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Case prioritisation and prosecutorial discretion by competition authorities – Background Note

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Abstract

Given the limited resources available to competition authorities, decisions around case prioritisation and prosecutorial discretion play a fundamental role in shaping the effectiveness of competition policy. This paper, supported by original survey evidence, highlights how such decisions influence the actions that competition authorities take and reflect their strategy and overall priorities. Effective case prioritisation requires striking a balance between discretion, transparency and cost-benefit based decision making. Authorities should consider developing procedures and public guidance to provide clarity and transparency to these decisions, and develop healthy case pipelines to make the exercise meaningful.

Key words: case prioritisation, prosecutorial discretion, competition enforcement, competition authority effectiveness, competition policy, international co-operation, market studies

JEL codes: K21, L4, L40, L41, L42, L49

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Executive summary

Case prioritisation by competition authorities is essential due to limited resources

Competition authorities must make strategic choices about where to focus their limited resources.[1] Case prioritisation and prosecutorial discretion are therefore central to effective competition policy, relating to the cases chosen, discarded or continued. While administrative and prosecutorial competition regimes differ in key respects, both rely on case prioritisation and prosecutorial discretion to deploy resources effectively at the individual project level. Although case prioritisation may most naturally focus on competition enforcement cases, a holistic approach should also encompass other actions, such as mergers, market studies and advocacy, to maximise impact.

To illustrate current practices with case prioritisation, the OECD conducted a short survey and received responses from thirty competition authorities. The survey results provide several insights into how competition authorities make case prioritisation decisions in practice. For example, the results show that authorities employ a range of different approaches to case prioritisation, although there are areas of similarity, such as many authorities having high degrees of discretion in how they select cases and several also publishing guidelines on how they prioritise cases.

Effective case prioritisation requires discretion anchored in strategy and transparency

Effective case prioritisation should be guided by an authority's overarching strategy and high-level priorities. To achieve this, competition authorities benefit from having discretion to select which cases to pursue and which to discard. Checks and balances may be appropriate. For example, providing appropriate transparency on the reasons for case prioritisation decisions can be an effective measure to reduce risks of excessive discretion. While providing detailed information on individual cases may be challenging, publishing general guidance on the approach can be useful and many authorities are already doing so. Efforts to promote transparency by explaining how cases are selected can be enhanced if the authority has a dedicated unit for such tasks. Transparency can also help the private sector better understand how cases will be selected, providing more certainty and making it easier to align with the future work of the authority.

Case prioritisation is akin to a cost-benefit and opportunity-cost exercise

Case prioritisation is, in essence, a cost-benefit analysis. Several factors combine to determine these assessments, for example the likelihood and magnitude of potential competition issues and the prospects of success, including at appeal. Other relevant variables include the chances of remedying harm, the economic and social importance of the markets concerned, deterrence effects, the expected costs and complexity of the action, as well as its likely risks. Importantly, cases will be assessed relative to existing

activities of the authority and likely alternatives, with the true cost of taking a case being the opportunity cost not to take others. Beyond these considerations, many factors could legitimately drive case prioritisation decisions, including those relating to public interest or highly specific strategic issues. Ensuring these factors are understood across an authority can be useful in ensuring the correct information is collected to assess prospective cases effectively. Competition authorities should also consider how to ensure their case prioritisation decisions reflect the best interests of the organisation, and are not unduly influenced by the incentives of individuals or their biases.

The OECD’s survey shows that authorities use a range of practices regarding case prioritisation decisions. Competition authorities should focus on creating manageable processes that leverage available information and staff experience to steer decisions. Understanding the cost of past actions could help authorities assess future options, as can having detailed knowledge of their current case portfolios. Templates for complainants could also assist in providing better quality information. Balancing relevant factors in practice requires careful assessment, but quantitative approaches can support qualitative judgements to improve case prioritisation decisions.

Case prioritisation must be supported by strong delivery and future case generation

Case prioritisation is a necessary, but not sufficient, condition for an effective competition authority. Absent a strong pipeline of potential cases, whether competition enforcement, market studies, mergers or advocacy, even great prioritisation decisions will not boost impact. Further, case prioritisation has limited value if authorities are not able to deliver the cases successfully. Alongside ensuring cases are successfully carried out, competition authorities must therefore also invest in generating future cases of potentially high impacts. Strengthening intelligence functions is likely to be an important step on this journey, as is occasionally conducting ex-post assessments. Such assessments not only allow an authority to learn lessons to improve, they also provide a better understanding of the impact of cases, providing the potential to continually select better cases over time.

1. Introduction

1. The resources of competition authorities are finite, meaning they cannot investigate all potential infringements of competition law, advocate against all impediments to competition, or research all areas of interest. To borrow from Confucius, if you chase two rabbits, you will catch neither. How competition authorities decide which cases to prioritise or prosecute is therefore important in ensuring limited resources have as much impact as possible. With recent data suggesting an overall decline in number of competition enforcement cases (OECD, 2025[1]), competition authorities will likely come under increasing pressure to demonstrate their efficacy. It is therefore an opportune time to consider how best they can prioritise their cases and when, and when not, to exercise prosecutorial discretion.[2]

2. Most competition authorities identify strategies to achieve their aims. As part of this they often set high-level priorities by identifying activities or sectors to concentrate on. They must also decide how to organise their resources and staff. This paper will focus on case prioritisation rather than high-level priorities or other strategies, narrowing in on the choice of individual cases and how these decisions are made. Nonetheless, despite this focus, the paper will need to consider how other levels of prioritisation might influence case prioritisation. For example, a decision to commence a specific cartel investigation may be influenced by whether or not tackling cartels has been identified as a high-level priority by the authority.

3. Whether a competition regime is administrative or prosecutorial may affect how case prioritisation decisions are made. Nonetheless, there are many similarities between case prioritisation and prosecutorial discretion. For example, both must decide where to devote resources in order to maximise impact, even if the processes and procedures may vary. For simplicity, the paper will use case prioritisation to also describe prosecutorial discretion, but will discuss when differences may emerge between the two.

4. Case prioritisation, to be effective, needs to include a holistic assessment of competing demands and opportunity costs.[3] As such, while much of the discussion in this paper will focus on traditional enforcement areas, such as abuse of dominance and cartels, the paper will also consider a broad definition of "case". In particular, the discussion will also cover prioritisation decisions in relation to advocacy, mergers, market studies, as well as other forms of research, such as ex-post assessments. This will allow the paper to consider how approaches may differ across tools. Similarly, as it relates to decisions on cases and resources, case prioritisation could also relate to the detailed strategies that authorities pursue on each case. This paper focusses on decisions on which cases to pursue and continue, while noting that how cases are pursued will also have a bearing on overall prioritisation.

5. To have the freedom to prioritise across cases, competition authorities require a degree of discretion, although there will be flexibility to adjust resources. How much discretion competition authorities should have, as bodies typically independent from government, has been subject to some debate, and priority setting by authorities depends on their legal and institutional context (Brook and Cseres, 2021[2]).

6. A range of factors are relevant to competition authorities as they consider case prioritisation decisions. Considering these factors and the theoretical underpinnings of decisions can provide a useful framework to evaluate existing practice. At the same time, reality is unlikely to be as simple as a theoretical assessment might suggest. Prioritisation is important, but authorities will devote most of their resources to delivering cases, as perfectly prioritising would be of little value without an end product. Authorities must

also deal with the political reality of being a public facing body that cannot perfectly predict the future. As such, this paper aims to consider both the theoretical and practical aspects of case prioritisation.

7. The OECD Competition Committee has not held a dedicated discussion on case prioritisation before. However, the OECD has conducted several related pieces of work. For example, it has held workshops or discussions considering elements of case prioritisation, such as how to select sectors for market studies (OECD, 2017[3]) or incorporating gender as a prioritisation principle (Kovacic, 2021[4]). A survey conducted in 2012 of OECD delegates evaluating competition enforcement and advocacy activities also included a series of questions relating to high-level priority setting (OECD, 2013[5]). More generally, the Committee's substantial catalogue of best practice competition policy roundtables have touched on many topics of value when considering case prioritisation, such as those that relate to measuring market competition (OECD, 2021[6]), assessing the impact of authorities activities[4] and the many that consider competition in sectors and effective use of competition tools.[5]

8. Other international organisations have worked on case prioritisation: the International Competition Network (ICN) published a report on Agencies' Case Prioritisation and Initiation (ICN, 2021[7]), as well as a chapter on Strategic Planning and Prioritisation in its Agency Effectiveness Manual (ICN, 2010[8]); the United Nations Conference on Trade and Development (UNCTAD) held a roundtable discussion on priority setting and resource allocation as a tool for agency effectiveness in July 2013, including a secretariat background note (UNCTAD, 2013[9]); and the European Competition Network (ECN) also published a Recommendation on the Power for ECN Competition Authorities to Set Priorities (ECN, 2021[10]).

9. To support this paper, the OECD conducted a short survey (the OECD Survey) of competition authorities to better understand several aspects of how they make case prioritisation decisions. The OECD Survey received 30 responses, and its results are referred to throughout the paper where relevant. A detailed summary of the findings are provided in the Annex.

10. The structure of this paper is as follows. Section 2. considers what we mean by case prioritisation and how it fits alongside broader high-level priority setting. Section 3. discusses the role and limits for prioritisation by competition authorities, including the constraints that should apply and the potential policy reasons for more, or less, discretion. Section 4. focusses on the factors relevant to case prioritisation decisions, as well as considerations for different tools and actions, and Section 5. considers more practical aspects, such as case prioritisation processes and the gathering of relevant information. The final section concludes and discusses potential future work.

2. What is case prioritisation and how does it relate to broader priority setting?

11. Prioritisation can take place at multiple levels within a competition authority. Case prioritisation, which is the focus of this note, concerns decisions on which projects to pursue, as well as which not to. In addition, at the organisational level, competition authorities may signal their high-level priorities. This section explores the definitions of these two levels of priority setting, as well as their differences and interactions.

2.1. Case prioritisation captures decisions on individual cases

12. Case prioritisation is important as it allows competition authorities to maximise their impact with limited resources and also effectively guide their work (ICN, 2021[7]). As competition authorities do not have a defined scope of activity like sector regulators, this prioritisation becomes even more important (Jennings, 2015[11]).

13. Case prioritisation decisions take place at an individual case or action level. This can also include when, and when not, to exercise prosecutorial discretion not to pursue a matter. These decisions revolve around what cases are worth pursuing, continuing, as well as the manner in which they are conducted. Case prioritisation is not an end in itself, but is the process by which an authority ensures it is taking the right cases, in the right way, at the right time.

14. There are both positive and negative dimensions to case prioritisation. On the positive side, this can involve deciding to launch a case, an ex-officio investigation, for example. On the negative, it could relate to deciding against pursuing one, such as when a complaint is received. As noted above, decisions are also needed beyond enforcement, such as for advocacy, market studies and perhaps to a lesser extent, mergers.

15. Case prioritisation is not just a one-off decision of whether to pursue a case or not. As cases evolve, a series of explicit or implicit decisions are made, such as it continuing to be worth pursuing. Decisions can also cover how to end cases, for example whether to seek particular remedies or to agree to a proposed settlement. Likewise, not taking up a potential project also reflects a decision. Seen this way, case prioritisation is a dynamic and constant process. As discussed in more detail further below however, for practical reasons decision making often occurs at discrete moments in a case lifecycle rather than constantly.

16. While case prioritisation decisions typically consider a holistic range of factors, as explored in more detail in Section 4. , they are likely to also be subject to several constraints. For example, the amount of resources at team level, such as cartels, may already be set. There may also be political or other factors driving individual case decisions.

2.2. High-level priorities set a context for an authority's actions

17. In contrast to case prioritisation, organisational high-level priority setting considers what the organisation will focus its resources on going forward. This is usually part of the overall strategy of the authority. High-level priorities are made periodically rather than in relation to specific cases. Some authorities set them annually, whilst others define them for longer periods. These priorities can determine how resources are allocated across an authority, for example the size and structure of tool focussed teams, like mergers or cartels. It can also affect where intelligence resources are directed.

18. Setting high-level priorities is common amongst competition authorities, and some authorities are under an obligation to do so.[6] For example, an OECD survey conducted in 2012 found that only three of the 46 authorities surveyed did not set priorities of some description (OECD, 2013[5]). While such high-level priorities can take various forms, it is common for them to focus on two areas:

- Sectors or industries where there is a particular desire to improve competition, for example markets relating to food or healthcare.
- Competition tools or types of conduct, for example cartels or exclusionary abuse.

19. Launching high-level priorities often communicates to government and the public the objectives of the authority, boosting transparency and accountability. Some authorities consult on their high-level priorities in order to obtain input from external stakeholders. [7] Such an exercise can broaden acceptance and legitimacy of the priorities that are adopted. Box 1 provides examples of the high-level priorities published by competition authorities.

20. High-level priorities can also reflect factors external to a competition authority. For example, they can form part of the dialogue with government on how the agency will seek to align with their priorities. [8] The nature of these discussions will depend on the institutional set-up of the authority. It may also link to a broader question of how governments prioritise their actions across policy areas, which is not the focus of this paper.

Box 1. Examples of high-level organisational priorities

Enforcement and compliance priority areas in New Zealand

Since 2017/18, the New Zealand Commerce Commission (NZCC) has publicly released its annual enforcement and compliance priorities, alongside a set of enduring priorities. The annual priorities change year to year, while the enduring priorities have evolved over time and signal areas the NZCC will always regard as priorities due to their significant potential impact on consumers, businesses or markets in New Zealand.

For 2025/2026 the NZCC's enduring priorities are cartels, anti-competitive conduct, activities that support market and economic regulation functions, product safety and the protection of vulnerable consumers. NZCC's specific priorities for 2025/2026 are cartels in the procurement of public services and infrastructure contracts, online sales conduct, breaches in the grocery and telecommunications sectors, motor vehicle sales and finance, and unconscionable conduct.

Korea's Major Work Plan

The Korean Fair-Trade Commission (KFTC) publishes an annual "Major Work Plan" outlining its core priorities for the coming year. For 2026, the KFTC will focus on four priorities: addressing power imbalances between large firms and small businesses; promoting fair competition in areas closely

related to people's livelihoods; fostering an innovative digital market ecosystem; and strengthening policy effectiveness for large business groups.

Within each priority area, key and supporting measures are identified to support achieving the strategic priorities. Examples of such measures include "creating fair subcontracting conditions that ensure timely payment" or "Strengthening market surveillance against price fixing".

Four-year organisational goals in Brazil

Since 2013 Brazil's Administrative Council for Economic Defense (CADE) has issued strategic plans every four years. For 2025–2028, ten organisational goals were provided, including (but not limited to) promoting a culture of competition, ensuring timely and rigorous control of market structures, and improving the efficiency of investigations and decisions on anti-competitive conduct.

Each goal has several descriptors and key results that CADE seeks to achieve. Examples of descriptors include: promoting a culture of competition among public officials or delivering timely, consistent and efficient merger reviews. Key results include reducing the average review period of summary mergers to less than 20 days.

Mexico's Strategic Plans

In 2022, Mexico's Federal Economic Competition Commission (COFECE), which was at that time the competition authority for Mexico, released its strategic plan for the years 2022-2025. The plan identified four institutional objectives for the period: prevent and correct market structures that hinder, damage or impede competition and free market access; fight and deter anticompetitive practices that affect markets; promote the application of competition principles between public and private actors through actively spreading the benefits of economic competition; and consolidate a robust institutional model that effectively responds to the institutional needs and challenges. Furthermore, as part of the strategic plan, COFECE prioritised several sectors, including food and beverages, transport and logistics, construction and real estate, energy, health, public procurement and digital markets.

Five yearly strategic plans in Türkiye

In 2024, Türkiye's Competition Authority, the Rekabet Kurumu (RK), released a strategic plan for (2024-2028). The plan identifies six goals and numerous sub-goals. The goals include (but are not limited to) ensuring the effective enforcement of competition law, and encouraging the production and dissemination of knowledge concerning competition law. Sub-goals include the updating of legislation, developing relations with academia and conducting academic studies. To achieve these goals and subgoals, the RK's strategic plan establishes "target cards" which provide performance indicators, and identifies risks, strategies, and cost estimates, findings and needs to achieve these objectives. For example, to achieve the production and dissemination of competition knowledge objective, RK set a number of desired publications per staff for each year.

Sources: NZCC (2025[12]), Enforcement and compliance priority areas, https://www.comcom.govt.nz/assets/Uploads/2025-26-Enforcement-and-compliance-priority-areas.pdf; KFTC (2025[13]), *Major Work Plan for 2026*, https://www.ftc.go.kr/www/selectBbsNttView.do?pageUnit=10&pageIndex=1&searchCnd=all&key=23&bordCd=2&nttSn=46824; CADE (2025[14]), *CADE Strategic Plan 2025-2028*, https://www.gov.br/cade/en/matters/news/cade-releases-2025-2028-strategic-plan; CADE (2025[15]), *Plano Estratégico CADE 2025-2028* https://cdn.cade.gov.br/Portal/acesso-a-informacao/institucional/planejamento-estrategico/2025/%5BCADE%5D_Caderno_da_Estrategia%202025-2028%201.pdf; COFECE (2022[16]), *Strategic Plan 2022-2025*, https://www.cofece.mx/wp-content/uploads/2022/11/PE2022-2025-ing-VF.pdf; Rekabet Kurumu (2024[17]), *Strategic Plan 2024-2028*, https://www.rekabet.gov.tr/Dosya/1-rekabet-kurumu-stratejik-plan-2024-2028.pdf.

2.3. High-level priorities and case prioritisation are different but connected

21. The two types of priority setting are undertaken for different purposes. Case prioritisation helps ensure the right mix of cases for an authority, while high-level priorities provide direction and transparency on their future intentions as part of implementing the overall goals of the organisation. At the same time, they also share similarities. Both reflect a need for competition authorities to operate efficiently and effectively given their objectives and constraints. Both must interact with authorities' institutional context.

22. They are also inter-dependent. Many of the considerations that determine priorities at one level of the organisation will also influence them at others. High-level priorities provide a framework within which case prioritisation decisions are made, both theoretically and operationally. Put simply, to achieve strategic objectives, the cases that authorities take should be consistent with the overarching goals of the organisation (Kovacic, 2018[18]). Ultimately, high-level strategies must be implemented through the choice of activities if they are to have any meaning. High-level priorities can also be influenced by individual case prioritisation decisions, for example if a series of decisions to initiate cases in a sector highlights a need to make it a broader priority.

23. To support this, the OECD survey conducted alongside this paper reveals that competition authorities believe that their high-level priorities have a significant influence on their case prioritisation decisions. Of the 30 respondents to the survey, 25 indicated that it was at least somewhat likely that a case prioritisation decision would be influenced by the authority's high-level priorities, with seven stating that this was very likely to be the case. Only one respondent indicated that it was somewhat unlikely that a case prioritisation decision would be influenced by the high-level priorities, and no respondents replied that it would be very unlikely.

24. The structure of an authority will to some extent reflect its high-level priorities, which will predetermine some parameters of case decisions. For example, if high-level priorities suggest that an organisational focus on a particular area of enforcement, there may be constraints on the ability to pursue cases falling in other areas if staff are committed elsewhere. However, these constraints may not be set in stone, and competition authorities may wish to have some flexibility to alter budgets between teams based on the cases they want to prioritise (ICN, 2021[7]).

25. In summary, the different prioritises operate at different levels, with high-level priorities being decided first at a macro level, but providing a framework to guide micro level decision making. As explored in Section 4. below, case prioritisation is then likely to be guided and impacted by organisational priorities, alongside other factors. Case prioritisation can also be a method for operationalising the priorities that the organisation sets itself.

3. The role and limits of discretion in case prioritisation

26. The previous section considered how different types of priorities interact. The discussion was based on an assumption that competition authorities have some ability to choose and then execute their priorities.

27. While there will likely always be choices available to competition authorities in how to progress cases, focus their investigative resources and the outcomes they pursue, nonetheless, the ability for authorities to freely exercise case prioritisation is to some extent determined by the degree of discretion they have to select their actions. Brook and Cseres (2021[2]) refer to the ability to set priorities as administrative discretion. As an example, if an authority is under an obligation to pursue an investigation in response to all complaints or petitions it receives, the ability to freely prioritise will be reduced. The ICN (2021[7]) notes that the most common reason competition authorities gave for not having a competition enforcement prioritisation policy was that they did not have discretion to dismiss complaints and so did not need a policy.

28. This section considers what discretion means for competition authorities and what impact it has on their ability to prioritise.

3.1. The degree of discretion affects the ability to prioritise freely

29. How competition authorities can, and should, prioritise depends on their legal and institutional context, and in particular the constraints that they must operate under. To illustrate this point, case prioritisation discussions do not usually focus on the area of mergers, as many jurisdictions have little choice but to assess mergers that are filed. This could mark a point of significant differences between prosecutorial and administrative regimes., however and even where a merger has to be reviewed, there will likely remain discretion on which issues to explore and how to do so.[9]

30. Discretion concerns whether authorities have the ability to select or deselect cases on subjective policy grounds, rather than objective grounds such as incomplete filings or clear lack of relevance (Petit, 2010[19]). Discretion can also be defined as the availability of options rather than an enforced choice (Gryllos, 2016[20]). There are several aspects of discretion to consider. As noted above, this includes whether or not authorities have a discretion to investigate matters as they choose or to respond to issues brought to them. These are sometimes described as the positive and negative aspects of prioritisation (Wils, 2011[21]). Interestingly, authorities appear to be aligned in having similar degrees of positive prioritisation, but may differ in their negative prioritisation abilities, notably how they must respond to complaints (Wils, 2017[22]).[10] Finally, as noted by Brook and Cseres (2021[2]), both *de jure* and *de facto* discretion are relevant, as even if legally it may be permissible to prioritise, it must also be possible in practice.

31. Beyond case selection discretion, timing and resourcing considerations also provide a degree of discretion, as does case strategy. Even if there are mandatory actions for authorities, there is likely to be

some ability to decide what to do and how to do it (Kovacic, 2018[18]). This means that while discretion is a determinant of how freely an authority can prioritise across cases, a lack of discretion does not necessarily mean an authority has no ability to prioritise.

32. The level of discretion competition authorities have can vary across jurisdictions. As detailed in the Annex of this paper, the majority of respondents to the OECD Survey indicated that they had at least some discretion to dismiss complaints that were received, with only two respondents indicating that they had little discretion to dismiss complaints. There was an even split between respondents indicating that they had significant discretion and those that indicated only having some, with the difference being attributed to the need to provide reasons. Similarly, in a 2021 survey by the ICN, 61% of responding competition authorities indicated that they did have the discretion to not proceed with investigations based on complaints, tip-offs or referrals (ICN, 2021[7]).[11] Box 2 describes how discretion has evolved in the European Union following the ECN Directive.

33. Discretion is not necessarily the same across all types of activities. Several jurisdictions have criminal sanctions for certain conduct, largely in relation to cartels. With potentially criminal conduct, a general principle might apply that prosecution should be brought where there are clear grounds that an individual criminal offence has been committed. Discretion may therefore be more limited to assessments of likelihood of proving breaches. [12] Even within this framework however, there may be grounds to consider the broader relevance and public interest in a case. In this sense, there are even some similarities between case prioritisation and criminal prosecutorial discretion.

Box 2. ECN+ and changes in discretion for authorities

The ECN+ Directive (Directive (EU) 2019/1) entered into force on 3 February 2019 and required Member States to transpose it into national law by 4 February 2021. Article 4(5) empowers National Competition Authorities (NCAs) to set their own enforcement priorities and to reject complaints on priority grounds, with the goal of enabling NCAs to use their resources more effectively.

Pre-Directive, prioritisation powers across EU NCAs varied with some NCAs lacking the power to reject official complaints on priority grounds. The European Commission’s 2017 Impact Assessment reported that fifteen NCAs did not have full power to set their priorities and decide which cases to dedicate their resources as they could not reject non-priority complaints without first investigating the substance of the complaint. It also found that eight NCAs were obliged to investigate cases even if they were not a priority.

For example, France’s *Autorité de la Concurrence*, prior to the Directive did not have the power to reject complaints on priority grounds and could only reject a complaint when it determined that the facts invoked were not supported by sufficient evidence. Similarly, Hungary’s *Gazdasági Versenyhivata* was previously required by law to examine all formal complaints and thus had limited scope for setting priorities before the transposition of the directive in its national law on 1 January 2021. Likewise, prior to 29 April 2021, Spain’s *Comisión Nacional de los Mercados y la Competencia* (CNMC) had a duty to investigate every complaint to identify whether there was sufficient evidence of a possible infringement and could not reject complaints when they are not a priority.

Post-Directive, once Article 4(5) was transposed into a member state’s national law, an NCA which was required to examine all formal complaints was able to reject cases based on their enforcement priorities. For example, the *Autorité de la concurrence* gained an express ‘opportunité des poursuites’ power in 2021 in its transposition of Directive EU and has rejected complaints on that basis, for example, Decision 22-D-19 (Culture Presse/La Poste, 20 Oct. 2022). According to a 2024 ECN Report, only one Member State’s NCA did not have an explicit power to reject formal complaints on priority grounds.

Sources: ECN (2021[10]), *Recommendation on the Power to Set Priorities*, https://competition-policy.ec.europa.eu/system/files/2021-07/recommendation_priority_09122013_en.pdf; Dr Armin Cuyvers et al. (2022[23]), *The boundaries of the Commission's discretionary powers when handling petitions and potential infringements of EU law: From legal limits to political collaboration in enforcement*, https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703589/IPOL_STU(2022)703589_EN.pdf; ECN (2024[24]), "ECN+ Directive", https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/ecn-directive_en; Anna Piszcz and Catherine Grynfogel (2022[25]), *Overview of Compliance with the Requirements of Directive (EU) 2019/1 with Regard to the Independence and Resources of National Competition Authorities: The Examples of France and Poland*, https://link.springer.com/article/10.1007/s40319-022-01215-5; European Commission (2017[26]), "Commission Staff Working Document Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council to Empower the Competition Authorities of the Member States to be more Effective Enforcers and to Ensure the Proper functioning of the Internal Market", https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52017SC0114; Wouter Wils (2017[27]), "Competition Authorities: Towards More Independence and Prioritisation? – The European Commission's "ENC+" Proposal for a Directive to Empower the Competition Authorities of the Member States to be more Effective Enforcers", https://www.concurrences.com/en/review/issues/no-4-2017/articles/the-european-commission-s-ecn-proposal-for-a-directive-to-empower-the-en; OECD (2019[28]), *Annual Report on Competition Policy Developments in Spain,* OECD Publishing, Paris, https://one.oecd.org/document/DAF/COMP/AR(2020)31/en/pdf.

3.2. Discretion empowers authorities but may be subject to limits

34. As experts in their field, authorities are likely best placed to use their specialised knowledge to understand how to best achieve their objectives. For some, discretion also goes hand-in-hand with independence, reducing the risk of undue interference by allowing authorities to conduct their affairs as they see fit. If authorities are not given options, then it increases the risk that they can be influenced by government.[13] Further, discretion may enable authorities to more effectively take into account broader public interest considerations that may be difficult to incorporate into enforcement decisions, but are nonetheless important for maximising the benefit and relevance of their work (OECD, 2023[29]).

35. While many jurisdictions provide discretion to authorities, some implement a safeguard of transparency through an obligation to explain why.[14] This obligation typically mandates explaining the reasons for not taking or continuing a case. Insufficient transparency could provide conditions for competition authorities to breach general principles of law, such as obligations not to discriminate between different entities (Petit, 2010[19]). For example, competition authorities have sometimes been found to have given insufficient reasoning for having rejected complaints and been asked to reconsider (AWB, 2010[30]).

36. Some jurisdictions limit other aspects of authority discretion, for example by imposing administrative limits on them. This could include setting time limits on cases, or requirements to consult with parties. This provides a mechanism by which authorities lose a small element of discretion to enhance accountability for decisions made after initiation.[15] In other jurisdictions, competition authorities can be obliged to engage in activities specifically directed by government. For example, in Australia and New Zealand, the competition authorities can be required to conduct market studies at the behest of government (OECD, 2025[31]).

37. These different forms of constraint combine to influence the degree of prioritisation exercised by an authority. Based on their research of European prioritisation practices, Brook and Cseres (2021[2]) highlight the interaction between prioritisation and constraints, setting out four models of competition authorities prioritisation. These identify trade-offs, based on external (governments, legislators or judiciary) and internal (self-imposed constraints by the authority) constraints.[16]

38. While this paper argues that discretion is an important element to enable effective case prioritisation, and that case prioritisation is important, within the context of public bodies often independent from central government, there may be possible reasons to limit or impose obligations in relation to the discretion of competition authorities. The literature, for example, has noted that unrestrained discretion can lead to risks (Brook and Cseres, 2021[2]) or trade-offs (Petit, 2010[19]). One potential limitation on discretion

is that decisions by authorities in many jurisdictions will be subject to general principles of administrative law, including effectiveness, independence and accountability, as well as government and judicial oversight (Brook and Cseres, 2021[2]). There have also been arguments raised for reasons to have some limits on unfettered discretion. For example, potential concerns about corruption, misaligned incentives, unaccountability, lack of transparency (Markowitz, 2017[32]).

39. Further, and in contrast to arguments seen above in favour of discretion, Petit (2010[19]) notes the risk of populism if too much discretion is given to authorities to dismiss complaints. (Schinkel, Tóth and Tuinstra, 2019[33]) have argued that providing too much discretion could allow perverse incentives for staff within authorities who may make decisions based on their careers rather than the public good, for example selecting higher profile or safer options compared to otherwise. Democratic accountability and competition policy may also be relevant. Limiting discretion may improve transparency and some have argued may improve (perceived) access to fair process and redress for citizens. For example, drawing on the work of administrative law theorist Kenneth Cup Davis, Waller (2025[34]) argues that as well as providing transparency of prioritisation decisions, a decision not to proceed with an investigation should be appealable in order to promote discretionary justice.

40. The appropriate balance between discretion and constraints will depend on the institutional and legal context in which the competition authority operates. However, significant discretion is an important pre-requisite for effective prioritisation and provides the freedom for expert independent bodies to exercise their mandate. Nonetheless, having some checks and balances in this process, for example on transparency, may be beneficial. There may also be legitimate questions over who sets the priorities and how government priorities are taken into account.

3.3. Where possible, competition authorities should promote transparency in how they exercise discretion

41. As well as being a limit on discretion, transparency on how discretion is exercised regarding case prioritisation has many benefits. For example, the Recommendation of the OECD Council on Transparency and Procedural Fairness in Competition Law Enforcement recommends that, as part of ensuring that competition law enforcement is transparent and predictable, adherents should promote the transparency of their competition enforcement priorities (OECD, 2021[35]).

42. In general, the full details of case prioritisation decisions are internal and not available to the public. Providing too much disclosure on the nature of these decisions would likely reveal information which could harm the authority in the pursuit of its objectives. However, in some cases, it will be possible for information to be provided on which cases are being pursued and its relative merits, rather than the prioritisation decision itself. Press releases, for example, may offer some clues as to the reasons a case is launched, rather than a full analysis of its respective merits.

43. An important exception, as discussed above, is when there are obligations to explain why a complaint is not being pursued, and the level of detail required within such explanations. The obligation may be triggered when certain criteria are met, for example with the requirement only being triggered for qualifying complaints. Such rules can improve future intelligence provided to the authority by allowing stakeholders to better understand why cases are prioritised or not. However, there is a risk that the incentive to complain will be undermined if prospective complainants self-assess that the authority will not prioritise it (Van Rompuy, 2022[36]).[17]

44. Even if individual prioritisation decisions are not necessarily public, competition authorities can communicate how they will generally prioritise cases. This allows stakeholders to obtain a greater understanding of the actions of a body, improving agency accountability, but also allowing stakeholders to better adapt to the public priorities. Several authorities issue public guidelines to explain how they will

prioritise across cases. These guidelines also serve to provide guidance to the private sector on how the authority will select cases. As noted further below, such guidance will need to retain a degree of flexibility, in order to reduce the risk that does not appear to permit anti-competitive behaviour implicitly deemed a non-priority.

45. The OECD Survey provides some insights to how authorities publish their case prioritisation policies. Half of the respondents indicated that they published written guidelines on how they make case prioritisation decisions, while six others (20%) indicated that they had a policy but did not publish it. Similarly, in the 2021 ICN survey on case prioritisation, just over 75% of respondents had a case prioritisation policy of which 66% of the authorities stated that they made the policy public (ICN, 2021[7]), also equating to half of respondents. Box 3 describes the approach of several authorities to case prioritisation, including noting how they communicate their approaches to case prioritisation. Efforts to explain how cases are selected can be enhanced if the authority has a dedicated unit for such tasks, such as a team that focusses on policy (Kovacic, 2018[18]). Such a unit can also help produce internal processes to guide how and when authorities will provide information on their case selections.

Box 3. How competition authorities' approach case prioritisation

Australia's compliance and enforcement policy and priorities

The Australian Competition and Consumer Commission's (ACCC) approach to the prioritisation of competition and consumer cases is set out by its Compliance and Enforcement Policy and Priorities document. The ACCC uses a mix of principles and factors to make a qualitative judgment in selecting the matters it investigates and sectors it engages in education and market analysis. For example, the Compliance and Enforcement Policy and Priorities 2026-27 Report states that the ACCC's first priority is to achieve the best possible outcome for the community and to manage risk proportionately in its case selection. The Report notes that enforcement actions are undertaken with the goal of maximising impact and leveraging any outcomes across an industry sector. Thus, the ACCC exercises discretion to direct resources to matters that provide the greatest overall benefit.

Annual priorities also inform the ACCC's compliance and enforcement activities for the year. Specifically, the 2026–2027 priorities guide the ACCC to consider competition issues across supermarkets and retail, essential services, aviation, and digital markets. The ACCC used surveys, complaints, intelligence, market inquiries and monitoring activities to identify where competition and trust are under pressure, to determine what sectors of the economy or type of conduct the ACCC would focus on for the year. The Report also lists matters that it is unlikely to pursue including (but not limited to) a one-off isolated event or matters more appropriately resolved directly between the parties.

Denmark's prioritisation of tasks

The Danish Competition and Consumer Authority (DCCA)'s website sets out how it prioritises matters. Prioritisation is guided by a qualitative assessment. The DCCA explains that it weighs the expected impact on market functioning of actions against the resources required. When assessing potential enforcement actions, it considers the gravity and market impact of the suspected infringement, whether the case may clarify a legal issue, and the resource intensity of pursuing it. In determining what guidance or information to issue, like the ACCC, the DCCA looks at stakeholder demand, whether the rules are perceived as unclear, and the expected impact on the relevant market and society.

The United Kingdom's prioritisation and principles report

The Competition and Markets Authority's Prioritisation and Principles Report (2023), explains that its case selection is guided qualitatively by five considerations. These are: the case's strategic significance,

its expected impact, whether the CMA is best placed to act, required resourcing; and the risk associated with CMA action. In general, the CMA's prioritisation is guided by balancing the strategic significance and impact of the case, against risk, resource implications, and whether the CMA is best placed to act. Prioritisation is therefore reliant on judgment and will vary from case to case, contingent on the CMA's overall portfolio and available capacity at the time.

Slovakia's priority policy (2025-2026)

The Antimonopoly Office of the Slovak Republic (AMO) approaches its case prioritisation through a qualitative framework, which rests on four criteria: (1) the importance/strategic importance of the case; (2) the presumption of success of the case; (3) existence of other more effective and deterrent measures; and (4) existing capacities of the AMO. Determining the importance/strategic importance of the case rests on the type of case, with horizontal agreements given primacy, and the factual significance of the case which includes amongst other things, whether the violators of the law are significant entrepreneurs in the relevant market. The presumption of success rests on factors including but not limited to the available evidence. However, the AMO noted that these four principles do not exclude the intervention of the AMO in cases which do not fall under the above-mentioned criteria.

Sources: ACCC (2026[37]), "Compliance and Enforcement Policy and Priorities", https://www.accc.gov.au/about-us/accc-strategy-and-priorities/compliance-and-enforcement-priorities#toc-principles-and-approaches-underlying-this-policy (accessed on 2 March 2026) ; CMA (2023[38]), CMA Prioritisation and Principles, https://www.gov.uk/government/publications/cma-prioritisation-principles (accessed on 2 March 2026); AMO (2025[39]), "AMO Priority Policy 2025-2026", https://www.antimon.gov.sk/priorizacna-politika-pmu-2025-2026/?csrt=11877858615763347912 (accessed on 25 Mar 2026).

4. Which factors affect how competition authorities prioritise?

46. This section will consider the factors that competition authorities may take into account when determining which cases to prioritise. In theory at least, a wide range of factors need to be considered and balanced for each case prioritisation decision. In essence the exercise is akin to a holistic cost benefit analysis. For example, Kovacic (2018[18]) suggests that authorities consider nine questions before deciding to proceed with a potential project, such as a case.[18] Beyond a cost benefit exercise, case prioritisation could also be considered in the context of avoiding Type I and Type II errors, while controlling costs (OECD, 2008[40]). As noted further below however, cases that do not result in an infringement decision are not necessarily a waste of resources, especially if they provide clarity on the law and provide an opportunity for further compliance from firms (Petit, 2010[19]). Box 3 above provides examples of the approaches taken by some authorities to prioritise cases.

47. The assessment typically starts with an issue and a potential instrument in mind. For simplicity, the discussion below assumes that these steps are completed, and that there has already been consideration of whether there is a better alternative to using this particular instrument for the issue in question. How prioritisation decisions vary according to the instrument selected is discussed at the end of the section.

48. The factors apply to every decision. This means that individual factors in the paper are considered on the basis of all else being equal, namely a potential case being identical in relation to all other factors but this one. In reality, this will be rare, with several factors often working in different directions. Considering factors in this way assumes a queue of potential cases upon which authorities can access information, and therefore carefully calibrate across relevant variables. In practice, authorities may be presented with relatively few promising leads, over which there is significant uncertainty. As such, while there is value in considering all of the factors that might be relevant for an authority's decision, it is important to note that in practice authorities will need to be pragmatic and practical in making case prioritisation decisions. It is therefore likely that most decisions will focus on the most pertinent and relevant factors, rather than necessarily a systematic consideration of every factor.

49. Further, as noted in the previous section, prioritisation decisions are made by humans, either individually or collectively, who may face incentives that differ slightly from those of the authority as a whole, as well as being liable to cognitive biases and limitations. Individuals may also face incentives that do not align perfectly with the organisation they work for. As such, competition authorities are unlikely to be perfect decision making entities. Section 5. considers many of these issues in more detail, including how authorities deal with uncertainty, a lack of information, as well as how they balance the different factors in practice.

50. The OECD survey asked respondents to consider the relative influence of substantial factors versus procedural ones on their case prioritisation decisions. Substantial factors were defined as those such as the theories of harm, its potential impact, potential legal precedents etc., whereas procedural factors concerned issues such as the likely resources required, the case complexity, staff availability etc. A slight majority of the respondents indicated that substantial factors were more likely to influence their

decision making than procedural factors, although 13 of the 30 respondents noted that both had an equal influence. None of the respondents suggested that procedural factors were more relevant than substantial factors in their case prioritisation decision making.

51. The factors described below could be characterised in a number of ways. As in the OECD survey, they could be thought of in terms of substantial factors versus procedural factors. Another way to cut them could be between external and internal factors. Building on the analogy above to cost benefit analysis, the paper categorises based on what could broadly be considered as the impacts of a potential case, compared to the potential cost. Such a split is not intended to be determinative, but serves as a useful way to describe the relevant considerations. As many factors can affect case prioritisation and not all fall neatly into either benefits or costs, a category is added to capture other factors. As such, this section categorises factors relevant for case prioritisation as follows:

- The expected value or impact of the case, including factors such as the economic importance of the sector, the likelihood of success, expected harm and the ability to reduce it, the ability to deter others and providing legal precedent or certainty.
- The expected cost implications of the case, including its complexity, scope and expected risks.
- A potentially wide range of other factors that could be relevant to the decision.

52. A crucial point to highlight regarding the assessment of cases against these factors is that one of most significant issues to consider when prioritising cases is the opportunity cost of any candidate option. Plainly, what actions might be impossible to take if this one is pursued, or what will be possible if it is not. To consider this, the authority must have some sense of the next best alternatives and their respective impact and cost. This element reinforces that case prioritisation should be undertaken holistically rather than purely looking at each prospective case in isolation. While competition authorities should always be mindful of the opportunity cost of their actions, in some circumstances this may be less relevant, for example if the authority is not near its operational capacity.[19]

4.1. Higher impact cases are likely to be prioritised

53. All else equal, cases expected to have a larger impact will be given priority. There are several aspects to the expected impact of cases. One aspect is the financial or economic impact that a case has, either on consumers or the broader economy. Another is the extent to which the case might be expected to have a broader societal impact. Within both areas there are multiple factors that can determine the expected impact.

54. A key starting point for this assessment is the expected chance of success, either through prosecution or from not having an administrative decision overturned through appeal. This can depend on a range of factors, including an assessment of the expected future reaction of courts. A related consideration is the extent to which success in the case will directly impact outcomes in the relevant markets, for example by providing effective remedy to the suspected harms.

55. Beyond the economic and societal impact, cases may also have an impact on future competition law compliance, for example by deterring others from breaching the law. Cases could also have value if they offer the prospect of providing legal clarity or precedent. Such prospective cases may need to be selected carefully, but at times testing the boundaries of the law could be valuable to reduce business uncertainty, as well as further promote compliance.

4.1.1. Authorities are more likely to prioritise cases in sectors of importance

56. The OECD (2014[41]) guide for competition authorities to assess the impact of their activities describes the main determinants of the direct effects of authority actions on consumers. This is the financial

savings by consumers that can be attributed to the intervention, determined by the likely price effect, the revenues involved, as well as the expected duration of the conduct absent the action.

57. As such, cases that relate to larger sectors in terms of revenue will generally have a larger impact and therefore are more likely to be prioritised. While many competition cases will relate to firms rather than the sectors in which they operate, for most competition cases it is reasonable to expect that a competition issue in a sector will influence outcomes across it.

58. Another factor that might be relevant is if the sector involved is critical in relation to other sectors of the economy, such that improvement in competition might be thought to have significant spillover effects. The prices of key inputs for other economic activities, such as energy or logistics for example, will have effects across a wide range of economic activity.

59. Beyond the economic reasoning above, cases could also be prioritised because they fall within a particular sector. For example, as discussed above in Section 2. , a sector could have been identified as a priority area by the authority, making it more likely that potential cases within it will be taken. Relatedly, it could be a priority sector for the government and therefore worthy of consideration as part of public accountability. Of course, the assessment of a sector as a high-level priority is likely to have considered many of the above factors already.

60. Further, public interest or social factors could lead to a case being taken or not. For example, Brook (2020[42]) empirically examines the cases that competition authorities in the EU have taken between 2004 and 2017, and argues that it shows how competition authorities have avoided taking cases that may be anti-competitive but with wider public policy angles.

61. Recently however, there has been increased discussion on the role of broader policy considerations in competition authorities' decision making (OECD, 2023[29]). As explored in detail through previous OECD Competition Committee discussions, there are several potential public interest factors that competition authorities could consider relevant in deciding whether to pursue, and continue, a potential case. One such factor could relate to environmental sustainability, which may work alongside or in opposing directions to competition (OECD, 2020[43]). Other considerations could relate to democracy (OECD, 2024[44]), inflation (OECD, 2022[45]), poverty reduction (OECD, 2023[46]) or national security concerns (OECD, Forthcoming[47]). As described in recent work from the OECD, prioritisation could also include considerations of gender issues (Kovacic, 2021[4]; OECD, 2023[48]). The relevance of these factors to a particular case, and the extent to which it will influence a competition authority's decision making will vary by jurisdiction and the broader policy environment. There will likely remain significant debate on the role that these considerations should have within competition policy. Nonetheless, in many jurisdictions, competition enforcement mechanisms may have relatively little flexibility in which to take into account broader policy considerations, and therefore prioritisation may provide one way to assist authorities in aligning and contributing to wider policy goals.

62. Box 4 describes some examples of how these factors have influenced case selections.

Box 4. Examples of other factors affecting case prioritisation

Social factors, pertaining to the public interest are used, occasionally, to explain why Competition Authorities have prioritised particular cases. Many of these factors may also influence the high-level priorities of the authority.

Environment

In part to aid the United Kingdom's (UK) goal of Net Zero 2050, the UK's Competition and Markets Authority (CMA) made supporting the transition to a low-carbon economy a strategic priority in

2020/2021, stating it would “act in a way which supports the transition to a low carbon economy.” Operationalising that priority, in 2021 the CMA launched a market study into electric-vehicle (EV) charging. In its final report, the CMA stated that delivering Net Zero (and the 2030 phase-out of new petrol and diesel cars) required a comprehensive and competitive EV charging network, which the study set out to assess and promote through recommendations.

Cost of Living and inflation

The Australian Competition and Consumer Commission’s (ACCC) compliance and enforcement priorities since 2023 have focussed, among other things, on the “cost of living pressures”. Thus, cost of living, among other things, has been cited in the ACCC’s reasoning for taking past enforcement actions and market studies. For example, the ACCC tied its decision to implement proceedings against Woolworths and Coles in part to cost-of-living harms: “[m]any consumers rely on discounts to help their grocery budgets stretch further, particularly during this time of cost-of-living pressures.”

The Canadian Bureau of Competition similarly cited inflationary pressures as part of its reasoning for undertaking a market study into competition in Canada’s Grocery sector. It stated that “grocery prices in Canada are currently increasing at their fastest rate” and that “grocery prices are increasing at an above-average rate.”

Vulnerable consumers

The Dutch Authority for Consumers and Markets’ (ACM) policy on prioritisation identifies that it “can prioritise an enforcement investigation because of the relatively large impact that [the impugned conduct] can have on … people and companies in vulnerable or dependent positions.” The ACM has at times, invoked this rationale to explain why it has taken particular cases. For example, it took action against unlawful rental-agency fees, expressly citing the abuse of tenants’ vulnerable position as one of the justifying factors. Similarly, an investigation against door-to-door sellers who sold alert systems to the elderly was justified under the company’s targeting of “an often-vulnerable population”.

Poverty reduction

In Mexico, poverty-reduction considerations have also shaped sectoral prioritisation. In its 2022-2025 Strategic Plan, the Federal Economic Competition Commission (COFECE) included the “impact on lower-income population” among the criteria used to determine priority sectors for both enforcement and advocacy cases. Applying this criterion, COFECE identified several strategic sectors for 2022-2025, including the food and beverages sector, and opened several investigations into the markets for industrial gases, corn and corn flour which would benefit the lower-income population.

Gender equality and democracy

Broadly, competition authorities do not appear to have set explicit gender related case priorities. However, Kovacic has noted that gender related considerations may have implicitly played a role in bringing cases. For example, the EU’s 2020-2025 Gender Equality Strategy emphasises that the ‘Commission will … systematically include[e] a gender perspective in all stages of policy design in all EU policy areas, internal and external”. It is plausible that gender has shaped how authorities prioritise cases, especially in the EU, albeit without being expressly invoked in case rationales. Like gender, democratic related priorities may implicitly play a role in an authority’s case prioritisation decision. The then Executive Vice President of the EU Commission, Margrethe Vestager gave a speech in 2024 where she stated that “competition policy is a democratic tool” citing that a fundamental objective of antitrust is “to preserve a diverse marketplace” and that competition enforcers, “are guardians of fundamental values: liberty, choice and pluralism”. Competition authorities have invoked media pluralism (a recognised component of democracy) as justification for enforcement action. For example, the UK’s CMA conducted an inquiry into an anticipated 21st Century Fox/Sky merger on the grounds

of media plurality. It is therefore possible that democratic related principles and values have shaped NCAs case prioritisation, however, like gender, this has rarely been expressly invoked in case rationale.

Source: CMA (2020[49]), "Annual Plan 2020 to 2021", https://www.gov.uk/government/publications/competition-and-markets-authority-annual-plan-2020-to-2021/annual-plan-2020-to-2021#fnref:3 (accessed on 9 March 2026); CMA (2024[50]), *Annual Plan, 2024-2025* https://assets.publishing.service.gov.uk/media/65f1a6f5981227a772f61377/CMA_Annual_Plan_2024-25.pdf; CMA (2021[51]), "Electric vehicle charging market study: final report", https://www.gov.uk/government/publications/electric-vehicle-charging-market-study-final-report/final-report#conclusions-and-recommendations (accessed on 9 March 2026); CMA (2017[52]), "21st Century Fox/Sky merger inquiry", https://www.gov.uk/cma-cases/twenty-first-century-fox-sky-merger-european-intervention-notice; ACCC (2024[53]), " ACCC takes Woolworths and Coles to court over alleged misleading 'Prices Dropped' and 'Down Down' claims", https://www.accc.gov.au/media-release/accc-takes-woolworths-and-coles-to-court-over-alleged-misleading-prices-dropped-and-down-down-claims (accessed on 9 March 2026); CBC (2022[54]), "Market Study Notice: Competition in Canda's Grocery Sector", https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/market-study-notice-competition-canadas-grocery-sector; ACM (2023[55]), "Policy rule Prioritisation of enforcement investigations by the Authority for Consumers and Market 2023", https://www.acm.nl/nl/publicaties/beleidsregel-prioritering-van-handhavingsonderzoeken-2023; ACM (2023[56]), "Provider of medical alert systems for seniors to compensate harmed consumers following ACM intervention", https://www.acm.nl/en/publications/provider-medical-alert-systems-seniors-compensate-harmed-consumers-following-acm-intervention ; William E. Kovacic (2021[4]), *Incorporating Gender as a Prioritization Principle and Project Selection Criterion in Competition Agencies*, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/gender-inclusive-competition-policy/proj-7-incorporating-gender-as-a-prioritization-principle.pdf; Or Brook and Kaitlin J Cseres (2021[2]), *Policy Report: Priority Setting in EU and National Competition Law Enforcement*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3930189 ; Margrethe Vestager (2024[57]), "Fixing the Information Crisis before it is too late", https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3516 ; JFTC (2021[58]), *Fact-finding Survey Report on Digital Platform Operators' Trade Practices*, https://www.jftc.go.jp/en/pressreleases/yearly-2021/February/211012-2.pdf ; COFECE (2022[16]), *Strategic Plan 2022-2025*, https://www.cofece.mx/wp-content/uploads/2022/11/PE2022-2025-ing-VF.pdf.

4.1.2. The impact of a case also depends on the issue, remedial options and alternatives

63. In addition to the importance of the sector, another key consideration is the expected magnitude of the potential harms to competition that can be reduced due to the action. This is linked to the likelihood that the suspected issue is actually harming competition and, if it is, the magnitude of such harm. While competition provides benefits to many parameters other than just price, a simple metric to consider this conceptually would be the likely increase in prices caused by the conduct that the case would seek to address (OECD, 2018[59]).

64. A related consideration is the likely duration of the harm that would have occurred absent action. Even if there is significant harm, if there are reasons to believe it would be short lived irrespective of intervention, perhaps due to expected entry or an upcoming change in legislation, this might otherwise make a case less likely to be prioritised. Ex-post assessments of previous actions can be a useful indication of the potential impact of different types of cases (OECD, 2023[60]).

65. This highlights a more general issue regarding a case's impact, which is the appropriate counterfactual. In this context, this is what would have arisen absent action by the authority. This is not necessarily the current state of affairs. For example, if action by others were likely to occur and could rectify the issue and reduce harm, the expected impact of a potential case is lower.[20] For example, sector regulators, other competition authorities in the case of global issues, or even private enforcement by affected parties, could all lead to similar outcomes than intervention by the authority.[21] All else equal, cases without a likely alternative rectification are likely to be prioritised. To illustrate this point, several competition agencies have noted that whether a complaint could be pursued through other avenues is a relevant consideration in deciding whether to pursue a complaint (ICN, 2021[7]; Konkurrensverket, 2022[61]; CMA, 2023[38]).

66. A similar, but slightly different, issue is whether a prospective case will resolve the alleged competition issue. In other words, will the action prevent the harm from occurring, through remedies for example or recommendations that the government or a regulator act. While punitive measures can still

provide deterrent effects as explored below, if the underlying harm cannot be rectified then the direct impact of a potential case is lower.

4.1.3. Aside from direct impact, deterrence effects matter

67. As noted in (OECD, 2014[41]), and further discussed in (OECD, 2025[62]), consumer benefits are not the only benefits from competition authority interventions. Another important aspect is the effect that enforcement actions can have on deterring others from engaging in illegal conduct.

68. There is a significant body of evidence relating to the deterrence effect of competition enforcement (JRC, 2022[63]). Much of this literature is based on surveys of competition lawyers and firms to ask them about their experiences of actions and conduct being deterred by competition authority actions (Gudde, 2005[64]; Deloitte, 2007[65]; London Economics, 2011[66]; Spinter Research, 2024[67]).

69. In weighing up the potential deterrence effect of a prospective case, authorities will likely give particular attention to the size of any expected fines, the applicability of the conduct to elsewhere in the economy, as well as other factors such as previous cases in the sector or recidivism by those particular parties. This could also include consideration of eventual damages that could be accrued.

70. Cases that are in sectors of high-profile, or otherwise likely to be widely publicised, may also be good candidates to have a larger deterrence effect. On the other hand, considering deterrence effects ensures authorities also assess the expected implications of not taking cases. For example, while an individual case may not offer the highest direct impact, if not taking action increases the chances of similar issues arising in multiple markets across the economy, then it may be more likely to be prioritised.[22]

71. The source of intelligence of a case may also be a relevant consideration for authorities. In particular, some authorities may choose to prioritise enforcement cases that are ex-officio rather than reactive. Conducting ex-officio cases provides a signal that the authority is proactively scanning for potential breaches of the law. That a prospective case would be launched ex-officio is therefore something that could enter a prioritisation assessment, even if other factors are not favourable. As explored above, a similar argument can also be made to take certain complaints more seriously than others, as this can improve incentives to provide further information to the authority and better intelligence in the future.[23]

72. A related, but broader, issue relates to legal certainty and precedent. There is value in testing legal boundaries, for example to provide greater certainty or an expanded scope. For example, a case could be prioritised even if the prospects of a large impact or deterrent effect are not high, on the basis that a ruling on the case may provide legal clarity going forward, which would be of value to the authority and businesses. Such considerations may be more likely in jurisdictions with a prosecutorial system as the court would be asked to make a ruling, but remain valid for administrative regimes where the appeals process can also provide useful precedent.[24]

4.2. The simpler and lower cost a case, the better

73. As well as the expected value or impact of a case, an equally important factor is its expected cost implications. To generalise and somewhat state the obvious, the lower the cost implications, the better. Cost is not simply a matter of financial expenses however, with other factors such as uncertainty and risks also relevant. In practice, it will rarely be possible to consider impacts and costs of prospective cases independently as they can be highly correlated. For example, impactful precedent defining cases are sometimes more complicated, costly and harder to predict. Similarly, while risk is something to avoid all else equal, it can often be associated with significant rewards.

4.2.1. Complexity, scope and duration can hinder a case's chances

74. The larger a case and the longer it takes to bring to a conclusion, at least in terms of staff resourcing, the higher its costs will be. There are several factors that may affect the scale and duration of cases, such as the scope of the investigation, the familiarity of case teams with the sector or the degree of expected co-operation from stakeholders, amongst others. More specifically, understanding how firms affected by a case will react to the potential matter can provide a good idea of likely costs, for example, the degree of co-operation with information requests or their litigiousness. For prosecutorial regimes, litigation costs are likely to be a significant factor in considering whether to exercise prosecutorial discretion.

75. An important factor in the costs of a prospective case is its complexity. There are several aspects to case complexity that may be relevant for prioritisation purposes. Firstly, the more complex it is to prove to the requisite standard that an alleged conduct has breached the law, the more staff time it is likely to take.[25] Such complexity could be driven by the sector or technology involved, as well as by the nature of the conduct in question. Such matters may also require specialist skills that are more expensive to recruit and retain, further increasing cost. A second aspect is the increased uncertainty of highly complex cases. Uncertainty links to risks which are discussed further below, but also has cost implications of its own. Planning is an essential part of a well-run organisation, but significant uncertainty reduces the ability of an authority to accurately predict how its workload will evolve, affecting overall planning efficiency. A particularly complex case could therefore raise costs through planning uncertainty.

76. Other factors might also affect the costs of taking a case. For example, the risks of appeal and its expected costs may weigh on an authority's mind, as could the likely cost of conducting required analyses. Having processes in place to understand the costs of previous actions could help competition authorities to understand the implications of choices. Some factors may reduce potential expenses, such as if co-operation provides synergies that allow an authority to deliver a case more efficiently. This is particularly likely to be the case where there are confidentiality waivers in place, a strong working relationship between the authorities and sufficient similarity in circumstances to provide synergies. Co-operation is not without its own costs of course, and, as discussed further below, is not undertaken for purely financial reasons.

77. Finally, while competition authorities will likely focus on their expected costs, they may also be mindful of the broader societal costs of an action, for example the costs that the prospective action will impose on others. Where there is a reasonable prospect of a breach of competition law, or more generally a significant competition issue, the costs imposed on firms at the centre of those issues may not be a determining factor for prioritisation. However, all else equal, the costs that a potential intervention imposes on others may be relevant, for example if the costs will be disproportionately high on third parties or if the financial impact of the proceeding could be detrimental to the financial health of a business.

4.2.2. All else equal, riskier cases are less attractive than safer ones

78. While competition authorities cannot, and likely should not, seek to avoid all risk when taking cases, in itself a case that is riskier but offers nothing to compensate is less attractive than a similar, lower risk case. All case prioritisation decisions involve uncertainty, and inherent to this is that authorities will need to consider the risks of candidate options. Risk management techniques provide a useful framework for this assessment, through the identification of the likelihood and magnitude of each identified risk. There are several potentially relevant risks for competition actions which will vary by individual case and type of action.

79. Few case outcomes can be considered certain at the outset. An adverse outcome is therefore itself a risk. In many ways this risk is already part of the assessment of the expected impact, but an additional consideration is required regarding further costs that might arise from the case not progressing as expected. For example, in some circumstances an unfavourable outcome could lead to reputational

damage. More broadly, cases may give rise to circumstances that affect an authority's relationship with external stakeholders. This could affect future cases. For example, it could give rise to relational frictions if not managed carefully, making the gathering of information more difficult amongst a certain set of stakeholders if the authorities reputation has been damaged.

80. As well as a risk from taking on a prospective case, risks can also arise from not taking action on an issue or rejecting a complaint. For example, a failure to take a case could expose an authority to negative reputational damage if harm were to accrue and an expectation emerges that it could have been prevented. These considerations are linked to the high-profile nature of some markets as discussed above.

81. In considering the likelihood of specific risks, risk mitigation strategies can be employed by authorities to mitigate them to some extent. The risk appetite of an authority may vary over time, and be affected by its current political context, maturity and past results. It could also reflect the culture of the organisation. Nonetheless, all else equal, cases that raise clear and acute risks, will generally be less attractive than those that do not. Similarly, the higher the risks from not taking a case, the more likely it will be to proceed.

4.3. Many other factors can influence case prioritisation

82. As noted in the introduction, in its purest form, case prioritisation must take into account a potentially unlimited number of factors as it holistically assesses the best mix of cases. As such, it is impossible to list all conceivable factors that might affect a case prioritisation decision. This section considers some other considerations of potential relevance.

83. In some circumstances, the ability to provide information and understand an issue can be a further justification to launch a case. For example, in the face of public concern and significant uncertainty regarding the underlying cause of an issue, particularly if high-profile, there might be good reason to prioritise an investigation to 'shine a light' on it. This could also relate to the broader political context and a desire to provide answers or shape public discourse in an evidence-based manner. As noted above, interaction with central government can have an influence on the high-level priorities of an authority, and this could include responding to public priorities in an area.

84. Another factor that may be relevant in deciding whether to embark on an action is the extent to which its goals are measurable (Kovacic, 2018[18]). Projects where outcomes are difficult to measure may, all else equal, be less attractive as they may make it difficult for authorities to evaluate whether or not they have achieved their objectives. This could prevent them from building on the work going forward, as well as being unable to learn lessons from the experience to improve future efforts.

85. As noted above, in some circumstances costs can be reduced via co-operation with other regulators or competition authorities, although this is not necessarily always the case and can have its own costs. Nonetheless, international co-operation provides multiple benefits, and the opportunity to co-operate could itself be a factor that authorities take into account when prioritising a case, for example as it provides the opportunity to improve a working relationship or learn from others more broadly. In some circumstances this will need to be balanced against considering the additional value of potentially duplicating work. When considering other organisations, this could also include whether an authority defers to another and lets them take the lead on a particular matter, for example if there is more than one body with overlapping jurisdiction.[26]

86. Another potential factor which may affect impact and costs is the history of interaction with expected key stakeholders that would be involved in a case. Repeated offending for example suggests penalising in order to send a clear message and deter recidivism, whereas a past history of willing compliance might push towards a lighter touch approach. Having multiple matters open with the same entity may also be a relevant factor, particularly if there is a risk other actions might negatively affect

ongoing ones. More generally, as noted in the context of broader criminal case prioritisation, practical considerations may also need to be taken into account, for example relating to expected assistance from potential partners, availability of witnesses if relevant, or any other factors that may make taking a case easier or more challenging (Rastan, 2024[68]).

87. Finally, a competition authority's portfolio of ongoing cases may also be relevant, with case prioritisation decisions affected by the other activities of an authority. For example, authorities may want to spread their efforts across the economy and therefore seek to give preference to potential cases that diversify their portfolio. Similarly to the precedent point discussed above, there might be a desire to bring a case if it relates to conduct not challenged recently across the portfolio, as doing so increases visibility of its illegal nature to boost deterrence against similar breaches elsewhere. At the same time, staff resources also need to be considered, including availability, experience and skills. For example, recent history in a sector could be a factor which reduces complexity and costs due to existing staff knowledge. On the other hand, if a case requires complex econometrics and all relevantly skilled staff are busy on another matter, the prospects may diminish.

4.4. Different case prioritisation considerations may be relevant across tools

88. The discussion above has not focussed on a particular instrument or tool, instead discussing factors that in general apply across them. In practice however, different considerations are likely to apply when considering different types of prospective cases. As noted above, case prioritisation should ultimately consider all potential alternative actions, including all tools. In practice, an authority might be set up to conduct a certain number of cases of a particular type due to its team structure or objectives. This links to the discussion above about high-level priorities or strategy influencing case prioritisation. In addition, for some potential issues there could be multiple prospective tools that might be appropriate. The section below therefore discusses the issues that may be particularly pertinent when assessing a prospective case under the framework of different competition tools.

89. Regarding competition enforcement, particular attention may be given to the likelihood of finding an infringement, as well as the likely deterrent effect of a positive finding. For some allegations of conduct, in particular relating to hardcore cartels, there is unlikely to be much of a decision making process for prioritisation, particularly in the context of a leniency application.[27] Most authorities will take these cases as a matter of course (OECD, 2019[69]). More generally however, weight might be given to whether enforcement could help determine key legal questions.[28] This could also relate to a desire to be a pioneer and uncover new issues (Kreifels, 2019[70]). Competition enforcement may also allow greater potential to uncover information in stages, allowing authorities to investigate potential breaches and then decide whether to continue pursuing the case when they have more information. Another relevant factor could be whether competition enforcement is likely to effectively remedy harm or just punish the conduct.

90. Advocacy tools are likely to require a slightly different set of criteria, as while they respond to competition concerns, they do not require suspicions of a breach of competition law. Advocacy tools, such as market studies, are flexible tools which can promote competition. Market studies help diagnose competition issues and offer recommendations to resolve them, albeit not necessarily within the authority's power (OECD, 2025[31]). They can therefore cover a broad set of competition issues and be forward looking. Market study selection may be particularly influenced by the high-level priorities of an organisation or government priorities, as they allow information gathering into a sector. As such, for market studies or other advocacy efforts, there is likely to be a focus on the importance of the sector and expected magnitude of suspected competition issues, as well as an analysis of how likely such an action will be to resolve them.[29] Finally, market study selection might also place weight on the importance of providing information on underlying issues, especially if there is public scrutiny on outcomes in a market but uncertainty as to their cause.

91. Case prioritisation is an area that, in general, may apply less to merger control. Generally, authorities have limited discretion to take merger cases, aside from informal discretion regarding the resources that are devoted to cases and the theories of harm to pursue. Merger control may be particularly subject to staffing structures which determine the number of staff working on them. The legislative context of merger control will also be relevant, determining if there is any discretion to review and the timeframes required. However, in prosecutorial or voluntary regimes decisions will need to be made regarding whether to take a matter to court or call it in, and elements of this discretion is similar to other areas.[30] In these contexts, the public nature of merger cases and timing implications are likely to be relevant. As most mergers are public, a decision not to prosecute (or call-in) can send a larger and more public signal than, for example, a decision not to launch an investigation or prosecute an alleged infringement that an authority becomes aware of.[31] Regarding timing, at least in the context of ex-ante merger control, a failure to act against a merger generally means an inability to do so again in the future, suggesting a greater imperative to do so as a priority.[32] Further, even in administrative regimes, there may be elements of discretion in certain circumstances, for example *de minimis* exceptions in certain jurisdictions (CMA, 2024[71])Further, even in administrative regimes, there may be elements of discretion in certain circumstances, for example *de minimis* exceptions in certain jurisdictions (CMA, 2024[71])

92. Finally, regarding other types of authority projects or actions, such as ex-post assessments or research, the criteria will be significantly different (OECD, 2016[72]). In particular, as these actions usually derive benefits over the medium to longer term, rather than necessarily immediately, the main consideration will be the trade-off between the opportunity cost of the action, compared to the expected longer-term benefits of improved functionality, for example due to greater knowledge or learning lessons. Top-down priorities may be an important factor in allocating and ring-fencing budget for these activities, perhaps acknowledging that they may struggle to get priority in the short-term if competing with all other potential actions.

5. Practical aspects of case prioritisation

93. The previous section focussed on the conceptual framework that can guide how case prioritisation decisions are made by competition authorities. Such a framework forms an important part of how authorities decide which matters to pursue or not. This section will build on that framework to explore more practical aspects of how competition authorities operationalise case prioritisation decisions.

94. In particular, it will consider the approaches and processes that authorities use to make case prioritisation decisions, as well as exploring the organisational frameworks required for better decisions. The section also explores how authorities obtain and access information to inform their decisions and how this may evolve over the lifecycle of a case.

95. How competition authorities make case prioritisation policies will vary. What makes sense to prioritise at any given time will depend on a range of contextual factors, and may also depend on authority size, maturity and remit. For example, it has been argued that different approaches may be required between developed and developing jurisdictions, with the latter exhibiting greater preferences for cases that pursue social goals given their political context (Jennings, 2015[11]).

96. Adopting procedures can help ensure case prioritisation decisions align with the high-level priorities and strategies of the organisation. It can also allow a reflection of the cumulative effect of case prioritisation decisions over time, rather than just individual decisions. A potential risk of disjointed case prioritisation could be if specific aspects are systematically deprioritised, effectively creating *de facto* unofficial safe harbours without due consideration. For example, prioritising purely based on the size of a case could have the unintended effect of creating a perception that an agency will never prosecute below certain perceived thresholds, even if this may not be consistent with the intent behind legislation or overall strategy of the authority.

5.1. Authorities adopt different approaches to operationalise case prioritisation

97. This section considers the different approaches competition authorities, comprised of human beings, use to make case prioritisation decisions which, as seen above, often involve considering a potentially wide array of factors and regular reassessment.

98. As part of this process, competition authorities should consider developing procedures and policies to help guide their decisions. It appears that many are already doing so. According to the ICN survey on case prioritisation, 35 respondents out of 46 indicated that they had a competition enforcement prioritisation policy, with nearly three-quarters of those starting that it was a formal policy, whereas the others adopted a more informal approach (ICN, 2021[7]).

99. Prioritisation policies usually concern the factors that will be used to evaluate cases, as explored in the section above. In addition to those factors, procedures can help ensure that decisions are made efficiently across the case lifecycle, executed by the appropriate managerial authority and effectively balance competing considerations.

5.1.1. Prioritisation decisions can benefit from processes for reassessment as cases evolve

100. Kovacic (2018[18]) argues that the chances of success for an authority in selecting the right projects depends heavily on the quality of the processes in place to do so. Competition authorities of all sizes face a range of challenges and pressures, often having to respond to opportunities or threats that emerge out of nowhere, on top of day-to-day pressures. In these environments, it is hard to imagine the best decisions being made routinely without a framework to ensure consistency and appropriate rigour.

101. The most obvious discrete decision point for a case prioritisation decision is when a new potential case emerges, for example in response to a complaint, new piece of intelligence or an updated external steer. This involves an array of decisions, such as selecting the most appropriate tool in response to a potential issue, the scope and scale of any actions, as well as whether this decision has implications for any existing cases. However, as noted above, case prioritisation decisions also occur dynamically across all ongoing actions. Allowing a case to continue is, in effect, a decision that it remains a priority, as is not initiating a new case in response to an identified issue.[33]

102. In practice, competition authorities are unlikely to be able to function with high degrees of decisional uncertainty, with the continuation of a case being considered constantly. This would make progressing with cases challenging. While there may be elements of the sunk cost fallacy at play, it is hard to imagine a case very near completion being deprioritised unless significant new information came to light that fundamentally changed its prospects.

103. To make case prioritisation tractable, competition authorities may find it useful to create processes to formalise decision points, although informal processes can also act in the same way. For example, this could take the form of internal investigatory steps, which offer the opportunity to take-stock of updated information and re-evaluate the prospects of an action. These moments might be referred to as internal “stop/go” points, and also link to the point explored below regarding who makes decisions on prioritisation. Such mechanisms may not need not be overly formalised to be effective, with processes of different sophistication potentially being appropriate for different situations.

104. This is supported by the OECD survey, which indicates that while practices vary somewhat, most authorities implement formal decision making points during cases to decide whether to continue to prioritise them. 18 of the 30 respondents indicated that they had formal decision points at either regular intervals or at specific decision points after information gathering and analysis. In contrast, ten respondents noted that there were no formal points, but instead informal decisions taken by managers as cases progressed.

5.1.2. Case prioritisation decisions can be made at different levels within an authority

105. As noted previously, competition authorities are organisations made up of human beings. While hardly a revolutionary perspective, it is an important one in the context of case prioritisation, as decisions need to be made by individuals, or groups of them, within the authority. All individuals will face their own incentives, informational asymmetries and, like all human-beings, be susceptible to cognitive biases.[34] Some senior leaders will make choices in the knowledge that their future re-appointment is dependent on how their decisions are received politically, others will have their own personal goals on what they want to achieve. As such, decision making processes should be designed to minimise the chances of bias, while also ensuring decisions reflect the long-term interest of the organisation. Internal processes and procedures may assist in making case prioritisation decisions.

106. Decision making can be top-down, for example board or executive level decisions, or bottom-up, where decisions rest within the case or tool level management, such as with the manager responsible for

mergers or cartels. In practice, a mix of top-down and bottom-up decision making may be appropriate. Certain decisions may require approval from the most senior leadership, whereas others could be made through a delegated authority. Kovacic (2018[18]) recommends the establishment of screening committees that are responsible for case selection. Such a body could take a holistic look across cases and be comprised of appropriate managers. As explored further below, it could be linked closely to intelligence functions. The OECD Survey highlights that several competition authorities employ a range of set-ups to consider cases, either through pipeline teams or different forms of collegiate bodies formed to assess prospective cases.

107. Which processes work best for case prioritisation decisions will depend on the institutional setting of the authority. It will also likely vary depending upon the size of the authority and the scope of its mandate. For example, the larger the authority and broader its remit, the more need there may be for formalised delegation and processes for decision making. It may also be that a more mature authority will have more experience with routine matters and therefore require less senior oversight for minor decisions.

108. Competition authorities appear to have different practices regarding where case prioritisation decisions sit within an authority. The OECD Survey asked respondents whether case prioritisation decisions were mostly made by areas of responsibility or by the most senior leadership of the organisation. Overall, neither appear to take precedence over the other, although responses indicate that practices can range significantly between authorities. A slight majority indicated that top-down decision making by the most senior leadership was more common, with 12 indicating this was either slightly or mostly the case, and 11 suggesting that it was slightly or mostly the case that decisions were made by areas of responsibility. A further question probed for more information on where case prioritisation decision responsibility sat within the organisation. Of the 23 that provided information, 15 reported that responsibility lay with a panel or collective body, eight indicated that responsibility rested with an individual (such as the head of the authority or investigating unit). Of these 23, five also noted that they had dedicated units or teams to assist in deciding which cases to prioritise.

109. What is appropriate may also vary by tool, with different competition tools requiring different frameworks, for example if tighter deadlines apply.[35] Different profile cases, due to the scale or potential impact, may also require different levels of oversight than others. More routine matters may not require approval from senior leadership in the same way that more novel issues do. As well as formalising decision points in cases, as described above, this will also concern designating decision makers or decision making bodies. An important part of this process is to identify the formal decision paths and points for different forms of decisions, and to map this into the organisational structure.

110. Where decision making sits may also vary depending on the timing of the case, with initial decisions to gather information on a lead being driven at staff level, before affirmation from top-down decision makers is required. As well as formal decision making points, informal decision making is also likely, in this context meaning ongoing decisions made by the appropriate authority or manager of the respective project. This could include how much resources to dedicate to an issue, as well as which potential issues to gather intelligence on, as well as case strategy.

111. Regardless of the mix of decision making, as highlighted in (ICN, 2010[8]), it will likely be a good idea for authorities to communicate their priorities and prioritisation policies internally so that they are better placed to act upon them. It will also allow staff to gather data to ensure that ultimate decision makers have the information they need. Organisation wide teams dedicated to policy can also be an effective way to help develop and implement effective priorities across an organisation (Kovacic, 2018[18]).

5.1.3. Balancing considerations is often qualitative but can also be quantitative

112. Across the factors identified in Section 4. , several trade-offs are likely. For example, cases with the largest impact may not be the simplest or lowest cost. Cases that seek to provide precedential value

will perhaps be more uncertain and complex, whereas cases involving larger markets may mean instigating proceedings against firms with significant financial resources, potentially increasing costs and even reducing the probability of success. Further, taking a case in a previously unexplored area of the economy may provide a boost to deterrence or useful information for an authority but could also be more costly and risky due to less prior knowledge. In the context of increasingly complex but expanding digital technologies, potentially impactful cases may be becoming increasingly difficult to predict and deliver.

113. Even where trade-offs do not exist, prospective cases are likely to have different profiles, offering varied potential motives for their selection. To return to a core premise for the need of prioritising cases, it will not be possible to do them all, at least at the same time or without sacrificing speed of delivery. When considering which cases to take then, different factors will need to be considered and balanced against each other.

114. In general, competition authorities will have experienced staff able to quickly form views on the key attributes of prospective cases. They will have knowledge on whether there is a strong chance of success, such as in finding a breach or of identifying competition issues, and the likely costs of an investigation. Broader contextual factors will also come to mind and form part of their thought process. Depending on where this experience sits within an organisation and whether decision making authority lies with them, there may then need to be a process for communicating these intuitions to senior leadership.

115. These judgements will reflect an assessment of the most pertinent factors and expectations on how things will develop. The ICN (2021[7]) suggests that competition authorities typically consider around five or six factors as part of their prioritisation policy. Jennings (2015[11]) argues that while a wide range of criteria could be relevant for prioritisation decisions, the main determinants should be the expected direct and indirect effects, even if there is no commonly accepted ordering of different criteria.

116. Even with experienced staff, authorities must balance different variables in their assessments, such as those set out in Section 4. , and decide how to proceed. As explored further below, they will rarely do so possessing all information they would like. In this context, most authorities appear to take a qualitative approach to balancing the different attributes of prospective cases, deciding which factors are the most pressing based on their experience as well as the current circumstances. Box 4 above provided several examples of such approaches.

117. Some authorities, however, use quantitative approaches to help weigh different factors when deciding between cases. Box 5 highlights examples from competition authorities in Greece and Latvia. With these methods, weights can be attributed to different factors in advance and then for each prospective case, values are assigned for each factor. A benefit of such an approach is that it ensures a systematic assessment of all of the factors considered relevant. There will be limitations however, including a potential rigidity in the balancing of different factors and the difficulty in assigning numbers. The results of ex-ante impact assessments and ex-post evaluations could assist with these values, although it is also likely to involve an element of qualitative judgment. A purely quantitative approach to case prioritisation may not be sufficiently flexible or able to take into account every necessary factor required to make decisions. Nonetheless, the addition of a systematic tool that can be used to assist qualitative judgements may be useful for some competition authorities, and appears worthwhile considering.

Box 5. Examples of quantitative approaches to case prioritisation

Latvia's Case Prioritisation Strategy

Latvia's Competition Council (Konkurences padome (KP) applies a criteria-based scoring approach to assist in the prioritsation of its cases. In KP's 2023 Case Prioritisation Strategy report, potential cases

are given a score based on several criteria to classify them as high, medium, or low priority. Seven or more points are a high priority case, four-six is medium priority and less than four, low priority.

The criteria are grouped under three headings: the nature of the infringement (which is made up of the type of violation, impact and scale of breach, duration and continuity of the violation); market participants involved in the infringement (number of participants involved, market positions and whether repeated infringement by any of the market participants); and other relevant factors (such as the sufficiency of information about the violation, existence of alternative legal remedies for resolving issues related to the infringement, or the novelty of the question). For example, alleged cartel and exclusionary abuse of dominance conduct is given 2 points, while potential exploitative abuse of dominance is given 1.5. There are no negative modifiers.

KP's criteria and weighting are guided by its prioritisation principles, Regulation No. 179 (2016), EU case law and consultation with the Advisory Council (a body which promotes public participation in the development of competition policy).

Greece's Prioritisation Decision

The Hellenic Competition Commission (HCC) prioritises cases with the assistance of a quantified points-based system, with high scoring cases being actioned ahead of lower-scoring ones. The establishment of a points-based system was developed from public consultation and was adopted in 2012 in decision 539/VII/2012. The points criterion and values were updated in 2024 in Decision 844/2024. This current criterion was informed (among other things) from the HCC's experience, and the HCC's decision to focus on critical sectors. To score a case, the HCC undertakes a cost-benefit assessment, with the impact of the conduct divided by the cost in time and human resources that will be required to establish the infringement.

A formula is thereby used: $\frac{\text{Impact x 2}}{\textit{Time Saving and Human Resources}} = \textit{Case Score}$

The HCC quantifies the impact of a case by assigning fixed point values to different forms of conduct. For example, horizontal agreements receive three points, while vertical agreements receive two. Cases that possess certain factors also gain or lose points, for example those relating to essential products or services, have a large geographic scope such as extending to another EU member state receive an additional point on the impact score. The HCC assesses time and resource savings using a scale of one or two. Cases where the probability of proving the violation appears high will receive a score of one, whereas cases in which there is minimum evidence will score two. The system also applies multipliers and deductions to the case score. If the impact score exceeds three it is then doubled. Other factors such as imminent limitation period, non-hard-core vertical conduct, or that collection of any fine imposed would be difficult to collect (i.e. through bankruptcy), may reduce the score.

Sources: KP (2023[73]), *Case Prioritisation Strategy*, https://www.kp.gov.lv/lv/media/11199/download?attachment; HCC (2024[74]), *Decision 844/2024*, https://www.epant.gr/en/decisions/item/3011-decision-844-2024.html.

5.2. Case prioritisation requires information from a range of sources

118. A range of sources of information can help inform prioritisation. As noted above, case prioritisation decisions occur at multiple points across a case lifecycle.

5.2.1. Competition Authorities should develop pipelines of prospective cases

119. While case prioritisation decisions occur across case lifecycles, perhaps the most important will be which cases are initiated and which go no further. Prospective enforcement cases generally start with a potential infringement of the law, while market studies or other actions, may start with a suspicion that competition is not working well in a sector (OECD, 2018[75]). The quality of the cases that are ultimately selected through a prioritisation process rests upon the options available to authorities. A brilliant case prioritisation process will not enhance results if the quality of the case pipeline is low. More generally, if there are few options on the table, the need to prioritise is lower.

120. Complaints received by an authority will often be a good source for cases, particularly enforcement (ICN, 2021[7]). As discussed above, the extent to which a competition authority can prioritise is significantly affected by the degree of discretion they enjoy, often reflected by their ability not to pursue complaints or allegations of misconduct. Assuming discretion, reception of a complaint may trigger a case prioritisation decision, whether to initiate an investigation or not. Generally, an authority will have a process for reviewing complaints, either through a dedicated team or through the staff dealing with the relevant sector or tool.

121. As noted above in the discussion of competition enforcement, leniency applications will also likely be an important source of potential cases. In practice though, such applications are unlikely to require much prioritisation contemplation, other than an assessment of whether the conduct is indeed likely to relate to an obvious cartel. While leniency applications across the OECD have recovered slightly in recent years, there may still be reason to worry that the overall number of applications has decreased compared to the past (OECD, 2025[1]).

122. While leniency applications and complaints are useful sources of information, authorities will also likely wish to gather their own intelligence on potential competition issues and potential breaches of competition law. As noted above, a strong enforcement strategy is likely to include a mix of reactive and ex-officio investigations, due to the importance of signalling to firms the possibility that infringements of the law will be detected. This intelligence ideally creates prospective cases that the authority will then need to decide whether to pursue.

123. Intelligence and monitoring by the authority should be a source of cases. Interacting with market participants and other stakeholders can also be a useful source of market intelligence (ICN, 2021[7]), as can speaking with other competition authorities which could identify issues that are also relevant to their jurisdiction. Further, a range of techniques can be used by competition authorities to identify potential competition issues or infringements of competition law, and these can assist authorities (OECD, 2023[76]) (OECD, 2023[77]).

5.2.2. There are several sources of market intelligence to inform case prioritisation

124. Case prioritisation requires a judgement about the expected prospects of a case and the alternatives. This requires information. As part of the assessment of cases will be relative to the alternatives, a potentially useful starting point for making case prioritisations is to have detailed information at hand on the portfolio of ongoing or completed cases (Kovacic, 2018[18]).

125. Much of the information required to form an initial assessment of a case's prospects can be fairly easily obtained, such as the nature of the markets involved, relevant goods and services, revenues and other financial information. Other critical information will concern the suspected harm to competition, including the nature of the harm, its likely magnitude, duration and whether there have been previous cases. A legal assessment will also likely be required if a breach of the law is suspected.

126. Information provided as part of a complaint may allow the authority to undertake an initial assessment of its attributes. In the first instance, this may reflect an assessment of how likely the complaint

is to relate to genuine competitive harm and, if relevant, the likelihood of finding a breach of competition law. A practical step to assist authorities in assessing potential complaints more quickly is to ask complainants to provide information that is most pertinent to the prioritisation principles that will be used. This could be aided by complaint templates or forms that ensure authorities assess the complaints efficiently by focussing on the most relevant information (ICN, 2021[7]). Further interaction with the complainant may allow the authority to obtain further information and be better placed to consider the prospects for further investigation.

127. When there is no complainant or tip-off, intelligence and monitoring by the authority can help provide information to assist with assessments, including from other regulators or international peers. Co-operation with other competition authorities for example could provide information on the expected magnitude of harm if they are able to share experiences from previous cases. Another key source of information will be what can be collected from desk research. As artificial intelligence technologies improve, the ability to collect and assess more information from the internet may improve authorities' ability to assess potential cases. In addition, previous cases in the sector will be a potentially useful source of information, allowing insights into the functioning of the market and potential scale of any harm.[36]

128. Another potentially useful source of information for prioritisation decisions can be ex-ante evaluations of impact or ex-post assessments of previous actions. These types of work can be valuable in helping assess the potential impact of cases. With ex-post assessments, for example, competition authorities can use knowledge of how their past actions have affected outcomes to help guide their future decisions, with an ongoing cycle taking place between decision to take cases and their evaluation assisting the next assessments (OECD, 2023[60]).

6. Conclusions

129. Effective case prioritisation requires a balance between discretion, transparency, and cost-benefit based decision making. Competition authorities must make choices on where to focus their limited resources. Part of this can involve setting out high-level priorities that will guide the bigger picture from the authority going forward. Absent processes and frameworks for prioritising at the case level however, there is a risk of case level decisions not supporting the overarching objectives and overall efficacy may suffer. In practice, this need not be overly complicated, but could revolve around identifying the most important factors to be considered when assessing prospective cases. It could also include guidelines on the approach which can be communicated publicly and internally.

130. While there may need to be checks and balances, competition authorities should have enough to ensure they can prioritise across cases to maximise their impact in the pursuit of their objectives. In particular, authorities should be transparent about how they will prioritise cases and, where appropriate, provide information to relevant stakeholders on the reasons for the decisions they have taken.

131. In considering how to optimise case prioritisation, it is useful to set out the framework that underpins the analysis. This includes a range of factors that should be considered as different opportunities are weighed against each other. The main attributes to consider are the potential impact of the case, driven by factors including the likelihood of competition issues and the size of the market, and the likely cost of the action, for example reflecting its scale, complexity or risk. However, many considerations could legitimately drive a prioritisation decision, and authorities will likely be best placed to address these. It may not be possible to identify all potential factors in advance. Publishing details of how these decisions will be made can assist stakeholders in providing the most pertinent information and also improves transparency and accountability of the authority. While setting out this framework is useful, it is important to be realistic. Case prioritisation is important, but so is the work of delivering successful cases, so authorities are unlikely to systematically and meticulously analyse all of these factors for every conceivable action. Instead, agency and staff experience will likely guide many decisions, as well as established rules of thumb.

132. A purely quantitative approach to case prioritisation may not be sufficiently flexible or able to take into account every necessary factor. Nonetheless, the addition of a systematic tool that can be used to assist qualitative judgements may be useful for some authorities, and appears worthwhile considering. Authorities will also need to consider how best to get the information they need to assess prospective cases. This could include investing in intelligence functions, as well as conducting ex-post assessments to better understand the impact that their cases are having.

133. There are several aspects of case prioritisation that could warrant further exploration between delegates or further research. One concerns the extent to which public interest issues, for example on particular social factors, should be part of prioritisation decisions. Another is the balance between transparency, discretion and oversight, particularly in the current political economy. Linked to this discussion is the appropriate role of broader government priorities to filter into competition authority case prioritisation decisions, nothing the potential impacts on independence, accountability and democratic accountability. A more general point that may also relate to this, is how authorities can link and balance top-down and bottom-up priority setting effectively, including in how they provide transparency in their actions to government and the wider public.

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Annex A. Results of the OECD Survey on Case Prioritisation by Competition Authorities

Survey results

134. This annex outlines the results of the OECD Secretariat's survey of competition authorities on how decisions to prioritise or prosecute competition cases are generally made. It was prepared as part of the preparations for the Roundtable on Case Prioritisation and Prosecutorial Discretion. The survey was sent to OECD members, as well as associates, participants and invitees to the OECD Competition Committee in February 2026. The OECD received 30 responses, including from OECD member and non-member jurisdictions.

135. In total, the survey asked nine questions, of which seven related to the topic and two asked for contact information. The questions were designed to understand at a high-level the approach that competition authorities take to case prioritisation, as well as how they communicate this approach with the public. There were a mix of multiple choice and open questions.

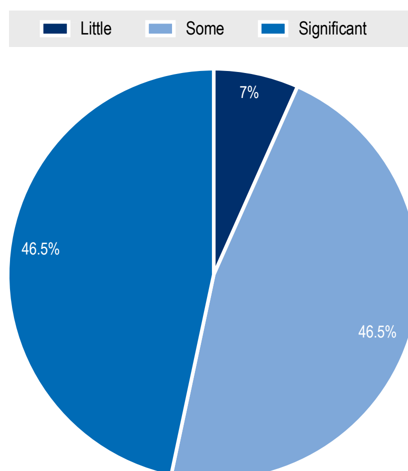
136. This annex provides an aggregated analysis of the survey findings, mainly drawing on responses to the multiple-choice questions, and supplemented by insights from the open-ended questions.

Discretion

137. The first substantive question asks respondents about the degree of discretion they have in responding to complaints that are brought to them. Specifically, the question asked:

> *To what extent do you have discretion to choose whether to investigate a complaint or allegation of a breach of competition law that is brought to your attention?*

Figure A.1. Extent of competition authority discretion to dismiss complaints



138. Respondents had the option of choosing between the following answers: "Significant discretion to dismiss without investigation", "Some discretion but must explain reasons", "Little discretion", "must investigate and provide fully reasoned decision", or "other".

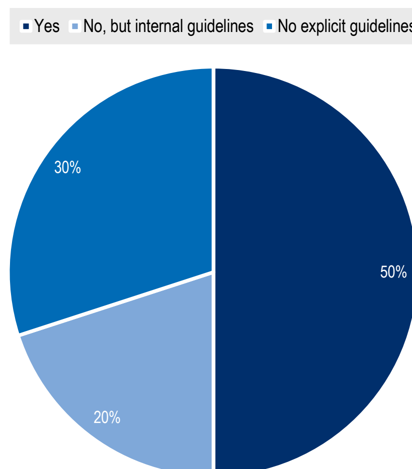
139. As seen above, the vast majority of respondents had at least some discretion to dismiss complaints, with an even split between those that can dismiss and those that must explain the reasons. That is, 14 (46.5%) respondents indicated that they had significant discretion to dismiss a case without investigation, while 14 (46.5%) others said that they had some discretion but must explain reasons. Two respondents (7%) provided that they had little discretion to choose and no respondents selected other.

Transparency

140. Another question focussed on whether respondents had developed guidance on case prioritisation. It asked:

> *Do you publish written guidelines for how you take decisions on case prioritisation?*

Figure A.2. Extent of internal or external guidelines on case prioritisation



141. Respondents responded with: "Yes", "No, but we have internal written guidelines"; "No, we do not have any explicit written prioritisation guidelines" and "other".

142. Half of respondents answered that they publish written guidelines. 15 respondents (50%) answered that yes, they publish written guidelines for how they take decisions on case prioritisation. Six respondents (20%) stated no, but they have internal written guidelines. Nine respondents (30%) answered that they do not have any explicit written prioritisation guidelines. None answered with other.

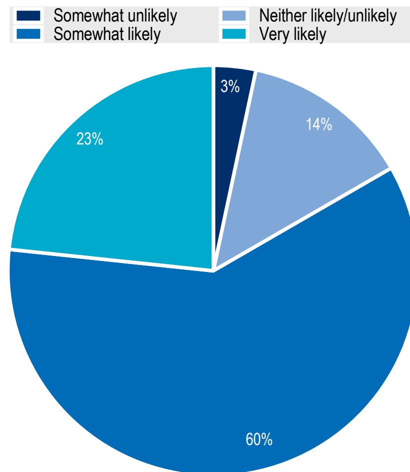
Influences on prioritisation decisions

143. Several questions concerned the factors that competition authority's felt influenced their case prioritisation decisions.

144. One question focussed on the influence of high-level priorities and asked:

> *How likely is a typical individual case prioritisation decision to be influenced by high-level priorities set for the organisation such as focussing on an industry or type of conduct?*

Figure A.3. Influence of high-level priorities on case prioritisation decisions



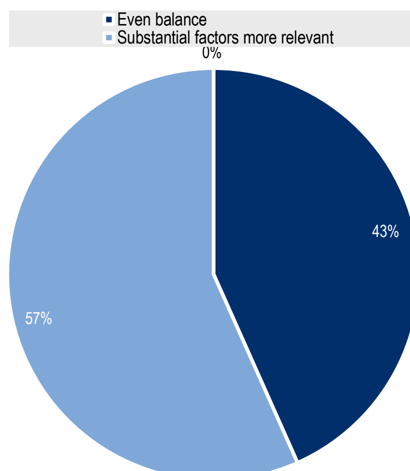
145. Respondents selected from the following options: “Very likely”, “Somewhat likely”, “Neither likely nor unlikely”, “Somewhat unlikely”, “Very unlikely”, or “We do not have high-level priorities”.

146. The vast majority of respondents (25) answered that it was either somewhat likely or very likely that an individual case prioritisation decision would be influenced by high-level priorities. That is, seven respondents (23%) responded that it was very likely that a typical individual case prioritisation decision would be influenced by high level priorities set by the organisation and 18 respondents (60%) selected that it was somewhat likely. Comparatively, four respondents (14%) said that it was neither likely nor unlikely, one respondent (3%) answered that it was somewhat unlikely, and no respondents answered that they had no high-level priorities.

147. Another question concerned the influence of substantial factors and procedural factors on prioritisation decisions. Respondents were asked:

> *For a typical case prioritisation decision, what is the balance between the influence of substantial factors (such as the theories of harm, its potential impact, potential legal precedents etc.) compared to procedural factors such as the likely resources required, its complexity, staff availability etc.)?*

Figure A.4. Relative influence of substantial and procedural factors in case prioritisation



148. Respondents were asked to choose from four response options: “Substantial factors are more relevant”, “Even balance between the two”, “Procedural factors are more relevant”, or “other”.

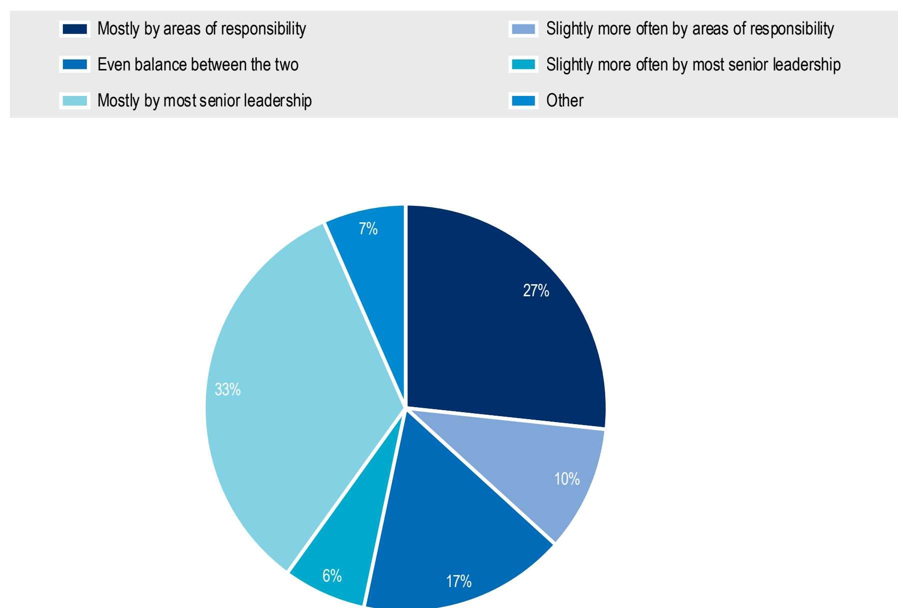
149. 17 respondents (57%) answered that substantial factors are more relevant. 13 respondents (43%) responded that the balance between the influence of substantial factors compared to substantial factors was even. No respondents answered that procedural factors were more influential or selected “other” considerations.

Decision making procedures

150. Several questions focussed on how the respondents made prioritisation decisions. One question concerned responsibility for those decisions. It asked:

> *For a typical case prioritisation decision, are decisions mostly made by areas of responsibility (i.e. driven by the leader of the cartels team) or by the most senior leadership of the organisation (i.e. taken by executive leadership or the board?*

Figure A.5. Responsibility for prioritisation decisions



151. Respondents could choose between the following answers: “Mostly by areas of responsibility”, “Slightly more often by areas of responsibility”, “Even balance between the two”, “Slightly more often by most senior leadership”, “Mostly by most senior leadership”, or “other”.

152. Responses were largely balanced between decisions being made by areas of responsibility and senior leadership. Eight respondents (27%) answered that for a typical case prioritisation decision, the decision is mostly made by areas of responsibility. Three respondents (10%) responded with “slightly more often by areas of responsibility”. Five (17%) responded with an “even balance between the two”. Two respondents (6%) selected “slightly more often by most senior leadership” and ten (33%) responded with “mostly by most senior leadership”. Two (7%) respondents answered “other”. Among those who selected “Other,” one respondent stated that such decisions are taken by case team leaders or case handlers,

subject to approval by senior management, whereas the other reported that they are made by a steering group comprising the relevant heads of unit and the head of the Competition Division.

153. The OECD conducted additional analyses on the results to understand whether there were clear patterns between how decisions were made and the characteristics of the competition authority. However, based on the data collected, there appears to be no clear trend between authority size (measured by the number of staff) and how they make case prioritisation decisions. There appears to be a slight pattern between the maturity of an authority and how it makes case prioritisation decisions, however. In particular, more mature authorities appear more likely to make case prioritisation decisions by areas of responsibility compared to less mature ones where senior leadership decisions were more likely. For example, respondents who answered mostly or slightly more by areas of responsibility had an average maturity of 59 years, whereas respondents who answered mostly or slightly more by most senior membership had an average maturity of 45 years.

154. Relatedly, another open question asked:

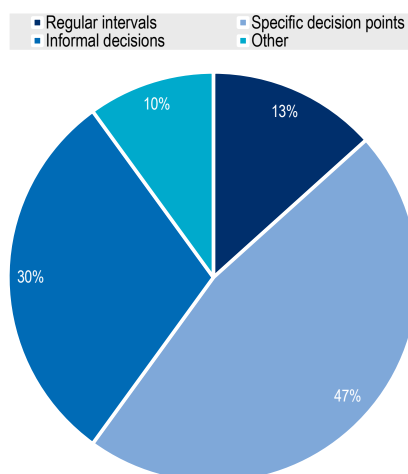
> *If responsibility for case prioritisation decisions sits with a particular person or decision-making body within the organisation, please specify the position or body (providing details of who sits within it).*

155. Six (20%) respondents said that this question was not applicable to them. One respondent (3%) answered that they had no procedure or organisations that explicitly determined the priority of individual cases. Out of the remaining 23 respondents, eight respondents (35%) indicated that responsibility for all case prioritisation decisions rested with a single particular individual (such as the head of the authority or investigating unit). The other fifteen (65%) reported that responsibility lay with a panel or collective body. Separately, five respondents out of the 23 respondents (22%) reported having a dedicated unit or team involved in determining, or supporting the determination of, which cases to prioritise.

156. Another question examined whether formal decision points exist in the process of case prioritisation. It asked:

> *Does your organisation have formal decision points for investigations on whether to continue to prioritise them after being initiated?*

Figure A.6. Formal case prioritisation decision making points



157. Respondents were asked to choose from the following options: “Yes, at regular intervals”, “Yes, at specific decision points after information gathering and analysis”, “No formal points, but informal decisions taken by managers” or “other”.

158. Four respondents (13%) answered with “Yes, at regular intervals”. Fourteen (47%) answered, “Yes at specific decision points after information gathering and analysis”. Nine respondents (30%) answered that there are “No formal points, but informal decisions taken by managers”. Three (10%) answered with “other”.

159. Among those who selected “Other,” one respondent stated “No,” indicating that they had neither formal decision points nor informal managerial decisions. Another respondent answered that prioritisation decisions may be reviewed after the initial fact-finding and assessment stage by senior management, whereas another noted that, once proceedings are opened, the case proceeds without further prioritisation under the relevant legislative rules.

Notes

[1] This note was prepared by Richard May of the OECD Competition Division, with helpful support from Hayden Chan. Helpful comments and review were provided by Ori Schwartz, Antonio Capobianco and Paulo Burnier, also of the OECD Competition Division. The note was prepared to serve as background material for discussions on “Case Prioritisation and Prosecutorial Discretion” taking place at the 25 June 2026 session of OECD Competition Committee.

[2] Case prioritisation concerns which cases competition authorities choose to take on, discard or continue. Prosecutorial discretion is similar but focusses on the cases where authorities elect not to prosecute in order to prioritise efforts elsewhere.

[3] Namely the counterfactual of what else could be achieved with the resources.

[4] The OECD Competition Committee has undertaken extensive work on both ex-ante evaluation of competition authorities’ activities and ex-post assessment of their impact. This work includes published guides for competition authorities on ex-ante assessments (OECD, 2014[41]) and ex-post assessments (OECD, 2016[72]), in addition to several roundtables, such as (OECD, 2025[62]), (OECD, 2011[90]) or (OECD, 2023[60]).

[5] See the OECD website for a full list of policy discussions and papers (OECD, 2025[83]).

[6] For example, the Irish Competition and Consumer Protection Act 2014, Section 30, sets out that the Irish Competition Authority must prepare a strategy statement for the three years ahead and submit it to the relevant Minister. See (ISB, 2014[80]).

[7] See, for example the UK’s Competition and Markets Authority consults on its annual plan (CMA, 2026[81]). See also Spain’s Comisión Nacional de los Mercados y la Competencia which consulted on its 2021-2026 strategic plan (CNMC, 2021[82]).

[8] For example, in the UK each Parliament issues a “Strategic Steer” which sets out how the government expects the Competition and Markets Authority (CMA) to support and contribute to the national priorities. It applies to all aspects of the CMA’s activity over which it has discretion. Similarly, the US government can issue “Executive orders” which encourage the Federal Trade Commission to prioritise certain areas.

[9] This means that even within mergers there will be a degree of prioritisation required, including on which cases to devote resources to, the remedies to pursue and the theories of harm focussed on. The overall amount of resources dedicated to mergers can also be decided at an organisation level, perhaps linked to the high-level priorities.

[10] Another aspect is whether there are external influences on the choices or actions that authorities can take. This could include obligations to undertake projects if directed by government, as is for example the case in some jurisdictions for market studies (OECD, 2025[31]).

[11] Consistent with the OECD Survey however, further analysis of the results suggests a higher proportion of OECD Members are able to dismiss complaints compared to non-Members, with 81% of OECD Member respondents indicating that they had this discretion. Analysis includes the European Union (EU) and OECD Members as of 14 March 2026. For some OECD Member jurisdictions, more than one agency responded to the survey. For those members, only one response was counted and it was selected as yes if at least one of the responding agencies indicated "yes".

[12] For example, in Australia, the decision to prosecute a cartel case criminally is dictated by a Memorandum of Understanding (MOU) between the Australian Competition and Consumer Commission (ACCC) and the Commonwealth Director of Public Prosecutions (CDPP) as well as the CDPP's own prosecution policy (CDPP and ACCC, 2022[78]). The MOU provides that the ACCC will refer only serious cartel conduct to the CDPP. Conduct is more likely to be considered serious where one or more factors apply, including (but not limited to): that the conduct was covert. Once a matter is referred, the CDPP decides whether to prosecute a case criminally by applying its prosecution policy - assessing first whether there is a reasonable prospect of conviction, and then whether prosecution is in the public interest. This involves considering non-exhaustive evidentiary factors (such as whether a witness may be unreliable) and a broad set of public-interest factors (including the seriousness or technicality of the offence). The prosecution policy notes that, in practice, prosecution generally proceed criminally where sufficient evidence exists to justify it.

[13] As explored further below however, the opposite could also be true and has been argued. Namely that if there is lots of discretion, it can provide a way to capture an authority and dictate the work that they do, as they face limited constraints.

[14] For example, this is the case in the EU (See Commission Regulation (EC) No 773/2004 of 7 April 2004 Article 7 (EU, 2004[87])) and Japan, where in the latter the Article 45 of the AMA requires the authority to notify the outcome of its handling of any report that satisfies the prescribed requirements (Japan, 1947[86]).

[15] For Italy the details of the alleged violation must be notified to interested parties within 90 days as provided *Law* 24 November 1981, no. 689 (Italy, 1981[84]) Article 14. For Australia there is a six-year limitation period from the date of the contravention to undertake civil claims seeking penalties or damages. See *Competition and Consumer Act 2010* (Cth) s 77 (Australia, 2010[85]).

[16] They illustrate this by presenting four scenarios: 1) high degree of prioritisation, with external or internal constraints; 2) a high degree of prioritisation, limited external and internal constraints; 3) a medium degree of prioritisation, limited internal constraints; and 4) a low degree of prioritisation, high degree of transparency.

[17] While preventing frivolous complaints is beneficial, as important sources of information, competition authorities are likely to be mindful of encouraging, rather than dissuading, potential complainants.

[18] The nine questions are: What are the anticipated gains? What are the risks? Who will do the project? What will it cost? Does the project employ the right policy instrument? Does the project build on what the

agency already knows? How does the project fit within the existing portfolio of projects? How long will the project take to complete? How will the agency know the project worked as planned?

[19] In these circumstances, taking an additional case does not necessarily require foregoing others.

[20] As discussed below, this highlights the importance of co-operation with others.

[21] A separate issue in this regard could be whether to intervene in ongoing private enforcement, perhaps as a less resource intensive way to influence outcomes of cases.

[22] This links to the discussion explored later in the paper around the risk of short-term prioritisation creating de facto safe-harbours based on perceived thresholds for intervention.

[23] For example, if a stakeholder provides information on a potential breach of competition law, dismissing it could impact whether that stakeholder provides information to the competition authority again in the future. For some stakeholders, where potential collaboration has been identified as worthwhile, this could provide an additional reason to prioritise investigating information provided by them.

[24] Cases may not need to reach an adverse finding for useless lessons to be drawn. For example, (Heim, 2025[79]) explores the lessons that can be taken from the European Commission’s abuse of dominance cases that were dropped.

[25] For example, in the context of mergers, (Burnier Da Silveira and Maiolino, 2025[92]) highlight that international mergers filed in Brazil take longer when they are more complex, for example in relation to the number of affected markets and whether number of jurisdictions notified.

[26] For example, this could be a relevant dynamic in the United States if the Federal competition authorities collaborate with state enforcers, for example in the OH v NCAA cases (Ohio et al. v. National Collegiate Athletic Association (NCAA), 2023[88]). It could also be relevant in the UK where the competition concurrency regime provides overlapping jurisdiction for competition issues between the CMA and sector regulators. In addition, in the EU, the European Commission and the competition authorities in member states may both have authority to review some matters.

[27] In this regard, it is worth noting that certain tools, such as leniency, may have the effect of limiting *de facto* discretion for authorities in some circumstances, in order to preserve the integrity of the schemes.

[28] Within competition enforcement, such considerations may be less likely in the context of hardcore cartels compared to other potential breaches of competition law, such as those relating to other forms of agreements or potentially abusive conduct.

[29] There may also be a role for government to ask competition authorities to assess a sector through a market study. While such requests will not necessarily be followed, it may increase the chances that a sector is considered. As noted above, in some jurisdictions the government also possesses the ability to initiate studies that the competition authority must complete.

[30] There may also be scope to adjust the prosecution strategy, such as which court to bring action to if more than one is available.

[31] As discussed above, in some cases, potential competition issues will be high-profile and in those circumstances there may be value in investigating them to bring an evidence-based approach to public debate.

[32] The existence of ex-post merger control mechanisms may slightly alter this equation, even if there are still likely to be good reasons to intervene before a merger has been consummated if possible (OECD, 2022[91])

[33] This also includes decisions relating to the scope or strategy in relation to ongoing investigations.

[34] For a description of some of the literature on how biases may affect firms, see (Tuinstra and May, 2026[89]).

[35] As is often the case with merger control.

[36] In some jurisdictions, authorities are either not permitted or do not use confidential information gathered during one case within another.