



**The Competition Authority**  
An tÚdarás Iomaíochta

# **Project Selection and Prioritisation Principles**

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# Project Selection and Prioritisation Principles

## Background

The Competition Authority is an independent legal body that enforces Irish and European competition law and advises Government Ministers and public authorities generally on competition related issues.

Competition law is designed, primarily, to protect and benefit consumers, including businesses. The Competition Authority's mission is ***"to ensure that competition works well for consumers and the Irish economy"***.

Competition benefits everyone; consumers, businesses and the economy as a whole. It keeps prices and costs down and improves quality and choice for all. It fosters innovation in the form of new products and services and it supports economic growth.

These benefits arise because competition encourages businesses to compete for customers. When consumers benefit from competition, then the economy does too. For example, when electricity costs fall due to greater competition, the cost of doing business falls. This makes Irish businesses more competitive at home and internationally, which, in turn, supports economic growth and ultimately job creation.

## Work of the Authority

The Competition Authority strives to make sure that competition works for the benefit of all consumers, including businesses, who buy products and services in Ireland. We do this by promoting competition in all sectors of the economy, by tackling anti-competitive practices and by increasing awareness of such practices.

Where there is evidence of businesses engaging in anti-competitive practices, we can investigate and bring proceedings in court. To assist us in detecting and combating cartel behaviour we have a Cartel Immunity Programme which we operate in conjunction with the Director of Public Prosecutions.

We can also block mergers that would substantially lessen competition.

The Competition Authority promotes competition in the economy by calling for reform when Irish laws, regulations or actions restrict competition and harm consumers. We also advise the Government on how proposed legislation or regulations could affect competition.

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In addition, the Competition Authority has a duty to inform public authorities and the general public about competition issues and give general guidance on compliance with competition law.

There is an important international aspect to our work. This flows from our role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law. As part of this, the Competition Authority is a member of the European Competition Network. The Network's aim is to help countries to apply European competition rules consistently.

We are also involved with the Organisation for Economic Co-operation and Development, the International Competition Network and the European Competition Authorities to promote best practice within the agency and to maintain knowledge of competition issues that are universal.

### **The need to prioritise our work**

Most of what we do is set out in a list of our functions in section 30 of the Competition Act 2002.

The Competition Authority does not have a *duty* to perform all of these functions. In relation to some functions we have the *power* to do so, which we may exercise at our discretion.

### ***What are our statutory obligations?***

The Competition Act imposes some specific duties on the Competition Authority. We do not have any discretion in these matters and the Authority must allocate sufficient resources to fulfil our obligations and prioritise these over our discretionary functions.

The first of these is set out in section 20(1) of the Act, where there is a statutory obligation on us to examine every merger or acquisition notified to us under the Act.

The second is set out in section 30(2) of the Act. That subsection gives the Minister for Jobs, Enterprise and Innovation power to request us to carry out a study or analysis and report on any practice affecting the supply and distribution of goods or the provision of services or any other matter relating to competition.

Certain obligations are also placed on us in relation to the provision of central administrative and support functions that are critical to our work. These include corporate governance, business planning, financial management and accounting and human resource management.

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As mentioned above, we are also responsible for the enforcement of European competition law in Ireland. As such we have a duty to assist the European Commission in carrying out any inspections in the State, or to carry out inspections on its behalf if and when we are requested. Membership of the European Competition Network is also compulsory for national competition authorities of all EU Member States.

### ***What discretionary functions do we have?***

We are entitled to determine our own priorities in relation to the exercise of all other functions to make the most of our resources and get the best value for consumers, business and the economy. We refer to these functions as discretionary. They typically take the form of individual projects. These include

- enforcement investigations,
- market studies,
- guidance notices,
- advocacy initiatives, and
- education & outreach.

### ***Why do we need to prioritise?***

The Competition Authority is funded by an annual grant from the Department of Jobs, Enterprise and Innovation. Being funded by tax-payers' money, we seek to achieve the best outcome for consumers by allocating resources to the right projects. Appropriate project selection and prioritisation criteria can help us achieve that and help manage stakeholder expectations.

The Competition Authority is critically aware of the need to prioritise its discretionary activities to ensure the best outcome for consumers and business and to achieve maximum efficiency. This is especially true in a global economic downturn when the resources of most agencies are under pressure in terms of both budget and staffing.

This is also the situation currently facing the Competition Authority, with our resources coming under pressure at a time when competition policy can offer a valuable way to contribute to economic growth and recovery.

The Agency Effectiveness Working Group of the International Competition Network, of which the Competition Authority is a member, recommends that an agency should broadly allocate resources across its main activities - enforcement and non-enforcement (including, for example, outreach and education, communications, advocacy, market studies and internal administrative support functions).

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Prioritisation involves deciding what not to do as much as deciding what to do.

Prioritisation does not mean that sectors or areas that have not been identified as high priority will be neglected or ignored. It is just a strategic method of streamlining an agency's focus.

The Competition Authority's prioritisation framework is outlined below. It incorporates international best practice and provides project selection and prioritisation principles. We will use these principles to prioritise our discretionary work and to help make decisions on whether to start or continue with a specific project and/or not to look any further at a particular matter.

## **How we prioritise**

In each of our projects it is important to identify the specific issue or conduct in question, whether it is for example

- an alleged breach of competition law,
- a practice or method of competition affecting the supply and distribution of goods or provision of services,
- a proposed or existing piece of legislation or regulation,
- a need for international involvement,
- lack of compliance, or
- a gap in information on how to interpret competition law.

Equally as important will be the way in which we choose to address the issue or conduct in question, that is the action we choose to take. This might involve

- investigating alleged breaches,
- bringing proceedings to court in appropriate cases,
- studying and analysing particular practices or methods of competition,
- launching an advocacy initiative,
- reaching agreement on good international practices, or
- publishing guidance.

Prioritisation is in essence a balancing act. The Competition Authority, at various stages in the lifetime of any project, from start to finish, will try to determine the significance of the issue at hand, or potential effect of the conduct in question. This will be weighed up

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against the potential influence that the Authority's action might have on the particular issue or conduct at hand and also on similar issues or conduct in future.

We will consider the wider economic significance of the affected market or sector. We will also consider the strategic significance of the issue or conduct in question and our own action and weigh that up against the potential risks involved in the particular project, as well as the potential resource requirements and costs involved.

Five main project selection and prioritisation principles are identified

- Significance of the issue or effect of the conduct in question
- Impact of the Competition Authority's action
- Wider economic significance of the market involved
- Strategic significance
- Risks, resources and costs

The project selection and prioritisation principles are not intended to be an exhaustive or rigid list of all of the factors that the Competition Authority might take into account when deciding whether to start, continue, or end a particular project, nor is it intended that they be applied in any formulaic way. None of the factors discussed are in any particular order of importance and no weighting is given to them. A certain amount of flexibility is required in the application of the principles to permit us to determine what issues to prioritise at any given time. Each and every project will be dealt with and evaluated on an individual, case-by-case basis. Therefore, other factors may be considered as and when necessary or deemed appropriate.

Looking at each of the project selection and prioritisation principles individually in more detail:

➤ **Significance of the issue or effect of the conduct in question**

The Competition Authority will take into account any direct effect on consumers in relation to price, quality and choice of goods or services.

We will also take into account the level of potential harm to customers and businesses, as well as the potential damage to consumers and/or the wider economy if the issue or conduct is not addressed.

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We will consider whether the issue or conduct in question constitutes a real competition law concern. For example, it may involve a private contractual or commercial dispute where the impact may be limited to the parties involved or a legal matter where we would not have jurisdiction, such as intimidation for instance.

Availability of good quality information, whether on the issue or conduct, the parties involved and/or something similar in the past or elsewhere, will be important to allow us to make quick and easy decisions.

We will consider the potential effects of the issue or conduct in question. The effects may be direct – relating to the product or market sector identified – and indirect – relating to other products and sectors. For example, Product A may be used as an input in the manufacturing process of another product (Product B). Any issue concerning Product A may therefore not only affect that particular product but may also have a knock-on effect on Product B.

The scope of the issue at hand or the level at which the conduct in question takes place will also be important; whether it is industry-wide or likely to become widespread, should the Competition Authority not take action.

The nature of the issue or conduct in question may also be used to measure the appropriate level of importance; whether it is a blatant breach and/or whether the parties or industry involved have previously been involved in similar breaches.

#### ➤ **Impact of the Competition Authority's action**

The Competition Authority will consider the potential impact that our action might have, not only on the issue or conduct in question, but also on businesses, other bodies, or Government departments involved.

We will choose to act in those cases where we believe our action will be to the general good of consumers and/or the economy or at least a substantial part of it.

Encouraging compliance with competition law is one of our core objectives. Whether we are

- conducting an enforcement investigation, where general deterrence is one of our aims,
- engaging in advocacy efforts, urging Government to reform laws, or

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- conducting a study, arising from which we recommend reform,

an objective of all of these activities is to deter measures that harm competition and thus increase compliance.

We will consider whether we will be able to take effective action to address the particular issue or conduct in question under competition law, or whether, alternatively any other body would be better placed to act or intervene more quickly.

Availability of reliable information on the effectiveness of previous or similar projects undertaken, whether locally or by competition authorities internationally, can also play a role in our decision-making process

#### ➤ **Wider economic significance of the market involved**

We will consider the economic significance and strategic importance of the affected market or sector.

The particular sector of the economy, and its strategic importance, will play a role in the decision-making process, as well as market characteristics, such as the number of competitors currently in the market, the degree of competition, the possibility of expansion and the potential for entry of any new competitors, as well as any barriers to entry.

We will also consider the characteristics and consumers of the product involved in the conduct; whether it is a luxury or essential good or service and/or whether there are potential harmful effects to a large number of consumers.

We will consider both the direct and indirect likely benefits for consumers of our action, and whether changes in business and government policy will enhance or restore consumer confidence and welfare and benefit the Irish economy or a significant part of it.

#### ➤ **Strategic significance**

The Competition Authority will consider the timeliness of its action from a strategic perspective and whether the matter is of particular importance in terms of our mission, vision and goals, as set out in our Strategy Statement.

For instance, we identified enforcement as one of our high level strategic goals and stated that the highest priority will be given to those infringements which do the greatest harm to consumers. Cartels fall within that category and this means that

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applications under the Cartel Immunity Programme are likely to be prioritised by the Authority in its enforcement work.

Even in a case where the issue or conduct in question might not be very damaging in itself or particularly widespread we may decide to take the project further where there are public interest issues arising out of it, for example, relating to education or healthcare.

In relation to potential enforcement issues, we will have to establish whether any private action has been taken in the matter, or whether it actually constitutes a request for legal advice, in which case we will not be in a position to act.

We may choose to pursue a particular project further where it would enhance the credibility of the competition regime or build capacity for better actions in the future.

The particular project might assist in developing important legal precedent or establishing case law and/or in helping to formulate or change economic policy. Our action might also be informative and/or deter similar conduct in future.

#### ➤ **Risks, resources and costs**

As mentioned above, the likely effect of the issue or conduct in question as well as the influence that the Competition Authority's action might have will be weighed up against the risks involved in the particular project as well as the potential resource requirements and costs involved.

In doing this we will consider the nature and scale of our action and/or whether there is scope for criminal or civil enforcement and the possibility of private action. The expected timing and resource requirements of the particular project as well as other work ongoing across the Competition Authority, both in terms of staffing and costs, will also be taken into account.

Throughout this whole process we will be mindful of the fact that the Competition Authority is funded from public money. We will also bear in mind that our actions can have an impact on others. We will therefore strive to be as reasonable as possible in our dealings with others and try to ensure that our actions are proportionate to the issue at hand.

### **Prioritisation as an ongoing process**

Whatever the Competition Authority's decision in a particular project all the information we receive is recorded and we keep a keen eye on signs of possible problem areas, recurring issues or repeat conduct and negative developments in any particular industry

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or sector of the economy. All of this information is fed back into the decision-making process during prioritisation and, as explained above, will have an impact on the selection of future projects.

Any previous decision not to take a project further, or not to act on a certain matter, will not automatically determine our decision, should a similar issue or the same conduct, market or sector come under scrutiny again. We will take into account any new information or developments and will apply all of the principles set out. This is not only to ensure that no sector becomes complacent and thinks itself immune to scrutiny but also to provide for any changes in the regulatory or economic context or within the Competition Authority in terms of focus, strategy or resources.

The more reliable the information we receive, the better we can understand any situation and the quicker we can be up to speed on the workings of any industry, market or sector. This is important to ensure a better outcome in any action taken by the Competition Authority.

The Competition Authority will keep the Project Selection and Prioritisation Principles under review and will revise them from time to time, as and when appropriate.

## **In summary**

The project selection and prioritisation principles can be summarised as follows:

- Significance of the issue or effect of the conduct in question
  - Direct effect on consumers – price, quality and choice
  - Potential impact of the issue or conduct on customers, business and ultimately consumers
  - Real competition law concern
  - Level of information available
  - Wide ranging or likely to become widespread
  - Blatant or repeat infringement
- Impact of the Competition Authority's action
  - Direct outcome - likelihood of effective action
  - Indirect outcome – change in business and government policy restoring consumer benefit and welfare
  - Increased compliance and general deterrence
  - Best placed to act – other regulators or legislation
  - General good of consumers and economy
  - Efficacy of previous or similar projects
- Wider economic significance of the market involved
  - Strategic importance of particular sector of the economy or industry
  - Market characteristics – concentration & barriers to entry
  - Product characteristics – luxury or essential good; potential for harm to a large consumer collective

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- Strategic significance
  - Timeliness
  - Public interest
  - Enhance credibility or capacity-building
  - Legal precedent
  - Economic policy
  - Informative & deterrent effect
  
- Risks, resources & costs
  - Possible outcomes – nature & scale
  - Scope for criminal or civil enforcement and possibility of private action
  - Expected timing & resource requirements
  - Other ongoing projects & work
  - Reasonableness and proportionality of costs

## **More information**

More information on the Competition Authority is available on our website: [www.tca.ie](http://www.tca.ie).

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