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Case Prioritisation and Prosecutorial Discretion – Note by South Africa

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Introduction

1. This document is a reply to the OECD’s call for contributions to the **Roundtable on Case Prioritization and Prosecutorial Discretion** at the Competition Committee meeting scheduled to take place in June 2026.

2. The Competition Commission of South Africa (“Commission”) understands that this roundtable seeks to explore the issue of how competition authorities prioritise their work, i.e., decide which actions are most worth pursuing and how, given that they are faced with limited financial, technical, and human resources, and considering that these constraints render some actions practically unattainable.

3. In the South African context, prioritisation is especially important because the Commission’s mandate combines conventional competition-law objectives with developmental and public-interest objectives, including consumer welfare, inclusive growth, employment, small-business participation, ownership spread and de-concentration.¹ The Commission notes that the OECD intends for the case prioritisation discussion to cover three broad themes, namely, (i) the link between discretion and prioritization, (ii) the extent to which authorities decide to prioritise or deprioritise certain actions over others, and (iii) the link between priority setting at the institutional level and individual cases.

4. This submission addresses the points above demonstrating how the Commission prioritises its work in the context of the objects of the Act and given resource constraints. This is done under the following six (6) topics:

- Section 1: Discretion as statutory, structured and purposive
- Section 2: Accountability and transparency in the exercise of discretion
- Section 3: How the Commission prioritizes its work
- Section 4: Evolution of the Commission’s prioritization approach
- Section 5: Illustrative examples of prioritization in practice
- Section 6: Relationship between organizational priorities and individual case decisions

5. While the Commission has discretion on its prioritization approach, this discretion is exercised within the bounds of statutory and procedural limits as Section A elaborates. In addition, accountability and transparency mechanisms ensure a responsible prioritization approach so that individual case decisions are prioritised or deprioritised on merit rather than simply on organisational priorities.

¹ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria; Competition Commission South Africa. 2025. *Strategic Plan 2025–2030*. Pretoria.

1. Discretion as statutory, structured and purposive

6. The Commission's discretion is statutory, structured and purposive rather than open-ended. It operates within the purposes of the Competition Act 89 of 1998, which include promoting the efficiency, adaptability and development of the economy; providing consumers with competitive prices and product choice; promoting employment and advancing social and economic welfare; expanding opportunities for South African participation in world markets; ensuring that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and promoting a greater spread of ownership, particularly by historically disadvantaged persons.²

7. The Act also confirms that the Commission's discretion is exercised across a wide set of functions. These include implementing measures to increase market transparency, investigating and evaluating alleged contraventions, granting or refusing exemptions, assessing mergers, negotiating consent orders, referring matters to the Competition Tribunal, initiating and conducting market inquiries, conducting impact studies, issuing guidelines and advisory opinions, and coordinating with sector regulators. Prioritisation is therefore not limited to selecting which cases to prosecute – it also involves deciding whether a competition concern is best addressed through litigation, settlement, merger conditions, advocacy, guidelines, research, a market inquiry or impact-assessment work.³

8. In complaint matters, the Commission's discretion is bounded by statutory procedure. The Commission may refer a complaint to the Tribunal after initiation, but it must either refer the complaint if it determines that a prohibited practice has been established or issue a notice of non-referral.⁴ If the Commission decides not to take a complaint forward, that decision must be made through the formal non-referral process set out in the Competition Act (so it is not simply an internal decision to stop working on a matter). Once a notice of non-referral is issued, the complainant may still refer the complaint directly to the Competition Tribunal.⁵ In this way, the Act gives the Commission discretion to prioritise its own resources but also places that discretion within a legal process that protects complainants' rights. This process illustrates that the Commission's discretion is statutory and structured.

9. The nature of discretion also differs across the Commission's tools. In merger control, discretion is constrained by merger thresholds, statutory timeframes and the substantive assessment in section 12A of the Competition Act, which requires consideration of whether a merger is likely to substantially prevent or lessen competition and whether it can or cannot be justified on public-interest grounds. Those public-interest grounds include effects on a particular industrial sector or region, employment, small and medium businesses, firms owned or controlled by historically disadvantaged persons, the

² Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Section 2).

³ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 20-21, Section 21A, 43B, 49D, Sections 79 and 82)

⁴ Where only part of a complaint is referred, a notice of non-referral must be issued for the remaining part.

⁵ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Section 50 -51)

ability of national industries to compete internationally, and the promotion of a greater spread of ownership.⁶

10. In market inquiries, the Commission may address market-wide or structural concerns that may not be suitable for ordinary case-by-case enforcement. The Act empowers the Commission to initiate a market inquiry where it has reason to believe that market features impede, distort or restrict competition, or where an inquiry would achieve the purposes of the Act.^{7 8}

2. Accountability and transparency in the exercise of discretion

11. Accountability for prioritisation and discretion operates at legal, procedural, adjudicative and institutional levels. At the legal level, the Commission looks to the extensive precedents created by the Tribunal (and other courts) to guide the exercise of the Commission's prosecutorial discretion. For different types of instruments, the Commission would then be aware of which legal tests, standards, facts and evidence are needed to have reasonable prospects of success on referral, which keeps the institution accountable in the exercise of discretion. At the adjudicative level, the Competition Tribunal and Competition Appeal Court provide oversight over referrals, merger decisions, interim relief and market-inquiry determinations, while Tribunal proceedings are generally conducted publicly, subject to confidentiality protections and procedural fairness requirements.⁹

12. Market inquiries are subject to additional transparency and consultation mechanisms. The Commission must publish terms of reference, invite written submissions and consult relevant sector regulators where a regulated sector is concerned. Before finalising an inquiry, the Commission must communicate provisional findings, proposed remedial actions or recommendations to materially affected parties and invite comment. This ensures that market-wide interventions, even where not framed as individual prosecutions, are subject to public participation, procedural discipline and stakeholder engagement.¹⁰

13. Institutional accountability is also reinforced through annual reports, strategic plans, annual performance plans, published guidelines, market-inquiry reports and impact

⁶ Competition Commission South Africa. 2021. Competition Act 89 of 1998, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 11 – 14A)

⁷ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 43A – 43C)

⁸ The Fresh Produce Market Inquiry, for example, illustrates this form of prioritisation: it examined features of fresh produce value chains, including national fresh produce markets, market agents, key agricultural inputs and barriers faced by small and historically disadvantaged farmers; Competition Commission South Africa. 2025. *The Fresh Produce Market Inquiry – Final report*. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

⁹ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 26 – 37, Sections 50 - 51)

¹⁰ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 43A – 43E); Competition Commission South Africa. 2025. *The Fresh Produce Market Inquiry – Final report*. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

assessments. Section 21A of the Competition Act expressly empowers the Commission to study the impact of decisions, rulings or judgments of the Commission, the Tribunal or the Competition Appeal Court, and to request information from firms for that purpose.¹¹ The Commission's institution-wide impact-assessment methodology further supports accountability by using standardised measures such as affected turnover, avoided price increase, duration of impact and benefit-to-cost ratios, while recognising that public-interest and deterrence effects may supplement direct consumer-savings estimates.¹²

3. How the Commission prioritizes its work

14. The Commission does not have a single, separate policy document that explains every prioritisation decision. Instead, it prioritises its work through a combination of tools and processes, including its strategic plans, priority sectors, annual planning, case-screening decisions, its choice of enforcement or advocacy tools and most recently, also its impact assessment framework. Time is also an important factor in prioritization, particularly where statutory timelines are applicable, such as the time limits mandated for assessment of mergers, investigation of market conduct cases, and market inquiries.

15. Its prioritisation approach could therefore be described as a hybrid framework rather than a single stand-alone policy, which includes:

- Organisation-level prioritisation through strategic priority sectors and annual planning;
- Tool-level prioritisation through the selection of enforcement, merger control, advocacy, guidelines, market inquiries, research or ex-ante impact assessment;
- Case-level prioritisation based on harm, evidence, legal prospects, remedy potential, public-interest effects and resource requirements; and
- Ex-post and ex-ante learning through ex-post impact assessments.
- Consideration of statutory/quasi-statutory time timelines.

16. This approach is aligned to the OECD's framing of prioritisation as a broader resource-allocation exercise, as it recognises that there are work streams from competition authorities (like enforcement, advocacy, market studies, research and impact assessments) that compete for agency resources, and that case prioritisation is closely linked to organisation-level choices about which tools and sectors should receive attention.¹³

¹¹ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Section 21A)

¹² Mahlalela, Q., Bleazard, T. and Maseng, O. 2025. *Institution-wide Impact Assessment Methods: An Overview of Methodologies Adopted by Major Jurisdictions*. Working Paper CC2025/01; Competition Commission South Africa; Competition Commission South Africa. 2025. *Measuring the Direct Impact of Competition Law Enforcement* (Part 1); Competition Commission South Africa. 2025. *Practice Note for Measuring the Direct Impact of Competition Law Enforcement* (for Part 1, dated 30 June 2025); Competition Commission South Africa. 2025. *Practice Note for Measuring the Indirect Impact of Competition Law Enforcement* (for Part 2, dated 5 December 2025).

¹³ OECD. 2026. Call for Contributions and to Respond to a Short Survey: *Roundtable on Case Prioritisation and Prosecutorial Discretion*. COMP/2025.032, 16 February 2026. OECD Competition Committee

17. The Commission has previously conveyed explicit prioritisation criteria. Its earlier prioritisation approach identified both priority sectors and the basis on which specific cases would be prioritised, namely the impact on poor consumers, the importance of the matter for accelerated and shared growth, and the likelihood of substantial competition concerns based on information gathered from complaints and merger notifications.¹⁴ These criteria remain important because they link prioritisation to welfare, developmental impact and evidentiary prospects, rather than treating all complaints or sectors as equally urgent.

18. Mid-term strategic planning continues to place priority sectors at the centre of the Commission's work. The Commission's Strategic Plan for 2020/21-2024/25 records that the identification of priority sectors allows for effective allocation of resources, alignment between the Commission's focus areas and government economic priorities, improved collaboration with stakeholders, and targeted impact in significant areas of the economy. The priority sectors include agriculture, food and agro-processing; healthcare; intermediate industrial inputs; construction and infrastructure; banking and financial services; information and communication technology; and energy, with these sectors prioritised for enforcement, advocacy, research, impact assessments or market inquiries, subject to annual review.

19. The Commission's latest Strategic Plan for 2025-2030 builds on this approach and confirms the continued importance of strategic prioritisation in its work. The new plan aligns the Commission's work with the priorities of South Africa's 7th Administration and the Department of Trade Industry and Competition (DTiC) including inclusive economic growth, job creation, poverty reduction, addressing the high cost of living and reducing red tape.¹⁵ It also frames the Commission's work against the persistence of high levels of concentration, limited entry and growth opportunities for new and small firms, and the need for market de-concentration and transformation.¹⁶

20. For the 2025-2030 period, the Commission identifies five priority sectors: agriculture, food and agro-processing; healthcare; digital markets; retail; and heavy and light industry to support industrial value chains and reindustrialisation.¹⁷ This confirms that sector prioritisation remains central to the Commission's allocation of resources and to its choice between enforcement, merger control, market inquiries, advocacy, research and impact-assessment tools.

21. From the 2026/27, the Commission has also adopted an impact-based approach to prioritization, which will be used moving forward. This approach that seeks to estimate, ex-ante, the likely economic and public-interest effect of different interventions, together with the resources required to pursue them. This involves estimating the financial value of benefits, including consumer savings and the financial value of settlement amounts and public-interest commitments, and an estimation of the return on investment (ROI) that each

¹⁴ Competition Commission South Africa. 2022. ERB Brief (unpublished) - *Prioritisation: An Overview of International Approaches*. Issue 2022/03 (2 December 2022).

¹⁵ Competition Commission South Africa. 2025. *Strategic Plan 2025-2030*. Pretoria. Available at: https://www.thedtic.gov.za/wp-content/uploads/Competition-Commission-2025_2030-Strategic-Plan.pdf (p. 1-9).

¹⁶ Competition Commission South Africa. 2025. *Strategic Plan 2025-2030*. Pretoria. Available at: https://www.thedtic.gov.za/wp-content/uploads/Competition-Commission-2025_2030-Strategic-Plan.pdf

¹⁷ Heavy and light industry broadly refers to industrial and manufacturing markets, including both large-scale industrial input sectors and lighter manufacturing activities.

intervention would yield.¹⁸ Other factors considered include whether the conduct affects poor or vulnerable consumers, whether the sector is strategically important (such as key input sectors), the likelihood of substantial competition concerns, evidentiary strength, legal prospects, remedy potential, urgency, deterrence value, precedent value and alignment with public-interest objectives.¹⁹

22. This reflects an evolving approach to prioritisation from 2026/27, where elements of the Commission's Impact Assessment framework are increasingly used not only to measure impact of interventions, but also to assess the likely impact of interventions on an ex-ante basis and use this on decisions on whether to prioritise or deprioritise an action, based on the level of expected benefits.²⁰

23. Importantly, in the assessment of mergers and acquisitions, investigation of market conduct and cartel cases, and market inquiries, statutory timeframes, which are imported into strategic documents also frame the prioritisation process. For example, there is often tension between the wide-scope of market inquiries and the timeline of 18 months, which is a major factor in prioritising issues, engagements and solutions/remedies.

4. Evolution of the Commission's prioritization approach

24. The Commission's approach to prioritisation has evolved from a more complaint-responsive model toward a more proactive model that identifies priority sectors and is more impact-driven. This development is visible in the Commission's earlier prioritisation criteria, its strategic-plan approach to priority sectors and its growing use of market inquiries, advocacy, guidelines, monitoring and impact assessment. It is also consistent with the OECD's observation that case prioritisation is linked to organisation-level priority setting, including decisions about which tools and sectors should receive the most attention.²¹

25. The 2018 amendments to the Competition Act widened the prioritisation lens by strengthening the role of public-interest considerations, enhancing the Commission's ability to address concentration and participation by SMEs and historically disadvantaged persons, strengthening the market-inquiry framework and introducing an express impact-

¹⁸ Competition Commission South Africa. 2025. Measuring the Direct Impact of Competition Law Enforcement (Part 1); Competition Commission South Africa. 2025. Practice Note for Measuring the Direct Impact of Competition Law Enforcement (for Part 1, dated 30 June 2025).

¹⁹ Competition Commission South Africa. 2025. Practice Note for Measuring the Indirect Impact of Competition Law Enforcement (for Part 2, dated 5 December 2025); ICN. 2021. *ICN Agencies' Case Prioritisation and Initiation*. Agency Effectiveness Working Group, p 9 -16.

²⁰ The information required for prioritisation is gathered from several sources, including complaints, merger filings, leniency applications, information requests, summons, public sources, stakeholder engagements, market monitoring, regulators, trade associations, consumer bodies, prior research and previous enforcement experience. For impact-assessment purposes, additional data are required, including affected turnover, avoided price increases, expected duration of impact, settlement amounts, public-interest commitments, jobs saved or created, investment commitments and remedy implementation data. This supports the Commission's movement toward collecting relevant impact data during the life of matters rather than attempting to reconstruct all benefits retrospectively.

²¹ OECD. 2026. *Call for Contributions and to Respond to a Short Survey: Roundtable on Case Prioritisation and Prosecutorial Discretion*. COMP/2025.032, 16 February 2026. OECD Competition Committee.

study function.²² Prioritisation is therefore not limited to price effects alone – the Commission also considers how its interventions affect participation, ownership, employment, market structure, entry barriers and inclusive growth.

26. The Commission’s current institution-wide impact-assessment framework provides an additional analytical tool by helping to quantify direct financial benefits and return on investment. The methodology draws on international approaches to estimating consumer savings and uses a standard formula based on affected turnover, avoided price increase and duration of impact.²³ While this methodology does not replace legal and strategic prioritisation, it can strengthen future resource allocation by identifying which types of interventions are likely to generate meaningful benefits for consumers and the public interest.²⁴

5. Illustrative examples of prioritization in practice

27. In the food and agro-processing sector, the Fresh Produce Market Inquiry demonstrates how the Commission prioritises market inquiries (tool prioritisation) to address market-wide concerns in an essential sector. The inquiry examined the fresh produce value chain, including national fresh produce markets, market agents, key inputs such as fertiliser and seeds, and barriers affecting small and historically disadvantaged farmers.²⁵ This example illustrates that, where competition concerns arise from structural market features rather than the conduct of a single respondent, a market inquiry may be prioritised over other tools such as conduct investigations as inquiries are more appropriate for sector-wide concerns and the benefits may be widespread. At a granular level, another example of prioritization in this inquiry is the selection of eleven (11) fresh produce commodities (out of thousands) on which analyses would be conducted (sector/product prioritization), which illustrates the need to balance financial and time constraints against impact.

28. The Online Intermediation Platforms Market Inquiry (OIPMI) is an example of an impact-driven sector prioritisation. The OIPMI illustrates how a sector affecting a wide range of business users and consumers was targeted with a market-wide intervention to reduce barriers to entry, promote increased participation, and gain consumer savings. The Commission selected online intermediation platforms because of their economy-wide importance and the potential impact of platform practices on businesses, SMEs and historically disadvantaged firms. The final report imposed or recommended remedial actions spanning price reductions to improved participation, involving leading platforms

²² Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 12A, 21A, and 43A-43E)

²³ ²³ Mahlalela, Q., Bleazard, T. and Maseng, O. 2025. *Institution-wide Impact Assessment Methods: An Overview of Methodologies Adopted by Major Jurisdictions*. Working Paper CC2025/01. Competition Commission South Africa

²⁴ Competition Commission South Africa. 2025. *Practice Note for Measuring the Indirect Impact of Competition Law Enforcement* (for Part 2, dated 5 December 2025)

²⁵ Competition Commission South Africa. 2025. *The Fresh Produce Market Inquiry – Final report*. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

and related firms, including Google, Booking.com, Takealot, Apple, Uber Eats, Mr D Food, Property24, Private Property, AutoTrader and Cars.co.za.²⁶

29. In automotive aftermarkets, the Commission used guidelines and monitoring rather than relying only on prosecution. The Automotive Aftermarket Guidelines were designed to address restrictions in warranty and servicing arrangements that limited consumers' ability to use independent service providers and constrained participation by SME and historically disadvantages firms in repair, service and maintenance activities. By clarifying that consumers may service their vehicles with independent providers without automatically voiding warranties, and by promoting greater transparency in parts, servicing and maintenance practices the Guidelines aimed to open the aftermarket to a wider range of service providers. This example illustrates how the Commission may prioritise different tools or approaches depending on the nature of the competition concern and the most effective means of achieving market-opening outcomes²⁷

30. In the energy sector, the Commission's engagement with the National Consumer Commission on renewable-energy products provides an example of proactive monitoring and advocacy in response to emerging market developments. The Commission's 2023/24 Annual Report records engagement on a survey concerning solar panels, inverters and storage batteries, including usage, willingness to pay, supply and demand, pricing transparency, installation quality and warranty-related consumer concerns.²⁸ This illustrates how prioritisation may involve evidence gathering and coordination with another regulator before deciding whether enforcement, advocacy, consumer-protection coordination or further market monitoring is appropriate.

31. In merger control, organisational priorities are reflected in public-interest conditions and the Commission's emphasis on employment, ownership, SME participation and transformation, as provided for in Section 12A of the Act. However, these considerations are not, in themselves, standalone drivers of case prioritisation. Rather, public-interest factors are applied within the assessment of individual transactions, based on the nature of the merger, the magnitude of its effects, and the facts of the case.

32. Going forward, the Commission's Impact Assessment framework provides a basis for incorporating these considerations more systematically into prioritisation decisions, including by assessing the likely scale of public interest effects – such as jobs affected, ownership outcomes or investment commitments – alongside competition effects and resource requirements. In this way, public interest considerations can be integrated into a more structured, forward-looking assessment of which matters are likely to generate the greatest overall impact.²⁹

²⁶ Competition Commission South Africa. 2023. *Online Intermediation Platforms Market Inquiry: Final Report and Decision*. Available at: https://www.compcom.co.za/wp-content/uploads/2023/07/CC_OIPMI-Final-Report.pdf

²⁷ Competition Commission South Africa. 2025. *Annual Report 2023/24*. Pretoria, p61-62. The report notes that information received from insurers reflected hundreds of independent service providers being approved under the Automotive Aftermarket Guidelines

²⁸ Competition Commission South Africa. 2025. *Annual Report 2023/24*. Pretoria, p48.

²⁹ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Section 12A).

6. Relationship between organizational priorities and individual case decisions

33. Organisational priorities guide, but do not determine individual case decisions. Organizational priorities (e.g., priority sectors), help the Commission identify areas of the economy that warrant closer attention, but case decision, i.e., the decision to investigate, refer, settle, impose conditions, issue guidelines, initiate a market inquiry or discontinue a matter, remains grounded in the Act and the evidence, legal prospects, remedy potential and resource constraints.³⁰ This distinction is important for preserving the Commission's independence in its decision-making. Strategic priorities thus inform the pipeline of cases or actions/ tool choice, while individual outcomes must still be justified by facts, evidence, law and procedure.

34. Organisational priorities are set through a combination of statutory mandate, government policy context, strategic plans, market intelligence and institutional learning. The Act provides the starting point by combining competition, consumer welfare and developmental objectives.³¹ Evidence of market failure or competition harm may come from complaints, prior investigations, concentration studies, price monitoring, market inquiries, merger trends, consumer complaints, stakeholder engagements and sector research. The Commission's strategic planning framework shows that selected priority sectors are intended to guide its broad enforcement, advocacy, research, market inquiries and impact assessments.³²

35. Strategic planning and annual performance-planning processes translate organisational priorities into practical areas of focus. The Commission's Strategic Plan records that priority sectors are subject to annual review and prioritised for enforcement action, advocacy, research, impact assessments or market inquiries.³³ The annual performance-planning process then provides a mechanism for linking priorities to outputs, indicators, targets and reporting to inform the business plan.³⁴ This planning framework helps the Commission allocate resources across tools and sectors while providing a basis for accountability to stakeholders but does not prescribe how to decide on each case.

36. Similarly, external bodies may influence the broader policy environment, but they do not determine individual case outcomes at the Commission. The Minister and the Department (the DTiC) may shape strategic priorities through policy context, public-interest priorities, annual planning and statutory roles, including participation in merger

³⁰ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria.

³¹ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Section 2, Section 12A)

³² Competition Commission South Africa. 2020. *Strategic Plan 2020/21–2024/25*. Pretoria; Competition Commission South Africa. 2025. *Strategic Plan 2025-2030*. Pretoria. Available at: https://www.thedtic.gov.za/wp-content/uploads/Competition-Commission-2025_2030-Strategic-Plan.pdf; Competition Commission South Africa. 2022. ERB Brief (unpublished) - *Prioritisation: An Overview of International Approaches*. Issue 2022/03 (2 December 2022).

³³ Competition Commission South Africa. 2020. *Strategic Plan 2020/21–2024/25*. Pretoria; Competition Commission South Africa. 2025. *Strategic Plan 2025-2030*. Pretoria. Available at: https://www.thedtic.gov.za/wp-content/uploads/Competition-Commission-2025_2030-Strategic-Plan.pdf

³⁴ Competition Commission South Africa. 2022. *Annual Performance Plan 2022/23*. Pretoria. Available at: <https://www.compcom.co.za/wp-content/uploads/2023/09/Competition-Commission-APP-2022-2023.pdf>

proceedings on public-interest grounds and powers relating to market inquiries. Other regulators may influence priorities through concurrent-jurisdiction arrangements and sector expertise, and the Act requires the Commission to coordinate with relevant regulatory authorities.³⁵ However, case-specific decisions remain evidence-based, legally constrained and subject to review. Case prioritization as well as prioritisation of issues and/or tools within individual cases can also be informed by the evolution of the evidence during investigations. In some instances, it becomes clear that the best tool to address conduct may require advocacy for instance, and as such the matter will be prioritised for advocacy as opposed to enforcement, as this might lead to better outcomes with less resources.

7. Concluding Remarks

37. In conclusion, the Commission’s approach to case prioritisation and prosecutorial discretion is best understood as a statutory, structured and purposive form of resource allocation that operates across the Commission’s full toolkit - enforcement, mergers, market inquiries and advocacy (including guidelines, research and impact assessment) rather than as a narrow decision about whether to litigate. Grounded in the Competition Act’s conventional competition objectives alongside South Africa’s developmental and public-interest mandate, the Commission applies organisation-level priority setting (including priority sectors and annual planning) while ensuring that individual case outcomes remain evidence-based, legally constrained and procedurally reviewable through transparency, consultation and adjudicative oversight. The submission further shows how this framework has evolved from a more reactive, complaint-driven posture toward proactive, sector-focused and now also impact-based prioritisation, with illustrative examples demonstrating how case/intervention and tool choice is matched to the nature of harm and the prospects for effective remedies. Overall, the disciplined discretion – supported by accountability mechanisms and strengthened by ex-ante and ex-post impact analysis, enables the Commission to pursue matters that deliver the greatest competition, consumer benefit, and public-interest benefits under binding resource constraints.

³⁵ Competition Commission South Africa. 2021. *Competition Act 89 of 1998*, as amended by the Competition Amendment Act 18 of 2018. Pretoria (Sections 18, 21, 43B and 82)