



Identifying the right investigations

John Davies, Executive Director

MCCI 28th May 2010

One year on...



A brief reminder



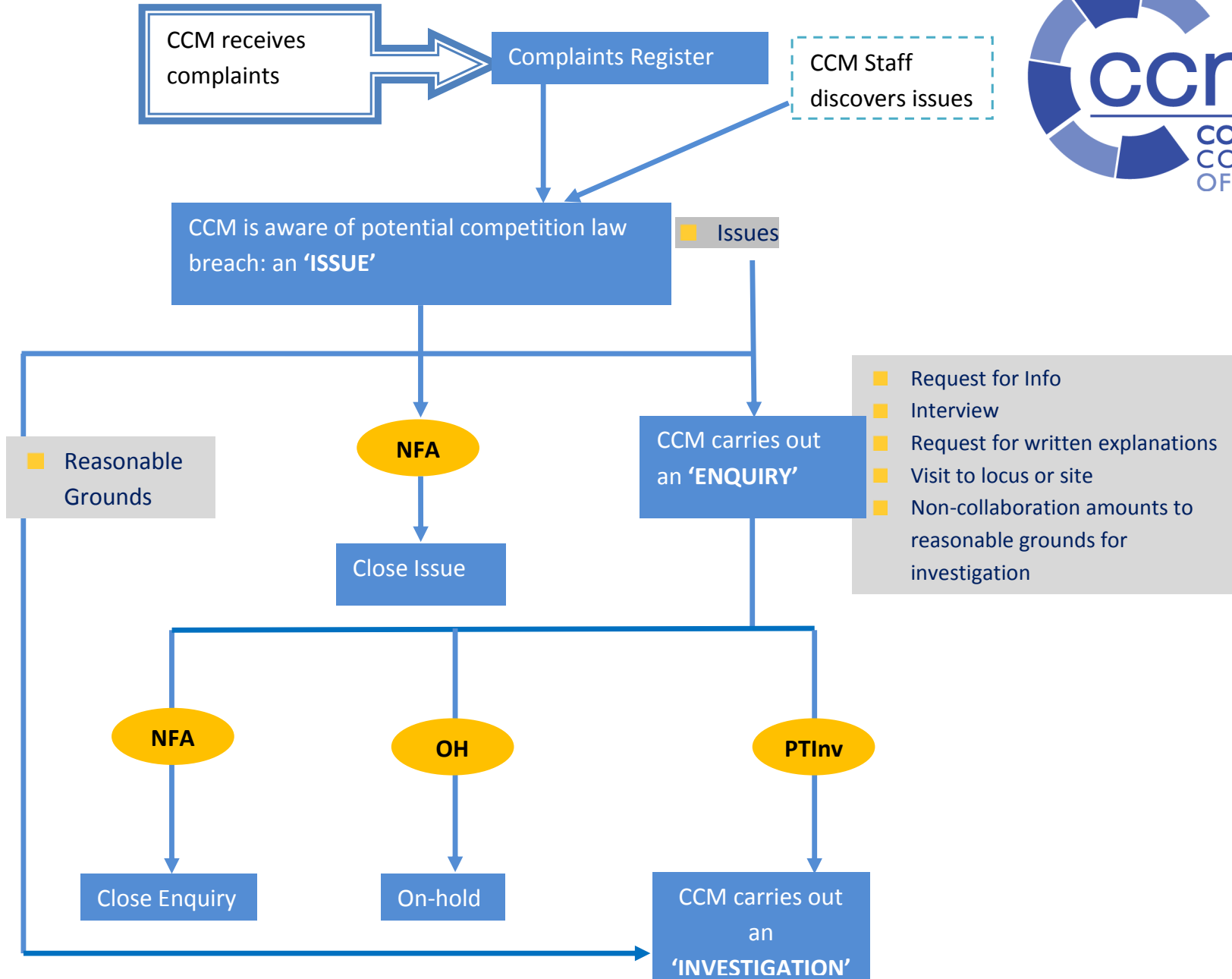
1. Collusive agreements
(price-fixing, bid-rigging,
resale price maintenance)
 - Prohibited (no discretion).
Possible fines for deliberate or
negligent breach.

 2. Non-collusive agreements
 3. Abuse of monopoly
- } ➤ CCM judgment based on
effect. Remedy to mitigate
problem; possible off-
setting public benefits
4. Merger control
 - Assess for significant lessening
of competition. Block or
remedy if so.

The story so far



- October 2007: Competition Act passed
- June 2009: Commission appointed
- September 2009: CCM begins first inquiries to identify cases
- November 2009: Guidelines and Procedural Rules published
- 25th November 2009: Act fully proclaimed
- December 2009: First investigation(s)



Overview



- Just over 50 ‘issues’ logged to date
...of which about 20 are formal complaints
- Only four progressed to investigation (one dropped)
...but other investigations shortly

Issues before us



- Concerns about cartel behaviour
- Complaints from businesses about abuse of monopoly
- Mergers notified to us or reported in newspapers

Issues **not** for us...



- Consumer protection (other than through competition)
- Enforcement of contracts
- Policy decisions of Government or regulators
- Business disputes

From issues to investigation



- CCM ‘enquiry’ – no powers available
 - Initial scoping – public documents, conversations with market participants
 - ‘End of enquiry memo’
 - Focused conversations with main parties
 - Investigation decision by Executive Director”
reasonable grounds

Nota bene



- “The Executive Director may, where any enterprise is not collaborating or is delaying unreasonably in relation to an inquiry, consider that state of affairs as being reasonable grounds for believing that a restrictive business practice has occurred or is occurring or is about to occur.”

CCM / – Rules of Procedure

Outcomes of CCM enquiries



- Progress to investigation
- Clearance – with or without notification
- On hold / ‘Watching brief’
- Advice to Government or other public bodies

Prioritization principles



- CCM will publish for consultation draft prioritization principles
- These set out how the Executive Director will normally prioritise the use of scarce resources
- They have no bearing on the reasonable grounds test

Prioritization principles



- **Impact**
 - Scale of problem
 - Likelihood of clear conclusion
 - Possible remedies
- **Strategic considerations**
 - CCM capabilities
 - Range of cases – sectors, types of behaviour
- **Resources**
 - Likely cost to the CCM, likely cost to other parties

Prioritization principles



- One exception to the prioritization principles:
 - Deliberate or negligent breach of the prohibition on collusive agreements (hard core cartels)
- The CCM will always investigate if the Executive Director believes that evidence can be found
- No consideration of scale, or of cost



Discussion