

# PRIORITISATION PRINCIPLES

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# FOREWORD

*The mission of the Gibraltar Competition and Markets Authority is to make markets work well in the interests of consumers, businesses and the economy. Markets perform efficiently when businesses compete vigorously and fairly to win customers' business.*

*In well-functioning markets consumers have confidence that market processes deliver excellent outcomes for them in terms of price, quality, variety, innovation and service. In turn, effective businesses are rewarded and productivity growth is higher.*

*In order to make the best use of our resources in terms of real outcomes for Gibraltar consumers, we need to ensure that we make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility.*

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# 1. ACKNOWLEDGEMENTS

Where appropriate, the Gibraltar Competition and Markets Authority will seek to ensure that locally published guidance notes are consistent with those published by fellow Competition Authorities in other jurisdictions.

As well as reflecting the existing competition standards and practices in Gibraltar, parts of this document reflect and/or incorporate the guidance from the UK's Competition and Markets Authority.

The following document was used in the production of these guidelines:

(a) "Prioritisation Principles for the CMA", Competition and Markets Authority, CMA 16<sup>1</sup>.

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<sup>1</sup> "Prioritisation Principles for the CMA", Competition and Markets Authority, CMA 16, April 2014, <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/885956/prioritisation\\_principles\\_accessible\\_v.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885956/prioritisation_principles_accessible_v.pdf)>, accessed 13/09/23.

## 2. INTRODUCTION

The Gibraltar Regulatory Authority (the "Authority") is designated as the competent authority for the promotion and enforcement of competition law in Gibraltar. Pursuant to such designation, the Authority must discharge all the functions, duties and obligations in accordance with the Competition Act 2020 (the "Act"), acting in its capacity as the **Gibraltar Competition and Markets Authority (the "GCMA")**.

The GCMA's mission is to make markets function properly in the interests of consumers, businesses and the economy. Markets work efficiently when businesses compete vigorously and fairly to win customers' business and consumers have confidence that market processes deliver excellent outcomes for them in terms of price, quality, variety, innovation and service.

Competition provides firms with incentives to deliver what consumers want, to provide value for money, to produce efficiently and to innovate; whilst well-informed, active consumers can play a key role in driving competition between firms. The GCMA only intervenes where necessary to protect competition or when it believes it can improve the way in which markets work. The GCMA's involvement therefore seeks to promote open competition, and to encourage greater availability of products and services and the provision of accurate, non-deceptive information between businesses and consumers.

We therefore focus our efforts and resources on deterring and influencing behaviour that poses the greatest threat to consumer welfare and in the process, drive higher productivity growth. We also recognise the need to avoid imposing unnecessary burdens on businesses.

In order to make the best use of our resources in terms of real outcomes for Gibraltar consumers, we need to ensure that we make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility. In seeking to target both our resources and enforcement strategy, the GCMA needs to consider a range of factors including impact on consumers, strategic significance, risks and resources. These are our principles.

In this document we set out how we use these principles, along with detail of the principles and explanatory notes. As well as consideration of the principles, it may be necessary for the GCMA to take other factors into account where appropriate.

**It is important that the GCMA continually adapts its approach to prioritisation principles to ensure that it is fulfilling its statutory duty in light of a dynamic and evolving economy. It therefore reserves the right to amend these guidelines from time to time in line with regulatory experience gained and expertise acquired.**

### 3. HOW WE USE THE PRINCIPLES

We generally prioritise according to the impact of work on consumers and according to the strategic significance of the work. We balance this against the risks and resources involved. Our vision, values, actions, plans and other corporate documents describe what we intend to do.

The list of factors to consider under different principles is illustrative and not exhaustive. We will not apply the principles in a mechanical way. Judgement and a reasoned balancing exercise are required for each case which necessitates that we consider the principles on a case-by-case basis. Where appropriate, we may also consider other relevant factors. In other words, prioritisation will not take place in isolation but will always be a relative question which necessitates considerations of the GCMA's overall portfolio and resources available at that time. It is therefore not possible to provide guidance such as to allow an advance external assessment of whether a particular case would or would not be taken on by the GCMA.

When deciding which new projects and programmes of work to take on, we will consider the timing and resource requirements of projects and other work going on within the GCMA at that time. As part of this, we will assess the resources required over the life of the projects under consideration as well as their potential impact. At particular points in the life cycle of a project we may consider whether it warrants the continued commitment of resources, especially when weighed against other potential work that we could take forward using those resources.

## 4. PRIORITISATION PRINCIPLES

We generally prioritise our work according to the principles set out below. Where appropriate, we may also take account of other relevant factors. Account will also be taken of whether we have a legal duty to act once certain circumstances have materialised. During prioritisation, we will consider the timing and resource requirements of our work and ensure that our duties are appropriately met within the confines of the resources available to the GCMA.

### **IMPACT**

What would be the likely direct effect on consumer welfare in the market or sector where the intervention takes place? Consumer welfare includes better value for consumers in terms of price, quality, range or service, both static and dynamic, and may also include non-financial detriment such as the avoidance of physical harm or emotional distress. We may prioritise work because the direct effects would specifically benefit disadvantaged consumers.

What would be the likely indirect effect on consumer welfare? This principle captures further improvement to consumer welfare and consumer confidence that results from changes in consumer or business behaviour which is prompted by the GCMA's action. It thus captures deterrence and improved awareness for consumers and businesses.

What would be the expected additional economic impact on efficiency, productivity, and the wider economy? This captures whether, as a result of our actions, efficiency would be expected to increase, or growth be encouraged in a particular sector or across the economy.

### **STRATEGIC SIGNIFICANCE**

Does the work fit with the GCMA's strategy and/or with other GCMA objectives? This will include whether there are elements of strategic significance of the work that are additional to impact.

Is the GCMA best placed to act?

Alternatives to GCMA action could include:

- private enforcement;
- market developments, self-regulation, or new regulatory or legislative developments.

What would be the impact of the new work on the balance of the GCMA's current portfolio of work?

### **RISKS**

What is the likelihood of a successful outcome?

## **RESOURCES**

What are the resource implications of doing the work?

This includes:

- 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;
- any savings created for the GCMA by enabling us to meet our objectives more efficiently.



# 5. EXPLANATORY NOTES

## **DIRECT EFFECT ON CONSUMER WELFARE (IMPACT)**

This is the benefit to consumers as a result of the change in behaviour of those that are subject to GCMA intervention. It will most likely arise from a GCMA action that leads to preventing or terminating activity that would have negatively affected consumers for some time into the future. We will have regard to the potential effect if an action is taken, regardless of whether it is due to direct action by the GCMA or by others (for example, the courts or the Government) pursuant to a GCMA intervention.

Where the problem is in an upstream market and benefit arises in the first instance to businesses, we assume that benefits will be passed on to final consumers as a direct effect unless there is evidence to the contrary. Accordingly, for example, an increase in supplier competition that resulted in a reduction in wholesale prices that were passed on to final consumers in terms of lower retail prices would be treated as a direct effect. The effects of increased competition in a market serving businesses would therefore also be considered as a positive direct impact.

Disadvantaged consumers may be particularly vulnerable to exploitation within markets or may simply not share the benefits of greater competition. Disadvantaged consumers may be served less well by markets because, for example, they may be more expensive to serve, they have less market access, they are in debt, or they cannot afford the higher risk that often accompanies better value. While the GCMA has no legal or other mandate to redistribute wealth or power to intervene in individual disputes, we may sometimes favour projects that would benefit disadvantaged consumers, in order to build overall consumer confidence in markets.

Similarly, we recognise that some or all customers in certain markets may be subject to information asymmetries or may make decisions based on behavioural biases. We will take account of the observed behaviour of customers in our analysis of markets and in the design of any market interventions.

## **INDIRECT EFFECT ON CONSUMER WELFARE (IMPACT)**

Indirect effects arise from changes to the behaviour of those other than the direct subject of the GCMA's intervention. While the deterrent effect of civil or criminal enforcement is the most obvious example, another example may be the increased consumer and business confidence in the correct functioning of the markets.

Whether a specific action will likely lead to wider behavioural changes can be difficult to gauge. Our work will be informed by the evidence available on deterrence and other indirect effects.

Examples of where indirect effects might exist include:

- the deterrent effect of taking action in a market where similar issues exist in other markets;

- action that clarifies the law in a way that enables other businesses to engage in pro-competitive practices that were previously considered potentially illegal;
- action that demonstrates to local government the benefits from removing disproportionate public restrictions on competition;
- action that leads to consumers being more or better informed, empowered or active;
- publication of guidance which affects policy and practice across all sectors.

### **EFFECT ON EFFICIENCY/PRODUCTIVITY (IMPACT)**

Competition is crucial in stimulating efficient and strong economies and encouraging growth; it drives productivity as more efficient firms win business from less efficient ones and all firms are motivated to become more efficient, often through innovation, in order to survive. We will look at whether there is the potential for additional economic impact on efficiency or productivity in the market in question or other markets. In markets where competition is weak or absent, substantial inefficiency may arise. This could take the form of poor cost control, weak internal managerial or strategic incentives, lack of innovation, or high levels of rent-seeking to prevent increased competition.

An initial action that increases competition in the market may deliver further consumer benefits over time resulting from the improved competitive process. Inefficiency on the other hand could take many forms, including lack of responsiveness to customer demand, high costs or low innovation relative to comparable industries, or high levels of anticompetitive lobbying.

### **FIT WITH THE GCMA'S STRATEGY AND OBJECTIVES (STRATEGIC SIGNIFICANCE)**

We will consider whether the proposed new project or piece of work would help further our key strategic objectives. Our four strategic goals, which support our mission, are:

- deliver effective enforcement;
- increase consumer protection;
- extend competition frontiers;
- achieve professional excellence.

In selecting and delivering our portfolio of work, we will seek to improve the skills and talent of our staff, the quality of our intelligence, our leadership ability and excellence on consumer and competition issues. Taking forward work that supports these aims will enhance the long-term ability of both the GCMA and competition policy framework to target intervention and deliver better outcomes.

Examples of the types of work that could enhance our capacity in this way include:

- work that clarifies the law in areas of practical commercial importance, therefore facilitating compliance and potentially promoting productivity;
- policy work that leads to improvement in the competition policy framework (for example, new legislation);
- work that results in greater consistency in approach;
- work that coordinates our activities with sector regulators, in a way that promotes and reinforces consistency and increases impact;
- work that enhances our ability to deal with complex cases where deterrence considerations play a role in our decision to pursue.

### **POTENTIAL IMPACT ON THE GCMA'S PORTFOLIO (STRATEGIC SIGNIFICANCE)**

As well as considering individual projects, we will also consider the impact on the GCMA's ongoing portfolio of work. We will therefore assess work in terms of its contribution to our portfolio as well as its individual impact.

Important portfolio considerations will include an appropriate balance:

- between tackling both public and private restrictions on competition;
- across the full range of legislative tools available to the GCMA;
- between established approaches and more innovative work;
- between work which builds capacity (investment) and work that uses that capacity (output);
- across sectors of the economy;
- of delivery over time;
- between risk and return in terms of outcomes for consumers.

### **LIKELIHOOD OF SUCCESSFUL OUTCOME (RISKS)**

We take into account how likely the new project or programme of work is to achieve its desired impact. In some cases, recognition of there being only a relatively small likelihood of success could be a reason not to proceed with the project. In other cases, the likely scale of the detriment may be such that a project should be pursued despite there being a small likelihood of success because it will nevertheless provide clarity on the law. We also consider the overall balance of risk across the whole of the GCMA's work portfolio.

In some cases, the desired impact may be to establish consistent standards, create legal certainty and send clear long-term messages rather than 'win' a case. We will balance the risk of short-term failure with the chances of long-term success.

Risk is inherent in everything that an organisation does. Consequently, good risk management at all levels is a critical success factor for any organisation. A core component of good corporate governance is risk management. The GCMA will therefore carefully manage risk throughout the process of making decisions on its work programme.

### **RESOURCE IMPLICATIONS OF DOING THE WORK (RESOURCES)**

When considering the resource implications of a proposed new project or programme of work, we will take into account all resources required to undertake the work. Over the course of a piece of work the resource allocated to it may change, depending on its requirements and the requirements of other projects, so that the GCMA's resources are allocated in the most efficient way to cover all of our work.

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