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and Policy**

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**Roundtable on:  
Prioritization and resource allocation as a  
tool for agency effectiveness**

**Contribution  
by  
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The views expressed are those of the author and do not necessarily reflect the views of  
UNCTAD.

By way of introduction, I would immediately like to express the view that prioritisation, use of resources and agency effectiveness is always a recurrent topic that needs to be revisited from time to time. This is because competition authorities are by their very nature dynamic agencies adapting to and providing on a continuous basis for the evolving needs of consumers, industry and the economy as whole, while keeping on track with new economic thinking and with a fast developing area of law – competition law. This is a topic where competition authorities can truly benefit from each other's experience. So I would like to thank UNCTAD for organising this Roundtable and inviting me to participate in this discussion.

The main aim of a competition authority is to protect competition in the market place. In furtherance of this, competition authorities, by virtue of the powers conferred upon them by law, take action against restrictive practices and abusive conduct which harm the competitive process and prevent markets from functioning properly. This in turn has a direct impact on consumer welfare, since the benefits derived by consumers as a result of competition, mainly lower prices, wider choice, better quality and more innovative products and services, are fostered.

I shall attempt to consider the key terms in this topic for discussion in the following order:

1. Agency effectiveness
2. Use of resources
3. Priority setting

Any discussion on agency effectiveness, use of resources and prioritisation must keep the main purpose of a competition authority always in focus. These three key terms are indeed very much interlinked and consequently interdependent.

### **1. Agency effectiveness**

An agency cannot consider itself effective unless it manages to actually establish itself in an assertive and no uncertain way as the 'guardian' of competition in the market. As observed in the Note by the UNCTAD secretariat<sup>1</sup>, a competition authority passes through different stages. Hence, the way agency effectiveness is achieved must correspond to the stage it is in. I recall in the first few years of the Office for Competition in Malta, back in the second half of the 1990's, much of the Office's resources were used on disseminating information about competition law and on instilling a competition culture in the business community. Indeed, one of the many questions that used to be raised concerned parallel trade – many a businessman at the time considered it unfair, paradoxically of course, that others were entering his market and taking the business which he had exclusively enjoyed for so many years. In this initial phase, advocacy to undertakings and associations of undertakings played a crucial role. The importance of competition also had to be instilled in consumers. The idea that prices should be standard or that there should be price control had to be eradicated - consumers had the onus of shopping around to trigger competition, thereby inducing lower prices.

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<sup>1</sup> *Prioritization and resource allocation as a tool for agency effectiveness*, 26 April 2013.

Once the message that competition is important and has to be safeguarded gets across to undertakings and consumers, cases start flowing in. At this point, the Office started discovering that many markets were not competitive. For instance, a frequent phenomenon was that markets over time had in fact been tailored in a way so as to protect the existing undertakings against new entry and to ensure that the undertakings present in those markets would all have a share, more or less equal, in that market. Up to today, the Office continues its struggle against markets tailored in this way.

More recently, advocacy for public entities is becoming an increasingly more important task for the Office, as public entities themselves through their policies and administrative practices may be, albeit without realising, restricting competition. There have also been a few instances where the Office has submitted advice with respect to existing legislation or proposals for legislation. As one of its next priorities, the Office shall be embarking on an advocacy project where it plans to create greater awareness of the ways competition may be restricted by policies, administrative practices and legislation. This in its own way should contribute to increased competition as barriers restricting competition are gradually broken down and new players enter the market.

Initially, cases may not be so complex. However, if one had to look at the experience of older competition authorities, one would quickly realise that this does not remain so for long. Hence, if an agency really wants to be effective it must ensure that it has the necessary resources in place and engage in a capacity building programme well-tailored to fulfil its responsibilities. Furthermore, its human resources must have a sound knowledge of competition law and the economics of competition.

From the experience of the Office for Competition in Malta, resource building has not been an easy task to accomplish. First of all, resource building requires financial resources and competition agencies are very often dependent on central government for this. So whilst competition authorities may build a strong solid case for capacity building, this ultimately depends on the readiness of central government to appreciate the needs and work of a competition authority and to cooperate with it. Secondly, a perennial problem is trying to hold on to the human resources acquired. It is indeed not uncommon to hear competition agencies complaining that after having trained lawyers and economists in the area, these have been absorbed by the private sector due to more attractive pay and conditions of work. A competition authority should in fact as one of its priorities, stop to think on how to retain and motivate staff and on how to attract qualified persons from outside to join it. Whilst financial considerations may be a primary factor for an officer to decide whether to choose a career with a competition agency or not, there are other factors which may influence the decision of professional officers, such as the intellectual challenge, job satisfaction, the exchange of experiences with other countries and training opportunities at home and abroad. Whilst competition authorities should continue to strive for better working conditions for their officers, they should also highlight and continue to improve upon the non-financial advantages of working in a competition agency, the latter being more dependent on the initiatives of the competition authority itself than on central Government. Finally, capacity building should not be a one-off exercise or an exercise undertaken when staff has already been lost. It must be a regular exercise ensuring that a

full complement enabling the authority to carry out its functions at all times is fully on board.

There is also another important stage which comes after some years of experience, that is where a competition authority looks at and assesses what it had achieved up to that point. Understanding the strengths and weaknesses of an authority is a very important step in the process. One crucial task at this stage is actually assessing the effectiveness of the legal framework. Indeed, recently many countries have reviewed their competition law regime to make it more effective. Malta itself went through this process only a couple of years ago when major amendments to the Competition Act entered into force. The aims of these changes were to strengthen the procedural safeguards of the parties, to strengthen the deterrent effect of the law, to accelerate the procedure before the Office and to enhance legal certainty. I will refer to two important changes which certainly had an impact on agency effectiveness and also indirectly on prioritisation.

The first significant change consisted in shifting from the bifurcated agency model to the integrated agency model<sup>2</sup>. Originally, the Office only had an investigatory role, as decision-making vested in a specialised Tribunal. Eventually, in 2004 an amendment was introduced enabling the Office to decide minor cases, whilst cases involving serious breaches and breaches of Articles 101 and 102 TFEU were to continue to be decided upon by the specialised Tribunal. The amendments in 2011 conferred full powers on the Office to decide cases and impose administrative fines, alongside the power to investigate, whilst providing for a right of appeal on points of law and fact to a specialised Tribunal and a right of appeal on points of law only from the decision of the Tribunal to the Court of Appeal. The major benefit of this change is that a case can be concluded more rapidly, in that once the Office has concluded its investigation and the parties have been given the opportunity to be heard, the Director General can immediately pass on to a decision and does not need to prove the case afresh before a Tribunal.

The second significant change consisted in the substitution of criminal sanctions for breaches of the competition rules with administrative fines. Prior to 2011, there had been some good cases unearthing cartels and abuse of dominance, where undertakings were found in breach of the competition rules. However, criminal sanctions meant that fresh proceedings requiring a different burden of proof had to be instituted before the Court of Magistrates. It also meant using already strained resources to assist the Police in criminal prosecution. The result was that no criminal proceedings were ever instituted and no fines were imposed, notwithstanding the decisions finding a breach.

These two amendments, whilst increasing the deterrent effect of the law and contributing to agency effectiveness, have also affected the Office's prioritisation strategy in that it is more amenable to prioritise those cases, such as cartels, which are most harmful to consumer welfare and where the end of competition law enforcement is achieved more meaningfully.

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<sup>2</sup> For an explanation of these terms, see the Note by the UNCTAD Secretariat, *ibid*, paragraph 35.

The introduction of programmes aimed to help competition authorities to detect breaches, such as leniency programmes<sup>3</sup>, and the introduction of procedures, such as commitments and settlement<sup>4</sup>, intended to enable the competition authorities to close cases more rapidly and to reduce the possibility of appeal, whilst saving on time and resources, also contributes to agency effectiveness.

Another important aspect of the work of a competition authority which is increasingly becoming more important is international co-operation. The Maltese Office for Competition is a member of the European Competition Network. I must say that the Office benefits immensely from cooperation within the network. It has meant that we can draw on the experience of more mature competition authorities on various substantive and procedural aspects and it provides an avenue for good contact points, something which for a small authority with limited internal expertise is very useful. Participation in other fora like UNCTAD, OECD and ICN has also proved to be highly beneficial, especially since we are very much in the learning curve ourselves, although in a dynamic area like competition law, I have still yet to encounter someone who can safely say 'I know it all'. Indeed, I strongly feel that ECN and international fora help to keep competition agencies more in step as competition law continues to evolve, with different authorities sharing experiences on cases, processes and new tools for carrying out our tasks more effectively. The series of roundtables for this week organised by UNCTAD are a case in point.

In the context of prioritisation, international fora can continue to offer support by continuing to build on the dialogue that has been initiated on this topic and by continuing to provide studies exploring, *inter alia*, the scope of prioritisation, the tools adopted in priority setting, the criteria for identifying priorities, how to select the best criteria for one's own legal and economic realities, the identification of tools for assessing the effectiveness of the priorities set and for determining whether the results originally intended by the prioritisation strategy were actually achieved. Discussions and studies on a general level are extremely helpful as they set wide parameters that authorities can then identify themselves with and draw analogies from the experiences of other authorities. For optimal results, in the case of young competition agencies, this guidance of a general nature is best followed by *ad hoc* assistance or programmes tailored to their specific needs and concerns, whilst keeping in mind the legal and economic realities of their countries, combined with a hands-on deck practical experience involving on site assistance by a legal and/or economic expert preferably with previous experience of a competition authority in a similar situation or by training visits by officers from these competition authorities to other more experienced competition authorities.

## **2. Use of resources**

Admittedly, it is a common phenomenon for public authorities to lack resources. This is certainly no exception for competition authorities, particularly when one considers the complexity of the tasks bestowed on a competition authority with many of these requiring the combination of both legal and economic expertise. Limited resources are therefore an

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<sup>3</sup> Malta published for consultation draft leniency regulations in June 2013. Vide <http://mcaa.org.mt/en/consultations-publications>.

<sup>4</sup> Malta introduced commitments and a settlement procedure in the Competition Act in 2011.

inherent limitation that a competition authority must recognise and come to terms with. Indeed, prioritisation is one way of trying to overcome this limitation, alongside the introduction of new procedures, such as commitments and settlement.

### **3. Priority setting**

#### What is prioritisation?

Ordinarily, priority setting refers to the possibility of an agency to deal with those cases which are most harmful to competition. There are two ways how prioritisation can be effected:-

(i) An agency may have the power to decide to deal only with those cases which it deems a priority and to set aside those cases which it does not consider a priority. The difficulty with this approach is that cases or sectors which are not classified as high priority may end up never being addressed. Another drawback is that it may send a signal that there is a kind of safe harbour (not necessarily *de minimis*) within which undertakings may act anti-competitively knowing that that conduct or sector concerned is unlikely to be classified as high priority.

(ii) An agency may be able to deal with its cases in order of priority but ultimately has the obligation to deal with or at least examine all cases. In the latter case the competition authority may be able to decide not to investigate on grounds of lack of priority. The risk here is that non-priority cases are likely to remain at the bottom of the list, as higher priority cases keep coming in. This in turn may create false expectations for a complainant who may continue to wait for the outcome of a competition authority rather than seek other avenues for a remedy. If eventually these cases are dealt with or examined, the lapse of time from the alleged breach may render the action by the competition authority less meaningful.

Prioritisation, therefore, by its very nature involves a choice. This choice comes at a cost, i.e. of not dealing with other cases or dealing with them at a later stage or deciding not to investigate. A decision to set priorities is therefore an important decision for which an authority must assume responsibility. Indeed prioritisation is a task in itself, involving an assessment by a competition authority of the cases before it, the harm ensuing from the alleged conduct and the value derived from the possible intervention of the competition authority.

In the context of agency effectiveness and resources, 'prioritisation' may also refer to the tools used by a competition authority to address restrictive conduct. Thus, a competition authority in its quest for effectiveness, may ask itself such questions as:

- should we adopt an advocacy approach or should we immediately investigate?
- should we opt for commitments or should we proceed with infringement proceedings?
- should we opt for a sector inquiry or for an investigation on particular undertakings?
- in infringement proceedings, should we offer the parties the possibility to settle?

All these questions entail some legal and economic assessment, with due consideration in mind to agency effectiveness and making the best use of available resources. In this context, it may be opportune to point out that a competition authority has various tools available to it to reach its goals and these tools co-exist and very often complement each other for optimal results. Thus, in practice, competition authorities resort to a careful blend of competition enforcement action, market monitoring and advocacy, prioritising amongst these according to the pertaining circumstances.

Should the decision to prioritise a case be flexible? Certainly, there must always be some allowance for flexibility, given that if a 'higher priority' case surfaces, then the competition authority, in pursuit of its purpose and objective, should be able to switch from one priority case to a higher priority case, where its resources do not enable it to deal with them at the same time. However, this flexibility should be used with caution and kept strictly to a minimum, particularly by smaller authorities. Otherwise, there is the danger that in shifting from one priority case to another, no case may end up being decided and concluded, resulting in a negative impact on the competition authority's effectiveness.

#### Why does a competition authority need to prioritise?

It has already been observed that a competition authority needs to prioritise because resources are limited. However, most importantly, a competition authority needs to prioritise because it is a public agency acting in the public interest and dependent on public funding. It is there for a purpose which purpose it must achieve and it must achieve it in the most effective way. A competition authority must consequently account for its existence and be credible. Indeed in this context, one may argue that a competition authority should not only prioritise, but should also assess with the benefit of hindsight whether its priorities strategy and decisions were really effective. In its pursuit to be effective and to make good use of public funds a competition authority would want to prioritise that activity which yields greater benefit for consumers and the economy and where the benefits derived from its activity outweigh the costs involved in that activity.

#### Should a competition authority communicate its prioritisation strategy?

In the interests of transparency and predictability, a public agency adopting a prioritisation strategy, should publish the principles which guide it to decide on what is a priority. A competition authority may go further than this and publicly identify the areas or sectors that it plans to focus upon for the next reporting period. So long as it does not prejudice any investigation or action that the agency may eventually take, prioritisation strategies, decisions and assessments should be communicated to the public. Transparency is an essential aspect of accountability and contributes to an agency's credibility. Moreover, good communication with the public improves the public's perception of the agency making it appear more reachable by the public. Winning public support and confidence in itself also facilitates the task of competition authorities as undertakings become more ready to engage in pro-competitive practices and in compliance programmes and the likelihood of new entry into the market increases as enterprises realise that there is an agency ensuring space for effective competition. This in turn helps the agency to win government support as the link between a healthy economy and competition manifests itself more clearly. Publicity also

serves to boost the agency and provide fresh impetus to its management and officers, through the realisation of the good work that it, or rather they, have been or shall be up to.

### How do we prioritise?

The Note by the UNCTAD Secretariat poses the question as to whether there is a universal standard to devise the appropriate way by which a competition agency should set its priorities and allocate its scarce resources. To begin with, there is certainly a common theme running through all competition agencies, i.e. the aim to protect competition in the market-place. So a degree of commonality amongst agencies inevitably exists. However, this aim is in itself wide and may present different nuances to different competition authorities depending on the legal and economic realities in their countries. Thus, competition authorities may have different concerns and priorities, which depend on a number of factors, such as, the size and strength of the economy of the State concerned, the stage of development of a country, the size and available resources of competition authorities, the legal framework and the investigatory and enforcement powers of the competition authority and its relationship with other institutions or authorities both within and outside the State concerned. All of these factors pose different variables within the equation making it difficult to come up with a universal standard. Moreover, the lapse of time bringing with it new economic circumstances, as, for instance, the economic crisis, may call for a review of already existing parameters and standards.

It may be possible, however, to set a wide framework within which competition authorities may be able to fit in and associate themselves with - a framework that may be adapted with time and new realities. Indeed, this is where international cooperation may prove useful, i.e. in the development of such a framework for priority setting. This framework may be built on common general pillars that can be applied by all. The material around those pillars can then be specific to the particular agencies. Thus, for instance, the first basic pillar could be that a competition authority should devise a clear prioritisation strategy and explain how it will achieve it. What goes into the strategy and how it will achieve it will depend on the authority's tools and concerns. Other pillars could relate to the need for multiple tools (like advocacy, sector inquiries and enforcement) that should be available to a competition agency, the need to assess and evaluate the activities which formed part of a competition agency's priority programme and the need for an effective communication strategy.

### The Maltese experience

The Office for Competition forms part of a larger authority, the Malta Competition and Consumer Affairs Authority, henceforth 'MCCAA', which consists of four entities being the Office for Competition itself, the Office for Consumer Affairs, the Technical and Regulatory Division and the Institute for Standards and Metrology. The Board of Governors of the MCCAA is mainly concerned with policy-making, whilst the entities are responsible for the application of the specific laws they administer. The purpose of the MCCAA is "the attainment and maintenance of well-functioning markets for the benefit of consumers and



economic operators”<sup>5</sup>. The Office for Competition contributes to the achievement of this purpose by promoting and enhancing competition. The Office has the sole responsibility for applying and enforcing in Malta the national competition rules and the EU competition rules in cases where there is an effect on trade between Malta and other Member States. Although, the MCCA is a relatively large authority, the Office for Competition itself is very small, indeed the smallest of all four entities. This means that prioritisation is extremely important for us, since resources are extremely limited in comparison to the responsibilities of the Office.

Prior to 2011, the Office for Competition was obliged to deal with all cases. It normally used to deal with them in the order they came in. Exceptionally, cases which manifested real urgency were dealt with before the rest. Complainants exerted considerable pressure on the Office, each expecting its case to be dealt with as early as possible. Coupled with this, complainants could, simultaneously with the complaint or at a later stage make a request for the adoption of interim measures. Obviously, this continued to exert pressure on the Office to deal with cases which it might not have given priority to. The number of complaints compared to available resources also meant that there was limited possibility for the Office to take a proactive approach and launch ex officio investigations.

In 2011, a new provision aimed to tackle this situation and enable the Office to take the reins and lead on the cases it considers a priority was adopted.<sup>6</sup> This does not mean that the role of complainants under our law has been diminished. On the contrary, the amendments to the Competition Act in 2011 enhanced the rights of complainants in competition proceedings. To date, complaints remain the most important source to trigger investigations. It does mean, however, that the Office can concentrate first and foremost on and investigate those complaints that raise serious concerns from a competition perspective. It has also meant that the Office can take a more proactive approach and pursue sectors or conduct which it deems most merit its intervention. Furthermore, following the 2011 amendments, consideration of the need or otherwise to adopt interim measures is exclusively within the discretion of the Director General.

Article 15 of the Malta Competition and Consumer Affairs Authority Act provides:

(1) The Office for Competition may allocate different degrees of priority to the cases brought or pending before it and in doing so it shall take into consideration, *inter alia*, the following factors:

- (a) the degree of consumer harm resulting from the alleged or suspected infringement;
- (b) the extent of consumer benefit resulting from the intervention of the Office for Competition;
- (c) the nature and gravity of the alleged or suspected infringement;
- (d) the stage of investigation;
- (e) whether the alleged practices are still ongoing or whether harmful effects persist; and
- (f) whether the alleged unlawful conduct is being examined or can be better examined by another public authority under its regulatory regime.

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<sup>5</sup> Article 4(1) of the Malta Competition and Consumer Affairs Authority Act, Chapter 510 of the Laws of Malta.

<sup>6</sup> But see point 3 on page 9.

(2) The Office for Competition shall from time to time issue guidelines under this article. These guidelines shall provide for the right to ask for information on the degree of priority allocated to a case or to a complaint by the undertaking or association of undertakings concerned or the complainant respectively and for the obligation of the Office to provide a reasoned reply within a specific time frame.

The salient features of Article 15 are the following:

1. It applies only to cases and not to the work of the Office in general. The decision as to which tools to use to deal with a case, remains within the discretion of the Office under the provisions of the Competition Act and falls outside the ambit of Article 15.
2. It is within the discretion of the Office whether or not it establishes priorities.
3. The provision, whilst enabling the Office to allocate different degrees of priority, does not explicitly say that low priority cases should not be dealt with at all. In the light of *Automec v Commission (No 2)*<sup>7</sup> and the provisions of the Competition Act giving a complainant the right to be informed of the reasons as to why its complaint is rejected and the right to submit observations similar to those found in Council Regulation 1/2003<sup>8</sup>, the Office considers that before closing a file it will first still be required to carry out a careful examination of the complaint in order to decide whether the complaint discloses conduct capable of restricting competition. Secondly, the Office will have to provide reasons for closing the file on the basis of its power to apply different degrees of priority and on the basis of the fact that it must act in the public interest it being a public authority.

Of course, it will be appreciated that this exercise still requires some time and resources. Nevertheless, this approach reaches a balance between, on the one hand, the need for the Office to prioritise and save on time and resources in favour of higher priority cases, in that where complaints are rejected on the grounds of non-priority the time and resources spent are far less than when an investigation is carried out, and, on the other hand, the right of the complainant to be informed of the outcome of its complaint after a careful examination of that complaint and after having been given the opportunity to make submissions.

This approach also has the effect of putting on complainants the onus of substantiating their complaints and providing sufficient evidence to convince the Office that the complaint filed merits being investigated. Indeed it is important for complainants to realise that the filing of a complaint is in itself a serious matter and the Office cannot be expected to launch an investigation on the basis of weak evidence or to pursue a case without there being a serious commitment by the complainant to disclose prima facie evidence of an infringement.

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<sup>7</sup> Case T-24/90, the General Court deals with the European Commission's right to set priorities in particular in paragraphs 71-86.

<sup>8</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, [2003] OJ L 1/1.

4. It sets out clearly the factors that the Office should consider when allocating different degrees of priority. The list provided is not exhaustive. Thus, the Office retains the discretion to prioritise for reasons not mentioned in Article 15, such as strategic significance, deterrent effect, chances of proving an infringement and the resources required.

5. The Office must issue guidelines as to how it will allocate priority. In fact, the Office is in the final stages of issuing these Guidelines. The Guidelines shall *inter alia* explain in more detail the factors mentioned in Article 15 and what the Office would be looking at in terms of those factors. The Guidelines should therefore provide more insight and transparency in the work of the Office.

6. Complainants and undertakings or associations of undertakings concerned have the right to ask the Office on the degree of priority given to a case concerning them and the Office has to reply within a particular time-frame giving reasons for its decision. This should apply in the interim phase whilst the case is still being examined by the Office. It reflects the duty of the Office to account for and be transparent in its decisions concerning priorities, particularly vis-à-vis those directly concerned.

Maltese law requires the MCCA to publish an annual report<sup>9</sup>. This gives the Office an opportunity to explain to the public its mission statement and how it achieved this through its activities. It also provides the Office with the possibility of explaining the results and benefits deriving from its activities. The Authority must also publish its business plan<sup>10</sup>. This gives the Office the opportunity to communicate what its priorities for the next programming period are, which sectors, practices or conduct it is most likely to look at and which tools it intends to use.

#### An example: The school uniforms market study

Currently, the Office is concentrating its resources on those cases which have a direct significant impact on consumers and where this impact is particularly widespread. It also gives particular importance to those cases where foreclosure effects are likely. Competition in Malta is already naturally restricted due to the island's small size, so it is all the more important to protect actual and potential competition to prevent markets becoming further concentrated. Due to limited resources, where it is feasible the Office is making increased use of advocacy to overcome or pre-empt situations restricting competition.

One example where these factors were taken into account is the school uniforms market study. By way of background, in Malta, school uniforms are compulsory in almost all schools for children aged between three and sixteen years of age. In the majority of cases, schools have exclusivity arrangements with particular suppliers. Schools tend to come up with particular features for their uniforms making the school uniform very specific to the school and making it difficult for the parents to match the uniform or parts thereof and purchase from a supplier other than that indicated by the school. Before the scholastic year is about to start, parents generally complain of high prices, poor quality and poor service.

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<sup>9</sup> Malta Competition and Consumer Affairs Authority Act, Article 11 (1)(f). See also Articles 58 and 59.

<sup>10</sup> Ibid. Article 11 (1)(e).

The Office decided to look more closely at this market on the grounds that uniforms involved a substantial expense for parents, prices appeared on the high side and clearly parents were not benefitting from competition. The issue affected a large number of families and the problem was recurring every year. Moreover, the arrangements with suppliers appeared to be creating foreclosure effects preventing new entry into the market.

The Office embarked on a fact-finding study selecting ninety-seven schools by means of a stratified random sampling method and looked at the prices and method of supply. The Office then published a preliminary report with its findings and initial recommendations, inviting comments thereon. The preliminary report attracted plenty of attention from, *inter alia*, schools, suppliers, potential competitors and parents. Following this consultation exercise, the Office published its final report with its conclusions and recommendations aimed to make the market more competitive. The whole exercise lasted for approximately eighteen months and took a good part of the Office's resources.

Why did we opt for a market study rather than launch investigations immediately? In assessing what would be the most effective manner as to how to proceed, the Office took into consideration the fact that there was a certain scale to the issue since it affected all schools, i.e. public, church and independent schools. At the same time, the Office wanted to address the situation and create an awareness about it as rapidly as possible. Furthermore, the major contributors to the problem were the schools themselves, many of which could not be classified as undertakings. Hence, the Office considered that it should engage in a constructive discussion mainly with the schools, share with them its concerns and encourage them to engage in more pro-competitive practices, with a view to opening up the market. At the same time, the Office involved the parents and encouraged them to become more active consumers exerting pressure where possible to create more competition. The Office also engaged in lengthy discussions with suppliers clearly identifying the problems that it saw in the market from a competition perspective. So throughout the exercise, as well as through the recommendations in the reports themselves, we engaged in significant advocacy.

What is the effect of the market study? Would we have achieved better results if we had immediately launched investigations? It is still early days to assess the impact of the report, but we have observed some improvements. Public schools have extended the use of public calls for an expression of interest.<sup>11</sup> Some suppliers are more willing to replicate and supply uniforms already being supplied by some other suppliers, giving parents another option from where to purchase uniforms, very often at lower prices. Schools have become more amenable to the Office's position and have expressed their intention to consider the Office's recommendations in the future.

For the Office it is not the end of the story – we shall continue to monitor the market, carry on with our advocacy efforts and also investigate as the need arises. This is the message we want to get across. Indeed this is part of agency effectiveness – sometimes an agency cannot safely say its task concerning a particular sector or conduct is complete once it has

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<sup>11</sup> Prior to the market study, an award procedure had already been limitedly put in place following earlier advice by the Office.

adopted a decision or concluded a sector inquiry. It has to continue monitoring the market and keep its eyes open for recurrent restrictive practices or abusive conduct and this even more so where that task was identified as a priority and resources were allocated to it. The Office's activities in this market constitute an example where complementary use of agency tools, in this case advocacy, market study and investigations, may be necessary to work together to achieve maximum results.

## **Conclusion**

A good prioritisation strategy for a competition authority is like a compass for a navigator – always an essential tool to guide and provide direction, but especially so in more difficult times. Once the destination is known and certain, we need to devise the most efficient way to get there. In the case of a competition authority, the destination is its purpose, whilst prioritisation paves the most effective way to achieve that purpose, becoming increasingly necessary as cases increase and become more complex, whilst resources remain all the more limited.