



# Strategy Statement 2006 ↘ 2008



**The Competition Authority**  
An tÚdarás Iomaíochta

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# 1 INTRODUCTION

- 1.1 Since 2002 the Competition Authority has undergone a period of profound change. New legislation, the Competition Act, 2002, was enacted by the Oireachtas which gives the Competition Authority new powers and increases the penalties for anti-competitive behaviour. Staff numbers at the Competition Authority have significantly increased in line with a larger budget. In terms of output and impact the Competition Authority has had its most successful period in its history. The Competition Authority has established a successful merger review regime as well as having increased activity and new achievements in the enforcement of competition law. The Competition Authority's advocacy work continues to shed light on a wide range of areas where competition is absent, limited or restricted.
- 1.2 However these changes have taken place alongside a legacy of an anti-competitive and anti-consumer culture. Public policies to drive competition such as law enforcement, merger review and regulatory reform have historically been weak in Ireland. Not surprisingly, in the absence of effective competition law, many markets in Ireland became highly concentrated via mergers and other private practices. In addition the State created many monopolies and protected many sectors of the economy from competition.
- 1.3 This Strategy Statement outlines the next stage in the development of the Competition Authority. It is a strategic plan for the period 1 January 2006 to 31 December 2008. While the Competition Authority looks forward to continued incremental expansion, the focus of its strategy is no longer on building capacity, but rather about discharging its functions in the most timely, efficient and effective way possible. As a 'maturing' agency the Competition Authority has moved away from building up 'inputs' to improving the quantity and quality of its 'outputs' and their delivery.
- 1.4 This Strategy Statement outlines the Competition Authority's strategic plan in three stages:
- ✘ **Section 2** addresses the question - '**What are the Competition Authority's objectives?**' Accordingly, the section begins with a statement of the Competition Authority's Mission Statement and Goals. This section also includes a description of the Competition Authority's role, as conferred by statute.
  - ✘ **Section 3** addresses the question - '**What factors, internal or external, affect how the Competition Authority might achieve its objectives?**' This section considers first the internal environment and accordingly describes the Competition Authority's structure and resources. The external environment is then considered and anticipated future developments are outlined. Critical Success Factors are then described.
  - ✘ **Section 4** addresses the question - '**Given the environmental factors that the Competition Authority operates in, how best might the Competition Authority achieve its objectives?**' This section outlines the Competition Authority's specific strategies for the period 2006 - 2008. Key Performance Indicators designed to allow the Competition Authority to assess how successful its strategies are in achieving its Goals, are also described.

## Mission Statement

“To ensure that competition works for the benefit of consumers throughout the Irish economy”

## 2 ETHOS, OBJECTIVES & RESPONSIBILITIES

### Mission Statement

2.1 The Competition Authority's mission is:

**“To ensure that competition works for the benefit of consumers throughout the Irish economy”**

- 2.2 Making competition work for the benefit of consumers means ensuring that markets can increase consumer welfare and consumer choice, through efficient pricing, innovation, and greater product quality and variety. Since businesses are often 'consumers' themselves, making competition work well for consumers also means making competition work well for businesses.
- 2.3 While the Competition Authority as an organisation has changed greatly since the publication of its 2003-2005 Strategy Statement, its Mission Statement has not. Whether it is through performing its enforcement, merger review or advocacy functions, the Competition Authority's overriding ethos has remained unchanged and retains consumers at its core.
- 2.4 This Mission Statement is a broad philosophy that steers the Competition Authority's decision-making. The Mission Statement plays three important roles. First, it provides direction. By specifying the fundamental principles on which strategies must be based the Mission Statement influences all of the Competition Authority's decisions. Second, the Mission Statement provides legitimisation. By specifying and communicating a clear philosophy that underlies the work of the Competition Authority, stakeholders have a benchmark against which to judge the organisation. Third, a Mission Statement provides motivation. The Mission Statement goes beyond external legitimisation, by giving a focus to the work of the Competition Authority.

### Goals

2.5 The Competition Authority Goals are as follows:

- Goal 1:** Ensure the fullest possible compliance with competition law;
- Goal 2:** Promote competition where it is absent, limited or restricted;
- Goal 3:** Raise awareness and understanding of the benefits of competition among policy makers, businesses and consumers;
- Goal 4:** Provide an effective and timely service to stakeholders, both internal and external; and,
- Goal 5:** Fulfill international obligations as well as contribute to the development of, and convergence to, international best practice in competition policy and enforcement.

### Explanatory Note 1: Competition and the consumer

The aim of competition law is to make markets work for the benefit of consumers. The Competition Act, 2002, makes specific kinds of business behaviour illegal and this law is enforced by the Competition Authority. Effective competition directly benefits consumers as firms try to win consumers' business through lower prices, improved quality and/or better design.

Competition law makes it illegal for firms to fix prices or divide up customers between them. In the case of dominant firms, it is illegal for them to abuse their market power by charging excessive prices or engaging in other 'unfair' trading practices. The Competition Authority also tries to ensure that markets work for the benefit of consumers by advocating for the removal of anti-consumer laws and regulations.

Competition law compliments consumer policy by ensuring that consumers have confidence in the market place and that they are empowered to make informed decisions about the purchases they make. Specific consumer protection laws prevent misleading advertising, the sale of unsafe products, misleading price information or the imposition of unfair contract terms. These laws are designed to protect consumers against deception and fraud. Consumer policy aims to improve the well-being of consumers by ensuring that they are aware of their rights and have appropriate recourse should those rights be abused.

Ireland has a legacy of decades of anti-consumer policy and culture. This legacy is frequently driven by public and private restrictions on competition in what the OECD has termed "underlying policy biases of producer over consumer interests". The Government commitment in 2005 to create a National Consumer Agency is a significant step in providing a strong and effective consumer voice in Ireland. This initiative combined with the new powers and extra resources of the Competition Authority will increase the benefits to Irish consumers of a modern and dynamic economy.

## The Competition Authority's Roles and Functions

- 2.6 The Competition Authority's Mission Statement and Goals are derived in large part from the functions of the Competition Authority as set out in the Competition Act, 2002. These functions include the enforcement of competition law, the review of mergers and competition advocacy.

### Enforcement

- 2.7 Essential to the Competition Authority's Mission Statement is credible enforcement of the law against anti-competitive practices. The Competition Act, 2002, gives the Competition Authority power to investigate breaches of competition law and where necessary to bring cases before the courts. The Competition Authority may itself act as plaintiff in civil proceedings, and may prosecute criminal cases summarily in the District Court. Prosecutions of serious criminal offences must, however, be brought by the Director of Public Prosecutions (DPP).
- 2.8 The Competition Authority is responsible for enforcing Sections 4 and 5 of the Competition Act, 2002, together with Articles 81 and 82 of the Treaty of Rome. Sections 6 and 7 of the Competition Act provide that breaches of Sections 4 and 5 and of Articles 81 and 82 are criminal offences. Section 4 and Article 81 deal with anti-competitive agreements. These could be either between firms that are competitors or between firms that are not competitors, such as distributors and retailers. Section 5 and Article 82 deal with anti-competitive behaviour by dominant firms, i.e., firms with sufficient economic strength to inhibit competition in their respective market.

### Anti-competitive agreements

- 2.9 Cartels are generally recognised as the most serious form of anti-competitive behaviour and the Competition Authority has identified cartel investigations as its top priority. Most cartels fall into one of two categories:
- ✘ Price-fixing cartels aim to ensure that their members are able to charge higher prices for specific goods or services than they could if they competed with each other; and,
  - ✘ Market-sharing cartels are where members agree among themselves to divide up the market or decide who should get a particular contract. Again this enables them to charge higher prices than if they competed.
- 2.10 The Competition Authority may investigate an alleged cartel either on foot of a complaint or on its own initiative. In the case of a cartel, the Competition Authority usually seeks to have the case dealt with in the criminal courts. Where sufficient evidence is obtained, the Competition Authority will submit a file to the DPP with a recommendation that the parties involved be prosecuted. The Competition Authority may also bring a summary prosecution in the District Court.



## Explanatory Note 2: Competition supports Irish enterprise and economic growth

Historically, competition considerations have not been a prominent part of Irish economic policy. More recently there is increasing recognition that competition policy, if properly implemented, can deliver economic benefits in terms of increased trade, lower prices to consumers and economic growth. Using effective competition policy has become even more important following the introduction of the single currency because Irish macro-economic discretion has been significantly constrained.

One of the most important impacts of effective and impartial competition in domestic markets is the improved ability of Irish businesses to compete in the international marketplace. Irish firms that successfully compete domestically are better able to compete internationally in order to grow and sustain their share of global markets. As Ireland is a small open economy which is highly dependent on exports, Irish firms that increase their share of global markets make a substantial contribution to sustainable economic growth.

Competition has two effects on the behaviour of firms. The first and most visible is that firms competing for business become more responsive to consumer needs by reducing prices as well as providing enhanced service and variety. The second, less visible effect is that competitive pressures drive firms to cut their costs by finding more efficient and productive ways of doing business. Lower costs and greater efficiency bring further price cuts for consumers, but importantly also mean higher productivity growth for the economy as a whole.

A key component of international competitiveness for Irish-based enterprise is the cost of doing business in Ireland. Firms that conduct their business in global markets are exposed to the intense pressures of international competition. In contrast many of the key services which affect the performance of exporting firms are 'sheltered' from these international pressures. Sheltered sectors of the Irish economy including professional services and utilities are sheltered from international competition by a combination of regulation, geography and the nature of the services. More vigorous competition in the sheltered sectors would ensure a lower cost base and therefore a more competitive position for those firms competing in the global economy. An important part of the Competition Authority's work has been investigating these sheltered sectors and arguing for more competition in order to ensure that Ireland's competitive position is maximised.

Competition policy is like a coin with cost on one side and productivity on the other. It delivers a double return: greater benefits for consumers, but also greater efficiency in production, which benefits the economy as a whole and improves Ireland's competitiveness.

- 2.11 Criminal investigations of cartels are complex, detailed and time-consuming. This is partly because cartels typically involve a conspiracy among many separate parties and also because of the high standard of proof that pertains to criminal trials. The Competition Act, 2002, increased the Competition Authority's investigative powers to allow it to search private dwellings and to seize original documents. The Competition Authority, in conjunction with the DPP, operates a 'Criminal Cartel Immunity Programme.'
- 2.12 The Competition Authority is also responsible for the investigation of non-hardcore anti-competitive agreements. Not all competitors that harm competition are prosecuted in the criminal courts. Agreements between competitors on research & development, group purchasing and standard-setting may have been entered into for reasons other than the elimination of competition, but may nonetheless breach Section 4 of the Competition Act, 2002, because of their anticompetitive effect.
- 2.13 The Competition Authority also examines agreements between firms that are not competitors but are related through a chain of distribution (i.e. 'vertical agreements') such as those between manufacturers and distributors, distributors and retailers, licensors and licensees and franchisors and franchisees. Non-hardcore cartel agreements between competitors and agreements between firms that are not competitors are normally resolved by civil proceedings in the High Court.

### **Abuse of Dominance**

- 2.14 Section 5 of the Competition Act, 2002, and Article 82 of the Treaty of Rome prohibit the abuse of a 'dominant position' by one or more firms. A position of dominance does not itself breach the Competition Act. For a breach to occur, a dominant undertaking must abuse its market position. Breaches of Section 5 or Article 82 are normally brought before the civil, rather than the criminal, courts by the Competition Authority. 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).

### Explanatory Note 3: The Criminal Cartel Immunity Programme

Participation in a cartel is a criminal offence under the Competition Act, 2002. Those found guilty of a cartel offence may face penalties of up to five years in jail and or €4m or 10% of turnover in fines. The Criminal Cartel Immunity Programme offers the opportunity for anybody involved in a cartel to avoid prosecution. This is a joint programme run by the Director of Public Prosecutions (DPP) and the Competition Authority.

Cartels result in consumers having to pay more than they should for goods and services. Typically, cartels operate by suppressing competition, either by geographically dividing up a market into local monopolies or by cartel members agreeing to set a price and agreeing not to undercut one another.

Hard-core cartels are difficult to detect and prosecute successfully since they are, by their very nature, conspiratorial. The Criminal Cartel Immunity Programme provides a means to break the secrecy surrounding cartel agreements. The Competition Authority will recommend immunity to the DPP if the applicant is the first person to come forward and cooperate fully with an investigation. In order to benefit from immunity, the immunity applicant must:

- ✘ Desist from continued participation in the cartel;
- ✘ Not alert other cartel members that he/she has sought immunity;
- ✘ Cooperate fully with the Competition 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 Competition Authority investigations can lead to the loss of immunity.

For more details see the Competition Authority's website [www.tca.ie/immunity.html](http://www.tca.ie/immunity.html) or call **087 7631378**. This line operates between the hours of 10am and 4pm Monday to Friday (except public or bank holidays).

## Merger Review

- 2.15 Mergers can be beneficial for both business and consumers by promoting efficiency and reducing unnecessary costs. Mergers are also a key instrument that firms often use to restructure in order to compete and survive. However, consolidation in an industry may have adverse effects on competition thereby harming consumers. It is vital that an effective and timely merger enforcement regime allows beneficial mergers that promote an efficient and dynamic economy, while prohibiting mergers that lessen competition and harm consumers.
- 2.16 Under the Competition Act, 2002, the Competition Authority is the body responsible for conducting reviews of proposed mergers. Companies and individuals that are parties to a merger over a certain threshold (as per Section 18 of the Competition Act, 2002) must notify the Competition Authority of the transaction. After either an initial (Phase 1) or full (Phase 2) investigation of the proposed merger<sup>1</sup> the Competition Authority will determine that the proposed merger:
- ✘ May be put into effect;
  - ✘ May be put into effect subject to conditions; or,
  - ✘ May not be put into effect.
- 2.17 Media mergers are approached differently under the Competition Act. All media mergers, including newspapers and broadcasting stations, have to be notified to the Competition Authority. The Competition Act, allows for the possibility that a media merger, cleared by the Competition Authority on competition grounds, can still be prevented by the Minister for Enterprise, Trade and Employment on specified public interest grounds.

# Mergers can be beneficial for both business and consumers

<sup>1</sup> The competition Authority may carry out a detailed Phase 2 examination of a transaction if after a preliminary Phase 1 investigation the Authority has been unable to conclude that the transaction will not 'substantially lessen competition.'

## Explanatory Note 4: Merger Procedures in Ireland (Competition Act, 2002)

### Merger Test: Substantial lessening of competition

The test used to decide whether a merger should be allowed or not is whether it will "substantially lessen competition" in the markets for goods or services in the State. This is the test used in the UK, and a similar version was recently adopted by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.

### Notification thresholds

The thresholds for notification are derived from the company's turnover. Both companies must have annual financial turnover of €40 million worldwide. Both of them must also carry on business in the island of Ireland, and at least one of them must generate €40 million turnover within the State. If these thresholds are triggered, then a notification must be made.

### Mergers below threshold

Mergers that are below these thresholds may still give rise to anti-competitive effects which hurt consumers. The Competition Act, 2002, allows for such mergers to be notified voluntarily to the Competition Authority, so as to gain legal certainty. This is partly because below-threshold mergers are still subject to enforcement action under Sections 4 and 5 of the Act, and the Competition Authority has conducted investigations into such transactions.

### Media Mergers

Mergers that are below threshold that involve a media business must be notified to the Competition Authority – this is due to a Ministerial Order made on 1st January, 2003. Here, the Competition Act defines a media business quite widely, including any business that has interests in, for example, newspapers, radio, television or broadcasting platforms. The Competition Act also specifies that a media merger that has been cleared by the Competition Authority can be prohibited by the Minister for Enterprise, Trade & Employment on public interest grounds.

### Preliminary investigation (Phase 1)

Phase 1 is a one month initial examination of the merger, which is generally sufficient for it to be cleared. The one month review period can be extended where the Competition Authority formally requests additional information from the parties or where the parties submit proposals with specific measures designed to address concerns raised by the Competition Authority. Over 98% of mergers notified in 2005 were cleared in Phase 1.

### **Full investigation (Phase 2)**

The Competition Authority may carry out a full investigation (Phase 2) where it is unable to determine after a preliminary examination that a merger will not lead to a "substantial lessening of competition". Phase 2 is an additional three month period where a detailed examination of the transaction and the market(s) in which the parties operate is conducted.

### **Assessment**

During a Phase 2 investigation, if the Mergers Division of the Competition Authority has serious competition concerns, it may issue a written Assessment of the transaction to the parties during the period. This sets out the Merger Division's concerns, and allows the parties to respond to them.

### **Clearance by Minister for Enterprise, Trade & Employment**

In media mergers, if the Competition Authority clears the merger at Phase 1, it is sent to the Minister for Enterprise, Trade and Employment, who has 10 days to request the Competition Authority to conduct a full investigation (Phase 2).

Where the Competition Authority clears a media merger after a Phase 2 investigation, the Minister has 30 days within which to allow the merger, clear it with conditions or prohibit it. The basis on which the Minister arrives at his decision relates not to competition criteria, but to one or more of the public interest grounds as set out in the Competition Act (known as "relevant criteria"). The relevant criteria include such matters as; diversity of ownership, strength of indigenous media and cross-ownership of different forms of media.

### **Appeal to the Courts**

If a merger is prohibited, the parties have one month to decide if they wish to make a full appeal to the High Court. If the parties appeal, then the Court may either annul or confirm the determination of the Competition Authority or confirm it subject to conditions.

### Explanatory Note 5: The investigative powers of the Competition Authority

<b>Power of Entry and Search</b>	Authorised officers of the Competition Authority can enter or search any premises or dwelling with a warrant issued by the District Court.
<b>Power to Seize Documents and Records</b>	Authorised officers of the Competition Authority can seize documents/records on foot of a warrant issued by the District Court.
<b>Power to Summon Witnesses</b>	<ul style="list-style-type: none"> <li>- The Competition Authority can summon a witness to attend before it and to be examined under oath.</li> <li>- Witnesses have the same immunities and privileges as a witness before the High Court.</li> <li>- Failure to appear before the Competition Authority on foot of a witness summons is a criminal offence.</li> </ul>
<b>Power to Require Production of Records and Information</b>	<ul style="list-style-type: none"> <li>- The Competition Authority has the power to require production of records and information</li> <li>- Non-compliance is a criminal offence.</li> </ul>
<b>Power to Require Information from Third Parties</b>	The Competition Authority can obtain information from third parties, including professional advisors and financial institutions.
<b>Appeal on Use of Powers</b>	The use of these powers by the Competition Authority can be challenged by way of judicial review in the High Court.
<b>Potential Routes to Settlement</b>	<ul style="list-style-type: none"> <li>- <b>Criminal prosecution (on indictment)</b> - Brought by the Director of Public Prosecutions (DPP) in the Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Competition Authority.</li> <li>- <b>Criminal prosecution (summary)</b> - Brought in the District Court by the Competition Authority.</li> <li>- <b>Civil Action</b> - Brought in the High Court by the Competition Authority in order to halt suspected anti-competitive behaviour.</li> <li>- <b>Settlement without court action</b> - Where the parties involved recognise and remedy potential breaches of competition law.</li> </ul>
<b>Maximum Level of Fines &amp; Penalties</b>	<ul style="list-style-type: none"> <li>- <b>Criminal (on indictment in the Central Criminal Court)</b> - €4 million or 10% of turnover, whichever is the greater and/or up to five years in prison.</li> <li>- <b>Criminal (summary in the District Court)</b> - €3,000 and/or up to six months in prison.</li> <li>- <b>Civil Action (by the Competition Authority)</b> - none.</li> <li>- <b>Civil Action (by injured parties)</b> - Damages at the discretion of the court.</li> </ul>

## Competition Advocacy

- 2.18 In addition to its law enforcement and merger review functions, the Competition Authority also has a duty to promote competition in the economy. Competition advocacy refers to activities that promote competition through non-enforcement mechanisms.
- 2.19 Advocacy is fundamental to the achievement of the Competition Authority's Mission Statement, particularly when many regulations and business practices restrict competition. These may range from unnecessary restrictions on competition in a specific sector or industry (e.g., The Groceries Order, which imposed a floor on grocery prices) to more general and subtle forms (e.g., planning laws and processes that may slow down expansion and/or deter new companies from opening up in Ireland across a range of industries).

### Advising Public Policy Makers

- 2.20 Sections 30(1)(c) and 30(1)(f) of the Competition Act, 2002, mandates the Competition Authority to provide Ministers, Government Departments and legislators with advice on competition issues. The Competition Authority provides an informed competition perspective on proposed primary and secondary legislation, so as to discourage the passing of legislation that may unnecessarily inhibit competition.

### Raising Awareness

- 2.21 Section 30(1)(g) of the Competition Act, provides for the Competition Authority "to carry on such activities as it considers appropriate so as to inform the public about issues concerning competition". In summary, public awareness and understanding are important for several reasons:
- ✘ As a law enforcer, the Competition Authority is mandated to act in the public interest. 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 small and medium-sized enterprises.
  - ✘ Understanding the effects and benefits of competition can encourage support for the Competition Authority's work in practical ways. For example by bringing relevant matters to the attention of the Competition Authority or more generally assisting the development of competition as an instrument of economic policy.



### **Explanatory Note 6: Complaints about anti-competitive behaviour**

Complaints come to the attention of the Competition Authority from numerous sources including members of the public, individual businesses, trade organisations, public representatives, as well as Government Departments and agencies.

When the information provided through complaints is sufficient to give the Competition Authority reasonable grounds for suspicion of an offence under the Competition Act, 2002, a formal investigation may be launched. Where the details of a complaint indicate the existence of laws or regulations, or administration by a Government Department or agency, which impose unnecessary restrictions on competition, the issue is brought to the attention of the Advocacy Division.

As a first step the Competition Authority will check that the complaint can be dealt with under competition law. The Competition Authority has a Complaints Screening System where a team of staff members meets weekly to assess every request for information and complaint. The Competition Authority's Complaint Screening System focuses resources on the most substantive cases while ensuring that complaints, which have little or no supporting evidence, are dealt with expeditiously but fairly.

The Competition Authority's Complaint Screening System is made up of three steps:

- Preliminary Screening;
- Detailed Evaluation; and,
- Investigation.

In the most serious cases a complaint can result in a full investigation leading to a number of possible actions by the Competition Authority, including:

- Sending a file to the Director of Public Prosecutions (DPP) with a recommendation that criminal charges be brought;
- Taking a court proceeding in the High Court in order to stop anti-competitive behaviour;
- Receiving out of court settlements with companies and organisations who agree not to engage in anti-competitive behaviour and, in some instances, change their behaviour so as to cure any competitive harm; and,
- Making recommendations to Government concerning changes in anti-competitive regulations.

#### **Resolving complaints without legal action**

The vast majority of complaints made to the Competition Authority do not reveal a breach of competition law or are resolved at an early stage without the need for legal action.

Following a **preliminary screening** many complaints are resolved because:

- The complaint is really a request for information;
- The complaint does not involve a competition law matter;
- The complaint arises from a business facing legitimate competition in their local market; and,
- The complaint concerns similar prices with no evidence or suggestion of an agreement between companies.

Some complaints receive a more **detailed evaluation** in order to assess their significance and determine whether a full investigation should be opened. This detailed evaluation may involve background research, taking formal statements from complainants and third parties and an examination of the legal parameters of the case. The main reasons complaints are resolved following such an evaluation include:

- The complaint cannot be substantiated;
- The complaint concerns a private or contractual dispute without any competition significance;
- Another regulatory agency also has jurisdiction and can remedy the situation in a more timely manner through the exercise of its functions; and,
- The complaint involves issues and facts similar to those previously examined and resolved by the Competition Authority.

### **Explanatory Note 7: International activities of the Competition Authority**

The Competition Authority is a member of a number of international organisations. The basis for participation is threefold:

- **Obligation** - As a member of the European Union and the Organisation for Economic Cooperation and Development, the Competition Authority must fulfil certain obligations and responsibilities;
- **Shaping international competition policy and promoting convergence** - globalisation has resulted in an increasing number of trans-national competition policy and enforcement issues. Consistent application of competition law principles requires that competition agencies communicate and jointly develop and promote convergence to best practice. Participation in this ongoing international debate allows Ireland to shape and influence the direction of international competition policy; and,
- **Learning from international experience** - participation in international fora allows the Competition Authority to benefit from the wealth of experience and knowledge of competition issues that lies with the many competition agencies around the world. As a relatively small and new agency, this is an especially important resource for the Irish Competition Authority.

#### **European Competition Network**

The Competition Authority is a member of the European Competition Network (ECN). The ECN was established to ensure that EU competition law is applied consistently across all Member States. The ECN provides an effective legal framework to challenge companies who engage in cross-border business practices that restrict competition and are anti-consumer. For all Member States, membership of the ECN is compulsory under European Community Regulation 1/2003.

#### **Organisation for Economic Cooperation and Development**

Ireland is a member of the Organisation for Economic Cooperation and Development (OECD). The OECD currently has 30 member countries and maintains active relationships with some 70 other countries. The Competition Authority attends the meetings of the Competition Committee of the OECD and its associated Working Parties. The Competition Committee facilitates detailed work on best practice and peer review of competition policy.

#### **International Competition Network**

The Competition Authority is a member of the International Competition Network (ICN). The ICN was set up in October 2001 and provides an informal forum for discussion by competition agencies worldwide of practical competition enforcement issues. Competition agencies participate voluntarily and the organisation aims to provide a platform for smaller agencies to set the agenda. The ICN is unique as it is the only international body devoted exclusively to competition law enforcement and currently has more than 90 members.

## European Competition Policy and Enforcement

- 2.22 The competition laws of the European Union are enforced by the Competition Directorate General (DG Comp) and competition authorities in the EU member states. These laws contribute to the welfare of consumers and the competitiveness of the European economy by ensuring that competition in the EU market is not distorted.
- 2.23 The antitrust activities of DG Comp are covered under Articles 81 and 82 of the Treaties establishing the European Community. Article 81 prohibits agreements which restrict competition, e.g., price-fixing agreements and cartels. Article 82 prohibits any abuse by a firm of a dominant position, e.g., predatory pricing.
- 2.24 Since 1 May 2004, a new system of application of Articles 81 and 82 entered into force. Since that date all designated national competition authorities are now empowered to apply the provisions of European law to ensure competition is not distorted or restricted. National courts can therefore directly apply these prohibitions so as to protect the rights conferred on citizens by the Treaty. In Ireland, the courts not only apply the provisions of Articles 81 and 82 in their capacity as courts; they are also the designated competition authorities. This means that in relation to EU law the Irish Competition Authority's function is the same as it is under the Competition Act, 2002. That is to investigate breaches of Articles 81 and 82 and bring them before the Courts, who then, in their capacity as designated authorities, apply the provisions of the Articles directly. The legal instrument for this new system was formed by the adoption of Council Regulation (EC) No 1/2003.
- 2.25 The European Competition Network (ECN) was set up under Regulation 1/2003 to build an effective legal framework to challenge companies who engage in cross-border business practices which restrict competition and are anti-consumer.
- 2.26 The ECN provides a forum for co-operation and appropriate case allocation between the competition authorities of EU Member States. Another objective of the ECN is to promote a consistent application of EU competition rules. The ECN is made up of the EU Commission and all the competition authorities of the Member States, including the Irish Competition Authority. The EU Commission and competition authorities from EU Member States cooperate with each other through the ECN by:
- ✘ Helping each other with investigations by exchanging confidential information on cases;
  - ✘ Coordinating investigations, where necessary;
  - ✘ Exchanging evidence; and,
  - ✘ Informing each other of new cases and decisions.



## 3 ENVIRONMENT & CONTEXT

### Competition Authority Structure and Resources

#### The Competition Authority

- 3.1 The Competition Authority is an independent corporate body consisting of five Members including a Chairperson. The Competition Authority derives its powers from the Competition Act 2002. Each of the Members of the Competition Authority is an executive director with responsibility for one or more of the Competition Authority's divisions.

#### The Divisional Structure of the Competition Authority

- 3.2 The Competition Authority is currently organised into six divisions. Each division is headed by a Member. The functions of each division are laid out in Table 1.

**Table 1: The Core Functions of the Competition Authority's Divisions**

Division	Function
<b>Advocacy</b>	Advice to policy makers, market analysis and intelligence, and raising awareness.
<b>Cartels</b>	Criminal enforcement of hard-core cartels under Section 4 of the Competition Act, 2002, inter-agency liaison and assisting prosecution.
<b>Corporate Services</b>	Financial and human resource management, information and communications technology, corporate governance, media relations, customer service, legal support and communications.
<b>Mergers</b>	Merger review, and guidance to practitioners and industry.
<b>Monopolies</b>	Enforcement of Sections 4 and 5 of the Competition Act, 2002, the provision of guidance to consumers, practitioners, industry bodies, and on regulatory affairs.
<b>Policy</b>	Analytical support for other divisions, principally for the Mergers Divisions, management and coordination of international work, development of information and training structures, and development and implementation of policies and strategy.

- 3.3 Including the Chairperson and the Members, the Competition Authority currently has approval to employ 52 staff<sup>2</sup>. Staff are recruited from a variety of backgrounds including law, economics, forensic investigation and public administration.
- 3.4 Table 2 below illustrates the breakdown of Competition Authority resources across its core activities.

**Table 2: The Core Activities of the Competition Authority**

Activities	Percentage of Resources
Competition Advocacy	20%
Competition Law Enforcement	60%
Merger Review	20%

### Advisory Panel

- 3.5 The Competition Authority's Advisory Panel was first established in October 2001. The Advisory Panel offers external counsel to the Competition Authority on legal, policy, management and strategic issues. For example, the Advisory Panel assisted the Competition Authority in preparing for the Competition Act, 2002, and the modernisation of European competition policy in 2003. Members of the panel act in a non-executive capacity and come from a variety of backgrounds including legal, academic and regulatory or governmental agencies.

### Internal Audit Committee

- 3.6 The Competition Authority is committed to supporting, developing and reviewing the internal control environment and corporate governance procedures. This includes all areas of activity for which the Accounting Officer (Chairperson) and the Competition Authority has responsibility. In order to achieve this objective an independent Internal Auditor has been appointed who will report directly to an Audit Committee. The Audit Committee is independent in the performance of its functions and is not subject to direction or control from any external party. It furnishes the Competition Authority with analyses, appraisals, recommendations and pertinent information concerning issues that it reviews and does not confine itself to financial or accounting activities.

<sup>2</sup> In the 2006 estimates provisions have been made for an additional seven employees; this is pursuant to a sanction being given by the Department of Finance.

## Anticipated Future Developments

The Competition Authority has considered a number of future developments which are likely to have a significant impact on its work between 2006 & 2008.

### Changes in legislation

- 3.7 In December 2005 the Minister for Enterprise, Trade and Employment published the Competition (Amendment) Bill, 2005 which is designed to revoke the 1987 Groceries Order and to amend the Competition Act, 2002. The Competition Authority continues to monitor the operation of the 2002 Act with a view to advising on any future necessary amendments.

### Regulatory Impact Assessments

- 3.8 The Government White Paper 'Regulating Better' outlined six principles of better regulation. Under the proportionality principle there is a commitment to use Regulatory Impact Assessments (RIAs) when considering the introduction of new laws or regulations. Regulations such as the Groceries Order have had an adverse effect on competition and the Competition Authority may be expected to have an input into the competition analysis of draft regulations in this and other sectors of the economy.

### The National Consumer Agency

- 3.9 The soon to be established National Consumer Agency (NCA) will have a statutory mandate as a consumer advocate. The Competition Authority has assumed some of this role in recent years. There is likely to be some cross over between the work of the Competition Authority and the NCA particularly in the area of market and sectoral studies. There will be a need to coordinate the work between the two bodies which may be formalised through a cooperation agreement.

### The Competition Authority's growing international function

- 3.10 The European Union's approach to the application of competition law was modernised under EC Regulation 1/2003 and came into effect on 1st May 2004. The modernisation process has established the European Competition Network which includes the Competition Authorities from the Member States and the European Commission. The European Competition Network and its associated working groups have increased the Competition Authority's obligations and commitments at the EU level. This is expected to increase in the coming years.
- 3.11 The Competition Authority's other international involvements through the OECD, the European Competition Authorities, the International Competition Network and improved bilateral relations with other competition authorities is expected to grow with the rapid and continuing internationalisation of competition policy.



### **Further expansion of the Competition Authority**

- 3.12 In November 2005, the Department of Enterprise, Trade and Employment announced a proposal to increase the budget of the Competition Authority. The proposed 2006 budget for the Competition Authority is €5.831m, an increase of €752,000 (15%) on its allocation for 2005. A substantial portion of this increase will be spent on employing extra case officers to enhance the enforcement capabilities of the Competition Authority. These extra staff places are subject to the approval of the Department of Finance.

## **Critical Success Factors**

- 3.13 In determining its objectives and Goals the Competition Authority had to consider a number of critical success factors which will affect the implementation of its strategy. In many cases these critical success factors are largely outside of the control of the Competition Authority.

### **Staff and Resources**

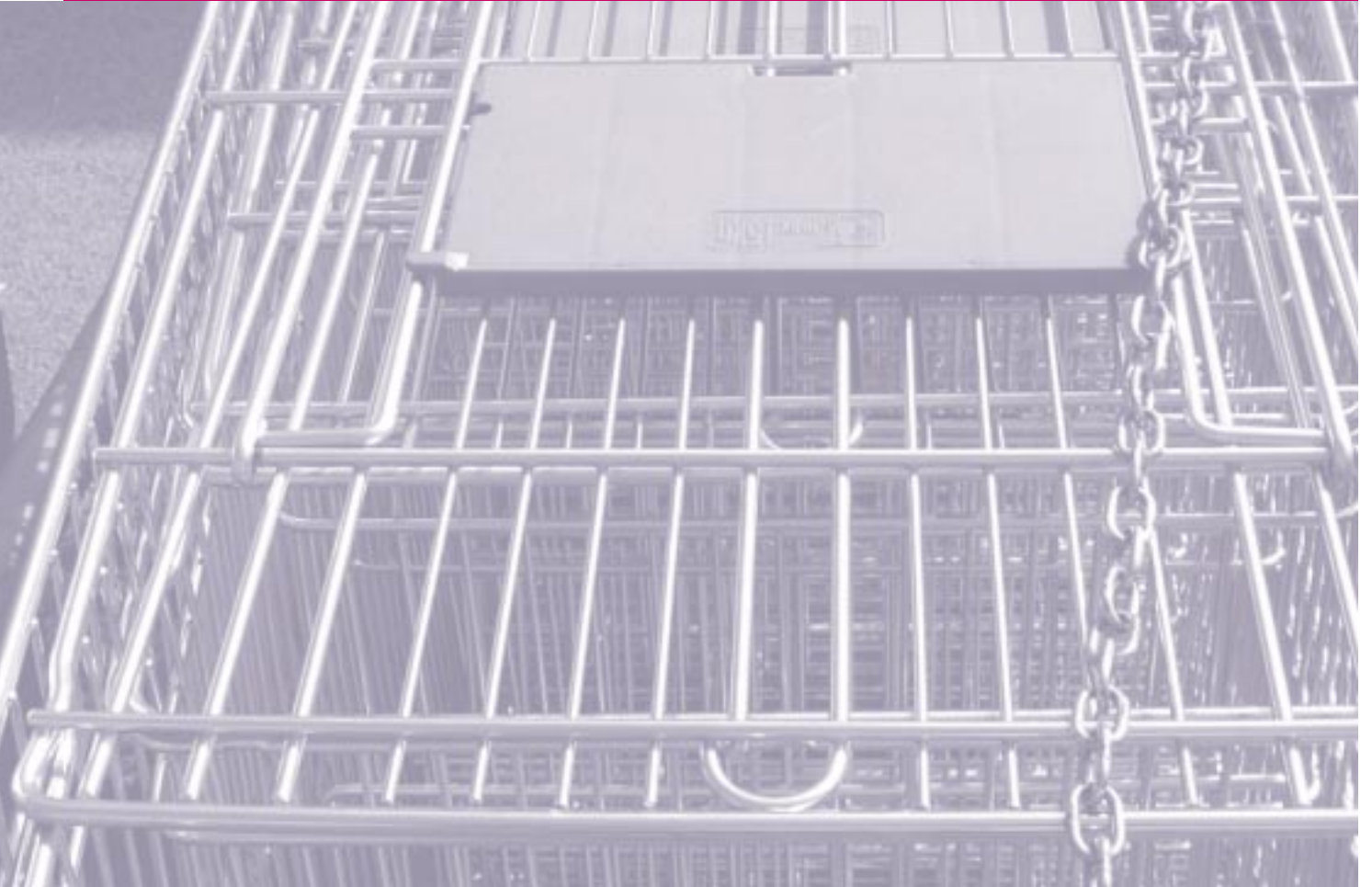
- 3.14 As with any organisation the Competition Authority's staff is its most important resource. Both the amendment to the Competition Act, 2002, and the expected increase in staff numbers provide challenges and opportunities for the Competition Authority.
- 3.15 With the increase in the Competition Authority staff level and the inevitable strain on internal systems and processes it will be important to minimise staff departures and maximise the level of continuity. Due to the technical nature of the economic, legal and forensic analysis required and the difficulties associated with recruiting staff with the necessary skills and experience levels, the Competition Authority endeavours to keep annual staff turnover levels below 20%.

### **Legal System and Prosecution Process**

- 3.16 Achieving the Competition Authority's Mission Statement depends not only on its own performance but also on elements outside the Competition Authority's control such as the speed and effectiveness of the legal process. Prosecution of competition cases is both complex and data-intensive. Consequently, court cases are typically lengthy and require extensive legal procedures in advance, such as, discovery and expert evidence in court.
- 3.17 For criminal cases the Competition Authority must prepare and send a file to the Director of Public Prosecutions (DPP) who is responsible for bringing all prosecutions on indictment. The ability of the Competition Authority to successfully bring prosecutions depends therefore not only on its own resources but on the discretion of the DPP in each particular case.

### **Political Economy and Policy Environment**

- 3.18 The Competition Act does not allow for the imposition of fines in civil cases. Civil fines are a typical feature of competition enforcement in many other countries including common law jurisdictions. It is not yet clear whether the concept of civil fines would be consistent with the Irish Constitution. The Competition Authority, when using civil enforcement procedures, can only seek a declaration from the court that a particular activity is in breach of the Competition Act, and an injunction to end an anti-competitive agreement or behaviour that was found to abuse a dominant position.
- 3.19 The Competition Authority depends, to a large extent, on public awareness and support to carry out its functions. While the Competition Authority does initiate its own investigations, the majority of its investigations are initiated through complaints from consumers, consumer bodies, industry groups and others.
- 3.20 The Government and other public bodies are not obliged to respond to Competition Authority recommendations for improving competition. In other jurisdictions governments have given commitments to respond to recommendations within a given time limit. Lack of a formal response by Government on recommendations for removal of public restrictions of competition can undermine Competition Authority recommendations.



## 4 STRATEGIES & PERFORMANCE

### Introduction

- 4.1 This section outlines the Competition Authority's specific strategies for the period 2006 - 2008. The Competition Authority's strategies are grouped depending on which of the Competition Authority's high level Goals they relate to. A detailed list of performance indicators on which the success of these strategies can be judged are then presented.
- 4.2 Each of the Competition Authority's six divisions has a number of 'core functions'. The divisional core functions and how they relate to the Competition Authority's Goals are listed in Table 3.

**Table 3 - How divisional functions relate to the Competition Authority's Goals**

Goal	Core Functions	Division
<b>Goal 1 - Ensure the fullest possible compliance with competition law</b>	Enforcement of Competition Law	Cartels and Monopolies
	Merger Review	Mergers and Policy
	Inter-Agency Liaison & assisting prosecution	Cartels
	Guidance	Monopolies and Mergers
<b>Goal 2 - Promote competition where it is absent, limited or restricted</b>	Analysis & Intelligence	Advocacy
	Regulatory Affairs	Monopolies & Advocacy
	Advice to Public Policy Makers	Advocacy
<b>Goal 3 - Raise awareness and understanding of the benefits of competition among policy makers, businesses and consumers</b>	Raising Awareness	All Divisions
	External Communications	Corporate Services
<b>Goal 4 - Provide an effective and timely service to stakeholders, both internal and external</b>	Financial & Human Resource Management	Corporate Services
	Corporate Governance & Customer Service	Corporate Services
	Information & Communications Technology	Corporate Services
	Legal Support	Corporate Services
	Analytical Support for other Divisions	Policy
	Information, Training and Internal Communications	Corporate Services and Policy
<b>Goal 5 - Fulfil international obligations and contribute to the development of and convergence to international best practice standards in competition policy and enforcement</b>	Participation in international organisations, policy/decision making committees and peer reviews	All Divisions
	International conferences and seminars	All Divisions
	Relations with other NCAs	All Divisions
	Implement and develop the Competition Authority's international policy	All Divisions

## Strategies

### Strategies supporting Goal 1: Compliance with Competition Law

4.3 The Competition Authority's first Goal is to:

**“Ensure the fullest possible compliance with competition law.”**

4.4 The Competition Authority seeks to fulfill this Goal by pursuing two broad strategies. First, the Competition Authority enforces the relevant sections of the Competition Act, 2002. Enforcement of the law has both specific and general deterrent effects. Specific deterrence relates to the particular individuals or firms that are the subject of Competition Authority actions. General deterrence on the other hand relates to the exemplary effect that a particular Competition Authority action has on other firms and individuals. Second, the Competition Authority seeks to provide guidance on the kinds of behaviour that breach and do not breach competition law.

#### **Enforcement of Sections 4 and 5 of the Competition Act, 2002**

4.5 There are three stages involved in the enforcement of Sections 4 and 5 of the Competition Act, 2002. These are detection, investigation and the initiation of legal proceedings.

4.6 The first stage concerns the detection of a breach. The Competition Authority may become aware of an alleged breach of the Competition Act, 2002, in a number of ways, e.g., through the complaints process, through the Criminal Cartel Immunity Programme or by monitoring activities of competition authorities internationally. The strategies below are designed to improve and develop these mechanisms.

# Ensure the fullest possible compliance with competition law.

### Detecting Breaches of Competition Law

- |      |   |                |
|------|---|----------------|
| S1.1 | Improve the Competition Authority's ability to detect breaches of competition law by:   |                |
|      | - Publishing revised guidance to potential complainants.  | Years 1, 2 & 3 |
|      | - Reviewing annually the internal complaint screening process.  | Years 1, 2 & 3 |
|      | - Monitoring investigations at EU level and by other National Competition Authorities where similar players compete in Irish markets.   | Years 1, 2 & 3 |
|      | - Continuing to examine new or alternative methods for detecting breaches of competition law.   | Years 1, 2 & 3 |
| S1.2 | Maximise the effectiveness of the Criminal Cartel Immunity Programme by:  |                |
|      | - Conducting, in conjunction with the Director of Public Prosecutions (DPP), a review of the Criminal Cartel Immunity Programme to ascertain how its effectiveness might be enhanced. | Year 2         |
|      | - Promoting the Criminal Cartel Immunity Programme so as to increase awareness of its existence across all stakeholders.  | Years 1, 2 & 3 |
|      | - Continuing to actively participate in the European Competition Network (ECN) Leniency Working Group so as to remain informed of international best practice.                        | Years 1, 2 & 3 |

- 4.7 The second stage of enforcement involves investigating potential breaches. The Competition Act, provides the Competition Authority with a number of powers to assist in gathering evidence. The strategies below are designed to allow the Competition Authority to continue developing its investigative capacity.

### Investigating Breaches of Competition Law

- |      |   |                |
|------|---|----------------|
| S1.3 | Continue to investigate alleged breaches of competition law, selected in order of priority, and allocate resources accordingly. | Years 1, 2 & 3 |
| S1.4 | Continue to develop team-based investigations availing of economic, legal and forensic expertise.                               | Years 1, 2 & 3 |
| S1.5 | Continue to use the powers and investigative tools at the Competition Authority's disposal.                                     | Years 1, 2 & 3 |

- S1.6 Improve the Competition Authority's ability to investigate breaches of competition law by:
- Continuing to invest human capital in the development of best practice investigative standards. Years 1, 2 & 3
  - Developing and implementing electronic forensic investigation software and techniques. Year 1

4.8 With criminal investigations the Competition Authority investigates, and prepares files for the Director of Public Prosecutions (DPP), who then decides whether or not to prosecute. If the Competition Authority's ultimate objective is to secure convictions, professional relations with the DPP are vital.

#### **Prosecution and Inter-agency Liaison**

- S1.7 Improve the Competition Authority's ability to bring criminal cases to court through the DPP by:
- Engaging in regular and timely meetings with the DPP and Chief State Solicitors Office. Years 1, 2 & 3
- S1.8 Raise awareness of the harm caused by anticompetitive behaviour among relevant agencies. Years 1, 2 & 3

#### **Merger Review**

4.9 The Competition Authority's merger review function has been operating successfully and to the highest international standard since January 2003. The strategies below are designed to ensure that the Competition Authority continues this trend by streamlining its internal procedures and examining the impact of its decisions in particular cases.

#### **Merger Review**

- S1.9 Ensure that mergers are processed and assessed in an effective, timely and efficient manner by:
- Undertaking a 'Client Survey' to elicit feedback from external stakeholders on the efficacy of the Competition Authority's merger control regime. Years 1 & 3.
  - Undertaking and publishing an ex post analysis of merger decisions taken by the Competition Authority. Year 3

- |   |                           |
|---|---------------------------|
| <p>S1.10 Ensure that mergers which are below the threshold for notification but which may have significant impacts on competition are investigated by the Competition Authority. This can be achieved either through voluntary notification by the parties involved or through investigations undertaken under sections 4 and 5 of the Competition Act.</p> | <p>Years 1, 2 &amp; 3</p> |
|---|---------------------------|

**Providing Guidance on Competition Law**

- 4.10 Compliance with competition law is preferable and less costly than the enforcement alternative. The Competition Authority therefore recognises the importance of providing guidance to the business community on the kinds of behaviour that might breach competition law. The strategies below are designed to increase the level of guidance provided to the business community and other relevant stakeholders.

**Guidance on Competition Law**

- |   |   |
|---|---|
| <p>S1.11 Provide guidance to relevant stakeholders on the Competition Authority's merger control regime by:</p> <ul style="list-style-type: none"> <li>- Publishing reasoned determinations.</li> <li>- Hosting a Mergers Conference.</li> <li>- Revising published procedures, processes, forms and guidelines as required and based on 'Client Survey' feedback.</li> </ul> | <p>Years 1, 2 &amp; 3</p> <p>Year 2</p> <p>Years 1, 2 &amp; 3</p>             |
| <p>S1.12 Promote compliance with competition law by:</p> <ul style="list-style-type: none"> <li>- Publishing reasoned Enforcement Decision Notes.</li> <li>- Publishing guidance notes and declarations as appropriate.</li> <li>- Making presentations to practitioners, industry and other relevant stakeholders.</li> </ul>  | <p>Years 1, 2 &amp; 3</p> <p>Years 1, 2 &amp; 3</p> <p>Years 1, 2 &amp; 3</p> |



## Strategies supporting Goal 2: Promoting Competition

4.11 The Competition Authority's second Goal is to:

**“Promote competition where it is absent, limited or restricted.”**

4.12 The Competition Authority seeks to promote competition by first identifying where and why it is absent, limited or restricted. The following strategies are designed to ensure that it undertakes this activity in the most effective and efficient manner possible.

### Analysis & Intelligence

S2.1	Undertake any studies requested by the Minister for Enterprise, Trade & Employment.	Years 1, 2 & 3
S2.2	Examine sectors where competition is not working well for consumers by:	
-	Completing the examinations of the professional services sector.	Years 1 & 2
-	Undertaking new examinations according to internal policy as outlined in the Review of Studies.	Years 2 & 3
S2.3	Implement a streamlined system for the production of high quality reports, submissions and position papers by:	
-	Implementing the recommendations of the Competition Authority's Review of Studies.	Year 1

4.13 Certain segments of the economy are the subject of extensive economic regulation. The Competition Authority seeks to ensure that such regulation is proportionate and that, where possible, measures are introduced to enhance competition. In order to promote competition in the regulated sectors of the economy the Competition Authority relies on good working relations with Government Departments and independent sectoral Regulators.

### Regulated Sectors

S2.4	Reinforce good working relationships with sectoral regulators covered by cooperation agreements by:	
-	Enhancing the effectiveness of current cooperation agreements with sectoral regulators.	Years 1, 2 & 3
-	Nominating dedicated contact points at the Competition Authority and at the relevant regulator's office.	Year 1

- Maintaining open lines of communication. Years 1, 2 & 3
- Participating in the telecom market review process. Year 2

4.14 The Competition Authority is mandated to provide advice to Ministers and other branches of the State (e.g., Government Departments and agencies) on situations where competition is absent, limited or restricted and where an enforcement solution is not feasible or appropriate. For example, the Competition Authority is frequently asked to comment on proposed legislation.

4.15 The Competition Authority also acts to promote competition through its membership of a number of ad hoc and standing groups. Examples of these include the Taxi Advisory Council, the Government's Better Regulation Group and the Auctioneering/Estate Agency Review Group.

#### **Advice to Public Policy Makers**

S2.5 Develop and implement more efficient and effective methods for providing advice to Ministers, Government Departments and Local Authorities by:

- Continuing the existing good relationship with the Department of Enterprise, Trade and Employment. Years 1, 2 & 3
- Formalising this relationship by developing a memorandum of understanding so that the Competition Authority may comment in a timely and considered fashion on memos for Government as required. Year 1
- Implementing a legislation monitoring system. Year 1
- Participating in relevant Government committees, commissions etc., that addressing competition matters. Years 1, 2 & 3
- Supporting the process of regulatory impact analysis by developing a 'competition screening' policy and training programme. Year 2
- Developing and maintaining a network of contacts across Government Departments and regulatory authorities. Year 2

## Strategies supporting Goal 3: Raising Awareness

4.16 The Competition Authority's third Goal is to:

**“Raise awareness and understanding of the benefits of competition among policy makers, businesses and consumers.”**

4.17 As well as raising general awareness of the benefits of competition the Competition Authority will over the period of this Strategy Statement seek to target specific issues. This will involve following up in a vigorous manner on the issues where competition problems and solutions have already been identified. By continuing to develop its external communications strategy the Competition Authority will seek to raise awareness of these issues and build momentum for implementing appropriate reforms.

### Raising Awareness

- S3.1 Develop and implement a process for targeted and systematic follow-up on recommendations made by the Competition Authority by:
- Liaising with relevant stakeholders. Years 1, 2 & 3
  - Promoting and raising awareness of the benefits of implementing the recommendations of the Competition Authority (i.e., by delivering presentations, conference speeches, writing press articles, and giving media interviews). Years 1, 2 & 3
  - Publishing a 'Status Report' on the implementation of the Competition Authority's recommendations, as part of the Competition Authority's Annual Report. Years 1 & 2
  - Publishing an Annual Competition Report which would replace the Status Report. Year 3
- S3.2 Enhance the Competition Authority's capacity to raise awareness of competition issues and their importance by:
- Establishing a system for prioritising issues which will be communicated to external stakeholders. Year 2
  - Outlining annual targets in terms of awareness-building activity including speeches, presentations, media interviews and newspaper articles. Year 2
  - Enhancing the method for evaluating the effectiveness of the Competition Authority's external communications strategy. Year 2

- S3.3 Build a network of policy makers in relevant areas in order to improve awareness of competition issues by:
- Identifying common interests, initiate contact with and liaising with a potential network of policy makers. Years 1, 2 & 3
- S3.4 Continue to improve communications with external stakeholders in order to raise awareness of the Competition Authority's activities and increase compliance with competition law by:
- Undertaking an assessment of current external communications Strategy and implementing any recommendations from this review. Year 1

## Strategies supporting Goal 4: Providing an Effective and Timely Service

4.18 The Competition Authority's fourth Goal is to:

**“Provide an effective and timely service to stakeholders, both internal and external.”**

4.19 The Competition Authority aims to be professional in its dealings with all its stakeholders. External stakeholders include all parties that the Competition Authority has contact with (e.g., consumers, firms, public representatives, the legal community and the media). Internal stakeholders include every member of the Competition Authority's staff. The strategies below are designed to ensure that our customers receive the highest standard of service possible and that the Competition Authority's staff are in the best possible position to ensure that the highest standard of service is provided.

### Corporate Governance and Customer Service

- S4.1 Ensure high standards of corporate governance by:
- Establishing an Internal Audit Committee. Year 1
  - Appointing an Internal Auditor to report to the Internal Audit Committee. Year 1
  - Auditing annually compliance with corporate governance codes of practice and conduct. Years 1, 2 & 3
- S4.2 Ensure high standards of customer service by:
- Implementing a new Customer Charter. Year 1
  - Monitoring compliance with the Customer Charter. Years 1, 2 & 3

### Financial and Human Resource Management

- S4.3 Ensure that financial management systems accord with best practice by:
- Maintaining the Competition Authority's financial accounts and processes to the highest standards. This includes having available up-to-date information for the Competition Authority, the Minister for Enterprise, Trade and Employment and the Oireachtas. Years 1, 2 & 3
  - Seeking to improve financial management tools by ensuring that all recommendations made by the Comptroller & Auditor General and by the Internal Audit Committee are implemented as soon as practicable. Years 1, 2 & 3
  - Implementing Internal Financial Policy and Procedures. Year 1
  - Reviewing Internal Financial Policy and Procedures annually. Years 1, 2 & 3

### Information and Communications Technology (ICT)

- S4.4 Ensure ICT systems are sufficient to allow the Competition Authority to perform its functions in an effective, efficient and timely fashion by:
- Redeveloping the Competition Authority's website, developing an intranet for Competition Authority staff and developing a business recovery plan to cater for a total ICT system failure. Year 1
  - Developing and publishing internally an ICT policy on procedures for reviewing staff ICT requirements and for identifying and providing ICT training to staff. Year 2
  - Implementing ICT Policy. Year 3

### Legal Support & Environment

- S4.5 Ensure the Competition Authority is ready to participate and drive competition legislative reform by:
- Liaising with the Competition Policy Section of the Department of Enterprise, Trade and Employment. Years 1, 2 & 3
  - Considering technical amendments to the Competition Act, 2002, based on operational experience and commenting on proposed amendments to competition legislation. Years 1, 2 & 3

### Information and Training

- S4.6 Enhance the Competition Authority's ability to harness the various information resources available to it, both internal and external, by:
- Assessing current information needs and deficits of staff at the Competition Authority and developing appropriate policy. Year 1
  - Implementing a new information policy. Year 2
- S4.7 Develop the Competition Authority's formal staff training capability by:
- Developing a mechanism and associated policy for assessing staff training requirements in the context of Performance Management and Development System (PMDS). Year 1
  - Implementing a new training policy. Year 2
- S4.8 Organise and host a seminar series on relevant competition policy and enforcement issues by:
- Hosting three autumn and three spring public seminars. Years 1, 2, 3
  - Hosting three autumn and three spring internal seminars. Years 1, 2, 3

## Strategies supporting Goal 5: International Obligations and Best Practice

4.20 The Competition Authority's fifth Goal is to:

**“Fulfill international obligations as well as contribute to the development of, and convergence to, international best practice in competition policy and enforcement.”**

### International

- S5.1 Participate in European Commission cases and EU policy-making on directives and regulations, via European Council and Advisory Committees. Years 1, 2 & 3
- S5.2 Attend, and present papers to, relevant international conferences and seminars. Years 1, 2 & 3
- S5.3 Pursue closer relations with and learn relevant best practice from other National Competition Authorities by:
- Maintaining open lines of communication and developing lists of relevant contacts. Years 1, 2 & 3

	- Seconding staff to relevant National Competition Authorities.	Years 1, 2 & 3
	- Monitoring relevant enforcement and advocacy activities.	Years 1, 2 & 3
S5.4	Participate in international peer reviews and other benchmarking exercises.	Years 1, 2 & 3
S5.5	Ensure the Competition Authority gains maximum benefit from participation in international activities by:	
	- Implementing a new international policy on coordination and management of international activities.	Year 1
	- Reviewing the operation and effectiveness of the new international policy.	Years 2 & 3

## Measuring Performance

4.21 This section outlines the Competition Authority's Key Performance Indicators. Assessing the Competition Authority's success in the fulfilment of its Goals, and therefore the efficacy of its strategies, is not a straightforward task. This is for two main reasons.

- ✘ First, the objectives as outlined in the five Goals, are difficult to measure. For example, in relation to Goal 1, compliance with competition law is not easily assessed. 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. Similarly, in relation to Goal 3, the level of awareness of the benefits of competition among business, policy makers and the public is difficult to determine in a reliable way.
- ✘ Second, even if the objectives, as outlined in the Goals, were fully measurable, because the Competition Authority's 'success' is dependent on a wide variety of factors outside its control, it is difficult to attribute either success or failure to the quality of the Competition Authority's efforts. For example, in relation to Goal 1, in the area of criminal enforcement, the Competition Authority is not the prosecuting body. The Competition Authority prepares and sends files to the Director of Public Prosecutions (DPP) who is charged with bringing all prosecutions on indictment. Successful prosecutions depend therefore not only on the Competition Authority's own efforts but on the discretion of the DPP in each particular case. Similarly in relation to Goal 2, the Competition Authority's success in promoting competition where it is absent, limited or restricted is dependent on whether the political environment is conducive to change and on whether vested interests are well organised or entrenched.

4.22 For these reasons, when developing meaningful indicators we are operating in a second best world. The indicators below tend to focus on the Competition Authority's observable

outputs. No indicator alone tells a complete story. Taken together however, the set of indicators allows us to build a picture of the extent of the Competition Authority's activities.

- 4.23 The Competition Authority's Key Performance Indicators presented below are grouped according to the relevant goal. Where quantitative performance indicators are not possible or create ambiguous results or perverse incentives the Competition Authority has endeavoured to provide qualitative performance indicators. As the 'impact' of the Competition Authority, and not the number or quality of its outputs is what matters, the Competition Authority intends over the period of this Strategy Statement to undertake an impact assessment.

### Performance Indicators for Goal 1: Compliance with Competition Law

- P1.1 Enforcement (Detection)
- Number of investigations opened.
- P1.2 Enforcement (Investigation)
- Number of warrants secured, persons interviewed, summonses issued and statements taken.
  - Number of investigations opened, closed and on-going.
  - Number of files sent to the Director of Public Prosecutions (DPP).
- P1.3 Prosecution and Inter-agency liaison
- Number of files accepted by the DPP.
  - Number of convictions.
  - Number of civil cases taken to court.
  - Number of settlements achieved.
  - Review of the 'Criminal Cartel Immunity Programme' with the DPP.
- P1.4 Merger Review
- Number of mergers evaluated within the statutory timeframe (Phase 1 and Phase 2 investigations).
  - Feedback from survey of stakeholders.
  - Results of ex-post analyses of merger decisions.



#### P1.5 Guidance

- Number of decision notes, notices/declarations, guidance notes, merger determinations published, and speeches and presentations given.
- Number of consultation processes undertaken.
- Improved quality of complaints along the model suggested in complaints guidelines.
- Number of attendees at and feedback on mergers conference.

### Performance Indicators for Goal 2: Promoting Competition

#### P2.1 Analysis & Intelligence

- Proportion of projects/studies completed on time; this currently relates to the examination of the professional services sector being completed within envisaged timeframe and budget.
- Implementation of the Review of Studies.
- Proportion of recommendations from the Competition Authority implemented.
- Number of new recommendations made.

#### P2.1 Advice to Government and Regulators

- Number of submissions made.
- Number of legislative proposals on which Competition Authority advice was sought.
- Number of legislative proposals commented on.

### Performance Indicators for Goal 3: Raising Awareness

#### P3.1 Raising Awareness

- Number of speeches and presentations made, media interviews given and press articles written.
- Improved ratings for the awareness of the Competition Authority and understanding of competition law based on market research.

P3.2 External Communication

- Volume of requests for information, interviews, comments and presentations.
- Number and quality of media articles written about the Competition Authority and competition issues.
- Number of users of the Competition Authority's website and information database.

**Performance Indicators for Goal 4: Providing an Effective and Timely Service**

P4.1 Corporate Governance and Customer Service

- Customer Service Charter implemented and Internal Audit Committee established within envisaged timeframe.
- Annual reports on compliance with corporate governance codes of practice and conduct, as well as compliance with Customer Charter.

P4.2 Financial and human resource management

- Annual report of the Comptroller and Auditor General on the management of the Competition Authority's finances.
- Annual Internal Audit.
- Staff turnover and retention.

P4.3 Information and Communications Technology

- ICT policy developed, implemented and internal targets achieved within the envisaged time-frame.

P4.4 Information and Training

- Information and training policy projects developed, implemented and internal targets achieved within the envisaged time-frame.
- Average number of attendees at and feedback on Competition Authority seminars.

**Performance Indicators for Goal 5: International Obligations and Best Practice**

## P5.1 Participation and International Conferences &amp; Seminars

- Number of relevant international meetings/forums, working groups, and Advisory Committees attended by the Competition Authority.
- Number of submissions or papers delivered.
- Number of times the Competition Authority's work is mentioned in papers, conferences, roundtables etc.

## P5.2 All international functions

- Number of international competition policy and enforcement issues that the Competition Authority has a substantial input and significant influence on.
- Number of times the Competition Authority has taken a lead role in international forums i.e., chairing working groups.