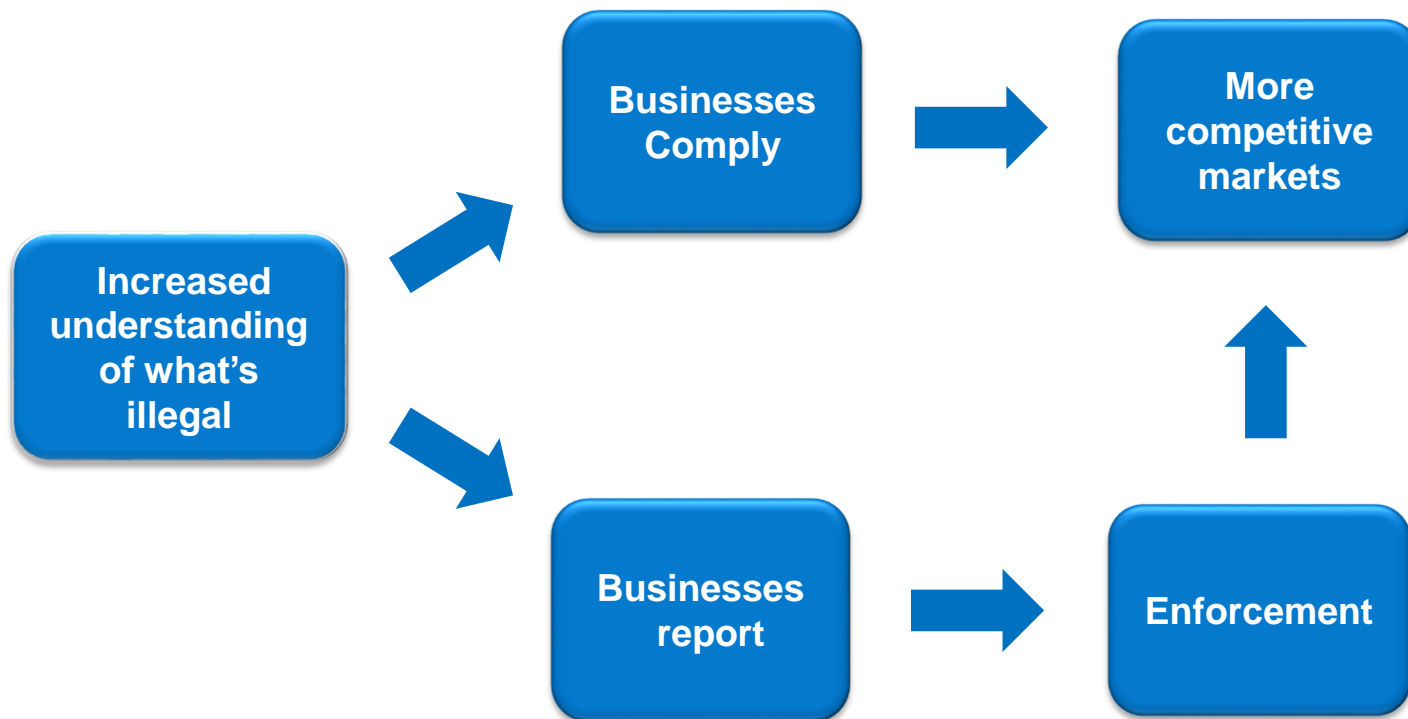


Alex Chisholm, CMA Chief Executive

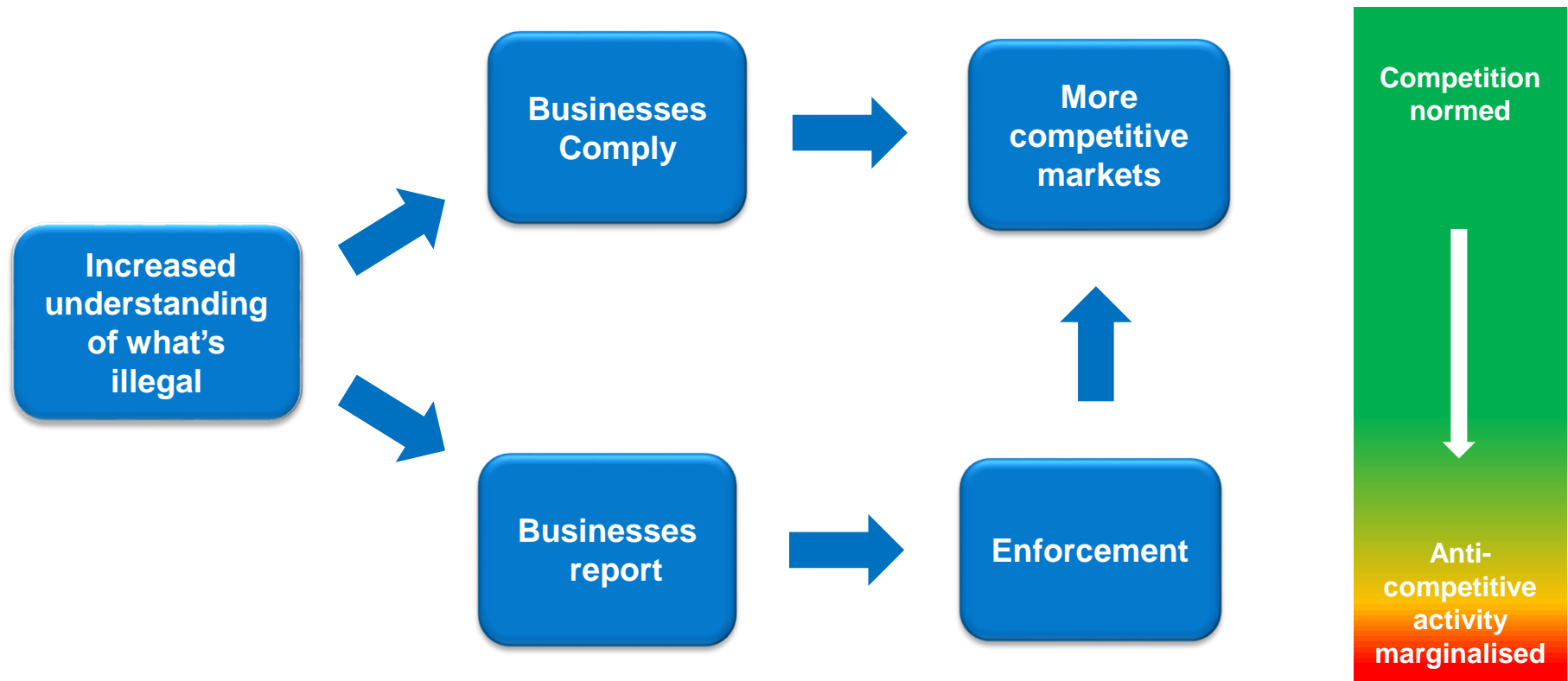
Speech to the Law Society Competition Section Annual Conference, 16 May 2014

“The more we can promote awareness of competition law and a culture of compliance amongst firms, the more we can demonstrate that those firms who do not comply merit serious punishments.”

2. Compliance and reporting



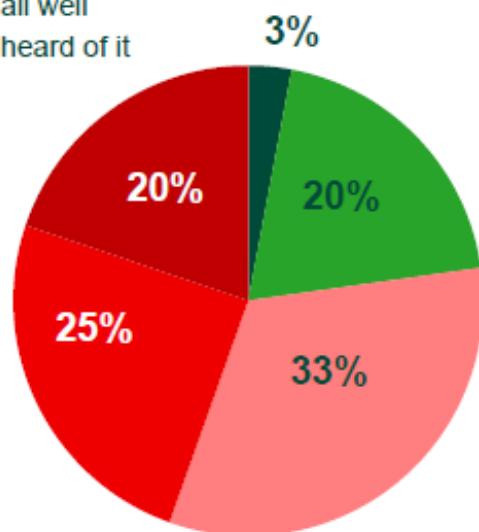
2. Compliance and reporting







3. Compliance – context

- UK businesses have a poor understanding of competition law

■ Very well
■ Fairly well
■ Not very well
■ Not at all well
■ Never heard of it



Businesses didn't know that these activities were illegal

-  **70%** Resale price maintenance (RPM)
-  **60%** Market-sharing
-  **53%** Discussing bids (bid-rigging)
-  **45%** Price-fixing

3. Compliance – context

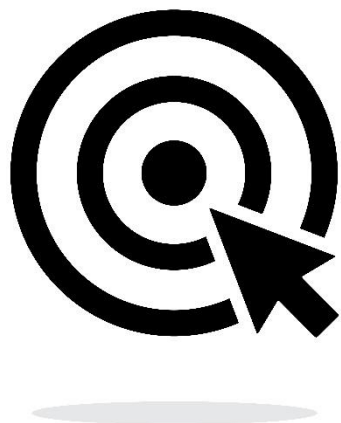


5.4m UK private sector businesses

A marketing approach to competition law compliance

- Targeting
- Positioning
- Messaging
- Channels
- Content
- Evaluation

3. A marketing approach



1. Targeting – sectors and smaller businesses

- Sectors with proven or potential risk
 - successful cases, intelligence
- Smaller businesses
 - lower awareness & understanding
 - FSB request
 - no in-house compliance support/training
 - 99.3% all businesses
 - defined channels
 - content for small businesses also relevant for large businesses' compliance

“Your SME targeted tools will be perfect for my frontline sales staff”

3. A marketing approach



2. Positioning – making it relevant

- Minimal awareness

“You’d have to enlighten me more on what you mean by competition law. To me there’s nothing I’m aware of that’s relevant”

- Doing business ‘properly’ essential to reputation
- both business and personal
- Intuitive ethical understanding of ‘wrong’ behaviour drives positioning of compliance with law/regulations

3. A marketing approach

Positioning compliance - examples

- Health and Safety
 - is there to prevent accidents and protect against injury and individual's conscience is as important as the risk of compensation
- Employment Law
 - is there to ensure fairness and justice
- Industry regulations
 - are there to protect the industry's reputation

3. A marketing approach

Positioning Competition Law - protection and fairness

Competition Law protects customer choice and ensures that customers, whether businesses or an individual, do not fall victim to any unfair practices

Moral and ethical tone of voice – ‘fair’

3. A marketing approach



3. Messaging

- Behaviours – not law per se
 - price fixing, bid-rigging, market-sharing
 - show what they look like and harm they do
- Identify anti-competitive behaviours so that
 - you're not ripped off by suppliers
 - cheated by competitors
 - you can report it
 - avoid falling foul of the law yourself (implied)
- Doing business fairly builds your reputation
- Risk – victim and perpetrator

3. A marketing approach



3. Messaging

- Risk – victim and perpetrator

Businesses talk – risky potential for conversations to stray into dangerous territory



83%

had some form of contact with other businesses in their sector



9%

of these contacts were to discuss 'prices'



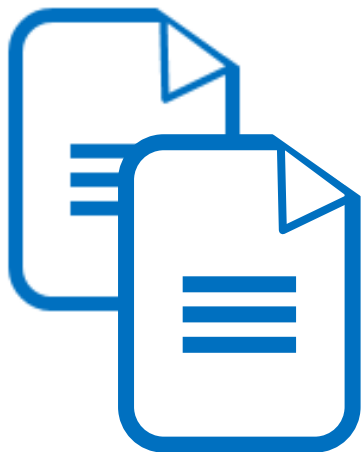
3. A marketing approach



4. Channels – trusted third parties

- Trade – associations, press, shows
- Business advocacy groups
- Professional accredited organisations
- Accountants/other professional advisers
- Low cost/no cost – Government Communication Service

3. A marketing approach



5. Content

- Short, simple, clear, informal, explanatory
- Bullet points, relevant case studies, examples
- Online and social media
 - search engine optimisation around behaviours
- Visual – ‘at a glance’, animation

3. A marketing approach

Content – relevant and real

As I mentioned to you, since we started conversations (i.e. even before we completed the transaction) with Tomms we have been very clear with them re which care homes they should be targeting and which they should be avoiding. It is very important to me that we ensure Tomms are only targeting independent pharmacy or Boots supplied care homes and I'm determined to ensure this continues to be achieved.

Evidence from *Supply of Prescription Medicines to Care Homes in England*, case CE/9627/12

“

I had a direct instruction from [Quantum Managing Director] saying that he was having complaints from Lloyds that we [Tomms] were...stealing his care home clients.

[This] was causing him grief because Lloyds...represented [a customer] of Quantum, so if Lloyds weren't happy, he wasn't happy, and would I please instruct all the sales team not to go for Lloyds Pharmacy customers.

So I said: I don't have a problem with that...

”

Tomms Managing Director - interview transcript, *Supply of prescription medicines to care homes in England*, case CE/9627/12

3. Small business outputs

Competing-fairly-in-business – targeted compliance materials

- Films
- Quiz
- At a glance guides
- Short case studies
- Partner support

<https://vimeo.com/maltfilms/review/145543343/d94ccaef29>

3. Case study – Three Counties

Background

An association of estate & lettings agents imposed a rule prohibiting members from advertising their fees in the local paper. This arrangement was extended to include the local paper directly, who agreed to reject any ads from agents wishing to advertise fees

Infringement

These agreements prevented agents from advertising their fees in the local paper. This limited their ability to compete with each other on their fees, making it harder for new or smaller businesses to use lower rates to attract new customers.



Activity and Engagement



Open Letter



- Distributed by the NAEA, Ombudsman and published in trade press
- Sent to circa **95% of estate and 75% of letting agents** in the UK
- Covered in national and regional press (Financial Times, Express & Star)

Working with sector partners



- Collaborating with Property Ombudsman on changes to codes of practice for agents & specific guidance note on competition law
- Planned engagement with RICS to issue out alert to members

Content for trade press & conferences



- Article in *Negotiator Magazine* – sent to **10,000 estate and letting agents** in the UK
- Planned speaking slot at *Negotiator* conference in November

Social Media



- Helped amplify reach via notable re-tweets and online shares
- Estimated reach of **76,000**

Activity	Reach
The Property Ombudsman (TPO) sent the letter directly to their registered agents	14,544 sales & lettings agents (approx. 95% of estate / 75% of lettings agents in the UK)
The National Association of Estate Agents (NAEA) sent the letter directly to their members	5,804 agents (1,827 unique opens / 5,228 views and forwards)
The News Media Association (NMA) sent the letter directly to their members	Approx. 75%* of regional newspapers in UK
Article published in The Negotiator (July issue)	Sent to 10,000 agents
Speaking at Negotiator conference (Nov 2015)	Over 400 senior representatives from leading UK agents
Property Redress Scheme (PRS) sent link to open letter in newsletter to registered agents	3,700 agents
British Property Federation (BPF) sent link to open letter in newsletter to members	400 member companies (31% real estate)
Royal Institute of Chartered Surveyors (RICS) covered release online + further work TBC	118,000 qualified professionals worldwide*

Evaluation - reach

Membership/businesses

- **Long-term Partners**

IRM, IOD, ICC, BIRA, CBI, NEDA, ICSA, ICAS, ICAEW, ICAS, ACCA

Total Reach: **590,000+**

- **SME Partners**

FSB, National Enterprise Network, Start-Up Britain, FPB

Total Reach: **475,000+**

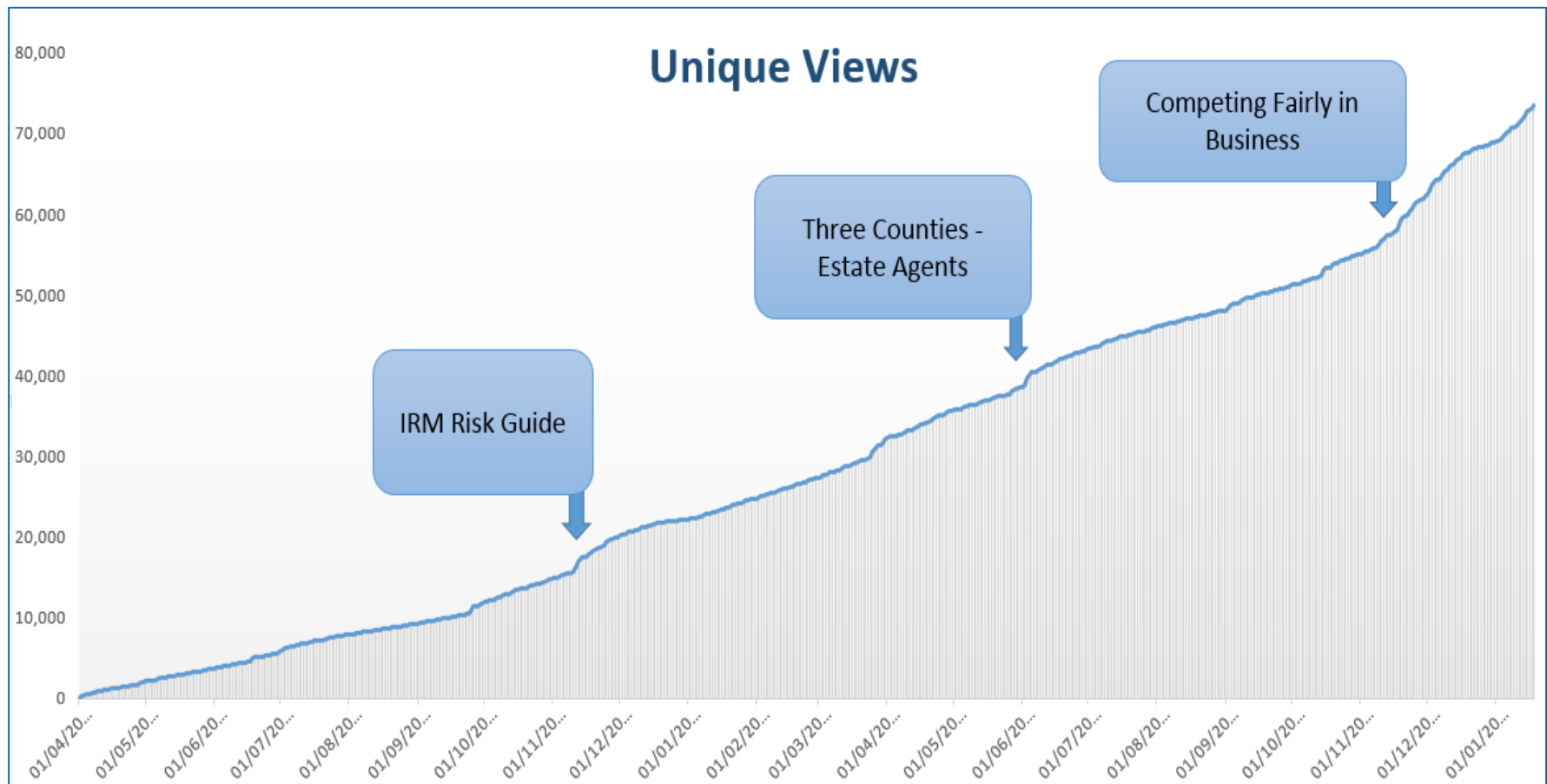
- **Sector specific Partners (following case-work)**

*National Franchised Dealers Association, Society of Motor Manufacturers
Property Ombudsman, National Association of Estate Agents
Federation of Independent Practitioner Organisations, GMC, Monitor*

Total Reach: **490,000+**

Evaluation – unique views

Compliance pages on gov.uk



Evaluation – behaviour change

- Property Ombudsman changed codes of practice for agents and produced specific guidance note on competition law



Guidance for Agents: Compliance with Competition Law

This guidance supplements the TPO Code of Practice (1 October 2015 version) and has been drafted to help agents meet their obligations under the law and the Codes. The content is in a form prepared with input from the Competition and Markets Authority.

- Reporting and subsequent case opening - Residential estate agency services: suspected anti-competitive arrangement(s)

Case information

This investigation has been launched on the basis of information received after compliance work undertaken following [a previous CMA investigation](#) into the advertising of fees in the estate and letting agency sector.

Looking forwards

Good progress over first 18 months

- Constant promotion to extend reach, frequency and **relevance** of messaging



1. Continue targeting sectors
 - enforcement/intelligence-led
 - issue-led e.g. bid-rigging, resale price maintenance
2. Drive smaller businesses/advisers to compliance content
 - Greater use of Warning Letters
 - Promote to all UK regions via law firms/Chambers of Commerce