

THE COMPETITION AUTHORITY

STRATEGY STATEMENT

2002 – 2004

TABLE OF CONTENTS

Introduction	1
The Competition Authority	2
Critical Success Factors	8
Goal 1: Ensure the fullest possible enforcement of and compliance with competition law	10
Goal 2: Identify markets where competition is absent or restricted and promote solutions that improve competition for consumers	14
Goal 3: Raise public awareness and understanding of the benefits of competition.....	17
Goal 4: Provide an effective and timely service to international best practice standards..	20
Performance Indicators.....	25

INTRODUCTION

This **Strategy Statement** defines the major strategic management and policy issues likely to face the Competition Authority from January 2002 to December 2004. It elaborates strategic priorities and provides a framework for the Authority to address strategic issues and strengthen its capacity to focus clearly on the overall direction of competition policy.

The Strategy Statement 2002–2004 comes at a time of significant change. First, reforms of European competition law relating to the modernisation of Regulation 17 will almost certainly delegate certain functions currently undertaken by DG Competition to the Competition Authority. Second, the Competition Bill 2001, not yet enacted, proposes that the Authority would take on additional functions in domestic law, most notably the merger control function currently exercised by the Minister of Enterprise, Trade and Employment. Third, the Authority is currently expanding, in the light of a review of its resources and management conducted by Deloitte and Touche in 2000 which recommended increasing staffing levels in the context of the current legislation. The first two factors will cause that expansion to continue over the three years of this Statement.

This Strategy Statement is based on the Authority's functions under the current legislation, namely the Competition Acts of 1991 and 1996. However, it cannot completely ignore the additional functions which are likely to devolve upon the Authority as a result of the Competition Bill 2001 and the modernisation of Regulation 17. Consequently, some priorities over the period will be influenced by the need to anticipate and prepare for possible new functions.

The detailed elements of the Authority's strategy are put in place through its annual business plans, which are implemented at division level under the guidance of individual Members and monitored by the Authority. These business plans, or "work programmes", provide a structured basis for developing and implementing the many objectives that flow from the Authority's high-level goals. As such, they are concerned with translating the relatively abstract aims of its strategy into realisable steps and activities.

The **mission** of the Authority is:

To ensure that competition works well for consumers throughout the Irish economy.

The high-level **goals** of the Authority are to:

- 1 ensure the fullest possible enforcement of and compliance with competition law;*
- 2 identify markets where competition is absent or restricted and promote solutions that improve competition for consumers;*
- 3 raise public awareness and understanding of the benefits of competition; and*
- 4 provide an effective and timely service to international best practice standards.*

In order to reflect the core values of its mission statement, the Authority will ensure that its actions are:

- professional, diligent and intellectually rigorous;
- ethical and impartial; and
- open, accountable and customer focused.

Terms such as "now", "currently", "at present", "to date", etc., in this Statement refer to 1 January 2002.

THE COMPETITION AUTHORITY

Legal background and function

The Competition Authority was established by the Competition Act 1991 as a collegiate body with a Chairman and two to four other Members, who are responsible for the implementation of the Act. The Competition (Amendment) Act 1996 provided for one of the Members to hold the position of Director of Competition Enforcement, responsible for investigating breaches of the Acts.

The Competition Acts prohibit two main types of commercial activity. Section 4 prohibits and renders void agreements “which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or any part of the State”. These include agreements which fix prices, limit or control production or markets, share markets or sources of supply, attach supplementary obligations to a commercial contract that have nothing to do with the subject of the contract (e.g. tying). Section 5 prohibits the abuse of a dominant position. Generally, a firm is considered to be dominant if it is able to act without taking account of the reaction of its customers or rivals. The Act is not contravened when a firm’s vigorous competition takes sales away from less efficient rivals, since this is competition working properly.

The main functions of the Authority are as follows.

- **Enforcement:** The Competition (Amendment) Act 1996 amended the 1991 Act by criminalising breaches of Sections 4 and 5. Private enforcement via civil action has been possible since 1991. The 1996 Act enabled the Authority to bring civil and criminal proceedings in respect of contraventions of Sections 4 and 5. The Authority has discretion as to whether to pursue specific contraventions as criminal or as civil infringements of the Acts, to pursue them by less formal means or not to pursue them at all.
- **Investigation:** The Authority has powers to undertake certain actions to enable it to obtain information necessary for the exercise of its functions under the Act. These powers include searches of premises and summoning people to make statements under oath.
- **Notifications:** Parties to agreements between undertakings may notify them to the Authority, which may certify that, in its opinion, the agreements do not contravene Section 4(1). Alternatively, the Authority may grant a licence to an agreement that contravenes Section 4(1) but where, in the Authority’s opinion, the agreement is beneficial according to criteria set out in Section 4(3).
- **Studies:** The Minister for Enterprise, Trade and Employment is empowered under Section 11 of the Act to request the Authority to undertake a study to analyse and report on any practice or method of competition affecting the supply and distribution of goods or the provision of services. The Authority may also carry out such studies on its own initiative. The regulated markets division studies State and other restrictions on competition that do not fall under Sections 4 and 5.
- **Merger referrals** (from the Minister): Under the provisions of the Mergers, Takeovers and Monopolies (Control) Act 1978, as amended by the 1991 Competition Act, the Minister may refer a proposed merger or take-over to the Authority to consider whether it would be likely to prevent or restrict competition, restrain trade or

act against the common good. The Authority is required to report to the Minister within tight deadlines.

Structure, staff and resources

During 2000, Deloitte & Touche Management Consultants undertook an organisational review of the Authority (this report can be found at www.tca.ie). This examined the structure, operations, resource requirements, business processes and information technology (IT) systems of the Authority in the context of the 1991 and 1996 Acts. The current structure and staffing of the Authority are largely influenced by this report, so it is useful to highlight its recommendations and base the description that follows around them.

The central structural recommendations of the Deloitte and Touche Report were:

- 1 to restructure the Authority into five separate divisions; and
- 2 to increase the staff complement from 24 to 44.

In addition, the report recommended the following measures: increasing the independence of the Authority; establishing an executive board or external advisory panel; developing better teamwork; establishing a proper internal career structure; improving internal communication, allocating additional office space to allow for improved physical layout, thus giving the Authority greater control over its IT and other systems; including Gardaí as Authority staff; and an increased emphasis on keeping the public informed of its findings.

The Authority has now been restructured into five divisions, each headed by a Member. This new structure came into effect in January 2001 and is described in the following table.

Division	Functions	Director
Cartel enforcement	Investigation and prosecution of and enforcement against hard-core cartels under Section 4.	Vacant, Paul Gorecki acting
Monopoly enforcement	Investigations and enforcement in abuse of dominance cases and for non-cartel (horizontal and vertical) agreements under Sections 4 and 5.	Paul Gorecki
Regulated markets	Study, analysis and advocacy of competition in markets where the State restricts competition and liberalising markets.	Isolde Goggin
Competition policy	Notifications, studies, merger referrals and preparation for undertaking the full merger function.	Declan Purcell
Chairman's office	Coordination, administrative services, public relations and external/international representation.	John Fingleton

An on-line annex to this Strategy Statement that describes the structure in detail and gives the names of all staff in the Authority is available at www.tca.ie/strategy.html. Full contact details for the different divisions are at www.tca.ie/contactlist.html.

The second major recommendation on staffing was partly implemented following an interim report in May 2000, when the staff complement was increased to 29. These five legal and economic posts established an internal career structure. Sanction for the remaining 15 positions was received in the second half of 2001, and these positions should all be filled during 2002. One Member vacancy also exists.

Staff come from a mixture of backgrounds, in law, economics and public administration, and it is intended to continue this blend of expertise when filling current vacancies. The anticipated appointment of two or three Gardaí in February will assist the Authority in white-collar law enforcement and further enhance teamwork. A press and communications officer was appointed in October 2001.

The Authority has put in place a staff development programme to deal with the enormous training needs arising from a staff turnover of about 75% during 2000 and the increased staff levels expected during 2002. As part of this programme, the Authority has developed close links with the Garda Training College, a relationship that has been hugely beneficial to the Authority in training staff in investigative techniques. In addition to the various internal and external training courses provided, the Authority actively encourages and funds staff to pursue relevant third-level courses.

In October 2001, the Authority established an advisory panel to advise the Authority on legal, policy, management and strategic issues and to assist the Authority in preparing for the additional powers and enhanced role that will emanate from the new Competition Bill and the modernisation of European competition policy. The panel has no executive role and does not discuss any individual enforcement cases before the Authority. The Members of the current panel, who will sit for a period of two years, are Gerard Hogan, Gerald Fitzgerald, Frances Ruane and John Travers (further details are available at www.tca.ie). The Authority greatly values the time and expertise that these individuals offer.

By the end of 2001, the Authority had implemented all of the recommendations of the Deloitte and Touche report over which it had control.

The Authority's central resources are its finances, its office accommodation and its information technology inputs. Each of these is provided by the Department of Enterprise, Trade and Employment, and the Authority has relatively little control over them. Deloitte and Touche recommendations in this area have not yet been fully implemented.

With regard to financial resources, the Authority's budget for 2002 is €3.2m. This represents an increase from €1.8m in 2001 and €1.5m in 2000 proportionate to sanctioned staffing changes. The Authority has had a Financial Autonomy Agreement with the Secretary General of the Department since 1998, when it was first afforded a degree of financial independence by being given its own subhead within the Department's administrative budget. The agreement places various obligations on both parties to the agreement and the Authority expects to continue with this arrangement for the duration of this Statement, unless it is made obsolete by new legislation.

The Authority's offices are located in Parnell Square in Dublin. With the major increase in staff numbers that is about to take place, the Authority has been seeking a commitment from the Department to providing additional office accommodation in the current premises or alternatively to relocate to new premises. We understand that additional space has now been identified in the Parnell House premises and that work is due to begin to convert that space into suitable office accommodation for the Authority.

The main IT needs of the Authority relate to hardware, software, a website and user support. The Authority has recently acquired new software and hardware and has upgraded and relaunched its website. One of the Authority's central objectives is to implement the Deloitte and Touche recommendations in this area, and for the Authority to have full control over its strategic IT choices and the provision of support and training.

Overview of work

On the **enforcement** side, the Authority opened 1,098 complaints files (to December 2001) covering a wide range of alleged contraventions of competition law after it assumed enforcement powers in 1996. A combination of the enthusiasm of complainants and the backlog from 2000 when the Authority was seriously understaffed means that there are currently 464 files open. Thorough investigations of allegations of contraventions of competition law are slow, painstaking and resource intensive by their nature, especially as the adjudicating authority in these matters are the civil or criminal courts.

Many files were closed, because the matter complained of was not covered by competition law, because there was insufficient information on which to conduct a thorough investigation or because the matter complained of was resolved following the Authority's intervention. In a small number of cases, legal proceedings have been initiated or files have been sent to the DPP. Investigations have involved summoning witnesses and undertaking searches of business premises (dawn raids).

In December 2001, the Authority introduced a Cartel Immunity Programme. This was based on the successful experiences of other jurisdictions in tackling cartels by means of such programmes. Such a programme is increasingly seen as a central element in international best practice. The Authority's immunity programme encourages self-reporting of unlawful cartels by offenders at the earliest possible stage and makes transparent the policy of both the Authority and the Director of Public Prosecutions in considering applications for immunity.

The Authority completed four formal **studies** between 1994 and 2001. Two such studies are currently in progress: one is on the Casual Trading Acts, at the request of the Minister; the second is on competition in professional services, undertaken on the Authority's own initiative, following on from the April 2001 report of the OECD on regulatory reform in Ireland. In addition to these formal studies, the Authority has studied and analysed competition issues in a variety of contexts. Such studies assist the Authority in understanding how competition operates in markets generally, in improving information about restrictions on competition and in identifying the many different ways in which problems can be addressed.

Many serious restrictions on competition result from State intervention. These cannot be tackled through the direct application of the competition laws. In recognition of the importance for the economy of vibrant competition in all sectors, the Authority established the Regulated Markets Division to put the case for competition and to monitor its application in sectors where it is being introduced. Since its establishment, the work of this division has concentrated on three main areas: liberalising markets, restricted markets and advising on new legislation. In each case it seeks to ensure that any State restrictions on competition are strictly proportionate to the benefit they are intended to produce. In addition to studying and commenting on these sectors, it works with the Monopolies Division to help ensure that competition legislation is enforced in recently liberalised sectors, such as telecommunications and electricity, and to liaise closely with sectoral regulators in dealing with issues which may fall under competition rules or sectoral rules, or both.

1,417 agreements were notified to the Authority since its establishment, the bulk of them (1,159) in the first year. At present, 31 **notifications** are awaiting a decision. These are made up of notifications received in 2001 and a number of notifications from earlier years that have raised legal or other difficulties that are being addressed progressively. The decline in the rate of notifications mirrors the increased legal clarity arising from the

publication of over 590 reasoned decisions, and a number of category certificates and licences that serve as standard templates for agreements.

Since 1991, the Authority has been asked to report on the effects of a **merger** on 11 occasions. The Authority generally has just over four weeks to write such reports, and this includes inviting submissions and having hearings with relevant parties. The Authority also sits on the EU Advisory Committee on Mergers.

Future context

The environment in which the Authority operates is constantly changing and, while it is not possible to anticipate all such changes, three developments will affect the Authority's work over the period covered by this Strategy Statement.

The **first** of these is the **Competition Bill 2001**. This legislation follows from the report of the Competition and Mergers Review Group (CMRG; this report can be found at www.tca.ie) in April 2000 that recommended sweeping legal changes. The main changes proposed in the Bill are:

- to terminate the notification system;
- to transfer the concentration (merger and acquisition) control function from the Minister to the Authority, and set out clearer rules and procedures for determining concentrations;
- to apply prison sentences to a narrower range of offences that cover “hard-core cartels” but increase the maximum sentence from 2 to 5 years to reflect the seriousness of such offences;
- to improve the Authority's investigative and advocacy powers;
- to enable the Authority to recruit its staff; and
- to make the Authority more accountable to the Minister in respect of finances, strategic planning and its annual work programme.

While several of these changes will greatly assist the Authority's work, the biggest effect will flow from the removal of notifications and the new concentration control function. The Authority intends for the Competition Policy Division, which currently manages notifications, to manage concentrations. Several of the objectives of this division listed below relate to preparing to take on this function.

The **second** major change is the EU proposal to reform Regulation 17, known as “**modernisation**”. Modernisation envisages that the Member States will take the primary responsibility for enforcing European competition law within their own territories. This means that the Authority will take on some of the functions currently exercised by the European Commission. At the time of writing, it is not known precisely how these functions will be allocated, so that the full consequences for the Authority are unclear.

However, modernisation will undoubtedly affect the Authority and its work during the period covered by this Strategy Statement. The European Commission has found many breaches of European law in the Irish market. Cases such as *Magill* and *Irish Sugar* illustrate that it has been the Commission that has traditionally tackled (often State-owned) monopolies in Ireland. There are several reasons why the Commission has been able to do this so successfully. First, it has had the resources and expertise. Second, it both undertakes the investigation and makes the decision, so that the process is faster. Third, Irish procedure requires that cases go through the courts. Fourth, the Commission

process can result in a fine, whereas the Irish one cannot (unless the matter is criminal, which only applies to hard-core cartels). Fifth, the EU Treaties enable the Commission to challenge State restrictions on competition. A case known as *Italian Match* that is currently before the European Court of Justice may expand the potential for the competition authorities of the Member States to challenge State restrictions under EU law.

At present, it is unclear how the Commission's dual powers to investigate and to make judicial decisions will be allocated within Ireland, although it is likely that they will be split between the Authority and the courts. It is also not clear whether sanctions similar to those in European law will be introduced.

The Authority has invested a great deal of time and effort in the discussions of these questions at European Commission and Council levels. Such involvement will continue over the remainder of the discussions, after which the Authority will begin to prepare for implementing the necessary changes. It is envisaged that the new Regulation will be finalised by the end of 2003 and that it will come into effect in 2004, leaving the final year of the Strategy Statement as a period of implementation.

The **third** issue of change is less central, and part of a longer-term trend towards the **internationalisation** of competition policy. There is increasing concern that the anticompetitive actions of large multinationals are not properly checked and controlled by a system of national competition laws working in isolation. Such concern has been further fuelled by high-profile cases such as the vitamins and lysine cartels, in which European, American and Asian companies were found to have formed cartels to rig world markets in these commodities.

Some responses to this challenge have emerged. Firstly, there is the inclusion of competition within the Qatar round of the World Trade Organisation. However, this is unlikely to have a significant impact on the Authority during this three-year period, although it may have profound long-term implications. A second response is the formation, at the end of 2001, of the International Competition Network (www.internationalcompetitionnetwork.org). This body aims to provide competition authorities with a focused network for addressing practical antitrust enforcement and policy issues of common concern and to facilitate procedural and substantive convergence in antitrust enforcement through a results-oriented agenda and informal, project-driven organisation. The Authority joined the Network in December 2001. A third development is the annual international cartel conference, where cartel enforcement officials from around the world come together to discuss techniques and enforcement strategies towards hard-core cartels. In addition to these new developments, the competition committee of OECD continues to facilitate detailed work on best practice and peer review of competition policy.

International cooperation of this kind is critical for a small economy like Ireland, for several reasons. Irish consumers and producers can be negatively affected by the actions of international cartels like those in vitamins and lysine, so Ireland depends on close cooperation with and action by the enforcement authorities in other countries to prevent and deter such cartels. This also applies to international mergers or existing international monopolies that may have an effect on Irish markets. More generally, small countries like Ireland may lack the critical mass to develop expertise and best practice in all areas of competition policy.

CRITICAL SUCCESS FACTORS

Staff

The achievement of the strategic goals relies critically on the Authority being fully staffed, with a balanced complement of expertise, skills and experience in law, economics and public administration. High staff turnover will always retard output. When it occurs on a large scale, as happened in 1999–2000, when turnover reached 75%, it can even undermine previous good work because of lack of continuity within the organisation. This situation is made worse if there are serious delays in filling vacancies. For legal and procedural reasons, it currently takes up to nine months to fill a vacancy. The Authority is also faced with the additional hurdle that private sector salaries are sometimes significantly higher for equivalent work.

Technology

The Authority has little or no control over many policy choices in this area (e.g. architecture, software packages, email, service and support). The ability to make policy choices in this area and shape the future technological development of the Authority would represent a significant improvement in resources.

Space

The Authority's office accommodation is currently relatively crowded and non-contiguous. It lacks space for core inputs, library materials, secure storage, a reception area and communal space. The question of the accommodation of the Authority was raised by both the CMRG and the Deloitte and Touche report.

Legislation

The CMRG identified several shortcomings in the Competition Acts of 1991 and 1996, particularly in relation to the treatment of mergers, criminal procedures, the powers and structure of the Authority, its relationship with regulators and its inability to tackle State restrictions on competition. The Competition Bill 2001, introduced in December 2001, seeks to implement the main recommendations of the CMRG and Deloitte and Touche reports

Resources

The ability of the Authority to secure sufficient resources is critical for meeting many of the objectives set out in this statement. The Authority's non-pay budget is relatively low, but in recent years this has not been a problem because there have been substantial savings on the pay side arising from staff vacancies. As the Authority approaches the point when all vacancies are filled, the low level of the non-pay budget will become a critical constraint. The Authority will need to devote resources to planning and developing the expertise for the transfer of the merger function, as proposed in the Competition Bill.

Similarly, the continuation of the Authority's positive relationship with the Department of Enterprise, Trade and Employment is critical in terms of resources. The Department provides many essential services for the Authority, including personnel management, all computer and IT services, office accommodation and related services such as cleaning and security. It supplies the Authority's staff and is responsible for selecting and

appointing Members. The Department also provides funding for the Authority via an annual grant, and negotiates with the Department of Finance on the Authority's behalf.

Legal process

The effectiveness of the Authority's work depends to a large degree on the efficiency of the legal process. The prosecution of competition law is complex and fact intensive, and court cases are typically long and require extensive discovery in advance and expert evidence in court. Competition policy is one of the areas that would benefit most from reforms in high court procedure, such as the use of specialised judges, managed cases and adequate resources to ensure prompt hearings. For serious criminal cases, the Authority sends a file to the Director of Public Prosecutions (DPP), who is charged with bringing all prosecutions on indictment. Here again, the ability of the Authority to convert its investigations into successful prosecutions depends critically on the DPP being sufficiently resourced to bring these complex white-collar cases to trial.

Policy environment

The final critical success factor for the Authority is the strength of support for competition policy within the portfolio of policy instruments available to government to improve economic performance. Historically, competition policy has been seen as a marginal add-on in the arsenal of policy instruments. In large part, this was because Ireland had little experience with it, and because the benefits are less immediately tangible.

There is increasing recognition that competition policy, properly implemented, can deliver enormous benefits in terms of increased trade, reduced price pressure and greater productivity growth over time. This view is led by economic policy analysis, supported by a growing number of examples, such as liberalisation of air travel and telecommunications. As the Irish economy has moved from high unemployment towards full employment, critical bottlenecks have thrown the spotlight on the inability of monopolised and restricted markets to respond to growing and changing demand. As this becomes recognised in the wider policy-making and political community, it will strongly influence the priority and support given to competition policy over the period of this Strategy Statement.

GOAL 1: ENSURE THE FULLEST POSSIBLE ENFORCEMENT OF AND COMPLIANCE WITH COMPETITION LAW

Restrictions by firms can prevent competition from working to the benefit of consumers and the economy generally. There are strong incentives for undertakings to collude to fix prices, allocate markets or limit production. Equally, undertakings in dominant market positions have good reasons for raising prices, foreclosing markets and preventing competition from entrants with innovative ideas and products.

To ensure that markets work well for consumers, the Competition Act contains provisions that prohibit undertakings from making agreements to restrict or distort competition (Section 4) and that prohibit those in a dominant position from abusing that position (Section 5). This creates an environment in which competitive forces can deliver to consumers lower prices, greater product choice and variety as well as more innovative goods and services.

The Authority is responsible for the public enforcement of competition law embodied in Sections 4 and 5 of the Competition Act. This is achieved through the deployment of three instruments:

First, the Authority conducts investigations and prosecutions of alleged breaches of the Act, usually based on a complaint from the public. Successful prosecution punishes wrongdoing and serves as an example to others. This is the most visible way in which the Authority enforces the Competition Acts.

Second, the Authority processes notifications, analyses proposed mergers and issues category certificates and licences.

Third, the Authority ensures compliance with the law through the provision of guidelines on the Authority's own investigative and enforcement priorities and on particular types of behaviour, such as refusal to sell or excessive pricing.

1(i) Develop an improved method for detecting breaches

Breaches of the Act are detected almost exclusively through complaints made by the public. They are the raw material, the cornerstone, of enforcement activity. In some instances, the Authority initiates its own investigations. Over the period of the Strategy Statement, a range of actions will be taken to critically examine the current approach to detecting alleged breaches of the Act and consider ways of improving the quality and breadth of detection methods.

Over the period of this Strategy Statement, the Authority will:

- examine the current profile of complaints (e.g. by sector, whether from business or consumers) and determine if there are any obvious gaps in coverage;
- estimate the proportion of complaints that do not raise competition concerns and consider whether they have common characteristics (e.g. where they fall outside the Act);
- measure consumer awareness of Sections 4 and 5 of the Act;
- utilise the powers and investigative tools at the disposal of the Authority, including the Cartel Immunity Programme;
- consider methods to generate better, more focused, complaints from the public, whether these are from business or consumers; and

- examine alternative methods to identify anti-competitive practices and the feasibility of implementing such methods.

1(ii) Thoroughly investigate, analyse and assess the effects on competition of alleged breaches

Not all alleged breaches can be thoroughly investigated at present. The demand for investigative services exceeds their supply. This means that choices need to be made. Optimal enforcement, with limited resources, will necessitate decisions being made as to which breaches merit greater priority and commitment of resources. The more well informed such decisions are, the better will be the enforcement of Sections 4 and 5. Over the period of the Strategy Statement, the Authority will develop an approach to identifying the most egregious breaches and allocate resources accordingly.

Over the period of this Strategy Statement, the Authority will:

- devise a better procedure for screening/ordering alleged breaches of Sections 4 and 5 for the purposes of enforcement;
- investigate alleged breaches, selected in order of priority, with resources allocated accordingly;
- draw the distinction as to when an investigation begins;
- review the procedure to evaluate the effectiveness of the screening process;
- develop and update policy towards openness in the enforcement divisions' investigations;
- ensure that business is not unduly burdened by the investigation process;
- work with the Gardaí in the conduct of investigations, training and computer forensics; and
- prepare an office manual of procedures for enforcement.

1(iii) Ensure the most appropriate outcome of an investigation of alleged breaches so as to maximise consumer benefits in a cost-effective manner

Breaches of the Act must be stopped, suitable remedies need to be devised and precedent needs to be established. Clear signals need to be sent that the Authority is serious about discharging its enforcement functions. In some instances, this may necessitate court action. In others, however, a less costly resolution may be preferable, as resources can then be concentrated on public enforcement. Over the period of the Strategy Statement, we will review the current approach to dealing with breaches of the Act to determine whether any improvements are necessary.

Over the period of this Strategy Statement, the Authority will:

- review current procedures for dealing with breaches of the Act;
- improve its ability to seek an injunction at short notice;
- improve its ability to bring cases on indictment, in conjunction with the DPP; and
- improve its ability to bring summary prosecutions.

1(iv) Promote greater compliance

Business needs to be informed and educated about Sections 4 and 5, especially as ignorance may be used as a defence under the Act. Greater awareness and understanding will facilitate increased compliance. It will reduce the cost of undertakings of complying with the Act. Business also needs to be made aware of the benefits of competition. A well functioning market will assist in reducing input costs and thus make firms more internationally competitive. We will seek over the period of this Strategy Statement to inform and educate business so as to provide clarity both in terms of the meaning of Sections 4 and 5 and their enforcement by the Authority.

Over the period of this Strategy Statement, the Authority will:

- prepare guidelines, as appropriate, on the divisions' investigative and enforcement priorities;
- prepare guidelines, as appropriate, on particular types of behaviour (e.g. excessive pricing);
- disseminate guidelines to the business community on, for example, how to recognise a cartel or an abuse of a dominant position;
- consult business and consumers to determine where greater guidance is needed; and
- improve business awareness of Sections 4 and 5.

1(v) Participate actively in the enforcement of law and coordination of policy at EU level

The Commission can investigate and make findings in relation to breaches of Articles 81 and 82 (upon which Sections 4 and 5, respectively, of the Competition Acts are based). The Commission also enforces Community legislation governing mergers with a European dimension. The Commission's efforts to make competition and the internal European market work well have direct and positive effects on the Irish economy and consumers.

The Council and Commission use a variety of instruments, such as directives, regulations and guidelines, to direct and change competition policy. Regulations such as those on mergers and vertical relations are important where business affects trade between Member States. The Authority, jointly with the Department of Enterprise, Trade and Employment, represents Ireland in the fora in which such policy directions are debated and determined.

It is important that the Authority play an involved and constructive role, and especially so given that the Irish economy is small and highly open to trade. Over the period covered by this Strategy Statement, we will assist the Commission in its investigative and enforcement functions.

Over the period of this Strategy Statement, the Authority will:

- actively participate in advisory committee meetings, on matters relating to Articles 81 and 82 and to mergers;
- act, as appropriate, as a rapporteur at hearings;
- assist the Commission with investigations in Ireland;

- participate in and contribute to EU horizontal rule-making at Commission level, with the Department of Enterprise, Trade and Employment, on issues such as block exemptions and guidelines; and
- participate in EU policy-making on directives and regulations, via Council and advisory committees, on issues such as the reform of Regulation 17 and the Merger Regulation.

1(vi) Support compliance through the notification process

Advice and guidelines may not provide the necessary legal certainty that some undertakings require with respect to particular agreements. The proposed agreement may pose genuinely difficult problems for an undertaking in deciding whether or not it constitutes a possible breach of the Act. On the other hand, notifying an agreement to the Authority is not a substitute for legal compliance, where it ought to be clear that a particular agreement, concerted practice or decision of an association of undertakings clearly risks breaching the Acts. When the Authority has to process a large number of notifications, it may decide that it is better to issue its opinion in the form of a category certificate or licence rather than by way of an individual decision; a number of such category certificates/licences are currently in force. The Authority will, over the period of the Strategy Statement, ensure that all notifications are dealt with in an efficient and effective manner and, where appropriate, review/issue category certificates.

Over the period of this Strategy Statement, the Authority will:

- within six months of receipt, deal with the bulk of new notifications, either by way of a final decision or a statement of objections;
- significantly reduce the backlog of notified cases; and
- review the Category Certificate/Licence for Agreements between Suppliers and Resellers, which is due to expire on 31 December 2003.

1(vii) Complete merger reports at the request of the Minister

Mergers are an important method by which industry structure (the number and size distribution of firms) can change. They can have important, long-lasting consequences and, on occasion, a proposed merger will prevent or restrict competition to the detriment of consumers. It is, thus, important that the Authority is in a position to respond quickly to requests from the Minister for merger analysis, a key objective that we will strive to meet over the period covered by this Strategy Statement.

Over the period of this Strategy Statement, the Authority will:

- maintain and develop expertise in the economic and legal analysis of the effects of concentrations on competition; and
- ensure the provision of an expert and timely report in response to all referrals from the Minister.

GOAL 2: IDENTIFY MARKETS WHERE COMPETITION IS ABSENT OR RESTRICTED AND PROMOTE SOLUTIONS THAT IMPROVE COMPETITION FOR CONSUMERS

The Authority's second high-level goal is to identify markets where competition is currently absent or restricted and, where the enforcement of Sections 4 and 5 is not a remedy, to promote solutions that benefit consumers. The most obvious example is where competition is restricted by government regulation that prevents or restricts new entry or price rivalry. Competition could also be limited by factors such as consumer inertia or lack of information, unnecessary bureaucracy, oligopolistic market structures and non-Section 4 industry practices. We refer to such impediments and limitations to competition as general restrictions on competition.

Identifying markets where competition is absent or restricted, and proposing remedies, is part of the legislative mandate of the Authority under Section 11 of the 1991 Act as amended. Because restrictions on competition can have high economic costs, measures that increase competition can give substantial benefits. Tackling general restrictions on competition also ensures that competition operates uniformly in the economy. Challenging State restrictions supports effective enforcement of competition law, because it makes it more difficult for firms and sectors to avoid being subject to competition rules by obtaining an exemption via regulation.

The Authority studies markets in one of two ways. Firstly, a formal study of a market, which usually involves a definite process with direct public consultation and a single publication at the end. It conducted four such studies between 1994 and 1998, two at the request of the Minister and two on its own initiative, and currently has two more under way. Secondly, the Authority can study and analyse markets informally on an ongoing basis. Such studies may encompass, for instance, responses to consultations carried out by sectoral regulators, or by government bodies concerned with the issue of regulatory reform in general.

2(i) Identify markets where competition is absent or restricted

The Authority will conduct studies to identify markets where competition is not well established.

Over the period of this Strategy Statement, the Authority will:

- identify State restrictions in legislation or administrative procedure that impede the competitive process, and for which there is not a commensurate benefit;
- Identify markets where competition does not appear to work well for consumers and where this is not easily explained, either by State restrictions or breaches of competition law;
- undertake any studies requested by the Minister;
- target the most important general restrictions on competition; and
- where competition is being introduced into former monopoly markets, identify and propose legislative measures that will create a suitable environment for competition, in order to benefit the consumer.

2(ii) Make appropriate recommendations

The Authority will highlight any restrictions that have a disproportionate negative impact on competition relative to any potential or claimed benefits.

Over the period of this Strategy Statement, the Authority will:

- present a report to the Minister after a study has been requested; and
- disseminate the findings of studies through representations and/or submissions to government departments, regulators, government-appointed commissions and Oireachtas committees, etc.

2(iii) Influence the regulatory process

The Authority will ensure that its findings are disseminated as widely as possible using all available media.

Over the period of this Strategy Statement, the Authority will:

- meet with government departments and agencies, regulators, undertakings and representative bodies and seek to build a consensus for change in order to enhance competition in sectors where studies have revealed problems;
- take all appropriate actions domestically and internationally to support the regulatory reform process with a view to implementing the recommendations of the OECD Report on Regulatory Reform in Ireland;
- comment on proposed and existing legislation with a view to ensuring that competition is promoted; and
- follow up on previous study recommendations to ensure that the momentum for change is maintained and enhanced.

2(iv) Champion competition

The Authority interacts on an ongoing basis with sectoral regulators, Oireachtas Committees, government commissions and review groups, and other bodies that develop and implement regulatory policy. These meetings provide an important opportunity to influence thinking and to build coalitions for change that will assist the competitive process. Directives from the Commission pursuant to Article 86 of the Treaty of Rome have led to the liberalisation of utilities and the establishment in Member States of independent regulators.

Over the period of this Strategy Statement, the Authority will continue to:

- liaise with sectoral regulators in relation to issues of mutual interest;
- participate in committees, commissions, etc., addressing competition matters, as with its current membership of the Liquor Licensing Commission and the Pharmacy Review Group;
- meet with the appropriate authorities to assess the case for restrictions on competition in areas such as safety, health and financial system security;
- annually review developments in markets where State restrictions on competition have been identified by the Authority, the OECD or otherwise, including an update on

institutional developments which may affect the quality of regulation and on developments abroad relevant to the Irish situation; and

- ensure that the perspective of the Competition Authority is well represented in any review of EU directives in the areas of telecommunications, energy and transport, etc.

Competition and Regulation

Sectoral regulators are generally appointed in industries where there is, or is perceived to be, a natural or legal monopoly. The case for a regulatory regime for industries such as gas, electricity, telecommunications and transport arises because the incumbent firm might abuse its market power by charging excessively high prices for its output, by refusing access to essential facilities to its competitors, or by using its market power in other ways to harm competitors and prevent, restrict or distort competition in the market.

In modern economies the responsibilities of sector-specific regulators generally include licensing functions, dispute resolution functions with respect to access and interconnection charges, and setting price caps in certain areas. These activities are not, in themselves, sufficient to ensure that the market will be competitive or efficient. On the other hand, competition law in itself may be a slow and unsuitable remedy for issues such as those described above. The Competition Authority has formal and informal arrangements in place for liaising with the principal sectoral regulators and the ODCA to promote competition in such markets and to decide how best to handle issues spanning competition law and sectoral regulation.

GOAL 3: RAISE PUBLIC AWARENESS AND UNDERSTANDING OF THE BENEFITS OF COMPETITION

Raising public awareness and understanding of the benefits of competition and the costs of lack of competition is an essential complement to the Authority's enforcement and advocacy work.

Each and every member of the public is a consumer who is directly affected by the state of competition in markets for goods and services. Where competition works well, consumers benefit from better value, choice and service. The challenge is therefore to ensure that consumers generally understand, by example and reasoning, how factors that improve competition, such as new entry, can yield gains to them personally.

Specific groups such as legislators, journalists, academics, business people, economists, representative bodies, public servants, worker representatives and lawyers will have a special interest in the competitive process and work of the Authority. Some groups have a strictly professional interest. Others are positively or negatively affected by increased competition. Because such groups are cohesive, interested and more informed about competition matters, they are important focal points and conduits for disseminating information and raising awareness.

In some cases, the Authority will wish to foster constituencies of support by ensuring that people are aware of how competition, and efforts to improve it by the Authority, matters for them. In other cases, the Authority will wish to ensure that those adversely affected by greater competition understand and appreciate the benefits that accrue for society generally and do not lose sight of the benefits they obtain from greater competition in other markets.

Public awareness and understanding are important for several reasons. First, as public enforcer, the Authority acts on behalf of the public interest. For this role to be, and to be seen to be, fully valid and legitimate, the public need to know about and understand the Authority's work. Second, awareness of competition law is essential for widespread compliance. Large firms can afford to have specific compliance programmes designed by their lawyers, but, for smaller and medium-sized enterprises, which are the mainstay of the Irish economy, compliance may be enhanced by general public information programmes as well as targeted ones. Third, groups that know about and understand the effects and benefits of competition can support the Authority's work in practical ways. Directly, they may help by bringing relevant matters to the attention of the Authority. Indirectly, they may support the removal of disproportionate restrictions on competition, help counter an imbalance in favour of producer interests in existing policy determination, or assist the development of competition as an instrument of economic policy generally. Finally, greater public awareness provides a broad mandate for the Authority's work and increases the accountability and transparency of the Authority generally.

3(i) Improve knowledge of competition law and the Authority's work

The Authority publishes and makes widely available a large range of material to improve knowledge and understanding of competition law and policy. Within the legal constraints that bind it, the Authority endeavours to make as much of its output as possible publicly available. This includes guidelines and short booklets, discussion papers and speeches by Members and staff, and conferences (in addition to formal decisions, which it is required to publish by law). These help to improve legal certainty, to elucidate particular competition issues in easy and accessible terms, to explain the Authority's work and

priorities and to discuss novel and complex policy issues in an open and transparent manner.

Over the period of this Strategy Statement, the Authority will:

- publish all its decisions, reports, studies and other work in the fullest form possible;
- publish guidelines, booklets and articles that explain competition law and the Authority's work and priorities;
- organise public conferences, seminars and other meetings on competition policy topics;
- provide expert and high-quality speakers for conferences, seminars and meetings organised by others on competition policy topics;
- ensure that the accessibility, format and availability of all the Authority's publications and public presentations are suitable to its audiences' needs;
- develop the full potential of the Authority's website as the leading Irish public information source about competition issues by keeping it up to date, comprehensive, accessible and well connected to other relevant sites; and
- develop a press and public relations strategy that maximises the impact of the Authority's publications and supports a positive public profile for the Authority's work.

3(ii) Raise public awareness of the benefits of competition

In the United States, over 80% of consumers are aware that competition benefits them. In the UK, this figure is around 10%. We do not currently know the Irish figure but would be surprised if it were greater than in the UK, where there is a stronger consumer culture. We continually engage in measures to improve awareness about competition, largely focused on highlighting good examples and supported by a consistent line of reasoning. Individual cases can act as powerful evidence of the benefits of competition, and consumers may identify them with tangible positive personal experiences. In many cases, the Authority will already have estimated such benefits as part of its enforcement or advocacy work, so it is simply a matter of presenting these results in an accessible and useful form. While striving to improve its direct efforts here, the Authority also needs to do more to understand the diverse public views that exist in relation to competition.

Over the period of this Strategy Statement, the Authority will:

- improve its understanding of what consumers and other groups generally know and think about competition;
- develop a policy to increase public understanding and awareness within a particular time-frame;
- work with the Office of the Director of Consumer Affairs and consumer groups to inform consumers of the role that competition policy can play in supporting consumer protection policies;
- work with other groups to explain and articulate competition policy issues;
- identify and present cases, either from the Authority's work or from other countries, that illustrate in a clear and tangible way the benefits of increased competition; and

- calibrate and articulate the macro-economic benefits that arise in terms of productivity growth and counter-inflationary pressure from competition policy intervention generally.

3(iii) Provide an informed competition perspective in public policy determination

Important policy decisions or legislation, especially if they involve regulation of the activities of firms, can have an effect on competition in individual markets. The Authority will wish to support proposals that increase competition and draw public attention to those that disproportionately restrict it.

Producer interests have traditionally exerted undue influence in policy decisions that affect competition because they are informed, interested and well-organised, in contrast to consumers who are typically less informed or organised. Because the consumer viewpoint is less well represented, regulations typically restrict competition more than is necessary or desirable.

Under its objectives in Goal 2, the Authority attempts to address this problem in the decision-making process itself. However, providing a more informed perspective on competition issues in the public arena is also important, for several reasons. First, public opinion can have a significant effect on the direction of public policy. Second, public policy decisions increasingly involve formal consultation, and individual consumers who make informed submissions that are representative of a large group of similar consumers will carry considerable weight.

Over the period of this Strategy Statement, the Authority will:

- use public speeches, debate, press articles, media appearances and other opportunities to articulate a pro-competition perspective;
- research the benefits of regulatory reform internationally so as to counter any misplaced fear regarding better regulation and offer successful alternative models to consider;
- promote the positive contribution that competition can play in policy initiatives such as the Better Regulation Initiative led by the Department of An Taoiseach;
- improve its capability to present publicly an informed and expert public opinion on new policy issues as they arise;
- raise the profile and awareness of competition policy issues among social partners and within the social partnership process;
- expose and counter the self-interested arguments of those who represent producers that gain from restrictions on competition; and
- produce and publicise periodic reviews of the progress that has been made since the OECD Report on Regulatory Reform in Ireland.

GOAL 4: PROVIDE AN EFFECTIVE AND TIMELY SERVICE TO INTERNATIONAL BEST PRACTICE STANDARDS

The Authority's fourth goal is to enhance its capabilities in undertaking its work generally so as to enable it to provide a high-quality and efficient service. This goal focuses mainly on the inputs to the Authority's work. The Authority's ability to be efficient, expert and informed is critical, both in order for it to get decisions and other interventions right and for the overall credibility of competition policy. The primary focus of this goal is on the staff of the Authority, in recruiting and retaining skilled and talented individuals and empowering them to reach their full potential. Most of the objectives here relate directly or indirectly to fostering excellence, expertise and high productivity in the staff of the Authority. Other resources, such as central government funding and physical resources, are also critical.

This goal is important because it addresses the quality of the Authority's work, it supports the other three goals, it provides an appropriate "customer" focus and it also enhances accountability and transparency.

The analysis and investigation of competition issues is complex and multi-faceted, and requires expertise in both law and economics. The Authority must continue to attract and retain highly skilled staff on the basis of factors such as the variety and attractiveness of the work, training and development, and the overall quality of the working environment. In areas such as law and economics, where a substantial private-sector salary premium exists, this is a significant ongoing challenge. The Authority will work on this directly via an objective related to staff development and retention, and indirectly by ensuring that the operation of the Authority and the provision of efficient corporate services contribute to an attractive working environment.

International practice and cooperation is important, as it enables the Authority to have a wider base of knowledge and experience of issues and solutions. For a small economy where the Competition Authority lacks the critical mass to undertake its own background research on every issue, international communication and experience are even more critical.

4(i) Recruit, develop and retain excellent staff

The Authority must have the correct level and mix of legal, economic, forensic, management and other administrative skills within its staff, and must continue to develop skills via on-the-job training and specific training programmes over time.

The Authority will continue to endeavour to fill all vacancies that are within its control as quickly as possible, to provide adequate training, development and career advancement for all staff and to ensure that the Authority is adequately staffed in order to fulfil its statutory functions.

Over the period of this Strategy Statement, the Authority will:

- seek to attract highly skilled and motivated individuals to work for the Authority;
- improve its staff induction programme and integrate new staff through active mentoring and teamwork;
- formulate and implement a comprehensive staff development programme by which training needs and appropriate courses and on-the-job training solutions can be identified; and

- improve its annual appraisal system.

4(ii) Manage resources effectively

The financial, physical and technological resources of the Authority are a vital input, affecting the volume of work undertaken and the quality of the physical environment in which it is done.

Over the period of this Strategy Statement, the Authority will:

- seek to secure sufficient funding to support the objectives set out in this Strategy Statement;
- ensure that the critical structural deficiency in its non-pay budget is rectified;
- ensure that all staff will be accommodated contiguously, that adequate office space will be provided for all inputs and functions and that the physical office environment complements the Authority's work and the reasonable needs of staff;
- seek to have greater control over technological choices and support;
- ensure that resource allocation within the Authority correctly reflects competition policy priorities and that it is responsive to change as priorities shift; and
- work closely with the Department of Enterprise, Trade and Employment on issues related to resources and services.

4(iii) Coordinate and manage the Authority's work

Since January 2001, the Authority has a divisional structure as outlined on page 3 above (full details are given in an on-line annex at www.tca.ie). The Authority works as a management board, with each Member directing one division. The Authority also meets formally to take decisions under the Act. Within divisions, frequent periodic team meetings involving all staff in the division are held to plan and execute work. Inter-divisional meetings are held every two months to share information with other divisions and to ensure good coordination of all the Authority's work. In addition, it is introducing strategic and change management along the lines developed in the public service in recent years, of which this Strategy Statement is a central example. Being a young organisation with a tenure of less than two years, change is less of an immediate priority. However, it is important that a culture of questioning and change develops within the Authority as it matures.

At the beginning of 2002, two major challenges are on the horizon. First, the Competition Bill, which was published in December 2001, proposes to give additional powers and functions – most importantly, a full merger function – to the Authority. Second, the proposals to modernise Regulation 17 of EU competition law are well advanced and will result in the Authority being required to enforce EU competition law in Ireland.

Over the period of this Strategy Statement, the Authority will:

- continue to evaluate and develop its internal management and communication systems to ensure that they meet the ongoing needs of the Authority as it grows;
- implement the Strategic Management Initiative internally;

- enhance inclusive strategic management to plan the Authority's work, execute it efficiently, measure performance and foster a culture that is constructively self-critical and open to change;
- manage the statutory business of the Authority efficiently and with excellent legal procedure;
- ensure that the Authority is adequately equipped to respond to unanticipated events without unduly disrupting its ongoing work;
- ensure that cases are allocated appropriately across divisions and that divisions work together on matters that span work areas;
- discharge the Authority's obligations under other legislation regarding areas such as employment, ethics in public office and freedom of information; and
- prepare for the merger function to be transferred to the Authority as per the Competition Bill 2001 and for the consequences of the modernisation of EU competition rules.

4(iv) Service the Authority responsively and competently

The Chairman's division provides a variety of administrative services for all divisions. These include equipment, supplies, travel, publications/library, press summaries, information technology, an asset register, bookkeeping, organisation of meetings, delivery of web services, event organisation, etc. The delivery of these services in a timely and cost-effective manner is critical to the overall efficiency of the Authority. As the Authority expands over the period of this Strategy Statement, the supply of these services will need to keep pace and be responsive to the growing and changing needs of the organisation.

Over the period of this Strategy Statement, the Authority will:

- provide administrative services in an efficient and timely manner; and
- critically assess the administrative services needs of the divisions on an ongoing basis.

4(v) Ensure that work is informed by best practice

Ireland is a small, open economy, and new ideas and innovations are diffused into the local economy from the rest of the world. The public sector is no different in this respect than the private sector. Best practice can be sought directly from national competition authorities and/or through a number of international forums. In the period covered by the Strategy Statement, the Authority will monitor the development of best practice and apply the lessons learned to the work of all divisions. In addition to international best practice, the Authority will continue to develop and foster links with bodies in Ireland with an academic or policy interest in competition. Research within these bodies may rely on Authority output, but may also inform and assist the Authority's work. Examples of such bodies are law and economic faculties in universities, the ESRI, Forfás, the Central Bank, the Central Statistics Office, the Irish Economics Association and the National Economic and Social Council.

Over the period of this Strategy Statement, the Authority will:

- actively participate in international competition forums, particularly the competition committee of the OECD, the European Competition Authorities and the newly formed International Competition Network (ICN);
- second staff to best-practice national competition authorities and invite visitors from best-practice national competition authorities to the Authority;
- develop bilateral and mutually beneficial relationships with other competition authorities;
- attend, and present papers at, relevant conferences and seminars;
- participate in international peer reviews and other benchmarking exercises;
- offer legal, economic and policy expertise and support at all stages in the process of revising Irish competition law; and
- develop bilateral and mutually beneficial relationships with individuals and organisations undertaking research relevant to competition policy, especially in Ireland.

4(vi) Provide quality and timely customer service

The Authority's customers include all those affected by its actions. The Authority aspires to provide an efficient and timely service, particularly to those that come into contact with the Authority. This includes complainants, firms under investigation or that have notified agreements, lawyers, civil servants and journalists. The provision of an efficient and timely service to each of these groups can improve the quality of the Authority's work and support its strategic goals.

More generally, the Authority needs not just to make information available, but also to provide it in a form that is accessible and useful to the person requesting or using it. The Authority will continue to develop its web site and electronic communication to assist in the provision of accessible and useful information, and to make the work of the Authority transparent.

Over the period of this Strategy Statement, the Authority will:

- work towards the introduction of standard turnaround times for complaints, notifications and other decision processes;
- engage in public consultation in formulating its policies, where possible, in order to take account of public input and diverse views;
- undertake customer satisfaction surveys and examine other methods of improving the Authority's responsiveness to and interaction with customers;
- make greater use of email lists and on-line forms for complaints and other public communications with the Authority, while making sure that hard copies of output can be provided to those without access to electronic facilities;
- develop, implement and update a customer service charter;
- ensure that its website is up to date and relevant to customers and that it meets web accessibility guidelines;
- process Freedom of Information Act requests efficiently; and

- develop greater clarity about what material the Authority makes publicly available.

PERFORMANCE INDICATORS

- Successful enforcement of competition law, as measured by the volume of complaints investigated; the number of civil and criminal cases brought and favourable judgements, decisions and convictions secured; the number of immunity applications; the case law precedents established, and merger and notification decisions.
- Successful advancement of competition in regulated markets measured by the level of competition in newly liberalised markets; the extent to which new legislation, economic policy and regulatory decisions incorporate the Authority's views; specific progress in areas already identified, such as liquor licensing, pharmacies and transport; the number, quality and influence of formal studies completed; the level of sustained follow-up of Authority studies.
- Efforts to increase public awareness of the benefits of competition as measured by: the number, quality and accessibility of publications, speeches, conferences and other publications; the extent and quality of media coverage of the Authority's work; the public profile of the Authority; the level of public awareness and understanding of competition issues; the existence of external ambassadors for competition policy; user sessions on the web page.
- Quality of work and inputs as measured by: staff retention and satisfaction; customer service levels and feedback; performance of the Authority in international fora and peer review; international recognition of the Authority's work; speed in reaching quality decisions.

ENQUIRIES AND FURTHER INFORMATION

All enquiries regarding this Strategy Statement or about the Authority generally should be directed to the Chairman's office:

By telephone +353 1 804 5417

By email to chair@tca.ie

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