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**An Bille Iomaíochta (Leasú), 2022**  
**Competition (Amendment) Bill 2022**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE IOMAÍOCHTA (LEASÚ), 2022  
COMPETITION (AMENDMENT) BILL 2022**

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# Bill

*entitled*

An Act to give effect to the implementation of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018<sup>1</sup> to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market; for that purpose to provide for a system of non-criminal enforcement of certain provisions of competition law, including the appointment and empowerment of independent adjudication officers, and the issuing of prohibition notices in response to certain suspected infringements of competition law; to provide for a system of enforcement and non-criminal penalties in relation to certain breaches of competition law, including by the imposition of non-criminal structural and behavioural remedies and certain non-criminal financial sanctions, and to provide for processes by which such non-criminal sanctions may be appealed, remitted or confirmed by the High Court; to provide for a leniency programme in relation to certain undertakings; to provide for cooperation between competition authorities in the European Union and certain bodies in the State; to increase the penalties for certain criminal offences for breach of competition law; to provide additional powers of surveillance to the Competition and Consumer Protection Commission in relation to the investigation of certain criminal offences; to amend certain provisions relating to the procedure for notifying mergers to the relevant authorities; for those and other purposes to amend the Competition Act 2002, the Competition and Consumer Protection Act 2014, the Communications Regulation Act 2002, the Consumer Protection Act 2007 and the Criminal Justice (Surveillance) Act 2009; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title, collective citation, construction and commencement**

**1.** (1) This Act may be cited as the Competition (Amendment) Act 2022. 30

<sup>1</sup> OJ No. L 11 14.1.2019, p. 3

- (2) *Parts 2 and 3* and the Competition Acts 2002 to 2017 may be cited together as the Competition Acts 2002 to 2022.
- (3) This Act shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 5

## Definitions

### 2. In this Act—

“Act of 2014” means the Competition and Consumer Protection Act 2014;

“Principal Act” means the Competition Act 2002. 10

## Transitional provisions

### 3. (1) Where a competent authority begins, on or after the date which *section 12* comes into operation, an investigation into a suspected infringement of relevant competition law—

(a) where the investigation relates wholly to conduct, behaviour or any matter that took place before the 4th day of February 2021, the provisions of the Principal Act, the Act of 2014 and the Communications Regulation Act 2002, as the case may be, shall, notwithstanding the amendments made to those enactments by Parts 2, 3, 4 and 6, apply to the investigation as if those amendments had not been made, and 15 20

(b) where the investigation relates to conduct, behaviour or any matter that, in whole or in part, took place on or after the 4th day of February 2021, the provisions of the Principal Act, the Act of 2014 and the Communications Regulation Act 2002, as the case may be, shall apply to the investigation as amended by such provisions of Part 2, 3, 4 and 6 as are in operation when the investigation takes place. 25

### (2) Subject to *subsection (1)*, proceedings (whether civil or criminal) or investigations taken or carried out by a competent authority, or any proceedings taken by the Director of Public Prosecutions, that—

(a) arise from, or are otherwise connected to, an investigation into a suspected infringement of relevant competition law, and 30

(b) are pending or open on the date on which *section 12* comes into operation,

shall, where they are continued, be so continued (and any penalty, forfeiture or punishment in respect of such infringement may be imposed and carried out) as if the amendments made by Parts 2, 3, 4 and 6 had not been made. 35

### (3) In this section—

“competent authority” has the meaning it has in the Principal Act;

“relevant competition law” means any of the following provisions:

(a) section 4 of the Principal Act;



- (b) section 5 of the Principal Act;
- (c) Article 101 of the Treaty on the Functioning of the European Union;
- (d) Article 102 of the Treaty on the Functioning of the European Union.

## PART 2

### AMENDMENTS TO PRINCIPAL ACT - RELEVANT COMPETITION LAW

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#### **Amendment of section 3 of Principal Act**

**4.** Section 3 of the Principal Act is amended—

- (a) by the insertion of the following definitions in subsection (1):

“ ‘Act of 2002’ means the Communications Regulation Act 2002;

‘Act of 2014’ means the Competition and Consumer Protection Act 2014; 10

‘Article 16(1) periodic penalty payment’ has the meaning assigned to it in section 15AD;

‘Article 16(2) periodic penalty payment’ has the meaning assigned to it in section 15AD; 15

‘administrative sanctions’ means the following sanctions imposed by an adjudication officer under Part 2D—

(a) structural or behavioural remedies,

(b) administrative financial sanctions under section 15AA, or

(c) periodic penalty payments, 20

and ‘administrative sanctions proceedings’ shall be interpreted accordingly;

‘breach of a procedural requirement’ refers to any of the following contraventions by an undertaking, or by an association of undertakings, of an obligation or requirement imposed by a competent authority in connection with an investigation under Part 2C: 25

(a) obstructing or impeding the exercise by—

(i) an authorised officer, within the meaning of the Act of 2014, of a power referred to in section 37 or 37A of that Act, or

(ii) an authorised officer, within the meaning of the Act of 2002, of a power referred to in section 39 or 39A of that Act; 30

(b) breaking a seal affixed by an authorised officer, within the meaning of the Act of 2014, or other accompanying person authorised or appointed by the competent authority, for the purpose of securing any document, record, data equipment, computer or place referred to in— 35

- (i) section 37(2)(c) of the Act of 2014, or
  - (ii) section 39(3)(c) or 39(3B)(c) of the Act of 2002;
- (c) giving a false or misleading answer, failing to answer without reasonable excuse, refusing to provide a complete answer to, or otherwise failing to comply with, a requirement referred to in— 5
- (i) section 37(2) of the Act of 2014, or
  - (ii) section 39(3) or section 39(3B) of the Act of 2002;
- (d) providing false, incomplete or misleading information, or failing, without reasonable excuse, to supply information, including books, documents and records, in the power or control of the undertaking or association of undertakings within the time limit specified by the competent authority— 10
- (i) in response to an examination, requirement or notice referred to in paragraph (b), (c) or (d) of section 18(1) or section 37A of the Act of 2014, or 15
  - (ii) in response to a requirement under section 38A of the Act of 2002;
- (e) failing without reasonable excuse to attend before the competent authority in response to—
- (i) a summons referred to in section 18(1)(a) of the Act of 2014, 20
  - (ii) a requirement referred to in section 37A of the Act of 2014, or
  - (iii) a requirement under section 38A of the Act of 2002;
- ‘bid-rigging’ has the meaning assigned to it by section 4;
- ‘cartel’ means an agreement or concerted practice between two or more competing undertakings aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices including the following: 25
- (a) the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights; 30
  - (b) the allocation of production or sales quotas;
  - (c) the sharing of markets;
  - (d) the sharing of customers;
  - (e) bid-rigging;
  - (f) restrictions of imports or exports; 35
  - (g) anti-competitive actions against other competing undertakings;

‘Directive’ means Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018<sup>2</sup> to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market;

‘enforcement proceedings’ means proceedings before a competent authority or court for the application of relevant competition law, but does not include proceedings— 5

- (a) that are closed by the competent authority under this Act,
- (b) in relation to which the competent authority has concluded that there are no grounds for further action, or 10
- (c) in relation to which the European Commission has made a decision under Chapter III of Council Regulation (EC) No 1/2003 of 16 December 2002<sup>3</sup> on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

‘hearing requirement’ means a requirement imposed by an adjudication officer on an undertaking or association of undertakings under section 15V or 15W; 15

‘hearing requirement periodic penalty payment’ has the meaning assigned to it in section 15AD;

‘notified undertaking’ means an undertaking, or an association of undertakings, as the case may be, to which a prohibition notice has been issued; 20

‘periodic penalty payment’ has the meaning assigned to it by section 15AD and, where used without qualification, includes an Article 16(1) periodic penalty payment, an Article 16(2) periodic penalty payment and a hearing requirement periodic penalty payment; 25

‘prohibition notice’ has the meaning assigned to it by section 15H;

‘relevant competition law’ means any of the following provisions:

- (a) section 4;
- (b) section 5; 30
- (c) Article 101 of the Treaty on the Functioning of the European Union;
- (d) Article 102 of the Treaty on the Functioning of the European Union;

‘relevant Minister’ shall be interpreted in accordance with section 52(3); 35

‘relevant recipient’, in relation to a statement of objections, means an undertaking or an association of undertakings, as the case may be, on which the statement of objections has been served;

2 OJ No. L 11 14.1.2019, p. 3

3 OJ No. L 1 4.1.2003, p. 1

‘settlement submission’ means a submission by, or on behalf of, an undertaking to a competent authority—

- (a) describing the undertaking’s acknowledgement of, or renouncing any right of the undertaking to dispute its participation in, an infringement of relevant competition law and its responsibility for that infringement, and 5
- (b) made for the purpose of requesting that the competent authority make a referral, in relation to that infringement, referred to in section 15L(5)(d);

‘structural or behavioural remedy’ has the meaning assigned to it by section 15Z;”, 10

and

- (b) by the substitution of the following definition for the definition of “authorised officer” in subsection (1):

“ ‘authorised officer’— 15

- (a) in relation to the functions performed by the Competition and Consumer Protection Commission, has the same meaning as it has in the Act of 2014, and
- (b) in relation to the functions performed by the Commission for Communications Regulation under this Act, has the same meaning 20 it has in section 39 of the Act of 2002;”.

#### **Amendment of section 4 of Principal Act**

5. Section 4 of the Principal Act is amended, in subsection (1)—

- (a) in paragraph (e), by the substitution of “subject of such contracts, or” for “subject of such contracts.”, 25
- (b) by the insertion of the following paragraph after paragraph (e):

“(f) are concerned with bid-rigging.”,

and

- (c) by the insertion of the following subsection after subsection (10):

“(11) In this section— 30

‘bid-rigging’ means the formation or continuation of an agreement or concerted practice between undertakings concerning or relating to their participation or non-participation in a relevant bidding process without informing the person requesting bids or tenders, and without prejudice to the generality of the foregoing includes the following: 35

- (a) an agreement whereby one or more undertakings agree not to submit a bid or tender in a relevant bidding process, or agree to withdraw a bid or tender submitted as part of such a process;

(b) an agreement whereby one or more undertakings submit a bid or tender, as part of a relevant bidding process, on terms, or subject to conditions, arrived at in accordance with the agreement or concerted practice between such undertakings;

(c) collusive tendering; 5

‘relevant bidding process’ means a process by which bids or tenders to supply a product or service, to produce a product or to enter into a concession contract are requested.”.

#### **Amendment of section 6 of Principal Act**

6. Section 6 of the Principal Act is amended— 10

(a) by the substitution of the following subsection for subsection (1):

“(1) An undertaking that—

(a) enters into, or implements, an agreement,

(b) makes or implements a decision, or

(c) engages in a concerted practice, 15

that is prohibited by section 4(1) or by Article 101(1) of the Treaty on the Functioning of the European Union, and that—

(i) intentionally or recklessly acts to prevent, restrict or distort competition, or

(ii) intentionally or recklessly makes omissions having the effect of 20 preventing, restricting or distorting competition,

shall be guilty of an offence.”,

and

(b) in subsection (2)—

(i) in paragraph (b), by the substitution of “sales,” for “sales, or”, 25

(ii) in paragraph (c), by the substitution of “customers, or” for “customers,”, and

(iii) by the insertion of the following paragraph after paragraph (c):

“(d) engage in bid-rigging.”.

#### **Amendment of section 7 of Principal Act**

7. Section 7 of the Principal Act is amended by the substitution of the following subsection 30 for subsection (1):

“(1) An undertaking that acts in a manner prohibited by section 5(1) or by Article 102 of the Treaty on the Functioning of the European Union, and which—

(a) intentionally or recklessly acts to prevent, restrict or distort 35 competition, or

- (b) intentionally or recklessly makes omissions having the effect of preventing, restricting or distorting competition, shall be guilty of an offence.”.

**Limitation of certain prosecutions**

8. The Principal Act is amended by the insertion of the following sections after section 7: 5

**“Limitation of certain prosecutions**

7A. An undertaking shall not be prosecuted for an offence under section 6 unless the offence—

- (a) relates to agreements between competing undertakings, decisions by associations of undertakings or concerted practices, and 10
- (b) involves—
  - (i) price fixing,
  - (ii) market sharing,
  - (iii) output restrictions,
  - (iv) bid-rigging, 15
  - (v) collective boycott agreements,
  - (vi) sharing information concerning future prices and future quantities of production, or
  - (vii) restricting the ability of undertakings to carry out research and development or to continue to use their own technology for future research and development. 20

**Defences – administrative proceedings**

7B. (1) In administrative proceedings in respect of a breach of section 4 or Article 101 of the Treaty on the Functioning of the European Union—

- (a) it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to— 25
    - (i) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice, 30
    - (ii) engage in bid-rigging,
    - (iii) limit output or sales, or
    - (iv) share markets or customers,
- has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise, 35

- (b) it shall be a good defence to prove that the agreement, decision or concerted practice in question did not contravene that prohibition by virtue of section 4(2), and
- (c) in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union, it shall be a good defence to prove that—
  - (i) there was in force, at the material time, in respect of the particular agreement, decision or concerted practice an exemption granted by the European Commission pursuant to Article 101(3) of the Treaty on the Functioning of the European Union,
  - (ii) at the material time the agreement, decision or concerted practice benefited from the terms of an exemption provided for by, or granted under, a regulation made by the Council or the European Commission pursuant to Article 101(3) of the Treaty on the Functioning of the European Union, or
  - (iii) the agreement, decision or concerted practice did not contravene that prohibition by virtue of Article 101(3) of the Treaty on the Functioning of the European Union.
- (2) In administrative proceedings in respect of a breach of section 4 or 5 or of Article 101 or Article 102 of the Treaty on the Functioning of the European Union—
  - (a) it shall be a good defence to prove that the act concerned was done pursuant to a determination made or a direction given by a statutory body, and
  - (b) for the purpose of determining liability, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.
- (3) In this section—
  - ‘administrative proceedings’ means proceedings, including proceedings before an adjudication officer or court, relating to any of the following:
    - (a) a prohibition notice;
    - (b) a statement of objections under section 15L;
    - (c) a referral to an adjudication officer under section 15M;
    - (d) administrative sanctions;
  - ‘competing undertakings’ means undertakings that provide or are capable of providing goods or services to the same purchaser or purchasers.”.

### **Amendment of section 8 of Principal Act**

#### **9. Section 8 of the Principal Act is amended—**

- (a) in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) on conviction on indictment—

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(i) in the case of an undertaking that is not an individual, to a fine not exceeding the greater of €50,000,000, or 20 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or

(ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €50,000,000, or 20 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 10 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.”,

10

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and

- (b) in subsection (2), by the substitution of the following paragraph for paragraph (b):

“(b) on conviction on indictment, to a fine not exceeding the greater of €50,000,000, or 20 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction.”.

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### **Amendment of section 9 of Principal Act**

#### **10. Section 9 of the Principal Act is amended—**

- (1) in subsection (1)—

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(a) by the substitution of “who appears to the court or adjudication officer, as the case may be,” for “who appears to the court”, and

(b) in paragraph (b)—

(i) by the substitution of “explanation to the court or adjudication officer, as the case may be,” for “explanation to the court”, and

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(ii) by the substitution of “assistance to the judge, adjudication officer or jury, as the case may be” for “assistance to the judge or, as the case may be, jury”.

- (2) in subsection (2)—

(a) by the substitution of “a court or adjudication officer, as the case may be, may” for “a court may”, and

35

(b) by the substitution of “admissible in proceedings under this Act” for “admissible in proceedings for an offence under section 6 or 7”.



## **Amendment of section 12 of Principal Act**

- 11.** Section 12 of the Principal Act is amended, in subsection (1) by the substitution of “whether criminal or civil, including proceedings under Parts 2C to 2H” for “whether civil or criminal”.

## **Insertion of Parts 2C to 2H into Principal Act**

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- 12.** The Principal Act is amended by the insertion of the following Parts after Part 2B:

### **“PART 2C**

#### **INVESTIGATIONS**

##### **Conduct of certain investigations**

- 15G.** (1) One or more authorised officers may or, where directed to do so by the competent authority, shall, carry out an investigation into any suspected infringement of relevant competition law. 10
- (2) Upon the completion of an investigation referred to in subsection (1), the authorised officer or officers, as the case may be, shall submit to the competent authority a written report which shall include at least the following matters: 15
- (a) the name of the undertaking or association of undertakings concerned;
  - (b) the investigative steps taken by the competent authority;
  - (c) the market or markets affected; 20
  - (d) the nature of the suspected infringement of relevant competition law;
  - (e) the authorised officer’s preliminary view as to whether or not there has been an infringement of relevant competition law;
  - (f) an outline of the facts and evidence upon which the authorised officer based his or her preliminary view. 25
- (3) Subject to this Act and any regulations made under it and—
- (a) in the case of the Competition and Consumer Protection Commission, the Consumer Protection Act 2007 and the Act of 2014 and any regulations made thereunder, and 30
  - (b) in the case of the Commission for Communications Regulation, the Act of 2002 and any regulations made thereunder,
- the competent authority may regulate its procedures, by rules or otherwise, for conducting such investigations in such manner as it shall from time to time determine, including the scope and terms of the investigation to be carried out, whether as respects the matters or the period to which an investigation is to extend or otherwise, and may, in 35

particular, limit the investigation to matters connected with particular circumstances or particular issues.

- (4) Where more than one authorised officer carries out an investigation under subsection (1), the report referred to in subsection (2) shall be prepared jointly by the authorised officers and this Part shall, with all necessary modifications, be construed accordingly. 5

**Prohibition notice**

**15H.** (1) Where, at any time during an investigation under section 15G, the competent authority suspects that there is a risk that, by virtue of an ongoing infringement, an undertaking or association of undertakings will cause serious and irreparable harm to competition, the competent authority may issue a notice in writing to the undertaking, or association of undertakings, concerned (in this Act referred to as a ‘prohibition notice’). 10

(2) A prohibition notice— 15

(a) shall state that the competent authority suspects that there is a risk that a notified undertaking will cause serious and irreparable harm to competition,

(b) shall state the reasons for that suspicion,

(c) shall specify the nature of the infringement of relevant competition law that the competent authority suspects has occurred or may be occurring, 20

(d) may, where the competent authority considers it appropriate to do so, specify directions as to measures to be taken, and a date before which, or a range of dates within which, they shall be taken, by the notified undertaking in order to— 25

(i) remedy any suspected infringement of relevant competition law to which the notice relates,

(ii) avoid or limit serious and irreparable harm to competition, or

(iii) otherwise comply with, or address matters specified in, the notice, 30

(e) shall prohibit the carrying on of the suspected infringement of relevant competition law to which the notice relates for such period as may be specified in the notice,

(f) shall specify a period within which the notified undertaking may make written submissions to the competent authority on the content of the prohibition notice, and 35

(g) shall be signed and dated by the competent authority.

(3) An undertaking to which a prohibition notice has been issued may, within such period as is specified in the prohibition notice, make written submissions to the competent authority on the content of the prohibition notice. 40

- (4) As soon as is practicable after—
- (a) receiving submissions under subsection (3), or
  - (b) where no submissions under subsection (3) are received, the expiry of the period within which such submissions may be made,  
the competent authority shall issue a written notice to the notified undertaking—  
    - (i) confirming that the measures specified in the prohibition notice are required to be put into effect by the notified undertaking in accordance with that notice, with or without modification, or
    - (ii) withdrawing the prohibition notice.
- (5) Subject to subsections (6) and (7), and to any suspension or order made by the High Court under section 15AY, a prohibition notice shall take effect on such date or time as may be specified in the notice, and remain in effect until the earlier of the expiry of the period specified in the notice (including such period as stands extended under subsection (6)) or the date on which the effect of the prohibition notice is ended under section 15J.
- (6) The competent authority may, where it considers it necessary to do so, extend a period referred to in a prohibition notice for such further period as it may specify by written notice issued to the notified undertaking, provided such notice is issued—
- (a) in the case of the first such notice, before the expiry of the period specified in the prohibition notice, or
  - (b) where the period referred to in the prohibition notice stands extended by a notice under this subsection, before the expiry of the period as so extended.
- (7) An appeal made against a prohibition notice shall not suspend its effect unless an order is made under section 15AY(14)(b).
- (8) A notified undertaking shall not, for the period during which a prohibition notice has effect, carry on any suspected infringement of relevant competition law specified in the prohibition notice as being prohibited.
- (9) The competent authority may, at any time during which a prohibition notice has effect, where it is of the opinion that the prohibition notice was issued in error or was incorrect in a material respect, issue written notice to a notified undertaking amending the prohibition notice, which notice shall specify the date from which such amendment shall have effect, and the prohibition notice shall have effect as if such amendment was included in the prohibition notice from the day specified in the second-mentioned notice.
- (10) The competent authority shall, after issuing a prohibition notice to an undertaking or association of undertakings in accordance with this

section, inform the European Competition Network (within the meaning of the Directive).

#### **Appeal against prohibition notice**

**15I.** A notified undertaking may appeal against a prohibition notice in accordance with section 15AY. 5

#### **Ending of effect of prohibition notice**

- 15J.** (1) Subject to subsection (2) and section 15H(5), a prohibition notice shall cease to have effect on and from the earlier of the date on which—
- (a) the competent authority issues a written notice to the notified undertaking stating that the prohibition notice is withdrawn, or 10
  - (b) the court under section 15AY or 15AZ, as the case may be, confirms the decision of an adjudication officer under section 15X on the matter to which the prohibition notice relates.
- (2) Where a prohibition notice was issued in error, or subject to a material inaccuracy, the competent authority may issue a written notice to the notified undertaking stating that the prohibition notice is cancelled, and a prohibition notice in relation to which notice under this subsection is so issued shall be deemed never to have been issued. 15

#### **Choice of enforcement mechanism**

- 15K.** (1) Where, at any stage during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and that the matter is to be treated as a criminal matter, the competent authority may— 20
- (a) refer the matter to the Director of Public Prosecutions for the purpose of considering commencing criminal proceedings under section 6 or 7, or 25
  - (b) bring summary proceedings under section 8(9).
- (2) Where, at any stage during an investigation under this Part, the competent authority forms a preliminary view that an infringement of relevant competition law may have occurred, or may be occurring, and that the matter is not to be treated as a criminal matter, the competent authority shall— 30
- (a) issue a statement of objections under section 15L to the undertaking or association of undertakings that, in its view, is responsible for such infringement, or 35
  - (b) seek relief against an undertaking by way of an action under section 14A or 14B.
- (3) Where a matter is referred to the Director of Public Prosecutions under subsection (1)(a) and the Director of Public Prosecutions, in relation to that matter— 40

- (a) commences criminal proceedings in respect of an offence under section 6 or 7 against an undertaking or association of undertakings that are struck out, concluded, discontinued or otherwise determined other than by way of *nolle prosequi*, the competent authority shall not pursue the proceedings referred to in subsection (1)(b) or (6) against such undertaking or association of undertakings in respect of the same matter, 5
- (b) commences criminal proceedings in respect of an offence under section 6 or 7 against an undertaking or association of undertakings, which are determined by way of *nolle prosequi*, the competent authority may pursue, against such undertaking or association of undertakings in respect of the same matter, either— 10
  - (i) proceedings referred to in subsection (1)(b), or
  - (ii) one or more of the proceedings referred to in subsection (6),
 or 15
- (c) decides not to commence criminal proceedings in respect of an offence under section 6 or 7 against an undertaking or association of undertakings, the competent authority may pursue any one of the proceedings referred to in subsections (1)(b) or (6) against such undertaking or association of undertakings in respect of the same matter. 20
- (4) Where the competent authority initiates proceedings referred to in subsection (6) against an undertaking or association of undertakings and the proceedings are not withdrawn before a decision under section 15X is made, the competent authority may not subsequently pursue any of the proceedings referred to in subsection (1), or paragraphs (b) to (d) of subsection (6), against the same undertaking or association of undertakings in respect of the same matter where— 25
  - (a) the adjudication officer finds that there has been no infringement of relevant competition law by the undertaking or association of undertakings, 30
  - (b) the adjudication officer finds that there has been an infringement of relevant competition law by the undertaking or association of undertakings and no administrative sanctions have been imposed,
  - (c) the adjudication officer finds that there has been an infringement of relevant competition law by an undertaking or association of undertakings and administrative sanctions have been imposed, or 35
  - (d) the proceedings have been otherwise determined, including by operation of commitments entered into under section 15AE or structural or behavioural remedies entered into under section 15Z. 40
- (5) For the avoidance of doubt, a preliminary view under subsections (1) or (2) may be formed in relation to conduct that is no longer ongoing.

- (6) The proceedings referred to in this subsection are proceedings relating to the following:
  - (a) administrative financial sanctions under section 15AA;
  - (b) commitments in accordance with section 15AE;
  - (c) structural or behavioural remedies under section 15Z; and 5
  - (d) sections 14A, 14B and 15C.

**Statement of objections**

**15L.** (1) A statement of objections shall be in writing and shall—

- (a) inform the relevant recipient that the competent authority has, in accordance with section 15K(1), formed a preliminary view that— 10
    - (i) an infringement of relevant competition law may have occurred or may be occurring,
    - (ii) a breach of a procedural requirement may have occurred or may be occurring,
    - (iii) the undertaking or association of undertakings concerned has failed to comply with commitments entered into under section 15AE, 15
    - (iv) the undertaking or association of undertakings concerned has failed to comply with a structural or behavioural remedy ordered under section 15Z, or 20
    - (v) the undertaking or association of undertakings concerned has failed to comply with a prohibition notice issued under section 15H,
  - (b) set out the competent authority’s reasons for forming that preliminary view, 25
  - (c) provide the relevant recipient with an explanation of how it is responsible, in the preliminary view of the competent authority, for the matter referred to in paragraph (a) in sufficient detail to allow the relevant recipient to fully respond to the statement of objections in accordance with subsection (2), and 30
  - (d) inform the relevant recipient of its right to make submissions under subsection (3), and the period within which that right may be exercised.
- (2) The competent authority shall, as soon as is practicable after issuing the statement of objections, give the relevant recipient a copy of, or access to, any material relied upon by the competent authority for the purpose of issuing the statement of objections, subject to such redactions as the competent authority may consider necessary and appropriate in order to protect commercial confidentiality, protect the rights of the parties or any other person, or for any other good and sufficient reason. 35 40

- (3) Subject to subsection (4), a relevant recipient may, within such period as is specified in the statement of objections, make written submissions to the competent authority on the content of the statement of objections.
- (4) Notwithstanding the period specified in the statement of objections in accordance with subsection (1)(d), the competent authority may, where it is appropriate to do so in the circumstances of the case, extend the period within which written submissions may be made and shall notify the relevant recipient in writing of the revised period. 5
- (5) Where a statement of objections relates wholly to the matter referred to in subsection (1)(a)(i), the competent authority may, as it considers appropriate and as soon as is practicable after receiving written submissions, if any, on the content of the statement of objections from the relevant recipient under subsection (3) or, where no such submissions are received, as soon as is practicable after the expiry of the period within which such submissions may be made under this section— 10 15
- (a) carry out further analysis or investigation into the matter in question,
- (b) close the investigation and not take any further action in respect of the matter, 20
- (c) enter into commitments with the relevant recipient under section 15AE,
- (d) agree, at any time prior to a decision being made by an adjudication officer under section 15X, a settlement with the relevant recipient concerned and make a referral to an adjudication officer in accordance with section 15M for an order on consent under section 15X(8) or 15Z(6), or 25
- (e) determine that it should prepare a full investigation report in accordance with subsection (9) and make a referral to an adjudication officer in accordance with section 15M. 30
- (6) Where a statement of objections relates wholly or partly to a matter referred to in subsection (1)(a)(ii) to (v), the competent authority may, as it considers appropriate and as soon as is practicable after receiving written submissions, if any, on the content of the statement of objections from the relevant recipient under subsection (3) or, where no such submissions are received, as soon as is practicable after the expiry of the period within which such submissions may be made under this section— 35
- (a) not take any further action in respect of the matter, or 40
- (b) determine that it should prepare a full investigation report in accordance with subsection (9) and make a referral to an adjudication officer in accordance with section 15M.

- (7) (a) Where the competent authority, having issued a statement of objections, identifies new or different points of fact or law, or new evidence, having a material impact on its analysis set out in the statement of objections, the competent authority shall issue a supplementary statement of objections to the relevant recipient. 5
- (b) The supplementary statement of objections referred to in paragraph (a) shall—
- (i) summarise the new or different points of fact or law or new evidence that have been identified by the competent authority and the material impact of such points of fact or law or such evidence on the competent authority’s analysis, and 10
- (ii) inform the relevant recipient of its right to make written submissions under paragraph (c), and specify the period within which that right may be exercised.
- (c) Subject to paragraph (d), the relevant recipient to which a supplementary statement of objections is provided may, within such period as is specified in the supplementary statement of objections, make written submissions to the competent authority on the content of the supplementary statement of objections. 15
- (d) Notwithstanding the period specified in the supplementary statement of objections in accordance with paragraph (b)(ii), the competent authority may, where it is appropriate to do so in the circumstances of the case, extend the period within which the relevant recipient may make written submissions under paragraph (c) and shall notify the relevant recipient in writing of the revised period. 20 25
- (8) Where a competent authority agrees a settlement with an undertaking or association of undertakings and makes a referral referred to in subsection (5)(d), the competent authority shall—
- (a) prepare a simplified investigation report containing— 30
- (i) a summary of the facts of the case,
- (ii) the allegations against the undertaking or association of undertakings concerned,
- (iii) the specific administrative financial sanction or structural or behavioural remedy which the competent authority is seeking to be imposed by the adjudication officer, and 35
- (iv) a statement that the competent authority and the undertaking or association of undertakings concerned consent to the imposition of the administrative financial sanction or structural or behavioural remedy specified in the simplified investigation report, 40



- (b) give a copy of the simplified investigation report referred to in paragraph (a) to the undertaking or association of undertakings concerned, and
  - (c) refer the matter to an adjudication officer in accordance with section 15M(1) for an order on consent under section 15X(8) or section 15Z(6). 5
- (9) Where a competent authority makes a determination or referral referred to in subsection (5)(e) or (6)(b), the competent authority shall—
- (a) prepare a full investigation report containing— 10
    - (i) a detailed description of the relevant facts of the case,
    - (ii) the allegations against the undertaking or association of undertakings concerned,
    - (iii) an outline of the facts and evidence on which the competent authority is relying for the purpose of referring the matter to an adjudication officer under section 15M, 15
    - (iv) a summary of any submissions made by the undertaking or association of undertakings concerned to the competent authority during the investigation, including in response to the statement of objections or a supplementary statement of objections, and 20
    - (v) any other information that the competent authority considers would be relevant for the adjudication officer to make a decision under section 15X(2),
  - (b) as soon as is practicable after preparing the full investigation report, give the undertaking or association of undertakings— 25
    - (i) a copy of the full investigation report, and
    - (ii) a copy of, or access to, any material (other than material that has already been provided to the undertaking) relied upon by the competent authority for the purpose of referring the matter to an adjudication officer under section 15M, subject to such redactions as the competent authority considers necessary and appropriate in order to protect commercial confidentiality, protect the rights of the parties or any other person, or for any other good and sufficient reason, 30 35
- and
- (c) if the competent authority forms an opinion in accordance with section 15M(2)(a), refer the matter to an adjudication officer under section 15M(2).
- (10) The competent authority shall not make any recommendation, or express any opinion, in a full investigation report prepared under subsection (9), as to the amount of any administrative financial 40

sanction which may be imposed under section 15X in the event that an adjudication officer is satisfied that the undertaking or association of undertakings has committed an infringement or a breach of procedural requirement or has failed to comply with commitments or with a structural or behavioural remedy. 5

- (11) The competent authority may provide a copy of the full investigation report prepared under subsection (9), and any such submissions, to such other persons as the competent authority considers appropriate.
- (12) A person who receives a full investigation report and any submissions under subsection (9) shall not, without the prior authorisation of the competent authority, disclose the existence or the content of the report or submissions to any other person. 10
- (13) A person who contravenes subsection (12) shall be guilty of an offence and shall be liable on summary conviction to a class A fine.
- (14) The undertaking or association of undertakings which has been provided with the material specified in subsection (9)(b)(ii) may appeal against the decision of the competent authority to impose redactions under that subparagraph— 15
  - (a) within 7 days of the undertaking or association of undertakings receiving a copy of the notice specified in section 15U(1), and 20
  - (b) by application to the adjudication officer to whom the matter has been referred under subsection (9)(c), provided that the adjudication officer may at any point refer the appeal to the Chief Adjudication Officer for re-assignment to and determination by another adjudication officer. 25

### **Referral**

- 15M.** (1) Where the competent authority has reached an agreement referred to in section 15L(5)(d) with the undertaking or association of undertakings concerned as to the imposition of an administrative financial sanction or structural or behavioural remedy, and has prepared a simplified investigation report under section 15L, the competent authority shall— 30
- (a) refer the matter to an adjudication officer for an order on consent under section 15X(8) or 15Z(6), and
  - (b) furnish the adjudication officer with a copy of the simplified investigation report. 35
- (2) Where, having prepared a full investigation report under section 15L(9), the competent authority—
- (a) forms an opinion that—
    - (i) an undertaking or association of undertakings has infringed or is infringing relevant competition law, 40
    - (ii) there has been a breach of a procedural requirement by an undertaking or association of undertakings,

- (iii) an undertaking or association of undertakings has failed to comply with commitments entered into under section 15AE,
  - (iv) an undertaking or association of undertakings has failed to comply with a structural or behavioural remedy ordered under section 15Z, or 5
  - (v) an undertaking or association of undertakings has failed to comply with a prohibition notice,
- and
- (b) has elected to bring proceedings under this section or Part 2D in respect of any matter referred to in paragraph (a), 10
- the competent authority shall refer the matter for decision by an adjudication officer under section 15X.
- (3) Where the competent authority refers a matter for decision to an adjudication officer under subsection (2), the competent authority shall furnish each such adjudication officer with— 15
    - (a) the statement of objections, and any supplementary statement of objections, issued by the competent authority under section 15L,
    - (b) the full investigation report prepared by the competent authority under section 15L,
    - (c) a copy of all material relied upon by the competent authority in referring the matter for decision, and 20
    - (d) any submissions made by the undertaking or association of undertakings concerned to the competent authority during the investigation, including in response to the statement of objections issued under section 15L. 25
  - (4) Notwithstanding subsection (2), the competent authority may, at any time after making a referral under this section, exercise its power under section 15AE to enter into legally binding commitments with the undertaking or association of undertakings.
  - (5) The relevant Minister may prescribe— 30
    - (a) the procedure for making a referral under this section,
    - (b) the procedure for withdrawing a referral under section 15N, and
    - (c) the procedure for making an order on consent under section 15X(8) or 15Z(6).
  - (6) The competent authority may, subject to this Act and to any regulations made under subsection (5), make rules detailing— 35
    - (a) the procedure for making a referral under this section,
    - (b) the procedure for withdrawing a referral under section 15N, and

- (c) the procedure for making an order on consent under section 15X(8) or 15Z(6).

**Withdrawal of referral**

- 15N.** (1) A referral under section 15M may be withdrawn by the competent authority while it is being or before it has been considered by the adjudication officer. 5
- (2) Where a referral is withdrawn under this section, the adjudication officer shall—
- (a) notify the undertaking or association of undertakings of the withdrawal, and 10
  - (b) take no further action in relation to the matter.

PART 2D

ADJUDICATION OFFICERS

**Appointment of adjudication officers**

- 15O.** (1) A competent authority, as a national administrative competition authority, shall nominate, for appointment by the relevant Minister under this section, persons (referred to in this Act as ‘adjudication officers’) to make decisions on behalf of the competent authority under section 15X and otherwise to exercise functions under this Act. 15
- (2) The relevant Minister may make regulations providing— 20
- (a) for the creation of a panel of adjudication officers to exercise the functions of adjudication officers in relation to relevant competition law in respect of the Commission, the Commission for Communications Regulation, or both,
  - (b) for the requirements and qualifications necessary appointment 25 under subsection (1), and
  - (c) for the relevant Minister to appoint—
    - (i) a Chief Adjudication Officer in respect of either or both competent authorities, or
    - (ii) a Chief Adjudication Officer in respect of each respective 30 competent authority.
- (3) The relevant Minister shall appoint a person nominated by a competent authority under this section unless the relevant Minister—
- (a) is not satisfied that the nominated person meets the requirements and qualifications prescribed by the relevant Minister, or 35
  - (b) considers that the nominated person does not have the independence necessary to be appointed as an adjudication officer.

## Independence of adjudication officers

- 15P.** (1) (a) Adjudication officers shall be independent in the performance of their functions.
- (b) The competent authority shall put in place measures to ensure—
- (i) the independence of adjudication officers in the performance of their functions, and 5
  - (ii) the effective implementation of and adherence to any regulations made under section 15Q.
- (c) Where an adjudication officer believes that performing any of his or her functions as an adjudication officer would— 10
- (i) potentially create a conflict of interest, the adjudication officer shall recuse himself or herself from the functions or proceedings in question and shall notify the competent authority and the undertakings concerned of the recusal, or
  - (ii) give rise to the perception of any potential conflict of interest, the adjudication officer shall disclose that fact to the competent authority and to the undertakings concerned in the matter with which the adjudication officer is dealing, and shall, having regard to any submissions received from the undertakings concerned or from the competent authority, consider whether it is necessary to recuse himself or herself from the functions or proceedings in question. 15 20
- (d) (i) An adjudication officer shall not make a decision under section 15X, or impose a behavioral or structural remedy under section 15Z(6), where the adjudication officer has been involved in decisions of the competent authority as to whether to exercise any of the powers conferred on the competent authority under, or to bring proceedings under, Part 2, 2C, 2E or 2F or sections 18 or 37 of the Act of 2014, in relation to the investigation. 25
- (ii) An adjudication officer shall not draw up or decide upon— 30
- (I) guidelines under section 15AF, or
  - (II) the policy of the competent authority or of the relevant Minister concerning—
- (A) the procedures, conduct or selection of investigations under Part 2C, 35
  - (B) referrals under section 15M,
  - (C) the choice of enforcement mechanism under section 15K,
  - (D) the level of administrative financial sanctions that may be imposed under section 15X, or 40
  - (E) the level of reduction of administrative financial

sanctions under Part 2E,

but may be consulted in the drawing up or deciding upon of such policy or guidelines, as the case may be.

- (iii) Where a decision of a competent authority referred to in subparagraph (i) is made as a college, or in any other manner whereby a decision of a competent authority is treated as having been made by all members of the competent authority, a member of the competent authority who recused himself or herself from the process of making that decision shall, for the purposes of subparagraph (i), be deemed not to have been involved in that decision, provided that the recusal took place at a point and in a manner which does not compromise the independence of the member of a competent authority as an adjudication officer. 5 10
- (2) Save where otherwise provided in this Act or in regulations made under this Act, adjudication officers shall not be subject to the direction of or accountable to or otherwise answerable to any other person in the performance of their functions under this Act. 15
- (3) (a) The chairperson of a competent authority shall not during his or her term of office serve as an adjudication officer.
- (b) A member of a competent authority may not during his or her term of office serve as Chief Adjudication Officer. 20
- (4) (a) A member of the competent authority or a member of staff of the competent authority who is appointed as an adjudication officer or is appointed to assist an adjudication officer under section 15R shall not be required by the competent authority or by any other person to perform any duty, including any statutory duty, of a member of the competent authority or a member of staff of the competent authority or of an adjudication officer the performance of which is inconsistent with his or her independence as an adjudication officer or, in the case of a person appointed to assist an adjudication officer under section 15R, the independence of an adjudication officer whom he or she is assisting or may assist. 25 30
- (b) If a member of a competent authority or a member of staff of the competent authority is requested to perform a duty, including any statutory duty, of the competent authority or a member of staff of the competent authority or of an adjudication officer the performance of which he or she considers is inconsistent with his or her independence as an adjudication officer or, in the case of a person appointed to assist an adjudication officer under section 15R, the independence of an adjudication officer whom he or she is assisting or may assist, he or she shall refuse to perform the duty and shall inform the Chief Adjudication Officer of the request and of his or her refusal. 35 40

**Regulations for appointment and independence of adjudication officers**

- 15Q.** (1) The relevant Minister shall make regulations— 45

- (a) prescribing requirements upon the competent authority and adjudication officers to implement sections 15O and 15P, and
  - (b) providing that adjudication officers shall not be involved in investigations of suspected infringements of relevant competition law, and shall not act as authorised officers under— 5
    - (i) section 15G,
    - (ii) section 35 of the Act of 2014, or
    - (iii) the Act of 2002.
- (2) In a manner ensuring the independence of adjudication officers in the performance of their functions, the regulations referred to in subsection (1) shall— 10
- (a) identify categories of, and criteria for, persons eligible for nomination by the competent authority for appointment by the relevant Minister as adjudication officers (including a Chief Adjudication Officer) and criteria for renewal of appointment of adjudication officers by the Minister, which persons may, subject to section 15P, include— 15
    - (i) members of the competent authority,
    - (ii) employees of the competent authority,
    - (iii) persons who are legally qualified, 20
    - (iv) such other persons as have, in the opinion of the competent authority and the Minister, sufficient expertise in matters of competition law, competition economics, or both, to merit such appointment, and
    - (v) such other persons as have, in the opinion of the competent authority and the Minister, the relevant expertise in matters likely to come before an adjudication officer, 25

and without prejudice to the generality of the foregoing, the competent authority may nominate, and the relevant Minister may appoint as an adjudication officer (including the Chief Adjudication Officer), a person who is not a member or employee of the competent authority, 30
  - (b) provide for—
    - (i) the term of appointment (including the term of appointment of a Chief Adjudication Officer), which term shall be specified in the instrument of appointment, and may be— 35
      - (I) fixed and non-renewable, or
      - (II) fixed and renewable based upon objective, competence-based and independently-assessed criteria referred to in paragraph (a), 40

- (ii) the remuneration of the Chief Adjudication Officer and other adjudication officers, which remuneration may—
  - (I) not be reduced during the term of their appointment save in accordance with law,
  - (II) vary depending on the category of person appointed under paragraph (a), and 5
  - (III) be paid per *diem*, per piece, or periodically,
- (iii) such prohibitions on the remuneration of adjudication officers during their term of office, by persons or bodies other than the competent authority, as are necessary to ensure that actual or perceived conflicts of interest do not arise in the performance of the adjudication officer’s functions, 10
- (iv) the resignation from office of adjudication officers,
- (v) procedures and criteria whereby the revocation of appointments of adjudication officers may only take place upon decision by the Government after independent assessment and recommendation by persons outside the competent authority with relevant experience and expertise and where— 15
  - (I) the adjudication officer concerned has become incapable through ill-health of effectively performing his or her functions, 20
  - (II) the adjudication officer concerned has engaged in serious misconduct, or
  - (III) the competent authority has been notified of an adjudication officer’s conflict of interest in more than one matter which conflict of interest is assessed to be likely to continue, 25
 

without prejudice to the automatic removal from office as an adjudication officer of an employee of the competent authority upon cessation of that employment,
- (vi) the functions of the Chief Adjudication Officer and, where no Chief Adjudication Officer stands appointed, the procedure for designation of an adjudication officer to perform the functions of a Chief Adjudication Officer under this Act, 30
- (vii) the rules concerning designation by a Chief Adjudication Officer of adjudication officers to divisions for any particular period or for any particular case or category of cases, 35
- (viii) the rules concerning decisions by a division of adjudication officers, including the appointment and functions of chairpersons and deputy chairpersons of such divisions,
- (ix) the rules concerning promotion and increments of employees of the competent authority who act as adjudication officers, 40



- (x) the rules concerning the tasking of any employee of the competent authority to assist an adjudication officer in the performance of his or her functions under this Act, and
  - (xi) the rules concerning the appointment of consultants or advisers for the purpose of assisting an adjudication officer in the performance of his or her functions under this Act, 5
- (c) make further provision for the independence of adjudication officers (including an effective internal separation between the functions of the competent authority and the functions of adjudication officers) and any such regulation shall include provision (where appropriate)— 10
- (i) that adjudication officers and employees of the competent authority tasked with assisting adjudication officers shall not communicate with authorised officers, employees and members of the competent authority in respect of any proceeding relating to relevant competition law before the competent authority arising under this Act save on notice to the undertakings concerned in those proceedings the subject of a referral under section 15M, or as otherwise permitted by regulations, which may include communications relating to investigations in which the adjudication officers, and employees of the competent authority tasked with assisting the adjudication officers, have not been nor will be involved in any decision under section 15X or in any related referral under section 15M, 15 20
  - (ii) that documentation and other information concerning an investigation conducted under Part 2C which have been obtained by the competent authority in the exercise of its functions under this Act and the Act of 2014, shall not be disclosed to adjudication officers that have been directed to make a decision under section 15X in relation to that same investigation or to employees of the competent authority or other persons (including any consultant or adviser) tasked with assisting such adjudication officers save in accordance with this Act and upon notice to the undertakings concerned in any referral under section 15M, 25 30 35
  - (iii) for arrangements for oversight by specified members or employees of the competent authority for compliance by the competent authority with section 15P and the regulations made thereunder,
  - (iv) for reporting to the relevant Minister or the competent authority by specified members or employees of the competent authority or by adjudication officers of any breach of section 15P and the regulations made thereunder, and mechanisms for remedying any such breach, 40

- (v) for specification of the functions of the competent authority which an adjudication officer can perform,
- (vi) for the structure of the competent authority,
- (vii) for the policies, practices and functions of the competent authority, and 5
- (viii) for arrangements for working conditions within the competent authority,
- (d) require the competent authority to publish policies and implement measures sufficient to identify and manage conflicts of interest on the part of— 10
  - (i) adjudication officers, and
  - (ii) any employee of the competent authority or other person (including any consultant or adviser) tasked with assisting an adjudication officer in the performance of his or her functions under this Act, 15
- and
- (e) require the Chief Adjudication Officer and the competent authority to report annually to the relevant Minister on the compliance by the competent authority and the adjudication officers with the principle of independence under section 15P and any regulations made hereunder and the policies the adjudication officers or the competent authority have adopted in order to do so. 20

**Appointment of assistants to adjudication officers**

- 15R.** (1) (a) The competent authority may from time to time—
- (i) require any employee of the competent authority, or 25
  - (ii) appoint such persons (including any consultant or adviser) as it considers necessary,
- to assist adjudication officers, or an individual adjudication officer (including the Chief Adjudication Officer), in the performance of their, or his or her, functions under this Act. 30
- (b) Persons assisting an adjudication officer under paragraph (a) shall not provide such assistance in connection with any matter in which they have or may have a conflict of interest.
  - (c) The Chief Adjudication Officer may at any time direct that an employee required to assist the adjudication officers, or an individual adjudication officer, under subsection (1)(a)(i) in the performance of their powers and functions under this Act, be reassigned by the competent authority. 35
- (2) Persons required to, or appointed to as the case may be, assist adjudication officers under subsection (1) may perform other tasks on behalf of the competent authority, including performing tasks in any 40

investigation in which they have not been, and will not be, involved in assisting an adjudication officer under this section, but they shall be solely responsible to the Chief Adjudication Officer, or to the adjudication officer or adjudication officers to which they have been individually assigned, in relation to their performance of the tasks referred to in subsection (1). 5

(3) (a) Employees of the competent authority who have been required to assist adjudication officers under subsection (1)(a), and persons appointed by the competent authority to assist adjudication officers under subsection (1)(a), shall not be subject to the direction of any member or employee of the competent authority in relation to the performance of the functions referred to in that subsection. 10

(b) Nothing in paragraph (a) shall preclude an employee of the competent authority or other person appointed by the competent authority being subject to the direction of a member or employee of the competent authority in relation to the performance of tasks not referred to in subsection (1)(a). 15

(4) Without prejudice to the responsibility of the competent authority for employment and for entering into contracts and determining all matters relevant thereto, where an adjudication officer has made a determination that specific assistance is required in a particular matter referred to an adjudication officer for a decision under section 15M, the adjudication officer shall be consulted on decisions concerning the appointment and assignment of persons to provide assistance to adjudication officers under subsection (1). 20 25

(5) (a) The relevant Minister may prescribe detailed requirements governing the appointment and assignment of persons to assist adjudication officers under subsection (1).

(b) The relevant Minister may, where it is necessary to enable the proper functioning of the competent authority, make regulations prescribing such limited exceptional circumstances in which persons referred to in subsection (3)(a) may be subject to a direction referred to in that subsection. 30

**Effect of appointment of an adjudication officer upon terms of employment or contract** 35

**15S.** (1) Nothing in this Part shall preclude the competent authority from relying on any aspect of a contract of service or for services in relation to the performance or non-performance of functions other than—

(a) the functions of an adjudication officer under this Act, and

(b) the functions of a person appointed to assist an adjudication officer under section 15R(1)(a) when assisting an adjudication officer. 40

(2) (a) The appointment of a person as an adjudication officer shall not in itself—

(i) constitute employment by or within the competent authority,

(ii)	constitute the holding of a position in the civil service, or	
(iii)	otherwise create a contract between an adjudication officer on the one part and the Minister or the competent authority on the other part.	
(b)	Save in relation to the application of independence requirements to an adjudication officer, nothing in this Part shall alter the terms and conditions of employment of an adjudication officer who is an employee of the competent authority on the date on which <i>section 12 of the Competition (Amendment) Act 2022</i> comes into operation.	5
(3)	Save for limited exceptions consistent with the independence of adjudication officers in the exercise of their functions which the relevant Minister may prescribe, nothing in this Part shall prevent the application by the competent authority of disciplinary procedures under a contract of employment save in respect of—	10
(a)	the tasks of an adjudication officer under this Act, and	15
(b)	the tasks of a person appointed to assist an adjudication officer under section 15R(1)(a) when assisting an adjudication officer.	
(4)	The relevant Minister may make regulations to give further effect to this section.	
	<b>Division of adjudication officers</b>	20
15T. (1)	At the discretion of the Chief Adjudication Officer, adjudication officers may (in a particular proceeding or otherwise) sit as a division, and in such circumstances references to an adjudication officer in this Act shall be considered to be references to a division of adjudication officers.	25
(2) (a)	A division of the adjudication officers referred to in subsection (1) shall consist of such uneven number of adjudication officers as the Chief Adjudication Officer may determine either for any particular proceeding or group of proceedings or for any type of proceedings as the Chief Adjudication Officer shall consider appropriate.	30
(b)	When establishing a division, the Chief Adjudication Officer shall have regard to the complexity of the anticipated proceedings, the potential for a balance of skills amongst the adjudication officers in such proceedings, and the need for consistent decision-making.	
	<b>Action by adjudication officer after receiving referral</b>	35
15U. (1)	As soon as practicable after a referral has been made under section 15M, the adjudication officer shall, subject to subsection (3), give the undertaking or association of undertakings—	
(a)	a copy of this section,	
(b)	in respect of a referral under section 15M(2), a written notice stating that the undertaking or association of undertakings may make submissions in writing to the adjudication officer on the full investigation report prepared under section 15L within the period	40

of 30 days from the date the undertaking or association of undertakings receives the notice, or such further period, not exceeding 15 days, as the adjudication officer may allow, and

- (c) in respect of a referral under section 15M(1), a notice stating that the matter has been referred for an order on consent under section 15X(8) or section 15Z(6) as the case may be, and asking the undertaking or association of undertakings to confirm the matters set out in paragraphs (a) and (b) of either section 15X(8) or section 15Z(6) as the case may be within the period of 15 days from the day the undertaking or association of undertakings receives the notice, or such further period, not exceeding 7 days, as the adjudication officer may allow. 5 10
- (2) The adjudication officer may do any of the following that he or she considers necessary to resolve an issue of fact or otherwise enable the adjudication officer to make a decision under section 15X: 15
  - (a) exercise any of the powers under section 15W;
  - (b) request further information from the undertaking or association of undertakings;
  - (c) request further information from any other person, and may, for the purposes of doing so, provide, with due regard for commercial confidentiality, a copy of the full investigation report prepared under section 15L to the person; 20
  - (d) conduct an oral hearing.
- (3) Where an oral hearing takes place at which an undertaking or association of undertakings may make submissions to the adjudication officer on the full investigation report prepared under section 15L(9), the adjudication officer shall not be required to give to the undertaking, or association of undertakings, the material referred to in subsection (1). 25
- (4) As soon as practicable after making a request under subsection (2)(c), the adjudication officer shall give to the competent authority, and shall, with due regard for commercial confidentiality, give to the undertaking or association of undertakings a copy of the request. 30
- (5) As soon as practicable after receiving any information pursuant to a request under subsection (2)(c), the adjudication officer shall, with due regard for commercial confidentiality, give the competent authority and the undertaking or association of undertakings— 35
  - (a) a copy of the information or, where commercial confidentiality means that such information cannot be provided in full, a summary of such information, and 40
  - (b) written notice stating that the competent authority and the undertaking or association of undertakings may make submissions in writing to the adjudication officer on the information within the

period of 20 working days from the day the undertaking or association of undertakings receives the notice, or such further period, not exceeding 10 working days, as the adjudication officer may allow.

- (6) A person who receives a copy of a report under subsection (2)(c) shall not, without the prior authorisation of the adjudication officer, disclose the existence or the content of the report to any other person. 5
- (7) A person who contravenes subsection (6) shall be guilty of an offence and shall be liable on summary conviction to a class A fine.
- (8) An adjudication officer may direct an employee of the competent authority required to assist with his or her functions to make any communication on his or her behalf. 10

### **Admissibility of Evidence and Rules for Oral Hearings**

- 15V.** (1) This section applies to an oral hearing before an adjudication officer under section 15U. 15
- (2) An adjudication officer may, by notice in writing—
    - (a) summon a witness to appear to give evidence, or to produce before the adjudication officer any books, documents or records in such person's power or control, or to do both, and
    - (b) require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudication officer. 20
  - (3) An adjudication officer may require evidence to be given on oath, and may for that purpose—
    - (a) require a witness to take an oath, and 25
    - (b) administer an oath to the witness orally or permit the witness to affirm.
  - (4) The oath to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give shall be true.
  - (5) The adjudication officer may allow a witness at the oral hearing to give evidence by tendering a written statement, provided such statement is verified on oath. 30
  - (6) Without prejudice to subsections (1) to (5), the adjudication officer has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to: 35
    - (a) the attendance and examination of witnesses on oath or otherwise (including witnesses who are outside the State);
    - (b) compelling the production (including discovery) of records or an identified category or categories of records. 40

- (7) An oral hearing under this section may, at the discretion of the adjudication officer, be held remotely (including in an online format), and evidence may be tendered as permitted by regulations or by an adjudication officer.
- (8) At the oral hearing before the adjudication officer— 5
- (a) an authorised officer or other representative of the competent authority or any other person, with leave of the adjudication officer, shall present the evidence in support of the referral, and
- (b) the testimony of witnesses attending the oral hearing shall be given in accordance with this section and any regulations made thereunder. 10
- (9) (a) A person to whom notice is given under subsection (2), or an authorised officer, may be examined and cross-examined at the oral hearing.
- (b) At any oral hearing before an adjudication officer, there shall be a right to cross-examine witnesses and call evidence in defence and reply. 15
- (10) (a) An oral hearing before an adjudication officer shall be held in public unless the adjudication officer is satisfied that, given the existence of special circumstances (which shall include whether information given or likely to be given in evidence is commercially sensitive information), the hearing or part of the hearing should be held otherwise than in public. 20
- (b) If special circumstances exist (which shall include whether information given or likely to be given in evidence is commercially sensitive information), an adjudication officer may impose restrictions on the reporting or distribution of information given at the hearing. 25
- (11) The payment or reimbursement, out of moneys at the disposal of the adjudication officer, of, or of any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing, is at the discretion of the adjudication officer. 30
- (12) The rules of evidence shall apply to an oral hearing before an adjudication officer save as may be otherwise prescribed.
- (13) Nothing in this section or section 15W compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession, power or control. 35
- (14) (a) The relevant Minister may make regulations setting out further details or conditions for the receipt of evidence or the conduct of oral hearings under this section. 40

- (b) Subject to any regulations under paragraph (a), the competent authority shall make rules providing for the conduct of an oral hearing under this section and shall publish such rules on a website maintained by it or on its behalf.
- (c) Rules made under paragraph (b) shall not have effect until they are published. 5

**Powers and offences**

- 15W.** (1) At any time after a referral under section 15M(2), an adjudication officer may, whether on application by the competent authority, by an undertaking or association of undertakings concerned in the matter which is the subject of the referral or of the adjudication officer’s own motion, and where the adjudication officer is satisfied that such direction is necessary to the determination of the issues before the adjudication officer— 10
- (a) direct authorised officers of the competent authority, or the undertaking or association of undertakings concerned, (each of which, in this section, is referred to as a ‘party’) to answer (whether on oath or otherwise) an identified question in whatever manner or form the adjudication officer may specify, 15
  - (b) direct a party to adduce evidence or produce books, documents and records in its power or control, and 20
  - (c) direct a party to clarify any issue of fact that an adjudication officer may deem necessary.
- (2) An answer to a question put to a person in response to a requirement under subsection (1)(a) is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath. 25
- (3) A summons issued by the adjudication officer for the purpose of an oral hearing under section 15V may be substituted for and is the equivalent of any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records. 30
- (4) A person the subject of a direction under this section shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in this section as a witness appearing in proceedings before the Court. 35
- (5) A person is guilty of an offence if the person—
- (a) to whom notice is given under section 15V does not comply with a requirement referred to in that subsection, 40
  - (b) subject to a direction under subsection (1), fails to comply with a requirement of that subsection,



- (c) having been duly summoned to attend before an adjudication officer under section 15V(2)(a) fails without reasonable excuse to attend at the time and place indicated on the summons,
  - (d) while attending as a witness before an adjudication officer at an oral hearing under section 15V refuses to— 5
    - (i) give evidence in the manner lawfully required by the adjudication officer to be taken,
    - (ii) produce any record in the person’s power or control that the person is lawfully required by the adjudication officer to produce, or 10
    - (iii) answer any question that the person is lawfully required by the adjudication officer to answer,

or
  - (e) while attending before the adjudication officer does anything that, if the adjudication officer were a court of law having power to punish for contempt, would be contempt of court. 15
- (6) The Court may, where a person fails to comply with a requirement under section 15V(2), with a direction under subsection (1), with a summons to attend before an adjudication officer, or refuses, while attending as a witness before the adjudication officer, to do anything referred to in subsection (5) that the person is lawfully required by an adjudication officer to do, or otherwise fails to comply with a direction or order of the adjudication officer, on summary application by a party on notice to that person— 20
- (a) by order require the person to attend before the adjudication officer or to do the thing that the person refused to do, as the case may be, within a period to be specified by the Court, and 25
  - (b) make such interim or interlocutory orders as it considers necessary for that purpose.
- (7) A person is guilty of an offence if, having been or in anticipation of being required to produce a book, document or record under subsection (1)(b) or under section 15V(2)(a), he or she intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals such book, document or record or causes or permits its destruction, disposal, falsification or concealment. 30
- 35
- (8) If information or evidence is provided by a person to an adjudication officer in connection with any function of an adjudication officer under this Part, that person is guilty of an offence if—
- (a) the information or evidence is false or misleading in a material respect, and 40
  - (b) the person knows, or ought reasonably to know, that it is false or misleading in a material respect.

- (9) A person who provides any information to another person, knowing the information to be false or misleading in a material respect, or who recklessly provides any information to another person which is false or misleading in a material respect, knowing the information is to be used for the purpose of providing information to an adjudication officer in connection with any of his or her functions under this Act, is guilty of an offence. 5
- (10) A person guilty of an offence under subsections (5), (7), (8) or (9) is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or 10
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000 or both.
- (11) Proceedings may be brought for an offence under this section regardless of whether or not an order has been made, or has been applied for, under subsection (6). 15
- (12) (a) An adjudication officer may refer to the Director of Public Prosecutions a suspected breach of a hearing requirement under this section or section 15V without the necessity for an investigation by the competent authority. 20
- (b) Subject to section 15X, an adjudication officer may impose a periodic penalty payment under section 15AD(1)(b) in respect of a breach of a hearing requirement without the necessity for an investigation by the competent authority and without a referral under section 15M separate to the proceedings in which the breach has arisen. 25
- (13) The relevant Minister may make regulations setting out further details or conditions for the exercise of the powers of adjudication officers and the competent authority under this section.
- (14) In this section, ‘Court’ means the High Court. 30

**Decision by the adjudication officer**

- 15X.** (1) An adjudication officer shall consider the following when making a decision referred to him or her under section 15M(2) in relation to any alleged infringement of relevant competition law, breach of a procedural requirement, failure to comply with a structural or behavioural remedy, failure to comply with commitments entered into under section 15AE or failure to comply with a prohibition notice: 35
- (a) the statement of objections (and any supplementary statement of objections) prepared by the competent authority;
- (b) the full investigation report prepared by the competent authority under section 15L(9); 40

- (c) any written submissions made by the undertaking or association of undertakings concerned on the content of the statement of objections and the full investigation report;
  - (d) any submissions, statements, admissions, information, records or other evidence provided to the adjudication officer in the course of proceedings; 5
  - (e) any prior relevant decision of an adjudication officer under this Act, other than insofar as such decision has not been confirmed by the High Court under section 15AY or 15AZ.
- (2) In any matter referred to an adjudication officer for decision under section 15M(2), an adjudication officer— 10
- (a) may make a decision as to whether, on the balance of probabilities—
    - (i) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently committed an infringement of relevant competition law, and whether that infringement is continuing, 15
    - (ii) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently breached a procedural requirement or a hearing requirement, and whether that breach is continuing, 20
    - (iii) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with commitments entered into under section 15AE, and whether that failure is ongoing, 25
    - (iv) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with a structural or behavioural remedy imposed under section 15Z, and whether that failure is ongoing, or
    - (v) an undertaking or association of undertakings has or has not intentionally, recklessly or negligently failed to comply with a prohibition notice issued under section 15H, and whether that failure is ongoing, 30
- and
- (b) may, having made a decision under paragraph (a), do one or more of the following: 35
    - (i) impose structural or behavioural remedies on the undertaking or association of undertakings concerned in accordance with section 15Z;
    - (ii) impose an administrative financial sanction on the undertakings or association of undertakings concerned in accordance with section 15AA; 40

- (iii) impose periodic penalty payments on the undertaking or association of undertakings concerned in accordance with section 15AD.
- (3) (a) For the avoidance of doubt, a decision under subsection (2) may be formed in relation to conduct that is no longer ongoing. 5
- (b) (i) After reaching a decision under subsection (2)(a) and prior to making a decision under paragraph (b) of that subsection, the adjudication officer shall provide the competent authority and the undertaking or association of undertakings with a copy of the decision under subsection (2)(a) and shall inform the competent authority and the undertaking or association of undertakings of— 10
    - (I) if any, the structural or behavioural remedies that the adjudication officer proposes to impose on the undertaking or association of undertakings, and 15
    - (II) the amount of any periodic penalty payment or administrative financial sanction that the adjudication officer proposes to impose, and the criteria that the adjudication officer considers applicable to the determination of such amount. 20
  - (ii) The adjudication officer may invite written submissions from the competent authority and the undertaking or association of undertakings in accordance with subparagraph (iii).
  - (iii) The competent authority and the undertaking or association of undertakings may, within a period of 15 working days from the date of being informed of the matter described in subparagraph (i), or such further period as is considered appropriate by the adjudication officer, make submissions in writing to the adjudication officer in relation to the application of the criteria in section 15Z, 15AA, 15AB or 15AD and may make submissions in regard to guidelines made by the competent authority under section 15AF. 25 30
  - (iv) The adjudication officer may by notice in writing request the undertaking or association of undertakings to provide, in writing, within a period specified in the notice, such information as the adjudication officer considers appropriate for the purpose of determining the sanction to be imposed. 35
  - (v) Nothing in this paragraph shall preclude the adjudication officer from imposing a structural or behavioural remedy or administrative financial sanction or periodic penalty payments different to that proposed, or outside the range of that proposed, under subparagraph (i). 40
  - (vi) Where an adjudication officer imposes a periodic penalty payment on an undertaking or association of undertakings under

this section, the amount of the periodic penalty payment shall be calculated in accordance with section 15AD and shall be reckoned from the date of the decision under subsection (2)(a).

- (vii) Without prejudice to the reckoning of time under subparagraph (vi) of this subsection, a decision under subsection (2) shall not have effect, be questioned or be the subject of a notice under section 15Y until a decision under both subsection (2)(a) and, where applicable, subsection (2)(b) has been made. 5
- (4) In determining the amount of any administrative financial sanction to be imposed, the adjudication officer shall have regard to— 10
- (a) the matters outlined in sections 15AB and 15AC, and
  - (b) the imposition of any structural or behavioural remedies according to section 15Z.
- (5) A decision under subsection (2) shall include details in relation to— 15
- (a) the decision made,
  - (b) the date of the decision,
  - (c) the reasons for the decision,
  - (d) the statement of objections, information, records, documents, statements, admissions, evidence and written and oral submissions considered, 20
  - (e) the right of appeal provided for under section 15AY,
  - (f) the time limits within which the undertaking or association of undertakings is required, in default of any relevant appeal, to pay the administrative financial sanction or periodic penalty payment, or give effect to the structural or behavioural remedy imposed, as the case may be, 25
  - (g) the name of the undertaking or association of undertakings concerned, and
  - (h) such other particulars or material as the adjudication officer considers appropriate. 30
- (6) The relevant Minister may make regulations setting out detailed requirements to implement this section and otherwise for the conduct of proceedings before an adjudication officer in any matter referred to an adjudication officer for decision (in this section referred to as ‘proceedings’), having regard to the need for efficiency and the rights of the defence, including but not limited to all or any of the following: 35
- (a) the form and manner of provision of a statement of objections or supplementary statement of objections prepared by the competent authority in accordance with section 15L;

- (b) the form and manner of provision of information, records, documents, statements, admissions and evidence to be provided to the competent authority or to the adjudication officer;
  - (c) time limits to apply to the making and conduct of proceedings;
  - (d) the attendance of witnesses at an oral hearing; 5
  - (e) the form and manner of making of requests by an adjudication officer for information, discovery or disclosure from a party to a proceeding, or a person other than a party;
  - (f) the provision by the competent authority or by an adjudication officer to a party to a proceeding, or a person other than a party to proceedings, of information received by the adjudication officer or the competent authority; 10
  - (g) procedures for the consolidation and hearing of two or more proceedings together;
  - (h) procedures for the separation of proceedings; 15
  - (i) the publication on a website maintained by or on behalf of the competent authority of information and documents provided, for the purposes of proceedings, by a party to a proceeding or by a person other than a party to proceedings;
  - (j) the form and manner in which a proceeding may be withdrawn; 20
  - (k) any consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the regulations.
- (7) In accordance with section 15AF, a competent authority shall, on a website maintained by or on behalf of the competent authority, publish guidelines on the conduct of proceedings and may publish guidelines on any of the matters the subject of subsection (6). 25
- (8) At any time after a referral under section 15M(1) seeking an order on consent in respect of an agreed settlement, and with the consent of the competent authority, an adjudication officer may impose on the undertaking or association of undertakings the subject of the referral an administrative financial sanction by order on consent if— 30
- (a) the undertaking or association of undertakings the subject of a referral under section 15M(1) acknowledges that the undertaking or association of undertakings concerned is committing or has committed an infringement of relevant competition law, and 35
  - (b) such undertaking or association of undertakings consents to the imposition of a specific administrative financial sanction.
- (9) No order as to costs shall be made in proceedings before an adjudication officer, save that an adjudication officer may in his or her discretion award the costs of proceedings before an adjudication officer— 40

- (a) against the undertaking or association of undertakings, in the event that it is found to have infringed relevant competition law and if the adjudication officer finds that the undertaking or association of undertakings has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in the conduct of its defence before an adjudication officer, or 5
- (b) against the competent authority in the event that no infringement is found and if the adjudication officer finds that the competent authority has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged infringement or in its conduct of the proceedings before the adjudication officer. 10

**Notice of decision**

- 15Y.** (1) As soon as practicable after the adjudication officer has made a decision under section 15X or an order under 15Z(6), the adjudication officer shall furnish the competent authority with the decision. 15
- (2) (a) The competent authority shall, within 7 days of receipt of the decision referred to in subsection (1), give notice in writing of the decision to the undertaking or association of undertakings concerned. 20
  - (b) The notice under paragraph (a) shall—
    - (i) include a copy of the decision referred to in subsection (1),
    - (ii) state that, in respect of an administrative financial sanction, an Article 16(2) periodic penalty payment, a hearing requirement periodic penalty payment or a structural or behavioural remedy, the decision does not take effect unless it is confirmed by the court in accordance with section 15AY or 15AZ, as the case may be, and 25
    - (iii) state that, in respect of an administrative financial sanction, an Article 16(2) periodic penalty payment or a behavioural or structural remedy, if the undertaking or association of undertakings does not appeal under section 15AY, the competent authority must, as soon as is practicable after the expiration of the period for the making of an appeal, make an application for confirmation of the decision in accordance with section 15AZ. 30 35
  - (c) The competent authority may provide a copy of a notice referred to in subsection (1) to a person other than the undertaking or association of undertakings where it considers it appropriate to do so. 40
- (3) A copy of the decision or order referred to in subsection (1) shall be published on a website maintained by or on behalf of the competent authority.

- (4) A decision or order referred to in subsection (1) or published under subsection (3) may contain such redactions as the adjudication officer considers necessary and appropriate, in respect of subsection (1) on his or her own motion, or in respect of subsections (2) and (3) upon application of the competent authority or any undertaking or association of undertakings concerned— 5
- (a) to protect commercial confidentiality,
  - (b) to protect the rights of the undertaking or association of undertakings concerned or any other person, or
  - (c) for any other good and sufficient reason. 10
- (5) (a) A person who receives a copy of a notice under subsection (2) prior to the publication of the decision under subsection (3) shall not, without the prior authorisation of the adjudication officer, disclose the existence or the content of the notice to any other person.
- (b) A person who receives a copy of a notice under subsection (2) which contains material redacted from publication under subsection (3) shall not, without the prior authorisation of the adjudication officer, disclose the content of the redacted material to any other person. 15
- (6) A person who fails to comply with a request to provide information under section 15X(3)(b)(iv), or a person who contravenes subsection (5), shall be guilty of an offence and shall be liable— 20
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both. 25
- (7) Summary proceedings in relation to an offence under subsection (6) may be brought by the competent authority. 30

#### **Structural or behavioural remedies**

- 15Z.** (1) Where an adjudication officer makes a decision under section 15X to impose a structural or behavioural remedy on an undertaking or association of undertakings, such remedy shall be imposed in accordance with this section. 30
- (2) In this Act, ‘structural or behavioural remedy’ means any remedy or obligation requiring an undertaking or association of undertakings to take, or to refrain from taking, any action relating to the behaviour or structure of an undertaking or association of undertakings and includes requiring the undertaking or association of undertakings in question to do one or more of the following: 35
- (a) to sell or divest itself of any matter, including business, assets, shares, real property or intellectual property; 40
  - (b) to modify or constrain its conduct in specified ways;



- (c) to grant specified undertakings access to assets, facilities, technology, infrastructure, information or services;
  - (d) to implement ring-fencing arrangements to prevent the sharing of specified competitively sensitive information;
  - (e) to cease a specified conduct or practice; 5
  - (f) to unbundle two or more products which were previously offered to customers jointly;
  - (g) to discontinue customer rebate schemes, or a part of any such schemes;
  - (h) to prevent the flow of competitively sensitive information between undertakings or within divisions, units, departments or other organisational units within an undertaking. 10
- (3) The adjudication officer shall not impose a structural or behavioural remedy on an undertaking or association of undertakings under this section unless— 15
- (a) imposing the remedy is necessary to bring an existing infringement of relevant competition law to an end or to prevent a similar infringement of relevant competition from reoccurring in future, and
  - (b) the remedy imposed is proportionate to the infringement of relevant competition law committed. 20
- (4) Where more than one structural or behavioural remedy would be equally effective for the purpose of bringing the infringement of relevant competition law in question to an end, the adjudication officer shall choose the remedy that is least burdensome for the undertaking or association of undertakings in question. 25
- (5) A decision to impose structural or behavioural remedy shall not take effect unless the decision is confirmed by the High Court under section 15AY or 15AZ.
- (6) At any time after a referral under section 15M and with the consent of the competent authority, an adjudication officer may impose a structural or behavioural remedy on the undertaking or association of undertakings the subject of the referral if— 30
- (a) the undertaking or association of undertakings the subject of a referral under section 15M(1) acknowledges that it is committing or has committed an infringement of relevant competition law, and 35
  - (b) that undertaking or association of undertakings consents to the imposition of a structural or behavioural remedy.

**Administrative financial sanctions**

- 15AA.**(1)An adjudication officer may, in accordance with section 15X, impose administrative financial sanctions on undertakings and associations of 40

undertakings, which sanctions shall be effective, proportionate and dissuasive, where the adjudication officer determines—

- (a) under section 15X(2)(a)(i) that the undertaking or association of undertakings committed an infringement of relevant competition law, including where the adjudication officer determined that the infringement is ongoing, 5
  - (b) under section 15X(2)(a)(ii) that the undertaking or association of undertakings breached a procedural requirement, including where the adjudication officer determined that the breach is ongoing,
  - (c) under section 15X(2)(a)(iii) that the undertaking or association of undertakings failed to comply with commitments entered into under section 15AE, including where the adjudication officer determined that the failure to comply is ongoing, 10
  - (d) under section 15X(2)(a)(iv) that the undertaking or association of undertakings failed to comply with a structural or behavioural remedy ordered under section 15Z, including where the adjudication officer determined that the failure to comply is ongoing, or 15
  - (e) under section 15X(2)(a)(v) that the undertaking or association of undertakings failed to comply with a prohibition notice issued under section 15H, including where the adjudication officer determined that the infringement is ongoing. 20
- (2) Where an adjudication officer makes a decision under section 15X and the provision of relevant competition law, or the alleged breach of a procedural requirement, in respect of which the decision was made is a provision the breach of which would constitute an offence, the undertaking or association of undertakings in respect of which the decision was made is not liable to be prosecuted or punished for the offence in the respect of the conduct to which the decision relates. 25
- (3) An adjudication officer may not impose an administrative financial sanction on an undertaking or association of undertakings for an infringement of relevant competition law or a breach of a procedural requirement— 30
- (a) if the undertaking or association of undertakings has been charged with having committed an offence under a law of the State, 35
  - (b) if—
    - (i) criminal proceedings are ongoing in respect of the infringement,
    - (ii) that undertaking or association of undertakings has been found guilty of having committed the offence, or
    - (iii) that undertaking or association of undertakings has been found not guilty of having committed the offence where proceedings have determined other than by way of *nolle prosequi*, 40

and

- (c) if the offence involves the same infringement or a breach of a procedural requirement as is before the adjudication officer.
- (4) A decision to impose an administrative financial sanction shall not take effect unless the decision is confirmed by the High Court under section 15AY or 15AZ, as the case may be. 5
- (5) (a) The adjudication officer may, having imposed an administrative financial sanction under this section on an undertaking (in this subsection referred to as the ‘sanctioned undertaking’), and where he or she considers that it is necessary to do so in order for that sanction to be effective, proportionate or dissuasive, impose the sanction (whether jointly with or separately to the sanctioned undertaking) on either or both of the following: 10
  - (i) a subsidiary undertaking of the sanctioned undertaking;
  - (ii) an undertaking of which the sanctioned undertaking is a subsidiary undertaking. 15
- (b) In this subsection—
  - (i) ‘subsidiary undertaking’ has the meaning it has in section 275 of the Companies Act 2014,
  - (ii) where an undertaking is a partnership, for the purposes of the application to it of the definition of ‘subsidiary undertaking’— 20
    - (I) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the partners in a partnership giving those partners the potential to exercise control or dominant influence over the activities of the partnership, and 25
    - (II) references to a company’s constitution shall be construed as references to any agreement or practice governing or concerning the operation of the partnership,
- and 30
- (iii) where an undertaking is an unincorporated association, for the purposes of the application to it of the definition of ‘subsidiary undertaking’—
  - (I) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the members of the unincorporated association giving those members the potential to exercise control or dominant influence over the activities of the unincorporated association, and 35
  - (II) references to a company’s constitution shall be construed as references to the constitution or of any agreement or 40

practice governing or concerning the operation of the unincorporated association.

### Calculation of administrative financial sanctions

- 15AB.** (1) When determining the amount of the administrative financial sanction to be imposed in respect of the matters set out in 15AA(1), an adjudication officer shall have regard to— 5
- (a) the need to ensure that any administrative financial sanction imposed is appropriate, proportionate and dissuasive,
  - (b) the gravity of the matter in respect of which an administrative financial sanction is imposed, 10
  - (c) in respect of an infringement of relevant competition law—
    - (i) the duration of the infringement,
    - (ii) the value of the undertaking's sales of the goods and services to which the infringement directly or indirectly relates, and
    - (iii) where applicable, the amount of any compensation paid as a result of a consensual settlement in accordance with Article 18(3) of Directive 2014/104/EU<sup>4</sup>, 15
  - (d) any specific factors, criteria or methodology relevant to paragraphs (a), (b) and (c) which are prescribed by the relevant Minister to be taken into account by an adjudication officer in the calculation of the amount of administrative financial sanctions, and 20
  - (e) any guidelines issued by the competent authority under section 15AF in respect of specific factors, criteria or methodology relevant to the calculation of the amount of administrative financial sanctions. 25
- (2) Where an administrative financial sanction is imposed on an association of undertakings under section 15AA in respect of an infringement of relevant competition law under Parts 2C to 2G, and such sanction is imposed not only on the association of undertakings but also on its members, the turnover of the members on which an administrative financial sanction is imposed shall not be taken into account when calculating the administrative financial sanction to be imposed on the association. 30
- (3) (a) Where—
- (i) an administrative financial sanction is imposed on an association of undertakings under section 15AA in respect of an infringement of relevant competition law under Parts 2C to 2G, and the infringement relates to the activities of its members, and 35
  - (ii) an administrative financial sanction is not also imposed on the individual members of the association, 40

4 O.J. No. L 349, 5.12.2014, p. 1

an adjudication officer may consider the value of the sales of goods and services to which the infringement directly or indirectly relates by the undertakings that are members of the association when calculating the administrative financial sanction to be imposed on the association of undertakings.

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- (b) If paragraph (a) is applied, in circumstances where the association of undertakings is not solvent, the association shall call for contributions from its members to cover the amount of the administrative financial sanction imposed.
- (4) Where, following a decision confirming an administrative financial sanction under section 15AY or 15AZ, as the case may be, contributions referred to in subsection (3) have not been made in full to the association of undertakings within the time limit fixed by the High Court, the competent authority may refer the matter back to an adjudication officer who may require any of the undertakings whose agents or representatives were members of the decision-making bodies of that association to pay the administrative financial sanction.
- (5) Where necessary to ensure full payment of the administrative financial sanction referred to in subsection (4), after the adjudication officer has required payment from such undertakings, the adjudication officer may also require the payment (on a joint and several basis) of the outstanding amount of the administrative financial sanction by any of the members of the association that were active on the market on which the infringement of relevant competition law occurred notwithstanding any decision made by the adjudication officer under section 15X(2) that such members of the association had not intentionally, recklessly or negligently committed the relevant infringement.
- (6) The provisions of sections 15AY or 15AZ shall apply, *mutatis mutandis*, to a decision or requirement of an adjudication officer under subsections (4) or (5).
- (7) Payment under subsection (5) shall not be required from an undertaking that proves, in accordance with such procedures as may be prescribed, on the balance of probabilities that—
- (a) it did not implement the infringement of relevant competition law of the association of undertakings, and
- (b) it—
- (i) was not aware of the existence of the infringement, or
- (ii) actively distanced itself from the infringement before the investigation under Part 2C commenced.
- (8) (a) After determining the amount of the administrative financial sanction to be imposed on an undertaking or association of undertakings, and prior to making a decision under section 15X(2) (b)(iii), the adjudication officer shall apply any decision made by

the competent authority under Part 2E in respect of such undertaking or association of undertakings regarding—

- (i) immunity from administrative financial sanctions, or
  - (ii) a reduction in the amount of administrative financial sanctions.
- (b) An adjudication officer shall not vary any decision of the competent authority made under Part 2E regarding the level of reduction to be applied to the administrative financial sanctions that would otherwise have been imposed on the undertaking or association of undertakings concerned. 5
- (9) The relevant Minister may prescribe rules for the purposes of the implementation of this section. 10

### **Maximum amount of administrative financial sanctions**

- 15AC.** (1) The maximum amount of an administrative financial sanction that an adjudication officer may impose under this Part in respect of an infringement of relevant competition law, for failure to comply with commitments entered into under section 15AE, for failure to comply with a structural or behavioural remedy or for failure to comply with a prohibition notice issued under section 15H shall be the greater of €10 million or 10 per cent of the total worldwide turnover of the undertaking or association of undertakings in the financial year preceding the decision. 15 20
- (2) Where an infringement of relevant competition law, failure to comply with commitments entered into under section 15AE, failure to comply with a structural or behavioural remedy or a failure to comply with a prohibition notice issued under section 15H by an association of undertakings relates to the activities of its members, the maximum amount of the administrative financial sanction shall be €10 million or 10 per cent of the sum of the total worldwide turnover (whichever is greater) of each member active on the market affected by the infringement of the association. 25 30
- (3) The maximum amount of an administrative financial sanction that an adjudication officer may impose with respect to a breach of a procedural requirement in accordance with section 15AA shall be €1 million or 1 per cent of the total worldwide turnover (whichever is greater) of the undertaking or association of undertakings in the financial year preceding the decision. 35
- (4) Where the breach of the procedural requirement by an association of undertakings relates to the activities of its members, the maximum amount of the administrative financial sanction shall be €1 million or 1 per cent of the sum of the total worldwide turnover (whichever is greater) of each member active on the market affected by the infringement of the association. 40
- (5) The financial liability of each undertaking in respect of the payment of the administrative financial sanction shall not exceed the maximum

amounts specified in subsection (2) or subsection (3), as the case may be, and shall be reduced by an adjudication officer in accordance with any decision made in respect of that undertaking under Part 2E.

**Periodic penalty payments**

- 15AD.** (1) (a) An adjudication officer may impose a payment (in this Act referred to as a ‘periodic penalty payment’) on an undertaking or association of undertakings in order to compel such an undertaking or association of undertakings to do one or more of the following: 5
- (i) comply with a search conducted by the competent authority, or otherwise allow for the exercise of the powers of an authorised officer, under section 39 of the Act of 2002 or section 37 of the Act of 2014, as the case may be; 10
  - (ii) provide complete and correct information in response to a requirement under section 39A of the Act of 2002 or section 18(1)(d) or 37A of the Act of 2014 or, as the case may be; 15
  - (iii) attend at an interview, or otherwise give evidence or produce information or documentation, before the competent authority under section 38A of the Act of 2002 or section 18 or 37A of the Act of 2014, as the case may be; 20
  - (iv) comply with a prohibition notice; 20
  - (v) comply with commitments entered into with the competent authority under section 15AE; 20
  - (vi) comply with structural or behavioural remedies. 20
- (b) (i) An adjudication officer may impose a periodic penalty payment on an undertaking or association of undertakings in order to compel such an undertaking or association of undertakings to comply with any hearing requirement imposed by an adjudication officer in the course of a referral under section 15M, without a referral under that section separate to the proceedings in which the breach of the hearing requirement has arisen. 25
- (ii) Where an adjudication officer imposes a hearing requirement periodic penalty payment under subparagraph (i), subject to this section such a decision shall be made under section 15X and this Act shall apply accordingly. 35
  - (iii) Where an adjudication officer considers it necessary in the interests of justice, an adjudication officer who apprehends that there has been a failure to comply with a hearing requirement made by that adjudication officer in the course of a referral under section 15M may refer to the Chief Adjudication Officer for assignment to another adjudication officer the decision under subparagraph (i). 40

- (2) (a) Before an adjudication officer makes a decision to impose a periodic penalty payment in accordance with subsection (1)(a), the competent authority shall issue to the undertaking or association of undertakings concerned a notice which shall—
- (i) specify the date by, or period within, which the undertaking or association of undertakings shall comply with the obligation concerned, 5
  - (ii) state the intention of the competent authority to refer the matter to an adjudication officer for a decision to impose a periodic penalty payment from a specified date if by that date the undertaking or association of undertakings concerned has not complied with the obligation concerned, and 10
  - (iii) specify the maximum daily amount of the periodic penalty payment that may be imposed from the specified date if the undertaking or association of undertakings concerned has not complied with the obligation concerned. 15
- (b) Before an adjudication officer makes a decision to impose a hearing requirement periodic penalty payment, the adjudication officer shall issue to the undertaking or association of undertakings concerned a notice which shall— 20
- (i) state the intention of the adjudication officer to impose a periodic penalty payment from a specified date if by that date the undertaking or association of undertakings concerned has not complied with the obligation concerned, and
  - (ii) specify the information referred to in subparagraphs (i) and (iii) of paragraph (a). 25
- (c) If, before the date, or before the expiration of the period, as the case may be, specified in a notice issued under paragraph (a) or (b), as the case may be, the undertaking or association of undertakings requests, in writing, an extension to the specified date or period, the competent authority or adjudication officer, as the case may be, may where it considers it appropriate to do so, extend that date or period and an undertaking or association of undertakings to which such an extension is granted shall comply with the obligation by the date, or within the specified period, within the specified period as so extended. 30 35
- (3) The maximum amount of a periodic penalty payment imposed per day during which the failure is ongoing in accordance with subsection (1) shall not exceed 5 per cent of the average daily total worldwide turnover of the undertaking or association of undertakings concerned in the preceding financial year. 40
- (4) Where the undertaking or association of undertakings has failed to comply with the obligation concerned before the date, or before the



- expiration of the period, specified in a notice issued under subsection (2)—
- (a) in respect of the matters set out in subsection (1)(a), the competent authority—
    - (i) shall prepare a statement of objections and give a copy of it to the undertaking or association of undertakings concerned in accordance with section 15L, and
    - (ii) may refer the matter to an adjudication officer for decision in accordance with section 15M,

or
  - (b) in respect of the matters set out in subsection (1)(b), an adjudication officer may make a decision under section 15X on his or her own motion.
- (5) (a) Where an adjudication officer has decided to impose a periodic penalty payment under section 15X on or before the date, or within the period, specified in a notice issued under paragraph (a) or (b) of subsection (2), an adjudication officer shall determine the periodic penalty payment to be imposed on the undertaking or association of undertakings concerned and shall impose such periodic penalty payment on such undertaking or association of undertakings under section 15X(2)(b)(iii).
- (b) The definitive amount of the periodic penalty payment shall be calculated from the date on which the period specified in the notice issued under paragraph (a) or (b) of subsection (2) expired until the date on which the adjudication officer is satisfied that the relevant obligation was complied with by the undertaking.
  - (c) An adjudication officer may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the notice issued under subsection (2).
- (6) The imposition of a periodic penalty payment under this section is without prejudice to—
- (a) the imposition of administrative financial sanctions for—
    - (i) a breach of a procedural requirement,
    - (ii) a failure to comply with commitments entered into under section 15AE,
  - (b) the imposition of a structural or behavioural remedy under section 15Z, or
  - (c) issuing a prohibition notice issued under section 15H.
- (7) A decision to impose an Article 16(2) periodic penalty payment or a hearing requirement periodic penalty payment shall not take effect

unless the decision is confirmed by the High Court under section 15AY or section 15AZ.

(8) In this section—

‘Article 16(1) periodic penalty payment’ means a periodic penalty payment imposed, in whole or in part, for the purposes of compelling an undertaking or association of undertakings to comply with the matters referred to in subsection (1)(a)(ii) and (iii);

‘Article 16(2) periodic penalty payment’ means a periodic penalty payment imposed for the purposes of compelling an undertaking or association of undertakings to comply with the matters referred to in subsection (1)(a)(i) and (iv) to (vi);

‘hearing requirement periodic penalty payment’ means a periodic penalty payment imposed under subsection (1)(b)(i).

### **Commitments**

**15AE.** (1) At any time during an investigation carried out by the competent authority into suspected or alleged infringements of relevant competition law, including at any time prior to a decision being made by an adjudication officer under section 15X, the undertaking or association of undertakings to which the investigation relates may, in writing, propose to the competent authority measures appropriately addressing the suspected or alleged infringement.

(2) Where the competent authority receives a proposal under subsection (1), it may—

(a) consult to the extent that it sees fit in relation to the proposal, including consulting publicly or consulting undertakings, or other persons participating in the market or markets concerned,

(b) where it is of the opinion that it requires further information in order to consider the proposal, by notice in writing served on the undertaking or association of undertakings that made the proposal, require the undertaking or association of undertakings to give to it within a specified period specified information, and

(c) where it considers it necessary to do so, at any time before the proposal is made subject to a commitment agreement under this section, propose to the undertaking or association of undertakings modifications, alterations, additions or other changes to the proposal.

(3) Where the competent authority—

(a) has complied with the requirements of subsection (4), and

(b) is satisfied that the terms of the proposal (subject to any modifications, alterations, additions or other changes made to the proposal under subsection (2))—

- (i) appropriately address the matters to which the investigation relates or any findings resulting from the investigation, and
  - (ii) are clear and unambiguous and capable of being complied with,

it may notify the undertaking or association of undertakings in writing that the proposal is agreed by the competent authority. 5
- (4) Before notifying an undertaking or association of undertakings under subsection (3), the competent authority shall inform the undertaking or association of undertakings—
  - (a) that the undertaking or association of undertakings is entitled to obtain legal advice on the terms of the proposal, and 10
  - (b) that failure to comply with the commitments may result in legal consequences for the undertaking or association of undertakings, including the imposition of administrative financial sanctions under section 15AA.
- (5) Where the undertaking or association of undertakings in receipt of a notification under subsection (3) consents to the terms of the proposal as agreed by the competent authority, it shall notify the competent authority of that fact. 15
- (6) Where a proposal has been consented to by an undertaking or association of undertakings under subsection (5) and an agreement (in this section referred to as a ‘commitment agreement’) in respect of such proposal has been entered into by that undertaking or association of undertakings and the competent authority, the commitment agreement shall (save where such publication would, in the opinion of the competent authority, prejudice the achievement of the objectives of this Act) be published on a website maintained by or on behalf of the relevant Minister or by the competent authority, with due regard for commercial confidentiality, as soon as practicable after the commitment agreement has been signed by the undertaking or association of undertakings and the competent authority. 20 25 30
- (7) A commitment agreement shall be binding on an undertaking or association of undertakings entering into it for the period beginning on the date specified in the commitment agreement and ending on the date specified in the commitment agreement.
- (8) Subject to subsection (9), the competent authority shall not, during the period for which a commitment agreement is binding on an undertaking or association of undertakings and in respect of the matters addressed in the commitment agreement— 35
  - (a) issue a prohibition notice to the undertaking or association of undertakings, 40
  - (b) refer the matter for decision by an adjudication officer under section 15M, or

- (c) continue any proceedings under this Act that are already in progress against the undertaking or association of undertakings,  
other than where the competent authority has formed a preliminary view, or an adjudication officer has decided, that the undertaking or association of undertakings has failed to comply with the commitment agreement. 5
- (9) The competent authority may, notwithstanding subsection (7)—
- (a) amend or terminate a commitment agreement where the undertaking or association of undertakings that has entered into the commitment agreement has consented to such amendment or termination and the competent authority is satisfied that there has been a material change to the facts on which the commitment agreement was based, 10
- (b) terminate a commitment agreement where the circumstances of the undertaking or association of undertakings, or of the market in which the undertaking or association of undertakings operates, mean that the commitment agreement is no longer necessary, 15
- (c) terminate a commitment agreement where the undertaking or association of undertakings concerned has acted contrary to the terms of the commitment agreement, or 20
- (d) terminate a commitment agreement where an undertaking or association of undertakings which has entered into a commitment agreement has submitted information to the competent authority in connection with a proposal or commitment agreement under this section that is false, incomplete, incorrect or misleading in a material respect. 25
- (10) The competent authority may monitor and review commitments, conditions or other terms contained in a commitment agreement.

### **Guidelines**

- 15AF.** (1) The competent authority may, having regard to the matters specified in subsection (2), make guidelines with respect to any matter provided for in Parts 2C and 2D, including in relation to the conduct of investigations, the conduct of oral hearings, the imposition of administrative sanctions (including the factors applicable to any order or administrative financial sanction to be imposed under section 15X and the method of calculation of administrative financial sanctions and periodic penalty payments), the general policies of the competent authority and such other matters as the relevant Minister may prescribe by regulations. 30 35
- (2) In making guidelines under subsection (1), the competent authority shall have regard to— 40
- (a) any regulations made under this Part, and
- (b) the fairness and efficiency of the procedures under this Part.

- (3) In respect of a decision under section 15X (in particular in relation to the imposition of sanctions) adjudication officers shall not be bound by but shall have regard to guidelines made under subsection (1).
- (4) The competent authority may amend or revoke guidelines made under subsection (1). 5
- (5) The competent authority shall publish any guidelines made under this section, and any amendment to or revocation of those guidelines, on a website maintained by it or on its behalf.
- (6) The competent authorities may make guidelines under this section jointly or separately. 10

**Conduct of investigations**

**15AG.** Subject to this Part and Part 2C, any rules made under section 15V(14) and any guidelines made under section 15AF, a competent authority may follow such procedures for the conduct of an investigation as it considers appropriate. 15

PART 2E

LENIENCY PROGRAMME

**Definitions (Part 5)**

**15AH.** In this Part—

‘applicant’ means an undertaking that submits a leniency statement under this Part; 20

‘competent prosecuting authority’ means—

- (a) in respect of civil or administrative financial sanctions proceedings under this Act, the competent authority,
- (b) in respect of criminal proceedings in respect of an infringement of relevant competition law tried on indictment in accordance with section 8, the Director of Public Prosecutions, or 25
- (c) in respect of criminal proceedings in respect of an infringement of relevant competition law tried summarily in accordance with section 8, the competent authority or the Director of Public Prosecutions, as the case may be; 30

‘immunity from administrative financial sanctions’ means an exemption from an administrative financial sanction granted by a competent authority that would otherwise be imposed on an undertaking for its participation in a cartel in accordance with a leniency programme; 35

‘leniency’ includes immunity from administrative financial sanctions and a reduction in administrative financial sanctions;

‘marker’ has the meaning it has in section 15AM.

## **Immunity from administrative financial sanctions**

- 15AI.** (1) Each competent authority shall put in place a programme (in this Part referred to as a ‘leniency programme’) enabling it to grant leniency to undertakings in exchange for—
- (a) disclosing their participation in a cartel, and 5
  - (b) voluntarily cooperating, independently of the other undertakings involved in the cartel, with an investigation of the competent authority concerning the application of relevant competition law.
- (2) Each competent authority shall prepare a policy as to how it will operate its leniency programme, which policy may include different policies or approaches in respect of different sectors or economic activities. 10
- (3) The leniency programme may also address the approach of the competent authority when exercising its power to grant leniency in respect of other serious infringements of relevant competition law. 15
- (4) Each competent authority shall publish its leniency programme by placing a notice in relation to it, together with the entire text of the programme, on a website maintained by or on behalf of the competent authority.
- (5) A competent authority may grant an undertaking immunity from any administrative financial sanction which would otherwise have been imposed provided that— 20
- (a) the undertaking discloses to the competent authority the fact of its participation in the cartel concerned, together with all the details thereof, in accordance with section 15AK(1)(b), 25
  - (b) the undertaking is the first to submit evidence to the competent authority which—
    - (i) in the view of the competent authority at the time it evaluates the application for immunity from administrative financial sanctions, will enable the competent authority to carry out searches in connection with an alleged cartel, provided that the competent authority did not at the time of the application, already have sufficient evidence to carry out such a search or sufficient evidence to seek a warrant for such a search or had not already carried out a search in connection with the alleged cartel, or 30
    - (ii) in the view of the competent authority, is sufficient to ground a finding of an infringement of relevant competition law covered by the leniency programme, provided that the competent authority did not have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity from administrative financial sanctions in relation to the same cartel, 40

- (c) the conditions for leniency set out in section 15AK are satisfied,
  - (d) the undertaking has not taken steps to coerce other undertakings to join a cartel or to remain in it,
  - (e) the undertaking provides the competent authority with any information reasonably required by the competent authority, and 5
  - (f) the other competent authority has not already granted the undertaking immunity in respect of the same matter or conduct.
- (6) (a) A competent authority may decide to grant an undertaking immunity from administrative financial sanctions conditional on it fulfilling the conditions in this Part. 10
- (b) The competent authority shall notify the undertaking of a decision made under paragraph (a).
- (c) Where the competent authority notifies an undertaking that it has been granted conditional immunity from administrative financial sanctions under paragraph (a), the undertaking shall be informed of the period it has to fulfil the conditions concerned. 15
- (7) The competent authority shall, where it is requested to do so by the applicant, notify a decision under subsection (5) to the applicant in writing.
- (8) An applicant, after it is notified that a decision was made under subsection (6)(a) not to grant it immunity from administrative financial sanctions, may request the competent authority concerned to consider its application as an application for reduction of administrative financial sanctions under section 15AJ. 20
- (9) (a) The Commission and the Commission for Communications Regulation may, to the extent required for the purposes of this Part— 25
- (i) cooperate and share information in relation to a leniency statement submitted to it,
  - (ii) co-ordinate their leniency programmes, in whole or in part, 30
  - (iii) take steps to align their respective policies as to how such programmes will operate,
  - (iv) agree that either the Commission or the Commission for Communications Regulation, but not both, deal with a particular leniency application, or with a class of leniency applications, and 35
  - (v) conclude cooperation agreements that will—
- (I) facilitate the performance of their respective functions under this Part and in particular the assessment of leniency applications, and 40

(II) if necessary, provide for procedures for the transfer of leniency applications received by one competent authority under this Part to the other competent authority.

(b) An agreement made under paragraph (a)(iv) shall be published, on a website maintained by them or on their behalf, by the Commission or the Commission for Communications Regulation or both. 5

### **Reduction of administrative financial sanctions**

**15AJ.** (1) Undertakings that do not qualify for immunity from administrative financial sanctions under section 15AI may be granted a reduction, in accordance with this section, of any administrative financial sanction that would otherwise have been imposed conditional on the undertaking fulfilling the conditions in this Part. 10

(2) A competent authority shall include in the leniency programme provision for reducing the amount of an administrative financial sanction that would otherwise be imposed on an undertaking that does not qualify for immunity from administrative financial sanctions for its participation in a cartel, in exchange for, or in order to acknowledge, its cooperation with a competent authority under the leniency programme. 15  
20

(3) Where a competent authority determines that an undertaking is entitled to a reduction of an administrative financial sanction, the adjudication officer and the High Court shall apply the reduction determined by the competent authority to the administrative financial sanction imposed by a decision under section 15X and confirmed by the Court, and the decision of the competent authority as to whether the conditions for the reduction of an administrative financial sanction under subsection (5) are satisfied may not be impugned by the Court. 25

(4) The competent authority shall publish, on a website maintained by it or on its behalf, its leniency programme allowing for a reduction of administrative financial sanctions. 30

(5) In order to qualify for a reduction of administrative financial sanctions, an undertaking shall—

(a) disclose its participation in the cartel,

(b) provide the competent authority with evidence of the alleged cartel which, in the view of the competent authority, represents significant added value relative to the evidence already in the possession of the competent authority at the time of the application, and 35

(c) otherwise satisfy the requirements set out in section 15AK. 40

(6) If an undertaking that has applied for a reduction of an administrative financial sanction submits compelling evidence which the competent authority uses to establish additional facts which lead to an increase of the amount of the administrative financial sanction imposed on other



undertakings or associations of undertakings, such additional facts shall not be taken into account by an adjudication officer when setting the amount of any administrative financial sanction to be imposed on the undertaking that provided this evidence.

- (7) In order to determine the appropriate level of reduction of the administrative financial sanction, the competent authority shall take into account— 5
- (a) the time at which the evidence was submitted (including the placing of the applicant in the chronological order of undertakings to apply for leniency), and 10
  - (b) the assessment of the competent authority as to the overall value added to its investigation by that evidence.
- (8) Reductions granted to an applicant under this section shall not exceed 50 per cent of the administrative financial sanction which would otherwise have been imposed. 15
- (9) If the competent authority finds that one or more of the conditions specified in subsection (5) has not been fulfilled, the undertaking shall not benefit from any favourable treatment under this programme in respect of the same cartel.
- (10) (a) In this Part, the ‘significant added value’ of evidence shall be assessed by the competent authority in terms of the extent to which the evidence provided to the competent authority strengthens, by its nature or in its level of detail, the ability of the competent authority to prove the existence of the alleged cartel. 20
- (b) The competent authority may publish, on a website maintained by it or on its behalf, guidelines on the assessment of the ‘significant added value’ of evidence and on the concept of ‘compelling evidence’ under subsection (6). 25

#### **General conditions for leniency**

- 15AK.** (1) In order to qualify for leniency for participation in a cartel an undertaking that has applied to the competent authority for leniency shall— 30
- (a) end its involvement in the alleged cartel at the latest immediately following its leniency application, except in cases where a delay would, in the view of the competent authority, be reasonably necessary to preserve the integrity of its investigation, 35
  - (b) cooperate genuinely, fully, and on a continuous basis and expeditiously with the competent authority from the time of its application until the competent authority has closed its enforcement proceedings against all parties under investigation by making a decision under section 15X or has otherwise terminated its enforcement proceedings (including continuing to so cooperate where required until the determination of any subsequent 40

proceedings under Part 2H), and such cooperation includes the following:

- (i) providing the competent authority promptly with all relevant information and evidence relating to the alleged cartel that comes into the applicant's possession or is accessible to it, in particular—
    - (I) the name and address of the applicant,
    - (II) the names of all other undertakings that participate or participated in the alleged cartel,
    - (III) a detailed description of the alleged cartel, including the affected goods or services, the affected territories, the duration, and the nature of the alleged cartel conduct,
    - (IV) evidence of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence), and
    - (V) information on any past or possible future leniency applications made to any other competent authorities, competition authorities of member states, the European Commission, or competition authorities of third countries in relation to the alleged cartel;
  - (ii) remaining at the disposal of the competent authority to promptly reply to any requests that may contribute to the establishment of the relevant facts;
  - (iii) making current directors, managers and other members of staff available for interviews with the competent authority and making reasonable efforts to make former directors, managers and other members of staff available for interviews with the competent authority;
  - (iv) not destroying, falsifying or concealing relevant information or evidence;
  - (v) unless and to the extent otherwise explicitly authorised by the competent authority, not disclosing the fact of, or any of the content of, its leniency application before the competent authority has issued objections in the enforcement proceedings before it,
- and
- (c) not have—
    - (i) destroyed, falsified or concealed evidence which falls within the scope of the application, or
    - (ii) disclosed, directly or indirectly, the fact of, or any of the content of the application it is contemplating except to other competent authorities or any competition authorities of member states or

the European Commission or competition authorities of third countries.

- (2) The competent authority shall, where it is requested to do so by the applicant, communicate a decision in relation to a leniency application under section 15AI or 15AJ to the applicant in writing. 5
- (3) An undertaking that fails to satisfy all of the requirements specified in subsection (1) shall not be eligible for leniency under section 15AI or 15AJ.
- (4) Where a competent authority accedes to an application for leniency under section 15AI or 15AJ, such grant of leniency may be withdrawn 10 where evidence is subsequently obtained by the competent authority which establishes that the undertaking concerned did not satisfy each of the conditions for leniency specified in subsection (1).
- (5) Where a competent authority deems that an applicant for leniency does not satisfy each of the conditions for leniency laid down in subsection 15 (1), or withdraws a grant of leniency pursuant to subsection (4), a competent authority may initiate whatever proceedings against the undertaking concerned as the competent authority deems fit.
- (6) An undertaking, and the servants or agents of an undertaking, shall be guilty of an offence where, in the context of an application for 20 immunity from administrative financial sanctions under section 15AI, or reduction of administrative financial sanctions under section 15AJ, or a summary application for leniency under section 15AN it intentionally or negligently—
- (a) provides the competent authority with information that is false or 25 misleading in a material respect, or
- (b) fails to comply with the obligation in subsection (1)(b)(iv).
- (7) An undertaking or other person guilty of an offence under this section is liable—
- (a) on summary conviction— 30
- (i) in the case of an undertaking that is not an individual, to a class A fine, or
- (ii) in the case of an individual, to a class A fine and to imprisonment for a term not exceeding 6 months, or to both, 35
- or
- (b) on conviction on indictment—
- (i) in the case of an undertaking that is not an individual, to a fine not exceeding whichever of the following amounts is the greater, €250,000 or 10 per cent of the turnover of the 40 undertaking in the financial year ending in the 12 months prior to the conviction, or

- (ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely €250,000 or 10 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 5 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment. 5
- (8) The competent authority may publish, on a website maintained by it or on its behalf, guidance as to applications for leniency including the procedures applicable to and appropriate scales for decisions by a competent authority to grant immunity from administrative sanctions to or to reduce administrative financial sanctions on undertakings that cooperate with the investigation of a competent authority in respect of any infringement of relevant competition law. 10
- (9) The relevant Minister may make regulations setting out further details or conditions for the grant of leniency from administrative financial sanction. 15

**Form of leniency statements**

- 15AL.** (1) An undertaking may apply for leniency by submitting to the competent authority, whether orally or in writing, a statement (in this Part referred to as a ‘leniency statement’) describing the role the applicant had in, and knowledge the applicant had regarding, a cartel. 20
- (2) The precise form of applications for leniency shall be set out in guidelines published by the competent authorities, on a website maintained by them or on their behalf. 25
- (3) A leniency statement, whether or not it has been withdrawn, shall not be admissible in evidence in proceedings other than those brought under this Act save in accordance with section 15AN.

**Markers for applications for leniency from administrative financial sanctions**

- 15AM.** (1) Protection (in this section referred to as a ‘marker’) may be afforded to an applicant for leniency under section 15AI or 15AJ by, and at the discretion of, the competent authority for a specified period whereby the applicant is given time to gather necessary information and evidence in order to meet the relevant evidential threshold for leniency, in consequence of which the applicant retains his or her place in the queue of applicants for leniency determined by valid chronological application. 30
- (2) (a) An undertaking that intends to make an application for immunity may apply to a competent authority for a marker. 35
- (b) To be eligible to secure a marker, either when the application for a marker is made or within a period granted by the competent authority upon request of the applicant (which period may be extended by the competent authority), the applicant shall provide the competent authority with its name and address, the information referred to in section 15AK(1)(b)(i), an outline of the facts which 40

led to the application for a marker, and any other information reasonably required by the competent authority.

- (c) Any information and evidence provided by the applicant within the period specified in accordance with paragraph (b) is deemed to have been submitted at the time of the initial request. 5
- (3) The competent authorities shall, jointly or separately, publish, on a website maintained by them or on their behalf, guidance on the procedures which shall apply to applications for markers.
- (4) Where the competent authority refuses to grant a marker, and where immunity from administrative financial sanctions is refused and an administrative financial sanction is imposed, the applicant may later rely on the contents of its application for leniency in an appeal under section 15AY and the contents of any such application shall be provided to the High Court on any application under section 15AZ. 10
- (5) For the avoidance of doubt, an undertaking wishing to make an application for the reduction of administrative financial sanctions under section 15AJ may also apply to the competent authority for a marker. 15

#### **Summary applications for leniency**

- 15AN.** (1) A competent authority shall accept summary applications for leniency (in this section referred to as a ‘summary application’) from applicants that have applied to the European Commission for leniency, either by applying for a marker or by submitting a full application in relation to the same alleged cartel. 20
- (2) A summary application shall only be accepted by a competent authority provided that the application to the European Commission covers more than 3 member states as affected territories. 25
  - (3) With a view to enabling the competent authority to determine an application for leniency, a summary application shall consist of a short description of each of the following: 30
    - (a) the name and address of the applicant;
    - (b) the names of other parties to the alleged cartel;
    - (c) the affected products and territories;
    - (d) the duration and the nature of the alleged cartel conduct;
    - (e) the Member States in which the evidence of the alleged cartel is likely to be located; 35
    - (f) information on any past or possible future leniency applications made to any other competition authorities or competition authorities of third countries in relation to the alleged cartel.
  - (4) A summary application shall be accompanied by a copy of the application made to the European Commission and any written confirmation of same received. 40

(5) The relevant Minister may prescribe rules and procedures governing summary applications for leniency, including procedures and decisions concerning upgrading summary applications to full applications, and guidelines for the exercise of the discretion of the competent authority under this section, and any such regulations shall address the following matters:	5
(a) the precise form of summary applications for leniency;	
(b) the grant of summary application markers;	
(c) the process for verifying whether another application or other applications has or have been received in relation to the same cartel and for informing an applicant that it is the first applicant for a marker;	10
(d) consultation between the competent authority and the European Commission in connection with summary applications for leniency;	
(e) the power of the competent authority to request further information in the context of summary applications for leniency;	15
(f) the power of the competent authority to give directions to undertakings concerning submissions, the provision of information and related matters in the context of summary applications for leniency;	20
(g) the circumstances in which the competent authority may direct that a summary applicant for leniency may be required to submit a full application and the power of the competent authority to give directions in that regard.	
<b>Relationship between applications for immunity from administrative financial sanctions and sanctions on natural persons</b>	25
<b>15AO.</b> (1) Where the conditions in subsection (2) are met, the following individuals are fully protected from any sanctions that may be imposed in administrative and non-criminal judicial proceedings, in relation to their involvement in the cartel covered by an application for immunity from administrative financial sanctions for infringements of relevant competition law:	30
(a) current and former directors of the undertaking concerned;	
(b) managers of the undertaking concerned;	
(c) other members of staff of the undertaking concerned.	35
(2) The conditions referred to in subsection (1) are as follows:	
(a) that the application for immunity from administrative financial sanctions of the undertaking to the relevant competent authority fulfils the requirements in accordance with paragraphs (a) and (b) of section 15AI(5);	40

- (b) that the individuals referred to in paragraphs (a), (b) and (c) of subsection (1) actively cooperate in this respect with the competent authority concerned;
- (c) that the application for immunity from administrative financial sanctions of the undertaking predates the time when the individuals referred to in paragraphs (a), (b) and (c) of subsection (1) were made aware by the competent authority of the proceedings leading to the imposition of sanctions referred to in subsection (1). 5
- (3) The individuals referred to in paragraphs (a), (b) and (c) of subsection (1) shall not be subject to criminal prosecution in relation to their involvement in the cartel covered by the application for immunity from administrative financial sanctions, for infringements of sections 4 or 5, if they meet the conditions set out in guidelines made under subsection (4) and actively cooperate with the competent prosecuting authority. 10 15
- (4) The competent prosecuting authority or the competent authority, as the case may be, may publish guidelines on the cooperation of individuals with the relevant authorities required under this section.
- (5) Where the condition of cooperation with the competent authority, in accordance with subsection (3), is not fulfilled, the competent prosecuting authority may proceed with the investigation, including prosecution of the individual or individuals concerned. 20
- (6) Where the competent authority has opened an investigation into a cartel following a leniency application received under this Part, and a competition authority or prosecuting authority of another member state is also seised in its jurisdiction of any aspect of the same cartel, the competent authority shall ensure contacts between its authorised officers and the competition authority or prosecuting authority of the other Member State. 25
- (7) The competent authorities may publish, on a website maintained by them or on their behalf, guidance as to the procedures applicable to and appropriate scales for decisions by a competent authority in respect of the operation of immunity from administrative financial sanctions in circumstances where another Member State is investigating in its jurisdiction any aspect of the same cartel. 30 35

**Leniency programme for other infringements**

**15AP.** (1) The competent authority may put in place a leniency programme for infringements of relevant competition law other than cartels.

- (2)(a) The relevant Minister may prescribe the applicable procedures, conditions, appropriate scales, and factors relevant to decisions by a competent authority under subsection (1) to grant immunity from administrative sanctions to or to reduce administrative financial sanctions on undertakings. 40

- (b) The competent authority may publish, on a website maintained by it or on its behalf, guidance as to the matters set out at paragraph (a).

## PART 2F

### MUTUAL ASSISTANCE

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#### **Cooperation with other competition authorities**

- 15AQ.** (1) A competent authority may request a competition authority of another Member State to carry out an inspection, interview or other fact-finding measure on its behalf.
- (2) A competent authority may, on the request of a competition authority of another Member State, or the European Commission, (each of which is in this Part referred to as a ‘requesting competition authority’) carry out an inspection, interview or other fact-finding measure on behalf of the requesting competition authority pursuant to—
- (a) this Act,
  - (b) Article 22 of Regulation (EC) No 1/2003 of 16 December 2002<sup>5</sup> on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,
  - (c) section 11, 18, 37 or 37A of the Act of 2014,
  - (d) section 38A, 39 or 39A of the Act of 2002, or
  - (e) any other relevant power conferred by law on the competent authority.
- (3) The competent authority and the competition authority of another Member State may exchange and use in evidence any material, including confidential information, for the purpose of this section, subject to the following limitations:
- (a) information provided to the competent authority by the competition authority concerned pursuant to this section shall only be used in evidence for the purpose of applying Article 101 or Article 102 of the Treaty on the Functioning of the European Union and in connection with the subject-matter for which it was collected by the competition authority concerned, save that the information may also be used for the purpose of applying section 4 or 5 in the same proceedings;
  - (b) information provided to the competent authority by the competition authority concerned pursuant to this section may be used in evidence to impose sanctions on a natural person where—
    - (i) the law of the Member State providing the information provides for sanctions of a similar kind in relation to an infringement of

<sup>5</sup> OJ No. L 1, 4.1.2003, p. 1



Article 101 or Article 102 of the Treaty on the Functioning of the European Union, or

- (ii) the information has been collected in a way that affords the same level of protection of the rights of defence of natural persons as is provided for under the law of the State but, in these circumstances, the information provided to the competent authority may not be used in subsequent proceedings before the courts to impose custodial sanctions on a natural person. 5
- (4) (a) A competent authority may appoint as an authorised officer under section 35 of the Act of 2014 or section 39 of the Act of 2002 any person authorised to be so appointed by a national competition authority (within the meaning of the Directive). 10
- (b) To the extent to which a competent authority may confer any of its powers and functions under this Act, the Act of 2014 or the Act of 2002 on an authorised officer, it may so confer same upon an authorised officer appointed in accordance with this subsection. 15
  - (c) An authorised officer appointed under section 35 of the Act of 2014 or section 39 of the Act of 2002 in accordance with this subsection shall be accountable to the competent authority for the conduct of their duties in the same manner as an authorised officer not authorised or appointed by the competition authority of another Member State. 20
  - (d) The relevant Minister may provide by regulations, and (subject to any such regulations) the competent authorities may provide by rules and guidelines, for the appointment of authorised officers in accordance with this subsection. 25

#### **Requests for the notification of preliminary objections and other documents**

- 15AR.** (1) A competent authority may request a competition authority of another Member State to notify an undertaking or association of undertakings, on behalf of the competent authority, of— 30
- (a) any preliminary objections that the undertaking or association of undertakings has infringed relevant competition law, or any decisions made by an adjudication officer under section 15X that an infringement of relevant competition law has occurred or is occurring, 35
  - (b) any procedural act adopted in the context of enforcement proceedings which the undertaking or association of undertakings concerned is entitled to be notified of under the law of the State, and
  - (c) any relevant document, including documents which relate to the enforcement of decisions imposing administrative financial sanctions or periodic penalty payments, related to the application of relevant competition law insofar as the documents concern an 40

infringement by the undertaking or association of undertakings referred by the competent authority.

- (2) A competent authority shall, without undue delay following receipt of a request from a competition authority of another Member State and subject to section 15AT(16), notify an undertaking or association of undertakings, on behalf of the requesting competition authority, of— 5
- (a) any complaint that the undertaking or association of undertakings has infringed Article 101 or Article 102 of the Treaty on the Functioning of the European Union or any decisions made by the referring competition authority that an infringement of Article 101 or Article 102 of the Treaty on the Functioning of the European Union has taken place, 10
- (b) any procedural act adopted in the context of enforcement proceedings of which the undertaking or association of undertakings concerned would be entitled to be notified under the law of the State, 15
- (c) any relevant document, including documents which relate to the enforcement of decisions imposing administrative fines or periodic penalty payments, related to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union insofar as the documents concern an infringement by the undertaking or association of undertakings which has been referred by the referring competition authority. 20
- (3) This section is without prejudice to any other form of notification made by a requesting competition authority in accordance with the law applicable in the Member State concerned. 25

**Requests for the enforcement of decisions imposing administrative financial sanctions or periodic penalty payments**

- 15AS.** (1) A competent authority may request a competition authority of another Member State to enforce a decision of an adjudication officer under section 15X which has become final. 30
- (2) A competent authority shall, without undue delay following receipt of a request of a competition authority in another Member State, take steps to enforce a final decision of that authority imposing administrative fines or periodic penalty payments adopted in accordance with Article 13 or 16 of the Directive. 35
- (3) Subsection (2) shall apply only to the extent that the requesting competition authority has made reasonable efforts to ascertain that the undertaking or association of undertakings against which the administrative fine or periodic penalty payment is enforceable does not have sufficient assets in the Member State of the requesting competition authority to enable recovery of such administrative fine or periodic penalty. 40

- (4) In circumstances other than those set out in subsections (2) and (3) a competent authority may, subject to a request from a requesting competition authority, take steps to enforce a decision of that requesting competition authority to impose administrative fines or periodic penalty payments adopted in accordance with Articles 13 or 16 of the Directive including in circumstances where the undertaking or association of undertakings subject to such decision is not established in the Member State of the requesting competition authority. 5
- (5) Section 15AT(3)(e) shall not apply to a request under subsection (4). 10
- (6) Subsections (2) and (4) shall apply only to decisions of the requesting competition authority that are not, or are no longer, capable of being appealed.
- (7) (a) A competent authority to which a request has been made under subsection (2) or (4) shall, subject to section 15AT(16), on notice to the undertaking or undertakings concerned, apply to the High Court for confirmation that the competent authority may execute that request. 15
- (b) Section 15AZ shall apply, *mutatis mutandis*, to an application for confirmation under this subsection, save that— 20
- (i) subsections (3), (4) and (8) of that section shall not apply, and subsection (8) of this section shall apply, and
- (ii) subsection (7) of that section shall not apply, and the Court shall make no order as to costs.
- (c) Rules of court may make provision for applications for confirmation under this section, and for the expeditious hearing thereof and any such rules shall be in accordance with the procedure set out in section 15AZ. 25
- (8) In an application under subsection (7) for confirmation that a competent authority may execute a request to enforce the decision of a competition authority of another Member State, the High Court shall confirm that the competent authority may execute the decision unless— 30
- (a) it considers that the request does not comply with the requirements of section 15AT, or 35
- (b) the execution of the request would be manifestly contrary to the public policy of the State.
- (9) Applications for the enforcement of a decision of a competition authority of another Member State under subsections (2) and (4) shall be made within a period of 6 years from the date of the decision sought to be enforced. 40

## General principles of cooperation

- 15AT.** (1) The requests referred to in sections 15AR and 15AS shall be executed by means of a notice which shall be accompanied by a copy of the preliminary objections, procedural act or other act, or a copy of the decision imposing administrative financial sanctions or periodic penalty payments to be notified or enforced, as the case may be. 5
- (2) The notice referred to in subsection (1) shall indicate:
- (a) the name and known address of the undertaking or association of undertakings concerned, and any other relevant information for the identification of the undertaking or association of undertakings concerned; 10
  - (b) a summary of the relevant facts and circumstances;
  - (c) a summary of the attached copy of the preliminary objections, procedural act or other act, or the attached copy of the decision imposing administrative fines or periodic penalty payments to be notified or enforced; 15
  - (d) the name, address and other contact details of the competent authority or of the requesting competition authority;
  - (e) the period within which notification or enforcement should be effected, such as statutory deadlines or limitation periods. 20
- (3) A request under section 15AS shall, in addition to the requirements set out in subsection (2), provide the following:
- (a) information about the decision permitting enforcement in the Member State of the requesting competition authority;
  - (b) the date when the decision became final; 25
  - (c) in the case of an administrative financial sanction imposed by a competent authority, the amount of the administrative financial sanction;
  - (d) in the case of an administrative fine imposed by the requesting competition authority, the amount of the administrative fine; 30
  - (e) the amount of the periodic penalty payment;
  - (f) information showing the reasonable efforts made by the requesting competition authority to enforce the decision in its own territory.
- (4) The competent authority shall take all necessary measures for the execution of the request under this section, subject to subsection (16) and section 15AS(8). 35
- (5) The notice referred to in subsection (1) shall be in one of the official languages of the State, unless the competent authority and the requesting competition authority agree on a case-by-case basis that it may be in another official language of the European Union. 40

- (6) When required by the competent authority, the requesting competition authority shall provide a translation of the matter to be notified or the decision permitting enforcement of the administrative fine or periodic penalty payment into one of the official languages of the State.
- (7) Subsection (6) is without prejudice to the right of the competent authority and the requesting competition authority to agree, on a case-by-case basis that such translation may be provided in another official language of the European Union. 5
- (8) Where the High Court, on an application for confirmation under section 15AS(7), declines to confirm a decision of a requesting competition authority in accordance with section 15AS(8), the competent authority shall notify the requesting competition authority of that decision. 10
- (9) The Court may, on an application for confirmation under section 15AS(7), direct the competent authority to request additional information from the requesting competition authority. 15
- (10) (a) The competent authority may request the reimbursement by the requesting competition authority of all reasonable additional costs in full, including translation, labour and administrative costs, that the competent authority has incurred in responding to requests made to the competent authority under section 15AQ(2) or 15AR(2). 20
- (b) The competent authority shall, where requested to do so by the competition authority to whom the competent authority has made a request under section 15AQ(1) or 15AR(1), reimburse all reasonable additional costs in full, including translation, labour and administrative costs, incurred by that competition authority in relation to that request. 25
- (11) The competent authority may recover the full costs that it has incurred in relation to actions taken to enforce a decision of a requesting competition authority under section 15AS from the administrative fines or periodic penalty payments it has collected on behalf of such requesting competition authority, including translation, labour and administrative costs. 30
- (12) Where, having taken steps to enforce a decision of a requesting competition authority in accordance with section 15AS, the competent authority is unsuccessful in collecting the administrative fines or periodic penalty payments on behalf of such requesting competition authority, the competent authority may request the requesting competition authority to bear the costs that the competent authority has incurred in doing so. 35  
40
- (13) (a) The competent authority may recover the costs incurred in relation to the enforcement of a decision under section 15AS from the undertaking or association of undertakings against which the administrative fine or periodic penalty payment is enforceable. 45

- (b) (i) Where the competent authority fails, within a reasonable period, to recover the costs incurred in relation to the enforcement of a decision under section 15AS from the undertaking or association of undertakings against which the administrative fine or periodic payment is enforceable, the competent authority may initiate proceedings for recovery of same. 5
- (ii) The High Court shall determine the costs of any such proceeding.
- (14) The competent authority shall recover the amounts referred to in this section in euro. 10
- (15) The competent authority shall, if necessary, convert the administrative fines or periodic penalty payments referred to in this section into euro at the rate of exchange applying on the date on which the administrative fines or periodic penalty payments were imposed.
- (16) The competent authority may not give effect to a request under section 15AR where— 15
  - (a) it considers that the request does not comply with the requirements of this section, or
  - (b) the execution of the request would be manifestly contrary to the public policy of the State. 20

**Disputes concerning requests for notification or enforcement of decisions imposing administrative fines or periodic penalty payments**

**15AU.** (1) Disputes set out in subsection (2)—

- (a) shall not be subject to the jurisdiction of the courts of the State, and
- (b) where they are the subject of proceedings in the State, shall be resolved by application of the law of the Member State of the requesting competition authority. 25
- (2) The disputes referred to in subsection (1) are those exclusively concerning one or more of the following:
  - (a) the lawfulness of an act to be notified in accordance with section 15AR; 30
  - (b) the lawfulness of a decision to be enforced in accordance with section 15AS;
  - (c) the lawfulness of the notice requesting enforcement in the State;
  - (d) limitation periods for the enforcement of administrative fines or periodic payments referred to in subsection (9) of section 15AS. 35
- (3) A dispute concerning the enforcement measures taken in the State or concerning the validity of a notification made by the competent authority shall fall within the jurisdiction of the High Court and shall be governed by the law of the State. 40

PART 2G

PROCEDURAL PROVISIONS

**Access to file by parties and limitations on the use of information**

- 15AV.** (1) Where a competent authority or authorised officer requires a natural person to provide a statement or admission on the basis of measures referred to in applicable provisions, any such statement or admission may not be admissible in evidence against that person in criminal proceedings other than criminal proceedings for an offence under section 18(4)(c), 37A or 35(8)(c) of the Act of 2014 or for perjury where such statement or admission was provided under oath. 5 10
- (2) Subject to subsection (3), and save in accordance with law, an adjudication officer, an authorised officer, a competent authority and its respective servants or agents shall not disclose to any person—
- (a) any confidential information obtained by virtue of the exercise of powers conferred by or under this Act, or 15
- (b) any information obtained by virtue of the exercise of powers conferred by or under Part 2D or section 18 of the Act of 2014 in relation to an investigation under section 10(1)(c) of that Act where that information was given under power of compulsion.
- (3) Notwithstanding subsection (2) an adjudication officer, a competent authority and its servants or agents may disclose information obtained by virtue of the exercise of powers conferred by or under this Act where such disclosure is— 20
- (a) permitted by section 15AX,
- (b) otherwise permitted by law, or 25
- (c) duly authorised by the competent authority or an adjudication officer in the performance of his or her functions.
- (4) Information provided to any person pursuant to subsection (3) may contain such redactions as an adjudication officer or a competent authority may consider necessary and appropriate— 30
- (a) to protect commercial confidentiality,
- (b) to protect the rights of the parties or any other person, or
- (c) for any other good and sufficient reason.
- (5) A person who contravenes subsection (2) commits an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both. 35
- (6) Access to a leniency statement or a settlement submission shall only be granted by the competent authority to an undertaking or association of undertakings subject to proceedings under Part 2D or 2E or any subsequent proceeding under Part 2H. 40

- (7) Access to a leniency statement or a settlement submission shall only be granted to the undertaking or association of undertakings concerned for the purpose of defending proceedings before the competent authority under Part 2D or 2E or in any subsequent proceeding under Part 2H. 5
- (8) Where an undertaking or association of undertakings has been given access to a leniency statement or a settlement submission for the purposes of exercising its right of defence under subsection (7), the undertaking or association of undertakings concerned shall be deemed to have given an undertaking that any such information to which it has been given access shall only be used in proceedings that are directly related to those in which access has been granted, and shall not be retained, stored or otherwise kept following the end of those proceedings or any subsequent proceeding under Part 2H. 10
- (9) Subsection (6) shall only apply where the proceedings concern— 15
- (a) the allocation between cartel participants of an administrative financial sanction imposed jointly and severally on them in proceedings under this Act, or
  - (b) the review, under Part 2H, of a decision by which an infringement of relevant competition law was found by the competent authority. 20
- (10) The following categories of information obtained by a party during investigations by a competent authority under this Act, or administrative sanctions proceedings before an adjudication officer under this Act, shall not be used by that party in proceedings before a court prior to the competent authority or an adjudication officer, as the case may be, having closed such proceedings with respect to all parties under investigation, whether by making a decision under section 15X or 15AE: 25
- (a) information that was prepared by persons specifically for investigations by the competent authority or administrative sanctions proceedings before an adjudication officer; 30
  - (b) information that the competent authority or an adjudication officer has drawn up and sent to the parties in the course of an investigation or administrative financial sanctions proceedings;
  - (c) settlement submissions that have been withdrawn. 35
- (11) A leniency statement shall only be exchanged between a competent authority and the competition authority of another Member State or the European Commission pursuant to Article 12 of Regulation (EC) No 1/2003<sup>6</sup>—
- (a) with the consent of the applicant (within the meaning of Part 2F), 40
  - (b) where the competition authority or the European Commission has also received a leniency application relating to the same

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infringement from the same applicant as the competent authority transmitting the leniency statement, or

- (c) subject to subsection (12), where the competent authority has also received a leniency statement relating to the same infringement from the same applicant as the European Commission or the competition authority transmitting the leniency statement. 5
- (12) Subsection (11)(c) shall only apply where, at the time the leniency statement is sent, it is not open to the applicant to withdraw the information which it has submitted to the national competition authority receiving the leniency statement. 10
- (13) The form in which the leniency statement is submitted under section 15AL shall not affect the application of subsections (5) to (11).
- (14) In this section, ‘applicable provisions’ means—
  - (a) sections 18, 37(2)(d)(ii) and 37A of the Act of 2014, and
  - (b) sections 38A, 39(3A) and (3B) and 39A of the Act of 2002. 15

**Admissibility of evidence before national competent authorities**

- 15AW.** (1) The types of proof that are admissible as evidence in proceedings under Parts 2C to 2F before a competent authority or an adjudication officer shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored, subject to the following conditions: 20
- (a) that the evidence referred to would have been admissible before a court were it before a court;
  - (b) that the evidence referred to was gathered in accordance with any procedural or other requirements concerning the gathering of evidence provided by law; 25
  - (c) that the evidence referred to came into existence before the commencement of the proceedings under this Act in which it is sought to tender it in evidence. 30
- (2) In estimating the weight, if any, to be attached to evidence admitted by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.
- (3) Where a type of proof is admitted in evidence by virtue of this section— 35
- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose, 40
  - (b) evidence may, with the leave of the adjudication officer seised of the proceedings, be given of any matter which, if that person had

been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and

- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself. 5
- (4) Nothing in this section shall prejudice the admissibility in any proceedings under this Act before a court or an adjudication officer of any document, as evidence of any matters stated in it— 10
  - (a) that is so admissible by virtue of any rule of law or other enactment, or
  - (b) in respect of adjudication officers, that would be admissible before a Court hearing civil proceedings by virtue of any rule of law or other enactment. 15

### **Confidentiality rings**

- 15AX.** (1) Where, in accordance with a provision to which this section applies, a competent authority provides, or otherwise makes available, a document to any person or undertaking, the competent authority may notify the person or undertaking concerned that such document, or such part of the document as it may specify, is provided subject to this section. 20
- (2) A document, or part of a document, provided subject to this section may not be viewed by, or shared with, any person other than one or more of the following, as the competent authority may specify: 25
    - (a) the person or undertaking to whom the document is provided or otherwise made available;
    - (b) a legal adviser, or other professional adviser, of the person or undertaking to whom the document is provided or otherwise made available; 30
    - (c) such other person as the competent authority may specify.
  - (3) This section applies to the following provisions: 35
    - (a) section 15L;
    - (b) Part 2E;
    - (c) Part 2F.
  - (4) A person who allows a document provided to the person subject to this section to be viewed by, or shared with, a person other than in accordance with this section shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both. 40

PART 2H

APPEALS, CONFIRMATIONS AND JUDICIAL REVIEW

**Appeal against certain decisions**

- 15AY.** (1) (a) (i) An undertaking or association of undertakings the subject of a decision under section 15X (including a decision on the basis of which an Article 16(1) periodic penalty payment is imposed) may appeal to the Court against that decision not later than 28 days after the undertaking or association of undertakings receives notice of such decision. 5
- (ii) A decision of an adjudication officer under section 15X shall not be questioned, including as to its validity, other than by way of an appeal under this section. 10
- (b) An undertaking or association of undertakings affected by, but not the subject of, a decision under section 15X may, not later than 14 days after that decision is published, apply to the Court for leave to appeal to the Court against that decision. 15
- (c) A notified undertaking may appeal to the Court against a prohibition notice not later than 7 days after the notified undertaking was served with the prohibition notice.
- (d) The respondent to an appeal under this section shall be the competent authority. 20
- (2) (a) On application, the Court may extend the period within which an appeal may be brought under subsection (1)(a) or (c), or within which an application for leave to appeal may be brought under subsection (1)(b), where it is satisfied that— 25
- (i) there is exceptional, good and sufficient reason for doing so,
- (ii) the circumstances that resulted in the failure to bring an appeal within the period provided for in subsection (1) were outside the control of the applicant for the extension, and
- (iii) if an application for confirmation has been brought under section 15AZ— 30
- (I) the Court has not heard the application for confirmation of the decision, and
- (II) the Court has not determined the application for confirmation of the decision, 35
- or
- (b) Where an application for confirmation has been brought pursuant to section 15AZ the Court may, upon application or of its own motion, stay the proceedings under section 15AZ.
- (c) (i) An application for leave under subsection (1)(b) shall be made by motion *ex parte* and shall be grounded in the manner 40

specified in an order of the Court in respect of an *ex parte* motion for leave.

- (ii) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the competent authority or the undertaking or association of undertakings concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis, and may adjourn the application on such terms as it may direct in order that a notice may be served on that person. 5 10
- (iii) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in the order in respect of an *ex parte* motion for leave) to any person specified for that purpose by order of the Court. 15
- (d) An undertaking or association of undertakings that appeals under subsection (1), or makes an application under subsection (14)—
  - (i) may include in such appeal or application, as the case may be, any ground that could, but for section 15AAA(2), be relied upon by the notified undertaking in an application seeking judicial review, and 20
  - (ii) shall, on the same date as it makes such appeal or application, as the case may be, notify the respondent of the fact that it has made the appeal or application, and of the grounds on which it has made the appeal or application. 25
- (e) The Court may—
  - (i) on the consent of all of the parties to an application for leave under subsection (1)(b) (including notice parties), or
  - (ii) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances, 30treat the application as if it were the hearing of the appeal and may for that purpose adjourn the hearing on such terms as it may direct.
- (f) The Court shall not grant leave under subsection (1)(b) unless it is satisfied that—
  - (i) there are substantial grounds for contending that the decision concerned is invalid or ought to be quashed, including any of the grounds of challenge that could be raised by the undertaking in judicial review proceedings, and 35
  - (ii) the applicant is materially affected by the decision or otherwise has a sufficient interest in the matter which is the subject of the application. 40

- (g) A sufficient interest for the purposes of paragraph (f)(ii) of this subsection is not limited to a financial interest.
- (h) If the Court grants leave to appeal under subsection (1)(b), no grounds shall be relied upon in the appeal under the order other than those determined by the Court to be substantial under paragraph (f)(i) of this subsection. 5
- (3) The Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, issue directions in respect of the conduct of the appeal.
- (4) An appellant shall, when making an appeal or an application for leave to appeal, precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which he or she intends to rely to support those grounds. 10
- (5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the Court all of the documents and evidence upon which he or she intends to rely to support those grounds. 15
- (6) Subject to subsection (7), a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated, or documents and evidence provided, under subsections (4) and (5). 20
- (7) (a) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to— 25
  - (i) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under subsections (4) and (5), and
  - (ii) provide documents or evidence to the Court other than documents or evidence provided under subsections (4) and (5), 30
- (b) The Court shall refuse to consider submissions, documents or evidence where—
  - (i) the submissions, documents or evidence are not relevant to the appeal, or
  - (ii) it is considered appropriate so as to avoid undue repetition of submissions. 35
- (c) Where the Court has granted leave to deliver additional submissions, documents or evidence in an application under paragraph (a), the Court shall give directions as to the scope, form and timeframe for delivery of such additional submissions, documents or evidence. 40

- (d) The Court may receive such evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
- (8) The Court, on hearing an appeal under subsection (1), may consider—
  - (a) whether the decision made is supported by the evidence including evidence admitted in accordance with subsections (7) and (9), 5
  - (b) whether the law was correctly applied in reaching the decision,
  - (c) whether an appropriate and proportionate sanction or prohibition notice was imposed, and
  - (d) whether the jurisdiction existed to make the decision against which an appeal has been brought. 10
- (9) (a) In considering an appeal, the Court—
  - (i) shall have regard to the record of the decision the subject of the appeal, and
  - (ii) shall have regard to any submissions, documents or evidence admitted under subsection (7). 15
- (b) The Court may draw inferences of fact in accordance with law.
- (10) The Court may, on the hearing of an appeal under subsection (1)—
  - (a) confirm the decision or prohibition notice the subject of the appeal, or 20
  - (b) where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures— 25
    - (i) annul the decision in its totality or in part, and—
      - (I) remit the decision for reconsideration by the adjudication officer or competent authority as the case may be, subject to such directions as the Court considers appropriate and, in the case of a decision by an adjudication officer, including whether the decision should be reconsidered by another adjudication officer, or 30
      - (II) vary the decision and substitute such other decision as the Court considers appropriate,
    - and 35
    - (ii) direct how the costs of the appeal or the application for leave to appeal are to be borne.
- (11) The Court shall, in determining an appeal or an application for leave to appeal under subsection (1) act as expeditiously as possible consistent

with the administration of justice, and shall have particular regard to the need for expedition in appeals under subsection (1)(c).

- (12) Rules of court may make provision for the conduct of appeals under this section including—
- (a) for the expeditious hearing thereof, 5
  - (b) for the procedures concerning the hearing of appeals and applications for leave to appeal,
  - (c) for the manner in which the issues on any such appeal or application for leave to appeal may be pleaded and evidence adduced in connection therewith, and 10
  - (d) for expedited hearings of appeals in respect of the imposition of a prohibition notice, or the imposition of a periodic penalty payment under section 15X.
- (13) The making of an appeal under subsection (1)(c), or an application for leave to appeal under subsection (1)(b), does not suspend the effect of the decision to which the appeal relates unless the Court, on application by the undertaking bringing the appeal, places a stay on the decision. 15
- (14) Where an appeal is made under subsection (1)(c)—
- (a) the appellant may apply to the Court to have the effect of the prohibition notice suspended until such time as the appeal is determined, and 20
  - (b) the Court may, if it considers it appropriate to do so having regard to all the circumstances, order that the effect of the prohibition notice, or such particular effects as the Court may order, be suspended until the appeal is determined, or until such other time as the Court may order. 25
- (15) Where the Court confirms, or substitutes its own decision for, the decision of an adjudication officer imposing an administrative financial sanction or periodic penalty payment, the Court may set a time limit for the payment of the administrative financial sanction or periodic penalty payment concerned. 30
- (16) The Court may award the costs of an appeal in accordance with subsection (9) of section 15X.
- (17) In this section, ‘Court’ means the High Court. 35

#### **Court confirmation of decision on certain administrative sanctions**

- 15AZ.**(1) (a) Where an undertaking or association of undertakings does not, within the period provided for in section 15AY(1)(a), appeal to the Court against a decision under section 15X imposing an administrative financial sanction, an Article 16(2) periodic penalty payment, a hearing requirement periodic penalty payment or structural or behavioural remedies, the competent authority shall, 40

as soon as practicable after the expiration of the period allowed for an appeal under section 15AY(1)(a), make an application to the Court for the confirmation of that decision.

- (b) (i) At any time prior to making an application under paragraph (a), the competent authority shall seek the consent in writing of the undertaking or association of undertakings to the confirmation of the decision of the adjudication officer. 5
- (ii) Where an undertaking or association of undertakings consents in writing to the imposition of the decision of an adjudication officer, the application under paragraph (a) (or any remaining steps in such application) may be made *ex parte*. 10
- (2) (a) An application by the competent authority under subsection (1) shall include the decision under section 15X together with the documents and evidence before the adjudication officer which are referred to in that decision, and may include any other documents and evidence which were before the adjudication officer. 15
- (b) Notice of an application under subsection (1) shall be served by the competent authority on the undertaking or association of undertakings the subject of a decision under section 15X within 7 days of the competent authority lodging the application in Court. 20
- (c) The notice referred to in paragraph (b) shall specify the time fixed by the Court for the hearing of the application, and shall enclose copies of all the papers lodged in Court in relation to the application under subsection (1).
- (3) The Court shall, on the hearing of an application under subsection (1), confirm the decision the subject of the application unless the Court, on the basis of the findings of fact in the decision of the adjudication officer (which are to be accepted as final by the Court), determines that— 25
- (a) the decision of the adjudication officer contains an error of law which is— 30
- (i) manifest from the record of the decision, and
- (ii) fundamental so as to deprive the decision of its basis,
- or
- (b) the sanction or remedy imposed was manifestly— 35
- (i) disproportionate,
- (ii) in excess of the sanction or remedy required to be dissuasive, or
- (iii) in excess of the sanction or remedy required to be effective.
- (4) The Court—
- (a) where it makes a determination referred to in subsection (3)(a), or a determination under subsection (3)(a) and (b), in relation to an 40



application under subsection (1), shall remit the matter for reconsideration by an adjudication officer, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not—

(i) the adjudication officer should be limited to reconsidering a specific aspect of a decision made under section 15X, and 5

(ii) the matter should be reconsidered by another adjudication officer,

or

(b) where it makes a determination referred to in subsection (3)(b), but not a determination referred to in subsection (3)(a), in relation to an application under subsection (1), may— 10

(i) order that a lower amount shall be substituted for the amount of the periodic penalty payment or administrative financial sanction specified in the decision, and confirm the decision subject to such substitution, and 15

(ii) where the Court does not make an order referred to in subparagraph (i) and considers that the interests of justice so require, remit the matter for reconsideration by an adjudication officer, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not— 20

(I) the adjudication officer should be limited to reconsidering a specific aspect of a decision made under section 15X, and

(II) as to whether or not the matter should be reconsidered by another adjudication officer. 25

(5) The Court shall hear the application under subsection (1) on the evidence before the adjudication officer.

(6) The Court shall, in determining an application under subsection (1), act as expeditiously as possible consistent with the administration of justice. 30

(7) (a) The Court may direct how the costs of an application under this section are to be borne.

(b) Without prejudice to the application by the Court of costs rules under other enactments (including the Rules of the Superior Courts), the Court may in its discretion award the costs of an application under this section as if section 15X(9) applied to an award of costs under this section. 35

(8) A decision made under section 15X imposing an administrative financial sanction, an Article 16(2) periodic penalty payment or structural or behavioural remedies in accordance with section 15Z shall not have effect until the later of— 40

- (a) where the Court does not grant leave to appeal to the Court of Appeal under section 15AAB—
  - (i) where an appeal is not brought within the time for appealing against that decision under section 15AY, the date on which the Court makes an order under this section confirming the decision, or 5
  - (ii) where an appeal under section 15AY has been brought, the date on which the Court confirms the decision in accordance with subsection (10) of that section, 10
- or 10
- (b) where the Court grants leave to appeal to the Court of Appeal under section 15AAB—
  - (i) the date on which any appeal to the Court of Appeal under section 15AAB and further appeal in relation to the decision has been decided, or has otherwise ended, without the decision being overturned, annulled or otherwise prevented from coming into effect by order of the Court of Appeal, or 15
  - (ii) the date on which the time for appealing against the result of the appeal under section 15AAB has expired without an appeal having been brought. 20
- (9) Rules of court may make provision for the conduct of applications for confirmation under this section, and for the expeditious hearing thereof.
- (10) Where the Court confirms, or substitutes its own decision for, the decision of an adjudication officer imposing an administrative financial sanction or an Article 16(2) periodic penalty payment the Court may set a time limit for the payment of the administrative financial sanction or Article 16(2) periodic penalty payment concerned. 25
- (11) In this section, ‘Court’ means the High Court. 30

**Judicial review**

- 15AAA.** (1) (a) An adjudication officer may, on her or his own initiative or at the request of the competent authority or an undertaking or association of undertakings the subject of a referral under section 15M, refer to the Court for decision by way of case-stated a question of law arising at a hearing on a referral under section 15M. 35
- (b) Where a question has been referred under subsection (1), the adjudication officer shall not, in relation to a referral under section 15M to which the hearing relates—
    - (i) make a decision under section 15X to which the question is relevant while the reference to the Court is pending, or 40

- (ii) proceed in a manner, or make a decision under section 15X, that is inconsistent with the Court’s opinion on the question.
- (c) Where a question is referred to the Court under subsection (1)—
  - (i) the adjudication officer shall send to the Court all documents before the adjudication officer that are relevant to the matter in question, and 5
  - (ii) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the adjudication officer.
- (2) The validity of a decision made or an act done by a competent authority (including an authorised officer and an adjudication officer) in the performance of a function under Parts 2C to 2G (whether such function is performed by way of powers conferred by or under this Act, the Act of 2014 or the Act of 2002) shall not be questioned other than— 10
  - (a) by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as ‘Order 84’), and in accordance with this section, or 15
  - (b) in accordance with a process provided for in this Act, the Act of 2002 or the Act of 2014 by which the validity of such decision or act may be questioned. 20
- (3) At any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (2) applies and which relates to a matter for the time being before the competent authority (including a matter before an adjudication officer), the competent authority may apply to the Court to stay the proceedings pending the making of a decision by the competent authority (including a decision by an adjudication officer) in relation to the matter concerned. 25
- (4) On the making of such an application, the Court may, where it considers that the matter before the competent authority (including an adjudication officer and an authorised officer) is within the jurisdiction of the competent authority (including an adjudication officer and an authorised officer), make an order staying the proceedings concerned on such terms as it thinks fit. 30 35
- (5) Subject to subsection (6), an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which subsection (2) applies shall be made—
  - (a) in respect of decisions or other acts under Parts 2C, 2D and 2G, not later than 28 days, or 40
  - (b) in respect of decisions or other acts under Parts 2E and 2F, not later than 8 weeks,

from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the undertaking or person became aware of the decision or act.

- (6) The Court may extend the period provided for in subsection (5) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that— 5
- (a) there is good and sufficient reason for doing so, and
  - (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension. 10
- (7) References in this section to Order 84 shall be construed as including references to Order 84 as amended or replaced (with or without modification) by rules of court.
- (8) (a) An application for leave under this section shall be made by motion *ex parte* and shall be grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave. 15
- (b) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the competent authority or the undertaking or association of undertakings concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person. 20 25
  - (c) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave)—
    - (i) if the application relates to a decision made or other act done by a competent authority (including an adjudication officer and an authorised officer) in the performance or purported performance of a function under this Act, the Act of 2002 or the Act of 2014, to the competent authority (including an adjudication officer and an authorised officer) concerned, and 30 35
    - (ii) to any other person specified for that purpose by order of the Court.
- (9) The Court may—
- (a) on the consent of all of the parties, or
  - (b) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances, 40

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.

- (10) The Court shall not grant leave under this section unless it is satisfied that— 5
- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed,
  - (b) the applicant is materially affected by or has a sufficient interest in the matter which is the subject of the application, and
  - (c) the matter does not relate to a decision by an adjudication officer under section 15X. 10
- (11) If the Court grants leave under this section, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the Court to be substantial under subsection (10) (a). 15
- (12) The Court may, as a condition for granting leave under this section, require the applicant for such leave to give an undertaking as to damages.
- (13) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which subsection (2) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate. 20 25
- (14) The Court shall, in determining an application under this section or an application for judicial review on foot of such leave—
- (a) act as expeditiously as possible consistent with the administration of justice, and 30
  - (b) give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.
- (15) Rules of court may make provision for the expeditious hearing of references to the Court by adjudication officers under subsection (1), for applications for leave under this section and applications for judicial review on foot of such leave. 35
- (16) In this section, ‘Court’ means the High Court.

### **Appeals to the Court of Appeal**

- 15AAB.** (1) An appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an appeal under section 15AY in respect of a decision by an adjudication officer under section 15X. 40

- (2) The determination of the High Court on—
- (a) an appeal under section 15AY against a prohibition notice,
  - (b) an application for confirmation under section 15AZ,
  - (c) an application for confirmation under section 15AS(7),
  - (d) an application for judicial review of any other decision made or act done under this Act by the competent authority (including decisions made or acts done under this Act by an authorised officer or by an adjudication officer), or 5
  - (e) a reference to the Court by way of case-stated by an adjudication officer under section 15AAA(1), 10
- shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any such case save with leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal. 15
- (3) In respect of an application for confirmation under section 15AZ, where the point of law which would otherwise be certified is a point that could have been brought by way of an appeal under section 15AY, the High Court may only in exceptional circumstances grant leave to appeal to the Court of Appeal under subsection (2). 20
- (4) (a) Subsection (2) shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the Constitution.
- (b) Nothing in subsection (2) shall be construed as preventing or restricting a competent authority from bringing an appeal to the Court of Appeal against a refusal of the High Court to grant prior authorisation of an inspection under section 37 of the Act of 2014 or section 39 of the Act of 2002. 25
- (5) On an appeal from a determination of the High Court to which subsection (2) applies, the Court of Appeal shall— 30
- (a) have jurisdiction to determine only the point of law certified by the High Court under subsection (2) (and to make only such order in the proceedings as follows from such determination), and
  - (b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice. 35
- (6) Nothing in this section shall affect the jurisdiction of the Supreme Court.
- (7) Except in the case of an appeal against the imposition, or the amount, of an administrative financial sanction, the making of an appeal under this section does not suspend the effect of the decision to which the 40

appeal relates unless a court so directs (including upon an application under section 15AY(14)).

- (8) Rules of court may make provision for the expeditious hearing of appeals under this section to the Court of Appeal and otherwise under this Act to the Supreme Court. 5

### **Conduct of proceedings**

**15AAC.** The whole or part of any court proceedings under this part and of any appeal against any order of court may be heard otherwise than in public if the court seised of the proceedings or appeal, in the interests of justice, considers that it would be appropriate in the circumstances to hold the hearing or part of the hearing otherwise than in public. 10

### **Treatment of amounts paid in respect of administrative financial sanctions**

**15AAD.** A payment received by the competent authority of any amount due to it pursuant to a decision confirmed or replaced under section 15AY or confirmed under section 15AZ or pursuant to a decision under section 15X in respect of periodic penalty payments shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct. 15

### **Recovery of amounts of administrative financial sanctions and periodic penalty payments due**

**15AAE.** The competent authority may recover as a simple contract debt in any court of competent jurisdiction, any administrative financial sanction or periodic penalty payment imposed under this Act.”. 20

## **PART 3**

### **MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT**

25

#### **Amendment of section 18 of Principal Act**

**13.** Section 18 of the Principal Act is amended—

- (a) by the insertion of the following subsections after subsection (3):

“(3A) Any of the undertakings involved in a merger or acquisition that—

(a) is not required to be notified under subsection (1), and 30

(b) was not notified under subsection (3),

may notify the Commission in writing of the merger or acquisition after it has been put into effect, and provide full details of the merger or acquisition concerned.

(3B) The Commission may review any notification made to it under subsection (3) or (3A) and may, in relation to such notification, take interim measures.”, 35

and

(b) in subsection (2)(c)—

(i) by the substitution of the following subparagraph for subparagraph (i):

“(i) subparagraphs (i) and (ii) of subsection (1)(a), in their application to the part of an undertaking mentioned in section 16(1)(c), shall apply as if the references to turnover in the State were, in relation to that part of an undertaking, references to turnover in the State generated from the assets of that part of an undertaking that are the subject of the acquisition mentioned in section 16(1)(c),”

and

(ii) by the substitution of the following subparagraph for subparagraph (ii):

“(ii) notwithstanding paragraph (b), that part of an undertaking mentioned in section 16(1)(c) shall, for the purposes of paragraph (a) or (b) of subsection (1) but not so as to place on it an obligation to notify the Commission of the proposal to put the merger or acquisition into effect, be deemed to be involved in the merger or acquisition.”

(c) in subsection (9), by the substitution of “subsection (1), section 18A(1) or section 20(2) an undertaking, the person in control of an undertaking, or (in the case of section 20(2)) other person” for “subsection (1) or section 20(2) an undertaking, or the person in control of an undertaking”, and

(d) by the insertion of the following subsection after subsection (14):

“(15) Summary proceedings in relation to an offence under subsection (9) may be brought by the Commission.”

#### **Insertion of sections 18A and 18B into Principal Act**

**14.** The Principal Act is amended by the insertion of the following sections after section 18:

##### **“Power to require notification of below threshold mergers or acquisitions**

**18A.** (1) This section applies to a merger or acquisition that—

- (a) is not required to be notified under section 18(1),
- (b) has not been notified to the Commission under section 18(3) or 18(3A), and
- (c) may, in the opinion of the Commission, have an effect on competition in markets for goods or services in the State.

(2) In relation to a merger or acquisition to which this section applies, the Commission may require, in accordance with subsection (3), each of the undertakings involved in the merger or acquisition to notify the Commission in writing, and provide full details, of the merger or acquisition and an undertaking of which such a requirement is made shall comply with the requirement.

(3) A requirement under subsection (2) shall—



- (a) be made by notice in writing served on each of the undertakings involved in the merger or acquisition,
- (b) specify a period within which the undertakings involved in the merger or acquisition shall submit a notification to the Commission, and 5
- (c) be made by the Commission no later than 60 working days after the earliest of the following dates:
  - (i) the date on which one of the undertakings involved in the merger or acquisition publicly announces an intention to make a public bid or a public bid is made but not yet accepted; 10
  - (ii) the date on which the Commission becomes aware that the undertakings involved in the merger or acquisition have entered into an agreement the result of which will, if the agreement is implemented, be that the merger or acquisition occurs;
  - (iii) the date on which the merger or acquisition is put into effect. 15
- (4) Where an undertaking of which a requirement is made under subsection (2) requests in writing, before the expiration of—
  - (a) the period specified in the requirement, or
  - (b) such period as stands extended from time to time in accordance with this subsection, 20

an extension to the period within which it is required to notify the merger or acquisition concerned to the Commission, the Commission may, where it considers it appropriate to do so, extend that period, and an undertaking in respect of which such an extension is granted shall comply with the requirement within the period as so extended. 25
- (5) (a) Subject to paragraph (b), sections 18(8), 18(12), 19, 20, 21 and 22 shall apply to a notification under subsection (2) as if it were a notification under section 18(1).
- (b) Where a merger or acquisition to which this section applies has already been put into effect at the time a requirement is made under this section, subsections (1) to (5) of section 19 shall not apply to the merger or acquisition. 30
- (6) Where an undertaking does not comply with a requirement to notify a merger or acquisition under subsection (2) within the period specified in the requirement, the Commission may, in relation to the merger or acquisition, do one or more of the following: 35
  - (a) examine the merger or acquisition in accordance with section 20 as if a notification had been received by the Commission in respect of it on the last day of the period specified in the requirement under subsection (1); 40
  - (b) where the Commission considers it appropriate to do so due to the risk that the merger or acquisition may have an effect on

competition in any markets for goods or services in the State, impose interim measures and the provisions of section 18B will apply *mutatis mutandis* to any measures so imposed.

**Power to impose interim measures in respect of certain mergers and acquisitions** 5

**18B.** (1) Where the Commission—

(a) has been notified of a merger or acquisition under section 18(1), 18(3), 18(3A), 18(12A) or 18A, and

(b) considers it appropriate to do so due to the risk that the merger or acquisition may have an effect on competition in any markets for goods or services in the State, 10

it may impose an interim measure on one or more undertakings involved in the merger or acquisition.

(2) Where the Commission imposes an interim measure under subsection (1) it shall by notice in writing served on the undertaking on which the measure is imposed— 15

(a) set out the nature of the interim measure or interim measures imposed, and

(b) specify the period for which the interim measure shall remain in force, which may include such period as is required for the Commission to make a determination under section 21 or section 22 in relation to the merger or acquisition. 20

(3) Where an interim measure has been imposed on an undertaking in accordance with this section, the Commission may, at any time before the expiry of the period referred to in subsection (2)(b), by notice in writing served on the undertaking on which the interim measure was imposed, vary or revoke the interim measure (including by specifying a period other than the period specified in the original interim measure) and, in the case of an interim measure that is varied, the interim measure shall apply on the terms set out in such notice. 25 30

(4) Where an undertaking fails to comply with an interim measure imposed on it in accordance with this section, the undertaking, or a person in control of the undertaking (within the meaning of section 18(11)), shall be guilty of an offence and shall, subject to subsection (5), be liable— 35

(a) on summary conviction, to a fine not exceeding €3,000,

(b) on conviction on indictment, to a fine not exceeding €250,000.

(5) Subsection (4) operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the undertaking or person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent 40

offence of which he or she is guilty by reason of that continued contravention, subsection (4) will have effect as if—

(a) in paragraph (a) of that subsection, “€300” were substituted for “€3,000”, and

(b) in paragraph (b) of that subsection, “€25,000” were substituted for “€250,000”. 5

(6) In this Part, ‘interim measure’ means a measure that is imposed by the Commission in accordance with this section requiring an undertaking involved in a merger or acquisition—

(a) to refrain from taking any step, or such steps as may be specified 10 by the Commission, towards putting the merger or acquisition into effect, or from further putting it into effect, or

(b) to take such actions as may be specified by the Commission for the purpose of mitigating the impact of any step already taken by such undertaking towards putting the merger or acquisition into effect, 15

and without prejudice to the generality of the foregoing includes—

(i) imposing on the undertaking obligations as to the carrying on of any activities or the safeguarding of any assets,

(ii) providing for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the measure) or in any other manner, and 20

(iii) imposing obligations preventing the undertaking from—

(I) closing or selling sites, 25

(II) selling or failing to maintain equipment,

(III) degrading service levels,

(IV) retaining key employees,

(V) integrating IT systems,

(VI) failing to participate in a tender process, 30

(VII) discontinuing products, or

(VIII) exchanging confidential commercially sensitive information.”.

### **Amendment of section 19 of Principal Act**

**15.** Section 19 of the Principal Act is amended—

(a) in subsection (1), by the insertion of “or in relation to which the Commission has made a requirement under section 18A(1) before it is put into effect,” after “in accordance with that subsection,” 35

(b) by the substitution of the following subsection for subsection (2):

- “(2) Any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes subsection (1), is void and shall remain void—
- (a) until the Commission informs the undertakings which made the notification that the merger or acquisition may be put into effect in accordance with section 21(2)(a), or 5
  - (b) where the Commission makes a determination pursuant to section 21(2)(b) to carry out an investigation under section 22 in relation to the merger or acquisition, until a determination is issued under paragraph (a) or (c) of section 22(3).”, 10
  - (c) in subsection (6)(b), by the substitution of “a notification of a merger or acquisition, a requirement or requirements of one or more of the undertakings involved in such merger or acquisition” for “the notification of the merger or acquisition concerned under section 18, a requirement or requirements of one or more of the undertakings concerned”, 15
  - (d) by the insertion of the following subsections after subsection (6):
    - “(6A) For the purposes of subsection (6), a requirement made under section 20(2) shall be deemed to be complied with on and from the date on which the Commission was provided with a certification under section 20(2)(b)(ii) where— 20
      - (a) the Commission confirms, by way of a notification under section 20(2)(c), that it is satisfied that the requirement to which the certification relates has been complied with, or
      - (b) the Commission does not issue a notification under section 20(2)(c) within 10 working days of being provided with the certification. 25
    - (6B) Where the Commission confirms, by way of a notification under section 20(2)(c), that it is not satisfied that a requirement to which the certification relates has been complied with—
      - (a) the requirement shall be deemed not to be complied with for the purposes of subsection (6A), and 30
      - (b) the Commission may request additional information relating to that requirement from the person or undertaking of whom the requirement was made.
    - (6C) Where, having received additional information requested under subsection (6B), the Commission considers that a requirement has been complied with, the requirement shall be deemed to be complied with for the purposes of subsection (6A) on and from the date on which the Commission so notifies the person or undertaking subject to the requirement.”, 35
- and 40
- (e) by the insertion of the following subsections after subsection (9):

- “(10) Where a merger or acquisition is put into effect, or purports to be put into effect, in contravention of subsection (1) the undertaking or undertakings that have put the merger or acquisition into effect, or the person in control of such undertaking (within the meaning of section 18(11)), shall be guilty of an offence and shall, subject to subsection (11), be liable— 5
- (a) on summary conviction, to a fine not exceeding €3,000,
  - (b) on conviction on indictment, to a fine not exceeding €250,000.
- (11) Subsection (10) operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the undertaking or person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, subsection (10) shall have effect as if— 10 15
- (a) in paragraph (a) of that subsection, ‘€300’ were substituted for ‘€3,000’, and
  - (b) in paragraph (b) of that subsection, ‘€25,000’ were substituted for ‘€250,000’.”.

**Amendment of section 20 of Principal Act** 20

**16.** Section 20 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (2):

“(2) (a) Where the Commission is of the opinion that it requires, in order to consider a merger or acquisition for the purposes of this Part, further information from— 25

- (i) any one or more of the undertakings involved in the merger or acquisition, or
- (ii) any other person or undertaking that it considers may have information relevant to the Commission’s consideration of the merger or acquisition, 30

it may require, by notice in writing served on that person or that undertaking, to provide to it, within such period as it specifies, specified information that is in the power or control of that person or that undertaking.

- (b) Where the Commission makes a requirement of a person or undertaking under paragraph (a)— 35

- (i) the person or undertaking of whom such a requirement is made shall comply with it, and
- (ii) the following person shall certify in writing that, to the best of his or her knowledge and belief, the person or undertaking has complied with a requirement under this section: 40

- (I) where the undertaking is a body corporate, a director or other similar officer of the undertaking or a person who purports to act in such capacity;
  - (II) where the undertaking is a partnership, a partner in the partnership; 5
  - (III) in the case of a form of undertaking other than a body corporate or a partnership, the individual in control of the undertaking;
  - (IV) where the request is made of a natural person, the person.
- (c) The Commission shall, within 10 working days from the date on which it is provided with a certification under paragraph (b)(ii), notify the person providing that certificate whether or not it is satisfied that the requirement to which the certification relates has been complied with.”, 10
- (b) by the substitution of the following subsection for subsection (2A): 15
- “(2A) If, before the expiration of the period specified in a notice under subsection (2), an undertaking on which, or person on whom, the notice was served requests, in writing, an extension to the specified period, the Commission may, where it considers it appropriate to do so, extend that period, and where such an extension is granted that undertaking or person shall comply with the requirement under subsection (2) within the specified period as so extended.”, 20
- and
- (c) in subsection (2B), by the substitution of “an undertaking or person referred to in subsection (2A)” for “the undertaking or undertakings concerned”. 25

**Amendment of section 22 of Principal Act**

**17. Section 22 of the Principal Act is amended—**

- (a) by the insertion of the following subsection after subsection (3):
- “(3A) Where, on completion of a full investigation in relation to a merger or acquisition— 30
- (a) that has been put into effect without the Commission having issued a determination under section 21(2)(a) or 22(3)(a) or (c), and
  - (b) that is a merger or acquisition—
    - (i) to which paragraph (a) or (b) of section 18(1) applies, or
    - (ii) that has been notified to the Commission in accordance with section 18(3), 18(3A) or 18A(1), 35
- the Commission finds that the result of the merger or acquisition will be to substantially lessen competition in markets for goods or services in the State, the Commission may—

- (I) determine that the merger or acquisition should be unwound or dissolved, and the manner in which such unwinding or such dissolution shall occur, including through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the merger or acquisition being put into effect, or 5
- (II) where it is not possible to unwind or dissolve the merger or acquisition, determine that the undertakings involved in the merger or acquisition shall take such steps as are appropriate to achieve restoration as far as practicable of the situation prevailing before the merger or acquisition was put into effect.”, 10
- (b) in subsection (4A), by the substitution of “a requirement or requirements of an undertaking involved in the merger or acquisition concerned” for “a requirement or requirements of one or more of the undertakings concerned”, and
- (c) by the insertion of the following subsections after subsection (4A): 15
  - “(4AA) For the purposes of subsection (4A), a requirement under section 20(2) shall be deemed to be complied with on and from the date on which the Commission was provided with a certification under section 20(2) (b)(ii) where—
  - (a) the Commission confirms, by way of a notification under section 20(2)(c), that it is satisfied that the requirement to which the certification relates has been complied with, or 20
  - (b) the Commission does not issue a notification under section 20(2)(c) within 10 working days of being provided with the certification.
  - (4AB) Where the Commission confirms, by way of a notification under section 20(2)(c), that it is not satisfied that a requirement to which the certification relates has been complied with— 25
    - (a) the requirement shall be deemed not to be complied with for the purposes of subsection (4A), and
    - (b) the Commission may request additional information relating to that requirement from the person or undertaking of whom the requirement was made. 30
  - (4AC) Where, having received additional information requested under subsection (4AB), the Commission considers that a requirement has been complied with, the requirement shall be deemed to be complied with for the purposes of subsection (4A) on and from the date on which the Commission so notifies the person or undertaking subject to the requirement.”. 35

**Amendment of section 47B of Principal Act**

- 18. Section 47B of the Principal Act is amended, in subsection (2), by the substitution of the following paragraph for paragraph (b): 40

“(b) the power to prosecute an offence under section 6 or 7, or to pursue administrative sanctions proceedings or for relief under section 14.”.

**Amendment of section 47E of Principal Act**

19. Section 47E of the Principal Act is amended, in subsection (1), by the substitution of “Part 2 (section 4(3) excepted), Part 2C and Part 2D” for “Part 2 (section 4(3) excepted)”. 5

**Insertion of section 47H in Principal Act**

20. The Principal Act is amended by the insertion of the following section after section 47G:

**“Liability of competent authority and associated persons and indemnity for associated persons” 10**

**47H.** (1) This section applies to the following persons:

- (a) the competent authority;
- (b) the members of the competent authority (including the chairperson); 15
- (c) adjudication officers under this Act;
- (d) employees of the competent authority;
- (e) agents of the competent authority.

(2) A person to whom this section applies is not liable for damages and no proceedings may be maintained against them in which it is claimed that the person is liable in damages (whether such liability is enforceable by action or not), for anything done or omitted to be done in the performance or purported performance or exercise or purported exercise of any of their functions or powers under Parts 2C to 2G, unless it is proved that the act or omission was in bad faith. 20 25

(3) Notwithstanding any subsequent court determination as to whether an act or omission was otherwise than in good faith, where a competent authority is satisfied that a person to whom this section applies (other than a competent authority) has discharged his or her duties in pursuance of the functions of the competent authority under Parts 2C to 2G in good faith, the competent authority may, in the manner and to the extent and subject to the terms and conditions that the competent authority may determine from time to time in consultation with the Minister, indemnify that person against all actions or claims (including as to costs) however they arise in respect of the discharge by him or her of his or her duties.”. 30 35

**Amendment of section 52 of Principal Act**

21. Section 52 of the Principal Act is amended—



- (a) by the substitution, in subsection (1), of “Subject to subsection (3), the Minister may” for “The Minister may”, and
  - (b) by the insertion of the following subsection after subsection (2):
    - “(3) In relation to any matter referred to in Parts 2C to 2H as prescribed, to be prescribed or otherwise to be provided for by the Minister in regulations— 5
      - (a) where the regulations in question relate wholly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to, the Commission, such regulations may be made by the Minister after consulting with the Minister for the Environment, Climate and Communications, 10
      - (b) where the regulations in question relate wholly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to, the Commission for Communications Regulation, such regulations may be made by the Minister for the Environment, Climate and Communications after consulting with the Minister, and 15
      - (c) where the regulations in question relate jointly to the composition, rules, procedures, staffing, functions or duties of, or any other matter relating to both the Commission and the Commission for Communications Regulation, such regulations may be made by the Minister after consulting with the Minister for the Environment, Climate and Communications, 20
- and in this Act, ‘relevant Minister’ shall accordingly be interpreted as the Minister or the Minister for the Environment, Climate and Communications as the case may be.”. 25

## PART 4

### AMENDMENTS TO ACT OF 2014

#### **Amendment of section 2 of Act of 2014**

- 22.** Section 2 of the Act of 2014 is amended by the insertion of the following definition: 30
- “ ‘relevant competition law’ has the same meaning as it has in the Act of 2002;”.

#### **Amendment of section 10 of Act of 2014**

- 23.** Section 10 of the Act of 2014 is amended—
- (a) by the substitution of the following subsection for subsection (6): 35
    - “(6) The Commission may delegate the performance of any of its functions to any member of the Commission, to any member of its staff duly

authorised in that behalf by the Commission or to any authorised officer duly authorised in that behalf by the Commission.”,

and

- (b) in subsection (7), by the substitution of the following paragraph for paragraph (c):

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“(c) the initiation of enforcement proceedings under Parts 2, 2A, 2C to 2H and section 26 of the Act of 2002 and Part 5 of the Act of 2007.”.

#### **Amendment of section 18 of Act of 2014**

24. Section 18 of the Act of 2014 is amended, in subsection (4), by the substitution of “A person who, other than in relation to an investigation, hearing or any other matter under Part 2C of the Act of 2002” for “A person who”.

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#### **Amendment of section 20 of Act of 2014**

25. Section 20 of the Act of 2014 is amended by the insertion of the following subsection after subsection (4):

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“(5) A direction given by the Minister under subsection (1) shall not be given to, nor apply to—

(a) adjudication officers appointed under section 15O of the Act of 2002, or

(b) assistants to adjudication officers appointed under section 15R of the Act of 2002.”.

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#### **Amendment of section 24 of Act of 2014**

26. Section 24 of the Act of 2014 is amended, in subsection (1), by the substitution of “Notwithstanding section 25, and section 15AV of the Act of 2002,” for “Notwithstanding section 25”.

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#### **Amendment of section 25 of Act of 2014**

27. Section 25 of the Act of 2014 is amended—

(a) by the substitution of the following subsections for subsections (1) and (2):

“(1) A person shall not, unless authorised by the competent authority, or by a member of the staff of the competent authority duly authorised in that behalf so to do, or required by law, disclose confidential information obtained by him or her in his or her capacity, or while performing duties as—

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(a) a member of the competent authority,

(b) a member of the staff of the competent authority,

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(c) an authorised officer,

- (d) a person engaged by the competent authority in any other capacity,  
or
  - (e) an adjudication officer appointed under the Act of 2002.
- (2) Subsection (1) shall not apply to—
- (a) a communication made by a member of the competent authority, a member of the staff of the competent authority, an authorised officer, or an adjudication officer in the performance of any of his or her functions under this Act, being a communication the making of which was necessary for the performance by the member, member of the staff of the competent authority, authorised officer or adjudication officer of any such function, or
  - (b) the disclosure by a member of the competent authority, a member of the staff of the competent authority, an authorised officer or an adjudication officer to any person or body mentioned in paragraphs (a) to (q) of section 24(1) of information which, in the opinion of the member, member of the staff of the competent authority, authorised officer or adjudication officer, may relate to the commission of an offence (whether an offence under this Act or not).”,
- (b) in subsection (4), by the substitution of the following paragraph for paragraph (b):
- “(b) by or on behalf of a competent authority to another competent authority or to the Minister.”,
- (c) in subsection (4)(a) and (5), by the substitution of “competent authority” for “Commission” in each place that it appears, and
- (d) by the insertion of the following subsections after subsection (5):
- “(6) Nothing in this section shall prevent the disclosure by a person of material in accordance with section 15AX of the Act of 2002.
- (7) In this section, ‘competent authority’ has the meaning it has in the Act of 2002.”.

**Amendment of section 27 of Act of 2014**

**28.** The Act of 2014 is amended by the substitution of the following section for section 27:

- “**27.** (1) Subject to subsection (2), the chairperson of the Commission or a member of the Commission shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.
- (2) The chairperson of the Commission or a member of the Commission shall not be required to give account before a Committee in relation to—
- (a) any matter which is or has been, or which the Commission has reason to think may in the future be, the subject of proceedings

- before an adjudication officer or before a court or tribunal in the State,
- (b) any matter specified in paragraphs (a) to (d) of section 10(7),
  - (c) a determination in relation to a merger or acquisition under section 21(2) of the Act of 2002, or 5
  - (d) the powers and functions of adjudication officers.
- (3) Where the chairperson or a member of the Commission is of the opinion that a matter in respect of which he or she is requested to give an account before a committee is a matter to which subsection (2) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when he or she is before it, the information shall be so conveyed in writing. 10
- (4) Where a chairperson or member of the Commission has informed a Committee of his or her opinion in accordance with subsection (3) and the Committee does not withdraw the requirement referred to in subsection (2) in so far as it relates to a matter the subject of that opinion— 15
- (a) the chairperson or member may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (2) applies, or 20
  - (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,
- and the High Court shall determine the matter. 25
- (5) Pending the determination of an application under subsection (4), the chairperson or member of the Commission shall not attend before the Committee to give account for the matter the subject of the application.
- (6) If the High Court determines that subsection (2) applies to the matter concerned, the Committee shall withdraw the requirement referred to in subsection (2), but if the High Court determines that subsection (2) does not apply, the chairperson or member of the Commission shall attend before the Committee and give account for the matter. 30
- (7) In the performance of his or her duties under this section, the chairperson of the Commission or a member of the Commission shall not question or express an opinion on— 35
- (a) the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy, or
  - (b) the carrying out of the functions of an adjudication officer. 40
- (8) In this section—

‘adjudication officer’ means an adjudication officer appointed in respect of the Commission in accordance with the Act of 2002;

‘Committee’ means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in section 26 or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a sub-Committee of such a Committee.” 5

#### **Amendment of section 33 of Act of 2014**

**29.** Section 33 of the Act of 2014 is amended by—

- (a) the substitution of “the High Court or, in respect of proceedings under Parts 2C, 2D and 2G of the Act of 2002, an adjudication officer appointed under the Act of 2002” for “the High Court” in each place it occurs, and 10
- (b) in subsection (5), by the substitution of “the court, or the adjudication officer as the case may be,” for “the court” in each place it occurs.

#### **Amendment of section 34 of Act of 2014**

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**30.** Section 34 of the Act of 2014 is amended by the substitution of the following definition for the definition of “records”:

“ ‘records’ includes, in addition to records in writing—

- (a) discs, tapes, sound-tracks or other devices in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form, 20
- (b) films, tapes or other devices in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, 25
- (c) photographs, and
- (d) any form of data or digital communications,

and a reference to a copy of records includes, in the case of records falling within paragraph (a) only, a transcript of the sounds or signals embodied therein, in the case of records falling within paragraph (b), a still reproduction of the images embodied therein and, in the case of records falling within both of those paragraphs, such a transcript and such a still reproduction;” 30

#### **Amendment of section 37 of Act of 2014**

**31.** Section 37 of the Act of 2014 is amended—

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- (a) in subsection (1), by the substitution of “the Act of 2002, or Article 101 or 102 of the Treaty on the Functioning of the European Union,” for “the Act of 2002”,
- (b) in subsection (2)—

- (i) by the substitution of the following paragraph for paragraph (a):
- “(a) to enter, if necessary by reasonable force, and search
- (i) any place at which, or any vehicle with which, any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on, or 5
- (ii) any place at which books, documents or records relating to the carrying on of a business referred to in subparagraph (i) are being kept, 10
- including, but not limited to, any place occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities;”,
- (ii) by the substitution of the following paragraph for paragraph (c): 15
- “(c) to seize and retain any books, documents, records, computers or any other storage medium in which any record is kept relating to an activity found at any place referred to in paragraph (a) or (b) and take any other steps which appear to the officer to be necessary for preserving, or preventing interference with, such books, documents, records, computers or media including— 20
- (i) taking or obtaining, in any form, copies of or extracts from such books, documents or records, and
- (ii) continuing, at any time, to search books, documents or records so seized, or any copies made thereof or extracts taken therefrom, at a premises other than the premises so entered;”, 25
- (iii) in paragraph (g), by the substitution of “paragraph (a);” for “paragraph (a).”,
- (iv) by the insertion of the following paragraphs after paragraph (g):
- “(h) to require any person who appears to the authorised officer to be in a position to facilitate access to documents or records stored in any data equipment or computer, or which can be accessed by the use of that data equipment or computer, to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by— 30
- (i) providing the documents or records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,
- (ii) giving to the authorised officer any password necessary to make the documents or records concerned legible and comprehensible, or 40

- (iii) otherwise enabling the authorised officer to examine the documents or records in a form in which they are legible and comprehensible;
  - (i) where the authorised officer considers it necessary to do so in order to preserve for inspection records, documents or any other matter, to secure, for later inspection, and for such period as may reasonably be necessary for the purposes of the exercise of the authorised officer’s powers under this section—
    - (i) documents or records accessed or found during a search under this section, and any data equipment, including any computer, in which those documents or records may be held, and
    - (ii) a place entered pursuant to this section, or any part of such place.”,
- and
- (c) in subsection (3), by the substitution of “an offence under the Act of 2002, or an infringement, whether or not the infringement is criminal in nature, of relevant competition law, within the meaning of the Act of 2002,” for “an offence under the Act of 2002”.

**Requests for information relating to investigations**

32. The Act of 2014 is amended by the insertion of the following section after section 37: 20

- “37A. (1) In the course of investigating a suspected infringement of relevant competition law, the Commission, or a person to whom functions relating to such an investigation have been delegated under section 10(6), may in writing require a person or undertaking under investigation to provide the Commission or delegate, as the case may be, with information that is connected to, and reasonably necessary for, the purposes of the investigation. 25
- (2) A requirement under subsection (1)—
- (a) shall specify a period of time within which it is to be complied with, which period shall be reasonable having regard to the nature of the request, the context in which the information is requested and the circumstances of the person or undertaking of whom the requirement is made, and 30
  - (b) shall not require a person or undertaking of whom it is made to admit to having infringed relevant competition law. 35
- (3) A person or undertaking of whom a requirement under subsection (1) is made shall comply with it within the period specified in the requirement.”.

PART 5

SURVEILLANCE

**Surveillance**

**33.** The Criminal Justice (Surveillance) Act 2009 is amended—

- (a) in section 1— 5
- (i) in the definition of “superior officer”—
- (I) in paragraph (b), by the substitution of “colonel;” for “colonel; and”,
- (II) in paragraph (c), by the substitution of “principal officer; and” for “principal officer;”, and
- (III) by the insertion of the following paragraph after paragraph (c): 10
- “(d) in the case of the Competition and Consumer Protection Commission, an authorised officer not below the rank of principal officer;”,
- (ii) in the definition of “relevant Minister”, by the insertion of the following paragraph after paragraph (a): 15
- “(aa) the Minister for Enterprise, Trade and Employment, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Competition and Consumer Protection Commission,”,
- and 20
- (iii) by the insertion of the following definitions:
- “ ‘authorised officer’ has the meaning it has in the Competition and Consumer Protection Act 2014;
- ‘relevant competition offence’ means an offence under section 6 of the Competition Act 2002 involving an agreement, decision or concerted practice to which subsection (2) of that section applies;”, 25
- (b) in section 2, by the substitution, in subsection (1), of “members of the Defence Forces, officers of the Revenue Commissioners and authorised officers of the Competition and Consumer Protection Commission” for “members of the Defence Forces and officers of the Revenue Commissioners”, 30
- (c) in section 3, by the substitution of “a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the Competition and Consumer Protection Commission” for “a member of the Defence Forces or an officer of the Revenue Commissioners”,
- (d) in section 4— 35
- (i) by the insertion of the following subsection after subsection (3):
- “(3A) A superior officer of the Competition and Consumer Protection Commission may apply to a judge for an authorisation where he or she



- has reasonable grounds for believing that, as part of an investigation being conducted by the Competition and Consumer Protection Commission concerning a relevant competition offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence.”, 5
- and
- (ii) in subsection (5), by the substitution of “(3), (3A) or (4)” for “(3) or (4)”, 10
- (e) in section 5—
- (i) in subsection (2)(a), by the substitution of “(2), (3) or (3A)” for “(2) or (3)”, and
- (ii) in subsection (7), by the substitution of “Forces, any authorised officer of the Competition and Consumer Protection Commission or any officer of the Revenue Commissioners” for “Forces, or any officer of the Revenue Commissioners”, 15
- (f) in section 7—
- (i) in subsection (1), by the substitution of “a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the Competition and Consumer Protection Commission” for “a member of the Defence Forces or an officer of the Revenue Commissioners”, 20
- (ii) in subsection (2)—
- (I) by the substitution of “(2), (3) or (3A)” for “(2) or (3)”, and
- (II) by the substitution of “arrestable offence, revenue offence or relevant competition offence, as the case may be” for “arrestable offence or a revenue offence, as the case may be” in each place it occurs, 25
- (iii) in subsection (7)(c), by the substitution of “member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Protection Commission” for “member of the Defence Forces or officer of the Revenue Commissioners”, and 30
- (iv) in subsection (12), by the insertion of the following paragraph after paragraph (aa):
- “(ab) in the case of an authorised officer of the Competition and Consumer Protection Commission, to a member of the Competition and Consumer Protection Commission within the meaning of section 12 of the Competition and Consumer Protection Act 2014,”, 35
- (g) in section 8—
- (i) in subsection (1), by the substitution of “a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the 40

- Competition and Consumer Protection Commission” for “a member of the Defence Forces or an officer of the Revenue Commissioners”,
- (ii) in subsection (2)(a), by the substitution of “(2), (3) or (3A)” for “(2) or (3)”,
- (iii) in subsection (7)(c), by the substitution of “member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Protection Commission” for “member of the Defence Forces or officer of the Revenue Commissioners”, and
- (iv) in subsection (10), by the insertion of the following paragraph after paragraph (aa):
- “(ab) in the case of an authorised officer of the Competition and Consumer Protection Commission, a member of the Competition and Consumer Protection Commission within the meaning of section 12 of the Competition and Consumer Protection Act 2014,”,
- (h) in section 11—
- (i) in subsection (5)(c), by the insertion of the following subparagraph after subparagraph (ia):
- “(ib) the Minister for Enterprise, Trade and Employment, in the case of a contravention by the Competition and Consumer Protection Commission,”,
- and
- (ii) in subsection (10), by the substitution of “Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission” for “Defence Forces or the Revenue Commissioners”,
- (i) in section 12(5), by the substitution of “Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission” for “Defence Forces or the Revenue Commissioners”,
- (j) in section 13(4)—
- (i) in the definition of “authorised person”—
- (I) by the insertion of the following paragraph after paragraph (b):
- “(ba) the Minister for Enterprise, Trade and Employment,”,
- and
- (II) in subparagraph (i) of paragraph (d), by the substitution of “the Chief of Staff of the Defence Forces, a Revenue Commissioner or the chairperson of the Competition and Consumer Protection Commission” for “the Chief of Staff of the Defence Forces or a Revenue Commissioner”,
- and
- (ii) in the definition of “relevant person”—
- (I) by the insertion of the following paragraph after paragraph (ba):

“(bb) a member of, a member of the staff of, or an authorised officer of the Competition and Consumer Protection Commission,”,

and

(II) in paragraph (e), by the substitution of “the Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission” for “the Defence Forces or the Revenue Commissioners”, 5

(k) in section 14, by the substitution of “member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Protection Commission” for—

(i) “member of the Defence Forces or officer of the Revenue Commissioners” in subsection (4)(a), and 10

(ii) “member of the Defence Forces or an officer of the Revenue Commissioners” in subsection (5),

(l) in section 15(2)(c), by the substitution of “Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission” for “Defence Forces or the Revenue Commissioners”, and 15

(m) in section 16(1), by the substitution of “the Minister for Defence, the Minister for Finance and the Minister for Enterprise, Trade and Employment” for “the Minister for Defence and the Minister for Finance”.

## PART 6

20

### AMENDMENT OF COMMUNICATIONS REGULATION ACT 2002

#### **Amendment of section 34 of Communications Regulation Act 2002**

**34.** Section 34 of the Communications Regulation Act 2002 is amended—

(a) in subsection (1), by the substitution of “Subject to subsection (3), the chairperson of the Commission shall” for “The chairperson of the Commission shall”, 25

(b) in subsection (2), by the substitution of “Subject to subsection (3), from time to time” for “From time to time”, and

(c) by the insertion of the following subsection after subsection (2):

“(3) The chairperson of the Commission shall not be required to give evidence in relation to, or account for, the functions of adjudication officers appointed in respect of the Commission in accordance with the Competition Act 2002”. 30

#### **Amendment of section 39 of Communications Regulation Act 2002**

**35.** Section 39 of the Communications Regulation Act 2002 is amended— 35

(a) in subsection (3), by the substitution of “this Act, the Competition Act 2002 (other than functions related to obtaining information which may be required in

relation to a matter under investigation under relevant competition law), a transferred function or any regulations made under the Act of 1972” for “this Act, the Competition Act 2002, a transferred function or any regulations made under the Act of 1972”,

- (b) by the insertion of the following subsections after subsection (3): 5
- “(3A) For the purpose of obtaining any information that may be required in relation to a matter under investigation under relevant competition law, an authorised officer may, on production of a warrant issued under section 40 authorising him or her to exercise one or more specified powers under subsection (3B), exercise that power or those powers. 10
- (3B) The powers referred to in subsection (3A) are the following:
- (a) to enter, if necessary by reasonable force, and search—
- (i) any place at which, or any vehicle with which, any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on, or 15
- (ii) any place at which books, documents or records relating to the carrying on of a business referred to in subparagraph (i) are being kept, 20
- including, but not limited to, any place occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities;
- (b) to enter, if necessary by reasonable force, and search any place 25 occupied by a director, manager or any member of staff of an undertaking that carries on an activity or of an association of undertakings that carry on activities, being, in either case, a place in respect of which there are reasonable grounds to believe books, documents or records relating to the carrying on of that activity or those activities are being kept; 30
- (c) to seize and retain any books, documents, records, computers or any other storage medium in which any record is kept relating to an activity found at any place referred to in paragraph (a) or (b) and take any other steps which appear to the officer to be necessary for preserving, or preventing interference with, such books, documents, records, computers or media including— 35
- (i) taking or obtaining, in any form, copies of or extracts from such books, documents or records, and
- (ii) continuing, at any time, to search books, documents or records so seized, or any copies made thereof or extracts taken therefrom, at a premises other than the premises so entered; 40

- (d) to require any person who carries on an activity referred to in paragraph (a) and any person employed in connection therewith to—
  - (i) give to the authorised officer his or her name, home address and occupation, and 5
  - (ii) provide to the authorised officer any books, documents or records relating to that activity which are in that person’s power or control, and to give to the officer such information as he or she may reasonably require in regard to any entries in such books, documents or records, and where such books, documents or records are kept in a non-legible form to reproduce them in a legible form; 10
- (e) to inspect and take copies of or extracts from any such books, documents or records, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form; 15
- (f) to require a person mentioned in paragraph (d) to give to the authorised officer any information he or she may require in regard to the persons carrying on the activity referred to in paragraph (a) (including in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and its committee of management or other controlling authority) or employed in connection therewith; 20
- (g) to require a person mentioned in paragraph (d) to give to the authorised officer any other information which the officer may reasonably require in regard to the activity referred to in paragraph (a); 25
- (h) to require any person who appears to the authorised officer to be in a position to facilitate access to documents or records stored in any data equipment or computer, or which can be accessed by the use of that data equipment or computer, to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by— 30
  - (i) providing the documents or records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible, 35
  - (ii) giving to the authorised officer any password necessary to make the documents or records concerned legible and comprehensible, or 40
  - (iii) otherwise enabling the authorised officer to examine the documents or records in a form in which they are legible and comprehensible;

- (i) where the authorised officer considers it necessary to do so in order to preserve for inspection records, documents or any other matter, to secure, for later inspection, and for such period as may reasonably be necessary for the purposes of the exercise of the authorised officer’s powers under this section— 5
- (i) documents or records accessed or found during a search under this section, and any data equipment, including any computer, in which those documents or records may be held, and
- (ii) a place entered pursuant to this section, or any part of such place.”, 10
- (c) in subsection (4), by the substitution of “subsection (3)” for “this section”, and
- (d) by the insertion of the following subsection after subsection (7):
  - “(8) In this section, ‘relevant competition law’ has the meaning it has in the Competition Act 2002.”.

**Amendment of section 38D of Communications Regulation Act 2002** 15

36. Section 38D of the Communications Regulation Act 2002 is amended by the substitution of the following subsection for subsection (2):

- “(2) Subsection (1) does not apply if—
- (a) the person has a reasonable excuse, or
- (b) the requirement under section 38A was made in relation to an investigation, hearing or any other matter under Part 2C of the Competition Act 2002.”. 20

**Requests for information relating to investigations**

37. The Communications Regulation Act 2002 is amended by the insertion of the following section after section 39: 25

- “39A. (1) In the course of investigating a suspected infringement of relevant competition law, the Commission, or an authorised officer appointed under section 39, may in writing require a person or undertaking under investigation to provide the Commission or officer, as the case may be, with information that is connected to, and reasonably necessary for, the purposes of the investigation. 30
- (2) A requirement under subsection (1)—
- (a) shall specify a period within which it is to be complied with, which period shall be reasonable having regard to the nature of the request, the context in which the information is requested and the circumstances of the person or undertaking of whom the request is made, and 35
- (b) shall not require a person of whom it is made to admit to having contravened relevant competition law.

- (3) A person or undertaking of whom a requirement under subsection (1) is made shall comply with it within the period specified in the requirement.”.

**Amendment of section 40 of Communications Regulation Act 2002**

38. Section 40 of the Communications Regulation Act 2002 is amended by the substitution of “under this Act, or relevant competition law,” for “under this Act”. 5

PART 7

AMENDMENT OF CONSUMER PROTECTION ACT 2007

**Amendment of Consumer Protection Act 2007**

39. Schedule 9 (inserted by section 81 of the Competition and Consumer Protection Act 2014) of the Consumer Protection Act 2007 is amended— 10
- (a) in column (1), by the insertion of “S.I. No. 345 of 2016” and, in column (2) opposite that reference, by the insertion of “European Union (Low Voltage Electrical Equipment) Regulations 2016”, and
  - (b) in column (1), by the insertion of “S.I. No. 136 of 2018” and, in column (2) opposite that reference, by the insertion of “European Union (Personal Protective Equipment) Regulations 2018”. 15

# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do thabhairt éifeacht do chur i ngníomh Threoir (AE) 2019/1 ó Pharlaimint na hEorpa agus ón gComhairle an 11 Nollaig 2018 chun údarais iomaíochta na mBallstát a chumhachtú le bheith ina bhforheidhmitheoirí níos éifeachtaí agus chun dea fheidhmiú an mhargaidh inmheánaigh a áirithiú; chun na críche sin, do dhéanamh socrú maidir le córas forheidhmiúcháin neamhchoiriúl ar fhorálacha áirithe de chuid an dlí iomaíochta, lena n-áirítear oifigigh bhreithniúcháin neamhspleácha a cheapadh agus cumhachtaí a thabhairt dóibh, agus fógraí toirmisc a eisúint mar fhreagairt do shárúithe amhrasta áirithe ar an dlí iomaíochta; do dhéanamh socrú maidir le córas forheidhmiúcháin agus pionós neamhchoiriúl i ndáil le sárúithe áirithe ar an dlí iomaíochta, lena n-áirítear trí bhearta leigheasta neamhchoiriúla struchtúir agus iompraíochta agus smachtbhannaí airgeadais neamhchoiriúla áirithe a fhorchur, agus do dhéanamh socrú maidir le próisis trína bhféadfar achomharc a dhéanamh i gcoinne smachtbhannaí neamhchoiriúla den sórt sin, nó iad a loghadh, nó iad a dhaingniú ag an Ard-Chúirt; do dhéanamh socrú maidir le clár trócaireachta i ndáil le gnóthais áirithe; do dhéanamh socrú maidir le comhar idir údarais iomaíochta san Aontas Eorpach agus comhlachtaí áirithe sa Stát; do mhéadú na pionós i léith cionta coiriúla áirithe mar gheall ar an dlí iomaíochta a shárú; do thabhairt cumhachtaí faireachais breise don Choimisiún um Iomaíocht agus Cosaint Tomhaltóirí i ndáil le cionta coiriúla áirithe a imscrúdú; do leasú forálacha áirithe a bhaineann leis an nós imeachta chun fógra a thabhairt do na húdarais iomchuí i dtaobh cumas; chun na geríoch sin agus chun críoch eile, do leasú an Acha Iomaíochta, 2002, an Acha um Iomaíocht agus Cosaint Tomhaltóirí, 2014, an Acha um Rialáil Cumarsáide, 2002, an Acha um Chosaint Tomhaltóirí, 2007 agus an Acha um Cheartas Coiniúl (Faireachas), 2009; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Tánaiste agus Aire Fiontar, Trádála agus  
Fostaíochta a thíolaic,

31 Eanáir, 2022

# BILL

(as initiated)

entitled

An Act to give effect to the implementation of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market; for that purpose to provide for a system of non-criminal enforcement of certain provisions of competition law, including the appointment and empowerment of independent adjudication officers, and the issuing of prohibition notices in response to certain suspected infringements of competition law; to provide for a system of enforcement and non-criminal penalties in relation to certain breaches of competition law, including by the imposition of non-criminal structural and behavioural remedies and certain non-criminal financial sanctions, and to provide for processes by which such non-criminal sanctions may be appealed, remitted or confirmed by the High Court; to provide for a leniency programme in relation to certain undertakings; to provide for cooperation between competition authorities in the European Union and certain bodies in the State; to increase the penalties for certain criminal offences for breach of competition law; to provide additional powers of surveillance to the Competition and Consumer Protection Commission in relation to the investigation of certain criminal offences; to amend certain provisions relating to the procedure for notifying mergers to the relevant authorities; for those and other purposes to amend the Competition Act 2002, the Competition and Consumer Protection Act 2014, the Communications Regulation Act 2002, the Consumer Protection Act 2007 and the Criminal Justice (Surveillance) Act 2009; and to provide for related matters.

Presented by the Tánaiste and Minister for  
Enterprise, Trade and Employment,

31st January, 2022

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,  
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,  
BAILE ÁTHA CLIATH 8, D08 XAO6.

Teil: 046 942 3100  
r-phost: publications@opw.ie  
nó trí aon díoltóir leabhar.

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from

GOVERNMENT PUBLICATIONS,  
MOUNTSHANNON ROAD, KILMAINHAM,  
DUBLIN, D08 XAO6.

Tel: 046 942 3100  
Email: publications@opw.ie  
or through any bookseller.

€11.94

ISBN 978-1-4468-6958-1



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