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Case Prioritisation and Prosecutorial Discretion – Note by BIAC

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1. Introduction

1. *Business at OECD* (BIAC) is grateful for the opportunity to submit a contribution to the OECD Competition Committee on the topic of case prioritisation and prosecutorial discretion. Broadly speaking, an authority's prioritisation of competition *policy*, which often finds expression in priority-setting documents or annual plans, is "directional" in nature. Such policy prioritisation indicates how an authority intends to fulfil its mandate. Often, priorities reflect how authorities have factored government or administration priorities into their competition enforcement activities or how authorities are responsive to their jurisdiction's ongoing socio-economic challenges, e.g., cost of living, energy markets, bid rigging, supply chain resilience. This is somewhat distinct from the discretion that an authority may exercise in enforcing competition *law*, which covers both case selection and prosecutorial or enforcement discretion.

2. As noted, competition policy prioritisation may be responsive to broader political considerations and is usually informed by many inputs, whereas case selection or prosecutorial discretion is bounded by the authority's legal mandate and the specific facts at issue. While authorities need the flexibility to diverge from priorities when required, for example, in addressing unforeseen exogenous shocks, enforcement should not be in direct conflict with stated competition policy priorities. However, during enforcement proceedings, authorities should isolate themselves from outside influence, particularly when engaged in the application of their discretion in enforcing the competition laws.

3. Although not all authorities undertake prioritisation exercises, BIAC supports the practice of publishing annual or multi-annual prioritisation documents, which increases transparency, engagement, and competition advocacy, as well as enhancing legitimacy and accountability, thereby enabling authorities to demonstrate their relevance and responsiveness to societal priorities.

4. On the other hand, the effective independence of competition authorities also requires due process protections and judicial oversight to ensure objectivity and confidence in the authorities' output. In exceptional situations where political considerations need to be taken into account, e.g., when balancing public interests, such an assessment should ideally be both transparent and independent of the competition review process, as exists where the law permits for exceptional intervention or forbearance based on overriding governmental interests.

5. In addition, the exercise of discretion in case prioritisation and enforcement should be disciplined by objective criteria, fundamental legal principles, due process, internal checks and balances, and judicial review, as discussed further below. BIAC's contribution is structured along the following lines: first, a discussion on discretion in case selection and case de-prioritisation, then prosecutorial discretion during enforcement actions, and then discretion in issuing public statements during investigations. Finally, the contribution concludes with a summary of BIAC's recommendations in the context of competition authorities' case prioritisation and prosecutorial discretion.

2. Discretion in Case Selection

6. While many competition authorities set out general prioritisation principles, others also set out how their discretion will be exercised, which BIAC would encourage. For example, the U.K. Competition and Markets Authority (CMA), applies five principles where it has the discretion to act: (i) would CMA action fall within with the CMA's objectives and strategy; (ii) would CMA action result in significant positive impact; (iii) is the CMA best placed to act; (iv) does the CMA have the resources to act effectively; and (v) what risks are associated with CMA action.[1] As factors relevant to the CMA's prioritisation may change, these principles are applied at different stages of the life cycle of an enforcement action, as well as when deciding whether to continue prioritising an action and committing the necessary resources. Considerations set out by the CMA notably relate to the authority's legal competence and internal functioning, such as the efficient allocation of an authority's resources and the ability to pursue a matter effectively, as well as its case docket, the preponderance of informal complaints etc. How the CMA undertakes such trade-offs will largely be unknown to those outside an authority.

7. The European Commission's approach to the formal prioritisation of antitrust investigations under Article 101 and/or 102 TFEU is also instructive. The Commission will open proceedings, with a view to adopting a formal enforcement decision "when the initial assessment leads to the conclusion that the case merits further investigation and where the scope of the investigation has been sufficiently defined."[2] The initiation of proceedings occurs only where the Commission assesses that there is a *prima facie* breach of Article 101 and/or 102 TFEU, for which the Commission intends to adopt an enforcement decision. Discretion to initiate proceedings is therefore conditioned, as it is in many instances, on fulfilling a minimum evidentiary threshold. In addition, the formal initiation of enforcement proceedings also "signals a commitment on the part of the Commission to further investigate the case as a matter of priority,"[3] that the necessary resources will be allocated to the investigation, and that the Commission "will endeavour to deal with the case "in a timely manner,"[4] requiring the Commission to also balance administrability and administrative efficiency in exercising its discretion.

8. Case prioritisation is naturally context- and fact- dependent. However, BIAC wishes to share the following observations relevant when authorities select cases for prioritisation.

- At the highest level, enforcement should ensure well-functioning markets, productivity, investment, and economic growth, as reflected in the mandate of the authority. Case selection should be consistent with these objectives and with the authority's broader goals and priorities.

[1] U.K. Competition & Mkts. Auth., Prioritisation Principles, CMA188, § 3 (Oct. 30, 2023), https://assets.publishing.service.gov.uk/media/653f71b780884d0013f71cf4/CMA_Prioritisation_Principles__.pdf.

[2] Commission Notice on Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102 TFEU, 2011 O.J. (C 308) 6, ¶ 17.

[3] DG Competition, Antitrust Manual of Procedures for the Application of Articles 101 and 102 TFEU (ManProc): Initiation of Proceedings ¶ 3 (Apr. 2025), https://competition-policy.ec.europa.eu/document/download/954231d9-874e-4605-a56d-b41548be978b_en?filename=Initiation-of-proceedings-module_ATC-procedures-manual.pdf.

[4] Commission Notice on Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102 TFEU, 2011 O.J. (C 308) 6, ¶ 18.

- The exercise of case selection should be bounded by principles of good administration, proportionality, equal treatment, non-discrimination, impartiality, and transparency. Such safeguards are particularly relevant when an authority needs to reconcile conflicting policy interests, notably to ensure legal certainty, and given ever-shifting governmental and societal priorities.
- Case selection should focus on objective criteria, e.g., where enforcement could result in significant benefits to the economy and society, thereby strengthening the authority's credibility at the national level. Local market dynamics should be prioritised. Authorities should, however, avoid being drawn into what are essentially contractual disputes or allowing political agendas to dictate enforcement action (and absent a clear likelihood that competition laws have been breached). Ill-conceived prioritisation risks biasing decision-making,[5] affecting resource allocation and potentially diverting attention from more critical competition concerns that may be less politically visible.
- Case selection should factor in legal certainty to ensure coherence, notably where other areas of law or regulatory tools may be involved. If appropriate, authorities should liaise with other regulators who have overlapping jurisdiction.
- During case prioritisation exercises, authorities should consider whether enforcement action is the most appropriate tool. Enforcement action is fact-specific, can be lengthy, and may not effectively address sector-wide issues. In such instances, authorities may consider more effective tools to ensure a competition compliance culture, e.g., soft-law advocacy tools, such as policy briefs, reports, or market studies to minimize the need for intervention.
- Case selection can also be informed by the range of alternative "remedies" available to address competition concerns, or where other regulators or authorities are deemed to be best placed to act. Relying on parallel actions of sister authorities, where remedies may resolve issues more broadly, requires not only significant similarity in laws and market conditions but also significant trust between authorities in their ability to extract proportionate remedies, that are responsive to the harm identified.
- While it is important that authorities be able to address novel competition policy challenges, these should be pursued only where they are economically grounded and have real-world relevance, are administrable, and where authorities can give businesses reasonable notice of the conduct at issue. Effective prioritisation mechanisms should allow authorities to also deprioritise investigations that drain authority resources and distract an authority from addressing vast majority of competition restrictions that originate in more traditional sectors or practices.

3. Discretion in Deprioritising Investigations

9. The likelihood of successful enforcement action will be an important consideration in prioritising investigations. Authorities must remain open-minded, however, as to the final outcome of an eventual investigation and not pre-judge or be subject to bias. A recent

[5] On the risks of bias negatively impacting enforcement discretion by leading to discrimination, short-sightedness, predictability and prioritisation process, *see* Wouter Wils, *Discretion and Prioritisation in Public Antitrust Enforcement*, *in Particular EU Antitrust Enforcement*, 34 WORLD COMPETITION 353 (2011).

study found that approximately 20% of the European Commission's formally initiated unilateral conduct investigations have been abandoned without any formal finding.[6] Such closures occur not only because the evidence gathered did not ultimately support a finding of a competition law abuse. Reasons given by the European Commission for closing investigations included where devoting resources to the investigation appeared disproportionate to the likelihood of establishing an infringement, given the complexity of the case and the time needed to reach a final decision. Other reasons included the existence of alternative means to pragmatically dispose of investigations, notably if the likely result would be equivalent to that obtained by conducting formal proceedings.[7]

10. For example, the European Commission has exercised its discretion to abandon formally initiated investigations (i.e., those that had been initially prioritised) for reasons, including:[8]

- Where complaints are withdrawn, indicating that complainants are no longer concerned by the allegedly anticompetitive practices. This has occurred, for example, once commercial agreements have been reached between the parties.
- Where the company or companies under scrutiny have modified their behaviour, thereby addressing preliminary concerns, whether by ceasing the impugned practice or by undertaking essentially informal remedies equivalent to those obtained by conducting formal proceedings.
- Where alternative solutions may be available to address policy concerns or market dynamics, for example through sectoral regulation or policy guidance.
- Where the facts do not bear out the theory underlying the investigation or where there is insufficient proof.
- Where the existence or the potential for parallel national investigations that may be better placed to address concerns.

11. The closure or de-prioritisation of particular investigations is a legitimate enforcement outcome. Authorities can use the closure of formal investigations to provide guidance to market players and sharpen their policy and enforcement toolkits. The decision to deprioritise and close particular investigations, even if expressed through informal tools, allows authorities to translate their investigative efforts into observable decisional output and thereby justify past activities, which is an important factor that affects the incentive structures of an authority and its officials. Most importantly, increasing the status of de-prioritisation of investigations provides authorities with greater administrative efficiency and the opportunity to engage in more investigations, knowing that there is an "escape valve," if continuing an investigation is not warranted. Indeed, an authority could prioritise

[6] Mathew Heim, *The Curious Case of the European Commission's Missing Antitrust Jurisprudence: Lessons from Abandoned Article 102 Investigations*, 16 J. EUR. COMPETITION L. & PRAC. 285 (2025). For a discussion on the European Commission's practice of rejecting complaints before proceedings are formally initiated, *see* Ben Van Rompuy, *The European Commission's Handling of Non-Priority Antitrust Complaints: An Empirical Assessment*, 45 WORLD COMPETITION 265 (2022).

[7] *See* Miguel Ángel Peña Castellot, *Commission Settles Allegations of Abuse and Clears Patent Pools in the CD Market*, Competition Policy Newsletter, Autumn 2003, at 3.

[8] *See* Heim, *supra* note 6. *See also* Eric Gippini-Fournier, *Community Report to the FIDE Congress 2008*, *in* THE MODERNISATION OF EUROPEAN COMPETITION LAW: FIRST EXPERIENCES WITH REGULATION 1/2003 (Herbert Franz Koeck & Margit Maria Karollus (eds), 2008).

the de-prioritisation of cases, not only as an exercise to seek a more efficient allocation of resources, but also to fast-track alternatives outcome, when appropriate.

4. Prosecutorial Discretion During Enforcement Proceedings

12. While the focus on the current Committee discussion is on case selection (or de-selection), it is also useful for authorities to also consider the exercise of discretion in the manner that enforcement proceedings are conducted, as case prioritisation decisions also occur dynamically across ongoing actions.[9]

13. For the purposes of this contribution, BIAC understands prosecutorial discretion to mean the margin of discretion that the law grants an authority during its enforcement actions, where the applicable legislative, constitutional provisions or case-law do not fully specify which course of action an authority must take and there is more than one equally valid choice open to the authority.[10]

14. Legislators often grant significant margins of discretion or appreciation to competition authorities, given that authorities are recognized as the specialist, technical bodies, best equipped to balance the issues at play when applying the competition laws. Competition laws in themselves often require prospective economic assessments that necessitates providing authorities with a level of flexibility. During enforcement proceedings, authorities are also required to exercise their discretion on a very broad range of procedural issues, including timing and investigative "intensity," the scope of information gathering; whether to apply interim measures; or whether to rely on formal complaints or undertake an own-initiative investigation (where such powers exist). An authority must also exercise its discretion on a broad range of substantive matters, such as which relevant markets to focus on; what theories of harm or economic tests to apply; which undertakings to investigate; the weight to give to defendants' efficiency or objective justification arguments; when and what types of remedies to accept; the range of possible fines and so on. The scope of discretion is therefore fact-specific and a matter of degree.[11]

15. Industrial policy priorities, whether formally set out or informally indicated by governments, can also affect how authorities exercise their discretion. For example, the UK government can provide a non-binding ministerial statement of strategic priorities to the CMA (referred to as a "steer," in recognition of the CMA's independence) to express how competition law would fit within the government's broader economic priorities. In 2025, the UK government's "Strategic Steer" set out the expectation that, when engaged in activities over which the CMA has discretion (including "investigations to commence, and in all cases where the CMA is considering remedies") the CMA should give "appropriate consideration" to:

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[9] OECD, *Case Prioritisation and Prosecutorial Discretion by Competition Authorities*, OECD Roundtables on Competition Policy Papers No. 333 (June 1, 2026), https://www.oecd.org/content/dam/oecd/en/publications/reports/2026/06/case-prioritisation-and-prosecutorial-discretion-by-competition-authorities_e66cd2b0/0ce3398f-en.pdf [hereinafter Secretariat Background Note].

[10] *See, e.g.*, Wils, *supra* note 5; and George Gryllos, *Discretion and Judicial Review in EU Competition Law: A Technical Analysis on Sources of Discretion, Judicial Review and Implications for the Litigants*, Concurrences, No. 4-2016, Art. No. 81687 (2016), https://ssrn.com/abstract=3742299.

[11] *See* Wils, *supra* note 5.

- prioritising pro-growth and pro-investment interventions;
- focusing on markets and harms that particularly impact UK-based consumers and businesses; [and]
- supporting growth and competitiveness in the industrial strategy's 8 growth-driving sectors.[12]

16. In response the CMA announced how the it will carry out its work in the context of the Strategic Steer: (i) pace in reaching faster decisions; (ii) predictability by clarifying the CMA's remit; (iii) proportionality in getting the right results while minimising burden on business; and (iv) process by improving engagement with business.[13] The CMA has therefore indicated that, when exercising its enforcement discretion, its choices may be influenced when applying principles that reflect the UK government's perspective.

17. Even the broadest discretion is fettered by basic principles, including good administration, proportionality, competitive neutrality, equal treatment, non-discrimination, impartiality, and transparency, in order to avoid arbitrary decision making. The exercise of discretion is also constrained by the respect of the rights of the undertakings involved. Indeed, the fundamental rights of the parties are a principal constraint on any naked exercise of administrative discretion. For this reason, the role of internal checks and balances, notably the role of an independently minded legal service, is critical to ensure that the appropriate considerations are weighed in the exercise of an authority's discretion. This is particularly important where authority staff exercise tactical discretion that may not trigger internal oversight.

18. Courts generally recognize that a margin of appreciation must be afforded to competition authorities when authorities engage in enforcement action. For example, in the context of EU merger control, the Court of Justice of the European Union (CJEU) has confirmed that the Commission has a margin of discretion with regard to economic matters when applying the merger regulation.[14] However, the CJEU also stressed that judicial oversight was needed *because* the Commission possessed such a discretion. Although the scope of judicial review was confined to ensuring the facts relied on were accurate and that there was no manifest error of assessment by the Commission, these limits do not restrain the EU Courts' from reviewing whether the evidence relied upon by the Commission contained the necessary information to make its assessment and whether the evidence substantiated the Commission's conclusions.[15] While courts tend to avoid substituting the authority's exercise of its discretion for the courts' own, courts should be able to undertake a review of the legality of an authority's exercise of discretion when the rights of parties are affected.

19. The exercise of enforcement discretion is therefore conditioned by judicial oversight, especially where the authority's actions could affect a defendant undertaking's

[12] U.K. Dep't for Business & Trade, Strategic Steer to the Competition and Markets Authority § 2.1 (May 15, 2025), https://www.gov.uk/government/publications/strategic-steer-to-the-competition-and-markets-authority/strategic-steer-to-the-competition-and-markets-authority.

[13] U.K. Competition & Mkts. Auth., Delivering the 4Ps Under the Digital Markets Competition Regime (Apr. 30, 2025), https://www.gov.uk/government/publications/delivering-the-4ps-under-the-digital-markets-competition-regime/delivering-the-4ps-under-the-digital-markets-competition-regime.

[14] Case C-376/20 P, Comm'n v. CK Telecoms UK Investments Ltd, ECLI:EU:C:2023:561 (July 13, 2023)

[15] *Id.* ¶¶ 124-126.

legal position, such as the right of defence. A good example can be found in *Bulgarian Energy Holding and Others v. Commission* (*BEH*),[16] where the European General Court considered the scope of the Commission's obligation to record its interviews with third parties during its investigation and to maintain a full case file, including potentially exculpatory evidence. The court accepted that, as the competent enforcement authority, the Commission had the discretion to exclude from the file documents not relevant to the investigation, but this discretion did not extend to deciding whether to exclude material from the file on the basis of what the Commission considered potentially incriminatory or exculpatory.[17] In addition, the court noted that the Commission's "supposed discretion" to exclude relevant information from the case file would effectively frustrate the courts' own ability to verify the Commission's compliance with European law.[18]

20. As an authority is required to exercise discretion at numerous points throughout the lifetime of an investigation, the exercise of that discretions should include effective internal "checks and balances," which could include separate investigative and decision-making functions (where applicable), independent internal review (peer review), and legal-service scrutiny. As highlighted in the Secretariat Background Note, instituting processes to formalise decision points may be useful to make case prioritisation tractable, such as internal investigatory steps ("stop/go" points) "which offer the opportunity to take-stock of updated information and re-evaluate the prospects of an action. . . . Such mechanisms may not need not be overly formalised to be effective, with processes of different sophistication potentially being appropriate for different situations."[19] These mechanisms are important to identify potential confirmation, hindsight, or policy bias which may occur notably during long-running investigations.[20]

21. As noted above, guardrails framing the exercise of an authority's discretion should be bounded by principles of good administration, proportionality, equal treatment, non-discrimination, impartiality, and transparency. The International Competition Network's Framework for Competition Agency Procedures, which sets out procedural fairness, transparency, confidentiality, and conflict-of-interest safeguards, is a useful comparative reference.[21]

22. The exercise of discretion remains the authority's competence and business may therefore not be aware of all the factors or trade-offs at stake and in any given instance. For this reason, communicating publicly how an authority applies its discretion will help avoid any sense of arbitrary enforcement. The Secretariat Note also considers that "[p]ublishing details of how these decisions will be made can assist stakeholders in providing the most

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[16] *See* Case T-136/19, Bulgarian Energy Holding EAD and Others v. Commission, ECLI:EU:T:2023:669 (Oct. 25, 2023).

[17] *Id.* ¶ 1158 ("it cannot be for the Commission alone to determine the evidence of use in the defence of the undertaking concerned").

[18] *Id.* ¶ 1171.

[19] Secretariat Background Note*, supra* note 9, at 29.

[20] *Id*. ("All individuals will face their own incentives, informational asymmetries and, like all human-beings, be susceptible to cognitive biases. 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.").

[21] Int'l Competition Network, ICN Framework for Competition Agency Procedures (2019), https://internationalcompetitionnetwork.org/wp-content/uploads/2019/04/ICN_CAP.pdf.

pertinent information and also improves transparency and accountability of the authority."[22]

5. Discretion in Public Communications

23. Competition enforcement action may be newsworthy and market moving. As a result, authorities should be neutral when then announce the initiation of proceedings and avoid create any expectation of outcome. For example, when the European Commission formally initiates antitrust proceedings, it is required to publicly state that the opening of a formal proceedings does not prejudge the existence of an infringement nor the outcome of the investigation.[23] This language is reflected in each Commission press release.

24. As FTC Commissioner Meador recently noted, "When we confront new questions around technology and innovation, *how* the Commission acts matters just as much as *whether* the Commission acts."[24] How an authority acts is not limited how an investigation is prioritised or the intensity with which the investigation is prosecuted, but also how an authority communicates about the ongoing investigation. Competition authorities also exercise their discretion in how (or much how) to disclose publicly about ongoing enforcement action, notably when these are high-profile or politically sensitive. A tension exists between, on the one hand, the need for transparency and competition advocacy, including the need to send signals to the market or other constituents and, on the other, the confidentiality of proceedings and imperative to avoid harming the legitimate interests of companies under investigation and avoiding perceptions of bias.

25. Undertakings, markets, consumers, and the media rely on authorities' communications and assume their veracity. By publicly framing allegations in strong or definitive terms, an authority may shape public opinion.[25] Emotive or prejudicial language can heighten public interest and expectation of enforcement, as well as influence the sector and financial markets, long before any decision. Inappropriate or excessive public communication may put pressure on an authority to address a mediatized case or may influence the exercise of the authority's discretion in that direction. Implications of guilt, vague or ambiguous language can also lead to confusion among external and in-house counsel on how to advise their clients, as well as for market participants who are considering related investment decisions. Public statements from senior competition officials that create an impression that the authority had already reached its conclusion have been deemed "maladministration," as they are not only misleading but give an impression of bias which is harmful to the reputation of an authority as an objective, independent

[22] Secretariat Background Note*, supra* note 9, at 34.

[23] Commission Notice on Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102 TFEU, 2011 O.J. (C 308) 6, ¶ 20.

[24] Mark R. Meador, Comm'r, Fed. Trade Comm'n, Keynote Address Before the Tech Antitrust Conference 4 (Jan. 15, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-concurrences-keynote.pdf.

[25] In reviewing a press release issued by the Dutch competition authority (then the "Nma"), the Dutch Court of Appeals of The Hague, considered that "members of the public would assume the release set out a decision, rather than concerns. As a result the release impinged upon the presumption of innocence under Article 6 of the European Convention on Human Rights. . . . Because it [] has decision-taking powers, the NMa has a duty to take particular care." *NMa Reprimanded Over Press Release*, GLOBAL COMPETITION REV. (Mar. 30, 2005), https://globalcompetitionreview.com/article/nma-reprimanded-over-press-release.

enforcement authority.[26] In addition, statements that appear politically motivated or strategically timed, especially to demonstrate responsiveness to industrial policy priorities, may affect the perception of the authority's neutrality.

26. To address some of these challenges, a number of authorities have developed specific guidance and practices related to public communications (at times resulting from judicial clarification), yet there is no uniform appreciation on this topic, which is of significance to the business community.[27]

6. Summary of Recommendations

27. As highlighted in this contribution, BIAC recommends that when exercising their discretion competition authorities consider the following recommendations:

1. Publish prioritisation principles, including on case selection and considerations when exercising discretion in enforcement, notably when the rights of parties are affected.
2. Publish, as appropriate, information of when discretion has been exercised in significant procedural steps, e.g. to drop certain undertakings from investigations.
3. Engage with the business community to explain how an authority applies its discretion will help businesses understand how the scope of discretion may be interpretated and help avoid any sense that discretion is exercised arbitrarily.
4. Discipline case selection through rigorous process and objective criteria, while avoiding contractual disputes or politically motivated cases.
5. Normalize the transparent deprioritisation of investigations, especially where alternative solutions exist that can foster competition and compliance.
6. Ensure effective internal processes when exercising discretion on significant issues, supported by checks and balances, including peer review and legal service scrutiny, to ensure an appropriate application of discretion at critical points of an enforcement action, factoring the relevant trade-offs and preventing prosecutorial discretion being arbitrarily exercised or being influenced by potential confirmation, hindsight, or policy bias.

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[26] *See* Eur. Ombudsman, Decision in the Inquiry into Complaint 1021/2014/PD Against the European Commission (Nov. 11, 2015), https://www.ombudsman.europa.eu/en/decision/en/61312 (holding that some of the public statements made by then Competition Commissioner "could reasonably be perceived as suggesting that the Commission or the Commissioner had already decided the outcome of the on-going investigation and that this constituted maladministration").

[27] *See, e.g.*, Austl. Competition & Consumer Comm'n, Media Code of Conduct Relating to the ACCC's Enforcement Activities (Mar. 2019), https://www.accc.gov.au/about-us/news/media-code-of-conduct.; U.K. Competition & Mkts. Auth., Transparency and Disclosure: Statement of the CMA's Policy and Approach (Consultation Draft), CMA6con (May 24, 2024), https://assets.publishing.service.gov.uk/media/6650a641dc15efdddf1a83f0/CMA6_con_draft_-_Transparency_and_disclosure__Statement_of_the_CMA_s_policy_and_approach.pdf; *see also* Int'l Competition Network Advocacy Working Grp., Advocacy Toolkit, Part II: Effective Communication of a Competition Advocacy Message (Apr. 2011), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_Toolkit2.pdf.

7. Reinforce an understanding of the principles governing the exercise of enforcement discretions, notably, good administration, proportionality, equal treatment, non-discrimination, impartiality, and transparency.
8. Exercise care in public communications on ongoing enforcement actions and publish principles on when and how authorities will communicate information.