

Competition Authority

Strategy Statement

2003-2005



Competition Authority

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1. Introduction

This Strategy Statement outlines the Authority's strategic priorities for the period 1 January 2003 to 31 December 2005 and identifies the major management and policy issues the Competition Authority expects to face over that period. The statement is presented against the backdrop of recent growth in the Authority's size, together with the enactment of the Competition Act 2002, which expanded the Authority's functions and responsibilities. (The role of competition policy, within the context of economic policy more generally, is summarised in Box 1.)

Box 1: Competition and economic policy

Historically, competition considerations have not been prominent in Irish economic policy. More recently, however, and particularly in a European environment where national macro-economic policy discretion is constrained, there is increasing recognition that competition policy, properly implemented, can deliver benefits in terms of increased trade, lower prices to consumers and greater productivity growth over time. This view is based on firm foundations of economic policy analysis and is further supported by a growing number of examples, such as liberalisation of air travel and telecommunications.

Competition policy concentrates on microeconomic issues (i.e. on particular sectors or markets, in order to improve consumer welfare through the efficient allocation of resources). Competition policy does not provide fast or simple solutions to macro-economic problems such as high inflationary pressures, short run capacity constraints, or the immediate impact on prices and output from changes in exchange rates.

Nevertheless, competition policy, can contribute over time to economic performance, particularly in relation to market regulation. While a competitive private sector is vital to sustainable economic growth, the public sector, through its influence on the structural and regulatory environment in which firms operate, is also important. Government policy and actions can contribute to, or indeed can hinder, competition and thereby affect economic growth, employment and citizens' welfare. Accordingly the Competition Authority considers that public sector activity should contribute to, or at least be neutral in its effect on, competition. The public sector should only restrict competition where there are clear demonstrable benefits from doing so and where these benefits outweigh the harm caused to consumers by restricting competition.

2. Mission Statement and High-Level Goals

The Authority's mission is to ensure that competition works well for consumers throughout the Irish economy; i.e. that markets can increase consumer welfare and consumer choice, through efficient pricing, innovation, and greater product quality and variety. (The benefits to consumers from competition are described in more detail in Box 2.)

In order to implement its mission, the Authority will ensure that its actions reflect the following core professional values:

- diligence, intellectual rigour and achieving results;
- ethical standards and impartiality; and
- openness, accountability and customer focus.¹

Box 2: Benefits to consumers from competition

In individual markets, consumers benefit from competition through downward pressure on prices as suppliers compete for customers (i.e. price competition means that, at any point in time, consumers pay lower prices than would be the case in the absence of competition). In addition, non-price competition increases the welfare of consumers over time as firms compete to better meet consumer needs by increasing the range and quality of products available, and through innovation.

By contrast, monopolies and cartels almost always have negative consequences for consumers. In either case, the price paid by consumers is greater than would be the case in a competitive market. Furthermore, monopolies and cartels impose barriers to entry to potential competitors and also inhibit innovation and consumer choice. All these factors contribute to a lessening in consumer welfare.

At a societal or economy-wide level, competition benefits consumers through its broader positive effects. For example, competing firms must produce goods and services efficiently, which reduces waste and frees up resources for use in the production of other goods and services. More broadly, competition in the economy encourages and promotes enterprise and efficiency and supports non-inflationary growth through the incentive to improve productivity, which is essential to sustainable long-term growth and higher standards of living.

¹ A customer in this context refers to individuals and organisations that come into direct contact with the authority (e.g. complainants). In a more general sense, the Authority serves, or acts on behalf of, a broader set of stakeholders (i.e. consumers, the vast majority of whom will have no direct contact with the Authority).

The Authority's high-level goals are to:

- ensure the fullest possible enforcement of and compliance with competition law;
- promote competition by studying and analysing cases/markets where competition is absent or restricted and recommending change;
- raise public awareness and understanding of the benefits of competition;
- provide an effective and timely service to international best practice standards; and
- participate actively in the international development of competition policy.

3. Authority Structure and Staff

Members

The Authority is structured into five divisions, each headed by a Member, as described in Table 1².

Table 1: Structure of the Authority

Division	Functions	Director
Chairman's office	Coordination, administrative services, public relations and external/international representation	John Fingleton
Advocacy	Study, analysis and advocacy of competition in markets which may not be working well for consumers	Declan Purcell
Cartel enforcement	Investigation and prosecution of and enforcement against hard-core cartels under Section 4	Terry Calvani ³
Mergers	Notifications, studies, merger referrals and merger control	Terry Calvani
Monopoly enforcement	Investigations and enforcement in abuse of dominance cases and for non-cartel (horizontal and vertical) agreements under Sections 4 and 5	Paul Gorecki

Staff

In addition to the Chairman and Members, the Authority has sanction to employ 47 staff, who are recruited from a variety of backgrounds including law, economics, forensic investigation and public administration.

A staff development programme addresses training needs and the Authority also actively encourages staff to attend internal and external training courses, including relevant third-level courses.

² An on-line annex to this Strategy Statement describes the structure in detail and gives the names of all staff in the Authority (www.tca.ie). Full contact details for the different divisions of the Authority are also available (www.tca.ie/contactlist.html).

³ Mr Calvani will direct the Mergers Division pending the appointment of an additional member, to replace former member Ms Isolde Goggin who resigned on 31 December 2002 to become a Commissioner at the Commission for Communications Regulation. The Authority anticipates that an appointment will be made during the first half of 2003.

Advisory panel

A panel, first established in October 2001, advises the Authority on legal, policy, management and strategic issues such as, for example, preparing for the Competition Act 2002 and the modernisation of European competition policy⁴. The Members of the current panel, who will sit for a period of two years, are Gerald Fitzgerald, Gerard Hogan, Frances Ruane and John Travers.

4. The Authority's Role and Functions

The Authority's operational functions are outlined below.

Enforcement

Credible enforcement against anti-competitive behaviour is important to maintaining an environment in which markets benefit consumers. Prosecution of offenders has an "exemplary" effect, which demonstrates to business and consumers the unacceptability of anti-competitive behaviour.

Successful prosecution depends on rigorous investigation. The Authority has a number of investigative mechanisms available to it, including the power to search premises and summons people to make statements under oath, and the "whistle-blower" immunity programme for cartels. (The various civil and criminal sanctions specified in the Act are summarised in Box 4 and Table 2.)

Hard-core cartels (i.e. price fixing or market sharing, as defined in Section 4 of the Act) are particularly serious offences and are subject to severe criminal sanctions including possible maximum prison sentences of five years⁵. Criminal investigations of cartels are detailed and time-consuming, partly because cartels typically involve a criminal conspiracy among many separate parties and also because of the high standard of proof that pertains in criminal trials. (Box 3 summarises the features of hard-core cartels and the Authority's immunity programme.) Investigations can take a year or more between the initial work and the decision by the Authority to bring proceedings or send a file to the Director of Public Prosecutions (DPP).

⁴ The Panel has no executive role and does not discuss any individual enforcement cases before the Authority. Further details are available on the Authority's website (www.tca.ie).

⁵ The five-year maximum sentence is significant, as it makes participation in a cartel an "arrestable" offence. Although likely to be rare in practice, this means that people suspected of hard-core cartel offences can be arrested by gardaí and held for questioning in gardaí premises.

Box 3: Hard-core cartels and the immunity programme

Hard-core cartels involve agreements between suppliers in order to maintain a price higher than would obtain under competitive conditions. Typically, cartels operate by excluding competition, either by geographically dividing up a market into local monopolies, within which the cartel member can charge a monopoly price, or by cartel members supplying within the same geographical area agreeing to set a price and to not undercut (i.e. compete with) one another.

The Authority's immunity programme provides a means to break the secrecy surrounding cartel agreements. In essence, the first member of a cartel who "blows the whistle" (i.e. informs the Authority of the existence of a cartel) can seek immunity from subsequent prosecution arising from Authority investigation. However, in order to benefit from immunity, the whistle-blower must:

- desist from continued participation in the cartel;
- not alert other cartel members that he or she has sought immunity;
- cooperate fully with the Authority's investigation; and
- not be the cartel "ring-leader" (i.e. the prime mover in maintaining and operating the cartel).

Failure to comply fully with Authority investigations can lead to the revocation of immunity.

Breaches of Section 5 (i.e. concerning the abuse of monopoly or otherwise dominant positions) are subject to civil remedies and summary fines, as listed in Table 2. In addition to these sanctions, Section 14 of the Competition Act 2002 provides that firms guilty of abusing a monopoly position may be subject to divestiture (i.e. the breaking up of a firm through the sale of assets). These divestiture powers are a new and very significant enforcement mechanism which strengthen the Authority's position in addressing abuses of monopoly or dominant positions.

In the past, the most frequent outcome, particularly in those instances where the Authority has been prepared to go to court, has been a negotiated solution whereby the party against which a complaint has been levelled agrees to change its practice(s). While out-of-court settlements successfully address particular cases of monopoly behaviour, there are also benefits to be gained, in particular greater clarity of law, from cases going to court.

Accordingly, over the 2003-2005 period, the Authority anticipates that there will be a greater likelihood than in the past of litigating cases where appropriate. In addition, as an alternative to the creation of public precedent through court judgement, the Authority intends to publicise settlements, either in full or in the most salient parts.

Box 4: Criminal and civil sanctions

Civil actions have the effect of controlling the actions of firms and/or individuals (i.e. an injunction prevents an action before it occurs, and a declaration stops an action from recurring once it has occurred).

Criminal sanctions additionally involve the imposition of penalties (i.e. fines and/or imprisonment). Summary criminal offences are tried in the District Court by a judge alone. More serious (i.e. indictable) offences are tried before a judge and jury in the Central Criminal Court.

As set out below in Table 2, the Competition Act provides for civil and criminal remedies against breaches of Section 4 (cartel offences) and Section 5 (monopoly offences). The table shows the specific penalties available under civil and criminal law, whether it is the Authority or the Director of Public Prosecutions (DPP) that brings the case to court, and whether the sanction applies to all breaches of Sections 4 and 5 or is more restricted to hard-core cartels. For example, as indicated below, whereas all offences are subject to civil remedies and criminal fines, hard-core cartel offences are also subject to imprisonment (either with or without the imposition of fines).

The Competition Act 2002 also makes provision for private prosecution, by parties directly affected by the alleged monopoly or cartel practice.

Table 2: Penalties under the Competition Act

Offence	Prosecuting Party	Court	Sanction	Specific Penalty
All Section 4 and 5 cases	Authority	Civil	Injunction	Prevent action
	Authority	Civil	Declaration	Halt action
	Authority	Criminal ⁶	Summary fines	€3,000 maximum
Hard-core cartels	Authority	Criminal	Summary fines	€3,000 maximum
	Authority	Criminal	Summary prison	Maximum 6 months
	DPP	Criminal	Indictable fines	€4,000,000 ⁷
	DPP	Criminal	Indictable prison	Maximum 5 years

Merger regulation

The Competition Act 2002 transferred the merger control function from the Minister for Enterprise, Trade and Employment to the Authority, effective from 1 January 2003. For individual cases, the Authority may (i) permit the merger to go ahead, (ii) permit it subject to conditions or (iii) forbid it. In determining a merger, the Authority uses

⁶ Section 14 of the Competition Act 2002 provides for additional sanction by way of divestiture (i.e. the breaking up of a company or firm guilty of abusing a monopoly or dominant position).

⁷ Or 10% of turnover for the financial year ending in the 12 months prior to conviction, whichever is the greater.

a substantial lessening of competition (SLC) test. The one exception to this rule is media mergers, where the Minister retains the right to apply a public interest test after the Authority has ruled on competition criteria. This right is asymmetric. The Minister can block, or impose conditions on, a media merger approved by the Authority. The Minister cannot, however, approve a media merger that has been disallowed by the Authority on competition grounds. (The rationale for regulating mergers is summarised in Box 5.)

Box 5: Why regulate mergers?

Mergers⁸ are an important mechanism by which industry structure (the number, size and distribution of firms) changes over time. Mergers have important consequences for competition and consumers. Firms may merge to exploit economies of scale, reduce the prices of goods to consumers, increase quality and innovation, and thereby better meet the needs of consumers. In such cases, mergers will be welfare-enhancing. However, it is useful to distinguish between welfare-enhancing effects of mergers and market power-enhancing effects of mergers, where the merged firm can increase prices to consumers and has less incentive to innovate or to increase quality. Such an outcome would not be beneficial to consumer welfare. There is no simple rule for assessing the economic costs and/or benefits of mergers; each case needs to be assessed on its merits and particular circumstances.

Advocacy

Competition advocacy refers to activities that promote competition through non-enforcement mechanisms. Advocacy has two broad elements: (i) provision of policy advice to government and (ii) championing competition more widely to the general public. Advocacy is fundamental to the achievement of the Authority's mission, particularly when, as in the case of Ireland, there exist many regulations and practices that restrict competition. These range from restrictions specific to particular markets or industries (e.g. specific barriers to entry or limits on consumer choice) to more general and subtle forms (e.g. planning laws and processes that may slow down capacity expansion and/or deter entry across a range of markets).

The Competition Act 2002 considerably strengthened and enlarged the Authority's advocacy role. In addition to the existing power to study and analyse competition matters, the Act empowers the Authority to:

- advise the government and ministers regarding the implications for competition in markets for goods and services of proposals for legislation, including statutory instruments;
- advise public authorities generally on issues concerning competition;
- identify and comment on constraints imposed by any enactment or legislative practice on the operation of competition in the economy;
- and carry on such activities as it considers appropriate so as to inform the public about issues concerning competition.

⁸ The term 'merger' is used in this Strategy Statement to cover all activities that involve the joining together of separate organisational entities.

Policy advice

The Authority advises the government about the implications for competition in markets arising from government policy proposals. The Authority also advises on the pro- or anti-competition implications of actual or proposed practices in any given industry or professional sector. (Box 6 identifies sectoral regulators with which the Authority has agreements.)

Regulations that restrict competition may sometimes be necessary for the achievement of other public policy objectives. However, this is by no means always the case. Arguably, as a policy instrument, regulation to limit competition has been heavily overused in the past. The Authority considers that restriction of competition, and its accompanying benefits, should be proportionate to the objective in question. Moreover, allowing restrictive regulations in one sector can undermine enforcement more generally by encouraging other sectors to seek similar protective treatment. In many cases, regulations purporting to benefit consumers actually protect producers and service providers against competition, thereby penalising consumers, with no countervailing benefits. The prevalence of such regulation in Ireland was recognised by the OECD in 2001 in its review, *Regulatory Reform in Ireland*.

Box 6: Competition and sector regulation

In addition to the Competition Authority, which has a general competition mandate, there are, in Ireland and in other countries, a variety of sectoral regulators responsible for particular markets or industries. Sectoral regulators are generally appointed in industries where there is, or was, a natural or legal monopoly. The responsibilities of sector-specific regulators generally include licensing, dispute resolution with respect to access and interconnection charges, and setting price caps in certain areas.

The case for a regulatory regime for industries such as gas, electricity, telecommunications and transport arises because an incumbent firm might abuse its market power by charging excessively high prices for its output, by refusing access to essential facilities to its competitors, or by using its market power in other ways to harm competitors and prevent, restrict or distort competition in the market.

The Competition Authority has formal arrangements in place for liaising with the principal sectoral regulators: the Broadcasting Commission of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation and the Commission for Communications Regulation. The purpose of these arrangements is to promote competition in such markets and, in particular, to facilitate cooperation, avoid duplication and ensure consistency of approach between the Authority and sector regulators.

Championing competition

Raising public awareness and understanding more generally of the benefits of competition, and the costs of lack of competition, is an essential component of the Authority's advocacy work. A particular challenge is to ensure that consumers understand how factors that improve competition, such as new entry, can yield gains to them personally. In this regard, individual cases with tangible positive personal experiences can act as powerful evidence of the benefits of competition.

In summary, public awareness and understanding are important for several reasons:

- As a public enforcer, the Authority is mandated to act in the public interest and the validity and legitimacy of its public role will be enhanced to the extent that citizens are informed about, and supportive of, competition.
- Awareness of competition law is essential for widespread compliance. For example, while large firms typically can afford specific compliance programmes designed by their lawyers, this is less likely to be the case for smaller and medium-sized enterprises (SMEs), for whom compliance may be enhanced by general public information programmes as well as targeted ones.
- Understanding the effects and benefits of competition can encourage support for the Authority's work in practical ways (e.g. by bringing relevant matters to the attention of the Authority or more generally assisting the development of competition as an instrument of economic policy).

5. Significant Developments in 2003-2005 and Beyond

A number of significant developments outside the immediate control of the Authority can be expected to have implications for the Authority over the 2003-2005 period. These include, but are not limited to, the following two international developments⁹:

- modernisation of competition policy (i.e. the reform of Regulation 17/62); and
- the internationalisation of competition policy.

Modernisation of competition policy

Towards the end of November 2002, a new Council regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty was adopted. The new regulation will become effective on 1 May 2004 and will replace regulation 17/62.

⁹ Other domestic and foreign events could have an impact on the Authority's operations, such as possible major changes in the domestic economic and policy environment, or implications arising out of the Constitutional Convention on Europe. While acknowledging the potential impact of these events, they are not elaborated upon in this Strategy Statement.

Hence, by virtue of the above decision, the 2003-2005 period will see the introduction of “modernisation”, whereby EU Member States take the primary responsibility for enforcing European competition law within their own territories. This is a significant responsibility, both in terms of implications for resources and in terms of effecting change in areas of Ireland’s economy where there are competition concerns.

While the full impact of modernisation is unclear at the present time (i.e. prior to 2003), it will undoubtedly affect the Authority. For example, at present it is unclear how the Commission’s dual powers to investigate and to make judicial decisions will be allocated within Ireland, although it is likely that they will be split between the Authority and the courts. It is also not clear how, or whether, sanctions similar to those in European law will be introduced.

Internationalisation of competition policy

Box 7: International linkages

While new ideas and innovations can be generated domestically, the rest of the world provides an important source of improvements to ‘best practice’. Ireland has, through linkages to Europe, the US and other parts of the world, the opportunity to benefit from the expertise of others. In addition, international organisations provide an excellent opportunity for Ireland to share its experience and expertise with others. This is also as true for other sectors of society and the economy as it is for competition policy.

With particular reference to competition policy, knowledge and information concerning best practice can be obtained directly from national competition authorities and/or through a number of international forums. The International Competition Network (ICN)¹⁰, formed at the end of 2001, provides competition authorities with a network for addressing practical antitrust enforcement and policy issues. The Authority joined the ICN in December 2001, was represented at its first meeting in Naples in 2002, and maintains an active interest and participation in its activities. In addition, the Authority will continue to participate in the annual International Cartel Workshop, at which enforcement officials from around the world come together to discuss techniques and enforcement strategies towards hard-core cartels. The Competition Committee of the OECD also facilitates detailed work on best practice and peer review of competition policy, while the EU DG Competition meetings provide an excellent forum for discussion and development of competition policy.

By maintaining international links, the Authority is able to share and benefit from the insights and experiences of others, both in terms of policy development and of operational practices (e.g. investigative and enforcement techniques).

¹⁰ Refer to www.internationalcompetitionnetwork.org for further information on the ICN.

The trend towards greater integration of the global economy has increased the internationalisation of economic policy, including competition policy. Internationalisation takes a number of forms, including: (i) policy dialogue, emphasising the importance of consumer welfare as the centrepiece of competition policy and enforcement; (ii) increasing consistency between countries in the application of competition law (e.g. through merger notification guidelines developed by the International Competition Network); and (iii) greater international cooperation in the investigation and prosecution of anticompetitive actions which impact across national boundaries. One important outcome of greater internationalisation of competition policy will be a lessening in the regulatory and compliance costs to businesses that operate in more than one jurisdiction and, ultimately, a more competitive international business environment, which will benefit consumers.

6. Strategic Goals

The Authority's high-level strategic goals listed on page 2, together with the significant developments listed in section 5, provide the backdrop to its more specific goals, listed below.

Goal 1: *Ensure the fullest possible enforcement of and compliance with competition law*

The Competition Act 2002 provides for strong sanctions against anti-competitive behaviour. The credibility of the new legislation will be greatly enhanced by cases being successfully prosecuted and sentences imposed. To this end, the Authority has enhanced its investigative capabilities and anticipates bringing cases to court, either on its own account or through the DPP.

The Authority enforces the Competition Act through:

- the investigation and prosecution of alleged breaches of Sections 4 and 5 of the Act; and
- the control of proposed mergers (under the authority set out in Sections 16-28 of the Competition Act 2002).

Investigation and enforcement of breaches of Sections 4 and 5

Investigation

Optimal enforcement requires prioritisation of the Authority's resources to identify and investigate the most egregious breaches and to allocate resources accordingly.

Over the period of this Strategy Statement, the Authority will:

- continue to improve its investigative functions;
- investigate alleged breaches, selected in order of priority, and allocate resources accordingly;

- develop team-based investigations availing of economic, legal and forensic investigative expertise;
- use the powers and investigative tools at its disposal, including the cartel immunity programme;
- examine and evaluate new or alternative methods for identifying anti-competitive practices and the feasibility of implementing such methods; and
- work with the Gardaí in the conduct of investigations, training and computer forensics.

Prosecution

The Authority seeks to maintain high professional standards in its interactions with the courts and with the DPP, in order to successfully bring cases to trial.

Over the period of this Strategy Statement, the Authority will:

- ensure the most appropriate outcome from investigations of alleged breaches of Sections 4 and 5;
- improve its ability to obtain injunctions, including at short notice, where this is the most appropriate remedy;
- improve its ability to bring criminal cases on its own account or through sending files to the DPP;
- litigate more Section 5 cases, where appropriate, in order to contribute to clearer case law; and
- vigorously enforce the law in relation to mergers that fall below the notification threshold, but which are anti-competitive.

Compliance with Sections 4 and 5

The Authority recognises that “prevention is better than cure”; compliance with the law is a preferable and less costly alternative to enforcement after the law has been broken. Informing and educating the business community and the general public about the provisions the Competition Act 2002 is an important means of encouraging compliance.

Over the period of this Strategy Statement, the Authority will:

- disseminate guidelines to the business community as to how the provisions of the Act may be complied with;
- publish notices providing guidance on particular types of behaviour;
- issue statutory declarations; and
- consult with business and consumers to determine where greater information is needed.

EU enforcement

The Commission can investigate and make findings in relation to breaches of Articles 81 and 82 of the Treaty of Rome, upon which Sections 4 and 5 of the Competition Act 2002 are based.

Over the period of this Strategy Statement, the Authority will:

- actively participate in advisory committee meetings, on matters relating to Articles 81 and 82 and mergers;
- act, as appropriate, as rapporteur at hearings;
- assist the Commission with investigations in Ireland; and
- implement the modernisation of Regulation 17 and the networking of EU National Competition Authorities.

Merger control

The merger control function was transferred from the DETE to the Authority on 1 January 2003.

Over the period of this Strategy Statement, the Authority will:

- maintain and develop expertise in the economic and legal analysis of the effects of mergers on competition;
- develop and disseminate information on the procedures and analytical frameworks used by the Authority in regulating mergers,
- ensure the provision of a timely regime of merger control; and
- subject to statutory constraints, be available on an informal basis for discussion and identification of apparent or potential competition issues arising from proposed mergers before notifications are filed.

Goal 2: Promote competition in markets where competition is absent or restricted

The Authority is mandated to provide advice to Ministers and governmental organisations (i.e. departments and agencies, regulators, undertakings and representative bodies) on situations where competition is absent or restricted, and where the enforcement of Sections 4 and 5 cannot provide a remedy. For example, the Authority will highlight instances where regulations impose restrictions on competition and, in particular, have a disproportionate negative impact on competition relative to the actual, potential or claimed benefits.

The Authority undertakes studies, either formally in response to a request from the Minister, or less formally through on-going monitoring and analysis. The Authority also has a mandate to ensure that State organisations take account of the impact on competition of government policy and/or administrative practices.

Market studies

Over the period of this Strategy Statement, the Authority will:

- undertake any studies requested by the Minister;
- on its own initiative, undertake studies in order to:
 - identify markets where competition does not appear to work well for consumers and where this is not easily explained, either by State restrictions or breaches of competition law;
 - where competition is being introduced into former monopoly markets, identify and propose legislative measures that will create a suitable environment for competition, in order to benefit the consumer;
 - develop an overview of competition across sectors; and
- identify and comment on constraints imposed by enactments or administrative practices on the operation of competition within the economy.

Interactions with government bodies

Over the period of this Strategy Statement, the Authority will:

- maintain ongoing relationships to advise government organisations in order to build a consensus for enhancing competition in sectors where studies have revealed problems;
- interact on an ongoing basis with sectoral regulators, Oireachtas Committees, government commissions and review groups, and other bodies that develop and implement regulatory policy;
- participate in government committees, commissions, etc., addressing competition matters in specific sectors; and
- maintain ongoing relationships with the appropriate authorities to assess the case for restrictions on competition in areas such as safety, health and financial stability.

Policy review and implementation

Over the period of this Strategy Statement, the Authority will:

- take all appropriate actions domestically and internationally to support the regulatory reform process, with a view to implementing the recommendations of the OECD review Regulatory Reform in Ireland, including active participation in the Department of the Taoiseach-led High-Level Group on Regulation;
- annually review developments in markets where State restrictions on competition have been identified by the Authority, or other agencies e.g. the OECD, including an update on institutional developments which may affect the quality of regulation and review of developments abroad relevant to the Irish situation; and
- ensure that the perspective of the Competition Authority is well represented in any review of EU directives or national legislation or regulation in areas such as telecommunications, energy and transport.

Goal 3: *Raise awareness and understanding of the benefits of competition*

The Authority seeks to understand, influence and respond to public views about competition, including views that question the existence or magnitude of the benefits of competition. Over the period of this Strategy Statement, the Authority will maintain a strategy to champion competition in order to maximise the impact of the Authority's work and support a positive public profile for it. Responding to and, where possible and appropriate, influencing public opinion is important in establishing a public environment that encourages competition, encourages compliance with the law and supports the legitimacy of the Authority's advocacy and enforcement functions.

Over the period of this Strategy Statement, the Authority will:

- publish material regarding its enforcement, regulatory and advocacy functions, wherever possible (subject, of course, to any legal constraints pertaining to particular cases);
- maintain its website as the leading Irish public information source about competition issues;
- articulate the macro-economic benefits that arise in terms of productivity growth and counter-inflationary pressure from competition policy intervention generally;
- critically examine the arguments of those who represent producers that gain from restrictions on competition;
- organise and/or participate in public conferences on competition issues;
- speak at seminars and other meetings on competition policy topics; and
- monitor public understanding of competition policy in order to inform and better target the Authority's championing of competition.

Goal 4: *Provide an effective and timely and efficient service*

The Authority's immediate customers are the individuals and groups with whom it has direct contact, i.e. complainants, firms and individuals under investigation for breaches of Sections 4 and 5, firms that have given notification of proposed mergers, as well as elected representatives, lawyers, civil servants and journalists. The provision of an efficient and timely service to each of these groups is dependent on the retention of good staff and the maintenance of a high-quality work environment.

Customer service

Over the period of this Strategy Statement, the Authority will:

- maintain and, where possible, improve its responsiveness to and interaction with customers;
- develop, implement and update a customer service charter; and
- ensure that its website is up to date and relevant to customers and that it meets web accessibility guidelines.

Staff retention

Over the period of this Strategy Statement, the Authority will:

- seek to continue to attract highly skilled and motivated individuals to work for the Authority;
- conduct staff induction training and integrate new staff through active mentoring and teamwork; and
- maintain a comprehensive staff development programme by which training needs, appropriate courses and on-the-job training solutions can be identified.

Work environment

Over the period of this Strategy Statement, the Authority will:

- ensure that adequate office space is provided for all inputs and functions and that the physical office environment complements the Authority's work and the reasonable needs of staff;
- continue to evaluate and develop its internal management and communication systems to ensure that resource allocation within the Authority correctly reflects competition policy priorities and is responsive to changes in priorities;
- seek to have greater control over technological choices and support;
- work closely with the Department of Enterprise, Trade and Employment on issues related to resources and services; and
- discharge the Authority's obligations under other legislation regarding areas such as employment, ethics in public office and the Freedom of Information Act.

Efficiency

All the Authority's strategic goals are underpinned by the managerial goal of managing the Authority's resources efficiently.

Over the period of this Strategy Statement, the Authority will:

- prioritise its actions and activities in order of their impact on achieving the Authority's strategic goals; and
- manage its available resources accordingly so that the desired actions and activities are carried out in a cost-effective manner.

Goal 5: *International Development of Competition Policy*

It is important for countries to be aware of, and to participate in, international developments concerning competition. This is particularly the case for small trading countries integrated into the world economy, such as Ireland. Accordingly, the Authority monitors, contributes to and learns from international developments in competition policy.

Over the period of this Strategy Statement, the Authority will:

- actively participate in international competition forums, particularly the DG Competition meetings of the European Commission, the Competition Committee of the OECD, the European Competition Authorities (ECA) and the International Competition Network (ICN);
- participate in and contribute to EU horizontal rule-making at Commission level, together with the Department of Enterprise, Trade and Employment;
- participate in EU policy-making on directives and regulations, via Council and advisory committees;
- attend, and present papers to, relevant international conferences and seminars;
- maintain ongoing relationships with other national competition authorities;
- second staff to best-practice national competition authorities and invite visitors from best-practice national competition authorities to the Authority; and
- participate in international peer reviews and other benchmarking exercises.

7. Critical Success Factors

The performance of the Authority will be critically affected by a variety of factors including the Authority's institutional arrangements with the DETE, the availability and management of resources, the legal process (in relation to prosecutions) and the policy environment in which the Authority operates.

Staff and resources

The following factors affect the Authority's performance:

- Staff – Achieving the Authority's strategic goals depends critically on the Authority being fully staffed, with a balanced complement of expertise, skills and experience in law, economics, forensic investigation and public administration. Filling vacancies is a big challenge and maintaining a full or near-full complement of staff, minimising staff turnover and reducing as much as possible the time taken to fill vacancies all contribute to the effective operation of the Authority. (Box 8 highlights the importance of managing the Authority's increased staff numbers and its increased range of responsibilities).

- **Technology** – Maintaining up-to-date and secure IT systems is critical to the Authority's performance, including its responsibility to ensure that sensitive and confidential information is held securely. The ability to make policy choices in this area and shape the future technological development of the Authority would represent a significant improvement in the management of resources.
- **Office Accommodation** – The Authority's office accommodation is currently sub-optimal. Office space is relatively crowded and non-contiguous, with inadequate heating and ventilation. Space is lacking for core inputs, library materials, secure storage, a reception area, meetings and communal space.
- **Budgeted Resources** – The ability of the Authority to secure sufficient resources is critical for meeting the objectives set out in this statement, particularly in relation to the merger control function. More generally, the Authority's non-pay budget is relatively low. In recent years this has not been a problem, due to savings on labour costs from staff vacancies which have enabled the funding of non-pay expenses. However, as the point approaches when all vacancies are filled, the non-pay budget will increasingly become a critical constraint on the range and effectiveness of the Authority.

Box 8: Enhancing the Authority's internal capacity and competence in administering the Competition Act 2002

The Competition Act 2002 strengthened the Competition Authority's role and mandate with respect to all its functions (relative to previous legislation). In addition, the Authority's staff numbers increased in 2002. Both the new legislation and the increase in staff numbers provide challenges and opportunities for the Authority. It will be vital that the additional resources are managed in a manner that strengthens the Authority's capacity to attain its strategic goals, thereby ultimately enhancing competition and consumer welfare. It will be important to foster an environment where new staff feel encouraged and empowered to contribute, including, for example, suggesting improvements and innovations in the way the Authority operates. It will also be important for the Authority to establish an environment that encourages teamwork, particularly given the range of professional skills and backgrounds amongst the Authority's staff.

DETE – Authority relationship

The Competition Act 2002 has increased the Authority's independence from other government bodies: the Authority is independent in its decisions as to when and how to investigate breaches of Sections 4 and 5; the Authority is the sole decision-maker in relation to mergers (with the exception of media mergers); and the Authority has an independent advocacy mandate. In addition, the Authority has autonomy on various administrative matters (e.g. staff recruitment processes).

The Authority is not, however, a completely stand-alone entity. The Department of Enterprise, Trade and Employment (DETE) continues to provide many essential services, including personnel management, all computer and IT services, office accommodation and related services such as cleaning and security. The Department also provides funding for the Authority via an annual grant and negotiates with the Department of Finance on the Authority's behalf. The Authority's relationship with the Department of Enterprise, Trade and Employment is critical to the ongoing effectiveness of the Authority.

Public awareness

While, in some instances, the Authority initiates its own investigations, in the majority of cases breaches of the Act are detected through complaints made by the public. Complaints from the public are the raw material, the cornerstone, of enforcement activity. It is vitally important, therefore, that members of the public are aware of the Authority as an avenue to address anti-competitive behaviour and that, in turn, the Authority is able to provide a high-quality service in dealing with complaints.

Prosecution processes

Achieving the Authority's enforcement mission depends not only on its own performance but also, to a significant degree, on elements outside the Authority's control, such as the speed and effectiveness of the legal process. Prosecution of competition law is complex and data-intensive. Consequently, court cases are typically long and require extensive discovery in advance and expert evidence in court. For serious criminal cases, the Authority sends a file to the Director of Public Prosecutions (DPP), who is charged with bringing all prosecutions on indictment. The ability of the Authority to successfully bring prosecutions depends critically on the DPP being sufficiently resourced to bring these complex white-collar cases to trial.

Policy environment

Political will and support for competition policy is crucial for the credibility and effectiveness of competition policy and enforcement. Historically, in Ireland competition policy was seen as a marginal add-on in the arsenal of policy instruments. In large part, this was because of relatively weak knowledge of, and inexperience with, competition policy as a policy instrument, and because the benefits from competition are less immediately tangible than other instruments such as, for example, monetary and exchange rate policy. More recently, however, critical bottlenecks and the inflexibility of monopolised and restricted markets have focused greater attention on competition policy.

8. Performance Indicators

Establishing performance measures for enforcement and policy advice agencies is not a straightforward task. For example, a low number of prosecutions could be interpreted positively (as evidence of an informed business community and strong self-compliance with the law). Alternatively, a low number of prosecutions could be a negative indicator of inefficient enforcement. Further information would be necessary to come to an informed judgement. Policy advice indicators are similarly difficult. Advice may be provided to a high professional standard, but this does not mean that the advice will, or should, necessarily be taken. Hence quantitative measures will not provide an unambiguous indicator of the Authority's performance. Given the above caveats, the Authority's performance can be measured by the following indicators.

- Successful enforcement of competition law, as measured by:
 - the number of civil and criminal cases investigated and brought and favourable judgements, decisions and convictions secured;
 - the number of cases settled in a non-adversarial manner (i.e. out of court);
 - the number of immunity applications;
 - the case law precedents established; and
 - the number of merger and declaration decisions made (and which are not subject to successful appeal).
- Successful advancement of competition in regulated markets, as measured by:
 - the level of competition in newly liberalised markets;
 - the extent to which new legislation, economic policy and regulatory decisions incorporate the Authority's views;
 - specific progress towards deregulation in areas such as liquor licensing, pharmacies and transport;
 - the number, quality and influence of formal studies completed; and
 - the level of sustained follow-up of Authority studies.
- Increasing public awareness of the benefits of competition, as measured by:
 - the number, quality and accessibility of publications, speeches, conferences and other publications;
 - the extent and quality of media coverage of the Authority's work;
 - the public profile of the Authority;
 - the level of public awareness and understanding of competition issues;
 - the existence of 'external ambassadors' for competition policy; and
 - user sessions on the web page.

- Involvement in international competition policy development, as measured by:
 - the level and regularity of attendance at international meetings;
 - the level and quality of participation in steering and working groups;
 - the frequency of requests to provide speeches and papers to international meetings;
 - the frequency and quality of written and oral contributions outside of and within meetings; and
 - the tangible lessons drawn from international 'best practice'.

- Quality of work and inputs as measured by:
 - staff retention and satisfaction;
 - customer service levels and feedback;
 - performance of the Authority in international fora and peer reviews;
 - international recognition of the Authority's work; and
 - timeliness in reaching considered decisions.



Competition Authority