Organisation for Economic Co-operation and Development

DAF/COMP/WD(2026)24

Unclassified

English - Or. English

5 June 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Case Prioritisation and Prosecutorial Discretion – Note by the European Union

25 June 2026

This document reproduces a written contribution from the European Union submitted for Item 6 of the 149th OECD Competition Committee meeting on 24-26 June 2026.

Ori SCHWARTZ
Email : Ori.Schwartz@oecd.org

JT03588688

European Union

1. General priorities of the Commission and its Directorate-General for Competition

1. The European Commission ("Commission") is responsible for the implementation and orientation of the Union's competition policy[1] and the Treaty has entrusted the Commission with an extensive and general supervisory task in this field. As an administrative authority, the Commission must act in the public interest, unlike the civil courts, whose task is to safeguard the individual rights of private persons. The Commission has limited resources and cannot pursue all possible infringements. The Union courts have therefore recognised that the Commission, as an inherent feature of its task as public enforcer, must have a margin of discretion to set priorities in its enforcement activity[2].

2. At a general level, priority setting includes the ex-ante definition of priorities that are meant to guide the activity of the authority. This can consist of long, medium or short-term strategic objectives, relating to enforcement but also other tasks of the authority, such as advocacy, policymaking, etc. Where authorities apply a number of different legal instruments, such general priorities may also reflect how the instruments will be balanced. As regards antitrust, the general priority setting can translate into a focus on particular sectors or particular types of infringements, for example in response to economical and societal developments. Authorities may give different degrees of publicity to their general priority setting.

3. At EU level, competition law is enforced on a day-to-day basis by the Directorate-General for Competition ("DG Competition")[3]. DG Competition is part of the Commission and competition policy is part of the wider EU policy framework. Those policies interact with and support each other so that all areas can contribute to the broader Commission objectives. DG Competition therefore takes into account the broader priorities of the Commission and the EU when setting its own priorities.

4. At the level of the Commission, the priorities of the European Union are set every 5 years, in line with core European Union values and following a dialogue between EU leaders, national ministers, EU institutions and the political groups elected to the European Parliament. At the start of a new mandate, the Commission draws up a strategic plan[4] reflecting its political priorities for the mandate. The plan highlights the objectives that are common to all Commission departments and provides an umbrella under which the departments present their strategic outlook for the mandate. In addition, at the start of a new mandate, the Commission President addresses a mission letter to the Commissioner

[1] Case C-234/89 Delimitis v Henninger Bräu AG, ECLI:EU:C:1991:91, paragraph 44.

[2] Case T-24/90, Automec v Commission, EU:T:1992:97, paragraphs 73-77 and paragraph 85.

[3] DG Competition pursues antitrust investigations on a day-to-day basis. However, decision-making in the Commission is based on the principle of collegiality. Therefore, as a rule, Commission decisions must be taken collectively by the College of Commissioners. Decisions of principle involving a margin of political discretion or appreciation are adopted by the College. Other decisions, such as measures of an investigatory or preparatory nature only, can be delegated to the responsible Commissioner or Director-General. In this context, DG Competition takes most of the administrative decisions regarding the daily running of antitrust investigations, but a number of decisions are taken either by the Commissioner responsible for Competition or by the College.

[4] See for example, the Commission's strategic plan for 2025-2029.

responsible for Competition, setting out the main goals as regards the competition portfolio. The mission letter does not usually set out detailed enforcement priorities for antitrust, to allow it flexibility to adapt those priorities throughout the 5-year mandate but rather focuses on high level policy priorities that cover all the instruments enforced by DG Competition. Nevertheless, it can already give a signal as to certain priority areas for enforcement. For example, in 2024, the mission letter addressed to Executive Vice-President Teresa Ribera[5] in charge of competition highlighted a focus on tackling "*anticompetitive practices, such as those which affect the competitiveness and sustainability of the food and farming sector*".

5. It is in this context that DG Competition publishes its annual management plan[6] setting out the forecasted outputs, activities and resources for each year and how they relate to the Commission's wider objectives. The annual management plan covers all activities of DG Competition. These include the enforcement of different sets of competition rules, namely antitrust, merger and State aid rules, as well as the enforcement of other legal instruments, namely the DMA[7] and the FSR[8]. In addition to its enforcement work, DG Competition is also responsible for developing competition policy, notably by adopting block exemptions, interpretative notices and guidelines. DG Competition further pursues advocacy activities within the European Competition Network ("ECN") as well as other European and international fora, and activities to raise awareness of competition enforcement and its benefits for companies and consumers. Finally, although not usually mentioned in the annual management plan, DG Competition also contributes to the work of other Commission services, to ensure that competition principles and enforcement experience are embedded into Commission initiatives and that regulatory activities do not negatively impact competition.

6. As regards antitrust enforcement, the annual management plan usually refers to the ongoing investigations that will be advanced throughout the year and explains how they contribute to the political priorities of the Union. In addition, the management plan can also cover areas of priority for offering guidance to stakeholders on the compatibility of their agreements with EU competition law. The management plan is, however, not very detailed or prescriptive as to the sectors of the economy and the type of conduct and infringements that the Commission intends to focus on in the medium-term. This is done to retain a degree of flexibility, so that DG Competition can be responsive to new and topical competition law concerns and adapt its proactive enforcement strategy accordingly. It also avoids giving the impression that conduct or sectors that have not been singled out face less risks of enforcement actions, with possible consequences in terms of e.g. compliance efforts.

2. Priority setting and discretion at the level of individual cases

7. In addition to priority setting at a general level, the power to set priorities also involves discretion to decide which individual cases to pursue or not pursue/discontinue. This is an essential tool allowing competition authorities to allocate resources effectively,

[5] See the mission letter addressed to Executive Vice-President Teresa Ribera of 1 December 2024.

[6] See for example, the 2026 Management Plan of DG Competition.

[7] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, pp. 1–66.

[8] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022, pp. 1–45.

thus ensuring the overall efficiency of their enforcement actions. Since 2004, with the entry into force of Regulation 1/2003[9], companies no longer have to notify agreements to the Commission in order to benefit from an exemption under Article 101(3) of the Treaty on the Functioning of the European Union ("TFEU"). This means that the Commission no longer has an obligation to examine certain cases. It therefore enjoys very broad discretion as to its enforcement actions regarding Articles 101 and 102 TFEU.

8. The Commission may start a case concerning an alleged infringement of Article 101 or 102 TFEU in several ways. It can be based on a formal complaint[10] or market information submitted by natural or legal persons as well as by companies that choose to self-report their involvement in a cartel under the Commission's Leniency Programme[11]. The Commission may also start a case on its own initiative (also referred to as 'ex officio'). It may do so when certain facts have come to its attention from e.g. public sources (such as press reports or public communication by companies), in the context of sector inquiries, meetings with industry, monitoring of markets, on the basis of information exchanged with the ECN or with competition authorities of third countries or through dedicated channels set up by the Commission for receiving inside knowledge or tips, such as the dedicated whistleblower tool[12]. Each of these ways of supplying information is important and can lead to enforcement action. The Commission will consider each potential case carefully and respond to every submission received, irrespective of the form or the channel used.

9. However, just like other competition authorities working in the public interest, the Commission is not in a position to act in each case in which the EU competition rules may have been breached. Given its limited resources, the Commission must allocate its resources to cases that it considers a priority. In order to make an informed decision about the cases it should focus on, all cases, irrespective of their origin, are subject to an initial assessment phase. During this phase the Commission examines whether a case merits further investigation, and, if so, provisionally defines its focus, in particular with regard to the parties, the markets and the conduct to be investigated. During this phase, the Commission will primarily rely on the information provided by the complainant/informant, immunity/leniency applicant or whistleblower, in combination with its (sectoral) knowledge from prior investigations, public sources such as specialised press, websites, statistical information or input from other (competition) authorities. The Commission may also conduct limited fact-finding involving other market participants during the initial assessment phase, mostly through requests for information or interviews. This is usually necessary where the information at its disposal is deemed insufficient to take a preliminary position on whether to prioritise a case. In practice, the system of initial assessment means that the Commission will, already at a very early stage, decide not to pursue some cases because they are not deemed to merit further investigation.

10. In its case selection and enforcement, the Commission focuses its resources on competition infringements with the most significant impact on the functioning of the internal market and risk of consumer harm, as well as on cases which are likely to contribute

[9] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, p.1 ('Regulation 1/2003').

[10] Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.04.2004, p.18 ('Regulation 773/2004'), and Form C in Annex.

[11] Leniency - Competition Policy - European Commission

[12] Whistleblower - Competition Policy - European Commission

to defining EU competition policy or to ensuring the coherent application of Articles 101 and/or 102 TFEU. Several criteria may play a role in the Commission's decision to further investigate a case and to grant it a priority status. In the past, the Commission has made public a non-exhaustive list of criteria which it intends to use when examining whether or not cases show a sufficient '(European) Union interest'. These criteria were published in the Annual Report on Competition Policy 2005 (adopted in June 2006)[13] and include the following:

1. the significance of the impact on the functioning of competition in the internal market, as indicated in particular by the geographic scope of the conduct complained of, or the economic significance of the conduct complained of, or the size of the market, or the importance for end consumers of the products concerned or of the conduct complained of[14];
2. the market position of the undertakings targeted by the complaint or the overall functioning of the market in question;
3. the extent or complexity of the investigation required, the likelihood of establishing an infringement and whether in light of these elements it is proportionate to conduct an in-depth investigation;
4. the possibility for the complainant to bring the case before a national court in a Member State, in particular taking into account whether the case is or has already been the subject of private enforcement or is of a type that can appropriately be dealt with in this way;
5. the appropriateness of acting on an individual complaint that concerns (a) specific legal issue(s) which the Commission is already in the process of examining in one or several other cases or which it has already examined and/or which is the subject of proceedings before the Union courts;
6. the cessation or modification of the conduct complained of, in particular where commitments have been made binding by a Commission decision pursuant to Article 9 of Regulation 1/2003 or where the undertaking(s) complained of has/have changed its/their conduct for other reasons, provided that neither significant

[13] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006SC0761&qid=1777369528419

[14] The Commission relies on similar criteria in its revised Notice on informal guidance of 2022 to identify cases in which it could issue informal guidance to companies on the application of the EU competition rules. See Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters), OJ C 381, 4.10.2022, pp. 9. According to paragraph 7 of this Notice, there could be a Union interest in providing such guidance if one or more of the following criteria are met: (i) the actual or potential economic importance of the goods or services concerned by the agreement or unilateral practice, in particular taking into account the consumers' interests; (ii) whether the objectives of the agreement or unilateral practice are relevant for the achievement of the Commission's priorities or Union interest; (iii) the magnitude of the investments made or to be made by the undertakings concerned, which are linked to the agreement or unilateral practice; and (iv) the extent to which the agreement or practice corresponds or is liable to correspond to more widely spread usage in the Union. This parallelism can be explained by the fact that the Commission's ability to issue informal guidance to undertakings should be aligned with the primary objective of Regulation 1/2003, namely, to ensure effective enforcement of Articles 101 and 102 TFEU. The Commission will therefore only provide informal guidance in so far as this is compatible with its enforcement priorities.

persisting anticompetitive effects nor the seriousness of the alleged infringement(s) give the complaint a Union interest in spite of the cessation or modification;

7. the importance of other areas of Union or national law affected by the conduct complained of compared with the importance of competition concerns raised by the complaint.

11. Some of these principles for assessing whether there is a Union interest in investigating a case can also be found in the Notice on handling complaints which sets out the main grounds that the Commission relies on when rejecting formal complaints[15]. In that context, the Union Courts have explicitly acknowledged that the Commission is not obliged to investigate every case brought to its attention and that it may give differing degrees of priority to complaints[16]. The Union Courts have also confirmed that there is no closed list of criteria and that in the context of its case-by-case assessment, the Commission may apply new criteria for rejecting a complaint due to lack of priority[17].

12. This initial assessment phase also attempts to address, at an early stage, the allocation of cases within the ECN. Regulation 1/2003 introduced a system of parallel competences in which the Commission and the national competition authorities (NCAs) can apply Articles 101 and 102 TFEU in full. The ECN was set up to ensure an efficient division of work for cases where an investigation is considered necessary. At the same time each network member (NCAs and Commission) retains full discretion in deciding whether to investigate a case. The Regulation therefore foresees the possibility of reallocating cases to other network members if they are well placed and willing to deal with them as the aim is, given the limited resources of both the Commission and the NCAs, that a case should ideally be handled by a single authority to avoid duplication of investigations[18]. Accordingly, the Commission may reallocate a case to an NCA and vice versa[19]. To this end, Article 13 of Regulation 1/2003 also explicitly introduced the possibility for the Commission to reject complaints on the ground that an NCA is dealing or already has dealt with the case. The Notice on cooperation within the ECN gives indications about cases the Commission can be considered particularly well placed to deal with[20]. These case

[15] Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty, OJ C 101, 27.4.2004, p. 65, see paragraphs 41- 44. These grounds include: (i) the limited likelihood of establishing an infringement of Article 101 or 102 TFEU, (ii) the limited potential impact of the alleged infringement on the functioning of the internal market, (iii) the fact that the alleged anti-competitive conduct has stopped (and that there are no indications that it would still be producing any anti-competitive effects), and (iv) the fact that national courts and/or national competition authorities are be well placed to deal with the case.

[16] Case T-24/90, Automec v Commission, EU:T:1992:97, paragraphs 73-77 and paragraph 85 and Case C-119/97 P, Ufex and Others v Commission, EU:C:1999:116, paragraphs 88-91. Recital 18 of Regulation 1/2003 expressly confirms this possibility.

[17] Case C-449/98, IECC v Commission, EU:C:2001:275, paragraphs 46-47; Case C-373/17 P, Agria Polska e.a. v Commission, EU:C:2018:756, paragraph 61.

[18] See recital 18 of Regulation 1/2003.

[19] See paragraphs 5 to 15 of the Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43.

[20] Ibid., paragraphs 14 and 15. The Commission is particularly well placed if one or several agreement(s) or practice(s), including networks of similar agreements or practices, have effects on competition in more than three Member States (cross-border markets covering more than three Member States or several national markets). Moreover, the Commission is particularly well placed to deal with a case if it is closely linked to other Community provisions which may be exclusively

allocation considerations in the context of the ECN are therefore reflected in the Commission's priority setting criteria. It should however be noted that the main purpose of these indications is to create a degree of predictability regarding the application of the ECN case-allocation rules. They do not limit the Commission's discretion, i.e. the Commission is not required to deal with such cases and is not prevented from dealing with other cases.

13. All priority setting criteria are applied flexibly and on a case-by-case basis. It is impossible to define abstract rules as to when it would or would not be right for the Commission to act. There will always be factors, not mentioned above, that may increase or decrease the degree of priority of a particular case in a particular context or timeframe. Moreover, the Commission is not obliged to set aside a case for lack of Union interest. But where the Commission does not believe that there is a sufficient Union interest to warrant an in-depth investigation, it will normally reject the complaint or discontinue a case with reference to one or more of these criteria.

14. There are no fixed deadlines for this initial assessment phase. However, the Commission endeavours to undertake the initial assessment and decide on priority within a short time frame. The Notice on handling complaints states that the Commission will in principle endeavour to inform complainants of the action it proposes to take on a complaint within an indicative period of four months from the reception of the complaint[21]. This time limit is not binding and depends on the circumstances of each case and in particular, the complexity of the initial assessment. In practice, the Commission often takes longer to complete its initial assessment of a case.

15. The initial assessment of a case is conducted by the case team, which then makes a proposal for prioritisation. In order to ensure that the proposal of the case team is sound and that all relevant views and evidence are properly taken into account, the procedure for deciding on prioritisation includes several actors and checks and balances. In particular, different units within DG Competition will have the opportunity to give their views on the proposal (including e.g. the Chief Economist and the Policy/Case support teams) and the decision is then taken by senior management. Subsequent changes to the scope of a case and/or any decision to deprioritise a case are subject to a similar procedure.

16. When the scope of the investigation has been sufficiently defined and the initial assessment leads to the conclusion that the case merits further investigation, DG Competition will eventually propose to the Commissioner for Competition to initiate formal proceedings. This indicates that the Commission will prioritise the case and that further resources will be allocated to continue the investigation with the intention to adopt one of the decisions referred to in Chapter III of Regulation 1/2003, usually a decision finding an infringement (with or without imposing fines) or a commitment decision[22]. The decision to initiate formal proceedings under Article 11(6) of Regulation 1/2003 is subject to the approval of the Commission's Legal Service and is adopted by the Commissioner for Competition, thus ensuring political oversight of such prioritisation decisions. This is however usually not an immediate step after granting priority status to a case. Additional investigation is typically still required before formally initiating proceedings, to properly

---

or more effectively applied by the Commission, if the Community interest requires the adoption of a Commission decision to develop Community competition policy when a new competition issue arises or to ensure effective enforcement.

[21] Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty, OJ C 101, 27.4.2004, p. 65, see paragraph 61.

[22] Case C-857/19, Slovak Telekom, EU:C:2021:139, paragraph 27.

assess the facts, the legal and economic context and further develop and substantiate the appropriate theory of harm.

17. The initiation of proceedings creates clarity as regards the allocation of the case within the ECN[23] and in relation to the parties and the complainant (if applicable). It also signals a commitment on the part of the Commission to further investigate the case as a matter of priority. However, it should be emphasised that the opening of proceedings does not prejudge in any way the existence of an infringement.

18. The Commission may make the initiation of proceedings public[24]. The Commission's policy is indeed to publish a standard notice announcing the adoption of the decision to initiate proceedings on the website of DG Competition and to issue a press communication, unless such publication may harm the investigation (e.g. if unannounced inspections are envisaged).

19. However, the initiation of proceedings does not mean that the priority status of the case cannot change during the in-depth investigation. Indeed, the results of the further investigation may lead the Commission to extend or reduce the scope of the case at a later point in time (e.g. by investigating new aspects or dropping existing aspects of the case), or to discontinue the investigation (which *de facto* means revoking its priority status). In other words, the priority status of a case does not prejudge its outcome.

3. Limitations to the Commission's discretion

20. The Commission's discretion to prioritise is not without limits. In practice, there are several internal and external constraints. Internally, the Commission's discretion is framed by prioritisation criteria as well as a procedure for deciding on prioritisation that involves several actors and checks and balances (described in section 2). Externally, the Commission is democratically accountable to the European Parliament. It is also constrained by its obligations regarding transparency and subject to the scrutiny of the Union courts and the European Ombudsman.

21. According to the system set out in Regulation 1/2003 and Regulation 773/2004, formal complainants are entitled to a decision that sets out the legal and factual considerations that led the Commission to conclude that there is an insufficient Union interest in further pursuing the complaint[25]. The Union courts have the power to review those decisions. While complainants are not entitled to a decision that definitively rules on

[23] Pursuant to Article 11(6) of Regulation 1/2003, the opening of proceedings relieves the NCAs of their competence to apply Article 101 and 102 TFEU. However, if the Commission closes its proceedings fully or partially, the NCAs may regain (part of) their competence to apply Articles 101 and 102 TFEU, see case C-17/10, Toshiba Corporation a.o., EU:C:2012:72, paragraphs 79-92.

[24] Article 2 of Regulation 773/2004.

[25] The right for formal complainants to trigger an investigation by the Commission and therefore to receive an appealable decision when the Commission decides not to pursue the complaint was codified in Regulation 1/2003. It was intended as an encouragement for stakeholders to bring information about serious infringements to the attention of the Commission, in the context of the abolishment of the notification system for agreements. However, not all competition authorities in the EU provide similar rights to complainants, and many deal with complaints administratively, without adopting appealable rejection decisions. The level of judicial review of prioritisation decisions also differs across jurisdictions.

the existence of an infringement of Article 101 or 102 TFEU[26], the Commission is obliged to examine carefully the factual and legal elements brought to its attention by the complainant[27]. The Commission must also state the reasons for its decision in a sufficiently precise and detailed manner to enable the court to effectively review the Commission's use of its discretion to define priorities[28]. Handling and rejecting complaints that the Commission does not believe merit (further) action can therefore be a time and resource intensive task.

22. The Union courts' review of the Commission's discretion to deal with complaints is however limited. In reviewing rejection decisions, the Union courts focus on whether the contested decision is based on materially incorrect facts or is vitiated by an error of law, a manifest error of appraisal or misuse of powers[29]. In this review, it is not for the court to substitute its own assessment of the Union interest for that of the Commission[30]. This limitation of the court's power of review therefore leaves a significant amount of discretion to the Commission. The Court has, for example, found that the Commission is not obliged to carry out an investigation, which could have no purpose other than to seek evidence of the existence of an infringement[31]. When the Commission does carry out an investigation, it retains its discretion to reject the complaint also at an advanced stage of the investigation[32]. This is a logical corollary to the fact that complainants are not entitled to obtain a final decision that rules on the existence of an infringement. Moreover, the Commission may reject a complaint even if it has become persuaded of the existence of an infringement but does not want to pursue the case[33]. When the court annuls a rejection decision, the Commission is also not obliged to purse the suspected infringement and to take a substantive decision on its existence. In the exercise of its discretion, the Commission may decide to reject the complaint again, as long as it addresses the deficiencies of the annulled decision (for example, by addressing any procedural errors, developing its statement of reasons or basing the rejection on different grounds).

23. At the same time, a recent evaluation of Regulation 1/2003[34] showed that the procedure for rejecting formal complaints is resource-intensive and results in significant time and resources being spent on cases that the Commission has decided not to prioritise. Although the Commission formally enjoys a large degree of discretion in dealing with such

[26] Case C-119/97 P, Ufex and Others v Commission, EU:C:1999:116, paragraph 87. See also Case C-367/10 P, EMC Development v Commission, EU:C:2011:203, paragraph 73.

[27] Case T-24/90, Automec v Commission, EU:T:1992:97, paragraph 79 and Case C-119/97 P, Ufex and Others v Commission, EU:C:1999:116, paragraph 86.

[28] Case C-19/93 P, Rendo and Others v Commission, ECLI:EU:C:1995:339, paragraph 27.

[29] Case T-296/09, EFIM v Commission, EU:T:2011:693, paragraph 40 and Case C-56/12 P, EFIM v Commission, EU:C:2013:575, paragraph 36.

[30] Case T-201/11, Si.mobil v Commission, EU:T:2014:1096, paragraph 85.

[31] Case T-24/90, Automec v Commission, EU:T:1992:97, paragraph 76.

[32] Case T-110/95, International Express Carriers Conference (IECC) v. Commission, EU:T:1998:214, paragraphs 48-49 and Case T-114/92, BEMIM v Commission, EU:T:1995:11, paragraph 81.

[33] Case T-5/93, Roger Tremblay and Others v Commission, EU:T:1995:12, paragraph 61 and Case T-114/92, BEMIM v Commission, EU:T:1995:11, paragraph 63.

[34] Commission Staff Working Document, Evaluation of Regulations 1/2003 and 773/2004, SWD(2024) 216 final, Section 4.1 and Annex VI, section 3.2.

complaints, and the Union courts cannot substitute their own assessment of the Union interest for that of the Commission, the practical exercise of the discretion risks leading to a misallocation of resources and a *de facto* limitation of the Commission's discretion. To increase efficiency, it is desirable that an authority may, to the greatest extent possible, close cases or reject complaints on priority grounds with fewer formalities. In view of this, in the context of the revision of Regulation 1/2003[35], the Commission is considering options to simplify the procedure and reduce the burden, including abolishing the system of formal complaints.

24. As explained above, stakeholders that submit market information do not have the right to receive a rejection decision. However, they have the right to receive an administrative reply to their correspondence, pursuant to the Code of Good Administrative Behaviour[36]. Compliance with this obligation is subject to the scrutiny of the European Ombudsman, who may carry out an inquiry into cases of alleged maladministration by the Commission.

25. The Commission's discretion is also to some extent constrained by its obligations regarding transparency, as transparency is generally a prerequisite for accountability. The Commission, in its Best Practices Notice[37], committed to making public on its website its decisions rejecting complaints, as well as other types of decisions in appropriate cases. In practice, DG Competition often makes public its decisions to open formal proceedings, which allows the public to have information about cases that have been prioritised. Where formal proceedings were opened or an investigation is otherwise known to the public, the Commission will usually also publicly communicate its decision to discontinue the investigation[38].

26. DG Competition also publishes annual activity reports and an annual Report on Competition Policy[39], providing detailed information on the most important policy and legislative initiatives, and on decisions adopted during the previous year. These reports raise awareness of DG Competition's work, provide insight into its ongoing priorities and present an account of the Commission's enforcement actions to the European Parliament, the Council, and the public.

27. As regards accountability, the Commission is democratically accountable to the European Parliament. The European Parliament prepares an annual own-initiative resolution on the Commission's annual competition policy report, scrutinising DG Competition's work. This report is discussed by the Parliament's Committee on Economic and Monetary Affairs (ECON) and adopted by the Plenary. It provides policy input and guidance to shape Parliament's view on how to address the EU's competition policy challenges. In addition, the Commissioner for Competition appears several times a year before the ECON Committee to explain the approach taken and discuss individual decisions. Although this scrutiny does not result in direct involvement of the Parliament in

[35] Call for Evidence for an Impact Assessment on the revision of Regulation 1/2003.

[36] Commission Decision (EU) 2024/3083 of 4 December 2024 establishing the Code of Good Administrative Behaviour for Staff of the European Commission in their relations with the public, OJ L, 2024/3083, 5.12.2024, section 4 of the Annex.

[37] Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308, 20.10.2011, pp. 6–32.

[38] This can be done through different means, including by noting the closure of the case in the case registry on the Commission's website.

[39] Annual reports - Competition Policy - European Commission

prioritisation decisions taken by the Commission, it is an important means to ensure transparency and a possibility to oversee the Commission's exercise of its discretion when enforcing the EU competition rules.

4. Conclusion

28. The Commission's ability to set priorities in its competition enforcement is essential to fulfil its role as an effective competition enforcer. With limited resources but broad responsibilities, the Commission must be able to focus its efforts where they deliver the greatest impact, considering that effective deterrence does not require that every infringement be investigated and sanctioned. The Commission exercises its discretion at both the authority level, through high-level priority setting aligned with broader EU policy objectives, and at the level of individual cases. The Commission must also strike a careful balance between flexibility and accountability. Internal processes and safeguards help ensure that prioritisation is objective and well-founded. External judicial review, transparency mechanisms and political accountability provide further checks on how the Commission exercises its discretion.