

Guidelines on the Conduct of Competition Adjudication Proceedings

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Coimisiún um
Iomáiocht agus
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Competition and
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Commission

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1 INTRODUCTION AND STATUTORY FRAMEWORK

- 1.1** The Competition Act 2002 (the “**2002 Act**”) establishes an administrative enforcement regime in which the Competition and Consumer Protection Commission (the “**CCPC**”) may through independent Adjudication Officers and subject to court approval, make Decisions concerning alleged breaches of Irish and European Union (“**EU**”) competition law. Part 2D of the 2002 Act creates the role of Adjudication Officers and allows for the appointment of a Chief Adjudication Officer. Adjudication Officers act as the CCPC’s decision-makers in respect of alleged breaches of competition law pursuant to an independent adjudication process.
- 1.2** On 27 September 2023, the Minister for Enterprise, Trade and Employment made regulations setting out requirements governing the independence and terms of service of Adjudication Officers carrying out their functions under the 2002 Act. These regulations, known as the Competition Act 2002 (Adjudication Officers) Regulations 2023 (S.I. No. 476 of 2023) (the “**2023 Regulations**”), set out further provisions relating to the CCPC’s adjudication process.
- 1.3** These Guidelines on the conduct of Adjudication Proceedings (“**Guidelines**”) set out guidance regarding the conduct of Adjudication Proceedings once a matter has been referred to an Adjudication Officer.
- 1.4** The Guidelines have been adopted and published by the CCPC pursuant to section 15AF of the 2002 Act and come into effect on [**insert date**].
- 1.5** The Guidelines are not an exhaustive guide to CCPC Adjudication Proceedings and do not replace the 2002 Act. The CCPC has also made Rules for Competition Adjudication Oral Hearings pursuant to section 15V(14)(b) of the 2002 Act (the “**Rules**”). In the event of a conflict or inconsistency between the Guidelines and:
- (i) the provisions of the 2002 Act and regulations made thereunder, the provisions of the 2002 Act and the regulations shall prevail.
 - (ii) the Rules, the provisions of the Rules shall prevail.
- 1.6** Adjudication Officers may depart from the Guidelines where they are not appropriate in the circumstances of a particular case.
- 1.7** The principles of constitutional justice, natural justice and fair procedures should be observed at all times when considering the Guidelines.

2 GLOSSARY

- 2.1** Words and phrases in the Guidelines shall have the following meanings unless the context otherwise requires.

Term	Meaning
"the 2002 Act"	the Competition Act 2002;
"the 2014 Act"	the Competition and Consumer Protection Act 2014;
"the 2023 Regulations"	the Competition Act 2002 (Adjudication Officers) Regulations 2023 (S.I. No. 476 of 2023);
"Adjudication Notice"	a notice in writing issued by an Adjudication Officer to an Undertaking pursuant to section 15U(1)(b) of the 2002 Act after a matter has been referred under section 15M(1) of the 2002 Act;
"Adjudication Officer"	an individual appointed by the Minister for Enterprise, Tourism and Employment pursuant to the 2002 Act and the 2023 Regulations to make decisions under section 15X of the 2002 Act, and, in the Guidelines, includes an individual Adjudication Officer, the Chief Adjudication Officer, and a division of Adjudication Officers assigned by the Chief Adjudication Officer to a particular Adjudication Proceeding or group of Adjudication Proceedings;
"Adjudication Proceedings"	proceedings before an Adjudication Officer under Part 2D of the 2002 Act;
"Adjudication Unit"	the unit of the CCPC responsible for providing assistance, including administrative support, to Adjudication Officers pursuant to section 15R of the 2002 Act, as described in Rule 5.7 of the Rules;
"CCPC"	the Competition and Consumer Protection Commission of Ireland;
"Chief Adjudication Officer"	the Chief Adjudication Officer appointed pursuant to the 2002 Act and the 2023 Regulations;
"Commitment"	an agreement entered into between the CCPC and an Undertaking under section 15AE of the 2002 Act;
"Consent Notice"	a notice in writing issued by an Adjudication Officer to an Undertaking pursuant to 15U(1)(c) of the 2002 Act after a matter has been referred for an Order on Consent under section 15M(1) of the 2002 Act;
"Decision"	a Decision of an Adjudication Officer made under section 15X of the 2002 Act;
"Enforcement"	The area(s) of the CCPC responsible for the discharge of the CCPC's enforcement functions in relation to Relevant

	Competition Law.;
"EU Regulation 1/2003"	the regulation (as amended) issued by the Council of the European Union bearing No 1/2003 of 16 December 2002 on the implementation of the rules on competition law as set out in Articles 101 and 102 of the Treaty on the Functioning of the European Union;
"Full Investigation Report"	the report prepared by Enforcement under section 15L(9)(a) of the 2002 Act;
"Order on Consent"	an order issued by an Adjudication Officer under section 15X(8) of the 2002 Act in respect of a referral under section 15M(1) of the 2002 Act;
"Prohibition Notice"	a notice issued to the Undertaking under section 15H of the 2002 Act;
"Relevant Competition Law"	provisions regarding competition law as set out in sections 4 and 5 of the 2002 Act and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union;
"the Rules"	the CCPC Rules for Competition Adjudication Oral Hearings made pursuant to section 15V(14)(b) of the 2002 Act;
"Simplified Investigation Report"	the report prepared by Enforcement under section 15L(8)(a) of the 2002 Act;
"Statement of Objections"	the Statement of Objections, and any supplementary Statement of Objections, issued by Enforcement under section 15L of the 2002 Act;
"Structural or Behavioural Remedy"	a remedy under section 15Z of the 2002 Act;
"Undertaking"	a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service in respect of whom a referral is made to an Adjudication Officer under section 15M of the 2002 Act for a Decision or order under section 15X of the 2002 Act and, in the context of these Guidelines, shall also include an association of Undertakings (or more than one Undertaking and/or association of Undertakings).

- 2.2** Where the "CCPC" is referenced in the Guidelines with regard to the performance of its functions for the purpose of Adjudication Proceedings, the term is not intended, save where the context requires otherwise, to include the Adjudication Unit or Adjudication Officers, which have separate functions with regard to Adjudication Proceedings, as set out in the 2002 Act and the 2023 Regulations.
- 2.3** Words and phrases not otherwise defined in the Guidelines shall, unless the context otherwise requires, have the meanings assigned to them in the 2002 Act and/or the 2023 Regulations.

3 ADMINISTRATION OF ADJUDICATION PROCEEDINGS

Independence, actions and Decisions of Adjudication Officers

- 3.1** Adjudication Officers are independent of the CCPC in the performance of their functions, and the CCPC shall ensure the effective internal separation between the functions of the CCPC and the functions of Adjudication Officers and that the structure, policies, practices and functions of, and working arrangements within the CCPC, are consistent with the 2002 Act and the 2023 Regulations.
- 3.2** In the context of these Guidelines, any references to the actions and/or Decisions of the Adjudication Officer assigned to a particular matter shall refer to the actions and/or Decisions of either the individual Adjudication Officer or to the division of Adjudication Officers assigned to the matter, as the case may be.

Adjudication Unit

- 3.3** Adjudication Officers will be assisted in the conduct of Adjudication Proceedings by the Adjudication Unit. All staff members of the Adjudication Unit are tasked as assistants to the Adjudication Officers under section 15R of the 2002 Act, and shall act in accordance with these Guidelines as appropriate.
- 3.4** The Adjudication Unit will provide assistance to the Adjudication Officers and will, for example, have responsibility for:
- (a)** receiving referrals for adjudication and for Orders on Consent on behalf of the Adjudication Officers;
 - (b)** transmitting to the Adjudication Officers documents received in the course of Adjudication Proceedings;
 - (c)** issuing communications for and on behalf of Adjudication Officers to Undertakings, Enforcement, and any other persons as may be directed by Adjudication Officers;

- (d) liaising with Adjudication Officers in respect of any correspondence received from Undertakings, Enforcement, and any other persons;
- (e) acting as registrar at hearings and managing the administration of hearings;
- (f) liaising with Adjudication Officers, Enforcement, and Undertakings in relation to scheduling and administrative arrangements;
- (g) providing such administrative assistance as may be required by Adjudication Officers in the course of Adjudication Proceedings;
- (h) providing procedural advice and guidance for Adjudication Officers with respect to Adjudication Proceedings; and
- (i) drafting and proofreading memoranda, correspondence and other documentation as may be required by Adjudication Officers in the course of Adjudication Proceedings.

3.5 Staff of the Adjudication Unit shall not provide legal advice in relation to the subject matter of referrals for adjudication or participate in the making of Decisions by Adjudication Officers.

3.6 Staff of the Adjudication Unit will not be subject to the direction of any member or employee of the CCPC in relation to the performance of their functions in assisting Adjudication Officers. In this regard, the CCPC shall ensure the effective internal separation between the functions of the Adjudication Unit and other areas of the CCPC where appropriate, and that the structure, policies, practices and functions of, and working arrangements within the CCPC, are consistent with the 2002 Act and the 2023 Regulations.

Appointment of external assistants to Adjudication Officers

3.7 The Chief Adjudication Officer may appoint external individuals (including consultants or advisers), to assist Adjudication Officers in the performance of their functions under the 2002 Act. Such persons shall not provide assistance in connection with any matter in which they have or may have a conflict of interest.

3.8 The Chief Adjudication Officer will appoint such persons to assist an Adjudication Officer as considered appropriate. If the Adjudication Officer, or division of Adjudication Officers as the case may be, assigned to a matter determines that specific assistance is required in that matter, the Adjudication Officer/division shall be consulted on decisions concerning the appointment of the relevant persons to provide such assistance. The payment or reimbursement of, or of any part of, the reasonable costs and/or fees charged or incurred by an external assistant in the performance of their tasks as part of the Adjudication Proceedings shall be agreed in advance with the external assistant and the discharge of such costs by the CCPC will be organised by the Adjudication Unit. The provisions of this paragraph are without prejudice to the overall responsibility of the CCPC regarding employment and entering into contracts and determining all matters relevant thereto.

- 3.9** Assistants shall be solely responsible to the Adjudication Officer in relation to their performance of the tasks referred to in the Rules and / or the Guidelines.
- 3.10** Although external assistants may provide advices and/or opinions on matters relevant to the Adjudication Proceedings as appropriate, they shall not participate in the making of substantive Decisions by Adjudication Officers. Any advices and/or opinions provided by external assistants on matters relevant to the Adjudication Proceedings will be disclosed to the Adjudication Officer, Enforcement and the Undertaking.

Record number and communications

- 3.11** Every matter referred for adjudication will be assigned an individual case record number and any communication to the Adjudication Unit in respect of such a matter should refer in its subject line to the record number assigned.
- 3.12** The Adjudication Unit will administer and manage an electronic document management system for matters referred for adjudication. Access to this system for individual matters referred for adjudication will be provided to the Undertaking and Enforcement and their authorised representatives on a case specific basis to facilitate the electronic transmission and exchange of notices and documents, as outlined in these Guidelines.
- 3.13** All applications, submissions, or supporting documentation intended for consideration by the Adjudication Officer shall be made in writing and directed to the Adjudication Unit, which will be responsible for forwarding the materials to the Adjudication Officer. No direct submissions to the Adjudication Officer are permitted.

4 COMMENCEMENT OF ADJUDICATION PROCEEDINGS

Referral to Adjudication Unit

- 4.1** The CCPC shall refer a matter for Decision by an Adjudication Officer after a Full Investigation Report has been prepared and the CCPC forms a provisional opinion that:
- (i)** an Undertaking has infringed and / or is infringing Relevant Competition Law;
 - (ii)** there has been a breach of a procedural requirement by the Undertaking;
 - (iii)** the Undertaking has failed to comply with its statutory Commitments or with a Structural or Behavioural Remedy ordered under section 15X of the 2002 Act; or
 - (iv)** the Undertaking has failed to comply with a Prohibition Notice.

Provision of documents upon referral

- 4.2** When a matter is referred for adjudication, Enforcement will provide the following documents to the Adjudication Unit by email or other electronic means:
- (i)** the Statement of Objections, and any supplementary Statement of Objections;
 - (ii)** the Full Investigation Report;
 - (iii)** a copy of all material relied upon for the purposes of referring the matter for Decision; and
 - (iv)** any written submissions made by the Undertaking concerned during the investigation, including in response to the Statement of Objections.

Assignment of matter to Adjudication Officer(s)

- 4.3** As soon as practicable after receipt of a referral for adjudication, the Chief Adjudication Officer will assign an Adjudication Officer to determine the relevant Adjudication Proceedings and make a Decision under section 15X of the 2002 Act.
- 4.4** At the discretion of the Chief Adjudication Officer, Adjudication Officers may (in a particular Adjudication Proceeding or otherwise) sit as a division. A division of Adjudication Officers shall consist of such uneven number of Adjudication Officers as the Chief Adjudication Officer may determine, either for any particular Adjudication Proceeding or group of Adjudication Proceedings or for any type of proceedings as the Chief Adjudication Officer shall consider appropriate.
- 4.5** When establishing a division, the Chief Adjudication Officer shall have regard to the complexity of the anticipated Adjudication Proceedings, the potential for a balance of skills amongst the Adjudication Officers in such proceedings, the need for consistent decision-making, the availability of Adjudication Officers, and the need for each Adjudication Officer to have a balanced workload.

Withdrawal of referral

- 4.6** The CCPC may, by notice in writing to the Adjudication Officer, withdraw a referral for adjudication at any time before a Decision is made under section 15X of the 2002 Act.
- 4.7** Where a referral is withdrawn under this section, the Adjudication Officer shall —
- (i)** notify the Undertaking of the withdrawal, and
 - (ii)** take no further action in relation to the matter.

5 SETTLEMENTS AND REFERRALS ON CONSENT

Referral for Order on Consent

- 5.1** Where the CCPC has agreed a settlement with the Undertaking concerned as to the imposition of an administrative financial sanction and / or a Structural or Behavioural Remedy, and has prepared a Simplified Investigation Report under section 15L of the 2002 Act, the CCPC shall—
- (i)** issue a written notice of referral to the Adjudication Officer for an Order on Consent and
 - (ii)** furnish the Adjudication Officer with a copy of the Simplified Investigation Report.

Notification on referral for an Order on Consent

- 5.2** As soon as practicable after a referral for an Order on Consent is made, the Adjudication Officer will give to the Undertaking a copy of section 15U of the 2002 Act and a Consent Notice stating that the matter has been referred for an Order on Consent.
- 5.3** The Consent Notice should also seek confirmation from the Undertaking as follows:
- (a)** That it consents to the imposition of the specific administrative financial sanction, or Structural or Behavioural Remedy, or both, as the case may be, as set out in the Simplified Investigation Report.
 - (b)** That it acknowledges that it is committing or has committed an infringement of Relevant Competition Law.
- 5.4** The Consent Notice should also inform the Undertaking that such confirmation should be provided within 15 working days from the date the Undertaking receives the notice, or such further period, not exceeding 7 working days, as the Adjudication Officer may allow.
- 5.5** The Adjudication Unit, acting for and on behalf of the Chief Adjudication Officer, shall also provide a copy of the Simplified Investigation Report and the Consent Notice to the European Commission in accordance with Article 11(4) of EU Regulation 1/2003. The notification to the European Commission shall issue not later than 30 days before the adoption of the Order on Consent. The Article 11(4) notification and any communications exchanged with the European Commission are considered confidential under EU law and, as such, will not be made available to Enforcement or the Undertaking.

Orders on Consent

- 5.6** The Adjudication Officer will prepare an Order on Consent once confirmation has been received from the Undertaking as set out at 5.3 above and once notification has issued to the European Commission as set out at 5.5 above.

- 5.7** The Order on Consent will set out the specific administrative financial sanction, the specific Structural or Behavioural Remedy, or both, as the case may be, as agreed by Enforcement and the Undertaking.
- 5.8** A copy of the Order on Consent shall be published on the CCPC website. The published version of the Order on Consent may contain such redactions as the Adjudication Officer considers necessary and appropriate, either on his or her own motion, or upon the written request of Enforcement and / or the Undertaking, in order to protect commercially sensitive information, to protect the rights of the Undertaking or any other person, or for any other good and sufficient reason.

6 PROCEDURE FOLLOWING REFERRAL FOR AN ADJUDICATION NOT ON CONSENT

Notification by Adjudication Officer on referral

- 6.1** As soon as practicable after a referral for adjudication is made, the Adjudication Officer will give to the Undertaking a copy of section 15U of the 2002 Act and an Adjudication Notice confirming that the matter has been assigned for Decision by the Adjudication Officer and informing the Undertaking whether the matter will proceed by way of written or oral submissions.
- 6.2** If the matter is to proceed by way of written submissions, the Adjudication Notice will provide a period of 30 working days from the date the Undertaking receives the Adjudication Notice for the Undertaking to make written submissions on the Full Investigation Report to the Adjudication Officer. The Adjudication Officer may allow a further period, not exceeding 15 working days, for the Undertaking to make the submissions. The Adjudication Officer will, as soon as practicable after receipt of such written submissions from the Undertaking, provide Enforcement with a copy of those submissions.
- 6.3** If an oral hearing is to take place, the Undertaking may make oral submissions to the Adjudication Officer. Further detail regarding oral hearings is set out in section 7 below and in the Rules.

Powers of Adjudication Officer following referral

- 6.4** At any time after a referral for adjudication, the Adjudication Officer may take certain actions if considered necessary to resolve an issue of fact or otherwise to enable the making of a Decision. Such actions, which are set out in paragraphs 6.5 and 6.6 below, may be taken following an application by Enforcement or by the Undertaking, or of the Adjudication Officer's own motion.
- 6.5** Such actions include the following:
- (i)** requesting further information from the Undertaking;
 - (ii)** requesting further information from any other person as set out in 6.8 below; and/or

(iii) conducting an oral hearing.

6.6 In addition to the above, the Adjudication Officer may make certain directions if necessary for determination of the issues arising in the Adjudication Proceedings. Such directions include:

(i) that the authorised officers of the CCPC or the Undertaking answer (whether on oath or otherwise) an identified question or questions in whatever manner or form the Adjudication Officer may specify;

(ii) that the authorised officers of the CCPC or the Undertaking adduce evidence or produce books, documents and records in its power or control; and

(iii) that the authorised officers of the CCPC or the Undertaking clarify any issue of fact that the Adjudication Officer may deem necessary.

6.7 Pursuant to Article 11(5) of EU Regulation 1/2003, the Adjudication Officer, in conjunction with the Adjudication Unit, may consult with the European Commission on adjudication matters and proceedings involving the application of EU law and any communications exchanged with the European Commission are considered confidential under EU law and, as such, will not be made available to Enforcement or the Undertaking.

Information requested and received from third parties

6.8 If an Adjudication Officer considers it necessary to resolve an issue of fact, or to otherwise enable the making of a Decision, the Adjudication Officer may request information from any other person and may, for the purposes of making such request, provide, with due regard for the protection of commercially sensitive information, a copy of the Full Investigation Report to the other person.

6.9 Such person who receives a copy of the Full Investigation Report shall not, without prior written authorisation of the Adjudication Officer, disclose the existence or the content of the report to any other person.

6.10 The Adjudication Officer will as soon as practicable:

(a) after making a request for further information from any person other than the Undertaking, give to Enforcement, and, with due regard for the protection of commercially sensitive information, give to the Undertaking, a copy of the request;

(b) after receiving any information pursuant to such a request, with due regard for the protection of commercially sensitive information, give to Enforcement and the Undertaking:

(i) a copy of the information or, where commercial confidentiality means that such information cannot be provided in full, a summary of such information; and

- (ii) written notice stating that Enforcement and the Undertaking may make written submissions to the Adjudication Officer on the information within the period of 20 working days from the date the Undertaking receives the notice, or such further period, not exceeding 10 working days, as the Adjudication Officer may allow.

7 CASE MANAGEMENT AND ORAL HEARINGS

Rules and procedure for oral hearings

- 7.1** Adjudication Officers will conduct oral hearings in accordance with section 15U of the 2002 Act, the Rules, and natural and constitutional justice. Oral hearings will take place as provided for in the Rules which are set out in the appendix to these Guidelines. Insofar as these Guidelines relate to oral hearings under the Rules, the Rules take precedence and the Guidelines are intended to supplement the Rules. As provided in paragraph 1.5 of these Guidelines, in the event of a conflict between these Guidelines and the Rules, the Rules shall prevail.
- 7.2** Adjudication Officers will at all times observe the rules of fair procedures as applied to administrative law proceedings, whilst at the same time conducting the adjudication proceeding as expeditiously and efficiently as possible.
- 7.3** In conducting an oral hearing, an Adjudication Officer will also determine any issues (including any legal issues) arising during the course of the hearing. Adjudication Officers may ask questions of witnesses, request submissions from the Undertaking and/or Enforcement, and otherwise carry out any other relevant function necessary for the conduct of the matter.
- 7.4** In advance of an oral hearing, Adjudication Officers may seek to narrow the issues to be determined at the oral hearing and to establish whether there are any preliminary applications or issues which may need to be determined at the outset (or in advance of) an oral hearing. This may be done by way of a case management hearing or by requesting written submissions from the Undertaking and Enforcement.
- 7.5** An Adjudication Officer may at their discretion determine that individual items of correspondence should not be sent to the Undertaking or Enforcement, or should be sent in a redacted form, if considered appropriate or necessary having considered the fair conduct of the matter.
- 7.6** At the beginning of an oral hearing, the Adjudication Officer (or chair, if a division of Adjudication Officers) will generally state the purpose of the oral hearing, introduce the members of the division (if applicable) and explain the manner and order in which the oral hearing will be conducted.
- 7.7** At a substantive oral hearing, the Adjudication Officer will generally set out the key issues which are to be considered. Enforcement will then be invited to make preliminary submissions, followed by an invitation for preliminary submissions from the Undertaking.

- 7.8** After the preliminary submissions, Enforcement and the Undertaking, or their representatives, will have an opportunity to lead evidence or cross-examine witnesses if and as appropriate.
- 7.9** Following all witnesses being called and examined, the Adjudication Officer will offer Enforcement and the Undertaking an opportunity to make closing submissions, including providing any written submissions as appropriate.

Case management hearings

- 7.10** Case management hearings may take place as provided for in the Rules.
- 7.11** The Adjudication Officer, or the Adjudication Unit on their behalf, will inform the Undertaking and Enforcement of the matters to be addressed at a case management hearing and will, insofar as practicable, provide reasonable notice of the day, time and location assigned for any case management hearing.
- 7.12** At a case management hearing, the Undertaking and Enforcement may make oral submissions on the matters to be considered by the Adjudication Officer.

Case management directions

- 7.13** Having taken into account the oral submissions and any written submissions which they permit, the Adjudication Officer will issue directions as appropriate, together with a timeframe for compliance.
- 7.14** Such directions as may be given should aim to ensure the timely and efficient running of the adjudication hearing while having due regard to the requirements of the legislation and to the principles of procedural fairness.
- 7.15** An Adjudication Officer also has the discretion to issue directions without the need for an oral hearing.
- 7.16** An Adjudication Officer may set such time limits as they deem reasonable for making submissions or complying with directions.
- 7.17** If complying with the directions is not possible in the time given, the Undertaking and/or Enforcement may request an extension of time. Such requests for an extension should be (i) in writing, (ii) received by the Adjudication Officer in sufficient time in advance of the set timeframe to allow the Adjudication Officer to consider the request and (iii) include reasonable and compelling reasons as to why it is not possible for the Undertaking or Enforcement to comply within the timeframe set. A copy of the request should be provided to the other side and the Adjudication Officer may permit a written response from the other side as to whether they consent to the request, or not as the case may be, and the reasons for their position. The decision on whether to grant the request lies within the sole discretion of the Adjudication Officer.

Witnesses

- 7.18** A witness is a person who has been identified as someone who may be able to provide relevant information to an adjudication, and may include an expert witness. In accordance with the Rules, a witness may be required to provide evidence by way of a written statement and may be required to furnish specified documents to an Adjudication Officer and/or to attend an oral hearing to give evidence.
- 7.19** To assist with the preparation to give evidence, the Undertaking or Enforcement may provide a witness with relevant documentation.
- 7.20** Witnesses are entitled to seek legal advice in relation to their attendance as a witness and an Adjudication Officer may, in their discretion, allow a witness to be represented at an oral hearing.
- 7.21** The payment or reimbursement 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. In assessing what constitutes reasonable travelling and subsistence expenses, the Adjudication Officer should have regard to the Civil Service rates for travel and subsistence, as are applicable at that time. The discharge of such expenses by the CCPC shall be organised by the Adjudication Unit who must be provided with sufficient supporting information including relevant receipts and documentation in order to keep appropriate records and arrange payment. Adjudication Officers do not have the power to discharge the legal costs of any witness appearing at an oral hearing.
- 7.22** The oral evidence of witnesses will be given on oath or by affirmation and such oath or affirmation will be administered by an Adjudication Officer.
- 7.23** The wording of the oath will be as follows:
- "I swear by (according to religious belief) that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."
- 7.24** The wording of the affirmation will be as follows:
- "I, [*name*], do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."
- 7.25** An Adjudication Officer may also allow a witness to give evidence by tendering a written statement, verified by oath or affirmation, and the witness may be required to attend an oral hearing for the purposes of examination.
- 7.26** An Adjudication Officer may also do any of the following:
- (i)** Require a witness to answer a question put to the witness.

- (ii) Require a witness pursuant to a summons to produce any document specified in the summons.

7.27 An answer to a question put to a witness, or information provided by a witness, in response to a requirement, will not be admissible as evidence against the witness in criminal proceedings, other than proceedings for perjury, if the information was provided on oath or affirmation.

7.28 The Adjudication Unit will arrange for the transcription of all oral hearings (including case management hearings). A copy of the transcript will be made available to the Adjudication Officer, the Undertaking and Enforcement as soon as practicable.

Failure to comply with procedural or hearing requirements

7.29 An Adjudication Officer will deal with a failure to comply with procedural or hearing requirements, including directions, as provided for in the Rules.

Confidential information

7.30 Any request for the confidential treatment of any document or part thereof provided in the course of Adjudication Proceedings should be made in writing, issued to the Adjudication Unit for consideration by the Adjudication Officer, and should:

- (a) indicate the relevant words, figures or passages for which confidentiality is claimed; and
- (b) be supported by specific reasons.

7.31 If so directed by an Adjudication Officer, the person making such request will also supply a non-confidential version of the relevant document to the Adjudication Officer for review and consideration, together with the request for confidential treatment.

7.32 The decision as to whether to grant such a request lies within the sole discretion of the Adjudication Officer.

7.33 Where confidential information is provided to Enforcement, the Undertaking, and/or any other person for the purposes of an oral hearing, the recipient must not disclose such information to any person unless authorised to do so by the Adjudication Officer in writing or required by law to do so. The recipient is not prevented from disclosing confidential information to their legal representatives.

Privileged legal material

7.34 Section 33 of the 2014 Act sets out the procedure for determining whether information is privileged legal material in the context of proceedings under Parts 2C, 2D and 2G of the 2002 Act.

7.35 This paragraph of the Guidelines deals with determinations of issues of legal privilege in the context of proceedings under Parts 2C and 2G (save as it relates to Part 2D) of the 2002 Act as follows:

1. Subject to section [2], nothing in these Guidelines shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.
2. The disclosure of information may be compelled, or possession of it taken, pursuant to the 2014 Act, notwithstanding that it is apprehended that the information is privileged legal material provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court or by an Adjudication Officer of the issue as to whether the information is privileged legal material.
3. Without prejudice to section [4], where, in the circumstances referred to in section [2], information has been disclosed or taken possession of pursuant to the 2014 Act, the person (a) to whom such information has been so disclosed, or (b) who has taken possession of it, shall – in accordance with section 33 of the 2014 Act – (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under section [4] in relation to the matter concerned) apply to the High Court or to an Adjudication Officer for a determination as to whether the information is privileged legal material and an application under this section shall be made within 30 days after the disclosure or the taking of possession.
4. A person who, in the circumstances referred to in section [2], is compelled to disclose information, or from whose possession information is taken, pursuant to the 2014 Act, may apply to the High Court or an Adjudication Officer for a determination as to whether the information is privileged legal material.
5. Pending the making of a final determination of an application to an Adjudication Officer under sections [3] or [4] an Adjudication Officer may give such interim or interlocutory directions as he or she considers appropriate including, without prejudice to the generality of the foregoing, directions as to:
 - (a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the Adjudication Officer;
 - (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Adjudication Officer considers to be appropriate for the purpose of—
 - (i) examining the information; and
 - (ii) preparing a report for the Adjudication Officer with a view to assisting or facilitating the Adjudication Officer in his or her determination as to whether the information is privileged legal material.

6. An application to an Adjudication Officer under sections [3], [4] or [5] shall be by application on notice and may, if an Adjudication Officer directs, be heard otherwise than in public.

7.36 Rules 5.1 to 5.6 of the Rules deals with determinations of issues of legal privilege in the context of proceedings under Part 2D and 2G (insofar as it relates to Part 2D) of the 2002 Act.

8 DECISIONS BY ADJUDICATION OFFICERS

Decision on substantive matters

8.1 Once all relevant information has been considered by the Adjudication Officer, the Adjudication Officer shall prepare a written Decision with respect to the matters before him or her including, as the case may be, whether

- (a) an Undertaking has or has not intentionally, recklessly or negligently committed an infringement of Relevant Competition Law, and whether that infringement is continuing;
- (b) an Undertaking has or has not intentionally, recklessly or negligently breached a procedural requirement or a hearing requirement, and whether that breach is continuing;
- (c) an Undertaking has or has not intentionally, recklessly or negligently failed to comply with Commitments entered into with the CCPC, and whether that failure is ongoing;
- (d) an Undertaking has or has not intentionally, recklessly or negligently failed to comply with a Structural or Behavioural Remedy, and whether that failure is ongoing; and / or
- (e) an Undertaking has or has not intentionally, recklessly or negligently failed to comply with a Prohibition Notice, and whether that failure is ongoing.

8.2 The relevant information to be considered by the Adjudication Officer shall be the following:

- (a) The documents provided to the Adjudication Unit when the matter was referred as set out in paragraph 4.2 above,
- (b) The Full Investigation Report and any written submissions made by the Undertaking on the content of the Full Investigation Report,
- (c) Any submissions, statements, admissions, information, records or other evidence provided to the Adjudication Officer in the course of the Adjudication Proceedings,
- (d) Any prior relevant Decision of an Adjudication Officer in Adjudication Proceedings, as long as such Decision has been confirmed by the High Court.

8.3 The Decision shall be made on the balance of probabilities.

8.4 The Decision may be formed in relation to conduct that is no longer ongoing.

Form of Decision

8.5 A Decision as described in paragraph 8.1 above shall include details in relation to –

- (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,
- (e)** The rights of appeal where a final Decision has been made,
- (f)** The time limits within which the Undertaking 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,
- (g)** The name of the Undertaking concerned, and
- (h)** Such other particulars or material as the Adjudication Officer considers appropriate.

Provision of Decision

8.6 The Adjudication Officer in conjunction with the Adjudication Unit shall provide the European Commission with a summary of the case and the envisaged Decision in accordance with Article 11(4) of EU Regulation 1/2003. The Adjudication Unit shall also inform the European Commission of the structural or behavioural remedies, if any, that the Adjudication Officer proposes to impose on the Undertaking, as well as 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. At the request of the European Commission, the Adjudication Unit shall make available other documents it holds which are necessary for the assessment of the case. The Article 11(4) notification and any communications exchanged with the European Commission are considered confidential under EU law and, as such, will not be made available to Enforcement or the Undertaking.

8.7 Not less than 30 days after the issuance of the Article 11(4) notification described above, the Adjudication Officer shall provide Enforcement and the Undertaking with a copy of the Decision and shall inform Enforcement and the Undertaking of:

- (a) The structural or behavioural remedies, if any, that the Adjudication Officer proposes to impose on the Undertaking, and
- (b) 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.

8.8 The Adjudication Officer may provide a period of 15 working days, or such further period as is considered appropriate by the Adjudication Officer, for Enforcement and the Undertaking to make written submissions in relation to the matters proposed by the Adjudication Officer as set out in accordance with paragraphs 8.7(a) and 8.7(b) above.

Submissions on behavioural and structural remedy, administrative financial sanction and periodic penalty payment

8.9 Enforcement and the Undertaking may, within the period of time as prescribed by the Adjudication Officer, make submissions in writing to the Adjudication Officer in relation to the Structural or Behavioural Remedy, the periodic penalty payment, or the administrative financial sanction that the Adjudication Officer has proposed to impose.

8.10 The submissions may also address the application of the "*Guidelines on the determination of administrative financial sanctions and periodic penalty payments*" published by the CCPC pursuant to section 15AF(1)(b) of the 2002 Act, as well as application of the criteria in sections 15Z, 15AA, 15AB or 15AD of the 2002 Act, as applicable.

Further information to determine behavioural and structural remedy, administrative financial sanction and periodic penalty payment

8.11 The Adjudication Officer may make a written request to the Undertaking for such further information as the Adjudication Officer considers appropriate for the purpose of determining the sanction to be imposed.

Decision on behavioural and structural remedy, administrative financial sanction and periodic penalty payment

8.12 The Adjudication Officer may, having regard to any submissions delivered on behalf of Enforcement and the Undertaking, issue a Decision:

- (a) imposing structural or behavioural remedies on the Undertaking;
- (b) imposing an administrative financial sanction on the Undertaking;
- (c) imposing periodic penalty payments on the Undertaking.

- 8.13** The Adjudication Officer is entitled to impose 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 paragraph 8.7 above.
- 8.14** Where an Adjudication Officer imposes a periodic penalty payment on an Undertaking, the periodic penalty payment shall be reckoned from the date of the Decision under 8.1 above.
- 8.15** Any Decision by an Adjudication Officer in respect of a Structural or Behavioural Remedy, administrative financial sanction, or periodic penalty payments, should specify the time period within which the Undertaking is required (subject to any appeal) to comply with the Decision.

9 NOTICE OF ADJUDICATION

Provision of Decision on behavioural and structural remedy, administrative financial sanction and period penalty payment

- 9.1** As soon as practicable after the Adjudication Officer has prepared a Decision as described in 8.12 above, the Adjudication Officer shall furnish the Adjudication Unit with the Decision.
- 9.2** The Adjudication Unit shall provide the European Commission with a summary of the case and the envisaged Decision in accordance with Article 11(4) of EU Regulation 1/2003. At the request of the European Commission, the Adjudication Unit shall make available other documents it holds which are necessary for the assessment of the case. The Article 11(4) notification and any communications exchanged with the European Commission are considered confidential under EU law and, as such, will not be made available to Enforcement or the Undertaking.
- 9.3** Not less than 30 days after the issuance of the Article 11(4) notification described above, the Adjudication Unit shall, as soon as practicable thereafter, furnish a copy of the Decision to Enforcement, subject to redactions as the Adjudication Officer considers necessary and appropriate in order to protect the rights of the CCPC, the Undertaking, or any other person, to protect commercially sensitive information, or for any other good and sufficient reason.

Notice to Undertaking

- 9.4** Within 7 days of receipt of the Decision by Enforcement under paragraph 9.3 above, the Adjudication Unit will give notice in writing of the Decision to the Undertaking. The notice will:
- (a)** include a copy of the Decision, subject to redactions as the Adjudication Officer considers necessary and appropriate in order to protect the rights of the CCPC, the Undertaking, or any other person, to protect commercially sensitive information, or for any other good and sufficient reason;

- (b) state that, in respect of an administrative financial sanction, a periodic penalty payment, or a Structural or Behavioural Remedy, the Decision does not take effect unless it is confirmed by the High Court, as applicable;
- (c) state that, if the Undertaking does not avail of any applicable rights of appeal, the CCPC must, as soon as is practicable after the expiration of the period for the making of an appeal, make an application to the High Court for confirmation of the Decision;
- (d) state that any person who receives a copy of the notice prior to the publication of the Decision shall not, without the prior written authorisation of the Adjudication Officer, disclose the existence or the content of the notice to any other person; and
- (e) state that any person who receives a copy of the notice which contains material redacted from publication shall not, without the prior written authorisation of the Adjudication Officer, disclose the content of the redacted material to any other person.

Notice to other persons

9.5 The Adjudication Unit may provide a copy of a notice referred to in 9.4 above to a person other than the Undertaking where the Adjudication Officer considers it appropriate to do so, subject to redactions as the Adjudication Officer considers necessary and appropriate in order to protect the rights of the CCPC, the Undertaking, or any other person, to protect commercially sensitive information, or for any other good and sufficient reason.

Publication of Decisions

9.6 The CCPC will publish a copy of all Adjudication Officer Decisions on the CCPC website, subject to such redactions as the Adjudication Officer may consider necessary and appropriate in order to protect the rights of the CCPC, the Undertaking, or any other person, to protect commercially sensitive information, or for any other good and sufficient reason, including where the publication of certain information would prejudice the achievement of the objectives of the 2002 Act. Any such publication should occur after the Decision has been made and has been furnished to Enforcement and the Undertaking, and should include a statement that the Decision does not take effect unless it is confirmed by the High Court as provided in paragraph 11.12 below.

9.7 Prior to publication, Enforcement and/or the Undertaking (in this section, each a “Requester”) will be entitled to review the Adjudication Officer's Decision for the purposes of considering whether any further redactions may be appropriate.

9.8 The Requester will make any request for further redactions to be considered by the Adjudication Officer in writing to the Adjudication Unit within 7 days from the date on which the Requester received a copy of the Adjudication Officer's Decision under this section. The Adjudication Officer will ordinarily only consider such applications where the Requester has identified the information requested for redaction, the basis upon which such information in the opinion of the Requester ought to be redacted, and the occasion(s) during the Adjudication Proceedings on which the Requester submitted that the information in question ought not be specified in the Adjudication

Officer's Decision, whether pursuant to a request for confidential treatment under the Rules or otherwise. The final decision as to whether such information will be published will rest with the Adjudication Officer.

10 COSTS

- 10.1** Ordinarily no orders as to costs will be made in proceedings before an Adjudication Officer. An Adjudication Officer may, however, in his or her discretion, award the costs of Adjudication Proceedings against an Undertaking or, as the case may be, the CCPC, in accordance with the Rules. Any such orders as to costs should be proportionate to the nature and extent of the conduct that the Undertaking or the CCPC is found to have engaged in and may be limited to a proportion of the overall costs of proceedings or to the costs of a particular part of the proceedings.

11 MATTERS CONSEQUENT TO ADJUDICATION

Appeal against a Decision to the High Court

- 11.1** The Undertaking may appeal the Adjudication Officer's Decision to the High Court not later than 28 working days after the date of service of the notice under paragraph 9.4. The respondent to an appeal will be the CCPC.
- 11.2** The High Court may extend the time period above for bringing an appeal in certain circumstances as provided in section 15AY(2)(a) of the 2002 Act.
- 11.3** The CCPC shall be notified by the appellant of any appeal made under this section on the same date as such appeal is made with the High Court, and of the grounds on which the appeal has been made.

Appeal by a separate Undertaking not the subject of the Adjudication Officer's Decision

- 11.4** An Undertaking or association of Undertakings affected by, but not the subject of, an Adjudication Officer's Decision may, not later than 14 working days after that Decision is published, apply to the High Court by motion ex parte for leave to appeal that Decision. Such an application does not suspend the effect of the Decision unless the High Court, on application by the applicant, place a stay on the Decision.

Judicial review of the acts of Adjudication Officers

- 11.5** A Decision of the Adjudication Officer, including as to its validity, shall not be questioned other than by way of an appeal as provided in section 15AY of the 2002 Act and as described in 11.1 above. The validity of any other act by an Adjudication Officer in the performance of their functions,

where an appeal would not be available under section 15AY of the 2002 Act, may be questioned by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) ("Order 84") and in accordance with the 2002 Act.

- 11.6** An application for judicial review under Order 84 in respect of acts of the Adjudication Officer as part of the Adjudication Proceedings should be made no later than 28 working days from the date on which the notice of the act was first sent or published or, if notice of the act was not sent or published, from the date on which the Undertaking became aware of the act.
- 11.7** The High Court may extend the time period provided for above if it is satisfied that there is good and sufficient reason for doing so and that the circumstances that resulted in the failure to make the application within the period provided were outside the control of the applicant.

Questions of Law for the High Court

- 11.8** The Adjudication Officer may, either at his or her own initiative, or at the request of Enforcement or the Undertaking, refer a question of law arising at the adjudication hearing to the High Court for decision.
- 11.9** When such a question of law has been made to the High Court, the Adjudication Officer shall send to the Court all documents before the Adjudication Officer that are relevant to the matter in question.
- 11.10** While such a question of law is pending before the High Court, the Adjudication Officer shall not make a decision as part of the Adjudication Proceedings which is relevant to the question of law.
- 11.11** The Adjudication Officer shall not proceed in a manner or make a decision in the Adjudication Proceedings that is inconsistent with the High Court's opinion on the question of law.

Court confirmation of an Adjudication Officer's Decision

- 11.12** Where the Undertaking does not appeal to the High Court within the time period provided under paragraph 11.1 above, the CCPC will as soon as practicable thereafter make an application to the High Court for confirmation of the Adjudication Officer's Decision. The application will include a copy of the Adjudication Officer's Decision, together with the documents and evidence referred to in the Adjudication Proceedings, and may include any other documents which were before the Adjudication Officer.
- 11.13** Prior to making the application, the CCPC will seek the consent in writing of the Undertaking to the confirmation of the Adjudication Officer's Decision and, where the Undertaking so consents, the application by the CCPC (and any remaining steps in such application) may be made *ex parte*.
- 11.14** Notice of the application will be served by the CCPC on the Undertaking within 7 working days of lodging the application in Court, together with all documents lodged in Court. The notice will also set out the date and time fixed by the Court for the hearing of the application.

Publication of Decision confirmed by the High Court

- 11.15** The CCPC will publish an Adjudication Officer's Decision confirmed by the High Court on the website of the CCPC subject to such redactions as the Adjudication Officer may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason, including where the publication of certain information would prejudice the achievement of the objectives of the 2002 Act. Such publication would only be necessary if the Decision has been substituted as part of the confirmation proceedings. Otherwise, the previous publication of the Decision as referenced in paragraph 9.6 above will remain on the CCPC website, subject to an update to reflect that the Decision has been confirmed and therefore taken effect.
- 11.16** Prior to such publication, Enforcement and the Undertaking (in this section, each a "**Requester**") will be entitled to review the Adjudication Officer's Decision as substituted by the High Court for the purposes of considering whether any further redactions may be appropriate.
- 11.17** The Requestor will make any request for further redactions to be considered by the Adjudication Officer in writing to the Adjudication Unit within 7 days from the date on which the Court issues its decision. The Adjudication Officer will ordinarily only consider such requests where the Requester has identified the information requested for redaction, the basis upon which such information in the opinion of the Requester ought to be redacted, and the occasion(s) during the Adjudication Proceedings on which the Requester submitted that the information in question ought not be specified in the Adjudication Officer's Decision, whether pursuant to a request for confidential treatment under the Rules or otherwise. The final decision as to whether such information will be published will rest with the Adjudication Officer.

12 **CRIMINAL OFFENCES**

- 12.1** Participants in Adjudication Proceedings should note that Part 2D of the 2002 Act creates the following criminal offences and penalties:

SECTION	OFFENCE
15U(7)	Disclosing the existence or the content of the Full Investigation Report to any other person without prior authorisation of the Adjudication Officer
15W(5)(a)	Not complying with a notice under section 15V of the 2002 Act.
15W(5)(b)	Failing to comply with a direction under section 15W(1) of the 2002 Act.
15W(5)(c)	Failing without reasonable excuse to attend at the time and place indicated on a witness summons.

15W(5)(d)	While attending as a witness before an Adjudication Officer at an oral hearing, refusing to (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 (iii) answer any question that the person is lawfully required by the Adjudication Officer to answer.
15W(5)(e)	Engaging in any conduct while attending before the Adjudication Officer that, if the Adjudication Officer were a court of law having power to punish for contempt, would be contempt of court.
15W(7)	Having been, or in anticipation of being, required to produce a book, document or record under section 15W(1)(b) or under section 15V(2)(a), intentionally or recklessly destroying or otherwise disposing of, falsifying or concealing such book, document or record, or causing or permitting its destruction, disposal, falsification or concealment.
15W(8)	Providing information or evidence to an Adjudication Officer which is false or misleading in a material respect and the person knows, or ought reasonably to know, that it is false or misleading in a material respect.
15W(9)	Providing information to another person, knowing the information to be false or misleading in a material respect, or recklessly providing 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 the 2002 Act.
15Y(6)	Failing to comply with a request to provide further information for the purpose of determining the sanction to be imposed as referred to in paragraph 8.11 above and in accordance with section 15X(3)(b)(iv) of the 2002 Act.
15Y(6)	Disclosing the existence or the content of a notice referred to in paragraph 9.4 above prior to publication of the Adjudication Officer's Decision to any other person without prior authorisation of the Adjudication Officer, in contravention of section 15Y(5)(a) of the 2002 Act, or disclosing the content of material redacted from publication to any other person without prior authorisation of the Adjudication Officer, in contravention of section 15Y(5)(b) of the 2002 Act.