Competitive Neutrality: Evaluating the Competition Impact of Policy Proposals

Guidance for Policy Makers

December 2015

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí
Competition and Consumer Protection Commission

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Preface

The Competition and Consumer Protection Commission ('the CCPC') was formed in 2014, following the amalgamation of the Competition Authority and the National Consumer Agency. We are responsible for enforcing Irish and European competition and consumer law. Our mission is to make markets work better for consumers and businesses. We work to protect and strengthen competition, empower consumers to make informed decisions and protect them from harmful business practices. As part of our remit, we advise Government on how proposed legislation, regulations or policies could affect competition and consumers.

This document has been prepared under Action 93 of the Action Plan for Jobs ("APJ") 2014. As part of our commitment to the Action Plan for Jobs, we undertook to prepare Guidance for policymakers to help them to assess the competition impact of their proposals.

We are always willing to advise public authorities on how new policy proposals might affect competition and consumers. If you have any queries on the application of this Guidance or would like advice at any stage of policy development, we encourage you to contact us using the information provided below.

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Executive Summary

This Guidance is designed to assist policy makers who are assessing proposals which may have implications for competition. It aims to help you in evaluating such proposals by providing practical examples of how competition may be affected and setting out a checklist of questions which you can use to test for likely competition impacts.

Competition is good for consumers (including the State, where it buys goods and services). It is also good for businesses and the economy as a whole. It helps to drive down prices, stimulates productivity and innovation, and fosters economic growth and job creation. Your decisions can have significant implications for competition, and ultimately for consumers. The Guidance can help you to consider the competition impact of your proposals so that we can all reap the benefits of effective competition.

Government regulations, policies or administrative practices can inadvertently restrict competition by raising barriers to entry or by changing the nature or extent of competition between businesses. The Guidance provides a framework for assessing the competition effects of proposals which can help you to ensure that no unnecessary or excessive restrictions on competition are introduced or retained.

The Guidance builds on what you already know. Many of the core principles will be familiar to you from the range of existing Guidance already in use in the public sector, including Smart/Better Regulation Guidance, Regulatory Impact Assessments, State Aid Guidance and the Public Spending Code. The core messages set down in these documents remain relevant, in particular the need to ensure that any State-backed intervention is necessary, effective, proportionate, consistent, transparent and capable of being held to account.

While many policy proposals are already subject to some form of competition impact assessment, this is not always the case. Depending on the nature of your work, you may find that there are instances where you are not required to consider the potential impact of your proposals on competition. You may not have considered this relevant in particular cases, or may be uncertain how to carry out such an appraisal. This Guidance is intended to show that a competition assessment is both easy to do and worthwhile.

In some instances, policies may raise competition concerns not because of any shortcomings in their design or appraisal, but because of issues relating to their implementation. Criteria may have been put in place to minimise the displacement of existing businesses and prevent cross-subsidisation of commercial activities by 'social' funding. A competition assessment can help to strengthen the case for these criteria and can demonstrate the importance of ensuring that they are effectively enforced.

The Guidance discusses the concept of competitive neutrality. A policy intervention will be competitively neutral if it has no impact on competition. Such interventions are rare. In practice, most State-backed interventions will change the conditions of competition in a market place. Businesses often complain that they have been subjected to what they perceive as 'unfair competition' because their competitors have received some form of support which is not available to the complainant and which they claim puts them at a commercial disadvantage. The concept of 'unfair competition' lies at the heart of any discussion of competitive neutrality.

Competitive neutrality should be kept in mind when you are designing or implementing proposals. It represents the initial state of competition in a particular market, prior to your intervention.[1] Understanding how your policy affects competition, and how different businesses (both those already in operation and potential entrants) will be impacted, lies at the heart of competition impact appraisal.

Competition brings many real benefits for consumers, businesses and the economy. Any restrictions on competition thus come at a cost. Where the State intervenes in a market to achieve social goals however, it may not always be possible or appropriate to maintain competitive neutrality. It may be inevitable that some businesses are placed in a favourable position vis-à-vis others. In these circumstances, your goal may not be to create a 'level playing field' for all. You may instead be trying to ensure that any changes in competition which result from your intervention are necessary, proportionate and kept to

[1] There is no presumption here that the initial state of competition in a market is optimal. Intervention may be needed because competition is not working well for consumers, because there is no competition in the market or because there is no market at the time of the intervention.

a minimum, and that the overall net effect for consumers and for the economy is beneficial.

Competition impact assessment focuses on four questions which are expanded on and explained in Section 5 of this Guidance**. A competition checklist is provided in Appendix B.** You may find this useful as a practical tool to alert you to possible competition concerns. The four competition assessment questions to ask in respect of any policy intervention are:

Does the proposal:

a) Directly or indirectly limit the range or number of businesses which can provide a particular good or service?

b) Limit the ability of businesses to compete?

c) Limit the incentive of businesses to compete vigorously?

d) Limit the choices or information available to consumers?

If the answer to any of the above questions is **Yes**, the policy is likely to raise competition concerns. In these circumstances, you may want to consider whether there are alternative ways to meet your objectives, or whether the policy can be remodelled so as to minimise any restriction of competition.

1 Objective and Scope of this Guidance

1.1 This Guidance is designed to assist policy makers who are assessing proposals which may have direct or indirect implications for competition. It aims to help you in designing, evaluating and implementing such proposals by providing practical examples of how competition may be affected and setting out a checklist of questions which you can use to test for likely competition impacts.

1.2 The Guidance is of relevance to anyone working in Government departments and agencies, public bodies and implementing agencies involved in:

a) Formulating, evaluating or implementing public policy;

b) Developing State investment, grant or support schemes;

c) Administering schemes through local, community or charitable bodies;

d) Overseeing the provision of indirect or 'soft' economic advantages (for example, allowing a private business access to publicly owned land free of charge, or at a discounted rent).

1.3 Many forms of State intervention, notably those which involve legislative proposals, require a Regulatory Impact Assessment (RIA) which incorporates significant elements of competition assessment. Other proposals fall under the remit of sectoral regulators, where competition impact assessment may also be a familiar tool. If your work focusses primarily on these areas, you will already be familiar with much of the material contained here but may find it helpful to have it presented here in one Competition Assessment Manual.

1.4 If you are engaged in developing or implementing policies which do not require legislation or which involve, for example, the provision or administration of assistance through local community support schemes, you may not have been required to consider the potential impact of your proposals on competition and may be uncertain how to carry out such an appraisal. This Guidance is intended to show that a competition assessment is both easy to do and worthwhile.

1.5 The Guidance builds on what you already know. Many of the core principles will be familiar to you from the range of existing Guidance already in use in the public sector, including Smart/Better Regulation Guidance, Regulatory Impact Assessments, State Aid Guidance and the Public Spending Code (see Appendix A for further details of these). The core messages set down in existing Guidance remain relevant, in particular the need to ensure that any State-backed intervention is necessary, effective, proportionate, consistent, transparent and subject to accountability.

1.6 The Guidance complements existing guidance in use in the public sector by putting a particular focus on competition analysis and providing (in Appendix B) a practical competition checklist. You may find it particularly helpful if competition analysis is new to you, or is not part of your normal appraisal procedures. If preliminary analysis based on the questions set out in Section 5 of this Guidance indicates that a policy is likely to raise competition concerns, you may want to consider whether there are alternative ways to meet your objectives, or whether the policy can be remodelled so as to minimise any restriction of competition.

2 Why Competition Matters

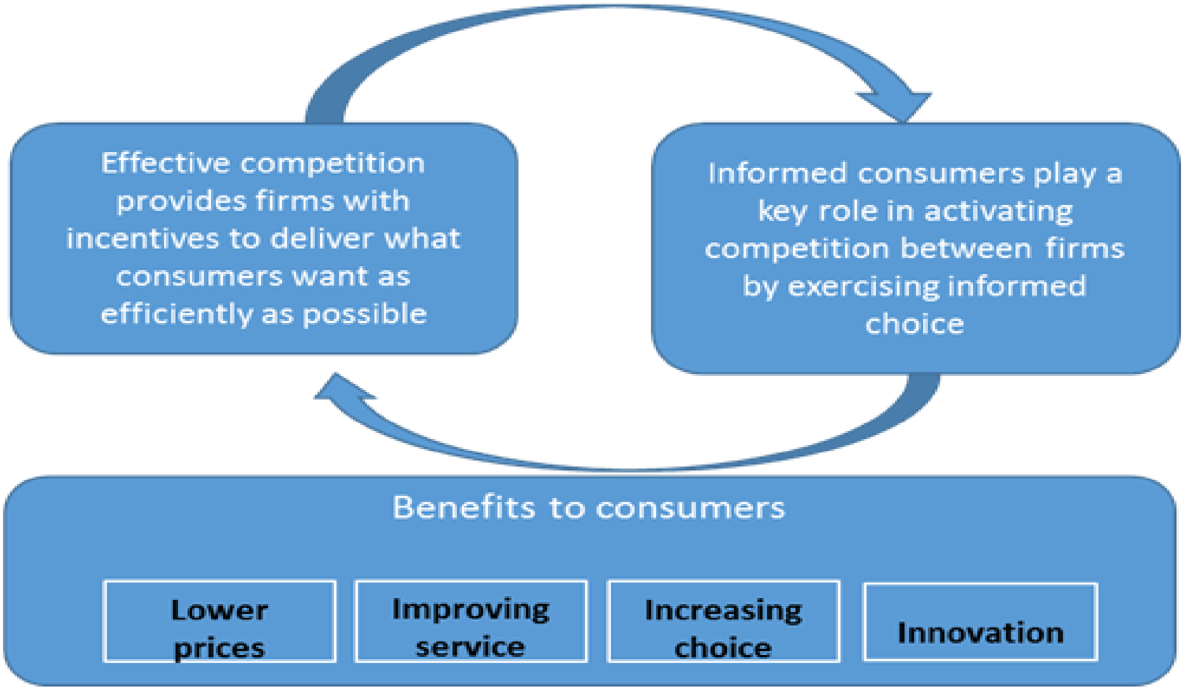
2.1 Your decisions about the policies which are introduced and how they are implemented can have significant implications for competition, and ultimately for consumers. Competition is a vital force for good in the economy. It benefits consumers (including the State, where it buys goods and services). It also benefits businesses and the economy as a whole. It helps to drive down prices, stimulates productivity and innovation, and fosters economic growth and job creation. Every effort should therefore be made to protect and promote the competitive process.

2.2 Competition is an important driver of innovation and dynamism. It forces businesses to constantly strive to improve. Effective competition fosters rivalry between businesses, encouraging them to compete for customers by delivering lower prices, higher quality, better products, more innovative services and greater choice to consumers.

2.3 Competition drives productivity in a number of ways. It acts as an important discipline on businesses, putting pressure on them to become more efficient. It ensures that the best businesses grow and prosper at the expense of less efficient businesses. It forces businesses to come up with new ways of keeping ahead of their rivals, by developing new products or services, new production processes or higher standards of customer service.

2.4 Consumers too have an important role to play in creating vigorous competition. Informed consumers increase competition between businesses and push them to deliver what they want. When both businesses and consumers drive the competitive process, a virtuous circle results which maximises the gains from competition. This is illustrated in Figure 1 below.

Figure 1: Virtuous Circle of Competition



Source: Based on *CMA Competition Impact Assessment Guidance* Part 2, page 37

2.5 When consumers benefit from competition, the economy does too. For example, when energy costs fall due to greater competition, the cost of doing business falls; this makes Irish businesses more competitive, which in turn supports long-term economic growth and job creation. Competition has a key role to play in ensuring that the Irish economy maintains and improves its competitiveness. It is therefore vital that you protect and promote competition in markets when making policy choices and decisions.

2.6 State interventions can restrict competition.[2] Removing unnecessary restraints on competition, or preventing the introduction of excessively restrictive policies, can help to ensure that Government policy supports competition and productivity, promotes economic growth and job creation and benefits consumers.

2.7 Competition policy is developed and implemented within a broader context which must take account of wider societal objectives. Competitive markets can be very

[2] State interventions can also work to promote competition. Examples include the deregulation of the airline industry, taxi sector and telecoms industry.

good at promoting consumer welfare, allocating resources efficiently and driving innovation. Market outcomes may sometimes need to be modified, however, to achieve other policy objectives such as ensuring universal access to services, facilitating income redistribution or promoting regional development.

2.8 There may be instances where the importance of ensuring effective competition is trumped by other policy objectives. Where this happens, it is essential that a competition impact assessment is carried out at an early stage in the policy planning process, so that any possible distortions of competition are recognised up-front and kept to a minimum. Section 5 of this Guidance explains how such an assessment may be conducted.

3 What is Competitive Neutrality?

3.1 The term 'Competitive Neutrality' is used here to describe a situation where a State-backed intervention or policy does not alter the conditions of competition between businesses. If the competitive conditions which existed in a particular market prior to your policy intervention remain unchanged, your action can be described as competitively neutral. In practice, this will be rare.

3.2 Internationally, the term competitive neutrality is typically applied to competition between State-Owned Enterprises ('SOEs') and private businesses. The key concern in this instance is to ensure that businesses are not placed at a competitive advantage (or disadvantage) simply by virtue of their ownership or control, and to ensure that SOEs are subject to the same laws, rules and incentives as private enterprises.[3] This Guidance focuses on a different dimension of competitive neutrality – it looks at how policy interventions can affect competition between different privately-owned businesses, impacting favourably on some and adversely affecting others.

3.3 In practice, most State-backed interventions will change the conditions of competition in a market place. Many interventions confer an advantage on one business to the detriment of another, altering the playing field and creating 'winners' and 'losers'. This Guidance outlines a number of questions which you should consider in evaluating such proposals.

3.4 The CCPC sometimes receives complaints from businesses which have been affected by State-backed interventions which, they claim, favour their

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3 The OECD has defined competitive neutrality as '*a regulatory framework within which public and private enterprises face the same set of rules and where no contact with the State brings competitive advantage to any market participant*' (OECD, *State Owned Enterprises and the Principle of Competitive Neutrality* 2009). Many countries are developing competitive neutrality policies which seek to ensure that Government-backed business activities which are in competition with private businesses do not have a competitive advantage (or disadvantage) simply by virtue of Government ownership or support. These policies are an adjunct to national competition policies. Their starting premise is that competitive neutrality is a good thing and the goal of policy makers is to ensure that it is achieved in practice. Developing comprehensive guidance for Irish policy makers on how to "level the playing field" between State owned enterprises and private businesses is outside the scope of this current work. We focus instead on competitive neutrality as it relates to competition between privately-owned businesses, some of which have may have received a competitive advantage (or disadvantage) by virtue of state-backed policy interventions.

competitors. The interventions take many different forms (grants, subsidies, restricted access to schemes etc.) and support can be channelled through a variety of different bodies, from Government departments to local Government bodies and a variety of State-supported and community organisations. The support essentially involves a form of State Aid, yet it lies outside the scope of European State Aid Rules because there is no effect on trade between Member States or because the amount of aid involved is too small to merit full scale appraisal at European level. In some instances, certain businesses may find that their ability to compete has been seriously undermined and that they have been placed at what they perceive as an 'unfair' disadvantage.

3.5 Competitive neutrality should be kept in mind when you are designing or implementing proposals. It represents the initial state of competition in a particular market, prior to your intervention. Understanding how your policy changes the nature or extent of competition, and how different businesses (both actual and potential) will be impacted, lies at the heart of competition impact appraisal.

3.6 Effective competition brings many real benefits for consumers, businesses and the economy (see Section 2). Any restrictions on competition thus come at a cost. Where the State intervenes in a market to achieve social goals however, it may not always be possible or appropriate to maintain competitive neutrality. It may be inevitable that some businesses are placed in a favourable position vis-à-vis others. In these circumstances, your goal may not be to create a level playing field for all, but rather to ensure that any changes in the conditions of competition resulting from your intervention are necessary, proportionate and kept to a minimum.

3.7 Failure to adequately consider the effects on competition can mean that the overall effect of policy interventions might not be fully appreciated and decisions may be made on the basis of incomplete information or analysis. It can result in unnecessary or avoidable impacts on competition, with efficient businesses being pushed out of the market while less efficient ones remain. Barriers to entry might be raised, preventing or discouraging new entrants from setting up. Jobs created in supported businesses may be offset by job losses in businesses elsewhere. Many of these unintended consequences can be anticipated and assessed by applying a competition checklist, as set out in Section 5 below.

3.8 Distortions to competition as a result of State-backed interventions are often not immediately visible. Once a scheme or policy is up and running, it can be very difficult to change. Markets also evolve over time and a policy which is justifiable at one time may no longer be appropriate at a later stage. State-backed interventions need to be regularly reviewed to ensure that the initial justification for intervening is still relevant and that the policy is not causing unnecessary or unanticipated distortions to competition.

3.9 These considerations underline the importance of carrying out a competition assessment at an early stage of the appraisal process and the need for regular reviews to ensure that the factors which merited intervention are still relevant.

4 Changing the Conditions of Competition: How Policies Affect Competitive Neutrality

4.1 Most of your proposals or policy interventions will have some impact on competition between businesses, whether those businesses are already operating in a market or are contemplating entering it. This section shows how your actions can affect competitive neutrality. We begin by considering a situation where a policy may have little or no effect on competition i.e. an intervention which is competitively neutral. We then move on to outline more typical scenarios where your intervention impacts on competition and you are faced with weighing up the likely implications of this for businesses, consumers and the overall economy.

A competitively neutral policy?

4.2 Businesses sometimes receive support to enable them to provide a socially beneficial service which would not be provided without State support, or to make goods or services available to groups which would not otherwise be able to avail of them. If the market is clearly not meeting a particular need, there will be no existing providers and therefore no existing competition. There is no possibility, in this situation, of affecting competition in the market and concerns about competitive neutrality do not arise – at least in the short term. Note however that, even in this situation, market conditions can change very quickly. There are many instances where goods or services which were once seen as 'uncommercial' or provided on a purely 'social' basis have developed into commercial businesses (consider, for example, the emergence of a strong market for the provision of elderly care in the home in recent years).

Example 1: Grant aiding of Community Crèches

The Community Childcare Subvention (CCS) scheme operated by the Department of Children and Youth Affairs provides funding to community/not for profit childcare services to enable them to provide quality childcare at reduced rates to disadvantaged and low-income working parents. The effect of the scheme was to create a new market for childcare/early childhood education in disadvantaged areas where children were not receiving the benefit of preschool education. There was to be no overlap with existing service providers. The children involved were not in the market for childcare (as their parents could not afford to pay for it). As originally conceived, this is an example of a case which may have been competitively neutral. State intervention was designed to create a new market with no spill-over between providers or purchasers. Private providers operated in an entirely separate market, therefore no competition issues arose (at least in the short term).

Key Features

- *Separate markets for public and private childcare*
- *No overlap between grant-aided and non grant-aided providers.*
- *Social policy meeting a need which was not previously supplied.*

Policies which affect competitive neutrality

4.3 In practice it is rare to find a case where State intervention does not impact on competition in some way. The examples below look at ways in which competition may be affected by policy interventions and highlight some of the issues which arise.

a) Changes in the nature of the market

4.4 Businesses which benefit from State-backed interventions often compete directly with other businesses which may not be able to avail of the same supports. This issue lies at the heart of competitive neutrality complaints. In some instances the problem arises because what was thought of as a new and entirely separate market turns out to be part of a wider market with existing (and potential) suppliers. In other cases, the policy intervention itself changes the marketplace, opening up new business opportunities and redefining the market.

Example 2: Early Childcare Education (ECCE) Scheme

In 2010 the Government introduced a year of free preschool education for all children aged 3-4 years. The State pays a capitation fee to participating playschools and day care services. The capitation fee is payable in respect of each eligible child enrolled. In return, participants provide a pre-school service free of charge to all children within the qualifying age for a given number of hours over a set period of weeks.

Parents can send their child to any registered ECCE preschool, whether community based or private. The introduction of the ECCE blurred the distinction between private preschools and community crèches. When the Government later increased investment in community crèches under the Community Childcare Subvention scheme ('CCS'), the CCPC received a large number of complaints from private crèche owners arguing that this was unfair and distortionary. They stated that, under the ECCE scheme, private crèches compete directly with community crèches for the same group of children. They complained that community crèches were able to offer better quality premises (due to their preferential access to capital grants) and/or face lower running costs (due to wage subvention under the Community Employment Scheme, lower commercial rates, etc.) and that this undermined their business.

The operation of the ECCE scheme alongside the CCS increased the risk that the overall policy could distort competition in the market for childcare services. Care needs to be taken in these situations to monitor the impact of policy interventions on an ongoing basis, recognising the indirect (and often unintended) impact on businesses which are not covered under the scheme.

b) Cross-subsidisation of commercial activities

4.5 Competitive neutrality issues often arise when a scheme or support which was designed to meet a particular need is extended beyond its original remit. This creates a number of problems, including:

a) The risk of displacement of existing private businesses

b) The risk of subvented bodies cross-subsidising their commercial activities when competing with private businesses.

Example 3: Aid granted for Community Services

Meals for the Elderly: A community organisation received grant aid to provide meals at its centre for elderly people who were unable to cater for themselves. The centre later opened its doors to the general public, thus placing itself in competition with commercial businesses. Local restaurants complained that they could not compete with the subsidised prices which the community centre was charging.

Community Laundry Services: The opening of a community laundry in a rural town resulted in a drop in business for existing private laundries. The community laundry secured funding to establish a service which would cater for the needs of pensioners, carers, elderly persons living alone and low income households. Funding criteria specified that the business must meet clear social objectives. Applicants had to show that they would not displace existing jobs or businesses. The community group stated that the laundry would satisfy an identified need which commercial operators were not meeting. It claimed it would operate in a niche market aimed at the elderly and that no displacement would occur.

Community Transport Schemes: A number of rural bus operators lost out on tenders for local Bus Eireann school runs. The tenders were won by an accessible community transport company, which was classified as not-for-profit and was in receipt of significant public funding. The funding criteria specified that grant aid should not be used to undercut commercial service providers and that any tenders for public service contracts should be made on the basis of full cost recovery. It also stated that any monies provided could only be used for the purposes for which they were approved (i.e. the provision of community transport).

Lessons learnt: Examination of the above complaints revealed that the criteria set down for funding these community initiatives appeared appropriate: they all specified that there should be no displacement of existing businesses and that social funding should not be used to cross-subsidise commercial activities. Concerns tended to centre on the adequacy and transparency of the mechanisms in place to ensure that these criteria were rigorously applied. In each case, the issue was whether the recipients were actually complying with the terms of their agreement and whether appropriate procedures were in place to ensure such compliance.

The cases highlight the need for ongoing review of supports, effective supervision and monitoring of aid, and transparent accounting procedures to ensure effective targeting and ring-fencing of aid. The latter issue is not always easily addressed. Given the small scale of many of the recipients of this type of aid, it may not be realistic or appropriate to insist that they adopt sophisticated (and potentially costly) accounting procedures which would allow them to track the allocation of every euro of State funds (thus dispelling definitively any concerns about cross-subsidisation). It is, however, essential that clear procedures are in place to investigate any complaints of cross-subsidisation and that any such investigations can draw on objective evidence (e.g. transparent accounts) to determine whether funds are being used for the purposes for which they were intended.

c) Protection of incumbents

4.6 Once a support scheme is in place, there is an incentive for beneficiaries of the scheme to keep new entrants out in order to protect their own incomes. Policy makers need to be alert to the danger of regulatory capture, whereby the interests of providers can come to take precedence over the interests of those whom the policy is designed to serve.

Example 4: Restriction of entry to State Schemes

The Government subsidises the provision of many services such as childcare (via the Early Childcare Education Scheme) and GP care for children under 6. In these cases, the service is provided free of charge to the recipient. Providers contract to deliver a specified service, for which they are paid an agreed fee.

It is not uncommon in these circumstances for pressure to arise to close the scheme to new providers. Existing providers will often argue that the market is 'over-supplied'. They may say that, if new businesses are allowed to offer their services, the viability of existing businesses will be threatened and the quality of the service being delivered will fall. This, they argue, will reduce the effectiveness of the scheme and prevent it from delivering on its objective. The situation is often complicated by the fact that the Government may have provided financial support to some or all of the existing providers and may therefore feel obliged to 'protect its investment'. The danger here is that the fortunes of providers can begin to be seen as more important than the outcome for those whom the scheme is intended to serve.

Even in situations where a market appears to have 'enough' suppliers, new businesses should be free to offer their services. New entrants are the life blood of any industry. They drive innovation and force existing businesses to keep on their toes. This in turn helps to drive down prices and improve the quality of the service provided.

Any decision to prevent new providers from offering their services clearly results in a major restriction of competition. It reduces the choices available to Government (as purchaser) and to the general public (as recipients of the service provided). It increases the power of existing providers and may ultimately lead to a deterioration in the quality of the service provided and/or pressure for higher prices to be paid. It prevents new businesses from establishing (because, where Government-backed services are available free-of-charge, it is unlikely that many businesses will be able to survive outside the scheme) and closes off opportunities for providers who may be perfectly competent and qualified to offer their services.

For a purchaser, excess supply is usually a good thing. In most markets, it drives competition, pushing down prices and/or forcing improvements in quality and innovation. Over time, the market adapts, with fewer businesses entering the market because of the poor returns available, better businesses continuing in operation (because they deliver what the customer wants, at a price they are prepared to pay) and weaker ones exiting. Accepting that not every provider can (or should) survive is a necessary part of a well-functioning market.

d) The impact of 'soft' supports

4.7 In some cases the support given to businesses takes the shape of 'soft' support. This may take a variety of forms, including allowing businesses to use public facilities on advantageous terms or conferring practical benefits on them by virtue of their association with a public body. The fact that this support is often indirect or informal means that its impact on existing businesses, or potential entrants, may be overlooked. Individual businesses may be granted a significant competitive advantage, sometimes unintentionally and without any process for evaluating whether this was necessary or appropriate.

Example 5: Use of School Premises for Commercial Preschool Activities.

Many national schools throughout the country allow private preschools to operate out of vacant rooms on their premises. From the schools' perspective, this may be a sensible use of available facilities. The on-site preschools benefit from the arrangement in a number of ways: co-location affords them high visibility with convenient access for parents who have older children attending the main school; some schools facilitate free advertising (allowing the preschool to send home flyers in older children's schoolbags); some over-subscribed schools actively promote the idea, or fail to challenge the perception, that children attending the on-site preschool will be given preferential access to the national school when they move on to 'big school' . On-site preschools may also not be subject to the same planning laws and commercial rates which apply to other local preschools.

The advantages gained by on-site preschools are not available to other preschools in the area which compete with them for business. In many cases however, there is no recognition of these advantages and no transparency in the procedures used to select the chosen preschool provider. Decisions are taken by local Boards of Management with no consistency at national level, and local providers are often not given an opportunity to tender for, or otherwise compete for, the position. There will often be no 'sunset clause' or review mechanism to determine who should be allowed to provide such services, and for how long.

Greater awareness of the competition effects of this type of 'soft' support would allow more informed decisions to be made which would take account of the likely knock-on effects on existing and potential providers.

e) Selective application of tax/regulatory reliefs

4.8 Tax and regulatory reliefs are often used to influence the incentives and behaviour of businesses in order to achieve wider social or economic objectives. When they are applied selectively, they can distort competition, sometimes with unanticipated consequences.

Example 6: Rate Relief for Pop-Up Shops

During the economic downturn, a number of city and town councils introduced initiatives to make use of empty commercial property in town centres by offering temporary low-cost space for the benefit of local communities, social enterprises and small businesses. The aim of the initiatives was to reduce the visual impact of empty properties, increase footfall in town centres and showcase empty properties to potential tenants. Businesses leasing the selected premises were not required to pay rates for the period of occupancy, which was typically expected to be of short duration (for example, in the run-up to Christmas).

The idea behind the initiative was understandable. It was met with resistance however from existing businesses, many of which were already struggling due to the recession. Businesses complained that they had to compete with these pop-ups, while effectively subsidising their costs via their own tax/rates payments. This conflict might have been avoided if the schemes had addressed any disproportionate advantages accruing to beneficiaries.

5 Assessing Competition Impact

5.1 The previous section has shown how State-backed interventions can have a significant impact on competition. This section sets out a framework to help you evaluate the competition impact of the measures you are seeking to develop or implement.

5.2 It was noted earlier (paragraph 1.3) that many policy proposals are already subject to some form of competition impact assessment. This, however, is not always the case. Depending on the nature of your work, you may find that there are instances where you are not required to consider the potential impact of your proposals on competition. You may not have considered this relevant or may be uncertain how to carry out such an appraisal.

5.3 In many cases where businesses complain to the CCPC about a lack of competitive neutrality or feel that they have been subjected to 'unfair competition', competition questions may have not been considered as part of the appraisal process, or an assessment of competition impact may have been inadvertently overlooked. By applying a Competition Checklist as described below, you can ensure that this does not happen.

The Competition Test

5.4 There are two main forces which help ensure effective competition in a market: (i) Ease of entry/exit and (ii) Rivalry. Competition impact assessment focuses on four questions which address different aspects of this entry/rivalry axis.

5.5 The OECD and the UK Competition and Markets Authority (CMA) have carried out extensive work in developing a competition test. [4] We have drawn on this here, adapting it to an Irish policy context. The four key questions which you should ask about any policy proposal are:

4 See CMA *Competition Assessment Guidelines,* Sept. 2015 (https://www.gov.uk/Government/publications/competition-impact-assessment-guidelines-for-policymakers) and OECD *Competition Assessment Toolkit* 2015 (www.oecd.org/competition/toolkit)

Does the proposal:

a) Directly or indirectly limit the range or number of businesses which can provide a particular good or service?

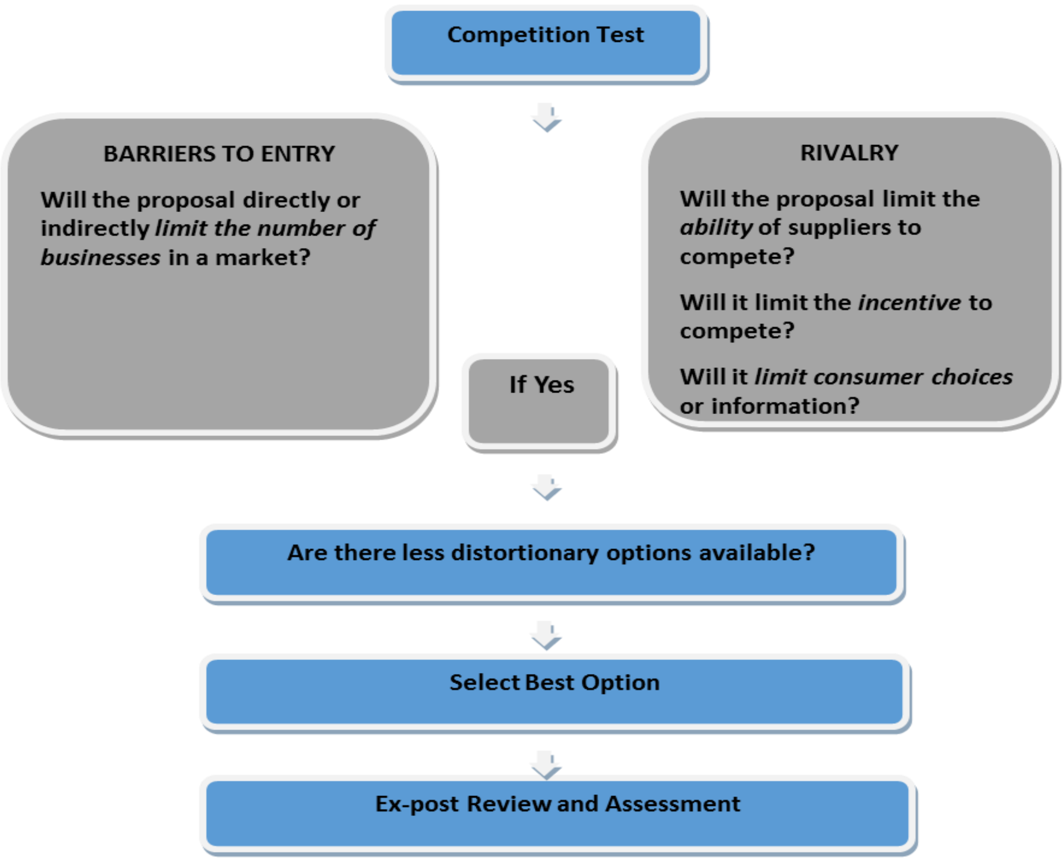
b) Limit the ability of businesses to compete?

c) Limit businesses' incentives to compete vigorously?

d) Limit the choices or information available to consumers?

5.6 If the answer to any of the above questions is **Yes**, you should consider carrying out a more detailed competition assessment as shown in Figure 2 below. The remainder of this section will help you to do this.

FIGURE 2: COMPETITION TEST



Four Competition Concerns

5.7 There are four main areas of concern from a competition perspective. If your proposal or policy measure has any of the following four effects, it is likely to restrict competition and you may wish to consider alternative options.

Concern 1: Limiting the number or range of businesses which can provide a particular good or service

The ability of businesses to enter a market is a fundamental requirement for effective competition: if businesses can't get into the market in the first place, they clearly cannot hope to compete there. Policy proposals must, therefore, be carefully assessed to see if they impose any restrictions on entry.

Policies that restrict the number or range of businesses in a sector are likely to severely restrict competition. The ability of businesses to enter a market in a timely manner, or even the threat of entry by new business, is central to how competitive a market is. New businesses may make the decision to enter a market because they have new ideas or better, more efficient, ways of operating. This offers further choice to consumers and creates incentives for existing businesses to improve their performance in order to avoid losing market share. The threat of entry by new business is a powerful competitive constraint. It encourages existing suppliers to remain efficient and constantly innovate. Similarly, the fact that existing businesses may be forced to exit the market if they are inefficient puts pressure on them to continuously adapt and provide good value products and services which meet customer needs.

A policy is likely to limit the number or range of suppliers if it does any of the following:

a) Fixes a limit (quota) on the number of businesses in a market.

5.8 Quantitative restrictions on entry (e.g. imposing a cap on the number of providers) impose a severe restriction on competition and should be avoided. This type of restriction is often introduced because of fears that 'excessive entry' will lead to oversupply, reduced profitability and a reduction in service quality or the collapse of the existing industry. Inevitably however, restricting entry in this way protects existing businesses at the expense of would-be entrants and consumers.

5.9 Restricting entry also increases the lobbying power of incumbents and transfers power from purchasers to providers. In the taxi sector, prior to deregulation, limits on the number of licences available resulted in long queues for taxis and helped to keep up the cost of taxi rides. Taxi licences traded for large sums of money, reflecting the monopoly rents earned by those who managed to secure one of the limited licences available. Deregulation of the taxi industry resulted in a major increase in the number of taxis on the roads, with greatly improved access for customers and the development of some degree of price competition below the regulated (maximum) price.

b) Limits the ability of some types of businesses to provide goods or services.

5.10 Regulations may stipulate that only certain businesses, or certain groups of professionals, can provide a particular service or function. For example, current Building Control Regulations stipulate that only registered architects, registered building surveyors and chartered engineers may certify building works. It is clearly vital that those certifying such works are competent to do so. Some restriction on the categories of authorised certifiers is thus inevitable and affords important protection to consumers.

5.11 Licences are often used as a means of ensuring that businesses have achieved a minimum level of competency and are fit to operate in a particular market. In many professions, such as law and accountancy, only individuals with specified qualifications are allowed to practice. These restrictions can protect consumers by ensuring they receive a minimum, consistent standard of service. It is important, however, that they do not impose restrictions beyond those necessary for consumer protection.

5.12 As a general principle, you should try to ensure that no unnecessary restrictions are placed on the pool of people eligible to offer a service. All those competent to provide a service should be allowed to do so. This will maximise the choice available to consumers/purchasers and help to ensure that competitive pressures operate effectively in the sector.

5.13 Regulations sometimes impose unnecessarily high quality standards, reducing consumer choice and forcing them to pay more than they otherwise would. In Ireland, for example, solicitors are the only professionals allowed to provide property conveyancing services. Many other countries allow trained conveyancers to offer their services to the public, often at a significantly lower cost than qualified solicitors. The Legal Services Regulation Bill 2011 provides that the new Legal Services Regulatory Authority shall prepare a report on the creation of a new profession of conveyancer in Ireland.

c) Significantly raises the cost of entry by new businesses.

5.14 Policies which raise the cost of entry can deter new businesses from setting up. You should be wary of introducing regulations that impact disproportionately on new businesses and favour incumbents. For example, a requirement that only drivers of wheelchair accessible vehicles could be issued with new taxi licences greatly increased the financial burden for new entrants into the taxi industry in Ireland in 2010 and placed them at a significant disadvantage compared to existing licence holders.

5.15 You may come under pressure to grant existing businesses an exemption from new regulations or to give them a temporary 'grace period' to allow them to adjust to new rules. Care should be taken not to discriminate against new entrants. For example, if new standards are to be introduced for the premises of persons contracted to provide services under Government schemes, the same standards should apply to all. A decision to 'phase in' the new standards by only applying them to new entrants would raise the cost of entry. Such a move would be likely to deter some people from setting up in business and would protect existing businesses at the expense of potential entrants and of consumers.

d) Grants exclusive rights for a business to provide goods or services.

5.16 The granting of an exclusive right to produce a good or provide a service creates a private monopoly and gives a firm significant market power. There is a danger that it may use this power to raise the price of the product over which it has exclusive rights or to leverage that power in related markets.

5.17 Historically, legal monopoly rights were granted to suppliers of public utilities such as electricity, natural gas, telecommunications, postal services or railways. Since the 1980s, deregulation of the utilities sectors has taken place throughout Europe and policy makers are rightly wary of awarding exclusive rights unless absolutely necessary. Where exclusive rights have been awarded, sectoral regulators have been put in place to ensure that the monopoly provider does not abuse its market power. There is extensive literature available elsewhere on this topic, so we do not expand on these issues here.

5.18 Instead of granting exclusive rights to a particular supplier, an alternative to consider is to distribute such rights through a competitive bidding process, as happens for example with tenders to provide National Lottery or Prize Bond services. Instead of competing in the market, businesses compete <u>for</u> the market for a limited time period. Care is needed to ensure that the length of licences, franchises or contracts is no longer than necessary, given the particular characteristics of the market under consideration.

e) Results in procurement from a single supplier or restricted group of suppliers.

5.19 Public sector organisations sometimes purchase all of their requirements from a single supplier or from a restricted group of suppliers. This may be because they find it easier to deal with one (or limited) supplier(s), or there may be efficiencies in the administration of the procurement process or lower costs from awarding a single contract. In some cases, the procurement process is set up in such a way that it is difficult for smaller companies to offer their services. The issues arising here are similar to those which arise in the granting of exclusive rights to supply (see 5.16 above). The benefits of restricted procurement processes should be weighed against the loss of competition and choice.

5.20 Procurement policies and processes should be drawn up in such a way as to invite the greatest possible number of bidders. They should avoid disproportionately favouring large suppliers. The size of the contract on offer may in itself limit the number of businesses able to bid. Unless there are significant economies of scale or scope, the option of breaking up contracts into a number of smaller contracts should be considered to encourage the greatest possible range of suppliers and reduce the advantages of existing suppliers. Another possibility is for businesses to join together to submit a combined bid. Care must be taken to ensure that any such bid does not infringe competition law. We have published a separate guide targeted at small and medium enterprises (SMEs) to help them comply with competition law when tendering as part of a consortium.[5]

f) Requires that potential entrants demonstrate that there is a "need" for an additional service before being permitted entry

5.21 Potential entrants should not be required to prove that there is a need for their services before they are permitted entry. Such a requirement favours incumbents and protects the status quo.

5.22 Under the 2001 Retail Planning Guidance, grocery retailers that wanted to open new or expand existing stores were required to demonstrate that their entry would not impact negatively on the businesses of existing grocery retailers, before they could be granted planning permission by local planning authorities. This had the effect of protecting existing retailers from normal competition and is likely to have blocked or limited new retailers from entering. This restriction was rescinded in 2012.

5.23 In 2013 the CCPC raised concerns about the conservative approach to stevedore licensing adopted by Dublin Port Company.[6] Applicants for general stevedore licences are required to demonstrate that they can attract new business to the port before Dublin Port Company will consider their application. There were also a limited number of self-handling licences available for port users. Dublin Port Company has gone some way towards addressing our concerns by issuing two

[5] http://www.ccpc.ie/consortium-bidding-guide

6 *Competition in the Irish Ports Sector,* Competition Authority, 2013 available at http://www.ccpc.ie/competition-irish-ports

new self-handling licences which will improve competition for stevedore services in Dublin Port.

ASSESSING IMPACT ON ENTRY: Summary
Q.1: Would the proposal limit the number or range of businesses which can provide a particular good or service?
This is likely to be the case if the proposal:
a) Fixes a limit (quota) on the number of businesses that can operate in a market. b) Limits the ability of some businesses to provide goods or services. c) Significantly raises the cost of entry by new businesses. d) Grants exclusive rights for a business to provide goods or services. e) Results in procurement from a single supplier or restricted group of suppliers. *f)* Requires that potential entrants demonstrate that there is a "need" for an additional service before being permitted entry.

5.24 The second factor necessary for effective competition (along with ease of market entry) is the ability of businesses to freely compete for buyers (a process known as rivalry). Businesses compete for customers in a variety of ways - by offering lower prices, better standards of service, better quality and choice of products, and by innovation in products and services. Policies should seek to support and encourage this process of rivalry, allowing the competitive process to deliver the best available outcome for consumers and for the economy.

5.25 Decisions taken by policy makers can impact on the levels of rivalry in a market. Policies may limit the ability of suppliers to compete, they may limit their incentive to compete or they may limit the choices or information available to consumers, resulting in less effective competition.

Concern 2: Limiting the ability of businesses to compete

A policy is likely to limit the ability of businesses to compete if it does any of the following:

a) Significantly raises costs of production for some businesses relative to others.

5.26 We noted earlier (paragraph 5.14) that regulations can act to deter or curtail entry by imposing costs on new entrants which are not applicable to existing businesses. For example, existing businesses may be offered a derogation from new rules or standards for a given time period to allow them to prepare for the new regime.

5.27 Regulations can also impact unevenly on existing businesses, with implications for competition. For example, regulations which impose new technologies or standards on businesses will benefit those businesses which have already adopted this technology or standard.

b) Limits the ability of businesses to set prices for their goods or services.

5.28 Regulations which impose minimum prices on certain goods or services directly constrain suppliers' ability to compete on price. Pressure to impose minimum prices frequently arises in situations where there has been intense price competition. In such a scenario, minimum price regulation is often portrayed as a way of protecting smaller suppliers from 'unfair' competition. It does so, however, at the expense of consumers who end up paying higher prices for their purchases.

5.29 Minimum prices are sometimes put forward as a way of ensuring that certain quality or health standards can be delivered, or to limit consumption of certain goods for public health reasons. The imposition of minimum prices to reduce consumption can, in fact, be counterproductive: if the effect of the minimum price is to raise the profits of retailers, this creates an incentive for retailers to sell more (not less) of the product in question. Consumers end up paying more for their purchases and the main beneficiaries of the policy are those businesses which are protected from price competition. Policy makers should consider whether there are alternative ways to achieve their objective (e.g. via an increase in taxation) which do not impose unnecessary costs on consumers.

5.30 Occasionally, proposals are put forward to impose a maximum price on certain goods or services. This may be portrayed as a means of protecting consumers from 'excessive' prices which could be charged by businesses with strong market power. There is a danger however that maximum prices can act a focal point, with businesses all charging in or around the maximum price and failing to compete aggressively at prices below this level.

c) Limits freedom of businesses to advertise or market their goods or services.

5.31 Businesses should be free to promote their goods and services and differentiate themselves from their rivals. The freedom to advertise is particularly important for new businesses seeking to establish themselves. As a general principle, advertising should be permitted providing it is fair, truthful and accurate. Where restrictions on advertising are proposed, they should go no further than is necessary to protect consumers from pressure to engage in harmful practices, such as excessive consumption of medication or the targeting of vulnerable groups (e.g. children).

d) Sets standards for product quality that provide an advantage to some businesses over others, or that are above the level that a well-informed customer would choose.

5.32 Consumers can benefit from the setting of standards if they act as a form of quality assurance which would otherwise be difficult to achieve. However, if the standards set are excessively high, they will limit consumer choice and prevent businesses from offering a lower quality (and probably lower cost) option. A better option might be to insist on clear product specifications, better labelling etc. so that consumers are in a position to make informed choices about the quality of the goods they are buying.

5.33 Unless there are clear safety reasons to impose a particular standard, it is generally preferable to allow consumers to decide for themselves which level of service/quality they wish to purchase. For example, if a regulation were to insist that airlines had to provide a hot meal to passengers on all flights, including on short-haul trips, this would raise the costs of flights to all passengers. Consumers would no longer have the option of choosing a cheaper flight with no in-flight meal.

5.34 If minimum standards are to be imposed in a particular industry, policy makers should try to ensure that businesses are free to, and have an incentive to, compete in how they choose to meet that standard. Rather than laying down a prescriptive set of rules which specify how to meet a given standard, the focus should be on defining the performance level required. This will mean that businesses retain a focus on innovation and provide maximum choice to consumers.

e) Limits the sales channels a business can use, or the geographic area in which a business can operate.

5.35 Policies which limit how goods or services can be supplied, or restrict the areas in which they can be supplied can limit innovation and/or reduce the number of businesses in an area, thus limiting competition. Businesses sometimes seek such restrictions in order to protect them from the market power of their suppliers.

5.36 In 1996, regulations[7] were introduced in Ireland which limited both the number of General Medical Services (GMS) contracts awarded to Community Pharmacists and also placed severe restrictions on the location of new pharmacies. Community Pharmacists were not permitted to set up within 250m of an existing pharmacy in urban areas, or within 5km in rural areas. The justification offered for this restriction was to preserve the viability of existing pharmacies. This restriction was abolished in 2002 following a series of recommendations from the Competition Authority aimed at opening up competition in the retail pharmacy sector. Since 2002, the number of community pharmacies in Ireland has risen by almost one-third, offering more choice and greater access to consumers.

Concern 3: Limiting the incentive of businesses to compete vigorously

A policy may reduce the incentive of businesses to compete if it does any of the following:

a) Requires or encourages the exchange of information on prices, costs, sales or outputs.

5.37 Policies which facilitate the exchange of commercially sensitive information between competitors create fertile grounds for concerted action, or even collusion, and can harm consumers. Such policies may be introduced with the intention of helping consumers but there is a danger that they will have the opposite effect. For example, in the case of mobile phone contracts, where

[7] SI 152/1996: Health (Community Pharmacy Contractor Agreement) Regulations, 1996

consumers are faced with a wide array of tariff choices, a proposal might be made to require phone companies to publish price information in order to make it easier for people to compare prices and to facilitate switching. To the extent that it does this, the policy may be pro-competitive. However, if businesses use the information to coordinate their behaviour and raise prices, the ultimate result will be detrimental for consumers.

5.38 Anticompetitive practices by businesses may breach competition law. If policy makers are concerned about the possible application of competition law, we would encourage them to contact the CCPC for advice before proceeding. We have published a separate guide to assist businesses and trade associations in complying with competition law.[8]

b) Creates a self-regulatory or co-regulatory regime.

5.39 In instances where representative associations have been allowed to set the rules of engagement for a particular sector or industry, the experience is that they tend to favour providers (and particularly existing providers) rather than consumers.

Concern 4: Limiting the choices or information available to consumers

5.40 Consumers can help to stimulate rivalry between businesses by making informed decisions which reward those businesses which best meet their demands. Active consumers will switch to businesses which best meet their needs, stimulating and reinforcing a virtuous circle of competition.

A policy may reduce rivalry between businesses if it does any of the following:

a) Limits the ability of customers to decide from whom they purchase.

5.41 In some cases it is difficult for consumers to make informed choices. A product may be inherently complex (e.g. certain financial services) or the purchase may be an ‘experience good’ where the value of the good can only be assessed after it has

[8] http://www.ccpc.ie/compliance-business/competition-law-%E2%80%93-how-does-it-apply-me-and-my-business

been bought (e.g. healthcare). In these cases, policy interventions may be necessary to help consumers to make appropriate decisions.

5.42 Consumers may be restricted in terms of where, or from whom, they can purchase certain goods or services. The restriction may be introduced to protect consumers in cases where it is felt that consumers require specialist advice at the point of sale. For example, most medications can only be supplied in pharmacies; complex financial products may only be sold by qualified professionals.

5.43 Care must be taken to ensure that the restriction on competition does not go further than is necessary to protect consumers. The Health Products Regulatory Authority is currently examining the classification of medicines to establish whether some of the medications which are only available on prescription could be made safely available to the public without prescription.

b) Raises switching costs

5.44 Policies may reduce the ability of customers to switch by increasing the costs of changing suppliers. For example, if consumers are required to provide more information than necessary when opening a bank account, this may deter some of them from changing banks and reduce competition between financial institutions.

c) Confuses customers by selectively framing choices or overloading them with information

5.45 The provision of more information does not always benefit consumers in terms of clarifying the choices they face. It can, in fact, do the opposite. Businesses may seek to confuse customers with multiple/complex tariffs, terminology/jargon which is difficult to understand or compare, or information overload (consider, for example, the health insurance and mobile phone sectors).

ASSESSING IMPACT ON RIVALRY: Summary

Q.2: Would the proposal limit the ability of businesses to compete?
This is likely to be the case if the proposal:
a) Significantly raises costs of production for some businesses relative to others (especially by treating existing operators differently from new entrants)
b) Limits businesses' ability to set prices for goods or services
c) Limits freedom of businesses to advertise or market their goods or services
d) Sets standards for product quality that provide an advantage to some businesses over others, or that are above the level that a well-informed customer would choose.
e) Limits the sales channels a business can use, or the geographic area in which a business can operate.

Q.3: Would the proposal limit the incentive of businesses to compete vigorously?
This is likely to be the case if the proposal:
a) Requires or encourages the exchange of information on prices, costs, sales or outputs.
b) Creates a self-regulatory or co-regulatory regime.

Q.4: Would the proposal limit the information or choices available to consumers?
This is likely to be the case if the proposal:
a) Limits the ability of customers to decide from whom they purchase.
b) Reduces the ability of customers to switch between suppliers by increasing the costs of changing suppliers.
c) Enables businesses to confuse customers with multiple/complex tariffs or information overload.

Selecting the Best Available Policy Option

5.46 If it becomes apparent, having considered the above questions, that a proposal is likely to cause a significant distortion of competition, you may want to consider whether a better option is available.

5.47 The first option to consider is to **Do Nothing**. Having assessed the likely impact of the proposal, including its impact on competition, the conclusion may be that it is not appropriate to introduce the new regulation or policy intervention. This does not necessarily mean abandoning the initial objective. It may be that the desired objective is attainable, for example, by more effective use of, or better enforcement of, regulations which are already in place. Alternatively, changes in administrative practices may be capable of bringing about the required outcome.

5.48 If intervention is still considered necessary and desirable, the challenge is to identify the least distortionary option available which will deliver the required results. In several of the above examples it was seen that alternative approaches might have achieved the desired outcome with less restriction of competition.

6 Policy Review and Sunset Clauses

6.1 Policies should be regularly reviewed to ensure that they are still necessary and appropriate. The routine inclusion of sunset clauses would ensure that policies did not remain in place for longer than required.

6.2 Where criteria for State funding indicate that funds must not be used to displace existing businesses or to cross-subsidise commercial activities, procedures should be put in place to allow for effective monitoring of compliance.

6.3 We hope that you have found this Guidance useful. If you have any queries about its application, or would like our advice on any matter arising, we encourage you to contact us at:

Competition and Consumer Protection Commission

Phone: 353 1 4025500

Email: advocacy@ccpc.ie

Website: www.ccpc.ie

A. Existing Guidance

<table>
<tr><td colspan="3">1. Public Spending Code (Department of Public Expenditure)
A set of rules and procedures that public bodies involved in spending public funds must apply to ensure that the best possible value-for-money is obtained whenever public money is being spent or invested.</td></tr>
<tr><td>Used By</td><td>Scope</td><td>Does it involve a Competition Analysis?</td></tr>
<tr><td>All Government Departments and public bodies and all bodies in receipt of public funding.</td><td>Applies to both Current and Capital expenditure.

The resources spent on appraisal are commensurate with the cost of projects (or proposals for current expenditure), and with the degree of complexity of the issues involved

<u>Current expenditure</u> includes;

a) New grant/subsidy schemes

b) Extension, renewal or re-orientation of existing programmes/schemes

c) New delivery mechanisms for existing services

d) New public services, state bodies or amalgamations of state bodies

e) Measures deriving from broad cross sectoral or framework policy initiatives</td><td>No.

However all public capital projects are appraised for displacement i.e. the extent to which the creation of a positive programme output in one area leads to a loss of output in another.</td></tr>
</table>

Cost Benefit Analysis (CBA) An economic appraisal tool for the comparison of costs and benefits associated with alternative approaches. The Public Spending Code revises and consolidates all previous Guidance for CBA in Ireland in one location.		
Used By	**Scope**	**Does it involve a Competition Analysis?**
Public servants who have been asked to conduct a CBA, managers of the appraisal process in Departments/Offices and evaluators.	CBA is a mandatory appraisal technique for projects costing more than €20m.	No. The possibility of the project displacing other economic activity is examined.
2. Regulatory Impact Assessment (RIA)		
All Government Departments and public bodies involved in preparing legislative proposals.	Applies to: a) Proposals for primary legislation involving changes to the regulatory framework b) Significant Statutory Instruments c) Proposals for EU Directives and significant EU Regulations d) Policy Review Groups bringing forward proposals for legislation	Yes. The framework for competition analysis which is set out in Section 5 of this report is broadly similar to that which is carried out under a RIA. Only applies to legislative proposals and so would not be applicable to many of the policy decisions and aid schemes that we examine in this Guidance.

4. State Aid Rules		
Used By	**Scope**	**Does it involve a Competition Analysis?**
Irish Government officials preparing applications for State Aid. European Commission officials responsible for assessing such applications.	Applies to any aid (above a specified level) which uses state resources to provide a selective advantage to a particular business or sector, and which distorts competition and affects trade between Member States.	Yes. The general principles applicable to assessing State Aid (necessity, proportionality, etc.) are all equally applicable to the issues under consideration in this Guidance. However the type of issues examined in this Guidance generally do not impact on trade between MS and fall well below the minimum spend thresholds.
5. OECD Competition Assessment Toolkit		
Used By	**Scope**	**Does it involve a Competition Analysis?**
Optional toolkit for policy makers designed to assist in competition analysis.	Potentially very widely applicable, but in practice likely to be used primarily by competition agencies.	Yes. The general approach to competition analysis adopted by the OECD is reflected in Section 5 of this Report.

6. Smart/Better Regulation Guidance		
Used By	**Scope**	**Does it involve a competition analysis?**
All public servants	Very widely applicable. The goal of Better Regulation is to ensure that policy is evidence-based, as far as possible, through stakeholder consultation and impact analysis; that regulation is introduced only when necessary, and that it has the intended effects, once implemented.	No Recognises the importance of competition but does not provide specific tools for assessing competition impact of proposals.

B. Competition Checklist

Q.1: Would the proposal limit the number or range of businesses which can provide a particular good or service?

This is likely to be the case if the proposal:

a) Fixes a limit (quota) on the number of businesses that can operate in a market.
b) Limits the ability of some businesses to provide goods or services.
c) Significantly raises the cost of entry by new businesses.
d) Grants exclusive rights for a business to provide goods or services.
e) Results in procurement from a single supplier or restricted group of suppliers.
f) Requires that potential entrants demonstrate that there is a "need" for an additional service before being permitted entry.

Q.2: Would the proposal limit the ability of businesses to compete?

This is likely to be the case if the proposal:

a) Significantly raises costs of production for some businesses relative to others (especially by treating existing operators differently from new entrants)
b) Limits businesses' ability to set prices for goods or services
c) Limits freedom of businesses to advertise or market their goods or services
d) Sets standards for product quality that provide an advantage to some businesses over others, or that are above the level that a well-informed customer would choose.
e) Limits the sales channels a business can use, or the geographic area in which a business can operate.

Q.3: Would the proposal limit the incentive of businesses to compete vigorously?

This is likely to be the case if the proposal:

a) Requires or encourages the exchange of information on prices, costs, sales or outputs.
b) Creates a self-regulatory or co-regulatory regime.

Q.4: Would the proposal limit the choices or information available to consumers?

This is likely to be the case if the proposal:

a) Limits the ability of customers to decide from whom they purchase.
b) Reduces the ability of customers to switch between suppliers by increasing the costs of changing suppliers.
c) Enables businesses to confuse customers with multiple tariffs or information overload.

C. References

Competition Impact Assessment: UK Competition and Markets Authority, September 2015

Competition Assessment Toolkit, Operational Manual: OECD, June 2015

Public Spending Code: Department of Public Expenditure and Reform. http://publicspendingcode.per.gov.ie/

Regulatory Impact Assessment Guidance 2009: http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guidance_June_2009.pdf

Regulating Better, (2004): White Paper, Department of An Taoiseach.

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission