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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Case Prioritisation and Prosecutorial Discretion – Note by Ireland**

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This document reproduces a written contribution from Ireland submitted for Item 6 of the 149<sup>th</sup> OECD Competition Committee meeting on 22-24 June 2026.

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## *Ireland*

### 1. Introduction

1. This submission has been prepared by the Irish Competition and Consumer Protection Commission (the “CCPC”) to inform the discussion at the OECD Roundtable on “Case Prioritisation and Prosecutorial Discretion”, to be held on Thursday, 25 June 2026.

2. The Roundtable will discuss case prioritisation and prosecutorial discretion in national competition authorities, in particular in terms of how these aspects are linked, what the optimal level of discretion and prioritisation is for a competition authority, the degree of flexibility authorities have in terms of decisions to prioritise or deprioritise, and what if any are the links between priority setting at authority level and individual case decisions. The submission from the CCPC will consider each of these questions, focussing on case selection and prioritisation in competition enforcement.

3. The CCPC has responsibility for enforcing EU and national competition law in Ireland. Its functions are set out in section 10 of the Competition and Consumer Protection Act 2014, as amended<sup>1</sup> (the “2014 Act”). The substantive provisions of Irish competition law are contained in the Competition Act 2002, as amended<sup>2</sup> (the “2002 Act”). The CCPC’s 2024-2026 Strategy Statement<sup>3</sup> includes a strategic goal to use our tools and powers to increase enforcement and compliance outcomes, including competition enforcement outcomes. Central to achieving this goal is a robust and considered approach to case prioritisation. The effective enforcement of competition law is enabled by a comprehensive approach to prioritisation, which allows the CCPC to employ resources and focus enforcement efforts on the most harmful infringements. A number of factors, both legislative and policy driven, are considered at organisational level to help inform this approach, which will be discussed further within this submission.

### 2. The Framework Applicable to Case Selection and Prioritisation

4. The CCPC’s approach to case selection and prioritisation is framed by its independence as an agency, the express statutory basis to exercise its discretion to prioritise cases, and the CCPC’s prioritisation framework.

#### 2.1. Legislative Basis for Discretion

5. Under national law, there are two statutory provisions which enable the CCPC to apply discretion in terms of case selection and prioritisation. These are provided for under section 15G of the 2002 Act, and section 10(8) of the 2014 Act. Section 15G of the 2002 Act relates to the conduct of certain investigations, and with respect to competition law investigations under the 2014 Act, provides that:

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<sup>1</sup> Available here: [Revised Acts | Law Reform](#)

<sup>2</sup> Available here: [Revised Acts | Law Reform](#)

<sup>3</sup> Available here: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/11/2024.11.13-100707-CCPC-Strategy-Statement-FINAL-WEB.pdf>

*“the competent authority may regulate its procedures, by rules or otherwise, for conducting such investigations in such manner as it shall from time to time determine, including the scope and terms of the investigation to be carried out, whether as respects the matters or the period to which an investigation is to extend or otherwise, and may, in particular, limit the investigation to matters connected with particular circumstances or particular issues.”*

6. In a similar manner, section 10(8) of the 2014 Act provides a statutory basis for the CCPC to have discretion in determining matters to investigate, including those relating to competition enforcement. Section 10(8) provides that:

*“[n]othing in this section or any other provision of this Act imposes a duty on the Commission to consider whether to investigate a matter that is referred to it but the Commission may, in the case of a matter referred to it, consider whether to do so (and, accordingly, may proceed to investigate the matter) where it is satisfied the matter may affect competition or the interests and welfare of consumers or both.”*

7. Article 4(5) of Directive (EU) 2019/1 (“the ECN+ Directive”) is also important to consider. Article 4(5) provides that:

*“[n]ational administrative competition authorities shall have the power to set their priorities for carrying out the tasks for the application of Articles 101 and 102 TFEU as referred to in Article 5(2) of this Directive. To the extent that national administrative competition authorities are obliged to consider formal complaints, those authorities shall have the power to reject such complaints on the grounds that they do not consider such complaints to be an enforcement priority. This is without prejudice to the power of national administrative competition authorities to reject complaints on other grounds defined by national law.”*

8. In practice, these provisions give the CCPC broad discretion to determine which matters to investigate and how to conduct those investigations.

## **2.2. The Application of Discretion to Case Selection and Prioritisation**

9. The CCPC’s discretion is applied broadly across the full lifecycle of a case, encompassing decisions taken both prior to and during an open investigation. At the assessment stage (i.e. prior to the opening of a formal investigation), discretion applies to the assessment of complaints, tip-offs, and intelligence received. This includes decisions on whether to open a formal investigation or take no further action. The CCPC also retains discretion to revisit or re-open matters where new evidence or information emerges.

10. During the course of an investigation, discretion is also applied in terms of what investigative tools and powers should be utilised to gather evidence, depending on what might be the most optimum approach for any given case. Equally at any stage of an investigation, with respect to alleged competition law infringements under section 4 or 5 of the 2002 Act, the CCPC enjoys discretion as to whether a criminal or administrative enforcement route should be utilised to achieve an enforcement outcome. This choice as between the criminal or administrative enforcement route is provided for in section 15K of the 2002 Act. In practice, the CCPC does not typically follow a criminal enforcement route in respect of breaches of section 5 of the 2002 Act (which largely mirrors Article 102 of the Treaty on the Functioning of the European Union (“TFEU”)). The CCPC’s general practice is to deal with section 5 abuse of dominance cases under its administrative enforcement regime. By contrast, greater discretion is typically exercised in respect of breaches of section 4 of the 2002 Act (which largely mirrors Article 101 of the TFEU). This discretionary approach is heavily guided and supported by the published CCPC

prioritisation principles<sup>4</sup>. The CCPC has also published a Guidance Note<sup>5</sup> on choice of enforcement route, which is discussed in further detail in section 5 of this submission.

### 2.3. CCPC Prioritisation Principles

11. Decisions on case selection and prioritisation are made by applying the CCPC prioritisation principles to a case. The CCPC prioritisation principles are a published<sup>6</sup> set of principles which are applied to investigative and enforcement actions considered by the CCPC. The four high level prioritisation principles that the CCPC applies are as follows:

- Level of economic and/or physical harm
- Likely impact of the CCPC's action
- Strategic significance
- Risks, resources and costs

12. The rationale behind the development of these principles was to guide the CCPC in deciding which projects or cases to commence or continue. With a very broad mandate and limited resources, it is not possible to investigate every complaint received, nor can the CCPC pursue every issue brought to its attention. Prioritising work enables the CCPC to focus its resources in the areas which will result in the greatest benefits to consumers, businesses and the economy. Publishing these principles also allows for increased transparency and accountability in terms of how work is prioritised and progressed by the CCPC.

13. Much like the application of the CCPC's statutory discretion to prioritise, the CCPC prioritisation principles are applied throughout the life cycle of a case, at the (i) complaint-handing and assessment stages (i.e. before a formal investigation is opened), and (ii) once a case is formally opened in accordance with section 10(1)(c) of the 2014 Act and Part 2C of the 2002 Act. Equally, the prioritisation principles are applied to the CCPC's decision-making regarding projects, market studies, public awareness or advocacy initiatives, or other activities the CCPC may choose to carry out. The prioritisation principles themselves remain fixed, but the weight given to each principle is assessed holistically (depending on the investigation, or on divisional or organisational priorities) and not based on a rigid scoring methodology. For example, the weight given to the application of each principle may vary depending on sectoral focus or enforcement priorities. Resource considerations, as well as consideration of the complexity and expected duration of an investigation, can also be relevant factors particularly where the potential enforcement impact is marginal. There is no onus on the CCPC to publish individual prioritisation decisions or the specific weight given to the application of each prioritisation principle in a particular case.

### 2.4. CCPC Independence to Prioritise Work

14. As the CCPC is an independent statutory body, it decides independently on how to prioritise and progresses its cases. The CCPC is subject to a degree of oversight from its parent ministry i.e. the Department of Enterprise, Tourism and Employment ("DETE"). A

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<sup>4</sup> The prioritisation principles are available here: <https://www.ccpc.ie/business/about/decide-take-action/>

<sup>5</sup> Available here: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Guidance-Note-on-Choice-of-Enforcement-Regime.pdf>

<sup>6</sup> Available here: <https://www.ccpc.ie/business/about/decide-take-action/>

written Oversight and Performance Delivery Agreement (“OPDA”) is in place between the CCPC and DETE, and is reviewed annually. The OPDA clearly defines the terms of the relationship between the CCPC and DETE, while respecting the CCPC’s statutory independence. It provides a formal framework for setting the CCPC’s objectives and performance targets, and for monitoring and overseeing its delivery and accountability to DETE. In line with Article 4 of the ECN+ Directive, the CCPC performs its duties and exercises its competition enforcement powers (including in relation to case selection and prioritisation) independently from political and other external influence.

15. From time to time, the CCPC has High Visibility Contacts (“HVCs”) i.e. engagements with key stakeholders such as members of the Houses of the Irish parliament (the “Oireachtas”) called Teachta Dála (“TDs”) and Senators. These contacts can sometimes pertain to sectors or areas that members of parliament think the CCPC should focus enquiries or investigative efforts on.

16. Under section 20 of the 2014 Act, the Minister for Enterprise, Tourism and Employment (the “Minister”) may give a direction in writing to the CCPC requiring it to comply with such policies of the Government as are specified in the direction. Under section 30(6) of the 2014 Act, the Minister may issue directions or guidelines to the CCPC concerning the preparation of its annual work programme and the CCPC is required to comply with those directions and prepare the work programme in accordance with those guidelines. The CCPC has not received any ministerial directions or guidelines under section 20 or section 30(6) since its establishment in 2014.

17. Under section 10(4) of the 2014 Act, the Minister may request the CCPC to carry out a market study relating to any competition or consumer protection matter. The Minister has exercised this power a number of times since the CCPC was established in 2014. For example, the Minister requested the CCPC to carry out market studies in relation to the operation of the household waste collection market (in 2017) and the public liability insurance market (in 2019).

18. The Minister may also make informal requests outside of the framework of section 10(4) of the 2014 Act. For example, this recently occurred in the context of rising fuel prices in the State as a result of the conflict in the Middle East. In early March 2026, the Minister requested the CCPC to examine public concerns regarding price gouging and potential illegal practices in the supply of home heating oil, petrol and diesel. The Minister also encouraged members of the public to contact the CCPC with complaints about increases in home heating oil and road fuel prices. In April 2026, the CCPC published its 2026 Fuel Report<sup>7</sup>, examining the issues raised by consumers in the context of conflict in the Middle East and the resultant impacts on international commodity markets.

19. While HVCs and engagement with the Minister may draw attention to particular sectors or issues, they have not, in practice, constrained the CCPC’s independence in deciding whether and how to pursue specific cases.

### 3. Internal Decision-Making Regarding Case Prioritisation

20. As outlined above, the CCPC exercises discretion across the case lifecycle, supported by the application of the prioritisation principles at key decision points.

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<sup>7</sup> <https://www.ccpc.ie/business/research/market-research/ccpc-fuel-report-2026/>

### 3.1. Case Prioritisation at Key Stages of a Case

21. The prioritisation principles are first applied at the complaint-handling stage, where they guide decisions on whether a matter should proceed to assessment. During the assessment stage, the application of the prioritisation principles is a key part of the analysis undertaken by the case team in determining whether a recommendation should be made to open a formal investigation. As part of the application of the prioritisation principles at both the complaint-handling and assessment stages, factors such as strategic, organisational or enforcement priorities are considered. The recommendation memo to open a formal investigation records the analysis undertaken at assessment stage. The final decision to open a formal investigation or to close a case at assessment stage may be taken by Commission Members, Divisional Directors, Deputy Directors, or Heads of Unit, in accordance with the CCPC's internal procedures. The application of the prioritisation principles often results in the closure of cases at assessment stage.

22. During the lifecycle of a formal investigation, the prioritisation principles are also applied at evidence gathering and evidence review stages and at major reporting junctures or "Stop/Go" points, including where a decision on choice of enforcement route (criminal versus administrative) needs to be made. At these key stages, decisions are ordinarily made by both Divisional Directors and Commission Members, following a recommendation by the case team. These decision-making structures also serve as an important accountability function. The involvement of senior management and Commission Members at key junctures ensures consistency in the application of prioritisation principles and provides an internal check on the exercise of discretion. While individual prioritisation decisions are not routinely published, this layered governance framework supports transparency and robustness in decision-making.

### 3.2. Soft Enforcement

23. The CCPC also has discretion for a Commission Member or a Divisional Director to decide that a more appropriate course of action is to pursue a "softer" form of enforcement rather than pursuing an administrative or criminal enforcement route. This "softer" type of enforcement can take various forms, such as compliance letters or warning letters issued to undertakings, or informal commitments agreed with an undertaking. This type of "softer" enforcement is often accompanied by a CCPC public communications campaign relating to the type of anti-competitive conduct which was suspected, acting as both an informative learning opportunity for other undertakings, as well as having a deterrent effect. The advantage of this type of enforcement is the timely and efficient resolution of the issue; it can be deployed both before a formal investigation is opened and, in some cases, after a formal investigation is opened.

### 3.3. Concurrent Jurisdiction on Competition Law Investigations with ComReg

24. Pursuant to Part 4A of the 2002 Act<sup>8</sup>, the CCPC shares concurrent jurisdiction with the Commission for Communications Regulation ("ComReg") regarding enforcement of competition law (sections 4 and 5 of the 2002 Act and Articles 101 and 102 of the TFEU) in the electronic communications sector. The Competition Authority (as it then was) and ComReg entered into a cooperation agreement in 2008, pursuant to section 47G of the Competition Act 2002 (as amended), to facilitate the exercise of their respective

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<sup>8</sup> As inserted by the Communications Regulation (Amendment) Act 2007, and subsequently amended by the 2014 Act.

competition powers. The Competition Authority and ComReg also entered into a more general co-operation agreement in 2002, pursuant to section 34(1) of the Competition Act 2002, in relation to their respective functions (dated 16 December 2002). Both of these agreements are still in force.

25. On foot of the amendments to the 2002 Act introduced by the Competition (Amendment) Act 2022, an administrative leniency programme<sup>9</sup> was put in place by the CCPC. This led to the establishment of the CCPC and ComReg joint policy on leniency applications in the electronic communications sector<sup>10</sup>, published in September 2023.

26. From a case selection and prioritisation standpoint, this cooperation provides that both agencies should, as far as practicable, consult with one another before performing any functions under the 2002 Act involving the same issues. This consultation occurs when required between the two agencies, to avoid duplication of investigative activities, and to ensure consistency between decisions made and the performance of common functions.

### 3.4. Transparency and Communication of Prioritisation Decisions

27. Transparency is an important component of the CCPC's prioritisation framework, particularly in relation to communication with complainants and parties who are the subject of an investigation.

28. When the CCPC receives complaints pertaining to alleged anti-competitive behaviour, complainants are informed at this stage of the discretion the CCPC has in terms of case selection and prioritisation. Moreover, information regarding the CCPC's discretion to determine which cases will be prioritised is published on the CCPC website<sup>11</sup>, so complainants are aware that not every matter will lead to a formal investigation being opened.

29. Subsequent to this and following assessment stage, if a formal investigation is opened, an opening letter may be sent to the undertakings subject to the investigation. The CCPC's competition enforcement divisions adopt a discretionary approach to sending this correspondence. For example, it is utilised in some contexts when it may be beneficial for an undertaking to be aware of an ongoing investigation, often in conjunction with the use of an investigative power such as the issuing of a Request for Information. When a decision is taken to close a case, a discretionary approach is also taken whether a complainant or an affected party will be informed about an enforcement decision. The CCPC is not obliged to inform the parties but decisions are ordinarily taken depending on the facts and circumstances of a particular case. Factors considered in making this decision may include

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<sup>9</sup>Available here: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Administrative-Leniency-Policy.pdf>

<sup>10</sup> Available here: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/09/CCPC-ComReg-Joint-Policy-on-Leniency-Applications-in-ECS.pdf>. It should be noted that prior to the introduction of the Leniency Programme, a cartel immunity programme was already in operation in conjunction with the Director of Public Prosecutions (the "DPP"). This programme is still in force today and is applicable to alleged criminal cartel offences under the 2002 Act. For further information, please see: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/02/2015-01-20-Revised-CIP-Final.pdf>

<sup>11</sup> Specifically, this is communicated on the prioritisation principles page of the website, where the CCPC states that "[w]ith a very broad mandate and limited resources it is not possible to investigate every consumer contact that we receive, nor can we pursue every issue. Therefore, we must prioritise our work." See further <https://www.ccpc.ie/business/about/decide-take-action/>

whether a notification of opening a formal investigation was sent, whether the complainant is a key stakeholder of the CCPC, whether the investigation was in the public domain, or what stage the investigation may have been progressed to, for example, referring a file to adjudication under Part 2D of the 2002 Act or referring a file to the Director of Public Prosecutions which is explained in further detail below.

30. In contrast to some national competition authorities, the CCPC is not required to publish any material on specific enforcement priorities, such as sectors or industries of focus or particular conducts. In practice, transparency on enforcement priorities may be provided on a discretionary basis. For example, the CCPC has stated recently that anti-competitive bid-rigging is an enforcement priority and it has highlighted the CCPC's request to Government for proposed legislative amendments to provide powers to the CCPC to screen public procurement data to help identify bid-rigging cartels.

31. A key challenge in this area is balancing transparency with the need to preserve enforcement flexibility. While greater disclosure of prioritisation decisions could enhance external accountability, it may also risk reducing the effectiveness of investigations or creating uncertainty in ongoing cases. The CCPC seeks to strike this balance by publishing general prioritisation principles, while retaining discretion in relation to case-specific decisions.

#### 4. Factors which Influence the Prioritisation of Cases

32. The prioritisation of cases within the CCPC is informed by a combination of substantive, operational and external considerations. These factors are applied within the CCPC's prioritisation principles framework and are assessed holistically, rather than through a rigid process. This ensures that decisions are both flexible and evidence based, while remaining aligned with the CCPC's statutory objectives and strategic priorities.

##### 4.1. Sources of Information

33. Information pertaining to alleged anti-competitive conduct is gathered by the CCPC in a variety of ways via detection tools including the complaint help centre, WhistleB<sup>12</sup> (online whistleblowing platform), the Immunity/Leniency hotline, intelligence gathered through market monitoring and stakeholder engagement and *ex-officio* work including screening and research into particular markets. The nature or strength of evidence received, or the quality or frequency of a complaint or information received may impact the approach to case prioritisation.

34. One of the primary sources of information pertaining to a case is via the complaint help centre.<sup>13</sup> Complainants, consumers or other interested parties may submit information online, by phone, or in writing to the CCPC. Some businesses choose to submit complaints to the CCPC through instructing legal advisors. If a complainant wishes to submit an anonymous complaint pertaining to alleged cartel conduct, they may also do so via WhistleB, the CCPC's whistleblowing service. Typically, the information provided is not sufficient on its own to merit opening a formal investigation, but the volume and type of complaint can be a factor when assessing whether to prioritise work in a particular area.

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<sup>12</sup> Available here: <https://report.whistleb.com/en-GB/ccpc>

<sup>13</sup> See further: <https://www.ccpc.ie/business/contact/make-competition-complaint/>

35. Information received via immunity and/or leniency applications is also a central tool for detection, which will impact prioritisation decisions. Information may be provided via the Cartel Immunity Programme, or the Administrative Leniency Policy.<sup>14</sup> This information is normally high-quality probative evidence which will be a key factor in applying the prioritisation principles. The promotion of the benefits of the Cartel Immunity Programme, or the Administrative Leniency Policy may also be an influencing factor in applying the prioritisation principles. For example, this may lead to increased immunity and/or leniency applicants, which may result in the receipt of probative evidence pertaining to an investigation. In turn, the receipt of this evidence may impact how a particular investigation is prioritised.

36. In addition to these methods, cases may also be selected and prioritised based on *ex-officio* work of the CCPC. For example, this could include *ex-officio* investigations commenced on foot of research, screening, or market analysis.

## 4.2. Level of Economic and/or Physical Harm

37. A central consideration in case prioritisation is the scale and nature of harm arising from the suspected conduct. The CCPC will assess the extent of economic harm, including the potential impact on prices, output, innovation and consumer choice, and the number and type of consumers or businesses affected. The CCPC may also consider the frequency of a particular type of complaint. An example of this is a recent investigation into motor vehicle parts following a large volume of reports of alleged anti-competitive behaviour.<sup>15</sup> Patterns in complaints or intelligence may also indicate broader harm within a market and may therefore support prioritisation.

38. Frequency of complaints and related market shifts may also lead to the CCPC conducting market enquiries and research, which can be considered as an alternative outcome to enforcement. For example, this can be evidenced with recent research into the school uniform sector<sup>16</sup> and the grocery sector<sup>17</sup>.

## 4.3. Strategic Significance

39. Strategic considerations play an important role in shaping prioritisation decisions. The CCPC's three-year Strategy Statement, provided for on a statutory basis under section 30(1) of the 2014 Act, is an important consideration when applying the prioritisation principles. The development of the Strategy Statement is a structured and iterative process. It typically involves an internal assessment of market conditions, enforcement experience, and emerging risks to competition and consumer welfare, alongside analysis of national and EU policy developments. This is complemented by engagement with external stakeholders, including government departments, regulators, and other relevant bodies, as well as consideration of economic evidence, complaint trends, and intelligence gathered through the CCPC's detection tools. The final Strategy Statement is approved at Commission level and published, providing a transparent articulation of the organisation's

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<sup>14</sup> <https://www.ccpc.ie/business/contact/immunity-and-leniency-programmes/>

<sup>15</sup> <https://www.ccpc.ie/business/ccpc-issues-warning-to-motor-industry-following-reports-of-anticompetitive-practices/>

<sup>16</sup> <https://www.ccpc.ie/consumers/2025/06/17/ccpc-urges-schools-to-protect-parents-from-anti-competitive-practices/>

<sup>17</sup> <https://www.ccpc.ie/business/ccpc-publishes-update-to-high-level-grocery-sector-analysis/>

high-level priorities and strategic objectives. These priorities, in turn, inform but do not rigidly determine individual case selection decisions, allowing operational teams to retain flexibility while ensuring alignment with broader organisational goals.

#### 4.4. Risks, Resources and Costs

40. The risks, resources and costs which might pertain to a case are also a key consideration of the CCPC in terms of case prioritisation. For example, this principle may be an important factor when considering whether to open or progress investigations where the level of harm relating to the conduct may not be especially high or egregious.

41. With respect to resources and costs, the CCPC will assess a number of factors, such as the resources which will be needed across the organisation over a period of time to progress an investigation and deliver enforcement outcomes, the specific budget (such as resourcing or foreseeable litigation costs) needed to progress an investigation, or the likelihood of resources and costs escalating significantly beyond that originally forecasted. Additionally, the CCPC will consider what cases, or other work may need to be deprioritised across the organisation in order to apply sufficient financial and human resources to the case at hand.

42. Regarding the consideration of risks, the CCPC will also assess various risk factors which may pertain to a case, such as legal, operational, or reputational risks. For example, in applying this principle, the CCPC might consider whether the investigative elements of the case or the relevant legal tests are novel and what the likelihood of legal challenge would be. The CCPC recognises that all investigations inherently have some degree of risk, so aims to approach this consideration by balancing risk appetite with protecting the organisation and the progression of its work.

#### 4.5. Likely Impact of CCPC Action

43. The degree of impact from of a case being prioritised and the resulting action also forms an important consideration for the CCPC. Capacity for the CCPC to take on all cases is limited; as such, understanding the significance of the likely impact of a particular action is crucial so that cases which most benefit consumers or markets, or cases which relate to especially harmful infringements may be prioritised.

44. There are a variety of factors which the CCPC might assess in determining whether the likely impact would be significant. For example, the CCPC might assess the likelihood of the enforcement action being successful or reducing harm, or whether the case might align with wider organisational objectives such as a push for a legislative amendment. Additionally, the CCPC might consider whether a case may have the potential to set an important precedent or have a particularly significant deterrent effect.

45. In essence, the application of the prioritisation principles seeks to ensure that there is accountability, structure, and transparency surrounding case prioritisation whilst also providing flexibility to select the most valuable cases to prioritise. Weighing up factors such as likely impact is central to this and to selecting appropriate cases to prioritise.

#### 4.6. Changes which May Influence Case Prioritisation

46. Changes to case prioritisation may also occur or be influenced by government or organisational policy, or through political or media-related factors. For example, the

National Action Plan on Competitiveness and Productivity<sup>18</sup> provides an important policy context for the CCPC's prioritisation of work. The Plan identifies a number of actions that are directly relevant to the CCPC's functions, including the publication of the CCPC's State of Competition Report to enhance understanding of competitive dynamics in the Irish economy, and the introduction of legislation for the CCPC to detect and prevent bid-rigging through the screening of public procurement data. These initiatives support the CCPC's strategic focus on strengthening enforcement, improving market intelligence, and promoting competitive outcomes, and may inform the selection and prioritisation of both enforcement and advocacy activities.

47. The CCPC published its State of Competition Report<sup>19</sup> in December 2025 which highlighted increasing concentration and rising mark ups in parts of Ireland's non-financial services sector. In a statement accompanying the publication of the Report, the Chair of the CCPC highlighted that the report would be used to help focus future activities on areas where increased competition can have a big impact.

48. Changes to prioritisation may also be influenced by informal Government steers, for example, as highlighted above in the context of the fuels and grocery sectors. Additionally, though not specifically published, sectoral priorities decided at organisational level may also influence a change in prioritisation.

#### 4.7. Best Practice and Lessons Learned from Case Prioritisation

49. In the CCPC's experience, a number of elements have proven particularly effective in operationalising the prioritisation principles. These include the application of prioritisation principles at multiple stages of a case lifecycle, the integration of prioritisation with organisational strategy, and the use of diverse detection tools to inform decision-making.

50. A key lesson is that prioritisation frameworks should remain sufficiently flexible to adapt to new evidence, changing market conditions, and emerging policy priorities, rather than relying on rigid or overly prescriptive criteria. While the CCPC does not rely on overly rigid or formulaic criteria in its prioritisation decisions, experience has shown that a high degree of discretion must be underpinned by sufficiently robust internal structures. The application of prioritisation principles across multiple stages of a case lifecycle, coupled with formal decision points and oversight by senior management and Commission Members, provides an important framework for consistent and accountable decision-making. This structured approach allows the CCPC to avoid inflexibility while ensuring that discretion is exercised in a transparent, evidence-based and proportionate manner.

### 5. Prosecutorial Discretion

51. Prosecutorial discretion forms a continuation of the CCPC's broader approach to case prioritisation, as decisions regarding the appropriate enforcement route are informed by the prioritisation principles. There are a number of factors which may impact this, such as the nature of the case and the strength of the evidence gathered over the course of the investigation.

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<sup>18</sup> <https://enterprise.gov.ie/en/publications/action-plan-on-competitiveness-and-productivity.html>

<sup>19</sup> <https://www.ccpc.ie/business/research/market-studies/the-state-of-competition/>

## 5.1. Criminal Enforcement vs Administrative Enforcement Regime

52. In relation to anti-competitive conduct under sections 4 and 5 of the 2002 Act, the CCPC has significant prosecutorial discretion in terms of the choice to enforce alleged offences via criminal prosecution or the administrative enforcement regime. This discretion in terms of choice of enforcement route is provided for on a statutory basis under section 15K of the 2002 Act, which provides, *inter alia*, that:

*“(1) Where, at any time during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and forms the view that the matter is to be treated as a criminal matter, the competent authority may—*

*refer the matter to the Director of Public Prosecutions for the purpose of considering commencing criminal proceedings under section 6 or 7, or*

*bring summary proceedings under section 8(9).*

*(2) Where, at any stage during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and that the matter is not to be treated as a criminal matter, the competent authority shall—*

*issue a statement of objections under section 15L to the undertaking or association of undertakings that, in its view, is responsible for such infringement, or*

*seek relief against an undertaking by way of an action under section 14A”.*

53. This section should be considered in the context of section 6 and 7A of the 2002 Act, which provide that only certain types of conduct prohibited by section 4 of the 2002 Act or Article 101 TFEU may be prosecuted criminally, specifically offences which relate to agreements or concerted practices between undertakings involving:

1. price fixing,
2. market sharing,
3. output restrictions,
4. bid-rigging,
5. collective boycott agreements,
6. sharing information concerning future prices and future quantities of production, or
7. restricting the ability of undertakings to carry out research and development or to continue to use their own technology for future research and development.

54. If the criminal enforcement route is chosen by the CCPC, an investigation file is drafted referring the case to the Director of Public Prosecutions (“DPP”), or, in some circumstances summary proceedings may be brought by the CCPC. If the administrative enforcement route is chosen, a Statement of Objections is prepared by the CCPC to be sent to the relevant undertakings; this may ultimately result in the case being referred for adjudication under Part 2D of the 2002 Act. Section 14A of the 2002 Act also gives the CCPC the power to apply to the Circuit Court or the High Court to seek a declaration (i.e. a court ruling that a particular arrangement or behaviour is unlawful) or an injunction (e.g. a court order requiring a particular arrangement or behaviour be stopped) in any case involving an alleged breach of section 4 or 5 of the 2002 Act or Article 101 or 102 of the TFEU.

55. In terms of how this discretion on choice of enforcement route is applied, the CCPC has published a Guidance Note on choice of enforcement route<sup>20</sup>, which outlines the factors which are considered in applying this discretionary approach. The Guidance Note sets out that the CCPC may exercise its discretion on a case-by-case basis to decide on the appropriate enforcement route for a suspected breach of competition law. When determining the appropriate enforcement route, the CCPC will “*select the appropriate enforcement mechanism after sufficient evidence has been obtained for the CCPC to come to a preliminary view that a breach of competition law has occurred or is occurring*”<sup>21</sup>. This decision is based on the information and evidence gathered, the individual circumstances of a given case and relevant factors to consider, including the nature of the suspected breach of competition law, the likelihood of successful enforcement action / prosecution, and the CCPC’s prioritisation principles.

56. As noted above, the Guidance Note also sets out that the CCPC will inform the undertaking(s) or association of undertakings that is/are the target of the CCPC’s investigation of the envisaged enforcement route at as early an opportunity as practicable and appropriate.

## 5.2. Discretion following Choice of Enforcement Route Decision

57. Following a decision on the choice of enforcement route, there is some discretion afforded to the CCPC and the DPP at prosecution or administrative enforcement stage.

58. For criminal prosecutions, once a referral file is sent to the DPP, the DPP has discretion as to whether they wish to proceed with a prosecution or not. At this stage the CCPC also has the discretion to notify the affected parties about the decision to refer a file.

59. With respect to administrative investigations, once a Statement of Objections is issued to the relevant undertakings and the matter is referred to an Adjudication Officer<sup>22</sup>, the Adjudication Officer may undertake a number of actions to resolve issues of fact or to enable them to make an adjudication decision under section 15X of the 2002 Act. These are set out under section 15U(2), which provides that they may:

- “(a) exercise any of the powers under section 15W;
- (b) request further information from the undertaking or association of undertakings;
- (c) request further information from any other person, and may, for the purposes of doing so, provide, with due regard for the protection of commercially sensitive information, a copy of the full investigation report prepared under section 15L to the person;
- (d) conduct an oral hearing.”

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<sup>20</sup> See further, Section 5 of the Guidance Note which covers choice of enforcement route: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Guidance-Note-on-Choice-of-Enforcement-Regime.pdf>

<sup>21</sup> See further, Section 5.4 of the CCPC Guidance Note on Choice of Enforcement Route, at p. 18.

<sup>22</sup> Subject to section 15M of the 2002 Act.

### 5.3. Settlement Procedure

60. In addition to the discretion afforded to the CCPC on the choice of enforcement route as described above, the CCPC also has the flexibility to apply the CCPC settlement procedure to all investigations which are on an administrative enforcement route, pursuant to sections 15L(5)(d), 15AF(1) and 15M(6)(c) of the 2002 Act. Unlike other Member States, this procedure is not limited to cartel conduct. Published on the CCPC website in 2025<sup>23</sup>, the settlement procedure was finalised following a public consultation conducted in 2024, where stakeholders commented on various aspects of the CCPC's proposed approach to settlement.

## 6. Conclusion

61. The CCPC's legislative framework affords a relatively high degree of discretion across the lifecycle of a case. The CCPC's approach to case prioritisation and prosecutorial discretion is grounded in a principles-based prioritisation framework, supported by a high degree of operational flexibility. This level of discretion is considered necessary to ensure that the CCPC's enforcement action is focused on the most harmful infringements and areas of greatest strategic importance where the CCPC will have most impact.

62. A central insight from the CCPC's experience is that this flexibility must be underpinned by strong internal governance and decision-making structures. While the prioritisation principles are deliberately high-level and are not applied through a rigid or weighted methodology, their consistent and effective application is ensured through structured processes, multiple decision points, and oversight by senior management and Commission Members. This combination allows the CCPC to exercise discretion in a disciplined and evidence-based manner, balancing flexibility with accountability.

63. As markets become more complex and resource constraints persist, strategic prioritisation supported by robust governance will continue to play an increasingly important role in competition enforcement. The CCPC's framework is designed to remain adaptable to these challenges, while maintaining consistency, transparency, and credibility in its decision-making.

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<sup>23</sup> See further <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2025/04/2025.04.23-CCPC-Settlement-Procedure.pdf>