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Case Prioritisation and Prosecutorial Discretion – Summaries of contributions

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Australia

This submission explains how ACCC’s case prioritisation and enforcement discretion work together to allocate scarce enforcement resources to matters that will deliver the greatest overall public benefit. It describes how the ACCC uses publicly stated priorities, priority factors, and intelligence-led case selection to shape its enforcement program, while retaining flexibility to choose the most effective tool and resolution pathway in individual matters. It also emphasises that structured discretion, supported by transparency, governance, and published policies, is essential to ensuring enforcement decisions are strategic, accountable, and effective.

Belgium

The Belgian Competition Authority exercises prosecutorial discretion to decide which cases to pursue. Annual priorities are published that guide both case selection and resource allocation. Cases are selected based on their expected overall impact and contribution to effective enforcement. This involves assessing the seriousness of the conduct and its effects on competition and consumers. Strategic importance, including sectoral priorities and potential precedent value, is also a key factor. In addition, the authority considers the likelihood of successfully establishing an infringement and the risks involved. This approach enables the BCA to act more effectively, more proactively and with greater consistency, while ensuring that decisions not to pursue a case remain reasoned and subject to an appropriate legal and institutional framework.

BIAC

Well-disciplined case selection improves overall outcomes. Transparent case prioritization processes help authorities explain where they intend to focus scarce resources, demonstrate responsiveness to market conditions, and strengthen public confidence. Authorities are most effective when they prioritize matters likely to deliver meaningful competitive and economic benefits. Equally important is the willingness to recognize when alternative actions, such as advocacy, guidance, market studies, regulation, or cooperation with other regulators may produce faster, broader, and more durable benefits.

Prioritisation decisions also occur dynamically throughout investigations, where authorities decide what theories to pursue or tools to apply. As such, prosecutorial discretion must remain firmly anchored in the authority's legal mandate, the evidentiary record, and objective enforcement criteria —eschewing shifting political pressures or reputational incentives.

De-prioritisation, i.e., closing ongoing investigations, is an equally important aspect of prioritisation and is a responsible expression of sound regulatory judgment. This may occur where the evidence is weak, market conduct has changed, complaints are withdrawn, alternative remedies are identified, or another institution can address the concern more effectively. Authorities should normalize such outcomes, transparently explaining the rationale, thereby reinforcing confidence that enforcement choices are principled.

The exercise of prosecutorial discretion during proceedings must be bounded by principles, e.g., due process, equal treatment and non/discrimination, good administration, impartiality, and transparency. These can be ensured through proper procedures, internal checks and balances and judicial oversight. Finally, public communications related to investigations should reflect the same discipline, given that public statements made before conclusions are reached risk prejudicing proceedings or undermining the perception of an authority's neutrality.

In sum, regulators should publish clear prioritization and communications principles, apply objective filters to case selection, use deprioritization openly where warranted, reinforce procedural safeguards that protect the credibility of competition enforcement and be mindful of public communications around investigations.

Brazil

Brazil's contribution to the OECD roundtable on case prioritisation and prosecutorial discretion starts from the premise that selectivity is inherent to competition enforcement. Since competition authorities operate with limited resources and face a broad range of possible enforcement actions, merger cases, advocacy initiatives, market studies and cooperation efforts, the relevant question is how this selectivity should be organised through evidence, criteria, reasons, transparency and accountability.

The Brazilian experience shows that prioritisation within CADE has often emerged less as a single codified doctrine than as a set of institutional choices made across enforcement, merger review, advocacy, economic studies and cooperation with other public bodies. These choices include whether to open or close investigations, allocate economic expertise, pursue enforcement or advocacy, negotiate commitments, or coordinate with another authority. CADE's experience also shows that discretion should be understood not as a weakness, but as an institutional resource in contexts marked by incomplete information, evidentiary asymmetry, evolving business practices and uncertainty regarding remedies.

Recent developments suggest a gradual movement from implicit and dispersed forms of prioritisation toward more visible and structured agenda setting. One example is CADE's designation of liquid fuel markets as a priority area for 2025 and 2026, combining prioritised investigations, updated sector studies, screening tools, cooperation with public bodies and communication initiatives. Another example is Bill No. 4,675 of 2025, which proposes the creation of a Digital Markets Superintendence within CADE, with functions related to studies, research and the publication of an annual agenda of priority initiatives and studies.

The contribution does not defend a rigid checklist for priority setting. A more explicit framework should operate as an organised practice of justification. Relevant considerations may include the seriousness of potential harm, strategic relevance of the sector, deterrence potential, evidentiary feasibility, technical complexity, internal expertise, coordination with other authorities, learning value and the effectiveness and monitorability of remedies. Market studies and economic analysis are central to this approach, as they support screening, triage and early diagnosis.

The Brazilian experience therefore suggests that prioritisation is not merely an operational necessity, but a defining feature of modern competition policy. The challenge is to preserve flexibility and technical independence while strengthening legitimacy, transparency, accountability and institutional credibility. Priority setting should be treated as a core dimension of institutional design, supported by reasons, evidence, structure and public intelligibility.

Croatia

This paper is Croatia's written contribution to the OECD Competition Committee roundtable on Case Prioritisation and Prosecutorial Discretion, to be held in June 2026.

The contribution explains the importance of case prioritisation for competition authorities in ensuring effective use of resources and focusing enforcement on the most serious competition law infringements and sectors of greatest economic and consumer relevance.

It describes the Croatian Competition Agency's approach to balancing discretion and prioritisation and refers to the Internal Guidelines on setting of priorities adopted in 2024, which determine the criteria the Agency applies when deciding on prioritisation.

The paper also outlines the Agency's commitment to transparency through the publication of priorities, decisions and reports, and refers to priority sectors identified for 2025 and 2026, including grocery retail, electronic communications, energy, construction and digital platforms for provision of taxi services.

Finally, the paper discusses the limits of prioritisation, noting that competition authorities must retain sufficient flexibility to address significant competition concerns that may arise outside predefined priority areas.

European Union

The Commission/DG Competition is responsible for the implementation and orientation of the European Union's competition policy. In carrying out its task as antitrust enforcer, it takes into account the broader priorities of the Commission and the EU when setting its own general priorities. These are laid out in its annual management plan which also explains how ongoing antitrust investigations contribute to the political priorities of the Union. However, the Commission does not normally specify on which sectors of the economy or infringement types it will focus. Together with its annual activity reports and an annual Report on Competition Policy, it raises awareness of its work, provides insight into its ongoing priorities and presents an account of its enforcement actions to the European Parliament, the Council, and the public.

In addition to such general priority setting, the Commission/DG Competition also has broad discretion to decide which individual antitrust cases to pursue as, given its limited resources, it is not in a position to deal with each infringement of Articles 101 and/or 102 TFEU. In practice, this discretion is translated into prioritisation criteria to be applied to each individual case, irrespective of whether the case started at the initiative of the Commission or based on information received from third parties. 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 to defining EU competition policy or to ensuring coherent application of the EU antitrust rules. However, granting a case priority status does not prejudice its outcome nor that the priority status of the case cannot change during the in-depth investigation. Indeed, the results of the investigation may lead the Commission to extend or reduce the scope of the case at a later point in time, or to drop the entire case.

However, the Commission's discretion to prioritise is not without limits. In addition to internal prioritisation criteria and procedure for deciding on prioritisation, the Commission is also subject to external review of its prioritisation decisions. According to the system set out in Regulation 1/2003 and Regulation 773/2004, the Commission's decisions to reject formal complaints are subject to judicial review. The Commission's discretion is also constrained by its transparency obligations, through its communication to the public on complaint rejections, the formal opening or closure of proceedings and the publication of annual activity reports, providing detailed information on its priority cases. In addition, the Commission is democratically accountable to the European Parliament which discusses and adopts an annual own-initiative resolution on the Commission's annual competition policy report. The Commissioner responsible for Competition also appears several times a year before the responsible Parliamentary Committee to explain the approach taken and discuss individual decisions. Although this scrutiny does not result in direct involvement of the Parliament in prioritisation decisions taken by the Commission, it is an important means to ensure transparency and oversight of the Commission's exercise of its discretion when enforcing the EU competition rules.

France

In a context of growing budgetary constraints and the increasing number of challenges facing competition authorities (the rise of digital markets, the climate emergency, the protection of purchasing power, etc.), the optimal allocation of resources has become a major strategic concern for the effectiveness of competition policy.

The Autorité de la concurrence (hereinafter ‘the Autorité’) has jurisdiction to apply both national competition rules and the competition rules of the European Union (hereinafter ‘the EU’), and is a member of the European Competition Network (hereinafter ‘the ECN’). It is within this framework of action that its practice as regards prioritisation and the exercise of discretion in the investigation of cases should be examined.

This framework evolved with the transposition into French law, by the ordonnance of 26 May 2021¹, of Directive 2019/1 of 11 December 2018, known as the ‘ECN+ Directive’². Article 4(5) of the Directive permits, in particular, the national competition authorities of the EU to set their enforcement priorities in the application of EU competition rules and, where national law requires them to examine formal complaints, to reject such complaints on the grounds that they do not consider them to be an enforcement priority. As recital 23 of the Directive emphasises, these provisions are intended to strengthen the effectiveness of public action by enabling authorities to allocate their resources optimally and to focus their efforts on conduct affecting competition in the internal market.

This contribution sets out the Autorité’s approach in this area, in the exercise of its full range of functions, around three strands: the identification of strategic priorities and their operational implementation **(1.)**, the exercise of discretion in the investigation of cases (commonly referred to as ‘prosecutorial discretion’) **(2.)**, and the optimisation of action through the finely-tuned management of cases within the Investigation Services **(3.)**.

¹ Article 2 of ordonnance No 2021-649 of 26 May 2021 on the transposition of Directive (EU) 2019/1, JORF No 0121 of 27.05.2021, p. 3948 (NOR: ECOC2105247R).

² Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, known as the ‘ECN+ Directive’, OJ L 11, 14.1.2019, pp. 3-33.

Greece

The Hellenic Competition Commission (HCC) has discretionary powers in deciding whether and how to pursue competition law cases, reflecting a general principle applicable to administrative authorities. This discretion allows the Authority to allocate its limited resources efficiently by prioritising complaints and investigations that are considered to have greater public importance, systemic significance, or broader impact on competition and consumers, while declining to pursue less significant matters. In Greece, the legal framework expressly authorises the HCC to establish objective and transparent prioritisation criteria through a scoring system. Introduced in 2011, this framework was designed to improve the effectiveness of the Authority and to enable targeted intervention in cases capable of affecting critical sectors of the economy.

The system that has been adopted combines quantitative and qualitative criteria in order to assess the importance of each case. Greater weight is attributed to serious infringements such as cartels and abuses of dominance, while the economic significance of the affected sector, the territorial scope of the practices, and the legal importance of the issues involved are also taken into account. The HCC further considers the evidential value of the material available and the resources likely to be required for the investigation. The system also incorporates a number of negative weighting factors. In essence, the prioritisation model is based on a ratio between the likely impact of the infringement and the resources required for enforcement. Although the general prioritisation framework is public and published both on the HCC website and in the Government Gazette, the individual ranking of specific cases remains internal and confidential. Cases exceeding a certain threshold proceed according to their ranking, whereas low-ranking cases may be dismissed on prioritisation grounds. Decisions dismissing complaints for reasons related to prioritisation are subject to judicial review (actions for annulment) by the Council of State. However, judicial review is limited to legality and does not extend to reassessing the substantive priority score assigned by the Authority,

The HCC also exercises its discretionary powers through multiannual strategic plans which define the Authority's broader enforcement objectives and institutional priorities, taking into account developments such as digitalisation, evolving market conditions, increasing case complexity, and organisational efficiency. Although the plans do not identify specific sectors or individual cases, they place impact-based prioritisation and targeted enforcement at the center of the Authority's long-term competition policy strategy.

Indonesia

In modern competition law, authorities cannot pursue all alleged violations with equal intensity, making case prioritisation and prosecutorial discretion essential tools for allocating limited resources toward cases with the greatest impact on consumer welfare, market structure, and economic efficiency. In Indonesia, although Law No. 5 of 1999 does not explicitly regulate prioritisation, the KPPU exercises administrative discretion in selecting cases, particularly in investigations, public complaints, and priority sectors, subject to limits of due process, legal certainty, accountability, and judicial review. Effective prioritisation relies on economic and institutional criteria such as market impact, concentration, deterrence value, and enforcement feasibility, while transparency and published guidelines are needed to ensure predictability, fairness, and credibility. As the digital economy and institutional demands evolve, Indonesia will require a more explicit, data-driven prioritisation framework to ensure enforcement resources generate maximum competitive benefit and that the KPPU's success is measured by its ability to foster competitive, innovative, and efficient markets rather than by case volume alone.

Ireland

The CCPC's approach to case selection and prioritisation is framed by its independence as an agency, the express statutory basis under Irish legislation that allows the CCPC to exercise its discretion to prioritise cases, and the CCPC's prioritisation framework.

The CCPC's discretion regarding case prioritisation is applied broadly across the full lifecycle of a case, encompassing decisions taken both prior to and during an open investigation. Decisions on case selection and prioritisation are made by applying the CCPC's prioritisation principles to a case. These are a published set of principles, which consider four key aspects: (i) level of economic and/or physical harm, (ii) likely impact of the CCPC's action, (iii) strategic significance, and (iv) risks, resources and costs. 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.

During the complaint-handling and assessment stages (i.e. prior to the opening of a formal investigation), the application of the prioritisation principles is a key part of the analysis undertaken in determining whether a recommendation should be made to open a formal investigation. 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 needs to be made.

The application of the prioritisation principles seeks to ensure that there is accountability, structure, and transparency surrounding case prioritisation, while also providing flexibility to select the most appropriate cases to prioritise. The CCPC prioritisation framework is sufficiently flexible to adapt to new evidence, changing market conditions, and emerging policy priorities, rather than relying on rigid or overly prescriptive criteria.

The CCPC is not required to publish any material on specific enforcement priorities, such as sectors or industries of focus, or particular conducts. The CCPC seeks to strike a balance between transparency and the need to preserve enforcement flexibility by publishing general prioritisation principles, while retaining discretion in relation to case-specific decisions.

The CCPC has significant prosecutorial discretion in terms of what enforcement route to choose in competition investigations (i.e. criminal prosecution or the administrative enforcement regime). Prosecutorial discretion forms a continuation of the CCPC's broader approach to case prioritisation, as decisions regarding the appropriate enforcement route are informed by – among other things – the prioritisation principles. The CCPC also has the flexibility to apply the CCPC settlement procedure to all competition investigations that are on the administrative enforcement route.

Israel

The Israeli Antitrust Authority (the "ICA") inevitably operates under severe resource constraints. The ICA cannot investigate every complaint or prosecute each potential infringement. Consequently, mechanisms for case prioritisation and the strategic exercise of prosecutorial discretion are central to maintaining an effective enforcement pipeline.

This document analyzes how the ICA balances administrative efficiency, legal rigor, and transparency when selecting cases in the framework of its criminal enforcement program. It focuses on the formulation of objective case screening methodologies, and the boundaries of legal challenges of the 'unfair selective enforcement' defense.

Japan

Regarding its enforcement policy, in a statement published on January 28, 2026, the Japan Fair Trade Commission (JFTC) has stated that “To encourage the free ingenuity of enterprises and prevent innovation from being unduly nipped in the bud, the JFTC will proactively engage in law enforcement that supports initiatives for ensuring a fair trading environment and promoting a competitive market environment as well as law enforcement related to issues that have a significant impact on the lives of citizens such as rising prices, .”

Building on this, in deciding whether to commence a case investigation, a comprehensive judgment is made on a case-by-case basis. This decision-making process takes into account various factors—in addition to the policy mentioned above—such as the potential impact of the case and the resources required for the investigation. In each case investigation, to reach an appropriate conclusion as expeditiously as possible, the investigation resource allocation is reviewed as necessary. This includes the rebalancing of personnel in charge of the investigation to ensure an optimal and efficient workflow. Moreover, regarding cases subject to administrative investigations, the JFTC, based on its findings, may take measures such as cease-and-desist orders, surcharge payment orders, and the approval of a commitment plan, or it may decide to terminate the investigation.

Regarding the scope of the JFTC’s investigations and measures, it is understood that it is reasonable and does not violate the principle of equality—from the perspective of administrative effectiveness—for the JFTC to limit the scope of its investigation to the portions with significant social impact, on which basis it establishes the existence of a violation and imposes legal measures.

Kazakhstan

This paper outlines the approach of the Agency for Protection and Development of Competition of the Republic of Kazakhstan to case prioritization and the allocation of enforcement resources. The Agency relies on systematic competition assessments of commodity markets as a key tool for identifying competition concerns, assessing market structure, regulating economic concentration, and evaluating the role of the state in the economy.

The prioritization process is governed by a formal methodology and an annual market analysis plan published on the Agency's website. Market selection is based on a combination of quantitative and qualitative criteria, with priority given to sectors that are socially significant, strategically important for the national economy, or where there are indications of competition restrictions and elevated risks of antitrust violations. Particular attention is paid to consumer impact, market concentration, import dependence, legislative developments, market structure changes, and substantiated complaints from businesses and consumers.

The framework aims to ensure that enforcement efforts are directed toward markets where intervention is likely to generate the greatest economic and social benefits. At the same time, the existence of clearly defined criteria promotes transparency, predictability, and consistency in the Agency's decision-making process, reducing the risk of arbitrary enforcement.

While the Agency retains discretion in determining enforcement priorities within the scope of its statutory powers, such discretion is exercised within a legally prescribed framework. Complaints alleging potential competition law violations cannot be ignored arbitrarily, and decisions to refuse consideration or terminate proceedings must be based on grounds explicitly established by law. Accountability is further ensured through administrative and judicial review mechanisms, public disclosure of decisions, and oversight by the Agency's Public Council, which includes representatives of the business community.

Overall, Kazakhstan's approach seeks to balance enforcement discretion with transparency, legal certainty, and accountability, ensuring that limited regulatory resources are focused on markets where competition concerns are most significant and where intervention can have the greatest public impact.

Latvia

The contribution presents the Latvian national competition authority's approach to case prioritisation and prosecutorial discretion, the legal framework governing these processes, and the factors considered when setting priorities and deciding on the initiation of the case, as well as challenges on making decisions to reject complaints that do not constitute enforcement priorities.

The legal framework and case prioritization by the Competition Council of the Republic of Latvia (the CC) described in the contribution shows broad institutional discretion with procedural safeguards to ensure transparency, accountability, and effective judicial review. The CC's discretion on initiating the proceedings and rejecting the complaints is recognized by the national courts, however it is not unlimited and decisions on rejection of complaints still must be sufficiently reasoned and objectively justified.

Lithuania

The ability to set priorities is an essential element of the Lithuanian Competition Council's independence and effectiveness. The Council operates within a prioritisation framework that enables it to allocate its resources effectively and focus on cases and sectors with the greatest impact on competition and consumer welfare. The Council exercises its discretion to prioritise both at the level of individual cases and at the level of economic sectors within a defined legal framework.

The Council applies a structured and transparent prioritisation framework grounded in the Law on Competition and reflected in clearly defined principles for case selection. Prioritisation decisions in individual cases are subject to procedural safeguards and judicial review, ensuring accountability. The Council complements case-level prioritisation with the identification of priority sectors, based on their economic and strategic importance, impact on consumers, the presence or risk of competition problems, and the authority's ability to act effectively and proactively. This combined approach enables the Council to allocate its resources effectively and to focus its enforcement and advocacy efforts on areas with the greatest expected impact on competition and consumer welfare.

Mexico

Mexico's constitutional and legal reforms have reshaped the framework for competition policy, establishing the National Antitrust Commission (Antitrust Commission or Commission) as country's competition authority in alignment with national development objectives. This institutional redesign embeds competition enforcement into national planning, strengthens accountability, and ensures greater coherence between safeguarding competition and advancing national economic priorities.

This contribution examines the foundations of institutional reform and the role of strategic prioritization, outlining the Commission's organizational priorities and planning instruments, and presenting the medium- and short-term programs that guide enforcement. It then turns to the interaction between case prioritization and prosecutorial discretion, highlighting how these elements combine to create an enforcement framework that is both principled and adaptive, and better equipped to respond to Mexico's evolving economic challenges.

New Zealand

Case prioritisation and discretion is fundamental to the effectiveness of the New Zealand Commerce Commission (NZCC) given, like many agencies, it is operating in a resource-constrained environment with a wide array of potential conduct it could pursue.

The paper outlines the NZCC's approach to case prioritisation and discretion in its competition enforcement work. In particular, it emphasises the following three key themes:

- Prioritisation continues throughout the lifecycle of the NZCC's cases, and is not limited to decisions to open cases;
- The NZCC's discretion is structured rather than unfettered, involving escalating sign-off levels and case-specific and organisation-wide frameworks; and
- Enforcement tools are selected strategically by the NZCC as part of prioritisation decisions to maximise impact, rather than defaulting to court proceedings.

The paper also discusses how the NZCC's approach to case prioritisation is grounded in two public-facing frameworks:

- Enforcement Criteria, which guides decisions at the case level; and
- Enforcement and Compliance Priorities, which guides resource allocation across the whole organisation.

Philippines

The Philippine Competition Commission (PCC) has adopted the Enforcement Strategy and Prioritization Guidelines on 29 August 2018 (Prioritization Guidelines), with the objective to manage its resources, maximize the impact of its enforcement actions, and provide efficient public service.

Under the Prioritization Guidelines, the PCC determines which enforcement action to prioritize considering various factors, i.e.: (a) public interest, (b) resource allocation, (c) likelihood of successful outcome, and (d) other reasonable grounds to conduct enforcement action.

The PCC assesses the public interest aspect by looking into whether the matter involves any of the priority sectors identified by the Commission. At present, the PCC's priority sectors are: (a) water; (b) food and agriculture; (c) health and pharmaceuticals (d) transportation and logistics; (e) telecommunications, financial services, and digital platforms; and (f) energy.

The initial evaluation of prioritization takes place during intake proceedings, when the Competition Enforcement Office (CEO) receives a complaint or referral, or when deciding to conduct a fact-finding inquiry. CEO's findings and recommendation are presented to the Commission who, in turn, makes the decision on whether to grant or deny due course, or to direct the CEO to conduct a *motu proprio* investigation. These investigations may result in actual cases filed before the Commission.

The priority sectors are also one of the main considerations in identifying possible topics for the PCC's published works and studies (e.g., market studies, competition impact assessments, policy notes) and advocacy activities (e.g., sector-specific conferences). The PCC Rules on Merger Procedure likewise provides that a *motu proprio* review may be conducted when the merger takes place in a critical industry or a priority sector.

Poland

Case prioritisation is an important, but often underestimated, factor impacting enforcement. The impact of prioritisation may easily be underestimated because it typically happens behind closed doors, without much fanfare. However, prioritisation and de-prioritisation of cases sooner or later find their way to the final outcomes of enforcement, i.e. adopted decisions.

Priority-setting influences at least a few areas, which we discuss in more detail in our contribution. This includes: case selection, prosecution choice, instrument choice, ongoing prioritisation, case type prioritisation, and market prioritisation.

Prioritisation may come down to “legal-based prioritisation” and “performance-based prioritisation”, the former being focused on the legal characteristics of a case (likelihood of infringement), and the latter on a broader set of factors (cost-benefit assessment). In practical terms, prioritisation typically involves: (a) strategic considerations; (b) market considerations; (c) institutional considerations; (d) assessment of available resources; (e) risk-assessment.

Over the last decade, our enforcement strategy has undergone significant changes, caused by a shifting approach to priority-setting. This included in particular more focus on larger and more complex cases, and developing instead a more flexible and responsive approach towards local and smaller cases.

Portugal

Case prioritisation constitutes a central feature of the Portuguese competition law enforcement framework, enabling the efficient allocation of limited public resources within an increasingly complex investigative environment.

Under the Portuguese Competition Act (Law no. 19/2012 of 8 May), the Portuguese Competition Authority (Autoridade da Concorrência – AdC) enjoys a significant margin of discretion in determining whether proceedings should be initiated and in defining the degree of priority assigned to each matter.

This discretion is exercised within a framework governed by the public interest in the promotion and protection of competition, procedural safeguards and judicial review. The legal framework expressly provides that the AdC may assign different levels of priority to matters submitted for its consideration and shall exercise its sanctioning powers whenever reasons of public interest justify intervention.

In practice, prioritisation enables the AdC to focus its enforcement efforts on conduct capable of causing significant harm to competition, consumer welfare and the efficient functioning of markets. The assessment is carried out on a case-by-case basis and may take into account the seriousness of the conduct, the likelihood of establishing an infringement, the economic relevance of the affected sector and the strategic importance of the case for competition policy and deterrence.

The Portuguese framework also incorporates important mechanisms of transparency and accountability. The AdC publishes annual competition-policy priorities, activity plans and procedural guidance, thereby improving predictability and public understanding of enforcement choices. Moreover, complainants must be informed where the AdC intends not to pursue a matter and are granted the opportunity to submit observations before a final decision is adopted. Decisions not to proceed may subsequently be challenged before the Competition, Regulation and Supervision Court.

Overall, the Portuguese model seeks to reconcile effective competition enforcement with organisational efficiency. While the AdC retains flexibility in the allocation of resources and the definition of enforcement priorities, the exercise of its discretion remains governed by statutory criteria, procedural guarantees and judicial oversight, ensuring that prioritisation decisions remain connected to the public interest in the protection and promotion of competition.

South Africa

The Competition Commission of South Africa’s (“Commission”) approach to prioritisation is best understood as a structured form of resource allocation across its full toolkit, rather than a narrow decision about whether to litigate. Prioritisation is not governed by one standalone policy document. Instead, it operates through a hybrid framework made up of strategic priority sectors, annual planning, tool selection, case-level assessment, statutory timelines and increasingly, ex-ante and ex-post impact assessment considerations.

The Commission’s discretion is exercised within the purposes and functions of the Competition Act, including conventional competition objectives and South Africa’s developmental and public interest objectives, such as consumer welfare, employment, SME participation, wider ownership, transformation and deconcentration. The Commission’s discretion also differs by tool: complaint matters are governed by referral/non-referral procedures; mergers are subject to statutory thresholds, timeframes and the section 12A competition and public interest tests; and market inquiries address structural or market wide concerns that may not be suitable for ordinary case-by-case enforcement.

Prioritisation decisions are subject to legal, procedural, adjudicative and institutional accountability mechanisms. Tribunal and court precedent also guides the exercise of prosecutorial discretion by clarifying the legal tests, evidentiary standards and prospects of success relevant to different instruments. Complainants may refer non-referred matters to the Competition Tribunal, and Tribunal and court oversight provide checks on referrals, merger decisions and other determinations. Market inquiries are subject to terms of reference, public submissions, provisional findings and consultation. Strategic priorities guide resource allocation and areas of focus, but do not predetermine individual case outcomes, which remain grounded in facts, evidence, law, legal prospects, remedy potential and procedure.

The Commission’s approach has evolved from a more complaint-responsive model toward a proactive, sector focused and impact informed model. Earlier prioritisation criteria focused on impact on poor consumers, importance for shared growth, and likelihood of substantial competition concerns. Current and recent strategic plans place priority sectors at the centre of resource allocation. Time is also an important prioritisation factor, especially where statutory or quasi-statutory timelines apply to mergers, market conduct investigations and market inquiries; for example, the broad scope of a market inquiry must be balanced against the 18-month statutory period, which affects how issues, engagements and remedies are prioritised. From 2026/27, elements of the Commission’s impact-assessment framework are increasingly being used not only to measure impact after interventions, but also to assess likely impact upfront. This can assist in identifying which interventions are likely to yield the greatest competition, consumer and public interest benefits relative to the resources required.

The overall theme for the Commission’s approach to case prioritisation and prosecutorial discretion is disciplined discretion: the Commission uses strategic priorities and impact tools to direct scarce resources toward high impact interventions, while maintaining legal accountability and independent, evidence-based case decision making. The evidence gathered during investigations may also change the appropriate tool – in some instances, the Commission may prioritise advocacy rather than enforcement where that route is likely to achieve better outcomes with fewer resources.

Spain

This contribution by the Spanish National Markets and Competition Commission (CNMC)³ for the 149th meeting of the Competition Committee addresses the topic of the session on “Case Prioritisation and Prosecutorial Discretion”, to be held in June 2026⁴.

From an enforcement perspective, this contribution describes the experience of the CNMC with the prioritisation mechanism introduced by Article 49.4 of the Spanish Competition Act (Law 15/2007) following its amendment on 29 April 2021. This provision, incorporated following the transposition of Directive (EU) 2019/1 (the ECN+ Directive), allows the authority to refrain from initiating proceedings when a complaint is not considered a priority.

Prioritisation mechanisms are used by competition authorities as a tool to allocate enforcement resources efficiently and to focus investigative activity on cases with the greatest potential impact on competition and consumer welfare. In this context, the CNMC has progressively incorporated prioritisation into its assessment of complaints received under the Spanish Competition Act.

The experience accumulated since the introduction of Article 49.4 suggests that prioritisation plays an important role in filtering complaints with limited evidentiary support, limited economic significance, or where alternative legal mechanisms may be better suited to address the conduct at issue.

Apart from enforcement powers, authorities may use advocacy tools to address competition issues. Within the advocacy role, the prioritisation of sectors/areas of analysis and the selection of the appropriate tool to deal with them are of utmost importance as well.

Market studies are one of the most relevant tools in competition advocacy. The CNMC has a [methodology](#) to carry out market studies⁵, adopted in 2016. This methodology focuses on several aspects, among which is how to select markets and/or areas. Ex ante selection of markets and/or areas implies being up-to-date with market and regulatory developments and may include engagement with stakeholders. The recent market studies by the CNMC show the prioritisation of two issues: 1) digitization 2) sustainability in its three dimensions: environmental, social (with a focus on vulnerable consumers) and economic (with a focus on productivity and competitiveness).

The CNMC, in its advocacy toolkit, combines market studies with other tools: guides, impact evaluation, legal appeals of anticompetitive measures, reports on draft laws, etc. The prioritisation of sectors and areas plays a relevant role in those tools as well.

³ This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents.

⁴ The contribution was prepared and sent to the OECD in early May 2026.

⁵ Recently summarised in a contribution to the OECD.

[https://one.oecd.org/document/DAF/COMP/WP2/WD\(2025\)47/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2025)47/en/pdf)

Sweden

The Swedish Competition Authority (SCA) has complete discretion in choosing which cases to pursue, as well as in deciding whether to follow up on or dismiss complaints and allegations. The authority has a responsibility to use its resources as efficiently as possible. It therefore needs to prioritise its day-to-day work between different competition enforcement cases. The authority focuses on investigating issues that are of general interest and that lead to clear results in line with a published prioritisation policy.

This contribution explains:

- how the SCA identifies and prioritises new competition cases, as well as how it prioritises in the course of ongoing competition investigations;
- the contents and application of the SCA's prioritisation policy; and
- the wider priorities of the SCA as an enforcement authority.