

consumers  
 competition in the economy  
 vigorous competition drives productivity growth, innovation and value for all consumers  
 innovation  
 productivity  
 economy  
 growth  
 productivity  
 innovation  
 and value for all consumers in the economy  
 economy  
 growth  
 productivity  
 innovation  
 and value for all consumers in the economy



productivity  
 growth  
 innovation  
 and value for all consumers in the economy

productivity

## Competition Authority Strategy Statement 2009-2011

December 2008



**The Competition Authority**  
 An tÚdarás Iomaíochta



## Table of Contents

---

<b>Foreword</b> .....	<b>ii</b>
<b>1. Mission Statement and Strategic Goals</b> .....	<b>1</b>
<i>Mission Statement</i> .....	<i>1</i>
<i>Strategic Goals</i> .....	<i>1</i>
<i>Layout of the Strategy Statement</i> .....	<i>4</i>
<b>2. The Competition Authority’s Role and Functions</b> .....	<b>6</b>
<i>Enforcement</i> .....	<i>6</i>
<i>Merger Review</i> .....	<i>10</i>
<i>Competition Advocacy</i> .....	<i>13</i>
<i>International Activities</i> .....	<i>14</i>
<i>Internal Support Services</i> .....	<i>16</i>
<b>3. Environment</b> .....	<b>18</b>
<i>Competition Authority Structure &amp; Resources</i> .....	<i>18</i>
<i>Anticipated Future Developments</i> .....	<i>18</i>
<i>Critical Success Factors</i> .....	<i>22</i>
<b>4. Strategies and Performance</b> .....	<b>25</b>
<i>Strategies for Raising Awareness</i> .....	<i>26</i>
<i>Strategies for Enforcement</i> .....	<i>27</i>
<i>Strategies for Merger Review</i> .....	<i>32</i>
<i>Strategies for Compliance</i> .....	<i>34</i>
<i>Strategies for Advocacy</i> .....	<i>35</i>

## Foreword

---

I am pleased to present the Strategy Statement of the Competition Authority for the period 2009 through 2011. This is the Competition Authority's third Strategy Statement and is the culmination of a comprehensive process which included engagement with stakeholders, internal review and a thorough examination of best international practice. In addition, this Strategy Statement draws upon the considerable expertise and experience of an organisation with a solid record of achievement during its brief history.

The period of the last Strategy Statement recorded a number of significant milestones in the development of the Competition Authority and the development of competition policy in Ireland. The Competition Authority achieved the first convictions on indictment for competition offences in Ireland - as well as the first criminal conviction for competition offences before a jury in Europe. We successfully operated a first rate merger review regime that is on a par with best international practice. Through its advocacy function, the Competition Authority cogently made the case for more competition in a variety of markets in the State and progress has resulted from the implementation of many of our recommendations to make those sectors work better for consumers.

The Competition Authority enters the period of its next Strategy Statement a stronger and more experienced agency.

Paradoxically, just at the time that the Competition Authority finds itself operating at higher levels of effectiveness, we face a number of new challenges.

First, the extremely challenging economic situation, both internationally and domestically, creates a much more difficult environment in which the Competition Authority must operate. Market based policies are being challenged and special interest groups will inevitably endeavour to protect their members by seeking to restrict competition - to the detriment of consumers. In addition, given the deterioration in the finances of the State, it is to be expected that fewer resources will be available to carry out our statutory functions going forward.

Second, the Government announced in October 2008 that the Competition Authority will be amalgamated with the National Consumer Agency. We know from international experience that agencies with both competition and consumer functions can be very effective at pursuing both goals. However, we have also learned that the proper amalgamation of two agencies with different statutory remits, different skill sets and different cultures is a sizeable task and we will need to deliver on an effective amalgamation while attempting to keep disruption to our core functions to an absolute minimum.

The way to effectively deal with these new challenges is to become more effective at doing our job. This Strategy Statement is an outline of how that will be achieved over the next three years.



**William Prasifka,**

**Chairperson of the Competition Authority**

## **1. MISSION STATEMENT AND STRATEGIC GOALS**

---

### **Mission Statement**

The Competition Authority's mission is:

***To ensure that competition works well for consumers and the Irish economy***

The Competition Authority has consistently put consumers at the heart of its activities. The wording for the Mission Statement for 2009 to 2011 has changed slightly from the previous version, to acknowledge that what benefits consumers also benefits businesses and the wider economy.

When competition works well – when consumers can choose freely from a variety of goods, services and suppliers – consumers benefit from improved value for money, choice and quality. Competition encourages businesses to compete for customers.

Businesses also benefit in many ways from effective competition policy. First, businesses as consumers of goods and services are similarly protected against cartels and abuses of dominance. Second, as inappropriate restrictions limiting who may provide goods and services are removed, businesses can develop new markets and consumers will benefit from new choices in goods and services. Third, businesses involved in exporting benefit from competitively priced inputs to keep their cost base low, in order to compete internationally. Finally, competitive markets favour efficient businesses as consumers increasingly switch to the firms which offer best value; this is especially significant in the current economic climate.

The overall economy also benefits from competitive markets, as firms become more productive. Firms that face competition from rivals seek to reduce costs through innovation and the minimisation of waste so as to maintain or increase sales. Similarly, competition incentivises firms to produce new or improved products that give businesses a competitive advantage over rivals. Competitive home markets are vital to the creation of firms which can compete internationally; thus domestic competition is a vital element of Ireland's international competitiveness.

Our vision is that by enforcing competition law, advocating pro-competitive reform and striving to be at the international forefront of merger analysis, we can help to foster a productive and dynamic economy that will benefit consumers and help drive Ireland's competitiveness, the productive capacity of the economy and therefore overall economic growth and societal welfare.

### **Strategic Goals**

In order to achieve its mission statement, the Competition Authority has developed five high-level Strategic Goals; these are Raising Awareness, Enforcement, Merger Review, Compliance and Advocacy.

**Raising Awareness Goal:** Foster a culture of competition in Ireland by raising awareness and understanding of

the benefits of competition, and of the Competition Authority's role, among policy makers, businesses and consumers.

- Enforcement Goal:** Enforce competition law against cartels, other anti-competitive agreements and abuses of dominance, giving the highest priority to those breaches which do the greatest harm to consumers.
- Merger Review Goal:** Implement the merger review regime efficiently, effectively and according to best international practice.
- Compliance Goal:** Promote compliance with, and understanding of, competition law among businesses by helping them to know what competition law is and how to comply with it.
- Advocacy Goal:** Achieve increased competition where it is unnecessarily absent, limited or restricted, and protect competition where it already exists - by working with the Government and its Ministers, Government Departments and public authorities generally, and consumer and business representatives.

## **Background**

The Strategic Goals have been developed through an extensive, three-month consultation process involving both external stakeholders and the staff of the Competition Authority. First, a consumer survey was carried out to gauge attitudes to competition and the Competition Authority. Second, a series of in-depth, face-to-face interviews with external stakeholder organisations was carried out. These organisations represented the following sectors:

- Government departments/agencies and regulators;
- Business associations;
- Consumer associations;
- Economic and business commentators;
- The legal community; and,
- International organisations.

The Competition Authority's three main statutory functions are competition law enforcement (breaches of section 4 and section 5 of the Competition Act 2002), merger review and competition advocacy. Underpinning all of these is a widely shared international consensus that competition is a good thing. Competition represents not only the best possible opportunity for consumers to get a fair deal, but also the opportunity for energetic and innovative businesses to enter markets which would previously have been closed to them. Air and taxi transport, telecommunications and independent radio are

examples of sectors where both consumers and service providers have benefited from greater competition. These are also highly regulated sectors where consumers are protected from threats to their safety and to their pockets. The opposite of competition is very often the protection of entrenched monopolies and vested interests, and the confining of the right to carry on certain businesses to the privileged few. As the experience of the Irish economy has shown, this results in high prices and poor or non-existent services for consumers.

In times of global economic disruption and uncertainty, the benefits of competition may be undervalued, to the detriment of the economy and consumers. Protectionism, increased regulation and outright intervention in markets, which reduce risk, may be viewed as desirable. Economics and history have shown that such "fixes" are frequently self-defeating. For this reason, the Competition Authority has decided to amplify and give greater prominence to its Raising Awareness goal. Those operating illegal cartels, and others enjoying shelter from competition, have plenty of interest in protecting their excessive profits by maintaining the status quo, and frequently have the resources to apply to the task. In order to counteract these lobbying efforts, the Competition Authority recognises that it must generate an understanding of the benefits of competition among affected groups and especially among policy-makers. This is fundamental to the achievement of all the other goals, achievement of which is heavily dependent on support for competition amongst key stakeholders.

In the previous Strategy Statement, there was a single goal which covered civil and criminal enforcement, mergers and the promotion of compliance by businesses with the competition rules. As a result of feedback received, particularly from business representatives, this has been split into three goals: Enforcement, Merger Review and Compliance. This will allow greater focus on these key functions: Enforcement, which deals with breaches of the law, Merger Review, which relates to the statutory process of merger control, and Compliance, which involves promoting greater understanding of the requirements of competition law amongst businesses. In this Strategy Statement, actions relating to the internal functioning of the Competition Authority have been treated as strategies which contribute to achieving goals, rather than as high-level objectives in themselves.

Vigorous and successful enforcement of competition law is key to realising the benefits of competition policy. The Competition Authority has achieved notable successes over the past three years. The Enforcement goal recognises that the Competition Authority must now continue to build on these successes in order to safeguard the rights of consumers and of businesses and to contribute to Ireland's competitiveness and economic growth.

A separate goal for the Merger Review function has been established, mainly because merger control is different, in terms of both content and function, from other aspects of competition law enforcement. This will allow greater concentration on, and scrutiny of, the effectiveness and efficiency of the Competition Authority's discharge of this function.

The Compliance goal is aimed at educating businesses, helping them to know what is and is not permitted under competition law, and encouraging greater use of private action before the courts and of the Competition Authority's immunity programme. It reflects a desire among business representatives for more structured interaction with the Competition Authority, and for training materials for use in compliance courses, especially for small businesses.

Given the changing economic climate, the Advocacy goal will be key to the Competition Authority's success over the period of this Strategy Statement. One of the Competition Authority's greatest challenges over the next three years will likely be to effectively make the case against exemptions from competition law and the case for the benefits competition brings to consumers. In times of economic uncertainty competition may be seen as risky and inconvenient; in fact, competition is a vital component of Ireland's ability to compete internationally and thus its future place in the global economy.

The Advocacy goal reflects the Competition Authority's acknowledgement that it must work in partnership with others to make the case for competition. It will work with those involved in developing policy, with regulatory bodies (both statutory and non-statutory) and with consumer and business representatives to achieve this goal.

These five Strategic Goals, taken together, encompass all the Competition Authority's major functions. The goals have been chosen to focus the Competition Authority on its core business, in order to improve its effectiveness. The Competition Authority is committed to evaluating its own effectiveness, openly and transparently.

Finally, two goals that have appeared in previous statements do not appear as distinct goals in this Strategy Statement. These strategic goals related to the international aspects of the Competition Authority's work and to support services within the organisation. The latter, while crucial to the effective functioning of the Competition Authority and the achievement of its strategic goals, is typically regarded as an internal issue and therefore is inappropriate for inclusion in an outward-facing strategy document.

With respect to the Competition Authority's international activities, rather than having a distinct strategic goal, the approach taken in this Strategy Statement is to recognise that there is an international aspect to each of the five goals. For example, the Competition Authority frequently draws on international experience and best practice, in pursuing each of the five goals. Most importantly, however, the Competition Authority has a role not only in the enforcement of domestic competition law, but also European competition law. These roles are often so closely intertwined that presenting them as separate strategic goals seems inappropriate.

## **Layout of the Strategy Statement**

The remainder of this Strategy Statement is structured as follows:

- Section 2 examines the Competition Authority's roles and functions. This includes a description of the legal context of the Competition Authority's enforcement activity; the Competition Authority's statutory role in merger review; the Competition Authority's important advocacy work in highlighting sectors of the Irish economy where competition is absent or limited; the Competition Authority's international obligations; and the Competition Authority's internal support services.
- Section 3 looks at the environment within which the Competition Authority operates. First, the Competition Authority's internal structure is described. Second, the current economic environment and anticipated future developments, such as the Competition Authority's proposed amalgamation with the National Consumer Agency, are considered. This



section emphasises the importance of competition policy to the performance of the Irish economy.

- Section 4 details the high-level goals and strategies of the Competition Authority over the next three years. How performance will be measured is also set out. These goals, strategies and performance indicators are targeted to improve the effectiveness of the resources of the Competition Authority.

### **Effectiveness of Competition Authorities**

The Competition Authority continuously aims to improve its practices. In 2007, it undertook a comprehensive review of the scope and adequacy of the competition policy system, rules and remedies. In its submission to the Department of Enterprise, Trade and Employment in relation to the current review of the Competition Act 2002, the Competition Authority reflected on what legislative changes may be required to allow it to operate more effectively and made approximately 40 recommendations; these recommendations were based on the Competition Authority's experience in working within its current legislative framework.

Over the period of the last strategy statement, the Competition Authority undertook a review of training and development. A recommendation resulting from this review was the creation of a dedicated Human Resources post. The Policy Division, which was established in mid-2005, enhanced the Competition Authority's knowledge base through researching competition policy developments, making internal policy recommendations and disseminating information on international best practice. The Competition Authority also participates in international competition fora and considers comparative international experiences in every aspect of its work.

Other elements, too, contribute to an effective organisation. Several such issues were identified in the Competition Authority's survey of external stakeholders as areas where the Competition Authority needs to make improvement. For example, a number of stakeholders suggested that the Competition Authority could do more in terms of promoting awareness and understanding of competition law and policy and therefore needed to engage with key stakeholder groups in a more systematic and regular fashion. Over the period of this Strategy Statement, the Competition Authority has set as one of its goals the task of raising awareness and understanding of the benefits of competition and the role of the Competition Authority. It will also aim to work in partnership with the Government, Ministers, Government Departments, public authorities generally and others to achieve increased competition.

This Strategy Statement reflects the Competition Authority's desire to improve itself by setting a forward-looking framework for action to achieve better practices.

## 2. THE COMPETITION AUTHORITY'S ROLE AND FUNCTIONS

---

The Competition Authority's Mission Statement and Goals are based on the statutory functions of the Competition Authority as set out in the Competition Act 2002 ("Competition Act"). These functions can broadly be categorised as the enforcement of competition law, merger review and competition advocacy.

### Enforcement

The Competition Authority is responsible for enforcing sections 4 and 5 of the Competition Act, together with Articles 81 and 82 of the Treaty establishing the European Community ("the Treaty"). Articles 81 and 82 EC apply where anti-competitive practices may have an effect on trade between Member States of the European Union. Section 4 of the Competition Act and Article 81 EC each prohibit anti-competitive agreements. Such agreements may occur between firms that are competitors of each other or between firms that are not competitors, for example between distributors and retailers. Section 5 of the Competition Act and Article 82 EC address anti-competitive behaviour by dominant firms, that is, firms with sufficient economic strength to inhibit competition in their respective markets.

The Competition Act gives the Competition Authority the power to investigate breaches of competition law, either as a result of a complaint made to it or on its own initiative, and responsibility for bringing summary proceedings in respect of breaches of the Competition Act. However, only the Director of Public Prosecutions can bring proceedings for breaches of competition law under indictment. Sections 6 and 7 of the Competition Act provide that breaches of sections 4 and 5 of the Competition Act and Articles 81 and 82 EC may be prosecuted as criminal offences. However, breaches of section 5 of the Competition Act and Article 82 EC are typically seen as civil offences.

### Investigative Powers

The Competition Act gives the Competition Authority a number of investigative powers, including:

- **Power of Entry and Search:** Authorised Officers of the Competition Authority can enter or search any premises or dwelling with a warrant issued by the District Court.
- **Power to Seize Documents and Records:** Authorised Officers can seize documents/records with a warrant issued by the District Court.
- **Power to Summon Witnesses and to Require Production of Records and Information:** The Competition Authority can summon witnesses to be examined under oath and can require production of records and information from that witness. Witnesses have the same immunities and privileges as a witness before the High Court. When summoned, failure to appear is a criminal offence.
- **Power to Require Information from Third Parties:** The Competition Authority can obtain information from third parties, including professional advisors and financial institutions.

## ***Anti-competitive agreements***

The Competition Act gives the Competition Authority power to investigate breaches of competition law. The Competition Authority has the discretion whether to pursue specific breaches as criminal or as civil infringements of the Competition Act, or to pursue them by other means.

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. A cartel is an illegal agreement between two or more competitors not to compete with each other. There are no pro-consumer benefits from cartels, and because they are blatantly anti-competitive, cartels are usually secret conspiracies. Cartels artificially raise prices, eliminate real consumer choice and deny consumers the benefits of innovation that would have arisen if a competitive market existed.

Most cartels fall into one or more categories of agreements or concerted practices:

- **Price fixing:** price fixing cartels aim to directly ensure that cartel members are able to charge higher prices for specific goods or services than they could if they competed with each other;
- **Market sharing:** market sharing cartels occur where cartel members agree among themselves to divide up the market or decide who should get a particular contract. Again, this enables cartel members to charge higher prices than if they competed;
- **Limiting production:** controlling the amount of goods or services provided is another way cartels can ensure that prices remain high; or
- **Bid rigging or collusive tendering:** occurs where competing undertakings agree on a strategy for how they will bid for a particular contract. Depending on the exact bidding strategy agreed, for example, cartel members may agree to submit bids above a particular price or to arrange the bids so that one particular undertaking wins customers in a particular (economic or geographic) area. This inevitably raises the price of tendered contracts above the competitive level. Cartel members may also agree with each other on the terms or conditions to be offered on a tender or agree to refrain from competing on a tender, or otherwise collude on competitive aspects of the tender process.

Price fixing, market sharing, limitations on sales and outputs, and bid rigging are considered "hardcore" offences, because they represent a fraud on the consumer (and the Exchequer), and carry the most stringent sanctions including fines, imprisonment and disqualification from acting as a company director. The Competition Authority may investigate an alleged cartel either on foot of a complaint received by it or on its own initiative. The Competition Authority usually seeks to have hardcore cartel cases dealt with in the criminal courts. Where sufficient evidence can be obtained, the Competition Authority will submit a file to the Director of Public Prosecutions with a recommendation that the parties involved be prosecuted. The Director of Public Prosecutions' office is responsible for bringing prosecutions on indictment in the State. The Competition Authority itself may bring a summary prosecution in the District Court.

Criminal investigations of cartel behaviour are time-consuming and complex. Cartels are a form of economic crime, where there is typically no "smoking

gun". Because they are a form of conspiracy to defraud the public, they are by their nature secretive. Participants tend to conceal evidence and to deny their involvement. Investigations into such behaviour are generally lengthy and resource intensive. There is also a high burden of proof in criminal cases, so obtaining the required volume of evidence can be more time-consuming than in civil cases. In this respect, the situation in Ireland differs from that in most other European countries, where the competition agency itself is typically empowered to impose administrative fines. In these countries, the same agency is responsible for investigation, for deciding on whether a breach of competition rules has occurred and for imposing penalties, even in serious cases. By contrast, in Ireland, the Constitution is generally held to preclude the taking of such decisions by a non-judicial body.

### ***Successful convictions and custodial sentences***

In March 2006 Ireland became the first country in the European Union to have a custodial sentence imposed, albeit suspended, for a breach of competition law. Since then, there have been a number of successful prosecutions for breaches of competition law. To date, 23 individuals and undertakings have received fines and five individuals have received suspended sentences for their involvement in hardcore cartel activity. To date, fines totalling €183,000 have been imposed by the courts.

While the Competition Authority regards these achievements as substantial, in relation to the level of fines imposed to date in particular, the Competition Authority is of the view that to ensure the continued effectiveness of competition policy and enforcement in Ireland, the quantum of fines must rise in order to create an effective deterrent to anti-competitive conduct. The courts have signalled the seriousness with which they regard breaches of competition law:

On sentencing of Michael Flanagan, 2<sup>nd</sup> March 2006, Judge Raymond Groarke stated:

***"Those engaged in cartels and involved in the fixing of prices are doing so only with the motivation of greed...That is why the legislature takes such a serious view of it...I could well see circumstances where persons convicted by a jury could be subjected to terms of imprisonment."***

In May 2006, Judge Groarke during sentencing two cartel participants involved in the Heating Oil Cartel, said:

***"... being involved in a cartel was theft."***

On sentencing of Denis Manning, 3<sup>rd</sup> February 2007, Mr. Justice Liam McKechnie stated:

***"This type of crime is a crime against consumers and is not simply against one or more individuals. To that extent it is different from other types of crime; and while society has an interest in preventing, detecting and prosecuting all crimes, those which involve a breach of the Competition Act are particularly pernicious. ... These activities, in my view, have done a shocking disservice to the public at large."***

The Competition Authority also investigates non-hardcore offences such as non-hardcore *horizontal agreements* and *vertical agreements*. Non-hardcore horizontal agreements between competitors can include agreements on research and development, group purchasing and standard-setting. Such agreements may have been entered into for reasons other than the elimination of competition, but nonetheless may breach section 4 of the

Competition Act because of the resulting anti-competitive effect. Vertical agreements are agreements between firms that are not competitors, but are linked through a distribution chain, such as those between manufacturers and distributors. Other examples include agreements between distributors and retailers, licensors and licensees and franchisors and franchisees. Most agreements of this sort benefit consumers and do not damage competition; those that are deemed to be in contravention of competition law are normally resolved by civil proceedings in the High Court.

### ***Abuse of Dominance***

Under section 5 of the Competition Act and Article 82 EC, it is prohibited for a undertaking, or a collectively dominant group of undertakings, to “abuse” a dominant position. Being dominant, or collectively dominant, is not in itself an offence. A dominant position essentially means a business can act independently of its competitors and consumers, that is, it is strong enough to operate without having to take account of the reaction of its competitors or consumers. A business may be dominant simply because it is performing the best, for example, by offering consumers high-quality products at lower prices than its competitors. In order for a breach of section 5 of the Competition Act or Article 82 EC to occur the business must be behaving in a manner that restricts or damages competition.

Behaviour that may be prohibited by section 5 of the Competition Act includes:

- Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- Limiting production, markets or technical development to the prejudice of consumers;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby putting them at a competitive disadvantage; and
- Making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

The dividing line between aggressive competition and abuse of a dominant position can often be blurred, and determining whether a dominant firm’s conduct is pro or anti-competitive involves a weighing of specific facts and economic evidence. (By contrast, cartels do not involve any pro-consumer or pro-competitive benefits.). Breaches of section 5 of the Competition Act are usually brought before the civil courts, not the criminal courts, by the Competition Authority. Pursuant to section 14 of the Competition Act, it is possible that a firm found to have abused a dominant position would be subject to divestiture, requiring the sale of assets in order to break up the firm.

## The Competition (Amendment) Act 2006

On 20<sup>th</sup> March 2006, the Competition (Amendment) Act 2006 came into force. This statute revoked the Restrictive Practices (Groceries) Order 1987, which had banned the selling of certain grocery items below net invoice price. At the time of the announcement of the revocation, the Minister for Enterprise, Trade and Employment, Mr. Michéal Martin stated that; *"There is no evidence that the Order has protected fair competition in the grocery sector and there is substantial evidence that consumers are paying higher prices because of the Order."* As a consequence of the Competition (Amendment) Act 2006, grocery operators are no longer subject to ex-ante regulatory constraints on the price at which they wish to sell groceries. Such operators are now subject to the full scope and terms of competition law in Ireland.

The main operative portions of the amending legislation are found in the new section 15B of the Competition Act which prohibits, subject to a competition test, the following conduct by grocery goods undertakings (as defined in the new section 15A):

- Attempts to compel or coerce another grocery goods undertaking to resell or advertise for resale any grocery goods at a fixed price or above a minimum fixed price;
- The application of dissimilar conditions to equivalent transactions with any grocery goods undertaking;
- Compelling or coercing another grocery goods undertaking to make any payment or grant any allowance for the advertising or display of grocery goods; and
- Compelling or coercing another grocery goods undertaking to pay the retailer for providing space for grocery goods within the first 60 days of the opening of a new retail outlet, the opening of a newly expanded or extended retail outlet or the opening of a store to the public under new ownership.

The Minister for Enterprise, Trade and Employment requested the Competition Authority, in conjunction with the Director of Consumer Affairs, *"to review and monitor the structure and operation of the grocery trade for the foreseeable future to see how it responds to the new legislative environment"*. In accordance with this request the Competition Authority established the *Grocery Monitor* project that produced a series of reports:

- Report No. 1: *A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006* – published in April 2008.
- Report No. 2: *Price Trends in the Irish Retail Grocery Sector: A Description of the Evolution of Retail Grocery Prices between 2001 and 2007* – published in April 2008.
- Report No. 3: *The Retail Planning System as Applied to the Grocery Sector: 2001 to 2007* – published in September 2008.

Monitoring of the grocery sector and retail sector more generally will continue, principally through the Competition Authority's enforcement role. The data and market intelligence gathered during the *Grocery Monitor* project will help inform our analysis of further issues arising in this sector.

## Merger Review

The Competition Authority is responsible, under Part 3 of the Competition Act, for reviewing certain mergers and acquisitions. Mergers are a mechanism used by businesses to restructure in order to compete and prosper. Mergers can be beneficial to consumers, businesses and the overall economy, while serving the interests of business through promoting efficiency and reducing unnecessary costs. However, some mergers could have adverse effects on

competition, thereby harming consumers. Mergers require the use of structured economic analysis to determine whether they will lead to a substantial lessening of competition. Effective and timely merger review allows beneficial mergers that promote an efficient and dynamic economy, while prohibiting mergers that substantially lessen competition and harm consumers.

Proposed mergers over certain financial thresholds (which are outlined in section 18(1)(a) of the Competition Act) must be notified to the Competition Authority. Mergers below those financial thresholds may still give rise to anti-competitive effects that can be detrimental to consumer welfare, and so the Competition Act allows for such mergers to be notified voluntarily to the Competition Authority. This permits the merging parties to gain legal certainty as otherwise, unless they were cleared, such mergers might run the risk of enforcement action under section 4 or 5 of the Competition Act.

Since the commencement of Part 3 of the Competition Act 2002, when reviewing proposed mergers the Competition Authority employs the Substantial Lessening of Competition ("SLC") test. The SLC test is widely recognised as being at the forefront of international best practice for merger review.

After an initial investigation of the proposed merger (Phase 1) the Competition Authority may clear the merger or proceed to a full investigation (Phase 2). Phase 1 is generally a one month initial examination of the merger; the period for review may be longer if the Competition Authority requests further information or receives proposals from the parties to address concerns raised by the Competition Authority.

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 period during which a more detailed examination of the transaction is undertaken. After a full investigation of the proposed merger, the Competition Authority will determine whether the merger:

- May be put into effect;
- May be put into effect subject to conditions; or,
- May not be put into effect.

Over the period of the last strategy statement which ran from 2006 to 2008<sup>1</sup>, 203 mergers were notified to the Competition Authority. Of this number, only nine went to a Phase 2 examination. Of the nine Phase 2 examinations, two mergers were blocked due to the determination that they would lead to a substantial lessening of competition. One merger was cleared with commitments and the remainder were cleared outright.

Media mergers are approached differently under the Competition Act. The Competition Act allows for the possibility that a media merger, cleared by the Competition Authority on competition grounds, can still be prohibited by the Minister for Enterprise, Trade and Employment on specified public interest grounds, including plurality and diversity. In addition, certain media mergers must be notified to the Competition Authority, irrespective of the turnover of the businesses involved. Statutory Instrument No. 122 of 2007 requires the notification of:

---

<sup>1</sup> Information accurate as of December 18<sup>th</sup>, 2008.

- All mergers or acquisitions in which two or more of the undertakings involved carry on a "media business" in the State; and
- All mergers or acquisitions in which one or more of the undertakings involved carries on a "media business" in the State and one or more of the undertakings involved carries on a "media business" elsewhere.

## **Changes to Merger Review**

### **Bank Mergers**

On the 2nd of October 2008 the Oireachtas passed the Credit Institutions (Financial Support) Act 2008 (the "2008 Act"), which was enacted in the public interest to: (i) provide financial support to banks in order to maintain the stability of the financial system in the State and (ii) modify certain provisions of the Competition Act in order to allow the Minister for Finance to review and make a decision in any merger or acquisition (within the meaning of section 16 of the Competition Act) in the banking sector which meets the criteria set out in section 7(1) of the 2008 Act. The 2008 Act does not therefore remove the Competition Authority's jurisdiction over all bank mergers, only those that meet the criteria set out in section 7(1).

Pursuant to sections 7(6) and (7) of the 2008 Act, the Minister for Finance may consult with the Competition Authority and the Competition Authority shall provide any advice, information and assistance reasonably requested by the Minister for Finance. Under section 7(12) of the 2008 Act, the Minister for Finance, after consultation with the Minister for Enterprise, Trade and Employment, the Governor of the Central Bank, the Central Bank and the Competition Authority, may

*... approve a merger or acquisition ... even if he or she forms the opinion that the result of the merger or acquisition will be to substantially lessen competition in markets for goods or services in the State but that the merger or acquisition is necessary having regard to any or all of the following:*

- *maintenance of the stability of the financial system in the State;*
- *the need to avoid a serious threat to the stability of credit institutions;*
- *the need to remedy a serious disturbance in the economy of the State.*

### **Media Mergers**

On 1st January 2003, the Minister for Enterprise, Trade and Employment made an Order under section 18(5) of the Competition Act. This Order, Statutory Instrument (S.I.) No. 622 of 2002, specified all media mergers as being a "class" of merger that were compulsorily notifiable, even if any such media merger did not meet the financial thresholds for mandatory notification set out in section 18(1)(a) of the Competition Act. The Competition Act defines a media business quite widely, which had the effect of causing many mergers to be notified that had no effect on media markets in the State, and in some cases, no practical link with media businesses at all.

On 21<sup>st</sup> March 2007, S.I. No. 622 of 2002 was revoked and replaced by S.I. No. 122 of 2007. The new Order now requires the notification of:

- All mergers or acquisitions in which two or more of the undertakings involved carry on a "media business" in the State; and
- All mergers or acquisitions in which one or more of the undertakings involved carries on a "media business" in the State and one or more of the undertakings involved carries on a "media business" elsewhere.

Since the commencement of the new Order, the Competition Authority has seen a considerable drop in the number of media mergers notified to it, from 23 in 2005 and 22 in 2006 to 17 in 2007.



## **Competition Advocacy**

In addition to its law enforcement and merger review functions, the Competition Authority has a number of functions coming under the general heading of competition advocacy, as outlined in section 30 of the Competition Act. This involves a duty to promote competition in the economy in a number of ways:

- Advising the Government, its Ministers and agencies, about the implications for competition of proposed legislation or regulation;
- Identifying and commenting on the effects on competition of existing laws or administrative practices;
- Studying and publicising how competition operates in the economy; and
- Advising and informing the general public, as well as public authorities, about competition issues.

The Competition Authority regularly advises Government Departments and agencies on the effect on competition, if any, of new legislation or policy proposals. In carrying out this function, the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers.

Many existing regulations and practices restrict competition, and the Competition Authority frequently calls for the removal of such anticompetitive laws. Public restrictions on competition may manifest themselves in many different, and often very subtle, ways. Excessive restrictions on entry to a business or profession, legislation conferring monopoly rights on a particular firm and prohibitions on advertising are just some examples of public restrictions on commercial freedom to compete on level terms for the custom of consumers. Public restrictions should be distinguished from private restrictions, which are of greater relevance to the Competition Authority's enforcement and merger review functions. The end result is the same, however: less value for money and less choice for consumers.

Since 2002, the Competition Authority has analysed many non-traded sectors of the Irish economy in-depth under the Competition Act, highlighting anti-competitive structures or practices and making recommendations on how sectors can become more dynamic and deliver better value to consumers.

In these sectoral analyses, the Competition Authority has made 158 recommendations aimed at increasing competition and enhancing consumer welfare. These recommendations have been addressed to Ministers and Government Departments, regulatory bodies and other bodies such as trade associations. Of the 158 recommendations made to date, 47 have been implemented and a further 34 are being progressed. The full implementation of these recommendations would have a positive impact on Ireland's competitiveness and economic growth.

In addition to making formal submissions and commenting on specific legislation, the Competition Authority also provides advice to Government Departments and public agencies in other ways and formats, such as through meetings, written communications or a combination of both.

### **Competition Enhances the Overall Economy**

Increased competition is associated with both short and long term gains in what a country can produce. These gains in productivity arising from increased competition benefit both consumers and businesses. Enhanced competition also increases employment. Productivity is higher in those sectors of the economy where competition is stronger. As the Organisation for Economic Co-operation and Development (OECD) has noted:

*"Regulatory policies that increase ... the role of competitive forces can raise output per capita by encouraging investment, improving productivity and increasing employment ... systematic reforms to promote market competition creates resilient, adaptable economies that grow faster and create more jobs."*<sup>2</sup>

Central to the idea of effective competition is rivalry between firms and the dynamic process of firms entering and exiting the market. Strong rivalry among firms drives productivity and promotes the development and adoption of innovative technologies. Markets that are closed to competition tend to be inefficient; opening markets up to rivalry will over time induce entry by more efficient firms. Incumbents will either adapt or fail. The threat of entry, that is, more competition from new firms, and the possibility of failure are strong drivers of efficiency within firms to produce good value products and services. Businesses exposed to competition will find more efficient ways to provide better goods and services by using inputs such as labour, finance and technology more efficiently. When this process is effective, dynamic competition ensures that the most efficient and productive firms thrive.

Sectors of the economy that are not exposed to international or inter-regional competition are often referred to as the non-traded or locally traded sectors. Non-traded sectors – such as electricity and professional services - tend to face less competition and this has implications for the wider economy.

Most services can be categorised within the non-traded sector. Services have a major role in the performance of the overall economy; they contribute approximately 63% of value added in the economy and employ two-thirds of the workforce. However, because of its insulation from effective competition, elements of the non-traded sector exhibit low productivity.

Goods and services produced in the non-traded sector are often inputs for other sectors of the economy, including those exposed to international competition. Poor performance in the non-traded sector affects consumers of those services, including firms that use them as inputs in the production of other goods. Therefore low productivity in one sector has a negative effect on the competitiveness of the overall economy.

In order to increase Ireland's competitiveness, measures must be taken to increase competition in the non-traded sector. A competitive services sector will help Ireland realise its productive potential.

### **International Activities**

There is an important international aspect to the work of the Competition Authority. The Competition Authority's international role stems primarily from its role, alongside the European Commission and national competition authorities in other Member States, in enforcing Articles 81 and 82 EC. The competition provisions of the Treaty establishing the European Community, which prohibit anti-competitive agreements and abuses of dominance, correspond closely to sections 4 and 5 of the Competition Act. The European

---

<sup>2</sup> OECD (2007), *Relationship between Competition Policy and Economic Performance*, OECD DAF/COMP(2007)2.

Competition Network, which is composed of the Commission and the national competition authorities of the various Member States, was established in 2004 to facilitate co-operation in the consistent application of Community competition rules through arrangements for information sharing, assistance and consultation.

The Competition Authority also participates in international fora as a means of promoting best practice within the agency. International organisations such as the Organisation Economic Cooperation and Development and the International Competition Network support the development of best practice in competition law and policy. The Competition Authority is an active participant in each of these organisations.

### ***European Competition Network***

Since May 2004, with the coming into force of Council Regulation (EC) No 1/2003 ("Regulation 1/2003"), a new system for the application and enforcement of Articles 81 and 82 EC has been put in place. Pursuant to Regulation 1/2003, all national competition authorities and national courts are empowered to directly apply the competition rules contained in the Treaty. The European Competition Network (ECN) was established, on foot of Regulation 1/2003, to ensure that Community competition law is applied consistently across all Member States. Membership of the ECN is compulsory for all EU Member States. The objective of the ECN is to build an effective legal framework to challenge companies who engage in cross-border business practices that restrict competition and are detrimental to consumer welfare. The Competition Authority actively participates in the work of the ECN.

The Competition Authority is designated as the representative of Ireland for consultations by the Competition Directorate of the Commission relating to competition enforcement cases and initiatives in competition law and policy. Before adopting a decision applying Article 81 or 82 EC, the Commission is required under Regulation 1/2003 to ask the Member States for its opinion through the Advisory Committee on Restrictive Practices and Dominant Positions. Similarly, the Commission is required under the EC Merger Regulation<sup>3</sup> to seek the opinion of the Advisory Committee on Concentrations before adopting a merger decision. In addition, the Commission consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. The Competition Authority fulfils this role through attendance at decision-making and other meetings as well as making written and oral contributions to policy and case analyses.

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

Ireland is a member of the OECD by governmental agreement. The OECD provides a setting for its 30 member governments to discuss economic, social and governance policy issues and experience. The OECD also acts as an independent source for policy research and analysis. The OECD is made up of Committees which focus on a wide range of policy issues. The Competition Committee of the OECD promotes market-oriented reform by actively encouraging and assisting decision-makers in government to tackle anti-competitive practices and regulations. The Competition Authority attends the meetings of the Competition Committee of the OECD and its two associated working parties.

---

<sup>3</sup> Council Regulation (EC) No 139/2004, hereafter "EC Merger Regulation".

## ***International Competition Network***

The Competition Authority is a member of the International Competition Network (ICN). The ICN is a voluntary organisation that seeks to provide competition authorities with a specialised yet informal venue for maintaining regular contact and addressing practical competition enforcement issues. The Competition Authority is active in three of the ICN's working groups: the Unilateral Conduct Working Group, the Merger Working Group and the Cartels Working Group.

## **Internal Support Services**

The central administrative and support functions in the Competition Authority include corporate governance, business planning, financial management and accounting, human resource management and development, information and communication technology and legal support services. The provision of these support services is critical to the Competition Authority's ability to achieve the strategic goals that it has set for itself in this Strategy Statement.

The contribution of internal support services to the achievement of the Competition Authority's Strategic Goals, include:

- Ensure and monitor compliance with our various statutory requirements as a corporate body and under the Government's Codes of Practice for Governance of State Bodies through the development of clear policies and procedures.
- Ensure effective management and coordination of the Competition Authority's business and strategic planning processes, so as to ensure that targets are met and that the strategic direction of the Competition Authority's activities is consistent with its Strategy Statement.
- Ensure the efficiency and effectiveness of the internal control systems by undertaking an internal audit programme in consultation with the Competition Authority's Internal Audit Committee, thereby giving the necessary assurance to management on the systems of control.
- Deliver a financial management service that promotes and contributes to the effective use of the Competition Authority's financial resources through the delivery of economy, efficiency, value for money and promptness in expenditure.
- Manage the Competition Authority's human resources so as to maintain a skilled and motivated team dedicated to achieving the Competition Authority's Strategic Goals.
- Provide for our staff a safe and supportive working environment and equitable people management services.
- Provide opportunities for skills development through the formulation of an annual training plan based on the business needs of the Competition Authority and the individual personal development needs of staff.
- Provide a reliable, secure and effective Information and Communications Technologies ("ICT") service and produce a new three year ICT plan that will define the technical direction and framework for developments in the Competition Authority's infrastructure.
- Manage the provision of timely legal services within the Competition Authority so as to give clear and consistent legal advice to the Competition Authority and its staff, and in particular, to advise on

statutes, legal requirements, and effective performance of legal processes and procedures.

- Maintain effective and responsive lines of communication with the Minister for, and Department of, Enterprise, Trade and Employment so as to optimise the necessary two-way flow of information.

For the duration of this Strategy Statement and beyond, the Competition Authority will seek to develop its competence to provide these services to the optimum level. Performance will be measured in overall terms by the success of the Competition Authority in achieving its Strategic Goals and in specific terms by its success in achieving the targets in its annual business plans.

### 3. ENVIRONMENT

---

#### Competition Authority Structure & Resources

The Competition Authority is an independent corporate body consisting of a Chairperson plus not less than two and not more than four Members. Currently, it has a Chairperson and three members. The Competition Authority is organised into six divisions. Each Member is an executive director with responsibility for one or more of the Competition Authority's divisions.

Including the Chairperson and the Members, the Competition Authority currently has a staff complement of 59. The staff have experience and training from a variety of backgrounds including law, law enforcement, economics and public administration.

The Competition Authority derives its powers and functions from the Competition Act.

Division	Function
Advocacy	Advising Government, Departments and public authorities on competition issues, and identification of workable solutions to increase competition where it is identified as unnecessarily absent, limited or restricted.
Cartels	Detection, investigation and prosecution of cartels under section 4 of the Competition Act, recommendations of criminal prosecutions on indictment to the Director of Public Prosecutions, development and maintenance of inter-agency relations and assisting criminal prosecutions by the Director of Public Prosecutions.
Corporate Services	Financial management and accounting, human resource management and development, information and communications technology, corporate governance, customer service; and legal support.
Mergers	Review notified mergers and determine whether they would lead to a substantial lessening of competition, provide guidance to practitioners and industry.
Monopolies	Detection, investigation and resolution of breaches of section 4 (non-hardcore anti-competitive agreements) and section 5 (abuse of dominance) of the Competition Act; and the provision of guidance to consumers, practitioners and industry bodies.
Policy	Management of international activities, internal and external communications and media relations, provision of Chairperson and divisional support, and strategy and business planning.

#### Anticipated Future Developments

The Competition Authority has considered a number of anticipated developments which are likely to have a significant impact on its work over

the period of the next Strategy Statement. The deteriorating economic climate, the ongoing review of competition legislation and the amalgamation with the National Consumer Agency will all present challenges for the effective operation of the Competition Authority. In identifying its Strategic Goals and how they may be achieved, the Competition Authority must be cognisant of these factors and the risks and opportunities they present.

### ***Deteriorating Economic Climate***

The Irish economy has entered a difficult phase. A combination of international and domestic factors has resulted in a drastic slowing of economic growth which will affect all sectors of the economy. Deteriorating economic circumstances will have an impact on the context in which competition policy and enforcement operate. While changing economic circumstances impact on different sectors to different degrees, undoubtedly, in some sectors, some firms will find it difficult to maintain profitability.

One response by businesses in difficult economic times may be to form anticompetitive cartels to maintain prices above the competitive level and inevitably harm consumers. Another is that operators may make requests to Government to introduce measures to cushion them from the negative effects of slower economic growth, including exemption from the scope of competition law. Each of these responses presents specific challenges for the Competition Authority.

It is important that policy must continue to support effective competition so that consumers are not unduly harmed during these difficult economic circumstances and into the future, by ensuring that productive and competitive firms can thrive. Fostering efficient and innovative enterprises through pro-competitive market structures will better enable Ireland to weather the current economic storm and enhance future growth and employment prospects.

### ***Review of the Competition Act 2002***

The Competition Authority was originally established as the statutory body responsible for the administration of domestic competition law by the Competition Act 1991. This statute only afforded the Competition Authority limited powers. Since then, the fundamental legislation under which the Competition Authority operates has changed twice. On each occasion significant steps forward were made toward the development of an effective competition law regime. First, the Competition (Amendment) Act 1996 criminalised certain types of anti-competitive behaviour and provided for enforcement by the Competition Authority and significant penalties including custodial sentences and substantial monetary fines. Five years later, the current legislation, the Competition Act 2002, was enacted. This replaced the Competition Act 1991, the Competition (Amendment) Act 1996 and the Mergers and Takeovers (Control) Act 1978. With the Competition Act, all aspects of competition law in Ireland were encompassed in a single piece of umbrella legislation. The Competition Authority now has sole responsibility for mergers (except media and banking mergers) and analysis them solely by reference to the likely effects on competition.

On 13<sup>th</sup> November 2007 the Tánaiste and Minister for Enterprise, Trade and Employment announced, in the context of a review of existing competition legislation, a public consultation seeking the views of interested parties. In December 2007, the Competition Authority made a submission to the Department of Enterprise, Trade and Employment. The submission was based

on the Competition Authority's considerable experience in working within the current legislative framework.

In its submission the Competition Authority outlined proposals to allow for more effective enforcement of sections 4 and 5 of the Competition Act and Articles 81 and 82 EC. A number of the recommendations related to increasing the level of fines handed down by the courts where firms and individuals have been found guilty of hardcore cartel offences. It is the view of the Competition Authority that, to date, the quantum of fines handed down by the courts for hardcore offences is insufficient to deter this type of anticompetitive conduct.

In relation to the Competition Authority's merger review function, the submission calls for amendments to the Competition Act that are required to clarify certain aspects of the notification procedure. The submission also calls for more effective execution of remedial measures when necessary, to alleviate competitive concerns regarding potential mergers.

Since its establishment, the Competition Authority has made many recommendations to improve competition in a variety of sectors across the economy. Some of these recommendations have been implemented, but most remain outstanding. The Competition Authority's advocacy function would be more effective if the Government made a commitment to responding to formal recommendations made by the Competition Authority. In this regard, the Competition Authority welcomes the Government's announcement in *Building Ireland's Smart Economy: A Framework for Sustainable Economic Renewal* that it intends to "... publish a whole-of-Government response to recommendations contained in reports of the Competition Authority within nine months of their publication."<sup>4</sup>

The review of competition legislation is ongoing. The Competition Authority looks forward to a continuing close working relationship with the Department of Enterprise, Trade and Employment during this process. The Competition Authority is hopeful that the outcome of the review, like the acts of 1996 and 2002, will represent another step toward an effective competition law and policy regime that is to the fore of international best practice. Effective competition law and policy, applied throughout the economy, will benefit Irish consumers and help drive economic growth and employment.

### ***Amalgamation with the National Consumer Agency***

At the announcement of the 2009 budget on 14<sup>th</sup> October 2008, the Minister for Finance outlined a rationalisation plan for State agencies. The rationalisation plan involves, among other things, an amalgamation of the Competition Authority with the National Consumer Agency ("NCA").

The NCA is the statutory body established to defend consumer interests and to embed a robust consumer culture in Ireland. The NCA's mandate is to defend and promote consumer rights through advocacy, targeted research, consumer information, education and awareness programmes, and the systematic enforcement of consumer law.

Competition and consumer policy are intertwined in that both have consumer welfare at the heart of their mission. This substantive link between the two

---

<sup>4</sup> Government of Ireland (2008), *Building Ireland's Smart Economy: A Framework for Sustainable Economic Renewal*, p. 51.



policies is the reason they are often housed in a single entity. There are approximately 102 competition agencies in 91 jurisdictions across the world. Of this number, approximately 40 also have some form of consumer protection role, including the US, Australia and Canada, alongside other countries in the European Union including the UK.

### **The Interface Between Competition and Consumer Policy**

Competition and consumer policies are highly complementary and can reinforce one another. Consumers benefit from competitive markets, where businesses have an incentive to improve quality and choice, lower their prices, be informative, minimise switching costs etc. in order to attract consumers. Effective consumer policy promotes consumer confidence enabling them to drive vigorous competition; when consumers can effectively make an informed choice this acts as a competitive discipline on businesses. The substantive link and shared agenda between the two policies is the enhancement of consumer welfare, and for this reason many countries house their competition and consumer functions in one agency.

Amalgamating the two agencies will result in many synergies. Principally, there are gains to be made from sharing expertise across the two areas. Integrated management may provide opportunities for professional development in which individuals are exposed to, and develop a detailed understanding of, both competition policy issues and consumer protection issues. Combining the competition and consumer policies enables issues to be analysed from both perspectives. Some issues are resolved best through a competition mechanism and others are a matter best dealt with through consumer protection. Having both functions in a single institution facilitates the choice of the most effective tool and adds flexibility to an agency's solutions.

However, there can also be tensions due to the different approaches taken. Competition policy addresses problems on the supply side of the market, namely restrictive agreements among competitors or abuses of dominance. Consumer policy approaches consumer welfare problems from the demand side, for example addressing information asymmetry, false and misleading advertising or disproportionate contract terms. In comparison to competition policy, consumer policy is concerned with more than making markets work and is more varied in its instruments, form and substance. However, consumer policy can also be more short-term in its approach. It may be directed towards limiting immediate price increases or directing the behaviour of firms, rather than creating market structures which maximise consumer welfare in the long-term.

The key challenge for the new amalgamated agency will be to coordinate the application of the two policies and ensure that they work together and not against each other. Appropriate prioritisation principles will be important for the new amalgamated agency.

To date in Ireland, while there has been some co-operation between competition and consumer policy, they have been functionally separated and housed in two independent agencies. Successful amalgamation of the Competition Authority and NCA will bring many of the synergies and benefits that international agencies with dual roles have. The amalgamated entity will allow for a stronger institution that can better represent the interests of consumers.

While this Strategy Statement is being drafted in the context of current legislation and therefore the Competition Authority's current statutory responsibilities, the core strategic goals, as outlined here, will endure within

the new post-amalgamation entity. The amalgamation will present significant challenges for the two organisations. A fundamental rethink of policy and organisational arrangements will be required. The Competition Authority looks forward to working with the NCA and the Department of Enterprise, Trade and Employment to ensure that the new agency will be well structured and that there will be a minimal disruption to the day-to-day activities of both agencies during the transition period. Nevertheless, a certain amount of disruption will be unavoidable during the initial bedding-down period.

### **Critical Success Factors**

In addition to the environmental factors of which the Competition Authority must be aware when creating this Strategy Statement, there are also critical success factors. Critical success factors are factors crucial to the success of the Competition Authority in the pursuit of its mission. While, to a significant extent, such factors are outside the Competition Authority's control or sphere of influence, it remains up to the Competition Authority to deal with the risks and opportunities they present. The three main critical success factors relate to staff and budgeting, the political and policy environment and the legal system.

### ***Staff Resources and Budget***

Staff is an organisation's most important resource. In order to maintain and improve the highest standards of public service, human resources policy must be aimed at attracting and retaining high quality staff to ensure a continuing culture of high performance and a reputation of excellence. Programmes for professional development and high quality seminars with contributors of high calibre will be continued.

Both the amalgamation with the National Consumer Agency and public sector cutbacks will inevitably strain internal systems and processes. The Competition Authority welcomes the opportunity to be part of discussions that will result in a well-organised, well-resourced combined agency that can better serve Irish citizens and the economy.

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

The Competition Authority aims to improve consumer welfare and by doing so, to increase the competitiveness of the overall economy. Public and political awareness of the benefits of competition are central to this. The political environment affects the degree to which the Competition Authority can be effective in its work. The Competition Authority's functions include advising Government on competition issues and studying markets to identify constraints on competition and make recommendations. In that context, the Competition Authority welcomes the Government's recent announcement that it will respond formally to recommendations in Competition Authority reports within nine months.

In addition to advocacy efforts, the policy environment and public awareness are also critical to the Competition Authority's enforcement efforts. The Competition Authority has made approximately 40 recommendations in its submission to the Department of Enterprise, Trade and Employment on the Review of the Competition Act, all of which the Competition Authority believes will enhance its enforcement efforts. While the Competition Authority can carry out investigations on its own initiative, the Competition Authority relies on public awareness and support in carrying out its functions; the majority of

investigations are initiated on foot of complaints from consumers, consumer bodies, businesses, industry groups and others.

For these reasons, one of the Competition Authority's principal Strategic Goals is to foster a culture of competition by raising awareness of the benefits it has brought already to Irish consumers, and can continue to bring given a supportive policy environment. The success of this goal is fundamental to achieving the other goals of the Competition Authority.

### **Effectiveness of Competition Policy**

Competition policy includes a set of prohibitions and obligations with which firms must comply with when operating in the market, together with an array of tools for policing their behaviours and punishing any violation. The main objective of a competition policy regime is to deter firms and individuals from behaviours that are harmful to society by limiting, or distorting, competition, while not chilling any behaviour that improves the welfare of society.

Deterrence depends on three factors:<sup>5</sup> (1) the level of sanction imposed for those that violate competition law; (2) the perceived probability of being caught; and (3) the perceived probability of investigating and convicting an innocent person/undertaking. These drivers in turn depend on six competition policy variables:

- The independence of the Competition Authority with respect to political or economic interests;
- The degree of separation between the adjudicator and the prosecutor;
- The quality of the law on the books;
- The level of loss that firms (and their employees) can expect to suffer as a consequence of a conviction;
- The type of investigative powers held by the Competition Authority; and
- The amount and the quality of the financial and human resources the Competition Authority can rely on in performing its tasks, in particular the level of its budget and the skills of its staff.

These policy variables set the parameters within which the Competition Authority decides to pursue cases, act on complaints and analyse sectors of the economy. Some of these factors are outside of the Competition Authority's direct control, but are nevertheless critical success factors. The Competition Authority is the enforcer of competition law whereas competition policy in Government falls under the remit of the Department of Enterprise, Trade and Employment. In response to the review of Irish competition law currently underway, the Competition Authority has made a submission to the Department of Enterprise, Trade and Employment recommending a number of changes to the existing competition legislation that the Competition Authority believes, based on its experience, would enhance these competition variables and improve the effectiveness of competition policy.

### **Decision Making and the Legal System**

The Competition Authority is not a decision making body with regard to breaches of section 4 or 5 of the Competition Act. The Competition Authority is responsible for investigating breaches of the Competition Act and where necessary bringing them before the courts or sending a file to the Director of Public Prosecutions with a recommendation for prosecution. The situation in Ireland differs from that in most other European countries, where the

---

<sup>5</sup> Lear (2008), *A Study of the Effectiveness of Competition Policy*; prepared by Lear for the Directorate General for Economic and Financial Affairs of the European Commission.

competition agencies are also empowered to decide on whether or not a breach of the competition rules has occurred and also to impose penalties. In Ireland, this is the responsibility solely of the courts. Achieving speedy and effective decisions depends not only on the Competition Authority's own performance but also on the speed and effectiveness of the legal system.

With respect to criminal cases, it is the Competition Authority that investigates alleged breaches of the Competition Act; however, in all criminal cases except those brought in the District Court by way of summary prosecution, it is the Director of Public Prosecutions who decides whether a case should be prosecuted. At trial on indictment, a jury decides whether the prosecutor has proved, beyond a reasonable doubt, that the impugned conduct breaches the Competition Act. After conviction, the court exercises its discretion to determine the appropriate sanctions to impose, including monetary fines and prison terms.

Where cases are brought by the Competition Authority itself, both civil and summary criminal cases, they are presented to the court without a jury. The courts are charged with determining both liability and the appropriate sanctions to be applied, in accordance with the Competition Act.

The Competition Authority has decision making powers with respect to mergers. A decision of the Competition Authority to block a merger or to clear it with conditions can be appealed. In these circumstances, the Competition Authority is once again dependent upon the decision-making process of the High Court.

## 4. STRATEGIES AND PERFORMANCE

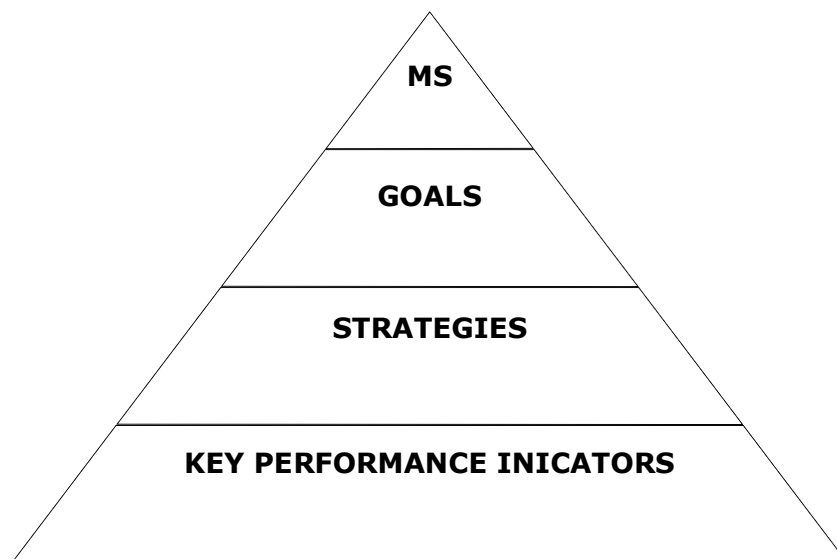
---

### Introduction

The four main elements of a Strategy Statement are:

- A **Mission Statement (MS)**;
- A set of high-level **Goals** which reflect the Mission Statement;
- **Strategies** to achieve these objectives; and,
- **Key Performance Indicators (KPIs)** to measure the effectiveness of the strategies.

The relationship between these four elements is illustrated the figure, below.



The **Mission Statement** sets out the fundamental reason why a body exists. It should be simple and easily understood by non-specialists. Nevertheless, it can play an important role both within and outside the organisation. Within the organisation, it provides a common purpose for all employees, and lets them understand that all parts of the system contribute to the same goal. By communicating to external stakeholders the fundamental vision of the organisation, it helps build support and a positive image.

Supporting the Mission Statement are the **Goals** which allow the organisation to achieve its mission. These goals should reflect the areas which are key to the success of the organisation. They are limited in number to ensure the organisation remains focused, but there should be no area critical to the future of the organisation that is not thought through and controlled.

**Strategies** are the methods which are used to achieve the goals; they may consist of action plans, or the framework for developing such plans. There are usually different ways to achieve any given goal. Choosing the correct strategy requires a realistic appraisal of the organisation's strengths and weaknesses, and of the opportunities and threats presented by the external

environment. Each strategy has advantages and disadvantages; in order to choose between them the organisation needs to know the exact nature of the problem, what resources are needed to implement the different strategies, and whether the organisation has, or can develop, these resources.

**Key Performance Indicators (KPIs)** are used to measure the effectiveness of strategies. They are numerical and non-numerical measurements used to help the organisation to determine the progress being made towards its goals. This implies that strategies must be precise – it must be easy to tell whether or not they are being achieved. An acronym in English – SMART – is used to remind us that strategies should be:

- Specific;
- Measurable;
- Achievable;
- Realistic; and,
- Time-bound.

In each case, the strategic plan should set out the specific target to be reached by a certain date, and explain exactly how the KPI is to be measured and reported against.

The remainder of this section details the Competition Authority's strategies and key performance indicators for each of its Strategic Goals.

### **Strategies for Raising Awareness**

Raising Awareness Goal: Foster a culture of competition in Ireland by raising awareness and understanding of the benefits of competition, and of the Competition Authority's role, among policy makers, businesses and consumers.

Research has shown that there is a significant gap between the work of the Competition Authority and public perceptions of the issues. It appears there is also a lack of understanding of competition and the role of the Competition Authority among policy makers and businesses. There is a requirement to raise public awareness and understanding of the role of the Competition Authority and the benefits of competition.

More specifically, the Competition Authority needs to increase efforts to promote an understanding of why competition is good for both consumers and the competitiveness of the economy. This is extremely important to the extent that greater understanding will result in greater compliance. Improved awareness of what constitutes a breach of competition law, and why it is harmful to society, should also lead to a higher number of complaints, and equally importantly, high quality complaints. Greater understanding of the benefits and role of competition will also promote better regulation of the economy in the future.

This goal underpins the other four, as their achievement is dependent on support for competition amongst key stakeholders. It is generally accepted that the general social, political and economic climate supports the idea that cartels and other anti-competitive practices represent a form of theft against consumers. The Competition Authority will seek to maintain this support and

to raise awareness of the role of competition in supporting Ireland’s overall economic growth.

This goal aims to enhance the reputation of the Competition Authority by clearly communicating the role, activities and value of the organisation to key stakeholders and the public at large.

<b>Raise awareness and understanding of why competition is good for consumers and the overall economy, and of the role of the Competition Authority, by developing annual communications plans targeted at key stakeholder groups of policy makers, businesses and consumers.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Develop and implement an annual communications plan with specific activities targeted at key stakeholders. The communications plan shall include, but is not limited to:               <ul style="list-style-type: none"> <li>- Review of the Competition Authority website.</li> <li>- Stakeholder outreach programme.</li> <li>- User-friendly information booklets on a range of topics.</li> <li>- Education/outreach programme</li> <li>- Publication of guidance and decision notes.</li> <li>- Series of conferences/seminars.</li> <li>- Active programme of presentations/speaking.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Communications plan developed and put in place each year (Year 1, 2 and 3).</li> <li>▪ Targets outlined in annual communications plan achieved (Year 1, 2 and 3).</li> <li>▪ Improved perception of competition as reflected in media coverage (Year 1, 2 and 3), and consumer and stakeholder research (Year 3).</li> <li>▪ Improved perception of the Competition Authority as reflected in media coverage (Year 1, 2 and 3), and consumer and stakeholder research (Year 3).</li> </ul>

## **Strategies for Enforcement**

**Enforcement Goal:** Enforce competition law against cartels, other anti-competitive agreements and abuses of dominance, giving the highest priority to those breaches which do the greatest harm to consumers.

Enforcing domestic and European competition law is one of the Competition Authority’s three main statutory functions. Enforcing competition law involves detecting, investigating and resolving cases; the aim is to efficiently achieve the most effective outcome for consumers and the overall economy.

The Competition Authority has been very successful over the period of the previous strategy statement in rooting out and prosecuting cartels. That said, however, measuring success in cartel enforcement is difficult since cartel activity is by definition secretive. The strategies and performance indicators for this goal reflect a best effort at measuring something that is inherently difficult to measure.

Measurement difficulties are also present when investigating other potentially anti-competitive agreements and allegations of abuse of dominance. For example, improving efficiency in the investigation and resolution of cases is not accurately reflected by an assessment of the time taken to resolve complaints but needs to be taken together with achieving the best outcome for consumers and the economy.

Success in achieving this goal is twofold: first, those individuals and undertakings that breach the competition law are reprimanded and punished, and second, successful action by the Competition Authority has a deterrent effect on other individuals and undertakings and therefore prevents anti-consumer behaviour in future.

The strategies to achieve this goal have been separated into four sections: Detection, Investigation, Interagency Liaison and International Activities.

**Detection**

The first step in enforcing domestic and European law is detecting potential breaches. Effective detection of breaches of competition law derives from a number of sources.

The best evidence in any investigation is evidence provided by immunity applicants. The Competition Authority is dedicated to reviewing and promoting the cartel immunity programme in order to maximise its effectiveness in assisting the Competition Authority in detecting breaches of competition law.

<b>Improve the detection of hardcore breaches of the Competition Act and the Treaty by maximising the effectiveness of the Cartel Immunity Programme.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Conduct, in conjunction with the Director of Public Prosecutions, regular reviews of the Cartel Immunity Programme to ascertain how its effectiveness might be enhanced.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Establish and agree with the Director of Public Prosecutions a process for regular review (Year 1).</li> <li>▪ Implement any changes or improvements identified during the review (Year 1).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Promote the Cartel Immunity Programme, consistent with the Competition Authority's overall communications strategy, by widely distributing public information concerning the Cartel Immunity Programme through a variety of channels, including business, legal advisors, industry associations, law enforcement and others to increase awareness of its existence across all stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cartel Immunity booklet published (Year 1) and distributed (Year 1, 2 and 3).</li> <li>▪ Number of speeches and presentations given relating to the Cartel Immunity Programme. (Year 1, 2 and 3).</li> <li>▪ Awareness of Cartel Immunity Programme among stakeholders as shown by external stakeholder survey. (Year 3).</li> </ul>

The majority of Competition Authority investigations are initiated from complaints received; a further means of detecting breaches is through examining potential breaches on the Competition Authority's own initiative.



Both of these means of detection are activities that the Competition Authority intends to further review and improve.

In addition to these mechanisms, improved detection is a by-product of many other activities in which the Competition Authority is engaged. Building relationships with other enforcement agencies, raising awareness of what anti-competitive behaviour looks like and international co-operation also improve the Competition Authority's ability to detect breaches of competition law.

<b>Improve detection of breaches of the Competition Act and the Treaty by maximising the effectiveness of complaint handling and by improving the Competition Authority's ability to be more activist in seeking out breaches.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Review the complaints mechanism and the quality of the information provided by complainants.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Publish revised guidance to potential complainants (Year 1).</li> <li>▪ Ensure the website has clear, concise, user-friendly information on making a complaint (Year 1).</li> <li>▪ Percentage of complaints that lead to complaint files being opened (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Review the monitoring process for complaints and information received from external sources in respect of suspected breaches of the Competition Act.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Undertake review and recommend any changes (Year 2).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Examine potential breaches of law on own initiative by monitoring media sources and investigations at EU level and by other national competition authorities where similar players compete in Irish markets or where market structures are similar.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of files opened on own initiative (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Work with public agencies to develop and publish user-friendly booklets on detecting and preventing collusive tendering.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Collusive tendering booklet published (Year 1).</li> <li>▪ Achieve Plain English mark from the National Adult Literacy Agency (Year 1).</li> <li>▪ Awareness of booklet among policy makers as shown by external stakeholder survey (Year 3).</li> </ul>

### ***Investigation***

The second stage of enforcement involves investigating alleged breaches of competition law. The Competition Act provides the Competition Authority with

a number of powers. The strategies below are designed to improve the efficiency and effectiveness of Competition Authority investigations.

The Competition Authority will target investigation of those breaches that do the greatest harm to consumers. Cartels are recognised internationally as the most serious category of competition offences and do the greatest harm to consumers; the Irish courts have recognised that participation in a cartel is in effect a form of theft. Cartel investigations remain a top priority for the Competition Authority.

Complaints relating to other anti-competitive agreements and abuses of dominance account for the largest number of complaints received by the Competition Authority. In order to improve the efficiency and effectiveness of the assessment of these complaints, the Competition Authority will review its case selection criteria and implement revisions.

<b>Improve the Competition Authority's efficiency in investigating and resolving possible breaches of the Competition Act and the Treaty by effective use of the Competition Authority's investigative tools, and developing and implementing rigorous and structured case management procedures.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Review criteria for case selection and cessation to ensure effective resource allocation, based on the nature of the breach, consumer impact, strategic significance, risk assessments and resources.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review of criteria completed (Year 1).</li> <li>▪ Implement revised criteria for case selection (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Efficiently examine complaints and information received from external sources in respect of suspected breaches of the Competition Act.</li> <li>▪ Identify range of options for resolving cases and apply most appropriate mechanism according to criteria for case selection and cessation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number and allocation of complaint files opened, closed and ongoing year-on-year (Year 1, 2 and 3).</li> <li>▪ Percentage of complaint files resolved within 3 months, 1 year, more than 1 year (Year 1, 2 and 3).</li> <li>▪ Number of active files (investigation and evaluation) (Year 1, 2 and 3).</li> <li>▪ Number of successfully resolved cases (Year 1, 2 and 3).</li> <li>▪ Number of complaints leading to enforcement action (Year 1, 2 and 3).</li> <li>▪ Number of files sent to the Director of Public Prosecutions (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Continue to implement and improve IT support for file management and electronic forensic investigation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of investigations in which electronic forensic investigation tools are employed (Year 1, 2 and 3).</li> <li>▪ Development and roll-out of iBase complaints database (Year 1 and 2).</li> <li>▪ IT support improved, as measured in internal survey (Year 1, 2 and 3).</li> </ul>

### **Interagency Liaison**

The Enforcement Goal covers cartels, anti-competitive agreements and abuses of dominance; substantiated complaints can be resolved either by receiving undertakings to stop certain behaviour, settling cases short of court action, initiating a court case challenging breaches of domestic and Community competition law civilly in the High Court or criminally through summary prosecutions, or in the case of cartels, sending a file to the Director of Public Prosecutions.

The strategies below are aimed at improving the Competition Authority's ability to resolve cases through the best possible mechanisms. With criminal investigations, the Competition Authority investigates and prepares files to be sent to the Director of Public Prosecutions, who then decides whether or not to prosecute. Therefore, with respect to criminal cases, professional relations with the Director of Public Prosecutions and other law enforcers are vital.

<b>Improve the Competition Authority's ability to bring criminal cases to court by working with other law enforcement agencies.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Reinforce and develop working relationships with enforcement agencies by:               <ul style="list-style-type: none"> <li>- Engaging in regular case related meetings with representatives of Office of the Director of Public Prosecutions, in particular the Chief Prosecution Solicitor's Office.</li> <li>- Allocating resources to litigation requirements where the Director of Public Prosecutions decides to prefer charges in a Competition Authority file.</li> <li>- Efficiently and effectively complying with the Director of Public Prosecutions' directions relating to litigation.</li> <li>- Developing shared knowledge base with representatives of the Director of Public Prosecutions and Chief Prosecution Solicitor regarding developments in criminal and competition law.</li> <li>- Maintaining and developing liaison relationship with An Garda Síochána and, in particular, the Garda Bureau of Fraud Investigation.</li> <li>- Liaising with other international law enforcement agencies involved in competition law enforcement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Percentage of files (of the number sent) accepted by the Director of Public Prosecutions (Year 1, 2 and 3).</li> <li>▪ Number of prosecution related court activities and appearances handled year-on-year (Year 1, 2 and 3).</li> <li>▪ Meet targets for stakeholder outreach as outlined in the Competition Authority's communications plan (Year 1, 2 and 3).</li> </ul>

## **International Activities**

In Ireland, the Competition Authority has responsibility for investigating not only breaches of domestic competition law, but also breaches of Community competition law, that is, Articles 81 and 82 EC. Further, the Competition Authority is designated as the representative of Ireland for consultations by the Commission about competition enforcement cases and initiatives in competition law and policy. Before adopting a decision applying Article 81 or 82 EC, the Commission is required under Regulation 1/2003 to canvass the opinion of the Member States through the Advisory Committee on Restrictive Practices and Dominant Positions. This strategy aims to ensure that the Competition Authority fulfils its obligations within the Community and follows and contributes to best international practice in competition law enforcement.

<b>Participate in the implementation and development of international competition law and policy.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Fulfil the Competition Authority's obligations under Regulation 1/2003.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of international competition enforcement issues into which the Competition Authority has a substantial input on (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Participate in European Commission enforcement cases and EU policy-making on directives and regulations, via European Council and Advisory Committees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Commission events (Oral Hearings, Advisory Commission meetings, policy meetings) to which the Competition Authority makes a contribution (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Participate in other relevant international fora.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of calls to actively participate in relevant international events (Year 1, 2 and 3).</li> </ul>

## **Strategies for Merger Review**

Mergers Review Goal: Implement the merger review regime efficiently, effectively and according to best international practice.

The main role of the merger review function is to perform the statutory task of analysing and publishing reasoned determinations on proposed mergers and acquisitions notified to the Competition Authority. The time periods within which this analysis must take place are specified in the Competition Act and the Competition Authority endeavours to ensure that these time periods are adhered to. Since 2003, when the Competition Authority's merger function commenced, the Competition Authority has been reviewing mergers according to the international best practice Substantial Lessening of Competition standard. The strategies below aim to improve the efficiency and effectiveness of the Competition Authority's merger review function.

### ***Process Mergers in an Effective, Timely and Efficient Manner***

All mergers above a certain financial threshold, and all proposed media mergers (irrespective of the financial threshold) must be notified to the

Competition Authority. This strategy aims to further streamline the Competition Authority's merger review functions and further improve the effectiveness of the function. In addition, the Competition Authority will continue to be proactive in providing guidance to stakeholders on the Competition Authority's merger review procedures and practices.

<b>Improve the Competition Authority's ability to efficiently and effectively protect consumers from mergers that substantially lessen competition.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Encourage pre-notification meetings with parties.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of pre-notification meetings, and the percentage of those that result in a notified merger (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Ensure clear timetable and process targets are understood, within the team and externally.</li> </ul>	<ul style="list-style-type: none"> <li>▪ All mergers dealt with within statutory deadlines (Year 1, 2 and 3).</li> <li>▪ Work plan for each Phase II and complex Phase I mergers established and communicated to relevant parties (Year 1, 2 and 3).</li> <li>▪ Good understanding of procedures and timelines as shown by external stakeholder survey (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Elicit feedback from stakeholders on the effectiveness of the Competition Authority's merger review regime.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Client survey conducted within envisaged timeframe (Year 3).</li> <li>▪ Implement any desirable changes identified in any such survey (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Undertake and publish an analysis of merger determinations of the Competition Authority, including effectiveness of remedies.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Results of ex-post analyses of merger decisions (Year 3).</li> <li>▪ Produce and publish guidelines on remedies (Year 1).</li> </ul>

### ***International Activities***

The Commission is required under the EC Merger Regulation to seek the opinion of the Advisory Committee on Concentrations before adopting a merger decision. The Competition Authority is a member of the Advisory Committee on Concentrations and as such is designated representative of Ireland for such consultations. This strategy aims to ensure that the Competition Authority fulfils its obligations within the Community and follows and contributes to best international practice in merger review.

<b>Evaluate and audit compliance with international obligations and follow best practice.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Fulfil the Competition Authority's obligations under the EC Merger Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of European merger issues on which the Competition Authority has a substantial input on (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Participate in review of European Commission merger cases and EU policy-making on directives and regulations, via European Council and Advisory Committees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of instances of participation in Community merger case reviews (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Participate in other relevant international fora.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of calls to actively participate in relevant international events (Year 1, 2 and 3).</li> </ul>

### **Strategies for Compliance**

Compliance Goal: Promote compliance with, and understanding of, competition law among businesses by helping them to know what competition law is and how to comply with it.

The Competition Authority has a statutory function to provide guidance on how the provision of the Competition Act may be complied with. Enforcing competition law is not solely about seeking out breaches and bringing enforcement actions, but also about proactively ensuring compliance with competition law; this strategy aims to promote compliance.

<b>Promote compliance with competition law by seeking to raise the level of understanding among the business community by engaging in targeted outreach.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>Work with businesses to develop and publish a user-friendly booklet on compliance with sections 4 and 5 of the Competition Act.</li> </ul>	<ul style="list-style-type: none"> <li>Consultation, publication and dissemination of booklet completed within envisaged timeframe (Year 1 and 2).</li> <li>Achieve Plain English mark from National Adult Literacy Agency (Year 1 and 2).</li> <li>Feedback from external stakeholder survey on accessibility of documents published (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>Publish enforcement decisions, guidance notes and declarations as appropriate in clear and concise user-friendly language.</li> </ul>	<ul style="list-style-type: none"> <li>Feedback from external stakeholder survey on accessibility of documents published (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>Revise published merger procedures, processes, forms and guidelines if required, based on feedback on client survey conducted.</li> </ul>	<ul style="list-style-type: none"> <li>Revised guidance developed within envisaged timeframe following feedback on client survey (Year 1 and 2).</li> </ul>
<ul style="list-style-type: none"> <li>Seek to make presentations on compliance with the Competition Act, consistent with the Competition Authority's communications plan, to practitioners, industry and other relevant stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Number of presentations made on compliance (Year 1, 2 and 3).</li> <li>Feedback from external stakeholder survey (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>Publish press releases that are comprehensible to the lay reader.</li> </ul>	<ul style="list-style-type: none"> <li>Feedback from external stakeholder survey on accessibility of press releases (Year 3).</li> </ul>

## **Strategies for Advocacy**

Advocacy Goal: Achieve increased competition where it is unnecessarily absent, limited or restricted, and protect competition where it already exists - by working with the Government and its Ministers, Government Departments and public authorities generally, and consumer and business representatives.

The Competition Authority has a number of advocacy functions under the Competition Act. The Competition Authority continues to fulfil its statutory advocacy functions; however the Competition Authority is aware that ensuring a positive impact goes beyond making recommendations and advising policy makers. The strategies below aim to maximise the Competition Authority's impact by improving relations with Government, Departments and public

authorities, further promoting implementation of recommendations and continuing to build a network of competition advocates.

**Advice to Government, Departments and Public Authorities**

The Competition Authority is charged with advising the Government, Ministers, Government Departments and public authorities on the implications of legislative proposals for competition. This strategy ensures that the Competition Authority fulfils its statutory role through working closely with Government, Departments and public authorities on competition issues, responding to requests for advice, making submissions and following up and gathering feedback on recommendations made.

<b>Fulfil statutory function of providing advice to Government, Departments and public authorities on competition issues.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Work with the Department of Enterprise Trade and Employment in its policy making role.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Feedback from survey of external stakeholders (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Respond to requests for advice from Government, departments and public authorities in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of requests for advice responded to (within specified timeframe) (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Participate in relevant Government committees, working groups, etc. that address competition matters as resources permit.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of requests to participate in working groups advanced and accepted (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Make submissions to public consultation processes where proposed policies may affect competition.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of submissions made – feedback received on each (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Advocate for the removal of proposed and existing laws, regulations and administrative practices that have a negative effect on competition.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of recommendations made for pro-competitive amendments to proposed or existing laws, regulations or administrative practices and proportion of those recommendations implemented (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Inform Government, Government Departments and public authorities of international recommendations and developments in competition policy.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Commission, OECD and ICN recommendations referenced to Government, Department and public authorities (Year 1, 2 and 3).</li> </ul>



## **Research & Analysis**

The Competition Authority is also mandated to study and publicise how competition operates in any sector of the economy. The Competition Authority has analysed many sectors of the Irish economy in-depth, highlighting anti-competitive structures or practices and making recommendations as to how sectors can become more dynamic and deliver better value to consumers. The aim of this strategy is to further build the Competition Authority's capability in selecting targets and analysing selected areas through, for example, expanding the use of data analysis.

<b>Build capability to better select and analyse areas where competition may be absent, limited or restricted.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"><li>▪ Implement improved system for prioritising and selecting relevant, credible, appropriate target areas for analysis.</li></ul>	<ul style="list-style-type: none"><li>▪ Feedback from consumer and external stakeholder surveys - alignment of areas analysed to concerns of consumers and businesses. (Year 1)</li></ul>
<ul style="list-style-type: none"><li>▪ Harness the knowledge of the full range of stakeholders in areas being analysed.</li></ul>	<ul style="list-style-type: none"><li>▪ Number of meetings per relevant stakeholder groups (Year 1, 2 and 3).</li></ul>

## **Solutions**

Research and analysis identifies where competition is absent, restricted or limited. The Competition Authority comments on constraints identified through recommending workable solutions to improve the operation of competition and seeking to have the recommendations implemented. The aim of this strategy is to ensure that the recommendations made by the Competition Authority are achievable in the sense that recommended solutions are operational and workable. The Competition Authority will endeavour to do this by consulting widely with relevant stakeholders.

The Competition Authority has a large stock of recommendations made but as yet unimplemented. Ensuring their implementation also requires on-going engagement with stakeholders and policy makers. This strategy therefore commits to continuing to promote unimplemented recommendations and to working with policy makers on the precise mode of their implementation.

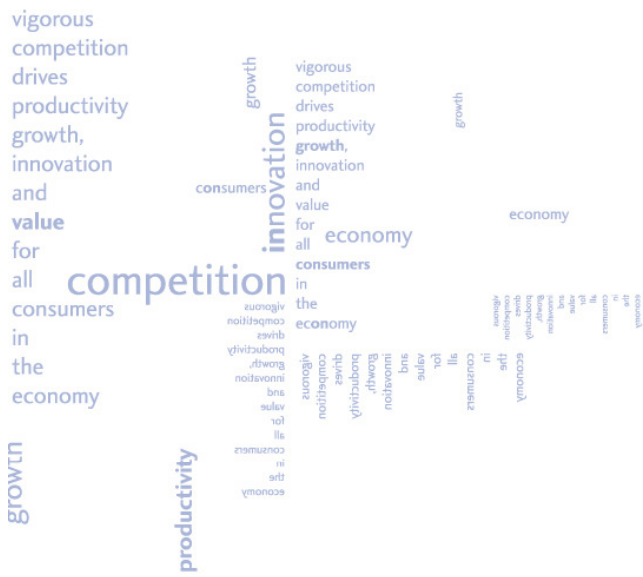
<b>Identify workable solutions to increase competition (where it has been identified as unnecessarily absent, limited or restricted) and follow up on these solutions in a pro-active manner.</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Analyse markets by efficiently producing targeted studies with workable recommendations to increase competition.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of reports produced within envisaged timeframe and on budget (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Consult widely on potential solutions to competition problems identified in areas under analysis.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of new recommendations (in reports and submissions/advice) implemented compared to historical levels (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Periodically follow up with decision makers and other parties on progressing Competition Authority recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Biannually follow up on unimplemented recommendations (Year 1, 2 and 3).</li> <li>▪ Increased proportion of implemented recommendations (Year 1, 2 and 3).</li> <li>▪ Extent to which advice acted on and/or recommendations accepted (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Seek to raise public awareness of new and existing recommendations and the competition issues involved.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of presentations made on new and existing studies/recommendations (Year 1, 2 and 3).</li> <li>▪ Feedback from consumer and external stakeholder surveys on level of awareness of where more competition is needed and the sectors where the Competition Authority has been actively promoting reform (Year 3).</li> </ul>

## **Competition Culture**

This strategy aims to foster a culture for competition by building a network of advocates for competition. Building momentum for the implementation of appropriate reforms is greatly assisted when the benefits of competition are advocated and supported from a number of sources.

<b>Build a network of advocates for competition</b>	
<b>How?</b>	<b>How will we know?</b>
<ul style="list-style-type: none"> <li>▪ Identify, engage and develop working relationship with relevant stakeholders/policy makers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of meetings with Government Departments, public authorities, and regulators (Year 1, 2 and 3).</li> <li>▪ Meet targets as outlined in the Competition Authority's communications plan (Year 1, 2 and 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Maintain open lines of communication and enhance effectiveness of co-operation with statutory bodies with which we have a cooperation agreement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of relevant communications with statutory bodies (Year 1, 2 and 3).</li> <li>▪ Number of cases referred to and from sectoral regulators year-on-year (Year 1, 2 and 3).</li> <li>▪ Results of external stakeholder survey (Year 3).</li> </ul>
<ul style="list-style-type: none"> <li>▪ Identify other organisations with which co-operation agreements would be appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of new co-operation agreements established (Year 1, 2 and 3).</li> </ul>





The Competition Authority, Parnell House, 14, Parnell Square, Dublin 1, Ireland  
 Tel: +353 (0)1 8045400 LoCall 1890 220224 e-mail: info@tca.ie

[www.tca.ie](http://www.tca.ie)