



Report on

# **ICN Agencies' Case Prioritisation and Initiation**

**By the ICN Agency Effectiveness Working Group, 2021**

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## Introduction

Many competition agencies have established methods and principles to prioritise cases to make the best use of their resources. Case prioritisation has become even more important now, as authorities increasingly deal with more complex business practices and large amounts of data as a result of the transition to the digital economy. Agencies typically use case prioritisation to (i) help them select complaints / tip-offs / referrals (“cases”) for further investigation and/or (ii) to aid them with prioritisation of new and ongoing cases based on the agencies’ priorities so as to dedicate resources efficiently.

The ICN Agency Effectiveness Working Group (AEWG) project on “Case Prioritisation and Initiation” looked into how early case prioritisation and management can contribute to effective and efficient enforcement. It examined competition agencies’ practices in handling and selecting cases<sup>1</sup>, weighing different enforcement priorities, and the effectiveness and / or challenges of doing so. The Competition and Consumer Commission of Singapore was the project lead on behalf of its fellow co-chairs of AEWG, the Swedish Competition Authority and the Competition and Consumer Authority of Botswana.

This report summarises the responses of ICN member agencies to a survey on their competition enforcement prioritisation policies, and the good practices from the agencies’ experiences in identifying and setting competition enforcement prioritisation policies. In particular, the report provides insights into the competition enforcement prioritisation policies of agencies with the discretion to dismiss cases, specifically how these agencies use the competition enforcement prioritisation policies for case selection. In addition, the report explores the reasons some agencies do not have a competition enforcement prioritisation policy, and their views on whether having a policy would be beneficial to them.

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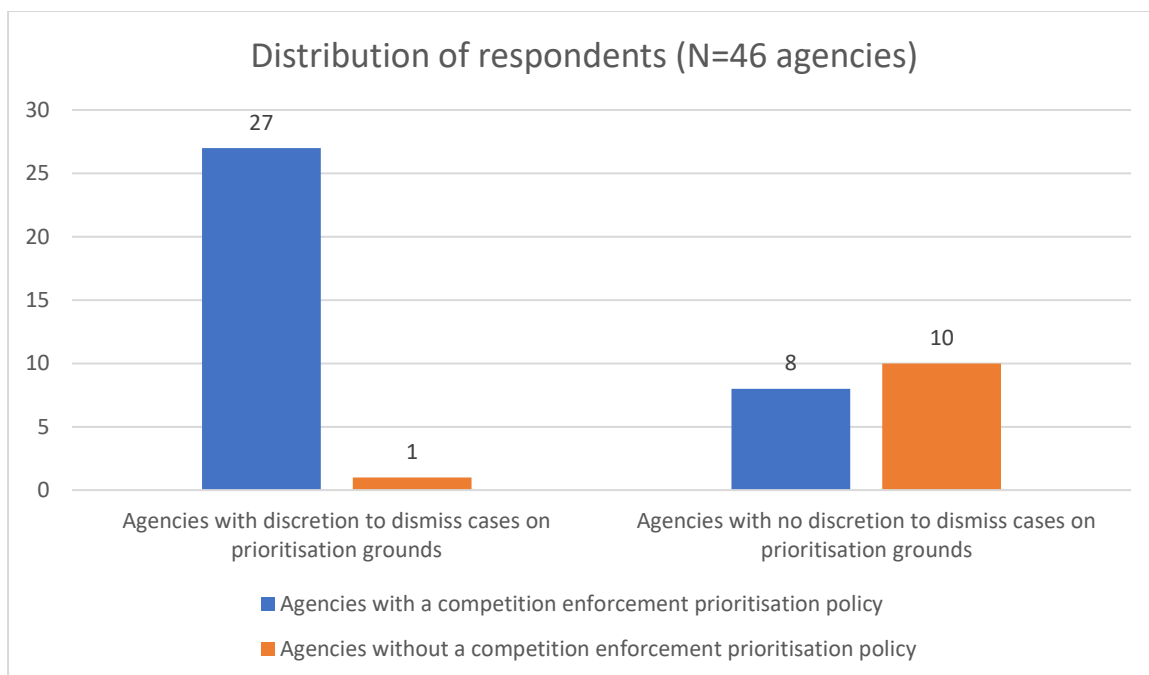
<sup>1</sup> For this project and report, the focus is on selecting complaints / tip-offs / referrals for further investigation, and not on prioritisation in ex officio cases.

# 1. Information on the responding agencies

## 1.1 Overview of the responding agencies

A total of 46 ICN member agencies submitted responses to the survey from March to April 2021. The general characteristics of these agencies are:

<i>No. of staff in agency working on competition-related matters</i>	
• Small (1-49 employees):	15 agencies (33%)
• Medium (50-99 employees):	12 agencies (26%)
• Large (≥100 employees):	19 agencies (41%)
<i>Years since the agency was established</i>	
• ≤10 years ago:	15 agencies (33%)
• >10 years ago:	31 agencies (67%)
<i>Non-competition related functions</i>	
• Yes:	26 agencies (57%, mainly related to consumer protection and sectoral regulation)
• No:	20 agencies (43%)
<i>Geographic representation</i>	
• Africa:	3 agencies (7%)
• Asia:	6 agencies (13%)
• Europe:	25 agencies (54%)
• North & South America:	10 agencies (22%)
• Oceania:	2 agencies (4%)
<i>Have discretion to dismiss cases on prioritisation grounds:</i>	28 agencies (61%)
<i>Have a competition enforcement prioritisation policy:</i>	35 agencies (76%)
• Formally document the policy:	26 agencies (74% of those with a policy)
• Publish the policy:	23 agencies (66% of those with a policy)



## 1.2 Discretion to dismiss complaints / tip-offs / referrals on prioritisation grounds

28 agencies (61%) indicated they have the discretion to dismiss [not to proceed further with an investigation] complaints / tip-offs / referrals (“cases”) on prioritisation grounds. The rest (18 agencies, 39%) do not have this discretion, or can only dismiss cases that are not competition related [not within the powers of the agency to act] and / or do not contain sufficient information for the agency to proceed further.

Agency (in alphabetical order by country within each region)	Discretion to dismiss complaints / tip-offs / referrals on prioritisation grounds
<b>Africa</b>	
Competition and Consumer Authority (Botswana)	-
Competition Authority of Kenya	-
Competition Commission (Mauritius)	-
<b>Asia</b>	
Bangladesh Competition Commission	-
Japan Fair Trade Commission	✓
Competition Protection Authority (Kuwait)	-
Malaysia Competition Commission	✓
General Authority for Competition (Saudi Arabia)	✓

Agency (in alphabetical order by country within each region)	Discretion to dismiss complaints / tip-offs / referrals on prioritisation grounds
Competition and Consumer Commission of Singapore	✓
<b>Europe</b>	
Albanian Competition Authority	-
Commission on Protection of Competition (Bulgaria)	✓
Croatian Competition Agency	-
Office for the Protection of Competition (Czech Republic)	✓
Danish Competition and Consumer Authority	✓
Directorate General for Competition (European Commission)	✓
Estonian Competition Authority	-
Finnish Competition and Consumer Authority	✓
Bundeskartellamt (Germany)	✓
Hungarian Competition Authority	✓
Icelandic Competition Authority	✓
Competition and Consumer Protection Commission (Ireland)	✓
Competition Council of Latvia	✓
Competition Council of the Republic of Lithuania	✓
Conseil de la Concurrence (Luxembourg)	-
Agency for Protection of Competition (Montenegro)	-
Authority for Consumers and Markets (Netherlands)	✓
Norwegian Competition Authority	✓
Office of Competition and Consumer Protection (Poland)	-
Commission for Protection of Competition (Serbia)	-
Slovenian Competition Protection Agency	-
National Commission of Markets and Competition (Spain)	✓
Swedish Competition Authority	✓
Swiss Competition Commission	✓
Competition and Markets Authority (UK)	✓ <sup>2</sup>

<sup>2</sup> In general, the CMA can dismiss tip-offs, complaints, or referrals on prioritisation grounds, but is required by law to take action in some specific complaints.

Agency <i>(in alphabetical order by country within each region)</i>	Discretion to dismiss complaints / tip-offs / referrals on prioritisation grounds
<b>North &amp; South America</b>	
Administrative Council for Economic Defense (Brazil)	-
Fiscalía Nacional Económica (Chile)	✓
Superintendence of Industry and Commerce (Colombia)	✓
Fair Trade Authority Curaçao	✓
Commission for the Defense and Promotion of Competition (Honduras)	-
Federal Economic Competition Commission (Mexico)	-
Authority for Consumer Protection and Competition Defense (Panama)	-
National Institute for the Defense of Competition and the Protection of Intellectual Property (Peru)	✓
U.S. Department of Justice, Antitrust Division	✓
U.S. Federal Trade Commission	✓
<b>Oceania</b>	
Australian Competition and Consumer Commission	✓
Competition Authority of New Caledonia	-

## 2. Agencies' competition enforcement prioritisation policies

An agency's competition enforcement prioritisation policy contains the agency's focus areas and the factors the agency considers for case prioritisation, and it is usually derived from the plans that guide the agency's overall work (e.g., strategic plans or work plans). It is typically used by an agency to select cases for further investigation or to prioritise new and ongoing cases.

This section provides a summary of responses of 35 agencies (out of 46 respondents) with a competition enforcement prioritisation policy. It provides an overview of such policies including the reasons agencies have prioritisation policies, the process to set the priorities, and the implementation challenges agencies faced, and concludes with some useful tips on how to set up and implement a prioritisation policy. Out of the 35 responding agencies with a competition enforcement prioritisation policy, 27 agencies (77%) have the discretion to dismiss cases on prioritisation grounds, while 8 agencies (23%) do not.

### 2.1 Reasons for having a competition enforcement prioritisation policy

Agencies may have multiple reasons for having a competition enforcement prioritisation policy. They include:

- *Ensuring efficient use of agency's limited resources (indicated by 22 agencies)* – The prioritisation policy helps the agency focus the use of its limited resources on interventions that are relevant, significant, important and generate the most impact on competition and consumers.
- *Guiding agency's work (indicated by 18 agencies)* – The prioritisation policy identifies the sectors / areas where the agency should concentrate its advocacy and enforcement efforts. These sectors / areas guide the agency's enforcement direction and help to coordinate its efforts to achieve better results and more effective interventions. The prioritisation policy also directs the agency to potential areas to build agency expertise and / or enhance competition policies and laws, and serves as a useful guide for the agency's staff on how to triage / prioritise incoming competition cases / matters.
- *Providing transparency to stakeholders (indicated by 7 agencies)* – The prioritisation policy can be used to explain and manage public expectations regarding how certain matters are prioritised, as well as explain the agency's decisions. It can also signal the key areas of concern which the agency will focus on, which encourages widespread industry compliance and promotes behavioural changes in the market.
- *Monitoring agency's activities (indicated by 2 agencies)* – The prioritisation policy can be used as the basis to monitor the agency's activities and measure its performance.



## 2.2 Overview of the agencies' competition enforcement prioritisation policies

### 2.2.1 *Approaches when documenting prioritisation policies – “formal” or “informal”*

The majority of agencies (26 out of 35 agencies with a prioritisation policy) indicated that they formally document their competition enforcement prioritisation policies (for example, in the legislation, agency's guidelines, published notices or annual plans).

The other 9 agencies adopt an informal approach (i.e., the prioritisation policy is not formally recorded, but it is practiced in the agency). Key reasons for using this approach are that it allows constant and smooth adjustments of the policies to cater for new developments, and that the decisions based on enforcement priorities could be made faster with less bureaucracy.

### 2.2.2 *Publishing prioritisation policies*

23 out of 35 agencies with a prioritisation policy published their policies or made them available to the public. The reasons for doing so include:

- Being transparent to stakeholders and providing them with guidance, certainty, and predictability.
- Creating public confidence by demonstrating the benefits of the agency's work and enhancing awareness on the priority areas which the agency is working on.
- Signaling the key areas of concern which the agency will focus on to encourage widespread industry compliance and promote behavioural changes in the market.

The agency's website is the most widely used platform to publish the prioritisation policy. A number of agencies use multiple channels to make their prioritisation policies available to the public, including through strategic documents (e.g., strategic plans or annual reports), and public speeches and presentations by the agency's senior representatives and staff.

For agencies that do not publish their competition enforcement prioritisation policies, the reasons include: confidentiality (i.e., the policy might contain references on ongoing cases and investigations which cannot be made public); the policy is considered an internal document within the agency; or the enforcement priorities have been conveyed indirectly through various other publications and news clippings.

One agency makes its overall priorities known in its competition policy document but does not communicate publicly its prioritisation policy, which is more nuanced. The agency is of the opinion that making its detailed priorities public does not bring much added value and may lead to more tip-offs and complaints being crafted in a way to “game the system” (i.e., tip-offs and complaints specifically written in a way specifically

to push the agency into prioritising a case which otherwise does not deserve prioritisation).

### 2.2.3 Review of competition enforcement prioritisation policies

<p><i>Frequency of review</i></p> <ul style="list-style-type: none"><li>• Annually: 16 agencies</li><li>• Every 2-4 years: 6 agencies</li><li>• Every 5 years: 1 agency</li><li>• Other options: 12 agencies – Of these, 5 agencies have multiple timeframes to review their competition enforcement prioritisation policies (e.g., one agency’s sectoral priorities are reviewed annually, its strategic plan is reviewed every 5 years and it has the flexibility to re-prioritise routinely to respond to new competition issues as they arise). 4 agencies adopt an ad-hoc / informal process to review their prioritisation policies as this allows a constant adjustment to new developments while at the same time ensuring reliable, competent decision-making and long-term stability. The other 3 agencies have only recently implemented their prioritisation policies and thus have yet to perform a review.</li></ul>
<p><i>Do agencies revise or update their prioritisation policies to take into account the rising trend of digital cases</i></p> <ul style="list-style-type: none"><li>• Yes: 25 agencies – 4 of them indicated that their current prioritisation policy is broad enough to take into account the rising trend of digital cases.</li><li>• No: 10 agencies – Reasons indicated include that the agency’s prioritisation policy is relatively new and have not yet been revised, the agency has not dealt with such cases, or the agency is currently focused on other priorities (e.g., competition issues due to the Covid-19 pandemic).</li></ul>

### 2.3 Process of setting the priorities

All 35 agencies that have a competition enforcement prioritisation policy responded that they recognise the importance of drawing upon a wide range of information sources when setting their priorities. These include:

#### *External information sources:*

- Consultations with key external stakeholders, such as business and consumer representatives and other government agencies / sector regulators.
- Consultations with other overseas competition agencies.

### *Internal information sources*

- Consultations with staff across divisions and seniority (including senior management and / or board members).
- Agency's research and monitoring activities on existing or emerging issues and market signals.
- Assessment and review of agency's prior work including investigations, case law, developments in regulatory framework, as well as the number and nature of complaints received.

Typically, a two-step process is used whereby the information gathered is first assessed to identify potential priorities and the proposed priorities are then discussed and decided by the agency's senior management, commissioners and / or board.

## 2.4 Types of priorities identified

On average, each of the 35 responding agency has 5-6 priorities in its competition enforcement prioritisation policy. The types of priorities mentioned in the responses are the following (by frequency in descending order):

- *Impact of conduct on market competition, consumer welfare, and / or businesses (indicated by 33 agencies)* – Conduct that causes significant detriment to market competition, consumer welfare and / or businesses will be given higher priority by the agencies.
- *Key sectors (indicated by 29 agencies)* – Reasons a particular sector may be identified as a priority include: the importance of the sector to consumers, low level of competition / high concentration in the sector, high number of complaints related to the sector, the directions / instructions from the government / ministry to look into the sector, feedback from stakeholders (e.g., consumers or businesses) on potential competition issues in the sector, as well as the changes to the level of competition in the sector arising from changes in laws and regulations related to the sector. Some key sectors mentioned by the responding agencies include the agricultural sector, education sector, food sector, funeral services sector, pricing and selling of essential services in the energy and telecommunications sector, financial services sector, commercial construction sector, distribution of pharmaceuticals and healthcare sector as well as public procurement.
- *Type of conduct (indicated by 25 agencies)* – A number of agencies specified certain types of conduct that can cause significant detriment as priorities in their competition enforcement prioritisation policies. Many of these agencies give high priority to investigating anti-competitive conduct (in particular, cartels) with several agencies recognizing it as a permanent priority in their prioritisation policies. Abuse

of dominance was the next most cited conduct (after cartels) by the respondents. Other types of anti-competitive conduct mentioned by agencies include bid rigging, concerted practices, resale price maintenance, exclusive dealing, horizontal agreements, and concentrations where there is a risk of a significant reduction in competition.

- *Likely effectiveness of agency's intervention (indicated by 21 agencies)* – Several agencies indicated that they assess whether they are best placed to intervene, whether it is within their powers to act, whether another authority has more suitable tools to address the particular competition or market concern, the possibility to prove infringement, or the existence and viability of an adequate remedy to address the conduct.
- *Effective and efficient use of agency resources (indicated by 15 agencies)* – Agencies are funded by the government and therefore they need to ensure that their resources are used effectively and efficiently to ensure accountability. In this aspect, an agency will consider the availability of its resources, experience, and existing capability to take on the investigation. It will also take into account whether the resource requirements of the work are proportionate to the benefits from doing the work, the period over which the resources will be needed, and how the agency can meet its other objectives if its resources are channeled to a particular investigation.
- *Potential effect of the investigation and enforcement (indicated by 15 agencies)* – Agencies will give higher priority to cases with higher potential deterrent effect, as well as those cases which set case law or enforcement precedents for infringements.
- *Emerging trends and developments / current issues of importance (indicated by 15 agencies)* – Environment and sustainability, digital platforms, digital economy, rapidly evolving new technologies are some emerging trends and developments which several agencies have indicated that they will place greater attention on. Some agencies indicated that competition issues arising from the Covid-19 pandemic is their current priority.
- *National economic or public interest (indicated by 14 agencies)* – When deciding on whether to launch an investigation, the agency may take into account the general economic priorities and areas of public interest of the country that were identified by the government or legislature. Strengthening competition or improving the conditions for the functioning of the markets related to these economic priorities and public interest will enhance the economic and social relevance of an agency's work. One agency indicated that its legislature has decided that well-functioning markets, optimal regulation of legal and natural monopolies, and consumer

protection are public interests that must be protected. Therefore, these interests play a role in the decision-making process on whether an investigation should be launched.

- *Nature of the case (indicated by 11 agencies)* – Areas which agencies may consider for this priority include: the number of complaints received on a particular conduct / sector, duration of the infringement, whether the agency's intervention will strengthen the agency's enforcement record (especially for areas / sectors with multiple or repeated infringements which demonstrated no deterrent effect from previous interventions). Agencies without the discretion to dismiss cases also mentioned they would give priority to leniency cases, cases arising from referrals from other government agencies, and older cases (which are near the statutory deadline to conduct investigations / take enforcement action [e.g., 5 years after the end of the anti-competitive conduct]).
- *Strategic importance to agency (indicated by 9 agencies)* – Agencies may decide to take on cases of strategic importance to them, for example, cases which allow them to develop new investigation expertise and experience, as well as to use different / new investigative and enforcement tools. Other areas of strategic importance may be cases related to issues of interest to the agency and those related to on-going partnerships with other government agencies or sector regulators.

## 2.5 Challenges and useful tips for setting and implementing competition enforcement prioritisation policies

The challenges faced by the 35 responding agencies in setting their competition enforcement prioritisation policies include:

- (For agencies that have recently implemented their prioritisation policies) It may take some time to change the agency's organisational culture and align existing internal procedures to reflect the prioritisation principles.
- Agencies may have to deal with businesses voicing their concerns that their sectors are being targeted.
- Disruptions and changes to the agency's priorities and prioritised activities arising from new / unforeseen developments (e.g., Covid-19), as well as change in the government's policy / agenda.

The respondents shared the following tips from their experiences for setting and implementing their competition enforcement prioritisation policies:

- It is useful to establish a legal basis in the law allowing the agency to identify its enforcement priorities.
- It is important to draw upon a wide range of information sources and build an in-depth knowledge of the relevant markets as well as have the overview of trends

affecting all areas of the economy in order to determine the existing and emerging issues of concern which warrant compliance and enforcement action.

- Having frequent dialogue with market participants and other stakeholders is helpful for getting insights about market trends, developments, and issues. Similarly, having a public consultation process to give stakeholders an opportunity to comment on the proposed enforcement priorities will help the agency in setting its priorities. External stakeholders are more likely to share information and insights where a mutually beneficial relationship has been built between the agency and the stakeholder over time.
- The overview of complaints received by the agency is a valuable information source to identify sectors where enforcement or other interventions are required.
- Sector inquiries based on sound economic analysis have proven to be a helpful tool to identify competition issues in specific sectors and to set the priorities accordingly.
- Prior organisation and processing of relevant information and data is strongly advised in order to create an effective prioritisation policy.
- It is recommended to take into account the government's overall growth strategies and agenda when setting priorities.
- The prioritisation policy should have the flexibility to incorporate new / unforeseen developments, such as the Covid-19 pandemic.

## 2.6 Approaches that can help agencies improve the setting and / or implementation of their competition enforcement prioritisation policies

Approaches ranked by the 35 responding agencies in terms of usefulness (from highest to lowest rank) are experience sharing by other agencies, best practices documents, and technical assistance.

One agency shared that it had met with a number of other competition agencies to understand the key cross-border competition and consumer issues affecting their respective jurisdictions. The discussions on areas such as emerging market issues, future areas of compliance and enforcement focus, as well as priority setting and case selection process are mutually beneficial as they help the agency and its international peers to better understand international market issues and consider potential ways to improve their priority setting processes.

### 3. Case selection by agencies with discretion to dismiss complaints / tip-offs / referrals on prioritisation grounds

This section delves into how the 28 agencies with the discretion to dismiss complaints / tip-offs / referrals (“cases”) on prioritisation grounds do so.

#### 3.1 Process to select / dismiss cases on prioritisation grounds

Typically, the cases which an agency receives are reviewed at the outset by the agency’s divisions / departments<sup>3</sup> / case handlers. They will evaluate the cases based on the priorities in the agency’s competition enforcement prioritisation policy, and also work out the theory of harm, cost-benefit (e.g., estimate expected cost of human resources, or expected benefit to consumers) and projected timeframe. The decision to select or dismiss a case is usually made by the agency’s senior management, who may consider the merits of the case in accordance with the priorities in the agency’s prioritisation policy. In several agencies, this decision is made by the divisions / departments / case handlers and overseen by senior management / heads of divisions or departments.

The majority of agencies reported that they did not have a structured method to weigh each case based on the priorities. Two agencies mentioned that a score would be given for each priority for the case, and the case with the higher score would have a higher priority. One agency revealed that a case would likely be pursued when all the priorities mentioned in its prioritisation policy were met.

#### 3.2 Other factors considered when selecting cases

Other factors which the responding agencies considered when selecting its cases include:

- Whether the complainant or interested parties have other avenues to pursue the case (indicated by 14 agencies)
- Whether the decision not to take up the case will be subject to judicial review (indicated by 5 agencies)
- Whether the agency is required by law to publish / make publicly available the decision for not taking up the case and the reasons for the decision (indicated by 3 agencies)

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<sup>3</sup> One agency informed that it has a special team responsible for handling tip-offs and complaints.

### 3.3 Challenges and useful tips for case selection / dismissal on prioritisation grounds

The challenges faced by the agencies in applying the priorities in the competition enforcement prioritisation policies for selecting / dismissing cases include the following:

- Selection of cases to prioritise is a challenge in itself, as every case may seem equally important and has to be settled quickly and closed.
- It is not easy to quantify the priorities of the cases, making the comparison difficult.
- The increasing number of cases that warrant further investigation based on the agencies' priorities puts pressure on the agencies' limited resources.
- The continuous stream of incoming cases makes it difficult for the agency to move towards a more proactive / ex officio approach in selecting cases according to its prioritisation policy.
- Cases can come to the agency as and when they arise and are not neatly organised by subject. Thus, there may be a need to further weigh an ongoing investigation against a new potential investigation to free up resources from the ongoing investigation for the new one. A practical challenge of this is deciding whether to end / scale down the ongoing investigation, where work has already been done and resources utilised, in favour of the new investigation.
- It may be challenging to make a decision on whether to proceed further with the case as the information provided may not be sufficient. The information may also not be organised or provided in a way that clearly points to the priorities.
- It may be challenging to find the right balance with regard to how far the agency should go, considering its limited resources, in its fact-finding to ensure that the case is not wrongly dismissed.
- It can be difficult to estimate the cost and benefit when assessing whether a case necessitates further investigation.
- Complainants or interested parties may disagree with the agencies' conclusion to dismiss the case.

The responding agencies shared the following tips for case selection / dismissal on prioritisation grounds:

- It is important to apply prioritisation policies and project management tools for effective case delivery.
- It might be helpful to use templates, forms and other documents that are embedded with the priorities to assess whether the case merits further investigation.
- The decision not to pursue a case based on a lack of enforcement priority should be well reasoned in order to withstand judicial review.
- Gather more information / request further details, if possible, in order to avoid hasty dismissals of cases with merit.
- It is useful to establish a legal basis in the law allowing the agency to identify its enforcement priorities, as well as to clearly define such priorities according to the rules. These serve as a good and solid foundation for the agency's decisions on



case selection and ensure that the decisions are more likely to withstand judicial review.

- It might be beneficial to build in flexibility in the agency to allow for re-allocation of resources among departments, and case teams.
- Agencies should consider performing continuous assessment on whether an ongoing investigation should continue as the investigation proceeds because the earlier prioritisation may change due to the number and scope of new and ongoing investigations.

## 4. Responses from agencies without a competition enforcement prioritisation policy

11 agencies responded that they did not have a competition enforcement prioritisation policy in place. Of these, 10 agencies did not have the discretion to dismiss complaints / tip-offs / referrals (“cases”) on prioritisation grounds.

### 4.1 Reasons for not having a competition enforcement prioritisation policy

The most commonly cited reason for not having a competition enforcement prioritisation policy was that the agencies do not have the discretion to dismiss cases (indicated by 7 agencies). Other reasons provided were the agency has sufficient number of case handlers to effectively complete its cases (indicated by 1 agency), the agency does not have many different cases to choose from as it is an “infant” agency (indicated by 1 agency), and the agency does not have legal grounds to set up a competition enforcement prioritisation policy (indicated by 1 agency).

One agency which does not have a prioritisation policy and has the discretion to dismiss cases on prioritisation grounds indicated that its current practice of applying general guidelines and referring to existing law to help identify cases for potential preliminary investigation has been yielding effective and efficient results.

### 4.2 Views on whether a competition enforcement prioritisation policy can help the agency operate more effectively and efficiently

7 agencies indicated that a competition enforcement prioritisation policy would help them operate more effectively and efficiently in competition enforcement. These agencies added that a competition enforcement prioritisation policy would enable them to better use and concentrate their limited resources on more substantive cases.

4 agencies, on the other hand, indicated that having a competition enforcement prioritisation policy would not increase their effectiveness or efficiency. Reasons cited include the agency’s current operating framework to identify cases for investigation is yielding effective and efficient results, and the agency would not be able to set meaningful / useful priorities as the patterns of emerging competition cases are still unclear since the markets in its jurisdiction are still evolving.

### 4.3 Plans to adopt a competition enforcement prioritisation policy in the next three years or upcoming law amendments which will enable having a prioritisation policy

3 agencies indicated they were either planning to adopt a competition enforcement prioritisation policy in the next three years, or there were upcoming law amendments,

which would enable having a prioritisation policy. The remaining 8 agencies indicated that they had no plans or did not consider whether to do so in the next three years.

#### 4.4 Useful approaches to help the agencies establish and implement a competition enforcement prioritisation policy for case selection

Technical assistance was the highest ranked approach in terms of usefulness. This was followed by documentation of best practices and experience sharing by other agencies.

## Conclusion

Based on the survey responses, the majority of agencies agree that a competition enforcement prioritisation policy enables them to operate more effectively and efficiently in competition enforcement. It also helps guide the agency's work, better explains the agency's work to the public, and directs limited resources to interventions that are relevant, significant, important, and most impactful on competition and consumers.

Some common considerations found in the agencies' competition enforcement prioritisation policies include the impact of the conduct (on market competition, consumer welfare and businesses), key sectors, types of conduct, and the likelihood of a successful outcome from the agency's intervention. Many agencies stated the importance of drawing upon a wide range of information sources, including stakeholder engagement / consultation, to set the priorities.

The survey responses showed that agencies usually have a two-step process to decide whether to select / dismiss cases on prioritisation grounds. First, the cases are initially reviewed by the agency's divisions / departments / case handlers. Thereafter, the decision is made by the agency's senior management, or by the divisions / departments / case handlers and overseen by senior management / heads of divisions or departments. However, the majority of agencies do not employ a structured method to weigh each case based on the priorities, and do not measure or monitor whether the priorities have been effective for their agencies' case selection.

For agencies without a competition enforcement prioritisation policy, the most common reason for not having a policy is the agency did not have the discretion to dismiss cases on prioritisation grounds. Notwithstanding this, a majority of these agencies acknowledged that having a prioritisation policy will allow them to focus their limited resources on more substantive cases.

While majority of the agencies with a competition enforcement prioritisation policy agree that it is useful to have a prioritisation policy for case selection, they also expressed the challenges faced in setting their policies as well as using the policies for case selection or prioritisation. Based on the report findings, the ICN could consider providing forums for more sharing of experiences and best practices and technical assistance to support agencies to improve the setting and implementation of their competition enforcement prioritisation policies.