



PRIORITERING DOOR DE ACM EN ANDERE MEDEDINGINGSAUTORITEITEN

**Mededingingscongres, 13
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THE PRIORITY-SETTING PROJECT: ACM, THE NETHERLANDS

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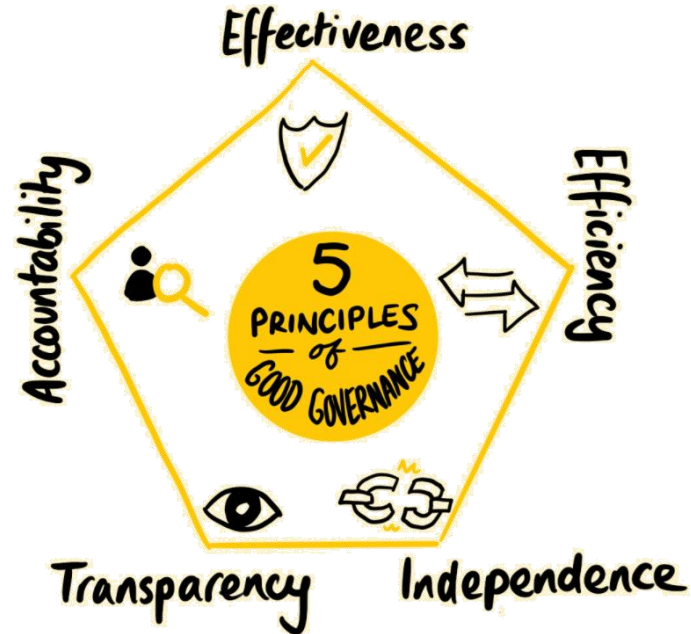
The importance of priority setting



The legal competence and *de facto* ability of CAs to choose which cases to pursue and which to disregard


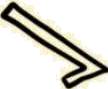

Effective allocation of scarce (human/financial) resources

Concretisation of legal norms; Administrative discretion



Typology of priority setting: 7 aspects of prioritisation

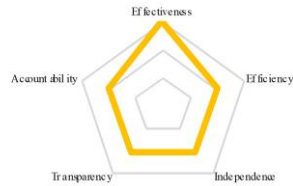


Stage	Aspects of priority setting	External	Internal
 PRE- DECISION	Agenda setting Competence to prioritise (de jure) Ability to prioritise (de facto)	X X X	X
 DECISION	Procedure to prioritise Substantive criteria Alternative mechanisms	X X X	X X X
 POST DECISION	Impact assessment	X	X

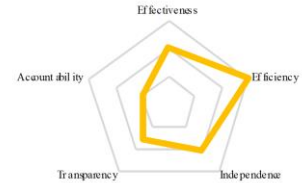
Empirical findings: Four representative models



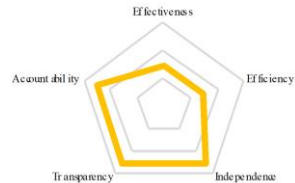
(I)
high degree of prioritisation,
external or internal
constraints



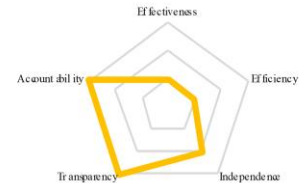
(II)
high degree of prioritisation,
limited external or internal
constraints



(III)
medium degree of
prioritisation,
limited internal constraints



(IV)
low degree of prioritisation,
high degree of transparency

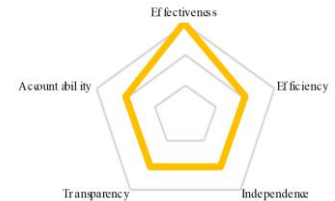


- Module I
- Alternative mechanisms of priority setting maybe a risk

Focus points

- ✓ Explicitly align priority setting with the CA's financial, human, and technical resources
- ✓ Adopt criteria/strategy for use of alternative enforcement

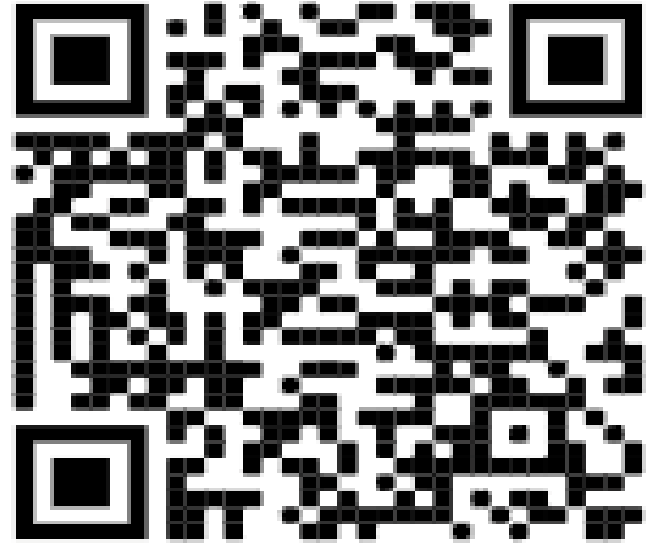
(I)
high degree of prioritisation,
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The Priority
Setting Project

Policy report



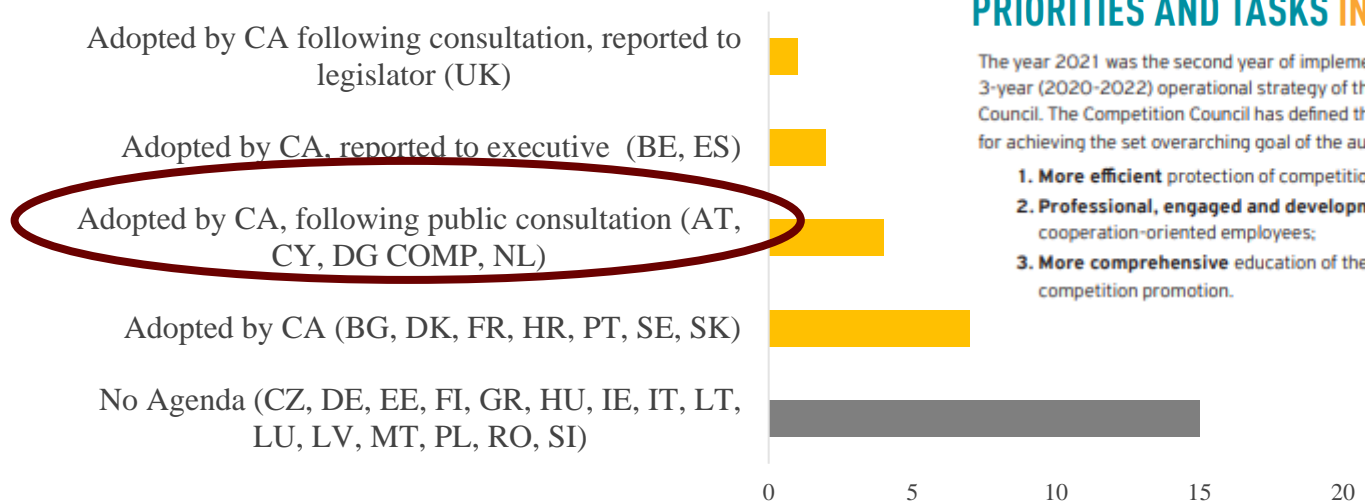
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TYOLOGY OF PRIORITY SETTING: PRE-DECISION STAGE



	External constraints (legislator; judiciary)	Internal constraints (CAs)
1. Agenda-setting	X	X



PRIORITIES AND TASKS IN 2021

The year 2021 was the second year of implementation of the 3-year (2020-2022) operational strategy of the Competition Council. The Competition Council has defined three priorities for achieving the set overarching goal of the authority:

- 1. More efficient** protection of competition;
- 2. Professional, engaged and development-** and cooperation-oriented employees;
- 3. More comprehensive** education of the public and competition promotion.

TYOLOGY OF PRIORITY SETTING: PRE-DECISION STAGE



External constraints

(legislator; judiciary)

Internal constraints

(CAs)

2. Competence to prioritise (de jure)

X

X

(a) All procedures, except complaints



(b) Rejecting complaints



- Opportunity principle (high discretion)
- Legality principle (low discretion)
- Public interest (medium discretion)

TYOLOGY OF PRIORITY SETTING: PRE/DECISION STAGE

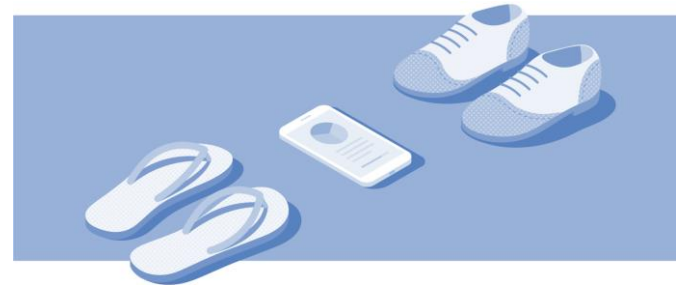


	External constraints (legislator; judiciary)	Internal constraints (CAs)
3. Ability to prioritise (de facto)	X	
<ul style="list-style-type: none">• Legal framework• Resources• Organisation and structure• Staff's skills and competences		

TYOLOGY OF PRIORITY SETTING: PRE/DECISION STAGE



	External constraints (legislator; judiciary)	Internal constraints (CAs)
4. Procedure to prioritise	X	X
<ul style="list-style-type: none">• Type of prioritisation decisions (reasoning, publication, and time limits)• Judicial review of prioritisation decisions• Participation of third parties• Institutional setting of the priority decision-making		



TYPE OF PRIORITISATION DECISIONS (REASONING AND PUBLICATION)



	Reasoned & published	Unreasoned & unpublished	Reasoned & partly or fully unpublished
Formal decision	BG; EE; ES; HR; LT	FR*	CY*; CZ; GR; IT; NL; RO*
Informal decision		AT*; BE*; DE*; DK; DG COMP*; FI*; HU*; IE; LU*; LV; PL*; PT*; SE*; SI*; SK; MT*; UK (except super-complaints)	NL*

* CAs adhering to different rules when rejecting complaints

POSSIBILITY FOR JUDICIAL REVIEW OF PRIORITISATION DECISIONS



	Only complaints	All prioritisation decisions	Indirect challenges of prioritisation decisions
Judicial review	BE, CY, DE, DG COMP, EE, ES, FI, FR, GR, HU, LU, NL PT, RO, MT	BG, IT, LT	CZ, HR, SK, MT
No judicial review	AT, DK, IE, SE* , LV, PL, SI, UK		

** CAs bring decision to a court that takes final decision ->functions as judicial review*

PARTICIPATION OF 3RD PARTIES



	Relevant third parties (incl. formal complainants): high external control	Rights only for formal complainants: medium external control	No formal status for 3 rd parties complainants: no external control
Full rights as rights of defence,	ES, IT	EE, NL	AT, DK, IE, MT, PL, SE, SI
Access to the full file	CZ, FI, LU, PT,		
Access to a non-confidential version of the statement of objections	BE, BG, GR, HU, HR, LV, LT, RO, UK	CY, DE, DG COMP, FR	
Participation in hearing, express opinions, and submit written observations	BG, CY, LU, LT, GR, SK, UK	DE, DG COMP, FR, RO	
Participation in hearing	BE; LV		
Express an opinion and submit written observations	BE, CZ, FI, HR, HU, PT		

THREE MODELS OF PARTICIPATION



Little to no cooperation
between NCA and
complainant after initial
complaint (*ex officio*
procedure - strong
independence)



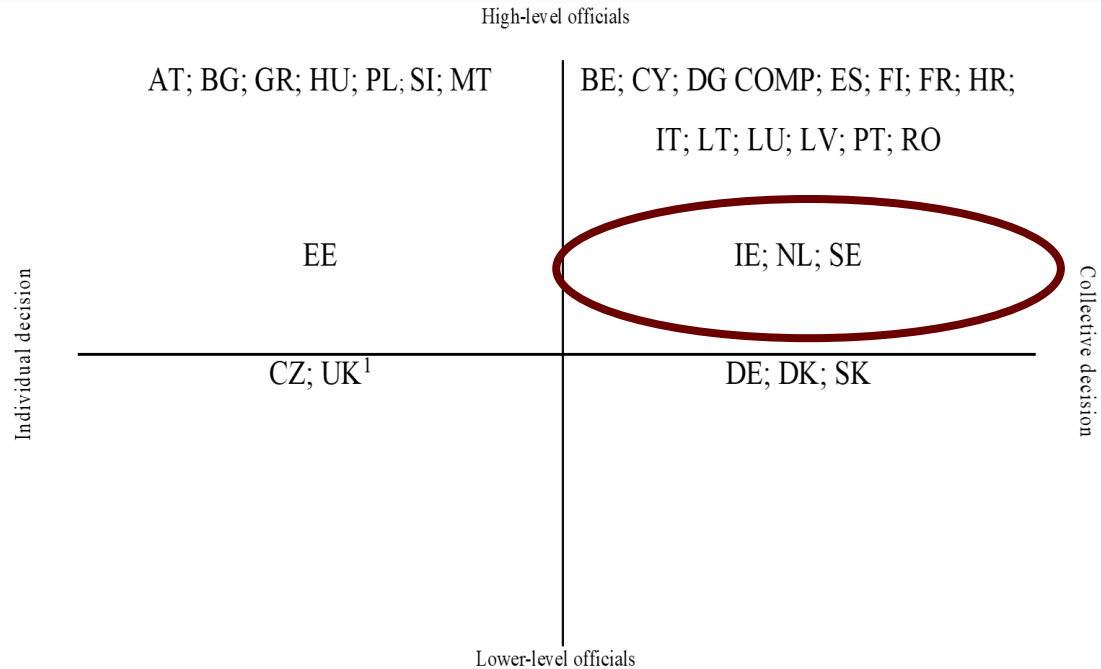
Moderate cooperation
between NCA and
complainant after initial
complaint (formal complaint
procedure)



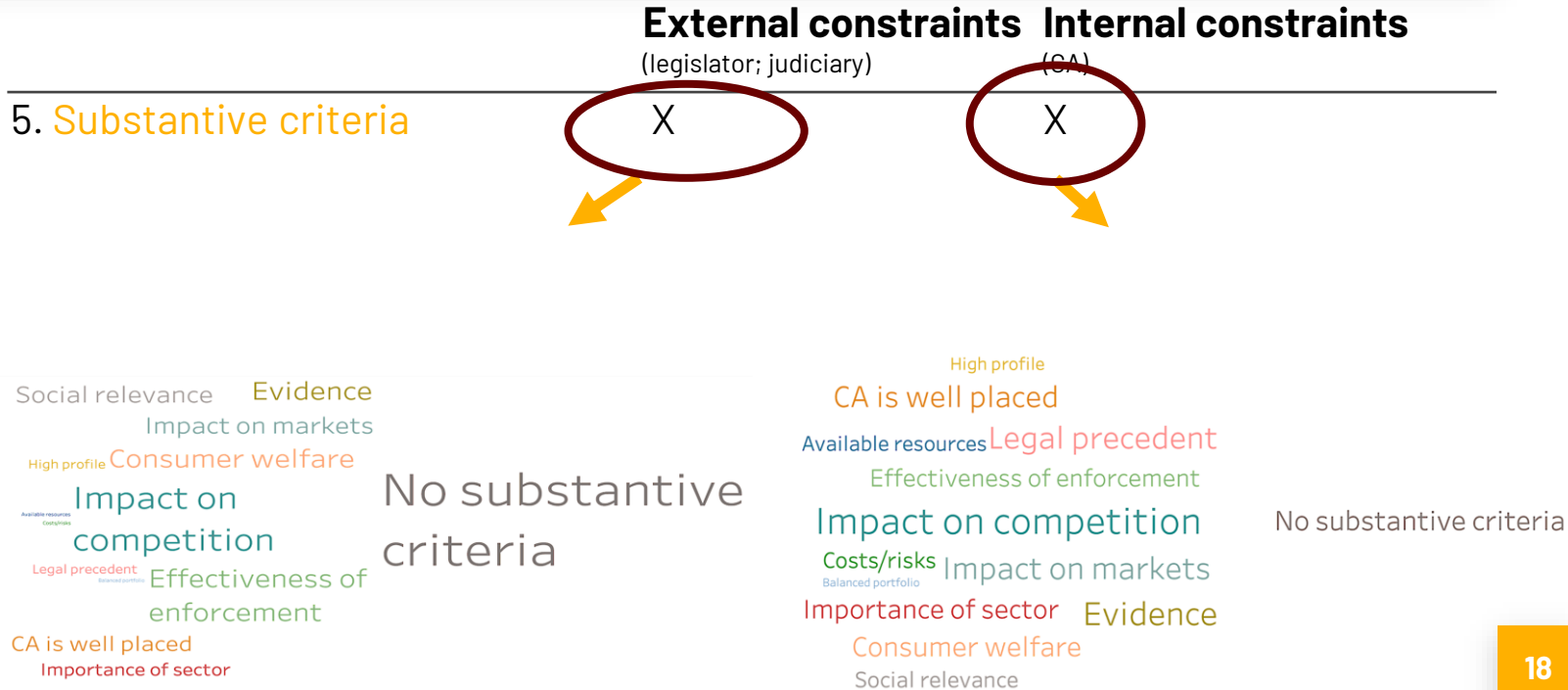
Extensive cooperation
between NCA and
complainant beyond initial
complaint (*super-complaint*
procedure)



INSTITUTIONAL SETTING OF THE PRIORITY DECISION- MAKING



TYOLOGY OF PRIORITY SETTING: DECISION STAGE



TYOLOGY OF PRIORITY SETTING: DECISION STAGE

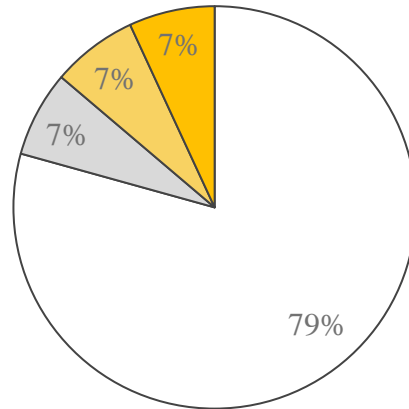


	External constraints (legislator; judiciary)	Internal constraints (CA)
6. Instrument and outcome discretion	X	X
<ul style="list-style-type: none">• Soft enforcement (commitments, informal opinions)• Leniency and settlements• Multi-function CAs (e.g., sector regulation or consumer protection)		

TYOLOGY OF PRIORITY SETTING: POST-DECISION STAGE



	External constraints (legislator; judiciary)	Internal constraints (CA)
7. Impact assessment	X	X



- No impact assessment
- Informal review
- Limited assessment as part of the annual report
- Full impact assessment