

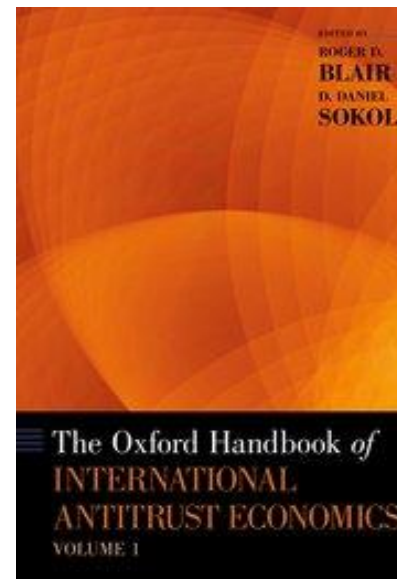
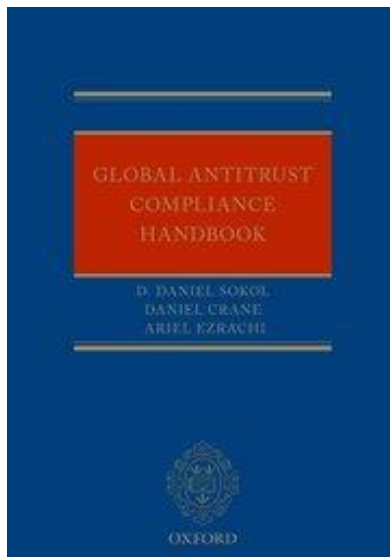
# Rethinking Compliance

Anne Riley – ICC Task Force on Antitrust  
Compliance and Advocacy

D. Daniel Sokol – University of Florida

# Previous Literature

- Riley and Bloom (2011)
- OECD (2011) (and Riley contribution)
- Sokol (2012)
- Sokol (2013)
- Sokol, Ezrachi & Crane (2014)
- Blair and Sokol (2014 forthcoming) (and Abrantes-Metz & Sokol contribution)



# The relationship between antitrust law compliance and broader issues of corporate governance

- Optimal deterrence and its limits
- Need proactive compliance
- Antitrust out of step with other areas of white collar crime like anti-bribery and corruption

# Drivers of Illegal Behavior

- Lack of commitment by management
- Unethical corporate culture
- Legal uncertainty
- Employee error
- Rogue employees
- Arrogance
- Competing interests from other compliance areas

# Antitrust Authorities and Compliance

- Strict liability
  - DOJ & DG Competition
- Negligence liability
- Composite regime of strict and negligence (leading to optimal outcome)
  - US Sentencing Guidelines
  - FCPA Guidance
  - World Bank
  - UK Anti-Bribery

# How the Market Responds to Compliance Failures

- Negative stock returns
- Sometimes there are reputational effects, sometimes there are not, for publicly traded companies reputational effects is a driver of behavior
- Shifting perceptions in Europe and Asia over time will create greater reputational penalties
- Increased linkage with CSR and antitrust will add to reputational penalties

# Focusing on creating credible and robust antitrust law compliance programs

- Self policing to optimize enforcement
- Agency guidance
- ICC toolkit

# Internal Management Issues

- Organizational Design and Management Commitment
- The role of the General Counsel and Chief Compliance Officer
- Relationship between Legal and Compliance and the business unit



# Ensuring the program has the right elements

- Risk Analysis (Identifying and Minimizing Legal Risk)
- Training and raising concerns
- Incentives That May Create Risk and Discipline to the Risk
- Compliance after an Infringement

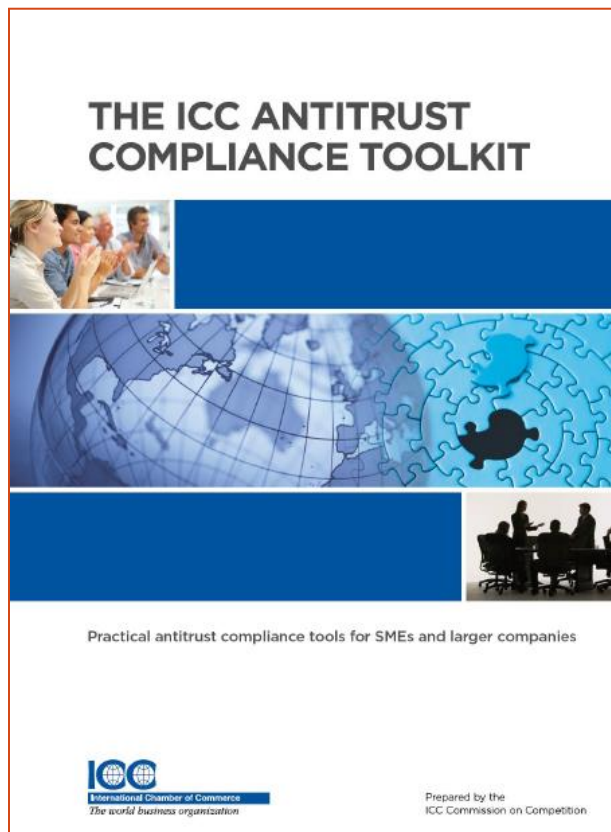
# ICC Toolkit

- ICC Commission on Competition
- Working group on Antitrust Compliance and Advocacy
- Ongoing dialogue with regulators
- Ongoing advocacy to business
- Dialogue with ECN, ICN and OECD
- Promoting consistently high global standards for antitrust compliance to assist companies – and ultimately stimulate trade and investment
- Developed a practical Toolkit for companies
- Complement existing materials – from agencies and organisations
- Toolkit should assist companies of all sectors and sizes

- No “one size fits all” or overnight solutions
- No such thing as “zero risk”
- What are effective controls?
- The people factor (controls alone don’t change behaviour)
- Alignment with broader programmes
- Reconciling regulatory requirements
- Championing compliance for vibrant businesses

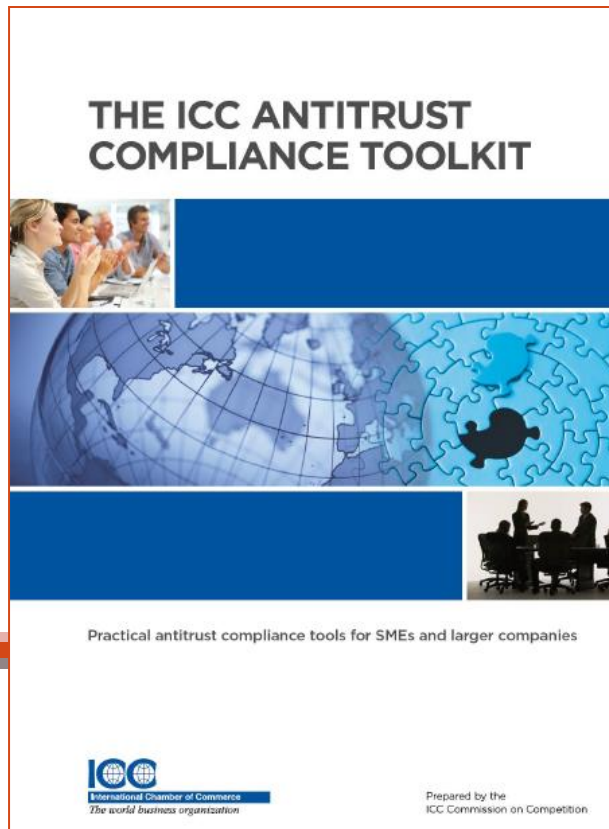
- Questions and Chair's conclusions from the OECD 2011 Compliance roundtable  
(OECD summary from DAF/COMP/M(2011)2/ANN/4)
  - The question is how far should competition authorities go? [in defining standards of agency expectations of best practice]
  - One approach is to leave the responsibility for compliance programmes with the business community, given they are for the benefit of the firm
  - However, if competition authorities want to *promote compliance* with competition law, it is arguably the responsibility of competition authorities to engage in a discussion with the business community and work together towards some common standards.

## A Toolkit of 11 Chapters:



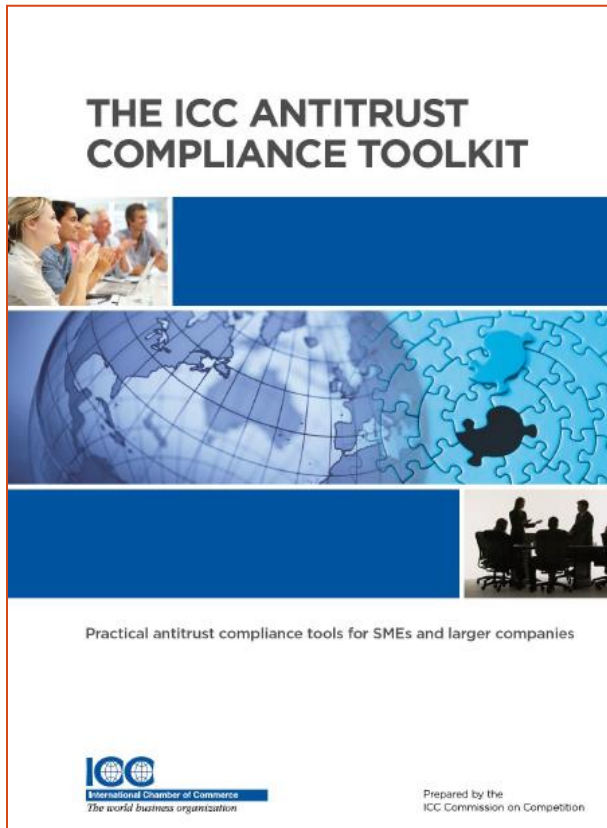
1. Compliance embedded as company culture and policy
2. Compliance organization and resources
3. Risk identification and assessment
4. Antitrust compliance know-how
5. Antitrust concerns-handling systems
6. Handling internal investigations
7. Disciplinary action
8. Antitrust due diligence
9. Antitrust compliance certification
10. Compliance incentives
11. Monitoring and continuous improvement

## Compliance embedded as company culture and policy:



- Companies to recognize antitrust risks that they face
- Adopt appropriate company standards of behaviour (e.g. Code of Conduct)
- Encourage business leaders to show active and committed personal support for ethical business practices

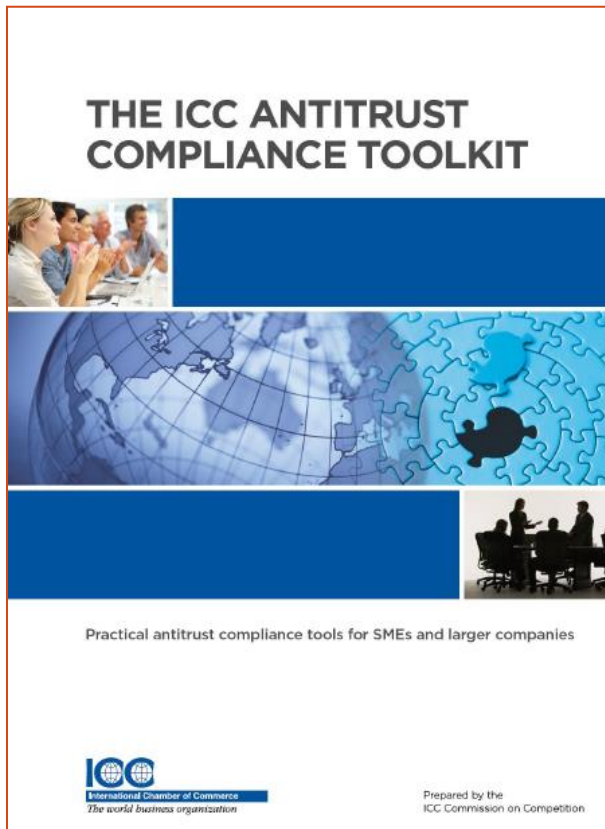
## Compliance organization and resources:



- Senior individual to supervise the implementation of the antitrust CP
- Ensure Compliance Officer / Head can make reports to highest levels of management
- Decide how to develop policies and/or guidance (depends on resources)

## Risk identification and assessment:

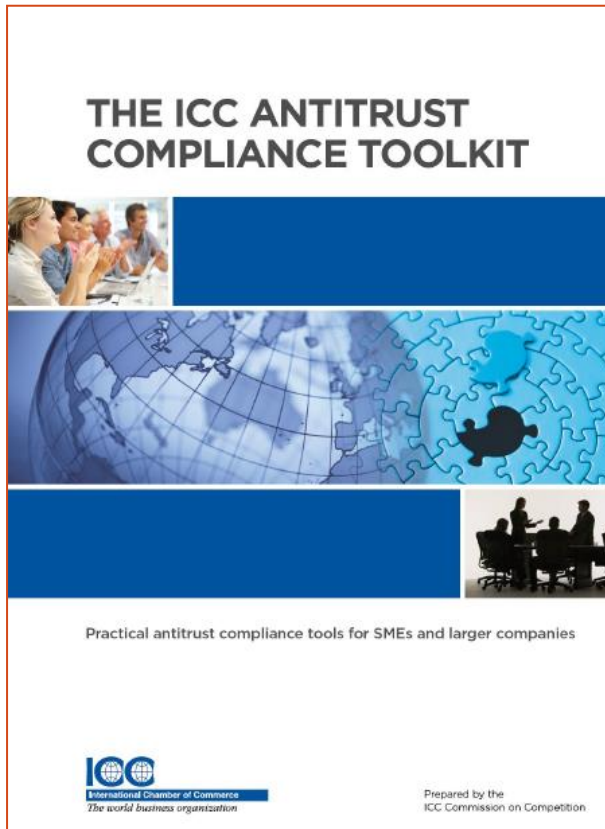
- Decide how to identify antitrust risks and trends, ideally as part of a general risk management process
- Consider what controls are needed to manage, minimize or eliminate the risks identified
- Share insights on the assurance process and scope for improvements with senior management





## Antitrust compliance know-how:

- Tailor antitrust know-how guidance to the risk profile and needs of the company
- Decide on the best way to deploy interactive training and updates
- Use business language, not legal jargon
- Work to ensure the message is understood



## Reinforcement of an existing programme:

5. Antitrust concerns-handling systems
6. Handling internal investigations
7. Disciplinary action
8. Antitrust due diligence
9. Antitrust compliance certification
10. Compliance incentives
11. Monitoring and continuous improvement

