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

Case Prioritisation and Prosecutorial Discretion – Note by New Zealand

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1. Introduction

1. This paper is a contribution to the Competition Committee's Roundtable on Case Prioritisation and Prosecutorial Discretion to be held on 25 June 2026.
2. Effective case prioritisation is central to the New Zealand Commerce Commission's (NZCC) ability to deliver meaningful outcomes for consumers and competition. Like many agencies, we operate within a strict budget envelope with a finite workforce. We are also a multi-functional regulator with broad statutory responsibilities across competition, consumer protection and economic regulation. It is therefore important that we make disciplined choices about where to focus our efforts and what tools we use.
3. This paper outlines the NZCC's approach to case prioritisation and discretion in our competition enforcement work. In particular, we want to emphasise the following three key themes:
 - Prioritisation continues throughout the lifecycle of our cases, and is not limited to decisions to open cases;
 - Our discretion is structured rather than unfettered, involving escalating sign-off levels and case-specific and organisation-wide frameworks;
 - Enforcement tools are selected strategically as part of prioritisation decisions to maximise impact, rather than defaulting to court proceedings.

2. Institutional context: the lifecycle of a case at the NZCC

4. The NZCC's competition enforcement activities typically follow a structured lifecycle as outlined below.
 1. Awareness. Matters are brought to our attention through avenues such as complaints, leniency applications and our market intelligence. We have a standalone Enquiries Team that manages this process. At this stage, matters that are potentially within the scope of our mandate are then screened.
 2. Screening. This is the initial triage and involves a quick and basic assessment of whether a matter warrants further inquiries. If it relates to a matter outside of our mandate, for example, it is not progressed. The NZCC has regular screening meetings comprised of staff from the Enquires Team and subject-matter experts from the investigation teams.
 3. Initial inquiries. If a matter is progressed from screening, it is sent to an investigation team to conduct initial inquiries. This involves preliminary information being gathered and assessed to consider whether to escalate the matter to a formal investigation. It also involves a consideration of whether there are other tools that could better address the matter without resorting to an investigation, for example advocacy or education.
 4. Investigation. This is a formal investigation where the matter is examined in depth to determine a breach of competition laws, often including information gathering,

interviews, and legal and economic analysis. Staff from investigation, legal and economic teams are involved at this stage.

5. Enforcement decision. This involves a determination of the appropriate regulatory response after the completion of an investigation. This can range from compliance advice or warning letters up to court proceedings.

3. Case prioritisation and discretion: our process

5. Case prioritisation and prosecutorial discretion is exercised across all stages of the lifecycle of a case at the NZCC. It is not just confined to the decision to open initial inquiries or an investigation but extends to:

- Whether to escalate or de-escalate a case;
- How intensively to investigate; and
- What enforcement response to adopt.

6. Prioritisation decisions are made at multiple levels of the NZCC, including by investigation team managers, the General Manager of our competition function, and the NZCC's Enforcement Committee. The Enforcement Committee was established earlier this year as the body responsible for making enforcement decisions across all functions of the organisation. Despite being separate from the Board, the Committee is accountable to the Board and must act in alignment with the Board's direction, strategy and priorities.

7. Who makes prioritisation decisions depends on the stage of the case in its lifecycle. Decisions to prioritise a matter that is at the initial inquiries stage and below are made by the investigation team manager. This is sometimes in consultation with the General Manager of our competition function, for example if the case will be resource intensive. Decisions to prioritise a case to full investigation are also made by the investigation team manager, but the manager seeks the views of the Enforcement Committee on complex or resource intensive cases. The enforcement decision from a full investigation is made by the Enforcement Committee.

8. The level of reporting to inform prioritisation decisions also differs depending on how advanced through its lifecycle a case is and who the decision-maker is. If a matter is at the screening stage, decisions to promote to initial inquiries will often be made through oral discussions and the recording of an assessment in a file note. Any consultation with Enforcement Committee on prioritisation to a full investigation requires a paper to be provided by the case team to the Committee. Enforcement decisions at the end of an investigation, which are made by the Enforcement Committee, involve an investigation report being provided to the Committee by the case team. An investigation report provides an assessment of the facts and merits of a case, and outlines factors relevant to the appropriate enforcement tool to use to address the matter.

3.1. Regular stop/go decisions

9. To ensure consistent and frequent prioritisation decisions are made throughout the lifecycle of a case, we require investigations to have regular prioritisation assessments (that we refer to as "stop/go decisions"). The frequency of these depends on the nature of the case but they occur approximately every three months. This involves the case team providing an update and recommendation on continuing the investigation to the investigation team manager for assessment.

10. Regardless of the outcome of stop/go decisions, we require case teams to report regularly Enforcement Committee on investigations.

3.2. Prioritisation decisions assess merits and prioritisation of case

11. Our prioritisation decisions involve consideration of two key aspects of a case:

- Merits, which concern the likelihood and evidential strength of a breach including an analysis of the particular facts, theory of harm and legal risks; and
- Prioritisation, which concerns the relative importance of pursuing the case given our resource constraints and strategic objectives, and other demands and cases. This involves a consideration of our Enforcement Criteria and Enforcement and Compliance Priorities (discussed below).

12. These two aspects are balanced against each other in a prioritisation assessment and are not mutually exclusive. For example, a case may have strong merits but still not be prioritised if the expected impact of any enforcement is limited. Conversely, cases with moderate evidential strength may still be pursued where the potential harm or deterrent effect is significant.

13. A recent case that was granted high prioritisation by the NZCC was *R v Kumar* [2024] NZHC 3955.¹ This was a criminal prosecution of cartel conduct involving bid rigging for major transport projects in Auckland. The NZCC secured a fine of NZD\$500,000 for the relevant company and six months' community detention and 200 hours' community work for its director.

14. This case was treated as a high priority given it involved public funds (therefore a high public interest element), and a high degree of seriousness and deterrence value. This was despite us being aware that this case would incur a large amount of resource, given it was the NZCC's first ever criminal cartel court action.

3.3. Discretion includes assessment of appropriate tools

15. Prioritisation decisions also extend to the choice of tool to address a matter during the lifecycle of the case. Selecting the appropriate tool is a key dimension of effective prioritisation because, given our scarce resources, it is vital that we utilise the full suite of our tools to achieve maximum benefit.

16. The NZCC has a spectrum of tools available to address matters, including:

- Intelligence gathering;
- Advocacy, engagement and education;
- Compliance advice;
- Warning letters
- Court proceedings, including civil proceedings and, for cartel conduct, the ability to take civil and criminal proceedings.

¹ See our media release here: <https://www.comcom.govt.nz/news-and-media/news-and-events/2024/cheating-the-system-sentencing-in-countrys-first-criminal-cartel-case/>

17. The appropriateness of which tool we use involves balancing multiple factors including the resource-intensiveness of a tool; the effectiveness of a tool to address the matter; and the seriousness of the conduct.

18. We acknowledge that lower-level responses, such as intelligence gathering and advocacy, do not have as great a deterrent effect compared to higher-level responses such as court proceedings. But given they are cheaper and can often be implemented more quickly, lower-level responses are sometimes more appropriate, for example if the extent of harm is low. Further, it is important to note that lower-level responses are anchored by the ability for us to take court proceedings if a party does not respond adequately to them. So, the threat of proceedings ‘provides teeth’ to these lower-level responses, while allowing us to avoid the cost and delay of proceedings.

19. A good example of us avoiding court proceedings yet still achieving a satisfactory outcome was our 2024 investigation into property valuation firm, Valocity Limited. We had concerns that Valocity’s platform was setting prices and allocating valuers in a way that limited competition and raised costs for home loan borrowers. As a result of our investigation, Valocity agreed to change the way it operated the platform, and allowed borrowers to reject set fees and seek competing quotes from valuers, restoring competitive pressure. As a result, we decided to close the investigation with no enforcement response.²

20. Ensuring we assess the appropriate tools in our prioritisation assessments is consistent with our responsible Minister’s expectations of us, in that he expects us “through clear prioritisation and utilisation of [our] full regulatory and enforcement toolkit to achieve real impacts for consumers, consistent with [our] strategy and vision”.³

4. Case prioritisation and discretion: our frameworks

21. The NZCC’s approach to case prioritisation is grounded in two public-facing frameworks, outlined further below:

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

22. These frameworks promote transparency and consistency, providing external stakeholders with clarity on how we exercise our discretion, while also ensuring the same framework and criteria are applied to all prioritisation decisions of the organisation.

4.1. Enforcement Criteria - case-level prioritisation

23. We apply our Enforcement Criteria⁴ to all enforcement decisions. These criteria provide a structured framework for assessing and comparing specific cases and include the following:

² See our media release here: <https://www.comcom.govt.nz/news-and-media/news-and-events/2024/changes-to-property-valuation-platform-good-for-competition-and-good-for-consumers-says-commerce-commission/>

³ https://www.comcom.govt.nz/assets/pdf_file/0021/367401/ComCom-Letter-Of-Expectations-2025-26-9-July-2025.pdf

⁴ <https://www.comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria/>

- Extent of detriment – the magnitude and distribution of harm to consumers or competition;
- Seriousness of the conduct – including intent, duration, and whether the conduct is systemic;
- Public interest – including deterrence value, precedent-setting potential, and alignment with statutory objectives.

24. We consider all three of these criteria together, weighing them against the available information and deciding what action is required in the context of all our overall activities.

25. These criteria are applied throughout the lifecycle of a specific case, from initial inquiries up to the enforcement response phase. Their application is dynamic as at the early stages of a case we usually have limited evidence and so the focus is on potential harm and the public interest in us pursuing the matter. However, as an investigation progresses and we obtain evidence, greater weight is placed on evidential strength and quantified harm as well as intent of the parties. These criteria enable transparent and consistent decision-making, while also allowing flexibility to respond to the specifics of each case at the different stages of its lifecycle.

4.2. Enforcement and Compliance Priorities - organisation resource allocation

26. In addition to case-level criteria, the NZCC sets annual Enforcement and Compliance Priorities,⁵ which guides our organisation-wide resource allocation and are considered as part of our prioritisation decisions. As the OECD acknowledges, prioritising cases is closely linked to organisation level priority setting that usually signals to the outside world which tools will be given the most prominence, as well as the sectors of the economy that warrant the most attention.⁶

27. Our Enforcement and Compliance Priorities identify sectors, issues, and types of conduct where our enforcement effort will be concentrated for the upcoming year. These are informed by a combination of complaint trends, market intelligence, economic conditions and emerging risks. They include:

- Enduring priorities, being conduct we see as so detrimental to consumer welfare and the competitive process that we will always dedicate significant resource to address them, for example cartel and anti-competitive conduct; and
- Current year priorities, relating to current issues, for example these currently include online sales conduct and breaches in the grocery sector.

28. These priorities provide strategic direction to the organisation and help ensure that our limited resources are deployed where they can have the greatest impact. Importantly, they do not operate as rigid constraints – we retain flexibility to act outside these priority areas where significant harm arises or urgent intervention is required.

⁵ <https://www.comcom.govt.nz/about-us/our-role/our-enforcement-and-compliance-priorities/>

⁶ OECD Competition Committee, *Call for contributions to Roundtable on Case Prioritisation and Prosecutorial Discretion* (February 2026).

4.3. Interaction between Enforcement Criteria and Enforcement and Compliance Priorities

29. The NZCC's Enforcement Criteria and Enforcement and Compliance Priorities complement each other during prioritisation assessments.

30. As mentioned above, the Enforcement Criteria is applied at the case level determining which matters are strongest and most impactful, while Enforcement and Compliance Priorities are applied at the organisation level determining where our overall resources are directed.

31. This interaction ensures that our prioritisation decisions are both strategically aligned with the organisation's priority areas, while also being responsive to the specific harms of a case. We consider it important to preserve flexibility and not be completely constrained by the organisation's priority areas, so high-impact cases that fall outside of organisation priorities can still be pursued – this is the complementing role of the case-specific Enforcement Criteria.

32. The application of these frameworks can be seen in recent cases taken by the NZCC. In July 2025, we filed civil proceedings against a major New Zealand supermarket and wholesale supplier for alleged cartel conduct.⁷ Cartel conduct is both a current year and enduring priority, and breaches in the grocery sector is a current year priority. There is also a high degree of public interest in the grocery sector currently in New Zealand. Therefore, both frameworks pointed to prioritisation involving court proceedings.

33. Whereas in the Valocity case discussed above, despite it involving anti-competitive conduct (an enduring priority), the industry was not a current year priority, and the extent of harm and public interest in us pursuing the matter was lowered due to Valocity changing its conduct. We therefore considered de-prioritisation was warranted in that case.

5. Conclusion

34. Case prioritisation and discretion is fundamental to the effectiveness of the NZCC given we are operating in a resource-constrained environment with a wide array of potential conduct we could pursue.

35. Our prioritisation approach is characterised by (1) prioritisation continuing throughout the lifecycle of our cases; (2) discretion being structured and grounded by frameworks; and (3) the assessment of enforcement tools being part of the prioritisation process.

36. While this provides a strong foundation, we continue to review and refine our prioritisation processes. This is to ensure that our enforcement tools are used as effectively as possible and that prioritisation decisions maximise benefits for consumers and markets.

⁷ See our media release here: <https://www.comcom.govt.nz/news-and-media/news-and-events/2025/commerce-commission-to-file-proceedings-against-foodstuffs-north-island-and-gilmours-alleging-cartel-conduct/>