

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

# Competition Authority Strategy Statement 2012-2014 (pending amalgamation)

December 2011



**The Competition Authority**  
 An tÚdarás Iomaíochta



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## Foreword

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The Authority is required by law to produce a strategic plan every three years. The purpose of the strategic plan is to set out the key objectives, outputs and related strategies, including use of resources for the relevant period.

This Strategy Statement has been drafted in the context of our impending amalgamation with the National Consumer Agency (NCA). We expect that the amalgamated body will be required to produce a new Strategy Statement within six months of its formation. While this would replace the current document, we have nevertheless developed this strategic plan intending that the goals and strategies it sets out will remain relevant to the competition-related functions of the new organisation after amalgamation.

The Competition Authority and the National Consumer Agency have already begun working closely together, both to put in place the necessary steps to make the amalgamation a success and to exploit synergies between the two organisations where possible. This work is reflected in this Strategy Statement. Staff from both organisations have already demonstrated their enthusiasm for, and commitment to, the exercise, and I have the utmost confidence that this will continue throughout the amalgamation process and beyond.

The process will necessarily absorb resources, in terms of time, effort and money. It will be a considerable challenge to maintain focus, both in the lead-in to the amalgamation and in the early life of the combined organisation, on the day-to-day tasks of making life easier for consumers and promoting competitive markets. I am confident, though, that not only can we make the amalgamation work, we can ensure that both organisations remain highly effective throughout the process.

These are difficult times for all public sector organisations. Resources are scarce, while in many areas – not least in the competition arena – the need for robust enforcement, effective advocacy and education is greater than ever. Hard economic times can encourage firms to seek to dampen competition among themselves, either through direct anti-competitive action or through seeking legal protection for such actions. The Competition Authority needs, not only to do more with less, but to do it ever more quickly and effectively. Our economic survival as a nation requires that we maintain our international competitiveness. We will not achieve this by avoiding competition – rather, we need to embrace it by allowing those firms which give their consumers a better deal to reap the rewards of success. In the longer term, this will contribute to sustainable job creation and economic recovery.

Without the people who breathe life into it, a strategy statement is just a paper exercise. The staff of the Competition Authority have demonstrated their dedication, expertise and enthusiasm in the past, and will, I know, continue to do so over the term of this Strategy Statement.



**Isolde Goggin,  
Chairperson of the Competition Authority**

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

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## **Mission Statement**

The Competition Authority's aim is to protect consumer interests in the State. Our mission is:

**To ensure that markets work well for Irish consumers, business and the economy. We will do this by**

- **actively enforcing competition law to stamp out anti-competitive behaviour that harms consumers,**
- **advising policy-makers, public authorities and other bodies on ways to protect and improve competition in the economy, and**
- **implementing our merger regime effectively to prevent mergers that will substantially lessen competition.**

Our Mission Statement for 2012 to 2014 expands upon the mission set out in our previous strategic plan. It reflects our desire to fulfil our role under legislation so as to contribute to the long term competitiveness and recovery of the Irish economy. We intend to do this by exercising our functions to promote healthy competition in Irish markets.

Our vision is that by enforcing competition law effectively, 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 the economy.

## **Strategic Goals**

We have developed four high-level Goals to help us achieve our mission.

1. Build a strong enforcement record, changing existing and deterring future anti-competitive behaviour, targeting those anti-competitive behaviours that do the most harm to consumers, business and the economy.
2. Raise awareness and understanding of the benefits of competition, the provisions of competition law, and our role and activities among
  - consumers and the public generally,
  - businesses, and
  - policy-makers.
3. Fulfil our statutory and regulatory obligations in a timely and effective manner consistent with recognised best practice.
4. Manage the amalgamation with the National Consumer Agency successfully, ensuring that we remain effective as an agency throughout the process and that the result is a strong and effective amalgamated body.

These Goals were developed on the basis of feedback from several sources. First, a consumer survey was carried out to gauge attitudes to competition and the Competition Authority. Second, an analysis of media coverage of the Authority's activities provided insight into perceptions of the organisation. Third, the views of external stakeholders were gathered using a combination of face-to-face interviews and an on-line survey. We canvassed the views of external stakeholders from the following groups

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

We then consulted with staff on their views. We discussed all of the feedback gathered and through this process the Goals listed above were developed.

Our Goals for 2012-2014 represent a narrowing in focus to reflect the current economic environment in Ireland. They demonstrate our commitment to use our resources as effectively as possible. We will do this by, in the first instance, allocating resources to fulfil our duties and obligations under law. We will then prioritise our other activities with a view to delivering the best results to consumers and value for money to taxpayers.

### **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,
- Section 3 looks at the environment within which we operate,
- Section 4 details the strategies we will employ to achieve our objectives over the next three years. It also looks at the outputs we will measure and report on to assess our performance.

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

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The Competition Authority is responsible for enforcing Irish and European competition law in Ireland and promoting competition in the economy. We have the power to investigate if there is evidence that businesses are involved in anti-competitive practices, such as price-fixing, or that businesses are abusing a dominant position. We can also block mergers between businesses that would substantially reduce competition and harm consumers.

Consumers are at the core of what we do. We are striving to make sure that competition works for the benefit of all consumers who buy products and services in Ireland. This includes businesses, the State and its agents, as well as individuals. Competition is very important to help Ireland's economic recovery.

Competition happens when a company tries to win customers by offering better service, more choice and lower prices than other companies. This benefits everyone: consumers, businesses and the Irish economy as a whole. Competition keeps prices down and improves the choices consumers have and the quality of goods and services they buy. This process makes Irish business more competitive, both at local and international level and supports economic growth, something which has never been more important.

The Authority also has a very broad role to promote competition in the economy. We do this by calling for reform when Irish laws, regulations or actions by State bodies restrict competition. We advise the Government and its agents on how proposed legislation or regulations could affect competition. This prevents future problems for consumers. In this way, we give a voice to consumers when it comes to policy-making. We also promote competition by telling public authorities and the public about what we do and how competition can benefit all citizens.

Our investigations have resulted in businesses and individuals being successfully prosecuted for running illegal cartels. Other enforcement activities have helped change the behaviour of individual firms and put a stop to potentially harmful conduct. We have also studied various areas of the economy and made recommendations to improve competition. As a result, there is now more competition in many different services, including dental services, GP services and bus transport. We continue to campaign for reforms that will benefit consumers.

### **Benefits of Competition**

Healthy competition between market participants has many benefits.

- It gives the consumer more choice.
- It makes sure consumers get value for money.
- It encourages businesses to create new and better products and services.
- It supports economic growth.

These benefits occur because competition encourages businesses to work harder to win customers. Consumers benefit as they have a choice of

providers competing for their custom by offering better prices and better quality goods and services. Businesses are consumers too and when consumers benefit from competition, the economy does too. For example, when electricity costs fall because of greater competition, the overall cost of doing business also falls. This makes Irish businesses more competitive, which supports long-term economic growth.

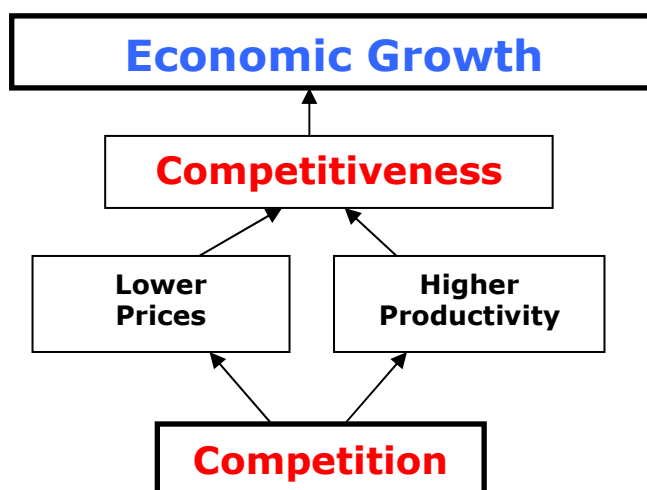
When there is a lack of competition, for example when there is a cartel or a monopoly, businesses do not compete for customers. In these cases, the consumer generally suffers because there are higher prices, less choice and lower quality.

Ireland has seen the benefits competition can bring. We know from experience that consumers got more choice, better prices, improved service and more new goods and services when the airline industry, intercity buses, telecommunications sector and the energy sector were opened up to competition.

### ***Competition Supports Economic Growth***

In a small open economy like Ireland, the key driver of economic growth is international competitiveness: this is the ability of Irish-based companies to export. By exporting goods and services, businesses in Ireland create wealth and employment, and help – by paying taxes – to fund public services such as health and social welfare.

Competition supports international competitiveness in two ways. The first and most visible effect is by keeping domestic prices down and by providing a greater choice and quality of goods and services. This means that Irish-based companies can keep their costs down and produce cheaper, better products that can be more easily exported.



Competition also drives productivity growth as firms continually strive to improve processes, reduce costs and produce products better suited to evolving consumer needs. Productivity is a measure of the level of value a business gets from its inputs. To increase productivity, that is, to get more output from a given level of inputs, a business must become more efficient. It must also innovate and develop new and highly sought after products that consumers want.



Where competition is strong, productivity is strong. If companies operating in competitive markets do not improve their productivity performance they will lose customers. Indeed, Ireland's most productive sectors are those that trade internationally in competitive markets. For example, productivity levels in the innovative chemical, pharmaceutical and electronics sectors are high and above average compared to sheltered, domestically trading sectors such as legal services, retail and distribution where competition is usually weaker.

Productivity will increasingly determine Ireland's competitiveness and, with it, our long term economic growth. Even in a high cost economy like Ireland, companies with high levels of productivity can continually cut costs and/or innovate to produce cheaper, better products that are easier to sell abroad. Productivity is therefore an essential factor in maintaining and building employment and will be a key determinant of Ireland's future economic performance and living standards.

## **The Authority's Functions**

### ***Preventing Anti-Competitive Behaviour***

The Competition Authority has a particular role in preventing anti-competitive behaviour. We are responsible for enforcing sections 4 and 5 of the Competition Act 2002 and Articles 101 and 102 of the Treaty on the Functioning of the European Union. The Competition Act gives us the power to investigate breaches of competition law, following a complaint or on our own initiative. The Act also gives us specific powers of investigation. These include the power to enter and search premises and homes with a search warrant issued by the District Court, the power to seize documents and records, the power to summon witnesses and to require information from third parties.

When we have gathered enough evidence of criminal cartel agreements, we refer a file to the Director of Public Prosecutions (DPP) for prosecution on indictment. In other cases, where we think competition law has been broken, we will bring a civil case before the courts. Sometimes cases are closed following a settlement with the parties, which involves them agreeing to change their behaviour.

Anti-competitive behaviour can take different forms.

#### *Cartels*

A cartel is an illegal agreement between two or more competitors not to compete with each other. It is a type of anti-competitive behaviour that is always harmful to consumers. Cartels usually involve a secret conspiracy among two or more businesses. Their aim is to make more profit at the expense of their customers. It means that consumers pay more for goods and services. Cartels are a crime against consumers.

Cartels are the most serious form of anti-competitive behaviour. So stopping cartels remains the Authority's top enforcement priority.

Cartels are illegal throughout the European Union and are recognised as the most serious breach of competition law throughout the world. In Ireland, cartels are hardcore breaches of competition law. Any business or person who is found guilty of a hardcore cartel offence can face a number of penalties, including fines and prison sentences.

Investigating cartels is difficult and complex. This is partly because cartels usually involve a secret conspiracy among many separate businesses and people. It is also because in Ireland, unlike most EU countries, hardcore cartel offences are criminally prosecuted and the burden of proof in court is to a criminal standard. That means the offence must be proved to a judge or jury beyond a reasonable doubt.

There are different types of cartels.

- Price-fixing cartels agree on the price to be charged for goods or services.
- Market-sharing cartels agree on which locations or group of customers they each sell to, which leads to higher prices.
- Production limiting cartels control the amount of goods or services they produce to make sure prices stay high.
- Bid-rigging or collusive tendering cartels agree how they will each tender or bid for a contract for business. They fix the outcome so that each member of the cartel gets a turn winning business. The result is that the business or public agency pays more for the goods or service.

In Ireland, only a court can decide that competition law has been broken and impose penalties. The Competition Authority does not make those decisions and cannot issue fines or other penalties for anti-competitive behaviour. Prosecutions are usually taken by the DPP following an investigation carried out by us, although we can bring prosecutions in the District Court in our own right.

#### *Non-hardcore Anti-competitive Agreements*

Cartel agreements are sometimes referred to as hardcore anti-competitive agreements because of the unequivocal nature of the harm that they cause to consumers. Other forms of anti-competitive agreements are sometimes referred to as non-hardcore agreements.

Non-hardcore agreements may be between:

- Competitors – agreements which may have an anti-competitive effect but do not relate to price-fixing, market sharing, limiting production or bid-rigging. Such agreements may involve, for example, sharing commercially sensitive information, carrying on production jointly, or advertising or promoting output jointly.
- Non-competitors – agreements between firms that are not competitors, for example, agreements between firms in a distribution chain, such as manufacturers and distributors. Such agreements may be anti-competitive if they unnecessarily restrict a company's behaviour, for example, dictating the price at which a retailer must sell or the customers to whom they may sell to.

The Competition Authority's objective is to get the parties involved in non-hardcore anti-competitive agreements to agree to stop the problematic behaviour. If necessary, we can go to the High Court to seek orders requiring them to do so.

### *Abuse of Dominance*

Businesses that hold a powerful position in relation to their competitors and their customers are not allowed to behave in ways that are anti-competitive. Holding a dominant position is not illegal. However, if a business abuses its dominant position to exploit consumers unfairly or stifle competition then it is behaving anti-competitively. If a business tries to eliminate its competitors or stop new competitors emerging by abusing its dominant position, this is a breach of competition law.

Conduct that may be considered abuse by a firm in a dominant position includes:

- Predatory pricing – selling a product or service at a very low price, intending to drive competitors out of the market, or intending to create barriers to entry for potential new competitors.
- Exclusive dealing – where a retailer or wholesaler is obliged to buy most or all of a product or service from a single supplier.
- Tying – making the sale of one good conditional on the purchase of a different good.
- Refusal to supply – refusing to supply products or services to another company as a means to eliminate competition.

As is the case with non-hardcore anti-competitive agreements, in abuse of dominance cases we will generally try to get the firm involved to agree to stop its anti-competitive behaviour. If voluntary compliance cannot be secured, the Competition Authority can take the firm to Court.

### *Private enforcement of competition law*

The Competition Authority cannot get back money for victims of cartels or other anti-competitive behaviour. Anyone harmed by anti-competitive behaviour can, however, bring a private civil action in court under Irish law.

If successful, the action may lead to an injunction (a court order prohibiting the behaviour) and the person or business bringing the claim may receive compensation, in the form of damages, for the loss they have suffered. In exceptional cases, an injured party may be awarded exemplary damages. This is an award of money that is more than the amount necessary to compensate for the damage caused. It is a punishment and is intended to mark the particularly serious nature of the infringement.

### ***Reviewing Mergers and Acquisitions***

Mergers between companies take place when they combine their business activities to create a larger company. An acquisition is where one company buys all or part of another company. They can be good or bad for consumers.

- Good mergers and acquisitions lead to a more efficient business that passes on some cost savings to consumers. They can also increase the level of competition in a market.
- Bad mergers and acquisitions lead to a situation where one or more businesses have the power to raise their prices, reduce output, or

reduce quality to consumers. They substantially reduce competition and consumers suffer.

The Competition Authority has to be notified of mergers and acquisitions involving companies with turnover over a certain amount of money. We then have the power, after assessing the notification, to clear a merger or acquisition if it raises no competition concerns, or block it if we find that it will substantially reduce competition and harm consumers. We can also clear a merger or acquisition subject to conditions, where we are satisfied that the conditions we impose will address any competition concerns.

Merger review can involve two phases. Phase 1 is a one month period in which an initial assessment of the transaction is carried out. Around 97% of all mergers are cleared in phase 1. If a merger is more complex, or more time is needed to assess it fully, the merger may go to phase 2. This is an in-depth assessment of the transaction that can take up to three months. Following a phase 2 assessment the deal may be cleared, cleared with conditions or blocked. In all cases, the Authority publishes a reasoned decision or determination explaining its decision.

Media mergers are treated slightly differently. All media merger notifications must be sent to the Minister for Jobs, Enterprise and Innovation. If we decide to clear a media merger, on the basis that it raises no competition concerns, we must inform the Minister. The Minister can then decide to block the merger on non-competition grounds, such as diversity and plurality of media ownership.

Different rules also apply to mergers involving credit institutions in Ireland (CIFS mergers). A CIFS merger is created when the Minister for Finance certifies in writing to the parties to the merger, the Competition Authority and the Governor of the Central Bank that the merger falls within the remit of the Credit Institutions (Financial Support) Act 2008 (CIFS Act). Once a merger has been certified it must be notified to the Minister for Finance rather than the Authority. While we may have a role, on request by the Minister for Finance, to review and provide assistance in respect of a CIFS merger, we have no jurisdiction to reach a decision on such mergers.

### ***Promoting Competition***

The Competition Authority has a function under the Competition Act to promote competition in the economy by

- Studying areas of the economy to examine how competition is working,
- Identifying laws, regulations or administrative practices that have a negative impact on competition,
- Advising the Government, its Ministers and agencies about how legislation or regulations may affect competition,
- Promoting compliance among businesses, and
- Informing the public about competition cases and raising awareness of the benefits of competition.

Competition can be restricted by laws, regulations or administrative practices, which denies consumers the benefits of competition.

If the Authority finds that the State, its agents, or a private representative body, is restricting competition unnecessarily, we make recommendations for reform. Examples of such restrictions on competition include:

- An industry or profession setting too many entry requirements, for example requiring people to obtain qualifications that are not necessary to do the job.
- An industry or sector having a long-term legal right to a monopoly in producing a good or service. For example, until relatively recently the Government gave the ESB exclusive licence to provide electricity.
- A ban on advertising prices.

### ***International Work***

There is an important international aspect to our work. The purpose of engaging at an international level with our competition colleagues in other countries and organisations is to contribute to the development of best practice internationally and ensure we employ best practice within our agency, as well as to fulfil our role as a law enforcement agency within the EU.

Since 2003, we, together with the Irish courts have been responsible for enforcing European competition law in Ireland. This obligation comes from Council Regulation (EC) No.1 of 2003 and our membership of the European Union (EU) generally. Competition law enforcement is one of the few economic policy areas where the EU has delegated powers and responsibility to Member States. The European Commission monitors enforcement by individual Member States and seeks to ensure that there is a co-ordinated approach to competition by National Competition Authorities. They do this through the European Competition Network (ECN). The competition authorities of every EU Member State, including Ireland, are required to actively participate in the ECN: to work with the Commission to agree common competition policy approaches and consult on enforcement activities throughout the EU. We also participate in EU merger policy development and case review when required.

The Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development (OECD) and we are active members of the International Competition Network. These organisations try to ensure a cohesive approach to competition law and policy at an international level. This improves their effectiveness at a domestic level and reduces business regulatory costs at a global level.

Ireland's participation in these fora will come to the forefront in the first half of 2013 when Ireland holds the EU Presidency. There will be a number of competition and consumer events taking place to coincide with the Presidency.

### ***Internal Support Services***

There are two divisions within the Competition Authority that support the work of the organisation overall. The Corporate Services Division provides administrative support to the organisation and the Strategy Division works on projects of a strategic nature and houses the communications function.

Corporate Services are responsible for corporate governance, financial management, IT, accounting, human resource management and legal support services. They ensure we comply with our various statutory and regulatory requirements under the Government's Code of Practice for Governance of State Bodies.

The Strategy Division is responsible for developing strategies and policies for the organisation. These relate to activities that affect the organisation at a multi-divisional level. It includes the development of policy, practice and procedures to enhance our international work, case prioritisation, effective project delivery etc. The Strategy Division coordinates the preparation of the Competition Authority's annual business plan and three year Strategy Statements. It is also responsible for the development and management of the Authority's communications strategy.

### **3. OUR OPERATING ENVIRONMENT**

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#### **Competition Authority Structure and Resources**

The Competition Authority is an independent corporate body consisting of a Chairperson and up to four Members. Currently, we have 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 Authority's divisions.

<b>Division</b>	<b>Function</b>
Advocacy	Promotes competition and advises public policy-makers.
Cartels	Responsible for investigating alleged cartel behaviour.
Corporate Services	Responsible for the administration, management and co-ordination of Authority policies and procedures and the provision of legal services.
Mergers	Responsible for examining mergers and acquisitions.
Monopolies	Responsible for investigating alleged non-hardcore anti-competitive agreements and firms that abuse a dominant position.
Strategy	Responsible for projects of strategic importance, review of Authority work and for implementing the Authority's communications strategy.

Including the Chairperson and the Members, the Competition Authority currently has 39 staff. This is down from 59 at the beginning of the previous strategy statement period (2009-2011). Authority staff have experience and training from a variety of backgrounds including law, law enforcement, economics and public administration.

#### **Anticipated Future Developments**

There are a number of factors affecting the environment in which we operate. These factors may affect our work during the period of this Strategy Statement. They include our forthcoming amalgamation with the National Consumer Agency (NCA), the economic climate, the review of competition legislation and the Ireland's Presidency of the EU in 2013.

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

In 2008, the then Tánaiste and Minister for Enterprise, Trade and Employment announced that the Competition Authority and the NCA were to be amalgamated as part of the rationalisation of state agencies. The NCA is the statutory body established to protect 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 complementary. Both have consumer welfare at the heart of their mission. It is for this reason that they are often

housed together in one agency. There are approximately 40 agencies throughout the world which have both competition and consumer protection mandates, including the US, Australia and Canada, alongside other countries in the European Union such as the UK.

While this Strategy Statement has been drafted in the context of current legislation, we have been very mindful of the fact that the amalgamation will take place during the course of this Strategy Statement period. We have drafted our Goals with the amalgamation in mind and we are satisfied that they will still be relevant to the competition function when we are operating as the new merged organisation.

The amalgamation will present significant challenges for the two organisations. The recent appointment of a new Chairperson and Members to the Competition Authority has already had a significant impact on the progress of the process and will help to ensure that things happen at a much faster pace. The process is already underway and we look forward to working with our new colleagues in the NCA and the Department of Jobs, Enterprise and Innovation (DJEI) on the task at hand. We will work together to create a formidable and successful combined agency.

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

Since 2008 the collapse of the domestic property and construction sectors along with the onset of the world financial crisis has resulted in a dramatic deterioration in the economy in Ireland. This has affected all sectors of the economy. The downturn has had an impact on the context in which competition policy and enforcement operate. While changing economic circumstances impact on different sectors to different degrees, undoubtedly, some sectors have fared worse than others.

One response by some sectors in these difficult economic times has been to lobby Government to introduce measures to cushion them from the recession by giving them an exemption from competition law. The Competition Authority has urged the Government to resist these calls for exemptions, and will continue to do so.

It is important that Government policy continues to support effective competition so that consumers are not harmed either now or in the future, by ensuring that effective market structures remain in place. This will help Ireland to weather the current economic storm and enhance future growth and employment prospects.

The arrival of the IMF/EU/ECB – or troika – and the subsequent conditions attached to Ireland's bailout has resulted in a number of commitments being made by the Irish Government relating to competition. These are mainly reforms to the sheltered sectors in the economy and a significant number of them reflect recommendations made by the Authority in various studies of specific sectors. They should yield positive results for consumers. We look forward to working with the Government and the troika to help achieve greater competition in more sectors of the economy.

Competition between properly regulated banks is vital to a strong economy and Ireland's future financial stability. The crisis in our banking system has resulted in state aid to banks and the creation of a two-pillar banking system. In this regard, financial stability has been prioritised over competition policy. We will continue to assist the Department of Finance and the EU Commission in formulating measures aimed at ensuring and safeguarding competition in



the banking sector in Ireland. We provide this assistance when a merger is notified to the Minister for Finance under the CIFS Act or the EU Commission in the performance of its State Aid function.

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

In December 2007, the Competition Authority made a submission to the then Department of Enterprise, Trade and Employment which had announced a public consultation on a review of the Competition Act 2002. The submission was based on our experience of working in the current legislative framework.

Subsequently, in 2008, the Minister for Enterprise, Trade and Employment announced that the Competition Authority and the NCA were to be amalgamated as part of a rationalisation of State agencies. It was decided that the review of competition legislation would be done in tandem with the work of amalgamating the consumer legislation. New joint legislation is required to bring the new merged entity into being. Drafting of this legislation is ongoing.

We look forward to a continuing close working relationship with the DJEI and the NCA during the drafting process. We are confident that the new legislation will be an effective tool for successful competition enforcement and consumer protection. Effective competition and consumer protection law and policy, applied throughout the economy, will benefit Irish consumers and business, and help drive economic growth and employment.

### ***EU Presidency***

Ireland will host the EU Presidency in the first half of 2013. We are planning to host a joint consumer and competition day with the NCA to mark Ireland's Presidency and look forward to participating in any other relevant events that take place during the Presidency.

### ***Critical Success Factors***

In addition to the environmental factors there are also critical success factors to be taken into account in the pursuit of our mission. While, to a significant extent, such factors are outside our control or sphere of influence, it remains up to us 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 are an organisation's most important resource. Given the moratorium on public sector recruitment that has been in place for the past number of years, career path progression and promotional opportunities are limited for our staff. Despite this, feedback gathered for the purposes of this Strategy Statement found that Authority staff are motivated and committed to their work. The view of our external key stakeholders, given in interviews as part of this process, is that we have skilled, professional, expert staff who are held in extremely high regard and are highly respected.

The challenge for us is to ensure that these levels of motivation and commitment are maintained throughout the amalgamation process and during the next three years. The steps taken by our Minister and his Department to put new leadership in place, who will take us through the amalgamation period, is a positive step in this regard.

Budget is an ongoing challenge for all public sector bodies, including the Competition Authority. Our market research tells us that we are not connecting well with consumers and certain demographics in particular. We will continue to strive to find creative ways of reaching out to consumers, and our other key stakeholder groups.

### ***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 and the Government's recognition of competition as an important way to achieve competitiveness can have a significant impact on the success of the Authority.

In addition to our own advocacy efforts, the policy environment and public awareness are critical to our enforcement efforts. While we can carry out investigations on our own initiative, we rely on public awareness and support, as the majority of investigations result from complaints from consumers, consumer bodies, businesses, industry groups and others.

For these reasons, one of our principal aims is to create a culture of competition by raising awareness of the benefits it has brought already to Irish consumers, and can continue to bring in the right political and policy environment. The success of this raising awareness Goal is fundamental to achieving our other Goals.

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

The Competition Authority does not make decisions on whether Irish and EU competition law has been infringed. Those decisions lie solely with the courts. We are responsible for investigating breaches of the Act and the Treaty on the Functioning of the European Union. Where necessary we bring those who we suspect have infringed the law before the courts, or send a file to the DPP with a recommendation for prosecution. This situation in Ireland is different to most other European countries, where the competition agencies have the power to decide on whether or not competition law has been broken and also to impose penalties. In Ireland, achieving speedy and effective decisions depends not only on our own performance but also on the speed and effectiveness of the legal system.

When it comes to criminal cases, it is the Competition Authority that investigates alleged breaches of competition law. However, in all criminal cases (except smaller, summary cases brought in the District Court) it is the DPP who decides whether a case should be prosecuted. In a prosecution brought by the DPP, a jury decides if the prosecutor has proved, beyond a reasonable doubt, whether the defendant is guilty or not. This is clearly a challenging standard. After conviction, the court decides the appropriate sanctions to impose, including monetary fines and prison terms.

Where we bring cases, whether they are civil cases or District Court criminal cases, they are tried by a judge alone, 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 one area where we have decision making powers is that of merger review. Any decision we take to block a merger or to clear it with conditions can be appealed to the High Court.

## **4. ACHIEVING OUR GOALS: STRATEGIES AND OUTPUTS FOR 2012-2014**

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### **Introduction**

A Strategy Statement is a forward-looking document that sets out what an organisation plans to achieve over a given period and how it intends to achieve it. It is part of a process of strategic management throughout the public sector which is aimed at providing a better service to citizens.

We look to our Strategy Statement for instruction on priorities to include in our annual Authority business plan and divisional business planning. We regularly review and report on our progress relative to the outputs set out in the Strategy Statement. This facilitates an ongoing assessment of whether we are allocating our resources correctly to meet our targets.

Our strategies and outputs are described here at a high level, appropriate to a Strategy Statement, under four headings:

1. Building a strong enforcement record
2. Raising awareness and understanding
3. Fulfilling our obligations
4. Managing the amalgamation process successfully.

The work required to implement these strategies and deliver the target outputs will be set out in our annual business plans. Our annual reports will provide an assessment of our performance in achieving the targets set out in this Strategy Statement.

The remainder of this section details the Competition Authority's strategies and outputs for each of our high-level Goals

### **Building a Strong Enforcement Record**

Our intention over the life of this Strategy Statement is to build a strong enforcement record, targeting those anti-competitive behaviours that do the most harm to consumers, business and the economy.

There are two elements to this Goal. First, we want to build a strong enforcement record, in the sense that we have an active and visible enforcement profile. Second, we want to provide value for money to taxpayers by focusing our efforts on investigations that will have the greatest impact from a consumer and economic perspective.

The feedback received from our stakeholders in preparing this strategy statement recognised that the Authority has achieved some notable enforcement successes. However, it also indicated some uncertainty whether the cases we pursued were those of most interest to consumers or the economy.

During the course of the last Strategy Statement period, we reviewed the selection and prioritisation principles we use across all of our activities. As a result of this review we published guidance on our case assessment criteria in July 2011. We will use these criteria over the next three years to focus our

enforcement activities on those issues that do the most harm to consumers, business and the economy.

The strategies we will use to achieve this high-level Goal are:

- Process complaints to the Authority in a timely manner and in accordance with our Customer Charter to ensure a good quality customer service to complainants.
- Apply our selection and prioritisation criteria throughout the life of every case – from the moment we decide to allocate resources to the issue until the matter is resolved to our satisfaction. This will help us ensure that we are focusing on the right issues and using the best approach in each instance.
- Publish a revised Cartel Immunity Programme in conjunction with the DPP. Promote the Programme in accordance with the Authority’s overall communications strategy and use it effectively to improve the quality and results of cartel investigations throughout the life of this strategy statement.
- Use our resources efficiently in the conduct of investigations. This will include using our effective project delivery framework, drawing upon existing skill sets and expertise within the Authority, as appropriate, as well as using the information produced by our market monitoring and analysis activities.
- Monitor developments in law and investigative best practice at a domestic and international level to ensure that we are conducting our investigations in accordance with best practice.
- Deal with cases in a timely and appropriate manner to achieve the best outcome. This will involve using the full range of options available to us as appropriate in bringing cases to a conclusion. These include closing a file without further action, taking legal proceedings, or settling a case with undertakings from the parties.
- Improve our ability to progress cases through the courts by ensuring meticulous preparation of court cases and monitoring developments in the law and legal procedure.
- Communicate relevant and understandable information on our enforcement activities. This may include the publication of enforcement decision notes, notices and guidance notes, as well as less formal documents. This will allow citizens to monitor our performance on an ongoing basis and contribute to general deterrence. It should also assist private enforcement of competition law.
- Seek feedback from our stakeholders on our performance. This will be obtained in the course of our dealings with people and when we are preparing our next Strategy Statement.

We will publish sufficient information on our enforcement activities to enable the public to assess our performance under this high-level Goal.

Relevant outputs involve publication of information on our enforcement work; as proceedings are initiated, as major cases are closed or resolved, and in our

Annual Reports. We will also seek feedback on our progress in the course of preparing our next strategy statement.

## **Raising Awareness and Understanding**

Our high-level objective is to raise awareness and understanding of the benefits of competition, the provisions of competition law, and of the Competition Authority's role and actions among

- consumers and the public generally,
- businesses, and
- policy-makers.

The way we communicate may differ for each group, but the core message remains the same. We need to explain our role and functions. We also need to give clear details on the rationale and results of our activities. We believe that if we do this right we can build a stronger culture of competition in Ireland by promoting compliance with competition law and deterring anti-competitive practices and policies. Overall, this will help markets work well and will contribute to improving our competitiveness and our economic recovery generally.

Our advocacy work is an important input to the achievement of this Goal. Of particular importance are our market studies. We generally decide to do these on our own initiative. However, the Competition Act also allows the Minister for Jobs, Enterprise and Innovation to ask the Authority to conduct a study of competition issues on his behalf. Ministerial studies must be completed within a timeframe specified by the Minister. This means that they involve diverting resources away from other projects.

To equip us to carry out a Ministerial study if and when requested to do so, we must ensure that we have the right resources and systems in place. These resource and system requirements are not exclusive to the conduct of Ministerial studies. They help us to carry out all of our discretionary functions under the Competition Act, in particular, investigations, (self-initiated) market studies, and advising Government and other public bodies.

The following strategies will help us accomplish our high-level Goal of raising awareness and understanding.

### *Communications strategies*

- Develop and implement an annual communications plan with specific activities targeted at the key groups identified.
- Publish information on our activities, in particular, press releases, annual reports, and online information, that is easily understandable to a wide audience.
- Work with business to develop user friendly guidance on competition law compliance.
- Respond favourably to invitations to speak on competition issues in relevant public fora. This includes speeches at conferences, presentations to business representative bodies and educational

institutions, as well as contributing to inter-agency groups at a domestic and international level.

- Explore new communication strategies and channels that we could usefully employ, for example, social media, TV and online advertising. We will draw on and learn from the experience of the NCA in this exercise.
- Expand and maintain a network of sustainable relationships with key stakeholders with an interest or role in promoting competition, especially, government departments and other public bodies.

#### Research and advocacy strategies

- Carry out ongoing market monitoring and analysis, in conjunction with the NCA. This will ensure that we retain a stock of up to date knowledge and data on a cross-section of markets.
- Select and analyse areas where competition may be absent, limited or restricted and make recommendations to address any problems identified in an appropriate form. This could involve the publication of studies, submissions to public consultation processes, or face to face interaction with Government departments and other public bodies.
- Develop and maintain relationships with Government departments and public or other bodies who have expertise across key sectors of the economy to ensure we have a network of experts we can consult with to enhance the performance of our functions.
- Provide clear, targeted and useful advice to government departments and public bodies on how to make competition work well in their areas of responsibility.
- Monitor and implement developments to ensure best practice in relevant areas and disciplines.

Our outputs under this heading will be measured, in the first instance, in terms of the volume of material published, the number of speeches made by representatives of the Authority, and the number of advocacy pieces – studies, recommendations, articles, and submissions – we publish. They will also include the completion of Ministerial studies on time and to an appropriate standard.

Feedback on our success at building a competition culture in Ireland is much more subjective and harder to measure. One numerical indicator is the number of our recommendations that are implemented. This provides a quantitative measure of political responses to our work. However, it is also necessary to look at the reasons why recommendations have not been implemented, a non-numerical measure. A Government decision will not necessarily represent a failing in our recommendations. They may have become unnecessary due to changes in law or policy at Government or European level. Alternatively, they might have been rejected by Government because other policy considerations are given priority.

The main indicator of our performance in this regard is the feedback that we receive from our stakeholders. This happens both in the course of our activities and via surveys of public perceptions of competition and of the Authority.

## **Fulfilling our Obligations**

### ***Merger review obligations***

All mergers above a certain financial threshold, and all proposed media mergers, must be notified to the Competition Authority. The Authority must then consider the proposed transaction and form a view on whether it is likely to harm competition – for example by resulting in higher prices, lower quality or less choice to consumers. The Competition Act specifies tight timeframes within which merger review must be completed. The time limits in the Act balance the need to protect consumers from mergers that would negatively affect them and the desire to minimise the associated regulatory costs to business. We often have to use resources from across the agency to discharge our statutory merger review obligations. We try to minimise the impact this can have on the work of other divisions.

We are committed to carrying out our merger review function efficiently, effectively, and according to best international practice. To accomplish that aim, we will use the following strategies:

- Publish and maintain up-to-date information on our merger review procedures.
- Maintain open lines of communication with the parties to a merger transaction during a review.
- Publish information on our merger decisions which is clear, easy to understand, and explains the thought process and rationale behind each decision.
- Monitor and implement developments in international best practice in merger review.
- Assign resources to the merger review function in such a way as to ensure that the business needs of the organisation as a whole are met. This may involve temporarily reassigning staff from other divisions to review a particular merger, where they have sectoral or academic expertise that would facilitate the review.

All mergers notified to us will be processed within the timeframes specified under the Competition Act. We will publish information on our merger review activities as and when reviews are completed. We will also seek qualitative measures of our performance in the course of our dealings with parties and through consultation with our stakeholders in year 3 of this Strategy Statement.

### ***General obligations***

The key strategies and outputs related to fulfilling our general corporate obligations are to:

- Implement clear policies and procedures that allow us comply with our statutory and regulatory requirements as a corporate body and under the Government's Code of Practice for Governance of State Bodies.
- Deliver a financial management service that promotes and contributes to the effective use of our financial resources through the delivery of economy, efficiency, value for money and promptness in expenditure.

- Provide a safe and supportive working environment for our staff and equitable people management services to ensure we maintain a motivated team dedicated to achieving our Goals.
- Manage a programme for skills development to ensure we maintain a balance of skills and expertise across the Authority that enables us to meet our business needs. This can include economic, legal, practical (e.g., project management) and sectoral expertise.
- Provide a reliable, secure and effective Information and Communications Technologies (ICT) service that supports us in the performance of our functions.
- Manage the provision of legal services 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.
- Review and improve our approach to project management across the Authority to ensure effective project delivery and management information systems that help us ensure we are using our resources in the best way possible.
- Ensure effective management and coordination of our business and strategic planning processes, so that we meet the targets in our Strategy Statement.
- Maintain effective and responsive lines of communication with the Minister for Jobs, Enterprise and Innovation and his Department to ensure we continue to meet our obligations.

The outputs against which our performance in this area will be measured consist primarily of compliance and audit reports and rapid implementation of any corrective measures identified.

However, the strategies listed above also underpin our ability to carry out all of our day-to-day activities effectively. This means that our success at meeting the targets set out above will also be demonstrated by our success at meeting the other targets set out in this Strategy Statement.

### **Managing the Amalgamation Process Successfully**

We intend to manage the amalgamation with the NCA while ensuring that we remain effective as an agency throughout the process. Our aim is that the process results in a strong and effective amalgamated body.

Achieving this objective will require careful planning of the amalgamation process to ensure that our other activities are not knocked off course in the process. We have already begun working closely with staff of the NCA and the DJEI on the amalgamation process. The goals and strategies outlined elsewhere in this strategy statement have been drafted with that process in mind. We feel that if we implement those strategies and manage the amalgamation process effectively, we can deliver on all of our Goals and our overall mission.



This section focuses exclusively on the amalgamation process and the strategies that we will adopt to create an effective amalgamated body.

- Work with the staff of the NCA and DJEI to develop and implement a plan to put systems in place so we can function as a cohesive body once the amalgamation is effective in law.
- Get expert assistance on key issues in the amalgamation to ensure that we tackle areas in which we have limited expertise in an appropriate and timely manner. This will include consulting with our colleagues in other public bodies as well as getting external assistance on very specific issues.
- Assist DJEI in drafting legislation for the amalgamated organisation.
- Work with the Office of Public Works to find a suitable location for the amalgamated organisation.
- Monitor activity across the Authority during the amalgamation process and assign resources to balance the ongoing needs of the organisation with the demands of the amalgamation process.
- Communicate with all of our stakeholders, internal and external, on key milestones throughout the process to ensure that we stay on course to complete the process on time and remain focused on the right issues.

There are some outputs associated with the amalgamation that are outside our remit – such as the passage of new legislation and finding new offices. Nevertheless, we will work with the NCA to have systems in place so that we can operate as effective bodies, separately and together, throughout the process.

The most obvious indicator that we have been successful in this regard is that the amalgamated body can be operational from the moment it is established in law. It will also be demonstrated by the degree to which both agencies continue to perform our functions effectively during the process.

## Summary of Key Outputs

Goal	Performance indicators
Building a strong enforcement record	<p>Provide information on the level of our enforcement activities in our Annual Reports</p> <p>Provide information on the number of prosecution recommendations to the DPP in our Annual Reports</p> <p>Publish information on legal proceedings initiated in civil cases</p> <p>Publish details of arrangements agreed by the Authority to resolve a case where appropriate</p>
Raising awareness and understanding	<p>Publish information which is easily understood by the public</p> <p>Publish information in relation to the results of our activities in the form of studies, press releases, decision notes, guidance notes, declarations and Annual Report</p> <p>Complete Ministerial studies as requested</p> <p>Publish recommendations designed to improve competition in selected markets</p> <p>Report on the proportion of recommendations that are implemented, outlining the reasons why any have not been implemented</p> <p>Survey perceptions of competition and our organisation in drafting a Strategy Statement for the amalgamated body</p>
Fulfil our statutory obligations	<p><i>Specific</i></p> <p>Process notified mergers within the relevant timeframes</p> <p>Seek and respond to feedback on merger procedures from stakeholders</p> <p><i>General</i></p> <p>Maintain up to date policies and procedures that enable us fulfil our obligations in a timely and effective manner</p> <p>Achieve a clean bill of health in compliance and audit reports</p>
Managing the amalgamation process successfully	<p>Publish information on key milestones reached in the amalgamation process in Annual Reports and as appropriate</p> <p>Create an effective amalgamated organisation</p> <p>Achieve the Goals outlined elsewhere in this Strategy Statement</p>

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